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

VOLUME 19 OF 53

Trial Court Cause No. 380-80047-01

THE STATE OF TEXAS * IN THE 380TH DISTRICT COURT

*

V. *

*

IVAN ABNER CANTU * OF COLLIN COUNTY, TEXAS

REPORTER'S RECORD
VOLUME 19 - VOIR DIRE
CAPITAL MURDER JURY TRIAL

COPY

On the 12th day of September, 2001, from 9:05 a.m. to 5:30 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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1 PROCEEDINGS
 2 (Open court, jury not present.)
 3 THE COURT: All right. We're on the record in
 4 the State of Texas versus Ivan Abner Cantu; Cause Number
 5 380-80047. The Defendant and his two attorneys are present,
 6 and the three attorneys for the State are present. And the
 7 first juror this morning is Mr. Bernecker.
 8 (Venireperson enters the courtroom.)
 9 THE COURT: Sir, are you Richard Bernecker?
 10 VENIREPERSON: Yes.
 11 THE COURT: I just want to remind you that
 12 three weeks ago I asked the jurors to take an oath, which
 13 everyone did, to give truthful answers to the questions that
 14 are asked by the attorneys on both sides. Do you recall that?
 15 VENIREPERSON: Yeah.
 16 THE COURT: So you're still subject to that
 17 oath. Please be seated.
 18 Mr. Schultz.
 19 MR. SCHULTZ: Thank you, Judge.
 20 DIRECT QUESTIONS
 21 BY MR. SCHULTZ:
 22 Q. Good morning to you, sir.
 23 A. Morning.
 24 Q. My name is Bill Schultz. I'm one of the Assistant
 25 District Attorneys representing the State of Texas in its

1 capital prosecution of Ivan Cantu. To my left is Ms. Gail
 2 Falco, who spoke with you as a group a few days ago. She's a
 3 chief felony prosecutor primarily assigned to the 199th
 4 Judicial District Court, but on loan to us for this trial.
 5 And then to her left, your right, is Ms. Jami Lowry, a felony
 6 prosecutor. We are probably the only three prosecutors you'll
 7 see in connection with this case. Sometimes there might be
 8 some specialized area of evidence that maybe there would be
 9 some other prosecutor more fluent in or more familiar, and
 10 sometimes we might bring that person in just for that portion
 11 of it. I kind of doubt that in this case.
 12 Some examples of what I'm talking about are there --
 13 where DNA evidence, for example, is hotly contested and where
 14 there's a significant issue about laboratory procedures or
 15 about integrity of specimens that have been taken, or
 16 something like that. Oftentimes there can be specialists that
 17 we would bring in. Sometimes if there's any -- a significant
 18 indication of an insanity defense, there may be prosecutors
 19 who have more familiarity with how to present psychiatric
 20 evidence and how to cross-examine a psychiatrist than more
 21 generic prosecutors. And finally, there may be circumstances
 22 where there may be a very young witness, like a child that --
 23 not necessarily a child who -- I don't know if you've ever had
 24 experience with children and witnesses and kind of being put
 25 on the spot, but they -- it's harder for them than even for

1 us, and we have prosecutors that work primarily with child
2 victims and child witnesses. That's their specialty, so those
3 are the circumstances where you might see some important
4 person come in, but I doubt it. I think it will be the three
5 of us.

6 And I know it will be the two defense attorneys at
7 the other table. Let me introduce, first of all, to you
8 Mr. Cantu, the Defendant, who's in the gray shirt. To your
9 left at that table, next to him, is Mr. Don High, and next to
10 him is Mr. Matt Goeller. These are both very fine private
11 practitioners of law and board certified criminal law
12 specialists, former prosecutors, and very fine men.

13 So, with those pleasantries let's talk about why we
14 do this on an individual basis, because in any other kind of
15 criminal case we do it just about like Ms. Falco and Mr. High
16 did it when they talked with you. It's the stand up in front
17 of a group, ask for a show of hands on this point and that
18 point, and do you have any questions, and from the
19 questionnaires we would make ten strikes, perhaps, each side,
20 and that's the process.

21 It is believed, and I think correctly so, that the
22 death penalty is so significant, first of all, for society to
23 be doing it, and secondly, so potentially emotional for jurors
24 that the comfort and the time necessary to make both sides
25 know exactly the decision they make -- both sides and lawyers,

1 is important enough to try to do it on an individual basis.
2 That way we're not distracted, or we're not bumbling for
3 Number 15, would that be you, or is that Mrs. Jones? There's
4 not that -- I think when it's a one-on-one kind of situation,
5 most jurors are more comfortable kind of in that interactive
6 procedure.

7 It will be friendly. It's -- I mean, this is not
8 adversarial between you and the lawyers on either side. Some
9 of the things you've said on your questionnaire will be things
10 that we want to respond to, and maybe something that would
11 cause me concern, let's say. Maybe it's something that would
12 cause the Defense concern, but if there's one thing I say with
13 every juror is this is America, and people have their own
14 opinions. That's great, and the opinions of today sometimes
15 become the laws of tomorrow, and that's how that all is.

16 Ms. Falco took time to graphically discuss with you
17 the fact that the State's belief is that we will present
18 sufficient evidence to convict the Defendant beyond a
19 reasonable doubt. That doesn't mean that what I believe is
20 evidence. Of course, it isn't. But that's what I believe to
21 be the outcome, and we believe that 12 reasonable people will
22 say, yeah, they've convinced us beyond a reasonable doubt, and
23 they will vote guilty of capital murder.

24 We further believe that based upon that same
25 evidence that we used at the guilt-innocence phase, the crime

1 itself plus any evidence that we may introduce at the
2 punishment phase, that second part of the trial, we believe we
3 will convince 12 people that the Defendant has a probability
4 of being a danger to our society in the future, and that he is
5 a continuing threat to society, and that this danger is
6 actually criminal acts of violence.

7 And we further believe that when we get to the
8 second question before the jury at punishment, we believe we
9 will convince the jury, or alternatively that the jury will be
10 convinced since we don't have a burden of proof on that
11 particular question, we believe the jury will be unanimously
12 convinced that there is not sufficient mitigating evidence in
13 the Defendant's background, personality, character,
14 upbringing, physical, spiritual or other parts of life,
15 there's not sufficient mitigating evidence to warrant a life
16 sentence, and we believe the jury will answer no to that
17 question.

18 And that means -- that means the result of those
19 answers is a death sentence, and even though we all know it's
20 slow, and the procedure seems interminable sometimes,
21 nevertheless we believe that at some point in time the
22 Defendant -- if all that happens, the Defendant will be taken
23 from one cell, walked down a hall. There may be priests
24 praying with him. There may be, you know, family members
25 sobbing. There may be people outside with candles, all the

1 things that we're familiar with with executions, but the
2 bottom line is we believe at some point if all that happens,
3 he'll be strapped on a gurney whether he wants to or not. And
4 if he resists, we'll get sufficient guards to avoid that being
5 a problem for us, and he'll be executed. And we can call it
6 humane because I suppose it's humane in the sense that we
7 think it's painless. I mean, it's just you going to sleep and
8 you don't wake up, but at the same time that's a grim reality,
9 and I want to make sure that everybody understands that we're
10 serious about it.

11 And I'm not implying that you don't understand that,
12 but I would hate for somebody to get right in the middle of
13 this -- I would hate for a juror to have the misery of getting
14 right in the middle of this and say, I don't know how I can
15 live with myself if I vote the evidence (sic). That's all.
16 I'm not trying to be funny, and I promise there isn't any --
17 there isn't any humor in my voice when I talk with you this
18 way.

19 When I talk that way, when Ms. Falco talks that way,
20 does it have any affect on your beliefs on the death penalty?
21 Does it give you just a different feeling about it at all?

22 **A. It is what it is, no.**

23 **Q.** But you understand how it might affect some other
24 people?

25 **A. (Nods head.)**

1 Q. My thinking is kind of that it's easy for us to say
2 what we ought to do as a society when we're in our living
3 rooms. I bet everyone in America has got some kind of
4 opinions in the back of his or her mind what we need to be
5 doing over what happened yesterday, for example. And, you
6 know, I guess some of us may be more caught up in the due
7 process notion that we've got to find who did it. That's real
8 important. We've got to find who did it before we punish
9 them.

10 And then other people might say, well, as long as we
11 know generally where they are, let's take out everybody as
12 long as we've got them and they're together kind of thing.
13 So, I mean, everybody has got different views. But when it
14 comes to doing it, we, in our living rooms, know we need to
15 fight over this. We all know that, but it might be different
16 for that pilot that's got to drop those bombs. Maybe he'd
17 have a different view on this. He's not in the living room.
18 He's in the complicated (sic). He may be thinking, you know,
19 not everybody I'm going to kill down there is responsible. Do
20 you follow what I'm saying?

21 A. Absolutely.

22 Q. And that's kind of where I'm coming from in this,
23 and I bet -- I might be wrong about you, but I'll bet you
24 didn't wake up this morning thinking it's going to be a good
25 day because if everything goes right, I may end up on a

1 capital murder jury, and if the State does everything just
2 right, I may have a chance to have some small part in killing
3 a human being. I bet you didn't feel that way?

4 A. No.

5 Q. And I didn't, either. I didn't wake up this morning
6 and say, boy, isn't this wonderful. If we didn't have a need
7 for a death penalty, and if we didn't have capital murderers,
8 it would be a better society it seems to me, but we do.

9 Why do you favor the death penalty?

10 A. I favor the option of a death penalty. I'm trying
11 to find a way to synopsise, just sort of a gut reaction. In
12 my life, in everyone's life we have encountered circumstances
13 or individuals that we found just untenable, just absolutely
14 untenable, and probably made a judgment that said that over
15 this line -- stepped over a particular line, there is a
16 sufficient lack of humanity that as much as we prize personal
17 liberty over public safety, we've got to take that step.

18 And to your comment about the armchair quarterback,
19 you know, that is what this opinion is at this point in time.
20 I mean, I've never been faced with the need to actually render
21 a judgment of that nature.

22 Q. Something interesting in your questionnaire, and
23 it's funny how this works because we'll read the
24 questionnaires and probably the takes we make on
25 questionnaires, they're just useful to us. They give us some

1 insight into kind of how different people think.

2 A. Creative writing exercise.

3 Q. Uh-huh, uh-huh.

4 And actually you had -- you did some really
5 thoughtful work on this, and much of it -- I don't know how
6 much of that is just reaction to yesterday and things that go
7 on, or how much seems to make sense or if you connect with me
8 somehow. But one of the things you said that I thought was
9 real interesting was have you felt differently about the death
10 penalty than we do now? And you indicate and you said, "With
11 age comes the understanding that things are never as black and
12 white as they seemed in youth."

13 And why that was interesting to me is because I
14 think most of us would agree that as we progress in life how
15 we live our life changes. And we might hope that in general
16 we get a little softer and kinder and less irritable as we get
17 along. I don't know if that's so or not, but I guess that
18 depends on our circumstances whether maybe that's so. But I
19 suspect you'd be the kind of man that would agree with me that
20 things that you thought you would have done at age 25 might be
21 different than now even.

22 A. Yes.

23 Q. Because how old a man are you?

24 A. 37.

25 Q. Twelve years difference. You see things differently

1 than you did then. I guess most people -- were you married at
2 25, by the way?

3 A. Yes. I had just gotten married, 25.

4 Q. Then I ought to go back to about 24 for the big
5 change, I guess.

6 Circumstances certainly dictate how we view things,
7 and I'll bet if you're like anybody else that's thoughtful,
8 you can look back, and you've got a whole bunch of "that was
9 probably not the right choice I made." That wasn't the
10 decision. I should have done this or that. Do you have any
11 of that?

12 A. As a general rule, no.

13 Q. Really?

14 A. Even those things that have not turned out to be the
15 most pleasant of experiences make me who I am.

16 Q. I understand. I'm right, I get what you're saying,
17 too.

18 You would agree with me that many times people make
19 mistakes in their youth that almost anybody on the outside
20 looking at it would say there's no way that's right. Would
21 you agree with that?

22 A. Yes.

23 Q. I'll bet you've known people who have gotten
24 married, and you look at that and say why on earth is she
25 marrying somebody like him. You can't tell her anything. I

1 love him. He's wonderful, you don't know him, and he's sweet
2 when he doesn't drink. You know all that kind of stuff? You
3 can't break through, but you know that's a crazy choice for
4 anybody. You know it can't work. Have you ever had a
5 situation like that?

6 **A. Yes.**

7 **Q.** You've probably known people who have made bad job
8 decisions. They've got a perfectly good job where they're
9 respected, and they -- but they go off chasing one of these
10 ads in the newspaper, call Mr. Brown if you want to make
11 \$100,000 a year, that kind of stuff --

12 **A. Right, uh-huh.**

13 **Q.** -- and you try to tell them that can't work out. If
14 it's a great job, he doesn't need to advertise in the paper
15 with weird stuff. You know, you can't tell them that.
16 They've got to find that out for themselves.

17 **A. Uh-huh.**

18 **Q.** And sometimes they learn from that and sometimes
19 they keep repeating it. For example, have you ever known a
20 person -- I don't know if it's more male or female. To me it
21 seems like it's more of a female thing, that they just keep
22 repeating, hooking up with one bad partner after another.
23 Have you ever known anybody like that?

24 **A. Yes.**

25 **Q.** And you wonder when are you going to figure -- it's

1 almost like if you think you love him, you better not because
2 you better not do anything with him, because your idea of love
3 ends up getting you hurt or mistreated or something like that.

4 **People make school decisions. I mean, people decide**
5 **they want to do something different, and they'll leave school**
6 **and then looking back later in their life they'll say, how**
7 **stupid. College was the best time of my life. What in the**
8 **world am I doing, you know, going off to Columbia looking for**
9 **animals, or whatever I did that seemed to make sense at that**
10 **time, and so on?**

11 **A. Right.**

12 **Q.** And you can even make worse choices than that.
13 **People of conscience and decency can make choices, like**
14 **getting involved in drugs, getting involved in weird political**
15 **organizations, getting involved in unusual, not bad, but**
16 **unusual religious sects that seem to have -- seem to have**
17 **dimensions about them that don't seem to fit what we think is**
18 **good for them. There's snake worshippers, and there's people**
19 **that do sacrifices and witch stuff and all that. I guess**
20 **that's legal in America, but it's kind of strange for most of**
21 **those people. I hope you don't do that because I take it all**
22 **back if really you do. You're a man of faith, I can tell.**

23 (Laughter.)

24 **Q. BY MR. SCHULTZ:** You don't, do you?

25 **A. No.**

1 **Q.** Okay. And it's so -- when you're looking at people
2 it's easy to say, you know, the excuses of youth will even out
3 as you get older. But I also get a sense from your
4 questionnaire that you recognize that the departures like
5 that, that we're talking about; lack of wisdom, lack of sense,
6 even -- all kinds of stuff; divorcing a good spouse is pretty
7 good for you, but now you won't hear otherwise. Something
8 else going on, you know, she doesn't make me happy, she
9 doesn't understand. Even stuff that's going to have
10 long-range implication, maybe going to hurt children, whatever
11 might happen, that's real different, hugely and enormously
12 different, from capital murders. Does that make sense to you?

13 **A. Yes.**

14 **Q.** Other than obviously where -- whether somebody goes
15 to college or not is certainly different than a capital
16 murder.

17 **Those departures are within the realm of experience**
18 **that all of us can understand and can kind of get there in our**
19 **minds. I mean, we can all understand getting sick of your job**
20 **and wanting to go to the beach and do whatever you do on the**
21 **beach kind of thing. We all understand that when we feel that**
22 **way.**

23 **Most of us, try as we might, cannot even get to such**
24 **a departure as capital murder. Burglary of somebody's home,**
25 **when they catch you and you go ahead and kill them and execute**

1 **them. Executing two people intentionally. Thinking about it,**
2 **having a weapon, knowing you're going to do it, being capable**
3 **enough in your -- and in control enough with your emotions and**
4 **your body to be able to effectively kill them. Take property**
5 **from them if it's a robbery. Take jewelry off of them if**
6 **it's -- you know, if you decide you want to give an engagement**
7 **ring to somebody else that makes perfect sense to some people,**
8 **but would never make sense to us. Do you agree with me?**

9 **A. Yes.**

10 **Q.** Let's assume you murdered a woman. Would it ever
11 make any sense to you to take an engagement ring off her
12 finger and give it to your girlfriend? I mean, does that just
13 seem ghoulish to you?

14 **A. I can't place myself there.**

15 **Q.** Okay.

16 **A. I mean --**

17 **Q.** That creates problems sometimes for the prosecution
18 because it's almost like -- because many times jurors can't
19 even recognize how such conduct could exist, how a human being
20 could even be that low. They say to themselves, he must be
21 crazy, or it's almost like we're looking for an explanation,
22 other than human responsibility for that conduct. It's almost
23 like inside us we would love to find some way that he had a
24 sad upbringing, or he didn't have enough money, or -- I don't
25 know. Sometimes you hear about these syndromes, these

1 battered kids' syndromes, or you didn't get any (sic) role
2 model. It's almost, like, if there's a logical cause and
3 effect that we can find, we're happier with it somehow inside.
4 Does that make sense to you what I'm saying?

5 A. Yes.

6 Q. And yet, the truth of the matter is I think try as
7 we might, there's never a way we could ever understand
8 somebody that you've indicated, like a serial killer, just a
9 cold-blooded killer, we really can't understand that. We can
10 understand a thief. I mean, you understand a thief. Somebody
11 has got something you wish you had, so you take it. You
12 wouldn't do it, but you understand it.

13 A. Yes.

14 Q. Right.

15 You can understand getting in a -- you can probably
16 even understand how somebody can get into domestic violence.
17 I mean, you wouldn't do it, but things get so bad and so tense
18 and ugly things are said, and there's so much history, and
19 finally a man or a woman takes a slap at the other. I mean,
20 you can --

21 A. **These are things that come from emotions that we all
22 feel and understand.**

23 Q. Absolutely.

24 A. Yeah.

25 Q. And those are things that people can work out of,

1 are these weird law school things we talk about sometimes.
2 Somebody is breaking into your house you think, but it turns
3 out it's your spouse who lost her key and doesn't want to wake
4 you up so she comes in the window or something like that, and
5 you holler out "stop or I'll shoot." She doesn't hear you or
6 thinks you're kidding or something like that, and you end up
7 killing her. If all that's true and you were reasonable in
8 believing that, you're not guilty of a crime. It's just one
9 of those awful misfortunes that happen.

10 But a capital murder, what we're talking about, this
11 is the intentional causing the death of another human being,
12 either in the course of a burglary, in the course of a
13 robbery, or in the course of another murder. That's that
14 double murder circumstance. So I guess it would be fair for a
15 juror to say if a person could ever get to that point, even
16 though I can't understand it, that person obviously doesn't
17 seem to value other humans lives. May value his own life.
18 May not want to be executed, and may be fighting and resisting
19 that concept and doesn't really value other human life,
20 because unlike you or I, he can get there with his
21 personality -- his personality let's him get to the point that
22 makes sense to him, what else can we do with a person but kill
23 them, kind of as an idea. What do you think about that?

24 A. **I was in the U.S. Military where I was trained to
25 accept the concept that under the proper circumstances it was**

1 you know, maybe with therapy, or just with aging, or some jail
2 time will straighten them out when they get to thinking or
3 quit their drinking, or whatever might contribute to that, and
4 those kinds of things people have reasonable chances of
5 rehabilitation; don't you think?

6 A. Yes.

7 Q. Even extreme stuff. I mean, I'm willing to say a
8 guy that steals for a living, I mean, you get him the right
9 way, he meets a good woman that will love him and make him
10 feel like he can do something else. I think there's probably
11 hope for that kind of stuff because stealing is not -- is not
12 killing, you know? It's different.

13 But you indicated something again that made a lot
14 of sense to me and makes me really understand the way you
15 think. You said that -- let me find it somewhere here. The
16 best argument in favor of the death penalty you indicated --
17 and I know what you're saying, the option of the death
18 penalty. I don't mean automatic, but the option. The public
19 safety in the face of someone who does not and cannot value
20 human life.

21 I guess most people that do capital murders it might
22 be said they don't value human life because they've done it.
23 It's not an accident. It's not self-defense. It's not
24 entrapment. I mean, the police didn't make them do the
25 capital murder. It's not a mistake. I mean, you know, there

1 **appropriate and encouraged to take many people's lives. I
2 can't -- I hear what you're saying. It is well-founded and
3 reasonable. I can't say yes, I agree, or no, I do not agree
4 because the circumstances are unknown. I mean, even within
5 your own description it is simply too generic to draw a
6 conclusion and say here's my opinion.**

7 Q. And so you understand that. I know you've already
8 figured this out because you're a thoughtful man. Neither
9 side can talk to you about the facts of this case.

10 A. Understood.

11 Q. Probably the -- our illustrations in the
12 hypothetical sense are not so much our imagination as they are
13 the fact that we can't talk about this case.

14 A. Right.

15 Q. So you're giving me the right answer. I mean, what
16 could be better? It's going to depend. What you're really
17 saying is you think the death penalty should be an option,
18 which tells me sometimes yes, sometimes no, and that it's
19 going to depend on the facts and circumstances of the case in
20 trying to answer these questions, which is, to my way of
21 thinking, exactly what we do expect of you and 11 other people
22 if you're seated on this jury. Because the law requires that
23 kind of process -- that kind of thinking.

24 At the same time you and I would agree there are
25 probably some cases that would be automatic to almost any

1 reasonable person saying what you're saying now. I mean, I
 2 think Oklahoma City -- and until yesterday that has always
 3 been the -- that's been the ultimate demonstration of the
 4 Poster Boy for the death penalty. That's the one -- for weeks
 5 now we've been using that exact illustration, and except for
 6 the occasional person who has total moral objections to the
 7 death penalty, everybody says, yeah, from what I know about
 8 McVeigh, awful crime, planned, no reason to do it, proud of
 9 it, no remorse.

10 THE COURT: Say, I'm going to ask you to step
 11 down for about five minutes, and then we'll have you back in.

12 VENIREPERSON: Okay.

13 (Venireperson exits the courtroom.)

14 MR. SCHULTZ: Did I do something wrong?

15 THE COURT: No, not yet. I just want to ask
 16 you, are you going to go to the New York business?

17 MR. SCHULTZ: Probably.

18 THE COURT: Are you?

19 MR. GOELLER: I hadn't thought about it. If
 20 you give me five seconds, I'll tell you.

21 (Discussion off the record.)

22 MR. GOELLER: Your Honor, may I ask for just a
 23 little bit of time? I want to talk to my client. I know
 24 where the Court's going. I haven't had a chance to talk with
 25 Mr. Cantu or Mr. High in any depth about whether we're going

1 to discuss the terrorists acts around the country yesterday.

2 THE COURT: Here's what we're going to do, the
 3 State is ordered not to go there. If they go there, you'll
 4 get the witness back -- you'll get the juror back. But we're
 5 not going to go there with the New York business, period. If
 6 you want to go there, great, then have at it, and they'll have
 7 their chance.

8 MR. GOELLER: Yes, sir.

9 MR. SCHULTZ: Why is the rule different for the
 10 State than the Defense, Judge?

11 THE COURT: Because it is. Do you understand?

12 MR. SCHULTZ: I understand what you're saying.

13 I don't understand the Court's thinking on it.

14 THE COURT: I tell you how I look at it. I
 15 think it's a highly charged thing, and if I hadn't realized
 16 it, certainly the fact that you-all talked to me about it
 17 yesterday made it apparent. And I think it's too hot, and I
 18 think it's too dramatic, and I don't think that it's necessary
 19 so we're not going to go there. If you open the door -- in
 20 fact, if you open the door with one witness, every witness
 21 thereafter and they want to talk about New York is fine.

22 MR. SCHULTZ: I mean, I'm not telling them how
 23 to try their case. Of course, I can't imagine why in the
 24 world they would not want to go into it. I would -- I mean,
 25 can you imagine defending somebody and wonder whether the

1 wrath of yesterday is going to fall on his head? I can't --

2 THE COURT: Good idea.

3 MR. SCHULTZ: Yeah.

4 THE COURT: Do you think you might want to
 5 bring it up? I tell you what, let's do this. Let's take five
 6 minutes.

7 MR. SCHULTZ: But I'd at least like to have an
 8 objection from them or a Motion in Limine from them rather
 9 than -- I mean, I'd rather be adversarial with the Defense
 10 rather than the Court on this issue.

11 THE COURT: Oh, you're not going to get
 12 adversarial with the Court.

13 MR. SCHULTZ: Well, I'm certainly respectfully
 14 disagreeing with the Court on its own motion.

15 THE COURT: Yeah, I understand that. Okay.
 16 We're going to take a five-minute recess.

17 (Recess taken.)

18 THE COURT: Please be seated. Let me get your
 19 take on this business.

20 MR. GOELLER: Yes, Your Honor. We choose not
 21 to bring up -- from the Defense we choose not to go into any
 22 of the events of September 11th regarding terrorist
 23 activities, the World Trade Center, the Pentagon, the hijacked
 24 planes, any of those.

25 THE COURT: You understand that you're free to

1 do that if you desire to?

2 MR. GOELLER: Yes, Your Honor.

3 THE COURT: All right, sir. But it's your
 4 choice not to do it?

5 MR. GOELLER: Yes, sir.

6 THE COURT: All right.

7 MR. SCHULTZ: I need to make a record if I
 8 might, Judge.

9 THE COURT: Sure.

10 MR. SCHULTZ: For the record, today is
 11 September 13th --

12 THE COURT: 12th.

13 MR. SCHULTZ: -- September 12th of the year
 14 2001, the day after the bombing of New York City by airplane
 15 and also of the Pentagon. Understanding and respectfully and
 16 strenuously disagreeing with the Court's ruling, the State
 17 will be prohibited from going into that subject matter. And
 18 further respectfully disagreeing with the Court's granting to
 19 the Defense the option of going into that, which means it
 20 might be or might not be proper inquiry, depending on who's
 21 doing it.

22 Nevertheless, I want to make the record that later
 23 on when this decision gets reviewed, that means the decision
 24 by the Defense to not adduce this type of evidence, I want the
 25 record to be abundantly clear that a lot of time was granted.

1 Probably -- I would estimate at least 15 minutes for the
2 Defense to discuss the issue, and apparently with the client,
3 because they requested and the State, as seated, left the
4 courtroom so they could have some privacy with their client.

5 Certainly I want to suggest that there are certainly
6 options for the Defense, and where I'm going with this is to
7 demonstrate in the record that they've made a calculated,
8 strategic, reasoned decision to not go into this material.
9 And I'm sure it's clear to everybody that these are the kinds
10 of events that could have significant effect on people's
11 opinions regarding the crime and punishment, regarding
12 responsibility for terrible actions, regarding society's
13 obligations to protect itself from wanton, senseless types of
14 crimes, and from an advocacy point of view, one reasoned
15 approach would be for the Defense to want to ask those jurors
16 and want to get them committed early on to the concept that
17 wrath, that might be directed in an international way, ought
18 to at least be balanced by the fact that this Defendant wasn't
19 involved and had nothing -- had nothing to do with that, and
20 the basic injustice of somehow using him as a convenient
21 object or scapegoat for our national sense of wrath.

22 Whether that's good analysis or not, I suppose
23 depends on the attorney. You know, I don't know what the
24 foot -- I don't know how knowledge -- frankly, I don't know
25 how knowledge for either side is ever unuseful (sic). I

1 mean -- understanding the Court's opinion, I doubt very
2 seriously that the first time these people will have heard of
3 this issue is from me if I were to go into it. I would
4 imagine probably every one of our potential jurors knows more
5 than perhaps we do since they might have been on the
6 television more than we were in this regard.

7 I certainly, if given the opportunity, would want to
8 find out what impact that might make on their ability to
9 fairly consider such things as mitigation, to consider those
10 types of issues, as well as their concept of what is
11 dangerous. But it's my opinion -- it's my personal opinion
12 that not going into this actually disadvantages the Defendant,
13 and I may be right or I may be wrong, but I want the record
14 really clear that the three of them, that being, Mr. Cantu is
15 an obviously intelligent person, as well as Mr. High and
16 Mr. Goeller, not only have considered it for purposes of their
17 considering, but at least have also heard from an experienced
18 criminal practitioner that this is an area that the State does
19 better by not going into and allowing -- I mean, there's
20 nobody that's going to come in, in the State's judgment, and
21 say, wow, let's give Mr. Cantu a break --

22 THE COURT: Do I understand from what you're
23 saying then that you would just as soon not go into it
24 yourself?

25 MR. SCHULTZ: Oh, no, absolutely. No, you

1 don't understand that at all.

2 THE COURT: You'd like to go into it?

3 MR. SCHULTZ: Absolutely.

4 THE COURT: Even though it would disadvantage
5 the State?

6 MR. SCHULTZ: Absolutely.

7 THE COURT: All right. I understand.

8 MR. SCHULTZ: Absolutely, I certainly would.
9 That's a tactical decision we undertake, and it ought to be
10 our choice if we want to disadvantage ourselves. All I'm
11 saying is I believe the State does better by simply allowing
12 this stuff to stay within the juror's personality unexposed,
13 and they obviously are considering that and have decided that
14 they want to not avail themselves of the Court's option that
15 was granted to them. And I just don't want to later on have
16 to fight the issue of, gosh, we wish we hadn't gone into that
17 because we talked to the jurors, and they said Mr. Goeller or
18 Mr. High, after New York, I realized we needed to really get
19 tough on people that do awful things because that's what
20 happens when you don't talk to them about it ahead of time.

21 Thank you.

22 THE COURT: All right. Do you have anything
23 that you want to add, Mr. Goeller?

24 MR. GOELLER: Just a second.

25 (Brief pause in proceedings.)

1 MR. GOELLER: Judge, may we approach sidebar?

2 MR. SCHULTZ: Could we have it on the record?

3 THE COURT: No. He can -- you can approach
4 sidebar.

5 (Sidebar discussion had.)

6 THE COURT: I'll let the record reflect with
7 regard to sidebar what Mr. Goeller said in Ms. Falco's
8 presence and mine was that he'd like a little more time, and I
9 suppose you've taken four or five minutes since Mr. Schultz
10 stopped, but take all the time you want. And you also know
11 that if it happens that you determine not to go there with
12 this issue, if you want to change your mind in the future you
13 could do that, too.

14 MR. GOELLER: Yes, sir.

15 THE COURT: Certainly you're free to go there
16 or not.

17 And I don't think -- I wonder whether there's any
18 utility at all in me even mentioning why the Court hesitates
19 to go there. I recognize that the attorneys will handle the
20 case, and I'm only presiding, but I suppose that any fool
21 would realize why I hesitate to go there. But, yeah, how much
22 time do you think you need? I'm going to give you all the
23 time you want.

24 MR. GOELLER: Yes, sir.

25 THE COURT: I'm just asking you for planning

1 purposes, how much time do you think you need to talk to him
2 about it?

3 MR. GOELLER: I don't think it -- give us ten
4 minutes, Judge.

5 THE COURT: Okay. It would be fair to say that
6 we've taken about 15 minutes to discuss it with your client.
7 We've had another five. Do you think about another 15?

8 MR. GOELLER: Yes, sir.

9 THE COURT: Okay. I'll have the bailiff check
10 with you in 15 minutes, and at that time you need some more
11 time, just let him know and I'll give you some more time.

12 MR. GOELLER: Yes, sir, Your Honor.

13 THE BAILIFF: All rise.

14 (Recess taken.)

15 THE COURT: We're back on the record in Cantu.
16 What do you have to tell me, Mr. Goeller?

17 MR. GOELLER: Nothing new, Your Honor.

18 THE COURT: And what does that mean?

19 MR. GOELLER: We will abide by the Court's
20 previous ruling, if I can call it a ruling.

21 THE COURT: Well, no. I'm not asking you to
22 abide by anything.

23 MR. GOELLER: I understand.

24 THE COURT: I'm asking you your position with
25 regard to going into the issue of the New York events of the

1 last day.

2 MR. GOELLER: We choose not to.

3 THE COURT: All right. Do you want to
4 articulate why you've chosen not to?

5 MR. HIGH: No.

6 MR. GOELLER: No, Your Honor.

7 THE COURT: But you've had ample time to
8 discuss it with your client; is that correct?

9 MR. HIGH: There have been discussions.

10 MR. GOELLER: Yes, sir.

11 THE COURT: Do you need any more time at all?

12 MR. GOELLER: No, sir.

13 THE COURT: Okay. And you understand, too, if
14 you decide to change your mind, just let me know, and by all
15 means, let the DA know.

16 MR. GOELLER: Yes, sir.

17 THE COURT: So since the DA goes first on these
18 matters he can bring it up.

19 MR. GOELLER: Yes, sir.

20 THE COURT: All right. Is there anything else
21 before we bring in the juror?

22 MR. SCHULTZ: Not from the State, Judge.

23 THE COURT: All right. Let's have
24 Mr. Bernecker come back in.

25 THE BAILIFF: Yes, Judge.

1 (Venireperson enters the courtroom.)

2 THE COURT: Mr. Bernecker, I want to ask you a
3 few questions.

4 I was looking at your questionnaire myself and
5 notice that your father was a physicist in Los Alamos.

6 VENIREPERSON: Yes.

7 THE COURT: Did he retire from --

8 VENIREPERSON: Not yet.

9 THE COURT: Oh, he's still --

10 VENIREPERSON: Actually, we moved up to a lab
11 outside of Washington D.C. in 1969, and he still works there.

12 THE COURT: I also notice that you went to the
13 12th grade; is that correct?

14 VENIREPERSON: Correct.

15 THE COURT: Did you attend college anywhere?

16 VENIREPERSON: Twenty-three credit hours my
17 first year.

18 THE COURT: Where at?

19 VENIREPERSON: University of Maryland.

20 THE COURT: Okay. And at the time of the
21 questionnaire, you had been married for one week; is that
22 correct?

23 VENIREPERSON: Correct.

24 THE COURT: All right. I also notice that it
25 appears that you don't have much contact with your family; is

1 that a correct inference?

2 VENIREPERSON: That's a fair statement.

3 THE COURT: Okay. All right. Mr. Schultz, go
4 ahead.

5 MR. SCHULTZ: Thank you, Judge.

6 Q. BY MR. SCHULTZ: We were talking about people's
7 actions saying that they don't have a value for human life.
8 Where do you -- do you think there are people who can take a
9 human life and have the same regard for that act as maybe you
10 or I could break a glass that we didn't like anymore, just
11 throw it because we got annoyed? Do you think there are
12 people that have that little regard for human life?

13 A. I'm not sure I understand the question.

14 Q. Well, it seems to me from the little bit of talking
15 that we've done that you have a high regard for human life. I
16 mean, to the extent, in fact, that you are even willing to
17 consider a death penalty as a possible punishment for having
18 taken another human life. So, we're right on that?

19 A. Yeah.

20 Q. And we've already talked that there are some people
21 who could make tremendous departures from the way you and I
22 might think about life and responsibility of things like that.
23 Do you think there's some people who could take a human life,
24 and have about as little emotion over that event or as little
25 concern as you and I could damage some piece of property?

1 A. Yes.

2 Q. Now, you've indicated that some of the things that
3 you think the death penalty should be available for in the
4 questionnaire were repetitive crimes of terror, for example,
5 serial rapist. Give me kind of an idea of your thinking on
6 that, and why that would be something that --

7 A. Well, my personal feeling on whether it is
8 appropriate to prize public safety over personal liberties is
9 when that individual has crossed that threshold where they no
10 longer display the capability of humanity. That act can be
11 taking someone's life. That act can be something short of
12 taking someone's life, but actions which are deliberately and
13 repetitively designed to create terror in other individuals.
14 That is, in my opinion -- there's a lack of humanity involved
15 that, in my opinion, crosses some line.

16 Q. Okay. Now, as you sit there I think you've
17 indicated that the crimes that we define as capital murder
18 seem to you, in general, to be the class of acts that should
19 offer the option of a death sentence. I believe that's what
20 you said. And you understand that things have to be analyzed
21 in an evidentiary sense before a death sentence can occur.
22 For example, we have charged the Defendant with a crime of
23 capital murder, we the Grand Jury, and that -- essentially
24 that's an accusatory body that investigates, has a much lower
25 than beyond a reasonable doubt standard. And the loose issue

1 before a Grand Jury, I suppose, is there sufficient evidence
2 that a trial will occur? It's like almost any other type of
3 legal proceeding. And then once that occurs, certain
4 responsibilities are before everybody, but the State's
5 responsibilities are if we accuse somebody of a crime we have
6 to be able to prove it beyond a reasonable doubt, or they're
7 acquitted.

8 And most of my questions, and probably the Defense
9 attorneys would tell you the same thing, most of what we talk
10 with you about here, one-on-one, assumes that the Defendant
11 has been convicted of capital murder. And when I say
12 "assumes," it doesn't mean that we are trivializing our burden
13 of proof in that obligation. But, rather, we don't need to be
14 talking about punishment issues and how you might approach
15 them unless the Defendant has been convicted of capital
16 murder.

17 So let me ask you to assume that the State has
18 discharged its responsibility of proving to you and 11 other
19 folks that the Defendant is guilty of capital murder, either
20 by burglary/murder, robbery/murder, or murder plus another
21 murder, murder/murder. Then we move into the punishment phase
22 of the trial. And under our law, the very facts that you
23 evaluated at the guilt-innocence phase of the trial, the very
24 evidence that was used there, is legally sufficient to answer
25 the two special issues that you would be dealing with all by

1 itself without additional evidence at the second part of the
2 trial. And that means that the evidence might be strong
3 enough to prove a future danger to our society, or it might
4 not. That means the evidence might be strong enough to prove
5 that there is or is not mitigation that would require a life
6 sentence, and the concept is there are some crimes and some
7 actions that clearly, by the very fact that a person could do
8 them, would indicate a probability that the Defendant would
9 commit criminal acts of violence that would constitute a
10 continuing threat to society. That's the so-called future
11 danger question. That doesn't mean that the jury has to do
12 that, of course, and it also doesn't mean that you won't hear
13 additional evidence because I've never heard of a capital
14 murder trial where there isn't additional evidence in the
15 second phase.

16 But do you believe that there are some capital
17 murders that the facts and circumstances of their commission
18 would be compelling enough that a jury could answer that
19 question yes, that first question there?

20 A. Does that probability exist?

21 Q. Uh-huh.

22 A. Yes, it exists.

23 Q. And I don't know if I wish the question were defined
24 a little better. I don't know if I wish the terms were
25 defined or not. Some days I think it would be better if we

1 had a definition of things like acts of violence, society,
2 continuing threat, and probability. Other days I stop and
3 think, well, we do this with frequency in the State of Texas.
4 Every single juror that ever sits in a capital murder case
5 gets a question about that issue, just about like you and I
6 are talking now, and I don't hear any complaints or
7 difficulties. When they get right down to it, that's asking a
8 jury to do something that the ordinary people in our community
9 can understand and can do; don't you agree?

10 A. Yes.

11 Q. Okay. Now, nobody can predict the future with any
12 kind of certainty. We may think some things are so close to
13 being certain that they're going to happen; sunrise and it
14 gets cold in the winter someplace. We figure that's always
15 happened before, so it always will. But I don't guess
16 anything is absolutely certain, but the probability could be
17 so strong that it adds to a bunch of digits kind of thing. So
18 that's how far we can go. But that question doesn't require
19 us to predict what a particular defendant will do in the
20 future because nobody can predict human behavior.

21 He could have a stroke tomorrow. The day after that
22 question is answered yes, he could have a stroke and be
23 paralyzed from the ears down. Suddenly he's not dangerous
24 anymore, and so that doesn't mean the jury's assessment of him
25 the day before is incorrect. It may have proven to have not

1 taken place the way the jury thought it would, but it
2 doesn't -- it doesn't mean that the analysis is wrong, and it
3 doesn't mean that the appraisal of his worthiness for the
4 death sentence was any less valid.

5 When we use the term "probability," some people say,
6 well, I'm mathematical about it. If your dad was a physicist,
7 I suspect much of his work, at least mathematically, would
8 have dealt with probabilities. What kind of -- how did he
9 apply his physics? What was his job exactly?

10 **A. He is a detonation physicist, specializing in**
11 **detonation to deflagration studies.**

12 Q. Okay. He probably deals with -- does he deal with
13 explosives and that sort of thing?

14 **A. Explosives and propellants.**

15 MR. GOELLER: I'm sorry, what was the last
16 part?

17 VENIREPERSON: Explosives and propellants.

18 MR. GOELLER: Propellants, okay.

19 Q. BY MR. SCHULTZ: Is that like rocket propellants,
20 that kind of idea?

21 **A. Yes.**

22 Q. You know, I don't know much about that business, but
23 I suspect that like everything else, there are probability
24 studies built into almost everything that's done. One rocket
25 in 90 might not take off. One guidance system might

1 malfunction because of gyroscope being off, those kinds of
2 things. So probably in his world, I'm guessing, when he talks
3 about probability, that could even mean a possibility. Do you
4 agree with that?

5 **A. Probability exists from zero to one. That's what it**
6 **is.**

7 Q. There are probably some things that could never
8 happen. I guess it's impossible for today to ever become
9 yesterday. I guess that's an impossibility, but most anything
10 else is theoretically possible, if not realistically likely,
11 right?

12 **A. Quantum physics, stuff happens.**

13 Q. Exactly. And maybe today could become yesterday
14 somehow. I don't know. Who knows?

15 **A. Uh-huh.**

16 Q. We use the term "probability" in other contexts
17 probably less precisely than your dad would use them as a
18 physicist. For example, you turn on the radio in the morning,
19 and we hear there's a 20 percent probability of showers. We
20 make our decisions based on whether we take an umbrella or
21 not, depending on that probability. Just depending on how
22 much you object to getting wet, you might -- that might make
23 sense to you to take an umbrella for 20 percent. It might not
24 make sense, right?

25 **A. Correct.**

1 Q. If I ask you, are you going to go to the
2 neighborhood block party this Friday night, and you tell me
3 probably. In that context it seems to my ear that what you'd
4 be saying is more likely than not when you say I'll probably
5 be there. Doesn't mean you will. Doesn't mean something
6 wouldn't change. It certainly doesn't mean that you really
7 mean probably. You could be one of those people that rather
8 not say no to anything and just kind of avoid the issue and
9 not show up. But it sounds like, if I were looking for you,
10 more likely than not I'd see you there. That's how I view it.
11 And then probability, depending upon your context, might mean
12 more -- might mean less.

13 What we know from our law is it's somewhere within
14 an extremely large range, and that is more than a mere
15 possibility, but less than a certainty. And I mean, I guess
16 that's great for the jury because it's not very binding in
17 terms of what you have to find. But you have to recognize
18 it's more than a possibility. You can see that concept?

19 **A. Yes.**

20 Q. And you also know that we don't ever have to prove
21 anything by a certainty. Another thing that's not defined in
22 that question is criminal acts of violence, and some of them
23 we clearly understand. We understand shooting somebody,
24 stabbing them, hitting them with a brick, setting them on
25 fire, beating them up. Those are obviously all criminal acts

1 of violence. And even though the context for those acts might
2 be different depending on what the facts were, they're still
3 criminal acts of violence, right?

4 **A. Reasonable.**

5 Q. And then there are some acts, which are probably
6 clearly not criminal acts of violence. There's no stretch of
7 the imagination whereby you could say that something like a
8 security swindle is a criminal act of violence, right?

9 **A. Yes.**

10 Q. I mean, I still use some securities and make
11 representations about them when they're not true, or I've done
12 something fraudulently wrong with that. It's not violent to
13 you. It may be equally culpable. It may be -- it may be
14 worse, depending on how you view stuff. It may --

15 **A. I understand.**

16 Q. -- be worse, but it's not an act of violence.

17 **A. I understand the --**

18 Q. Shoplifting, the same thing.

19 And then there's some hybrids. There are some
20 things that are, depending upon the individual's take, they
21 may or may not be a crime of violence, and we hear both from
22 juries on this question.

23 I come over to your house, and I throw bricks
24 through every one of your windows and pour weed killer on your
25 lawn, and -- you know, bust up all your shrubbery in the -- in

1 front of your house, and I'm angry and I'm just -- I'm just
2 wild because either I'm mad at you, or I'm just off on a
3 rampage indiscriminately, whatever that might be. Do you
4 consider that to be a criminal act of violence?

5 **A. The expression is violent. It may be targeted at a**
6 **property, as opposed to an individual, but the expression has**
7 **violence in it.**

8 **Q.** Okay. Other people have said they believe an act of
9 violence has to be limited strictly to human beings, like
10 human on human. And then you run into some other kind of
11 unusual situations. What about human on an animal? Is that
12 an act of violence to mistreat an animal in a really vicious
13 kind of way? And those are the kinds of things, assuming
14 anybody cared enough to, could be debated.

15 And some people say, no, that must be mean --
16 criminal acts of violence must be on people, doesn't mean on
17 property. Other people say, well, why not? Like you say, the
18 mentality is violent. The -- it's taking force to do unlawful
19 things that impact other people and the difference may be so.

20 And then you come to something like drug dealing,
21 and if you ask somebody is drug dealing a criminal act of
22 violence? I suppose the first answer you get is, well, no,
23 it's not. It's a -- it's almost like the swindling with the
24 securities kind of thing. You know, there's an unlawful
25 transaction, and, yes, somebody may be harmed, but it's not

1 violent because there's not damage to property, damage to
2 person, damage to animals. There's nothing physical about it.

3 Another way of looking at it would either be well,
4 if you're delivering drugs to somebody else, selling drugs,
5 and part of that commerce, those drugs will harm other people
6 directly when they put them in their bodies, number one, and
7 it's only indirect to say it's not an act of violence simply
8 because the transaction itself isn't violent. For example,
9 you come to me and say I want to murder somebody. Will you
10 give me a gun? And I give you the gun, I probably haven't
11 committed a criminal act of violence, and yet, the end result
12 is so foreseeable of how it's going to be that maybe I did.
13 Are you with me?

14 **A. I understand.**

15 **Q.** Okay. Furthermore, with drug dealing everybody
16 understands that drugs can make you dangerous, that drugs can
17 alter your personality to a point where you do things that
18 maybe, without those drugs, you wouldn't do it. And so some
19 people could say that when you do drug dealing, and you're
20 involved in that whole drug transaction -- I'm not talking
21 about kids smoking a little marijuana. I'm talking about
22 hard-core streets drugs that have aggressive results in
23 people. Some people say that is violent because you know you
24 are -- it's almost like you're arming yourself and turning
25 yourself loose on society by taking those kinds of drugs. How

1 do you feel about that?

2 **A. I guess I'm having a difficult time wrapping my**
3 **arms around the -- I mean, from my perspective violence is**
4 **violence. If there is not violence immediately involved,**
5 **you're -- whether you're driving moonshine or, you know,**
6 **delivering PCP or anything else. I have a difficult time**
7 **viewing that as inherently violent.**

8 **Q.** Okay. That's reasonable. That's certainly a
9 reasonable approach. And some people say that other people --
10 other reasonable people view it differently, and that's what
11 makes the jury system so good.

12 Do you see how even if something were not in and of
13 itself characterized as a criminal act of violence,
14 nevertheless that would be a good indicator to a jury in
15 predicting the -- in discovering the character of the person,
16 number one, and predicting whether or not criminal acts of
17 violence would occur in the future, even if it's not a violent
18 crime itself?

19 **A. Could I take the fact that someone was convicted of**
20 **three acts of selling cocaine in the park? Could I take that**
21 **as a future determination that they would commit an act of**
22 **violence at some point in the future? I'd have a tough time**
23 **with that.**

24 **Q.** Okay.

25 **A. It doesn't mean it's not possible, but I can't make**

1 **that leap just inherently.**

2 **Q.** Does it help -- would you be able to use those --
3 and you don't have to. It's not required that you do. Would
4 you be able to use those facts as evidence in assisting you to
5 answer that question because you understand the personality
6 and the respect for law and orders?

7 **A. It's contextual information.**

8 **Q.** Okay, okay. And it may -- I mean, one of -- for
9 example, one of the things you already know before you ever
10 get to this question, you know the person has committed a
11 criminal act of violence that's probably monumental because
12 it's capital murder. And it's almost one of the questions,
13 among other things, you're asking yourself does this one act
14 of capital murder convince me the answer to this question is
15 yes? And then additional evidence might be presented, which
16 may be other acts of violence, if there are any, or they may
17 be other criminal acts that are not violent. And obviously
18 other criminal acts of true violence might be more probative
19 in answering that question than nonviolent ones. Would you
20 agree with me?

21 **A. Yes.**

22 **Q.** I think that's what you're saying.

23 **A. Yes.**

24 **Q.** But you also do believe that other crimes, if not
25 violent in and of themselves, could be important in answering

1 that question, maybe one way or the other?

2 **A. Do they establish a context? Yes, they do. Do they**
 3 **establish a context that would allow me, again in the absence**
 4 **of repetitive violent acts, could I then say, okay, this**
 5 **individual was convicted three times of selling crack in the**
 6 **park, and fourth time around, oops, he got in an argument with**
 7 **somebody and shot him, killed him. You know, does that**
 8 **individual constitute a continuing threat to society to commit**
 9 **criminal acts of violence probably in the future?**

10 Q. Maybe, maybe not?

11 **A. Maybe, maybe not. It's the context of the act of**
 12 **violence itself. I mean, certainly you place yourself in the**
 13 **wrong place at the wrong time on a repetitive basis, and in**
 14 **the very least you're showing that -- well, you need to find a**
 15 **new hobby.**

16 Q. When you think of spousal abuse, domestic violence,
 17 wife beating -- and I know it could be husband beating, too,
 18 but let's talk about wife beating for a moment. What's your
 19 take on that in terms of how serious a crime that is?

20 **A. I have a fairly low threshold for that.**

21 Q. Tell me about it, your thinking on that.

22 **A. Acts of passion, up to and including the taking of a**
 23 **human life, are probably easier for me to wrap my brain**
 24 **around, to understand how a person can get there. Acts that**
 25 **are acts designed to create terror and intimidation, spousal**

1 of another human being.

2 **A. Right.**

3 Q. And even if we wrap ourselves in the notion that,
 4 well, at least we gave the defendant a fair trial and gave him
 5 good lawyers and gave him resources, which is a lot better
 6 than the defendant gave the victims of the crime. There
 7 wasn't any trial, there wasn't any judge or jury or
 8 indictments or pleadings, any of that stuff.

9 Nevertheless, they say that the death penalty is
 10 still wrong, and I guess it -- it's not necessarily hard to
 11 argue against that, but it seems like a reasonable thing
 12 people would say. What are your thoughts on this? Is it
 13 wrong of society to be doing that in your judgment?

14 **A. We, as a society, have for thousands of years**
 15 **removed people from our midst as a means of maintaining**
 16 **public safety, and we may remove them from our midst for a**
 17 **period of time, and we may wrap it in terms of rehabilitation**
 18 **or anything else. Whatever the motivation boils down to,**
 19 **we've established this and we're all comfortable and accept**
 20 **this.**

21 **As I hear the question that's being asked, is it**
 22 **fair or reasonable? Sitting over here in the left brain side**
 23 **of things, to think it reasonable? Certainly possible that**
 24 **there can be some acts that are sufficient that we would say**
 25 **we want to remove this individual from our society to a degree**

1 **abuse or anything else, that's more difficult for me, and**
 2 **therefore, it's more frightening for me on a personal level.**
 3 **I don't understand how an individual can get to that point,**
 4 **and it's human nature to fear what we don't understand.**

5 Q. Okay. The concept of continuing threat to society
 6 is really, I suppose, at the core of our Texas death penalty
 7 scheme because there may be other reasons why people express a
 8 support for the death penalty. For example, there may be
 9 people who have a religious underpinning and believe that
 10 concept of judgment; an eye for an eye kind of an idea. And
 11 in their minds, irrespective of the personality of the
 12 defendant, almost irrespective of the motive of the defendant,
 13 if he's guilty of a murder, and certainly of a capital murder,
 14 in their minds the same thing ought to happen to him?

15 **A. Retribution.**

16 Q. Just an action and reaction thing?

17 **A. Yes.**

18 Q. How do you feel about that concept?

19 **A. I -- the concept of retribution of and by itself is**
 20 **abhorrent to me. There has to be something more to it than**
 21 **simple retribution.**

22 Q. Because some people express this belief. Say, you
 23 know, at its best, the death penalty is some form of societal
 24 murder. At its absolute best, we're doing the same act that
 25 the defendant has done. We're intentionally causing the death

1 **that they could never possibly be reintroduced, to a degree**
 2 **where we actually take their life, not simply just lock them**
 3 **up for life. Truly no possibility for -- lock them away, but**
 4 **truly take their life. They are considered a sufficient**
 5 **threat that we will actually take their life. Is that -- I**
 6 **mean, I get the impression you're asking me, do I think that's**
 7 **reasonable? Yes.**

8 Q. Okay. Well, I guess the question coming back to you
 9 then would be, if the only object is to protect society, why
 10 not just lock them up for life and be done with the death
 11 penalty altogether?

12 **A. Well, you're asking me to tread into areas that I'm**
 13 **fairly ill-equipped to debate. The concepts of deterrence,**
 14 **the concepts of is a life sentence truly a life sentence, and,**
 15 **you know, that whole slippery slope that I'm simply not**
 16 **equipped to debate that.**

17 Q. I appreciate that.

18 **A. It's one of those things that you know it when you**
 19 **see it, and it just --**

20 Q. And, in fact, I'm not debating. I'm just real --
 21 this is what we do.

22 **A. I understand.**

23 Q. We try to interact, and you and I are getting along
 24 famously.

25 You do believe that's a question that you are

1 equipped as a human being with experience on this earth to be
2 able to answer, if given sufficient evidence, either way?

3 **A. Yes.**

4 **Q.** Okay. Now, I want to talk a little bit about
5 psychiatric evidence. I don't know if you've ever paid any
6 attention, but it's, if not customary, it's frequent
7 psychiatric evidence is offered by one side or another in a
8 criminal case. Typically the larger the case, the more that
9 you would expect. Doubtless you've heard of that case down in
10 Houston where the mom drowned all the children, and she's
11 being prosecuted for capital murder. And obviously there
12 would be psychiatric evidence offered in her trial. I figure
13 there's an insanity defense coming. That may have already
14 been announced for all I know.

15 I don't keep up with other trials. I've got so much
16 of this that I don't -- it's not interesting to me anymore
17 sort of thing. But you would expect that the Defense will
18 have psychiatrists that will say she was insane, didn't know
19 right from wrong because of her mental condition. And you
20 would expect that the State will have psychiatrists that will
21 come in and say, no, she did know right from wrong. Here's
22 how the brain works with the kind of illness that she's got.
23 It still knows right from wrong. It's just not so interested
24 in those distinctions, the way it works, and a jury is going
25 to have to evaluate that evidence for whatever it's worth.

1 Now, some people say except for some major mental
2 condition, like a tumor or some incredible chemical imbalance,
3 that's not even a psychiatric issue at all, whether somebody
4 is probably going to be dangerous, and some jurors say, I
5 really don't -- I'll listen -- I'll listen to anything that's
6 brought to me, but I really don't need psychiatric evidence to
7 tell me how to figure out whether somebody is probably going
8 to be a danger in the future.

9 Rather, what I need is background information on the
10 defendant. I need as much information as I can about the days
11 before this capital murder that I found him guilty of, the
12 days before that. I need to know other acts that he's
13 committed, good or bad. I mean, if he was a war hero, I need
14 to hear that. If he was a deserter, I need to know that. If
15 he was taking drugs for the first time, I need to know that.
16 If he was a habitual substance abuser, I need to know that.
17 Was he -- once he got over the shock of the crime, was he
18 remorseful then, or was he not remorseful. If he is
19 remorseful now, or claims to be, did this remorse surface
20 before or after he was arrested and charged, or did the
21 remorse start showing its face before that and before he was
22 detected? Those are the kinds of things that they say that
23 are important. That's what some people say.

24 If psychiatric evidence were introduced in this
25 case, you'd certainly listen to it and give it the weight you

1 thought it deserved, wouldn't you?

2 **A. Yes.**

3 **Q.** What's your -- do you think psychiatric -- does
4 psychiatric evidence on that question, do you seem to be the
5 kind of person that thinks that's important?

6 **A. Yes.**

7 **Q.** Okay. Do you think that a defendant could find
8 psychiatrists that would offer favorable psychiatric evidence
9 for the Defendant on that question?

10 **A. Yes.**

11 **Q.** And you think we could -- the State could go out and
12 find an equally qualified psychiatrist that's going to say,
13 no, he's a great doctor, but he's mistaken this time?

14 **A. Yes.**

15 **Q.** All right. If that's so, then how would that be
16 valuable if both sides effectively cancel each other out?

17 **A. The question wasn't whether they could effectively
18 cancel each other out. The question was whether or not you
19 could pay to obtain a perspective which was favorable to your
20 position.**

21 **Q.** Okay.

22 **A. And my answers to that are yes. They can pay --
23 find someone that will give them an answer that is favorable,
24 and you can find someone that will give you an answer that's
25 favorable. Does that cancel each other out? No, because we**

1 **don't know what it is that will be said, you know, but in
2 terms of your ability to find perspectives that support each
3 of your particular positions, oh, absolutely.**

4 **Q.** Okay. Okay. Let's assume that you've answered that
5 question, along with 11 other persons, yes, that you've been
6 convinced beyond a reasonable doubt that there's a probability
7 the Defendant would commit criminal acts of violence that
8 would constitute a continuing threat to society. And by the
9 way, society is also a term that's not defined in there. And
10 what that means is really you are measuring the Defendant's
11 personality as that personality confronts society, and it
12 certainly may include prison society because that is a
13 society.

14 You can also answer that question based upon other
15 societies in measuring the Defendant's personality. That's
16 what it invites you to do. It can be a hospital society. It
17 could be a -- I don't know -- could be the society that you
18 and I work in, where you go to work, where you go out to
19 dinner, your neighborhood, because what that question is
20 really doing is testing the Defendant's character for being a
21 future danger. Are you with me on that?

22 **A. Yes.**

23 **Q.** And why illustrate this point, if the question
24 merely meant is there any way he could be confined so that he
25 would not be a danger to anybody? First of all, if that were

1 the question, it would say so, and secondly, I suppose, almost
 2 in line with this notion of anything's possible, if we wanted
 3 to take the time and attention and take the expensive and
 4 extreme steps of doing it, I suppose there's no human being
 5 that -- even that guy that -- who's that guy that Anthony
 6 Hopkins plays in the movies? What's his name, Hannibal
 7 something? You know the one, in Silence of the Lambs?

8 **A. Hannibal Lector.**

9 Q. Yeah, okay. I mean, I've never seen any of those
 10 movies. Those things kind of -- they scare me. But if I
 11 understand it right, there's -- no prison is ever going to
 12 hold that guy, that he can escape no matter what sort of
 13 thing.

14 Except for him, don't you think we want to take
 15 enough resources, we could figure a way to make it so nobody
 16 could ever escape, if we wanted to go that far?

17 **A. That's reasonable.**

18 Q. Okay, all right. The question doesn't ask us that
 19 because I suspect the answer to that would be nobody would
 20 ever be a danger in the future if the question is, is there
 21 some way we could make him, not undangerous, but insulate us
 22 from his danger. Are you with me?

23 **A. Yeah.**

24 Q. That's not the question. The question is, is he
 25 dangerous to society because if he is, the law doesn't oblige

1 us to build the world's greatest jail cell for him. Make
 2 sense?

3 **A. Yes.**

4 Q. If you've answered that question yes beyond a
 5 reasonable doubt, then this is the last question that seems at
 6 first to be an invitation to do whatever feels right to the
 7 jury, and I'm not being flippant. I mean, it does if you look
 8 at it. If you look at that question, not only does it not
 9 have any definitions, it doesn't even have a burden of proof.
 10 It doesn't tell you what mitigation is. It doesn't tell you
 11 how much mitigation is sufficient mitigation. It just says
 12 consider all the evidence, including the crime, the
 13 Defendant's character, background and his moral culpability,
 14 and decide is -- I suppose, first of all, is there mitigation,
 15 and, secondly, is the mitigation that you find sufficient to
 16 make a life sentence where a death sentence would otherwise
 17 have followed for that first special issue? And I know that
 18 you're right there on that question. You understand it, just
 19 like all the rest of this. I can tell.

20 I believe that there's no human being that's ever
 21 lived on this earth that doesn't have mitigating evidence in
 22 his or her background if called upon to demonstrate it.
 23 Because if the idea of mitigating is something that lessens
 24 the enormity of the crime, and if we believe that the reason
 25 everybody turns out to be how they turn out is because of the

1 influences as they were growing up and that sort of thing,
 2 then probably nobody has ever had a 100 percent great life.
 3 Do you agree with that?

4 **A. Yes.**

5 Q. I mean, it could be little stuff, and a lot depends
 6 on the person. I don't know, but I'll bet if you looked at
 7 Adolf Hitler's background, I'll bet there's stuff that, in a
 8 different context, we'd say that was sad. I'll bet he got
 9 teased as a kid. I'll bet -- I don't know for sure, but I
 10 don't -- you kind of wonder if somebody like him could have
 11 emerged just because he chose to be that way. You wonder kind
 12 of what went on. Do you know what I mean?

13 **A. Yes.**

14 Q. And yet, the kinds of things that might be called
 15 upon by Hitler if he were a defendant in a criminal case to
 16 somehow try to get a yes answer on that question, you might
 17 agree, yeah, he was sickly; yeah, he got teased; yeah, he got
 18 kicked out of art school when he loved art. I mean, yeah, all
 19 that stuff, and yet, even if we call that mitigating, which I
 20 guess we could, how in the world could that ever be considered
 21 to be sufficient mitigating evidence, taking into account the
 22 circumstances of the offense, his background, all the writings
 23 that he did, the things he did even to his own people, let
 24 alone defenseless other religions, those kinds of things.

25 And so that question doesn't ask you really is there

1 mitigating evidence? If you actually read it, it almost
 2 implies that there is going to be mitigating evidence because
 3 it says taking into consideration all the evidence, including
 4 the circumstances, there is sufficient mitigating evidence.
 5 It doesn't say that there is any mitigating evidence. It
 6 almost implies that there's going to be some. Are you with
 7 me?

8 **A. Yep.**

9 Q. And then it's a measurement. It's a measurement
 10 test, just like these other questions, measuring how much
 11 evidence it takes to be sufficient mitigating evidence. And
 12 does that seem like a -- does that seem like a reasonable
 13 thing to be giving to a trial jury?

14 **A. This is the "break glass in case of emergency." In
 15 other words, you have a series of rules and steps, okay? If
 16 this, then that, and if you get to the very end, and there is
 17 something inside of you as a peer of this individual that does
 18 not -- it just isn't appropriate the road that you're on,
 19 break glass in case of emergency. I mean, that's my
 20 perspective on this.**

21 Q. I agree. Do you like that being in our system?

22 **A. I think that's reasonable, yeah.**

23 Q. I think it's good for the jury. I think it would be
 24 an awful feeling for a jury to come out of there and not think
 25 they've done -- it's never going to be a happy thing to give a

1 death sentence. But we would hope that a jury would always
 2 feel it's the right thing.
 3 **A. You don't want them to change the law because they
 4 don't like the outcome.**
 5 **Q. That's well-said. You're absolutely right. And
 6 that question -- but it's not a license to just do what feels
 7 good. That's not -- it could work that way. I mean, nobody
 8 is going to stop them from doing it and using it that way.
 9 But the question still requires them to reason and think and
 10 actually wrestle with this whole issue is what's being offered
 11 as mitigating evidence in our collective wisdom sufficient to
 12 take an otherwise appropriate death sentence and convert it
 13 into a life sentence? That's kind of the question that's
 14 asked.**
 15 **A. If Ava Braun stood up, would I consider it
 16 mitigating evidence? I mean, Ava Braun, Hitler's lover, you
 17 know? She stands up and says, I love this man. He's not
 18 capable of this stuff. Would I consider that to be mitigating
 19 evidence, is sort of what I hear you -- the record that you're
 20 going down.**
 21 **Q. Maybe it is.**
 22 **A. Yeah. I don't know. You draw that line in the
 23 moment. You have no way of knowing what will be presented and
 24 what the context is.**
 25 **Q. But assuming that were mitigating evidence in your**

1 mind, then the next question is, well, so, is that sufficient
 2 mitigating evidence to lessen the need for a death sentence
 3 for a Hitler kind of thing? Do you follow what I'm saying?
 4 **A. I follow what you're saying. I don't know if
 5 there's a question in there.**
 6 **Q. I'm not sure there is.**
 7 **A. Okay.**
 8 **Q. Other than do you follow what I'm saying?**
 9 **A. Okay.**
 10 **Q. Let me give you an example. Would you say -- do
 11 you consider youth to be a mitigating circumstances in a death
 12 penalty case?**
 13 **A. I don't have an answer. I mean, left brain/right
 14 brain. There's violent disagreement over that.**
 15 **Q. What are the pros and cons you're thinking about
 16 then?**
 17 **A. There is a natural compassion for the stupidity of
 18 youth. Does the stupidity of youth mitigate the -- the
 19 consequences? I'm not comfortable saying, no, it never does.
 20 I'm not comfortable saying, yes, it always does. That's --**
 21 **Q. Okay. Have you ever heard the expression that there
 22 are not atheists in war, no atheists in a fox hole?**
 23 **A. Uh-huh, a few times.**
 24 **Q. What does that -- you probably got an insight from
 25 your military background that many of us may not. What does**

1 that mean to you, that expression?
 2 **A. In times of duress, belief structures can be created
 3 that would not ordinarily exist in an individual.**
 4 **Q. Okay. Doesn't mean it's not sincere, do you think,
 5 or do you think it does?**
 6 **A. In the moment, it is sincere. In context, it is
 7 likely insincere.**
 8 **Q. Okay. I'll bet you kind of anticipated where I'm
 9 going with that question. It's not in the military context,
 10 but in the capital defendant context.**
 11 **Can you see any parallels; you find yourself charged
 12 with capital murder as opposed to being in the fox hole for a
 13 human being?**
 14 **A. Right.**
 15 **Q. And why I ask you that question is -- I'm not
 16 talking about this case because we're still in a hypothetical.**
 17 **A. Right.**
 18 **Q. But I think you and I might well expect in capital
 19 murder cases to hear evidence that a defendant has had some
 20 type of religious experience or conversion since he's been in
 21 the jailhouse awaiting trial. I mean, that would seem like a
 22 reasonable thing you might see in a trial, don't you think?**
 23 **A. I suppose.**
 24 **Q. And to some people that's the kind of evidence that
 25 would be very acceptable and very positive. Maybe because,**

1 number one, they have a strong faith in that themselves, and
 2 they care for that sort of thing. And, number two, if I'm
 3 right, people would love to have an explanation for even awful
 4 behavior and maybe something to say made them do it, and now
 5 it's better because we've changed or something, might be
 6 comfortable to a jury, for example. And you get right down to
 7 it, for most people that seems to have -- if true, certainly
 8 that seems to have some positive response in other people.
 9 Now, not everybody is. There are other people that are very
 10 doubting of that and very cynical, and I mean, people are
 11 people.
 12 **But I guess, can you see how being charged with
 13 capital murder and not wanting to be executed, because I
 14 figure there are very few capital defendants that want to be
 15 executed if given the choice. I don't think they want that.
 16 I wouldn't; you wouldn't. Do you consider that to be the kind
 17 of thing, like being in war, where that would be a situation
 18 of duress?**
 19 **A. It's possible. I mean, it -- I'm sitting here
 20 listening to you talk, and I'm thinking to myself, well, I
 21 doubt that very many people are going to stand up and say --
 22 outside of the examples earlier -- are going to stand up and
 23 say I'm really, really happy to be here today. And so there
 24 is an expectation that there will be presentations of remorse,
 25 and conversion, or whatever it is that you'd like to say it.**

1 Is there a cynical discounting of that, or is there an
 2 absolute faith and trust in that? Can't tell you. I mean,
 3 it's within the context.
 4 Q. Do you think that -- do you view that as mitigating
 5 evidence? The fact that someone after having committed a
 6 capital crime has made a genuine conversion in a religious
 7 sense?
 8 A. Is it mitigating?
 9 Q. Is it mitigating evidence? Uh-huh.
 10 A. As to what standard? Mitigating in terms of do I
 11 believe that is potentially possible? Yes. Do I believe that
 12 should be taken into account? Yes. Do I believe it should be
 13 taken into account to the level where it would, for example,
 14 trigger the break glass in case of emergency? Can't bloody
 15 tell you. Don't know. I mean --
 16 Q. Might, it might not?
 17 A. It might; it might not.
 18 Q. What about drug usage? Now, if a person has
 19 committed the atrocious crime of capital murder, and you as a
 20 juror look and see a direct link between voluntary drug usage,
 21 not like the TV stuff where somebody captures you and shoots
 22 drugs into you involuntary. Is that mitigating, if the crime
 23 was committed as a result of drugs?
 24 A. Committed as a result of drugs or under the
 25 influence of drugs?

1 Q. Well, let's say under the influence then.
 2 A. Okay. It weighs on the mind. Again, where it falls
 3 in -- you know, I suppose if I were to try to draw an analogy,
 4 because I feel like I have to paint a bit of a picture here.
 5 An individual is arrested three times for DUI, loses his
 6 license, does a year in jail, third time, comes back out, is
 7 driving down the road at 85 miles an hour on the wrong way on
 8 I-30 and toasts a bus full of nuns, could you -- would you
 9 consider that they were drunk at that time to be mitigating to
 10 the fact that they toasted a busload of nuns? No, probably
 11 not. It would be difficult to say the alcohol mitigated the
 12 fact that they killed a busload of nuns.
 13 To try and find a more -- to put -- more of a finer
 14 point on that, I really can't. Because, again, everything in
 15 life is contextual, and you really can't -- I don't feel
 16 comfortable speaking in generalities to these things, other
 17 than to say I understand the range of possibility. I
 18 understand the potential from one spectrum to the other for
 19 most things, and my job is to figure out where everything
 20 falls in the middle, in between those.
 21 Q. Okay. Do you think it makes a difference who you
 22 kill, or what kind of a person you kill in terms of evaluating
 23 the seriousness of a crime?
 24 A. You can't go down that road. No life is worth more
 25 than another life. Can't go down that road.

1 Q. Because I want to change your hypothetical slightly.
 2 Instead of a carload of nuns, it's a carload of drug users.
 3 Is that the same --
 4 A. Same thing. You can't place more value on one life
 5 than another. That's inappropriate in my -- by my value
 6 structure, that's inappropriate.
 7 Q. Well, for most people don't you think that would be
 8 human to consider it --
 9 A. Of course, it's human nature. Anyone that does not
 10 conform to your value structure, there will be some -- you
 11 know, some reaction. When push comes to shove in the actual
 12 context of stating this life has more value than other, could
 13 I actually? No. In other words, what I'm basically doing is
 14 separating sort of a human -- base human instinct and the way
 15 that we initially approach things to, okay, if you were
 16 actually to sit down and ask me in a measured fashion, do I
 17 really believe that one life has more value than any other
 18 life? I can't come up with any answer, other than no.
 19 Q. Do you know the name Jeffrey Dahmer?
 20 A. Yes.
 21 Q. Do you remember what happened to him?
 22 A. He was killed in prison.
 23 Q. Let me test your hypothesis, if I could. When you
 24 heard he was killed in prison, do you remember what your
 25 reaction was?

1 A. Flat.
 2 Q. Have you heard other people getting killed that made
 3 you much sadder than that?
 4 A. Yes.
 5 Q. Does that still square with what you're telling me
 6 about one death is not any different than any other one?
 7 A. No. It actually -- you're illustrating exactly why.
 8 You have human nature. You have the -- you attempt to, in
 9 some measured fashion, apply a value structure which may or
 10 may not jive with your instinctive reaction. Do I have a
 11 reaction to hearing that Jeffrey Dahmer was killed in prison?
 12 No more reaction than I heard that Mother Teresa had passed
 13 away.
 14 Q. Really?
 15 A. We go through life and there are any number of -- on
 16 the other hand, I sat down last night, and I went there at
 17 11:00 at night, you know, with my wife and our son bawling our
 18 eyes out. I mean, you go through life and you create a --
 19 Q. Excuse me?
 20 A. -- a level playing field sort of thing where you
 21 distance yourself from certain actions. Did Jeffrey Dahmer
 22 die in prison? Did I shed a tear? Did I have a positive or
 23 negative reaction? No.
 24 Same reaction to hearing that Mother Teresa died.
 25 It is a factoid that you're inundated with on a daily basis,

1 **and you just tuck it away and say, okay, that happened.**

2 **So I – you know, to get around to your question, I don't**

3 **think that I could – I think I'm...**

4 Q. Where I'm coming from on that is I'm not talking
5 about this trial, but it's not unconventional in trials for a
6 defendant to trash the victim. And I'm not saying there's
7 anything wrong with it. If the Rules of Evidence authorize
8 it, that's fine. And I'm curious because there's that old
9 saying that you don't build yourself any by tearing others
10 down, that kind of notion. But I'm curious, what you're
11 telling me that's not a big thing to me, the quality of the
12 person that was killed. It's the act of the killer that you
13 look at more?

14 A. **That would be my impression of why we were here.**

15 Q. Some people would say murdering the drug dealer is
16 not like murdering the nun, but you're not that -- you don't
17 see it that way?

18 A. **No. I mean, that is a philosophical and moral**
19 **slippery slope that just gives me the willies thinking about**
20 **it.**

21 Q. Now, let's assume that we have proved to you beyond
22 a reasonable doubt that the Defendant is guilty of capital
23 murder. We proved to you that he is a probable danger of
24 criminal acts to our society in the future, and we proved to
25 you that whatever mitigation evidence, if any, you see in all

1 Q. Do you feel like our system is too complicated? I
2 mean, obviously it's taken already -- even you're not seated
3 on this jury, it's already taken a lot of your time. I mean,
4 you're an intellectual guy, but I bet you got better things to
5 do than be discussing this with me, if given the choice. But
6 I know you're here willingly, like you were in the military,
7 same thing. Is it your impression that we make too big a deal
8 out of this death penalty litigation, that somehow it's too
9 much time or too much explanation? What's your take on that?

10 A. **Well, I can't really speak to anything other than**
11 **what I've seen in the last month. I just don't pay that much**
12 **attention to a lot of that stuff in the media because it is –**
13 **I am, by definition, an analyst. It's part of what I do for a**
14 **living, and if I don't feel like I'm comfortable with all the**
15 **information, I make an effort to, more or less, keep it out**
16 **there.**

17 **If I were in the position where I was sitting over**
18 **there, I would want all due deliberation and process. Do I**
19 **feel that what I've seen so far is inappropriate in that**
20 **regard? No.**

21 Q. You indicated that you agree with the law, that you
22 can consider -- or that you can return a "yes" answer to that
23 first special issue just on the crime itself. And you said,
24 yes, you agree with that if the circumstances support the act
25 is a truly depraved action. What do you think?

1 the evidence that you looked at, that it's insufficient
2 mitigating evidence to require the Defendant's life to be
3 spared in the context of the trial. You know what the result
4 of those answers will be, even though you're not going to be
5 the person injecting the lethal substance that's going to
6 happen down the road. And I know this is hypothetical, but
7 you're thinking, man, you might have some (inaudible). How do
8 you think you're going to feel looking back on that decision,
9 number one, and maybe one day realizing, because it will still
10 be TV news, it always is -- that the Defendant has been
11 executed, or the hypothetical had been if you're sitting on
12 the trial and he has been executed. Kind of, as best you can,
13 project how you think you're going to feel at that point?

14 A. **Weary. I mean, weary. That's the only word that**
15 **can form around what would –**

16 Q. Have I made you feel weary yet, by the way?

17 A. **Pardon me?**

18 Q. Have I made you feel weary yet?

19 A. **No, no.**

20 **No, weary is just a hollowness. It's just sort of**
21 **a -- it really, pardon my French, it really sucks that this**
22 **has to happen. It really sucks that we got to this point.**
23 **There's sort of a resignation that sometimes you have to get**
24 **to this point, but it doesn't make it any less, pardon my**
25 **French, crappy. There's that weariness to it.**

1 A. **You have the benefit of the question in front of you**
2 **that I don't have.**

3 MR. SCHULTZ: Approach the juror?

4 THE COURT: Yes, sir.

5 Q. BY MR. SCHULTZ: I'm sorry. You've probably thought
6 of other things since you threw this out. This question right
7 here, you indicated --

8 A. **Okay. I understand the context.**

9 Q. What are you thinking of when you're talking about
10 a truly depraved act?

11 A. **Again, it's not something I can put my finger on.**
12 **Do I believe that it is possible that someone can be -- I**
13 **mean, I'm reading that question, and I'm trying to make an**
14 **analysis of what is it really asking? What is it saying to**
15 **me? Is it possible for an individual to have committed a**
16 **crime -- have committed no crimes -- have been convicted of no**
17 **crimes prior to a particular point in time be -- and then**
18 **commit a crime that provides insight into their humanity, for**
19 **lack of a better way to put it, do I need -- essentially do I**
20 **need a repetitive pattern of violent, ugly things in their**
21 **past to say that this is a violent, ugly individual? No. The**
22 **act provides a potential window into that, you know.**

23 **In the hypothetical question, do I believe that**
24 **having this particular standard available for this particular**
25 **type of act in lieu of having any past priors, is that at**

1 **least reasonable to have that available? Yes, I do.**

2 Q. Okay. Now, places you've lived previously. You
3 were in Elizabeth City, North Carolina. And I know the North
4 Carolina has a death penalty, but I don't think anywhere is
5 death penalty litigation as active as it is here in Texas.
6 And there was something on the questionnaire that you
7 indicated that you recently moved here, relatively speaking --

8 **A. Yes.**

9 Q. BY MR. SCHULTZ: -- so you weren't all that familiar
10 with a lot of what we do here. Did you ever follow any death
11 penalty cases in North Carolina?

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

13 Q. And then previously before that you lived in Vermont
14 for 11 years, is that right, or is that Virginia?

15 **A. Virginia.**

16 Q. Fairfax, Virginia. I'm sorry. Your (inaudible)
17 almost was a T.

18 Is that Fairfax County?

19 **A. Yeah.**

20 Q. What did you do there?

21 **A. I'm a computer system architect.**

22 Q. And I know Virginia has a death penalty, but once
23 again it's much less actively used than Florida and Louisiana
24 or Texas.

25 And then prior to that time you lived in Silver

1 **A. Not really.**

2 Q. Have you always -- you may have answered that. I
3 don't guess I inferred your answer to it. Have you always
4 favored the death penalty since you've been thinking about it
5 all your life as an option?

6 **A. Always? I'd say yes.**

7 Q. People evolve on it sometimes. I always figured
8 people would start out more liberal in their youth, and they
9 always say you become less liberal when you pay taxes, kind of
10 that idea?

11 **A. Yeah.**

12 Q. But I hear both ways. I hear people that used to be
13 in favor of it, and now they're not, and so it just depends.

14 If given the choice, would you prefer to be on or
15 off this jury?

16 **A. Well, that's what I've really spent most of my time
17 debating. I mean, not the actual death penalty or anything
18 else, but it -- the idea of taking four to six weeks away from
19 my normal existence is a particular inconvenience, and it's
20 not quite as bad as having hot tar poured up my nostrils, but
21 it really does sting.**

22 **(Laughter.)**

23 Q. Have you ever tried that? Some people like it.

24 **A. On the other hand, I -- everyone gives me advice,
25 here's what you need to do to get off a jury. Here's what you**

1 Spring, Maryland?

2 **A. Correct.**

3 Q. Which, I guess, is Montgomery County, Maryland?

4 **A. Yeah.**

5 Q. That was for 20 years?

6 **A. Yeah. Basically from the time I was six and seven
7 years old, up through '86.**

8 Q. Where did you go to high school?

9 **A. Springbrook High School.**

10 Q. I'm from Bethesda is the only reason I ask.

11 **A. Ah, got you.**

12 Q. And you work for Pepsico now?

13 **A. Correct.**

14 Q. I'm trying to remember, are they affiliated with
15 Frito-Lay? I always get that confused.

16 **A. Frito-Lay is one of the divisions of Pepsico.
17 Tropicana, Quaker Oats, as of July, Frito-Lay and Pepsi Cola.**

18 Q. Do they have any distilleries or any kind of
19 whiskey connections?

20 **A. No.**

21 Q. Does Pepsico have any of those?

22 **A. No. They have -- no. Tropicana makes bottles for
23 Bacardi is the closest that we get.**

24 Q. Have you and your spouse ever discussed the death
25 penalty, that you recall?

1 **have to say, and I find that I cannot bring myself to do that.**

2 Q. I appreciate that.

3 **A. If -- by hook or by crook if -- if I were charged
4 with a crime, any crime, and I had a trial by jury, I would
5 like to think that my jury was comprised of people that were
6 truly my peers, not people that -- you know, too dumb to get
7 out of jury duty, or the chronically unemployed and,
8 therefore, available. And I'm not trying to be denigrating in
9 any way when I say that.**

10 Q. So you're willing to contribute your energies and
11 your talents if called upon to do so?

12 **A. Yes.**

13 Q. And do you see jury service as a very important
14 thing in our society?

15 **A. Yeah.**

16 Q. Would you consider yourself -- if someone were to
17 say are you a fair juror in a death penalty case, that doesn't
18 mean being top-dead center because there are all kinds of
19 varieties of fair. I guess to be fair means to be open-minded
20 on all the issues. Do you see yourself as a fair potential
21 juror?

22 **A. Yes.**

23 Q. As you sit there now, do you have in your heart any
24 desired outcome that if you -- maybe one is to not be on the
25 jury if it works out that way. But apart from that, if you

1 end up on the jury, do you feel in your heart you've got one
2 way you wish it would all work out, rather than another at
3 this point?

4 **A. No, I really -- I mean it -- at this point**
5 **everything is an abstraction, and I can't -- I mean, there**
6 **just other than the, okay, I'm going to give it my best shot,**
7 **and if they don't pick me, (wosh), okay, I can go along with**
8 **my life. But outside of that, there really is not a -- it's**
9 **an abstraction.**

10 **Q. Okay. Because some people say -- down in their**
11 **hearts they say, gee, I hope the evidence doesn't make me vote**
12 **yes because I couldn't live with myself if I had to do that.**
13 **I mean, you're not that way?**

14 **A. (Shrugs.)**

15 **MR. SCHULTZ: Pass the juror.**

16 **THE COURT: Mr. Goeller, or is it Mr. High?**

17 **MR. HIGH: Mr. Goeller.**

18 **MR. GOELLER: Thank you, Your Honor.**

19 **CROSS-QUESTIONS**

20 **BY MR. GOELLER:**

21 **Q. It's still good morning, Mr. Bernecker.**

22 **A. Bernecker.**

23 **Q. Okay. I want to make sure I pronounce it right,**
24 **Bernecker.**

25 **Mr. Bernecker, thank you for coming down here again**

1 today. I know you've already put some considerable time into
2 this case as just a prospective juror. And you said something
3 that really struck home to me about having to be tried by 12
4 people that weren't smart enough to get out of jury service.
5 I hear that all the time. I hear very educated, professional,
6 all sorts of people say that, and they've got to be people who
7 have either never had an opportunity to serve on a jury, never
8 been called. Some people refuse to register to vote, although
9 they can get tagged other ways now. There are people out
10 there that will not vote, will not even register to make sure
11 they never get tagged for jury service. I guess it's kind of
12 sad, but I guess that's what makes this country go round.
13 Everybody is entitled to their own opinion.

14 **But I really appreciate that comment --**

15 **A. Well, I made that comment because that was your**
16 **comment to our -- the pool. I guess it was a week ago?**

17 **Q. Yeah.**

18 **A. That was the expression you used.**

19 **Q. Right. You truly feel that way, though?**

20 **A. I won't say too smart to get out of jury. My**
21 **experience so far has been, A, I have never had jury duty. I**
22 **mean, I'm 37 years old, and I've never been tagged to do this.**
23 **Okay, tag, here I am. As I wander in and wander back into my**
24 **life and talk to my co-workers and so forth, it seems that**
25 **everybody has a -- sort of the get-out-of-jail card kind of an**

1 **idea. Here's what you got to do to get out of jury duty, and**
2 **so I'm reacting to that. I find that you smile and you**
3 **make -- yeah, thanks a lot, yeah, yeah, and I find it somewhat**
4 **morally reprehensible.**

5 **Q. Do you think most folks when they kind of give**
6 **those clues, here's what you've got to say -- because**
7 **typically when we get a juror up here that has some education**
8 **and some savvy, and when they get up here and they raise their**
9 **hand to the judge very early on and say, oh, Judge, I believe**
10 **they're all guilty until proven innocent. I mean, it's here's**
11 **a colored glass (sic) of how they really feel. You know, they**
12 **really want out of jury duty.**

13 **Do you think people -- the people that were kind of**
14 **giving you tips, was it more tongue-in-cheek, or do you think**
15 **they were really trying to help you avoid this whole process?**

16 **A. They were really trying to help me.**

17 **Q. Why do you think that is?**

18 **A. Because they want my butt back at work.**

19 **Q. Okay, okay. I was curious to know.**

20 **A. Okay, you know.**

21 **Q. I like to ask jurors this, and I don't know of any**
22 **better way to ask it. I've thought about how to phrase this**
23 **so it might make more sense, but I like to say to a**
24 **perspective juror: If you were sitting in my chair, would you**
25 **want somebody like you on the jury?**

1 **A. That's actually the one discussion I have had with**
2 **my wife, and that is that yes.**
3 **Q. I'm very, very -- I'm all ears on that one.**
4 **A. Well, that's essentially what -- the only**
5 **conversation that my wife and I have had on this has been, so**
6 **what are you going to do about it? Well, I'd want 12 of me,**
7 **not necessarily with the same value structure, but with the**
8 **willingness to participate and actually evaluate given a set**
9 **of criteria, given a set of variables that fit into those**
10 **criteria, perform an analysis, if you will, and render a**
11 **verdict. Yes, I would want 12 jurors like myself.**

12 **Q. Okay. Tell me what kind of things you do in your**
13 **job. Pretend and assume, it would be correct, that I am not**
14 **too savvy when it comes to high-tech. It took me a week to**
15 **learn that stupid thing. I still don't have it down, but what**
16 **do you do every day?**

17 **A. That stupid thing there, I make those.**

18 **Q. Palm Pilot? Greatest device ever made.**

19 **A. In reality, for example, you're Frito-Lay, and you**
20 **have 20,000 workers that do nothing but wander the streets**
21 **delivering bags of Fritos and potato chips and so forth. And**
22 **you basically hire me to spend an awful lot of your money to**
23 **create the device and the software on the device and all the**
24 **stuff upstream that allows them to track their orders and**
25 **track their inventory and do all this fun, happy stuff.**

- 1 Q. When you just mentioned that, there's a gentleman
2 that comes in our building probably twice a day, and I think
3 he's either UPS or Fed Ex. He's a -- and he's got this --
4 **A. The little one is Fed Ex; the big slate is UPS.**
5 Q. He's got what looks like a giant cell phone, and
6 he's got a notepad and he'll bar --
7 **A. That's Fed Ex.**
8 Q. -- (noise), then he'll (indicating). Is that kind
9 of what you're talking about?
10 **A. I moved down here from Washington, D.C. to work on a**
11 **contract for Fed Ex to retire that pig, that existing**
12 **hand-held device, and get them their next generation. That's**
13 **what actually got me into the Dallas/Fort Worth area.**
14 Q. Really?
15 **A. Yes.**
16 Q. I think I, in a very fundamental sense, I think I
17 know what you do.
18 Do you deal in -- I'm trying to think of a way to
19 say this. Do you deal in more of data and certainties?
20 **A. I was going to say, you're looking for the -- I**
21 **know what word you were searching for, the intangibles.**
22 Q. Yes.
23 **A. Those things -- it's a cloud. You can't necessarily**
24 **put a form to it, but you can sense that it is there.**
25 Q. Okay.

- 1 **A. To a degree, yes, you have to. I mean, probably 80**
2 **percent of my effort revolves around conversations and cues,**
3 **what it is that individuals truly want a tool to do for them,**
4 **what they perceive the value added and the return on**
5 **investment to be, and then go off-line and take my technical**
6 **knowledge and create a blueprint against which people build**
7 **that system.**
8 Q. So I guess there are finite types of things.
9 There's X number of retailers or wholesalers, X number of bags
10 of chips, X number of drivers, X number of trucks, all that
11 kind of thing, and to track all that we're dealing with, I
12 guess, hard numbers, hard data.
13 **A. (Nods head.)**
14 Q. Is that fair to say?
15 **A. Yes.**
16 Q. Or am I oversimplifying it?
17 **A. No, that's --**
18 Q. These kinds of questions, and in the first phase of
19 the trial, you probably -- let me back up just a little bit.
20 This individual voir dire, where it's one-on-one voir dire, is
21 only conducted in capital murder accusation cases. Normally
22 it's 50 people. They sit right there. In any other kind of
23 case, from the time you get to the courthouse, to the time you
24 end up in the jury box is probably two hours.
25 But the Legislature, the law, requires this

- 1 individual voir dire and -- because of the death penalty
2 issues and the feelings on it. It's sometimes uncomfortable
3 for me to spend almost all my time talking about punishment,
4 but that's what I have to do at this phase of the trial. I've
5 got to put a certain amount of faith and confidence in people
6 that they understand fundamental Democratic/Republican --
7 Republican forms of Government, our system of justice, you
8 know, trial by jury, innocence until proven guilty, guilt must
9 be proved beyond a reasonable doubt, direct examination.
10 Hopefully, in this day and age of television and court TV,
11 most people could do that for me if they had to come over here
12 and explain to folks. So, I've got to put all my eggs in one
13 basket, as far as this goes talking about these special
14 issues.
15 But in a real round-about way, I've encountered
16 jurors who are schooled and their whole career has been in
17 those very hard finite sciences that have real difficulty with
18 these kinds of issues and the questions, but I don't get that
19 from you. Are you pretty comfortable being able to answer
20 these kinds of questions where things may not be defined
21 specifically, and the word "sufficient," the word
22 "mitigation," the word "probability," all that?
23 **A. Yes.**
24 Q. That doesn't cause you any concern, does it?
25 **A. No.**

- 1 Q. Obviously I've got to -- I try to take some notes,
2 and I go through your questionnaire and -- in the amount of
3 time that I have I try to hit the highlights. I'm not going
4 to go over everything Mr. Schultz went over. That's a waste
5 of your time and the Judge's time.
6 One thing that you said that I just made a note of,
7 and I know you'll understand why I ask these things. I think
8 you are, if I can use the word, a proponent of capital
9 punishment in cases of less than homicide. Did I write that
10 down right?
11 **A. I could be.**
12 Q. You could be?
13 **A. I could be.**
14 Q. Like the serial rapist, something like that?
15 **A. Yes.**
16 Q. Okay, okay. When you give best argument in favor of
17 the death penalty. Understand that. Best argument in
18 opposition of the death penalty. Possibly mistakes can be
19 made in prosecution. If I told you that you couldn't write
20 that down, that -- you know, come up with something else other
21 than appellate error, could you come up with something to fit
22 in that sentence, other than mistakes at trial?
23 **A. You're fishing for how much of an emotional problem**
24 **I have, directly or indirectly, causing the death of someone**
25 **else in this case in a legal fashion. There is -- there's an**

1 emotional quandry there for anyone, as there should be, and I
2 don't believe anyone can stand up and say I don't have a
3 problem with this in any way, shape or form under any
4 circumstances.

5 Q. Okay.

6 A. Everyone has a threshold above which they have a
7 problem with it. I can't tell you where that line is. I
8 can't tell them where the line is because I don't have -- I
9 don't have subject matter exposure to be able to say even
10 here's an idea of where it falls. I have an instinct that
11 tells me, yes, there can be and is appropriate under the
12 proper set of circumstances. Can I define those with a nice
13 bright line? No. Actually, I find I have a real tough time
14 with that.

15 Q. And I understand that. My question may not have
16 been a very good one, to be honest with you.

17 Have you ever heard people that are opponents of
18 capital punishment state reasons why they're opponents? I
19 guess what I'm fishing for -- and that's what I'm doing, I'm
20 fishing.

21 A. Uh-huh. That's your job.

22 Q. I guess I'm trying to see if you can -- if you
23 understand some of the positions against capital punishment,
24 other than just possible trial mistakes? Or if you can maybe
25 not understand, appreciate or recognize that there are folks

1 out there that have reasonable opposition and philosophies?

2 A. Yes.

3 Q. I'm just testing. I'm fishing to see if you can
4 articulate one.

5 A. There is -- I mean, the concept that taking a human
6 life as punishment for taking another human life, I mean, some
7 people are very uncomfortable. You are as guilty as the
8 individual that committed the crime. You are duplicating
9 their crime, would be --

10 Q. Do you see some merit in that argument? I'm not
11 asking you to take a position or agree with it.

12 A. There's a merit in any argument.

13 Q. Okay. A legitimate merit in that argument. And
14 when we get to kind of retribution -- I know you touched on
15 that a little earlier.

16 I thought -- if I wrote down right -- you're not on
17 board retribution for retribution?

18 A. The eye for an eye, I have a difficult time with,
19 yes.

20 Q. Okay. I think I'm clear there.

21 A. Yes.

22 Q. Biggest problem in criminal justice system. Lack
23 of public support and interest for both prosecution and
24 defense of criminals beyond the grossly superficial. Tell me
25 more.

1 A. Well, I'm a perfect example of that.

2 Q. Okay.

3 A. I mean, I -- my exposure to my understanding of what
4 happens on a day to day, and within our criminal justice
5 system, or whatever you want to call is, quite frankly, just
6 abysmal. I'll at least go to the point where I understand --
7 I will actively avoid -- I don't follow the O.J. Simpson
8 trial. I don't follow these types of things on TV, and I
9 deliberately don't do it because I know that I'm not in a
10 position to actually evaluate what I'm hearing, and the
11 chances are what I'm hearing are probably sufficiently
12 superficial that I really shouldn't be arriving at any kind of
13 a conclusion on it. And I take that whole, what's going on
14 over here, and just push it out of the way and go through my
15 normal life as if these things don't happen.

16 You ask me what the problem is. I think that's a
17 problem. I mean, I think that is more symptomatic than
18 anything else.

19 Q. Do you think that parallels our voting system, too?
20 Do you think a lot of people go in that both and pull a lever
21 for -- they don't have a clue?

22 A. Yeah.

23 Q. Okay.

24 A. Party affiliations.

25 Q. Unless they're a straight-ticket puller, do people

1 really research a candidate? I don't know. I think you're
2 right.

3 I got to get a little personal with you, sir. Just
4 may tie into other facts and circumstances and theories of
5 this case. Do you drink?

6 A. No.

7 Q. Okay. Have you ever drank?

8 A. Well, I mean -- no. In -- no. Let me put "no" in
9 little emphatics and not big emphatics. I will have the
10 occasional beer, the occasional Vodka and Citrus, but very,
11 very rare.

12 Q. More as a -- like, at a social setting or
13 something?

14 A. Yes.

15 Q. Okay. Do you know folks that drink?

16 A. Yes.

17 Q. And drink -- and I'm not saying alcoholics, but
18 drink on maybe a regular basis?

19 A. Yes.

20 Q. Have you ever given any thought as to why people
21 choose to drink or use substances, legal or -- the Federal
22 Government says nicotine and liquor are legal, and we're going
23 to make tax dollars off them, and marijuana and cocaine are
24 illegal, and we'll prosecute for those. Why do you think
25 people engage in mind-altering substances? I don't mean

1 mind-altering like LSD. But, obviously, people who drink
 2 drink for a reason. Have you ever given much thought to that,
 3 or why people smoke marijuana or why they do --
 4 A. Much thought? No, not really. I mean, you
 5 encounter -- you go through life and you encounter
 6 individuals, whether it's legal or illegal substances, based
 7 on our definition. There is a historical -- I mean, since the
 8 dawn of civilization you can find that X percentage of the
 9 human population has found it desirous to engage in, you know,
 10 taking substances that will specifically alter their mood
 11 and/or character. From a historical perspective it's there.
 12 It's always been there.
 13 Q. Why do you think that is? What about the human
 14 being, whatever percentage of our population is, that we seek
 15 out to some --
 16 A. Sometimes --
 17 Q. -- synopsis?
 18 A. Sometimes it's fun. I mean, this is something that
 19 is fun. You know, most people would have -- even nondrinkers
 20 would have a glass of champagne and get a little bit tipsy,
 21 and say, hey, this is fun. Why did they do it? Because it
 22 was fun. I know individuals that have an addictive
 23 personality, and as they would explain it to me their body
 24 chemically deals with these substances differently than mine,
 25 and, therefore, they have -- you know, they ingest these

1 substances because they have a physiological reaction to do
 2 so.
 3 Q. Okay, exactly.
 4 A. I mean, certainly I smoke cigarettes. I pretty much
 5 understand at least part of that.
 6 Q. So you probably understand a little bit about the
 7 concept of addiction?
 8 A. Yes. I've quit four times.
 9 (Laughter.)
 10 Q. I don't think this is much. I have to ask. If I
 11 don't, somebody may think I'm a fool. Victim of vandalism
 12 unreported. Just the way you wrote it, I assume it wasn't
 13 that big a deal?
 14 A. Well, it was to me emotionally, but it wasn't --
 15 Q. What did somebody do?
 16 A. Well, right before I moved down here, Christmas eve,
 17 a bunch of drunk kids are driving through the neighborhood
 18 late at night and throw beer bottles at my brand-new car, and,
 19 you know, dent it all to hell and back again.
 20 Q. Was it kids being stupid, or do you think you were
 21 targeted?
 22 A. No. I was not targeted.
 23 Q. Okay, okay, okay.
 24 THE COURT: Mr. Goeller, we're going to take a
 25 recess for lunch at this time. And, sir, I want to ask you to

1 be back at 1:00, and when you come back perhaps there will be
 2 jurors in the jury room. I want to ask you not to discuss
 3 with them anything that's been asked of you, or anything that
 4 you've responded. And we'll come back at 1:00 and continue
 5 with the voir dire.
 6 (Venireperson exits the courtroom.)
 7 (Recess taken.)
 8 THE COURT: After Mr. Bernecker we've got
 9 Ms. Boykin. Do you desire to go first?
 10 MR. GOELLER: Boykin, is she the one, Judge?
 11 THE COURT: Yes.
 12 MR. GOELLER: Oh, Vicky Boykin. I'd like to
 13 have that opportunity.
 14 THE BAILIFF: All rise.
 15 (Venireperson enters the courtroom.)
 16 THE COURT: Mr. Bernecker, welcome back, and
 17 you know you're still under oath.
 18 VENIREPERSON: Thank you.
 19 Q. BY MR. GOELLER: Welcome back, Mr. Bernecker. Did
 20 you get a bite to eat?
 21 A. Yeah, probably shouldn't have had the onion rings
 22 at Sonic. If I fall asleep, you'll know why.
 23 Q. It's America's drive-thru.
 24 A. That's it.
 25 Q. I can't even remember where I left off. You do

1 probably, though. What was I talking to you about?
 2 A. I honestly don't recall. I mean, I walked out of
 3 here thinking about the things I hadn't been asked, and that's
 4 pretty much where my mind was focused so I can't...
 5 Q. Well, you opened up that door, and I'm going right
 6 through it. Tell me about that because that's probably real
 7 important stuff and --
 8 A. I mean, for example --
 9 Q. -- I may not be smart enough to ask the kind of
 10 questions that matter, and this might give you some real
 11 insight on how I do my job.
 12 A. Well, for example, if someone said to me that -- we
 13 were along the discussion lines of addictive personalities and
 14 drug usage and how I felt about that one way or another, and I
 15 freely admitted and no one noticed the bulge in my pocket.
 16 But, no, in fact, I smoke. I have a sensitivity to the
 17 concept and the reality of addictive substances and
 18 personalities that are susceptible to certain addictions. A
 19 follow-up question, were I on the other side of this wonderful
 20 little oak rail, would have been along the lines of, how do I
 21 feel about the tobacco lawsuits? In other words, do I believe
 22 it is appropriate or inappropriate? For example, would I
 23 raise my hand and say, yeah, I wish to join in a class-action
 24 suit against a tobacco industry for perpetrating this
 25 addiction upon me? And my answer would have been no.

1 Q. No. I figured that out about you. You don't buy
2 those cigarettes every single day and then look at the side of
3 it and say, hum, that Surgeon General warning. And I don't
4 see you driving down the road, keep picking the pack up and
5 look at it and contemplating before you fire one up.

6 A. Actually, I do. I just don't act upon it. But
7 where I was going with that is the reason that I -- for
8 example, one of my value structures, one of the most strongly
9 held value structures is responsibility for one's actions.

10 Q. Right.

11 A. I'm, frankly, stupid enough to smoke. I know it
12 will kill me. I know that there is, in fact, a very hard and
13 fast. In this case, it's not up to a juror or any other legal
14 system. If I keep doing this, that it, in fact, is a
15 self-imposed death sentence, and I understand that, and I take
16 responsibility for that. I mourn for the fact that I have
17 this, and I know this to be true, but I take responsibility
18 for engaging in that habit that, in fact, I know for a fact,
19 categorically if I continue it, will kill me.

20 I don't know what that tells you, but it is, in
21 fact, one -- a very strong value structure. I understand and
22 am aware of the ability to do -- to do things which are
23 potentially harmful because of -- you know, in this case an
24 addiction. I also personally take responsible for that. This
25 is my own damn fault that I'm doing it.

1 Q. Right.

2 A. I know that I shouldn't do it. I know that it will
3 kill me. So there's sort of an understanding of both sides of
4 that coin.

5 Q. Yeah, I think I saw that. I would obviously be
6 worried as a defense attorney -- when you look at those two
7 special issues, they ask you to -- one asks you to kind of
8 predict the future. The other one is that, I think you put
9 it, the emergency break light. That's exactly what it is.

10 Now, there are some jurors out there that say, look,
11 if I had found somebody guilty of a double homicide, or I
12 found somebody guilty of killing in the course of robbery or
13 killing in connection with a burglary of a habitation,
14 furtherance of it, I don't need those special issues. They're
15 dead. We've had jurors like that, and I applaud their honesty
16 because you can understand why. That's why I told people I
17 could care less what people tell me. I just need the honest
18 answer.

19 Are you cause and effect such that if you found
20 somebody guilty of capital murder, I'm wasting my time even
21 talking about mitigation or probability?

22 A. No.

23 Q. Okay. I didn't think so. I'm getting mixed
24 signals, and maybe because you know how this game is played.
25 I've got a limited amount of time to get in your head.

1 A. Uh-huh. Heck, I'd like to do that.

2 Q. And when I hear you say things like, I wouldn't get
3 in a tobacco lawsuit, I know these things could potentially
4 kill me. You know, it's one of those things, I know people
5 that have smoked three packs a day that are 90 years old, and
6 the doctors say keep your driver's license, you're in good
7 health, rock and roll. They drink a quart of vodka a day.
8 It's weird. Human beings are just odd.

9 A. Yeah. The point there had nothing to do with the
10 death penalty itself.

11 Q. Okay. I just wanted to make sure.

12 A. No. It was just one of those lines that we had gone
13 down in terms of an awareness or an understanding of the gray
14 areas in all of this, and that was one of those avenues that
15 we hadn't pursued. Well, ultimately what is my value
16 structure around the concept of addiction and how I perceive
17 it? I perceive it to be real. It may or may not be
18 applicable here, I don't know. Right now, I would rather not
19 know. But, it came up as a line of questioning. This is -- I
20 have an awareness of the concept. I have an awareness of
21 consequences, and I, at least, have one habit that falls into
22 that general category, on the other hand, so there's a
23 sympathy to that. On the other hand, I'm not very sympathetic
24 to myself on that point.

25 Q. Right.

1 A. So.

2 Q. What other areas were you curious as to why you
3 haven't been asked yet? I would like to think I would have
4 gotten around to them, but that's --

5 A. That was the primary one.

6 Q. Okay.

7 A. That was -- I mean, I -- of course, I walked into
8 this with an expectation that there are two perspectives here,
9 and each perspective has a desire to find a pool of jurors
10 that is most sympathetic to their perspective, and I walked in
11 knowing that there was absolutely no way given where I am in
12 my head and emotionally that I could actually satisfy either
13 party and either perspective. There is simply -- we talked a
14 little about the retribution. You know, we talked a little
15 bit about the cons of the death penalty itself, and the same
16 argument, eye for an eye, tooth for a tooth, is a value
17 structure that I find abhorrent. I mean, to me that is the
18 one reason you don't do it.

19 But I have -- you know, there are very valid
20 arguments on the other side, and I would probably characterize
21 myself as following, at least intellectually, in the camp
22 where I say that possibility -- these arguments are creating
23 the possibility for the death penalty are valid, but I can't
24 give a -- define an example of when -- when would I basically
25 say this mitigating stuff doesn't apply. There is no

1 mitigation, or conversely.
 2 Q. Right.
 3 A. I'm a little frustrated because I feel like I can't
 4 necessarily convey the level of confusion. I'm sure you guys
 5 live it on a daily basis, but just --
 6 Q. That special issue, the one that's down on the floor
 7 there, you talked a little bit with Mr. Schultz about
 8 probability. If I could ask you to put probability in a
 9 percentage?
 10 A. Point 8.
 11 Q. I'm sorry?
 12 A. Point 8. I'll do a rectal extraction, .8
 13 probability, 80 percent.
 14 Q. Okay.
 15 A. I mean, who knows? I pulled that out because it's
 16 as valid an answer as any other.
 17 Q. You bet. We all agree that it means more than a
 18 possibility, almost -- both sides have used the phrase "more
 19 likely than not," so I guess that's something.
 20 A. That's .5 to 1.0.
 21 Q. Right, right. And if you're anywhere within that
 22 range, you're okay. I worry about people that, you know, .1.
 23 You know, and they're really -- because what the law says is
 24 if a juror equates probability with just possibility, they're
 25 not qualified because -- and then it's an impossible question

1 for us to handle. You know, if it was just -- anything is
 2 possible. Obviously, the Legislature didn't mean it that way.
 3 A. I was going to say, yeah, it's possible an airline
 4 can crash into a building. But up until yesterday, who would
 5 have actually considered it.
 6 Q. The -- that question is odd. The State has the
 7 burden -- that first question, the one on the floor there,
 8 that's special issue number one, what we've been calling the
 9 future dangerousness question. It's a bit odd because the
 10 State has the sole burden of proof in that, and they have to
 11 prove that probability beyond a reasonable doubt. I've never
 12 been able to square that in my limited head. But you don't
 13 have any problem with their burden of proof beyond a
 14 reasonable doubt on that question?
 15 A. No.
 16 Q. Okay.
 17 A. You have to understand how I'm approaching all of
 18 this. Most all of my life I have kept all myself reasonably
 19 removed from, you know, the criminal justice system or
 20 anything else. And I have -- I'm approaching this the same
 21 way I would approach any client who said, I need you to build
 22 me a very -- 250 million dollar computer system. If I walk in
 23 with preconceived notions, if I walk in with concepts of what
 24 it should look like or smell like or be like before I walk in
 25 the door, then I'm probably going to get fired. I'm probably

1 not going to do a particularly good job.
 2 Q. How did you get into computers? Was it from the
 3 Army?
 4 A. I was Army Signal Corp, and when I got out I
 5 actually thought I was going to be doing wireless stuff since
 6 that's what I did in the military. And I just got a break.
 7 Q. Were you kind of a natural at it? Have you had a
 8 lot of formal training in it?
 9 A. No.
 10 Q. That was something you were wired for, no pun
 11 intended?
 12 A. How stuff works.
 13 Q. That top special issue the -- boy, I like that term
 14 you used. Say it again for me. Last --
 15 A. Oh, it's the break glass in case of emergency. You
 16 know the sign over the fire alarms, or the fire extinguishers,
 17 you know, break glass in case of emergency.
 18 Q. I got you. I'm going to write that down because I
 19 like that.
 20 That special issue nobody has a burden of proof on.
 21 The State doesn't have to -- to answer it no, it's got to be a
 22 unanimous verdict. And obviously a "no" answer unanimously
 23 results in a death sentence. A "yes" answer obviously results
 24 in a life sentence. What's interesting about that question,
 25 what distinguishes it from this question, and all the issues

1 on guilt-innocence, whether somebody is actually guilty beyond
 2 a reasonable doubt of capital murder, all the elements are
 3 focused. All the jurors are -- to get a verdict it has to be
 4 unanimous one way or another. Even a not guilty verdict in
 5 our State has to be unanimous. The jury is all focused on the
 6 same thing really, the elements of the offense and the very
 7 specifics of probability, acts of violence, continuing threat
 8 to society.
 9 Where this question is, although it has to be
 10 answered "no" unanimously and "yes" by at least 10 jurors, as
 11 far as what makes up these things is totally an individual.
 12 You could have ten jurors that answer that question -- this
 13 one yes, that would result in a life sentence? Each juror is
 14 entitled to define sufficient, whatever that means. Could
 15 be anything on a percentage, could be anything. What's
 16 mitigating? Anything. They don't have to agree. That's the
 17 uniqueness about that question. Each juror who would vote
 18 "yes" could do it for totally different reasons and totally
 19 different quantum of proof. That's what is unique about that.
 20 A. That's the vote your conscience instead of follow
 21 the rules.
 22 Q. There you go. Exactly.
 23 Back to that first special issue, I can tell you
 24 that society definitely means prison society. I'm not allowed
 25 to tell you that you can consider no other society, other than

1 prison society. The law won't let me do that, but I can tell
2 you it includes prison society. My personal feeling is, and
3 my argument would mean it's really got to mean prison society,
4 because before you get to those questions, if there's been a
5 unanimous verdict of guilty on capital murder, you know,
6 there's only two possibilities; life or death. Life in -- my
7 argument is life is really the automatic one, because to get
8 to the death sentence those questions have to be answered in
9 certain ways.

10 So, constitute a continuing threat to society, we
11 know it at least includes prison. Do you have any knowledge
12 or understanding of how penitentiaries operate, either through
13 hearsay or reading books or anything like that?

14 **A. (Shakes head.)**

15 Q. Okay, okay.

16 **A. I mean, other than the Cool Hand Luke, or such
17 silliness, no.**

18 Q. What we have here is a failure to communicate.

19 (Laughter.)

20 Q. BY MR. GOELLER: I don't have many more questions.
21 I just want to go over anything I saw on -- in the
22 questionnaire. I know where I left off now. I asked you
23 about that vandalism. That's what you were fixing to tell me.
24 No, we answered that. You talked about some kids stoned your
25 car.

1 **A. Beer bottles.**

2 Q. Beer bottles, okay. Okay.

3 You got a six-year old and a five-month old?

4 **A. Correct.**

5 Q. What's your philosophy on being a parent, your
6 general philosophy?

7 **A. Responsive and consistent.**

8 Q. Lead by example?

9 **A. Yes.**

10 Q. Do you think kids -- children in their formative
11 years, do you think that -- how do I phrase this? Do you
12 think it's very important, in regards to raising children, as
13 to how you want them to be as adults and how you want them to
14 turn out in life, it's very important that they watch how
15 you're living your life?

16 **A. Yes.**

17 Q. Okay, okay. And I don't mean that to be, like, a
18 rhetorical question, but do you think there's an awful lot --
19 I mean, obviously children growing up, assuming they're in a
20 home with their parents and not off in boarding school or some
21 other weird situation, obviously they're around their parents
22 more than any other adult. So, to figure out what an adult
23 is, they --

24 **A. Up until about age 5, age 6, and then the school
25 teachers suddenly become the formative figures. I mean, they**

1 **spend far more time with the teachers than they do with you.**

2 Q. Yeah. I never thought about that.

3 So they'd be feeding off them, too, probably?

4 **A. Yes.**

5 Q. A little personal, but I've never seen it so that's
6 why I certainly --

7 **A. Shoot.**

8 Q. Your brothers and sisters, I guess --

9 **A. Three sisters, no brothers.**

10 Q. Kat --

11 **A. Catherine, Hannah Laura and Samantha.**

12 Q. I've never seen anybody write "unknown" about
13 occupation, school --

14 **A. Haven't had contact with, at least, Catherine for 15
15 years.**

16 Q. Tell me about that.

17 **A. Well --**

18 Q. I know it's very personal.

19 **A. Well, no. I'm trying to find a succinct way to put
20 it because I realize that there are a lot of people sitting
21 out there waiting to get in here.**

22 Long story short: We had a fairly dysfunctional
23 family. I, at the age of 16, was granted legal emancipation
24 from my parents and moved out because of a dysfunctional
25 family situation. Made my way through life, and along the way

1 several of my siblings I have simply lost contact with through
2 lack of interest. They just simply don't represent
3 individuals that I would really like to have in my life.

4 Q. Was that -- how old -- you were about 15 or 16?

5 **A. I was 16 when I started it; 17 when I was actually
6 emancipated.**

7 Q. So your siblings were --

8 **A. Two older, one younger.**

9 Q. Did that situation, was that more due to your
10 parents or siblings?

11 **A. All of the above. I mean, it was simply a bad mix
12 of personalities, and a German rocket scientist and a German
13 immigrant who were -- had a very limited amount of time and
14 attention and energy to devote to four very, very demanding
15 children.**

16 Q. When you look back on that, does that -- maybe it
17 begs the obvious. You are doing things, I suppose,
18 differently?

19 **A. Yes.**

20 Q. You're trying to be a different parent than your
21 parents were?

22 **A. Yes. And you asked about regrets. I forget whether
23 it was y'all, or who asked about the regrets. One of the ones
24 that -- when people get to know me and they learn that, in
25 fact, I was legally emancipated, I mean, I gave up the**

1 opportunity, for example, to — I was accepted into three
2 colleges, the three that I had applied to; Cornell, Columbia
3 and University of Chicago. And I, essentially, gave up the
4 opportunity for a college education to, in fact, pursue legal
5 emancipation.

6 Q. Sounds like it probably wasn't that bad a decision
7 based on what you're doing now.

8 A. Again, in my career I can regret, gee, having a
9 degree, a sheepskin, would certainly make my abilities more
10 credible. Do I ultimately regret not having that, given the
11 two choices that were available? No.

12 Had I stayed, I probably would have wound up in a
13 courtroom earlier than today.

14 Q. Are you open to the theories of mitigation regarding
15 upbringing, childhood, dysfunctional families, things like
16 that?

17 A. I mean, that's essentially where a lot of this
18 question has gotten to is what is my receptiveness to that,
19 and I have a very hard time providing a concise answer to
20 that. I don't have subject matter knowledge sufficient to say
21 that I've had exposure to it and here's my reaction to it. In
22 many regards, and I've hopefully conveyed this, I really am
23 naive when it comes to these issues. I have spent, you know,
24 the last 20 years concentrating on other aspects of the human
25 existence, and this just is not one of those things that

1 Q. Okay.

2 (Laughter.)

3 THE COURT: Me, too.

4 Q. BY MR. GOELLER: Okay. Sir, do you have any
5 questions of me?

6 A. (Shrugs.)

7 Q. Any questions you think, if I was a smart lawyer, I
8 should have asked you?

9 A. No. I -- I feel like I've actual -- I mean, my
10 purpose in coming back after lunch and saying you guys didn't
11 ask me the questions that I thought were -- because I realize
12 that you're dancing around all of these topics that you really
13 can't discuss, and you're fishing for particular perspectives.
14 And I guess what I was feeling more than anything else is a
15 personal inability or difficulty in expressing a perspective.
16 I think at this point I've probably yacked a bunch and said my
17 peace.

18 Q. I think you've been fine. And it's, again,
19 frustrating on our part to doing the dance. You know, we have
20 certain rules at this stage of the trial that we can't talk
21 about, certain things factually, or -- you know, we're not
22 allowed to say, let me give you this fact situation. You tell
23 me how you would vote.

24 A. Yeah.

25 Q. I'd love to be able to do that, and Mr. Schultz

1 I've -- I am as open to that as much as I am open to anything
2 else. Can I give up -- how would I react if?

3 Q. Yeah. And that --

4 A. Not without enough context that it would blow this
5 out of the water.

6 Q. One other thing I made a note, just because I don't
7 see it and I would just question. Under religious, political
8 other activities, N/A, not applicable, not applicable, not
9 applicable, not applicable. Has there ever been religion in
10 your life? Were you born into a faith, anything like that?

11 A. I was baptized a Roman Catholic. I was actually
12 converted to a Methodist for my first marriage and briefly
13 participated in driving the bus on Sundays to the rest homes
14 to pick up folks and bring them to church and that kind of
15 thing. I have no -- there is no denomination that I would
16 affiliate myself with. I am not a church-goer.

17 Q. Okay.

18 A. There is, I suppose, a -- sort of an instinctive
19 feeling of spirituality, but nothing that manifests itself in
20 terms of a specific affiliation.

21 Q. Do you consider yourself in a very generic class of
22 either Christian or anything like that?

23 A. I'm more familiar with Christianity than any other
24 religion. I'm certainly, you know, far more familiar with
25 Christianity than, you know, being a Druid.

1 would love to be able to do that. Jury selection would
2 probably take three years, but anyhow you did fine. And I
3 appreciate your honesty. I always tell jurors, the personal
4 questions I ask, any other kind of case -- if you're sitting
5 out here on any -- a DWI case, nobody ever asks you those kind
6 of things. They basically ask you, you know, if you saw the
7 tape and you saw him fall down and he was drunk, could you
8 vote him guilty? Yes. Could you even possibly send him to
9 jail if you thought it was the right thing? Yes. That's jury
10 selection in those cases. But anyhow, these are a little bit
11 different.

12 Sir, I thank you for your time and attention.

13 MR. GOELLER: Pass the witness.

14 THE COURT: Let me ask you to step down for a
15 few minutes, and we'll have you come back in just a moment.
16 (Venireperson exits the courtroom.)

17 MR. SCHULTZ: Peremptory Number 6, Judge.

18 THE COURT: Ask Mr. Bernecker to come back in.
19 Is it Bernecker or Benecker (sic)?

20 MR. SCHULTZ: Bernecker.

21 (Venireperson enters the courtroom.)

22 THE COURT: Well, Mr. Bernecker, I want you to
23 know that I've personally really enjoyed your responses to the
24 questions, and I appreciate your time. You are, at this time,
25 finally excused from service.

1 VENIREPERSON: Okay.
 2 THE COURT: Thank you, sir.
 3 (Venireperson exits the courtroom.)
 4 I tell you what, I'd like to go down the list and
 5 tell you what my tally is at this point. For the Defense, I
 6 have 1, 2, 3, 4, 5, 6, 7, 8 strikes. For the State 1, 2, 3,
 7 4, 5, 6 strikes. The jurors that we have are Number 21,
 8 Mr. Calhoun; Number 27, Mr. Hayden; Number 34, Mrs. Duncan;
 9 Number 43, David Cannon; Number 45, Jung So; Number 46,
 10 Michael Foster; Number 62, Maurice Jacob; Number 63, Deborah
 11 Cole; and Number 75, Tanya Burks.
 12 Does everybody agree with everything?
 13 MS. FALCO: Yes, sir.
 14 MR. GOELLER: Except for State peremptory
 15 strikes, I think you and Mr. High are way off. I've only got
 16 down we've used one.
 17 (Laughter.)
 18 THE COURT: Let's invite Ms. Boykin.
 19 MR. SCHULTZ: Could you assist us with
 20 something, if you would?
 21 THE COURT: Yes.
 22 MR. SCHULTZ: We have a juror, the next juror
 23 after Boykin is Juror Wood or Woods.
 24 THE COURT: Yes.
 25 MR. SCHULTZ: And we don't know if she has a

1 criminal history or not. It's an unusual name, and the date
 2 of birth --
 3 MS. FALCO: The date of birth is the same, but
 4 her criminal history occurred in Florida, and nowhere on her
 5 questionnaire does she say she ever lived in Florida. The
 6 physical description on her questionnaire says she's 4 foot 11
 7 and has red hair and blue eyes.
 8 MR. SCHULTZ: And we were hoping, perhaps, the
 9 Bailiff could just casually, when he gets the next juror,
 10 Boykin, just look and see if this looks like someone of that
 11 very short, physical stature.
 12 THE COURT: I tell you what, if it's still
 13 ambiguous, I'll just ask her myself.
 14 MR. SCHULTZ: Okay.
 15 THE COURT: Anything you want me to ask her.
 16 MR. SCHULTZ: If she's, like, a tall person,
 17 that might -- maybe we've just got the wrong one. Like you
 18 say, you'd think there'd be an indication she'd been in
 19 Florida if she's been in trouble in Florida, but maybe just
 20 report back on her stature.
 21 THE COURT: But see --
 22 (Discussion off the record.)
 23 (Venireperson enters the courtroom.)
 24 THE COURT: Ma'am, are you Vicky Boykin?
 25 VENIREPERSON: Okay.

1 THE COURT: Excuse me, are you Vicky Boykin?
 2 VENIREPERSON: Yes.
 3 THE COURT: I suppose you remember about three
 4 weeks ago I placed everybody under oath.
 5 VENIREPERSON: Yes.
 6 THE COURT: And the oath was to give truthful
 7 answers to all the questions that are propounded, not only by
 8 the Court, but also by the attorneys. Do you recall that?
 9 VENIREPERSON: Yes.
 10 THE COURT: That oath still applies, ma'am.
 11 VENIREPERSON: All right.
 12 THE COURT: All right. Mr. Goeller, would you
 13 like to go first? And I tell you what, I'm going to ask you
 14 to pass the witness in 20 or 25 minutes.
 15 MR. GOELLER: Yes, sir.
 16 DIRECT QUESTIONS
 17 BY MR. GOELLER:
 18 Q. Good afternoon, Ms. -- am I pronouncing it
 19 correctly -- Boykin?
 20 A. **Boykin, yes.**
 21 Q. B-O-Y-K-I-N, Boykin.
 22 A. **Uh-huh.**
 23 Q. Ma'am, thank you for coming back today. I have just
 24 a few questions for you about your questionnaire.
 25 A. **Okay.**

1 Q. I think probably both lawyers -- both sets of
 2 lawyers at one time or another probably spoke about the need
 3 for honesty and candor from a juror in this process. There's
 4 no right or wrong answers or that kind of thing. I've got --
 5 MR. GOELLER: Judge, may I have just a moment?
 6 THE COURT: Yes.
 7 (Brief pause in proceedings.)
 8 MR. GOELLER: Judge, could we have a sub rosa
 9 hearing very briefly?
 10 THE COURT: Ma'am, I'm going to ask you to step
 11 down for just a moment, and we'll call you back in in just a
 12 minute.
 13 (Brief recess taken.)
 14 THE COURT: Did we do anything or --
 15 MR. GOELLER: I think her very presence has
 16 done something, and we've come to an agreement on that juror.
 17 THE COURT: Well, no comment.
 18 MR. SCHULTZ: Does the critical person agree?
 19 MR. GOELLER: Mr. Cantu?
 20 THE DEFENDANT: Absolutely.
 21 (Laughter.)
 22 THE COURT: All right. Then, Mr. Cantu, just
 23 to be explicit, I understand that it's your desire this lady
 24 not serve on your jury; is that correct?
 25 VENIREPERSON: Yes, Your Honor.

1 THE COURT: Both attorneys feeling the same,
 2 would you tell Vicky Boykin to --
 3 MR. GOELLER: Get the "boink" out of here.
 4 THE COURT: Would you tell her that she's
 5 finally excused?
 6 (Discussion off the record.)
 7 (Venireperson enters the courtroom.)
 8 THE COURT: All right. Ma'am, are you Shirley
 9 Ann Wood?
 10 VENIREPERSON: Yes.
 11 THE COURT: All right. Perhaps you'll recall
 12 about three weeks ago I placed everybody under oath, and the
 13 oath was to tell the truth with regard to any questions
 14 propounded by the Court or by the attorneys on either side. I
 15 want you to understand, you're still subject to that oath.
 16 And I want to ask you, I was looking at your juror
 17 questionnaire and notice that you were born in Stroud,
 18 Oklahoma and currently live in McKinney, and you lived in
 19 Mexico until you were 20; is that correct?
 20 VENIREPERSON: Uh-huh.
 21 THE COURT: And then New Jersey for six years,
 22 and you lived in California on two occasions?
 23 VENIREPERSON: Uh-huh. I had a --
 24 THE COURT: Or for two years.
 25 VENIREPERSON: Two years.

1 THE COURT: And then Texas for three years.
 2 Have you ever spent any time in Florida?
 3 VENIREPERSON: No. I've been visit (sic) a
 4 couple of times, but that's it. I'd rather live here.
 5 THE COURT: Hey, who wouldn't?
 6 Okay. All right. Then, that's about all that I
 7 want to ask you, and my questions are the easy ones. Let me
 8 ask you to be seated, and we'll see who goes first.
 9 MR. SCHULTZ: Ms. Lowry will be speaking for
 10 the State, Judge.
 11 THE COURT: All right. Ms. Lowry.
 12 DIRECT QUESTIONS
 13 BY MS. LOWRY:
 14 Q. Good afternoon, Ms. Wood. I don't know if you
 15 remember -- it's been a week now. It's been a long week. My
 16 name is Jami Lowry. I'm one of the Assistant District
 17 Attorneys here in Collin County. Seated to my right is Gail
 18 Falco, who is also an Assistant District Attorney, and seated
 19 to my far right is Mr. Bill Schultz, who is the first
 20 assistant in our office.
 21 MR. SCHULTZ: Good afternoon.
 22 VENIREPERSON: Good afternoon.
 23 Q. BY MS. LOWRY: And seated directly to my left is
 24 the Defendant, Ivan Cantu.
 25 VENIREPERSON: Hi.

1 Q. BY MS. LOWRY: And seated to his left is Don High
 2 and Matt Goeller, his defense attorneys.
 3 MR. HIGH: Ma'am.
 4 VENIREPERSON: Hey.
 5 Q. BY MS. LOWRY: As I recall from last week, you don't
 6 know anybody; is that correct?
 7 A. No.
 8 Q. Let me explain a little bit about the process to
 9 you. We call this basically individual voir dire. We bring
 10 you in and talk to you a little bit, you know, just about your
 11 views and things like that. And we do this because it helps a
 12 person feel a little bit more comfortable in expressing their
 13 feelings, expressing their ideas about things. It's not as --
 14 I know there are six people sitting here looking directly at
 15 you.
 16 A. I know.
 17 Q. But it's supposed to make you feel a little more
 18 comfortable in being open about how you feel about things. So
 19 it's a pretty relaxed atmosphere, so just feel free to --
 20 A. Okay.
 21 Q. -- talk to us about how you feel about things, okay?
 22 A. Okay.
 23 Q. Let me ask you first, when you first found out this
 24 was a capital murder case, what did you think about that?
 25 A. Well -- when I came the very first time?

1 Q. Yes, ma'am.
 2 A. Well, I have no idea. Just listened to everybody
 3 else.
 4 Q. Did you have any initial reactions when you were
 5 looking at your questionnaire, and it basically asked you what
 6 your name is --
 7 A. Basically that day I had a terrible, terrible
 8 headache, and it was real bad. So, I really didn't know how
 9 to fill out a lot of that paperwork, but --
 10 Q. Probably the heat and the moving back and forth and
 11 all that didn't help you?
 12 A. Yeah, right.
 13 Q. I want to go over a little bit with you what capital
 14 murder is. I know that Gail went over that with you last
 15 Tuesday. When we talk about capital murder, it's kind of -- I
 16 guess it's kind of -- I don't even know what the word is for
 17 it. But, calling it capital murder doesn't really give you an
 18 idea of exactly what we're talking about, because it's not an
 19 automatic death penalty kind of case. Does that make sense?
 20 A. Yeah.
 21 Q. It's really probably better termed murder, plus
 22 something else, or murder with aggravating factors, something
 23 like that, because that's basically what we're talking about.
 24 A. Okay.
 25 Q. The three main capital murder issues we're talking

1 about is murder in the course of a burglary, murder in the
2 course of a robbery, and then killing two people. Is that
3 your understanding of what capital murder is?

4 **A. Yeah.**

5 Q. What do you think about, like, burglary; killing
6 somebody in the course of a burglary? You break into
7 somebody's house to steal their things, or something of that
8 nature, and then you end up killing the homeowner. Do you
9 think that's the kind of case that's appropriate for the death
10 penalty as an option?

11 **A. Yes.**

12 Q. And what about robbery, talking about the
13 one-on-one, person-to-person?

14 **A. If you want to go in and rob somebody, you know,
15 that's one thing. But, when you rob and go and kill somebody,
16 that's something else.**

17 Q. And do you think going up to someone and taking
18 their possessions by force and then killing them, do you think
19 that's the kind of offense that is appropriate for the death
20 penalty as an option?

21 **A. Yeah, I guess so. When you kill somebody, no matter
22 what you do, where you're at, you shouldn't kill anybody. I
23 mean...**

24 Q. That's fine. Like I said, that's what we want to
25 know. Just feel free to express your opinions, your ideas,

1 what our intentions were through this process; that being,
2 that what we intend to do is present enough evidence to a jury
3 that they will find beyond a reasonable doubt that the
4 Defendant is guilty of capital murder. And that our further
5 intention is that there will be evidence that will cause you
6 to answer these questions in such a way that the death penalty
7 will result. And it's our further intention that at some
8 point in the future that an execution date will be set, and
9 that the Defendant will be walked down a hall, strapped to a
10 gurney and injected with a lethal substance. How did you feel
11 about that when she was explaining that to you?

12 **A. I think it's gruesome. It's terrible, but --**

13 Q. Did you understand that she wasn't doing that to be
14 dramatic or to be gory or gruesome in any kind of way?

15 **A. Oh, no. She was just doing her job.**

16 Q. Basically, that's done so that jurors that come in
17 can start thinking about what they think about the death
18 penalty, and whether or not they can actually be part of a
19 process that's going to result in something like that. Did
20 that in any way affect the way you felt about the death
21 penalty?

22 **A. No.**

23 Q. Do you feel like you could be a part of a process
24 that would result in something like that?

25 **A. I don't think so. I don't know whether I can make**

1 anything you think would be important for us to know about you
2 as a juror, okay.

3 And then, of course, the killing of two people, do
4 you think that's the kind of case that would be appropriate
5 for the death penalty as an option?

6 **A. I think so.**

7 Q. I want to talk to you a little bit about your
8 questionnaire. Like I said, when you come in they ask you to
9 write down your name, where you live, birth date, things like
10 that.

11 **A. Right.**

12 Q. And then the first thing they ask you is are you in
13 favor of the death penalty?

14 **A. Yes.**

15 Q. And, of course, you put yes. What was going through
16 your mind at this time? I mean, what kinds of things were you
17 thinking about?

18 **A. How could somebody kill somebody else and why?**

19 Q. Okay. What kinds of things, or why exactly are you
20 in favor of the death penalty?

21 **A. Because I don't think it's right for another human
22 being to kill another human being. I mean, there's other ways
23 of coping with matters and coping with situations instead of
24 killing somebody.**

25 Q. Do you recall the explanation given by Ms. Falco of

1 **that choice or not --**

2 Q. Tell me about that.

3 **A. -- myself.**

4 Q. Why is that? I guess, what kinds of things have you
5 been thinking about that had led you to that?

6 **A. That I just don't want to be responsible for taking
7 somebody's else's life, or giving or -- sentencing somebody to
8 death. I don't -- that's...**

9 Q. So has that changed how you feel about the death
10 penalty, or just whether or not you think you can be a part of
11 it?

12 **A. I don't think I can be a part of it.**

13 Q. Okay.

14 **A. Personally, myself, I couldn't do that.**

15 Q. Okay. So you're having problems, then, I guess with
16 the actual process itself, not the whole idea of whether or
17 not it's going to be appropriate?

18 **A. Right.**

19 Q. Let me explain a little bit more about the process
20 to you just as far as what it's going to involve, things of
21 that nature. Most of the questions and most of the things
22 that I'm going to be talking to you about are not about the
23 guilt-innocence phase of this trial, not because that's any
24 less important or not because we -- there's any other reason,
25 other than these are the issues we need to get to, whether or

1 not you can actually -- you know, like we're talking about, be
2 a part of this process.

3 **A. Right.**

4 Q. What happens is, assuming someone has been found
5 guilty of capital murder, we then go to what we call the
6 punishment phase. And that's where the jury never
7 automatically says I'm giving this person life, or I'm giving
8 this person death. That question is not asked to you. Do you
9 understand?

10 **A. Right.**

11 Q. What we do instead is ask you these questions. The
12 first question on the bottom, can you see that question? If
13 you'll just read it to yourself and refresh your memory.

14 **A. Okay.**

15 Q. And the way this process works is by all the
16 evidence that comes in through the trial, and any evidence
17 that may come in through the punishment phase, the jury is
18 asked to look at all of that evidence and evaluate that
19 evidence and then answer these questions. Does that make
20 sense?

21 **A. Uh-huh.**

22 Q. So what we're asking of you is if you could look at
23 the evidence and evaluate the evidence and answer a question
24 like this first question here on the bottom?

25 **A. Probably, yes.**

1 Q. Do you think you could answer a question like that?

2 **A. Uh-huh.**

3 Q. Okay. Let me go over a little bit with you what
4 this question is asking for. There are some words in there
5 that are not defined and there's not going to be a definition
6 given to you.

7 **A. Right.**

8 Q. The first word is, of course, "probability." That
9 question, it's left up to the jury what definition they assign
10 to it. People with a mathematical mind may say that that's
11 some type of percentage, something like that. Most people
12 think of probability as being something that's maybe more
13 likely than not. Where do you fall -- what is your definition
14 of what probability is?

15 **A. Probability means whether the person did it or not?**

16 Q. Probability in general. Not with regards to whether
17 someone did something or did not, but just what is
18 probability -- just the word "probability" mean to you?
19 Because it's certainly not asking you is there a certainty
20 this person will commit future acts of violence, or it's not
21 asking you if it's possible. So, it's asking you somewhere
22 between a mere possibility and a certainty whether or not
23 someone is going to commit a future acts of violence. Does
24 that make sense?

25 **A. Well, sometimes I guess it's probably. I don't know**

1 **how to answer that.**

2 Q. Okay. Do you have an idea in your mind of what
3 probability means? If somebody tells you I'm probably going
4 to do something, what does that mean to you?

5 **A. Probably what it means, he's going to do it.**

6 Q. So, if somebody said I'm probably going to see you
7 at church this weekend, that means that --

8 **A. They'll probably see you at church, yeah.**

9 Q. And certainly if they told you, you know, it's
10 possible that I might be there, would you really expect to see
11 them?

12 **A. Might, maybe, maybe not.**

13 Q. But if they --

14 **A. Probably. They probably will.**

15 Q. So you understand that probability is more than just
16 the mere possibility that it could happen?

17 **A. Yes.**

18 Q. Now, the next thing that's undefined and that's up
19 to the jury to decide what it means is criminal acts of
20 violence. And when you talk about that, there are several
21 different ways that violence can be committed. Several
22 different ideas of what violence is. Certainly it's obvious
23 to everyone that things such as beating up your wife or
24 beating up someone else, murder, rape, things of that nature
25 are certainly acts of violence because they're against a

1 person. Do you agree with that?

2 **A. Uh-huh.**

3 Q. But when you get to talking about something, like
4 property, and you talk about -- you know, somebody is really
5 angry so they go over to your house, and they throw rocks
6 through your windows, they take a baseball bat to your car,
7 things of that nature that they do because they're mad at you,
8 do you think those are acts of violence?

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

10 Q. Because certainly, you know, it's their anger that's
11 causing them to do that, and they're taking that out in a way
12 that seems to be violent. Is that your understanding?

13 **A. Uh-huh.**

14 Q. It still gets a little fuzzier when you talk about
15 things like -- because certainly things like shoplifting, just
16 theft, things of nature wouldn't necessarily be violent.

17 **A. No. That would just -- what I call teen-age --
18 usually the teen-agers. Sometimes teen-agers go in and try to
19 see if they can do something, or --**

20 Q. So maybe it's more stupidity?

21 **A. Yeah, stupidity, right.**

22 Q. What about when we talk about, like, drug usage,
23 maybe selling drugs, using drugs, things of that nature.
24 Because we all know everybody is taught today, from the time
25 they're very small, that drugs are bad.

1 A. **That's right.**

2 Q. They cause bad things. Sometimes when people are on
3 drugs, they commit robberies, they commit thefts, they do all
4 kinds of --

5 A. **It leads them off to do something else.**

6 Q. Do you think that selling drugs or using drugs is an
7 act of violence?

8 A. **Yes, I do.**

9 Q. So that's certainly something that, if you were
10 given evidence, you could decide whether or not somebody might
11 commit further acts of violence?

12 A. **Right.**

13 Q. Do you think that someone's background as far as,
14 maybe other things they may have done, could help you answer
15 whether or not --

16 A. **Yes, background.**

17 Q. -- they might be violent?

18 A. **Right.**

19 Q. Like things like maybe running from the cops, just
20 things that -- you know, show that they had absolutely no
21 respect for authority, things of that nature, will help you?

22 A. **Right, yes.**

23 Q. Now, the last word that you come to is the word
24 "society." It's not defined. It's something that's up to the
25 jury to decide what they think society is. When you're

1 Q. -- is going to be a future danger.

2 If the State meets that burden and presents you the
3 evidence that proves to you beyond a reasonable doubt that the
4 person will be a future danger, can you answer this question
5 yes?

6 A. **Yes.**

7 Q. Based on the evidence?

8 A. **Yes.**

9 Q. Now, this question has to be answered yes
10 unanimously before you go on to the next question. If ten or
11 more people answer this question "no," it's an automatic life
12 sentence. Does that make sense?

13 A. **Yes.**

14 Q. If this question is answered "yes" by the jury, then
15 you go on to the top question. Can you see that question and
16 read that to yourself?

17 A. **The top one?**

18 Q. Yes, ma'am.

19 A. **(Complies.)**

20 Q. What this question is -- and we call this question
21 the mitigation question, and it's also kind of referred to as
22 the "one-last-look question," maybe the "last-chance question"
23 because it gives the jury an opportunity to look at the whole
24 situation. Do you read it as giving the jury that
25 opportunity?

1 talking about a case of this nature, and you get to this
2 question, you've already found someone guilty of capital
3 murder, which means that the only options are life or death.
4 So, certainly prison society would be included in that. But
5 if you'll notice the question doesn't ask you, can this person
6 safely be held in prison, or will they be a continuing threat
7 to the prison society? So do you see how by just asking, just
8 blanket society, that it could mean our society as well as
9 prison society? Does that make sense?

10 A. **Yes.**

11 Q. Because certainly you have things, like -- you could
12 have a law change, for some reason a person gets out of
13 prison. You could have someone who escapes, things of that
14 nature, that they could be back in our society. Does that
15 make sense?

16 A. **Right.**

17 Q. So, do you think that you could listen to the
18 evidence that's presented and fairly answer this question
19 based on what the evidence is?

20 A. **Right, I would.**

21 Q. And if evidence is presented to you that led you to
22 believe -- and we have the burden of proof on this question,
23 and that burden is beyond a reasonable doubt. So, we have to
24 prove to you beyond a reasonable doubt that the person --

25 A. **Right.**

1 A. **Right.**

2 Q. And it asks you to take into consideration several
3 different factors; that being the circumstances of the
4 offense, the Defendant's character and background, his
5 personal moral culpability. And what that asks you -- or I
6 guess maybe I should ask first, what kinds of things do you
7 think you would want to hear about or you would want to
8 consider in answering this question?

9 A. **Would you repeat that again, would you?**

10 Q. In answering this question -- when you're asked to
11 answer this question, what kinds of things would you like to
12 know that would help you to answer this question?

13 A. **I'd like -- just like to know the backgrounds.**

14 Q. Maybe things a person has done in the --

15 A. **Past.**

16 Q. -- past, things they've done --

17 A. **Right.**

18 Q. -- you know, things of this nature before, things
19 like that.

20 A. **Uh-huh.**

21 Q. Okay. What else might you like to know?

22 A. **I guess that's all.**

23 Q. Because there are a lot of things that can be
24 mitigating that can maybe lessen the offense, or lessen, you
25 know, whether or not this person should get a life or death

1 sentence because that's what it's asking you to look at. Is
 2 there anything about this offense or maybe this Defendant that
 3 would cause you to think that he needed a life sentence rather
 4 than a death sentence? Do you read it to mean that?
 5 **A. Yes. To (inaudible), yes.**
 6 **Q.** Do you feel like this question at all asks you to
 7 take into consideration the victim's character?
 8 **A. Yes.**
 9 **Q.** Maybe in the part where it talks about circumstances
 10 of the offense, it may ask you to think about the victim,
 11 kind of what the circumstances were there?
 12 **A. Yes.**
 13 **Q.** Does it matter to you who the victim was?
 14 **A. No.**
 15 **Q.** I think one of the examples --
 16 **A. I mean, it doesn't matter. I mean, I guess it does**
 17 **matter, but in a way it doesn't matter because -- well, I just**
 18 **don't know how to say it.**
 19 **Q.** One of the common examples is if you have somebody
 20 that goes in and shoots a nun while they're down on their
 21 knees praying, versus someone who goes -- you know, down and
 22 goes to where drugs are sold and shoots a drug dealer. Does
 23 it, in your mind, make it any less of an offense, depending on
 24 who they killed?
 25 **A. Yes.**

1 **Q.** Why is that?
 2 **A. I mean, it's a terrible thing, I would think, for**
 3 **someone to do something like that.**
 4 **Q.** So the fact that someone killed a nun versus someone
 5 who killed a drug dealer, does the fact that person killed a
 6 drug dealer, does that make his actions or him any less
 7 responsible? Does that make sense?
 8 **A. No.**
 9 **Q.** Should we let the person who kills the drug dealer
 10 go free, and the person who kills the nun, leave them in
 11 prison? How do you feel about that, or do you think they
 12 should be punished the same?
 13 **A. I think they should be punished.**
 14 **Q.** What about the background of a person? How much
 15 does it matter to you, or what kinds of things matter to you
 16 as far as how a person was brought up?
 17 **A. It matters a whole lot. I mean, it starts back when**
 18 **they're little. You got to teach them the right things, tell**
 19 **them they can't -- you know, beware of strangers and not take**
 20 **candy from anybody. I mean, it's that sort of thing. You**
 21 **just got to try to raise them the best way you know how, I**
 22 **guess.**
 23 **Q.** Do you feel like maybe a person who --
 24 **A. It's nice to know that both families are at home**
 25 **taking care of the kids.**

1 **Q.** And certainly there are circumstances, I mean as we
 2 all know, or people that aren't that fortunate?
 3 **A. Right.**
 4 **Q.** Do you think that it is in any way an excuse for
 5 someone that maybe they didn't have both parents at home?
 6 **A. (Nods head.)**
 7 **Q.** Do you think that excuses their conduct in the
 8 future?
 9 **A. No.**
 10 **Q.** Certainly we all know people who, for one reason or
 11 another, maybe only had one parent in their household, and
 12 they grew up to be okay and follow the rules and follow the
 13 laws and not go out and do bad things. Do you know people
 14 like that?
 15 **A. There's a lot of them around, but...**
 16 **Q.** So is that something to you that would be
 17 mitigating in the sense that it would make it okay? You know,
 18 if the person, say, only had one parent at home and had a bad
 19 childhood because of that?
 20 **A. No.**
 21 **MR. SCHULTZ:** Judge, may we ask the juror be
 22 briefly retired?
 23 **THE COURT:** Ma'am, let me ask you to step down
 24 for just a minute.
 25 **VENIREPERSON:** Sure.

1 **THE COURT:** Ma'am, I'd ask you also not to
 2 discuss with any other juror in there anything that's been
 3 asked or anything that's been answered.
 4 **VENIREPERSON:** Okay.
 5 **THE COURT:** Okay. We'll have you back in in
 6 just a moment.
 7 **(Venireperson exits the courtroom.)**
 8 **MR. SCHULTZ:** Excused by consent.
 9 **MR. GOELLER:** Yes, Your Honor.
 10 **THE COURT:** Mr. Cantu, is that your desire --
 11 **VENIREPERSON:** Yes, Your Honor.
 12 **THE COURT:** -- that this juror not serve on
 13 your jury?
 14 **THE DEFENDANT:** Yes, Your Honor.
 15 **THE COURT:** All right. Then I tell you what,
 16 would you ask Ms. Wood to come back in for a minute?
 17 **THE BAILIFF:** Yes, Your Honor.
 18 **THE COURT:** And the next one is going to be
 19 Brittani Elfstrom.
 20 **(Venireperson enters the courtroom.)**
 21 **THE COURT:** Ms. Wood, I just want to tell you
 22 that your suffering is over. The -- both sides have agreed,
 23 and I have approved dismissing you from further service in
 24 this case. I want to thank you for your time.
 25 **VENIREPERSON:** Thank you.

1 (Venireperson exits the courtroom.)
 2 THE COURT: All right. Brittani Elfstrom.
 3 (Venireperson enters the courtroom.)
 4 THE COURT: All right. Are you Brittani
 5 Elfstrom, ma'am?
 6 VENIREPERSON: Yes.
 7 THE COURT: All right. I just want to remind
 8 you that about three weeks ago I placed you under oath, and
 9 the oath was to give truthful answers to both sides when
 10 you're asked questions. Do you recall that?
 11 VENIREPERSON: Yes, I do.
 12 THE COURT: All right. Ma'am, you're still
 13 subject to that oath. Please be seated.
 14 Is it Ms. Falco? All right.
 15 DIRECT QUESTIONS
 16 BY MS. FALCO:
 17 Q. Good afternoon, Ms. Elfstrom. Again, my name is
 18 Gail Falco, and I'm the one that spoke to you last week. I'm
 19 an Assistant District Attorney here in Collin County. Seated
 20 to my right is Mr. Bill Schultz. He's my boss, first
 21 Assistant District Attorney here in Collin County.
 22 MR. SCHULTZ: Good afternoon.
 23 Q. BY MS. FALCO: To my left is Ms. Jami Lowry. She's
 24 also an Assistant District Attorney here in Collin County.
 25 At the other, seated closest to me, is the

1 Defendant, Ivan Cantu.
 2 THE DEFENDANT: Hello.
 3 VENIREPERSON: Hi.
 4 Q. BY MS. FALCO: Seated next to him are his lawyers,
 5 Mr. Don High and Mr. Matt Goeller.
 6 MR. GOELLER: Good afternoon.
 7 Q. BY MS. FALCO: And they're both private
 8 practitioners here in Collin County.
 9 And I take it from last week, you do not know any of
 10 us; is that correct?
 11 A. That's correct.
 12 Q. Ms. Elfstrom, as I explained to you last week, we
 13 have this process where we have general voir dire.
 14 Initially -- actually, you've come in twice already. You came
 15 in and filled the questionnaire out and came in and had
 16 general voir dire where we covered the law, and now this part
 17 is the individual voir dire process. And even though there's
 18 six of us staring at you, this is intended to be a little bit
 19 more relaxed atmosphere, and a place where you can ask us
 20 questions, and we're trying to get to know you as best we can
 21 during this short period of time. And the only thing that's
 22 required of you at this point in time is for you to be honest
 23 with us. And you don't have to worry about being politically
 24 correct, or anything like that, in your answers.
 25 Both sides are just looking for 12 people who can be

1 fair and impartial, and could fairly consider a death sentence
 2 if the facts were appropriate and could fairly consider a
 3 life sentence if the facts were appropriate. And we're not
 4 here to debate with you or to argue with you or change your
 5 mind, but just to ask you questions to try to understand your
 6 opinions or your thoughts or what your feelings might be
 7 regarding particular topics.
 8 Now, when you came back, several weeks ago at this
 9 point, and filled out -- do you remember when you came in to
 10 fill out the questionnaire?
 11 A. (Nods head.)
 12 Q. When you first came in, what were your thoughts when
 13 you realized this was a death penalty case?
 14 A. I really didn't have much thought because I didn't
 15 know anything about, other than the fact that it was a death
 16 penalty case. I knew it was -- I could tell that it was
 17 something more serious than a traffic violation with the
 18 number of people and several seating rearrangements that y'all
 19 were doing.
 20 Q. And we understand when you filled out these
 21 questionnaires that it pretty much -- first of all, you filled
 22 it out before any of the lawyers talked to you about the law
 23 or explained anything to you, and we understand that you don't
 24 live in our world with legal terms and words, and pretty much
 25 right off the bat on the first page it asks your name and what

1 you think about the death penalty. And we understand that
 2 that's without time for a whole lot of reflection, and why
 3 most people don't even think about that on a daily basis.
 4 But knowing that you've probably had some time since
 5 then to think about what you feel about the death penalty and
 6 whether or not you can involve yourself in that process, am I
 7 correct in assuming you've done some thinking about that?
 8 A. Yes, I did.
 9 Q. Okay. And kind of tell me what you were thinking
 10 about -- what you were thinking about these things?
 11 A. When I answered the questionnaire, from that time
 12 to this time, my thoughts on the death penalty hasn't changed.
 13 Q. Okay.
 14 A. Even though I've thought more about it, I haven't
 15 really made any changes in where my views are on it.
 16 Q. Okay. And your views, and I'm looking at your
 17 questionnaire, state that you're in favor of the death
 18 penalty, and you believe that in the appropriate case you
 19 could return a verdict resulting in a death sentence.
 20 Have you done some thinking about whether or not you
 21 could be involved in this process, because we understand it's
 22 one thing to sit in your living room, and something comes on
 23 TV and to talk about it hypothetically, and whether it's a
 24 good thing or a bad thing and have an opinion. It's
 25 completely different when you're coming in here and basically

1 being interviewed to see, can you be involved in this process?

2 Have you done some thinking about that?

3 **A. Yes, and I still feel I can be involved in the**
4 **process.**

5 Q. Now, when I was talking last week and describing
6 what our intentions are, as far as proving this case, proving
7 that the evidence would be sufficient to the point you would
8 answer the questions in a way that resulted in a death
9 sentence for the Defendant, and that at some point in the
10 future there would be an execution date. The Defendant would
11 be taken to the death chamber, strapped to a gurney. Do you
12 remember me talking about that?

13 **A. Yes, I do.**

14 Q. What were your thoughts as I described that to you?

15 **A. My thoughts were that was procedural; that you would**
16 **explain that to us, and I was already aware of that. It**
17 **wasn't anything that was news to me.**

18 Q. Would you agree, if we have to have the death
19 penalty that probably by lethal injection is probably the most
20 humane way?

21 **A. That is. I would agree.**

22 Q. And as far as beliefs on the death penalty, you
23 state you're in favor of it. And just -- you're Juror Number
24 80, so we've talked to approximately 80 people just for this
25 trial, and people vary on why they're in favor of the death

1 **a threat to society, an eye for an eye, but I do agree that**
2 **they need to go through a trial, giving them that opportunity,**
3 **rather than the victim not even giving them that opportunity.**

4 **I also feel that it is a deterrence, and sometimes**
5 **I do feel that the law is not stringent enough on convicted.**

6 Q. And what do you mean by that?

7 **A. I see inconsistencies in -- in the punishment phase.**

8 Q. Are you talking particularly about capital murder
9 or --

10 **A. No, more so to murder, whether it be capital or**
11 **not. Some cases -- and I don't follow cases at very much**
12 **detail, a lot of times. But what I do hear from the media and**
13 **what I've read, it just seems -- sometimes it seems like**
14 **there's inconsistency in the way they're convicted -- the ones**
15 **being convicted is punished.**

16 Q. You mean inconsistencies in the sentencing?

17 **A. In the sentencing, yes.**

18 Q. When you say inconsistent, do you think some of
19 those are wrong or too light or too stringent?

20 **A. No. Too light or too heavy on some cases that I**
21 **wouldn't expect it to be that heavy.**

22 Q. So just inconsistent both ways?

23 **A. Uh-huh.**

24 Q. When I talked to you about capital murder and
25 explained the difference between that and noncapital murder,

1 penalty. Some may say, well, it's kind of a retribution type
2 deal, an eye-for-eye. That person committed murder, so
3 therefore, they ought to lose their life.

4 And I guess the flip side to that argument is, well,
5 the death penalty is kind of a state-sanctioned murder, and
6 we're doing the same thing to them, but you can counter that
7 with, well, at least the State is giving them a trial. We're
8 giving them lawyers and giving them an appellate process,
9 which is a lot more than they do for the victim, so that's
10 still okay.

11 Some people say, well, the death penalty is an
12 appropriate sanction because it might act as a deterrent. It
13 might deter people that were thinking about committing murder,
14 they might think down the line, well, I could lose my life for
15 this. It might deter some people.

16 And still another group of thinking is those that
17 are for protection of society. You know, in our society this
18 person might be too dangerous, too much of a threat to our
19 society, and to protect our society, we just need to execute
20 them as opposed to letting there be a chance that he hurt
21 somebody else.

22 Tell me what your thoughts are on why you're in
23 favor of the death penalty.

24 **A. I'm in favor of it for a combination of reasons.**
25 **Many of them are what you've stated already, and that is being**

1 basically it's murder plus an aggravating factor. And for our
2 purposes, there's three types of capital murder that we need
3 to talk about. And the first one is burglary -- murder in the
4 course of a burglary; someone breaking into a house and
5 killing somebody, or getting into a house by some kind of
6 fraudulent consent and killing somebody. In your opinion, is
7 that the type of crime where the death penalty ought to at
8 least be an option?

9 **A. In the case where it's burglary and there's the**
10 **murder --**

11 Q. A murder.

12 **A. -- involved?**

13 Q. And not saying it's automatic it should be the
14 death penalty, but should it at least be an option depending
15 on what the facts show?

16 **A. Yes.**

17 Q. And the same with murder in the course of a robbery,
18 which is the person on person, taking property and murder in
19 the course of that. Should the death penalty at least be an
20 option for that sort of a crime?

21 **A. Yes.**

22 Q. And the same with a double homicide; is that a
23 situation where the death penalty ought to at least be an
24 option?

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

1 Q. Now, with regard to our jury system -- our trial
2 system in Texas, it's bifurcated. As I explained, there's two
3 parts to the trial, and the first phase of the trial is what
4 we call the guilt-innocence phase. And during that phase of
5 the trial, the burden of proof is always on the State. We're
6 the ones doing the accusing, so it's only fair that we're the
7 ones that have to prove that case, and we have to prove it
8 beyond a reasonable doubt. And with regard to that, a
9 defendant can testify if he wants to. He can present evidence
10 if he wants to, but he doesn't have to, and if he doesn't
11 testify, doesn't present evidence, that cannot be held against
12 him.

13 And I'm looking at your questionnaire, and you seem
14 to have understood that. The burden of proof is on the
15 prosecuting attorney. They must prove the defendant is
16 guilty. So, you understand all that?

17 A. Yes, I do.

18 Q. And if you were instructed by the Judge that if a
19 defendant did not testify that you cannot use that against
20 him, you'd be able to follow that law?

21 A. Yes.

22 Q. I mean, does that make sense to you? Let's say
23 that I say I think you stole my car last week. Wouldn't it
24 only be fair to make me prove that, rather than make you
25 disprove it? Isn't that only fair that if I'm going to be the

1 defendant guilty of capital murder, but get to this question
2 and decide, no, he's not a future danger.

3 And that could be a number of reasons. I talked
4 about the parents whose child is killed, and the two killers.
5 for whatever legal technicality or loophole get off, and on
6 the way out of the courtroom laugh at the parent. That parent
7 tracks them down and kills them. That's capital murder.
8 There may be some jurors that look at this question and think,
9 well, that was a very isolated incident. We don't think that
10 parent will be a danger in the future.

11 Or you may have a situation where a defendant
12 commits capital murder, whether it's murder in the course of a
13 burglary or murder in the course of a robbery, and right after
14 he's arrested, but before his trial he has a stroke and he's
15 paralyzed from the neck down. He can't move any body part,
16 and so the jury may look at that question and say, well, since
17 he physically cannot do anything, we don't think he can be a
18 future danger.

19 So, because the Legislature has envisioned there are
20 situations in which that could happen, the jury is asked to
21 look at the evidence, both from the guilt-innocence phase and
22 the punishment phase and answer this question.

23 Now, it may very well be you could look at the facts
24 of the case, and that alone, and decide I think he's a future
25 danger, just based on those facts. I think Timothy McVeigh is

1 one that's going to accuse you of it, then I ought to at least
2 be the one to have to prove it?

3 A. Yes.

4 Q. Now, let's assume that all 12 jurors hear the
5 evidence in a capital murder case, and they find the defendant
6 guilty of capital murder. You move on to the punishment
7 phase, which is the second phase of the trial. And as we
8 talked about last week, it's not an automatic. There's no
9 automatic death sentence. There's no automatic life sentence.
10 You don't go back there and say, "life or death." You have to
11 go through a series of questions, and depending on how you
12 answer those questions or special issues dictates whether or
13 not the defendant gets a death sentence or a life sentence.
14 Do you remember me talking about that?

15 A. Yes, I do.

16 Q. With regard to the first question you'll get to, the
17 question that's down on the floor that talks about
18 probability, can you see that from where you're sitting?

19 A. Uh-huh.

20 Q. If you want to read that to yourself just to refresh
21 your memory.

22 A. Okay.

23 Q. And that's what we call the future dangerousness
24 question. And with regard to this question, the Legislature
25 obviously envisioned situations where a jury could find a

1 a perfect example of that. I don't think people really cared
2 what his criminal history was, and what he had done in the
3 past. What he did alone, by killing 168 people, wasn't (sic)
4 sufficient to be a future danger.

5 So in looking at the question, you can just use the
6 facts of the case alone, use that in combination with anything
7 you hear during the punishment phase to answer that question.
8 Does that make sense to you?

9 A. Yes, it does.

10 Q. And with regard to this question, again the burden
11 of proof is on the State. We have to prove to you beyond a
12 reasonable doubt that there's a probability that he'll commit
13 criminal acts of violence in the future and be a continuing
14 threat to society. And when it's asking about probability,
15 it's not saying is there a certainty? We don't have to prove
16 there's a certainty a defendant will commit criminal acts of
17 violence. It's something less than a certainty, but it's
18 something more than a possibility. It's not saying is there a
19 possibility? You'd agree with me anything is possible. I
20 mean, it's possible it could snow tonight in Dallas in the
21 middle of September; not probable, but it's possible.

22 So probability, therefore, has to mean something
23 more than a possibility, but less than a certainty. And with
24 regard to that word, it's going to be the word -- it's not
25 going to be defined for you in the Court's charge at the end

1 of the case when you get all the law, and it's a word that's
2 frequently debated as to its meaning. It's going to be up to
3 you as a jury to decide what that word means, and did the
4 State prove it beyond a reasonable doubt.

5 There are some people that are mathematically minded
6 and look at that word and say, well, that means a percentage
7 to me. There's some percentage that he will commit criminal
8 acts of violence in the future. Other people may look at that
9 and say, well, that means more likely than not to me. What
10 does that word "probability" mean to you?

11 **A. Probability means more likely than not.**

12 **Q.** And you do understand the distinction; it's
13 something more than a possibility, but less than a certainty?

14 **A. Yes, I do.**

15 **Q.** Moving along that sentence, the next phrase we get
16 to that, again, won't be defined for you -- it's going to be
17 up to you as a jury to decide -- is going to be criminal acts
18 of violence. I think all of us would agree to certain acts as
19 being criminal acts of violence, like murder, aggravated
20 sexual assault. Violence to a person like that would be a
21 criminal act of violence. Somebody who beats up their wife,
22 that's a criminal act of violence.

23 It gets a little fuzzier when you start talking
24 about property. Let's say I just had a real bad day at work,
25 and I was a mad, and I just went outside with a baseball bat

1 and just start taking my anger out on cars. Just started
2 smashing windshields, bashing them with a baseball bat. In
3 your opinion, is that an act of violence?

4 **A. Yes.**

5 **Q.** It gets a little fuzzier still when you start
6 talking about drugs, and whether you're talking about just
7 taking drugs yourself or delivery of drugs. And some people
8 may say when you ingest drugs into your system, it's doing
9 violence to your body. It's damaging your body, and when you
10 take those drugs, it could lead to violent results. People
11 might become violent and do violent things; therefore, that's
12 a criminal act of violence to me.

13 Other people may say, well, no, it's not really
14 hurting anybody but that person. It's not affecting anybody
15 else, at least the act. Any implications down the road are
16 indirect. I don't see that as an act of violence. Where do
17 you fall on that continuum?

18 **A. That's violence related to drugs, I believe that
19 the person who is voluntarily taking the drug, and in this
20 case I consider a controlled substance, something that's
21 illegal, I think he or she made the conscious decision to take
22 that drug; therefore, he or she is going to be responsible. I
23 hold that person accountable for what he or she does.**

24 **Q.** And then you get into some crimes that we probably
25 all agree are not violent in nature, but may give you insight

1 into their character, like theft or somebody involved in
2 fraudulent business schemes, things like that, that don't
3 involve violence, but show you how the mind works and shows
4 maybe a general lack of regard for law or authority, just
5 general lawlessness. Would you look at those things and say,
6 that gives me insight into their character and that might help
7 me answer this question of whether there's a probability they
8 would commit criminal acts of violence? Could you see how
9 you'd use that information to answer the question?

10 **A. I'm not sure I understand your question.**

11 **Q.** If you heard of acts that weren't violent in and
12 of themselves, such as the theft or fraudulent business
13 scams, do you think those might give you some insight into a
14 person's character?

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

16 **Q.** And understanding their character a little bit and
17 just their lack of regard for authority, lack of regard for
18 the law, do you think that would help you answer this question
19 of the probability they'd commit criminal acts of violence?

20 **A. To some degree, yes.**

21 **Q.** The last word that you get to in that sentence is
22 the word "society," which again is undefined, but yet
23 frequently debated as to what that means. That question does
24 not ask can the defendant safely be locked up? It doesn't
25 limit itself to prison society. It seems to ask what is the

1 propensity of a person for violence in the future without
2 regard to a specific location. Do you see how that can
3 include -- it can include prison society, but it can also
4 include the society you and I live in; the world outside, the
5 person that drives the school bus, the man on the street
6 selling flowers? Society can include all of that.

7 **A. It can, yes.**

8 **Q.** Now, in looking at that question, you probably have
9 heard, and if you follow capital murder trials, or murder
10 trials at all, one side or the other may call a psychiatrist
11 or psychologist to testify in the punishment phase. And
12 assuming they're not testifying as to a mental disease or
13 defect or brain tumor and its impact on the mind, but just
14 assuming that they're looking at a pattern of behavior and
15 saying one way or another whether they think that person would
16 be dangerous or not. Do you think that type of testimony is
17 important?

18 **A. In some cases I do.**

19 **Q.** What type of cases would that be?

20 **A. When there are situations that -- in the case that
21 involves perhaps the psychological behavior of what may have
22 caused the defendant to act in the manner that he did.**

23 **Q.** Okay. Do you think if the defense got somebody, a
24 psychiatrist or psychologist to testify one way regarding a
25 pattern of behavior or a defendant's future dangerousness, do

1 you think the State could turn right around and present a
2 psychiatrist to state just the opposite?

3 **A. Do I think the State could do the same thing?**

4 Q. Yes.

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

6 Q. Do you see how you could possibly end up as just a
7 battle of the experts?

8 **A. I can see that, yes.**

9 Q. In talking about that, let's assume you were at the
10 circus, and you saw a tiger, and he's -- the tiger is doing
11 his tricks, and he goes back in the cage, and -- but at some
12 point in time the tiger gets loose. You don't need a
13 veterinarian to tell you, you better run because that tiger is
14 dangerous, do you?

15 **A. No.**

16 Q. Okay. And kind of the same thing with regard to
17 this question. Do you think you could take your life
18 experiences and your education and apply that to this question
19 and look at the facts and be able to answer that question?

20 **A. Yes.**

21 Q. Now, let's assume all 12 jurors look at that
22 question and they answer it yes. You're still in the process
23 of assessing a death sentence if all 12 jurors say "yes." If
24 ten or more jurors answer that question "no," then it's an
25 automatic life sentence and deliberations end at that point.

1 So let's assume all 12 jurors say yes, then you
2 would move on -- you may or may not get that question on the
3 law of parties that I briefly mentioned last week. And since
4 we're not sure if we'll get to that or not, we'll go ahead and
5 move to the question you would have gotten to, that one at the
6 top. If you want to read that to yourself to refresh your
7 memory?

8 **A. (Nods head.) Okay.**

9 Q. This is what we call the mitigation question. And
10 mitigation, again there won't be a definition given to you in
11 the Court's charge, but it's commonly defined as anything that
12 reduces or lessens a person's blameworthiness, or culpability.
13 With regard to this question, there's no burden of proof on
14 either the State or Defense. This question is used for the
15 jury to weigh the evidence, and you get to give whatever
16 weight you want to, to the evidence. The crime itself, you
17 can give whatever weight you want to; the Defendant's
18 character, his background, his personal moral culpability, you
19 give that evidence whatever weight you want to. If you hear
20 any mitigating evidence, you give that whatever weight you
21 want to. And in the end, you put everything on the scales.
22 If there's sufficient mitigating evidence to warrant a life
23 sentence, then that person gets a life sentence. Does that
24 seem to make sense to you?

25 **A. It does.**

1 Q. As you can probably imagine, if any of us were on
2 trial for our lives, or for whatever situation, we could
3 probably all come with something in our background that is
4 mitigating, that's sympathetic, that's sad. That may be a
5 single-parent family, or abuse, or health conditions,
6 something that would be mitigating. So, the question's not,
7 is there any mitigating evidence? The question is, is it
8 sufficient? Giving weight to everything else, including the
9 circumstances of the offense, is it sufficient to warrant a
10 life sentence? Does that make sense to you?

11 **A. Yes.**

12 Q. Now, with regard to this question, you won't get a
13 list of things to consider as mitigating. You won't be told,
14 here's the list and you decide, because what may be mitigating
15 to you may be aggravating to the person sitting next to you.
16 And a perfect example, like we talked about, was drugs. One
17 person may say that's mitigating to me because he's not
18 normally like that, and it changed his personality, and it was
19 a downward spiral, and he's off the drugs now, so that's
20 mitigating to me. Another juror may say, I don't think so.
21 We're taught in society not to take drugs and just to say no
22 to drugs. And we know the result and the impact of drugs, and
23 if you take them, bad things will happen, and so that's
24 aggravating to me because they knew that, and they did it
25 anyway, and they should have to pay for that. So, you see how

1 something might be seen as mitigating to one person, but
2 aggravating to another?

3 **A. Uh-huh.**

4 Q. Let's talk a little bit about -- have you ever heard
5 the phrase "there are no atheists in fox holes" --

6 **A. No.**

7 Q. -- or atheists in war?

8 **A. No. Actually, I haven't.**

9 Q. Could you imagine what that phrase might mean?

10 **A. A little bit, yeah.**

11 Q. What do you think that might mean?

12 **A. Having the faith to follow -- I really don't know
13 what "no atheists in a fox hole" means.**

14 Q. Typically it's used to describe when someone is
15 being faced with death, and the fox hole is in the front line,
16 obviously, in war, and in a situation of duress faced with
17 death, people might get right -- decide to get right with God
18 at that point in time.

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

20 Q. And whether or not that's a true conversion, or that
21 lasts after the duress or the stress is gone, is not really
22 for us to decide at this point. But could you see how that
23 situation could carry over to somebody on trial for their
24 life?

25 **A. I can see how it could.**

- 1 Q. Have you ever heard the term "jailhouse conversion?"
 2 A. No.
 3 Q. Okay.
 4 A. **But I have an idea of what that might mean.**
 5 Q. Okay. What's your idea of what that might mean?
 6 A. **Being imprisoned and then converting to -- kind of**
 7 **like a born-again Christian.**
 8 Q. Okay. And if you heard -- and we're always talking
 9 in a hypothetical situation, but if you heard during the
 10 punishment phase that after somebody got arrested for an
 11 offense, like capital murder and before their trial, that they
 12 converted, that they became a Christian at that point in time,
 13 would you view that with skepticism because of the timing, or
 14 would you think, well, maybe that might be validity and give
 15 it some thought?
 16 A. **I really can't answer that either way. I could look**
 17 **at one and really, truly believe that that person is sincere**
 18 **in converting, or I can also look at it and say they're doing**
 19 **that because they have no alternative, and it's just a resort.**
 20 Q. Okay. And let's assume that you looked at it and
 21 decided that maybe there's some credibility to this. Does
 22 that make a difference to you?
 23 A. **If there's credibility, if I see?**
 24 Q. If they say I'm a Christian now, so don't kill me?
 25 A. **I don't think so, no.**

- 1 Q. Okay. Would you still feel like they still have to
 2 answer for what they've done?
 3 A. **If during (sic) a jury, and the jury convicted that**
 4 **person, and if there's no doubt that they did commit the**
 5 **crime, I would say that they would have to be punished as**
 6 **ordered.**
 7 Q. Okay. And in order to be qualified as a juror,
 8 like I stated earlier, you have to be able to fairly answer
 9 these questions as the evidence shows and based on the law.
 10 And with regard to that, first of all, if the State proved to
 11 you beyond a reasonable doubt a defendant was guilty of
 12 capital murder, could you find them guilty?
 13 A. Yes.
 14 Q. Then moving to the punishment phase, you're going to
 15 get that first question regarding future dangerousness. If we
 16 prove to you beyond a reasonable doubt a defendant was a
 17 future danger, could you answer the question "yes?"
 18 A. **I could answer yes.**
 19 Q. And on the flip side, if we didn't prove it to you,
 20 could you answer that question "no," resulting in a life
 21 sentence?
 22 A. **Uh-huh.**
 23 Q. And let's assume you answer that question "yes," and
 24 you get to the mitigation question, could you keep an open
 25 mind and take into consideration all the evidence and weigh

- 1 it, and if there is sufficient mitigating circumstances, then
 2 you could answer that question "yes," resulting in a life
 3 sentence?
 4 A. **I could, yes.**
 5 Q. And on the flip side, if you get to that question
 6 and there is not sufficient mitigating evidence, could you
 7 answer that question "no," knowing it would result in a death
 8 sentence?
 9 A. **Yes, I could.**
 10 Q. In looking at that mitigation question, other than
 11 the phrase "circumstances of the offense," it doesn't really
 12 leave any room for a victim's character. It seems to focus on
 13 a defendant's character, defendant's background, defendant's
 14 moral culpability, not really any room to weigh the victim and
 15 the victim's character. Does that make a difference to you if
 16 it's the example we used, the nun praying in the church,
 17 versus the drug dealer that got killed?
 18 A. **That doesn't make a difference to me.**
 19 Q. It's still a killer, and the act that he committed
 20 is still a dangerous act with regard to --
 21 A. **The life that he took is still a life, whether it**
 22 **be a nun or a drug dealer.**
 23 MR. HIGH: I'm sorry, Judge. I couldn't hear
 24 that answer.
 25 VENIREPERSON: Oh, I'm sorry. To me a life is

- 1 equal, whether you're a nun or a drug dealer. So, the
 2 victim's life wouldn't make a difference to me.
 3 Q. BY MS. FALCO: And let me extend that a little bit
 4 further. Let's assume a person wanted just to live a good
 5 life and have a lot of money, but not work for it and decides
 6 to go and rob a convenience store and just picks one out on
 7 his way home, not knowing who works there, not knowing
 8 anything about the people that work there, or how they might
 9 be affected, or the families that would be affected. And goes
 10 into the 7-Eleven, robs it, kills the clerk, leaves, not
 11 knowing what impact he might have on that family of that clerk
 12 he just killed.
 13 Compare that to the situation where he decides to
 14 rob the 7-Eleven in the neighborhood where he grew up, and he
 15 picks this 7-Eleven because he knows the family that owns the
 16 store, and he knows who works when, and they're all his
 17 friends, and these are friends that have fed him, and
 18 sheltered him, and he's spent the night over there, and
 19 they've supported him. But, because he knows them, he knows
 20 how much money they keep and how much he can get if he robs
 21 it at a certain time, and that's what he decides to do. And
 22 he goes in that 7-Eleven, robs them, kills his friend, knowing
 23 how it's going to devastate the family and takes the money.
 24 How does that compare to the first scenario? Does
 25 it make a difference that person killed someone they knew and

1 knew the family, versus someone they didn't?

2 **A. I'd like to say no, but it does make a difference.**

3 Q. Okay.

4 **A. It tells me more about the character of the**

5 **defendant.**

6 Q. What does it tell you about the character?

7 **A. His conscience, a lack of.**

8 Q. Now, with regard to the burden of proof, both in the

9 guilt-innocence and on that first question, you understand

10 that it's always on the State, and it never shifts. And you

11 understand that they can put on evidence, that the defendant

12 can testify, but he doesn't have to.

13 **A. Uh-huh.**

14 Q. And if you were instructed to not hold that against

15 him, you could do that?

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

17 Q. Having been through this process today and this

18 being your third time up here, do you think that we spend too

19 much time? This is too complex. We're being too cautious on

20 these capital murder cases. What are your thoughts on that?

21 **A. I don't think it's being too cautious. Actually, I**

22 **learned a lot from just being on this -- on this jury process.**

23 **Before, I didn't know that there was an individual interview**

24 **being done with a prospective juror, so I learned that. And I**

25 **think, you know, with such a -- with such a case as this, I**

1 think it needs to be very cautious.

2 **The only complaint I have to say is just the first**

3 **day where we were seated, and then reseated and -- it's a slow**

4 **process, but that's really the only complaint. I thought the**

5 **last -- was it last day -- last week, when both the prosecutor**

6 **side and defense side explained the process and explained**

7 **that -- what const -- what is an offense that's a capital**

8 **murder versus just murder. I thought that was very**

9 **informative.**

10 Q. Getting back to that mitigation question a little

11 bit, I'm just kind of looking at your questionnaire. We

12 talked about with regard to the Defendant's background, or

13 anybody's background, we can probably all think of situations

14 where a person had a bad background, whether it was a single

15 parent, or abusive family, or just a very dysfunctional

16 family, poor, lacked material things, but still were

17 successful in life. Can you imagine someone that you know in

18 that situation?

19 **A. Uh-huh.**

20 Q. And on the flip side, we can probably all think of

21 somebody who didn't lack for material things, always had what

22 they wanted, had two parents, parents that loved them and

23 cared for them, and yet they turned out rotten. The Menendez

24 brothers come to mind as an example. In looking at this

25 question, this mitigation question, you answer -- in getting

1 back to your questionnaire, do you remember that page where it

2 listed several statements, and it had anywhere from strongly

3 agree to strongly disagree --

4 **A. Uh-huh.**

5 Q. -- and you had to circle one of these?

6 **A. I do.**

7 Q. And one of the statements was a person -- persons

8 determine their destiny or fate by choices they make in life,

9 and you put strongly agree. Kind of tell me what your

10 thoughts are on that.

11 **A. I think that you make certain decisions in life, and**

12 **the result of those kind of decisions shape the kind of person**

13 **that you are and how you react to them. Therefore, your**

14 **personality and your character is developed by the decisions**

15 **that you make, and that's why I answered the way I did.**

16 Q. And the very next question says a person's destiny

17 or fate is determined by the circumstances of their birth and

18 their upbringing, and you answered disagree. Tell me what

19 your thinking is behind that.

20 **A. Being in U.S., I think everybody has a -- we say**

21 **equal opportunity, but I think there are more that opportunity**

22 **is presented to some that are born in a certain sociological**

23 **place as opposed to another. I don't think that just because**

24 **you're born into a certain family or have certain privileges**

25 **allows you to grow up to be a certain type of person. I think**

1 **society, as well as the decisions that you make, shape the**

2 **person that you are.**

3 Q. Okay. I notice on your questionnaire you have two

4 young children?

5 **A. I do.**

6 Q. Okay. And let's assume that several years down the

7 road, and they've grown up, and I assume you love your

8 children and support them and would do anything in the world

9 for them. And let's assume 15, 20 years down the road when

10 they're older they get in trouble with the law, and I would

11 assume you still love them and you'd still support them; is

12 that fair to say?

13 **A. Yes, that's fair to say.**

14 Q. And assuming they had a trial, and I'm sure being a

15 loving, supportive mother you'd probably testify at that trial

16 and let the jury know that you loved your child?

17 **A. Yes, I would.**

18 Q. And could you imagine in a capital murder case a

19 parent of a child convicted of capital murder might do the

20 same thing?

21 **A. Yes, I can imagine.**

22 Q. If there were a parent that got on the stand during

23 the punishment phase, and obviously upset and crying and

24 stated basically, don't kill my child because I love them, how

25 does that argument sit with you?

1 A. I can understand the mother feeling the way she
2 does, but at the same time her child is an adult, and that
3 adult committed -- or is accused of committing a crime. And,
4 yes, I would be very emotional. I would feel a lot of emotion
5 for that mother, but it wouldn't stop me from doing my job as
6 a juror.

7 Q. In talking about your children and your job, first
8 of all, what is your company. I? Think it was CS or SC?

9 A. Cingular Wireless.

10 Q. SBC, Cingular?

11 A. Uh-huh.

12 Q. Okay. What exactly do you do? You said quality
13 analyst. What exactly do you do?

14 A. My department is responsible for testing the billing
15 system, that customer service management system, and my team
16 is responsible for the technical support side of it.

17 Q. Okay. So given that, and it looks like you've been
18 doing that for five years and you've got your two young
19 children, if you had a choice whether or not to be on this
20 jury at this point after having had the time to think about
21 it, what would your answer be?

22 A. I had answered yes, and my answer is still yes.

23 Q. And obviously, that's a very unselfless (sic)
24 answer. There's a lot of people that say, you know, my job is
25 important. I've got other things going on, and I really don't

1 have time. But, because jury duty is the only thing we have
2 left that is an obligation of citizens, we don't have the
3 draft anymore. We don't have anything that's mandatory, other
4 than jury duty. Obviously, we appreciate when people are
5 willing to say I can put my job aside. I can put that aside
6 and concentrate on the trial. And so, I'm assuming you could
7 do that, whatever is going on at work, or whatever situations
8 are going on at home and give this trial your attention?

9 A. Yes.

10 Q. And you mentioned that you go to Grace Community
11 Church. Is that the one on Preston and Parker Road?

12 A. Yes, uh-huh. I'm not a regular attendant. I'm an
13 Easter and Christmas attendant.

14 Q. You don't know anyone by the name of Sylvia Cantu,
15 do you?

16 A. No.

17 Q. And you put on women you most respect, you put
18 Katie Courick. I was just telling Ms. Lowry the other day, I
19 probably would have put her, too. I admire her greatly for
20 the way she --

21 A. I do. I admire her. I admire her because she is a
22 working mother, and she and I -- I share a lot of views that
23 are similar to hers.

24 Q. And she handled her husband's tragedy and was able
25 to inform people and try to have a silver lining out of all

1 that, and put people more informed about cancer and getting
2 checked.

3 Before I pass you, do you have any questions of me?

4 A. Not at this time.

5 MS. FALCO: Thank you, Ms. Elfstrom. Pass
6 this juror.

7 THE COURT: Is it Mr. High or Mr. Goeller?

8 MR. HIGH: Yes, Your Honor. I'll handle the
9 questions for the Defense.

10 THE COURT: All right.

11 CROSS-QUESTIONS

12 BY MR. HIGH:

13 Q. Good afternoon, Ms. Elfstrom.

14 A. Good afternoon.

15 Q. My name is Don High, like up high in the air,
16 H-I-G-H. There you go, guys. I did it.

17 I work, along with Matt Goeller, and we represent
18 this young man right here, Ivan Cantu. Have we ever had any
19 contact, met each other, talked, or anything like that?

20 A. No.

21 Q. Okay, very good.

22 I'm going to have some questions for you, too.

23 Obviously, the idea here is to find out about you and find out
24 about your views and find out if you'd be appropriate to sit
25 on a capital murder jury. I'm sure you've figured out that

1 this is probably the most serious kind of case -- criminal
2 case there is.

3 A. Yes.

4 Q. Okay. And when you -- when you first came up here
5 last month in August, August the 20th, when you first came in
6 and found out it was a criminal case, how did that strike
7 you?

8 A. Honestly, I thought it was very interesting.

9 Q. Okay.

10 A. I was on a jury for a traffic violation, and I
11 served on that jury, and it was very quick, uneventful.

12 Q. Okay.

13 A. And so I was -- I was interested in it just to find
14 out the process to go through.

15 Q. So you're interested in the process?

16 A. Uh-huh.

17 Q. Okay.

18 A. And I'm also interested in the case as well. I
19 haven't done any research on it, but...

20 Q. All right. Does it frighten you at all?

21 A. A capital murder case? Yes. I think what I imagine
22 would be real frightening to me would be to -- if it were a
23 gory -- if it were a gory murder, just my thoughts of sitting
24 on a jury and actually going through that. That's -- that's
25 what I kind of thought when I first heard about capital

1 murder.

2 Q. Okay.

3 A. Because I really didn't know what capital murder was
4 a month ago, other than the fact that I knew one was if it was
5 a murder and it involved a law enforcement person, or a police
6 officer. I didn't know what else constitutes a capital
7 murder, but I found out last week.

8 Q. When you came in that big room with all those
9 people, and you figured out who was who, that one side was the
10 prosecution and one side was the defense.

11 A. Yeah.

12 Q. And then you figured out this young man was the
13 defendant.

14 A. Uh-huh.

15 Q. I think he had on a suit that day.

16 A. He did.

17 Q. What went through your mind when you first took a
18 look at him?

19 A. After the Judge announced who was who?

20 Q. Correct.

21 A. What went through my mind?

22 Q. Take your time. I want to know.

23 A. Well, I was visiting with the person sitting next to
24 me, and she happened to say, gee, I wonder what he did. But
25 that wasn't what went through my mind. I think I was more

1 surprised at the fact that the accused was in the room with
2 us. I think I was more surprised about that. And just
3 listening to the person sitting next to me saying I wonder
4 what he did, and then coming into this room last week and
5 listening to Mr. Goeller saying, you know, where was -- most
6 people probably thought, gee, I wonder what he did. I just
7 thought that was a coincidence with the person sitting next to
8 me.

9 Q. In other words, that made sense. You kind of
10 snapped on that. I didn't say to myself, I wonder what he
11 did. My -- the person sitting next to me said it, and I can't
12 tell you whether that's what went through my mind, but I did
13 wonder. I said, I wonder what he was accused of, but I...

14 A. That's really all that went through my mind.

15 Q. That's fair enough. And honestly, I would probably
16 do the same thing, honestly. That's just human nature.

17 You understand the difference between saying I
18 wonder what he did, and I wonder what the State is going to
19 prove to me? In other words, I mean, they have the burden of
20 proof. They have to prove it.

21 A. I do understand that.

22 Q. Okay. And I suppose hearing that from your friend,
23 and then hearing Mr. Goeller's talk, you kind of decided,
24 look, I better mark myself. I better kind of have my mind
25 right before I go into this trial. If I'm a juror, I better

1 be consistent with the presumption of innocence. Is that what
2 I'm hearing you say, or is that -- have you thought about that
3 process?

4 A. I had thoughts in my mind about, you know, what was
5 he accused of.

6 Q. Uh-huh.

7 A. I already knew before even coming in for that day
8 that the burden of proof was on the State.

9 Q. Uh-huh.

10 A. But I mean, I agree with Mr. Goeller that I think
11 it's just human nature to say I wonder what he did.

12 Q. Okay.

13 A. And to some people it's actually -- just assuming
14 that he's guilty and he did that, and to others it may just
15 mean that -- it was just almost like a rhetorical question,
16 like, I wonder what he did, really meaning I wonder what he
17 was accused of. And I think that's what went through my mind
18 is that what he was accused of. I didn't necessarily say, you
19 know -- my thoughts weren't he's guilty and he got indicted.
20 I didn't lead to that conclusion.

21 Q. Yeah. I sure don't mean to beat a dead horse, but
22 let me ask you this, sitting there right now today, have you
23 formed an opinion with respect to whether or not Ivan Cantu is
24 guilty or not guilty?

25 A. No. Honestly, I have not. I'm -- I'm being very

1 open-minded about this, and I think that's the way that it
2 should be. But it's -- I'm not doing that because I feel like
3 that's the way it should be. It's just the way I feel right
4 now is that I'm being very open-minded. And I'm ready to hear
5 from both sides.

6 Q. Okay. Now, I want to make something clear right
7 from the beginning: We're going to talk some about punishment
8 issues, and the State has already talked to you a bunch about
9 these special issues and how the law of capital murder works,
10 et cetera. We're not going to talk that much today about
11 guilt or innocence.

12 A. Okay.

13 Q. We may talk a little about it, but we're not going
14 to talk a lot about it, you and me. And I don't want you to
15 get the impression that we admit that he's guilty, that we
16 concede guilt. That's not our position at all. In fact,
17 there's going to be a full-blown trial on the issue of
18 guilt-innocence, okay?

19 A. (Nods head.)

20 Q. By the same token, the law requires that we have to
21 discuss punishment issues at the front end of the trial. In
22 the event we get to a guilty verdict, then we can go right
23 into the punishment phase with the same jury. We've already
24 discussed punishment issues with that jury. So we may not
25 ever even get to the punishment phase of the trial; do you

1 understand that? We're going to have a full-blown trial.
 2 We're going to represent this young man and hopefully we win,
 3 okay? But if we don't, then we're ready to go into these
 4 particular issues. Does that make sense to you?
 5 A. Yes, it does.
 6 Q. Okay. Let's go back and discuss some background
 7 information. I notice that you were born in Thailand?
 8 A. Yes, I was.
 9 Q. Okay. And looks like you were about eight when you
 10 came over?
 11 A. Uh-huh.
 12 Q. Tell me about that.
 13 A. Well, we left Thailand, and we went to live in the
 14 Philippines for about seven -- either seven or eleven months,
 15 and then we came to the U.S. I didn't want to come to the
 16 U.S. I had a real difficult time because I didn't speak the
 17 language really well, the English language.
 18 Q. Looks like you've fixed that, haven't you?
 19 A. And I was very small --
 20 Q. Uh-huh.
 21 A. -- for being eight. I didn't get along with the
 22 kids very well because I didn't speak English very well.
 23 Other kids kind of saw me, I don't know, different.
 24 Fortunately we moved from Garland, which is where we stayed
 25 when we first came to U.S. We moved to Plano, and I met a

1 very good friend, my next-door neighbor, who -- who really
 2 helped me with -- with just getting to know the people in the
 3 U.S., becoming my best friend, and I look to her as a very
 4 well-rounded person with spiritual faith. And I'm not a very
 5 religious person, but she was. And I attribute my good side
 6 to her, for a lot of them.
 7 But I'm very Americanized. I don't -- I don't even
 8 have any Thai friends. All my friends are American. I don't
 9 even speak Thai anymore. I can understand some words, but
 10 that's about it. Can't read or write it.
 11 Q. All right, excellent. This friend of yours, you
 12 guys still friends?
 13 A. Yes.
 14 Q. Was she your age?
 15 A. She was a year older.
 16 Q. All right. And does she still live in this area?
 17 A. No. She lives in Alabama.
 18 Q. Okay, I see. And you attribute a lot of your
 19 adjustment -- your ability to adjust, and I guess make it
 20 here, to her; is that right?
 21 A. Yeah, I do. She was just a very -- a very loyal,
 22 good friend. I feel very fortunate that we crossed paths.
 23 Q. Sure. Made your life better?
 24 A. I think so.
 25 Q. Okay, fantastic. And so that would have been about

1 1975, I take it?
 2 A. '75, '76, yes.
 3 Q. And how was it that your parents made the decision
 4 to come to the U.S.?
 5 A. Let's see, I'm full Thai. My mom was married, and
 6 they -- my parents had me and then they got a divorce, and I
 7 never knew my dad. My mother remarried an American. He was
 8 stationed there for work with TI. And they met, and they got
 9 married, and they decided to bring me to America, and that's
 10 how I came over here.
 11 Q. Okay. I saw the name, is it Williams?
 12 A. Uh-huh, that's my stepdad.
 13 Q. That's your stepfather?
 14 A. Uh-huh.
 15 Q. Okay. James Wayne Williams?
 16 A. Yes.
 17 Q. And your mother's name is Nari?
 18 A. Nari Williams.
 19 Q. And was he sent from here, Texas, in the U.S.?
 20 A. Yes. He was working for TI, and TI sent him over
 21 there. He was in the defense department. I don't know a
 22 whole lot about that. He's retired now. So, he was in
 23 defense, and he wasn't really able to tell me a whole lot of
 24 what he did since it was a program that he couldn't really
 25 discuss with his family.

1 Q. Uh-huh, okay. Real secretive?
 2 A. Yeah.
 3 Q. And I take it your mother was single with one child,
 4 and that was you at the time?
 5 A. Yes.
 6 Q. And he moved you and your mother over here after
 7 they married?
 8 A. Uh-huh.
 9 Q. And then they had another child, and that's your
 10 sister, Lisa Marie Williams?
 11 A. Uh-huh.
 12 Q. Okay. Are you close with your sister?
 13 A. I'm close to her, yes.
 14 Q. And you've got some years on her, about 11 years --
 15 A. Uh-huh.
 16 Q. -- so you're the older sister?
 17 A. I am.
 18 Q. And does she do what you tell her to do?
 19 A. When she was little; not anymore. No. I was kind
 20 of like her second mother just because of the age gap.
 21 Q. Okay.
 22 A. But now that we're both adults, we've become more
 23 friends than mother/daughter.
 24 Q. Okay. And that's a whole lot more fun, isn't it?
 25 A. It is.

- 1 Q. Yeah. All right. So, I guess you've been in the
 2 U.S. 25 years. So, have all of those years been in the
 3 Dallas/Fort Worth area?
 4 A. Uh-huh.
 5 Q. Like where specifically?
 6 A. **When I first came to the U.S. we lived in Garland.**
 7 **I want to say about six months, and then we moved to Plano,**
 8 **and I grew up going to Plano schools. We moved several times**
 9 **within Plano, but that's primarily where we lived.**
 10 **And then I went to school in Austin. My parents**
 11 **moved to Korea for a couple of years because my dad got**
 12 **transferred, but I didn't live with them. I went to visit**
 13 **them during the summers and Christmas. And then when I**
 14 **graduated college, I came back to Dallas and have been in the**
 15 **Dallas area since.**
 16 Q. Which high school did you graduate from?
 17 A. **Plano Senior High.**
 18 Q. A Wildcat?
 19 A. **The Wildcats, yes.**
 20 Q. What year was that?
 21 A. **'86.**
 22 Q. And then you went to college immediately after that?
 23 A. **Uh-huh.**
 24 Q. Where did you go to college?
 25 A. **UT Austin.**

- 1 Q. Awesome. Hook 'em Horns.
 2 A. **Yeah.**
 3 Q. They're going to have a good year this year.
 4 A. **You know, I wasn't really into football.**
 5 Q. You need to be this year.
 6 A. **I went to a couple of games, and that's it.**
 7 Q. You need to be this year, because you guys may be
 8 vying for the National Championship this year.
 9 A. **That's good to hear.**
 10 Q. At least that's what members of my household tell
 11 me. I didn't go to Texas. I went to Baylor, but they're sure
 12 rubbing my nose in it this year.
 13 So you went to UT in Austin, and when did you get
 14 out?
 15 A. **In December of '89.**
 16 Q. So you graduated in three and a half years?
 17 A. **Uh-huh.**
 18 Q. I take it you had a good GPA?
 19 A. **It was all right.**
 20 Q. What did you study?
 21 A. **Accounting.**
 22 Q. Oh, you're killing me. I studied accounting. I
 23 sure didn't graduate in any three and a half years. How many
 24 hours of accounting do you have?
 25 A. **How many hours?**

- 1 Q. Yeah.
 2 A. **Oh, gosh, I can't remember.**
 3 Q. 27, 30, 33?
 4 A. **It was more than that.**
 5 Q. Really?
 6 A. **I can't remember how many hours of accounting, but**
 7 **it was enough to qualify for me to get a degree in accounting.**
 8 Q. Okay. Well, it's usually in that area; 24, 27, 30,
 9 33.
 10 A. **I can't remember.**
 11 Q. Okay. Did you take the exam?
 12 A. **No. I never sat for the exam. After I graduated**
 13 **with my accounting degree, I worked as a staff accountant, and**
 14 **I got bored doing that.**
 15 Q. Who was that for?
 16 A. **That was for a company called Doc Easy. They were a**
 17 **software developer. They've been bought out by Sage U.S.**
 18 Q. That's your husband's company?
 19 A. **It is. That's where we met.**
 20 Q. That is not so bad, is it?
 21 A. **No. I think you'd ask me a lot of personal**
 22 **questions.**
 23 Q. Did you do any public accounting?
 24 A. **No, huh-uh.**
 25 Q. Weren't interested in doing public accounting?

- 1 A. **No, I -- I really -- I went into accounting because**
 2 **I did really well in accounting in high school, and I actually**
 3 **enjoyed accounting in high school, and accounting was pretty**
 4 **big at the time that I entered college. And when I got out,**
 5 **it was flooded. The market was just flooded, and during**
 6 **college we had a lot of recruiters at the time, one of the big**
 7 **eight or big six, whatever they were back then. And they**
 8 **would come down and do a little dinner with --**
 9 Q. Searching for the cream of the crop? Companies like
 10 Arthur Andersen --
 11 A. **Arthur Andersen, Coopers and Lybrand. I didn't**
 12 **get -- I didn't get a good taste from that. And my GPA, it**
 13 **wasn't that bad, almost 3.0, and they were looking for someone**
 14 **better. And maybe I had resentment against them, but I felt**
 15 **fortunate getting Doc Easy.**
 16 Q. Let me tell you something, I'm hearing everything
 17 you're saying.
 18 A. **Did you have an accounting degree, too?**
 19 Q. Yeah. And I went to all those recruiting dinners
 20 and swooning and getting to meet people. And what was it that
 21 was the -- was it Alpha Si was the accounting fraternity?
 22 A. **I wasn't -- I was in the University Accounting**
 23 **Association, and that was it. That was just the association I**
 24 **was involved in.**
 25 Q. Okay.

1 A. But I felt fortunate to get a job with Doc Easy
2 because it was actually corporate accounting that we learned
3 in school. I was able to apply the things I learned in
4 school, but at the same time it was really monotonous to me.
5 I -- looking back, I probably didn't apply myself as I should
6 have.

7 But I got laid off from that company and went to
8 technical support with software, and I learned a lot more in
9 there, and I enjoyed that much more.

10 Q. Okay. Technical support with software. Tell me
11 more about that.

12 A. Okay. When I was at Doc Easy, my husband, at the
13 time he was in technical support for -- his department
14 supported the accounting system, and I was actually doing
15 staff accounting. I actually wanted to move to his
16 department, but didn't really pursue that. But then I found
17 out -- later I was laid off. And when I was looking for jobs,
18 I kept on looking for accounting jobs, but then I was always,
19 in the back of my mind, interested in going to technical
20 support and learning more of the technical aspect of the
21 industry. So, I finally landed a job with the -- it's oil
22 accounting software. I was there for five years, and then
23 that was like a stepping stone for me to come through where I
24 am right now. And I enjoy what I do right now.

25 Q. Oil accounting software?

1 A. Uh-huh.

2 Q. And was that still an accounting job, or was that
3 technical support?

4 A. It was technical support. I didn't do the
5 accounting for that, but it was an accounting software for the
6 oil and gas industry, so I was able to bring some of my
7 background to that.

8 Q. Sure, okay. And your current job is what?

9 A. Technical support for testing a billing system for
10 the wireless industry.

11 Q. Okay. Tell me more about that. Which wireless
12 industry?

13 A. Cingular Wireless.

14 Q. So if I was somebody that had a problem with the
15 software, and I couldn't quite figure out how to work the
16 software, I'd call up on the phone and you'd be who I'd talk
17 to?

18 A. No. We're not -- we don't interface with the
19 customers directly. Our department is responsible for testing
20 the major versions that -- with the new functionalities that
21 come in to the billing system.

22 THE COURT: Mr. High, let me ask you to mark
23 your notes. We're going to take a ten-minute recess, no more
24 than ten minutes --

25 MR. HIGH: Okay.

1 THE COURT: -- and we'll come back.

2 Ma'am, I just want to ask you not to talk to the
3 other lady who's back in the back about anything that's been
4 asked of you or anything you've responded.

5 VENIREPERSON: Okay.

6 THE BAILIFF: All rise.

7 (Recess taken.)

8 THE COURT: Ms. Elfstrom, you're still under
9 oath.

10 Q. BY MR. HIGH: When we left off, Ms. Elfstrom, we
11 were talking about your current job and being in technical
12 support in the software area. And I think we've talked a lot
13 about your work and the kind of work you do. So, I think I've
14 got a pretty good handle on that.

15 I want to switch gears. I want to go back in time
16 just a little bit. I want to go back to high school.

17 A. Okay.

18 Q. And I want to ask you, what kind of activities were
19 you involved in in high school?

20 A. Extracurricular activities?

21 Q. Yeah.

22 A. I was on the drill team, which is the dance team in
23 Plano, spent a lot of time doing that because we have a class
24 from 2:30 from 3:30, and then we also practice a couple of
25 hours after school.

1 Q. Okay. So did you do that two or three years of high
2 school?

3 A. I did that two years of high school.

4 Q. Okay. And did you study dance as a youngster?

5 A. I took dance classes. Probably when I started 9th
6 grade, which was about when I was 15. So, I become interested
7 when I was about 15 or so.

8 Q. Okay. Played any musical instruments?

9 A. No.

10 Q. Involved in the band or anything?

11 A. No.

12 Q. When you went to Texas, what kind of extracurricular
13 activities were you involved in?

14 A. I joined the University Accounting Association,
15 which allowed us to intermix with recruiters and other
16 students who are also majoring in accounting. I was also
17 involved in a business fraternity, Phi Beta Ki. I can't
18 remember it. It was for one year.

19 I studied more than anything. When I look back, I
20 wish I had enjoyed more social aspect of going to college.

21 Q. Had a little more fun?

22 A. Yeah.

23 THE COURT: I never heard that before. Nobody
24 ever says I wish I had played harder in college.

25 VENIREPERSON: Really? Yeah. I really

1 focused -- I had a roommate, very studious, and she and I
2 tended to study together, and so trying to get out in three
3 and a half years, wanted to make my own money.

4 MR. HIGH: Okay. You know my wife has the same
5 thing to say about her experience of Texas, Judge, and she
6 wished she had played a little bit more.

7 THE COURT: I wish I had played a little bit
8 less.

9 MR. HIGH: I'm kind of like you, Judge. I wish
10 I had studied more.

11 Q. BY MR. HIGH: I take it then, at that age you were
12 real motivated to make good grades and get out and get a job,
13 I guess --

14 A. Uh-huh.

15 Q. -- and go to work, I guess. Would you say you're a
16 goal-oriented person?

17 A. I would say so, yes.

18 Q. Tell me about that. What kind of goals do you have
19 now, I guess, for instance?

20 A. I had really very general. I knew that -- I knew
21 that when I was in college I wanted to get out. I wanted to
22 be successful in terms of -- not so much making a lot of
23 money, but being happy at what I was going to be working --
24 what I was going to be doing, and also liking what I was
25 doing. Of course, I wanted to get married eventually, have

1 A. Sure.

2 Q. So, but you're still young. You're still 33.

3 You've still got a lot of time left to travel.

4 A. Yes, I do.

5 Q. And see the world, I guess. So that's still a goal
6 in the future?

7 A. Uh-huh, it is.

8 Q. You still have the chance to attain it.

9 Anything else that kind of sticks out in your mind
10 that just didn't work out for you, it was a real heartbreaker,
11 anything like that?

12 A. No. The only thing that really sticks out in my
13 mind is when I was going to college, and I was majoring in
14 accounting and I wasn't making 3.5 or 3.4 GPA. I was
15 borderline 3.0. I was kind -- I was disappointed in myself
16 because I was a straight-A student when I was in high school,
17 and I think it was a big blow to my self-esteem, to my ego
18 that I couldn't make straight A's in college. I was really
19 disappointed, and I think part of that was the reason why I
20 wanted to get out of college and just be away from that kind
21 of environment and make money and be -- feel like I'm
22 successful again.

23 Q. So you put in all that effort and all that work and
24 did all your problems, I take it, got them in, turned them in
25 on time and still the grades, you just didn't -- they just

1 kids, very, very, you know, general goals that many people
2 have.

3 Q. Uh-huh.

4 A. Not real, real specific ones. I mean, I wanted to
5 get married and have a house and have kids, have kids before I
6 was 30, which I didn't achieve. It was after 30.

7 Q. Okay, okay. Well, that's fine. Sounds like you've
8 satisfied most, if not all, of your goals?

9 A. Yeah.

10 Q. And that's a wonderful thing. Is there anything,
11 other than having kids before you're 30, that you feel like
12 you haven't achieved; that just broke your heart; that just --
13 gee, I wish that had happened for me?

14 A. I really can't say that. I wish I could have
15 traveled more. My husband is (sic) fear of flying, so we're
16 kind of limited to ground transportation, and he's from
17 Minnesota, so every summer we go to Minnesota and spend time
18 with his family, and that's our summer vacation. I would
19 rather go to, like, Cancun, but he doesn't like to fly so we
20 just --

21 Q. I understand. And maybe he'll overcome that some
22 day.

23 A. Oh, I doubt it. I probably have to go on vacation
24 on my own, or with friends instead, flying.

25 Q. Can I go?

1 didn't happen for you?

2 A. Yeah.

3 Q. And that was hurtful to you?

4 A. It was a struggle for me.

5 Q. And it was for me, too, okay? And guess what, it
6 happened to me all over again in law school. So I went
7 through about four or five years of that in a row.

8 Did you want to just say -- go into your professor
9 and say, look, you know -- look, I've done everything I can.
10 Why am I not getting the grades? Why me? How come I can't
11 get an A in this class? You just want to just throw up your
12 hands and say how come this isn't happening. I'm sure that's
13 frustrating.

14 A. It was frustrating. I learned as I was going
15 through each course that the more I study with groups, the
16 better I did. There was a professor that I had that was just
17 excellent. I took it during summer. I did real well in his
18 class, and I thought he was -- I thought a lot of it had to do
19 with his teaching method, but also that I studied in groups
20 rather than individually, so that was helpful. But that was
21 towards the end of my college years that I discovered that.

22 Q. Okay, all right. I just lost my train of thought.
23 I had another area. Okay.

24 Earlier you said -- you said something about
25 opportunities don't seem to be as available to some folks as

1 they are to others. Do you recall that comment?

2 A. Yes, I remember saying that.

3 Q. And I want to explore that with you.

4 A. Okay.

5 Q. Can you develop that a little bit more for me, and
6 tell me what you mean by that.

7 A. Yeah. What I understood from the question that was
8 being asked of me was the -- there was a statement from the
9 questionnaire -- in the questionnaire that we did where it
10 asks something about what you were born into and what was
11 given to you. Does that develop the kind of person that you
12 are. And what I was basically saying is, yes, it does develop
13 the person, but just because you're born into wealth, and you
14 have the opportunity to go to the best of education doesn't
15 mean that you're going to come out to be the best kind of
16 person, or what society expects of you. I think that's
17 influenced by the society, and the decisions that you make.

18 And that's really all I was trying to say. A person
19 who is born into wealth and has opportunities to go to the
20 best kind of education is going to have more opportunity than
21 a person who is born in the projects, for example.

22 Q. Sure.

23 A. But ultimately, as they get older, they'll be able
24 to make their own decisions as pre-adulthood and then into
25 adulthood that they need to be accountable.

1 Q. Sure.

2 A. That's kind of where I was leading to.

3 Q. Okay. What about you? Does that apply to you at
4 all, or are you just making a generic statement? Does that
5 apply in your own experience?

6 A. In my experience, somewhat because when I was born
7 in Thailand, I was born in a very small village. My family
8 didn't have much money. My mom was fortunate that after she
9 divorced my dad that she went to another city, and she was
10 able to get a job, and that's where she met my dad. And then
11 we got the opportunity to come to the U.S. I'd be in Thailand
12 planting in the rice fields right now probably.

13 Q. Okay. So you've thought about that --

14 A. Uh-huh.

15 Q. -- if your mother hadn't gone from one city to the
16 other what a difference that would have made in your life?

17 A. Yes. It would have made a big difference.

18 Q. It made a world of difference, literally.

19 A. Yes, it did.

20 Q. And I guess you've played out all the scenarios.

21 You'd be a totally different person at 33 than you are today?

22 A. I would, uh-huh.

23 Q. Do you think that your personality would have been
24 the same, or would it have been different? I'm sure you've
25 lived and dwelled and played with this in your mind.

1 A. Yeah. I think that you're born with -- your

2 personality is, of course, shaped as -- ever since you were

3 little, being 2, 3 or 4.

4 Q. That's right.

5 A. Your surroundings, the people that you're surrounded
6 by, the environment you're surrounded by, it shapes you as a
7 person.

8 Q. That's right.

9 A. The experiences that you have shapes you as a
10 person. I would say I would probably be a different person
11 living in Thailand than I am here.

12 Q. Okay. Did your mother have to work very hard in
13 those years; do you recall that?

14 A. When she was in Thailand?

15 Q. That's right.

16 A. My mother had me, and then six months later my
17 parents got a divorce, and I don't know how long from there.
18 She left me to my grandfather and grandmother, and she went to
19 live in another city and work in another city.

20 Q. Uh-huh.

21 A. When she came back for me, I was -- I was about 6 or
22 7 years old. There was a period where there were (sic)
23 paperwork that need to be filed, and I stayed with my
24 grandparents. And like I said, we lived in the Philippines
25 for a while.

1 I don't -- my mother, from what she has told me, she
2 did work really hard when she was living in that other city,
3 when we were in Thailand. And even when we came to the U.S.,
4 she was a working mother, from the time I remember ever since
5 I was, like, 7 or 8 years old, when we came to the U.S. So,
6 yes, she's a very hard worker.

7 Q. And I'm sure as a young mother, you read all these
8 books about psychology and -- because you strike me as very
9 educated, very dedicated to being the best you can be. You
10 strike me that way. And I mean, you studied a lot in college.

11 So, I'm sure you've read that -- experts say that
12 personality's formed, what, between the ages of zero and three
13 or four, something like that?

14 A. Something -- yeah, within those.

15 Q. Have you read that?

16 A. I've read that anywhere from when they're infants,
17 or more so from, like, nine months to three years, or
18 something like that. I've seen mixed reports.

19 Q. Okay. So I'm not totally off on that, am I?

20 A. Not from my views.

21 Q. Okay. Sounds like your grandparents then had a lot
22 to do with shaping your personality. Not so much your mom,
23 but it was your grandparents.

24 A. If we look at the fact -- our views as being shaped
25 around age nine months to three years, yes, it would be my

1 grandparents.

2 Q. Okay. And I guess they were good people?

3 A. They were.

4 Q. Have you ever considered if your grandparents hadn't
5 been there and, you know, somebody else had -- your mother had
6 to leave you with somebody else, you know, whether it was
7 somebody down the street or some organization or -- you know,
8 a day-care, I guess. I mean, have you ever thought about
9 that? I mean --

10 A. It was unlikely because in Thailand my grandmother
11 had 11 kids, so if it wasn't them -- if it weren't my
12 grandparents taking care of me, it would be one of my aunts or
13 uncles.

14 Q. Sure.

15 A. So, I really didn't think much about being in the
16 care of someone else, other than family members.

17 Q. Sure, okay. So, although the beginnings of your
18 life, the situation wasn't what we call the American ideal --

19 A. Yeah.

20 Q. -- it still wasn't bad because you still had plenty
21 of family around; your mother and grandparents and all aunts
22 and uncles, all those folks.

23 A. Uh-huh.

24 Q. Okay. And I guess you understand -- you're smart
25 enough to know where I'm going with this -- with this line of

1 A. Basically what I wrote. There are crimes that I
2 think should be punishable by death if the defendant is found
3 guilty and beyond reasonable doubt. I would have -- it would
4 definitely -- I would have to feel very confident that the
5 defendant committed that crime before I could say, you know,
6 that he should be -- he or she should be put to death.

7 Q. Sure, okay. What about regular murder? Not capital
8 murder, but regular murder, just killing somebody. Do you
9 think that should be punishable by death?

10 A. In some cases I think, yes. I -- you know, last
11 week, there was six offenses that made it capital crime.

12 There were six that I remembered.

13 Q. Yeah.

14 A. I think it may -- I may be confused with the
15 goriness because to some -- I thought that was associated with
16 capital punishment. You know, someone goes out with such
17 diabolical measures to kill someone, but he may not be done
18 with some aggravated act I think it -- personally I think that
19 could go through punishment stage or being put to death.

20 Q. Okay. Let's say that I get really upset with my
21 partner here because he's making bad decisions, you can't
22 count on him, and he's not showing up on time, and he's doing
23 stupid stuff, and he's frustrating me, and maybe I get really
24 aggravated with him. Maybe I don't like him, to start out
25 with. And one day I take him out on the lake, and I throw him

1 questioning. I mean, you -- and we've talked a little bit
2 about mitigation and that sort of thing. And there's a
3 whole -- I mean, this is a great big world. There's a whole
4 panoply of beginning for people.

5 I mean, just like the rich person that you talked
6 about with all the opportunities just laid out before them,
7 and then the other person that starts out in the projects with
8 nothing. I think an awful lot about Cabrini Greens up in
9 Chicago. Have you ever been up there?

10 A. No.

11 Q. Shoo, tough area, south side of Chicago, and you
12 sure wouldn't want to be out after dark in that area. Yet,
13 there have been some very, very excellent people come out of
14 that environment, much like yourself. I mean, you know, you
15 didn't have the greatest start, but here you are. I mean, at
16 33, you've accomplished most, if not all, of your goals.

17 A. Uh-huh.

18 Q. I just think that's terrific.

19 Let's talk about -- go back to your questionnaire
20 here. It says -- it's talking about the death penalty. It
21 says are you in favor of the death penalty? Yes. Please
22 explain your answer. I believe there are crimes that are
23 committed which should be punishable by death. Those are your
24 words.

25 Tell me what you meant when you wrote that.

1 overboard knowing that he can't swim and he drowns, okay. And
2 I intentionally caused his death, which is murder, okay. And
3 that doesn't really fit the statutory description of what we
4 talked about last week, you know, being a double homicide,
5 killing a guard, killing a child under six, you know, murder
6 in the course of robbery, murder in the course of burglary.

7 You know, it's just straight murder?

8 A. Uh-huh.

9 Q. I'm just upset with him because he's been performing
10 poorly and made me mad. I'll fix you, and I did it. Do you
11 think I should be sentenced to death for that?

12 MR. GOELLER: Please say yes.

13 (Laughter.)

14 MS. FALCO: Your Honor, I'm going to object to
15 him committing her to a specific set of facts.

16 THE COURT: Sustained. If you'd ask more
17 hypothetically.

18 MR. HIGH: Okay.

19 Q. BY MR. HIGH: Let's say that I gave you a situation
20 that was just straight murder, okay, and I'm trying to give
21 you an illustration because I know you're not a lawyer.

22 But let's say it doesn't fit within what our
23 Legislature says is capital murder, but it's just straight
24 murder, just a killing. And I'm just trying to get your true
25 feelings here. There's no right or wrong answer. If you

1 think -- if you think somebody convicted of murder should die,
2 then by all means tell us, okay. That's what we need to know.
3 It's not right or wrong; we just need to know it. What do you
4 think?

5 **A. It would -- I mean, my thoughts are it would have to**
6 **depend on what -- what the actual crime was. I really can't**
7 **answer whether I feel it should just -- whether he should be**
8 **put to death or not.**

9 **Q. Well, I'm getting the impression from you, though,**
10 **that if a person kills somebody else, then they should have**
11 **that same thing done to them. Am I wrong in that impression,**
12 **or is that the way you feel?**

13 **A. Like I said, up until last week I didn't -- I didn't**
14 **know all the definitions of a capital murder.**

15 **Q. Okay.**

16 **A. I thought it was related to the goriness of the**
17 **crime and the premeditated -- the premeditation of the crime.**
18 **I'm trying to think of an example where I thought someone**
19 **should be -- the case that comes to mind is the guy in**
20 **Highland Park where he stabbed his wife --**

21 **Q. Uh-huh.**

22 **A. -- several times.**

23 **Q. Uh-huh.**

24 **A. That wasn't just a general murder case.**

25 **Q. Uh-huh.**

1 **A. It was just a murder case?**

2 **Q. Uh-huh.**

3 **A. And I don't know the details of it, but just to know**
4 **that -- just my reaction to that when I saw it was if he was**
5 **guilty of that, it was just so gory that he doesn't deserve to**
6 **be in society anymore; that he should be -- after he's**
7 **convicted, he should be put to death.**

8 **Q. Okay. And when you --**

9 **A. But that's --**

10 **Q. Did you ever learn that was just a murder case and**
11 **not a capital murder case?**

12 **A. I didn't know at the time whether it was capital**
13 **murder or murder.**

14 **Q. Right.**

15 **A. I heard the news, and I don't follow things to every**
16 **detail.**

17 **Q. Okay.**

18 **A. Having two kids, I don't --**

19 **Q. Sure.**

20 **A. There are things I miss on TV, and something might**
21 **be pertinent that I don't hear. But, again, at the time, you**
22 **know, I thought that was due to the goriness of the crime.**

23 **Q. Okay. All right. Let me move along here.**

24 **It says -- it gave you a list of statements that**
25 **best represent your feeling about the death penalty, and there**

1 was five statements on there, and you circled number two,
2 which says I believe that the death penalty is appropriate in
3 some capital murder cases, and I could return a verdict
4 resulting in death in a proper case. Is that still your
5 position?

6 **A. It is.**

7 **Q. Okay. And I'm sure everybody agrees, probably even**
8 **death penalty opponents would agree that a case like Timothy**
9 **McVeigh, that did the Oklahoma City bombing, killed 168**
10 **people, a lot of little ones in a day-care. I mean, surely in**
11 **your mind that's a proper case for the death penalty?**

12 **A. Yes, it is.**

13 **Q. Okay. And I mean, obviously it involves issues of**
14 **premeditation, the planning that went on.**

15 **A. Uh-huh.**

16 **Q. You know, getting the fertilizer and bomb in the**
17 **truck and planning the escape route, et cetera. And then also**
18 **you mentioned in your questionnaire that person has no**
19 **remorse. McVeigh didn't have any remorse, and did you watch**
20 **up until the end his execution. He never every expressed any**
21 **remorse, did he, as far as we know?**

22 **A. I didn't watch it up to the execution. I just read**
23 **or hear from the news reports that he didn't really have any**
24 **kind of remorse.**

25 **Q. Okay. So that's a proper case -- I mean, you agree**

1 that McVeigh should have gone to meet his maker? He should be
2 executed?

3 **A. Uh-huh.**

4 **Q. And you're glad he was?**

5 **A. I feel relieved, yes.**

6 **Q. Okay. And most folks would point to Jeffrey Dahmer,**
7 **talk about gory, huh? Do you recall Jeffrey Dahmer?**

8 **A. Uh-huh.**

9 **Q. The one that killed his victims and tore off their**
10 **limbs?**

11 **A. Yes, I remember.**

12 **Q. Okay. Obviously, one of the goriest cases in**
13 **history.**

14 **A. Uh-huh.**

15 **Q. And yet, he was killed in prison, which is kind of**
16 **ironic?**

17 **A. (Nods head.)**

18 **Q. Do you believe that was a proper case for the death**
19 **penalty?**

20 **A. Yes, uh-huh. I do.**

21 **Q. And, of course, if you lived in the '60s like I did,**
22 **a lot of folks remember Charles Manson. Did you ever read**
23 **about Charles Manson, or hear about Charles Manson?**

24 **A. I've heard about Charles Manson.**

25 **Q. The one with the X on his brow. Probably seen some**

1 movies, too?

2 **A. I don't think I've seen movies. I just hear -- seen**
3 **clips here and there about it.**

4 Q. Okay. Is it -- I take it that might be a proper
5 case for the death penalty?

6 **A. Uh-huh.**

7 Q. On the next page of the questionnaire, it talks
8 about life confinement in prison, and it gives you three
9 options, and you circled number three, "I believe that life
10 confinement in prison is appropriate in some capital murder
11 cases, and I could return a verdict resulting in life
12 confinement in a proper case."

13 **A. Uh-huh.**

14 Q. Basically, it's the flip side, you know.

15 **A. Yes.**

16 Q. I believe death is the appropriate, proper case; I
17 believe life is the appropriate, proper case.

18 Any proper cases come to mind?

19 MS. FALCO: Your Honor, again, I'm going to
20 object to committing her to a particular set of facts as to
21 what facts she could issue a life sentence on. It's improper
22 questioning.

23 THE COURT: Sustained.

24 Q. BY MR. HIGH: I guess the State gave you the example
25 of the disgruntled father.

1 **A. Uh-huh.**

2 Q. Okay. And, you know, there's a multiple -- I mean,
3 his daughter is dead, and somehow they get off on a legal
4 technicality, and as they're walking out of the courtroom they
5 smirk at the father, and then he's upset with that, of course.
6 He takes the law into his own hands and kills them both, which
7 is capital murder.

8 **A. Uh-huh.**

9 Q. And they're dead now, but we're prosecuting him for
10 capital murder. And I guess the State could seek the death
11 penalty, or seek a life sentence and usually the State will
12 ask you, you know, is there a probability that he'll be a
13 danger in the future, you know, with respect to Special Issue
14 Number One? And, of course, this guy has never been in any
15 trouble before, and obviously there's a reason for doing what
16 he did. He was mad and upset and disappointed with the legal
17 system. Probably no likelihood that he'll ever be a problem
18 again. In that type of scenario, is that the kind of case
19 that you think would be appropriate for a life sentence?

20 MS. FALCO: Again, Your Honor, I'm going to
21 object to committing her to a particular set of facts, asking
22 her how she would answer in result to certain facts, whether
23 it be a life sentence or a death sentence.

24 THE COURT: I'll overrule the objection.

25 **A. In that scenario?**

1 Q. BY MR. HIGH: Uh-huh.

2 **A. Would the special -- would consideration to that --**
3 **if you're asking me if I would consider a life sentence, yes,**
4 **I would.**

5 Q. You would?

6 **A. Yes.**

7 Q. Wouldn't have any problem considering a life
8 sentence?

9 **A. No, I wouldn't.**

10 Q. Are you familiar with spur of the moment -- and I
11 understand that you're -- you don't do our kind of work,
12 okay? But are you familiar with "heat of the moment," "spur
13 of the moment-type killings?" Have you ever read about them,
14 heard about them on the radio?

15 **A. Yeah.**

16 Q. Somebody gets mad at somebody else. In fact, we had
17 an example of it earlier this week when somebody cut somebody
18 off on Central and they were killed, okay. Obviously, that's
19 a whole different situation than Timothy McVeigh. There's
20 really no premeditation. It's rage. It's anger, maybe it's
21 intoxication, maybe it's drugs, something like that. In your
22 mind is that a little different scenario than Timothy McVeigh
23 or Jeffrey Dahmer situation?

24 **A. A different scenario?**

25 Q. Uh-huh.

1 **A. It's not premeditated from -- it's just out of rage.**

2 Q. Uh-huh.

3 **A. A case that comes to mind is -- from a long, long**
4 **time ago where that woman who axed the woman who was having an**
5 **affair with her husband.**

6 Q. Uh-huh.

7 **A. Again, I didn't -- I was very young when that**
8 **happened.**

9 Q. Happened in this county.

10 **A. It was Elizabeth Montgomery, or something like that.**

11 Q. Yeah, Candice Montgomery.

12 **A. Candice Montgomery. I didn't follow the case, but**
13 **I do remember -- my dad was actually in the jury selection**
14 **process. He didn't get on the jury, but he was -- after the**
15 **fact he told me about that.**

16 Q. Uh-huh.

17 **A. It was kind of -- I guess it happened in the heat of**
18 **the moment. I don't know if she premeditated that or not, but**
19 **if your question is would I consider that differently from a**
20 **premeditated one? Yeah, it is different.**

21 Q. Would you be open to considering a life sentence in
22 that kind of situation?

23 Maybe my question is unfair, and nobody has really
24 told you what life sentence means, have they?

25 **A. Minimum 40 years.**

- 1 Q. There you go.
- 2 A. **Last week I found out.**
- 3 Q. Okay, good. Minimum 40 years, so you understand all
4 of that?
- 5 A. **Uh-huh.**
- 6 Q. Okay. Keep going then. Sorry I interrupted you.
- 7 A. **It's different. Yes, with that I would consider a
8 life sentence.**
- 9 Q. Okay. Now, let's talk about philosophy here, or
10 philosophical, logical reasons. At the top of the page there,
11 it says what is the best argument in favor of the death
12 penalty. A person convicted of a crime -- the person is
13 convicted of a crime, and that person has no remorse, and the
14 potential for that person to commit crimes again. Is that
15 your view, or is that what you've read or heard people talk
16 about? I mean, is what I'm reading here your own personal
17 view?
- 18 A. **I'm sorry. My mind drifted for a second. I didn't
19 pay attention to the first part.**
- 20 Q. Let me -- let me let you look at it, too. Maybe
21 you're at a disadvantage.
- 22 A. **Okay. And your question is?**
- 23 Q. Is that your own personal view?
- 24 A. **Yeah, it is. I really -- that was really hard for
25 me to answer, and I thought pretty long about it. But that is**

- 1 **what I feel when I finally was able to sum it up.**
- 2 Q. Okay. The thing that gives me pause here is the
3 last phrase, and it says the potential for that person to
4 commit crimes again. I don't know if I'm reading too much
5 into this or not. That's why I want you to explain it.
- 6 Does that -- we all know that the death penalty has
7 finality to it. I mean, we terminate a life. In your mind,
8 is that one of the best arguments for the death penalty is to
9 kill somebody so they don't commit crime again?
- 10 A. **I would consider it a deterrent, yeah.**
- 11 Q. All right. The reason I'm really asking about this
12 is because you say it again on page 5 of your questionnaire
13 when it says the law in the State of Texas says that a person
14 convicted of capital murder can receive the death penalty
15 solely because the facts and circumstances of the crime, even
16 if he has committed no other crimes. Do you agree with this
17 law? Yes. Please explain. If someone commits a crime and
18 was found guilty, society shouldn't give that person a second
19 chance to commit the crime again.
- 20 Does that mean -- does that mean that if they commit
21 capital murder that they should die and not have the
22 opportunity to live where they could commit crime again?
- 23 A. **It would depend on the situation. I mean, in the
24 case where the father shoots -- or kills the two that had
25 killed his son or daughter, I think about the future danger,**

- 1 **and he wouldn't be a future danger in my mind.**
- 2 Q. Are you -- are you real interested in allowing
3 somebody to live after they've committed capital murder? I
4 guess that's what I'm asking.
- 5 A. **If there are circumstances that we would consider
6 after -- during the punishment phase.**
- 7 Q. Okay. And the law has been explained to you that,
8 you know, you're going to go through special issues one and
9 two.
- 10 A. **Uh-huh.**
- 11 Q. And obviously if you answer special issue two
12 "yes," with mitigating circumstances, then you're sparing a
13 life, and you're giving a defendant a second chance, okay?
- 14 A. **Uh-huh.**
- 15 Q. And that really doesn't square with what you've got
16 on your questionnaire here. Do you understand why I'm asking
17 you?
- 18 A. **Yes, I understand why you're asking. I think the
19 reason that I put down what I did is in my mind I had a vision
20 of what an example of a case would be that would result in
21 someone who's convicted of a capital murder. At that time, I
22 wasn't aware of the special issues. I think partly some of
23 my -- the answers that you might see may be related to just
24 not knowing the law itself, how it applies.**
- 25 Q. I understand that, and I'm not -- look, I'm not

- 1 being critical of your answers. I'm really not. I'm just
2 trying to find out how you really feel to make sure that
3 you're proper for this jury.
- 4 A. **I understand.**
- 5 Q. You understand I've got this young man's life in my
6 hands, and I've got to protect him as best I can. The only
7 way I can do that is to find out how you really feel. If this
8 is how you feel, I need to know it.
- 9 Do you -- it appears that you've written this a
10 couple of times. The potential for that person to commit
11 crimes again is a really big deal for you.
- 12 A. **It is.**
- 13 Q. You've written it twice.
- 14 A. **It is.**
- 15 Q. Okay.
- 16 A. **In -- I would still -- I would still say that, you
17 know, the potential of committing crimes again is something
18 that I would weigh heavily in my decision.**
- 19 Q. Very good. I believe you will. I believe you will.
- 20 All right. Then, let me ask you this, then. We
21 have an indictment in this case, and I think it's already been
22 explained to you that the indictment alleges murder plus a
23 robbery, okay, or murder plus a burglary or two murders, you
24 know, a double homicide, which makes it capital.
- 25 A. **Uh-huh.**

1 Q. Okay. And the jury is going to have to consider the
2 evidence, and if the evidence substantiates what the
3 indictment alleges, then if it's proof beyond a reasonable
4 doubt, the jury would then decide guilt for capital murder,
5 okay. And let's assume -- I'm not saying that -- I'm not
6 saying this is going to happen, but let's assume that the
7 State's able to satisfy their burden and prove it to you
8 beyond a reasonable doubt that this young man is guilty of
9 capital murder; that he committed a capital murder, whether
10 it's burglary/murder, robbery/murder, double homicide, okay.
11 At that point you would then take up the consideration of the
12 first special issue, okay, because you would have already
13 found him guilty.

14 And, this first special issue asks you to look into
15 the future and try to decide if he's going to be a danger in
16 the future. If you want to take a look at it with me, it's on
17 the floor. Whether there's a probability the Defendant would
18 commit criminal acts of violence that would constitute a
19 continuing threat to society. And I'm sure you took business
20 statistics, like I did. You guys studied probabilities; do
21 you remember that?

22 A. Yes.

23 Q. Where you had a coin and flipped it in the air and
24 did all those mathematical problems, remember that? It was a
25 hard class.

1 Here's my question. If you've already found somebody guilty
2 of a double homicide or murder plus burglary or murder plus
3 robbery, I'm sure that's kind of appalling to you to even
4 consider that scenario. That's bad stuff, but when you go to
5 answer this question, Brittani, are you going to -- are you
6 going to give fair consideration to that question, or are you
7 going to say, you did a capital murder, and -- I mean, shoot,
8 he did a capital murder. He's going to be -- there's no
9 question in my mind, there's a probability he's going to be a
10 danger to society from now on.

11 A. I'd have to consider the circumstance of the case
12 itself. I can't tell you that because he's found guilty that
13 I'm -- that I would say he's going to be -- the probability of
14 him committing a crime again would be a yes. I can't say
15 that. It keeps going back to the -- the example about the
16 father shooting the --

17 Q. Okay.

18 A. -- shooting the --

19 Q. Okay. You're doing great. You're doing great.

20 So, you would give fair and independent
21 consideration to that question?

22 A. Yes, I would.

23 Q. Aside from the fact that this person has already
24 been convicted of capital murder?

25 A. Yes.

1 A. I remember distinctive deviation and the median,
2 yeah.

3 Q. That's right. And I'm sure you recognize the
4 difference between a probability and a possibility?

5 A. Uh-huh.

6 Q. Okay. Tell me the difference.

7 A. Possibility is just it could happen, what are the
8 chances? It can be anywhere from, you know, more than zero
9 percent up to 100 percent. Probable, or probability of it
10 happening, to me that's really just -- like, in terms more
11 along the lines of more likely to happen.

12 Q. Okay. That's fair enough. In other words, it could
13 be just 50 percent, 51 percent, you know, more likely than
14 not?

15 A. Well, like -- yeah.

16 Q. Or it could be 99 to 1. Are you a gambler?

17 A. No.

18 Q. Me, either. A lot of people are, though. They
19 understand it in terms of whatever the odds and -- okay. So,
20 I think we're together on that.

21 The State carries the burden of proof on this
22 question. I think they explained it to you. It's the same
23 burden of proof that's beyond a reasonable doubt that there's
24 a probability that the defendant would commit criminal acts of
25 violence that would constitute a continuing threat to society.

1 Q. Fair enough. Okay. Now, you understand that if the
2 jury says "yes" to that question unanimously, and you do
3 decide that there's been proof beyond a reasonable doubt that
4 this Defendant is going to be a danger to society in the
5 future, then you go to the next special issue. Do you
6 understand that?

7 A. Yes.

8 Q. And now we get to the mitigation question. Now
9 there's lots of different names for this question. Some folks
10 have called it the humanitarian question. Some folks have
11 called it the one-last-look question. We had a guy this
12 morning that called it the emergency -- the break glass in
13 case of emergency question, okay. Like, you know, when you
14 see -- when you're walking down the hall at school and you see
15 those fire alarms and you break the glass that sets off the
16 fire alarm?

17 A. Uh-huh.

18 Q. I guess his thinking was that we're about to get to
19 a bad result, or result that we don't like, so we're going to
20 break the glass. We've got an emergency. I thought that was
21 a pretty innovative way of thinking. But anyway -- and I'm
22 not smart enough to think all this stuff up by myself. I've
23 heard this from hearing these guys talk earlier this week.
24 But one last look, you found the defendant guilty of capital
25 murder, you found that he's going to be a danger to society.

1 Now, you're looking at mitigation, and you're going to take
2 one last week look at the Defendant and say, hum, I'm
3 wondering if there's any mitigating circumstances that are
4 sufficient enough to warrant the imposition of a life sentence
5 as opposed to a death sentence. Does that make sense to you?

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

7 **Q.** Okay. And the Texas Legislature gave us this
8 question, and they say what the jury should consider when they
9 take their one last look. They say that they should consider
10 the circumstances of the offense, and you will have already
11 heard all about the offense.

12 **A. Uh-huh.**

13 **Q.** You'll know all about it. You don't know anything
14 right now.

15 **A. No.**

16 **Q.** But by then, you'll know all about it, upside,
17 downside, sideways, okay? They say that you should consider
18 the Defendant's character and his background. Obviously, that
19 takes on new meaning to you now after the fact we've discussed
20 your background, and also the panoply of backgrounds out there
21 in this world. So, that's -- the Legislature says obviously
22 that should be considered as mitigating circumstances.

23 Then, they say that you should consider the
24 personal, moral culpability of the Defendant. Any idea what
25 that means, personal moral culpability?

1 **A. I don't know what the word "culpability" is. I
2 don't know what that means.**

3 **Q.** Okay. In law that means responsibility.

4 **A. Okay.**

5 **Q.** The rest of it, who knows? What do you think it
6 means?

7 **A. The Defendant's character, his moral
8 responsibility. Are you asking me what that moral culpability
9 means?**

10 **Q.** I'm not going to let you off the hook. What do you
11 think it means, personal moral culpability? What does that
12 mean in your mind?

13 **A. He's responsible for his own actions.**

14 **Q.** Okay. Does that mean -- what did you say?

15 **A. He's responsible for his own actions.**

16 **Q.** Okay. But what does moral have to do with it?

17 **A. I really don't know why they would be asking that
18 his moral -- asking for the moral responsibility of the
19 Defendant. We need to get -- so they're asking us to consider
20 his character and background --**

21 **Q.** Uh-huh.

22 **A. -- his moral responsibility.**

23 **Q.** Uh-huh.

24 **A. I don't know why moral is in there.**

25 **Q.** Okay.

1 **A. To me, it would be complete without the word
2 "moral," his responsibility as a citizen of this society.**

3 **Q.** You've said in your questionnaire that the best
4 argument in favor of the death penalty is a person convicted
5 of a crime, and that person has no remorse. And we talked
6 about Timothy McVeigh. Could that mean the Defendant's
7 responsibility for his activity, what he did, how he feels
8 about it? Could that be? Maybe he feels bad; maybe he
9 doesn't.

10 **A. Is that what you're telling me it means?**

11 **Q.** I'm not telling you. And the State was correct,
12 this mitigation evidence is what it means to the individual
13 juror, okay. You're not going to get an instruction on it.
14 You're not going to get a definition on it, not from the
15 Court, and what's mitigating to one person may be aggravating
16 to the other person. Do you remember that line of
17 questioning?

18 **A. Uh-huh.**

19 **Q.** So, it's what it means to the individual juror.

20 They tell you that you're to consider the personal
21 moral culpability, and if that means guilt to you, then you
22 consider that. If that means remorse to you, then you
23 consider it. If it means taking responsibility for it, then
24 you consider it. Do you understand what I'm saying?

25 **A. I do.**

1 **Q.** Would you be able to do that in this case?

2 **A. Uh-huh, I would.**

3 **Q.** Okay. When you consider all those things together,
4 his character, his background, personal moral culpability, the
5 circumstances of the offense, you know, whether it's
6 premeditated, whether it's a passion killing,
7 heat-of-the-moment type killing, you consider all that
8 together, if there's a sufficient mitigating circumstance that
9 would warrant imposition of life imprisonment as opposed to
10 the death penalty. I take it that's the way the Legislature
11 wants you to take your last look. Would you be able to do
12 that?

13 **A. Yes.**

14 **Q.** In a situation involving a double homicide, I think
15 they ask you if it was reasonably possible for you to answer
16 that question in such a way that a death sentence could be
17 imposed; is that correct?

18 **A. In a double homicide?**

19 **Q.** Yeah.

20 **A. A double homicide would be considered a capital
21 murder, and if found guilty, yes, I could render a sentence of
22 death penalty.**

23 **Q.** Okay. And what about a life sentence?

24 **A. It would -- again, that would depend on the case
25 itself.**

1 Q. Are you more likely to render a death sentence as
2 opposed to a life sentence?

3 MS. FALCO: Your Honor, I'm going to object to
4 that. That's an objectionable question whether she's more
5 likely or less likely. As long as she can be fair and fairly
6 consider the evidence and follow the law, that's all that's
7 required.

8 THE COURT: Sustained.

9 Q. BY MR. HIGH: Which way do you lean; towards a life
10 sentence or a death sentence?

11 MS. FALCO: Your Honor --

12 A. **Depends on the case. I can't answer that.**

13 Q. BY MR. HIGH: We're talking about a double homicide
14 case.

15 A. **Which way I would lean?**

16 MS. FALCO: Your Honor, I object to improperly
17 trying to commit this juror to a particular verdict one way or
18 another. As long as she can fairly consider the law and give
19 a life sentence if the facts were appropriate, and give a
20 death sentence if the facts were appropriate.

21 THE COURT: I tell you what, I'll overrule the
22 objection, if it's something she can answer.

23 A. **I was being -- I can't answer that, which way I
24 would lean. I would have to consider -- I would have to see
25 what the case is -- how the case is presented, or what's**

1 **presented in the case.**

2 Q. BY MR. HIGH: My observation is you don't seem to
3 have any hesitation in rendering a death sentence. Is that a
4 correct observation?

5 A. **I would -- it wouldn't be something I could just
6 quickly conclude. It would be something I would definitely
7 have to think long and hard and the way the circumstances --
8 it would not be something I can conclude quickly, no.**

9 Q. Okay. Now, let me ask you this. One thing about
10 your questionnaire that I need to explore with you, and it
11 says regarding your jury service, and you circled when I make
12 up my mind, I rarely change it. And you strike me as that
13 kind of person. You strike me as very decided, and you've got
14 a goal, and you're going to go for it, and you're going to
15 accomplish it, okay.

16 A. **Yes, but --**

17 Q. You're goal-driven and task-oriented?

18 A. **I am. But I'm not close minded. I'm very open to
19 what suggestions and what facts can be presented. It's not
20 where I'm just narrow minded. I mean, but when I do make a
21 decision, usually I stick to it.**

22 Q. Okay. I'm sure you would take time to listen to
23 both sides in the case?

24 A. **Uh-huh, I would.**

25 Q. You'd do that, wouldn't you?

1 A. **Yes, of course.**

2 Q. Okay. You wouldn't make a decision until we
3 presented a case or didn't present a case? You'd wait until
4 all the evidence was there?

5 A. **Oh, of course, yes.**

6 Q. And with respect to a decision -- with respect to
7 life or death, you would follow the capital law -- capital
8 murder procedure and go through the questions. You're not
9 going to decide this person should die or this person should
10 live?

11 A. **No, I would follow the law. I would follow the
12 directions given to me.**

13 Q. Okay. Let me ask you this: Let's say -- are you
14 the type of person, I don't think you are, but you wouldn't
15 make a decision that this person should die, and then answer
16 the questions and then figure out the way I answer these
17 questions is not going to accomplish a death sentence, so --

18 A. **No, I would -- I would consider both special issues
19 after -- if it's a yes to the first one, I would move on to
20 the second one. But, I would be the kind of person that would
21 dissect each of the phrases in there, and just make sure that
22 I answer it with the facts that I have and what my feelings on
23 it.**

24 Q. Okay. And I don't mean to step on your toes, but I
25 want to get real specific, okay? If the answer was yes to the

1 future dangerousness question and we moved to the mitigation
2 question, and you considered the mitigation, decided that
3 there were sufficient mitigating circumstance, so the answer
4 is yes?

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

6 Q. Then that mean that his life is spared -- the
7 defendant's life is spared, you wouldn't then -- if you
8 thought a death sentence was appropriate in your heart, you
9 wouldn't vote to -- for a different answer, would you, even
10 though the evidence showed the answer should be yes?

11 A. **No. I wouldn't change my answer to meet what I
12 would -- you know, if I felt what was in my heart was the
13 right answer. If there were substantial evidence from what I
14 saw --**

15 Q. Okay.

16 A. **-- that met the mitigating circumstances, if that
17 was yes, then I would.**

18 Q. And you'd be fine with that?

19 A. **Oh, yes.**

20 Q. And if the answer was no, you'd be fine with that?
21 If the answer is no mitigation, means a death sentence, you'd
22 be fine with that?

23 A. **Yes.**

24 Q. Okay. You indicate that criminal defense attorneys
25 have the responsibility of submitting evidence and the goal of

1 proving his or her client is innocent.
 2 **A. Did I say that?**
 3 Q. Huh?
 4 **A. Did I say that?**
 5 Q. Yeah.
 6 **A. The defense?**
 7 Q. I'll let you see it.
 8 **A. I don't know why I said that. I knew that the**
 9 **burden was on the State to prove the defendant being guilty.**
 10 Q. Okay.
 11 **A. All I can think of is at that time perhaps I was**
 12 **thinking the defense attorneys would have to -- if the**
 13 **prosecuting attorney presented some evidence, then the defense**
 14 **attorneys would have to -- I guess for lack of a better**
 15 **word -- try to prove it otherwise.**
 16 Q. Okay. I just wanted to ask you a couple of
 17 questions about it. You understand we don't have any burden
 18 at all?
 19 **A. I understand that now, yes.**
 20 Q. Okay. In fact, we could just sit here and not do
 21 anything as long as we're orderly and we're here, okay?
 22 **A. But I wouldn't -- I wouldn't expect that, though.**
 23 Q. You wouldn't expect that, would you?
 24 **A. No.**
 25 Q. You'd expect us to do something, ask some questions,

1 okay. You'd expect us to, right? Did you see "My Cousin,
 2 Vinny?"
 3 **A. I saw it. I remember parts of it.**
 4 MR. GOELLER: Two "yutes."
 5 (Laughter.)
 6 Q. BY MR. HIGH: Obviously, you're not going to expect
 7 us to do something we have no legal responsibility to do, are
 8 you? You're not going to require us to prove this young man
 9 innocent, are you?
 10 **A. No, not if the law says that you don't have to prove**
 11 **anything.**
 12 Q. Okay.
 13 **A. I understand that now from last week.**
 14 Q. Okay. And I could be comfortable that you're not
 15 going to require us to do something, even if we do
 16 something --
 17 **A. I wouldn't require you to. I would be surprised if**
 18 **you didn't.**
 19 Q. Here's a question. The Constitution says an accused
 20 citizen does not have to testify on his or her own behalf.
 21 How do you feel about this Constitutional privilege? I
 22 support this privilege. Obviously, that goes along with not
 23 doing anything, okay. We don't have a burden to do anything.
 24 **A. Okay.**
 25 Q. And we certainly don't have the burden to testify,

1 to put our client on that witness stand. We don't have to do
 2 that if we don't want to. If we feel like the case is going
 3 along just fine without us doing anything, if we feel like the
 4 State hasn't proven the case, we sure don't want to help them
 5 do it, okay? And we sure don't want to mess up something
 6 that's going good for us as it is. Do you understand that way
 7 of thinking?
 8 **A. I do.**
 9 Q. Okay. With respect to the client -- or the
 10 Defendant not testifying, the Fifth Amendment says you have a
 11 right not to testify. You have that, too. And you indicate
 12 you support the privilege. To what extent? I understand you
 13 probably want to hear from the Defendant. That's human
 14 nature; most people do. But I anticipate that the Judge will
 15 instruct you at the end of the trial that the Defendant has an
 16 absolute right not to testify, and his choosing not to testify
 17 is not a circumstance to be held against him. You wouldn't do
 18 that, would you?
 19 **A. No, I would not hold that against him.**
 20 Q. Okay. Do you have any questions of me? Anything
 21 that I've stirred in your mind that you need an answer to?
 22 **A. No.**
 23 **Will you decide -- will y'all decide whether I would**
 24 **be a juror today or not?**
 25 Q. Yeah.

1 **A. Okay.**
 2 Q. Yeah. At the end of questionnaire, it's 13 pages --
 3 14 pages long, and right below where you told us you wanted to
 4 be a juror in the case, there's a place to sign it. You
 5 didn't sign it?
 6 **A. Oh. You know, I was thinking back. I said I**
 7 **wondered if I signed that thing. I couldn't remember if I**
 8 **did. I think I came back because there was one question that**
 9 **I really had to think long and hard about, and I skipped to**
 10 **the witnesses list. And when I came back to answer it, I**
 11 **realized I didn't sign it.**
 12 **Do you need me to sign it?**
 13 Q. No, not really. I just wanted -- it's got a
 14 comment here right above. It says I declare under penalty of
 15 perjury that all of my answers in the questionnaire are true,
 16 correct and complete to the best of my knowledge. Just kind
 17 of an oath type thing.
 18 **A. Yeah.**
 19 Q. And I just wanted to make sure there wasn't
 20 something about an oath.
 21 **A. No. I simply forgot to sign it. It wasn't anything**
 22 **intentional.**
 23 Q. Fair enough, okay.
 24 Back to college. Did you -- how did you go to UT?
 25 Did your parents pay for it?

1 A. Uh-huh.
 2 Q. Did you have to work while you were in college?
 3 A. I worked two summers. I didn't have to pay with my
 4 work money.
 5 Q. Okay. You just had summer jobs?
 6 A. For spending money, yeah.
 7 Q. Okay. All right. Well, I've certainly enjoyed
 8 visiting with you and appreciate your candor, and I hope I
 9 didn't get too personal at times and look forward to -- if you
 10 sit on the jury, look forward to working with you.
 11 MR. HIGH: Judge, that's all the questions I
 12 have, so I'm going to pass the juror back to the State.
 13 THE COURT: Ms. Elfstrom, we're going to ask
 14 you to step down for a minute, and we'll have you back in in
 15 just a minute.
 16 VENIREPERSON: Okay.
 17 THE COURT: All right. What says the State?
 18 MS. FALCO: This juror is acceptable to the
 19 State, Your Honor.
 20 MR. HIGH: We're going to need a second,
 21 Judge.
 22 (Pause in proceedings.)
 23 MR. HIGH: Judge, if it please the Court, this
 24 is Peremptory Number 9.
 25 THE COURT: All right. Ms. Elfstrom is

1 stricken by the Defendant. Let's invite Jenny Craig to come
 2 in.
 3 THE BAILIFF: Yes, Your Honor.
 4 THE COURT: Yeah, was there something?
 5 MR. SCHULTZ: Is there any chance the attorneys
 6 could confer, not likely that (inaudible), but we wanted to
 7 discuss this juror. You don't need to leave. Could we just
 8 confer for a moment before we bring her in?
 9 THE COURT: Sure.
 10 (Pause in proceedings.)
 11 MR. SCHULTZ: Here's the situation. Two of the
 12 three of us here at the State's table have church things
 13 tonight, again, which is maybe more important than ordinary.
 14 And Mr. Goeller has courteously agreed that he won't nickel
 15 and dime us over the same lawyer that examined the juror has
 16 to be the same one objecting and making announcements and that
 17 kind of thing. So, I assume that's all right with the Court,
 18 as long as they don't care.
 19 THE COURT: All right.
 20 MR. SCHULTZ: So we need to figure out -- we've
 21 got to figure out our orders of departure, because they're
 22 different, and then we'll figure out who the lucky one is
 23 going to be to start. But we'll know that by the time she
 24 gets in.
 25 THE COURT: It could be this witness will go so

1 fast all this will be mooted.
 2 MR. SCHULTZ: That's always possible.
 3 (Venireperson enters the courtroom.)
 4 THE COURT: Ma'am, are you Jennifer Craig?
 5 VENIREPERSON: Yes.
 6 THE COURT: I just want to remind you that
 7 about three weeks ago I placed all the jurors under oath, and
 8 the oath was to truthfully respond to all the questions
 9 propounded to you. Do you remember that?
 10 VENIREPERSON: Uh-huh.
 11 THE COURT: All right. Then you're still under
 12 oath. Please be seated.
 13 THE COURT: Ms. Lowry.
 14 DIRECT QUESTIONS
 15 BY MS. LOWRY:
 16 Q. Hi, Ms. Craig. It's getting pretty late in the
 17 afternoon, and I apologize for that.
 18 A. Right.
 19 Q. I just want to reintroduce myself. My name is Jami
 20 Lowry. I'm one of the Assistant District Attorneys in Collin
 21 County. Seated to my right is Gail Falco, who is a chief
 22 prosecutor for one of the courts here. Seated to her right is
 23 Bill Schultz, who is -- well, going to be seated to her right
 24 is Bill Schultz, who is the First Assistant in our office.
 25 Seated directly to my left is the Defendant, Ivan

1 Cantu, and one of his attorneys, Don High, will be sitting in
 2 the middle and will be coming back in in a few minutes, and
 3 his other attorney is Matt Goeller.
 4 MR. GOELLER: Ma'am.
 5 Q. BY MS. LOWRY: They're both private practitioners in
 6 Plano.
 7 And as I recall from last week, you don't know any
 8 of us; is that correct?
 9 A. Correct.
 10 Q. Just to explain a little bit to you about the
 11 process, we do individual voir dire like this because it's
 12 supposed to make you feel more comfortable. You're kind of
 13 sitting there with the six of us looking at you, asking you
 14 questions, talking to you, so it may not be as comfortable as
 15 you might like. But we do this so that you can feel free to
 16 express your ideas, your feelings, any opinions that you might
 17 have, because that's what we need to know. We need to try to
 18 get to know the best that we can in the little bit of time
 19 that we have, okay?
 20 A. Okay.
 21 Q. All we ask you to do is just to be really honest
 22 with us. Tell us anything that you think, whether you think
 23 it sounds good or bad, or right or wrong. There are no right
 24 or wrong answers; no good or bad answers. We just need to
 25 know how you feel about everything. Okay?

1 A. Okay.

2 Q. Just to begin with, before you came -- when you
3 came in back on, I guess it was, August 21st, that Tuesday
4 when you came in at first, did you feel like there was
5 something different about this jury service than any other
6 jury service?

7 A. No. I've never been called for jury duty.

8 Q. When was it that you realized how serious this
9 process was going to be?

10 A. The questionnaire.

11 Q. Pretty much they asked you what's your name, where
12 do you live, what do you think about the death penalty?

13 A. Uh-huh.

14 Q. What were your thoughts at that time? How did
15 that -- what was going through your mind, I guess?

16 A. In filling out the questionnaire?

17 Q. Uh-huh. Or when you found out that they were
18 wanting to know how you felt about the death penalty?

19 A. Probably just answering truthfully and thinking
20 about, okay, you know, if I answer it now without thinking too
21 long about it. That's probably my initial answer.

22 Q. And they don't give you a lot of time to contemplate
23 what you think about it, and certainly we realize that there's
24 a difference in sitting around your living room and talking
25 about the death penalty in the abstract and what you think

1 intentions were as far as this case goes? Do you recall her
2 talking to you about that?

3 A. Yes.

4 Q. Do you recall her telling you that what we intended
5 and what our purpose was to present evidence to this jury that
6 proved to them beyond a reasonable doubt that this Defendant
7 was guilty of capital murder, and that our further purpose was
8 to, you know, with that evidence, along with any evidence that
9 may come in at the punishment phase, to bring you enough
10 evidence to make it where the answer to the first question
11 was, beyond a reasonable doubt, "yes," and the answer to the
12 second question was, "no, there's no mitigating evidence," and
13 that a death penalty be rendered?

14 And it was further our intention that at some point
15 in the future that an execution date be set, that this
16 Defendant be taken down a hallway, strapped to a gurney and
17 injected with a lethal substance. How did you feel about that
18 when she was talking to you about that?

19 A. I probably thought if all of that came to be, then
20 all of the evidence would have pointed in that direction and
21 that was the sentencing that was felt appropriate.

22 Q. And certainly you understand that she didn't do
23 that to be dramatic or --

24 A. Right.

25 Q. -- to be gruesome, or anything of that nature. Just

1 about it, things of that nature. There's a difference in that
2 and coming in and saying, okay, this is the process, and we're
3 asking you to be a part of it. Do you agree with that?

4 A. Yes.

5 Q. Have you given it any thought since you left since
6 you filled out the questionnaire about your thoughts on the
7 death penalty?

8 A. Some, probably not a lot -- I mean, I haven't
9 dwelled on it.

10 Q. Is there anything that's changed about how you feel
11 about the death penalty, whether or not you could be a part of
12 this process?

13 A. No, nothing has changed.

14 Q. What are some of the reasons that you're in favor of
15 the death penalty?

16 A. Probably my biggest reason would be if -- in cases
17 where that is a form of punishment or sentencing, if that
18 has -- if the case comes and the defendant is guilty and that
19 is the punishment that's been delivered, then, you know, I
20 sort of, in my mind, accept that and say, you know, then that
21 has been viewed as -- or deemed appropriate. And so I
22 don't -- I mean, I don't go back and say, no, under no
23 circumstances is it not an option.

24 Q. Do you recall the hypothetical -- or when Ms. Falco
25 talked to y'all last Tuesday when she told you what our

1 basically so that the people in the courtroom that were being
2 asked to be a part of this process could face the reality that
3 this isn't just talking about it abstractly in your living
4 room?

5 A. Correct.

6 Q. We know certainly you didn't get up this morning,
7 and think, wow, today I'm going to get to go down to the
8 courthouse, and I could be a part of a process that's going to
9 end up killing somebody?

10 A. Correct.

11 Q. And we agree with that. And we also understand
12 that, you know, most people probably when they come in think,
13 you know what, I hope that as we go through the trial, if I am
14 picked for this jury that the evidence is of such a nature
15 that this person doesn't have to be put to death?

16 A. Correct.

17 Q. Do you think you might have felt -- I mean, that you
18 felt that way?

19 A. I don't think anybody or myself would wish that that
20 would be the outcome, no.

21 Q. The death penalty?

22 A. Correct.

23 Q. And that's natural. I mean, we don't -- I think it
24 would make everybody in here a little bit nervous if they had
25 somebody up there that said, yes, I hope this person ends up

1 having to die, and that's natural, and that's certainly what
 2 we're -- we're glad to hear somebody that wants that.
 3 Let's talk about just the process in general. I
 4 know that whenever that question was asked on the
 5 questionnaire, you know, what your thoughts are about the
 6 criminal justice system, that one of the most frequent answers
 7 was that it takes too long. Do you feel like this process, I
 8 guess the parts you've been a part of so far, do you feel like
 9 we're taking too much time, or maybe going too into detail or
 10 being too cautious with this process?

11 A. No.

12 Q. If you had a choice, would you be on this jury?

13 A. I don't think that's a yes or no answer. I think
 14 it's more a matter of if I was selected would I be willing to
 15 do it? Of course. To say that I want to do it, I don't know.
 16 I don't think anybody really wants, you know, to do that, but
 17 it is part of what we do, and so you leave it to the selection
 18 process, and say if they feel it's appropriate -- you know, if
 19 they feel I'm the right person, then I'm selected. And if
 20 not, I wasn't.

21 Q. Because there are certainly people that come in and
 22 say, you know what, my job is more important, my family,
 23 everything that's going on in my life right now is just so
 24 much more important than what we're doing here that I just do
 25 not want to be on this jury, and I couldn't give it my full

1 attention.

2 A. Uh-huh.

3 Q. That's what we want to make sure with the people
 4 that we talk to, that you can give this trial your full
 5 attention. We know that it's going to inconvenience your
 6 personal, your work life, things like that. We just need to
 7 know that you're going to give it your full attention and take
 8 it as seriously as it needs to be taken, okay?

9 A. Okay.

10 Q. Just to go over a little bit of what the process is
 11 going to be, the first part of the trial -- we have bifurcated
 12 trials in criminal laws (sic) in Texas. And what that means
 13 is you have a guilt-innocence phase where you determine
 14 whether or not the person is guilty or innocent, and then you
 15 have a punishment phase. Most of our questions are going to
 16 be geared towards your views on the punishment phase and the
 17 death penalty itself, not because the guilt-innocence phase is
 18 any less important or we think there's definitely going to be
 19 a guilty or anything like that. But it's just that we have to
 20 kind of focus on the ultimate issue because we have such
 21 limited time; does that make sense?

22 A. Yes.

23 Q. I guess my main question, as far as the
 24 guilt-innocence phase is you understand now what capital
 25 murder is; is that right?

1 A. Yes, ma'am.

2 Q. As far as, like, burglary with a murder and robbery
 3 with a murder, do you feel like those cases are appropriate
 4 cases where the death penalty should be an option?

5 A. Yes.

6 Q. And also the killing of two people in the same
 7 course or transaction, do you feel like that's an offense that
 8 should have the death penalty as an option?

9 A. Yes.

10 Q. And if the evidence was such presented by the State
 11 that it was proved to you beyond a reasonable doubt that the
 12 person committed these acts, could you find someone guilty of
 13 capital murder?

14 A. Yes.

15 Q. And you know, of course, that the burden of proof
 16 during the guilt-innocence phase is on the State, and it's our
 17 burden to prove to you beyond a reasonable doubt the guilt of
 18 the Defendant?

19 A. Correct.

20 Q. And you'll be able to hold us to that burden and
 21 follow the law and make sure that we present the evidence to
 22 you in a way that it would prove it to you beyond a reasonable
 23 doubt?

24 A. Yes.

25 Q. You're not going to put any kind of burden on the

1 Defense to prove anything to you, to bring you any evidence,
 2 or that the Defendant testify, are you?

3 A. No.

4 Q. Now, I want to talk to you about the punishment
 5 phase. We have what we call special issues, the first of
 6 which is the one that's on the bottom. Can you see that from
 7 where you're sitting?

8 A. Uh-huh.

9 Q. If you'll just read that to yourself and refresh
 10 your memory.

11 A. Okay.

12 Q. We call this question the future danger question,
 13 because that's going to be the first question that you come
 14 to, and this is all assuming that you found the person guilty
 15 of capital murder. This question kind of focuses on a
 16 person's kind of propensity for dangerousness, you know,
 17 whether or not they are going to be dangerous or not. There
 18 are several words that are in this question that are not
 19 defined, and you won't be getting a definition to if you're
 20 seated on this jury.

21 The juror's job is to take the evidence that's
 22 presented to them and decide for themselves what evidence is
 23 important in answering this question and what they think the
 24 definitions of these undefined words should be. Does that
 25 make sense?

1 A. Uh-huh.

2 Q. The first word that is undefined is "probability,"
3 and what the law intends by the word "probability" is that
4 it's more than a mere possibility; certainly less than a
5 certainty because it doesn't ask for a certainty. Some people
6 that have mathematical minds, deal with math, things of that
7 nature might assign some kind of percentage to the word
8 "probability." I think most people that have come in and said
9 what probability means to them is that it's more likely than
10 not, or that there's some kind of likelihood. What, in your
11 mind, is the definition of probability?

12 A. More likely than not.

13 Q. And is that a word that you think can, you know,
14 have a common-sense definition for if you were asked to answer
15 that question?

16 A. Yes.

17 Q. The next part of that sentence that's not going to
18 be defined for you is criminal acts of violence. Certainly I
19 think most people are in agreement that rape, murder, somebody
20 beating up somebody else, somebody beating on their wife,
21 things of that nature are certainly criminal acts of violence.
22 Do you agree with that?

23 A. Correct.

24 Q. I think it gets a little fuzzier when you talk about
25 property, talk about somebody, you know, getting angry at

1 "society." We know that it definitely includes prison
2 society, because if you get to this question, a defendant has
3 been found guilty of capital murder. And as you know, the
4 only two
5 options at that point are life or death.

6 So when you talk about society, you know you're
7 certainly going to talk about prison society. Or another
8 interpretation of the word "society" is that it could mean all
9 of our society. We certainly know from past events that
10 people can escape from prison, the law can change, and it
11 certainly can include more than just prison society. What do
12 you think -- or when you think of the word "society," what
13 does that mean to you?

14 A. I think of it as society as a whole. I think of it
15 as -- my first thought is not of prison society, but as a
16 society that we live in here.

17 Q. Because certainly it doesn't ask you, you know, can
18 this person safely be held in prison? Can we confine this
19 person and control them enough to where the only society they
20 ever touch is the prison society again?

21 A. Uh-huh.

22 Q. Now, as a juror you're free to consider the evidence
23 that comes in, and the way that you feel is appropriate in
24 answering this question. What we need to know as far as you
25 being qualified as a juror is can you keep an open mind to the

1 another person, going over and taking a baseball bat to their
2 car, or maybe throwing rocks through their windows, things of
3 that nature. Taking their anger out on a person's property.
4 Do you feel like those are considered criminal acts of
5 violence, or would you consider them acts of violence?

6 A. Yes.

7 Q. And I guess it gets even fuzzier still when you talk
8 about things like drugs, a person selling drugs, a person
9 dealing drugs. I think some people think that taking drugs
10 might be doing violence to your body. Some people feel like
11 selling drugs, taking drugs leads people to be more
12 aggressive, maybe be persons that they aren't usually, maybe
13 steal, things of that nature. Would you see selling drugs or
14 using drugs as an act of violence, either in and of itself, or
15 maybe for what it might cause?

16 A. Possibly for what it might cause. Probably not in
17 and of itself.

18 Q. And in answering that question, do you think it's
19 helpful to know maybe things about a person's background,
20 things like that, to kind of let you know --

21 A. Yes.

22 Q. -- whether or not they have a probability of
23 committing those acts?

24 A. Yes.

25 Q. And the last word that's not defined is that word

1 evidence that comes in when you're answering this question?

2 A. Yes.

3 Q. Because certainly by the Legislature coming up with
4 this question and presenting to juries that have found someone
5 guilty of capital murder they have necessarily envisioned, in
6 their mind, a situation in which a person might be guilty of
7 capital murder, yet not necessarily a future danger. Does
8 that make sense?

9 A. Yes, it does.

10 Q. And an example, I think that was used, was the
11 father who goes out and kills the murderers of his child
12 because they got off on some technicality. Certainly if he
13 kills the two murderers, he may be guilty of capital murder,
14 but he may not necessarily be a future danger. This may be
15 one isolated incident where you can certainly see why he
16 committed this act, and there may be no reason whatsoever to
17 think he would ever do anything like this again. Does that
18 make sense?

19 A. Yes.

20 Q. And the question is, can you keep an open mind and
21 understand that you need to, I guess, fairly weigh the
22 evidence in answering this question, and not just
23 automatically answer it yes because you found somebody guilty
24 of capital murder?

25 A. Yes.

1 Q. The burden of proof on this first question is on
2 the State, and it is also beyond a reasonable doubt. The
3 State has to bring you evidence to prove to you beyond a
4 reasonable doubt that the person is a future danger. If the
5 evidence isn't there, if it's not proven to you beyond a
6 reasonable doubt, it's required that you answer the question
7 "no," and that's something that you can do if you're not
8 convinced beyond a reasonable doubt that a person is a future
9 danger. Can you answer that question no?

10 A. Yes.

11 Q. When you're dealing with question -- the question
12 like future danger is -- has frequently happened that
13 psychiatrists or psychologists are used for testimony on that
14 field. Do you feel like that testimony would be something
15 that would be important to you?

16 A. Possibly.

17 Q. Could you envision, I guess, a circumstance where a
18 defendant could bring a psychiatrist in to say he's a
19 wonderful person, he's not ever going to do this again, he's
20 not a future danger. And in turn, the State could bring in
21 someone to say, yes, he is a future danger. He is not a
22 wonderful person. He is going to do this again. Do you see
23 how that could happen?

24 A. Yes.

25 Q. Do you think that you could answer this question

1 just purely by your evaluation and not necessarily needing the
2 psychiatric testimony?

3 A. Yes.

4 Q. Certainly, it's kind of like if you go to the
5 circus. You see a tiger out in the middle of the circus ring.
6 All the sudden, the tiger breaks loose and starts coming out
7 towards the crowd. You certainly don't need some specialist
8 or veterinarian or somebody to come out and say, you know
9 what, that tiger could be dangerous. That's kind of what
10 we're asking here. Is that some determination or evaluation
11 you could make on your own?

12 A. I could.

13 Q. Do you think it's possible for someone to commit
14 such a horrible crime, or such a, I guess, horrible murder
15 that that person would automatically be a future danger, or
16 because of the way he committed the crime would be a future
17 danger?

18 A. Automatic? I don't know.

19 Q. And you would make that determination based on the
20 evidence that had been presented?

21 A. Yes, on the facts, the evidence.

22 Q. In answering this question it takes a unanimous
23 "yes" answer, that means all the jurors have to answer yes
24 before you move on to the next question. If all the jurors
25 answer yes, you're still in the process of assessing the death

1 sentence, and then you go on the third question. It takes ten
2 jurors to answer the question "no," and if the question is
3 answered "no," then that's a life sentence. Does that make
4 sense to you?

5 A. Yes.

6 Q. There was a special issue, number two, that we're
7 not sure whether or not the evidence is going to make that
8 question something that's necessary or not. So mainly we're
9 skipping to the third question because we know that's
10 something that you're going to get to.

11 A. Okay.

12 Q. That third question is what we call the mitigation
13 question. If you want to take a minute to re-read that, just
14 to refresh your memory?

15 A. Okay.

16 Q. This question kind of gives the jury a chance to
17 kind of look back. It's like the one-last-look question.
18 Maybe some people refer to as the "humanitarian question,"
19 because it gives the jury an opportunity to look at the
20 evidence and look at everything kind of as a whole, and see if
21 there's anything about the circumstances of this offense, or
22 maybe this Defendant or the circumstances of the Defendant
23 that would warrant a life sentence rather than a death
24 sentence. Do you see how that question gives you that
25 opportunity?

1 A. Yes.

2 Q. Do you like the fact that question gives the jury
3 that opportunity?

4 A. Yes.

5 Q. What you as a juror have to be able to do is keep an
6 open mind to the fact that there is possible mitigating
7 evidence, enough out there, that it could be sufficient to
8 warrant a life sentence, rather than a death sentence. Does
9 that make sense?

10 A. Yes.

11 Q. We ask you the same thing on this. You give the
12 evidence the weight you want it to have. You decide what's
13 mitigating and what's aggravating, because certainly there's
14 not going to be any list of "this is mitigating evidence," or
15 "this is mitigating evidence," or anything like that. That's
16 going to be completely up to you to decide what you think is
17 mitigating, and how mitigating you think it might be. Does
18 that make sense?

19 A. Yes.

20 Q. Is that something you can do as far as evaluating
21 the evidence in answering this question?

22 A. Yes.

23 Q. When you look at this question that talks to you
24 about -- or asks you to take into consideration the
25 circumstances of the offense, the defendant's character and

1 background, the defendant's moral culpability. Do you feel
2 like this question asks you at all to take into account the
3 victim's character?

4 A. No.

5 Q. It doesn't really point you to taking that into
6 consideration, and take -- points you to the circumstances of
7 the offense itself, but it doesn't really ask you to look at
8 the victim. Is that kind of how you read it?

9 A. Correct.

10 Q. Does it matter to you what the character of the
11 victim is, or who the victim is?

12 A. No.

13 Q. So, you know, if someone goes out and murders the
14 nun who's praying inside the church, versus someone who goes
15 out and murders a drug dealer who's down on the street selling
16 drugs to our kids. Does that make any difference to you as
17 far as the acts of the Defendant go?

18 A. No, same (inaudible.)

19 Q. It also asks you to take into consideration the
20 defendant's character and background. What kinds of things do
21 you think are important to consider when you're looking at
22 that?

23 A. History, home life, possibly education. Those are
24 the main ones.

25 Q. Ma'am?

1 A. Those are the main ones; history, home life,
2 possible education.

3 Q. Do you think a person's, I guess, upbringing or
4 their home life is something that's important in understanding
5 maybe why they do things or don't do things?

6 A. Can be.

7 Q. Do you think it's an excuse for why they do things?

8 A. No.

9 Q. Certainly we all know people who have grown up in
10 the worst situation. I mean, they had no one to love them,
11 support them. Maybe had no chances whatsoever in life, but
12 still turned out to be okay.

13 A. Right.

14 Q. And we all have heard of people who grew up in the
15 greatest of circumstances, had every opportunity in the world,
16 had everybody that loved them and still turned out to be bad?

17 A. Correct.

18 Q. What about something like drugs -- people who take
19 drugs? Some people might say that, you know, if a person is
20 taking drugs, they're doing things that they wouldn't normally
21 do, or they're acting like they wouldn't normally act. If
22 they hadn't been on drugs, they would have never done this.
23 How does that argument sit with you?

24 A. My response would probably be they -- you know the
25 risks you're taking when you do that. You know -- and I mean,

1 we all know, you know, that there are risks in taking drugs.

2 Q. Certainly we've been taught since we were little
3 everything that can happen from doing that.

4 And that's just a perfect example of how one person
5 might find that mitigating. One person might say, well, that
6 explains it. They wouldn't have done it if they hadn't been
7 on drugs, whereas you might find that aggravating because you
8 know what's going to happen if you take drugs.

9 A. Correct.

10 Q. That's up to you as a juror to decide, you know,
11 what you think is mitigating and what you think is
12 aggravating.

13 A. Okay.

14 Q. Overall, this question talks to you about mitigation
15 of the defendant. I think certainly every person walking
16 around has some things maybe in their past that they can point
17 to that they can say, well, this thing happened to me, and
18 this thing happened to me, and that's all bad. Maybe that's
19 why I did some of the things I did. Do you think most people
20 can probably point to something here and there that was bad
21 that happened in their life?

22 A. Sure.

23 Q. One of the good examples of that is -- that we've
24 been using a lot is Adolf Hitler. Everybody knows the
25 horrible things he's done, and, you know, how wrong -- just

1 all the people he's killed. But when you look at Hitler, and
2 you look at his youth, there were a lot of bad things that
3 happened to him. His growing up -- you know, his whole
4 purpose towards the end of his life is just to kill all the
5 Jewish people.

6 He grows up -- his father is, basically, an
7 illegitimate child, argued to be the son of a Jewish man. His
8 mother contemplated having an abortion, and I think told him
9 on several occasions that she contemplated having an abortion.
10 His father was pretty strict on him, pretty authoritative to
11 him, not real proud of him because he wasn't quite the son
12 that he wanted him to be, things of that nature, and I think
13 even, on occasion, beat his mother and him several times. I
14 know some of the history books say that at one point, I think
15 his father beat Hitler so bad he thought he killed him one
16 time. There are certainly things that are in his life that
17 are really bad that could have made him turn out the way he
18 did.

19 You know, as he got older, he was wanting to go to
20 art school, wanted to be a painter, got kicked out of art
21 school, was told he was no good at that. His whole life was
22 basically one big failure until he got into the Army.

23 You can certainly look at that and say, well, you
24 know what, all those things were really bad. He just really
25 never had a chance, really never had anybody that loved him,

1 really never had any breaks. But is that all something, when
2 you look at that as a whole, that would be sufficient to
3 warrant a life sentence? And most people -- I think everybody
4 says, no, there's no way, because all those things were bad,
5 and you can see why, you know, maybe some of the ways that he
6 turned out, where that came from, still there's no way that
7 can be mitigating for what he did. Does that make sense?

8 **A. Yes.**

9 Q. And that's what this question is asking you to look
10 at, is just you take the mitigating evidence, if you feel like
11 there even is any, and decide whether or not it's sufficient
12 to give this person life or death. And is that a question
13 that you think you can fairly evaluate the evidence and answer
14 that question?

15 **A. Yes.**

16 Q. There's not a burden of proof on this question. You
17 know, it's not up to the State to bring you evidence that
18 says, no, there's no mitigating evidence. It's not up to the
19 Defense to bring you evidence that says, yes, this is
20 mitigating. It's just what you determine based on all the
21 evidence?

22 **A. Correct.**

23 Q. Now, along with the mitigation stuff you're going
24 to probably -- when you talk about Defendant's character and
25 background -- you're a mother. You have two children, right?

1 **A. Correct.**

2 Q. Certainly if they grow up, get older, for some
3 reason get in trouble with the law, you're still going to love
4 them and still going to care about them?

5 **A. Right.**

6 Q. You know, probably even if they had to go to trial,
7 would go to trial and say, I love my child and I did the best
8 I could to raise him right. You know, I still love him. Is
9 that safe to assume?

10 **A. Yes, right.**

11 Q. And you can probably think that in a case like this,
12 that's this serious, that a defendant might have family
13 members or loved ones that are going to come in and say the
14 same thing, we love him so much, he's a wonderful person,
15 please don't execute him. Can you imagine how that would
16 happen?

17 **A. Yes.**

18 Q. How would you feel about that, or how would that
19 appeal to you?

20 **A. Well, I'll think about it in -- myself, in**
21 **relationship to my kids, and I think as a parent, or as a**
22 **member of a family, you don't ever stop loving them or caring**
23 **about them. However, does that -- I mean, would you -- it's**
24 **separate from approving of what they do. It's separate from**
25 **them being responsible for their own actions, but it would be**

1 **more weird to me if they didn't still care about somebody and**
2 **love somebody. I think your family should stand by you. I**
3 **mean, in that sense your family should continue to love and**
4 **support you. That's your family.**

5 Q. Would you find it important still to look, you know,
6 at the circumstances of the offense, at the Defendant, kind of
7 separately from the fact that, of course, you know his family
8 is going to love him?

9 **A. Yes.**

10 Q. Have you ever heard the saying, "There are no
11 atheists in fox holes?"

12 **A. No.**

13 Q. Can you imagine what that might mean?

14 **A. I've never heard it, so probably off the top of my**
15 **head I'd go, what, what does it mean?**

16 Q. Just in talking about it, you can imagine the fox
17 holes are on the front line of a war. They're the ones that
18 are up there that are taking the brunt of it. Some people say
19 that, you know, when you get put in that situation, if you're
20 going to believe, this is time to --

21 **A. Time to do it.**

22 Q. -- do it.

23 **A. Okay.**

24 Q. Could you imagine that, you know, put in that
25 situation and, you know, needing to feel like there's

1 something, you know, besides just dying, how people, you know,
2 could turn to God and say, you know what, I'm a believer faced
3 with a situation like that?

4 **A. Sure. I mean, it would be easy to say, yeah, at a**
5 **critical time or given the right circumstances or situation,**
6 **yeah, anybody can probably say something like that.**

7 Q. And could you imagine that maybe people that walked
8 away from that situation kind of forget that promise that
9 they've made whenever they get back home --

10 **A. Yes.**

11 Q. -- to their comfortable lives, things like that?

12 **A. Yes.**

13 Q. Could you see how that might correlate to a
14 situation like this, where you have a person who is faced with
15 life or death basically and that's kind of what they're
16 looking at, how they might be in the same position?

17 **A. Possibly.**

18 Q. Have you ever heard the term "jailhouse conversion"?

19 **A. Yes.**

20 Q. Could you imagine in a case like this where you
21 might see something like that?

22 **A. Yes.**

23 Q. How would you feel about that?

24 **A. You would have to -- I think you would have to look**
25 **at all of the facts and weigh it and say, you know, is this**

1 **just words, or would -- how do your actions speak, or is it**
 2 **just a verbal thing that really isn't substantiated by**
 3 **anything else.**

4 Q. Does that, in your mind -- or would that, in your
 5 mind, take away from what they've done?

6 A. **No. It doesn't -- you know, it's easy to say that,**
 7 **but I don't think that washes away, or erases what has**
 8 **happened.**

9 Q. Would you be somewhat skeptical of something like
 10 that, just because of the circumstance?

11 A. **Possibly.**

12 Q. Let's talk just a little bit about, I guess,
 13 different circumstances of offense -- offenses, things of that
 14 nature. Let's say you have a person who decides they just --
 15 you know, just want money, just tired of working. They're
 16 just going to get it the easy way. They go find some random
 17 convenience store and decide they're just going to go in and
 18 rob it. They go in, take all the money, don't want any
 19 witnesses, so they kill the clerk.

20 Distinguish that with a person who, let's say,
 21 decides basically the same thing; that they want money, they
 22 don't want to work for it, but they know that their friend and
 23 their friend's family lives right down the road, has a store
 24 right next door to their house, has a lot of money in there at
 25 the particular time the friend is working. So, he decides to

1 **easier. I mean, it's easier. It's not as tough. I mean,**
 2 **it's a -- you know, it's a lot easier, I think, to do, and**
 3 **to -- you know, to see or to witness the electric chair with**
 4 **all -- what goes with that.**

5 Q. In a capital murder case, assuming you found someone
 6 guilty of capital murder, if the evidence was such that you
 7 believed beyond a reasonable doubt that they were going to be
 8 a future danger, and you answered that question yes. And you
 9 got to this mitigation question, and based on the evidence and
 10 your evaluation you thought there wasn't sufficient mitigating
 11 evidence to warrant a life sentence. Would you be able to
 12 answer that question no, knowing it would result in a death
 13 sentence?

14 A. **Yes.**

15 Q. And kind of along the same lines, does the -- I
 16 guess does the Defense have the same opportunity with you as
 17 far as, you know, if the evidence doesn't show that he's going
 18 to be a future danger, can you answer that question no?

19 A. **Yes.**

20 Q. Or in the situation where you think the person is a
 21 future danger, but you get to the mitigation question and
 22 truly evaluate the evidence and truly looking at it you think
 23 that there is sufficient mitigating evidence, can you answer
 24 that question, yes, there is sufficient mitigating evidence
 25 knowing a life sentence will result?

1 go in, steal all the money and kills his friend. Does that
 2 make any difference to you?

3 A. **No. It's the same crime.**

4 Q. Because the defendant is still, basically,
 5 committing the same action?

6 A. **It's still robbery; it's still killing.**

7 Q. In looking at your questionnaire a little bit, one
 8 of your arguments in opposition of the death penalty is it's
 9 inhumane, regardless of the means. Can you explain to me a
 10 little bit about what you were thinking about that?

11 A. **I said it was in humane?**

12 Q. That was your argument against it.

13 A. **That was my argument, okay. I mean, there is the**
 14 **side that says, you know -- you know, it's not justified under**
 15 **any conditions. There is the -- you know, I mean, there are**
 16 **those that believe under no circumstances is it warranted.**
 17 **You know, doesn't matter whether it's the electric chair or**
 18 **lethal injection, I mean, you can't -- their argument would be**
 19 **you can't make it -- you can't sugar-coat it by saying it's**
 20 **lethal injection, because it's still the same deal, and**
 21 **that's -- and the idea with it being inhumane and not --**

22 Q. How do you feel personally about our form of
 23 execution; that being lethal injection?

24 A. **I certainly would rather have lethal injection than**
 25 **the electric chair. I think it's -- how do you say it? It's**

1 A. **Uh-huh.**

2 Q. What we need to know from you as a potential juror
 3 is that your answers to these questions are going to be based
 4 solely on the evidence and not on the result that you would
 5 like to occur. Does that make sense?

6 A. **Yes.**

7 Q. So if you hear from the circumstances of the offense
 8 that you decide, you know what, I think this person needs to
 9 get death, are you going to answer the questions in a way
 10 that's going to affect that result, or are you still going to
 11 look at the questions and answer them based on the evidence
 12 and just let the chips fall where they may?

13 A. **Base them on the evidence, not what I might**
 14 **personally feel it should be. But based on what are the facts**
 15 **and what has been given.**

16 Q. Because -- I mean, when you get down to it, life or
 17 death, it's not an automatic death sentence if you find
 18 somebody guilty of capital murder.

19 A. **Right.**

20 Q. You may be the kind of person who would give death
 21 75 out of 100 times, and you're qualified as a juror, as long
 22 as there -- as you can envision, or you are open to the idea
 23 that there's circumstance that you would give a life sentence.
 24 Does that make sense?

25 A. **Correct. Yeah, basically it has to meet the**

1 **criteria, or if it's not going to -- if you question these or**
 2 **it doesn't meet the criteria, then -- you know, then the**
 3 **sentence isn't death. Then the sentence would be life in**
 4 **prison. It's just whether these are meet.**

5 Q. One last thing that I forgot to talk to you about is
 6 personal moral culpability. What do you think that means?

7 A. **Values, beliefs.**

8 Q. Ma'am?

9 A. **Their personal values or beliefs.**

10 Q. What do you think, I guess, or what would be
 11 important to you to consider in deciding whether or not a
 12 person is personally, morally culpable?

13 A. **Regretfulness. Sort of -- I don't know,**
 14 **understanding. Is there any, like, remorse, regretfulness,**
 15 **you know, is there sincerity in realizing the whole scope of,**
 16 **you know, what their actions did. I think you have to look at**
 17 **those things.**

18 Q. And I guess when you kind of look at that, and you
 19 think in the context of what we're doing here, somebody has
 20 been convicted of capital murder, how can they not be
 21 personally, morally responsible for that? How could they not,
 22 you know, have been responsible for what they did?

23 A. **Uh-huh.**

24 Q. And a good illustration of maybe when a person may
 25 not be personally, morally culpable is like Dr. Kavorkian.

1 You know, if you have an older couple who, you know, has vowed
 2 they don't want to live without each other. They're both
 3 getting, you know, on up in years, and they know that one of
 4 them is about to go. And they call him in and say, look, we
 5 want to die together, and we want you to do this for us, and
 6 he comes in and he does it. Kills them both, and here in
 7 Texas that's capital murder because it's two deaths.

8 But you look at this question and you might say,
 9 well, you know what, they wanted him to do it, they, you know,
 10 wanted to die together. He wasn't doing to be it cruel or to
 11 be violent or anything of that nature, so maybe there is no
 12 personal moral culpability there because he wasn't doing it
 13 for bad reasons. He was doing it for good reasons, or
 14 something of that nature. Does that make sense to you?

15 A. **Uh-huh.**

16 Q. And I just have one last question that I wanted to
 17 ask you about. You go to Grace Community Church?

18 A. **Yes.**

19 Q. And where exactly in Plano is that located?

20 A. **Hedgcoxe Road.**

21 Q. Where?

22 A. **Hedgcoxe.**

23 Q. Do you happen to know a lady by the name of Sylvia
 24 Cantu?

25 A. **No.**

1 Q. At this point do you have any questions for me?

2 A. **No.**

3 Q. This would be the last time probably that we get to
 4 talk to each other.

5 A. **No, no questions.**

6 Q. Thank you so much for your time.

7 MS. LOWRY: Pass the juror.

8 THE COURT: Mr. Goeller or Mr. High?

9 MR. HIGH: No, it's Mr. Goeller.

10 **CROSS-QUESTIONS**

11 **BY MR. GOELLER:**

12 Q. Hi, Ms. Craig.

13 A. **Hi.**

14 Q. Do you want to stand up a sec with me? You've been
 15 probably sitting a long time. Do you want to stretch your
 16 legs or anything or --

17 A. **Huh-uh.**

18 Q. You okay?

19 A. **Yeah.**

20 Q. Keep going?

21 A. **Yeah, keep going.**

22 Q. Thanks for coming back down here today.

23 You were on the panel last week, right, the group of
 24 folks that came in this courtroom in here for voir dire?

25 A. **Yeah.**

1 Q. What did you think after Ms. Falco spoke that day?
 2 What were your thoughts? No right or wrong answer. Just tell
 3 me what you thought after she was done speaking.

4 A. **I guess my thoughts were, you know, just the**
 5 **seriousness of the situation, the fact that you really have**
 6 **to -- that you shouldn't take things lightly; that you have to**
 7 **give the whole -- you know, that -- there need to be a whole**
 8 **lot of thought given to the whole process.**

9 Q. Okay. After I was done talking, what kind of
 10 impression did you have of me and what I had to say?

11 A. **I don't think I had one.**

12 Q. Okay.

13 A. **If I did, I don't remember. I don't think I had**
 14 **one, to be quite honest. I think I was just listening.**

15 Q. Okay. These questionnaires that we hand out start
 16 off with just some personal information on it, almost like
 17 you're filling out a job application, and then we talk about
 18 the death penalty. Are you in favor of it? You circled
 19 "yes." Explain. "If someone has been tried, convicted and
 20 given the death penalty, then I have no problem with it being
 21 carried out."

22 A. **Correct.**

23 Q. Okay. Let me ask you to answer that question on a
 24 more philosophical level, not really involved in it with a
 25 trial court, a trial and a conviction and all that. If

- 1 somebody were to ask you to give your top three reasons for
 2 having a death penalty, period, how would you answer that
 3 question?
 4 **A. Top three reasons for imposing?**
 5 Q. Or having one.
 6 **A. For having one?**
 7 Q. Imposing --
 8 **A. Okay.**
 9 Q. -- kind of goes to a trial, but if you're in favor
 10 of it, and you've --
 11 **A. Top reasons for having one?**
 12 Q. -- never been a juror in a capital case, you must
 13 have some fundamental, philosophical reasons why you favor the
 14 death penalty?
 15 **A. I think if that is the -- if everything has gone**
 16 **toward that direction, he's been found guilty and that's his**
 17 **sentence, number one, according to our legal system, it's an**
 18 **option. So right there it tells you, you know, that it has**
 19 **been deemed, in certain situations and circumstances, a**
 20 **necessary option.**
 21 **And I also think that if everything -- if it was**
 22 **guilty, you played it all out, and that was -- that was the**
 23 **decision that it came to, then do I have a problem with it?**
 24 **No.**
 25 Q. Okay. You may have misunderstood my question.

- 1 You're kind of restating what you've already written, and I'm
 2 not trying to debate with you. Forget the trial system.
 3 Forget --
 4 **A. Am I -- I guess what you're asking is, am I one way**
 5 **or the other, probably not. But would I have a problem if**
 6 **that -- if that were the sentencing?**
 7 Q. No, no. I'm not asking you that at all. And it may
 8 be -- it's late in the day, and maybe my questions aren't
 9 really good because I've been -- it's been a long day. I know
 10 it's been a long day for you sitting back there, too.
 11 I'm not asking you whether you have a problem
 12 With -- you know, if everything was done just right in
 13 carrying it out and all that. I'm asking you your personal
 14 philosophy on why -- why you are pro death penalty, not
 15 specifically regarding a trial.
 16 I agree with you. If they've been tried, convicted
 17 and given it, you got no problem. I understand that, but
 18 forget the trial system. Tell me why you think capital
 19 punishment -- why you are in favor of it.
 20 **A. I think there are times -- I think there are times**
 21 **when either because it's so horrific or it's so incredibly**
 22 **bad, for lack of another word, that that is a viable option.**
 23 Q. There we go. That's what I was trying to get to.
 24 **A. I see.**
 25 Q. That's one reason. Any others?

- 1 **A. No. That's probably it. That's probably it.**
 2 Q. Have you ever heard of cases where -- or thought
 3 about cases or -- and I guess we're probably -- you've never
 4 served as a juror, and you've --
 5 **A. Never been called.**
 6 Q. -- never been called. Never been called?
 7 **A. Never been called.**
 8 Q. Well, you've lived in the county --
 9 **A. Fourteen years, uh-huh, never been called.**
 10 Q. Wow! You've been registered to vote?
 11 **A. All 14 years.**
 12 Q. You got a driver's license?
 13 **A. All 14 years.**
 14 Q. Boy, you're lucky. You're lucky.
 15 **A. They've missed me for 14 years.**
 16 Q. Boy, when you get called on a first time, you get
 17 called on a big one, don't you?
 18 **A. I guess.**
 19 Q. They were saving it all up for you.
 20 What kind of cases have you thought about? When
 21 you make that statement, "there are certain cases so horrific
 22 that the death penalty should be an option," what kind of
 23 things come to your mind? What kind of cases?
 24 **A. Probably the two that would stand out would be mass**
 25 **murderers and serial killers.**

- 1 Q. Like --
 2 **A. That's probably the two off the top of my head.**
 3 Q. Mass murder like --
 4 **A. Being -- if it's an entire family, being if it's an**
 5 **entire --**
 6 Q. Like McVeigh in the Oklahoma City thing, that kind
 7 of mass murder, or more like the Charles Manson kind of thing?
 8 **A. Could be any. I mean, it could be --**
 9 Q. Ted Bundy?
 10 **A. Well, it's -- I think about somebody that goes in**
 11 **and, you know, and do -- and kills an entire family.**
 12 Q. Okay.
 13 **A. That's one, or a serial killer who is just**
 14 **repeatedly killing.**
 15 Q. Okay. The -- do you agree with the proposition that
 16 the death penalty -- the imposition of the death penalty is
 17 the ultimate punishment, the ultimate finality of crime and
 18 punishment and ought to be reserved for the worst of the worst
 19 in our society?
 20 **A. Yes.**
 21 Q. Okay. Your best argument for it, "this is a form of
 22 sentencing that is an option in certain cases and
 23 appropriately fits the crime." Your best argument against it,
 24 "two wrongs don't make a right, and it's inhumane regardless
 25 of the reasons."

1 Do you personally feel both of those? In other
2 words, we didn't -- I would have probably phrased them just a
3 little bit differently because I've come across people that
4 when they really think about it, they're not really sure. So
5 when you answered these two questions, best argument for, best
6 argument against, were those things that you've thought of, or
7 were those your personal feelings, or were those things you've
8 adopted from either other people or media? Do you know what
9 I'm trying to say?

10 A. It's my --

11 Q. Do you feel those things?

12 A. Yes.

13 Q. Okay.

14 A. Yes.

15 Q. Okay. And I guess that's why you feel it's
16 appropriate in some cases. You had a list of one through
17 five of the policies that you could personally adopt. It
18 ought to be imposed in all capital cases; it's appropriate in
19 some, all the way down to you could never ever vote to give
20 the death penalty. Then the next page on life, you adopted
21 life in prison is appropriate in some cases, and you could
22 return a verdict of life in a proper case.

23 So when I look at all your things combined, it
24 doesn't seem you're real heavily in favor of capital
25 punishment, but you see it as a potential option in, you know,

1 little vignettes of areas of criminal law and asked kind of to
2 fill in the blank and give your thoughts on it. Biggest
3 problem in the criminal justice system; lengthy appeal
4 process. Tell me about that. Why did you put that down?
5 A. I think that was my -- that was actually my first
6 thought, and when I thought about it, I thought -- you know,
7 from what I know, now granted, you know, this is just from my
8 knowledge, the appeal process can be very time-consuming,
9 lengthy, you know, and it can be exhaustive.

10 Q. Yeah. In capital cases, like death penalty cases
11 or any kind of case?

12 A. I thought about it just in general.

13 Q. You've lived -- I don't have your questionnaire
14 memorized. Have you lived anywhere else other than Texas?

15 A. I lived outside of New York for a while.

16 Q. Where was that?

17 A. And in New Orleans for a while.

18 Q. Wow! You've lived all over.

19 A. Trenton, Trenton, New Jersey.

20 Q. Jersey?

21 A. Uh-huh.

22 Q. Okay. The appellate process in capital cases can be
23 lengthy, but can you see why if somebody has been given the
24 death penalty?

25 A. Yes.

1 the worst of the worst. There are cases out there that do
2 merit it, as least as a consideration?

3 A. Yes.

4 Q. Have you been pretty much consistent in your views
5 of capital punishment throughout your life?

6 A. Yes.

7 Q. Where you did go to school? I know you've got a
8 Bachelor's of Administration, right?

9 A. Yes. Stephen F. Austin.

10 Q. Okay. In --

11 A. East Texas, Nacogdoches.

12 Q. Nacogdoches?

13 A. Nacogdoches.

14 Q. And it was -- you're a Business Administration
15 major?

16 A. That's actually a communications major.

17 Q. Com major, okay.

18 A. Uh-huh, Radio and TV.

19 Q. Really? Did you ever work in that field at all?

20 A. No.

21 Q. Okay. Tell me why, just out of curiosity.

22 A. I decided my junior year I wanted to do something
23 different, and I was too far into my major.

24 Q. Okay, good enough.

25 On page 3 of the questionnaire, you were given

1 Q. Okay. Because if it's not and somebody was executed
2 and found out there is a problem or something, it's the only
3 case where it's truly too late to go back. And the wrongfully
4 accused can spend -- in fact, people spend 20, 30, 40 years in
5 prison for a crime that they didn't do, but maybe there is
6 some kind of life if they get out.

7 But I can tell you that you can take comfort in 99.9
8 percent of the cases are not capital cases, and in those
9 cases, the appellate process is pretty swift. Most cases
10 certainly less than a year, start to finish, done.

11 In Texas, now, the media can lead you to think
12 otherwise, and I can assure you, the Judge and Mr. Schultz can
13 assure you of that. Does that give you any problem?

14 A. No.

15 Q. I didn't think so. I just have to ask. Do you
16 understand I've got to ask?

17 A. I do.

18 Q. If I don't ask, you might think --

19 A. Why didn't he ask.

20 Q. -- why didn't he ask me? What is he, stupid.

21 The death penalty in Texas by lethal injection for
22 capital murder cases and not routinely carried out. Tell me
23 what you meant.

24 A. That they don't happen all the time. I mean -- I
25 don't know the statistics, but I know that, you know, someone

1 isn't being executed every day.
 2 Q. Right. God, let's hope not.
 3 A. That it's not -- you know, it's seldom and few and
 4 far between, and it's not, you know --
 5 Q. Probably, I don't know -- I mean, we lead the
 6 nations for sure in pure numbers, but, I don't know, they
 7 probably execute two or three a month.
 8 A. I don't know. I don't know the statistics.
 9 Q. I wanted to talk to you a little bit about the
 10 prison system in Texas is overcrowded. It's a form of
 11 punishment but not always rehabilitation. Someone sentenced
 12 to prison doesn't mean they'll serve the time sentenced.
 13 Differences between State and County. Tell me what you're
 14 trying to tell me there.
 15 A. Prisons are overcrowded --
 16 Q. Okay.
 17 A. -- for some offenses. You know, and it -- I mean,
 18 it depends. There are some offenses probably that a
 19 rehabilitation program is probably more appropriate than going
 20 to prison --
 21 Q. Okay.
 22 A. -- depending on what it is.
 23 Q. I see what you mean. Got you?
 24 A. You know, and that there is a huge difference, I'm
 25 sure, in county and federal and state prisons.

1 Q. Yeah. Was it discussed with you last week, was it
 2 with the panel -- and to be honest with you, I can't
 3 remember -- what life sentence in capital murder means?
 4 A. Oh, yes.
 5 Q. How was that? It was probably me, or maybe it was
 6 Ms. Falco. I can't recall.
 7 A. 40 years.
 8 Q. 40 years?
 9 A. It was 35 raised to 40.
 10 Q. Right, there you go. There you go.
 11 Some folks have a problem with that. Some folks
 12 want true life without parole, you will definitely die within
 13 the penitentiary. I don't know what the difference is between
 14 life and 40 years is, to be honest with you. I suppose
 15 there's always -- I think you probably remember me telling
 16 you, depending on the age of the defendant, it is life without
 17 parole.
 18 A. Uh-huh.
 19 Q. But in any event, I know you've answered the
 20 questions that you could fairly consider a life sentence.
 21 Would knowing that 40 minimum calendar, would that cause you
 22 any problems in considering a life sentence --
 23 A. Huh-uh.
 24 Q. -- in a proper case?
 25 A. Huh-uh.

1 Q. Okay. Most of your stuff in your questionnaire
 2 is -- I want to commend you. You are the only one -- you're
 3 juror number, what, 81 --
 4 A. 81.
 5 Q. -- with something that I was like, wow.
 6 A. What?
 7 Q. Do you think -- you're the only one that got this
 8 right. Do you think citizens accused of criminal offenses are
 9 afforded too many rights by the Constitution of the U.S. and
 10 the State of Texas and criminal laws of the State. You
 11 circled "no," and then you said there's a difference between
 12 being accused and convicted.
 13 A. Yes.
 14 Q. Good for you. The other 200 people, 199 haven't
 15 snapped on that yet, so I like that.
 16 Oh, I know what else I checked about your
 17 questionnaire. You were a banquet manager?
 18 A. Uh-huh.
 19 Q. You know what stress is then?
 20 A. Uh-huh.
 21 Q. You did catering?
 22 A. Banquets, catering, and now I run transportation.
 23 Q. I worked for a caterer once. That's high stress.
 24 A. Long hours, high stress.
 25 Q. Long hours. And those clients better be happy and

1 depending on -- you know what I'm talking about? It's high
 2 stress because that is one bad experience where one client can
 3 ruin your business just like that, right?
 4 A. Yeah.
 5 Q. I mean, unless you're in a huge city where
 6 there's -- but that's high stress stuff. And I was just a
 7 gopher really, but I could see it in people.
 8 I know you're vice president for a marketing service
 9 down at the Market Center?
 10 A. Yes.
 11 Q. Logistics and operations?
 12 A. For the marketing division, yes.
 13 Q. Tell me what a day in the life of Jennifer Craig is
 14 like. What kind of things do you do?
 15 A. I'll tell you what I oversee. I oversee the travel
 16 division, the 800 call center, registration for four buildings
 17 and all transportation.
 18 Q. Wow!
 19 A. It's a big job.
 20 Q. That is a big job. You must have a lot of people
 21 underneath you?
 22 A. Not a lot. I've got some good people underneath me.
 23 It's probably more necessary than the quantity.
 24 Q. Let me jump to those special issues. I know the
 25 hour is getting late, and I'm going to try to go through those

1 as quick as I can.
 2 **A. Okay.**
 3 Q. Probability. Tell me how you equate that, or what
 4 would be a good synonym for that word for you.
 5 **A. Greater than.**
 6 Q. Greater than?
 7 **A. Not.**
 8 Q. Greater than not. More than 50 percent?
 9 **A. Yes.**
 10 Q. Okay. I think you're okay. I think --
 11 **A. Yes.**
 12 Q. -- as long as a juror can say that's more than 50,
 13 all the way up to 99?
 14 **A. Most likely.**
 15 Q. Yeah, okay. And anywhere in between. Probably less
 16 than 50 percent, probably -- there's probably a problem, but I
 17 think you're right in there.
 18 Society, as Ms. Lowry correctly pointed out, it
 19 definitely includes prison society. Logically I think that's
 20 what it means. How could it mean anything else because when
 21 you get to that question it's life or death. No one is going
 22 home. No one is going back out in society. It's life or
 23 death so -- and I can tell you it definitely includes prison
 24 society. I cannot tell you, and the Judge won't let me, and
 25 Mr. Schultz or Ms. Lowry will be on their feet screaming if I

1 tell you it is only prison society. It is subject to some
 2 interpretation outside of prison.
 3 I can tell you it is prison; maybe others and maybe
 4 not. I suppose it's up to a jury what it means.
 5 **A. Okay.**
 6 Q. I think you talked about --
 7 **MR. SCHULTZ:** Mr. Goeller, excuse me just a
 8 moment. May we approach the bench for about 30 seconds?
 9 (Sidebar discussion had off the record.)
 10 **THE COURT:** Sorry about that.
 11 **VENIREPERSON:** That's okay.
 12 **MR. GOELLER:** May I approach the boards,
 13 Judge?
 14 **THE COURT:** Yes, sir.
 15 Q. **BY MS. GOELLER:** Although these questions are
 16 separate, they're kind of related in a way. We talk about
 17 probability of criminal acts of violence that would constitute
 18 a continuing threat to society. The State gave you some
 19 examples of the person that goes into the convenience store,
 20 just murders the clerk to rob the cash register. There are
 21 all sorts of scenarios where homicides take place. There's
 22 the -- and I think you alluded a little bit. The serial
 23 killer, the -- his MO is to hit liquor stores, convenience
 24 stores, cash register, kill the clerk, no witness, out, gone,
 25 and maybe they finally catch him.

1 There are people out there that are random,
 2 opportunistic killers that don't know their victims. Do you
 3 know what I'm talking about?
 4 **A. Uh-huh.**
 5 Q. Some people would say that they are a lot more
 6 dangerous than maybe the type of person that killed out of
 7 passion or had some kind of relationship. Do you know what
 8 I'm trying to say?
 9 **A. Yes.**
 10 Q. Sometimes the -- that opportunistic killer, he
 11 kills, doesn't care who he kills. He's just finding targets,
 12 so to speak, for a -- for the reason maybe of only money, only
 13 to get that cash register, only to, once the store clerk is
 14 killed, break out the glad bag, get behind counter. A lot of
 15 these guys don't even mess with the cash register. A lot of
 16 time it's timed. There's very little money in there. It's a
 17 timed vault. A lot of these guys, all they want is cartons of
 18 cigarettes. You know, load up those cigarettes. Probably
 19 more cigarette convenience store robberies now than cash.
 20 Then there are the kind of people out there that get
 21 themselves into a situation due to some kind of passion, some
 22 kind of relationship, maybe a drug deal gone bad, all sorts of
 23 reasons. Do you see how some people could make the argument
 24 that the guy that kills randomly, kills people he has no
 25 relationship with -- not that there's ever a reason to kill,

1 but no reason other than just random acts. Or the serial
 2 rapist, just picks a target, picks a female, vulnerable,
 3 abducts her, rapes her, kills her. Versus crimes of passion,
 4 you know.
 5 Do you see how maybe the true predator, liquor store
 6 robberies --
 7 **A. Uh-huh.**
 8 Q. -- serial rapists, how they may be more of a
 9 danger -- a future danger versus the person that killed
 10 because of a specific situation?
 11 **A. Uh-huh.**
 12 Q. Do you see where I'm going?
 13 **A. Uh-huh.**
 14 Q. Are you --
 15 **A. One is Russian roulette, and the other is, you know,**
 16 **because you knew the person or --**
 17 Q. Yeah, okay. Do you see some validity to that
 18 viewpoint?
 19 **A. Uh-huh. One is random and one is --**
 20 Q. Yeah. And that may give a juror some insight as to
 21 how to answer that first special issue. You know, would they
 22 be a future danger? If you've got a guy that's
 23 blood-thirsty, likes the kill, hey, when I kill I get cash or
 24 I get lots of cigarettes, don't know the people I'm killing,
 25 that's -- that may be a different beast than the person who's

1 involved in a relationship, a situation in -- you know, kind
2 of a situational killing. Do you see how there could be a
3 difference in maybe how a juror might answer that first
4 special issue regarding the continuing threat to society?

5 Some people might argue that if you take certain
6 factors away, drugs, particular kinds of relationships, the
7 penitentiary may do a good job of preventing future violence.
8 Do you see what I'm saying?

9 **A. I understand.**

10 Q. Okay. Do you think that's valid? Do you think
11 that's a valid proposition?

12 **A. Could be. It could be. You know, you'd have to
13 look at --**

14 Q. Right.

15 **A. -- all the criteria.**

16 Q. You bet, okay. That question is a funny question
17 the way it's got to be proved. You told me that probability,
18 and I think you're exactly right, it's something more than
19 probably 50 percent but something -- the State can say we
20 don't have to prove it 100 percent so --

21 **A. Right.**

22 Q. -- I guess any juror that's within the ballpark of
23 51 to 99 is probably okay, the way I think. But they've got
24 to prove that probability, future acts of violence, continuing
25 threat beyond a reasonable doubt, okay? I tell jurors all the

1 time "beyond a reasonable doubt," when I use our other burdens
2 of proof, like civil cases and termination of parental rights
3 and Child Protective Services has to remove children, I think
4 beyond a reasonable doubt is way up there, maybe in the 90s,
5 maybe in the high 90s. It's somewhere up there. It's a lot
6 of proof, okay? Not a 100 percent. Mr. Schultz wouldn't let
7 say me say it's proof beyond any doubt. It's beyond a
8 reasonable doubt.

9 I think logically I agree with that, and I can live
10 with that because to prove something to you 100 percent is
11 probably an impossible burden on Ms. Lowry. Because if you
12 weren't there and you didn't see it and you're not a fact
13 witness, you know, something could never be proved to you 100
14 percent, okay?

15 **A. Okay.**

16 Q. But it's up there a lot. So that's the funny part
17 about that question. They've got to prove in the high 90s, I
18 think, something that's a probability. It's odd. It's odd
19 the Legislature wrote it like that, but most people would
20 agree that it's very, very difficult to predict future human
21 behavior, okay? But that's what that question asks us to do,
22 and I think that if we look at the circumstances of the crime,
23 circumstances of the offense, all those kinds of things and --
24 with maybe some professional help, too, maybe some experts in
25 that area who can talk about maybe what prisons can do and

1 can't do and risk assessment.

2 Do you ever use risk assessment? Do you have risk
3 managers down there at the Trade Center?

4 **A. No.**

5 Q. Are you familiar with that concept?

6 **A. Vaguely.**

7 Q. Okay. It seems really -- when I first look at that
8 question, I thought it was kind of a foreign concept but then
9 I thought, well, there are all sorts of people that do that
10 every day in the business world. Insurance agents, or
11 insurance adjusters and all those people, they want to know
12 what they're going to charge you for the next year in
13 insurance premiums. They kind of want to know what your past
14 driving history is, plus they want to know what you're going
15 to be driving in the future, okay? Are you a 17-year old kid
16 with a brand-new Five-liter Mustang. Okay, you're going to
17 get
18 one rate.

19 What do you drive, Ms. Craig? What kind of car?

20 **A. A van.**

21 Q. A van?

22 **A. A mini-van.**

23 Q. Mini-van.

24 **A. A mom mobile.**

25 Q. Mom mobile. I got one, too.

1 THE COURT: So do I.

2 Q. BY MR. GOELLER: Do you have a pretty good driving
3 record?

4 **A. Yes.**

5 Q. I guarantee you don't want to pay the same rate as
6 the kid that just got his driver's license and mommy and daddy
7 bought him a brand-new red convertible five-liter Mustang,
8 right? You don't want to pay his rates?

9 **A. Probably not.**

10 Q. You know not.

11 **A. I don't know what his rates are.**

12 Q. Well, they're three or four times.

13 **A. I don't even know what my rates are.**

14 Q. You probably pay -- I bet you if you're a good
15 driver and you drive a mini-van, you're paying between 5 and
16 600 dollars every six months, maybe even less than that.

17 **A. (Shrugs.)**

18 Q. You don't pay the bills?

19 **A. No.**

20 Q. Mr. Craig does that?

21 **A. Yes.**

22 Q. Good for you. But trust me when I tell you, you
23 wouldn't want to pay the 17-year old with the Five-liter
24 Mustang.

25 **A. Okay.**

1 Q. He's going to pay three, four, five times what you
2 pay, if you both were just paying one on one.

3 But anyhow, that insurance adjuster, how he says,
4 okay, Mr. and Mrs. Craig, here's what I'm going to charge you
5 to write you an insurance premium. I kind of look at your
6 past driving history, but I'm also going to look to other
7 things in the future. I'm going to look to what kind of car
8 you're driving. Women your age driving mini-vans are a safe
9 risk. We kind of -- they kind of know how you're going to
10 drive. They have demographics on the chances of you getting
11 into a fatality accident, or an accident that's going to cost
12 that insurance company a lot of money. They figure in your
13 zip code. They figure in all sorts of things; how many
14 miles -- you know, when they ask you how many miles you
15 average a week driving all that kind of -- obviously the more
16 miles you put on the highway, the more risk you have, just --
17 you know, data like that.

18 So, in the same general way, that's what that
19 question is asking. They're kind of asking risk management.
20 Is this the worst of the worst that we must kill him? That's
21 the bottom line of that question. Or, is there something
22 less?

23 A. Uh-huh.

24 Q. Okay. Then we get into that -- that last mitigation
25 issue. Whether taking into consideration all of the evidence

1 murder -- and the elements of the offense, you know,
2 burglary/murder, robbery/murder, double homicide. All 12
3 jurors focus on the same thing in arriving at their verdict,
4 whatever it is, or a not guilty. It takes a unanimous
5 verdict, too.

6 For the sake of argument, because of this individual
7 voir dire, I have to put all my eggs in the punishment basket.
8 That's why we talk to you on the death penalty.

9 This question focuses the jurors, again, on the same
10 thing. All 12 focus on those elements. The State's got to
11 prove these elements, so all 12 jurors have to focus on the
12 same issue and arrive at a unanimous verdict "yes" in order to
13 move on to that. Of course, if there's not a unanimous
14 verdict, or ten answer it "no," then there's a life sentence
15 imposed in the case. And finally this last question, again
16 what's so unique about it, nobody has got a burden of proof,
17 and each juror is entitled to give their own personal
18 definition of mitigation, their own spin and look at
19 everything, their own definition of sufficient, their own
20 definition of mitigating. And but -- so that question is
21 unique. If you have ten people that say -- that answer that
22 question yes in order to impose a life sentence, it can be for
23 ten different reasons, and it can be for ten different
24 weights. Do you see what I'm saying?

25 A. Uh-huh.

1 including -- they don't say the offense -- the circumstances
2 of the offense, and then maybe that can give you some clue.
3 Was this the serial rapist, finds a woman walking home from
4 the dorms, or walking home after she closed down the pizza
5 place, abduct a woman, drive her to the country, strangle her,
6 rape her, kill her, and do it over again and dump the body, or
7 the circumstances of was it kind of -- was there a business
8 relationship, crime of passion, something else, that allows
9 you to look into -- although it doesn't say victims,
10 circumstances of the offense. You can look at the
11 relationship between the victim and the Defendant. Character,
12 background, personal moral culpability, all those things go
13 in.

14 What's very unique about that question is, I think
15 Jami -- or Ms. Lowry told you there's no burden of proof on
16 it, but what is -- how the Legislature set this up, most of
17 these things aren't going to be defined. What is or isn't
18 mitigating is totally up to the individual juror, okay?

19 Now, to answer this question no, ten jurors -- well,
20 to impose a death penalty, that would have to be answered
21 unanimously "no," okay, all 12 jurors would have to say no.
22 To answer that question "yes" takes ten jurors, okay?

23 A. (Nods heads.)

24 Q. And the first part of the trial, all 12 jurors are
25 focused on the same issues -- you know, was it capital

1 Q. And what our courts have basically said, and the way
2 this question is set up, this question is -- doesn't limit
3 anything. It's really a free-for-all. It's what that juror
4 individually and maybe collectively really think is the right
5 thing to do, and it's kind of wonderfully drafted in that
6 respect. It allows each juror to express their own feelings.
7 And you mentioned something, and I'm getting in a real
8 round-about way, I wanted to come back to something you wrote
9 down -- I wrote down that you said. You said, "I keep my
10 personal feelings out of it." Do you remember kind of saying
11 something about that when Ms. Lowry was questioning you?

12 A. Uh-huh.

13 Q. We don't want you to do that, or I don't want you to
14 do that. I don't think -- because personal feelings based on
15 whatever you consider in here is exactly -- I think you
16 probably meant to say you wouldn't go into this with an angle
17 and answer the questions to fit into your -- to fit into a
18 previously decided agenda. Do you get what I'm saying?

19 A. Uh-huh.

20 Q. A juror could go into this whole thing --

21 A. With preconceived ideas.

22 Q. Yeah. If I get on this jury, they're dead, and I'll
23 answer these questions and make sure they get the death
24 penalty, or vice-versa. I don't believe in a death penalty.
25 I'm going to throw it, and about the only rules we have in

1 individual voir dire is you can't go in knowing you're going
2 to throw the question, or answer the question to fit your
3 preconceived. But when you talk about this stuff, it is
4 feeling.

5 THE COURT: Mr. Goeller, I hate to interrupt
6 you. We're going to have to break for the day. My court
7 reporter has commitments.

8 MR. GOELLER: Okay. I tell you what, Judge,
9 you give me two minutes, and I won't have to have her come
10 back if that's okay?

11 THE COURT: Okay.

12 Q. BY MR. GOELLER: The last thing I want to talk to
13 you about. Feelings are okay. I mean, you're going to have
14 to -- this stuff is kind of loosey-goosey, as you can see;
15 predicting the future, life or death, personal -- it's your --
16 how you personally feel about that case. I don't want you to
17 think that your personal feelings don't figure in. Maybe in
18 the first phase of the trial they don't; burden of proof, the
19 elements, was it capital, was it not. Yeah, but this stuff I
20 want you to understand, personal feelings are okay. In fact,
21 I don't know how you can answer these without personal
22 feelings. But anyway, do you see the point I'm trying to
23 make?

24 A. Yes. And you have to -- but you have to factor in
25 all the circumstances, criteria --

1 Q. Yeah.

2 A. -- that's what this is talking about, because --

3 Q. This kind of stuff --

4 A. -- you have to take everything --

5 Q. -- is going to hit you in a certain way of personal
6 feelings. I want you to have those personal feelings.

7 A. You have to take everything into consideration.

8 Q. You bet you. As long as you're not saying, my
9 personal feelings in a capital case, I'm going to kill that
10 guy, no matter what it takes, and I'll throw those questions.
11 As long as you don't do that, you're okay, okay? Are we
12 square?

13 A. Yes.

14 Q. Do you have any questions for me?

15 A. No.

16 MR. GOELLER: Okay, ma'am. Thank you very
17 much.

18 VENIREPERSON: Okay.

19 THE COURT: Thank you, Mr. Goeller.

20 Ma'am, I'm going to ask you to step down for just a
21 minute, and we'll have you back in pretty quick here.

22 (Venireperson exits the courtroom.)

23 THE COURT: What says the State?

24 MS. LOWRY: This juror is acceptable to the
25 State.

1 MR. HIGH: We're going to need a second, Judge.

2 THE COURT: All right.

3 (Brief pause in proceedings.)

4 MR. GOELLER: We'll use a peremptory on her,
5 Judge.

6 THE COURT: All right. Then the Defendant will
7 use a peremptory strike. Would you, Mr. Powell, please advise
8 the juror. This is Number 10 for you guys, or am I wrong?

9 MR. HIGH: Yes. It's Number 10.

10 THE COURT: So, the Defendant strikes Jennifer
11 Craig, Number 81.

12 And I will see you-all at 8:45 in the morning. Both
13 sides are excused.

14 (End of Volume 19.)

1 REPORTER'S CERTIFICATE
2 THE STATE OF TEXAS *

3 COUNTY OF COLLIN *

4
5 I, Lisa M. Renfro, Official Court Reporter in and
6 for the 380th District Court of Collin County, State of Texas,
7 do hereby certify that the above and foregoing contains a true
8 and correct transcription of all portions of evidence and
9 other proceedings requested in writing by counsel for the
10 parties to be included in this volume of the Reporter's
11 Record, in the above-styled and -numbered cause, all of which
12 occurred in open court or in chambers and were reported by me.

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

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

19 WITNESS MY OFFICIAL HAND this 4th day of
20 January, 2003.

21 *Lisa M. Renfro*
22 Lisa M. Renfro, Texas CSR #4534
23 Official Court Reporter, 380th District Court
24 Collin County, Texas
25 Collin County Courthouse
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