

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

VOLUME 46 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 46 - GUILT/INNOCENCE

CAPITAL MURDER JURY TRIAL

COPY

On the 24th day of October, 2001, from 9:20 a.m. to 5:00 p.m. the Capital Murder - Punishment Phase of the proceedings came on to be heard in 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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1 here?  
 2 A. If you're looking at likelihood of homicide. It's  
 3 somewhat more likely, and it depends some on what part -- what  
 4 neighborhood are you in. There are some neighborhoods that  
 5 are more dangerous than death row that are on the outside out  
 6 in the community. It depends some on what socio-economic  
 7 group you're from and whether you're in the inner city or some  
 8 things like that, but in terms of population in the United  
 9 States at large, the rates in prison are lower than the rates  
 10 in the general population. The rates on death are somewhat  
 11 higher.

12 Q. You make a good point, because even though there may  
 13 be statistical frequency of all sorts of things, that might  
 14 not answer the question of the individual risk of the  
 15 individual person, which may be situational; would you agree  
 16 with that?

17 A. No, sir, I wouldn't. The whole point of talking  
 18 about these group statistics is that is applicable to an  
 19 individual, and as we look at an individual, unless they're  
 20 just overwhelmingly compelling features about him that make  
 21 him different from the other murderers who are in prison, or  
 22 the other violent felons who are in prison, we would do better  
 23 to stay pretty close to those statistical numbers as we look  
 24 at his individual risk.

25 Q. Let's test that in some other areas, if you will.

1 Lets assume you and I decide we want to be sky divers, and we  
 2 did some research and we discovered the failure rate of  
 3 parachutes. Maybe we decide that's three one-hundredths of a  
 4 percent, whatever that failure rate is. Wouldn't it be  
 5 important to know who that person packing that chute was so  
 6 that we could determine whether or not he's on the high side  
 7 of those statistics or the low side because not all people are  
 8 the same? Wouldn't that be important to you?

9 A. Yeah, it could be. The likelihood is that when we  
 10 look, for example, at parachute packing that our number of  
 11 parachute failures are chutes packed by certified packers. So  
 12 if I've got a certified packer, then, again, that rate of  
 13 certified packers is what's going to be most accurate.

14 Now, if you have a packer who is not certified, or  
 15 who is simply negligent, and then now we're separating him  
 16 from the broad body of other parachute packers. Now we're  
 17 back to what I said before. Unless there's some compelling  
 18 issue that separates this person from all the other parachute  
 19 packers -- from all the other murderers in prison, or all the  
 20 other violent felons in prison, then I want to be careful  
 21 about saying this guy is somehow distinctive from that group  
 22 rate.

23 Q. So our jump sergeant is up there with us, and you  
 24 say who packed our chutes? And he says, oh, don't worry about  
 25 it. I'm not worried about it, and that's okay with you?

1 A. No, sir. I would verify that, in fact, a certified  
 2 packer had packed my chute, which is what I did when I did do  
 3 some skydiving. I made sure my chute was packed by a  
 4 certified packer. I didn't wad it in there myself. At that  
 5 point if the guy is certified, then I'm satisfied with those  
 6 statistical risks.

7 Q. Suppose you were going to have you some heart  
 8 surgery, and you went did the research on what the failure  
 9 rate was, or shall we say the mortality rate was on that  
 10 particular surgery. Would you just say, well, those are my  
 11 odds, or would you want to find out about the doctor that was  
 12 going to perform the surgery?

13 A. Well, I would certainly investigate the doctor to be  
 14 sure that he, in fact, he meets the criteria that those other  
 15 board certified doctors did. And I would also look at some  
 16 things like how many surgeries does that hospital do, because  
 17 a hospital that does many of those surgeries has a lower  
 18 complication rate than a hospital that does few of those  
 19 surgeries. So again, what I'm looking for are statistical  
 20 features from the group that then I can apply to my own  
 21 individual risk.

22 Q. Let's face it, you want to know about the doctor.  
 23 You'd actually want to investigate the doctor, and his or her  
 24 particular skills, wouldn't you?

25 A. Again, to make sure that he fits with that group

1 statistic.

2 Q. Okay. And I'm going to ask if I can get a yes or no  
 3 answer. You'd want to investigate the individual doctor,  
 4 wouldn't you?

5 A. To be sure -- yes, sir, to be sure that he is board  
 6 certified --

7 Q. Can you answer that yes or no --

8 A. -- and fits with the rest of the group.

9 Q. -- Doctor. That's all I'm asking you.

10 A. I'm trying to describe what it is about him that's  
 11 important to investigate.

12 Q. I didn't ask you that. I just asked you would you  
 13 want to investigate the doctor; yes or no?

14 A. Well, yes, sir.

15 Q. Thank you. Let's assume that a person were wanting  
 16 to be involved in modern dating, and that means all the  
 17 things, I suppose, that goes along with that. And let's  
 18 assume this person investigated the AIDS rate in our society.

19 A. Yes, sir.

20 Q. The purpose of that is rather obvious because nobody  
 21 seems to want to get AIDS in our society?

22 A. That's correct.

23 Q. And let's assume that from the statistical study it  
 24 was relatively infrequent, and I have no idea what that rate  
 25 might be. But let's assume it's a very low percentage rate of

1 they're released immediately and -- or they continue in the  
2 community, and say there are circumstances about this guy's  
3 particular offense that might make him somewhat less likely,  
4 might individualize that some, but I would still try to use  
5 those group statistics about somebody who's committing murder  
6 in the community.

7 Q. You understand another approach is simply look at  
8 that and just use human understanding, and say, this guy is  
9 not going to be dangerous in the future. This is situational,  
10 and not only do I have a reasonable doubt about his future  
11 danger, I don't even think it at all. Do you understand  
12 that's a reasonable approach, too?

13 A. Somebody might take that approach. Again, it is  
14 disturbing that he doesn't just kill the perpetrator, but that  
15 he kills somebody else and he takes this on himself.

16 Q. Okay.

17 A. Many people have some inner justification for  
18 committing murder. It isn't just a wholly irrational act.  
19 That inner justification is still a problem though.

20 Q. Maybe he finds two guards that are roommates and he  
21 kills both of them. That's a capital murder?

22 A. Yes, sir.

23 Q. They're both equally understandable as targets of  
24 this murder, not justifiable, but understandable; don't you  
25 agree?

1 A. Potentially. I don't think people should take the  
2 law into their own hands, and there's certainly mechanisms for  
3 bringing those people to justice that don't require him to  
4 intercede himself. The fact that he grew up in a  
5 concentration camp would certainly be something that we would  
6 consider to be mitigating, even though he makes a choice to  
7 murder someone. We would take in that history as being  
8 something that helped shape and form that choice. So what  
9 you're saying is a good example of that.

10 Q. Do you think motive is important in assaying the  
11 individual danger of capital murder? Do you think this motive  
12 in committing a crime is important?

13 A. It seems not to be as we look at capital offenders,  
14 and we break out, did they kill somebody in the course of a  
15 robbery? Did they kill a policeman? Did they kill a child?  
16 Did they rape the person when they killed them? Did they kill  
17 them with a gun or a knife or a club? None of those factors  
18 seem to have any relevance to -- or any predictive benefit  
19 when we look at their outcomes in prison. So from that  
20 standpoint, the specific motive that's involved doesn't seem  
21 to inform things very well when we're looking at their  
22 likelihood of violence in prison.

23 Now, it might be relevant to the follow-up of what  
24 would happen in the community if they were free right now.  
25 But in terms of their behavior in prison, it seems not to

1 translate well, based on the research we have.

2 Q. Of course what you're telling us is that there's  
3 only about a 20 percent chance of even the death row inmates  
4 committing violent acts; isn't that right? Is that what you  
5 told us?

6 A. Committing violent acts in the general prison  
7 population, a 20 to 30 percent likelihood.

8 Q. But you said it was relative. It was correlative  
9 even in the death row sense?

10 A. Yes, sir. When you look at a follow-up of death row  
11 inmates, my recollection is about 20 percent of those guys  
12 were violent on death row.

13 Q. And once again, that means 80 percent of the time  
14 they weren't violent?

15 A. That's correct.

16 Q. And nevertheless, juries of conscience and  
17 commitment found probability of violence, despite what you say  
18 the statistics show; is that right?

19 A. I don't know that it was despite that. I don't know  
20 that they had benefit of that statistical knowledge as they  
21 made that determination. But they identified that there was a  
22 probability and so sentenced the person to death.

23 Q. Is it your proposition that 80 percent of the time  
24 that was an erroneous answer by the jury then?

25 A. Based on the follow-up of those individuals, it

1 would it appear that the juries were incorrect in their  
2 assessment eight out of ten times.

3 Q. Which is why they need either you or someone like  
4 you to bring information that you bring?

5 A. Why they need the data. The data may be helpful to  
6 them, and I think is essential in trying to identify what the  
7 relatively likelihood is and who they're dealing with, and  
8 what mechanisms of prevention are available.

9 Q. Just so we're clear, not only this Defendant, but  
10 you're saying virtually every capital defendant is a danger to  
11 society at large?

12 A. If released immediately.

13 Q. Okay. Fair enough.

14 Now, do you remember my questions yesterday about  
15 whether or not much of what you say is common sense, and you  
16 indicated you didn't think that it was?

17 A. No, sir. It wasn't common sense to me before I  
18 began to study it, and as I talked to people about it they  
19 seemed surprised by those numbers.

20 Q. Would you do me a favor and go to those risk  
21 assessment factors and those DOJ lists that you have.

22 A. Yes, sir.

23 Q. And I'm not -- I can't identify -- I can't identify  
24 the particular slide, but if you get me in that area I'll know  
25 where I want to be.

1 physicians and childcare and Boys and Girl Clubs and things  
2 that could constructively intervene.

3 Q. I don't mean punitively. I mean vigilantly just be  
4 on the lookout because here's some problem in about 13 or 14  
5 years.

6 A. I think that would be a waste of resources. The  
7 issue that the Justice Department is talking about is not to  
8 be on the lookout so they can lock the kid up. The issue is  
9 to begin delivering services that interrupt the processes that  
10 cause the violence.

11 Q. Okay. Let's talk about family history of criminal  
12 behavior and substance abuse. What's that mean to you?

13 A. Well, that means that the parents, or people in the  
14 family system either are engaging in illegal activities  
15 themselves, or they have substance and alcohol dependence  
16 problems.

17 Q. Isn't that common sense? If your parents are out  
18 committing crimes and doing dope, they're not going to be  
19 taking the time to be good parents, and doesn't everybody  
20 understand that?

21 A. They might. But on the other hand, when we look at  
22 something like alcoholism they might not identified that your  
23 parent being an alcoholic is increasing your likelihood of  
24 being chronically delinquent or violent in early adulthood.  
25 In fact, they might say, gee, lots of people's fathers drank

1 and what does that have to do with them deciding to commit  
2 some act of violence in the community? So the Justice  
3 Department is, in fact, not trying to just say what are we  
4 speculating about, but what factors have been demonstrated in  
5 the research as increasing the risk.

6 Q. Johnny, where is your dad? He's in jail. Why is he  
7 in jail? He's dealing drugs. You don't think people without  
8 your credentials can understand how that would affect somebody  
9 and their criminality? Isn't that obvious?

10 A. You would think so, but I have heard arguments in  
11 courts just like this where they say lots of people have  
12 parents who end up in jail, and they don't go on to acts of  
13 serious violence. And, in fact, have actively disputed what  
14 the Justice Department is saying there's research to  
15 demonstrate.

16 Q. So this jury needs you to explain that that's the  
17 case; that if you've got a dad in prison or in jail because  
18 he's dealing drugs, that affects your values growing up? They  
19 couldn't figure that out without you?

20 A. Oh, no, sir. They don't need me. I think that as  
21 they try to give weight to the developmental factors, the risk  
22 factors that may be present in Ivan's life, or any Defendant's  
23 life, that to the extent that's illuminated by the best  
24 research from the best sources that they're going to make a  
25 more reliable determination of that.

1 Q. Family management problems. You checked that as  
2 applying to this Defendant. What does that mean?

3 A. Well, that means that there is not a good mechanism  
4 of supervision. You know, when you have an eight-year-old  
5 providing care for a three-year-old, that's not good family  
6 management. If mom is working two jobs, and the kid is left  
7 unattended and is unsupervised a good part of the time, that's  
8 not good family management. You don't have appropriate  
9 supervision and guidance and adult care for a child.

10 Q. You think we need you to explain if you've got a  
11 child younger than the age of six, and you're working two  
12 jobs, and he's left alone that that's not good parenting?  
13 There are parents on this jury. You think they can't figure  
14 that out without you?

15 A. Well, they might be able to, but when it's  
16 represented to them that he had a loving mother and a loving  
17 father, the implication is somehow that because they loved him  
18 that then took away the impact of not being there to supervise  
19 him and guide him and be on site functionally. So they might  
20 well be distracted from what they know about family management  
21 as they say, well, gee, his parents loved him, so I guess it  
22 didn't matter whether or not they were there to actually guide  
23 him and supervise him.

24 Q. You're basing that on watching the witnesses testify  
25 about that, right?

1 A. Yes, sir, and your own cross-examination.

2 Q. I understand. That's a yes or no, isn't it?

3 A. I'm not sure if it is or not. I don't know that I  
4 remember the question.

5 Q. Do you understand the jury was sitting there, too?  
6 Do you think they're not able to evaluate witnesses without  
7 your help? You think they couldn't figure --

8 MR. GOELLER: Objection to the form of the  
9 question. Now he's attempting to get the witness and the jury  
10 into a battle of sorts. It's improper for Mr. Schultz to bait  
11 the jury.

12 THE COURT: Sustained.

13 Q. BY MR. SCHULTZ: Well, you understand that you might  
14 have been here in one role. Other people could have been  
15 watching those same witnesses testify and draw whatever  
16 conclusions they wanted to, just like you have.

17 A. Well, certainly they can draw whatever conclusions  
18 they want to. The conclusions that I have pointed to are  
19 simply to say there is research that shows an association  
20 between these developmental events and criminal violence in  
21 adolescence and early adulthood. And that's not a matter of  
22 speculation. That's been demonstrated by research from the  
23 Justice Department, and I'm simply providing that illumination  
24 as the jury gives weight to the testimony they heard.

25 Q. But you figure they wouldn't have known such things

1 so there are competing views in our society about whether  
2 availability of firearms is related to likelihood of violence  
3 or not.

4 Q. Now, they claim the media portrayals of violence  
5 increases the likelihood of violence and delinquency in the  
6 community; is that right?

7 A. That's correct.

8 Q. Well, haven't we always had movies that have  
9 violence in them? Even the old gangster movies, haven't we  
10 always had them?

11 A. The concentration of violence in the media is  
12 increasing, and with video games and that sort of thing, kind  
13 of pseudo killing as you're looking over the barrel of a  
14 shotgun in a video game, the violence pervasiveness that young  
15 people are exposed to is increasing, and it's identified as a  
16 risk factor, particularly if the child has some other  
17 vulnerabilities.

18 Q. I'm curious, since you never took the opportunity  
19 to talk with the Defendant, where do you get the idea that you  
20 want to check media portrayals and violence? Where does that  
21 come from?

22 A. That applies to virtually every child who has grown  
23 up in the United States across the last 20 years, unless  
24 they're isolated and home-schooled and no TV in the house and  
25 that kind of thing.

1 age six through adolescence, that's still not common sense for  
2 us to figure that out?

3 A. Not that they know it's associated with criminal  
4 violence in young adulthood. I think people might not  
5 automatically make that connection.

6 Q. Now, where did you get the conclusion that this  
7 Defendant's parental attitudes were favorable toward crime and  
8 substance abuse?

9 A. Well, the substance abuse; that his father was  
10 described as being an alcoholic, was described as abusing  
11 drugs on occasion, as I recall. That also represents criminal  
12 activity. His mother was going to engage in a fraud for child  
13 support. That represents a criminal activity. So there are  
14 some facts of parental behaviors that are consistent with this  
15 kind of risk factor.

16 Q. Of course, we don't know if he knew about that fraud  
17 or not, do we? We don't have any idea about that part?

18 A. No, sir.

19 Q. Okay. Moreover, we've got his aunt telling him to  
20 stop hanging around drug dealers and go get help. We've got  
21 that for him, right?

22 A. Yes, sir. She's not a parent, but she is a  
23 relative.

24 Q. Well, she claimed to be like a parent because she  
25 was raising him. Do you remember that part of her testimony?

1 Q. So you just go check that because you figure he  
2 probably was?

3 A. Typically that's present in almost every case.

4 Q. And yet, you know, if there are only 500 people on  
5 death row and we've got millions and millions of people in  
6 this country, apparently most of them do just fine, even  
7 though they've all been exposed to violence?

8 A. Yes, sir. That's why this is not common sense, just  
9 for that argument that someone would say, gee, lots of people  
10 get exposed to this. Very few people kill somebody. Obviously  
11 this doesn't have any relationship. And yet, statistically  
12 when you look at it, it is a risk factor, and this is saying,  
13 not that it compels somebody to do criminal acts of violence,  
14 but it increases the risk. And unless you know this research  
15 or are exposed to it, then you fall pray to the notion that  
16 because it doesn't affect everybody in a homicidal way,  
17 therefore it has no relevance at all.

18 Q. The next three that you've checked are actually the  
19 same as were checked as age -- from conception until six, and  
20 that is family management, family conflict, parental attitude  
21 (inaudible) towards involvement in crime and substance abuse,  
22 right?

23 A. Yes, sir. They're continuing to have that kind of  
24 problematic effect even after age six.

25 Q. And that's still not common sense? Even for people

1 A. Yes, sir. There are individuals in his background  
2 who do not have favorable attitudes. There are some in his  
3 background who do have favorable attitudes toward these  
4 things.

5 Q. All those things that you didn't check for this  
6 person, those next four that had blue dots by them, early and  
7 persistent antisocial behavior. You decided he didn't have  
8 any of that?

9 A. I have no information to tell me that he had early  
10 and persistent antisocial behavior.

11 Q. You have no information that he didn't either,  
12 though?

13 A. No, sir. In the absence of information, that  
14 assumption that that risk factor is not present. So I don't  
15 have school reports that describe extensive misbehavior and  
16 extensive juvenile record. There's simply not data to support  
17 that there was early and persistent antisocial behavior.

18 Q. What about academic failure and lack of commitment  
19 to school, you got no data on that?

20 A. There is some indication of academic failure. He  
21 failed economics. As I looked at his transcripts, there were  
22 periodic failing grades. There was not pervasive academic  
23 failure, and as I went over this slide yesterday, I described  
24 that this might be a factor that could be checked. It's kind  
25 of a marginal one because he did fail some, but there

1 **A. I don't know that I can answer it yes or no. That's**  
2 **maybe it's common sense.**

3 Q. If you can't it answer yes or no, just tell me.  
4 That's all I want to know.

5 **A. Yes, sir.**

6 Q. Fair enough? All right.

7 Early initiation of violent behavior. Isn't that  
8 common sense that that's a risk factor that increases a  
9 person's danger later?

10 **A. I might not know there was a six-fold increase in**  
11 **risk based on that.**

12 Q. I understand. But isn't the phenomenon common  
13 sense; if you start violence early, that's worse?

14 **A. Yes, sir. People might have a sense of that.**

15 Q. Involved in other forms of antisocial behavior, and  
16 I assume that means other forms other than the capital murder.  
17 Is that what that means?

18 **A. Well, these are looking at behaviors as the kid is**  
19 **growing up. Is he involved in multiple different kinds of**  
20 **antisocial conduct.**

21 Q. Isn't that -- isn't it common sense that if a person  
22 does not only capital murders, but also other things that are  
23 antisocial, even small things in and of themselves, that's not  
24 a -- that's a more risky person. Isn't that common sense?

25 **A. Well, that's not what this is saying. This is not**

1 talking about a capital murder. This is talking about risk  
2 factors before the person ever becomes seriously violent in  
3 the community. So as Ivan is abusing drugs and hanging out  
4 with delinquent sorts of folks, then he is moving in harm's  
5 way.

6 Q. Beliefs and attitudes favorable to deviant or  
7 antisocial behavior. Is that not common sense that somebody  
8 that believes that antisocial behavior is good, that that  
9 person is more likely to be a risk?

10 **A. Yes, sir. I think there's common sense with that.**

11 Q. Why did you check that for the Defendant that he's  
12 favorable to deviant or antisocial behavior?

13 **A. Well, as I described earlier, he's in kind of a gray**  
14 **zone there. I checked it because of his involvement in drug**  
15 **and alcohol abuse, and then in the kind of late adolescent,**  
16 **early adulthood range, going to topless bars and is -- leaves**  
17 **the Navy, and those kinds of things. Now, some of these --**  
18 **some of those behaviors are kind of an early adulthood.**

19 They're almost beyond this late adolescent developmental zone.  
20 So it's kind of a -- I checked that one because I was trying  
21 to not just identify factors that were completely outside of  
22 him, but to try to say, gee, there may be some things that are  
23 part of him, or his background as a child that are here, too.  
24 So it was kind of in an abundance of caution I checked that.

25 Q. Do you know about him going around telling people he

1 was connected to the Gambino family and he could get people  
2 killed when he wanted to?

3 **A. I've heard that, yes, sir.**

4 Q. Would that be fair to say that's an attitude  
5 favorable to antisocial behavior?

6 **A. Yeah, that kind of bragging is an attitude that's**  
7 **favorable to that.**

8 Q. And that's not -- you do think that is common sense;  
9 is that right?

10 **A. Yeah. I think there's some common sense element to**  
11 **that.**

12 Q. Parental criminality. Isn't it common sense that if  
13 your parents are criminals, that you're likely to be a  
14 criminal, too? Isn't that common sense?

15 **A. Potentially. Although again, the argument might be**  
16 **made most people who's parents are criminal don't become**  
17 **criminals themselves, so because it's not 100 percent it has**  
18 **nothing to do with it. And this is identifying that, in fact,**  
19 **it is a risk factor. Some studies don't report any increase**  
20 **in the -- as a factor. Others report it increases the risk**  
21 **almost four times.**

22 Q. But even if you hadn't offered this testimony and  
23 these statistics, wouldn't a jury be able -- if they thought  
24 it were important in their decision, would they, in common  
25 sense, know such things?

1 **A. Not necessarily. It's one thing to know something**  
2 **is common sense. It's something else to, in fact, know there**  
3 **is research that supports this notion, so that as I'm trying**  
4 **to give weight to it, or as I'm discussing it with other**  
5 **jurors, it's not just, gee, that's kind of what I think. But,**  
6 **in fact, that's what the Justice Department said was a risk**  
7 **factor. So I think it's important for people to kind of know**  
8 **what supports what they believe, or what, in fact, provides**  
9 **information that's new to them.**

10 Q. Okay. Child maltreatment, and by the way, you  
11 didn't check that, right?

12 **A. That's correct.**

13 Q. You don't think that's common sense that if somebody  
14 is mistreated as a child that might increase the formation and  
15 values of them being dangerous later on?

16 **A. If they really think it through, although again I've**  
17 **heard arguments that say lots of kids are abused, and they**  
18 **don't go on to kill somebody. So it can be important to know**  
19 **that the research about maltreatment says different.**

20 Now, let me add this could have been checked because  
21 of the neglect that he's experiencing as he's left to care for  
22 a three-year-old when he's eight or nine. That's a form  
23 of child maltreatment. I didn't check that, though, because  
24 he was not actively physically abused or tortured or that sort  
25 of thing. But it's a factor that potentially could have been

1 Q. People have been drowned as a result of the behavior  
2 of that family before, haven't they?

3 A. That, apparently, has not been determined in a court  
4 of law, to my understanding. There are certainly some popular  
5 notions about what Ted Kennedy's role was in the  
6 Chappaquiddick issue. I'm not familiar with other drownings  
7 that have occurred in the family.

8 Q. But my point is, by many accounts that's a real fine  
9 functioning family, certainly a high-achieving family, right?

10 A. Many of its members are high achieving. The  
11 functionality of it, again I haven't looked at them real  
12 carefully to identify just how functional the family as a  
13 whole is.

14 Q. And yet despite the fillers of an approving media,  
15 there's still a whole bunch of stuff that comes out of that  
16 family, and they don't do a lot of moving around, that kind of  
17 thing, right?

18 A. There have been problems in that family. Again, I  
19 wouldn't characterize it as a whole bunch -- I wouldn't do a  
20 character assassination on the Kennedy family in this  
21 courtroom when I'm not really familiar with tracking the whole  
22 family tree. There have been really isolated instances of  
23 serious problems that have gotten a lot of attention out of  
24 that family group.

25 Q. And yet probably if you looked through those risk

1 factors, a bunch of those probably don't apply to them at all.  
2 They certainly didn't grow up in a bad neighborhood, right?

3 A. They didn't grow up in a bad neighborhood. There  
4 has been a -- there have been problems with alcoholism within  
5 that family group, and it may well be that the problem  
6 behaviors that have occurred have been associated with  
7 substance abuse or alcohol abuse in the children within that  
8 family.

9 Q. Of course, the school factors, there's some  
10 problems with Teddy because he got kicked out of law school  
11 for cheating, right, so he could probably make some of those?

12 MR. GOELLER: I don't know if we're going to go  
13 to Jimmy Carter next or whatever, but I'm going to object to  
14 relevance to the specifics of the Kennedy clan.

15 THE COURT: The objection is sustained.

16 MR. GOELLER: Thank you, sir.

17 Q. BY MR. SCHULTZ: My point is you could have good  
18 people coming out of bad families, and bad people coming out  
19 of good families?

20 A. Yes, sir. This is just a function of the risk --

21 Q. I understand that.

22 A. -- and the percentages of coming out good or coming  
23 out bad are vastly different depending on how the risk factors  
24 and protective factors stack up.

25 Q. I understand. Gang membership, isn't that common

1 sense if you're part of a street violent gang, that you're  
2 going to be more likely to grow up more violent; isn't that  
3 kind of common sense?

4 A. Yes, sir, but when we get ready to commit millions  
5 of tax dollars, we want to have some research to back it up.

6 Q. Doctor, you know you just have to answer that yes or  
7 no, or I can't answer it, right?

8 A. Oh, yes, sir. I'll try to do that.

9 Q. Thank you. Community neighborhood factors. You've  
10 already said -- we understand if you grow up in poverty that  
11 might increase your risk. That's common sense?

12 A. There's some common sense to that.

13 Q. Community disorganization, crime, drug selling,  
14 gangs, poor housing. We can understand how that would  
15 increase risk of criminality, right?

16 A. Yes, sir, there's some common sense with that.

17 Q. Thank you. Availability of drugs and firearms. If  
18 you can get drugs and guns any time you want them, that --  
19 common sense tells us that relates, doesn't it?

20 A. No, sir. I addressed that earlier that we have some  
21 pretty mixed feelings about availability of firearms in our  
22 culture.

23 Q. So we need expert assistance to figure that out?

24 A. I think it's helpful to have the research data, and  
25 that may be delivered by an expert.

1 Q. And they may or may not agree because reasonable  
2 people could say, it's individual choice that makes guns  
3 dangerous, not their mere availability. You could also --

4 A. Somebody can have that belief. Here's what the  
5 research says out of the Justice Department. Best research we  
6 have. They may decide to have an opinion that's discrepant  
7 from that research, but here's the research.

8 Q. Neighborhood adults involved in crime and exposure  
9 to violence and racial prejudice. That's common sense?

10 A. That's not a neighborhood I'd want my kids in.  
11 There's some common sense to that.

12 Q. Thank you. Next slide. Keep on, if you would.

13 Now, do you not think it would be common sense that  
14 alcohol and drugs make people more dangerous and violent?  
15 Isn't that common sense?

16 A. Not that it's associated with homicide. I think  
17 people might not make that connection. I think they have some  
18 sense that -- and maybe they wouldn't even identify that  
19 domestic violence is more likely in that, but people do have  
20 some sense that folks get drunk in bars and get in fights.

21 But that it's associated with this high a frequency of  
22 homicide offenders, that I think they might not be aware of.

23 Q. So, 52 percent of inmates convicted of homicide  
24 were under the influence of alcohol or drugs, so it wasn't  
25 their fault?

1 I'll give you a chance to change it if you want.  
 2 **A. In an abundance of caution, I guess I would call**  
 3 **that -- if it clarifies it to say observational. I'm**  
 4 **comfortable with clinical descriptions, but I'll change it to**  
 5 **observational if that makes it a clearer reference.**

6 Q. That's up to you, Doctor.

7 Okay, next slide. That has to do with people doing  
 8 bingeing and then crashing, and that sort of thing?

9 **A. Yes, sir, typical pattern of abuse with cocaine and**  
 10 **amphetamines.**

11 Q. Next slide.

12 Drugs affect you mentally and physically, don't  
 13 they?

14 **A. Yes, sir, particularly cocaine and methamphetamines.**

15 Q. Common sense, isn't it? Maybe not specifically  
 16 how, but isn't it common sense that they will affect your mind  
 17 and affect your body?

18 **A. I think it's common sense that they're going to have**  
 19 **an effect. The nature of these effects are not well-known to**  
 20 **people who aren't involved in drug prevention or assessment of**  
 21 **drug abusers, or that kind of thing.**

22 Q. Of course, you don't know if that applies to the  
 23 Defendant or not? You're just guessing at most?

24 **A. Well, I have good reason to believe there is a heavy**  
 25 **drug abuse pattern present in his life.**

1 Q. But those responses, those results, those  
 2 consequences, you don't know if those apply or not?

3 **A. Well, as he engages in domestic violence against the**  
 4 **women he's involved with, that has this mood fluctuation issue**  
 5 **of becoming extremely hostile, and it has this irritability**  
 6 **component to it, and so that kind of behavior, as well as the**  
 7 **nature of this offense, that has an impulsive -- a reactive**  
 8 **quality to it. Those things would be consistent with the kind**  
 9 **of changes that are observed in chronic cocaine or meth abuse.**

10 Q. Why did he leave the Navy?

11 **A. That's not clear. I mean, he was there until late**  
 12 **in his basic training and then he left.**

13 Q. You don't have any idea -- you don't have a clue?

14 **A. Well, he seems to have been successful with it. It**  
 15 **wasn't because he was kicked out because he was not**  
 16 **performing, or they were going to send him back through basic**  
 17 **again. I don't have any indications of that, only that he**  
 18 **left.**

19 Q. And he managed to stay gone for a while, stay  
 20 hidden?

21 **A. They typically are not hunting for you real hard**  
 22 **when you go AWOL from the military. They may put out a bench**  
 23 **warrant, but it's not as if they're actively trying to run you**  
 24 **down in most cases.**

25 Q. Next slide. Combination of carrying concealed

1 weapons and using large doses of amphetamine or cocaine is  
 2 also dangerous. Now, do you think we need an expert to figure  
 3 that out?

4 **A. Yes, sir, you might. You might not realize that**  
 5 **amphetamines and cocaine are increasing aggressive potential**  
 6 **that much, and I mean, obviously you wouldn't want to give a**  
 7 **handgun to somebody you knew was a drug abuser. You might not**  
 8 **realize the extent of which cocaine and amphetamines jack up**  
 9 **homicidal violence capability.**

10 Q. That's all I need of the slides. Go ahead and have  
 11 your seat, if you will, Doctor.

12 **A. Yes, sir.**

13 Q. I may have missed it in the slides, and correct me  
 14 if I'm wrong, I didn't see anything in there about willingness  
 15 to engage in vicious behavior as somehow a risk factor.

16 **A. No, sir. The Justice Department doesn't talk about**  
 17 **choice, and they don't talk about willingness to engage in**  
 18 **vicious behavior. Essentially their perspective is that the**  
 19 **combination of these risk factors or protective factors result**  
 20 **in somebody who then engages in vicious behavior or makes**  
 21 **criminally violent choices. So it's not that the problem is**  
 22 **somebody who's just inherently a bad chooser or a bad seed,**  
 23 **but instead, with enough exposure to these risk factors, if**  
 24 **you would go on this developmental trajectory, that you end up**  
 25 **some place that is terribly destructive to all of us.**

1 Q. But it seems like, and maybe I just don't  
 2 understand, but it seems like those risk factors ignore  
 3 individual choice in getting yourself into trouble; don't you  
 4 think they do?

5 **A. They describe what shapes choice. Choice isn't**  
 6 **something that happens in a vacuum, and we don't all arrive in**  
 7 **adulthood on the same level playing field. The Justice**  
 8 **Department is describing when you get enough of these risk**  
 9 **factors present, the likelihood that you're going to make a**  
 10 **bad choice is becoming overwhelming in nature.**

11 Q. I understand, Doctor, but what my point is, all of  
 12 those risk factors up there are things that appear to not even  
 13 involve any choice on the part of the offender at all, don't  
 14 you agree?

15 **A. Well, most of them. There are some of them, like**  
 16 **the school factors, whether you are truant, that involves some**  
 17 **choice to leave school; whether you initiate violent behavior,**  
 18 **that involves some choice to do that. But many of them, bad**  
 19 **family management practices, perinatal problems, many of those**  
 20 **are things that happen to the kid that he didn't choose.**

21 Q. Well, but things like whether your mom had a  
 22 difficult pregnancy, that's not a matter of choice for a  
 23 person?

24 **A. Oh, no, sir, that's something that happens to him.**

25 Q. If you're born with deformed ears, that's not a



1 or simmering, and that there was still some awareness of  
2 social consequences. Now, that doesn't mean that the person  
3 was completely unaffected and was making a choice in a cold,  
4 stone sober sort of way. It just says their brain wasn't  
5 totally put to sleep. The brakes were damaged, the paranoia  
6 is increased, but it isn't like it's just made them totally  
7 stupid.

8 Q. Smart enough to take her somewhere where nobody  
9 else would be watching what he was doing. The brain was  
10 working that well?

11 A. Still some awareness. Yeah, it's still a stupid  
12 thing to do with somebody that you care about that's going to  
13 have a destructive effect on the relationship.

14 Q. Or mean? May be not stupid, it may be mean, don't  
15 you think?

16 A. Well, it's a mean thing to bounce somebody's head on  
17 the concrete.

18 Q. I think so.

19 A. Yeah. It may not say that the character of  
20 this person is mean. People do mean things who are  
21 intoxicated, particularly with these kind of drugs.

22 Q. What about taking a shot at his girlfriend and  
23 missing her head by about a foot, is that something that he  
24 had choice over?

25 A. Yes, sir. The kind -- again, not a choice that's

1 made like you and I would have, but it's the choice at the end  
2 of this pipeline. Drug and alcohol dependent kind of issues.  
3 Yeah, at that point he's got a choice. It's an impaired  
4 choice, but it's a choice.

5 Q. At least that's your assessment, although you never  
6 met him to really know. You're making that assessment about  
7 him that he's an addict, right?

8 A. Yes, sir. Based on the -- and certainly I couldn't  
9 make a definitive diagnosis of him without interviewing him.

10 Q. Right.

11 A. But as the evidence I've reviewed supports that  
12 hypothesis.

13 Q. How about when he was smashing his girlfriend's  
14 hand in the door; you know about that, don't you?

15 A. Yes, sir.

16 Q. Was that a matter of choice? I mean, when you get  
17 right gown do it, that takes a certain amount of focus to be  
18 able to smash somebody's hand inside a doorjamb, doesn't it?

19 A. Oh, yes, sir. Any behavior that's not driven by a  
20 seizure represents the operation of some command in control  
21 and some choice.

22 Q. Uh-huh.

23 A. The command in control center may be impaired in  
24 some way. It may be a faulty choice, a bad choice.

25 Q. A mean choice?

1 A. A destructive choice, sure.

2 Q. Or mean, just plain-old mean?

3 A. The behavior is obviously mean when you're  
4 physically damaging somebody, but mean infers they must have a  
5 mean character, or they must have an inherently hostile  
6 character, and that's not necessarily the case. People that  
7 are drug and alcohol dependent do very mean things. Doesn't  
8 necessarily mean they're just inherently a mean person when  
9 they're sober and recovered.

10 Q. What about shooting somebody in bed right beside of  
11 their head when they're laying down in bed, is that a mean  
12 thing to do?

13 A. Yes, sir.

14 Q. How about shooting the girlfriend that wasn't even  
15 threatening you, just slaughtering her, shooting her several  
16 times? Is that a mean thing to do?

17 A. Yes, sir.

18 Q. How about shooting her in the breast, is that a mean  
19 thing to do?

20 A. Yes, sir. Particularly if it was a deliberate thing  
21 that you were shooting her in the breast. As she is shot in  
22 the breast in the course of being shot -- clearly shooting  
23 somebody at all is a mean thing. Deliberately setting the  
24 person up to shoot them through the breast, that is a much  
25 more hostile kind of action.

1 Q. What about kicking them after they're dead?

2 A. Yes, sir.

3 Q. Is that pretty mean?

4 A. That would be a mean act.

5 Q. How about saying I need to shoot them some more  
6 after they've been dead because I can't find what I'm looking  
7 for? Is that pretty mean?

8 A. Yes, sir, and irrational as if somebody -- again,  
9 that goes to support the notion that somebody is under the  
10 influence; that their frustration is such that when they can't  
11 find something they want to shoot a body that's already dead.  
12 That's, again, consistent with this hypothesis.

13 Q. You say it's irrational because it doesn't match  
14 our values -- our conventional values. That's why we think  
15 it's irrational, but might it be rational to somebody that  
16 thinks differently, don't you think?

17 A. No, sir. It's not a rational thing to shoot a dead  
18 body that's already dead. That serves no purpose, so to take  
19 your frustrations out on somebody who's already dead is an  
20 irrational thing to do. It's not a function of kind of  
21 personal values. It's a stupid thing to do.

22 Q. It's not rational to shoot innocent people if  
23 they're alive, though, is it?

24 A. Not in my circumstances.

25 Q. Tell me why did he kill them. What was the reason

1 many opinions about the reliability and integrity with which  
2 an adjudication of that should be -- how it should be  
3 conducted. But in terms of an advocacy position about the  
4 death penalty, I don't have that.

5 Q. So you don't have any personal interest in whether  
6 this Defendant is executed or not?

7 A. That's correct.

8 Q. You don't even have a position on that because  
9 you've never met him?

10 A. Well, I don't have a position on it because I don't  
11 have a firm position on the death penalty. I see arguments on  
12 both sides of it, and I've not heard all the evidence the jury  
13 has heard. I wouldn't assume to sit in their place with this  
14 decision.

15 Q. When he ran off from the Navy was he exercising a  
16 choice?

17 A. Yeah, it --

18 MR. GOELLER: Objection as to asked and  
19 answered, Your Honor.

20 MR. SCHULTZ: Never asked him that.

21 MR. GOELLER: Beg to differ.

22 THE COURT: Overrule the objection.

23 A. Well, sure any behavior that wasn't caused by a  
24 seizure happening in his sleep, he had a choice about. It's  
25 choice that, again, was at the end of a developmental

1 trajectory by somebody who may well have been drug or alcohol  
2 dependent before he went into the Navy. But, yeah, certainly  
3 he decided to walk out the door in the face of whatever forces  
4 were on him.

5 Q. And you're not taking the position he was under the  
6 throws of addiction at the time he ran off from the Navy?

7 A. The evidence of his drug and alcohol abuse predates  
8 his time in the Navy, and I don't think he had gone through a  
9 period of recovery where he was actively involved in AA or NA  
10 and doing a 12-step program. So while he may not have been  
11 actively drinking and drugging while he was in the Navy, he  
12 was also not in recovery.

13 Q. Is it then your position that he was such an addict  
14 that he's not responsible for what he did?

15 A. Oh, no, sir. This is not a question of criminal  
16 responsibility.

17 Q. That's not your position. He's responsible?

18 A. Criminally responsible, yes, sir. That's why he was  
19 adjudicated for getting out of the Navy, and that's why he's  
20 been found guilty here. There's criminal responsibility.  
21 That's different than what's being considered at sentencing.

22 Q. Maybe, maybe not?

23 A. Well, no, sir. If this was an issue of criminal  
24 responsibility and that was the consideration, then if he was  
25 not criminally responsible he would have been found not guilty

1 by reason of insanity. If he was criminally responsible and  
2 he'd have been found guilty and a death penalty would  
3 automatically be applied. This phase is not about criminal  
4 responsibility. It's about violence risk assessment and moral  
5 culpable or mitigation. Separate from --

6 Q. And danger to the community?

7 A. Well, that's what risk assessment is, is his  
8 likelihood of risk in whatever context we're assessing.

9 Q. Free world, jail world, right?

10 A. Free world right now, TDC 40 years, free world in 40  
11 years, if they cut him loose then.

12 Q. Right. Are you of the opinion -- is it your opinion  
13 that he was drug intoxicated at the time he slaughtered those  
14 two people? Is that your opinion?

15 A. I don't have information about whether he was  
16 intoxicated or coming down. There is indications that he --  
17 this happened during a period of time in his life when he was  
18 abusing cocaine and methamphetamine heavily. But exactly  
19 where he was on that binge-crash cycle that I described, that,  
20 I don't know.

21 Q. Even if he were high on drugs, does that take away  
22 his ability to be able to function regularly in your opinion?

23 A. It impairs ability. It doesn't take it away. It's  
24 not a bright line. It's not "yes, it does," or "no, it  
25 doesn't." It's to what extent is it affected, so I don't

1 want somebody doing surgery on me who is in the throws of a  
2 cocaine-methamphetamine dependence period of their life.  
3 I don't want them flying the airplane I'm on. Now, obviously  
4 they can find the airport, find the cockpit, and they can take  
5 the plane off, but I'm still thinking they're impaired in what  
6 they can bring to bear when I'm a passenger.

7 Q. They can still make choices?

8 A. Oh, yes, sir. It's a drug addict's choice, but it's  
9 a choice. And I don't see his impaired flying to be a notion  
10 that he's just willfully, erratically driving the plane. This  
11 is an impaired guy.

12 Q. Well, maybe, but at the same time he's -- I'm sure  
13 you're aware that he was constantly driving his car all during  
14 this period of time, driving fast (inaudible) everyone else.  
15 Apparently, he didn't have any accidents during this period of  
16 time?

17 A. That's right. It doesn't appear that these drugs  
18 inhibit your ability to function with motor smoothness.  
19 You're likely to be somewhat hyperactive. You may be speeding  
20 and doing some things that are impulsive, but you can operate  
21 mechanical equipment and be an impaired  
22 cocaine-methamphetamine addict.

23 Q. And you can, if you want to, slow your car down if  
24 you perceive that's a risk?

25 A. Oh, yes, sir. You're operating a motor vehicle.

1 BY MR. GOELLER:  
 2 Q. Dr. Cunningham, when we talk about this special  
 3 issue before we get to this, you've testified, and I think  
 4 it's probably the opinion of everyone, that anybody that's  
 5 been convicted of capital murder, you can go to murder; you  
 6 can go to aggravated assault; you could do just about any  
 7 assaultive offense. All of those people are a danger if  
 8 released out in the free society tomorrow, correct?

9 MR. SCHULTZ: Excuse me, Judge, two objections.  
 10 First of all, he's leading his witness, and secondly, that  
 11 question is irrelevant as it relates to any offense other than  
 12 capital murder because the special issue he's presenting is  
 13 not used in any other context than capital murder.

14 THE COURT: Overruled.

15 A. Yes, sir. Any serious violent felon who has  
 16 recently done this act and they're on trial for it, if you cut  
 17 them loose to society right now, there is a markedly increased  
 18 risk of them being violent out there again.

19 Q. BY MR. GOELLER: And that opinion has got to be held  
 20 across the board by everybody in mental health professions,  
 21 law enforcement to people on the street?

22 A. Yes, sir. That's common sense.

23 Q. That's common sense?

24 A. Yes, sir.

25 Q. If that's the case and that's reality and we look at

1 that special issue, then we might as well do away with all  
 2 these special issues because the only answer, if that's the  
 3 way we look at it, line them up and kill them all?

4 A. Yes, sir. Then every capital offender who is not a  
 5 quadriplegic --

6 MR. SCHULTZ: Excuse me. This is a  
 7 nonresponsive answer. It's just yes or no.

8 THE COURT: Sustained.

9 Q. BY MR. GOELLER: Explain.

10 A. Because all violent felons are going to be -- are  
 11 going to be likely to be violent immediately in the  
 12 community. If that's what that means -- if that's what that  
 13 special issue means, then it applies to all capital offenders  
 14 who aren't made a paraplegic or quadriplegic in the offense.  
 15 It is then a meaningless issue because it applies to all of  
 16 them. The automatic answer is yes. It has no effect of  
 17 limiting and narrowing and looking individually at who --  
 18 who's assessed this penalty. It's not enough to have done  
 19 this terrible capital murder in the community or in prison, or  
 20 wherever it happened.

21 There also has to be a determination of these other  
 22 factors that narrow. Even among those individuals, we're  
 23 narrowing the field to identify certain persons out of that,  
 24 and if this applies to release them now into the community, it  
 25 has no narrowing effect at all. It's a meaningless statute.

1 MR. GOELLER: Pass the witness.

2 RECROSS-EXAMINATION

3 BY MR. SCHULTZ:

4 Q. Well, it may not. You've already told me there are  
 5 some situations where the answer to that question would  
 6 reasonably be no, even with capital murderers.

7 A. Not any reasonable situations. You talked about  
 8 somebody who had grown up in a Nazi concentration camp, and I  
 9 talked about somebody whose made a quadriplegic or is brain  
 10 damaged, made comatose in the offense. Those are not  
 11 reasonable situations, and if those are the only ones this  
 12 issue applies to, it is functionally meaningless.

13 Q. Well, of course, the narrowing that you talk about  
 14 may well be in the mitigation question because that's the  
 15 question that simply asks the jury, under all the  
 16 circumstances of the case, is a death sentence or life  
 17 sentence really the appropriate one? That may be the  
 18 narrowing we're talking about.

19 A. Well, no, sir. Because when this statute was  
 20 drafted by the Legislature in 1973, that mitigation clause  
 21 that currently exists was not part of it. In fact, this was  
 22 narrowing based on future dangerousness without a good  
 23 consideration of the mitigation. That's what's come about  
 24 through the Penry decisions.

25 Q. You're talking about the special issue that

1 directly focuses the jury's attention on the propriety, the  
 2 right to assessing a death penalty, even against a dangerous  
 3 capital murderer. Because you don't get to the mitigation  
 4 question unless this question is first answered unanimously  
 5 "yes."

6 A. Each of the questions has narrowing focus of it --

7 Q. Excuse me, Doctor. My question is, you don't get to  
 8 the mitigation question unless, first, the jury answers this  
 9 question "yes"?

10 A. That's correct.

11 Q. Then the mitigation question -- what you talk about  
 12 this narrowing, that has a narrowing effect because even  
 13 people who are dangerous capital murderers who will probably  
 14 be a danger in the future may still be spared the death  
 15 penalty based upon a sufficient amount of mitigation found by  
 16 the jury; is that right?

17 A. I'm not sure I understand the question. You're  
 18 saying the first issue is meaningless, and it's only the  
 19 second issue that has a meaningful, narrowing quality to it.  
 20 The first one is just window dressing. That's what I  
 21 thought --

22 Q. Is that what you think I said?

23 A. Well, yes, sir, because it sounded like you were  
 24 saying this -- okay, they go through this one. It's the  
 25 second one that matters and is limiting, and that's what I'm

1 THE COURT: Let's go in a different direction.  
 2 Q. BY MR. SCHULTZ: Other people might say that  
 3 question can go either way, even dealing with a person's  
 4 present propensity for violence in the free world. Do you  
 5 understand that's another way to consider it?  
 6 A. Oh, yes, sir. Anything is a possibility.  
 7 Q. And just because they don't share your view, doesn't  
 8 make it an unreasonable view, or do you think it is? If a  
 9 jury doesn't agree with you, that's unreasonable?  
 10 A. It's not a function of agreeing with me. I think it  
 11 is unreasonable to believe that you can cut a capital murderer  
 12 loose today, and he's fine in the community. I think that's  
 13 not a reasonable proposition.  
 14 Q. That's your opinion?  
 15 A. Yes, sir, someone could come to something different.  
 16 Q. Would they be foolish or not in tune like you are?  
 17 A. I don't know if they would be not in tune like me.  
 18 I think that would not be a reasonable conclusion to reach.  
 19 Q. Nevertheless, the mitigation question deals with  
 20 whether or not it's the right thing to do under the  
 21 circumstances, doesn't it?  
 22 A. Yes, sir.  
 23 Q. You got any clue how the Defendant's mind was  
 24 working when he was slaughtering those people?  
 25 A. No, sir.

1 Q. Could you help us understand what his thoughts were  
 2 and going through there when he did that?  
 3 A. Well, if he's under the influence of cocaine or  
 4 methamphetamine, or if he's part of that cycle, and, in fact,  
 5 the paranoia, disturbed thinking are not just present when the  
 6 person is intoxicated. That pervades their experience even  
 7 when they're in the down cycle of that. If that's his  
 8 experience, then as we look at his mental processes, he's  
 9 going to be extraordinarily impulsive, suspicious, paranoid,  
 10 over-reactive, aggressive and distorting and angry, and so  
 11 those kind of features -- now, exactly what thought processes  
 12 were going through his mind, that I think is -- I can't  
 13 reconstruct from the data.  
 14 Q. He was certainly jealous of James's success, wasn't  
 15 he?  
 16 A. I don't know that.  
 17 Q. If you had -- maybe other people would know that if  
 18 they heard evidence of that. You don't know that?  
 19 A. I don't know that, no.  
 20 Q. And he didn't like Amy, the female victim, and he  
 21 was resentful of her influence with James?  
 22 A. I'm not familiar with the motivations or the nature  
 23 of the relationship between these individuals.  
 24 Q. You don't know about that?  
 25 A. No, sir.

1 Q. By the way, he knew James's family, didn't he?  
 2 A. Oh, yes, sir.  
 3 Q. And he knew Amy's family?  
 4 A. Amy's family, I don't have knowledge of that,  
 5 whether he knew her family or not.  
 6 Q. He was still willing to put people that he knew  
 7 personally through this life-long misery that they're going to  
 8 have go through. He's willing to do all that?  
 9 A. Obviously, by his behavior, yes. He's likely not  
 10 looking down the road that far, but clearly, yes.  
 11 MR. SCHULTZ: Pass the witness.  
 12 FURTHER REDIRECT EXAMINATION  
 13 BY MR. GOELLER:  
 14 Q. If somebody is convicted of walking into a liquor  
 15 store, taking out a piece and executing the clerk, that's  
 16 capital murder?  
 17 A. Yes, sir.  
 18 Q. Would you think most people would think, ah,  
 19 probably ought not to put them back on the street after  
 20 finding them guilty of capital murder?  
 21 A. Oh, no, sir.  
 22 Q. That's ridiculous?  
 23 A. Yes, sir.  
 24 Q. If I walk up to a police officer -- that's an even  
 25 more ridiculous example.

1 If I kill a police officer, okay, I'm wanted. I'm a  
 2 fugitive out of California. Highway patrolman pulls up,  
 3 license and registration, bang, just execute that police  
 4 officer, convicted of capital murder. Probably not a good  
 5 idea to just go out on the street, right?  
 6 A. Oh, no, sir.  
 7 Q. Okay. So again, it's -- as a professional, those  
 8 are not only held by you and the people in your business, but  
 9 you think that's just -- that's just common sense; you don't  
 10 put those people back out on the street?  
 11 A. Yes, sir.  
 12 Q. All right.  
 13 MR. GOELLER: That's all I have, Judge.  
 14 FURTHER RE-CROSS-EXAMINATION  
 15 BY MR. SCHULTZ:  
 16 Q. But there may or may not be a probability of danger  
 17 if we don't put them back out on the streets because they have  
 18 to be punished for their crime somehow, right?  
 19 A. You've lost me. I'm sorry.  
 20 MR. SCHULTZ: Never mind. I'll withdraw it.  
 21 THE COURT: All right. Is he excused by both  
 22 sides?  
 23 MR. GOELLER: Yes, sir.  
 24 MR. SCHULTZ: Yes, sir.  
 25 THE COURT: All right, sir. Thank you,

1 recognitions, achievements, honors that you've accomplished  
 2 while you've been pastor of Cornerstone Church in Nashville,  
 3 Tennessee?  
 4 A. I've done the Policeman's Memorial Service for the  
 5 Nashville Metro Police Officers of the city. I am the  
 6 chaplain today for the State Senate, and I regularly do  
 7 devotions for the State Senate and State Legislature. I am a  
 8 member of the Chamber of Commerce of two of the rural -- of  
 9 the suburban communities around Nashville itself. I host a  
 10 national television program from our church on the Inspiration  
 11 Network, and I pastor a church.

12 Q. Do you know the Lieutenant Governor?

13 A. Lieutenant Governor Wilder, yes, sir.

14 Q. Personal friend of his?

15 A. I don't know about a personal friend. I'm a regular  
 16 acquaintance.

17 Q. Quite often you will see him when you go over to  
 18 speak before the Legislature?

19 A. Yes, sir, almost every time.

20 Q. And your church, Cornerstone Church, how does it fit  
 21 in terms of size within the State of Tennessee?

22 A. We have the largest sanctuary in the City of  
 23 Nashville and that surrounding area, and we are the largest  
 24 Assembly of God Church in the State of Tennessee.

25 Q. So you're the one. You're the flagship Assembly of

1 God Church in the State of Tennessee?

2 A. Yeah, I guess so, for our fellowship.

3 Q. And what about your commitment to missions? Tell  
 4 the jury about that.

5 A. In the year 2000, at Cornerstone Church in the  
 6 Assemblies of God, we have a little over 13,000 churches in  
 7 the United States, and we were number 37 in the nations in  
 8 reaching people in foreign countries with aid and stuff. We  
 9 have taken the nation of Kenya, and we've built 62 churches in  
 10 the last five years, two Bible schools and an orphanage.

11 Q. Sounds like you're busy?

12 A. Wonderfully.

13 Q. Let me ask you, Pastor Davis, have you ever been to  
 14 prison?

15 A. Yes, sir.

16 Q. What for?

17 A. Murder.

18 Q. When did you go to prison?

19 A. I was incarcerated in January of 1975 and went to  
 20 prison in the summer of that year.

21 Q. How old were you?

22 A. Eighteen years of age.

23 Q. Tell the jury about your offense. And I realize  
 24 this is not something you like to think about, but why don't  
 25 you give us some insight into what it is you did.

1 A. I had been become a drug addict, and -- over a  
 2 period of years, and in January of 1975, a friend of mine and  
 3 I were burglarizing homes. And on the day that we committed  
 4 the crime -- or I committed the crime, we were knocking on  
 5 homes that had For Sale signs in the front yard, and if no one  
 6 was home, we burglarized the home. If someone was home, we  
 7 just looked through the home and left.

8 And there was a home that we went to. Nobody was  
 9 there, but when we looked in the windows there were no -- no  
 10 furniture in the house. The house was empty, and so we were  
 11 leaving the home, and the lady came from either across the  
 12 street or beside the home somewhere in that area.

13 Q. Did you know this lady?

14 A. No, sir.

15 Q. Ever seen her before?

16 A. No, sir.

17 Q. What happened then?

18 A. She said she had a key to the home if we wanted to  
 19 look at it, and so we went through the same method that we had  
 20 done before and just looked through the home. And we were  
 21 beside the -- we had gone through the whole house and we were  
 22 on the way out, and there was a closet of some kind, to the  
 23 best of my memory, and it had a furnace in it, like a gas  
 24 furnace or something that was inside the house. And there was  
 25 a bucket of paint there, and I told her we needed to move the

1 paint so it wouldn't catch on fire.

2 Q. Now, Pastor Davis, I want to stop just a minute.  
 3 Were you high at the time?

4 A. Yes, sir.

5 Q. Strung out?

6 A. Yes, sir.

7 Q. On what?

8 A. Amphetamines and alcohol.

9 Q. And alcohol?

10 A. Uh-huh.

11 Q. Did you regularly use amphetamine and alcohol?

12 A. Daily.

13 Q. And do you recall what your state of mind was at the  
 14 time?

15 A. No, not really.

16 Q. Okay. Do you remember what you did?

17 A. I remember parts of it. There were many parts of it  
 18 brought out in the trial by the testimony of the man that was  
 19 with me and stuff that I don't recall.

20 Q. Okay. So what happened next? You're strung out on  
 21 amphetamines, and you're in this house.

22 A. She decides she wants to get the paint instead of me  
 23 get the paint. She reaches for the bucket of paint, and she  
 24 spills the bucket of paint on me, and I just exploded, and I  
 25 struck the woman. And she began to scream and it scared me.

1 with my apartment roommate and myself.  
 2 Q. Had dinner with your girlfriend?  
 3 A. Yes, sir.  
 4 Q. What did you do after that?  
 5 A. I took her home late that evening.  
 6 Q. Did you tell her about the murder?  
 7 A. No, sir.  
 8 Q. What did you do after that?  
 9 A. I fell asleep at her house on the couch.  
 10 Q. Okay. You fell asleep. Were you still doing some  
 11 drugs?  
 12 A. Yes, sir.  
 13 Q. You were doing drugs?  
 14 A. And alcohol. I drank a lot that evening. The  
 15 amphetamines keep you from sleeping. Sometimes if you drank  
 16 enough, you'd override that effect and put yourself to sleep.  
 17 Q. I see. So used it as a sedative?  
 18 A. Yes.  
 19 Q. What did you do the next day?  
 20 A. When I got up in the morning, I just woke up, and it  
 21 surprised me that I had fallen asleep. And I took -- because  
 22 I had taken her home, her car was at the apartment. I told  
 23 her that I'm going to go back, clean up, get up, I'll take you  
 24 to work and at lunch we'll swap cars. And as I drove out of  
 25 her house, is when I ran into the Irving Police Department

1 They had come to arrest me.  
 2 Q. Because you had been discovered?  
 3 A. Yes, sir. They had run enough trails from the  
 4 clothes at the cleaners and stuff, apparently, that they had  
 5 gone to my apartment. They had gone and arrested my roommate,  
 6 and he told them where I was. They came and got me. They  
 7 knew where I was.  
 8 Q. And they arrested you?  
 9 A. Yes, sir.  
 10 Q. And put you in jail?  
 11 A. Yes, sir.  
 12 Q. Which jail?  
 13 A. Irving City Jail.  
 14 Q. Charged you with what?  
 15 A. First-degree murder.  
 16 Q. Okay. And eventually transferred down to Lew  
 17 Sterret?  
 18 A. I was at the Dallas County Jail, which I think was  
 19 before the Lew Sterret Center.  
 20 Q. That's right. You would have been in the old white  
 21 building, what they call the "new courthouse"?  
 22 A. I don't remember.  
 23 Q. The George Allen Building?  
 24 A. I know it was 500 North Main Street, whichever one  
 25 that is.

1 Q. 600 North Commerce?  
 2 A. I don't know.  
 3 Q. Okay.  
 4 A. That's real foggy in my mind. It was the old jail.  
 5 Q. 1975?  
 6 A. Yes, sir.  
 7 Q. And I take it you took up residence there in the  
 8 Dallas County Jail?  
 9 A. Yes, sir.  
 10 Q. And how long were you incarcerated in the Dallas  
 11 County Jail awaiting trial?  
 12 A. Until I was sentenced in May, and then transferred  
 13 to the Texas Department of Corrections, first part of the  
 14 summer.  
 15 Q. And tell the jury, when you first arrived in the  
 16 Dallas County Jail, what was your state of mind?  
 17 A. Lost, confused, my mental condition at that point,  
 18 because of the drug uses and alcohol and the other things that  
 19 had gone on in my life, was probably irrational, unrealistic.  
 20 I don't know. That's the best way I can describe it.  
 21 Q. Okay. So you were still strung out?  
 22 A. Oh, yes, sir.  
 23 Q. But you couldn't get drugs or alcohol; is that fair  
 24 to say?  
 25 A. Huh-uh.

1 Q. So are you familiar with DT's, or detoxing?  
 2 A. Yes, sir.  
 3 Q. Tell the jury about that.  
 4 A. It's when you've addicted your body to a chemical,  
 5 and -- beyond the emotional need that you have for a drug, or  
 6 whatever put you in that position to use something. Your body  
 7 has withdrawal symptoms, and it produces some sweats, some  
 8 nightmares, some feverish moments. I maybe was not, as an  
 9 alcoholic, somebody that had been a street drunk or something  
 10 of that nature, but it was pretty rough.  
 11 Q. How long did that go on?  
 12 A. Off and on, for a month.  
 13 Q. Was that difficult?  
 14 A. Yes, sir.  
 15 Q. Okay. And also, I'm sure your roommates weren't too  
 16 accommodating, were they?  
 17 A. No, it's -- no. It's not a very accommodating  
 18 place.  
 19 Q. Now, again, did you realize what was happening to  
 20 you?  
 21 A. There was an awareness that I --  
 22 Q. It's yes or no.  
 23 A. Yes.  
 24 Q. You sort of did or you didn't or what?  
 25 A. I knew I committed a murder. I knew I had been

1 we'll see you about 1:20.

2 THE BAILIFF: All rise.

3 (Jury exits the courtroom at 11:50 a.m.)

4 MR. HIGH: All right. Judge, if the objection  
5 relevance Texas Rule of Evidence 401, relevance is "the  
6 tendency to make the existence of a fact more or less probable  
7 than it would be without the evidence." We all know that.  
8 The leading case on that is Montgomery versus State, which is  
9 cited at 810 S.W. 2d, 372 at page 376.

10 THE COURT: You're not writing on a clean slate  
11 with regard to relevancy. I don't need a citation. I just  
12 need to know why this testimony is relevant.

13 MR. HIGH: If you will bear with me, Judge,  
14 I've got three theories of relevance. I'm just about there.

15 THE COURT: All right. Go ahead.

16 MR. HIGH: Under the Code of Criminal Procedure  
17 37.071, Section 2 (b) (1), the Special Issue Number One is  
18 whether or not this Defendant, Mr. Cantu, would commit  
19 criminal acts of violence in the future, or would he  
20 constitute a continuing threat to society, emphasis on the  
21 word "would" because that's what the special issue says and  
22 that's how it's drafted.

23 Our first theory of relevance is that the State's  
24 voir dire --

25 THE COURT: Wait. Let me ask you this, and I

1 killing two perpetrators who brutally sexually assaulted and  
2 murdered his daughter.

3 Furthermore, on cross-examination of the Defense's  
4 expert, which occurred yesterday, Dr. Cunningham, those  
5 examples were discussed before the jury, not individually as  
6 in voir dire, but now as a collective group, thereby  
7 referencing the impression made -- or reinforcing the  
8 impression made that the -- at the voir dire stage of this  
9 trial. In other words, they talked about it individually with  
10 every person on this jury. Now they've talked about it again  
11 collectively as a group in this trial.

12 In addition, the State discussed other examples  
13 whereby one may not be a future danger. Again, while crossing  
14 Dr. Cunningham, the State referred to persons placed in  
15 cast-iron suits and fed through an opening, persons placed on  
16 an island and not available to the public, persons with  
17 dynamite strapped to them to see if they would sit still,  
18 rendering a person comatose or a person that's suspended in  
19 the air from a derrick at a construction site, okay? Those  
20 were all illustrations whereby --

21 THE COURT: Let me ask you this. Suppose I  
22 find his testimony is relevant. How much time do you need to  
23 finish up with him?

24 MR. HIGH: I probably need about another 20  
25 minutes or so.

1 hate to interrupt you. I assume he's going to say, I  
2 committed the murder, I went to the penitentiary, I found God,  
3 and now I'm really productive.

4 MR. HIGH: That's basically what he will say.

5 THE COURT: And I've been saved and I'm  
6 productive. Okay. So that's the gist of his testimony?

7 MR. HIGH: That's correct.

8 THE COURT: Is there much beyond that?

9 MR. HIGH: There's a little beyond that.

10 THE COURT: Tell me the little bit beyond that.

11 MR. HIGH: He was determined to be a future  
12 danger, and he is not a future danger.

13 THE COURT: Anything else?

14 MR. HIGH: That's basically it.

15 THE COURT: All right. Go ahead.

16 MR. HIGH: May I continue?

17 THE COURT: Yes.

18 MR. HIGH: Well, Judge, as the Court recalls in  
19 our six weeks of voir dire, the State delineated two  
20 illustrations or hypotheticals whereby a capital defendant may  
21 not be a future danger. And the illustration was that a  
22 person paralyzed from the neck, chin or eyebrows down during a  
23 police shootout at the time of arrest, that person would not  
24 be a future danger. Secondly, they illustrated with a  
25 disgruntled father who takes the law into his own hands by

1 THE COURT: No, we're not going to do that  
2 because one thing that I do have the authority to do is figure  
3 out the timing in this thing. And if you want to take a  
4 couple of more minutes to get to the heart of what I said,  
5 which it only took me about 30 minutes (sic) to do, I'll let  
6 you have it, but that's about it.

7 MR. HIGH: Excuse me, Judge. There is also  
8 some other relevance as well.

9 THE COURT: Tell me what it is.

10 MR. HIGH: Okay. This individual is going to  
11 talk about his experiences in prison, his life there, the  
12 contribution it has made to his Christian faith, and if the  
13 Court would bear with me, because I want to articulate my  
14 other theories of relevance. Judge, this is well thought out,  
15 and I'd like to have the opportunity to express it on the  
16 record.

17 THE COURT: Let me tell you something, you can  
18 go ahead and express it, but it's probably not going to be  
19 anything that I haven't figured out in the last 20 or 30  
20 years. But if you want to do it for the record, sure. But I  
21 don't think any appellate court is going to have much problem  
22 grabbing the issue of relevance or not, so why are we going  
23 there?

24 MR. HIGH: The reason is because the case law  
25 talks about it, and if the Court would bear with me, I can

1 **A. And so I know this man is a man that is lost that**  
 2 **has now made a confession of his life to Christ, from what the**  
 3 **attorney just said, and so I do know him as a Brother in**  
 4 **Christ based on his own confession.**

5 Q. Let me stop you a second if I could. What's the  
 6 difference between them calling you, and me finding some guy  
 7 that's on death row and bringing him up here and say, yeah, I  
 8 killed while I was on drugs, and I wish I could get off of  
 9 death row so I could go out and kill again, because I liked  
 10 killing and I want to kill some more. What's the difference  
 11 in you coming in and telling your story that relates to you,  
 12 and me finding somebody that's going to say, I want to go kill  
 13 somebody? How is there any difference?

14 **A. Well, the guy that you're talking about has not made**  
 15 **a commitment of his life to Jesus Christ and has verbalized**  
 16 **that he intends to continue to be a threat to society. I've**  
 17 **spent my life trying to help people like that to be**  
 18 **transformed so they would not be.**

19 Q. I'm not trying to equate you to the fellow that  
 20 wants to kill again. You misunderstood.

21 **A. Okay.**

22 Q. My point is, how would that be relevant to this  
 23 Defendant that I find some other beast that will come in and  
 24 say, I want to go out and satisfy my blood-thirsty lust for  
 25 more victims? How is that any more relevant to this

1 MR. HIGH: I just want to make the record  
 2 clear, too.

3 THE COURT: That's good.

4 MR. HIGH: But I also want to point out, Judge,  
 5 that the State has made him relevant. The State has made him  
 6 relevant by the questions they've asked, by the witnesses they  
 7 plan to call, and the way they've attempted to paint my  
 8 client. He is fully relevant, and if the Court grants the  
 9 relevancy objection, I need to make an offer of proof with the  
 10 argument in complete detail.

11 THE COURT: No. I tell you what. I'm not  
 12 going to grant the relevancy objection, but I'm going to give  
 13 you about five minutes to finish up with him, and that's about  
 14 it. Now, if the State wants to take 30 minutes with him, then  
 15 I'll give you some more time.

16 MR. HIGH: All right. Judge, I respectfully  
 17 object to a limit of --

18 THE COURT: That's fine. Go ahead and object.

19 MR. HIGH: Could I have about ten minutes to  
 20 finish with him? I mean -- give me just a moment, Judge.

21 THE COURT: Here's what I'm saying. What  
 22 you're trying to tell the jury about this, I think is of  
 23 limited utility, of limited relevancy, but you started, and  
 24 we'll let you finish up the thought and the idea. But let me  
 25 tell you something, I tell you why he's not relevant, that's

1 Defendant, if he doesn't know this Defendant or anything about  
 2 him, than you are with this Defendant if you don't know  
 3 anything about him?

4 MR. HIGH: Excuse me, Judge, I don't see  
 5 anything from that, than just cross-examination.

6 THE COURT: Oh, no. Listen, I tell you what,  
 7 here's what I think, I think I could grant the relevancy  
 8 objection right now and not have a problem, but you started,  
 9 and I'll let you finish up.

10 MR. HIGH: Judge, I'm not offering him as an  
 11 expert.

12 THE COURT: I know that.

13 MR. HIGH: I want the Court to understand that.

14 THE COURT: You thought that I thought he  
 15 might be an expert?

16 MR. HIGH: Well, I just -- I just want to make  
 17 sure that the record is clear.

18 THE COURT: Tell me what you thought I might  
 19 consider him an expert to be on? How did you think I might  
 20 perceive him as an expert?

21 MR. HIGH: I don't know, Judge.

22 THE COURT: All right. Go ahead.

23 MR. HIGH: Possibly drugs, alcohol, prison.

24 THE COURT: Well, let your mind be at ease, I  
 25 didn't think that.

1 him. What he's talking about is him, and that's fine.

2 MR. HIGH: Well, with all due respect, Judge,  
 3 he's the finished product of him.

4 THE COURT: No, he's not. That's him, and your  
 5 client is himself.

6 MR. HIGH: What's the difference from him and  
 7 Dr. Griggson who's never even met my client, who's going to  
 8 come in here and say he's a future danger? What's the  
 9 difference? There is no difference.

10 THE COURT: Now, you want to talk about an  
 11 expert, right?

12 MR. HIGH: I'm sorry?

13 THE COURT: Now, you're telling me about an  
 14 expert witness.

15 MR. GOELLER: Those aren't our words.

16 THE COURT: But any rate, here's what we'll  
 17 do. I'll give you another five or ten minutes, and that's it  
 18 because that's all you need to finish up your thought about,  
 19 hey, look, I was convicted of murder. I committed a horrible  
 20 murder, I've been saved. You know, there's probably people  
 21 out there that never got caught that changed their way of  
 22 life, all right. And so, so what? You're also capable of  
 23 doing another one, right?

24 THE WITNESS: No, sir.

25 THE COURT: You're not?



- 1 Q. Okay. So you realized you were in trouble?
- 2 A. Yes, sir.
- 3 Q. Okay. And who were you visiting with?
- 4 A. Pastor Don George, who was here this morning, was
- 5 coming to visit me. My attorney, who had become a member of
- 6 his church, was talking to me about God, and then there was an
- 7 inmate in there with me that was also talking to me about God
- 8 at that time.
- 9 Q. Okay. And were you a Christian or not a Christian?
- 10 A. No, sir. I'd never been in church in my life.
- 11 Q. And when did you become a Christian, or did you?
- 12 A. About a month and a half after that. So four and a
- 13 half months into it, I made a commitment of my life to Christ
- 14 and changed the destiny of my life.
- 15 Q. What effect did that have on you, Pastor Davis?
- 16 A. It changed my heart, and when my heart changed,
- 17 there was an emotional moment -- emotional moment -- emotional
- 18 period after that of conscience, and I shared that with you
- 19 earlier that I had not had any remorse because I really didn't
- 20 think right. I was messed up. And when I became a Christian,
- 21 all of the sudden the value of human life became incredible to
- 22 me. Well, then I took a life, and so the guilt of that became
- 23 a burden unlike anything I'd ever had.
- 24 Q. And the shame and remorse?
- 25 A. All of that, the guilt, the shame, the remorse.

- 1 It's just an overwhelming emotion that you have to process,
- 2 and the ministers talked to me about the grace of God and
- 3 God's ability to put the past in the past and give you the
- 4 opportunity to go on, and that's how I've had to deal with it.
- 5 Q. Did you become a Christian?
- 6 A. Oh, yes, sir.
- 7 Q. You prayed to receive God's grace?
- 8 A. Yes, sir.
- 9 Q. And you knew you'd become a Christian?
- 10 A. The moment --
- 11 MR. SCHULTZ: Excuse me --
- 12 A. -- it happened.
- 13 MR. SCHULTZ: Excuse me, just a moment,
- 14 Pastor. We'd object to Mr. High continuing to lead the
- 15 witness and suggest answers to him.
- 16 THE COURT: All right, sustained.
- 17 MR. HIGH: I'll rephrase.
- 18 Q. BY MR. HIGH: You talked about your heart. What
- 19 about your head?
- 20 A. My head was still messed up, not in the sinful
- 21 thoughts, but in Biblical ignorance and morality and wisdom.
- 22 I didn't understand a lot about the Bible. And just a good
- 23 example, I'd never read the Bible, so when I read the book of
- 24 James and realized it was a sin to cuss, I felt like I ought
- 25 to not call myself a Christian anymore because I cussed all

- 1 the time. And all of that stuff was new to me because I had
- 2 never been around it.
- 3 Q. Have you heard the term "being a babe in Christ"?
- 4 A. Yes, sir, a baby in Christ. Mike Murdock says, "God
- 5 makes men right, not bright." That's kind of where I was at
- 6 that moment. I got right with God, but I was just not bright.
- 7 Q. Did you go to trial on your case?
- 8 A. Yes, I did.
- 9 Q. Were you convicted?
- 10 A. I was convicted and sentenced to 20 years.
- 11 Q. Convicted of murder?
- 12 A. Yes, sir.
- 13 Q. When did you go down?
- 14 A. I went to prison in the summer of 1975 and began to
- 15 do farm labor at the Ferguson Unit of the Texas Department
- 16 of Corrections.
- 17 Q. And how many years did you serve on that 20 years?
- 18 A. I served eight and a half years.
- 19 Q. When you were inside the prison, tell us about
- 20 prison life.
- 21 A. Prison, in many ways, is a very disciplined life.
- 22 Tell you what time to get up, what time to go to lunch. There
- 23 are a number of things going on in prison. I was under --
- 24 MR. SCHULTZ: Excuse me just a moment, Pastor.
- 25 Judge, we're going to object to this response. It has nothing

- 1 to do with the Defendant's situation. This man has never been
- 2 to death row. He has never been in the same types of units
- 3 related to this Defendant. He doesn't know the Defendant and
- 4 has no connection, and to talk in generic terms about prison,
- 5 particularly in view of the length of time, the remoteness of
- 6 the information that he had would be misleading, and we submit
- 7 it's not relevant to any issue before this case related to
- 8 this Defendant and his fate.
- 9 THE COURT: All right. I'm going to overrule
- 10 the objection. You have about five minutes remaining.
- 11 MR. HIGH: Does that include the objections
- 12 that have been made by --
- 13 THE COURT: That includes everything.
- 14 MR. HIGH: All right.
- 15 Q. BY MR. HIGH: Did you have access to drugs in
- 16 prison?
- 17 A. No.
- 18 Q. Did you have access to alcohol in prison?
- 19 A. No.
- 20 Q. Did you have access to women in prison?
- 21 A. No.
- 22 Q. What about Sunday school?
- 23 A. Yes. There was a Sunday school program at the
- 24 Ferguson Unit, which was the first maximum security unit I was
- 25 sent to. And --

1 Q. And what have been the consequences of that  
2 redemption?

3 A. I think that I've been able to touch lives that  
4 maybe other people couldn't touch, and maybe I have a little  
5 deeper passion to make the life that I have count, because I  
6 feel like I did so badly at the early part of my life that  
7 maybe there's that need to make up for the bad, but redemption  
8 has given me the ability not to be who I was.

9 Q. And, Pastor Davis, can we ever really know if a  
10 person is converted?

11 A. Yes.

12 Q. And how?

13 A. It takes time. You have to observe their life over  
14 a period of time to see if they bear fruit.

15 Q. Do you know a Dr. Griggson?

16 A. Yes, sir.

17 Q. Did he testify at your trial in 1975?

18 A. Yes, sir.

19 Q. What did he say about you?

20 A. He said that I was the most likely person --

21 MR. SCHULTZ: Excuse me, just a moment, Pastor.  
22 Judge, we're going to object. First of all, it calls for a  
23 hearsay answer. Secondly, we object because what someone else  
24 would have said about him at his trial is not relevant to this  
25 Defendant, and this Defendant's situation. And, number three,

1 by my watch they've gone more than the three minutes you gave  
2 them, and we believe this is, once again, irrelevant, not only  
3 for all the other reasons, including that he knows nothing  
4 about this Defendant, but also it's an undue waste of the  
5 Court's time in view of the great latitude you've allowed in  
6 this area of testimony already.

7 THE COURT: All right. I'll overrule the  
8 objection, and I'll allow him to answer this question and one  
9 more question.

10 MR. HIGH: Thank you, Judge.

11 A. He said that I was the most likely inmate that he  
12 had analyzed or interviewed to commit further violent crimes.

13 Q. BY MR. HIGH: Okay. More than any other inmate he  
14 had ever seen?

15 A. That's what I'm telling you.

16 THE COURT: All right. That's two questions.

17 MR. SCHULTZ: Excuse me. What was that answer?

18 A. That's what I'm told.

19 MR. SCHULTZ: What do you mean what you're  
20 told?

21 THE COURT: I tell you what --

22 MR. SCHULTZ: I thought I had him.

23 THE COURT: -- the witness has been passed, you  
24 can ask him yourself. Go ahead.

25 MR. HIGH: Judge, just let the record reflect

1 that I did not pass the witness, but the Court required me to  
2 pass the witness. Is that correct, Your Honor?

3 THE COURT: That's correct.

4 MR. HIGH: Just so the record is clear.

5 THE COURT: All right. Time is 1:47.

6 CROSS-EXAMINATION

7 BY MR. SCHULTZ:

8 Q. What do you mean that's what you're told?

9 A. I talked to my attorney last night. Dennis Brewer  
10 was my attorney and --

11 MR. SCHULTZ: Excuse me, Judge. We're going to  
12 again renew our objection to that. It's a hearsay statement.

13 It's even worse than that. He doesn't have any personal  
14 knowledge of the hearsay. Somebody told him what somebody  
15 else said in some proceeding.

16 A. No, sir, I was there in the courtroom.

17 Q. BY MR. SCHULTZ: Do you remember it or not?

18 A. I remember him saying that he thought I would commit  
19 crimes the rest of my life, and that I was the worst inmate he  
20 had ever analyzed. I asked my attorney last night if he could  
21 get the transcripts, or the verbiage from files, and he said  
22 what he said was you were the worst, and so I would just --

23 Q. Okay. Just a couple of questions, if I could. You  
24 were not charged with capital murder; is that correct?

25 A. No, sir.

1 Q. Okay. And does that mean you were charged with  
2 regular murder? Was your crime murder?

3 A. First-degree murder.

4 Q. Which did not carry a death penalty, but carried a  
5 punishment range of 5 years to 99 years, or life?

6 A. I think that's the case, sir.

7 Q. Now, did these -- do you remember how much time the  
8 State was asking for when they argued to the jury?

9 A. They were asking for a life sentence, or 99 years. I  
10 don't remember. They were asking for the maximum.

11 Q. And that's -- you know, we can fault, and we can say  
12 the jury system doesn't work, or juries don't have intuition.  
13 And yet, instead of giving you the maximum that the law  
14 allowed, that trial jury, having heard all the evidence in its  
15 wisdom, thought the appropriate sentence for you was 20 years,  
16 right?

17 A. It was 11 to 1 in favor of life, and the jury  
18 foreman, who was an ex-highway patrolman, would not give me a  
19 life sentence, and he convinced the jury to come to 20 years.

20 Q. Okay. Once again, I guess the answer is "yes," they  
21 gave you much less than the law would have allowed them to  
22 give you?

23 A. I believe they decided to do that rather than be  
24 hung.

25 Q. Well, whatever their reasons, they unanimously gave

1 today, they don't get to go to Heaven because they are  
2 professing one thing, but living another. But a conversion of  
3 the heart changes the person, and they would not do those  
4 things.

5 Q. Certainly the Ku Klux Klan had a Christian  
6 underpinning as part of its fabric, and yet, most of the  
7 things that organization has done are not things we look upon  
8 and say that's not violent?

9 A. That's bigotry hiding behind religion.

10 Q. Certainly it's fair to look at history and say, many  
11 of the people who profess to be Christians in this nation, at  
12 the same time, held slaves?

13 A. Uh-huh.

14 Q. And they would take those slaves, and they would  
15 sell somebody's child to somebody else that needed a young  
16 slave and have no regard or compassion for that family unit,  
17 or the pain of that mom or the pain of that dad or the pain of  
18 that child, right?

19 A. No.

20 Q. They claimed to be Christians?

21 A. Just like in Kenya we deal with that, and that's why  
22 we're there, trying to help those men understand they can't  
23 sell their wives. They claim to be Christians, and they  
24 really are born-again. But there's a point to where a person  
25 comes to Christ, and coming to Christ with their heart doesn't

1 help their mind or their memory of how things work. It takes  
2 a while to bring that up. And so they don't understand that  
3 your wife is God's daughter, and you have to treat her with  
4 respect and dignity, and so it takes a while.

5 Now, in the case of slave owners, they had a culture  
6 that was prejudicial and racist, and there were different  
7 preachers in that generation. Some said, all men are created  
8 equal, all men are human beings and every man should have the  
9 right to life, liberty and the pursuit of happiness. The  
10 other side of the coin is there were preachers saying, the  
11 black man came from a cursed race, is not all the way human,  
12 he's not equal to the white man, and so racism was preached  
13 from pulpits. But if you go to the spirit of Lord, Jesus  
14 never looked at preachers and lawyers, that he didn't love  
15 them.

16 MR. GOELLER: I object to that.

17 (Laughter.)

18 MR. GOELLER: Say it's not so.

19 Q. BY MR. SCHULTZ: My point is, professing  
20 Christianity, in your judgment, isn't the same as being  
21 Christian, right?

22 A. That's true.

23 Q. Okay. Surely you're not telling us you have some  
24 special ability to look into somebody's eyes and tell whether  
25 or not it's genuine, or whether it's utilitarian, right?

1 A. No, sir. That's why I said I believe the only way  
2 to know that is time, and you have to observe somebody's life  
3 in time. My pastor -- and I'll just pick him as an example.  
4 He's ministered to me for eight and a half years in prison,  
5 walked with me. We took a month's sabbatical motorcycle ride  
6 around the continental borders of the United States. After my  
7 first five years in ministry, he said you're stressed out,  
8 come here. And whether he's in the pulpit, on a motorcycle,  
9 traveling as an evangelist or taking a family vacation, which  
10 he took me on so I'd learn how a Christian man treats his wife  
11 and his kids, he's the same guy.

12 And so I would say if you said, your pastor is two  
13 different people. I've seen him. I've seen him tired, I've  
14 seen him emotionally drained, I've seen him under financial  
15 duress. I've seen him when one of the kids was driving him  
16 crazy. He's trying to raise a teenage boy. It's not where he  
17 needs to be at that point in his life, and he's just a great  
18 guy. He is who he is sitting there behind the scenes, and so  
19 time is how you tell whether there's the fruit of  
20 Christianity. If there was really a root put down in God,  
21 then there will be fruit.

22 Q. Well, you're not saying only Christians can be  
23 nonviolent? You wouldn't take that position, would you?

24 A. No, sir. There are great people, good people, moral  
25 people that have never darkened a church door, read the Bible

1 or anything.

2 Q. You may have issues with whether or not they'll find  
3 their way to heaven, but not whether or not they would be good  
4 neighbors or somebody that would help you when you were in  
5 need, or somebody that loves their kids. They can do all that  
6 in your mind, couldn't they?

7 A. Yes, sir.

8 Q. And the same thing with other faiths. I mean,  
9 you're not telling us that the only faith you believe is an  
10 important faith is Christianity. You're not saying that other  
11 faiths aren't important, are you? I'm not talking about  
12 getting into Heaven. I'm just saying, are you saying other  
13 faiths aren't important?

14 A. I think anything that's built on deception is  
15 harmful to man, and because I believe in the Bible as the  
16 inspired word of God, and Jesus said, if you come to the  
17 Father any other way but by me, you're the same as a thief and  
18 robber. They're important to the people that believe them. I  
19 don't believe they're of eternal value.

20 Q. So you don't think, for example, people that follow  
21 the Islam, or the teachings of Muhammad, you don't believe  
22 that's an important following?

23 A. No. I believe it's detrimental. That's -- Muhammad  
24 had a nine-year-old wife, and so the Spirit of Islam is the  
25 spirit of control and lust.

1 the lawmaker you'd change the law? You actually believe that  
 2 what the State is attempting to do here, you believe that to  
 3 be evil?  
 4 A. Yes, sir.  
 5 Q. And you would believe that --  
 6 A. And I believe it to be harmful.  
 7 Q. We're not quarreling.  
 8 A. Yes, sir.  
 9 Q. And it wouldn't matter who the defendant were. It  
 10 could be Adolf Hitler. It could be Timothy McVeigh. It could  
 11 be Osama Bin Laden. It wouldn't matter who it is that we're  
 12 trying for whatever crime, you'd still say that was -- in your  
 13 opinion that's an evil thing that we were trying to do to kill  
 14 that person?  
 15 A. Yes, sir.  
 16 MR. SCHULTZ: I appreciate your courtesy.  
 17 We'll pass the witness.  
 18 THE COURT: I'll give you couple of minutes to  
 19 wrap up.  
 20 MR. HIGH: Thank you, Judge.  
 21 REDIRECT EXAMINATION  
 22 BY MR. HIGH:  
 23 Q. Did you -- with respect to Adolf Hitler, Osama Bin  
 24 Laden and Timothy McVeigh, do you know whether or not they had  
 25 ever converted to Christianity?

1 A. No.  
 2 Q. You're not aware of that, are you?  
 3 A. No, sir.  
 4 Q. In fact, Bin Laden is Islamic and McVeigh was  
 5 atheist or agnostic?  
 6 A. I don't know.  
 7 MR. SCHULTZ: Excuse me, unless Mr. High wants  
 8 to be testifying, this witness says he doesn't know, and I  
 9 don't know that Mr. High telling him that makes any  
 10 difference.  
 11 THE COURT: Sustained.  
 12 Q. BY MR. HIGH: Let me rephrase my question. Do you  
 13 know whether or not Timothy McVeigh --  
 14 A. I don't know anything about any of them.  
 15 Q. Okay. And with respect to testifying in other  
 16 trials, have you ever testified in other trials?  
 17 A. No, sir.  
 18 Q. This is the only one?  
 19 A. A trial like this, yes, sir. I've testified for in  
 20 custody trials for people in my church adopting babies.  
 21 Q. And with respect to telling you if he was a  
 22 Christian, have you also listened to a cassette tape of him  
 23 talking?  
 24 A. Yes. I listened to a cassettes tape of him having  
 25 lengthy discussions with his mother.

1 MR. HIGH: Okay.  
 2 THE COURT: Mr. High, your time has just about  
 3 expired.  
 4 MR. HIGH: Judge, I believe there was an  
 5 objection in there. Can I have a couple of more questions?  
 6 I realize the State has talked with the Court and persuaded  
 7 the Court to limit me on my questions with --  
 8 THE COURT: Oh, no.  
 9 MR. HIGH: Judge, that's a statement --  
 10 THE COURT: They never asked me to limit you.  
 11 I don't recall your asking me to limit him.  
 12 MR. HIGH: Well, I believe that discussion  
 13 occurred on the record about two hours ago, and I know that  
 14 the State has persuaded the Court to limit me on my direct of  
 15 this witness. I'm just asking for a couple of more questions.  
 16 THE COURT: I understand. No, I'm not going to  
 17 give you any more questions.  
 18 MR. HIGH: So the Court is denying me the  
 19 opportunity to further examine this witness?  
 20 THE COURT: Yes, that's right.  
 21 MR. HIGH: Thank you, Judge.  
 22 And I take it you're making that ruling on the  
 23 record, denying me the opportunity to examine this witness?  
 24 THE COURT: See the court reporter over here?  
 25 MR. HIGH: Yes, sir. Just want to make sure

1 the record is clear.  
 2 THE COURT: Yes.  
 3 MR. HIGH: Thank you, Your Honor.  
 4 THE COURT: Anything else?  
 5 MR. SCHULTZ: No, sir.  
 6 THE COURT: All right. Let's see now, we want  
 7 him to stick around a little bit, don't we?  
 8 MR. HIGH: (Nods head.)  
 9 THE COURT: If you would stick around for a  
 10 little while. Perhaps we'll have you back later.  
 11 THE WITNESS: Great.  
 12 THE COURT: All right. Good attitude.  
 13 Call your next witness, please.  
 14 MR. GOELLER: Your Honor, we'll call Dr. Walter  
 15 Quijano.  
 16 THE COURT: Let me ask the attorneys to step  
 17 up here for a second.  
 18 (Discussion had outside the hearing of the court  
 19 reporter and the jury.)  
 20 THE COURT: Please come up to the bench, and  
 21 I'll swear you in.  
 22 (Witness sworn by the court.)  
 23 THE COURT: Put your hand down and have a seat  
 24 right here, please.  
 25 MR. SCHULTZ: Approach the bench again, Judge?

1 which is published in Texas Psychological Foundation.  
 2 There is that -- my work as editor for that textbook by  
 3 the Institute of Justice, and I review articles for  
 4 publication for the prison journal -- prison -- Journal of  
 5 Prison Health.

6 Q. And that -- what is that publication about?

7 A. That is a publication on how, by and for mental  
 8 health and medical, dental, professionals that work in prisons  
 9 and jails.

10 Q. Okay. Are you familiar with the Texas prison  
 11 system regarding diagnostics and classifications?

12 A. Yes.

13 Q. Could you tell the jury a little bit what those two  
 14 terms mean? We'll start off with diagnostics.

15 A. Diagnostic started -- the term diagnostic was used  
 16 because we have a prison unit called the Diagnostic Unit in  
 17 Huntsville. It is the entry point of main prisoners. There  
 18 is a process there -- a two-prong process. What is called the  
 19 Diagnostic One Process is a process by which each incoming  
 20 inmate is reviewed by a multidisciplinary team of security  
 21 experts, psychological people, medical, dental, educational  
 22 and even work people. They review this person and decide as a  
 23 team where in the prison system he can be housed the best,  
 24 considering his security needs and his personal needs.

25 Those who are identified as high-risk at the initial

1 screening are sent to what is called the Diagnostic Two  
 2 process where there is more intensive psychological testing,  
 3 evaluations, a more gathering of free world information. From  
 4 there, they are then assigned to the various TDC units. In  
 5 TDC lingo they're called "farms." So it's a screening process  
 6 by which the best estimation TDC has for the security need of  
 7 that person, as well as the personal need if the person is  
 8 evaluated and his assignment is decided on that basis.

9 Q. Okay. And classifications is that term. We've  
 10 heard that term used. Can you give us a little insight on  
 11 classifications specifically?

12 A. The classification is the system by which the  
 13 diagnostic process places people in various security levels  
 14 and other personal needs. It's a very sophisticated system.  
 15 It's maybe one of the best in the country. Many prison units,  
 16 or prison systems come to look at it, and base their  
 17 renovations on it. It decides on the security level, medical  
 18 needs, psychological needs and other needs, and that is done  
 19 by a team in the diagnostic unit called the State  
 20 Classification Committee. That decision is then forwarded to  
 21 the specific prison unit where the inmate goes, and that  
 22 individual prison unit has a unit classification committee  
 23 that reviews the work of the State level people. Any changes  
 24 can be made at that level.

25 That State -- that unit classification committee is

1 also responsible for reviewing the day-to-day behaviors of the  
 2 inmates and adjusting their security levels accordingly,  
 3 upwards or downwards.

4 Q. Okay. What is the goal -- the TDC goal of  
 5 diagnostics and classifications? What is the end result we're  
 6 trying to achieve, or the prison is trying to achieve?

7 A. The primary goal, of course, of the prison system is  
 8 to house inmates and to advise the various courts in a safe  
 9 manner; safe for fellow inmates as well as for the staff.  
 10 That is the first goal. Then, after that you have secondary  
 11 goals of providing services so that there is an opportunity  
 12 for change and rehabilitation, but the primary goal is  
 13 detention in a safe manner.

14 Q. Okay. Were you part of the videotaping of one of  
 15 the units in the penitentiary that we're going to show the  
 16 jury here?

17 A. Yes.

18 Q. Okay. Can you talk to the jury a little bit about  
 19 levels of security? We hear the terms "administrative  
 20 segregation," "general population," can you give the jury a  
 21 quick overview of what they might expect on this tape?

22 A. The best way, and I think the simplest way, to  
 23 understand the security levels in TDC is to look at its  
 24 housing scheme. TDC housing ranges from, like, a 50-bed  
 25 dormitory to a single cell with one person in what is called

1 "super segregation, or high security units. In the dormitory  
 2 it's an open-type setting where there are 50 beds in one  
 3 location. It goes on to the next level where you have cells  
 4 with bars with two inmates in one cell. It's called double  
 5 celling. Then you have cells with bars with one inmate called  
 6 single celling. Then you have cells with solid doors with two  
 7 inmates, cells with solid doors with one inmate, all in what  
 8 is called a general population.

9 There are specialized units -- housing called  
 10 administrative segregation. Administrative segregation is  
 11 housing problematic people. The A type is the assaultive  
 12 type. People who continue to be assaultive in the prison are  
 13 sent to administrative segregation to restrain them. These  
 14 are cells with solid doors, and the window, or the food slot,  
 15 that is the opening is there for food and other deliveries and  
 16 for handcuffing purposes. There is a window that is covered  
 17 by a plexi -- Lexan, or screen.

18 Another type of administrative segregation housing  
 19 is exactly the same, but is for people who are there for  
 20 protection, who are potential victims. So if you segregate  
 21 them, the dangerousness of the whole prison system is reduced  
 22 because the victims are segregated. They are in the single  
 23 cells, but the openings don't have these Lexans and don't have  
 24 the iron screens.

25 A third group of people there are what we call

- 1 A. Yes.
- 2 Q. Those are the windows?
- 3 A. Yes. Those are -- the new standards require that
- 4 each prison cell has direct sunshine, so they place these
- 5 small windows in the top of the cells, the upper end towards
- 6 the ceiling, to provide them the sunshine.
- 7 Q. These there are the windows?
- 8 A. Those are the windows, and later on you can see the
- 9 windows from inside the cell.
- 10 Q. That's an inmate?
- 11 A. That's an inmate standing on something peering out
- 12 the window.
- 13 Q. Looks like he's wanting to maybe communicate
- 14 something. What's he doing, Dr. Quijano? What is that?
- 15 A. I am told he is giving a gang signal, but I thought
- 16 he was just hooking (sic) them horns. Longhorns, yeah.
- 17 (Laughter.)
- 18 A. I'm told that could be a gang signal.
- 19 That is the entrance into the administrative
- 20 segregation pod.
- 21 Q. Who was that that just walked in?
- 22 A. That was me.
- 23 Q. That's you?
- 24 A. That's my cameo appearance.
- 25 Q. Your what?

- 1 A. My appearance. That's the only time I think you see
- 2 me.
- 3 This is a cage in the waiting area where the inmates
- 4 are kept if they are waiting transportation or are waiting to
- 5 be moved to another place. They cannot just stand around the
- 6 reception area. They have to be inside that cage.
- 7 Q. This cage here?
- 8 A. Yes.
- 9 Q. What's this scene?
- 10 A. This illustrates how inmates in administrative
- 11 segregation are seen by medical staff. Rather than being
- 12 walked into the infirmary, the nurses come to the ad seg area,
- 13 and they are seen here following the protocol, which you will
- 14 see very shortly.
- 15 Q. Does a guard have to be there?
- 16 A. Yes. You will see very quickly that each inmate has
- 17 to have one guard, and the guard has to keep holding the
- 18 inmate until he goes to see the nurse. While with the nurse,
- 19 his handcuffs are not removed. That inmate is awaiting his
- 20 turn, so he is handcuffed by his hands in the back, and a
- 21 guard is with him.
- 22 Okay. This will illustrate how he is escorted back
- 23 to his cell.
- 24 Q. One-on-one?
- 25 A. One-on-one.

- 1 Q. Ad seg, they label them?
- 2 A. Yes, so --
- 3 Q. Everybody knows they're --
- 4 A. They belong to ad seg, yes.
- 5 See, that door is controlled by -- electronically by
- 6 a picket officer so that this officer doesn't have a key and
- 7 less reason to assault him.
- 8 Q. That's how they take the cuffs off. Once he's
- 9 behind locked doors then they --
- 10 A. The cuffs are removed after he gets inside the cell
- 11 and the door is closed.
- 12 Q. That's the cell block, I guess you'd call it?
- 13 A. This section of ad seg is the better kind. These
- 14 are status inmates. They're there for being gang members and
- 15 not for being assaultive. Notice, it's clean and relatively
- 16 quiet.
- 17 Q. This is the better side, so to speak, the least
- 18 restrictive side, or the least restrictive side -- lesser
- 19 restrictive side?
- 20 A. Lesser restrictive side of ad seg.
- 21 This cage here is a room that is considered the
- 22 recreation area. They are entitled to one hour a day of
- 23 recreation, and so they are brought to this room one at a time
- 24 and they stay there for an hour, and then they go back to
- 25 their cell. Following the same procedure, like going to a

- 1 medical appointment, they are searched before going back to
- 2 their rooms.
- 3 Q. What's that?
- 4 A. That is the opening -- window that I talked about
- 5 with a screen, but that has no plastic covering. You can poke
- 6 your fingers through it.
- 7 Q. Would that be these screens right here, or, no, is
- 8 that something else?
- 9 A. Yes, those are the windows.
- 10 Q. That's the rec cage?
- 11 A. That's the recreation cage. Inside recreation.
- 12 There's a similar cage outside. It's called outdoor
- 13 recreation. The difference being access to sunshine.
- 14 Q. Will the jury notice quite a noise difference
- 15 between kind of the good side here and --
- 16 A. The violent side, yes.
- 17 Q. -- the violent side?
- 18 A. Yes.
- 19 Q. How big are these cells on the inside?
- 20 A. All new cells are now 10 by 6.
- 21 Q. 10 by 6?
- 22 A. Okay. This is the procedure that is followed once
- 23 recreation is over and he's brought back to his cell.
- 24 Q. Will there be any nudity here?
- 25 A. Yes, but it's done very nicely.

1 they can come get it. The serving the food is not the hard  
2 part. The hard part is figuring out what you're eating.

3 (Laughter.)

4 Q. Good stuff, huh?

5 A. They are really nutritious in the sense  
6 of nutritious value, but taste is a different matter. But  
7 they are designed by a nutritionist so they have a balanced  
8 meal.

9 Q. That handle device doesn't look like a key. What is  
10 that? Is that how they open the bean hole?

11 A. It's like a -- it's like a jack, you know. It pries  
12 it open.

13 Q. What's this, Dr. Quijano?

14 A. That is the picket -- inside picket I talked to you  
15 about. These cells are electronically closed and opened. In  
16 the older prisons, you have these huge keys that guards use to  
17 close and open the various cells. Like, in the movie they are  
18 objects of attack because they want the keys. In this, you  
19 deprive them of that because it's controlled by somebody  
20 inside the picket controlling it electronically.

21 Now, these are batons. The only weapons guards have  
22 is a batons, a shield and chemical agents. There are no guns  
23 allowed inside the prison.

24 Q. Where we saw the food being served to those inmates,  
25 was that still the good side of the bad house?

1 side of ad seg.

2 Q. Okay.

3 A. This illustrates that administrative segregation  
4 inmates don't have free access to the hallways. These are  
5 trustees that deliver food and janitors.

6 Q. A lot of yelling?

7 A. This is the portion of ad seg that houses the  
8 violent inmates who continue to be violent, even in ad seg.

9 Q. Is that someone pounding?

10 A. Pounding on their cells, shaking their doors,  
11 yelling screaming, urinating so that the urine seeps through  
12 the doors and stinks the whole place. Very brutish, animalish  
13 behavior.

14 Q. And as long as they act like this, they're going to  
15 stay there?

16 A. They're stuck there.

17 See, now those -- that is the types of doors they  
18 have. It has the screen -- metal screen and Lexan glass so  
19 they cannot throw objects or liquids at the officers.

20 Q. Doesn't appear to be a happy individual.

21 A. This particular one is psychotic. He's talking  
22 about poison in his food.

23 Q. If an inmate refuses to take his medication, what do  
24 you do with them?

25 A. If it's medication that -- medication you can

1 A. Yes, we are still there. You can tell.

2 Q. It's quiet?

3 A. When we are in the bad side, you can tell.

4 Q. Okay.

5 A. When they open the door of the cells, only one  
6 inmate is allowed at a time. You will not see two inmates  
7 walking around at the same time.

8 Q. Is there somebody always in this picket area?

9 A. Oh, yes.

10 Q. 24 hours, 7 days a week?

11 A. 24 hours, 7 days a week. And the staffing in the ad  
12 seg section is richer than in general population.

13 That person is still in the indoor recreation. The  
14 intent there is to allow them to use their large muscles  
15 because if they don't get out of their cells and use their  
16 large muscles, they deteriorate and it leads to very expensive  
17 medical conditions.

18 These pickets also have holes that enter into the  
19 general area where they can introduce chemical agents in case  
20 they have to control a riot.

21 Q. Like CS gas, that kind of stuff?

22 A. Yes.

23 Q. What will be the next thing that the tape goes  
24 into, Doctor?

25 A. I think we're going to the noisy side, the violent

1 refuse. Treatment you can refuse, but if the medication is  
2 intended to restrain you from hurting yourself or other  
3 people, they can be forced to do that.

4 THE COURT: Matt, any idea how much longer?

5 MR. GOELLER: Doctor, what do you think?

6 THE WITNESS: This portion is almost done.

7 Then the captain talks, which we will not watch. And then  
8 there is a ten-minute portion in the general population, which  
9 shows the general dining room and how a pod in general  
10 population looks like.

11 MR. GOELLER: I guess maybe a total of 15  
12 minutes left?

13 THE WITNESS: More than that. Are you talking  
14 about a break, Judge?

15 THE COURT: Yes.

16 THE WITNESS: Maybe after this and before the  
17 general population we should take a break.

18 THE COURT: That makes sense. Go ahead and --

19 THE WITNESS: Anyway, we have to skip the  
20 captain talking.

21 Q. BY MR. GOELLER: Let me know when you think that's  
22 about to hit. Is that in this section here?

23 A. Yes.

24 Q. Is that noise in the bad section of bad, is it  
25 constantly?

1 area.

2 Q. Is that some more of that nutritious food,

3 Dr. Quijano?

4 A. Yes. It's the same food served throughout the

5 prison, except in the violent part of ad seg they blend

6 everything in that tray, they blend it into a ball and bake

7 it.

8 Q. Yummy.

9 A. But it deprives them of one more weapon to use.

10 Q. So no tray?

11 A. No tray. They put them in a brown bag, so they

12 don't mess their cells and the floors. It's called a "brown

13 bag," and everything in that tray is in that ball. It's very

14 nutritious, technically.

15 Q. Very nutritious ball.

16 What's this?

17 A. This is the, what they call the "piddling shop."

18 It's really the leather arts and crafts, which is every

19 inmate's dream to be able to get this privilege. They, of

20 course, use instruments that could be used as weapons, but

21 they are given that privilege. And as the best inmates, they

22 are able to make arts and crafts, and they can sell them so

23 they earn a little money through the commissary system.

24 Q. So the piddling shop is leather, arts and crafts, no

25 heavy industry?

1 A. No. It's belts, purses.

2 Q. Little trinkets, stuff like that?

3 A. Trinkets, yes.

4 And depending on which inmate you ask to make you a

5 belt, you could have a lifetime warranty, if they serve a life

6 sentence.

7 (Laughter.)

8 Q. Rec room?

9 A. That is the recreation -- the indoor recreation I

10 talked about for the general population. So they cluster

11 together. They have a television, and they vote what channel

12 to watch. This is the cells in the general population. Look

13 at that window, the two windows, not covered by either the

14 screen or Lexan glass. There are no food slots, and they are

15 free to stay there or go into recreation, either way.

16 Q. So they could open that door right now?

17 A. No, no, no. Certain hours.

18 Q. Okay.

19 A. There is what they call "racking in" or "racking

20 out."

21 See, there are two inmates in that cell. This is

22 the overview of the pod. There are three stories in a

23 semi-circular configuration.

24 Q. What kind of channels do they get on those TVs?

25 A. Basic channels.

1 Q. They don't get like Playboy and --

2 A. No.

3 Q. -- important stuff?

4 A. No.

5 Q. Like news, CNN?

6 A. No, just the basic channels.

7 Q. ABC, NBC, CBS?

8 A. Yes.

9 Q. Okay. It seems kind of quiet here. Is that

10 generally the way it is?

11 A. It's very nice, very quiet. People are

12 well-behaved, and they protect that privilege. They can read

13 a paper, and they can play quiet games, Dominos.

14 Q. Like this here?

15 A. Oh, right there, yes. That's the end of this tape.

16 Q. Okay.

17 THE COURT: Do you want to mark that as 42

18 then?

19 MR. GOELLER: Yes, sir.

20 THE COURT: And I suppose it will be admitted

21 -- is it offered; is that the idea?

22 MR. SCHULTZ: If offered, yes, sir, we don't

23 object.

24 THE COURT: All right. Then 42 for the

25 Defendant is admitted.

1 Q. BY MR. GOELLER: Dr. Quijano, I want to talk to you

2 just very briefly about control in prisons, and the term we

3 use "manipulation." There has been testimony before this jury

4 that Ivan can be a manipulator, or can manipulate people. Can

5 you give the jury a little insight as to manipulation and how

6 that's perceived by the prison as far as maybe a tool in

7 control?

8 A. Manipulation has a negative connotation, but it's

9 really a very good word in that it means that you are able to

10 rearrange contingencies that are available to you. A

11 manipulation can be a tool for control because you want the

12 inmates to be able to manipulate what is available to be

13 manipulated; in other words, to use the system, to quit using

14 their previous methodologies and tricks, but to manipulate the

15 system properly to get what they want. Now, you may not get

16 what you want as quickly, but you will eventually get what you

17 want if you use the system well.

18 Manipulation is something you would like to teach

19 the inmate. Now, manipulation to hurt other people or to

20 violate their rights, is, of course, to be discouraged and to

21 be punished. But manipulation in itself, once you get the

22 inmate to use what is available to them, it's a good coping

23 skill for them and a good control technique because they will

24 use what you and I do in the free world to get what we want to

25 legitimately get what they deserve or what they -- what's



- 1 A. (Nods head.)  
 2 Q. Are you familiar with what a life sentence means in  
 3 Texas?  
 4 A. The life sentence in Texas, capital life means he  
 5 has to serve a minimum of 40 years before he's even considered  
 6 for parole.  
 7 Q. Do you have -- did you have any experience with  
 8 40-year inmates from psychological services, or any connection  
 9 you had in the penitentiary?  
 10 A. No. We don't have such an inmate yet who has served  
 11 40 years.  
 12 Q. Okay.  
 13 MR. GOELLER: I'll pass the witness, Your  
 14 Honor.  
 15 THE COURT: All right.  
 16 MR. SCHULTZ: Thank you, Judge.  
 17 CROSS-EXAMINATION  
 18 BY MR. SCHULTZ:  
 19 Q. Doctor, I've just got a few questions, if I might.  
 20 When an inmate comes in, even with a conviction for  
 21 capital murder, but it's a nondeath sentence, does that person  
 22 automatically go into ad seg?  
 23 A. No.  
 24 Q. That person will go to general population?  
 25 A. Yes, unless he has points against him to go to ad

- 1 seg. But the presumption is general population.  
 2 Q. You mentioned gang membership. Does that have to be  
 3 in-the-system-gang membership or prior-to-entering-the-system  
 4 gang membership?  
 5 A. In and prior to, a gang membership is considered a  
 6 risk factor because the gangs love to kill each other, gang  
 7 members. And so if you are identified as a gang member, then  
 8 your chances of going to ad seg increases.  
 9 Q. Okay. In your judgment, is prison a dangerous place?  
 10 A. Yes.  
 11 Q. The protection doesn't really depend upon the  
 12 inmate's own conscience because they probably don't have those  
 13 skills. That's why they're in prison; is that right?  
 14 A. Yes.  
 15 Q. The protection really depends upon the ability of  
 16 the system itself to control them; is that right?  
 17 A. Yes.  
 18 Q. And if there's a breakdown somewhere in the system,  
 19 that's where we have problems like escapes or knifings or  
 20 things like that; is that fair?  
 21 A. Yes, the human factors.  
 22 Q. If we wanted to spend the money and take the time  
 23 and commit the resources, don't you think we would make prison  
 24 almost totally safe if we want to spend that much time?  
 25 A. Yes.

- 1 Q. I mean, if we want to assign two guards per every  
 2 inmate, whether that's general population or trustees or  
 3 violent gang members, if we want to assign those kinds of  
 4 resources we could just about eradicate any kind of violence  
 5 in prison, couldn't we?  
 6 A. Yes. You could get to the point.  
 7 Q. The problem is we probably don't make enough money  
 8 as a society to do such a thing; isn't that so?  
 9 A. True.  
 10 Q. See, here's -- you've testified in death penalty  
 11 cases before on behalf both of the Defense and the State; is  
 12 that correct?  
 13 A. Yes.  
 14 Q. And those have been based not only upon  
 15 hypothetical-type situations, but also clinical evaluations?  
 16 A. Yes.  
 17 Q. And would you agree, in general -- I'm not trying to  
 18 pin you down to a specific -- but do you consider the clinical  
 19 evaluation of a capital murderer an important ingredient in  
 20 risk assessment?  
 21 A. It's very important.  
 22 Q. Because some people would say don't confuse me with  
 23 information about this person. I don't want to meet him and  
 24 know his personality. I want to assess him statistically.  
 25 Are you familiar with that type of thought?

- 1 A. Yes. There is such a school of thought.  
 2 Q. What's your opinion on that school of thought?  
 3 A. That it is deprived of rich clinical data, the  
 4 combination of statistical prediction, as well as personal  
 5 knowledge of the person is, of course, superior.  
 6 Q. Now, I promise I'm not trying to pin you down  
 7 statistically. I'm just going to ask you to generalize as  
 8 best as you can based upon your experience and your knowledge  
 9 of TDC. Roughly, how many folks do you think we have on Texas  
 10 Death Row right now?  
 11 A. About 400.  
 12 Q. Okay. And obviously, they share certain things in  
 13 common, and that would be, number one, they've been convicted  
 14 of capital murder?  
 15 A. Yes.  
 16 Q. Because no matter how dangerous you are or how  
 17 habitual a criminal you are, if you don't commit a capital  
 18 murder you can't ever end up on death row; is that right?  
 19 A. If you are not convicted, you cannot go to death  
 20 row.  
 21 Q. Exactly. So they share the fact they've been found  
 22 guilty of capital murder?  
 23 A. Yes.  
 24 Q. And they all share the fact that Special Issue  
 25 Number One has been answered "yes" unanimously by the jury; is

1 A. Yes. The answer to the question is danger -- that  
2 in the person itself the answer is yes. The person is  
3 dangerous, a future danger.

4 Q. Right.

5 A. The question is, where is he? Then, the answer can  
6 vary.

7 Q. Okay. In other words, if you look at the outside  
8 world, for example, the answer is clearly very dangerous?

9 A. Yes.

10 Q. If you look at a breakdown in the prison system, the  
11 answer is clearly very dangerous?

12 A. Correct.

13 Q. If everything works just fine in prison and nobody  
14 makes a mistake or accidentally unlocks a door or accidentally  
15 doesn't catch the toothbrush that's missing or the fork or the  
16 knife, then perhaps that person could successfully live in  
17 prison?

18 A. Yes.

19 Q. But they're still probably a danger to society, a  
20 danger for violent acts in the future?

21 A. Yes, and all the precautions must be maintained.

22 MR. SCHULTZ: A moment, please, Judge.

23 THE COURT: All right.

24 MR. SCHULTZ: It's great seeing you again,  
25 Doctor. We'll pass the witness.

1 cut loose? If somebody were convicted of capital murder, and  
2 the judge said, well, just go home versus --

3 A. Well, the person is dangerous by the acts he  
4 committed, has been found to be dangerous by the jury. So  
5 there is no need to predict whether this person would be  
6 dangerous or not. He is dangerous. What you're trying to  
7 predict is the acts of violence.

8 Q. Okay.

9 A. And that acts of violence depends on where the  
10 person is. If he has opportunities, chances are he will  
11 continue to do so. If he is in a very restrained setting, in  
12 the words of Mr. Schultz, "when everything works properly,"  
13 he'll be okay.

14 Q. Okay. In your years of forensic psychology and your  
15 intimate knowledge of the penitentiary system and practicing  
16 in your field in the penitentiary, have you ever seen  
17 extrinsic factors and controls that maybe changed behavior and  
18 personality? Do you know what I'm trying to say?

19 A. Yes. Not personality, but the -- the person can,  
20 through the external controls, over a long period of time,  
21 develop a new pattern of behavior and do very well. In fact,  
22 correctional experts will tell you that lifers are the best  
23 inmates because they learn to use the system. They learn to  
24 live with the system. And so external controls over a long  
25 period of time can lead to a change in a person's pattern of

1 MR. GOELLER: Just a couple of more questions,  
2 Dr. Quijano.

3 REDIRECT EXAMINATION

4 BY MR. GOELLER:

5 Q. When Mr. Schultz was asking you the question, I  
6 assume and he'll correct me if I'm wrong, he was asking about  
7 Special Issue Number One?

8 A. Yes.

9 Q. Okay. And as you know -- I know you've written  
10 about this and you've testified before whether there is a  
11 probability the Defendant would commit criminal acts of  
12 violence that constitute a continuing threat to society.

13 Would you agree with me that most -- most people who have been  
14 convicted of capital murder -- probably more than most -- the  
15 vast majority of them, if set out in the free world, they're a  
16 danger?

17 A. Yes.

18 Q. They're at risk to do bad things?

19 A. Yes.

20 Q. Okay. In regards to that special issue, obviously  
21 when we're talking about -- and we don't get to that special  
22 issue until somebody has been found guilty, so we know life or  
23 at least 40 minimum. When we talk about future dangerousness  
24 or the probability in the penitentiary system, what are your  
25 thoughts on that? Can a person be a danger if they're just

1 behavior, but that is obvious.

2 Those who don't, will be identified and then move on  
3 to ad seg, and those who move on to ad seg and then learn a  
4 new pattern of behavior can be moved back to general  
5 population, and there are those who don't and will remain in  
6 ad seg.

7 Q. In the -- some of the things that may help get a  
8 person convicted of capital murder, you know, drugs, alcohol,  
9 you know -- substance abuse addictions, things of that nature,  
10 how good a job does the penitentiary do in removing elements  
11 that make people dangerous? And maybe that's not good, "make  
12 them." But certainly contribute to why somebody ends up  
13 convicted of capital murder?

14 A. Uh-huh. In a capital murder and in any acts of  
15 violence, there are what you call risk factors that enough  
16 of those would put the person over the edge and commit the  
17 crime. One of those risk factors is, of course, drugs and  
18 alcohol. If you remove that factor, whatever level of  
19 dangerousness the person has will decrease. And a prison is a  
20 place where that is controlled. The problem is, it is not  
21 controlled a hundred percent. There is still some alcohol and  
22 still some drugs in the prison but, it is pretty much under  
23 control. So, in a sense, that person is less dangerous  
24 because of no more access to drugs and alcohol, but there is  
25 that small chance that it can still happen.

1 TDC was a Lutheran minister, George Sebido (phonetic), and  
2 that is how spirituality was introduced to the prison system.

3 Q. There's been evidence -- well, there's been  
4 testimony -- I'm not allowed to say there's been evidence of  
5 an actual Christian conversion. There's been testimony --  
6 there's been evidence -- it's debated whether or not it's a  
7 true, bona fide Christian conversion. Some people may say  
8 that's a form of manipulation. I mean, you're going to trial  
9 for capital murder. How do you look at that, whether it's  
10 legit or not, in the context of manipulation and the context  
11 of the penitentiary?

12 A. Jailhouse conversions are, of course, often suspect  
13 because of how it was generated. But a jailhouse conversion  
14 is better than no jailhouse conversion. There are people who  
15 are in jail who have committed serious crimes, who undergo  
16 conversion or report, and those who just continue to be  
17 belligerence (sic). Okay?

18 Now, the value of that is, of course, very, very  
19 subjective. But for those of us on the outside looking at  
20 that, any conversion is good. Now, how genuine that is,  
21 that's between him and God. But from the outside, I would  
22 take a person who has converted rather than a person who  
23 hasn't because that is at least one step bettering himself.  
24 But the genuineness of that is hard to -- is hard to judge  
25 because it is opportunistic.

1 Q. Right. My last question for you, Dr. Quijano, I  
2 want to clear something up, and I may have confused the jury  
3 when I spoke about general population. Are there different  
4 levels of general population? Do you know what I'm saying, or  
5 different units of general population?

6 A. Yes.

7 Q. Could you briefly explain that? I may have left a  
8 false impression. There's general population and different  
9 levels of ad seg and super seg. Can you tell them what  
10 general population is?

11 A. There are layers in general population, too. The  
12 best way to understand is the housing scheme I -- is like a  
13 matrix. On one end you have the housing scheme, and then the  
14 other factor is the degree of supervision. So you have the  
15 housing scheme from dorm to super seg, and then the  
16 supervision would be people allowed inside their cell and  
17 never get out. There are people allowed outside their cell,  
18 but inside the tiers. There are people allowed outside the  
19 cell, but inside a building. There are people allowed outside  
20 the building, but inside the fence. And there are people  
21 allowed outside the building and outside the fence, and then  
22 there's one more layer, allowed outside the building with  
23 armed -- with unarmed supervision, and then outside the  
24 building with armed supervision. So those are the layers of  
25 supervision in the general population. If you don't fit in

1 any of those, that is when you are sent to ad seg. So even  
2 within the general population, there are limits.

3 It's not what -- I don't know why people pick  
4 Holiday Inn, but it's not Holiday Inn type of -- maybe Holiday  
5 Inn Express, but it's not that kind.

6 (Laughter.)

7 A. There are layers of supervision. But it's, of  
8 course, determined on what TDC thinks can safely hold you.

9 Q. Okay.

10 MR. GOELLER: Thank you, sir. That's all I  
11 have.

12 MR. SCHULTZ: Just got a few questions for you.

13 RE-CROSS-EXAMINATION

14 BY MR. SCHULTZ:

15 Q. Doctor, approximately how many death penalty cases  
16 do you believe you testified in? Again, I'm not trying to pin  
17 you down. Just give --

18 A. Maybe I've been involved in about 150 or so.

19 Q. Have you testified both for the State and for the  
20 Defense in those cases?

21 A. Mostly for the Defense. About 60 percent for the  
22 Defense; 40 for the State.

23 Q. Okay. So, I mean, you do both, and you're capable  
24 of doing both; is that right? And you do that with frequency.  
25 Both sides hire you, is what I'm asking?

1 A. Yes.

2 Q. Okay. In your judgment, does that question ask us  
3 can the penitentiary protect itself from the particular  
4 defendant? Is that what that question is asking, in your  
5 judgment?

6 A. No.

7 Q. Okay. Because probably the world's most dangerous  
8 person, the prison could protect itself from that person,  
9 right?

10 A. Yes.

11 Q. I mean, I don't know who that would be. I don't  
12 know if that would be Hitler or if it would be Stalin or if it  
13 would be McVeigh or somebody -- somebody in a terrorist  
14 organization. I don't know who that would be, but whoever  
15 that would be, the prison has the ability to always protect  
16 itself from a person, no matter how dangerous; is that right?

17 A. Yes, if he is kept properly.

18 Q. As long as they do their job, and as long as nobody  
19 makes a mistake -- just like handling dynamite. If you handle  
20 it right, it won't do any harm, right?

21 A. Yes.

22 Q. Okay. So the question really doesn't mean can the  
23 prison neutralize a person's violent behavior? That's not  
24 what that question is asking, is it?

25 A. This particular question? No, it does not ask that

1 me realize what I did, and then I can then minimize the  
2 damage. This oh-my-God-what-have-I-done response would kick  
3 in. If that doesn't kick in, then you have a blunting of the  
4 conscience, and that can be explained in various ways, but  
5 clearly a person whose conscience is blunted would be more  
6 dangerous than a person whose conscience is not blunted.

7 Q. Is there any clinical significance, in your  
8 judgment, to an individual who, after committing an atrocious  
9 and senseless and wanton capital murder, would then just want  
10 to go out and party and have some fun? Is that of clinical  
11 significance to you?

12 A. Yes.

13 Q. Tell me about that, please.

14 A. Well, it's again, this issue of, if I have committed  
15 a serious crime and my conscience kicks in, that would pretty  
16 much -- the conscience would work on me so that I -- I may not  
17 even be able to eat. You lose your normal pleasures, ability  
18 to -- and if that doesn't bother you, then you can, in effect,  
19 party, the partying itself is not what is the question. It's  
20 the lack of being bothered, the lack of conscience kicking in.  
21 Now, that can be because of a person's personality, that can  
22 be because of drugs and alcohol, or a combination of both.

23 Q. Doctor, in answering that question, trying to figure  
24 out what would the Defendant do if he had the opportunity in  
25 terms of future violence, do you have to limit yourself to

1 consideration only of serious violent acts on human beings, or  
2 can other incidents of misbehavior be important in helping us  
3 answer that question?

4 A. No. You have to consider any acts of violence, not  
5 just serious acts of violence.

6 Q. Why I ask that question is, if someone is charged  
7 with capital murder, which is the only way that person could  
8 ever be executed, under our law, and someone has been found  
9 guilty of capital murder, it may well be that evidence of  
10 nonviolent crimes, or nonviolent activities would be  
11 attributed to the Defendant. Are they important in deciding  
12 whether or not this person would, if given the opportunity,  
13 commit criminal acts of violence?

14 A. It's important if the acts of violence, although not  
15 committed by the Defendant, is orchestrated by him.

16 Q. I apologize. It was a bad question, and we've just  
17 been at this a while.

18 Are things like property crimes significant  
19 clinically in answering that question? They're not crimes of  
20 violence, but things like thefts, or things like mortgage  
21 company scams, are those important in answering that question,  
22 in your judgment?

23 A. They are indirectly important in that it shows a  
24 pattern of antisocial behavior. They are not in themselves  
25 violent acts like the questions ask, but it shows a pattern of

1 antisocial behavior. It also -- are risk factors. Theft  
2 alone is not violent, but it can lead to violence. So it  
3 doesn't really answer this question, but it indirectly  
4 contributes to it.

5 Q. What is your personal and professional opinions of  
6 spousal abuse in terms of relative seriousness as a bad act in  
7 our society?

8 A. There are, of course, various kinds of spousal  
9 abuse. There are abuses that are just plainly called mean.  
10 There are abuses that derive from a sick relationship. There  
11 are abuses that are derived from abuse of drugs and alcohol,  
12 and there are abuses that are derived from psychiatric  
13 disorders, such as explosive disorders and impulse control  
14 disorders. So you have to really look at what type of abuse  
15 it was.

16 Q. All right. How about violence on spouses, is that  
17 important in assaying a person's desire, if given the  
18 opportunity, or propensity, if given the opportunity, to  
19 commit future acts of violence?

20 A. Yes.

21 Q. And why is that important, because it almost seems  
22 like we're punishing someone with a death sentence for spousal  
23 abuse or theft if we use those in answering those questions?  
24 Is that what we're doing?

25 A. Well, I hope we are not killing people because they

1 beat up their wives, although the wives may think that is the  
2 right thing to do.

3 Q. Then why is it important on that question?

4 A. It's important, again, because the pattern -- it's  
5 the pattern of if I can be violent to you, a stranger, people  
6 can understand that. But if I am violent to you, my wife, who  
7 I supposedly love, you know, there are many violations in that  
8 act of violence.

9 Q. Okay. Is there any clinical significance to  
10 patterns of violence -- violence being on the ascending slope,  
11 rather than a descending slope in your opinion?

12 A. There is a significance in that some people commit  
13 acts of violence, recognize it, and then turn their lives  
14 around. And there are people who commit acts of violence and  
15 just keep going. Those are two different types of people.

16 Q. Now, you hear the term -- and I know it has medical  
17 significance. We all hear the term "depression" in just our  
18 everyday language, don't we?

19 A. Yes.

20 Q. And I suppose that might mean one thing to a  
21 layperson, might mean another to a clinician; is that fair?

22 A. Yes.

23 Q. If somebody is just kind of bummed out from work or  
24 listening to lawyers or something, they might consider  
25 themselves depressed, but it would be different than the

1 A. Yes. The plot thickens then.  
 2 (Laughter.)  
 3 Q. Yeah, okay.  
 4 MR. GOELLER: That's all I have.  
 5 FURTHER RECROSS-EXAMINATION  
 6 BY MR. SCHULTZ:  
 7 Q. And I guess if you take a shot at your live-in  
 8 girlfriend and miss her head, that would be a family  
 9 situation, right?  
 10 A. Live-in girlfriend?  
 11 Q. Uh-huh. That's not exactly a family member, but  
 12 it's kind of like that?  
 13 A. Kind of, yes.  
 14 Q. But that's still real dangerous, taking a shot at a  
 15 lady's head just because you want to. That's awful  
 16 dangerous, too, isn't it?  
 17 A. Well, yes.  
 18 MR. SCHULTZ: Thank you. Pass the witness.  
 19 MR. GOELLER: Well, we could thicken blood all  
 20 day. I feel like I'm playing tennis over here. That's all I  
 21 have.  
 22 THE COURT: Anything else?  
 23 MR. SCHULTZ: Nothing from the State on this  
 24 witness.  
 25 THE COURT: All right. Ladies and Gentlemen,

1 you are instructed that it is your duty not to converse among  
 2 yourselves or with anyone else on any subject connected with  
 3 the trial, or to form or express any opinion thereon until the  
 4 cause is finally submitted to you. And let's get started, and  
 5 perhaps even get finished. But let's get started at 9:30  
 6 tomorrow morning.  
 7 THE BAILIFF: All rise.  
 8 (Jury exits the courtroom at 4:55 p.m.)  
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1 REPORTER'S CERTIFICATE  
 2 THE STATE OF TEXAS \*  
 3 COUNTY OF COLLIN \*  
 4  
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 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  
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 12 occurred in open court or in chambers and were reported by me.  
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 15 proceedings truly and correctly reflects the exhibits, if any,  
 16 offered by the respective parties.  
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 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.  
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