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

VOLUME 21 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

On the 14th 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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 CLERK OF DISTRICT COURT
 COLLIN COUNTY, TEXAS
 BY: *[Signature]* DEPUTY

1 REPORTER'S RECORD 1

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15 APPEARANCES 2

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3 VOLUME 21

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5 SEPTEMBER 14, 2001
 6 INDIVIDUAL VOIR DIRE

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13 (Open court, defendant present.)

14 THE COURT: Cause No. 380-80047, State of
 15 Texas versus Ivan Abner Cantu. Is the State ready?

16 MS. FALCO: State's ready.

17 THE COURT: Is the defense ready?

18 MR. GOELLER: Yes, Your Honor.

19 THE COURT: Juror No. 94 is a fellow named
 20 Forrest Haskell. And he's told the bailiff that he's
 21 trying to speak to a school at Custer and Renner in
 22 Plano at 10:45, and he's a writer, apparently. He's
 23 talking to students. So with your permission I'll take
 24 him up first.

25 (Venireperson Haskell present.)

THE COURT: All right. Good morning, sir.
 Are you Forrest Haskell?

VENIREPERSON: Yes, sir.

THE COURT: I want to welcome you back to
 the courthouse. I understand that you have a commitment
 with some students this morning.

VENIREPERSON: I do at 10:45, if possible.
 If not I'll just call.

THE COURT: I can't tell you with
 certainty that you'll be out of here on time. But the
 only thing -- the best we can do is to take you up

08:50 1 first.

08:50 2 VENIREPERSON: I appreciate that.

08:50 3 THE COURT: If we run late, you run late.

08:50 4 Maybe you recall about three weeks ago I swore everybody
08:50 5 in, all 200 people. And the oath was to tell or to give
08:50 6 truthful answers to questions that were propounded by
08:50 7 either side. Do you recall that?

08:50 8 VENIREPERSON: Sure.

08:50 9 THE COURT: You are still under that oath,
08:50 10 and I ask you to please be seated.

08:50 11 THE COURT: All right. Ms. Falco?

08:50 12 MS. FALCO: Thank you, Your Honor.

08:50 13 VOIR DIRE EXAMINATION

08:50 14 BY MS. FALCO:

08:50 15 Q. Mr. Haskell, my name is Gail Falco, and I'm an
08:50 16 assistant criminal district attorney here in Collin
08:50 17 County. And probably coming in while I'm talking to
08:50 18 you, seated to my right, is Mr. Bill Schultz. He's the
08:50 19 first assistant district attorney in Collin County. And
08:50 20 seated to my left is Jami Lowry. She's also an
08:50 21 assistant district attorney in Collin County.

08:50 22 At the other table closest to me is the
08:50 23 defendant Ivan Cantu. And seated next to him is his
08:50 24 lawyer, Mr. Matt Goeller.

08:50 25 A. Good morning.

08:51 1 Q. And also possibly coming in while we are
08:51 2 talking will be his other lawyer, Mr. Don High. I take
08:51 3 it from last week that you don't know any of us; is that
08:51 4 correct?

08:51 5 A. That's correct.

08:51 6 Q. Mr. Haskell, we understand this is probably
08:51 7 your third time to come up here for this process. And
08:51 8 understanding that probably the number one answer when
08:51 9 asked: What is the biggest problems with the criminal
08:51 10 justice system? People say it's too slow. It takes too
08:51 11 long. But understanding we only do this individual voir
08:51 12 dire process in cases where the State is seeking the
08:51 13 death penalty.

08:51 14 With regard to that, with regard to the
08:51 15 fact that this is your third time up here, and we
08:51 16 understand this is an inconvenience to you, what do you
08:51 17 think of this process so far?

08:51 18 A. Well, with all of its problems, you might say
08:51 19 it's still the best system that I can think of. Who can
08:51 20 think of a better one? If they could, bring it forward;
08:51 21 but I think it's fair and just.

08:51 22 Q. When you came in the first time, that's
08:51 23 probably almost been three weeks ago, I guess, at this
08:51 24 point. And you came in and filled out the
08:52 25 questionnaire. And we all understand that you filled

08:52 1 out this questionnaire prior to any of us talking about
08:52 2 the law and prior to you really having any time for
08:52 3 reflection or thinking about it before you filled that
08:52 4 out. It was pretty much right off the bat it asks:
08:52 5 What do you think about the death penalty?

08:52 6 THE COURT: Ms. Falco, I hate to interrupt
08:52 7 you. And the reason I'm interrupting is that I don't
08:52 8 have this gentleman's questionnaire, as I told you. But
08:52 9 I just looked at my list, and I believe this is one that
08:52 10 the defense probably was the first one on.

08:52 11 So, Mr. Goeller, I'm going to ask you to,
08:52 12 if you would, and I really do apologize for the
08:52 13 interruption. I'm going to ask you to question this
08:52 14 witness and pass him in about 20 or 25 minutes.

08:52 15 MR. GOELLER: Yes, sir.

08:52 16 VOIR DIRE EXAMINATION

08:52 17 BY MR. GOELLER:

08:52 18 Q. Good morning, Mr. Haskell.

08:52 19 A. Good morning.

08:52 20 Q. Matthew Goeller. This is Don High and Ivan.
08:52 21 We've got your questionnaire here. I understand -- I
08:52 22 heard your comment to the Judge. You have a speaking
08:52 23 engagement, and I'll try to go through this as quickly
08:53 24 as you can. You are a writer?

08:53 25 A. Yes.

08:53 1 Q. What do you write?

08:53 2 A. I'm writing a novel.

08:53 3 Q. About?

08:53 4 A. Life in the 1950s in Detroit.

08:53 5 Q. Okay. On your questionnaire I note that you,
08:53 6 on the first page you circled: I believe the death
08:53 7 penalty should be imposed in all capital cases. And the
08:53 8 next one you circled I believe the death penalty is
08:53 9 appropriate in some capital cases, and you could return
08:53 10 a verdict resulting in death in a proper case.

08:53 11 A. Uh-huh.

08:53 12 Q. Which one would you adhere to more?

08:53 13 A. Well, I don't think there's a real definitive
08:53 14 answer there to that question because circumstances can
08:53 15 change a lot of things.

08:53 16 Q. Okay.

08:53 17 A. So I think that's what I was really meaning
08:53 18 there.

08:53 19 Q. On the second page, the page you were asked to
08:53 20 give your best argument in favor of the death penalty
08:53 21 and your best argument against it, and you left those
08:54 22 blank?

08:54 23 A. Right.

08:54 24 Q. Tell me about that.

08:54 25 A. Well, as I said before, the circumstances mean

08:54 1 an awful lot --

08:54 2 Q. Okay.

08:54 3 A. -- in both instances, so it's pretty hard to
08:54 4 give a one-line answer to that.

08:54 5 Q. Right. Are you a proponent of the death
08:54 6 penalty? Do you believe in the death penalty?

08:54 7 A. Yes, I do.

08:54 8 Q. Tell me why.

08:54 9 A. Well, I suppose it's one less person that will
08:54 10 be a threat to society. Even though, like you said,
08:54 11 they go to prison and what have you. But they do break
08:54 12 out sometimes and kill policemen --

08:54 13 Q. You bet.

08:54 14 A. -- or what have you, or they kill inmates.
08:54 15 So -- but under certain circumstances I would not want
08:54 16 to invoke the death penalty.

08:54 17 Q. Tell me what you think about when you say under
08:54 18 certain circumstances.

08:54 19 A. Well, crimes of passion would probably be right
08:54 20 up there at the top of the list. I don't think would be
08:55 21 one of my top ones.

08:55 22 Q. Okay.

08:55 23 A. Of course, traitors or things that are
08:55 24 happening like in New York, I think that's the death
08:55 25 penalty for sure.

10

08:55 1 Q. Right.

08:55 2 A. So that's an example of a couple of the
08:55 3 circumstances.

08:55 4 Q. Okay. You noted: "Are you in favor of the
08:55 5 death penalty?" "Yes." "Explain your answer." "The
08:55 6 Bible says, 'An eye for an eye, and rid the society of
08:55 7 killers.'"

08:55 8 A. Uh-huh.

08:55 9 Q. Of course when we talk about capital murder,
08:55 10 we're talking about murder. In this case murder of two
08:55 11 people. Murder in the course of robbery or murder in
08:55 12 the course of burglary. Do you believe that the death
08:55 13 penalty is appropriate in those cases?

08:55 14 A. I still say circumstances could change that a
08:56 15 lot.

08:56 16 Q. Okay. Okay. I understand what you are saying
08:56 17 about circumstances. I'm curious, though, when you say
08:56 18 prison breakouts and murders of police officers and
08:56 19 murder of other inmates, how would that -- even if you
08:56 20 say your views on the death penalty or your position on
08:56 21 the death penalty would depend on the circumstances of
08:56 22 the offense, when we know that, if somebody is found
08:56 23 guilty of capital murder, it's life or death.

08:56 24 So if you found somebody guilty of capital
08:56 25 murder, I guess what you are saying is: The

08:56 1 circumstances of the offense would dictate how you would
08:57 2 view the death penalty for that person?

08:57 3 A. Sure, uh-huh.

08:57 4 Q. Okay. Taking that -- looking at the
08:57 5 circumstances of the offense and your comments about
08:57 6 prison breakouts, police officers, murders, murdering of
08:57 7 inmates, how does that -- tell me how that would square
08:57 8 with you.

08:57 9 A. I'm not getting what you are -- the picture you
08:57 10 are trying to draw for me here.

08:57 11 Q. Yeah. You stated that your position on the
08:57 12 death penalty or whether to impose it would depend on
08:57 13 the circumstances of the offense.

08:57 14 A. Yes.

08:57 15 Q. Okay. Things that you already know by the time
08:57 16 you get to the punishment phase of a trial. When you
08:57 17 say, prison breakout and inmate murders and things like
08:57 18 that, I'm wondering how that figures into how you view
08:57 19 whether or not the death penalty is --

08:57 20 A. I just use that as an example.

08:57 21 Q. Of?

08:57 22 A. I mean, there are a lot of other circumstances
08:57 23 that I would not want to invoke it. And -- and consider
08:58 24 life imprisonment as opposed to putting a person to
08:58 25 death.

12

08:58 1 Q. Okay.

08:58 2 A. See, I'm a Christian person, and death to me
08:58 3 means a lot more than maybe it would to some other
08:58 4 people. So that's meaningful to me.

08:58 5 Q. In your questionnaire you were given a
08:58 6 statement, and they gave you five, you know, from
08:58 7 strongly agree all the way down to strongly disagree.
08:58 8 It said: If someone is accused of capital murder, he
08:58 9 should have to prove his innocence. And you circled,
08:58 10 "strongly agree." Tell me why.

08:58 11 A. Well, I guess I missed that one because he
08:58 12 should be considered innocent until he's proven guilty.
08:58 13 I missed that one.

08:58 14 Q. Okay. All right. I kind of thought so
08:58 15 because --

08:59 16 A. Yeah.

08:59 17 Q. Later on you said a defendant is innocent until
08:59 18 proven guilty beyond a reasonable doubt, and wrote
08:59 19 "strongly agree."

08:59 20 A. Sure. I mean, that's our system.

08:59 21 Q. What are your thoughts on that? Do you agree
08:59 22 with that?

08:59 23 A. Agree with? What was that?

08:59 24 Q. Presumption of innocence?

08:59 25 A. Oh, sure.

08:59 1 Q. Burden of proof on the State?
 08:59 2 A. Sure, sure.
 08:59 3 Q. "In your opinion, what does the death penalty
 08:59 4 say about American culture?" "Those that take the life
 08:59 5 should pay with their own. People are fed up with
 08:59 6 murderers." Tell me your thoughts there.
 08:59 7 A. Well, just the fact that people are murdering
 09:00 8 another person, that's such a heinous crime in itself.
 09:00 9 I mean, what do you do in that case? I guess the
 09:00 10 ultimate thing is that the person has to forfeit their
 09:00 11 life. I mean, it's the crime and the punishment. You
 09:00 12 know, you do this crime, and how severe a punishment can
 09:00 13 you give the person? What can you do? And if -- if
 09:00 14 they do this, and they are evil people and you put them
 09:00 15 to death, they get the worst punishment.
 09:00 16 Q. Right.
 09:00 17 A. And then they go to hell on top of it.
 09:00 18 Q. Right.
 09:00 19 A. So...
 09:00 20 Q. When that question asked, "What does that say
 09:00 21 about American culture?" What you just told me, is that
 09:00 22 your personal opinion?
 09:00 23 A. Sure.
 09:00 24 Q. You believe that?
 09:00 25 A. Yeah.

09:00 1 Q. And I won't disagree with you. I'm wondering
 09:00 2 how that fits in with you stating whether or not to give
 09:00 3 the death penalty. You see, by the time you get to
 09:00 4 those questions that determine life or death, you've
 09:01 5 already found somebody guilty of capital murder. In
 09:01 6 this case, you've either found that they've killed two
 09:01 7 people in the same course of conduct, robbery or
 09:01 8 burglary, whatever?
 09:01 9 A. But I have a choice.
 09:01 10 Q. Uh-huh.
 09:01 11 A. I have a choice of life imprisonment or death.
 09:01 12 Q. Right.
 09:01 13 A. And that's the choice.
 09:01 14 Q. Right.
 09:01 15 A. So it's life or death.
 09:01 16 Q. I gotcha.
 09:01 17 A. So there's a big difference there.
 09:01 18 Q. Oh, I understand.
 09:01 19 A. So you are asking me if I could put a person to
 09:01 20 death, and I would. But under certain circumstances I
 09:01 21 would give them life imprisonment if they were found
 09:01 22 guilty.
 09:01 23 Q. Okay.
 09:01 24 A. By the courts.
 09:01 25 Q. Gotcha. I agree, I understand that. And when

09:01 1 you say that they take a life, they should pay with
 09:01 2 their own. I'm trying to see how that --
 09:01 3 A. That would be what I would consider the
 09:01 4 ultimate penalty.
 09:01 5 Q. Okay. If you found somebody guilty of capital
 09:02 6 murder, what you are telling me is you wouldn't
 09:02 7 automatically give them the death penalty?
 09:02 8 A. Of course not. Of course not.
 09:02 9 MR. GOELLER: Judge, I think I would pass
 09:02 10 the juror either back to the Court or to the State.
 09:02 11 THE COURT: Okay. Go ahead.
 09:02 12 VOIR DIRE EXAMINATION
 09:02 13 BY MS. FALCO:
 09:02 14 Q. Mr. Haskell, I'm sorry if you are feeling kind
 09:02 15 of like a ping-pong ball going back and forth.
 09:02 16 A. That's all right.
 09:02 17 Q. I'm trying to get some continuity going back
 09:02 18 and forth. As far as this type of jury service goes,
 09:02 19 obviously both sides are looking for a juror who could
 09:02 20 be fair and impartial and fairly answer the questions on
 09:02 21 special issues that I talked about last week, depending
 09:02 22 on the evidence, and if they could follow the law that
 09:02 23 was given to them by the Judge.
 09:02 24 And the only thing at this time obviously
 09:02 25 that is required by you is just to give us honest

09:02 1 answers and let us know how you feel. And the questions
 09:02 2 we ask you are not intending to pry or embarrass or
 09:02 3 offend you. We're not trying to debate you or change
 09:03 4 your mind. We're just trying to figure out where you
 09:03 5 are, and if you can be qualified to be on this jury.
 09:03 6 With regard to the jury system in our
 09:03 7 country, we have what is called a bifurcated trial
 09:03 8 system. You have the first phase of the trial which is
 09:03 9 called the guilt-innocence phase. And at that time, and
 09:03 10 as you obviously understand from your questionnaire, the
 09:03 11 burden of proof is on the State, and we have to prove it
 09:03 12 to you beyond a reasonable doubt.
 09:03 13 And if it's capital murder, we have to
 09:03 14 prove all the elements of capital murder to you beyond a
 09:03 15 reasonable doubt until you find that defendant guilty of
 09:03 16 capital murder. And you understand about the burden
 09:03 17 being on us and that it never shifts, right?
 09:03 18 A. Sure.
 09:03 19 Q. And you have no problem with not shifting the
 09:03 20 burden. And if the Judge ordered you not to take into
 09:03 21 consideration the defendant not testifying, you could
 09:03 22 follow that instruction?
 09:03 23 A. Sure.
 09:03 24 Q. And they can testify if they want to. They
 09:03 25 have every right to put on a case if they want to, but

09:03 1 they don't have to. And if they don't, it can't be used
09:03 2 against them.

09:03 3 A. Uh-huh.

09:03 4 Q. And let's assume that, as a jury, you found the
09:04 5 defendant guilty of capital murder, you then move on to
09:04 6 the second phase of the trial which is the punishment
09:04 7 phase. And as we talked about last week, it's not a
09:04 8 situation where it's automatic life or automatic death.
09:04 9 You don't circle life or death depending on what you
09:04 10 want to happen. You have to go through a series of
09:04 11 questions. And based on how you answer those questions,
09:04 12 it results in a life sentence or a death sentence.

09:04 13 A. Each individual juror, and then they take a
09:04 14 poll of what the majority is?

09:04 15 Q. Well, and I'll get to that.

09:04 16 A. All right.

09:04 17 Q. When you get to the punishment phase, the first
09:04 18 question that you are going to get is the question
09:04 19 that -- can you see that one?

09:04 20 A. Uh-huh.

09:04 21 Q. It's what we call the future dangerousness
09:04 22 question. With regard to that question, the burden of
09:04 23 proof again is on the State to prove it to you beyond a
09:04 24 reasonable doubt. If all 12 jurors say question, yes,
09:04 25 we think there's a probability that he'll be a danger in

09:04 1 the future, you are still in the process of assessing a
09:04 2 death sentence.

09:04 3 If 10 or more jurors decide, no, we do not
09:04 4 think he'll be a future danger, it's an automatic life
09:05 5 sentence. That ends your deliberations at that point.
09:05 6 If all 12 jurors say yes, then you move onto the next
09:05 7 question. And when we get to that question, I'll
09:05 8 explain that more, but that's the mitigation question.
09:05 9 Do you recall that?

09:05 10 A. I see, uh-huh.

09:05 11 Q. If all 12 jurors decide there's not sufficient
09:05 12 mitigating evidence, then a death sentence results. If
09:05 13 10 or more decide there is sufficient mitigating
09:05 14 evidence, then it results in a life sentence. So you,
09:05 15 as a jury, deliberate, and you have to answer this
09:05 16 question. And depending on the unanimity or the lack of
09:05 17 unanimity dictates the result of that question. Do you
09:05 18 understand?

09:05 19 A. I understand.

09:05 20 Q. The first question that you get to if you found
09:05 21 a defendant guilty of capital murder would be this
09:05 22 future dangerousness question.

09:05 23 A. Uh-huh.

09:05 24 Q. Obviously the legislature envisioned
09:05 25 circumstances where a jury could find a defendant guilty

09:05 1 of capital murder, yet still decide that person was not
09:05 2 a future danger. We know this because we have this
09:05 3 question where you are to reevaluate the evidence and
09:05 4 decide in light of the evidence if that person is or is
09:06 5 not a future danger.

09:06 6 Some of those situations are kind of like
09:06 7 the hypotheticals that we talked about could be the
09:06 8 parent whose child was killed by two killers, and
09:06 9 there's a trial for those two killers. And because of
09:06 10 some technicality or loophole, they get off. And as
09:06 11 they are walking out the courtroom they are laughing
09:06 12 because they got away with murder literally. And the
09:06 13 parent of that child becomes so enraged, goes out there
09:06 14 and kills them.

09:06 15 That's capital murder because it's double
09:06 16 homicide, but a jury may get to that question and
09:06 17 decide, well, that's a very isolated incident. He has
09:06 18 no criminal history, and I don't think he would ever be
09:06 19 a future danger again.

09:06 20 A. Hmm.

09:06 21 Q. Another situation might be a defendant who has
09:06 22 been arrested for capital murder. And say they went
09:06 23 into a convenience store, robbed it, killed the clerk,
09:06 24 got arrested. But before trial had a stroke and became
09:06 25 paralyzed basically from the neck down. Couldn't move

09:06 1 anything, so physically could never be a danger to
09:06 2 anybody. The jury might look at that and say, I don't
09:06 3 think that person would be a future danger.

09:07 4 So obviously, because there are
09:07 5 situations, the legislature has decided that could
09:07 6 happen. That that person could be guilty of capital
09:07 7 murder but not a future danger. The jury is asked to
09:07 8 look at the evidence, both the evidence in the guilt-
09:07 9 innocence phase and the evidence in the punishment phase
09:07 10 and answer this question.

09:07 11 A. Uh-huh.

09:07 12 Q. Now, it may be that the evidence from the
09:07 13 guilt-innocence phase alone is sufficient to help you
09:07 14 decide that question. You may look at the facts alone.

09:07 15 And Timothy McVeigh is a perfect example.
09:07 16 I mean, I don't think anyone really cares what his prior
09:07 17 history was or what his background was. They look at
09:07 18 the offense itself and say, that's horrendous enough.
09:07 19 And I can look at that and say, he's a future danger.

09:07 20 A. Uh-huh.

09:07 21 Q. You can use the facts alone, or you can
09:07 22 collectively use the facts in the punishment phase to
09:07 23 answer that question.

09:07 24 A. I understand.

09:07 25 Q. With regard to that question, there are several

09:07 1 words in there that will not be defined for you. And
 09:07 2 you as a jury has to decide what does that word mean and
 09:07 3 did the State prove it to you beyond a reasonable doubt?
 09:07 4 In that first question is probability. And some people
 09:08 5 that are mathematically minded are going to say that's a
 09:08 6 percentage to me. That's some number.

09:08 7 Other people may look at that and say that
 09:08 8 to me means more likely than not. Now, the question
 09:08 9 doesn't ask whether there's a certainty, you know, will
 09:08 10 the defendant commit criminal acts of violence in the
 09:08 11 future? So it's something less than a certainty. But
 09:08 12 it doesn't say whether there's a possibility either.
 09:08 13 And you'd agree with me, anything is possible?

09:08 14 A. Sure.

09:08 15 Q. A cold front could blow through and snow in
 09:08 16 Dallas in the middle of September. I mean, it's
 09:08 17 possible. Probable no, but it's possible.

09:08 18 A. Uh-huh.

09:08 19 Q. So that word probability has got to mean
 09:08 20 something less than a certainty, but something more than
 09:08 21 a possibility. Do you understand that?

09:08 22 A. Yes, sure.

09:09 23 MS. FALCO: Just one moment. We have to
 09:09 24 make sure there are no potential jurors in here. I'm
 09:09 25 sorry.

09:09 1 Q. (BY MS. FALCO) So with regard to that word
 09:09 2 probability, what would that mean to you? How do you
 09:09 3 think of that word probability in the context of that
 09:09 4 question?

09:09 5 A. Well, probability, I mean, it means possible.
 09:09 6 It's possible that it might happen. Although, this is
 09:09 7 another thing that we're talking about, the
 09:09 8 circumstances of what happened. Just like the defense
 09:09 9 was asking me about under what conditions. Well,
 09:09 10 certain circumstances.

09:09 11 Well, I think that's what this is all
 09:09 12 leading up to. What were the circumstances of what had
 09:09 13 happened? And I think you'd have to take them into
 09:09 14 consideration as a whole instead of individually.

09:09 15 Q. Do you understand now that that word
 09:09 16 probability, it has to mean something more than just a
 09:10 17 possibility?

09:10 18 A. Well, the probability means that it's probable
 09:10 19 that he will do it again. Whether there is a
 09:10 20 probability that the defendant would commit it, that
 09:10 21 means that it's more likely that he would commit it.

09:10 22 Q. Okay. And you understand that's something
 09:10 23 greater than just a mere possibility?

09:10 24 A. Sure, yeah.

09:10 25 Q. And continuing along that sentence, the next

09:10 1 phrase you get to that's going to be undefined for you
 09:10 2 that yet you had frequently debated what it could mean,
 09:10 3 is criminal acts of violence. And I think all of us
 09:10 4 collectively would agree that violence to a person, such
 09:10 5 as murder, sexual assault. Those are acts of violence?

09:10 6 A. Uh-huh.

09:10 7 Q. How about beating up your wife? Do you
 09:10 8 consider that an act of violence?

09:10 9 A. Yeah. How about bombing the World Trade
 09:10 10 Center?

09:10 11 Q. Without a doubt.

09:10 12 A. Right.

09:10 13 Q. Without a doubt. Anything that harms people, I
 09:10 14 think we would all agree is an act of violence?

09:10 15 A. Uh-huh.

09:10 16 Q. It gets a little fuzzier when you start talking
 09:11 17 about property, if it's just property. Let's say I
 09:11 18 became very upset, very enraged, and I just decided to
 09:11 19 take my anger outside in the parking lot with a baseball
 09:11 20 bat and just start smashing up windows and cars with a
 09:11 21 baseball bat. In your opinion, is that an act of
 09:11 22 violence?

09:11 23 A. It is, yes. But the circumstances, maybe the
 09:11 24 person was a mental patient or maybe he had a brain
 09:11 25 tumor, what have you. So there are circumstances to

09:11 1 almost every type of situation. I think that's what you
 09:11 2 are looking for in a juror, that can determine what are
 09:11 3 the circumstances and what is fair that coincides with
 09:11 4 those circumstances.

09:11 5 Q. Exactly. Let's talk a little bit about drugs.
 09:11 6 Because it gets a little fuzzier still when you are
 09:11 7 talking about violence and drugs and whether you are
 09:11 8 talking about delivering drugs or just taking drugs.
 09:11 9 I'm talking about illegal substances as far as cocaine
 09:11 10 or methamphetamine.

09:11 11 Some people may say, well, if you take
 09:11 12 drugs, you are doing violence to your own body. And
 09:11 13 then it's going to lead to violent results because it's
 09:12 14 going to change your personality, make you more violent
 09:12 15 and you may do violent things; and, therefore, maybe
 09:12 16 that whole thing is an act of violence.

09:12 17 Other people may say, it's just that
 09:12 18 person, and they are taking drugs themselves. And what
 09:12 19 they do to themselves doesn't really affect the rest of
 09:12 20 us, and it's an indirect consequence that it causes
 09:12 21 violence down the road, and I don't see that as an act
 09:12 22 of violence. Where do you fall in that continuum?

09:12 23 A. Well, you know, drugs are so prevalent in this
 09:12 24 society today, I don't know if anybody in this courtroom
 09:12 25 that probably is not taking some kind of a drug, aspirin

09:12 1 or something. The lady that killed her children, I
09:12 2 mean, whatever that was, she was supposed to be taking
09:12 3 Prozac or what have you, and then she got off of that,
09:12 4 and she killed her children. So that's a circumstance.

09:12 5 So she was -- was she mentally deranged
09:12 6 or, no, she wasn't. But she was mentally deranged
09:12 7 because she took the drugs, the Prozac, and then got off
09:12 8 of them and that in turn made her, you know, do what she
09:12 9 did.

09:13 10 So circumstances mean so much today in
09:13 11 today's society, and drugs are so prevalent. Marijuana
09:13 12 is -- is so widespread. I'm from the '70s, '60s,
09:13 13 generation, more or less, and I lived in Ann Arbor. And
09:13 14 it was a \$5 penalty if you got caught with less than
09:13 15 four reefers on you. I do not do drugs. I never have
09:13 16 done drugs. So I can look at it from a real clear
09:13 17 perspective, and I think it's what society will accept
09:13 18 today. I really do.

09:13 19 So I'm not saying that if someone
09:13 20 sold someone some drugs and the drug deal didn't go
09:13 21 according to plan and somebody got killed, that the fact
09:13 22 that he was selling drugs would help me determine
09:13 23 whether or not he should get death. I think the fact
09:13 24 that he killed somebody should make the determination to
09:14 25 that factor.

09:14 1 Q. Okay. In answering this question, let's talk a
09:14 2 little bit too about stuff that is obviously not an act
09:14 3 of violence but maybe might just give you insight into
09:14 4 somebody's character, like a theft, or just somebody's
09:14 5 total disregard for the law, like running from a police
09:14 6 officer, or just engaging in fraudulent business
09:14 7 transactions. You'd think things like that, that are
09:14 8 not an act of violence, might give you some insight into
09:14 9 a person's character?

09:14 10 A. Yeah. I think it would give me some insight
09:14 11 into their character. One thing that kind of -- that I
09:14 12 don't understand real well is why juries are not
09:14 13 permitted to know the previous history of this person.
09:14 14 Whether he's a habitual person that does this and what
09:14 15 have you.

09:14 16 And here's this person, and I see him
09:15 17 there, and I have to judge exactly what he did based on
09:15 18 just the information you told me. However, if he had
09:15 19 been doing this all of his life, that would certainly be
09:15 20 a circumstance. So, circumstances.

09:15 21 Q. And you understand, as far as the comment you
09:15 22 just made, during the guilt-innocence phase, the only
09:15 23 thing that's focused on is the crime at hand, to decide
09:15 24 whether or not that person is guilty of that crime.

09:15 25 A. Uh-huh.

09:15 1 Q. At the punishment phase, you do start to hear
09:15 2 about past criminal history. Anything that the State
09:15 3 knows about and can prove, obviously they are going to
09:15 4 bring that to your attention and let you know about
09:15 5 that. So you would have that kind of information
09:15 6 available as far as what the State knew in order to
09:15 7 answer that question.

09:15 8 A. Well, that would help me then with my decision
09:15 9 on what to impose on this person.

09:15 10 Q. And when we get to the second question too,
09:15 11 there's room to consider it at that point as well, but
09:15 12 you are allowed to take all that into consideration to
09:15 13 determine whether or not you think that person is a
09:15 14 future danger.

09:15 15 A. Uh-huh.

09:15 16 Q. What about somebody that goes AWOL from the
09:16 17 military? What do you think of people like that?

09:16 18 A. That goes AWOL from the military?

09:16 19 Q. Yes.

09:16 20 A. No. You mean would require the death penalty?

09:16 21 Q. As far as talking about their character. What
09:16 22 do you think that says about somebody's character?

09:16 23 A. Well, I went through the Vietnam thing, and I
09:16 24 don't know. A lot of guys took off to Canada and they
09:16 25 wound up one of them almost became President or became

09:16 1 President, or he didn't go to Canada, but he went to
09:16 2 England. So I don't really know about that.

09:16 3 I was against that. I was in the
09:16 4 military, and I felt everybody should have served their
09:16 5 country and their duty. So I -- I would look at
09:16 6 deserters not too favorably.

09:16 7 Q. And speaking of your experience in the
09:16 8 military, you were actually in the military police?

09:16 9 A. Uh-huh.

09:16 10 Q. Were you in the military police the entire time
09:16 11 you were enlisted?

09:16 12 A. I wasn't enlisted; I was drafted.

09:16 13 Q. I'm sorry, drafted. In considering that
09:16 14 question, the last word you get to that again will be
09:16 15 undefined for you, but frequently debated is that word
09:17 16 society. With regard to that word society, that
09:17 17 question doesn't ask: Can the defendant be confined and
09:17 18 not be a danger? Can he -- it doesn't limit itself to
09:17 19 prison society. It doesn't say: If you keep them in
09:17 20 prison society, will we be safe?

09:17 21 It seems to be broader than that. It
09:17 22 seems to include the society that you and I live in, on
09:17 23 the street corner, the person sacking your groceries at
09:17 24 the grocery store. Would that person be a continuing
09:17 25 threat to that society? Do you see how it can be

09:17 1 interpreted that way?

09:17 2 A. To the society at large or the penal system?

09:17 3 Q. Both.

09:17 4 A. Both. He would be a threat even to people in
09:17 5 prison if he was a threat, and they are people also.
09:17 6 And I have been in prisons, and I've seen how terrible
09:17 7 it is. And just the mere fact of killers being on the
09:17 8 loose, if you will, in there is a real psychological
09:18 9 problem for prisoners. So it's a real terrible form of
09:18 10 torture. And sure, I think he would be a threat to that
09:18 11 society also.

09:18 12 Q. Uh-huh. When you say you have been in prisons,
09:18 13 what has been your connection to being in a prison?

09:18 14 A. Well, I was a guard many times in the Mannheim
09:18 15 prison in Germany. I was a guard on trains or several
09:18 16 ships. And I was actually right in there with these
09:18 17 prisoners and it's -- it's a horrible way of life,
09:18 18 especially if you've been a free man your whole life.
09:18 19 It's a terrible thing.

09:18 20 So it's not as if they are getting off
09:18 21 lightly by life in prison. I think the one guy, Rivas,
09:18 22 made a perfect example, that, no, he's not getting
09:18 23 death; he's getting freedom. And I suppose that's true.

09:18 24 Q. With regard to that question, what other type
09:18 25 of things would you want to know in answering that? You

09:19 1 talked a little about bit about their criminal history
09:19 2 in the past. What other type of things would you want
09:19 3 to know to answer that question?

09:19 4 A. Well, their past history would mean a lot to
09:19 5 me.

09:19 6 Q. Okay.

09:19 7 A. Their lifestyle, I think, would mean a lot,
09:19 8 also, which essentially is their past, their lifestyle,
09:19 9 their past history. I think that would do it.

09:19 10 Q. And with regard to that question, the burden of
09:19 11 proof is on the State. And if we prove to you beyond a
09:19 12 reasonable doubt and all 12 jurors say, yes, that's the
09:19 13 process of the death sentence. If 10 or more say no,
09:19 14 that could end your deliberations by an automatic life
09:19 15 sentence?

09:19 16 A. Uh-huh.

09:19 17 Q. Let's assume all 12 jurors, and you are on the
09:19 18 jury. And all 12 jurors answer that question yes, and
09:19 19 you think they will be a future danger, you would
09:20 20 definitely at some point have to answer this question,
09:20 21 if you want to take a moment to yourself to read that,
09:20 22 to refresh your memory.

09:20 23 A. Uh-huh. I would agree with that.

09:20 24 Q. And this question, it's really for the jury to
09:20 25 weigh all the evidence, and it gives you an opportunity.

09:20 1 You are allowed to give whatever weight you want to to
09:20 2 whatever circumstances you want to. It may be that the
09:20 3 facts of the case weigh very heavily, and background may
09:20 4 or may not way weigh so heavily.

09:20 5 Mitigating circumstances may or may not
09:20 6 weigh so heavily. It's up to you to give whatever
09:20 7 weight to the evidence you want to give it. You kind of
09:20 8 put it on the scales. If the mitigating evidence is
09:20 9 sufficient to warrant a life sentence, then that person
09:20 10 gets a life sentence. Does that make sense?

09:20 11 A. Yeah, sure.

09:20 12 Q. With regard to this question, there is no
09:20 13 burden of proof on either the State or the defense. We
09:20 14 have no obligation to bring you evidence that there's no
09:20 15 mitigating evidence.

09:20 16 They don't have the burden of proof to
09:21 17 show you that there is sufficient mitigating evidence.
09:21 18 That's just up to you as the jury to collectively look
09:21 19 at all the evidence from the guilt-innocence or the
09:21 20 punishment, whatever you might hear, weigh it all and
09:21 21 see if there's sufficient mitigating evidence.

09:21 22 A. Uh-huh.

09:21 23 Q. Now, with regard to this question again, you
09:21 24 are not going to be told what is mitigating. You are
09:21 25 not going to be told, here is a list of factors you can

09:21 1 consider as mitigating. Typically, mitigating is
09:21 2 defined as anything that reduces or lessens the
09:21 3 defendant's blameworthiness, his guiltiness. It's going
09:21 4 to be up to you decide what's mitigating, if anything.

09:21 5 You can probably imagine, all of us
09:21 6 probably have something mitigating in our background in
09:21 7 our circumstances that, if we were on trial, we could
09:21 8 bring up and particularly sad or particularly
09:21 9 sympathetic.

09:21 10 Maybe some kind of health problem or
09:21 11 abusive childhood or single parent childhood, and
09:21 12 something that we could bring up to show ourselves as
09:21 13 being sympathetic and mitigating. So the question is
09:22 14 not: Is there any mitigating evidence? It's putting it
09:22 15 on the scales with everything else you've heard --

09:22 16 A. Uh-huh.

09:22 17 Q. -- and weighing it.

09:22 18 A. Yeah.

09:22 19 Q. And is it sufficient to warrant a life
09:22 20 sentence?

09:22 21 A. Sure. Circumstances.

09:22 22 Q. Right.

09:22 23 A. That's what this is all about. What are the
09:22 24 circumstances?

09:22 25 Q. Exactly.

09:22 1 A. One thing that I'm kind of getting here, which
09:22 2 I don't know why I'm getting these vibes, but it seems
09:22 3 as though we, everybody is asking me what we're going --
09:22 4 whether they are going to put this guy in prison for
09:22 5 life or give him the death penalty. But where is my
09:22 6 instructions about whether he's guilty or innocent?

09:22 7 Every time I've ever been a juror before,
09:22 8 the whole process was whether or not -- how am I
09:22 9 determining whether this guy is innocent or guilty?
09:22 10 You're already assessing -- having me assess what the
09:22 11 guy's penalty is. Why is that? Do you already assume
09:22 12 that the guy is guilty?

09:22 13 Q. No. Let me explain that to you a little bit.
09:22 14 We have to pick the jury at this point in time, and it's
09:23 15 going to be the same jury that does the guilt-innocence
09:23 16 phase that also does the punishment phase. We can't
09:23 17 just focus on the guilt-innocence phase and at that
09:23 18 point start asking questions about the penalty phase.

09:23 19 A. I haven't heard one question about whether the
09:23 20 guy is guilty or innocent. Not one question. The whole
09:23 21 thing has been whether or not we're going to imprison
09:23 22 him for life or kill him.

09:23 23 Q. And you understand that at this point he is
09:23 24 presumed innocent and --

09:23 25 A. Not the way I'm getting it. The way I'm

09:23 1 getting it is he's guilty.

09:23 2 Q. You understand we have to talk about punishment
09:23 3 evidence or the issues of the death penalty at this
09:23 4 point in time to see if you are qualified to serve as a
09:23 5 juror on a death penalty case. And the only way we can
09:23 6 do that is by addressing it now prior to any evidence
09:23 7 being presented.

09:23 8 A. I see. Okay.

09:23 9 Q. We can't tell you the facts of the case. We
09:23 10 can't discuss it with you and decide if you vote guilty
09:23 11 or not guilty. We can only talk about issues of law.
09:23 12 And we have to talk about all the issues of law that are
09:23 13 pertinent to the guilt-innocence phase and the
09:23 14 punishment phase at this time to see if you'd be a
09:24 15 qualified juror.

09:24 16 A. To see if I would put him to death if he was
09:24 17 found guilty?

09:24 18 Q. Not if he was found guilty, if we proved to you
09:24 19 the first question of future dangerousness beyond a
09:24 20 reasonable doubt. And then if you got to the mitigating
09:24 21 question and you found that the evidence was not
09:24 22 sufficient.

09:24 23 MS. FALCO: Your Honor, at this moment may
09:24 24 we briefly have a sub rosa hearing?

09:24 25 THE COURT: Sir, I'm going to ask you to

09:24 1 step down for just a moment. Let me ask you to do this,
09:24 2 if you would: Don't discuss this with any other juror.

09:24 3 VENIREPERSON: Do I need to go out?

09:24 4 THE COURT: Yes, sir. The bailiff will
09:24 5 escort you out.

09:24 6 (Venireperson Haskell not present.)

09:24 7 THE COURT: Both sides agree that he's
09:24 8 okay to put out of the jury, I suppose?

09:24 9 MS. FALCO: Just the opposite, Your Honor.
09:24 10 Both sides agree that he may be excused.

09:25 11 THE COURT: Is that correct?

09:25 12 MR. GOELLER: Yes, sir.

09:25 13 THE COURT: Is that your desire,
09:25 14 Mr. Cantu, that he not be on the jury?

09:25 15 THE DEFENDANT: Yes, Your Honor.

09:25 16 THE COURT: All right. Then, Mr. Haskell,
09:25 17 No. 94, is finally excused. Would you tell him that
09:25 18 we'd really appreciate his service, but perhaps we'll
09:25 19 see him another day.

09:25 20 THE BAILIFF: Yes, Your Honor.

09:25 21 MR. GOELLER: Good luck with his speech.

09:25 22 MS. FALCO: Your Honor, before we get any
09:25 23 further, if you would give the State and the defense an
09:25 24 opportunity, we might be able to move these proceedings.

09:25 25 THE COURT: What do you want, ten minutes

09:25 1 or how much time?

09:25 2 MR. GOELLER: I think that would be fine.

09:25 3 THE COURT: If that's works, okay.

09:25 4 THE BAILIFF: All rise.

09:35 5 (Break.)

10:13 6 THE COURT: I understand that both sides
10:13 7 have some announcements to make?

10:13 8 MR. GOELLER: Yes, Your Honor.

10:13 9 MS. FALCO: Your Honor, we're agreeing to
10:13 10 strike Mr. Thomas Graham, No. 93; Mr. Enrique Hernandez,
10:13 11 No. 92; Ms. Susan Price, No. 90; Ms. Kimberly Bolin,
10:14 12 No. 91; and Mr. Mark Littlejohn, No. 89.

10:14 13 THE COURT: All right. And in order then,
10:14 14 that's 89, 90, 91, 92 and 93, I suppose.

10:14 15 MS. FALCO: Yes, sir.

10:14 16 THE COURT: All right. And Mr. Goeller,
10:14 17 is that the desire of the defense?

10:14 18 MR. GOELLER: Yes, Your Honor. I've
10:14 19 spoken with my client and Mr. High. We've reviewed all
10:14 20 the questionnaires. The State has provided me with the
10:14 21 criminal history information on some of those jurors,
10:14 22 prospective jurors, and we've arrived at that decision
10:14 23 and agree with the State that those jurors should be put
10:14 24 in the category of an agreed strike by both.

10:14 25 THE COURT: Mr. Cantu, is that your desire

10:15 1 also, sir?

10:15 2 THE DEFENDANT: Yes, Your Honor.

10:15 3 THE COURT: Thank you, very much. Then
10:15 4 Mr. Powell, if you would tell 89, 90, 91, 92, 93,
10:15 5 Littlejohn, Price, Bolin, Hernandez, Graham, that they
10:15 6 are finally excused, I would appreciate it. And if you
10:15 7 would ask Ms. Poplin to step in.

10:15 8 THE BAILIFF: Yes, Your Honor.

10:15 9 THE COURT: We've got to wait until one
10:15 10 o'clock to tell Bolin, Hernandez and Graham. Then we'll
10:15 11 tell them. If you will tell Littlejohn and Price that
10:15 12 they are finally excused. And ask Ms. Poplin to step
10:15 13 in, please.

10:16 14 THE COURT: Ma'am, are you Darlene Poplin?

10:16 15 VENIREPERSON: Yes.

10:16 16 THE COURT: All right. I want to remind
10:16 17 you that about three weeks ago I placed all 200 jurors
10:16 18 under oath. And the oath was to tell the truth with
10:16 19 regard to questions that are propounded by the Court and
10:16 20 by both sides. Do you recall that?

10:16 21 VENIREPERSON: Yes.

10:16 22 THE COURT: All right, ma'am. I just want
10:16 23 to tell you you are still under that oath. I want to
10:16 24 ask you to please be seated. The attorneys will ask you
10:16 25 questions.

10:16 1 THE COURT: Ms. Falco?

10:16 2 MS. FALCO: Thank you.

10:16 3 VOIR DIRE EXAMINATION

10:16 4 BY MS. FALCO:

10:16 5 Q. Ms. Poplin, you may recall, my name is Gail
10:16 6 Falco. I'm an assistant district attorney here in
10:17 7 Collin County. And probably while I'm talking, there
10:17 8 will be a man that comes in sitting to my right. That's
10:17 9 Mr. Bill Schultz. He's my boss. He's the first
10:17 10 assistant district attorney. Seated to my left is
10:17 11 Ms. Jami Lowry. She is also another assistant district
10:17 12 attorney here in Collin County.

10:17 13 At the other table closest to me is the
10:17 14 defendant Ivan Cantu. Next to him are his lawyers,
10:17 15 Mr. Don High and Matt Goeller. They are both private
10:17 16 practitioners here in Collin County representing the
10:17 17 defendant.

10:17 18 I take it from last week that you don't
10:17 19 know any of us; is that correct?

10:17 20 A. No. No, I don't.

10:17 21 Q. Ms. Poplin, we understand this is probably your
10:17 22 third time to come up here, and it's been time
10:17 23 consuming, taking time out of your busy life. But you
10:17 24 understand that it's only in situations where the State
10:17 25 seeks the death penalty that we have you come in to do

10:17 1 this individual one-on-one type voir dire.

10:17 2 A. Yes.

10:17 3 Q. And with the understanding that probably the
10:17 4 number one answer to that question on the questionnaire
10:17 5 that says: What's the biggest problem for the criminal
10:17 6 justice system, I think the number one answer was, the
10:17 7 process is too slow. The system takes too long.

10:18 8 And understanding that and understanding
10:18 9 people -- that's what people think of the criminal
10:18 10 justice system, do you think on these type -- on this
10:18 11 type of a case where the State is seeking the death
10:18 12 penalty, that we're taking too much time? We might be
10:18 13 too cautious, too slow when selecting a jury for this
10:18 14 type of case?

10:18 15 A. No, I don't.

10:18 16 Q. Now, obviously, Ms. Poplin both sides are
10:18 17 looking for 12 people who can be fair and impartial
10:18 18 jurors to sit on this case. And what that means is that
10:18 19 you can, in the guilt-innocence phase, look at all the
10:18 20 evidence and follow the law and decide if the State
10:18 21 proved beyond a reasonable doubt whether or not the
10:18 22 defendant's guilty and render the verdict according to
10:18 23 the law and the evidence. And in the punishment phase,
10:18 24 fairly answer each of the questions or the special
10:18 25 issues based on the law and the facts presented to you.

10:18 1 And if the facts play out to render a life
10:18 2 sentence, a juror that could do that or if the facts
10:19 3 played out to render a death sentence, the juror could
10:19 4 do that. Basically, just be open and be willing to
10:19 5 follow the law and apply the facts and the law to these
10:19 6 questions and answer them fairly.

10:19 7 A. Okay.

10:19 8 Q. The only thing that's required of you at this
10:19 9 time is just for you to be honest with us. And we do
10:19 10 this with a one-on-one type process for you to just be
10:19 11 free to talk to us and let us know how you think and how
10:19 12 you feel without the pressures of being politically
10:19 13 correct or anything like that.

10:19 14 We're not trying to change your mind.
10:19 15 We're not trying to change your opinion or debate with
10:19 16 you. We're just trying to determine whether or not
10:19 17 you'd be a fair and impartial juror for this case and be
10:19 18 qualified for this case.

10:19 19 And when we ask you questions, we don't
10:19 20 mean to pry or to offend you or to get too personal with
10:19 21 you, but we're just trying to get to know you in as
10:19 22 little bit of time as we can to decide if you would be
10:19 23 qualified.

10:19 24 A. Okay.

10:19 25 Q. And with regard to this type of case, I

10:19 1 understand that when y'all filled out the questionnaire,
 10:19 2 you filled them out before anybody talked to you about
 10:20 3 what the law was and really before you had any time to
 10:20 4 really reflect on how you thought about the death
 10:20 5 penalty.

10:20 6 Because I know it's one thing to just be
 10:20 7 watching your TV and something come on TV and to sit
 10:20 8 around with your family, and if it's a good thing or bad
 10:20 9 thing. But it's a completely different ball game to
 10:20 10 ask: Can you be part of the process that could result
 10:20 11 in the death of the defendant?

10:20 12 Understanding that, when I looked at your
 10:20 13 questionnaire, you indicated you were in favor of the
 10:20 14 death penalty, and that you believe the death penalty is
 10:20 15 appropriate in some capital murder cases and can return
 10:20 16 a verdict resulting in death in a proper case?

10:20 17 A. Yes.

10:20 18 Q. I'm sure over the past several weeks you've had
 10:20 19 an opportunity to think more about that; is that fair to
 10:20 20 say?

10:20 21 A. Yes.

10:20 22 Q. And have you done some thinking?

10:20 23 A. Yes, some.

10:20 24 Q. And what have been the things that have crossed
 10:20 25 your mind in the past couple of weeks?

10:20 1 A. Circumstances that, you know, I don't have any
 10:20 2 knowledge of. Death penalty to me is if torture, abuse
 10:21 3 like to a child. Say, premeditated, cold-blooded
 10:21 4 murder, I would be for the death penalty, yes.

10:21 5 Q. So in having time for reflection, your answer
 10:21 6 would still be the same as what you put on the
 10:21 7 questionnaire?

10:21 8 A. Yes, it would.

10:21 9 Q. Have you had some time to think about, as far
 10:21 10 as being involved in a process that could result in the
 10:21 11 death of someone? Do you feel like you could do that,
 10:21 12 if the facts were there?

10:21 13 A. Yes.

10:21 14 Q. Tell me in your own words, Ms. Poplin, after
 10:21 15 doing some thinking, why are you in favor of the death
 10:21 16 penalty?

10:21 17 A. I just think that there are some people that
 10:21 18 when you say deserve the death penalty, I don't really
 10:21 19 think they should be put back into a society. Say, the
 10:21 20 society we live in or the people who are in prison
 10:21 21 because some are there for a short period of time. They
 10:22 22 are not all there for life, for their safety also.

10:22 23 Q. When you first realized that this was a capital
 10:22 24 murder case and that the State was seeking the death
 10:22 25 penalty, what were the thoughts that crossed your mind?

10:22 1 A. I really hoped that I wouldn't get put on the
 10:22 2 jury.

10:22 3 Q. And that's probably being very honest. I'm
 10:22 4 sure you did not wake up today excited about coming up
 10:22 5 here thinking, I might get the opportunity to be on this
 10:22 6 case.

10:22 7 A. No.

10:22 8 Q. I'm sure that you hoped you would get struck
 10:22 9 or --

10:22 10 A. Uh-huh.

10:22 11 Q. -- even if you got put on the jury, there's
 10:22 12 probably a part of you that hopes the evidence says "not
 10:22 13 guilty" or hopes the evidence says "life" just because
 10:22 14 that would be a real tough decision to get all the way.

10:22 15 A. Yes, it would.

10:22 16 Q. And I think we all join in that. I think we
 10:22 17 all wish we lived in a society where we didn't have to
 10:22 18 use the death penalty, or we lived in a society where we
 10:22 19 could turn on the TV and not see another murder or not
 10:22 20 see another death, and we just didn't have to have these
 10:22 21 kind of things.

10:22 22 A. That's correct.

10:22 23 Q. I think we all agree with you on that. And I
 10:23 24 guess that kind of question, obviously if you had the
 10:23 25 choice, I'm sure you would say no --

10:23 1 A. Yes.

10:23 2 Q. -- if it were totally up to you. But
 10:23 3 understanding that jury duty is the only duty or
 10:23 4 obligation left anymore that's required of our citizens,
 10:23 5 and understanding that -- we don't have the draft
 10:23 6 anymore. We don't have anything else that mandatory or
 10:23 7 an obligation, if you are a citizen. If you were called
 10:23 8 upon to sit on this jury, could you set aside your
 10:23 9 business, what's going on with your family and your
 10:23 10 social life and give this case your full attention?

10:23 11 A. Yes, I could.

10:23 12 Q. I'm going to take you through the stages of the
 10:23 13 trial. In Texas it's called a bifurcated trial system,
 10:23 14 and what that means is there's two phases. There's the
 10:23 15 guilt-innocence phase, and there's the punishment phase.
 10:23 16 We have to talk about both phases, including the
 10:23 17 punishment phase now because now is when we're deciding
 10:23 18 if you are a proper juror for this type of case.

10:23 19 A defendant, and this defendant is still
 10:23 20 presumed innocent. And they are not -- and that
 10:24 21 presumption remains there until the State proves to you
 10:24 22 beyond a reasonable doubt obviously. But we do need to
 10:24 23 explore punishment issues now because, if we waited
 10:24 24 until after we started trying the case and then talked
 10:24 25 to you about it, it would be too late --

10:24 1 A. Uh-huh.

10:24 2 Q. -- if we decided you weren't a qualified juror
10:24 3 for this type of case.

10:24 4 A. I understand.

10:24 5 Q. And with regard to the first phase of the
10:24 6 trial, as I explained to you last week, the burden of
10:24 7 proof is always on the State. We have to prove to you
10:24 8 beyond a reasonable doubt that a defendant is guilty of
10:24 9 capital murder.

10:24 10 And that's only fair, since we're the ones
10:24 11 doing the accusing, that we should have to do the
10:24 12 proving. If I said, Ms. Poplin, I think when you were
10:24 13 here last week, you stole my car. It's only fair that I
10:24 14 should have to prove that if I'm the one making the
10:24 15 accusation, rather than disprove it.

10:24 16 A. That's true.

10:24 17 Q. You understand that with regard to the
10:24 18 guilt-innocence phase, the burden never shifts to the
10:24 19 defense. They never have to prove anything.

10:24 20 A. Yes, I do.

10:24 21 Q. And if you were instructed and -- now, they can
10:24 22 put on evidence if they want to. The defendant can
10:24 23 testify if he wants to, but that's their right and
10:25 24 that's their choice. It can't be held against them one
10:25 25 way or the other.

10:25 1 A. I understand.

10:25 2 Q. You are instructed if a defendant did not
10:25 3 testify, and you were instructed not to take that into
10:25 4 consideration in determining guilty or not guilty, you
10:25 5 could do that?

10:25 6 A. Yes.

10:25 7 Q. With regard to capital murder, I talked about
10:25 8 different -- there was the difference between capital
10:25 9 murder and murder, and it had to be some aggravated
10:25 10 factor. And with regard to this particular case there's
10:25 11 three different types of aggravating factors to make it
10:25 12 capital. There's murder in the course of burglary.
10:25 13 Murder in the course of robbery, and what we've been
10:25 14 calling a double homicide.

10:25 15 With regard to murder in the course of a
10:25 16 burglary, in your opinion, is that the type of case or a
10:25 17 type of crime where the death penalty ought to at least
10:25 18 be an option? And I'm not asking, should it be
10:25 19 automatic and should it be a result, but should it be an
10:25 20 option depending on what the facts showed?

10:26 21 A. Yes. I would say it could be an option.

10:26 22 Q. And the same with murder in the course of a
10:26 23 robbery; do you think the death penalty ought to at
10:26 24 least be an option depending on what the facts were?

10:26 25 A. Yes, they could. Depending on what the facts

10:26 1 were.

10:26 2 Q. And the same with a double homicide; do you
10:26 3 think that the death penalty ought to at least be an
10:26 4 option depending on what the facts showed?

10:26 5 A. Yes.

10:26 6 Q. Now, let's assume all 12 jurors decided a
10:26 7 defendant is guilty of capital murder. At that point
10:26 8 you move to the punishment phase. When you get to the
10:26 9 punishment phase, there's not an automatic life sentence
10:26 10 or an automatic death sentence. The jury is to go
10:26 11 through a series of questions. And depending on how
10:26 12 they answer those questions dictates whether it's a life
10:26 13 sentence or a death sentence.

10:26 14 And the first question that you get to if
10:26 15 you found a defendant guilty of capital murder, would be
10:26 16 the question down there on the floor. Can you see that
10:27 17 from where you are sitting?

10:27 18 A. Yes.

10:27 19 Q. If you want to read that to yourself just to
10:27 20 refresh your memory. And that question is what we call
10:27 21 the future dangerousness question. Obviously, when the
10:27 22 legislature drafted these special issues, they
10:27 23 envisioned certain circumstances where a jury could find
10:27 24 a defendant guilty of capital murder, but get to this
10:27 25 question and decide that he would not be a future

10:27 1 danger.

10:27 2 We talked a little bit about that last
10:27 3 week about you have the parent whose child is murdered,
10:27 4 and there's two murderers. And those murderers have a
10:27 5 trial. And for whatever reason, because of some
10:27 6 technicality or loophole, those murderers get off. And
10:27 7 as they are walking out of the courtroom, they are
10:27 8 laughing because literally they got away with murder.
10:27 9 And this enrages the parent, and the parent goes out
10:27 10 there and kills them.

10:27 11 Some jurors may look at that question and
10:27 12 think, well, that was an isolated incident. That person
10:27 13 has never been in trouble before. I understand why they
10:27 14 did it, and we don't think they would be a future
10:28 15 danger. So that might be a situation that they find,
10:28 16 no, he's not a future danger.

10:28 17 Or you might have a situation where a
10:28 18 defendant goes in to rob a convenience store and does,
10:28 19 robs a convenience store, shoots the clerk, kills the
10:28 20 clerk, actually gets arrested for the offense. And
10:28 21 while they are in jail, they have a stroke. And they
10:28 22 are paralyzed from the neck down. Physically can't
10:28 23 move. Physically can't hurt anybody. Jury may look at
10:28 24 that question and decide, well, we don't think he's a
10:28 25 future danger because he can't do anything.

10:28 1 A. That's right.

10:28 2 Q. So because of that -- because it's not an
10:28 3 automatic thing, just because you find somebody guilty
10:28 4 of capital murder, doesn't automatically make them a
10:28 5 future danger. The jury is to look at this question and
10:28 6 basically reevaluate the evidence. Does that make
10:28 7 sense?

10:28 8 A. Yes, it does.

10:28 9 Q. With regard to this question, you may decide
10:28 10 just based on the facts of the case alone that that
10:28 11 person is a future danger. And a good example of that
10:28 12 would be Timothy McVeigh. I don't think anyone really
10:29 13 cared what his prior criminal history was or what he did
10:29 14 before that because it doesn't matter because you can
10:29 15 just look at that case and say, that alone tells me he
10:29 16 would be a future danger.

10:29 17 A. Yes.

10:29 18 Q. And you could use that and just that alone to
10:29 19 answer this question, yes. Do you understand that?

10:29 20 A. Uh-huh.

10:29 21 Q. With regard to this question, the burden of
10:29 22 proof again is going to be on the State. And we have to
10:29 23 prove to you beyond a reasonable doubt there's a
10:29 24 probability the defendant would commit criminal acts of
10:29 25 violence in the future.

10:29 1 The question doesn't ask whether or not
10:29 2 there's a certainty that he would commit criminal acts
10:29 3 of violence in the future, just whether or not there's
10:29 4 probability. But on the flip side it doesn't say: Is
10:29 5 there a possibility? Do you understand? Would you
10:29 6 agree with me that anything is possible.

10:29 7 A. Oh, yes.

10:29 8 Q. I mean, it could snow tonight. If a cold front
10:29 9 blew through, it could snow in the middle of September
10:29 10 in Dallas. It's not probable, but it's a possibility.
10:30 11 Do you understand that?

10:30 12 A. Yes.

10:30 13 Q. So that question says probability, meaning
10:30 14 something less than a certainty, but something more than
10:30 15 just a mere possibility.

10:30 16 A. Uh-huh.

10:30 17 Q. Does that make sense to you?

10:30 18 A. Yes, it does.

10:30 19 Q. And some people may look at that word
10:30 20 probability and say, well, being mathematically minded
10:30 21 that's some percentage to me. You know, I put a number
10:30 22 figure on that for probability. Other people may look
10:30 23 at that and just say, well, that means more likely than
10:30 24 not to me. What does that mean to you?

10:30 25 A. Well, it would be kind of like the number

10:30 1 factor whether they are more or high. That would be my
10:30 2 view of it.

10:30 3 Q. Okay. And something more than just a
10:30 4 possibility, but something less than a certainty.

10:30 5 A. Yes.

10:30 6 Q. Going along in that sentence, the next phrase
10:30 7 we get to that -- again, that's not going to be defined
10:30 8 for you. And it's going to be up to you as a juror to
10:30 9 decide what that means. And if we proved it, it's
10:30 10 criminal acts of violence. And I think all of us would
10:30 11 agree that if you harm another person, that's a criminal
10:31 12 act of violence. Just like murder, rape; that's an act
10:31 13 of violence.

10:31 14 A. Yes.

10:31 15 Q. How about spousal abuse? Somebody that beats
10:31 16 up their wife. Do you consider that an act of violence?

10:31 17 A. Yes.

10:31 18 Q. It gets a little fuzzier if you start talking
10:31 19 about property. And let's assume I get real angry and
10:31 20 I'm upset, and I decide to take my anger out on the cars
10:31 21 in the parking lot. And I go out there with a baseball
10:31 22 bat and start bashing up the cars in the parking lot.
10:31 23 Is that an act of violence, in your opinion?

10:31 24 A. Well, it's an act of violence, but it's towards
10:31 25 an object, not a person.

10:31 1 Q. Okay.

10:31 2 A. That would be less, in my opinion.

10:31 3 Q. And it gets a little fuzzier still when we
10:31 4 start talking about drugs. And whether we're talking
10:31 5 about dealing drugs or taking drugs, and I'm talking
10:31 6 about illegal substances like cocaine or
10:31 7 methamphetamine.

10:31 8 Some people may say, well, when you take
10:32 9 drugs, that does violence to your body. So you are
10:32 10 doing violence to your own body, and when you take it,
10:32 11 it changes your personality and it leads to violent
10:32 12 behavior. So, therefore, that's a criminal act of
10:32 13 violence.

10:32 14 Other people will say, well, no, I just
10:32 15 think if it's just you yourself and you are not hurting
10:32 16 anybody else, you are taking the drugs and any violent
10:32 17 consequences, it's indirect. So that's not an act of
10:32 18 violence. Where do you fall in that continuum?

10:32 19 A. To me, if you have taken it yourself without
10:32 20 anyone forcing you to, I wouldn't consider it an act of
10:32 21 violence. It's something that you have done to
10:32 22 yourself.

10:32 23 Q. And then there's other things that are clearly
10:32 24 not an act of violence such as theft or just general
10:32 25 lawlessness or disregard for the law, like somebody who

10:32 1 runs from the police when the police are telling them to
10:32 2 stop or people that engage in fraudulent business
10:33 3 transactions. They are not really doing violence to
10:33 4 anyone, but they are disregarding the law.

10:33 5 A. Yeah.

10:33 6 Q. Would you agree with me that, though it's not
10:33 7 an act of violence, it might give you some insight into
10:33 8 that person's character?

10:33 9 A. Yes.

10:33 10 Q. And in understanding their character a little
10:33 11 bit more, would that help you in answering that question
10:33 12 if there would be a probability they would be a
10:33 13 continuing threat to society?

10:33 14 A. If it would give me a picture of his character,
10:33 15 yes.

10:33 16 Q. As we move along in that sentence, the last
10:33 17 word you get to, again, it's not going to be defined for
10:33 18 you, and it's frequently debated. It's that word
10:33 19 society. And a question doesn't ask: Can the defendant
10:33 20 be safely contained in jail? It doesn't limit itself to
10:33 21 prison society. It just asks: Will he be a continuing
10:33 22 threat to society? Basically asking: Is the
10:33 23 defendant's -- what is the defendant's propensity for
10:34 24 violence without regard to a specific location.

10:34 25 So that word society can mean the world

10:34 1 that you and I live in today. The man sacking the
10:34 2 groceries at the grocery store and the person standing
10:34 3 on the street corner selling flowers. It could also
10:34 4 include prison society. Do you see how it can be
10:34 5 interpreted that broadly?

10:34 6 A. Yes.

10:34 7 Q. Now, with regard to that question -- and,
10:34 8 again, you would be in the punishment phase when you got
10:34 9 to that question, what type of evidence would you want
10:34 10 to see or would you want to know to answer that
10:34 11 question?

10:34 12 A. Well, a picture of his possible past, the
10:34 13 character. The -- kind of give you an idea of how he
10:34 14 thinks, how he feels, what type of person he is, and
10:34 15 then what he's done, or whatever.

10:34 16 Q. Let's talk a little bit about psychiatric
10:35 17 testimony. You probably heard or read that in cases
10:35 18 like this, that one side or the other may call a
10:35 19 psychiatrist. And let's assume it's not to say that
10:35 20 they have a brain disease or a brain disorder or some
10:35 21 kind of a tumor that's making him act a certain way, but
10:35 22 it's just to talk about like a pattern of behavior.

10:35 23 And let's assume one psychiatrist may say,
10:35 24 well, I've looked at his pattern of behavior and, in my
10:35 25 opinion, he's a future danger.

10:35 1 The other side may get another
10:35 2 psychiatrist and say just the opposite. I've looked at
10:35 3 this pattern of behavior, and I don't think he will be a
10:35 4 future danger. Would that kind of testimony be
10:35 5 important to you?

10:35 6 A. Not really.

10:35 7 Q. Okay. With regard to this question, if all 12
10:35 8 jurors agree beyond a reasonable doubt that there's a
10:35 9 probability the person will be a continuing threat to
10:35 10 society and answer that question yes, then you are still
10:35 11 in the process of assessing a death sentence.

10:36 12 If 10 or more jurors answer that question
10:36 13 no, we don't think he'll be a future danger, then that's
10:36 14 the end of your deliberations. It's an automatic life
10:36 15 sentence.

10:36 16 But let's assume all 12 jurors have
10:36 17 answered that question yes, then you get to the question
10:36 18 up there, what we call the mitigation question. If you
10:36 19 want to take a moment to refresh your memory and read
10:36 20 that to yourself. Do you remember that question from
10:36 21 last week?

10:36 22 A. Yes.

10:36 23 Q. That's what we call the mitigation question.
10:36 24 Again, the word mitigation is not going to be defined
10:36 25 for you, but it's typically defined as something that

10:36 1 reduces or lessens. And in application to this
10:36 2 question, something that reduces or lessens a
10:36 3 defendant's blameworthiness or guiltiness.

10:36 4 And when it comes to this question,
10:36 5 there's no burden of proof on either side. We don't
10:37 6 have any obligation to prove there's insufficient
10:37 7 mitigating evidence, and the defense doesn't have an
10:37 8 obligation to prove to you that there is.

10:37 9 What this question is defined for is for
10:37 10 the jury to give whatever weight they want to to all the
10:37 11 evidence that they've heard. Put it all on the scales.
10:37 12 And if there's sufficient mitigating evidence to warrant
10:37 13 a life sentence, then that person gets a life sentence.
10:37 14 But you can look at the facts of the case and give it
10:37 15 whatever weight. You can give it a lot of weight, or
10:37 16 you can give it a little weight.

10:37 17 You can look at a defendant's background
10:37 18 and character. You can give it a little weight, a lot
10:37 19 of weight, whatever weight you want to give it. You can
10:37 20 look at mitigating evidence and give it whatever weight
10:37 21 you want to. And in the end, after you've weighed
10:37 22 everything, is there sufficient mitigating evidence to
10:37 23 warrant a life sentence? Does that make sense to you?

10:37 24 A. Yes.

10:37 25 Q. When it comes to mitigating circumstances, you

10:37 1 are not going to be given a list of factors and be told
 10:37 2 that, here's some mitigating factors for you to
 10:37 3 consider. It's up to you to decide what, if anything,
 10:38 4 is mitigating and to give it whatever weight you want to
 10:38 5 give it.

10:38 6 We all have things that are mitigating, if
 10:38 7 we were on trial. Probably something sad or maybe an
 10:38 8 abusive childhood or single parent childhood or health
 10:38 9 illness. We could all come up with something we could
 10:38 10 say, this was mitigating in my situation.

10:38 11 A. Uh-huh.

10:38 12 Q. And knowing that the question doesn't really
 10:38 13 say, is there any mitigating evidence? It's asking, is
 10:38 14 it sufficient?

10:38 15 A. Sufficient.

10:38 16 Q. After weighing all that other stuff, is it
 10:38 17 sufficient? And there may be some things that one juror
 10:38 18 says, that's mitigating to me. And another juror will
 10:38 19 turn around and say, that's aggravating to me.

10:38 20 And a perfect example of that would be
 10:38 21 drugs. One juror may say, well, they are not really
 10:38 22 like that, but they started taking drugs. And it's a
 10:38 23 downward spiral, and the drugs changed their
 10:38 24 personality. And they did these things only because of
 10:39 25 the drugs, and so that's mitigating to me.

10:39 1 But another juror may say, well, no. As a
 10:39 2 society we're told to stay away from drugs, not to do
 10:39 3 them. We're told why we shouldn't do them because it
 10:39 4 can lead to these violent horrific results. And so
 10:39 5 that's aggravating to me because they knew better and
 10:39 6 they did it anyway, and it led to these bad results. So
 10:39 7 that's aggravating to me.

10:39 8 So, you see how something could be viewed
 10:39 9 as mitigating to one and aggravating to another?

10:39 10 A. Yes.

10:39 11 Q. What do you think of that argument that, I did
 10:39 12 this because of drugs? I have been taking drugs, and I
 10:39 13 got in a bad downward spiral. And the drugs changed my
 10:39 14 personality, but I'm not doing them anymore. I'm off
 10:39 15 the drugs. I'm not going to do them again, so don't
 10:39 16 kill me. What do you think of that argument?

10:39 17 A. I don't know whether he's truthful in saying
 10:39 18 that he would be off from them and stay off from them.
 10:39 19 And anything he's done while under the influence of
 10:40 20 drugs is still his responsibility. Blaming it on the
 10:40 21 drugs to me is a cop-out. It's an excuse.

10:40 22 Q. In looking at this question -- well, let me ask
 10:40 23 you this: Have you ever heard the phrase there's no
 10:40 24 atheists in foxholes?

10:40 25 A. Yes.

10:40 1 Q. What does that phrase mean to you?

10:40 2 A. It means when you are under extreme
 10:40 3 difficulties, duress, life threatening, you are going to
 10:40 4 find God.

10:40 5 Q. Okay. You were exactly right. Do you see how
 10:40 6 that philosophy might be carried over to somebody on
 10:40 7 trial for their life?

10:40 8 A. Of course.

10:40 9 Q. And with regard to that, whether that
 10:40 10 conversion is real or not, I guess ultimately is not for
 10:40 11 us to decide. But assuming in a capital murder trial
 10:40 12 somebody who was never a religious person before,
 10:41 13 whether they were just atheist or agnostic or didn't
 10:41 14 really have any place for God in their life, but once
 10:41 15 they get arrested for capital murder, all of a sudden
 10:41 16 they come in and tell you, I'm a Christian now. So
 10:41 17 don't kill me because I'm a Christian.

10:41 18 First of all, would you look at that with
 10:41 19 some skepticism based on its timing, or would you just
 10:41 20 assume it's true because people wouldn't say that unless
 10:41 21 it was true?

10:41 22 A. I would be a little skeptical about it.

10:41 23 Q. Okay. Let's assume you thought it was true.
 10:41 24 Maybe you believed them when they said it that it was
 10:41 25 true that I'm a Christian now so don't kill me. How

10:41 1 does that argument play with you, in regard to this
 10:41 2 mitigation question?

10:41 3 A. Well, in my opinion, whether it's life or
 10:41 4 death, I guess I'd still have my doubts.

10:41 5 Q. Okay. And you'd agree with me as -- I mean, we
 10:41 6 may be Christians, but we're still human.

10:41 7 A. That's right.

10:41 8 Q. And as Christians, though we strive to sin less
 10:42 9 often, we still sin?

10:42 10 A. Oh, yes.

10:42 11 Q. And so you'd agree with me that Christians are
 10:42 12 still capable of committing crime?

10:42 13 A. We've all got the ability to kill in certain
 10:42 14 circumstances, yes.

10:42 15 Q. And so even getting back to that probability
 10:42 16 question, that future dangerousness question, even if
 10:42 17 somebody came along and said, I'm a Christian now so
 10:42 18 I'll never be a future danger, that wouldn't be an
 10:42 19 impossible thing for me to prove to you, would it?

10:42 20 A. I'm afraid so.

10:42 21 Q. You think it would be impossible?

10:42 22 A. Yes, I do.

10:42 23 Q. If somebody said I'm a Christian now, and I
 10:42 24 won't be a future danger?

10:42 25 A. I think the only one that would know the truth

10:42 1 to that would be God and not me.

10:42 2 Q. Okay. And so if someone came along and said,
10:42 3 I'm a Christian now, this jailhouse conversion, and they
10:42 4 said, I'm a Christian now, under no other circumstances
10:42 5 you would be able to say they would be a future danger?

10:42 6 A. No. Just saying you are a Christian doesn't --
10:42 7 I mean, people lie. So, no, it really wouldn't be.

10:43 8 Q. Would you still look at all their other
10:43 9 background and their criminal history and their things
10:43 10 that led up to the murder and the murder itself?

10:43 11 A. I'm afraid so, yes.

10:43 12 Q. Ms. Poplin, you do have children? You have
10:43 13 three children, correct?

10:43 14 A. Yes. I have three sons.

10:43 15 Q. Okay. And having three sons, that's probably a
10:43 16 handful growing up. They all appear to be close in age?

10:43 17 A. Yes, they was.

10:43 18 Q. And I assume you love your children very much?

10:43 19 A. Yes. I have five grandchildren that I
10:43 20 baby-sit, yes.

10:43 21 Q. And your children and your grandchildren, I'm
10:43 22 assuming you love them and support them no matter what
10:43 23 the circumstances?

10:43 24 A. Yes, I would.

10:43 25 Q. And let's assume that one of your children or

10:43 1 grandchildren, once they were adults, got in trouble
10:43 2 with the law. I'm assuming you would still love them
10:44 3 and support them even through that situation?

10:44 4 A. It doesn't make any difference what your child
10:44 5 has done. It's still your child. It's still your baby,
10:44 6 yes.

10:44 7 Q. And you would still love them?

10:44 8 A. Yes.

10:44 9 Q. And probably, if called upon to testify in a
10:44 10 punishment hearing, you would be willing to get in front
10:44 11 of that jury and say, I love my child, and I support my
10:44 12 child still, even though they might have done this
10:44 13 crime?

10:44 14 A. Of course.

10:44 15 Q. Could you see how that might also be a
10:44 16 situation in a capital murder trial, that there would be
10:44 17 a parent out there that would still love their child?

10:44 18 A. Yes.

10:44 19 Q. How would that argument sit with you if you had
10:44 20 a mother that was obviously very upset because her child
10:44 21 had just been convicted of capital murder, begging you
10:44 22 not to kill her child. How would that argument sit with
10:44 23 you?

10:44 24 A. It would be very emotional if I was in that
10:44 25 situation. I'm sure that I would beg for the life of my

10:44 1 child, but it would still be a weighing process between
10:44 2 the evidence, whatever, because that is a mother's love,
10:45 3 you know. I would beg for one of my children. But if
10:45 4 they received the death penalty, I would accept it also
10:45 5 because you pay for what you do.

10:45 6 Q. And looking at that mitigation question, other
10:45 7 than the phrase circumstances of the offense, there's
10:45 8 really nowhere else that seems to concentrate or ask you
10:45 9 to look at the victim's character. And it asks you to
10:45 10 look at the defendant's character, defendant's
10:45 11 background, defendant's moral culpability. It's not
10:45 12 asking you to focus on the victim.

10:45 13 Now, if you remember me talking last week
10:45 14 a little bit about the difference between killing a nun
10:45 15 that's praying in the church versus the drug dealer on
10:45 16 the street, in your mind does that make a difference who
10:45 17 the killer kills, or is he still a killer? I mean, a
10:45 18 killer is a killer?

10:45 19 A. Well, basically, I guess he is a killer. But
10:45 20 if it's two drug dealers, they have both put their
10:46 21 selves in a bad situation where violence and death rate
10:46 22 is high. Where the nun in the church praying has not
10:46 23 put herself in that situation. So, yes, therefore, it
10:46 24 would make a difference.

10:46 25 Q. Does it make a person more or less dangerous

10:46 1 depending on who he killed or just the fact that he
10:46 2 chose to kill as opposed to some other resolution that
10:46 3 might make the difference?

10:46 4 A. Not really.

10:46 5 Q. Let's extend that a little bit further. Let's
10:46 6 assume that a person wanted to live the easy life, and
10:46 7 they didn't want to have to work for a living, so they
10:46 8 decide they are just going to rob a store and take all
10:46 9 the money, and that's what they are going to live off
10:46 10 of.

10:46 11 And they just decide to do it on their way
10:46 12 home, and they just pick out a convenience store that
10:46 13 they don't know anyone that works there, and they don't
10:46 14 know any of the family that works there. And they go in
10:46 15 that store, rob the clerk, and kill the clerk, not
10:46 16 having any idea how that was going to impact the family.

10:46 17 Compare that to the situation where this
10:46 18 person decides to rob the 7-Eleven that's in the
10:47 19 neighborhood that he grew up, and these are his friends
10:47 20 that own the 7-Eleven and that work there. And these
10:47 21 are the same friends that have taken him in and given
10:47 22 him, you know, fed him dinner, and let him spend the
10:47 23 night and sheltered him and fed him and loved him
10:47 24 because they all grew up together in the same
10:47 25 neighborhood.

10:47 1 But that's the store he chooses because he
 10:47 2 knows when the people work, and he knows how much money
 10:47 3 they keep behind the counter. And he knows exactly how
 10:47 4 much money he can get at what time, and so that's the
 10:47 5 clerk. He decides to go in, and he takes the money from
 10:47 6 his friend, and then he kills his friend knowing how
 10:47 7 it's going to impact that friend's family. Is there a
 10:47 8 difference in those two situations in your mind?

10:47 9 A. Yes. I think it shows a moral lacking of love
 10:47 10 and concern on his part to kill someone that you know
 10:47 11 and then that you have been with almost would be to me
 10:48 12 like a friend, a family member. That would be a
 10:48 13 difference than facing someone and shooting and killing
 10:48 14 them than someone that you have no knowledge of.

10:48 15 Q. As I told you earlier, with regard to this
 10:48 16 question, there is no burden of proof on this side. If
 10:48 17 all 12 jurors agree, no, there's not sufficient
 10:48 18 mitigating evidence, then a death sentence results. If
 10:48 19 10 or more jurors decide, yes, there is sufficient
 10:48 20 mitigating evidence, then it's a life sentence. Does
 10:48 21 that make sense to you?

10:48 22 A. Yes.

10:48 23 Q. And kind of taking you through the process, and
 10:48 24 during the guilt-innocence phase, if we prove the case
 10:48 25 to you beyond a reasonable doubt that a defendant is

10:48 1 guilty of capital murder, could you follow the law and
 10:48 2 find him guilty?

10:48 3 A. Yes.

10:48 4 Q. And on the flip side, if we didn't prove to you
 10:48 5 beyond a reasonable doubt he was guilty of capital
 10:48 6 murder, could you follow the law and find him not
 10:48 7 guilty?

10:48 8 A. Yes.

10:49 9 Q. And assuming you find him guilty and you get to
 10:49 10 the punishment phase and you get to that first question
 10:49 11 about future dangerousness, if we prove to you beyond a
 10:49 12 reasonable doubt that a defendant would be a future
 10:49 13 danger, could you answer the question yes?

10:49 14 A. I certainly could, uh-huh.

10:49 15 Q. And if we don't prove it to you beyond a
 10:49 16 reasonable doubt, could you answer the question "no,"
 10:49 17 knowing it would result in a life sentence?

10:49 18 A. Yes.

10:49 19 Q. And assuming you would answer that question
 10:49 20 yes, and you get to this mitigation question -- first of
 10:49 21 all, would you keep an open mind to all evidence
 10:49 22 presented before answering that question?

10:49 23 A. Yes.

10:49 24 Q. And if there was mitigating evidence, you'd
 10:49 25 listen to it and give it whatever weight you decided to

10:49 1 give it?

10:49 2 A. Yes.

10:49 3 Q. And would you keep an open mind and fairly
 10:49 4 answer this last question? And could you answer it no
 10:49 5 if there is insufficient mitigating evidence knowing it
 10:49 6 would result in a death sentence?

10:49 7 A. Yes.

10:49 8 Q. And on the flip side, after taking everything
 10:50 9 into consideration, keeping an open mind, could you
 10:50 10 answer that question yes if, in your mind, there is
 10:50 11 sufficient mitigating evidence to warrant a life
 10:50 12 sentence?

10:50 13 A. Yes.

10:50 14 Q. I want to talk to you a little bit about your
 10:50 15 questionnaire. And basically everything on your
 10:50 16 questionnaire indicates you understand that the burden
 10:50 17 is always on us, and the defendant is innocent until
 10:50 18 proven guilty.

10:50 19 But there's one statement, and I think
 10:50 20 it's just badly worded because several people have had
 10:50 21 problems with it or answered it inconsistently compared
 10:50 22 to the others. It's on the page where it talks about --
 10:50 23 and it gives you different statements, and you have to
 10:50 24 say anything from strongly agree to strongly disagree.
 10:50 25 Do you remember that page?

10:50 1 A. Yeah, vaguely.

10:50 2 Q. And there's one statement that says: If
 10:50 3 someone is accused of capital murder, he should have to
 10:50 4 prove his innocence. And you put "strongly agree." But
 10:50 5 you understand the defendant does not have to prove his
 10:51 6 innocence?

10:51 7 A. By that time, I guess, I was hot, I was tired,
 10:51 8 and I was writing very fast.

10:51 9 Q. And you got -- the rest of it you answered
 10:51 10 correctly. You have: A defendant is innocent unless
 10:51 11 proven guilty beyond a reasonable doubt. "Strongly
 10:51 12 agree." I mean, you obviously understand the burden is
 10:51 13 with us.

10:51 14 A. Yes.

10:51 15 Q. And the defense never has to prove their
 10:51 16 innocence. And you are not the only one that had that
 10:51 17 inconsistency, that's why I think it might just be a
 10:51 18 badly worded question.

10:51 19 On your questionnaire you indicate that
 10:51 20 you know a Jeff Smith that's been to Huntsville?

10:51 21 A. He's out now.

10:51 22 Q. Who is Jeff Smith in relationship to you?

10:51 23 A. A friend.

10:51 24 Q. Do you know the details of his offense?

10:51 25 A. Just using drugs. He was caught using drugs.

10:51 1 Q. Do you think he was treated fairly by the
10:51 2 system, or do you think maybe there's some injustice
10:52 3 there? What is your opinion of what happened with him?

10:52 4 A. No. I think he received, and I think it's
10:52 5 really turned his life around, but we'll have to see,
10:52 6 you know, how it goes when they first get out. Then
10:52 7 they tend to -- sometimes their attitude changes, and
10:52 8 they go right back to the drugs. So we'll give Jeff
10:52 9 time to see if his stay in Huntsville has helped him.

10:52 10 Q. And there is a blank for employer. Are you
10:52 11 currently retired?

10:52 12 A. I'm just a housewife. I baby-sit grandkids,
10:52 13 shuttle to school, pick up, you know.

10:52 14 Q. So you are probably busier than us?

10:52 15 A. My days are full, and when I go to bed, I sleep
10:52 16 very soundly, yes. They range from age 18 months to
10:52 17 8 years old.

10:52 18 Q. Do you watch all of them on a regular basis?

10:53 19 A. Yes. Yes, I do.

10:53 20 Q. So let me -- this brings up another question.

10:53 21 If you do that on a regular basis, if you were selected
10:53 22 to be on this jury and this trial were to last, and
10:53 23 understanding if you were selected today, you could go
10:53 24 back to your normal life until the trial started and
10:53 25 then you would have to come back. But if the trial

10:53 1 lasted anywhere from two to four weeks, would you be
10:53 2 able to have alternative care for your grandchildren?

10:53 3 A. Not that I know of. They would have to find a
10:53 4 baby-sitter. And they would have to find someone to
10:53 5 take the preschooler to -- well, the older ones, they go
10:53 6 to school at 8:30. She's got to be at school at 9:00.
10:53 7 You pick her up at 2:00. Then you pick the other two up
10:53 8 at 3:30, and then you got the two little ones that you
10:53 9 shuttle around with you.

10:53 10 Q. If you were called upon to serve on this jury,
10:53 11 could you make those arrangements for those two or three
10:53 12 weeks?

10:53 13 A. I guess I would have to. They said the only
10:53 14 excuses you have is you are dead or in the hospital?

10:54 15 Q. Your favorite movie and favorite television
10:54 16 show, you put "none." Are you too busy to be watching
10:54 17 movies and watching TV shows?

10:54 18 A. I'm very busy. I don't watch a lot of TV. I
10:54 19 do a lot of reading, and yes, my preference is
10:54 20 mysteries.

10:54 21 Q. Is *L. A. Dead*, is that a mystery book?

10:54 22 A. Yes, yes. I'm reading *Dead Eyes* now. I like
10:54 23 mysteries.

10:54 24 THE COURT: What are *Dead Eyes*? That's
10:54 25 the name of the book?

10:54 1 VENIREPERSON: Yes. That's the name of
10:54 2 the book.

10:54 3 THE COURT: Who is the author?

10:54 4 VENIREPERSON: Woods, I believe.

10:54 5 THE COURT: Is that a man or woman?

10:54 6 VENIREPERSON: It's a man.

10:54 7 THE COURT: Do you read any of the female
10:55 8 mystery writers?

10:55 9 VENIREPERSON: Oh, yes. I read all the
10:55 10 ABC Murders, and Danielle Steele and Linda Howard.
10:55 11 *Mr. Perfect* was very funny for -- I laughed till the
10:55 12 tears run down my face. Even though it was a mystery,
10:55 13 it was hilarious, but she writes different styles. Yes,
10:55 14 I enjoy mysteries. I do a lot of reading.

10:55 15 Q. (BY MS. FALCO) I assume you do that when the
10:55 16 children are taking naps.

10:55 17 A. Yeah, in the evening is what you call it
10:55 18 relaxing.

10:55 19 Q. Good. Ms. Poplin, before I pass you to
10:55 20 Mr. Goeller, do you have any questions of me?

10:55 21 A. None.

10:55 22 MS. FALCO: Thank you, Ms. Poplin. I pass
10:55 23 this juror.

10:55 24 THE COURT: Mr. Goeller?

10:55 25 MR. GOELLER: Thank you, Your Honor.

VOIR DIRE EXAMINATION

10:55 1 BY MR. GOELLER:

10:55 2 Q. Good morning, ma'am.

10:55 3 A. Good morning.

10:55 4 Q. Ms. Poplin, I believe you came up to court when
10:55 5 the big group of jurors was here. Was that last week?

10:56 6 A. Yes.

10:56 7 Q. I guess it was last week.

10:56 8 A. Or the week before last.

10:56 9 Q. Do you remember me talking that day?

10:56 10 A. Yes.

10:56 11 Q. What -- after I was done speaking, what were
10:56 12 your impressions of me, this case? Anything hit you one
10:56 13 way or the other strongly?

10:56 14 A. That you seemed very capable for your job, and
10:56 15 your job is to defend your defendant as best you can.

10:56 16 Q. Okay. Did I say anything that maybe you took
10:56 17 issue with, or did I do or say something that maybe on
10:56 18 the way back to the Farmersville, you said, you know, I
10:56 19 really don't like that guy. Anything come up like that?

10:56 20 A. No.

10:56 21 Q. Okay. You were probably seated in, oh, I would
10:56 22 say maybe the fourth or fifth row about three weeks ago
10:56 23 when we met over in the big room. Do you remember that?

10:57 24 A. Yeah.

10:57 1 Q. Did you get a look at Ivan that day, and
 10:57 2 obviously you got to see him last week?
 10:57 3 A. No. I didn't get to see him the first day.
 10:57 4 Q. As he sits there right now, what do you think?
 10:57 5 What impressions do you form just looking at him?
 10:57 6 A. None. I don't know him.
 10:57 7 Q. Okay. Does he look pretty young to you?
 10:57 8 A. Yes. He looks young.
 10:57 9 Q. I noticed your children are all in their mid to
 10:57 10 very early thirties, right?
 10:57 11 A. Yes.
 10:57 12 Q. And you've got five grandchildren, too?
 10:57 13 A. Yes.
 10:57 14 Q. Is that with Johnny, Brian and Jason's
 10:57 15 children?
 10:57 16 A. No. Brian has one daughter, and Jason has four
 10:57 17 children. Him and his wife love children. They have
 10:57 18 two boys and two girls.
 10:57 19 Q. Good for them.
 10:57 20 A. If it wasn't for them, I wouldn't have any
 10:58 21 grandchildren. My oldest son does not want any.
 10:58 22 Q. Johnny? Well, he's still got time, I guess.
 10:58 23 A. He wants to travel.
 10:58 24 Q. Really? He's a driver, a trucker?
 10:58 25 A. Yes, he's a trucker.

10:58 1 Q. So he probably spends a lot of time on the
 10:58 2 road?
 10:58 3 A. Yes.
 10:58 4 Q. What does Brian and Jason do?
 10:58 5 A. They finish drywall, and they are painters, the
 10:58 6 same as my husband.
 10:58 7 Q. That's the business your husband is in?
 10:58 8 A. Yes.
 10:58 9 Q. How are their backs? They say drywall
 10:58 10 Sheetrock can ruin a man's back by the time he's 30.
 10:58 11 A. No.
 10:58 12 Q. Of course, they are wearing big braces now,
 10:58 13 right?
 10:58 14 A. No.
 10:58 15 Q. No? They must just have strong backs?
 10:58 16 A. Brian has trouble with one knee, but that's
 10:58 17 from a car wreck. A guy hit him in the back, and he hit
 10:58 18 the dash. But my boys are not little tiny things, they
 10:58 19 are like their father. They are short, stocky, very big
 10:58 20 men, yes.
 10:58 21 Q. Can handle that kind of tough work?
 10:58 22 A. Yes.
 10:59 23 Q. Good for them. You are from Springdale,
 10:59 24 Arkansas?
 10:59 25 A. Yes.

10:59 1 Q. Springdale; is that near Rogers?
 10:59 2 A. Yes.
 10:59 3 Q. Bentonville?
 10:59 4 A. Uh-huh, Beedeville.
 10:59 5 Q. You know, if you go up the road a little, you
 10:59 6 ever heard of Bella Vista?
 10:59 7 A. Yes.
 10:59 8 Q. Okay. My wife's grandparents retired there
 10:59 9 until they passed. That's a real nice area.
 10:59 10 A. My sisters and her husband have a retirement
 10:59 11 house there next to the golf course.
 10:59 12 Q. Really. Yeah, it has beautiful golf courses
 10:59 13 and a lot of trees.
 10:59 14 A. Yes. They have a retirement house there.
 10:59 15 Q. And then everybody that goes up and visits
 10:59 16 takes the day trip over to, what, Eureka Springs?
 10:59 17 A. Yes. We've been there several times.
 10:59 18 Q. And was that Pea Ridge Cemetery?
 10:59 19 A. Yes.
 10:59 20 Q. That national cemetery. It's real nice. Kind
 10:59 21 of like Gettysburg, nice driving and noncommercialized.
 10:59 22 Not cemetery, a battlefield.
 10:59 23 A. The area, battlefield.
 10:59 24 Q. And it's a nice -- it's a nice area of the
 10:59 25 country. Where would you rather be? In that part of

10:59 1 the country or Collin County, if you had to live
 11:00 2 somewhere, if you had your choice?
 11:00 3 A. Well, I would rather be in Arkansas, but my
 11:00 4 husband decided to live down here. He had spent some
 11:00 5 time down here in Fort Worth when he was younger. To
 11:00 6 tell you the truth, I cried for two weeks. And I told
 11:00 7 him it was -- I believe I told him he had brought me to
 11:00 8 hell. It was hot as hell, and it looked like hell.
 11:00 9 THE COURT: But other than that.
 11:00 10 Q. (BY MR. GOELLER) Other than that, it's not too
 11:00 11 bad.
 11:00 12 A. Uh-huh.
 11:00 13 Q. I've been to that Springdale-Rogers, that whole
 11:00 14 northwest corner of Arkansas. It's just gorgeous.
 11:00 15 A. Oh, it's just beautiful, and I get homesick in
 11:00 16 autumn.
 11:00 17 Q. I bet you do. We don't have much of a fall
 11:00 18 here.
 11:00 19 A. No. No beautiful colors.
 11:00 20 Q. Yeah. I always -- I always get a kick out of
 11:00 21 that. There's probably more golf carts driving around
 11:00 22 in Bella Vista than there are cars.
 11:01 23 A. I imagine. My brother-in-law stays over there
 11:01 24 every Saturday morning, my sister says. He's over there
 11:01 25 playing golf.

11:01 1 Q. Yeah. In fact, they have -- the roads are set
11:01 2 up where golf -- people take their golf carts to the
11:01 3 store. They'll buy their groceries. You know, there's
11:01 4 little doctors' offices and dentists' offices.

11:01 5 A. I have only been over there twice because they
11:01 6 haven't retired there yet, but it's a beautiful area.

11:01 7 Q. Yeah. As I -- I think I stated back last week,
11:01 8 as far as the questions I have for you, Ms. Poplin, no
11:01 9 right or wrong answers. Just tell me what's on your
11:01 10 mind and shoot from the heart, and I would be so
11:01 11 appreciative of that. Okay?

11:01 12 A. All right.

11:01 13 Q. Main thing to remember today, no right or wrong
11:01 14 answers. No one's going to argue with you. I promise
11:01 15 the Judge would not allow anyone to argue with you,
11:01 16 debate you, question you. You just -- you just let it
11:02 17 roll, and we'll go from there. Okay?

11:02 18 A. All right.

11:02 19 Q. When you put down on your questionnaire, some
11:02 20 crimes are bad enough to deserve death. What were you
11:02 21 kind of thinking about? Did maybe some criminals come
11:02 22 to mind or cases or anything like that?

11:02 23 A. I don't really follow cases. Okay. The couple
11:02 24 that had the small child that was in the closet, that
11:02 25 they had abused and starved.

11:02 1 Q. Right.

11:02 2 A. That's over a period of weeks, years, months.
11:02 3 I mean, they could have stopped that at any time.

11:02 4 Q. Yeah.

11:02 5 A. Yes. Somebody like that doesn't need to be in
11:02 6 society, I don't believe.

11:02 7 Q. And I think -- I think that child was -- or
11:02 8 child or children, I can't recall if it was one or more
11:02 9 children in that home, but the State removed those
11:02 10 children and got them in foster care. And I think they
11:02 11 are in the process of having their parental rights
11:03 12 terminated.

11:03 13 A. Yes.

11:03 14 Q. And then the children will be adopted or placed
11:03 15 with some nicer people. That's an offense that we call
11:03 16 either injury to a child or endangering a child,
11:03 17 depending on, on how the folks looked at it. Do you
11:03 18 think crimes like that are worthy of the death penalty?

11:03 19 A. Yes, I do.

11:03 20 Q. So you can see that there -- or your opinion is
11:03 21 there are some nonhomicide, nonkilling offenses that the
11:03 22 death penalty would be justified?

11:03 23 A. Yes.

11:03 24 Q. Okay, okay. Any other kinds of cases that may
11:03 25 not involve the taking of a life, but you would think

11:03 1 that the death penalty is appropriate?

11:04 2 A. I can't think of any offhand.

11:04 3 Q. Okay. You put down in your questionnaire, you
11:04 4 circled the option, "I believe the death penalty is
11:04 5 appropriate in some capital murder cases, and I could
11:04 6 return a verdict resulting in death in a proper case."

11:04 7 I think you spoke a little bit about the
11:04 8 things that come to your mind for capital punishment or
11:04 9 the death penalty or maybe, I guess, murders that
11:04 10 involve torture.

11:04 11 A. Yes.

11:04 12 Q. Torturing people?

11:04 13 A. Uh-huh.

11:04 14 Q. And killing children. Things like that?

11:04 15 A. Uh-huh.

11:04 16 Q. It's your understanding that the State has the
11:05 17 burden of proof in the first part of a case, you know,
11:05 18 whether they are guilty or not guilty?

11:05 19 A. Yes.

11:05 20 Q. Do you know what that burden of proof is? What
11:05 21 the Judge would tell you that the State has to prove it
11:05 22 by, how much evidence? Do you recall any of that?

11:05 23 A. Not offhand. There was a percentage, right?

11:05 24 Q. Yeah. I guess there's a percentage. We don't
11:05 25 put an actual number on it or our law doesn't. We use

11:05 1 the phrase beyond a reasonable doubt. You probably read
11:05 2 that in some of your mystery novels.

11:05 3 A. Yes.

11:05 4 Q. That involve crime. Some people say beyond a
11:05 5 shadow of a doubt, beyond a reasonable doubt. It's a
11:05 6 lot of evidence or a lot of -- the quantum or the
11:05 7 quality of the proof has to be very high.

11:05 8 A. Yes.

11:05 9 Q. Okay. Do you agree with that?

11:05 10 A. Yes.

11:05 11 Q. Tell me why.

11:05 12 A. I want a crystal-clear picture that the man is
11:06 13 guilty. I don't want an innocent man to serve time.

11:06 14 Q. Okay. The State has to prove all the elements
11:06 15 of the offense. The State has to prove that a defendant
11:06 16 did what they say he did beyond a reasonable doubt.

11:06 17 A. Uh-huh.

11:06 18 Q. You know, and how he did it. How they allege a
11:06 19 defendant committed a crime. They have to prove that he
11:06 20 did commit that crime.

11:06 21 A. Yes.

11:06 22 Q. If they fail to prove beyond a reasonable doubt
11:06 23 an element of the offense, okay, what would your verdict
11:06 24 be?

11:06 25 A. An element of the offense?

11:06 1 Q. Yeah.
 11:06 2 A. Not whether he did it or not.
 11:06 3 Q. Right.
 11:06 4 A. Well, then I could go for life imprisonment.
 11:06 5 Q. Okay, okay. In the first part of the trial,
 11:07 6 the guilt or innocence, what do you think the jury's job
 11:07 7 would be in the first part of the trial, the guilt-
 11:07 8 innocence phase?
 11:07 9 A. The guilt-innocence would be in deciding
 11:07 10 whether the man was guilty or innocent.
 11:07 11 Q. And if we -- if we talk about for now the
 11:07 12 guilt-innocence phase, and if the Judge instructed you
 11:07 13 that the State has to prove each element of the offense
 11:07 14 beyond a reasonable doubt.
 11:07 15 A. Uh-huh.
 11:07 16 Q. But the State failed to prove to you beyond a
 11:07 17 reasonable doubt an element of the offense, even though
 11:07 18 you think he was probably guilty of it, but they failed
 11:07 19 to prove an element of the offense, what would your
 11:07 20 verdict be?
 11:07 21 A. It would probably be life imprisonment if they
 11:07 22 couldn't prove that.
 11:07 23 Q. Of course, in that part of the trial, we
 11:08 24 probably are not talking about punishment yet.
 11:08 25 A. Uh-huh.

11:08 1 Q. It's just whether he's guilty or not guilty.
 11:08 2 A. Guilt or innocence.
 11:08 3 Q. So I was just curious why you would vote life
 11:08 4 if the State failed to prove an element of the offense?
 11:08 5 A. Or you mean prove that he is innocent or
 11:08 6 guilty?
 11:08 7 Q. Yeah.
 11:08 8 A. Oh, well, I misunderstood you. If they could
 11:08 9 not prove him actually with a shadow of a doubt that he
 11:08 10 was guilty, then we'd probably be -- and my vote would
 11:08 11 be for innocence, if they couldn't prove to me without a
 11:08 12 shadow of a doubt that he was guilty.
 11:08 13 Q. Okay. I gotcha.
 11:08 14 A. Now, if we've already proven that he is guilty,
 11:08 15 that's what I --
 11:08 16 Q. Yeah, yeah.
 11:08 17 A. -- then it would be the circumstances of the
 11:08 18 crime.
 11:08 19 Q. Right. So, even if you felt somebody was
 11:08 20 guilty of a crime, you thought they might be guilty.
 11:09 21 But if the State failed to prove, beyond a reasonable
 11:09 22 doubt the element of that offense, you could return a
 11:09 23 verdict of not guilty?
 11:09 24 A. Most definitely.
 11:09 25 Q. Okay. All right. I mean, some people may say,

11:09 1 well, I'm pretty sure he did it, but the proof's not
 11:09 2 there. Boy, I'm sure going to feel awful by finding him
 11:09 3 not guilty. But I -- I would do it. I would find him
 11:09 4 not guilty even though I didn't like to do that. You
 11:09 5 could do that, right?
 11:09 6 A. Yes. He's innocent until proven guilty.
 11:09 7 Q. Do you think that's a pretty important right we
 11:09 8 have, innocence until proven guilty?
 11:09 9 A. Yes, I do.
 11:09 10 Q. As a people?
 11:09 11 A. Yes. That's all we have, yes.
 11:09 12 Q. In this case the indictment, in other words,
 11:09 13 the -- the legal accusation that the Judge has, the --
 11:10 14 the papers the State has filed saying, you know, they
 11:10 15 are just accusing him of something.
 11:10 16 A. Uh-huh.
 11:10 17 Q. Okay? Now, the Judge would tell you that that
 11:10 18 piece of paper is not evidence of guilt, and it doesn't
 11:10 19 mean a thing. It absolutely means not a thing. It's
 11:10 20 just a piece of paper that starts a trial. It's really
 11:10 21 all it is. Okay? And in that piece of paper, it states
 11:10 22 that in this case there was a double homicide. In other
 11:10 23 words, two people were killed?
 11:10 24 A. Uh-huh.
 11:10 25 Q. It also states that a person was killed during

11:10 1 a robbery, and a person was killed during a burglary.
 11:10 2 And those three kinds of things are capital murder.
 11:10 3 A. Yeah.
 11:10 4 Q. If -- at least that's what our law says. If
 11:11 5 the jury finds beyond a reasonable doubt that one of
 11:11 6 those three things is true, okay, then the Judge would
 11:11 7 instruct you to find the defendant guilty of capital
 11:11 8 murder.
 11:11 9 And the Judge would also instruct you, if
 11:11 10 you have a reasonable doubt, in other words, the State
 11:11 11 didn't prove their case the way they should have, the
 11:11 12 Judge would tell you, say not guilty. Okay?
 11:11 13 And if it's not guilty on capital murder,
 11:11 14 there may be other kinds of offenses. We don't know yet
 11:11 15 if there will or won't be. But there are other kinds of
 11:11 16 offenses the Judge may tell you to consider next.
 11:11 17 In other words, the Judge could say, if
 11:11 18 you find him not guilty of capital murder, maybe
 11:11 19 consider something less. Maybe just simple murder,
 11:12 20 maybe burglary, maybe robbery, maybe assault, something
 11:12 21 of that nature.
 11:12 22 A. A lesser offense, okay.
 11:12 23 Q. I'm sorry?
 11:12 24 A. A lesser offense.
 11:12 25 Q. Yes. How did you know that phrase?

11:12 1 A. I read mysteries.
 11:12 2 Q. Boy, that's fantastic. I think you are the
 11:12 3 first juror that's used that. That's a very specific
 11:12 4 legal phrase. Lesser-included offense. Very good. So
 11:12 5 you understand that whole concept?
 11:12 6 A. Yes.
 11:12 7 Q. Okay. Super. And I think you are very clear
 11:12 8 on beyond a reasonable doubt, burden of proof. It's all
 11:12 9 on the State, you know, the defendant doesn't have to do
 11:12 10 anything. You understand that?
 11:12 11 A. Oh, yes. That's the right.
 11:12 12 Q. That's the society we live in. If the
 11:12 13 government wants to accuse a person the way our
 11:12 14 Constitution is set up, our Texas Constitution and our
 11:12 15 State or our Federal Constitution, that they have to do
 11:12 16 all the proving?
 11:12 17 A. That's right.
 11:12 18 Q. That makes sense to you, right?
 11:13 19 A. Yes. Innocent until proven guilty, yes.
 11:13 20 Q. There you go, okay. Because this is individual
 11:13 21 voir dire and we talk to jurors one-on-one, the purpose,
 11:13 22 the way the law contemplates this individual voir
 11:13 23 dire -- well, you've never served on a jury before, have
 11:13 24 you?
 11:13 25 A. Never in my life.

11:13 1 Q. Okay. Normally it's not like this. In the
 11:13 2 regular -- any other kind of case, speeding ticket case,
 11:13 3 a shoplifting case, a marijuana case, all the jurors sit
 11:13 4 out here like you did last week. And then from start to
 11:13 5 finish, it's about two hours.
 11:13 6 A. Uh-huh.
 11:13 7 Q. And then the jury is picked. And from the time
 11:13 8 you get to the courthouse, and we get to the courthouse
 11:13 9 at 8:30, many times in most other cases the jury is
 11:13 10 hearing evidence by before lunch. But because this is a
 11:13 11 potential death penalty case, where the State seeks the
 11:13 12 death penalty, we go into this individual voir dire
 11:14 13 where it's one-on-one like this because we have to talk
 11:14 14 about these special issues in the death penalty, in
 11:14 15 general.
 11:14 16 I mean, that's why this situation is
 11:14 17 unique in this kind of case. When we talk about those
 11:14 18 special issues, that first one on the floor down there,
 11:14 19 that probability, I think you mentioned that probability
 11:14 20 to you means, you said a number factor?
 11:14 21 A. Yes.
 11:14 22 Q. Does that -- was I correct and when I think you
 11:14 23 meant a percentage?
 11:14 24 A. Yeah.
 11:14 25 Q. A percentage?

11:14 1 A. Say, the history of the person for violence or
 11:14 2 whatever.
 11:14 3 Q. Okay.
 11:14 4 A. Or if this is just a random one time.
 11:14 5 Q. Okay.
 11:14 6 A. It would be more probable if he had a very
 11:14 7 violent or bad background.
 11:14 8 Q. Right.
 11:14 9 A. It would be more probable to me than if it was
 11:15 10 just a one-time act with no violent background would be
 11:15 11 lesser probable to me.
 11:15 12 Q. Okay. I think -- I think you are right. For
 11:15 13 example, if you found out that a defendant or learned
 11:15 14 from the evidence that a -- have you heard of these
 11:15 15 serial rapists?
 11:15 16 A. Yes.
 11:15 17 Q. Okay. Have you ever read any novels, or has
 11:15 18 that ever come up in the books you've read?
 11:15 19 A. Oh, yes, several.
 11:15 20 Q. In the books and -- usually those books are
 11:15 21 pretty accurate. How does a serial rapist pick his
 11:15 22 target? How do they go about doing that?
 11:15 23 A. A lot of times it's the habits, the character
 11:15 24 of the person, maybe the physical -- maybe the blonds or
 11:15 25 brunets or a certain type of person. They stalk them.

11:15 1 Q. Right.
 11:15 2 A. They watch them, and they pick their
 11:15 3 opportunity.
 11:15 4 Q. There you go. They are kind of -- I think the
 11:15 5 word *stalk* and *opportunity* and -- they are usually
 11:16 6 strangers, though, right?
 11:16 7 A. Oh, yes.
 11:16 8 Q. The bad guy, the serial rapist, he doesn't know
 11:16 9 these women?
 11:16 10 A. No.
 11:16 11 Q. And he looks for vulnerable women?
 11:16 12 A. Uh-huh.
 11:16 13 Q. And, you know, like you say, some fixate on a
 11:16 14 different characteristic or physical description,
 11:16 15 blonds, brunets, Anglo, Hispanic, black, whatever, and
 11:16 16 they have no relationship. They've never known those
 11:16 17 victims?
 11:16 18 A. No.
 11:16 19 Q. They just stalk them, target them, see where
 11:16 20 they are vulnerable, watch them. Maybe they know this
 11:16 21 secretary always leaves the building at, you know --
 11:16 22 A. Yes.
 11:16 23 Q. -- 8:30, 9 p.m., and she parks here, and it's
 11:16 24 dark and that kind of thing. And if a person has got a
 11:16 25 long history, if you've found that somebody has done

11:17 1 this. Maybe they have been to the penitentiary for
11:17 2 being a serial rapist before. Now they are not only a
11:17 3 serial rapist, they've actually killed one of their
11:17 4 victims in the course of committing that rape, and that
11:17 5 would be capital murder.

11:17 6 The fact that they've got a long history.
11:17 7 Maybe they've serial raped dozens of women or they've
11:17 8 killed many women, that would give you a lot of insight
11:17 9 as to whether there's a probability of whether they
11:17 10 would be violent, right?

11:17 11 A. Yes, that's right.

11:17 12 Q. And then there are kind of the situational, the
11:17 13 people who may have committed a murder due to a
11:17 14 situation. They are not stalkers. They are not people
11:17 15 that planned it. The victims are known to them, you
11:17 16 know. You know, it might be a cousin. It might be
11:17 17 somebody they've had a relationship with.

11:17 18 So you have that situation where it's a
11:17 19 situational killing maybe. Maybe passion involved.
11:18 20 Maybe drugs or a drug deal involved. Maybe they've
11:18 21 known this person a long time, but a certain situation
11:18 22 came together and, for whatever reason, a killing took
11:18 23 place.

11:18 24 Do you see that as a lot different than
11:18 25 that -- that serial rapist killer stalking when it comes

11:18 1 to that probability?

11:18 2 A. I would say if it was not a premeditated,
11:18 3 cold-blooded murder, is what you are saying.

11:18 4 Q. Yeah. I guess so, yeah.

11:18 5 A. Depending on the situation. If you were going
11:18 6 in to rob and you took a gun with, a gun in your
11:18 7 possession and take it in, there's a likelihood that you
11:18 8 are liable to shoot somebody.

11:18 9 Q. Right, right.

11:18 10 A. So I would still weigh, maybe lesser on the
11:18 11 probability, depending on the circumstances and the
11:19 12 evidence.

11:19 13 Q. Right. Okay. Super. When we look at that
11:19 14 question probability, Ms. Falco is exactly right when
11:19 15 she says it means more than possibility.

11:19 16 A. Uh-huh.

11:19 17 Q. Because the question wouldn't make any sense if
11:19 18 probability meant possibility.

11:19 19 A. No.

11:19 20 Q. There's a possibility tomorrow you and I could
11:19 21 end up committing a bad crime. It's not probable. But
11:19 22 like you said--I think you said it and said it well--
11:19 23 there's the possibility that all of us could kill.

11:19 24 A. Oh, yes. If our life were threatened or our
11:19 25 loved ones and we had the means to stop it, yes, we

11:19 1 could kill.

11:19 2 Q. Of course, that wouldn't be a crime, though.

11:19 3 A. No. That would be self-defense.

11:19 4 Q. If you were protecting those beautiful
11:19 5 grandchildren of yours, that wouldn't be a crime at all.

11:19 6 A. No. That's self-defense, yes.

11:19 7 Q. But as human beings and having faults and
11:19 8 problems, all of us are capable of doing bad things. I
11:20 9 mean, I think as human beings, as sinners, some more
11:20 10 than others. I mean, I don't think the chance of you
11:20 11 doing something bad in your life, I mean, really bad is
11:20 12 very high?

11:20 13 A. No.

11:20 14 Q. I would bet the rest of your life you will live
11:20 15 very nicely, but there's always that possibility. You
11:20 16 never know. Just like me, just like Mr. High, just like
11:20 17 Ms. Falco and Ms. Lowry over there. You know, you never
11:20 18 know what the future holds. But when we talk about that
11:20 19 word probability, that's why it means more than
11:20 20 possibility.

11:20 21 A. Yes.

11:20 22 Q. Because anything is possible.

11:20 23 A. Anything is possible.

11:20 24 Q. Anything is possible. So did you say it meant
11:20 25 more likely than not?

11:20 1 A. Probability to me?

11:20 2 Q. Yeah.

11:20 3 A. Yeah.

11:21 4 Q. Ms. Falco told you that the word society can
11:21 5 mean many things. It means, one thing we can say for
11:21 6 sure it means and that's the penitentiary. Okay? We
11:21 7 know it includes the penitentiary. I can't tell you
11:21 8 it's limited to that. But I can tell you it definitely
11:21 9 includes that, the penitentiary. Because we know if you
11:21 10 get to these questions, a jury has found somebody guilty
11:21 11 of capital murder beyond a reasonable doubt. And there
11:21 12 are only two choices, life or death?

11:21 13 A. Uh-huh.

11:21 14 Q. We know life is a life sentence in the
11:21 15 penitentiary. So that's why we know society includes
11:21 16 penitentiary. I want to talk to you just a little bit
11:21 17 about Jeff or Mr. Smith. He -- did he actually go to
11:21 18 Huntsville?

11:21 19 A. Yes.

11:21 20 Q. And when you say Huntsville, do you mean the
11:21 21 units around Huntsville? Some people use the word
11:22 22 Huntsville meaning just the Texas penitentiary. Of
11:22 23 course, we've got units, dozens of units all over the
11:22 24 State from El Paso to Texarkana, and Beaumont to
11:22 25 Amarillo. But he actually went to Huntsville?

11:22 1 A. Yeah. He went to prison.
 11:22 2 Q. Okay. How long did he serve; do you know?
 11:22 3 A. 18 months.
 11:22 4 Q. 18 months. Okay. Was he in what we call a
 11:22 5 state jail or an actual institutional division unit?
 11:22 6 A. I don't really know. I didn't visit him.
 11:22 7 Q. Do you know what his sentence was, 18 months?
 11:22 8 A. I think that's what he served, is 18 months.
 11:22 9 Q. Do you know if that's -- okay, okay. And it
 11:22 10 was for drug possession?
 11:22 11 A. Uh-huh.
 11:22 12 Q. Okay. How -- how do you know this fellow? I
 11:22 13 think you said he was a friend?
 11:22 14 A. His father and his stepmother bought an acre
 11:23 15 and a half off of us and moved a house in by us. They
 11:23 16 lived there for several years while Jeff was young, just
 11:23 17 a young boy, all his children were. And then they got a
 11:23 18 divorce. They sold the house, and they went their
 11:23 19 separate ways. And his father lives in town, and his
 11:23 20 stepmother, I think, lives in Greenville now. I am not
 11:23 21 certain.
 11:23 22 Q. How old was Jeff when you first knew him, you
 11:23 23 first met him, I guess?
 11:23 24 A. Probably about 8 years old.
 11:23 25 Q. What kind of kid was he then?

11:23 1 A. Rowdy, big mouthed, not well behaved.
 11:23 2 Q. How do you think -- why do you think he was
 11:23 3 that way when he was 8?
 11:23 4 A. Because his father was a drunk, and he didn't
 11:23 5 really care what he did.
 11:23 6 Q. Oh, that's awful. As he progressed along in
 11:24 7 life, became 8. How old is he now, about, Jeff?
 11:24 8 A. Jeff, I believe, is 21.
 11:24 9 Q. 21. Okay. So he went to the penitentiary when
 11:24 10 he was probably 19, 20?
 11:24 11 A. Probably. I'm not certain of his age, but
 11:24 12 probably.
 11:24 13 Q. Did you kind of watch him grow up from 8 to
 11:24 14 when he went to the penitentiary?
 11:24 15 A. In a way, yes.
 11:24 16 Q. What did you see? When you look back on it and
 11:24 17 here was this kid that was, I suppose at 8, if he was
 11:24 18 kind of rowdy and had a big mouth, and I suppose he
 11:24 19 wasn't a bad kid, though, was he? Or just kind of a kid
 11:24 20 with some trouble?
 11:24 21 A. No. He done a little stealing. He stole a
 11:24 22 little gas out of my car.
 11:24 23 Q. Oh, boy.
 11:24 24 A. I threatened to whip him with a belt. That
 11:24 25 solved that problem. But if you're referring to Weldon

11:25 1 being a drunk and it being a situation -- a bad
 11:25 2 situation for the children, okay. You got Jeff; he was
 11:25 3 into drugs. You got Misty; she's a prostitute. But you
 11:25 4 also got Shane that has a wife and two boys and makes a
 11:25 5 well good living and done quite well. But he was killed
 11:25 6 in an automobile accident about a year or so ago.
 11:25 7 Q. Oh, boy.
 11:25 8 A. So you've -- I'm also a product of an alcoholic
 11:25 9 father and a drug-addicted mother. I am not an
 11:25 10 alcoholic. I don't do drugs and neither do my sisters.
 11:25 11 And me and my sister are both married to sons that come
 11:25 12 from alcoholic fathers, very physically and mentally
 11:25 13 abused. Neither one of them are alcoholic or abusive.
 11:25 14 So, no, I will not agree with circumstances and how you
 11:25 15 are raised, if that's what you are referring to.
 11:26 16 Q. Well, I was going to get into that. How did
 11:26 17 you raise your boys?
 11:26 18 A. To be self-sufficient. That, because they were
 11:26 19 men, they could still wash dishes. They could wash
 11:26 20 clothes. They could learn how to clean a house. And
 11:26 21 every son I have knows how to cook. As a matter of
 11:26 22 fact, the one that has four children bakes better than I
 11:26 23 do.
 11:26 24 Q. Wow.
 11:26 25 A. To make their own decisions and stand by the

11:26 1 result of those decisions, is how I was raised.
 11:26 2 Q. Your husband's name is Ernest, right?
 11:26 3 A. Yes.
 11:26 4 Q. So you were -- and you have been married, what,
 11:26 5 how many years?
 11:26 6 A. 35 years.
 11:26 7 Q. 35 years. So your kids grew up in a two-parent
 11:26 8 home?
 11:26 9 A. Yes.
 11:26 10 Q. You taught them respect and taught them good
 11:26 11 values?
 11:26 12 A. As far as my knowledge, yes.
 11:26 13 Q. And you -- I got to believe you and Ernest
 11:27 14 didn't use drugs around them?
 11:27 15 A. No.
 11:27 16 Q. Didn't drink to excess around them?
 11:27 17 A. (Moving head from side to side.)
 11:27 18 Q. You kind of raised those kids by example?
 11:27 19 A. Yes.
 11:27 20 Q. When you think about it. Why was that
 11:27 21 important that you do that?
 11:27 22 A. Because I didn't want my children raised like I
 11:27 23 was raised, and he didn't want his children to be raised
 11:27 24 like he was raised. So you can take a bad raising as an
 11:27 25 example of what not to do to your families.

11:27 1 Q. Because, although some kids can, as you said,
11:27 2 you were maybe not raised in the best of homes, but you
11:27 3 turned out pretty good, right?

11:27 4 A. Yes.

11:27 5 Q. Do you recognize that some kids can turn out
11:27 6 maybe not so great because of the home they were raised
11:28 7 in?

11:28 8 A. That's still a choice. You make your choice.

11:28 9 Q. I know, I know. But how we make our choices in
11:28 10 life can often depend on how we were raised and how we
11:28 11 observe the day-to-day choice-making of our parents
11:28 12 though, right?

11:28 13 A. I can't believe any human being, unless they
11:28 14 are mentally off, does not know the difference between
11:28 15 right and wrong.

11:28 16 Q. I agree. I agree.

11:28 17 A. And although my father was an alcoholic, he was
11:28 18 not abusive, but I seen that it was wrong. I seen what
11:28 19 it did to me, and I seen what it did to my mother and my
11:28 20 sister, and I chose not to go that way. Now, if I
11:28 21 wanted to --

11:28 22 Q. What did it do to your sister?

11:28 23 A. She's a very capable lady. When her husband
11:28 24 was in the Desert Storm, she took over -- he was
11:29 25 reserves. He was a lieutenant in the reserves. She

11:29 1 took it over. She distributed the money. She found the
11:29 2 money, the clothing, food, Pampers, money for the ladies
11:29 3 that their husbands were gone. We are a very
11:29 4 strong-willed, capable women.

11:29 5 Q. That's good.

11:29 6 A. Not a credit to my mother or my father. Other
11:29 7 than they -- maybe their weaknesses and character made
11:29 8 us even stronger. We depended on each other, and we
11:29 9 stood by each other, and we survived.

11:29 10 Q. In that special issue, the last one, the one
11:29 11 that's on top up there. Of course, if we -- if you get
11:29 12 to that special issue, if the jury is going to consider
11:29 13 that special issue, we know certain things have already
11:29 14 taken place. And don't get me wrong, we're -- we're
11:30 15 obviously pleading not guilty, and our hope is that the
11:30 16 jury never gets that far.

11:30 17 A. Yes. I can understand.

11:30 18 Q. But because it's a capital murder case, I have
11:30 19 to talk about these things now. I can't tell about them
11:30 20 later in the trial. The Judge won't let me, so I got to
11:30 21 talk about them now. If the jury found somebody guilty
11:30 22 beyond a reasonable doubt of capital murder, okay, then
11:30 23 we move into the punishment phase where we have these
11:30 24 two questions.

11:30 25 That first question on the floor, the

11:30 1 State has to prove to you beyond a reasonable doubt that
11:30 2 there's a probability of future dangerousness. Okay?

11:30 3 A.

11:30 4
11:30 5 Yes, definitely.

11:30 6 Q. Then if the jury says no, then a life sentence
11:30 7 is going to take place. The trial is essentially over,
11:30 8 and the defendant would be committed to the Huntsville
11:30 9 and serve a life sentence. If the jury says yes, that
11:31 10 we find beyond a reasonable doubt that there is a
11:31 11 probability of criminal acts of violence constituting a
11:31 12 continuing threat to society--the jury says yes--then
11:31 13 there's that top question.

11:31 14 And that special issue on top up there,
11:31 15 that is what we call either the mitigation question.
11:31 16 Some folks call it the humanitarian question. That
11:31 17 question ultimately decides what the jury thinks is the
11:31 18 right thing to do in that case.

11:31 19 A. Uh-huh.

11:31 20 Q. Life or death. Okay? Now, so logically, our
11:31 21 laws contemplate that, even if a person has been found
11:31 22 guilty of capital murder and even if they are likely to
11:32 23 be a danger in the future, that we don't have to kill
11:32 24 them. There can be a life sentence, even if they've
11:32 25 been found guilty, even if they are likely to be a

11:32 1 danger in the future. What do you think about that?

11:32 2 A. That would depend on, I guess, the
11:32 3 circumstances, evidence or the majority of what the
11:32 4 jurors thought.

11:32 5 Q. Right. Do you agree with that philosophically?
11:32 6 I mean, just your own personal feelings that, if I found
11:32 7 somebody, say, committed -- killed two people, and I
11:32 8 found that they were going to be dangerous again in the
11:32 9 future, what do you think about the possibility of being
11:32 10 able to vote a life sentence in a case like that?

11:33 11 A. Wouldn't that be putting the men in prison?

11:33 12 Q. Uh-huh.

11:33 13 A. It would put them at a disadvantage, especially
11:33 14 for those like Jeff who was in there for 18 months. I
11:33 15 would be putting Jeff's life in danger by letting him go
11:33 16 with a life sentence. Is that what you are saying?

11:33 17 Q. No. But I can see how maybe I've confused you.
11:33 18 Because I don't think my question was very good in
11:33 19 retrospect. If you are sitting as a juror in a case,
11:33 20 and you found somebody guilty of a capital murder.

11:33 21 A. Uh-huh.

11:33 22 Q. Let's say, this gives you an example, you found
11:33 23 that this person killed two people. Okay? And you have
11:33 24 found by the first question that they are likely to be a
11:33 25 future danger. Okay? And then even though you found

11:34 1 those two things, you may have the option not to give
11:34 2 the death penalty; to give a life sentence. And I'm
11:34 3 just curious; what do you think about that, being able
11:34 4 to have that option?

11:34 5 You think that's a good thing or do you
11:34 6 think, if you've already found somebody guilty of
11:34 7 capital murder and are likely to be a future danger,
11:34 8 that a life shouldn't be an option?

11:34 9 A. I don't think life should be an option.

11:34 10 Q. Say again?

11:34 11 A. I don't think life -- life should be an option
11:34 12 if -- if he proves to be a danger to the other inmates.
11:34 13 I would vote for the death penalty.

11:34 14 Q. Okay.

11:34 15 A. If that's what you are asking.

11:34 16 Q. Yeah, yeah. That's what I am. And I thought I
11:34 17 heard something earlier that I haven't come around to
11:34 18 that because, obviously, if somebody is in the
11:34 19 penitentiary, they are in there with other people.

11:35 20 A. Yes.

11:35 21 Q. We don't have penitentiaries built for one
11:35 22 person.

11:35 23 A. That's right.

11:35 24 Q. And I think that's consistent with your
11:35 25 testimony regarding -- I mean, we talk about things,

11:35 1 circumstances of the offense. Character, background,
11:35 2 personal moral culpability. Those things are not
11:35 3 important to you.

11:35 4 A. His background, how he was raised that would
11:35 5 make him do all this, no. I don't go for that.

11:35 6 Q. Okay.

11:35 7 A. Now, offenses and stuff that he has done
11:35 8 through his life shows me what kind of character of a
11:35 9 person he is. Yes, that would make a difference.

11:35 10 Q. So you would -- you would be interested in
11:35 11 prior criminal history?

11:35 12 A. Uh-huh.

11:35 13 Q. Okay? But the rest of the things --

11:36 14 A. Would be meaningless to me of how he was raised
11:36 15 or what the situation was.

11:36 16 Q. So as far as mitigation, the concept of
11:36 17 mitigation. And many people have, you know, some of the
11:36 18 things you've mentioned are often mentioned. Character,
11:36 19 background, maybe how he was raised, drug use, how his
11:36 20 parents raised him, all that kind of thing.

11:36 21 As you sit there right now, you know that
11:36 22 those things are not important, and you are not going to
11:36 23 consider them because, if you found that they committed
11:36 24 a capital murder, and you found they are going to be a
11:36 25 future threat to society, you would vote the death

11:36 1 penalty. Period.

11:36 2 A. That's right.

11:36 3 Q. Okay. Okay. Tell me why again. Tell me why
11:36 4 all those other things, those mitigation areas are -- I
11:37 5 think you said are meaningless to you. Tell me why they
11:37 6 are meaningless.

11:37 7 A. Like I say, if you are talking about the
11:37 8 situation he was raised in, the parents that he was
11:37 9 raised by, has caused him to do this? No. I don't buy
11:37 10 that. That's a cop-out. That's an excuse.

11:37 11 Q. What about drugs?

11:37 12 A. You take them or you don't. And if you take
11:37 13 them, you know what it's going to do. I mean, there's
11:37 14 enough help groups that doesn't cost anything to go to.
11:37 15 There is people there to help you, aid you, any means
11:37 16 possible. And if nobody is forcing you to put it down,
11:37 17 nobody forced my father to drink. He drank because he
11:37 18 wanted to.

11:37 19 Q. So if somebody were to put forth a -- as far as
11:37 20 mitigation, maybe drug history or drug use or things
11:37 21 like that, you looked at it as more of a cop-out. You
11:38 22 are not going to consider any type of mitigation
11:38 23 evidence because it's a cop-out?

11:38 24 A. No, I'm not. I get drunk, so I go down here
11:38 25 and shoot somebody and rob somebody. Or I take drugs,

11:38 1 and I go down here. Hey, nobody told me to -- forced me
11:38 2 to drink it. Nobody forced me to take the drugs. And
11:38 3 I've got enough on TV and around and has been for years
11:38 4 to see what drugs does to people -- what drugs do to
11:38 5 people. I mean, I'm not ignorant of what drugs do to
11:38 6 you. So, no, it's a cop-out. You can't plead innocent
11:38 7 or ignorant of what drugs will cause you to do.

11:38 8 Q. Okay. Okay. Ms. Poplin, any questions for me?

11:38 9 A. Nope.

11:38 10 Q. Okay.

11:38 11 MR. GOELLER: Thank you, ma'am. I'll
11:38 12 submit and pass.

11:38 13 THE COURT: Ms. Falco?

11:38 14 MS. FALCO: Yes, sir.

11:38 15 VOIR DIRE EXAMINATION

11:38 16 BY MS. FALCO:

11:38 17 Q. Just briefly, Ms. Poplin. We kind of went
11:39 18 through these questions earlier. And to be a qualified
11:39 19 juror you have to be able to fairly go through these
11:39 20 questions without having a predetermined way you want it
11:39 21 to come out. If you decide, I want this guy to have the
11:39 22 death penalty, I'm going to answer the questions in such
11:39 23 a way that makes that happen.

11:39 24 Or the other way: I don't want this guy
11:39 25 to get life. I'm not going to answer the questions in

11:39 1 such a way. That would make you disqualified. So to be
 11:39 2 qualified you have to be able to take each question,
 11:39 3 step-by-step, analyze it based on the evidence and
 11:39 4 fairly answer it based on the evidence.

11:39 5 And when we get to that first question,
 11:39 6 regarding future dangerousness, and just as we talked
 11:39 7 about, they are not automatically dangerous just because
 11:39 8 you found them guilty of capital murder, there's also --
 11:39 9 the legislature has also envisioned circumstances where
 11:39 10 you could find someone guilty of capital murder. You
 11:39 11 could find that they are a future danger, yet there
 11:39 12 might be something sufficiently mitigating to warrant a
 11:39 13 life sentence.

11:39 14 And we know that they envisioned those
 11:39 15 situations because that's why you've got that mitigation
 11:39 16 question. And so you have to take it one step further.
 11:40 17 You can't stop at that first question and say, I find
 11:40 18 him a future danger; therefore, a death sentence should
 11:40 19 result because you still have to go one more question.

11:40 20 A. Yes.

11:40 21 Q. And there could be all kinds of situations.
 11:40 22 Actually, the case that got us this mitigation question
 11:40 23 was a guy named Penry. And I don't know if you've ever
 11:40 24 heard of Penry, or do you follow football at all, or
 11:40 25 does your husband follow football?

11:40 1 A. No.

11:40 2 Q. Well, it was actually one of the Washington
 11:40 3 Redskins' former kicker, Mark Mosley. It was his sister
 11:40 4 that was murdered. And Penry was the defendant, and he
 11:40 5 actually was a service repair guy that had gone to the
 11:40 6 house to repair something, and he came back later to
 11:40 7 rape and kill the victim.

11:40 8 But during his trial, he brought up
 11:40 9 evidence that he was mentally retarded. And there was
 11:40 10 some evidence; maybe he was borderline, maybe not. But
 11:40 11 the Court thought that the jury ought to have a question
 11:40 12 that addresses his mental retardation.

11:40 13 And that's the reason we got that
 11:40 14 mitigation question because you could still find he was
 11:41 15 guilty of capital murder. You could still find he was a
 11:41 16 future danger, but maybe that mental retardation is
 11:41 17 sufficient mitigation to warrant a life sentence.

11:41 18 There may be other situations, getting
 11:41 19 back to our parent whose child is killed and it's the
 11:41 20 two killers. And let's assume the two killers leave the
 11:41 21 courtroom and the parent at that point in time doesn't
 11:41 22 have an opportunity to kill them both, but he knows
 11:41 23 where they live. And so he goes and he breaks into one
 11:41 24 of them's house, and he kills one of them.

11:41 25 Well, that's capital murder because it's

11:41 1 burglary in the course -- or it's murder in the course
 11:41 2 of burglary. And he gets caught, and he gets arrested.
 11:41 3 And the jury might find him guilty and say, well, he's a
 11:41 4 future danger because there's still that other guy out
 11:41 5 there that we know he wants to kill. But then you get
 11:41 6 to the mitigation question, and you look at his personal
 11:41 7 moral culpability. And that's kind of defined as his
 11:41 8 responsibility or maybe, what were the reasons that he
 11:41 9 did it?

11:41 10 A. Yeah.

11:41 11 Q. You might find, well, he had a really good
 11:41 12 reason. And he doesn't deserve to die because that is
 11:42 13 sufficiently mitigating that he should only get a life
 11:42 14 sentence.

11:42 15 A. Uh-huh.

11:42 16 Q. Or you may have the situation where a person
 11:42 17 comes home, and they find their spouse in bed with
 11:42 18 somebody else, and they kill them both. That would be
 11:42 19 capital murder because it's two people. And so you
 11:42 20 might find, well, he's guilty of capital murder. Guilty
 11:42 21 as a future danger because I guess there was a
 11:42 22 probability they could get married again and the
 11:42 23 situation happen again, and he respond the same way.

11:42 24 But you get to the mitigation question,
 11:42 25 and you think, well, but if you look at the reason why

11:42 1 they did it -- it was heat of the passion. It wasn't
 11:42 2 premeditated, and it wasn't planned. That's
 11:42 3 sufficiently mitigating to warrant a life sentence.

11:42 4 So, obviously, the legislature has
 11:42 5 envisioned scenarios where the jury could find him
 11:42 6 guilty of capital murder. Could find that they were a
 11:42 7 future danger, but you still have to take one more look
 11:42 8 at all the evidence and decide: Is there sufficient
 11:42 9 mitigating evidence before you decide life or death? Do
 11:42 10 you understand that?

11:42 11 A. Yes.

11:43 12 Q. And if you were -- and I kind of took you
 11:43 13 through this earlier. If you found the defendant guilty
 11:43 14 and you found he was a future danger, the law
 11:43 15 requires--if you answer that question yes--the law
 11:43 16 requires you are to go one more step before you decide
 11:43 17 whether there's a death sentence or a life sentence.
 11:43 18 And that step is that mitigation question.

11:43 19 A. Yeah.

11:43 20 Q. And if the law required you, not at that point
 11:43 21 to decide: he needs to die or he needs a death sentence,
 11:43 22 but to wait; look at this mitigation question. Take all
 11:43 23 the evidence into consideration, and you can give it
 11:43 24 whatever weight you want to give it.

11:43 25 A. Yeah.

11:43 1 Q. But look, you know, look at the reasons for the
11:43 2 killing, look at everything and then decide: Is there
11:43 3 sufficient mitigating evidence? And at that point if
11:43 4 you decide no, then the death sentence results.

11:43 5 A. Yes, uh-huh.

11:43 6 Q. Could you do that?

11:43 7 A. Yes. If there was enough mitigating evidence,
11:44 8 yes.

11:44 9 Q. Okay.

11:44 10 A. Then I could.

11:44 11 Q. What that means though, you can't just stop at
11:44 12 that future dangerousness question. After that future
11:44 13 dangerousness question, you can't just decide that
11:44 14 person deserves death, and that's the way I'm going to
11:44 15 answer that question.

11:44 16 A. You have to take that into consideration. Yes,
11:44 17 I understand that.

11:44 18 Q. And so, if you find somebody guilty of capital
11:44 19 murder and you find that they are a future
11:44 20 dangerousness, can you follow the law? And the law
11:44 21 says, when you get to that mitigation question, you
11:44 22 don't just answer it based on what you want to happen.

11:44 23 A. Uh-huh.

11:44 24 Q. You just want him to die, so you answer it no.
11:44 25 You have to fairly consider that question and fairly

11:44 1 answer it based on all the evidence, and then answer it
11:44 2 yes or no.

11:44 3 A. Yes.

11:44 4 Q. And could you follow the law and do that?

11:44 5 A. Yes.

11:44 6 Q. Okay. And so when you were talking to
11:44 7 Mr. Goeller about, well, if I found he was a future
11:44 8 danger, and I found he was guilty of capital murder,
11:44 9 that's it. I'm going to give him the death sentence.
11:45 10 You understand it's got to go one more step than that?

11:45 11 A. Oh, yeah. I would have to review all the
11:45 12 evidence. Yes, I'm aware of that.

11:45 13 Q. And if you were instructed that you'd have to
11:45 14 answer that mitigation question without a preconceived
11:45 15 notion of which way you want it to go, you could do
11:45 16 that?

11:45 17 A. Yes.

11:45 18 Q. And you could -- and could you imagine a
11:45 19 scenario where you found someone guilty of capital
11:45 20 murder, and you found that they were a future danger.
11:45 21 And get to this mitigation question. Is it possible if
11:45 22 there were sufficient mitigating circumstances, you
11:45 23 could answer that question yes, resulting in a life
11:45 24 sentence?

11:45 25 A. Yes, there is, depending on the evidence.

11:45 1 Q. So even though you found him guilty of capital
11:45 2 murder and you found they were a future danger, there
11:45 3 are situations. You would be willing to listen to the
11:45 4 evidence. And if it was sufficient mitigating
11:45 5 circumstances, you can answer that question yes?

11:45 6 A. Yes, uh-huh.

11:46 7 Q. And so you are not just going to decide, well,
11:46 8 I want this defendant to get the death sentence, so I'm
11:46 9 going to answer that bottom future danger question yes
11:46 10 and this question no just so he'll get the death
11:46 11 sentence. You are not going to predetermine how you
11:46 12 want the result to be, so answer the questions
11:46 13 accordingly?

11:46 14 A. I will take anything into consideration, but
11:46 15 not being raised in a bad situation. To me that doesn't
11:46 16 mean anything to me. I'm sorry.

11:46 17 Q. Okay. And that's fine. You can give whatever
11:46 18 weight you want to to the evidence. But anything other
11:46 19 than, if you are talking about anything other than
11:46 20 background, you would be open-minded?

11:46 21 A. Yes.

11:46 22 Q. And you'd listen to whatever reason there might
11:46 23 be, whatever -- something about their character and
11:46 24 you'd listen?

11:46 25 A. Yes.

11:46 1 Q. And see if that was sufficiently mitigating?

11:46 2 A. Yes.

11:47 3 Q. And you would weigh all that and decide all
11:47 4 that before you answered that last question?

11:47 5 A. Yes. You have to take everything into
11:47 6 consideration. You are talking about a man's life, yes.

11:47 7 MS. FALCO: Thank you, Ms. Poplin. Pass
11:47 8 this juror.

11:47 9 MR. GOELLER: Just very briefly, Judge.

11:47 10 VOIR DIRE EXAMINATION

11:47 11 BY MR. GOELLER:

11:47 12 Q. Ms. Poplin, I think I understand you. When
11:47 13 we're talking about the possibility of life, you had
11:47 14 mentioned that, if you found they were dangerous, they
11:47 15 are going to be a future danger, you mentioned, you
11:47 16 wouldn't want them in the penitentiary because they
11:47 17 could be around people like your friend, Jeff Smith?

11:47 18 A. Yes.

11:47 19 Q. And that's why you told me you would vote the
11:47 20 death sentence, if you found that they were dangerous?

11:47 21 A. Well, through the evidence. You have to take
11:47 22 that into consideration, too. What is going to be
11:47 23 shown, produced, you got to weigh it all.

11:47 24 Q. You bet. And I think you told Ms. Falco what's
11:48 25 important to you is prior criminal history?

11:48 1 A. Uh-huh.
 11:48 2 Q. And you could consider all the evidence, but
 11:48 3 you would not consider character and background because,
 11:48 4 well, I think you told Ms. Falco that again. That's a
 11:48 5 cop-out, and that's one place you won't go.

11:48 6 A. No.

11:48 7 Q. You are not going to consider character and
 11:48 8 background, but all the other things you would.

11:48 9 MS. FALCO: Your Honor, I am going to
 11:48 10 object to any confusion there might be between
 11:48 11 considering and giving it weight. If she doesn't want
 11:48 12 to give it any weight, she's free to do so as long as
 11:48 13 she's able to consider it and just decides not to give
 11:48 14 it any weight.

11:48 15 THE COURT: Overruled.

11:48 16 Q. (BY MR. GOELLER) You've been very clear that
 11:48 17 you will not consider character and background?

11:48 18 A. No.

11:48 19 Q. No. No, you will not consider?

11:48 20 A. I will not consider it at all.

11:48 21 Q. And that's your bottom line? That's the truth
 11:48 22 under oath, and you are telling this Judge --

11:48 23 A. That's it.

11:48 24 Q. You could look at everything else, but you will
 11:49 25 not consider character and background?

11:49 1 A. No.

11:49 2 MR. GOELLER: Okay. Thank you, ma'am,
 11:49 3 very much. And I either pass or I'm ready in a sub rosa
 11:49 4 argument.

VOIR DIRE EXAMINATION

11:49 6 BY MS. FALCO:

11:49 7 Q. Just briefly, Ms. Poplin. With regard to that
 11:49 8 question, basically, all you really said to this point
 11:49 9 is, if they had a bad upbringing, you wouldn't consider
 11:49 10 that?

11:49 11 A. No.

11:49 12 Q. But when we're talking about considering -- let
 11:49 13 me tell you, there's a difference between considering
 11:49 14 it -- considering it meaning listening to it, putting it
 11:49 15 on the scales and either giving it a lot of weight,
 11:49 16 middle weight, no weight. That's -- considering is
 11:49 17 listening to it and deciding what weight to give it.
 11:49 18 And you can listen to it and decide: I'm not going to
 11:49 19 give it any weight, and you are still --

11:49 20 MR. GOELLER: Objection. Are you done? I
 11:49 21 object to that question. Now she's attempting to
 11:49 22 qualify her on a specific fact situation. Asking her
 11:49 23 how she would vote on specific evidence, and that is
 11:49 24 improper.

11:49 25 THE COURT: Overruled. Go ahead.

11:50 1 Q. (BY MS. FALCO) So I'm just trying to explain
 11:50 2 to you the difference between considering and giving
 11:50 3 weight to. I mean, what I'm asking you is: Can you be
 11:50 4 open-minded to listening to evidence of defendant's
 11:50 5 character, and it could be good character? It could be
 11:50 6 bad character, and listening to background. It could be
 11:50 7 good background. It could be bad background. Can you
 11:50 8 listen to that evidence? Can you decide to give it
 11:50 9 whatever weight you want to give it after you've
 11:50 10 listened to it, or are you going to shut your ears and
 11:50 11 say, I don't want to hear it.

11:50 12 A. As far as home life or what he was raised up
 11:50 13 in, as far as I am concerned, there's no weight. No
 11:50 14 weight. I will not consider it, no.

11:50 15 Q. What if it's a flip situation? You've got
 11:50 16 somebody who was in the military and became a war hero.
 11:50 17 Saved lots of lives, whether it was in World War II,
 11:50 18 Vietnam War. You understand there could be good
 11:50 19 mitigating evidence regarding character and background.
 11:50 20 You are specifically saying, just if there's a bad
 11:50 21 background?

11:51 22 A. Yeah. And if he's going to use an excuse,
 11:51 23 well, I did this because of my father did this or my
 11:51 24 mother did this or the way I was raised. To me, that
 11:51 25 means nothing. I wouldn't consider it.

11:51 1 Q. But what about the flip side? What about if
 11:51 2 they want to bring you evidence that that person is a
 11:51 3 war hero and saved lots of lives or was a doctor and
 11:51 4 saved lots of lives or was a paramedic or a firefighter
 11:51 5 and spent their whole life saving people's lives? Are
 11:51 6 you telling this Court you are just not going to listen
 11:51 7 to it at all?

11:51 8 MR. GOELLER: Judge --

11:51 9 VENIREPERSON: Well, no.

11:51 10 MR. GOELLER: Just a second, Ms. Poplin.
 11:51 11 Again, it's specific evidence in which she's attempting
 11:51 12 to get the juror to commit. The war hero, the doctor;
 11:51 13 that is highly improper, Judge. I object to that.

11:51 14 THE COURT: Overruled. Do you remember
 11:51 15 the question?

11:51 16 Q. (BY MS. FALCO) I guess, let me phrase it this
 11:51 17 way, Ms. Poplin. When we're talking about background --

11:51 18 A. Are you talking about --

11:51 19 Q. -- we're not limiting you just to a bad
 11:51 20 background.

11:51 21 A. You are saying that you have a good character
 11:52 22 background and you have a bad. Okay. I understand what
 11:52 23 you are saying. Okay.

11:52 24 Q. So regardless --

11:52 25 MR. GOELLER: Wait. I don't think she is

11:52 1 done with her answer.
 11:52 2 A. You know, I understand what you are saying.
 11:52 3 You have a good character, a good moral person, and
 11:52 4 you've got a bad, immoral. Yes, I can take that into
 11:52 5 consideration. But if it's going to be an excuse that I
 11:52 6 was raised this way, that's the reason I am -- that's
 11:52 7 the reason I did this, I mean, it, to me it is an
 11:52 8 excuse, and it is a cop-out, and I won't consider that,
 11:52 9 no. Not the way I'm raised. It's the reason that's why
 11:52 10 I am.

11:52 11 Q. But you are not going to just turn your ear off
 11:52 12 to what might be good character or good background?

11:52 13 A. Good or bad about him, I mean, if he has other
 11:52 14 offenses or, you know, personal people that know him.

11:52 15 Q. You would --

11:52 16 A. Yes, I will consider that. It's just not, you
 11:52 17 know, I did this because of my situation, huh-uh.

11:53 18 Q. But you would keep an open mind to evidence
 11:53 19 regarding a defendant's character and background. It's
 11:53 20 just that if you hear something about a bad background
 11:53 21 as an excuse, you are not going to give that any weight.
 11:53 22 But if you hear other evidence, you might give that
 11:53 23 weight, whether somebody is talking about knowing them
 11:53 24 or him being a doctor or a war hero, you are going to
 11:53 25 listen to that?

11:53 1 A. Yeah. It would give me an idea of what type of
 11:53 2 person he is, yes.

11:53 3 Q. And you would consider evidence regarding what
 11:53 4 type of person?

11:53 5 A. Oh, yes. That gives me an insight into the
 11:53 6 man. See, I don't know him. It would give me an
 11:53 7 insight into other people who do know him.

11:53 8 Q. And you would listen to all this?

11:53 9 A. Oh, yes.

11:53 10 MS. FALCO: Pass this juror.

11:53 11 THE COURT: Anything else, Mr. Goeller?

11:53 12 MR. GOELLER: Just one question.

11:53 13 VOIR DIRE EXAMINATION

11:53 14 BY MR. GOELLER:

11:53 15 Q. Ms. Poplin, I don't mean to keep ping-ponging
 11:53 16 you here, but when I went up to the board and I asked
 11:53 17 you, you would consider all that, except character and
 11:54 18 background, you were very certain. You told me no.

11:54 19 A. Well, defendant's character and background, I
 11:54 20 thought you were talking about raised situation --

11:54 21 Q. Might be.

11:54 22 A. -- through the family.

11:54 23 Q. Might be -- might be character and background.
 11:54 24 I'm not talking about specific prior criminal history.
 11:54 25 Okay? I'm talking about character and background. And

11:54 1 you were very specific when you told me you would not
 11:54 2 consider that type of evidence. Were you telling me the
 11:54 3 truth then?

11:54 4 A. I don't know how to make you understand. Okay.
 11:54 5 Let's say I lived with a woman who was very high
 11:54 6 tempered. Okay? Since she was my mother, I break
 11:54 7 things, and I hit people, and I'm violent because that's
 11:54 8 how I was raised. I won't accept that, no.

11:54 9 Q. Okay. All right.

11:54 10 A. That's what I'm saying. Now, character of
 11:54 11 whether he has a people of witnessing what type of
 11:55 12 person he is.

11:55 13 Q. Okay.

11:55 14 A. Yes. I will accept to let me know what kind of
 11:55 15 person he is because, like I say, I don't know the man.

11:55 16 Q. Right.

11:55 17 A. But to fall back on what you call background,
 11:55 18 and if it's, you know, how I was raised, is this is why
 11:55 19 I do this because of how I was raised or however, you
 11:55 20 know, everything that was in the past, that's the reason
 11:55 21 I am what I mean today. No, I won't accept that.

11:55 22 Q. Okay. Thank you, ma'am.

11:55 23 MR. GOELLER: That's all I have, Judge.

11:55 24 THE COURT: Let me ask you something off
 11:55 25 this issue: Have you ever read Danielle Steele's other

11:55 1 stuff?

11:55 2 VENIREPERSON: Other stuff? No, I
 11:55 3 haven't.

11:55 4 THE COURT: The other novels? Did you?

11:55 5 VENIREPERSON: Oh, I have read. I'm
 11:55 6 trying remember. I read so many. Let's see, I can't
 11:56 7 remember the last one I read of Danielle Steele. I can
 11:56 8 tell you what the story was of *Mr. Perfect*. And what
 11:56 9 was the other one? It was about ghosts anyway. It was
 11:56 10 about a ghost.

11:56 11 THE COURT: Did you know she writes under
 11:56 12 other names?

11:56 13 VENIREPERSON: She does? I didn't know
 11:56 14 that. What does she write under?

11:56 15 THE COURT: I can't remember the other
 11:56 16 names, but --

11:56 17 VENIREPERSON: I am bad about that. Not
 11:56 18 being able to remember the names of the books I read.

11:56 19 THE COURT: Well, maybe you can recognize
 11:56 20 the style. See, my wife used to read a lot of Danielle
 11:56 21 Steele. And she would tell me, this is -- this is
 11:56 22 another -- another book that she's written. So she's
 11:56 23 using this name. So, interesting stuff.

11:56 24 VENIREPERSON: Yeah.

11:56 25 THE COURT: I tell you what, let me ask

11:56 1 you to step down for a few minutes.
 11:56 2 VENIREPERSON: Can I go to the bathroom?
 11:56 3 THE COURT: Yes. In fact, Billy will lock
 11:56 4 you in there for a minute.
 11:56 5 (Venireperson Poplin not present.)
 11:57 6 THE COURT: All right. What says the
 11:57 7 State?
 11:57 8 MS. FALCO: Ms. Poplin, this juror is
 11:57 9 acceptable to the State, Your Honor.
 11:57 10 MR. GOELLER: Your Honor, comes now Ivan
 11:57 11 Cantu, and respectfully challenges Juror Poplin, No. 88,
 11:57 12 for cause. I'd cite to the Court, *Maldonado v. State*.
 11:57 13 This juror has made it clear that she will not consider
 11:57 14 character and background.
 11:57 15 Maldonado stands for the proposition the
 11:57 16 juror must be willing to consider character and
 11:57 17 background evidence, and she clearly is not. I went up
 11:57 18 to the board, which is special issue No. 3. I
 11:57 19 specifically carved out character and background. She
 11:57 20 said, "I will consider everything except that."
 11:57 21 Now, Ms. Falco, in her attempt to
 11:57 22 rehabilitate, well, he's a doctor and a war hero, and
 11:58 23 that's it. I again asked her character and background.
 11:58 24 She will not consider that. She has a bias against that
 11:58 25 phase of the law in violation of *Maldonado v. State*.

11:58 1 She used the word *cop-out* and *excuse* at
 11:58 2 least a half a dozen times. My client doesn't have a
 11:58 3 fair shot at that special issue, Judge, with this juror.
 11:58 4 Not saying there's anything wrong with her. I think
 11:58 5 she's kind of a delightful lady, actually. But when it
 11:58 6 comes to character and background, Maldonado says, the
 11:58 7 juror has to be able to consider it. The overall -- she
 11:58 8 specifically said, "No, I will not," on three occasions.
 11:58 9 And then when Ms. Falco, again in her
 11:58 10 attempts to rehabilitate, finally the juror comes back
 11:58 11 that she wants to know prior criminal history. This
 11:58 12 woman is concerned with prior criminal history. And I
 11:58 13 think the bottom line here, Judge, is maybe it's because
 11:58 14 she's had some personal involvement with this Jeff Smith
 11:59 15 fellow that has been to the penitentiary.
 11:59 16 I think the seminal statement from her on
 11:59 17 life or death, she told the Court: If he's dangerous,
 11:59 18 I'm not putting him in the penitentiary where my Jeff
 11:59 19 Smith could be. I don't want him walking around in
 11:59 20 there. That's why I would vote for death.
 11:59 21 So I think she very superficially
 11:59 22 understands and maybe gave us lip service in her own
 11:59 23 nice way to special issue No. 3. When you take that
 11:59 24 altogether, once she finds there's a future danger, it's
 11:59 25 over, and she is not going to consider mitigation.

11:59 1 Finally -- so those are my first two
 11:59 2 grounds. And my third ground would be, again, she's a
 11:59 3 Perillo juror, Judge. She vacillates. I couldn't have
 11:59 4 been more clear with her under oath. No, I will not
 11:59 5 consider character and background. And then she will
 11:59 6 waffle a little bit on an attempted rehabilitation, but
 11:59 7 she comes right back to it. She is not going to
 12:00 8 consider that. So she's a Maldonado-cause juror, and
 12:00 9 I'd submit her. Thank you, Judge.
 12:00 10 THE COURT: All right. The Court will
 12:00 11 deny the challenge for cause. Is it your plan to strike
 12:00 12 her?
 12:00 13 MR. GOELLER: Can I have a minute?
 12:00 14 THE COURT: Take your time.
 12:01 15 (Counsel conferring.)
 12:07 16 MR. GOELLER: Judge, we're going to accept
 12:07 17 her. We'd like to accept her with her in here, if
 12:07 18 that's okay.
 12:07 19 THE COURT: That would be fine. Let's ask
 12:07 20 Ms. Poplin to step in. I'm going to have to use my
 12:07 21 whiteout. So...
 12:08 22 (Venireperson Poplin present.)
 12:08 23 THE COURT: Yes. Please be seated
 12:08 24 Ms. Poplin. All right. What says the State?
 12:08 25 MS. FALCO: This juror is acceptable to

12:08 1 the State.
 12:08 2 THE COURT: What says the defendant?
 12:08 3 MR. GOELLER: And Ms. Poplin is acceptable
 12:08 4 to the defendant, Your Honor.
 12:08 5 THE COURT: Ms. Poplin, you are going to
 12:08 6 serve on this jury.
 12:08 7 VENIREPERSON: All right.
 12:08 8 THE COURT: You've been the 10th juror
 12:08 9 that has been chosen. So I'm assuming it won't be too
 12:08 10 long, maybe a week or two before we call you back to
 12:08 11 actually serve.
 12:08 12 VENIREPERSON: How far in advance do you
 12:08 13 notify?
 12:08 14 THE COURT: Well, that's a good question.
 12:08 15 I tell you what I think. I think it will probably be in
 12:08 16 a week.
 12:08 17 VENIREPERSON: That will be good because
 12:08 18 they are going to have to find drivers and baby-sitters.
 12:09 19 THE COURT: There are a few things I'm
 12:09 20 going to tell you, too, especially since you are such a
 12:09 21 prolific reader. I want to ask you not to read -- if
 12:09 22 there is anything, there probably won't be anything in
 12:09 23 the media. But if there is, don't read about it. If
 12:09 24 there is anything on TV, don't look at it. Or on the
 12:09 25 radio, don't listen to it. And also don't discuss any

12:09 1 of the possibilities here with anybody.
 12:09 2 VENIREPERSON: Okay.
 12:09 3 THE COURT: Because when you come here for
 12:09 4 jury service, we want you to come up with a clean slate.
 12:09 5 You know, clean mind, clean heart, clean slate, right?
 12:09 6 And is there anything else that anybody would like me to
 12:09 7 tell her?

12:09 8 MS. FALCO: No, Your Honor.

12:09 9 MR. GOELLER: No.

12:09 10 THE COURT: All right. Then thank you for
 12:09 11 your service.

12:09 12 VENIREPERSON: Thank you.

12:09 13 THE COURT: Maybe we'll see you maybe in a
 12:09 14 week or two or three.

12:09 15 VENIREPERSON: Thank you.

12:09 16 (Venireperson Poplin not present.)

12:09 17 THE COURT: Say, let me get a recap. Not
 12:09 18 only is it the end of the week, but it's also the bottom
 12:09 19 of my page. Here's what I've got. I've got, we've
 12:09 20 chosen 10 jurors. The defense has taken 11 strikes.

12:10 21 The State has taken 6. Does everybody agree with that?

12:10 22 MS. FALCO: Yes.

12:10 23 THE COURT: Even the defense?

12:10 24 MR. HIGH: Yes.

12:10 25 MR. GOELLER: I don't, but --

12:10 1 THE COURT: Then there's a dissent over
 12:10 2 there. We'll see you at 8:45 on Monday, the 17th.

3 (Court adjourned.)

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REPORTER'S CERTIFICATE

1 THE STATE OF TEXAS

2 COUNTY OF COLLIN

3 I, Barbara L. Tokuz, CSR, RMR, CRR, Deputy Official
 4 Court Reporter in and for the 380th Judicial District
 5 Court of Collin County, State of Texas, do hereby
 6 certify that the above and foregoing contains a true and
 7 correct transcription of all portions of evidence and
 8 other proceedings requested in writing by counsel for
 9 the parties to be included in this volume of the
 10 Reporter's Record, in the above-styled and -numbered
 11 cause, all of which occurred in open court or in
 12 chambers and were reported by me.

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

16 WITNESS MY OFFICIAL HAND this the 11th day of
 17 February, 2002.

18
19
20 

21 Barbara L. Tokuz, CSR #4615, RMR, CRR
 22 Deputy Official Court Reporter
 23 Expiration Date: 12/31/2002
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