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

VOLUME 22 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 17th 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.

*Handwritten:* 2001-09-17

*Stamp:* 2001-09-17

*Stamp:* 2001-09-17

*Signature:* [Handwritten Signature]

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6 IVAN ABNER CANTU ) 380TH JUDICIAL DISTRICT

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1 APPEARANCES 2

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1 PROCEEDINGS:

2 (Open court, defendant present.)

3 THE COURT: All right. We're on the
4 record in Cause No. 380-80047-01. State of Texas versus
5 Ivan Abner Cantu. Do you have some agreements, or do
6 you want to call somebody first?

7 MR. GOELLER: I think we have some
8 agreements, Your Honor.

9 THE COURT: All right.

10 MR. GOELLER: Juror No. 95, Susan James;
11 Juror No. 100, Charlene Herbert; and Juror No. 97, Nora
12 Davidoff. We've reached an agreement to strike those
13 jurors.

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

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And I suppose from the State?

18 MR. SCHULTZ: Yes, sir.

19 THE COURT: All right. Did you say Abner
20 or Herbert?

21 MR. GOELLER: Herbert. I was using the
22 Cajun pronunciation.

23 THE COURT: 95, Susan James; 97, Nora
24 Davidoff; and 100, Herbert, are stricken by agreement.
25 And let's ask Patricia Hogan to come in.

09:10 1 THE BAILIFF: Yes, Your Honor.  
 09:10 2 (Venireperson Hogan present.)  
 09:11 3 THE COURT: Are you Patricia Hogan?  
 09:11 4 VENIREPERSON: I am. Just putting things  
 09:11 5 down.  
 09:11 6 THE COURT: Patricia Hogan?  
 09:11 7 VENIREPERSON: I am.  
 09:11 8 THE COURT: Do you recall that it's been  
 09:11 9 close to a month now?  
 09:11 10 VENIREPERSON: Uh-huh.  
 09:11 11 THE COURT: That I had all 200 jurors  
 09:11 12 assembled. I swore everyone in. Do you recall that?  
 09:11 13 VENIREPERSON: I do.  
 09:11 14 THE COURT: And do you recall the oath was  
 09:11 15 to tell the truth was referring to the questions that  
 09:11 16 were propounded by either side in this case?  
 09:11 17 VENIREPERSON: Yes.  
 09:11 18 THE COURT: All right. You are still  
 09:11 19 subject to that oath. I appreciate you coming in.  
 09:11 20 Please have a seat here.  
 09:11 21 VENIREPERSON: Thank you. Good morning.  
 09:11 22 THE COURT: Mr. Schultz?  
 09:11 23 VOIR DIRE EXAMINATION  
 09:11 24 BY MR. SCHULTZ:  
 09:11 25 Q. Good morning, ma'am. My name is Bill Schultz.

09:11 1 I'm one of the assistant district attorneys that's been  
 09:11 2 assigned to represent the State of Texas in its capital  
 09:11 3 prosecution of the defendant Ivan Cantu.  
 09:11 4 Earlier you would have met, during the  
 09:12 5 general voir dire, one of my co-counsel, Ms. Gail Falco,  
 09:12 6 the lady to my left. And then moving further toward the  
 09:12 7 end of our table is Ms. Jami Lowry.  
 09:12 8 A. Hi.  
 09:12 9 Q. We will be the three prosecutors primarily  
 09:12 10 working with the jury in this prosecution. There could  
 09:12 11 be situations where another prosecutor would come in for  
 09:12 12 some specialized purpose. I don't know that this will  
 09:12 13 be the kind of case, but sometimes there are either  
 09:12 14 special forms of evidence that are very technical in a  
 09:12 15 scientific way.  
 09:12 16 A. Uh-huh.  
 09:12 17 Q. Or sometimes there are witnesses who are  
 09:12 18 particularly complex. And I'm thinking, maybe I'm  
 09:12 19 thinking of little children. Sometimes there are little  
 09:12 20 children that might be fact witnesses to something. And  
 09:12 21 there are prosecutors that are more specialized at  
 09:12 22 working and communicating with little children, and so  
 09:12 23 those are the situations, but I deem it unlikely in this  
 09:12 24 case. And I would expect we'll be the prosecutors that  
 09:12 25 you'll be dealing with.

09:12 1 At the defense table, first of all, is the  
 09:12 2 defendant in this case, Mr. Ivan Cantu.  
 09:12 3 A. Good morning.  
 09:13 4 Q. Moving further to your right is the defense  
 09:13 5 attorney from Plano, Texas, Mr. Don High. And the lead  
 09:13 6 attorney in this case at the far end of the table is  
 09:13 7 Mr. Matt Goeller, are both very fine private  
 09:13 8 practitioners of law who work primarily in Plano, Texas,  
 09:13 9 but travel to all parts of our state on important  
 09:13 10 business.  
 09:13 11 I believe you don't know any of us  
 09:13 12 personally and to the best of your recollection have  
 09:13 13 never had any dealings with us. And I guess that means  
 09:13 14 if you had had dealings with us, it would be so casual  
 09:13 15 you wouldn't even remember it. Would that be fair?  
 09:13 16 A. That would be true.  
 09:13 17 Q. And you can refresh my memory because it's been  
 09:13 18 a while since I've read your questionnaire. Have you  
 09:13 19 ever had any prior jury service?  
 09:13 20 A. No, I have not.  
 09:13 21 Q. Have you ever been called for jury service, but  
 09:13 22 for one reason or another not been selected?  
 09:13 23 A. At one time, yes.  
 09:13 24 Q. Could you tell me about that.  
 09:13 25 A. Oh, it was about, I believe, two, two and a

09:13 1 half years or so ago. We were living in upstate New  
 09:14 2 York. The best of my recollection, it was a malpractice  
 09:14 3 suit of some sort in which huge damages could be  
 09:14 4 awarded. And I was uncomfortable in doing that so I was  
 09:14 5 dismissed.  
 09:14 6 Q. Why were you uncomfortable with awarding huge  
 09:14 7 damages?  
 09:14 8 A. Because I believe that pain and suffering, it's  
 09:14 9 hard to quantify and -- and put a dollar amount on pain  
 09:14 10 and suffering. And I did not feel that some of the  
 09:14 11 questions coming from the -- the attorneys that were  
 09:14 12 there were appropriately phrased so that I would feel  
 09:14 13 comfortable in issuing a large settlement.  
 09:14 14 Q. Okay. As a concept -- only because you brought  
 09:14 15 it up, and I certainly won't dwell on it -- as a  
 09:14 16 concept, do you think it's fair that if people are  
 09:15 17 negligent and cause enormous physical pain and suffering  
 09:15 18 on somebody that there be compensation for that?  
 09:15 19 A. I do agree with that.  
 09:15 20 Q. If you are riding on the bus, and the bus  
 09:15 21 driver is careless and you, for example, end up a  
 09:15 22 paraplegic, not only will your future medical expenses,  
 09:15 23 just the care that you will need and the therapy and  
 09:15 24 fighting infections and all the kinds of things that  
 09:15 25 always happen. Not only is that important, but don't

09:15 1 you think a person's quality of life is worth lots of  
09:15 2 money, if it's taken away by somebody else's  
09:15 3 carelessness?

09:15 4 A. To a certain extent, I agree. But to my  
09:15 5 recollection for the previous case, I felt the amount  
09:15 6 was hugely disparate for what would accommodate those  
09:15 7 circumstances.

09:15 8 Q. Some people are cynical of lawyers, especially  
09:15 9 on the plaintiff's bar and think that they probably tend  
09:15 10 to inflate damages a lot of times for monetary reasons?

09:16 11 A. Uh-huh.

09:16 12 Q. And I'm not even joking about that. I think  
09:16 13 it's a fair criticism of some lawyers. I don't think  
09:16 14 it's fair of all. It's the occasional extremist that  
09:16 15 causes problems for everybody a lot of times.

09:16 16 A. Uh-huh.

09:16 17 Q. At any rate, as you know, this is a capital  
09:16 18 murder case. And you were probably surprised when you  
09:16 19 came up here. I don't know what you expected, but I  
09:16 20 would be willing to bet you didn't expect a death  
09:16 21 penalty case?

09:16 22 A. That would be very true.

09:16 23 Q. How did you find out first? Was it what the  
09:16 24 Judge told you, or was it when you started filling out  
09:16 25 the questionnaire?

09:16 1 A. Actually, I believe that the Judge, earlier on,  
09:16 2 said that it was going to be a capital murder case  
09:16 3 without going into any specifics.

09:16 4 Q. Okay. And I've got to believe, just like every  
09:16 5 other person out of that 200, it must have affected you,  
09:16 6 not shocking necessarily. But it certainly, I mean,  
09:16 7 we're no longer talking about shoplifting or something  
09:16 8 like that. You understood that?

09:16 9 A. Indeed.

09:16 10 Q. Now, I don't have a large understanding of New  
09:17 11 York criminal law. Probably a big part of it is what  
09:17 12 I've seen on television because that tends to be an  
09:17 13 interesting venue for a lot of TV crime shows or TV  
09:17 14 prosecution shows. But I've also kept up, to some  
09:17 15 extent, with some of the New York activity in the death  
09:17 16 penalty. And New York does have a death penalty for  
09:17 17 certain types of special circumstance cases now; is that  
09:17 18 true?

09:17 19 A. I'm not familiar with that, to be honest with  
09:17 20 you.

09:17 21 Q. Okay. Well, then we won't talk about that.  
09:17 22 Needless to say, it is done very rarely in the State of  
09:17 23 New York, and that might be why you wouldn't know about  
09:17 24 it. It is not like it's an everyday occurrence like it  
09:17 25 is here in Texas or Louisiana or Florida or some other

09:17 1 state that does a lot of it.

09:17 2 I noticed on your questionnaire, when  
09:17 3 given that attitudinal question of which best represents  
09:17 4 your feelings on the death penalty, it was not an  
09:17 5 understanding of the law, but, what are your thoughts on  
09:18 6 it? It looks like you initially started to circle the  
09:18 7 No. 3 answer which would -- it's been a while ago. Do  
09:18 8 you want me to show you what I'm looking at?

09:18 9 A. Yes, please. That would be helpful.

09:18 10 MR. SCHULTZ: May I approach?

09:18 11 THE COURT: Yes.

09:18 12 VENIREPERSON: Okay.

09:18 13 Q. (BY MR. SCHULTZ) You know what they always say  
09:18 14 about taking tests and everything? They say the first  
09:18 15 answer is usually the more accurate one. But there  
09:18 16 aren't any right or wrong answers. This is not a test.  
09:18 17 It is an opportunity literally for the lawyers to get to  
09:18 18 know you in almost a folksy sort of way.

09:18 19 A. Uh-huh.

09:18 20 Q. And what I do, and everybody is different, but  
09:18 21 I imagine the defense would be somewhat similar. I try  
09:18 22 to understand you and just kind of see how you think,  
09:18 23 how you respond. What seems to be your passions and  
09:18 24 interests and those sorts of things. And then I decide:  
09:18 25 Is this person likely to see the evidence that I think

09:19 1 we're going to present in a way that I've used favorable  
09:19 2 to the State?

09:19 3 A. Uh-huh.

09:19 4 Q. Not unfairly because nobody wants unfair  
09:19 5 results from a juror, but there are all kinds of  
09:19 6 varieties of fair. The thing that makes us different is  
09:19 7 the people might make us different in how we go about  
09:19 8 fairly evaluating the evidence. And that's -- there's  
09:19 9 no magic to it. It's just straightforward stuff.

09:19 10 I guess I could ask it again because I  
09:19 11 know you've got some time to think about it. And I've  
09:19 12 got to believe that over the last few weeks, while not  
09:19 13 dwelling on it, you really have thought about it. You  
09:19 14 probably heard on the radio about some death penalty  
09:19 15 case going on or something like that or somebody being  
09:19 16 charged with capital murder. We all have our moments  
09:19 17 when we think about things like the safety of society.

09:20 18 We think about things like how free we can  
09:20 19 be in a society if we have people doing things that  
09:20 20 endanger us, those kinds of concepts. And I'm curious:  
09:20 21 If I were to ask you that question right now -- and I'm  
09:20 22 going to -- do you favor having capital punishment as an  
09:20 23 option in our society, what's your answer?

09:20 24 A. You are correct in that I have done some  
09:20 25 reflective thinking on it, where before it was kind of

09:20 1 an abstract belief. Now, when potentially I could be  
 09:20 2 instrumental in choosing the death penalty for someone,  
 09:20 3 my belief now is I believe that -- that I could fairly  
 09:20 4 listen to the evidence, base my decision on what the law  
 09:20 5 is, but a little bit of my heart would -- would be  
 09:20 6 involved in the thought process as well. I am not sure  
 09:20 7 that I could totally just decide something on the merits  
 09:21 8 of the case.

09:21 9 Q. Well, I'm not sure that that's -- I'm not sure  
 09:21 10 what you are saying is inconsistent. I'm going to tell  
 09:21 11 you straight off: I don't know what you think about  
 09:21 12 prosecutors in general or what your view is of -- of our  
 09:21 13 role, but I would -- I would expect -- I would hope for  
 09:21 14 12 people that they don't leave their hearts somewhere  
 09:21 15 down the street when they come in to decide.

09:21 16 I think when we talk about these  
 09:21 17 questions, I don't see how you answer those questions  
 09:21 18 like a machine anyway. I don't know why there would be  
 09:21 19 any reason why people wouldn't use their hearts in  
 09:21 20 having to make a decision about answering these  
 09:21 21 questions because this is hurtful stuff.

09:21 22 A. Uh-huh.

09:21 23 Q. It's going to be hurtful on both sides. You  
 09:21 24 will doubtless hear from the families of victims who  
 09:21 25 have lost people they loved and people that deserved to

09:21 1 grow old, in their judgment, and that's going to break  
 09:21 2 your heart.

09:21 3 A. Uh-huh.

09:21 4 Q. You will doubtless hear from families of  
 5 victims who have lost people they love and people that  
 6 deserve to grow old, in their judgment, and that's going  
 7 to break your heart.

8 A. Uh-huh.

9 Q. You will doubtless hear from family members of  
 09:21 10 the defendant who will say things like: He's got good  
 09:21 11 qualities, and he doesn't deserve to die. And I love  
 09:22 12 him, and it's going to break my heart if he dies. You  
 09:22 13 are going to hear stuff like that.

09:22 14 A. Uh-huh.

09:22 15 Q. You are going to look at evidence that's going  
 09:22 16 to break your heart even if the victims didn't have any  
 09:22 17 family and the defendant didn't have a family and nobody  
 09:22 18 had any family. Just what happened. Do you follow what  
 09:22 19 I'm saying?

09:22 20 I don't think this situation obliges you  
 09:22 21 to be cold and heartless at all. And so, I mean, if  
 09:22 22 that's a difference, I mean, so far you haven't said  
 09:22 23 anything that gives me any concern in what you are  
 09:22 24 saying.  
 09:22 25 A. Okay.

09:22 1 Q. And I think you bring up another good point,  
 09:22 2 and that good point is: It's very easy for us to sit  
 09:22 3 around our living rooms and talk about what they ought  
 09:22 4 to be doing. That *they* being somebody else. It's very  
 09:22 5 easy, for example, for us to watch some horrific crime  
 09:22 6 unfold before us on television and then say: Well, they  
 09:22 7 need to catch those people and execute them. That's the  
 09:23 8 only way we can stop these robbers, these serial  
 09:23 9 killers, these child killers, those sorts of things.

09:23 10 And I analogize that a lot of times in the  
 09:23 11 military action because I think it is very easy for us  
 09:23 12 to be in our living rooms saying, especially now knowing  
 09:23 13 that probably the largest air armada ever is getting  
 09:23 14 ready to fly.

09:23 15 A. Uh-huh.

09:23 16 Q. It's easy for us to say what they ought to be  
 09:23 17 doing. They ought to be bombing them. They ought to  
 09:23 18 use nuclear weapons. They ought to use this; they ought  
 09:23 19 to use that. But we are not the *they*. It's those  
 09:23 20 pilots. It's those navigators. It's those infantrymen.  
 09:23 21 Those are the ones that are the *they*. And if we had  
 09:23 22 kids that fit that category, maybe we'd see that real  
 09:23 23 differently.

09:23 24 A. Uh-huh.

09:23 25 Q. We'd have different views on what the *they*

09:23 1 ought to be. So I'm glad to hear that you've said that  
 09:23 2 you have had some real time to think about your views on  
 09:23 3 capital punishment. And I'm not putting words in your  
 09:24 4 mouth. It sounds to me maybe like you are maybe not  
 09:24 5 quite as strong on it now knowing that you are now the  
 09:24 6 *they* as maybe before when you weren't? Am I right about  
 09:24 7 that?

09:24 8 A. I think that would be accurate. That would be  
 09:24 9 accurate.

09:24 10 Q. And I'll bet it is true. I'll bet if you had a  
 09:24 11 son that was a navy pilot, you might view our immediate  
 09:24 12 future perhaps differently than maybe you do now. Do  
 09:24 13 you know what I'm saying?

09:24 14 A. Indeed.

09:24 15 Q. Everything covers it. I mean, you are from New  
 09:24 16 York. Obviously, that might have different implications  
 09:24 17 to you than if you were from Kansas.

09:24 18 A. Uh-huh.

09:24 19 Q. Everybody -- everybody is a product of  
 09:24 20 experience. So let's then talk about it: what would be  
 09:24 21 expected of you. And you say you could fairly answer  
 09:24 22 the questions, and I'm promising you you are free to  
 09:24 23 keep your heart in answering them because I think you  
 09:24 24 will see that the heart fits into these just fine. Why  
 09:25 25 is it that you are in favor of capital punishment?

09:25 1 What's the reason for that?

09:25 2 A. Well, I believe right now that our society is a  
09:25 3 little bit out of control. And perhaps -- where,  
09:25 4 initially, I think I put down on the questionnaire that  
09:25 5 I felt a capital punishment is more of a deterrent. I'm  
09:25 6 not sure that I, in reflecting, that I really feel that  
09:25 7 way now. I'm not sure that as a deterrent it really  
09:25 8 changes things. For people that --

09:25 9 Q. May I stop you just a minute? Because I'm not  
09:25 10 sure what you mean. Are you saying you're not sure that  
09:25 11 it is a deterrent, or you don't think --

09:25 12 A. I don't think it is as high. I don't think as  
09:25 13 a deterrent I would put it as the main reason for  
09:25 14 capital punishment being an option. That's what I mean.

09:25 15 Q. Then what would you put as your main reason for  
09:25 16 being an option?

09:25 17 A. Probably protection of society.

09:25 18 Q. Are those two concepts -- I know they can be  
09:26 19 compatible. But are they -- are they totally different  
09:26 20 in your mind?

09:26 21 A. I don't think they are totally different. I do  
09:26 22 think that they -- that they carry a little bit  
09:26 23 different weight. Each one of them carries a different  
09:26 24 weight.

09:26 25 Q. I understand. When you talk about deterrence,

09:26 1 I am assuming that you are talking about using capital  
09:26 2 punishment as an example to others who might follow that  
09:26 3 path. Is that what we're talking about?

09:26 4 A. Correct.

09:26 5 Q. So I hear some people talking, and it's not  
09:26 6 critical because I guess they are right. They talk  
09:26 7 about deterrence in the sense of deterring this person  
09:26 8 from ever being able to do something again. And that's  
09:26 9 true as far as it goes. But I think most of us think of  
09:26 10 deterrence as an example or warning to others.

09:26 11 A. That possibly this is the eventual outcome for  
09:26 12 these actions.

09:26 13 Q. And I guess what I'm thinking is that, when you  
09:26 14 talk about that type of deterrence, if it works, that's  
09:27 15 a form of protecting society. I mean, if -- if -- if  
09:27 16 executing somebody would really make people not commit  
09:27 17 capital murders, then that would be a way of protecting  
09:27 18 society if that worked, don't you think?

09:27 19 A. Yes.

09:27 20 Q. I'm guessing you figured it doesn't work that  
09:27 21 well for a variety of reasons?

09:27 22 A. I've been doing just a little bit of Internet  
09:27 23 research and so forth, just because it's -- I didn't  
09:27 24 feel that I was as well versed in the understanding of  
09:27 25 capital punishment perhaps as I should be, considering

09:27 1 the potential circumstances here. So I wanted to  
09:27 2 educate myself a little further.

09:27 3 Q. Okay.

09:27 4 A. And I believe many of the articles that I read  
09:27 5 indicated particularly law enforcement. People don't  
09:27 6 feel that, as a deterrent, it's -- it's vastly that  
09:27 7 important.

09:27 8 Q. I mean, I can understand that argument. It  
09:27 9 makes good sense. First of all, it takes forever to  
09:28 10 execute somebody. I'm thinking about committing a  
09:28 11 capital murder. I'm thinking, first, they got to catch  
09:28 12 me; and then they have got to get enough evidence on me  
09:28 13 to get me convicted; and then they've got to convince a  
09:28 14 jury to go in a way that's going to cause my death. And  
09:28 15 I'll appeal for the next 10 or 15 years. It's hard to  
09:28 16 see any real big deterrent effect if I'm looking at  
09:28 17 that.

09:28 18 Another, I guess another way of looking at  
09:28 19 that is that requires a fair amount of thinking on  
09:28 20 people's parts. I mean, it requires kind of long-range  
09:28 21 thinking. It's kind of like you have a credit card.  
09:28 22 You are going to get that bill one day, and we all know.  
09:28 23 And yet sometimes it's awful easy to pass that thing  
09:28 24 over the counter and do what we want. And if people  
09:28 25 could do that kind of thinking, common sense would tell

09:28 1 them they don't need to be doing capital murders anyway,  
09:28 2 even apart if there's a death penalty or not.

09:28 3 A. Uh-huh.

09:28 4 Q. So you think protection of society is what we  
09:28 5 need to be aiming for with capital punishment?

09:29 6 A. I believe so.

09:29 7 Q. It's interesting, Ms. Hogan, because actually,  
09:29 8 as you are going to see in a minute in the questions  
09:29 9 that we ask, seem to hit that right on. We don't have  
09:29 10 any question about "an eye for an eye," directly.

09:29 11 You know that concept of capital  
09:29 12 punishment that many people express, and that is: If  
09:29 13 someone does a horrific crime, they should pay for it  
09:29 14 with their life. If it's a lesser crime, they get a  
09:29 15 lesser punishment, maybe go to prison or maybe go to  
09:29 16 jail. If it's real small, like a first-time shoplifting  
09:29 17 or vandalism or something like that, they probably don't  
09:29 18 even get that. They get probation with restitution  
09:29 19 ordered or something like that.

09:29 20 A. Uh-huh.

09:29 21 Q. And I think the idea in many people's minds--  
09:29 22 I'm not being critical--is this eye-for-an-eye concept.  
09:29 23 You do huge offenses, and you've got to have something  
09:29 24 huge done to you. And that doesn't get its way  
09:29 25 expressed directly in the questions. It sort of gets

09:30 1 expressed in the last question, which is the mitigation  
09:30 2 question, because it invites you to measure the  
09:30 3 sufficiency of the mitigating evidence against the  
09:30 4 circumstances of the crime.

09:30 5 A. Uh-huh.

09:30 6 Q. So in a sense, perhaps the bigger the crime,  
09:30 7 the higher requirement of sufficient mitigating evidence  
09:30 8 to make that a life crime rather than a death crime.  
09:30 9 But the only one that really finds its way into our  
09:30 10 questions that you get directly answering is this one  
09:30 11 here. And go ahead and take a moment to read that. Can  
09:30 12 you see it from your angle okay?

09:30 13 A. Yes, I can.

09:30 14 Q. Go ahead and take a second and read those four  
09:30 15 lines for me. Even though it's not expressed in terms  
09:30 16 of protection of society, do you -- do you see that  
09:30 17 that's what that question is really aimed square on at?

09:30 18 A. I do.

09:30 19 Q. What -- and I'm going to be talking about the  
09:30 20 punishment issues almost exclusively during my portion,  
09:30 21 and perhaps the defense attorneys will also do the same.  
09:30 22 Let me preface these questions with the notion that the  
09:30 23 State knows it has a burden of proof beyond a reasonable  
09:30 24 doubt to prove the defendant's guilty. Because if we  
09:30 25 don't do that, we don't worry about punishment because

09:31 1 the defendant walks out of the courtroom like you or I  
09:31 2 would. And that means several things. It means we have  
09:31 3 to do all the proving because we've done the accusing.

09:31 4 A. Uh-huh.

09:31 5 Q. It means the defendant doesn't have to testify  
09:31 6 because that's his right. And he doesn't have to help  
09:31 7 the State or even participate in anything that the  
09:31 8 State's doing, other than to be here.

09:31 9 A. Uh-huh.

09:31 10 Q. That doesn't mean that, and that also means his  
09:31 11 attorneys don't have any obligation to call any  
09:31 12 witnesses. They don't even have an obligation to  
09:31 13 cross-examine the State's witnesses. They don't have an  
09:31 14 obligation to argue when the Judge says: All right.  
09:31 15 Bring -- produce your final arguments. They don't even  
09:31 16 have to do any of that if they don't want to.

09:31 17 Now, that's silly because I'm sure many of  
09:31 18 those things will occur. But the first part of the  
09:31 19 trial is all on us, and nothing changes until we've  
09:32 20 convinced 12 people he's guilty of capital murder. Are  
09:32 21 you with me?

09:32 22 A. I am.

09:32 23 Q. Then we move into the punishment phase. And  
09:32 24 I'm not trivializing the first part; but this time I  
09:32 25 want to spend with you on the punishment issues,

09:32 1 assuming that you found him guilty. And the burden of  
09:32 2 proof will protect those interests just fine for the  
09:32 3 defendant, I'm sure.

09:32 4 You'll be given, perhaps, additional  
09:32 5 evidence at the second part of the trial. The rules for  
09:32 6 the admissibility of evidence are a little different at  
09:32 7 the guilt-innocence portion than they would be at the  
09:32 8 punishment phase of the trial. Different -- different  
09:32 9 things are admissible at the second stage. So I would  
09:32 10 expect the State will offer additional evidence at the  
09:32 11 second phase.

09:32 12 A. Am I to understand there is two separate trial  
09:32 13 portions that different evidence is allowed at one,  
09:32 14 maybe versus the other one?

09:32 15 Q. Absolutely.

09:32 16 A. Okay. I didn't realize that.

09:33 17 Q. You can use the evidence -- once the evidence  
09:33 18 has been presented to you at the first part of the  
09:33 19 trial, you can use that evidence at the second part of  
09:33 20 the trial. In other words, you don't forget about it  
09:33 21 and start over. What happens at the second part of the  
09:33 22 trial is cumulative of what happened at the first part  
09:33 23 of the trial. Does that make sense to?

09:33 24 A. Uh-huh.

09:33 25 Q. It would be pretty silly if we came up with a

09:33 1 system that, once you decided the defendant's guilty,  
09:33 2 you forget all the evidence of what he did, and now  
09:33 3 let's just move into the punishment phase. That  
09:33 4 wouldn't make any sense because our law actually  
09:33 5 provides that the punishment stage -- that the guilt-  
09:33 6 innocence evidence is so strong, potentially, that if a  
09:33 7 jury wishes to, it may answer that question there yes,  
09:33 8 solely based on the facts of the offense, all by itself.

09:33 9 A. Uh-huh.

09:33 10 Q. You see how that could be? There could be  
09:33 11 circumstances where a crime would be so awful that you  
09:33 12 would say to yourself, anybody that could do that,  
09:33 13 anybody that could engage in that kind of conduct would  
09:33 14 always probably be a continuing threat to our society.  
09:34 15 Do you see how that could be?

09:34 16 A. I see how that could be, yes.

09:34 17 Q. That doesn't mean that you have to because you  
09:34 18 could also look at that evidence and say, that's awful  
09:34 19 conduct. That's terrible conduct. But for whatever  
09:34 20 reason, I don't believe this particular individual is a  
09:34 21 continuing threat to our society, probably. In other  
09:34 22 words, you can go both ways.

09:34 23 Some types of evidence that you might see  
09:34 24 at the second part of the trial are psychiatric  
09:34 25 evidence. If you watched any TV or read any newspapers

09:34 1 about trials, particularly capital trials, it is -- it  
09:34 2 is, if not customary, it is common for one side, and  
09:34 3 usually both sides, to offer psychiatric evidence.

09:34 4 A. Uh-huh.

09:34 5 Q. Perhaps the State gets a psychiatrist that will  
09:34 6 come in and say: I have studied psychiatry for a lot of  
09:34 7 years, and, in my judgment, the defendant is a dangerous  
09:34 8 person. He's always probably going to be a continuing  
09:34 9 threat to our society.

09:34 10 The defense can go get a psychiatrist. "I  
09:34 11 have been studying the same amount of time. I respect  
09:35 12 Dr. So-and-so for the State, but he's mistaken this  
09:35 13 time. I don't believe the defendant is going to be  
09:35 14 dangerous in the future, and here are my reasons."

09:35 15 And do you believe that? That the State  
09:35 16 could get a lot of psychiatrists to say that on behalf  
09:35 17 of their side; and the defense could get a lot of  
09:35 18 psychiatrists to say that on behalf of their side?

09:35 19 A. I do.

09:35 20 Q. And some people say they end up canceling each  
09:35 21 other out. And other people say: I will listen to all  
09:35 22 of it; and one might be more convincing than the other.  
09:35 23 And if that's the case, you know, I'll weigh that. And  
09:35 24 even if one is more convincing than the other, that  
09:35 25 doesn't mean that's going to change my mind about what I

09:35 1 can figure out myself. Do you see yourself as that kind  
09:35 2 of person?

09:35 3 A. I think I would leave myself open to my own  
09:35 4 interpretation.

09:35 5 Q. In other words, you are not going to say, well,  
09:35 6 these psychiatrists, they are being paid to testify to  
09:35 7 what they want, so I am just going to turn a deaf ear to  
09:35 8 them? You wouldn't do that?

09:35 9 A. No, I would not.

09:35 10 Q. Okay. You know, it's funny because there is a  
09:35 11 lot of flexibility in this. Some other jurors say, you  
09:35 12 know, when I look at that question, all it's asking me  
09:36 13 to do is to do something that I am perfectly able to do,  
09:36 14 and that is, make predictions about how people in  
09:36 15 situations are going to end up in the future. That's  
09:36 16 all it's asking me to do.

09:36 17 And some people say, I don't really need a  
09:36 18 psychiatrist to tell me how to answer that question. I  
09:36 19 want to know things like the defendant's history. I  
09:36 20 want to know not only big things about the defendant but  
09:36 21 little things. I mean, not only do I want to know how  
09:36 22 he did a capital murder that I found him guilty of, and  
09:36 23 that's very important, but I want to know other parts  
09:36 24 about him.  
09:36 25 I want to know about opportunities that he

09:36 1 may have had in his life. I want to know about  
09:36 2 disappointments he may have had in his life. I want to  
09:36 3 know, when put in other situations, what's his  
09:36 4 personality like on how he handles those situations  
09:36 5 because those are the things that, as a human being, I  
09:37 6 can figure out about a person. Not the exact, but only  
09:37 7 the probability, but I can do that. Do you see yourself  
09:37 8 as being able to do that, even if you didn't have  
09:37 9 psychiatric?

09:37 10 A. Very definitely.

09:37 11 Q. Let me give you an example of what's helpful to  
09:37 12 me. You probably had a friend that will come to you and  
09:37 13 say, Ms. Hogan -- or call you by your first name, I'm  
09:37 14 sure. I've met a man, and we're going to get married.  
09:37 15 All right? That's common. You hear that all the time.

09:37 16 A. Uh-huh.

09:37 17 Q. And so if it's your friend, you'll say things  
09:37 18 like, "Tell me about him." Right?

09:37 19 A. Uh-huh.

09:37 20 Q. "Well, he's wonderful." "Well, can you be a  
09:37 21 little more specific?" "Well, he's kind. He cares  
09:37 22 about me and listens to me," and all the things that  
09:37 23 everybody thinks in the beginning of a relationship are  
09:37 24 wonderful.

09:37 25 And if you start thinking about it a

09:37 1 little bit more, you are going to know some things about  
09:37 2 your friend. Have you ever known anybody that just  
09:37 3 seems like they keep hooking up with the wrong kind of  
09:37 4 person? They just keep repeating that, almost time  
09:38 5 after time in their lives? Have you ever known anybody  
09:38 6 like that?

09:38 7 A. Indeed.

09:38 8 Q. And I mean, that's a situation. Yeah, you  
09:38 9 don't know this new person, but you've got some --  
09:38 10 you've at least got some history that gives you some  
09:38 11 indication right away, right?

09:38 12 A. Yes.

09:38 13 Q. And then let's say further you say, "Well,  
09:38 14 what's his situation?" "Well, he's very nice." "Has he  
09:38 15 ever been married before?" "Yeah, four times." "Has he  
09:38 16 got any kids?" "Yeah, he's got some kids here and  
09:38 17 there." "Does he ever see them?" "No, he doesn't. He  
09:38 18 says it's his wife's fault. She didn't want him to ever  
09:38 19 see the kids."

09:38 20 And you start hearing all of this, and you  
09:38 21 don't know that person real well. You might meet him.  
09:38 22 And maybe she'll say, I want to go out to dinner or  
09:38 23 something. And you meet this new person, her fiance.  
09:38 24 He seems nice enough. You can't really tell. He's  
09:38 25 wanting to be charming. Why wouldn't you be when you



09:38 1 are meeting somebody's good friend? He's charming, he's  
09:38 2 polite. He's attentive to her, and he says nice things.

09:38 3 Taking all that evidence into account, you  
09:39 4 could see how you would maybe quietly, to your husband,  
09:39 5 or somebody else not involved say, you know, here we go  
09:39 6 again. That's not going to work out. It sounds good.  
09:39 7 It looks good. That's probably not going to ever work  
09:39 8 out. It will be just like all the others. Do you see  
09:39 9 how you could do that?

09:39 10 A. Yes.

09:39 11 Q. And you might be wrong. I mean, let's face it,  
09:39 12 maybe this time it's different. Maybe he's different.  
09:39 13 Maybe she's different. Maybe that love has gotten  
09:39 14 mature, where before it has been immature. Who knows?  
09:39 15 But probably speaking, you just sort of -- you know  
09:39 16 those things, don't you?

09:39 17 A. Uh-huh.

09:39 18 Q. And that's my point. When you look at that  
09:39 19 question, even though this is a criminal case, and you  
09:39 20 are not a lawyer, and you are not a police officer, you  
09:39 21 are not a psychiatrist, that's asking you to do the same  
09:39 22 things we do everyday in our lives. Trying to make some  
09:39 23 prediction on the future, based on whatever evidence is  
09:39 24 presented to us. And you think you could do that?

09:40 25 A. I do.

09:40 1 Q. And here's what's interesting because I guess  
09:40 2 if I were sitting on a jury, I might be saying this to  
09:40 3 myself. Well, what does probability mean? And I would  
09:40 4 say, well, it must mean something that really could  
09:40 5 happen, not theoretical. It must mean something more  
09:40 6 than lightening striking the same place twice because  
09:40 7 even though that theoretically could happen, they say  
09:40 8 that's awfully unlikely that that would ever happen.

09:40 9 When you see that word probability, what  
09:40 10 does that mean to you?

09:40 11 A. More than an even chance of something  
09:40 12 happening. More than a 50-50 chance.

09:40 13 Q. Okay. I mean, it seems to me that that's so.  
09:40 14 Do you attend a church or synagogue at this time?

09:40 15 A. No, I do not.

09:40 16 Q. Okay. Now, let's talk about a party. Someone  
09:40 17 says, "Are you going to go to the neighborhood party on  
09:40 18 Friday night?" And your answer is, "Probably so." To  
09:40 19 most of our ears that means it's more likely than not,  
09:40 20 don't you think --

09:41 21 A. Yes.

09:41 22 Q. -- that you are going to be there? There are  
09:41 23 other ways that you could use probability. The weather  
09:41 24 people use 20 percent probability of showers. That's  
09:41 25 not 50-50. That's only 20 percent. Mathematicians talk

09:41 1 in terms of the probabilities of something happening  
09:41 2 down to many decimal places sometimes.

09:41 3 If I'm flipping a coin, the first thing we  
09:41 4 figure is, it could only be two things. It could only  
09:41 5 be heads or tails?

09:41 6 A. Uh-huh.

09:41 7 Q. But actually there's a very small probability  
09:41 8 that it could be something else. Do you know what that  
09:41 9 is?

09:41 10 A. On its edge, I guess.

09:41 11 Q. Very good. Very good.

09:41 12 A. Thank you.

09:41 13 Q. Yes, real remote. I mean, that thing is  
09:41 14 spinning. It will bounce high. How could it come to  
09:41 15 rest there? But it could happen. Maybe a bunch of  
09:41 16 decimal places. But that's probably not -- that's  
09:41 17 certainly not the kind of probability that that question  
09:41 18 is talking about, the coin ending up on its edge.

09:41 19 A. Uh-huh.

09:41 20 Q. It may be talking about heads or tails. It may  
09:41 21 be talking about two heads out of three. It may be  
09:41 22 talking about one head out of three, which is, I guess,  
09:41 23 the same probability. You see yourself as being able to  
09:42 24 answer that question?

09:42 25 A. I do.

09:42 1 Q. Let me tell you really honestly, there is a  
09:42 2 possibility that people, number one, could be wrong.  
09:42 3 All we're doing is evaluating a personality, talking  
09:42 4 about probabilities. Just like your friend, she may be  
09:42 5 marrying Mr. Wonderful. This may be the right one. But  
09:42 6 all it's asking you to do is talk in terms of  
09:42 7 probabilities.

09:42 8 Do you think that's -- do you think that's  
09:42 9 fair to a defendant that a jury only deals with the  
09:42 10 probability of a future danger? Does it seem okay with  
09:42 11 you?

09:42 12 A. I think that's all you can do because you can't  
09:42 13 read the future.

09:42 14 Q. Here's where I'm going with that question. Do  
09:42 15 you think it's possible for a jury to be absolutely  
09:42 16 correct in its assessment at the time of sentencing a  
09:42 17 defendant from the time of answering those questions?  
09:42 18 And then because we take so long before executions are  
09:42 19 ever carried out that some of these people could, in  
09:43 20 fact, have a metamorphosis in their life, a change in  
09:43 21 their life? Is that possible in your mind?

09:43 22 A. I believe so.

09:43 23 Q. Did you ever hear about that case, that Carla  
09:43 24 Faye Tucker case down in Houston, that first woman that  
09:43 25 was executed?

09:43 1 A. No. I'm not familiar with it.

09:43 2 Q. Real quickly, the story was that she did  
09:43 3 horrible brutal murders. Jury answered that question  
09:43 4 yes, and answered all the other questions in a way that  
09:43 5 caused her a death sentence. She stays on death row for  
09:43 6 a number of years. And then apparently professed a  
09:43 7 profound conversion to Christianity. Involved herself  
09:43 8 in prison ministry, whatever that really would be.

09:43 9 That might only be in terms of assisting  
09:43 10 in worship services or Bible studies or whatever.  
09:43 11 Became a very interesting media darling because she was  
09:43 12 charismatic and had a real pretty smile, and all the  
09:43 13 national media came and did little cameos of her, and a  
09:43 14 lot of slow motion shots of her skipping across the  
09:44 15 floor and things like that.

09:44 16 It became very controversial because she  
09:44 17 requested a pardon from then Governor Bush, now  
09:44 18 President Bush. And he deferred to the Board of Pardons  
09:44 19 and Paroles which rejected her notion, and she was  
09:44 20 executed then. She was -- she was killed sometime last  
09:44 21 year.

09:44 22 If it's true, and if she had that  
09:44 23 conversion and if, as a result of that conversion, she  
09:44 24 wasn't dangerous anymore, and we really only have her  
09:44 25 word for it. That's all we really had. Was it an

09:44 1 injustice to execute her when she had been dangerous,  
09:44 2 but because of passage of time, she wasn't anymore? Is  
09:44 3 that an injustice?

09:44 4 A. No. Because the -- you make a decision based  
09:44 5 on the circumstances at the time. You cannot predict  
09:44 6 what's going to happen in the future. So the majority  
09:44 7 of your -- your understanding of the issue is for what  
09:44 8 happened at that time.

09:45 9 Q. Okay. Makes sense to me. But I hope that's  
09:45 10 just not living room stuff because those are the -- I  
09:45 11 can't imagine how I could be sitting on a jury and not  
09:45 12 at least be thinking that: How do we ever know  
09:45 13 anything?

09:45 14 I could just as easily be going the other  
09:45 15 way and say, well, I don't think this person is probably  
09:45 16 going to be dangerous, and then six months later you  
09:45 17 hear a prison guard gets murdered by them.

09:45 18 A. Uh-huh.

09:45 19 Q. Do you believe that's just what you got to do?  
09:45 20 You got to weigh the evidence and decide right then in  
09:45 21 the trial?

09:45 22 A. I think your choices are limited to the  
09:45 23 knowledge that you have at the time.

09:45 24 Q. And are you comfortable with that being fair in  
09:45 25 this system, to have the juries do the best that they

09:45 1 can do under all of the evidence?

09:45 2 A. Indeed.

09:45 3 Q. It doesn't even have to be a conversion. A  
09:45 4 person can have a stroke. You could have the world's  
09:45 5 most dangerous person. The jury answers that question  
09:45 6 yes. And somewhere down the line he has a -- has a  
09:45 7 massive stroke that paralyzes him from the -- from the  
09:45 8 temples down. I mean, barely can even move his eyes.

09:46 9 Now, all of a sudden that person is not a  
09:46 10 threat to society, not because he doesn't have the heart  
09:46 11 of a threat, but because he doesn't have a body of a  
09:46 12 threat anymore. Does that make sense to you?

09:46 13 A. Yes.

09:46 14 Q. Do you think that's an injustice to go ahead  
09:46 15 with the execution in his case then, even though he used  
09:46 16 to be dangerous, but something happened? Kind of like  
09:46 17 the lady that had the conversion. Something has since  
09:46 18 happened to make him not dangerous anymore.

09:46 19 A. I think you are calling up a much different  
09:46 20 circumstance. You still have to base it on the  
09:46 21 information that you have at the time that you make the  
09:46 22 decision.

09:46 23 Q. Okay. And you are still able to do that, and  
09:46 24 realize we are just identifying a person's personality  
09:46 25 right now? Not -- not what we think they might be

09:46 1 possibly going to be later on about things we don't  
09:46 2 know?

09:46 3 A. Correct.

09:46 4 Q. The next thing in that question is a little bit  
09:46 5 vague, although it's a -- juries don't have any trouble  
09:46 6 with that question. I think the only ones that have  
09:47 7 trouble with that question are lawyers. Juries use that  
09:47 8 every time there is a capital murder case and have been  
09:47 9 for 20 years probably.

09:47 10 Criminal acts of violence. It sounds  
09:47 11 pretty straightforward. Everybody knows some of those  
09:47 12 murders, by stabbing or shooting somebody, attempted  
09:47 13 murders, sexual assaults, severe beatings, even regular  
09:47 14 beatings. All those things, you agree, are acts of  
09:47 15 violence?

09:47 16 A. Yes, I would.

09:47 17 Q. And most people say, you know, when I think of  
09:47 18 an act of violence, I'm really thinking about one person  
09:47 19 hurting another person. That's kind of what most people  
09:47 20 are thinking of when they hear that term "criminal act  
09:47 21 of violence."

09:47 22 And then if you -- if you dig a little  
09:47 23 deeper, and you say, all right. When we talk about  
09:47 24 violence for a minute, what do we really mean? A lot of  
09:47 25 people say, well, it's really force. People choosing to

09:48 1 use force in a way that's harmful to other people.  
 09:48 2 And here's what I mean by that. If -- you  
 09:48 3 know, if you are the kind of person that enjoys working  
 09:48 4 out, you like punching like the heavy bag or something  
 09:48 5 like that. That's what you like to do because it feels  
 09:48 6 good and develops your speed and gets the tension out of  
 09:48 7 your body and those kinds of things. If all you are  
 09:48 8 doing is punching your punching bag hanging in the  
 09:48 9 garage, that's not an act of violence. Would you agree?

09:48 10 It might be aggressive, but the bag  
 09:48 11 doesn't have any feelings apparently. At least we don't  
 09:48 12 think it does.

09:48 13 A. Correct.

09:48 14 Q. Okay. And it's your bag besides, and it's your  
 09:48 15 property. And if you want to do that, that's not -- if  
 09:48 16 violence is using force to the detriment of somebody  
 09:48 17 else, you are not doing that. Do you agree?

09:48 18 A. If you are hitting a punching bag, that's  
 09:48 19 correct.

09:48 20 Q. Okay. And even if you got stuff there, I mean,  
 09:49 21 and I don't know if you are the kind of person that gets  
 09:49 22 mad sometimes and throws stuff. Are you that kind of  
 09:49 23 person, Ms. Hogan?

09:49 24 A. Not at all.

09:49 25 Q. But even if you were, if you get mad and you

09:49 1 start throwing plates at the wall because you are mad or  
 09:49 2 that sort of thing, as long as there is not somebody in  
 09:49 3 the way or you are not trying to hit somebody, it's your  
 09:49 4 plate, right? You can do that. And it might be  
 09:49 5 aggressive. It might be unproductive, but it's not  
 09:49 6 exactly violence because you are not harming anybody.  
 09:49 7 Would you agree with that?

09:49 8 A. If one's definition of violence is against  
 09:49 9 another human being or another living thing, yes. I  
 09:49 10 think that violence -- you can have someone who is  
 09:49 11 violent who may progress to harming an individual that  
 09:49 12 may start out in, you know, doing damage to a mailbox,  
 09:49 13 and then progress further to throwing things against  
 09:49 14 somebody's personal property in their anger. And there  
 09:50 15 could be an increment at which it increases.

09:50 16 Q. Okay. So how about -- how about if I'm mad and  
 09:50 17 I'm -- I'm angry, and so I just go out some night and  
 09:50 18 start knocking down mailboxes? Is that an act of  
 09:50 19 violence in your mind?

09:50 20 A. If my definition of violence is doing something  
 09:50 21 that is harmful to someone else, no. If it's harmful to  
 09:50 22 somebody or somebody's personal property, then yes.

09:50 23 Q. So you see, depending on the circumstances,  
 09:50 24 intentionally doing harm to somebody else's property  
 09:50 25 could be a criminal act of violence on that question,

09:50 1 then?

09:50 2 A. I'm not sure if I would call it a criminal --  
 09:50 3 well, yes, it would be a criminal act.

09:50 4 Q. Because you could call the police and say --

09:50 5 A. Right. Because it's my personal property  
 09:50 6 that's being damaged.

09:50 7 Q. And you bring up a good point because most of  
 09:50 8 us might say that an act of violence on a mailbox is not  
 09:50 9 of the same quality as an act of violence on a person.  
 09:51 10 And maybe of course a mailbox is not as important as a  
 09:51 11 person. Everybody knows that.

09:51 12 A. Correct.

09:51 13 Q. But it may be that all that is is a  
 09:51 14 progression, or it may be that the only reason that it's  
 09:51 15 a mailbox and not a person because there didn't happen  
 09:51 16 to be a person there at that time anyway. That's also a  
 09:51 17 possibility?

09:51 18 A. Uh-huh.

09:51 19 Q. And then there are things that are sort of  
 09:51 20 right in the middle because we know some things that  
 09:51 21 aren't criminal acts of violence: Shoplifting, you go  
 09:51 22 in there and you steal some makeup from the makeup  
 09:51 23 counter because that easily fits in your purse, or you  
 09:51 24 steal some jewelry when you are trying on a ring, or you  
 09:51 25 go steal a baseball from the sporting store, something

09:51 1 that you can conceal, and walk out of the store. It's a  
 09:51 2 crime, stealing, but it's not -- it's not violent in any  
 09:51 3 way. Wouldn't you agree with that?

09:51 4 A. Yes.

09:51 5 Q. Drug dealing becomes complicated because, if we  
 09:52 6 look narrowly at the crime of delivery of narcotics,  
 09:52 7 drug dealing, selling.

09:52 8 A. Uh-huh.

09:52 9 Q. If I give you money, and you give me speed or  
 09:52 10 cocaine, and we both leave and say, "See you next week,"  
 09:52 11 it's hard to find violence directly in that transaction.  
 09:52 12 It's like a business deal. It's like buying a new  
 09:52 13 toaster at the store. It's just -- it's a transaction,  
 09:52 14 but only an illegal transaction. Do you agree?

09:52 15 A. I agree.

09:52 16 Q. And yet, if you stop and look a little bit more  
 09:52 17 closely, it's not so clear. For starters, the drugs  
 09:52 18 that you sell me are going to end up in somebody's body.  
 09:52 19 That's the reason we do that. I mean, it's not an  
 09:52 20 ornament. I'm not going to have it on my mantle for  
 09:52 21 decoration.

09:53 22 I'm either going to use it myself or I'm  
 09:53 23 going to sell it to somebody else and make a little  
 09:53 24 profit off of smaller sales after I got the bigger one  
 09:53 25 from you. And those drugs are going to end up in

09:53 1 somebody's body. And there's no way that those drugs  
09:53 2 are anything but harm to that body. Not only  
09:53 3 physically, but they get the body in trouble because  
09:53 4 they make the body do things aggressively that the body  
09:53 5 might otherwise not be doing.

09:53 6 And, furthermore, that kind of business is  
09:53 7 violent in and of itself. I mean, the fact that you and  
09:53 8 I didn't do the transaction today doesn't mean that  
09:53 9 tomorrow one of us isn't going to pull out a gun and  
09:53 10 start shooting over it because it's a violent kind of  
09:53 11 thing.

09:53 12 A. Uh-huh.

09:53 13 Q. No telling what you and I are going to do if  
09:53 14 the police come up and try to arrest us while we are  
09:53 15 doing this transaction. Maybe we'll both pull out our  
09:53 16 guns and start shooting, and that's dangerous. Maybe I  
09:53 17 take some of those drugs, and I get into my car, and I  
09:54 18 drive dangerously, and I kill some innocent person.

09:54 19 So that's an event that's got violence all  
09:54 20 around it, even if it's not in the exact act itself. Do  
09:54 21 you see what I'm saying about that?

09:54 22 A. Uh-huh.

09:54 23 Q. And what the evidence that could be presented  
09:54 24 in this trial really allows is that you can look at all  
09:54 25 aspects of a defendant's personality. And I think

09:54 1 you've already said that you can see how busting a  
09:54 2 mailbox would help you answer the question of whether he  
09:54 3 would bust somebody's head under some circumstances,  
09:54 4 right?

09:54 5 A. Correct. It's not necessarily a given, though.

09:54 6 Q. Absolutely not. But neither is even busting  
09:54 7 one person's head an indication that you are going to  
09:54 8 bust another person's. I mean, it also depends on the  
09:54 9 whole context of it?

09:54 10 A. Right. All the information presented.

09:54 11 Q. Okay. The idea is that you look at all the  
09:54 12 evidence and make the best determination you can about a  
09:54 13 probability that the person would be a continuing threat  
09:54 14 to society.

09:55 15 Now, we don't know what continuing threat  
09:55 16 means. I mean, we would hope that it doesn't mean that  
09:55 17 you would do it everyday. That a person will everyday  
09:55 18 wake up as, you know, brush your teeth and go have  
09:55 19 breakfast and then go be violent that day. It doesn't  
09:55 20 surely mean that it has to be every single day.

09:55 21 You know, on the other hand, maybe every,  
09:55 22 you know, the chance of it happening every 25 years  
09:55 23 might not be a continuing threat, or it may be.

09:55 24 And pardon this analogy. I like to talk  
09:55 25 in analogies. But some people say it's unfair you

09:55 1 calling the defendant an animal or something, and I'm  
09:55 2 not. But just listen to my question: If I have a  
09:55 3 circus, and part of my circus is big cats, lions,  
09:55 4 tigers, animals like that. And when I'm not doing the  
09:55 5 lion taming or the tiger taming, I've got these animals  
09:55 6 in a cage.

09:55 7 And somebody comes by and says, "Can I pet  
09:56 8 your tiger, Mister?" And I say, "Well, I don't know."  
09:56 9 And they say, "Well, will he bite me?" And the answer  
09:56 10 is, "Well, I have had him 15 years, and he's not bitten  
09:56 11 anybody yet." Does that make that tiger safe to stick  
09:56 12 your hand in there and start petting him, in your mind?

09:56 13 A. I don't think so.

09:56 14 Q. Okay. Even if there are circumstances that  
09:56 15 even if it wasn't happening right now, that tiger could  
09:56 16 still be a threat because the personality, when given  
09:56 17 the right circumstance, might take over in a situation.  
09:56 18 Do you follow what I'm saying?

09:56 19 A. Uh-huh.

09:56 20 Q. Because here's the thing that we grapple with a  
09:56 21 lot of times in my business, and that is the business of  
09:56 22 capital prosecution. Does the fact that a person  
09:56 23 behaves him or herself in jail while in custody and  
09:56 24 doesn't -- doesn't attack guards and stab other inmates,  
09:57 25 and they don't shake him down every night and find a

09:57 1 little homemade knife on him or something like that,  
09:57 2 does the fact that a person behaves well in prison mean  
09:57 3 that he's not a threat to society, simply because he's  
09:57 4 behaving in prison? What do you think?

09:57 5 A. Well, I would think if -- if someone is in  
09:57 6 prison, possibly they are being given instructions to a  
09:57 7 certain extent, kind of toe the line here for a while.  
09:57 8 This is not the time to -- to be aggressive or vent your  
09:57 9 frustrations in being here. So I would suspect that  
09:57 10 that could be a part of it. That doesn't necessarily  
09:57 11 mean, though, that a person is -- that that's the only  
09:57 12 motivation that they have in maintaining that stance.

09:57 13 Q. Absolutely. It could be other things. It  
09:58 14 could be a genuine transformation. Do you agree?

09:58 15 A. Quite possibly. One would hope.

09:58 16 Q. Okay. Okay. It would also be a realization.  
09:58 17 I can do it the easy way or the hard way, but either way  
09:58 18 I'm going to be here. I might as well take care of  
09:58 19 myself.

09:58 20 A. Uh-huh.

09:58 21 Q. Do you think if a person has been in custody  
09:58 22 before a trial that it could also be an explanation that  
09:58 23 they are trying to look good for a jury or a judge?

09:58 24 A. That's possible.

09:58 25 Q. I mean, do you see anybody that doesn't want to

09:58 1 be executed in trying to do whatever might be useful in  
09:58 2 order to be influential in not being executed?

09:58 3 A. Uh-huh.

09:58 4 Q. I guess my question is: You know, we're only  
09:58 5 looking at people at the time. You figure we've got  
09:58 6 many of hundreds of people on death row in Texas now  
09:58 7 awaiting some future execution. And you figure probably  
09:58 8 most of them behave. We don't know, but let's say they  
09:59 9 do. Let's say most of them come in their cells when  
09:59 10 they are told to go in their cells. They come out, and  
09:59 11 they have their one hour of exercise a day. They go  
09:59 12 have their one hour of exercise a day.

09:59 13 And the guard says, okay. Take your  
09:59 14 clothes off because we're going to search you now and  
09:59 15 make sure you don't have knives on you or something, and  
09:59 16 they do that, and just go about your business. Does  
09:59 17 that mean the juries that sent them there are wrong and  
09:59 18 that they are not a danger and a continuing threat to  
09:59 19 society?

09:59 20 A. Not necessarily.

09:59 21 Q. Okay. I mean, and that's kind of why I do that  
09:59 22 tiger thing. I'm not trying to equate any defendant  
09:59 23 with an animal. Do you understand what I'm saying?  
09:59 24 It's the fact that there is a dangerous nature that  
09:59 25 might not take effect. I mean, you might tell that

09:59 1 tiger to go from here to there, and the tiger  
09:59 2 understands the command and goes ahead and does it. He  
09:59 3 wants to be fed, and he figures -- but when given the  
09:59 4 chance, that personality is what we are concerned about.

09:59 5 A. Yes.

09:59 6 Q. Now, when we use the term society, prison is  
10:00 7 certainly a part of our society, wouldn't you agree?

10:00 8 A. Yes.

10:00 9 Q. It may not be a part that you and I want to be  
10:00 10 in, but we've created it. We fund it; we service it.  
10:00 11 It's as much a part of our society as our schools, our  
10:00 12 hospitals, our libraries, our homes. It's just a  
10:00 13 different part of our society.

10:00 14 A. There are various aspects of our society, yes.

10:00 15 Q. Absolutely. That question allows you to test  
10:00 16 the personality of the defendant in all aspects of our  
10:00 17 society. It allows you to -- speculate is probably not  
10:00 18 quite the word we're looking for. It certainly allows  
10:00 19 you to consider how would this person be in prison  
10:00 20 because that's a part of our society.

10:00 21 Is this person going to have a personality  
10:00 22 in prison that, if given an opportunity, would threaten  
10:00 23 other people? You can also consider, how about walking  
10:00 24 down our streets? How about at our shopping malls, at  
10:00 25 our schools, our junk yards, our sporting events, all

10:01 1 those kinds of things? And because if you look at that  
10:01 2 question, what it's asking you to do is to measure the  
10:01 3 personality of the capital murderer that you've  
10:01 4 convicted in terms of his danger. And that can be in  
10:01 5 many different contexts. Are you with me on that?

10:01 6 A. Yes.

10:01 7 Q. And do you feel like you are able to do that as  
10:01 8 well as the next person in our society?

10:01 9 A. I believe so, yes.

10:01 10 Q. If you answer that question yes, and that means  
10:01 11 12 people -- 1, 11 plus yourself have to vote yes on  
10:01 12 that question beyond a reasonable doubt because that's  
10:01 13 up here. Do you find beyond a reasonable doubt there's  
10:01 14 a probability the defendant would commit criminal acts  
10:01 15 of violence?

10:01 16 If you answer that question yes, there's  
10:01 17 another question for you. If you answer that question  
10:01 18 no, Ms. Hogan, do you know what happens? What's the  
10:01 19 result of a no answer?

10:01 20 A. I basically remember something about 10, 10  
10:01 21 jurors or less.

10:02 22 Q. You were listening. Very good. If 10 jurors  
10:02 23 or more --

10:02 24 A. Or more.

10:02 25 Q. -- answer that question no, do you know what

10:02 1 the results of that answer is?

10:02 2 A. I assume it's just rather than the death  
10:02 3 penalty, it's a life in prison.

10:02 4 Q. Automatically, uh-huh. And you and I go home,  
10:02 5 and the defendant goes down to the penitentiary to begin  
10:02 6 serving a life sentence. But if that answer to the  
10:02 7 question is yes beyond a reasonable doubt, we move to  
10:02 8 that second question. If you would, take a moment to  
10:02 9 read that.

10:02 10 A. Okay.

10:02 11 Q. Remember, I told you that I think there is a  
10:02 12 place in the punishment phase for a person's heart to  
10:02 13 use?

10:02 14 A. Uh-huh.

10:02 15 Q. I'm not sure, in the first part, there really  
10:02 16 is because I'm not sure -- I'm not sure that question  
10:02 17 doesn't direct itself at just the defendant's character.  
10:03 18 I'm not -- I mean, it doesn't really say: Does your  
10:03 19 heart want to find that he's dangerous, or does your  
10:03 20 heart want to find that he's not dangerous? It just  
10:03 21 says, is he probably going to be dangerous?

10:03 22 But that second question, it seems to me,  
10:03 23 invites the best of us all. And that is a desire to do  
10:03 24 the right thing in a capital murder case. Not -- not  
10:03 25 the fun thing because there's no fun in any of this. I

10:03 1 don't wake up in the morning thinking how lucky I am  
10:03 2 that I get to do this.

10:03 3 I know you didn't this morning. You  
10:03 4 didn't think, gee, this might be my big day. I might be  
10:03 5 on a jury that might be able to cause someone's death.  
10:03 6 I know you better than that. You didn't want that, and  
10:03 7 I don't either.

10:03 8 A. Correct.

10:03 9 Q. But that question invites us to do the right  
10:03 10 thing and to be comfortable in knowing that we've done  
10:03 11 the right thing. It gives us the option of resolve  
10:03 12 that, no matter what other answers happen, like guilty  
10:04 13 and yes, that we will measure the evidence and really  
10:04 14 ask ourselves: Is what he did and what he is, such that  
10:04 15 it's not right to kill him? Or alternatively, is what  
10:04 16 he did and what he is such that it is right to kill him?  
10:04 17 Do you see how that really is?

10:04 18 A. Yes.

10:04 19 Q. It directs you to go back again. First thing,  
10:04 20 taking into consideration all the evidence. Well,  
10:04 21 that's what you are doing anyway. Every minute of your  
10:04 22 deliberations you are taking into consideration all the  
10:04 23 evidence. How you weigh it is up to you.

10:04 24 You might think some evidence is  
10:04 25 important. And another juror might say, well, that

10:04 1 doesn't sway me. I'm just different. But then it says,  
10:04 2 take the circumstances of the offense; take into account  
10:04 3 the defendant's character. And probably a big part of  
10:04 4 the defendant's character has been answered in that  
10:04 5 first question, if you get right down to it. Are you  
10:05 6 with me on that?

10:05 7 A. Uh-huh. I hear what you are saying, yes.

10:05 8 Q. I mean, those things that it directs you to  
10:05 9 take into consideration may be bad things for the  
10:05 10 defendant. If the circumstances of the crime, the  
10:05 11 circumstances of the offense, I mean, it's not saying,  
10:05 12 look for the good in all of that necessarily.

10:05 13 I mean, if you found him guilty of capital  
10:05 14 murder, that's bad. That's a bad thing that you are  
10:05 15 taking in and probably goes badly against him.

10:05 16 The defendant's character: Well, if he's  
10:05 17 probably going to be a continuing threat to society,  
10:05 18 that -- that's not looking -- that's not a good thing  
10:05 19 for the defendant probably because, if it had been a  
10:05 20 good thing for the defendant, that question might have  
10:05 21 been answered differently. Do you know? Do you  
10:05 22 understand what I'm saying?

10:05 23 A. Uh-huh.

10:05 24 Q. And then it asks you to take into account the  
10:05 25 background. And that's where that may well be -- that's

10:05 1 where that mitigation stuff may find a big part. You  
10:05 2 may find it someplace else, but certainly the background  
10:05 3 of the defendant may produce what we call lessening or  
10:06 4 mitigating or sympathetic-type evidence. Do you agree  
10:06 5 with that?

10:06 6 A. Yes, very definitely.

10:06 7 Q. You know, I don't know. We look at awful,  
10:06 8 awful, awful mass murder, vicious, wanton, callous  
10:06 9 killing of innocent human beings. We see that around us  
10:06 10 all the time in varying degrees. But I always think of  
10:06 11 the largest example of that in modern history, and  
10:06 12 that's Adolf Hitler, and what he did to people.

10:06 13 He took people because of their  
10:06 14 characteristics that he didn't like, and he just  
10:06 15 exterminated them. Turned them into ashes. Turned them  
10:06 16 into vapor. Did awful things. Things that I don't even  
10:06 17 want to talk about what he did with them. And these  
10:06 18 were many times society's weaker folks. These were --  
10:06 19 these were Jewish people that weren't being treated very  
10:06 20 decently in Eastern Europe, even in their own countries,  
10:07 21 even before Hitler moved in.

10:07 22 He did things to Gypsies. He did things  
10:07 23 to homosexuals. He did things to mentally retarded  
10:07 24 people. He did things to insane people. He didn't have  
10:07 25 a lot of Asian or African-Americans to work on, but he

10:07 1 was going to. And all of that because of what they  
10:07 2 were, not what they had done, just because of what they  
10:07 3 were.

10:07 4 And, yet, if you look at Hitler's  
10:07 5 background, if you just looked at that in isolation,  
10:07 6 don't you bet there were a lot of things about his  
10:07 7 growing up that we would say that was probably sad, that  
10:07 8 that could contribute to making him how awful he was?  
10:07 9 Don't you bet?

10:07 10 A. I think you could argue a case, yes, that that  
10:07 11 happened.

10:07 12 Q. I mean, he was sickly. The kids made fun of  
10:07 13 him. He couldn't play soccer. He was -- he was  
10:07 14 artistic, he thought. And then he goes to the art  
10:07 15 museum or the art institutions, and they -- and they  
10:07 16 say, you are not talented, and they kick him out of  
10:08 17 that.

10:08 18 And all of that might be sympathetic if  
10:08 19 you are wondering why Hitler wasn't doing well in  
10:08 20 school. And if you are the teacher sitting around  
10:08 21 saying: Why isn't Adolf doing his homework? That could  
10:08 22 be real sympathetic if you are looking at it in that  
10:08 23 context. Wouldn't you agree with me?

10:08 24 A. Uh-huh.

10:08 25 Q. That doesn't make much difference at all when

10:08 1 you are looking at the context of what he'd done, the  
10:08 2 circumstances of his offense. Don't you agree?

10:08 3 A. Yes.

10:08 4 Q. And the point I'm trying to illustrate to you,  
10:08 5 Ms. Hogan, is really every one of us had bad things in  
10:08 6 our life that haven't gone well, things that we wish it  
10:08 7 would come out differently.

10:08 8 Maybe at critical times in our life some  
10:08 9 loved one let us down. We -- something we really  
10:08 10 wanted, we weren't able to get. Some of us worse than  
10:08 11 others. Some of us have had pretty bad mistreatment  
10:08 12 growing up, all of which could be considered mitigating.  
10:08 13 It lessens it. It takes us a little bit away from the  
10:08 14 killing for the pure fun of it, perhaps. But it  
10:09 15 wouldn't be anywhere near sufficient to -- to nullify an  
10:09 16 otherwise perfectly appropriate death sentence. Does  
10:09 17 that make sense to you?

10:09 18 A. Yes, it does.

10:09 19 Q. Okay. And because that question talks about  
10:09 20 sufficient mitigating evidence, it doesn't say: Is  
10:09 21 there going to be any mitigating evidence? Because I  
10:09 22 promise you there will be. Maybe we put it on. Maybe  
10:09 23 we put on some evidence that we think is 100 percent  
10:09 24 State's evidence. And yet, juries might say, well, gee,  
10:09 25 there's this little thing in there I noticed, that

10:09 1 nobody else did, that's mitigating. It's the idea of  
10:09 2 sufficient mitigating evidence that -- that will  
10:09 3 determine.

10:09 4 And how you weigh these different factors  
10:09 5 is strictly up to you. I suppose the more serious and  
10:09 6 cruel the crime, perhaps some people would say, well,  
10:09 7 that means there better be more mitigating evidence to  
10:09 8 balance that out if anybody strikes me to vote for a  
10:10 9 death sentence. But how you look at all that stuff is  
10:10 10 up to you.

10:10 11 Some things that might be awkward and have  
10:10 12 the potential for you to consider mitigating, I would  
10:10 13 think, are things like coming from a broken home.

10:10 14 A. Uh-huh.

10:10 15 Q. Do you think -- do you think coming from a  
10:10 16 broken home is hard on a child growing up?

10:10 17 A. Yes, I do.

10:10 18 Q. Do you think it affects how a child makes  
10:10 19 choices and how a child has self-esteem, and how a child  
10:10 20 has confidence in him or herself, and all those things  
10:10 21 are affected by being in a broken home?

10:10 22 A. It can, but choice is the operative word,  
10:10 23 though, in my mind.

10:10 24 Q. And once again, if you and I are teachers and  
10:10 25 we're sitting around wondering why Suzy isn't doing her

10:10 1 homework, that could be big stuff in that context, don't  
10:10 2 you think?

10:10 3 A. Indeed.

10:10 4 Q. We'd say -- we'd try to get the parents in and  
10:10 5 say: Can you all try to get along a little better as  
10:10 6 divorced parents because it's hurting your child, and  
10:11 7 we're seeing it as teachers. And that would make sense,  
10:11 8 and our heart might go out to her in that context.  
10:11 9 Don't you agree?

10:11 10 A. Yes.

10:11 11 Q. But that same evidence that could be so  
10:11 12 heart -- heart affecting when we're looking at one type  
10:11 13 of behavior, might be very pale in explaining why Suzy  
10:11 14 killed those two people in cold blood. Do you know what  
10:11 15 I'm saying?

10:11 16 A. Uh-huh.

10:11 17 Q. Well, she came from a broken home, and she  
10:11 18 wasn't having self-esteem. Well, big deal. You know,  
10:11 19 that's all over the world, and people don't do stuff  
10:11 20 like this. Do you follow what I'm saying?

10:11 21 A. I follow.

10:11 22 Q. It depends on what's being done in measuring  
10:11 23 that mitigating evidence. What about drug usage?  
10:11 24 Because you are talking about choices. Do you think  
10:11 25 when people start using illegal drugs, that's a choice?

10:11 1 A. Yes.

10:11 2 Q. But they may be kids who make bad decisions.  
10:12 3 Do you have any teenage children?

10:12 4 A. Our children are 32 and 28; so they are old.

10:12 5 Q. Used to be teenagers?

10:12 6 A. Used to be.

10:12 7 Q. Did you worry about how they were driving at  
10:12 8 night, like maybe in the summertime when they took the  
10:12 9 family car? Did you ever worry about that?

10:12 10 A. I think as a parent, everyone would.

10:12 11 Q. Sure. And yeah, they do because they are  
10:12 12 youthful. You and I know you don't drive crazy because  
10:12 13 it's going to kill you or somebody someday. We all know  
10:12 14 that. Kids sometimes, they sort of know it, but they  
10:12 15 don't think what they know. Do you agree with me on  
10:12 16 that?

10:12 17 A. They think it won't happen to them.

10:12 18 Q. Absolutely. And I'm sure there's probably some  
10:12 19 of that in drugs. Don't you figure all, and kid stuff?  
10:12 20 It's the stuffy, old, middle-aged people that think that  
10:12 21 drugs are bad. And as long as you know what you are  
10:12 22 getting in, and as long as you don't do too much or  
10:12 23 drink a lot of water with it or don't do this or that.  
10:12 24 You know how kids are. They will think that way maybe  
10:12 25 sometimes?

10:12 1 A. Rationalize.  
 10:12 2 Q. Absolutely. Do you think they are responsible  
 10:12 3 for their drug usage, even as teenagers?  
 10:12 4 A. Yes, because of choices.  
 10:12 5 Q. Okay. And you and I both know that, among the  
 10:13 6 other dangers of drugs, is that you can become addicted  
 10:13 7 to them. And once that happens, that addiction could  
 10:13 8 overcome your will. And you are almost -- your ability  
 10:13 9 to do anything in conformity with society. Don't you  
 10:13 10 agree?  
 10:13 11 A. Yes.  
 10:13 12 Q. You can't work. You can't relate to your  
 10:13 13 parents or your friends because you can't work, and  
 10:13 14 drugs are expensive. You got to steal. You got to do  
 10:13 15 this; you got to do that. And it makes you mean because  
 10:13 16 you are taking more and more of them. And you are  
 10:13 17 taking drugs to make you feel bad because the drugs are  
 10:13 18 making you feel sick and so on and so forth.  
 10:13 19 How about when you become addicted to  
 10:13 20 drugs, having started out being warned about drugs?  
 10:13 21 Does that -- is that a choice too, the choice to become  
 10:13 22 addicted?  
 10:13 23 A. I don't think the choice to become addicted is.  
 10:13 24 I think the reality of the addiction is you feel you  
 10:13 25 have no other options. Your -- your ability to make

10:13 1 choices then is skewed.  
 10:13 2 Q. Okay. And everybody in our society of  
 10:14 3 television age, even, probably knows all that because  
 10:14 4 we've been told it on TV. And our parents talk to us  
 10:14 5 hopefully. And even if our parents don't talk to us,  
 10:14 6 the schools do and doctors and everything. Newspapers  
 10:14 7 always talk about drugs and what all happens that's bad,  
 10:14 8 right?  
 10:14 9 A. Yes.  
 10:14 10 Q. If a person becomes an addict, and of course I  
 10:14 11 guess that depends on one's definition, is the addict  
 10:14 12 responsible for crimes that the addict commits while  
 10:14 13 under the influence of those drugs?  
 10:14 14 A. That's a tough question. The addiction is  
 10:14 15 driving the individual and his -- his or her ability to  
 10:14 16 make choices have been compromised by the drugs.  
 10:14 17 However, I believe each of us are responsible for what  
 10:15 18 we -- what decisions we make and whatever the prevailing  
 10:15 19 laws are that govern those decisions.  
 10:15 20 Q. Do you see being an addict, a drug addict, as a  
 10:15 21 mitigating circumstance in trying to evaluate evidence?  
 10:15 22 A. Again, a tough question. My -- my heart tells  
 10:15 23 me that it's -- it may be the drugs that are acting and  
 10:15 24 cut that person some slack. But I'm not sure that --  
 10:15 25 that within the field of law, that I would agree with

10:15 1 that.  
 10:15 2 Q. Okay. Kind of how I approach it--and it's just  
 10:15 3 one person's view on it--I think of mitigating evidence  
 10:15 4 as evidence that lessens. Perhaps it's not so bad in  
 10:16 5 the grand scheme of things. It's less bad because of  
 10:16 6 the mitigating evidence otherwise. Does that make sense  
 10:16 7 to you?  
 10:16 8 A. Yes.  
 10:16 9 Q. I'm thinking to myself. I come home one night,  
 10:16 10 and I see police and ambulances and newspaper  
 10:16 11 photographers and everybody else there at my house. And  
 10:16 12 I go walking up. And I say, "What's going on?" And  
 10:16 13 they say, "We've got some really bad news for you. Your  
 10:16 14 son's just been murdered."  
 10:16 15 I have a 14-year-old kid. And "Your son's  
 10:16 16 just been murdered." And the officer said, "But it's  
 10:16 17 not so bad as you might at first think because he was  
 10:16 18 murdered by a drug addict. And so I know this is not  
 10:16 19 good, and it's not excusing it. But it's not so bad  
 10:16 20 because the guy was a drug addict, and he shot up some  
 10:16 21 speed that night or he had taken cocaine that night.  
 10:16 22 And it made sense to break into your home when you  
 10:17 23 weren't there and murder your son. He maybe wouldn't  
 10:17 24 have done that if he weren't on the drugs. It's not so  
 10:17 25 bad."

10:17 1 Do you think it's not so bad because of  
 10:17 2 that?  
 10:17 3 A. I think, as a parent, you would not be able to  
 10:17 4 accept that rationale at all.  
 10:17 5 Q. You are absolutely right. There's a difference  
 10:17 6 between being involved and being in our living room or  
 10:17 7 even in a jury box when we're not directly involved in  
 10:17 8 it. Is that mitigating in your mind?  
 10:17 9 A. The addiction?  
 10:17 10 Q. Right.  
 10:17 11 A. You are saying as being a reason for the act?  
 10:17 12 Q. Uh-huh.  
 10:17 13 A. Based on the circumstance you just presented,  
 10:17 14 it would -- it would weigh less for me.  
 10:17 15 Q. But I'm not talking about your kids, or I'm not  
 10:17 16 even talking about me. Because, of course, I mean, if I  
 10:17 17 had a gun, I'd go kill him right there. That might be  
 10:17 18 what I would end up doing just because I love my kid. I  
 10:18 19 get emotional. But, I mean, is that -- I know it's  
 10:18 20 possible to be addicted. And a lot of people claim to  
 10:18 21 be addicted, and they are not.  
 10:18 22 A lot of people still take choices, and  
 10:18 23 they will go off it for a while, and they will go back  
 10:18 24 on it. And nobody -- I think people being addicted, I  
 10:18 25 think like people just being crazy and out of their



10:18 1 minds and running around, but there are a lot of people  
 10:18 2 that they don't have any drugs. They don't do them.  
 10:18 3 And then after a while they start wanting them again,  
 10:18 4 and that sort of stuff. So there's all kinds of levels.  
 10:18 5 Is that mitigating? Because that does happen in our  
 10:18 6 society.

10:18 7 There are people who load up on drugs and  
 10:18 8 probably do a crime under the influence of drugs because  
 10:18 9 their mind is all affected that they wouldn't do  
 10:18 10 otherwise. Maybe it makes them paranoid. Maybe they  
 10:18 11 see an enemy where somebody isn't an enemy because of  
 10:18 12 the drugs. Is that mitigating in your mind?

10:18 13 A. No. Again, I guess because of choices, even  
 10:19 14 though you may have an impaired judgment on choices, you  
 10:19 15 still have free will to make decisions. Granted,  
 10:19 16 addiction skews that and maybe to the point where you  
 10:19 17 don't think rationally at all; but it does not give you  
 10:19 18 the right to be able to -- to harm someone else and  
 10:19 19 allow you to get off.

10:19 20 Q. About youth. Some people say that age is a  
 10:19 21 mitigating factor. And, doubtless, you've looked at the  
 10:19 22 defendant. It's perfectly permissible. You can look at  
 10:19 23 him all you want anyway. I guess, compared to me he  
 10:19 24 certainly looks young. I guess compared to somebody in  
 10:19 25 high school or beginning college, he might not look so

10:19 1 young.

10:19 2 But is youth something that's a mitigating  
 10:19 3 circumstance that like, if I come home and they say,  
 10:19 4 it's not so bad because the fellow that killed your son  
 10:19 5 was only 28 years old, for example? It's not as bad as  
 10:19 6 if he were 45. Is that a mitigating factor to you?

10:20 7 A. Not in that circumstance.

10:20 8 Q. About what age do you think that every single  
 10:20 9 human being of average intelligence knows it's wrong to  
 10:20 10 kill? You've raised kids. What do you think?

10:20 11 A. I would hope that they would know early on: 5,  
 10:20 12 6, 7 years old, that killing is wrong.

10:20 13 Q. They might make lesser mistakes. And every kid  
 10:20 14 knows when he starts driving that it's wrong to be  
 10:20 15 driving intoxicated. Some of them do it.

10:20 16 A. Uh-huh.

10:20 17 Q. Every kid knows it's wrong to be racing down  
 10:20 18 the road, but some of them do it. They don't have to be  
 10:20 19 bad to do something like that. Because it's not -- like  
 10:20 20 you are saying, they aren't thinking about it being  
 10:20 21 dangerous. They aren't trying to hurt anybody. They  
 10:20 22 are just being kids. They are being foolish, but they  
 10:20 23 aren't thinking about hurting anybody. That's not their  
 10:20 24 focus at all. Do you agree with me on that?

10:20 25 A. That's not their intent.

10:20 1 Q. I don't get in my car and drive a hundred miles  
 10:20 2 an hour and saying: Boy, sooner or later I'm going to  
 10:20 3 lose control, and I'll kill somebody, and won't that be  
 10:20 4 okay? I figure I got great reflexes. I can drive a  
 10:20 5 hundred miles an hour, and everything will be fine  
 10:21 6 because I'm a kid, right? Don't you think?

10:21 7 A. You are saying, that's the way a kid could  
 10:21 8 think?

10:21 9 Q. Yeah.

10:21 10 A. Possibly.

10:21 11 Q. Yeah. And that's real different action from  
 10:21 12 going and murdering somebody in cold blood. Don't you  
 10:21 13 agree?

10:21 14 A. Yes.

10:21 15 Q. And so you think even like certainly  
 10:21 16 10-year-olds, they all know that you don't go murder  
 10:21 17 people?

10:21 18 A. Yes.

10:21 19 Q. Now, why I asked you the question about church  
 10:21 20 or synagogue was not for any other reason than to  
 10:21 21 explain to you that it is not unusual, especially in a  
 10:21 22 capital murder case, but in almost any big case, for a  
 10:21 23 defendant prior to trial professing a conversion to some  
 10:21 24 type of religion -- it doesn't have to be Christianity.  
 10:21 25 It could be Islam. It could be some -- some meditative

10:21 1 type of organized religion. It could be a lot of  
 10:22 2 different things, but that's not unusual for a lot of  
 10:22 3 reasons.

10:22 4 I mean, first of all, in a jailhouse you  
 10:22 5 have a lot of time on your hands, and you got to do  
 10:22 6 something. Very possibly some people could actually  
 10:22 7 start thinking about life, and the meaning of it and all  
 10:22 8 those sorts of things. So that could be real, and that  
 10:22 9 could be another reason for doing it.

10:22 10 It could be with a desire to influence a  
 10:22 11 jury down the road because, let's face it, all other  
 10:22 12 things being equal and most people would be impressed  
 10:22 13 with a conversion to some type of religious thing. For  
 10:22 14 most of us that's better than -- than not, don't you  
 10:22 15 think?

10:22 16 A. Yes.

10:22 17 Q. I mean, I was raised Christian Protestant. But  
 10:22 18 I mean, if I had some child that had not had any  
 10:22 19 religious interest at all, and she comes home one day  
 10:22 20 and says, I'm interested in Buddhism. It would be hard  
 10:22 21 for me to say that isn't positive even if I don't  
 10:22 22 necessarily agree with that. It's still a positive  
 10:22 23 thing for me, don't you think?

10:23 24 A. Yes.

10:23 25 Q. All right. Is it mitigating that a person

10:23 1 would perhaps demonstrate to a jury that they claim that  
10:23 2 he has become religious? Is that mitigating in your  
10:23 3 mind?

10:23 4 A. I would say probably. Not because I would -- I  
10:23 5 would think that someone who is looking at potentially a  
10:23 6 life sentence or punishment would try to look for  
10:23 7 some -- some understanding of -- of if they should  
10:23 8 happen to be killed, that there would be some life after  
10:23 9 that for them.

10:23 10 Q. Did you ever hear that expression that there  
10:23 11 are no atheists in war? No atheists in fox holes?

10:23 12 A. I have.

10:23 13 Q. Is that kind of like that idea?

10:23 14 A. Same concept.

10:23 15 Q. Now, let's talk a little bit about -- you see  
10:23 16 that we want to look at the defendant's character in  
10:24 17 answering that question. And the jury is directed to  
10:24 18 consider that in the defendant's background. There's  
10:24 19 nothing in there that directly talks about the victim's  
10:24 20 character.

10:24 21 It seems indirectly that might factor into  
10:24 22 the circumstances of the offense, but it really doesn't  
10:24 23 say that. Do you think the victim's character, what  
10:24 24 kind of a person the victim is, is something that might  
10:24 25 be mitigated?

10:24 1 A. Yes.

10:24 2 Q. Tell me how that -- tell me how you see that  
10:24 3 could be mitigating?

10:24 4 A. Well, if someone's life has been taken who had  
10:24 5 three kids and, you know, had just picked up this extra  
10:24 6 job to have more support for his family and gets killed  
10:24 7 in the process of it, that would be more of a tragic  
10:24 8 circumstance that I would weigh into any deliberations.

10:24 9 Q. Okay. So maybe it -- maybe that wouldn't even  
10:25 10 be mitigating. It's almost like, instead of it's not so  
10:25 11 bad, it's even more bad kind of idea?

10:25 12 A. Yes. I'm sorry.

10:25 13 Q. No. That's okay.

10:25 14 A. I misphrased it.

10:25 15 Q. And you bring up a good point because some  
10:25 16 people might see something as mitigating. And somebody  
10:25 17 sitting right next to them on the jury might say: No.  
10:25 18 You are mistaken. That's aggravating.

10:25 19 I mean, I'm thinking, defendant comes in  
10:25 20 and says: I just found out. I never had any love my  
10:25 21 whole life. I never had brothers and sisters. My  
10:25 22 parents hated me. I go to this store, and I was going  
10:25 23 to rob it, and I see this fellow has a picture of his  
10:25 24 wife and three kids kind of hanging on the wall behind  
10:25 25 him, and all that did was make me feel worse about my

10:25 1 miserable growing up existence. And that just triggered  
10:25 2 something in me, and I killed that person because I was  
10:25 3 so resentful that he had what I never had.

10:25 4 And one juror might say: That's real sad.  
10:26 5 That's mitigating. I understand, you poor thing.  
10:26 6 Another juror just like you might say: Well, how is  
10:26 7 that mitigating? He killed somebody he knew was pretty  
10:26 8 darn decent, and he's looking at a picture of some  
10:26 9 people that anybody knows he's hurting those people  
10:26 10 there, too. He's killing a part of them when he kills  
10:26 11 their dad.

10:26 12 A. Uh-huh.

10:26 13 Q. So --

10:26 14 A. So your own personal perspective makes that  
10:26 15 determination for you.

10:26 16 Q. Absolutely, absolutely. I mean, and there may  
10:26 17 be somebody else on the jury that says, all the poor  
10:26 18 drug addicts. He didn't know what he was doing. How  
10:26 19 could I ever kill a drug addict? How could I do that  
10:26 20 because he's sick? It's like killing him because he had  
10:26 21 TB and coughed on somebody or something. How could I do  
10:26 22 that? Are you following what I am saying?

10:26 23 A. Yes, I do.

10:26 24 Q. And you could say, my goodness. Even if he  
10:26 25 didn't have the control to not do drugs when he was an

10:26 1 addict, and I'm not sure about that. You'd say, he's  
10:26 2 the one that made himself that way. You and I didn't  
10:26 3 make himself that way. He chose to engage in conduct  
10:27 4 that had this as an end result?

10:27 5 A. Uh-huh.

10:27 6 Q. So that's up to you. Let's go the other way,  
10:27 7 Ms. Hogan. What if the victim is somebody that all of  
10:27 8 us in society would fairly say, he's not all that  
10:27 9 wonderful, and I'm trying to think of an example. Let's  
10:27 10 say it's Charles Manson.

10:27 11 A. Uh-huh.

10:27 12 Q. Let's say I'm a prison guard out in California,  
10:27 13 and I know all about what Manson did. And I know how  
10:27 14 dangerous he is. And he may be behaving in the pen  
10:27 15 right now to try to get parole, but I know what he is,  
10:27 16 and I know the horror.

10:27 17 So one day I snapped, and I snap. One day  
10:27 18 I just decide, I'm going to put an end to all of this,  
10:27 19 and I go murder him. I'm a prison guard. And I  
10:27 20 murdered Charles Manson in the prison.

10:27 21 Is my crime less because every one of us  
10:27 22 would agree that Manson is a terrible person that maybe  
10:27 23 society is better off without anyway?

10:27 24 A. No. You are killing another human being.

10:28 25 Q. Why can't I come in? And I start explaining

10:28 1 myself, and I say, gosh. I'm tired of seeing the  
10:28 2 families go through all these parole hearings every few  
10:28 3 years when he comes up for parole. And it brings it all  
10:28 4 back to them, and they don't need that.

10:28 5 A. Uh-huh.

10:28 6 Q. And he should have been executed anyway, but  
10:28 7 the Supreme Court, they overturned his death sentence.  
10:28 8 And so now he's doing life out there. And he's awful,  
10:28 9 and I just did it because I thought it was the right  
10:28 10 thing to do. And why is everybody mad at me? Society  
10:28 11 tried to kill him one time. I mean, he needed to be  
10:28 12 killed because he got a death sentence in his original  
10:28 13 trial.

10:28 14 A. Uh-huh.

10:28 15 Q. Why is everybody so mad at me, and why isn't  
10:28 16 that so? Why isn't what I did less than if I had killed  
10:28 17 somebody that we deem is decent in our society?

10:28 18 A. Well, because if you are taking another --  
10:28 19 another human life, you are putting a quality on the  
10:29 20 life one way or the other, your own personal judgment on  
10:29 21 that particular circumstance. And you, depending upon  
10:29 22 how you feel about life in general, I think, you could  
10:29 23 say, taking the life of somebody who is less than  
10:29 24 desirable carries no less or no more weight than  
10:29 25 somebody who was a decent upstanding citizen.

10:29 1 Q. Do you really believe that?

10:29 2 A. I -- in my mind, I do. I think if it comes  
10:29 3 right down to -- to making that determination or being a  
10:29 4 part of the process that makes that determination on my  
10:29 5 own, I might have a more difficult time.

10:29 6 Q. It seems like. Do you know who Jeffrey Dahmer  
10:29 7 was? Do you remember that name?

10:29 8 A. Yes, I do.

10:29 9 Q. I mean, he's the Milwaukee cannibal. Do you  
10:29 10 remember what happened to him?

10:29 11 A. Actually, no, I don't.

10:29 12 Q. Well, they don't have a death penalty in the  
10:30 13 State of Wisconsin. So they tried him and got 50 life  
10:30 14 sentences on him or however many they could get, and  
10:30 15 then he went to prison. And then some prisoner stabbed  
10:30 16 him probably four or five years into his sentence.

10:30 17 And I don't know about you, it's kind  
10:30 18 of -- and I don't know it -- I don't get a sense from  
10:30 19 you that your heart is breaking right now to hear about  
10:30 20 what happened to him. Do you know that? And I think  
10:30 21 that's human to look at the victim and to get some  
10:30 22 reaction from that. But you are telling me that your  
10:30 23 head really doesn't see it that way?

10:30 24 A. My head sees it that taking another life does  
10:30 25 not balance out the first life that was taken before.

10:30 1 My heart probably would say, we may be better off  
10:30 2 without him because of all the multiple killings that he  
10:30 3 did.

10:30 4 Q. I mean, that -- I don't know if it's true, but  
10:30 5 it seems reasonable to me. I think I'd feel the same  
10:30 6 way probably. I'm just about ready to pass you to the  
10:31 7 defense. But I want to -- I want to explain to you that  
10:31 8 when we're talking theoretically about answering those  
10:31 9 questions, the notion is that what a jury does is just  
10:31 10 measure. It measures evidence the same way that  
10:31 11 everybody else in our society measures things. The same  
10:31 12 way that, you know, the grocer measures the pears that  
10:31 13 you buy at the store and tells you how much to pay.

10:31 14 And that sounds good as a theory, but  
10:31 15 there's not a whole lot of human interest. The heart  
10:31 16 doesn't have a lot to do with how much you are paying  
10:31 17 for your sackful of pears at the grocery store, right?

10:31 18 A. Uh-huh.

10:31 19 Q. That's pretty much intellectual. These kinds  
10:31 20 of questions, even though they are -- they are weighing  
10:31 21 questions and they require that this somewhat  
10:31 22 dispassionate search for the truth, you know what the  
10:32 23 results of those answers is going to be because we tell  
10:32 24 you that. We tell you that, if you turn in an answer to  
10:32 25 that first question yes, that he's probably going to be

10:32 1 dangerous in the future.

10:32 2 And if you reject the notion that there's  
10:32 3 sufficient mitigating evidence to make a life sentence  
10:32 4 appropriate and you answer that second question no,  
10:32 5 along with 11 other people, you know that the  
10:32 6 defendant's death will result from those answers. Are  
10:32 7 you with me on that?

10:32 8 A. Yes.

10:32 9 Q. And it seems -- it seems only fair to jurors  
10:32 10 that we really recognize that. Maybe you are not the  
10:32 11 person that will inject the substance into him down at  
10:32 12 the penitentiary, and yet you are as much a part of that  
10:32 13 process as I am.

10:32 14 I can't -- I can't say, oh, all I was was  
10:32 15 the prosecutor. I can't pass the buck to the jury and  
10:32 16 say I'm -- I'm not -- I don't have anything to do with  
10:32 17 this because I do. I'm putting on evidence and trying  
10:32 18 to convince you that -- that the State is entitled to  
10:33 19 this result of this remedy from the -- from the abuses  
10:33 20 of the defendant.

10:33 21 And you are not putting the needle in him,  
10:33 22 but you are part of it. And the guards, I guess, could  
10:33 23 say, well, we're just holding him here. And the  
10:33 24 executioner could say, all I'm doing is -- I have an  
10:33 25 order from the Judge saying, I'm supposed to do this.

10:33 1 And, yet, every one of us is part of the process. Don't  
 10:33 2 you agree?  
 10:33 3 A. I agree with that, yes.  
 10:33 4 Q. And I've had -- I've had to ask myself the  
 10:33 5 question, and I'm sure juries do, too. Is this  
 10:33 6 something that you can fairly do? I know you don't like  
 10:33 7 it because I don't like it; but can you fairly do it?  
 10:33 8 A. I believe that I can, yes.  
 10:33 9 MR. SCHULTZ: Thank you so much for your  
 10:33 10 time, ma'am. We'll pass the juror.  
 10:33 11 VENIREPERSON: Thank you, Mr. Schultz.  
 10:33 12 THE COURT: Thank you, Mr. Schultz.  
 10:33 13 Mr. Goeller?  
 10:33 14 MR. GOELLER: Thank you, Your Honor.  
 10:33 15 VOIR DIRE EXAMINATION  
 10:33 16 BY MR. GOELLER:  
 10:33 17 Q. Good morning, Ms. Hogan.  
 10:33 18 A. Good morning.  
 10:33 19 Q. How are you?  
 10:33 20 A. Doing well.  
 10:33 21 Q. Do you need a break or anything?  
 10:33 22 A. No. I'm fine.  
 10:33 23 Q. Are you ready?  
 10:33 24 A. Ready to rock and roll.  
 10:34 25 Q. All righty. You are from St. Louis?

10:34 1 A. Originally from St. Louis, yes.  
 10:34 2 Q. City or West County?  
 10:34 3 A. South County.  
 10:34 4 Q. The Hill?  
 10:34 5 A. Crestwood, Sunset Hills, that area.  
 10:34 6 Q. I've lived in St. Louis, and my wife is from  
 10:34 7 St. Louis.  
 10:34 8 A. Oh, really?  
 10:34 9 Q. Yeah. Good Italian food.  
 10:34 10 A. Indeed.  
 10:34 11 Q. No doubt about it. It's a wonder you and I  
 10:34 12 haven't crossed paths sometime in our life. You lived  
 10:34 13 in upstate New York?  
 10:34 14 A. Syracuse.  
 10:34 15 Q. You lived in down state. You lived in the  
 10:34 16 city?  
 10:34 17 A. No. Actually we didn't live in New York City,  
 10:34 18 no.  
 10:34 19 Q. Were you going to John J?  
 10:34 20 A. No. My daughter went to John J.  
 10:34 21 Q. I lived in upstate, too. Your daughter went to  
 10:34 22 Albany?  
 10:34 23 A. Yes, she did.  
 10:35 24 Q. How long have you been in Texas?  
 10:35 25 A. A little over a year.

10:35 1 Q. Okay.  
 10:35 2 A. 14 months.  
 10:35 3 Q. What brought y'all here?  
 10:35 4 A. My husband took a new position with Lennox  
 10:35 5 Industries.  
 10:35 6 Q. Lennox; is that --  
 10:35 7 A. Heating and air conditioning.  
 10:35 8 Q. "That a boy, Dave"?  
 10:35 9 A. "That a boy, Dave," exactly.  
 10:35 10 Q. Are they headquartered here?  
 10:35 11 A. Yes; in Carrollton. Richardson and Carrollton.  
 10:35 12 Q. But that's a big outfit, right?  
 10:35 13 A. Yes, it is.  
 10:35 14 Q. They are global, I think?  
 10:35 15 A. Yes, they are.  
 10:35 16 Q. What does he do for them?  
 10:35 17 A. Vice president of product development and  
 10:35 18 research.  
 10:35 19 Q. Okay. What's his background? That's an  
 10:35 20 interesting job.  
 10:35 21 A. Actually, he's a mechanical engineer. Went to  
 10:35 22 Purdue for 15 years before he finally -- finally got all  
 10:35 23 the degrees he wanted, and then we moved on from there.  
 10:35 24 Q. Okay. Right now you are at home?  
 10:35 25 A. Yes, I am.

10:35 1 Q. What do you do? What do you do with your time?  
 10:35 2 A. Newcomers' groups. I have stitching interests,  
 10:36 3 reading, volunteer work, gardening.  
 10:36 4 Q. I notice from your questionnaire, you did a lot  
 10:36 5 of volunteer work up in -- up in Syracuse?  
 10:36 6 A. That's correct.  
 10:36 7 Q. What did you do?  
 10:36 8 A. I worked for a mental health organization  
 10:36 9 called, Contact. It's a -- I worked on the phone lines  
 10:36 10 in a crisis, people who have crisis or things that they  
 10:36 11 need to talk about could call Contact. And we are  
 10:36 12 taught a model of empathetic listening that allows a  
 10:36 13 caller to kind of pursue options if he or she feels or  
 10:36 14 maybe just vent, whatever the situation happens to be to  
 10:36 15 try to bring it down and diffuse a little bit.  
 10:36 16 Q. Were you a hands-on listener? You actually  
 10:36 17 talk to folks, or you were more the coordinator?  
 10:36 18 A. Well, a little bit of both. I was on the phone  
 10:36 19 lines actually talking to people. And that spun off to  
 10:36 20 working as an assistant to the director of volunteers.  
 10:37 21 Q. You lived in Syracuse quite a while?  
 10:37 22 A. Yeah. 16 years.  
 10:37 23 Q. I guess you went over like Skinny Atlas Lake?  
 10:37 24 A. Oh, of course.  
 10:37 25 Q. Okay. Penn-Can Mall. I remember that place.

10:37 1 A. Uh-huh.  
 10:37 2 Q. That was a big deal when it first opened up. I  
 10:37 3 never realized that it was Pennsylvania-Canada. Like  
 10:37 4 half way between Pennsylvania and Canada?  
 10:37 5 A. Oh, you didn't get the connection there?  
 10:37 6 Q. I never got it for up until a couple years ago,  
 10:37 7 and I have been here forever.  
 10:37 8 A. Interesting.  
 10:37 9 Q. Your maiden name was Wescott?  
 10:37 10 A. Yes.  
 10:37 11 Q. Did your parents have anything to do with,  
 10:37 12 just, I only recognize the name, Wescott Communications?  
 10:37 13 A. No.  
 10:37 14 Q. Okay. I guess, if I recall correctly, you were  
 10:37 15 part of the second panel of folks that came and sat in  
 10:38 16 the courtroom?  
 10:38 17 A. That's correct.  
 10:38 18 Q. What did you think after -- after you heard  
 10:38 19 both presentations that day? What were your thoughts  
 10:38 20 when you -- when you drove back down to Plano that day?  
 10:38 21 A. Just that it was a -- a potentially a very  
 10:38 22 heady responsibility that both sides were certainly  
 10:38 23 going to work very hard to -- and the State and giving  
 10:38 24 evidence that proved beyond a doubt that Mr. Cantu was  
 10:38 25 guilty. And you would be working, you and your staff,

10:38 1 would be working on his behalf to -- to not allow him to  
 10:38 2 have to face the death penalty.  
 10:38 3 Q. Okay. Actually, more than that. It's our  
 10:38 4 intent to show the jury that he's not guilty of capital  
 10:38 5 murder. What do you think about that?  
 10:38 6 A. That would be reassuring if I could get that  
 10:39 7 evidence.  
 10:39 8 Q. Okay. Okay. This individual voir dire is, we  
 10:39 9 only do this in capital murder cases. It's been quite a  
 10:39 10 process so far. You probably remember about a month ago  
 10:39 11 where 200 folks came?  
 10:39 12 A. I do.  
 10:39 13 Q. You fill out the questionnaires, and you came  
 10:39 14 back a couple weeks ago, and then you are here again  
 10:39 15 today. This only takes place in these types of  
 10:39 16 allegations, a capital murder allegation. Normally,  
 10:39 17 jury selection in any other kind of case is about a  
 10:39 18 two-hour process from start to finish.  
 10:39 19 A. I have been involved in that. And, yes, that  
 10:39 20 was the case.  
 10:39 21 Q. Very -- it's very common for typically maybe 50  
 10:39 22 folks to show up for your -- for any other kind of case.  
 10:39 23 And I don't know if the Judge starts jury selection at  
 10:39 24 nine o'clock. I've had a lot of cases where the first  
 10:39 25 witness is heard before lunch, but this is very unusual

10:40 1 in that respect.  
 10:40 2 And the purpose of this individual voir  
 10:40 3 dire is to talk really about these special issues. It  
 10:40 4 is -- it is odd. Let me see if I can explain it this  
 10:40 5 way. Every case I've ever been involved in where a jury  
 10:40 6 returned a verdict of not guilty, I spent a great deal  
 10:40 7 of time during the voir dire process on punishment. Do  
 10:40 8 you see what I'm saying?  
 10:40 9 A. Yes.  
 10:40 10 Q. I don't think you fall in that category. A lot  
 10:40 11 of jurors -- we had a juror a few days ago that couldn't  
 10:40 12 believe we were talking about punishment issues. But I  
 10:40 13 don't think he understood that this individual voir dire  
 10:40 14 is to talk about the punishment. I have to spend most  
 10:40 15 of my time on those special issues.  
 10:40 16 Do you think that the burden of proof --  
 10:40 17 but I want to talk a little bit about the first part of  
 10:41 18 the trial. Most of it -- I found most people, just  
 10:41 19 reading their questionnaires, they you understand that.  
 10:41 20 You understand the burden of proof is on the State,  
 10:41 21 right?  
 10:41 22 A. Definitely.  
 10:41 23 Q. And their burden is beyond a reasonable doubt?  
 10:41 24 A. Yes.  
 10:41 25 Q. Have you ever served as a juror before?

10:41 1 A. No.  
 10:41 2 Q. What does that mean to you, beyond a reasonable  
 10:41 3 doubt?  
 10:41 4 A. If -- if I would have any concerns or issues in  
 10:41 5 my mind that I felt by the evidence had not proven that  
 10:41 6 whatever charges were against the individual were  
 10:41 7 proven, that would be a reasonable doubt to me.  
 10:41 8 Q. Okay. Sometimes a juror is placed in the  
 10:41 9 position of after having heard the evidence, you think  
 10:41 10 maybe somebody had something to do with the crime. You  
 10:41 11 kind of have a suspicion maybe they are guilty or not  
 10:41 12 guilty of a primary crime, some other crime, or  
 10:42 13 something like that, but they haven't been convinced  
 10:42 14 beyond a reasonable doubt of the guilt.  
 10:42 15 In a case like that, would you be able, if  
 10:42 16 you were not so convinced beyond a reasonable doubt,  
 10:42 17 would you be able to return a verdict of not guilty?  
 10:42 18 A. I would have to be beyond a reasonable doubt  
 10:42 19 for me.  
 10:42 20 Q. What if you had?  
 10:42 21 A. A couple little nagging inconsistencies would  
 10:42 22 not -- would not sway me to staying away from a guilty  
 10:42 23 verdict.  
 10:42 24 Q. Okay. What if you thought the person was  
 10:42 25 probably guilty, but you just weren't convinced beyond a

10:42 1 reasonable doubt? Could you return a verdict of not  
10:42 2 guilty?

10:42 3 A. Can you rephrase that a little bit for me?

10:42 4 Q. Let's say you had some feelings that the person  
10:42 5 was guilty or maybe that -- or had some kind of  
10:42 6 involvement or maybe was guilty of some other crime, but  
10:42 7 the State did not prove it to you beyond a reasonable  
10:43 8 doubt.

10:43 9 A. If the State did not prove it beyond a  
10:43 10 reasonable doubt, I would have no problem in saying he  
10:43 11 wasn't guilty.

10:43 12 Q. Okay. In your jury questionnaire, I notice  
10:43 13 that on the first page you are given five options, so to  
10:43 14 speak, regarding the death penalty. The first one is:  
10:43 15 I think the death penalty should be imposed in all  
10:43 16 capital murder cases. You didn't pick that one?

10:43 17 A. No.

10:43 18 Q. The second one you had said: I believe the  
10:43 19 death penalty is appropriate in some, and I could return  
10:43 20 a verdict of death in a proper case. You circled that  
10:43 21 one.

10:43 22 And the third one, I think you had  
10:43 23 circled, and you scratched it out. And that was:  
10:43 24 Although I do not believe it should ever be imposed,  
10:43 25 it's the law. As the law provides for it, I could

10:43 1 assess it under the proper set of circumstances.

10:43 2 I'm just curious; obviously you thought  
10:44 3 about those two, and you changed from "although I do not  
10:44 4 believe it should ever be imposed." You went up to "I  
10:44 5 believe it is appropriate in some cases," and they may  
10:44 6 be very close in and among themselves. But tell me what  
10:44 7 your thoughts were when you were choosing between those  
10:44 8 two.

10:44 9 A. My initial thought was that I don't believe in  
10:44 10 the death penalty, but, I, after rethinking it, the law  
10:44 11 is there for a reason. And if -- if the circumstances  
10:44 12 dictate that somebody is proven guilty beyond a  
10:44 13 reasonable doubt, and the law dictates that it should be  
10:44 14 so, I could abide by that.

10:44 15 Q. Okay.

10:44 16 A. My heart tells me I don't want to do that,  
10:44 17 though.

10:44 18 Q. When you chose that one, I believe it's  
10:44 19 appropriate in some cases that I could return a verdict  
10:44 20 resulting in death in a proper case. Tell me what kind  
10:45 21 of thoughts you had and what --

10:45 22 A. My definition of proper case? Is that what you  
10:45 23 mean?

10:45 24 Q. Yeah.

10:45 25 A. Proper case for me, I guess, would be any case

10:45 1 where the circumstances and all the information that's  
10:45 2 presented would -- I would feel comfortable in -- in  
10:45 3 coming back with a guilty verdict on that. I'm not sure  
10:45 4 that I necessarily said what the circumstances for a  
10:45 5 proper case for me would be, and I delineated that.  
10:45 6 That would not be my -- that was not my thinking at the  
10:45 7 time.

10:45 8 Q. Okay.

10:45 9 A. It's not a given, though, that I would return a  
10:45 10 guilty verdict. It's confusing to me as well, believe  
10:45 11 me.

10:45 12 Q. Of course, we never get to the death --  
10:45 13 life-or-death issue until after a verdict has been  
10:45 14 returned of guilty on a capital murder, right?

10:46 15 A. I understand that. Now, I wasn't clear on that  
10:46 16 until today.

10:46 17 Q. What thoughts have you had in the last month  
10:46 18 regarding capital punishment, death penalty, that kind  
10:46 19 of thing?

10:46 20 A. Capital punishment where before I thought of it  
10:46 21 more as a deterrent for other people down the road, I'm  
10:46 22 not sure that I necessarily see it that way now. I  
10:46 23 would -- I would like to think that the death penalty --  
10:46 24 the possibility of the death penalty in anybody who is  
10:46 25 contemplating a crime would be a deterrent in itself,

10:46 1 but I don't believe that that's the case.

10:46 2 Q. You would agree it's the ultimate -- it's the  
10:46 3 most serious ultimate punishment a government could  
10:47 4 impose?

10:47 5 A. Without a doubt.

10:47 6 Q. Killing a human being. You think necessarily  
10:47 7 when we -- when we talk about a capital murder and,  
10:47 8 again, let's assume for these special issues, for the  
10:47 9 sake of our discussion, that somebody was found guilty  
10:47 10 of capital murder.

10:47 11 And when we have the legislature, and the  
10:47 12 laws of Texas have told us that the only two options  
10:47 13 available are life and death. Do you think when -- when  
10:47 14 death comes about, that ought to be reserved for the  
10:47 15 very worst, the worst of the worst?

10:47 16 A. Does the law read that? Is that the way the  
10:47 17 law reads?

10:47 18 Q. No. I'm just asking what you think.

10:47 19 A. Yes.

10:47 20 Q. Tell me why.

10:47 21 A. Just because I'm not sure that I believe  
10:48 22 there's any equation for taking a life, that taking one  
10:48 23 life for another life is equal justice.

10:48 24 Q. You know that -- that saying, "An eye for an  
10:48 25 eye"? It's obviously out of the Old Testament, and I

10:48 1 heard somebody recently say: If we, as a society, go to  
10:48 2 that "eye for an eye," pretty soon the whole world will  
10:48 3 be blind. I had not really thought about that.

10:48 4 Have you ever thought about that? Does  
10:48 5 that maybe figure into your feelings on -- obviously,  
10:48 6 you don't believe in just killing for the sake of  
10:48 7 someone having killed, pure retribution?

10:48 8 A. No.

10:48 9 Q. Why do you think that's a dangerous -- if you  
10:48 10 think that's a dangerous philosophy for a citizenry or a  
10:48 11 society?

10:48 12 A. Because perhaps circumstances -- I'll give an  
10:49 13 example of an abused wife who takes years and years of  
10:49 14 abuse for 15 or 20 years. And finally she reaches a  
10:49 15 saturation point, and she kills her spouse in an act of  
10:49 16 rage. That could be a circumstance in -- in which I, as  
10:49 17 a juror, would probably feel enough compassion and feel  
10:49 18 that that's a mitigating circumstance that -- that would  
10:49 19 allow me to assess a lighter sentence.

10:49 20 Q. And that gets real complicated because there  
10:49 21 could be situations where that may be a defense, almost  
10:49 22 self-defense. I mean, who knows? When we talk about  
10:49 23 those crimes of passion, they get very complicated.  
10:49 24 That could or probably wouldn't be a capital murder to  
10:49 25 begin with. But just for sake of argument, say it was,

10:49 1 somehow, a capital murder. You can see something like  
10:50 2 that as possibly mitigation?

10:50 3 A. I could.

10:50 4 Q. Okay.

10:50 5 A. I can see how it could be read the other way  
10:50 6 though, as well.

10:50 7 Q. Sure. Tell me that. Tell me how.

10:50 8 A. It would be possible for the circumstance to be  
10:50 9 such that the woman, in retaliation, performed such a  
10:50 10 gruesome act on her husband, spouse, boyfriend, whoever  
10:50 11 it happened to be, that it could be read differently.  
10:50 12 That even though it might have been a sexual assault  
10:50 13 that started it, that her response to it was way out of  
10:50 14 line for what that particular circumstance was at that  
10:50 15 time.

10:50 16 Q. Right. When we talk about mitigation, I know  
10:50 17 we used that word a lot today. Of course, by the time  
10:51 18 you get to those issues, say when you get -- if you get  
10:51 19 to those issues, somebody's been found guilty of capital  
10:51 20 murder.

10:51 21 A. Uh-huh.

10:51 22 Q. And there are only two options, life or death,  
10:51 23 depending on how those special issues were answered.  
10:51 24 And in your questionnaire they talked about life  
10:51 25 confinement in prison. And you are given three options.

10:51 1 One, basically, I'd never give life confinement for  
10:51 2 capital murder.

10:51 3 In other words, I'd kill every time.

10:51 4 Second one is, well, the second one is, you talked about  
10:51 5 just straight running murder. I believe that life  
10:51 6 confinement in prison is never appropriate in any murder  
10:51 7 case.

10:51 8 And then the last one is the one you  
10:51 9 chose: I believe that life confinement in prison is  
10:51 10 appropriate in some capital murder cases, and I could  
10:51 11 return a verdict resulting in life confinement in a  
10:51 12 proper case. Tell me what your thoughts were when you  
10:52 13 answered that question.

10:52 14 A. Not knowing any of the punishment phase issues  
10:52 15 at the time, I think that -- that I could go either way  
10:52 16 depending upon how I felt the evidence was presented.  
10:52 17 Whether the case was -- obviously, if I returned a  
10:52 18 guilty verdict, my thought was at the time that the  
10:52 19 deliberation would be right then and there, that you  
10:52 20 determined whether it was --

10:52 21 Q. Life?

10:52 22 A. -- would warrant life in prison or death.  
10:52 23 Obviously, now I'm enlightened, and I know more about it  
10:52 24 than I did before. But I don't believe that capital  
10:52 25 murder always should be one or the other.

10:52 1 Q. Why?

10:52 2 A. Because the circumstances for each case would  
10:52 3 be different.

10:52 4 Q. Okay. Okay. And I think you are exactly  
10:52 5 right. When we talk about those special issues, and  
10:53 6 that first one down on the floor down there, that  
10:53 7 probability special issue, a lot of that -- and you said  
10:53 8 something earlier when Mr. Schultz was talking to you.  
10:53 9 Probability, how you look at probability and the  
10:53 10 definition of probability which is -- and I think you  
10:53 11 are right on. I think to be -- for purposes of capital  
10:53 12 murder cases, it's got to be something greater than 50  
10:53 13 percent?

10:53 14 A. That was my assessment, yes.

10:53 15 Q. Each individual juror, I think a person would  
10:53 16 be a qualified juror as long as they look at that as  
10:53 17 something more than a possibility. Maybe more than 50  
10:53 18 percent, somewhere between 50 and 100 percent. And  
10:53 19 anybody that fell in there I think would be okay.

10:54 20 When we take the example of, say, the  
10:54 21 woman who was battered and abused by her spouse. And  
10:54 22 then for whatever reason she ends up killing that -- the  
10:54 23 batterer, I guess, can you glean anything about  
10:54 24 probability that should be a future danger from that  
10:54 25 circumstance?

10:54 1 A. That she would be?  
 10:54 2 Q. Yeah.  
 10:54 3 A. Well, I believe the conditions under which she  
 10:54 4 lived would be mitigating circumstances. And I  
 10:54 5 personally would tend to cut some slack and probably say  
 10:54 6 that she was not a continuing threat to society.  
 10:54 7 Q. Do you see a difference between her or a  
 10:54 8 difference between any -- in any homicide case, I  
 10:54 9 suppose they kind of boils down to, in very broad terms,  
 10:55 10 people that know the victim, have some kind of personal  
 10:55 11 relationship with the victim.  
 10:55 12 And maybe the -- the offense takes place  
 10:55 13 due to specific fact circumstances somehow involving the  
 10:55 14 victim versus total stranger killings. And if you think  
 10:55 15 about that in terms of, you know, is there a  
 10:55 16 probability? I mean, if you took the guy that was the  
 10:55 17 serial rapist.  
 10:55 18 A. Uh-huh.  
 10:55 19 Q. Targets strange women, stalks them, tries to  
 10:55 20 find them, you know, maybe leaving -- walking to a  
 10:55 21 parking lot in a dimly lit campus, or leaving a dimly  
 10:55 22 lit office building, or something like that. Kind of  
 10:55 23 opportunistic abduction, mutilation, killing. Do you  
 10:56 24 see a difference if you had to answer that question on  
 10:56 25 probability regarding that kind of individual?

10:56 1 A. It would be high.  
 10:56 2 Q. Versus the -- the no. You know, maybe more of  
 10:56 3 a crime of passion or some particular peculiar  
 10:56 4 involvement with the victim. Do you see how probability  
 10:56 5 may, in answering that question, that could factor in?  
 10:56 6 A. Yes.  
 10:56 7 Q. Okay. Victim's character. I agree with  
 10:56 8 Mr. Schultz. That special issue, the top one there, the  
 10:56 9 mitigation special issue. That second line where it  
 10:56 10 says, including circumstances of the offense. That may  
 10:56 11 take into account, not just the, you know, on the first  
 10:56 12 part of the trial, you may hear -- you may hear some  
 10:56 13 circumstances of the offense; but your focus at that  
 10:57 14 point in time: Did a person commit the crime?  
 10:57 15 A. Uh-huh.  
 10:57 16 Q. Okay? And probably in the first part of a  
 10:57 17 trial, the victim's character doesn't figure into it.  
 10:57 18 A. It's only in the punishment phase.  
 10:57 19 Q. Yeah. I think so, in all fairness. I really  
 10:57 20 think so. But in the punishment phase, you may be able  
 10:57 21 to consider some of the victim's character that you may  
 10:57 22 have heard from the first part of the trial, and you may  
 10:57 23 hear more in the second part of the trial. And you know  
 10:57 24 maybe that gets back into explaining the why. You know,  
 10:57 25 the why it took place. And was there a relation?

10:57 1 For example, maybe a victim was a drug  
 10:57 2 dealer and had a personal drug-dealing relationship with  
 10:57 3 somebody. Maybe even got somebody hooked on the drugs  
 10:57 4 or got them in the business, and then there was some  
 10:58 5 kind of falling, something like that. That may figure  
 10:58 6 into that first special issue of probability, too. You  
 10:58 7 know that situational specific --  
 10:58 8 A. Uh-huh.  
 10:58 9 Q. -- offense versus the guy that is out there  
 10:58 10 stalking women to abduct, rape, kill, dispose of bodies,  
 10:58 11 and things like that. You know, like these serial child  
 10:58 12 molesters and killers?  
 10:58 13 A. Uh-huh.  
 10:58 14 Q. And these guys are -- will target -- they want  
 10:58 15 to get involved in little legal baseball. And the guy  
 10:58 16 up in -- what? Chicago. I can't remember where he was  
 10:58 17 from. The Clown? You know, those kind of guys that  
 10:58 18 target children, always need to be around them. Gacy;  
 10:58 19 do you remember him?  
 10:58 20 A. I don't remember the incident.  
 10:58 21 Q. A lot of these serial-type molesters and  
 10:58 22 killers will -- most of them will find ways of  
 10:58 23 associating with groups of young people.  
 10:58 24 A. Uh-huh.  
 10:58 25 Q. The YMCA, Little League baseball, Boy Scouts,

10:59 1 all sorts of things, and being a clown, a children's  
 10:59 2 clown, and all that sort of stuff.  
 10:59 3 A. Uh-huh.  
 10:59 4 Q. And, again, kind of like -- kind of like the  
 10:59 5 serial rapist doesn't know their victims, but are  
 10:59 6 stalking. That planning out: I want to molest young  
 10:59 7 boys. I want to abduct them, torture them and  
 10:59 8 eventually kill them. How do I get myself around young  
 10:59 9 boys?  
 10:59 10 A. Uh-huh.  
 10:59 11 Q. Well, I'll join the YMCA. I'll be a counselor.  
 10:59 12 I'll go be a camp counselor. I'll get involved with the  
 10:59 13 church youth group, something like that. You've  
 10:59 14 probably read cases like that?  
 10:59 15 A. Yeah.  
 10:59 16 Q. And that particular mind-set, a juror could  
 10:59 17 look at it. And looking at probability versus the  
 10:59 18 person who maybe never set out, maybe never woke up one  
 11:00 19 day to say, you know, I'm going to stalk and kill and  
 11:00 20 rape and torture and molest. But again, that's  
 11:00 21 situational. They are thrust into a situation, maybe  
 11:00 22 somebody they know. Passion, maybe the abused wife.  
 11:00 23 The drug dealers, who knows? But you can see a  
 11:00 24 difference there.  
 11:00 25 A. Yes, I can.



11:00 1 Q. When we talk about mitigation, by the time you  
11:00 2 get to that last special issue, the one on top, if you  
11:00 3 were to get to that special issue, the jury obviously  
11:00 4 has already found somebody guilty of capital murder.  
11:00 5 And they have already -- they have found that first  
11:00 6 special issue, probability of future acts, continuing  
11:00 7 threat to society, all of that beyond a reasonable  
11:00 8 doubt.

11:00 9 So, you know, people think -- people, some  
11:00 10 people are of the opinion that, well, if I found them  
11:00 11 guilty of capital murder and if I had found that they  
11:00 12 are a future danger, whether in prison or anywhere else.  
11:00 13 And we know -- we know life in prison is the minimum.

11:01 14 A. Uh-huh.

11:01 15 Q. There's only two, and that's, I suppose, that's  
11:01 16 the less serious offense. Although, we have had jurors  
11:01 17 that have talked about that's worse than getting the  
11:01 18 death penalty. But some jurors they'll say, well, that  
11:01 19 should be the end of it. If I found him guilty, and  
11:01 20 he's going to be a future danger, then, you know, why  
11:01 21 are there other questions?

11:01 22 A. Uh-huh.

11:01 23 Q. Can you see why there are other questions?

11:01 24 A. Definitely. Because there are -- there may be  
11:01 25 circumstances that -- that allowed a type of behavior

11:01 1 to -- to possibly come into the picture.

11:01 2 Q. Yeah.

11:01 3 A. I'm not -- that doesn't necessarily mean that I  
11:01 4 would negate those circumstances and say for that reason  
11:01 5 this person should get off, but --

11:01 6 Q. When you say, "get off," what do you mean by  
11:02 7 that?

11:02 8 A. Not have, not -- not return a verdict of --

11:02 9 Q. Okay. I see what you are saying. I see what  
11:02 10 you are saying. Those circumstances, whatever they may  
11:02 11 be, would not affect your ability to find somebody  
11:02 12 guilty or not guilty of capital murder?

11:02 13 A. Correct.

11:02 14 Q. And they shouldn't. The only circumstances  
11:02 15 that should affect the juror's ability to say guilty or  
11:02 16 not guilty are those that would rise to the level of  
11:02 17 self-defense or, you know, something like that. But you  
11:02 18 are exactly right. I think I understand what you are  
11:02 19 saying now.

11:02 20 Those kind of things to you would factor  
11:02 21 into the second phase of the trial and not necessarily  
11:02 22 the first phase, whether they are guilty or not guilty?

11:02 23 A. Correct. And I believe the one down on the  
11:02 24 floor deal -- in my mind deals more with the -- with the  
11:02 25 legal issues. And this has more to do with perhaps

11:02 1 background and circumstances. So the --

11:03 2 Q. Yeah. That one on the floor, you know,  
11:03 3 Mr. Schultz told you that that word society is, in his  
11:03 4 opinion, not limited to prison society. I can tell you  
11:03 5 that society definitely includes the penitentiary.

11:03 6 A. Uh-huh.

11:03 7 Q. There's no doubt about that. Now, whether it  
11:03 8 includes other parts of society, that's the debate, you  
11:03 9 know. My personal opinion is, it doesn't. It wouldn't  
11:03 10 make any sense. If we know life confinement in the  
11:03 11 penitentiary, it wouldn't make sense if we're talking  
11:03 12 about probability of committing criminal acts of  
11:03 13 violence on the outside, you know.

11:03 14 A. I beg to differ.

11:03 15 Q. Tell me why.

11:03 16 A. I'm sorry.

11:03 17 Q. If we know they are going to the penitentiary  
11:03 18 for life, what do you think they are talking about?

11:03 19 A. The -- I see where you are coming from. But in  
11:03 20 my mind, society means all of society. Whether you are  
11:04 21 in prison, whether you are in church, whether you are in  
11:04 22 your own home, whether you are in the neighborhood just  
11:04 23 hanging out, whatever, whatever you are doing.

11:04 24 Q. Okay.

11:04 25 A. You are saying that since this -- and my

11:04 1 distinction comes from the fact I believed all of this  
11:04 2 was involved in the same process. I'm now understanding  
11:04 3 that there are two distinct phases in which this does  
11:04 4 not even enter in until we're into the punishment phase.

11:04 5 Q. Right, right. You are exactly right.

11:04 6 A. And my previous understanding was based on the  
11:04 7 fact that I thought all of this was presented as  
11:04 8 evidence in the one trial. I understand where you are  
11:04 9 coming from now because, if there's two distinct phases  
11:04 10 within this, this will not even enter in until the time  
11:04 11 that the punishment phase is deemed to be appropriate or  
11:04 12 not appropriate.

11:04 13 Q. Exactly. You are exactly right. Because of  
11:04 14 our scheme our legislature has recognized and our courts  
11:05 15 have recognized that prison can be an appropriate place  
11:05 16 for people who have been found guilty of capital murder  
11:05 17 and have been deemed to be a future danger.

11:05 18 A. Uh-huh.

11:05 19 Q. Do you see what I'm saying? And obviously the  
11:05 20 intent was, we have certain prison -- prisons in Texas,  
11:05 21 the Department of Corrections or Texas Department of  
11:05 22 Criminal Justice Institutional Division, actually they  
11:05 23 call it now, are all sorts of prisons that are  
11:05 24 everywhere from almost drug rehab centers to maximum  
11:05 25 security units to death rows, to administrative

11:05 1 segregation. There's -- in fact, we have a prison that  
11:05 2 specializes in just figuring out what units, what type  
11:05 3 of prison an inmate should go to.

11:05 4 A. I didn't know that.

11:05 5 Q. They are very involved, very complex. Now,  
11:05 6 obviously the legislature has faith and confidence in  
11:06 7 the penitentiary, Texas penitentiary anyhow, to handle a  
11:06 8 person who is guilty of capital murder and would be a  
11:06 9 future danger to society.

11:06 10 A. Uh-huh.

11:06 11 Q. Because there's no automatic death sentence.  
11:06 12 That's why they have that third special issue up there.  
11:06 13 But anyhow, it is okay to be a juror to include, to have  
11:06 14 society varying, you know, all inclusive as long as you  
11:06 15 can include the penitentiary.

11:06 16 A. Yes.

11:06 17 Q. That's, that's, that's -- and many times you  
11:06 18 may hear evidence of probability. Let me ask you this:  
11:06 19 Do you drive a car?

11:06 20 A. Yes, I do.

11:06 21 Q. Okay. And I'm sure your husband drives a car.

11:06 22 A. Yes, he does.

11:06 23 Q. And I think your kids are what, 28?

11:06 24 A. 28 and 32.

11:06 25 Q. You are not paying for their insurance now?

11:07 1 A. No, no, no, no, no. That ended a long time  
11:07 2 ago.

11:07 3 Q. And you are glad for that?

11:07 4 A. Indeed.

11:07 5 Q. You got a pretty good driving history?

11:07 6 A. Yes, I do.

11:07 7 Q. What kind of car do you drive?

11:07 8 A. A '99 Dodge Intrepid.

11:07 9 Q. Okay. Sedan?

11:07 10 A. Yes.

11:07 11 Q. Not a hot rod?

11:07 12 A. No.

11:07 13 Q. You, Ms. Hogan, pay a rate based on your age,  
11:07 14 based on -- probably your driving record figures into  
11:07 15 it. The kind of car you drive figures into it. In  
11:08 16 looking at that question, kind of predicting the future,  
11:08 17 that that word probability, looking to the future,  
11:08 18 it's -- I like to draw the analogy between that and  
11:08 19 insurance adjuster. Okay? An insurance adjuster,  
11:08 20 somebody is going to quote you an insurance premium.  
11:08 21 Have you ever worked in the insurance industry?

11:08 22 A. No, I have not.

11:08 23 Q. They have to figure out what they are going to  
11:09 24 charge Mr. and Ms. Hogan for the next six-month premium  
11:09 25 based on a lot of factors, you know, because they are

11:09 1 kind of looking to the future, finding out what the risk  
11:09 2 assessment is. It's really what that question boils  
11:09 3 down to, risk assessment.

11:09 4 A. Uh-huh.

11:09 5 Q. An insurance man might look at you, your age,  
11:09 6 the kind of car you drive, the kind of horsepower  
11:09 7 underneath the hood, your past driving history, where  
11:09 8 you live, your ZIP code, whether you keep that car in  
11:09 9 the garage at night, whether you park, kind of where you  
11:09 10 work, where your husband might work. Is there a company  
11:09 11 parking lot? Is he kind of parking on -- remember up  
11:09 12 around Syracuse all those commuter lots next to the  
11:09 13 thruway?

11:09 14 A. Yes.

11:09 15 Q. People hitch rides, either GE, they are going  
11:09 16 to Xerox in Rochester, or they are going the other way.  
11:09 17 You know, a lot of cars were stolen out of them lots.  
11:10 18 Kind of, where are they parked during the day? Anyhow,  
11:10 19 so he kind of looks at the past and looks at some  
11:10 20 factors he knows should be constant to the future. I  
11:10 21 mean, obviously, if you and your husband -- what's your  
11:10 22 husband drive?

11:10 23 A. An M5.

11:10 24 Q. What's that?

11:10 25 A. A BMW.

11:10 1 Q. BMW. Okay. He probably pays pretty good on  
11:10 2 that?

11:10 3 A. I'm sure he does. He pays for it, though. So  
11:10 4 I don't even look at the bill.

11:10 5 Q. Let's say you were both driving. Let's say you  
11:10 6 were driving the Intrepid, and he was driving a -- I  
11:10 7 don't know the M5. Is that a sports car?

11:10 8 A. Yes.

11:10 9 Q. Is it high performance?

11:10 10 A. Yes. We're on opposite ends of the spectrum  
11:10 11 here.

11:10 12 Q. Well, he's messed up my hypothetical here. So  
11:10 13 let's put him in a Dodge minivan.

11:10 14 A. All right.

11:10 15 Q. Now, you get your insurance quote for your  
11:10 16 Dodge minivan and the Dodge Intrepid. Three months from  
11:10 17 now, you and him decide, what the heck, let's go out and  
11:10 18 get brand-new Corvettes. Let's get the new ZR1 525  
11:11 19 horsepower, 0 to 150 in about nine seconds. Your rates  
11:11 20 are going to go up.

11:11 21 A. Uh-huh.

11:11 22 Q. Because you kind of -- you've changed a known  
11:11 23 factor, really. And then he's got to look at, well,  
11:11 24 what's the claim rate for Corvettes?

11:11 25 A. Uh-huh.

11:11 1 Q. Kind of like the kid, you know, if you got,  
11:11 2 when your kids were 17, 18 were they getting cars?  
11:11 3 A. They drove the family car.  
11:11 4 Q. So that helped a lot.  
11:11 5 A. It did.  
11:11 6 Q. When kids get 16, 17, 18, you've heard or seen  
11:11 7 the kids that on their 17th birthday or 16th birthday,  
11:11 8 somehow they end up with a new Mustang?  
11:11 9 A. Uh-huh.  
11:11 10 Q. 5-liter Mustang. 16-year-old kid with a hot,  
11:11 11 hot, hot car. And they are going to pay a lot different  
11:12 12 based on if they are just driving mom and dad's sedan  
11:12 13 around once in a while. You know what I'm saying?  
11:12 14 They are not really the primary drivers of  
11:12 15 you and your husband's car. Can you see how that all  
11:12 16 factors in? Can you think of probability in trying to  
11:12 17 look at many factors, present, past, all that?  
11:12 18 A. Yes, I can.  
11:12 19 Q. You can keep an open mind on that?  
11:12 20 A. I can.  
11:12 21 Q. "What makes a person dangerous?" "Someone with  
11:12 22 a disrespect for humanity and unwillingness to reform  
11:12 23 makes a dangerous person." What did you mean -- I sound  
11:12 24 silly when I say: What did you mean when you said that?  
11:12 25 I don't mean to say that. Just go into a little bit

11:12 1 deeper for me, "an unwillingness to reform."  
11:12 2 A. I think if a person commits a crime, if there  
11:12 3 is remorse and a willingness to change behavior in the  
11:12 4 future, that that is, you know, everybody makes  
11:12 5 mistakes. But if you can learn from the mistakes and --  
11:12 6 and change behavior as a result of it, that's -- that's  
11:13 7 a positive thing, as opposed to a continuing, getting  
11:13 8 out of the continuation of the same old, same old.  
11:13 9 Q. Right. In the case of capital murder, you  
11:13 10 know, people wonder: Is there room in our system, in  
11:13 11 our society for reform? Probably not in the classic  
11:13 12 sense of maybe somebody going to prison and maybe  
11:13 13 getting out early on good behavior and on probation and  
11:13 14 electronic monitoring and halfway houses and a gradual  
11:13 15 work backing.  
11:13 16 And, of course, in a capital murder, we  
11:13 17 don't have that. The only reform would have to be done  
11:13 18 during the life sentence in the penitentiary, and I  
11:13 19 guess it would be more internal reform than anything.  
11:13 20 That's not a probation matter. But do you think people  
11:13 21 can reform at least themselves in the penitentiary?  
11:13 22 A. I think the potential is there if they have the  
11:14 23 will and the -- and the willingness to at least try it.  
11:14 24 Certainly it's -- it's an area where it's probably not  
11:14 25 as easy to do as on the outside.

11:14 1 Q. Right. There was one answer you put in here,  
11:14 2 and I think I know why you circled this. So I want to  
11:14 3 ask you about it. It was -- it gave you a page of just  
11:14 4 statements, and you had to choose between anywhere from  
11:14 5 strongly agree to agree, to uncertain, to disagree to  
11:14 6 strongly disagree. One, was stated: If someone is  
11:14 7 accused of capital murder, he should have to prove his  
11:14 8 innocence. And you circled "agree." I think you  
11:14 9 probably -- there's probably a reason why you did that.  
11:14 10 A. I believe that -- read the statement again for  
11:14 11 me?  
11:14 12 Q. If someone is accused of capital murder --  
11:14 13 A. Uh-huh.  
11:14 14 Q. -- he should have to prove his innocence.  
11:14 15 A. I don't think I necessarily meant prove his  
11:15 16 innocence, but explain either the circumstances that  
11:15 17 make him not guilty of the crime or remorseful in some  
11:15 18 way of having -- having done it.  
11:15 19 Q. Okay.  
11:15 20 A. It's confusing, I know.  
11:15 21 Q. No. It may not be, but I'm glad you brought it  
11:15 22 up. I mean, a Judge would give you the instruction that  
11:15 23 if someone were not to testify, you could hold no  
11:15 24 circumstance against them and all that kind of thing.  
11:15 25 Would that, you know, assuming in a case someone did not

11:15 1 testify or did not put forth evidence in the guilt-  
11:15 2 innocence phase, is that a problem for you?  
11:15 3 A. It wouldn't be a problem. Although I -- I  
11:15 4 would like to believe and would hope that, if someone is  
11:15 5 indeed guilty, that they would be willing to state that  
11:16 6 on the record and let both sides ask whatever questions  
11:16 7 to either prove or disprove that. That doesn't mean  
11:16 8 that I would believe if he chose -- he or she chose not  
11:16 9 to do that that I would deem that person guilty because  
11:16 10 they didn't take the stand on their behalf.  
11:16 11 Q. Yeah. When you say you'd like both sides to be  
11:16 12 able to pose questions to somebody, is that in the  
11:16 13 punishment phase, are you thinking?  
11:16 14 A. Well, since I thought they were all inclusive  
11:16 15 in one, that would be hard for me to quantify now.  
11:16 16 Q. Okay. Okay. In the questionnaire it said: If  
11:16 17 you believe in the death penalty, how strongly on a  
11:16 18 scale of 1 to 10 do you hold that belief? You are right  
11:16 19 in the middle with 5. Is that your true feelings? I  
11:17 20 don't see you, from everything I've heard you state so  
11:17 21 far, you are not a big proponent of the death penalty.  
11:17 22 A. No, I'm not.  
11:17 23 Q. And you are not so against it that you think it  
11:17 24 ought to be outlawed.  
11:17 25 A. I believe that 5 is probably pretty consistent

11:17 1 for where I am. The circumstances would have to be  
11:17 2 huge, I think, for me to -- the evidence would have to  
11:17 3 be huge for me to agree to it.

11:17 4 Q. "American culture and the death penalty, it's a  
11:17 5 sad commentary that we must resort to taking another  
11:17 6 life to compensate for one already lost." Do you  
11:17 7 remember writing that?

11:17 8 A. I do.

11:17 9 Q. And the only question I have is when I see  
11:17 10 somebody use, "we must resort." Obviously, you  
11:17 11 understand how it all works now? And there is no "must  
11:17 12 resort to a death penalty."

11:17 13 A. I understand that now.

11:17 14 Q. Do you agree with that?

11:17 15 A. Yes.

11:18 16 Q. Okay. Okay. Do you see why I asked these  
11:18 17 questions?

11:18 18 A. I do.

11:18 19 Q. Okay. My partner is feeding me questions now,  
11:18 20 too.

11:18 21 A. That's fine.

11:18 22 Q. "The Constitution says an accused citizen does  
11:18 23 not have to testify. Someone innocent will choose to  
11:18 24 testify, but it should be his or her right to make that  
11:18 25 decision one way or the other."

11:18 1 A. I agree. That's what I wrote, and that's what  
11:18 2 I believe.

11:18 3 Q. Tell me about that. What -- let me ask you  
11:18 4 this question: If somebody chooses not to testify, what  
11:18 5 does that tell you?

11:18 6 A. I'll tell you what it doesn't tell me. It  
11:18 7 doesn't tell me that he or she is guilty of whatever  
11:18 8 they've been charged. Our judicial system is set up so  
11:18 9 that an individual can testify on their behalf or make  
11:18 10 the decision not to. And a lot of that has to do with  
11:19 11 the lawyers on both sides to -- to guide in whatever way  
11:19 12 they feel would be most appropriate for their client to  
11:19 13 be able to not be convicted of whatever he or she has  
11:19 14 been charged with.

11:19 15 Q. Okay. Tell me what it does tell you if  
11:19 16 somebody does not testify.

11:19 17 A. Well, you are really posing hard questions for  
11:19 18 me to answer.

11:19 19 Q. Do you think I should?

11:19 20 A. Definitely. Definitely. Can we come back to  
11:19 21 that, and let me think about it for a minute?

11:19 22 Q. You bet. Because, remember, I told you a  
11:19 23 couple weeks ago, as long as you shoot straight with me,  
11:19 24 I will -- I will admire you.

11:19 25 A. That's what I'm trying to do. I don't want to

11:19 1 shoot from the hip and say something I don't believe.

11:20 2 Q. Okay. Then you and I are A-OK, as long as you  
11:20 3 do that. I promise you.

11:20 4 Laura, she's a caseworker, AIDS council,  
11:20 5 Albany?

11:20 6 A. Correct.

11:20 7 Q. Tell me what she does.

11:20 8 A. She works with people who have AIDS and  
11:20 9 facilitates getting them to and from doctors'  
11:20 10 appointments. Gets them whatever help they might need  
11:20 11 in being able to carry out day-to-day activities. If  
11:20 12 they need some aid to come in when they are too sick to  
11:20 13 care for themselves, she arranges that.

11:20 14 Q. That's got to be a tough job.

11:20 15 A. It is.

11:20 16 Q. Does she deal directly with AIDS patients?

11:21 17 A. She does in that, sometimes she's face to face  
11:21 18 with them. Other times it's just a matter of they call  
11:21 19 her, and she sets up whatever requirements they might be  
11:21 20 needing at that particular time.

11:21 21 Q. How did she -- she got her degree in community  
11:21 22 psychology at, I assume, in Albany, right?

11:21 23 A. Correct.

11:21 24 Q. How did she get into the field she's in right  
11:21 25 now?

11:21 1 A. Actually, I think it was -- she kind of put out  
11:21 2 a bunch of different feelers in a lot of different  
11:21 3 areas, and this was a position that came up that she  
11:21 4 thought would be helpful for her for -- for her field  
11:21 5 and be able to understand the system a little bit  
11:21 6 better.

11:21 7 Q. Do you talk -- are you pretty close with her?  
11:21 8 Do you talk with her?

11:21 9 A. Yes.

11:21 10 Q. How does she like her work? I got to imagine  
11:21 11 that is tough stuff.

11:21 12 A. Well, at times it is for her. At other times  
11:21 13 it's rewarding if she feels that, you know, she can kind  
11:21 14 of help ease the tough path that they have. So, you  
11:22 15 know, there's pros and cons. Sometimes working with the  
11:22 16 State and the County is a difficult thing for her  
11:22 17 because things don't happen quickly enough to help the  
11:22 18 people.

11:22 19 Q. Yeah. Scott, Scott's in -- he's in the coffee  
11:22 20 business?

11:22 21 A. Yes, he is.

11:22 22 Q. Starbucks?

11:22 23 A. No. That's a dirty word. No.

11:22 24 Q. Good. I hate them.

11:22 25 A. He's with a much smaller organization called --

11:22 1 Q. Java?

11:22 2 A. On Common Grounds. It's like a three-store

11:22 3 operation in around the Saratoga-Albany area; but

11:22 4 they've got better coffee.

11:22 5 Q. I'll bet they do. You know, Starbucks tries to

11:22 6 find people like that and get them out.

11:22 7 A. I'm sure they do.

11:22 8 Q. They target a woman across the street, and they

11:22 9 are very proud of it. They'll target a mom-and-pop shop

11:22 10 and get rid of them.

11:22 11 A. Uh-huh.

11:22 12 Q. And it's kind of sad. And I never really

11:23 13 figured out why people want to spend four bucks for a

11:23 14 cup of coffee. He turned out pretty good, would you

11:23 15 say?

11:23 16 A. He has. They both have. We're very proud of

11:23 17 both of them.

11:23 18 Q. Why do you think that was?

11:23 19 A. Hopefully, a stable home environment. I think

11:23 20 their inherent personalities are such that they have a

11:23 21 good sense of how to treat people fairly and kindly.

11:23 22 Q. Do you think you and your husband had a lot to

11:23 23 do with how Laura and Scott turned out, most likely?

11:23 24 A. I think early on we had an influence probably

11:23 25 up until the time they were about five or six. And then

11:23 1 I think after that they each kind of chartered their own

11:23 2 path, with a little guidance from us.

11:23 3 Q. I wanted to ask you a question just -- please

11:23 4 don't be offended when I ask you this. You had a sister

11:23 5 named Barbara?

11:23 6 A. Yes.

11:23 7 Q. And she's deceased?

11:24 8 A. Uh-huh.

11:24 9 Q. How did that come about?

11:24 10 A. She was killed in an automobile accident.

11:24 11 Q. I'm sorry. A long time ago?

11:24 12 A. Uh-huh.

11:24 13 Q. Were you in Syracuse when your daughter was at

11:24 14 Albany?

11:24 15 A. Yes.

11:24 16 Q. So you could -- two and a half hours away you

11:24 17 could see her?

11:24 18 A. Right, right.

11:24 19 Q. I apologize when I asked that question about

11:24 20 your sister. I know that's probably upset you.

11:24 21 A. That's okay.

11:24 22 Q. I have to. You understand why I have to. Were

11:24 23 you raised in the Church of Christ?

11:24 24 A. Yes; United Church of Christ.

11:24 25 Q. In St. Louis?

11:24 1 A. Webster Groves, yes.

11:24 2 Q. Webster Groves, okay. So you know that --

11:25 3 what's that real good restaurant in Webster Grove -- do

11:25 4 you know what I'm talking about? Everybody goes there

11:25 5 for the burgers?

11:25 6 A. It's been 25 years since I've lived there. So

11:25 7 I probably wouldn't remember it unless the name came up.

11:25 8 MR. SCHULTZ: Wendy's.

11:25 9 MR. GOELLER: No, not Wendy's.

11:25 10 Q. (BY MR. GOELLER) Is Favazza's still there?

11:25 11 A. I don't know. Again, it's been a long time

11:25 12 since we've gone. We go back; we're there for three or

11:25 13 four days, and then we come back to either Dallas or at

11:25 14 that time Syracuse.

11:25 15 Q. Tell me, when you were growing up, was it --

11:25 16 did you participate in organized religion? Was it

11:26 17 services and going to a --

11:26 18 A. Yes. On Sunday we went to church, and we had

11:26 19 Bible studies and so forth. We were involved in the

11:26 20 youth group, so we did -- we were involved in, believe

11:26 21 it or not, a basketball league. And I was a center.

11:26 22 Hard to believe, isn't it? Five feet tall.

11:26 23 Q. No. It's not hard to believe.

11:26 24 A. And softball. So it was more sports oriented

11:26 25 than anything else.

11:26 1 Q. Did your religious views now, what would you

11:26 2 consider yourself, if anything?

11:26 3 A. I consider myself a good Christian person who

11:26 4 follows the Ten Commandments on a day-to-day basis. I

11:26 5 feel it's more important to follow my Christian beliefs

11:26 6 on a day-to-day basis than to go to church on Sunday and

11:26 7 maybe not follow those beliefs during the rest of the

11:26 8 week.

11:26 9 Q. Amen. I wish more people were like that.

11:26 10 Independent; you are not a Democrat, and you are not a

11:26 11 Republican?

11:27 12 A. That's right.

11:27 13 Q. Tell me why.

11:27 14 A. I think there are some good things in both

11:27 15 political parties. And my choice is to make my

11:27 16 decisions on candidates based on their stands of issues

11:27 17 at the time that I'm doing the voting.

11:27 18 Q. So you are not a straight-ticket puller?

11:27 19 A. Not at all.

11:27 20 Q. You do -- I know you like reading and gardening

11:27 21 and stitching. Volunteer work?

11:27 22 A. Yes.

11:27 23 Q. What are you doing now?

11:27 24 A. Actually, I'm working for Contact here. So I'm

11:27 25 doing the same thing that I did in Syracuse.

11:27 1 Q. What attracts you to that particular  
11:27 2 organization?

11:27 3 A. The model of empathetic listening that's taught  
11:27 4 empowers the caller, rather than we, as counselors,  
11:27 5 being directive in saying, you should do A, B or C. The  
11:27 6 steps help facilitate a person to make choices or  
11:28 7 decisions on his or her own.

11:28 8 Q. So having a good ear is, I guess, critical in  
11:28 9 that job?

11:28 10 A. Definitely.

11:28 11 Q. You got to be able to listen. I would imagine  
11:28 12 you got to be able to listen to what people are saying,  
11:28 13 and then really try to figure out what they are saying.

11:28 14 A. Right. And filter out your own beliefs or  
11:28 15 biases or anything like that.

11:28 16 Q. Okay.

11:28 17 A. Kind of leave yourself at the door.

11:28 18 Q. How many hours you put in that job?

11:28 19 A. Well, not as much here. It's basically eight  
11:28 20 hours a month here. Although, when I was in Syracuse, I  
11:28 21 did probably 16 hours a month, a 4-hour shift every  
11:28 22 week.

11:28 23 Q. Does Helen run that?

11:28 24 A. No. No.

11:28 25 Q. Where are they locally?

11:28 1 A. I can't tell you. I'm sorry.

11:28 2 Q. That's okay. That's okay.

11:28 3 A. It's for the safety of the volunteers and so  
11:29 4 forth. We keep where we do the counseling private.

11:29 5 Q. I understand that. Is it -- do any of the  
11:29 6 calls ever involve like suicide, suicide hot line?

11:29 7 A. Definitely.

11:29 8 Q. Is that the primary?

11:29 9 A. No. It's really more of -- it's called a  
11:29 10 crisis line, but a very small percentage are actually  
11:29 11 suicide calls. It's really more a place for people to  
11:29 12 talk out issues that they are struggling with and  
11:29 13 perhaps talk to somebody who is not going to judge how  
11:29 14 they've reacted or what they are going to do, but give  
11:29 15 them a place to be able to vent, which I believe in this  
11:29 16 society is an important -- important vehicle to have.  
11:29 17 Every -- particularly every big city should have it.

11:29 18 Q. The last book you read was *House of Sand and*  
11:29 19 *Fawn*?

11:29 20 A. Yes.

11:29 21 Q. Tell me what that was about.

11:29 22 A. It was about an Iranian man who had come over  
11:30 23 here when -- he was involved in a government that  
11:30 24 basically fell, and he took his family outside of the  
11:30 25 country with, I don't know, \$150,000. Was down to his

11:30 1 last \$45,000 and had to try and figure out how he could  
11:30 2 make a new start for his family. So he bought a house  
11:30 3 that was on the market through the County for back  
11:30 4 taxes. And it turns out that there was some interaction  
11:30 5 between the gentleman and the owner of -- or actually  
11:30 6 the woman's father who was deceased, who owned the  
11:30 7 house, and the conflict that they had as a result of it.

11:30 8 Q. Wow. If there was -- why did you pick that  
11:30 9 book? I guess I'm trying to figure out what kind of  
11:30 10 books you like to read.

11:30 11 A. I like books that are thoughtful, that are  
11:30 12 introspective. That maybe I learn something, and I  
11:31 13 learned quite a bit about the Iranian culture and  
11:31 14 philosophy as a result of this book. And I like things  
11:31 15 that are not necessarily the best sellers or  
11:31 16 run-of-the-mill.

11:31 17 Q. What did you take away about Iranian culture?

11:31 18 A. That the male definitely dominates the society.  
11:31 19 And that they are very strong in their beliefs of family  
11:31 20 and to what extent one protects one's family, maybe more  
11:31 21 so than we are in this culture.

11:31 22 Q. You're a little bit different on the funny  
11:31 23 little section -- I don't know why we put that in there.  
11:31 24 I guess maybe it helps us. In some way try to figure  
11:31 25 out, try to get to know you better. People you most

11:31 1 respect and people you least respect.

11:31 2 I think you are the only juror I've seen  
11:32 3 so far very, very, very few that haven't put Bill  
11:32 4 Clinton somewhere in there. Oh, you got them. Least  
11:32 5 respect, Bill and Hillary. Okay, got 'em. Dan Rather  
11:32 6 is down there in least. There's got to be a good  
11:32 7 reason.

11:32 8 A. Well, there is a little history behind that.  
11:32 9 We used to watch Dan Rather on a regular basis. I'm an  
11:32 10 avid tennis player. And some years ago he refused to go  
11:32 11 on the air, or refused to allow the U.S. Open, which was  
11:32 12 in the finals at that time, to be able to have the  
11:32 13 finals shown because it went over into his airtime. And  
11:32 14 from that, it just -- it just left a sour taste in my  
11:32 15 mouth. I just switched to Peter Jennings and have been  
11:32 16 happy since then.

11:32 17 Q. You know, back before hockey, before the Dallas  
11:32 18 Stars came down here and hockey got big down here, when  
11:32 19 they would run a Stanley Cup or a hockey game, you know,  
11:33 20 if *Hee-Haw* or *The Dukes of Hazard* came on, they cut away  
11:33 21 to go to that and leave the hockey fans. So I didn't  
11:33 22 like that too much.

11:33 23 Larry King, why do you respect Larry King?  
11:33 24 I'm sure you mean *Larry King Live*?

11:33 25 A. Yes. I believe he tries to, with all of the

11:33 1 people that he has on his show, he tries to give a  
 11:33 2 balanced portrayal of -- rather than, rather than  
 11:33 3 inserting his bias on a particular issue, he will allow  
 11:33 4 his people to say whatever, whatever they feel and  
 11:33 5 think.

11:33 6 Q. Madonna?

11:33 7 A. Just don't like her, just her whole demeanor  
 11:33 8 and --

11:33 9 Q. That kind of sex-in-your-face?

11:33 10 A. Right.

11:33 11 Q. I'm nasty and cruel and vulgar. And if you  
 11:33 12 don't like it, tough, you're getting it anyhow?

11:33 13 A. Right. Pretty accurate depiction.

11:33 14 Q. Right. I mean, isn't that what she's really  
 11:33 15 all about? I don't know. I've never seen her, to be  
 11:34 16 honest with you. She kind of scares me. You said you  
 11:34 17 wanted to serve as a juror on this case?

11:34 18 A. Yes.

11:34 19 Q. That puts you in a very very small group of  
 11:34 20 people out of that 200 that showed up. But I think your  
 11:34 21 reason why, you are interested in seeing the judicial  
 11:34 22 process in action. Is that important to you, seeing the  
 11:34 23 judicial process?

11:34 24 A. It is. Because I think it is a cornerstone of  
 11:34 25 our democracy. And I believe each of us has a civic

11:34 1 responsibility to do what we can to make the process  
 11:34 2 function.

11:34 3 Q. Somebody maybe involved in this trial, may have  
 11:34 4 some connection with Contact. Let me ask you if this  
 11:34 5 phone number sounds familiar, 233-3333 (972)?

11:35 6 A. That's not a number that would be a counseling  
 11:35 7 line.

11:35 8 Q. Okay. I know you can't tell me where it is,  
 11:35 9 and I respect that. Do you have any occasion -- I got  
 11:35 10 to ask you this. I don't know any way to ask you, 635  
 11:35 11 LBJ, 635 and Hillcrest. Is that -- is that the center?

11:35 12 A. Yes.

11:35 13 Q. Okay, okay. How long have you been there?

11:35 14 A. I started in, I believe, October of last year  
 11:35 15 there. Basically when we moved, I had taken a few  
 11:35 16 months off before I decided to go back.

11:35 17 Q. Do you know who -- who is the person in charge?  
 11:36 18 Who runs it?

11:36 19 A. I do, but I'm not sure that I'm supposed to put  
 11:36 20 that information out. I'm sorry.

11:36 21 Q. That's okay. That's all right.

11:36 22 A. We have some confidentiality rules that --

11:36 23 Q. I respect that.

11:36 24 A. Okay.

11:36 25 Q. Okay. When Mr. Schultz was talking to you

11:36 1 about those things that you might consider mitigating or  
 11:36 2 not: youth, drug addiction, all those kind of things, I  
 11:36 3 heard you say you could look at that, but that's not an  
 11:36 4 excuse. Okay? And I agree with that concept.

11:36 5 Of course, when you are looking at that  
 11:36 6 thing, those types of issues, whether they are  
 11:36 7 mitigating to you or not, but that genre of background  
 11:37 8 and character, and youth and drug addiction and the way  
 11:37 9 you were raised and all those kind of things, when you  
 11:37 10 are looking at those in that third special issue, they  
 11:37 11 are not really put forth in terms of an excuse, so to  
 11:37 12 speak. Do you see the point I'm trying to make? I may  
 11:37 13 have just been misreading you.

11:37 14 There are no excuses if you've gotten to  
 11:37 15 the second part of the trial. Somebody has been found  
 11:37 16 guilty of capital murder. There are no excuses. You  
 11:37 17 know, unless you had self-defense or you didn't do it or  
 11:37 18 something like that. But I'm trying to -- I guess in a  
 11:37 19 roundabout way I'm asking you: Can you look at  
 11:37 20 mitigating evidence, consider it?

11:37 21 A. I can. Although, that in itself would not,  
 11:37 22 that in itself would not make me weigh the mitigating  
 11:37 23 circumstances either higher or lower, altogether. I'm  
 11:38 24 not sure I really phrased that the way I wanted to.

11:38 25 Q. Well, let's just kind of go back. You found

11:38 1 somebody guilty of capital murder beyond a reasonable  
 11:38 2 doubt.

11:38 3 A. Uh-huh.

11:38 4 Q. And assuming the State could prove to you  
 11:38 5 beyond a reasonable doubt that somebody is a future  
 11:38 6 danger.

11:38 7 A. Correct.

11:38 8 Q. Then you get to that last one up on top there.  
 11:38 9 And what that question is really doing is asking the  
 11:38 10 jury: What's the right thing to do in this case? Give  
 11:38 11 life or give death.

11:38 12 A. Uh-huh.

11:38 13 Q. And when you -- when you go through that  
 11:38 14 question, there is no burden of proof on that question.  
 11:38 15 Everything up until that last question, the State's got  
 11:38 16 to prove beyond a reasonable doubt all the issues of the  
 11:38 17 first phase of the trial, the probability question on  
 11:38 18 the bottom there.

11:38 19 A. Uh-huh.

11:38 20 Q. They've got the entire burden of proof, and  
 11:39 21 they've got to do it beyond a reasonable doubt.

11:39 22 A. Correct.

11:39 23 Q. And then assuming they did that, you know, our  
 11:39 24 position is they won't be able to. But for individual  
 11:39 25 voir dire, I've got to talk about these things.

11:39 1 Assuming they do that, and we get to that last special  
11:39 2 issue up there, there's no burden of proof. They don't  
11:39 3 have to prove anything. We don't have to prove  
11:39 4 anything, but I think you'll hear evidence. You know,  
11:39 5 you'll be able to consider a lot of things.

11:39 6 That term sufficient will not be defined  
11:39 7 for you. Sufficient will mean whatever an individual  
11:39 8 juror thinks it means.

11:39 9 A. Which could be different for each juror?

11:39 10 Q. Absolutely. Now, you make a great point there  
11:39 11 by your comment. In the first phase of the trial, is a  
11:39 12 person guilty or not guilty? All 12 jurors have to  
11:39 13 focus on the same things, the elements of the offense to  
11:40 14 arrive at their verdict. So the jury is very focused.  
11:40 15 In fact, they are focused on the exact same thing. That  
11:40 16 second special issue, again, they are all focused on  
11:40 17 that probability question.

11:40 18 A. Uh-huh.

11:40 19 Q. Probability, although probability there is  
11:40 20 some -- there's some room for different interpretations  
11:40 21 on the word probability. I would think, and my belief  
11:40 22 is, something more than 50 percent all way up to  
11:40 23 probably 99?

11:40 24 A. Uh-huh.

11:40 25 Q. But outside of that, there is -- they are still

11:40 1 focusing on one question because the State has to prove  
11:40 2 it beyond a reasonable doubt. But then when you get to  
11:40 3 that last one, no burden of proof, no definition, and  
11:40 4 the jurors are allowed to individually focus on anything  
11:40 5 they want. They give sufficient, their own personal  
11:40 6 definition if they so choose.

11:40 7 What is a mitigating circumstance or  
11:41 8 circumstances? You know, for example, if that question  
11:41 9 is answered no, that top one, no unanimously, all 12  
11:41 10 jurors say no, then the defendant will be killed.

11:41 11 A. Uh-huh.

11:41 12 Q. If 10 or more say yes, then a life sentence.  
11:41 13 Now, you could have 10 or 11 or 12 yes votes all based  
11:41 14 on different criteria, different definitions, different  
11:41 15 interpretations of mitigation, different versions of, or  
11:41 16 definitions of what is sufficient. Do you see what I'm  
11:41 17 trying to say?

11:41 18 A. (Moving head up and down.)

11:41 19 Q. That one is a true expression of the  
11:41 20 individual's, individual juror's assessment of the case.

11:41 21 A. That's why I'm glad that one is in there.

11:42 22 Q. Okay. Because the first part of the trial, the  
11:42 23 Judge will say, and I can't say in this case. Let's say  
11:42 24 it was, oh, I'm trying to think of -- shoplifting.

11:42 25 Okay? And the Judge would say, theft. It is a person's

11:42 1 intent to commit theft if they appropriate property with  
11:42 2 the intent to permanently deprive the owner of the  
11:42 3 property.

11:42 4 A. Uh-huh.

11:42 5 Q. And that's a legal definition the Judge would  
11:42 6 give. All 12 jurors have to be able to say, Judge, I  
11:42 7 understand your definition of theft, and that is what I  
11:42 8 will abide by. No. There's no room. All 12 jurors  
11:42 9 have to go into the jury room. Here's what theft is.  
11:42 10 The Judge told us here's what theft is. It's not  
11:42 11 subject to our own interpretation as to what the  
11:42 12 definition is.

11:42 13 A. Uh-huh.

11:42 14 Q. And that's true for a capital murder trial all  
11:42 15 the way through that last special issue. And that's,  
11:42 16 like you say, I think that's a good thing that's an  
11:43 17 individual assessment.

11:43 18 A. Uh-huh.

11:43 19 Q. Okay. Ms. Hogan, I know you've been up there  
11:43 20 now for almost, well, two and a half hours. And let me  
11:43 21 ask again: Do you have any questions for me?

11:43 22 A. I guess I'll -- maybe I should address it to  
11:43 23 the Judge, I don't know. Are these the only two  
11:43 24 options? There's no plea bargaining or anything that  
11:43 25 can happen anywhere in the course of the trial, as far

11:43 1 as saying, you know, a certain amount of imprisonment  
11:43 2 and restitution to the families or anything like that?  
11:43 3 I'm assuming that these are the only two options,  
11:43 4 correct?

11:43 5 THE COURT: That's correct.

11:43 6 MR. GOELLER: That's correct.

11:43 7 THE COURT: Anything else?

11:43 8 VENIREPERSON: No; that's it.

11:43 9 THE COURT: Please step down. We'll have  
11:43 10 you back in here in a few minutes.

11:43 11 VENIREPERSON: Thank you.

11:43 12 (Break)

11:43 13 MR. SCHULTZ: Judge, we want to exercise  
11:43 14 State's peremptory challenge No. 6 on this juror.

11:43 15 THE COURT: All right. Then you are  
11:43 16 finally excused.

11:43 17 VENIREPERSON: Thank you.

11:43 18 MR. SCHULTZ: No. 7.

11:45 19 (Venireperson Hogan excused.)

12:34 20 THE COURT: We'll come back at 1:00.

12:34 21 (Lunch recess.)

13:05 22 THE COURT: Tell you what, before lunch I  
13:05 23 gave both sides a memorandum from John Foster, I  
13:05 24 believe. And do I understand that you all have -- and  
13:05 25 that the memorandum, it was from John Foster. Basically



13:05 1 he's got a medical problem in the family. So I want to  
13:05 2 ask both sides: Have you reached an agreement with  
13:05 3 regard to Mr. Foster?

13:05 4 MS. FALCO: Yes, sir. It's agreeable with  
13:05 5 the State that he be excused due to a medical situation.

13:05 6 MR. GOELLER: Yes, sir.

13:05 7 THE COURT: All right. And is that your  
13:05 8 agreement too, Mr. Cantu?

13:05 9 THE DEFENDANT: Yes, Your Honor.

13:05 10 THE COURT: All right. Then Mr. Foster is  
13:05 11 finally excused. I got another one that came in. Let  
13:05 12 me give this to both sides, and take a look at that.

13:05 13 And I tell you what, let's do this. Just  
13:05 14 take a look at it, and let's not talk about it until the  
13:06 15 end of the day. But do me a favor; don't lose it  
13:06 16 between now and the end of the day. So if I ask you  
13:06 17 something about it, we'll talk about it.

13:06 18 The next juror -- let's see now,  
13:06 19 Ms. Patricia Hogan was finally excused. She was  
13:06 20 stricken by the State. And the next and the last  
13:06 21 witness for the day is John Smith, No. 98.

13:06 22 (Venireperson Smith present.)

13:06 23 THE COURT: Sir, are you John Smith?

13:06 24 VENIREPERSON: Yes, I am.

13:06 25 THE COURT: I remember your face from the

13:06 1 other day. It's been close to a month now. Or close to  
13:06 2 four weeks, actually, since all 200 jurors were  
13:06 3 assembled. And at that time I put everyone under oath.  
13:06 4 The oath was to give truthful answers to questions that  
13:06 5 are propounded by both sides. Do you recall that?

13:06 6 VENIREPERSON: Yes, I do.

13:06 7 THE COURT: All right. I just want to  
13:06 8 tell you, Mr. Smith, you are still subject to that oath,  
13:07 9 and ask you to please be seated.

13:07 10 VENIREPERSON: Okay.

13:07 11 THE COURT: Ms. Falco?

13:07 12 MS. FALCO: Your Honor, Ms. Lowry will  
13:07 13 begin.

13:07 14 THE COURT: All right. Ms. Lowry?

13:07 15 VOIR DIRE EXAMINATION

13:07 16 BY MS. LOWRY:

13:07 17 Q. Good afternoon, Mr. Smith. How are you today?

13:07 18 A. Hello, fine.

13:07 19 Q. I don't know if you recall from last Tuesday,  
13:07 20 my name is Jami Lowry. I'm one of the assistant  
13:07 21 District Attorney's here in Collin County. And seated  
13:07 22 to my right is Gail Falco, who is also an assistant  
13:07 23 district attorney. She is the chief prosecutor assigned  
13:07 24 to the 199th District Court who is going to be working  
13:07 25 on this case also. Coming in probably while we're

13:07 1 talking is going to be seated to her right, is going to  
13:07 2 be Bill Schultz. He's the first assistant in our  
13:07 3 office.

13:07 4 Seated to my left, the first person to my  
13:07 5 left is Ivan Cantu, the defendant. To his left are Don  
13:07 6 High and Matt Goeller, who are his defense attorneys.

13:07 7 A. Right.

13:07 8 Q. As I recall from Tuesday, you don't know any of  
13:07 9 us; is that correct?

13:07 10 A. That's correct.

13:07 11 Q. We call this individual voir dire. And the  
13:07 12 reason that we do this is because of the issues that are  
13:07 13 involved basically. It's supposed to make you feel more  
13:07 14 comfortable. It's supposed to make you feel more open  
13:08 15 to voice your opinions, your ideas, just anything that  
13:08 16 you feel is necessary to talk to us about. I know there  
13:08 17 are six of us sitting here or going to be six of us  
13:08 18 sitting here kind of looking at you, waiting to see what  
13:08 19 you are going to say.

13:08 20 A. Right.

13:08 21 Q. But all we want from you is just to know how  
13:08 22 you feel about things. And we're not looking for the  
13:08 23 politically correct answers or what you think we want to  
13:08 24 hear, but just how you feel about everything. Okay?

13:08 25 A. Okay. Excuse me, I do have a cold today, so I

13:08 1 might not be too clear.

13:08 2 Q. If you need to take a break at any time or need  
13:08 3 a glass of water, just let us know. Okay?

13:08 4 A. Okay.

13:08 5 Q. As you know, you are here on a capital murder  
13:08 6 case. And I guess my first question is: What went  
13:08 7 through your mind when you first found out that this  
13:08 8 involved the death penalty?

13:08 9 A. Well, I wasn't surprised with the 200 people,  
13:08 10 potential jurors. But as far as the actual case itself?  
13:09 11 I don't really know. I just thought that this is the  
13:09 12 time that I could serve on a jury. I didn't really  
13:09 13 think much about it.

13:09 14 Q. Do you recall the explanation given by  
13:09 15 Ms. Falco last Tuesday of what our purpose was in being  
13:09 16 here? As far as we intended to present evidence to a  
13:09 17 jury that caused them to find beyond a reasonable doubt  
13:09 18 that this defendant is guilty of capital murder. And  
13:09 19 that we further intended to, at the end of the  
13:09 20 punishment phase, have a jury that believed beyond a  
13:09 21 reasonable doubt that he deserved a death penalty.

13:09 22 A. Uh-huh.

13:09 23 Q. And it was our further intention that at some  
13:09 24 point in the future that there would be an execution  
13:09 25 date set. And that he would be taken down to the death

13:09 1 chamber, strapped to a gurney, and injected with a  
13:09 2 lethal substance. What was going through your mind  
13:09 3 whenever she was talking about that?

13:09 4 A. I guess I did understand the responsibility  
13:09 5 that I would have as a juror on this case. And it did  
13:09 6 make me think about my beliefs in capital punishment.  
13:10 7 And on the questionnaire I did put that I was for it,  
13:10 8 but of course on a case-by-case basis.

13:10 9 Q. Right. And you understand that she didn't go  
13:10 10 through all of that for dramatic flare or to be gruesome  
13:10 11 or anything of that nature. That's done to help the  
13:10 12 people on the jury panel understand that this is the  
13:10 13 reality. That this isn't something that you are sitting  
13:10 14 in your living room talking about. You know, as far as  
13:10 15 you see something on TV. And you think, well, that  
13:10 16 person ought to get the death penalty or something of  
13:10 17 that nature. This is actually asking you to be involved  
13:10 18 in the process that causes that.

13:10 19 A. Uh-huh.

13:10 20 Q. Have you had some time, or have you taken some  
13:10 21 time to reflect on your views of the death penalty?

13:10 22 A. It made me reflect on what I believe, and my  
13:10 23 beliefs hadn't changed. And like I said, I think that  
13:10 24 capital punishment is necessary in our society because  
13:10 25 it places value on human life.

13:11 1 Q. Right.

13:11 2 A. And without that, that's like the ultimate --  
13:11 3 the worst thing that could happen to a criminal is their  
13:11 4 death. And that's the ultimate -- excuse me, response  
13:11 5 that society can give to a person. And because of the  
13:11 6 value of human life, that's why I agree with it.

13:11 7 Q. And that's kind of what we just wanted to find  
13:11 8 out today is your questionnaire asks basically: What's  
13:11 9 your name? Where do you live? And things like that.  
13:11 10 And then the first question is: Are you in favor of the  
13:11 11 death penalty?

13:11 12 It doesn't give you a whole lot of time to  
13:11 13 contemplate what you really think about it. Most people  
13:11 14 come in, have a general idea of what they think about  
13:11 15 it. But until you are actually asked to be a part of  
13:11 16 the process, you know, you kind of view it on a  
13:11 17 different level.

13:11 18 A. Right.

13:11 19 Q. This process so far that, you know, you've been  
13:11 20 up here, what, this is your third time now?

13:11 21 A. Yes.

13:11 22 Q. Do you think we're spending too much time on  
13:12 23 this process?

13:12 24 A. When somebody's life is at stake, I don't think  
13:12 25 so. It is very serious.

13:12 1 Q. Exactly. And one of the questions in the  
13:12 2 questionnaire is: What is the biggest problem with the  
13:12 3 judicial system? And most people overwhelmingly put  
13:12 4 that it takes too much time. And that's just something  
13:12 5 that we like to explore because this process is so  
13:12 6 serious and just what your views are -- if you think  
13:12 7 we're being too cautious, maybe this is too tedious or  
13:12 8 anything like that.

13:12 9 As you said, you indicated on your  
13:12 10 questionnaire that you are in favor of the death  
13:12 11 penalty. How did you, I guess, form that opinion that  
13:12 12 the death penalty is appropriate in some cases?

13:12 13 A. First of all, I value human life extremely.  
13:12 14 That's the most important thing, I think, to me. And in  
13:13 15 some cases, I don't know, I'm sorry. Depending on the  
13:13 16 crime itself, I guess I would -- I wouldn't  
13:13 17 automatically say that everybody automatically gets it  
13:13 18 for what they've done, but on a case-by-case basis based  
13:13 19 on the severity of the crime and everything else  
13:13 20 involved and even on the past of that person, their  
13:13 21 criminal record.

13:13 22 Q. Right.

13:13 23 A. I would take all that into account and make a  
13:13 24 decision then.

13:13 25 Q. Okay. Suppose that we end up with some type of

13:13 1 referendum or something of that nature that asks you to  
13:13 2 vote whether or not we keep the death penalty. What  
13:13 3 would your vote be?

13:13 4 A. I would say, keep it.

13:13 5 Q. Okay. What we want to know or what this  
13:13 6 process is about is, we need to find out what your views  
13:14 7 are and if you can be qualified as a juror. And  
13:14 8 certainly being in favor of the death penalty, you are  
13:14 9 qualified to be a juror. What we need to know is  
13:14 10 because we present you with several different questions,  
13:14 11 and most of the things that we're going to talk about  
13:14 12 during this process are the punishment phase.

13:14 13 And that's not because the guilt-innocence  
13:14 14 phase is any less important or anyone thinks that he's  
13:14 15 already guilty, anything like that. It's just that this  
13:14 16 is the only time that we really get to talk to you about  
13:14 17 your ideas and your opinions, things like that. So we  
13:14 18 have to kind of focus on the, I guess, more serious  
13:14 19 issues of whether or not you are going to be able to  
13:14 20 serve as a juror. Does that make sense?

13:14 21 A. Uh-huh.

13:14 22 Q. The trial is going to be -- is a bifurcated  
13:14 23 system that we have. We have a guilt-innocence phase  
13:14 24 where you go through with the evidence strictly of the  
13:14 25 offense and decide whether or not the person is guilty.

13:14 1 Then comes the punishment phase. And before you came  
13:14 2 in, on Tuesday, what was your understanding of what  
13:14 3 capital murder was?

13:14 4 A. It's when murder was -- I understood that when  
13:15 5 murder was committed and other circumstances were part  
13:15 6 of it.

13:15 7 Q. And by calling it capital murder, it kind of  
13:15 8 makes it a little bit confusing because it almost leaves  
13:15 9 you to believe that the death penalty is automatic  
13:15 10 because it's called capital. And what it basically is  
13:15 11 is just murder plus something else, some aggravating  
13:15 12 factor that makes it more than just a murder.

13:15 13 The three main kinds of capital murder  
13:15 14 that we're concerned with are murder being committed  
13:15 15 during the course of a burglary. And that may be, you  
13:15 16 break into somebody's house. And the homeowner maybe is  
13:15 17 there, and you maybe kill the homeowner. Is that a type  
13:15 18 of offense that you feel is appropriate to have the  
13:15 19 death penalty as an option?

13:15 20 A. I really haven't given it much thought. I just  
13:15 21 took what y'all told us and what the laws state. I let  
13:15 22 the lawmakers make that decision. But with the  
13:15 23 burglary? I, yeah, I guess so.

13:16 24 Q. You think --

13:16 25 A. Because I think that's a -- a pretty violent

13:16 1 act.

13:16 2 Q. Okay. So you think it's good that we have that  
13:16 3 option on a burglary when someone gets killed?

13:16 4 A. I think I, yeah. I guess I agree with that. I  
13:16 5 haven't really thought about it.

13:16 6 Q. What about with a robbery, which is the more  
13:16 7 person-to-person kind of theft. You know, where you --

13:16 8 A. Wait, I'm sorry. I was thinking, you said  
13:16 9 burglary first?

13:16 10 Q. Right. First I asked you about burglary. Now,  
13:16 11 I'm going to ask you about --

13:16 12 A. Okay. I was actually thinking about robbery  
13:16 13 when I said that.

13:16 14 Q. Okay.

13:16 15 A. When it's at gunpoint robbing somebody.

13:16 16 Q. Right.

13:16 17 A. Yes, I definitely agree. That's a violent act.  
13:16 18 But burglary is that -- that's --

13:16 19 Q. Burglary is just like if you break into  
13:16 20 someone's home or break into a building. That's  
13:16 21 burglary. You break -- and what we're talking about is  
13:16 22 actually breaking into a person's home, and during the  
13:16 23 course of that burglary committing murder.

13:16 24 A. Okay.

13:16 25 Q. And that was the first question. Do you think

13:17 1 that the death penalty is something that's an  
13:17 2 appropriate option for a case like that?

13:17 3 A. Okay. With that one, I guess I'm not really  
13:17 4 sure then.

13:17 5 Q. Okay.

13:17 6 A. With robbery I am.

13:17 7 Q. Okay. Tell me why that is. I mean why do you?  
13:17 8 Explain.

13:17 9 A. Robbery, you are going in, the person is going  
13:17 10 in with a weapon, deliberately trying to take something  
13:17 11 from somebody at gunpoint or whatever. To me that's a  
13:17 12 lot more violent than trying to just break in and get  
13:17 13 something and somebody gets in the way. I don't know.

13:17 14 Q. Okay. So do you think in a case of where you  
13:17 15 have burglary, and then a murder is committed during the  
13:17 16 burglary that maybe the death penalty shouldn't be an  
13:17 17 option in that situation?

13:17 18 A. I'd have to hear all the facts. I really --

13:17 19 Q. Okay.

13:17 20 A. I'm not sure.

13:17 21 Q. What about killing two people?

13:17 22 A. Definitely.

13:17 23 Q. Uh-huh. What we need to know, as far as the  
13:18 24 punishment phase goes, is whether or not you have a  
13:18 25 genuine ability to render a life or a death sentence and

13:18 1 that you are going to base your decision on the evidence  
13:18 2 itself. Like I said, most of the questions that I'll be  
13:18 3 asking you from here on out are going to be assuming  
13:18 4 that a person has been found guilty of capital murder.

13:18 5 A. Okay.

13:18 6 Q. And it's not -- it used to be such that they  
13:18 7 just asked you, you know, once somebody is found guilty  
13:18 8 of capital murder, they get life or death. Now they  
13:18 9 have two different questions that you have to answer as  
13:18 10 a jury. And you don't really specify specifically  
13:18 11 whether or not you want life or death.

13:18 12 What the jury does is they go back. They  
13:18 13 take all the evidence, and then answer these questions,  
13:18 14 and then a life or death sentence results depending on  
13:19 15 how those questions are answered. Does that make sense?

13:19 16 A. Uh-huh.

13:19 17 Q. The first question is the one on the bottom.  
13:19 18 Can you see that one down there?

13:19 19 A. Yes, I can.

13:19 20 Q. If you'll take just a moment to read that one  
13:19 21 to yourself.

13:19 22 A. Okay.

13:19 23 Q. What this question -- we call this the future  
13:19 24 danger question. What this asks basically is whether or  
13:19 25 not this person is going to be a future danger. This

13:19 1 question, the burden of proof on this question is on the  
13:19 2 State. It's up to us to bring you evidence and prove  
13:19 3 beyond a reasonable doubt that the person is going to be  
13:19 4 a future danger.

13:19 5 There are several words in this question  
13:19 6 that will not be defined for you, and that you as a jury  
13:19 7 will have to come up with a definition on your own. The  
13:19 8 first word is probability. Some people who deal a lot  
13:19 9 with mathematics, things of that nature, think of  
13:19 10 probability and they think of percentages. Some type of  
13:19 11 number term. Other people think it just means more  
13:19 12 likely than not. What is your understanding of what  
13:19 13 probability means?

13:20 14 A. More likely than not.

13:20 15 Q. Okay. Certainly you understand that it's more  
13:20 16 than just a mere possibility. But it's something less  
13:20 17 than a certainty?

13:20 18 A. Yes.

13:20 19 Q. So if you asked me, you know, "Are you going to  
13:20 20 the office party this weekend?" And I said, "Yes, I  
13:20 21 probably will," more than like likely you are going to  
13:20 22 think I'm going to be there?

13:20 23 A. Right.

13:20 24 Q. The next phrase that comes up that's somewhat  
13:20 25 ambiguous, that's not going to be defined for you, is

13:20 1 that phrase criminal acts of violence. What is your  
13:20 2 definition of what violence is? What do you consider  
13:20 3 violent?

13:20 4 A. Well, there's different degrees of violence.  
13:20 5 I'd say anything against what people want done to them.

13:20 6 Q. Okay. Certainly.

13:20 7 A. It could be as simple as yelling at somebody,  
13:21 8 driving or flipping somebody off on the highway.  
13:21 9 Somebody else could consider that violent. And then you  
13:21 10 got the ultimate extreme violence, I guess like what  
13:21 11 happened last week.

13:21 12 Q. Right.

13:21 13 A. So.

13:21 14 Q. Okay. Certainly all people would agree that  
13:21 15 murder, rape, things of that nature are acts of  
13:21 16 violence, criminal acts of violence. Beating up your  
13:21 17 wife, maybe beating up your next-door neighbor, things  
13:21 18 like that, a person-to-person kind of act. And most  
13:21 19 people agree that that is a criminal act of violence.

13:21 20 I guess people kind of differ, start  
13:21 21 differing in their opinions a little bit when you start  
13:21 22 talking about property, as opposed to a person. You  
13:21 23 talk about someone who gets mad at you, goes out, sees  
13:21 24 your car parked out in the parking lot, takes a baseball  
13:21 25 bat and starts beating it up. Is that something you

13:21 1 would consider a criminal act of violence?

13:21 2 A. Yes, I would. It's vandalizing somebody else's  
13:22 3 property.

13:22 4 Q. Certainly they are doing it out of rage or  
13:22 5 anger, things of that nature. It gets a little fuzzier  
13:22 6 still when you talk about acts like drug usage or drug  
13:22 7 selling. I think, in and of itself, selling of drugs  
13:22 8 most people don't think automatically violence.

13:22 9 When you talk about what all that involves  
13:22 10 though, you talk about somebody selling drugs to another  
13:22 11 person. They then go take those drugs. Sometimes that  
13:22 12 leaves them to do things that they normally wouldn't do.  
13:22 13 It might lead them then to rob people and go burglarize  
13:22 14 places so they can get money to buy more drugs, things  
13:22 15 of that nature. Do you see the selling of drugs, the  
13:22 16 using of drugs as a criminal act of violence also?

13:22 17 A. I don't know if the actual exchange is, but I  
13:22 18 think everything surrounding it is.

13:22 19 Q. Okay.

13:22 20 A. Or could be.

13:22 21 Q. Certainly gives you some insight into whether  
13:22 22 or not that person might be more dangerous or might  
13:22 23 commit other criminal acts of violence?

13:23 24 A. And there's no telling how much violence  
13:23 25 occurred to get the drug to that point of sale. And

13:23 1 then afterwards, you don't know how that person is going  
13:23 2 to respond to receiving drugs.

13:23 3 Q. Okay. Then you have things like your --  
13:23 4 basically just shoplifting, just petty theft, things of  
13:23 5 that nature that don't really involve any violence  
13:23 6 themselves but maybe could give you some insight into  
13:23 7 that person's character and to who they are and how they  
13:23 8 think about life. Obviously, they have no regard for  
13:23 9 someone else's property, things of that nature.

13:23 10 A. Yes.

13:23 11 Q. Do you think all those things would be helpful  
13:23 12 in determining whether or not a person might be a future  
13:23 13 danger?

13:23 14 A. I think you have to get all the information you  
13:23 15 can about their background to be able to make that kind  
13:23 16 of decision.

13:23 17 Q. Do you think if you were a juror on this jury  
13:23 18 that you would be able to answer a question involving  
13:23 19 these matters?

13:23 20 A. Yes.

13:23 21 Q. The last word that you come to that is somewhat  
13:23 22 ambiguous -- it's not going to be defined for you -- is  
13:23 23 the word society. Certainly in a case like this, if you  
13:24 24 found somebody guilty of capital murder, they are either  
13:24 25 going to the penitentiary for life or they are going to

13:24 1 get a death sentence.

13:24 2 So certainly it's going to include prison  
13:24 3 society. You know, is that person going to be a  
13:24 4 continuing threat to prison society? Do you also see  
13:24 5 how that word could be extended to include all of our  
13:24 6 society, though?

13:24 7 A. Well, that is one of the big disagreements that  
13:24 8 I had with a defendant attorney last week or last time  
13:24 9 we were here was, I do not agree with his definition of  
13:24 10 society. I don't believe that the lawmakers wrote this  
13:24 11 law taking into consideration the prisoner or prison  
13:24 12 society. I think the people are judged based on the  
13:24 13 normal society outside the prison walls.

13:24 14 So my definition is, society is the lady,  
13:24 15 like you had an example, at the ice cream shop, my wife,  
13:24 16 my kids. That is society.

13:24 17 Q. And that's completely up to you, as a juror, to  
13:25 18 determine what you think the definition of that word is.  
13:25 19 So you are free to, you know, you can think, you know,  
13:25 20 one person could think that means just prison society.  
13:25 21 But it's up to you to decide who you think society is,  
13:25 22 and that's like I said.

13:25 23 A. Yeah. After he said that, I immediately knew  
13:25 24 what my definition was.

13:25 25 Q. And taking all of that into consideration, this

13:25 1 is a question that is going to be posed to you, assuming  
13:25 2 that a person is found guilty of capital murder. And  
13:25 3 what they ask when you answer this question is that you  
13:25 4 look at all the evidence that has been presented. You  
13:25 5 are certainly welcome to use just the circumstances of  
13:25 6 the offense. But certainly at the second phase of the  
13:25 7 trial, which we call the punishment phase, it could be  
13:25 8 new evidence that comes in, maybe additional things.  
13:25 9 And you take everything into consideration and fairly  
13:25 10 weigh all of that in answering this question. Is that  
13:25 11 something that you can do?

13:25 12 A. Yes.

13:25 13 Q. Certainly by coming up with this question, the  
13:26 14 legislature has envisioned a set of circumstances or a  
13:26 15 situation in which you might find someone guilty of  
13:26 16 capital murder. Yet, you might not think they are a  
13:26 17 future danger. Do you see how that could happen?

13:26 18 A. Yes, I do.

13:26 19 Q. Certainly you could have -- I don't know if you  
13:26 20 recall the hypothetical where you have the father --  
13:26 21 child has been murdered by two people. They get off on  
13:26 22 a technicality. And he just decides, you know what?  
13:26 23 That's just not right, and he goes out and kills them.  
13:26 24 Technically, that's capital murder. But you can  
13:26 25 certainly understand how -- why he did it, what

13:26 1 happened, and that he may not, you know, ever be a risk  
13:26 2 again to anyone.

13:26 3 So you could see that you have to -- just  
13:26 4 because you find someone guilty of capital murder  
13:26 5 doesn't necessarily mean that they are going to be a  
13:26 6 future danger?

13:26 7 A. Yes, I understand.

13:26 8 Q. And you are not automatically going to answer  
13:26 9 this question yes, that they will be a future danger  
13:26 10 just because you found them guilty of capital murder.

13:26 11 A. I understand, yes.

13:26 12 Q. Okay. Once you answered this question -- and  
13:26 13 it takes 12 people to answer this question yes; 10 or  
13:26 14 more to answer it no. So, if the jury comes back 10 or  
13:27 15 more people have answered it no, then it's an automatic  
13:27 16 life sentence at that point. If it comes back that it's  
13:27 17 a unanimous yes, then you go onto the next question  
13:27 18 which we call the mitigation question. If you want to,  
13:27 19 take just a moment to read that to yourself.

13:27 20 A. Okay.

13:27 21 Q. When you think of the word mitigation, what  
13:27 22 does that mean to you?

13:27 23 A. Actually, to tell you the truth, I didn't have  
13:27 24 a good definition of what it really means.

13:27 25 Q. Usually when mitigation is talked about, it

13:27 1 means to lessen or to somehow reduce. Does that fit  
13:27 2 into the context of what you are reading?

13:27 3 A. Yes.

13:27 4 Q. What this question asks you to consider is --  
13:28 5 it's kind of for the jury in a way. Basically, what it  
13:28 6 asks you is, it gives you all these things to look at,  
13:28 7 and you are looking at this situation. And is there  
13:28 8 anything, you know, whether it be about the defendant's  
13:28 9 background, his character, maybe the circumstances of  
13:28 10 the offense, that you think is sufficient to warrant a  
13:28 11 life sentence over a death sentence? Does that make  
13:28 12 sense?

13:28 13 A. Yes, it does.

13:28 14 Q. What do you think about the opportunity that  
13:28 15 that gives the jury, that question?

13:28 16 A. I think that it's really making the jury be  
13:28 17 sure that they are correct.

13:28 18 Q. Okay. And once again, this question, there's  
13:28 19 no burden of proof on this question. So it's not up to  
13:28 20 us to bring you evidence that says there's nothing here  
13:28 21 that's sufficiently mitigating to give this person a  
13:28 22 life sentence over a death sentence.

13:28 23 And it's not up to the defense to bring  
13:28 24 you any evidence that says: This is mitigating  
13:28 25 evidence, and it's sufficient. It's just, you look at

13:28 1 all the evidence and you decide on your own, as a juror,  
13:28 2 whether or not it's sufficiently mitigating.

13:29 3 A. Okay.

13:29 4 Q. And the thing about mitigating evidence is  
13:29 5 that's also for you to decide what you think it is.  
13:29 6 Because certainly something that might be mitigating to  
13:29 7 you may be aggravating to someone else.

13:29 8 A. Uh-huh.

13:29 9 Q. A perfect example of that is drugs. Some  
13:29 10 people sit back and look at a situation where maybe the  
13:29 11 person who committed an offense was, you know, addicted  
13:29 12 to drugs. They were using drugs at the time. And, you  
13:29 13 know, you have people that come in and say, well, he  
13:29 14 never would have done this if he hadn't been on drugs,  
13:29 15 things of that nature.

13:29 16 And one person may say, you know what?  
13:29 17 That's mitigating because that's not really his  
13:29 18 personality. He wouldn't be that way if he weren't on  
13:29 19 drugs.

13:29 20 Whereas, another person might say, you  
13:29 21 know what, though? That was his choice. We learn from  
13:29 22 the time that we are very young that drugs are bad, what  
13:29 23 they can do to you, that they make you aggressive, and  
13:29 24 things of that nature. And that's aggravating to me  
13:29 25 because we know better than to take drugs.

13:29 1 So it's up to you, as a juror, to decide  
13:29 2 whether you think something is mitigating or whether you  
13:30 3 think it's aggravating. It's purely up to you. Do you  
13:30 4 see how that can happen?

13:30 5 A. Yes, I do.

13:30 6 Q. This question tends to ask you -- tends to ask  
13:30 7 more for a defendant's moral blameworthiness. You know,  
13:30 8 what is it about this offense? Is there anything about  
13:30 9 this offense or these circumstances that would want the  
13:30 10 jury to give him a life sentence rather than a death  
13:30 11 sentence? Do you see anywhere where it tends to ask you  
13:30 12 for the character of the victim or to take into  
13:30 13 consideration what the victim's character is?

13:30 14 A. Well, the defendant's character and background  
13:30 15 and personal moral culpability, all that is about the  
13:30 16 character of the defendant.

13:30 17 Q. Right. And when we're talking about, you know,  
13:30 18 the character of the victim -- did I say defendant a  
13:30 19 minute ago?

13:30 20 A. I'm sorry; I might have misunderstood. Are we  
13:31 21 talking about the victim?

13:31 22 Q. Yeah. Sometimes I -- you know, if something is  
13:31 23 not clear, feel free to ask me to rephrase it.

13:31 24 A. Okay.

13:31 25 Q. But I guess my question is going to be --

13:31 1 A. About the victim.

13:31 2 Q. -- about the victim.

13:31 3 A. No, there's not.

13:31 4 Q. And it asks you to take into consideration the  
13:31 5 circumstances of the offense. You know, maybe at that  
13:31 6 point, you know, you might think about the victim who is  
13:31 7 involved, things of that nature. How important is it to  
13:31 8 you what the character of the victim is?

13:31 9 A. It shouldn't be of any importance. A murder is  
13:31 10 a murder, whether they deserved it or not. They might  
13:31 11 say they deserved it. Some people might think, well,  
13:31 12 they had it coming to them, but I don't believe you  
13:31 13 should think that about anybody who has been murdered  
13:31 14 like that.

13:31 15 Q. It certainly doesn't take away from the actions  
13:31 16 of the defendant. Do you agree with that?

13:31 17 A. No. Because the defendant made that decision  
13:31 18 to take that action.

13:32 19 Q. So in a circumstance where you come in and  
13:32 20 maybe you have had a person who has killed a drug dealer  
13:32 21 versus a person who has killed a nun praying in a  
13:32 22 church, you don't think that one action is any less than  
13:32 23 the other?

13:32 24 A. No. Well, you look, of course, more badly on  
13:32 25 killing the nun. But still, a death is a death. It

13:32 1 doesn't matter who it is.

13:32 2 Q. And probably most people would not feel as bad  
13:32 3 about the drug dealer being killed because of who he is  
13:32 4 as they would about the nun being killed. But, you  
13:32 5 know, it doesn't necessarily lessen the actions of the  
13:32 6 defendant.

13:32 7 A. I agree with that.

13:32 8 Q. What about in a circumstance where you have  
13:32 9 someone who has decided that they are tired of working,  
13:32 10 tired of doing, living the right way. They are just  
13:32 11 going to go down, rob a store, get a bunch of money and  
13:33 12 just go live on the beach. And so they do that, go  
13:33 13 down, find some random store in a neighborhood they've  
13:33 14 never been to before. Go in, rob the clerk, take all  
13:33 15 the money, and then kill the clerk.

13:33 16 How does that, if at all, differ from,  
13:33 17 let's say, a person who makes the same determination  
13:33 18 that they are tired of living the good life? They want  
13:33 19 to go steal some money and go live on the beach. So  
13:33 20 they go down to the 7-Eleven on the corner in their  
13:33 21 neighborhood where they know the family who owns that  
13:33 22 store. They have known them all their life. Spent many  
13:33 23 a night at their house with their son eating dinner  
13:33 24 there and things of that nature. And they know that at  
13:33 25 a specific time exactly how much money is in that store

13:33 1 and who is working. So they go at that time, go in  
13:33 2 there, take the money, and kill their friend. Does  
13:33 3 that -- is there any difference in those two situations  
13:33 4 to you?

13:34 5 A. I'd have to say yes because they knew the  
13:34 6 person. They had all the information, and then I would  
13:34 7 consider that a much more cold-blooded than just a  
13:34 8 random act.

13:34 9 Q. Now, let's talk about, I guess, just things in  
13:34 10 general. When you are trying to decide what is or what  
13:34 11 is not mitigating, what kinds of things would you  
13:34 12 consider, or what kinds of things would you like to know  
13:34 13 in determining whether or not there's sufficient  
13:34 14 mitigating circumstances?

13:34 15 A. What I'd like to know? Well, I would expect  
13:34 16 all the evidence to be presented. I was actually  
13:34 17 wondering about this myself. What if there is not  
13:34 18 enough information given during the trial to make that  
13:35 19 decision? What can a jury do?

13:35 20 Q. On which part?

13:35 21 A. On all -- on all the evidence to either  
13:35 22 consider it mitigating or not.

13:35 23 Q. Are you talking just specifically about the  
13:35 24 mitigation question --

13:35 25 A. Yes; about the mitigation question.

13:35 1 Q. -- or overall? Okay. That's what you are  
13:35 2 looking for, I guess. That's -- I guess the ultimate  
13:35 3 answer to that question is, if there's not enough  
13:35 4 information out there for you to know whether it's  
13:35 5 sufficiently mitigating, then it must not be  
13:35 6 sufficiently mitigating. Does that make sense?

13:35 7 A. Okay.

13:35 8 Q. There has to be information or some kind of  
13:35 9 evidence out there that, that you in your mind think is  
13:35 10 sufficient to warrant the life sentence.

13:35 11 A. Okay.

13:35 12 Q. And if there's not, then the answer to that  
13:35 13 question is no.

13:35 14 A. Okay.

13:35 15 Q. Does that make sense?

13:35 16 A. Yes.

13:35 17 Q. Does that answer your question?

13:35 18 A. Yes.

13:35 19 Q. And that's up to you to decide. You know, one  
13:35 20 person -- people's views are going to differ. And  
13:35 21 people are going to take into account, maybe some  
13:35 22 circumstances that another person might not take into  
13:36 23 account, and that's just completely up to you as a juror  
13:36 24 to decide.

13:36 25 A. Is that debateable between jurors to be able to

13:36 1 discuss that, to determine if, to sway each other on if  
13:36 2 it's mitigating or not?

13:36 3 Q. And that's what you do during your  
13:36 4 deliberations.

13:36 5 A. Okay.

13:36 6 Q. Talk about the evidence, what you think the  
13:36 7 evidence shows, and what you think the evidence doesn't  
13:36 8 show, things of that nature.

13:36 9 A. Okay. Can you ask that question, the original  
13:36 10 question again?

13:36 11 Q. I don't think so because I'm not sure what it  
13:36 12 was. Let's break it down a little bit. When you are  
13:36 13 talking about like the defendant's character and  
13:36 14 background. What kinds of things do you want to know,  
13:36 15 would you want to consider in deciding whether or not  
13:36 16 there's mitigating evidence out there?

13:36 17 A. Well, knowing the suspect's criminal  
13:36 18 background, religious background, all the history you  
13:37 19 can get about that person, I think, to determine if it  
13:37 20 was mitigating.

13:37 21 Q. Okay. What about -- let's talk about  
13:37 22 specifically a person's upbringing, their childhood.

13:37 23 A. Uh-huh.

13:37 24 Q. What if, I guess, for example, you go home this  
13:37 25 afternoon and there are police cars out in front of your

13:37 1 house, and you find out that a murder has happened at  
13:37 2 your house. The police say, you know what? It really  
13:37 3 may seem bad, but it's not that bad because the person  
13:37 4 that did it had a really bad childhood. Maybe their  
13:37 5 father wasn't around whenever they were young. Maybe  
13:37 6 they didn't have all the role models, all the love and  
13:37 7 support that most kids have. So it's not so bad. It's  
13:37 8 not as bad as it may seem. How does that strike you?

13:38 9 A. Well, in our society today, I think that excuse  
13:38 10 is used too much, and people don't take responsibility  
13:38 11 for their actions. I might feel sorry for the person if  
13:38 12 they were in that situation, not having a father or  
13:38 13 whatever when they were growing up, but I do believe  
13:38 14 that people make decisions in their life, and they  
13:38 15 should be responsible for them.

13:38 16 Q. Surely you've known people who have grown up in  
13:38 17 the worst of circumstances. You know, maybe had --  
13:38 18 their parents were split up or had no love and support  
13:38 19 from home, you know. Just had a really really bad  
13:38 20 childhood but grew up to be good people.

13:38 21 A. Right.

13:38 22 Q. Whereas, you've probably also known people who  
13:38 23 had a great childhood, everything they could ever want  
13:38 24 or imagine and had every option in the world, but still  
13:38 25 just grew up to be bad. And that's another thing that's

13:38 1 up to you as a juror to decide, whether or not you think  
13:38 2 that that's mitigating. Things of that nature can  
13:38 3 certainly explain maybe why things have happened, but  
13:39 4 doesn't necessarily excuse it. Does that make sense?

13:39 5 A. Yes.

13:39 6 Q. What about, like I said, drug usage? You know,  
13:39 7 you come home, same scenario. An officer comes up and  
13:39 8 says, you know what? But it's not so bad because the  
13:39 9 person who did this, he's addicted to drugs, and he was  
13:39 10 just on drugs at the time. Does that make it any --  
13:39 11 does that make it any better to you?

13:39 12 A. No.

13:39 13 Q. The phrase personal moral culpability; what  
13:39 14 does that mean to you?

13:39 15 A. I had to get the definition of culpability.  
13:39 16 What exactly does that mean?

13:39 17 Q. It means like responsibility.

13:39 18 A. Okay.

13:39 19 Q. Whether you are responsible or not.

13:40 20 A. Personal moral responsibility of the defendant.

13:40 21 Q. And that's okay.

13:40 22 A. I don't really know.

13:40 23 Q. If nothing's coming to mind, I'm not real sure.  
13:40 24 I mean, it's certainly not defined. I'm not real sure  
13:40 25 anyone knows exactly what it means. It tends to ask you

13:40 1 to take into consideration whether someone's maybe  
13:40 2 morally responsible for what they did.  
13:40 3 Like, for example, take Dr. Kevorkian.  
13:40 4 Say he comes to Texas, has this little old couple who  
13:40 5 have all of their lives decided they were not going to  
13:40 6 live without each other. And they were getting, you  
13:40 7 know, older in years. And one of them is getting really  
13:40 8 sick; wasn't going to live much longer.

13:40 9 And they call Dr. Kevorkian and say, look,  
13:40 10 we are just not going to live without each other. We  
13:41 11 want you to come down here and take both of our lives,  
13:41 12 and so he comes down. Goes to their house. Hooks them  
13:41 13 both up to his machines, and they both die. And in  
13:41 14 Texas that's capital murder because that's two killings.

13:41 15 But can you see how maybe in that  
13:41 16 situation he wouldn't be morally responsible, maybe  
13:41 17 personally morally responsible because the people wanted  
13:41 18 to die? They asked him to come do this for him so that  
13:41 19 they didn't have to live without each other. He wasn't  
13:41 20 really doing it out of violence or hatred or anything  
13:41 21 like that.

13:41 22 A. I can see that.

13:41 23 Q. And that may be something that that's asking  
13:41 24 you about. Do they have the personal moral  
13:41 25 responsibility, or do they not?

13:41 1 A. Okay.

13:41 2 Q. Does that help at all?

13:41 3 A. Yes.

13:41 4 Q. One of the helpful illustrations that we've  
13:41 5 used frequently whenever you are talking about this  
13:41 6 question is and, I guess I need to back up a little bit  
13:41 7 before I go into that. Can you see how maybe someone  
13:41 8 has committed a crime, a capital murder, and you find  
13:42 9 that they are a future danger.

13:42 10 Do you think there's a situation out there  
13:42 11 where even though you found them to be guilty of capital  
13:42 12 murder and they are a future danger, there might be  
13:42 13 sufficient mitigating circumstances to warrant a life  
13:42 14 sentence rather than a death sentence?

13:42 15 A. I'm sure there are. I can't think of any  
13:42 16 examples right now.

13:42 17 Q. Are you open to that idea?

13:42 18 A. Yes.

13:42 19 Q. That there are those situations? Okay. And  
13:42 20 that's all you need to be qualified as a juror. Just to  
13:42 21 be able to assure us that -- that you are going to keep  
13:42 22 an open mind. And if the evidence points to the person  
13:42 23 is a future danger, and if the evidence shows that there  
13:42 24 are sufficient mitigating circumstances, that you can  
13:42 25 answer these questions in a way that would result in a

13:42 1 life sentence. Does that make sense?

13:42 2 A. Yes, it is. And I can do that.

13:42 3 Q. And can you do that?

13:42 4 A. Yes.

13:42 5 Q. Now, getting into, one of the illustrations  
13:43 6 that we use as far as where maybe mitigating  
13:43 7 circumstances aren't sufficient, are things like when  
13:43 8 you talk about Adolf Hitler. Everyone is well aware of  
13:43 9 the things that he did and how horrible his actions were  
13:43 10 and things of that nature.

13:43 11 A. Uh-huh.

13:43 12 Q. But even in looking at Hitler, you could  
13:43 13 probably imagine that there are things in his childhood  
13:43 14 that were not good, maybe that people could point to to  
13:43 15 say, well, this is why he turned out the way that he  
13:43 16 did.

13:43 17 A lot of people say that he was teased as  
13:43 18 a kid, you know, that maybe he wasn't as manly as his  
13:43 19 father wanted him to be. They say his father was pretty  
13:43 20 strict on him, things of that nature. He just wasn't  
13:43 21 quite the son he wanted. I think he beat him on  
13:43 22 occasions, beat his mother, too. Hitler wanted to go to  
13:43 23 art school. He wanted to be a painter. They kicked him  
13:43 24 out of art school. They said, you are no good.

13:43 25 All of these things can be pointed to that



13:43 1 were probably bad for him. You know, bad in his life,  
13:43 2 maybe some of the reasons why he grew up the way he did.  
13:43 3 Does that make sense?

13:43 4 A. Yes.

13:44 5 Q. But when you look at that in relationship to  
13:44 6 what he did and to all of the lives that he took and the  
13:44 7 way that he took them, things, you know, all of that,  
13:44 8 there's just no way that that's sufficiently mitigating  
13:44 9 to give him life?

13:44 10 A. That strongly outweighs the mitigating  
13:44 11 circumstance then.

13:44 12 Q. Right. And that's what it's asking you to look  
13:44 13 at. Because somebody may have a life that's just filled  
13:44 14 with nothing but bad stuff, but depending on what the  
13:44 15 circumstances are, and it's just asking you to weigh all  
13:44 16 that. Look at all the evidence and determine whether or  
13:44 17 not you think that it's sufficient for a life sentence.  
13:44 18 Is that something that you think as a juror you could  
13:44 19 do?

13:44 20 A. Yes.

13:44 21 Q. You said something earlier when you were  
13:44 22 talking about a defendant's character and background,  
13:44 23 about their religion. How important of a role do you  
13:44 24 think a person's religion --

13:44 25 A. Well, religion might have been too specific.

13:44 1 It's really probably more of their moral -- moral  
13:45 2 character in the past.

13:45 3 Q. Okay.

13:45 4 A. Most people that are religious have strong  
13:45 5 moral character and would at least say, no, that that  
13:45 6 act was wrong. But I would say it's more of their  
13:45 7 values and their moral character that I would be wanting  
13:45 8 to know.

13:45 9 Q. Okay. Have you ever heard the saying, there  
13:45 10 are no atheists in fox holes?

13:45 11 A. Yes.

13:45 12 Q. What does that mean to you?

13:45 13 A. When somebody's life is in danger, they look  
13:45 14 for a higher being for comfort than when they do die.

13:45 15 Q. And can you see maybe, you know, how in the  
13:45 16 heat of the moment things are getting really close to  
13:45 17 them as far as death that they might do that? Can you  
13:45 18 also imagine that maybe if they make it out of that  
13:45 19 situation, they come back home, back to their lives, how  
13:45 20 they might lose a lot of that religion that they found?

13:45 21 A. Oh, yes.

13:45 22 Q. Can you see how that circumstance or that  
13:45 23 situation might relate to a circumstance where a  
13:45 24 defendant's on trial for his life?

13:46 25 A. (Moving head up and down.) I'd say during the

13:46 1 trial it could be presented as being very religious and  
13:46 2 to make -- to bring up his character more to help make a  
13:46 3 mitigating circumstance to sway the jury.

13:46 4 Q. Certainly you've heard the term jailhouse  
13:46 5 conversion. Have you ever heard of that?

13:46 6 A. (Moving head up and down.)

13:46 7 Q. How do you feel about the argument, "I found  
13:46 8 God. I'm saved. Please don't execute me"?

13:46 9 A. The -- well, I feel that God gave us the  
13:46 10 intelligence to create man's laws on earth for society.  
13:46 11 And it's up to society to decide what they need to do  
13:46 12 with that person.

13:46 13 Q. Okay.

13:46 14 A. And then after that point, it's between him and  
13:46 15 God. I don't think that should sway a decision about  
13:46 16 the outcome.

13:46 17 Q. Okay. Do you have children?

13:47 18 A. I have two.

13:47 19 Q. Certainly, I'm sure you love and adore those  
13:47 20 children.

13:46 21 A. (Moving head up and down.)

13:47 22 Q. And I'm sure when they grow up, let's say they  
13:47 23 got in trouble with the law, I'm sure that you would  
13:47 24 still love them, support them, stand behind them, and do  
13:47 25 whatever you could do to help them. Is that a safe

13:47 1 assumption?

13:47 2 A. Yes, it is.

13:47 3 Q. Say, they got in trouble with the law and ended  
13:47 4 up on trial. They asked you to come down and testify on  
13:47 5 their behalf as to what a good child they were, about  
13:47 6 their good character, their good virtues. Is that  
13:47 7 something that, as a parent, you would want to do to try  
13:47 8 to help them?

13:47 9 A. Uh-huh.

13:47 10 Q. Can you imagine in a situation like this where  
13:47 11 a person would probably have family members, maybe a  
13:47 12 mother, you know, things of that nature that are going  
13:47 13 to come down and say, "I love this person, and he's been  
13:47 14 a great child, and I need him here. Please don't  
13:47 15 execute him." Can you see how that might happen in a  
13:47 16 case like this?

13:47 17 A. Yes.

13:47 18 Q. How would you feel about that kind of  
13:48 19 testimony?

13:48 20 A. Well, I'd probably appreciate the love that the  
13:48 21 parent has for the child. And I don't really know if --  
13:48 22 if it would influence me one way or the other. I think  
13:48 23 it would grab me at first. Like, get more emotionally  
13:48 24 involved with the trial, but then you step back and look  
13:48 25 at all the evidence. I don't think testimony like that

13:48 1 should make much or any difference.

13:48 2 Q. Okay. When you look at this defendant, is  
13:49 3 there anything, any observations that you make about  
13:49 4 him?

13:49 5 A. No.

13:49 6 Q. Certainly he looks pretty young. Is there  
13:49 7 anything about that that concerns you?

13:49 8 A. About the age?

13:49 9 Q. Uh-huh.

13:49 10 A. No.

13:49 11 Q. Looking at your questionnaire do you remember  
13:49 12 the page where --

13:49 13 A. Well, back to your other question, if -- I  
13:49 14 guess what you are probably getting at what was his age  
13:49 15 and getting out on parole in 40 years or so, he'll still  
13:49 16 be a pretty young man well in his 60s, but I don't know.  
13:49 17 I don't really know how to answer that question, but I  
13:49 18 know what you are getting at.

13:50 19 Q. Well, and -- (counsel conferring) in looking at  
13:50 20 mitigating evidence, youth is certainly one thing that  
13:50 21 could come up. It could be a person that's younger.  
13:50 22 Some people say, people that are younger haven't yet  
13:50 23 matured. Maybe they deserve a little more, I guess, to  
13:50 24 be taken a little lightly, you know, on them than  
13:50 25 someone who has lived a little bit longer and maybe

13:50 1 knows not to do some of the things that they do. How do  
13:50 2 you feel about that?

13:50 3 A. I might agree with that more if it was more of  
13:50 4 a teenager, younger than 20. I don't know. Especially  
13:50 5 a younger teenager that really hadn't had that  
13:50 6 experience of the world and might not really know true  
13:50 7 right from wrong or hadn't had that good of influence.  
13:51 8 I guess I would cut them a little more slack than I  
13:51 9 would somebody older that's been out in the world a  
13:51 10 little longer.

13:51 11 Q. Now, I might go back to your questionnaire.  
13:51 12 There's a page where it had ten statements where it  
13:51 13 asked you to either strongly agree all the way down to  
13:51 14 strongly disagree. Do you recall that page?

13:51 15 A. I think so.

13:51 16 Q. One of the statements was: If someone is  
13:51 17 accused of capital murder, he should have to prove his  
13:51 18 innocence. And you circled "agree." In this trial in  
13:51 19 the guilt-innocence phase, as well as on this first  
13:51 20 question that's on the bottom down here, the State has  
13:51 21 the burden of proof, which means we have to prove and  
13:51 22 bring evidence to convince the jury beyond a reasonable  
13:51 23 doubt that he's guilty.

13:51 24 A. Right.

13:51 25 Q. The burden never shifts to the defense. They

13:51 1 don't have to bring any evidence to you. They don't  
13:51 2 have to --

13:51 3 A. Right.

13:51 4 Q. They don't even have to ask questions of any  
13:51 5 witnesses. All they have to do basically is show up and  
13:51 6 act right. Is there anything about that that concerns  
13:52 7 you?

13:52 8 A. No. I think that the defendant will bring any  
13:52 9 evidence forward that they can to help save the  
13:52 10 defendant. But I know -- I understand they don't have  
13:52 11 to.

13:52 12 Q. And that's my question. You know, if you are  
13:52 13 going to require them to bring evidence to you that's  
13:52 14 going to prove that he's innocent.

13:52 15 A. I guess when I answered that question I was  
13:52 16 more thinking of the proof -- well, on the prosecutor's  
13:52 17 side, they have to present the amount of, the right  
13:52 18 evidence to prove the guilt. If they don't, then that  
13:52 19 innocence is proven or not guilty is proven.

13:52 20 Q. And that's consistent with the statement that's  
13:52 21 on down on the page. It asks: A defendant is innocent  
13:52 22 unless proven guilty beyond a reasonable doubt. And you  
13:52 23 put "strongly agree"?

13:52 24 A. Yes.

13:52 25 Q. And we've had several people who have come in

13:53 1 and have them read that question to read what they  
13:53 2 actually think. Does that make sense?

13:53 3 A. Uh-huh.

13:53 4 Q. Because you are exactly right down here where  
13:53 5 we talked about, we have to prove he's guilty beyond a  
13:53 6 reasonable doubt. And until we do, he's innocent.

13:53 7 A. If we don't do that, our system doesn't work.  
13:53 8 So --

13:53 9 Q. Exactly.

13:53 10 A. -- I believe in the system.

13:53 11 Q. So if I asked you right now if you had to  
13:53 12 return a verdict, what would it be?

13:53 13 A. Right now?

13:53 14 Q. Right now.

13:53 15 A. With no evidence?

13:53 16 Q. Yes.

13:53 17 A. I would say not guilty.

13:53 18 Q. It's not a trick question. I'm just, you know,  
13:53 19 until you get evidence that proves to you beyond a  
13:53 20 reasonable doubt that he's guilty, your verdict is going  
13:53 21 to be "not guilty."

13:53 22 A. Yes.

13:53 23 Q. Does that make sense?

13:53 24 A. (Moving head up and down.)

13:53 25 Q. And you are going to hold us to our burden,

13:53 1 make sure that we prove and bring the evidence that we  
13:53 2 have to bring you, right?

13:53 3 A. I'll be very objective, and yes.

13:53 4 Q. Let's go back to this first special issue down  
13:54 5 on the bottom. The future danger question. It's  
13:54 6 frequent in cases like this where you might hear some  
13:54 7 kind of psychiatric testimony, some testimony from some  
13:54 8 psychiatrists, things of that nature.

13:54 9 A. Uh-huh.

13:54 10 Q. How important do you think that kind of  
13:54 11 testimony is?

13:54 12 A. I think it gives some insight into the  
13:54 13 character of the person.

13:54 14 Q. Okay. Do you think it's possible that they  
13:54 15 could get a psychiatrist that says he's not a future  
13:54 16 danger. He'd never do anything like this again. He's a  
13:54 17 wonderful person. And we could probably go out and get  
13:54 18 a psychiatrist who says: No, he is a future danger. He  
13:54 19 is going to do this again. He is not a nice person.

13:54 20 Do you think that's a possibility?

13:54 21 A. I'm sure it is.

13:54 22 Q. In a situation like that, how would you view  
13:54 23 that evidence?

13:54 24 A. Well, I would probably want to hear the other  
13:54 25 side of it, too. And if I didn't -- I would see it as a

13:55 1 biased opinion. I would have to weigh out both sides of  
13:55 2 the opinion.

13:55 3 Q. Is this a question you think you could answer  
13:55 4 without the help of psychiatric testimony?

13:55 5 A. Yes.

13:55 6 Q. It's kind of like going to the circus, seeing  
13:55 7 the tiger out in the middle of the ring with the little,  
13:55 8 the tiger tamer, and all of a sudden the tiger comes out  
13:55 9 into the crowd. You don't necessarily need a  
13:55 10 veterinarian to tell you, you know what? You might  
13:55 11 ought to run because that tiger is probably dangerous.

13:55 12 A. I think we could determine from the evidence.

13:55 13 Q. I wanted to also talk to you about: There's a  
13:55 14 question on here that asks about circumstantial  
13:55 15 evidence. If you could convict someone of capital  
13:55 16 murder based solely on circumstantial evidence, and your  
13:55 17 response was, no.

13:56 18 Circumstantial evidence is something  
13:56 19 that's not direct evidence. Direct evidence, that being  
13:56 20 an eye witness. Someone who sees it directly. Sees  
13:56 21 what's going on. That's direct evidence.

13:56 22 Circumstantial evidence is something like DNA or maybe  
13:56 23 fingerprint?

13:56 24 A. Oh, is that all considered circumstantial?

13:56 25 Q. Yes. Could you convict someone of capital

13:56 1 murder based on circumstantial evidence of that nature  
13:56 2 or just on circumstantial evidence, in general?

13:56 3 A. I was actually seeing the physical evidence  
13:56 4 like that as true uncircumstantial or noncircumstantial  
13:56 5 evidence. If he had -- if there's plenty of  
13:56 6 fingerprint, DNA evidence and all kinds of things we can  
13:56 7 get out of scientific examination of the evidence, at  
13:56 8 the scene of the crime, yeah, I think that would --  
13:57 9 okay. I would have to change the answer to yes.  
13:57 10 Because the scientific evidence is there, and I could go  
13:57 11 based on scientific evidence.

13:57 12 Q. Okay. Because the direct evidence is going to  
13:57 13 be more if you have eye witness, maybe someone who saw  
13:57 14 it, maybe a videotape, something like that. That's  
13:57 15 going to be direct evidence.

13:57 16 A. Okay. That was my misunderstanding of what  
13:57 17 circumstantial actually means.

13:57 18 Q. So you wouldn't have any trouble convicting  
13:57 19 someone based solely on circumstantial evidence?

13:57 20 A. If it was the right type of circumstantial  
13:57 21 evidence.

13:57 22 Q. What do you mean when you say that?

13:57 23 A. Like I said, scientific. If they can prove  
13:57 24 that's the same matching DNA, same hair or fabric  
13:57 25 sample, fiber sample, I believe so.

13:57 1 Q. Okay. I'm just trying to go through your  
13:58 2 questionnaire a little bit.

13:58 3 MR. SCHULTZ: If we could have just a  
13:58 4 moment, Judge.

13:58 5 VENTIREPERSON: Could I get a drink?

13:58 6 THE COURT: Yes. Billy could you get this  
13:58 7 gentleman a drink?

13:58 8 (Off the record.)

14:00 9 Q. (BY MS. LOWRY) I want to go to the first  
14:00 10 special issue with you again, the future danger question  
14:00 11 and talk to you a little bit more about society.

14:00 12 A. Okay.

14:00 13 Q. I know that you had said that you had a  
14:00 14 differing opinion from defense counsel when he was  
14:00 15 talking about society meant just prison society.

14:00 16 A. Yes.

14:00 17 Q. And it's up to you to decide what society or  
14:00 18 what all you want to include in society. But our law  
14:00 19 says that prison is part of society.

14:00 20 A. Oh, it does?

14:00 21 Q. Does that make sense? I mean, because you are  
14:00 22 talking about whether or not this person is going to be  
14:00 23 a continuing threat to society. And you know he's  
14:00 24 either -- he's going to be in prison if he gets a life  
14:01 25 sentence. So it necessarily includes prison society.

14:01 1 And prison society is part of our society  
14:01 2 as well because we fund it. You know, we pay for it.  
14:01 3 We send people from normal society from the free world  
14:01 4 basically in to work there. And we have prison guards,  
14:01 5 you have doctors, clergy, things of that nature.

14:01 6 A. That's true.

14:01 7 Q. So when it asks if he's going to be a  
14:01 8 continuing threat to society, knowing that he's going to  
14:01 9 be in prison, that's necessarily a part of society, but  
14:01 10 it's certainly up to you to decide, you know, if you  
14:01 11 want to include in that, you know, all of society. That  
14:01 12 means outside of prison, inside of prison and all of it  
14:01 13 together. Does that make sense?

14:01 14 A. Yes, it does. I would still base my decision  
14:01 15 on outside of prison society. That's the standards that  
14:01 16 we hold people to in this society.

14:01 17 Q. And -- (counsel conferring.)

14:02 18 MR. SCHULTZ: A moment please, Judge?

14:02 19 Q. (BY MS. LOWRY) When the legislature came up  
14:02 20 with this question, they envisioned that society -- I  
14:02 21 guess, that included prison society. They didn't limit  
14:03 22 it strictly to prison society. Of course, they didn't  
14:03 23 ask, you know, can he safely be held in prison?

14:03 24 So it's up to you as a juror to decide, if  
14:03 25 your definition of society is prison society, as well as

14:03 1 outside society. Are you --

14:03 2 A. Okay.

14:03 3 Q. -- open to the idea that that question is  
14:03 4 asking you not only whether or not he's going to be a  
14:03 5 continuing threat to outside society -- never mind. Let  
14:03 6 me try that again. Are you open to the idea that that  
14:03 7 question asks you to contemplate whether or not he's  
14:03 8 going to be a continuing threat to outside society as  
14:03 9 well as a continuing threat to the prison society that  
14:03 10 he'll find himself in if he gets a life sentence?

14:03 11 A. I guess I'd have to take that into  
14:03 12 consideration because that's the way the law is written.  
14:03 13 It was my definition on what society was. I wasn't  
14:03 14 aware that the lawmakers would actually write a law that  
14:03 15 takes into account a prison society.

14:03 16 Q. Well, it kind of asks you to take into  
14:04 17 consideration his propensity for dangerousness based on  
14:04 18 his personality and, you know, his own characteristics  
14:04 19 rather than a location. You know, not, is he going to  
14:04 20 be a danger in prison? Not, is he going to be a danger  
14:04 21 in society? But basically, you know, is he a future  
14:04 22 danger in whatever society he may find himself in?

14:04 23 A. Okay.

14:04 24 Q. And with that, because the law is such that, if  
14:04 25 he's found guilty of capital murder, he's going to be in

14:04 1 prison, you know, because he'll either get a death  
14:04 2 sentence or a life sentence.

14:04 3 THE COURT: Say, Ms. Lowry, I'm going to  
14:04 4 ask you to pass the witness in about five minutes.

14:04 5 MS. LOWRY: Thank you, Your Honor.

14:04 6 Q. (BY MS. LOWRY) Do you see how that question is  
14:04 7 asking you basically just for his propensity for  
14:04 8 dangerousness? Whether or not he's going to be a future  
14:04 9 danger in whatever society he finds himself in?

14:04 10 A. I can see that.

14:04 11 Q. Okay. And you are certainly free to consider  
14:04 12 and, you know, whether or not he'd be a danger outside  
14:05 13 of prison. But since, if he gets a life sentence, he is  
14:05 14 going to be in prison. It's also asking you to consider  
14:05 15 whether or not he's going to be a continuing threat to  
14:05 16 the prison society as well as any outside society.

14:05 17 A. Okay.

14:05 18 Q. Also, I see on here that you have, as one of  
14:05 19 your most respected women, the Mayor of Frisco. Can I  
14:05 20 ask why?

14:05 21 A. I really couldn't think of anybody else that,  
14:05 22 Kathy Seih goes to our church. My wife knows her pretty  
14:05 23 well, and I think she's done some good things for  
14:05 24 Frisco, and I couldn't really think of anybody else, so  
14:05 25 I put her. I think she's a very nice lady, and I do

14:05 1 respect her a lot.

14:05 2 Q. Just curious. I guess the final questions are:  
14:06 3 If the evidence is such that you believe beyond a  
14:06 4 reasonable doubt that the defendant is guilty of capital  
14:06 5 murder, can you return a verdict that convicts them of  
14:06 6 that offense?

14:06 7 A. Yes.

14:06 8 Q. And getting to the punishment phase. After  
14:06 9 convicting someone of capital murder, if you look at the  
14:06 10 evidence and weigh the evidence and the evidence is  
14:06 11 proven to you beyond a reasonable doubt that the person  
14:06 12 is a future danger, can you answer that question yes?

14:06 13 A. Yes, I could.

14:06 14 Q. And going further with the mitigation question.  
14:06 15 After looking at all the evidence, you found somebody  
14:06 16 guilty of capital murder, you found that they are a  
14:06 17 future danger, you weigh the evidence, and there is not  
14:06 18 sufficient mitigating circumstances, can you answer that  
14:06 19 question no, knowing that it is going to result in a  
14:06 20 death sentence for this defendant?

14:06 21 A. I could, but it would be hard. But I would  
14:06 22 have to answer that question.

14:06 23 Q. And certainly that's understandable. I mean,  
14:07 24 no one thinks that it's going to be an easy task. You  
14:07 25 know, it's just, all we ask is that you look at the

14:07 1 evidence and weigh the evidence and answer the questions  
14:07 2 in the way that the evidence requires.

14:07 3 A. Right.

14:07 4 Q. And is that something that you can do?

14:07 5 A. Yes.

14:07 6 MS. LOWRY: Pass the juror.

14:07 7 THE COURT: All right.

14:07 8 MR. HIGH: I'm going to talk to this  
14:07 9 juror, Judge.

14:07 10 THE COURT: All right.

14:07 11 VOIR DIRE EXAMINATION

14:07 12 BY MR. HIGH:

14:07 13 Q. How are you doing, Mr. Smith?

14:07 14 A. All right.

14:07 15 Q. Do you go by John or do you go by David?

14:07 16 A. At work I go by J.D.

14:07 17 Q. My name is Don High, and I'm one of the other  
14:07 18 lawyers on the case. Mr. Goeller, here, is my partner,  
14:07 19 and we're going to be working together on this case.  
14:07 20 And I haven't had a chance to talk with you yet. So  
14:07 21 it's nice to meet you and nice to talk with you. I'm  
14:07 22 not going to have near as many questions. I'll be  
14:07 23 surprised if I have you a half hour. We'll see how it  
14:07 24 goes. Okay?

14:07 25 I notice that you were born in Dallas and

14:08 1 that you've lived a number of places in Texas; is that  
14:08 2 right?

14:08 3 A. Yes.

14:08 4 Q. And Snyder, Texas, comes to mind. Was that  
14:08 5 junior high and high school?

14:08 6 A. That was fifth grade through ninth grade.

14:08 7 Q. Okay. And then back to Denton?

14:08 8 A. Yes.

14:08 9 Q. And you went to high school in Denton?

14:08 10 A. Yes.

14:08 11 Q. And what activities did you participate in in  
14:08 12 high school?

14:08 13 A. I was in football, track, band, photography.

14:08 14 Q. Did you letter in football?

14:08 15 A. No. Actually, football, I just played up until  
14:08 16 my sophomore year. I did not play my junior -- or  
14:08 17 junior year. I actually got out of football to be able  
14:08 18 to be in band. I actually enjoyed that more.

14:08 19 Q. Okay. And you have been able to play trombone  
14:08 20 for years now?

14:08 21 A. Yes.

14:08 22 Q. Is that -- your football career probably would  
14:08 23 have lasted a year or two?

14:08 24 A. That was part of the reason I made that choice.

14:08 25 Q. I understand. Yeah. I was faced with -- when

14:09 1 you don't have the size in high school you got to --  
14:09 2 need to think about the long term?

14:09 3 A. Oh, I was -- it wasn't really the size because  
14:09 4 I was as big as anybody.

14:09 5 Q. Is that right?

14:09 6 A. It was just my interest.

14:09 7 Q. You enjoyed the music more?

14:09 8 A. Yes, I do.

14:09 9 Q. And I notice you went -- you were in Lubbock.  
14:09 10 Do you go to Texas Tech?

14:09 11 A. Yes.

14:09 12 Q. Did you play in the band at Texas Tech?

14:09 13 A. I was in the marching band my freshman year,  
14:09 14 and jazz bands, brass choir, took some music theory  
14:09 15 classes.

14:09 16 Q. Okay. So were you -- are you a singer?

14:09 17 A. Oh, no.

14:09 18 Q. Brass choir?

14:09 19 A. Brass choir.

14:09 20 Q. Brass?

14:09 21 A. Brass, it's all brass instruments.

14:09 22 Q. I see, okay. So were you thinking about  
14:09 23 studying music when you started out at Tech?

14:09 24 A. I thought about it, but I also thought about  
14:09 25 photography.

14:10 1 Q. Okay.

14:10 2 A. But I discovered computers my senior year in  
14:10 3 high school. And when I went to Tech, I knew I was  
14:10 4 going to be computer science.

14:10 5 Q. Okay.

14:10 6 A. So my decision's already been made when I went  
14:10 7 there.

14:10 8 Q. Okay. But you dabbled a little bit in music;  
14:10 9 took some music theory?

14:10 10 A. Yeah. Music has always been a big interest of  
14:10 11 mine.

14:10 12 Q. Super. Have you played in any band since you  
14:10 13 have been out of college?

14:10 14 A. At the church off and on for a couple musicals.  
14:10 15 A musical in McKinney and Denton and Frisco.

14:10 16 Q. Super. And it's always trombone?

14:10 17 A. Yes.

14:10 18 Q. Very good. You've been married a good long  
14:10 19 time now. You were about 23 when you were married, when  
14:10 20 you got married?

14:10 21 A. Yes, I was.

14:10 22 Q. Just out of college a couple of years?

14:10 23 A. One year. My wife just graduated from Texas  
14:10 24 Tech --

14:10 25 Q. All right.

14:10 1 A. -- when we got married.

14:10 2 Q. I want to go to your questionnaire. Right off  
14:11 3 the bat, it asks you about the death penalty. And it  
14:11 4 says: Are you in favor of the death penalty? And you  
14:11 5 say "yes." And it says, please explain your answer.  
14:11 6 And it says, it is society's way to make order and to  
14:11 7 hold the murderer accountable for his or her actions.

14:11 8 So I guess did the word murderer, I mean,  
14:11 9 it comes up pretty quick and pretty quick there. What  
14:11 10 were you thinking? How did that come to mind so  
14:11 11 quickly? I guess that's what I'm wondering about.

14:11 12 A. Well, you could say the accused. You could say  
14:11 13 the suspect. I know it does sound pretty strong. But  
14:11 14 if you are convicted, that's what society has said that  
14:11 15 you have done, so I just use that word.

14:11 16 Q. Okay. You filled out that questionnaire pretty  
14:12 17 quickly after the Judge gave his opening remarks. And I  
14:12 18 think the parties were introduced to you, and I believe  
14:12 19 Mr. Cantu here was introduced as charged with capital  
14:12 20 murder.

14:12 21 And I guess you -- you could figure out  
14:12 22 that he was the defendant, and everybody else was  
14:12 23 lawyers and judges. I know we're not real clear with  
14:12 24 that. But were you able to kind of figure out that he  
14:12 25 was the accused? He was the one on trial?

14:12 1 A. I wasn't absolutely sure, but I thought  
14:12 2 possibly.

14:12 3 Q. Okay. And how would -- how was your mind  
14:12 4 working right then? Were you wondering what he had done  
14:12 5 to land himself there? Did you wonder what he's guilty  
14:12 6 of or --

14:12 7 A. What I was actually wondering was, there's 200  
14:13 8 people here.

14:13 9 Q. Uh-huh.

14:13 10 A. It's got to be a pretty major case.

14:13 11 Q. Okay.

14:13 12 A. You know, I really didn't know what it was, to  
14:13 13 tell you the truth. Not until he announced, until the  
14:13 14 Judge told us what it was.

14:13 15 Q. Sure. Okay. We explained some legal concepts  
14:13 16 to you that morning, that the defendant is innocent  
14:13 17 until he's proven guilty. And we referred to him as  
14:13 18 accused and that sort of thing. One thing that I find  
14:13 19 interesting is you talk about murderer in your  
14:13 20 questionnaire. Had you already made a decision that  
14:13 21 morning that --

14:13 22 A. No.

14:13 23 Q. -- that he was guilty of murder or that he was  
14:13 24 a murderer or --

14:13 25 A. No. I did not make that decision. That's just

14:13 1 a word I chose based on the outcome of the trial, but  
14:13 2 that's all it meant.

14:13 3 Q. You understand that -- that there's going to be  
14:14 4 a trial. That we don't contend he is guilty. And that  
14:14 5 the issues of his guilt will be determined at some  
14:14 6 future date. And I know you are probably getting the  
14:14 7 impression there. I mean, we're sitting here talking  
14:14 8 about punishment and a life sentence and mitigation and  
14:14 9 that sort of thing. We're talking about that even  
14:14 10 before the trial gets under way. Does that strike you  
14:14 11 as odd or --

14:14 12 A. Actually, I think it's good to do so you make  
14:14 13 sure you get the right kind of juror that can answer  
14:14 14 those questions.

14:14 15 Q. Absolutely. Absolutely.

14:14 16 A. So I don't have any --

14:14 17 Q. In fact, the law provides for it. We have to  
14:14 18 do this in a capital murder scenario. Now, I don't want  
14:14 19 you to get the impression that either myself or  
14:14 20 Mr. Goeller agree that he's guilty because we don't. In  
14:14 21 fact, we're going to join issue on that. The jury is  
14:14 22 going to hear evidence on that, and they are going to  
14:14 23 have to make a decision whether or not he's guilty. Do  
14:15 24 you understand that?

14:15 25 A. Uh-huh.

14:15 1 Q. And the State has the burden of proof. And  
14:15 2 they are going to have to prove it to the jury beyond a  
14:15 3 reasonable doubt. All that makes sense?

14:15 4 A. I understand, yes.

14:15 5 Q. Okay. A couple of questions here at the top of  
14:15 6 page two: "What is the best argument in favor of the  
14:15 7 death penalty?" "It serves as a deterrent." "What is  
14:15 8 the best argument in opposition of the death penalty?"  
14:15 9 "It is not for society to be playing God."

14:15 10 And I have been listening to you for the  
14:15 11 last hour or so. I don't think that's your opinion, is  
14:15 12 it? That's just --

14:15 13 A. I was saying, yeah. That would be an argument  
14:15 14 not to have the death penalty.

14:16 15 Q. That's not -- that's not the way you feel?  
14:16 16 That's the way probably you learned in college at Tech  
14:16 17 maybe?

14:16 18 A. Yes. I do feel like that society has a right  
14:16 19 to make capital punishment, to use capital punishment.  
14:16 20 And it's -- it's really up to us. And like I was saying  
14:16 21 earlier, it's between him and God at that point.

14:16 22 Q. Okay.

14:16 23 A. So I think that you have man's laws and God's  
14:16 24 laws, and you need to abide by both, so...

14:16 25 Q. Okay. With respect to life confinement in

14:16 1 prison, you circled No. 3, and you had three choices.  
 14:16 2 No. 3 says: I believe that life confinement in prison  
 14:16 3 is appropriate in some capital murder cases, and I could  
 14:16 4 return a verdict resulting in life confinement in a  
 14:16 5 proper case.

14:16 6 And you seem to understand some of the way  
 14:17 7 our law works. You understand we don't have life  
 14:17 8 without parole?

14:17 9 A. I understood that the last time I was here.

14:17 10 Q. Okay. So you also understand that a conviction  
 14:17 11 for capital murder means 40 calendar years? And you  
 14:17 12 indicated that if, you know, if he's in his 20s, he  
 14:17 13 could still be somewhat of a young man, or at least in  
 14:17 14 his 60s, when he gets out?

14:17 15 A. Yeah.

14:17 16 Q. A person 26, 27 years old, we're talking 66,  
 14:17 17 67, before they are even eligible for parole. And I'm  
 14:17 18 sure you understand that that's a discretionary thing,  
 14:17 19 that the Board of Pardons and Paroles that, you know,  
 14:17 20 they can turn a person down, once, twice, three times  
 14:17 21 until they decide that yes, in fact, he can be released.

14:17 22 A. I understand that.

14:17 23 Q. Okay. So, in practicality a life sentence  
 14:18 24 could work out to be a life sentence. You know, a  
 14:18 25 person may not live 40 years. A person may be

14:18 1 repeatedly denied parole. Okay?

14:18 2 A. I understand that, too.

14:18 3 Q. But with those further explanations, I know you  
 14:18 4 don't know anything about the facts in this case. And  
 14:18 5 we can't tell you about the facts in this case, but is  
 14:18 6 it still your opinion that you could assess life  
 14:18 7 confinement in a proper case?

14:18 8 A. Of course.

14:18 9 Q. Okay. And that would be on a case-by-case  
 14:18 10 basis?

14:18 11 A. Yes.

14:18 12 Q. There's a phrase here. It has to do with the  
 14:18 13 criminal justice system. It says: The death penalty in  
 14:18 14 Texas is; and I'm going to give you a blank line. And  
 14:18 15 you say: The death penalty in Texas is the correct way  
 14:19 16 to sentence those that commit terrible cold-blooded  
 14:19 17 crimes against innocent victims.

14:19 18 Tell me what you meant by that. Give me a  
 14:19 19 little bit more explanation what you meant.

14:19 20 A. I value life greatly, and I agree with the  
 14:19 21 death penalty for that case. And I do believe that that  
 14:19 22 is a proper way to convict a person if the case  
 14:19 23 warrants.

14:19 24 Q. Obviously, when I see you write that "terrible  
 14:19 25 cold-blooded crimes," I think of Timothy McVeigh, you

14:19 1 know, in the Oklahoma City bombing case.

14:19 2 A. Uh-huh.

14:19 3 Q. I mean, that is terrible. That's horrendous.

14:19 4 It was cold-blooded. It was premeditated. It was  
 14:19 5 deliberate. It's the kind of guy that thought about it  
 14:19 6 for months. He planned it. He studied it. He bought  
 14:20 7 the truck. He bought the fertilizer. He planned his  
 14:20 8 escape route, and he didn't even show any remorse for  
 14:20 9 it.

14:20 10 A. Uh-huh.

14:20 11 Q. Obviously, that's probably the best example of  
 14:20 12 a cold-blooded killer. And, obviously, I'm sure you  
 14:20 13 agree that we're probably better off without him, that  
 14:20 14 he got the death penalty, and it's probably the right  
 14:20 15 thing.

14:20 16 Some folks would talk about Jeffrey  
 14:20 17 Dahmer. You know, the one that was the cannibal up in  
 14:20 18 Minnesota. And of course, he got what was coming to him  
 14:20 19 in prison when he was killed in prison? Do you recall  
 14:20 20 that several years ago?

14:20 21 A. I don't remember that.

14:20 22 Q. Some would talk about John Wayne Gacy. You  
 14:20 23 know, the one that dressed up like a clown in Chicago?  
 14:20 24 And he had lured his victims out from birthday parties  
 14:20 25 and things, and he was a multiple killer. A serial

14:20 1 killer who killed repeatedly. Sometimes he knew his  
 14:21 2 victims. Sometimes he didn't. Okay?

14:21 3 When I think of cold-blooded -- I don't  
 14:21 4 know what you think -- but I think of somebody who has  
 14:21 5 no real reason for doing it other than they just want  
 14:21 6 to. You know, they just -- they just want to do it, as  
 14:21 7 opposed to a relationship-type killing, you know?

14:21 8 A. Right. There's crimes of passion to where as  
 14:21 9 something, you know, like exactly like a relationship  
 14:21 10 and you get even basically. And then you have these  
 14:21 11 calculated murders that actually happen, are planned out  
 14:21 12 or which, like with a robbery, you are planning on going  
 14:21 13 in there stealing something and doing or whatever you  
 14:21 14 have to --

14:21 15 Q. Sure.

14:21 16 A. -- to take it. So I do distinguish between the  
 14:21 17 two types.

14:21 18 Q. Are you talking about relationship killing like  
 14:21 19 maybe the wife that's been beaten up for years by her  
 14:21 20 husband? She just can't take it anymore. And so, one  
 14:22 21 night he comes home, and she's had it, and she pulls a  
 14:22 22 knife out of the door and stabs him and kills him. And  
 14:22 23 obviously, she's committed a murder. She's  
 14:22 24 intentionally and knowingly taken a human life, but a  
 14:22 25 lot of us can understand that, right?

14:28 1 that may not be dangerous in the future. Would you  
14:28 2 agree?

14:28 3 A. Yes, in that case.

14:28 4 Q. Okay. And in fact that -- that's a person that  
14:28 5 you may have a hard time with answering question one,  
14:28 6 that she would be, there's a probability that she would  
14:28 7 commit criminal acts of violence and that she would  
14:28 8 constitute a continuing threat to society. You may --  
14:28 9 you may hear the evidence and say, no, I don't think so.

14:28 10 A. That's true.

14:28 11 Q. Unless she marries another man like that, that  
14:28 12 mistreats her like that. Okay. You say, if you believe  
14:28 13 in using death penalty, how strongly on a scale of 1 to  
14:28 14 10, do you hold that belief? 1 being the least and 10  
14:28 15 being the strongest, and you rated yourself a 10. And  
14:28 16 tell me why.

14:29 17 A. I believe if we have a death penalty in place,  
14:29 18 we should use it the way it's intended. I don't think  
14:29 19 we should alter our use of it, you know, over time. I  
14:29 20 think as a society, we should use that.

14:29 21 I actually thought about that question  
14:29 22 after I answered it. I really was wondering what that  
14:29 23 really meant or what it was really asking. But I took  
14:29 24 it as meaning, if we do have it in place, we need to use  
14:29 25 it. So I strongly agree that we should use that in our

14:29 1 judicial system.

14:29 2 Q. Okay. Along those same lines, if you were to  
14:29 3 sit on 10 death penalty cases, how many of those death  
14:29 4 penalty cases do you think that you would give the death  
14:29 5 penalty --

14:29 6 MS. LOWRY: Your Honor, I'm going to  
14:29 7 object, just to improper question in order to attempt to  
14:30 8 commit him to a certain rate of what he would vote death  
14:30 9 for or how often he would vote death.

14:30 10 THE COURT: Tell me the question again,  
14:30 11 please.

14:30 12 MR. HIGH: It's along the same lines of  
14:30 13 the jury questionnaire. It says, if you believe in  
14:30 14 using the death penalty, are you a 1 or a 10? He says  
14:30 15 he's a 10. And my question was: If he was to sit on 10  
14:30 16 death penalty juries, how long -- how many times does he  
14:30 17 think he would give the death penalty?

14:30 18 THE COURT: I'll overrule the objection.

14:30 19 Q. (BY MR. HIGH) And I know you can't be exact on  
14:30 20 that question.

14:30 21 A. Well, I'll tell you --

14:30 22 Q. I'm just trying to get a feeling.

14:30 23 A. -- I hope it's a one-time event in my life,  
14:30 24 so...

14:30 25 Q. Let's hope so.

14:30 1 A. If that. If I had to sit on 10 death penalty  
14:30 2 trials, we've got some real problems in our country.

14:30 3 Q. I understand. I understand. It's just a  
14:30 4 hypothetical though.

14:30 5 A. I would have to weigh each case by case. I  
14:30 6 cannot tell you.

14:30 7 Q. Okay.

14:30 8 A. It depends on the case.

14:31 9 Q. Going into a trial, though, do you think that  
14:31 10 you are more likely to give the death penalty than to  
14:31 11 give a life sentence?

14:31 12 A. No.

14:31 13 Q. No?

14:31 14 A. No.

14:31 15 Q. The next question after that, it says: In your  
14:31 16 opinion, what does the death penalty say about American  
14:31 17 culture? And you say: Our society does not tolerate  
14:31 18 murder, and the criminals that are sentenced to death  
14:31 19 must pay the ultimate price.

14:31 20 A. And that's placing a value on life, on human  
14:31 21 life.

14:31 22 Q. All right. Let me ask you this. It was  
14:31 23 explained to you, the difference between murder and  
14:31 24 capital murder.

14:31 25 A. I really didn't know the difference until this.

14:31 1 Q. I'm sure you didn't.

14:31 2 A. Capital murder -- well, I knew that there was  
14:31 3 capital murder and murder, but I wasn't sure of the  
14:32 4 circumstances that maybe did one or the other.

14:32 5 Q. Sure.

14:32 6 A. So you want my understanding of what capital  
14:32 7 murder is.

14:32 8 Q. No. I just said it was explained to you the  
14:32 9 difference. Capital murder?

14:32 10 A. Yes.

14:32 11 Q. Could be, you know, killing two people, could  
14:32 12 be murder with some underlying crime like burglary or  
14:32 13 robbery. It could be killing a guard, killing a police  
14:32 14 officer. We know a lot about that now, the George Rivas  
14:32 15 case. Those are the kinds of capital murder. There's  
14:32 16 other scenarios. But those are capital murder  
14:32 17 scenarios, as opposed to just killing one person, you  
14:32 18 know?

14:32 19 A. Right.

14:32 20 Q. That's just straight running murder, and we try  
14:32 21 to explain that to you early on. You understand that  
14:32 22 straight running murder, like, if I get upset with my  
14:32 23 partner, and I -- and I just take him out and throw him  
14:32 24 over a boat and he drowns. Okay? And I intentionally  
14:32 25 and knowingly cause his death.



14:33 1 A. Uh-huh.  
 14:33 2 Q. I could be charged with murder. You understand  
 14:33 3 that that does not automatically call -- or it doesn't  
 14:33 4 call for the death penalty in our State?  
 14:33 5 A. Yes.  
 14:33 6 Q. Okay. And, in fact, depending on how the  
 14:33 7 evidence comes down in this trial, that could be a  
 14:33 8 lesser-included offense. You know, for instance, if  
 14:33 9 they charged Mr. Cantu here with killing two people, and  
 14:33 10 let's say they only prove that he kills one. All right?  
 14:33 11 In which case the conviction would be for  
 14:33 12 regular murder, and then the range of punishment that  
 14:33 13 you would have to consider is not life or death, but it  
 14:33 14 would be from 5 years up to 99 years to life in prison.  
 14:33 15 Okay? Five years in prison all the way up to 99 years  
 14:33 16 to life in prison.  
 14:33 17 A. Yes.  
 14:33 18 Q. Can you envision a range of circumstances, once  
 14:34 19 you found someone guilty of straight murder, where you  
 14:34 20 could give the minimum sentence of five years?  
 14:34 21 A. An example would be maybe the battered wife.  
 14:34 22 Somebody is more of a defense than anything.  
 14:34 23 Q. So you could?  
 14:34 24 A. Yes.  
 14:34 25 Q. Okay. There's also a concept of probation.

14:34 1 Probation means you don't go to jail. You don't go to  
 14:34 2 prison. You walk out of the courtroom just like the  
 14:34 3 jury does, and you have to report to a probation officer  
 14:34 4 once or twice a month and pay a probation fee and pay a  
 14:34 5 fine, do community service, don't kill anymore, that  
 14:34 6 sort of thing. Okay?  
 14:34 7 Could you envision a circumstance -- and  
 14:34 8 also if a person files an application which proves they  
 14:35 9 are eligible for probation, a jury would have to  
 14:35 10 consider probation. Can you envision a set of  
 14:35 11 circumstances or set of facts where you would consider  
 14:35 12 five years' probation for a straight-running murder  
 14:35 13 conviction?  
 14:35 14 MS. LOWRY: Your Honor, I'm going to  
 14:35 15 object at this point just to an improper question,  
 14:35 16 asking him to specifically envision a set of  
 14:35 17 circumstances because the law just requires that he be  
 14:35 18 open to the fact that there may be a set of  
 14:35 19 circumstances out there. He doesn't have to be able to  
 14:35 20 come up with that specific set of circumstances.  
 14:35 21 THE COURT: I'll overrule the objection.  
 14:35 22 Q. (BY MR. HIGH) Do you understand the question?  
 14:35 23 A. I'm sorry. Repeat the question again.  
 14:35 24 Q. Okay. I'm trying to give you a whole lot of  
 14:36 25 information inside of a question. I've already given

14:36 1 you the information. So let me just ask you the  
 14:36 2 question now.  
 14:36 3 A. Okay.  
 14:36 4 Q. You know, if you sit on this jury and you find  
 14:36 5 that it's not capital murder, but it's regular murder,  
 14:36 6 and you will have heard the facts of the case. I can't  
 14:36 7 tell you what the facts are, and let's say that the  
 14:36 8 application for probation has been filed. Could you  
 14:36 9 envision --  
 14:36 10 A. Okay.  
 14:36 11 Q. -- or consider giving five years' probation,  
 14:36 12 which is the least you can give in a straight-running  
 14:36 13 murder conviction, or is that just not possible for you?  
 14:36 14 A. I don't really know. I'd have to see the facts  
 14:36 15 of the case. I just don't know how to answer that.  
 14:36 16 Q. Are you open to giving five years' probation,  
 14:36 17 or are you absolutely closed to that idea?  
 14:36 18 A. If that's an option and we have to consider it,  
 14:36 19 yes, I would be open to it.  
 14:37 20 Q. Okay. Fair enough.  
 14:37 21 MR. HIGH: Pass the juror.  
 14:37 22 THE COURT: All right. You may step down,  
 14:37 23 sir. We'll call you back in in a few minutes.  
 14:37 24 (Venireperson Smith not present.)  
 14:38 25 THE COURT: What says the State?

14:38 1 MS. LOWRY: This juror is acceptable to  
 14:38 2 the State.  
 14:38 3 THE COURT: All right. What says the  
 14:38 4 defendant?  
 14:38 5 MR. HIGH: At this time defense exercises  
 14:38 6 peremptory No. 12.  
 14:38 7 THE COURT: All right. Would you tell  
 14:38 8 Mr. Smith that we thank him for his service, and he is  
 14:38 9 finally excused.  
 14:38 10 THE BAILIFF: Yes, Your Honor.  
 14:38 11 (Venireperson Smith excused.)  
 14:38 12 THE COURT: Say, also, we -- I gave you  
 14:38 13 this fax on Shala Jones. She's Juror No. 122. And I  
 14:39 14 don't know if you all have done this. I pulled out her  
 14:39 15 questionnaire. She is a No. 1. So her response is, "I  
 14:39 16 believe the death penalty should be imposed on all  
 14:39 17 capital murder cases." I notice that she's 31 and  
 14:39 18 divorced, but she's remarried. And she and her current  
 14:39 19 husband have each had a DWI.  
 14:39 20 So anyway, think about it, and I'm not in  
 14:39 21 a hurry to do anything with Shala Jones. But if you --  
 14:39 22 if you decide to do something by tomorrow morning, I'd  
 14:39 23 appreciate it if you let me know. If you still want to  
 14:39 24 think about it some more, that's fine with me. Is there  
 14:39 25 anything else from either side?

14:39 1 MS. FALCO: No, Your Honor.  
 14:39 2 MR. HIGH: No, Your Honor.  
 14:39 3 THE COURT: All right. Then we're in  
 14:39 4 recess until tomorrow morning at 8:45.  
 14:39 5 THE BAILIFF: All rise.  
 14:40 6 (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 *Barbara Tokuz*

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