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

VOLUME 23 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 |

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JURY VOIR DIRE

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COPY

On the 18th 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:* 2001-09-18

*Stamp:* 2001 SEP 18 11 04 AM

*Stamp:* CLERK OF DISTRICT COURT COLLIN COUNTY TEXAS

*Signature:* [Handwritten Signature]

4 THE STATE OF TEXAS ) IN THE DISTRICT COURT  
 5 )  
 6 VS. ) COLLIN COUNTY, TEXAS  
 7 )  
 8 IVAN ABNER CANTU ) 380TH JUDICIAL DISTRICT

9 JURY VOIR DIRE

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1 APPEARANCES

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17 CHRONOLOGICAL INDEX

18 SEPTEMBER 18, 2001  
INDIVIDUAL VOIR DIRE

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1 PROCEEDINGS:

2 (Open court, defendant present.)

3 THE COURT: Are both sides ready?

4 MR. SCHULTZ: We're ready.

5 MR. HIGH: We're ready.

6 THE COURT: Cause 380-80047. Mr. Cantu  
 7 and his attorney are present. The State is present  
 8 represented by counsel. First witness -- first juror,  
 9 rather, is Barbara Klapper.

10 MR. SCHULTZ: I believe we have an  
 11 agreement with regard to this first juror. Is that  
 12 right, Mr. High?

13 MR. HIGH: That's right, Mr. Schultz.

14 MR. SCHULTZ: Either way.

15 THE COURT: Let's see, both sides desire  
 16 to strike Ms. Klapper by agreement?

17 MR. SCHULTZ: As a package, along with  
 18 Juror No. 107, Mr. Metters. Condition of course upon  
 19 the approval of the citizen accused.

20 THE COURT: Mr. Cantu, is that your  
 21 desire, sir?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Then No. 101, Ms. Klapper;  
 24 No. 107, Mr. Metters, are stricken by agreement. And I  
 25 suppose, and number two wasn't present so we called the

08:52 1 third one. Is that going to be Mary Ellen Evans?  
 08:53 2 THE BAILIFF: Yes, sir.  
 08:53 3 THE COURT: Alma Crook is not here, so  
 08:53 4 we'll call Mary Ellen Evans next. Also, have you done  
 08:53 5 anything about Shala Jones?  
 08:53 6 MS. FALCO: She is not until next week.  
 08:53 7 THE COURT: All right. But what I'd like  
 08:53 8 to do is, if you decide something, I'll tell her sooner  
 08:53 9 instead of later.  
 08:53 10 (Venireperson Evans present.)  
 08:53 11 THE COURT: All right. Are you Mary Ellen  
 08:53 12 Evans?  
 08:53 13 VENIREPERSON: Yes.  
 08:53 14 THE COURT: Welcome back. About four  
 08:53 15 weeks ago I swore in all the jurors, all 200. And the  
 08:53 16 oath provided that: Let me ask you to swear truthful  
 08:53 17 answers to questions that are propounded by the Judge  
 08:53 18 and by both sides in this case. Do you recall that?  
 08:53 19 VENIREPERSON: Yes.  
 08:53 20 THE COURT: All right. You are still  
 08:53 21 under that oath, and I want to ask you to be seated, and  
 08:53 22 the attorneys will ask you some questions.  
 08:54 23 Mr. Schultz?  
 08:54 24 MR. SCHULTZ: Good morning. May I speak  
 08:54 25 with Mr. Goeller right here for just a second?

08:54 1 THE COURT: Yes, sure.  
 08:54 2 VOIR DIRE EXAMINATION  
 08:54 3 BY MR. SCHULTZ:  
 08:54 4 Q. Hello. I believe, were you on the elevator  
 08:54 5 when I came in? I believe so, and then I think the  
 08:54 6 other prosecutor got on with their cartful of stuff when  
 08:54 7 you were on there; is that right?  
 08:54 8 A. Yes.  
 08:54 9 Q. You understand why it might seem we're so  
 08:54 10 reluctant to even talk with a juror because it doesn't  
 08:54 11 look good, you know, that kind of thing. So if I was  
 08:55 12 quiet or reserved it's just because I didn't want to be  
 08:55 13 otherwise and not because I'm unfriendly.  
 08:55 14 If you had a choice, Ms. Evans, between  
 08:55 15 being on or off of this jury, what choice would you  
 08:55 16 make?  
 08:55 17 A. I don't know. I don't really have a choice.  
 08:55 18 Q. Okay. When you -- when you first found out  
 08:55 19 that this was a capital case, that being a potentially  
 08:55 20 death penalty kind of case, do you recall what your  
 08:55 21 first reaction was?  
 08:55 22 A. No. I was a little bit shocked because I've  
 08:55 23 never been -- been on a jury with a capital case.  
 08:56 24 Q. And then you find yourself right on the most  
 08:56 25 extreme situation. Do you feel like you are the -- do

08:56 1 you consider yourself to be a fair person?  
 08:56 2 A. Yes.  
 08:56 3 Q. I know it's real hard to even envision being on  
 08:56 4 the jury, but if you were -- if you were on the jury,  
 08:56 5 would you -- would you see yourself as a leader,  
 08:56 6 somebody who would try to be the presiding juror and  
 08:56 7 want to be kind of directing other people?  
 08:56 8 Do you see yourself sort of in the middle?  
 08:56 9 Do you see yourself sort of being quiet and listening to  
 08:56 10 the different points of view and kind of consider what  
 08:56 11 everybody else thought as part of what you were  
 08:56 12 thinking?  
 08:56 13 A. Probably I would consider myself to be a  
 08:56 14 leader.  
 08:56 15 Q. Okay. So you, I mean, for example, you might  
 08:56 16 see yourself as being the presiding juror, even what we  
 08:56 17 used to call the foreman, but now we call them presiding  
 08:56 18 jurors.  
 08:56 19 A. Yes.  
 08:57 20 Q. Okay. Now, you've indicated on your  
 08:57 21 questionnaire that you are not in favor of the death  
 08:57 22 penalty; is that correct?  
 08:57 23 A. Yes, that's correct.  
 08:57 24 Q. And you still feel that way; is that right?  
 08:57 25 A. Yes.

08:57 1 Q. Can you give me some idea or some understanding  
 08:57 2 of why it is that you are not in favor of the death  
 08:57 3 penalty? And I'm not challenging you on that. This is  
 08:57 4 America and everybody has different opinions, and there  
 08:57 5 are a lot of people that feel the way you do. I'm  
 08:57 6 curious, how do you get to the place where you say you  
 08:57 7 are not in favor of the death penalty?  
 08:57 8 A. I believe life -- anybody's life is sacred.  
 08:57 9 Q. Right. Okay. Well, let's talk a little bit  
 08:57 10 about some -- some of those issues because the real  
 08:57 11 critical question is not whether you are in favor of the  
 08:57 12 death penalty or not because there are a lot of laws  
 08:58 13 that all of us maybe don't agree with.  
 08:58 14 And sometimes when there's a trial, juries  
 08:58 15 are called upon to give effect, to almost to enforce  
 08:58 16 laws that maybe they don't themselves agree with. Do  
 08:58 17 you follow what I'm saying?  
 08:58 18 A. Yes.  
 08:58 19 Q. And so the fact that you are for it, it's  
 08:58 20 like -- it's like, the fact that you are for or against  
 08:58 21 the death penalty is not the issue. The idea is: Can  
 08:58 22 you follow all the basic instructions, and can you give  
 08:58 23 fair effect to all aspects of the law that are required?  
 08:58 24 And so let's talk about that a little bit.  
 08:58 25 Is your belief that life is sacred and

08:58 1 should not be taken, is that a religious-based belief,  
08:58 2 would you say, or is it just kind of your personal  
08:58 3 ethics? What is that exactly?

08:58 4 A. It's not a religious belief.

08:59 5 Q. Would you say that there are some exceptions  
08:59 6 where taking a life is, in your opinion, an acceptable  
08:59 7 or moral thing to do?

08:59 8 A. Yes.

08:59 9 Q. I mean, obviously every one of us is thinking  
08:59 10 right now about the prospects of war, and it almost  
08:59 11 seems like the notion is not: Will there be a war?  
08:59 12 But, rather, how big is it going to be? I think there's  
08:59 13 a sense right now that our country is getting ready to  
08:59 14 go to war?

08:59 15 A. Yes.

08:59 16 Q. It might be nice if we had the ability to only  
08:59 17 destroy buildings but not people. That might be nice.  
08:59 18 I mean, all of a sudden if you don't have any tanks or  
08:59 19 any planes or any ships; you just got your clothes, that  
08:59 20 kind of thing, that might be better. But when we go to  
08:59 21 war, we kill people and we're going to get people  
08:59 22 killed, right?

08:59 23 A. Right.

08:59 24 Q. Is that justified? Is that -- that's taking a  
09:00 25 life. Don't you agree with me?

10

09:00 1 A. Right. Maybe what I meant is more like life  
09:00 2 shouldn't be taken lightly.

09:00 3 Q. Okay. Okay. I'm with you on that. Tell me  
09:00 4 this, do you -- do you or any member of your family own  
09:00 5 a handgun?

09:00 6 A. No.

09:00 7 Q. Have you ever considered getting a handgun,  
09:00 8 like for self protection, self-defense?

09:00 9 A. No.

09:00 10 Q. Do you think -- do you think it's proper and  
09:00 11 moral for a homeowner to protect his life, her life or  
09:00 12 her family's life by killing an intruder that's meaning  
09:00 13 harm or death to them? Do you think that's okay?

09:00 14 A. Yes.

09:00 15 Q. As I understand what you are saying, you are  
09:00 16 not absolutely automatically against killing, but you  
09:00 17 just have a view that it's -- that life is important,  
09:00 18 and it better be a really good reason for taking a life;  
09:00 19 is that fair?

09:00 20 A. That is correct.

09:01 21 Q. Are there some situations where you think it --  
09:01 22 are there any people or any situations or any people  
09:01 23 whose crimes are enormous that you got to say it seems  
09:01 24 really fair that the death penalty be on this or that  
09:01 25 person?

09:01 1 A. Yes.

09:01 2 Q. Give me some ideas of some death penalties that  
09:01 3 you think are appropriate. And I understand you  
09:01 4 don't -- you don't exactly favor the death penalty.  
09:01 5 Just like you don't seem to me to be a war monger, for  
09:01 6 example, somebody that is all thrilled about the idea of  
09:01 7 us going to war now. You are not that way, I know.

09:01 8 A. No.

09:01 9 Q. But yet you realize when there are some times  
09:01 10 when that's the right thing to do. Name me some names  
09:01 11 of people that you think really deserve the death  
09:01 12 penalty?

09:01 13 A. Well, the first one that comes to my mind is  
09:01 14 Timothy McVeigh.

09:01 15 Q. Okay.

09:01 16 A. And I don't have any names. But whoever,  
09:01 17 whoever did last Tuesday's terrorist activity.

09:02 18 Q. Sure. But if we go back to what you were  
09:02 19 saying before, that's still taking a life?

09:02 20 A. Correct.

09:02 21 Q. Let's talk about this. There are some laws  
09:02 22 that a person might be opposed to and say that's a bad  
09:02 23 law; and yet, if they were put on the jury, they could  
09:02 24 still vote in favor of that law. Does that make sense  
09:02 25 to you?

12

09:02 1 And here's something that comes to my  
09:02 2 mind, and there are a million examples, I suppose.  
09:02 3 There are ordinances in most cities that you can't have  
09:02 4 washing machines and junk and stuff in your front yard.

09:02 5 Now, you are paying taxes; you are paying  
09:02 6 mortgage payments; you've got to provide insurance;  
09:02 7 that's your land. And yet, you know, you can't have a  
09:02 8 bunch of old transmissions and, you know, nasty old  
09:03 9 tires and batteries and boards and garbage and stuff in  
09:03 10 your front yard. That's -- that's a city ordinance. Do  
09:03 11 you understand that?

09:03 12 Now, there are people in our society that  
09:03 13 say, I own my land. I'm paying for it. Nobody else is,  
09:03 14 and I have the right to have whatever I want out there  
09:03 15 just as long as it's not a health issue.

09:03 16 I mean, transmissions are ugly, but they  
09:03 17 are not probably going to make your neighbor sick like,  
09:03 18 you know, bacteria pools or something like that. So  
09:03 19 there are people who believe that and say, it's not the  
09:03 20 City's business what I want to put in my yard. And if,  
09:03 21 in my idea, washing machines are art or decorative, I  
09:03 22 want to be able to have them out there. And yet those  
09:03 23 people could serve on a jury prosecuting somebody for  
09:03 24 violating that ordinance or that law.

09:03 25 Do you follow what I'm saying? Even

09:03 1 though they may think it's not a good law, and I wish we  
09:04 2 didn't have such a good law, it's not so important to  
09:04 3 them that they say, I'm going to revolt against the law  
09:04 4 and just automatically acquit the defendant because I'm  
09:04 5 going to make a law myself. I'm going to be the jury  
09:04 6 law-making body myself. Does that make sense to you,  
09:04 7 what I'm saying?

09:04 8 People can serve on juries and enforce  
09:04 9 laws that they don't personally agree with sometimes?

09:04 10 A. Yes. I believe they can. And, well, it's kind  
09:04 11 of a hard one.

09:04 12 Q. Right.

09:04 13 A. I believe in enforcing the law.

09:04 14 Q. Right.

09:04 15 A. So, if I were breaking the law, it would  
09:04 16 probably be kind of hard to enforce the law, the same  
09:04 17 law, I was breaking on someone else.

09:04 18 Q. Right.

09:04 19 A. Is that what you mean?

09:04 20 Q. Kind of.

09:04 21 A. And if you are breaking the law --

09:04 22 Q. Uh-huh.

09:04 23 A. -- then you can serve on a jury and be fair  
09:05 24 about. It would be hard to be fair --

09:05 25 Q. Okay.

09:05 1 A. -- to someone. If you were breaking the same  
09:05 2 law that they were accused of admitting --

09:05 3 Q. I'm with you.

09:05 4 A. -- accused of doing.

09:05 5 Q. I'm with you. And kind of what you are saying:  
09:05 6 It probably wouldn't be good if we had some capital  
09:05 7 murderers on the jury because they would be like capital  
09:05 8 murders, and then how could they be enforcing the law  
09:05 9 against another capital murderer?

09:05 10 A. Right.

09:05 11 Q. And our law is wise that way because we don't  
09:05 12 allow capital murderers to ever serve on a jury. It  
09:05 13 might be kind of unfair to them because maybe we are  
09:05 14 thoughtless or something, but still that's the -- that's  
09:05 15 the law.

09:05 16 When we talk about serving on a capital  
09:05 17 murder jury, though, those issues can be real big for  
09:06 18 people. And I sense from you that you are the kind of  
09:06 19 person that really cares about human life. I mean, I  
09:06 20 don't know you very well, but I have a sense that human  
09:06 21 life and being able to have the most of life that you  
09:06 22 can is very important to you?

09:06 23 A. Yes.

09:06 24 Q. Am I right about that?

09:06 25 A. Yes, that's correct.

09:06 1 Q. And you seem like a peace-loving individual to  
09:06 2 me. And you kind of -- you want to be able to live and  
09:06 3 let live, kind of. That's your philosophy in life. Am  
09:06 4 I right about that?

09:06 5 A. Yes.

09:06 6 Q. And so sometimes you get pulled into court and  
09:06 7 as a possible juror. I mean, you didn't volunteer for  
09:06 8 this job. You just got a summons from the court saying:  
09:06 9 come on in and be a juror.

09:06 10 In a capital murder case we sometimes put  
09:06 11 people where they really don't need to be. We put them  
09:06 12 in a situation that, because of their views or their  
09:06 13 beliefs, they just don't need to be there. Not  
09:06 14 because -- not because they are difficult or not because  
09:07 15 they are not law abiding or good people; it's just that  
09:07 16 the law asks of them something that just doesn't feel  
09:07 17 like something they can do. Do you understand kind of  
09:07 18 what I'm saying about that?

09:07 19 I mean, I'm thinking to myself, if I had  
09:07 20 a -- if I had a wife who went to the hospital and had an  
09:07 21 operation, and the doctors made some mistakes, and she  
09:07 22 died from that -- from that operation because they made  
09:07 23 mistakes. They used the wrong this, or they cut the  
09:07 24 wrong organ, or they didn't -- they didn't do something.

09:07 25 I'm not a doctor, so I don't know what

09:07 1 they would have done. But everybody would agree they  
09:07 2 made mistakes and she died. I don't know how I could  
09:07 3 sit as a juror -- a moment please, Judge.

09:07 4 MR. SCHULTZ: A moment please, Judge.

09:07 5 Excuse me, just a moment, ma'am.

09:08 6 (Counsel conferring.)

09:08 7 MR. SCHULTZ: We were trying to work out  
09:08 8 something that's efficient.

09:08 9 THE COURT: Do you want me -- do you want  
09:08 10 to step outside, or how do you want to do it?

09:09 11 MR. SCHULTZ: What is the Court's  
09:09 12 pleasure? We just need a couple more minutes.

09:09 13 THE COURT: Yeah. I tell you what.  
09:09 14 Ma'am, why don't you step down for a minute, and I'll  
09:09 15 step down for a minute, and you let me know if you  
09:09 16 reached an agreement.

09:09 17 THE BAILIFF: All rise.

09:09 18 (Venireperson Evans not present.)

09:09 19 (Break.)

09:19 20 MR. SCHULTZ: We thought we had something.  
09:19 21 We couldn't make it work. I'm sorry.

09:20 22 THE COURT: No problem. Let's bring  
09:20 23 Ms. Evans back in. I'm probably going to ask you to  
09:20 24 pass her in about a half hour.

09:20 25 (Venireperson Evans present.)

09:20 1 THE COURT: Yes, ma'am. Please be seated.  
09:20 2 And, Ms. Evans, you are still under oath. Mr. Schultz,  
09:20 3 please go ahead.

09:20 4 Q. (BY MR. SCHULTZ) Sorry for the delay,  
09:20 5 Ms. Evans. A lot of times there will be some issue  
09:20 6 about some legal point, and the lawyers try to work out.  
09:20 7 And we just try to do it efficiently. And we are  
09:20 8 working as hard as we know how on a case like this.

09:20 9 We were talking before about you being the  
09:20 10 kind of person that prizes human life because I can tell  
09:21 11 that you are. You work for Amtrac; is that right?

09:21 12 A. That's correct.

09:21 13 Q. As I understand it, there was a -- there was  
09:21 14 some incident maybe on late Tuesday or maybe early  
09:21 15 Wednesday involving some people that apparently were  
09:21 16 taken into custody on the way to see some radiologist in  
09:21 17 San Antonio or something, and something went wrong on an  
09:21 18 Amtrac heading that way. Possibly they got into some  
09:21 19 dispute themselves somehow. That's kind of what  
09:21 20 attracted everybody's attention. The last I heard,  
09:21 21 those people now are supposed to be up in New York where  
09:21 22 they are getting the inquisition at the hands of the  
09:21 23 federal authorities.

09:21 24 Did you have anything to do with that  
09:21 25 incident?

09:21 1 A. Not directly. They were on the Amtrac train in  
09:21 2 Fort Worth. My train was right behind it, and I talked  
09:22 3 to the conductor of that train. And he noticed they  
09:22 4 were acting nervous, and they had locked their self in  
09:22 5 the bathroom. And so he called the Amtrac policeman.  
09:22 6 The Amtrac policeman -- we had a DEA agent there.

09:22 7 He called on him, and they decided to call  
09:22 8 the FBI. And I was -- I watched it, as far as that. I  
09:22 9 talked to the conductor that was on that train, and my  
09:22 10 train was right behind it.

09:22 11 Q. Have you noticed any increase in train traffic  
09:22 12 since all this happened?

09:22 13 A. Oh, yes.

09:22 14 Q. What is it like now on the trains? Is it like  
09:22 15 standing room only almost?

09:22 16 A. Yes. They are booked solid for the next few  
09:22 17 weeks.

09:22 18 Q. I was wanting to know this. Do you ever get  
09:22 19 any bums on those trains? You have to kick them off  
09:22 20 because they don't have a ticket?

09:22 21 A. Yeah. Not so much on the trains down here.  
09:22 22 But I worked -- I transferred down here from Washington,  
09:22 23 D.C. And I worked the commuter trains in from northern  
09:23 24 Virginia up to Washington, D.C. And part of my job was  
09:23 25 to write summons to fare evaders.

09:23 1 Our passengers were on the honor system.  
09:23 2 And if they got on without a ticket or if they had an  
09:23 3 invalid ticket, then I would have to write them a  
09:23 4 summons. I had a court date once a month.

09:23 5 Q. Did you make them show you ID?

09:23 6 A. Yes.

09:23 7 Q. Seems like a lot of times, bums wouldn't have  
09:23 8 any ID. How would you know who they were?

09:23 9 A. Well, I didn't have any bums on that train. I  
09:23 10 don't recall ever having one. I don't recall ever  
09:23 11 having a bum on the train.

09:23 12 Q. I'm thinking of the guy with the stick, with  
09:23 13 the handkerchief.

09:23 14 A. Right. I think they tend to go by freight  
09:23 15 trains.

09:23 16 Q. Top hat with the hood up?

09:23 17 A. Yeah. I worked freight for ten years before I  
09:23 18 went to work for Amtrac, and there was a lot of those on  
09:23 19 freight, but not so much on passenger trains.

09:23 20 Q. I heard sometimes conductors, as long as it's  
09:24 21 not a big deal, will look the other way and pretend not  
09:24 22 to see the bums if they are not bothering anybody. Were  
09:24 23 you that kind of person, or would you always tell them  
09:24 24 to get off?

09:24 25 A. On the freight trains, like I say, we don't get

09:24 1 bums on passenger trains. But if I had passengers  
09:24 2 without a valid ticket, I didn't look the other way  
09:24 3 because it wasn't fair to the ones that paid the price  
09:24 4 of their ticket.

09:24 5 Q. Okay, okay. When we -- when we get to a death  
09:24 6 penalty case, because that's where we are now -- asking  
09:24 7 somebody to participate in a death penalty case when  
09:24 8 they don't believe in it may be unfair to that person or  
09:24 9 it may just be very very hard for that person. It may  
09:24 10 be hard but not unfair, just hard. It's kind of like in  
09:25 11 war -- I mean, have you ever heard the term  
09:25 12 conscientious objector?

09:25 13 A. Yes.

09:25 14 Q. What does that mean to you when you hear that  
09:25 15 term?

09:25 16 A. That someone for religious or personal reasons  
09:25 17 can't do what they are supposed to do.

09:25 18 Q. Like kill?

09:25 19 A. Right.

09:25 20 Q. Do you believe that's genuine, or do you  
09:25 21 think -- do you think every one of those people is  
09:25 22 faking about what they believe, just because they are  
09:25 23 like cowards or something?

09:25 24 A. I think there probably were some that were not  
09:25 25 genuine and some that were.

09:25 1 Q. And it's not a matter of them not being brave,  
09:25 2 the ones that were genuine, because they volunteered to  
09:25 3 be medics or they'll do stuff. They'll be couriers,  
09:25 4 probably more dangerous many times than the people with  
09:25 5 rifles. But they just, like you say, for whatever  
09:25 6 reason, believe that it's wrong to kill even in time of  
09:25 7 war. Can you respect a person like that, if it's  
09:26 8 genuine?

09:26 9 A. Yes.

09:26 10 Q. Okay. All right. And that's sometimes how it  
09:26 11 works in these death penalty cases. It's not -- this is  
09:26 12 not exactly a war, although some people would say it is  
09:26 13 a war. It's a war of law-abiding people against  
09:26 14 extremely unlaw-abiding people, but it's not a war.

09:26 15 I mean, we don't wear a uniform as the  
09:26 16 jury. You know, you don't -- we don't come in every  
09:26 17 morning and salute the Judge. And, you know, we don't  
09:26 18 march you around in the morning. We don't wake you up  
09:26 19 with a bugle.

09:26 20 It's not that kind of thing, so it's not  
09:26 21 that kind of war. But in many ways, many people believe  
09:26 22 it's -- it's good versus evil. Right versus dark. Good  
09:26 23 versus bad. Those kinds of concepts and that's --  
09:26 24 that's very similar to -- to war.

09:26 25 But if you can respect a person that could

09:27 1 not take another life in wartime, can you see how jurors  
09:27 2 could be respected for not being able to take a life as  
09:27 3 part of their jury service? Can you see the same kind  
09:27 4 of idea?

09:27 5 A. Uh-huh.

09:27 6 Q. Does that make sense to you?

09:27 7 A. Yes.

09:27 8 Q. Okay. And it's not like they wouldn't be good  
09:27 9 jurors doing something different like in a noncapital  
09:27 10 case or a civil case. Just like -- just like the  
09:27 11 conscientious objectors can do valuable military  
09:27 12 service. They just can't do that one small part of it  
09:27 13 because of the kind of good people they are and what  
09:27 14 they believe. They can't kill. Does that make sense to  
09:27 15 you?

09:27 16 A. Uh-huh.

09:27 17 Q. And, you know, sometimes I'll talk with jurors.  
09:27 18 And I'll say, well, you are not the one doing the  
09:27 19 killing. It's the guy down in Huntsville that sticks  
09:27 20 the needle in the fellow. That's who is doing the  
09:27 21 killing. What do you think about that idea, or do you  
09:27 22 think that makes sense to say it that way?

09:28 23 A. Yeah.

09:28 24 Q. That makes sense?

09:28 25 A. Yeah.

09:28 1 Q. Okay. So I guess what I'm saying to you is:  
09:28 2 You could vote according to the evidence, and you  
09:28 3 wouldn't have to feel like you are doing the killing.  
09:28 4 Do you follow what I'm saying?

09:28 5 A. Yes.

09:28 6 Q. Does that really make sense to you?

09:28 7 A. Yes.

09:28 8 Q. Let's -- let's talk about that. We first have  
09:28 9 to prove before there's ever -- before anybody can be  
09:28 10 executed, a lot of things have to happen. First, the  
09:28 11 person has to be caught, and you don't catch them all.  
09:28 12 Do you understand?

09:28 13 A. Uh-huh.

09:28 14 Q. And then that person has to be indicted by a  
09:28 15 Grand Jury for capital murder. And if that person isn't  
09:28 16 indicted, there can't be a death sentence because you  
09:28 17 have to be charged before you can be convicted and  
09:28 18 before you can be punished. And so then the person has  
09:28 19 to go to trial.

09:29 20 And a trial jury has to find beyond a  
09:29 21 reasonable doubt the person is guilty of capital murder  
09:29 22 all the elements of capital murder. Are you with me?

09:29 23 A. (Moving head up and down.)

09:29 24 Q. One thing I need for you to do, Ms. Evans, if  
09:29 25 you would, you and I are communicating, but there's a

09:29 1 lady right next to you that takes down everything that's  
09:29 2 said. And even though you are nodding and I know you  
09:29 3 are meaning yes or no, she can't write. She can't  
09:29 4 write -- she can say, I have to get you to say yes or  
09:29 5 no. I'm not rude. It's how we have to do that.

09:29 6 A. Yeah, I understand. My sister is a court  
09:29 7 reporter. I should know that.

09:29 8 Q. There you go. There you go. I'm sure she  
09:29 9 would tell you the same thing, you know. You got to say  
09:29 10 yes or no.

09:29 11 A. Yeah.

09:29 12 Q. So as it turns out, if a jury finds somebody  
09:29 13 guilty beyond a reasonable doubt, then we move into the  
09:29 14 punishment phase of the trial where either life or death  
09:29 15 may result, depending upon what the jury does. Do you  
09:29 16 understand that?

09:29 17 A. Uh-huh, yes, I understand.

09:30 18 Q. Do you ever go to sporting events like baseball  
09:30 19 or anything? Do you like baseball?

09:30 20 A. Yes.

09:30 21 Q. Do you ever like go out to watch the Rangers  
09:30 22 play?

09:30 23 A. I have been to ball games. Not to the Rangers,  
09:30 24 but I have been to other ball games.

09:30 25 Q. Do you ever go to like kid games, like children

09:30 1 or nieces or nephews? Do you ever do that?

09:30 2 A. Yes.

09:30 3 Q. What kinds of kids games do you go to?

09:30 4 A. Soccer, football. My grandkids are involved in  
09:30 5 sports in high school.

09:30 6 Q. You know, what we ask of referees or umpires or  
09:30 7 officials is to make the calls the right way even if  
09:30 8 they kind of wish -- wish it weren't because they got  
09:30 9 feelings the same as everybody else.

09:30 10 Even the referees probably have a team  
09:30 11 they like more than a team they don't like. You know,  
09:30 12 that kind of idea? But they just make the calls  
09:30 13 according to what they see, and that's what we ask of  
09:30 14 jurors.

09:30 15 Could you find the defendant guilty of  
09:30 16 capital murder if we proved that to you beyond a  
09:30 17 reasonable doubt?

09:30 18 A. Yes.

09:30 19 Q. Could you do that? No problems there, right?

09:31 20 A. No. Not if that's the law.

09:31 21 Q. Well, the law is, yes, you must find him guilty  
09:31 22 beyond a reasonable doubt. If we prove our case beyond  
09:31 23 a reasonable doubt, the jury must find him guilty.

09:31 24 A. Right.

09:31 25 Q. That's the law, and you can do that?

09:31 1 A. Right.

09:31 2 Q. Okay. Then we go to the punishment phase. Do  
09:31 3 you see that first question up there? Ms. Falco talked  
09:31 4 with you about it earlier. Go ahead and read that to  
09:31 5 yourself, if you would. Okay?

09:31 6 A. Yes, I read it.

09:31 7 Q. In your own words, what's that question mean?  
09:31 8 Not just the words of that question, what does that mean  
09:31 9 to you?

09:31 10 A. What does it mean to me? Okay.

09:31 11 Q. What is that asking you to figure out?

09:31 12 A. That's asking me to figure out if -- if a  
09:31 13 defendant would be a recurring threat to society.

09:32 14 Q. What kinds of things would you want to know  
09:32 15 about in order to answer that question if you were on  
09:32 16 the jury? What kinds of information do you think would  
09:32 17 be important?

09:32 18 A. Well, past -- I think past -- past acts of  
09:32 19 violence.

09:32 20 Q. Okay. For example, you don't get to that  
09:32 21 question unless you already found that the defendant's  
09:32 22 guilty of capital murder, and you've already found that.  
09:32 23 Does the -- can you see how the crime itself would be  
09:32 24 very important in helping you answer that question?

09:32 25 A. Yeah, that's correct.

09:32 1 Q. Even without regard to the past or anything  
09:32 2 else? Just look at the crime. Like Timothy McVeigh;  
09:32 3 you mentioned him?

09:32 4 A. Right.

09:32 5 Q. Now, we don't know a whole lot about his past.  
09:32 6 Apparently he served, if not with distinction, he served  
09:32 7 honorably in the military. He was a soldier and, you  
09:32 8 know, I don't know if he was a hero or not, but he  
09:33 9 certainly did his job and like that.

09:33 10 We don't know too much else about him. At  
09:33 11 least I don't. I don't know if he worked for a living  
09:33 12 most of the time. I don't know how he treated women. I  
09:33 13 don't know if he did dope and things like that. I don't  
09:33 14 know any of those kind of things, but I do know what he  
09:33 15 did. And I know how enormous that was.

09:33 16 Do you think Timothy McVeigh, just based  
09:33 17 on that crime alone, if you were answering that  
09:33 18 question, that would have to be a yes answer, that he  
09:33 19 probably would always be dangerous, just based on what  
09:33 20 he had done?

09:33 21 A. Right.

09:33 22 Q. I mean, what if he came in and said, I'm real  
09:33 23 sorry. I made a big mistake, and I'm better now. I'll  
09:33 24 be okay. Does that fix it for you, and make that a no  
09:33 25 answer then?

09:33 1 A. No, that wouldn't fix it.

09:33 2 Q. Okay. What if he meant it? What if he really  
09:33 3 was sorry? Does that make a difference?

09:33 4 A. No. I think he could be sorry for that one  
09:34 5 thing he did and still do it again if --

09:34 6 Q. Okay. And that question kind of makes us look  
09:34 7 into the future, don't you think?

09:34 8 A. Yes.

09:34 9 Q. And that's always difficult when people try to  
09:34 10 look into the future because we can only make the best  
09:34 11 choices we can. We try to learn as much as we can  
09:34 12 about -- about our decision.

09:34 13 And then when somebody says what's  
09:34 14 probable, about all we can really do is take our best  
09:34 15 effort at it. And that's what that question asks you to  
09:34 16 do. Do you see that? It doesn't say: Is it certain?  
09:34 17 Is it absolutely going to happen that he's going to be a  
09:34 18 continuing threat to society, because we can't say that?

09:34 19 A. No.

09:34 20 Q. You can't say that the trains are going to be  
09:34 21 running tomorrow, that they almost always are. And we  
09:35 22 assume that they are going to be, but we don't know what  
09:35 23 might happen tomorrow, you know. They are probably  
09:35 24 going to be running tomorrow, don't you think? Amtrak  
09:35 25 is going to be running. You know, the Chicago to San



09:35 1 Antonio route, I guess? Isn't there one of them?  
 09:35 2 A. That's the Texas Eagle.  
 09:35 3 Q. Yeah. And there's going to be the East-  
 09:35 4 Western. They are probably going to be running, but we  
 09:35 5 don't know for certain. And we do that all the time in  
 09:35 6 our lives. Like, we listen to the weather in the  
 09:35 7 morning before we go to work. And then we decide if we  
 09:35 8 are going to take our umbrellas based upon what they say  
 09:35 9 the probability of showers is. Does that make sense?  
 09:35 10 A. Yes.  
 09:35 11 Q. If we are getting ready to drive to visit  
 09:35 12 Grandma someplace, and we hear that there's talk about a  
 09:35 13 snowstorm, we decide whether or not that's probable and  
 09:35 14 then we decide whether or not we're going to try to  
 09:35 15 drive through the snow or not. Do you know what I mean?  
 09:35 16 A. Yes.  
 09:35 17 Q. And that question asks the same thing of a  
 09:36 18 juror. It says: Is he probably going to commit  
 09:36 19 criminal acts of violence that would constitute a  
 09:36 20 continuing threat to society? Do you feel like you  
 09:36 21 could do that?  
 09:36 22 A. Yes.  
 09:36 23 Q. Now, sometimes there are psychiatrists or  
 09:36 24 doctors that will testify in a criminal trial, and they  
 09:36 25 will -- they'll come in. And one doctor will say, yeah.

09:36 1 He's a bad person. He's going to be dangerous.  
 09:36 2 I've studied all the records, and I've  
 09:36 3 studied his behavior. And I've looked at him and  
 09:36 4 whatever, and I've decided that this defendant is going  
 09:36 5 to be a danger to society. Okay? And that would  
 09:36 6 usually be somebody the State would hire. That would  
 09:36 7 probably be a State doctor, right?  
 09:36 8 A. Right.  
 09:36 9 Q. And the defense, they could do the same thing.  
 09:36 10 They get an equally qualified, equally affable physician  
 09:36 11 to come in and say: I've examined this person, and I  
 09:36 12 wish I had a son like him. I'm proud to have had the  
 09:36 13 opportunity to know an inspirational character such as  
 09:36 14 this defendant. I -- you know, I like him so much I'm  
 09:37 15 going to visit him every week in the pen to learn  
 09:37 16 wonderful things from him. They could have that kind of  
 09:37 17 a doctor, too. Does that make sense to you?  
 09:37 18 A. Yes.  
 09:37 19 Q. And those doctors would end up canceling each  
 09:37 20 other out almost in the jury's mind almost, or maybe  
 09:37 21 they would just have to decide which one is more  
 09:37 22 important. Or maybe they would say, I don't need a  
 09:37 23 psychiatrist to help me figure out this dangerous  
 09:37 24 person. I can do that myself, you know?  
 09:37 25 A. Yes.

09:37 1 Q. Do you need a psychiatrist to come in and tell  
 09:37 2 you whether Timothy McVeigh was dangerous or not?  
 09:37 3 A. No.  
 09:37 4 Q. You can do that all by yourself?  
 09:37 5 A. Yes.  
 09:37 6 Q. If you answered that question yes, you and 11  
 09:37 7 other people, then we move onto the next question.  
 09:37 8 Okay?  
 09:37 9 A. Right.  
 09:37 10 Q. If you answered that question no, what happens?  
 09:37 11 You and nine other people? If ten people answer that  
 09:37 12 question no, what happens then? What happens to the  
 09:37 13 defendant?  
 09:38 14 A. I would think he wouldn't get a death penalty.  
 09:38 15 Q. Right. If he doesn't get a death sentence,  
 09:38 16 what does he get?  
 09:38 17 A. Life.  
 09:38 18 Q. You are exactly right. And so, let's just say  
 09:38 19 that you've answered this question, yes. You move to  
 09:38 20 this next question. Do you want to go ahead and read  
 09:38 21 that?  
 09:38 22 A. Yeah, I've read it.  
 09:38 23 Q. That question is a little more complicated. I  
 09:38 24 think, Ms. Evans, what it asks you to do is look back at  
 09:38 25 the evidence one more time, and look at it in a little

09:38 1 different way than you were before, because first you  
 09:39 2 were looking at the evidence to see whether he was  
 09:39 3 guilty or not. And you looked at it real close, and you  
 09:39 4 decided that he was guilty beyond a reasonable doubt.  
 09:39 5 And then you looked at it to see whether he's going to  
 09:39 6 be dangerous or not.  
 09:39 7 And that was that first question we talked  
 09:39 8 about: Is he going to be a continuing threat to  
 09:39 9 society? And you looked at that, and you decided yes.  
 09:39 10 But it's asking you to look at it one more time a little  
 09:39 11 bit differently.  
 09:39 12 And it's asking you to look at all of  
 09:39 13 the -- all of the -- what they call mitigation evidence.  
 09:39 14 That's -- that's, for want of a better word, that's the  
 09:39 15 stuff that might be sad or unfortunate that happens in  
 09:39 16 people's lives and see, first of all, is there any  
 09:39 17 mitigation? Is there any sadness or difficulty that  
 09:39 18 even rises to the level of being mitigation at all?  
 09:39 19 And then, even if there is mitigation,  
 09:39 20 seeing if there is enough, seeing if there is sufficient  
 09:40 21 mitigating circumstance, sufficient to warrant a life  
 09:40 22 sentence rather than a death sentence. It's kind of  
 09:40 23 like giving the jury one last look to make sure that the  
 09:40 24 death penalty is the right thing to do. Okay?  
 09:40 25 A. Yeah, I understand.

09:40 1 Q. It's like McVeigh. If they had given a  
09:40 2 question like that. Well, looking at McVeigh's  
09:40 3 background, he wanted to be a general, but he was only a  
09:40 4 sergeant, and that was real important to him. And his  
09:40 5 mom and dad, they were divorced. And he got all upset  
09:40 6 about Waco. He hated the FBI. And he read a bunch of  
09:40 7 books that he shouldn't have been reading, and that  
09:40 8 might be mitigating.

09:40 9 That might be something that's unfortunate  
09:40 10 or didn't go right for him, you know? And say, is that  
09:40 11 sufficient stuff that didn't go right for him to make  
09:40 12 him get a life sentence rather than a death sentence?  
09:40 13 Do you understand how that could be?

09:40 14 A. Yes.

09:40 15 Q. Okay. And before -- before they sent him to  
09:40 16 hell, that jury would have had to have considered  
09:41 17 something just like that and had to consider whether or  
09:41 18 not there's sufficient mitigating evidence that would  
09:41 19 have spared his life. And obviously, they didn't have  
09:41 20 any trouble with that because he's not amongst us  
09:41 21 anymore. Does that make sense to you?

09:41 22 A. Yes.

09:41 23 Q. And it certainly doesn't mean that you got to  
09:41 24 spare his life, but it means that you got to look at  
09:41 25 that possibility to give him a fair shot before you vote

09:41 1 before you -- before he's going to receive the death  
09:41 2 sentence. Does that seem okay to you?

09:41 3 A. Yes.

09:41 4 Q. All right. Now, let me tell you where I'm  
09:41 5 going with all of this. I get a sense from you, but if  
09:41 6 I'm wrong, you correct me because I'm just guessing.  
09:41 7 I've only known you 30 minutes, so I'm just guessing. I  
09:41 8 get a sense from you that you are all right with the  
09:41 9 death penalty in some cases if the crime is bad enough.  
09:41 10 Am I right about that?

09:41 11 A. Yeah, that's correct.

09:41 12 Q. Okay. Are you the kind of person that says, "I  
09:42 13 wish we didn't have to have a death penalty because  
09:42 14 human life is real important to me"? Do you feel that  
09:42 15 way?

09:42 16 A. Yes.

09:42 17 Q. Are you also the kind of person that says that  
09:42 18 this isn't a perfect world, and sometimes it's the right  
09:42 19 thing to do?

09:42 20 A. Yes. Sometimes it is.

09:42 21 Q. Okay. I'm with you on that then. Now, here's  
09:42 22 our problem. Are you -- do you still consider yourself  
09:42 23 opposed to the death penalty or not?

09:42 24 A. Well, maybe not in all circumstances.

09:42 25 Q. Okay.

09:42 1 A. It would have to depend on -- on the crime.

09:42 2 Q. Sure, sure. Because there are some times where  
09:42 3 the answer to those questions -- and we don't ask -- we  
09:43 4 don't really ask you life or death anyway in these  
09:43 5 questions; and we talked about this. We just ask you  
09:43 6 to -- we just ask you to call balls and strikes. Kind  
09:43 7 of like you, you are not the one that sets the fares for  
09:43 8 that train?

09:43 9 A. No.

09:43 10 Q. I mean, somebody else does that. And maybe you  
09:43 11 think that's too much money for a fare, for all I know.  
09:43 12 You might say, gee, that's a lot of money for a fare or  
09:43 13 maybe you think it's too little money for a fare, but  
09:43 14 you still do your job as a conductor, and you take the  
09:43 15 tickets and issue citations if they need to be issued,  
09:43 16 right?

09:43 17 A. Right. I did not agree with them having the  
09:43 18 conductors to do that job because we saw the passengers  
09:43 19 every single day, and I had to write summons to people I  
09:43 20 had known and talked to everyday for two years. But I  
09:43 21 did it because it was my job, you know, and that was the  
09:43 22 law.

09:43 23 Q. Exactly. Do you think you could do that?  
09:43 24 Could you vote, if we convinced you that the answer to  
09:43 25 that first question should be yes, can you vote yes

09:44 1 without any problem at all, if we convinced you?

09:44 2 A. Yeah.

09:44 3 Q. That's this future danger question. If we  
09:44 4 convince you from the evidence that a defendant is  
09:44 5 probably going to commit criminal acts of violence in  
09:44 6 the future, based upon his past and the things that he's  
09:44 7 done, will you vote yes to that question?

09:44 8 A. Yes.

09:44 9 Q. All right. And if we convince you, or if you  
09:44 10 are not convinced that there's enough mitigating  
09:44 11 evidence, will you vote no on this question? No, there  
09:44 12 is not. No, no there's not sufficient mitigating  
09:44 13 circumstances to cause a life sentence. Are you able to  
09:44 14 do that just fine?

09:44 15 A. Yes.

09:44 16 Q. Because it's like -- it's like what you are  
09:44 17 talking about as a conductor. You may not think it's  
09:44 18 right for you to have to write summonses to your  
09:44 19 friends. People that you -- and you know they are good  
09:44 20 people or you know they just forgot, or they thought  
09:44 21 they had a ticket or it's back on their dresser drawer,  
09:44 22 do you know, all that kind of thing?

09:44 23 A. (Moves head up and down.)

09:44 24 Q. And yet that's your job, and you are able to  
09:45 25 live with yourself just fine doing your job, aren't you?

09:45 1 A. Yes.  
 09:45 2 Q. I guess what I'm thinking to myself is: I was  
 09:45 3 a little bit concerned when you first came in because it  
 09:45 4 sounded like you -- you were an opponent of the death  
 09:45 5 penalty. And I was thinking, well, if she feels that  
 09:45 6 way, maybe I have an impossible job, but I don't feel  
 09:45 7 that way now. Do I have an impossible job with you if  
 09:45 8 you are on this jury?  
 09:45 9 A. No. No. I'm -- I'm opposed to the death  
 09:45 10 penalty because I think there should be a law -- life  
 09:45 11 sentences in some states are not really life sentences.  
 09:45 12 Q. Like Texas, for example.  
 09:45 13 A. Right. And there should be like a real life  
 09:45 14 sentence, and it should be worse than death being in a  
 09:46 15 small cell, not being able to see anybody, without  
 09:46 16 having to take a human life. But since we don't have  
 09:46 17 that in the law, we do have capital punishment. I  
 09:46 18 believe in upholding the law.  
 09:46 19 Q. What's more important to you? Give me your  
 09:46 20 true answer to this question, and do your best to help  
 09:46 21 me. What's more important to you, following the law or  
 09:46 22 sparing a life in a death penalty case?  
 09:46 23 A. Following the law.  
 09:46 24 Q. Are you sure about that?  
 09:46 25 A. Yes.

09:46 1 Q. Because you and I are fine as long as you  
 09:46 2 follow the law. I can trust you as a juror. And then  
 09:46 3 my job is to produce enough evidence to convince you?  
 09:46 4 A. Yes.  
 09:46 5 Q. But it's just like if -- it's like being the  
 09:46 6 train conductor and say, I know these people so I'm just  
 09:47 7 going to look the other way. That's the one thing I  
 09:47 8 can't work with, not because you are a bad person; it  
 09:47 9 might make you a better person. I can't work with that  
 09:47 10 because the law doesn't make me have to convince you  
 09:47 11 that capital punishment is the perfect way for our  
 09:47 12 society.  
 09:47 13 The law only makes me have to convince you  
 09:47 14 beyond a reasonable doubt that he's guilty of capital  
 09:47 15 murder and that he's a dangerous person in the future,  
 09:47 16 and that there's not enough mitigation.  
 09:47 17 A. All right.  
 09:47 18 Q. And are you the kind of person that could vote  
 09:47 19 either way on those questions and realize you are  
 09:47 20 following the law and that that's the most important  
 09:47 21 thing?  
 09:47 22 A. Yes.  
 09:47 23 Q. Do you feel like you would be fair, fair to my  
 09:47 24 side and listen to this evidence?  
 09:47 25 A. Yes.

09:47 1 Q. Do you feel like you would be fair to the  
 09:47 2 defense side and listen to this evidence?  
 09:47 3 A. Yes.  
 09:48 4 Q. Do you think drugs -- do you have sympathy for  
 09:48 5 people who commit crimes while they are on drugs?  
 09:48 6 A. No.  
 09:48 7 Q. Why not?  
 09:48 8 A. I think taking drugs is a choice. You choose  
 09:48 9 to do the drugs. And if you do a crime while you are  
 09:48 10 under the influence of drugs, you made that choice when  
 09:48 11 you took the drugs.  
 09:48 12 Q. Can you see how being the kind of person who  
 09:48 13 would choose to take dangerous drugs could help you  
 09:48 14 understand how a person is going to be dangerous because  
 09:48 15 they are the kind of people that make dangerous choices?  
 09:48 16 A. Right.  
 09:48 17 Q. By the way, could you execute somebody if you  
 09:48 18 were convinced that a person was guilty? When I say  
 09:48 19 execute, could you vote in a way that would cause an  
 09:49 20 execution, if you were convinced that person was guilty  
 09:49 21 and you were convinced that person was going to be  
 09:49 22 dangerous in the future and you didn't find enough  
 09:49 23 mitigating evidence, even though the crime was committed  
 09:49 24 while that person was taking drugs? Would you still  
 09:49 25 say, so what? If you did it on drugs, you made a

09:49 1 choice, and I'm going to vote in a way that will cost  
 09:49 2 you your life. Could you do that?  
 09:49 3 A. Yes. Like I say, I don't believe being under  
 09:49 4 the influence of drugs is a -- I don't believe that's  
 09:49 5 enough to -- to make a person escape capital punishment  
 09:49 6 or any kind of punishment.  
 09:49 7 Q. Okay. What about, let's talk about wife  
 09:49 8 beating for a minute, spousal abuse. Are you -- do you  
 09:49 9 consider yourself pretty tolerant about people who beat  
 09:50 10 their wives?  
 09:50 11 A. No.  
 09:50 12 Q. Well, some people say it's just a sickness.  
 09:50 13 That they didn't learn good ways to deal with their  
 09:50 14 stress or something. And so instead of leaving the room  
 09:50 15 or talking it out or cooling off, they just -- they go  
 09:50 16 beat her up, and they didn't mean much by it. Do you  
 09:50 17 buy that argument?  
 09:50 18 A. No.  
 09:50 19 Q. Do you think that's a choice too, that when you  
 09:50 20 have trouble with your wife or your girlfriend, you just  
 09:50 21 take to whipping on her? Do you think that's a choice  
 09:50 22 that people make?  
 09:50 23 A. Yes.  
 09:50 24 Q. Now, some people say that young people ought  
 09:50 25 not -- ought not to be executed. And I guess we all

09:50 1 agree if you are like a little kid or something. We  
09:50 2 wouldn't want to execute little kids. But have you had  
09:50 3 a chance to look at the defendant since you have been  
09:50 4 here a little bit?

09:50 5 A. Uh-huh.

09:50 6 Q. It's all relative. Does he seem like -- does  
09:50 7 he look young to you or old?

09:50 8 A. He looks young.

09:50 9 Q. How old does he look to you, probably?

09:51 10 A. In his 20s, maybe.

09:51 11 Q. That's certainly young for maybe you or me,  
09:51 12 right?

09:51 13 A. Yes.

09:51 14 Q. Is that some factor that makes you think, I  
09:51 15 mean, because someone looks younger to you or I, does  
09:51 16 that mean that they shouldn't be executed for their  
09:51 17 crimes?

09:51 18 A. No. Not unless they are very young.

09:51 19 Q. I mean, we don't -- we don't know, and I'm only  
09:51 20 talking about looking. Does he look old enough to know  
09:51 21 what he's doing when he does stuff? Does he look old  
09:51 22 enough for that to you?

09:51 23 A. Yes.

09:51 24 Q. And then some people say that, well, it's not  
09:51 25 fair to execute people if they come from a broken home.

09:51 1 What do you think about that?

09:51 2 A. I think if that were true, better than half the  
09:51 3 country probably couldn't be executed. No, I don't  
09:51 4 believe that's --

09:52 5 Q. I mean, life is not always just perfectly fair  
09:52 6 to people, right?

09:52 7 A. Right.

09:52 8 Q. I bet if you wanted to, you could point to  
09:52 9 things in your life that didn't go right and try to use  
09:52 10 that as excuses for anything you do that's not right or  
09:52 11 doesn't go the way it should go, right?

09:52 12 A. Right.

09:52 13 Q. I don't even need to ask you, but I'll bet if  
09:52 14 we talked, there are things that happened to you when  
09:52 15 you were young and growing up in your later life that  
09:52 16 have broken your heart in one way or another; isn't that  
09:52 17 so?

09:52 18 A. Yes.

09:52 19 Q. And that's true for most people; isn't it?

09:52 20 A. Yes.

09:52 21 Q. And yet most of us, despite all that, are able  
09:52 22 to work for a living and try to do the best we can, try  
09:52 23 to make a better life for our kids and grandkids that we  
09:52 24 have. Most of us are able to do that, right?

09:52 25 A. Right.

09:52 1 Q. Have you known some people that had a great  
09:52 2 life growing up and they turned out bad? Have you ever  
09:52 3 known people like that?

09:52 4 A. Yes.

09:52 5 Q. And have you known some people that have had a  
09:52 6 pretty bad life, and they've turned out good?

09:52 7 A. Yes. I've known people like that, too.

09:52 8 Q. So it's more -- it's more their responsibility  
09:53 9 how they are going to turn out than -- than the cards  
09:53 10 that life has dealt them a lot of times, don't you  
09:53 11 think?

09:53 12 A. Yes.

09:53 13 Q. And some people talk about religion being  
09:53 14 important. Could we talk a little bit about your  
09:53 15 religious ideas? Either that you have them or you  
09:53 16 don't? Could we talk a little bit about that?

09:53 17 A. Yeah.

09:53 18 Q. Do you attend any church or synagogue or temple  
09:53 19 of any kind?

09:53 20 A. Not on a regular basis, no.

09:53 21 Q. Did you ever do more of that as you were  
09:53 22 growing up?

09:53 23 A. Yes.

09:53 24 Q. Is that probably because some family member  
09:53 25 took you there, or that was just what the family did?

09:53 1 A. Yes.

09:53 2 Q. You are probably like a lot of people. Even  
09:53 3 though you don't attend organized services, either  
09:53 4 because they don't have a lot of meaning for it, just  
09:53 5 like we're all pressed for time, you still got a faith  
09:54 6 about you, don't you?

09:54 7 A. Yes.

09:54 8 Q. Do you think that a fact that a person is or  
09:54 9 has become Christian means it's wrong to execute them if  
09:54 10 they are that way?

09:54 11 A. No.

09:54 12 Q. Why not? Because that's -- that's probably a  
09:54 13 desirable thing for many people in this country, at  
09:54 14 least to become a Christian, isn't it?

09:54 15 A. Yes.

09:54 16 Q. Well, if that's a good thing, and that's a  
09:54 17 teaching of peace and love and gentleness, then why, why  
09:54 18 should we execute somebody who is a Christian?

09:54 19 A. Do you mean they've become a Christian after  
09:54 20 they've committed the crime or before?

09:54 21 Q. Well, either way, but let's talk about after.  
09:54 22 That's a good point. Suppose somebody, after getting  
09:54 23 arrested, goes over to the jailhouse and says, you know,  
09:54 24 I've become a Christian, and they start talking all that  
09:54 25 talk. And they got Bibles, and they walk around looking

09:55 1 holy.

09:55 2 And they go talking to their cell mates  
09:55 3 about holy things. Why would we execute someone like  
09:55 4 that person for a crime? Like McVeigh, if he became  
09:55 5 holy, why would we execute him if he became a  
09:55 6 Christian?

09:55 7 A. I think it would be good if he became a  
09:55 8 Christian after the fact, but I don't believe that  
09:55 9 should have any bearing on whether he's executed or not.

09:55 10 Q. Okay. Ms. Falco, my co-counsel, wants me to  
09:55 11 ask you about your hobby, about bubble wrap?

09:55 12 A. Uh-huh.

09:55 13 Q. It wasn't as important to me as it is to her.  
09:55 14 This is for her. Tell us about that.

09:55 15 A. Yeah. I love popping those bubbles on the  
09:55 16 bubble wrap. It -- that and crossword puzzles. That's  
09:56 17 about the only two hobbies I have.

09:56 18 Q. Okay. Do you go buy rolls of it just so you'll  
09:56 19 have it to pop?

09:56 20 A. No.

09:56 21 Q. You just wait until somebody sends you presents  
09:56 22 and stuff and you take it out of there?

09:56 23 A. Yeah, or I move.

09:56 24 Q. Do you do it at night to keep people awake?

09:56 25 A. No.

09:56 1 Q. Because I could hardly sleep through that, if  
09:56 2 you are up doing your hobby?

09:56 3 A. No.

09:56 4 Q. Do you ever do that?

09:56 5 A. No.

09:56 6 Q. Do you ever do it on the train?

09:56 7 A. No.

09:56 8 Q. Do you like the bigger bubbles or the smaller  
09:56 9 ones? What's better?

09:56 10 A. I like the small ones.

09:56 11 Q. Why? There's more of them?

09:56 12 A. There's more of them, and yeah, you can get --  
09:56 13 you don't have to have a big sheet.

09:56 14 Q. Okay. Let's talk about remorse. Because you  
09:57 15 put in there, one of the reasons that you think is a  
09:57 16 good argument for the death penalty is for somebody that  
09:57 17 doesn't have any remorse?

09:57 18 A. Right.

09:57 19 Q. If that's what a juror is looking for, wouldn't  
09:57 20 you think that capital murderers would often come in and  
09:57 21 say, I got lots of remorse?

09:57 22 A. Yes.

09:57 23 Q. I mean, are you the kind of person to look at  
09:57 24 that and say, if it's real he wouldn't have done it in  
09:57 25 the first place, maybe? That kind of idea. Because

09:57 1 we're talking about premeditated murder, according to  
09:57 2 you. That's kind of what you think is the right kind of  
09:57 3 case for capital punishment?

09:57 4 A. Yes. Premeditated and depends on what it was,  
09:57 5 too, you know. Some crimes are more heinous than  
09:57 6 others.

09:57 7 Q. Sure, sure. You think killing two people is a  
09:58 8 lot worse than killing one person?

09:58 9 A. No.

09:58 10 Q. You think it's the same?

09:58 11 A. I think killing period is wrong.

09:58 12 Q. I got just a couple more questions of you.  
09:58 13 I'll move along. You ever heard the term probation?

09:58 14 A. Yes.

09:58 15 Q. Like in a criminal case. What do you think of,  
09:58 16 when you hear of probation, what do you think?

09:58 17 A. I've never thought about it before. Probation  
09:58 18 means that someone has found that, whether it be a judge  
09:58 19 or a group of people at a prison, that they would be law  
09:58 20 abiding if they let them out or didn't send them to a  
09:59 21 jail.

09:59 22 Q. Do you think that could be okay in some cases  
09:59 23 to do that?

09:59 24 A. In some cases, yes.

09:59 25 Q. Now, our law provides, not in capital murder,

09:59 1 of course you couldn't give somebody a death sentence  
09:59 2 and give them probation.

09:59 3 A. Right.

09:59 4 Q. That's just not provided. That wouldn't seem  
09:59 5 to make much sense anyway. But our law provides that  
09:59 6 every other crime -- there are two crimes in Texas you  
09:59 7 can't get probation for. Only two, by their very  
09:59 8 definition.

09:59 9 One is capital murder, and the other is a  
09:59 10 particular variety of perjury in which a police officer  
09:59 11 lies about the circumstances of a confession. By  
09:59 12 statute, for some reason, that's considered so awful  
09:59 13 there's not even eligibility for probation. But any  
09:59 14 other crime, no matter how awful it might be, a person  
09:59 15 is eligible for probation if certain things occur.

09:59 16 One, he has to never before have been  
09:59 17 convicted of a felony in Texas or anyplace else or the  
10:00 18 U.S.

10:00 19 And secondly, the jury has to be looking  
10:00 20 at a sentence within the 10-year or less range. All  
10:00 21 right? That's the two. Of course, you can't get 20  
10:00 22 years' probation or 50 years' probation or life  
10:00 23 probation, but you can get 10 years' probation or 5  
10:00 24 years' probation. In some -- in some cases even less  
10:00 25 than 5 years depending on the crime. And that means

10:00 1 murder, regular murder, not capital, but regular murder.  
 10:00 2 People who do those crimes are eligible for probation.  
 10:00 3 A. I see.  
 10:00 4 Q. Now, some people say: There's no way. No  
 10:00 5 matter what kind of murder we are talking about, I would  
 10:00 6 never ever give anybody probation no matter what for  
 10:00 7 murder because life is so important to me. How do you  
 10:00 8 feel about that? Would you consider probation in a  
 10:00 9 regular murder case depending on the circumstances?  
 10:01 10 A. Yes.  
 10:01 11 Q. And you realize, maybe you give it frequently,  
 10:01 12 maybe you wouldn't, but regardless, you would be open to  
 10:01 13 that?  
 10:01 14 A. Yes.  
 10:01 15 Q. There's another kind of crime that you can --  
 10:01 16 well, never mind.  
 10:01 17 This is kind of a delicate subject for me,  
 10:01 18 and it has to do with your late husband. First of all,  
 10:01 19 is it okay if I ask you some questions about that? I  
 10:01 20 hope you can see how that relates and when we're talking  
 10:01 21 about a murder case?  
 10:01 22 A. Yes.  
 10:01 23 Q. Is it okay if I ask you about that?  
 10:01 24 A. Yes.  
 10:01 25 Q. When did -- when was he deceased?

10:01 1 A. In June 5th, 1970.  
 10:01 2 Q. 1970?  
 10:01 3 A. Uh-huh.  
 10:02 4 Q. And where were you all living at the time?  
 10:02 5 A. We were living west of Fort Worth in a small  
 10:02 6 town named LaHuna.  
 10:02 7 Q. What county would that have been? Is that  
 10:02 8 Parker County or is it Tarrant County?  
 10:02 9 A. I believe it was Parker County -- no, Parker  
 10:02 10 County. He was killed in Tarrant County, but we lived  
 10:02 11 in Parker County.  
 10:02 12 Q. Tell me -- tell me, just in your own words,  
 10:02 13 what happened. Kind of explain the situation to me.  
 10:02 14 A. Okay. It happened in a bar, and it was a fight  
 10:02 15 over a pool game.  
 10:02 16 Q. Okay. And did he get shot?  
 10:02 17 A. Yes.  
 10:02 18 Q. Did he -- did he have a gun with him at the  
 10:02 19 time?  
 10:02 20 A. No.  
 10:02 21 Q. Was there ever a trial of the person that  
 10:02 22 killed him?  
 10:02 23 A. No.  
 10:02 24 Q. What happened in that?  
 10:02 25 A. They did arrest a man, but the Grand Jury

10:03 1 didn't indict him, so...  
 10:03 2 Q. Was he claiming self-defense or something  
 10:03 3 probably, or do you even know?  
 10:03 4 A. I don't know.  
 10:03 5 Q. How did that affect -- I don't need to ask you  
 10:03 6 how it affected you for him to be murdered because I can  
 10:03 7 only guess what that would have been like. Did you know  
 10:03 8 he was there at the poolroom when this all happened?  
 10:03 9 A. No.  
 10:03 10 Q. I mean, was it -- how did you get the news?  
 10:03 11 A. My husband's cousin had been there with him at  
 10:03 12 the bar, and he came and told my brother-in-law, my  
 10:03 13 husband's brother. And my husband's brother came and  
 10:03 14 got me. We, at that time, we didn't know he was dead  
 10:04 15 until we got to the hospital.  
 10:04 16 Q. Did you think it was wrong of the Grand Jury  
 10:04 17 not to indict that case?  
 10:04 18 A. At the time I did, at that time.  
 10:04 19 Q. Are you different now?  
 10:04 20 A. I don't know what evidence they had against  
 10:04 21 this man or why they didn't indict him, so I don't know.  
 10:04 22 I don't know why they didn't indict him, whether they  
 10:04 23 thought he did it and didn't have enough evidence or  
 10:04 24 they thought he didn't do it because I didn't know the  
 10:04 25 man.

10:04 1 Q. Right.  
 10:04 2 A. At the time -- like I say, at the time I was 25  
 10:04 3 years old. I thought -- I thought they should have.  
 10:04 4 Q. A lot of times when you are sitting up there,  
 10:05 5 you are probably going through your mind is the idea  
 10:05 6 that, I wonder if they are going to ask me something.  
 10:05 7 It's kind of also like, there may be something you are  
 10:05 8 thinking of that you think might have to do with whether  
 10:05 9 you can be fit in this case or whether you could be the  
 10:05 10 right kind of juror.  
 10:05 11 Some jurors say, you know, I'm not going  
 10:05 12 to volunteer stuff, but if I get asked about this or  
 10:05 13 that, I'll tell the truth, kind of thing. Is there  
 10:05 14 anything that you are sitting there thinking now that if  
 10:05 15 one of us asks you, you'll tell and you think it has  
 10:05 16 something to do with this case? Is there anything like  
 10:05 17 that?  
 10:05 18 A. No.  
 10:05 19 Q. Okay.  
 10:05 20 MR. SCHULTZ: Pass the juror.  
 10:05 21 THE COURT: All right. Mr. Goeller?  
 10:05 22 MR. GOELLER: Thank you.  
 10:05 23 VOIR DIRE EXAMINATION  
 10:05 24 BY MR. GOELLER:  
 10:06 25 Q. Good morning, Ms. Evans.

10:06 1 A. Good morning.  
 10:06 2 Q. How are you?  
 10:06 3 A. All right.  
 10:06 4 Q. What -- you work for Amtrac, right?  
 10:06 5 A. Yes, I do.  
 10:06 6 Q. And you are from Denison?  
 10:06 7 A. I was born in Denison.  
 10:06 8 Q. Okay.  
 10:06 9 A. I've never lived there, but I was born there.  
 10:06 10 Q. How did you -- I notice one of your -- I think  
 10:06 11 it's one of your sons is also a conductor?  
 10:06 12 A. Yes.  
 10:06 13 Q. Or is this your brother?  
 10:06 14 A. My son.  
 10:06 15 Q. How did -- how did trains get in the family?  
 10:06 16 A. Well, I was the first one in the family to work  
 10:06 17 for a railroad.  
 10:06 18 Q. Okay.  
 10:06 19 A. And I was -- I had a business. I had dump  
 10:06 20 trucks, and I hauled sand to new house construction.  
 10:06 21 Well, anyway, in the late '70s when the economy got so  
 10:06 22 bad there was not much construction going on, so I went  
 10:07 23 to the railroad.  
 10:07 24 This girl told me that they had good  
 10:07 25 benefits. And I went to the railroad looking for a

10:07 1 truck-driving job. And they told me they didn't hire  
 10:07 2 truck drivers. But affirmative action was big then, and  
 10:07 3 they wanted to hire women as conductors. They didn't  
 10:07 4 have any. So she asked me if I wanted to be a  
 10:07 5 switchman. And I told them, yeah, you know, after she  
 10:07 6 told me how much it paid. And I had to go home and ask  
 10:07 7 everybody what a switchman was. I had no idea.  
 10:07 8 Q. What is a switchman?  
 10:07 9 A. A switchman? They are the ones that --  
 10:07 10 Q. I think of like pulling those big gates, you  
 10:07 11 know, that make the train take one track or another?  
 10:07 12 A. Right.  
 10:07 13 Q. Is that it?  
 10:07 14 A. That's part of it. That's only a small part.  
 10:07 15 Q. You ever see that movie, *Runaway Train*?  
 10:07 16 A. Yeah.  
 10:07 17 Q. With John Voigt and --  
 10:07 18 A. Eric Roberts.  
 10:07 19 Q. Yeah. Eric Roberts.  
 10:07 20 A. Uh-huh.  
 10:07 21 Q. And I think of the guy, you know, I guess it's  
 10:07 22 up in Alaska or somewhere. And they are trying to radio  
 10:08 23 ahead and pull it so the train goes off on that -- well,  
 10:08 24 there's no end. There's an end to that line, but that  
 10:08 25 was a great movie, I thought.

10:08 1 A. Yeah. It wasn't exactly correct, but --  
 10:08 2 Q. But that's Hollywood for you, right?  
 10:08 3 A. Yeah.  
 10:08 4 Q. So you became a switchman?  
 10:08 5 A. Uh-huh.  
 10:08 6 Q. And how long did you do that?  
 10:08 7 A. Ten years.  
 10:08 8 Q. Okay. And then I guess you worked your way up  
 10:08 9 the ranks to become, I guess, you can't go any higher in  
 10:08 10 the railroad than a conductor. What other jobs?  
 10:08 11 A. You can -- the conductor is in charge of the  
 10:08 12 train. The whole train, but the engineer makes more  
 10:08 13 money.  
 10:08 14 Q. Oh, what's the difference between the engineer  
 10:08 15 and the conductor? I always thought they were the same.  
 10:08 16 A. No. A lot of people do. The conductor is in  
 10:08 17 charge of the train, the boss of the whole train, from  
 10:08 18 one end to the other. The engineer operates the train.  
 10:08 19 They run the train.  
 10:08 20 Q. And it's all -- are they ever one in the same,  
 10:08 21 or there's always two distinct people up there?  
 10:09 22 A. It's always two distinct people.  
 10:09 23 Q. Can one -- is one trained to maybe do the other  
 10:09 24 one's job in an emergency?  
 10:09 25 A. No.

10:09 1 Q. No?  
 10:09 2 A. No.  
 10:09 3 Q. What happens if something happened to the  
 10:09 4 engineer, I mean, the conductor?  
 10:09 5 A. The conductor? On freight trains you have a  
 10:09 6 brakeman. Brakeman can take the conductor's place, if  
 10:09 7 they are qualified. If they are not, they have to stop.  
 10:09 8 The train can't go anywhere without the conductor.  
 10:09 9 Q. Okay.  
 10:09 10 A. They would have to stop and recrew. Bring  
 10:09 11 another conductor.  
 10:09 12 Q. So -- so I never forget this: The conductor  
 10:09 13 actually drives the train? No. The engineer drives the  
 10:09 14 train. The conductor --  
 10:09 15 A. The engineer runs the train. Don't ever tell  
 10:09 16 an engineer he drives the train.  
 10:09 17 Q. Oh, that's a bad one. Okay.  
 10:09 18 A. Yeah.  
 10:09 19 Q. Okay. And the one that is actually running it?  
 10:09 20 A. That's the locomotive engineer.  
 10:10 21 Q. Locomotive engineer. When I was growing up,  
 10:10 22 they always had that hat. You know, that train  
 10:10 23 conductor hat. Do they still wear those?  
 10:10 24 A. Yeah, the conductors do.  
 10:10 25 Q. Yeah. That's, I guess, that's tradition, huh?

10:10 1 That special hat they have?

10:10 2 A. Yeah. Well, on freight they don't. They don't  
10:10 3 wear uniforms on freight, but on passenger trains they  
10:10 4 do. I work passenger trains.

10:10 5 Q. Okay. I guess the responsibility and the  
10:10 6 pressure on passenger line is, I guess, kind of like the  
10:10 7 airlines. You know, it's one thing to fly FedEx planes  
10:10 8 when you just got boxes back there. Same kind of  
10:10 9 analysis? Much more responsibility and pressure when  
10:10 10 you have human beings on the train?

10:10 11 A. Yes.

10:10 12 Q. What have you enjoyed more, freight or  
10:10 13 passenger?

10:10 14 A. There's things I like about each one of them.  
10:10 15 There are times on the passenger trains I wish I was  
10:10 16 back on a freight train because there's a lot of -- a  
10:10 17 lot going on.

10:10 18 You have to do the same job on a passenger  
10:11 19 train which is the railroad in part. Calling the slow  
10:11 20 orders. Making sure the engineer is operating according  
10:11 21 to all of the operating rules. And you've got different  
10:11 22 operating rules for every railroad you operate on.

10:11 23 If you are on the BNSF you've got a set of  
10:11 24 rules and a set of signals. You have to make sure the  
10:11 25 engineer is complying with the signals and the operating

10:11 1 rules.

10:11 2 If you are on the Union Pacific, there's  
10:11 3 another set of rules and another set of signals. And  
10:11 4 I'm one of the few that's qualified on the only four big  
10:11 5 railroads left, which is the Norfolk Southern, the CSX,  
10:11 6 the BNSF, and the UP. So it's a lot of rules and a lot  
10:11 7 of signals that you have to know.

10:11 8 Q. Okay.

10:11 9 A. So I have all that to do plus tend to  
10:11 10 passengers.

10:11 11 Q. That's a -- how many -- what's the most number  
10:11 12 of people you've ever had on a train?

10:12 13 A. That would be a commuter train. I worked up in  
10:12 14 northern Virginia to D.C., and I had about 1,300 people  
10:12 15 on the train the day before Thanksgiving. We weren't  
10:12 16 expecting. It was our first year to operate the  
10:12 17 commuter trains up there. We had them in the bathrooms  
10:12 18 and in the vestibules, everywhere.

10:12 19 Q. Wow. Did you ever cut through Quantico? Did  
10:12 20 you ever have one of those lines that ran through  
10:12 21 Quantico?

10:12 22 A. Yeah. That was my line, one of my lines. And  
10:12 23 I did have a lot of passengers that worked at the  
10:12 24 Pentagon.

10:12 25 Q. Really?

10:12 1 A. Uh-huh.

10:12 2 Q. Wow, wow. When you filled out your  
10:12 3 questionnaire, Ms. Evans, and you chose that: Although  
10:12 4 I do not believe that the death penalty should ever be  
10:12 5 imposed, you could -- you could assess it under the  
10:12 6 proper set of circumstances.

10:12 7 What were your thoughts a month ago when  
10:13 8 you filled that out? Tell me why you circled that one.

10:13 9 A. I don't believe there should be a law calling  
10:13 10 for the death penalty.

10:13 11 Q. Okay.

10:13 12 A. But since -- since there is -- since there is a  
10:13 13 law that requires the death penalty, I believe you  
10:13 14 should obey the law.

10:13 15 Q. Okay. The way our system is set up, the death  
10:13 16 penalty is never a mandatory punishment. Okay? It's  
10:13 17 never mandatory. And there's really no law that ever  
10:13 18 really calls for it. Jurors sit in a capital murder  
10:13 19 case and look at evidence and look at those special  
10:13 20 issues. But do you -- do you understand that? That  
10:13 21 there's no mandatory death penalty?

10:13 22 A. Yes.

10:14 23 Q. When you, you know, this -- this purpose of  
10:14 24 the -- the purpose of individual voir dire -- and before  
10:14 25 I get to that, have you ever served as a juror before?

10:14 1 A. No.

10:14 2 Q. Okay. This is very unusual. The only time we  
10:14 3 go through this one-on-one questioning, with folks out  
10:14 4 there who may have to be jurors in a case. This only  
10:14 5 happens in this kind of case, capital murder. And the  
10:14 6 laws are set up so, in a death penalty, we could talk to  
10:14 7 you individually about your views of the death penalty.

10:14 8 If you had gotten called down here on that  
10:14 9 Monday or Tuesday, whatever it was, about a month ago,  
10:14 10 and it was just any other kind of case, DWI or burglary  
10:14 11 or shoplifting or possession of marijuana or anything  
10:14 12 like that, from the time you got to the courthouse to  
10:14 13 the time you start hearing evidence, maybe just a couple  
10:14 14 hours. And jury selection is usually just about a  
10:14 15 two-hour process in any other kind of case, but these  
10:15 16 cases are a little bit different.

10:15 17 And getting back to our capital murder  
10:15 18 situation, we ask jurors to consider those special  
10:15 19 issues. Now, you may wonder, obviously Mr. High and I,  
10:15 20 we represent Ivan here. And you -- you may wonder: Why  
10:15 21 are we spending so much time on the punishment phase.  
10:15 22 Okay?

10:15 23 And I don't want you to think that we  
10:15 24 think he's guilty or we're just glossing over that.  
10:15 25 It's our -- it's our expectation or anticipation that



10:15 1 the jury will not find him guilty. Period.

10:15 2 But in every case -- let me explain it to  
10:15 3 you. I'll put it to you this way: In every case where  
10:15 4 somebody has been found not guilty, the defense lawyers  
10:16 5 had to spend a lot of time on punishment issues because  
10:16 6 this is the only time we get to talk to you about it.

10:16 7 Most of the things that are associated  
10:16 8 with the first phase of the trial, you know, whether or  
10:16 9 not somebody is guilty, I think in our society and  
10:16 10 especially in Collin County, most people are well aware  
10:16 11 of the legal issues involved.

10:16 12 For example, you believe that -- well, I  
10:16 13 think I got this from your questionnaire, too. You  
10:16 14 certainly believe that all people are presumed innocent  
10:16 15 until proven guilty, correct?

10:16 16 A. Yes.

10:16 17 Q. And the burden of proof is on the State?

10:16 18 A. Yes.

10:16 19 Q. Do you know what the burden of proof is in a  
10:16 20 criminal case in Texas? What they have to prove it to  
10:16 21 you by, how much evidence?

10:16 22 A. By reasonable.

10:16 23 Q. Yeah. Yeah. I think you are right. They have  
10:17 24 to prove it to you beyond a reasonable doubt beyond. In  
10:17 25 other words, more than just a reasonable doubt, beyond a

10:17 1 reasonable doubt. And the Judge would give you an  
10:17 2 instruction. And, in fact, the instructions regarding  
10:17 3 the first phase of a trial, whether it be capital murder  
10:17 4 or a shoplifting or when folks would not pay the fare or  
10:17 5 the ticket if they had -- I guess you had to appear in  
10:17 6 court? You had a court docket?

10:17 7 A. Yes.

10:17 8 Q. I imagine most of that was pretty cut and dry.  
10:17 9 You either had the ticket or you didn't. Were there  
10:17 10 ever people that would say, I'm not guilty of fare  
10:17 11 jumping, or what was the nature? What does the railroad  
10:17 12 call that?

10:17 13 A. The fare evasion.

10:17 14 Q. Fare evasion. Because I know, like in New York  
10:17 15 or any city that has a subway, the metro, you know, the  
10:17 16 underground metro in D.C. and all those places. You hop  
10:17 17 over the turnstile, and you don't put the token in, you  
10:18 18 know, it's fare jumping, I guess it was called.

10:18 19 But did the -- were there ever trials?  
10:18 20 Did anybody walk up to the Judge and say, I'm not  
10:18 21 guilty? I had the fare, or I paid for it, or, you know,  
10:18 22 something like that? What was your involvement in the  
10:18 23 docket calls?

10:18 24 A. Yeah, there was trials. Well, they just went  
10:18 25 before the Judge.

10:18 1 Q. Yeah. Was it a state judge or administrative  
10:18 2 judge or railroad judge?

10:18 3 A. No. It was a county judge in Alexandria.

10:18 4 Q. Fairfax County?

10:18 5 A. Well, no, not Fairfax County. Alexandria.

10:18 6 Q. Alexandria. Yeah, okay. What would the  
10:18 7 proceeding be like? Were you called as a witness?

10:18 8 A. Yes. It was a criminal charge.

10:18 9 Q. Kind of almost like theft of a service, I  
10:18 10 guess?

10:18 11 A. Yes.

10:18 12 Q. How would they usually go?

10:18 13 A. The county -- the county prosecutors would go  
10:19 14 first and tell the Judge what it was.

10:19 15 Q. Uh-huh.

10:19 16 A. And they would call me -- they would call the  
10:19 17 defendant up and get their side of the story, then they  
10:19 18 would call me.

10:19 19 Q. Okay.

10:19 20 A. Most of the defendants always pled. It was  
10:19 21 like guilty with a reason.

10:19 22 Q. Yeah, yeah. It's true, Judge, I didn't have a  
10:19 23 fare, but for whatever reason -- okay, okay. As you  
10:19 24 probably learned from the presentations a couple weeks  
10:19 25 ago, we don't have something actually called life

10:19 1 without parole. I mean, we have life confinement.

10:19 2 I like to tell folks, depending on the age  
10:19 3 of the person, it is life without parole. Okay?

10:20 4 Because we know if someone were convicted of capital  
10:20 5 murder and sentenced to life, they would have to spend  
10:20 6 at least 40 calendar years. No parole, no probation, no  
10:20 7 getting out early. At least 40 calendar from going into  
10:20 8 the future.

10:20 9 Now, if somebody were 40, 50, years old,  
10:20 10 it's probably life without parole. If you are 40 and  
10:20 11 you get a 40-year sentence, you would be 80 before you  
10:20 12 could even think about getting out. And our law is not  
10:20 13 set up where you do 40, and you just get out. It would  
10:20 14 take the governor and his or her Board of Pardons and  
10:20 15 Paroles to vote.

10:20 16 I guess under present law, it would take  
10:20 17 three-quarters of everybody voting to parole somebody.  
10:20 18 Who knows? All we know it's at least 40 years.

10:21 19 So somebody whose 40 or 50, they'll  
10:21 20 probably die in the penitentiary. And we don't know if  
10:21 21 somebody can live 40 years in a Texas prison. It hasn't  
10:21 22 been done yet. This law is relatively recent. It's  
10:21 23 less than 10 years old.

10:21 24 Somebody that's in their late 20s, if they  
10:21 25 were to receive a life sentence, they would be about 70

10:21 1 before they could even hope about getting out, assuming  
10:21 2 they could even live 40 years.

10:21 3 So with that in mind, do you have -- I  
10:21 4 know you expressed some concern earlier about not having  
10:21 5 life without parole. But after hearing my comments,  
10:21 6 does it ease your mind a little bit about how our life  
10:21 7 system works in Texas, life in the penitentiary?

10:21 8 A. I wasn't aware of it. I have been living in  
10:21 9 northern Virginia for so many -- for over ten years. I  
10:22 10 believe it's closer to a life sentence. But it's my  
10:22 11 belief too that life sentences -- you shouldn't get out.

10:22 12 Q. Yeah. Yeah. When we think about these special  
10:22 13 issues and a jury having found somebody guilty, we know  
10:22 14 there are only two options. If the jury finds somebody  
10:22 15 guilty of capital murder, we know it's life or death.  
10:22 16 That's -- nothing else can happen. One of those two  
10:22 17 things must happen.

10:22 18 And I want to come up and just flip that  
10:22 19 one chart down. If I set this down on the floor,  
10:22 20 Ms. Evans, would you be able to see that, so I don't  
10:22 21 cover them both up? Can you read that?

10:22 22 A. Yes, I can.

10:22 23 Q. From where you are sitting? Okay. The word  
10:23 24 probability. What does that mean to you? If you were  
10:23 25 asked to define probability, using words that don't

10:23 1 include the root word probable, how would you do that?

10:23 2 A. I would say the odds were that it would --  
10:23 3 could happen again.

10:23 4 Q. What our courts and our legislature, I suppose,  
10:23 5 have agreed that that word means more than a  
10:23 6 possibility. Okay? Most -- a lot of folks would tell  
10:23 7 you or have the opinion that that word probability means  
10:23 8 more likely than not. Greater than 50-50.

10:23 9 Something, possibility probably means  
10:24 10 50-50 or below. You know, it's just a coin flip. You  
10:24 11 know, if I flipped a coin, it's possible it could come  
10:24 12 up tails, and it's possible it could come up heads. And  
10:24 13 so I think what the legislature and the courts have said  
10:24 14 the State needs to prove it's more likely than not.  
10:24 15 Probably something greater than 50 percent and maybe  
10:24 16 something less than 100 percent.

10:24 17 MR. SCHULTZ: Excuse me. Judge, we're  
10:24 18 going to object. That's a misstatement of the law. I  
10:24 19 don't think there's any determination it has to be more  
10:24 20 than 50 percent by case law. It's got to be more than a  
10:24 21 mere possibility and less than a certainty.

10:24 22 THE COURT: Sustained.

10:24 23 MR. GOELLER: Okay.

10:24 24 Q. (BY MR. GOELLER) Well, we know it's got to be  
10:24 25 more than possibility. Okay? If you were to assign a

10:24 1 number and somewhere between 0 and 100 percent for the  
10:24 2 word probability, what number would you -- what  
10:24 3 percentage would you assign it?

10:25 4 A. 51 percent.

10:25 5 Q. Okay. Okay. I think you are right on there,  
10:25 6 somewhere. And I think that that would be a fair  
10:25 7 assessment of that word. And I think folks who fall in  
10:25 8 anywhere from there and above probably would be a good  
10:25 9 juror, qualified juror.

10:25 10 It's a funny question because the State  
10:25 11 has to prove that question to you. They have the burden  
10:25 12 of proof. They are the ones that have to bring you the  
10:25 13 proof to prove that there is a probability that someone  
10:25 14 would commit criminal acts of violence that would  
10:25 15 constitute a continuing threat to society.

10:25 16 They've got to prove that, and they've got  
10:25 17 to prove that beyond a reasonable doubt. So when you  
10:25 18 think about it, they've got to prove that there's a  
10:25 19 probability beyond a reasonable doubt. Does that  
10:25 20 seem -- that seems a bit odd, doesn't it?

10:26 21 A. Well, I wouldn't say odd.

10:26 22 Q. Because we know beyond a reasonable doubt is a  
10:26 23 lot more than 50 percent of proof. That's probably up  
10:26 24 in the 90s. Okay, it's a lot. So they've got to bring  
10:26 25 a lot of proof to prove a probability.

10:26 1 And if you think about it, I guess it can  
10:26 2 make sense. And then you wonder why the legislature  
10:26 3 chose the word probability, or you wonder why they put  
10:26 4 the burden of proof on the State beyond a reasonable  
10:26 5 doubt. But in any event, they've got to prove those  
10:26 6 things would constitute a continuing threat to society.

10:26 7 As you probably heard me say before,  
10:27 8 society includes the Texas Department of Corrections,  
10:27 9 the prison society. And we know it includes that  
10:27 10 because no matter what happens, at the very minimum,  
10:27 11 somebody is going to have to be there for at least 40  
10:27 12 years or the rest of their life.

10:27 13 It can, I suppose, it can include other  
10:27 14 aspects of society, but when we look at these special  
10:27 15 issues, and if somebody has been found guilty of capital  
10:27 16 murder, and if -- if a jury finds that the State proved  
10:27 17 beyond a reasonable doubt that there's a probability of  
10:27 18 future dangerousness, I would kind of shorten that down  
10:27 19 to what's called the future dangerousness question.

10:27 20 Our legislature has recognized that people  
10:27 21 who have been found guilty of capital murder and would  
10:27 22 pose a future danger can be held in the penitentiary.  
10:27 23 Do you see what I'm saying?

10:28 24 A. Yes.

10:28 25 Q. So obviously there's -- some thought has gone

10:28 1 into where to keep people who are a future danger, have  
 10:28 2 been found guilty of capital murder, where to keep them  
 10:28 3 without giving them the death penalty. So, do you  
 10:28 4 understand how all that works?

10:28 5 A. Yes.

10:28 6 Q. What do you think about that? What do you  
 10:28 7 think about prisons? Prisons, a Texas prison system in  
 10:28 8 general? What are your thoughts on that?

10:28 9 A. I haven't thought much about Texas, in general.  
 10:28 10 I believe prisons are there to punish people for crimes.

10:28 11 Q. You bet. You bet. I think you are exactly  
 10:28 12 right. Some -- it's certainly there to punish. They  
 10:28 13 are certainly there to keep people out of free society;  
 10:29 14 would you agree?

10:29 15 A. To protect society.

10:29 16 Q. Absolutely. Protect society. And there's all  
 10:29 17 sorts of prisons. I'm sure you've heard of minimum  
 10:29 18 security and maximum security and all that kind of thing  
 10:29 19 because there's all sorts of people in prison. Maybe  
 10:29 20 somebody that's down there for, I don't know, taking  
 10:29 21 cars.

10:29 22 Somebody stole a car or a motorcycle or  
 10:29 23 something like that, they may not pose the same type of  
 10:29 24 risk or threat as maybe somebody down there for, you  
 10:29 25 know, maybe child molester or a serial child molester or

10:29 1 a rapist or something like that. Do you see what I'm  
 10:29 2 talking about?

10:29 3 A. Yeah.

10:29 4 Q. When we talk about probability, as Mr. Schultz  
 10:29 5 said, we're really asking you to kind of look in the  
 10:29 6 future, almost predict the future, I suppose. Maybe not  
 10:29 7 predict because nobody really knows what any human being  
 10:30 8 is going to do in the future. Do you agree with me?

10:30 9 A. Yeah.

10:30 10 Q. It's very very difficult. And maybe that's why  
 10:30 11 the legislature used the word probability. I suppose  
 10:30 12 they could have phrased that question: Will the  
 10:30 13 defendant be a future danger? But that's maybe like  
 10:30 14 asking if you or I would be a future danger. Probably  
 10:30 15 not, but you know, who knows?

10:30 16 A. Yeah.

10:30 17 Q. Who knows? But when we look at that question,  
 10:30 18 and again, we're trying to get some insight on the  
 10:30 19 future. What we're really talking about is risk  
 10:30 20 assessment. Would you agree?

10:30 21 A. Yes.

10:30 22 Q. And do you use that word in the railroads? Do  
 10:30 23 they use that word at all, that term, risk assessment?

10:31 24 A. Not -- not exactly that word, but it would mean  
 10:31 25 the same thing.

10:31 1 Q. Right. I imagine, and trust me, I don't -- I  
 10:31 2 don't know anything about the railroads, although  
 10:31 3 they've always kind of fascinated me. You ever go to  
 10:31 4 places like the old Union Station in St. Louis and the  
 10:31 5 old hubs of locomotive passenger service? Have you ever  
 10:31 6 been to any of those renovated union stations?

10:31 7 A. I've been to Union Station in Chicago, and I  
 10:31 8 worked out of the one in D.C., Washington, D.C. I have  
 10:31 9 been in Union Station. I worked out of the one in L. A.

10:31 10 Q. Wow. A lot of history in those buildings.

10:31 11 A. Yes.

10:31 12 Q. A lot of history. But when we talk about risk  
 10:31 13 assessment, I imagine in your job, you -- what route do  
 10:31 14 you run? You run Fort Worth to Oklahoma City?

10:32 15 A. Uh-huh, yeah.

10:32 16 Q. I imagine there are a lot of bridges or maybe  
 10:32 17 you call them trestles, I'm not sure. What do you call  
 10:32 18 a railroad bridge? Trestle?

10:32 19 A. Yeah, some of them.

10:32 20 Q. You are going over water. Does that line run  
 10:32 21 up through like Ufalla, through those lakes up there?

10:32 22 A. No.

10:32 23 Q. Take a different route?

10:32 24 A. No. It's the old Santa Fe route.

10:32 25 Q. Okay. You probably have. You may have it

10:32 1 memorized if you do the route enough. But you know  
 10:32 2 there are places that may have curves in the line or  
 10:32 3 going over railroad trestles or for whatever reason,  
 10:32 4 maybe populated areas, I don't know. But there are  
 10:32 5 probably speed limits, I would imagine, right?

10:32 6 A. There's -- yes. There's speed limits, and  
 10:32 7 there's speed restrictions.

10:32 8 Q. Yeah. And because there are known risk factors  
 10:33 9 down the line and all those types of factors are  
 10:33 10 accounted in, and that's why you have certain protocols  
 10:33 11 through -- over this particular stretch of railroad  
 10:33 12 track. You'll back it down to -- do you all use miles  
 10:33 13 an hour?

10:33 14 A. Yes.

10:33 15 Q. Is that how you do speed on a train?

10:33 16 A. Not always. We have restricted speed, which is  
 10:33 17 the most limited speed probably you can run, which is  
 10:33 18 you have to be able to stop short of a train, locomotive  
 10:33 19 car, equipment or men working on the tracks, and you  
 10:33 20 have to stop within half the range of vision.

10:33 21 Q. Oh, really?

10:33 22 A. Yes.

10:33 23 Q. Because I know it can take a long time to stop  
 10:33 24 a train. Trains are -- I guess that's part of the  
 10:33 25 problem. There's so much weight.

10:34 1 A. Freight trains, it depends on tonnage, grade,  
10:34 2 and how far you can see. It depends on a lot of things,  
10:34 3 yes. Some freight trains can take almost two miles to  
10:34 4 get them stopped.

10:34 5 Q. Wow.

10:34 6 A. Not the train I'm on. It's a passenger train.  
10:34 7 We only have three cars.

10:34 8 Q. Yeah.

10:34 9 A. But it still takes a lot longer than a car, but  
10:34 10 you still have to, if you are running restricted speed,  
10:34 11 you've got to stop half the range of vision.

10:34 12 Q. How you operate the train and the rules and  
10:34 13 regulations and how you run locomotives on tracks, a lot  
10:34 14 of that has to do with risk assessment. What's down  
10:34 15 ahead, what are the known factors down the line. Would  
10:34 16 you agree with me? It all figures into how you go about  
10:34 17 running that -- that locomotive, right?

10:34 18 A. Uh-huh.

10:34 19 Q. I've always wanted to ask somebody this, and  
10:35 20 I've never been able to talk to a -- somebody in your  
10:35 21 position before. What happened to the cabooses?

10:35 22 A. Well, the railroads -- the ones that run the  
10:35 23 railroads, management, they wanted rid of the cabooses  
10:35 24 for a long time because they cost them a lot of money.  
10:35 25 So slowly they got rid of all of them through the

10:35 1 negotiations with unions and also with legislation --  
10:35 2 legislators of each state.

10:35 3 Some states, up until a few years ago,  
10:35 4 still would not allow a train to run through their state  
10:35 5 without a caboose because it is a safety factor.

10:35 6 Q. You think that's a good thing or a regretful  
10:35 7 thing that we've done away with the caboose?

10:35 8 A. I think it's regretful. It's safer with them  
10:35 9 than without them.

10:35 10 Q. I'll bet. I'll bet.

10:36 11 A. They went the way of a lot of things. But for  
10:36 12 cost, to save money.

10:36 13 Q. I love these questionnaires because you see  
10:36 14 things you don't normally think about, and we get so  
10:36 15 many different answers to questions that it makes us  
10:36 16 think a little bit. Two people you least respect,  
10:36 17 Senator John McCain?

10:36 18 A. Right.

10:36 19 Q. I haven't seen him yet. Tell me why you put  
10:36 20 him down.

10:36 21 A. Well, he -- I guess of because when I was in  
10:37 22 Washington, I listened to a lot of the senators in  
10:37 23 transportation hearings, and he is totally anti-Amtrac,  
10:37 24 you know. He thinks it's a way of life that should have  
10:37 25 gone by the wayside a long time ago.

10:37 1 Q. Kind of like Herb Keller with Southwest  
10:37 2 Airlines. Hates the trains because it might dig into  
10:37 3 his pocket a little bit?

10:37 4 A. Right, right. And he would rather see that the  
10:37 5 passenger trains don't exist. He thinks they are, you  
10:37 6 know, they should have went out with, I guess, the horse  
10:37 7 and buggy.

10:37 8 Q. Really?

10:37 9 A. Yeah.

10:37 10 Q. That's pretty --

10:37 11 A. Well, everybody wants to see the northeast  
10:37 12 corner stay, but they want passenger trains out in this  
10:37 13 part of the country gone.

10:37 14 Q. What do you think that is? Do you think that's  
10:37 15 the airline lobby putting money in their pockets to get  
10:37 16 rid of trains?

10:38 17 A. I don't think it's so much the airline lobby as  
10:38 18 it is the big construction companies that build super  
10:38 19 highways who can afford to give them money.

10:38 20 Q. Ah.

10:38 21 A. Amtrac doesn't have money to give them so  
10:38 22 because they want Amtrac to be self-sufficient. There's  
10:38 23 not a railroad in the world that's self-sufficient  
10:38 24 that's not run with subsidies. And we get the same  
10:38 25 subsidies that Iran and Ethiopia get, on that amount of

10:38 1 money, for the richest country in the world.

10:38 2 Q. We know freight, moving freight by rail is a  
10:38 3 thousand times more efficient than trucks. What do they  
10:38 4 think about that? Do they want to do away with that and  
10:38 5 build the highways for the 18-wheelers and get the rid  
10:38 6 of the --

10:38 7 A. No. The freight railroads, back in the '80s  
10:38 8 were in danger of being -- of going by the wayside  
10:39 9 because of the trucks. But the railroads now work with  
10:39 10 trucks, and that's why you see so many trains out there  
10:39 11 with trailers on them.

10:39 12 Q. Okay. So they are really they are kind of,  
10:39 13 they need each other?

10:39 14 A. They are working hand in hand, which is the way  
10:39 15 the railroads should work with the airlines.

10:39 16 Q. Right. Katherine Harris, Florida Secretary of  
10:39 17 State?

10:39 18 A. Yes. Well, I was pretty bitter about the  
10:39 19 election, yes.

10:39 20 Q. Some people say she's had way too many plastic  
10:39 21 surgeries, too. Tanya Harding, I certainly understand.  
10:39 22 I'm not sure what this one, A-L. Oh, is that Al  
10:39 23 Sharpton?

10:39 24 A. Yes.

10:39 25 Q. Tell me why he's down there. We've seen him a

10:39 1 lot, by the way.  
 10:39 2 A. Yes. I think he just gets in for publicity  
 10:39 3 that he doesn't really -- he doesn't really mean  
 10:40 4 anything he says. He doesn't go out and do work. He  
 10:40 5 just shows up when it's a lot of publicity.  
 10:40 6 Q. Okay. There you go. A lot of -- a lot of  
 10:40 7 politicians seem to do that, too, don't they?  
 10:40 8 A. Yeah.  
 10:40 9 Q. Their face is on the camera when the camera is  
 10:40 10 there. *Outlaw Josey Wales*; why do you like that movie?  
 10:40 11 I like that movie, too.  
 10:40 12 A. Yeah, that's my favorite movie. I've seen it a  
 10:40 13 hundred times.  
 10:40 14 Q. Tell me why you like that movie. If I recall,  
 10:40 15 that was Clint Eastwood, right?  
 10:40 16 A. Uh-huh.  
 10:40 17 Q. And he fought. I guess it was right after the  
 10:40 18 Civil War, and a bunch of Yankees were down trying to  
 10:40 19 root out all the last of the Confederacy. I know his  
 10:40 20 family was murdered or something like that.  
 10:40 21 A. Uh-huh.  
 10:40 22 Q. Tell me -- tell me why you like that movie?  
 10:41 23 A. I just like the fact that one man could do what  
 10:41 24 he did.  
 10:41 25 Q. Yeah, yeah. Kind of a hero, really?

10:41 1 A. Uh-huh.  
 10:41 2 Q. *Cold Mountain*. What was that book about? I'm  
 10:41 3 not familiar with that.  
 10:41 4 A. That book was about a man who deserted the --  
 10:41 5 he was a Confederate soldier, and he just wanted to go  
 10:41 6 home. And he met a lot of people along the way. And he  
 10:41 7 was a good man, but he was tired of the war, and he  
 10:41 8 wanted to go.  
 10:41 9 Q. Tired of killing and all the misery that goes  
 10:41 10 with killing.  
 10:41 11 A. Uh-huh.  
 10:41 12 Q. I might have to read that.  
 10:41 13 A. Good book.  
 10:41 14 Q. And the last question -- I certainly don't mean  
 10:41 15 to pry. I don't think it had anything to do. I know  
 10:41 16 you take medication for a heart condition?  
 10:42 17 A. Uh-huh.  
 10:42 18 Q. And I guess the last group of things I talked  
 10:42 19 to you about, we would anticipate this trial probably  
 10:42 20 starting in the next couple of weeks, I would think.  
 10:42 21 Probably a start time in two weeks, and then we would  
 10:42 22 anticipate probably a three, three- to four-week trial.  
 10:42 23 Maybe I should say maybe a minimum two  
 10:42 24 weeks in trial. Probably the outside four to five  
 10:42 25 weeks. So that's why I say maybe three, three to four

10:42 1 weeks, something like that. I think, so we're talking  
 10:42 2 probably the latter part of this month. Maybe the first  
 10:42 3 half of October, something like that.  
 10:42 4 I would anticipate the Court would conduct  
 10:42 5 the trial probably Monday through Friday, sometime  
 10:42 6 between starting eight, nine o'clock in the morning and  
 10:42 7 probably going around five in the afternoon. An hour  
 10:42 8 for lunch.  
 10:42 9 I mean, you would be sitting in a chair  
 10:43 10 over in there that's maybe a little bit more comfortable  
 10:43 11 than the one you are in, but probably not that much  
 10:43 12 more. But obviously it involves sitting for probably a  
 10:43 13 good hour and 45 minutes to two hours at a clip. And  
 10:43 14 the Judge would usually give some kind of break in the  
 10:43 15 morning and afternoon.  
 10:43 16 Is that -- and I ask that because, you  
 10:43 17 know, people may have conditions that could be  
 10:43 18 detrimental to their health. Is that okay with you?  
 10:43 19 That kind of schedule?  
 10:43 20 A. Yeah. I take my medicine in the morning and at  
 10:43 21 night.  
 10:43 22 Q. Okay. Do you have any questions for me? Have  
 10:43 23 you sat there and thought: I sure wish that lawyer, he  
 10:43 24 should be asking this, and he should be asking that?  
 10:43 25 A. No. I don't have any questions.

10:43 1 Q. Okay. And I guess my last question to you is  
 10:43 2 regarding those special issues, that last special issue  
 10:43 3 up on top -- what kind of things, Ms. Evans, do you  
 10:44 4 think that question is getting to?  
 10:44 5 A. That question I think would be like, if there  
 10:44 6 was some reason that you should consider life in prison  
 10:44 7 rather than a death sentence, some reason like mental  
 10:44 8 or --  
 10:44 9 Q. Could be. That's the wonderful thing about  
 10:44 10 that question. What is mitigating is anything you think  
 10:44 11 it is. Okay? Whatever weight you want to give it.  
 10:44 12 Judge won't define what mitigation is.  
 10:44 13 The Judge won't define or the Court won't  
 10:44 14 define what sufficient is and if that's truly a question  
 10:44 15 that asks for each individual juror's response to the  
 10:45 16 case.  
 10:45 17 And what that question really does and  
 10:45 18 people, we call that the mitigation question. Other  
 10:45 19 folks call it the humanitarian question. Other folks  
 10:45 20 have described it as the look-back. We've had folks  
 10:45 21 describe it as the "break glass in case of emergency."  
 10:45 22 You see some fire alarms in buildings, you got to break  
 10:45 23 the glass and pull the alarm.  
 10:45 24 But it's been described in many different  
 10:45 25 ways, but I think what it really boils down to is, for

10:45 1 each individual juror, what is the right thing to do in  
10:45 2 this case? Kill the defendant or spare his life? Would  
10:45 3 you agree with me?

10:45 4 A. Yeah. We have a rule about sufficient on the  
10:45 5 railroad. And if you put cars or a train on a track,  
10:45 6 you have to tie a sufficient amount of hand brakes. It  
10:45 7 doesn't say you got to get 20 or you got to get 10.  
10:46 8 Sufficient means enough to keep it from rolling out. If  
10:46 9 you put a brake on every car and it rolls out, they  
10:46 10 still get you for not having a sufficient amount of  
10:46 11 brakes.

10:46 12 Q. Right. And that's the neat thing about that  
10:46 13 question. Sufficient is whatever you think it means.

10:46 14 A. Right.

10:46 15 Q. Individually.

10:46 16 A. Right.

10:46 17 Q. Okay. All right. No questions for me?

10:46 18 A. No.

10:46 19 MR. GOELLER: I sure thank you for your  
10:46 20 time and attention to me. I think you are a wonderful  
10:46 21 person for coming up with us. Okay. I'll go ahead and  
10:46 22 pass the juror back, Your Honor.

10:46 23 THE COURT: Let me ask both sides, does  
10:46 24 Ms. Evans need to step down?

10:46 25 MR. SCHULTZ: No, sir. The State will

10:46 1 exercise a peremptory challenge on this juror.

10:46 2 THE COURT: Ms. Evans, you are finally  
10:46 3 excused.

10:46 4 (Venireperson Evans excused.)

10:46 5 THE COURT: All right. Let's get  
10:46 6 Ms. Crook.

10:56 7 (Break.)

10:56 8 (Venireperson Crook present.)

10:56 9 THE COURT: Are you Alma Crook?

10:56 10 VENIREPERSON: Yes.

10:56 11 THE COURT: I just want to ask you: Do  
10:56 12 you recall about four weeks ago when we had all 200  
10:56 13 jurors here, and I swore everybody in. And the oath was  
10:57 14 to give truthful answers to the questions that are  
10:57 15 propounded. Do you recall that?

10:57 16 VENIREPERSON: Yes.

10:57 17 THE COURT: And you are still subject to  
10:57 18 the oath. Please be seated.

10:57 19 VENIREPERSON: Okay.

10:57 20 THE COURT: Mr. Schultz?

10:57 21 VOIR DIRE EXAMINATION

10:57 22 BY MR. SCHULTZ:

10:57 23 Q. Hello.

10:57 24 A. Hi.

10:57 25 Q. My name is Bill Schultz, and I'm one of the

10:57 1 assistant district attorneys representing the State of  
10:57 2 Texas in its capital prosecution of Ivan Cantu. I  
10:57 3 believe earlier you would have met as a group with  
10:57 4 Ms. Falco, who is one of our assistant district  
10:57 5 attorney's assigned to another district court but on  
10:57 6 loan here for this prosecution. And then the lady at  
10:57 7 the far end of our table is Ms. Jami Lowry, who is also  
10:57 8 a felony prosecutor.

10:57 9 Most likely we will be the three  
10:57 10 prosecutors the jurors will be working with in this  
10:57 11 case. There is also a possibility of someone coming in  
10:57 12 for some specialized witness or some special type of  
10:58 13 evidence. I don't think this would be a case where that  
10:58 14 would likely happen. But sometimes there might be a  
10:58 15 very young witness, a child witness. We have some  
10:58 16 prosecutors who are better trained and more experienced  
10:58 17 in working with young children in getting them to feel  
10:58 18 comfortable enough to get them to know about what we're  
10:58 19 talking about.

10:58 20 And sometimes we have scientific issues  
10:58 21 with some very complicated scientific evidence where we  
10:58 22 think there may be a need for a prosecutor that sort of  
10:58 23 specializes in how to present that type of evidence and  
10:58 24 how to make it understandable to a jury that doesn't  
10:58 25 work with that generally, but I deem that unlikely. I

10:58 1 think it will be the three of us that you will be  
10:58 2 working with.

10:58 3 At the defense table is, first of all, the  
10:58 4 defendant in this case, Ivan Cantu. Then moving further  
10:58 5 to your right is Mr. Don High. He's the man in the  
10:58 6 middle of that table. And then on the far right is  
10:58 7 Mr. Matt Goeller. Mr. High and Mr. Goeller are private  
10:58 8 attorneys engaged in general practice of law in Plano,  
10:59 9 Texas. They are board certified criminal specialists  
10:59 10 and both very decent men.

10:59 11 And I believe that you don't know any of  
10:59 12 us. And to the best of your knowledge you've never even  
10:59 13 met any of us involved. And if you have met us, it was  
10:59 14 probably so casual that it wouldn't matter anyway  
10:59 15 because you don't remember us. And I don't believe any  
10:59 16 of us remember you from the grocery store or parking  
10:59 17 lots or anything like that.

10:59 18 So, unlike a regular trial in which the  
10:59 19 jury would come in much like what happened a couple  
10:59 20 weeks ago with Ms. Falco and Mr. Goeller and got talked  
10:59 21 to as a group, capital cases are a little bit different.

10:59 22 And our law provides that the jurors are  
10:59 23 examined individually on the issues related to capital  
10:59 24 punishment. That's really the focus of this second part  
10:59 25 of it to talk about how you feel about capital

10:59 1 punishment. How you feel about the special issues,  
10:59 2 those special questions that we're going to talk about.

10:59 3 And it gives us an opportunity really just  
11:00 4 to get to know how you look at society and the troubles  
11:00 5 in society and that whole criminal justice system. And  
11:00 6 I can't speak for other lawyers, but I know the way we  
11:00 7 think is, we first want to know: Is a juror qualified  
11:00 8 to be picked to serve on a jury?

11:00 9 To be qualified, you might remember some  
11:00 10 of those questions the Judge asked about being of good  
11:00 11 moral character and being under accusation for theft.  
11:00 12 Do you remember all those kinds of questions you were  
11:00 13 asked? If the answers to those had been otherwise, then  
11:00 14 the law will say that you couldn't serve on this jury.

11:00 15 It's like if you were on the Grand Jury  
11:00 16 that indicted the defendant. They won't let you be like  
11:00 17 the accuser and then come in and have to become neutral  
11:00 18 as a trial jury. So there's a whole lot of reasons why  
11:00 19 you couldn't serve just because that's how -- there's a  
11:00 20 big laundry list almost in our law about who can serve  
11:00 21 and who can't.

11:00 22 And the next thing that happens, a lot of  
11:01 23 times, jurors either know something about the case.  
11:01 24 They've actually learned so much about the case that it  
11:01 25 might affect their judgment. I mean, let's say, for

11:01 1 example, suppose you were the mom of one of the victims.  
11:01 2 Obviously there's no way you could serve fairly on a  
11:01 3 jury because you -- you would have real strong opinions  
11:01 4 for them. Do you know what I'm saying?

11:01 5 A. Absolutely.

11:01 6 Q. Or you were the mom of the defendant. There's  
11:01 7 nothing in the statute that says that the mom of the  
11:01 8 defendant is automatically disqualified, I guess. But  
11:01 9 the truth is, anybody would know that person could not  
11:01 10 fairly be a juror in the case just because of that  
11:01 11 relationship. Do you agree with that?

11:01 12 A. Absolutely.

11:01 13 Q. So then -- then the next thing that happens a  
11:01 14 lot of times with jurors is jurors may have such a  
11:01 15 strong bias against one part of the law that may apply  
11:01 16 in a particular case that it's decided they just can't  
11:01 17 be fair because of that bias.

11:01 18 I want to talk with you a little bit  
11:02 19 about -- about how that works. And I don't for a minute  
11:02 20 sense that that's the case with you, but you never know.  
11:02 21 And if it is, just tell us whichever way it is. And  
11:02 22 there are no wrong answers here. The only wrong answers  
11:02 23 are the untruthful ones.

11:02 24 Capital punishment is a very important,  
11:02 25 sometimes even a divisive issue in our society. There

11:02 1 are probably four or five things in our society that  
11:02 2 sometimes just rip us apart because good people on both  
11:02 3 sides see things differently.

11:02 4 I think racial issues, a lot of times,  
11:02 5 seem to rip this country apart. People good on both  
11:02 6 sides sometimes see things real differently, and they  
11:02 7 believe it in their hearts.

11:02 8 You look at O. J. Simpson, depending upon  
11:02 9 your race, you have an entirely view of that whole case  
11:02 10 and what happened. And that's not saying one person is  
11:02 11 bad or good. That's a good thing, don't you agree? The  
11:02 12 racial issues?

11:02 13 A. It turned out to be, yes.

11:03 14 Q. I don't know why. I don't understand why, but  
11:03 15 I understand that it is. Abortion certainly is an issue  
11:03 16 that tears this country apart in a lot of ways. People  
11:03 17 on both sides have strong beliefs on that issue. You  
11:03 18 can't say that -- you can't say that even somebody that  
11:03 19 believes differently than you or I on that subject, we  
11:03 20 can't say they are bad people. At least I can't.  
11:03 21 Whatever side they are on, I can't say that's bad. It's  
11:03 22 tough stuff.

11:03 23 And doctors, some people think doctors end  
11:03 24 up getting killed over just practicing their medicine.  
11:03 25 And apparently, people think that's the right thing to

11:03 1 do because of those issues. I mean, that's a big issue  
11:03 2 in our society, don't you think, abortion?

11:03 3 A. Yes, unfortunately.

11:03 4 Q. I mean, I'm with you. I wish it weren't. I'm  
11:03 5 not sure why it has to be. It seems like that's  
11:03 6 important. And capital punishment is a big issue in our  
11:03 7 society. It really is. And people, that became an --  
11:03 8 that became an issue in our last presidential election.

11:03 9 And, for whatever reason, people were  
11:04 10 either supporting then governor, now President Bush,  
11:04 11 because he comes from a State where we have death  
11:04 12 penalties and active prosecution. But other people  
11:04 13 criticized him and say, that's wrong and that's  
11:04 14 terrible, and that's one of the reasons you shouldn't be  
11:04 15 President because you come from a state that is doing  
11:04 16 that.

11:04 17 That's why we have these individual  
11:04 18 questions and answers with jurors to find out really  
11:04 19 about your views on capital punishment. Because some  
11:04 20 people's views, one way or the other, could be so strong  
11:04 21 that that would affect the fairness of their answers in  
11:04 22 the questions. Does that make sense to you? What I'm  
11:04 23 saying?

11:04 24 A. Yes.

11:04 25 Q. Okay. And it goes both ways. There's some

11:04 1 people that believe that all murder cases, no matter  
 11:04 2 what the circumstance, should always result in a death  
 11:04 3 penalty. That's how they believe. They believe if you  
 11:04 4 take a life intentionally, the State should take your  
 11:04 5 life intentionally. It doesn't matter how good a man or  
 11:05 6 woman you used to be. It doesn't matter how sorry you  
 11:05 7 are or why it was that you did it. None of those things  
 11:05 8 that matter.

11:05 9 There are good people who believe you  
 11:05 10 should automatically be executed if they are found  
 11:05 11 guilty of committing murder. There are some people that  
 11:05 12 say: I don't care how bad your crime is. I don't care  
 11:05 13 how bad a person you are. I don't care how dangerous  
 11:05 14 you are. It's wrong to execute anybody, and I would  
 11:05 15 never do that. And they are able to do that and say  
 11:05 16 that.

11:05 17 And those are the kinds of people that  
 11:05 18 probably would not be able to be fair jurors unless they  
 11:05 19 could leave those opinions when they went into the jury  
 11:05 20 deliberation room and just vote on the evidence. Do you  
 11:05 21 follow what I'm saying?

11:05 22 A. Uh-huh.

11:05 23 Q. Our law contemplates a fair trial for everybody  
 11:05 24 that's accused. Our law contemplates that if the State  
 11:05 25 accuses somebody of a -- any kind of crime and

11:06 1 especially of capital murder, the State must prove that  
 11:06 2 case to the satisfaction of the jury beyond a reasonable  
 11:06 3 doubt or else the defendant is acquitted. He's found  
 11:06 4 not guilty. And I know you've got to share that.  
 11:06 5 That's our American system. I know you believe in that.  
 11:06 6 I don't need to ask you that.

11:06 7 And while that's a large burden, it  
 11:06 8 requires some very strong proof to the jury. It's  
 11:06 9 not -- it's not -- it's not anything that we're not  
 11:06 10 equal to as prosecutors. I mean, that's -- every  
 11:06 11 defendant that's ever been convicted in every trial  
 11:06 12 you've ever listened to on radio or TV started the same  
 11:06 13 way. And the State had that same obligation, and they  
 11:06 14 had to produce enough evidence.

11:06 15 I mean, Timothy McVeigh started out  
 11:06 16 presumed innocent. He started out with the State  
 11:06 17 having -- the government of the United States having to  
 11:06 18 prove his guilt beyond a reasonable doubt. And they  
 11:06 19 were able to do it, and they were able to convince the  
 11:06 20 jury, and the system works great.

11:06 21 It's a tremendous protection for you and  
 11:06 22 me and anybody else that we care about. And in our  
 11:07 23 society, if I believe the Prosecution's case isn't  
 11:07 24 righteous, there shouldn't be a conviction. It should  
 11:07 25 not be done if the evidence isn't there.

11:07 1 So, we start out with a crime of capital  
 11:07 2 murder, and if we are able to prove to the jury beyond a  
 11:07 3 reasonable doubt that the defendant is guilty of that  
 11:07 4 crime, the jury verdict should be guilty. That's --  
 11:07 5 that's how the law works. And you'd be instructed, if  
 11:07 6 we prove it, you are instructed that you -- that you  
 11:07 7 vote for guilty. And if we don't prove it, you vote for  
 11:07 8 not guilty. Any problem there?

11:07 9 A. Oh, no.

11:07 10 Q. If you find the defendant guilty, and I'm not  
 11:07 11 going to talk much more about that now because the real  
 11:07 12 purpose of this individual discussion is to talk about  
 11:07 13 the punishment issues. But if you find the defendant  
 11:07 14 guilty and you finally discharged our burden of proof,  
 11:07 15 then we go into a second part of the trial, sometimes  
 11:07 16 called the punishment or the penalty phase. Have you  
 11:08 17 ever served on a jury before?

11:08 18 A. No.

11:08 19 Q. Have you ever been called for jury duty, but  
 11:08 20 weren't selected but were there?

11:08 21 A. No.

11:08 22 Q. Well, you made the major leagues your first  
 11:08 23 trip up. I bet you had some thought about that, the  
 11:08 24 fact that you thought you were coming up for who knows  
 11:08 25 what? A custody case or an auto wreck or maybe a

11:08 1 shoplifting case. And you started filling out that  
 11:08 2 questionnaire, and it is a death penalty case. I bet  
 11:08 3 that was kind of a sobering moment for you, wasn't it?

11:08 4 A. Uh-huh.

11:08 5 Q. Probably you and 200 other people. I ask that  
 11:08 6 same question of everybody, and they say the same thing.  
 11:08 7 Boy, I didn't have any idea what I was coming up here  
 11:08 8 for. What were your thoughts when you -- when the Judge  
 11:08 9 told you it was a death penalty case?

11:08 10 A. It was something I didn't want to do.

11:08 11 Q. Okay. And do you think that's probably how  
 11:08 12 almost everybody would feel?

11:08 13 A. What, to be on a jury? Yes.

11:09 14 Q. Everybody that gets called, don't you figure  
 11:09 15 they all have kind of the same feelings?

11:09 16 A. For various reasons, yes. I don't think they  
 11:09 17 want to be picked.

11:09 18 Q. I don't know about you. When I woke up this  
 11:09 19 morning, I didn't say to myself, it's going to be a good  
 11:09 20 day because you are able to participate in a process  
 11:09 21 that, depending upon the evidence, that will result in  
 11:09 22 somebody's death. I don't know if there are prosecutors  
 11:09 23 that -- that feel that way. I've never met any, that  
 11:09 24 they get a rush from it.

11:09 25 I bet you didn't wake up in the morning



11:09 1 and say, boy, if both sides accept me, I may have a  
 11:09 2 chance to participate in a death penalty case. I bet  
 11:09 3 you didn't feel that way at all, did you?

11:09 4 A. No.

11:09 5 Q. I think the way most people feel, from what I  
 11:09 6 have been able to tell, I think the way most people feel  
 11:09 7 is, number one, I wish we didn't have a society where a  
 11:09 8 death penalty was even necessary to have as an option.  
 11:09 9 I think most people wish that were the case.

11:10 10 And I think most people wish that people  
 11:10 11 believe it's necessary to serve their country, and jury  
 11:10 12 service is serving your country. And we need good  
 11:10 13 citizens and decent people to serve our country so we  
 11:10 14 have fair jurors. We need that.

11:10 15 I think most people would say, I'll go  
 11:10 16 ahead and answer the questions truthfully. And even  
 11:10 17 though it's a personal inconvenience in my life, if I'm  
 11:10 18 called to serve, I'll go do it.

11:10 19 And it's not nearly as big a sacrifice as  
 11:10 20 all those people who have died, at least in foreign  
 11:10 21 countries, protecting our freedoms like we've had to.  
 11:10 22 And I think most people are willing to serve and see the  
 11:10 23 value in serving, even though they don't want to do  
 11:10 24 that. Do you feel they do that way, too?

11:10 25 A. Yes.

11:10 1 Q. I mean, nobody's expecting -- I would be scared  
 11:10 2 of a juror -- I'll be honest with you -- I'd be a little  
 11:10 3 frightened of a juror who saw it as a thrill and somehow  
 11:11 4 saw it as a crusade somehow that they wanted to be on.  
 11:11 5 I wouldn't -- this is serious stuff to me. I wouldn't  
 11:11 6 want to be working with somebody that was almost that  
 11:11 7 casual about the subject matter, you know. I wouldn't  
 11:11 8 want that.

11:11 9 A. No.

11:11 10 Q. And then I bet most people, and I can see how I  
 11:11 11 might feel the same way, would say, you know, if I find  
 11:11 12 the defendant guilty beyond a reasonable doubt of this  
 11:11 13 awful crime, there are going to be two possible things  
 11:11 14 that will come out of the punishment phase of the trial.

11:11 15 It's either going to be life or death, and  
 11:11 16 I'm going to do my best. And I think in my heart, hope  
 11:11 17 that the evidence shows me that the way it ought to come  
 11:11 18 out is life rather than death. Does that make sense to  
 11:11 19 you. Do you feel that way?

11:11 20 A. I'm sorry, would you say that again?

11:11 21 Q. Well, you know that only two things that are  
 11:11 22 going to happen is life or death out of the punishment  
 11:11 23 phase?

11:11 24 A. Right.

11:11 25 Q. I think a lot of people would prefer that the

11:11 1 honest answer to those questions would result in a life  
 11:12 2 rather than death, if given the choice. Do you know  
 11:12 3 what I'm saying?

11:12 4 A. No. I'm not sure.

11:12 5 Q. Okay.

11:12 6 A. That if I found the person guilty, that I would  
 11:12 7 want to the circumstances to be such that they would get  
 11:12 8 life rather than death?

11:12 9 Q. As opposed to a death sentence.

11:12 10 A. Yeah. If there are circumstances that could  
 11:12 11 make me feel that way.

11:12 12 Q. We're a lover of life in this country. We take  
 11:12 13 human life very seriously. We -- we provide enormous  
 11:12 14 medical care, try to save people lives that's probably  
 11:12 15 hopeless, and that's what we do. We -- we spend  
 11:12 16 enormous amounts of time hoping to find that needle in a  
 11:12 17 haystack.

11:12 18 You get some building that gets blown up.  
 11:12 19 You know what the doctors tell about the possibility of  
 11:12 20 survivors. You understand that, and yet we care so much  
 11:12 21 we're going to keep digging and keep looking, hoping,  
 11:12 22 number one, that there's a way to save a life because  
 11:12 23 that's important to us.

11:13 24 And, number two, even if we can't do that,  
 11:13 25 at least we can always tell ourselves we went that extra

11:13 1 step because life means a lot to us.

11:13 2 And I think that's true even in juries. I  
 11:13 3 think that's true even if you are dealing with a capital  
 11:13 4 murderer because we, as a society, are not used to  
 11:13 5 hurting people, and that's not the way we work.

11:13 6 It's not how we -- you know, if you  
 11:13 7 want -- if somebody is getting on a bus and it's  
 11:13 8 crowded, you don't give them the old foot and kick them  
 11:13 9 off for your own comfort. I mean, we try to make room  
 11:13 10 for everybody. That's just how we are as a society.

11:13 11 I'm just thinking that a lot of people  
 11:13 12 say, I hope the evidence is such that a life sentence  
 11:13 13 rather than a death sentence results. I'll do the right  
 11:13 14 job, but I hope the evidence means a life sentence. Do  
 11:13 15 you feel that way at all?

11:13 16 A. This is after the person has already been  
 11:13 17 convicted of --

11:13 18 Q. Right.

11:13 19 A. -- the crime.

11:13 20 Q. Right. Then the two choices, you don't exactly  
 11:13 21 answer life or death. You sort of do, but not exactly.  
 11:13 22 You answer questions, and if the answers to the  
 11:13 23 questions are yes on one and no on the other, it's a  
 11:13 24 death sentence. That the answer is no on one or yes on  
 11:14 25 the other. We'll talk more specifically in a minute.

11:14 1 A. I'd have to know the circumstances on that.

11:14 2 Q. Does it matter -- do you see yourself as -- as  
11:14 3 caring one way or the other whether the evidence leads  
11:14 4 you to a life or death sentence for a capital murder?

11:14 5 A. It may sound terribly harsh, but I'm a very  
11:14 6 pro-death penalty.

11:14 7 Q. I know you are. I know you are.

11:14 8 A. I would -- it would just depend on the  
11:14 9 circumstances, what would make me believe a person  
11:14 10 guilty of murder should not get the death penalty. It  
11:14 11 would have to be extreme for me.

11:14 12 Q. Okay. We're going to talk a little bit about  
11:14 13 that. Did you -- before you were called for this case  
11:14 14 and had the explanation from the lawyers, did you -- did  
11:14 15 you think that if a person got convicted of capital  
11:14 16 murder, he would automatically be executed for that?

11:14 17 A. No.

11:14 18 Q. So you probably have watched TV shows and read  
11:14 19 in the newspapers about other capital murders. And  
11:15 20 you'll hear the jury found Rivas guilty of capital  
11:15 21 murder. And now the jury will consider punishment and  
11:15 22 decide whether he gets life or death. And so you  
11:15 23 understood that process?

11:15 24 A. Right.

11:15 25 Q. And you may not have understood about exactly

11:15 1 what the questions that the jury was being asked, but  
11:15 2 you understood that both were possible outcomes of the  
11:15 3 punishment phase of the trial?

11:15 4 A. Right.

11:15 5 Q. Okay. Does that seem to you to be an okay  
11:15 6 system that we not have an automatic death penalty, but  
11:15 7 instead the jury is to consider certain aspects about  
11:15 8 the defendant and his crime and his background and  
11:15 9 his -- his personality before deciding those questions?

11:15 10 A. I think something should be considered, yes,  
11:15 11 before you just automatically say death penalty.

11:15 12 Q. Okay. Okay. Then let's talk a little bit  
11:15 13 about how this works. Let's assume that you had -- that  
11:15 14 you have been convinced beyond a reasonable doubt by the  
11:16 15 State's evidence. And by the way, the State has to put  
11:16 16 on evidence. The defense does not have to put on  
11:16 17 evidence. Do you understand that?

11:16 18 A. (Moving head up and down.)

11:16 19 Q. I'm going to ask one thing of you, if I could,  
11:16 20 Ms. Crook. You and I were communicating perfectly well  
11:16 21 when you nod your head yes or no. But let me tell you  
11:16 22 why you need to say it; it's because there's a lady next  
11:16 23 to you that takes down every word, and she doesn't have  
11:16 24 a symbol for shaking your head. You might hear me say,  
11:16 25 "Can you give me an answer?" It's not rudeness. It's

11:16 1 just that we've got to get a record of everything.

11:16 2 A. I'm just a little nervous.

11:16 3 Q. I know you are. But three hours up there,  
11:16 4 you'll be fine. You won't have any problems. You'll be  
11:16 5 numb before very long. Once you have deliberated on the  
11:16 6 evidence of guilt or innocence, and we have proved to  
11:16 7 you beyond a reasonable doubt that the defendant's  
11:16 8 guilty of capital murder, and that could include murder  
11:17 9 in the course of burglary. Murder in the course of  
11:17 10 robbery or murder in the course of another murder. In  
11:17 11 other words, double murder. That murder plus kind of  
11:17 12 idea.

11:17 13 If we prove that to you beyond a  
11:17 14 reasonable doubt, it is your duty as a juror to vote  
11:17 15 guilty if we prove it to you beyond a reasonable doubt.  
11:17 16 There's no -- there's no options on that. If it's  
11:17 17 proved, you got to do it. Any problem with that?

11:17 18 A. I'm sorry, I was a little distracted because  
11:17 19 there was something, the day that I was here last, I  
11:17 20 learned more about this case than I knew prior to that.  
11:17 21 So when you were talking about the things that might be  
11:17 22 involved in this, I'm aware of what they are now.

11:17 23 Q. Can you --

11:17 24 A. To a certain extent.

11:17 25 Q. What?

11:17 1 A. There was a newspaper article the day that I  
11:17 2 was up here last time when they were selecting another  
11:17 3 jury for a different case, and the last two paragraphs  
11:17 4 they mentioned this case and what it was.

11:17 5 Q. What did they mention about it?

11:17 6 A. That it was a double homicide. And I remember  
11:17 7 seeing it on TV because it was about a mile from my home  
11:17 8 and -- and I remember seeing the family out there before  
11:18 9 they found the suspect or whatever. And it was very  
11:18 10 upsetting to both my husband and I.

11:18 11 Q. Let's talk a little bit about that. Because  
11:18 12 there are circumstances, some crimes you can't help  
11:18 13 hearing about, and some crimes can be big enough that  
11:18 14 you'd never find a jury that had not heard about it.  
11:18 15 I'm thinking like Oklahoma City. They moved that case  
11:18 16 to Denver to try it. They could have moved it to  
11:18 17 Karachi, Pakistan, or someplace, and I doubt if you  
11:18 18 could find people that hadn't heard of a crime like  
11:18 19 that.

11:18 20 The test is not whether you heard  
11:18 21 something about it or heard something representative  
11:18 22 about a case or read something in the newspaper because  
11:18 23 we don't -- we ask the juries really to measure evidence  
11:18 24 fairly. In other words, to consider what comes in in an  
11:19 25 admissible form. Put that on the scales of justice and

11:19 1 decide: Has it been proven beyond a reasonable doubt?  
11:19 2 That's what we ask of jurors.

11:19 3 And that's what we asked of people in the  
11:19 4 Oklahoma City case. That's what we would ask of people  
11:19 5 in that Rivas case. Even though, I mean, gosh, that was  
11:19 6 national news and people looked for them all over the  
11:19 7 place and found them in Colorado, that kind of thing.

11:19 8 First of all, has whatever you read in the  
11:19 9 newspaper, has that formed an opinion in you about  
11:19 10 whether the defendant's guilty or not from what you read  
11:19 11 in the paper?

11:19 12 A. Just lately.

11:19 13 Q. Well, there isn't any -- that's one of the --

11:19 14 A. Well, I mean, until you hear all the aspects of  
11:19 15 a case, you really don't know but the fact that they  
11:19 16 were related. I don't know. It just seems -- I don't  
11:19 17 know. I really don't know how to answer that  
11:20 18 completely.

11:20 19 Q. Well, I need to ask you because you are going  
11:20 20 to get an instruction, if you are selected to serve on  
11:20 21 this jury. And the instruction will be to only consider  
11:20 22 the evidence presented to you in court and not other  
11:20 23 stuff.

11:20 24 Now, more importantly the Judge is going  
11:20 25 to tell you to stay away from that other stuff. I mean,

11:20 1 if somebody starts talking about the case to you, your  
11:20 2 husband, sister or somebody like that, you got to tell  
11:20 3 them to stop or get away from them or not do it, and the  
11:20 4 Judge will give you those instructions. But the main  
11:20 5 instruction that you get is to fairly be able to  
11:20 6 disregard nonevidence type stuff.

11:20 7 A. Right.

11:20 8 Q. And there are a lot of things that the Court  
11:20 9 tells you are not evidence, and you got to disregard  
11:20 10 them. For example, failure of the defendant to testify.  
11:21 11 The defendant has a Constitutional right not to testify.  
11:21 12 Do you understand?

11:21 13 A. Uh-huh.

11:21 14 Q. And if the defendant doesn't testify, you see  
11:21 15 it. You have observed it because you are sitting there,  
11:21 16 and you saw the other witnesses, but he didn't testify.  
11:21 17 So you've seen it?

11:21 18 A. Right.

11:21 19 Q. Judge doesn't say, ignore the fact. The Judge  
11:21 20 doesn't say, forget the fact that the defendant didn't  
11:21 21 testify. The Judge says, disregard the fact that the  
11:21 22 defendant didn't testify and not consider that as a  
11:21 23 circumstance against him.

11:21 24 A. Right.

11:21 25 Q. Are you with me?

11:21 1 A. Uh-huh.

11:21 2 Q. You can do that?

11:21 3 A. Yes.

11:21 4 Q. And you saw it and you might have your own --  
11:21 5 you know, if you got to thinking in that area, you might  
11:21 6 have your own opinions about why he did or did not  
11:21 7 testify, but you can't consider that as part of the  
11:21 8 case.

11:21 9 A. Right.

11:21 10 Q. Now, sometimes people can be so close to a case  
11:21 11 somehow that it's absolutely impossible for them to  
11:21 12 separate what they know from outside the courtroom from  
11:21 13 what they know from inside the courtroom.

11:21 14 Like a defendant's mom. Now, how possibly  
11:22 15 could a defendant's mother separate all the things she  
11:22 16 knows about the defendant growing up and everything like  
11:22 17 that? How could she ever separate all that knowledge  
11:22 18 from what she decided in the courtroom? Do you follow  
11:22 19 what I'm saying?

11:22 20 A. Right.

11:22 21 Q. Well, the victim's mom. How could the victim's  
11:22 22 mom ever just listen to the evidence and not be thinking  
11:22 23 of my little girl when she was five with her ribbons in  
11:22 24 her hair and those kinds of things? Do you understand?

11:22 25 A. Yes, I do.

11:22 1 Q. Now, do I understand -- you read a newspaper  
11:22 2 article about this case?

11:22 3 A. No. It was about another case. They just  
11:22 4 happened to mention this in the last two paragraphs.

11:22 5 Q. And you were reading about that case, not this  
11:22 6 one?

11:22 7 A. Right.

11:22 8 Q. And that was. What -- it said it was a double  
11:22 9 homicide? Is that what you --

11:22 10 A. About this case?

11:22 11 Q. Yeah.

11:22 12 A. Yes.

11:22 13 Q. And there was some mention about it being a  
11:22 14 relative?

11:22 15 A. Yes.

11:22 16 Q. What else do you remember from the article?

11:22 17 A. Well, as soon as I read it, I realized it was  
11:23 18 the case that I had seen the TV coverage about when it  
11:23 19 happened.

11:23 20 Q. Okay. For starters, do you consider that  
11:23 21 that's somehow evidence in this case?

11:23 22 A. Not really because I didn't even hear that they  
11:23 23 had found someone that they suspected of being the  
11:23 24 person.

11:23 25 Q. Well, now I understand. But do you -- the

11:23 1 newspaper might be absolutely right, and that might be  
11:23 2 the same thing you would see.

11:23 3 A. It was just a very short paragraph.

11:23 4 Q. No, no, I understand. I understand, but you  
11:23 5 mentioned it. The newspaper could be right. They could  
11:23 6 have it exactly right, and the evidence could show that  
11:23 7 it is a relative of the defendant.

11:23 8 The evidence, whatever the newspaper said,  
11:23 9 it could be exactly right. It could be wrong. They  
11:23 10 might have gotten the wrong information. They might  
11:23 11 have talked to one side, and the other side doesn't  
11:23 12 agree.

11:23 13 The newspaper is not under oath. I didn't  
11:23 14 get a chance to cross-examine the newspaper.  
11:24 15 Mr. Goeller didn't get a chance to cross-examine the  
11:24 16 newspaper. The defendant wasn't present when the  
11:24 17 newspaper was getting printed.

11:24 18 The question is -- first of all, listen to  
11:24 19 my question. Do you consider that newspaper article,  
11:24 20 whatever it was, as evidence in this case that you would  
11:24 21 use in deciding the guilt or innocence of the defendant  
11:24 22 and the punishment?

11:24 23 A. No.

11:24 24 Q. You are sure about that?

11:24 25 A. No, I'm not. I don't know. Maybe we do put

11:24 1 too much stock in what we read in the newspaper. Maybe  
11:24 2 you think they do have their facts right. I don't know,  
11:24 3 and I don't always agree with what's written in the  
11:24 4 paper or what's on the news and everything. But in  
11:24 5 something that simple, I find that hard to disregard.

11:24 6 Q. All right. Well, if it takes an hour, I'm  
11:24 7 going to pin you down to an answer.

11:24 8 A. Okay. I'm not trying to be evasive.

11:24 9 Q. I know you are not, but I'm going to pin you  
11:24 10 down to an answer anyway. Are you going to consider  
11:24 11 what you read in the newspaper in deciding the issues of  
11:25 12 this trial, yes or no?

11:25 13 A. Not having heard any other evidence, yes, it is  
11:25 14 in my mind a contributing factor right now, yes.

11:25 15 Q. Are you going to consider it as evidence in  
11:25 16 this case in answering these questions or deciding his  
11:25 17 guilt or innocence?

11:25 18 A. Without having heard any other evidence or  
11:25 19 anything like that?

11:25 20 Q. Well, whether you do or don't, are you going to  
11:25 21 consider it? That's not a trick question. It's pretty  
11:25 22 straightforward.

11:25 23 A. I would have to say yes, the way I feel right  
11:25 24 now.

11:25 25 Q. You would consider it?

11:25 1 A. Right.

11:25 2 MR. SCHULTZ: See ya.

11:25 3 THE COURT: Excuse me, ma'am. I just want  
11:25 4 you to know that I appreciate your service, and that you  
11:25 5 are finally excused.

11:25 6 VENIREPERSON: All right.

11:25 7 MR. SCHULTZ: I believe she's excused by  
11:25 8 consent?

11:25 9 THE COURT: Is that correct, Mr. Cantu?

11:25 10 THE DEFENDANT: Yes, Your Honor.

11:25 11 (Venireperson Crook excused.)

11:25 12 MR. GOELLER: Not so fast. Oh, it's  
11:26 13 Mr. Cantu.

11:26 14 THE COURT: Let's do this -- Mr. Schultz,  
11:26 15 in the future don't do that. All right? It's just  
11:26 16 like, when it's quitting time, you know, I'm the one  
11:26 17 that says when it's quitting time. So don't tell her,  
11:26 18 "see ya."

11:26 19 If you are through questioning, just say,  
11:26 20 I have no further questions or whatever it is, and I'll  
11:26 21 let her know when she's done. Although it's, as you  
11:26 22 know, a foregone conclusion, but let's keep it a little  
11:26 23 more formal.

11:26 24 Is there anything else from either side  
11:26 25 before we come back at one o'clock?

11:26 1 MR. GOELLER: No, sir.

11:26 2 THE COURT: All right. Let's see you-all  
11:26 3 at one o'clock.

11:26 4 (Lunch recess.)

13:03 5 THE COURT: Would you bring in Angela  
13:03 6 Blankenship?

13:03 7 THE BAILIFF: Yes, Your Honor.

13:04 8 THE COURT: Are you Angela Blankenship?

13:04 9 VENIREPERSON: Yes.

13:04 10 THE COURT: Say, do I know you?

13:04 11 VENIREPERSON: You might know me, but I  
13:04 12 don't know you.

13:04 13 THE COURT: I tell you what, about four  
13:04 14 weeks ago, I placed all 200 jurors under oath. And the  
13:04 15 oath was to tell the truth with regard to the questions  
13:04 16 that were asked by either side. Do you recall that?

13:04 17 VENIREPERSON: Yes.

13:04 18 THE COURT: And you are still under that  
13:04 19 oath then.

13:04 20 VENIREPERSON: Yes.

13:04 21 THE COURT: Please be seated right here.

13:05 22 All right. Ms. Falco, go ahead.

13:05 23 VOIR DIRE EXAMINATION

13:05 24 BY MS. FALCO:

13:05 25 Q. Ms. Blankenship, my name is Gail Falco, and I'm

13:05 1 an assistant district attorney here in Collin County.  
 13:05 2 And I'm the one that spoke to you, and it's been about  
 13:05 3 two weeks ago. Seated to my right is my boss. He's the  
 13:05 4 first assistant district attorney, Mr. Bill Schultz.  
 13:05 5 And to my left is Ms. Jane Jami Lowry, she's also an  
 13:05 6 assistant district attorney here in Collin County.

13:05 7 At the other table closest to me is the  
 13:05 8 defendant. That's Ivan Cantu. Seated next to him are  
 13:05 9 his lawyers Mr. Don High and Mr. Matt Goeller. I take  
 13:05 10 it from two weeks ago when you were here you do not know  
 13:05 11 any of us; is that correct?

13:05 12 A. That's correct, I do not.

13:05 13 Q. Are you any relation to a Cindy  
 13:05 14 Blankenship-Springer, by any chance?

13:05 15 A. Maybe, but I don't know. Not that I know of.

13:05 16 Q. We have a prosecutor in our office named Cindy.  
 13:05 17 Her maiden name is Blankenship, and it's the same  
 13:05 18 spelling. A little bit unusual spelling.

13:05 19 A. Well, my Blankenship relatives that come had  
 13:05 20 drifted all off, but not that I know, that I'm aware of.

13:06 21 Q. Okay. Ms. Blankenship, we do this one-on-one  
 13:06 22 type voir dire only in cases where the State is seeking  
 13:06 23 the death penalty in a capital murder trial. And  
 13:06 24 obviously this is at least your third trip up here for  
 13:06 25 jury selection, but understanding this type of case has

13:06 1 the most serious of consequences of any type of criminal  
 13:06 2 case that we try.

13:06 3 And with regard to that, about taking up  
 13:06 4 your time, we've already taken up two days. This is  
 13:06 5 probably going to take a couple hours this afternoon.  
 13:06 6 Do you think we're being too careful with this process,  
 13:06 7 taking up too much time, spending too much time, or what  
 13:06 8 do you think about that?

13:06 9 A. No. I mean, if it was me, I would want more  
 13:06 10 time taken, as much as possible.

13:06 11 Q. Okay. Now, with regard to this individual voir  
 13:06 12 dire, we do it for several reasons. But one is a chance  
 13:06 13 just for us to get to know you as good as we can. Both  
 13:06 14 sides are looking for 12 jurors to be fair and impartial  
 13:06 15 and be able to answer the questions fairly according to  
 13:07 16 the law and the evidence.

13:07 17 The only thing that's required of you is  
 13:07 18 to be honest with us and just truthfully answer whatever  
 13:07 19 we ask. And we're not here to debate with you or to  
 13:07 20 change your mind about anything. Just merely just to  
 13:07 21 explore your opinions and your feelings about things to  
 13:07 22 see if you'd be that qualified juror to sit.

13:07 23 So even though it might be intimidating up  
 13:07 24 there because there's six people staring at you waiting  
 13:07 25 to hear what you have to say, just know it's meant to be

13:07 1 a more relaxed atmosphere as far as you just being open  
 13:07 2 and honest with us. And we're not here to challenge you  
 13:07 3 or anything like that.

13:07 4 A. Okay.

13:07 5 Q. When you came back -- that very first day you  
 13:07 6 came in, the day you filled out the questionnaires -- do  
 13:07 7 you remember that day?

13:07 8 A. Uh-huh.

13:07 9 Q. When you first realized, probably at the point  
 13:07 10 when you were filling out the questionnaire, when you  
 13:07 11 first realized this was a death penalty case, what were  
 13:07 12 you thinking?

13:07 13 A. Well, this is my first time to ever come to  
 13:07 14 jury duty. And so when I was coming up here talking, I  
 13:08 15 called my mother on the phone, and I was talking to her,  
 13:08 16 and then she was telling me it would be kind of what was  
 13:08 17 happening. And so then my first thoughts were, you  
 13:08 18 know, is that the way it's going to be, or is all that  
 13:08 19 thrown out the window? So I was really trying to  
 13:08 20 determine how my day was going to go.

13:08 21 Q. Okay. And you are not the first. Quite a few  
 13:08 22 people actually that have never been called to jury duty  
 13:08 23 at all and then, boom, all of a sudden this capital  
 13:08 24 murder. I mean, you don't get started out in traffic  
 13:08 25 court.

13:08 1 A. No. Just hit right there.

13:08 2 Q. And understanding that, that none of us enjoy  
 13:08 3 being here or want to be here, I'm sure you didn't wake  
 13:08 4 up this morning excited that you were going to get up  
 13:08 5 here and talk to us and hopefully get selected to be on  
 13:08 6 this jury to make the tough decision. And we understand  
 13:08 7 that because us, as lawyers, I mean, we don't enjoy  
 13:08 8 having to prosecute somebody for this, and we're doing  
 13:08 9 our job.

13:08 10 But I think we, all of us, wish we lived  
 13:08 11 in a society where we didn't have to seek the death  
 13:08 12 penalty. We all wish we could turn on the TV and not  
 13:09 13 see murder and not see death, and, for once, see someone  
 13:09 14 curing cancer and good things. And so I think it kind  
 13:09 15 of makes us all -- we understand the importance, but it  
 13:09 16 saddens us all a little bit that we have to be here.

13:09 17 And when you filled out this  
 13:09 18 questionnaire, and I'm sure you have had time for  
 13:09 19 reflection and time to think about what your position on  
 13:09 20 the death penalty is. When you first filled out the  
 13:09 21 questionnaire, you indicated you were in favor of the  
 13:09 22 death penalty and in the appropriate case you could  
 13:09 23 return a verdict resulting in death.

13:09 24 I'm sure you've done some thinking about  
 13:09 25 that since you've done the questionnaire. Am I right

13:09 1 about that?

13:09 2 A. Yes.

13:09 3 Q. What has been your thoughts over the past  
13:09 4 couple of weeks with regard to the death penalty?

13:09 5 A. Well, I'll be honest. I'm not one person that  
13:09 6 stays informed with what's happening in the news. Only  
13:09 7 like, you know, big stories or big cases. And the only  
13:09 8 way I even know about those is because my sister calls  
13:10 9 me and tells me what's going on.

13:10 10 I do not read the newspaper or any of that  
13:10 11 stuff that you are supposed to do to be informed and a  
13:10 12 good citizen. But, you know, there are cases that I  
13:10 13 hear about and things that have happened that I think  
13:10 14 that death penalty, you know, they should receive those.

13:10 15 Q. And understanding is one thing, to talk with  
13:10 16 your sister over the phone or if something comes on TV,  
13:10 17 and if you are sitting around with your friends to kind  
13:10 18 of discuss theoretically or hypothetically about the  
13:10 19 death penalty or whether that's a good thing or a bad  
13:10 20 thing for society to have.

13:10 21 It's a completely different ball game when  
13:10 22 you are asked: Can you involve yourself? Can you  
13:10 23 participate in a process that can result in somebody's  
13:10 24 death? Have you done some thinking about that, whether  
13:10 25 you personally could be involved in that process?

13:10 1 A. Yes. And I think so.

13:10 2 Q. All right.

13:10 3 A. I went to church this Sunday, which I haven't  
13:10 4 been to church in seven years. Not because of this  
13:11 5 case, but because of what has happened in the world has  
13:11 6 caused me to go back to church, but, yes.

13:11 7 Q. Kind of tell me your thoughts about why you  
13:11 8 favor the death penalty or why you think that a society  
13:11 9 should have the death penalty.

13:11 10 A. Well, because there's some crimes that have  
13:11 11 caused the death of somebody. Kind of an eye-for-an-eye  
13:11 12 kind of theory, but not, you know, to that whole extent  
13:11 13 of cutting your hand off if you steal something, but --

13:11 14 Q. Okay. I want to talk to you a little bit about  
13:11 15 the different phases of the trial. There's two stages  
13:11 16 to the trial. There's the guilt-innocence stage and  
13:11 17 then, if that person is found guilty, then you'd move  
13:11 18 onto the punishment stage. Two separate stages of the  
13:11 19 trial.

13:11 20 The first stage, the burden of proof is on  
13:11 21 the State. And they have to prove to you beyond a  
13:11 22 reasonable doubt that a defendant is guilty and in this  
13:11 23 case of capital murder. And if we prove that to you,  
13:12 24 you then move onto the punishment phase.

13:12 25 And a couple things about that, the

13:12 1 guilt-innocence phase of a capital murder trial. That  
13:12 2 would be the time. I notice in your questionnaire when  
13:12 3 it said: The best argument in opposition to the death  
13:12 4 penalty, and you wrote, "self-defense." And you also  
13:12 5 wrote, "case of passion."

13:12 6 Self-defense is probably something that  
13:12 7 would be brought up during the guilt-innocence phase.  
13:12 8 And if it was truly self-defense, you would probably  
13:12 9 find the defendant not guilty.

13:12 10 So you understand that's something that  
13:12 11 would be brought up in a guilt-innocence phase as  
13:12 12 opposed to the punishment phase.

13:12 13 A. Okay.

13:12 14 Q. During the guilt-innocence phase, as I talked  
13:12 15 to you two weeks ago, there's the difference between  
13:12 16 capital murder and murder. Did you know, prior to that,  
13:12 17 did you know what the distinction was between capital  
13:12 18 murder and murder?

13:12 19 A. No.

13:12 20 Q. And you now understand that capital murder is  
13:12 21 murder plus some aggravating factor?

13:12 22 A. Yes.

13:13 23 Q. With regard to this case, I talked to you about  
13:13 24 murder in the course of a burglary. And in your  
13:13 25 opinion, is murder in the course of burglary a type of

13:13 1 case where the death penalty ought to at least be an  
13:13 2 option? Not necessarily would you give it, but should  
13:13 3 it at least be an option given certain facts and  
13:13 4 circumstances?

13:13 5 A. Yes.

13:13 6 Q. And saying with murder in the course of a  
13:13 7 robbery, should the death penalty at least --

13:13 8 A. Oh, wait a minute. Burglary was the deal where  
13:13 9 there's nobody involved?

13:13 10 Q. Well, it's entering someone's home either  
13:13 11 without their permission or with fraudulent consent.  
13:13 12 Because, obviously, if someone comes to your door and  
13:13 13 says, "Let me in. I'm going to kill you," you are not  
13:13 14 going to let them in your house.

13:13 15 A. Right.

13:13 16 Q. So it's either breaking into their house while  
13:13 17 they are asleep or obtaining consent to come into the  
13:13 18 house fraudulently. I mean, your intent is to go in and  
13:13 19 kill them. And you somehow use other means to get them  
13:14 20 to let you in the house and then you kill them.

13:14 21 A. Okay.

13:14 22 Q. But it's breaking into the home without  
13:14 23 effective consent and then doing the killing.

13:14 24 A. Okay.

13:14 25 Q. And in your opinion, is that the kind of case

13:14 1 where the death penalty --

13:14 2 A. Yes.

13:14 3 Q. -- at least ought to be an option?

13:14 4 A. Yes.

13:14 5 Q. And murder in the course of robbery, and  
13:14 6 robbery is the one-on-one. You want to take property,  
13:14 7 and so you kill them to get that property. Whether it's  
13:14 8 the clerk at the 7-Eleven or somebody on the street or a  
13:14 9 carjacking type of situation. That's murder in the  
13:14 10 course of robbery.

13:14 11 A. Yes.

13:14 12 Q. Is that a situation where the death penalty  
13:14 13 ought to at least be an option?

13:14 14 A. Yes.

13:14 15 Q. And then murdering two or more people in a  
13:14 16 common scheme or plan what we've been calling the double  
13:14 17 homicide. Is that a situation where the death penalty  
13:14 18 ought to at least be an option?

13:14 19 A. Yes.

13:14 20 Q. And I believe, based on your questionnaire, you  
13:14 21 obviously understand that the burden of proof is on us.  
13:14 22 In fact, you even say the burden of proof in a criminal  
13:14 23 case is on the prosecution. You understand that during  
13:15 24 the guilt or innocence phase it never shifts. We have  
13:15 25 to prove it to you beyond a reasonable doubt. And if we

13:15 1 fail to do so, it's not guilty. If we prove it to you  
13:15 2 beyond a reasonable doubt, then you move onto the  
13:15 3 punishment phase.

13:15 4 And the defense has obviously a Fifth  
13:15 5 Amendment right not to testify. They can put on  
13:15 6 evidence if they choose to. They don't have to put on  
13:15 7 evidence if they don't choose to. That's purely their  
13:15 8 right and their choice.

13:15 9 And the law states, if a defendant chooses  
13:15 10 not to testify, then you are not to hold that against  
13:15 11 him or use as any evidence of guilt.

13:15 12 A. Yes.

13:15 13 Q. And you could follow that instruction?

13:15 14 A. Yes.

13:15 15 Q. And all that seems fair because if we're the  
13:15 16 ones doing the accusing, we're the ones that should have  
13:15 17 to do the proving.

13:15 18 A. Right.

13:15 19 Q. Right. Now, when we get to the punishment  
13:15 20 phase of a capital murder trial, as I told you the other  
13:15 21 day, it's not a matter of it's an automatic life  
13:15 22 sentence or an automatic death sentence. It's a matter  
13:15 23 of going through and answering questions. And depending  
13:16 24 on how you answer the question, dictates whether it's a  
13:16 25 life sentence or a death sentence.

13:16 1 The first question that you get to in a  
13:16 2 capital murder case, if you have found the defendant  
13:16 3 guilty of capital murder, is the question over here on  
13:16 4 this board. Can you see that?

13:16 5 A. Yes.

13:16 6 Q. And if you want to, just read that to yourself  
13:16 7 real quick to refresh your memory.

13:16 8 A. Okay.

13:16 9 Q. And that's the case where there was a question  
13:16 10 that we call the future dangerousness question.  
13:16 11 Obviously, the legislature envisioned certain  
13:16 12 circumstances that you -- a jury could find a defendant  
13:16 13 guilty of capital murder but not necessarily find that  
13:16 14 he is a future danger.

13:16 15 And I think I've alluded to some of those  
13:16 16 earlier when we talked about, you have the parent whose  
13:16 17 child is killed. And let's say there's two killers.  
13:16 18 And those two killers have a trial, and because of some  
13:16 19 technicality or loophole, those killers get off and are  
13:16 20 found not guilty. And as they walk out of the  
13:16 21 courtroom, they kind of sneer and laugh because they  
13:16 22 literally got away with murder.

13:16 23 This upsets the parent, and the parent  
13:17 24 goes and kills them. That's capital murder. Some  
13:17 25 jurors may look at that situation and look at that

13:17 1 question and say, we don't think they will be a future  
13:17 2 danger. That was a one-time deal. No criminal history,  
13:17 3 and we don't think so.

13:17 4 Another situation may be, let's say you  
13:17 5 have a defendant who decides to go rob a convenience  
13:17 6 store. And he goes in there, and he robs a convenience  
13:17 7 store and kills the clerk and commits the capital  
13:17 8 murder. But after he gets arrested and he's in jail, he  
13:17 9 has a stroke. And let's say he is paralyzed from the  
13:17 10 scalp down.

13:17 11 I mean, he physically -- he can't move.  
13:17 12 He can't even blink his eyes to communicate. Most  
13:17 13 jurors would probably look at that question and say, I  
13:17 14 don't think he's a future danger because physically he  
13:17 15 can't do anything.

13:17 16 A. Right.

13:17 17 Q. And so, because the legislature has envisioned  
13:17 18 there are those circumstances out there, this question  
13:17 19 is designed for the jury to kind of take another look at  
13:17 20 the evidence and evaluate it, both what they heard  
13:17 21 during the guilt-innocence phase and everything they  
13:17 22 heard in the punishment phase and use that information  
13:17 23 to answer this question.

13:18 24 With regard to this question, again the  
13:18 25 burden of proof is on the State. And we have to prove

13:18 1 to you beyond a reasonable doubt that there's a  
13:18 2 probability the defendant will commit criminal acts of  
13:18 3 violence and be a continuing threat to society.

13:18 4 A. (Moving head up and down.)

13:18 5 Q. Now, the question does not state with a  
13:18 6 certainty or, you know: Will the defendant commit  
13:18 7 criminal acts of violence? It states whether there's a  
13:18 8 probability. So, obviously, that's got to be something  
13:18 9 less than a certainty. We don't have to prove a hundred  
13:18 10 percent he will. But it's also -- it also means it's  
13:18 11 something more than just a possibility. Would you agree  
13:18 12 with me that anything's possible?

13:18 13 A. Right.

13:18 14 Q. A cold front could come through, and it could  
13:18 15 snow. Anything's possible. So it's something less than  
13:18 16 a certainty, but something more than a possibility that  
13:18 17 that's what probability falls.

13:18 18 Now, some people that are mathematically  
13:18 19 minded when it comes to probability say, well, that's  
13:18 20 some kind of a number to me. It's some kind of  
13:18 21 percentage, whether it's 50 percent. It's some  
13:19 22 percentage.

13:19 23 Other people may look at that word and  
13:19 24 say: That means more likely than not to me. It's more  
13:19 25 likely than not he'll commit a criminal act of violence

13:19 1 in the future. But you do understand that it is  
13:19 2 something more than a possibility, but less than a  
13:19 3 certainty?

13:19 4 A. Yes.

13:19 5 Q. And continuing in that sentence, the next  
13:19 6 phrase that you get to that is not going to be defined  
13:19 7 for you in the Court's charge, but it will be up to you  
13:19 8 as a jury to decide what that means, and that's criminal  
13:19 9 acts of violence.

13:19 10 And I think all of us would agree that any  
13:19 11 act toward another person such as murder, such as  
13:19 12 aggravated sexual assault, things of that nature, are  
13:19 13 criminal acts of violence because it harms another  
13:19 14 person.

13:19 15 And other things like beating up your  
13:19 16 wife, I mean, what do you think about somebody who beats  
13:19 17 up their wife? Do you think that is a criminal act of  
13:19 18 violence?

13:19 19 A. Yes.

13:19 20 Q. And there's some people who look at that, and  
13:19 21 they may have tolerance for that because they may have  
13:20 22 been in that situation before or maybe raised in that  
13:20 23 situation or kind of see that as a sickness on behalf of  
13:20 24 the beater.

13:20 25 Other people are like, I don't have any

13:20 1 tolerance for that. Where do you kind of fall on that  
13:20 2 scale, someone who beats up their wife?

13:20 3 A. I have no tolerance.

13:20 4 Q. And in that criminal act of violence, it gets a  
13:20 5 little fuzzier about whether or not people think it's  
13:20 6 violence if you start talking about property. If I were  
13:20 7 to get very mad and have just a really bad day today at  
13:20 8 work, and I just go out into the parking lot and start  
13:20 9 smashing up windshields with a baseball bat because I'm  
13:20 10 mad. In your opinion, is that a criminal act of  
13:20 11 violence?

13:20 12 A. I am leaning more towards no because it's just  
13:20 13 possessions.

13:20 14 Q. Just property as opposed to a person?

13:20 15 A. Right.

13:20 16 Q. And then you get even -- and then you get even  
13:20 17 fuzzier still when you start talking about things like  
13:20 18 drugs. Some people will say that, whether you are  
13:21 19 talking about selling drugs or just taking drugs. I'm  
13:21 20 talking about illegal drugs, like cocaine,  
13:21 21 methamphetamine.

13:21 22 Some people say, well, if you take drugs,  
13:21 23 first of all, it does violence to your own body. And  
13:21 24 secondly, you take drugs. It changes your personality.  
13:21 25 It makes you do things that lead to violate results and

13:21 1 horrific crime. And so, therefore, it's a criminal act  
13:21 2 of violence and because the drugs led to that.

13:21 3 Other people say, no, it's just if you are  
13:21 4 taking the drugs. It's just your own. You are just  
13:21 5 doing damage to yourself, and it's not threatening  
13:21 6 anybody else. And any violence that results is kind of  
13:21 7 indirect, so I don't see that as criminal acts of  
13:21 8 violence. Where do you fall on that continuum? How do  
13:21 9 you think of drugs?

13:21 10 A. Do you mean?

13:21 11 Q. As in the context of an act of violence?

13:21 12 A. Well, I don't really have experience with  
13:21 13 people taking drugs. So the only thing I know about is  
13:21 14 what I've seen on TV, and so I think they would just be  
13:21 15 hurting themselves.

13:21 16 Q. Okay. And there's probably things that we'd  
13:22 17 all agree are not criminal acts of violence such as  
13:22 18 stealing, you know, theft, or just general lack of  
13:22 19 regard for authority, like people who run from the  
13:22 20 police. People who are deserters from the military.

13:22 21 I mean, they enlist, and then they drop  
13:22 22 out and run away. Would you agree with me that even  
13:22 23 though these things might not be violent, they would  
13:22 24 still show you that person's character?

13:22 25 A. Yes.



13:22 1 Q. And do you think, and understanding a little  
13:22 2 about their character, that would help you to answer  
13:22 3 this question in determining if there's a probability  
13:22 4 they'll commit criminal acts of violence in the future.

13:22 5 Like, if you heard that they did drugs,  
13:22 6 and they had a lack of regard for authority or the  
13:22 7 police and damaging property, though you may not think  
13:22 8 they are violent, do you think it would help you answer  
13:22 9 this question of whether or not there's a probability of  
13:22 10 future dangerousness?

13:23 11 A. Well, I think past things that related to being  
13:23 12 violent would. But, I mean, just because somebody may  
13:23 13 run from the police doesn't mean that they are going to  
13:23 14 one day go out and shoot somebody. I mean, they did  
13:23 15 that then, but that doesn't mean that's what they are  
13:23 16 going to, you know, move on.

13:23 17 Q. Okay. What type of -- what type of things  
13:23 18 would you look for, would you want to hear to help  
13:23 19 answer that question? What type of evidence?

13:23 20 A. Well, I don't, just, I don't know. If they  
13:23 21 were somebody that, you know, got into a lot of fights.  
13:23 22 If there is, you know, records of, you know, fight after  
13:23 23 fight after fight. Those kinds of things. You know,  
13:23 24 but, I mean, those things that you were talking about or  
13:23 25 just, you know, mistakes or bad decisions, but that

13:23 1 doesn't mean that, you know, they would kill somebody.

13:24 2 Q. Okay. Well, what about not necessarily that  
13:24 3 they would go out and kill somebody, but just that they  
13:24 4 commit criminal acts of violence that would be a threat  
13:24 5 to society? Do you see what I'm saying?

13:24 6 It's not asking necessarily: Is there a  
13:24 7 probability that they'll go kill someone again? Just,  
13:24 8 is there a probability they'll commit criminal acts of  
13:24 9 violence? Even, is there a probability that they will  
13:24 10 go out and be a wife beater? Is there a probability  
13:24 11 they'll go out and beat someone up but not kill them?  
13:24 12 Do you see what I'm saying? It doesn't necessarily  
13:24 13 mean --

13:24 14 A. Those kinds of things, I mean, they'd have  
13:24 15 patterns along the way. If they had a lot of fight  
13:24 16 incidences, then that would be, you know, there would be  
13:24 17 a possibility that they would go out and beat somebody  
13:24 18 up again.

13:24 19 Q. Okay. The last word you get to in that phrase  
13:24 20 that it is undefined and yet frequently debated what it  
13:24 21 means is that word society. And that question does not  
13:25 22 ask: Can the defendant safely be held in prison?

13:25 23 MR. GOELLER: I'm sorry, Judge. I'm going  
13:25 24 to object to that statement based on *Franklin v.*  
13:25 25 *Lynagh*, 199 U.S. Supreme Court. They say that's

13:25 1 exactly the issue in the statement.

13:25 2 THE COURT: Well, the last thing I heard  
13:25 3 the prosecutor say was something that it wasn't, and so.

13:25 4 MR. GOELLER: I thought the prosecutor  
13:25 5 said, it does not mean: Can they be safely held in  
13:25 6 prison? And my objection to that is we've got high  
13:25 7 court case law stating that that's exactly what that  
13:25 8 question means.

13:25 9 THE COURT: Yeah. Is he correct? Is that  
13:25 10 what you said?

13:25 11 MS. FALCO: I've never seen the case nor  
13:25 12 language that says that's what that question is.  
13:25 13 Society is undefined, and it does not limit itself to:  
13:25 14 Can they be safely contained in prison?

13:25 15 THE COURT: Have you got the case?

13:25 16 MR. GOELLER: I do. Not right on me. I  
13:25 17 can go get it if the Court would like.

13:26 18 THE COURT: All right. But your assertion  
13:26 19 is that the case says that -- my understanding of the --  
13:26 20 of the fact and of the past few days too is that you --  
13:26 21 that it's your impression that it is under must be  
13:26 22 considered.

13:26 23 MR. GOELLER: Yes, sir.

13:26 24 THE COURT: Under that case.

13:26 25 MR. GOELLER: Yes, sir.

13:26 1 THE COURT: That a juror must consider.

13:26 2 MR. GOELLER: It is society.

13:26 3 THE COURT: That that is society.

13:26 4 MR. GOELLER: Yes.

13:26 5 THE COURT: And you don't agree?

13:26 6 MS. FALCO: I'm saying it's not limited to  
13:26 7 that, Your Honor. I do not agree. I don't think that  
13:26 8 that's -- I don't think that case stands for the  
13:26 9 proposition that it only includes prison society. I  
13:26 10 don't think that's the process at all.

13:26 11 MR. GOELLER: And I didn't, and she's  
13:26 12 correct. The dictum in that case says: Society can  
13:26 13 mean other things within the prison. And she's right,  
13:26 14 it doesn't exactly limit itself, but it does absolutely  
13:26 15 include it.

13:26 16 THE COURT: Yeah, the definition of  
13:26 17 society does include prison.

13:26 18 MR. GOELLER: Yes, Your Honor.

13:26 19 THE COURT: And I didn't understand your  
13:26 20 question to say that it didn't.

13:27 21 MS. FALCO: Right, Your Honor. Basically  
13:27 22 I'm asking her, it doesn't just limit itself to just  
13:27 23 prison.

13:27 24 THE COURT: Okay. All right. Well, I  
13:27 25 think with all that clarification.

13:27 1 MR. GOELLER: Yes, sir.  
 13:27 2 THE COURT: I'll overrule the objection if  
 13:27 3 that's what it's clear where we're going.  
 13:27 4 MS. FALCO: Yes, sir.  
 13:27 5 Q. (BY MS. FALCO) Ms. Blankenship, you  
 13:27 6 understand, with regard to that question, it doesn't  
 13:27 7 limit itself to prison society. It doesn't say prison  
 13:27 8 society. It just says "society."  
 13:27 9 A. Yes.  
 13:27 10 Q. And that could be interpreted to mean -- it can  
 13:27 11 include prison society, but it can also include a  
 13:27 12 society you and I live in. It can include the man  
 13:27 13 selling ice cream in the ice cream store, and it can  
 13:27 14 include the person driving the school bus.  
 13:27 15 A. Yes.  
 13:27 16 Q. It's society as a whole, including the prison  
 13:27 17 society.  
 13:27 18 A. Yes.  
 13:27 19 Q. With regard to that question, and if you don't  
 13:27 20 keep track of criminal cases that often, you may or may  
 13:27 21 not know that typically in capital murder type cases.  
 13:27 22 One side or the other will call a psychiatrist or a  
 13:28 23 psychologist.  
 13:28 24 And assuming they are not called to  
 13:28 25 testify about a brain disorder or a mental disease or

13:28 1 defect or, you know, the defendant having a brain tumor,  
 13:28 2 the results of that. But let's assume that they are  
 13:28 3 just called to talk about, you know, I looked at this  
 13:28 4 pattern of behavior. And my opinion, I think the  
 13:28 5 defendant is going to be a future danger.  
 13:28 6 Or on the flip side the defense could call  
 13:28 7 someone that said, I looked at this pattern of behavior,  
 13:28 8 and I don't think he'll be a threat to society. How  
 13:28 9 important is that type of testimony to you?  
 13:28 10 A. I wouldn't totally, you know, say they said,  
 13:28 11 you know, there is a danger, do it, or they didn't say  
 13:28 12 there was a danger, not. But I would take it into  
 13:29 13 consideration. I wouldn't think it would be like, you  
 13:29 14 know, a deciding determining factor for me.  
 13:29 15 Q. And just like -- let's assume you went to the  
 13:29 16 circus. And you see a tiger there and he's, you know,  
 13:29 17 he's well trained, and he's doing the tricks and stuff,  
 13:29 18 and he goes back in his cage. But at some point in time  
 13:29 19 that tiger gets out and starts running through the  
 13:29 20 crowd. You wouldn't need a veterinarian to tell you  
 13:29 21 that tiger is dangerous. Get out of here.  
 13:29 22 A. Right.  
 13:29 23 Q. Do you think, based on your own life  
 13:29 24 experiences, your own education, you could look at the  
 13:29 25 facts of the case and all the evidence presented during

13:29 1 the punishment phase and be able to answer that  
 13:29 2 question?  
 13:29 3 A. Yes.  
 13:29 4 Q. If somebody is dangerous or not?  
 13:29 5 A. Yes.  
 13:29 6 Q. Okay. Now, with regard to that question, you  
 13:29 7 know, though we talked earlier, it's not an automatic  
 13:29 8 thing if you found somebody guilty of capital murder.  
 13:29 9 You can take the facts of the case and just the facts  
 13:29 10 alone and look at this question and say, just based on  
 13:29 11 the facts alone, I think that person is a future danger.  
 13:30 12 I think Timothy McVeigh is the perfect  
 13:30 13 example of that. I don't think people really care what  
 13:30 14 his past was, as far as any criminal behavior. What he  
 13:30 15 did that one time alone is enough to say he's a future  
 13:30 16 danger. So, do you understand you can take the facts of  
 13:30 17 the case in and of themselves all by themselves and say  
 13:30 18 that person is a future danger?  
 13:30 19 A. Yes.  
 13:30 20 Q. And as I said, the burden of proof is on the  
 13:30 21 State to prove this question to you beyond a reasonable  
 13:30 22 doubt. If all 12 jurors agree, yes, there's a  
 13:30 23 probability he'll be a future danger, then you are still  
 13:30 24 in the process of assessing the death sentence.  
 13:30 25 If 10 or more jurors say, no, we don't

13:30 1 think that person is a future danger, then that's an  
 13:30 2 automatic life sentence, and that ends your  
 13:30 3 deliberations. Okay?  
 13:30 4 So let's assume that all 12 jurors say,  
 13:30 5 yes, he's a future danger, you would then have to answer  
 13:30 6 this question. And if you want to take a moment to read  
 13:30 7 that to yourself to refresh your memory.  
 13:31 8 A. Okay.  
 13:31 9 Q. And this is what we call the mitigation  
 13:31 10 question. When the jury gets to this question, first of  
 13:31 11 all, there's no burden of proof on either side. There's  
 13:31 12 no burden for us to disprove mitigating circumstances.  
 13:31 13 There's no burden on the defense to provide mitigation  
 13:31 14 circumstances. There's no burden of proof on either  
 13:31 15 side.  
 13:31 16 This question is designed for the jury to  
 13:31 17 take all the evidence, give it whatever weight you want  
 13:31 18 to give it and weigh it all. And at the end when you  
 13:31 19 are weighing it all, is there sufficient mitigating  
 13:31 20 circumstances to warrant a life sentence?  
 13:31 21 So you can take the circumstances of the  
 13:31 22 offense and give it -- that can mean a lot to you, and  
 13:31 23 that could weigh very heavily. And then you can take  
 13:31 24 the defendant's character and background, good or bad,  
 13:31 25 and give it whatever weight you want to give it.

13:32 1 When you put it all on the scales, it's  
13:32 2 not: Is there any mitigating evidence? But is there  
13:32 3 sufficient, in light of what he did, in light of his  
13:32 4 character and background to warrant a life sentence?  
13:32 5 Does that make sense to you?

13:32 6 A. Yes.

13:32 7 Q. You can probably imagine that all of us, if we  
13:32 8 were on trial, could come up with things in our life  
13:32 9 that are mitigating. Things that have been  
13:32 10 heartbreaking to us, things that have been sad, things  
13:32 11 in our childhood or our background. Maybe an abusive  
13:32 12 parent or a single parent or alcoholism. Something that  
13:32 13 we can point to to say, this is a sympathetic situation  
13:32 14 in my life, and it's mitigating.

13:32 15 So the question doesn't say, is there any  
13:32 16 mitigating evidence? It's whether or not it's  
13:32 17 sufficient in light of everything else. Does that make  
13:32 18 sense?

13:32 19 A. Yes.

13:32 20 Q. You won't get a list from the Judge of factors  
13:32 21 to consider as mitigating. You are not going to be told  
13:32 22 what is mitigating. It's going to be up to you as a  
13:32 23 jury to decide whether or not something's mitigating.  
13:33 24 And there's some things that one juror may say, that's  
13:33 25 mitigating to me. And the other juror may say, I don't

13:33 1 think that's mitigating at all.

13:33 2 And an example of that -- a good example  
13:33 3 of that would be drugs. One juror may say, well, they  
13:33 4 took the drugs, and they didn't have a violent behavior  
13:33 5 before they started taking the drugs. But they started  
13:33 6 taking them, and it became a downward spiral, and it  
13:33 7 changed their personality. And now they've done these  
13:33 8 violent things, but that's not really their personality.  
13:33 9 It's the drugs, so that's mitigating to me.

13:33 10 Someone else may look at that evidence and  
13:33 11 say, well, no, because as a society, we're told not to  
13:33 12 do drugs. And one of the reasons we're told not to do  
13:33 13 drugs is because it can do all these things and change  
13:33 14 our personality and cause us to do violent things.

13:33 15 And so that's aggravating to me because  
13:33 16 they knew better, and they made the choice to take the  
13:33 17 drugs, and they are responsible and that's aggravating  
13:33 18 to me. Do you see how that can be looked at two  
13:33 19 different ways?

13:33 20 A. Yes.

13:33 21 Q. Where do you fall on that continuum, as far as  
13:34 22 drugs go? Is that something that you'd say?

13:34 23 A. I say, no, it's not mitigating because they  
13:34 24 chose to take the drugs.

13:34 25 Q. Okay. Now, along those lines and, I guess kind

13:34 1 of getting back to your questionnaire, do you remember  
13:34 2 the pages -- I know it's been a long time. But you were  
13:34 3 given a list of statements. And you could do anything  
13:34 4 from strongly agree to strongly disagree with the  
13:34 5 statements?

13:34 6 A. Uh-huh.

13:34 7 Q. Do you remember that page in your  
13:34 8 questionnaire?

13:34 9 A. Yes.

13:34 10 Q. And one of the questions or statements was:  
13:34 11 "Persons determine their destiny or fate by choices they  
13:34 12 make in life." And you put, "I agree." And tell me  
13:34 13 what your thinking is behind that?

13:34 14 A. Well, I think that your choices that you make  
13:34 15 throughout your life, that determines your fate. And  
13:34 16 what you choose to do determines where you are going to  
13:34 17 end up.

13:34 18 Q. Okay. And then right underneath that, the very  
13:35 19 next statement says: A person's destiny or fate is  
13:35 20 determined by the circumstances of their birth and their  
13:35 21 upbringing. And you put, "I disagree."

13:35 22 We probably all know of people that have  
13:35 23 come from bad backgrounds, broken homes, abusive homes  
13:35 24 and have overcome all that and become successful with  
13:35 25 their lives. Is that fair to say?

13:35 1 A. Yes.

13:35 2 Q. And on the flip side, we could probably all  
13:35 3 come up with people that were born and had everything.  
13:35 4 They had two parents. They had material wealth,  
13:35 5 everything a child could want, yet they still turned out  
13:35 6 bad.

13:35 7 And a perfect example of that would be the  
13:35 8 Menendez brothers who killed their own parents, and yet  
13:35 9 they had all the luxuries. When you were given that  
13:35 10 statement and you say, "I disagree," tell me what your  
13:35 11 thinking was behind that?

13:35 12 A. Well, I have been reading several books, A  
13:35 13 *Child Called It*. Who was exactly abused, I mean, made  
13:35 14 to live like a thing, an animal, not a person, but yet  
13:36 15 he grew up through out all of that torture and torment.  
13:36 16 And yet, he's a successful speaker that speaks to  
13:36 17 motivate people to move on with their life. And I just  
13:36 18 finished that book before we had to do the  
13:36 19 questionnaire, and so that was fresh on my mind.

13:36 20 Q. And a perfect example is, you can overcome your  
13:36 21 circumstances?

13:36 22 A. Yes.

13:36 23 Q. On the questionnaire, you don't have any  
13:36 24 children; is that correct?

13:36 25 A. No, I do not.

13:36 1 Q. Do you have nieces and nephews?  
 13:36 2 A. Yes.  
 13:36 3 Q. And I'm assuming you love them very much?  
 13:36 4 A. Yes.  
 13:36 5 Q. And are you close to them?  
 13:36 6 A. She lives with me.  
 13:36 7 Q. And let's assume -- is she little?  
 13:36 8 A. She's in third grade. She's 8.  
 13:36 9 Q. And let's assume she gets older, and she's late  
 13:36 10 teens, early 20s, and she gets in trouble with the law.  
 13:36 11 And I'm sure you would still love her and support her?  
 13:36 12 A. Yes.  
 13:36 13 Q. And if she had to have a trial on for whatever  
 13:36 14 she got in trouble for, you would be there to testify  
 13:36 15 and let the jury know that you love her and you support  
 13:37 16 her?  
 13:37 17 A. Yes.  
 13:37 18 Q. And in that regard, you can probably imagine  
 13:37 19 the same thing would happen in a capital murder trial.  
 13:37 20 There's probably still some family members there that  
 13:37 21 love and support that person regardless of what they've  
 13:37 22 done.  
 13:37 23 A. Right.  
 13:37 24 Q. And in that light, how would that argument play  
 13:37 25 to you? If you had a mother on the stand crying,

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13:37 1 basically saying, "Don't kill my child because I love  
 13:37 2 them," how does that argument sit with you?  
 13:37 3 A. Pretty heavy.  
 13:37 4 Q. Okay. And tell me why?  
 13:37 5 A. Because I could see that.  
 13:37 6 Q. Do you think that that might kind of be the  
 13:37 7 swing thing that made you decide a life sentence over a  
 13:37 8 death sentence, if you had gotten that far in the  
 13:37 9 questions?  
 13:37 10 A. No. Because, I mean, I would expect that. But  
 13:37 11 I would think that that would, you know, just be a part  
 13:37 12 that would play on my conscience later on, but -- but  
 13:37 13 no.  
 13:37 14 Q. And what if that was countered by the victim's  
 13:38 15 family who were pleading for justice in this case  
 13:38 16 because they don't have a child here on earth anymore to  
 13:38 17 love. Would that --  
 13:38 18 A. Balance.  
 13:38 19 Q. Would that weigh on your conscience as well?  
 13:38 20 A. Yes.  
 13:38 21 Q. And looking at that -- that mitigation  
 13:38 22 question, other than that phrase circumstances of the  
 13:38 23 offense, nowhere in that question does it direct your  
 13:38 24 attention to the victim, the victim's character or  
 13:38 25 anything about the victim. Is that fair to say?

13:38 1 A. Yes.  
 13:38 2 Q. I mean, it seems to focus on the defendant, the  
 13:38 3 defendant's character, background, personal moral  
 13:38 4 culpability, more so than the victim. We talked a  
 13:38 5 little bit a couple weeks ago about whether or not it  
 13:38 6 made a difference who the killer killed. If he killed a  
 13:38 7 nun or if he killed a drug dealer.  
 13:38 8 Does that make a difference, or just the  
 13:38 9 fact that they chose to kill somebody and take their  
 13:39 10 life? Is that what's more important?  
 13:39 11 A. A life is more important.  
 13:39 12 Q. So -- so whether it was a nun or -- let me ask  
 13:39 13 you this. Does it make a person less dangerous  
 13:39 14 depending on who he killed?  
 13:39 15 A. Less dangerous?  
 13:39 16 Q. More or less? Is his dangerousness affected by  
 13:39 17 who he killed? Does it make him more dangerous or less  
 13:39 18 dangerous based on who he killed?  
 13:39 19 A. No.  
 13:39 20 Q. Let's extend that out a little bit more. Let's  
 13:39 21 say that a person wanted to live the good life, and they  
 13:39 22 were tired of working so they were just going to rob for  
 13:39 23 all their money. And they decide just to pick a  
 13:39 24 7-Eleven on their way home from work that day.  
 13:39 25 They have no idea who that clerk is

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13:39 1 working behind the counter. They don't know the family.  
 13:39 2 They don't know anything about this person other than  
 13:39 3 they probably got money. So this person goes in, robs  
 13:39 4 the clerk, kills the clerk, not knowing how it's going  
 13:39 5 to impact anything.  
 13:39 6 And compare that to the person who decides  
 13:39 7 to rob a 7-Eleven in the neighborhood where he grew up.  
 13:40 8 And he knows the family that owns the 7-Eleven, and this  
 13:40 9 family has fed him and clothed him and just loved him  
 13:40 10 and supported him.  
 13:40 11 He was friends with the clerk of the  
 13:40 12 store, but he decided to pick this store because he  
 13:40 13 knows who works when and how much money they keep behind  
 13:40 14 the counter. And so that's who he decides to rob and  
 13:40 15 kill.  
 13:40 16 And he goes into the store, gets the money  
 13:40 17 from his friend and kills him, knowing how it's going to  
 13:40 18 devastate this family who has loved him and supported  
 13:40 19 him in the past. Is there a difference in those two  
 13:40 20 situations to you?  
 13:40 21 A. Difference? Yes.  
 13:40 22 Q. And what's that difference?  
 13:40 23 A. Because it's almost like he's trying to hurt  
 13:40 24 his family.  
 13:40 25 Q. Is that -- is that better, worse, more callous,

13:40 1 less callous, in your opinion?

13:40 2 A. Well, I think it's worse. It's more callous  
13:40 3 because those are the people that take care of him.  
13:40 4 They might not actually be blood family but, I mean, if  
13:41 5 they care for you, feed you, clothe you, love you, I  
13:41 6 mean, they are family.

13:41 7 Q. You talked. You just mentioned earlier in our  
13:41 8 conversation, Ms. Blankenship, that you went to church  
13:41 9 this Sunday in a couple of years?

13:41 10 A. Seven years.

13:41 11 Q. What type of church was that?

13:41 12 A. Well, it's where my sister goes. It's really  
13:41 13 kind of a nondenominational.

13:41 14 Q. And were you raised in a nondenominational  
13:41 15 church?

13:41 16 A. No. Southern Baptist.

13:41 17 Q. And probably my understanding is all church  
13:41 18 attendance was up on Sunday, I think?

13:41 19 A. Yes.

13:41 20 Q. World events have led to that. Have you ever  
13:41 21 heard that phrase, there are no atheists in foxholes?

13:41 22 A. No.

13:41 23 Q. There's no atheists in wartime?

13:41 24 A. No.

13:41 25 Q. Can you imagine somebody, like on the front

13:41 1 line, in a foxhole being on the front line, people on  
13:41 2 the front line of war being faced with imminent death?  
13:42 3 That they might turn to God and get right with God in  
13:42 4 that anxiety of being killed?

13:42 5 A. Yes.

13:42 6 Q. And I guess you can probably imagine maybe if  
13:42 7 the war is over, and they survive and they get back to  
13:42 8 their own life several years down the road, I guess  
13:42 9 there's always the possibility they could lose that  
13:42 10 intensity for their faith?

13:42 11 A. Yes.

13:42 12 Q. Kind of fall back into their old ways and go  
13:42 13 back to their old ways. Can you imagine the type of  
13:42 14 situation of somebody on trial for their life such as in  
13:42 15 a capital murder --

13:42 16 A. Yes.

13:42 17 Q. -- situation. That faced with the same thing,  
13:42 18 somebody may choose to get right -- right with their  
13:42 19 creator at that time?

13:42 20 A. Yes.

13:42 21 Q. Now, whether that conversion is real or not,  
13:42 22 obviously, is not ultimately for us to decide. But  
13:42 23 assuming you heard that somebody had committed a  
13:42 24 horrendous crime, and after they got arrested they  
13:42 25 decided, I'm a Christian now and, don't kill me now

13:42 1 because I'm a Christian.

13:42 2 Does that argument carry much weight with  
13:42 3 you, or are you going to be a little bit cynical because  
13:43 4 of the timing or the fact that he's facing trial and  
13:43 5 maybe just plain old jury sympathy?

13:43 6 A. When somebody gets right with God, it's between  
13:43 7 them and God. It has no bearing with me.

13:43 8 Q. With regard to these questions, and I know  
13:43 9 you've done some thinking about it in the past couple of  
13:43 10 weeks. First of all, with regard to the mitigation  
13:43 11 question, if all 12 jurors say no, there's no sufficient  
13:43 12 mitigating evidence, then that's a death sentence. If  
13:43 13 10 or more jurors decide yes, there is sufficient  
13:43 14 mitigating circumstances, then that's a life sentence.

13:43 15 I'll kind of take you back through the  
13:43 16 steps of the process. Assuming you were on a jury, if  
13:43 17 the State proved to you beyond a reasonable doubt  
13:43 18 somebody was guilty of capital murder, could you follow  
13:43 19 the law and find him guilty?

13:43 20 A. Yes.

13:44 21 Q. And assuming you do that, and you get to that  
13:44 22 first question, that future dangerousness question,  
13:44 23 again, if the State proved to you beyond a reasonable  
13:44 24 doubt the defendant would be a future danger, could you  
13:44 25 answer that question yes?

13:44 1 A. Yes.

13:44 2 Q. And on the flip side, if we did not prove to  
13:44 3 you beyond a reasonable doubt that they would be a  
13:44 4 continuing threat to society, could you answer the  
13:44 5 question no?

13:44 6 A. Yes.

13:44 7 Q. And let's assume you answered the question yes,  
13:44 8 and you get to this mitigation question -- first of all,  
13:44 9 could you keep an open mind and consider all the  
13:44 10 evidence that's presented?

13:44 11 A. Yes.

13:44 12 Q. And you are not going to be close-minded and  
13:44 13 just say, no. That doesn't have any bearing with me,  
13:44 14 and no. You'll be fair, and you'll listen to all the  
13:44 15 evidence?

13:44 16 A. Yes.

13:44 17 Q. And you'll give all the evidence whatever  
13:44 18 weight you want to give it?

13:44 19 A. Yes.

13:44 20 Q. And if there was sufficient mitigating  
13:44 21 circumstances, could you answer that yes, resulting in a  
13:44 22 life sentence?

13:44 23 A. Yes.

13:44 24 Q. And if, after all the weighing, you decide no,  
13:45 25 there's not sufficient mitigating circumstances to

13:45 1 warrant a life sentence, could you answer the question  
 13:45 2 no, knowing it would result in a death sentence?  
 13:45 3 A. Yes.  
 13:45 4 Q. And you are a first grade teacher; is that  
 13:45 5 right?  
 13:45 6 A. Yes.  
 13:45 7 Q. If you -- I don't know what you answered on  
 13:45 8 your last. If you had a choice whether or not to be on  
 13:45 9 this jury, I know you answered "no" several weeks ago.  
 13:45 10 I'm assuming that would still be your answer?  
 13:45 11 A. Well, no. I mean, I kind of would like to  
 13:45 12 learn about the process. I mean, I know that sounds  
 13:45 13 weird, but I would.  
 13:45 14 Q. But as far as your work goes, with you being a  
 13:46 15 teacher, would that be okay? Would you get a substitute  
 13:46 16 to take your place if you were called as a jury?  
 13:46 17 A. My principal is not happy, but I'm the team  
 13:46 18 leader at my level, so I'm in charge of what happens in  
 13:46 19 our grade level. When I told her I had to come back  
 13:46 20 this afternoon, she was not happy. But yes, it would be  
 13:46 21 okay.  
 13:46 22 Q. And you'd be able to put aside -- and I'm sure  
 13:46 23 there will be a lot going on at your school -- but you'd  
 13:46 24 be able to put that aside and give your concentration to  
 13:46 25 this trial, if you were called upon to do so?

13:46 1 A. Yes.  
 13:46 2 Q. Which -- you are in the Plano School District?  
 13:46 3 A. Yes.  
 13:46 4 Q. Which school do you teach at?  
 13:46 5 A. Memorial.  
 13:46 6 Q. Where is that at?  
 13:46 7 A. It's on Park and Jupiter, right behind Bowman  
 13:46 8 Middle School.  
 13:46 9 Q. Over on the east side?  
 13:46 10 A. Yes.  
 13:46 11 Q. So do the kids go from your school to Bowman?  
 13:46 12 A. If they don't transfer, but most of them do.  
 13:46 13 Yes, that's our feeder school.  
 13:47 14 Q. And you also mentioned when I was talking about  
 13:47 15 the Fifth Amendment, you said you'd like to hear their  
 13:47 16 side. But you understand they don't have to testify?  
 13:47 17 A. Right.  
 13:47 18 Q. We talked about that?  
 13:47 19 A. Yes.  
 13:47 20 Q. And you could follow that instruction?  
 13:47 21 A. Yes.  
 13:47 22 Q. Now, this, one of the last questions and,  
 13:47 23 granted, it says page 12 of the questionnaire. And I  
 13:47 24 know most people have told us this was one of the  
 13:47 25 hardest questions to answer. But the people you least

13:47 1 respect and most respect. I must admit those answers  
 13:47 2 are the first on this: "Jon Bon Jovi."  
 13:47 3 A. Yes.  
 13:47 4 Q. Why did you put him down?  
 13:47 5 A. Probably because I've loved him for, I don't  
 13:47 6 know, 20 years.  
 13:48 7 Q. Did you see that movie, *Rock Star*?  
 13:48 8 A. Yes.  
 13:48 9 Q. I was talking about that movie with my boss?  
 13:48 10 A. Friday night. Are you kidding? Opening night.  
 13:48 11 Q. Did you like it?  
 13:48 12 A. I loved it.  
 13:48 13 Q. How about Jennifer Anniston?  
 13:48 14 A. She's always just so sweet and wholesome and,  
 13:48 15 you know, the perfect model of a person.  
 13:48 16 Q. The same with Julia Roberts, I assume?  
 13:48 17 A. Yes.  
 13:48 18 Q. Why not Tommy Lee? Why do you least respect  
 13:48 19 him?  
 13:48 20 A. He's just an all-around bad guy.  
 13:48 21 Q. The wife beating part of it?  
 13:48 22 A. Yes, and irresponsible and --  
 13:48 23 Q. And, *A Child Called It*. That was the book you  
 13:49 24 were just talking about.  
 13:49 25 A. Yes.

13:49 1 Q. Was that book recommended to you? What made  
 13:49 2 you pick that book?  
 13:49 3 A. I just completed my master's degree, and then  
 13:49 4 this summer. And we had to pick a book, and that was  
 13:49 5 one of the books that was selected. I didn't get that  
 13:49 6 one; somebody else got it.  
 13:49 7 And, of course, during the course of the  
 13:49 8 class, you know, she kept talking about it. So I went  
 13:49 9 out and bought it. And there was a three-step series,  
 13:49 10 so I'm on the last one now, but that's why. And of  
 13:49 11 course being a teacher, I mean, there's incidences of  
 13:49 12 that.  
 13:49 13 Q. Right. That's why I was asking. I didn't know  
 13:49 14 if you had to read it for your job or --  
 13:49 15 A. It's personal choice, kind of job related.  
 13:49 16 Q. It says you have travel plans September 29  
 13:49 17 through October 6 in Seattle. Is that personal or is  
 13:49 18 that business?  
 13:49 19 A. My dad lives there. And so I was going to go  
 13:49 20 up there and do the music experience thing. That's fall  
 13:49 21 break.  
 13:49 22 Q. Did you already have your arrangements made?  
 13:49 23 A. Yes. He called last night to see if I  
 13:50 24 chickened out yet. And I told him, "Not yet."  
 13:50 25 Q. Are you American or United?

13:50 1 A. No; Northwest. But my best friend's going with  
13:50 2 me, and she's flying American.

13:50 3 Q. Excuse me just one moment. Ms. Blankenship,  
13:50 4 before I pass you over, do you have any questions of me?

13:51 5 A. No.

13:51 6 MS. FALCO: Thank you. Pass this juror.

13:51 7 THE COURT: All right. Mr. High?

13:51 8 VOIR DIRE EXAMINATION

13:51 9 BY MR. HIGH:

13:51 10 Q. Hi, Ms. Blankenship.

13:51 11 A. Hi.

13:51 12 Q. My name is Don High, and I represent Mr. Cantu  
13:51 13 here along with Mr. Goeller. And I have a few questions  
13:51 14 for you, too.

13:51 15 A. Okay.

13:51 16 Q. Probably not as many as Ms. Falco. Let me kind  
13:51 17 of back up a little bit. Let's talk in general about  
13:51 18 the death penalty and seeking the death penalty. Any  
13:51 19 idea, you are a schoolteacher, and you have a master's  
13:51 20 degree. Any idea how we got to this point? Any idea  
13:51 21 how this case got in here, and how we're seeking the  
13:51 22 death penalty on this young man?

13:51 23 A. Well, I'm assuming, since I don't know, I'm  
13:51 24 assuming that there was some evidence that, you know,  
13:51 25 warranted his arrest.

13:52 1 Q. Okay. Secondly, I want to make sure that you  
13:53 2 don't have the impression that we believe or the Court  
13:53 3 believes that he's guilty already. Okay? Well, we  
13:53 4 haven't had his trial yet.

13:53 5 A. Correct.

13:53 6 Q. And we plan to have a full-blown trial. We  
13:53 7 plan to cross-examine the witnesses, and we plan to  
13:53 8 enter a plea of not guilty. And all of those issues are  
13:53 9 going to be hotly litigated. Do you understand that?

13:53 10 A. Yes.

13:53 11 Q. Okay. And you probably think it's kind of  
13:53 12 strange that we're up here. You're up there. We're  
13:53 13 talking about punishment already before this young man's  
13:53 14 even had a trial?

13:53 15 A. Right.

13:53 16 Q. That's kind of strange?

13:53 17 A. Yes.

13:53 18 Q. Let me explain something. The law provides for  
13:53 19 this procedure. Okay? And I guess the law contemplates  
13:53 20 that the same jury, you know, that has to decide guilt  
13:53 21 or innocence is going to be the same jury that would  
13:53 22 decide punishment. And we have to have the right kind  
13:54 23 of people on the jury that are qualified, that are  
13:54 24 appropriate to assess punishment. Does that make sense  
13:54 25 to you?

13:51 1 Q. Okay. You are on a roll. Keep going.

13:51 2 A. And then when they looked at the evidence, they  
13:52 3 decided to seek the death penalty.

13:52 4 Q. Okay. And who decides to seek the death  
13:52 5 penalty?

13:52 6 A. Well, I learned that the other day, and it was  
13:52 7 one man.

13:52 8 Q. Okay.

13:52 9 A. In the D.A.'s office. Correct?

13:52 10 Q. Yeah. Okay. Perfect. You listened well. It  
13:52 11 was the district attorney. The district attorney in  
13:52 12 this region, in this county, actually. And he made the  
13:52 13 decision to go for the death penalty in this case. Does  
13:52 14 that -- does that -- any questions about that?

13:52 15 A. No.

13:52 16 Q. It's not myself. It's not Mr. Goeller. It's  
13:52 17 not the Judge. It's not anybody at that table over  
13:52 18 there. Somebody else made that decision.

13:52 19 A. Right.

13:52 20 Q. Okay. So that's what we're dealing with.  
13:52 21 We're dealing with a death penalty criminal prosecution.  
13:52 22 And if you are chosen to sit on the jury, that's one of  
13:52 23 the issues you are going to have to decide. Fair  
13:52 24 enough?

13:52 25 A. Yes.

13:54 1 A. Yes. I was just ignorant of the fact that I  
13:54 2 thought it was a different phase, different jury. I  
13:54 3 didn't know it was all the same.

13:54 4 Q. It's all the same jury. And so the law  
13:54 5 provides that we interview jurors individually. And  
13:54 6 then we have the trial, and then if we get to the  
13:54 7 punishment phase, then so be it. Okay? I just want to  
13:54 8 make sure you don't think at this point we're admitting  
13:54 9 or conceding guilt because we aren't.

13:54 10 A. Right.

13:54 11 Q. But we have to discuss these issues to you,  
13:54 12 with you at the very beginning.

13:54 13 A. I understand.

13:54 14 Q. Fair enough?

13:54 15 A. I understand.

13:54 16 Q. Any question about that?

13:54 17 A. No.

13:54 18 Q. Okay. That's one thing you'll be able to teach  
13:54 19 to your students maybe one day.

13:54 20 A. Not first grade.

13:54 21 Q. Not first grade. Well, I understand. Okay.  
13:55 22 Let's -- let's back up just a little bit. You live in  
13:55 23 Wylie. How long have you lived in Wylie?

13:55 24 A. I bought my house in '97. So that's four or  
13:55 25 five years.

13:55 1 Q. Okay. And I'm the municipal prosecutor in  
13:55 2 Wylie. I go out there a couple of times a month. If  
13:55 3 you get a speeding ticket and you go to trial in Wylie,  
13:55 4 I'm the man.

13:55 5 A. Well, hopefully I won't be there.

13:55 6 Q. Okay. And I don't recognize you, so I don't  
13:55 7 suppose you and I have had any contact in municipal  
13:55 8 court at all?

13:55 9 A. No.

13:55 10 Q. And we probably never will?

13:55 11 A. Hopefully.

13:55 12 Q. Hopefully. That's right. I notice that you  
13:55 13 are divorced. How long have you been divorced?

13:55 14 A. '98.

13:55 15 Q. Okay. So you moved to Wylie in '97 and  
13:55 16 divorced in '98?

13:55 17 A. Uh-huh.

13:55 18 Q. So that's been about three years ago?

13:56 19 A. Okay.

13:56 20 Q. And what, you were about 26 when you divorced;  
13:56 21 25, when you were married?

13:56 22 A. Maybe, I don't know. I probably do the math.  
13:56 23 Around there, yes.

13:56 24 Q. And did you guys buy this house together in  
13:56 25 Wylie and --

13:56 1 A. Yes.

13:56 2 Q. -- and you got a divorce. Did you have lawyers  
13:56 3 in the case?

13:56 4 A. It was kind of -- he took it all and did the  
13:56 5 deal in there.

13:56 6 Q. Okay.

13:56 7 A. So, no, I didn't go or didn't do it.

13:56 8 Q. Okay. Did he have a lawyer?

13:56 9 A. Yes.

13:56 10 Q. Who was his lawyer?

13:56 11 A. I don't even know. Somebody his dad knew.

13:56 12 Q. Everything worked out okay, as far as you are  
13:56 13 concerned, in terms of the divorce?

13:56 14 A. Yes.

13:56 15 Q. Fair enough. Before that, I take it you were  
13:56 16 in school?

13:56 17 A. I graduated in '95.

13:56 18 Q. Okay. And you got a master's?

13:57 19 A. Yes. But I didn't do that until after. Part  
13:57 20 of Plano's program is you can get your master's through  
13:57 21 Plano, and they pay for it.

13:57 22 Q. Excellent. That's smart. So where did you get  
13:57 23 your master's?

13:57 24 A. North Texas.

13:57 25 Q. And what's that in?

13:57 1 A. I should know this. And I know it's sad that I  
13:57 2 don't, but I think it's a masters of education.

13:57 3 Q. And how many hours program is that, any idea?

13:57 4 A. 36.

13:57 5 Q. Okay. And what did you get your undergraduate  
13:57 6 degree in?

13:57 7 A. It's a bachelor's of science in  
13:57 8 interdisciplinary studies.

13:57 9 Q. Interdisciplinary studies?

13:57 10 A. Yes.

13:57 11 Q. Tell me more about that.

13:57 12 A. It's teaching. The interdiscipline studies  
13:57 13 means you have a balance of the curriculum areas. You  
13:57 14 know, language, math, science, and social studies.

13:58 15 Q. Okay. Was the focus on elementary or  
13:58 16 secondary?

13:58 17 A. Early childhood.

13:58 18 Q. All right. And you went for your teaching  
13:58 19 certificate?

13:58 20 A. Yes.

13:58 21 Q. Where did you student teach? Mostly  
13:58 22 elementary?

13:58 23 A. At Memorial.

13:58 24 Q. Okay. Same place you got your job?

13:58 25 A. Yes.

13:58 1 Q. Well, that worked out well, didn't it?

13:58 2 A. Well, that's the way they said it was supposed  
13:58 3 to work out, so I was glad when it did.

13:58 4 Q. Well, I noticed that you lived in Nacogdoches  
13:58 5 for a while. Did you go to Stephen F. Austin?

13:58 6 A. Yes.

13:58 7 Q. Did you start out there?

13:58 8 A. No. I went to Richland for a year, and North  
13:58 9 Texas for a year. And then I went to Stephen F. Austin  
13:58 10 because of my ex-husband.

13:58 11 Q. Was he playing -- was he going to school there?

13:58 12 A. He was on the track team there.

13:58 13 Q. Okay. Somehow I picked that up. And so you  
13:58 14 transferred to be with him?

13:58 15 A. Yes.

13:59 16 Q. And you finished up there, finished your  
13:59 17 undergraduate degree?

13:59 18 A. Yes, in '95.

13:59 19 Q. And where did you guys move after you finished  
13:59 20 there?

13:59 21 A. Sachse.

13:59 22 Q. Did you go to Naaman Forest High School?

13:59 23 A. No. My sister does -- did. I went to Garland  
13:59 24 High School.

13:59 25 Q. Where is that?



13:59 1 A. In Garland. Garland High School.  
 13:59 2 Q. So your family is kind of in and around the  
 13:59 3 Garland area?  
 13:59 4 A. My mother, but nobody else.  
 13:59 5 Q. Where is your father?  
 13:59 6 A. In Seattle. Actually he's in Tacoma,  
 13:59 7 Washington.  
 13:59 8 Q. You mentioned that.  
 13:59 9 A. They got a divorce when I was in kindergarten,  
 13:59 10 and he got a job with the APA. So he's kind of lived  
 13:59 11 all over, but that's where he's at now.  
 13:59 12 Q. What is APA?  
 13:59 13 A. American Plywood Association. He inspects the  
 13:59 14 plywood mills.  
 13:59 15 Q. Okay. So how long has he been up in that area?  
 13:59 16 A. Maybe three years.  
 14:00 17 Q. Your mother remarried?  
 14:00 18 A. Yes.  
 14:00 19 Q. And then Candace, your sister, is that your  
 14:00 20 half sister?  
 14:00 21 A. Yes.  
 14:00 22 Q. So you and your sister, Amanda, you are a year  
 14:00 23 apart. I take it you are very close?  
 14:00 24 A. We live together.  
 14:00 25 Q. Okay. And then Candace, are you close with

14:00 1 her, too?  
 14:00 2 A. Yes. But, you know, she's a senior in high  
 14:00 3 school, so you don't hardly ever see her.  
 14:00 4 Q. She's having fun, isn't she?  
 14:00 5 A. Yes.  
 14:00 6 Q. And who is it that lives with you?  
 14:00 7 A. Amanda.  
 14:00 8 Q. And somebody else lives with you?  
 14:00 9 A. Melanie.  
 14:00 10 Q. A niece?  
 14:00 11 A. Yeah, Melanie.  
 14:00 12 Q. And where does Melanie fit in?  
 14:00 13 A. She's Amanda's daughter.  
 14:00 14 Q. Is Amanda single or divorced or --  
 14:00 15 A. She's divorced.  
 14:01 16 Q. How old is Melanie?  
 14:01 17 A. Eight.  
 14:01 18 Q. Now, that makes you her aunt?  
 14:01 19 A. Uh-huh.  
 14:01 20 Q. So are you fairly involved in her raising? Are  
 14:01 21 you involved in that or --  
 14:01 22 A. Yeah. I'm kind of like a second mama.  
 14:01 23 Q. I bet that's kind of tough because you are not  
 14:01 24 really the mom, but you are there all the time like your  
 14:01 25 sister?

14:01 1 A. No. It's not tough. If it was, we wouldn't be  
 14:01 2 living together.  
 14:01 3 Q. Okay.  
 14:01 4 A. It's a pretty good situation. I enjoy it.  
 14:01 5 Q. So you've had the house, and they were able to  
 14:01 6 come live with you?  
 14:01 7 A. She got a divorce in '97 and then moved in with  
 14:01 8 me and my ex-husband, and then we got a divorce the  
 14:01 9 following year. When he moved out, instead of selling  
 14:01 10 the house and moving to an apartment, we stayed there  
 14:01 11 together.  
 14:01 12 Q. I see. That worked out really good, didn't it?  
 14:01 13 A. Yes, it did.  
 14:01 14 Q. And since you work at Memorial, that's on the  
 14:02 15 east side of Plano, all you got to deal with is that 544  
 14:02 16 commute?  
 14:02 17 A. Actually, I do Parker Road.  
 14:02 18 Q. You do Parker Road.  
 14:02 19 A. Because I live on that far side of Wylie.  
 14:02 20 Q. Let me ask you something: Did Memorial have a  
 14:02 21 bomb threat or anything like that a year or two ago? Do  
 14:02 22 you remember when all of that was going on with --  
 14:02 23 A. No.  
 14:02 24 Q. -- with the high school?  
 14:02 25 A. We thought we were having a bomb threat, but we

14:02 1 were having a fire in our fire extinguisher.  
 14:02 2 Q. Okay.  
 14:02 3 A. But no, we haven't had anything.  
 14:02 4 Q. So that wasn't a problem then? They didn't  
 14:02 5 evacuate Memorial, did they?  
 14:02 6 A. Not for a bomb, no.  
 14:02 7 Q. Now, let's go to the death penalty. It says  
 14:02 8 here on the questionnaire that you filled out about a  
 14:02 9 month ago, it says here, "Are you in favor of the death  
 14:02 10 penalty?" You said, "yes." "Please explain your  
 14:02 11 answer." And you say, "some circumstances." So I want  
 14:02 12 to ask you what you had in mind when you said "some  
 14:03 13 circumstances." What about that?  
 14:03 14 A. I think murders should get the death penalty,  
 14:03 15 but, you know, people that, you know, like, I don't  
 14:03 16 know, a husband who kills his wife for some -- cheating  
 14:03 17 or some kind of extenuating circumstances, I don't think  
 14:03 18 that.  
 14:03 19 Q. Like an indiscretion?  
 14:03 20 A. Right, or some kind of case like that. I don't  
 14:03 21 think that they should receive the death penalty.  
 14:03 22 Q. What about a wife that kills her husband?  
 14:03 23 A. Same thing.  
 14:03 24 Q. Because he's been beating on her for years.  
 14:03 25 She just can't handle it anymore.

14:03 1 A. Same. I don't think she deserves the death  
 14:03 2 penalty.  
 14:03 3 Q. Or a father that, you know, his two children  
 14:03 4 were murdered, and the murderers got off on a  
 14:03 5 technicality?  
 14:03 6 A. The same thing.  
 14:03 7 Q. He takes the law into his hands.  
 14:03 8 A. Right. I don't think they should receive the  
 14:03 9 death penalty.  
 14:03 10 Q. What about a couple of drug dealers that get in  
 14:03 11 a tiff, get in a disagreement, and one gets mad at the  
 14:04 12 other and somebody gets killed?  
 14:04 13 A. Yes.  
 14:04 14 Q. Do you think that's deserving of the death  
 14:04 15 penalty?  
 14:04 16 A. Yes.  
 14:04 17 Q. What's the difference in that and those other  
 14:04 18 scenarios you just talked about?  
 14:04 19 A. Well, it's a passion kind of issue, kind of  
 14:04 20 thing where they are just enraged with a spouse kind of  
 14:04 21 issue. Whereas, you know, they are married to that  
 14:04 22 person. I just, you know, versus somebody who gets  
 14:04 23 enraged at somebody else. I mean, the likelihood that  
 14:04 24 they'll get enraged at somebody else down the road is  
 14:04 25 there.

14:04 1 Q. In other words, the marriage has a lot to do  
 14:04 2 with it? Folks being married or -- I don't quite follow  
 14:04 3 you.  
 14:04 4 A. I see that. A husband and, you know, wife kind  
 14:05 5 of deal where she's cheating. He's enraged. He, in the  
 14:05 6 throw of passion, kills somebody. It's passion, high  
 14:05 7 emotions. You wouldn't normally have done that,  
 14:05 8 devastated. Whereas somebody who gets, you know, mad or  
 14:05 9 ticked off at somebody else and kills them, where, you  
 14:05 10 know, they shouldn't have such high emotions in that  
 14:05 11 kind of instance.  
 14:05 12 Q. Okay. But now, we had a killing last week, two  
 14:05 13 weeks ago on Central Expressway. Somebody got --  
 14:05 14 somebody cut the other person off, flipped them the bird  
 14:05 15 or something like that. So they pulled out a gun and  
 14:05 16 shot and killed. I guess they were passionate and mad.  
 14:05 17 That's a passionate type of situation, isn't it?  
 14:05 18 A. It's different.  
 14:05 19 Q. That's different than a husband-wife type  
 14:05 20 killing?  
 14:05 21 A. Yes.  
 14:05 22 Q. Tell me why it's different in your mind. I  
 14:06 23 mean, the passion is still there.  
 14:06 24 A. Those people should be able to control  
 14:06 25 themselves. I mean, they are driving down the road.

14:06 1 They know there's going to be traffic. They should be  
 14:06 2 able to control their temper and control their rage.  
 14:06 3 Q. Why wouldn't the husband be able to control his  
 14:06 4 rage?  
 14:06 5 A. They should. They should control their rage.  
 14:06 6 Q. Okay. I don't mean to argue with you. I'm not  
 14:06 7 trying to argue with you. I'm just trying to understand  
 14:06 8 the difference. Let's go -- let's go back here.  
 14:06 9 The next page. It sounds like passion  
 14:06 10 matters to you because you say: What is the best  
 14:06 11 argument in opposition to the death penalty? You say,  
 14:06 12 "self-defense in case of passion." So that's why this  
 14:06 13 is really important to me to understand how you feel.  
 14:06 14 It sounds to me like you want passion, but  
 14:07 15 you also want some sort of relationship between the  
 14:07 16 victim and the killer, right? Some sort of relationship  
 14:07 17 and maybe a marital relationship?  
 14:07 18 A. Well, like I said, when I first started, I  
 14:07 19 don't really read the newspaper. I don't really pay  
 14:07 20 attention. Watch a lot of movies, lot of TV.  
 14:07 21 Q. Okay.  
 14:07 22 A. And I just think that those kind of cases when  
 14:07 23 there's passion involved where, you know, somebody  
 14:07 24 cheated on somebody, and then they, you know, killed  
 14:07 25 their spouse for cheating on them. I don't think they

14:07 1 should get the death penalty versus somebody who is out  
 14:07 2 on the street and somebody, you know, flips them off.  
 14:07 3 They get ticked off, and then they kill somebody.  
 14:07 4 Q. Okay. So you think that the fellow, if they  
 14:07 5 catch the guy driving down Central, if they catch him,  
 14:07 6 he needs to get the death penalty?  
 14:07 7 A. Yes.  
 14:07 8 Q. And between a couple of drug dealers, if  
 14:07 9 somebody gets upset and somebody gets killed, then that  
 14:08 10 person needs to get the death penalty?  
 14:08 11 A. Right.  
 14:08 12 Q. And would that be automatic with you, or would  
 14:08 13 you -- would you consider these special issues?  
 14:08 14 A. Well, of course I would consider the special  
 14:08 15 issues.  
 14:08 16 Q. Okay. We'll get to that here in just a second.  
 14:08 17 What about a couple of people living together? You  
 14:08 18 know, they haven't been married, but they've lived  
 14:08 19 together a long time?  
 14:08 20 A. That's a marriage.  
 14:08 21 Q. In your opinion, that's a marriage?  
 14:08 22 A. Yes.  
 14:08 23 Q. And there may be some history there. There may  
 14:08 24 be great history. They may get along great. But there  
 14:08 25 may be an indiscretion all of a sudden, and then you got

14:08 1 the passion. You got the walking in, and you find them  
14:08 2 and, boom, they are dead. You could understand that  
14:09 3 situation?

14:09 4 A. Yes.

14:09 5 Q. What about a couple of high school or college  
14:09 6 roommates that have lived together, and they know each  
14:09 7 other, and they washed their clothes together, and  
14:09 8 they've dated together. And then one guy's got a  
14:09 9 girlfriend, and the other one starts dating his  
14:09 10 girlfriend, and he's upset about that. And the next  
14:09 11 thing you know you've got a killing. What do you think  
14:09 12 about that situation?

14:09 13 A. I'd have to think about that.

14:09 14 Q. Okay. That's a little bit tougher?

14:09 15 A. Yeah.

14:09 16 Q. And I'm talking about a blatant indiscretion.  
14:10 17 I'm talking about walking in between classes or  
14:10 18 something.

14:10 19 A. Yeah, I understand that. I don't know.

14:10 20 Q. You don't know about that?

14:10 21 A. (Moving head up and down.)

14:10 22 Q. Well, this is all very interesting, isn't it?  
14:10 23 Let's see, let's go to this thing in your questionnaire.  
14:10 24 There's a section here, it says: The criminal justice  
14:10 25 system, and it gave you some lines. And you filled in

14:10 1 the blank.

14:10 2 And there's a part here, it says:  
14:10 3 Prosecutors. And it's got three blanks. And you wrote  
14:10 4 in, "prosecutors try to convict criminals." And you've  
14:10 5 underlined criminals twice. Let me let you look at it.

14:10 6 A. I remember.

14:10 7 Q. Do you remember?

14:10 8 A. (Moving head up and down.)

14:10 9 Q. Tell me why you underlined criminals a couple  
14:10 10 of times. I'm just curious about that.

14:10 11 A. Well, you know, I told you I watch a lot of  
14:10 12 movies. And most movies on TV are, you know, people who  
14:11 13 are being tried, prosecuted because, you know, they  
14:11 14 believe that they did something. And then in the course  
14:11 15 of the movie of course they didn't do it. Blah, blah,  
14:11 16 blah did it.

14:11 17 And I think that most people, when they  
14:11 18 look at things they see, you know, if there's a case, if  
14:11 19 there's a prosecution, it's a criminal. They've done it  
14:11 20 before it even started. So that was my thinking, that,  
14:11 21 you know, they are thinking, you know, their criminals  
14:11 22 are already guilty before it started.

14:11 23 Q. Okay. I take it that's pretty important to  
14:11 24 you?

14:11 25 A. What?

14:11 1 Q. That somebody be presumed innocent?

14:11 2 A. Oh, yes.

14:11 3 Q. Don't let me put words in your mouth.

14:11 4 A. I just want to --

14:11 5 Q. I'm just sensing that from you.

14:11 6 A. Yes.

14:11 7 Q. You believe that everybody should be presumed  
14:11 8 innocent at the beginning of the trial, and that the  
14:11 9 State should prove guilt beyond a reasonable doubt. And  
14:11 10 if they do it, then fine.

14:12 11 A. Right.

14:12 12 Q. You are guilty. But everybody, I mean, when we  
14:12 13 start out, everybody should have a clean slate and no  
14:12 14 presumed guilt, right? It's presumed innocence?

14:12 15 A. Correct.

14:12 16 Q. Good. You sure studied in college, and you  
14:12 17 sure learned it well. And so I take it when you wrote  
14:12 18 this out, you basically, you are reiterating the  
14:12 19 presumption of innocence when you underlined  
14:12 20 "criminals"?

14:12 21 A. Yes.

14:12 22 Q. I think I understand. On the next page they  
14:12 23 gave you a list of ten statements with quotes around it.  
14:12 24 One of them got my attention, and I'll read it to you.  
14:12 25 It says genetics, circumstances of birth.

14:12 1 Upbringing and environment should be  
14:13 2 considered when determining the proper punishment of  
14:13 3 someone convicted of a crime. And you circled "agreed."  
14:13 4 And tell me why you agreed with that. Genetics,  
14:13 5 circumstances of birth, upbringing and environment  
14:13 6 should be considered when determining the proper  
14:13 7 punishment. And I think that's a fine answer. Just  
14:13 8 tell me why you said you agree.

14:13 9 A. Well, isn't that the question with the writing  
14:13 10 scale where you write how strongly you agree with it?

14:13 11 Q. That comes next, I think. Let me show you your  
14:13 12 questionnaire --

14:13 13 A. Okay.

14:13 14 Q. -- so you can see it. I've got it  
14:13 15 highlighted.

14:13 16 A. Okay. Well, I agree.

14:13 17 Q. Okay.

14:13 18 A. That, you know, the strong -- because I  
14:13 19 remember something about the strongly. I think it  
14:13 20 should be looked at.

14:14 21 Q. Okay.

14:14 22 A. But it's not like the most important factors.

14:14 23 Q. Okay. Some of these things like genetics.

14:14 24 We're learning a lot about that, and we've got a lot to  
14:14 25 learn, obviously. That's probably not as important as

14:14 1 some of these others. Like circumstances of birth,  
14:14 2 that's probably -- that's probably somewhat important.  
14:14 3 Upbringing, that's probably more important, wouldn't you  
14:14 4 say, as opposed to genetics and circumstances of birth?

14:14 5 A. Yes.

14:14 6 Q. Upbringing, do you believe upbringing is  
14:14 7 important or not?

14:14 8 A. Yes. But I believe you make your own  
14:14 9 decisions.

14:14 10 Q. Okay. And environment. I guess that's -- I  
14:14 11 guess that's the environment in which you live, I guess,  
14:14 12 or where you went to school or something, I guess. Can  
14:14 13 you see how that type of thing could fit into that issue  
14:14 14 up there, which is the second special issue. Can you  
14:15 15 see how these items could fit into special issue  
14:15 16 No. 2?

14:15 17 A. Yes.

14:15 18 Q. Which is the mitigation question?

14:15 19 A. Yes.

14:15 20 Q. Now, the scale, you didn't give us a scale. It  
14:15 21 says, the question here is: If you believe in using the  
14:15 22 death penalty, how strongly on a scale from 1 to 10 do  
14:15 23 you hold that belief? 1 being the least and 10 being  
14:15 24 the strongest, and you left it blank. Did you feel  
14:15 25 comfortable answering that or uncomfortable or --

14:15 1 A. I didn't intentionally leave it blank, but you  
14:15 2 know, several of those I had to, you know, kind of  
14:15 3 ponder and go back and skip around.

14:15 4 Q. Okay. Let me let you look at it. Okay?  
14:16 5 That's this one right here.

14:16 6 A. Oh, probably about a 7.

14:16 7 Q. Okay. Tell me your rationale. You just used  
14:16 8 to say you are a 7.

14:16 9 A. Well, I believe in the eye-for-an-eye theory.  
14:16 10 And in regards, like I talked about earlier, I don't  
14:16 11 want to cut people's hands off for stealing, but it is a  
14:16 12 life that's gone. But, you know, there may be  
14:16 13 circumstances or issues surrounding, you know, what  
14:16 14 happened. Like my big passion issue. So I'm for the  
14:16 15 death penalty, but I wouldn't say that I'm out waving  
14:16 16 banners, pro-death penalty.

14:17 17 Q. Okay. All right. The next page talks about  
14:17 18 the Constitution. It says, "An accused citizen does not  
14:17 19 have to testify on his or her own behalf. How do you  
14:17 20 feel about this Constitutional privilege?" And you say,  
14:17 21 "Okay, but I would think they would want to tell their  
14:17 22 side." And that's a fine answer. But I want to make  
14:17 23 sure that you understand about the not testifying.

14:17 24 A. Yes, I do.

14:17 25 Q. You understand?

14:17 1 A. Yes.

14:17 2 Q. And I'm sure you watched plenty of TV where  
14:17 3 sometimes they testify and sometimes they don't.

14:17 4 A. Yes.

14:17 5 Q. But obviously we, as viewers, we always want  
14:17 6 them to testify.

14:17 7 A. Right.

14:17 8 Q. And the folks on the jury, because it makes a  
14:17 9 better show if they testify, obviously. And to be  
14:18 10 honest with you, probably in most trials, the jury wants  
14:18 11 the defendant to testify. I mean, that's just, that's  
14:18 12 just a natural human -- human nature response, wouldn't  
14:18 13 you say?

14:18 14 A. Yes.

14:18 15 Q. I don't know what's going to happen in this  
14:18 16 trial. Okay? Mr. Cantu may testify. He may not  
14:18 17 testify. We may not make that decision until right at  
14:18 18 the very end of the trial. So, let's say he chooses not  
14:18 19 to testify. The Judge would instruct you that that's  
14:18 20 not a circumstance that the jury is to consider against  
14:18 21 him. And I understand you probably would like to hear  
14:18 22 from him; most people would. Would you be able to  
14:18 23 follow the law and not hold that against him? That is,  
14:18 24 not testify?

14:19 25 A. Yes. Admission doesn't mean guilt.

14:19 1 Q. Okay. So let's go back to what you said. And  
14:19 2 you say, but I would think they would want to tell their  
14:19 3 side. And I agree with that. I agree with that. A lot  
14:19 4 of times defendants want to tell their side, but they  
14:19 5 don't tell their side for a lot of reasons. Some of  
14:19 6 them tactical. Some of them strategic. Maybe they  
14:19 7 don't tell their side very well at all. Maybe they are  
14:19 8 a terrible witness. You understand that?

14:19 9 A. Yes.

14:19 10 Q. Okay. We've also had some jurors say, well, if  
14:19 11 they were innocent, they would testify. Okay? You  
14:19 12 don't feel that way, do you?

14:19 13 A. No.

14:19 14 Q. Anything, anything else? Should I explore this  
14:20 15 any more with you, or are we on the same page?

14:20 16 A. We're on the same page.

14:20 17 Q. Okay. Fair enough. Your car was stolen. When  
14:20 18 was that?

14:20 19 A. '91.

14:20 20 Q. Where was it stolen from?

14:20 21 A. From my driveway.

14:20 22 Q. What county, Dallas or Collin?

14:20 23 A. Dallas.

14:20 24 Q. Did you deal with Dallas P.D.?

14:20 25 A. I didn't. My stepdad did.

14:20 1 Q. So you haven't had any contact with police work  
14:20 2 in Collin County or the DA's office in Collin County?

14:20 3 A. Well, you know, I have been like stopped,  
14:20 4 pulled over for something, but nothing other than that.

14:20 5 Q. Okay. Down at the bottom of page 8 it says:  
14:21 6 "How would you feel if you later learned that you, as a  
14:21 7 juror, did not have all the information available and  
14:21 8 that the new information might have caused you to return  
14:21 9 a different verdict?" And you write, "Upset. I would  
14:21 10 want all the possible information to make a fair  
14:21 11 verdict." And then you crossed it out, which is kind of  
14:21 12 interesting. What did you do that for?

14:21 13 A. I don't know.

14:21 14 Q. Let me show it to you. Did you know you were  
14:21 15 going to be cross-examined?

14:21 16 A. No. I would have memorized it.

14:21 17 Q. It's down at the bottom.

14:21 18 A. Oh, you know, I was going to -- not going to  
14:21 19 make so much comments on there. And then -- because if  
14:21 20 I really would have wanted to cross it out, it would  
14:21 21 have been a lot more crossed out. But then I decided,  
14:21 22 no, because I think I did that when I started writing  
14:21 23 the possible. And then I decided I wanted to go ahead  
14:21 24 and put all that on there.

14:21 25 Q. So this answer is your answer, and you are fine

14:21 1 with it?

14:21 2 A. Yes.

14:22 3 Q. Fair enough. How long have you been a first  
14:22 4 grade teacher?

14:22 5 A. This is my seventh year to teach.

14:22 6 Q. And has it always been first grade?

14:22 7 A. Yes.

14:22 8 Q. And that is such a critical age. I mean, the  
14:22 9 youngsters are so very impressionable at that age.

14:10 10 A. (Moving head up and down.)

14:22 11 Q. And I take it, I mean, that takes special skill  
14:22 12 to be able to do that. I know I couldn't do it.

14:22 13 A. Well, I couldn't do your job.

14:22 14 Q. Sometimes I can't do my job. I take it you've  
14:23 15 always got to be very sensitive with those little minds,  
14:23 16 those -- because they are so very impressionable, and  
14:23 17 they think so much of their teacher. I mean, you are  
14:23 18 Ms. Blankenship to them?

14:10 19 A. (Moving head up and down.)

14:23 20 Q. And their minds are so vibrant, and their  
14:23 21 curiosity is so great. Tell me about that. Do you  
14:23 22 enjoy teaching first grade? Is that your preference?  
14:23 23 Do you like being there?

14:23 24 A. I love first grade because they learn to read.  
14:23 25 When they come in, they, you know, barely recognize the

14:23 1 letters. And then when I send them off, they can pick  
14:23 2 up books off the shelf and read them. You know, it  
14:23 3 happens like overnight. I try to pretend like it's  
14:23 4 these little things I do all year. And then we slowly  
14:23 5 gradually up to being reading. But, no, it happens  
14:23 6 overnight, and I love watching that switch.

14:23 7 Q. They'll switch; the light turns on?

14:23 8 A. Yes.

14:23 9 Q. So that's very fulfilling to you?

14:23 10 A. Yes.

14:24 11 Q. And you enjoy it?

14:24 12 A. Yes.

14:24 13 Q. Is that where you -- is that where you belong?  
14:24 14 In first grade, you think?

14:24 15 A. Yes.

14:24 16 Q. Have you thought about teaching other grades or  
14:24 17 working in other parts of the system?

14:24 18 A. I asked my principal last year to teach  
14:24 19 kindergarten because there was some openings but, you  
14:24 20 know, I was tired. Completing the master's program, I  
14:24 21 had so much paperwork. I had to do all my papers and  
14:24 22 projects from master's program, plus all the stuff of  
14:24 23 being a team leader. But she told me no. As you can  
14:24 24 see, I'm still in first grade, and I'm very happy and  
14:24 25 don't want to leave.

14:24 1 Q. Okay. Fantastic, it's great. You've worked in  
14:24 2 retail before. Was that in college?

14:24 3 A. Yes.

14:24 4 Q. Where? Tell me about that. What kind of  
14:24 5 retail work have you done?

14:24 6 A. I've worked at Mervin's. I was district  
14:25 7 manager at a little store in the mall at Nacogdoches,  
14:25 8 Harrah's, clothing kind of stores.

14:25 9 Q. Which Mervin's have you worked at?

14:25 10 A. In Richardson. The one across from Richardson  
14:25 11 Square Mall.

14:25 12 Q. I'll ask you some about your religious  
14:25 13 feelings. I take it you were raised up in the Baptist  
14:25 14 Church?

14:25 15 A. Yes.

14:25 16 Q. Through high school?

14:25 17 A. My parents got a divorce when I was in  
14:25 18 kindergarten, so probably about second, third grade.  
14:25 19 And I lived with my dad then, and then we didn't go to  
14:25 20 church. And then my mom moved to Dallas, and then I  
14:25 21 moved in with her when I was in eighth grade. And then  
14:25 22 she didn't go to church.

14:25 23 But then right before I got married, we  
14:26 24 started going to church and went, you know, kind of off  
14:26 25 and on. But then of course when I got a divorce, then

14:26 1 there was no more going to church for a long time.  
 14:26 2 Q. Okay. So when you went as a youngster, did you  
 14:26 3 go to the Baptist Church?  
 14:26 4 A. Yes. I've always went to Baptist except for  
 14:26 5 last Sunday.  
 14:26 6 Q. Okay. And your husband and you went to the  
 14:26 7 Baptist Church, too?  
 14:26 8 A. Yes.  
 14:26 9 Q. Which one did you and your husband go to?  
 14:26 10 A. Arapaho Road in Garland.  
 14:26 11 Q. In Garland. All right. Are you -- are you  
 14:26 12 interested in -- in faith or Christian teachings? Or  
 14:26 13 what are you interested in, I guess? This is kind of a  
 14:26 14 tough question to ask.  
 14:26 15 A. Well, my plan is to continue going with my  
 14:26 16 sister to church. You know, I'm not ready to jump full  
 14:27 17 force back in and, you know, become a member of the  
 14:27 18 church and attend all the weekly functions that the  
 14:27 19 church has, but I'm going to slowly wet my feet and get  
 14:27 20 back in.  
 14:27 21 Q. Okay.  
 14:27 22 A. I've always believed in God and Jesus, and you  
 14:27 23 should do the right things and, you know, follow, but I  
 14:27 24 haven't been an active participant.  
 14:27 25 Q. I understand. That's fair enough. Tell me why

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14:27 1 you like *Buffy the Vampire Slayer*?  
 14:27 2 A. I know you look at that thing and you think,  
 14:27 3 she is not really 30, right?  
 14:27 4 THE COURT: My kids watch *Buffy*  
 14:27 5 religiously.  
 14:27 6 A. Well, my friends always kind of joke with me  
 14:27 7 because they think I'm the guy of the bunch. I mean,  
 14:28 8 like, I love heavy metal, you know, the horror flicks,  
 14:28 9 everything, the action films. Everything that boys are  
 14:28 10 supposed to like, that's what I'm into.  
 14:28 11 I don't know why, but that kind of goes  
 14:28 12 along with the horror, and of course it's a little bit  
 14:28 13 of love story, too. It's got a little bit of everything  
 14:28 14 for everybody. The whole family can enjoy.  
 14:28 15 THE COURT: It's good family  
 14:28 16 entertainment.  
 14:28 17 A. Right. There's a couple of scenes where you  
 14:28 18 have to cover your eyes.  
 14:28 19 Q. (BY MR. HIGH) Do you kill vampires?  
 14:28 20 A. Do I?  
 14:28 21 Q. Yeah.  
 14:28 22 MR. GOELLER: No. Not her, Buffy.  
 14:28 23 Q. (BY MR. HIGH) Oh.  
 14:28 24 A. Oh, yeah, she does. And of course that's  
 14:28 25 always fun.

14:28 1 THE COURT: Trying to figure out who they  
 14:28 2 are, right?  
 14:28 3 VENIREPERSON: Right. Well, they usually  
 14:28 4 kind of mess their face up real quick, so you know.  
 14:28 5 THE COURT: So you can figure it out.  
 14:28 6 Q. (BY MR. HIGH) Are you into Halloween? Do you  
 14:28 7 like Halloween?  
 14:28 8 A. Yes. But, you know, I'm not thinking the  
 14:28 9 horror flick, but no, I'm not. My mother is psychotic  
 14:28 10 Halloween. I'm a more Christmas kind of person.  
 14:29 11 Q. What about, it's got TV shows. *Buffy the*  
 14:29 12 *Vampire* -- do you watch *Jerry Springer*?  
 14:29 13 A. No.  
 14:29 14 Q. Big turnoff?  
 14:29 15 A. Yes.  
 14:29 16 Q. Me too.  
 14:29 17 A. My sister does.  
 14:29 18 Q. Your sister watches it?  
 14:29 19 A. Pretty regularly. She loves it when they are  
 14:29 20 having, you know, "Who's the Baby's Daddy?"  
 14:29 21 Q. Who is Fred Durst? I'm going to have to plead  
 14:29 22 ignorance on that.  
 14:29 23 A. Lint Biscuit's lead singer.  
 14:29 24 Q. And tell me more.  
 14:29 25 MR. GOELLER: That's a band. I know that.

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14:29 1 VENIREPERSON: Yes.  
 14:29 2 A. They kind of sing a little rappy kind of rock  
 14:29 3 songs. What do you mean, tell you more? Tell you more  
 14:29 4 about him?  
 14:29 5 Q. Yeah.  
 14:29 6 A. Well, is that the one I put, I didn't like him?  
 14:30 7 Q. Yeah. You least respect him anyway.  
 14:30 8 A. I used to really like him, and then they  
 14:30 9 started a fight with another band that I kind of liked.  
 14:30 10 And the way that he started the fight was really bad,  
 14:30 11 and so I don't like him at all now.  
 14:30 12 Q. Okay. Now, this trip that you've got coming  
 14:30 13 up, if you get picked on this jury, that's going to put  
 14:30 14 that trip in serious jeopardy. Do you realize that?  
 14:30 15 A. Then I better not get picked because my dad  
 14:30 16 would put me in serious jeopardy.  
 14:30 17 Q. I'm sure the Court can work on that for you,  
 14:30 18 but --  
 14:30 19 THE COURT: What, I believe, he asked you  
 14:30 20 if you had chickened out, right?  
 14:30 21 VENIREPERSON: He called last night  
 14:30 22 because of all the other deal. But yes, he did call and  
 14:31 23 ask me that.  
 14:31 24 THE COURT: And you said, "not yet."  
 14:31 25 VENIREPERSON: Right, not yet. And I

14:31 1 asked him how long I had.  
 14:31 2 THE COURT: How much time did he give you  
 14:31 3 to decide, or did he give you a time limit?  
 14:31 4 VENIREPERSON: Well, he kind of laughed  
 14:31 5 like, you are coming. He didn't really give me that  
 14:31 6 option.  
 14:31 7 THE COURT: Got to honor your father,  
 14:31 8 right?  
 14:31 9 VENIREPERSON: Well, he's kind of a  
 14:31 10 jokester, too. I mean, I'm sure if I told him, no, dad,  
 14:31 11 I'm scared, then he'd --  
 14:31 12 Q. (BY MR. HIGH) Okay. I want to cover some of  
 14:31 13 the special issues with you briefly. You understand  
 14:31 14 that the procedure in a capital case is you are going to  
 14:31 15 hear all the evidence, and then the jury is going to  
 14:31 16 have to make a decision about whether or not this person  
 14:31 17 is guilty or not guilty of capital murder. That's going  
 14:32 18 to be the first order of business.  
 14:32 19 A. Yes.  
 14:32 20 Q. We won't even get to these issues unless you  
 14:32 21 guys decide that it happened, and he's guilty.  
 14:32 22 A. Right.  
 14:32 23 Q. So, again, we're not agreeing that he is, but  
 14:32 24 assume -- let's assume for a minute that he's found  
 14:32 25 guilty, and now we've got to get to these issues.

14:32 1 A. Okay.  
 14:32 2 Q. And the first issue there is -- and it's on the  
 14:32 3 floor -- is a probability that the defendant would  
 14:32 4 commit criminal acts of violence that would constitute a  
 14:32 5 continuing threat to society. And you got a master's  
 14:32 6 degree. Does probability in your mind mean the same  
 14:32 7 thing as possibility?  
 14:32 8 A. No.  
 14:32 9 Q. Okay.  
 14:32 10 A. Possible, you know, I mean, anything in the  
 14:32 11 world. But probably means it is, just like you know.  
 14:32 12 Q. More likely to happen.  
 14:32 13 A. Right.  
 14:33 14 Q. And also this is looking towards the future,  
 14:33 15 correct?  
 14:33 16 A. Right.  
 14:33 17 Q. And we're looking to see whether he's going to  
 14:33 18 be a continuing threat to society. We're looking into  
 14:33 19 the future, and so some people have a hard time with  
 14:33 20 that. Of course, in life a lot of times the way we make  
 14:33 21 decisions, is we look at history, what has happened in  
 14:33 22 the past, and then we try to predict the future,  
 14:33 23 although we can't always predict the future. The stock  
 14:33 24 market has been awfully difficult to predict.  
 14:33 25 A. Yes.

14:33 1 Q. But that's probably a classic example. We look  
 14:33 2 at downturns or bumps in the economy. And then we say,  
 14:33 3 last time this happened and then there was a big jump.  
 14:33 4 And so we're trying to predict or the probability that  
 14:33 5 the stock market is going to go up, fair enough?  
 14:33 6 A. Right.  
 14:33 7 Q. Okay. And I think it was explained to you that  
 14:33 8 the burden of proof in the trial on guilt-innocence is  
 14:34 9 beyond a reasonable doubt. The proof must be beyond a  
 14:34 10 reasonable doubt, an extreme tipping of the scales. And  
 14:34 11 was it explained to you that the proof on this question  
 14:34 12 must be beyond a reasonable doubt?  
 14:34 13 A. Yes.  
 14:34 14 Q. Okay. In other words, it must be proven to you  
 14:34 15 beyond a reasonable doubt that there is a probability  
 14:34 16 that he will commit criminal acts of violence that would  
 14:34 17 constitute a continuing threat to society?  
 14:34 18 A. Yes.  
 14:34 19 Q. Now, does that seem a little bit odd to you  
 14:34 20 that it has to be proven beyond a reasonable doubt that  
 14:34 21 there's a probability? Think about that for just a  
 14:34 22 minute.  
 14:34 23 A. Well, no.  
 14:34 24 Q. No. You don't have any problem with that?  
 14:34 25 A. No.

14:34 1 Q. Tell me why.  
 14:35 2 A. Well, because before you, you know, sentence  
 14:35 3 somebody to death, you want to make sure that there's  
 14:35 4 not going to be, that if there's any possibility that  
 14:35 5 there's not going to be any, you know, more incidences  
 14:35 6 or threat that, you know, that they had that  
 14:35 7 opportunity.  
 14:35 8 Q. Uh-huh. Let's go back and talk about the  
 14:35 9 husband-wife incident where the husband comes home and  
 14:35 10 he finds his wife in bed with another man and comes and  
 14:35 11 shoots and kills her. And that's the passion situation  
 14:35 12 that you are talking about, and then you found him  
 14:35 13 guilty. Let's assume he kills two people. Let's assume  
 14:35 14 he kills the wife, and he kills the lover.  
 14:35 15 A. Okay.  
 14:35 16 Q. Which, a capital murder situation. Two -- two  
 14:35 17 people killed. And you found them guilty. And now you  
 14:35 18 are looking at this question. How -- how would you, it  
 14:35 19 would seem to me, you would have a hard time with that  
 14:35 20 question.  
 14:35 21 MS. FALCO: Your Honor, I'm going to  
 14:35 22 object. He's committing her to a particular set of  
 14:36 23 facts and asking her how she would answer that given  
 14:36 24 that certain set of circumstances. That's binding her  
 14:36 25 to a certain result based on facts.

14:36 1 THE COURT: Well, the last thing he said,  
 14:36 2 it seems to me you would have a hard time with that.  
 14:36 3 MR. HIGH: Yeah.  
 14:36 4 THE COURT: Overrule the objection. Let's  
 14:36 5 hear a question.  
 14:36 6 Q. (BY MR. HIGH) Would you have a hard time  
 14:36 7 looking at this question?  
 14:36 8 A. No.  
 14:36 9 Q. You wouldn't?  
 14:36 10 A. No.  
 14:36 11 Q. Okay. Because of the passion that's involved?  
 14:36 12 A. Well, if he walks in, his wife is cheating on  
 14:36 13 him with some other man, he kills them. I mean, the  
 14:36 14 future probability that he would be in that circumstance  
 14:36 15 and would do those things again, you know, it's not very  
 14:36 16 probable that that would happen to him again for those  
 14:36 17 circumstances to arise.  
 14:36 18 Q. I understand. Because after all, the wife's  
 14:36 19 gone. The cheating wife is gone.  
 14:36 20 A. That's right.  
 14:36 21 Q. And the lover is gone. Those things have been  
 14:36 22 removed from the situation, thanks to him. And so I  
 14:36 23 think I understand what you are saying. Obviously, the  
 14:36 24 wife had a lot to do with the conduct. I mean, in your  
 14:36 25 mind, at least, the wife had a lot to do with why that

14:37 1 conduct arose in the first place, right? What she did.  
 14:37 2 She shouldn't have done that?  
 14:37 3 A. Right. I don't think she deserves to die  
 14:37 4 because of what she did. I'm just saying what he did,  
 14:37 5 and you know what I'm saying.  
 14:37 6 Q. I understand. And the circumstances had a lot  
 14:37 7 to do with that. I mean, how was he to know that he was  
 14:37 8 going to put his key in the knob, walk in, and find  
 14:37 9 that? And then, you know, maybe he had a gun handy.  
 14:37 10 Maybe he didn't?  
 14:37 11 If he didn't have a gun handy, then we'd  
 14:37 12 be talking about a whole different thing. But if the  
 14:37 13 gun was there, he was upset. He grabbed the gun, and he  
 14:37 14 shot and killed, right? In the heat of the moment,  
 14:37 15 right?  
 14:37 16 A. Right.  
 14:37 17 Q. If the gun hadn't been there, it probably  
 14:37 18 wouldn't have happened at all, right?  
 14:37 19 A. Right.  
 14:37 20 Q. Let me ask you this, and you can see how a man  
 14:37 21 like that could get charged with capital murder, right?  
 14:37 22 A. Right.  
 14:37 23 Q. And it's pretty easy to understand. And I  
 14:37 24 guess I'm taking it from the way you are answering these  
 14:37 25 questions, it's not going to be an automatic thing. You

14:38 1 know, like let's say that -- let's say you found him  
 14:38 2 guilty of capital murder, you know, the double homicide  
 14:38 3 to kill them. But I'm getting it from you that the  
 14:38 4 future danger, that's not an automatic thing?  
 14:38 5 A. Right.  
 14:38 6 Q. Okay. And with respect to capital murder in  
 14:38 7 general. Okay? And I'm not asking you to consider that  
 14:38 8 hypothetical. And I'm just the law of capital murder,  
 14:38 9 because that's the way it works.  
 14:39 10 I mean, you got to hear the evidence, find  
 14:39 11 the person guilty, and then go to this question. Is it  
 14:39 12 going to be an automatic thing if you convict somebody  
 14:39 13 of a double homicide, and you get to this question?  
 14:39 14 Are you automatically going to say,  
 14:39 15 evidently you are not, because of the situation we just  
 14:39 16 talked about. You are not going to automatically say  
 14:39 17 they are a future danger, are you?  
 14:39 18 A. No.  
 14:39 19 Q. You are going to consider this by yourself?  
 14:39 20 A. Yes.  
 14:39 21 Q. Now, the only way that you get to that last  
 14:39 22 question, the mitigation question, the humanitarian  
 14:39 23 question. Some people call it the last-look question.  
 14:39 24 That's the one up top. The only way that you get to  
 14:39 25 that is if you find the person was a future danger; is

14:39 1 that clear?  
 14:39 2 A. Yes.  
 14:39 3 Q. And basically, if the jury finds guilt beyond a  
 14:40 4 reasonable doubt and they find the person is going to be  
 14:40 5 a future danger, then they take that one last look to  
 14:40 6 see if there's any reason why the defendant's life  
 14:40 7 should be spared. Does that make sense to you?  
 14:40 8 A. Uh-huh.  
 14:40 9 Q. And instead of looking forward, as we did in  
 14:40 10 question one, we're now looking over at the defendant.  
 14:40 11 We're saying, what about mitigation? What about  
 14:40 12 mitigating circumstances? Does that make sense?  
 14:40 13 A. Yes.  
 14:40 14 Q. Now, let's look at the mitigation question. It  
 14:40 15 says, whether taking into consideration all the evidence  
 14:40 16 including the circumstances of the offense and, of  
 14:40 17 course, that passion situation. That's probably going  
 14:40 18 to be firmly implanted in your mind when you walk out of  
 14:40 19 here.  
 14:40 20 But I assure you, that's not the case  
 14:40 21 we've got here. We've got a whole different set of  
 14:40 22 facts. Okay? But you would consider the circumstances  
 14:40 23 of the offense, the defendant's character and  
 14:40 24 background. And earlier we talked about genetics,  
 14:40 25 circumstances of birth, upbringing, and environment.



14:41 1 Okay? Can you see that factoring into character and  
14:41 2 background?

14:41 3 A. Yes.

14:41 4 Q. Okay. And would you be able to consider it  
14:41 5 with respect to this question?

14:41 6 A. Yes.

14:41 7 Q. All right. And the personal moral culpability.  
14:41 8 All right, Ms. Schoolteacher, tell me what we mean by  
14:41 9 that. Any idea?

14:41 10 A. Well, their moral -- I teach first grade. You  
14:41 11 remember that part, right? Well, that would be like  
14:41 12 they are --

14:41 13 Q. I'm playing with you. (Simultaneous talking)  
14:41 14 Huh?

14:41 15 A. That would be like their morals, right? The  
14:41 16 way that they --

14:41 17 Q. You are not wrong.

14:41 18 A. Okay, good. But the way they conduct  
14:42 19 themselves morally.

14:42 20 Q. You are still not wrong. Culpability is a  
14:42 21 tough word. The only reason I know it is because I'm a  
14:42 22 lawyer. Okay? And culpability is defined in the Penal  
14:42 23 Code as responsibility.

14:42 24 And usually they talk about it in terms of  
14:42 25 criminal responsibility whether someone is criminally

14:42 1 responsible. You know, like driving too fast on the  
14:42 2 highway. And you are going 90, 95, a hundred miles an  
14:42 3 hour, and then you wreck into somebody.

14:42 4 And then they say, hmm, it's not just an  
14:42 5 accident. You know, maybe -- maybe they are criminally  
14:42 6 responsible for that. Maybe they should be prosecuted.  
14:42 7 Do you know what I mean?

14:42 8 A. Uh-huh.

14:42 9 Q. Maybe they are culpable. Maybe they have some  
14:42 10 culpability. They shouldn't have been going a hundred  
14:42 11 miles an hour on the highway. You just don't do that.  
14:42 12 So then the next thing you know they are indicted and  
14:42 13 charged with manslaughter, something like that. As  
14:43 14 opposed to driving 65 on the highway and having an  
14:43 15 accident, somebody hurt. You know, that's a little bit  
14:43 16 different thing. Does that make sense to you?

14:43 17 A. Yes.

14:43 18 Q. Let's go back. And the personal moral  
14:43 19 culpability or responsibility of the defendant. Does  
14:43 20 that give you any clues? You are not the one that put  
14:43 21 Susan Smith in here, or did you?

14:43 22 A. I don't know.

14:43 23 Q. Okay. The one in North Carolina that drowned  
14:43 24 her kids?

14:43 25 A. Yes.

14:43 1 Q. I take it from, all of the -- that's a bad  
14:43 2 thing?

14:43 3 A. Yes.

14:43 4 Q. And it's kind of hard to even envision a person  
14:43 5 like Susan Smith having any personal moral culpability  
14:43 6 or responsibility. That's kind of tough, isn't it? I  
14:44 7 mean, if she did, she wouldn't have done what she did,  
14:44 8 right?

14:44 9 A. Right.

14:44 10 Q. I take it you probably wouldn't have been a  
14:44 11 good juror on that case?

14:44 12 A. No. I would not have been.

14:44 13 Q. She wouldn't want you on her jury?

14:44 14 A. No.

14:44 15 Q. What about remorse? What about guilt? Do you  
14:44 16 think that that may be personal moral culpability? How  
14:44 17 they feel?

14:44 18 A. I don't know.

14:44 19 Q. Okay. It's fair enough. There's no wrong  
14:44 20 answers. I can't give you a definition for personal  
14:45 21 moral culpability. I don't think the Court's going to  
14:45 22 be able to give you one. But you, as a juror, you are  
14:45 23 going to have to consider it if you sit on the jury and  
14:45 24 you guys get to this question. Okay?

14:45 25 You are going to have to consider the

14:45 1 circumstances of the offense, the character and  
14:45 2 background, and the personal moral culpability of the  
14:45 3 defendant. Then you are going to have to consider it  
14:45 4 within the context of whether it's sufficient to warrant  
14:45 5 that a sentence of life, as opposed to death, should be  
14:45 6 imposed. Does that make sense to you?

14:45 7 A. Yes.

14:45 8 Q. Okay. And in law, frequently we use balancing  
14:45 9 tests. Do you use balancing tests in education? You  
14:45 10 decide whether or not to swat the kid or send them to  
14:45 11 the principal's office?

14:45 12 A. I don't do any of that.

14:45 13 Q. Huh?

14:45 14 A. I don't do any of that, but yes.

14:46 15 Q. On balance, you know, how does that weigh out?  
14:46 16 Do I call the parents? Do I call the kid's parents? Do  
14:46 17 I just talk to the kid? On balance, what's the right  
14:46 18 thing to do?

14:46 19 A. Right.

14:46 20 Q. Right. Does that make sense, that this is kind  
14:46 21 of a balancing test. Do we spare the life? Do we not  
14:46 22 spare the life? Does that make sense?

14:46 23 A. Yes.

14:46 24 Q. There's no burden of proof on this question.  
14:46 25 And the State doesn't have a burden of proof. We don't

14:46 1 have a burden of proof. And whatever the juror thinks  
 14:46 2 is what's right. You know? If you think it's  
 14:46 3 mitigating, great. If you think it's not mitigating,  
 14:46 4 that's fine too. It's up to the -- it's up to the  
 14:46 5 individual juror. Does that make sense?

14:46 6 A. Yes.

14:46 7 Q. Okay. I did have one thing I wanted to finish  
 14:46 8 up with. And you indicated that a conversion experience  
 14:47 9 would have no influence on you, that that's between them  
 14:48 10 and God. And I take it, between the defendant and God,  
 14:48 11 right?

14:48 12 A. Right.

14:48 13 Q. And I take it that you're starting to explore  
 14:48 14 your involvement in church again. I guess that's a  
 14:48 15 separate thing than the way you believe. I take it you  
 14:48 16 already believe, and you have religious beliefs, and I  
 14:48 17 take it maybe you even had a conversion experience. I  
 14:48 18 don't know.

14:48 19 Would that -- would the conversion  
 14:48 20 experience, with the personal beliefs, would the change  
 14:48 21 that it's made in a person's life have any impact in  
 14:48 22 your consideration of that second special issue?

14:48 23 A. No.

14:48 24 Q. None whatsoever?

14:48 25 A. No.

14:49 1 Q. And tell me why. Tell me why you can say that  
 14:49 2 would have no impact on you.

14:49 3 A. I believe that that's a personal relationship  
 14:49 4 between you and the Lord. I mean, it's not, you know,  
 14:49 5 when you get, I mean, you could be right with the Lord  
 14:49 6 all your life. You know, or when you get right with the  
 14:49 7 Lord, it doesn't matter. That's between you and the  
 14:49 8 Lord at what point you decide to get right with the  
 14:49 9 Lord.

14:49 10 I think I would be hypocritical, you know,  
 14:49 11 saying, yes, it did, you know, now in light of what  
 14:49 12 happened, that I'm trying to get right with the Lord.  
 14:49 13 Do you see what I'm saying?

14:49 14 Q. And it makes me think of that passage in the  
 14:49 15 Bible that says: Behold all things are passed away, and  
 14:49 16 all things become new. You know, when we talk about a  
 14:50 17 real conversion experience.

14:50 18 What I'm wondering is, would it have any  
 14:50 19 impact at all on question one with respect to future  
 14:50 20 dangerousness? I mean, those of us that subscribe to  
 14:50 21 the Christian faith and recognize that change can be  
 14:50 22 made in a person. Do you believe that? Do you believe  
 14:50 23 that a change could be made by virtue of a religious  
 14:50 24 conversion?

14:50 25 A. Yes.

14:50 1 Q. Okay. So would that have any impact with  
 14:50 2 respect to the way you view question one, probability of  
 14:50 3 future dangerousness?

14:50 4 A. Well, yes. But when, you know, she was talking  
 14:50 5 about earlier, she was saying, you know, you are -- you  
 14:50 6 are looking down this road. You see the Lord now.

14:50 7 Q. I understand that. I guess what I'm trying to  
 14:51 8 find out from you is -- is -- is that just something  
 14:51 9 that just, you are closed to the idea that a conversion  
 14:51 10 experience is just simply the jailhouse conversion? Or  
 14:51 11 can a person actually change? I guess that's what I'm  
 14:51 12 asking from you.

14:51 13 A. Yes. But I think it would be hard to really  
 14:51 14 see that there's been a big -- you know what I'm saying?  
 14:51 15 That there would be a big change in your lifestyle  
 14:51 16 and --

14:51 17 Q. What would you be looking for?

14:51 18 A. I don't know.

14:51 19 Q. But you'd be looking for something other than  
 14:51 20 someone just saying it?

14:51 21 A. Right. Because you can talk the talk, but do  
 14:51 22 you actually walk it?

14:51 23 Q. Absolutely.

14:51 24 MR. HIGH: All right. Thank you so much,  
 14:51 25 Ms. Blankenship. I've kind of had a good time. I hope

14:51 1 you have. I'll pass the juror.

14:51 2 THE COURT: All right. You may step down,  
 14:51 3 ma'am. We'll have you back in a few minutes.

14:51 4 VENIREPERSON: Okay.

14:52 5 (Venireperson Blankenship not present.)

14:52 6 THE COURT: What says the State?

14:52 7 MS. FALCO: This juror is acceptable to  
 14:52 8 the State, Your Honor.

14:52 9 THE COURT: What says the defense?

15:00 10 MR. HIGH: This juror is acceptable.

15:00 11 THE COURT: This is Angela Blankenship,  
 15:00 12 No. 106. She's juror No. 11, I suppose.

15:00 13 THE COURT: Let's ask Ms. Blankenship to  
 15:00 14 come back in, and then we'll have both sides announce in  
 15:00 15 her presence. Very pleasant woman.

15:00 16 (Venireperson Blankenship present.)

15:00 17 THE COURT: Ms. Blankenship, please be  
 15:00 18 seated. All right. What says the State?

15:00 19 MR. SCHULTZ: This jury is acceptable to  
 15:00 20 the State, Your Honor.

15:01 21 THE COURT: What says the defense?

15:01 22 MR. GOELLER: Ms. Blankenship is  
 15:01 23 acceptable to the defense, Your Honor.

15:01 24 THE COURT: All right. Ms. Blankenship,  
 15:01 25 you are the 11th person chosen. So we have 12 jurors

15:01 1 and two alternates. So we have three left to choose.  
15:01 2 And I want to tell you just a few things. First one is,  
15:01 3 it's -- it's -- well, I can't predict.

15:01 4 I tell people it's not likely this will be  
15:01 5 in the media, but it could be. In could be in the  
15:01 6 newspaper or on TV or something like that. If you have  
15:01 7 the impression that you are about to read something  
15:01 8 about it or about to see something about it, try to  
15:01 9 avoid those things because we want you to -- we want you  
15:01 10 to come to court kind of with a clean slate and hear  
15:01 11 everything that you are going to hear about this case  
15:01 12 from the witness stand.

15:01 13 And along that same line, I'm going to ask  
15:01 14 you not to discuss the case or even the possibilities  
15:01 15 with anybody, your sister, or anybody else, you know,  
15:01 16 anybody that you go out with, or your father or anything  
15:01 17 like that. And so, anyway with those two admonitions,  
15:02 18 is there anything else from either side for this juror?

15:02 19 MS. FALCO: No, Your Honor.

15:02 20 THE COURT: Then we'll probably see you  
15:02 21 in, oh, a couple of weeks.

15:02 22 VENIREPERSON: So, are you telling me I  
15:02 23 can't go to my dad's?

15:02 24 THE COURT: Tell your father that the  
15:02 25 Judge -- you didn't chicken out. But the Judge did

15:02 1 this, did this to you.

15:02 2 VENIREPERSON: (Weeping.)

15:02 3 THE COURT: Hold on just a second. What  
15:02 4 were those dates?

15:02 5 VENIREPERSON: The 29th.

15:02 6 THE COURT: The 29th through what?

15:02 7 VENIREPERSON: The 5th.

15:02 8 THE COURT: Yeah, I tell you what. My  
15:02 9 guess, ma'am, is that we'll probably -- how much time do  
15:02 10 you have to cancel?

15:02 11 VENIREPERSON: It's a free ticket. I  
15:02 12 mean --

15:02 13 THE COURT: Do you have miles?

15:03 14 VENIREPERSON: Yes.

15:03 15 THE COURT: Okay. I tell you what. It's  
15:03 16 conceivable that we will not have started yet, but I  
15:03 17 think it's likely that we'll start about that time. So  
15:03 18 why don't you keep in touch with us. And if -- if we're  
15:03 19 about to start at that time, then we'll be able to tell  
15:03 20 you or if you have a chance to make it.

15:03 21 Hey, let me ask you something else. You  
15:03 22 are scheduled from the 29th through the 5th. Could you  
15:03 23 come back earlier?

15:03 24 VENIREPERSON: Well, the 5th is a  
15:03 25 Saturday

15:03 1 THE COURT: Yes.

15:03 2 VENIREPERSON: I don't know. It's a free  
15:03 3 ticket, I mean, you know. It says, no cancellations.  
15:03 4 No nothing.

15:03 5 THE COURT: All right.

15:03 6 VENIREPERSON: So when are you going to  
15:03 7 know when it starts?

15:03 8 THE COURT: We won't know until we pick  
15:03 9 Juror No. 14, and that I can't tell you with certainty.

15:03 10 VENIREPERSON: So if you are still picking  
15:03 11 on the 29th and I get on that plane because I haven't  
15:03 12 heard that we're starting --

15:03 13 THE COURT: Then you are okay.

15:04 14 VENIREPERSON: Then I'm okay.

15:04 15 THE COURT: Because if we're still picking  
15:04 16 on the 29th, I mean, I'll give these lawyers a few days  
15:04 17 to -- to get it altogether before we actually bring the  
15:04 18 jury in. So if we're still picking on the 29th, then  
15:04 19 you are fine, and you can go. But if we finish picking  
15:04 20 this week -- I'm hoping that we're going to finish  
15:04 21 picking this week -- then we'll probably start on  
15:04 22 October 2nd. And that means that you would have to be  
15:04 23 back by then.

15:04 24 VENIREPERSON: Okay. So you are expecting  
15:04 25 right now to start October 2nd?

15:04 1 THE COURT: That's what I'm expecting but,  
15:04 2 see, I can't tell you that with certainty. And I hate  
15:04 3 to be so vague, but it's just that I can't tell you when  
15:04 4 we are going to get 14 people. We could end up getting  
15:04 5 14 tomorrow. And if we did, then I would surely start  
15:04 6 on the 2nd, and might even start before that. But I  
15:05 7 want to give the lawyers at least a week after the time  
15:05 8 we picked the last juror.

15:05 9 VENIREPERSON: To prepare.

15:05 10 THE COURT: To prepare. Yeah.

15:05 11 THE COURT: Well, and also to rest because  
15:05 12 this is grueling. This is -- this is.

15:05 13 VENIREPERSON: I know it is on my end. I  
15:05 14 didn't know about the other.

15:05 15 THE COURT: Hey, and let me tell you  
15:05 16 something. It's -- even if for a little trial, it's  
15:05 17 always a sacrifice, and everybody sacrifices. All  
15:05 18 jurors sacrifice.

15:05 19 VENIREPERSON: But you're not the one  
15:05 20 calling my dad.

15:05 21 MR. GOELLER: Judge, may we approach  
15:05 22 sidebar?

15:05 23 THE COURT: Yeah. Let me ask you to go  
15:05 24 out with the bailiff for just a moment.

15:05 25 (Venireperson Blankenship not present.)

15:06 1 THE COURT: I tell you what. The juror  
15:06 2 has stepped outside. And even though both sides have  
15:06 3 found her acceptable, they -- they approached sidebar,  
15:06 4 and I think they may have reached an agreement with  
15:07 5 regard to this juror. And so I guess I'll just ask the  
15:07 6 defense about the possible agreement.

15:07 7 MS. FALCO: Your Honor, that's correct.  
15:07 8 The State agrees, based on her reaction when told she  
15:07 9 was going to be on the jury. And she visibly began to  
15:07 10 cry and was upset. We're agreeing to let her go.

15:07 11 THE COURT: Is that the desire of the  
15:07 12 defense also?

15:07 13 MR. GOELLER: Yes, Your Honor.

15:07 14 THE COURT: Mr. Cantu, is that your  
15:07 15 desire?

15:07 16 THE DEFENDANT: Yes, Your Honor.

15:07 17 THE COURT: Also to let her go? All  
15:07 18 right. So would you tell Ms. Blankenship that she's  
15:07 19 finally excused, and thank her for her service. And  
15:07 20 tell her she's finally excused. She will not be back at  
15:07 21 all.

15:07 22 THE BAILIFF: Yes, Your Honor.

15:07 23 THE COURT: We have the most compassionate  
15:07 24 attorneys in Texas in choosing this jury.  
15:08 25 (Court adjourned.)

REPORTER'S CERTIFICATE

1  
2 THE STATE OF TEXAS  
3 COUNTY OF COLLIN

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

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

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

19 *Barbara Tokuz*

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