

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

VOLUME 40 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

COPY

DISTRICT

REPORTER'S RECORD

VOLUME 40 - EX PARTE MOTION FOR COMPETENCY

DEFENDANT'S HEARING ON SIXTH AMENDMENT RIGHTS

CAPITAL MURDER JURY TRIAL

On the 15th day of October, 2001, from 11:05 a.m. to 3:00 p.m. the Hearings on the above-listed 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.

LISA M. RENFRO, Texas CSR #4534

Official Court Reporter - 380th Judicial District Court

210 S. McDonald Street, McKinney, Texas 75069

(972) 548-4661

FILED

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HONORABLE CHARLES F. SANDOVAL  
DISTRICT CLERK  
COLLIN COUNTY, TEXAS

*[Signature]*

1 APPEARANCES  
 2 ATTORNEYS FOR THE STATE OF TEXAS  
 3 MR. BILL SCHULTZ  
 SBOT NO. 17841800  
 4 MS. GAIL T. FALCO  
 SBOT NO. 00787450  
 5 MS. JAMI LOWRY  
 SBOT NO. 24012724  
 6  
 7 Assistant Criminal District Attorneys  
 Collin County Courthouse  
 8 210 S. McDonald, Suite 324  
 McKinney, Texas 75069  
 9 Telephone: (972) 548-4323  
 10  
 11 ATTORNEYS FOR THE DEFENDANT  
 12 MR. MATTHEW GOELLER  
 SBOT NO. 08059260  
 13 MR. DON N. HIGH  
 SBOT NO. 09605050  
 14  
 15 GRUBBS, HIGH, GOELLER & ASSOCIATES  
 400 Chisholm Place, Suite 400  
 16 Plano, Texas 75075  
 Telephone: (972) 423-4518  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
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1 PROCEEDINGS  
 2 (Open court, jury not present.)  
 3 THE COURT: We have the Defendant and his two  
 4 attorneys and the three attorneys for the State present. The  
 5 jury is not present at this time and -- please be seated.  
 6 I understand from both sides that we probably need  
 7 some more time to prepare the charge, and so we've all pretty  
 8 much decided to let the jury go for the day and come back  
 9 tomorrow morning at 9:00; is that correct?  
 10 MR. GOELLER: Yes, sir.  
 11 MR. SCHULTZ: Yes, sir.  
 12 THE COURT: All right. I tell you what, I  
 13 think I'll bring them in and just admonish them once again not  
 14 to discuss the case, and also tell them that the delay was  
 15 unavoidable but we'll have the charge of the court, and  
 16 arguments of counsel starting tomorrow morning at 9:00, and I  
 17 suppose I can practically guarantee it. All right. Let's  
 18 bring the jury in.  
 19 THE BAILIFF: All rise.  
 20 (Jury enters the courtroom at 11:05 a.m.)  
 21 THE COURT: Please be seated. Ladies and  
 22 Gentlemen, as you know we were all set to charge the jury and  
 23 have the arguments of counsel this morning, and we're not  
 24 going to do it this morning, but we're going to do it starting  
 25 tomorrow morning. We've got a one-day delay. I want to

1 assure you it was unavoidable and not an uncommon occurrence  
 2 in a situation like this. So, I want to ask you to be patient  
 3 and not to speculate about -- among yourselves or with anybody  
 4 else.  
 5 In fact, to be specific I want to instruct you that  
 6 it's your duty not to converse among yourselves or with anyone  
 7 else on any subject connected with the trial or to form or  
 8 express any opinion thereon until the cause is finally  
 9 submitted to you. You know, I don't like to be like that  
 10 fellow at the Men's Warehouse that guarantees anything, but I  
 11 can practically guarantee you that tomorrow morning at 9:00  
 12 that we'll start, and I'll read you the charge. Then the  
 13 attorneys will argue, and you'll begin deliberations tomorrow.  
 14 So with that, I will see you tomorrow morning at  
 15 9:00 in the morning.  
 16 THE BAILIFF: All rise.  
 17 (Jury exits the courtroom at 11:06 a.m.)  
 18 THE COURT: Please be seated. All right. The  
 19 jury is outside the courtroom, and in chambers the attorney  
 20 for the Defendant has raised an issue before the court in the  
 21 presence of the attorneys for the State. So would you put on  
 22 the record whatever you'd like to put on the record.  
 23 MR. GOELLER: Yes, Your Honor. And before I do  
 24 that, Your Honor, I'd like to ask the Court to make this in  
 25 the nature of an ex parte proceeding; State and the Defendant

1 being part of the ex parte. I'd ask the Court, based on the  
2 fact that both sides have rested and closed in this phase of  
3 the trial, the fact that this case has gotten a certain amount  
4 of media attention, I believe it was the lead story -- front  
5 page story of The Plano Morning News on Friday or Saturday  
6 morning about this case.

7 The nature of my discussions in chambers and what  
8 I'm about to put on the record I'd ask the Court to have the  
9 courtroom cleared. Only the litigants and the Defendant be  
10 present for this. I think the Court is well within its  
11 discretion to do that. What we have to say to the Court has  
12 no bearing on the evidence or facts in this case. It's not  
13 part of the trial, and therefore, the Court is well within its  
14 right to have the courtroom cleared and make this an ex parte  
15 proceeding without the members of the public being in here,  
16 and that it has no bearing on my client's 4th, 5th and 6th  
17 Amendments rights to public and speedy trial.

18 THE COURT: All right. I think you're probably  
19 right. Do you feel the same, Mr. Schultz?

20 MR. SCHULTZ: Actually, the State doesn't have  
21 a position on that, Judge.

22 THE COURT: All right. Then I tell you what,  
23 I'm going to ask -- I'm going to ask that the courtroom be  
24 cleared, and we'll conduct this hearing just among the parties  
25 and the attorneys and me.

1 (Courtroom cleared at this time.)

2 THE COURT: All right. The courtroom is clear.

3 MR. GOELLER: Thank you, Your Honor.

4 THE COURT: Say there is this, too, we've got  
5 three officers in here, including my bailiff, and I want to  
6 admonish you-all not to discuss whatever you hear in this  
7 courtroom with anybody else until the trial is finally over.  
8 Is that a deal?

9 OFFICER BURNETT: Yes, sir.

10 THE COURT: You have any problem with that,  
11 sir? What is your name, sir?

12 OFFICER BARTCH: Norman Bartch.

13 THE COURT: All right.

14 OFFICER BORTON: Yes, sir.

15 THE COURT: Go ahead.

16 MR. GOELLER: Thank you, Your Honor.

17 Your Honor, at this time pursuant to Article 46.02  
18 of the Code of Criminal Procedure I guess I'd call myself as a  
19 witness for the limited purpose of 46.02.

20 THE COURT: All right. Raise your right hand:  
21 (Mr. Goeller sworn by the Court.)

22 MR. GOELLER: I do, Your Honor.

23 THE COURT: All right. Put your hand down.

24 MR. GOELLER: Thank, Your Honor. Your Honor,  
25 may I ask leave of court to proceed in a narrative?

1 THE COURT: Yes, please go ahead.

2 MR. GOELLER: Thank you, Judge.

3 My name is Matthew Goeller. I'm an attorney  
4 appointed to represent the accused in this capital murder  
5 prosecution of Ivan Abner Cantu, my client. My co-counsel in  
6 this case is Mr. Don N. High, who's seated here and is present  
7 in the courtroom. I would state to the Court that I have  
8 good, bona fide, genuine reason to believe that there may be  
9 an issue regarding my client's competency, or incompetency as  
10 it may be under 46.02, to proceed.

11 46.02, Section 2-B states, "If during the trial  
12 evidence of the Defendant's incompetency is brought to the  
13 attention of the Court from any source, the Court must conduct  
14 a hearing out of the presence of the jury to determine whether  
15 or not there is evidence to support a finding of incompetency  
16 to stand trial." Getting to 46.02 (1) A -- A, "A person is  
17 incompetent to stand trial if a person does not have one's  
18 sufficient present ability to consult with the person's lawyer  
19 with a reasonable degree of rational understanding."

20 I would state to the Court that it is my opinion  
21 beginning approximately October -- approximately October 9th,  
22 October 10th I have found, with increasing difficulty, my  
23 ability to consult with my client with a reasonable degree of  
24 rational understanding. I base that on comments that my  
25 client has made in some of his writings that have been given

1 to me obviously in the context of the attorney/client  
2 privilege. I began to suspect even more strongly on this past  
3 Thursday and Friday, this past Saturday, which would have  
4 been --

5 MR. HIGH: Would have been the 13th.

6 MR. GOELLER: -- 13th. Well, getting back to  
7 the morning of the 12th, October 12th, myself and Mr. High and  
8 my mitigation specialist, Mr. Vince Gonzales, spoke with our  
9 client for about an hour and 45 minutes regarding trial  
10 issues, things such as strategy and other kinds of trial  
11 issues, and we began to question whether our client was  
12 competent at that point in time. Mr. High and I went out to  
13 the Collin County Sheriff's Office and obtained a contact  
14 visitation with Mr. Cantu this past Saturday the 14th --

15 MR. HIGH: 13th --

16 MR. GOELLER: -- I'm sorry the 13th of  
17 October. And again, it became more apparent to me that there  
18 is an issue -- or at least a potential issue regarding  
19 competency. I discussed the matter with Mr. High, and I  
20 discussed the matter with my mitigation specialist, Vince  
21 Gonzales. Mr. Gonzales has never seen anything quite like  
22 this with a capital murder defendant. He has a volume of  
23 about 160 capital murder cases, homicide cases, and his  
24 comments to me reinforced my thoughts that there's something  
25 maybe not right with Ivan's mind right now as far as the way

1 he processes information and hears people speaking.  
 2 Yesterday, I spent a great deal of time thinking  
 3 about what my options are at this point, and based on  
 4 Wednesday, Thursday, Friday and Saturday of last week, I saw  
 5 an increasing deterioration of my client's ability to consult  
 6 with me, listen to my advice and counsel, and therefor, I --  
 7 as an officer of the court, I firmly believe that there is  
 8 something there. I don't know what it is, but I'd ask the  
 9 Court to appoint a disinterested mental health expert to make  
 10 further inquiry of the matter.

11 So, I would tell the Court and the State that my  
 12 concerns are not just based on my observations of Ivan and my  
 13 conversations with him, but it's reinforced by conversations  
 14 with Mr. High and conversations with Mr. Vince Gonzales. So,  
 15 I think that's all I have at this point, Your Honor.

16 THE COURT: Mr. Schultz.

17 MR. SCHULTZ: Your Honor, I've been waiting 14  
 18 years for this chance.

19 CROSS-QUESTIONS

20 BY MR. SCHULTZ:

21 Q. You don't have any specialized medical training  
 22 involved with legal training, do you?

23 A. No, sir.

24 Q. Probably been to doctors, like everybody else, but  
 25 that's most of your connection; is that fair?

1 Q. You pretty sure it's not you, right? You don't  
 2 feel like you're the problem there, right?

3 A. No, sir.

4 MR. SCHULTZ: That's all the questions we have,  
 5 Judge.

6 MR. CANTU: Do I have the opportunity to speak?

7 I mean, I'm glad it's amusing to all of you and  
 8 you're laughing, but this is my life, and I'd like the  
 9 opportunity to speak --

10 MR. GOELLER: I'd ask the Court to admonish  
 11 him. He's not a witness. I'd ask the Court to admonish him  
 12 to not speak.

13 MR. SCHULTZ: Excuse me just a moment, Judge.  
 14 I'm not sure the Court has got that authority. I don't mean  
 15 that confrontationally. I don't know that anybody can  
 16 admonish someone that he doesn't have a right to speak. Maybe  
 17 at a particular time in the proceedings, but with due respect  
 18 to everybody, I believe that's his right, not ours to say  
 19 whether he's got the right to speak or not at a hearing  
 20 involving him.

21 THE COURT: Well, I tell you what, I would kind  
 22 of be interested in what he has to say, but I wouldn't want to  
 23 hear anything that has to do with this offense, or with the  
 24 facts of the case, but I wouldn't mind hearing anything that  
 25 he might want to say about the issue of competency.

1 A. Yes, sir. I would say I think I have some insight  
 2 into mental health in that I've been appointed to represent,  
 3 probable in the hundreds, of folks who are going through  
 4 involuntary mental health commitments, and I've worked a lot  
 5 with psychiatrists and psychologists and the mental health  
 6 court and incompetency and insanity proceedings. But -- so I  
 7 don't think I'm running just totally blind to this area, but I  
 8 would concede, no, I have no formal training in those areas.

9 Q. But you don't consider yourself a naive man?

10 A. No, sir.

11 Q. Or a gullible man?

12 A. No, sir.

13 Q. But you're telling this Court that you have a  
 14 genuine concern about your ability to communicate with your  
 15 client?

16 A. Absolutely.

17 And I would say that I stated earlier that my  
 18 concern is based on, obviously my contact with my client in  
 19 the course of Wednesday and Thursday of last week and  
 20 Saturday -- and this Friday and this past Saturday. And then  
 21 this morning. Again, I thought before I would bring to the  
 22 attention of the Court these matters, I thought I would probe  
 23 that one more time, or sit down with my client again.  
 24 And Mr. High and I did that again this morning, and I would  
 25 say that my concerns are more reinforced.

1 Do you understand?

2 MR. CANTU: Yes, Your Honor.

3 THE COURT: Okay. Tell me what you want to  
 4 tell me.

5 MR. GOELLER: Judge, I don't mean to interrupt.  
 6 Before the Court does that, with the prosecutors for the State  
 7 here, I'm really concerned about Mr. Cantu's comments in front  
 8 of the State on this issue. I suppose none of it's evidence  
 9 and could never be brought before a jury, but his comments at  
 10 this point in time, not knowing whether he's incompetent or  
 11 not, could seriously impact trial strategy, if we ever get to  
 12 a second phase of this trial, and could adversely impact the  
 13 attorney/client privilege, adversely impact his right to his  
 14 6th Amendment right to effective assistance of counsel. So,  
 15 I'd have to object to the Defendant making any comments at  
 16 this point, not only in a narrative form, but further  
 17 subjecting him to possible cross-examination by the State at  
 18 this point in time.

19 THE COURT: I may not let them cross-examine  
 20 him, and in fact, probably won't.

21 MR. GOELLER: Just for the record, Judge, I'd  
 22 object.

23 THE COURT: All right. I understand.

24 Now, Mr. Cantu, what I'd like to do is hear whatever  
 25 you have to say about your competency because this is the

1 first case of sudden onset of incompetency I've ever seen.  
 2 MR. GOELLER: Judge, I know I'm interrupting  
 3 you again. Could I -- just for the record. I've got to  
 4 protect everything. Could I have a ruling on my objection to  
 5 him commenting in front of the State?

6 THE COURT: What would you prefer, the State  
 7 not be present?

8 MR. GOELLER: Yes, Your Honor, I would. If  
 9 it's -- I don't see what -- why the necessity of the State  
 10 being here. Number one, it's not evidence; number two, it's  
 11 privileged; and number three, it's not admissible before the  
 12 jury for any purposes, and this threshold hearing is to  
 13 determine whether or not there is any evidence of potential  
 14 incompetency. I wouldn't see the necessity for the State  
 15 hearing the Defendant's comments to the Court.

16 MR. SCHULTZ: With complete respect and  
 17 understanding, this is a proceeding involving the State of  
 18 Texas, and if evidence is going to be offered to the Court  
 19 directly relating to this criminal prosecution, we can't --  
 20 we insist on staying. We don't do that disrespectfully or  
 21 insensitively in any regard, but we insist upon staying here.  
 22 It's our case. We are the State, and there's no -- there's  
 23 no -- and, respectfully, there's no authority for having us  
 24 leave, and that would also put the Court in a position that  
 25 it's really not the Court's responsibility to protect the

1 Mr. Cantu's case, and he is here with his attorneys, and the  
 2 State's attorneys are here. And I probably should have put on  
 3 the record, too, that I mentioned the 6th Amendment. And I  
 4 suppose I'm just as concerned about the Defendant's 5th  
 5 Amendment rights as I am his 6th Amendment right.

6 So at any rate, I understand that you've talked to  
 7 your client, Mr. Goeller, and you have some notes you want to  
 8 share with me; is that correct?

9 MR. GOELLER: Yes, Your Honor. I'd prefer to  
 10 do it this way than have my client either testifying or being  
 11 subjected to cross. It's been -- well, since we took the  
 12 break until just now, five or ten minutes speaking with my  
 13 client, and I've written down the major themes that Mr. Cantu  
 14 would like to discuss with the Court.

15 Mr. Cantu would like the Court to know that he is  
 16 not a marshmallow; that he is in chains; that he has pieces of  
 17 a puzzle that we need to put together; that his attorneys have  
 18 not done their homework; that his attorneys have told the jury  
 19 that he's a piece of shit. His words, I'm sorry for the  
 20 profanity on the record. Jury only thinks what they hear from  
 21 bad people. His attorneys have not shot everybody in the  
 22 ground. The more truth he tells his lawyers, the more they  
 23 won't fight. The more honest he is, the less his attorneys  
 24 work. And made inquiry if Mr. Schultz believes Adolf Hitler  
 25 is incompetent.

1 State's interest, depending upon what's happening. We're the  
 2 only ones that can fairly do that, and you're the only one  
 3 that has to be the neutral arbiter of this. And no, sir, we  
 4 stay.

5 THE COURT: Well, I tell you what, I am  
 6 concerned about his 6th Amendment right to counsel and to have  
 7 whatever statements he may desire to make be made  
 8 confidential. Let me ask this, Mr. Goeller, is there anything  
 9 else -- here's what I want you to do. I want you to go talk  
 10 to your client, and then I want you to come back and tell me  
 11 what he has to say.

12 MR. GOELLER: Yes, sir.

13 THE COURT: Okay.

14 MR. GOELLER: Yes, sir.

15 THE COURT: Let's take a five-minute recess.  
 16 Talk to your client, tell me what he has to say, and I'm sure  
 17 if it's not an accurate rendition, Mr. Cantu can tell me it's  
 18 not accurate and --

19 MR. GOELLER: Yes, sir.

20 THE COURT: -- that's the way we're going to do  
 21 it. So let's step down for about five minutes.

22 THE BAILIFF: All rise.

23 (Recess at 11:28 a.m.)

24 (Resumed at 11:55 a.m.)

25 THE COURT: We're back on the record in

1 We need -- his attorneys -- or his attorneys have  
 2 not presented evidence that he is not guilty. If everybody  
 3 wants to talk about complete honesty, then does he not need  
 4 any lawyers. His lawyers are possibly throwing this case,  
 5 quote, unquote, because we work with Collin County. He would  
 6 like to explore the possibility with the Court of new counsel.  
 7 We have not -- his attorneys have not done enough research.  
 8 He does not know what all of his legal options are at this  
 9 point. He would like to explore with the Court the  
 10 possibility of proceeding pro se, and that finally Mr. High  
 11 and I do not want to win.

12 THE COURT: All right. Is there anything from  
 13 the State?

14 MR. SCHULTZ: I'm not sure there's anything  
 15 that -- I mean, I don't see any great advantage in me trying  
 16 to cross-examine Mr. Goeller about what's in the Defendant's  
 17 mind. I don't know that that's either productive or -- in  
 18 fact, I guess that is probably to the alternate issue, that  
 19 we're not trying to deal with.

20 I guess -- I guess, I'd like to make a  
 21 contemporaneous offer of proof, something in the -- along the  
 22 same lines as the defense attorney is doing because,  
 23 essentially, he's offering what's being said by the Defendant  
 24 as evidence in establishing whether or not there's any  
 25 legitimate issue of incompetency of the Defendant, then I

1 guess -- may I sit down?

2 THE COURT: Yes, please, by all means.

3 MR. SCHULTZ: You know, if you listen to  
4 what's been offered by Mr. Goeller, ironically much of what  
5 he's said is very trial-related and  
6 awareness-of-these-proceedings related, which is really --  
7 just because we think the interpretations are incorrect or  
8 wrong doesn't mean that they're irrational or that he doesn't  
9 understand the proceedings.

10 For example, he's correct. He's been in chains, and  
11 that's been what's been occurring throughout this trial for  
12 good reason. I understand some of his remarks. Apparently,  
13 it annoyed him earlier before we took the recess that  
14 Mr. Goeller and I had a certain amount of lightness about the  
15 proceedings that occurred, and the Court will remember, and  
16 I'm sure the record would reflect that there was a -- it was  
17 not sarcasm. It was good-natured and perhaps a little bit of  
18 stress relief when I kidded Mr. Goeller about having him on  
19 the stand and asking him about his medical training, and there  
20 was certainly levity both sides. And I think the Defendant  
21 correctly perceived what was going on at this time. In fact,  
22 I'm sure the Court observed it. I would even ask the record  
23 reflect that there was that bit of humor that was actually  
24 going on here in open court.

25 Obviously we are at a point in the trial where we're

1 I don't understand his reference to, they're not  
2 trying very hard because they're with Collin County, although,  
3 in fairness, it's not irrational for somebody to say, my  
4 attorneys derive at least a portion of their income from  
5 court-appointed cases and working with the court systems of  
6 Collin County in providing defenses. It's certainly not  
7 irrational for him to be concerned about whether or not that  
8 creates any conflict or any reluctance on the part of his  
9 attorneys to do perhaps what he -- what he thinks should be  
10 done.

11 The fact that he expresses concerns about his  
12 attorneys not having done their job, or not being vigorous  
13 enough in his defense seems to me to be very related to  
14 whether or not he's participating in his own defense. And I  
15 don't know a law that requires him to agree with our  
16 assessment that his attorneys are doing great in order for  
17 him to be rational. There's room for differing views, and  
18 that seems to make perfect sense.

19 The fact that he thinks that he's been called that  
20 ugly name that was recited, I don't remember any such thing in  
21 the record. I'd be very surprised if anything existed in that  
22 record, but perhaps he has that interpretation somehow that  
23 that's what his attorneys think. I don't know that we're able  
24 to say that's bizarre or unrelated to his own defense. And it  
25 appears to me that a big part of what's being recited is a

1 getting very close to the conclusion of the first part of the  
2 trial, and I would imagine that's reasonably stressful upon  
3 anybody. It sure would be upon me knowing, and observing the  
4 way the trial has taken place and what the witnesses have had  
5 to say and that would certainly be stressful. The fact  
6 that -- the fact that he believes I believe that Hitler was  
7 incompetent certainly shows a fair amount of attention-paying  
8 to what we consider to be the core of our jury selection; that  
9 being Adolf Hitler as an illustration of some of these  
10 important principles in death penalty litigation. I mean,  
11 whether I believe that Adolf Hitler was incompetent or not to  
12 stand trial isn't really the point. It shows he's thinking  
13 about trials and trial proceedings, and he's been paying  
14 attention enough to know that, at least in my mind, Adolf  
15 Hitler has been a big part of this whole proceeding, and I  
16 think that's pretty rational, and I think that's good.

17 The fact that he's dissatisfied with his attorneys  
18 may not, in our minds, be correct in view of the work that  
19 they've done, which is very, very good. But it's hard to say  
20 that from the prospective of a criminal, particularly one who  
21 perhaps often blames others for his own shortcomings, it's  
22 hard to say that's not rational in the world in which he works  
23 and that he's dissatisfied with them based upon his reasons.  
24 Even if we think they're correct, that's not irrational to  
25 say.

1 generalized concern with the quality of representation because  
2 perhaps he doesn't want to blame himself for the fact that the  
3 reason he's in the predicament he's in now is because of his  
4 own conduct, but rather wants to blame somebody else.

5 We may think that his claim for self representation  
6 under Feretta versus California is unwise. We may think that,  
7 as the dissenting opinion in that case said, that a person who  
8 has himself for an attorney has a fool for a client, and  
9 that's somehow been made a part of our Constitutional law. We  
10 may ourselves think that's unwise, and I suppose it is. And  
11 yet, that's pretty darn precise in terms of our law because  
12 he's focusing on what is his Constitutional right, and that is  
13 after being admonished by the Court of the pitfalls and the  
14 inherent dangers and disadvantages of self-representation, our  
15 United States Supreme Court allows that exercise of  
16 self-representation, and that's pretty darn trial related, it  
17 seems to the State, that he's considering that as an option  
18 and has some sophistication in knowing that he does, in fact,  
19 have that right. And if that's a legitimate request on his  
20 part, perhaps the Court has that obligation under Feretta to  
21 warn him, admonish him, and do everything short of ordering  
22 him not to self-represent, and then if he chooses to do it,  
23 allow him to do it.

24 I guess our position is just because we sit here  
25 saying his troubles with his attorneys don't seem to be

1 founded in reason as we are lawyers and we are people who work  
 2 in this arena from time to time, that's certainly not  
 3 irrational to take that position. It's just different in  
 4 coming from the point of view that none of us have; that,  
 5 number one, being unschooled in the legal letters; and number  
 6 two, facing the executioner's noose. And it is for all of  
 7 those reasons that we simply observe at this time, in the  
 8 event that any clarification by anybody is deemed appropriate,  
 9 that those recitations seem, to the State, very focused upon  
 10 this trial, this proceeding, and the understanding of the  
 11 proceedings against him. Even his remark that y'all may be  
 12 laughing, but my life is on the line here, that's a fact.  
 13 That's exactly where we are, and it's -- and that's all I've  
 14 got to say about all that, Judge.

15 MR. CANTU: Your Honor, may I address your  
 16 Court?

17 THE COURT: Well, I tell you what, you do so at  
 18 your peril if you -- let me advise you of this. If you want  
 19 to say anything to the Court, I would advise you to stay away  
 20 from anything having to do with the merits of the case.

21 MR. CANTU: Absolutely, I will, Your Honor.

22 THE COURT: Do you understand, and you think  
 23 you can do that?

24 MR. CANTU: Yes, Your Honor.

25 THE COURT: All right. Tell me what --

1 MR. GOELLER: Judge, before we go there, is he  
 2 going to be subject to cross-examination?

3 THE COURT: Probably won't.

4 MR. GOELLER: I would, again, lodge an  
 5 objection and --

6 THE COURT: And I tell you why, I consider this  
 7 to be a collateral matter, so it's something I think he can  
 8 bring up with the Court.

9 MR. GOELLER: I'm just worried about my client  
 10 going into a narrative. I have no idea what he's going to say  
 11 at this point, and for those reasons I'd have to object to him  
 12 going into a narrative at this point or even speaking to the  
 13 Court in front of counsel for the State.

14 THE COURT: All right. You've talked to your  
 15 client about the dangers of speaking to the Court without your  
 16 assistance, haven't you?

17 MR. GOELLER: Not on this point, Judge. I've  
 18 talked to him about the -- no. I have not spoken with him  
 19 about this particular hearing, him speaking to the Court. I  
 20 did explain to him why I was back there writing down his  
 21 concerns.

22 THE COURT: Let's do this, just in an abundance  
 23 of caution, it's just about time for lunch. Why don't you  
 24 talk to your client about the perils of speaking out in court  
 25 without you relaying the message, and why don't we come back

1 at about 1:30, and we'll continue this little hearing. And  
 2 talk to your lawyer, and if you still conclude that you want  
 3 to talk to me, then I'll let you talk to me.

4 MR. CANTU: Well, I just feel that back at  
 5 square one the notes weren't taken properly and that's a  
 6 concern to me. The notes couldn't be taken properly.  
 7 Information keeps going forward, Your Honor, and it's  
 8 incorrect information.

9 THE COURT: All right. Then I tell you what,  
 10 you've got about an hour -- let's make it an hour and a half.  
 11 We'll come back at 1:40. You've got an hour and a half to  
 12 talk to your attorneys about what the proper information is,  
 13 and see if you want your attorney to talk to me in that  
 14 format; in other words, to relay to me what you have to say.  
 15 And if not, then I'll allow you to address the Court. But I  
 16 do want to make sure that your attorney admonishes you with  
 17 regard to the perils of speaking out in court. All right.  
 18 Especially without -- without it being in a question and  
 19 answer forum. In other words, there's some perils in just  
 20 narrating what you want to tell me, and he can tell you what  
 21 those dangers are.

22 Say, I tell you what, too, if you would continue to  
 23 work on the charge.

24 MR. SCHULTZ: Yes, sir.

25 THE COURT: And let's see if we can come in

1 about 3:00 this afternoon and put whatever objections there  
 2 are to the charge on the record, so we're actually ready to go  
 3 with the jury at 9:00. So, I'll see everybody in an hour and  
 4 a half, and we'll see if I may hear from the Defendant himself  
 5 at that time.

6 MR. GOELLER: Yes, sir.

7 THE BAILIFF: All rise.

8 (Lunch recess at 12:10 p.m.)

9 THE COURT: All right. Let the record reflect  
 10 that the Defendant and his attorneys and attorneys for the  
 11 State are present. The jury has been excused for the day, and  
 12 the last thing we did before we took a break is the Defendant  
 13 indicated he might want to address the Court, and so I asked  
 14 him to consult with his attorneys to see if that's something  
 15 that he really wanted to do, and asked him to consult with his  
 16 attorneys about even the hazards of speaking in court without  
 17 the benefit of counsel.

18 So, Mr. Goeller, have you talked to your client  
 19 about whether or not he wants to talk to the Court about  
 20 anything?

21 MR. GOELLER: Yes, Your Honor. I advised my  
 22 client that I did not believe it was in his best interest to  
 23 speak on his own behalf in court with the State present. I've  
 24 advised him of that. I've advised him that I did not think it  
 25 would be in his best interest to proceed pro se and mentioned

1 some of the potential problems and disadvantages and pitfalls  
2 of self-representation.

3 I did advise him once a self-representation motion  
4 has been granted that -- the disadvantages regarding  
5 preserving the record, preserving error, things of that nature  
6 and advised him that --

7 THE COURT: Before we get into that issue, I'm  
8 just talking about whether or not he wants to address the  
9 Court, and I'd kind of like to keep it narrowed to what we  
10 talked about before --

11 MR. GOELLER: I'm sorry, Judge. Yes, I advised  
12 him that, in my best legal opinion, it is not to his advantage  
13 to address the Court in open court on any matters.

14 THE COURT: All right. You had the impression  
15 he understood everything you told him?

16 MR. GOELLER: Yes, sir.

17 THE COURT: All right. Mr. Cantu, do you still  
18 want to talk to the Court?

19 MR. CANTU: No, Your Honor.

20 THE COURT: Okay. Is -- well, then tell me  
21 what else we need to talk about?

22 MR. GOELLER: I was making inquiry if my client  
23 still wanted to proceed pro se. At this point, Judge. I  
24 don't think there's been an unequivocal demand for  
25 self-representation; therefore, I suppose the matter is closed

1 the personal rights of the accused that none of us can or  
2 should be taking from him. And I'm sure it's all fine, but if  
3 there are complaints or areas in which the Defendant perhaps  
4 feels he's being talked out of an exercise of some right he  
5 wishes to exercise, that's only the State's business.

6 If we're going to have to deal with that later on,  
7 and in the event the case turns out in a way that's not of the  
8 Defendant's liking or that does not satisfy him, or perhaps  
9 even otherwise, we are still perhaps in a position to cure  
10 many of the complaints he will later advance. For example, I

11 have no idea whether he wishes to testify or not even -- or  
12 even what his advice from Counsel might be on that subject.

13 THE COURT: I suppose you're talking about the  
14 case-in-chief?

15 MR. SCHULTZ: I am. But we're certainly  
16 perhaps in a position where we would not oppose reopening, if  
17 he chooses to do that. We're at a point now where that can be  
18 corrected without a huge interruption of the trial. Later on  
19 when he appeals this case, if that occurs, or if we find  
20 ourselves dealing in some post-conviction habeas proceeding,  
21 federal or state, we're not in a position to correct what he  
22 considers to be the deficiencies in the trial, but rather then  
23 we have to address whether or not these deficiencies occurred,  
24 and whether or not, if they did occur, whether they're  
25 sufficient to cause a new trial.

1 at this time.

2 THE COURT: All right. In fact, this is the  
3 first I've heard about it on the record with regard to the  
4 possibility that he might want to. I suppose that if you've  
5 talked to him, you've told him there are many pitfalls, many  
6 hazards involved in self-representation?

7 MR. GOELLER: Yes, Your Honor.

8 THE COURT: Hey, I also get the impression that  
9 you and your client are -- seem to be communicating pretty  
10 well. Do you feel like there's any need to pursue this  
11 competency business anymore?

12 MR. GOELLER: That, I still do, Judge.

13 THE COURT: Okay. Is there any other matter to  
14 take up?

15 MR. GOELLER: I don't think so, Your Honor, not  
16 from our position.

17 THE COURT: All right. Mr. Schultz?

18 MR. SCHULTZ: Just a couple of things, if I  
19 might, Judge. I might have been picking up somewhat mixed  
20 signals and not being privy to all that is going on at the  
21 defense table, nor should I be, I am concerned and simply want  
22 to make known in open court, which probably states the  
23 obvious, but in many regards he's already -- particularly like  
24 issues of addressing the Court, and testifying and  
25 self-representation, and things like that, they are probably

1 I guess what I'm saying is if he wants to testify,  
2 we don't have any problem reopening to do that. If there are  
3 witnesses that he thinks ought to have been called that  
4 weren't, and they can't work that out amongst themselves,  
5 we're not standing in the way just because we find ourselves  
6 in he position of having closed. We're not standing in the  
7 way of opposing reopening of evidence. It's curable at this  
8 point very simply, and later on we want the opportunity to  
9 say, the State gave you that opportunity. We expressed our  
10 willingness to allow you to have occur what you wanted to  
11 occur, and for whatever reason you chose not to deal with  
12 that.

13 Same thing with the self-representation issue. I'm  
14 not -- I agree with Mr. Goeller. It was never actually  
15 demanded, although we all perhaps anticipated it, just based  
16 upon the circumstances that were occurring. But I don't want  
17 to have to deal a year from now or five years from now with  
18 the proposition that I wanted to represent myself, and I got  
19 talked out of it or threatened out of it or deceived out of  
20 it, or any of those things, which I'm sure would not happen  
21 and I'm sure have not happened. But I simply want the record  
22 clear that we're all here and are prepared to allow that issue  
23 to be addressed if the Defendant himself wishes to address  
24 that issue or wishes to do it through attorneys.

25 I'm not trying to meddle in any way in their



1 business, except to the extent I don't want us being  
2 disadvantaged by an opportunity to claim nobody gave me the  
3 chance to do these things because it's the State's position  
4 that, within reason, any way he wants to approach any of these  
5 issues, we'll listen to and probably would not oppose it, if  
6 it's an exercise of some personal right of his.

7 Specifically with regard to the competency issue, we  
8 are of the opinion, at least at this time, that the Court  
9 would be justified in taking the position that at this point  
10 insufficient evidence has been presented to even warrant the  
11 convening of a competency hearing, or even the appointment  
12 of a psychiatrist. That's not disrespectful to the defense  
13 attorney, but everything we've seen throughout this trial has  
14 indicated the alertness of the Defendant, his timely responses  
15 to the Court on matters that were addressed to him by the  
16 Court. His behavior in court has been impeccable. There's  
17 been no evidence of any type of bizarre behavior or  
18 histrionics. He's obviously been alert in terms of, all  
19 during jury selection, we asked, not only his attorneys, but  
20 we also asked him as we made numerous agreements trying to get  
21 to the bottom of this process, which was to select a jury that  
22 was fair to all of us. And he made -- he made agreements.  
23 The Court certainly could allow the record to reflect the  
24 Defendant was actively interested and paid attention to the  
25 prospective jurors that came in.

1 When I introduced my co-counsel and moved to the  
2 Defense table, he was always alert and regular and polite to  
3 those jurors, and he said "good morning" to them, or "hello"  
4 or nodded his head appropriately for in court. Even the  
5 things, as I said earlier, that Mr. Goeller represented to the  
6 Court to be the positions or the statements or the directives  
7 of the Defendant, as I said earlier, seem to have been  
8 goal-related and seem to have evidenced an understanding of  
9 the proceedings against him.

10 You asked the Defendant, and, in fact, the Court  
11 made the finding -- you asked the Defendant if it was still  
12 his desire to talk with you, and he indicated no, it wasn't.  
13 And he seemed alert and intelligent, and with regard to some  
14 of the Court's questions, he even had some type of  
15 conversations with the Defense attorneys. I don't know what  
16 they were, but at least they seemed to be related to some type  
17 of communication. And at least at this point, it is the  
18 State's position that there's insufficient evidence upon which  
19 to even order a competency examination or a competency jury  
20 trial in any regard. And we think 46.02 authorizes that  
21 because it requires the Court to conduct an initial  
22 investigation into the -- into his inability to assist in his  
23 own defense. We see nothing in the record indicating anything  
24 about that at all frankly.

25 MR. GOELLER: The way you're looking at me,

1 Judge, I figure you want me to speak?

2 THE COURT: Well, no. Looks like the Defendant  
3 is talking to your co-counsel there, and I was just wanting to  
4 see if we have any more in the way of a response.

5 I tell you what you can do while they talk, though,  
6 Mr. Goeller, the -- your earlier position that you might want  
7 to have Mr. Cantu examined is somewhat vague, and it's -- so I  
8 don't know that there is enough for me to order an  
9 examination. If there is anything else that you would like  
10 to say on the record, then I'll certainly consider it.

11 MR. GOELLER: No, Judge. I don't have  
12 anything else I could say on the record.

13 THE COURT: And do you have any desire to call  
14 him with regard to the matter?

15 MR. GOELLER: No, sir.

16 THE COURT: All right. So I understand, with  
17 regard to the matter that we took up about whether or not he  
18 would address the Court, you've spent some time talking to  
19 him. You don't have any doubt about your communication with  
20 regard to that matter; is that correct?

21 MR. GOELLER: That's correct, Your Honor.

22 There is still some lingering doubt in my mind as to whether  
23 my client wishes to proceed pro se after I announced to the  
24 Court that he had not unequivocally demanded such. I think  
25 the issue has arisen again, and he may have some questions for

1 the Court along those lines -- I know this is convoluted. He  
2 may have questions for the Court -- for the Court in order to  
3 make his own determination whether he should demand to proceed  
4 pro se, and I told him I would accommodate him in asking the  
5 Court to maybe answer a few questions, more regarding  
6 logistics of a pro se representation. Not so much along the  
7 lines of disadvantages and pitfalls and such, but rather the  
8 logistics and how much time the Court would grant him to  
9 prepare.

10 THE COURT: I tell you what, I don't mind if he  
11 asks me something, but I can tell you that I don't represent  
12 anybody in this case. That's why you and Mr. High are here  
13 and have done a superb job so far. So, I certainly don't mind  
14 any question that's asked, but I can't tell you for certain  
15 that I would answer any.

16 MR. GOELLER: Yes, sir.

17 THE COURT: So, do you want to ask me anything,  
18 Mr. Cantu?

19 MR. CANTU: May I address your court, Your  
20 Honor?

21 THE COURT: Yes, sure.

22 MR. CANTU: In my opinion, I feel I am fully  
23 competent. This is not a problem with Mr. Goeller or  
24 Mr. High. I feel there's -- maybe research or some things  
25 that haven't been added to this trial that can help me going

1 forward, but before making a decision of choosing pro se, not  
2 to waste a lot of your time, but --

3 THE COURT: Don't worry about wasting a lot of  
4 my time. But here's the thing, you know, we've got a jury  
5 that's certainly ready to begin deliberating in this case, but  
6 perhaps you understood from Mr. Schultz that we can reopen  
7 your case if you desire to reopen it, and you can put on your  
8 case if you desire to. If you have anything to put on, and  
9 that includes you testifying or not testifying, based upon  
10 whether you desire to and based upon your attorney's advice.  
11 And it also includes you putting on any other evidence that  
12 you want to put on, based upon what you desire to do and what  
13 your attorneys advise you to do. And as you know, a fellow  
14 with good sense is going to listen to his attorneys, and he's  
15 going to listen carefully, and he's going to understand that  
16 they have experience in these matters.

17 And I would imagine that you're aware that they have  
18 your best interest at heart; is that correct?

19 MR. CANTU: Correct.

20 THE COURT: All right. If they've got a lot of  
21 experience and your best interest at heart, that should tell  
22 you something about the approach you should be taking with  
23 your case. But at any rate, you have been aware, even before  
24 just this moment, that you had a right to put on a case; is  
25 that correct?

1 MR. CANTU: Yes, Your Honor.

2 THE COURT: And your attorneys advised you  
3 about that, right?

4 MR. CANTU: Yes.

5 THE COURT: And you still do. If you, in  
6 conjunction with your attorneys, decide that you want to put  
7 on a case, let me know. But here's what I want you to do: I  
8 want you to think about it and let me know within the next  
9 hour if you decide to reopen your case. If you decide to  
10 reopen your case, fine. And I don't represent you, your  
11 attorneys do. The State doesn't represent you. In fact, they  
12 are adversary to you. They are opposed to you. They are  
13 against you, as you know. But, whether or not to put on a  
14 case is a very important decision for a defendant to make,  
15 whether -- first of all, whether or not to testify, and  
16 whether or not to put on anything at all.

17 And some defendants have hung themselves in the  
18 process of putting on a case that they shouldn't have put on,  
19 and others have -- and others have found a good result in  
20 putting on a case. Your attorneys have seen a lot of cases  
21 tried, and they probably have a pretty good feel whether or  
22 not it's a good idea for you to put on any case at all, and  
23 you guys have spent hours talking about whether or not to do  
24 it, I suppose, Mr. Cantu?

25 MR. CANTU: At times, yes.

1 THE COURT: So, anyway, if you decide that you  
2 want to reopen and put on a case in conjunction with talking  
3 to your attorneys, let me know within the next hour, and when  
4 we come back tomorrow morning we can reopen your case, and you  
5 can put on whatever you want. Or you may decide that what  
6 you've done so far is a very prudent and very intelligent  
7 approach to the case, but that's for you to decide, not for  
8 me.

9 MR. CANTU: I agree, Your Honor. But -- before  
10 ever choosing to go pro se, do I have the option of asking you  
11 possible questions of what I -- ever since I've been at the  
12 Sheriff's department in jail, on numerous occasions I've  
13 requested to go to the law library and get law books, but I've  
14 not been allowed to because, according to the Sheriff's rule,  
15 as long as you have court-appointed counsel, you can't read  
16 the law books. You can't look at the Criminal Codes of  
17 Procedures. It's not going to happen.

18 At times I know that -- you know, I am able to see  
19 my attorneys, but times are limited. They might not always  
20 have the answers to the questions that I need. Without having  
21 to do proper research and at the rate that they're going,  
22 their mind might be completely focused on something else that  
23 has to do with the trial.

24 THE COURT: Okay.

25 MR. CANTU: How would someone know all their

1 options on choosing pro se and knowing what you can and can't  
2 do?

3 THE COURT: Well, of course, the start is to  
4 talk to your attorneys about how it works.

5 MR. CANTU: Okay. They've informed me that  
6 you're on your own and your resources are limited. Now, how  
7 can someone fight a capital murder case without having the  
8 proper resources that the State has to fight it?

9 THE COURT: Well, that's probably why you don't  
10 see very many intelligent defendants representing themselves  
11 in criminal cases. Perhaps you've heard, you know, you don't  
12 give yourself an appendectomy, right? You go to a doctor to  
13 get that done.

14 MR. CANTU: Correct.

15 THE COURT: And so that's why you generally  
16 don't see people representing themselves, and when you do, you  
17 generally don't see them representing themselves with very  
18 good results. So, to answer your question, how do you find  
19 out? You have to rely on your attorney's best advice with  
20 regard to what steps you take next. Ultimately many of these  
21 things are your decision. It's your decision whether or not  
22 you testify. It's your decision whether or not you put on a  
23 case, but it's their duty to give you their best advice with  
24 regard to what would be a smart thing for you to do.

25 MR. CANTU: Okay. If I was to choose pro se

1 from the Court, what kind of time factor would I be looking  
2 at?

3 THE COURT: What, to prepare?

4 MR. CANTU: Yes, Your Honor.

5 THE COURT: Well, let me tell you, we've got a  
6 jury in the box, and I don't know if you've ever heard the  
7 term about jeopardy attaching, but jeopardy is attached in  
8 this case, and we've got a jury. So I think, if I were really  
9 going to give you time to prepare for this case, Mr. Cantu,  
10 I'd probably have to give you about eight or ten years because  
11 the first thing we'd have to do is send you to law school.  
12 And then we'd have to give you about five years of practice in  
13 the criminal courts, and I don't think that the system would  
14 allow you to wait ten years to prepare yourself to defend  
15 yourself. So, in terms of what you can do in a very limited  
16 amount of time, the best thing you can do is talk to your  
17 attorneys about how to proceed.

18 I don't know the facts of your case, naturally, and  
19 I'm not supposed to, just as the State doesn't know exactly  
20 what you're going to do, or what approach you're going to  
21 take. But I will allow you to represent yourself if you  
22 decide you want to, but, let me tell you something, I don't  
23 even do my own plumbing, okay? And I don't recommend it for  
24 other people, and so I think that as a general proposition  
25 it's a mistake to do it, but that's not always so.

1 You have to decide whether you're going to rely on  
2 your attorneys or not. If you don't, you will be on your own,  
3 and I won't be giving you any -- I wouldn't be giving you any  
4 help in trying your case. You'll be on your own. You won't  
5 know what kind of objections to make. You won't know how to  
6 approach the evidence that's put on by the State. What I'm  
7 telling you is, there's a lot of things that you will --  
8 simply will not know how to do that your attorneys know how to  
9 do that's second nature to them. And so you're going to be  
10 operating at a tremendous disadvantage, but it's your choice.

11 If you figure that you are such a virtuous soul and  
12 are so prepared to represent yourself then that's the thing  
13 that you need to do. Then you have to consider whether or not  
14 you want to do it.

15 MR. CANTU: Of making the choice of pro se?

16 THE COURT: Yeah.

17 MR. CANTU: Are they still able to be  
18 available as co-counsel?

19 THE COURT: Well, it's possible that I would  
20 let them -- well, I probably wouldn't let both of them. If  
21 you're going to have a backup, then I suppose that you aren't  
22 going to need any more than one, and -- but here's the thing.  
23 I'm not going to let you go pro se, and then let them  
24 represent you, and you represent yourself, and they represent  
25 you, and you represent yourself. You're either going to be

1 represented by them, or you're going to represent yourself  
2 with them available to assist you a little. But we're not  
3 going to go bouncing back and forth between you representing  
4 yourself and them representing you throughout the rest of this  
5 trial.

6 MR. CANTU: I understand.

7 THE COURT: And so I might allow them to be  
8 standby counsel for you, but keep in mind, too, that as  
9 standby counsel they're not going to be able to make  
10 objections, and they're not going to be able to handle  
11 witnesses. They're not going to be able to question the  
12 witnesses. They're not going to be able to cross-examine.  
13 They're not going to be able to put on your witnesses for you  
14 because you're pro se. They'll be standing by to help you.

15 MR. CANTU: But once someone chooses pro se,  
16 you're able to put witnesses on that stand, correct?

17 THE COURT: You can put witnesses on the stand  
18 if you're not pro se. You can put witnesses on the stand if  
19 they represent you. So that shouldn't be the deciding factor,  
20 whether or not you want to put on witnesses.

21 MR. CANTU: I understand.

22 THE COURT: If you want to put on witnesses,  
23 then they can put them on for you.

24 MR. CANTU: And if they're not agreeing to do  
25 so, then that's something I have to go with?

1 THE COURT: Well, that's something you two --  
2 you three have to decide together, you and your attorneys?

3 MR. CANTU: Right. I think that's --

4 THE COURT: What approach do you take and how  
5 do you put on any evidence that you want to put on, or do you  
6 put on no evidence, because that's the smart thing to do, is  
7 to put on no evidence, or put on a little bit of evidence.  
8 You know, it could be that you would call three witnesses, and  
9 it's a great idea to call two of them, and the third witness  
10 that you thought was such a great idea to put on kills you,  
11 right?

12 MR. CANTU: Could happen, yes.

13 THE COURT: Or could be that all three would  
14 kill you. And then you'll look back some day and say, you  
15 know, I sure wish I had just taken my attorney's advise.

16 MR. CANTU: Or all three get me home, and I  
17 think that's --

18 THE COURT: It's conceivable.

19 MR. CANTU: -- where we're bumping into some  
20 problems.

21 THE COURT: That's what you have to decide.

22 MR. CANTU: If I was to make that choice, how  
23 limited am I to resources being at the jailhouse? Would you  
24 allow Mr. High or Mr. Goeller to pull documents for me, or  
25 actually submit and turn in the evidence, or at least help me

1 retrieve it?

2 THE COURT: Well, let me tell you something, I  
3 don't want to inquire of you about specifically what evidence  
4 you're talking about because I'm sure it's something you and  
5 your attorney want left alone. But they have the ability --  
6 they'll have the same ability to do today and tomorrow what  
7 they've had the last -- over the last few months to do. So,  
8 they'll have the same ability to represent you as they have  
9 had. In terms of resources, let me tell you something, I  
10 don't think you're going to be able to go to the law library  
11 on the second floor right now. If I let you go to the law  
12 library right now and told you to sit in that law library for  
13 the next two months and do nothing but read materials from the  
14 law library, you wouldn't know anything more about defending  
15 yourself in two months than you know right now.

16 MR. CANTU: I agree.

17 THE COURT: So depends on what resources we're  
18 talking about, and what materials we're talking about.

19 MR. CANTU: You can give me an hour to make  
20 that decision, actually less than that, from the time you said  
21 an hour?

22 THE COURT: Well, I'll give you more than  
23 that. You know, I tell you what, we're going to be here until  
24 about 5:00 today, and I suppose in about 45 minutes we're  
25 going to be taking a look at the charge, so --

1 want to, you can let me know tomorrow morning. But there is  
2 this, too, let me know whatever you want to do by tomorrow  
3 morning at 9:00, and -- but let's make this the last go-round  
4 with regard to whether you represent yourself or not.

5 If you decide to go pro se, great. You tell me that  
6 tomorrow morning at 9:00, and you're on your own. All right?

7 MR. CANTU: I understand.

8 THE COURT: On the other hand, if you tell me  
9 at 9:00 tomorrow morning, I want the two -- I've come to my  
10 senses, and I've decided that I'm better off with the two  
11 attorneys that I've got, then let's make that the way that we  
12 run this case.

13 And having said that, I will tell you that with  
14 regard to any Constitutional right, you can assert it at any  
15 time, and so if you decided -- if you decided in three days  
16 that you want to represent yourself, then I would allow you to  
17 do it at that time. But I think that you probably had a lot  
18 of time to think about it already, and I don't know how many  
19 more chances you're going to need to figure out whether you  
20 want the attorneys you've got or whether you want to represent  
21 yourself.

22 At any rate, where are we on the charge?

23 MR. SCHULTZ: I think we're where we want to  
24 be. They don't agree with all of our omissions. We're where  
25 we want to be, with the exception of that 38.23 charge on

1 MR. SCHULTZ: Except we might have to figure  
2 out who we're going to be doing the charge conference with,  
3 which I'm not being facetious. I'll be honest, we've having a  
4 hard time drafting this charge ourselves. We've been doing  
5 this most of our lives, and I can't begin to imagine how  
6 someone that isn't schooled in this business would be able to  
7 draft a charge that -- so I don't know. I guess we proceed  
8 under the assumption that we'll propose the charge and whoever  
9 it is allow them to make objections or requested instructions,  
10 I guess?

11 THE COURT: Well, if he's pro se, naturally  
12 he's going to be making whatever objections he wants to, but  
13 his attorneys are not.

14 MR. SCHULTZ: I understand.

15 THE COURT: And so --

16 MR. SCHULTZ: I'm just saying, you know how  
17 complicated that charge stuff is. It's very complicated.

18 THE COURT: Well, there's a lot of other stuff  
19 that gets complicated, and I think, Mr. Cantu, if you jump  
20 into this case on your own, it's not going to be very long  
21 before you are completely lost and floundering. But  
22 nevertheless, the Constitution gives you a right. You have a  
23 Constitutional right to represent yourself, and I'm certainly  
24 not going to interfere with that. But anyway, yeah, think  
25 about it. You're not limited to an hour. You know, if you

1 unlawfully obtaining evidence, and we're having to rework  
2 that. Our problem is we're having to just cook this out of  
3 the air. There's not any form book that deals with this  
4 instruction, the requested -- that 4th Amendment stuff. If  
5 it's just nice -- if it's an unlawful traffic stop and then a  
6 DWI results -- follow that, we've got some instructions on  
7 that.

8 But I asked Mr. Goeller where he got that, and it  
9 was just his work. I'm not being critical. I think probably  
10 we have a different oil cloth we'd like to cut it from, and  
11 then let the Court maybe decide.

12 THE COURT: In fact, I've never had a real high  
13 opinion of the whole process of letting the jury decide what  
14 the 4th Amendment means, but that ain't my business.

15 MR. SCHULTZ: But we're working on it, and  
16 I'll give you a progress report in half an hour. Are you  
17 going to stick around until --

18 THE COURT: We'll just stick around because I  
19 want to get the charge ready today so that we can either give  
20 it to the jury tomorrow morning, or let the Defendant reopen  
21 his case, whichever we decide to do.

22 MR. SCHULTZ: Yes, sir.

23 THE COURT: All right. Then I'll see you in  
24 about half an hour, 45 minutes.

25 MR. SCHULTZ: Yes, sir.

1 (End of Volume 40.)

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

16 I further certify that the total cost for the  
 17 preparation of this Reporter's Record is contained in  
 18 Volume 53 and was paid by Collin County.

19 WITNESS MY OFFICIAL HAND this the 14th day of  
 20 January, 2003.

*Lisa M. Renfro*  
 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  
 Tel. Number: 972/424-1460, ext. 4661

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