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

VOLUME 20 OF 53 VOLUMES

TRIAL COURT CAUSE NO. 380-80047-01

THE STATE OF TEXAS)	IN THE DISTRICT COURT
)	
VS.)	COLLIN COUNTY, TEXAS
)	
IVAN ABNER CANTU)	380TH JUDICIAL DISTRICT

JURY VOIR DIRE

COPY

DUPLICATE COPY

On the 13th day of September, 2001, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Machine Shorthand.

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 7 VS.)
 8 IVAN ABNER CANTU) COLLIN COUNTY, TEXAS
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 22 Honorable Charles F. Sandoval, Judge Presiding,
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 14
 15 VOLUME 20

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17 SEPTEMBER 13, 2001
 INDIVIDUAL VOIR DIRE

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2 THE COURT: 380-80047, State of Texas
 3 versus Ivan Abner Cantu. His attorneys are present.
 4 The attorneys for the State are present. The first
 5 juror this morning is Anne Kovacs. Are both sides
 6 ready?

7 MR. SCHULTZ: Yes, sir.

8 MR. GOELLER: Yes, sir.

9 (Venireperson Kovacs present.)

10 THE COURT: Are you Anne Kovacs?

11 VENIREPERSON: I am.

12 THE COURT: I just want to remind you that
 13 about three weeks ago I placed all the jurors under
 14 oath. The oath is to tell the truth and hear the
 15 answers propound by either side, and you are still under
 16 oath? Please be seated.

17 THE COURT: Mr. Schultz?

18 MR. SCHULTZ: Yes, Judge.

19 VOIR DIRE EXAMINATION

20 BY MR. SCHULTZ:

21 Q. Good morning, Ms. Kovacs.

22 A. Good morning.

23 Q. My name is Bill Schultz. I'm one of the
 24 assistant district attorney's representing the State of
 25 Texas in its capital prosecution of Ivan Cantu. A few

08:58 1 days ago you met Ms. Falco who spoke to the jury panel
08:58 2 as a group. That is Ms. Gail Falco. She's the chief
08:58 3 felony prosecutor assigned to a different district court
08:58 4 but assigned to this case for its duration.

08:58 5 To your far right, at our table, is
08:58 6 Ms. Jami Lowry, a felony prosecutor also assigned to
08:58 7 this court. In all likelihood we will be the only three
08:58 8 prosecutors that you will be dealing with if you are
08:58 9 seated as a juror in this case. Although it is always
08:58 10 possible that for some specialized type of evidence or
08:58 11 some particularly challenging type of witness, there
08:58 12 might be one additional prosecutor that would arrive
08:58 13 just for that portion, if there is some special area or
08:58 14 special need that we think another prosecutor can help
08:58 15 us with.

08:58 16 An example would be, although I don't deem
08:58 17 it likely in this case, that there will be a substantial
08:58 18 pivotal issue about DNA evidence, although, I anticipate
08:59 19 there will be DNA evidence presented.

08:59 20 Sometimes when there is a legitimate
08:59 21 serious issue about the quality or the nature of the DNA
08:59 22 evidence -- I'm not saying that is not going to be in
08:59 23 this case. There are prosecutors who have more facility
08:59 24 with that area of technology. They studied it, worked
08:59 25 with it before, and maybe have a better notion of how to

08:59 1 present that to a jury that may be less familiar with
08:59 2 that kind of evidence. So that could happen.

08:59 3 Sometimes we have very young witnesses.
08:59 4 Maybe a very young child, and we have prosecutors that
08:59 5 work more with those types of witnesses than, than we,
08:59 6 the generic prosecutors do. And sometimes it's more
08:59 7 effective to have someone who is better able to help
08:59 8 children feel relaxed in order to be able to give
08:59 9 testimony, but I doubt that. I think it would be the
08:59 10 three of us. And, you know, I guess you'll be stuck
08:59 11 with us. All the charismatic people will be in other
08:59 12 trials perhaps.

08:59 13 The defense -- first of all, the defendant
09:00 14 is the gentleman in the blue at the defense table. He
09:00 15 will be on your far left to the other table as Mr. Ivan
09:00 16 Cantu. Next to him is Mr. Don High. And then moving
09:00 17 further to your right is Mr. Matt Goeller. These are
09:00 18 both private practitioners of law in Plano, Texas.

09:00 19 And I believe that you don't know any of
09:00 20 us from your response. Am I right on that?

09:00 21 A. Right, correct.

09:00 22 Q. Your birth place, you've indicated, is
09:00 23 Portland, Oregon?

09:00 24 A. Correct.

09:00 25 Q. How long did you live in Portland?

09:00 1 A. Oh, left as a child.

09:00 2 Q. Okay. And then where did you go from Portland?

09:00 3 A. State of Washington.

09:00 4 Q. Okay. What -- in a city or in more rural areas
09:00 5 of Washington?

09:00 6 A. A small city.

09:00 7 Q. One I'd ever heard of, maybe?

09:00 8 A. Yakima.

09:00 9 Q. I've heard of Yakima. How long did you live
09:00 10 there?

09:00 11 A. I lived there, I guess, until I was about 20.

09:00 12 Q. So you --

09:00 13 A. After high school.

09:01 14 Q. You graduated from Yakima High School?

09:01 15 A. Correct.

09:01 16 Q. What kinds of things -- were you in any kinds
09:01 17 of activities in high school?

09:01 18 A. I was in Future Teachers. I wasn't in a lot of
09:01 19 things, so nothing really comes to mind at the moment.

09:01 20 Q. Now, your -- is your husband actually a
09:01 21 physician, psychiatrist?

09:01 22 A. My husband is a retired physician,
09:01 23 psychiatrist.

09:01 24 Q. And what -- and I know it would have been
09:01 25 varied. I know it would have been a hospital setting,

09:01 1 and I also know he probably had a private practice, but
09:01 2 kind of tell me the nature of his medical work.

09:02 3 A. He was with Mental Health, Community Mental
09:02 4 Health for about 30 years.

09:02 5 Q. And what -- tell me kind of what would have
09:02 6 been a -- all in a day's work for him? What kind of
09:02 7 things would he have done, typically?

09:02 8 A. I don't know that I know actually. I just
09:02 9 never heard very much.

09:02 10 Q. Would his patients actually come through like a
09:02 11 community center?

09:02 12 A. Yes.

09:02 13 Q. And then, I guess, it would have been one of
09:02 14 those. Was he an employee of the community center?

09:02 15 A. Yes.

09:02 16 Q. And then they would make the financial
09:02 17 arrangements with the patient on a sliding --

09:02 18 A. It was State and County usually. That much I
09:03 19 know.

09:03 20 Q. And when you've indicated he's retired, then
09:03 21 I'm guessing he had some retirement or 401(k) plan or
09:03 22 something with the community health; is that --

09:03 23 A. Uh-huh.

09:03 24 Q. Okay. Did he ever -- did he practice also in
09:03 25 the State of Texas before he retired?

09:03 1 A. (Head moving from side to side.)
 09:03 2 Q. How did you end up in Texas then?
 09:03 3 A. Our daughter married a Texan.
 09:03 4 Q. And you came to be near your daughter?
 09:03 5 A. He didn't want to leave Texas, and we -- it
 09:03 6 worked out that we were able to downsize and move.
 09:03 7 Q. And then are you currently employed?
 09:03 8 A. No.
 09:03 9 Q. You indicated that you were in Future -- you
 09:03 10 were in Future Teaching or Future Teachers when you were
 09:03 11 in high school. Did you ever teach?
 09:03 12 A. No. I did not complete college.
 09:03 13 Q. Was teaching something that at the time you
 09:04 14 thought you really wanted to do?
 09:04 15 A. Yes, it was.
 09:04 16 Q. And then circumstances changed or other
 09:04 17 opportunities came along?
 09:04 18 A. Correct.
 09:04 19 Q. Now, you also indicated that your husband was
 09:04 20 in the U.S. Army; is that right?
 09:04 21 A. He has told me he was. That was before I was
 09:04 22 on the scene, so...
 09:04 23 Q. And you've indicated unknown details. You
 09:04 24 don't doubt that he was. You are just kidding me about
 09:04 25 that? You believe he was in the Army?

09:04 1 A. Oh, yes, yes.
 09:04 2 Q. When you say he tells me, that always implies
 09:04 3 maybe you wonder if he really was or something. And
 09:04 4 then you presently attend North Dallas Community Bible
 09:04 5 Fellowship Church; is that right?
 09:04 6 A. Correct, correct.
 09:04 7 Q. I don't know the location. The name tells me
 09:04 8 it's probably nondenominational, or am I wrong about
 09:04 9 that?
 09:04 10 A. I would say that's probably accurate.
 09:04 11 Q. When I think of a denomination, I think of like
 09:05 12 the Presbyterians or the Baptists or Episcopalians,
 09:05 13 maybe.
 09:05 14 A. Correct.
 09:05 15 Q. How did you and your -- does your husband
 09:05 16 attend with you?
 09:05 17 A. Yes, he does.
 09:05 18 Q. How did you -- how did you discover that
 09:05 19 church? What steps did you -- what process did you go
 09:05 20 through to find that church?
 09:05 21 A. We visited there when we came to Dallas to
 09:05 22 visit our daughter, and it was one of the churches we
 09:05 23 visited.
 09:05 24 Q. And it just felt like home to you?
 09:05 25 A. Yes.

09:05 1 Q. So you stayed. You are not nervous about this
 09:05 2 process I hope, are you?
 09:05 3 A. Not exactly.
 09:05 4 Q. I doubt anybody -- I don't think I've met
 09:05 5 anybody yet that, if they knew what this was and
 09:05 6 somebody would want to come up and spend a morning in
 09:05 7 McKinney talking this way, I haven't met the person yet
 09:05 8 that would say, yeah, that sounds great. I'll be right
 09:06 9 there, sort of thing.
 09:06 10 But at the same time, I would hope that by
 09:06 11 the time this is over that, number one, no matter what
 09:06 12 happens, whether you are selected or not, number one,
 09:06 13 every person would come out of this operation feeling
 09:06 14 relaxed, feeling respected and understanding that this
 09:06 15 is just a crucible of ideas that's fine for all of us.
 09:06 16 I know I can speak for the defense as well
 09:06 17 as the State when I tell you that it's actually
 09:06 18 challenging as to your different citizens' ideas and
 09:06 19 make determinations about whether that citizen best
 09:06 20 seems to fit what we think the evidence is going to be
 09:06 21 and best seems to fit personality-wise our personalities
 09:06 22 and our style of practice because communication in a
 09:06 23 trial is everything.
 09:06 24 And if they can communicate with you, they
 09:06 25 being the defense, if they can communicate with you in

09:06 1 having you listen to their side, if there's anything
 09:06 2 they want you to listen to, if we can communicate with
 09:07 3 you and listen to our side, who could ask for more?
 09:07 4 And that's this whole process, but it's
 09:07 5 easy. You are not supposed to know any law. You are
 09:07 6 supposed to have a willingness to follow whatever law
 09:07 7 would be required of you. But other than -- there's no
 09:07 8 reason you should know any of this law. And if we're
 09:07 9 doing our jobs right, you will know this specialized
 09:07 10 area of law about as well as we do because it's very
 09:07 11 narrow and in many ways very straightforward.
 09:07 12 The other nice thing, I suppose, if the
 09:07 13 proper word is nice, the other enriching thing about
 09:07 14 this experience for jurors, I believe, is at least in
 09:07 15 this one little area of our life it kind of gets you to
 09:07 16 think about issues that you've never exactly thought of
 09:07 17 in exactly the same way, just in answering the
 09:07 18 questions. And I think most jurors would believe, even
 09:07 19 if they don't get selected, I wasn't interested and I
 09:08 20 did some thinking afterwards.
 09:08 21 And in that line, Ms. Kovacs, I know you
 09:08 22 remember, first of all, coming up to court back on
 09:08 23 August the 21st, which was the first day. 200 people
 09:08 24 were there, and it was probably a real surprise to you
 09:08 25 to discover pretty early on that it was a death penalty

09:08 1 case that you were being summoned for. Were you
 09:08 2 surprised when you found that out, or were you not?
 09:08 3 A. I probably was. I hadn't really thought ahead
 09:08 4 about it at all.
 09:08 5 Q. And I'll bet when you started filling out your
 09:08 6 questionnaire, was that a surprise to you that you'd
 09:08 7 have a questionnaire to fill out like that?
 09:08 8 A. Yes. That was a surprise.
 09:08 9 Q. I don't know that any juror feels invaded, but
 09:08 10 I guess it's possible that a juror could say, well, that
 09:08 11 sure is asking for a lot of personal information from
 09:09 12 me. I mean, it's not deep dark secrets, but still it is
 09:09 13 personal information, and some jurors might react
 09:09 14 negatively to the concept.
 09:09 15 And of course, did you have any problem
 09:09 16 with the questions that were asked on the questionnaire?
 09:09 17 Did you feel -- did you feel like the Court giving the
 09:09 18 questionnaire somehow was invading your privacy in any
 09:09 19 way or anything like that?
 09:09 20 A. Yes.
 09:09 21 Q. Do you -- given the nature of this case, do you
 09:09 22 think that's an appropriate, an appropriate
 09:09 23 questionnaire to be asking people?
 09:09 24 A. I don't know how to answer that.
 09:09 25 MR. SCHULTZ: Okay. Judge, I think we

09:09 1 reached a point where we need to briefly ask the juror
 09:09 2 to retire.
 09:09 3 THE COURT: All right. Let me ask you to
 09:09 4 step down for a moment.
 09:10 5 (Venireperson Kovacs not present.)
 09:11 6 THE COURT: Mr. Schultz, do you have an
 09:11 7 announcement?
 09:11 8 MR. SCHULTZ: Yes, sir, I believe we've
 09:11 9 reached an agreement to excuse this well-qualified
 09:11 10 venireperson by agreement.
 09:11 11 MR. GOELLER: That's correct, Your Honor.
 09:11 12 THE COURT: Is that your desire,
 09:11 13 Mr. Cantu?
 09:11 14 THE DEFENDANT: Yes, Your Honor.
 09:11 15 THE COURT: Too scintillating?
 09:11 16 MR. SCHULTZ: Yes, sir, too scintillating.
 09:11 17 Obviously spends too much time on neurocommunication to
 09:11 18 sit on this jury. "He claims he was in the Army, but I
 09:11 19 don't know. I don't know. "What's his job for 30
 09:11 20 years?" "I don't know."
 09:11 21 THE COURT: Healthy skepticism. At any
 09:11 22 rate, if you'd tell Ms. Kovacs that she is excused?
 09:11 23 (Venireperson Kovacs excused.)
 09:12 24 (Venireperson Morris present.)
 09:12 25 THE COURT: Sir, are you Jerry Morris?

09:12 1 VENIREPERSON: Yes, sir.
 09:12 2 THE COURT: I want to welcome you to the
 09:12 3 courtroom. Previously, I placed all 200 jurors under an
 09:12 4 oath.
 09:12 5 VENIREPERSON: Yes.
 09:12 6 THE COURT: If you recall, it was an oath
 09:12 7 to truthfully respond to the questions asked by both
 09:12 8 sides in this case.
 09:12 9 VENIREPERSON: Yes.
 09:12 10 THE COURT: And I just wanted to remind
 09:12 11 you that you are still under that oath, sir.
 09:12 12 VENIREPERSON: Yes.
 09:12 13 THE COURT: All right. Mr. Schultz?
 09:12 14 VOIR DIRE EXAMINATION
 09:12 15 BY MR. SCHULTZ:
 09:12 16 Q. Yes, sir. Good morning to you, Mr. Morris.
 09:12 17 A. Good morning.
 09:12 18 Q. My name is Bill Schultz. I was probably
 09:12 19 introduced to you back when Ms. Falco spoke to you a few
 09:13 20 days ago. I'm a felony prosecutor and an assistant
 09:13 21 district attorney assigned to prosecute the capital case
 09:13 22 against Ivan Cantu. You met Ms. Falco a few days ago
 09:13 23 when she spoke to you as group. And then further to
 09:13 24 your right, at our table, is Ms. Jami Lowry, also a
 09:13 25 felony prosecutor in Collin County.

09:13 1 If you are selected to serve upon this
 09:13 2 jury, we'd most likely be the three prosecutors that you
 09:13 3 would be working with. Although, it is possible that
 09:13 4 another prosecutor might come along to help with some
 09:13 5 specialized area, if one emerged, there are prosecutors
 09:13 6 that are very good at certain types of scientific
 09:13 7 evidence.
 09:13 8 There are prosecutors that are very good
 09:13 9 with talking with very young children and getting them
 09:13 10 to open up and explain what they may know or be able to
 09:13 11 offer evidence on, but most likely you'll be dealing
 09:13 12 with the three of us.
 09:13 13 At the defense table, the man in the blue
 09:13 14 shirt to your left at that table, is the defendant Ivan
 09:13 15 Cantu. Next to him is Mr. Don High, and next to
 09:14 16 Mr. High is Matt Goeller. These are two very fine law
 09:14 17 specialists and practitioners in Plano, Texas.
 09:14 18 And I believe from earlier discussions and
 09:14 19 from the questionnaire answers, you don't know any of
 09:14 20 the participants in this; is that right?
 09:14 21 A. The names I'm not familiar with, no.
 09:14 22 Q. Okay. Do you recognize any of us? Do you
 09:14 23 think you've ever had any dealings with any of us?
 09:14 24 A. No dealings.
 09:14 25 Q. So, I mean, if you have met us before, you

09:14 1 don't connect us with names, and it can't be a very
09:14 2 important dealing because you don't remember, right?

09:14 3 A. Right.

09:14 4 Q. You know, if someone were to ask the question:
09:14 5 What is a qualified juror, the answer to that question,
09:14 6 first of all, would be a juror that meets all the
09:14 7 statutory requirements.

09:14 8 For example, you never before have been
09:14 9 convicted of a theft. You can't -- you can't be
09:15 10 currently under accusation for theft. You've got to be
09:15 11 of good moral character, whatever that means. You have
09:15 12 to -- and there's a list of things that actually,
09:15 13 probably already have been dealt with in this case.

09:15 14 You can't, for example, have been on the
09:15 15 Grand Jury that indicted this defendant. And I know you
09:15 16 weren't because we work with Grand Juries. But if you
09:15 17 had been, they say you can't be both the accuser and
09:15 18 then also the neutral trial juror.

09:15 19 But once you meet those -- those
09:15 20 standards, then the next question is: Is a juror an
09:15 21 open-minded enough individual to be able to follow all
09:15 22 aspects that the law requires? And that could often
09:15 23 mean putting aside your personal views in favor of your
09:15 24 desire and your ability to follow the law in some areas.
09:15 25 Does that make sense to you?

09:15 1 A. Yes.

09:15 2 Q. And we probably -- we probably do that all the
09:16 3 time in life and don't really even -- excuse me.

09:16 4 A. I'm trying to listen to you, and I was hearing
09:16 5 other --

09:16 6 Q. Okay. Some -- I can't explain for them, but
09:16 7 sometimes, in discussing things, it's necessary for us
09:16 8 to talk rather than ask the Judge for a recess if we've
09:16 9 got to communicate something.

09:16 10 A. Sure.

09:16 11 Q. I'll try to talk. I may do that with
09:16 12 Ms. Falco. We may talk, so nothing personal to anybody.
09:16 13 You are just listening. You weren't mad at them for
09:16 14 talking or anything?

09:16 15 A. No, no. I was just trying to listen.

09:16 16 Q. Good enough. Now, what we ask of jurors is to
09:16 17 have an open mind and not only a willingness but -- and
09:16 18 a real ability to follow all of the law that's required
09:16 19 of them in a case. And for some people, that is a snap
09:17 20 because some people are not strongly opinionated on the
09:17 21 jury system, and other people are strongly opinionated.
09:17 22 And then it's just up to them, how strong their
09:17 23 personality is. How able they are and how important it
09:17 24 is for them to follow the requirements of society in
09:17 25 order to make a better society

09:17 1 Let me give you an example of that. You
09:17 2 could be serving on a civil jury and somebody could be
09:17 3 hurt very, very, very badly and all kinds of damages.
09:17 4 Their life ruined by something somebody else did. Not a
09:17 5 crime, but just a civil kind of thing, an auto accident
09:17 6 paragraphs, a -- some type of medical malpractice, some
09:17 7 type of, I don't know.

09:17 8 Some government building was poorly
09:17 9 constructed and the building falls on top of them and
09:17 10 breaks their back or something. And you might feel real
09:17 11 sorry for the person who got hurt. Who wouldn't? Who
09:17 12 wouldn't feel really sorry for someone who got injured?

09:17 13 And yet, the way the law is worded, there
09:17 14 may be reasons you could not find any damages for that
09:17 15 person? Do you understand what I'm saying? It might be
09:18 16 like, maybe the case was barred by the statute of
09:18 17 limitations, and he had to consider facts and you had to
09:18 18 follow that.

09:18 19 Maybe there's some type of immunity that
09:18 20 applied. Like sometimes governments are immune to civil
09:18 21 suits just because of the way the law is worded. Are
09:18 22 you the kind of person that could follow the
09:18 23 instructions the Court gave you, even though -- like in
09:18 24 a civil case, you wanted to find money for the poor
09:18 25 plaintiff who had gotten his spine broken? Are you that

09:18 1 kind of person?

09:18 2 A. Yes.

09:18 3 Q. It mostly works very easily in criminal law. I
09:18 4 think in most criminal prosecutions, it would be rare
09:18 5 for us to find a juror who could honestly tell us, I
09:18 6 can't follow all of the instructions the Court gives me
09:18 7 when I get to the punishment part of the trial.

09:18 8 I mean, I don't know if you ever thought
09:18 9 about it before. I know you have been on juries before
09:18 10 so you have more understanding about the process than
09:19 11 the average person, perhaps. But I'll bet, as you sit
09:19 12 there right now, you don't have any idea what the
09:19 13 punishment range is for a fellow that is found guilty of
09:19 14 forging a deed. You wouldn't know what that is, would
09:19 15 you? What the punishment range is?

09:19 16 A. Not right offhand, no.

09:19 17 Q. And you might be the kind of person who would
09:19 18 think that's the world's worst crime. And anyone who
09:19 19 forges a deed ought go to prison for the rest of his
09:19 20 life. Or you might be the kind of person that says,
09:19 21 well, that doesn't sound like too much. It got
09:19 22 discovered and nobody got injured. There wasn't any
09:19 23 physical violence, and so it's real real light. And
09:19 24 yet, you'd be the kind of person who could follow the
09:19 25 full range of punishment

09:19 1 And if, for example, it ended up being a
09:19 2 two-year, ten-year type of punishment range, you could
09:19 3 set punishment anywhere within that range. Am I right
09:19 4 on that?

09:19 5 A. Yes.

09:19 6 Q. Even though, if they said, you know,
09:19 7 Mr. Morris, come on down to the legislature and tell us
09:19 8 what you think the punishment range ought to be, you
09:19 9 might say it ought to be 30 days in jail, or you might
09:19 10 think it ought to be 50 years in the joint kind of
09:19 11 thing?

09:19 12 A. Right.

09:20 13 Q. You could do that?

09:20 14 A. Right.

09:20 15 Q. That's what we really expect. We expect, and
09:20 16 this is probably easier for a person with a military
09:20 17 background, conceptually. We expect people who will
09:20 18 come, when their society asks them to come serve and
09:20 19 will recognize that there is value in the uniformity of
09:20 20 following rules, and that ultimately that takes care of
09:20 21 us all. And even if you disagree, you'll still do it.

09:20 22 Now, you had a number of years in the
09:20 23 United States Marine Corps? Am I right about that?

09:20 24 A. Yes.

09:20 25 Q. And did you -- part of that question, I hope

22

09:20 1 it's not too sensitive. Did you ever have occasion to
09:20 2 see armed conflict?

09:20 3 A. No, I did not.

09:20 4 Q. You reckon if you look back -- how many years
09:20 5 were you in the Marine Corps?

09:20 6 A. Approximately seven.

09:20 7 Q. Seven?

09:20 8 A. Yes.

09:20 9 Q. If you looked back on those seven years, do you
09:20 10 think you ever got an assignment or a duty that you
09:21 11 didn't agree with? Did that ever happen?

09:21 12 A. No.

09:21 13 Q. Did you ever engage in any type of activity
09:21 14 that you thought wasn't the right thing?

09:21 15 A. No.

09:21 16 Q. Is that just because it always worked out
09:21 17 perfectly for you or just because you were committed to
09:21 18 the idea of the whole program?

09:21 19 A. I was committed to it. Mostly, it was while I
09:21 20 was in college. It was a reservist-type enlistment.

09:21 21 Q. And then what was your rank when you were in
09:21 22 the Marine Corps?

09:21 23 A. Sergeant.

09:21 24 Q. What were some of your duty stations?

09:21 25 A. San Diego. Naval Air Station in Dallas. And

09:21 1 then in the summer when I was in the reserves, summer
09:21 2 camp was in South Carolina; Yuma, Arizona.

09:21 3 Q. What part of South Carolina; Paris Island?

09:21 4 A. Paris Island.

09:21 5 Q. They say that's very picturesque; is that true?

09:22 6 A. (Laughter.)

09:22 7 Q. Mr. Goeller who has a Marine Corps background,
09:22 8 he'll be talking the old stories with you, I'm sure,
09:22 9 when he speaks with you. How about 29 Palms? Were you
09:22 10 ever there?

09:22 11 A. No. I never got there.

09:22 12 Q. Now, I think of capital punishment as very
09:22 13 different as a concept from any other type of jury
09:22 14 service, even criminal jury service. And, of course,
09:22 15 it's obviously different because a life is on the line
09:22 16 in a capital murder trial. And so that's -- to most of
09:22 17 us that love a free society, that love America, that
09:22 18 love human life, and we all do in this country. That's
09:22 19 kind of what we are. That's a big thing.

09:22 20 And I guess I have to ask, rather than
09:22 21 assume, because you know what they say about assuming,
09:23 22 but are you the kind of person that realizes it's
09:23 23 extremely important for a capital murderer to have a
09:23 24 fair trial whether he's guilty or not, number one, and,
09:23 25 further, to have jurors that can fairly consider

24

09:23 1 answering questions, the results of which may result in
09:23 2 life or death, depending on how they answer these
09:23 3 questions?

09:23 4 A. Yes.

09:23 5 Q. You feel -- you know, and I don't know, most
09:23 6 people are not top dead center in terms of where they
09:23 7 line up on capital punishment. There are some people
09:23 8 that are, for example, extremely strong for it. There
09:23 9 are some people that are kind of in the middle, and
09:23 10 they, well, kind of, I'm torn. I'm split. I see both
09:23 11 sides.

09:23 12 There are some people that -- that are
09:23 13 downright opposed to it for a lot of different reasons,
09:23 14 all of whom could still fairly belong on a trial jury if
09:23 15 they could follow the instructions of the Court.

09:23 16 In other words, if I'm the kind of person
09:24 17 who doesn't think the death penalty is a good thing in
09:24 18 our society, and I'm asked the question: All right,
09:24 19 given you don't believe it's a good thing for the
09:24 20 society, could you still follow the law? My answer is,
09:24 21 sure. I can still do that because following the law is
09:24 22 more important than me making my own law as an
09:24 23 individual citizen by voting the way I want to vote,
09:24 24 rather than what the law requires. Does that make sense
09:24 25 to you?

09:24 1 A. Yes.

09:24 2 Q. And it's kind of like coming back to that deed
09:24 3 thing that I talked to you about. I mean, if someone
09:24 4 said, well, you know, you think a deed forgery ought to
09:24 5 be 50 years; but you won't be able to do that. Can you
09:24 6 still work within the two- to ten-year range that the
09:24 7 law says you got to follow? And you can do that?

09:24 8 A. Yes.

09:24 9 Q. And so what we end up having ultimately, we
09:24 10 have a couple of processes. We, first of all, have a --
09:24 11 we have some jurors that come up. I'm not saying they
09:24 12 are wrong. I'm not saying they are lesser people or
09:24 13 anything like that. But they come up and say, no, I'm
09:24 14 against the death penalty. And it doesn't matter what
09:25 15 you show me; I will always vote those questions in a way
09:25 16 that will make sure a life sentence happens.

09:25 17 It doesn't matter who it is. You can be
09:25 18 trying Adolf Hitler, and he could be screaming
09:25 19 atrocities all through the trial. It wouldn't matter.
09:25 20 We're going to vote in such a way as to make sure that
09:25 21 Mr. Hitler gets a life sentence. If they say that, they
09:25 22 are not qualified jurors. They can't even have the
09:25 23 opportunity to serve on the jury because they can't
09:25 24 follow the law. Does that make sense to you?

09:25 25 A. Yes.

26

09:25 1 Q. And going the other direction, because it could
09:25 2 also be true. We have some jurors that say, I'm so
09:25 3 committed to capital punishment. I'm so angry about
09:25 4 what criminals are doing to our free society, I'm so
09:25 5 tired of my law-abiding freedoms being constantly
09:25 6 narrowed by my fears of safety. I'm so worried -- I'm
09:26 7 so tired about worrying about children going out at
09:26 8 night and wondering if they are going to come home, not
09:26 9 because of their behavior, but because of somebody else.

09:26 10 I'm so tired of picking up the newspaper
09:26 11 and just reading about however many triple homicides
09:26 12 they had in Dallas last week or what happened in Houston
09:26 13 or Fort Worth. I'm so tired of all that. It's time to
09:26 14 start the killing machine going. And you put me on this
09:26 15 jury, and I'll tell you what my answers are going to be.
09:26 16 They were going to be the answers that won't cause
09:26 17 death. I don't care about the evidence. I care about
09:26 18 the result, in other words. You see?

09:26 19 And if a person is that way, if they say,
09:26 20 I don't care about the evidence; I care about the
09:26 21 result, whichever result they are caring about, they are
09:26 22 not neutral jurors. They are not fair and impartial.
09:26 23 They won't follow the law, in other words. Does that
09:26 24 make sense?

09:26 25 A. Yes.

09:26 1 Q. So what we're looking for, and this whole
09:26 2 process is designed to find out whether jurors are those
09:26 3 open-minded people that most people really are that will
09:27 4 keep their minds open to both sides. And then what we
09:27 5 think about, as lawyers, we have to say, okay. He's
09:27 6 open-minded, but his mind seems to be too much this way
09:27 7 or too much that way for our satisfaction, for our side
09:27 8 of the case.

09:27 9 And then if it's nothing personal, we end
09:27 10 up using one of our, what we call, peremptory
09:27 11 challenges, one of our strikes, on that juror. And that
09:27 12 can happen, you know. You and I haven't gone far enough
09:27 13 yet for me to go, but I might get the idea that this is
09:27 14 a man who will probably be extremely favorable to the
09:27 15 defense in the defense evidence. And I might say, well,
09:27 16 I'd love to have you on some other kind of case,
09:27 17 Mr. Morris, but I'm concerned. I know my evidence. You
09:27 18 don't know my evidence. I know what it's going to be,
09:27 19 and I'm concerned.

09:27 20 Mr. Goeller might be the same way. He
09:27 21 might say, you are a great guy, and I love talking
09:27 22 marine stories with you, but you seem to me, in his
09:27 23 mind, to be the kind of person less favorable to his
09:27 24 side of the case than maybe he's comfortable with. So
09:28 25 he could use a strike on you. Are you following what

28

09:28 1 I'm saying?

09:28 2 A. Yes.

09:28 3 Q. So let's, first of all, find out if you are
09:28 4 even qualified for us to get that far.

09:28 5 A. Right, right.

09:28 6 Q. And if you are not, you are not, and it's
09:28 7 nothing personal.

09:28 8 A. Can I inject some things that have come to my
09:28 9 mind recently?

09:28 10 Q. Yes, sir.

09:28 11 A. When the Judge asked if I knew anything about
09:28 12 the case or when we had the questionnaire, I didn't
09:28 13 recognize names. I don't know -- I didn't know the
09:28 14 case. I still don't really know the case.

09:28 15 Q. Okay.

09:28 16 A. But I did read some things years ago, not years
09:28 17 ago, I guess months ago in the paper that might -- this
09:28 18 might be this case, I don't know. Because I picked some
09:28 19 things out when Ms. Falco was talking about the
09:28 20 ingredients that make capital murder. And when she
09:28 21 talked about being more than one person involved in the
09:28 22 murder, I began to remember something I had read.

09:28 23 Q. Okay. Let me stop you there because I'm going
09:28 24 to ask you directly about that. I wish I could tell you
09:29 25 I bet so because that's the only such kind of case we

09:29 1 have in Collin County. I wish -- that's not so.

09:29 2 A. And I don't know names either, so.

09:29 3 Q. I know. Tell me what -- first of all, tell me
09:29 4 what -- tell me all that you remember about what you
09:29 5 read.

09:29 6 A. I read that this was a couple and that the
09:29 7 female involved had come here to visit from some other
09:29 8 nation, and that they were both deceased, both murdered.
09:29 9 And I remember reading a little bit more that there were
09:29 10 some suspects.

09:29 11 Q. Right.

09:29 12 A. And, unfortunately, I think I read that one of
09:29 13 the suspects might have been on a release program of
09:29 14 some kind.

09:29 15 Q. Like you mean from prison or something, you
09:29 16 mean?

09:29 17 A. Something similar to that.

09:30 18 Q. I know the case you are talking about. It's
09:30 19 interesting because it's being tried just down the hall.
09:30 20 It's not this case at all.

09:30 21 A. Okay. I just wanted to make that clear that I
09:30 22 had read that, and I did remember that particular event.

09:30 23 Q. Okay.

09:30 24 THE COURT: Thank you, sir.

09:30 25 Q. (BY MR. SCHULTZ) So what we're going to do now

09:30 1 is look and see whether you are qualified, whether you
09:30 2 are the kind of person that is -- that the law would
09:30 3 say: This is a qualified juror. Now, let the lawyers
09:30 4 decide whether you want to choose this juror.

09:30 5 And you have been through this process a
09:30 6 couple of times before, just not individually. Do you
09:30 7 remember how it worked in your other situations as
09:30 8 jurors?

09:30 9 A. Somewhat, yes.

09:30 10 Q. Probably -- probably lawyers stood up for the
09:30 11 State. You have been on two different juries; is that
09:30 12 right?

09:30 13 A. Yes.

09:30 14 Q. A lawyer stands up for the State talking about
09:30 15 the law and what might apply. He doesn't tell you the
09:30 16 facts about that case, but gives you a little flavor for
09:30 17 it and asks you different things. And then the defense
09:30 18 lawyer stands up and talks much of the same thing, but
09:31 19 maybe with a different spin. Talks more about other
09:31 20 concepts. And then the jury is retired for a while.

09:31 21 The Judge says, "Both sides make your
09:31 22 strikes." And then you come back in a little bit later,
09:31 23 and they start calling names, and here comes Mr. Morris.
09:31 24 You are on this jury, too, and so you go up and sit in
09:31 25 the jury box. Do you remember all that?

09:31 1 A. Yes.

09:31 2 Q. And that's happened to you twice. This is
09:31 3 exactly the same process except instead of letting me
09:31 4 see a show of hands of all the people that agree, kind
09:31 5 of like usually happens in a trial, we're doing it
09:31 6 individually with them, but it's the same thing. We
09:31 7 make our strikes one at a time, but it's the same idea.

And it's interesting because at least on
09:31 8 two occasions, both defense and State have agreed upon
09:31 9 you -- have agreed upon you in the sense they didn't
09:31 10 strike you in the past because you were on two juries.

Were you ever on a panel but didn't get --
09:31 11 but got struck, so you weren't one of the jurors? Did
09:31 12 that ever happen to you?

09:31 13 A. Yes.

09:31 14 Q. How many times did that happen?

09:31 15 A. Two, I think.

09:31 16 Q. So you probably actually have been examined
09:31 17 four times for jury service, maybe?

09:31 18 A. Actually, personally, only once, I think. The
09:31 19 other time was just a selection from the panel.

09:31 20 Q. I'm with you. Were they all four criminal
09:31 21 cases?

09:31 22 A. No.

09:31 23 Q. Were two -- I guess two were criminal?

09:32 1 A. Yes.

09:32 2 Q. And two -- that had to be some kind of civil
09:32 3 case?

09:32 4 A. Right, right.

09:32 5 Q. Do you favor the death penalty?

09:32 6 A. Yes.

09:32 7 Q. I know you put on your questionnaire, but I'm
09:32 8 kind of -- I'm curious to kind of hear now because some
09:32 9 people find, once they get to thinking about it between
09:32 10 the time they fill out the questionnaire and have that
09:32 11 initial talk with Ms. Falco and when they come in, they
09:32 12 change sometimes on their views, or their thinking
09:32 13 changes a little bit. I don't necessarily get a sense
09:33 14 from you there's been any real change on your basic
09:33 15 belief on the subject?

09:33 16 A. No.

09:33 17 Q. Tell me why you favor the death penalty.

09:33 18 A. We have a law about killing another person.
09:33 19 And since I support the laws of this country, that's
09:33 20 where I take it from. But also, I have a personal
09:33 21 belief that each individual has a responsibility for
09:33 22 what they do, and that there's a result of that act that
09:33 23 was committed.

09:33 24 Q. Since you support the laws of this state and
09:33 25 country, you do understand that the laws of the State

09:33 1 and country say only certain types of homicides can be
09:33 2 capital crimes?

09:33 3 A. Yes.

09:33 4 Q. And by the way, for whatever it's worth, there
09:34 5 was a question on the questionnaire -- I don't know how
09:34 6 you answered it. It's not, but well, I do too. Do you
09:34 7 think that the death penalty should be available for
09:34 8 punishment upon conviction of other criminal offenses?
09:34 9 And you indicated, yes, rape of a child, that that ought
09:34 10 to also be a death penalty situation.

09:34 11 A. Yes.

09:34 12 Q. I don't know whether we have case law on that
09:34 13 subject, but it is my sense that if such a fact
09:34 14 situation ever made it's way to the Supreme Court, the
09:34 15 U.S. Supreme Court would say no. That doesn't pass
09:34 16 the -- the 8th Amendment requirement that you be free
09:34 17 from cruel punishment. And I think the Supreme Court
09:34 18 would say that's cruel for a nonhomicide case.

09:34 19 There still may be one crime that's not a
09:34 20 murder that we can still have a death penalty for;
09:34 21 although, we haven't done that in a long time. Would
09:34 22 you know what that one other crime that still probably
09:34 23 could get you the death penalty for that's not a murder?
09:34 24 There's one.

09:35 25 A. I do not know.

09:35 1 Q. It would be treason or some type of extreme
09:35 2 espionage, which I guess that's very very close to
09:35 3 treason. And there's still a federal -- there's still a
09:35 4 federal crime that's capital in nature for the offense
09:35 5 of treason. Does that seem to you -- does treason seem
09:35 6 to be the kind of thing that a person ought to be strung
09:35 7 up from a tree for?

09:35 8 A. Or shot or -- there's a judgment for that, yes.

09:35 9 Q. Does that seem like that ought to be a capital
09:35 10 crime to you?

09:35 11 A. Yes.

09:35 12 Q. Well, we don't do any treason prosecution in
09:35 13 Collin County. Of course, neither does our country, so
09:35 14 who knows.

09:35 15 A. Right.

09:35 16 Q. If I follow the law, the law says, first of
09:35 17 all, the law says, you must afford a defendant a fair
09:35 18 trial upon the guilt-innocence portion of -- of a case.
09:36 19 That means that this defendant and any defendant in any
09:36 20 case that a juror would serve on must have absolute
09:36 21 assurance that you would hold the State to its burden of
09:36 22 proof.

09:36 23 A. Yes.

09:36 24 Q. And I know you know all this because you have
09:36 25 been instructed on this. You've not only been examined

09:36 1 on this twice before, but you've even been instructed by
09:36 2 the trial court on this twice before. But I want to go
09:36 3 over it and just make sure that your views haven't
09:36 4 changed. And that is that the burden of proof of
09:36 5 proving the defendant guilty is always upon who?

09:36 6 A. The State.

09:36 7 Q. Okay. And you also understand the defendant
09:36 8 has no burden of proof at all?

09:36 9 A. Right.

09:36 10 Q. Not only does the defendant have no burden of
09:36 11 proof, the jury can't use against him the fact that he
09:36 12 chooses not to produce any proof, if he doesn't want to.

09:36 13 A. Right.

09:36 14 Q. That's their call, their right. They don't get
09:36 15 a bonus for it. You don't say, gee, I'll bet they had
09:37 16 some great evidence. I wonder what it would be and
09:37 17 start trying to help them with their not doing it. But
09:37 18 you don't hold it against them or imply that they are
09:37 19 hiding something because your job, Mr. Morris, as you
09:37 20 know very well, is not so much to figure out what
09:37 21 everybody's thinking and why everybody is doing what
09:37 22 they are doing in a trial.

09:37 23 Your job is really very narrow. It's to
09:37 24 measure the evidence that the Judge tells you is
09:37 25 admissible. And that's -- it's a measurement thing.

09:37 1 It's not -- I mean, your job, and you know this as a
09:37 2 juror, is not to say which is the better lawyer, or it's
09:37 3 not important. I mean, I'd like you to like us here,
09:37 4 and I'm sure the defense lawyers would like you to like
09:37 5 them too and admire our work and respect us for what we
09:37 6 do, but that doesn't matter.

09:37 7 I mean, you could -- you could be sick of
09:37 8 listening to me or sick of listening to Mr. Goeller, and
09:37 9 that doesn't matter. What matters is, there is a trial.
09:37 10 And you have to measure the evidence presented however
09:37 11 it comes in. And are you the kind of man who could do
09:38 12 that?

09:38 13 A. Yes.

09:38 14 Q. And that might also mean that the defendant
09:38 15 would not have to testify. And I'm curious, do you
09:38 16 recall in either the two criminal cases, when you were
09:38 17 on the jury, do you recall whether those defendants
09:38 18 testified in those cases?

09:38 19 A. I believe one did and one didn't.

09:38 20 Q. Okay. For starters, the one that didn't
09:38 21 testify, you didn't hold that against him? You didn't
09:38 22 say, he must be hiding something. He must be guilty?

09:38 23 A. No.

09:38 24 Q. And because that's the right that you have and
09:38 25 I have, and you did follow the law?

09:38 1 A. Yes.
 09:38 2 Q. And the one that did testify, did you listen to
 09:38 3 what he had to say?
 09:38 4 A. Yes.
 09:38 5 Q. And were you open-minded in terms of --
 09:38 6 open-minded in the sense that you had the ability to
 09:38 7 listen to what the witness had to say and evaluate it?
 09:38 8 A. Yes.
 09:38 9 Q. In other words, you wouldn't say, well, he's
 09:38 10 the defendant. I'm shutting my ears until he's finished
 09:38 11 talking because I'm not going to listen to it, right?
 09:38 12 A. Right.
 09:38 13 Q. On the other hand, you understood you had the
 09:38 14 right as a juror to consider such things as, well, maybe
 09:39 15 he's telling the truth or maybe he's not. Maybe he has
 09:39 16 a reason to be testifying the way he is, other than the
 09:39 17 truth, and that's pretty obvious to try to get him or
 09:39 18 herself out of trouble, but maybe not. Just because you
 09:39 19 are a defendant doesn't mean you are automatically a
 09:39 20 liar.
 09:39 21 At the same time, a defendant may be a
 09:39 22 suspect kind of a witness. You can certainly see he has
 09:39 23 a lot of reason, other than the truth, to be talking the
 09:39 24 way he might be talking. Do you understand all those
 09:39 25 concepts?

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09:39 1 A. Yes.
 09:39 2 Q. And then you evaluate it. And if you -- if you
 09:39 3 believe his evidence or if you've got a reasonable doubt
 09:39 4 that it might be true, and if what he offers you is
 09:39 5 something that makes you then have a reasonable doubt
 09:39 6 about the State's case, then you are the kind of man
 09:39 7 that could find him not guilty. If you've got a
 09:39 8 reasonable doubt about his evidence or you believe that,
 09:39 9 right?
 09:39 10 A. Right.
 09:39 11 Q. Do you believe you gave both of those
 09:40 12 defendants a fair trial in those other cases?
 09:40 13 A. Yes.
 09:40 14 Q. You individually?
 09:40 15 A. Yes.
 09:40 16 Q. You think you gave the State a fair trial?
 09:40 17 A. Yes.
 09:40 18 Q. And when you did the punishment phase, do you
 09:40 19 believe you gave a fair consideration of punishment to
 09:40 20 the defendant?
 09:40 21 A. Yes.
 09:40 22 Q. Now, I would think most people when looking at
 09:40 23 the results of a punishment might think, well, maybe so,
 09:40 24 but he tends to be more on the higher side of punishment
 09:40 25 than maybe some other jurors would be, and that could

09:40 1 be. Or maybe it was merely the evidence.
 09:40 2 The reason you voted for the punishment
 09:40 3 that you voted for was because of the evidence, not
 09:40 4 because you were just going out there just to make some
 09:40 5 lawyers help, right?
 09:40 6 A. Right.
 09:40 7 Q. You saw that evidence, and you said this
 09:40 8 evidence requires this punishment?
 09:40 9 A. Yes.
 09:40 10 Q. And if you thought it required a different
 09:40 11 punishment, a lesser punishment, that's what you would
 09:40 12 have done also?
 09:40 13 A. Yes.
 09:40 14 Q. What do you think of the jury system, and you
 09:40 15 have been involved in it? How much do you respect it?
 09:41 16 A. I would say very highly.
 09:41 17 Q. Do you consider that an important, almost a
 09:41 18 sacred duty of citizens to be on a jury and do it right?
 09:41 19 A. Yes.
 09:41 20 Q. But, again, it's different because you never
 09:41 21 served on a death penalty case, so you never had to make
 09:41 22 a life-and-death call before.
 09:41 23 A. Right.
 09:41 24 Q. But let's assume now, and we have to prove
 09:41 25 beyond a reasonable doubt that the defendant is guilty

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09:41 1 or we don't even worry about these questions. And when
 09:41 2 I say guilty, I say guilty of capital murder. But
 09:41 3 unlike what you probably did on those other cases, you
 09:41 4 probably didn't have any real special issues of the
 09:41 5 punishment phase. You might have had something like it,
 09:41 6 I don't know.
 09:41 7 There might have been something under our
 09:41 8 repeat-offender law. There might have been a question
 09:41 9 to you about whether or not the defendant had been
 09:41 10 previously convicted of a felony and maybe give you a
 09:41 11 cause number and a date and stuff like that. Do you
 09:41 12 remember if there were any, like, priors in either of
 09:41 13 those cases introduced?
 09:42 14 A. On one there was.
 09:42 15 Q. And so it was more than just, what punishment
 09:42 16 do you impose? Because there was probably a finding
 09:42 17 that you have to make in order to, about whether he was
 09:42 18 convicted of that other offense first, and then you
 09:42 19 would do punishment.
 09:42 20 But this doesn't ever ask you -- you are
 09:42 21 never going to -- you will never write anything down
 09:42 22 about what sentence the defendant gets in this case on
 09:42 23 the verdict form. Whoever is the presiding juror, there
 09:42 24 is no blank that says life or death on the verdict form.
 09:42 25 What we do is very much like how we do it

09:42 1 in civil cases. We ask the jurors questions that are
 09:42 2 yes or no questions. It's just that simple, yes or no.
 09:42 3 And how those questions are answered determines what
 09:42 4 punishment the defendant gets. Does that make sense to
 09:42 5 you, what I'm saying?

09:42 6 A. Yes.

09:42 7 Q. Question No. 1 has to do with what we call
 09:42 8 future danger, whether there is a probability that the
 09:42 9 defendant would commit criminal acts of violence that
 09:42 10 would constitute a continuing threat to society.

09:43 11 Now, I wish we had some definitions of
 09:43 12 those words. And yet it doesn't seem to bother jurors
 09:43 13 across the State doing capital trials. I don't think
 09:43 14 I've ever yet heard of a jury writing a note to the
 09:43 15 Judge saying, we don't understand the question. We're
 09:43 16 not deadlocked. We just -- we don't know how to answer
 09:43 17 because we don't understand it. They figure it out. It
 09:43 18 ends up making sense to jurors once they go to it, even
 09:43 19 though it's not always well defined.

09:43 20 First term in there that's a little bit
 09:43 21 vague is probability. You know the word. You've heard
 09:43 22 of it before. It's what we use in our -- in our
 09:43 23 everyday language. But it might mean different things
 09:43 24 to different people, number one. And it might mean
 09:43 25 different things depending upon what stuff we're talking

09:44 1 about.

09:44 2 For example, to a weather forecaster, a
 09:44 3 weather forecaster might say there is a 20 percent
 09:44 4 probability of rain tomorrow. Have you ever heard that
 09:44 5 when they are talking on the weather channel?

09:44 6 A. Yes.

09:44 7 Q. And I guess that means there is an 80 percent
 09:44 8 probability of no rain. And then from that we make our
 09:44 9 judgments about whether we take an umbrella with us
 09:44 10 where we're going. And I don't know -- I don't know if
 09:44 11 20 percent is worth taking an umbrella or not. I guess
 09:44 12 it depends on how much other stuff we're carrying. 80
 09:44 13 percent probability, I bet we all take an umbrella
 09:44 14 because that's how we are.

09:44 15 People that -- people that are like
 09:44 16 gamblers -- did you ever play cards or dice or anything
 09:44 17 like in Las Vegas, any of that kind of stuff?

09:44 18 A. No.

09:44 19 Q. All that stuff is based on probabilities. Slot
 09:44 20 machines, they have a probability of paying off. You
 09:44 21 know it's not a 50-50 shot, or how do the casinos make
 09:44 22 money? But they have probabilities, and they all
 09:44 23 advertise, and liberal slots, and we pay off better than
 09:44 24 everybody else. And maybe that's so, but the
 09:45 25 probability of you walking out of there with all that

09:45 1 you walked in with has got to be low because how do they
 09:45 2 stay in business otherwise, you know? Do you agree with
 09:45 3 me on that?

09:45 4 A. Right.

09:45 5 Q. So in that context, I don't know what
 09:45 6 probability may mean. I don't know what the probability
 09:45 7 is if I'm playing blackjack. But I know -- I know my
 09:45 8 experience is, it's got to be less than 50-50 because I
 09:45 9 always walk out broke. I don't ever -- and they got the
 09:45 10 lights on in the casino. They stay in business.

09:45 11 So probability doesn't have to be more
 09:45 12 than 50 percent. It may be, depending on the context,
 09:45 13 but it can be less than 50 percent. Are you with me?

09:45 14 A. Right.

09:45 15 Q. So let's talk about, if I were to say,
 09:45 16 Mr. Morris, are you going to go to the neighborhood
 09:45 17 party Friday night? And you tell me "probably." In
 09:45 18 that context, probability to me sounds like it's more
 09:46 19 likely that I'm going to see you than not.

09:46 20 I figure -- I figure somebody says, are
 09:46 21 you going to see Mr. Morris at the neighborhood party?
 09:46 22 I pass along "probably." I talked to him, and he said
 09:46 23 he would probably be there. So I mean, everybody is
 09:46 24 expecting more likely you will be there. Do you
 09:46 25 understand?

09:46 1 A. Right.

09:46 2 Q. And then probability to a mathematician can
 09:46 3 mean something very very remote. It could happen, but
 09:46 4 in the real world, other than -- other than to a
 09:46 5 mathematician or a theoretical person or something, it
 09:46 6 isn't going to happen. Let me give you an example. If
 09:46 7 I've got a coin in my hand, and I flip it, how many
 09:46 8 different things could it come up?

09:46 9 A. Two.

09:46 10 Q. Okay. Well, nobody but a lawyer would think
 09:46 11 this way; actually, there are three ways it could come
 09:46 12 up. It could land on its edge.

09:47 13 A. Yeah, it could.

09:47 14 Q. Are you with me?

09:47 15 A. Right.

09:47 16 Q. Now, I suppose that's theoretically -- well, of
 09:47 17 course it is. I mean, if we have a million apes
 09:47 18 flipping a million coins for a million years, some of
 09:47 19 those coins are going to end up on their edge just
 09:47 20 because there are such a large number of things
 09:47 21 happening. Sometime one is going to end up on its edge.
 09:47 22 But I wouldn't like those odds if I were betting the
 09:47 23 farm on it. Do you know what I mean?

09:47 24 A. Right.

09:47 25 Q. I mean it could happen but it ain't going to

09:47 1 happen. The sun may not shine tomorrow anywhere. It
09:47 2 may burn out tonight for all we know. But all of our
09:47 3 studies and all of our knowledge indicates that's not
09:47 4 going to happen, although I guess it could. I guess it
09:47 5 could explode tonight, you know, the sun could.

09:47 6 So whatever probability means to you in
09:47 7 that question, it has to be more than a mere
09:47 8 possibility. It has to be more than that coin ending up
09:47 9 on its edge, or the sun burning out, or an enormous
09:47 10 spinal cord injury just fixing itself magically the next
09:47 11 day. You know, it has to be more than, yeah, I guess
09:48 12 that could happen. It has to be a realistic shot it
09:48 13 happened. Does that make sense to you?

09:48 14 A. Yes.

09:48 15 Q. Other than that, we can't define it for you.
09:48 16 We know it means more than a mere possibility, mere
09:48 17 conjecture, and it means less than a certainty. And
09:48 18 then the next question is: The probability has to be
09:48 19 that the defendant would commit criminal acts of
09:48 20 violence.

09:48 21 Now, it doesn't mean -- it doesn't mean:
09:48 22 Is there a way to keep the defendant from committing
09:48 23 criminal acts of violence because, I mean, there are all
09:48 24 kinds of theoretical ways to keep even the world's most
09:48 25 dangerous person from committing an act. Put him in a

09:48 1 rocket ship and send him someplace where they don't have
09:48 2 anybody else, and you can't do criminal acts of violence
09:48 3 if there is nobody else. Do you agree?

09:48 4 A. Yes.

09:48 5 Q. But that's not what it says. It just says: Is
09:48 6 there a probability that the defendant would commit
09:48 7 criminal acts of violence? When you think of criminal
09:48 8 acts of violence, what do you think about? What kind of
09:49 9 acts are those?

09:49 10 A. Acts against individuals, against a person,
09:49 11 personal entity.

09:49 12 Q. Makes sense to me. And, yet, if you stop and
09:49 13 think about what the act of violence is, it's an
09:49 14 infringement by force upon people's personal rights.
09:49 15 That's kind of what it is. I mean, you punched me.
09:49 16 That's kind of an infringement of my right to not have
09:49 17 my face punched.

09:49 18 And of course we all know that's violence
09:49 19 because it's kind of fist-to-face kind of violence. But
09:49 20 what if you, out of the same darkness of heart, pick up
09:49 21 a baseball bat and go to work on my brand-new car and
09:49 22 just make it look like it got hit by a, you know, a hail
09:49 23 storm bowling ball size, or something like that? Is
09:49 24 that a criminal act of violence, do you think?

09:49 25 A. It's an act of violence, but I don't know that

09:50 1 it would be criminal.

09:50 2 Q. Well, let me -- let's think about that for a
09:50 3 second. If I go down there and beat up your car now,
09:50 4 are you going to call the police on me?

09:50 5 A. Yes.

09:50 6 Q. Do you think they are going to say, "That's not
09:50 7 criminal"? Do you know what I'm saying?

09:50 8 A. Right.

09:50 9 Q. It's a criminal act. If it's an act of
09:50 10 violence, that's necessarily a criminal act of violence,
09:50 11 right? Because you called the police. That's what --
09:50 12 you called the police on me for that, right?

09:50 13 A. Right.

09:50 14 Q. Okay. And then there are some things that
09:50 15 you'd agree with me are not acts of violence. They may
09:50 16 be crimes; they may be criminal acts, but they are not
09:50 17 violence. Like, can you think of a crime that's clearly
09:50 18 not an act of violence in your mind, some kind of crime?

09:50 19 A. Purse snatcher or pickpocket.

09:50 20 Q. Yeah. I mean, pickpockets, they are real good
09:50 21 at not letting you feel when they are doing it. So I
09:50 22 mean, it couldn't hurt me. It's pretty hard to say that
09:50 23 I got some violence from the guy when I didn't even know
09:50 24 he got my wallet until they catch him down at the other
09:51 25 end of the platform or something.

09:51 1 Stealing, shoplifting; there is no
09:51 2 violence there. Tax cheats. You know, lying on your
09:51 3 internal revenue forms, for example. Those are crimes.
09:51 4 Those are federal crimes, and, yet, there is not
09:51 5 violence involved in them. How about deserting from the
09:51 6 military? Is that a violent act, in your opinion?

09:51 7 A. Yes.

09:51 8 Q. How would that be a crime of violence?

09:51 9 A. It is your elective duty -- it's not standing
09:51 10 up for what you are taking an oath to do.

09:51 11 Q. And plus it might be violent because you might
09:51 12 have to knock a sentry in the head because he's not
09:51 13 going to let you hop the fence, right, because he's not
09:51 14 supposed to, or an MP? You might have to whack an MP
09:51 15 at the gate to get out. For example, that would be an act
09:51 16 of violence, wouldn't it?

09:51 17 A. Yes.

09:51 18 Q. And when they come try to arrest you, you might
09:52 19 try to resist, and that would be an act of violence,
09:52 20 right?

09:52 21 A. Right.

09:52 22 Q. Well, the idea of this question is to measure
09:52 23 the defendant's personality and say, based on all I
09:52 24 know about the defendant, including what crime I found
09:52 25 him guilty of--because you only do that question at the

09:52 1 second phase of the trial, at the punishment part--do I
09:52 2 believe beyond a reasonable doubt he will probably
09:52 3 commit criminal acts of violence in the future that
09:52 4 constitute a continuing threat to society? Do you
09:52 5 understand the concept of that question?

09:52 6 A. Yes.

09:52 7 Q. And the law requires jurors who say and mean, I
09:52 8 can answer that question yes or no depending upon what I
09:52 9 see in the courtroom. I can go either way on that
09:52 10 question. Kind of like I can give somebody two years or
09:52 11 ten years for forgery depending on what I see in the
09:52 12 evidence in the case. Does that make sense to you?

09:53 13 A. Yes.

09:53 14 Q. And that's where I was talking about those
09:53 15 jurors that aren't even -- that aren't even fit to be
09:53 16 considered for jury service. And when I say fit, I
09:53 17 don't mean fit as human beings. I mean fit as jurors.
09:53 18 They were not fit to be considered.

09:53 19 If a juror comes in and says, I don't care
09:53 20 what you prove to me, State, I don't care how good or
09:53 21 how bad a lawyer you are, if you are the world's
09:53 22 greatest prosecutor with all the skill in the world, no
09:53 23 way are you ever going to get a yes answer out of me to
09:53 24 that question. Not that you wouldn't be right with your
09:53 25 evidence, but I'm not going to answer it yes because

09:53 1 that could result in a death penalty for somebody, and
09:53 2 I'm not going to do it.

09:53 3 I will -- I'm the kind of person who
09:53 4 doesn't believe in the death penalty. And I'm going to
09:53 5 let my views take over the rest of society's because I'm
09:53 6 going to make my own law in answering that question so I
09:53 7 can make sure that there is no death penalty in this
09:53 8 case. Do you understand why that person would not be
09:54 9 fit for jury service?

09:54 10 A. Right.

09:54 11 Q. And in your mind, why would that person not be
09:54 12 fit for jury service if that person thought that way?

09:54 13 A. They are not looking at what is presented in
09:54 14 the courtroom.

09:54 15 Q. Right. Already made up their mind?

09:54 16 A. Right.

09:54 17 Q. That they are going to do what they want which
09:54 18 is part of the problem with our country anyway. We have
09:54 19 just so many people doing what they want to do and not
09:54 20 what the country needs them to do; isn't that true?

09:54 21 A. Right.

09:54 22 Q. And let's go the other way. Same thing,
09:54 23 because I'm not -- I'm not picking on death penalty
09:54 24 opponents. They can be death penalty proponents. They
09:54 25 can be for the death penalty, and they are just as --

09:54 1 they were just as unfair.

09:54 2 Here's how it is. A juror that's very
09:54 3 strongly for the death penalty says, you know, I know
09:54 4 what this means. If I answer that yes, a death sentence
09:54 5 can result. If I answer that question no, a death
09:54 6 sentence cannot ever result. A no answer to that
09:55 7 means -- means a life sentence. And I don't want that
09:55 8 because I'm the kind of guy that decides there ought to
09:55 9 be death penalties all over the case, and I'm for it,
09:55 10 and I'm going to put my law in this trial instead of
09:55 11 Texas law.

09:55 12 And so if the answer is, well, you know,
09:55 13 Mr. Schultz, do what you can. Try to -- if you can
09:55 14 prove that question, fine. If you can prove it's yes,
09:55 15 that's okay. But don't worry about it because even if
09:55 16 you don't prove it, you still got a yes answer out of me
09:55 17 because I'm going to kill the guy. Do you understand
09:55 18 how that person can't be fit either?

09:55 19 A. Yes.

09:55 20 Q. Tell me why that person would not be fit to
09:55 21 even be considered as a juror?

09:55 22 A. Because they've already made their mind up
09:55 23 before they even got to that phase of the trial.

09:55 24 Q. Now, Mr. Morris, do you understand what I'm
09:55 25 saying when I say that people who are real strong for

09:55 1 the death penalty and people who are very very against
09:55 2 the death penalty still could be fit for jury service as
09:56 3 long as they can say and mean they'll fairly answer that
09:56 4 question. And even though they don't like the result,
09:56 5 because maybe the result is what they don't want, they
09:56 6 can still do it fairly according to the evidence because
09:56 7 they'll follow the law.

09:56 8 A. Yes.

09:56 9 Q. Are you that kind of man?

09:56 10 A. Yes.

09:56 11 Q. When we talk about society, that's really that
09:56 12 last -- I guess, it's the very last word in that
09:56 13 question. That's not defined for us, either. When
09:56 14 somebody tells me about society, I guess it depends on
09:56 15 what they are saying. When I think of society, I think
09:56 16 of people in tuxedos and long gowns going to the society
09:56 17 ball. When I still hear that word society, I think of
09:56 18 like, kind of aristocrats and that kind of thing.
09:56 19 That's certainly one kind of society, high society, you
09:56 20 know?

09:56 21 But really society just means where we are
09:56 22 and where we live, our community, our city, our state,
09:56 23 our county, our country. I guess the world is a
09:57 24 society. And society has a lot of little parts within
09:57 25 it.

09:57 1 You know, if you and I don't get sick, we
09:57 2 don't see much of hospital society, but they have church
09:57 3 services there. They have gift shops. They've got
09:57 4 puppet shows for children. There's all kinds of things
09:57 5 that go on in the hospital. Maybe we're never there,
09:57 6 but that's still society, right?

09:57 7 A. Right.

09:57 8 Q. A prison is a society, if you think about it.
09:57 9 With any of kind of luck, you and I will never go there.
09:57 10 But it's still a society, and those are still Americans
09:57 11 that are in prison. And they got some rights just, you
09:57 12 know -- they got so many of the same rights you and I
09:57 13 have.

09:57 14 We don't let them vote, and we don't let
09:57 15 them walk around loose. And we don't let them go work
09:57 16 in a job usually, but they got basic human rights. And
09:57 17 that's a society too, don't you agree?

09:57 18 A. Yes.

09:57 19 Q. That's part of society? That question doesn't
09:57 20 limit itself to one part of society. That question
09:58 21 calls upon you to measure the personality of the
09:58 22 defendant and say, is this the kind of guy that would
09:58 23 commit criminal acts of violence that are a continuing
09:58 24 threat to society?

09:58 25 It doesn't say -- it doesn't say, for

09:58 1 example, is there some island we could put him on, and
09:58 2 he couldn't hurt anybody because he couldn't get off the
09:58 3 island? It doesn't say, could we put him in a rocket
09:58 4 ship and make him safe? It just says, is his
09:58 5 personality a way that he's a continuing threat to
09:58 6 society? Does that make sense to you?

09:58 7 A. Yes.

09:58 8 Q. And you can test it in several different ways.
09:58 9 You can test it thinking, well, what about if he's
09:58 10 running around loose in our world right now? What if I
09:58 11 see him in the grocery store? Is he safe there? You
09:58 12 could say, would I want him dating my daughter? Is he
09:58 13 the guy that would be safe to be around my daughter if
09:58 14 they were dating? You can say, if I saw him walking
09:58 15 down the street, would I -- would I go to the other side
09:58 16 of the street? If he moved in next to me, would I load
09:58 17 my .357? You know, you can say those kinds of things.

09:58 18 You can say also: How would he be in
09:59 19 prison? What would he be like? What happens if he
09:59 20 doesn't get his way while he's in prison? What happens
09:59 21 if an opportunity to escape comes along? How does he
09:59 22 handle that? If he does escape, what is he going to be
09:59 23 like once he does escape?

09:59 24 All of those things can be analyzed by the
09:59 25 jury in trying to figure what kind of a threat to

09:59 1 society he will be. Does that make sense to you?

09:59 2 A. Yes.

09:59 3 Q. Now, what can you consider in deciding those
09:59 4 sorts of things? You may consider all of the facts that
09:59 5 you heard in the first part of the case because it is
09:59 6 possible for you to say, those facts are so terrible
09:59 7 that anyone who could do such a thing establishes by
09:59 8 those actions, in my mind, a probability that he's
09:59 9 always going to be a threat.

09:59 10 In other words, if you stop and think
09:59 11 about it, what kind of person could go, you know, blow
10:00 12 up a federal courthouse with innocent people in it, for
10:00 13 example? And that crime could be so horrific, so
10:00 14 terrible, you say, anybody that could think about such a
10:00 15 thing and do it, knowing what he was doing could go take
10:00 16 all the steps necessary. Getting the fertilizer truck
10:00 17 and, you know, getting the kerosene and detonating it
10:00 18 like he did. Anybody could do that.

10:00 19 He's proved -- he's already, by his
10:00 20 actions, proven to me there is a probability that he's
10:00 21 going to be a continuing threat to society. Does that
10:00 22 make sense to you?

10:00 23 A. Yes.

10:00 24 Q. And there are some people, there are some
10:00 25 crimes where that's just flat not so for a lot of

10:00 1 reasons. There are -- I think Ms. Falco might have
10:00 2 mentioned to you the example of the daddy whose little
10:00 3 child has been brutalized, maybe raped, and then
10:00 4 murdered. And two people have done it, and they get
10:00 5 caught. And they get taken to the courtroom, and they
10:00 6 get put on trial. And they get off on a technicality.

10:00 7 And they come walking out of the
10:00 8 courtroom, and they are just laughing. And they are
10:01 9 high-fiving each other and giggling and strutting out of
10:01 10 the courtroom. And daddy's there just like any other
10:01 11 daddy would be, watching the whole proceedings. And he
10:01 12 says to himself, that's not to be tolerated. I tried to
10:01 13 do it the right way. I let the system work. Everybody
10:01 14 agrees that system didn't do right in this case. I'm
10:01 15 going to correct that problem right now.

10:01 16 He goes home. Gets his .357 and stalks
10:01 17 them. Has to follow them all over the place till he
10:01 18 finds the opportunity. He's not crazy. He's just
10:01 19 focused. He's angry. He misses his child. His life is
10:01 20 not important to him anymore. He doesn't ever want
10:01 21 anybody to go through that himself. He finally finds
10:01 22 them, and he blows both their heads off with his .357
10:01 23 and goes and turns himself in. And says, here I am.
10:01 24 I'm Joe. I just murdered those two creeps, and I knew
10:02 25 what I was doing.

10:02 1 That's capital murder. Maybe it doesn't
 10:02 2 feel to you and me like it ought to be, and maybe it
 10:02 3 does. If you stop and think about it, we can't have
 10:02 4 people going around and being their own law. You
 10:02 5 understand? We can't have people doing that. But if
 10:02 6 you murdered two people like that daddy did, you
 10:02 7 understand why that's capital murder, what he's done?

10:02 8 A. Yes.

10:02 9 Q. And maybe the evidence is overwhelming. Maybe
 10:02 10 he just -- maybe he just, like I said, maybe he just
 10:02 11 sits there and doesn't offer any evidence because he
 10:02 12 doesn't have to. State's got eye witnesses. We got him
 10:02 13 with a gun, and we got ballistics tying the gun to the
 10:02 14 bullets in the killer's brains. So it's all -- it's all
 10:02 15 very clear. He's found guilty of capital murder.

10:02 16 You know, if a death sentence is
 10:02 17 automatic, based upon a finding a capital murder, there
 10:02 18 is no point in having these questions anyway. Can you
 10:02 19 see how you could look at that question and say to
 10:02 20 yourself, you know, this guy's not dangerous.

10:03 21 The only reason he ever killed those
 10:03 22 people was because the system failed. He did wrong.
 10:03 23 He's a capital murderer, but there's no probability in
 10:03 24 my mind from the evidence he's ever going to be any
 10:03 25 threat from society. He never was before. I can't

10:03 1 condone what he did. I had to find him guilty for that.
 10:03 2 But I understand how that could happen, and I understand
 10:03 3 how you and I maybe could get there. Could you
 10:03 4 understand how that could ever happen to you if you ever
 10:03 5 got in that situation?

10:03 6 A. Yes.

10:03 7 Q. And you understand that you could be the same
 10:03 8 decent man that you are right now, even having done that
 10:03 9 kind of a crime, and that you wouldn't be dangerous
 10:03 10 anymore, but that was a special circumstance. Do you
 10:03 11 understand that?

10:03 12 A. Yes.

10:03 13 Q. Okay. And that's kind of -- that's the notion.
 10:03 14 It's that, sure, we may think that it's likely that a
 10:03 15 person who does an awful atrocious crime -- as we sit
 10:03 16 there, we may think that that's likely. But when you
 10:04 17 look at the evidence and ask yourself, is it probable
 10:04 18 that it may not be based on the evidence? And when you
 10:04 19 really look at it, almost kind of like what you first
 10:04 20 think is sort of how it will be. If you are willing to
 10:04 21 look at the evidence, it might not be so. Are you with
 10:04 22 me on that?

10:04 23 A. Yes.

10:04 24 Q. And in which case, you would have to vote --
 10:04 25 you would have to vote no. And you don't have any --

10:04 1 you don't have any personal objections to voting no to
 10:04 2 that question if the evidence requires a vote like that,
 10:04 3 do you?

10:04 4 A. No.

10:04 5 Q. Even though that means a life sentence, you are
 10:04 6 not looking for a chance to kill somebody no matter what
 10:04 7 the evidence? That's not your desire?

10:04 8 A. No.

10:04 9 Q. Did you wake up this morning saying, boy, if I
 10:04 10 answer these guys' questions just the right way, I might
 10:04 11 get a chance to kill a fellow? You didn't feel that
 10:04 12 way, did you?

10:04 13 A. No.

10:04 14 Q. You never know. Another example is, what if
 10:04 15 that person had a stroke before the trial? He used to
 10:04 16 be the world's most dangerous person. But he's got, you
 10:04 17 know, he's got a -- he's gotten some kind of a stroke
 10:05 18 that makes it impossible for him to move his body at
 10:05 19 all.

10:05 20 He's paralyzed from the hair follicles
 10:05 21 down, perhaps, you know? And so he has no movement.
 10:05 22 Somehow or another with magic machines they can keep him
 10:05 23 alive. The answer to that question would have to be no,
 10:05 24 wouldn't it?

10:05 25 A. Right.

10:05 1 Q. There's no -- there's no probability that he
 10:05 2 could ever commit any criminal acts of violence, except
 10:05 3 for those science fiction shows where, like, his brain
 10:05 4 can control other people. That kind of idea. But
 10:05 5 there's no proof that that really exists?

10:05 6 A. Right.

10:05 7 Q. If you fairly answered that question yes or no,
 10:05 8 there are going to be results to that answer. If the
 10:05 9 answer to this question is no that the defendant would
 10:05 10 not commit criminal acts of violence, what is the
 10:05 11 result?

10:05 12 A. Life.

10:05 13 Q. Uh-huh. And you go home; I go home; the
 10:05 14 defense lawyers go home. The defendant goes down to
 10:06 15 Huntsville to begin serving his life sentence. If the
 10:06 16 answer to that question is yes, there's another question
 10:06 17 for you. You are going to consider the same evidence
 10:06 18 that you considered probably already twice because you
 10:06 19 are going to consider -- you are going to consider the
 10:06 20 evidence of the crime itself one more time. Looking at
 10:06 21 it, like, from a little different point of view.

10:06 22 It's -- it's -- it's like in football.
 10:06 23 You ever watch football, and they have a different angle
 10:06 24 of the play?

10:06 25 A. Yes.

10:06 1 Q. Same play, but you are looking at it a little
10:06 2 bit differently from a different view and seeing if it
10:06 3 looks different to you from kind of a different
10:06 4 direction? Have you ever noticed how that could be, by
10:06 5 the way? If you are looking at it from the end zone, it
10:06 6 looks one way. And if you are looking at it from back
10:06 7 to the left, you see there really was a fumble or there
10:06 8 really wasn't a fumble, that kind of thing?

10:06 9 A. Right.

10:06 10 Q. All right. You looked at the evidence of the
10:06 11 crime and find the defendant guilty of the offense. You
10:06 12 considered everything presented there. And then you get
10:06 13 to the next part of the trial, and you listened to
10:07 14 additional evidence that may or may not be presented.
10:07 15 Now, we don't have to put on any new evidence at
10:07 16 punishment. The defense never has to put on any
10:07 17 evidence at any time.

10:07 18 And so it's possible both sides could say,
10:07 19 okay, just look at the crime again and answer these
10:07 20 questions based on the crime. That usually doesn't
10:07 21 happen. Usually, there's going to be more evidence to
10:07 22 put on at the second part of the trial. And I'm
10:07 23 almost -- I can about guarantee you that, well, we'll
10:07 24 put on evidence. I can guarantee you. They may or may
10:07 25 not, but I bet they will. They don't have to, but they

10:07 1 will.

10:07 2 And we can put on evidence that we think
10:07 3 shows the jury that the defendant is dangerous. Like,
10:07 4 we could put on -- I'm not talking about this case in
10:07 5 general, but I'm not talking about this case, just any
10:07 6 case.

10:07 7 We could put on evidence of prior acts
10:07 8 that are bad or prior personality things or, you know,
10:07 9 things like that. The defense attorney could offer
10:08 10 evidence that, you know, the -- that his client was a
10:08 11 medal of honor winner. That's a good thing. He was
10:08 12 gallant.

10:08 13 He protected a lot of people in the Navy
10:08 14 and made life easier for his fellow seamen. Psychiatric
10:08 15 evidence could be offered on both sides. They could
10:08 16 offer a psychiatrist to say that he wasn't dangerous and
10:08 17 that his life was very difficult.

10:08 18 We could offer evidence to say that a
10:08 19 psychiatrist could say just the opposite. You could get
10:08 20 a psychiatrist on both sides testifying. And you would
10:08 21 listen to all of that, wouldn't you?

10:08 22 A. Yes.

10:08 23 Q. And maybe you think psychiatrist's evidence is
10:08 24 important, maybe you don't. But you would listen to
10:08 25 everything that was presented. And you would decide

10:08 1 from listening to it how important it was; is that
10:08 2 right?

10:08 3 A. Yes.

10:08 4 Q. This question though is different, Mr. Morris.
10:08 5 This question is called the mitigation question or
10:08 6 the -- or the one last look kind of question. And
10:09 7 here's what it's designed for: It's for the jury. It's
10:09 8 for the peace of mind and for the emotional comfort of
10:09 9 the trial jury in a capital case.

10:09 10 And incidentally, it benefits the
10:09 11 defendant because it gives the benefit of one last look
10:09 12 at the evidence from a little different perspective.
10:09 13 It's like the reverse angle in football. Let's take one
10:09 14 more look and see what this all means.

10:09 15 The first word up there that's interesting
10:09 16 is mitigation. And what that means, it means to lessen.
10:09 17 Mitigation means to lessen, lessen the impact of or the
10:09 18 seriousness of, perhaps lessen the need for vengeance by
10:09 19 society. Lessen -- you know, lessen the need for the
10:09 20 death penalty. That's what mitigation means.

10:09 21 That question says, whether taking into
10:10 22 consideration all of the evidence including the
10:10 23 circumstances of the offense, the defendant's character
10:10 24 and background and the personal moral culpability of the
10:10 25 defendant, there is sufficient mitigating evidence. Do

10:10 1 you see that word there, "mitigating" right after
10:10 2 sufficient?

10:10 3 A. Yes.

10:10 4 Q. That makes a life sentence rather than a death
10:10 5 sentence. Is the right thing to do appropriate, in
10:10 6 other words? And the notion of that question is, our
10:10 7 law says that there are cases, there do exist situations
10:10 8 where even though a person is a capital murderer, he has
10:10 9 been found guilty of that.

10:10 10 And even though the jury answered that
10:10 11 first question about him being a continuing threat to
10:10 12 society, answer that question yes, still taking into
10:10 13 consideration all of the circumstances, including his
10:10 14 character and background and his moral culpability,
10:10 15 which is kind of like how he got that way, maybe.

10:11 16 Well, if you take all that into
10:11 17 consideration, there is sufficient mitigating, that's
10:11 18 lessening evidence, sufficient mitigating evidence to
10:11 19 warrant that a life sentence rather than a death
10:11 20 sentence be imposed. Do you feel like you understand
10:11 21 what that question is doing?

10:11 22 A. Yes.

10:11 23 Q. All right. And, you know, I'm not sure how I
10:11 24 react. I do this for a living, and so it's different
10:11 25 for me than a juror. If I was sitting there as a juror

10:11 1 I might be thinking to myself, what in the world could
10:11 2 that be? I might be saying, gee, you got a capital
10:11 3 murderer that's going to be dangerous. What could I
10:11 4 learn from his background or his character that would
10:11 5 make me think a -- a life sentence is right rather than
10:11 6 a death sentence?

10:11 7 Do you have any of those thoughts yourself
10:11 8 right now, or do you think there are situations that you
10:11 9 could do that just fine?

10:11 10 A. I had not really thought of that.

10:11 11 Q. Let's explore it.

10:11 12 A. And this is kind of a new -- when was this law
10:12 13 passed?

10:12 14 Q. Probably -- probably in really in the late
10:12 15 1980s. To make a long story short, the law was quote
10:12 16 passed by the U.S. Supreme Court. We didn't envision it
10:12 17 initially in Texas. The Supreme Court case came along
10:12 18 that said sort of what I'm saying now. That it is
10:12 19 unfair to the defendant that he has no way to express
10:12 20 the fact that a life sentence -- that the jury has no
10:12 21 way to express the fact that a life sentence is the
10:12 22 right thing to do based on the evidence.

10:12 23 Because we used to have these mechanical
10:12 24 questions in Texas and California and Louisiana that
10:12 25 made -- the answers made a death sentence automatic. If

10:12 1 you got yes, yes, yes, it was automatic. So the Supreme
10:12 2 Court said, no.

10:12 3 The jury still has the opportunity. It
10:12 4 has to have the opportunity to consider all of the
10:12 5 circumstances and be asked the ultimate question: Is a
10:12 6 life sentence appropriate? Even though, up to now, up
10:13 7 to now the way we've answered these questions a death
10:13 8 sentence is coming. Do you follow how that works?

10:13 9 A. Yes.

10:13 10 Q. And when you first think about it, it seems
10:13 11 kind of strange because the first thing you say is,
10:13 12 well, why would we do that? And yet, really, if you
10:13 13 stop and think about it -- first of all, for a fellow
10:13 14 like you, one answer is that's the law. And you got to
10:13 15 be able to do that if you are going to be fit to serve
10:13 16 as a possible juror.

10:13 17 But we would all agree that if you found
10:13 18 sufficient mitigating evidence that maybe you believe a
10:13 19 life sentence is appropriate, that you ought to be able
10:13 20 to do that as a juror. Don't you believe that?

10:13 21 A. Yes.

10:13 22 Q. If you stop and think, put yourself in a
10:13 23 position. Say you are the juror. Yeah, you found him
10:13 24 guilty. Yeah, you found he was a danger. And you say,
10:13 25 gosh, I'm as tough as the next fellow, but that fellow

10:13 1 doesn't need to be killed. That's not right. And you
10:14 2 think, Judge -- do you want to talk to the Judge about
10:14 3 it? Judge, "Well, I'm sorry. I can't listen to that.
10:14 4 You've answered the questions."

10:14 5 "Well, Judge, I don't want him dying.
10:14 6 Well, it's not right. Based on his background, how he
10:14 7 got the way, that's the wrong thing to do. Listen to
10:14 8 me, Judge."

10:14 9 "That's too bad. Take him out and kill
10:14 10 him." Think about how awful that would be for a juror.
10:14 11 Does that make sense to you?

10:14 12 A. Yes.

10:14 13 Q. That would be an awful place for any of us to
10:14 14 be in. And the Judge wouldn't be bad; he would just be
10:14 15 following the law. He couldn't listen to that. That
10:14 16 question gives a jury the opportunity to feel that way
10:14 17 and to do it. And I don't know what that would be.

10:14 18 I mean, everybody has got mitigating
10:14 19 things in their background. Everybody has got stuff
10:14 20 that didn't go right and it was sad. You know, if you
10:14 21 look back on your life, I bet there was some things in
10:14 22 your life that didn't go the way you wished they had,
10:14 23 right?

10:14 24 A. Right.

10:14 25 Q. Do you have kids?

10:14 1 A. Yes.

10:14 2 Q. I bet -- you don't have to tell me this. But
10:14 3 I'll bet as a dad, I bet you probably did things that
10:14 4 you wish you had not done if you had been a little wiser
10:15 5 at the time it happened. Maybe you would have done it
10:15 6 differently with your kids, right?

10:15 7 A. Right.

10:15 8 Q. And it was probably pretty -- for most of us
10:15 9 it's been okay. For some people it has not. Some
10:15 10 people, and you probably knew them in the Marine Corps,
10:15 11 came from pretty bad backgrounds. You knew that.

10:15 12 And yet, the question is: Is that
10:15 13 sufficient mitigating evidence? Is that sufficiently
10:15 14 sympathetic? Do I have sufficient compassion--I guess
10:15 15 is another way to look at that question--to give someone
10:15 16 a life sentence rather than a death sentence? Are you
10:15 17 with me?

10:15 18 A. Yes.

10:15 19 Q. And it's a measuring thing. Because it might
10:15 20 be -- when considering the circumstances, it might be:
10:15 21 The worse the offense, the more vicious the offense.
10:15 22 For example, the more mitigation would be required to be
10:15 23 sufficient mitigation, you know?

10:15 24 I mean, the guy that, you know, the
10:15 25 capital -- the guy that killed the killers of his

10:15 1 children or his child, if you got to that question, if
 10:15 2 you found he was dangerous because he did it once, he
 10:16 3 might do it again. Well, that might be sufficient
 10:16 4 mitigating. He said he lost his kids. The system let
 10:16 5 him down.

10:16 6 You might say that's sufficient mitigating
 10:16 7 evidence. All it's asking you to do is save his life.
 10:16 8 It's not asking you to turn him loose or give him a
 10:16 9 medal. Just save his life.

10:16 10 A. Yes.

10:16 11 Q. Maybe a Medal of Honor winner. Maybe somebody
 10:16 12 who saved a bunch of shipmates with heroism and got the
 10:16 13 Medal of Honor and then went bad late in life. Maybe,
 10:16 14 yeah, he was a war hero okay, but he did a capital
 10:16 15 murder. And, yeah, he is dangerous because he's gotten
 10:16 16 that way.

10:16 17 But maybe you say, you know, there's 300
 10:16 18 people alive because of him that wouldn't have been
 10:16 19 otherwise. And those guys have had lives, and they've
 10:16 20 had children and grandchildren. And in my mind that
 10:16 21 counts for something.

10:16 22 I'm going to save his life because to me
 10:16 23 that's sufficient to make it. He deserves something for
 10:17 24 what he did, and all we're doing is giving him his life.
 10:17 25 Can you see how you might look at a situation like that?

10:17 1 A. Yes.

10:17 2 Q. Are you the kind of man that would be willing
 10:17 3 to do that? And are you the kind of man that could
 10:17 4 fairly respond to that question if you got that far and
 10:17 5 give a yes or no answer no matter what?

10:17 6 A. Yes.

10:17 7 Q. Would you ever walk out of this courtroom
 10:17 8 feeling like you were a weak man if you voted in a way
 10:17 9 that caused a life sentence?

10:17 10 A. No.

10:17 11 Q. I mean, are you going to come out of the
 10:17 12 courtroom if you vote for a death sentence feeling like
 10:17 13 you are some kind of hero or something like that? Do
 10:17 14 you view that as like, all by itself, a wonderful thing
 10:17 15 to do, to vote for somebody's death?

10:17 16 A. No.

10:17 17 Q. You are not looking forward to making these
 10:17 18 decisions and having that responsibility, are you?

10:17 19 A. No.

10:17 20 Q. Okay.

10:17 21 MR. SCHULTZ: A moment please, Judge?

10:17 22 THE COURT: Yes. Anything else?

10:18 23 MR. SCHULTZ: Just real quickly, Judge.

10:18 24 I'm hustling. I apologize.

10:18 25 Q. (BY MR. SCHULTZ) Do you think the best

10:18 1 argument -- you indicate on the questionnaire, the best
 10:18 2 argument in favor of the death penalty -- a law
 10:18 3 established by a majority got punishment on certain
 10:19 4 crimes. Best argument against it is, it is cruel and
 10:19 5 unusual punishment, and those are certainly mainstream.
 10:19 6 Biggest problem with the criminal justice system is it's
 10:19 7 not perfect. I grant you that.

10:19 8 The death penalty in Texas is a law the
 10:19 9 majority's decided and agreed for certain acts. Police
 10:19 10 uphold the laws and protect citizens. Burden of proof
 10:19 11 is up to the prosecution to prove from evidence and
 10:19 12 witnesses if possible. Which means, if we don't, we are
 10:19 13 out of luck, right?

10:19 14 A. Right.

10:19 15 Q. You do that the same way you would do any other
 10:19 16 decision, right?

10:19 17 A. Right.

10:19 18 Q. Okay. "The prison system in Texas is known
 10:19 19 only from what the news media presents." What were you
 10:19 20 thinking when you put that there?

10:19 21 A. I had no personal experience, or none in my
 10:19 22 family, so I couldn't actually tell you what it's like.

10:19 23 Q. Prosecutors are to present evidence to prove
 10:20 24 charges brought on the defendant. Criminal defense
 10:20 25 attorneys have the duty to represent clients with all

10:20 1 available defenses. What makes a person dangerous?
 10:20 2 Decisions to control, hurt or have no regard of persons.
 10:20 3 Criminal laws treat criminal defendants too harshly.
 10:20 4 You disagree with that. You trust the criminal justice
 10:20 5 system in Collin County. You have been a part of it as
 10:20 6 a juror before, and you trust it.

10:20 7 A. In Dallas County, yes.

10:20 8 Q. Oh, those weren't Collin County cases?

10:20 9 A. No. No, sir. I have only been in Collin
 10:20 10 County a couple of years, but I have been in Richardson
 10:20 11 all my life.

10:20 12 Q. If somebody is accused of capital murder, he
 10:20 13 should have to prove his innocence. You disagree with
 10:20 14 that because you know he doesn't have to prove anything.

10:20 15 A. Right.

10:20 16 Q. We got to do all the proving.

10:20 17 A. Right.

10:20 18 Q. You disagree that bringing somebody to trial on
 10:21 19 murder charges makes him probably guilty. You -- you
 10:21 20 don't think that's so. Furthermore, you say prove it --
 10:21 21 to the State.

10:21 22 A. Prove it.

10:21 23 Q. Okay. You agree that a person is innocent
 10:21 24 unless proven guilty beyond a reasonable doubt. This is
 10:21 25 interesting. It is the job of the jury to solve the

10:21 1 crime, and you disagree with that. Tell me what your
 10:21 2 thinking is on that. I think you are right.
 10:21 3 A. Well, that's not what I'm to do. I'm to look
 10:21 4 at the evidence that's presented.
 10:21 5 Q. You indicated you are about a 7 on the death
 10:21 6 penalty. So you are not just a mad dog about it, but
 10:21 7 you support it?
 10:21 8 A. I don't think so.
 10:21 9 Q. And Mr. Morris, do you have any questions of
 10:21 10 me?
 10:21 11 A. I don't believe so.
 10:21 12 Q. Okay. Sir, thank you for your courtesy.
 10:21 13 MR. SCHULTZ: Thank you, Judge.
 10:21 14 THE COURT: All right. Mr. Goeller?
 10:22 15 MR. GOELLER: Thank you, Your Honor.
 10:22 16 VOIR DIRE EXAMINATION
 10:22 17 BY MR. GOELLER:
 10:22 18 Q. Good morning, sir.
 10:22 19 A. Good morning.
 10:22 20 Q. Mr. Morris, I appreciate you coming back down
 10:22 21 here today. I'll spend some time with you and kind of
 10:22 22 talk about some of these issues and go through your
 10:22 23 questionnaire. A few moments ago you had asked the
 10:22 24 Judge who was in the courtroom?
 10:22 25 A. Who else was in the courtroom, yes.

10:22 1 Q. Okay.
 10:22 2 A. I wasn't familiar with an open courtroom.
 10:22 3 Q. Oh, really.
 10:22 4 A. In this phase, no. In this phase.
 10:22 5 Q. Okay. Your prior jury service, you had told
 10:22 6 Mr. Schultz that you weren't, or I think you asked, when
 10:22 7 were these laws passed? Or you weren't familiar with
 10:22 8 these special issue laws. Had you served on a capital
 10:22 9 jury before?
 10:22 10 A. No. It was not capital. It was murder.
 10:22 11 Q. I was just curious why you stated, when were
 10:22 12 these laws passed because you weren't familiar with
 10:22 13 them.
 10:22 14 A. I'm not a lawyer.
 10:22 15 Q. I understand that.
 10:22 16 A. And I don't -- I've not kept up with -- I mean,
 10:23 17 there's a lot of laws passed.
 10:23 18 Q. Yeah.
 10:23 19 A. And I just was not familiar that there was a --
 10:23 20 another step in this.
 10:23 21 Q. Okay. Did you -- I guess you probably thought
 10:23 22 it was the same as a regular murder case. You just --
 10:23 23 A. I knew there was more to it. But I didn't know
 10:23 24 there were two -- two steps.
 10:23 25 Q. Okay. You mean the two questions?

10:23 1 A. Right.
 10:23 2 Q. Back on, I guess, it was last week, you came
 10:23 3 down for the general panel on here.
 10:23 4 A. Yes.
 10:23 5 Q. What were your thoughts and impressions after
 10:23 6 Ms. Falco spoke, the prosecutor?
 10:23 7 A. Like what kind of impressions? I mean, I was
 10:23 8 listening to what she said and how she outlined the law.
 10:23 9 Q. Okay.
 10:23 10 A. And that's when I -- I realized that this was a
 10:23 11 little bit different than what I had seen before.
 10:24 12 Q. When was your jury service in Dallas County on
 10:24 13 the murder case?
 10:24 14 A. It's been a few years. I couldn't tell you
 10:24 15 exactly.
 10:24 16 Q. In the last ten years?
 10:24 17 A. Yes.
 10:24 18 Q. Tell me about that experience. What did you
 10:24 19 think about all that? I guess you sat as a juror in
 10:24 20 punishment as well, correct?
 10:24 21 A. Yes. We were instructed, yeah.
 10:24 22 Q. You were instructed to return a verdict in the
 10:24 23 punishment?
 10:24 24 A. Yes.
 10:24 25 Q. Tell me about that experience. What you

10:24 1 thought about it, what you came away from it with, what
 10:24 2 it was like to sit as a juror and assess punishment in a
 10:24 3 homicide case.
 10:24 4 A. Well, it was an experience I had never had
 10:24 5 before. Maybe I had thought about how it would be, but
 10:24 6 I never had that experience. It was quite interesting
 10:24 7 to -- to listen to the other 11 jurors and see where
 10:24 8 they were coming from and to -- to hear the way they had
 10:25 9 heard the testimony. And compare that to the way I had
 10:25 10 heard it or -- and to come -- to come to a resolution as
 10:25 11 a group, as a juror.
 10:25 12 Q. Were you -- were you the foreman or foreperson?
 10:25 13 A. No, I was not.
 10:25 14 Q. How did the jury decide that? Do you recall
 10:25 15 how you all went about the business of picking a
 10:25 16 foreman?
 10:25 17 A. No. I don't really.
 10:25 18 Q. Was it a big debate or --
 10:25 19 A. No.
 10:25 20 Q. Or was it kind of like?
 10:25 21 A. No. It was kind of like we all --
 10:25 22 Q. All volunteers take one step forward, and
 10:25 23 everybody takes one back?
 10:25 24 A. No. It was a kind of a coming together of the
 10:25 25 minds, and it was real interesting to see that the

10:25 1 majority zeroed in on one individual.
 10:25 2 Q. Really? Everybody kind of looked to --
 10:25 3 A. Right.
 10:25 4 Q. -- to one juror?
 10:25 5 A. Right. I don't know why. I can't tell you
 10:25 6 why.
 10:25 7 Q. Okay. Were you at the wing or the grunts, or
 10:26 8 neither?
 10:26 9 A. I was with the wing.
 10:26 10 Q. You were with the wing?
 10:26 11 A. Naval air, yes.
 10:26 12 Q. Back then what, course airs?
 10:26 13 A. No. Actually it was a max squadron, Marine
 10:26 14 air-controlled squadron.
 10:26 15 Q. San Diego?
 10:26 16 A. For basic, yes, then Quantico.
 10:26 17 Q. Quantico?
 10:26 18 A. Not Quantico. I'm sorry, Pendleton. My
 10:26 19 brother was at Quantico.
 10:26 20 Q. Your brother was at Quantico?
 10:26 21 A. Yes.
 10:26 22 Q. Stationed or for training?
 10:26 23 A. Training, PLC.
 10:26 24 Q. I'm sorry?
 10:26 25 A. PLC.

10:26 1 Q. Okay. He was an officer?
 10:26 2 A. Yes.
 10:26 3 Q. Did you ever do any time at Quantico?
 10:26 4 A. No, not really. I think I mentioned Quantico a
 10:26 5 while ago, but I did not.
 10:26 6 Q. The other case you served on, was that burglary
 10:26 7 of a habitation?
 10:26 8 A. Yes.
 10:26 9 Q. And it looks like you wrote and, I guess, maybe
 10:27 10 attempt?
 10:27 11 A. I'm sorry.
 10:27 12 Q. Okay. Tell me about that, Dallas County?
 10:27 13 A. Dallas County.
 10:27 14 Q. When was that, in the last ten years?
 10:27 15 A. It's probably a little longer than that on that
 10:27 16 one.
 10:27 17 Q. Was that your first -- your first service as a
 10:27 18 juror?
 10:27 19 A. No.
 10:27 20 Q. The burglary?
 10:27 21 A. Oh, in that case of a burglary, yes.
 10:27 22 Q. What were different about the two? I don't
 10:27 23 mean as far as the cases goes, but your experience as a
 10:27 24 juror?
 10:27 25 A. I don't think there was just a whole lot, other

10:27 1 than the individual questions on the murder.
 10:27 2 Q. Were the dynamics of the jury in deliberation
 10:27 3 similar?
 10:27 4 A. Probably it was not -- not quite as much
 10:27 5 emotion or intensity.
 10:27 6 Q. Okay. The murder case, what were some of the
 10:27 7 facts of that case? What kind of murder case was it?
 10:28 8 A. Estranged couple. And the husband had come to
 10:28 9 the apartment complex where his estranged wife lived,
 10:28 10 and he had called her some names, pulled a weapon and
 10:28 11 shot her.
 10:28 12 Q. Okay.
 10:28 13 A. With the kids in the car.
 10:28 14 Q. Oh, boy. That wasn't good, huh? In your
 10:28 15 questionnaire, you had basically five positions to take
 10:28 16 or choose from regarding the death penalty. I suppose
 10:28 17 when you filled out this questionnaire, I think Judge
 10:28 18 Sandoval had told you that in this case the indictment
 10:28 19 alleged a double homicide, two people allegedly killed.
 10:29 20 And a murder in the course of a burglary and a murder in
 10:29 21 the course of a robbery. Do you recall that? Do you
 10:29 22 recall people talking about that?
 10:29 23 A. Yes, I remember talking about it. I'm not sure
 10:29 24 who, but yes.
 10:29 25 Q. I know, I think that day, probably Mr. Schultz

10:29 1 and Judge Sandoval, Judge Sandoval mentioned what the
 10:29 2 indictment stated and Mr. Schultz wanting that.
 10:29 3 Anyhow, regarding your questionnaire, you
 10:29 4 have the option of people that are proponents of capital
 10:29 5 punishment would have naturally chosen one of the first
 10:29 6 two.
 10:29 7 The first one is: You believe the death
 10:29 8 penalty should be imposed in all capital murder cases.
 10:29 9 And the second option was: You believe it's appropriate
 10:29 10 in some capital murder cases, and you could return a
 10:29 11 verdict resulting in death in a proper case.
 10:29 12 Why -- tell me your logic and your
 10:29 13 thinking as to choosing the second of those two options.
 10:30 14 A. I think they are -- there probably are
 10:30 15 circumstances that maybe -- I could think about or
 10:30 16 weigh. Like I said, I'm not, you know, I'm not out here
 10:30 17 to put anybody in the death chair or death penalty or --
 10:30 18 Q. I would certainly hope not. I don't think
 10:30 19 anybody is. Maybe there are some people that think that
 10:30 20 way. Tell me what kind of thoughts you had about
 10:30 21 options like that.
 10:30 22 A. I think I said, life is precious to all of us.
 10:30 23 Q. Okay. Have you always -- would you say your
 10:30 24 views on the death penalty have been consistent
 10:30 25 throughout your life? Have you ever tweaked it any,

10:30 1 thought about it some?
 10:30 2 A. I've thought about it, but yes, it's been
 10:31 3 constant.
 10:31 4 Q. When is the first time you can remember
 10:31 5 thinking about it, taking a position with yourself or
 10:31 6 deciding which way you were going to go?
 10:31 7 A. Maybe in late teens.
 10:31 8 Q. Maybe college, were you in college?
 10:31 9 A. Maybe college.
 10:31 10 Q. Where did you go to school?
 10:31 11 A. Southern Methodist.
 10:31 12 Q. Okay. I think on your -- if you believe in
 10:31 13 using the death penalty, how strongly on a scale of 1 to
 10:31 14 10 do you hold that belief? I think you wrote a 9.
 10:31 15 Mr. Schultz said, it's either a 7 or 9. Out of 1 to 10,
 10:32 16 how do you feel about it?
 10:32 17 A. I still think it's in that range.
 10:32 18 Q. Okay.
 10:32 19 A. It hasn't moved too much.
 10:32 20 Q. Okay. In one section in here we talk about any
 10:32 21 personal family involvement with the criminal justice
 10:32 22 system. You've written down your daughter was charged
 10:32 23 in the outcome. What year was that?
 10:32 24 A. Three or four years ago.
 10:32 25 Q. Which county was that?

10:32 1 A. Dallas.
 10:32 2 Q. Were you involved in that situation?
 10:32 3 A. No. And it was, it was a strange deal and --
 10:32 4 Q. Tell me about it.
 10:32 5 A. She went into a store to just pick up something
 10:32 6 for the baby. And she went and picked up some pictures
 10:32 7 that she had ordered and walked through the store and
 10:32 8 didn't find what she was looking for and started out and
 10:32 9 had the pictures in her hand.
 10:32 10 Q. Okay.
 10:32 11 A. Apparently somebody had been watching her
 10:33 12 walking up and down the aisles.
 10:33 13 Q. Did she end up pleading on it?
 10:33 14 A. I don't remember.
 10:33 15 Q. You wrote down "deferred"?
 10:33 16 A. Yes. So I guess she did. That's what I'm
 10:33 17 thinking about. That she did go and appear in court. I
 10:33 18 mean, I'm sure she -- if she was arrested, she probably
 10:33 19 had to go and appear in court.
 10:33 20 Q. Yeah. Was there a -- was there an attorney
 10:33 21 involved?
 10:33 22 A. I believe so.
 10:33 23 Q. You don't know who that was, or did you have
 10:33 24 anything to do with the hiring of that attorney?
 10:33 25 A. No, I did not. She did it all on her own, she

10:33 1 and her husband.
 10:34 2 Q. Was that Cindy, Tina or Laurie?
 10:34 3 A. That was Laurie, the youngest daughter.
 10:34 4 Q. Looks like all three of your kids turned out
 10:34 5 wonderfully. You got a school principal, so I assume
 10:34 6 she's either got a master's or Ph.D.?
 10:34 7 A. Master's.
 10:34 8 Q. She must be really good because usually those
 10:34 9 principals are -- is she a principal in what school
 10:34 10 district?
 10:34 11 A. It's a Waco Christian Academy.
 10:34 12 Q. And Tina is a professor?
 10:34 13 A. Yes.
 10:34 14 Q. Where does she --
 10:34 15 A. Furman University, South Carolina.
 10:34 16 Q. Okay. What's her area of expertise?
 10:34 17 A. Voice.
 10:34 18 Q. Voice. And Laurie's a teacher as well?
 10:34 19 A. Yes.
 10:34 20 Q. Where does she teach?
 10:34 21 A. She's a drama, and mostly drama. Children's,
 10:34 22 children's drama.
 10:34 23 Q. Okay. What does she teach?
 10:35 24 A. She teaches some at the Dallas Theater Center,
 10:35 25 some at the Richardson Children's Theater and at her

10:35 1 church. She has a drama group.
 10:35 2 Q. You've been married, what, about 30 years?
 10:35 3 A. Yes.
 10:35 4 Q. So Cindy -- Cindy and Tina are with a former
 10:35 5 spouse?
 10:35 6 A. Yes.
 10:35 7 Q. Tell me about -- did that marriage end in a
 10:35 8 divorce?
 10:35 9 A. Yes.
 10:35 10 Q. Tell me about that. What happened?
 10:35 11 A. I think he was seeing someone else.
 10:35 12 Q. She was --
 10:35 13 A. He was. My wife's husband, former husband.
 10:35 14 Q. Okay. These are your --
 10:36 15 A. My stepgirls. The two oldest daughters,
 10:36 16 stepdaughters.
 10:36 17 Q. And Laurie is?
 10:36 18 A. Our daughter.
 10:36 19 Q. How old were you or how old were the -- was
 10:36 20 Cindy and Tina?
 10:36 21 A. 8 and 10.
 10:36 22 Q. 8 and 10. Were you pretty much a father figure
 10:36 23 in their life or their father or both?
 10:36 24 A. I was with them more. They saw more of me and,
 10:36 25 yes, probably more of.

10:36 1 Q. Well, certainly for Laurie, and I guess Cindy
 10:36 2 and Tina, would you say that how they turned out in life
 10:36 3 had something to do with the way you were a parent?
 10:36 4 A. I would hope. I would like to say that, but --
 10:36 5 Q. Well, it certainly, with kids that turn out
 10:37 6 that way, principals and professors and teachers, it
 10:37 7 wasn't luck. You know that. Would you say that your
 10:37 8 current wife and you had similar philosophies on rearing
 10:37 9 children?
 10:37 10 A. Yes.
 10:37 11 Q. What were they, generally speaking? If you
 10:37 12 looked back on it: Okay. I was a father, and I raised
 10:37 13 these girls. The most important things I did would
 10:37 14 be -- what could you name?
 10:37 15 A. I would think to be good citizens for one
 10:37 16 thing.
 10:37 17 Q. Okay.
 10:37 18 A. To respect the law.
 10:37 19 Q. Okay.
 10:37 20 A. To worship. I think the church was a big part
 10:37 21 of our life. It still is.
 10:37 22 Q. Yeah. And those things were important to you?
 10:38 23 A. Yes.
 10:38 24 Q. Because you knew they would maybe be critical
 10:38 25 in how these three girls, certainly Laurie, maybe to a

10:38 1 greater extent, I don't know. But you were certainly
 10:38 2 around Tina and Cindy more than their father?
 10:38 3 A. Yes.
 10:38 4 Q. What was their father like? Was he -- if you
 10:38 5 had to rate him as a parent, 1 to 10, where would you
 10:38 6 plug him in?
 10:38 7 A. Probably about a 6.
 10:38 8 Q. Somewhere in the middle of the road. Not the
 10:38 9 greatest dad and probably not the worst?
 10:38 10 A. Right.
 10:38 11 Q. You and your wife consider those things very
 10:38 12 important, church, solid foundation. Have you and your
 10:38 13 wife -- have you maintained a pretty solid marriage,
 10:38 14 would you say?
 10:38 15 A. I would say probably a normal. We've had our
 10:39 16 ups and downs.
 10:39 17 Q. Like any couple, I suppose?
 10:39 18 A. Right. And maybe because of the stepdaughters,
 10:39 19 it might have been a little different than what you
 10:39 20 might expect.
 10:39 21 Q. More stress, you think or --
 10:39 22 A. I think so.
 10:39 23 Q. Because you are always dealing with the ex?
 10:39 24 A. Right.
 10:39 25 Q. You are always dealing with your child support

10:39 1 issues and visitation issues and money issues. All
 10:39 2 those things that come with those situations.
 10:39 3 I guess when you have that kind of stress
 10:39 4 and those added factors, things like you and your wife
 10:39 5 maintaining a solid foundation and church and leading by
 10:39 6 example -- what you are really talking about, I guess if
 10:39 7 I could lump all that into one category is lead by
 10:39 8 example. Show these girls how you live your life
 10:39 9 everyday and hopefully enough of that will rub off, and
 10:39 10 I guess it did where they turn out like they did. Would
 10:39 11 you agree with me?
 10:40 12 A. I hope I did, yes.
 10:40 13 Q. I don't think you have to hope. I don't think
 10:40 14 there are many parents out there that can say their
 10:40 15 three children are in those kind of professions, and
 10:40 16 they turned out the way they did. Do you agree with me,
 10:40 17 that's more than luck?
 10:40 18 A. Yes.
 10:40 19 Q. Come on, take some credit there, Mr. Morris.
 10:40 20 You had to be a helluva good dad. You are at First
 10:40 21 Baptist in Richardson, correct?
 10:40 22 A. Right.
 10:40 23 Q. You probably know a guy named Rick Sullins?
 10:40 24 A. Yes.
 10:40 25 Q. That's Mr. High's, here, brother-in-law.

10:40 1 A. Okay.
 10:40 2 Q. Don is heavily involved in some of things
 10:40 3 you've already mentioned, Richardson Theater and all
 10:40 4 that kind of thing. And you probably know Debbie
 10:40 5 Sullins too, right?
 10:40 6 A. I saw her last night.
 10:40 7 Q. Okay. Do you know who that is?
 10:40 8 A. Yes.
 10:41 9 Q. That's Don's sister.
 10:41 10 A. Okay.
 10:41 11 Q. And do you know the kids, Daniel and Lisa?
 10:41 12 A. Somewhat, yes.
 10:41 13 Q. And I know you work down at the Foundation,
 10:41 14 right?
 10:41 15 A. Correct.
 10:41 16 Q. Okay.
 10:41 17 A. And I also recently learned that one of our
 10:41 18 attorneys --
 10:41 19 Q. Jeff?
 10:41 20 A. Jeff Smith was with the District Attorney's
 10:41 21 office some years ago.
 10:41 22 Q. Yeah. I used to work with him. I think Don
 10:41 23 worked with him, too. We used to work with the DA's
 10:41 24 office, which kind of brings me around in a roundabout
 10:41 25 way to my next question. That you are a very unusual

10:41 1 juror in that you've got some connection or working
10:41 2 knowledge or personal knowledge of one of the lawyer's
10:41 3 family. How does -- how does all that kind of square in
10:41 4 with a death penalty case, this kind of case?

10:42 5 A. I don't know that it has any connection.

10:42 6 Q. Okay. Some people, I guess there are three
10:42 7 kinds of people out there that would fall in that
10:42 8 situation. One is, it's too close. I don't want to.
10:42 9 It would bother me just because of the connection. The
10:42 10 other person says, I don't think it would. I don't
10:42 11 know. And the other person is, they are just totally
10:42 12 separate and wouldn't factor in in any way. I assume
10:42 13 you are in that latter group?

10:42 14 A. Yes.

10:42 15 Q. Jeff Smith; have you talked to him at all about
10:42 16 his days in the DA's office? I don't know if he did any
10:42 17 criminal defense work or not. I can't remember.

10:42 18 A. I don't know. He has mentioned it, and I not
10:43 19 even -- I don't think he has ever discussed anything.

10:43 20 Q. You are a certified accountant, right?

10:43 21 A. Well, I have a BBA, but I'm not a CPA.

10:43 22 Q. Is there a -- I was just looking at your
10:43 23 questionnaire -- oh, I'm sorry, what other jobs have you
10:43 24 held? Cost accountant?

10:43 25 A. Cost accountant.

10:43 1 Q. What kind of things do you do as an internal
10:43 2 auditor down at the foundation?

10:43 3 A. I see that the instructions and programs that
10:43 4 are set up by administration are carried out. And I
10:43 5 look for errors that someone made.

10:43 6 Q. Are they in the nature -- I assume in your job,
10:43 7 you find errors?

10:43 8 A. Yes.

10:43 9 Q. Are they always in the nature of mistakes in
10:44 10 adding and subtracting, or are sometimes they more than
10:44 11 that? Is it almost quasi-criminal?

10:44 12 A. I haven't seen anything like that, no.

10:44 13 Q. Okay.

10:44 14 A. Of course, I'm in an institution that more than
10:44 15 likely would not have that, but you still as an internal
10:44 16 auditor would be responsible for.

10:44 17 Q. You can never rule it out?

10:44 18 A. Right.

10:44 19 Q. There's always -- always a possibility. Tell
10:44 20 me about the preacher at First Baptist in Richardson.
10:44 21 Who is the head down there?

10:44 22 A. Brian Harbor.

10:44 23 Q. Tell me about him. What do you think about
10:44 24 him?

10:44 25 A. He's a -- in my opinion, a CEO of the church,

10:45 1 and is quite an in-charge person, very well-read,
10:45 2 established, prepared, forward looking, very well-read,
10:45 3 author. I perceive a family man.

10:45 4 Q. His philosophy on life and religion, what have
10:45 5 you gleaned from that over the years?

10:45 6 A. I think that he tries to establish that to be
10:45 7 Christlike in our lives and to reach out to people in
10:46 8 the community with a message of Jesus Christ.

10:46 9 Q. Does that square with you? I mean, what are
10:46 10 your thoughts about his message to the church?

10:46 11 A. I think it's biblical. I mean, he's taking
10:46 12 biblical standards and presenting those.

10:46 13 Q. Do you think it's important, or is it
10:46 14 significant to try to lead our lives as Christlike as we
10:46 15 can?

10:46 16 A. Yes.

10:46 17 Q. When it comes to capital punishment, tell me
10:47 18 about those two concepts. Can they be reconciled, or do
10:47 19 you see a potential conflict?

10:47 20 A. No. Because I think that Christ told us to
10:47 21 follow the laws of the land, to live on those laws, even
10:47 22 though we might not agree.

10:47 23 Q. Okay. Absolutely, you think? Or you think
10:47 24 sometimes there becomes a situation where we can't
10:47 25 follow the law of the land because there's got to be a

10:47 1 conflict with the way Christ would view it? Do you know
10:47 2 what I'm trying to say?

10:47 3 For example, let's say the law of the land
10:48 4 was that shoplifters are executed. And our legislature
10:48 5 passes a law where, if you steal from somebody, it's a
10:48 6 potential death penalty case. See what I'm trying to
10:48 7 say?

10:48 8 A. Yes.

10:48 9 Q. Tell me about that. Talk to me about that.

10:48 10 A. I think it's a personal thing. It would have
10:48 11 to be a personal decision. I guess right now, when you
10:48 12 said that, I just thought of it -- the two Baylor Xes
10:48 13 that are being held by the Taliban in Afghanistan. They
10:48 14 knew the law, but they were willing, I guess willing to
10:48 15 not stand to it, even though they were guests in another
10:48 16 country.

10:48 17 Q. Do you think that philosophy needs to be
10:48 18 consistent with every law, any law of a government?

10:49 19 A. Explain the consistency of --

10:49 20 Q. Well, I guess the point I was trying to make
10:49 21 is, you know, you said that Christ teaches we should
10:49 22 follow the law. I'm getting back to, if we're going to
10:49 23 execute shoplifters or things of that nature, I'm trying
10:49 24 to figure where you break the line, if you do break the
10:49 25 line?

10:49 1 A. If I would, myself?
 10:49 2 Q. Yeah, yeah. I'm just talking about you.
 10:49 3 A. I believe pretty strongly, but I guess it would
 10:49 4 be -- I would have to think real seriously.
 10:49 5 Q. Would you have to think real seriously about
 10:49 6 shoplifting?
 10:49 7 A. No, no.
 10:49 8 Q. That's one extreme?
 10:49 9 A. That's extreme, yes.
 10:49 10 Q. Burglary?
 10:49 11 A. Probably, that's something that would not be --
 10:50 12 if it was just breaking in.
 10:50 13 Q. Right.
 10:50 14 A. -- a business or something or car or --
 10:50 15 Q. You would draw the line there. That probably
 10:50 16 would, even if man's law said you could get the death
 10:50 17 penalty for that, your personal beliefs would interfere
 10:50 18 with your ability to impose the death penalty?
 10:50 19 A. I'd have a problem.
 10:50 20 Q. Do you teach down at the First Baptist?
 10:50 21 A. Sixth graders, yes.
 10:50 22 Q. What's your philosophy on teaching as a
 10:50 23 teacher? How do you go about that?
 10:50 24 A. I look at the material, I think, that we have.
 10:50 25 Most of the time we're using the prepared material.

10:51 1 Q. Okay.
 10:51 2 A. And so I go from that position.
 10:51 3 Q. That's volunteer work, right?
 10:51 4 A. Yes.
 10:51 5 Q. You are not paid?
 10:51 6 A. No.
 10:51 7 Q. That's just time you donate?
 10:51 8 A. Yes.
 10:51 9 Q. Do you find that rewarding?
 10:51 10 A. Yes.
 10:51 11 Q. Do you -- tell me why you teach. Why do you
 10:51 12 volunteer and teach, teach The Word to people?
 10:51 13 A. Well, for one thing I like them.
 10:51 14 Q. The kids?
 10:51 15 A. Yes.
 10:51 16 Q. Okay.
 10:51 17 A. And I think of the ones that taught me. The
 10:51 18 teachers that I have had and the people there.
 10:51 19 Q. I suppose you could volunteer to do a million
 10:51 20 things out there. To be around young people you
 10:51 21 could -- you could go to the YMCA. You could go to
 10:51 22 Richardson parks. You could -- there's unlimited number
 10:51 23 of ways to volunteer.
 10:51 24 I'm trying to figure out why you chose
 10:52 25 that type of volunteer service, you know, involved in

10:52 1 church. And specifically, I mean, you could volunteer
 10:52 2 to go down and, you know, drive the kids around or
 10:52 3 driving to youth camps or volunteer to landscape around
 10:52 4 the church, all sorts of things. Why did you focus in
 10:52 5 on or choose The Word of God with these kids?
 10:52 6 A. I think it's important.
 10:52 7 Q. And I know I've asked this before, but why?
 10:52 8 Why is that important?
 10:52 9 A. It's important for them, as it is for me.
 10:52 10 Q. Okay. Okay. Are you a hunter?
 10:52 11 A. No.
 10:52 12 Q. You are not?
 10:52 13 A. No.
 10:52 14 Q. Okay. Just -- I guess you answered that. You
 10:52 15 used to be a hunter?
 10:52 16 A. I used to do maybe a little bit when I was a
 10:53 17 teenager, but not very much. Didn't have the
 10:53 18 opportunity for one thing.
 10:53 19 Q. And obviously fired a gun in your military
 10:53 20 training. You had the M-14?
 10:53 21 A. Right.
 10:53 22 Q. Pretty good piece of gear, wouldn't you agree?
 10:53 23 A. Yes.
 10:53 24 Q. Except it had -- it could be bad on the thumb.
 10:53 25 Do you know what I'm talking about?

10:53 1 A. Right.
 10:53 2 Q. Did you ever have that happened?
 10:53 3 A. No. I started on the M-1, and the only time I
 10:53 4 really had one in my hand was sort of -- didn't really
 10:53 5 get to see much of it.
 10:53 6 Q. They are a good bullet launcher, but they were
 10:53 7 tough on the manual of arms, and they weighed a ton.
 10:54 8 Back to those special issues, I'm going to go back there
 10:54 9 and just flip that one down. If I leave this on the
 10:54 10 deck down here, Mr. Morris, can you read that?
 10:54 11 A. Yes.
 10:54 12 Q. And the prosecutors can't see it, but they know
 10:54 13 that one is down there. That word probability,
 10:54 14 Mr. Schultz spoke with you a little bit about it.
 10:54 15 What's that mean to you? If you could -- if you could
 10:54 16 put that in a percentage from 0 to 100 percent, how
 10:54 17 would you -- how would you peg that, in the context of
 10:54 18 that question, as you see it?
 10:54 19 A. More than 50 percent.
 10:54 20 Q. Okay. I think you are exactly right. I think
 10:54 21 that's what our law contemplates it means. Have you
 10:54 22 ever -- when you served on those two criminal juries, I
 10:55 23 think, and I think I know you were dealing with that
 10:55 24 concept of beyond a reasonable doubt?
 10:55 25 A. Yes.

10:55 1 Q. Did you ever think about, or how would you peg
10:55 2 that on a scale of 0 to 100?
10:55 3 A. It would be a little higher than half, 50-50.
10:55 4 Probably would peg it 75 percent, two-thirds.
10:55 5 Q. Something like that?
10:55 6 A. Something like that.
10:55 7 Q. Okay. When you read that question, it's odd
10:55 8 because the State has the burden of proof on that first
10:55 9 one. They've got to prove beyond a reasonable doubt
10:55 10 that there is a probability. Have you thought about
10:55 11 that?
10:55 12 A. Yes.
10:55 13 Q. I'll bet as a -- I'll bet in your field that,
10:55 14 that may not -- that might seem odd that you got kind of
10:55 15 a two -- maybe it's not different. Everybody would
10:55 16 agree that beyond a reasonable doubt is the highest
10:55 17 burden we have.
10:55 18 A. Right.
10:55 19 Q. And most people agree that probability probably
10:55 20 means more likely than not. Something more than a
10:56 21 50-percent chance, something less than a certainty. Do
10:56 22 you see a potential conflict with balancing that and
10:56 23 using those two terms?
10:56 24 A. Not with the two questions, I don't think.
10:56 25 Q. Okay. When you think of society, what do you

10:56 1 think of? What do you think the intent of that question
10:56 2 was when they say society?
10:56 3 A. The population, everybody.
10:56 4 Q. Everybody?
10:56 5 A. Everybody.
10:56 6 Q. Do you see how it necessarily includes prison?
10:56 7 A. Yes. If you say everybody, then it includes
10:56 8 everywhere.
10:56 9 Q. Okay. Because we know before you get to those
10:56 10 questions, if somebody's found guilty of capital murder,
10:56 11 we know it's either a life or death sentence. We know
10:57 12 it's life, probably, almost automatically other than
10:57 13 death because to get to death, more questions have to be
10:57 14 answered.
10:57 15 A. Yes.
10:57 16 Q. And if those questions aren't answered or are
10:57 17 answered in such a way that a life sentence, and you
10:57 18 don't get to the second or third question unless the
10:57 19 third one is answered unanimously, yes.
10:57 20 But when you look at those two questions
10:57 21 together -- and I agree with Mr. Schultz, the
10:57 22 legislature obviously recognized situations where, if
10:57 23 somebody has been found guilty of capital murder and a
10:57 24 jury finds beyond a reasonable doubt unanimously that
10:57 25 they are a future danger, that there are situations

10:57 1 where the death penalty need not be imposed, agree?
10:57 2 A. Yes.
10:57 3 Q. And, therefore, we know that the legislature
10:57 4 considered that people who may be a future danger would
10:57 5 be housed for the rest of their life or receive a life
10:58 6 sentence in the penitentiary. So along those lines,
10:58 7 what kind of job do you think penitentiaries do in
10:58 8 controlling dangerous people, people that commit acts of
10:58 9 violence?
10:58 10 A. From what perspective, from what you read or --
10:58 11 Q. Yeah.
10:58 12 A. That would be the only thing I have is from
10:58 13 what I read.
10:58 14 Q. Yeah. What you've read.
10:58 15 A. From time to time it doesn't sound real good.
10:58 16 Q. Why?
10:58 17 A. Because of what happens in the prisons that's
10:58 18 reported.
10:58 19 Q. What kind of things do you think are important
10:58 20 in answering that first special issue, the one on the
10:58 21 ground there?
10:59 22 A. The circumstances that are presented, I think,
10:59 23 that --
10:59 24 Q. Okay.
10:59 25 A. -- or what we hear and what we are given.

10:59 1 Q. Okay. And all that would be important to you?
10:59 2 A. Yes.
10:59 3 Q. More specifically, what -- what kind of things,
10:59 4 what kind of circumstances or what types of things would
10:59 5 you like to hear, do you think would be necessary to
10:59 6 answer a question like that?
10:59 7 A. The acts, the type of acts that were committed.
10:59 8 The extent, circumstances.
10:59 9 Q. Do you think it would be important to have
10:59 10 information about penitentiaries and the interworkings
10:59 11 of penitentiaries, and the ability of penitentiaries to
11:00 12 control people? Do you think that would be important in
11:00 13 answering that question?
11:00 14 A. I think it would.
11:00 15 Q. Okay. Have you ever heard of the term risk
11:00 16 assessment?
11:00 17 A. Yes.
11:00 18 Q. I'll bet that term is used down at the
11:00 19 Foundation from time to time.
11:00 20 A. Yes.
11:00 21 Q. You drive an automobile, right?
11:00 22 A. Yes.
11:00 23 Q. What kind of car do you have or truck?
11:00 24 A. It's a Chevrolet APV.
11:00 25 Q. APV?

11:00 1 A. It's a minivan.
 11:00 2 Q. Minivan. Did that used to be like the
 11:00 3 Silhouette, and they call it an APV?
 11:00 4 A. It was before the Silhouette.
 11:01 5 Q. I know you have insurance.
 11:01 6 A. Yes.
 11:01 7 Q. You have car insurance, right, liability
 11:01 8 insurance?
 11:01 9 A. It's the law.
 11:01 10 Q. Absolutely. Absolutely. A lot of people don't
 11:01 11 have it. One out of every four out there don't have it,
 11:01 12 unfortunately. But you drive a vehicle that's -- it's
 11:01 13 not a hot rod. You are 62 years old. And do you have a
 11:01 14 pretty good driving record? I'm putting you on the spot
 11:01 15 here.
 11:01 16 A. I did until the last couple of years.
 11:01 17 Q. Couple of speeding tickets maybe?
 11:01 18 A. I got one here recently that I wasn't real
 11:01 19 happy with.
 11:01 20 Q. Well, we never are. I'm in the same boat.
 11:01 21 A. Especially when I've driven for 40 some years
 11:01 22 without one.
 11:01 23 Q. Well, I don't think -- did your insurance
 11:01 24 company -- did they punish you for it yet?
 11:01 25 A. I haven't heard.

11:02 1 Q. They may not.
 11:02 2 THE COURT: Forty-seven years sounds like
 11:02 3 mitigating circumstances.
 11:02 4 Q. (BY MR. GOELLER) Yeah. I think you've got
 11:02 5 some good mitigation here. But aside from any recent
 11:02 6 tickets, you obviously wouldn't want to pay, at your
 11:02 7 age, driving an APV, you wouldn't want to pay the rates
 11:02 8 as a 17-year-old kid who just got his license and he
 11:02 9 just brought a brand-new Mustang convertible, 5.7 liter
 11:02 10 high output car, would you?
 11:02 11 A. No.
 11:02 12 Q. Why?
 11:02 13 A. Because I'm not in that category.
 11:02 14 Q. You bet. It gets kind of back to that theory
 11:02 15 or that concept of risk assessment, right?
 11:02 16 A. Right.
 11:02 17 Q. I mean, they base -- they are going to base
 11:02 18 your premium that they are going to quote Jerry W.
 11:02 19 Morris based on maybe your past driving history, right?
 11:03 20 A. Right.
 11:03 21 Q. They are going to base it on how many miles you
 11:03 22 report that you drive approximately in the next year,
 11:03 23 right?
 11:03 24 A. Right.
 11:03 25 Q. They are going to report it on the kind of

11:03 1 vehicle that you are going to drive for the next year?
 11:03 2 A. Right.
 11:03 3 Q. They are going to base that premium maybe on
 11:03 4 where you live, your ZIP code?
 11:03 5 A. Yes.
 11:03 6 Q. They are going to base it on whether you keep
 11:03 7 that car parked out on the street. Or they ask you when
 11:03 8 you are getting that insurance, do you garage that car
 11:03 9 at night? All those things figure in, right?
 11:03 10 A. Right.
 11:03 11 Q. Risk assessment. And they, Prudential or State
 11:03 12 Farm or whoever out there, USAA is going to funnel all
 11:03 13 that down and come out with a quote for Jerry Morris
 11:03 14 what it's going to cost him to keep that car insured for
 11:03 15 the next six months, right?
 11:03 16 A. Right.
 11:04 17 Q. And there's going to be a whole different set
 11:04 18 of different factors for the kid that just got the 5
 11:04 19 liter Mustang on his 16th birthday or whatever. So you
 11:04 20 understand those kind of concepts?
 11:04 21 A. Yes.
 11:04 22 Q. In a way, the insurance man is doing a function
 11:04 23 kind of like that first special issue. He's looking to
 11:04 24 the future and quoting that -- that insurance and
 11:04 25 whether to keep you as a customer, right? That risk

11:04 1 assessment would kind of -- kind of have to make
 11:04 2 projections into the future. Do you agree?
 11:04 3 A. Based on the facts they have from the past,
 11:04 4 right.
 11:04 5 Q. That's right. And other factors, other factors
 11:04 6 about what they know would be a constant in the future.
 11:04 7 Obviously, they are going to quote you one fee because
 11:04 8 you are driving a Chevy APV. But if all of a sudden you
 11:05 9 decide to get a 2001 ZR1 Corvette putting out 500
 11:05 10 horsepower, they are going to -- there are going to be
 11:05 11 changes made, agreed?
 11:05 12 A. Yeah, probably from several areas.
 11:05 13 Q. You bet. So it's a combination. Risk
 11:05 14 assessment is a combination of factors you can rely on,
 11:05 15 relatively constant in the future and in the past,
 11:05 16 agree?
 11:05 17 A. Yes.
 11:05 18 Q. Okay. Okay. When Mr. Schultz was talking to
 11:05 19 you about that probability of future acts, criminal
 11:05 20 violence, that kind of thing, I think either Mr. Schultz
 11:05 21 or you mentioned sometimes there are special
 11:06 22 circumstances or a special circumstance. And I think he
 11:06 23 used the example of the father who executes the two
 11:06 24 people who felt the court system --
 11:06 25 A. Yes.

11:06 1 Q. -- didn't work. There are some folks out there
11:06 2 who, when they think about probability of future acts of
11:06 3 dangerousness, they kind of look at -- they want to go
11:06 4 back and look at the circumstances of the offense. And
11:06 5 to some folks it's important as to whether or not they
11:06 6 have really a predatory type of person.

11:06 7 If you can think about the guy who would
11:06 8 hang out down by SMU. Are you familiar with that, the
11:06 9 serial rapist problem that they had around SMU?

11:06 10 A. Yes.

11:06 11 Q. You know, there are types of people out there
11:06 12 who are really predatory in nature. They stalk unknown,
11:06 13 unsuspecting victims. It could be the serial rapist or
11:07 14 the serial rapist murderer who abducts total strangers,
11:07 15 violates them, murders them, dumps their bodies.

11:07 16 Convenience store robbers. Just pick a
11:07 17 convenience store, unknown person, unknown clerk, no
11:07 18 witnesses, execute the clerk and, you know, that kind of
11:07 19 pattern of behavior.

11:07 20 Then there are people who maybe like the
11:07 21 example Mr. Schultz was talking about, although he
11:07 22 probably didn't really know, he was certainly dealing
11:07 23 with two people who he believed killed his daughter or
11:07 24 whatever or somebody that knows the victim and has had a
11:07 25 relationship, some type of relationship, some type of

11:08 1 special circumstance.

11:08 2 There are many people who would say that
11:08 3 that person who is the predatory type of stalker, that
11:08 4 never knows his victims -- just a predatory, stalk them,
11:08 5 opportunistic type of criminal, that that person is much
11:08 6 more dangerous or likely to be more of a probability of
11:08 7 future dangerousness than the person who committed their
11:08 8 offense under special circumstances where they knew the
11:08 9 victim, maybe some type of relationship, maybe some type
11:08 10 of passion that was involved or something like that.
11:08 11 What do you think about that?

11:08 12 A. I haven't really sat down and really weighed
11:08 13 those two to how I would really react to that. I think
11:09 14 there might be some instances that there might be a
11:09 15 difference in that.

11:09 16 Q. Okay. Tell me why you think that.

11:09 17 A. I'm not sure what kind of -- what kind of an
11:09 18 example I can present or -- or I think there might. I
11:09 19 just think there might be some.

11:09 20 Q. Okay. Okay. When you wrote down, what is the
11:09 21 best argument in opposition of the death penalty? You
11:09 22 wrote down "cruel and unusual punishment." What did you
11:09 23 mean by that? What were your thoughts for why you chose
11:09 24 those words because they are right out of our 8th
11:09 25 Amendment?

11:09 1 A. Right, right. I just -- that was my thought at
11:09 2 that time when I read that question, and I think that's
11:10 3 the argument used in most anti -- to the death penalty.

11:10 4 Q. What do you think about that argument? It's
11:10 5 cruel and unusual punishment?

11:10 6 A. I would think that there's maybe things that
11:10 7 might be worse than that to some individuals.

11:10 8 Q. Right.

11:10 9 A. It may not be as cruel --

11:10 10 Q. I always think of like, when you are in, what
11:10 11 grade was it? I don't know, 6th or 7th grade, somehow I
11:10 12 ended up in a class where the British -- I tell you what
11:10 13 it was used. It was used in the American Revolution,
11:10 14 the draw, drawn and quartering, draw and quartering.
11:11 15 And the British would tie four horses to the limbs of a
11:11 16 man and go in opposite directions. And then the limbs
11:11 17 were put on a ship and brought to the four corners of
11:11 18 the earth as far as the British Admiralty would go.
11:11 19 That's grizzly stuff that you never get out of your
11:11 20 head. But certainly that's probably a lot worse than
11:11 21 lethal injection or the guillotine or something like
11:11 22 that.

11:11 23 In this case, in the case at hand, we know
11:11 24 what the indictment alleges. It alleges the criminal
11:11 25 deaths of two people or the, in and of themselves, the

11:11 1 death or the murder of two people, or in the course of a
11:12 2 burglary, or in the course of a robbery. Okay? So
11:12 3 it's -- if a jury were to find somebody guilty of those
11:12 4 offenses, that's -- that's pretty bad, would you agree?

11:12 5 A. Yes.

11:12 6 Q. Those facts, in and of themselves, are -- are
11:12 7 awful, agreed?

11:12 8 A. Yes.

11:12 9 Q. And as Mr. Schultz said, I think he alluded to
11:12 10 that some folks are better jurors in some cases than
11:12 11 other cases. Knowing what the indictment alleges, and
11:12 12 assume for a moment that you get to these special issues
11:12 13 in a case of capital murder, what are your thoughts
11:12 14 about your ability to fairly consider those issues in
11:12 15 connection with the offense of capital murder and your
11:12 16 views on the death penalty?

11:13 17 A. I wouldn't even think about them, I don't
11:13 18 think, until after I heard the case, and the jury had
11:13 19 made the decision on that. I mean, we'd have to -- I
11:13 20 don't think that would be in my mind at the time.

11:13 21 Q. Okay. Okay. So you are saying it's basically,
11:13 22 this is all fact driven. You could --

11:13 23 A. Yes.

11:13 24 Q. Even if you, even with your views, obviously
11:13 25 you are pro-death penalty. You think you are the kind

11:13 1 of juror that could fairly answer those questions?
 11:13 2 A. Yes.
 11:13 3 Q. Consider those. Okay. When you sat as a juror
 11:13 4 in that murder case, do you recall what the range of
 11:13 5 punishment the jury had available to them?
 11:13 6 A. It seems like -- I'm not sure. I'm not sure
 11:14 7 exactly. I think we ended up with 20 years or
 11:14 8 something.
 11:14 9 Q. On the murder case?
 11:14 10 A. I'm not sure. I'm not real --
 11:14 11 Q. I think you wrote down in your questionnaire it
 11:14 12 was life?
 11:14 13 A. I think that's what, but I'm not real positive.
 11:14 14 Q. And I think you wrote down -- you wrote down 20
 11:14 15 plus?
 11:14 16 A. Maybe that was.
 11:14 17 Q. The burglary?
 11:14 18 A. The burglary, yes. And the other one was life,
 11:14 19 yes. Whatever that was at the time, and I'm not sure.
 11:14 20 Q. It probably would have been the same as it is
 11:14 21 right now. Do you have any idea -- do you recall what
 11:14 22 the low end of the range of punishment is?
 11:14 23 A. I don't know.
 11:14 24 Q. Five?
 11:14 25 A. Five was low.

11:14 1 Q. And a murder in Texas, the range of punishment
 11:14 2 is not less than 5 years nor more than 99 years or life.
 11:15 3 Did the word manslaughter come up at all in that case?
 11:15 4 Just based upon what you told me, it was kind of an
 11:15 5 argument, and that never figured into it, I guess.
 11:15 6 A. No.
 11:15 7 Q. The Judge never gave you an instruction on
 11:15 8 manslaughter?
 11:15 9 A. No.
 11:15 10 Q. Okay. So you would have had a range of
 11:15 11 punishment of 5 to 99 years or life?
 11:15 12 A. That's probably.
 11:15 13 Q. Sound right?
 11:15 14 A. It sounds about right. Probably, yeah.
 11:15 15 Q. What do you think about, in any case where
 11:15 16 there's a capital murder -- not in any case, but in
 11:15 17 certain circumstances there may be lesser-included
 11:15 18 offenses, other than capital murder there, that are
 11:15 19 given to the jury.
 11:15 20 In capital murder, a lesser-included
 11:15 21 offense, maybe the offense of plain murder we call it.
 11:15 22 I hate to use that word plain. I hate to use the word
 11:15 23 simple. But noncapital murder, let me just put it that
 11:16 24 way. What do you think about the range of punishment as
 11:16 25 low as five years for intentionally taking a human life?

11:16 1 A. I don't know where that came from.
 11:16 2 Q. Does that sound almost bizarre to you?
 11:16 3 A. Yes.
 11:16 4 Q. Let me talk to you just a little bit about
 11:16 5 that. I don't know where it came from either, other
 11:16 6 than the legislature just put it in there. Okay?
 11:16 7 Our -- our law of murder is defined as intentionally
 11:16 8 causing the death of another human being. Okay? And
 11:16 9 the range of punishment for that is not less than five
 11:16 10 years. So five would be the minimum and not more than
 11:16 11 99 years or life. That's probably the same range of
 11:16 12 punishment that you had in your case.
 11:17 13 In certain circumstances, if a defendant
 11:17 14 has never before been convicted of a felony offense,
 11:17 15 they may be eligible for probation.
 11:17 16 A. Yeah.
 11:17 17 Q. In which the minimum, and if someone were
 11:17 18 eligible and the jury decided that that was the thing to
 11:17 19 do, a defendant convicted of intentionally killing
 11:17 20 another human being, murder could receive as low as five
 11:17 21 years' probation. Tell me what your thoughts are on
 11:17 22 that.
 11:17 23 A. I guess if it's the law, I would still have a
 11:17 24 problem with it.
 11:17 25 Q. Okay. And when I talked to you last week, you

11:17 1 probably remember, I think the most important thing I
 11:17 2 said was, you know, if a juror is just totally honest
 11:18 3 with me up there on their individual voir dire, that's
 11:18 4 all I --
 11:18 5 A. Yes.
 11:18 6 Q. -- that's all I can ask of anybody. When you
 11:18 7 say you have a problem with it, explain that a little
 11:18 8 bit more to me. Go into a little more detail. That you
 11:18 9 have a problem with the range of punishment as low as
 11:18 10 five years in the penitentiary or probation. Probation
 11:18 11 means somebody doesn't do time.
 11:18 12 A. Right.
 11:18 13 Q. They go home?
 11:18 14 A. I can't see it. I mean, for that type of
 11:18 15 offense, I just don't understand why that would even be
 11:18 16 a choice.
 11:18 17 Q. A lot of people agree with you. Okay? You are
 11:18 18 not alone. I suppose what our law requires is that if a
 11:19 19 juror thought that was the right thing to do, well, then
 11:19 20 they should do it. And I heard -- I heard somebody very
 11:19 21 eloquently state the difference between, you know, is it
 11:19 22 possible that you could even conceive of ever
 11:19 23 considering a probated sentence on five years if you
 11:19 24 thought it was the right thing to do?
 11:19 25 And this person, I thought so artfully

11:19 1 phrased it like this. You and I could go -- this is a
 11:19 2 six-story building. Okay? And you and I could go up on
 11:19 3 the roof up there and -- and I could -- you and I could
 11:19 4 go up there together and say, let's jump off the roof
 11:19 5 and land on our heads on that concrete out there because
 11:19 6 it's the right thing to do. And I'm going to do it
 11:19 7 because I just think it's the right thing to do.

11:19 8 Me and Jerry Morris go up on the 6th floor
 11:20 9 and you say, I'm going to do it too because I think it's
 11:20 10 the right thing to do. Do you see what I'm saying?
 11:20 11 It's kind of like, whether you could give five years or
 11:20 12 five years' probation for a murder case.

11:20 13 The Judge would instruct you, well, if you
 11:20 14 thought it was the right thing to do, you could do it,
 11:20 15 as far as probation or as little as five years. But,
 11:20 16 you know, and it's like, if we're up on the rooftop, if
 11:20 17 you thought it was the right thing to do, to jump off
 11:20 18 the roof six stories up and land on your head on the
 11:20 19 sidewalk, yeah, I guess you'd do it. But the real
 11:20 20 question is: Do you ever think that would be the right
 11:20 21 thing to do?

11:20 22 MR. SCHULTZ: Objection, Judge. That's
 11:20 23 certainly irrelevant for any consideration for this
 11:20 24 juror because that's got no relationship. If the law
 11:20 25 required him to fairly consider jumping off and that was

11:20 1 part of the law, that might be different. Just like the
 11:20 2 law requires that he fairly consider probation as a
 11:21 3 concept because it is our law. But this hypothetical
 11:21 4 involving jumping off a roof is irrelevant and
 11:21 5 misleading and designed to confuse the juror.

11:21 6 THE COURT: I'll overrule the objection.

11:21 7 Q. (BY MR. GOELLER) Do you see my point? Do you
 11:21 8 ever think that giving five years or five years'
 11:21 9 probation could ever be the right thing to do when you
 11:21 10 found somebody guilty of intentionally killing another
 11:21 11 human being?

11:21 12 A. No.

11:21 13 Q. Okay. I'm not -- I'm not here to try to change
 11:21 14 your mind or anything like that, and I appreciate your
 11:21 15 honesty with me. There are all sorts of situations out
 11:22 16 there and all sorts of cases. You could think of a
 11:22 17 thousand situations where trying to figure out maybe
 11:22 18 what the right punishment ought to be. But if we talk
 11:22 19 about murder -- and the only difference between capital
 11:22 20 murder and murder is either more than one victim or that
 11:22 21 robbery, burglary, police officer, very young child,
 11:22 22 something like that. But the fundamental concept of
 11:22 23 both murder and capital murder is the intentional taking
 11:22 24 of a human life, an intentional killing. Okay? So in
 11:22 25 that respect, they are very similar.

11:22 1 And when we talk about a potential range
 11:22 2 of punishment for that murder, being as little as five
 11:23 3 years in the penitentiary or no penitentiary time, just
 11:23 4 probation, it's your position that you could never in
 11:23 5 any circumstance consider that range of punishment?

11:23 6 A. No.

11:23 7 Q. Okay. Tell me why.

11:23 8 A. I don't want to live next to this person for
 11:23 9 one thing.

11:23 10 Q. Okay.

11:23 11 A. I don't want that person out.

11:23 12 Q. Okay.

11:23 13 A. My grandchildren are out there, too. You know,
 11:23 14 I don't know any of the circumstances or anything, but
 11:23 15 in your example, I don't want that person in society
 11:23 16 loose. And five years is -- seems like a small price to
 11:24 17 pay if you've got a reason to commit murder.

11:24 18 Q. Okay. I won't disagree with you. I don't
 11:24 19 think -- I won't disagree with you. Do you have any
 11:24 20 questions for me, sir?

11:24 21 A. I thought of one, but I'm not sure it's
 11:24 22 appropriate.

11:24 23 Q. Go ahead.

11:24 24 A. I know that the district attorney and his staff
 11:24 25 is paid by the taxpayer.

11:24 1 Q. We're court appointed.

11:25 2 A. Okay. Thank you.

11:25 3 Q. Tell me why you wanted to ask me that.

11:25 4 A. No reason. It just --

11:25 5 Q. There's a reason. Come on.

11:25 6 A. It just popped into my mind, and I was just
 11:25 7 curious as to whether or not, as a juror, to know that.

11:25 8 Q. Yeah. It should have absolutely no relevance.

11:25 9 A. Right.

11:25 10 Q. But, you know, I'm a taxpayer, too. And I have
 11:25 11 concerns about where my tax dollar goes, and I know you
 11:25 12 are in the money business. You are in the numbers and
 11:25 13 figures business. You know who's paying my tab. If you
 11:25 14 live in Collin County, you are.

11:25 15 A. Yes.

11:25 16 Q. And trust me when I tell you, you are getting a
 11:25 17 bargain, and I'm not getting rich off this case, and I
 11:25 18 mean that. If I could take that spray paint can and
 11:25 19 paint it around this courthouse, I would do it everyday
 11:25 20 if I could. So, but, you know, and I don't blame you
 11:26 21 for asking that question.

11:26 22 The flip side to that coin is, you know,
 11:26 23 there are jurors who wonder, this kid must have money
 11:26 24 rolling out of his ears to have two lawyers sitting up
 11:26 25 here for weeks and weeks and days on end. and that ain't

11:26 1 the case. We're court appointed because he's indigent.
 11:26 2 Okay? Anything else?
 11:26 3 A. No. I guess not.
 11:26 4 Q. Okay. Do you have any questions for
 11:26 5 Mr. Schultz or the Judge at this point?
 11:26 6 A. I don't believe so.
 11:26 7 Q. Okay. One thing I didn't cover, and I
 11:26 8 always -- I always try to start off with this
 11:26 9 information. I just forgot in your case. I notice that
 11:26 10 you are on a couple medications. Any problem with?
 11:26 11 A. I hope not.
 11:26 12 Q. Okay. I think jury service in this case would
 11:27 13 probably last somewhere between two and four weeks.
 11:27 14 Probably a minimum of two weeks. I think worst-case
 11:27 15 scenario, four, five weeks, minimum two weeks. So call
 11:27 16 it three or four weeks.
 11:27 17 I would anticipate the Judge would
 11:27 18 probably conduct the trial Monday through Friday,
 11:27 19 9 a.m., 8:30, 9 a.m., earliest maybe 8 a.m., probably
 11:27 20 latest 5:00 or 6:00 at night, with probably an hour for
 11:27 21 lunch and maybe a midmorning break of 15 minutes and a
 11:27 22 midafternoon break of 15 minutes. And that would be the
 11:27 23 routine for the duration of the trial.
 11:27 24 And, again I apologize, I should always
 11:27 25 ask that up front with anybody that has any kind of

11:27 1 medical condition. Do you see any -- any problem there?
 11:28 2 A. I don't really know. I had angioplasty a few
 11:28 3 years ago, so. I think I'm doing pretty good, so.
 11:28 4 Q. I imagine your position is pretty solid down at
 11:28 5 the Foundation?
 11:28 6 A. Yes. I looked at the handbook and there's five
 11:28 7 days, but I don't think that's a problem.
 11:28 8 Q. Five days for jury service?
 11:28 9 A. Yes.
 11:28 10 Q. I can tell you, you are going to rewrite the
 11:28 11 handbook if you are a juror on this case. But in all
 11:28 12 seriousness, I got to believe that they understand that
 11:28 13 jury service in these kinds of cases -- there's not a
 11:28 14 capital case, I don't think that's ever been tried in
 11:28 15 less than two weeks. No problem down at the Foundation
 11:28 16 if you are a juror in this case?
 11:28 17 A. I don't believe so.
 11:28 18 Q. Okay. All right. Okay. Who's your -- what's
 11:28 19 the chain of command down there, so to speak?
 11:28 20 A. Lynn Kraft is the president.
 11:29 21 Q. And do you report directly to him?
 11:29 22 A. Yes.
 11:29 23 Q. Does he know of your potential service in this
 11:29 24 case?
 11:29 25 A. He does or the executive vice president does,

11:29 1 that there's a possibility.
 11:29 2 Q. Has it been discussed that you might be out of
 11:29 3 pocket, three, four weeks?
 11:29 4 A. I did inform him after we were told, yes.
 11:29 5 Q. What did they say?
 11:29 6 A. We'll get to that when we get there.
 11:29 7 Q. Okay. So they weren't jumping up and down,
 11:29 8 saying, yeah, Jerry, good job?
 11:29 9 A. No.
 11:29 10 MR. GOELLER: Judge, can I have a moment
 11:29 11 to confer with Mr. High?
 11:29 12 THE COURT: Yes.
 11:29 13 MR. GOELLER: I don't think we need a sub
 11:29 14 rosa, but I'll go ahead and pass the juror back to
 11:29 15 Mr. Schultz.
 11:30 16 THE COURT: All right. Mr. Schultz?
 11:30 17 VOIR DIRE EXAMINATION
 11:30 18 BY MR. SCHULTZ:
 11:30 19 Q. Sometimes we throw these questions at you and
 11:30 20 the answers. Sometimes depending upon how you
 11:30 21 understand the question or how they are phrased and
 11:31 22 sometimes they are --
 11:31 23 A. Yes.
 11:31 24 Q. And sometimes they are absolutely right on, no
 11:31 25 matter who is asking the questions. And you are the

11:31 1 only one who is going to know. So we're going to talk a
 11:31 2 little bit about the probation in a five-year situation.
 11:31 3 Because remember what I said when we first started,
 11:31 4 there's nothing wrong with a juror being unfit to serve
 11:31 5 in a particular case.
 11:31 6 But at the same time, if that juror is
 11:31 7 unfit, it needs to be clear that that's the case so we
 11:31 8 understand. It's a disservice to you if you
 11:31 9 misinterpret it. It's a disservice to one side or the
 11:31 10 other if they are forced to have to use a strike on
 11:31 11 somebody that is really unfit. Does that make sense to
 11:31 12 you?
 11:31 13 A. Yes.
 11:31 14 Q. We talked a lot about those special issues, and
 11:31 15 we explained that the ability to go either way on those
 11:31 16 questions, depending on the evidence, is what's required
 11:31 17 of a juror and the fact that maybe you were surprised
 11:32 18 with that mitigation question even being in existence.
 11:32 19 Despite that and despite whether maybe you
 11:32 20 would have such a question if you were making the law or
 11:32 21 not, the only way you could be fit as a juror is if you
 11:32 22 could assure us that you would fairly consider following
 11:32 23 your instructions, weighing the evidence and determining
 11:32 24 whether there was sufficient mitigating evidence. And
 11:32 25 you said you could do that. You could consider whether

11:32 1 there is or is not mitigating evidence that would be
11:32 2 sufficient to make a life sentence appropriate in a
11:32 3 capital case, remember?

11:32 4 A. Right. And that's after all the other?

11:32 5 Q. Uh-huh. And that's exactly right. That would
11:32 6 be the very last thing you would do as a juror, if you
11:32 7 got that far --

11:32 8 A. Right.

11:32 9 Q. -- based on your answers. Now, let's go back
11:32 10 to this question, and let's just go to the absolute
11:32 11 extreme on the issue of punishment. And that would be
11:32 12 the five-year probation for the crime of murder that we
11:32 13 talked about.

11:32 14 You understand, Mr. Goeller is correct
11:33 15 that under our law a person convicted of regular murder,
11:33 16 which could even happen for here. Because a defendant
11:33 17 could be charged with capital murder and for some reason
11:33 18 the jury would not find all of the things necessary for
11:33 19 it to be capital murder, but the jury would still be
11:33 20 convinced that a regular murder occurred. Let me tell
11:33 21 you how that could happen, Mr. Morris.

11:33 22 A. Okay.

11:33 23 Q. Let's say, for example, the defendant were
11:33 24 charged, as in this case, with the crime of capital
11:33 25 murder by murder of two people. Because that's capital

11:33 1 murder, to murder two people in the same criminal
11:33 2 episode.

11:33 3 And let's say you are looking at all the
11:33 4 evidence, and you are convinced that he murdered one of
11:33 5 them, and no doubt about that. It's clear. But for
11:33 6 some reason, based on the evidence, you were unable to
11:33 7 prove that he killed them both.

11:33 8 I mean, maybe they were found in different
11:33 9 rooms, and you think there is no evidence that the
11:33 10 defendant was in the room where the body was found. Or
11:34 11 maybe you think somebody else did the other killing or
11:34 12 he wasn't involved in that.

11:34 13 Whatever the reason, do you see how you
11:34 14 couldn't find him guilty of killing two people, but
11:34 15 maybe only killing the one person, how that could
11:34 16 happen? Does that make sense to you?

11:34 17 A. See, that would -- that would -- would that
11:34 18 mean that you couldn't -- you could find not guilty
11:34 19 then?

11:34 20 Q. No.

11:34 21 A. In that case where there is criminal?

11:34 22 Q. No. What would happen in that case, the Judge
11:34 23 would give you an instruction saying, if you find --

11:34 24 A. Okay.

11:34 25 Q. -- beyond a reasonable doubt that the defendant

11:34 1 is guilty of capital murder, then say so. Say guilty.
11:34 2 If you don't find that, but you do find that the
11:34 3 defendant committed a murder, but it just isn't the
11:34 4 murder plus that makes it capital.

11:34 5 Maybe you find it was a murder, but there
11:34 6 wasn't a burglary with it. Or maybe you find it was a
11:34 7 murder, but there wasn't a robbery. It was just a
11:34 8 regular murder. Then you find the person guilty of the
11:34 9 lesser offense of a regular murder. It's still murder,
11:34 10 but it's not capital murder because part of what's
11:35 11 needed to be found you couldn't find.

11:35 12 A. That comes from an instruction from the Judge?

11:35 13 Q. Exactly, yeah. Are you with me so far?

11:35 14 A. Right.

11:35 15 Q. And so what that means is that it is possible
11:35 16 in any case that the State would have tremendous proof
11:35 17 that a murder occurred. I mean, clear, DNA evidence,
11:35 18 eye witnesses, fingerprints, ballistics, footprints,
11:35 19 tire marks. Everything in the world that proves a
11:35 20 defendant committed one murder, but we're unable to
11:35 21 convince a jury beyond a reasonable doubt that that
11:35 22 murder was caused with a burglary or with a robbery or
11:35 23 with another murder all rolled into it? Do you follow
11:35 24 what I'm saying?

11:35 25 A. Yes.

11:35 1 Q. If that's the case, the Judge would give you
11:35 2 instructions to acquit the defendant of capital murder
11:35 3 because you didn't find all that was needed for capital
11:35 4 murder. You could not do that because the proof wasn't
11:35 5 there, and to consider regular murder, to see if he's
11:35 6 guilty of that lesser offense. Do you follow me?
11:36 7 Because I'll go over it again if you're not following
11:36 8 it?

11:36 9 A. Well, I'm not following this, when this would
11:36 10 take place, the sequence of events. Is that instructed
11:36 11 before the trial?

11:36 12 Q. No. Before deliberations.

11:36 13 A. Before deliberations. But you would not know
11:36 14 that until then?

11:36 15 Q. Who the jury?

11:36 16 A. Right.

11:36 17 Q. Yeah. The jury wouldn't. The jury might know
11:36 18 what's going on from the evidence, but they wouldn't
11:36 19 have made any decisions until deliberations.

11:36 20 A. Right. But then this comes as an instruction
11:36 21 as you go to deliberations. But you would not know that
11:36 22 that was -- you know that that's a possibility.

11:36 23 Q. You know it now; it's a possibility in this or
11:36 24 any other case.

11:36 25 A. Okay.

11:36 1 Q. Like that murder case -- Mr. Goeller kind of
11:36 2 hinted at it with you -- in that murder case if anybody
11:36 3 asked you, there was always a possibility of
11:36 4 manslaughter. There was a regular murder. It had a
11:36 5 different set of elements. It might have been something
11:36 6 lesser than murder that could have occurred in the
11:36 7 evidence. So are you with me now, what could happen?

11:37 8 A. Okay.

11:37 9 Q. Any problem? And see, that gets back to
11:37 10 whether or not you are willing to follow the law as a
11:37 11 person because, if you are the kind of person that
11:37 12 thinks this defendant ought to die, that you are looking
11:37 13 at the evidence. You say, that's an awful crime. He
11:37 14 ought to die. But if I find him guilty of regular
11:37 15 murder, he won't die. Do you follow what I'm saying?
11:37 16 It's not a death penalty.

11:37 17 Are you the kind of man that even in your
11:37 18 heart you felt like the conduct was such that he ought
11:37 19 to die for that? If the State doesn't prove everything
11:37 20 it has to for capital murder, you'll come back with a
11:37 21 regular murder verdict?

11:37 22 A. If instructed.

11:37 23 Q. No. You wouldn't be instructed to do that.
11:37 24 You would be instructed to decide: Is he guilty of
11:37 25 capital murder or regular murder?

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11:37 1 A. Okay.

11:37 2 Q. Am I making sense to you?

11:37 3 A. Okay.

11:37 4 Q. You might want to, just like I said before, you
11:37 5 might want to find the defendant not guilty of capital
11:37 6 murder so you don't have to worry about a death penalty.
11:37 7 But you wouldn't do that because you are an evidence
11:38 8 person, right?

11:38 9 A. Right.

11:38 10 Q. You might want to be able to give or to
11:38 11 consider a death sentence on an individual for a murder,
11:38 12 if it's capital. But if the evidence proves it's not a
11:38 13 capital murder, you wouldn't be able to give a death
11:38 14 penalty. Does that make sense to you?

11:38 15 A. Okay.

11:38 16 Q. Does it make sense? Are you following me?

11:38 17 A. Right.

11:38 18 Q. All right. Would you vote the evidence and
11:38 19 come back with regular murder knowing that there could
11:38 20 never be a death penalty coming from that vote?

11:38 21 A. Yes.

11:38 22 Q. Even if you thought the right thing to do in
11:38 23 the -- in the overall equity sense, the overall
11:38 24 rightness, even if you thought he, his conduct was bad
11:38 25 enough for the death penalty, you would still vote the

11:38 1 correct answers rather than achieve the result you
11:38 2 wanted?

11:38 3 A. Right.

11:38 4 Q. Okay. And that's how come we get into this
11:38 5 question that Mr. Goeller was asking you about, the
11:38 6 punishment range in a murder case. Because if you find
11:39 7 a defendant guilty of regular murder, then the Judge
11:39 8 would have a punishment range that the legislature has
11:39 9 created. It's not me doing it. It's not Mr. Goeller
11:39 10 doing it. It's not the Judge doing it. It's our
11:39 11 legislature in Austin has said the full range of
11:39 12 punishment for the crime of murder is at the very high
11:39 13 end, 99 years or life. At the very low end, 5 years'
11:39 14 probation.

11:39 15 Now, first of all for there to be
11:39 16 probation, a defendant has to be quote eligible for
11:39 17 probation. In other words, which doesn't mean a whole
11:39 18 lot really. All it means that he's never been before
11:39 19 convicted of a felony offense.

11:39 20 I mean, Adolf Hitler, as near as I can
11:39 21 tell, has never been convicted of a felony offense so he
11:39 22 would be eligible for probation. Are you with me on
11:39 23 that?

11:39 24 A. Right.

11:39 25 Q. Now, that's not a whole lot, I must admit.

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11:40 1 Now, we've talked before about whether you'd follow the
11:40 2 law, even if you personally disagreed with it. I think
11:40 3 Mr. Goeller was asking you questions, you know, would
11:40 4 you give the death penalty for stealing if that was the
11:40 5 law? And I think your answer was, that would depend on
11:40 6 the circumstances. I mean, I don't think.

11:40 7 Was that your answer to him, that if the
11:40 8 law said you could get a death penalty for stealing, you
11:40 9 might or might not, depending on all the evidence
11:40 10 presented, vote that way?

11:40 11 A. Right.

11:40 12 Q. Is that true?

11:40 13 A. Yes.

11:40 14 Q. Okay. It's the same thing with this concept of
11:40 15 probation. When Mr. Goeller was asking you, could you
11:40 16 give probation in a murder case, talking about a murder
11:40 17 case, what was in your mind when answering his question?
11:40 18 What were you thinking about as a murder case?

11:40 19 A. Taking the life of someone.

11:40 20 Q. Okay. Any particular way or under any
11:40 21 particular circumstances?

11:40 22 A. Not really.

11:40 23 Q. Well, let's talk about it. And like I say,
11:41 24 your opinions are yours. And if you are not fit, if you
11:41 25 are not fit to be considered as a juror -- and I don't

11:41 1 mean as a person. I mean in terms of your willingness
11:41 2 to follow the law -- there's nothing wrong with that in
11:41 3 however respect.

11:41 4 Most people, when they think of murder
11:41 5 think of things like stabbings and shootings and things
11:41 6 like that. Wouldn't you agree? That's usually how we
11:41 7 think about it when you talk about murder?

11:41 8 A. I would say most of the time, yes.

11:41 9 Q. Certainly there are other varieties of murder
11:41 10 that, while not excusable, don't have the same, don't
11:41 11 have the same quality about them as just a cold-blooded
11:41 12 kind of killer. Do you agree with that, or do you
11:41 13 disagree with that?

11:41 14 A. I think I agree with that.

11:41 15 Q. Okay. I mean, I'll give you an example.

11:41 16 MR. GOELLER: Judge, I'm going to object
11:41 17 to Mr. Schultz giving him a specific example. This is
11:42 18 now an attempt, after I passed, to qualify the juror on
11:42 19 a specific fact situation. That's improper.

11:42 20 THE COURT: Overruled.

11:42 21 Q. (BY MR. SCHULTZ) For example, you might have a
11:42 22 murderer who said, you know, I've always wanted to know
11:42 23 what it feels like to be a murderer. I think there
11:42 24 would be some interesting insight into human life. So
11:42 25 he goes out looking for somebody to murder, and he

11:42 1 murders that person. That's pretty scary stuff, don't
11:42 2 you think?

11:42 3 A. Yeah.

11:42 4 Q. Many other circumstances could be murder. I
11:42 5 mean, they truly are murder. And most of us would say,
11:42 6 that's, that's different. It's still murder, but it's
11:42 7 different. Let me give you an example. The father that
11:42 8 kills the killer of his child who is going free. And
11:42 9 not only does he think that's an awful thing that's
11:42 10 happened, but he, in his mind, believes that person is
11:43 11 going to go out and do it to somebody else's little
11:43 12 girl. He really believes it because he's heard all the
11:43 13 evidence, but that guy gets off on a technicality. Do
11:43 14 you remember that?

11:43 15 A. Yes.

11:43 16 Q. Do you know it's still murder to go kill that
11:43 17 person, even if we understand it? It's still murder.
11:43 18 It's an intentional causing of the death of that other
11:43 19 person. You and I can't go around killing people we
11:43 20 think need to be killed. We can't do that in this
11:43 21 society. Do you agree?

11:43 22 A. Right.

11:43 23 Q. Does that seem the same to you as the guy that
11:43 24 goes out and murders for the fun of murdering? Does it
11:43 25 seem like the same? Are we at the same place in your

11:43 1 mind?

11:43 2 A. I kind of look at taking a life as murder. I
11:43 3 mean --

11:43 4 Q. Okay. Okay. You've obviously heard of the
11:43 5 concept of mercy killing, right?

11:43 6 A. I'd have to think about it.

11:43 7 Q. Do you know what I mean when I talk about mercy
11:43 8 killing?

11:43 9 A. Uh-huh.

11:43 10 Q. What do you understand that to be?

11:44 11 A. Are we talking about a spouse or something
11:44 12 along that line or?

11:44 13 Q. Maybe.

11:44 14 A. Dr. Kevorkian or?

11:44 15 Q. Maybe, maybe. Those kinds of things. What are
11:44 16 your thoughts on what that is. What conduct that is?

11:44 17 A. I don't know if it's compassion or not. I
11:44 18 don't know.

11:44 19 Q. Does that seem different? When somebody is in
11:44 20 a lot of pain and wants to die, does it seem different
11:44 21 to you than going out and murdering somebody because you
11:44 22 are mad at them or they said some things about you.
11:44 23 Does that seem different to you, or is it the same?

11:44 24 A. It's taking of a life. I have a little bit of
11:44 25 a problem with making a distinction between the two.

11:44 1 Q. Okay. Okay. You are the only one that's going
11:44 2 to know the answer to this question. In a murder case,
11:45 3 in a case in which you found a defendant guilty of
11:45 4 murder, whatever the facts, it could be the thrill
11:45 5 killing. It could be the execution in the penitentiary.

11:45 6 He got his days confused and killed a guy
11:45 7 a day early. I guess that's murder, I don't know. It's
11:45 8 still taking the human life. There is no defense for
11:45 9 it. You got your paperwork confused. You kill him a
11:45 10 day early. It could be any of those kind of cases. Are
11:45 11 you with me?

11:45 12 A. Uh-huh.

11:45 13 Q. And we are not trying to limit you to one
11:45 14 particular fact situation. The Judge would tell you, to
11:45 15 be fit as a qualified juror, to be fit for consideration
11:45 16 as a juror, you must follow all of the law that could
11:45 17 ever be involved in this kind of a case. And some of
11:45 18 those laws are what we talked about before, presuming
11:45 19 the defendant innocent. Not making him testify if he
11:46 20 doesn't want to.

11:46 21 Not -- not holding them responsible to
11:46 22 prove evidence, but also it means to be able to fairly
11:46 23 consider punishment and consider the high end and the
11:46 24 low end and the end in the middle. It's easy with the
11:46 25 death penalty because the ends are both pretty high

11:46 1 It's life or death and there's nothing in between.
 11:46 2 The question is: If our law requires a
 11:46 3 jury to be able to fairly consider as little as five
 11:46 4 years' probation for the crime of murder, if that's what
 11:46 5 our law requires, are you unable to follow an
 11:46 6 instruction on that point?

11:46 7 A. No.

11:46 8 Q. You can't do it?

11:46 9 A. Oh, you mean follow? I don't agree with it,
 11:46 10 but, yes, I could follow it. If I'm -- yeah. If that's
 11:46 11 presented, and that situation comes.

11:46 12 Q. Let's -- it's like the death penalty question.
 11:46 13 It's possible that people don't agree with the death
 11:46 14 penalty. They don't -- they say, I don't agree with
 11:47 15 that law. How is that right for us to kill somebody
 11:47 16 else, but they can be fit jurors by saying, I will still
 11:47 17 follow the law even though I don't agree with it, and I
 11:47 18 can fairly answer the questions, and I can fairly
 11:47 19 consider death.

11:47 20 If called upon to do it, I can fairly
 11:47 21 consider those questions that would result in a death
 11:47 22 penalty, even though I don't agree with it. Do you
 11:47 23 understand?

11:47 24 A. Yes.

11:47 25 Q. Do you think -- do you think people could

11:47 1 actually do that? Do you think people have the ability,
 11:47 2 people can, on a jury, vote in a way that might be
 11:47 3 different from how they think the law ought to be? Do
 11:47 4 you think people can do that?

11:47 5 A. Yes.

11:47 6 Q. And you think they can do that fairly?

11:47 7 A. Yes.

11:47 8 Q. Okay. Well, now, that's what's confusing me
 11:47 9 about your answers, and you are the only one that knows.
 11:47 10 I don't know. None of us know what you are thinking.
 11:48 11 You've already said that it seems to you that even
 11:48 12 giving an option to a jury of as little as five years'
 11:48 13 probation for murder doesn't seem right to you?

11:48 14 A. Right. It doesn't.

11:48 15 Q. You know, from your point of view. And of
 11:48 16 course you don't know all the circumstances that went
 11:48 17 into their thinking or anything; it just doesn't seem
 11:48 18 right to you?

11:48 19 A. Right.

11:48 20 Q. Do you agree?

11:48 21 A. Right.

11:48 22 Q. That kind of makes you like the person that
 11:48 23 might be sitting on the death penalty jury saying,
 11:48 24 capital punishment doesn't seem right to me. Don't you
 11:48 25 think? Makes you like that --

11:48 1 A. Somewhat, yes.

11:48 2 Q. Can you fairly consider probation as a possible
 11:48 3 option in a murder case, since that's what the
 11:48 4 legislature has set as the full range of punishment, and
 11:48 5 that's what the Judge is telling you is required of
 11:48 6 jurors. That's the law. And that jurors, to be fit,
 11:48 7 have to fairly be able to consider probation as well as
 11:49 8 10 years, 20 years, 50 years or life. Can you do that?

11:49 9 A. If it got to that point, yes.

11:49 10 Q. In other words, if you found him guilty of the
 11:49 11 lesser offense?

11:49 12 A. Yes.

11:49 13 Q. Okay. And you also have already told me that
 11:49 14 you are capable of finding him guilty of a lesser
 11:49 15 offense if the evidence isn't there for the capital
 11:49 16 crime?

11:49 17 A. Yes.

11:49 18 Q. You can do that?

11:49 19 A. Yes.

11:49 20 Q. Now, Mr. Goeller was talking about jumping off
 11:49 21 the roof on your head. Was that a helpful example to
 11:49 22 you? Does that seem to help you understand the
 11:49 23 probation question any?

11:49 24 A. Maybe.

11:49 25 Q. Okay. I think his point was: If any of us

11:49 1 think something is the right thing to do, we hope we
 11:49 2 would do it. I mean, if you -- I mean, I guess if I
 11:49 3 think it's the right thing to do, to run naked down the
 11:49 4 street, I guess I would do that, if I think that's the
 11:49 5 right thing to do. But I'm not going to do that.
 11:50 6 That's kind of his point, I think.

11:50 7 A. Okay.

11:50 8 Q. At the same time to follow the law as a juror
 11:50 9 you've already said, it's the right thing to do because
 11:50 10 you've said you view jury service importantly enough
 11:50 11 that you are here to do your duty as a juror, right?

11:50 12 A. Yes.

11:50 13 Q. And I can tell you are, the question after the
 11:50 14 question that you've answered has always been in terms
 11:50 15 of if the evidence requires it; if the law requires it.

11:50 16 A. Yes.

11:50 17 Q. The law requires jurors who could fairly
 11:50 18 consider the entire range of punishment anywhere from as
 11:50 19 little as 5 years to 99 years or life for someone they
 11:50 20 have found guilty of murder, depending on what
 11:50 21 circumstances have shown up in the evidence and what
 11:50 22 things they hear. And you and I can't think of examples
 11:50 23 right now of what that would be.

11:50 24 A. No.

11:50 25 Q. Is your mind closed and are you telling us

11:50 1 that, no matter what the law requires you've already
11:51 2 decided there would never be -- that there will be no
11:51 3 five-year probated sentence in a murder case if you are
11:51 4 on the jury? If you decided that, that's not going to
11:51 5 happen?

11:51 6 A. No. I just don't agree with it.

11:51 7 Q. Okay. A lot of stuff you don't agree with,
11:51 8 right?

11:51 9 A. Right.

11:51 10 Q. Do you think -- do you think you pay enough
11:51 11 taxes now, do you feel?

11:51 12 A. Sure.

11:51 13 Q. What if they raise your taxes, are you going to
11:51 14 pay some more, if they raise them?

11:51 15 A. I'm going to pay them.

11:51 16 Q. You don't have to agree with it. You don't
11:51 17 like them now, but you will do it because you are that
11:51 18 kind of person, right?

11:51 19 A. Right.

11:51 20 Q. Can you, if the law says you must fairly
11:51 21 consider five years' probation and be able to do that,
11:51 22 that doesn't mean a wink and a nod, and say, well, yeah,
11:51 23 I'll say I'll consider it. I'll say, I'll keep my mind
11:51 24 open, but I know better. Are you fit if you are that
11:51 25 way? Are you a fit juror?

11:52 1 of punishment, including as little as five years'
11:52 2 probation? Look at the evidence, apply the evidence to
11:52 3 what you think is the right thing and come back with a
11:52 4 proper punishment? If you ever had to consider a
11:53 5 murder?

11:53 6 A. If it's considered, yes.

11:53 7 Q. And it should be considered, if that's what you
11:53 8 should find the defendant guilty of. Are you with me?

11:53 9 A. I'm with you.

11:53 10 Q. Okay. You would do that?

11:53 11 A. Yes.

11:53 12 Q. And your mind is not closed to doing it. Your
11:53 13 mind is not closed to considering five years' probation.
11:53 14 You just think that it's a law that doesn't make a lot
11:53 15 of sense?

11:53 16 A. Right.

11:53 17 Q. But you are the kind of person, just like a lot
11:53 18 of people who can do it, you can do what the law
11:53 19 requires. Even if as a citizen, you might disagree with
11:53 20 that law, you could still be fair and do it?

11:53 21 A. Right.

11:53 22 MR. SCHULTZ: Okay. I'll pass the juror.

11:53 23 THE COURT: Mr. Goeller?

11:53 24 VOIR DIRE EXAMINATION

11:53 25 BY MR. GOELLER:

11:51 1 A. No.

11:51 2 Q. Why wouldn't that be fit for you to do it that
11:52 3 way? Say, why, sure, I'll consider it. Kind of like
11:52 4 I'll consider drinking some poison or something. Why
11:52 5 wouldn't you be fit if you think that way?

11:52 6 A. Because you predetermined what you are going to
11:52 7 do.

11:52 8 Q. Well, when you were talking to Mr. Goeller, it
11:52 9 sounded like -- maybe I misunderstood. It sounded like,
11:52 10 I'm not going to consider that instruction and consider
11:52 11 five years.

11:52 12 A. No. I just don't agree with it. I don't know
11:52 13 where it came from.

11:52 14 Q. Well. It comes from our legislature.

11:52 15 A. Well, I know. I just don't understand the
11:52 16 thinking.

11:52 17 Q. Well, we could guess. Mr. Goeller might have
11:52 18 an idea, and I might have an idea.

11:52 19 A. Right. We all might.

11:52 20 Q. We're just guessing. We weren't down there.
11:52 21 At least I wasn't. I don't think he was either. We
11:52 22 don't know, but it's the law. A lot of stuff that --
11:52 23 why 55 miles an hour instead of 65, who knows? It's
11:52 24 what they decided.

11:52 25 Can you fairly consider the entire range

11:53 1 Q. Mr. Morris, I know it may seem like we're
11:53 2 trying to ping-pong you here back and forth, but this
11:53 3 stuff is pretty important. When I talked to you about
11:53 4 five years' probation in a murder case, you were very
11:53 5 specific. And that's why I asked you why. You talked
11:53 6 about it. You had grandchildren. You talked about the
11:54 7 intentional taking of another human life and that you
11:54 8 would not -- you would not consider the five years'
11:54 9 probation. Again, I'm not -- I'm not disagreeing with
11:54 10 you. I'm not trying to change your mind or anything
11:54 11 like that.

11:54 12 And I think you've been very consistent,
11:54 13 and you see murder as murder, the taking of a human
11:54 14 life. Even -- even on the extreme example Mr. Schultz
11:54 15 used of Kevorkian, you weren't sure if that's
11:54 16 compassionate or not. I see you as a person, who, if
11:54 17 you have found somebody has intentionally caused the
11:54 18 death of another human being, that's very serious.
11:54 19 That's murder to you?

11:54 20 A. Yes.

11:54 21 Q. Okay. Now, based on all the answers to the
11:54 22 questions you have heard, your position with me was
11:55 23 that, you know, you had grandchildren. You didn't want
11:55 24 that person out walking around. And I suppose five
11:55 25 years, you know, the person would be walking around

11:55 1 after five, maybe sooner.
 11:55 2 Probation is they never go to the
 11:55 3 penitentiary. They are just out. And when you told me
 11:55 4 all those things, and then Mr. Schultz asked you
 11:55 5 questions, I don't see you as the kind of man that would
 11:55 6 change your views or conform your views just because a
 11:55 7 judge gave you an instruction that to be a qualified
 11:55 8 juror you would have to do this.

11:55 9 MR. SCHULTZ: Excuse me a moment. I'm
 11:55 10 going to object to that instruction because it's
 11:55 11 misleading. There is no such instruction that he would
 11:55 12 ever give that he would have to do this.

11:55 13 THE COURT: Sustained.

11:55 14 MR. GOELLER: Well, I didn't mean to say
 11:55 15 the Judge would give you an instruction that you have to
 11:56 16 do a certain thing in the case. The Judge would give
 11:56 17 you an instruction that, to be a qualified juror, you
 11:56 18 would have to fairly consider the entire range of
 11:56 19 punishment. That's the qualification.

11:56 20 Now, based on what you've told me about
 11:56 21 your views on as little as five years' probation, but
 11:56 22 the very minimum of five years in the penitentiary, and
 11:56 23 all the reasons why you told me you could not consider
 11:56 24 that, I don't think you're the kind of person that would
 11:56 25 say or would take the position that, well, to be -- if

11:56 1 the Judge instructed me to consider that, or if I
 11:56 2 considered myself a qualified juror, I would consider
 11:56 3 that. I don't see you as the kind of guy that just
 11:56 4 makes that flip, and all that's fairly considerable now,
 11:56 5 five years' probation. Am I right?

11:56 6 A. Well, I have definite ideas about it. But if
 11:57 7 it's the law, I'm probably going to consider it. I
 11:57 8 mean, I'm not probably. I'm going to consider it, if it
 11:57 9 comes to that point.

11:57 10 Q. Tell me, you just said you had some definite
 11:57 11 ideas about that. Tell me what those ideas are?

11:57 12 A. Well, I just think -- I just don't think that
 11:57 13 that's a credible instance in a murder. I don't
 11:57 14 understand it even being there, but if it's been passed
 11:57 15 as a law, then I would have to consider it, if
 11:57 16 instructed so, if it came to that point.

11:57 17 Q. So you -- you think that's -- you think if it's
 11:57 18 not credible, it's incredible that we could even have
 11:57 19 that law?

11:57 20 A. Yeah. I didn't know that it existed, but --

11:57 21 Q. Does that seem just obscene to you that
 11:57 22 something --

11:57 23 A. Like we said, I don't know where it's coming
 11:57 24 from. I don't know.

11:57 25 Q. Yeah. We don't either. We know it's somehow

11:57 1 filtered its way out of Austin, but --

11:58 2 A. It's the law.

11:58 3 Q. -- that's all we know. Okay. But as you sit
 11:58 4 there right now, the concept of five years, potential of
 11:58 5 five years' probation for the intentional taking of
 11:58 6 another human life, you can't even see how those --
 11:58 7 those people in Austin could even have thought of such a
 11:58 8 thing?

11:58 9 A. I have a question about it, yeah.

11:58 10 Q. Okay.

11:58 11 A. But like, I wasn't there, and we don't know
 11:58 12 what they discussed and how they arrived at it.

11:58 13 Q. Right. You had mentioned that the fact that
 11:58 14 you have grandchildren, that you don't want these people
 11:59 15 walking around who have been convicted of murder on
 11:59 16 probation. Can you think of any other things as to why
 11:59 17 that -- why that law is such that you can't even figure
 11:59 18 out how -- how it got there? What other reasons does
 11:59 19 that strike you as just not right, probation for murder?

11:59 20 A. Seems like it's saying that life is not very
 11:59 21 important.

11:59 22 Q. Sure does, doesn't it? Because that's what
 11:59 23 that five years' probation contemplates, not one day for
 11:59 24 murder, for the intentional taking of a human life. And
 12:00 25 that's -- that's, I guess that's the example I was

12:00 1 trying to use. I wasn't trying to be silly, but it's
 12:00 2 easy to say, I would consider it.

12:00 3 You know, I would consider jumping off the
 12:00 4 roof of this building. If I thought it was the right
 12:00 5 thing to do, I'd do it. But I'm never going to consider
 12:00 6 that. I'm never going to consider Mr. Schultz' example
 12:00 7 of taking the bottle of poison.

12:00 8 Suppose if Mr. Schultz filled up this
 12:00 9 glass with poison and sat it over here and said,
 12:00 10 Mr. Goeller, why don't you drink that glass of poison?
 12:00 11 It's the right thing to do. And I look at that, and I
 12:00 12 say, you know what? That's the right thing to do.
 12:00 13 Drink the poison. Well, yeah, I considered it. I
 12:00 14 thought it was the right thing to do, so I drank the
 12:00 15 poison. But I'm never going to, right? Wouldn't you
 12:00 16 agree with me?

12:00 17 You and I aren't going to jump off the
 12:00 18 roofs of this building on our head. And you and I
 12:00 19 aren't going to drink the poison. Would you agree with
 12:00 20 me?

12:00 21 MR. SCHULTZ: Excuse me. We're going to
 12:00 22 object. That's a misleading question because that's not
 12:01 23 couched in terms of the law requiring fair consideration
 12:01 24 of this.

12:01 25 MR. GOELLER: It wasn't a question.

12:01 1 MR. SCHULTZ: Well, why were you saying it
12:01 2 then if it wasn't a question? The fact of the matter
12:01 3 is, the question for this juror is whether or not he can
12:01 4 follow an instruction. Whether he can follow the law
12:01 5 and fairly consider the punishment range and not as an
12:01 6 illustration of jumping off of a building or drinking
12:01 7 some poison and trying to somehow equate that to the
12:01 8 concept of whether or not he could follow an instruction
12:01 9 and fairly consider a law that he doesn't personally
12:01 10 agree with.

12:01 11 THE COURT: All right. There was no
12:01 12 question.

12:01 13 MR. GOELLER: No. Not yet.

12:01 14 THE COURT: All right.

12:01 15 Q. (BY MR. GOELLER) The point I'm trying to make
12:01 16 is, a person could say, I would fairly consider it
12:01 17 because that's the law. Okay? And maybe in many types
12:01 18 of cases most people would be able to fairly consider.
12:02 19 Like possession of marijuana. As little as just a fine
12:02 20 of -- a dollar fine all the way up to six months of
12:02 21 probation, or six months of jail time, not penitentiary,
12:02 22 jail.

12:02 23 Most people would say, I could fairly
12:02 24 consider that entire range of punishment because that
12:02 25 fits in. Nothing about that entire range of punishment

12:02 1 so conflicts with my personal beliefs that I couldn't
12:02 2 consider it. There are people that would say, I don't
12:02 3 want jail time. And they may have an option of jail
12:02 4 time for a small amount of marijuana.

12:02 5 Some people say, I would give somebody six
12:02 6 months for a little bit of marijuana. But cases like
12:02 7 that really don't conflict with a whole lot of people's
12:02 8 personal values. That's not the same in homicide and
12:02 9 murder cases, I think.

12:02 10 That's one thing to say I would fairly
12:03 11 consider it because that's what the law contemplates.
12:03 12 But based on what I've heard you say about, you know,
12:03 13 you've got grandchildren, and you don't want these
12:03 14 people walking around and, you know, it's probation for
12:03 15 taking a human life and your concept that you can't even
12:03 16 believe that -- you are having a hard time figuring out
12:03 17 how these people down in Austin even came up with this
12:03 18 one.

12:03 19 So that the question is not whether you
12:03 20 would just consider it because the Judge instructs you
12:03 21 to consider it, or would you fairly consider it based on
12:03 22 everything you told me about your feelings about
12:03 23 probation and murder? Could you fairly consider that
12:03 24 probation?

12:03 25 A. If it got to that point.

12:03 1 Q. What does that mean? If it got to that point?

12:03 2 A. If through the evidence that was presented and
12:03 3 if the jury agreed that it was not capital murder, and
12:03 4 it got to the point where that was instructed by the
12:03 5 Judge, that that's what we had to consider, that that's
12:04 6 what we had to consider.

12:04 7 Q. Okay.

12:04 8 A. Then I would have to fairly --

12:04 9 Q. Then you would have to what?

12:04 10 A. Fairly look at that.

12:04 11 Q. Look at what?

12:04 12 A. At the five years or the probation.

12:04 13 Q. Okay. Could you?

12:04 14 A. Fairly, yes.

12:04 15 Q. Tell me why you could. Based on everything
12:04 16 else you told me, tell me why you could.

12:04 17 A. It's the law.

12:04 18 Q. Only because it's the law?

12:04 19 A. It's the law. And I would be instructed to
12:04 20 look at it at just that.

12:04 21 Q. Okay. So that doesn't conflict with your
12:04 22 personal feelings about probation and murder?

12:04 23 A. I'm sure it conflicts.

12:04 24 Q. Why?

12:04 25 A. As far as --

12:04 1 Q. Tell me why it conflicts.

12:05 2 A. I think in weighing -- in weighing the
12:05 3 punishment for the -- for the act. It just doesn't fit.

12:05 4 Q. Okay. Thank you, sir.

12:05 5 MR. GOELLER: Pass the witness.

12:05 6 THE COURT: You may step down, sir. And I
12:05 7 tell you what, we'll call you back in in just a moment.

12:05 8 (Venireperson Morris not present.)

12:05 9 THE COURT: What says the State?

12:05 10 MR. SCHULTZ: He's acceptable.

12:05 11 THE COURT: What says the defense?

12:05 12 MR. GOELLER: Move to challenge the jury
12:05 13 for cause. 3517's biased against the phase of the law
12:05 14 in which we're entitled to rely on. Ask the Court to
12:05 15 the very last thing he said. I think he finally got it.
12:05 16 Obviously, the juror's conflicted with taking oaths and
12:05 17 following the law. But when I asked him, why would that
12:06 18 conflict with the way the Court would instruct you to
12:06 19 your qualifications? And he said, because it just don't
12:06 20 fit; and, therefore, he's got a definite bias against
12:06 21 probation or the minimum range of punishment on the
12:06 22 lesser-included offense, Your Honor.

12:06 23 THE COURT: All right. Deny the
12:06 24 challenge. I'll deny the challenge for cause.

12:06 25 MR. GOELLER: Yes, sir. I understand

12:06 1 THE COURT: He's agreeable with the State?
 12:06 2 MR. SCHULTZ: Yes, sir, he is.
 12:06 3 THE COURT: All right. That's No. 83.
 12:06 4 Jerry Morris. The defendant strikes Jerry Morris. And
 12:06 5 we'll start at one o'clock sharp with Olivia Turpie.
 12:08 6 (Lunch recess.)
 12:08 7 THE COURT: Are you Olivia Turpie?
 13:08 8 VENIREPERSON: I am.
 13:08 9 MR. GOELLER: You may recall that about
 13:08 10 three weeks ago I swore all of our jurors, and the oath
 13:08 11 was that they would tell the truth in regard to
 13:08 12 questions that were propounded by either side. Do you
 13:08 13 recall that?
 13:08 14 VENIREPERSON: Yes.
 13:08 15 THE COURT: You are still under that oath,
 13:08 16 and I'll ask you to be seated. Mr. Schultz?
 13:08 17 MR. SCHULTZ: Thank you, Judge.
 13:08 18 VOIR DIRE EXAMINATION
 13:08 19 BY MR. SCHULTZ:
 13:08 20 Q. Good afternoon, ma'am.
 13:08 21 A. Good afternoon.
 13:08 22 Q. My name is Bill Schultz. I'm an assistant
 13:08 23 district attorney representing the State of Texas in its
 13:08 24 capital prosecution of Ivan Abner Cantu. To my left and
 13:08 25 I believe, pardon me, I believe you've already met her

13:08 1 from general voir dire a few days ago, Ms. Gail Falco.
 13:08 2 And she is the chief felony prosecutor also assisting
 13:09 3 with this prosecution. We have a third prosecutor who
 13:09 4 will probably be in at some point. Her name is Jami
 13:09 5 Lowry.
 13:09 6 The defendant is the man in the blue shirt
 13:09 7 over at the defense table. And immediately next to him
 13:09 8 is Mr. Matt Goeller one of his two attorneys that is
 13:09 9 representing him in his defense.
 13:09 10 We've been working so hard. Sometimes my
 13:09 11 memory fails me, but I believe that Ms. Falco and
 13:09 12 another attorney, Mr. Don High, spoke on behalf of the
 13:09 13 defendant when we were in here last. Am I right about
 13:09 14 that?
 13:09 15 A. Uh-huh.
 13:09 16 Q. What we're seeking to do in this second stage
 13:09 17 of the proceedings is to try to limit our inquiry as
 13:09 18 much as possible to what we call the punishment issues
 13:09 19 of capital murder, kind of the death penalty issues.
 13:09 20 And many times, I guess, our questions
 13:10 21 will tend to presuppose that the defendant has been
 13:10 22 found guilty of capital murder at the first part of the
 13:10 23 trial by the jury.
 13:10 24 Because you might wonder, well, why are we
 13:10 25 talking about punishment questions when he's presumed

13:10 1 innocent and there's been no finding of guilt yet. The
 13:10 2 answer to the question very simply is that before the
 13:10 3 trial begins, we have to inquire to make sure that all
 13:10 4 the things that we think you might possibly be called
 13:10 5 upon to do, all the issues are those issues that you
 13:10 6 could accept and work comfortably with because otherwise
 13:10 7 if we waited until after there was a conviction, there
 13:10 8 might be somebody who would automatically look for a
 13:10 9 death penalty, for example, based upon the conviction.
 13:10 10 Somebody else might automatically vote for
 13:10 11 a life sentence, and the idea is that there not be any
 13:10 12 automatics one way or the other. Does that make sense
 13:10 13 to you? Are we communicating okay?
 13:10 14 A. Yes, we are.
 13:11 15 Q. Okay.
 13:11 16 MR. SCHULTZ: Just a moment, please,
 13:11 17 Judge?
 13:11 18 THE COURT: All right.
 13:11 19 Q. (BY MR. SCHULTZ) Now, you've kind of indicated
 13:11 20 in your judgment that one of the problems with the
 13:11 21 criminal justice system is overloaded cases which need
 13:11 22 to be settled outside of court.
 13:11 23 A. Did I say that? I don't remember it. Make
 13:11 24 sure it's me.
 13:11 25 Q. Maybe we got them switched somehow.

13:11 1 A. I'll recognize my handwriting. Yes, I did say
 13:11 2 this. I may have a different set of mind today.
 13:11 3 Q. It's almost like an attitudinal kind of
 13:11 4 question, what those are. There aren't any right or
 13:11 5 wrong answers. It just kind of gives us an idea about
 13:11 6 how you think. And that helps the lawyers wonder
 13:12 7 whether or not you would be the kind of juror that they
 13:12 8 could probably comfortably work with.
 13:12 9 An issue -- an issue of law has just
 13:12 10 emerged about ten seconds ago. It doesn't -- what I'm
 13:12 11 going to ask the Judge to do is to excuse you, if you
 13:12 12 will, for just a little bit because a point of law has
 13:12 13 come up, that you know how that sometimes it happens.
 13:12 14 It has to be outside the jury's presence, and this has
 13:12 15 just emerged. If the Court would, would you retire the
 13:12 16 juror?
 13:12 17 THE COURT: Would you step outside,
 13:12 18 Ms. Turpie, and we'll see you in just a few minutes
 13:12 19 then.
 13:12 20 (Venireperson Turpie not present.)
 13:12 21 THE COURT: She appears to be out the
 13:12 22 door.
 13:12 23 MR. SCHULTZ: Thanks, Judge. I have
 13:12 24 proposed, and I believe Mr. Goeller has indicated an
 13:13 25 agreement that Juror No. 84, Ms. Turpie, and Juror 85.

13:13 1 Ms. Caldwell, be excused by consent. And that's a
 13:13 2 package deal or trade, so to speak. And that's of
 13:13 3 course contingent on whether or not the defendant
 13:13 4 consents to that also.
 13:13 5 THE COURT: Is that correct, Mr. Goeller?
 13:13 6 MR. GOELLER: Yes, Your Honor.
 13:13 7 THE DEFENDANT: Yes, Your Honor.
 13:13 8 THE COURT: You agree that both 84 and 85
 13:13 9 should be excused; is that correct, sir?
 13:13 10 THE DEFENDANT: Yes, Your Honor.
 13:13 11 THE COURT: Okay. Thank you, Mr. Cantu.
 13:13 12 All right. Let's bring in -- would you thank Ms. Turpie
 13:13 13 for her service and ask Michael Baker to step in?
 13:13 14 THE BAILIFF: Yes, Your Honor.
 13:13 15 (Venireperson Becker present.)
 13:13 16 THE COURT: Sir, are you Michael Becker?
 13:15 17 Three weeks ago I swore everyone in. And the oath was
 13:15 18 to tell the truth in your responses to questions that
 13:15 19 were asked by both sides here. Do you recall that?
 13:15 20 VENIREPERSON: I do.
 13:15 21 THE COURT: And you are still under that
 13:15 22 oath, and I'll ask you to be seated. All right.
 13:15 23 Mr. Schultz?
 13:15 24 MR. SCHULTZ: Thank you, Judge.
 13:15 25 VOIR DIRE EXAMINATION

13:15 1 BY MR. SCHULTZ:
 13:15 2 Q. Good afternoon, Mr. Becker.
 13:15 3 A. Good afternoon.
 13:15 4 Q. Mr. Becker, my name is Bill Schultz. I'm one
 13:15 5 of the assistant district attorneys representing the
 13:15 6 State of Texas in its capital prosecution of the
 13:15 7 defendant Ivan Abner Cantu. And to my left is the
 13:15 8 person with whom you spoke to a few days ago, Ms. Gail
 13:15 9 Falco, one of our chief felony prosecutors assigned to
 13:16 10 another court. And further at the other end of our
 13:16 11 table is Ms. Jami Lowry, also a felony prosecutor. It
 13:16 12 is likely that we'll be the three attorneys that will be
 13:16 13 involved in this whole case.
 13:16 14 There is always the chance that for some
 13:16 15 unusual evidentiary reason some other prosecutor might
 13:16 16 come in. And that usually is the occasion, Mr. Becker,
 13:16 17 when there might be some other particularly complicated
 13:16 18 form of scientific evidence to be presented. And maybe
 13:16 19 there is another prosecutor more experienced in handling
 13:16 20 that particular type of evidence, handling some of the
 13:16 21 predicate type questions necessary to get that
 13:16 22 particular type of scientific evidence before a jury.
 13:16 23 It might be some situation where there's a
 13:16 24 child witness. And we have prosecutors that generally
 13:16 25 work more with children and have more of a facility to

13:16 1 speak with children than maybe we would as generic trial
 13:16 2 prosecutors. But most likely it would be the three of
 13:17 3 us.
 13:17 4 At the defense table is the defendant
 13:17 5 Mr. Ivan Cantu, in the blue shirt. And immediately next
 13:17 6 to him is Mr. Matt Goeller, one of his two attorneys
 13:17 7 who -- and Mr. Goeller is engaged in private practice of
 13:17 8 law as is the other attorney, Mr. Don High, who I
 13:17 9 believe spoke with you last week.
 13:17 10 A. Yes, he was here.
 13:17 11 Q. And it's certainly not unusual. One of the
 13:17 12 reasons we have more than one attorney is just to
 13:17 13 facilitate other things going on either with this case
 13:17 14 or something. Just, you are a lawyer, you know the
 13:17 15 situation. There may well be something that's going to
 13:17 16 take five minutes, but it has to be those five minutes
 13:17 17 right then, so that's not unusual. Mr. High will be
 13:17 18 back, I'm sure, soon.
 13:17 19 I'm curious if you've had a chance to
 13:17 20 think about what special challenges, if any, being
 13:17 21 trained in the law would create for you, serving on a
 13:17 22 jury, which I would expect to be with all lay people?
 13:18 23 A. I can honestly tell you I've never served on a
 13:18 24 jury. I have been called to jury many times. I'm
 13:18 25 relatively new to the Dallas area and been called many

13:18 1 times in Harris County and was never selected, for one
 13:18 2 reason or another. I honestly will tell you, I haven't
 13:18 3 given it much thought.
 13:18 4 Q. Some of the things I've thought of, and it's
 13:18 5 not -- you always hear stories that the lawyers never
 13:18 6 make it on a jury because one side wants you and the
 13:18 7 other side doesn't. And I'm not sure how that all
 13:18 8 means.
 13:18 9 I always interpret it to mean that
 13:18 10 probably one side had a -- had a case that, if analyzed
 13:18 11 closely might, might go well for them. And the other
 13:18 12 side necessarily might not go. I figure it was that or
 13:18 13 I didn't know. I thought it might be that, if it's
 13:18 14 true, that maybe lawyers wouldn't want themselves
 13:18 15 scrutinized in trial work by other lawyers and say, what
 13:19 16 a dumb thing to say, or what a silly way to ask a
 13:19 17 question because we work in this business. I've had
 13:19 18 that -- I've had lawyers on juries before. I never gave
 13:19 19 it a lot of thought, either.
 13:19 20 One thing that does occur to me, is just
 13:19 21 because of the technical nature of our business as
 13:19 22 lawyers, you would probably be a lot quicker at reading
 13:19 23 written instructions and understanding written
 13:19 24 instructions than the average person. It may not be any
 13:19 25 judgment on anything other than you experienced the way

13:19 1 you've been trained to think through the years and how
13:19 2 to work, which seems to me would be a good thing.

13:19 3 I would think when you get an instruction
13:19 4 allocating the burden of proof to one side or the other,
13:19 5 depending upon a particular issue, you might make more
13:19 6 sense out of that more quickly than maybe some other
13:19 7 juror would.

13:19 8 A. I would hope so.

13:19 9 Q. Okay. And I also think that many of the things
13:20 10 that we really call upon our jurors to do and that's
13:20 11 have a willingness sometimes to -- what they want to
13:20 12 happen to be different from what the evidence says must
13:20 13 happen.

13:20 14 I think lawyers may oftentimes be a little
13:20 15 better than that than the average person just being
13:20 16 able, for example, to disregard evidence. You've heard
13:20 17 somebody offer some evidence. Everybody hears it.
13:20 18 Judge, there's an objection. It gets sustained. The
13:20 19 Judge says, "Jury, disregard that last remark."

13:20 20 I tend to think lawyers just by how we
13:20 21 tick and how we've been trained, might be a little
13:20 22 better able to do that just because we weigh the
13:20 23 evidence that's before us. And we don't get quite so
13:20 24 caught up with the inadmissible evidence we've heard
13:20 25 about. Do you agree with that?

13:20 1 A. I think generally I would.

13:20 2 Q. And I look -- I think about -- I think, for
13:20 3 example, like a trial judge. The Judge is sitting there
13:20 4 as a trier of fact, hears some stuff. Somebody objects,
13:20 5 and it's sustained. Most trial judges don't have any
13:21 6 difficulty just moving that off the scales if they are
13:21 7 trying to weigh up, if they are trying to make
13:21 8 decisions. I think a lot of that is our legal training.

13:21 9 A. Yeah. I think our training basically is that,
13:21 10 you know, the witnesses will tell us what the facts are.
13:21 11 And the Judge will tell us what we can consider and what
13:21 12 we can't consider. And the Judge will tell us what the
13:21 13 law is, and the idea is that we're supposed to follow
13:21 14 that.

13:21 15 Q. Okay. Another thing that I've thought of is,
13:21 16 how would a jury react to having a lawyer in the jury
13:21 17 room with them? And I'm thinking you might be a high --
13:21 18 a high likelihood to be the foreman or the presiding
13:21 19 juror. I would think if I were a juror, and there was
13:21 20 somebody that was familiar with this sort of thing, as
13:21 21 you worked with them -- you know, when we pick jurors,
13:21 22 we look at a person.

13:21 23 And I know Mr. Goeller does it too because
13:21 24 we've talked about it. We look at somebody and say,
13:21 25 gee, we're not only thinking is this person somebody we

13:22 1 want on the jury, but is this person somebody that we're
13:22 2 happy -- comfortable being the presiding juror? I think
13:22 3 you could see how that could just follow.

13:22 4 A. Uh-huh.

13:22 5 Q. On the flip side is, you might be a pariah. If
13:22 6 they don't like lawyers back there, I mean it could go
13:22 7 the other way.

13:22 8 A. Yes.

13:22 9 Q. But I would think, and given your personality
13:22 10 that I've seen so far, I would think it's likely that
13:22 11 you might be the presiding juror. Do you think that
13:22 12 would create any special problems for you, if they
13:22 13 wanted you to do that?

13:22 14 A. No. I don't know that I would lobby for that
13:22 15 within the jury panel, but, you know, if asked to do it,
13:22 16 I would.

13:22 17 Q. I could find your questionnaire, but it's
13:22 18 quicker to ask you. Where did you go to law school?

13:22 19 A. South Texas College of Law.

13:22 20 Q. And that's in --

13:22 21 A. Houston.

13:22 22 Q. At -- is it San Jacinto?

13:22 23 A. San Jacinto and --

13:22 24 Q. Clay?

13:22 25 A. Yes. Somewhere down around there. I could

13:22 1 walk there very easily from the Tenico Building, but I
13:23 2 couldn't tell you what streets I crossed.

13:23 3 Q. I understand. I go down there about once a
13:23 4 year to interview. That's my connection with it. I
13:23 5 never had a case in the Court of Appeals, which I guess
13:23 6 is still in that same building?

13:23 7 A. Yeah. I think the 1st and the 13th or the 1st
13:23 8 and the 14th are both in that building now.

13:23 9 Q. Have you always lived in Texas?

13:23 10 A. No. I was born and raised in New York.

13:23 11 Q. Would that be New York City? New York --

13:23 12 A. I was raised on Long Island in a -- basically a
13:23 13 farm community. I worked in Manhattan for several
13:23 14 years.

13:23 15 Q. Would you take a train in then?

13:23 16 A. I used to ride the Lionel Railroad into work
13:23 17 and then take the subway. And one of the clients
13:23 18 that -- I worked as paralegal in New York. One of the
13:23 19 clients that I serviced was a Houston-based client. And
13:23 20 when they elected to take the work that I was doing
13:23 21 in-house, they extended an offer to me. And it was
13:24 22 proved to be fruitful because I was able to go to law
13:24 23 school at night.

13:24 24 Q. Mr. Goeller will be able to talk to you about
13:24 25 that New York stuff. That's his home, and you guys can

13:24 1 talk restaurants and subways and all that stuff
13:24 2 together. I never knew anything about the city. There
13:24 3 is certainly a perception, at least in this part of the
13:24 4 country, that New York City is a liberal place. Do you
13:24 5 think that's accurate?

13:24 6 A. New York City is very unlike the rest of the
13:24 7 state. I think. That's -- that's my perception of it.
13:24 8 Where I grew up we, you know, like I say, we are
13:24 9 basically a farm community, cabbage farming and potato
13:24 10 farming were the major industries out there, unless you
13:24 11 worked in the defense plant, or you got on the train and
13:24 12 rode into the city and went to work.

13:24 13 The Long Island area that I grew up in was
13:25 14 extremely conservative. Yet, my congressional district
13:25 15 always sent a liberal Democrat to congress, which I
13:25 16 could never figure, so...

13:25 17 Q. Now, New York State has a death penalty, which
13:25 18 apparently isn't used, well, certainly not as frequently
13:25 19 as Texas or Louisiana or Florida. But New York, does
13:25 20 the State of New York still have a death penalty?

13:25 21 A. When I left New York, and I left New York in
13:25 22 1981.

13:25 23 Q. Okay.

13:25 24 A. And I don't believe that it had a death penalty
13:25 25 at that time. I'm trying to think of the -- I guess

13:25 1 Mario Cuomo was the governor at the time, and he was
13:25 2 opposed to the death penalty. I do recall that there
13:25 3 was certain -- there was several bills passed through
13:25 4 the State legislature to approve capital punishment in
13:25 5 the State. Under certain circumstances the governor
13:25 6 always vetoed them.

13:26 7 Q. You've indicated on your questionnaire, that
13:26 8 although you are in favor of the death penalty, I think
13:26 9 your answer was -- please explain your answer. That I
13:26 10 am neither a strong proponent nor an opponent. They are
13:26 11 not inconsistent, but I'm looking for that little area,
13:26 12 kind of what that means in your mind.

13:26 13 A. As I get older, I guess I'm mellowing. But I
13:26 14 was a very strong proponent of the death penalty. I
13:26 15 believe it's a necessary evil. I sometimes wonder if we
13:26 16 don't apply it where it's not necessary. I guess I
13:26 17 started rethinking my position on this maybe about five
13:26 18 years or so ago.

13:26 19 A good friend of mine in Houston who is --
13:26 20 who is a label lawyer, works with a volunteer group that
13:26 21 does pro bono work for death row inmates. And she --
13:27 22 she is certainly not a liberal type by any stretch of
13:27 23 the imagination, but just in conversations with her, I
13:27 24 guess she got me to thinking more.
13:27 25 And I guess it was when Carla Faye Tucker

13:27 1 was executed by the State, I was wondering, in my mind,
13:27 2 I was thinking is there a better benefit that the State
13:27 3 can derive out of her because I really do believe that
13:27 4 she had changed her ways, that she had been
13:27 5 rehabilitated.

13:27 6 And I thought that someone like her would
13:27 7 be a good spokesperson to talk to troubled youths. And
13:27 8 I think we made a mistake in not, I guess, repealing the
13:27 9 -- or turning the sentence into life.

13:28 10 Q. Well, I remember when, I mean, like everybody
13:28 11 else, I'm not sure when the media became interested in
13:28 12 the situation. I always had some cynical suspicion that
13:28 13 it was somehow related to the presidential candidacy of
13:28 14 our governor. Because I think a lot of the hits maybe
13:28 15 that we took nationally of the death penalty in Texas
13:28 16 may have been politically driven.

13:28 17 I mean, if you are cynical you might want
13:28 18 to say, there's a governor of the State that's executed
13:28 19 more people than anyone else running for president.

13:28 20 And irrespective of that, I guess one take
13:28 21 on that situation would be that it was a genuine
13:28 22 metamorphosis of that personality in general in the
13:28 23 religious conversion. You don't know what's in her
13:28 24 heart. I don't know what's in her heart.

13:28 25 A. No. You can't tell. She seemed sincere.

13:28 1 Q. And then I guess the next question was: Did
13:28 2 the jury do the right thing at the time that they had
13:29 3 the evidence, and they probably did. I mean, you look
13:29 4 at those facts.

13:29 5 A. Oh, I had just moved to Houston when that crime
13:29 6 was committed, and it was absolutely horrific.

13:29 7 Q. You understand that if given the options that
13:29 8 trial jury had, you think they made the right call in
13:29 9 her case?

13:29 10 A. Yeah, at the time I certainly did. At the time
13:29 11 I certainly did.

13:29 12 Q. And there was a real irony about that. I think
13:29 13 when you do this stuff for a living like I do, you spend
13:29 14 a lot of time thinking about how it all happens and how
13:29 15 chances affect how everybody works on this.

13:29 16 There's a real irony in the fact that we
13:29 17 take so long sometimes for executions to actually be
13:29 18 carried out, that that always invites some significant
13:29 19 change in circumstances which, had they been that way at
13:29 20 the time of the trial, maybe a different result would
13:29 21 have happened.

13:29 22 A. Quite possibly.

13:29 23 Q. One of the things that I think about, I'm not
13:29 24 going to dwell on the guilt-innocence portion that I
13:30 25 would with a lay person. You know we've got to prove

13:30 1 he's guilty beyond a reasonable doubt of all the
 13:30 2 elements alleged. If we do that, we are entitled to
 13:30 3 have you find him guilty. If we don't do that, you find
 13:30 4 him not guilty. And if we prove by less than beyond a
 13:30 5 reasonable doubt, whatever you determine that is, that's
 13:30 6 the same as no evidence at all. It's just insufficient
 13:30 7 evidence. And he goes -- he goes free. You follow that
 13:30 8 law, of course?

13:30 9 A. Yes.

13:30 10 Q. But you understand. No problems there. If
 13:30 11 he's found guilty of capital murder, we move along to
 13:30 12 this first special issue, which is one of the really few
 13:30 13 animals we have in our criminal system with what you do
 13:30 14 in a civil side. But it is a true special issue, you
 13:30 15 will direct the jury to decide the probability that the
 13:30 16 defendant will be a future danger, will commit future
 13:30 17 acts of violence.

13:30 18 And it's possible for that question to be
 13:30 19 fairly answered yes and then because of changed
 13:31 20 circumstances, which is kind of what you are talking
 13:31 21 about I think, if you asked that question ten years
 13:31 22 later, the answer to that question could be no. Do you
 13:31 23 agree?

13:31 24 A. I would definitely agree. You have to make the
 13:31 25 call when you make the call.

13:31 1 Q. And it could go the other way. A person could
 13:31 2 find some -- a person could find a no answer on that
 13:31 3 question based on what they think is the evidence. Send
 13:31 4 him down to Huntsville on a life sentence. First day
 13:31 5 down there he stabs a guard. Sticks a knife right in
 13:31 6 the guy's throat because he doesn't like him. All we
 13:31 7 can do is our best and analyze -- that question really
 13:31 8 calls for us to analyze the defendant's personality at
 13:31 9 the time of the trial.

13:31 10 But other things could happen. A fellow
 13:31 11 could have a stroke. A fellow could get a death
 13:31 12 sentence and have a stroke and no longer be physically
 13:31 13 able to be dangerous to anybody else later on while
 13:31 14 waiting the executioner's visit.

13:31 15 And yet, there's nothing in our law that
 13:31 16 somehow makes that person less appropriate for the death
 13:32 17 penalty legally than before because there's been a
 13:32 18 trial. There's been a determination of his guilt and of
 13:32 19 his then present capacity for future violence.

13:32 20 And I guess what you are saying is that it
 13:32 21 may be a flaw in our system that we don't have some
 13:32 22 mechanism to accommodate later changes. Am I correct?

13:32 23 A. Yeah. I don't know or maybe there is a flaw in
 13:32 24 the system, but I don't know that there is a better
 13:32 25 system. And certainly we have a Board of Pardons and

13:32 1 Parole that's supposed to evaluate these issues over a
 13:32 2 period of time. And I have absolutely no idea what goes
 13:32 3 on behind their closed doors, but there certainly is
 13:32 4 some mechanism in place for that.

13:32 5 Q. The only thing that I know that we seem to have
 13:32 6 that will accommodate a change in circumstances, a few
 13:33 7 years ago, much to the surprise of a lot of people, the
 13:33 8 U.S. Supreme Court ruled that a person has to be quote
 13:33 9 mentally competent to be executed. I.e., if a person's
 13:33 10 gone insane, psychotic or something has happened to him
 13:33 11 so they don't even appreciate the fact that they are
 13:33 12 getting ready to be executed, the Supreme Court says
 13:33 13 it's unconstitutional to execute them, which was always
 13:33 14 kind of screwy to me because I'm thinking: If somebody
 13:33 15 is going to kill me, I might just as well be plenty
 13:33 16 happy to be so insane I wouldn't mind them doing it.
 13:33 17 That might be a benefit. But our enlightened approach
 13:33 18 seems to be to go wake him up and fix him up enough to
 13:33 19 be able to appreciate what we're doing to him and then
 13:33 20 kill him.

13:33 21 Anyway, if a person goes crazy between the
 13:33 22 time of the trial and the time of execution, he's
 13:33 23 entitled to hearings to see whether he's so crazy -- see
 13:33 24 first of all, is he crazy? And second of all, faking.
 13:33 25 Because you can see how that would happen.

13:33 1 A. Sure.

13:34 2 Q. I mean, you and I would do that, if we could
 13:34 3 get away with that. I would. And then see if it's --

13:34 4 A. Sure.

13:34 5 Q. -- it's the kind of crazy that makes him not
 13:34 6 understand the death penalty. So we have hearings and
 13:34 7 we do that. So that's a fail-safe program for that.
 13:34 8 But you are absolutely right. Other than gubernatorial
 13:34 9 clemency or the Board of Pardons and Paroles, there's
 13:34 10 about nothing to accommodate the --

13:34 11 A. And it's my understanding that the governor
 13:34 12 can't really grant clemency; is that correct?

13:34 13 Q. Well, he may not be able to grant clemency
 13:34 14 without a majority vote from the Board of Pardons and
 13:34 15 Parole. He could obviously pardon someone.

13:34 16 A. There's a big difference between a clemency and
 13:34 17 a pardon, I would think.

13:34 18 Q. Uh-huh. But a cynical fellow would say that
 13:34 19 since those people on the Boards of Pardons and Parole,
 13:34 20 that's somehow the governor's wishes to find expression
 13:34 21 in the votes. But I think your point is right. That
 13:34 22 was Bush's position. "I'd like to help you, but I
 13:35 23 can't," kind of idea.

13:35 24 I merely say they were appointees, and I
 13:35 25 just -- I just wondered if they weren't shilling for him

13:35 1 in what he thought it was what he wanted to do. But not
13:35 2 him directly, but you know how it works?

13:35 3 A. Sure.

13:35 4 Q. Well, let's assume you are right, and let's
13:35 5 assume that the Carla Faye Tucker situation was an
13:35 6 injustice. And, you know, who is to say? I'm not.
13:35 7 Does that -- does that fact, if true, weaken -- is that
13:35 8 what weakened your support for the death penalty, do you
13:35 9 think?

13:35 10 A. Well, I think, and I wouldn't say that the
13:35 11 execution was an injustice. I think it was a mistake
13:35 12 because I think that Carla Faye Tucker could have
13:35 13 performed a benefit to society, and we removed that
13:35 14 opportunity.

13:36 15 You know, what better way to get through
13:36 16 to potentially violent teens, gang members, drug
13:36 17 abusers, et cetera, et cetera, than to find somebody who
13:36 18 has actually been there, committed the crimes and has
13:36 19 seen both sides of the problem.

13:36 20 And, you know, if somebody like that can
13:36 21 turn one or two kids around, I think that it -- it's a
13:36 22 benefit that society needs to recognize exists and take
13:36 23 advantage of it.

13:36 24 Q. You know, I've always wondered, what if you've
13:36 25 got some brilliant medical doctor that you are getting

13:36 1 ready to give the death penalty to, and he's about ready
13:36 2 to break through and find a cure for cancer. Is that
13:36 3 something that ought to be factored in, not so much his
13:36 4 worthiness, but his value to society? What do you think
13:36 5 about that?

13:36 6 A. I don't know that the -- the ability to do the
13:37 7 research in that instance, the ability to do the
13:37 8 research. And there's a real nexus between the penalty
13:37 9 and the benefit.

13:37 10 Q. Okay. Again, you would be more familiar with
13:37 11 the Tucker case than I would, both because it happened
13:37 12 in your part of the country at the time and, secondly,
13:37 13 because you've obviously been interested in it. Not
13:37 14 that I'm not. But I don't know about you, but when you
13:37 15 deal in this business all the time, you have a tendency
13:37 16 not to pay attention to other people's trials. I have
13:37 17 had enough of this to last me for a lifetime, just so
13:37 18 far. But my understanding of that case, was her story
13:37 19 was she was strung out on drugs at the time?

13:37 20 A. Uh-huh.

13:37 21 Q. And probably that was true. I don't have a
13:37 22 drug test on it, but I'm going to assume that makes
13:37 23 sense. I'm going to assume that she was. She was
13:38 24 heavily dosed with drugs that often make people
13:38 25 aggressive and do aggressive things.

13:38 1 And then her story was they got me off the
13:38 2 drugs because I wasn't doing that anymore because I'm
13:38 3 down in prison. And my true stuff started emerging.
13:38 4 And I became better, and I started reading the Bible,
13:38 5 and I became better, et cetera, et cetera.

13:38 6 And I'm wondering how you view drugs in
13:38 7 terms of voluntary use of drugs in terms of your
13:38 8 responsibility for what we all know happens when you do
13:38 9 use drugs. Does that lessen, in your mind, your
13:38 10 responsibility the reason you did these horrible crimes
13:38 11 was because you were taking drugs that altered your
13:38 12 perceptions and made you aggressive?

13:38 13 A. Whoa, tough question. I guess I'd have to view
13:38 14 that very much like an alcohol abuse, that we should all
13:39 15 be aware of all the potential downside of alcohol use.
13:39 16 And I think that drug use, basically, you have the same
13:39 17 issue that someone has to know what the results are
13:39 18 going to be.

13:39 19 I mean, you know, lots of people say that
13:39 20 they try this experimentally because they wanted to see
13:39 21 what happened. And but I would think, if -- you know,
13:39 22 if you are a hard-core user, I guess at some point you
13:39 23 lose control because of the addiction. I just don't
13:39 24 know.

13:39 25 Q. I don't offer this as a fact. But it seems to

13:39 1 make sense to me. I suspect many of our really serious
13:39 2 violent crimes in our society have some -- some drug
13:39 3 connection somehow. And if the reason for the crime
13:40 4 wasn't over drugs themselves, like trying to rob
13:40 5 somebody of his or her drugs or trying to do something
13:40 6 like that, perhaps it's a crime.

13:40 7 It's like a robbery, motivated by a need
13:40 8 to get money to go get drugs, or perhaps it's a crime
13:40 9 that is committed because of the mind-altering effects
13:40 10 of drugs. I think -- I'm thinking. I don't know, it's
13:40 11 not evidence.

13:40 12 I'm just telling you, I think that it's a
13:40 13 high density of really serious serious crimes that have
13:40 14 that kind of drug connection. Some are interlaced
13:40 15 within them. And I really want to make sure kind of
13:40 16 where we're coming from. There's not any right or wrong
13:40 17 answers. I just want to know how you take it or how you
13:40 18 view things. I'm thinking what evidence I've got or how
13:40 19 I will be presenting it. I'm trying to get a feel for
13:40 20 how your system would -- would evaluate the evidence I
13:40 21 think that I'll be producing in this case.

13:40 22 And so my question to you is: Does the
13:41 23 fact that a crime is committed under the influence of
13:41 24 drugs in any way in your mind lessen the responsibility
13:41 25 of the person that commits the crime?

13:41 1 A. No, no. And I can't remember. It's been a
13:41 2 long time since I took a criminal law course. And I've
13:41 3 never practiced criminal law, but I seem to recall that
13:41 4 the statutes speak to that, do they not?

13:41 5 Q. Okay. A part from the legal issue, and I think
13:41 6 you are right about that, but apart from the legal
13:41 7 issue, just in a moral kind of sense, does it seem to
13:41 8 you that voluntary drug usage that influences crimes or
13:42 9 crimes committed under the influence of voluntarily
13:42 10 taking drugs, does that seem to in any way lessen?

13:42 11 A. No. I don't think it should be used as a
13:42 12 crutch.

13:42 13 Q. Because why I ask that question is: It is
13:42 14 certainly conceivable that a jury could find, you know,
13:42 15 if only he'd heeded all the warnings on television and
13:42 16 his teachers try to tell him and the people of the
13:42 17 church and his mom or his dad or his brother or anybody
13:42 18 else because we get told 50 times a day: Don't do
13:42 19 drugs. That's our society.

13:42 20 If he heeded all of that and not taken
13:42 21 these drugs, this crime probably wouldn't have happened,
13:42 22 I mean, I'm -- I'm open-minded enough to say that there
13:42 23 is such a -- there is such a situation, that, but for
13:42 24 the drugs that the person voluntarily took, he might not
13:42 25 have done the crime, you know?

13:42 1 And so my question is: Apart from the
13:42 2 legal issues that maybe we learned in law school, do you
13:42 3 think there's any moral difference between committing
13:43 4 the act under the influence of drugs and committing the
13:43 5 acts done sober?

13:43 6 A. No, probably not.

13:43 7 Q. Okay, okay. Has your feeling about the death
13:43 8 penalty -- you must have done at least some thinking
13:43 9 about it since the time you filled out the questionnaire
13:43 10 and maybe since the time that Ms. Falco talked to you
13:43 11 about this case.

13:43 12 And I don't know how you are, many people
13:43 13 come in and they say, you know, it was really
13:43 14 interesting. I didn't quite at first understand why
13:43 15 Ms. Falco was talking graphically about putting somebody
13:43 16 on a gurney and strapping them down and inserting a
13:44 17 lethal substance into their body until they are dead.

13:44 18 And sometimes people come in and say, you
13:44 19 know, I never really thought about it in the real life
13:44 20 terms until I'm actually looking at a human being and
13:44 21 hearing that kind of very blunt graphic talk about what
13:44 22 we're doing, and it's made me do a lot of thinking.

13:44 23 And we kind of wonder what they are
13:44 24 thinking since that talk. I'm curious whether or not
13:44 25 that had any effect on you when you actually started

13:44 1 realizing that this isn't the theoretical support for a
13:44 2 death penalty.

13:44 3 We might have it in our living rooms when
13:44 4 we see really terrible brutal crimes, and we think we
13:44 5 might be able to protect ourselves. This is much more
13:44 6 personal because now it's you, and you are actually in
13:44 7 the place where this may happen. Any different thoughts
13:44 8 at all?

13:44 9 A. No. I guess maybe it set home a little bit
13:44 10 harder that, you know, this is -- this isn't a mock
13:45 11 trial. This isn't the type of things that I deal with
13:45 12 in my practice. In my practice, something goes wrong;
13:45 13 somebody pays money; somebody apologizes. Life goes on.
13:45 14 This is very serious. We've got a victim. We have an
13:45 15 alleged. And, you know, the decisions that this jury
13:45 16 makes are going to have a serious -- may have very
13:45 17 serious repercussions for an individual.

13:45 18 And the thought that I took out of the
13:45 19 courthouse -- I guess was it last week when we were
13:45 20 here? I can't remember -- was that, you know, to my
13:45 21 mind if I was selected, you really need to prove to me
13:45 22 the issues raised in the indictment are actually true.
13:45 23 And for me, what I view as a reasonable doubt would be
13:46 24 that I've got to be able to look at myself in the mirror
13:46 25 after it's all over and say, I did the right thing.

13:46 1 Q. I hope you are that kind of man. I do. And,
13:46 2 you know, you don't have a monopoly on those kinds of
13:46 3 sentiments in this kind of case, I assure you. I don't
13:46 4 get up in the mornings thinking, isn't it a great
13:46 5 opportunity for me to be able to come up and participate
13:46 6 in maybe taking somebody's life? I don't view that as a
13:46 7 delight.

13:46 8 Believe me, if we had the kind of society
13:46 9 where it wasn't necessary, I wouldn't -- I wouldn't feel
13:46 10 deprived. I wouldn't long for the good ol' days. It
13:46 11 would never be anything like that at all. And I haven't
13:46 12 met a juror in this case yet that said anything
13:46 13 different.

13:46 14 I haven't met the juror yet that would say
13:46 15 I woke up this morning thinking, maybe I'll be lucky
13:46 16 enough to be on the jury. And maybe I'll be lucky
13:46 17 enough and the evidence will convince me that the
13:46 18 answers should end up in a death sentence.

13:46 19 That's not the way our American culture
13:46 20 is. That's not the kind of people we are to take
13:47 21 delight in other people's death. You know, we're not
13:47 22 that way. And the question then becomes really for
13:47 23 everybody, not even so much: Are you in favor of it,
13:47 24 the death penalty? Are you -- are you hoping that it
13:47 25 will be a death sentence?

13:47 1 Because a lot of people, if you stopped
13:47 2 and asked yourself, if selected on this jury, what would
13:47 3 I hope the outcome would be? I would think most people
13:47 4 would say, I hope the outcome is the evidence says a
13:47 5 life sentence would be the right thing to do, assuming
13:47 6 he is found guilty. I would think most people would
13:47 7 find that more comfortable, as long as they did their
13:47 8 job as jurors, than voting for a death sentence. What
13:47 9 do you think about that?

13:47 10 A. I'd given it a lot of thought. Yeah, you know,
13:47 11 I just don't -- I don't know that I could -- that I
13:47 12 could willingly take someone's life.

13:48 13 Q. We're going to talk about that.

13:48 14 A. Unless, except in a self-defense situation,
13:48 15 something like that. And this is not -- not that
13:48 16 situation. But this -- this will be a very serious
13:48 17 decision. And you use the word luck, and I don't know
13:48 18 whether the people who get selected here are going to be
13:48 19 the lucky ones or the people who get sent home are the
13:48 20 lucky ones. I haven't figured that out in my own mind.

13:48 21 Q. I hope you have an opinion about who are the
13:48 22 ones. Let's talk about that a little bit because there
13:48 23 are a lot of -- there are a lot of laws that you might
13:48 24 not agree with, that aren't so -- that don't touch
13:48 25 intimate issues as life and death, the people who do

13:48 1 just fine with it, and it's no problem. You do -- you
13:48 2 do a lot of corporate law?

13:48 3 A. I practice intellectual property. I do
13:48 4 trademarks and copyrights and software licensing. With
13:48 5 my previous employer, I managed a lot of civil
13:49 6 litigation. I did some human resources work. I
13:49 7 basically -- a relatively eclectic practice.

13:49 8 Q. Okay. Do you have any specialty in your patent
13:49 9 practice?

13:49 10 A. No, not patents -- trademarks. I'm not an
13:49 11 engineer.

13:49 12 Q. Okay.

13:49 13 A. Although I work for a chemical company.

13:49 14 Q. I mean, you know how corporate law works. I
13:49 15 mean, the board of directors are just having some kind
13:49 16 of meeting, and they are getting ready to do something
13:49 17 that maybe will get them sued by the shareholders by
13:49 18 some action.

13:49 19 And if I remember all that stuff from law
13:49 20 school, if you are like a descending guy, you are
13:49 21 supposed to either -- I suppose I should leave the
13:49 22 meeting. If you do something that you think is illegal,
13:49 23 then you probably don't have any civil liability to the
13:49 24 shareholders and all that kind of stuff.

13:49 25 But if you don't -- if you don't leave,

13:49 1 but you just object and you stay there and the vote is
13:49 2 taken, maybe you are doing it. All that stuff could
13:49 3 create injustices in terms of the pocketbook, like you
13:49 4 are saying. Some guy gets sued on it, and it wasn't his
13:49 5 idea maybe. He loses some money. But that isn't the
13:50 6 same thing as a death issue.

13:50 7 So we are asking the jury to follow the
13:50 8 law and who gets -- who gets what money or whether or
13:50 9 not a trademark is abandoned, for example, and that will
13:50 10 be real unfortunate.

13:50 11 You probably read some of those cases
13:50 12 where somebody didn't mean to abandon a trademark, and
13:50 13 then suddenly somebody else starts making money out of
13:50 14 it?

13:50 15 A. Oh, sure. It's such an arcane practice.

13:50 16 Q. And, you know, the same with that copyright
13:50 17 law. It almost seemed kind of weird to me that you can
13:50 18 take a guy's ideas, and that's legal, but you can't take
13:50 19 his words, kind of thing. But that's just the law, and
13:50 20 it's not intimate like the death penalty. Wouldn't you
13:50 21 agree?

13:50 22 A. I would agree, definitely agree.

13:50 23 Q. Everybody is getting ready to cringe when I go
13:50 24 into this subject matter because they have had to listen
13:50 25 to it for weeks now. But I like to think of Nazi

13:50 1 Germany, and I think of it in the context of exactly:
13:51 2 What does it mean to say, I'm just following the law.
13:51 3 And at what point do some people even walk out when I
13:51 4 talk about it.

13:51 5 And at what point do people's
13:51 6 responsibilities to not follow a law or to stand up in
13:51 7 some way on a law that's important. Where do they
13:51 8 emerge. And kind of my thinking -- my thinking is this:
13:51 9 You know, you are a trainman up in somewhere up in
13:51 10 Germany and Poland. Let's say it's in Poland. And you
13:51 11 are loading people on to a train, and you figured out
13:51 12 who they are. You've seen their passports, and you've
13:51 13 seen their tatoos. You know what's going on.

13:51 14 Yeah, you've never been down to Sobibor.
13:51 15 You've never been to Dachau. But I don't care what they
13:51 16 say, people know stuff. Germany isn't a big country.
13:52 17 The word gets around. You know, what's going on and
13:52 18 whatever is at the other end of that line, you know it's
13:52 19 grim. You don't ever see them coming back. It's all
13:52 20 one-way trips for these people.

13:52 21 But you say to yourself, I'm just a
13:52 22 trainman. All I'm doing is this. It could just as
13:52 23 easily be coal. It could just as easily be lumber this
13:52 24 particular day. It's just people, and I don't know what
13:52 25 goes on down at the other end. I probably don't really

13:52 1 want to care about it particularly. Whatever is going
13:52 2 on, I'm not doing it. Somebody else at the other end is
13:52 3 doing this and so -- so I'm absolved.

13:52 4 And you might even go further if you are a
13:52 5 person that has some conscious and you are looking for
13:52 6 some way to make peace with all this. And you might
13:52 7 say, well, not only do I not know, well, even if I do
13:52 8 know, even if I know what's going on at the other end,
13:52 9 I'm just following the law, the law of this state by the
13:52 10 directive of his chancellor is that this is an okay
13:53 11 thing to do.

13:53 12 These people's rights have been suspended
13:53 13 by edict or practice or whatever, and I can do it.
13:53 14 That's okay to say, but it's hard to make those acts
13:53 15 pass any reasonable moral scrutiny. Don't you agree?

13:53 16 A. Most definitely.

13:53 17 Q. Sure. You can come up with everything, and you
13:53 18 can say, all I was doing is -- my part was limited. I
13:53 19 didn't kill anybody, you know. But if you are knowingly
13:53 20 part of the operation, don't you think you are as much
13:53 21 involved in it as the person who actually does it at the
13:53 22 other end?

13:53 23 A. Well, I think morality, personal morality
13:53 24 requires you to make that decision. You know, can you
13:53 25 walk away?

13:53 1 Q. Uh-huh.

13:53 2 A. And I have twice in my lifetime walked away
13:53 3 from things that I enjoy doing because the direction
13:54 4 that events were taking were contrary to my personal
13:54 5 morality.

13:54 6 Q. Could you share any of that with me?

13:54 7 A. I would be happy to.

13:54 8 Q. Okay.

13:54 9 A. I was very active in the Boy Scouts. Both of
13:54 10 my sons are Eagle Scouts. I have been through the Wood
13:54 11 Badge Training program, which is basically the Harvard
13:54 12 MBA for Boy Scout leaders. When the Boy Scouts took the
13:54 13 position against homosexuality, I walked away because I
13:54 14 felt it was wrong.

13:54 15 I also shoot competitively. This past
13:54 16 summer I represented Texas State Rifle Association at
13:54 17 the National Pistol Championships at Camp Perry. I was
13:54 18 a director of a gun club in Houston. And when the
13:54 19 concealed carry handgun licenses were approved, there
13:55 20 was a move on our board of directors to basically
13:55 21 sublicense or sublet our ranges to anyone who wanted to
13:55 22 use them to teach those instructions. I was the sole
13:55 23 person on the board of directors who thought that was a
13:55 24 bad idea from a personal liability perspective. And
13:55 25 when the board voted to allow it, I immediately

13:55 1 resigned. And I have no hesitation to walk away from
13:55 2 something that I think is morally wrong and speak my
13:55 3 mind about it.

13:55 4 Q. I understand your first example about the moral
13:55 5 issue. I may be missing the second one. It sounds like
13:55 6 that's more of a liability issue. Am I wrong? Am I
13:55 7 missing the point on that one?

13:55 8 A. Yeah. It's a liability issue. But I
13:55 9 thought -- I disagreed with it. I thought it was wrong.
13:55 10 And it was something that I did not want to have my name
13:55 11 associated with.

13:55 12 Q. I'm with you. We're not Nazi Germany. As a
13:56 13 matter of fact, if there's ever a criticism in this
13:56 14 country, it may be that we're too good for our own good
13:56 15 sometimes because we in our own plotting sometimes, the
13:56 16 way we try extremely hard to recognize personal
13:56 17 liberties and to find redemptive merit in everybody we
13:56 18 can look for, that's us.

13:56 19 I mean, you'll have some -- some god-awful
13:56 20 disaster where some building has been just absolutely
13:56 21 demolished, exploded like Oklahoma City, for example.
13:56 22 And we will spend days after days digging for that
13:56 23 needle in the haystack, knowing nobody could be alive
13:56 24 ten days under rubble, even if there's some little air
13:56 25 pocket. But we'll do that anyway and we're all for

13:56 1 that. I mean, we find a single survivor where 168
13:56 2 people have died, and there's a joy about that in us,
13:56 3 and that's good stuff.

13:57 4 I mean, I now like it -- I think it sounds
13:57 5 like you are the kind of man that appreciates those
13:57 6 sorts of things and sees merit in them. We are not Nazi
13:57 7 Germany. Perhaps executions are immoral, but they are
13:57 8 not motivated on things like people's religions or
13:57 9 ancestry. They are motivated on things like people's
13:57 10 behavior. I mean, we don't execute people in this
13:57 11 country for who they are but for what they've done, when
13:57 12 you get right down to that. Do you agree with that?

13:57 13 A. I don't have a problem with that.

13:57 14 Q. But nevertheless, the fact of the matter is, if
13:57 15 a person truly believes that executions are -- are
13:57 16 wrong, and I don't just mean unwise, but really wrong,
13:57 17 but a person in his or her own way who believes they are
13:57 18 wrong, asking those people to serve on a jury is asking
13:58 19 them to have to make a choice between participating in
13:58 20 what they absolutely believe is wrong or walking away
13:58 21 because they can do that too, and not -- not because you
13:58 22 want to. You are not free to leave. Like, you can't
13:58 23 resign from the jury pool.

13:58 24 A. Right. I understand that.

13:58 25 Q. At the same time, if you genuinely are unable

13:58 1 to allow the evidence to dictate what you do as a juror,
 13:58 2 you are free to leave in the sense that that's really
 13:58 3 where you are, and then you are not qualified to serve
 13:58 4 as a potential juror, and nobody could fault you for
 13:58 5 that.

13:58 6 It's just like -- it's like a civil case.
 13:58 7 You ask somebody, could you disregard the fact that the
 13:58 8 insurance company is paying for this guy's auto accident
 13:58 9 defense? And they say, no. I know how the world works.
 13:58 10 I know it's a big old insurance company over there. And
 13:59 11 if that's their position, they are gone. They can't be
 13:59 12 jurors in that kind of case. You understand that?

13:59 13 A. Uh-huh.

13:59 14 Q. And when we get right down to it, I'm not going
 13:59 15 to spend a lot of time working on these questions except
 13:59 16 to briefly show you how it worked, and maybe show you
 13:59 17 the first time when Ms. Falco spoke to you and maybe
 13:59 18 Mr. High. The first special issue deals with the
 13:59 19 personality of the defendant and the probability that he
 13:59 20 would commit criminal acts of violence that would
 13:59 21 constitute a continuing threat to society.

13:59 22 Now, apart from death penalty issues,
 13:59 23 every now and then there are people, ironically
 13:59 24 intellectual people, who say, you know, talk in terms of
 13:59 25 a probability about what somebody's going to do in the

13:59 1 future is impossible. They say because the world's
 13:59 2 greatest person, whoever that might be, who's the best
 13:59 3 human being you know of right now? First name comes to
 13:59 4 mind?

13:59 5 A. The Pope.

13:59 6 Q. Who?

13:59 7 A. The Pope.

13:59 8 Q. Okay. I mean, we don't know. He's old. He's
 14:00 9 certainly not in the greatest of health, but for all we
 14:00 10 know, it's possible that he could turn bad and turn
 14:00 11 violent. We don't know that. We don't see any evidence
 14:00 12 of it. He's been admirable in ways that can't even be
 14:00 13 estimated.

14:00 14 But first of all, anything is possible
 14:00 15 with a person. Some people say, I can't predict. I
 14:00 16 can't predict when a bad man will go good or when a good
 14:00 17 man will go bad and they balk at that question. What do
 14:00 18 you think about that? Do you think you could predict
 14:00 19 probabilities of human behavior?

14:00 20 A. That's ironic because in the law that I
 14:00 21 practice, I deal with a likelihood of confusion
 14:00 22 everyday.

14:00 23 Q. Okay.

14:00 24 A. And a likelihood of probability are probably
 14:00 25 about the same thing.

14:00 1 Q. So you could do that then?

14:00 2 A. Yeah.

14:00 3 Q. And what you want is evidence. And certainly
 14:00 4 history is a good -- do you believe history is a good
 14:00 5 predictor of future behavior?

14:00 6 A. Oh, I certainly do. I have a bachelor's degree
 14:00 7 in history.

14:01 8 Q. Okay. You sort of know what happens. You know
 14:01 9 what happens and you give people freedom, and you start
 14:01 10 clamping down and oppress that freedom, and that's when
 14:01 11 revolutions come sometimes. And we all understand we
 14:01 12 can predict what's going to happen by -- I mean, the
 14:01 13 Indian Army goes marching into the temple to remove the
 14:01 14 Sikhs. People could predict there was going to be
 14:01 15 trouble out of an event like that. We didn't know for
 14:01 16 sure, but it was probable that there would be
 14:01 17 retaliation. And sure enough, there was. So you could
 14:01 18 answer that question according to the evidence, you
 14:01 19 believe?

14:01 20 A. Definitely, yes.

14:01 21 Q. Okay. And you know the effect of a no answer,
 14:01 22 means what?

14:01 23 A. The no answer basically is at that point --
 14:01 24 it's a life sentence, isn't it?

14:01 25 Q. Right. Everybody goes home, except the

14:01 1 defendant, he goes to the pen for a life sentence. If
 14:01 2 there's a yes answer, then we move to the second
 14:01 3 question. It's like your special issues in civil work.
 14:01 4 If you answer this way, you go to the next thing.

14:02 5 Same thing; this is the mitigation
 14:02 6 question. It's kind of interesting history because it
 14:02 7 came originally from the U.S. Supreme Court which said
 14:02 8 it is cruel and unusual punishment to not allow a
 14:02 9 defendant a vehicle for the jury to express its
 14:02 10 particular belief that a death sentence should not
 14:02 11 result in his particular case.

14:02 12 Where it came from, have you heard that
 14:02 13 Penry case, the mentally retarded capital defendant?
 14:02 14 Have you heard of him?

14:02 15 A. Probably.

14:02 16 Q. It was actually his case. He claimed to be
 14:02 17 retarded, and maybe he was, maybe he wasn't. He
 14:02 18 requested some form of instruction to consider whether
 14:02 19 or not his retardation lessened the need for a death
 14:02 20 penalty. It was pretty good work by the trial lawyers
 14:02 21 to come up with such a thing.

14:02 22 The instruction was overruled. It was
 14:02 23 denied. And he goes to the Supreme Court, and he says,
 14:02 24 I'm entitled to an issue on mitigation. I'm entitled to
 14:03 25 the jury to focus on the facts of my case. my

14:03 1 background, my circumstances, all of my sad story and
 14:03 2 see whether all that added up together, is sufficient to
 14:03 3 give me a life sentence, even though the answers to the
 14:03 4 questions before it would have been a death sentence.
 14:03 5 That's how that -- that's how that case arose. We've
 14:03 6 now codified it in Texas, and that's actually one of our
 14:03 7 statutory questions to death penalty juries.

14:03 8 And in many ways, Mr. Becker, it just asks
 14:03 9 the jury to revisit the evidence with a slightly
 14:03 10 different slant than it might have in another context.
 14:03 11 Because it invites you to consider -- it directs you to
 14:03 12 consider a fact by the circumstances of the offense.
 14:03 13 And then it directs you to consider the defendant's
 14:03 14 character and background and personal moral culpability,
 14:03 15 whatever that might be, and to decide all of those
 14:03 16 things together, plus anything else that you see creates
 14:03 17 a sufficient mitigating circumstance or circumstances so
 14:04 18 that a life sentence should have it rather than a death
 14:04 19 sentence.

14:04 20 Now, you can certainly see that that is
 14:04 21 open-ended enough that you could just read that thing
 14:04 22 and say: What do you want to do, you know? Do you
 14:04 23 agree?

14:04 24 A. It's my understanding from what I have read
 14:04 25 that the evidence that's produced in the penalty phase

14:04 1 can be substantially different from what we see in the
 14:04 2 guilt-innocence phase.

14:04 3 Q. Can be. And it can be, interestingly, there's
 14:04 4 no obligation for either side to introduce evidence at
 14:04 5 the punishment phase of the trial. And the law allows a
 14:04 6 jury to convict solely -- I'm sorry, the law allows a
 14:04 7 jury to answer that special issue on future danger
 14:04 8 solely on the basis of the circumstances of the case.
 14:04 9 And for that matter, to answer that mitigation question
 14:04 10 solely on the circumstances of the case.

14:04 11 So, I mean, if the facts of the capital
 14:05 12 murder are so bad that you say to yourself, anybody that
 14:05 13 could do that kind of a crime, would probably always be
 14:05 14 dangerous, then you could answer that question yes
 14:05 15 without a single bit of evidence. Does that make sense
 14:05 16 to you to be able to do that?

14:05 17 A. Yeah, I think so.

14:05 18 Q. You know, how bad the facts would have to be
 14:05 19 for you to do that might be different than your neighbor
 14:05 20 on the jury.

14:05 21 A. Sure.

14:05 22 Q. You might, in your mind, be thinking of a far
 14:05 23 more brutal crime than someone else might be or maybe
 14:05 24 not. I mean, there are some examples. I imagine most
 14:05 25 people would have to say that the Timothy McVeigh case,

14:05 1 for example, is such a case that, to do that, how could
 14:05 2 anybody ever be other than probably dangerous? What do
 14:05 3 you think?

14:05 4 A. I think they are issues with Timothy McVeigh
 14:05 5 that a lot of us will never understand. But to say that
 14:05 6 he was a dangerous man, I definitely would not disagree
 14:05 7 with you there.

14:06 8 Q. There is no burden of proof on that second
 14:06 9 question, the mitigation question. You know, they don't
 14:06 10 have to offer any evidence of mitigation. We don't have
 14:06 11 to offer any evidence of lack of mitigation or
 14:06 12 aggravation. I mean, that question just gets answered.
 14:06 13 It's another look at all the evidence that's already
 14:06 14 been considered in other contexts is what it amounts to.
 14:06 15 There is a measuring stick in there that's just -- it's
 14:06 16 just a somewhat fuzzy one.

14:06 17 A measuring stick is that word
 14:06 18 "sufficient" because I think every single one of us has
 14:06 19 evidence that might fairly be called mitigation evidence
 14:06 20 just around us that we brought with us through our
 14:06 21 lives. And most us don't use it in our day-to-day
 14:06 22 activities. I mean, some of us have come from broken
 14:06 23 homes. Some of us have -- some of us come from broken
 14:07 24 homes. Some of us -- with the possibility of
 14:07 25 efficiently moving these proceedings, could we briefly

14:07 1 retire the juror? Or in the alternative, maybe it's
 14:07 2 just as easy to let us leave for a moment and go out in
 14:07 3 the hallway. Might we do that?

14:07 4 THE COURT: Yeah. Go ahead.

14:09 5 (Break.)

14:09 6 MR. SCHULTZ: Judge, might we request the
 14:10 7 juror be briefly retired for a point of order?

14:10 8 THE COURT: We'll have you back in a
 14:10 9 minute.

14:10 10 (Venireperson Becker not present.)

14:10 11 MR. GOELLER: May I have a second with
 14:12 12 Mr. Schultz, Your Honor?

14:12 13 THE COURT: All right.

14:12 14 MR. GOELLER: Judge, we've reached an
 14:12 15 agreement that we'd agree to mutually strike his
 14:12 16 negotiated deal, Juror No. 86, Michael Albert Becker for
 14:12 17 Juror No. 87, May Garner.

14:12 18 THE COURT: So you want to strike both
 14:12 19 jurors, 86 and 87?

14:12 20 MR. GOELLER: Yes, sir.

14:12 21 THE COURT: Is that your desire,
 14:12 22 Mr. Cantu?

14:12 23 THE DEFENDANT: Yes, Your Honor.

14:12 24 THE COURT: Then No. 86 and 87 are
 14:12 25 stricken by agreement. And I suppose we start with

14:12 1 Darleen Poplin tomorrow morning. Is there anything else
14:13 2 from either side?

14:13 3 MR. GOELLER: Judge, yes, I would like
14:13 4 to -- no, actually, no. Not today. That's all I have.
14:13 5 Thank you.

14:13 6 (Court adjourned.)

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1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS

3 COUNTY OF COLLIN

4 I, Barbara L. Tokuz, CSR, RMR, CRR, Deputy Official
5 Court Reporter in and for the 380th Judicial District
6 Court of Collin County, State of Texas, do hereby
7 certify that the above and foregoing contains a true and
8 correct transcription of all portions of evidence and
9 other proceedings requested in writing by counsel for
10 the parties to be included in this volume of the
11 Reporter's Record, in the above-styled and -numbered
12 cause, all of which occurred in open court or in
13 chambers and were reported by me.

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

17 WITNESS MY OFFICIAL HAND this the 11th day of
18 February, 2002.

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