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

VOLUME 25 OF 53 VOLUMES

TRIAL COURT CAUSE NO. 380-80047-01

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

JURY VOIR DIRE

COPY

On the 20th day of September, 2001, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Machine Shorthand.

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 CLERK OF DISTRICT COURT
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1 REPORTER'S RECORD 1
 2 VOLUME 25 OF 53 VOLUMES
 3
 4 TRIAL COURT CAUSE NO. 380-80047-01
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2 APPEARANCES

1
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16 SEPTEMBER 20, 2001
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4 PROCEEDINGS:

(Open court, defendant present.)

08:55 3 THE COURT: Case No. 380-80047. State of
 08:55 4 Texas versus Ivan Abner Cantu, and he's here with his
 08:55 5 attorneys. The attorneys for the State are here.
 08:55 6 And before we call the first juror, I want
 08:55 7 to go over some things with you. Have y'all thought
 08:55 8 about Shala Jones? I gave you a copy of a fax from her.
 08:55 9 She's got vacation plans and wants to be excused. She's
 08:55 10 set for tomorrow.
 08:55 11 MR. SCHULTZ: Is there any way we can just
 08:55 12 reschedule her, maybe?
 08:56 13 THE COURT: The thing is, in that
 08:56 14 memorandum she attached a copy of her itinerary, and she
 08:56 15 wants to be gone from -- what does it look like? It
 08:56 16 looks like from the --
 08:56 17 MS. FALCO: From September 28th through
 08:56 18 October 1st.
 08:56 19 THE COURT: Which actually that wouldn't
 08:56 20 create a problem, would it? I don't think so in this
 08:56 21 case. But she's got a meeting for tomorrow, and we can
 08:56 22 reschedule her for, I don't know, some other time, if
 08:56 23 you want. If you don't, that's fine.
 08:56 24 MR. GOELLER: I'll give you our position.
 08:56 25 THE COURT: Okay.

08:56 1 MR. GOELLER: We'd agree to just get rid
08:56 2 of her. My feeling is that someone who takes that much
08:56 3 effort for a business reason, she just doesn't want to
08:56 4 serve. Period. I don't know how important this little
08:56 5 meeting of hers is, but I don't want her.

08:57 6 THE COURT: And say, for whatever it's
08:57 7 worth, she's a No. 1 also.

08:57 8 MR. SCHULTZ: But in fairness to her, she
08:57 9 did say she thinks life sentences are appropriate in
08:57 10 some cases.

08:57 11 THE COURT: Yeah. Listen, if you don't
08:57 12 want to excuse her, we'll have her in tomorrow. It's up
08:57 13 to you guys.

08:57 14 MR. SCHULTZ: Those are the only two
08:57 15 choices then? I was thinking about rescheduling her
08:57 16 just because it's a one-day thing.

08:57 17 THE COURT: Yeah, but if we reschedule
08:57 18 her, if we don't get with her tomorrow, we're booked
08:57 19 through the 24th, right? Right. And so I suppose we'd
08:57 20 have to reschedule her for the 25th, 26th, 27th. And is
08:57 21 that the 28th or is it the 26th? Because the fax is a
08:57 22 little blurred.

08:57 23 MS. FALCO: It's the 28th, Your Honor.

08:57 24 THE COURT: It's the 28th for sure?

08:57 25 MS. FALCO: Because it says in her memo.

08:57 1 THE COURT: I suppose we'd reschedule her
08:58 2 for one of those three days: 25th, 26th, 27th, and I
08:58 3 guess we could do that, you know. It doesn't look like
08:58 4 too good a bet to me. But if that's what you-all want
08:58 5 to do, that's what we'll do. Do you want to do that?

08:58 6 MR. SCHULTZ: Yes, sir.

08:58 7 THE COURT: All right. Mr. Goeller?

08:58 8 MR. GOELLER: I'm sorry, Judge. What was
08:58 9 your last comment? I was talking to Mr. High, and I
08:58 10 didn't hear you.

08:58 11 THE COURT: What we'll do is we'll
08:58 12 reschedule her for the 25th, 26th or 27th.

08:58 13 MR. GOELLER: Yes, sir.

08:58 14 THE COURT: And she's No. 122. And if she
08:58 15 is chosen, I'm pretty sure that we've got enough time
08:58 16 to -- for her to finish her vacation.

08:58 17 Okay. The next one that I need to ask you
08:58 18 about is a fellow named Gregory Smith. He's No. 152.
08:59 19 And I don't know what his numbers are, but he's moving
08:59 20 to Illinois on Monday. And I'm assuming that he's
08:59 21 automatic, but y'all tell me.

08:59 22 MR. GOELLER: Yeah, if he's moving.

08:59 23 MR. SCHULTZ: Yes, sir.

08:59 24 THE COURT: Is that agreeable to you,
08:59 25 Mr. Cantu?

08:59 1 THE DEFENDANT: Yes, Your Honor.

08:59 2 THE COURT: So he'll be stricken by
08:59 3 agreement. All right.

08:59 4 The next one is No. 158, and this is --
08:59 5 this is a -- we'll find out what kind of hearts are
08:59 6 beating in you guys right now. Nathaniel Hawthorne is
09:00 7 No. 158. He's been laid off since July 19th. He was
09:00 8 just offered a new job. He was offered the job on
09:00 9 September 19th to begin on September 24th. And he'd
09:00 10 like to be released. Beats the heart so hard.

09:00 11 MR. GOELLER: What number was he, Judge?

09:00 12 THE COURT: Nathaniel Hawthorne. I don't
09:00 13 know anything about him other than what I have just told
09:00 14 you. Nathaniel Hawthorne, that's a famous name, isn't
09:00 15 it?

09:01 16 MR. GOELLER: Well, in that he believes a
09:01 17 good argument against the death penalty: If they are
09:01 18 not guilty.

09:01 19 MR. SCHULTZ: He's got a point.

09:01 20 MR. GOELLER: He certainly has a point,
09:01 21 Judge.

09:01 22 THE COURT: At least an arguable point.

09:01 23 MR. GOELLER: My position on a guy like
09:01 24 that, Judge, he'll certainly be bitter if he -- if he's
09:01 25 been unemployed that long and loses a job opportunity.

09:01 1 I think he'll be a bitter man, so we would not want him.

09:01 2 MR. SCHULTZ: That's fine, Judge. We'll
09:01 3 agree.

09:01 4 THE COURT: All right. We'll strike him
09:01 5 by agreement.

09:01 6 MR. SCHULTZ: Assuming that's okay with
09:01 7 the defendant.

09:01 8 THE COURT: Is that your desire,
09:01 9 Mr. Cantu?

09:01 10 THE DEFENDANT: Yes, Your Honor.

09:01 11 THE COURT: Okay. Now, let me tell you
09:01 12 some people that are -- that are scheduled for the voir
09:01 13 dire on the 24th. And if you would, kind of write these
09:01 14 down because you don't have to decide anything today. I
09:01 15 just want to tell you about them. But right now they
09:02 16 are scheduled for voir dire on the 24th, the morning of
09:02 17 the 24th. The first one is No. 157, Charlotte
09:02 18 McCracken. She has vacation plans from October 1st to
09:02 19 October 5th. Miles Prestemon has vacation plans from
09:02 20 September 28th through October 5th.

09:02 21 MR. GOELLER: What number is he?

09:02 22 THE COURT: He's No. 164, I'm sorry.

09:02 23 MR. GOELLER: Thank you.

09:02 24 THE COURT: No. 164, Miles Prestemon;
09:02 25 vacation plans 9-28 through 10-5. The next one is

09:02 1 No. 167, Judith Hoffman; vacation plans from September
09:02 2 26th through October 3rd. And the last one is No. 168,
09:02 3 Charles McNally; vacation plans from September 29th
09:02 4 through October 6th. And I guess I have one other --
09:02 5 one other one to tear at your hearts. No. 150, I don't
09:03 6 remember her name.

09:03 7 MS. FALCO: Nancy Anderson.

09:03 8 THE COURT: Yes. Her daughter has just
09:03 9 had a baby in Austin. And my feeling is that if it was
09:03 10 her baby, that might be a different story. But anyway
09:03 11 her daughter has just had a baby, and she wants to be
09:03 12 excused. But think about that one, too. And --

09:03 13 MR. GOELLER: Judge, all those folks that
09:03 14 are going to have vacation plans, was that all the same
09:03 15 week of vacation?

09:03 16 MS. FALCO: Yes.

09:03 17 THE COURT: It may be. I haven't even
09:03 18 checked that out.

09:03 19 MS. FALCO: So that's fall break.

09:03 20 THE COURT: And I tell you why I'm kind of
09:03 21 throwing those out, too, along with, I guess, Shala
09:03 22 Jones -- if you think we have enough of a crop that are
09:04 23 just, I suppose, generic people that are unknowns that,
09:04 24 you know, enough left certainly to choose from and these
09:04 25 people are unknown to us, you may not care. Because one

09:04 1 unknown juror, if the juror is completely unknown, if
09:04 2 it's another unknown juror I suppose, depends on how you
09:04 3 look at it. But maybe you guys have different ways that
09:04 4 you look at it. But when I look at those people, and I
09:04 5 think if -- if they've -- if they've got at least a
09:04 6 problem to begin, if we don't even schedule them in the
09:04 7 first place, then we don't have to fool with them. And
09:04 8 so anyway, it's something to think about.

09:04 9 If you'd do this, with regard to the
09:04 10 vacation people, if you all come to an agreement, let me
09:04 11 know. If you don't, I need to start preparing the
09:05 12 schedules for the -- for the September 24th crowd.
09:05 13 Well, I need to get them done -- I need to know by five
09:05 14 o'clock today and, as you can imagine, it doesn't -- it
09:05 15 doesn't bother me one way or the other.

09:05 16 If you don't want to let them go, that's
09:05 17 great. Because you don't know, there might be some
09:05 18 great jurors among those people, and they might fit more
09:05 19 and all that stuff. But I -- I've always been a gambler
09:05 20 and always look at the possibilities. And which is not
09:05 21 to say that they are -- they are a real low percentage,
09:05 22 but anyway, think about it and let me know.

09:05 23 MR. SCHULTZ: In thinking -- may I address
09:05 24 the Court?

09:06 25 THE COURT: Yes.

09:06 1 MR. SCHULTZ: In thinking about that, one
09:06 2 of the -- one of the things that--and I know we may not
09:06 3 know the answer to this--one of the things that would be
09:06 4 helpful is, let's assume out of that group, let's assume
09:06 5 we get a jury, say, the 27th or something like that
09:06 6 maybe. For all I know, we could have it tomorrow. We
09:06 7 don't know as we forge ahead. Would we be working that
09:06 8 fall break week? Would that be your plan? Because if
09:06 9 we are, I mean, it's more than just, I guess then we
09:06 10 really have to think about whether we would want to look
09:06 11 at these people knowing that seating them is going to
09:06 12 wreck four of their vacations and possibly even a couple
09:06 13 more that are already on the jury. And I'm not sure
09:06 14 that we even looked at this with some of these jurors,
09:06 15 if they might have had fall breaks or not.

09:06 16 THE COURT: Well, I tell you what, if we
09:06 17 got, if we -- hey, tell me exactly when fall break is,
09:07 18 if you know.

09:07 19 MR. SCHULTZ: It's October 1st through --

09:07 20 MR. GOELLER: The 5th.

09:07 21 MR. SCHULTZ: Well, that's six days, isn't
09:07 22 it?

09:07 23 MR. GOELLER: No.

09:07 24 MR. SCHULTZ: That's five. Yeah, it's
09:07 25 October 1st through 5th.

09:07 1 MR. GOELLER: Monday through Friday.

09:07 2 MR. SCHULTZ: Yeah.

09:07 3 THE COURT: Yeah. I tell you what, I
09:07 4 would, if I could, work. So if we could -- if we could
09:07 5 take some time off, enough time for you guys to feel
09:07 6 good about your cases and then start. If I could start
09:07 7 during fall break, if that's the way it worked out, I
09:07 8 would. Because the fall break doesn't -- doesn't move
09:07 9 me.

09:07 10 MR. SCHULTZ: Okay. I guess we can think
09:07 11 about it, Matt. Maybe we ought to at least think about
09:07 12 what it's going to do to the other ten that we got. I
09:07 13 don't think we really got into that with them,
09:07 14 especially the early ones. Well, if the plan is to
09:07 15 work -- well, let us think about it and try to give you
09:07 16 an answer this afternoon.

09:07 17 THE COURT: And I tell you what, I
09:07 18 wouldn't be surprised -- I wouldn't be surprised if it
09:08 19 works out that we take that week of fall break off
09:08 20 because that's the way it works, too, you know. So, and
09:08 21 if it works out that way, that would be nice.

09:08 22 And if it will work out that way, if it
09:08 23 comes close to working out that way, then we'll do that,
09:08 24 you know. But if -- but just from my standpoint, I'd
09:08 25 only give a little bit of weight to the fall break

09:08 1 fact. So, okay. All right. The first -- first juror
 09:08 2 is No. 114, Lorna Bonner.
 09:08 3 (Venireperson Bonner present.)
 09:09 4 THE COURT: Good morning, ma'am.
 09:09 5 VENIREPERSON: Good morning.
 09:09 6 THE COURT: Are you Lorna Bonner?
 09:09 7 VENIREPERSON: Yes.
 09:09 8 THE COURT: I want to ask you, a little
 09:09 9 over a month ago that I had all 200 jurors, I asked them
 09:09 10 to raise their hands and be sworn. Do you recall that?
 09:09 11 VENIREPERSON: Yes.
 09:09 12 THE COURT: Now, the oath was to respond
 09:09 13 truthfully to questions that were propounded by the
 09:09 14 Court or by the attorneys on both sides. Do you recall
 09:09 15 that?
 09:09 16 VENIREPERSON: Yes.
 09:09 17 THE COURT: I just wanted to remind you
 09:09 18 that you are still subject to that oath.
 09:09 19 VENIREPERSON: Okay.
 09:09 20 THE COURT: Thank you. Please be seated
 09:09 21 right here.
 09:10 22 THE COURT: All right, Mr. Schultz?
 09:10 23 MR. SCHULTZ: Yes, Judge. Thank you.
 09:10 24 VOIR DIRE EXAMINATION
 09:10 25 BY MR. SCHULTZ:

09:10 1 Q. Good morning.
 09:10 2 A. Good morning.
 09:10 3 Q. Ms. Bonner, my name is Bill Schultz. I'm an
 09:10 4 assistant district attorney representing the State of
 09:10 5 Texas in its capital prosecution of Ivan Cantu. The
 09:10 6 lady to my left is Ms. Gail Falco, one of our chief
 09:10 7 felony prosecutors. And then moving a little bit
 09:10 8 further down our table is Ms. Jami Lowry, also a felony
 09:10 9 prosecutor working for our office.
 09:10 10 Most likely we're the three that you would
 09:10 11 be seeing throughout the course of the prosecution, if
 09:10 12 you were serving as a juror. Occasionally, for one
 09:10 13 reason or another, maybe another prosecutor would also
 09:10 14 come along for part of the trial.
 09:10 15 Usually how that would happen would be
 09:10 16 something like a particular witness, like a child
 09:10 17 witness, let's say, that takes a certain amount of
 09:11 18 expertise maybe to effectively work with them, we have
 09:11 19 some people that deal more with child witnesses than we,
 09:11 20 that just do burglaries, robberies, murders, those types
 09:11 21 of things.
 09:11 22 The other possibility, and I deem it
 09:11 23 unlikely, would be if there was some complicated
 09:11 24 scientific issue. It might be that one of our
 09:11 25 prosecutors might have more familiarity with some

09:11 1 chemical issue or maybe a physics issue or something
 09:11 2 like that that might arise during the case.
 09:11 3 Usually that's more of the nature of
 09:11 4 something like a -- maybe a vehicular homicide case or
 09:11 5 something where people have some kind of scientific
 09:11 6 background and been trained in that. But most likely
 09:11 7 it's going to be the three of us that the jury will be
 09:11 8 working with.
 09:11 9 At the defense table is the defendant
 09:11 10 Mr. Ivan Cantu. Further to your right is Mr. Don High,
 09:11 11 and at the end of the table, Matt Goeller. Mr. High and
 09:11 12 Mr. Goeller are both fine attorneys engaged in private
 09:11 13 practice of law in Plano, Texas, and are court appointed
 09:12 14 to represent the defendant in this case.
 09:12 15 The reason I tell you they are court
 09:12 16 appointed is, I can remember a time earlier in my career
 09:12 17 where there was a pretty strong concern, at least by
 09:12 18 taxpayers, about that whole concept of court-appointed
 09:12 19 attorneys. And if I didn't ask the question, I'm sure
 09:12 20 the defense would.
 09:12 21 You wouldn't hold it against anybody that,
 09:12 22 because of his economic situation, he had court-
 09:12 23 appointed lawyers. And, I guess, you and I in a sense
 09:12 24 will be paying for it rather than he. So would you hold
 09:12 25 that against him in an evidence kind of way?

09:12 1 A. No.
 09:12 2 Q. I didn't think you would. And it's funny, that
 09:12 3 goes back to my beginning days of prosecution, and I
 09:12 4 don't hear that much anymore, but I thought I should
 09:12 5 ask. I believe, Ms. Bonner, that you don't know any of
 09:12 6 us; is that correct?
 09:12 7 A. Correct.
 09:12 8 Q. And if you've ever had any encounters with us,
 09:12 9 it would be in such a casual way that neither we nor you
 09:13 10 remember it?
 09:13 11 A. Correct.
 09:13 12 Q. And I think that's good. There's no reason
 09:13 13 that a juror who knows, for example, one of the
 09:13 14 attorneys couldn't serve, but I think that just creates
 09:13 15 the potential for an awkwardness that fortunately
 09:13 16 doesn't seem to exist in a large county like ours.
 09:13 17 This is a low-key process that we're doing
 09:13 18 now. The reason we do this individually only in death
 09:13 19 penalty cases, I think the notion is, and correctly so,
 09:13 20 the death penalty is one of the really big issues in our
 09:13 21 society that's charged with religious views and a whole
 09:13 22 lot of just societal views in general. And people, good
 09:13 23 people, have opinions on both sides of that issue, and
 09:13 24 they can be pretty deep issues with them.
 09:14 25 And so I think the idea is that we can

09:14 1 talk about it in a little simpler way. And you don't
09:14 2 have 15 people sitting next to you and us trying to
09:14 3 figure out which is one is Ms. Bonner and Mr. Jones kind
09:14 4 of thing and trying to get the questionnaire and try to
09:14 5 thumb through them like we do.

09:14 6 What we do, we give you the questionnaire
09:14 7 really before anybody talks to you about how the law
09:14 8 works, just to get your views about background, hobbies,
09:14 9 interest, kind of how you think and how you see the
09:14 10 world.

09:14 11 And at least from my point of view, and
09:14 12 I'm sure it might be similar to the defense table too,
09:14 13 the idea is not a -- certainly not to change anybody's
09:14 14 mind on anything because it's just discourse is what
09:14 15 we're doing. But it's to try to get some understanding
09:14 16 of how you view -- how you view the world and how you
09:14 17 view the criminal justice system, because I know what my
09:14 18 evidence is going to be.

09:14 19 I think I know how the evidence is going
09:14 20 to come out. You don't, and you are not hearing any
09:15 21 evidence. I'm just saying I have an idea of who my
09:15 22 witnesses will be, what they are going to be saying,
09:15 23 what kinds of cross-examination from the other side they
09:15 24 can expect. I have a notion of all that.

09:15 25 I'm just trying to find someone that I

09:15 1 think will listen fairly to our evidence and fairly
09:15 2 evaluate it and hold us to our burdens of proof that we
09:15 3 have in this case. Not put any additional burdens on us
09:15 4 that the law doesn't put on us. And I'm sure, I'm sure
09:15 5 in many ways that's kind of what the defense would be
09:15 6 doing to you. Because they know how they are going to
09:15 7 approach the case, whatever that might be.

09:15 8 And I'm sure they are thinking: Is this a
09:15 9 juror that is going to be responsive and listen
09:15 10 attentively to whatever approach they are going to take
09:15 11 in this case? So other than that, no right or wrong
09:15 12 answers. In fact, the only wrong answers you could ever
09:15 13 give would be untruthful ones, and I know you wouldn't
09:16 14 do that. You are not nervous up there, are you?

09:16 15 A. Somewhat, yes.

09:16 16 Q. Are you really?

09:16 17 A. Yes.

09:16 18 Q. It doesn't show. Just because it's not a
09:16 19 situation you've been in before or what?

09:16 20 A. Well, correct. I've never been in a situation
09:16 21 like this.

09:16 22 Q. Okay.

09:16 23 A. It makes me very uncomfortable.

09:16 24 Q. By the time we get through to you, I promise
09:16 25 you, you won't be nervous. You're just going to be

09:16 1 numb, so don't worry.

09:16 2 A. I just want to go home.

09:16 3 Q. When we talked with you and asked you, when
09:16 4 Ms. Falco and Mr. Goeller talked to you as a group just
09:16 5 a few days ago, you may remember that Ms. Falco talked
09:16 6 pretty straightforward about what we're doing here.

09:16 7 And I think it went something like: Take
09:16 8 a moment and realize that this defendant is someone we
09:16 9 have charged with capital murder and that we believe
09:16 10 we'll prove beyond a reasonable doubt is guilty of what
09:16 11 he's been charged with, and that's capital murder in one
09:17 12 of the three varieties.

09:17 13 We plead the same crime in different ways
09:17 14 to allow for flexibility of the evidence and also to
09:17 15 allow for that unusual event where one element under one
09:17 16 period of capital murder might be missing.

09:17 17 Maybe we are unable to prove it was a
09:17 18 burglary for some reason. Maybe our evidence wouldn't
09:17 19 be strong enough for that, or maybe the evidence
09:17 20 wouldn't be strong enough for a robbery for some reason.
09:17 21 But it would be strong enough to prove a double
09:17 22 homicide.

09:17 23 And maybe for some reason we couldn't
09:17 24 prove the double homicide, but we could prove a
09:17 25 burglary-homicide. So what we said at jury selection

09:17 1 and what I say now is that truthfully we can and expect
09:17 2 to prove beyond a reasonable doubt that the defendant is
09:17 3 guilty of capital murder.

09:17 4 We expect to prove to you that the capital
09:17 5 murder punishment issues should be answered in such a
09:18 6 way that the result for the defendant will be a death
09:18 7 sentence. And that at some point in the future the --
09:18 8 the time will come for him to -- to meet his date with
09:18 9 the executioner. And we don't say that, I'm not
09:18 10 laughing about that. And I promise, it's not
09:18 11 entertaining, and it's not something that as many times
09:18 12 as I've said it in my career, it still puts a shudder in
09:18 13 me just saying those words, and it's true.

09:18 14 And I want to make sure, and Ms. Falco
09:18 15 will make sure that everybody knows it is the real
09:18 16 thing. And when we talk that way, does it -- does it
09:18 17 affect you? I know it wouldn't make you angry at us. I
09:18 18 understand that. But does it change anything that you
09:18 19 feel about capital punishment?

09:18 20 A. It does.

09:18 21 Q. Tell me how.

09:18 22 A. I have always been a proponent of capital
09:18 23 punishment.

09:18 24 Q. Sure.

09:18 25 A. Of death sentence. But when I look in terms of

09:19 1 what's happening in lieu of lack of evidence, it makes
09:19 2 me concerned. So I would, you know, I've always said,
09:19 3 yes, I could be on a jury that would convict a person of
09:19 4 murder and have them executed, but the evidence would
09:19 5 really have to prove it to me.

09:19 6 Q. I hope so. And I mean that as -- I mean that
09:19 7 from my heart. If anybody would think that we would
09:19 8 come in and want jurors that were going to make it easy
09:19 9 for us somehow, I mean, this is my -- this is my
09:19 10 community too, you know. This is my society.

09:19 11 And when I'm not a prosecutor, you can see
09:19 12 me in the ball field, just like you are and that kind of
09:19 13 thing. And if that's the reaction that came to you from
09:19 14 how we talk about that, then I did my job by saying
09:19 15 that.

09:19 16 A. Yeah, you did.

09:19 17 Q. You know, it's -- to me it's very interesting
09:20 18 when we think of capital punishment because we try, as
09:20 19 Americans, try to live our lives in a way that at least
09:20 20 doesn't do anybody any harm, and hopefully we do some
09:20 21 people good. I don't know you real well.

09:20 22 I know you from your questionnaire, but I
09:20 23 have a sense that you are -- you are somebody that would
09:20 24 help somebody that needed help. I don't know. I might
09:20 25 be all wrong, but I think most decent people want to

09:20 1 find the best in people.

09:20 2 We want to give people a break. We kind
09:20 3 of have an affection for the underdog, those kinds of
09:20 4 ideas a lot of times. And the truth is, when you come
09:20 5 into something like a capital punishment, we're not
09:20 6 doing the defendant any good by executing him in terms
09:20 7 of what he wants, I wouldn't guess. You know? I don't
09:20 8 know, I've never talked with him.

09:20 9 I don't get the impression that the
09:20 10 defendant wants to die. I don't feel that that's --
09:20 11 some may want to, but I don't get that impression here.
09:21 12 And in a lot of ways it's almost asking a jury to do
09:21 13 something unusual for them.

09:21 14 It's asking them to do something to
09:21 15 somebody that that person doesn't want to happen to
09:21 16 them. And when you sort of think about it, it doesn't
09:21 17 seem like a particularly kind thing, right?

09:21 18 A. Correct.

09:21 19 Q. So, with all that in mind, tell me why it is
09:21 20 that you favor capital punishment, and you've always
09:21 21 been a proponent of it?

09:21 22 A. When you take a life, you pay with a life.
09:21 23 Blanket statement, but there are always gray areas. And
09:21 24 those gray areas are: Was it done for self-defense?
09:21 25 Because I would have no problems with, if my life was in

09:21 1 danger, with shooting a gun. I would not, just for
09:21 2 self-preservation. And so that, you know, makes me,
09:21 3 instead of just saying it's black and white, there are
09:22 4 gray areas, and you have to look at all areas.

09:22 5 Q. Sure, sure. And you bring up a good point
09:22 6 because, truly, the way it works is we charge a
09:22 7 defendant with capital murder, that being the Grand
09:22 8 Jury. And that's not evidence of guilt because the
09:22 9 Grand Jury has a different control than the trial jury.

09:22 10 Their role is to determine whether or not
09:22 11 there should be an accusation, whether there should be a
09:22 12 trial. That's the role of the Grand Jury. And while
09:22 13 they are careful and decent people and sworn to do the
09:22 14 right thing, it's not like a trial.

09:22 15 For example, the defendant's not there,
09:22 16 normally. I can tell you, in this case he wasn't there.
09:22 17 The defense attorneys aren't there to try to
09:22 18 cross-examine the witnesses because it's a -- it's a --
09:22 19 it's a secure and secret proceeding, frankly. And
09:22 20 there's not a burden of proof on the State. The only
09:22 21 burden of proof is to determine whether or not there's
09:23 22 like probable cause. It's almost like a probable cause
09:23 23 decision.

09:23 24 Is there a reasonable likelihood that a
09:23 25 crime has been committed, and did this defendant do it?

09:23 1 And so that's why, when you come into court, you are
09:23 2 instructed that the Grand Jury indictment is no evidence
09:23 3 of guilt because it's a much lesser amount of evidence
09:23 4 than would be required by a jury for a conviction. Plus
09:23 5 if that were evidence of guilt, that would be more than
09:23 6 a presumption of innocence that all defendants have.

09:23 7 The fact that when we start out in the
09:23 8 beginning. Like if somebody said right now, what should
09:23 9 your vote be, based on what you've heard? Well, you've
09:23 10 heard nothing. So the vote has to be not guilty because
09:23 11 he's presumed innocent. Do you know that idea?

09:23 12 A. Correct.

09:23 13 Q. But the things that you bring up or what we
09:23 14 sometimes call defenses or justifications, and I want to
09:23 15 talk about them a little bit. If you are asleep at home
09:23 16 and got your family there, and you are happy enough, and
09:23 17 somebody breaks into your home, and you reasonably fear
09:23 18 for the safety of yourself or people there in the house,
09:24 19 our law provides that you are justified in -- in
09:24 20 shooting that person, in stabbing him or whatever you
09:24 21 do, whatever type of deadly force you choose to use.
09:24 22 You are justified in doing that, and it's called
09:24 23 self-defense, just like you said.

09:24 24 If self-defense applies, then you are not
09:24 25 quilty of any crime. You don't have to worry about what

09:24 1 the punishment issues are of any kind or death penalty
09:24 2 issues because you are as innocent of the crime as if
09:24 3 you would have never even been charged because
09:24 4 self-defense applies.

09:24 5 There's some other less well-known
09:24 6 defenses. Things like mistake of fact. I mean, if
09:24 7 you -- if you are scared. You holler: Get out of here.
09:24 8 I'm going to shoot, and you don't ever get an answer.
09:25 9 It's one of those tragic tragic things. You know,
09:25 10 shooting a family member. What you think is an
09:25 11 intruder, and you think you are threatened by the
09:25 12 intruder. If the jury thinks that's a reasonable
09:25 13 mistake for you to have made under all the
09:25 14 circumstances, you are not totally responsible. It's
09:25 15 called a mistake of facts.

09:25 16 And on the other hand, if you should have
09:25 17 known better, then you may be guilty of that crime or
09:25 18 certainly something less. Some other defenses that
09:25 19 might apply are insanity.

09:25 20 Under our law, if a person is insane at
09:25 21 the time of crime, that is, did not, as a result of
09:25 22 mental illness, have the ability to know right from
09:25 23 wrong in a legal sense, then that person is not guilty
09:25 24 of the crime because the mental disturbance prevented
09:25 25 him from being able to know right from wrong. And those

09:25 1 are all -- those are all defenses, some less popular
09:25 2 than others.

09:25 3 For most people the insanity defense is
09:25 4 very unpopular and is oftentimes believed to be some
09:26 5 type of artifice or trickery or something like that to
09:26 6 escape responsibility.

09:26 7 There can be some other circumstances.
09:26 8 You kind of hit on it. Like, insufficient evidence ends
09:26 9 up operating effectively like a defense. If the State
09:26 10 is unable to prove to you -- to your satisfaction beyond
09:26 11 a reasonable doubt the guilt of the defendant, the
09:26 12 defendant's to be found not guilty. And so those are
09:26 13 circumstances where you never even worry about
09:26 14 punishment issues.

09:26 15 Capital murder requires that you be
09:26 16 convinced beyond a reasonable doubt, at least in this
09:26 17 situation, either that there was a double homicide or
09:26 18 that there was a burglary-homicide or a robbery-
09:26 19 homicide and that the defendant did it, and we have to
09:26 20 convince you beyond a reasonable doubt.

09:27 21 If we do that, any problem finding him
09:27 22 guilty, if we convince you beyond a reasonable doubt
09:27 23 that he's guilty of that crime, would you have any
09:27 24 problem finding him guilty?

09:27 25 A. No.

09:27 1 Q. And why I ask that question, Ms. Bonner, is
09:27 2 because, let's face it, when we're in our living rooms
09:27 3 looking at what Timothy McVeigh did or those escaped
09:27 4 killers, what they did. Remember the ones that killed
09:27 5 the policeman over in Arlington in the robbery or
09:27 6 burglary, I guess it really was?

09:27 7 When we look at those kinds of cases, we
09:27 8 might say in our living rooms, we need to get really
09:27 9 tough on criminals, and we need to start executing
09:27 10 people like that. And we may mean it in our living
09:27 11 rooms.

09:27 12 I think you might understand what I mean
09:27 13 when I say, I bet it's a little different. Instead of
09:27 14 in the living room, you are in the courtroom right now.
09:27 15 And possibly you being one of those people that are
09:27 16 doing that? Does it seem different to you?

09:27 17 A. Very.

09:27 18 Q. I'll bet it seems real different now when we're
09:28 19 talking about arming up for war. I'll bet it would be
09:28 20 real different if you and I had a son that was going to
09:28 21 fly one of those planes than if we didn't, and we just
09:28 22 say we need to retaliate against who's done those
09:28 23 things. Would you agree with me on that?

09:28 24 A. Correct.

09:28 25 Q. It's hard for everyone when you are doing it.

09:28 1 And many people say: Well, I'm not really doing it.
09:28 2 It's the executioner that does it. It's the warden that
09:28 3 does it. But if you really think about it, everyone of
09:28 4 us, if we were involved in the process, we're all in it.
09:28 5 And we're all participants whether we, you know, the
09:28 6 warden can say, well, I'm not doing the execution. The
09:28 7 jury ordered it, or the Judge signed the death warrant.
09:28 8 But we're all -- we're all part of the process. Don't
09:28 9 you think?

09:28 10 A. Uh-huh.

09:28 11 Q. You indicated on your questionnaire, and you
09:29 12 circled No. 2, which is: I believe that the death
09:29 13 penalty is appropriate in some capital murder cases, and
09:29 14 I could return a verdict resulting in death in a proper
09:29 15 case.

09:29 16 And then you also indicated that you
09:29 17 believe life confinement in prison is appropriate in
09:29 18 some capital murder cases, and you could vote in a way
09:29 19 that would cause a life sentence depending on the
09:29 20 evidence. Do you still feel that way?

09:29 21 A. Yes.

09:29 22 Q. All right. And that's -- in a nutshell, that's
09:29 23 a big part of what the jury's responsibility is in a
09:29 24 capital murder case. It's, number one, to recognize
09:29 25 that no sentence should be automatic. In other words,

09:29 1 it should not -- the punishment sentence for capital
09:29 2 murder should not automatically be a life sentence. It
09:29 3 should not automatically be a death sentence. Rather,
09:29 4 it should be the decision of the jury based on evidence
09:29 5 which applies, and you've indicated you are open to both
09:29 6 aspects; is that correct?

09:29 7 A. Correct.

09:30 8 Q. It's interesting because your best argument in
09:30 9 favor of the death penalty and the best argument in
09:30 10 opposition to the death penalty actually seem to be at
09:30 11 least biblically inspired, if not -- if you weren't
09:30 12 actually thinking about the Bible when you said it: "An
09:30 13 eye for an eye" versus "Thou shalt not kill." They
09:30 14 certainly do have biblical roots. Do you agree with
09:30 15 that?

09:30 16 A. Uh-huh.

09:30 17 Q. I could look at your questionnaire and answer
09:30 18 my question, and it will save you time. Do you attend
09:30 19 any organized religious activity or synagogue?

09:30 20 A. Yes.

09:30 21 Q. Where do you go?

09:30 22 A. Saint Luke's United Community Methodist Church,
09:30 23 Dallas, Texas.

09:30 24 Q. Can you kind of get me directed to where that
09:30 25 might be?

09:30 1 A. Interstate 30 from downtown Dallas. To
09:30 2 interstate 30, heading towards Mesquite.

09:30 3 Q. Is that on the south side of 30?

09:31 4 A. Yes.

09:31 5 Q. Okay. I've seen it. I've never worshipped
09:31 6 there, but I've seen it.

09:31 7 A. Zan Holmes is the pastor.

09:31 8 Q. Do you recall your church ever having
09:31 9 discussions about capital punishment?

09:31 10 A. Not since I've been a member there.

09:31 11 Q. Okay. And I don't get an impression that it's
09:31 12 a regular topic in most faiths. Although there are some
09:31 13 religions that have an opposition to the death penalty.

09:31 14 And I know the Quakers, the Society of
09:31 15 Friends, they are opposed to it. I know it's largely a
09:31 16 belief that the Roman Catholic Church is opposed to the
09:31 17 death penalty. And that seems to be the case because
09:31 18 oftentimes the -- we get communications from the Vatican
09:31 19 here and there about executions. And that seems to me
09:31 20 to mean something about the Roman Catholic position.

09:31 21 You don't have an impression that your
09:31 22 church has a -- an opposition or even a supportive of
09:31 23 it? Do you have the impression they don't really get
09:32 24 involved in that one way or another?

09:32 25 A. I really don't have any feel for it at all.

09:32 1 Q. Okay. Okay. What do you think about the
09:32 2 notion about, "Thou shalt not kill"? Do you think that
09:32 3 applies to executions, do you feel like?

09:32 4 A. No. I think that applies to, if your life is
09:32 5 threatened, depending on circumstances. If you can walk
09:32 6 away from it, fine. If you can't then it's
09:32 7 self-preservation.

09:32 8 Q. Okay. You know, some people say that about the
09:32 9 death penalty. They say that in a kind of a -- it's
09:32 10 kind of like society's self-defense a lot of times.
09:32 11 People say that, you know, when a fellow comes into your
09:32 12 house and he's threatening your life, you have the right
09:32 13 to shoot him to protect yourself or your family. We
09:32 14 know that. That's self-defense.

09:32 15 And they say if you are not able to do
09:33 16 that and maybe he murders you and/or murders a family
09:33 17 member, and we catch him and arrest him and try him,
09:33 18 it's almost like a delayed self-defense on the part of
09:33 19 society.

09:33 20 It's like, well, when you go into
09:33 21 somebody's house and do a murder that can cost you your
09:33 22 life and the homeowner wasn't able to do that, but we
09:33 23 are -- do you ever see any connection to that as
09:33 24 self-defense by society?

09:33 25 A. No.

09:33 1 Q. Some people -- some people view capital
09:33 2 punishment like it's like a deterrent. It's kind of
09:33 3 like, let this be a warning to other people that are
09:33 4 going to do that? But you don't see that as a big
09:33 5 reason for capital punishment?

09:33 6 A. It hasn't worked so far. So, no, I don't see
09:33 7 it as a deterrent.

09:33 8 Q. You make a point. You certainly make a point.
09:33 9 What about protection of society? Does that seem to be
09:33 10 served by -- by capital punishment?

09:33 11 A. To some degree, yes.

09:33 12 Q. Tell me what you are thinking when you say,
09:33 13 yes.

09:34 14 A. If this is a person that is likely to do it
09:34 15 again, then it is protection. It's the right of society
09:34 16 to -- to execute.

09:34 17 Q. Okay. I understand that we have a burden of
09:34 18 proof. And my questions are going to start focusing in
09:34 19 on the punishment phase. And I always want to tell
09:34 20 jurors that I'm not short changing the idea that we have
09:34 21 to prove to you beyond a reasonable doubt he's guilty of
09:34 22 capital murder.

09:34 23 The idea of this individual discussion is
09:34 24 really to focus on the punishment issues. And so let's
09:34 25 just have an agreement that I know I've got to convince

09:34 1 you by lots of important and persuasive evidence of the
09:34 2 defendant's guilt. And I don't take that responsibility
09:34 3 lightly.

09:34 4 I believe I can do it, but I don't take it
09:34 5 lightly. But I'm not skipping over a defendant's rights
09:34 6 when I talk about the punishment issues, if you follow
09:34 7 what I'm saying.

09:35 8 A. Yes.

09:35 9 Q. I want to move on, but I'm going to assume for
09:35 10 our questions that I've done what the law requires, and
09:35 11 that's convince you beyond a reasonable doubt. And you
09:35 12 agree with my assessment of the evidence and you voted
09:35 13 that way. When you get to the punishment phase of the
09:35 14 trial, which is -- which in many ways is a second --
09:35 15 it's another trial in many ways, but there are some
09:35 16 differences.

09:35 17 For example, we don't go through a second
09:35 18 jury selection. It will be the same jury for both. And
09:35 19 it's -- you don't disregard the evidence you heard at
09:35 20 the first part of the trial. Everything you heard at
09:35 21 the first part of the trial carries over into the second
09:35 22 part, plus anything else that might be given to you.
09:35 23 And most times there is additional evidence at the
09:35 24 punishment stage of the trial from at least one side and
09:35 25 sometimes from both sides.

09:35 1 Neither one of us has to put on any
09:35 2 evidence at the punishment phase of the trial. And even
09:35 3 though neither one of us put on any evidence, both sides
09:36 4 could still have answers, answered according to the way
09:36 5 they think it should be answered because the law
09:36 6 provides that the crime itself, once you found the
09:36 7 defendant guilty of may, if the jury chooses, be
09:36 8 sufficient to fully answer both of the special issues
09:36 9 all by itself.

09:36 10 If you want, Ms. Bonner, take just a
09:36 11 moment and read that first question, just to yourself,
09:36 12 those four lines. Okay? In a -- in a kind of a
09:36 13 complicated way, that question does really talk about
09:36 14 protection of society. If you look at what it's saying
09:36 15 because it's asking the jury to focus on whether there
09:36 16 is a probability that the defendant would commit
09:36 17 criminal acts of violence that would constitute a
09:36 18 continuing threat to our society. And that society can
09:36 19 be defined in a lot of different contexts or ways.

09:37 20 For example, sometimes people were
09:37 21 surprised by the notion that society can include prison
09:37 22 society. Because what -- when -- I don't know about
09:37 23 you, but when I think of society, I think of stuff like
09:37 24 the schools, the libraries, the churches, the -- I kind
09:37 25 of think about the free-world society where you and I

09:37 1 live our lives. Do you kind of feel that way?

09:37 2 A. Yes.

09:37 3 Q. Okay. And yet, you know, there are parts of
09:37 4 society that maybe you and I aren't in because of our
09:37 5 situations, but they are still a society. You and I
09:37 6 aren't in the hospital. We could be well right now. We
09:37 7 aren't there, and yet hospitals are of course a part of
09:37 8 our society.

09:37 9 I hope it's a long time before you and I
09:37 10 need a nursing home, but we may some day. We'll be in
09:37 11 that situation. That's part of society even though it's
09:37 12 not a place that right now we belong to. It's still
09:37 13 part of society.

09:38 14 Same thing with the penitentiary or jail.
09:38 15 It may not be a place that you and I operate in at the
09:38 16 moment, and let's hope it never is. But still, it is
09:38 17 part of society. We build the prisons. We pay for it.
09:38 18 We have courts, prosecutors, defense lawyers that have
09:38 19 trials before people go there. And when people in the
09:38 20 penitentiary get sick, we bring in doctors who are from
09:38 21 the outside world. And so can you see how it's fair to
09:38 22 say that prison is a part of society that can be
09:38 23 considered?

09:38 24 A. Yes.

09:38 25 Q. And what that question really asks you to do,

09:38 1 it seems, is to take a look at the defendant's character
09:38 2 and personality right now and test that in terms of
09:38 3 its -- of its safety or its danger, the personality of
09:38 4 the character of the person. And that means you can
09:38 5 look and say, well, would this person be safe living
09:39 6 down the street?

09:39 7 Would they be somebody that I would be
09:39 8 concerned about being a continuing threat to people
09:39 9 where I live? Would I be concerned for my children if
09:39 10 he were driving the school bus? Would I be concerned in
09:39 11 all these different contexts? Is this somebody who
09:39 12 could be safe in our society or somebody who would
09:39 13 probably be dangerous?

09:39 14 But you can also consider the penitentiary
09:39 15 too, because you can -- you can say to yourself: What
09:39 16 about in the penitentiary? Would this person be
09:39 17 dangerous in the penitentiary? Does he have a dangerous
09:39 18 character or personality?

09:39 19 And the reason you can do both is because,
09:39 20 even if the defendant gets a life sentence, even if you
09:39 21 answer that question no or something else occurs that
09:39 22 causes a life sentence and he goes to the
09:39 23 penitentiary -- first of all, there's no assurance he's
09:39 24 going to stay there forever because we don't have life
09:40 25 without parole in Texas. People can be pardoned.

09:40 1 People can escape. Those things can happen. And so
09:40 2 that's why you kind of look at it in a different context
09:40 3 of our society. Does that make sense?

09:40 4 A. Yes.

09:40 5 Q. That question kind of asks us to predict the
09:40 6 future. And I don't know how good you are at that. I
09:40 7 know that's not -- that's not a precise science by any
09:40 8 means because I guess if we could all predict the
09:40 9 future, we would all be rich in the stock market.

09:40 10 We'll buy one day when it's going to go up
09:40 11 the next day, and we'd sell it when it goes down. And
09:40 12 if we were good at predicting the future, we'd get rich,
09:40 13 and I don't think most of us can do that. But that only
09:40 14 requires us to make probability predictions on the part
09:41 15 of the defendant. Is that something you could do if
09:41 16 given evidence, that you could answer that question?

09:41 17 A. Yes.

09:41 18 Q. And why I say that because some people say,
09:41 19 well, I might need a psychiatrist or some medical expert
09:41 20 to come in and tell me about the medical science of
09:41 21 being dangerous and a medical science of personality.

09:41 22 And then other people say, well, I would
09:41 23 listen to anything that might be said by a psychiatrist,
09:41 24 but I don't need a psychiatrist to understand whether a
09:41 25 person is probably going to be dangerous or not. I need

09:41 1 to look at that person's history. I need to look at the
09:41 2 crime he committed. I need to see what other things
09:41 3 he's done in his life other than that crime. I need to
09:41 4 know about what things led up to him committing that
09:41 5 crime. What was his personality like before that might
09:41 6 have contributed to that?

09:41 7 And I need to have some understanding of
09:41 8 what he's going to be like in the future, but I don't
09:41 9 need a psychiatrist. How do you feel about that? Do
09:42 10 you think psychiatric evidence is crucial to you, or do
09:42 11 you think it would be helpful or not helpful?

09:42 12 A. Probably would be helpful.

09:42 13 Q. And it's very possible that both sides will
09:42 14 have psychiatrists. And as you can imagine, the State's
09:42 15 psychiatrist would tend to say he's going to be
09:42 16 dangerous. And the defense psychiatrist will say he's
09:42 17 probably not going to be dangerous. And that doesn't
09:42 18 make them liars. It doesn't even make them bad doctors.

09:42 19 It's -- people can look at situations
09:42 20 according to, you know, who they work for. Who has
09:42 21 hired them, those kinds of things. Do you think you'd
09:42 22 listen to that evidence and answer the question based on
09:42 23 all the things that you thought was important?

09:42 24 A. Yes.

09:42 25 Q. So those people are critical of that question

09:42 1 and say nobody can predict the future. What do you
09:42 2 think about that -- their position?

09:42 3 A. I think they are wrong. Because I think you
09:42 4 can look at past history, and you can get a tendency for
09:43 5 what someone is prone to do or not do. And more than
09:43 6 likely, they are going to do it. I mean, if there isn't
09:43 7 some deterrent along the way.

09:43 8 Q. Okay. And you are very right because we use
09:43 9 that term probability, and that might mean different
09:43 10 things to different people. But it means more than a
09:43 11 possibility. All right?

09:43 12 A. All right.

09:43 13 Q. It's possible it's going to snow this
09:43 14 afternoon. I mean, I'm sure there are circumstances
09:43 15 where that could happen. But that's not probable and
09:43 16 nobody would expect to get snow early in September or
09:43 17 mid-September in Texas, right?

09:43 18 A. Correct.

09:43 19 Q. And so when you use that term probability, a
09:43 20 lot of people say probability means more likely than
09:43 21 not. That's the usual term that people use. Like, if I
09:43 22 asked you if you are going to go to the party Friday
09:43 23 night, and you told me, "probably so." In my mind, I
09:43 24 think it's more likely that you are going to be there
09:43 25 than not. Do you agree with that?

09:43 1 A. Yes.

09:43 2 Q. And we don't think about it too much, but we do
09:44 3 that everyday in our lives. We make -- we look at
09:44 4 situations, and we decide what's probable. It's like
09:44 5 risk assessment. We do that everyday and don't even
09:44 6 think about it.

09:44 7 You ever had a friend that is getting
09:44 8 married, and you just in your heart you are pretty sure
09:44 9 the person she's marrying or he's marrying, it ain't
09:44 10 going to work out? You don't see that working out?
09:44 11 Have you ever had that happen?

09:44 12 A. Yes.

09:44 13 Q. And some of that could be history. I mean, if
09:44 14 you find out the guy that she's marrying has been
09:44 15 married five times before, that's some history that
09:44 16 helps you to think about that that probably isn't going
09:44 17 to work out the sixth time, right?

09:44 18 A. Correct.

09:44 19 Q. And sometimes it does. But most of the time
09:44 20 we -- we can be right. When we are objective looking at
09:44 21 it, we can be right. Don't you think?

09:44 22 A. Yes.

09:44 23 Q. Now, we have to prove the answer to that
09:44 24 question is yes, beyond a reasonable doubt. And we have
09:45 25 to convince 12 people that the answer to that question

09:45 1 should be yes. And that's based on not only the first
09:45 2 part of the trial, but anything that's brought in in the
09:45 3 second part of the trial.

09:45 4 The defense doesn't have to do anything in
09:45 5 terms of disproving that at all. Just like they didn't
09:45 6 have to prove their innocence. They don't have to do a
09:45 7 single thing on that question. And the burden never
09:45 8 shifts.

09:45 9 And the fact that they don't offer
09:45 10 evidence that he's not dangerous isn't somehow a bad
09:45 11 thing by them or should not be held against them. And
09:45 12 furthermore, the defendant -- you know about the right
09:45 13 to not testify? Do you understand that?

09:45 14 A. Correct.

09:45 15 Q. The defendant has the right not to testify to
09:45 16 the first part of the trial, and he has a right not to
09:45 17 testify to the second part of the trial. And that can't
09:45 18 be used as evidence either. Are you with me?

09:45 19 A. Yes.

09:45 20 Q. And you wouldn't hold that against the
09:45 21 defendant if he's taking advantage of the same right you
09:45 22 and I have?

09:45 23 A. Right.

09:45 24 Q. If we prove to you beyond a reasonable doubt
09:45 25 that the answer to this question should be yes, then we

09:45 1 have another question for you. If 10 or more of the
09:46 2 jury believes the answer to that question is no, that
09:46 3 there is not a probability of committing criminal acts
09:46 4 of violence, do you know what -- do you know what the
09:46 5 effect of a no answer to this question would be?

09:46 6 A. Yes. Yes, I know.

09:46 7 Q. A life sentence.

09:46 8 A. Right.

09:46 9 Q. I know you know. And you are absolutely right,
09:46 10 and that is automatic. As soon as that no answer by 10
09:46 11 or more people comes back, the trial is over. And the
09:46 12 defendant begins serving a life sentence, which in Texas
09:46 13 means 40 years before eligibility of parole. If the
09:46 14 answer to the question is yes, then we have another
09:46 15 question, the so-called mitigation question.

09:46 16 If you would, Ms. Bonner, just take a
09:47 17 moment and read that question to yourself, and let me
09:47 18 know when you are done.

09:47 19 That question really asks you to take one
09:47 20 last look at the evidence, that's if you've answered
09:47 21 that first question yes. And it asks you to take one
09:47 22 last look at the evidence, not that you haven't seen it
09:47 23 at least twice before -- once at the guilt-innocence
09:47 24 part of the trial and again maybe at the punishment part
09:47 25 of the trial.

09:47 1 That question asks you to actually take
09:47 2 another look at the evidence with a kind of different
09:47 3 approach to it, kind of a fresh approach to the
09:47 4 evidence. We're not worried about whether he's a
09:47 5 capital murderer anymore because that's already been
09:47 6 decided. We're not worried about whether he's going to
09:47 7 be a continuing threat to society because that's already
09:47 8 been decided.

09:47 9 Now, we're worried about whether, under
09:47 10 all the circumstances that -- that you have seen in the
09:48 11 case, whether a death sentence is inappropriate, whether
09:48 12 a death sentence really shouldn't happen. That's what
09:48 13 that question is really concerned with. It's not just
09:48 14 open-ended. It's not one of those: Do you, ladies and
09:48 15 gentlemen, do what you feel you want to do. It's not
09:48 16 that open-ended because it still requires you to look,
09:48 17 to consider evidence and to weigh evidence just like the
09:48 18 other part of the trial. But there isn't any burden of
09:48 19 proof that tells you you had to weigh the evidence.
09:48 20 It's up to your individual idea of how much is enough.

09:48 21 So, let's look at it for a second. Maybe
09:48 22 we can take it just part by part. Whether, taking into
09:48 23 consideration all the evidence -- well, that's helpful.
09:48 24 All the evidence, but you already heard that, including
09:48 25 the circumstances of the offense. That's what you found

09:48 1 him guilty of -- the defendant's character and
09:49 2 background and the personal moral culpability of the
09:49 3 defendant. Taking all that into account, and you are
09:49 4 asking whether there is a sufficient mitigating
09:49 5 circumstance or circumstances to warrant that a sentence
09:49 6 of life imprisonment rather than a death sentence be
09:49 7 imposed.

09:49 8 Now, I'll bet everybody has something
09:49 9 about them that's mitigating. In the sense that
09:49 10 mitigating evidence is probably evidence of things that
09:49 11 haven't been great in the defendant's life, things that
09:49 12 have gone wrong. Relationships that have let a person
09:49 13 down. Substance abuse, things like that that may or may
09:49 14 not be mitigating to people. And I don't -- I don't say
09:49 15 it critically when I say that mitigation evidence is
09:49 16 generally sympathy-type evidence. I'm not being
09:49 17 critical on it. That's it's nature.

09:50 18 And what I'm saying is, I think all of us
09:50 19 have stuff that we could point to, if we were in
09:50 20 trouble, to try to explain in a sympathy kind of way why
09:50 21 we made the choices that we made that got us into what
09:50 22 you have. Do you agree with me on that?

09:50 23 A. Yes.

09:50 24 Q. You know, first of all, nobody ever has a
09:50 25 perfect life. I mean, obviously. But even more than

09:50 1 that, I've known people that have grown up and had just
09:50 2 awful lives. Have you ever known anybody just as a
09:50 3 child or a teenager that their life was just really bad?

09:50 4 A. Yes.

09:50 5 Q. And I absolutely can see the influence that
09:50 6 some of those things can have on how people do a lot of
09:50 7 things. I can see if you grow up with nobody telling
09:50 8 you you are good or worthwhile or important, I can see
09:50 9 how it's real hard to somehow dig down and end up in
09:51 10 medical school, you know?

09:51 11 It sounds real good that everybody can go
09:51 12 to medical school in our society. But if you've got
09:51 13 nobody telling you that you are worthy, it's pretty hard
09:51 14 for somebody to get there. Do you know what I mean?

09:51 15 A. I don't agree with that, but I know what you
09:51 16 mean.

09:51 17 Q. Okay. Do you -- don't you think background has
09:51 18 something to do with how people turn out or maybe you
09:51 19 don't?

09:51 20 A. Yeah. Background does play a part.

09:51 21 Q. Okay, okay. Well --

09:51 22 A. But it doesn't control.

09:51 23 Q. I'm with you. I'm with you. Have you known
09:51 24 some people that have had really bad lives growing up
09:51 25 and have made something of themselves that we could all

09:51 1 be proud of. Do you know people like that?

09:51 2 A. Yes.

09:51 3 Q. Have you ever known anybody that had a pretty
09:51 4 good life growing up and didn't turn out very good at
09:51 5 all?

09:51 6 A. Yes.

09:51 7 Q. What do you think's the difference? How -- how
09:52 8 do bad -- how do people overcome bad backgrounds and
09:52 9 squander good backgrounds? How do they do that?

09:52 10 A. I think it's their own self-worth value they
09:52 11 have for themselves and, really, a morality. So, you
09:52 12 know, circumstances only play a part.

09:52 13 Q. Okay. Okay. Like I said, there are no wrong
09:52 14 answers. I'm not quarreling with you about it. What
09:52 15 kinds of things do you feel that you have sympathy for
09:52 16 people growing up? Kind of give me an idea of what --
09:52 17 what things that go wrong seem like big things to you.
09:52 18 What are some things that matter?

09:52 19 A. My background is education.

09:52 20 Q. Okay.

09:52 21 A. I've been in the school system. So I have had
09:52 22 children from all walks of life, and I can look at
09:53 23 children that come from very poor families. I come from
09:53 24 a single-parent home. That may play a part. But that
09:53 25 does not make a person's -- it doesn't make, show a

09:53 1 person's worth or what they determine for themselves
09:53 2 what they are going to do.

09:53 3 Q. Okay.

09:53 4 A. They may be in a bad situation, but what do you
09:53 5 do with that situation to overcome it?

09:53 6 Q. Okay.

09:53 7 A. So that's why I say background; it could be low
09:53 8 socioeconomic. It could be alcoholism, drug abuse,
09:53 9 whatever, divorced parents. But that does not -- that
09:53 10 plays a part in the makeup of the child, but that does
09:53 11 not determine what happens to that child.

09:53 12 Q. Okay.

09:53 13 A. So I don't know if I answered your question or
09:53 14 not.

09:53 15 Q. I think you did. I think you did answer my
09:53 16 question. You are not telling me that you don't have
09:54 17 compassion for those children that are sexually abused
09:54 18 or got drug dealers living in their house? You are not
09:54 19 telling me that?

09:54 20 A. No. And I used to tell my students, there are
09:54 21 problems at home. I can have empathy with those
09:54 22 problems, but when you hit this schoolhouse, here is
09:54 23 what I expect of you. And I will work with you to help
09:54 24 buffer whatever those outside influences of you, but
09:54 25 here's my expectations of you.

09:54 1 Q. Give me some examples of how you buffer to help
09:54 2 kids that have -- don't have it quite right at home?
09:54 3 How have you done some of that?

09:54 4 A. I'm going to give you a for instance. One of
09:54 5 my student's mother was in prison, was being raised,
09:54 6 quote raised. Child welfare never came in to remove the
09:54 7 children from the situation, but she ran one of the
09:54 8 largest prostitution rings in my neighborhood.

09:54 9 This is in east Texas. And I would have
09:54 10 no problems going over to the house to get her to sign
09:55 11 forms. And I would say, yes, I am assuming this is the
09:55 12 legal guardian even though the Court's never assigned
09:55 13 her as legal guardian because I needed this child to be
09:55 14 on free or reduced lunch.

09:55 15 If that meant I walked through places
09:55 16 where I had no business being to get forms signed or to
09:55 17 get health insurance or to get medical attention for a
09:55 18 child. That's just something that you did so the child
09:55 19 had it so there were safe hours for that child.

09:55 20 Q. Okay. Okay. And I think you understand what I
09:55 21 mean when I say everybody probably has things that they
09:55 22 could point to which most people would be sympathetic
09:55 23 for. You were obviously sympathetic enough of that
09:55 24 child's situation to take that extra step and maybe
09:55 25 endanger yourself some?

09:55 1 A. Stupidly, yes.
 09:55 2 Q. You say that now.
 09:55 3 A. Oh, yeah.
 09:55 4 Q. But you might do it again?
 09:55 5 A. Probably, probably.
 09:55 6 Q. And you did that out of compassion and
 09:56 7 realizing that it wasn't quite the same level feel for
 09:56 8 that kid as it might be for some of other students; is
 09:56 9 that true?
 09:56 10 A. Yeah. I would say it's 50-50.
 09:56 11 Q. You'd rather have the mom come in and sign the
 09:56 12 forms and been there with you?
 09:56 13 A. Of course, of course.
 09:56 14 Q. What about grading? Would you ever make any
 09:56 15 adjustments in your grading for kids that had just all
 09:56 16 hell going back at their houses? Would you ever make
 09:56 17 any adjustments that way?
 09:56 18 A. The only adjustment I'd make is if I had a
 09:56 19 child who did not sleep that night. He got to sleep,
 09:56 20 and then he took the test later on during the day
 09:56 21 or the next day. That would be the only type of
 09:56 22 adjustment that I would do; otherwise, he's held to
 09:56 23 that same standard as everybody else. That's those
 09:56 24 gray areas, so...
 09:56 25 Q. Now, let's revisit this question again because

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09:56 1 it doesn't say, of course, it doesn't say: Does he have
 09:57 2 enough sympathetic stuff growing up that we're going to
 09:57 3 excuse him? It doesn't say: Does he have enough
 09:57 4 sympathetic stuff going on that we're going to make it a
 09:57 5 defense and turn him loose? Because we're not talking
 09:57 6 about self-defense or mistake or insanity, those things
 09:57 7 I talked about before.

09:57 8 We don't get to that question if there
 09:57 9 were defenses or if it was an accident or if we got the
 09:57 10 wrong guy killed. We don't ever get to that question
 09:57 11 because that's not guilty. That question is asking of
 09:57 12 the jurors, and it's our law, and the jurors would be
 09:57 13 instructed to consider that.

09:57 14 That's asking whether, taking all of the
 09:57 15 circumstances into evidence -- in the evidence,
 09:57 16 including his character and background and his moral
 09:57 17 culpability, whether looking at all of that there's
 09:57 18 sufficient amount of that that makes you think that a
 09:57 19 life sentence rather than a death sentence is imposed.

09:58 20 What do you think about -- first of all,
 09:58 21 what do you think about that concept, giving the jury,
 09:58 22 because I think that question is for the benefit of the
 09:58 23 jury. It helps the defendant perhaps, but it's really
 09:58 24 for the jury to have that -- that comfort of knowing
 09:58 25 that they've done the right thing, whichever way they

09:58 1 do, death sentence or life sentence. What do you think
 09:58 2 about having such a question available to the jury?
 09:58 3 A. Well, it needs to be available because they
 09:58 4 would need to weigh it.
 09:58 5 Q. Okay. Kind of in connection with what you've
 09:58 6 been saying, and I agree with you. It doesn't matter
 09:58 7 how awful your background is, but you are still -- that
 09:58 8 doesn't excuse murdering other people for sure?
 09:58 9 A. Correct.
 09:58 10 Q. Right?
 09:58 11 A. Correct.
 09:58 12 Q. But we're not talking about excuse. Do you
 09:58 13 understand how there can be some circumstances where a
 09:58 14 life sentence because the person's background is the
 09:58 15 right thing to do? Do you believe that it is?
 09:58 16 A. Yes. Because the life sentence may be worse.
 09:59 17 Q. All right. But even if it's not worse, let's
 09:59 18 just say it's better. Let's say, and I guess that
 09:59 19 depends on what we think. The question doesn't say: Do
 09:59 20 the worst to the defendant. Well, you know what? You
 09:59 21 know, maybe it does.
 09:59 22 Maybe you could answer that question and
 09:59 23 say, yeah, there is. You know, taking all that stuff
 09:59 24 into consideration, a life sentence rather than the
 09:59 25 death sentence is the right thing to do.

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09:59 1 And maybe what you are really saying is,
 09:59 2 that's the worst thing to do. And maybe you can do that
 09:59 3 with that question. Because it doesn't -- it doesn't
 09:59 4 say: Do the worst or the best for the defendant. It
 09:59 5 just says, whether under all those circumstances life
 09:59 6 rather than death is the proper thing to do, and I never
 09:59 7 really thought of it that way. But I understand what
 09:59 8 you are saying. It's the first time I ever thought of
 09:59 9 that, and I didn't.

09:59 10 I think most people would say that
 10:00 11 question -- I think most people in our society,
 10:00 12 Ms. Bonner, would think that a life sentence is less
 10:00 13 than a death sentence. I don't know how you and I would
 10:00 14 feel if you were sitting at the defense table. But most
 10:00 15 people think it's less, and that's kind of why that
 10:00 16 mitigation thing comes up. The idea is: Is there
 10:00 17 enough lessening evidence to make a life sentence, the
 10:00 18 lesser sentence, the right thing to do?

10:00 19 Do you see how that question could be
 10:00 20 asking about a life sentence even if that life sentence
 10:00 21 is a lesser punishment than death? Do you see the
 10:00 22 notion that there may be circumstances in the background
 10:00 23 and in the crime that make a jury feel that a life
 10:00 24 sentence is the right thing rather than death?

10:00 25 A. Well, I can see why the question is being

10:00 1 asked.
 10:00 2 Q. Okay. Well, are you able -- do you believe you
 10:00 3 are the kind of a juror, the potential juror, that could
 10:00 4 answer that question fairly?

10:01 5 A. Yes.

10:01 6 Q. Okay. In other words, you -- depending on what
 10:01 7 evidence was presented to you, your answer to that
 10:01 8 question might be yes or it might be no?

10:01 9 A. Correct.

10:01 10 Q. Why do you think -- why do you think people
 10:01 11 start taking drugs? We -- you -- I can't imagine how
 10:01 12 many times you in your school tell kids: Don't do
 10:01 13 drugs. You and I know what -- how it's going to end up.
 10:01 14 The way it always ends up. Why do they do it anyway?

10:01 15 A. Escapism. Peer -- I can't even say peer
 10:01 16 pressure. It's just a matter of it's what they want to
 10:01 17 do because society has said it's a no-no.

10:01 18 Q. Do you think we overdo it? Do you think we're
 10:01 19 making it such a taboo that it almost makes it
 10:01 20 interesting to kids?

10:01 21 A. In some points, yes.

10:01 22 Q. Is there an excuse for becoming addicted to
 10:02 23 drugs, in your mind?

10:02 24 A. No.

10:02 25 Q. Because some of those drugs they take say one

10:02 1 hit on them will make you real vulnerable to addiction.
 10:02 2 And even if that's true, is that an excuse?

10:02 3 A. No.

10:02 4 Q. How about once you become addicted, and we know
 10:02 5 what that does to your mind and your judgment and makes
 10:02 6 you aggressive, those kinds of things. Is that an
 10:02 7 excuse?

10:02 8 A. No.

10:02 9 Q. Who are your heroes?

10:02 10 A. Bill Clinton. William Jefferson Clinton is one
 10:02 11 of my heroes.

10:02 12 Q. Tell me why.

10:02 13 A. I'm a baby boomer. And a very intelligent man.
 10:02 14 Too smart for his own good. Had displayed an awful lot
 10:02 15 of wisdom, and just really didn't know how to curve
 10:03 16 things so that they would be acceptable by society and
 10:03 17 home, but I like him.

10:03 18 I think, as a minority, an African-
 10:03 19 American female, he's the first person in as a President
 10:03 20 that I think that a minority could relate to, partly
 10:03 21 because of his background.

10:03 22 Q. Did you ever meet him?

10:03 23 A. Yes.

10:03 24 Q. I had a sense that you might have. Tell me
 10:03 25 where.

10:03 1 A. National Safety Council Meeting, Washington,
 10:03 2 D.C. We had a major school shooting in Longview, and so
 10:03 3 I was part of a safety committee and worked with
 10:03 4 National School Safety out of California.

10:03 5 Q. Did you get your picture taken?

10:03 6 A. No. Rubbed shoulders though.

10:04 7 Q. Now, you've indicated that you don't believe
 10:04 8 the death penalty is applied fairly in Texas. And I
 10:04 9 think your explanation was the majority of death row
 10:04 10 inmates are minorities that may have not had adequate
 10:04 11 legal representation.

10:04 12 A. Correct.

10:04 13 Q. And of course that was kind of at the time an
 10:04 14 attitude question. But I don't think anything we've
 10:04 15 done has probably addressed that issue anyway?

10:04 16 A. No, no.

10:04 17 Q. What affect does that seem to you now? Does
 10:04 18 that seem to have any affect on how you would view the
 10:04 19 evidence in this particular case?

10:04 20 A. No.

10:04 21 Q. Well, that could be for a couple of reasons.
 10:04 22 Tell me, if you think that's generally the situation,
 10:04 23 why would it not affect you here?

10:04 24 A. It would -- it really would depend on what
 10:04 25 evidence is presented during the case, and I would view

10:04 1 the case as this is now and what's happening, not in
 10:05 2 lieu of death row sentences that have been overturned
 10:05 3 because of DNA evidence.

10:05 4 Q. Okay. Okay. You've always felt the same about
 10:05 5 the death penalty as you do now. You indicate you are
 10:05 6 about a 5 on a 10-point scale? Would that still apply,
 10:05 7 or is that an 8?

10:05 8 A. Probably, probably 5, middle of the road. And
 10:05 9 it really depends on the circumstances of the crime.

10:05 10 Q. Okay. Okay. "In your opinion, what does the
 10:06 11 death penalty say about American culture?" "We are a
 10:06 12 throw-away society and do not do enough to deter violent
 10:06 13 acts." Tell me a little bit more about what that means.

10:06 14 A. And I'm speaking from my own background as an
 10:06 15 educator. I have had children that we've -- I could say
 10:06 16 when I look at a second grader and the actions that the
 10:06 17 second grader would take, I would be able to say: This
 10:06 18 child is going to be doing these things when they became
 10:06 19 a junior high, a middle school student or when they left
 10:06 20 school because we have nothing in place to help that
 10:06 21 family, the culture, the environment the child is raised
 10:06 22 in to change the pattern that was established.

10:06 23 And I look in terms of our society. We're
 10:07 24 building more prisons. It's not deterring crime. We're
 10:07 25 still having murders committed, breaking and entering.

10:07 1 I don't see anything that's changing the persons who are
 10:07 2 committing the crime. So as a society, I think we need
 10:07 3 to go back and look at what's happening from the very
 10:07 4 very beginning part of our young offenders.

10:07 5 Q. Okay.

10:07 6 A. Because our young offenders become our major
 10:07 7 offenders.

10:07 8 Q. That's kind of getting back to what I'd asked
 10:07 9 you about earlier about background and society's
 10:07 10 failings. Is that still consistent with what you said
 10:07 11 earlier, about it's still a responsibility even if
 10:07 12 society is not doing enough for them?

10:07 13 A. It's up to the individual. It's an individual
 10:07 14 decision on what you are going to do and how you turn
 10:07 15 out. You know, a background plays a part. But if you
 10:07 16 choose not to break that cycle yourself, you know,
 10:07 17 that's self decision.

10:08 18 Q. I'm trying to figure out what this means
 10:08 19 exactly. You say you are a --

10:08 20 A. I did a general blanket statement.

10:08 21 Q. Right. I'm just -- I just want to make sure I
 10:08 22 understand.

10:08 23 A. Uh-huh.

10:08 24 Q. It seems like what you are saying is, and
 10:08 25 probably we'd all agree, if we could break some of these

10:08 1 risk factors early on, we could probably use a lot of
 10:08 2 that money we use for prisons more effectively dealing
 10:08 3 with second graders than dealing with 18-year-olds or
 10:08 4 something like that.

10:08 5 A. Yes.

10:08 6 Q. And let's assume you are right. Is that -- the
 10:08 7 fact that we're not doing that, you still aren't saying
 10:08 8 that's not that person's responsibility, even though it
 10:08 9 could have been done better by us to help him be less
 10:08 10 risky?

10:08 11 A. It is still the individual's decision --

10:09 12 Q. Okay.

10:09 13 A. -- on what they do.

10:09 14 Q. Now, you indicated on your questionnaire your
 10:09 15 daughter used to be a public defender in Florida?

10:09 16 A. She is a public defender.

10:09 17 Q. I apologize. Okay. Had friends or associates
 10:09 18 who are attorneys. Yes. Daughter is a public defender
 10:09 19 in Florida. What county?

10:09 20 A. West Palm Beach.

10:09 21 Q. And then you have cousins who are criminal
 10:09 22 lawyers in New York and Virginia; is that right?

10:09 23 A. Correct.

10:09 24 Q. I know you talk with your daughter a lot about
 10:09 25 her work, right? Or I think I know you do, right?

10:09 1 A. In fact, I've called her several times about
 10:09 2 the questionnaire because that -- I was very concerned
 10:10 3 with the questionnaire.

10:10 4 Q. Tell me why.

10:10 5 A. I've been called to jury duty, and I've always
 10:10 6 been excused. And then when I had to come back, and I
 10:10 7 had to fill out this 25-page questionnaire, and the
 10:10 8 questions that were asked, I felt they were extremely
 10:10 9 personal, and it concerned me. So I called her to ask
 10:10 10 if this was a procedure that normally took place. And
 10:10 11 she told me, "Oh, yeah, standard procedures."

10:10 12 Q. I mean, yeah. I know it's -- I've never had to
 10:10 13 fill one out, but I know what you are saying. For
 10:10 14 whatever it's worth, given the gravity of this kind of a
 10:10 15 charge, that's what this whole process is about.

10:10 16 A. Right.

10:10 17 Q. For both of us to try to get to know you about
 10:10 18 how you are probably going to view the evidence. What
 10:10 19 about your cousins? Do you talk with them much about
 10:10 20 their work?

10:10 21 A. We had a family wedding over Labor Day, and we
 10:11 22 talked, yes. So both of them were there.

10:11 23 Q. Did you tell them what you might be involved
 10:11 24 in?

10:11 25 A. Yes.

10:11 1 Q. What did they have to say?

10:11 2 A. They just laughed and said, "They are going to
 10:11 3 excuse you." And I said, "I know."

10:11 4 Q. Well, it hadn't happened yet.

10:11 5 A. I know.

10:11 6 Q. We don't give you that choice, of course,
 10:11 7 Ms. Bonner. But if you had a choice, would you rather
 10:11 8 be on this jury or off it?

10:11 9 A. Off.

10:11 10 Q. Tell me why.

10:11 11 A. When I found out that it was a capital murder
 10:11 12 case, it really is going to make me sit back and
 10:11 13 question things that I have always been a proponent of.

10:11 14 Q. Uh-huh.

10:11 15 A. It's one thing to say something, but it's
 10:11 16 another thing to sit there and be part of a panel that
 10:11 17 weighs and judges to take a life.

10:11 18 Q. Don't you bet most of the people that have to
 10:12 19 do this work would agree, would feel pretty much the
 10:12 20 same way you do?

10:12 21 A. Hopefully.

10:12 22 Q. I guess it's one of those, you know, almost one
 10:12 23 of those, it's not something anybody wants. It's almost
 10:12 24 like the military service. Maybe most people don't want
 10:12 25 to do it in time of war?

10:12 1 A. Uh-huh.
 10:12 2 Q. If you are chosen, you'll do it the best of
 10:12 3 your ability, won't you?
 10:12 4 A. Yes.
 10:12 5 Q. Do you see yourself as middle of the road in
 10:12 6 this kind of a case? Do you view yourself that way?
 10:12 7 A. For the most part.
 10:12 8 Q. Could you tell me about the unmost part?
 10:12 9 A. The unmost part would be when I look in terms
 10:12 10 of if a defendant has a jury of peers. When I'm looking
 10:13 11 in terms of number of minorities, that, you know, when I
 10:13 12 think in terms of something like that, where I don't
 10:13 13 want to be one of those minorities sitting on the panel.
 10:13 14 But a defendant has the right to have representation,
 10:13 15 and I may not be representation. So that's, when I say
 10:13 16 most part, you know, it comes back to your own values.
 10:13 17 Q. Tell me how you think that plays a part. It
 10:13 18 seems -- are you saying that, depending upon our race or
 10:13 19 our ethnicity we're going to vote different? We're
 10:13 20 going to see evidence differently? Is that where we're
 10:13 21 coming from?
 10:13 22 A. Yes. I do think so.
 10:13 23 Q. How does that happen in your mind? Where does
 10:13 24 that all come from?
 10:13 25 A. Well, I was raised in a very small WASP

10:14 1 community in upstate New York. Left New York and went
 10:14 2 to California and taught in Berkeley during the late
 10:14 3 '60s, '69, when they were doing the fire bombs at
 10:14 4 Berkeley.
 10:14 5 Q. Yeah, I remember.
 10:14 6 A. So I look in terms of how police relate to
 10:14 7 certain, quote, and you have to use the word classes of
 10:14 8 people, either economic or ethnic or religious.
 10:14 9 Q. Okay.
 10:14 10 A. And I do think that, you know, our country was
 10:14 11 founded on WASP mentality. And we all -- there's a
 10:14 12 certain mold. And if you don't fit that mold, then you
 10:14 13 consider them -- not lesser but, it's almost like: You
 10:14 14 are wrong, and I'm right.
 10:14 15 Q. Okay. Do you think there are -- I know, I'll
 10:14 16 bet I know anyway. Do you think there are cases where
 10:14 17 it isn't going to matter what your ancestry or your race
 10:15 18 is? People are going to see it the same way? Do you
 10:15 19 think there are cases like that, too?
 10:15 20 A. Yes. Hopefully, yes.
 10:15 21 Q. One thing about Oklahoma City, for example,
 10:15 22 that mess up there, I'm thinking to myself, maybe
 10:15 23 there's -- I might be missing it. But I can't imagine,
 10:15 24 like, how like a Hispanic juror might see what he did to
 10:15 25 those people differently than an Asian juror or

10:15 1 African-American juror or a white juror?
 10:15 2 I'm just wondering, do you think it's
 10:15 3 that -- do you think it's that persuasive that, or do
 10:15 4 you think there's just some cases that really race is
 10:15 5 not a part of it anyway? It's not even a factor in the
 10:15 6 evidence?
 10:15 7 A. I think in some cases race is not a factor.
 10:15 8 Q. I mean, if the case has been investigated
 10:15 9 properly, you can look at it. Whatever your background
 10:15 10 is, and you can look at the evidence. It's not, I guess
 10:16 11 I'm just trying to get an idea for how you take on that
 10:16 12 one. Is it, aren't there cases where it's just
 10:16 13 straightforward, and race doesn't even have anything to
 10:16 14 do with the case at all?
 10:16 15 A. Should be, yes. I think there are cases of
 10:16 16 that.
 10:16 17 MR. SCHULTZ: A moment please, Judge?
 10:17 18 Q. (BY MR. SCHULTZ) Your favorite TV show is
 10:17 19 NYPD?
 10:17 20 A. Oh, yes.
 10:17 21 Q. Who is your favorite character in there?
 10:17 22 A. Sipowitz. Used to be Jimmy Smitts, but he
 10:17 23 left, you know. He was nice to look at.
 10:17 24 Q. But he died, as I recall?
 10:17 25 A. Yes, he died.

10:17 1 Q. What do you think about Sipowitz?
 10:17 2 A. Has his own views. Calls it likes he sees it,
 10:17 3 and I like the character.
 10:17 4 Q. How about how he interacts with his son? Do
 10:17 5 you like that?
 10:17 6 A. Oh, yes. It's a different side, tenderness,
 10:17 7 uh-huh.
 10:18 8 Q. Your two least-respected people are Al Sharpton
 10:18 9 and George Bush. I guess that would be George Bush, the
 10:18 10 present President?
 10:18 11 A. Yes. But I've kind of changed my views this
 10:18 12 last week. I've got to take him out of that negative, I
 10:18 13 really do. And the negative was when he was governor.
 10:18 14 Q. Okay. And was there anything particular about
 10:18 15 that?
 10:18 16 A. He reminds me of a rich Anglo who has always
 10:18 17 had everything spoon-fed to him and has never had to
 10:18 18 stand on his own; but my views have definitely changed
 10:18 19 over the last two weeks.
 10:18 20 Q. How so?
 10:18 21 A. His handlers may just be doing an excellent job
 10:18 22 with him, but he has just done a superb job handling the
 10:18 23 crisis that we're under.
 10:18 24 Q. What about Al Sharpton?
 10:18 25 A. I cannot stand loudmouths. I can't stand

10:23 1 So I live almost in Plano, north Dallas.
 10:23 2 THE COURT: Mr. Goeller?
 10:23 3 MR. GOELLER: Thank you, Your Honor.
 10:23 4 VOIR DIRE EXAMINATION
 10:23 5 BY MR. GOELLER:
 10:23 6 Q. Good morning, Ms. Bonner.
 10:23 7 A. Yes.
 10:23 8 Q. Would you do me a favor? Would you stand up
 10:23 9 for a minute?
 10:23 10 A. (Witness complying.)
 10:23 11 Q. Good. Because I needed to stand up. I been
 10:23 12 sitting for an hour and 20 minutes, and I bet you have
 10:23 13 to, and just shake it out. I know you are nervous.
 10:23 14 Relax. This isn't going to hurt a bit. I promise you.
 10:23 15 You are from Olean, New York?
 10:24 16 A. Yes. Upstate New York.
 10:24 17 Q. Okay. You know where Allegheny State Park is?
 10:24 18 A. That's my home.
 10:24 19 Q. Yeah. I spent a lot of time camping in that
 10:24 20 state park.
 10:24 21 A. Okay.
 10:24 22 Q. I know that neck of the woods. I've lived
 10:24 23 upstate. I've lived all over New York. That kind of
 10:24 24 brought a smile when I saw Olean.
 10:24 25 A. Yeah. St. Bonaventure.

10:24 1 Q. Yes, yes. It's -- you know, it's funny when
 10:24 2 you meet people that have never been to New York. They
 10:24 3 think the whole thing is like Manhattan?
 10:24 4 A. The city.
 10:24 5 Q. It's kind of funny. When you came in, you were
 10:24 6 on that panel that came in the courtroom here about, I
 10:24 7 don't know, probably two or three weeks ago.
 10:24 8 A. Uh-huh.
 10:24 9 Q. Do you remember the one thing I said was the
 10:24 10 most important thing about this whole jury selection
 10:24 11 process? Do you remember anything I stressed or I tried
 10:24 12 to stress?
 10:24 13 A. No. I really dealt with mannerisms. I heard,
 10:24 14 but I don't remember what you stressed.
 10:24 15 Q. What impressions did you take away about me?
 10:25 16 Good or bad? Oh, boy, here it comes.
 10:25 17 A. In fact, I called my daughter again. I called
 10:25 18 her to question her about the questionnaire. I called
 10:25 19 her to ask her about lawyers' stance, and lawyers being
 10:25 20 what I considered too informal.
 10:25 21 Q. Okay.
 10:25 22 A. And she explained why you did certain things.
 10:25 23 Q. Okay.
 10:25 24 A. That, as a prospective juror, kind of bothered
 10:25 25 me.

10:25 1 Q. Tell me, tell me about it because it might be a
 10:25 2 learning experience for me.
 10:25 3 A. The prosecutor bothered me because she was so
 10:25 4 straightforward. Okay. And I was already trying to
 10:25 5 figure out whether she was pregnant or she went to
 10:25 6 Cancun and had a bad food experience. So, okay?
 10:25 7 Because you had Saltines and 7-Up. So I already figured
 10:25 8 that one out.
 10:25 9 She was very straightforward when she
 10:25 10 talked about Napoleon. That kind of bothered me. Not
 10:25 11 Napoleon -- Hitler. That kind of bothered me.
 10:25 12 But what you said. I heard what you said,
 10:25 13 but it did not hit home with me. You leaned. You
 10:26 14 touched the defendant. It was too informal to me, and
 10:26 15 that bothered me. So I called her to ask.
 10:26 16 And she said you are -- if you are picked,
 10:26 17 you are one of those jurors, you -- you look at all
 10:26 18 these details. I said, yeah. You know, I want to hear
 10:26 19 the facts. I want to hear whatever, but I don't want
 10:26 20 you to be too comfortable, but I want you to remain in
 10:26 21 that professional arena.
 10:26 22 Q. Touching him, why did that bother you?
 10:26 23 A. Well, she had compared him, almost did a
 10:26 24 comparison with Hitler. And your counterreaction was
 10:26 25 let me show you. This is a real person. Hands on the

10:26 1 shoulder, and it was almost like --
 10:26 2 Q. Phony?
 10:26 3 A. No. I didn't take it as phony, but the
 10:26 4 connection wasn't necessary. The words would have just
 10:26 5 served your purpose.
 10:26 6 Q. Okay. Okay. Because I'll tell you, there's
 10:26 7 absolutely nothing phony about it. It's -- in this kind
 10:26 8 of case, I'll tell you, we all do things a little bit
 10:27 9 differently. I probably don't voir dire like that. But
 10:27 10 when you got a life-and-death situation, I do things I
 10:27 11 wouldn't normally do as an attorney. But I hope none of
 10:27 12 what I did was offend you?
 10:27 13 A. Oh, no.
 10:27 14 Q. Okay. Okay. Your thoughts about this case,
 10:27 15 since going back to August 21st, the first time we all
 10:27 16 gathered up over in the other building. And
 10:27 17 conversations you've had with your daughter. And I
 10:27 18 think you said you were at a family reunion with some
 10:27 19 other criminal defense attorneys?
 10:27 20 A. Yes.
 10:27 21 Q. If you could, classify all the thoughts you've
 10:27 22 had about capital punishment, death penalty cases and
 10:27 23 all that, what would be the -- the dominant thoughts
 10:27 24 you've had? What have you thought about the most?
 10:28 25 A. Each one is different.

10:28 1 Q. Okay.

10:28 2 A. And unique.

10:28 3 Q. Okay. You are -- I know it's been mentioned --

10:28 4 you stated that your daughter is a public defender in

10:28 5 West Palm Beach. Is that West Palm Beach County? Is

10:28 6 the city and the county the same name?

10:28 7 A. Oh, yes, yes.

10:28 8 Q. Is that where the --

10:28 9 A. Nathaniel Brazell.

10:28 10 Q. What?

10:28 11 A. Nathaniel Brazell case. I thought that's what

10:28 12 you were going to ask me.

10:28 13 Q. No. I was going to ask you about the chads,

10:28 14 the hanging chads?

10:28 15 A. Oh, yeah. That's her county. Yes, okay. The

10:28 16 vote.

10:28 17 Q. What kind of cases does your daughter work on?

10:28 18 A. She's been dealing a lot with -- well, she's --

10:28 19 it's misdemeanors. You know, traffic violations, drunk

10:28 20 drivers, driving without a license, things like that.

10:28 21 Right now she's doing intake at what they call gun club.

10:28 22 It's prison, and taking information from prisoners.

10:29 23 Q. Okay.

10:29 24 A. To get them ready for trial.

10:29 25 Q. We don't have a public defender in Collin

10:29 1 County. I do a lot of criminal law in my practice, and

10:29 2 I'm kind of like a public defender. It's just that we

10:29 3 don't have a building or an office called Public

10:29 4 Defender. I don't know, depending on how big Collin

10:29 5 County gets, maybe there will be one.

10:29 6 As Mr. Schultz told you in the beginning

10:29 7 of his voir dire with you today, he anticipates and

10:29 8 expects and he thinks he can prove that Ivan's guilty of

10:29 9 capital murder. And he thinks and expects, and he

10:29 10 thinks he'll prove that he'll put on evidence in such a

10:29 11 way that the jury will give him the death penalty. And

10:29 12 I'm here to tell you I think the exact opposite. I

10:29 13 mean, you'd expect that, right?

10:30 14 A. Correct.

10:30 15 Q. He's an advocate for the State of Texas, and

10:30 16 I'm an advocate for Ivan. We're going to look at things

10:30 17 differently. We do look at things differently. I made

10:30 18 a mistake yesterday in talking with a juror who

10:30 19 mentioned something about some commitments, some travel

10:30 20 commitments and some work, and it turned out it ended up

10:30 21 being a real problem. Actually, it was the day before

10:30 22 yesterday. I know you are -- you work for the

10:30 23 regional --

10:30 24 A. Educational Region Service Center.

10:30 25 Q. Tell me what that is.

10:30 1 A. Texas is divided into 20 areas.

10:30 2 Q. Okay.

10:30 3 A. And Region 10 -- that's where I work -- it

10:30 4 takes care of this area of Texas. We go up to almost up

10:30 5 to Oklahoma and down to Waxahachie and over to Canton.

10:30 6 We act kind of like a resource center for school

10:31 7 districts, then I act as a liaison person between our

10:31 8 education system in Austin and school districts.

10:31 9 Q. I.e., field service agent?

10:31 10 A. Yes.

10:31 11 Q. Does it have anything to do with statewide

10:31 12 standards and testing, or is it more --

10:31 13 A. I'm administrative. I tell folks what the law

10:31 14 says for schools.

10:31 15 Q. I gotcha.

10:31 16 A. And I get districts ready for compliance visits

10:31 17 from the State and tell them what to expect. I don't

10:31 18 have to make sure they do it. I don't have to even

10:31 19 check to see if they are doing it. I'm the one that

10:31 20 goes and tells them what to do.

10:31 21 Q. Okay. What kind of -- when we're talking about

10:31 22 compliance, I guess that's -- we're not really talking

10:31 23 about academics, or are we?

10:31 24 A. Yeah. It's academics, standards.

10:31 25 Q. Okay.

10:31 1 A. This is what the system is. What the standards

10:31 2 are. Are you doing it? Will you be in compliance when

10:31 3 the State sends a team in to review what you are doing?

10:32 4 Q. Let's say, for example, in fifth grade you

10:32 5 should be teaching in mathematics division and

10:32 6 subtraction, that kind of thing?

10:32 7 A. Well, it would be like, the law says you must

10:32 8 have, say -- we've got charter schools in Region 10.

10:32 9 And the law says charter schools must have certain

10:32 10 points and programs in effect for special education, for

10:32 11 bilingual ed. And then I go in and tell them what the

10:32 12 law says they have to have and get them ready to what I

10:32 13 think the State's going to look for when they come in,

10:32 14 help them gather their documentation to prove it.

10:32 15 Q. I know you've been a school principal, too.

10:32 16 A. Fourteen years.

10:32 17 Q. What district?

10:32 18 A. Longview, Texas, east Texas.

10:32 19 Q. My sister is a teacher. She just got her

10:32 20 master's in Special Ed.

10:32 21 A. Oh, bless her.

10:32 22 Q. And now she realizes she doesn't want to work

10:32 23 in Special Ed.

10:32 24 A. It's hard.

10:33 25 Q. So I don't know what she's doing. You get a

10:33 1 whole new respect for teachers when you get one in the
 10:33 2 family. And you better not say anything critical about
 10:33 3 them, boy, I'll tell you.
 10:33 4 A. That's right.
 10:33 5 Q. I take it you went to school in California?
 10:33 6 A. Got my master's in California. Got my
 10:33 7 bachelor's at University of Buffalo; Buffalo, New York.
 10:33 8 Q. Buffalo State?
 10:33 9 A. Yeah.
 10:33 10 Q. That's where my sister got her teaching degree.
 10:33 11 A. Good school.
 10:33 12 Q. Do you know Nazareth, Nazareth College?
 10:33 13 A. Yes.
 10:33 14 Q. That's where she got her master's. They are
 10:33 15 big, big masters in, I guess, Special Ed?
 10:33 16 A. I don't know now. I have been away too long.
 10:33 17 Q. If you have a Buff State, that's a lot of good
 10:33 18 teachers come out of there. I'm real prejudiced so
 10:33 19 though. But I notice you put down on some of the folks
 10:33 20 you most respect is Royce West, state senator?
 10:33 21 A. Yes.
 10:34 22 Q. He's a criminal defense attorney, too?
 10:34 23 A. Yes.
 10:34 24 Q. We get all sorts of jurors up there, you know.
 10:34 25 I've seen more than once, criminal defense lawyers

10:34 1 are -- what was the last one? Bottom feeders, scabs,
 10:34 2 overpaid, all sorts of things. I guess, with someone in
 10:34 3 the family and you putting down Royce West, you don't
 10:34 4 feel that way at all?
 10:34 5 A. No.
 10:34 6 Q. Okay, good. I really hate seeing that on these
 10:34 7 questionnaires, bottom feeders. But I wanted to talk to
 10:34 8 you about one thing in your questionnaire, and I know --
 10:34 9 I know these questions are very personal. And I hate to
 10:34 10 go into it even more, but, I know somebody like you can
 10:34 11 appreciate my business, and what I got to do in this
 10:34 12 kind of case. Divorce proceedings; you bought a gun?
 10:34 13 A. Uh-huh.
 10:34 14 Q. Was that for just general protection or from
 10:34 15 your ex?
 10:35 16 A. From my ex. My lawyer advised me to get a gun
 10:35 17 and to take lessons. And so I took lessons, and I had a
 10:35 18 restraining order. Now, I think I put protective order,
 10:35 19 but I couldn't remember. I was so nervous. I had a
 10:35 20 restraining order.
 10:35 21 Q. It could have been.
 10:35 22 A. It was restraining.
 10:35 23 Q. Yeah. And it's probably a protective order,
 10:35 24 too. Was it obtained in the course like very early on
 10:35 25 in the divorce?

10:35 1 A. Yes, when I first filed.
 10:35 2 Q. It could have been both. Family violence?
 10:35 3 A. When we first married, yes.
 10:35 4 Q. Okay. I notice that -- I think somewhere in
 10:35 5 the questionnaire you'd written down that he had to seek
 10:35 6 some type of professional help for a chemical imbalance?
 10:35 7 A. Yes. His chemical imbalance runs in his
 10:35 8 family, and I had him hospitalized three times.
 10:35 9 Q. Okay. What's your relationship, if any, with
 10:36 10 him now?
 10:36 11 A. Oh, they tell me when he's in Texas so that I'm
 10:36 12 on guard.
 10:36 13 Q. Okay. Not good?
 10:36 14 A. No.
 10:36 15 Q. Is he on medication?
 10:36 16 A. I don't know.
 10:36 17 Q. Was medication -- it was something that helped
 10:36 18 him maybe?
 10:36 19 A. Oh, yes. But when you are 6'5" and you decide
 10:36 20 that you don't need to take medicine, I'm 5'3" and a
 10:36 21 fourth.
 10:36 22 Q. So if there could have been a way where, if he
 10:36 23 was either committed or forced to take that medication,
 10:36 24 would things maybe have been different?
 10:36 25 A. No.

10:36 1 Q. Tell me why.
 10:36 2 A. I didn't marry for love. You know, I stayed in
 10:36 3 a relationship too long. It was just one of those
 10:36 4 things.
 10:36 5 Q. Okay. Enough said. I won't pry no more. When
 10:36 6 you were a teacher, what did you teach? What subjects?
 10:37 7 A. I've taught 2nd through 8th grade. All
 10:37 8 subjects in the elementary level. When I came to Texas
 10:37 9 I taught remedial reading to 16-year-old 8th graders and
 10:37 10 social studies to 6th graders. I've taught GT and
 10:37 11 mentally retarded children.
 10:37 12 MR. GOELLER: If I could just approach,
 10:37 13 Judge.
 10:37 14 THE COURT: All right.
 10:37 15 Q. (BY MR. GOELLER) The system we have in Texas
 10:37 16 is that, in a capital murder case, if somebody is found
 10:37 17 guilty of capital murder, there's a presumption they get
 10:37 18 life. Okay? I think we value life very highly. Kind
 10:37 19 of like the first part of a trial. There's a
 10:37 20 presumption that people are presumed innocent until
 10:37 21 proven guilty. You know that?
 10:37 22 A. Uh-huh.
 10:37 23 Q. And that presumption is there until the State
 10:37 24 can produce enough evidence beyond a reasonable doubt to
 10:38 25 find someone guilty. Same with the punishment phase

10:38 1 there's a presumption of life, and that life sentence is
10:38 2 there --

10:38 3 MR. SCHULTZ: Excuse me just a moment,
10:38 4 Mr. Goeller. Judge, we're going to object. There's no
10:38 5 such presumption or instruction in our law.

10:38 6 THE COURT: Sustained.

10:38 7 Q. (BY MR. GOELLER) If the State does not prove
10:38 8 that question beyond a reasonable doubt, that first one
10:38 9 on the floor, a life sentence will come about no matter
10:38 10 what. So when I say my opinion that there is a
10:38 11 presumption for life, until the State meets that burden,
10:38 12 proving beyond a reasonable doubt probability, future
10:38 13 acts of violence. And if they can't do that, that life
10:38 14 sentence is there.

10:38 15 It's there before that question is asked,
10:38 16 and it's there if that question is not answered
10:38 17 unanimously yes. What is your definition of
10:38 18 probability? I know you've taught English, and you've
10:38 19 taught reading. And that may have a different
10:39 20 definition for you than other people.

10:39 21 A. That more than likely it will occur again.

10:39 22 Q. Okay. Okay. And do you see what they have to
10:39 23 prove? Beyond a reasonable doubt, that very very high
10:39 24 degree of proof, that there's a probability and that,
10:39 25 you know, criminal acts of violence. And when that last

10:39 1 phrase down in there, continuing threat to society --
10:39 2 what does that mean to you?

10:39 3 A. That the individual will be released and do the
10:39 4 same thing over again.

10:39 5 Q. Okay. Okay. I'm with you. We've had some
10:39 6 jurors that have had a problem by the way they've
10:39 7 answered. Not you. I'm talking about other folks in
10:39 8 their questionnaires. Some folks have had a problem
10:39 9 with life in Texas.

10:39 10 Meaning, well, we don't have life without
10:39 11 parole. But maybe we do, and we just don't know it. We
10:40 12 know if someone receives a life sentence for capital
10:40 13 murder, they must serve at least 40 calendar years. And
10:40 14 during that 40 years there's no parole or probation or
10:40 15 anything like that. It's 40 years.

10:40 16 So if someone is about 30, they could
10:40 17 never even hope to get out until they are 70. And then
10:40 18 the hope is, if you take a vote of, a three-quarter vote
10:40 19 of the gubernatorial Board of Pardons and Paroles to
10:40 20 even get there, but I don't suppose that's something
10:40 21 that we need to be concerned about. Most of us probably
10:40 22 won't be here in 40 years anyhow. But does that cause
10:40 23 you any problems?

10:40 24 A. No.

10:40 25 Q. Okay. All right. Knowing that the only two

10:40 1 options, if somebody's convicted of capital murder is
10:41 2 life or death, and we talk about that first one, and
10:41 3 some people call that the future dangerousness question.

10:41 4 As Mr. Schultz stated, if that question is
10:41 5 not unanimously answered yes, a life sentence would come
10:41 6 about. That last question up on top, the mitigation
10:41 7 question, of course we only get to that if there is a
10:41 8 unanimous beyond a reasonable doubt answer to that first
10:41 9 one.

10:41 10 So you may say to yourself, well, if we
10:41 11 found somebody guilty of capital murder, and if we found
10:41 12 beyond a reasonable doubt they are a future danger, we
10:41 13 get to that last question. That's still, as Mr. Schultz
10:41 14 said, it's probably for the jury. We still have the
10:41 15 option of imposing a life sentence rather than a death
10:42 16 sentence.

10:42 17 So logically we know that people who have
10:42 18 been convicted of capital murder, who are -- do pose a
10:42 19 future danger, our system is set up so that they'll go
10:42 20 to the penitentiary. Do you see what I'm saying?

10:42 21 A. Yes.

10:42 22 Q. And we recognize that. And so obviously the
10:42 23 legislature and the laws of the State recognize we have
10:42 24 a penal system, a penitentiary system equipped to deal
10:42 25 with dangerous people. Do you agree with that?

10:42 1 A. It's supposed to be.

10:42 2 Q. It's supposed to be. You are right. Nothing
10:42 3 is ever 100 percent, right?

10:42 4 A. Right.

10:42 5 Q. When we talk about that third special issue,
10:43 6 circumstances of the offense, character, background,
10:43 7 moral culpability, those kind of things, of course it,
10:43 8 at that part of the trial, we're not really talking
10:43 9 about excuses. Do you know what I'm saying? We're not
10:43 10 talking about things that excuse the conduct. Because
10:43 11 that would have come up, I suppose, in the first part of
10:43 12 the trial.

10:43 13 But we're talking about those -- those
10:43 14 types of mitigating factors, if a jury considers those
10:43 15 things mitigating. And we've had a lot of jurors say,
10:43 16 well, all those things, character and background and, I
10:43 17 guess, negative or positive. None of that is an excuse,
10:43 18 and I think they probably missed the mark.

10:43 19 If they are talking about: Does it excuse
10:43 20 the conduct? No. No. Nothing outside of self-defense
10:44 21 and a few other examples that -- nothing will excuse the
10:44 22 conduct, legally. I mean, you are not going to be able
10:44 23 to walk out of the courtroom because you had a bad
10:44 24 background or something like that.

10:44 25 But are you the kind of juror that can

10:44 1 look at that question and consider mitigating
 10:44 2 circumstances? In other words, do you think -- in other
 10:44 3 words, do I got a fair shot with you as a juror on that
 10:44 4 third special issue as far as considering, at least
 10:44 5 considering things?

10:44 6 A. I don't know, to be honest.

10:44 7 Q. Okay. Tell me your thoughts.

10:44 8 A. I basically would say, no, but there's always
 10:44 9 that possibility.

10:44 10 Q. Okay.

10:44 11 A. So I don't know. I can't say definitely one
 10:44 12 way or the other.

10:44 13 Q. All right. Is it more, you'd have to hear it?

10:45 14 A. That's right.

10:45 15 Q. Before you could make the call?

10:45 16 A. Yeah.

10:45 17 Q. Let me ask you this: If you found somebody
 10:45 18 guilty of capital murder, you know, and I believe the
 10:45 19 jury is not. But, you know, this individual voir dire
 10:45 20 is geared toward the punishment, and that's why I got to
 10:45 21 spend my time on it.

10:45 22 If you found somebody guilty of capital
 10:45 23 murder, and you found that they were a future danger,
 10:45 24 that first question, is it over for you?

10:45 25 A. Probably, yes.

10:45 1 Q. Okay. Why? Tell me why.

10:45 2 A. And I say probably because I would have taken
 10:45 3 everything into consideration to get to that point to
 10:45 4 make it a yes. It would have been weighed prior to it.
 10:45 5 And I say probable because I don't know.

10:45 6 Q. You lost me on that.

10:45 7 A. Well, I have to be put in that situation to
 10:46 8 have to deal with it to say either yea or nay. It's
 10:46 9 those gray areas.

10:46 10 Q. I know.

10:46 11 A. And you don't know the gray areas until you are
 10:46 12 faced with them.

10:46 13 Q. I agree.

10:46 14 A. So that's why I say probably.

10:46 15 Q. So you might -- you might be considering those
 10:46 16 typical issues that might come up in the last special
 10:46 17 issue in determining the first special issue?

10:46 18 A. I would.

10:46 19 Q. Okay. All right. I gotcha. All right. I
 10:46 20 think that's fair. I think that's fair. As you sit
 10:46 21 there right now, and I know you'd rather not. We've had
 10:46 22 very few jurors -- there are some jurors just dying to
 10:46 23 get on this jury, believe it or not, but the vast
 10:47 24 majority of people, if given a choice, would prefer not
 10:47 25 to.

10:47 1 And, you know, personally I'd wonder about
 10:47 2 anybody that's really wanting on this jury, but we've
 10:47 3 had a few folks. Outside of work-related issues, what
 10:47 4 would be the main reason you'd not want to serve?

10:47 5 A. Just time of year, I want to move. I've got
 10:47 6 major things that I'm considering doing between now and
 10:47 7 December. So, and as a convenience, to be honest,
 10:47 8 personal convenience.

10:47 9 Q. I know. Here we go, another hypothetical.
 10:47 10 Let's just assume for a moment you are selected on this
 10:47 11 jury, and you are pretty much -- and I think what the
 10:48 12 schedule would be Monday through Friday, probably nine
 10:48 13 o'clock in the morning until five at night with an hour
 10:48 14 for lunch.

10:48 15 Say that went on for about three and a
 10:48 16 half weeks. Let's assume you are in, game's on. How
 10:48 17 much of an impact is that going to have on your personal
 10:48 18 life and your professional life?

10:48 19 A. A major impact this time of year.

10:48 20 Q. Okay.

10:48 21 THE COURT: Mr. Goeller, we're going to
 10:48 22 take a ten-minute recess. Ms. Bonner, the other jurors
 10:48 23 are on a break right now. But if you happen to overlap
 10:48 24 with them in the jury room, I'll ask you not to discuss
 10:48 25 with them the main thing that's been asked or anything

10:48 1 that you've said.

10:48 2 VENIREPERSON: Uh-huh.

10:48 3 THE COURT: So when you come in, we'll
 10:48 4 start with a clean slate. And hopefully we'll be back
 10:49 5 at 11 o'clock and continue the questioning.

10:49 6 THE BAILIFF: All rise.

11:04 7 (Break.)

11:04 8 (Open court, defendant present, no juror.)

11:04 9 THE COURT: Please be seated. Is there
 11:12 10 anything that can be announced, or shall I ask
 11:12 11 Ms. Bonner to come back?

11:12 12 MR. SCHULTZ: Something to be announced.

11:12 13 THE COURT: All right. We have agreed to
 11:12 14 excuse this juror by consent. That's assuming that
 11:12 15 that's the defendant's wish also.

11:12 16 MR. GOELLER: Yes. Your Honor that's
 11:12 17 true.

11:12 18 THE COURT: Mr. Cantu?

11:12 19 THE DEFENDANT: Yes, Your Honor.

11:12 20 THE COURT: Then would you tell
 11:12 21 Ms. Bonner, tell her that the predictions were accurate.
 11:12 22 Just tell her that we really appreciate her service, and
 11:12 23 she's finally excused. And would you ask Ms. Loretta
 11:12 24 Hall to come in. And No. 114, Lorna Bonner is stricken
 11:12 25 by agreement.

11:13 1 (Venireperson Hall present.)
 11:13 2 THE COURT: Ma'am, are you Loretta Hall?
 11:13 3 VENIREPERSON: Yes.
 11:13 4 THE COURT: Perhaps you recall when all
 11:13 5 200 jurors were assembled. I put you under oath, and it
 11:13 6 was to answer truthfully the questions that were asked
 11:13 7 by either side. Do you remember that?
 11:13 8 VENIREPERSON: Yes.
 11:13 9 THE COURT: I just want to advise you that
 11:13 10 you are still under that oath.
 11:13 11 VENIREPERSON: All right.
 11:13 12 THE COURT: Thank you very much. Please
 11:13 13 be seated. Mr. Schultz?
 11:14 14 MR. SCHULTZ: Thank you, Judge.
 11:14 15 VOIR DIRE EXAMINATION
 11:14 16 BY MR. SCHULTZ:
 11:14 17 Q. Good morning, Ms. Hall.
 11:14 18 A. Good morning.
 11:14 19 Q. My name is Bill Schultz. I'm one of the
 11:14 20 assistant district attorneys representing the
 11:14 21 State of Texas in its capital prosecution of the
 11:14 22 defendant Ivan Cantu. You have been introduced to
 11:14 23 Ms. Falco and Ms. Lowry previously.
 11:14 24 At the defense table is Mr. Cantu and one
 11:14 25 of his attorneys, Mr. Matt Goeller.

11:14 1 A. Uh-huh.
 11:14 2 Q. I believe you don't know any of us personally;
 11:14 3 is that right?
 11:14 4 A. Right.
 11:14 5 Q. Are you nervous up there at all?
 11:14 6 A. Yes.
 11:14 7 Q. Tell me why because we don't want you to be.
 11:14 8 A. Well, the unknown, I'm sure is part of it.
 11:14 9 Q. Okay. Okay. Well, there aren't any right or
 11:14 10 wrong answers, and you don't need to know any law. And
 11:14 11 we're not going to give you a test and tell us what all
 11:14 12 the elements of capital murder are. It's nothing like
 11:14 13 that.
 11:14 14 We're really more interested in your
 11:14 15 attitudes as it really relates to the death penalty.
 11:14 16 And that's why we do it in this individual way, rather
 11:14 17 than in front of that whole group. Like, the other day
 11:15 18 when Mr. Goeller and Ms. Falco had spoken to you as a
 11:15 19 whole group. And my questions are going to be directed
 11:15 20 about the punishment issues.
 11:15 21 And I'm fully aware that the defendant is
 11:15 22 presumed innocent and that we have to prove he's guilty
 11:15 23 beyond a reasonable doubt. That's the State's
 11:15 24 obligation and our burden. And I'm not -- I'm not
 11:15 25 forgetting about that. And I'm not saying that when the

11:15 1 time comes that won't be important to us. But just for
 11:15 2 the purposes of -- of the question, I want to be talking
 11:15 3 about the punishment issue because if things go the way
 11:15 4 I think they'll go, we will get to that point at some
 11:15 5 point of this trial.
 11:15 6 And that's not to say that what I say is
 11:15 7 evidence, it's just I believe that how -- I believe the
 11:15 8 defendant will be found guilty of capital murder. But I
 11:15 9 could be wrong, and we still have to do it. Are you
 11:15 10 with me on that?
 11:15 11 A. Right.
 11:16 12 Q. In other words, I don't want you thinking he's
 11:16 13 already got the guy convicted in doing that. I don't
 11:16 14 have him convicted. He's presumed innocent, and I have
 11:16 15 to prove that he's guilty beyond a reasonable doubt.
 11:16 16 And if I do that, then we move to the
 11:16 17 punishment phase of the trial. And I want to kind of
 11:16 18 talk with you a little bit about -- about the death
 11:16 19 penalty and your views on it.
 11:16 20 When you were asked: Are you in favor of
 11:16 21 the death penalty, your answer at least at the time that
 11:16 22 you filled the questionnaire out back in August, I
 11:16 23 believe August 21st, the answer to that question was:
 11:16 24 Yes, you are in favor of the death penalty. And then
 11:16 25 you put down with a question mark, "In some cases?" Is

11:16 1 that right?
 11:16 2 A. Yes.
 11:16 3 Q. And at the time -- sometimes people may say
 11:16 4 something at one point, and when they have time to think
 11:16 5 about it more later on, they realize it's not quite that
 11:16 6 way. Let me give you an example of what I mean.
 11:16 7 You and I might be watching TV some night.
 11:17 8 And we might see some awful crime that somebody has
 11:17 9 committed, and we may say, well, they ought to be
 11:17 10 executing people for doing those crimes. We may think
 11:17 11 that or we may say that and maybe we don't.
 11:17 12 But then when it changes from us just
 11:17 13 being in the living room thinking what somebody else
 11:17 14 ought to be doing, when it suddenly becomes you or me on
 11:17 15 a jury, that must face that issue. Sometimes it can be
 11:17 16 a different thing altogether. Do you agree with that?
 11:17 17 A. Oh, yeah.
 11:17 18 Q. Okay. And why I ask the question is because
 11:17 19 you have indicated that you don't believe the death
 11:17 20 penalty should ever be imposed. Let me show you what
 11:17 21 I'm talking about.
 11:17 22 MR. SCHULTZ: May I approach the juror,
 11:17 23 Judge?
 11:17 24 THE COURT: Yes.
 11:17 25 Q. (BY MR. SCHULTZ) Sorry, about the highlight

11:17 1 It's just to make it easier for us to look at the
 11:17 2 questionnaires. We put yellow highlighter on things we
 11:17 3 want to talk to the jurors about. That's what you
 11:17 4 circled. Does that still seem about right to you, or
 11:17 5 are you changed even more so now?

11:18 6 A. I probably -- I don't know why I put yes,
 11:18 7 actually.

11:18 8 Q. It's no?

11:18 9 A. It's no.

11:18 10 Q. Okay. It's America. There's room for
 11:18 11 everybody, and we respect everybody's views. So that
 11:18 12 I'm -- so that we're clear, I'm going to take a little
 11:18 13 time just talking with you about what your thoughts are.

11:18 14 The law puts heavy burdens on the State in
 11:18 15 prosecution. We have to prove certain things with a lot
 11:18 16 of evidence. That's the way the law works, and that's
 11:18 17 the way the law ought to work. Because if we're going
 11:18 18 to go about accusing somebody of a crime, we ought to be
 11:18 19 able to prove it's true. And they don't need to be
 11:18 20 having to prove it's not true. That's just how our
 11:18 21 system works.

11:18 22 But the law doesn't put on us impossible
 11:19 23 burdens. In other words, we don't have to prove beyond
 11:19 24 all doubt that a person is guilty beyond a reasonable
 11:19 25 doubt. We don't have to prove that a person is

11:19 1 guaranteed to be dangerous in the future, that it's an
 11:19 2 absolute certainty that this person will be dangerous in
 11:19 3 the future. And we don't have to prove that there's not
 11:19 4 any mitigating circumstances at all. We don't have to
 11:19 5 prove any of those things.

11:19 6 And we are entitled to have jurors who are
 11:19 7 convincing that questions should be answered in a way
 11:19 8 that a death sentence will result. That's our right.
 11:19 9 Just like the defense is entitled to have jurors who are
 11:19 10 convincing that sometimes a life sentence is the right
 11:19 11 thing to do. Does that make sense?

11:19 12 In other words, we're both entitled, and I
 11:19 13 kind of get -- I kind of get from what you are telling
 11:19 14 me that maybe -- maybe you are not convincing in a way
 11:20 15 that would cause the death sentence. Is that kind of
 11:20 16 where we are?

11:20 17 A. (Moving head up and down.)

11:20 18 Q. I need to get you to say yes or no because the
 11:20 19 lady -- not for my benefit because I understand what you
 11:20 20 are saying, but the lady needs to take down actual words
 11:20 21 rather than nods.

11:20 22 A. Yes.

11:20 23 Q. Tell me what your feelings are that make you,
 11:20 24 in your mind, not able to vote in a way that would cause
 11:20 25 a death penalty?

11:20 1 A. It's really hard. I lost a daughter to cancer
 11:20 2 after a year's struggle. I know that has nothing to do
 11:21 3 with this, but it really really makes you think about
 11:21 4 life is a one-way street. There's no coming back no
 11:21 5 matter what.

11:21 6 Q. Right.

11:21 7 A. It's just -- as long as there's life,
 11:21 8 there's -- I don't know. I can't even explain; I'm
 11:21 9 sorry.

11:21 10 Q. No. I think you are doing good. I think you
 11:21 11 are saying that to you life is sacred, maybe always has
 11:21 12 been, but even -- even more maybe now because of your
 11:21 13 family circumstances. Is that what you are saying?

11:22 14 A. That's probably right.

11:22 15 Q. Okay. I mean, if you think there's any
 11:22 16 criticism -- or I'm not disagreeing with anything you
 11:22 17 are saying. It's not my place to anyway. This is
 11:22 18 America. You understand that we don't ask the jury
 11:22 19 directly: Does the person get a life sentence or a
 11:22 20 death sentence? We don't do it that way in Texas.
 11:22 21 Maybe we come close by one of those questions, but
 11:22 22 not -- not exactly.

11:22 23 In other words, we don't say, ladies and
 11:22 24 gentlemen, we've now found the defendant guilty of
 11:22 25 capital murder. Does he get life or death? We don't do

11:22 1 it that way in Texas. Instead, what we do is ask the
 11:22 2 jury questions, but we tell the jury what the effect of
 11:22 3 answering the questions a certain way will be.

11:22 4 Now, if you look at the questions, I mean,
 11:22 5 whether we told them or not, they could easily figure
 11:23 6 out by the notion of what -- you could look at the
 11:23 7 questions and say, this is a good answer or a bad answer
 11:23 8 for the defendant.

11:23 9 You'll see what I mean in a minute. And
 11:23 10 then so everybody would know, even if we didn't tell
 11:23 11 you, everybody would know if we answered it in a way bad
 11:23 12 for the defendant that that would have to be the death
 11:23 13 answer. And if we answered it in a way better for the
 11:23 14 defendant, that would be the life answer. Do you know
 11:23 15 what I'm saying?

11:23 16 A. (Moving head up and down.)

11:23 17 Q. So we tell you exactly how it is so there's no
 11:23 18 mistake and so people don't have to wonder. If you find
 11:23 19 the defendant guilty of capital murder, the first
 11:23 20 question we ask you is this one right here: Whether
 11:23 21 there's a probability that the defendant would commit
 11:23 22 criminal acts of violence in the future that would
 11:23 23 constitute a continuing threat to society. All right?

11:23 24 A. Right.

11:23 25 Q. And I think you'll understand what I mean. You

11:23 1 know, is a yes answer or a no answer, does that seem
 11:23 2 better for the defendant to you on that question? Does
 11:24 3 it make him a -- do you understand my question?
 11:24 4 A. No.
 11:24 5 Q. Okay. Well, if you answer that question yes,
 11:24 6 he's going to be a continuing threat to our society?
 11:24 7 A. Oh, okay.
 11:24 8 Q. Do you follow what I'm saying? That doesn't
 11:24 9 sound real good for the defendant's side. Is that fair?
 11:24 10 A. Right.
 11:24 11 Q. And if you answer the question no, he's not
 11:24 12 going to be a continuing threat to society, that at
 11:24 13 least sounds better for the defendant's side. Do you
 11:24 14 know what I'm saying?
 11:24 15 A. I agree.
 11:24 16 Q. And that's how our law works because a yes
 11:24 17 answer to that question may ultimately cause a death
 11:24 18 sentence to occur. A no answer to that question
 11:24 19 absolutely will cause a life sentence to occur. Are you
 11:24 20 with me on that?
 11:24 21 A. Okay.
 11:24 22 Q. So you already know if you -- if you are not
 11:24 23 able to ever answer those questions in a way that a
 11:24 24 death sentence would result, you already know how to
 11:24 25 answer that question to make sure that that doesn't

11:24 1 happen. And how would you -- what would be the way to
 11:25 2 answer that question to make sure a death sentence would
 11:25 3 happen? Yes or no? What would you answer to make sure
 11:25 4 it's a life sentence?
 11:25 5 A. No.
 11:25 6 Q. Okay. You'd answer the question no, and that
 11:25 7 becomes a life sentence then. Now, our law makes the
 11:25 8 jury, requires that a jury not just answer those
 11:25 9 questions so they can cause the result that they want.
 11:25 10 Instead, you are supposed to answer it based on the
 11:25 11 evidence. But when you are talking about a life or
 11:25 12 death issue, that's asking more of some people than --
 11:25 13 than is even humanly possible for them. That's just how
 11:25 14 they are. Do you know what I mean?
 11:25 15 A. Yes.
 11:25 16 Q. I think you do because I could talk to you
 11:25 17 until I'm blue in the face and saying, all you are doing
 11:25 18 is weighing the evidence, and you could answer that
 11:25 19 question yes or no, according to the evidence. But as
 11:25 20 you sit there right now, you already told me that if you
 11:25 21 are on this jury and it's not because of your beliefs
 11:26 22 and what you care about, about that human life, you are
 11:26 23 never going to vote in a way that a death sentence will
 11:26 24 result. You are being up front with me on that?
 11:26 25 A. Right.

11:26 1 Q. And so do you think the fact that you have
 11:26 2 already decided, really, that there's no way you can
 11:26 3 participate in a death sentence, is that going to affect
 11:26 4 how you would be able to fairly answer that question, do
 11:26 5 you think?
 11:26 6 A. Well, I would hope it wouldn't. I mean, that I
 11:26 7 could answer it fairly. I don't --
 11:26 8 Q. Do you think you could?
 11:26 9 A. That so much depends. Without knowing
 11:26 10 anything, I don't know how to --
 11:26 11 Q. Okay. Let's do it this way.
 11:26 12 MR. GOELLER: Judge, may I have just a
 11:26 13 moment with Mr. Schultz?
 11:26 14 THE COURT: Yes.
 11:27 15 (Counsel conferring.)
 11:27 16 MR. SCHULTZ: May we have a moment, Judge?
 11:27 17 THE COURT: Sure.
 11:28 18 MR. SCHULTZ: We've got an agreement. Do
 11:28 19 you want to do it with the juror present? It doesn't
 11:28 20 matter to us.
 11:28 21 THE COURT: Yeah. Do both sides agree?
 11:28 22 MR. GOELLER: Yes, sir.
 11:28 23 THE COURT: All right. And I understand
 11:28 24 that -- let me ask Mr. Cantu. Do you understand what
 11:28 25 we're talking about here?

11:28 1 THE DEFENDANT: Absolutely, Your Honor.
 11:28 2 THE COURT: With your agreement also?
 11:28 3 THE DEFENDANT: Yes.
 11:28 4 MR. SCHULTZ: And also as part of this
 11:28 5 agreement, the next juror also who is Juror No. --
 11:28 6 MR. GOELLER: 116.
 11:28 7 MR. SCHULTZ: That being juror.
 11:28 8 THE COURT: Terry Minton.
 11:28 9 MR. SCHULTZ: Uh-huh.
 11:28 10 THE COURT: No. 116, is that your desire
 11:28 11 also, Mr. Cantu, that he be finally excused?
 11:28 12 THE DEFENDANT: Yes, Your Honor.
 11:28 13 THE COURT: Then, Ms. Hall, I want to
 11:28 14 thank you for your service. You are finally excused.
 11:28 15 VENIREPERSON: Thank you.
 11:29 16 (Venireperson Hall excused.)
 11:29 17 THE COURT: Say, I tell you what, I think
 11:29 18 we are out of jurors for this morning. Could I see the
 11:29 19 attorneys in chambers for about five minutes?
 11:29 20 THE BAILIFF: All rise.
 11:29 21 (Lunch break.)
 13:08 22 THE COURT: Please be seated. All right.
 13:08 23 We're back on the record in the Cantu case. And I want
 13:08 24 to ask the -- both sides. There was a woman named Nancy
 13:08 25 Anderson who was Juror No. 150 whose daughter has had a

13:08 1 child in Austin. Have you all talked about what you
 13:08 2 want to do about that one?
 13:08 3 MR. SCHULTZ: We'd agree with the defense
 13:08 4 and the defendant to excuse her, Judge, by agreement.
 13:08 5 MR. GOELLER: That's correct.
 13:08 6 THE COURT: Mr. Cantu, is that your
 13:08 7 desire?
 13:08 8 THE DEFENDANT: Yes, Your Honor.
 13:08 9 THE COURT: All right. Then No. 150,
 13:08 10 Nancy Anderson, is finally excused. All right. The
 13:08 11 next juror is Luis Castillo.
 13:09 12 (Venireperson Castillo present.)
 13:09 13 THE COURT: Are you Luis Castillo?
 13:09 14 VENIREPERSON: Yes.
 13:09 15 THE COURT: Do you remember about a month
 13:09 16 ago all 200 jurors were here. And I swore everyone in,
 13:09 17 and the oath was to tell the truth to questions that
 13:09 18 were asked by both sides?
 13:09 19 VENIREPERSON: Yes.
 13:09 20 THE COURT: I want to tell you you are
 13:09 21 still subject to that oath. Please be seated right
 13:09 22 here. All right. Mr. Schultz?
 13:09 23 MR. SCHULTZ: Thank you, Judge.
 13:09 24 VOIR DIRE EXAMINATION
 13:09 25 BY MR. SCHULTZ:

13:09 1 Q. Good afternoon, sir.
 13:09 2 A. Afternoon.
 13:09 3 Q. My name is Bill Schultz. I'm one of the
 13:10 4 assistant district attorneys representing the State of
 13:10 5 Texas in its capital murder prosecution of Ivan Cantu.
 13:10 6 Next to me is Ms. Gail Falco, who is a chief felony
 13:10 7 prosecutor. And next to her is Ms. Jami Lowry. We are
 13:10 8 the three prosecutors assigned to this case.
 13:10 9 At the defense table is Mr. Ivan Cantu.
 13:10 10 Next to him is Mr. Don High, one of his attorneys. And
 13:10 11 all the way to your far right is Mr. Matt Goeller,
 13:10 12 another fine attorney from Plano, Texas.
 13:10 13 Do you know any of us, Mr. Castillo?
 13:10 14 A. No, sir.
 13:10 15 Q. And the reason I ask that is because a lot of
 13:10 16 times it's possible. And of course us being out and
 13:10 17 about to be in the business world, maybe I would be a
 13:10 18 customer or something or in your place of business,
 13:10 19 those kinds of things. And maybe you might remember me,
 13:10 20 and I not remember you or vice versa. I've got a couple
 13:10 21 of questions to ask you.
 13:10 22 First of all, have you heard anything
 13:11 23 about this case or do you know -- do you know or have
 13:11 24 you been informed of any what may be the facts of this
 13:11 25 case?

13:11 1 A. No, sir.
 13:11 2 Q. Okay. Now, I can't tell for sure because it's
 13:11 3 very faint. But it looks like you may have --
 13:11 4 MR. SCHULTZ: May I approach the juror,
 13:11 5 Judge?
 13:11 6 THE COURT: Yes.
 13:11 7 Q. (BY MR. SCHULTZ) It may be the way it got
 13:11 8 reproduced. But it kind of looks like on this
 13:11 9 questionnaire you may have drawn a line along here. Do
 13:11 10 you know any of that group of people there, or was just
 13:11 11 an extra line? That's not your line that you put on
 13:11 12 there?
 13:11 13 A. No.
 13:11 14 Q. Okay. Good enough.
 13:11 15 THE COURT: Say, Mr. Schultz, I'm going to
 13:11 16 ask you to pass this witness in about 30 minutes.
 13:11 17 MR. SCHULTZ: Yes, sir, I understand.
 13:11 18 Q. (BY MR. SCHULTZ) I think you've -- I think
 13:11 19 you've been very clear and forthright in your
 13:11 20 questionnaire answers about the death penalty on what
 13:11 21 your views are on it. And I want to make sure that, in
 13:12 22 addition to the questionnaire, that I'm getting the
 13:12 23 right read on it. So help me out with this a little
 13:12 24 bit. When you filled in the questionnaire, you
 13:12 25 indicated that you were not in favor of the death

13:12 1 penalty; is that right?
 13:12 2 A. Yes.
 13:12 3 Q. And that's -- and is it fair to say that's
 13:12 4 still your view, right?
 13:12 5 A. Yes.
 13:12 6 Q. And it's possible sometimes that -- I guess
 13:12 7 it's possible that somebody could not be in favor of the
 13:12 8 death penalty, but I guess they could do it if it was
 13:12 9 the law. But you've indicated at least here that you
 13:12 10 could not, under any circumstances, ever return a
 13:12 11 verdict which assessed the death penalty; is that right?
 13:12 12 A. That's correct.
 13:12 13 Q. And there's room on a jury, I suppose, for
 13:12 14 people who are super strong on the death penalty and
 13:12 15 maybe people who are super opposed to the death penalty
 13:12 16 as long as both of them could fairly answer the
 13:12 17 questions and either return a life sentence or a death
 13:13 18 sentence according to what the evidence required. But
 13:13 19 there's no way, no matter what the State does, if you
 13:13 20 are on this jury, there's no way that we would ever get
 13:13 21 a vote that would be a death sentence from you. Is that
 13:13 22 a fair statement?
 13:13 23 A. Yes, sir.
 13:13 24 Q. And it's not like -- I mean, you are not trying
 13:13 25 to be difficult, or you are not just trying to disobey

13:13 1 the law. It's something that you have such strong
13:13 2 feelings about that I guess you -- you feel it's almost
13:13 3 a moral issue that you couldn't do that; is that fair?

13:13 4 A. Yes, sir.

13:13 5 Q. You indicated on your questionnaire when you
13:13 6 were asked: What is the best argument in favor of the
13:13 7 death penalty? I get -- it looks like you couldn't even
13:13 8 come up with an argument in favor of it because of your
13:13 9 feelings; is that right? Or you didn't fill one in?
13:13 10 The best argument against the death penalty was: It's
13:13 11 not your call to pass judgment. You believe only God
13:13 12 can do that. So it's kind of a religious thing; is that
13:14 13 right?

13:14 14 A. Yes, sir.

13:14 15 Q. And do you have any moral, religious or
13:14 16 personal beliefs that would prevent you from sitting in
13:14 17 judgment of another human being? And your answer to
13:14 18 that was yes; is that right?

13:14 19 A. I can't recall.

13:14 20 Q. Okay. Do you have any moral, religious or
13:14 21 personal beliefs that would prevent you from returning a
13:14 22 verdict that would result in the execution of another
13:14 23 human being? And you said, yes, you do have moral,
13:14 24 religious or personal beliefs that would prevent that;
13:14 25 is that right?

13:14 1 A. Yes.

13:14 2 Q. You know, it's funny how we do the death
13:14 3 sentence in Texas, because we don't actually -- here's
13:14 4 some of the things we don't ask the jury to do. We
13:14 5 don't ask the jury to actually insert the needle into
13:14 6 the person and kill them.

13:14 7 So some people would say, well, all I was
13:14 8 was the jury. I was on the jury, and I'm not really --
13:14 9 I'm not the one that's doing the executing. Somebody
13:14 10 else is down the line, you know? Does that make any
13:14 11 sense to you to look at it that way?

13:14 12 A. Yes.

13:15 13 Q. Okay. Then why couldn't you vote in a way that
13:15 14 would cause the death sentence?

13:15 15 A. You are related to that for that act. I mean,
13:15 16 you have a role in that.

13:15 17 Q. I get you. I mean, everybody -- everybody
13:15 18 that's in the process could -- could claim that they
13:15 19 weren't doing the ultimate act. And even the guy down
13:15 20 there would say, well, I was just following orders,
13:15 21 right?

13:15 22 A. Yes.

13:15 23 Q. We are all involved in it. We're all doing it
13:15 24 together; is that right?

13:15 25 A. Yes.

13:15 1 Q. Okay. Do you believe your objections to the
13:15 2 death penalty are so strong that they would interfere
13:15 3 with your ability to even look at the evidence fairly?

13:15 4 A. Yes.

13:15 5 MR. SCHULTZ: Pass the juror, Judge.

13:15 6 THE COURT: All right. Mr. Goeller?

13:15 7 VOIR DIRE EXAMINATION

13:15 8 BY MR. GOELLER:

13:15 9 Q. Good afternoon, Mr. Castillo. I probably just
13:16 10 have a few questions for you. Do you remember the
13:16 11 Oklahoma City bombing?

13:16 12 A. Yes.

13:16 13 Q. Timothy McVeigh? Did you follow that case at
13:16 14 all?

13:16 15 A. Yes.

13:16 16 Q. What do you think about him having received the
13:16 17 death sentence for what he did?

13:16 18 A. (Pause) I've thought about it, but really I
13:16 19 just -- it was a horrible thing that happened. I think
13:16 20 he could have been sent to prison and maybe --

13:16 21 Q. Okay.

13:16 22 A. -- rehabilitated.

13:16 23 Q. Do you -- I mean, it's obvious you don't favor
13:17 24 the death penalty, and that's okay. Mr. Schultz asked
13:17 25 you a question. I'm kind of going to ask you the same

13:17 1 thing maybe from a slightly different angle. Okay? I
13:17 2 believe that he was right when he said there's room for
13:17 3 all sorts of people on a jury.

13:17 4 I mean, I think as a society, we don't
13:17 5 want a jury just full of people who just love the death
13:17 6 penalty, you know? Kind of got-to-kill-them-all people.
13:17 7 And in all fairness to the State, we probably can't have
13:17 8 a jury full of people that would never ever give the
13:17 9 death penalty because, if our laws call for it, I guess,
13:17 10 we have to have a jury that could give it in the right
13:17 11 circumstances.

13:17 12 And it's okay to be a juror on this -- in
13:17 13 a death penalty case if you are against the death
13:17 14 penalty. Okay? The key question is, well, first of
13:18 15 all, on the first part of a trial, you are just trying
13:18 16 to figure out whether somebody's guilty or not guilty,
13:18 17 right?

13:18 18 A. Yes.

13:18 19 Q. You could do that?

13:18 20 A. Yes.

13:18 21 Q. Whether they did the crime or not. And the
13:18 22 State would have to prove it to you beyond a reasonable
13:18 23 doubt. And if they did that, the Judge would instruct
13:18 24 you, if the State proved their case and they proved it
13:18 25 very good beyond a reasonable doubt, return a verdict of

13:18 1 not guilty. And if they didn't prove it to you, or if
 13:18 2 you have a reasonable doubt, then you say not guilty.
 13:18 3 You could do that, right?

13:18 4 A. Yes.

13:18 5 Q. Okay. And in a capital murder case, if you did
 13:18 6 that, then we move on to these questions that are up
 13:18 7 there, and the questions are based on evidence. And
 13:18 8 actually, the questions can be based on a lack of
 13:19 9 evidence, too. But we ask jurors to answer those
 13:19 10 questions based on how they perceive the evidence or
 13:19 11 lack of it. Okay?

13:19 12 A. Yes.

13:19 13 Q. Now, in order to be a juror, the Judge would
 13:19 14 give you an oath and you'd have to swear to render a
 13:19 15 true verdict. In other words, you would have to swear
 13:19 16 that you would answer the questions based on the
 13:19 17 evidence or lack of it, as the case may be.

13:19 18 Now, we know those two questions are
 13:19 19 either going to determine a life in prison sentence or a
 13:19 20 death sentence. Okay?

13:19 21 A. Yes.

13:19 22 Q. Even though you are against the death penalty,
 13:19 23 or a prospective juror is an opponent of the death
 13:20 24 penalty -- in other words, they don't favor the death
 13:20 25 penalty -- if they could take the oath from the Judge

13:20 1 and say: Although I don't like the death penalty, I
 13:20 2 will answer the questions based on the evidence, however
 13:20 3 that turns out to be. If you could do that, you would
 13:20 4 be a qualified juror.

13:20 5 If you tell the Judge that I will answer
 13:20 6 the questions in such a way as to manipulate the
 13:20 7 outcome -- in other words, I'm not going to look at the
 13:20 8 evidence, Judge. I'm not going to consider the facts in
 13:20 9 this case. I'm going to answer those questions to
 13:20 10 manipulate the outcome.

13:20 11 In other words, I'm going to answer
 13:20 12 them -- both types of jurors, I suppose, could fall into
 13:20 13 this situation. But if a juror said: I don't care
 13:20 14 about the evidence. I'm going to answer those questions
 13:21 15 to make sure a life sentence comes about or, I'm going
 13:21 16 to answer those questions and make sure I kill somebody,
 13:21 17 those people would not be proper.

13:21 18 In other words, they would -- they would
 13:21 19 answer the questions based on their own itinerary and
 13:21 20 agenda. Do you see what I'm saying?

13:21 21 A. Yes.

13:21 22 Q. Where do you fit in? Even though you don't
 13:21 23 like the death penalty, could you follow the law and
 13:21 24 take your oath from the Judge and let the chips fall
 13:21 25 where they may? And they may fall on a life sentence.

13:21 1 They may fall on a death sentence. Nobody would know
 13:21 2 until they hear the evidence. Or are you the juror
 13:21 3 that, no matter what the evidence is, you'd disregard
 13:21 4 the evidence, disregard your oath and answer it to
 13:21 5 achieve a predisposed view or outcome of the case?

13:21 6 A. I could be fair about it. I wouldn't lie to --

13:22 7 Q. Okay.

13:22 8 A. -- favor a certain direction on that.

13:22 9 Q. Okay. And that's -- that's the important
 13:22 10 thing. And that's a difficult task because there are
 13:22 11 people that are just the opposite of you. Okay? They
 13:22 12 really like the death penalty. Okay?

13:22 13 And when they first get a questionnaire
 13:22 14 where you don't know any facts about a case, you don't
 13:22 15 know anything about the case, obviously you circled 5,
 13:22 16 you know, you are not going -- you don't, you would not,
 13:22 17 under any circumstances invoke death.

13:22 18 Well, there are also jurors out there that
 13:22 19 will circle 1. I'll give death every time. And so we
 13:22 20 use these questionnaires to maybe go a little bit
 13:22 21 deeper.

13:22 22 So even though you are opposed to the
 13:23 23 death penalty, and that's okay, there's room on this
 13:23 24 jury for folks that are opposed to the death penalty.
 13:23 25 But if you can tell Judge Sandoval you'll answer the

13:23 1 questions based on the evidence and you'll take to heart
 13:23 2 the oath the Court will give you, in other words, you
 13:23 3 call it based on what you hear, and actually you are
 13:23 4 sitting in the witness chair in the trial in this
 13:23 5 case -- that's actually the witness seat -- if you call
 13:23 6 it like you see it after you hear all the evidence and
 13:23 7 answer the questions based on the evidence, you are
 13:23 8 okay. Okay?

13:23 9 A. Okay.

13:23 10 Q. And I know you are capable of that because you
 13:23 11 can do it in the first part of the trial. If they prove
 13:23 12 to you beyond a reasonable doubt, you hear all the
 13:23 13 State's evidence and you say: I believe beyond a
 13:23 14 reasonable doubt somebody's guilty of that crime in any
 13:23 15 case. It could be possession of marijuana. It could be
 13:23 16 DWI. It could be shoplifting. It could be sexual
 13:24 17 assault. It wouldn't matter. If they prove the case to
 13:24 18 you, you'd find them guilty, right? If they proved
 13:24 19 their case beyond a reasonable doubt, you could say
 13:24 20 guilty, right?

13:24 21 A. Yes.

13:24 22 Q. And if they don't do it, let's say after you
 13:24 23 hear the State's evidence and you go back to the jury
 13:24 24 deliberation room and you say to yourself, it just isn't
 13:24 25 there. It's just not there. I'm going to vote not

13:24 1 guilty because I have a doubt based on reason about
13:24 2 their evidence. You could do that too, right?

13:24 3 A. Yes.

13:24 4 Q. And getting to those special issue questions,
13:24 5 the State's got to prove that first one beyond a
13:24 6 reasonable doubt. They've got the burden of proof on
13:24 7 that one right there. If they prove to you, based on
13:24 8 the evidence, all the evidence, everything you've heard
13:24 9 in the first part of the trial and in the second part of
13:25 10 the trial, if you hear anymore evidence, they prove that
13:25 11 to you beyond a reasonable doubt that there is a
13:25 12 probability beyond a reasonable doubt a defendant would
13:25 13 be a future danger -- that's what we call the future
13:25 14 dangerousness question. If the evidence told you, and
13:25 15 they said, if the evidence said to you individually:
13:25 16 The State's evidence proves to me beyond a reasonable
13:25 17 doubt that somebody's going to be a danger in the
13:25 18 future, could you vote yes to that question?

13:25 19 A. Yes.

13:25 20 Q. Okay. Okay. And the last question, the last
13:25 21 question is what -- what we call the special issue
13:25 22 question. And that's one last question a jury is asked
13:25 23 in a capital murder case once they found somebody guilty
13:25 24 of capital murder and they have found that they would be
13:26 25 a future danger. There's no burden of proof on this

13:26 1 question.

13:26 2 In other words, the State doesn't have to
13:26 3 prove it. We don't have to prove it. They don't have
13:26 4 to disprove it, and we don't have to disprove it. It's
13:26 5 probably all related, and you'll certainly hear
13:26 6 evidence. I haven't seen a case yet where you don't
13:26 7 receive evidence, but I think you'll receive evidence.
13:26 8 But that asks you to take a look back at everything,
13:26 9 everything you've heard, all the evidence, circumstances
13:26 10 of the offense back in the first part of the trial,
13:26 11 character and background, moral culpability. And it
13:26 12 asks you -- what that question really asks: What's the
13:26 13 right thing to do in this case, life or death? Okay?

13:26 14 A. Yes.

13:26 15 Q. After hearing all the evidence, if you thought
13:27 16 there was a sufficient mitigating circumstance or
13:27 17 circumstances to warrant that a life sentence rather
13:27 18 than death be imposed, you could vote that way, correct?

13:27 19 A. To a life sentence, yes.

13:27 20 Q. Yeah. And if there was not, after you found
13:27 21 somebody guilty of capital murder, in this case the
13:27 22 indictment alleges a double homicide, two people being
13:27 23 killed and then a person being killed during a robbery,
13:27 24 a person being killed during the course of a burglary,
13:27 25 if you found them guilty of that and you've also found

13:27 1 that they were a future danger beyond a reasonable
13:27 2 doubt, and if there was no -- nothing that was
13:27 3 sufficiently mitigating to warrant a life sentence, you
13:27 4 could answer that question no if there was nothing, no
13:27 5 evidence?

13:28 6 A. Yes.

13:28 7 Q. Okay. Okay. Um, I may visit with you again in
13:28 8 a few minutes, Mr. Castillo. For the time being, I
13:28 9 think it probably goes back to the State at this point
13:28 10 in time. Thank you, sir.

13:28 11 VOIR DIRE EXAMINATION

13:28 12 BY MR. SCHULTZ:

13:28 13 Q. I got to go a little more for you. If you
13:28 14 answer this question no, this second question, he gets
13:28 15 the death penalty. Okay? That's how that works. If
13:28 16 you answer that question no, there's not mitigation.
13:28 17 That's a death sentence. Are you with me on that?

13:28 18 A. Yes.

13:28 19 Q. You can do that? You can vote -- you can vote
13:28 20 in a way that will cause a death sentence? I thought
13:28 21 you said you couldn't. You can't do that, can you?

13:29 22 A. No, I can't.

13:29 23 Q. And it's not personal to me. It's not like I'm
13:29 24 not a good enough lawyer. The world's greatest lawyer
13:29 25 is not going to get you to vote no on that question,

13:29 1 when you know a death sentence comes from that. You
13:29 2 would never do that?

13:29 3 A. That's correct.

13:29 4 MR. SCHULTZ: Thanks.

13:29 5 THE COURT: All right. You may step down,
13:29 6 sir.

13:29 7 (Venireperson Castillo not present.)

13:29 8 MR. GOELLER: He's acceptable, Judge.

13:29 9 THE COURT: All right.

13:29 10 MR. SCHULTZ: We challenge him for cause,
13:29 11 Your Honor.

13:29 12 THE COURT: The challenge for cause is
13:29 13 granted.

13:29 14 (Venireperson Castillo excused.)

13:30 15 THE COURT: Before he brings her in, did
13:30 16 you guys talk about what you want to do about the ones
13:31 17 and fives? Because if we're going to strike them, then
13:31 18 and we're doing the list right now, then I need to know
13:31 19 now if you have decided. Or don't want to, just let me
13:31 20 know.

13:31 21 MR. GOELLER: I can tell the Court that I
13:31 22 have been asked to take a look at them. In other words,
13:31 23 you know.

13:31 24 THE COURT: That's fine.

13:31 25 (Venireperson Penn present)

13:31 1 THE COURT: Are you Brenda Penn?
 13:31 2 VENIREPERSON: Perhaps you recall about a
 13:31 3 month ago that all 200 jurors came in.
 13:31 4 VENIREPERSON: Yes.
 13:31 5 THE COURT: And I put you under oath and
 13:31 6 that was to answer the questions truthfully the
 13:31 7 questions asked that were asked by the State and defense
 13:31 8 and by me.
 13:31 9 VENIREPERSON: Yes.
 13:31 10 THE COURT: Ms. Penn, you are subject to
 13:31 11 that oath. Please be seated right here.
 13:31 12 VENIREPERSON: Okay.
 13:31 13 THE COURT: Ms. Falco?
 13:31 14 VOIR DIRE EXAMINATION
 13:32 15 BY MS. FALCO:
 13:32 16 Q. Ms. Penn, my name is Gail Falco. And I'm an
 13:32 17 assistant district attorney here in Collin County, and I
 13:32 18 introduced myself to you a few weeks ago. Seated to my
 13:32 19 right is my boss, the first assistant district attorney,
 13:32 20 Mr. Bill Schultz. And to my left is also an assistant
 13:32 21 district attorney, Ms. Jami Lowry.
 13:32 22 Seated at the other table, closest to me,
 13:32 23 is the defendant Ivan Cantu. And seated next to him is
 13:32 24 his lawyer, Mr. Matt Goeller. And probably coming in,
 13:32 25 while we will be talking, is Mr. Don High, who is

13:32 1 Mr. Cantu's lawyer. They are both private practitioners
 13:32 2 here in Collin County. I take it from several weeks ago
 13:32 3 that you do not know any of us; is that correct?
 13:32 4 A. No, I don't.
 13:32 5 Q. Ms. Penn, we do this individual voir dire only
 13:32 6 in cases where the State is seeking the death penalty.
 13:32 7 We do this one-on-one. Some call it an interview. And
 13:32 8 we're only doing it in cases where they seek the death
 13:32 9 penalty. We do that for several reasons, but one of the
 13:32 10 reasons is both sides are looking for 12 people who can
 13:32 11 be fair and impartial in this kind of case.
 13:33 12 And when we bring you in here, when you
 13:33 13 first filled out the questionnaire, you didn't have a
 13:33 14 lot of time for thought or reflection when you filled it
 13:33 15 out to consider what your thoughts might be on the death
 13:33 16 penalty. And now you've had some time to think about
 13:33 17 that, so we bring you back to talk about that. There's
 13:33 18 no one here to challenge you on how you feel or to
 13:33 19 change your opinion on what you think.
 13:33 20 We really just want you to be honest with
 13:33 21 us, and just see if you are a qualified juror that could
 13:33 22 serve on this jury. So I know you may be a little
 13:33 23 nervous up here. So here we're six of us staring at you
 13:33 24 asking questions, but we don't intend for you to be
 13:33 25 nervous, and we just want you to feel as relaxed as you

13:33 1 can and just be honest with us and truthfully answer our
 13:33 2 questions.
 13:33 3 A. Okay.
 13:33 4 Q. And if at any time you don't understand what
 13:33 5 I'm asking you, just ask me to repeat it or just tell me
 13:33 6 you don't understand, and I'll try to rephrase it.
 13:33 7 A. Okay.
 13:33 8 Q. When you came back in the first time -- I guess
 13:33 9 you have been in three times now -- so the first time
 13:33 10 you came in when you filled out that juror
 13:33 11 questionnaire, and probably it was about that time when
 13:33 12 you saw "death penalty" that you realized what you were
 13:34 13 here for, if you didn't realize that before that. What
 13:34 14 thoughts went through your head when you realized this
 13:34 15 was a death penalty case?
 13:34 16 A. I thought it would be interesting. Of course,
 13:34 17 I thought further about it later. But at that time I
 13:34 18 thought this might be an interesting case to be a juror
 13:34 19 on.
 13:34 20 Q. Have you ever been called for jury duty before?
 13:34 21 A. I've never been selected. I've been called
 13:34 22 once, but that was when I was in Florida.
 13:34 23 Q. And I know when you fill out the
 13:34 24 questionnaires, it pretty much goes straight from your
 13:34 25 name to: What do you think of the death penalty? And

13:34 1 you don't have a lot of time to think about it. It's
 13:34 2 kind of what your instant reaction is. And I know
 13:34 3 several weeks ago you -- you put you are in favor of the
 13:34 4 death penalty. In the appropriate case you could return
 13:34 5 a verdict resulting in death. And I'm sure you've had
 13:34 6 some time to think about it in the past couple of weeks.
 13:34 7 Is that fair to say?
 13:34 8 A. Yes.
 13:34 9 Q. What has been your thinking over the past
 13:34 10 couple weeks about this?
 13:35 11 A. Well, I actually, honestly, I did have to do a
 13:35 12 lot of soul-searching after the fact because I realized
 13:35 13 it's easy to say that. I think you mentioned that when
 13:35 14 we were here before. When you are sitting in your
 13:35 15 living room and watching on television or something, you
 13:35 16 know, it's easy to say, yeah, I support that. But if
 13:35 17 you are actually the one responsible, it would be
 13:35 18 different.
 13:35 19 I still feel supportive of it, and I would
 13:35 20 have to be truly convinced of the guilt of that person
 13:35 21 because I think that the worst part of the death penalty
 13:35 22 is that there might actually be someone executed who was
 13:35 23 innocent. And that's my only reservation about it, but
 13:35 24 I still support it.
 13:35 25 Q. Okay. And you're exactly right, and that's why

13:35 1 the burden of proof is on the State. We have to prove
 13:35 2 to you beyond a reasonable doubt. We have to convince
 13:35 3 all 12 people beyond a reasonable doubt that a defendant
 13:35 4 is guilty of capital murder before we can even move onto
 13:35 5 the punishment phase and talk about the death penalty.

13:36 6 And given that you had some time to think
 13:36 7 about it as well, why are you in favor of the death
 13:36 8 penalty?

13:36 9 A. I would think it would deter someone from
 13:36 10 committing that crime if they think about the
 13:36 11 consequences that they could also die as a result. And
 13:36 12 I think that's why mainly I support it.

13:36 13 Q. Now, with regard to this case, assuming that
 13:36 14 you are selected as a juror, it's what we call a
 13:36 15 bifurcated trial system. And I explained that a little
 13:36 16 bit a couple weeks ago, that there's two parts of the
 13:36 17 trial.

13:36 18 And the first part of the trial is the
 13:36 19 guilt-innocence phase. And we're going to talk about
 13:36 20 both the guilt-innocence phase and the second part, the
 13:36 21 punishment phase today because we have to select a jury
 13:36 22 and it's going to be one jury that decides the
 13:36 23 guilt-innocence. And if they find the defendant guilty
 13:36 24 of capital murder, they are also going to do the
 13:36 25 punishment. It's going to be the same jury.

13:37 1 So necessarily we have to talk about both,
 13:37 2 the punishment phase as well as the guilt-innocence
 13:37 3 phase now. And we understand that the defendant is
 13:37 4 presumed innocent, and that doesn't change until we
 13:37 5 prove his case beyond a reasonable doubt. But because
 13:37 6 we won't have time after you find him guilty to then
 13:37 7 question you about the death penalty, we have to do that
 13:37 8 at this time. Do you understand that?

13:37 9 A. Yes.

13:37 10 Q. And not to confuse you, but that's just the way
 13:37 11 the process works.

13:37 12 A. Uh-huh.

13:37 13 Q. And as I told you, in the first phase the
 13:37 14 burden of proof is on the State. And we have to prove
 13:37 15 to you beyond a reasonable doubt. And you even
 13:37 16 explained in your answer, "If there's no doubt
 13:37 17 whatsoever that the defendant is guilty, I support it."

13:37 18 A. Uh-huh.

13:37 19 Q. And so you understand that burden, and that's
 13:37 20 it's on us and it's beyond a reasonable doubt?

13:37 21 A. Right.

13:37 22 Q. I guess there's always the possibility you
 13:37 23 could have a doubt, just not a reasonable doubt. As
 13:37 24 long as we prove it beyond all reasonable doubt. Do you
 13:37 25 understand?

13:37 1 A. I understand.

13:37 2 Q. And though you may want to hear what the
 13:37 3 defendant has to say, or you may want to hear what they
 13:38 4 have to say, the defense never has to produce any
 13:38 5 evidence. A defendant never has to testify. They can
 13:38 6 if they choose to. That's their choice, but if a
 13:38 7 defendant chooses not to testify, they'll be instructed
 13:38 8 that you can't hold that against them. And you could
 13:38 9 follow that law, couldn't you?

13:38 10 A. Yes.

13:38 11 Q. And that's only fair since we were the ones
 13:38 12 accusing a person of a crime that we should be the ones
 13:38 13 to prove it.

13:38 14 A. Right.

13:38 15 Q. Now, with regard to capital murder, and I
 13:38 16 talked about there are several different ways that a
 13:38 17 murder becomes capital murder. And you understood it
 13:38 18 was a murder plus an aggravating factor?

13:38 19 A. Right.

13:38 20 Q. And as far as our case is concerned, I gave
 13:38 21 three illustrations of capital murder. That being
 13:38 22 murder in the course of a burglary, murder in the course
 13:38 23 of robbery, or what we've been calling a double
 13:38 24 homicide, killing two or more people during the same
 13:38 25 scheme.

13:38 1 A. Uh-huh.

13:38 2 Q. And as far as murder in the course of a
 13:38 3 burglary -- and burglary is the intentional entering of
 13:38 4 a someone's home without effective content. That could
 13:38 5 be breaking the window or breaking down the door. I'm
 13:39 6 going in. Or it could be getting in due to fraudulent
 13:39 7 consent.

13:39 8 Obviously, if someone stands at your door
 13:39 9 and says, can I come in and kill you, nobody is going to
 13:39 10 let that person in. But if they fraudulently induce
 13:39 11 consent by how they get in with the intent being to kill
 13:39 12 you, that's fraudulent consent. Murder in the course of
 13:39 13 that is -- in your opinion, is that the type of crime
 13:39 14 where the death penalty ought to at least be an option?
 13:39 15 Not saying you necessarily would give it, but should it
 13:39 16 at least be an option depending on the facts?

13:39 17 A. Yes.

13:39 18 Q. And same with murder in the course of robbery.
 13:39 19 And again, robbery is the one-on-one type. I take your
 13:39 20 property by force, and I kill you to take your property.
 13:39 21 Is that the type of crime where the death penalty ought
 13:39 22 to at least be an option?

13:39 23 A. Yes.

13:39 24 Q. And same with a double homicide. Is that the
 13:39 25 type of crime where the death penalty ought to at least

13:39 1 be an option?

13:39 2 A. Yes.

13:39 3 Q. And let's assume the State proves to you beyond
13:39 4 a reasonable doubt that a defendant is guilty of capital
13:40 5 murder, we then move onto the punishment phase. So
13:40 6 we're going to go ahead and talk about that now.

13:40 7 If you get to the punishment phase of a
13:40 8 capital murder trial, again, it's not automatic life or
13:40 9 death, and you don't go back and just answer life or
13:40 10 death. You answer a series of questions. And depending
13:40 11 on how you answer those questions, dictates a life
13:40 12 sentence or a death sentence. And you heard me talking
13:40 13 about that?

13:40 14 A. Yes.

13:40 15 Q. The first question that you get to is the
13:40 16 question that's on the bottom. Can you see that?

13:40 17 A. Yes, ma'am.

13:40 18 Q. And that's what we call the future
13:40 19 dangerousness question. If you want to take a moment
13:40 20 just to refresh your memory and read that. Do you
13:40 21 remember that question?

13:40 22 A. Yes, I do.

13:40 23 Q. Now, the legislature enacted that question,
13:40 24 obviously, envisioning scenarios that a jury could find
13:40 25 a defendant guilty of capital murder, but then get to

13:40 1 that question and decide they were not a future danger.
13:40 2 And a couple of examples -- and I think I talked about
13:40 3 this earlier -- would be the parent whose child is
13:41 4 killed.

13:41 5 And let's assume that those killers had a
13:41 6 trial and, for whatever reason, some technicality or
13:41 7 loophole, they got off, and they left the courtroom
13:41 8 literally laughing because they got away with murder.
13:41 9 And that parent went after them and killed them. That's
13:41 10 capital murder.

13:41 11 And assuming they had no criminal history,
13:41 12 a jury might look at that question and look at those
13:41 13 facts and say, I don't think that person is a future
13:41 14 danger. That was a one-time deal.

13:41 15 Or you may have a situation where a person
13:41 16 commits capital murder. Goes in and robs the 7-Eleven
13:41 17 and kills the clerk or some type of capital murder. And
13:41 18 they get arrested, but while they are in jail they have
13:41 19 a stroke. And they are paralyzed from the eyes down. I
13:41 20 mean, they physically can't move. They can't talk.
13:41 21 They can't communicate. There's no way, I mean, a jury
13:41 22 would look at that question and say, there's no way he
13:41 23 could commit criminal acts of violence. He can't move.
13:41 24 So they would answer that question no.

13:41 25 So obviously, since there are scenarios

13:41 1 where a person could have committed the crime of capital
13:41 2 murder, the jury could get to this question and say no,
13:42 3 we don't think there is a future danger.

13:42 4 Now, with regard to this question, the
13:42 5 burden of proof is on the State. We have to prove to
13:42 6 you beyond a reasonable doubt that there is a
13:42 7 probability a defendant would commit criminal acts of
13:42 8 violence in the future.

13:42 9 Now, the question doesn't ask for a
13:42 10 certainty: Will he commit criminal acts of violence?
13:42 11 It doesn't say with a certainty: Will he commit? It's
13:42 12 asking whether there's a probability.

13:42 13 A. Uh-huh.

13:42 14 Q. That's a word that will not be defined for you
13:42 15 in the Court's Charge. It's up to you, as a juror, to
13:42 16 decide what that means. We know it means something less
13:42 17 than a certainty. And it means something more than just
13:42 18 a possibility. Would you agree with me that anything is
13:42 19 possible?

13:42 20 A. Yes.

13:42 21 Q. It's possible that this rain outside could turn
13:42 22 to snow. Not probable, but it's possible. So we know
13:42 23 it's something less than a certainty but something more
13:42 24 than a possibility. Some people that are mathematically
13:42 25 minded tend to see that word probability and think of a

13:42 1 number or a percentage.

13:42 2 Other people may look at that word and
13:43 3 say, well, that means more likely than not to me. But
13:43 4 as long as you understand it's something more than a
13:43 5 possibility, but less than a certainty. Do you
13:43 6 understand?

13:43 7 A. I understand.

13:43 8 Q. The next phrase that you get to that's again,
13:43 9 it will be undefined for you, but it's frequently
13:43 10 debated. It is criminal acts of violence. I think all
13:43 11 of us would agree that violence to a person, such as
13:43 12 murder, such as aggravated sexual assault, those type of
13:43 13 things are criminal acts of violence. But it gets a
13:43 14 little fuzzier when you start talking about property.

13:43 15 Let's say I just had an awful day at work,
13:43 16 and I decide to take my baseball bat, and I'm mad. I'm
13:43 17 just going to take my anger out on the cars in the
13:43 18 parking lot, and I just start bashing windshields. In
13:43 19 your opinion, is that a criminal act of violence?

13:43 20 A. Yes.

13:43 21 Q. Okay. It gets a little fuzzier still when you
13:43 22 start talking about drugs. And I'm talking about
13:43 23 illegal drugs such as cocaine or methamphetamine. And
13:44 24 whether it's the sale or just the use of drugs. Some
13:44 25 people say, well, if you take drugs in your body, you

13:44 1 are doing harm and danger to your own body. And when
13:44 2 you take those drugs, it could change your personality
13:44 3 and make you do violent things with violent results;
13:44 4 therefore, it's a criminal act of violence.

13:44 5 Other people may say, well, no, it's you
13:44 6 and you are doing it to your own body. And you can do
13:44 7 whatever you want, and that's fine. And any result
13:44 8 that's a violent result is indirect, and so I don't see
13:44 9 drugs as an act of violence. Where do you fall in that
13:44 10 continuum?

13:44 11 A. I think that if someone does drugs, they
13:44 12 realize the possibility that they may do something that
13:44 13 is out of character, which may be an act of violence.
13:44 14 So they are still ultimately responsible. Is that what
13:44 15 you are asking?

13:44 16 Q. Yeah.

13:44 17 A. Okay.

13:44 18 Q. Now, there's some things that you may hear
13:44 19 during a punishment phase of a capital murder trial that
13:45 20 clearly are not acts of violence like theft, shoplifting
13:45 21 type things, or deserting the military, or just acts of
13:45 22 lawlessness.

13:45 23 Like, the police tells you to stop, and
13:45 24 you don't stop. Or the police tell you to get out of
13:45 25 the car and you won't get out of the car. Just lack of

13:45 1 regard for authority. And though they may not show
13:45 2 criminal acts of violence, do you think those type of
13:45 3 things show you somebody's character?

13:45 4 A. I guess. Yeah, in a way.

13:45 5 Q. If they are a thief or somebody that disregards
13:45 6 authority or abandons the military, does that tell you
13:45 7 something about their character?

13:45 8 A. Uh-huh.

13:45 9 Q. And knowing a little bit about their character,
13:45 10 would that help you answer that question of whether or
13:45 11 not there's a probability they would commit criminal
13:45 12 acts of violence in the future, if you understood their
13:45 13 character a little bit?

13:45 14 A. Yes.

13:45 15 Q. Now, the last word you get to again that's
13:45 16 going to -- it's a word that's frequently debated, but
13:45 17 it's not going to be defined for you. It's that word
13:45 18 society. That sentence does not limit itself to prison
13:46 19 society. It doesn't ask: Can the defendant be safely
13:46 20 contained in the jail?

13:46 21 It can be interpreted to not be just the
13:46 22 prison society, but it could include the society that
13:46 23 you and I live in. The person driving your child's
13:46 24 school bus, the man sacking the groceries at the grocery
13:46 25 store, the man down the street selling flowers. It can

13:46 1 include that society as well. You understand how that
13:46 2 question can incorporate all of society?

13:46 3 A. Yes.

13:46 4 Q. And so basically the question is asking: What
13:46 5 is a defendant's propensity for violence without regard
13:46 6 to a specific location?

13:46 7 A. Okay.

13:46 8 Q. Now, with regard to this question, what type of
13:46 9 evidence would you want to see or would you want to hear
13:46 10 to help you answer that question? And assuming we're in
13:46 11 the punishment phase, you've already heard all the facts
13:46 12 of the case, what else would you want to know to answer
13:46 13 that question?

13:47 14 A. Background of that defendant.

13:47 15 Q. Okay.

13:47 16 A. Things pointing to his character or a pattern
13:47 17 of that kind of act. I guess that would be about it.

13:47 18 Q. Do you think past behavior is a good indicator
13:47 19 of how someone might behave in the future?

13:47 20 A. Most of the time. I mean, everyone can change
13:47 21 if they want to try, but most of the time people don't.

13:47 22 Q. Okay. Along those lines, again, let's talking
13:47 23 about this question, and I don't know how much you
13:47 24 followed criminal cases or capital murder cases. But
13:47 25 typically in a capital murder case, one side or the

13:47 1 other will call a psychiatrist or a psychologist to
13:47 2 testify in a punishment phase.

13:47 3 And assuming they are not testifying about
13:47 4 a mental defect or mental disease or a mental
13:47 5 retardation or a brain tumor that's pressing on their
13:48 6 head. Assuming it's just to look at a pattern of
13:48 7 behavior and say, well, I think that person will be a
13:48 8 future danger.

13:48 9 And you can imagine the other side can --
13:48 10 the other psychiatrist to say: I think based on his
13:48 11 behavior that they will not be a future danger. How
13:48 12 important would that type of testimony be to you?

13:48 13 A. From either side?

13:48 14 Q. Uh-huh.

13:48 15 A. I guess it would have to be weighed. If you
13:48 16 had someone on each side talking about, yes, he is a
13:48 17 further threat or, no, he isn't, it would have to be
13:48 18 weighed as to why they thought that.

13:48 19 Q. Okay.

13:48 20 A. Each of them.

13:48 21 Q. Okay. Let's assume you went to the circus.
13:48 22 And I know you have some stepchildren that are a little
13:48 23 bit older, but assuming they were younger, and you took
13:48 24 your kids to the circus. And you saw the tiger and the
13:48 25 tiger is doing tricks, and he would go in and out of his

13:48 1 cage.

13:48 2 Assuming at some point in time during the
13:49 3 circus the tiger just ran away from the trainer and
13:49 4 started running into a crowd. You wouldn't need a
13:49 5 veterinarian to say, grab your children and get out of
13:49 6 here because that tiger is dangerous, would you?

13:49 7 A. No.

13:49 8 Q. And you just know from your life experience and
13:49 9 things you know and things you've read, you know they
13:49 10 are dangerous?

13:49 11 A. Uh-huh.

13:49 12 Q. At the same regard, could you look at the
13:49 13 evidence in a case, looking at what the defendant did,
13:49 14 what you found him guilty of and looking at the pattern
13:49 15 of behavior, the criminal history, could you look at all
13:49 16 that to answer this question as to whether or not he
13:49 17 would be a future danger?

13:49 18 A. Yes.

13:49 19 Q. Now, with regard to this question, since the
13:49 20 burden of proof is on the State, if we proved to you
13:49 21 beyond a reasonable doubt and all 12 jurors say, yes, we
13:49 22 think he's going to be a future danger, you are still in
13:49 23 the process of assessing a death sentence. If 10 or
13:49 24 more jurors decide no, the State didn't meet its burden,
13:49 25 we don't think he's a future danger, then that's an

13:49 1 automatic life sentence. The trial is over.

13:49 2 A. Okay.

13:50 3 Q. Well, first of all, backing up a little bit, on
13:50 4 the guilt-innocence part of it, if the State failed to
13:50 5 meet its burden and prove to you beyond a reasonable
13:50 6 doubt a defendant is guilty of capital murder, you could
13:50 7 find him not guilty. That's the law instructed to you.

13:50 8 A. Okay.

13:50 9 Q. And again, getting to this first question, if
13:50 10 the State failed to prove to you beyond a reasonable
13:50 11 doubt there's a probability he'll be a future danger,
13:50 12 you could answer that question no?

13:50 13 A. Right.

13:50 14 Q. And that would result in a life sentence?

13:50 15 A. Okay.

13:50 16 Q. And assuming we proved to you that he was going
13:50 17 to be a future danger and you answered the question yes,
13:50 18 you would move onto the next question, which is the
13:50 19 question up above. Can you see that?

13:50 20 A. Uh-huh.

13:50 21 Q. If you want to take a second just to refresh
13:50 22 your memory.

13:50 23 A. Okay.

13:50 24 Q. This is what we call the mitigation question.

13:50 25 A. Uh-huh.

13:50 1 Q. Now, with regard to the word mitigation, again,
13:50 2 that's not going to be a word that's going to be defined
13:50 3 for you but typically means to reduce or lessen. So
13:51 4 reduce or lessen a defendant's culpability or
13:51 5 blameworthiness or guiltiness. And with regard to this
13:51 6 question, there's no burden of proof on either side.

13:51 7 The State doesn't have to prove to you
13:51 8 there's no mitigating evidence. The defense doesn't
13:51 9 have to prove to you that there is. There's no burden.
13:51 10 This question is designed for the jury to weigh all the
13:51 11 evidence. And you are allowed to give whatever weight
13:51 12 to the evidence you want to.

13:51 13 You may decide to give the facts of the
13:51 14 case, what that person did, a lot of weight and the rest
13:51 15 of the stuff, little weight or no weight. I mean, it's
13:51 16 up to you to give whatever weight you want to, and you
13:51 17 put everything on the scales.

13:51 18 You put the circumstances of the offense,
13:51 19 whatever you hear about the defendant's background, his
13:51 20 character, his moral culpability, and any mitigating
13:51 21 evidence you hear, you put it all on the scale. And at
13:51 22 the end you look and decide: Is there sufficient
13:51 23 mitigating evidence to warrant a life sentence based on
13:51 24 all the other things?

13:51 25 A. Okay.

13:51 1 Q. And if you find there is sufficient mitigating
13:52 2 evidence, then that's a life sentence. Does that make
13:52 3 sense to you?

13:52 4 A. Yes.

13:52 5 Q. Now, you can probably imagine that if we
13:52 6 were -- if any of us were in a situation where we had a
13:52 7 trial and we had to come up with things that were
13:52 8 mitigating in our life, everyone could probably come up
13:52 9 with something that's sad or sympathetic. Maybe a
13:52 10 single parent home or an alcoholic parent or abuse or
13:52 11 just things that have been heartbreaking in our life
13:52 12 that we can present at trial and say: Look at that.
13:52 13 That's mitigating.

13:52 14 A. Uh-huh.

13:52 15 Q. And so the question doesn't ask: Is there any
13:52 16 mitigating evidence? It asks: Is there sufficient
13:52 17 mitigating? And weighing all the other things that
13:52 18 you've heard about this person. Do you understand that?

13:52 19 A. Yes.

13:52 20 Q. Now, with regard to this question, like I said,
13:52 21 you won't be given a definition of mitigating or you
13:52 22 won't be told, you know, given a list of factors saying,
13:52 23 these are mitigating for you to consider. It's up to
13:52 24 you as a jury to decide what you think is mitigating.
13:53 25 And if it is mitigating, is it sufficient? But a

13:53 1 typical example of something that could be interpreted
13:53 2 as mitigating by one person and not another is drugs.

13:53 3 One juror may say, well, that's not his
13:53 4 normal personality, but he started taking these drugs,
13:53 5 and it changed his personality. And it began his
13:53 6 downward spiral. And he did these awful, horrendous
13:53 7 things, but that's not him. That's not the way he
13:53 8 really is. And he's not doing those drugs anymore, so
13:53 9 that's all mitigating to me.

13:53 10 Another juror may say, well, you know
13:53 11 what? We're told that in a society we're not supposed
13:53 12 to do drugs. And we're told why we don't do drugs in
13:53 13 that it can lead to changes in personality. It can lead
13:53 14 to violent results, and this person knew better and knew
13:53 15 that. And so they took the drugs anyway, and it led to
13:53 16 this horrific result, and that's aggravating to me. So
13:53 17 you see how that could --

13:53 18 A. Uh-huh.

13:53 19 Q. -- be interpreted one way by one person and
13:53 20 another way by a different person?

13:53 21 A. Yes.

13:53 22 Q. Okay. Now, with regard to this question, other
13:53 23 than the phrase circumstances of the offense, there's no
13:54 24 place that talks about the victim and the victim's
13:54 25 character. It seems to focus on defendant's character,

13:54 1 defendant's background, defendant's moral culpability.

13:54 2 I mentioned this a couple weeks ago a
13:54 3 little bit. Does it make a difference to you who the
13:54 4 victim was? Like, you know, if it's the nun praying or
13:54 5 the drug dealer on the street? Or in your mind, is a
13:54 6 killer a killer, and it's because he killed that's bad,
13:54 7 not who he killed?

13:54 8 A. Assuming it's not because of the victim's
13:54 9 character that he got killed. In other words, the
13:54 10 defendant wasn't defending himself.

13:54 11 Q. Okay.

13:54 12 A. Then I don't see a difference.

13:54 13 Q. Okay.

13:54 14 A. He just decided, I'm just going to kill this
13:54 15 person. It doesn't matter who the person was.

13:54 16 Q. Okay. Let's take that one step further. Let's
13:54 17 assume that there's a person that decides they just want
13:54 18 to live the good life. They don't want to have to work
13:55 19 for it, so they are going to rob a store. And they are
13:55 20 just going to live off the proceeds of the robbery, and
13:55 21 they were going to kill anybody that gets in their way,
13:55 22 and no witnesses and nobody to tie them to the crime.

13:55 23 So they decide on their way home from work
13:55 24 one day to stop at a 7-Eleven, and that's the place they
13:55 25 are going to rob. And they go in and rob the clerk and

13:55 1 kill the clerk, not knowing who that person is or if
13:55 2 that person has a family, not knowing anything. Just
13:55 3 selfishly killing him and taking the money and going.

13:55 4 Compare that to the person who decides,
13:55 5 well, I'm going to rob this 7-Eleven that's in my
13:55 6 neighborhood, and I'm going to rob this particular
13:55 7 7-Eleven because I know the family that owns it because
13:55 8 I grew up with this family. And they are friends of
13:55 9 mine, and they've clothed me. They've sheltered me, and
13:55 10 they've given me food and love and support when I needed
13:55 11 it. But I'm going to rob them because I know who works
13:55 12 when, and I know how much money they keep behind the
13:55 13 register. And I know they'll give me the money, and
13:55 14 then I got to kill them because I don't want any
13:55 15 witnesses.

13:55 16 So that's a 7-Eleven that they choose.
13:55 17 They go in, and they rob their friend. They kill their
13:56 18 friend, knowing how it's going to impact their friend's
13:56 19 family because they know this family. Is there a
13:56 20 difference, in your mind, in those two scenarios?

13:56 21 A. The second one almost sounds more cruel. But I
13:56 22 don't, I don't really see a difference, no.

13:56 23 Q. Okay. Now, you imagine you have -- how long
13:56 24 have you been married?

13:56 25 A. Three years.

13:56 1 Q. Three years. So you have been with your
13:56 2 stepchildren three years?

13:56 3 A. Yes.

13:56 4 Q. And I imagine you love them?

13:56 5 A. Right.

13:56 6 Q. And you support them?

13:56 7 A. Uh-huh.

13:56 8 Q. And if they were to get in trouble with the
13:56 9 law, you'd still love them and support them?

13:56 10 A. Yes.

13:56 11 Q. And you can imagine that's probably true of a
13:56 12 person charged with capital murder. They probably got a
13:56 13 mom or family member that loves them and supports them.
13:56 14 And if they were on trial, that that parent or that
13:56 15 family member would get up, tell the jury: I love my
13:56 16 child. Please don't kill my child because I love them.

13:56 17 A. Uh-huh.

13:56 18 Q. How does that argument sit with you?

13:57 19 A. I can understand it. I mean, I think everyone
13:57 20 has hopefully someone who loves them that would stand up
13:57 21 for them. But it would, like you said, have to be
13:57 22 weighed with everything else.

13:57 23 Q. Okay.

13:57 24 A. If I went and killed someone, I know my parents
13:57 25 would probably do the same for me. But if I did it and

13:57 1 I deserved the punishment, you know, that argument
13:57 2 doesn't -- wouldn't sway one way or the other. I don't
13:57 3 see how that would -- would matter in the whole scheme
13:57 4 of things.

13:57 5 Q. I'm going to talk a little bit more on that
13:57 6 question, on your questionnaire. Do you remember that
13:57 7 page that it -- it gave you a statement, and then it
13:57 8 asks you if, anywhere from strongly agree to strongly
13:57 9 disagreed with that statement?

13:57 10 A. Vaguely, yes.

13:57 11 Q. And there's -- first of all, just to clear
13:57 12 something up. And I think so this is just a poorly-
13:58 13 written statement because a lot of people have answered
13:58 14 it the same way you did. And it's -- it's inconsistent
13:58 15 with the way you've answered it in other areas.

13:58 16 But one statement says: If someone is
13:58 17 accused of capital murder, he should have to prove his
13:58 18 innocence. You wrote, "strongly agree." But you
13:58 19 understand that there's a presumption of innocence
13:58 20 that --

13:58 21 A. Yes.

13:58 22 Q. -- we still have to. And I think, it caught a
13:58 23 lot of people. Because down here where it says, "proven
13:58 24 innocent until proven guilty," you wrote "strongly
13:58 25 agree"?

13:58 1 A. Yes.

13:58 2 Q. You understand that they are innocent until
13:58 3 we've proven beyond a reasonable doubt?

13:58 4 A. Yes.

13:58 5 Q. And you would never shift that burden to them?

13:58 6 A. Right.

13:58 7 Q. But it also makes some statements where it
13:58 8 says: A person determines their destiny or fate by
13:58 9 choices they make in life. And you put "strongly
13:58 10 agree." Tell me what your thinking was on that.

13:58 11 A. Assuming you've lived in this society and grown
13:58 12 up in this society, everyone learns right from wrong,
13:58 13 hopefully. I don't know, I always did, but you have to
13:59 14 pay for what you do. You know, the consequences, if you
13:59 15 do wrong, you pay for it. So by making choices, you are
13:59 16 choosing your path. You make the right choice, you are
13:59 17 going to have good results. The wrong choice, not so
13:59 18 good.

13:59 19 Q. Right.

13:59 20 A. I mean, that's always been my experience.

13:59 21 Q. Okay. And then one step further it says: A
13:59 22 person's destiny or fate is determined by circumstances
13:59 23 of their birth and their upbringing. And you wrote,
13:59 24 "disagree." I'm sure we've all -- I think I mentioned
13:59 25 this a couple weeks ago.

13:59 1 And I'm sure we can all imagine a person
13:59 2 that we know that came from a bad situation, bad family
13:59 3 life, bad home life, very poor, abused, but they were
13:59 4 able to overcome that and be successful in their life.

13:59 5 And then we could all think of somebody on
13:59 6 the flip side that was born into a family, both parents,
13:59 7 money, never lacked for material goods, but still turned
13:59 8 out rotten?

14:00 9 A. Uh-huh.

14:00 10 Q. Like the Menendez brothers is a great example.
14:00 11 Kind of what your thinking was when you said you
14:00 12 disagree that your fate is determined by your birth and
14:00 13 your upbringing?

14:00 14 A. Could you read the question again, what it was?

14:00 15 Q. "A person's destiny or fate is determined by
14:00 16 the circumstances of their birth and their upbringing."

14:00 17 A. I think I said disagree because it's -- it's
14:00 18 saying that it's totally. The way I read it was it's
14:00 19 totally determined by your birth and your upbringing,
14:00 20 and I don't think that's true. I think there's a lot of
14:00 21 factors aside from that.

14:00 22 Q. And such as?

14:00 23 A. Like you said, you can overcome --

14:00 24 Q. Right.

14:00 25 A. -- negative things or turn out pretty bad, even

14:00 1 though you had it made. So it's not 100 percent that
14:00 2 that's going to determine your fate, and that's the way
14:00 3 I read that question.

14:00 4 Q. Okay. Now, one thing you put interesting in
14:01 5 your questionnaire, when it said: Do you believe the
14:01 6 death penalty is applied fairly in Texas? And you said,
14:01 7 "I'm not sure. I don't agree with executing the
14:01 8 mentally disabled or anyone else who doesn't understand
14:01 9 the meaning of the consequence."

14:01 10 I don't know how well you keep up with the
14:01 11 capital murder cases, but have you heard of the case of
14:01 12 Penry?

14:01 13 A. Yes. But I didn't keep up real clearly, so I
14:01 14 wasn't sure how that turned out. I remember that being
14:01 15 a controversy a few months ago.

14:01 16 Q. And that's exactly why we have this second
14:01 17 question, this mitigation question, was because of that
14:01 18 case. It's actually been tried twice already and may
14:01 19 get tried a third time. But the Supreme Court, Court of
14:01 20 Criminal Appeals decided to give the jury a question
14:01 21 that would contemplate somebody's mental capacity.

14:01 22 On Mr. Penry's case he claimed that he was
14:01 23 borderline mentally retarded, and they didn't have a
14:01 24 question that contemplated that. And so, as a result,
14:01 25 we got that mitigation question

14:01 1 A. Okay.

14:01 2 Q. And so that's something that you could

14:02 3 contemplate based on the mitigation question.

14:02 4 A. And when we answered that questionnaire, I

14:02 5 wasn't aware of these questions.

14:02 6 Q. So, yeah, you were right on target.

14:02 7 A. I didn't know.

14:02 8 Q. Have you ever heard the phrase: There are no

14:02 9 atheists in foxholes?

14:02 10 A. Yes.

14:02 11 Q. Or no atheists in wartime?

14:02 12 A. Yes.

14:02 13 Q. What does that phrase mean to you?

14:02 14 A. That when you are in deep trouble or you see

14:02 15 the end, you kind of find your faith.

14:02 16 Q. Okay.

14:02 17 A. You have to find something else or someone to

14:02 18 believe in or some power.

14:02 19 Q. And you are exactly right. And you can

14:02 20 probably imagine some of those soldiers that were on the

14:02 21 front line. And when faced with death, decided to have

14:02 22 faith in God. But you can probably imagine that,

14:02 23 assuming they survived the war and got back to America

14:02 24 and life got back to normal, some of them may have

14:02 25 slacked, slacked in their faith or kind of went back to

14:02 1 their old ways. Thanks, God, for getting me through

14:03 2 this, but I'm going to go back to my old ways.

14:03 3 But can you imagine, when faced with that

14:03 4 kind of stress or being faced with death, can you see

14:03 5 how that might also apply in a capital murder trial

14:03 6 where somebody has been arrested for capital murder and

14:03 7 is now literally on trial for their life?

14:03 8 A. Oh, sure.

14:03 9 Q. Okay. And assuming in a capital murder, try to

14:03 10 get to the punishment phase and you hear that a person,

14:03 11 you know, prior to being arrested was either atheist or

14:03 12 agnostic. Didn't care about God. Didn't specifically

14:03 13 denounce God, but really had no place for religion in

14:03 14 his life at all. But since he's been arrested now, I'm

14:03 15 a Christian now, and give me a life sentence because I'm

14:03 16 different now. I'm a changed person now.

14:03 17 And whether that conversion is real or

14:03 18 not, is ultimately obviously not for us to decide. But

14:03 19 assuming you heard that type of an argument or that type

14:03 20 of evidence, does that hold much weight with you, or

14:04 21 would you be skeptical because the timing of the

14:04 22 conversion, or what are your thoughts on that?

14:04 23 A. Oh, that's a tough one because, hmm, I

14:04 24 understand that you would have to look and get some

14:04 25 faith in that time. But, yeah, the timing would make me

14:04 1 a bit skeptical also. So I really don't know how to

14:04 2 answer that. I think I'd have to hear the argument and

14:04 3 listen and see how, if I believed it or not, or if it

14:04 4 was just purely the timing.

14:04 5 Q. Okay. And assuming you believed it, would it

14:04 6 make a difference to you?

14:04 7 A. Probably not.

14:04 8 Q. Okay. Would you still be looking at the past

14:04 9 behavior and this crime and use that as well to answer

14:04 10 these two questions?

14:04 11 A. Yeah.

14:04 12 Q. Okay. Now, with regard to that last question,

14:05 13 obviously you only get there if you find the defendant

14:05 14 guilty of capital murder and you've already answered,

14:05 15 yes, we think he's a future danger. If you looked at

14:05 16 all the evidence and you gave it the weight you felt

14:05 17 appropriate, if you found there was sufficient

14:05 18 mitigating evidence, could you answer that question,

14:05 19 yes, resulting in a life sentence?

14:05 20 A. Yes.

14:05 21 Q. And if you looked at all the evidence and found

14:05 22 there was not sufficient mitigating evidence, could you

14:05 23 answer the question no, resulting in a death sentence?

14:05 24 A. Yes.

14:05 25 Q. And to answer it, no, and in order for a death

14:05 1 sentence to result, all 12 jurors would have to say no.

14:05 2 And for it to be a life sentence, 10 or more jurors

14:05 3 would have to say yes, and that would be a life

14:05 4 sentence. But you could look at that question fairly,

14:05 5 keep an open mind to consider mitigating evidence, and

14:05 6 answer it based on how you weigh the evidence?

14:05 7 A. I believe so.

14:05 8 Q. And you wouldn't close your mind off to

14:05 9 anything that might be considered mitigating by either

14:06 10 side?

14:06 11 A. No.

14:06 12 Q. You'd keep an open mind?

14:06 13 A. Yes, ma'am.

14:06 14 Q. And it showed you were a computer engineer for

14:06 15 NASA?

14:06 16 A. Yes.

14:06 17 Q. How was that?

14:06 18 A. It was okay.

14:06 19 Q. I'll bet it was a tough job.

14:06 20 A. It was okay.

14:06 21 Q. How many years did you do that?

14:06 22 A. Seventeen, including co-op through college and

14:06 23 all of that, and then I retired.

14:06 24 Q. You retired?

14:06 25 A. Yeah. It wasn't my calling, so

14:06 1 Q. Did you enjoy doing that?
 14:06 2 A. It came and went. Good and bad. It wasn't as
 14:06 3 glamorous as it sounds.
 14:06 4 Q. It does sound glamorous. A couple more things
 14:06 5 I want to get into, and I'm not asking these things to
 14:07 6 embarrass you in any way. I just need to ask to make
 14:07 7 sure that there's nothing there that might keep you from
 14:07 8 being a qualified juror. And one is your DUI you got
 14:07 9 back in '95.
 14:07 10 A. Uh-huh.
 14:07 11 Q. Anything about that situation that, and
 14:07 12 obviously wasn't a pleasant experience, but anything
 14:07 13 about that, that you might have been treated unfairly by
 14:07 14 the police or the D.A.'s office in that situation?
 14:07 15 A. No, and I remember that question. You asked if
 14:07 16 I had any unpleasant experiences. And, it's like, well,
 14:07 17 that wasn't pleasant, but --
 14:07 18 Q. But nothing?
 14:07 19 A. No.
 14:07 20 Q. You thought you were treated unfairly?
 14:07 21 A. Yes, ma'am.
 14:07 22 Q. And the second situation regarding your
 14:07 23 stepson?
 14:07 24 A. Yes.
 14:07 25 Q. How old is your stepson?

14:07 1 A. 16.
 14:07 2 Q. Did that incident happen in Collin County?
 14:07 3 A. Yes, it did.
 14:07 4 Q. Do you know what the status is of that?
 14:07 5 A. Yes. We were here yesterday in regards to
 14:07 6 that.
 14:07 7 Q. Was it disposed of?
 14:07 8 A. It was disposed of yesterday. They gave him
 14:07 9 deferred prosecution and six months' probation and 12
 14:08 10 hours' community service.
 14:08 11 Q. And that had nothing to do with anyone in this
 14:08 12 courtroom?
 14:08 13 A. No.
 14:08 14 Q. It wasn't this judge, and it wasn't any --
 14:08 15 A. He didn't even go before a judge because they
 14:08 16 gave him the deferred prosecution.
 14:08 17 Q. And it was none of the prosecutors sitting here
 14:08 18 at this table?
 14:08 19 A. No.
 14:08 20 Q. And it didn't involve any of the attorneys
 14:08 21 sitting at the other table?
 14:08 22 A. No.
 14:08 23 Q. Anything about that situation that might keep
 14:08 24 you from being fair and impartial in this case?
 14:08 25 A. No, I don't think so.

14:08 1 Q. Are they two separate situations?
 14:08 2 A. Oh, yes.
 14:08 3 Q. Do you know what agency it was that arrested
 14:08 4 your stepson?
 14:08 5 A. Agency as in?
 14:08 6 Q. Police agency.
 14:08 7 A. Allen Police Department.
 14:08 8 Q. Last book you read, *F is for Fugitive*. Does
 14:09 9 she do, like, the alphabet series?
 14:09 10 A. Yes.
 14:09 11 Q. Have you read A through F?
 14:09 12 A. Yes.
 14:09 13 Q. You read A through F. I guess my last -- my
 14:09 14 last question, you said possibly you might have plans
 14:09 15 for fall break. Have you made plans for fall break?
 14:09 16 A. We didn't do that because of my stepson's
 14:09 17 thing. We didn't know when that was going to happen.
 14:09 18 So we put him off until Christmas.
 14:09 19 Q. Okay. Back when you filled out this
 14:09 20 questionnaire, when asked: Do you want to serve as a
 14:09 21 juror on this case? And you answered no, which we would
 14:09 22 expect anyone in this case would if they had their
 14:09 23 choice, would choose not to. Have you done some
 14:09 24 thinking about that, about whether you want to be a
 14:09 25 juror or not?

14:09 1 A. Oh, sure I have. It's still not something that
 14:09 2 I would really want to do, but I would if I were chosen.
 14:10 3 I'd feel it was my duty. And the reasons I wouldn't
 14:10 4 want to do it is just logistical. Like I said, I'm
 14:10 5 retired. I don't have to get up and go to work
 14:10 6 everyday, and that would be like going back to work.
 14:10 7 So, just, those kind of reasons, but I would do it
 14:10 8 gladly if I were chosen.
 14:10 9 Q. Ms. Penn, do you have any questions of me
 14:10 10 before I pass you?
 14:10 11 A. No, I don't believe so.
 14:10 12 MS. FALCO: Okay. Thank you, Ms. Penn.
 14:10 13 Pass this juror.
 14:10 14 THE COURT: Thank you, Ms. Falco.
 14:11 15 Mr. High?
 14:11 16 MR. HIGH: Thank you, Your Honor.
 14:11 17 VOIR DIRE EXAMINATION
 14:11 18 BY MR. HIGH:
 14:11 19 Q. Good afternoon, Ms. Penn.
 14:11 20 A. Good afternoon.
 14:11 21 Q. My name is Don High, and I'm one of the lawyers
 14:11 22 on this case. And I'm going to be working with
 14:11 23 Mr. Goeller here to represent this young man, Ivan
 14:11 24 Cantu.
 14:11 25 A. Okay

14:11 1 Q. And I have a few questions for you, not a whole
14:11 2 lot. But, first of all, I want to kind of make it
14:11 3 clear: We're appointed to represent Mr. Cantu. He
14:12 4 hasn't hired us. He hasn't retained us to represent
14:12 5 him. The Court has appointed us to represent him. Are
14:12 6 you familiar with that? That quite often indigent
14:12 7 defendants have court-appointed counsel?

14:12 8 A. Public defenders; is that what they are called?
14:12 9 Yes.

14:12 10 Q. That's right. In some places they are public
14:12 11 defenders.

14:12 12 A. Okay.

14:12 13 Q. We don't have a public defender in this county.

14:12 14 A. You are court appointed, I understand.

14:12 15 Q. Right. Do you have any problems with that,
14:12 16 that the taxpayers of Collin County are paying for
14:12 17 Mr. Cantu's defense?

14:12 18 A. No.

14:12 19 Q. Okay. That used to be a problem years ago when
14:12 20 it kind of came about, but it's been in place for a
14:12 21 while now. All right. I'm wondering was Mr. Dickey,
14:12 22 was he court appointed or was he retained?

14:12 23 A. He was retained.

14:12 24 Q. And how did you know him?

14:13 25 A. He -- someone referred us to him. We didn't

14:13 1 know him, and we didn't know who to get. And I don't
14:13 2 even remember how he was referred, but that was the
14:13 3 situation.

14:13 4 Q. Okay. I think he takes some appointed cases.

14:13 5 A. Does he?

14:13 6 Q. He has in the past. I think he still might
14:13 7 take a few.

14:13 8 A. It was my understanding he did mostly juvenile
14:13 9 work, so...

14:13 10 Q. Okay.

14:13 11 A. That's why we were pointed in that direction.

14:13 12 Q. And he represented your son well?

14:13 13 A. Yes.

14:13 14 Q. It sounds like you got a good result?

14:13 15 A. Yes, he did.

14:13 16 Q. Okay. Very good. You're originally from
14:13 17 Florida?

14:13 18 A. Yes, sir.

14:13 19 Q. Lived most of your life there?

14:13 20 A. Uh-huh.

14:13 21 Q. That's a great place to be from. Why did you
14:13 22 leave?

14:13 23 A. Got married.

14:13 24 Q. Okay.

14:13 25 A. Followed the good job out here.

14:13 1 Q. Okay.

14:13 2 A. That was -- that was it. I was -- I was ready
14:13 3 to move on from NASA, and my husband got the job here
14:14 4 and couldn't resist.

14:14 5 Q. Okay. What kind of job did he get?

14:14 6 A. He's a technical manager for Computer Sciences
14:14 7 Corporation.

14:14 8 Q. And what does that mean, technical manager?

14:14 9 A. Actually he's -- they contract to Raytheon.
14:14 10 And he's got all the parts of their competing servers
14:14 11 and stuff across the country. So he actually travels a
14:14 12 lot for that. And that's not actually the job we came
14:14 13 out here for though. That's just what he does now. He
14:14 14 came out with a job for Sprint doing the same type of
14:14 15 work though.

14:14 16 Q. Okay.

14:14 17 A. He's a computer person too, but he's more of a
14:14 18 manager type.

14:14 19 Q. Okay. Great. And I guess this is -- he is not
14:14 20 going to be traveling near as much, I guess, in the
14:14 21 immediate future?

14:14 22 A. No.

14:14 23 Q. It's a little bit of a concern, isn't it?

14:14 24 A. He had just been at Newark airport the Friday
14:14 25 before that happened, and said he'd been looking across

14:14 1 at the World Trade Centers about three days before. So
14:15 2 thank goodness he was home.

14:15 3 Q. And I take it you don't travel much?

14:15 4 A. No, not if I can help it. I'm a homebody.

14:15 5 Q. And you are enjoying your retirement and your
14:15 6 life right now?

14:15 7 A. Yes.

14:15 8 Q. I'm sure that most of us in here are very
14:15 9 jealous of you. Sounds terrific. When you were in
14:15 10 Florida -- I don't see in here that you served on any
14:15 11 juries. Have you ever served on a jury before?

14:15 12 A. No, I haven't.

14:15 13 Q. And this was a first experience?

14:15 14 A. I was called for jury duty down there, like I
14:15 15 said, but wasn't even questioned. Just, you know, it
14:15 16 was off after the first day. So never served on a jury,
14:15 17 no.

14:15 18 Q. And then you get to Texas. Is this the first
14:15 19 time you've ever been called in Texas?

14:15 20 A. Yes.

14:15 21 Q. And then you have been called in for a capital
14:15 22 murder death penalty case. You picked the daddy of them
14:15 23 all, didn't you?

14:15 24 A. Oh, yeah.

14:15 25 Q. When you came in that morning and you figured

14:16 1 out it was pretty serious, and you figured out it was
 14:16 2 capital murder, tell me what went through your mind.
 14:16 3 Tell me -- tell me what was going on in that head of
 14:16 4 yours.

14:16 5 A. Wow. Most of the time people think being on a
 14:16 6 jury is boring and, you know, petty little things and
 14:16 7 you have to sit and waste your time listening. And I
 14:16 8 thought, well, like I said, this one might actually be
 14:16 9 kind of interesting if I actually had to do it. But
 14:16 10 then, as I thought about it more, you know, I thought
 14:16 11 about the ramifications of my decision, and I did have
 14:16 12 to do some soul-searching about that.

14:16 13 Q. I'll bet. Okay. And then they handed out the
 14:16 14 questionnaire, and right on the very first page it talks
 14:16 15 about the death penalty in bold letters. So I'm sure
 14:16 16 that was fairly shocking.

14:16 17 A. Oh, yes.

14:17 18 Q. Okay. So then everybody, I remember that hour.
 14:17 19 It was about an hour, hour and a half, two hours. And
 14:17 20 y'all were working feverishly on your questionnaire.
 14:17 21 Did you have a chance to look around? I know you had a
 14:17 22 chance to look at the State, and you had a chance to
 14:17 23 look at our side. And did you have a chance to get a
 14:17 24 good look at Mr. Cantu that morning?

14:17 25 A. I don't think I even realized who he was that

14:17 1 morning.

14:17 2 Q. Okay. Were you seated pretty far back where
 14:17 3 your view was obstructed?

14:17 4 A. Yes.

14:17 5 Q. Did you figure out who the defendant was?

14:17 6 A. I think by the end of that day I had.

14:17 7 Q. Okay. And had you presumed that he had done
 14:17 8 something, that he was guilty? Tell me what was going
 14:17 9 on in your head in that respect.

14:17 10 A. I don't think I presumed anything.

14:17 11 Q. Okay.

14:17 12 A. It's just, oh, okay. He's the one on trial.

14:17 13 Q. Okay, fair enough. You know, what I'm getting
 14:18 14 at. I'm getting at the presumption of innocence.

14:18 15 A. Uh-huh.

14:18 16 Q. And at least at this stage in the trial, you
 14:18 17 know if you were to sit on the jury, you haven't heard
 14:18 18 any evidence yet.

14:18 19 A. Uh-huh.

14:18 20 Q. And I anticipate the Judge will instruct you
 14:18 21 that he will be presumed innocent until -- until he's
 14:18 22 not innocent anymore, until the State's discharged their
 14:18 23 burden of proof to prove him guilty beyond a reasonable
 14:18 24 doubt. Does that make sense?

14:18 25 A. Yes.

14:18 1 Q. And so I guess the idea is not to presume guilt
 14:18 2 at the beginning of the trial. You are sure not
 14:18 3 supposed to do that.

14:18 4 A. Right.

14:18 5 Q. I guess I'm trying to find out from you, deep
 14:18 6 in your heart, were you presuming him guilty?

14:18 7 A. I don't think I was presuming. I think what I
 14:18 8 was thinking was: Wow, I wonder what happened?

14:18 9 Q. Okay.

14:18 10 A. I was not familiar, didn't know anything about
 14:18 11 this case, and that's all I was thinking is: I wonder
 14:18 12 what happened?

14:18 13 Q. Fair enough. Okay. I guess you are okay with
 14:19 14 the burden of proof, proof beyond a reasonable doubt,
 14:19 15 and that the State has the burden?

14:19 16 A. Uh-huh.

14:19 17 Q. And that you also understand that the defense
 14:19 18 really has no burden at all?

14:19 19 A. Right.

14:19 20 Q. Other than to be here?

14:19 21 A. Uh-huh.

14:19 22 Q. And behave ourself in the courtroom. Do you
 14:19 23 understand that, and before I went to law school and
 14:19 24 even in law school, I had kind of a tough time
 14:19 25 understanding this, and I still do, as a matter of fact,

14:19 1 in the practice. Sometimes it's better just to sit here
 14:19 2 and be quiet if things are going your way than to do
 14:19 3 something and mess up something that's already going
 14:19 4 pretty good. Do you know what I mean?

14:19 5 A. Uh-huh.

14:19 6 Q. In fact, in some trials -- and I've watched
 14:19 7 some really good lawyers do this -- they don't do
 14:19 8 anything. They just sit there because they -- they can
 14:19 9 tell that the case is going their way.

14:19 10 A. Sure.

14:19 11 Q. Does that make sense to you?

14:19 12 A. Yes.

14:19 13 Q. And that's really hard for me to do because I
 14:20 14 have a tendency to want to make it better.

14:20 15 A. Uh-huh.

14:20 16 Q. But there are some really good lawyers and
 14:20 17 strategic lawyers out there that they can -- they can
 14:20 18 know enough to keep their mouth shut. Does that make
 14:20 19 sense to you?

14:20 20 A. Yes.

14:20 21 Q. You understand that, you know, it may be that
 14:20 22 way in this trial. I don't think it will be. I've got
 14:20 23 a feeling that we're going to be doing some things in
 14:20 24 this trial. But you understand that the Judge or the
 14:20 25 jury or the State, nobody can require the defense to do

14:20 1 anything, other than be here?
 14:20 2 A. I understand.
 14:20 3 Q. And that makes sense?
 14:20 4 A. Uh-huh.
 14:20 5 Q. Okay. Also along those lines, the defendant
 14:20 6 has a Fifth Amendment right not to testify.
 14:20 7 A. Uh-huh.
 14:20 8 Q. Not to say anything if he doesn't want to. And
 14:20 9 I'm sure you are -- you are familiar with the case of
 14:20 10 *Miranda v. Arizona*. We hear it all the time on TV. You
 14:20 11 know, you have the right to remain silent and anything
 14:21 12 you say can and will be used against you in a court of
 14:21 13 law.
 14:21 14 A. Yep.
 14:21 15 Q. And certainly if you say, in a court of law, it
 14:21 16 could be used against you.
 14:21 17 A. Uh-huh.
 14:21 18 Q. Okay. And, in fact, you may have even been
 14:21 19 read your *Miranda* rights when you were arrested. Do you
 14:21 20 recall that or --
 14:21 21 A. Oh, yes. And if my case had gone to trial, it
 14:21 22 was my attorney's recommendation that I not testify. So
 14:21 23 I'm very familiar with all of that. I understand. And
 14:21 24 I don't presume guilt or innocence, either way, based on
 14:21 25 that.

14:21 1 Q. Excellent.
 14:21 2 A. Based on my experience, I understand, you know,
 14:21 3 what they are getting at.
 14:21 4 Q. Excellent.
 14:21 5 A. Things can get out of hand if you get up there
 14:21 6 sometimes.
 14:21 7 Q. That's right because it's an unfamiliar place
 14:21 8 sitting where you are right now.
 14:21 9 A. It's very uncomfortable. I've never been here
 14:21 10 before.
 14:21 11 Q. Well, I'm -- Ms. Falco has treated you very
 14:21 12 very nice, and I plan to do the same thing. We sure
 14:21 13 don't want you to be uncomfortable. Okay? And I
 14:22 14 understand you are because this is not where you live
 14:22 15 and reside like we do, but we'll try to get through
 14:22 16 this. And hopefully you'll have a good feeling about it
 14:22 17 when you are done. Okay. You've made that part of my
 14:22 18 job easy.
 14:22 19 Let's go to the death penalty. And
 14:22 20 there's a question here, it says: Are you in favor of
 14:22 21 the death penalty? And you said yes. And it says:
 14:22 22 Please explain your answer. And you said: If there is
 14:22 23 no doubt whatsoever that the defendant is guilty, then I
 14:22 24 support the death penalty as appropriate punishment.
 14:22 25 Now, I want you to elaborate on that, if

14:22 1 you will. Just make -- just give me a little bit more,
 14:22 2 if you don't mind.
 14:22 3 A. Okay. Well, first of all, like I was saying
 14:23 4 before, when I answered that, I wasn't familiar with
 14:23 5 these questions either, so. But all I was thinking was,
 14:23 6 I would have to be awfully convinced of the guilt
 14:23 7 because -- because of the burden of the juror of making
 14:23 8 that decision. But I think -- but that's the way the
 14:23 9 law in Texas is, and I can abide by it also if I was
 14:23 10 convinced.
 14:23 11 Q. Okay.
 14:23 12 A. But I can't think of anything worse than --
 14:23 13 than putting someone to death who wasn't guilty --
 14:23 14 Q. Okay.
 14:23 15 A. -- either, so...
 14:23 16 Q. I think I understand what you mean, but I want
 14:23 17 to explore it just a little bit further. If a person is
 14:23 18 convicted of capital murder, and you know beyond a
 14:23 19 doubt, that they were guilty, is that going to be a
 14:23 20 death penalty from you or --
 14:23 21 A. Not necessarily.
 14:23 22 Q. Not necessarily. You would consider the other
 14:23 23 option which is a life sentence?
 14:24 24 A. Yes.
 14:24 25 Q. Fair enough. And then the next section on

14:24 1 here, it talks about life confinement in prison. And
 14:24 2 they gave you three options, and you circled the third
 14:24 3 option. And I'll read it to you, and if that's not
 14:24 4 clear, I'll let you see it.
 14:24 5 It says: I believe that life confinement
 14:24 6 in prison is appropriate in some capital murder cases,
 14:24 7 and I could return a verdict resulting in life
 14:24 8 confinement in a proper case. Is that still your
 14:24 9 position today?
 14:24 10 A. Yes.
 14:24 11 Q. Okay. And I believe Mr. Goeller explained that
 14:24 12 to some extent when we were all here in this room.
 14:24 13 A. Uh-huh.
 14:24 14 Q. And incidentally, anything about his
 14:24 15 presentation that didn't sit too well with you?
 14:24 16 Anything -- anything he said or did rubbed you the wrong
 14:24 17 way?
 14:24 18 A. No.
 14:24 19 Q. That's good. I don't need to take him outside
 14:24 20 and work him over for you. Okay. All right. Did he
 14:25 21 get the point across that, when we're talking about life
 14:25 22 confinement that, especially on a conviction for capital
 14:25 23 murder, that we're talking at least 40 calendar years?
 14:25 24 A. Uh-huh.
 14:25 25 Q. Okay. And so a person that's 28, 29, 30 is

14:25 1 going to be in until they are 68, 70 years old.

14:25 2 A. Right.

14:25 3 Q. And even then, it's up to the Board of Pardons
14:25 4 and Paroles to decide if they get parole. It's not an
14:25 5 automatic thing. I'm sure you've watched some movies
14:25 6 where the guy submits his application for parole, and
14:25 7 the stamp comes down "denied." Okay?

14:25 8 And I'm not exactly sure how it works, but
14:25 9 I'm sure that's probably not too far off. You know,
14:25 10 it's not an automatic thing. I mean, a person could be
14:25 11 in for 42, 45, maybe 50 years, maybe longer. Does that
14:25 12 make sense to you?

14:25 13 A. Yes.

14:25 14 Q. And so even though we don't have life without
14:26 15 parole in Texas, it could work that way?

14:26 16 A. Uh-huh.

14:26 17 Q. And we don't know how long a person can survive
14:26 18 in a Texas prison for one thing. Okay. So you don't
14:26 19 have any problems with any of that, that thinking?

14:26 20 A. No.

14:26 21 Q. We'll get to my next thing. You circled, it
14:26 22 says: If you believe in using the death penalty, how
14:26 23 strongly on a scale of 1 to 10 do you hold that belief?
14:26 24 And you said you were a 7. 1 being the least, and 10
14:26 25 being the strongest. You said you were a 7. Tell me

14:26 1 why you chose 7.

14:26 2 A. Well, that's a hard question to answer not
14:26 3 knowing the case or the evidence or anything.

14:26 4 Q. It absolutely is.

14:26 5 A. I mean, you really can't say. It has to be on
14:26 6 a case-by-case basis. So, I don't know why I said 7.

14:27 7 Q. Okay. Do you have any leanings, more towards
14:27 8 the death penalty or more towards a life sentence, or is
14:27 9 that kind of hard to say?

14:27 10 A. It's hard to say.

14:27 11 Q. Okay. So you would be open to either one?

14:27 12 A. Yes.

14:27 13 Q. Depending on the facts and circumstances of the
14:27 14 case?

14:27 15 A. Uh-huh.

14:27 16 Q. That's fair enough. I want you to understand
14:28 17 at this point that, you know, we're talking about
14:28 18 punishment in this trial. We're talking about
14:28 19 punishment issues. We're talking about life, death, and
14:28 20 we're assuming that this jury has found this young man
14:28 21 guilty. Do you understand that we haven't had his trial
14:28 22 yet?

14:28 23 A. Yes.

14:28 24 Q. And that we plan to plead not guilty, and that
14:28 25 those issues are going to be engaged and probably fought

14:28 1 over very strenuously. And we may not even get to the
14:28 2 punishment phase of the trial. Do you understand that?

14:28 3 A. Uh-huh.

14:28 4 Q. Okay. I sure don't want to give you the
14:28 5 impression that we agree that he's guilty, or that we
14:28 6 admit that he's guilty or anything like that. I haven't
14:28 7 given you that impression, have I?

14:28 8 A. No.

14:28 9 Q. Okay. So I want to make sure I cleared that up
14:28 10 right now. All those issues are going to be litigated
14:28 11 before we even talk about the punishment.

14:29 12 A. Right.

14:29 13 Q. The way our law is set up in Texas, we have to
14:29 14 do an individual voir dire on death penalty cases. We
14:29 15 have to talk with the jurors individually to find out
14:29 16 about their views on life in prison and the death
14:29 17 penalty before they get empaneled on a jury. So this is
14:29 18 the way our law provides for this kind of case. Is that
14:29 19 fair enough?

14:29 20 A. Uh-huh.

14:29 21 Q. And you are okay with that?

14:29 22 A. I'm okay with it.

14:29 23 Q. Okay. Obviously, we couldn't ask you about it
14:29 24 later, if you were picked on the jury.

14:29 25 A. Uh-huh.

14:29 1 Q. And then -- and then we got to the guilty
14:29 2 verdict, assuming we did, and we couldn't ask you about
14:29 3 your views then because it's already too late. You
14:29 4 would be on the jury.

14:29 5 A. I understand.

14:29 6 Q. Because we'd have to do it ahead of time. When
14:29 7 you were facing your DWI charge, DUI in Florida --

14:29 8 A. Uh-huh.

14:29 9 Q. -- I guess your lawyer explained to you that
14:29 10 you had a right to have a jury trial, if you wanted one?

14:30 11 A. Right.

14:30 12 Q. But obviously it was going to cost you a lot
14:30 13 more money, right? He probably told you that?

14:30 14 A. Yeah. It still cost a lot of money.

14:30 15 Q. And I'm sure he explained to you the upside of
14:30 16 having the jury trial, the downside of having a jury
14:30 17 trial. That it would take longer. It, you know, it
14:30 18 could go bad for you.

14:30 19 A. Sure.

14:30 20 Q. Maybe a little more time-consuming or
14:30 21 expensive, what have you. And then I'm sure he did some
14:30 22 plea bargaining for you, and then was able to get a
14:30 23 resolution that you could live with.

14:30 24 A. Uh-huh.

14:30 25 Q. That wasn't exactly great but something that

14:30 1 was palatable, I guess.
 14:30 2 A. Right.
 14:30 3 Q. And then at that point you had to give up your
 14:30 4 right to a jury trial. I'm sure you had to waive that
 14:30 5 right?
 14:30 6 A. Right.
 14:31 7 Q. And obviously, our system here in Texas is
 14:31 8 probably not too much different than the one in Florida.
 14:31 9 I mean, you have the same -- we have the same rights,
 14:31 10 and we have the same issues. And you understand that
 14:31 11 we're -- we're going to be trying this case. This is
 14:31 12 going to be a jury trial.
 14:31 13 A. I understand.
 14:31 14 Q. Okay. And it's going to be up to the jury to
 14:31 15 make a decision whether or not the State's met their
 14:31 16 burden of proof of whether or not this young man is
 14:31 17 guilty?
 14:31 18 A. Right.
 14:31 19 Q. Okay. Tell me what your degree is in.
 14:32 20 A. It's a bachelor of science in engineering.
 14:32 21 Q. Where did you get it?
 14:32 22 A. University of Central Florida.
 14:32 23 Q. Is that in Orlando?
 14:32 24 A. Yes.
 14:32 25 Q. I used to know the name of their mascot. I

14:32 1 think black and gold, gold and black?
 14:32 2 A. Yes. Gosh, I can't even think of it --
 14:32 3 Knights.
 14:32 4 Q. The Knights.
 14:32 5 A. Okay.
 14:32 6 Q. That's where one of the bowl games is played, I
 14:32 7 think. Isn't it where the Gator Bowl or one of those?
 14:32 8 A. I'm not a sports fan, sorry.
 14:32 9 Q. You're not?
 14:32 10 A. I can't help you there.
 14:32 11 Q. And did you go your four years of school there?
 14:32 12 A. At least, more like five.
 14:32 13 Q. You crammed five into four?
 14:32 14 A. Yeah. Four into five.
 14:32 15 Q. Four into five, there you go. Any other
 14:33 16 schooling past your BS in engineering?
 14:33 17 A. I got a real estate license in Florida.
 14:33 18 Considered going back for the master's, but just never
 14:33 19 made it. So I guess nothing significant, no.
 14:33 20 Q. Did you have to take some tests to get the real
 14:33 21 estate license?
 14:33 22 A. Yes, sir.
 14:33 23 Q. Did you ever use the real estate license?
 14:33 24 A. No.
 14:33 25 Q. No?

14:33 1 A. Just for knowing what was going on when I was
 14:33 2 buying, you know, a house and everything. Personal use.
 14:33 3 Q. How long did you live in Orlando?
 14:33 4 A. About six years.
 14:34 5 Q. Was that college?
 14:34 6 A. Uh-huh.
 14:34 7 Q. How long did you live in Cocoa?
 14:34 8 A. Well, I was born and raised there, so my first
 14:34 9 18 years.
 14:34 10 Q. Is that on the beach?
 14:34 11 A. About ten miles inland.
 14:34 12 Q. Okay.
 14:34 13 A. Cocoa and then Cocoa Beach, two different
 14:34 14 cities, but --
 14:34 15 Q. You spent a lot of time on the beach as a young
 14:34 16 person?
 14:34 17 A. Some, but not so much.
 14:34 18 Q. Not so much?
 14:34 19 A. No. It was there though, which was nice. I
 14:34 20 didn't realize how much I'd miss it.
 14:34 21 Q. Yeah. Because it ain't there now.
 14:34 22 A. Huh-uh.
 14:34 23 Q. And then you lived in Titusville. I've been to
 14:34 24 Titusville.
 14:34 25 A. That's near Kennedy Space Center.

14:34 1 Q. How long did you live there?
 14:34 2 A. Off and on, probably five years total.
 14:34 3 Q. Okay. And all of those places are nice places
 14:34 4 to live.
 14:34 5 A. Uh-huh.
 14:35 6 Q. And so what were your hobbies growing up
 14:35 7 through your youth? Was it going to the beach? Was
 14:35 8 it -- what exactly did you do for fun?
 14:35 9 A. Wow. I don't remember. Going shopping, I
 14:35 10 guess, or going to the beach occasionally, water skiing
 14:35 11 maybe.
 14:35 12 Q. You are a water skier?
 14:35 13 A. Not big, just occasionally.
 14:35 14 Q. What do you think of these shark attacks going
 14:35 15 on?
 14:35 16 A. It's scary, but I think it's just getting more
 14:35 17 publicity this year for some reason. It's always been
 14:35 18 like that.
 14:35 19 Q. It has?
 14:35 20 A. Uh-huh.
 14:35 21 Q. I tell you it is getting a lot of publicity.
 14:35 22 Now, I noticed on your questionnaire, you now have nine
 14:35 23 pets. Cats and dogs?
 14:35 24 A. That's my full-time job now.
 14:35 25 Q. Okay. So is it evenly split, four dogs and

- 14:35 1 five cats, or how many?
- 14:35 2 A. Six cats and three dogs.
- 14:36 3 Q. How about that? And how did you come to
- 14:36 4 acquire that many animals?
- 14:36 5 A. I had two cats for a long time. That was when
- 14:36 6 I was single and everything, and then decided to get a
- 14:36 7 third kitten. And about that time I met my husband. I
- 14:36 8 got the third kitten when he got the two more kittens
- 14:36 9 for him and his son because we weren't planning on
- 14:36 10 getting married at the time. So then when we ended up
- 14:36 11 together, we had five cats. And then we decided to have
- 14:36 12 one together, so we got a sixth one.
- 14:36 13 And in the meantime, we found this old
- 14:36 14 10-year-old dog that had been abandoned, and we rescued
- 14:36 15 her. And we just were softies when it comes to pets, I
- 14:36 16 guess.
- 14:36 17 Q. Sounds like it.
- 14:36 18 A. We don't have any kids together, so that's our
- 14:36 19 kids.
- 14:36 20 Q. Okay. That's great. And what does your food
- 14:36 21 bill for those animals run? I'm just curious.
- 14:37 22 A. Too much. The vet bill is the worst part.
- 14:37 23 Q. Is it?
- 14:37 24 A. Yeah.
- 14:37 25 Q. You got the path worn out to the vet's office?

- 14:37 1 A. Oh, yeah.
- 14:37 2 Q. Interesting.
- 14:37 3 A. We just wish we could get tax deductions for
- 14:37 4 them.
- 14:37 5 Q. These stepchildren -- Brian is 16, and Jeremy
- 14:37 6 is 21?
- 14:37 7 A. Right.
- 14:37 8 Q. Okay. Yeah, pretty big boys.
- 14:37 9 A. Jeremy doesn't live with us.
- 14:37 10 Q. Where does he live?
- 14:37 11 A. Houston.
- 14:37 12 Q. What kind of work does he do?
- 14:37 13 A. This week? Who knows. Installing cable, the
- 14:37 14 last I heard.
- 14:37 15 Q. Okay. Did he live with you when you guys --
- 14:38 16 A. No. He's never lived with us.
- 14:38 17 Q. What about Brian?
- 14:38 18 A. He's always been with us.
- 14:38 19 Q. Okay. And is he in school?
- 14:38 20 A. Yes.
- 14:38 21 Q. What is JJAEP?
- 14:38 22 A. He's at the Juvenile Justice Alternative
- 14:38 23 Education up here in McKinney at the old hospital for
- 14:38 24 the -- the offense that he did last May. Hopefully
- 14:38 25 he'll be getting out of there next week though.

- 14:38 1 Q. Okay.
- 14:38 2 A. And then he'll be at Allen High School.
- 14:38 3 Q. Allen High School?
- 14:38 4 A. Uh-huh.
- 14:38 5 Q. What kind of activities is he involved in at
- 14:38 6 Allen High School?
- 14:38 7 A. Well, he's not at the high school.
- 14:38 8 Q. Before this happened, I guess.
- 14:38 9 A. He was at the Lowry Freshman Center. So he was
- 14:38 10 into theater, and he's really into tae kwon do. He's
- 14:38 11 almost got his black belt. That's not a school
- 14:39 12 activity, but that's really where his main focus lies.
- 14:39 13 He works part-time at the bowling alley, and he's into
- 14:39 14 that a lot, too.
- 14:39 15 Q. And do you-all have a close relationship?
- 14:39 16 A. Surprisingly, for a stepchild and stepmother,
- 14:39 17 yes.
- 14:39 18 Q. And I guess, has it been stretched over this
- 14:39 19 recent turn of events with this -- with this charge
- 14:39 20 or --
- 14:39 21 A. I guess. It's been strained, but it's also
- 14:39 22 brought us closer, I think.
- 14:39 23 Q. Absolutely. So are you-all going to be able to
- 14:39 24 work it out, it sounds like?
- 14:39 25 A. Yeah.

- 14:39 1 Q. That's good. It says here that you've been
- 14:39 2 taught to fire a handgun at a gun range?
- 14:39 3 A. Uh-huh.
- 14:39 4 Q. What kind? Do you recall what kind it was.
- 14:40 5 A. 9 millimeter, I think.
- 14:40 6 Q. 9 millimeter?
- 14:40 7 A. Yeah. That's all I remember.
- 14:40 8 Q. Pretty common piece. Is it your husband's?
- 14:40 9 A. It was a friend of my husband. He's -- that's
- 14:40 10 kind of his hobby, and I decided that I needed to know
- 14:40 11 how to do that.
- 14:40 12 Q. Did you learn?
- 14:40 13 A. I guess, I did it.
- 14:40 14 Q. Okay.
- 14:40 15 A. I didn't really -- I didn't want to go back.
- 14:40 16 It wasn't like lots of fun, but I figured it might come
- 14:40 17 in handy. Hopefully not.
- 14:40 18 Q. I don't suppose that caught on with you then?
- 14:40 19 You are not anxious to run back down there and fire
- 14:40 20 handguns for fun on the weekend?
- 14:40 21 A. No.
- 14:40 22 Q. And you didn't pursue your conceal-and-carry
- 14:40 23 license, did you?
- 14:40 24 A. No.
- 14:40 25 Q. It says here you are taking Zyban to try to

14:40 1 quit smoking?
 14:40 2 A. Uh-huh.
 14:40 3 Q. Were you a smoker?
 14:40 4 A. Yes.
 14:41 5 Q. Okay. I just got a few more questions about
 14:41 6 the special issues. Obviously, there will be the trial.
 14:41 7 We've talked about that. And if the jury decides beyond
 14:41 8 a reasonable doubt that there's guilt, then there's a
 14:41 9 finding of guilt on capital murder. Then the jury will
 14:41 10 go into the punishment phase. And there may or may not
 14:41 11 be evidence or probably will be evidence to support
 14:41 12 these two issues.

14:41 13 And the first issue, Ms. Falco went over
 14:41 14 it with you real well, the one on the floor there is
 14:41 15 whether there's a probability that the defendant would
 14:41 16 commit criminal acts of violence that would constitute a
 14:41 17 continuing threat to society.

14:41 18 And obviously the jury would be in the
 14:41 19 format of having to look into the future, you know.
 14:42 20 Having to say, yes, we believe there is a probability
 14:42 21 that he's going to be a future danger. All right?

14:42 22 And I believe also she explained to you
 14:42 23 that it's going to be their burden to prove to the jury
 14:42 24 beyond a reasonable doubt there's a probability that
 14:42 25 he's going to be a danger to the future?

14:42 1 A. Yes.
 14:42 2 Q. And you've -- you've been to a lot of classes.
 14:42 3 I'm sure that sounds kind of strange to you, and it does
 14:42 4 to me. And to prove something beyond a reasonable doubt
 14:42 5 of probability. Is that just a little odd, or can you
 14:42 6 make sense of that?
 14:42 7 A. I can make sense of that.
 14:42 8 Q. Okay. I'm sure you -- there's a difference
 14:42 9 between probability and possibility. Tell me the
 14:42 10 difference between probability and possibility.
 14:42 11 A. Possibility is, it could happen. Anything
 14:43 12 could happen. Probability, it probably would happen.
 14:43 13 Q. Absolutely.
 14:43 14 A. More than likely would.
 14:43 15 Q. Okay. For instance, like, "Don are you going
 14:43 16 to go to the office party this Friday night?" And I
 14:43 17 say, "Well, I probably am."
 14:43 18 A. I'd probably expect to see you.
 14:43 19 Q. There you go.
 14:43 20 A. Uh-huh.
 14:43 21 Q. Whereas, if they say, "Well, are you going to
 14:43 22 go to the office party this Friday night?" And I say,
 14:43 23 "Well, maybe, maybe not. Just depends, you know." Then
 14:43 24 you'd probably say, "Well, maybe not. There's a
 14:43 25 possibility he'll be there." Okay?

14:43 1 A. Right.
 14:43 2 Q. Now, one thing we talked about when we were all
 14:43 3 here in this big group was society. And we talked about
 14:43 4 the fact that, if there's a conviction for capital
 14:43 5 murder, that we know at least that the -- or the very
 14:44 6 least that could happen to a defendant is he's going to
 14:44 7 go to prison for life. We know that's going to happen.
 14:44 8 A. Right.
 14:44 9 Q. And then we proceed down this trail, you know,
 14:44 10 if we find that he's a future danger, if that's yes, and
 14:44 11 then we look for mitigation. If there's no mitigation,
 14:44 12 then you get the death sentence. Does that make sense?
 14:44 13 A. Uh-huh.
 14:44 14 Q. So really the automatic finding is life unless
 14:44 15 we get through these questions, and there's no
 14:44 16 mitigation with future dangerousness.
 14:44 17 A. Right.
 14:44 18 Q. So we know, at least that a defendant is going
 14:44 19 to spend the next 40 years in prison. Does it make
 14:44 20 sense to you to consider at least how he's going to do
 14:44 21 in prison?
 14:44 22 A. Consider how he's going to do?
 14:44 23 Q. Right.
 14:44 24 A. You mean as far as being a threat?
 14:44 25 Q. That's right.

14:44 1 A. I don't see that as a -- as a problem to think
 14:45 2 about. I mean, you know, with the guards and everything
 14:45 3 are there for.
 14:45 4 Q. Okay. Okay. And guards are there to take care
 14:45 5 of the situation, calm any uprisings?
 14:45 6 A. Uh-huh.
 14:45 7 Q. Keep drugs out, keeps weapons out, lock guys up
 14:45 8 when they misbehave, that sort of thing?
 14:45 9 A. Uh-huh.
 14:45 10 Q. And you would agree with the interpretation or
 14:45 11 at least that some would look at this question, and they
 14:45 12 would say, society -- well, if he's going to go to
 14:45 13 prison for 40 years and we need to consider how he's
 14:45 14 going to be, whether he's going to be a threat in prison
 14:45 15 society. And that's -- that's a reasonable
 14:45 16 interpretation?
 14:45 17 A. I can see that. That was maybe the only
 14:45 18 problem I had with the things that Mr. Goeller said the
 14:45 19 other day.
 14:45 20 MR. GOELLER: What?
 14:45 21 A. It just didn't make a lot of sense to worry
 14:46 22 about him being a threat to the prison society. I would
 14:46 23 also look at it as: Okay. Say, he got out at age 70.
 14:46 24 Q. Sure.
 14:46 25 A. Would he be a threat to society at that point

14:46 1 in time?

14:46 2 Q. Absolutely. Okay. And you are exactly right,
14:46 3 exactly right. But you would be open to considering
14:46 4 prison society too, I mean, within the context of this
14:46 5 question?

14:46 6 THE COURT: Say, that reminds me, did you
14:46 7 get me that case?

14:46 8 MR. HIGH: Are you pointing at me?

14:46 9 THE COURT: Yeah. Remember we talked
14:46 10 about that case?

14:46 11 MR. HIGH: He needs a case on prison
14:46 12 society, and he said he has one.

14:46 13 MR. GOELLER: Yes, sir, I do.

14:46 14 THE COURT: Go ahead with your questions.
14:46 15 If you've got it, let me see it.

14:46 16 Q. (BY MR. HIGH) Okay. Well, I'm not going to
14:46 17 beat a dead horse. I'm going to try to keep moving.

14:46 18 A. Okay.

14:46 19 Q. You mention earlier, and I wrote this down. It
14:46 20 came right after the bashing-windshields comment.
14:47 21 Bashing windshields is an act of violence. And you
14:47 22 said, "Everyone can change if they really try." Is that
14:47 23 right?

14:47 24 A. Most people could, sure.

14:47 25 Q. If they really try. If they really work at it,

14:47 1 they can change?

14:47 2 A. Uh-huh.

14:47 3 Q. And I suppose, if you heard evidence that
14:47 4 someone's changed, would you be able to consider that
14:47 5 evidence with -- with respect to this probability
14:47 6 question, whether or not they are going to be a
14:47 7 continuing threat to society?

14:47 8 A. I'd be able to consider it, sure.

14:47 9 Q. Okay. All right. And of course, the only way
14:47 10 we know if somebody is changed is if there's evidence of
14:47 11 the change. Isn't that fair to say? I mean, talk's
14:47 12 cheap.

14:47 13 A. Actions are --

14:47 14 Q. Actions speak a thousand words.

14:48 15 A. Uh-huh.

14:48 16 Q. That's the kind of thing you'd be looking for,
14:48 17 right?

14:48 18 A. Uh-huh.

14:48 19 Q. And is it fair to say that if you -- you know,
14:48 20 if you saw sufficient actions, if you saw a sufficient
14:48 21 change, you know, and if you were persuaded that a
14:48 22 person's changed and you saw enough actions, enough
14:48 23 effort on their part, I mean, is it possible that after
14:48 24 you convicted them of capital murder, that you could
14:48 25 find that they weren't going to be a continuing threat

14:48 1 to society? Is that possible?

14:48 2 A. It's possible.

14:48 3 Q. Okay. And so if you -- if you found that way,
14:48 4 the answer is: No. They weren't going to be a
14:48 5 continuing threat to society, then we're done, right?
14:48 6 The defendant goes to prison with his life sentence?

14:48 7 A. Uh-huh.

14:48 8 Q. Now, let's go to the last question. If you
14:49 9 say, no, you know, I don't believe they've changed
14:49 10 enough. They are still a continuing threat to society,
14:49 11 whether it be prison or on the outside. Yes, they are a
14:49 12 continuing threat, then we go to that last question.

14:49 13 And the last question, the Penry question
14:49 14 that we talked about, mitigation question, some people
14:49 15 call it the humanitarian question. Other people call it
14:49 16 the last-look question.

14:49 17 In other words, the jury has found a
14:49 18 person guilty of capital murder, and they found that
14:49 19 he's going to be a future danger, a continuing threat to
14:49 20 society. And now they are going to take that one last
14:49 21 look at the defendant and see if there's any reason why,
14:49 22 based on mitigation, they should spare his life. Does
14:49 23 that make sense?

14:49 24 A. Uh-huh.

14:49 25 Q. And the question says: Taking into

14:49 1 consideration all of the evidence, including the
14:49 2 circumstances of the offense, the defendant's character
14:49 3 and background and the personal moral culpability of the
14:50 4 defendant. Any idea what personal moral culpability
14:50 5 means?

14:50 6 A. That's a tough one.

14:50 7 Q. He would have to ask that, huh?

14:50 8 A. Yeah.

14:50 9 Q. I'll give you a little help. In law,
14:50 10 culpability means responsibility.

14:50 11 A. Okay. Oh, you are still asking me to explain
14:50 12 it?

14:50 13 Q. Yeah. I was going to let you take a stab at
14:50 14 it.

14:50 15 A. How much he feels responsible for his actions.

14:50 16 Q. Okay. You are right on. And that could come
14:50 17 in many forms, such as remorse?

14:50 18 A. Uh-huh.

14:50 19 Q. Guilt, actions taken, emotions, that sort of
14:51 20 thing. Timothy McVeigh didn't have any remorse, right?

14:51 21 A. Right.

14:51 22 Q. And any emotion he had was utter contempt,
14:51 23 basically, in your face?

14:51 24 A. Right.

14:51 25 Q. So we'd probably give him a pretty low grade

14:51 1 with respect to personal moral culpability. He would
 14:51 2 probably get a zero on that?
 14:51 3 A. Uh-huh.
 14:51 4 Q. Now, there's no definition on this because the
 14:51 5 jury's going to have to decide really what personal
 14:51 6 moral culpability is. And they are also going to have
 14:51 7 to weigh it, along with the background and the character
 14:51 8 and the circumstances of the offense to see if it's
 14:51 9 sufficient to block out a death sentence, I guess. To
 14:51 10 warrant that a life sentence rather than a death
 14:51 11 sentence be imposed. Does that make sense to you?
 14:51 12 A. Uh-huh.
 14:52 13 Q. Ms. Falco's correct. What's aggravating to one
 14:52 14 person may be mitigating to another person. Or what you
 14:52 15 think is mitigating to one person may be aggravating to
 14:52 16 another person. We're all different, aren't we?
 14:52 17 A. Uh-huh.
 14:52 18 Q. And it may be that the fact that a person has
 14:52 19 changed, and we talked about that, and the actions.
 14:52 20 Maybe they took -- it may not weigh in very heavily with
 14:52 21 respect to question No. 1, but it may weigh in heavily
 14:52 22 with respect to question No. 2. Can you see how that
 14:52 23 might happen?
 14:52 24 A. Uh-huh.
 14:52 25 Q. And could you see how that could be viewed as

14:52 1 mitigating, I guess?
 14:52 2 A. That's where I thought you were going when you
 14:52 3 were talking about changing.
 14:52 4 Q. Sure.
 14:52 5 A. And that could be, even if you answer yes, you
 14:52 6 could answer no for the same reason to question 2.
 14:52 7 Q. Sure. Okay.
 14:52 8 A. It's a mitigating circumstance, but you still
 14:53 9 think he might probably be a threat.
 14:53 10 Q. Absolutely.
 14:53 11 A. Okay.
 14:53 12 Q. And I've been looking at these questions for
 14:53 13 about four weeks, and sometimes I get cross-eyed. But
 14:53 14 I've also noticed that that type of evidence could be
 14:53 15 considered with respect to question 1 and question 2.
 14:53 16 It could flip back and forth. Does that make sense to
 14:53 17 you?
 14:53 18 A. Uh-huh.
 14:53 19 Q. You agree with mitigation? With this concept
 14:53 20 of looking at circumstances to see if they are
 14:53 21 sufficiently mitigating to warrant a sentence of life
 14:53 22 imprisonment. You agree with that concept?
 14:53 23 A. Yes.
 14:53 24 Q. Would you feel comfortable with applying that
 14:53 25 type of standard?

14:53 1 A. Uh-huh.
 14:53 2 Q. And I guess I have the same question as
 14:53 3 Ms. Falco. And in a capital murder scenario where
 14:54 4 somebody's been found guilty of capital murder, I
 14:54 5 believe the indictment in this case alleges a homicide
 14:54 6 of two people, a double homicide.
 14:54 7 A. Uh-huh.
 14:54 8 Q. It also alleges a burglary and a robbery. Do
 14:54 9 you envision a scenario or set of circumstances whereby
 14:54 10 you could answer no to that last question and render a
 14:54 11 death sentence?
 14:54 12 A. Sure.
 14:54 13 Q. Could you imagine a scenario where you could
 14:54 14 answer yes to that last question? We're talking about a
 14:54 15 double homicide, two people killed.
 14:54 16 A. Uh-huh.
 14:54 17 Q. And say, yeah, the circumstances are mitigating
 14:54 18 enough, and they are sufficient enough to give a life
 14:54 19 sentence?
 14:54 20 A. Sure. Either way.
 14:54 21 Q. So both of us, I mean, the State, they'd have a
 14:54 22 fair shot at the death sentence. And we'd have a fair
 14:54 23 shot at a life sentence?
 14:54 24 A. Uh-huh.
 14:55 25 Q. If I was -- if you were sitting where I am, and

14:55 1 you were representing this young man --
 14:55 2 A. Uh-huh.
 14:55 3 Q. -- would you -- would you feel comfortable
 14:55 4 putting you on the jury?
 14:55 5 A. Yes.
 14:55 6 Q. You would? Do you have any questions you want
 14:55 7 to ask me, Ms. Penn?
 14:55 8 A. I don't think so.
 14:55 9 MR. HIGH: Okay. Well, I guess -- I guess
 14:55 10 we're done. Give me just a second. We don't have
 14:55 11 anymore questions, Ms. Penn.
 14:55 12 VENIREPERSON: Okay.
 14:55 13 MR. HIGH: Thank you so much for your
 14:55 14 time. We pass the juror, Judge.
 14:55 15 THE COURT: You may step down. We'll call
 14:55 16 you back in a few minutes.
 14:55 17 (Venireperson Penn not present.)
 14:56 18 THE COURT: What says the State?
 14:56 19 MS. FALCO: I believe we have Juror
 14:56 20 No. 11, Your Honor.
 14:56 21 MR. GOELLER: Can we have just a few
 14:56 22 minutes?
 14:56 23 (Counsel conferring.)
 15:01 24 MR. HIGH: Judge, I think we're there.
 15:01 25 Judge, she's acceptable to the defendant.

15:01 1 THE COURT: All right. We'll bring her
 15:01 2 back in, and we'll talk to her and maybe we'll have a
 15:01 3 different reaction than we got from the last one.
 15:02 4 (Venireperson Penn present.)
 15:02 5 THE COURT: Please be seated, ma'am. All
 15:02 6 right. What says the State?
 15:02 7 MS. FALCO: This juror is acceptable to
 15:02 8 the State, Your Honor.
 15:02 9 THE COURT: What says the defense?
 15:02 10 MR. HIGH: Acceptable to the defense, Your
 15:02 11 Honor.
 15:02 12 THE COURT: All right. So Ms. Penn, you
 15:02 13 are going to be serving on this jury.
 15:02 14 VENIREPERSON: Okay.
 15:02 15 THE COURT: There are a few things that I
 15:02 16 want to tell you. And if I miss anything, I think the
 15:02 17 lawyers will remind me about what I should have said
 15:02 18 that I haven't.
 15:02 19 First one I want to tell you is I want to
 15:02 20 advise you or to admonish you not to be looking for
 15:02 21 anything in the paper or on TV or anything with regard
 15:02 22 to this case. I have the impression it's not likely
 15:02 23 there's going to be anything; but if you think you might
 15:02 24 be coming upon something, then I'll ask you to -- to not
 15:02 25 participate by watching it or reading anything.

15:02 1 VENIREPERSON: Okay.
 15:02 2 THE COURT: And in that same regard, I
 15:02 3 want to ask you not to talk to anybody, your husband or
 15:02 4 any other person about your service here or about this
 15:03 5 case. Because there's -- everything that you hear in a
 15:03 6 case, you hear from the witness stand. That's the only
 15:03 7 evidence. And one of the problems with talking to
 15:03 8 people is that, for one thing, they may not give you
 15:03 9 what is actually the case. So you may get the wrong
 15:03 10 impression. Period. But even beyond that, you
 15:03 11 shouldn't be talking to anybody about it because we want
 15:03 12 you to come back into the courtroom with kind of a clean
 15:03 13 slate.
 15:03 14 I can't tell you with certainty when we're
 15:03 15 going to begin. If I were going to guess, I would guess
 15:03 16 in about 10 days --
 15:03 17 VENIREPERSON: Okay.
 15:03 18 THE COURT: -- that we'll begin the trial.
 15:03 19 But I can't tell you with certainty. It could be
 15:03 20 sooner. It could be later. And is there anything else
 15:03 21 that I need to tell Ms. Penn?
 15:03 22 MS. FALCO: No, Your Honor.
 15:03 23 MR. HIGH: Not that I know of.
 15:03 24 THE COURT: All right. Do you have any
 15:03 25 other questions of me before you leave?

15:03 1 VENIREPERSON: I'll be notified when to
 15:03 2 show up?
 15:03 3 THE COURT: Yes, we'll notify you. We'll
 15:03 4 give you some time, too, so that you can have a chance
 15:04 5 to make plans for it.
 15:04 6 VENIREPERSON: All right.
 15:04 7 THE COURT: Thank you for your time.
 15:04 8 VENIREPERSON: Thank you, Your Honor.
 15:04 9 THE COURT: All right. We'll be in recess
 15:04 10 for 10 minutes, 15 minutes, something like that.
 15:04 11 THE BAILIFF: All rise.
 15:04 12 (Break.)
 15:26 13 THE COURT: Please be seated. All right.
 15:26 14 Let's see if both sides are ready here. Are both sides
 15:26 15 ready?
 15:26 16 MR. GOELLER: Yes, sir.
 15:26 17 THE COURT: Let's bring in Stuart Maples.
 15:26 18 MR. SCHULTZ: Ms. Lowry will speak for the
 15:26 19 State, Judge.
 15:26 20 THE COURT: All right.
 15:26 21 (Venireperson Maples present.)
 15:27 22 THE COURT: Are you Stuart Maples?
 15:27 23 VENIREPERSON: Yes, sir.
 15:27 24 THE COURT: I want to ask you, a month ago
 15:27 25 I swore in all 200 jurors. And the oath was to tell --

15:27 1 I believe to make true answers, or anyway to tell the
 15:27 2 truth to questions propounded by both sides and by the
 15:27 3 Court. Do you remember that?
 15:27 4 VENIREPERSON: Yes.
 15:27 5 THE COURT: I just want to remind you you
 15:27 6 are still under that oath. Please be seated right here.
 15:27 7 VOIR DIRE EXAMINATION
 15:27 8 BY MS. LOWRY:
 15:27 9 Q. Good afternoon, Mr. Maples. How are you today?
 15:27 10 A. All right.
 15:27 11 Q. As you recall from a couple of weeks ago, my
 15:27 12 name is Jami Lowry. I'm one of the assistant district
 15:27 13 attorneys that is representing the State of Texas in its
 15:27 14 capital murder case against Ivan Cantu. Well, going to
 15:27 15 be seated to my right and probably coming in while we're
 15:27 16 talking, is another one of the assistant district
 15:27 17 attorneys, Gail Falco. And seated farthest to my right
 15:27 18 is Bill Schultz, who is the first assistant in our
 15:27 19 office.
 15:27 20 And seated to my left, at the table
 15:27 21 closest to me, is Ivan Cantu, the defendant. And seated
 15:28 22 next to him, to his left, is Don High, his attorney, and
 15:28 23 Matt Goeller, the other defense attorney.
 15:28 24 As I recall, from about two weeks ago, you
 15:28 25 don't know any of us; is that correct?

15:28 1 A. Yes, ma'am.
 15:28 2 Q. We call this part of the voir dire basically
 15:28 3 individual voir dire. Some people kind of call it an
 15:28 4 interview. We do this in this fashion so that it's
 15:28 5 supposed to help you feel more comfortable, less nervous
 15:28 6 about talking about your opinions openly, things of that
 15:28 7 nature. So that's kind of what we are wanting to do.
 15:28 8 Just tell us how you feel about things. Tell us what
 15:28 9 you think on different issues. Not looking for any
 15:28 10 specific answer, just how you really feel about things.
 15:28 11 Okay?

15:28 12 A. Okay.

15:28 13 Q. If at any point I'm asking you a question,
 15:28 14 talking to you about something, and my question doesn't
 15:28 15 come out right, something like that, just feel free to
 15:28 16 say, you know what? I don't understand that. Please
 15:28 17 state it again.

15:28 18 A. I will. No problem.

15:28 19 Q. Let me ask you first: When you came in back in
 15:28 20 August, in late August, when you first found out this
 15:29 21 was a capital murder case, what went through your mind?

15:29 22 A. Well, I was kind of -- kind of surprised, I
 15:29 23 guess, in a sense. I have been called for jury duty
 15:29 24 before and never really got past the opening gate, so to
 15:29 25 speak. And I really wasn't -- really wasn't and wasn't

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15:29 1 still too excited about being on a capital murder case,
 15:29 2 but...

15:29 3 Q. And this was the third time you have been down?

15:29 4 A. Yes, ma'am.

15:29 5 Q. What do you think about the process so far? Do
 15:29 6 you think we're spending too much time on this process?

15:29 7 A. No. I don't think you are spending too much
 15:29 8 time on it. It's somewhat confusing, but I don't think
 15:29 9 you are spending too much time on it. You know, if I
 15:29 10 knew everything about all that you are doing, I would be
 15:29 11 where you are and not where I am. And so I don't
 15:29 12 propose to know all that. So if I were making the
 15:29 13 decision that you people are making, I'd probably spend
 15:29 14 a lot of time on it, too.

15:30 15 Q. Let's talk just a little bit about capital
 15:30 16 murder. Like I say, a lot of my first questions are
 15:30 17 going to be about when you first came in, what your
 15:30 18 ideas were before the law was given to you, things like
 15:30 19 that. Did you understand, before you were given the law
 15:30 20 in a capital murder, that it's not an automatic death
 15:30 21 penalty?

15:30 22 A. Yes.

15:30 23 Q. That it was basically there was a second phase
 15:30 24 to the trial where the jury answered questions, and
 15:30 25 that's what determined what --

15:30 1 A. I didn't actually know how it worked. But,
 15:30 2 yes, I knew that just from watching the news and other
 15:30 3 things that it wasn't always automatically a death
 15:30 4 penalty if there was a life-sentence option.

15:30 5 Q. Just by virtue of being called capital murder,
 15:30 6 some people tend to think that that automatically means
 15:30 7 that the person gets the death penalty, and that's not
 15:30 8 at all that way.

15:30 9 A. Yeah.

15:30 10 Q. Tuesday, two weeks ago, you were talked --
 15:30 11 Ms. Falco talked to you, and she gave you three
 15:30 12 different situations that were considered capital murder
 15:30 13 in Texas. That being, murder in the course of
 15:30 14 committing burglary, murder in the course of committing
 15:31 15 robbery, and then the double homicide, killing two
 15:31 16 people.

15:31 17 Let's talk a little bit first about murder
 15:31 18 in the course of burglary. That is, you break into
 15:31 19 somebody's house while you are in there. You kill
 15:31 20 somebody inside, basically. Do you feel like that kind
 15:31 21 of offense, the type of offense is appropriate to have
 15:31 22 the death penalty as an option?

15:31 23 A. Yes.

15:31 24 Q. Okay. Why is that?

15:31 25 A. Because I'm having been broken into once

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15:31 1 before, being thankful that we weren't home. I'm glad
 15:31 2 the people broke into our house when I wasn't there.
 15:31 3 Had someone broken into my house when I was present, I
 15:31 4 would feel that that was more of a direct assault
 15:31 5 against me and my family than just against our
 15:31 6 possessions. So that would imply intent. If they know
 15:31 7 you are there, then they are not willing to honor your
 15:31 8 quality of life or whatever.

15:31 9 Q. Okay.

15:32 10 A. By just wanting to take your stuff. I can see
 15:32 11 somebody wanting to take my stuff. I can't see somebody
 15:32 12 wanting to take my stuff while I'm there.

15:32 13 Q. And what you are talking about is somebody
 15:32 14 breaking into your house, which you normally think of as
 15:32 15 burglary. Were you also aware, as far as burglary goes,
 15:32 16 that a person can come into your house apparently with
 15:32 17 consent, but they enter your home with the intent to,
 15:32 18 say, kill you while you are inside or something of that
 15:32 19 nature, that basically the consent given to them to come
 15:32 20 in is not effective.

15:32 21 A. Right.

15:32 22 Q. And that can still be considered --

15:32 23 A. And I would consider that even worse. It is
 15:32 24 one thing for them to break in and be sneaky, but to
 15:32 25 violate my trust would even be a worse violation.

15:32 1 Q. Okay. And let's talk a little bit about
15:32 2 robbery. Robbery is more the person-to-person offense
15:32 3 where someone takes your possessions from you by some
15:32 4 type of force. Do you think that robbery or murder in
15:32 5 the course of robbery, do you think that is an
15:32 6 appropriate offense to have a death penalty as an
15:32 7 option?

15:32 8 A. Yeah, or for similar reasons.

15:32 9 Q. Okay. And also the double homicide situation,
15:33 10 is that something that's also appropriate to have death
15:33 11 penalty as an option?

15:33 12 A. Yes.

15:33 13 Q. I want to talk to you a little bit about your
15:33 14 questionnaire that day that y'all came in back in
15:33 15 August. I know that you were all shuffled around a
15:33 16 little bit. It was extremely hot, and all of those
15:33 17 things. And then they hand you this questionnaire and
15:33 18 it basically says: What's your name? Give me your
15:33 19 address, and, what do you think about the death penalty?

15:33 20 It didn't give you a whole lot of time to
15:33 21 think about, you know, kind of ease you into the whole
15:33 22 situation. It just, right off the front, asked you what
15:33 23 you thought about it. And your answer was yes. And it
15:33 24 asked you to please explain, and then there's nothing.
15:33 25 So of course I'm going to ask you to please explain.

15:33 1 A. Yeah, I'm sure you are. I don't know what we
15:33 2 want to know about what I think about the death penalty.

15:33 3 Q. Well, I guess --

15:33 4 A. Well, you know, there are things that -- there
15:33 5 are people, and not to say that I would be the one to
15:33 6 judge any of this, but there are people in this world
15:34 7 where recently that are not respectful or honorable of
15:34 8 the rights of life of other people.

15:34 9 Q. Right.

15:34 10 A. And they need to be removed, is for our own
15:34 11 social progression through the world.

15:34 12 Q. Basically protecting society.

15:34 13 A. Yes. Just for society's protection. And
15:34 14 people who don't seem to possess the ability to honor
15:34 15 life need to be done something with. And eventually the
15:34 16 prisons are all going to get full, and you can't house
15:34 17 them forever, so...

15:34 18 Q. And that goes along a lot with what the
15:34 19 legislature was thinking. What they worry about with
15:34 20 the death penalty is the protection of society.
15:34 21 Certainly it has no rehabilitating effect on the person
15:34 22 committing the crime, or some people, like I say, maybe
15:34 23 it's a deterrent. But if you look at people are still
15:34 24 committing these crimes.

15:34 25 A. It doesn't appear to be a deterrent, no.

15:34 1 Q. So what they worry about is protection of
15:35 2 society, and that's why we have the death penalty. If
15:35 3 you were asked -- do you have children?

15:35 4 A. Yes, ma'am.

15:35 5 Q. If you were asked by your children, say, when
15:35 6 they were younger, just kind of the age where they are
15:35 7 kind of understanding some of the more complex issues.

15:35 8 A. It's where they are, so...

15:35 9 Q. If they came in and said, you know what, Dad?
15:35 10 I was at school today. My teacher, who is a great
15:35 11 person, she has great morals, great ethics, all of those
15:35 12 things, and she's opposed to the death penalty, you
15:35 13 know, and asked you your view. And you explained to
15:35 14 them that you were in favor of it, how would you explain
15:35 15 to them what the views were or why people opposed it?

15:35 16 A. This is like trying to fill out the
15:35 17 questionnaire, and I don't feel like I have time to
15:35 18 answer it. As in anything that you would try to explain
15:35 19 to your kids or that I would try to explain to my kids,
15:35 20 I wouldn't necessarily want my views to domineer what
15:36 21 they would think.

15:36 22 I would want maybe an influence, but I
15:36 23 want them to be able to make up their own mind on
15:36 24 things. And I wouldn't -- I wouldn't at all say that
15:36 25 someone who doesn't agree with the death penalty is

15:36 1 wrong any more than I would say that someone who does
15:36 2 agree with it is right. I don't know that there is a
15:36 3 definite right or wrong there.

15:36 4 There are people that agree and people who
15:36 5 don't in all kinds of things. And that's probably the
15:36 6 way that I would approach that. I would tell them,
15:36 7 especially at the age that they are at now -- one is 3,
15:36 8 and one is 7 -- that the day will come that they will
15:36 9 know within themselves what they would think would be
15:36 10 right or wrong, and that it's not something that they
15:36 11 would have to contend with right now.

15:36 12 And I would -- I would just try to impress
15:36 13 on them, you know, my morals, and let them at an age
15:36 14 when they become able to make that decision, be willing
15:36 15 to make it for themselves. I would hope that I would
15:36 16 more empower them with the ability to make decisions
15:37 17 than empower them with the decisions they should make.

15:37 18 Q. Okay. Certainly we all know that you didn't
15:37 19 wake up this morning and get dressed very happily and
15:37 20 say, you know what? Today I'm going to get to go down,
15:37 21 and I might be a part of this process --

15:37 22 A. Yeah, right.

15:37 23 Q. -- that results in someone's death. We all
15:37 24 know that you aren't excited about that.

15:37 25 A. No, ma'am, I'm not.

15:37 1 Q. If I asked you what your choice was, if you
 15:37 2 could choose whether or not to be on this jury, what
 15:37 3 would your choice be?
 15:37 4 A. My choice would be to go home.
 15:37 5 Q. Why is that?
 15:37 6 A. I -- maybe not, maybe not in a sense that I'm
 15:37 7 too excited about exercising my beliefs or having my
 15:37 8 beliefs tested to the final ultimate which this would be
 15:37 9 for me. I'm here because it's my duty to show up and do
 15:37 10 this, and I understand that. But I'm not here because I
 15:37 11 want to be. So why would I choose that to go home?
 15:38 12 Because that's what I want to do. I don't want to be
 15:38 13 here and do this.
 15:38 14 Q. And I think more people feel more that way than
 15:38 15 don't. Certainly it's an opinion, if people say, yes, I
 15:38 16 want to be a part of this process. I want to be on a
 15:38 17 case where somebody could die. I think everybody in
 15:38 18 this room would feel really uneasy about that.
 15:38 19 A. I would rather not.
 15:38 20 Q. It's probably just as normal or just as usual
 15:38 21 to feel, if you sit on this jury that you might want the
 15:38 22 evidence to be such that it didn't require someone to be
 15:38 23 put to death.
 15:38 24 A. Yes, ma'am.
 15:38 25 Q. And that's certainly normal too, and we

15:38 1 certainly worry about anyone who felt otherwise. So in
 15:38 2 that context, knowing that none of us are excited about
 15:38 3 this process, we certainly all wish that we had a
 15:38 4 society that we didn't have to do this. But it is -- it
 15:38 5 is part of our law. And there are times that do require
 15:38 6 it, and that's what we're going to talk to you about.
 15:38 7 Okay?
 15:38 8 A. Yes, ma'am.
 15:38 9 Q. I want to ask you to recall the portion of voir
 15:38 10 dire Tuesday, two weeks ago, the second one that you
 15:38 11 came to, when Ms. Falco was asking you to look at the
 15:39 12 defendant and take a few moments to think about what our
 15:39 13 purpose was here. That we believe we have evidence that
 15:39 14 we're going to present to a jury of 12 people that's
 15:39 15 going to convince them beyond a reasonable doubt that
 15:39 16 this person has committed capital murder.
 15:39 17 We further believe that we have evidence
 15:39 18 to show that these questions should be answered in a way
 15:39 19 that should result in his death. And it's our intention
 15:39 20 that at some date in the future that an execution date
 15:39 21 be set. That he be taken to that death chamber. He be
 15:39 22 strapped to a gurney and be put to death.
 15:39 23 You know, she did not ask you that or
 15:39 24 didn't say it that straightforward to be dramatic or
 15:39 25 gory or anything like that. What that is is basically

15:39 1 to give you something to think about. It certainly is
 15:39 2 different to think about the death penalty, what you
 15:39 3 might do when you are sitting in the living room
 15:39 4 watching it on TV, and you see some horrible story come
 15:39 5 on, and you think: You know what? That person ought to
 15:39 6 die.
 15:40 7 A. Right.
 15:40 8 Q. Then it's different than how it is now when
 15:40 9 we're asking you to actually be part of the process that
 15:40 10 causes that to happen. And I'm sure that you thought
 15:40 11 probably a lot more about the death penalty in the past
 15:40 12 month or so than you ever have.
 15:40 13 A. Yes, ma'am.
 15:40 14 Q. Have your feelings or your thoughts on it
 15:40 15 changed at all since you filled out the questionnaire?
 15:40 16 A. No, ma'am.
 15:40 17 Q. Have you -- are you any stronger on it, any
 15:40 18 less strong on it?
 15:40 19 A. No, ma'am.
 15:40 20 Q. Still the same?
 15:40 21 A. Yes, ma'am.
 15:40 22 Q. What are your thoughts about executions, in
 15:40 23 general?
 15:40 24 A. Give me more.
 15:40 25 Q. This type of execution. The type of execution,

15:40 1 lethal injection, what is used in Texas.
 15:40 2 A. I've never really put much thought on it. I
 15:40 3 mean, it's not anything I had ever hoped to have to
 15:40 4 confront. So I didn't think about it. You know, if you
 15:40 5 wanted to compare it against hanging or guillotine, it's
 15:40 6 obviously more civilized. But how civil can it be to
 15:40 7 kill someone? So as far as what I think about it,
 15:41 8 that's pretty much a nutshell on it.
 15:41 9 Q. That's fine. I'm just curious what you think.
 15:41 10 How do you think you would feel down the road if you did
 15:41 11 sit on this jury and a death sentence did result? How
 15:41 12 did you think you'd feel later down the road if you
 15:41 13 heard that that person had actually been executed?
 15:41 14 A. I think I would rather I hadn't, but I don't
 15:41 15 think I would harbor any great regret over it. If -- I
 15:41 16 have tried to teach my children to do the best they can
 15:41 17 do, do what they know that they have to do. And, if I,
 15:41 18 as an example, do that myself, I see no wrong in that.
 15:41 19 We don't always enjoy what we have to do.
 15:41 20 Q. And certainly like we talked about, and
 15:41 21 everybody hopes that at the end of this, the evidence is
 15:41 22 such that the jury doesn't have to vote in that way.
 15:41 23 A. That's right. We hope we all walk away.
 15:41 24 Q. I want to talk to you a little bit about the
 15:41 25 basic process of the trial, and we have a bifurcated

15:42 1 trial system in Texas. And that is basically there are
15:42 2 just two parts.

15:42 3 First part is the guilt-innocence phase.
15:42 4 That's where the evidence of this offense is going to be
15:42 5 put on. You'll see circumstances of the offense.
15:42 6 Things that you need to decide, whether or not he's
15:42 7 guilty of capital murder or not. At the end of that
15:42 8 phase you'll be asked to determine whether or not he's
15:42 9 guilty of capital murder.

15:42 10 During that phase of the trial, the State
15:42 11 has the burden of proof. The burden of proof is beyond
15:42 12 a reasonable doubt. And it's completely up to us to
15:42 13 bring you the evidence to convince you beyond a
15:42 14 reasonable doubt that the person is guilty. Do you
15:42 15 understand, and can you follow that law?

15:42 16 A. Yes, ma'am.

15:42 17 Q. And at no point does the defense have any kind
15:42 18 of burden. The only thing they have to do in this trial
15:42 19 is show up and act nice. So that's -- that's all they
15:42 20 have to do. And there's also -- it's also the
15:42 21 defendant's right whether or not he testifies.

15:42 22 It has absolutely nothing to do with
15:42 23 whether he's guilty or innocent. It's his right. It's
15:42 24 up to him. And you, as a juror, to be qualified, have
15:42 25 to be able to assure the Court and all of the attorneys

15:43 1 that you are not going to hold that against him.

15:43 2 A. No, I wouldn't.

15:43 3 Q. Now, after the guilt-innocence phase, and what
15:43 4 most of my questions are going to focus on is the
15:43 5 punishment phase. And that's not because the
15:43 6 guilt-innocence phase is any less important or anything
15:43 7 of that nature. It's just those are the more ultimate
15:43 8 issues that we have to find out how you feel about. So
15:43 9 most -- my questions from now on are going to assume
15:43 10 that you've convicted someone of capital murder.

15:43 11 A. Okay.

15:43 12 Q. Let me, before I move off of that, just touch
15:43 13 on briefly: During the guilt-innocence phase, if the
15:43 14 evidence is presented to you and you were convinced
15:43 15 beyond a reasonable doubt that he was guilty, can you
15:43 16 find him guilty?

15:43 17 A. Yes, ma'am.

15:43 18 Q. First, I want to direct your attention to the
15:43 19 two special issues. I don't know if you recall them a
15:43 20 couple weeks ago and Ms. Falco going over them with you.

15:44 21 A. Yes.

15:44 22 Q. What we do in Texas, we don't ask anymore: Do
15:44 23 you want life? Do you want death or what the jury's
15:44 24 verdict is: Is it life or death? They pose it to you
15:44 25 in questions, two different questions. And from the way

15:44 1 you answer those questions, that's how it's determined
15:44 2 what the sentence is going to be. So the jury doesn't
15:44 3 actually decide, yes, he gets life. Yes, he gets death,
15:44 4 in essence. Does that make sense?

15:44 5 A. Yes.

15:44 6 Q. The first question is what we call the future
15:44 7 danger question, and that's the one on the bottom. If
15:44 8 you want to reread that briefly to yourself.

15:44 9 A. Okay.

15:44 10 Q. Like I said, we call that question the future
15:44 11 danger question. And what that question talks to you
15:44 12 about is a defendant's propensity for dangerousness.
15:44 13 Not necessarily in regards to his location, but just in
15:44 14 regards to his -- his attitude, his trait for
15:44 15 dangerousness. Does that make sense?

15:44 16 A. Yes, ma'am.

15:44 17 Q. There are several words in that sentence that
15:44 18 are not going to be defined for you. And you, as a
15:44 19 juror, have to come up with your own definition to
15:44 20 decide what you think they mean and answer that question
15:44 21 from the evidence.

15:45 22 By drafting this question and having this
15:45 23 question posed to you in the punishment phase, the
15:45 24 legislature has envisioned, obviously, a certain or
15:45 25 certain circumstances in which a person has been found

15:45 1 guilty of capital murder but may not be a future danger.

15:45 2 So that's why they give you the question
15:45 3 and give you the option to look at the evidence from
15:45 4 obviously the offense and any circumstances surrounding
15:45 5 that, plus any evidence that may be put on in the
15:45 6 punishment phase.

15:45 7 In looking at that question, one of the
15:45 8 first words that is ambiguous and is not going to be
15:45 9 defined is the word *probability*. Now, some people say
15:45 10 that that means, more likely than not. Some people
15:45 11 assign it some kind of percentage. And what the law
15:45 12 basically tells you is that it's more than a mere
15:45 13 possibility, but less than a certainty. What do you
15:45 14 think probability means?

15:45 15 A. I read it as likelihood.

15:45 16 Q. And certainly that's a word that in that
15:45 17 sentence you can work with if you are on the jury?

15:45 18 A. Possibly, yes.

15:45 19 Q. The next word that is ambiguous, often debated
15:46 20 as far as what it means or what it involves, is criminal
15:46 21 acts of violence. When you talk about violence, I think
15:46 22 one thing or the most thing -- the most thing -- see?
15:46 23 There I go. I don't make sense.

15:46 24 A. There we go.

15:46 25 Q. One thing that people probably think of first

15:46 1 is hurting another person, murdering someone, maybe
 15:46 2 sexual assault, maybe beating up your wife, you know,
 15:46 3 beating up someone else, things of that nature. That's
 15:46 4 certainly something that most people agree on as a
 15:46 5 criminal act of violence. Is that -- do you see it that
 15:46 6 way?

15:46 7 A. Yes. I do see it that way.

15:46 8 Q. You have other offenses that people debate over
 15:46 9 whether or not they are actually criminal acts of
 15:46 10 violence. For instance, offenses against property. Say
 15:46 11 I get really angry at you today because you just don't
 15:46 12 answer my questions the way I want you to, and I'm
 15:46 13 talking too fast, and you couldn't understand them, and
 15:46 14 I just didn't know that.

15:46 15 And at the end of the day I just decide
 15:46 16 I'm angry with you. I find your car, and I just start
 15:47 17 kicking your door in. Do you feel like that's a
 15:47 18 criminal act of violence?

15:47 19 A. Until someone's asked me that question, I had
 15:47 20 kind of -- when we saw this last time, I thought that a
 15:47 21 criminal act of violence would entail violence against a
 15:47 22 person, a personal type thing.

15:47 23 Q. Uh-huh.

15:47 24 A. Yeah. That could probably be seen as a
 15:47 25 criminal act of violence, but that's more like an event

15:47 1 to me, to go out and mash up somebody's car. Okay? I
 15:47 2 made you unhappy, and you've done something. It would
 15:47 3 be like coming home and finding a three-legged cat or
 15:47 4 something, that someone did something mean to you.
 15:47 5 Yeah, it's violent, but...

15:47 6 Q. Well, I promise I won't follow you out to your
 15:47 7 car. If you can see how some people might --

15:47 8 A. Yes.

15:47 9 Q. -- interpret that an act of violence because of
 15:47 10 the rage involved, or maybe the acting out, things of
 15:47 11 that nature.

15:47 12 A. Yeah.

15:47 13 Q. It becomes even fuzzier still when you talk
 15:47 14 about things like drug usage. Selling drugs, taking
 15:47 15 drugs, things of that nature?

15:48 16 A. Right.

15:48 17 Q. We've all learned from the time that we were
 15:48 18 very small that drugs were bad. Exactly what they do to
 15:48 19 you, that they can cause you to be aggressive, cause you
 15:48 20 to not be who you normally are, maybe take that out on
 15:48 21 other people.

15:48 22 A. Right.

15:48 23 Q. We also know that they can cause you to steal,
 15:48 24 rob people, things like that, to get you money to buy
 15:48 25 drugs. Some people say that because of that, even

15:48 1 though it's an indirect result of drugs, that maybe it's
 15:48 2 an act of violence. Some people say that drugs in and
 15:48 3 of themselves are not an act of violence. Do you see
 15:48 4 how the different opinions could be out there?

15:48 5 A. Okay.

15:48 6 Q. How do you feel about that?

15:48 7 A. As you said, we've been taught since childhood
 15:48 8 not to mess with alcohol and drugs, and we probably all
 15:48 9 at one point have, one or the other. And if we have a
 15:48 10 bad effect, you leave it alone. That's a decision we
 15:48 11 make. And if you decide to pursue that endeavor, and it
 15:48 12 leads you to something else that you shouldn't have
 15:48 13 done, then you are still responsible for whatever you've
 15:49 14 coughed up, so...

15:49 15 Q. And then there are other offenses like theft,
 15:49 16 shoplifting and things of that nature that certainly
 15:49 17 aren't criminal acts of violence that maybe might help
 15:49 18 you have a little insight into a person's, maybe their
 15:49 19 background, maybe the way they look at things.
 15:49 20 Certainly whether or not they had a regard for authority
 15:49 21 or other people's property, things of that nature. Do
 15:49 22 you think things like that would be helpful in helping
 15:49 23 you answer this question, also?

15:49 24 A. Yes.

15:49 25 Q. Now, the last word in this question that's

15:49 1 going to, not going to be defined for you, and it's
 15:49 2 frequently debated is the word society. And, once
 15:49 3 again, it's up to the jury to decide what they think
 15:49 4 society means. Certainly because this is, at this point
 15:49 5 you found someone guilty of capital murder, they are
 15:49 6 either going to be sentenced to life in prison or they
 15:49 7 are going to be sentenced to the death penalty.

15:49 8 Society is certainly going to include
 15:49 9 prison. However, it's frequently debated and certainly
 15:50 10 arguable and understandable that society is a lot more
 15:50 11 than just prison because you certainly have people who
 15:50 12 could escape. Certainly have -- the law could change,
 15:50 13 any number of those things.

15:50 14 And what that's asking you is to determine
 15:50 15 whether or not this person is going to be a future
 15:50 16 danger anywhere. You know, it's more about his
 15:50 17 propensity for dangerousness, whether he has the trait
 15:50 18 for dangerousness, not where is he? Because it
 15:50 19 certainly doesn't ask you: Can he safely be held in
 15:50 20 prison, or are they going to be able to keep him there
 15:50 21 without hurting someone? Does that make sense?

15:50 22 A. Yes, ma'am.

15:50 23 Q. What do you think society means?

15:50 24 A. Society are those of us that breathe.

15:50 25 Q. Okay.

15:50 1 A. And there are elements of that that -- that
15:50 2 seek for the good of those, and there are elements of
15:50 3 those that don't. And I tend to cater, hopefully, to
15:50 4 those that do. So that's my view of society.

15:50 5 Q. All right. Now, with this question, you as a
15:50 6 juror, you are free to consider all of the evidence.
15:51 7 Well, actually you are to consider all of the evidence.

15:51 8 A. I hope so.

15:51 9 Q. And you are free to consider the definitions of
15:51 10 what you think these things mean. And as we talked
15:51 11 about earlier, future danger -- I'm sorry, I can't see
15:51 12 your questionnaire. Future danger -- this future danger
15:51 13 question is aimed at protecting society. It's not about
15:51 14 retribution. It's not about an eye for an eye, things
15:51 15 of that nature.

15:51 16 This question is aimed at the protection
15:51 17 of society, whether or not this person is going to be
15:51 18 something that's going to be a threat to our society as
15:51 19 a whole.

15:51 20 Frequently, in cases like this and when
15:51 21 you have a jury that's going to answer this question,
15:51 22 you have testimony such as psychiatric testimony. How
15:51 23 important do you think that would be to you?

15:52 24 A. I am -- I am a technician. I work in the
15:52 25 technology. I'm involved in the sciences and that sort

15:52 1 of thing a little bit. And psychology is kind of a
15:52 2 fringe element for me. There's good and bad there.

15:52 3 Q. A little too touchy-feely?

15:52 4 A. I would consider it, but it would not carry as
15:52 5 much consideration as other things that I would
15:52 6 consider.

15:52 7 Q. And that, once again, is completely your
15:52 8 decision as a juror. That's kind of like going to the
15:52 9 circus and a tiger getting loose and somebody asking you
15:52 10 if you are going to need a veterinarian to come tell you
15:52 11 that the tiger is dangerous.

15:52 12 A. Yeah.

15:52 13 Q. It's up to you. You can take your life
15:52 14 experiences, the things that you know about society and
15:52 15 use those to answer this question.

15:52 16 Now, I don't know if you recall from
15:52 17 Tuesday, a couple weeks ago, there was a second special
15:52 18 issue that's not on one of these cards. We haven't been
15:53 19 going over that one very much. Basically, if you find
15:53 20 from the evidence that the defendant did this offense by
15:53 21 himself, that's not going to be an issue. So we're
15:53 22 talking more about the third issue which is the one on
15:53 23 top, if you'll take just a minute to read that to
15:53 24 yourself.

15:53 25 A. Okay.

15:53 1 Q. What this question asks for is mitigation. Is
15:53 2 there sufficient mitigating circumstances? Mitigation
15:53 3 is another word that's not going to be defined. We give
15:53 4 you all these words and ask you to determine all these
15:53 5 things, but then we don't tell you what any of it means,
15:53 6 basically. Mitigation is usually -- or usually means to
15:53 7 lessen, to reduce, something like that. What does
15:53 8 mitigation mean to you?

15:53 9 A. The same thing, when I read the question, I
15:53 10 read it that is there some -- something in the course of
15:53 11 all the events that I would say, see, that would make me
15:53 12 feel that, yeah, he's got to go to prison, but he
15:53 13 doesn't need to die. That there was some other leading
15:54 14 reason for what went on.

15:54 15 There could be many things. You know, did
15:54 16 you -- did you kill someone because they shot your kid?
15:54 17 Well, I can relate to that. So that, to me, would be a
15:54 18 mitigation, and it's just the way I considered it.

15:54 19 Q. And that's -- that's exactly right. That's
15:54 20 what it's asking you to consider. A lot -- some people
15:54 21 call it the one-last-look question. It gives you an
15:54 22 opportunity to look back at all the evidence, all of the
15:54 23 circumstances surrounding it, and let you decide whether
15:54 24 or not you think there's evidence out there that's
15:54 25 sufficient to warrant a life sentence over a death

15:54 1 sentence. And that question is basically for the jury.
15:54 2 And that gives them the opportunity to make sure that,
15:54 3 in their weighing of the evidence, they have done what
15:54 4 they think is right, the right outcome is. Does that
15:54 5 make sense?

15:54 6 A. Yes, ma'am.

15:54 7 Q. It's not asking you: Is there any mitigating
15:54 8 evidence? It's asking you if there's sufficient
15:54 9 mitigating evidence. And as far as what is or is not
15:55 10 mitigating evidence, nobody's going to tell you that
15:55 11 either, and that's going to be completely up to you.

15:55 12 Nobody is going to send a list back to
15:55 13 you, that says: Okay. Here's all the evidence. This
15:55 14 is mitigating. This is aggravating.

15:55 15 It's going to be up to the jury to decide.
15:55 16 The only thing it directs you to is what to take into
15:55 17 consideration when looking at that.

15:55 18 One of the first things it asks you to
15:55 19 take into consideration is the circumstances of the
15:55 20 offense. What's happened, what was going on. And then
15:55 21 it asks you to take into consideration a lot of things
15:55 22 about the defendant. It doesn't seem to point to or ask
15:55 23 you to take into consideration the victim's character.
15:55 24 How important do you feel the victim's character is in a
15:55 25 case like this, or in any case for that matter?

15:55 1 A. Well, it could be very important.
 15:55 2 Q. Okay.
 15:55 3 A. If -- people can be, any of us in this room
 15:55 4 could be pushed beyond our resolve to do something that
 15:55 5 we normally wouldn't.
 15:56 6 Q. Okay.
 15:56 7 A. So, yes, that would matter. Obviously --
 15:56 8 obviously aggression or whatever from both sides would
 15:56 9 play in this situation. But yeah, even myself, any of
 15:56 10 us here, I think, could be pushed to a point that we
 15:56 11 would do something that we wouldn't want to.
 15:56 12 Q. Okay.
 15:56 13 A. So.
 15:56 14 Q. And further along those lines -- so if you have
 15:56 15 someone who kills the nun who is praying versus someone
 15:56 16 who kills the drug dealer on the side of the road, do
 15:56 17 you feel like that's a different offense?
 15:56 18 A. No. It's the same offense. Although, I may
 15:56 19 have a little more -- I may have, not a little more, or
 15:56 20 a little less aggression in my heart toward one over the
 15:56 21 other, but, you know, it's the same offense.
 15:56 22 When you have something, and I don't know
 15:56 23 how this is going to work. If you ask me all these
 15:56 24 questions after this is over -- if I have to go through
 15:56 25 this whole mess, which I hope I don't -- then I would

15:57 1 honestly have an entirely different view of this.
 15:57 2 Q. Right.
 15:57 3 A. You know, it's like going to a parent's
 15:57 4 funeral. You never know what it's like to lose someone,
 15:57 5 you never know what it's like to lose a parent until
 15:57 6 you've lost one, and then it's beyond the point then.
 15:57 7 So some of this stuff, I'm sure I would feel about it
 15:57 8 differently.
 15:57 9 But, no, given an offense, given that this
 15:57 10 person killed this person, I expect that there will be:
 15:57 11 here's the law, just as the Judge mentioned last time.
 15:57 12 Here's what it is, and you'll follow these guidelines.
 15:57 13 It's a spec. I have been following specs at Texas
 15:57 14 Instruments for 18 years. I know what that is.
 15:57 15 And given those guidelines, yes, these are
 15:57 16 the rules. Do I feel like that I am more upset that
 15:57 17 someone kills a nun than a drug dealer? Well, sure.
 15:57 18 I'm a human being, but one is as bad as the other. Are
 15:57 19 they a menace to society? I don't know. All of that is
 15:58 20 left to be determined in the case. Is it wrong? Yeah.
 15:58 21 It's the same wrong. It's just, you know.
 15:58 22 Q. And that goes back to just being human like
 15:58 23 everybody else. I mean, certainly, you would not feel
 15:58 24 as bad about someone who is a pull in our society,
 15:58 25 someone who sells drugs to our children, someone who is

15:58 1 constantly doing things they are not supposed to do.
 15:58 2 You are not going to feel as bad about that as you would
 15:58 3 about someone who tries to do nothing but good for our
 15:58 4 community.
 15:58 5 And this doesn't ask you to feel that way.
 15:58 6 It doesn't ask you to take that into account. What it's
 15:58 7 asking you is: Look at what the defendant did. Look at
 15:58 8 what the person who committed the offense did, more than
 15:58 9 the victim or the character of the victim. Does that
 15:58 10 make sense?
 15:58 11 A. Yes, ma'am.
 15:58 12 Q. The next thing that you are asked to look at is
 15:58 13 the defendant's character and background. And what that
 15:58 14 kind of leaves you to think about is the person's
 15:58 15 upbringing. What kind of childhood did they have? Is
 15:59 16 there something in their background that may have made
 15:59 17 them the way they are? What do you think about a
 15:59 18 person's upbringing, and how much that has to do with
 15:59 19 how they turned out?
 15:59 20 A. I think it has a lot to do with how you turn
 15:59 21 out, having kids of my own. Although, I don't think
 15:59 22 that it ultimately determines how they will turn out.
 15:59 23 People -- people are kind of like water. They kind of
 15:59 24 tend to seek the path of least resistance. And how they
 15:59 25 seek that path kind of influences me more than what it

15:59 1 actually leads them to.
 15:59 2 So -- so, yeah, your upbringing and how
 15:59 3 you start out in the world definitely has an effect on
 15:59 4 where you wind up. It might be more driven by your own
 15:59 5 resolve and your own sense of character and morals and
 15:59 6 what. Kids that are brought up in good homes can turn
 15:59 7 and do things that they wish they wouldn't, just as much
 15:59 8 as kids that grew up in bad homes, so...
 15:59 9 Q. And that's kind of what you put on your
 15:59 10 questionnaire when it talks about: Persons determine
 16:00 11 their destiny or fate by choices they make in life. And
 16:00 12 you put "agree." And then when it asked about the
 16:00 13 circumstances of your birth and upbringing, you disagree
 16:00 14 more to that. And so it's more important to you the
 16:00 15 choices that they make rather than --
 16:00 16 A. Yes, ma'am.
 16:00 17 Q. And certainly some of the evidence maybe that
 16:00 18 you are going to hear, something about upbringing, maybe
 16:00 19 about their childhood, things about their character may
 16:00 20 help to explain a little bit about how -- why they are
 16:00 21 the way they are, but it certainly doesn't excuse it.
 16:00 22 Do you think that's the case?
 16:00 23 A. Yes, ma'am.
 16:00 24 Q. When you talk about character and background,
 16:00 25 in regards to mitigation and in a situation like this,

16:00 1 one of our common examples has been Adolf Hitler.
 16:00 2 Everybody knows, of course, the horrible things that he
 16:00 3 did. All of the, you know, numbers of people that he
 16:00 4 killed basically for no reason.

16:00 5 And when you look at his lifestyle, if you
 16:01 6 were asked a question like this about Adolf Hitler and
 16:01 7 you have him on trial and you are asked to look at his
 16:01 8 character and background. Some of the things that you
 16:01 9 probably found out about him are, he was pretty much
 16:01 10 beaten as a child. His dad, on many occasions would go
 16:01 11 down to the local bar, have a little bit too much to
 16:01 12 drink, come home and beat on him and his mom.

16:01 13 You probably would hear that at one point
 16:01 14 he almost beat him to death. You would also hear that
 16:01 15 his mother contemplated abortion. Told him so on
 16:01 16 several occasions. You'd probably hear that he always
 16:01 17 had dreams of being a painter. But because he'd always
 16:01 18 been bad in school, and once he got to art school, he
 16:01 19 was kicked out.

16:01 20 You'd probably hear about the fact that
 16:01 21 his mom died of cancer when he was an adolescent. And
 16:01 22 that pretty much shattered his whole world because she
 16:01 23 was the only one that gave him any kind of support.

16:01 24 And all of these things might let you
 16:01 25 believe, you know what? That was a pretty bad

16:01 1 childhood. He really didn't have any support. The only
 16:02 2 support he had was his mom, and she died when he was
 16:02 3 pretty young. And you might be able to see how where it
 16:02 4 was that he turned bad. Does that make sense?

16:02 5 A. Yes.

16:02 6 Q. Then when you take that into consideration when
 16:02 7 you are looking at all of these issues and you are
 16:02 8 asked, is that sufficient? Well, no. You know, in a
 16:02 9 situation like that. And that's what it's asking you to
 16:02 10 look for. Take everything into consideration and, you
 16:02 11 know, it may explain why he's like he is or maybe give
 16:02 12 some reasons why he might be like he is. But it's
 16:02 13 certainly not going to excuse it, and that's what it's
 16:02 14 asking you to look for. Are there mitigating factors
 16:02 15 out there that are going to be sufficient to think a
 16:02 16 life sentence is going to be appropriate?

16:02 17 Now, the next thing that comes to mind is
 16:02 18 a personal word that comes up, is personal moral
 16:02 19 culpability. And I don't think anyone really knows what
 16:02 20 that means. We've talked about it a lot, and a lot of
 16:02 21 people have been asked.

16:02 22 Culpability basically means a person's
 16:02 23 responsibility, whether or not they are responsible for
 16:02 24 it. And personal moral responsibility, what does
 16:02 25 that -- what do you think that means?

16:03 1 A. I took that to mean that, from their point of
 16:03 2 view, did it infringe on their morals? Did they know
 16:03 3 that that was wrong from that point of view? And that
 16:03 4 kind of goes up with the upbringing thing, not to pull
 16:03 5 anything from the papers or anything, but if any of us
 16:03 6 were Muslim in here, we might have a different point of
 16:03 7 view from our upbringing than some of the rest of us
 16:03 8 that are in here.

16:03 9 Q. Right.

16:03 10 A. And that -- that might be a consideration
 16:03 11 from -- from a defendant's point of view. But in the
 16:03 12 global view of how that plays toward the benefit of the
 16:03 13 world, you would have to kind of weigh that.

16:03 14 I would be more interested -- if someone
 16:03 15 in here was Muslim or someone wasn't from any other
 16:03 16 culture and they had some moral responsibility that they
 16:03 17 were aware of, I would be more influenced by: were they
 16:03 18 true to their own moral responsibility of whatever they
 16:04 19 were taught than were they true to mine, my specific
 16:04 20 one.

16:04 21 You know, where I would be more
 16:04 22 interested, were they true to self? And even if I
 16:04 23 didn't disagree with it, yeah, that could be a
 16:04 24 mitigation. If they were true to what they believed,
 16:04 25 regardless of what that was and whether it catered

16:04 1 toward me or not. Were they true to self?

16:04 2 Q. And one of the examples of that is like
 16:04 3 Dr. Kevorkian.

16:04 4 A. Yeah.

16:04 5 Q. Where, say, you have an older couple who has
 16:04 6 vowed all of their lives that they weren't going to live
 16:04 7 without each other. Came to the point in life where one
 16:04 8 of them became pretty sick and wasn't going to live much
 16:04 9 longer so they called him to come in. And said, hey,
 16:04 10 look, we don't want to live without each other, and we
 16:04 11 want to go together. We want you to do that.

16:04 12 In Texas that would be a capital murder
 16:04 13 because he killed two people. But certainly in a
 16:04 14 situation like that you could see where he's not -- or
 16:04 15 people would argue that he's not personally morally
 16:04 16 culpable because he's doing what they wanted him to do.
 16:04 17 They wanted to die. They asked him to come in and do
 16:04 18 it, and he wasn't doing it out of rage or violence or
 16:05 19 anger or for any bad reasons, basically. Does that kind
 16:05 20 of seem like what you are --

16:05 21 A. Yeah, that's what I'm thinking.

16:05 22 Q. Now, as far as this question goes, there's no
 16:05 23 burden of proof on this question. It's not the State's
 16:05 24 responsibility to bring you evidence that there are no
 16:05 25 mitigating factors. It's not the defense's

16:05 1 responsibility to bring you evidence that there are
 16:05 2 mitigating factors. It's up to the jury to look at all
 16:05 3 of the evidence, weigh that and decide whether you think
 16:05 4 there are mitigating factors. Does that make sense?

16:05 5 A. Yes, ma'am.

16:05 6 Q. And when we are talking about what is or what
 16:05 7 is not a mitigating factor, one thing could be
 16:05 8 mitigating. It could also be aggravating to other
 16:05 9 people. And it's completely up to you as a juror to
 16:06 10 decide what you think it mitigating, what you think is
 16:06 11 aggravating.

16:06 12 Drugs is another -- is a perfect example
 16:06 13 of that because some people say, well, you know what?
 16:06 14 This person was on drugs when they committed this
 16:06 15 offense. They weren't in their normal mind. Normally
 16:06 16 they wouldn't have done something like this. Normally
 16:06 17 they are not aggressive. And if it weren't for the
 16:06 18 drugs, they wouldn't have done this. So that's
 16:06 19 mitigating to me.

16:06 20 Whereas, other people might say, like we
 16:06 21 talked about earlier, you know exactly what drugs are
 16:06 22 going to do to you. You were taught from the time you
 16:06 23 were young what they were going to do to you, and you
 16:06 24 did them anyway. So it's up to you as a juror decide
 16:06 25 what you think is mitigating and what you think is

16:06 1 aggravating.

16:06 2 Let's talk a little bit about family
 16:06 3 issues. Certainly in a case like this when you are
 16:06 4 talking about a defendant's character and background,
 16:06 5 things of that nature, and you will probably anticipate
 16:07 6 that you are going to hear from somebody that knows him.

16:07 7 Certainly, as a parent, if you had a child
 16:07 8 who, let's say, grew up and got in trouble with the law,
 16:07 9 you are still going to love that child and support that
 16:07 10 child. Is that safe to assume?

16:07 11 A. Yes.

16:07 12 Q. And if, in a situation like this, they needed
 16:07 13 you to come in and testify for them on what you thought
 16:07 14 about them as a child, you would do that?

16:07 15 A. Yes.

16:07 16 Q. And can you see how that could happen in this
 16:07 17 case?

16:07 18 A. Yes.

16:07 19 Q. Certainly the defendant may have, you know, a
 16:07 20 family member, someone who loves them, someone, you
 16:07 21 know, who doesn't want them to get the death penalty who
 16:07 22 could come in and tell you that. Tell you, I love this
 16:07 23 child. He's always been a good child. You know, please
 16:07 24 don't execute my child. How do you feel about an
 16:07 25 argument like that?

16:07 1 A. Again, if it were my kids, I would go in and
 16:07 2 speak for them, but I would also probably have my own
 16:07 3 views about how bad I thought what they had done was
 16:08 4 and, you know, like you said, you always love your kids.
 16:08 5 I can't see losing that.

16:08 6 I would expect to hear from some kind of a
 16:08 7 character witness or something that knew them, and I
 16:08 8 would appreciate having a little background. But,
 16:08 9 again, I'm going to be given guidelines to make
 16:08 10 decisions off of. And no matter how much I love someone
 16:08 11 and no matter how much somebody else loves someone, if
 16:08 12 they did it, then we got to go with the guidelines. And
 16:08 13 I would feel sorry for people, as I would feel sorry for
 16:08 14 myself.

16:08 15 Q. Right.

16:08 16 A. But ultimately, you know, I can love my kids,
 16:08 17 and I do. But ultimately they are responsible. And we
 16:08 18 all reach an age where we are ultimately responsible,
 16:08 19 and we leave home, and it's up to us. And you can still
 16:08 20 love your kids, but they can still do something that you
 16:08 21 wouldn't be proud of.

16:08 22 And am I still going to love them, and am
 16:09 23 I going to say good things about them, and am I going to
 16:09 24 want them to live? Sure, I want them to live, but --

16:09 25 Q. But it may not --

16:09 1 A. But it may not work out.

16:09 2 Q. Okay. As far as circumstances of the offense,
 16:09 3 do you see any difference in maybe a circumstance like,
 16:09 4 you have someone who maybe has a bunch of debts out
 16:09 5 there, owe a lot of people money and decide that they've
 16:09 6 got too many people knocking on their door so they are
 16:09 7 just going to steal the money?

16:09 8 And they know that they've got this -- I
 16:09 9 guess, a family down the road that they've known all
 16:09 10 their lives and spent nights over there, eaten at their
 16:09 11 house, played with their kids, all of their life. And
 16:09 12 they know that they keep a safe in their house with a
 16:09 13 lot of money in it. And they decide, you know what? I
 16:09 14 just can't take this anymore. And they go down there to
 16:09 15 their house one night when they are asleep, break into
 16:10 16 the house to get the money, kill them so there won't be
 16:10 17 any witnesses, take the money and leave.

16:10 18 Do you feel like there's any difference in
 16:10 19 that than, say, basically the same situation, but you go
 16:10 20 across town, break into somebody's house to see if they
 16:10 21 have any jewelry, money or things like that that you can
 16:10 22 get money for? Do you feel like there is any difference
 16:10 23 in those two situations?

16:10 24 A. Is there any real difference? Do I feel like
 16:10 25 there's a difference? Yes. There's a difference in the

16:10 1 maliciousness of attacking somebody you know as opposed
 16:10 2 to attacking a stranger. And over the whole scheme of
 16:10 3 that, having been at a point once in life where I didn't
 16:10 4 have a place to live and money and stuff, I found other
 16:10 5 means of arranging for my existence than to rob from
 16:10 6 people. And so there are other ways of working things
 16:10 7 around than that. But, yes, I would think that
 16:10 8 attacking somebody that you know is more malicious. But
 16:10 9 as far as one being more violent than the other, no.

16:11 10 Q. It might certainly lead you --

16:11 11 A. The character would definitely --

16:11 12 Q. -- to know more about someone's character?

16:11 13 A. Yes.

16:11 14 Q. Have you ever heard the saying, there are no
 16:11 15 atheists in war?

16:11 16 A. Not really, no.

16:11 17 Q. If someone asked you what that meant, what
 16:11 18 would you think that meant?

16:11 19 A. It would throw the picture of the movie
 16:11 20 *Sergeant York* to mind where he was in great distress as
 16:11 21 to whether he should go to war or not because of the
 16:11 22 commandment of not to kill. And there again, there's
 16:11 23 not always things we want to do, but there are things
 16:11 24 that we have to do, and we all face that eventually.

16:11 25 Q. And can you imagine if a person is in war,

16:11 1 maybe they are in foxholes on the front line, deciding,
 16:11 2 you know, facing their own impending death. And they
 16:11 3 decide, you know what? I've got to believe in something
 16:11 4 that's a higher power than I am, and they find God.
 16:12 5 Have you ever heard of things like that taking place?

16:12 6 A. Yes.

16:12 7 Q. Do you think though once those people, if they
 16:12 8 make it through the war and they get back home and get
 16:12 9 back to their normal lives might forget about that
 16:12 10 promise that they made that day to God and how they were
 16:12 11 going to change and do better? Do you think they might
 16:12 12 lose a little bit of that?

16:12 13 A. Yeah, and they could. In the intense of the
 16:12 14 moment you tend to be a whole lot more religious than
 16:12 15 later on down when you don't need it anymore.

16:12 16 Q. Do you see how that might relate to a situation
 16:12 17 such as a capital murder trial?

16:12 18 A. Yes.

16:12 19 Q. And that person who is basically facing life or
 16:12 20 death, certainly you've heard the term jailhouse
 16:12 21 conversion?

16:12 22 A. They can become very religious, yes.

16:12 23 Q. How would you view something like that, or what
 16:12 24 do you think about that concept?

16:12 25 A. You are going to think I'm terribly cold, and

16:12 1 but I'm -- I'm going to be honest.

16:12 2 Q. That's what we want.

16:12 3 A. You know, if someone is in prison through some
 16:13 4 act, and they've said, oh, I realize this is terrible
 16:13 5 and I found God, that's fine, and that's a great,
 16:13 6 wonderful thing, and I would just rejoice over that.

16:13 7 If the case came to the point that they
 16:13 8 were given life imprisonment, that's great. But if it
 16:13 9 came to the point that they were deemed the death
 16:13 10 sentence, I would view it as sending them home. If --
 16:13 11 if -- if they've converted, then great. They are going
 16:13 12 to get there before I do, and that would be a good thing
 16:13 13 for them.

16:13 14 Q. Certainly even something like that doesn't
 16:13 15 lessen what happened before.

16:13 16 A. No, ma'am.

16:13 17 Q. I'm going to talk about your questionnaire now.
 16:13 18 I know you are excited about that, right?

16:14 19 A. Oh, that's great.

16:14 20 Q. Your best argument in opposition of the death
 16:14 21 penalty is that some cases are turned over on appeal and
 16:14 22 that accidents by the State happen?

16:14 23 A. Yes. We all make accidents. We all make
 16:14 24 mistakes. We all make decisions that we wish we hadn't
 16:14 25 later on. Not just in these things, but just in life in

16:14 1 general. And mistakes can be made, and it would be a
 16:14 2 regretful thing. We live with our mistakes in all
 16:14 3 things that we do.

16:14 4 And, again, ask these questions after the
 16:14 5 point of fact of going through something like this as
 16:14 6 before, could you live with a mistake that you made on a
 16:14 7 death penalty case? I think so. I don't know. I
 16:14 8 haven't done that yet. But, yeah, that's my argument.
 16:14 9 Once you've executed them, it's too late.

16:14 10 And if somebody was wrong -- what was the
 16:14 11 case not too long ago? Some doctor -- I can't remember
 16:14 12 where -- was found to have violated DNA evidence in
 16:15 13 several cases. And those people weren't guilty, weren't
 16:15 14 proven guilty by the evidence he presented. Were they
 16:15 15 guilty? I don't know. But, yeah, stuff comes up.

16:15 16 If something like that came up after a
 16:15 17 case that I was in, could I live with it? I hope so.
 16:15 18 I'm not going to tell you that until after the point of
 16:15 19 fact. I don't know, but I would hope so.

16:15 20 Q. Do you think that's going to enter into your
 16:15 21 mind when you are looking at the evidence in this case?

16:15 22 A. It will enter into my mind, but as in all other
 16:15 23 things, it won't enter into your mind as strongly as it
 16:15 24 will after it's done. If I go through something like
 16:15 25 this and it came up, and then the next time someone

16:15 1 called me in on a capital murder case, I would probably
16:15 2 have a very different opinion. And hopefully I won't
16:15 3 ever have to worry about either one, so...

16:15 4 Q. Just briefly, where it says -- gave you the
16:15 5 page where it gave you like the beginning of the
16:15 6 sentence and asked you to finish it. This one says,
16:16 7 "Criminal defense attorneys" -- and you finished it
16:16 8 with, "present the case in favor of the defendant."

16:16 9 A. Yes.

16:16 10 Q. Just briefly touching on the fact that they
16:16 11 don't have to present anything.

16:16 12 A. Right.

16:16 13 Q. They don't have to do anything. They don't
16:16 14 have to cross-examine a witness if they don't want to.
16:16 15 That's completely up to them. That's not something that
16:16 16 you are going to hold against them?

16:16 17 A. No. I understand that it is his job to do what
16:16 18 he has got to do to try to make a -- come to the right
16:16 19 decisions. And I'm sure he has a view, and you have a
16:16 20 view. We are all going to have views. And I'm just as
16:16 21 interested in what he's got to say as in what anyone
16:16 22 else has to say.

16:16 23 Q. And along those lines, like, it being our
16:16 24 burden of proof. If we don't present sufficient facts
16:16 25 to you to prove to you beyond a reasonable doubt, can

16:16 1 you come back with a not guilty verdict?

16:16 2 A. Sure can. I can be just as neutral as anybody
16:16 3 else.

16:17 4 Q. And I, like this --

16:17 5 A. Oh, go away.

16:17 6 Q. I just have to --

16:17 7 A. No. Don't do it.

16:17 8 Q. Because I've always -- every time you talk to a
16:17 9 jury and you talk to them, the people who have a problem
16:17 10 with whether or not the defendant testifies, I guess
16:17 11 I've never really found the right way to put it until
16:17 12 now. And you put, on his -- whether or not he should
16:17 13 have to testify. Mostly I find I'm better off if I keep
16:17 14 my mouth shut.

16:17 15 And I'm usually the same way. I just have
16:17 16 never thought of it quite in terms like that. So I just
16:17 17 wanted to tell you, I may have to use that from now on,
16:17 18 if that's okay with you.

16:17 19 A. That's fine.

16:17 20 Q. Should I even ask why you don't like Dennis
16:17 21 Rodman?

16:17 22 A. No.

16:18 23 Q. And just to end with, I guess my question --
16:18 24 questions are, after all the evidence has come in and
16:18 25 you are asked to go back and answer these questions

16:18 1 after you found somebody guilty of capital murder. And
16:18 2 on the first question, we still have the burden of
16:18 3 proof, and it's beyond a reasonable doubt. If the
16:18 4 evidence is such that we prove to you beyond a
16:18 5 reasonable doubt that the person is a future danger, can
16:18 6 you answer that question yes?

16:18 7 A. Yes.

16:18 8 Q. And moving onto the last question, based on all
16:18 9 the evidence, after you've played that evidence and you
16:18 10 find that there are no sufficient mitigating
16:18 11 circumstances -- get that out right -- can you answer
16:18 12 that question no, knowing that it's going to result in a
16:18 13 death sentence?

16:18 14 A. Yes.

16:19 15 Q. And on the flip side, if we don't prove to you
16:19 16 that he's a future danger, can you answer that question
16:19 17 no?

16:19 18 A. I sure can.

16:19 19 Q. And I guess if we prove to you that he is a
16:19 20 future danger because there is sufficient mitigating
16:19 21 evidence, can you answer that question yes, knowing that
16:19 22 a life sentence is going to result?

16:19 23 A. Yes.

16:19 24 Q. Do you have any questions of me at this time?

16:19 25 A. No.

16:19 1 MS. LOWRY: Pass the juror.

16:19 2 THE COURT: All right.

16:19 3 MR. GOELLER: Thank you, Your Honor.

16:19 4 VOIR DIRE EXAMINATION

16:19 5 BY MR. GOELLER:

16:19 6 Q. Good afternoon, Mr. Maples. Are you doing
16:19 7 okay? Do you need to stand up or stretch or anything?

16:19 8 A. No, no. I'm fine.

16:19 9 Q. Okay. You work at TI?

16:19 10 A. Yes, sir.

16:19 11 Q. Tell me about your schedule in the next month.
16:19 12 Anything, I've made the mistake in the last couple of
16:19 13 days of not asking a juror that, and it caused big
16:19 14 problems afterwards. So I guess I'm being smart. I
16:19 15 ought to just start off with those questions. Tell me
16:19 16 about your personal life and professional life until
16:19 17 from now -- well, say maybe a week from now.

16:20 18 A. Okay.

16:20 19 Q. Say the last week of September to the third
16:20 20 week of October.

16:20 21 A. I'm not an extremely busy person. Although I
16:20 22 can tell you that I wish I was so that I could say I was
16:20 23 because that obviously would be of some benefit to me in
16:20 24 not having to do this.

16:20 25 Q. Yeah.

16:20 1 A. Every other Monday I go to a Scout meeting with
 16:20 2 my little boy, and that's pretty much my social
 16:20 3 commitments outside of work. I don't do a lot.
 16:20 4 Q. Boy Scouts, Cub Scouts?
 16:20 5 A. He's -- he is Cub Scouts, so he's going to be a
 16:20 6 Boy Scout sometime.
 16:20 7 Q. All right.
 16:20 8 A. And Saturdays we meet with a family that we've
 16:20 9 known for the past five or six years, so we have a
 16:20 10 Saturday evening dinner. And that's my two nightly, or
 16:20 11 two things I do.
 16:20 12 Q. Okay.
 16:20 13 A. At work, although I might be missed, it's not a
 16:21 14 distressful thing. I'm a technician, and I do a little
 16:21 15 bit of this, and I do a little bit of that. And if I'm
 16:21 16 not there, some other technician does a little more of
 16:21 17 this and a little more of that than what he would have
 16:21 18 had to have done the day before. They could easily live
 16:21 19 without me. I'm not critical.
 16:21 20 Q. Do you get to pick who gets to do a little bit
 16:21 21 more?
 16:21 22 A. Sorry?
 16:21 23 Q. Do you get to pick who gets to do a little bit
 16:21 24 more?
 16:21 25 A. I wish I could. I know I've had to do a little

16:21 1 bit more than the other guy's had to do, so...
 16:21 2 Q. Yeah.
 16:21 3 A. I wish -- I honestly wish I could sit here and
 16:21 4 tell you that my presence in the world was terribly
 16:21 5 stressful if I wasn't there, but honestly, it's not.
 16:21 6 Q. Your children are in the Wylie ISD?
 16:21 7 A. Yes, sir, my little boy is. He's in second
 16:21 8 grade.
 16:21 9 Q. Because they are -- do they have any kind of
 16:21 10 fall break?
 16:21 11 A. Yes, sir, I believe they do.
 16:21 12 Q. Any plans? I know we've had some.
 16:21 13 A. No. I don't have any plans that I know of. My
 16:21 14 wife would probably tell you different.
 16:22 15 Q. You grew up in Arkansas hunting furry animals?
 16:22 16 A. Yes, sir. You know, that's not fair because
 16:22 17 y'all have those questionnaires, and we don't.
 16:22 18 Q. I know, I know.
 16:22 19 A. But, yes, sir, that's true.
 16:22 20 Q. And they always tell us in a death penalty case
 16:22 21 watch out for hunters if you are representing the
 16:22 22 accused. So you are especially a deer hunter?
 16:22 23 A. No. I never hunted deer.
 16:22 24 Q. All right. Then you are okay then.
 16:22 25 A. I haven't handled a gun since -- since a long

16:22 1 time.
 16:22 2 Q. Small game?
 16:22 3 A. Yes, sir. Yeah. I actually thought at one
 16:22 4 time that it was fun to sell skins, but that was a
 16:22 5 short-lived.
 16:22 6 Q. It's just kind of -- I just love the way you
 16:22 7 phrased that, hunting furry animals. I guess most of
 16:22 8 them have fur, furry little animals.
 16:22 9 A. I've eaten a few squirrels, so...
 16:22 10 Q. Tastes like chicken.
 16:22 11 A. Yeah. Tastes like chicken, yeah.
 16:22 12 Q. Okay. One thing, I don't know if you recall,
 16:22 13 about a month ago, the Judge talked about, in any kind
 16:23 14 of capital murder case, there may be what we call
 16:23 15 lesser-included offenses: murder, robbery, burglary,
 16:23 16 things like that. In the overall scheme of things, do
 16:23 17 you see much of a difference between murder and capital
 16:23 18 murder?
 16:23 19 A. Not knowing the definitions prior to you people
 16:23 20 teaching us those things.
 16:23 21 Q. Yeah.
 16:23 22 A. No, I didn't. Now I can kind of see some
 16:23 23 difference, yes.
 16:23 24 Q. It's really situational. The only difference
 16:23 25 between murder and capital murder is either the status

16:23 1 of the victim, you know, a police officer, fireman, a
 16:23 2 very very young child. Other than that, it's just the
 16:23 3 situation. They all involve an intentional killing,
 16:23 4 intentional taking of a human life. And then it's just
 16:23 5 whether it's in the context of a burglary or a robbery,
 16:24 6 or a double homicide.
 16:24 7 A lot of folks, for example, if I -- I
 16:24 8 don't know. If I just had revenge and evil in my heart,
 16:24 9 and I caught my neighbor. He's taking his trash out to
 16:24 10 the alley, and I just bludgeoned him to death with an
 16:24 11 ax, and then I poured gasoline on him and lit the body
 16:24 12 when he is still alive. And you just think of the most
 16:24 13 grizzly, awful murder you could ever picture, I could
 16:24 14 not -- believe it or not, I could never get the death
 16:24 15 penalty for that. Okay?
 16:24 16 A. Okay.
 16:24 17 Q. But if I went in his house to do it, I could.
 16:24 18 And if I didn't set him on fire and bludgeon him with an
 16:24 19 ax --
 16:24 20 A. Whatever.
 16:24 21 Q. Whatever. It's odd. But anyhow, the really
 16:25 22 common thing between them, the primary link between
 16:25 23 murder and capital murder is an intentional killing.
 16:25 24 Okay? You got to have that in both of them, really.
 16:25 25 And in the course of or in the situation

16:25 1 of murder, there could be a situation in a case like
 16:25 2 this where a jury could consider whether someone is
 16:25 3 guilty of plain murder. I hate to say it like that.
 16:25 4 Plain murder. I guess just murder versus capital
 16:25 5 murder. And the range of punishment for that offense is
 16:25 6 not less than 5 years nor more than 99 years or life
 16:25 7 confinement. No death penalty. Just 5 to life. And,
 16:25 8 again, that's the range of punishment for murder, and
 16:25 9 that's defined as an intentional taking of another human
 16:26 10 life.

16:26 11 It's possible under certain circumstances,
 16:26 12 if a defendant has never before been convicted of a
 16:26 13 felony offense, that he may ask for probation as part of
 16:26 14 punishment. Some other things have to fall in place.
 16:26 15 The sentence can't exceed 10 years, but his eligibility
 16:26 16 for probation can be put to the jury. And a juror in
 16:26 17 such a case might be asked to consider anything from as
 16:26 18 little as 5 years' probation. And that means, you know,
 16:26 19 you don't go to the penitentiary. You just go home
 16:26 20 basically under supervision of the Court, as little as
 16:26 21 5 years' probation. Of course, the other end of that
 16:26 22 scale is just life confinement or 99 years. What are
 16:27 23 your thoughts about probation for people convicted of
 16:27 24 murder?

16:27 25 A. Back to your example, if you bludgeoned your

16:27 1 neighbor to death and set him on fire, and he wasn't
 16:27 2 inside his house and you got probation for it, you would
 16:27 3 get that from me because in the case such evidence was
 16:27 4 presented and such guidelines were given me that that's
 16:27 5 what you got. I wouldn't necessarily like it, but I
 16:27 6 would be confined to do what I'm told to do. And --

16:27 7 Q. Well, let me stop you there. You know --

16:27 8 A. Is that where you are going or --

16:27 9 Q. Kind of, but no one -- I may have not explained
 16:27 10 it as best as I probably could have. Nobody -- the
 16:27 11 Court would never tell you what to do.

16:27 12 A. No, no. No, the Court's going to give me some
 16:27 13 guidelines. They are going to say this is the law.
 16:27 14 Here's some evidence. You decide based within these
 16:28 15 boundaries of what we're going to do.

16:28 16 Q. Right, right.

16:28 17 A. And given that as my window to view from, am I
 16:28 18 going to view outside that window and say: Well, good
 16:28 19 grief. You bludgeoned him to death and burned him. No,
 16:28 20 that's my window. When I go home and tell my next door
 16:28 21 neighbor about it, I'm going to say, you know, they gave
 16:28 22 that son of a gun probation after he did that? But
 16:28 23 that's what we had to do. And they are going to look at
 16:28 24 me, and say, I can't believe you did that. And I'm
 16:28 25 going to say, well, this is it. This is what we got to

16:28 1 do. Now, and I don't know if that's really where you
 16:28 2 are going or not.

16:28 3 Q. Well, I'm testing to see whether you could give
 16:28 4 probation if you thought that was the right thing to do.

16:28 5 A. Yeah, I could.

16:28 6 Q. Okay, okay.

16:28 7 A. I could.

16:28 8 Q. Good for you.

16:28 9 A. I'm going to be given what I'm given. I'm
 16:28 10 going to have to make decisions off of whatever.

16:28 11 Hopefully, you people are going to give us enough
 16:28 12 guidelines that we can make a decent decision knowing
 16:28 13 that probably none of us have done this before.

16:29 14 Q. And therein lies the problem. You will get no
 16:29 15 guidelines whatsoever, other than, say, on punishment.
 16:29 16 Say, on a murder case, Judge cannot, will not. The
 16:29 17 Judge will tell you in the instructions, he has no right
 16:29 18 to give you any guidelines.

16:29 19 A. Right, but we have the law.

16:29 20 Q. You got the law. The Judge basically makes
 16:29 21 a -- he doesn't really say this, but in his
 16:29 22 instructions, anywhere from 5 years' probation to life.
 16:29 23 You figure it out. That's all he'll do. But do you see
 16:29 24 yourself as a person that could give 5 years' probation
 16:29 25 for murder?

16:29 1 A. Yeah.

16:29 2 Q. Okay. You are very unusual.

16:29 3 A. You know, well --

16:29 4 Q. I mean, I think you're --

16:29 5 A. You know, did the guy back out of his backyard
 16:29 6 and run over some next-door neighbor's kid? Sure. You
 16:29 7 know, I don't know. It depends.

16:29 8 Q. It depends on the facts.

16:29 9 A. Did you bludgeon him to death and set him on
 16:29 10 fire? If I had to --

16:29 11 Q. Do you have any neighbors that you'd like to do
 16:29 12 that to, by the way? (Talking simultaneously.)

16:29 13 A. If I do that, I would give it to you. But no,
 16:29 14 I would not want to do that. But if I had to, I could,
 16:29 15 yeah.

16:29 16 Q. Okay. Okay. All right. Let me ask you a
 16:30 17 question. You wrote down the best argument in
 16:30 18 opposition to the death penalty, and you kind of couched
 16:30 19 your answers in terms of mistakes, and I understand
 16:30 20 that. Those -- the things you wrote down really take
 16:30 21 into account somebody that was not guilty, you know what
 16:30 22 I'm saying?

16:30 23 A. Right.

16:30 24 Q. Give me an argument against the death penalty
 16:30 25 that doesn't talk about guilt or innocence in a

16:30 1 particular case or DNA or anything like that. Can you
 16:30 2 give me an argument against the death penalty on just
 16:30 3 general philosophical grounds?

16:30 4 A. Yeah, I could give you one, but I don't know if
 16:30 5 that could be supported.

16:30 6 Q. That's okay.

16:30 7 A. I mean, I could sit here and the same example I
 16:30 8 gave her and say, you know, biblically, we're told not
 16:30 9 to do that. Is that an argument against the death
 16:30 10 penalty. Yeah? Is it one I can apply within the
 16:31 11 regulations and restrictions I'm given? Not necessarily
 16:31 12 so. Do I have to compromise myself somewhat? Maybe.

16:31 13 Am I willing to do that? Well, if I have to. But
 16:31 14 again, I don't want to. I don't want to do this. And
 16:31 15 you asked me, would I rather go home? Yeah, I'd rather
 16:31 16 go home. It doesn't involve making any tough decisions.

16:31 17 Q. Right.

16:31 18 A. Are you going to ask me, can I give you an
 16:31 19 argument against the death penalty? I can give you lots
 16:31 20 of them.

16:31 21 Q. Give me the best one.

16:31 22 A. God tells us not to do it.

16:31 23 Q. Okay.

16:31 24 A. But is that my best? Well, that's my best I
 16:31 25 can give you when I'm in a roomful of people that I

16:31 1 don't know and looking at me and asking me a question.
 16:31 2 If I went home and thought about it for a while, I might
 16:31 3 be able to cough up a different one.

16:31 4 Q. Okay.

16:31 5 A. But on the point, you know, that's my best one,
 16:31 6 and it doesn't involve guilt or innocence or anything.
 16:31 7 It just involves me.

16:31 8 Q. Right.

16:31 9 A. And I've been taught not to do that.

16:31 10 Q. Okay.

16:31 11 A. You know, and --

16:31 12 Q. That's good enough for me.

16:31 13 A. You know, it's all I can give you.

16:31 14 Q. Along those -- when you mentioned along
 16:32 15 biblical lines, just out of curiosity because I haven't
 16:32 16 seen your question, I see sometimes you attend a
 16:32 17 Presbyterian church, and sometimes you attend a Baptist
 16:32 18 church?

16:32 19 A. Yeah. And sometimes I don't go, so...

16:32 20 Q. Taking that path of least resistance.

16:32 21 A. Yes.

16:32 22 Q. As I would call it, Saint Mattress I was
 16:32 23 attending. Tell me, that was unusual just as the
 16:32 24 questionnaires. Two denominations?

16:32 25 A. When -- you-all don't care about this, but

16:32 1 growing up in Arkansas, as a young child, or before
 16:32 2 that, growing up in Fort Worth, my mom took us to
 16:32 3 church, not a certain one. And I vaguely remember that.
 16:32 4 I was very young. And then after she remarried, there
 16:32 5 was a time that we didn't go to church.

16:32 6 When we moved to Arkansas, my grandparents
 16:32 7 took me to church. I get up in high school and meet
 16:32 8 some friends. I go to their church. It was a Baptist
 16:32 9 church. I'm very comfortable in that. Somewhere along
 16:33 10 the way insanity struck me, and I go off to school and
 16:33 11 come back and get married, and we move to Texas, and I
 16:33 12 don't know anybody anymore. And even in this
 16:33 13 environment --

16:33 14 Q. Insanity being getting married or moving to
 16:33 15 Texas?

16:33 16 A. Both. I'm not one to walk into a group -- a
 16:33 17 group being more than one other person and be
 16:33 18 comfortable.

16:33 19 Q. Okay.

16:33 20 A. So we go and we visit a few churches around
 16:33 21 here and there. And honestly, they are not nice and all
 16:33 22 these people are great, but I don't like going somewhere
 16:33 23 where there's a lot of people I don't know. I'm just
 16:33 24 not comfortable with it. And it's not my hometown
 16:33 25 church.

16:33 1 And lo and behold I meet somebody at TI,
 16:33 2 and their husband is a minister. And we go, and we go
 16:33 3 to their child's christening. And eventually we attend
 16:33 4 their church a few times. And it happens to be a
 16:33 5 Presbyterian church in Sherman. And he gets a job as a
 16:33 6 minister at a church in McKinney, and we start going.

16:33 7 Q. Okay.

16:33 8 A. And my job moves to Wylie, and we move to
 16:33 9 Wylie, Texas. And it's a bit of a drive from Wylie to
 16:33 10 McKinney. And we start visiting a church in Wylie. And
 16:34 11 my little boy went to the preschool at the local Baptist
 16:34 12 church. And we thought it would be nice to go to church
 16:34 13 in our hometown where he can go to church with the
 16:34 14 classmates and stuff and, yeah.

16:34 15 And do I attend church regularly? No.
 16:34 16 Should I? Yes. Does it bother me that I don't? Yes.
 16:34 17 Can I get over the influence of wanting to go into a
 16:34 18 whole crowdful of people that I don't know and go to
 16:34 19 church every morning? No, I can't. And the obvious
 16:34 20 proof of that is, my family doesn't go to church every
 16:34 21 Sunday.

16:34 22 THE COURT: You are asking better
 16:34 23 questions and giving better answers.

16:34 24 MR. GOELLER: Yeah. I should write these
 16:34 25 down --

16:39 1 that I've thought about since this came up.
 16:39 2 Q. Okay.
 16:39 3 A. If it were me and I'm sitting here and they
 16:39 4 say, life in prison, you know, I wouldn't go to Scouts
 16:39 5 with my boy. I wouldn't see what my daughter learned in
 16:39 6 baton twirling class. She's three years old. If it
 16:39 7 were me, I would rather not have the life in prison.
 16:39 8 Q. Life can almost be worse than death?
 16:39 9 A. Yeah. And I would consider it insalvageable.
 16:39 10 I wouldn't want to be there.
 16:39 11 Q. Okay. Okay. Any questions for me, Mr. Maples?
 16:40 12 A. No.
 16:40 13 Q. Okay. I sure appreciate you being here today.
 16:40 14 I think I've learned a lot talking to you. You're a
 16:40 15 neat guy. Thank you.
 16:40 16 VENIREPERSON: Thank you.
 16:40 17 THE COURT: All right. You may step down,
 16:40 18 and we may call you back in a minute.
 16:40 19 (Venireperson Maples not present.)
 16:42 20 THE COURT: What says the State?
 16:42 21 MR. SCHULTZ: We're not quite prepared to
 16:42 22 say yes yet.
 16:42 23 THE COURT: Do you want a minute? Do you
 16:42 24 all need me to step down for a minute?
 16:42 25 MR. SCHULTZ: Sure. Thank you.

16:42 1 THE COURT: Just let Billy know. When
 16:42 2 both sides are ready, I'll come back.
 16:42 3 THE BAILIFF: All rise.
 16:42 4 (Break.)
 16:45 5 THE COURT: Please be seated. What says
 16:45 6 the State?
 16:45 7 MS. LOWRY: This juror is acceptable to
 16:45 8 the State.
 16:45 9 THE COURT: What says the defense?
 16:45 10 MR. GOELLER: Your Honor, we'll exercise
 16:45 11 the peremptory strike No. 2 on this juror.
 16:45 12 MR. SCHULTZ: I believe we've already done
 16:45 13 that a long time ago. Would you correct Mr. Goeller's
 16:45 14 numbers, please, Your Honor?
 16:45 15 THE COURT: Yes. I tell you what. I
 16:45 16 think this is No. 13, right?
 16:45 17 MR. GOELLER: Judge, I'd like to know what
 16:45 18 grades you made in math before I agree with you. Were
 16:45 19 you pretty good in math?
 16:46 20 THE COURT: Let's see here, we got six
 16:46 21 plus five.
 16:46 22 MR. GOELLER: Yes, sir, that's 13.
 16:46 23 THE COURT: 13, okay. So did both sides
 16:46 24 like Mr. Maples? Yes. But did the defense take him?
 16:46 25 No.

16:46 1 So, would you tell Mr. Maples we want to
 16:46 2 thank him for his service, and tell him he's finally
 16:46 3 excused.

16:47 4 (Court adjourned.)
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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.
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