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

VOLUME 30 OF 53

Trial Court Cause No. 380-80047-01

THE STATE OF TEXAS

IN THE 380TH DISTRICT COURT

V.

IVAN ABNER CANTU

OF COLLIN COUNTY, TEXAS

REPORTER'S RECORD
VOLUME 30 - VOIR DIRE
CAPITAL MURDER JURY TRIAL

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On the 27th day of September, 2001, from 1:00 p.m. to 6:30 p.m. the Voir Dire proceedings came on to be heard outside the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Stenotype Machine; Reporter's Record produced by Computer-Assisted Transcription.

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Official Court Reporter - 380th Judicial District Court
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COLLIN COUNTY
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1 PROCEEDINGS
 2 THE COURT: All right. The next juror is Gary
 3 Simms. We're back on the record in the State of Texas versus
 4 Ivan Abner Cantu, 380-80047.
 5 MR. HIGH: It's just going to be me this
 6 afternoon. That's okay with Mr. Cantu.
 7 THE COURT: All right. The first juror is Gary
 8 Simms. Let's bring in Mr. Simms.
 9 (Venireperson enters the courtroom.)
 10 THE COURT: Are you Gary Simms?
 11 VENIREPERSON: Yes, sir.
 12 THE COURT: I want to welcome you back to the
 13 court.
 14 VENIREPERSON: I appreciate it.
 15 THE COURT: And thank you for coming.
 16 Perhaps you'll recall about a month ago when all 200
 17 jurors were assembled, I administered an oath?
 18 VENIREPERSON: Yes, sir.
 19 THE COURT: The oath was to give truthful
 20 answers to questions that might be asked by the Court and the
 21 attorneys.
 22 VENIREPERSON: Yes, sir.
 23 THE COURT: I want to tell you you're still
 24 subject to that oath, and I want you to be seated, and the
 25 attorneys will ask you some questions.

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1 VENIREPERSON: All right.
 2 THE COURT: All right. Mr. Schultz.
 3 MR. SCHULTZ: Thank you.
 4 DIRECT QUESTIONS
 5 BY MR. SCHULTZ:
 6 Q. Good afternoon, Mr. Simms. I'm Bill Schultz, and
 7 I'm one of the attorneys representing the State of Texas in
 8 its capital prosecution of Ivan Cantu. Next to me -- soon to
 9 be next to me is Ms. Gail Falco, one of our chief felony
 10 prosecutors, and at the far end of our table is Ms. Jami
 11 Lowry, a felony prosecutor.
 12 At the defense table is Mr. Cantu and Mr. Don High,
 13 one of his two attorneys. Mr. Goeller, who you spoke with a
 14 couple of days ago as a group, will not be here this afternoon
 15 for jury selection and we will forge ahead.
 16 A. Okay.
 17 Q. Kind of cutting right to the chase, you've been very
 18 candid in your questionnaire, which is what we would hope that
 19 you would be. And you're probably the only one that's going
 20 to be able to answer the questions for us, and I know you will
 21 do it honestly. The remarkable thing about jury selection is
 22 that we take all the people at their words completely. You
 23 think, well -- you'd expect if that's the case, everybody
 24 would get up there and say, I cannot be fair, my mind's made
 25 up, I'm biased, I'm this or that. People don't do that.

1 There's something remarkable about the American jury
 2 system that people just tell the truth because it's the right
 3 thing to do. So, I'm perfectly comfortable with that, and
 4 obviously what both sides are looking for is, number one,
 5 jurors that they think would be responsive to the evidence,
 6 that either respective side thinks is important in the case.
 7 And more importantly, I suppose, essential to that is somebody
 8 who, whether you're particularly favorable to that type of
 9 evidence or not, would be fair and could go either way in the
 10 verdict depending upon what the evidence would be.

11 In other words, let's say it's, you know, a federal
 12 prosecution. It's over tax evasion. I doubt if many of the
 13 jurors that would ever be selected for a tax evasion case
 14 would be particularly fond of the Internal Revenue Service, or
 15 American Tax Code, that sort of thing. And yet, even though
 16 they might not like the level of taxation, or sometimes way
 17 the IRS did it's business, those people would be able to sit
 18 as jurors as long as they would fairly view the evidence, and
 19 if the Government proves its case, the Government wins, and if
 20 the Government doesn't prove its case, then the citizen wins.
 21 Does that make any sense to you?

22 A. Yes.

23 Q. Okay. I wouldn't have any questions of you in any
 24 other kind of case, other than in a capital case, because you
 25 probably would never even have been asked what your view is on

1 the death penalty and what your position is.

2 A. Uh-huh.

3 Q. But this is a death penalty case. You were asked
 4 what your view is, and the question was, are you in favor of
 5 the death penalty. And your answer was "95 percent no," which
 6 I guess means 5 percent, yes, I guess, right?

7 A. Yes, huh-uh.

8 Q. And that's -- I guess the simple answer is, are you
 9 able to vote in such a way as would result in a death penalty?
 10 Would you be able to do that if the evidence were there?

11 A. Well, I have serious reservations. It's a moral
 12 issue with me.

13 Q. Right.

14 A. I don't want to argue for or against the death
 15 penalty with you. I can get into my moral reasons. The
 16 reason I said 5 percent yes, I guess I'm like anyone else. If
 17 it was so close to home, if it was my child or my wife, of
 18 course, I would never be put in the position. I would
 19 probably have such strong emotional feeling that I would say,
 20 yes, I agree with it. But I've got to say pretty strongly
 21 that 95 percent of the time I am opposed to it, and there's
 22 reasons I'd be glad to get into, if you'd like to hear?

23 Q. Sure. And I can do that with you in just a minute,
 24 and I'd like to because it's an important issue. It's an
 25 issue about which people are so passionate that unlike whether

1 you like taxes or not, the Internal Revenue Service for most
 2 people would not be a passionate enough subject that that
 3 would affect how they would see the evidence. Do you see what
 4 I'm saying?

5 A. Uh-huh.

6 Q. Things like the death penalty, capital punishment,
 7 it really would because it's important enough a lot of times,
 8 and it's a moral issue.

9 Let me ask you this first of all. Of course, you
 10 would not be able to serve as a juror in a case in which a
 11 family member or dear friend or somebody like that had been
 12 murdered, and I understand what you're saying. Those are the
 13 kinds of cases where some people actually take the law into
 14 their own hands. Someone harms your child, it's not beyond
 15 our experience that the parent of that child goes and gets a
 16 gun and kills the killer kind of thing.

17 But obviously, you're not related to the Defendant.
 18 You're not related to the victim, as far as you can tell,
 19 because we had that list of all the witnesses.

20 A. Uh-huh.

21 Q. And my first question, I guess, becomes do I have an
 22 impossible burden with you of convincing you to -- that those
 23 special issues should be answered in a way that would cause a
 24 death sentence to occur? You've got a way to have a life
 25 answer and a way to have a death answer, and I guess my

1 question is, is there any way at all that you could ever vote
 2 in favor of a death sentence if it was a nonfamily member that
 3 was the victim?

4 A. No, sir. I would -- I don't believe I could do
 5 that.

6 Q. You know, it's kind of -- we -- this won't be a
 7 surprise to you if you've ever been around any lawyers. But
 8 lawyers sometimes play word games that are genuine because we
 9 deal in words. That's a lot of our language. And sometimes
 10 you get situations like this: If I were to say, Mr. Simms,
 11 there's a six-story building, let's you and I go up to the
 12 roof, and let's both of us jump off at the same time and try
 13 to land on our heads and see what happens. You're not going
 14 to do that; that's impossible. I could ask you that for the
 15 next ten years, and you'd say no, no, no. You'd never do
 16 that.

17 Well, if I phrased the question a little differently
 18 and said, Mr. Simms, if you were convinced it was the right
 19 thing to do, to jump off that roof with me, and we both land
 20 on our heads on the concrete down below, and we're six stories
 21 up, would you do it if you were convinced it was the right
 22 thing to do? And I guess if you thought it were the right
 23 thing to do, you'd do it. We'd all do what we thought was the
 24 right thing to do, I guess, if we ever identified it. Are you
 25 with me on that?

1 A. I follow your reasoning, yes.

2 Q. The problem is it's never going to be the right
3 thing for you to do, and you know that before we ever go
4 walking up the stairs, right? There's nothing that could be
5 said or done, or nothing could occur that would make that the
6 right thing to do, so it's not going to happen, right?

7 A. Yes, sir.

8 Q. I could say the same thing about capital
9 punishment. I could say, well, Mr. Simms, if we convinced you
10 it was the right thing to do, to order up a death sentence for
11 a fellow, would you do it? And I guess the same thing, your
12 answer would be, well, yeah, if I believed it were the right
13 thing to do, I guess I would. But because of my moral
14 persuasions on the issue, I would never believe it was the
15 right thing to do, so it wouldn't happen. Is that --

16 A. That's a good summary. If it was the right thing to
17 do, of course, like most people, I want to do the right thing.
18 But you draw the line on the right thing to do with your --
19 with, you know, ethics and morality, and, you know, I --
20 personally I can't conceive of being convinced that morally
21 that's the right thing to do.

22 Because basically I understand there's a trial
23 portion and there's a sentencing portion. But -- and I
24 respect you as prosecutors, your role. I have no problem with
25 your role.

1 Q. Sure. We're not taking it personal.

2 A. No, it's not.

3 But I would be put into the position where
4 potentially, you know, you would ask me to, essentially, kill
5 this young man. That's how strong I feel about it. I know
6 we, as a society, tend to sanitize the death penalty. We take
7 it to Huntsville. There's a long period of time between the
8 trial sometimes and the person dying. You know, a hundred
9 years ago we'd take the guy out back and probably hang him
10 from a tree. Now we do an injection. We tend to -- we hope
11 that's a humane way of ending someone's life. But to me, the
12 bottom line is that we still, as a society -- you know, we're
13 being asked to possibly kill someone, and to me that equates
14 us to the act itself, and I have a moral issue with that.

15 I have a moral issue because I have a lot of friends
16 around the world, and we talk about a lot of things. We talk
17 about Texas. We talk about our culture, but invariably it
18 comes around to two things. You know, we have a lot of guns
19 in this country, and why do we, as a nation, we speak of human
20 rights and go around the world campaigning for human rights,
21 why do we as a nation continue to kill so many people when
22 most of the Western countries have abandoned the death penalty
23 when there's other alternatives.

24 I mean, I'm not saying we should let criminals go.
25 Like I say, I respect your position. I appreciate you

1 aggressively prosecuting, but it's the punishment phase of
2 being put in the position to potentially ask me -- and that's
3 the way I feel about it -- to kill someone, assuming that they
4 were guilty, that bothers me when I think -- if you told me
5 that the only punishment phase would be possibly life
6 imprisonment, I would have no problem with it. But I realize
7 that you are prosecuting for the death penalty. That's what
8 you believe in, and it's just a moral issue with me.

9 Q. I'm with you. You and I are communicating
10 completely. Just take it from me, a record is being made of
11 all this, and we have to do it a certain way, and even though
12 you and I are completely communicating I have to go through
13 some other stuff. Just trust --

14 A. I'll answer anything you --

15 Q. -- me it's necessary --

16 A. Certainly.

17 Q. -- for me to do my job to be doing it the way I am.

18 I often like to speak in analogies, and sometimes, I
19 guess, it's a helpful way to talk and sometimes it isn't. For
20 example, talking about jumping off the roof, to me makes sense
21 in terms of, yeah, the things I know I wouldn't do if somebody
22 convinced me it was the right thing to do, I would do it, but
23 they're never going to convince me on something like that.
24 And when I think about what you said -- because there's
25 actually some real thought in what you're saying when you say

1 that, you know, you're part of the process if you're on the
2 jury.

3 You know, I look back to, you know, 1940s Europe. I
4 look back to Germany where they're loading people up on
5 railroad cars --

6 A. Uh-huh.

7 Q. -- to be driven in crowded, inhumane conditions down
8 to a place where they're going to be killed. And I'm thinking
9 about those trainmen. And I'm thinking what would go through
10 those people's minds to be loading folks like that and to be
11 involved in it. Maybe what they said is, well, all I'm doing
12 is being a trainman. Today I load people, tomorrow I load
13 coal, the next day it's timber, and I'm not the one doing the
14 killing. All I'm doing is just doing my job as a trainman.
15 Somebody else is doing that. And then I guess the engineer
16 that drives the train down to Dachau or Selvadore, or any of
17 those other camps, I suppose could say, all I'm doing is
18 driving the train. I'm not killing anybody.

19 But if you be honest about it and think about it,
20 we're all doing it. We're part of that process, and I've
21 thought about that as a prosecutor. I can't say, gee, I'm
22 just the prosecutor. I never killed anybody, because if I
23 present evidence and try to convince the jury in succeeding --
24 convincing a jury that a death sentence is appropriate, just
25 because I don't have the syringe in my hand doesn't mean I'm

1 not as much a part of that as the fellow who does. Do you
 2 agree with that?
 3 **A. Yes, I do. You're the lawyer, but I would think the**
 4 **law would state, also, if you were an accomplice with a**
 5 **crime -- I mean, maybe you didn't pull the trigger, but you**
 6 **were associated with that, that you're tied in with that crime**
 7 **just because you were sitting in the car out front, or you**
 8 **were the lookout, or whatever. I'm assuming you can't wash**
 9 **your hands and say, well, I wasn't a part of that event there,**
 10 **especially if you had the opportunity to stop the event from**
 11 **occurring. Q. And I'm with you. And what you say is**
 12 **a common reason in opposition to the death penalty. There are**
 13 **others we sometimes hear, like for example --**

14 **MR. SCHULTZ: May I approach the bench?**

15 **THE COURT: Yes.**

16 **MR. SCHULTZ: And perhaps can we do this**
 17 **without even retiring the juror. I just got that from**
 18 **Mr. High.**

19 **THE COURT: All right. Are you familiar with**
 20 **the note that I've received from your attorney, Mr. Cantu?**

21 **THE DEFENDANT: Yes, Your Honor.**

22 **THE COURT: And are you agreeable to it, also?**

23 **THE DEFENDANT: Yes, Your Honor.**

24 **THE COURT: All right. Then, Mr. Simms, you**
 25 **are finally excused.**

1 **MR. SCHULTZ: For the record, he's excused by**
 2 **agreement by the State.**

3 **MR. HIGH: That is correct, Your Honor.**

4 **THE COURT: By agreement of both sides, and**
 5 **I've read your note, and basically it was a note from the**
 6 **attorney for the Defendant indicating both sides agree, and**
 7 **that was the note you're familiar with, right, Mr. Cantu?**

8 **THE DEFENDANT: Yes, Your Honor.**

9 **VENIREPERSON: I do apologize. If there's an**
 10 **opportunity to serve again that I'm not put in a situation**
 11 **that -- you know, is a moral position, I would certainly be**
 12 **honored to serve.**

13 **THE COURT: Hey, look, let me tell you**
 14 **something. Your position is not uncommon, and we understand**
 15 **it. And some people are good jurors in one case and some in**
 16 **another. I sincerely thank you for your service.**

17 **VENIREPERSON: Thank you, Your Honor.**
 18 **(Venireperson exits the courtroom.)**

19 **THE COURT: Let's bring in the next juror.**

20 **(Venireperson enters the courtroom.)**

21 **VENIREPERSON: Good afternoon.**

22 **THE COURT: Are you Barbara Ann Klodnicki?**

23 **VENIREPERSON: Yes.**

24 **THE COURT: Ma'am, I want to ask you if you**
 25 **recall about a month ago when all 200 jurors were assembled I**

1 administered an oath?

2 **VENIREPERSON: Yes.**

3 **THE COURT: And the oath was to tell the truth**
 4 **to any questions that were asked by the Court --**

5 **VENIREPERSON: Yes.**

6 **THE COURT: -- or by the attorneys. And I just**
 7 **want to advise you that you're still subject to that.**

8 **VENIREPERSON: Yes.**

9 **THE COURT: Please be seated right here.**

10 **VENIREPERSON: Okay.**

11 **THE COURT: All right. Mr. Schultz.**

12 **MR. SCHULTZ: Yes, sir.**

13 **DIRECT QUESTIONS**

14 **BY MR. SCHULTZ:**

15 **Q. Good afternoon, ma'am.**

16 **A. Good afternoon.**

17 **Q. My name is Bill Schultz. I'm one of the Assistant**
 18 **District Attorneys representing the State of Texas in its**
 19 **capital prosecution of the defendant, Ivan Cantu. Next to me**
 20 **is Ms. Gail Falco, a chief felony prosecutor, and then at the**
 21 **far end of our table is Ms. Jami Lowry, who spoke with you**
 22 **earlier as a group a few days ago.**

23 **At the defense table is the defendant, Ivan Cantu,**
 24 **and next to him is one of his two attorneys, Mr. Don High.**
 25 **I don't think you met Don High last week because I think**

1 **Mr. Goeller, one of his attorneys, spoke with you then.**
 2 **Mr. High is a very fine practitioner of law in Plano, Texas, a**
 3 **board certified criminal law specialist and a good man.**

4 **I'm guessing that you didn't wake up this morning**
 5 **with the thrill in your heart about the possibility of being**
 6 **able to be on a capital murder jury, but I could be wrong?**

7 **A. No, you're not.**

8 **Q. How did you feel when you woke up this morning and**
 9 **realized this might be the day that you would be seated on a**
 10 **capital murder jury?**

11 **A. Nervous. I feel like my life's in your hands.**

12 **Q. I hope by the time we're through with this, you**
 13 **won't quite feel that way.**

14 **I hope this will be low-key for you. I mean, it is**
 15 **from our point of view --**

16 **A. Uh-huh.**

17 **Q. -- because I know you've never done this before, and**
 18 **there aren't any right or wrong answers. Nobody is up here to**
 19 **trap you on anything. And I'm actually going to try to be**
 20 **brief with you on this, and that doesn't mean that the other**
 21 **side will be. They may have a different approach to this**
 22 **situation than I do.**

23 **I think what we're really looking for, very simply,**
 24 **is a juror who is capable, depending upon the evidence, of**
 25 **returning either a verdict that would cause a person to get a**

1 life sentence for capital murder, or death for capital murder,
2 depending upon the evidence that juror found. And unless
3 something has changed in the way you see the issue since the
4 time you answered the questionnaire, it seems to me that
5 you're that type of person who, depending upon the
6 circumstance, could vote either way and feel that was the
7 proper thing to do. Am I still right about that?

8 A. Yes.

9 Q. And why I ask you that, Ms. Klodnicki, is a lot of
10 times people will fill out the questionnaires before anybody
11 has really explained the death penalty thing to them. And
12 then because there's a fair period of time, in your case a lot
13 of time has passed, probably in excess of a month since you
14 filled -- well, I know in excess of a month since you filled
15 out that questionnaire -- people will say I feel differently
16 about it now because always before I was just in my living
17 room seeing horrible crimes on television and saying we need
18 to start executing people that do these awful things. And
19 then once I realized that they need to do something about
20 this, suddenly it becomes me, that I feel differently about
21 that.

22 And then other people say that made me test my
23 conviction and made me test my resolve, and it has a more
24 realistic feel to it, but I still feel about the same way as I
25 did before on the subject. How would you say you are with it?

1 burden, but it ought to be.

2 A. Uh-huh.

3 Q. We're equal (sic) to it. Every criminal trial
4 you've ever heard of starts out exactly the same as this one
5 does; that is, the defendant is presumed innocent. The burden
6 of proof is always on the State of Texas. There could be 500
7 eyewitnesses. There could be a videotape of the event. There
8 could be fingerprints and footprints leading right up to the
9 crime scene, all which got matched to the defendant. There
10 could be people who said the defendant told me he did it.
11 There could be dying declarations, the victim names the
12 defendant just before the victim expires. There could be
13 unbelievably enormous evidence. That same case starts out
14 presumed innocent. They all start that way, and they all end
15 up with a jury having to decide if the State proved its guilt
16 beyond a reasonable doubt.

17 I know you don't have any problem presuming the
18 innocent. You can do that?

19 A. Uh-huh.

20 Q. And also in connection with being presumed innocent
21 that means they don't have to do anything at all in their own
22 defense if they don't want to; do you understand that concept?

23 A. Yes.

24 Q. Now, you and I might think to ourself (sic), it
25 would sure be helpful to us to know both sides of the story,

1 A. Basically the same.

2 Q. Okay.

3 A. I want to hear what's going on before I make the
4 decision, but seeing it's in the law in Texas that it could be
5 either death or it could be prison, I'll have to listen and
6 see what it says, and I will do either one.

7 Q. Okay. We are not quite so crass in Texas as to ask
8 the jury does the person get life or death. That's not a
9 direct question.

10 A. Oh, okay.

11 Q. I'm not quarreling with you. I'm just saying -- but
12 you're very, very close because by the time we go through our
13 whole question process, what you will see -- I didn't mean you
14 were crass. I'm just saying it's our system that's not that
15 crass. By the time we go through answering those questions,
16 it's almost the same thing as saying what's the proper
17 punishment in the case, because when you get to that last
18 special issue, that last question that we'll talk about in a
19 minute, it almost asks that very question, is life or death
20 the appropriate sentence? It just makes you look at a
21 particular thing in order to decide whether life or death is
22 right.

23 The first thing the State has to do is it has to
24 prove the Defendant is guilty beyond a reasonable doubt.
25 That's our obligation. That's our burden, and it's a heavy

1 if there are two sides to it. And if they choose to give
2 their version of evidence or facts, that is their right. They
3 may do that, but they're not obligated to do it. The Defense
4 is not obligated to produce any evidence at all, and we
5 cannot hold that against them or use that as some evidence
6 against them, the fact they
7 choose not to offer evidence. Any problem with that?

8 A. I'm unclear on that. Does that mean that they could
9 know something or have proof that would -- or something that
10 would indicate he is guilty, and they don't have to produce
11 it? Is that what you're saying? I'm saying that kind of
12 thing --

13 Q. I'm saying that and some more, yeah. If they had
14 some knowledge or evidence that would tend to prove the
15 defendant guilty, of course, they don't have to produce it, if
16 they don't want to.

17 A. Right.

18 Q. But it could be that they just have knowledge or
19 evidence that they just don't want to put on for any reason.

20 A. Okay.

21 Q. The first thing -- I guess a lot of people think if
22 it was great evidence, wouldn't they put it on? And so if
23 they don't put evidence on it must be because there's not -- I
24 mean, I guess that would be a logical way to do it.

25 But truthfully, the law says that, very simply, the

1 failure to produce evidence is not a circumstance against the
2 defendant.

3 **A. Okay.**

4 Q. And you'll know it. I mean, if they don't put on
5 evidence, the judge isn't going to tell you to pretend that
6 they did, or forget that they didn't put on evidence, because
7 nobody can forget what you've seen. The judge will simply
8 say, don't put that fact on the scales of justice, I guess is
9 the best way to say it.

10 **A. Okay.**

11 Q. Could you do that, not make that a circumstance?

12 **A. I would try. I want to be open.**

13 Q. Well, when you say you would try, do you think you
14 would succeed, you'd be able to do that?

15 **A. All I could say was I'll try. Wait a minute, let me
16 take that back. Yeah, I would be able to do that, because if
17 it's not presented, it's not presented. I don't know if they
18 don't have evidence or are just not presenting it, so I would
19 have to assume there is none.**

20 Q. And you're exactly right. That's an area the judge
21 would tell you, don't speculate into, don't try to figure what
22 they might have put on, if they chose to, or what that all
23 means because that's just not evidence. It's not good for
24 them, it's not bad for them; it's just not evidence. Any
25 problem?

1 **A. No.**

2 Q. Super. Same thing with failure to testify. I mean,
3 sure it might be helpful to all of us to hear a defendant in a
4 criminal case testify. We'd maybe learn about his
5 personality, maybe learn this or that. That's not legal. You
6 can't consider that as evidence because it's a Constitutional
7 right. Does that make sense to you?

8 **A. Uh-huh.**

9 Q. And the judge would instruct you not to ever
10 consider the failure of a defendant to testify as any evidence
11 in the case or a circumstance against him, and you could
12 follow that instruction?

13 **A. Uh-huh.**

14 Q. And again when we talk about the judge instructing
15 you what to consider or what not to consider, all that really
16 has to do with is do you put that fact on the scales of
17 justice and make it part of the evidence in the case. Do you
18 follow me? If he says, don't consider it, that means that
19 doesn't go on the scales as any evidence.

20 **A. Right, yeah. You can't consider what you don't
21 have, is how I see it.**

22 Q. Exactly, exactly. And you could follow those
23 instructions in those areas?

24 **A. Uh-huh.**

25 Q. Okay. Now, you made an observations about

1 prosecutors and defense attorneys, and there aren't any right
2 or wrong answers, and I don't quarrel with anything that
3 anybody says. And I know the answer to this, but I want to
4 make sure that it wouldn't somehow affect your ability to be
5 fair in looking at the evidence. You put down that
6 "prosecutors really try to get all the facts presented, clear,
7 understandable for lay people, help jury to convict
8 criminals."

9 And I suppose we do, and I like to think we try to
10 be clear in what we do. I'd like to think we try to get
11 criminals convicted because that is a big part of what we do,
12 but then when you get to criminal defense attorneys, you put
13 that they can -- I believe it's -- "they can camouflage the
14 truth and facts to get his client off." And --

15 **A. I've been watching too much LA Law, or whatever
16 that is.**

17 Q. And I'm sure there may be some defense attorneys who
18 would do that. I don't know what camouflage the truth is. I
19 kind of keyed on that because much of what an advocate does is
20 try to expose weaknesses and flaws on the other side's case,
21 like with cross-examination?

22 **A. Uh-huh.**

23 Q. And I don't know -- that doesn't seem to be
24 camouflaging the truth. You could almost say that the people
25 that put those witnesses on might have camouflaged some of the

1 truth, and the other side is just trying to expose it by
2 cross-examination, you know?

3 **A. Uh-huh.**

4 Q. I mean, do you somehow have a feeling that
5 prosecutors are more moral or more ethical than defense
6 lawyers?

7 **A. No. I think -- as we're talking, I think that
8 camouflage wasn't really a good word, but I was kind of at a
9 loss for words at the time. And I guess the way they present
10 it would have a shading towards what they -- you know, to get
11 someone found not guilty, or whatever. And like you said, not
12 giving evidence, they wouldn't have to have, that's kind of
13 what I meant, like he wouldn't have to prosecute, or he
14 wouldn't have to go on the -- on the stand or anything like
15 that. That is kind of what I meant, rather than camouflage.
16 I didn't know how else to put it.**

17 Q. Okay. Well, if I didn't ask this question, I know
18 Mr. High would ask it, so I'll ask it. You know that the
19 lawyers are not -- we're not the ones on trial here.

20 **A. (Nods head.)**

21 Q. Nothing happens to me whatever the jury's verdict
22 is. Nothing happens to Mr. High or Mr. Goeller, whatever the
23 jury's verdict is. Something happens to the State, depending
24 upon what the verdict is. Something happens to the Defendant,
25 depending upon what the verdict is, but the lawyers aren't on

1 trial. The ones that deserve the fair trial are really the
 2 Defendant and the State of Texas. Are you able to do that?
 3 **A. Uh-huh.**
 4 **Q.** Can you give both sides a fair trial?
 5 I need to get you to say yes or no because she's
 6 taking down --
 7 **A. Oh, I'm sorry. You can't hear my head shake, huh?**
 8 **Q.** Yes, you could give us both --
 9 **A. Yes. Uh-huh, yes.**
 10 **Q.** If I were sitting where Mr. High is, I guess the
 11 question in my mind would be how do you give my client a fair
 12 trial if you think I belong to a profession that camouflages
 13 the truth to try to get guilty people free? How would you
 14 fairly listen to my side, if I have a side, or to my evidence,
 15 if I produce evidence? That would be my question if I were
 16 sitting over there.
 17 **A. I don't know. That's a -- it's not that I guess**
 18 **he -- I think he gets people off. I think it's his job to**
 19 **stand up for someone who is not educated kind of in the legal**
 20 **business, like the person on trial, and he's representing him**
 21 **to see that he does get this balance of justice that we talk**
 22 **we have in the United States.**
 23 **Q.** Okay.
 24 **A. Did I not answer your question?**
 25 **Q.** I think you did. The way you worded the prosecutor

1 role and the criminal defense attorney role, if I were sitting
 2 over there I might say, sure sounds like she respects what
 3 prosecutors do a lot more than she respects what I do. I
 4 think that's what I would be thinking if I were Mr. High.
 5 Does that make sense to you? Tell me about that.
 6 **A. Yeah. But, see, I have family on both sides of the**
 7 **law, and it's kind of hard to sit here and think of it because**
 8 **I know the folks in our family were not innocent, and there**
 9 **was lawyers that defended them the best they could. And I**
 10 **mean, I was a child when all this happened, but according to**
 11 **what the family had said, you know? And so I feel they did**
 12 **what they could, and they did the best they could, but the**
 13 **outcome was not what we -- what the family wanted basically.**
 14 **Q.** Okay. And nobody is trying to get you to change
 15 your opinion of what prosecutors do or defense attorneys do.
 16 The real question is can you give the Defendant a fair trial
 17 based on everything you know about yourself? Can you be fair
 18 to him?
 19 **A. I'm going to try.**
 20 **Q.** Well --
 21 **A. I know that's not a precise answer, but I can't**
 22 **say, sitting here, yes, I'm going to. I'm going to do**
 23 **everything to be open-minded, to listen clearly and not to**
 24 **prejudge.**
 25 **Q.** Okay.

1 **A. I know that's not a precise answer, but I can't say**
 2 **sitting here, yes, I'm going to -- I'm going to do everything**
 3 **I can to be open-minded, to listen clearly and to prejudge.**
 4 **Q.** Okay.
 5 **A. Doesn't answer your question, does it?**
 6 **Q.** Well, no, only because on something like that, and
 7 we're not disagreeing.
 8 **A. Right.**
 9 **Q.** I can't understand how somebody couldn't say yes or
 10 no on that one. I mean, if somebody asked me will you be
 11 fair, I'm either going to say, yeah, I will, or I won't. I'm
 12 not going to say I'm going to try, because when you say I'm
 13 going to try, it sounds like you're saying I might try, but I
 14 might gyp him out of a fair trial even though I'm not trying.
 15 **A. See, I understood that differently. Like I say, you**
 16 **know, if -- I don't know if maybe it was saying, like, his**
 17 **attorney may feel it wasn't fair because we've convicted him;**
 18 **is it that kind of thing or not? But I would say I would do**
 19 **what I can to be open-minded and not to let anything but what**
 20 **I see and hear determine the facts and determine my decision.**
 21 **Q.** Can you do that? Are you the kind of person that
 22 can do that?
 23 **A. Yes.**
 24 **Q.** All right. If we prove beyond a reasonable doubt
 25 the Defendant's guilty of capital murder, the proper

1 verdict -- the only acceptable verdict, if we prove it beyond
 2 a reasonable doubt, is guilty, and that's what the jury must
 3 do if we've proven that to them beyond a reasonable doubt.
 4 And if we do that, you will vote guilty; is that correct?
 5 **A. Yes.**
 6 **Q.** If that occurs and 11 other people have voted guilty
 7 along with you when you vote, you get two questions at the
 8 punishment phase of the trial. Can you see that okay from
 9 where you are, Ms. Klodnicki?
 10 **A. Yes.**
 11 **Q.** Take a moment and read that for me.
 12 **A. Okay.**
 13 **Q.** Okay. They probably could have worded that question
 14 a little better than they did, but that's the one every
 15 capital murder trial in Texas has been using for the last 17
 16 years -- no, more than that. 20-something years now.
 17 That question says having found the defendant guilty
 18 of capital murder; we next want you to consider his
 19 personality for the particular personality trait of being
 20 violent, of being dangerous.
 21 **A. Uh-huh.**
 22 **Q.** Some people say that question requires you to
 23 predict the future. I don't think it requires you to predict
 24 the future. I believe it requires you to deal right in the
 25 present and to identify, does he have the kind of personality

1 that makes him dangerous, if given the opportunity --
 2 **A. Uh-huh.**
 3 **Q.** -- to be dangerous. Does that make sense to you?
 4 **A. Yes.**
 5 **Q.** I could never prove to you -- if that question were
 6 worded there's a probability that he will commit criminal acts
 7 of violence in the future, instead of would -- if we were
 8 talking about will, I don't know how we'd ever prove that he
 9 will because there could be ways to control him. If we want
 10 to take enough time and energy and money, there could be ways
 11 to control his ability to ever harm us, but that still doesn't
 12 mean he's not a dangerous person. Does that make sense to
 13 you?
 14 **A. Yes.**
 15 **Q.** I like to think of it, very similarly, to going to
 16 the circus where they have a -- where they have these large
 17 cats, like tigers and lions and leopards. And the question, I
 18 suppose, is, is that a dangerous situation? Well, as long as
 19 they're in the cage and people have those doors latched and
 20 they don't escape, and we keep little kids' hands out from
 21 inside those bars, then probably those tigers and lions will
 22 not commit acts of violence on anybody. Do you follow what
 23 I'm saying?
 24 **A. Yes.**
 25 **Q.** But if you ask yourself, instead, is there a

1 probability that they would commit acts of violence on people,
 2 the answer to that question is "yes." They certainly would if
 3 given the opportunity to do that?
 4 **A. Yes.**
 5 **Q.** And so I think of it -- I think of it very
 6 similarly. It's not enough to say, well, can we devise a
 7 system that would prevent their personality from translating
 8 into action. It's not -- that's not what that question is
 9 aimed at.
 10 Rather, the question is aimed at their present
 11 personality trait and find out is this a dangerous
 12 personality? Kind of like, is this a dangerous tiger or not?
 13 Does that make sense to you?
 14 **A. Yes.**
 15 **Q.** Now, in answering that question there's several
 16 things that may be considered. One is the crime itself. You
 17 might look at what the person has done and say, this crime is
 18 so awful that anybody who could do that has certainly got a
 19 personality that is probably dangerous, that probably would
 20 cause acts of violence in the future. Do you see how you
 21 could do that just from that one crime only?
 22 **A. Yes.**
 23 **Q.** And then additionally, both sides are entitled to
 24 introduce psychiatric evidence, if they choose to, to help you
 25 answer that question. For example, the State is entitled to

1 bring on doctors that say, yes, I have reviewed this evidence.
 2 Yes, I have talked with the defendant. I've talked with
 3 people who know the defendant. I've considered this and that,
 4 and in my opinion, having considered that evidence, that is
 5 the kind of personality that would, if given the chance,
 6 commit criminal acts of violence.
 7 And the Defense has the same rights, and they can
 8 bring on psychiatrists to say, yes, I've studied the Defendant
 9 and talked with family members, and he doesn't have that kind
 10 of personality. He would not commit criminal acts of
 11 violence. Do you follow what I'm saying?
 12 **A. Yes.**
 13 **Q.** And that might help the jury, and it might not.
 14 Different people might like psychiatric evidence and say
 15 that's real helpful. Other people -- cynical ones say, well,
 16 both sides are going out and just hiring people to say what
 17 they want them to say. They cancel each other out almost.
 18 Some people say where's the magic in that?
 19 And other people say, you know, I answer questions
 20 like that very one there in my life all the time, just a
 21 little bit different wording. If I have a child that's
 22 engaged to somebody to be married, I make predictions in my
 23 mind. I may never tell my child that, but I can look and say,
 24 that looks really good, or that's not the kind of person I
 25 wish my daughter were marrying. I don't get a good feeling

1 about this man, or I don't get a good feeling about my son's
 2 fiance.
 3 We make those kinds of predictions when we make
 4 investments. We make predictions about the personality that's
 5 selling us these investments. We make predictions, based on
 6 the past, about how we think these investments are going to
 7 work. We do it all the time. We hear the weather forecast in
 8 the morning. We make determinations, should I take my
 9 umbrella or not? They said it's only a 20-percent
 10 probability. What does that matter? You know, how rumpled
 11 will I get if I don't have an umbrella? If it's just a
 12 T-shirt, maybe it's not a big deal if it gets wet, anyway. We
 13 make all those kinds of predictions all the time. Do you see
 14 yourself being able to answer the question, depending upon the
 15 evidence in the case one way or the other?
 16 **A. Yes. I'd have to weigh both of them. I'd have to**
 17 **hear what they both have to say, and how they come to those**
 18 **conclusions, and what sounds, I guess, the most believable or**
 19 **real to me that, let's say, makes sense.**
 20 **Q.** Sure, sure. And the law contemplates that a juror
 21 be open-minded enough to realize sometimes the answer to that
 22 question would be "yes" and sometimes the answer to that
 23 question would be "no."
 24 **A. Uh-huh.**
 25 **Q.** You may be the kind of person that would tend to

1 answer that question more often no, than somebody else on the
2 jury, but it's not a matter of numbers. It's not a matter of
3 who's going to answer yes or no more frequently. It's a
4 matter of, is this juror fairly able to answer one or the
5 other, depending upon the evidence, and you told me you can do
6 that?

7 **A. Uh-huh.**

8 Q. All right. If you answer that question "no," do you
9 know what that means? If the answer is "no," the person is
10 not possessing a personality that would commit criminal acts
11 of violence, do you know what that answer means?

12 **A. That means he would just go to jail.**

13 Q. Goes to prison for a life sentence?

14 **A. Right.**

15 Q. If you answer the question "yes," then your job is
16 not through. You have to next consider the last question
17 that's up there on the board in front of you.

18 **A. (Reading.)**

19 Q. A little complicated?

20 **A. Yeah.**

21 Q. Seems like to me, and I've been reading it three or
22 four times a day for weeks now.

23 **A. Yes.**

24 Q. What do you think that's asking you to do as a jury?

25 **A. It's really asking us to get into his mind, so to**

1 rather than a death sentence? Do you understand that concept?

2 **A. Uh-huh.**

3 Q. And I guess if I were sitting on the jury, I would
4 say how much mitigation is sufficient may depend upon the
5 crime itself. The bigger the crime, the more it might take in
6 terms of mitigation to balance that to make a life sentence
7 the right thing to do. Does that make sense to you?

8 **A. Uh-huh.**

9 Q. Now, I look at somebody like, for example, Adolf
10 Hitler or some -- you know, some terrorist that leases --
11 loses some gas on innocent people and kills thousands of them
12 over in the Middle East, or something. And there may not be
13 enough mitigation in the whole wide world that would be
14 sufficient to spare that person's life.

15 **A. Uh-huh.**

16 Q. But there might be other fact situations in which
17 that same evidence would be sufficient, in that case, to spare
18 the person's life. Do you follow what I'm saying?

19 **A. Yes.**

20 Q. I mean, what if the person used to be really, really
21 good and turned bad late in life? What if the person, when he
22 was younger, was a Medal of Honor winner and saved a bunch of
23 people that had lives because of his heroism in the military?
24 And then, for whatever reason, he turned mean and
25 dangerous and did a capital murder. Maybe all of that

1 **speak, or in his skin to see what he was like, or what he is**
2 **like. And if we feel that after doing that and listening to**
3 **what, you know, the evidence is, or the doctor says, if we can**
4 **get in there and understand and make that decision.**

5 Q. That's pretty good. It seems to focus on this
6 notion of mitigation, this lessening kind of evidence because
7 it tells you to take into consideration certain things, like
8 take another look at the crime because it says circumstances
9 of the offense. It tells you to take another look at the
10 defendant's character, and probably you'd agree the
11 defendant's character is not very good if you've gotten to
12 that question because you found he would commit criminal acts
13 of violence in the future, if allowed to. Do you understand?

14 **A. Uh-huh.**

15 Q. Consider that -- the fact he's got a dangerous
16 character, and consider his background, which is probably
17 where this mitigation evidence would most clearly fit because
18 background is stuff like grown-up years and what his parents
19 were like and whether he drank and whether he had drugs and
20 whether he, you know, was given religious training, et cetera,
21 et cetera, et cetera. And what it directs you to do is
22 consider all that evidence again and ask yourself the
23 following: Is all of that sufficiently mitigating,
24 sufficiently sympathetic perhaps, but certainly sufficiently
25 mitigating, that the right thing to do is a life sentence,

1 gallantry in the military in the early days might be enough
2 that a jury would say that's enough for me to at least give
3 the guy a life sentence, rather than killing him. Does that
4 make sense to you?

5 **A. Uh-huh, yes, sir.**

6 Q. Do you see yourself as being able to fairly consider
7 whatever evidence you find mitigating and decide whether a
8 life sentence or death sentence is appropriate? Could you do
9 that?

10 **A. I had -- yes, I think so. I keep saying I think so**
11 **because I think sitting here, yes. Of course, I'm sitting**
12 **here. And it -- I guess it would depend, really, on the**
13 **facts. Yes, I would be able to do this, but the facts would**
14 **have to prove one way or the other for me to have to decide**
15 **what it should be.**

16 Q. Okay. That seems simple enough. A couple of
17 questions.

18 MR. SCHULTZ: Moment, please, Judge?

19 THE COURT: Yes, sir.

20 (Brief pause in proceedings.)

21 Q. BY MR. SCHULTZ: Now, you've indicated that you are
22 in regular attendance at St. Elizabeth Seton Roman Catholic
23 Church in Plano, Texas; is that correct?

24 **A. Yes, sir.**

25 Q. I'm not a Roman Catholic, but I've done this so much

1 now that I have the opinion that the Catholic church has at
 2 least close to an official position on capital punishment.
 3 Why I say close is because I hear some people that say there's
 4 not -- they've not made it an article of faith. I don't think
 5 you would -- I don't, for example, have an impression that a
 6 juror who voted for a death sentence would have to go and
 7 confess that vote, for example, to the priest. What do you
 8 think about that? Think you have to confess that?
 9 **A. No.**
 10 Q. Okay. Only you are going to know this answer, and
 11 I just want to know what you think. If that's true, and your
 12 church is opposed to capital punishment, how does that -- how
 13 does that, if it does, affect your ability to return a death
 14 sentence in this case?
 15 **A. I would say it wouldn't make a difference.**
 16 Q. Would not?
 17 **A. No, sir.**
 18 MR. SCHULTZ: Judge, we'll pass this juror.
 19 Ma'am, thank you so much for your time.
 20 THE COURT: Thank you, Mr. Schultz. Mr. High,
 21 are you ready?
 22 MR. HIGH: Yes.
 23 THE COURT: Wait, Ms. Klodnicki.
 24 VENIREPERSON: Oh, I've had enough, I'm going
 25 home. No.

1 (Laughter.)
 2 MR. HIGH: Was it that bad?
 3 VENIREPERSON: No. Heavens, no.
 4 CROSS-QUESTIONS
 5 BY MR. HIGH:
 6 Q. How are you this afternoon?
 7 **A. Nervous, but I'll be fine.**
 8 Q. Okay. Well, you're almost done.
 9 **A. Thank you.**
 10 Q. So just hang in there.
 11 My name is High, Don High, just like it sounds, like
 12 up in the air, High, H-I-G-H. And I've got a few questions
 13 for you.
 14 **A. Okay.**
 15 Q. Not a lot. I represent Ivan here, and I'm
 16 appointed, along with Mr. Goeller, to represent him, okay?
 17 Ivan didn't retain us. The court appointed us to represent
 18 him.
 19 **A. Okay.**
 20 Q. And actually the taxpayers of Collin County will be
 21 paying --
 22 **A. (Raises hand.)**
 23 Q. That's right. Me, too.
 24 We'll be paying for his defense, and I just wanted
 25 to get that out in the open with you. And it's a pretty

1 common thing. Ever since *Gideon versus Wayne*, years
 2 ago, it's a pretty common thing for an indigent defendant to
 3 receive a taxpayer-assisted defense. You're familiar with
 4 that, I assume?
 5 **A. Yes, uh-huh.**
 6 Q. Are you okay with that?
 7 **A. Yes.**
 8 Q. Okay. It's not --
 9 **A. I mean, we can't already decide that he's guilty**
 10 **because he can't afford a lawyer, or we can't assume, you**
 11 **know, something because he doesn't have the money. And I**
 12 **think it's right that he should have the opportunity.**
 13 Q. Yes, ma'am. Certainly in a high-stakes case like
 14 this where his life is on the line. That's the right thing to
 15 do, wouldn't you say?
 16 **A. Yes.**
 17 Q. Okay. You're originally from Cleveland, Ohio?
 18 **A. Yes, sir.**
 19 Q. I've been there.
 20 **A. Okay.**
 21 Q. And I like it.
 22 **A. Yes.**
 23 Q. You're kind of snickering.
 24 **A. Everyone says great place to be from, you know what**
 25 **I mean?**

1 Q. Okay. Well, I think it's kind of on the upswing.
 2 **A. It is.**
 3 Q. I was there about three years ago -- two to three
 4 years ago when the new stadium was under construction.
 5 **A. The Jake or the other?**
 6 Q. The other one, the new --
 7 **A. The football stadium?**
 8 Q. That's right. And walked all around the downtown
 9 area and went all over the city and saw Cleveland Clinic
 10 and --
 11 **A. Oh, yeah.**
 12 Q. -- saw the sites, and I liked it a lot. You were
 13 born and raised there?
 14 **A. Yes, sir.**
 15 Q. Okay. And then when did you come to Texas?
 16 **A. 25 years ago.**
 17 Q. What brought you to Texas?
 18 **A. A job.**
 19 Q. Okay.
 20 **A. I was going to say the Lord, but strike that,**
 21 **please. But really, work brought us here.**
 22 Q. Okay. And you've stuck around?
 23 **A. Yes.**
 24 Q. You're almost becoming a naturalized Texan?
 25 **A. No. I'm an Italian.**

- 1 Q. Okay.
- 2 A. **Not a naturalized citizen -- Texan.**
- 3 Q. Well, do you like it here?
- 4 A. **Yes.**
- 5 Q. Do you like living in Texas?
- 6 A. **Yes.**
- 7 Q. Do you make it back to Ohio frequently?
- 8 A. **Once a year.**
- 9 Q. When do you go?
- 10 A. **In October.**
- 11 Q. Okay. Well, that's right in the fall, isn't it --
- 12 A. **(Nods head.)**
- 13 Q. -- when the leaves are changing?
- 14 A. **That's why I go.**
- 15 Q. Okay. Do you have family down here?
- 16 A. **Just my immediate -- my children and my brothers,**
- 17 **yeah. And my husband's side of the family mostly is back in**
- 18 **Ohio, and I have aunts and uncles back there.**
- 19 Q. Okay. Well, that's great. And you live in Plano?
- 20 A. **Yes, sir.**
- 21 Q. Have y'all always lived in Plano?
- 22 A. **Yes, sir.**
- 23 Q. So you've seen the growth of Plano over the last 20,
- 24 25 years?
- 25 A. **Yes, sir. We were the last house in Plano 25 years**

- 1 ago.
- 2 Q. Well, how about that? That's fascinating.
- 3 Okay. Have you ever served on a jury here in --
- 4 A. **No, sir.**
- 5 Q. How did you manage that, lived here all that time?
- 6 A. **I have an honest face. No. I don't know. I just**
- 7 **never have.**
- 8 Q. Well, that's uncommon. I've been called a couple of
- 9 times already, and I've lived here since '88, and I'm even an
- 10 attorney, and you think they would avoid me.
- 11 A. **Yeah, like the plague.**
- 12 Q. Okay. When you came on August -- that's a good
- 13 answer.
- 14 When you came on August the 20th, though, your first
- 15 time to jury service, and there's 200 folks over there in that
- 16 room, you found out it was a death penalty case, how did that
- 17 strike you? What was your reaction to that?
- 18 A. **Oh, God, I wish it were 120 -- I wish I was the**
- 19 **199th person in the back row. That's how it struck me. I**
- 20 **wanted to be closer to the back because it's -- that's a great**
- 21 **responsibility.**
- 22 Q. Yeah.
- 23 A. **You know, I just thought, well, they're going to**
- 24 **call me, like they did before, and I'm going to go down, and**
- 25 **they're going to say, go home, we don't need you. And that's**

- 1 **what I did. And when he stood up there --**
- 2 VENIREPERSON: Excuse me, sir.
- 3 A. **When Your Honor stood up there, told us -- and swore**
- 4 **us in and gave us all the whatnot, I thought, oh, this is**
- 5 **serious business. And I tried to listen to everything I heard**
- 6 **and pay attention so I could understand. I knew the gravity**
- 7 **of it was serious, so I wanted to be the best one I could be**
- 8 **if I were going to be one.**
- 9 Q. BY MR. HIGH: Can you imagine how I must feel?
- 10 A. **Yes, yes.**
- 11 Q. Okay. Well, that's good.
- 12 A. **At a Cleveland Browns football game, that's how you**
- 13 **feel, being a Dallas Cowboy fan.**
- 14 Q. Do you recall that mud bowl back in the '60s, '66,
- 15 '67? Y'all beat us 6 to 3; do you remember that game?
- 16 A. **Yeah.**
- 17 Q. What a game. I bet you're proud.
- 18 A. **Oh, Browns and Indians fans are just fans, no matter**
- 19 **what. No matter win, lose or draw, they're there.**
- 20 Q. Okay. Well, that killed me because I was originally
- 21 from Texas, and we were living in Wyoming at the time, and we
- 22 lived on the outside edge of town. We had to have friends to
- 23 invite us over to watch it on cable, and I was over at a
- 24 friend's house that day, and he wasn't necessarily a Cowboy
- 25 fan and he just ate that up. We were miserable, okay. What a

- 1 game, though.
- 2 A. **Yes. It's hard to see them lose, but it's just fun**
- 3 **to watch.**
- 4 Q. Yeah. And I'm glad they're back.
- 5 A. **Me, too.**
- 6 Q. That's exciting.
- 7 A. **Oh, yes, we have -- my husband has a Brown's parking**
- 8 **spot, you know, all that kind of -- he and my son are Browns**
- 9 **fan?**
- 10 Q. Okay. Are you still a Browns fan?
- 11 A. **If you'd call me a fan. I'd rather watch them if I**
- 12 **have to watch football, but other than that, you know --**
- 13 Q. Otherwise, that's cruel and unusual punishment?
- 14 A. **Yes, absolutely. Fits into the last question, I**
- 15 **think, over there.**
- 16 Q. That's fun. I'd love to talk football, but I got --
- 17 A. **Oh, go right ahead, please.**
- 18 Q. -- some business here to go over with you.
- 19 A. **They're timing us in the other room, I have to tell**
- 20 **you.**
- 21 Q. Okay. I think I understand about the camouflaging
- 22 business we went over earlier about what criminal defense
- 23 attorneys do. Did you know that criminal defense attorneys
- 24 aren't born criminal defense attorneys? Sometimes they start
- 25 out as prosecutors, and then they become criminal defense

1 attorneys later. Did you know that?

2 **A. Yeah. A job change is good for everybody.**

3 Q. Yeah.

4 **A. One way or the other.**

5 Q. In fact, both of the criminal defense attorneys that
6 will be working on this trial are former prosecutors. In
7 fact, we've worked with these guys. They're our friends,
8 we've known them, we've grown up with them in the profession.
9 And sometimes you go from being a criminal defense attorney to
10 being a prosecutor. Kind of hard to predict how your career
11 is going to work out, but that's real common in this business,
12 okay? Does that make sense to you?

13 **A. Oh, yeah.**

14 Q. Okay. That a person would train as a prosecutor,
15 and then kind of learn the ropes and get some experience, and
16 then become a criminal defense attorney, and maybe do that a
17 while and go back and forth. Is that -- that's easy to
18 understand now. I guess that makes sense?

19 **A. Sure. I mean, everybody changes careers every week.**

20 Q. Okay. So you think this is what you want to do,
21 and you get on the outside, and think, nah, I think I have a
22 little more strength that will work on this side.

23 **A. Sure.**

24 Q. And sometimes it's a process of growth and
25 development in your career as well, you know? I mean, you may

1 **hiding something or whatever, and that's not necessarily what**
2 **I meant to say.**

3 Q. I understand. Basically it's the way of presenting
4 your side of the case --

5 **A. Uh-huh.**

6 Q. -- and hoping that the jury sees it your way. Maybe
7 not necessarily camouflage, but it's a perspective, if you
8 will. The State would have a perspective of the evidence, and
9 the Defense would have a perspective of the evidence, and
10 whoever is the better advocate wins. Is that fair to say? Is
11 that kind of the way you see it, or do you see it differently
12 than that?

13 **A. I don't know if you say better advocate.**

14 Q. Well, maybe that's a little strong?

15 **A. See, that's the same thing like camouflage. It's**
16 **the same thing as -- you know what I'm saying, as far as**
17 **describing it. You're both presenting evidence, and it's up**
18 **to us to decide which is the more stronger evidence, so to**
19 **speak, or the one that either proves or disproves what the**
20 **case is.**

21 Q. Okay, okay. So, I don't think I have anything to
22 worry about with you with respect to how you view criminal
23 defense attorneys, do I?

24 **A. No.**

25 Q. Okay. I didn't think I did.

1 stay on one side of the bar for a while and go on the other
2 side of the bar and grow in the profession. Would that make
3 sense to you, too?

4 **A. Yeah, but it's -- I could understand how it happens,**
5 **yes.**

6 Q. Okay. Sometimes it's a function of money. We all
7 like that, don't we?

8 **A. Yes, sir.**

9 Q. All right. What I'm getting at is there's advocacy
10 on both sides. Lawyers are advocates, and they're hired to
11 represent their client and advocate their position as best
12 they can. Would you agree with that?

13 **A. Yes.**

14 Q. Because you've had some lawyers try and help out
15 your family?

16 **A. Yeah.**

17 Q. Sometimes you advocate well, and sometimes you just
18 do the best you can. Sounds like that's what happened in your
19 family?

20 **A. Uh-huh.**

21 Q. All right. And I take it you would want to take the
22 word camouflage back if you could, right?

23 **A. Yes. Well, when I'm sitting there I think, how do I**
24 **describe what I want to say? And that could be the only word**
25 **I could think of at the time, but camouflage would be, like,**

1 **A. No.**

2 Q. You're -- you work for MCI?

3 **A. No. Verizon.**

4 Q. Oh, okay. And tell me about your work. Tell me
5 what you do.

6 **A. I work in the repair department. You know, you call**
7 **in and say your phone is broken, then I give you the quiz, did**
8 **you do this, did you do that, and if they have to have things**
9 **that have to be programmed, I go in the computer and program**
10 **Call Waiting, and all that good stuff. And that's about what**
11 **I do.**

12 Q. Oh, okay. And you're used to dealing with the
13 public?

14 **A. And nobody is happy to talk to me. Nobody is happy**
15 **to talk to me because their phone is not working, so they're**
16 **not happy to talk to me.**

17 Q. But you're the one that gets it fixed?

18 **A. Yes, if I can, sure do.**

19 Q. I tell you what, from what I recollect, the times
20 I've had to call you guys, you've been very professional
21 because I don't have a bad recollection of any problems I've
22 ever had --

23 **A. (Makes sign of the cross), Thank God.**

24 Q. -- with my phone service, and I guess that's a
25 function of how you guys do your training. And I take it that

- 1 customer service and customer satisfaction is a huge deal with
2 you-all?
3 **A. Yes, sir.**
4 **Q.** And then I seem to recall sometimes you would talk
5 with the customer service rep, and then you'd hold the line
6 and you'd go to somebody else, and they'd give you a quiz on
7 how your service was, or something like that.
8 **A. Oh, yeah, that's true.**
9 **Q.** Okay. So you're in the courtesy business; is that
10 fair to say, try to keep --
11 **A. Most days, yes.**
12 **Q.** That's great. You strike me that way. You strike
13 me that you're a very courteous and caring and considerate
14 person, and I suppose you're probably naturally that way, but
15 you're probably also a function of what you do for eight to
16 ten hours a day. That probably carries over a lot into your
17 personal life.
18 **A. Yeah.**
19 **Q.** Is that fair to say?
20 **A. I go home and bark at the dog once in a while, but**
21 **mainly I'm okay.**
22 **Q.** Okay. Whereas, my business is conflict and solving
23 problems and advocating, fighting for a cause, and that tends
24 to spill over into my personal life.
25 **A. Okay.**

- 1 **Q.** And sometimes it's really hard to avoid that, but
2 maybe I need to consider doing some of your work.
3 **A. Well, they job train you.**
4 **Q.** Yeah. Let's see, your husband is retired?
5 **A. Yes, sir.**
6 **Q.** What kind of work did he do?
7 **A. He worked for Sears. He sold appliances, was a**
8 **manager, 30 years.**
9 **Q.** You have three children?
10 **A. Yes.**
11 **Q.** In their 30's?
12 **A. Yes.**
13 **Q.** Two girls and a boy?
14 **A. Yes, sir.**
15 **Q.** One's in telecommunications --
16 **A. Yes, sir.**
17 **Q.** -- which is kind of similar to what you do?
18 **A. But she gets paid much better than I do, believe me.**
19 **Q.** Julie is in sales and Jim's in pizza delivery?
20 **A. Yeah, that's his career move.**
21 **Q.** What did he do before that?
22 **A. Nothing. He doesn't like people. He doesn't like**
23 **stress. He doesn't like confrontation, so that's the easiest,**
24 **where he gets in, gets a delivery and gets out, and that's his**
25 **kind of thing. He doesn't have to really deal with anyone,**

- 1 **and that's how my son likes it.**
2 **Q.** Okay. So that's not like you?
3 **A. I think me and his two sisters kind of bowl him**
4 **over, kind of.**
5 **Q.** Is that right?
6 **A. I think so. We're all kind of verbal, and he's just**
7 **kind of a more shy kid, quieter.**
8 **Q.** Does he get along okay with his sisters?
9 **A. No.**
10 **Q.** No?
11 **A. No. He has one that he just -- they don't see eye**
12 **to eye, but I feel like he tolerates them as best he can.**
13 **Q.** I had a couple of sisters, too, and I was the
14 youngest just like Jim.
15 **A. Uh-huh.**
16 **Q.** And sometimes that's tough.
17 **A. Yes.**
18 **Q.** And you've got three moms to deal with.
19 **A. Yes. And they all carry a wooden spoon and keep you**
20 **in shape.**
21 **THE COURT:** A big wooden spoon.
22 **(Laughter.)**
23 **Q. BY MR. HIGH:** It talks about on page 10, have you
24 or any family member or close friend undergone care for
25 emotional or psychiatric behavior or substance abuse

- 1 problems. Yes. Brother Bill --
2 **A. Uh-huh.**
3 **Q.** -- under doctor's care and hospitalized. I can't
4 read the next thing.
5 **A. Neither could I, probably. Can't read my own**
6 **writing half the time.**
7 **Q.** Looks like it's "Bar One or Bank One, therapy
8 family." Do you want to see it?
9 **THE COURT:** It says, "Barb, me; therapy,
10 family."
11 **VENIREPERSON:** Oh, yes. Very good. He's
12 right. "Barb, me; therapy, family." Yes.
13 **Q. BY MR. HIGH:** Can you tell me a little bit more
14 about that?
15 **A. Mine or my brother's?**
16 **Q.** Your brother's.
17 **A. They have all kinds of names for what he does and**
18 **what he is. He's bipolar. Before he used to be**
19 **excessive/compulsive, and just those -- every year when they**
20 **come up with a new buzz word is what he is, I guess. But he**
21 **doesn't cope well with life. He remembers every day, and**
22 **every day was bad, and he winds up in the hospital quite**
23 **often.**
24 **Q.** That's tough. So, who looks after him?
25 **A. He's got a wife that's going to be a saint.**

- 1 Q. Really?
- 2 A. Yes.
- 3 Q. That's -- he's very fortunate he has her.
- 4 A. Yes, he is. Yes, he is.
- 5 Q. And what about yourself? Just -- you don't have to
- 6 tell me all about your therapy, but are you in therapy?
- 7 A. Not now. I was at one point in time, yes.
- 8 Q. Okay. What was the source of that therapy?
- 9 A. Just depression, a lot of depression, a lot of
- 10 stress. The move here did it, kind of -- you know, we moved
- 11 here. Things did not pan the way we expected them, and it was
- 12 just like the bottom fell out of everything.
- 13 Q. Sure.
- 14 A. I was 35, never moved anywhere, other than three
- 15 miles from my house and my family, and then we up and move
- 16 this far alone, and didn't do well -- I was not prepared for
- 17 what took place, okay? Just the whole of it. Never having
- 18 moved anywhere, it was, like, we're going to pick up our
- 19 furniture and put it over here, and it's going to be fine.
- 20 Well, it wasn't.
- 21 Q. So on the other side of world?
- 22 A. Uh-huh. They didn't have Italian cheese in the
- 23 grocery stores. I thought, where did we move to?
- 24 Q. I don't mean to probe too much.
- 25 A. Go right ahead.

- 1 Q. There was no violence or anything in your past, way
- 2 back there, that caused any of the therapy?
- 3 A. For me?
- 4 Q. Yeah. Any -- the reason I ask that is because we're
- 5 going to be talking about violent acts, you know, in that
- 6 Special Issue Number One and just --
- 7 A. Violent acts were a daily thing at our house in our
- 8 family. It was either verbal or physical.
- 9 Q. Okay. Are you talking your immediate family?
- 10 A. Yes, and my uncles.
- 11 Q. Okay. And was that a problem for you, or is that
- 12 just the way things were done in your family?
- 13 A. Well, it was a problem, yes, because -- I don't know
- 14 how -- I don't know why, but it just wasn't right. And
- 15 something inside me said, this is not how things should be.
- 16 Q. Okay.
- 17 A. And I became the little guy. They just kind of, you
- 18 know, went around the furniture and didn't get noticed and
- 19 stayed out of the line of fire, and my brother, Bill, would be
- 20 the one who would be out pushing people to the max so this
- 21 would all take place.
- 22 Q. Okay. And then you moved at 38, and I suppose it
- 23 was -- it was a blessing, to some extent, and a negative to
- 24 another extent?
- 25 A. Uh-huh.

- 1 Q. And I'm kind of picking that up; is that right or
- 2 wrong?
- 3 A. Uh-huh. The move was difficult because, like I
- 4 said, I wasn't prepared for it. I had never moved anywhere.
- 5 Q. Right.
- 6 A. And I found out I'm not a good mover. I make my
- 7 nest, I sit in it, and this is where I'm going to stay. We
- 8 bought the house 25 years ago, I put my curtains up after a
- 9 year and a half, and I said, I guess I'm staying, and I've
- 10 been there ever since.
- 11 Q. Okay. So you've made the adjustment?
- 12 A. Uh-huh.
- 13 Q. But is the therapy that you've done -- was part of
- 14 the therapeutic reason for the therapy, was it the move or was
- 15 it these violent acts?
- 16 A. It was the violent acts basically. I mean -- yes, I
- 17 would say it was -- it was the violent acts basically, is what
- 18 it is.
- 19 Q. Okay. And are you still undergoing therapy?
- 20 A. No.
- 21 VENIREPERSON: Bless you.
- 22 Q. BY MR. HIGH: Have you been successful in therapy,
- 23 do you think?
- 24 A. Yes.
- 25 Q. Has it helped you?

- 1 A. Yes. Because when I -- I called the guy, I was
- 2 having a bad time. And he said, are you okay? And I said to
- 3 the therapist, if I were okay, why would I be calling you, was
- 4 the first thing I said to the man, and it turned out to be the
- 5 first honest thing I said in a long time, come to think of it.
- 6 And, yeah, I went for about three years. And, yes, because I
- 7 have gone to my children and said I'm sorry for the things
- 8 that I did that were abusive that were customary in the house,
- 9 so I didn't know there was another way of doing things. And I
- 10 went to them, and I apologized, and I mentioned things so that
- 11 they would know this is not right. This is not the way to do
- 12 things. You have other choices. There's other ways of
- 13 handling it.
- 14 Q. Sure. Boy, that is very mature and very responsible
- 15 on your part.
- 16 A. And I asked them, did they have any questions? Did
- 17 they want to know anything, that they could come to me at any
- 18 time and ask.
- 19 Q. Uh-huh. There's a book that was published several
- 20 years ago called Breaking the Chains. Are you familiar with
- 21 that?
- 22 A. No, not really.
- 23 Q. They say that violence continues from one generation
- 24 to the next.
- 25 A. Yes, and it does.

1 Q. And it's spawned -- unless you break the chain, like
 2 you're doing --
 3 A. Uh-huh.
 4 Q. -- it's going to be handed down --
 5 A. Oh, yeah.
 6 Q. -- perpetuated forever.
 7 A. **There was violence in the family, from what my**
 8 **understanding is, from -- since the family's been telling**
 9 **stories. You know how a family sits around and tells stories?**
 10 **None of them are very good, but I guess I'm just blessed.**
 11 **That's all.**
 12 Q. That's right.
 13 A. You know, someone had to say enough. I don't like
 14 this, I don't want it, and when I went to therapy before, my
 15 mother told me I was crazy. And I said you're probably right,
 16 but I'm going to do it my way, and I did.
 17 Q. Okay. And you're glad you did?
 18 A. Yes.
 19 Q. And you're healthier as a result?
 20 A. Yes.
 21 Q. Okay.
 22 A. **And my brother, they used to lock us in a closet for**
 23 **punishment. My brother is still living in the closet. I told**
 24 **him he's big enough to open the door anytime he wants, and I**
 25 **think that's why he's where he's at because he can't get over**

1 **what's gone on in the past, and he's the only one that's**
 2 **keeping himself there.**
 3 Q. Sure. And you're probably accurate about that.
 4 Absolutely.
 5 A. **You know the only parents you can change are your**
 6 **kid's parents.**
 7 Q. Uh-huh. Okay. Well, this is an issue. I apologize
 8 for having to probe into this area.
 9 A. **No problem.**
 10 Q. I'm sure this is not something you're real proud
 11 about, but at the same time it's part of your background, and
 12 it's something that you bring with you into your jury service.
 13 A. Uh-huh.
 14 Q. And possibly into the jury box, and so that's why I
 15 have to explore it with you. I don't mean to probe or --
 16 A. **You're fine. I have no problem.**
 17 Q. Okay, okay. Try not to be impolite.
 18 A. **You're not.**
 19 Q. The nature of this case, obviously, is a violent
 20 case. It's a capital murder case, and the allegation is that
 21 this young man committed a double homicide, and also that
 22 there was a burglary and a robbery associated with it. You've
 23 heard that discussed several times already. At least that's
 24 what the indictment says.
 25 A. **Oh, I didn't know exactly what the indictment did**

1 **say, if you want to know the truth. If someone said it, I**
 2 **missed it.**
 3 Q. Okay. Fair enough.
 4 The indictment in this case alleges a double
 5 homicide, you know, multiple killing. It also alleges a
 6 robbery with a homicide and alleges a burglary with a
 7 homicide, okay? And we don't agree that he did it, okay? We
 8 don't stipulate and admit he did it. We say he's not guilty,
 9 and I'm sure you think why are we sitting up here talking
 10 about punishment when he hasn't even had his trial yet. Is
 11 that kind of weird?
 12 A. **No. Because you want to know what I would do at the**
 13 **end. Before we get to the beginning, you want to know how I'm**
 14 **going to react at the end. If it's favorable or not, what is**
 15 **my choice going to be, and what do I think about it, and what**
 16 **my reactions will be.**
 17 Q. Absolutely, absolutely. And that's what the
 18 Legislature -- that's the way they've developed the law, so we
 19 would have an opportunity to visit with jurors ahead of time
 20 before they get on a capital jury. And so this is the way
 21 it's set up, and I just don't want you to get the impression
 22 that I agree or that I admit that he's guilty of anything at
 23 this point because there's going to be a trial about that, and
 24 we're going to engage the issue on that, and he may even be
 25 acquitted, okay?

1 A. **Uh-huh.**
 2 Q. So, please don't get the impression that I'm talking
 3 punishment because I think he's -- or admit that he's guilty.
 4 That's not the way it is at all.
 5 A. **Well, I didn't think so because if he's guilty he'd**
 6 **stand before the judge and there wouldn't be a trial. So, as**
 7 **long as he's here and we're all here, we're saying he's**
 8 **innocent, and we want our day in court.**
 9 Q. Absolutely. That's absolutely right. He's presumed
 10 innocent until they can prove his guilt beyond a reasonable
 11 doubt. You're right on.
 12 And so a lot of our discussion is about the
 13 punishment phase, so we're just going to assume that you guys
 14 find him guilty. I'm not saying you will.
 15 A. **I know. I get the lingo.**
 16 Q. We're going to assume, and then we've got to talk
 17 about the punishment, like number one and number two. And
 18 Mr. Schultz did an admirable job of explaining how these
 19 issues work, how our law works, and I want to just go into it
 20 a little bit with respect to the things we just talked about.
 21 And the first issue is the future dangerousness question that
 22 involves acts of violence. Oops, had it upside down.
 23 A. **Works better the other way.**
 24 Q. The question talks about probability that he would
 25 commit criminal acts of violence that would constitute a

1 continuing threat to society. Obviously, you know what
 2 probability means?
 3 **A. (Nods head.)**
 4 Q. What does it mean to you?
 5 **A. He may or may not do it.**
 6 Q. Okay.
 7 **A. Is that close?**
 8 Q. Yeah, that's real close. Does that mean the same as
 9 possibility, or does it -- are those different?
 10 **A. Not to me.**
 11 Q. They're not different?
 12 **A. Not to me. In other words, saying they both mean**
 13 **the same thing.**
 14 Q. Okay. Well, you know if there's a possibility it
 15 may rain today, there could be a one percent possibility,
 16 right?
 17 **A. Yes.**
 18 Q. Okay. If there's a 90 percent chance of rain today,
 19 then there's a pretty good chance it's going to rain; is that
 20 fair to say?
 21 **A. Uh-huh.**
 22 Q. Would you say it's probable that it will rain if
 23 it's a 90 percent chance of rain?
 24 **A. In Texas, no. Every place else, yes.**
 25 Q. Okay. But if there's a one percent chance of rain,

1 would you say that's probable that it's going to rain?
 2 **A. No.**
 3 Q. Okay. So there isn't -- there is a difference
 4 between --
 5 **A. Okay.**
 6 Q. -- possibility and probability, wouldn't you say?
 7 **A. Okay.**
 8 Q. And I'm not trying to play games with you. I just
 9 want to make sure we're on the same page.
 10 **A. Okay.**
 11 Q. Probability means we'd have to look into the future
 12 and say, with reasonable certainty, with some assurance, with
 13 pretty good likelihood that criminal acts of violence are
 14 going to occur. Would that make sense to you?
 15 **A. I'm sorry. Say that again. I'm --**
 16 Q. This question is going to ask the jury to look into
 17 the future and determine beyond a reasonable doubt that
 18 there's a probability --
 19 **A. Okay.**
 20 Q. -- that the defendant is going to mess up with acts
 21 of violence and be a continuing threat to society. Do you
 22 agree with that?
 23 **A. Yeah.**
 24 Q. It also asks, if there's going to be more than one
 25 act of violence, that there would have to be multiple acts

1 because, after all, it's plural acts of violence. Not just
 2 one act, but multiple acts. And then the word "continuing,"
 3 being a continuing threat to society, it's kind of like being
 4 a continuing problem in the classroom. You know, Johnny in
 5 the back of the classroom, that every day it's a problem,
 6 okay, continuing over and over again. Does that make sense to
 7 you?
 8 **A. Uh-huh.**
 9 Q. Okay. Now, we had a juror several days ago -- I
 10 think it was even yesterday -- that was going to have a real
 11 problem with this question because we were talking about acts
 12 of violence, and we're talking about maybe even domestic
 13 violence situations. And she said, look, I just don't think
 14 I'm the right juror to listen to evidence on that because I
 15 get upset. You know, I'm going to therapy for it. My
 16 progress has been good, and I'm at a point in my life where I
 17 don't want to suffer a setback, and you could take a look at
 18 her and she was visibly disturbed because it made her very,
 19 very uncomfortable. And I just want to explore that with
 20 you. Is that kind of a soft spot with you? Is that a problem
 21 area for you?
 22 **A. I don't know, but as you're talking about it my**
 23 **heart is going, da, da, da, da. I hadn't thought about it**
 24 **until you brought it up, really.**
 25 Q. Yeah.

1 **A. Because I guess I expected it, seeing as what the**
 2 **case is about, you know, what the charges are.**
 3 Q. Sure.
 4 **A. So I expected it, but when you said it, that's when**
 5 **it kind of got me. I was expecting that because of why we're**
 6 **here and what the trial is about.**
 7 Q. Sure. I can't tell you what the trial is about.
 8 **A. No. But I'm just saying what they've charged him**
 9 **with. That's what I'm referring to.**
 10 Q. Well, you know, an act of violence is not
 11 necessarily going to be another murder. You know, it could be
 12 beating up your girlfriend, it could be beating your wife, it
 13 could be --
 14 **A. But I see that as violent, and you murder someone's**
 15 **soul. You murder their joy. I see that the same way.**
 16 Q. I agree. I agree. I don't think we disagree on
 17 that.
 18 **A. But I see that as violence.**
 19 Q. Sure, absolutely. If you commit a capital murder,
 20 that's most likely, probably violent. If you commit a
 21 subsequent murder to that, most likely that's going to be
 22 violent. But that's not just exclusive.
 23 **A. Right.**
 24 Q. I mean, there's other violent acts. You know,
 25 beating up somebody, having a dispute with your wife, throwing

1 things, breaking things, throwing a fit, you know? Some folks
2 say that drug dealing is violent.

3 **A. Uh-huh.**

4 **Q.** Some folks say it's not. But I'm not really
5 concerned with that with you. What I'm concerned with is it
6 sounds like in your past you've had some experience with
7 violence, violence in the family.

8 **A. Yes.**

9 **Q.** And I'm wondering how receptive you're going to be
10 to that evidence. I mean, if you hear evidence like that in
11 this trial is that going to hit you in such a way that you're
12 going to react to it, or you're going to be overly sensitive
13 to it, or you may be too sensitive to it? I don't know. I'm
14 just exploring that with you. How is that going to affect you
15 to hear that kind of evidence?

16 **A. I know it's affecting me right now. I can see some
17 of the things we've gone through. You know, but I'm saying,
18 I'm still here, I'm still sitting, and I'm still carrying on
19 my life.**

20 **Q.** Okay. Mr. Schultz explained that the murder
21 conviction itself, assuming you guys hear all the evidence and
22 you decide the evidence is sufficient beyond a reasonable
23 doubt to convict of capital murder and you guys convict, that
24 can be considered with respect to this question, and that's
25 true.

1 **A. No.**

2 **Q. No?**

3 **A. No. I would be scrutinizing him as we were within
4 the trial and see how he conducts himself, and whatever
5 evidence would be brought forward, and determine for myself
6 what I think and feel.**

7 **Q.** Okay. That's fair enough. So you would -- you'd be
8 open to the idea -- even if you convicted someone of capital
9 murder, you'd be open to the idea that we got to look at this
10 question and see whether or not they're going to do this again
11 or be dangerous in the future?

12 **A. Absolutely.**

13 **Q.** Fair enough. That's the correct way to look at
14 it.

15 And with respect -- if you were to hear evidence of
16 domestic violence or wife beating, stuff like that, which is
17 particularly sensitive -- or family violence, which is
18 particularly sensitive to you -- what am I trying to ask you?

19 **A. How would I react? Would I let that cloud my
20 judgment?**

21 **Q.** Yeah, that's right.

22 **A. Would it (sic) be swaying in any way?**

23 **Q.** Yeah. That's what I'm trying to ask you.

24 **A. I want to say no.**

25 **Q.** Is it going to be a problem for you?

1 **A. Uh-huh.**

2 **Q.** You can consider all the facts and everything that
3 happened that you're going to hear in the trial. You can
4 consider it with respect to this question.

5 You're most likely going to hear other evidence,
6 too, because when we go into the punishment phase of the
7 trial, or -- the State can offer other evidence. We may offer
8 some evidence. We may not. But you're going to have to make
9 another determination. You're going to have to determine,
10 beyond a reasonable doubt, if there's a probability that the
11 defendant would commit criminal acts of violence. It's a
12 separate determination than the fact of the conviction; does
13 that make sense?

14 **A. Uh-huh.**

15 **Q.** I know I'm going kind of fast. I'm talking a lot of
16 words, because that's what lawyers do.

17 **A. Well, I'm paying you for that so that's okay.**

18 **Q.** I can go slower, if you want me to?

19 **A. No, please. I want to get it over with.**

20 **Q.** Here's a question for you. If you, the jury, decide
21 that this young man is guilty of capital murder, and you've
22 heard all the evidence in the case, would you then jump
23 automatically to a conclusion that, yes, he's going to be a
24 future danger because after all you convicted him of capital
25 murder?

1 **A. Geez. I want to say no, but I don't know.**

2 **Q.** Okay.

3 **A. Because I feel whoever comes to court, whether in
4 the jury or in the gallery, or you or them, they will be
5 affected by what they hear, whether they were a part of
6 violence in their past, or whatever. Everyone's affected by
7 it.**

8 **Q.** Uh-huh. Would it be hard to set it aside, your
9 prior experiences with violence?

10 **A. Yeah, I've opened the door to the closet. I'm out.
11 I'm**

12 **walking around. I'm breathing. I'm having a wonderful day.**

13 **Q.** But I guess the idea is would it be hard to put it
14 out of your mind, your prior experience? I mean, after all,
15 you have -- you know a lot about it. You've thought about it
16 a lot. You've experienced it. You've been to therapy for it,
17 and then you may hear some evidence about it in this
18 courtroom. Would it be hard for you to put that out of your
19 mind and just be open to the evidence with respect to how it
20 applies to this question? Would you be able to set it
21 completely aside and put all of your prior experience out of
22 your mind?

23 **MR. SCHULTZ:** Excuse me, Judge. I'm going to
24 object to that question. I don't think she's obligated to do
25 that. We bring our common experience into the jury box, and

1 then use that common experience to measure the evidence. And
 2 I don't think we need to speculate on what she can put out of
 3 her mind because I don't think a juror is required to do that.

4 THE COURT: Sustained.

5 Q. BY MR. HIGH: Okay. Let me see if I can ask it this
 6 way. Would it substantially impair your ability to consider
 7 the Special Issue Number One, criminal acts of violence, you
 8 know, and be fair to us on that special issue?

9 MR. SCHULTZ: Excuse me, Judge. I'm not trying
 10 to be difficult, but I don't know what "it" is that he's
 11 referring to.

12 MR. HIGH: I'll rephrase.

13 THE COURT: All right.

14 Q. BY MR. HIGH: Would your prior experience with
 15 reference to domestic violence -- you know, the therapy that
 16 you've had and discussions that you've had, the thinking that
 17 you've done about it, would that substantially impair your
 18 ability to be fair to us and consider Special Issue Number
 19 One?

20 A. No.

21 Q. You don't think it would?

22 A. No.

23 Q. Okay. Well, all right. I'll have to deal with
 24 that, and I appreciate that. Let's go to some other areas
 25 then, and we'll get something that's easier, okay?

1 A. **It's okay.**

2 Q. Do you need a chance to calm down?

3 A. **(Shakes head.)**

4 Q. The -- you attend St. Elizabeth Seton?

5 A. **Yes, sir.**

6 Q. Do you know John Peyton?

7 A. **No, sir.**

8 Q. No. I went to a wedding there. He was married
 9 there. I love your church. It's got a good setup, a good
 10 piano and sound system in there.

11 A. **Oh, yes.**

12 Q. I like it. And I noticed you call yourself a
 13 Democrat? You circled "Democrat."

14 A. **Only because they didn't have or something else. I
 15 can't say I'm a Democrat or a Republican. There wasn't a
 16 third choice, and I didn't think you guys would approve if I
 17 put my own choice in there.**

18 Q. Okay. I notice that you write songs?

19 A. **Yes.**

20 Q. What kind of songs do you write?

21 A. **Mostly prayers.**

22 Q. Interesting. Do you set them to music?

23 A. **I had a friend that used to do that for me. I would
 24 tell her how I hear it and how I see it, and then she's -- I'd
 25 hum it, out of tune, of course, but she could pick it up and**

1 **write what I had.**

2 Q. Have you cataloged it in any way, recorded any of
 3 it?

4 A. **No, uh-huh. This is for me.**

5 Q. Okay. And I notice that you have a fascination with
 6 angels?

7 A. **Yeah.**

8 Q. Because I know that in "It's a Wonderful Life" they
 9 have an angel, you like to read about angels, you have a
 10 bumper sticker about angels?

11 A. **What?**

12 Q. You have a bumper sticker --

13 A. **Oh, yeah.**

14 Q. -- about angels?

15 A. **That was a gift from my kids. They think I drive a
 16 little quickly.**

17 Q. What fascinates you about angels?

18 A. **I don't think I'm fascinated. I think I just -- I
 19 like to read different things, and angels are -- I guess
 20 they're fascinating because I feel we all have one.**

21 Q. Okay.

22 A. **And it's learning about their uses, and it's just
 23 different things. I mean, things I learn I didn't know. Like
 24 I named my angel, and when I call him he comes.**

25 THE COURT: What's his name?

1 VENIREPERSON: Francis.

2 THE COURT: I shouldn't have said his, should
 3 I?

4 VENIREPERSON: Well, it's Francis. He's a he.

5 Yeah, I think there's only one girl angel that I've
 6 ever seen, and that's the one where the children are walking
 7 across the bridge. Every other angle I know is Rafeal,
 8 Gabrielle, you know, Michael the Arch Angel, and they're all
 9 men.

10 THE COURT: Those are the only three mentioned
 11 in the Bible.

12 VENIREPERSON: Uh-huh. What I'm saying, it
 13 doesn't mention a Gertrude angel girl, you know what I mean.
 14 So I'm just assuming that's the only one I saw. And I think
 15 the reason it's men is because it's power, it's strength, it's
 16 protection, and that's why it's men. And we also have to
 17 realize who translated the Bible. Men. So I don't think
 18 they're ever going to give too much validity to a strong lady
 19 or anything.

20 THE COURT: But who wrote it?

21 VENIREPERSON: Yes. But I said translated it.
 22 I know who wrote it.

23 THE COURT: Sorry.

24 MR. HIGH: I appreciate that input.

25 Q. BY MR. HIGH: Did Billy Graham write that book,

1 "All about Angels"?

2 **A. To tell you the truth, I don't know who wrote it.**

3 **I don't think it was Billy Grahams (sic), though.**

4 Q. I started one, but I didn't get finished, and now

5 that you mention it, I'm going to go back and look for it

6 again. And I agree with you. I think there is -- are you --

7 do you consider yourself Christian? Do you believe in the

8 Holy Spirit or Jesus Christ?

9 **A. Yeah. Catholics are Christians, yes.**

10 Q. I'm not saying they're not.

11 **A. I know, but I'm just saying yes.**

12 Q. Okay. The people that you mentioned are top-notch

13 people. You mentioned Mother Theresa, and I like this, Golda

14 Meir.

15 **A. Yes.**

16 Q. What a terrific lady.

17 **A. Yes.**

18 Q. Have you been to Israel?

19 **A. Yes.**

20 Q. She is almost sainthood over there.

21 **A. Yes. What is it, Golda Meir is Golden Light or**

22 **something, I think it means.**

23 Q. I think that's right. Okay.

24 **THE COURT:** Did you know Mark Link went back to

25 Chicago?

1 **VENIREPERSON:** No.

2 **THE COURT:** That's right.

3 **VENIREPERSON:** When did he leave?

4 **THE COURT:** For good.

5 **VENIREPERSON:** For good?

6 **THE COURT:** Probably about two months ago.

7 **VENIREPERSON:** Oh, rats. He had some good

8 books. Did you ever see his Vision 2000?

9 **THE COURT:** Yeah.

10 **VENIREPERSON:** My husband likes that. He reads

11 it all the time.

12 Q. **BY MR. HIGH:** I notice that -- we've kind of

13 dabbled about this, about your family members, Tony Delgaddo

14 and Joe --

15 **A. Petrangello.**

16 Q. Yeah. Tell me about that.

17 **A. They both went to jail. Now, I didn't know if I**

18 **should mention this or not there because I didn't know**

19 **what-all was expected on the piece of paper, but when you talk**

20 **about murder. My grandfather was murdered and my Uncle Joe**

21 **was murdered.**

22 Q. This Joe --

23 **A. Petrangello, yes.**

24 Q. And who's the grandfather, is that Tony?

25 **A. No, huh-uh. I didn't list him because I don't know**

1 if he was ever in jail, but I knew he was dead. He was Joe

2 Petrangello, too, come to think of it. Yeah, he was Joe

3 Petrangello, too.

4 Q. All right. Were you close with those guys?

5 **A. Yes, yes. When my uncle was away from college, as**

6 **they said, he would come live at our house. And college ran**

7 **in 7 to 10, and things like that.**

8 Q. Okay.

9 **A. He would be with us at times.**

10 Q. How was he murdered?

11 **A. Shot in the head and stuffed in the trunk of a car.**

12 Q. Oh, my. Anybody ever caught?

13 **A. No.**

14 Q. Any motive, any idea why that happened?

15 **A. We all have guesses, but no fact of any kind.**

16 Q. Okay.

17 **A. The only way they were able to identify who he was,**

18 **was he had his paintings in the car when they found him.**

19 Q. He was a painter?

20 **A. Uh-huh. He was an artist. He had a picture in a**

21 **paper one time where he painted the president. Which one --**

22 **he painted something -- was it one of the astronauts, or**

23 **something. He was in the paper, and when he was killed he was**

24 **in the paper again. He was on the front page again, and it**

25 **was hard, but, see, I knew him both ways. He would talk to**

1 **ladies as gentle as a flower and never above a whisper. But I**

2 **saw him on the other side, and, man, you guys mess with him,**

3 **and it's all over for you.**

4 Q. The Italian?

5 **A. Yes, yes.**

6 Q. Was that a long time ago?

7 **A. Yes.**

8 Q. Well, now, obviously you know why I'm asking that?

9 **A. Sure.**

10 Q. How would that affect your jury service sitting on a

11 murder case? I mean, you've had people close to you that have

12 been murdered.

13 **A. I don't think it would affect me because it happened**

14 **over 30 years ago. I saw the men on both sides, and both**

15 **men -- soft-talking, gentle man, kissing his kids, and then I**

16 **saw the other one stomping on a guy on the sidewalk, and I**

17 **felt sorry for the guy on the sidewalk.**

18 Q. Okay.

19 **A. Frankly, I'm glad you brought it up because I wanted**

20 **you to know because I figured you'd have questions for me.**

21 Q. Well, I have a whole range of questions, but I

22 don't know for sure that I'm going to go into all of them

23 right now.

24 **A. But I thought that would, you know, give you better**

25 **judgment or understanding.**

1 Q. Well, I'm mostly -- I'm trying to cut to the chase.
 2 I'm just mostly concerned that that's not going to affect your
 3 jury service; that's not going to be a problem for you with
 4 respect to sitting on this case and hearing the evidence and
 5 being fair -- I guess being fair and impartial. You say
 6 that's not going to have any effect on you?
 7 A. No, because I -- you see, I saw both sides of the
 8 man, and I hate to say they got what they deserved, but on the
 9 other hand, you can't live that kind of lifestyle and not at
 10 some time maybe wind up with that kind of --
 11 Q. Result?
 12 A. -- result. Yeah.
 13 Q. Uh-huh. In other words, you're kind of asking for
 14 it?
 15 A. Oh, I didn't see it as asking for it. But the kind
 16 of work he was in, that does happen.
 17 Q. What kind of work was he in? I just got to know.
 18 What kind of work was he in? Now you've really got me.
 19 A. You know, the kind of work that they're in, it's
 20 part of the job -- oh, what do you want to say -- perks? No,
 21 that's not a perk, but that's it.
 22 Q. Are you going to let me sit over here and burn with
 23 curiosity?
 24 A. Well, we were never told what their job was or what
 25 they did.

1 Q. Yeah.
 2 A. It was always innuendo and speculation and that kind
 3 of stuff, because we were the kids, and the kids weren't to
 4 know what was going on.
 5 Q. Yeah.
 6 A. You know, and they never talked about it because the
 7 kids were around.
 8 Q. Yeah.
 9 A. But when we'd be out and someone would confront us
 10 about what was going on in our family, we didn't know. More
 11 of the neighborhood knew than we did.
 12 Q. All right.
 13 A. And I don't want to speculate, but I -- so I can't
 14 really say for sure, but I have some ideas.
 15 Q. Okay. And you sure wouldn't want to say in this
 16 courtroom where it's being written down.
 17 A. Meet me in the hall afterwards, and I'll whisper in
 18 your ear. Only kidding.
 19 THE COURT: Just don't get too close.
 20 VENIREPERSON: Yeah, right.
 21 THE COURT: (Laughter.)
 22 Q. BY MR. HIGH: Well, let's finish this up and get you
 23 out of here.
 24 We talked about Question One. Obviously, if you
 25 answer "no" to question one, being a continuing threat, then

1 the trial is over and the Defendant gets a life sentence. And
 2 I'm sure my partner explained to you that that means 40
 3 calendar years before you're even eligible for parole, right?
 4 A. I thought that if you were convicted of murder you
 5 automatically had -- what do you call those -- appeals?
 6 Q. Yeah.
 7 A. Is that not so?
 8 Q. Yeah, you can appeal.
 9 A. Okay.
 10 Q. You sure can.
 11 A. I thought that was automatic if that were done, and
 12 that's not?
 13 Q. Probably is.
 14 A. Okay.
 15 Q. But I'm not going to discuss that with you.
 16 A. Oh, no. I'm just saying that's -- when you said 40
 17 years, I thought, yeah. Well, take 40 years to get an appeal
 18 done.
 19 Q. Yeah, I'm sure that's part of the picture.
 20 A. Okay.
 21 Q. But we're going to talk about the sentencing part of
 22 the trial, and a jury could go either way, life or death. If
 23 they go life, if they say "no" to this question, it's life,
 24 and that means, at the minimum, 40 calendar years before
 25 you're eligible for parole, and you may not ever get parole,

1 you know. It could mean life, could mean life. On the other
 2 hand, you could get paroled at the earliest date, which is 40
 3 years from now, okay? Is that clear to you?
 4 A. Yeah.
 5 Q. Okay. And then, of course, the other alternative is
 6 death. If you guys say that the defendant is going to be a
 7 continuing threat to society, if you say "yes," then you go to
 8 the next question. That's the mitigation question, the
 9 humanitarian question, and I've learned this since I've been
 10 in this trial. They call it the last-look question. The jury
 11 takes a last look at all the evidence and the Defendant and
 12 sees if there's sufficient mitigation to spare his life.
 13 A. Uh-huh.
 14 Q. That's kind of my short version for you.
 15 A. Okay.
 16 Q. Now, they tell you in the question what you're going
 17 to consider, and they tell you it's going to be the
 18 circumstances of the offense. All the evidence you've heard
 19 in the trial -- and they tell you that you need to consider
 20 his character, and that could be good character, it could be
 21 bad character, you know, what you view, whether it's good or
 22 bad and his background, and I assume that you're going to hear
 23 quite a bit in the trial. I expect you'll hear quite a bit
 24 about his background, and I expect that once the trial is over
 25 if you guys convict, you'll hear even more about his

1 background. You may hear some from the State. You may hear
2 some from the Defense. I don't know. It depends on how the
3 trial goes.

4 **A. Uh-huh.**

5 Q. If we feel like the trial is going good for us, we
6 may not put on any evidence. As Mr. Schultz explained, we
7 don't have a duty to put on any evidence. We have a duty to
8 be here and behave ourselves.

9 **A. And defend him.**

10 Q. And defend him, but sometimes a good trial strategy
11 is not to mess up something that's going good for you.

12 **A. You're not going to object any time or anything like
13 that?**

14 Q. You better believe it, we're going to object.

15 You're going to get your money's worth.

16 **A. Okay. I want to make sure you're earning your pay.**

17 Q. You bet. Okay. You're going to consider his
18 character, his background, whatever evidence there is before
19 you, and his personal moral culpability. Any idea what that
20 means?

21 **A. Personal moral culpability? Kind of his belief
22 system; is that what it means?**

23 Q. Could. There's no definition for it. I'm giving
24 you a shot at finding it for me.

25 **A. Oh, wait, I'll make one up.**

1 THE COURT: Mea culpa, mea culpa, mea maxima
2 culpa. What does it mean?

3 VENIREPERSON: Through my fault, through my
4 fault, through my most grievous fault. That's what it means.

5 THE COURT: That's right.

6 VENIREPERSON: Old Catholic school girl.

7 Q. BY MR. HIGH: Okay. My fault, that's in line, I
8 think. In law we talk about culpability as responsibility.

9 **A. Oh, okay.**

10 Q. I guess, if you say it's my faulty you're saying I'm
11 responsible. You sure don't want to say that if you've hit
12 somebody from the rear in a car, you know?

13 THE COURT: It doesn't apply in civil cases.

14 **A. But also -- that's also -- could be omission, also.**

15 Q. BY MR. HIGH: Uh-huh, yeah. That's right.

16 **A. I was going to say sins of omission, but that means
17 kind of the same thing.**

18 Q. That has some legal precedent, too. You know, acts
19 of commission or acts of mission, absolutely.

20 Well, what we have here in this question is personal
21 moral culpability, responsibility, fault, et cetera, and
22 there's going to be no definition. The judge is not going to
23 instruct you on it. There's not a legal definition for it, so
24 you guys are going to have to think about it and decide what
25 that means. Some would say blameworthiness, you know, how

1 much he is to blame, the defendant, for what he did. Some
2 would say the guilt that they feel. Some might say the
3 remorse that they experience. Some might say their own
4 personal view of what they did, and maybe whether or not they
5 accept responsibility for what they did.

6 **A. Uh-huh.**

7 Q. I mean, I suppose all those things are fair game in
8 terms of the jury. You guys are going to be determining
9 what's mitigating and what's not, and you're going to have to
10 apply a balancing test, and say I want to put all this stuff
11 on the scale and say this is mitigating, and if it's
12 sufficient enough to outweigh a death sentence --

13 **A. Uh-huh.**

14 Q. -- then when you take your last look and you apply
15 all the mitigation, you're going to answer the question. Does
16 that make sense?

17 **A. Yes.**

18 Q. Okay. And when I think of personal moral
19 culpability, fault, remorse, responsibility, the guy that
20 jumps right out at me, I'm sure he probably does you, too, is
21 Timothy McVeigh.

22 **A. Sad fellow.**

23 Q. Because in that instance, I mean, there was no
24 personal moral culpability. He sure didn't accept any fault.
25 I mean, he felt good about it up until the very end, and what

1 was going on with his conscience, I don't think we'll ever
2 know.

3 **A. I don't think he had one to do that.**

4 Q. On the other hand, you know, there may be somebody
5 that's on the other extreme, you know, that feels horrible and
6 maybe feels like they made a mistake, and I'm not saying this
7 is our case.

8 **A. Right.**

9 Q. Okay. But you can see the difference between
10 somebody who feels none and somebody who feels a lot? Maybe
11 the wife that killed her husband because he beat her over and
12 over again for years. She just couldn't take it anymore. She
13 killed him. She'd probably do it again, but she feels bad
14 because that's the way it ended.

15 **A. Uh-huh.**

16 Q. You know?

17 **A. Yes.**

18 Q. Okay. Do you feel like you could consider that sort
19 of stuff --

20 **A. Yes.**

21 Q. -- with respect to this question?

22 **A. Yes.**

23 Q. Okay. Do you feel like you could consider good
24 character, as well as bad character?

25 **A. Yes. There's got to be some in everybody.**

1 Q. And do you feel like --

2 THE COURT: Say, I'm not going to interfere
3 with your time, but I will tell you that you've used more time
4 than the State, and the State has another shot, so take all
5 the time you need.

6 MR. HIGH: Thank you, Judge. I'm probably
7 within two minutes of being done.

8 THE COURT: All right.

9 VENIREPERSON: Me, too.

10 THE COURT: You're just about done, and I am,
11 too.

12 Q. BY MR. HIGH: And I'm serious, we're almost done.

13 Do you feel like, if you consider all that evidence,
14 you know, that there's a possibility that you could get to the
15 end and render a life sentence? Do you think that that's a
16 possibility, you could say, yes, there's sufficient mitigating
17 circumstances to outweigh the imposition of the death penalty?

18 A. Yes.

19 Q. Okay. And let me be more specific. With respect to
20 a conviction for capital murder with a double homicide, maybe
21 with burglary or robbery, is it still -- is that still within
22 the range of possibilities?

23 MR. SCHULTZ: Excuse me a moment, Judge. We're
24 going to object to that question because now he's trying to
25 limit the juror's consideration of the question to particular

1 facts or circumstances that may be proven. The question is
2 not what she would do in a particular variety, whether it be
3 150 people killed or otherwise. But rather, in a proper case
4 of capital murder, whether or not she could consider
5 mitigation and give effect to it.

6 I'm not sure, for example, that if Adolf Hitler were
7 on trial for his crimes, I'm not sure she has to indicate a
8 willingness to a six-million-time killing, it being one where
9 she could give fair consideration to mitigation, but rather in
10 the capital murder case itself.

11 THE COURT: Sustained.

12 Q. BY MR. HIGH: Well, obviously a capital murder, you
13 know, it could mean a double homicide or, you know, murder
14 with robbery and murder with burglary, and we've explained
15 that to you.

16 A. Uh-huh.

17 Q. And I've also explained to you that those are the
18 allegations in this case?

19 A. Uh-huh.

20 Q. And with that in mind, knowing what you know about
21 capital murder, can you envision, you know, applying this
22 standard and looking at the evidence and -- whether it's
23 mitigating or not, can you envision getting to the end of that
24 question and saying, hey, it's enough mitigation and it's
25 sufficient to warrant a life sentence?

1 A. Yes.

2 Q. Okay. All right. Well, Ms. Klodnicki, we're
3 through.

4 A. I'm free to go home?

5 Q. Did you have any more questions of me?

6 A. I just have one. You had me circle people's names I
7 knew on that sheet, and I put a little "X" by a Mary
8 Hernandez.

9 Q. Yeah, I see that.

10 A. And I asked the guy -- I asked --

11 VENIREPERSON: Excuse me, Officers.

12 A. I asked the officer that day, what -- I don't know
13 if that has any relation, or if you need to know or anything
14 else, but I just want to bring that up because I don't know if
15 that was a problem. Because I thought I don't know why I'm
16 circling these things for or making X's here.

17 Q. BY MR. HIGH: Okay. I can't answer that.

18 A. I mean, she was listed, and I said I know one,
19 but --

20 THE COURT: That's a real common name. Let me
21 just ask you, Mary Hernandez --

22 VENIREPERSON: I was just going to say, it's
23 like a Mary Smith.

24 THE COURT: How do you know her?

25 VENIREPERSON: From church.

1 THE COURT: She goes to Elizabeth Seton?

2 VENIREPERSON: Yes.

3 THE COURT: Do you know what she does or her
4 husband does?

5 VENIREPERSON: She's a school teacher.

6 THE COURT: Where?

7 VENIREPERSON: In Dallas.

8 THE COURT: Down in Dallas. Is there any
9 identity as far as you-all know with Mary Hernandez who might
10 be a witness? Do you know offhand?

11 MS. FALCO: Do you know where Mary Hernandez
12 lives?

13 VENIREPERSON: Oh, a couple of blocks from me.

14 MS. FALCO: It's not the same.

15 THE COURT: Okay. That takes care of that, I
16 suppose.

17 VENIREPERSON: Okay.

18 THE COURT: All right. And you also said that
19 you might know the custodian of records at Verizon.
20 I suppose there could be --

21 VENIREPERSON: Because I work there, I can look
22 up just about --

23 THE COURT: There can be many, many of those.

24 VENIREPERSON: Yeah. Well, I just thought, I
25 didn't know what to circle. So I thought, I got the paper.

1 I'll fill it out. You guys figure it out.
 2 THE COURT: Sure, you did the honest thing. I
 3 appreciate it.
 4 Do you have any more questions?
 5 MR. SCHULTZ: No, sir.
 6 THE COURT: Ma'am, do you want to step down for
 7 a minute and perhaps we'll have you back in here.
 8 VENIREPERSON: Oh, I don't think so. Nice
 9 meeting you-all.
 10 THE COURT: Well, wait a minute now. You may
 11 see us again.
 12 VENIREPERSON: Freedom -- no. I'm just
 13 kidding.
 14 THE COURT: All right, all right, all right.
 15 (Venireperson exits the courtroom.)
 16 THE COURT: What says the State?
 17 MR. HIGH: I haven't talked to him.
 18 MR. SCHULTZ: Why don't we see if we want her
 19 first.
 20 THE COURT: Do you want five minutes?
 21 MR. SCHULTZ: I don't think we need that much.
 22 THE COURT: All right.
 23 (Brief pause in proceedings.)
 24 THE COURT: What says the State?
 25 MR. SCHULTZ: We don't say anything.

1 THE COURT: All right. What says the
 2 Defendant?
 3 MR. HIGH: She's acceptable, Your Honor.
 4 THE COURT: All right. Then Mrs. Barbara
 5 Klodnicki is Alternate Juror Number One. Would you ask her to
 6 step back in?
 7 THE BAILIFF: Yes, Your Honor.
 8 MR. HIGH: If we could have a short break, I
 9 think we can talk about an agreement on somebody, and I'd like
 10 to call Matt and make sure that I'm not screwing up anything
 11 so...
 12 THE COURT: Let me just bring her in, and I'll
 13 tell her the things I need to tell her, and then we'll take a
 14 break if you want.
 15 MR. HIGH: Thank you, Judge.
 16 (Venireperson enters the courtroom.)
 17 THE COURT: Step right up here. I tell you
 18 what, why don't you have a seat because there's a few things I
 19 want to tell you.
 20 VENIREPERSON: Another seat. Is this the hot
 21 seat, Guys?
 22 THE COURT: In fact, they all are.
 23 Say, I tell you what, you have been chosen as what
 24 is called an alternate juror. That means that there's the
 25 possibility -- if I can use the term -- that you might

1 deliberate in this case, but as it is, you're kind of an
 2 insurance policy. We've got 12 jurors, and you're the first
 3 alternate.
 4 VENIREPERSON: Oh.
 5 THE COURT: Which means that if they stay
 6 healthy, then they will be the ones who decide this case, but
 7 you have to sit throughout the case.
 8 VENIREPERSON: Okay.
 9 THE COURT: Because if they don't stay healthy,
 10 then you've got to hear everything because you'll be doing the
 11 deliberating. You'll move up to become a regular juror. All
 12 right?
 13 VENIREPERSON: Uh-huh.
 14 THE COURT: So it's very important -- just as
 15 important that you listen as if you were a juror.
 16 VENIREPERSON: Okay.
 17 THE COURT: What I need to tell you is don't
 18 discuss this case with anybody. It's something that you have
 19 to be quiet about, confidential, and that's something you can
 20 do.
 21 VENIREPERSON: I don't know anything. What can
 22 I say?
 23 THE COURT: But you don't want to know.
 24 VENIREPERSON: Oh.
 25 THE COURT: Anything you're going to find out,

1 you'll hear from the witness stand.
 2 VENIREPERSON: Right.
 3 THE COURT: So, at any rate if something comes
 4 out in the newspaper or TV or radio, just don't even listen to
 5 it. Just -- because we want you to -- we want to write on a
 6 clean slate when you come in here to sit as a juror.
 7 VENIREPERSON: And, boy, am I a clean slate.
 8 THE COURT: Are you a clean slate?
 9 VENIREPERSON: Yes.
 10 THE COURT: Okay, that's good.
 11 VENIREPERSON: I only listen to Christian
 12 radio. I have my tapes, so it's like --
 13 THE COURT: What do you listen to, KZPI?
 14 VENIREPERSON: No. I have tapes that I buy of
 15 music.
 16 THE COURT: You buy music?
 17 VENIREPERSON: Yeah. I sing on the way to
 18 work, and sing on the way home. I should say I sing on the
 19 way to work and pray to win the lottery on the way home.
 20 THE COURT: You pray to win the lottery on the
 21 way home?
 22 VENIREPERSON: Sure. Sing on the way up, and
 23 then when it's been a bad day, pray to win the lottery on the
 24 way home.
 25 THE COURT: Even if you win the lottery, you

1 still have to serve.

2 VENIREPERSON: That's what I was afraid of.

3 THE COURT: But you'll be the wealthiest
4 alternate juror.

5 So, don't discuss it with your husband or with your
6 children or with your friends or anybody else, and don't
7 listen to anything on the radio. And, in fact, that
8 admonition continues throughout the trial.

9 VENIREPERSON: Right.

10 THE COURT: This case hasn't had a lot of
11 publicity, and it's very unlike you ever saw anything on the
12 case. I haven't, and I have kind of been looking, right?

13 VENIREPERSON: Uh-huh.

14 THE COURT: So I doubt anybody else has, but
15 anyway, is there anything you want -- oh, we're going to start
16 next Wednesday.

17 VENIREPERSON: Next Wednesday?

18 THE COURT: Let's see, Wednesday is the 3rd.

19 VENIREPERSON: Okay.

20 THE COURT: So we'll see you next Wednesday.

21 VENIREPERSON: Here, in this courtroom?

22 THE COURT: Right.

23 VENIREPERSON: What time?

24 THE COURT: About 9:00.

25 VENIREPERSON: Okay. I'll be here at 9:00.

1 THE COURT: Any other questions for me?

2 VENIREPERSON: (Shakes head.)

3 THE COURT: Thank you. You're excused until
4 next Wednesday.

5 VENIREPERSON: Next Wednesday, okay.

6 THE COURT: Thank you very much.

7 VENIREPERSON: You're welcome.

8 (Venireperson exits the courtroom.)

9 THE COURT: All right. Did you want me to
10 step down?

11 MR. HIGH: Yes, please.

12 THE COURT: How much time do you need?

13 MR. HIGH: Probably about ten minutes.

14 (Recess taken.)

15 THE COURT: Was there anything that anybody
16 had to tell me? We're going to talk to Mr. Richeson, and do
17 we have an agreement?

18 MR. SCHULTZ: Yes.

19 THE COURT: The next one up was Charlene
20 Foster.

21 MR. SCHULTZ: And for record purposes,
22 Ms. Charlene Foster was arrested back in the '70s back in
23 Lubbock, Texas. She did pay a fine, and it was a final
24 conviction -- a theft conviction, so I don't think she is
25 eligible for jury service.

1 THE COURT: Shall I strike her by agreement of
2 both sides then?

3 MR. HIGH: Yes, Your Honor.

4 MR. SCHULTZ: Yes, sir.

5 THE COURT: Is that your desire, Mr. Cantu?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. And there's also a
8 Juror Number 145, Sheila Hamm, and I gave both sides a copy of
9 a fax we got, and, in fact, I wrote you a little note on it,
10 and then you-all wrote me back. And I understand from your
11 notes that both sides are agreeable to striking Sheila Hamm;
12 is that correct?

13 MS. FALCO: Yes, sir.

14 THE COURT: Number 145. Is that correct?

15 MR. HIGH: Yes, sir.

16 THE COURT: Mr. Cantu, is that your agreement,
17 also?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Then Number 145, Sheila Hamm, is
20 stricken by agreement, and let's bring William Richeson in.

21 THE BAILIFF: Yes, Your Honor.

22 (Venireperson enters the courtroom.)

23 THE COURT: Yes, sir. Are you William
24 Richeson?

25 VENIREPERSON: Yes, I am.

1 THE COURT: Welcome back to the courtroom.

2 VENIREPERSON: Thank you.

3 THE COURT: I appreciate you coming. Perhaps
4 you'll recall about a month ago when we had all 200 jurors
5 assembled, I administered an oath to the whole venire.

6 VENIREPERSON: Correct.

7 THE COURT: And the oath was to tell the truth
8 with regard to any questions that were asked by the Court and
9 by the attorneys. Do you remember that?

10 VENIREPERSON: Yes, I do.

11 THE COURT: Sir, I just want to remind you that
12 you're still subject to that oath, and ask you to have a seat
13 here, please.

14 All right, Ms. Falco.

15 MS. FALCO: Thank you, Your Honor.

16 DIRECT QUESTIONS

17 BY MS. FALCO:

18 Q. Mr. Richeson, good afternoon.

19 A. Hi.

20 Q. My name is Gail Falco, and I'm an Assistant District
21 Attorney here in Collin County.

22 A. Hi.

23 Q. And probably coming in while I'll be talking and
24 will be seated next to me is my boss, the first assistant,
25 Mr. Bill Schultz. Seated to my left is Jami Lowry. She's the

1 one that spoke to you earlier this week --

2 **A. Sure.**

3 Q. -- also an Assistant District Attorney here in
4 Collin County.

5 At the other table closest to me is the Defendant,
6 Ivan Cantu, and next to him is his lawyer, Don High.

7 **A. Hi.**

8 Q. As you recall, he also has another lawyer, Mr. Matt
9 Goeller, that spoke to you earlier this week.

10 **A. Right.**

11 Q. I take it from earlier this week you don't know any
12 of us?

13 **A. Correct.**

14 Q. And if you may have seen us somewhere, it's not
15 anything of significance that rings any bells or anything
16 you'd remember?

17 **A. Correct.**

18 Q. Mr. Richeson, I guess to just kind of tell you where
19 we're at, we already have 12 jurors. We're now looking for
20 alternates to seat on this jury.

21 **A. Okay.**

22 Q. And what that means is you'd actually be seated, and
23 you'd listen to the evidence, and if something happened to one
24 of the 12 jurors -- there's actually another alternate. So if
25 something happens to two of the jurors, you'd be -- go back in

1 deliberations with the jury.

2 But when you're sitting here during the trial, you
3 will listen just as if you were going to be one of those
4 jurors deliberating because you never know --

5 **A. Okay.**

6 Q. -- at what point. But just so you know where we're
7 at.

8 **A. Okay.**

9 Q. As far as when the State does its individual voir
10 dire, or when the Court does this individual voir dire, it's
11 only when the State seeks the death penalty in a capital
12 murder case.

13 **A. Correct.**

14 Q. And we do it for a couple of reasons. And one is
15 back when you filled out that questionnaire, it's been over a
16 month since then.

17 **A. Right.**

18 Q. It was pretty much just your gut reaction, what do
19 you think about the death penalty?

20 **A. Sure.**

21 Q. Not a whole lot of time for reflection, or anything
22 like that, or your -- you thinking about it personally --
23 could you be personally involved. So, one, it one gives you a
24 little bit of opportunity to kind of think about that and
25 involve yourself.

1 **A. Right.**

2 Q. And also this part, this individual part of voir
3 dire, is meant to be a little bit more comfortable and
4 relaxing for the individual as far as talking one on one and
5 gets a little bit more personal, and we understand the death
6 penalty involves issues that could be personal --

7 **A. Sure.**

8 Q. -- for moral, or religious, or whatever reasons, and
9 you don't have to worry about talking in front of a group of
10 other people --

11 **A. Right.**

12 Q. -- and being embarrassed, or being politically
13 correct.

14 **A. Okay.**

15 Q. And so when we talk to you, we're not trying to
16 change your mind. We're not trying to challenge your
17 opinions. We're just trying to see if you're a qualified
18 juror that can serve on this jury.

19 **A. Okay.**

20 Q. And the only answer -- the only right answer is an
21 honest one --

22 **A. Okay.**

23 Q. -- just for you to be honest with us.

24 When you first started filling out this
25 questionnaire over a month ago and you realized it was a death

1 penalty case, what were your thoughts?

2 **A. Seriousness of the crime, obviously, if it was a
3 death penalty case. I didn't have any specific thoughts or
4 opinions or anything at that time.**

5 Q. And after you filled --

6 **A. Not --**

7 Q. I'm sorry.

8 **A. Not knowing any particulars, I guess, about the
9 case, it was hard to draw a conclusion or form any opinion,
10 other than it's a death penalty case.**

11 Q. And actually, you'll probably notice all the way
12 through, we're not going to talk about any facts.

13 **A. Correct.**

14 Q. We only talk about the law. And just so you
15 understand that this is the only time that we can talk to you
16 about the punishment phase, as well as the guilt-innocence
17 phase.

18 **A. Right.**

19 Q. We're not trying to run over a defendant's
20 presumption of innocence. We're not trying to leap ahead and
21 just say -- presume him guilty, here we go. But once we pick
22 a jury, that same jury is going to do guilt-innocence, and if
23 we find him guilty, they're the same jury that's going to do
24 punishment.

25 **A. Correct.**

1 Q. And at that point it's too late to talk to you about
2 the death penalty, so that's why we do it now.
3 **A. Right.**
4 Q. And you understand that?
5 **A. Sure.**
6 Q. Now, when you filled out the questionnaire, you
7 stated you were in favor of the death penalty.
8 **A. Correct.**
9 Q. And you said "in appropriate cases" -- and you
10 actually, interesting enough, on your questionnaire you said
11 "I believe the death penalty is appropriate," and you
12 scratched out "some" and you wrote "most capital murder cases
13 you could return a verdict resulting in death." But you did
14 the same thing on the second page when it said "I believe that
15 life confinement in prison is appropriate." It said in
16 "some," you crossed it out, and you put "most." Do you
17 remember doing that?
18 **A. Kind of.**
19 Q. What was your thinking behind that? Do you want me
20 to show you your questionnaire?
21 **A. Yeah, let me glance at it. That would be good.**
22 MS. FALCO: Your Honor, may I approach?
23 THE COURT: Yes.
24 Q. BY MS. FALCO: And if you'll excuse the highlights.
25 We just do that because we see so many, and it's just to draw

1 our attention to things to ask you about.
2 **A. Sure, I'm with you.**
3 **Oh, okay. I do remember doing that.**
4 Q. And you did it?
5 **A. Right.**
6 Q. Okay.
7 **A. I guess I just thought that the death penalty**
8 **probably is appropriate in most capital murder cases. The**
9 **seriousness of the crime -- that I felt some, you know, was**
10 **not, maybe, harsh enough.**
11 Q. Okay. And when you put on it for the life sentence,
12 I believe it's life confinement is appropriate in most capital
13 murder cases?
14 **A. Right. Just there again, if the sentence comes back**
15 **as guilty, then, yeah, maybe the opportunities for them to be**
16 **turned around would seem not as -- not quite as capable of**
17 **that happening, I guess.**
18 Q. Okay. Mr. Richeson, have you had some time to
19 think about -- we all know it's one thing to sit in your
20 living room, and if something comes on TV to talk about what
21 you think about the death penalty, or whether it's right or
22 wrong or you'd be for it or not.
23 **A. Right.**
24 Q. It's a completely different situation to say, can
25 you personally be involved and make the decisions that can

1 result in somebody's death? And have you done some thinking
2 about that?
3 **A. Sure. There again, you're still at a -- you're**
4 **still not -- you're apart from it. You're not really right**
5 **there yet, so it's difficult to put yourself in that position**
6 **probably until you're there. So to say -- yeah, I thought**
7 **about it. Sure, I have. But to say I could be -- in that**
8 **situation, I guess as in many things, you're going to have to**
9 **be in it to understand the seriousness of it, sure.**
10 Q. And as far as your thinking about it, if the State
11 proved its case beyond a reasonable doubt, and you found a
12 defendant guilty of capital murder, and you got to the
13 punishment phase, and as you recall we don't just ask for life
14 or death. You don't just go back there and circle "life or
15 death," but rather you answer special issues.
16 **A. Uh-huh.**
17 Q. And the way you answer those questions dictates a
18 life sentence or a death sentence.
19 **A. Right.**
20 Q. Do you remember that from earlier this week?
21 **A. Yes.**
22 Q. And with regard to that, if you did find somebody
23 guilty of capital murder and you got to the punishment phase,
24 if the evidence showed, based on the questions, that a person
25 ought to get a life sentence, could you answer the questions

1 in a way that resulted in a life sentence?
2 **A. Yes.**
3 Q. And just the flip side, if you got to the punishment
4 phase, and the evidence showed that a death sentence would be
5 appropriate based on the questions, based on the facts, could
6 you answer the questions in such a way that would result in
7 the death of the defendant?
8 **A. Yes.**
9 Q. I guess -- you wrote, when asked are you in favor of
10 the death penalty, you put "yes." And you wrote "an eye for
11 an eye," and obviously, that's a Biblical term?
12 **A. Sure.**
13 Q. I guess, kind of tell me what your thoughts are, why
14 you're in favor of the death penalty. Is it Biblical
15 reasoning?
16 **A. Not necessarily, no. Just -- it would depend,**
17 **obviously, on the seriousness of the crime, but if it were one**
18 **that mandates it, yeah, I could be in favor of it. And I just**
19 **feel like it's the right thing to do.**
20 Q. Now, with regard to this trial, like I said, there's
21 two parts to the trial. The first part being the
22 guilt-innocence phase, and you understand the burden of proof
23 is on the State?
24 **A. Correct.**
25 Q. And that we have to prove to you beyond a reasonable

- 1 doubt that a defendant is guilty of capital murder?
 2 **A. Correct.**
 3 Q. If we don't prove that beyond a reasonable doubt,
 4 could you find the -- could you follow the law and find the
 5 defendant not guilty?
 6 **A. Yes.**
 7 Q. And if we prove to you beyond a reasonable doubt
 8 that he is guilty, could you follow the law and find the
 9 defendant guilty?
 10 **A. Certainly.**
 11 Q. When it comes to you to -- I'm sure you've heard of
 12 the Fifth Amendment privilege, right not to testify?
 13 **A. Correct.**
 14 Q. It's his right; it's his choice?
 15 **A. Correct.**
 16 Q. They can choose to put on evidence if they want to,
 17 and the Defendant can choose to testify, if he wants to, but
 18 he doesn't have to. And if he doesn't, or he chooses not to
 19 testify, you'll be instructed that you're not to use that
 20 against the Defendant, and not to use that as evidence of
 21 guilt. If you were given that instruction, could you follow
 22 that instruction?
 23 **A. Sure.**
 24 Q. And that's only fair. Since we're the ones doing
 25 the accusing, we should be the ones to have to prove it; does

- 1 that make sense?
 2 **A. Yes, it does.**
 3 Q. Now, with regard to the punishment phase, as I said,
 4 when you get to the punishment phase, it won't be just life or
 5 death, and neither life or death is automatic. You go through
 6 a series of questions and answer them. The first question
 7 that you get to is the one at the top. It's the one that we
 8 call the future dangerousness question. Can you see that from
 9 where you're sitting?
 10 **A. Uh-huh.**
 11 Q. Do you remember that question from earlier this
 12 week?
 13 **A. Uh-huh.**
 14 Q. With regard to this question, when the Legislature
 15 drafted these questions, they envisioned certain situations in
 16 which you could find a defendant guilty of capital murder, yet
 17 still find they are not a future danger, because, otherwise,
 18 they would not have given us this question.
 19 **A. Right.**
 20 Q. And I guess examples of that might be the parent
 21 whose child is killed.
 22 **A. Right.**
 23 Q. Remember that hypothetical?
 24 **A. Right.**
 25 Q. Other examples might be the defendant who goes to

- 1 rob the 7-Eleven, and he goes in and kills the clerk, and on
 2 the way out, the police show up, and he gets in a shoot-out.
 3 He gets shot in the neck and ends up paralyzed from the neck
 4 down. He can't move, can't do anything.
 5 **A. (Nods head.)**
 6 Q. Therefore, most jurors would probably say he's not a
 7 future danger because he can't do anything.
 8 **A. Okay.**
 9 Q. Another illustration might be Dr. Kevorkian, and I
 10 guess people come down on different sides of the fence on
 11 mercy killing. But either way, you have a victim who
 12 voluntarily solicits the services of Dr. Kevorkian, and
 13 assuming he helps him with that service and assuming it's two
 14 people -- maybe it's an elderly couple who decide they're
 15 getting along in years. They're both sick and getting along
 16 in life, and neither one wants to live without the other. And
 17 if he performs that service, they both die. In Texas, that
 18 would be capital murder because he took the lives of two
 19 people. And when you get to that question, some jurors might
 20 say he's not a future danger because the victims solicited his
 21 help, and he's not going to be a future threat to society.
 22 And people can come down either way.
 23 But, obviously, the Legislature thought there has to
 24 be situations in which the jury finds someone guilty of
 25 capital murder, but still say, no, we don't think he's a

- 1 future danger. And to be qualified as a juror, you have to be
 2 able to get to this question and without a bias, without
 3 saying I want him to die and how do I answer these questions
 4 in such a way without causing his death? And you have to get
 5 to these questions, and you'll have both guilt-innocence
 6 evidence and punishment evidence at this point. You would
 7 look at all the evidence, look at that question, and answer
 8 that -- be able to answer that question fairly. Do you think
 9 you could do that?
 10 **A. Yes.**
 11 Q. With regard to that question, the first one, the
 12 burden of proof is on the State?
 13 **A. Uh-huh.**
 14 Q. And we have to prove to you beyond a reasonable
 15 doubt there's a probability the defendant will commit criminal
 16 acts of violence in the future.
 17 **A. Okay.**
 18 Q. If we prove that to you beyond a reasonable doubt,
 19 you could answer that question "yes"?
 20 **A. Yes.**
 21 Q. And if we don't prove it to you beyond a reasonable
 22 doubt, or you just look at the evidence and decide, no, I
 23 don't think he's going to be a future danger, could you answer
 24 that question "no," knowing it would result in a life
 25 sentence?

1 A. Yes.

2 Q. Now, a couple of things about that question before
3 I move on. First of all, it doesn't ask the jury to predict
4 without a certainty. Obviously, none of us can do that. We
5 don't know what the future holds. What that question asks is
6 whether there's a probability.

7 A. Uh-huh.

8 Q. So we know it's got to be something less than a
9 certainty.

10 A. Okay.

11 Q. But when you look at that word probability, and
12 most -- it's not going to be defined for you, but most people
13 would say that means more likely than not to me, or that I'm
14 mathematically minded so maybe that's some kind of percentage
15 to me. But we do know that it has to mean something more than
16 just a mere possibility, because you would agree with me that
17 anything is possible?

18 A. Uh-huh.

19 Q. I mean, I know you're a golf pro. I could go out
20 there tomorrow and hit a hole in one. It's not probable, but
21 it's possible.

22 A. Sure.

23 Q. So we know that word probability means something
24 more than just a possibility --

25 A. Right.

1 Q. -- but something less than a certainty?

2 A. Okay.

3 Q. Do you understand that difference?

4 A. Sure.

5 Q. Now, with regard to that question, again, like I
6 said, you can take into consideration the facts of the case
7 alone. You may look at the facts, and with just the facts
8 alone be able to answer that question and say, yes, I think
9 he's a future danger. You also can take into consideration
10 everything you hear in the punishment phase.

11 If all 12 jurors agree yes, we think he's a future
12 danger, then you still have one more question to answer. If
13 ten or more jurors say, no, we don't think he'll be a future
14 danger, then that ends your deliberations. That's an
15 automatic life sentence at that point.

16 But assuming the jury -- all 12 jurors say, yes, we
17 think he's a future danger, you're going to answer that next
18 question, the one below. That's what we call the mitigation
19 question.

20 A. Okay.

21 Q. Do you remember that question?

22 A. Uh-huh.

23 Q. And again, mitigation is not a word that's going to
24 be defined for you, but it typically means to lessen or
25 reduce.

1 A. Right.

2 Q. And with regard to this question, there's no burden
3 of proof on either side. This question is for the jury, and
4 it's for the jury to take all the evidence that they've heard,
5 taking all that into consideration and to give it whatever
6 weight they want to give it. You may look at the facts of the
7 case and think it's so horrendous that you'd give it a lot of
8 weight. That really is going to weigh heavily in your
9 decision.

10 You take into consideration the defendant's
11 character and background, and that could be good and that
12 could be bad. You can hear from family members and ministers
13 and people in the community. You may hear that he -- he's a
14 doctor and came up with a cure for cancer. You may hear he's
15 a medal -- he earned a medal in the Army. Or you may hear
16 about the criminal history and bad things. But either way to
17 be a fair juror, to be a qualified juror, you have to be
18 willing to listen to the evidence and give it fair
19 consideration. And when it comes to the defendant's character
20 and background, it can be good or bad. You just have to be
21 willing to listen to it and give it fair consideration, and
22 give it whatever weight you want to. His bad character may
23 weigh a lot; his good character may weigh a lot. That's up to
24 you as a juror.

25 And you also get to that word (sic) personal moral

1 culpability, which again, that word culpability is not defined
2 for you. It's up to you as a jury. But typically people
3 answer that to say it means responsibility. Maybe that's also
4 the place you'd take into consideration a person's motive, why
5 they did the killing.

6 But anyway it's up to the jury to put all that on
7 the scales and look at any mitigating evidence that might have
8 been presented. It's up to you as a jury to decide, is there
9 enough mitigating evidence, compared to what he did, to be
10 sufficient to warrant a life sentence. Does that make sense
11 to you?

12 A. Uh-huh.

13 Q. And the question really is not is there any
14 mitigating evidence because you'd probably agree with me that
15 if any of us were on trial, we could all come up with
16 something in our background that's really sad --

17 A. Right.

18 Q. -- or heartbreaking or didn't go our way, and call
19 that mitigating.

20 A. Uh-huh.

21 Q. So it's up to the jury to decide, taking into
22 consideration all those things in that question, is it enough?
23 Is it enough to be sufficient to mitigate all that and warrant
24 a life sentence; does that make sense?

25 A. Uh-huh.

- 1 Q. And could you do that with regard to that question?
 2 Could you keep an open mind, give fair consideration to the
 3 evidence that you hear, put it on the scales, give it whatever
 4 weight you want to, and if there's sufficient mitigating
 5 evidence, answer that question, yes, I think there's
 6 sufficient mitigating evidence to warrant a life sentence. Or
 7 if you find, no, there's not, answer the question no, knowing
 8 it's going to result in a death sentence. Could you do that?
 9 A. Yeah. And life sentences -- are the life sentences
 10 without parole?
 11 Q. It's with parole.
 12 A. With parole?
 13 Q. I don't know if you remember Mr. Goeller mentioning
 14 that this week. In Texas, we don't have life without parole.
 15 A. Okay.
 16 Q. Life in Texas means you've got to do at least 40
 17 years before you're eligible for parole, but at 40 years you
 18 become eligible.
 19 A. Oh, okay.
 20 Q. But looking at that question, do you think you could
 21 keep an open mind and give fair consideration to the evidence,
 22 give it the weight you think is appropriate and answer that
 23 question yes or no depending on the evidence?
 24 A. Yes.
 25 Q. And you could answer it yes, knowing it would result

- 1 in a life sentence if that's what the evidence showed?
 2 A. Sure.
 3 Q. And you could answer the question no, if that's what
 4 the evidence showed, warranting a death sentence?
 5 A. Correct, yes.
 6 Q. And you understand that you can't just, at the end
 7 of the guilt-innocence phase, decide how you want the outcome
 8 to be? You can't just decide, well, I think this guy deserves
 9 to live, or I think this guy deserves to die and answer the
 10 questions in such a way that result in that. You understand
 11 you'd --
 12 A. Yes.
 13 Q. -- have to look at the questions and answer them
 14 based on the evidence?
 15 A. Yes.
 16 Q. And you can do that?
 17 A. Yes.
 18 Q. Just a couple of questions about your
 19 questionnaire. And again, I'm going to ask you these
 20 questions, and I don't mean to embarrass you or get
 21 personal --
 22 A. Okay.
 23 Q. -- but just both sides need to know --
 24 A. Sure.
 25 Q. -- if you can be fair.

- 1 And I do notice on your questionnaire you do mention
 2 you got a DWI in Plano two years ago. And you made a comment
 3 about the Plano police officers, and Plano is not going to be
 4 involved in this case. But anything about your case that
 5 might keep you from being fair to the State?
 6 A. Well, I mean --
 7 Q. In this case?
 8 A. Probably not. I mean, I wasn't real happy with the
 9 way -- the treatment I received, but that's here (sic) nor
 10 there. But I take responsibility for my own actions, and
 11 nothing that I'm proud of. But it happened, and I don't -- I
 12 don't feel like I was treated leniently. I was in my
 13 driveway, but -- so, you know -- just, I thought, for whatever
 14 reason, I'd bring that up.
 15 Q. And that's why I ask because you did mention it, and
 16 obviously it was with our office. When you talk about the
 17 prosecution gave you very little leniency, I mean that's our
 18 office, so I'm just asking. Are you going to hold that
 19 against us, or make it a harder burden or higher burden
 20 because of what happened with you?
 21 A. Right. Well, that's a tough one.
 22 Q. I mean, I'm assuming none of the prosecutors here,
 23 nor Mr. Schultz, were involved?
 24 A. No, not at all. No.
 25 Q. And assuming it's none of the same officers -- I

- 1 don't anticipate any Plano officers testifying in this case.
 2 A. Right.
 3 Q. So assuming it's all different players --
 4 A. Right.
 5 Q. -- would what happened to you regarding Plano PD,
 6 would that factor into your deliberations when you're
 7 deliberating on this case?
 8 A. No.
 9 Q. Or your treatment by the DA's office in your case,
 10 would that factor in your deliberations when you're answering
 11 the questions in this case?
 12 A. It shouldn't, no.
 13 Q. Okay.
 14 A. No. There again, I wasn't pleased, but that was a
 15 different deal.
 16 Q. Okay. And you understand why I need to ask that?
 17 A. Sure.
 18 Q. And your wife's situation, did you know her at the
 19 time?
 20 A. Oh, yes.
 21 Q. And in -- anything about that situation -- did you
 22 feel like she was treated fairly by the system, or do you feel
 23 like she was treated unfairly by the system?
 24 A. I don't even have a -- I don't know.
 25 Q. You don't have an opinion one way or another?

- 1 A. **Hub-uh.**
- 2 Q. I see that you got a BA in Political Science, which
3 is my background. What did you intend to do?
- 4 A. **Go to law school.**
- 5 Q. Usually that's --
- 6 A. **I was accepted into a couple of law schools and got
7 tired of school and went into the golf business.**
- 8 Q. So you decided a golf pro would make more money?
- 9 A. **Well, not more money, but I've enjoyed my lifestyle.**
- 10 Q. Be more fun?
- 11 A. **Sure.**
- 12 Q. You have Florence Shapiro down as one the of women
13 you least respect. Is there any particular incident?
- 14 A. **I worked for the City of Plano in '85 to '91, and
15 she was involved with them then. And I just -- she just irked
16 me. A lot of people like her, but I didn't. Some of the
17 things she tried to pull, she had to use her weight to get
18 things done within the city that I didn't think were up and
19 up.**
- 20 Q. When you worked for the city, what did you do?
- 21 A. **I was the head golf professional for the City of
22 Plano.**
- 23 Q. Okay. Over at Pecan Hollow?
- 24 A. **Yes, it's now Pecan Hollow. Back then it was
25 called Plano Municipal.**

- 1 Q. If you were selected as a juror -- on your
2 questionnaire I noticed -- you probably just missed it. You
3 didn't fill in the very last page. Most importantly, I
4 guess, it was your signature, and it's a declaration that you
5 answered everything under penalty of perjury.
- 6 A. **Okay.**
- 7 Q. And I'm assuming you answered truthfully --
- 8 A. **Certainly.**
- 9 Q. -- under the penalty of perjury?
- 10 A. **Correct.**
- 11 Q. I mean, it just looks like -- you didn't answer
12 anything, so it looks like you just skipped over it by
13 accident.
- 14 A. **Okay.**
- 15 Q. But one question that it asks, and I'll ask you
16 this, if you had a choice to be on this jury, if it was up to
17 you, would you choose to be on this jury?
- 18 A. **No.**
- 19 Q. Okay. And tell me -- I mean, that's the typical
20 answer, but tell me what your reasons are behind that.
- 21 A. **Well, just kind of the -- if this were maybe a few
22 months ago, maybe yeah. Just work-related situations that are
23 going on right now. I mean, it would be a very high
24 possibility that if I had to sit on it and be gone this
25 particular month, it most likely would happen, you know, that**

- 1 **my position might get replaced. I know they can't terminate
2 you for that, but it would cause some things to have to happen
3 within our division of our company that would -- that I'm a
4 critical part of. So, if that were to happen then I could be
5 moved into a different position or something like that.
6 But -- so it's going to cause a great deal of burden.**
- 7 Q. Is that the American Golf Corporation or the Nike
8 Golf --
- 9 A. **Both. American Golf Corporation is who I work for.
10 Nike Golf Learning Centers is the player development part, a
11 division of the company. And they're going through a
12 highly -- recruiting time of the year, and I'm responsible for
13 that, and if it doesn't happen within this time frame, then
14 it's going to affect everything that happens next year. So
15 it's just a -- it couldn't be worse timing. We're -- a lot of
16 the planning things we do and the preparation things is
17 happening now and the early part of next year, training and
18 everything else.**
- 19 **We really -- even in the summer when golf is the
20 busiest, we're really the slowest because everything is in
21 place. So, really just -- yeah, if I had to choose it would
22 be no, just due to the timing. I don't mind fulfilling my
23 obligation or duty, but I know it's never going to be a
24 perfect time for everybody -- for everyone, but there would be
25 other times of the year it would be more -- be able to get**

- 1 **that done, so it's definitely no.**
- 2 Q. When you say this time of year, we anticipate this
3 trial starting the middle of next week.
- 4 A. **Right.**
- 5 Q. And going approximately three weeks.
- 6 A. **Right.**
- 7 Q. Does that encompass the time period?
- 8 A. **Right. That month of October, which is basically
9 what you're talking about, is a critical time for us, and in
10 all honesty, I'm not just saying that to say it, it's a
11 critical time. My position would have to be fulfilled by
12 somebody else, and it would be a difficult thing.**
- 13 Q. If you did end up on this jury and had to be up here
14 for three weeks, knowing what's going on at work --
- 15 A. **Right.**
- 16 Q. -- obviously missing out at work, do you think you
17 could put those frustrations aside? I mean, you're not the
18 type of person that's going to take that out on the State or
19 take that out on the Defense that you had to be here anyway?
- 20 A. **No, no. But it would require me to -- well, I'm not
21 sure what I would do. I would have to get with my other
22 people I work with and figure it out, but -- whether I -- you
23 know, go in when I'm done here or go in on weekends and try to
24 get things done. It's just it would be a huge burden.**
- 25 Q. Well, I thank you, Mr. Richeson, for your honesty.

1 Do you have any questions of me?

2 A. No.

3 MS. FALCO: Thank you. Pass this juror.

4 THE COURT: All right.

5 MR. HIGH: Thank you, Judge.

6 CROSS-QUESTIONS

7 BY MR. HIGH:

8 Q. Good afternoon.

9 A. Hi.

10 Q. My name is Don High, and I represent this young man,
11 Ivan Cantu, and I don't believe you've seen me before?

12 A. Huh-uh.

13 Q. I think I was absent on Monday. Were you here
14 Monday?

15 A. Yes. You were at the first one in August?

16 Q. No.

17 A. No, you weren't, in August when we had all 200 of us
18 there.

19 Q. Well, I was there but I did not talk.

20 A. No. I remember just seeing your face.

21 Q. I remained silent.

22 A. Okay.

23 Q. But, yeah, I'm going to be the second chair in the
24 case. My partner, Matt Goeller, is going to do most of the
25 talking.

1 A. Okay.

2 Q. I'll talk occasionally, but he's not here today so
3 I'm going to handle this, all right?

4 A. You got it.

5 Q. May I have just a moment?

6 A. Sure.

7 (Discussion off the record.)

8 MS. FALCO: Your Honor, I think both sides
9 have an agreement.

10 THE COURT: All right. And is that your
11 agreement, Mr. Cantu?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right, sir. You are finally
14 excused.

15 VENIREPERSON: Thank you.

16 THE COURT: Thank you very much.

17 MS. FALCO: The second part of the agreement is
18 Mr. Runey is due to come in next --

19 THE COURT: With regard to Mr. Richeson, the
20 agreement was that he finally be excused by both sides?

21 MS. FALCO: That's correct.

22 MR. HIGH: Yes, sir.

23 THE COURT: Then Richeson is done, and the
24 next one is Runey that you agree to?

25 MS. FALCO: Yes, sir.

1 THE COURT: All right. Say, let me tell you, I

2 got a note from my bailiff with regard to Tammy Sakurada.

3 Tammy Sakurada is Number 146. I certainly don't have the

4 authority. I would assume that Mr. Lau is not much of a

5 possibility, but Tammy Sakurada then would be the next one

6 after Mr. Vogt -- or Jackie Vogt, I suppose. Maybe it's a

7 woman. Probably is a woman.

8 Tammy Sakurada has to pick her child up from

9 day-care. She says she needs to leave by 4:45. Would you-all

10 like to make a run at Tammy Sakurada? Do you want me to tell

11 her to go ahead and leave for the day? Just take a moment and

12 think about it, and tell me what you think you want me to do,

13 and then we'll decide what we're going to do with Tammy

14 Sakurada. I know nothing about her. I haven't even looked at

15 my --

16 MR. HIGH: Judge, can we have a moment to look

17 at the questionnaire?

18 THE COURT: Sure. Both sides look at the

19 questionnaire, and I'll do the same thing.

20 MS. FALCO: She's circled one and two. On

21 page 2, life confinement is never appropriate.

22 THE COURT: Say, let me put this on the record.

23 I understand that both sides agree that Number 147, Mr. Runey,

24 Brian Runey is also -- both sides agree he should be excused;

25 is that correct?

1 MS. FALCO: No. He should be the next one to
2 be brought in.

3 THE COURT: Oh, he should be the next one to be
4 brought in?

5 MS. FALCO: Yes, sir.

6 THE COURT: Okay. Then I guess I didn't quite
7 have the agreement right.

8 (Discussion off the record.)

9 MR. HIGH: I'm okay with excusing Tammy
10 Sakurada.

11 MS. FALCO: It's agreeable with the State as
12 long as --

13 THE COURT: Is that your agreement, too,
14 Mr. Cantu?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Would you tell Tammy Sakurada she
17 may leave for the day?

18 THE BAILIFF: Yes, Your Honor.

19 THE COURT: And ask Brian Runey to step in.

20 THE BAILIFF: Yes, sir.

21 (Venireperson enters the courtroom.)

22 THE COURT: Yes, sir. Are you Brian Runey?

23 VENIREPERSON: Yes, sir.

24 THE COURT: I want to welcome you back to the
25 court, and ask you if you recall a month ago when I had all

1 200 members of the venire present that I administered an oath.
 2 Do you recall that?
 3 VENIREPERSON: Yes, sir.
 4 THE COURT: The oath was to give truthful
 5 answers to anything the court might ask and the attorneys
 6 might ask. Do you recall that?
 7 VENIREPERSON: Yes, sir.
 8 THE COURT: And I suppose you took that oath?
 9 VENIREPERSON: Yes, sir.
 10 THE COURT: I just want to tell you that you're
 11 still subject to that oath because the attorneys want to ask
 12 you questions today, and perhaps I'll ask you one or two.
 13 I'll ask you to have a seat right here.
 14 Ms. Lowry.
 15 DIRECT QUESTIONS
 16 BY MS. LOWRY:
 17 Q. Good afternoon, Mr. Runey.
 18 A. Good afternoon.
 19 Q. My name is Jami Lowry, as you may recall from Monday
 20 when we spoke with you. I'm one of the Assistant District
 21 Attorneys in Collin County.
 22 A. Right.
 23 Q. And seated to my right is Gail Falco, who is also an
 24 Assistant District Attorney.
 25 A. Hi.

1 Q. Seated directly to my left is Ivan Cantu, the
 2 Defendant.
 3 THE DEFENDANT: Hello.
 4 VENIREPERSON: Hello.
 5 Q. BY MS. LOWRY: And seated directly to his left is
 6 Don High, one of the defense attorneys. You may recall from
 7 Monday that Mr. High was not present in court, and you met
 8 Mr. Goeller, who is also one of the defense attorneys.
 9 A. Yes, ma'am.
 10 Q. Let me just kind of orient you to where we are in
 11 the process. We have 12 jurors, and in a case like this,
 12 because of the seriousness of it, because of the length of the
 13 trial, all the time we've already taken so far, we also choose
 14 two alternates. And basically as an alternate what your job
 15 is, is to listen to the evidence, just like you would if you
 16 were a juror because if something were to happen to one of the
 17 jurors you would take their place and deliberate with the rest
 18 of the jury. Does that make sense?
 19 A. Yes.
 20 Q. So that's kind of what we're here to talk about
 21 today. You'd have to go through the trial just as you would
 22 if you were a regular juror and listen to all the evidence
 23 just the same as they do.
 24 First of all, I just want to talk to you briefly
 25 about when you first came back in August and filled out the

1 questionnaire --
 2 A. Uh-huh.
 3 Q. -- you were basically asked what your name is,
 4 where do you live, and then what do you think about the death
 5 penalty?
 6 A. Right.
 7 Q. What kind of thoughts were you having at that point
 8 about the death penalty?
 9 A. I've always been in favor of the death penalty. You
 10 know, I think it's something that is needed if the -- the
 11 crime -- you know, if the crime was severe enough.
 12 Q. And have you had an opportunity, since that time and
 13 even since Monday when we talked about it a little further in
 14 detail, to think about your position on the death penalty and
 15 whether or not you could actually be part of a process that
 16 resulted in someone's death?
 17 A. Yes. And my views have not changed since that day I
 18 filled out the questionnaire.
 19 Q. And this is the individual part of the voir dire.
 20 This is supposed to be a time when it's more comfortable.
 21 A. Right.
 22 Q. It's supposed to help you feel more free to tell us
 23 your opinions, exactly what you think --
 24 A. Okay.
 25 Q. -- because we just need to know how you feel about

1 different issues, what your opinions are, and whether or not
 2 you'd be qualified to be a fair and impartial juror in this
 3 case.
 4 A. Okay.
 5 Q. And so even though we're all just sitting here
 6 looking at you, asking you questions, it's not meant to be
 7 that way. It's supposed to be just real comfortable.
 8 A. Okay.
 9 Q. I guess, first of all, were you aware of the types
 10 of cases that were capital murders before Monday?
 11 A. No, I was not. I was not aware what was considered
 12 murder and capital murder.
 13 Q. And since visiting with you on Monday and telling
 14 you, you know some of the types of cases that are capital
 15 murder are double homicides, murders committed during the
 16 course of burglary, robbery, things of that nature. Do you
 17 think those are cases that are appropriate to have the death
 18 penalty as an option?
 19 A. Yes. I think any murder case should have the option
 20 of the death penalty. I kind of disagree with, you know, if
 21 it's -- if you kill one person or two people or if you're
 22 doing it during a robbery. To me if you kill somebody, kind
 23 of an eye for an eye, and it shouldn't -- I think that's part
 24 of the problem with our society today, you know, because
 25 sometimes the penalties aren't severe enough.

1 Q. And as I said, that's what we needed to know is how
2 you feel about those things.

3 That may raise questions in some people's minds
4 about -- anytime anybody thinks the law ought to be a little
5 different, something like that, you know, our main concern is
6 can you follow the law when it comes down to it?

7 Because as I talk to you, we've charged it as
8 capital murder, but there could be an instance where, because
9 of the evidence that comes in or the proof, maybe it's the
10 lesser included offense of murder, and at that point the death
11 penalty is not an option anymore.

12 A. **Uh-huh.**

13 Q. Is there anything about that that concerns you?

14 A. **It would bother me.**

15 Q. Would you still be able to follow the law and look
16 at the evidence and decide whether or not he's guilty of
17 murder versus capital murder?

18 A. **Given those parameters, I'd feel obligated that I'd
19 have to do that.**

20 Q. And I guess my bottom-line question is, you're not
21 going to convict somebody guilty of capital murder unless
22 they're truly guilty of it just so you can have the death
23 penalty as an option?

24 A. **No, I wouldn't do that.**

25 Q. And that's what we need from you. That's what you

1 doing that. He kills them. In Texas that's going to be
2 murder, but in a circumstance like that, that's going to be
3 completely different from a situation where you have someone
4 who just walks up to someone on the street and kills them for
5 no reason, or some really gruesome murder.

6 A. **Uh-huh.**

7 Q. And that's why we have a punishment range of that
8 nature. And you don't have to be able to specifically
9 articulate the facts that you would give probation in, as long
10 as your mind is open to the fact there may be some
11 circumstances that probation might be appropriate. Are you
12 open to that at all?

13 A. **I don't -- I really don't believe I am.**

14 Q. And no one -- we're not asking, would you give
15 probation every time.

16 A. **Right.**

17 Q. Or would you give it in this case because, of
18 course, we can't talk to you about the facts of this case.
19 But what the Legislature contemplates is just that, because of
20 all the different kinds of circumstances, would you give it
21 fair consideration? And until you see evidence or facts that
22 make you think there's no way it's warranted in this case, can
23 you wait until that point to rule out probation?

24 A. **I'm a pretty black and white person. You know, to
25 me, I just see things -- whether it's right or wrong, okay?**

1 need to be -- to be qualified as a juror.

2 A. **Uh-huh.**

3 Q. And if at any point I ask a question, or something,
4 that's not clear, just ask me to rephrase it.

5 A. **Okay.**

6 Q. With murder, as I told you on Monday, there comes
7 the punishment range of five to 99, or life in prison.

8 There's also a possibility of probation in some
9 circumstances. Do you see yourself as a person who, with the
10 law telling you that you have to be able to consider that
11 punishment range, do you see yourself as a person who is open
12 to all different situations that may come up that may require
13 from as little as probation on a murder case, all the way up
14 to life or 99 years?

15 A. **No. I don't think I could do -- give someone
16 probation for murder. No.**

17 Q. And some of the examples that I don't know if I used
18 on Monday or not, but as I told you, the Legislature has come
19 up with this punishment range because you never know what the
20 circumstances are going to be.

21 A. **Right.**

22 Q. And it could be an instance where you have an
23 elderly person who has absolutely no quality of life left, and
24 they just want to die. Maybe they bring in Dr. Kevorkian, and
25 say, look, please do this for me. He's in the business of

1 **And I believe if someone has done something wrong, they need
2 to be punished for it. So, to me, probation is not
3 punishment. It's letting people off, you know, because
4 obviously they made a decision that is not normal behavior.
5 And with that, you know, I don't see how you can give
6 somebody probation for killing somebody else, regardless of
7 what the circumstances
8 were.**

9 **I know you used the circumstance of the elderly lady
10 and the husband and they've been together for all that time.
11 Well, you know, to me that's still -- because the quality of
12 life is so important to me, you know, and life itself is very
13 important. To me there's always a chance that person might
14 have gotten better or come off life support or something. So,
15 until the good Lord takes you, no one else has that right, in
16 my opinion.**

17 Q. Even if the person that was going to be killed
18 themselves felt there was no quality of life left?

19 A. **Yes. I don't agree with that.**

20 MS. LOWRY: Pass the juror, Your Honor.
21 (Discussion off the record.)

22 MS. LOWRY: Your Honor, I believe we have an
23 agreement.

24 THE COURT: All right. And is that your
25 agreement, also, Mr. Cantu?

1 THE DEFENDANT: Yes, Your Honor.
 2 THE COURT: And that is that this man be
 3 finally excused?
 4 THE DEFENDANT: Yes, Your Honor.
 5 THE COURT: All right, sir. You are finally
 6 excused. Thank you for your time.
 7 VENIREPERSON: Thank you.
 8 (Venireperson exits the courtroom.)
 9 THE COURT: Well, the next one on the list is
 10 Jackie Vogt. Is that who you-all want?
 11 (Discussion off the record.)
 12 THE COURT: Would you invite Jack Vogt, Number
 13 143, in?
 14 THE BAILIFF: Yes, Your Honor.
 15 (Venireperson enters the courtroom.)
 16 THE COURT: Are you Mr. Vogt?
 17 VENIREPERSON: Vogt.
 18 THE COURT: Vogt?
 19 VENIREPERSON: Vogt.
 20 THE COURT: Okay. And is it Jack or Jackie?
 21 VENIREPERSON: It's Jack. Jackie is my given
 22 name, but I go by Jack.
 23 THE COURT: Go by Jack, okay.
 24 Then I want to welcome you back to the court, and
 25 ask you if you recall about a month ago when I had all 200

1 jurors assembled and administered an oath; do you recall that?
 2 VENIREPERSON: I do.
 3 THE COURT: All right. The oath was to give
 4 truthful answers to anything the court or the attorneys might
 5 ask; do you recall that?
 6 VENIREPERSON: I do.
 7 THE COURT: And did you take that oath?
 8 VENIREPERSON: I did, yes.
 9 THE COURT: And I just want to advise you
 10 you're still subject to that oath, and ask you to have a seat
 11 right here, and the attorneys will ask you some questions.
 12 VENIREPERSON: Okay.
 13 THE COURT: Ms. Falco.
 14 DIRECT QUESTIONS
 15 BY MS. FALCO:
 16 Q. Mr. Vogt, my name is Gail Falco, and I'm an
 17 Assistant District Attorney here in Collin County, and seated
 18 next to me is Ms. Jami Lowry, also an Assistant District
 19 Attorney. You probably remember her from Monday. At the far
 20 table closest to me is the defendant, Ivan Cantu, and next to
 21 him is his attorney, Mr. Don High, a local practitioner here
 22 in Collin County. And you probably remember, his other lawyer
 23 is Mr. Goeller that spoke to you on Monday.
 24 I recall from Monday that you did not know any of
 25 us; is that correct?

1 A. That's correct.
 2 Q. Mr. Vogt, we do this individual voir dire process
 3 only in cases where the State is seeking the death penalty,
 4 and we do it for a couple of reasons, but one is when you
 5 first came in to fill out that questionnaire, and you didn't
 6 have a whole lot of time for thought or reflection, and you
 7 filled it out from more kind of your gut reaction. And so it
 8 gives you some time to think about it and come back and still
 9 see if you're in the same place. But also to kind of promote,
 10 I guess, a more comfortable atmosphere so we can talk one on
 11 one, and when we do that we're not here to challenge you.
 12 We're not here to change your mind or change your opinion.
 13 We're just here to see if you're a qualified juror for this
 14 case. And the only wrong answer you can give us is a
 15 dishonest one, so we're just asking for you to be honest with
 16 us and let us know how you feel and what you think. And we
 17 don't mean to intimidate you or embarrass you, but you
 18 understand why we have to talk about the death penalty. That
 19 could be personal to some people, and we're just asking for
 20 your honesty, okay?
 21 A. Okay.
 22 Q. And just to let you know where we're at right now
 23 in the trial, we've already got 12 jurors, and we actually
 24 already have an alternate, but in a case like this, because of
 25 the magnitude of the case, because of the length of

1 the case, we always get two alternates. The alternates sit as
 2 regular jurors. They listen to the entire trial. If, at the
 3 time of deliberations, something happens to one of the jurors,
 4 then the alternate goes back and deliberates with the jury.
 5 So you're kind of insurance, and so you're just as important
 6 as anyone sitting there, but we do pick two alternates and
 7 that's where we're at now, is picking two alternates.
 8 As far as your views on the death penalty, I know
 9 when you came in over a month ago you indicated you were in
 10 favor of the death penalty and that in the appropriate case
 11 you could assess the death penalty. I know you've had some
 12 time to think about it, and I know it's one thing if you're
 13 sitting at home and it comes on TV, and you're talking about
 14 it among your friends and your family. It's a completely
 15 different ball game if we ask you, can you be involved in a
 16 process that results in somebody's death -- or could result in
 17 somebody's death. Have you done some thinking about that?
 18 A. Yes.
 19 Q. And tell me kind of what you've been thinking about
 20 over the past month.
 21 A. Well, I think you've put it quite appropriately. It
 22 would be much different when you're talking amongst your
 23 friends versus being able to actually assess that and actually
 24 carry that out. I think -- in the appropriate circumstances,
 25 I think I would be able to impose the death penalty.

1 Q. And that's all that both sides are looking for, is
2 somebody to be fair and impartial, listen to the evidence, and
3 answer the questions based on the evidence and the law. And I
4 guess, as you've kind of learned on Monday, first of all, you
5 learned the difference between murder and capital murder.

6 A. Uh-huh.

7 Q. So you understand that distinction?

8 A. Yes.

9 Q. Murder plus some aggravating factor.

10 And when you get to the punishment phase of a
11 capital murder, you don't just go back there and say life or
12 death, you know, circle one or circle the other. You actually
13 answer special issues, and the way you answer those questions
14 dictates a life sentence or a death sentence, depending on how
15 you answer those questions. You understood that from Monday?

16 A. Yes.

17 Q. And so to be a qualified juror you just have to be
18 open-minded enough and be able to listen to the evidence and
19 during the guilt-innocence phase, if the State proves the case
20 beyond a reasonable doubt, you find the Defendant guilty. And
21 if we don't prove it to you beyond a reasonable doubt, find
22 the Defendant not guilty. And you understand that the burden
23 of proof is on the State?

24 A. Yes.

25 Q. And that burden never shifts to the Defense. A

1 defendant has a Fifth Amendment privilege. He does not have
2 to testify. He does not have to put on any evidence at all.
3 That is his choice. If he wants to, he can. But if he does
4 not testify, then you will be instructed by the judge not to
5 take that into consideration as any evidence of guilt. Could
6 you follow that instruction?

7 A. Yes.

8 Q. And that seems only fair: If we're the ones doing
9 the accusing, we're the ones that should have to do the
10 proving. Doesn't that seem fair?

11 A. Yes.

12 Q. So in that regard, if we prove the case of capital
13 murder to you beyond a reasonable doubt, could you find a
14 defendant guilty?

15 A. Yes.

16 Q. And on the flip side, if we did not prove our case
17 to you beyond a reasonable doubt that a person is guilty of
18 capital murder, could you follow the law and find a defendant
19 not guilty?

20 A. Yes.

21 Q. As far as your opinion of the death penalty, you
22 said you've done some thinking about it, and you said in some
23 circumstances you still think that's the right thing to do, or
24 the appropriate punishment, I guess is better?

25 A. Yes.

1 Q. Tell me a little bit -- since you've had some time
2 to think about it, tell me why you think that's the
3 appropriate punishment in some cases.

4 A. **I think it would be appropriate in a case where the
5 crime is so heinous that I don't believe that person should be
6 allowed to continue to have the same type of life that
7 someone -- they were able to just callously take someone
8 else's life, I believe in that case that, you know, someone
9 should be willing to give up their life, if they're willing to
10 take another life. And it would probably have to be a case in
11 which -- it would -- in my opinion, it would have to be very
12 extenuating circumstances.**

13 Q. And when you say very extenuating circumstances,
14 what kinds of things do you have in mind?

15 A. **That they intentionally did it. They knew what they
16 were doing when they did it.**

17 Q. Okay.

18 A. **Other crimes were involved.**

19 Q. You also put in your questionnaire that a convicted
20 felon cannot be redeemed and would always be a threat to
21 society. And, obviously, when you saw the questions, that's
22 exactly what that first question contemplates, if somebody is
23 going to be a continuing threat to society. So in your answer
24 in your questionnaire, you're pretty much right on point with
25 what the Legislature thinks, or when that -- they think the

1 death penalty is an appropriate punishment.

2 A. Yes.

3 Q. And when we start talking to you about the
4 punishment phase, and we do this now at this point because we
5 pick one jury, and the one jury does the guilt-innocence
6 phase, and if they find the Defendant guilty, they also do the
7 punishment. So, obviously, this is the only time that we have
8 the chance to talk to you. And by skipping on to the
9 punishment phase, we don't mean to override a defendant's
10 presumption of innocence, or we're just -- ask you to just --
11 let's assume he's guilty already. You understand why we have
12 to talk about the punishment phase now?

13 A. Yes.

14 Q. Now, with regard to the punishment phase, if you
15 find a defendant guilty of capital murder, the first question
16 that you would answer is what we call the future dangerousness
17 question, which is the question up top. Can you see that from
18 where you're sitting?

19 A. **I'm going to have to put on my glasses.**

20 Q. Do you recall that question from Monday?

21 A. Yes.

22 Q. And like I said, that's the question we call the
23 future dangerousness question, and it contemplates what you
24 talked about, a defendant being a continuing threat to
25 society.

1 **A. (Nods head.)**

2 Q. The Legislature gave us this question envisioning
3 that there are certain scenarios -- or there has to be certain
4 scenarios out there where a jury could find a defendant guilty
5 of capital murder, yet still decide that person is not a
6 continuing threat to society. Some of those examples might be
7 the parent whose child is killed, and the killers have a
8 trial, and because of some technicality or loophole they get
9 off, and they go out of the courtroom laughing because they
10 got away with murder, literally. And that just infuriates
11 parents so much. They trusted the system, and it didn't work
12 for them, so they go out and kill them.

13 Killing two people, it's capital murder. But some
14 juries may look at that and they think, well, you know, that
15 parent never did anything wrong. They were law-abiding. They
16 were contributing to society, and this was just more than they
17 can handle, and what they did is wrong, but we don't think
18 they'll be a continuing threat to society.

19 Another situation may be a person who decides to go
20 in and rob 7-Eleven. And he goes in, and he robs the
21 7-Eleven, kills the clerk. And on the way out the door, the
22 police show up, and he gets in a shoot-out with the police,
23 and the police end up shooting him in the head, and he ends up
24 being paralyzed from the neck down. He can't move a muscle in
25 his body from the neck down, so physically he can't do

1 anything. He can't harm anybody, and so a jury might look at
2 that and say, well, we don't think he's going to be a
3 continuing threat to society.

4 And another example, kind of the -- the doctor --
5 Jack Kevorkian, Dr. Kevorkian. And people come down on both
6 sides of the fence as far as mercy killing, whether that's
7 right or wrong. But assuming you have a situation where a --
8 let's say it's an elderly person. They're in bad health.
9 They want to pass at the same time. Neither one wants to be
10 around when the other one is not here, and they solicit the
11 help of

12 Dr. Kevorkian. He performs this service; they pass away.
13 There are probably some juries that would look at that and
14 say, though what he did is wrong and it's capital murder, we
15 don't think he's a continuing threat to society.

16 So by giving us this question, the Legislature
17 decided that the jury has to be able to find someone guilty of
18 capital murder, and, yet, get to this question and re-evaluate
19 the evidence. And you can take the facts of the case into
20 consideration. You also take into consideration punishment
21 evidence, everything you heard in the punishment phase, and
22 then decide whether or not that person is a future danger.
23 With regard to that question the burden of proof is on the
24 State. We have to prove to you beyond a reasonable doubt that
25 he will be a future danger. If we fail to do so, obviously

1 the answer to that question is no.

2 If all 12 jurors decide yes, this person is a
3 continuing threat to society, then you still have one more
4 question to answer -- at least one more question to answer.
5 If ten or more jurors decide no, either the State didn't prove
6 it to us or we just don't think this person is going to be a
7 continuing threat to society, then that's an automatic life
8 sentence and that ends your deliberations. So, if you were
9 sitting as a juror and you found a defendant guilty of capital
10 murder, could you get to this question and fairly answer it
11 based on the evidence yes or no, depending on how the evidence
12 played out? I mean, if we didn't prove the case -- if we
13 didn't prove to you beyond a reasonable doubt that he would
14 be a continuing threat to society, could you answer that
15 question no?

16 **A. Yes.**

17 Q. Okay. And if we did prove to you beyond a
18 reasonable doubt that he was going to be a continuing threat
19 to society, could you answer the question yes?

20 **A. Yes, I believe so.**

21 Q. Okay. And you understand the ramifications of each
22 of those answers as far as that's a life sentence, or you
23 continue on to see if it's going to be a death sentence or a
24 life sentence. You understand that?

25 **A. Yes.**

1 Q. Okay. Now, with regard to that question, it doesn't
2 ask you to predict the future with a certainty, because that's
3 impossible for any of us to do because we don't know what the
4 future holds. Rather, what that asks is whether there's a
5 probability. So we know that word "probability" is something
6 less than a certainty. But with regard to that word, you
7 won't be giving a definition of what that means. Some people
8 tend to think that means more likely than not. Other people
9 that are more mathematically minded say that's some kind of
10 percentage to me. But as long as you understand it's
11 something less than a certainty and something more than just a
12 mere possibility, because you would agree with me that
13 anything is possible?

14 **A. Yes.**

15 Q. I mean, theoretically anything is possible?

16 **A. (Nods head.)**

17 Q. So that question contemplates it's got to be
18 something more than just a possibility, but something less
19 than a certainty. And do you understand that distinction?

20 **A. Yes.**

21 Q. Okay. And assuming -- with regard to that question,
22 assuming you answer that question yes, you would still have
23 one more question to answer, and that would be the question
24 below it, the mitigation question. Do you recall that
25 question from Monday?

1 A. Yes.

2 Q. And again the word mitigation is not something
3 that's going to be defined for you, but it typically means to
4 reduce or to lessen. In this case to reduce or lessen the
5 defendant's guiltiness or blameworthiness. With regard to
6 this question, there's no burden of proof on either side. We
7 don't have a burden of producing any evidence, nor does the
8 Defense. This question is for the jury to weigh the evidence
9 as they see fit, and after they weigh all the evidence decide
10 is there enough evidence to be sufficient to warrant a life
11 sentence.

12 So, you take the facts of the case, and you put that
13 on the scales. You can give that a lot of weight. You can
14 give it a little weight. If it's something horrendous,
15 obviously you give it a lot of weight. You look at a
16 defendant's character and background, and that would be both
17 good and bad. May hear bad, bad stuff, criminal history, and
18 beating up wives, things like that. You may hear good stuff.
19 You may hear that they earned medals in the war, and they
20 saved people's lives. And they're a doctor, and all they did
21 was look after people's lives and take care of people, and
22 this was an aberration. But good or bad, you take all that
23 into consideration as well, and you put it on the scales.

24 And then you take into consideration the
25 defendants's personal moral culpability, and again that's

1 circumstances, could you answer the question "no" resulting in
2 a death sentence?

3 A. Yes.

4 Q. I want to just briefly look through your
5 questionnaire.

6 And assuming, just for the month of October, other
7 than the normal, daily stress and having work situations, do
8 you have any travel plans or anything scheduled like that for
9 the first few weeks of October?

10 A. No, nothing until the end of October.

11 Q. So it would just be the normal stresses of work, and
12 if you were chosen as a juror, just the normal stresses of the
13 fact that you're missing work and not being there, probably
14 similar to what every other juror would be going through?

15 A. Yeah. It would be -- actually it would be very
16 difficult, actually.

17 Q. And why is that?

18 A. Just because of the circumstances at work right now.

19 Q. And how is that different than any other --

20 A. Well, it's just Q-4 is always our biggest quarter of
21 the year. I am currently -- I'm a financial manager at my
22 company. Unfortunately, my company has experienced a lot of
23 layoffs. I really don't have a staff and really don't have a
24 supervisor right now. So, it would be trying to work that out
25 in the group that I support. I support a sales team, and so

1 another word. It's not going to be defined for you, but it
2 typically means responsibility. It may also be the place
3 where you take in motive; what was that person's reason for
4 doing the killing. You take all that into consideration, and
5 you've got the circumstances of the offense. You've got the
6 defendant's character, good or bad, you've got their
7 culpability, and you look at all that and ask yourself, is
8 there enough evidence to be sufficient to warrant -- to
9 mitigate -- to warrant a life sentence? And if the answer to
10 that question is yes, then that defendant gets a life
11 sentence. And if the answer to that question is no, then that
12 results in a death sentence. Does that make sense to you?

13 A. Yes.

14 Q. To be a qualified juror, you have to be able to give
15 fair consideration to this question. In answering it, you
16 have to be able to listen to all the evidence, give it fair
17 consideration, and give it whatever weight you deem
18 appropriate, and then answer the question based on the
19 evidence "yes" or "no." So, you'd think if you got to this
20 question and you fairly considered all the evidence and you
21 found there was sufficient mitigating evidence, could you
22 answer the question "yes" resulting in a life sentence?

23 A. Yes.

24 Q. And if you got to this question and weighed all the
25 evidence and decided no, there's not sufficient mitigating

1 that would be pretty stressful, I think.

2 Q. But you're not the type of guy that would take that
3 out on the State or the Defense because you're stressed about
4 work? I mean, you're not going to come in here and go, I'm
5 mad that I have to be here, and I'm just -- I'm going to vote
6 against the State, or I'm going to vote against the Defense?

7 A. No, I wouldn't. I would not do that.

8 Q. Okay. And we do -- we understand the stresses of
9 work, and obviously we're not going to get 12 people in here
10 who don't work at all. We understand the stresses of work,
11 but you'd be able to work with us and handle work situations
12 if you got called for jury duty and had to serve?

13 A. I would absolutely do my best, yes.

14 Q. Do you have any questions of me, Mr. Vogt?

15 A. I guess, we talked about beyond a reasonable doubt,
16 and I'm not sure I clearly understand what beyond a reasonable
17 doubt means.

18 Q. And actually that's another phrase that will not be
19 defined for you by the Court. It's going to be up to you as a
20 jury. Obviously, it's not beyond all doubt. It's not beyond
21 a shadow of a doubt. It's beyond a reasonable doubt. That's
22 up to you, as a juror, to decide what does that mean and has
23 the State proved it to me.

24 And I guess the example I've always given, you drove
25 here today; is that right?

1 A. (Nods head.)

2 Q. Are you 100 percent sure your car is still down
3 there in the parking lot? You hope?

4 A. I'm pretty sure. I hope it's still there.

5 Q. But you're not 100 percent sure, but when you leave
6 here, you're going to walk out to where you left your car. So
7 you might have a doubt in your mind that maybe my car is not
8 there, but it's not a reasonable doubt. And so the same thing
9 here, because the jurors, obviously, are not eyewitnesses --
10 they couldn't be eyewitnesses and jurors. So, because you
11 didn't see it yourself, probably be impossible to convince you
12 100 percent because you didn't see it. So, the burden of
13 proof is beyond a reasonable doubt. So you just -- when
14 you're deliberating, you have to ask yourself, do you have a
15 doubt? If you have a doubt, is it reasonable? And if you
16 have a reasonable doubt, does it go to one of the elements,
17 because that's what we have to prove to you, is the elements
18 of the offense, which you'll get in the Court's charge. We
19 have to
20 prove that to you beyond a reasonable doubt. Does that help
21 you any?

22 A. A little bit, yes.

23 Q. Okay. Do you have any more questions that I can
24 answer for you?

25 A. I don't think so.

1 MS. FALCO: Thank you, Mr. Vogt. Pass this
2 juror.

3 THE COURT: Say, if I could just say, you know,
4 Mr. Vogt, it's kind of a human tendency to want to quantify
5 things and put a number on them.

6 VENIREPERSON: That's because I'm a numbers
7 person. Yes, sir.

8 THE COURT: You could take the term
9 probability, and perhaps you could put a number on it and
10 perhaps you couldn't, you know, that something could probably
11 happen.

12 Let me tell you, we have police officers that come
13 in all the time, and they have to have probable cause. And
14 sometimes the police officer doesn't have the foggiest notion
15 about what probable cause is, and sometimes they do. But it's
16 difficult to articulate, and the same thing is true of beyond
17 a reasonable doubt. You can't put a number on probability.
18 You can't put a number on possibility. You can't put a number
19 on beyond a reasonable doubt because those are things that are
20 not subject to quantification. Now, you can try, and you can
21 kind of, perhaps, get a feel for what it might mean by trying
22 to put a number on it. But I just want to tell you that
23 because it's -- it's something that's a natural human tendency
24 to say, well, if probability means a likelihood, well, then
25 does that mean anything greater than 50 percent, and perhaps

1 it does. Maybe it means 50.000000001, or maybe it means 51
2 percent, maybe it means 60 percent, and perhaps to some people
3 it doesn't mean -- it doesn't have to get up to 50 percent.

4 And you can kind of think of beyond a reasonable
5 doubt in that same way. You know what any doubt can be, and
6 you know what a certainty is. A certainty is something that
7 is 100 percent sure, and I don't know that there's anything
8 that's a certainty. But there isn't very much that's an
9 impossibility, either. So, you don't have either 100 percent
10 or zero in any of these equations. You've got something in
11 between, right?

12 VENIREPERSON: Uh-huh.

13 THE COURT: And so I just -- I'm telling you
14 that not because I want to confuse the issue, because
15 sometimes it has a tendency to confuse, to tell you what it's
16 not. It's not a number, but perhaps sometimes it tends to
17 clarify.

18 VENIREPERSON: (Nods head.)

19 THE COURT: All right. Mr. High.

20 MR. HIGH: Thank you, Judge.

21 CROSS-QUESTIONS

22 BY MR. HIGH:

23 Q. Sir, tell me the pronunciation of your name again.

24 A. It's Vogt. It's like V-O-T-E.

25 Q. Okay, thank you. I didn't hear it the first time.

1 I can tell that you're very well-educated. You've
2 got a graduate degree in business. Is that an MBA?

3 A. Yes, it is.

4 Q. Excellent. Where did you get your undergraduate
5 degree?

6 A. At Oklahoma State University.

7 Q. Cowboy?

8 A. Yes.

9 Q. Okay. Where did you get your MBA?

10 A. Texas A&M University.

11 Q. They have a pretty good business school from what I
12 understand.

13 A. It's a pretty good school.

14 Q. Pretty tough?

15 A. It was tough enough.

16 Q. Okay. What -- did you focus in accounting; is that
17 what you focused on?

18 A. That's my undergraduate degree.

19 Q. Okay.

20 A. Finance and marketing in my MBA.

21 Q. All right. I suffered through accounting in my
22 undergraduate degree, so I can understand that, empathize with
23 that. Did you sit for the exam?

24 A. I did.

25 Q. Okay. And are you proud or not so proud?

- 1 **A. Yes. No, I eventually was proud. Yes.**
 2 Q. Excellent. Well, then you're a stud then. Okay.
 3 Let me tell you something, that's much harder than the Bar
 4 Exam. It absolutely is, so -- because I've taken them both.
 5 **A. Okay. I'll take your word for it.**
 6 Q. I notice that you did some public accounting,
 7 Ernst & Young, and was that your first job --
 8 **A. Yes, it was.**
 9 Q. -- out of college?
 10 Did you enjoy that?
 11 **A. It was a very good experience.**
 12 Q. Work long hours?
 13 **A. Worked -- yeah.**
 14 Q. Met the client?
 15 **A. Yes.**
 16 Q. Okay. And having to take instruction from seniors
 17 and do your working papers and all that stuff, right?
 18 **A. Yes.**
 19 Q. And some seniors are more stringent than others, I
 20 guess?
 21 **A. Yes.**
 22 Q. And then you got your fill of public accounting, as
 23 you moved from there to corporate work with PageNet?
 24 **A. Yes.**
 25 Q. And they hired you away, gave you a more lucrative

- 1 position and benefits and that sort of thing?
 2 **A. Yes.**
 3 Q. Does it sound like I've been there?
 4 I worked for Price, Waterhouse for a while.
 5 **A. Okay. Yes.**
 6 Q. And you stayed with PageNet, and then you moved on
 7 from there to Nortel?
 8 **A. I went to MBA school after I worked for PageNet.**
 9 Q. Okay. That's great. And how long have you been
 10 with Nortel, four years?
 11 **A. Yes.**
 12 Q. That's been a difficult four years because you guys
 13 were riding high about two years ago, and then this --
 14 **A. Actually up until about the fourth quarter of last**
 15 **year.**
 16 Q. Okay. Now, here's the question, should I buy some
 17 more stock?
 18 THE COURT: No, that's not the question.
 19 Q. BY MR. HIGH: It's at 5 or 6 dollars a share today,
 20 I think, right?
 21 **A. About 5 dollars.**
 22 Q. I owned some other stock. I was thinking about
 23 buying some more, but that -- you think that's a good
 24 decision, bad decision?
 25 **A. I wish I could tell you.**

- 1 THE COURT: Good answer.
 2 Q. BY MR. HIGH: That's an amazing thing. You guys
 3 going to make it out of it, you think? I mean, you've had
 4 some layoffs?
 5 **A. Yeah, we've had significant layoffs.**
 6 Q. Okay.
 7 **A. Potentially might see some more.**
 8 Q. You're such a force in this area. There's so many
 9 people that work for Nortel along the corridor there. You
 10 guys got to make it.
 11 **A. I hope we do.**
 12 Q. Okay. Well, I hope you do, too.
 13 I have my own comments about beyond a reasonable
 14 doubt. Obviously, you know I would since I'm a defense
 15 attorney. You're learning an awful lot about the law. You
 16 know an awful lot about accounting and business. Have you
 17 ever been interested in law? Did you take some business law
 18 courses?
 19 **A. It's a requirement.**
 20 Q. How interested were you in law?
 21 **A. I didn't have a lot of passion for it. Let's put it**
 22 **that way.**
 23 Q. Okay. Those business law courses were fairly dry,
 24 wouldn't you say?
 25 **A. Yes.**

- 1 Q. I mean, talked about contracts and consideration,
 2 things like that.
 3 **A. Yes.**
 4 Q. UCC, things like that.
 5 Well, this is the sexy part of the law. This has
 6 to do with courtroom, criminals, beyond a reasonable doubt,
 7 that sort of thing, okay? There used to be a definition for
 8 beyond a reasonable doubt, but they took it away last year,
 9 and so we don't have one now. There are three legal standards
 10 that most of us are used to dealing with. There's civil
 11 cases, which is by a preponderance of the evidence, and
 12 preponderance means a little more evidence. If you slightly
 13 tip the scales, you win. And then there's this legal
 14 standard called clear and convincing evidence, which is used
 15 in child termination cases. And, of course, that's even more
 16 evidence. The evidence -- or the burden of proof must be clear
 17 and convincing for you to win. And then in a criminal case,
 18 which is the strongest standard in American jurisprudence, is
 19 beyond a reasonable doubt, which is an extreme tipping of the
 20 scales. Does that make sense? Is that a yes?
 21 **A. If that's your opinion, yes.**
 22 Q. Okay. Well, I think that that's pretty generally
 23 accepted in terms of the quantum of proof that's necessary.
 24 You know, preponderance is not as much as clear and
 25 convincing, and clear and convincing is not as much as beyond

1 a reasonable doubt. You know, the framers of our Constitution
 2 said before you can be convicted of a crime, the proof must be
 3 of such merit that it's beyond a reasonable doubt, okay? And
 4 I guess what we're talking about now is a liberty interest,
 5 somebody's right to be free, to move about, and to take that
 6 right away from them we're going to require a pretty strict
 7 burden of proof. That's when we came over from common law
 8 England. We wanted that in this country, and you've studied
 9 all that, I'm sure. And also that was the burden of proof in
 10 the O.J. Simpson trial, and it seemed to work for him. So,
 11 that's the burden of proof that we use in all criminal trials
 12 across the country.

13 Let's move on to something else. You indicated that
 14 you're in favor of the death penalty. You said on your
 15 questionnaire that in some cases the offense is so hideous and
 16 inhumane that it can be appropriate. And then Ms. Falco
 17 explored that with you, and you said extenuating
 18 circumstances, and I really wasn't clear on what you meant by
 19 that. Can you elaborate on that a little bit more for me?

20 A. I guess, maybe I could give an example, maybe?

21 Q. Sure.

22 A. **On the little girl, Polly Klaus, when she was
 23 killed, if I had been a juror I'm sure I would have had no
 24 problem giving that gentleman the death penalty.**

25 Q. Okay, okay. What about the Oklahoma City bombing

1 stranger-on-stranger type thing, as opposed to a
 2 relational-type killing? And I know you don't think about
 3 this stuff every day so I'm going slow. You deal with
 4 numbers, and you deal with clean stuff. I know you do. But
 5 is there a difference in your mind? You know, maybe -- when I
 6 mean relational, I mean in the family, you know? Maybe
 7 husband and wife, or maybe the wife gets upset with taking
 8 beatings from her husband, and so finally one day she's just
 9 fed up with it, and she stabs him, you know. There's a
 10 relationship. There's a reason. There's a --

11 A. **Uh-huh.**

12 Q. Or maybe there's a business transaction that goes
 13 south. Maybe a drug deal that goes bad, and folks get mad,
 14 and they get angry, and somebody gets killed, or a Mafia
 15 situation?

16 A. **I see a significant difference between a wife who's
 17 been beaten and a drug deal gone bad. I wouldn't have a lot
 18 of sympathy for the drug dealer.**

19 Q. Okay, okay.

20 A. **Drugs are illegal. People know -- I mean, there are
 21 statistics of what drugs will do to you.**

22 Q. I understand that, and I don't disagree with that.
 23 But what I'm trying to distinguish between is the random, no
 24 knowledge, no relationship versus people who know each other,
 25 have dealt with each other, have spent time together, the

1 case?

2 A. **You know, I really didn't follow that trial very
 3 closely. So I really wasn't in that courtroom, and I really
 4 don't know what the circumstances were.**

5 Q. Okay. Well, you know, we know what the offense
 6 was. We know that 168 people were killed.

7 A. **Uh-huh.**

8 Q. Some of them toddlers, innocent children.

9 A. **Indeed.**

10 Q. And we know what kind of premeditation went on. We
 11 know that McVeigh planned it, thought about it, bought the
 12 fertilizer --

13 A. **Yeah. No, if I had been --**

14 Q. -- rented the truck --

15 A. **-- a juror and that had been proven to me, I would
 16 have probably imposed the death penalty.**

17 Q. That's an extreme kind of case. Probably a good
 18 example for, at least in your mind, for the death penalty?

19 A. **Yes.**

20 Q. Okay. And it is in most people's minds, too.

21 Absolutely.

22 Do you recognize the different between, say, a
 23 random killing or serial killing, people who go up and down
 24 the highways, pick up hitchhikers, rape, murder them, maybe
 25 10, 12, 15 at a time where it's a random act, it's a

1 acquaintance type of relationship. You recognize the
 2 distinction?

3 A. **I recognize the distinction, but I guess I don't
 4 understand. Is there a question?**

5 Q. No --

6 A. **Okay. I see that there is a difference --**

7 Q. Okay.

8 A. **-- in those types of killings, but -- if that's all
 9 you're looking for, yes, I see a difference.**

10 Q. Yeah, that's fair enough. That's fair enough.

11 With respect to a -- I'm sure you're a good
 12 listener, and you've listened throughout all stages of this
 13 trial. And I'm sure it was explained to you that the
 14 indictment has double homicide alleged in it; not one killing,
 15 but two. Two people were killed. And with respect to that
 16 allegation, also a burglary, also a robbery. Those things are
 17 alleged. Do you understand that there's going to be a trial
 18 in this case, and we don't admit -- we don't agree that has
 19 happened. There's going to be a full-blown trial on that. Do
 20 you understand that?

21 A. **Yes.**

22 Q. Okay. And I'm not advocating, I'm not stipulating,
 23 I'm not agreeing that this young man is guilty of that because
 24 that's still yet to be decided. But we've got to talk about
 25 punishment with you up front before you wind up on the jury.

1 Do you understand that?
 2 **A. Yes.**
 3 Q. Okay. Anything unclear about that?
 4 **A. No.**
 5 Q. Okay. Our law provides that we talk with jurors
 6 individually before we begin a capital murder case, so that's
 7 why we're doing this.
 8 Do you understand that the State would call (sic)
 9 evidence, and the State has the burden of proof in the case to
 10 prove guilt beyond a reasonable doubt as we discussed earlier
 11 and that, you know, we may put on some proof. We may not put
 12 on some proof. It just depends on how a case goes. Do you
 13 understand that?
 14 **A. Yes.**
 15 Q. And also, this young man has a Constitutional right
 16 not to testify. He can just sit here and remain silent, and
 17 that's not a circumstances that can be used against him. Do
 18 you understand that?
 19 **A. Yes.**
 20 Q. Do you have a problem with that?
 21 **A. To be perfectly honest, I don't know.**
 22 Q. Okay. Well, I've got to explore that with you, and
 23 I don't have a problem with you telling me that, okay? In
 24 fact, I'd have a problem if you didn't tell me that, and we've
 25 got to know this going in. We've got to know this going in.

1 I don't mean to beat a dead horse, but the law says -- the
 2 Constitution says that the accused has the right to remain
 3 silent, and then the Miranda Rights, as we watch on TV, say
 4 that anything you say can and will be used against you in a
 5 court of law. And obviously, if you climb on the witness
 6 stand and things don't go so well, then that's going to be
 7 used against you in a court of law. And so there's obvious
 8 strategic and tactical reasons why lawyers sometimes advise
 9 their clients not to take the witness stand. Is that fair
 10 enough?
 11 **A. Yes, that's fair.**
 12 THE COURT: Say, Mr. High, I'm going to ask you
 13 to remember that you're talking about Miranda, and I want to
 14 take about a five-minute recess. And I want to ask you not to
 15 discuss anything that you've been asked or anything that
 16 you've answered with the other two jurors that are present
 17 back there, and we'll have you back in in about five minutes.
 18 VENIREPERSON: Okay.
 19 THE BAILIFF: All rise.
 20 (Venireperson exits the courtroom.)
 21 (Recess taken.)
 22 THE COURT: Now, as I said before we took the
 23 break, we've moved everybody up who was scheduled for October
 24 1st -- from October 1st to tomorrow afternoon at 1:30, and
 25 that includes James Bryan, Number 149, roughly through Ann

1 Moore, 159, with some exceptions. There's one fellow on there
 2 named Robert Landry, who is Number 151, who is hoping to leave
 3 for Disney World in a few hours. And I understand that we
 4 have an agreement that it's okay to let him go to Disney
 5 World; is that correct?
 6 MR. HIGH: Yes, it is.
 7 THE COURT: Is that your desire, Mr. Cantu?
 8 VENIREPERSON: Yes, Your Honor.
 9 THE COURT: Is that the State's agreement?
 10 MR. SCHULTZ: Yes, sir.
 11 THE COURT: All right. Then Robert Landry,
 12 Number 151, is excused by agreement, and let's talk to
 13 Mr. Vogt some more.
 14 (Venireperson enters the courtroom.)
 15 THE COURT: All right, sir, please be seated.
 16 I believe we were talking about Miranda?
 17 MR. HIGH: Yes, sir.
 18 THE COURT: All right.
 19 Q. BY MR. HIGH: Mr. Vogt, we were talking about the
 20 defendant and him not -- him having a Constitutional right not
 21 to have to take the stand, not to have to testify in a trial,
 22 and I think you had some reservation about that, and I wanted
 23 to explore that further with you. Is that going to be a real
 24 problem? If -- you know, if you want to hear from the
 25 Defendant and he doesn't testify, is that going to be a

1 problem for you?
 2 **A. That's hard to say because it would probably depend**
 3 **on how the case has gone to that point.**
 4 Q. Right.
 5 **A. If I think there is convincing evidence that the**
 6 **prosecution has put on a case, I -- you know, I think that**
 7 **could potentially be an issue then.**
 8 Q. Well, I understand that. But are you going to
 9 expect the Defendant to testify, even if he has a
 10 Constitutional right not to testify?
 11 **A. No, I don't expect him to testify.**
 12 Q. Are you going to -- the judge is going to instruct
 13 you at the end of the trial that failure to testify is not a
 14 circumstance to be held against him.
 15 **A. Yes.**
 16 Q. Okay. Are you okay with that? Are you going to --
 17 **A. Am I okay with that instruction? Yes.**
 18 Q. You're not going to hold it against him that he
 19 didn't testify in the trial?
 20 **A. No.**
 21 Q. Sounds like you're not sure about that.
 22 **A. I guess I'm not exactly sure what you're trying to**
 23 **get at. I mean, I don't have a problem with him not**
 24 **testifying. No -- do I have a problem with that? No.**
 25 Q. Okay.

- 1 A. **If he doesn't want to get on the stand and defend**
 2 **himself, I don't have a problem with that.**
 3 Q. And you could still say -- consider the evidence,
 4 the evidence that you hear --
 5 A. **Uh-huh.**
 6 Q. -- and judge the evidence based upon whether it's
 7 credible and believable?
 8 A. **Uh-huh.**
 9 Q. And if you find that the evidence proves his guilt
 10 beyond a reasonable doubt, you could find that way?
 11 A. **Yes.**
 12 Q. Okay. And part of him not testifying, you're not
 13 going to say, well, look, if he had something to prove that he
 14 was innocent, he would have taken the witness stand? That's
 15 not going to be your thought process, is it?
 16 A. **I hope not.**
 17 Q. But you're not sure?
 18 A. **I'm not sure.**
 19 Q. In other words, there's a possibility that you could
 20 impute that as some evidence of guilt against him because he
 21 didn't take the witness stand?
 22 A. **Yes, that's possible.**
 23 Q. In other words, you would say to yourself --
 24 A. **I understand what the law says, and I think it could**
 25 **be -- that could be difficult, yes.**

- 1 Q. Okay, fair enough.
 2 I notice that you attend St. Andrew's Church in
 3 Plano. How often?
 4 A. **I think I indicated something there like, "not**
 5 **enough," or something like that, if I remember correctly.**
 6 Q. Okay.
 7 A. **And that's -- that's very accurate, not enough.**
 8 Q. Okay. Do you know many people there?
 9 A. **Not as many as I used to. I used to attend quite a**
 10 **bit more than do I now. I used to belong to that church**
 11 **before I left to go back to school, and then -- well,**
 12 **actually -- when I worked for PageNet, I actually left the**
 13 **state for about a year, so I probably didn't attend there for**
 14 **about two and a half or three years between being -- working**
 15 **with PageNet in Salt Lake City for a year and moving back to**
 16 **Texas. And when I moved back, of course, I moved to Bryan,**
 17 **Texas, to go to school, so I didn't attend for about two and a**
 18 **half or three years. So, I haven't attended as regularly as**
 19 **I've been back.**
 20 Q. Do you know Mr. Schultz who sits at the table over
 21 there? He attends there.
 22 A. **I do not know him.**
 23 Q. Okay. You indicate on your questionnaire that if a
 24 person is brought to trial on murder charges that person is
 25 probably guilty, and you said you were uncertain about that.

- 1 Why did you answer that way?
 2 A. **I'm sorry, repeat that again.**
 3 Q. Yeah. Let me let you look at it.
 4 A. **This question here (indicating)?**
 5 Q. Right.
 6 A. **If a person is brought to trial on murder charges,**
 7 **that person is probably guilty. I'm sure I answered it that**
 8 **way because of -- I personally believe that there is some**
 9 **reason for why someone is brought to trial. They've**
 10 **typically -- obviously, the police have had evidence to be**
 11 **able to arrest the individual. If a Grand Jury has heard the**
 12 **case, there is some circumstance that has led this person to**
 13 **be in the position that they're in, and that's why I answered**
 14 **that as I'm uncertain.**
 15 Q. I just want to explore this with you. The judge is
 16 going to instruct you at the end of the case that a Grand Jury
 17 indictment is not evidence of guilt, and also, you know --
 18 what the Grand Jury has done or what the police have done is
 19 not evidence of guilt. The fact that we're here is not any
 20 evidence of guilt, and that he's presumed innocent until he's
 21 proven guilty beyond a reasonable doubt. And so we've
 22 explained that burden of proof to you over and over again.
 23 A. **Yes.**
 24 Q. Is it still your opinion, though, that -- that if
 25 he's on trial for murder charges, he's probably guilty, or

- 1 something must have happened, or what is your opinion? I
 2 mean, are you going to consider a Grand Jury indictment
 3 evidence of guilt?
 4 A. **I know that it's not evidence of guilt.**
 5 Q. Okay.
 6 A. **I know that's what the law says.**
 7 Q. Uh-huh.
 8 A. **I don't know what the Grand Jury heard, though.**
 9 Q. That's right.
 10 A. **So, I -- I mean, I would base it on what I've heard.**
 11 **I mean, just because a Grand Jury made an indictment doesn't**
 12 **mean I would vote guilty automatically because of that.**
 13 Q. Fair enough. So you would not consider the
 14 indictment as evidence of guilt?
 15 A. **No, I would not.**
 16 Q. Okay.
 17 A. **It would not sway what I've heard in the court.**
 18 Q. Okay. With respect to these special issues, the
 19 probability that the defendant would commit criminal acts of
 20 violence that would constitute a continuing threat to society,
 21 you understand that by the time you get to that special issue
 22 you would have heard all the facts of the case, and presumably
 23 the jurors would have found the defendant guilty? And again,
 24 I'm not agreeing that's going to happen, but before you get to
 25 these issues there had to have been a finding of guilt. Fair

1 enough?

2 A. Yes.

3 Q. Okay. And I think it was explained to you that the

4 facts of the offense could be considered when answering this

5 first question, but there's probably going to be some other

6 evidence, too, probably from the State, maybe some from the

7 defense, okay? Here's my question: Because the jury had

8 found the defendant guilty of capital murder -- you know,

9 capital murder, are you going to consider that the Defendant

10 is automatically a future danger, or are you going to consider

11 all the evidence and decide? Do you understand my question?

12 A. Are you asking if I will automatically assume he's a

13 future danger?

14 Q. Yes, that's my question. And it's a hard question.

15 A. I don't know, to be perfectly honest. I mean, when

16 you say automatically --

17 Q. Yeah --

18 A. I mean -- I mean, if there's evidence in the

19 trial -- that comes out in the trial during that phase of the

20 trial where I believe that that individual would be a future

21 threat --

22 Q. I think you're on the right track.

23 A. -- I may automatically already know that.

24 Q. I think you're on the right track, but just because

25 the jury has convicted an individual of capital murder, for

1 instance --

2 A. Uh-huh.

3 Q. -- are you, as a juror, going to say, well, we have

4 this conviction here, you know. I know what the facts are in

5 the case, but we have this conviction here, the answer has got

6 to be yes to that question. Are you open to the idea that

7 maybe you know he may not be a future danger?

8 A. Yes, I think that's possible.

9 Q. Okay. So you're open to it?

10 A. Uh-huh.

11 Q. Absolutely. And lastly with respect to mitigation,

12 and a lot of people call it the humanitarian question. A lot

13 of people call it the last-look question where you guys take

14 one last look at the evidence, you take one last look at the

15 Defendant, you consider mitigating circumstances, and you

16 decide whether or not a life sentence is appropriate as

17 opposed to a death sentence. You're learning a lot of law

18 today, aren't you?

19 A. (Nods head.)

20 Q. Do you feel comfortable looking at those issues and

21 that question and performing the balancing test, trying to

22 decide if there's sufficient mitigation?

23 A. I think that would be more difficult because if I

24 felt -- if I was able to answer the first question yes, I

25 don't understand what kind of circumstances we'd really need

1 to answer that question no.

2 Q. Okay. Now, it tells you what kind of circumstances

3 you should consider. You know, it tells you that you should

4 consider the circumstances of the offense, the character and

5 background of the defendant, and his personal moral

6 culpability. And culpability, by way of explanation, is

7 similar to or means responsibility, personal moral

8 responsibility, like guilt, like remorse, like "I wish I

9 hadn't done this," like, "I did it, shouldn't have done it,"

10 that sort of thing, you know? In that light are you saying

11 that you're going to have a real hard time considering

12 mitigation if you find someone guilty of capital murder, and

13 you find that they're a future danger?

14 A. Once again, I could only go to an example. If --

15 I'm going to go back to the Polly Klaus case.

16 Q. Uh-huh.

17 A. If the man was a violent criminal and committed

18 those acts, and I believed for whatever reason that in that

19 instance that they presented innocent -- or presented evidence

20 that he would be violent, or could potentially commit criminal

21 acts of violence. There was a probability that he would do

22 that in the future, I -- it wouldn't matter to me how sorry he

23 was. His character -- I mean, I guess that goes in -- I mean,

24 I can't imagine that character isn't going to come into

25 answering the first question. I don't see --

1 Q. The character could come into answering that first

2 question there. It could. Some of the evidence could apply

3 to both questions.

4 A. I mean, anything is possible. Obviously, I don't

5 know what the circumstances would be, but I think if I was

6 able to answer Question One, the first question, yes, I, at

7 this point, don't see how I would answer the second question

8 no.

9 Q. Okay. So, deep in your heart, because that's what

10 we're really talking about, you know, the thing that helps us

11 make decisions -- you know, what's deep down inside of us.

12 Mitigation is really not of any consequence or issue to you,

13 especially if you say that a person is a future threat.

14 A. Yeah.

15 Q. Is that fair to say?

16 A. Yes.

17 Q. Okay. And your inability to considering mitigation

18 would substantially impair your ability to answer that second

19 special issue?

20 THE COURT: Could you ask that question one

21 more time?

22 MR. HIGH: Let me rephrase it because that

23 went by in a hurry.

24 Q. BY MR. HIGH: Your inability to consider mitigation

25 would substantially impair your ability to consider and

1 appropriately answer the second special issue?

2 **A. I think that's fair, yes.**

3 MR. HIGH: Okay. Judge, I'd pass the juror.

4 REDIRECT QUESTIONS

5 BY MS. FALCO:

6 Q. Just briefly, Mr. Vogt. Regarding these questions,
7 first of all, these questions are independent, just like the
8 first question is independent from the guilt-innocence burden.
9 If you find someone guilty, you've got to independently weigh
10 the evidence, and you understand that?

11 **A. I'm sorry. Say that one more time. I'm sorry.**

12 Q. These questions have to be looked at independently
13 and have to be answered independently just like if you find
14 somebody guilty of capital murder, you don't just
15 automatically come to the first question and say, yes, he's a
16 future danger. It's independent consideration. Basically
17 relooking at the evidence.

18 With regard to Question Number One, the future
19 danger question, if you find that he is a future danger and
20 you answer that yes, obviously again, the Legislature is
21 envisioning that there's got to be situations out there that a
22 jury could find someone guilty of capital murder, they could
23 find that he's a future danger, and get to this last
24 question -- this mitigation question and find that there is
25 sufficient mitigating evidence to warrant a life sentence.

1 mentally retarded or not. The defendant wanted the jury to be
2 able to consider his mental retardation as sufficient
3 mitigation because there are some jurors that say, yes, he's a
4 capital murderer; yes, he's a future danger, but I think
5 mental retardation is sufficient mitigation evidence that we
6 shouldn't kill someone. We shouldn't kill someone who's
7 mentally retarded, or borderline retarded. So that might be
8 an issue, where you could get that far.

9 So to be a qualified juror, obviously you have to be
10 able to look at that first question and answer that, and then
11 independently look at this second question, the mitigation
12 question, weigh all the evidence, without automatically
13 saying, oh, I'm going to get to that and answer it in a way
14 that results in death, but be able to look at the evidence.
15 And I know in your mind you've got the Polly Klaus killer in
16 your head. But what we're asking is, could you keep an open
17 mind and give fair consideration to the evidence that you
18 hear, if you get to the mitigation question, and if you do
19 hear sufficient mitigating evidence, and maybe you can't think
20 of what that might be right now, but if you heard it, could
21 you answer that question yes, resulting in a life sentence?
22 Could you do that?

23 **A. It's possible.**

24 Q. And that's all we're saying is that could you follow
25 the law? Could you keep an open mind -- and it may be, it's

1 And it could be that -- going back to the parent
2 whose child is killed. It could be that there's two killers,
3 and both these killers have a trial and they get off. And the
4 parent goes -- and perhaps they get all the way home. The
5 killers get all the way home before the parent can go after
6 them. And he breaks into one of them's home, and he kills
7 them. Well, that's capital murder because it's burglary --
8 killing in the course of a burglary; capital murder. And then
9 you get to the future dangerousness question, and you're like,
10 well, there's still one more killer out there, and if he got
11 out of jail, he might kill that one other killer. So, yeah, I
12 guess he could be a future danger.

13 And then you get to the mitigation question, and
14 you're like, but this man was still a good man. He was a
15 contributor to society. You look at the reason for the
16 killing and decide, but I think there's sufficient mitigating
17 evidence because of why he killed, because of his character.
18 There are -- the Legislature said there's got to be situations
19 like that.

20 Or maybe it's -- like a defendant name Penry. Penry
21 is a defendant. He's the whole reason we have this mitigation
22 question. He -- I don't know if you're a football fan or not,
23 but he actually killed Mark Mosely's sister, and the issue
24 there was whether or not he was mentally retarded. And there
25 were psychiatrists on both sides saying whether he was

1 only one situation out of a hundred that you would do it, but
2 as long as you could fairly answer the question because it may
3 be such that the evidence is bad enough, what that person did
4 is bad enough, what their criminal history is is bad enough,
5 no, there will never be sufficient mitigating evidence. And
6 that's okay, but just as long as you recognize there is that
7 situation out there where it's possible you could get to this
8 mitigation question and answer it yes -- say, yes, there is
9 sufficient mitigating evidence, even though he is a capital
10 murderer. Even though he is a future danger, there is a
11 situation where I could find sufficient mitigation and give
12 him a life sentence. Do you understand that?

13 **A. I understand what you're saying, and all I can say
14 is it's possible.**

15 Q. Okay. And if that situation came up, and you saw
16 the evidence that was sufficiently mitigating, could you
17 answer that question "yes," resulting in a life sentence?

18 **A. I think I could.**

19 Q. Okay. Now, with regard to failure to testify, and
20 we talked about it briefly before I passed you to Mr. High.
21 We talked about the burden of proof being on the State, and
22 the reason it's on the State is because we're the ones doing
23 the accusing, we should have to be the ones that have to do
24 the proving. And the Defense has the choice -- and granted,
25 it's human nature to want to hear both sides. I think we're

1 designed that way. We want to hear both sides. We're
2 curious. I mean, a lot of people, when they come in the jury
3 room, they're curious. They look over where the defendant is
4 sitting and say, I wonder what he did? And there's a lot of
5 things we're curious about. It's human nature, but the
6 question is, can you follow the law? And if you get to trial
7 and the State presents their case, and they prove it to you
8 beyond a reasonable doubt, or even if they -- if the defendant
9 does not testify, and you are instructed you are not to take
10 into consideration his failure to testify as evidence of
11 guilt, could you follow the law?

12 **A. Yes, I believe I could.**

13 **Q.** Okay. And there may be lots of reasons a defendant
14 chooses not to testify. They may think, the State didn't do
15 it. They didn't prove my case, and I'm not going to get up
16 there and help them any. Or it may be, people get very
17 nervous on the stand, and you seem pretty comfortable and
18 relaxed, but we've seen a lot of people up there. They get
19 very nervous. They're not saying anything wrong. They're not
20 doing anything wrong.

21 **A. Well, I'm glad I'm putting on a good show here.**

22 **Q.** But you understand sitting up there in the seat
23 being asked questions that are totally outside of your arena,
24 and there may be lots of reasons they decide not to get up
25 there on that witness stand. Basically, that law is set up so

RE-CROSS-QUESTIONS

1 **BY MR. HIGH:**

2 **Q.** Mr. Vogt, I know that you're thinking that we're
3 just probing you and punching you and picking at you, and I
4 apologize for that, but we've got to do it. That's our job.
5 And I notice that you're kind of squirming up there in your
6 chair, and you're shaking your head sideways, just -- you're
7 having a tough time with some of these questions. Is that
8 fair to say?

9 **A. That's fair.**

10 **Q.** Okay. You said that you would do your best to try
11 to go along with the failure to testify instruction, but you
12 cannot guarantee us that you would do that; can you?

13 **A. No, I can't guarantee you anything.**

14 **Q.** And you said that you're putting on a show up there,
15 I guess, to put it in your words.

16 **A. Oh, that was in reference that she thought I looked
17 comfortable, because I'm not comfortable.**

18 **Q.** Okay. Is this -- this is the issue, you know --
19 what we're talking about is how you feel. The failure to
20 testify is a real problem for you, and it would be real hard
21 for you to put that out of your mind with respect to
22 considering the evidence; is that fair to say?

23 **A. I'm sorry? Repeat that, please.**

24 **Q.** The Defendant's failure to testify --

1 you don't speculate, or think they must be guilty because they
2 didn't take the stand, and that's why we have that law.
3 And if you were so instructed, you could follow that law; is
4 that correct?

5 **A. I would do my best to do that.**

6 **Q.** You're not going to just disregard the law?

7 **A. No.**

8 **Q.** I mean, you're a law-abiding citizen?

9 **A. Try to be.**

10 **Q.** On your way up here when you passed the speed limit
11 signs, I mean, you didn't just intentionally speed up and
12 start going ten miles faster.

13 **A. No.**

14 **Q.** Most people tend to use that as a check to keep in
15 line. And in the same regard, I mean, the judge gives you an
16 instruction. That's the speed limit sign. I mean, you're not
17 going to automatically just disregard it? Here's the
18 instruction, here's what you're to do, and you're going to
19 follow that law?

20 **A. I would do my best to do that, yes.**

21 **MS. FALCO:** Thank you, Mr. Vogt. Pass the
22 juror.

23 **MR. HIGH:** Have a few more questions, Judge.

24 **THE COURT:** All right.

25 (No omissions.)

1 **A. Oh, okay.**

2 **Q.** -- would be a real problem for you with respect to
3 considering the evidence?

4 **A. That's just -- it's difficult to answer because I
5 don't know what's coming down the pike.**

6 **Q.** That's all it is. That's all I'm asking you, pure
7 and simple. The Defendant's failure to testify is a real
8 problem for you because you want him to, and if he doesn't
9 you're going to think, what's going on here?

10 **A. Uh-huh.**

11 **Q.** Is that fair to say?

12 **A. That is fair to say, but I could try to follow the
13 law.**

14 **Q.** I understand. I understand. You'll try, but you
15 can't guarantee it?

16 **A. No, I can't guarantee it.**

17 **Q.** And with respect to mitigation you said earlier that
18 voting yes to Special Issue Number One, that he's a continuing
19 threat to society, and you get to the mitigation question,
20 that mitigation really didn't matter to you, if they're a
21 continuing threat, right?

22 **A. I guess that -- it's possible there are
23 circumstances.**

24 **Q.** But didn't you say it really didn't matter to you?
25 Isn't that what you said?

1 **A. I did say that, yes.**
 2 Q. Okay. And didn't you also say that your inability
 3 to consider it would substantially impair your ability to
 4 consider mitigation and answer that question?
 5 **A. To answer that question yes for life imprisonment?**
 6 Q. Uh-huh.
 7 **A. Yes, I did say that.**
 8 Q. And that's true, right? That's true?
 9 **A. Yes.**
 10 Q. Okay.
 11 MR. HIGH: Pass the juror.
 12 THE COURT: All right. You may step down.
 13 (Venireperson exits the courtroom.)
 14 THE COURT: Is there a motion?
 15 MR. HIGH: Yes, Your Honor. We move for cause
 16 on the failure to testify. That's a law that we're entitled
 17 to rely on, and we're not going to get that from this juror, a
 18 failure to testify instruction. We also move on the -- his
 19 inability to consider mitigation with respect to Special Issue
 20 Number Two, in that his inability substantially impairs his
 21 ability to consider answering.
 22 THE COURT: All right. Motion is granted, and
 23 Mr. Vogt is stricken for cause. Do you all have an agreement
 24 on Mr. Lau?
 25 MR. HIGH: May I have just a moment, Your

1 Honor?
 2 (Brief pause in proceedings.)
 3 MS. FALCO: Yes, Your Honor. There's an
 4 agreement to excuse Mr. Lau, as long as that's acceptable with
 5 the Defendant.
 6 THE COURT: Is that your desire, Mr. Cantu?
 7 VENIREPERSON: Yes, Your Honor.
 8 THE COURT: Mr. Lau is stricken by agreement.
 9 And let's invite Melanie Iannizzaro to come in.
 10 (Venireperson enters the courtroom.)
 11 THE COURT: Ma'am, pronounce your last name.
 12 VENIREPERSON: Iannizzaro.
 13 THE COURT: Iannizzaro?
 14 VENIREPERSON: Iannizzaro.
 15 THE COURT: And I want to ask you, do you
 16 recall about a month ago when I had all 200 jurors here, I
 17 administered an oath.
 18 VENIREPERSON: Uh-huh.
 19 THE COURT: And the oath was to tell the truth
 20 in responding to any questions asked by the court or by the
 21 attorneys. Did you take that oath?
 22 VENIREPERSON: Yes, I did.
 23 THE COURT: All right. I just want to advise
 24 you that you're still subject to that oath. I thank you for
 25 coming in today. Please have a seat right here.

1 You're going to be the last juror that we talk to
 2 today, as you can imagine.
 3 VENIREPERSON: Oh, that guy is in there. Do I
 4 face you or --
 5 THE COURT: Well, I tell you what, I think
 6 Ms. Lowry is probably going to ask you questions first, so
 7 just talk to her.
 8 (No omissions.)
 9 DIRECT QUESTIONS
 10 BY MS. LOWRY:
 11 Q. Good, almost evening. I know it's getting pretty
 12 late, and I know you've been here for a while. I promise you
 13 we've been in here just as long as you've been back there.
 14 I just want to let you know kind of the point that
 15 we're at with these proceedings. We have 12 jurors at this
 16 point. With a case of this magnitude -- this serious, it's
 17 going to take a little bit of time the way this one is going
 18 to. We get two alternates, and those are for instances where
 19 maybe one of the first 12 gets sick and something happens, and
 20 they can't continue deliberating.
 21 **A. Uh-huh.**
 22 Q. Your job, as an alternate, would be just to sit,
 23 listen to the evidence, just like you were one of the first 12
 24 jurors. You're going to be here every day. You're going to
 25 hear everything that they hear, all of that stuff. And in the

1 instance that something does happen, you would take over one
 2 of the places of the juror. In the instance that something
 3 doesn't happen, whenever it's time for them to start
 4 deliberating, you don't deliberate with them.
 5 **A. Oh, I see. Okay.**
 6 Q. Just briefly, I know it was just Monday that I
 7 visited with you. As you recall, my name is Jami Lowry. I'm
 8 one of the Assistant District Attorneys here in Collin
 9 County. Seated to my right is Gail Falco. She's one of the
 10 other Assistant District Attorneys in our office. Directly to
 11 my left is Ivan Cantu.
 12 THE DEFENDANT: Good afternoon.
 13 VENIREPERSON: Hi.
 14 Q. BY MS. LOWRY: And directly to his left is Don High,
 15 and I don't believe you met him on Monday.
 16 **A. Yeah, different attorney.**
 17 Q. He's also one of the defense counsels. Mr. Matt
 18 Goeller was the one that was here on Monday, and he's not
 19 present today.
 20 VENIREPERSON: Nice to meet you.
 21 MR. HIGH: Nice to meet you.
 22 Q. BY MS. LOWRY: As I recall from Monday, and now that
 23 you've met Mr. High you don't know any of us; is that correct?
 24 **A. Correct.**
 25 Q. And if you've seen any of us, or if we've seen you,

- 1 it was something so casual that nobody really remembers it?
 2 **A. Right, right.**
 3 Q. I know it's been over a month since the first time
 4 you came in, and you filled out your questionnaire, and that's
 5 basically what we're going to be talking to you about today.
 6 And as I explained to you on Monday, we're not going to talk a
 7 lot about the guilt-innocence phase. Not that it's any less
 8 important, not that we think that it's going to go by so fast
 9 that nobody is even going to realize it was there, anything of
 10 that nature. Basically our position is, our case is either a
 11 good and righteous case and you're going to find him guilty,
 12 or you're not.
 13 **A. Right.**
 14 Q. We understand that most people have an understanding
 15 of what the law is as far as what the burden of proof is. You
 16 know that the State has to prove our case, and we have to
 17 prove it to you beyond a reasonable doubt?
 18 **A. Right.**
 19 Q. Nobody is going to tell you what that means. You're
 20 going to know what you think beyond a reasonable doubt is.
 21 **A. Right.**
 22 Q. You're going to basically get back there, take the
 23 evidence that we've given you, decide if you have a doubt,
 24 first of all, and if you do have a doubt, is it reasonable?
 25 **A. Uh-huh.**

- 1 Q. And that's going to be up to, you know, how you deal
 2 with that as a juror. The other basic laws that go along with
 3 the guilt-innocence phase are the defendant has a right not to
 4 testify. He also has a right to testify. Either way it's up
 5 to him. That is not something that you can take either way as
 6 a circumstance of his guilt.
 7 **A. Right.**
 8 Q. It's up to us. We did the accusing in this case,
 9 and it's only right that we prove to you beyond a reasonable
 10 doubt that he's guilty.
 11 **A. Right.**
 12 Q. And it's completely his right to sit over there and
 13 say, you know what, State, prove it.
 14 **A. Uh-huh.**
 15 Q. And that's not something you're going to hold
 16 against him, is it?
 17 **A. No.**
 18 Q. And it's human nature to maybe want to know what the
 19 other side is, or maybe want to know certain things, but that
 20 may just not happen.
 21 **A. Okay.**
 22 Q. And we have to be sure that's not something that
 23 you're going to weigh into whether or not he's guilty.
 24 **A. Right. No, I don't think I would.**
 25 Q. As far as capital murder goes, did you have an

- 1 understanding before Monday of what capital murder was?
 2 **A. No, I did not.**
 3 Q. And I think simply by calling it capital murder,
 4 some people know what it means. Some people just think that
 5 maybe it's something that deals with only police officers, and
 6 that it, you know, is an automatic death penalty-type case,
 7 and that's just not the case.
 8 **A. Uh-huh.**
 9 Q. As I told you, it's murder plus some aggravating
 10 factor that makes it capital.
 11 **A. Right.**
 12 Q. What we're specifically talking about in this case
 13 are three different types of capital murder; and that is the
 14 double homicide, murder in the course of burglary, or murder
 15 in the course of robbery.
 16 **A. Uh-huh.**
 17 Q. And you may recall on Monday I asked the question,
 18 do you think those three types of cases are cases that are
 19 appropriate to have a death penalty as an option?
 20 **A. Uh-huh. Oh, are you asking me that now?**
 21 Q. Yes.
 22 **A. I suppose. Depending -- on a case-by-case basis, I**
 23 **suppose.**
 24 Q. And as I explained to you, that's why we have the
 25 range of punishment.

- 1 **A. Right.**
 2 Q. That's why you have a life sentence versus a death
 3 sentence. That's why you have a range of punishment on
 4 murder, because that's what it depends on, is the
 5 circumstances.
 6 **A. Exactly, right.**
 7 Q. But if we prove to you that a murder was committed
 8 during a burglary, or if we prove to you that a murder was
 9 committed during a robbery, or even a double murder, and you
 10 believed beyond a reasonable doubt that he's guilty of that
 11 offense, can you find someone guilty of capital murder?
 12 **A. Yes.**
 13 Q. Once you've found someone guilty of capital murder,
 14 in the event that you do, as I said, you go on to the special
 15 issues. The first one that you come to is the question there
 16 on top. Do you recall seeing that on Monday?
 17 **A. Uh-huh.**
 18 Q. If you'll just kind of read that and refresh your
 19 memory.
 20 **A. Uh-huh.**
 21 Q. We call that question the future danger question.
 22 As I told you, it's our position that we're not asking you to
 23 predict the future. We're basically asking you to look at the
 24 present because it's asking you is there a probability that he
 25 would commit criminal acts of violence that would constitute a

1 threat? It's not asking you, is he for sure going to? It's
 2 not asking for a certainty. It's basically asking you, is
 3 there a probability that he has that characteristic or that
 4 trait of dangerousness?
 5 **A. Uh-huh.**
 6 **Q.** Does he have that about him in his personality?
 7 **A. Okay.**
 8 **Q.** And does that look like a question that you think,
 9 based on the evidence, you could answer?
 10 **A. Oh, I could -- yeah, I could answer the question.**
 11 **Right.**
 12 **Q.** And there may be some instances where you need just
 13 the circumstances of the offense to answer that question.
 14 **A. Uh-huh.**
 15 **Q.** But there may be some circumstances where you need
 16 more than just the circumstances of the offense. Go ahead.
 17 **A. May I ask a question?**
 18 **Q.** Uh-huh.
 19 **A. Okay. Answering -- okay. Number One, the first**
 20 **question, answering these are the ones that decide life versus**
 21 **death, right?**
 22 **Q.** Right.
 23 **A. Okay. Okay. I see what you're saying, okay.**
 24 **Q.** Am I going -- talking too fast?
 25 **A. No, no, no. You're not, no. I'm thinking on**

1 **different levels here, and I'm trying to decide if I answer**
 2 **yes to that first one, then that's one step closer to death.**
 3 **Q.** Right.
 4 **A. And I -- philosophically I don't even know if you**
 5 **care at this point, but I don't necessarily know that I would**
 6 **equate a "yes" on the first one with death personally, and I**
 7 **know that's not what you're asking me at this point. So I'm**
 8 **just trying to see if logically -- if I answer this one yes,**
 9 **then I go on to the next one. If I say no to that one, then**
 10 **it's kind of kicked out. Is that --**
 11 **Q.** Well, then it's --
 12 **A. It would be life versus death?**
 13 **Q.** -- generally people say no to that first question
 14 in the last sentence.
 15 **A. Okay. I'm sorry. I'm keeping up. I'm just --**
 16 **Q.** No, that's fine. If at any point -- I mean, it
 17 doesn't matter if you stop me in mid-sentence --
 18 **A. All righty. All righty.**
 19 **Q.** If you don't understand something, or maybe you just
 20 want to go -- want me to back up. We've been talking about
 21 this for almost six weeks now, so it's kind of hard to think
 22 about, you know, if I've gone over it enough with you --
 23 **A. Right.**
 24 **Q.** -- versus what we did with the last ten people.
 25 **A. All righty. Fair enough.**

1 **Q.** So don't feel bad about asking questions.
 2 **A. Okay.**
 3 **Q.** And actually what you said about not equating an
 4 answer with the first sentence with a death sentence, that's
 5 not what we want you to do, anyway.
 6 **A. Right.**
 7 **Q.** Because we're not asking you whether or not you want
 8 to give him life or death.
 9 **A. Correct.**
 10 **Q.** We're asking you to look at the evidence and answer
 11 these questions based on that, without thinking about whether
 12 or not it's going to be a life sentence or a death sentence.
 13 **A. All righty.**
 14 **Q.** What the Legislature has envisioned by propounding
 15 this question and submitting it to the jury is that there are
 16 circumstances out there where a person could be found guilty
 17 of capital murder, but maybe is not a future danger.
 18 **A. Right.**
 19 **Q.** And that's why they give you this separate question.
 20 **A. Right.**
 21 **Q.** And they ask you to look -- you can certainly look
 22 at the circumstances of the offense, and any other evidence
 23 that is presented during the punishment phase in answering
 24 this question.
 25 **A. Right.**

1 **Q.** And to be a qualified juror, you just have to be
 2 able to make an independent determination of whether or not
 3 someone is going to be a future danger without saying yes,
 4 he's going to be a future danger just because I found him
 5 guilty. Does that make sense?
 6 **A. Yes.**
 7 **Q.** And is that something you can do?
 8 **A. Yes.**
 9 **Q.** We talked a little bit about the wording of that
 10 question. The probability, that's going to be up to you as a
 11 jury, what you think that is.
 12 **A. Right.**
 13 **Q.** As I said, the law states it's something more than a
 14 possibility.
 15 **A. Uh-huh.**
 16 **Q.** Certainly something less than a certainty.
 17 **A. Right.**
 18 **Q.** So it's something in between there, and what
 19 definition you give that is up to you as a jury. Most people
 20 tend to think that it's more likely than not, because that's
 21 just probable.
 22 Criminal acts of violence, that's up to you, also,
 23 as a jury to decide what you think a criminal act of violence
 24 is.
 25 **A. Uh-huh.**

1 Q. And what you want to take into consideration when
2 determining whether or not a person has that trait for being
3 dangerous. Such as things like running from the police, maybe
4 shoplifting, things of that nature, may not necessarily be
5 criminal acts of violence, but they may give you some insight
6 into whether or not a person is dangerous.

7 **A. Right.**

8 Q. Just maybe out of their sheer disregard for
9 authority and the law --

10 **A. Uh-huh.**

11 Q. -- things of that nature. And it's up to you what
12 you want to take into consideration.

13 **A. Right.**

14 Q. And as far as society goes, at this point you've
15 found him guilty of capital murder. He's either going to
16 prison, or he's going to have a death sentence, so it
17 certainly includes prison. It's debatable as far as exactly
18 what the definition is because there is no definition. My
19 view is that it means all of society because he may be in
20 prison, but we support the prisons, we pay for the prisons, we
21 send people from the outside world in to work in those
22 prisons. We send doctors in when people are sick there, and
23 then you have the circumstances where they can escape, things
24 of that nature.

25 So, when you're looking at that, it's not

1 question. Mitigation is not going to be defined for you,
2 either. Most people think it means to lessen, maybe somehow
3 reduce.

4 What this question is asking you basically is to
5 take one last look at all of the evidence. Is there something
6 about, whether it be the circumstances of the case, or
7 something about this defendant, his background, his character,
8 something of that nature, something that makes you think that
9 a life sentence is more appropriate than a death sentence?

10 **A. Uh-huh.**

11 Q. And when you talk about this question, this
12 mitigation question, it's up to you what you think is
13 mitigating and what you think is aggravating. No one can tell
14 you this has to be mitigating; this has to be aggravating.
15 Nobody is going to give you a list of what that is. And as
16 far as character and background go, that ranges everywhere
17 from the worst character to the best character, and the worst
18 background to the best background. And you may not, as a
19 juror think that, you know, just because someone has had a bad
20 background or has bad character, you may think, well, I'm not
21 going to consider that mitigating, and that's fine. It's up
22 to you to decide how you're going to weigh the evidence.

23 **A. Uh-huh.**

24 Q. But to be a qualified juror, you have to keep an
25 open mind before you hear the evidence that you will give all

1 necessarily asking you can he safely be held in prison, but
2 whether or not -- like I said, he's got that characteristic
3 for dangerousness without regard to where he is.

4 **A. Right.**

5 Q. And is that, like I said, a question that you could
6 answer based on the evidence?

7 **A. Yes.**

8 Q. And do you feel if you found someone guilty of
9 capital murder, once you've heard all of the evidence you
10 could answer this question "yes" if you thought that -- if we
11 proved to you beyond a reasonable doubt that the person was a
12 future danger, could you answer that question yes?

13 **A. Yes.**

14 Q. And on the flip side of that, if we didn't prove to
15 you beyond a reasonable doubt that the person was a future
16 danger, could you answer that question "no", knowing that it
17 would result in a life sentence?

18 **A. Yes, I could.**

19 Q. Am I talking really fast?

20 **A. No. I'm from Ohio. I talk really fast, and I hear
21 really fast, so you're fine.**

22 Q. The court reporter is kind of looking at me, and so
23 I tend to do that sometimes.

24 If you've answered this question yes, you then go
25 on to the second special issue, which we call the mitigation

1 of the evidence meaningful consideration when you're deciding
2 whether or not it's mitigating, or not.

3 **A. Right.**

4 Q. And can you do that?

5 **A. I believe so, yes.**

6 Q. And I'm not going to try to pronounce your name
7 because I know I'm not going to get it right, so if you'll
8 tell me --

9 **A. Iannizzaro.**

10 Q. Iannizzaro?

11 **A. Uh-huh.**

12 Q. Okay. Ms. Iannizzaro, why is it that you support
13 the death penalty?

14 **A. Did I put that I support it?**

15 Q. Yes.

16 **A. Okay. First of all, let me say that it's real hard
17 with yes and no questions.**

18 Q. Right.

19 **A. I wouldn't say necessarily I support it in every --
20 in every case, but I do think that in certain circumstances it
21 is a necessary part of the law.**

22 Q. Okay. And I know that you didn't wake up this
23 morning and -- were just truly excited about the fact that --
24 oh, did you know this morning you were coming in?

25 **A. Yeah, I found out last night.**

1 Q. I know you didn't wake up this morning saying, you
2 know what, I'm going down today, and I may get the chance to
3 give someone the death penalty. And I don't think anyone in
4 this room woke up this morning excited about the process. We
5 all wish that we lived in a world that we didn't have to do
6 this.

7 A. Right.

8 Q. To be a qualified juror, basically you don't have to
9 be a person that would vote for the death penalty in every
10 case, and if you were a person that would vote for the death
11 penalty in every case, you couldn't sit on that jury.

12 A. Uh-huh.

13 Q. Just like if you were a person who would never vote
14 for the death penalty --

15 A. Right.

16 Q. -- you couldn't sit on the jury. It's up to you how
17 many times you would or would not vote for the death penalty,
18 and that's completely your decision as a juror, as long as you
19 know that there are circumstances out there, and that you will
20 fairly weigh the evidence and answer the questions the way the
21 Legislature intended this process to work.

22 A. Uh-huh.

23 Q. I see in your questionnaire that you have relatives
24 who have either worked for the deputy sheriff or are police
25 officers?

1 A. Yes, I do.

2 Q. Is there anything about that relationship or
3 anything that they've told you that would cause you to weigh
4 the evidence any differently or maybe unfairly in this case?

5 A. I don't believe so. They both tend to be very jaded
6 on people, in general. But I don't think this case -- not
7 that I know much about the case, but I don't believe so. I
8 don't believe so.

9 Q. Because certain people that have relatives who work
10 for law enforcement, things like that, maybe tend to lean a
11 little bit more towards those types of people because you know
12 those people, and you respect those people.

13 A. Yeah.

14 Q. As far as witnesses in this case, you know, it's a
15 criminal case. Obviously, we're going to have police officers
16 as witnesses.

17 A. Okay.

18 Q. What you have to be able to do as a juror is not to
19 start them out at any higher level of credibility simply
20 because they're a police officer. Does that make sense?

21 A. Oh, definitely.

22 Q. You may put more weight on their testimony because
23 of their experience, because of their background, because of
24 their training, and that's completely up to you as a juror, as
25 long as when they walk through the door, you're not

1 automatically going to believe them over some other civilian
2 juror -- I mean, witness. Does that make sense?

3 A. Oh, yes. And having grown up with -- around a
4 number of them, I know there are good ones and bad ones, so...

5 Q. As far as law enforcement goes, there's absolutely
6 nothing wrong with someone having strong feelings about law
7 enforcement and wanting the law to be enforced.

8 A. Right.

9 Q. We all live in this society. We all want that, so
10 there's not anything wrong with that as long as you're going
11 to hold us to our burden and weigh all the witnesses the same.

12 A. Right.

13 Q. I see that you have a vacation planned for the week
14 of Thanksgiving, and although we're taking a really long time
15 with this, I don't think we're going to run into that week.

16 Also, on your questionnaire, it gave you the page
17 where it gave you some words and asked you to finish the
18 sentences.

19 A. Okay.

20 Q. And one of them are prosecutors, and you put have an
21 uphill battle. What -- can you kind of give me some insight
22 on that?

23 A. Well, obviously because you're the one with the
24 burden of proof, and although my firsthand knowledge of the
25 courtroom procedure is somewhat limited, I tend to think

1 that -- how do I say it? I think that the law is weighed to
2 defend -- or not to defend. I suppose to watch out for the --
3 to protect -- that's the word -- to protect the individual and
4 rights thereof, so I think it tends to be more of a battle on
5 your end as opposed to the defense attorneys.

6 Q. Right. And that's basically what the burden of
7 proof means.

8 A. Uh-huh.

9 Q. You know, that we start off doing the accusing, and
10 we have to make it up to a certain point with our evidence and
11 with our proof to where you know that he's guilty.

12 A. Right.

13 Q. And if we don't do that, then they are entitled to a
14 verdict of not guilty.

15 A. Uh-huh.

16 Q. Is that also something you can do? If we don't
17 prove it, can you find him not guilty?

18 A. Oh, yes, definitely.

19 Q. At this point do you have any other questions for
20 me? Anything that you need to know?

21 A. I don't believe so.

22 THE COURT: All right.

23 MS. LOWRY: Thank you for your time. Pass the
24 juror.

25 VENIREPERSON: Thank you.

1 THE COURT: Mr. High.
 2 MR. HIGH: Thank you, Judge.
 3 CROSS-QUESTIONS
 4 BY MR. HIGH:
 5 Q. Ms. Iannizzaro?
 6 A. **Very good, you got it.**
 7 Q. Jami helped me.
 8 My name is High, Don High, and she covered a lot of
 9 stuff with you so -- and she did a great job, so maybe I can
 10 just cover a few more things with you, and we'll be done.
 11 A. **That's fine.**
 12 Q. On your questionnaire it says death penalty -- are
 13 you in favor of the death penalty, and it says yes. Please
 14 explain your answer: I believe in a few cases that a person
 15 can never be rehabilitated and will never be a normal member
 16 of society. Some actions are so incredibly unforgivable that
 17 death is the only fair retribution.
 18 A. **God, I sounded so -- I said that?**
 19 Q. Are you okay with my reading of it?
 20 A. **Yeah. That was nice. I sound so profound.**
 21 Q. And incidentally, I talk much slower than Jami, and
 22 probably slower than you.
 23 A. **Yeah, I'm sure.**
 24 Q. I apologize for that.
 25 A. **No, no, that's fine.**

1 Q. I'm from Texas.
 2 A. **No, that's fine.**
 3 Q. As a defense attorney, do I have a reason to be
 4 overly concerned about that comment or -- you know, sitting
 5 where I am --
 6 A. **Oh, yeah.**
 7 Q. -- defending this young man, is there anything more
 8 I need to know?
 9 A. **I don't know the circumstances of the case, so I**
 10 **don't know if you've got something to be --**
 11 Q. Okay.
 12 A. **I guess you're asking for more information about it?**
 13 Q. I guess that's what I'm doing. Right.
 14 A. **You know, I never really thought about my**
 15 **philosophies on this until recently, and so I've been delving**
 16 **into exactly what I believe, and I guess that I believe that**
 17 **there are very few really evil people in the world, and maybe**
 18 **we should save that for the truly evil people.**
 19 Q. Okay. Do you think that --
 20 A. **And I don't, you know.**
 21 Q. That's exactly what I was after. I was looking for
 22 a little more clarification on that.
 23 A. **I believe that there are people that do horrendous,**
 24 **horrible, despicable things, and there are horrendously,**
 25 **horrible, despicable people, and I guess maybe it would just**

1 **be a personal -- once confronted with all the issues, it would**
 2 **have to come from inside me as to whether or not I thought**
 3 **that it was to point of -- you know, if they enjoyed it or if**
 4 **they --**
 5 Q. Sure.
 6 A. **I don't know. There would be just a thousand**
 7 **different variables that probably come into play that would**
 8 **make me decide whether or not a person was, what I'm quoting,**
 9 **as being evil enough to deserve that.**
 10 Q. Listening to you talk, I think of Timothy McVeigh.
 11 That's kind of who I'm thinking of.
 12 A. **Really?**
 13 Q. Does that fit?
 14 A. **Or Mr. -- I guess I wouldn't say "Mr." Bin Laden,**
 15 **you know, and I can think of a few others, but people that**
 16 **would kind of -- I hate to use this term. I won't use this**
 17 **term. I don't know what other term to use. Get something out**
 18 **of it, get kind of --**
 19 Q. A thrill?
 20 A. **Get a thrill out of the kill.**
 21 Q. Well, that's true. There are people out there.
 22 A. **And that's kind of what I --**
 23 Q. That's real perverted and strange.
 24 A. **Yeah. So I could -- yeah. I could require the**
 25 **death penalty if it was shown to me that the person kind of**

1 **got a little joy out of it.**
 2 Q. Okay. And also there are -- I mean, we can go on
 3 and on about people like Jeffrey Dahmer and Manson back in the
 4 '60s. He clearly got a thrill out of it. And I read lately
 5 there are some hitchhikers -- there's a female that was
 6 arrested in Florida for picking up hitchhikers and just
 7 killing them, eight, ten of them.
 8 A. **People like that. That's kind of where I am.**
 9 Q. Is that kind of where you are?
 10 A. **Uh-huh.**
 11 Q. Okay. That helps me a lot. I appreciate that. And
 12 there are other cases, on page 2 you circled, I believe --
 13 when we're talking about life confinement, it says, "I believe
 14 that life confinement in prison is appropriate in some capital
 15 murder cases, and I could return a verdict resulting in life
 16 confinement in a proper case."
 17 A. **Uh-huh.**
 18 Q. And I take it those people that get a thrill out of
 19 killing, they're not going to get the life confinement?
 20 A. **Oh, no.**
 21 Q. But other folks might have a shot at it, I guess?
 22 A. **Right.**
 23 Q. Do you recognize the difference between a serial
 24 killing, like I'm talking about in Florida where it's over and
 25 over and over again, or Dahmer, over and over and over again,

1 as opposed to a situational killing, you know, like you're in
2 a barroom and there's a fight. Somebody goes outside and
3 somebody gets stabbed and murdered, you know, it's relational.
4 They know each other, and there's an argument and somebody
5 dies. Or maybe a husband and wife situation where the wife
6 has been beaten for years, and she can't take it anymore, and
7 so she stabs the husband.

8 **A. Do I -- are you asking me if I see the difference?**

9 Q. Do you recognize the difference?

10 **A. Oh, yeah.**

11 Q. And obviously the relational -- where there's some
12 relationship or just a situational killing, that would be much
13 different than the other random, serial-type killing in your
14 mind. Is that fair to say?

15 **A. That would be different, yes.**

16 Q. Okay. Those folks in a situational killing, would
17 you say that they'd have a better shot at life confinement
18 than somebody who does it over and over again and gets a
19 thrill out of it?

20 MS. LOWRY: Excuse me, Your Honor. I'm going
21 to object just to him attempting to pin her down on a certain
22 set of facts, where she might have a better shot of giving a
23 life sentence or a death sentence, whether or not -- depending
24 on the facts of the case. Does that make sense?

25 THE COURT: Yeah. I'll sustain the objection.

1 Q. BY MR. HIGH: Okay. What I'm trying to find out
2 from you if you recognize the difference, and I'm trying to
3 find out, you know, based upon your comment that you said
4 earlier that it sounds like the thrill seeker, the serial
5 killer, those are the ones that you're going to reserve the
6 death penalty for. Is that fair enough?

7 MS. LOWRY: Your Honor, I'm going to object
8 once again to him trying to commit her to a certain set of
9 facts, that she's going to reserve the death penalty for.

10 THE COURT: Sustain the objection.

11 Q. BY MR. HIGH: Okay. You tell me -- let's go back to
12 what you said. A person can never be rehabilitated and will
13 never be a normal member of society. Some actions are so
14 incredibly unforgivable death is the only fair retribution.
15 Tell me again what you think on that.

16 **A. I think we need to be careful of how we use the**
17 **death penalty. I think that -- I think that there are bad**
18 **people. I think that there are people that do really stupid**
19 **things and should pay a price for it. I think that -- I think**
20 **that each case -- you know, honestly it's hard for me to just**
21 **sit here and give you a black-and-white answer.**

22 Q. Absolutely.

23 **A. It would really depend on, you know, the person and**
24 **what led up to it, and did the person -- it would -- there**
25 **would just be a million different variables. I don't know**

1 that I could --

2 Q. You're doing great. Keep going.

3 **A. It would really depend. I don't know -- maybe if**
4 **you asked me again, what do I mean by that? I guess on a**
5 **case-by-case basis if I sat over a thousand trials, I would**
6 **have to hear them, and maybe there would be -- each one I**
7 **would have to look at it separately to decide whether or not I**
8 **thought what had been done was bad enough and horrible enough**
9 **to constitute death.**

10 Q. Okay. Okay. Now, let me let you look at your
11 questionnaire because I'm --

12 **A. My writing.**

13 Q. Page 5.

14 **A. My writing. Uh-oh. I hope I can read it.**

15 Q. This and this.

16 **A. Oh, yeah, this is bad. All righty. Let me read my**
17 **own question first to myself.**

18 **If past arrests are not admissible for the**
19 **prosecution, then they should not be used to define the**
20 **terms/conditions of that single crime. All right. Let me**
21 **read that again because I don't know if I understood the**
22 **question now. Yeah. I agree.**

23 Q. You lost me?

24 **A. Do you want me to read the question?**

25 Q. Yeah. That would be great. Let's do that.

1 **A. Okay. That will help me, too. "The law in the**
2 **State of Texas says that a person convicted of a capital**
3 **murder can receive the death penalty solely because of the**
4 **facts and circumstances of the crime, even if he" -- it should**
5 **say or she -- "has committed no other crimes. Do you agree**
6 **with this law? Yes, I do." Yes, I do.**

7 Q. Okay. And then keep going. What did you say?

8 **A. If past -- I don't understand the answer, but I**
9 **understand the question. "If past arrests are not admissible**
10 **for the prosecution then they should not be used to define the**
11 **terms/conditions of that same crime." I don't understand my**
12 **answer, but I can tell you --**

13 Q. Okay.

14 **A. -- that, yes, I do think that if someone does**
15 **something so despicable and evil enough, that should be --**
16 **death should be a possible punishment. I don't know what the**
17 **other one means.**

18 Q. Fair enough. I just want to make sure I wasn't
19 missing something important.

20 "Do you believe the death penalty is applied fairly
21 in Texas? No." Let's see what this one says.

22 **A. Although I don't know much about it because I'm**
23 **from Ohio, that's my disclaimer. I haven't been here long. I**
24 **have heard Texas is overly-liberal on this application. I**
25 **think I heard recently of a person on death row that committed**

1 **the crime as a minor. I'm not sure that I agree.**
 2 Q. Okay. That's fair enough. Thank you so much.
 3 We've had a run on Ohio people.
 4 **A. Lucky you.**
 5 Q. Ohio is a good place. I've been there.
 6 **A. It is a good place.**
 7 Q. Obviously, when I get someone that -- on the jury
 8 panel that has relatives in law enforcement, I want to make
 9 sure that I cover that, and make sure there's not any problem
 10 there, and I don't think you're in this. But if y'all were
 11 sitting down at Thanksgiving dinner, and they found out that
 12 you are working on -- or sat on a capital murder case --
 13 **A. Uh-huh.**
 14 Q. -- and it came up that you turned somebody loose, is
 15 that a problem? I mean, would you have trouble saying, look,
 16 Mom, or look, Sis, I turned somebody loose? Are you going to
 17 have to tell them, look, I did my job. I found them guilty
 18 and I gave them the death penalty. Is there any pressure?
 19 **A. Is there any pressure to give them the death**
 20 **penalty?**
 21 Q. Or find them guilty?
 22 **A. It would certainly be an interesting conversation.**
 23 Q. Uh-huh.
 24 **A. Especially, like I said, my sister, God bless her,**
 25 **is 25 and cute as a Barbie and just tainted and jaded as all**

1 **get-out. My mother left, so it would be -- I wouldn't get a**
 2 **turkey thrown at me or anything. I mean, it would be an**
 3 **interesting conversation, but I argue with them all the time**
 4 **anyway, over everything, so I don't think they'd necessarily**
 5 **disown me or anything --**
 6 Q. Okay.
 7 **A. -- either way.**
 8 Q. So that's not a consideration. You're going to do
 9 what's right based on the evidence?
 10 **A. Definitely.**
 11 Q. And they're going to have to bear the consequences?
 12 **A. Definitely.**
 13 Q. And you're going to have to get the turkey thrown at
 14 you, if that's what the evidence says.
 15 **A. Well, lucky me, they won't be here for Christmas.**
 16 Q. Okay. I'm comfortable with that. I feel
 17 comfortable with that.
 18 **A. Okay.**
 19 Q. Unless there's something else you want to tell me,
 20 and I trust you, and I believe that completely.
 21 Christy, she's the police officer, age 25, how about
 22 that? I'll bet she's got an interesting job, interesting
 23 career.
 24 **THE COURT: Go ahead. We're going to work**
 25 **until 6:30, and then we'll have this witness -- this juror**

1 back tomorrow.
 2 **MR. HIGH: Thank you, Judge.**
 3 **THE COURT: All right. Go ahead.**
 4 Q. **BY MR. HIGH: You also indicated -- where did you**
 5 **go to college?**
 6 **A. Kent State University in Ohio.**
 7 Q. Wow, that's where the --
 8 **A. Four dead in Ohio. Yes, that's it. That's the**
 9 **place.**
 10 Q. And I guess that's a shame that it has that
 11 reputation because --
 12 **A. Yeah, really. It does, but on the other hand**
 13 **everybody knows it. So --**
 14 Q. Okay.
 15 **A. -- it's kind of nice. I can go anywhere in the**
 16 **world, and people have heard of it.**
 17 Q. And you minored in psychology?
 18 **A. Minor in psyche.**
 19 Q. What was your major in?
 20 **A. Rhetoric and communications.**
 21 Q. Excellent, okay. Took a lot of speech classes?
 22 **A. Yes, I did; argumentation and that type of thing.**
 23 Q. I notice that you've had some alcohol problems in
 24 the family?
 25 **A. Oh, I thought you meant -- no.**

1 Q. I'm talking about your stepfather and brother?
 2 **A. Yes. Grandfather, I've got a few of them.**
 3 Q. Okay. Does that impact you in any way, one way or
 4 the other? Does that affect your decision-making or views, or
 5 is that just somebody else has the problem or --
 6 **A. Honestly, which, of course I -- honestly -- how do I**
 7 **say this in -- less so with my brother, but more so with my**
 8 **stepfather, I tend to have a lower regard for -- isn't that**
 9 **horrible? I don't consider alcoholism a disease. I kind of**
 10 **think we have free-will. You have -- if it was a disease**
 11 **there wouldn't be people in AA that hadn't drunk in --**
 12 **anything to drink in years. So I tend to be kind of more**
 13 **harsh than the liberal attitude of people these days, feeling**
 14 **sorry for people with alcohol problems.**
 15 Q. Okay. You realize that some people go to prison
 16 because they have an alcohol problem, because they continue to
 17 drink and drive and drink and drive and drink and drive?
 18 **A. That's true.**
 19 Q. And some folks just can't help it, and they wind up
 20 going to prison --
 21 **A. Yes, that's true.**
 22 Q. -- as a result. What do you think about that? Any
 23 thoughts on that?
 24 **A. They belong there.**
 25 Q. Okay.

1 A. If they're going to hurt people and put other people
2 in danger, then --

3 Q. And as a result, society is safer because they're
4 there and we're here?

5 A. Yeah. Actually I know somebody that's been in jail,
6 like, a number of times and keeps going back for longer
7 periods, so --

8 Q. Uh-oh.

9 A. And he's a friend of my father, and I think he's --
10 well, my father agrees. He belongs there. He's safer.

11 Q. And we're safer, too?

12 A. And we're safer.

13 Q. And after all, we can control how much they drink
14 if they're in prison, right?

15 A. Exactly.

16 Q. At least we hope so.

17 You believed O.J. was guilty?

18 A. Oh, yes.

19 Q. I did, too.

20 A. Did I put that down there? Was it even a question?
21 Did I just ramble excessively?

22 Q. No. It's related to a question that says have you
23 had a special interest in any criminal case? Yes. O.J., I
24 believe he was guilty. And most people have an opinion on
25 that. I certainly do. Don't get me started.

1 But you also understand that there was 12 people
2 allegedly that were impaneled and heard all the evidence, and
3 like it or not, they know what the evidence was, and we know
4 what the talking heads told us, basically. So I guess --
5 A. Right. But there were also a number of -- as I
6 recall, it's been quite some time -- I think there was a lot
7 of evidence that wasn't -- that they didn't hear. They had to
8 work with what they had as opposed to -- I don't really
9 remember, but seems to me there were a number of things that
10 were kept from the jury.

11 Q. Right.

12 A. But I don't remember what it was or anything, so
13 that's why I think he's guilty.

14 Q. I realize that's a highly publicized case and
15 emotion-packed.

16 A. Right.

17 Q. Man, trial of the century.

18 With respect to this case, you know, it's a capital
19 murder case, have you formed any kind of an opinion, any kind
20 of impression of this young man?

21 A. I haven't heard anything about it.

22 Q. Okay.

23 A. So, I think I know less than -- I don't know. I
24 mean, I've never heard his name in the news or anything, so I
25 have no concept. I think it has something to do with maybe

1 robbery. That's the only thing I've collected.

2 Q. The allegations in the indictment are double
3 homicide, murder plus robbery and murder plus burglary, okay?

4 A. Uh-huh.

5 Q. And we're not going to talk about the facts of the
6 case.

7 A. Right.

8 Q. We're not supposed to.

9 A. My point is, I haven't drawn any conclusions because
10 I've heard nothing, so I don't know.

11 Q. And you understand we're talking about punishment
12 issues here before we've even started the trial.

13 A. Right.

14 Q. I'm sure you think that's awkward. That's kind of
15 weird, but I need you to understand that I don't agree that
16 he's guilty. I don't stipulate and admit that he's guilty.

17 A. Oh, right. We're not talking about that.

18 Q. We're going to have a full-blown trial on those
19 issues. Is that clear to you?

20 A. Oh, definitely.

21 Q. Any questions about that?

22 A. I don't think so.

23 Q. Okay. Please understand it's awkward for me to be
24 discussing punishment before --

25 A. That's true --

1 Q. -- we've had the trial. The law in --

2 A. That's true. It can't be that easy on him, either.

3 Q. Absolutely. The law in Texas requires me to do
4 that.

5 A. Right.

6 Q. And both sides, actually, to do that, interview the
7 jurors.

8 Okay. With respect to these issues, understand we
9 don't get to these issues unless the jury finds beyond a
10 reasonable doubt that this young man is guilty of capital
11 murder.

12 A. Right.

13 Q. We may not ever get there.

14 A. Right.

15 Q. They may say, no, he's not.

16 A. Right.

17 Q. We hope that happens. But assuming they do find
18 he's guilty, then you're going to have to consider these
19 special issues. Special Issue Number One, looking in the
20 future, trying to decide if there's a probability that he's
21 going to commit criminal acts of violence such that he'd be a
22 continuing threat to society.

23 A. Uh-huh.

24 Q. And I'm sure you don't have a problem with that.

25 You understand the difference between probability and

- 1 possibility, right?
- 2 **A. Right.**
- 3 Q. What's the difference, in your mind?
- 4 **A. There's -- well, how do I say it? A possibility**
- 5 **is -- there's 100 percentage points, and a possibility is**
- 6 **anything from 1 percent up, and then a probability, I would**
- 7 **say is probably anything over 50 percent.**
- 8 Q. Fair enough.
- 9 **A. I don't know if I said that.**
- 10 Q. There's not going to be a definition for it.
- 11 **A. Right.**
- 12 Q. But obviously there's a difference in the English
- 13 language between possibility and probability.
- 14 **A. Right. Well, my husband possibly will do the**
- 15 **dishes, but probably will not when I get home, so how's that?**
- 16 Q. I think you're all over it.
- 17 With respect to the probability that the defendant
- 18 would commit criminal acts of violence, you recognize that
- 19 question there talks about a plurality. Not just one act of
- 20 violence, but more than one?
- 21 **A. Uh-huh.**
- 22 Q. And I guess taken together, those acts of violence
- 23 would be a continuing threat to society. And I kind of think
- 24 of little Johnny in the classroom, you know, that's always a
- 25 problem.

- 1 **A. Uh-huh.**
- 2 Q. You know he's going to be problem. He's always
- 3 pulling the little girl's hair. He's always pushing her out
- 4 of her desk. He's stealing her crayons. Every day the
- 5 teacher knows it's going to be a problem with Johnny, okay?
- 6 Of course, this is a whole lot more serious than Johnny, but
- 7 obviously we're talking about looking into the future based
- 8 upon the evidence that you've heard in the trial, all the
- 9 evidence, the crime itself, and any other evidence the State
- 10 or the Defense may bring you --
- 11 **A. Uh-huh.**
- 12 Q. -- in trying to decide, hey, is this going to keep
- 13 happening? Is he going to be a continuing threat; does that
- 14 make sense to you?
- 15 **A. Yes.**
- 16 Q. Here's the question. If you hear all the evidence
- 17 and you decide that somebody is guilty of capital murder --
- 18 **A. Uh-huh.**
- 19 Q. -- you know, a double homicide, a murder plus a
- 20 robbery or a murder plus a burglary, are you going to -- and
- 21 you can consider all the evidence that you've heard in the
- 22 trial.
- 23 **A. Right.**
- 24 Q. Absolutely. But are you automatically going to say,
- 25 hey, we've convicted him of capital murder. Obviously, this

- 1 guy is going to be a continuing threat -- there's a
- 2 probability that he's going to commit criminal acts of
- 3 violence. He's going to be a continuing threat. Are you
- 4 going to automatically say "yes," or are you going to
- 5 independently listen to the evidence, look at the evidence and
- 6 say "yes" or "no," depending on what the evidence shows?
- 7 **A. Well, I think I would be fair about it and listen to**
- 8 **the evidence.**
- 9 Q. I believe you would. Do you understand why I ask
- 10 that?
- 11 **A. Oh, yeah.**
- 12 Q. Okay. And you don't have a problem with that?
- 13 **A. Oh, no.**
- 14 Q. Okay. All right. Let's go to the last issue there,
- 15 and Ms. Lowry was absolutely right. It's the look-back type
- 16 question.
- 17 **A. Uh-huh.**
- 18 Q. You know, you've gone all the way. You've got the
- 19 conviction. You've found future dangerousness. Now you're
- 20 looking back at the defendant --
- 21 **A. Uh-huh.**
- 22 Q. -- and you're considering mitigation, you know,
- 23 things that would mitigate against the death penalty. You
- 24 know, a mitigating circumstance. And they tell you in that
- 25 question what those things are, like the circumstances of the

- 1 offense.
- 2 **A. Uh-huh.**
- 3 Q. You're going to hear all about the offense at the
- 4 trial. You'll probably hear about his character and his
- 5 background. You may hear some in the trial, and you may hear
- 6 some after the trial is over and you get to the punishment
- 7 phase.
- 8 **A. Okay.**
- 9 Q. And then you're going to consider -- the Legislature
- 10 says personal moral culpability. Culpability is defined in
- 11 law as responsibility.
- 12 **A. Uh-huh.**
- 13 Q. You know, personal moral responsibility. And when I
- 14 see that, I was going to ask you to define what that means in
- 15 your mind, but since we're short on time I'll use the example
- 16 we used earlier of Timothy McVeigh. Would you agree that
- 17 Timothy McVeigh, he didn't really accept any personal, moral
- 18 responsibility for what he did?
- 19 **A. From the comments that I read about it in the paper,**
- 20 **yeah, I would say.**
- 21 Q. Yeah. He was in your face about what he did.
- 22 **A. About -- he was kind of proud about it.**
- 23 Q. Yeah. You recognize that there could be the
- 24 situation totally opposite from that where somebody feels
- 25 guilty about what they did?

- 1 **A. Uh-huh.**
 2 **Q.** Somebody feels remorse about what they did. Maybe
 3 somebody feels like they made a mistake. They were stupid, or
 4 they were on drugs or alcohol, or maybe they feel true
 5 blame -- you know, I think the law used to be
 6 blameworthiness --
 7 **A. Uh-huh.**
 8 **Q.** -- okay? Those are the kinds of things that you
 9 would have to consider with respect to mitigation, which would
 10 mitigate against a death penalty and cause you to take the
 11 last look and say, hey, I think the right thing to do is to
 12 spare their life, okay? Does that make sense to you?
 13 **A. That makes sense.**
 14 **Q.** And you'd be able to consider all those things?
 15 **A. Yeah, I believe so.**
 16 **Q.** Okay. You understand that the State is seeking the
 17 death penalty so, you know, if you said there was no
 18 mitigation, no mitigating circumstance, and the answer was no,
 19 the Defendant would get the death penalty?
 20 **A. Right. Now, can I ask something?**
 21 **Q.** Yes.
 22 **A. Moral culpability --**
 23 **Q.** Uh-huh.
 24 **A. -- is it a problem that I don't necessarily think if**
 25 **somebody is really, really sorry they did something that --**

- 1 **how do I say this? A person's moral culpability, okay.**
 2 **You're saying that personal moral culpability could be, I did**
 3 **it, and I'm really, really sorry. I'm really ashamed that I**
 4 **did it, and I should never have done it. That is supposed to**
 5 **be -- okay, that's an excuse for life versus death. Okay. I**
 6 **got it. Forget it. I understand.**
 7 **Q.** Yeah. But you raised an issue --
 8 **A. Yeah, I did. I'm sure I did.**
 9 **Q.** -- I want to clear up. You raise an issue I want to
 10 clear up real quick with the remaining time I've got.
 11 **A. All rightly.**
 12 **Q.** Just because I say it, or just because Ms. Lowry
 13 says it doesn't mean you go along with that. Just because I
 14 say that remorse or guilt, that may be the way I view it.
 15 Maybe I made a mistake. Just because I say it may be
 16 mitigating, you may not think it's mitigating. In fact, you
 17 may think it's aggravating, okay?
 18 **A. Right, okay.**
 19 **Q.** And the jurors may see that totally different if
 20 they sit on the jury. You may see that as mitigating, or the
 21 person next to you may see it as aggravating.
 22 **A. Right, okay.**
 23 **Q.** Okay?
 24 **A. I got you.**
 25 **Q.** It's within your purview --

- 1 **A. All rightly.**
 2 **Q.** -- to judge the evidence, and say, hey, this is
 3 mitigating evidence, you know --
 4 **A. Right.**
 5 **Q.** -- and then weigh it --
 6 **A. We should take this into consideration, blah, blah,**
 7 **blah.**
 8 **Q.** Absolutely.
 9 **A. All rightly, got you.**
 10 **Q.** And really it's kind of a balancing test. You're
 11 going to balance the mitigating evidence, if there is any.
 12 **A. Right.**
 13 **Q.** See if it outweighs a death penalty.
 14 **A. Right.**
 15 **Q.** Does that make sense?
 16 **A. Yes, it does now. I had to think about it for a**
 17 **moment.**
 18 **Q.** Okay.
 19 **A. Sorry.**
 20 **Q.** All right. Well, I'm going to -- we've got two
 21 minutes left. Is there any questions you have for me, any
 22 other questions, good questions?
 23 **A. I don't believe so.**
 24 **Q.** Okay. All right. If you were sitting where I am,
 25 would you feel comfortable putting you on the jury? Do you

- 1 think you'd give yourself a fair shot as a trial attorney?
 2 **A.** You know, in the sense that I'm a fair-minded
 3 person, I probably would. But in the sense that, since I
 4 don't know the case, I tend to be pretty good about seeing the
 5 fallacy in an argument or hearing someone's argument and
 6 saying that doesn't -- you know what I mean? No, no, no. I
 7 tend to be -- my husband always calls me the literal genius
 8 because I have a tendency to be very theoretical, or --
 9 there's a word I can't think of right now. But I tend to be
 10 able to remember what people say and to weigh it, and I'm very
 11 literal.
 12 **Q.** Sounds like your husband --
 13 **A.** And so depending on what your case is, and don't try
 14 to pull anything over on me, or vice-versa, either side,
 15 because I tend to catch those things, and say wait, wait,
 16 wait. That's not a good argument. That doesn't make any --
 17 it doesn't follow the rules of argumentation. You know what I
 18 mean?
 19 **Q.** I understand.
 20 **A.** So I don't know if I'm not -- I don't know your
 21 case, so I don't know whether I'd be comfortable being on here
 22 or not.
 23 **Q.** Okay. I think I understand, and maybe your husband
 24 and I could have a few beers together.
 25 **A.** Oh, let me tell you.

1 Q. I don't have any further questions for you. I sure
 2 do appreciate your fairness and your candor.
 3 MR. HIGH: And, Judge, I pass the juror.
 4 THE COURT: Ma'am, you may step down, and
 5 perhaps we'll have you back in a few minutes.
 6 VENIREPERSON: You will? Okay. So I should
 7 wait?
 8 THE COURT: Yes.
 9 (Venireperson exits the courtroom.)
 10 THE COURT: What says the State?
 11 MS. LOWRY: Juror is acceptable to the State.
 12 THE COURT: What says the Defense?
 13 MR. HIGH: Well, Judge, she's acceptable to the
 14 defense as well.
 15 THE COURT: All right. Would you ask Ms. --
 16 THE BAILIFF: Iannizzaro.
 17 THE COURT: -- Iannizzaro to come back in.
 18 (Venireperson enters the courtroom.)
 19 THE COURT: All right. What says the State?
 20 MS. LOWRY: This juror is acceptable to the
 21 State, Your Honor.
 22 THE COURT: And how about the Defense?
 23 MR. HIGH: This juror is acceptable to the
 24 Defense.
 25 THE COURT: All right. Ms. Iannizzaro, you are

1 going to be the second alternate in this case.
 2 VENIREPERSON: Okay.
 3 THE COURT: And that means that 12 jurors are
 4 going to hear this case -- actually 14 are going to hear it
 5 because we've got 12 jurors and two alternates. You are the
 6 second alternate. You were the last person chosen. If two
 7 people among the 12 can't serve, then you will become a juror
 8 in the case who will deliberate.
 9 Now, what that means is that you must pay attention
 10 to all the evidence just as closely as if you were a juror
 11 because you may be called upon to deliberate in the case. You
 12 may move up, in other words.
 13 VENIREPERSON: Right, right.
 14 THE COURT: So there are a couple of things I
 15 want to tell you with regard to the case -- a few things.
 16 First thing is that we're going to get started October 3rd,
 17 which is this coming Wednesday at about 9:00 in the morning.
 18 The second one I want to ask you -- in fact, admonish you not
 19 to look for anything in the news or on the radio or on TV or
 20 in the newspaper. This hasn't been a high-publicity case, and
 21 it's unlikely that you've read anything about it. I haven't,
 22 and so -- and that could change, and it might not. You never
 23 know what the newspapers are going to decide what they want to
 24 print because they manage the news to suit themselves.
 25 So, at any rate, if something does come out, I'll

1 ask you to avoid it. And also ask you to avoid discussing the
 2 case with anybody else, even your husband or your relatives,
 3 or -- I guess particularly your relatives, or neighbors or
 4 friends or anything else, because when you come into the
 5 courtroom you're going to hear all the evidence that exists in
 6 this case from the witness stand, and we want you to come in
 7 and the attorneys want to write on a clean slate. They don't
 8 want you to have been influenced in any way by anything that
 9 you may have heard about the case because everything you hear
 10 you should hear right here.
 11 VENIREPERSON: Right.
 12 THE COURT: Do you have any questions for me?
 13 VENIREPERSON: I don't believe I do.
 14 THE COURT: All right.
 15 VENIREPERSON: Will you call my boss?
 16 THE COURT: In fact, we can write you a letter.
 17 VENIREPERSON: That would be really helpful.
 18 THE COURT: Let's see, I've got your
 19 questionnaire. What do you want me to tell him or her?
 20 VENIREPERSON: Him.
 21 THE COURT: What's his name?
 22 VENIREPERSON: Michael Haskin.
 23 THE COURT: H-A-S --
 24 VENIREPERSON: H-A-S-K-I-N.
 25 THE COURT: And at the business that you put

1 down on your questionnaire. Oh, you know what, I don't think
 2 you gave us an address. Give me the name of the business and
 3 the address.
 4 VENIREPERSON: You know what, I don't even know
 5 if I have the address. I work out of my home.
 6 THE COURT: Then I tell you what, why don't you
 7 call us tomorrow --
 8 VENIREPERSON: Yeah, I don't think I have it.
 9 Oh, it might be --
 10 THE COURT: Call us tomorrow and give Billy
 11 the name and address.
 12 VENIREPERSON: I might have it. I don't know
 13 if it's on my business card. It is. Oh, I almost threw it at
 14 you. There you go.
 15 THE COURT: Bosch Rexroth. Is this a division
 16 of Bosch?
 17 VENIREPERSON: Yes, it is. I work with the
 18 pneumatics division.
 19 THE COURT: In Houston, right?
 20 VENIREPERSON: That's where my branch is, but
 21 I work out of my home.
 22 THE COURT: But I should write to him --
 23 VENIREPERSON: Yes, at that address --
 24 THE COURT: -- in Houston? Then I'll do it.
 25 I'll tell him that you've been chosen.

1 definitely want something in writing. Thank you.
2 THE COURT: And tell him that you may be tied
3 up for a couple of weeks, and perhaps a week or two more than
4 that.

5 VENIREPERSON: All righty.

6 THE COURT: Thank you very much, ma'am.

7 We'll see you --

8 VENIREPERSON: Will I hear something, or do I
9 just show up?

10 THE COURT: Yeah, just show up.

11 VENIREPERSON: Just show up October 3rd at
12 8:00?

13 THE COURT: At 9:00.

14 VENIREPERSON: 9:00.

15 THE BAILIFF: All rise.

16 THE COURT: And so we'll see you in about five
17 or six days. Thank you, ma'am.

18 (End of Volume 30.)

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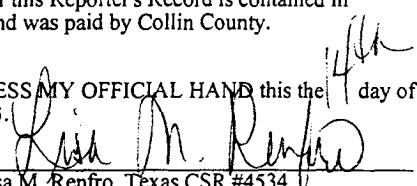
1 REPORTER'S CERTIFICATE
2 THE STATE OF TEXAS *
3 COUNTY OF COLLIN *

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

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

17
18 I further certify that the total cost for the
19 preparation of this Reporter's Record is contained in
20 Volume 53 and was paid by Collin County.

21
22 WITNESS MY OFFICIAL HAND this the 14th day of
23 January, 2003.

24
25

Lisa M. Renfro, Texas CSR #4534
Official Court Reporter, 380th District Court
Collin County, Texas
Collin County Courthouse
210 S. McDonald Street
McKinney, Texas 75069
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