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

VOLUME 47 OF 53 VOLUMES

TRIAL COURT CAUSE NO. 380-80047-01

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

JURY TRIAL

COPY

On the 25th day of October, 2001, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Machine Shorthand.

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 6 VS.) COLLIN COUNTY, TEXAS
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 8 IVAN ABNER CANTU) 380TH JUDICIAL DISTRICT

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4 PROCEEDINGS:

(Open court, defendant present.)

09:47 THE COURT: You guys ready?

09:47 MR. HIGH: Yes, Your Honor, we're ready.

09:47 THE COURT: Let's bring them in.

09:47 (Open court, defendant and jury present.)

09:49 THE COURT: Mr. Goeller?

09:49 MR. GOELLER: Your Honor, the State of
 09:49 Texas, ladies and gentlemen, the defense would rest.

09:49 THE COURT: All right. Mr. Schultz?

09:49 MR. SCHULTZ: Would the Court permit us
 09:49 about five minutes to group ourselves and make our next
 09:49 decision?

09:49 THE COURT: All right. Tell you what,
 09:49 let's start off with a break. And let's step down for
 09:49 about five minutes or probably a maximum of ten minutes
 09:50 and then we'll see if there's no phase. And if there
 09:50 is, fine; and if there isn't, fine. But at any rate
 09:50 we'll see you in about ten minutes.

09:50 THE BAILIFF: All rise.

09:51 (Break.)

09:58 THE COURT: Both sides ready to bring the
 09:58 jury back?

09:58 MR. SCHULTZ: Yes, Judge. Thanks for the
 09:58 recess.

09:58 1 THE COURT: All right.
 09:59 2 MR. GOELLER: Your Honor, before the jury
 09:59 3 steps in, they'll put on some victim impact testimony.
 09:59 4 And at this time I'd like to renew my objections based
 09:59 5 on my pre-trial motions that I filed regarding victim
 09:59 6 impact evidence for all the reasons I stated in those
 09:59 7 motions.

09:59 8 And once the Court has ruled on, and my
 09:59 9 bottom line premise is -- I think Mosley and the Court
 09:59 10 of Criminal Appeals and Payne out of U.S. Supreme Court
 09:59 11 is bad law.

09:59 12 THE COURT: I overrule the objection.

09:59 13 MR. GOELLER: Yes, sir. And I would just
 09:59 14 ask the Court to note the language in Payne and Mosley
 09:59 15 directs trial courts to be wary and volume, repetition,
 09:59 16 and point wherein any probative value outweighs any
 10:00 17 prejudicial value and tends to outweigh any probative
 10:00 18 value. The Court's have -- have explicitly held trial
 10:00 19 courts to be well advised to watch the volume and
 10:00 20 character and any attempts to compare the self worth of
 10:00 21 any victims versus the defendant.

10:00 22 THE COURT: All right.

10:00 23 MR. SCHULTZ: And if I might address the
 10:00 24 Court more, as a footmark for this issue, when it's
 10:00 25 reviewed at some point in the future, in particular in

10:02 1 Q. And you are the same Gladys Tamez that
 10:02 2 previously testified during the guilt-innocence stage;
 10:02 3 is that correct?

10:02 4 A. Yes.

10:02 5 Q. And when you testified previously, you
 10:02 6 indicated that James Mosqueda is your brother?

10:02 7 A. Yes.

10:02 8 Q. And y'all are the only two children; is that
 10:03 9 correct?

10:03 10 A. Correct.

10:03 11 Q. How would you describe your relationship with
 10:03 12 James?

10:03 13 A. We were close, and we spent holidays and
 10:03 14 birthdays together. He spent a lot of time at the house
 10:03 15 with the kids, and we talked on the phone three or four
 10:03 16 times a week. We, you know, grew up together obviously,
 10:03 17 and he lived in Dallas. I lived in Mesquite, but he'd
 10:03 18 always make time to come over on the weekends to see the
 10:03 19 kids, their games and stuff like that.

10:03 20 He was over at our house at every holiday.
 10:03 21 We'd spend birthdays together. We'd eat dinner together
 10:03 22 and things like that.

10:03 23 Q. And how many children do you have?

10:03 24 A. Three.

10:03 25 Q. And were all three alive while James was alive?

10:00 1 this case, and I know the record would amply
 10:00 2 demonstrate, this defendant knew these victims
 10:00 3 personally, intimately.

10:00 4 He had connections with them, knew about
 10:00 5 their lives and the relationships with the people that
 10:00 6 he murdered. And all the more probative in this case is
 10:00 7 the fact that this defendant knew that these surviving
 10:00 8 people would also be victims of his crime and,
 10:00 9 nevertheless, proceeded with it.

10:00 10 THE BAILIFF: All rise.

10:01 11 THE COURT: Come on in.

10:01 12 (Open court, defendant and jury present.)

10:01 13 THE COURT: Please be seated. Ms. Falco?

10:01 14 MS. FALCO: Call Gladys Tamez.

10:02 15 THE COURT: Ms. Tamez, I just want to
 10:02 16 remind you you are still under oath.

10:02 17 THE WITNESS: Okay.

10:02 18 GLADYS TAMEZ,
 10:02 19 being first duly sworn, testified as follows:

10:02 20 THE COURT: Have a seat right here. All
 10:02 21 right. Ms. Falco?

10:02 22 DIRECT EXAMINATION

10:02 23 BY MS. FALCO:

10:02 24 Q. Could you state your name again for the jury.

10:02 25 A. Gladys Kelly Tamez.

10:03 1 A. Yes. Well, yes, uh-huh.

10:03 2 Q. What kind of uncle was James to your three
 10:03 3 children?

10:03 4 A. He was a very good uncle. Very caring, he
 10:03 5 would take care of them for me. He would take them
 10:03 6 shopping and just spend a lot of time with them. He'd
 10:04 7 come over to the house, and he'd sit in front of the TV
 10:04 8 with them, watch video games. Do video games with them
 10:04 9 and watch movies and just, you know, pretty much was
 10:04 10 acting like a kid himself with them. He would get on
 10:04 11 the floor with them and play around and play outside
 10:04 12 with them.

10:04 13 Q. How has James's death affected your children?

10:04 14 A. My son is real scared of, you know, he thinks
 10:04 15 somebody else is going to come and do the same thing to
 10:04 16 us that was done to them, and they miss him. They cry
 10:04 17 for him everyday.

10:04 18 My two-year-old asks everyday, where is
 10:04 19 James? Where is James? You know, Amy, Amy is at home.
 10:04 20 James is at home, and that's it. I mean, my boys know
 10:04 21 what happened and they can kind of understand, but
 10:04 22 Alison, she doesn't understand.

10:04 23 Q. How old is Alison?

10:04 24 A. She's two.

10:05 25 Q. Have you even tried to explain what happened to

10:05 1 Alison?
 10:05 2 A. She's too young. She just looks at the
 10:05 3 pictures and says she wants to go to their house. And
 10:05 4 just says Amy is at home or James is at home.
 10:05 5 Q. How has James's death impacted you?
 10:05 6 A. The only brother I had is gone. I won't ever
 10:05 7 have another brother again. And my kids lost the only
 10:05 8 uncle that they'll ever have. They never got to know
 10:05 9 Amy as their aunt.
 10:05 10 They, you know, they had a lot of plans
 10:05 11 and stuff to get married and have kids. And they
 10:05 12 wanted, you know, our kids to be close since they would
 10:05 13 be cousins so there was not going to be any other ones
 10:05 14 besides my three and his. I mean, we cry everyday. We
 10:05 15 grieve everyday for them, and we miss them terribly. We
 10:05 16 just -- it was like we can't go on without them.
 10:06 17 Q. Do you have any grandparents that are still
 10:06 18 alive?
 10:06 19 A. Yes.
 10:06 20 Q. And how have you seen James's death impact
 10:06 21 them?
 10:06 22 A. My grandmother doesn't know. We can't tell her
 10:06 23 because she will die on the spot from it. She thinks
 10:06 24 they moved away. And my grandfather is just -- he's
 10:06 25 just really upset about it. He -- he knows Ivan and,

10:06 1 you know, he spent time with James and Ivan when they
 10:06 2 were both little. And he's just really upset about it.
 10:06 3 James was like a son to him. He raised James.
 10:06 4 Q. Why do you think it would affect your
 10:06 5 grandmother so much?
 10:06 6 A. Because she raised James like she was his
 10:06 7 mother and because she's -- she's old, and she has
 10:06 8 Alzheimer's. Her health is not good. She would have a
 10:06 9 heart attack on the spot.
 10:06 10 Q. Does she ask about him?
 10:06 11 A. She asks about him all the time. She just
 10:07 12 wonders why they haven't come over to see her because
 10:07 13 they used to come over and visit her all the time. And
 10:07 14 we just tell her that they are real busy, and they moved
 10:07 15 away. Got a new job. We don't know what else to do.
 10:07 16 Q. Do you miss your brother?
 10:07 17 A. Uh-huh. Yes, I do.
 10:07 18 MS. FALCO: Thank you, Ms. Tamez. Pass
 10:07 19 the witness.
 10:07 20 THE COURT: All right. You may step down.
 10:07 21 (Witness excused.)
 10:07 22 THE COURT: Call your next witness.
 10:07 23 MS. FALCO: Gladys Mosqueda. Your Honor,
 10:07 24 at this time we're also going to ask that Ms. Mosqueda's
 10:07 25 interpreter be brought in. She understands only limited

10:07 1 English and that he be able to translate for us.
 10:07 2 THE COURT: Is that Louis Garcia?
 10:07 3 MS. FALCO: It's actually going to be
 10:07 4 Mr. Robinson Toledo. Louis had a previous engagement
 10:07 5 for today.
 10:07 6 THE COURT: In fact, I guess I better
 10:07 7 administer the oath to him while I'm at it. Let me ask
 10:07 8 both of you to come up to the Bench and stand right
 10:08 9 here, and I'll swear in the interpreter. Mr. Toledo,
 10:08 10 would you raise your right hand, please.
 10:08 11 (Spanish interpreter sworn in.)
 10:08 12 THE COURT: Put your hand down. And I
 10:08 13 will ask this witness to raise your right hand, please.
 10:08 14 GLADYS MOSQUEDA,
 10:08 15 being first duly sworn, testified as follows:
 10:08 16 THE COURT: Put your hand down. Please be
 10:08 17 seated over here. Do you need to tell her anything
 10:09 18 before we get started?
 10:09 19 THE INTERPRETER: No, sir. Thank you.
 10:09 20 THE COURT: Ms. Falco?
 10:09 21 (The following was interpreted from
 10:09 22 English to Spanish and Spanish to English.)
 10:09 23 DIRECT EXAMINATION
 10:09 24 BY MS. FALCO:
 10:09 25 Q. Ms. Mosqueda, would you state your name for the

10:09 1 record.
 10:09 2 A. Gladys Mosqueda.
 10:09 3 Q. Ms. Mosqueda, you understand limited English,
 10:09 4 but you have an interpreter to help you understand in
 10:09 5 case there's something you don't understand what I say;
 10:09 6 is that right?
 10:09 7 A. A little bit, yes.
 10:09 8 Q. Ms. Mosqueda, how do you know James Mosqueda?
 10:09 9 A. Like how he was?
 10:10 10 Q. Who is he in relationship?
 10:10 11 A. We had a good relationship.
 10:10 12 Q. Was he your son?
 10:10 13 A. Yes.
 10:10 14 Q. Describe your relationship with your son to the
 10:10 15 jury.
 10:10 16 THE COURT: Say --
 10:10 17 THE WITNESS: How he was?
 10:10 18 THE COURT: Excuse me, just a moment. I'm
 10:10 19 going to ask you to say aloud the words in Spanish and
 10:10 20 in English. All right? You don't need to whisper them
 10:10 21 to her. Let's let everybody hear the words in English
 10:10 22 and in Spanish.
 10:10 23 THE INTERPRETER: All right.
 10:10 24 THE COURT: All right. Go ahead.
 10:10 25 Q. (BY MS. FALCO) I'm sorry, Mr. Toledo, what was

10:10 1 the response? I'll ask the next question.
 10:10 2 THE INTERPRETER: Thank you.
 10:10 3 Q. Describe your relationship with James when he
 10:10 4 was alive?
 10:11 5 A. He was a very good son. We never had any
 10:11 6 problems. We had a good time.
 10:11 7 Q. Was he your only son?
 10:11 8 A. Uh-huh, yes.
 10:11 9 Q. Was he the oldest or youngest child?
 10:11 10 A. The youngest, the little one.
 10:11 11 Q. What type of things did you do with your son?
 10:11 12 A. I would go to the ball games with him,
 10:11 13 everywhere. He began to work at age 14, and I was
 10:11 14 always with him. He would take me everywhere, to the
 10:11 15 games and from the school.
 10:11 16 Q. And as an adult would you say you were close to
 10:11 17 your son?
 10:12 18 A. He would come and see me at the place of work
 10:12 19 because I would work all day. And he would come to the
 10:12 20 mall.
 10:12 21 Q. And how often would you see your son?
 10:12 22 A. On Sundays.
 10:12 23 Q. Did you spend the night with James and Amy?
 10:12 24 THE INTERPRETER: I'm sorry?
 10:12 25 Q. (BY MS. FALCO) Did you spend the night with

10:12 1 James and Amy?
 10:12 2 A. I spend a couple of nights with him because my
 10:12 3 truck -- my truck broke down. So I was -- it was close
 10:12 4 to my work. Two nights.
 10:12 5 Q. Two nights, total or two nights a week?
 10:12 6 A. No. Tuesday and Thursday, only. Only when the
 10:13 7 car would not work is when I would stay with them.
 10:13 8 Q. Since James's death how has his death affected
 10:13 9 you?
 10:13 10 A. We were so close and it has affected me most,
 10:13 11 than anybody else.
 10:13 12 Q. And in what way? How are you now as opposed to
 10:13 13 when James was alive?
 10:13 14 A. He would -- he -- I miss him a lot. I need
 10:13 15 him. He defended me. He would support me. He would do
 10:13 16 everything for me.
 10:14 17 Q. Was he a good brother to Gladys?
 10:14 18 A. He was very good. He was very good. And
 10:14 19 within him, he had a very noble heart. He was silly.
 10:14 20 Q. Was he a good son to his father?
 10:14 21 A. Yes.
 10:14 22 Q. Was he close to his father?
 10:14 23 A. He would see him every 15 days because we were
 10:14 24 divorced, but he never stopped seeing him.
 10:14 25 Q. And they remained close even after the divorce?

10:14 1 A. Ever since we divorced -- ever since we
 10:14 2 divorced, he would see him every 15 days and every
 10:14 3 chance he had.
 10:14 4 Q. Do you miss your son?
 10:15 5 A. Ever since he died, I go to the cemetery two or
 10:15 6 three times. And I go and I talk with him. The
 10:15 7 cemetery is close to where I work, and I go and I visit
 10:15 8 both of them.
 10:15 9 Q. How often do you go to the cemetery?
 10:15 10 A. Twice a week since he died or three times
 10:15 11 because he's across the street from where I work.
 10:15 12 MS. FALCO: Thank you, Ms. Mosqueda. Pass
 10:15 13 the witness, Your Honor.
 10:15 14 THE COURT: You may step down.
 10:15 15 (Witness excused.)
 10:16 16 THE COURT: Call your next witness,
 10:16 17 please.
 10:16 18 MS. FALCO: Bernadine Kitchen.
 10:16 19 BERNADINE KITCHEN,
 10:16 20 being first duly sworn, testified as follows:
 10:16 21 THE COURT: Ms. Kitchen, you are still
 10:16 22 under oath. Please be seated over here.
 10:16 23 THE COURT: Ms. Falco?
 10:16 24 DIRECT EXAMINATION
 10:16 25 BY MS. FALCO:

10:16 1 Q. Ms. Kitchen, could you state your name again
 10:16 2 for the jury.
 10:16 3 A. Bernadine Kitchen.
 10:16 4 Q. And you are the same Bernadine Kitchen that
 10:16 5 previously testified during the guilt-innocence phase of
 10:17 6 this trial?
 10:17 7 A. Yes.
 10:17 8 Q. And, Ms. Kitchen, when you previously
 10:17 9 testified, you told the jury that Amy Kitchen was your
 10:17 10 daughter?
 10:17 11 A. Yes.
 10:17 12 Q. How many children do you have?
 10:17 13 A. Two.
 10:17 14 Q. And was Amy the oldest or the youngest?
 10:17 15 A. The youngest.
 10:17 16 Q. How old was she when she died?
 10:17 17 A. 22.
 10:17 18 Q. Would you describe your relationship with Amy?
 10:17 19 A. We were just -- had the great wonderful
 10:17 20 relationship. I mean, you consider mother/daughter,
 10:17 21 best of friends. I mean, we just talked everyday, and
 10:17 22 we just had the best of relationships (weeping.)
 10:17 23 Q. How often would you see Amy?
 10:17 24 A. Well, it wasn't really about as often as her
 10:17 25 studies would allow. She was studying to be an RN.

10:17 1 Q. She was in nursing school?
 10:18 2 A. Yes.
 10:18 3 Q. And she wanted to be an RN?
 10:18 4 A. Oh, yes, definitely.
 10:18 5 Q. Any particular areas she wanted to be a nurse?
 10:18 6 A. She definitely wanted to be in the area that
 10:18 7 dealt with children.
 10:18 8 Q. And how much longer did she have in school
 10:18 9 before she would have been a nurse?
 10:18 10 A. This was her first semester at TWU. She had to
 10:18 11 finish one year and one semester.
 10:18 12 Q. I believe the bailiff has a cup of water. And
 10:18 13 you talked to her daily on the phone?
 10:18 14 A. Yes. Daily, at night, because I always worked
 10:18 15 a part-time job. And she was always making sure that we
 10:18 16 talked every night.
 10:18 17 Q. What kind of sister was Amy to her brother,
 10:18 18 Mark?
 10:18 19 A. Oh, they were just great. I mean, the best
 10:18 20 brother and sister relationship could be.
 10:18 21 Q. And Mark had a little girl. Mark has a little
 10:18 22 girl?
 10:18 23 A. Yes; Tabitha.
 10:19 24 Q. And is that the only -- your only grandchild?
 10:19 25 A. Right.

10:19 1 Q. And what kind of aunt was Amy to Tabitha?
 10:19 2 A. She just adored Tabitha, just like if she was
 10:19 3 her own daughter. She totally adored her. Tabitha
 10:19 4 really adored her, too.
 10:19 5 Q. Did they spend a lot of time together.
 10:19 6 A. Whenever they had -- yeah, whenever they had
 10:19 7 the chance.
 10:19 8 Q. And was Amy -- how was Amy as a daughter to
 10:19 9 their father?
 10:19 10 A. Oh, she was just always concerned about her dad
 10:19 11 and always talking to them and always concerned about
 10:19 12 that he was doing everything right for his health and
 10:19 13 that nothing was wrong, and just was really extra
 10:19 14 concerned about him.
 10:19 15 Q. Did she talk to her brother and her dad
 10:19 16 frequently, as well?
 10:19 17 A. Yes.
 10:19 18 Q. Was she kind of the glue that held everybody
 10:19 19 together even though you and Mr. Kitchen were divorced?
 10:19 20 A. Yes, she was.
 10:19 21 Q. How has Amy's death impacted you?
 10:19 22 A. It's just tore my world apart. I mean, there
 10:20 23 hasn't been a day that my heart hasn't been hurt. My
 10:20 24 baby's gone.
 10:20 25 Q. Have you seen how this has impacted your son,

10:20 1 Mark?
 10:20 2 A. Yes, it has.
 10:20 3 Q. How has it done that?
 10:20 4 A. It has affected his work somewhat and his
 10:20 5 marriage somewhat and have really gone through some
 10:20 6 problems because of this and just -- he's just not
 10:20 7 himself. And it will never be the same, never.
 10:20 8 Q. How about Tabitha? How has Amy's death
 10:20 9 affected Tabitha?
 10:20 10 A. You can just sense the loss there just by
 10:20 11 looking at her. In fact, just the other day she just
 10:20 12 broke down to her dad, and she just cried and cried.
 10:20 13 "Where is Amy? Where is Amy?"
 10:21 14 Q. And how has her death impacted her dad?
 10:21 15 A. He made the statement. He said, "I wish I
 10:21 16 could just go to sleep and never wake up. I miss her so
 10:21 17 bad." He said, "I just want to go be with her in
 10:21 18 heaven."
 10:21 19 Q. Do you miss your daughter?
 10:21 20 A. Yes, I do, very much. Words cannot even
 10:21 21 describe it. It's hard to even concentrate when I'm
 10:21 22 there at work because she's always there on my mind and
 10:21 23 always will be. I just can't seem to imagine to want to
 10:21 24 go on without her.
 10:21 25 MS. FALCO: Thank you, Ms. Kitchen. Pass

10:21 1 the witness.
 10:21 2 THE COURT: No questions? All right. You
 10:21 3 may step down.
 10:22 4 (Witness excused.)
 10:22 5 THE COURT: All right. Call your next
 10:22 6 witness, please.
 10:22 7 MS. FALCO: Your Honor, at this time the
 10:22 8 State rests.
 10:22 9 THE COURT: All right.
 10:22 10 MR. GOELLER: We close.
 10:22 11 MS. FALCO: We close as well, Your Honor.
 10:22 12 THE COURT: All right. Ladies and
 10:22 13 gentlemen, both sides have rested and closed. So that
 10:22 14 means you've heard all the evidence that you are going
 10:22 15 to hear in this case. And I'll tell you what I think
 10:22 16 we'll do. I think we'll take about approximately no
 10:22 17 more than a five-minute recess. And then we can come
 10:22 18 back, and you'll hear the arguments of counsel.
 10:22 19 MR. GOELLER: Judge, may we approach
 10:22 20 sidebar?
 10:23 21 (Bench conference.)
 10:24 22 THE COURT: All right. Ladies and
 10:24 23 gentlemen, we're going to take a 20-minute recess. And
 10:24 24 then when you come back, you'll hear a short charge from
 10:24 25 the Court and then the arguments of counsel. And then

10:24 1 you'll have a chance to go to lunch at that time if you
10:24 2 want or begin your deliberations, however you choose to
10:24 3 do it. So let's be in recess in this case for 20
10:24 4 minutes.

10:24 5 THE BAILIFF: All rise.

10:25 6 THE COURT: I have a post charge that the
10:25 7 State has prepared. And I understand it's been tendered
10:25 8 to the defendant, but perhaps the defendant has some
10:25 9 more things to put on the record. So, go ahead,
10:25 10 Mr. Goeller.

10:25 11 MR. GOELLER: Actually, Judge, that's why
10:25 12 I was asking for a little more than five minutes.

10:25 13 THE COURT: You want everybody to come
10:25 14 back in about 15 minutes?

10:25 15 MR. GOELLER: Yes, sir, if I could. I'm
10:25 16 sorry. I didn't make that clear.

10:25 17 THE COURT: I'll step down, and we'll all
10:26 18 come back in about 15 minutes, and then we'll bring the
10:26 19 jury back in about 20.

10:26 20 MR. GOELLER: Yes, sir.

10:26 21 THE COURT: All right.

10:26 22 THE BAILIFF: All rise.

10:26 23 (Break.)

10:26 24 (Open court, defendant present, no jury.)

10:26 25 THE COURT: Let's see, I believe the State

11:01 1 THE COURT: So 25 and 20?

11:01 2 MR. GOELLER: Yes, sir.

11:01 3 THE COURT: So I'll tell you when it's 25,
11:02 4 so you can keep on talking as much as you want.

11:02 5 MR. GOELLER: Yes, sir.

11:02 6 THE COURT: I'll tell you when there are
11:02 7 two minutes remaining on the 45.

11:02 8 MR. HIGH: Okay.

11:02 9 THE COURT: All right. I believe -- say,
11:02 10 let the record reflect that the defendant and his
11:02 11 attorneys and the attorneys for the State are present.
11:02 12 And I believe the defendant had something to put on the
11:02 13 record, right?

11:02 14 MR. GOELLER: Yes, sir. I suppose the
11:02 15 first thing, Judge, let me file a motion. If I could
11:02 16 ask the Court to have this file stamped.

11:02 17 THE COURT: I tell you what, I'll just
11:02 18 mark it filed. The time is about five after eleven.

11:02 19 MR. GOELLER: Essentially what this is --
11:02 20 may I address the Court?

11:02 21 THE COURT: Yes.

11:02 22 MR. GOELLER: Essentially what this motion
11:02 23 is is a motion for the defendant to be able to close the
11:02 24 argument. As the Court knows there is no burden of
11:02 25 proof on special issue No. 3.

11:00 1 wanted to divide their time, a half hour and 15 minutes,
11:01 2 right?

11:01 3 MR. SCHULTZ: Yes, Judge.

11:01 4 THE COURT: And you don't want me to give
11:01 5 you any kind of a call on the first half hour?

11:01 6 MS. FALCO: Actually the way we're going
11:01 7 to do it, Your Honor, Mr. Schultz is going to speak for
11:01 8 about five minutes initially, five to ten, and then I'm
11:01 9 going to speak.

11:01 10 THE COURT: For the balance of the half
11:01 11 hour?

11:01 12 MS. FALCO: Correct.

11:01 13 THE COURT: Do you want me to tell when
11:01 14 you are getting close to the half hour?

11:01 15 MS. FALCO: Yes, sir.

11:01 16 THE COURT: Two minutes till the half
11:01 17 hour.

11:01 18 MR. SCHULTZ: I don't need any kind of
11:01 19 warning because I'll be self-policing, Judge.

11:01 20 THE COURT: Okay. And then I'll give you
11:01 21 2 minutes at the 15 minutes also. And do you want me to
11:01 22 do anything to you guys, or leave you alone until you
11:01 23 run out or --

11:01 24 MR. GOELLER: Judge, if you could give me
11:01 25 a warning at about 25 minutes into my argument.

11:02 1 Typically, why we'd allow the State to
11:02 2 open and close is they have the burden of proof, Your
11:03 3 Honor. 36.06 of the Code of Criminal Procedure talks
11:03 4 about Order of Argument, and it recognizes the State
11:03 5 does have the burden in the guilt-innocence phase
11:03 6 issues.

11:03 7 It provides that the State's counsel shall
11:03 8 have the right to make the concluding address to the
11:03 9 jury. This is presumably referring to the
11:03 10 guilt-innocence phase of the trial. But in any event,
11:03 11 this article, that is 36.07, has no application in a
11:03 12 capital case. That's governed by 37.071. 36.01, Order
11:03 13 of Proceeding in Trial does not specify the Order of
11:03 14 Argument for the punishment phase of the trial.

11:03 15 In 37.071 it governs the procedure in a
11:03 16 capital case. The only reference to an Order of
11:03 17 Argument is contained in 37.01, subparagraph 2, which
11:03 18 provides the State and the defendant -- or the
11:04 19 defendant's counsel shall be permitted to present
11:04 20 argument for or against the sentence of death.

11:04 21 This places the argument of defense
11:04 22 counsel as the concluding argument. Allowing the State
11:04 23 to conclude the argument in the penalty phase cannot be
11:04 24 justified by the rationale that the State has the burden
11:04 25 of proof in the mitigating issue.

11:04 1 Although 37.072(c) places a burden of
11:04 2 beyond a reasonable doubt as to the special issue No. 1,
11:04 3 future dangerousness, and the parties which we don't
11:04 4 have. The State has no such burden with respect to the
11:04 5 mitigation issue for 37.0712(e)1.

11:04 6 The burden of proof is impermissibly
11:04 7 shifted to the defendant by the blatantly unlawful
11:04 8 language of 37.072(f)2 that requires at least ten jurors
11:04 9 to agree to a yes answer in the mitigation issue.

11:04 10 This not only shifts the burden back to
11:04 11 the defendant, but it intentionally misleads the jurors
11:04 12 as to the ultimate responsibility for the sentence of
11:04 13 life or death. Is that one juror that can hang up with
11:05 14 a resulting life sentence which is -- which is the law
11:05 15 under 37.071(g) or ten jurors required for a life
11:05 16 sentence as they are led to believe.

11:05 17 This burden is cemented by the admonition
11:05 18 of the defense and the Court that the jury cannot be
11:05 19 advised of the result of their failure to agree on an
11:05 20 issue.

11:05 21 In other words, they cannot be told that
11:05 22 the vote of one juror can result in a life sentence.
11:05 23 The importance to the defense, Your Honor, of being able
11:05 24 to respond to the final arguments of the State regarding
11:05 25 whether or not there is sufficient mitigation in

11:05 1 defendant's case cannot be overstated.

11:05 2 Defendant's counsel makes this request to
11:05 3 provide effective assistance of counsel is guaranteed by
11:05 4 the 6th and 14th Amendments and by the U.S.
11:05 5 Constitution, Articles I, Section 3, 10, 15, 19 of the
11:05 6 Texas Constitution.

11:05 7 In closing, Judge, we'd ask the Court to
11:05 8 allow us to have the final word regarding mitigation on
11:05 9 the special issue.

11:06 10 THE COURT: All right. Let me hear from
11:06 11 the State.

11:06 12 MR. SCHULTZ: First of all, point of
11:06 13 argument is essentially discretionary, for starters.
11:06 14 The problem with any deviation, there's no authority for
11:06 15 this. And, other than just simply to request it. The
11:06 16 problem with the deviation from the accepted practice of
11:06 17 the State to both open and close final argument in both
11:06 18 phases of the trial, is that one of the key if not most
11:06 19 important incident in a mitigation question, references
11:06 20 the jury directly to the facts of the offense itself and
11:06 21 the character of the defendant himself.

11:06 22 If the request were simply to be able to
11:06 23 stand up and argue the mitigating evidence only, without
11:06 24 that, I suppose -- I suppose it would be a little bit
11:06 25 different. But we're going to be in a position of

11:06 1 aligning them effectively to argue the future danger
11:06 2 issue also under the guise of: This has to do with the
11:06 3 character of the defendant, and it has to do with the
11:06 4 background of the defendant and the circumstances of the
11:06 5 offense, all of which are equally related to that issue
11:07 6 upon which we do have the burden of proof.

11:07 7 I think the reason we have always been
11:07 8 entitled to close argument has been, when a burden of
11:07 9 proof is allocated and even in conventional trials where
11:07 10 there is no burden of proof on the issue of punishment,
11:07 11 same order of argument still applies.

11:07 12 I mean, in a regular burglary case in
11:07 13 which the State is asking for some term of years and the
11:07 14 defense is asking for some other terms of years or
11:07 15 probation, the same story. The State has the right to
11:07 16 close evidence.

11:07 17 Even in those cases where the defense has
11:07 18 a burden of proof at the punishment phase and that
11:07 19 burden of proof is to demonstrate eligibility for
11:07 20 probation, for example, even in those circumstances the
11:07 21 State still has the right to open and close final
11:07 22 argument, and there's nothing about this case that would
11:07 23 necessitate any deviation.

11:08 24 Every capital defendant that gets this far
11:08 25 in the trial has this same -- this same thing occurred

11:08 1 since 1987, I guess, when we started implementing the
11:08 2 Penry decision. That's how it's been. That's how we do
11:08 3 all of them.

11:08 4 And I'm not saying that's how we always do
11:08 5 it is necessarily the best reason for doing it, but we
11:08 6 have -- we have prepared our argument in that way. We
11:08 7 have divided our argument in that way.

11:08 8 And there's no way that he can merely
11:08 9 concentrate on the mitigation issue anyway without, in a
11:08 10 sense, having the last word on the future danger
11:08 11 question by arguing things about his character, his --
11:08 12 his -- his background and the facts of the case.

11:08 13 And we would ask you in your discretion to
11:08 14 deny the motion which has no statutory or Constitutional
11:08 15 basis, nor any buttressing in the case law.

11:08 16 THE COURT: You have final on this issue
11:08 17 of the law?

11:08 18 MR. GOELLER: Yes, Your Honor. The State
11:08 19 correctly points out it's totally discretionary with the
11:08 20 Court. And I'd submit to the Court that this is not a
11:09 21 regular burglary case, besides the obvious. A man's
11:09 22 life hangs in the balance.

11:09 23 And that third special issue, being no
11:09 24 burden of proof on either side, the discretion of the
11:09 25 Court ought to allow the defendant the final word on

11:09 1 that third special issue, which the Court can certainly
11:09 2 remedy the argument and direct counsel that, if you have
11:09 3 the last word on the third or mitigation special issue,
11:09 4 you shall confine your argument to argument on that
11:09 5 issue only and not special issue No. 1, which the
11:09 6 defense does have the burden of proof on.

11:09 7 THE COURT: All right. I'll deny the
11:09 8 motion.

11:09 9 MR. GOELLER: Yes, sir.

11:09 10 THE COURT: Both sides ready to bring in
11:09 11 the jury?

11:09 12 MR. GOELLER: I have just a few more.

11:09 13 THE COURT: Oh, sure, go ahead.

11:09 14 MR. GOELLER: Judge, per 37.07 of the
11:09 15 Texas Code of Criminal Procedure, I would ask the Court
11:09 16 to include in the Charge of the Court the instruction in
11:10 17 that section on proof beyond a reasonable doubt as to
11:10 18 extraneous matters.

11:10 19 I'd ask the Court to instruct the jury
11:10 20 that if they've heard matters or evidence concerning
11:10 21 other crimes, wrongs or bad acts, that they should not
11:10 22 consider such unless it is shown beyond a reasonable
11:10 23 doubt to have been committed by the defendant or for
11:10 24 which he could be held criminally responsible,
11:10 25 regardless of whether he has previously been charged

11:10 1 with or finally convicted of that same act. And I point
11:10 2 out to the Court that it's Article 37.07 of the Code of
11:10 3 Criminal Procedure.

11:10 4 THE COURT: All right. Do you have any
11:10 5 other motions? I'll deny the motion.

11:10 6 MR. GOELLER: Yes. I'd also ask the
11:10 7 Court, again, the Court has file marked an Order,
11:10 8 included in the papers of the cause, our previous
11:11 9 request for special charges in the guilt-innocence
11:11 10 phase. At this time I'd ask the Court to include in the
11:11 11 charge our previously requested special charge No. 6 on
11:11 12 provoking the difficulty and couch that in terms of a
11:11 13 mitigating factor.

11:11 14 Along those lines I'd also ask the Court
11:11 15 to, at this time, place in the Court's Charge the
11:11 16 special issues as they existed prior to September 1st of
11:11 17 1991. Under the former article, it's still in effect
11:11 18 for offenses before that. 37.0711 regarding provocation
11:11 19 and the issue of provocation and ceased and
11:11 20 reasonableness and unreasonableness and the actions on
11:11 21 the part of the defendant for 37.0711, Subsection 3(b)3.

11:12 22 THE COURT: All right. Denied.

11:12 23 MR. GOELLER: Yes, sir.

11:12 24 THE COURT: Is there anything else?

11:12 25 MR. GOELLER: No, sir.

11:12 1 THE COURT: All right. Let's bring the
11:12 2 jury in.

11:12 3 THE BAILIFF: Yes, Your Honor.

11:13 4 THE COURT: I suppose I should ask you on
11:13 5 the record, there is no objections in the charge other
11:13 6 than the ones that you've made, correct?

11:14 7 MR. GOELLER: No. No, sir.

11:14 8 THE BAILIFF: All rise.

11:14 9 (Open court, defendant and jury present.)

11:14 10 THE COURT: Please be seated. Ladies and
11:14 11 gentlemen of the jury, I would once again ask you to
11:14 12 please listen carefully as I read this charge to you.
11:14 13 The original will be placed on the table in the jury
11:14 14 room when you retire to begin your deliberations.

11:14 15 (Reading the Court's Charge.)

11:20 16 THE COURT: I've signed this charge with
11:20 17 the special issues at this time. And I would ask the
11:20 18 State, are you ready to proceed?

11:20 19 MR. SCHULTZ: Yes, sir.

11:20 20 THE COURT: All right. Please go ahead.

11:20 21 STATE'S CLOSING ARGUMENTS

11:20 22 MR. SCHULTZ: May it please the Court,
11:20 23 Mr. Goeller.

11:20 24 MR. GOELLER: Sir.

11:20 25 MR. SCHULTZ: Mr. High.

11:20 1 MR. HIGH: Sir.

11:20 2 MR. SCHULTZ: Ladies and gentlemen of the
11:20 3 jury, I have been doing this a long time. And the truth
11:20 4 of the matter is every time I stand up and do this kind
11:20 5 of case, I think a little of me goes out with the case.
11:20 6 I think I bleed a little with the victims.

11:20 7 I get a closeness to juries that is quite
11:21 8 remarkable to me. I suppose it's that closeness that I
11:21 9 have been able to develop and understanding that I have
11:21 10 been able to develop that makes this kind of work
11:21 11 rewarding to me.

11:21 12 And I can tell you from my heart there's
11:21 13 no place I'd rather be, as hard as this work is on me
11:21 14 and as long as I've been doing it, there's no place on
11:21 15 this earth I'd rather be than standing up in front of
11:21 16 you right now representing the State of Texas, trying
11:21 17 this case with decency and honor and integrity, putting
11:21 18 on the evidence and allowing good people like you to
11:21 19 make a decision to what happens in our society about
11:21 20 crimes like this.

11:21 21 I have a special appreciation for Judge
11:21 22 Sandoval and what you've done in this case because it's
11:21 23 been hard on him. A lot you haven't seen. And if you
11:21 24 can imagine all that you have had to listen to just in
11:21 25 terms of the lawyers going on and droning on about

11:21 1 things that you probably already figured out, he's had
 11:21 2 to hear lots more that you don't even know about and
 11:21 3 he's been patient and he's been honorable and fair, and
 11:21 4 I sincerely mean how much I appreciate that.

11:21 5 And I appreciate the work of the defense
 11:22 6 attorney because we may be on opposite sides of this
 11:22 7 trial and we may be miles apart in what we think this
 11:22 8 evidence shows and what this defendant deserves, but
 11:22 9 they've tried this case in the best traditions of
 11:22 10 lawyers and advocates of the people of honor.

11:22 11 And I'd much rather have a hard case and a
 11:22 12 hard defense than an easy one because what's before us
 11:22 13 in this kind of work is something that we need to know
 11:22 14 it's the right thing, and we need to do the right thing
 11:22 15 in this case.

11:22 16 And I've got a special sensitivity to you
 11:22 17 people because we spent a lot of time talking with you,
 11:22 18 and I've watched you and just sort of sensed. And we
 11:22 19 spend time when you-all are out or when we are waiting
 11:22 20 for you to come back from lunch.

11:22 21 We talk about, well, what about this
 11:22 22 juror? This juror seems to be disinterested. And we
 11:22 23 spent a lot of time trying to figure out what you are
 11:22 24 thinking and what they view toward perhaps presenting
 11:22 25 evidence we may anticipate is important to one of you.

11:22 1 And it's very imprecise. We probably
 11:22 2 always get it wrong. We probably read you wrong. But
 11:22 3 one thing I know about you, is every single one of you
 11:23 4 takes this seriously. Every single one of you has a
 11:23 5 heart. And every single one of you has told us when you
 11:23 6 were selected, we wish we didn't have a society where a
 11:23 7 death penalty is necessary, wishing in your heart that
 11:23 8 the evidence would emerge in a way that you wouldn't
 11:23 9 have to return a verdict that would cost somebody his
 11:23 10 life. And yet, every single one of you said that you
 11:23 11 recognize the need and the appropriateness of a death
 11:23 12 penalty, depending on the circumstances, that you would
 11:23 13 do it, and you would vote the hard thing.

11:23 14 And that's easy to say because the fact of
 11:23 15 the matter is we're a compassionate people. It's the
 11:23 16 darnedest situation I've ever understood when I think of
 11:23 17 about us flying bombers over a country and right behind
 11:23 18 them flying cargo planes dropping food and supplies.
 11:23 19 And I guess at first blush that seems very inconsistent,
 11:23 20 and yet, that's kind of what we're about.

11:23 21 I've got to believe that, in truth, as bad
 11:23 22 as this fact is, as dangerous as this defendant is, you
 11:23 23 still got feelings about that. But don't allow
 11:23 24 yourselves to be put in the place of it is somehow your
 11:24 25 fault because you guys have been living your lives the

11:24 1 best way you knew how on November 4th, the year 2000,
 11:24 2 when this defendant was going about his criminal
 11:24 3 business.

11:24 4 You weren't in the bars with him. You
 11:24 5 weren't in those drug situations. You weren't going to
 11:24 6 foreign countries for those drug things. You know the
 11:24 7 evidence, and you've heard it. We're going to talk some
 11:24 8 more about that later on. There's a real compassionate
 11:24 9 streak in people.

11:24 10 We have a tendency, whenever possible, to
 11:24 11 try to do good. That's our nature. And I guess anytime
 11:24 12 you get into a punishment situation, I suppose, that
 11:24 13 doesn't seem like you are doing good, but you really
 11:24 14 are.

11:24 15 Some of you are going to come to this
 11:24 16 conclusion very easily because of the way you are made
 11:24 17 up. And some of you it will be a lot harder. Some of
 11:24 18 you, you will struggle with it more.

11:24 19 To those people that find it easy, have
 11:24 20 compassion and understanding and respect for those
 11:24 21 people on this jury that don't find it easy because
 11:24 22 maybe they just come from a different direction from
 11:24 23 you.

11:24 24 And to those people that are struggling
 11:24 25 with it and resisting the notion of voting in a way that

11:25 1 causes a death sentence, you have respect for the people
 11:25 2 that find it easily done because they are good people,
 11:25 3 too. Every one of you are good people. Every one of
 11:25 4 you, in your own way, are trying very hard to be fair to
 11:25 5 all sides and make this a good society.

11:25 6 Something we often forget to do when we
 11:25 7 deal with victims, ladies and gentlemen, is we spend a
 11:25 8 lot of time talking about the defendant, and we really
 11:25 9 don't have a place for the victims because the victims
 11:25 10 are dead.

11:25 11 We don't have the opportunity to watch
 11:25 12 them and be talking to us and whispering to us and
 11:25 13 wonder what they are thinking or thinking about them.
 11:25 14 We don't hear a whole lot about them except in this
 11:25 15 phase of the trial. But I know because I know the 12 of
 11:25 16 you very well but that you all care very much about
 11:25 17 these people and what they lost.

11:25 18 (Mr. Schultz addressing both victims'
 11:26 19 family members in the gallery in Spanish and English.)

11:26 20 MR. SCHULTZ: I know I speak for the jury.

11:26 21 MR. GOELLER: Objection. Objection as to
 11:26 22 the form of the argument.

11:26 23 THE COURT: Sustained.

11:26 24 MR. GOELLER: Mr. Schultz speaks for the
 11:26 25 jury.

11:26 1 THE COURT: Sustained.
 11:26 2 MR. SCHULTZ: Everybody here understands
 11:26 3 and appreciates your loss. There is not much we can do
 11:26 4 to correct that. But what we can do, ladies and
 11:26 5 gentlemen, is address this issue and stand firm in our
 11:26 6 resolve.

11:26 7 I truly appreciate and respect what you
 11:26 8 are going to do in this case. I don't denigrate any of
 11:26 9 this responsibility. We believe we've proven beyond a
 11:26 10 reasonable doubt that this defendant, if given the
 11:26 11 opportunity, would be a danger to our society. And we
 11:26 12 believe that all 12 of you know in your heart of hearts
 11:26 13 that we've done that, and we've proven that.

11:26 14 I speak from the heart when I say we'll
 11:26 15 talk to you later on. And now, Mr. Cantu, is the time
 11:26 16 for us to be talking about you.

11:27 17 MS. FALCO: Ladies and gentlemen of the
 11:27 18 jury, defense counsel: In talking about the defendant
 11:27 19 it's time now for y'all to go back there and answer
 11:27 20 questions. And in answering these questions, you are to
 11:27 21 take into consideration all the evidence that you heard.
 11:27 22 The evidence during the guilt-innocence phase, the
 11:27 23 evidence during the punishment phase and use that to
 11:27 24 answer these questions.

11:27 25 When you get to that first question, it's

11:27 1 what we've been calling the future dangerousness
 11:27 2 question. It's the only question that we have the
 11:27 3 burden of proof on. There's nothing in that question
 11:27 4 that limits your consideration to prison. It doesn't
 11:27 5 ask, can the defendant safely be held in prison?
 11:27 6 There's no definition of society. There's nothing in
 11:27 7 that question that limits your definition of society to
 11:27 8 be just prison. You are free to consider society to be
 11:27 9 the world that we live in, including prison.

11:27 10 And I think Dr. Quijano said it the best.
 11:28 11 This question is about assessing the defendant's
 11:28 12 character, his propensity for violence. And as he put
 11:28 13 it, if given the opportunity would this defendant have
 11:28 14 the desire to commit criminal acts of violence? Would
 11:28 15 this defendant, if given the opportunity, have the
 11:28 16 desire to beat his next wife?

11:28 17 Would this defendant, if given the
 11:28 18 opportunity, have the desire to shoot his next
 11:28 19 girlfriend, to be argumentative, belligerent, aggressive
 11:28 20 toward his mother. There's no doubt that the answer to
 11:28 21 that question is yes.

11:28 22 And in looking at all the evidence,
 11:28 23 Dr. Quijano told you, he said, look at their background.
 11:28 24 Look at the -- their criminal history. Look at the
 11:28 25 crime. That's what you use to answer this question.

11:28 1 That's what you use to decide if this defendant is a
 11:28 2 future danger.

11:28 3 We start out with the fact he always goes
 11:28 4 for the head. He's a killer. He shot James Mosqueda
 11:28 5 twice in the head. He shot Amy Kitchen in the head. He
 11:29 6 shot at Amy Boettcher's head, missing her by inches.
 11:29 7 Held a gun to her head.

11:29 8 Michelle Traister. You heard about what
 11:29 9 he did to her on numerous occasions. Pounded her head
 11:29 10 into the concrete. Punched her in the head. Kicked her
 11:29 11 in the head. He's always going for the head.

11:29 12 Jennifer Snyder. Same thing. Punches to
 11:29 13 the head. You heard the police officers talk about
 11:29 14 bruises to her forehead. Lumps on her head. He has
 11:29 15 absolutely no regard for human life.

11:29 16 Damages property. Doesn't respect
 11:29 17 property either. His mother's own car. Kicks in the
 11:29 18 passenger door. Kicks in the driver door. Violence
 11:29 19 demonstrated on the property. And he doesn't limit
 11:29 20 his -- he doesn't even have a drug of choice.

11:29 21 He doesn't limit himself. It's whatever
 11:29 22 he wants because he's selfish. It's alcohol; it's
 11:29 23 marijuana; it's mushrooms; it's cocaine; it's
 11:29 24 methamphetamine; it's ecstasy. Whatever he can get his
 11:29 25 hands on, that's what he does. He doesn't care about

11:29 1 anybody but himself.

11:29 2 Not only does he do all these things and
 11:29 3 he does them easily, he does them freely, but he's
 11:30 4 driving around while he's doing it. He's not doing it
 11:30 5 at home. He's out at Club Seven. He's out at Metal's
 11:30 6 house. He's out at the lake. He's driving on the same
 11:30 7 roads that you and I are driving on, and that makes him
 11:30 8 dangerous.

11:30 9 And you heard about the two times he did
 11:30 10 get caught. One time was at the Carrollton Police
 11:30 11 Department, the evading arrest. He's going 80 miles an
 11:30 12 hour in a 30-mile-an-hour zone. He's going so fast that
 11:30 13 he loses control of his car. He's a danger.

11:30 14 You also heard about the reckless driving.
 11:30 15 Dallas police. The officer told you about him when he
 11:30 16 was leaving that club, Eden 2000, down there on lower
 11:30 17 Greenville, going 50 miles an hour through the parking
 11:30 18 lot. People literally diving to get out of his way,
 11:30 19 going airborne to get out of his way. He didn't care
 11:30 20 about those people. If they didn't dive to get out of
 11:30 21 his way, they could have been hurt. They could have
 11:30 22 been killed. He never stopped. He didn't care.

11:30 23 You know that he has absolutely no respect
 11:30 24 for authority. You saw that from both the Carrollton
 11:30 25 Police Department and Dallas when they stopped him and

11:30 1 arrested him. He wouldn't give his driver's license to
11:31 2 them. And he was very confrontational with them.
11:31 3 Wouldn't follow orders.

11:31 4 You heard from his probation officers,
11:31 5 Chris Jones. No respect for the Court's order, no
11:31 6 respect for the probation department. Lied to the
11:31 7 probation department. Used health products from GNC to
11:31 8 fake his urine test so he could pass them. No respect.

11:31 9 Absolutely no respect for his mother.
11:31 10 Carlos told you about that. You heard about incidences
11:31 11 where he was cussing. His own mother said he didn't
11:31 12 respect her.

11:31 13 No respect for the military. He goes in
11:31 14 there. They have rules and things that he has to do and
11:31 15 he has to obey just to get through boot camp. He
11:31 16 doesn't want to do it. He says, "I'm out of here," and
11:31 17 he takes off. No respect for authority.

11:31 18 You know he's a thief. He got convicted
11:31 19 of it. He did a day in jail for it. And this crime.
11:31 20 When he goes over there and he kills Amy and James, he
11:31 21 takes the car, he takes the money, he takes the jewelry.
11:31 22 He's a thief. He's dishonest.

11:32 23 You know he's a wife beater, woman beater,
11:32 24 and you heard from Michelle. Constant for two years.
11:32 25 Pounding her head, kicking her in the head, slamming her

11:32 1 head in the concrete.

11:32 2 You heard about Jennifer. Same thing.
11:32 3 Hitting her in the head. Pushing her down the stairs.
11:32 4 You heard about Amy Kitchen because we talked about it
11:32 5 during the guilt-innocence phase that we know that
11:32 6 somebody's blood is all over the wall and the ceiling.

11:32 7 And you heard from Paulette Sutton that
11:32 8 that was a hit or a kick. We talked about it's a
11:32 9 reasonable inference that was Amy because she's the one
11:32 10 that had the blood in the lungs. She's the one that had
11:32 11 the blood in the airways. It's a reasonable inference
11:32 12 that he was torturing her. And you already know what he
11:32 13 thinks about women. So he's doing that to Amy Kitchen.

11:32 14 And then Amy Boettcher, same thing.
11:32 15 Shooting at her head, gun to her head, slamming her hand
11:32 16 in the door. He has no respect for women, and he's
11:32 17 going to take his abuse out on her. And then his
11:32 18 pattern of behavior. Just to show that he's
11:32 19 controlling. He's manipulating. He's cunning. He's
11:32 20 charming when he wants to be.

11:32 21 Look at Michelle Traister. Look at
11:32 22 Jennifer Snyder. Look at Amy Boettcher. They are all
11:33 23 small in stature. They are all weak and quiet, low
11:33 24 self-esteem. He was able to charm them. Within weeks,
11:33 25 marry two of them. Engaged to the third one, within

11:33 1 weeks. And then the beatings start.

11:33 2 Michelle he convinced to never even call
11:33 3 the police on him. Convinced her to stay so he could
11:33 4 beat her some more. For two years she put up with that.
11:33 5 Jennifer put up with it for several
11:33 6 months. Despite the fact she called the police, he was
11:33 7 able to charm her into staying, charm her into at least
11:33 8 not leaving him.

11:33 9 Amy Boettcher, kept her with him until he
11:33 10 got arrested. We know he has no problem threatening
11:33 11 people. Threatening Amy with a gun to her head.

11:33 12 He's always threatening his mom. He's
11:33 13 abusive. He's aggressive toward her. You heard about
11:33 14 the situation with Patrick Swann. You heard about the
11:33 15 situation with Rick Alcala.

11:33 16 You heard from Lance Teichelman about the
11:33 17 threat of Paul Maggio. The man that hit on Lance's
11:33 18 wife. The defendant bragging, I'm part of the Gambino
11:33 19 clan. I can have him taken out for you if you want to.
11:34 20 That's the kind of talk he talks.

11:34 21 Patrick Swann, when he was escorting him
11:34 22 out there because he was so abusive to his own mother,
11:34 23 he told Patrick Swann, "You don't know who you are
11:34 24 messing with. You don't know who I am." That's the
11:34 25 kind of man he is. No remorse. Absolutely no remorse.

11:34 1 Immediately after the murders, he's ready
11:34 2 to go party. He's ready to go kick it at Seven, in
11:34 3 Amy's words. Let's go do drugs. Let's go dancing.
11:34 4 Let's go smoke some crack. Let's go to Arkansas and
11:34 5 hang out with your parents. No remorse.

11:34 6 Carlos told you, no remorse. Dick Kremer
11:34 7 said the defendant sat down in front of him and said,
11:34 8 "Don't think I'm a bad man, but I didn't think much of
11:34 9 my cousin, and I'm not real upset that he's dead." No
11:34 10 remorse.

11:34 11 Dr. Quijano said people like that have no
11:34 12 conscious. Whereas you or I, when we do something wrong
11:34 13 or we do something bad, we feel horrible. Want to fix
11:34 14 it, want to correct it. People with no conscience don't
11:34 15 feel that, and that's him. That makes him more
11:34 16 dangerous.

11:34 17 And Dr. Quijano says it's even worse when
11:34 18 they do want to go out and have fun afterwards. Not
11:35 19 only do they not have remorse, but they are so
11:35 20 unbothered by it, that they can go out and they can
11:35 21 party and it's all okay. Not even thinking about the
11:35 22 slaughter they just committed.

11:35 23 We believe that the evidence showed beyond
11:35 24 a reasonable doubt that this defendant is dangerous. We
11:35 25 believe that the evidence showed beyond a reasonable

11:35 1 doubt that, if given the opportunity this defendant
 11:35 2 would desire to commit criminal acts of violence. And
 11:35 3 we ask that you go back there and unanimously answer yes
 11:35 4 to that first special issue.

11:35 5 And when you do, you get to the second
 11:35 6 special issue which is the mitigation question. With
 11:35 7 regard to the mitigation question, if you recall, it
 11:35 8 asks you to take into consideration the circumstances of
 11:35 9 the offense, his background, personal moral culpability.
 11:35 10 Take all that into consideration and ask yourself: Is
 11:35 11 there anything sufficiently mitigating to warrant a life
 11:35 12 sentence?

11:35 13 Look at the circumstances of the offense.
 11:36 14 He slaughtered two people. He killed two people. They
 11:36 15 are not here anymore. They are gone by no actions of
 11:36 16 their own. What's so sufficiently mitigating that his
 11:36 17 life ought to be saved? Nothing. Go back to no
 11:36 18 remorse. There's absolutely no remorse.

11:36 19 And you even have further -- this
 11:36 20 jailhouse conversion. Well, I'm a Christian now. Well,
 11:36 21 you can be suspect about that. Look at the timing. You
 11:36 22 know he's a conniver, a manipulator. He's looking at
 11:36 23 coming in here. He knows he's going to be facing y'all.
 11:36 24 And if this is such a true conversion, where is the
 11:36 25 repentance? Where is the, Lord, forgive me for

11:36 1 slaughtering these two people? It's not there. His
 11:36 2 own --

11:36 3 MR. GOELLER: Objection. That's an
 11:36 4 absolute lie. It is there.

11:36 5 THE COURT: Overruled.

11:36 6 MS. FALCO: His own mother -- his own aunt
 11:36 7 still think he's innocent. So if he's repenting, if
 11:36 8 he's sorrowful, why are they still thinking he's
 11:36 9 innocent? He hadn't repented. He's not sorry. He's
 11:36 10 not remorseful.

11:37 11 He had money. He had success when he
 11:37 12 wanted it. You heard about him making \$130,000 a year
 11:37 13 in the mortgage business. He had a nice home. Had
 11:37 14 cars, had boats, had money to go party. Nothing about
 11:37 15 his family background held him back. Nothing kept him
 11:37 16 down. He was successful. He could have been a
 11:37 17 productive member of society if he wanted to be.

11:37 18 Family support. He had a dad that loved
 11:37 19 him. His parents got divorced like 50 percent of the
 11:37 20 kids in America, but his dad loved him. And Imelda said
 11:37 21 his dad loved him and saw him when he could. Always
 11:37 22 paid his child support. It was never an issue, despite
 11:37 23 the fact his own mother was trying to double dip on
 11:37 24 that. Dad did what he could. Dad loved him. Dad was
 11:37 25 there. He had mom. He had aunts that loved him and

11:37 1 supported him. He had family support.

11:37 2 And the alcohol and the drugs, this is
 11:37 3 something that we talked about with all of y'all during
 11:37 4 voir dire. Is that something that's mitigating or
 11:37 5 aggravating? In this circumstance it's aggravating.

11:38 6 This defendant has been doing alcohol.
 11:38 7 He's been doing drugs since you know at least early
 11:38 8 '90s. It's his choice. He can control it. He doesn't
 11:38 9 want help. He doesn't care. He knows he hurts people.
 11:38 10 He knew he was beating up his wife. He didn't stop. He
 11:38 11 didn't care.

11:38 12 You also know that he can be drunk, or he
 11:38 13 can be on drugs and have a great time and not hurt
 11:38 14 anybody when he's out at Club Seven, or he's out at the
 11:38 15 lake, or he's out with his buddies. That doesn't
 11:38 16 automatically make him violent.

11:38 17 You also know that he can be violent
 11:38 18 without being on drugs or without being drunk because
 11:38 19 Michelle told you that. Michelle was like, yeah, he
 11:38 20 pushed me and he hit me. And he didn't have anything to
 11:38 21 drink, and he didn't have any drugs. That's just his
 11:38 22 nature, and he just chooses to do the drugs and the
 11:38 23 alcohol.

11:38 24 And there's absolutely no evidence that
 11:38 25 this defendant was on drugs or drinking when he

11:38 1 committed this horrible crime. The only evidence is
 11:38 2 that as soon as he got home, he goes in the freezer and
 11:38 3 gets the mushrooms, and later on does the cocaine, the
 11:38 4 meth, the ecstasy.

11:38 5 There is no evidence that when he killed
 11:38 6 James and Amy he was on anything. In fact, we know he
 11:39 7 was talking about it a couple weeks prior when he was
 11:39 8 talking to Jeff Boettcher about it, about the money and
 11:39 9 the drugs that are over there. And he can kill them and
 11:39 10 get the money and the drugs. It wasn't spontaneous.

11:39 11 We know he's not a productive member of
 11:39 12 society. You heard from his mom all the different jobs
 11:39 13 he's had. Went from one job to the next. Always 'cause
 11:39 14 he was greedy. Always looking for more money. Never
 11:39 15 giving back to society. And the kind of places he
 11:39 16 worked, Baby Dolls. Is that contributing to society?
 11:39 17 Is that benefitting anyone here in Collin County?

11:39 18 How did he spend his money and his time?
 11:39 19 He spent his money and his time on drugs, in bars, out
 11:39 20 at the lake, partying. You didn't hear about volunteer
 11:39 21 work. This isn't the doctor that came up with some
 11:39 22 great cure. This isn't the decorated soldier. Even the
 11:39 23 Navy doesn't want him. The Navy, you heard me read from
 11:39 24 the Naval records. Dishonorable discharge. Navy
 11:39 25 doesn't think much of him.

11:39 1 MR. GOELLER: Objection. He did not get a
11:40 2 dishonorable discharge, Your Honor.

11:40 3 MS. FALCO: It's in the records.

11:40 4 MR. GOELLER: No, it's not. It's not a
11:40 5 dishonorable discharge.

11:40 6 THE COURT: Ladies and gentlemen, you are
11:40 7 going to have to determine what the evidence is. The
11:40 8 attorneys -- at this time the attorneys will tell you
11:40 9 how they saw the evidence, and ultimately, you must
11:40 10 decide. Go ahead.

11:40 11 MS. FALCO: And that might be the only
11:40 12 thing you think might benefit society. Well, he at
11:40 13 least enlisted or enrolled in the military. But you
11:40 14 heard he left after two months. And according to his
11:40 15 family, defendant said that was the worst mistake he
11:40 16 ever made. Not the wife beating, not the drugs, not the
11:40 17 DWI, the possession of cocaine, not that. But going
11:40 18 into the military. That was the worst mistake he ever
11:40 19 made. That's the way he thinks.

11:40 20 Look at all the lives he destroyed. Look
11:40 21 at the Mosquedas. Look at the Kitchens. They've lost
11:40 22 something that they can never get back. Never. Look at
11:40 23 Amy Boettcher. You saw her. She's a mess. She has to
11:40 24 live with the vision of those dead bodies for the rest
11:41 25 of her life. Jennifer Snyder moved halfway around the

11:41 1 world. She moved to the Marshall Islands to get away
11:41 2 from him.

11:41 3 MR. GOELLER: Objection. That's a
11:41 4 misstatement of the law. Her parents live there. They
11:41 5 are in the military. They even brought that up.

11:41 6 THE COURT: Overruled.

11:41 7 MS. FALCO: And Michelle Traister, still
11:41 8 trying to get herself back together. Still trying to go
11:41 9 to the jail to show the defendant: You tried to destroy
11:41 10 me, but you can't. Still trying to prove to herself.
11:41 11 Still trying to gain her self-worth back. Look at all
11:41 12 the lives he has destroyed.

11:41 13 When you evaluate the character, when you
11:41 14 evaluate it both to show there is absolutely nothing
11:41 15 mitigating about him. Nothing worth saving his life
11:41 16 over. You also use this to see if he's dangerous. This
11:41 17 is a summary of his character.

11:41 18 You know he's lying. He lied about the
11:41 19 pizza man story. He lied to his mom about the drugs,
11:41 20 about what he was in jail for. He lied with the
11:41 21 probation officer about the drugs. And Michelle
11:41 22 Traister said, That's finally what got me to leave him.
11:41 23 All the lies. Couldn't put up with the lies.

11:41 24 You know he's a thief. He was convicted
11:42 25 for it. He did jail time for it, and that's what he did

11:42 1 from Amy and James. He stole their stuff. Dope
11:42 2 smoking. There's plenty of evidence of that.
11:42 3 Freeloading, just goes from place to place. Lives with
11:42 4 Mr. Bobbitt for a month, lives with his mom for a week,
11:42 5 lives with his brother for a week. Goes wherever he can
11:42 6 to just freeload. Lack of responsibility.

11:42 7 Law-breaking. You heard about all the
11:42 8 times he got arrested, including the P.I. in the
11:42 9 military. Cop running. He's running from the cops the
11:42 10 two times they go after him on the reckless driving and
11:42 11 on the DWI. Both times he's running from them.

11:42 12 He doesn't like women. Carlos told you
11:42 13 that from the beginning. He doesn't like women. He
11:42 14 doesn't respect them. And then look how he treated the
11:42 15 women who were close to him, how he treated his mother.
11:42 16 How he treated his two wives. How he treated Amy
11:42 17 Boettcher. How he treated Amy Kitchen. He's jealous.

11:42 18 We know that's the whole reason he
11:42 19 committed this crime. He's jealous of James, what he
11:42 20 had, his money. Jealous that Amy got to benefit from
11:42 21 that. He's controlling and manipulating. That's how he
11:43 22 gets what he wants from these women. That's how he gets
11:43 23 what he wants in life. Except the military. When he
11:43 24 couldn't get what he wanted, he left.

11:43 25 He's cowardly. Beats up on women. Beats

11:43 1 up on people smaller than him. People that can't
11:43 2 protect themselves. And when he does finally go after a
11:43 3 man, he goes after James. He goes after them while he's
11:43 4 in bed, laying down in his bedroom clothes. He's a
11:43 5 coward.

11:43 6 Drunk, you know, he's drinking all the
11:43 7 time. You heard that along with all the drugs. You
11:43 8 know, he's a wife beater, and now he's a convicted
11:43 9 killer. There's nothing mitigating about his life worth
11:43 10 saving. And I ask that you go back there and you
11:43 11 unanimously answer that second question no. Thank you.

11:43 12 THE COURT: Thank you, Ms. Falco.
11:43 13 Mr. Goeller, would you like to open for the defendant?

11:43 14 MR. GOELLER: Yes, Your Honor.

11:43 15 THE COURT: All right.

11:43 16 DEFENSE CLOSING ARGUMENTS

11:43 17 MR. GOELLER: If it please the Court.

11:43 18 THE COURT: Yes.

11:43 19 MR. GOELLER: Mr. Schultz.

11:44 20 MR. SCHULTZ: Yes, sir.

11:44 21 MR. GOELLER: Ms. Lowry, Ms. Falco. The
11:44 22 number of occasions that a lawyer stands up and argues
11:44 23 for the life of a human being are rare, maybe once in a
11:44 24 lifetime, maybe a couple times at most. You feel pretty
11:44 25 woefully inadequate to do a job like this, but let me

11:44 1 take a shot.
 11:44 2 Two themes, I think, that maybe they are
 11:44 3 competing themes at the punishment phase of a trial and
 11:44 4 especially with a capital murder trial: mercy and
 11:44 5 justice. Your verdict will not grant Ivan Cantu
 11:45 6 freedom. We're not asking for freedom. Your verdict,
 11:45 7 no matter what it is, will not bring back the deceased.

11:45 8 You know, over 400 years ago Shakespeare
 11:45 9 wrote about a trial in *The Merchant of Venice*. Back
 11:45 10 then the jury was really the victim. The victim's
 11:45 11 family and they got to really decide what happened. And
 11:45 12 back then, if you had committed a crime or even broke a
 11:45 13 civil promise and you were found guilty, the victim
 11:46 14 could demand a pound of your flesh. And they would
 11:46 15 weigh it out, one pound. And usually they would cut
 11:46 16 around the heart and the chest because that would
 11:46 17 certainly ensure death.

11:46 18 And Shakespeare wrote about maybe not
 11:46 19 taking that pound of flesh because in the end, what does
 11:46 20 it really prove? If we value life so much like we say
 11:46 21 we do, if we really value life, why would we take it if
 11:46 22 we don't have to? Why would we take it if we don't have
 11:46 23 to?

11:46 24 Mercy, I don't know if putting him in the
 11:47 25 penitentiary for 40 calendar years is mercy. Maybe

11:47 1 giving him a life sentence sentences him to die a little
 11:47 2 bit everyday for the next 40 years.

11:47 3 You think about 40 years. People are
 11:47 4 born. They go to school. They go to grade school.
 11:47 5 They go to middle school. They go to junior high and
 11:47 6 high school. Maybe they go to college. Maybe they
 11:47 7 start a career. Maybe they get married. Maybe they get
 11:47 8 divorced. Maybe they have children. Maybe they have
 11:47 9 grandchildren. I mean, it's a long time.

11:47 10 You know as you sit there right now that
 11:47 11 if, and as everybody has told you, we don't know. My
 11:48 12 guess is he'll die in the joint if he's given a life
 11:48 13 sentence. He'll be 60 or 70 years old when he gets out,
 11:48 14 but that's a long time.

11:48 15 And I can't sit up here and -- if there
 11:48 16 was something I could do, you know, you get in these
 11:48 17 kind of trials and you start thinking about: What if?
 11:48 18 What if he would have stayed in the Navy? All
 11:48 19 indications he did pretty good while he was in there.
 11:48 20 He just walked out the front gate. Maybe he didn't have
 11:48 21 the tools to stay.

11:48 22 Again, the theme here or the bottom line
 11:48 23 is when -- when a society, if we've got to kill
 11:48 24 somebody, aren't we killing, if we're going to do that,
 11:48 25 the worst of the worst. Those that have absolutely no

11:49 1 hope, no redemption whatsoever. If there is a glimmer
 11:49 2 of hope, some hope, why would we kill?

11:49 3 I can't undo what's done. I can't bring
 11:49 4 the victims back. I can't go back in his life -- I wish
 11:49 5 I could -- and change things. I think it's pretty clear
 11:49 6 by now that the choices we make in life aren't just
 11:49 7 freewill.

11:49 8 The one person he did probably get closest
 11:49 9 to was Washona, you know, his cousin. She died of AIDS
 11:49 10 or pneumonia complicated by AIDS. As she probably lay
 11:50 11 there dying, however old Ivan was at the time and she
 11:50 12 was at the time, I wonder if anybody would have said,
 11:50 13 you know, you were a prostitute at that truck stop
 11:50 14 because that was your freewill. We shouldn't pity you.
 11:50 15 We shouldn't feel sorry for you. Those are choices you
 11:50 16 made in your life.

11:50 17 You know, you think about us. And you
 11:50 18 maybe think about walking out of church or something
 11:50 19 like that. And you come across a friend or a neighbor
 11:50 20 or a fellow churchgoing member. And they say, you know,
 11:50 21 my child is in trouble. My child has been arrested. My
 11:50 22 child is doing drugs. My child is engaging in hazardous
 11:50 23 sex acts, questionable sex, all those things.

11:50 24 Do you turn to your neighbor, your friend,
 11:50 25 your loved one, maybe a member of your church and say,

11:50 1 well, they had a choice about it? No. No one would do
 11:50 2 that. You would say, what can I do to help? What can
 11:51 3 be done to maybe save them?

11:51 4 But when we come in in the confines of a
 11:51 5 criminal courtroom, there are those that would have you
 11:51 6 believe it's just freewill. It's just a choice. He
 11:51 7 made choices. Now kill him.

11:51 8 I don't think that's how life operates.
 11:51 9 Is he the worst of the worst? He's never been to the
 11:51 10 penitentiary before. He doesn't go around as a
 11:51 11 predator. He doesn't abduct and rape and kill.

11:51 12 And all the examples that the State has
 11:51 13 given you why. Why would they be asking all those
 11:51 14 experts about the people that abducted the little
 11:51 15 retarded girl and raped her and tortured her and killed
 11:51 16 her? Why do they do that? Why do they do that?
 11:51 17 Because they know from day one, back in August, to help
 11:51 18 you kill him, to help you kill him, if they can
 11:52 19 dehumanize him and make him subhuman, it's a lot easier
 11:52 20 for you folks to pull the plug.

11:52 21 Now, I would ask you folks, how many times
 11:52 22 have you heard the word Adolf Hitler? Those three know
 11:52 23 what they are doing. You think they -- we spent how
 11:52 24 many hours since August talking about Hitler, and Pol
 11:52 25 Pot, and Jeffrey Dahmer, and Timothy McVeigh, and the

11:52 1 Unibomber, Osama bin Laden. You think they did that for
11:52 2 fun? Yeah, it got a little humorous at times, but there
11:52 3 was method in that.

11:52 4 There is a reason Mr. Schultz pounded on
11:52 5 those people. Because the more you hear about it and
11:52 6 the more you can link it to him, he's less than a human
11:52 7 being. Dehumanize him. That's their goal. Dehumanize
11:53 8 him, and then it's easier to kill him. When you folks,
11:53 9 if you buy into that, well, yeah, he did kill 20 million
11:53 10 people, kinda like 6 million people. He's not a human
11:53 11 being.

11:53 12 Ask yourselves, when you go back into that
11:53 13 jury deliberation room: Why did the No. 1 name in this
11:53 14 trial come up at least a thousand times, I'll betcha,
11:53 15 since August, Adolf Hitler? And what does that have to
11:53 16 do with this case? From the prosecution's point of
11:53 17 view, it's got a lot to do with it.

11:53 18 The special issues, Mr. Schultz talked a
11:53 19 lot about common sense. Probability would commit
11:53 20 criminal acts of violence. And we play a lot of
11:54 21 semantics: Would, will. Would is past tense of will.

11:54 22 It is common sense. Anybody that's been
11:54 23 convicted of capital murder is a danger. We're not
11:54 24 fighting that. If he got out on the street today, and
11:54 25 he got back into drugs and bad relationships with women

11:54 1 and economic turmoil, he'd be a danger. They all would.
11:54 2 If somebody killed a police officer and you let him out,
11:54 3 wouldn't he be a danger? That's not what we're talking
11:54 4 about. That's the obvious.

11:54 5 We brought you their statistics. The
11:54 6 government's statistics. Again, back to -- if you don't
11:54 7 have to kill, why would you? What, the rates of
11:54 8 violence? Point -- it wasn't even a percentage. It
11:55 9 wasn't a percentage. I suppose -- you know, it cuts
11:55 10 both ways.

11:55 11 They want to say, well, he's a real bad
11:55 12 manipulator. You know, he's been in the Collin County
11:55 13 jail now a year, and he's been perfect. And they'll
11:55 14 stretch, and they'll say, well, he did file a complaint
11:55 15 because the styrofoam melted into the rest of his food.
11:55 16 You know, troublemaker, manipulator, complainer.

11:55 17 You can't win. If he had been bad and he
11:55 18 had been threatening staff and other inmates and trying
11:55 19 to hurt people, you would have heard about that. But if
11:55 20 you don't have that, well, that's somehow manipulation.
11:55 21 Because we heard from Dr. Quijano manipulation maybe is
11:55 22 not a bad thing in the sense of the penitentiary and
11:55 23 incarceration. We have the means to make him -- make
11:56 24 him not be a danger.

11:56 25 Play that videotape again, 40 years of

11:56 1 that. They could have brought you, you know, on the
11:56 2 government side, they could have brought you every ward
11:56 3 in the State, every special investigator. They could
11:56 4 have brought you somebody, anybody to say, well, you
11:56 5 know, our own statistics are a bunch of lies. Not one
11:56 6 person.

11:56 7 I'd submit to you, they know this is the
11:56 8 truth. They don't like that. They don't want that.
11:56 9 That's why they want to say, well, you let him out
11:56 10 today, he'll be bad, but that's not common sense. We
11:56 11 know he's not getting out. We know he'll never see, if
11:56 12 he lives that long, the outside world for 40 years.

11:57 13 Dr. Quijano said -- I asked him, I said,
11:57 14 Do we have any statistics on that? He said, Well,
11:57 15 everybody said we know that they age out of all this.
11:57 16 But those people that have been in 40 years, nobody has
11:57 17 been able to do it yet. I'm not asking for mercy.
11:57 18 Because I don't think -- why? Mercy is a "me" word.
11:57 19 Just is -- is an "us" word. Us.

11:57 20 What is our, really, our societal
11:57 21 responsibility? The war on drugs. Okay. Not my job.
11:57 22 The probation officer. Yeah, there's dope in his urine.
11:57 23 He's still doing drugs. Well, we didn't do anything
11:58 24 about it. It's not my job. That's some other judge,
11:58 25 some other probation officer. That's not my job. Well,

11:58 1 that's your tax dollar getting paid for those kind of
11:58 2 people to say: That's not my job.

11:58 3 They know they have a problem. We know
11:58 4 drugs are a problem. Every -- our federal government,
11:58 5 our State government tells us that. Maybe if somebody
11:58 6 would have done their job, they would have taken him off
11:58 7 the street, put him in a penitentiary, a jail, put him
11:58 8 in an inpatient lockdown drug clinic or something like
11:58 9 that. "It's not my job."

11:58 10 I can't stand up here and justify or
11:58 11 excuse his conduct, but he didn't do this in a vacuum,
11:58 12 folks. He didn't do it in a vacuum. I wish I could go
11:58 13 back. I wish he could have loved a grown-up in a two-
11:58 14 parent loving family. I wish he didn't have to get in
11:58 15 cars at a young age with his mother and go beg for child
11:59 16 support and all the problems that Sylvia brought on this
11:59 17 child.

11:59 18 Now, what about his father? Well, nobody
11:59 19 heard about him going to court and fighting for rights
11:59 20 and saying, "Judge, this isn't right. We're going to
11:59 21 ruin this kid. I want my visitation. I want this kind
11:59 22 of nonsense to stop." Not their job.

11:59 23 I wish -- I wish the families hadn't told
11:59 24 this kid, be more like your cousin, James. Be more like
11:59 25 your cousin, James. Is there some responsibility there?

11:59 1 Did the man deserve to die? No. But as Sylvia's
11:59 2 calling this man, help me with my son. He's going
11:59 3 crazy. He's on drugs. Well, Sylvia, I've strung him
11:59 4 out. I'm really sorry. I'll see what I can do.

12:00 5 Does James Mosqueda and Amy Kitchen accept
12:00 6 some of the responsibility for what's gone on here
12:00 7 today? Detective Winn: Kilos, 50 to 200 pounds of pot
12:00 8 at a clip. How many victims are not out there now? I
12:00 9 don't know.

12:00 10 Nobody ever came in and said, you know,
12:00 11 James Mosqueda, he always made sure those drugs never
12:00 12 filtered down to kids. You didn't hear that. Major
12:00 13 supplier. Where it went after that? Who knows?

12:00 14 I'm not trying to justify what he's been
12:00 15 convicted of, but there's some responsibility about
12:00 16 dealing dope. But when you string a kid out, bad things
12:00 17 can happen, and they did.

12:01 18 The State wants to talk about the war on
12:01 19 drugs, and the drugs, and the drugs, and the drugs. But
12:01 20 where's their responsibility in this, too, you know?
12:01 21 Amy Boettcher. Still like to know what -- why he
12:01 22 wouldn't want to polygraph her.

12:01 23 Do you have some doubts about some of her
12:01 24 testimony and some of the evidence? But even after all
12:01 25 this, not one thing is done about it. Not one thing has

12:01 1 been done about it. And the Carlos Gonzalezes, and the
12:01 2 Chris Heads, and the Anthony Foncescas, and the Lips, and
12:01 3 the Metal. What has been done about it?

12:01 4 We're going to take a big broom, as the
12:01 5 State would have it. We're going to lift up the carpet
12:01 6 and sweep all the trash under it. Kill him, and then we
12:02 7 can tie a nice little bow on it, and we can all go home.
12:02 8 Did our job. Did our job. Killed him.

12:02 9 Again, is he the worst of the worst? Do
12:02 10 you have a history of violence in confinement? He's not
12:02 11 a revolving door in the penitentiary. He had never been
12:02 12 there before. Is there some hope, based on that tape
12:02 13 and all the testimony you heard with psychological
12:02 14 counseling? No access to drugs or at least on a level
12:02 15 Dr. Quijano would tell you it's a problem.

12:02 16 No ability to have relationships with
12:02 17 those kinds of girls, educational opportunities,
12:02 18 religious opportunities. Is it so wrong to try that?
12:03 19 When we talked about the statistics, their statistics.
12:03 20 And Dr. Cunningham was very frank over the course of a
12:03 21 four-year period, maybe a 20 percent chance that he
12:03 22 would involve in some type of assaultive conduct. And
12:03 23 you go back and you look at that, and beyond a
12:03 24 reasonable doubt we talked about. You know that high
12:03 25 90s?

12:03 1 Has the State proven in the high 90s that
12:03 2 that probability more likely than not, over 50 percent,
12:03 3 based on everything you know. And they know it's right
12:03 4 because if it wasn't, they would have put 20 witnesses
12:03 5 up there to say Cunningham was wrong.

12:03 6 They know it's right, and that's why they
12:03 7 are afraid. That's why they want to tell you, base your
12:03 8 decision on your emotions today if he got out. But
12:04 9 that's not common sense. It doesn't make any sense
12:04 10 whatsoever.

12:04 11 I -- a couple notes I made. I just feel
12:04 12 that there has to be absolutely no hope, no glimmer of
12:04 13 light. The light has to be totally snuffed out. It has
12:04 14 to be extinguished before we kill. He has shown times
12:04 15 in his life great promise. He's not a sociopath. He's
12:04 16 not a psychopath. If he was the State would have
12:04 17 brought you witnesses to tell you that.

12:05 18 He's a product of many, many, many things
12:05 19 that went wrong in his life. Not as a justification for
12:05 20 what he did, but he didn't commit these crimes in a
12:05 21 vacuum.

12:05 22 The death penalty is -- I think as a
12:05 23 juror, as lawyers, as judges, as everybody in the
12:05 24 system, the death penalty or imposing it, killing
12:05 25 somebody is one of those things that you hope to God you

12:05 1 made the right decision because there's no going back.
12:05 2 There's no going back.

12:05 3 If all of this is wrong, if all of this is
12:06 4 wrong, folks, or you say to yourselves, you know what?
12:06 5 This is that half a percent. He will be one of those
12:06 6 two people.

12:06 7 Dr. Cunningham told you the line is so
12:06 8 thin he couldn't make PowerPoint given. If he's -- has
12:06 9 the State proven to you he's one of them? If they have,
12:06 10 if he's one of them, then I'm wasting my time. But they
12:06 11 haven't proven that.

12:06 12 The second special issue or the last
12:06 13 special issue to you deal with talks about mitigation.
12:06 14 You've heard a lot about his -- how he grew up.
12:06 15 Dr. Cunningham has explained in great detail. How we
12:06 16 get to make the choices in our life. We don't do it in
12:07 17 a vacuum.

12:07 18 Nobody wakes up one day and says, I'm
12:07 19 going to be a capital murderer today. What I'm asking
12:07 20 for is justice, not mercy. I'm not asking for the "me"
12:07 21 word. I'm asking for the "us" word. We just can't pick
12:07 22 up the carpet and sweep it all underneath it, folks.
12:07 23 There are bigger things at stake here, bigger things at
12:07 24 play.

12:07 25 Mr. High is going to talk to you about

12:07 1 maybe the concepts of redemption and remorse and things
 12:07 2 like that that he's more in tune with than me. But my
 12:07 3 last words to you -- and we don't get to go last. The
 12:07 4 State will get up, and they'll attack what I have said.
 12:07 5 And they will -- they will call for his blood. They
 12:08 6 will do that. He has done it. She has done it, and
 12:08 7 they'll do it again. They want you to kill this kid.

12:08 8 But, again, my -- my last question to you:
 12:08 9 Is he the worst of the worst in this world? Is he the
 12:08 10 Adolf Hitler and the Joseph Stalin and the Pol Pot, and
 12:08 11 the Osama bin Laden, and the Jeffrey Dahmer, and the
 12:08 12 Timothy McVeigh? Because that's why they said it a
 12:08 13 thousand times, to get you to link him to the worst of
 12:08 14 the worst.

12:08 15 The candle has been blown out.
 12:08 16 Exterminate him. Bring him to Huntsville. Poison him
 12:08 17 so his blood boils, and he dies because he's the worst
 12:08 18 of the worst. There's absolutely no hope left. That's
 12:08 19 what they want you to do.

12:08 20 I'm here to tell you there's still life.
 12:08 21 The candle still burns. And as Christians who are we to
 12:09 22 blow out that candle? Maybe I couldn't stand up here
 12:09 23 and say that if I were defending Adolf Hitler or Pol Pot
 12:09 24 or Jeffrey Dahmer and the iron suits, and blast him into
 12:09 25 outer space, and hang him from cables, and put him in

12:09 1 with dynamite.

12:09 2 Mr. Schultz doesn't do that to waste your
 12:09 3 time. Trust me. He doesn't do it to hear himself talk.
 12:09 4 Trust me. You know, in cases like this you don't know
 12:09 5 what to argue.

12:09 6 THE COURT: I just want to tell you that
 12:09 7 you've used about 25 minutes.

12:09 8 MR. GOELLER: Yes, sir. Thank you, Judge.
 12:09 9 You know, life and death cases, you know, a lot of
 12:09 10 things go through your head because I don't argue this
 12:09 11 stuff on a regular basis, on no basis.

12:09 12 A lot of things come in your head. Your
 12:10 13 own spiritual beliefs and, you know, Cain and Abel.
 12:10 14 I've been told by great scholars, the only time God ever
 12:10 15 directly talked about murder was Cain and Abel and
 12:10 16 didn't kill them.

12:10 17 God says, I'm not going to kill you. I'm
 12:10 18 going to banish you, though. I don't bring the Bible up
 12:10 19 much, but I don't try these kind of cases much. And I
 12:10 20 think there's maybe something to be learned from that,
 12:10 21 in that biblical story. I don't know.

12:10 22 I'm going to let -- I'm going to sit down,
 12:10 23 and Mr. High's going to talk to you. And I'd ask you,
 12:10 24 folks, while you deliberate, just ask yourselves: Has
 12:10 25 the light been blown out? Has the candle been snuffed

12:11 1 out? Or does it still glimmer somewhat? Thank you.

12:11 2 THE COURT: Mr. Goeller. Mr. High, are
 12:11 3 you ready to argue?

12:11 4 MR. HIGH: I'm ready. May it please the
 12:11 5 Court and opposing counsel, Mr. Schultz.

12:11 6 MR. SCHULTZ: Yes, sir.

12:11 7 MR. HIGH: Ms. Falco and Ms. Lowry.
 12:11 8 Mr. Goeller?

12:11 9 MR. GOELLER: Sir.

12:11 10 MR. HIGH: And ladies and gentlemen of the
 12:11 11 jury, bear with me. Like Mr. Goeller, I've never been
 12:11 12 here before. I've been training for this all my life,
 12:11 13 and now I'm here arguing for the life of a man. We're
 12:11 14 talking about a candle still burning. We're talking
 12:11 15 about a light that could potentially be snuffed out by
 12:11 16 you, by the State of Texas.

12:11 17 And I find myself in the position of
 12:11 18 advocating, pleading, begging for the life of one of
 12:12 19 God's creatures, Ivan Cantu. And since I've become an
 12:12 20 attorney, I've realized the parallel between the
 12:12 21 attorney who is an advocate, who advocates and pleads,
 12:12 22 represents his client before a tribunal, before a judge
 12:12 23 or before a jury and the Father/Son who is the ultimate
 12:12 24 advocate, who pleads our case everyday.

12:12 25 And I hope you will bear with me because I

12:12 1 feel, I believe Mr. Goeller feels that this is a
 12:12 2 tremendous burden that we've carried for months. And in
 12:13 3 just few moments we're going to hand it over to you.
 12:13 4 It's going to become your burden.

12:13 5 We're all earthly creatures. We live on a
 12:13 6 planet. We live in a country where we've made laws.
 12:13 7 We've developed a penal code, and we've said what's
 12:13 8 right and what's wrong. But we've established criminal
 12:13 9 responsibility and we've established consequences.

12:13 10 Our hope is that it will bring order and
 12:13 11 harmony. Hopefully, we can live at peace together.
 12:13 12 That's our hope. For the most part it works.

12:13 13 There's these concepts of justice and law
 12:13 14 and order. We all have different ideas of what justice
 12:13 15 is. The State's idea of justice, at least with respect
 12:14 16 to this case, is to take a life. "An eye for an eye."

12:14 17 Mr. Goeller, Shakespearian concept, "a
 12:14 18 pound of flesh." I didn't know that. But that's what
 12:14 19 the State wants. They want you to reach in and grab
 12:14 20 that heart and kill this young man. Let there be no
 12:14 21 question about that.

12:14 22 Justice on this side of the room means
 12:14 23 killing. Justice on this side of the room means saving
 12:14 24 a life. The line is drawn. You're going to have to
 12:14 25 decide what justice really is in this case.

12:14 1 I would suggest to you that "eye for an
12:15 2 eye," "a pound of flesh" are Old Testament type
12:15 3 concepts. They are based in history. They are based in
12:15 4 the olden days. It means this for that. They also
12:15 5 involve anger. They involve disgust. They involve, I'm
12:15 6 tired of you. Sick of you. Be gone.

12:15 7 Ladies and gentlemen, you've seen that
12:15 8 demonstrated by the State's table over here. They are
12:15 9 angry. They are disgusted. They are sick of it. And
12:15 10 they acted that way, not just about Mr. Ivan Cantu, but
12:15 11 they treated an innocent victim, a witness over here,
12:15 12 Sylvia Cantu, in the most reprehensible way.

12:16 13 She doesn't have a dog in this fight,
12:16 14 ladies and gentlemen. She hurts just like the rest of
12:16 15 us do. But they spit and argued with her and attacked
12:16 16 her in a mean, hateful, dishonorable way because they
12:16 17 are mad, because they want a pound of flesh, because
12:16 18 they are angry. You saw it. It ain't pretty.

12:16 19 Now, I understand they've got a job to do.
12:16 20 I understand that. I understand that they are appointed
12:16 21 by the government. I understand that there's a death
12:16 22 penalty in this State. I understand that it's their
12:16 23 responsibility, if they feel that they've got the right
12:16 24 case, to go for it.

12:16 25 The Old Testament is consistent with "eye

12:17 1 for an eye," "a pound of flesh." Recall in the Old
12:17 2 Testament there were burnt offerings, sin offerings,
12:17 3 killings all to atone for sin, for wrongdoings, for
12:17 4 falling short.

12:17 5 There was a price to be paid. Often it
12:17 6 was a life. We're not in the Old Testament anymore.
12:17 7 There's -- as Maury Davis pointed out, there's the New
12:17 8 Testament concept of grace and mercy.

12:17 9 You see, God himself got tired of the old
12:17 10 way of doing things because it was angry and it was
12:17 11 hurtful and it wasn't pretty, and he decided to atone
12:17 12 for our sins in a new way. By sending mercy and grace
12:18 13 and the redemptive theme that has pervaded history.

12:18 14 Now, the story of Maury Davis is one of
12:18 15 mercy and love and grace. And what's so interesting
12:18 16 about that is his crime -- well, actually, you think
12:18 17 about it, Ivan's crime, however bad it was, and it was
12:18 18 terrible. But Ivan's crime was really no worse than
12:18 19 that of Maury Davis, if you think about it.

12:18 20 I mean, when you heard him describe that,
12:18 21 you could almost smell and feel the sensation of the
12:18 22 crime. What a horrible thing. People that -- a lady
12:18 23 that he didn't even know. Dead, at his hand. The
12:19 24 closeness of a stabbing.

12:19 25 Stabbing is a whole lot more personal than

12:19 1 a shooting, if you think about it. You got to get up
12:19 2 close. Think about that, ladies and gentlemen. Bad,
12:19 3 it's a bad crime.

12:19 4 And I apologize, Pastor Davis. I know
12:19 5 this is tough on you to hear this. It was tough on him
12:19 6 to take the witness stand. I'm sure it was humiliating.
12:19 7 He has never done that before. He had to relive it all
12:19 8 over again.

12:19 9 But I want to ask you something, when you
12:19 10 think about human emotion, which is more attractive,
12:19 11 anger, hostility, fire spitting, the irritation, the
12:19 12 anger, or a more calm, reserved, relaxed concept of
12:19 13 mercy, grace and love? Which one lasts longer? Which
12:20 14 one has more staying power? Which one makes you feel
12:20 15 better in the end? Is it the anger, the hostility, the
12:20 16 disgust? Or is it the calm resolute peace that you get
12:20 17 from doing the right thing?

12:20 18 Pastor Davis is the embodiment of a life
12:20 19 that has been redeemed. And he testified that the
12:20 20 Heavenly Father was not through with him. That the
12:20 21 Heavenly Father had great plans for him.

12:20 22 And we've seen that borne out very clearly
12:20 23 in these exhibits right here, Defendant's Exhibits 41
12:20 24 and 42, 41 and 40. I suggest to you, this is your
12:21 25 evidence. Take it back with you and read it.

12:21 1 You'll see that he is very forthcoming in
12:21 2 saying that he went to trial. He was 18 years old, a
12:21 3 new Christian and very much alone. It talks about the
12:21 4 prison chaplain.

12:21 5 He talks about Chaplain Dick Kastner and
12:21 6 how he served as his pastor. He talked about his
12:21 7 ministry foundation was discovered and developed while
12:21 8 he was in prison. And he gives Chaplain Kastner credit
12:21 9 for it in this bulletin right here.

12:21 10 And what's surprising, at the bottom he
12:21 11 puts his TDC No. 249079. Very interesting. Here's a
12:21 12 man convicted of murder, goes to prison, does the best
12:21 13 that he can, survives, works on himself, comes out a new
12:22 14 creation, and yet is humble enough to tell people this
12:22 15 is what I went through.

12:22 16 This is who I am, and God's not finished
12:22 17 with me yet. And God may not be finished with you,
12:22 18 either. What a tremendous witness that can be. Those
12:22 19 of you who aren't Christians, who don't subscribe to the
12:22 20 faith, certainly you can recognize the social benefit to
12:22 21 someone who comes out and says, I've made an effective
12:22 22 change in my life. I'm now a force for good instead of
12:22 23 bad.

12:22 24 MR. SCHULTZ: Excuse me, Judge. We're
12:22 25 going to object to that as a misstatement of evidence.

12:22 1 THE COURT: Overruled.
 12:22 2 MR. SCHULTZ: Excuse me. Specifically,
 12:22 3 there's been no demonstration of anybody coming out and
 12:23 4 saying, this is what I've done. There's been no
 12:23 5 demonstration of that at all in this record in this
 12:23 6 case. The State would object to such an inference
 12:23 7 before this jury that that's been said.

12:23 8 THE COURT: Ladies and gentlemen of the
 12:23 9 jury, this is argument of counsel --

12:23 10 MR. HIGH: How much time do I have?

12:23 11 THE COURT: -- how they have heard the
 12:23 12 evidence, what they think it means, what they want you
 12:23 13 to do.

12:23 14 You have about six minutes remaining.

12:23 15 MR. HIGH: Thank you, Judge. Ladies and
 12:23 16 gentlemen of the jury, just take a look at the evidence
 12:23 17 that's been admitted before you because we've got a
 12:23 18 gentleman that's giving credit to the veterans of this
 12:23 19 nation.

12:23 20 I'm congratulating them and telling them
 12:23 21 that they mean something to this country that has social
 12:23 22 value, that has worth. We know that. We've never known
 12:23 23 that any more than we do today.

12:23 24 Now, this concept of redemption is not
 12:23 25 new. In fact, it's based in history. We've talked

12:23 1 about biblical references. Perhaps biblical references
 12:24 2 become more relevant in a capital murder trial because
 12:24 3 you have the integration of law and death and life.

12:24 4 You think about the murderers that the
 12:24 5 State brought to you, people like Hitler, Osama bin
 12:24 6 Laden, Manson, McVeigh. These were the kind of
 12:24 7 murderers who never found redemption. They are the ones
 12:24 8 that never experienced God's grace.

12:24 9 But there's also another famous murderer
 12:24 10 in history, Moses. And God wasn't through with Moses.
 12:24 11 He allowed him to go on and do mighty things. Just like
 12:24 12 occurred in the life of Maury Davis.

12:25 13 According to Pastor Davis you can't
 12:25 14 underestimate the power of God in a human life. You
 12:25 15 have the present day example sitting before you. You
 12:25 16 have the historical example of Moses, and now you have
 12:25 17 the possibility of a future example before you. And you
 12:25 18 have the power and the opportunity to make that happen.

12:25 19 You see what Maury Davis needed back in
 12:25 20 1975 was a jury that was sensitive, insightful enough
 12:25 21 and courageous enough to give him what he needed, and
 12:25 22 that was time. The opportunity to learn and grow and
 12:25 23 change himself so that he could impact his world.

12:25 24 We're not asking that you turn Ivan Cantu
 12:26 25 loose. You know that's not going to happen. If there's

12:26 1 any concern or fear that you have about him, he's going
 12:26 2 to be gone for the next 40 years, locked up behind bars.
 12:26 3 That doesn't mean that he won't have an opportunity to
 12:26 4 impact his world and work on himself and try to change.

12:26 5 What I want to point out is there is
 12:26 6 evidence before you that the redemptive process has
 12:26 7 already begun. These letters in Defendant's 30, 31, 28,
 12:26 8 32, and 29 -- and I suggest you take these back with
 12:26 9 you. Comments from graders that say, "You did a really
 12:26 10 good job on the great truths part of the lesson. This
 12:26 11 was a fairly long lesson requiring you to take up a lot
 12:26 12 of Bible passages, but you did every one of them
 12:27 13 correctly. Good work."

12:27 14 THE COURT: Mr. High, you have about two
 12:27 15 minutes remaining.

12:27 16 MR. HIGH: Thank you, Judge. "You are off
 12:27 17 to a good start, and I want to encourage you in your
 12:27 18 personal walk with the Lord. Congratulations. We're
 12:27 19 excited to announce that you have graduated with honors
 12:27 20 from the tier one level of Crossroad Bible Institute."

12:27 21 Here's the certificate. Take these and
 12:27 22 look at them. But as Pastor Davis said, if we really
 12:27 23 want to know if a person is converted, what we got to
 12:27 24 give them is time. Let's hope this conversion is for
 12:27 25 real.

12:27 1 (To defendant:) God help you if it ain't.

12:27 2 Don't interrupt the redemptive process.
 12:27 3 Don't intervene and take a life when God has begun a
 12:28 4 work in him.

12:28 5 I want to finish up with Defendant's 28.
 12:28 6 It's a verse Jeremiah 29:11, and it's in evidence. "For
 12:28 7 I know the plans I have for you, declares the Lord.
 12:28 8 Plans to prosper you, not to harm you. Plans to give
 12:28 9 you hope and a future."

12:28 10 THE COURT: Thank you, Mr. High.

12:28 11 Mr. Schultz, you have 23 minutes remaining.

12:28 12 STATE'S REBUTTAL ARGUMENTS

12:28 13 MR. SCHULTZ: Thank you. May it please
 12:28 14 the Court.

12:28 15 THE COURT: Yes, sir.

12:28 16 MR. SCHULTZ: I'm not going to get
 12:28 17 biblical with you because it occurs with me, if you want
 12:28 18 to go to church, you ought to be able to make that
 12:28 19 choice yourself. If you want to go to temple, you ought
 12:28 20 to be able to make that choice yourself. That's
 12:28 21 between, I suppose, them and you. And I don't want you
 12:28 22 to be subjected to that.

12:28 23 And I guess if he thinks that's
 12:28 24 appropriate to give you a preaching sermon and somehow
 12:29 25 involve that into the evidence of this case, that's his

12:29 1 business. You can judge that as you will.

12:29 2 You know, a couple of observations. It's
12:29 3 remarkable to me that they have the gall to complain
12:29 4 about how we handled Sylvia Cantu as a witness when they
12:29 5 went through that long calculated process of trashing,
12:29 6 not even the victims, but the relatives of the victims.
12:29 7 Remember those remarks that they made for example to
12:29 8 Gladys, James's sister? Remarks about her dad and the
12:29 9 circumstances of his leaving? What possible, possible
12:29 10 reason could that have to do with this case in any
12:29 11 regard?

12:29 12 I mean, that -- that's, that's almost
12:29 13 laughable to accuse the State of mistreating a witness,
12:29 14 given that concept.

12:29 15 In fact, Mr. Goeller can't still resist.
12:29 16 We're still back trashing the police department and some
12:29 17 of their remarks in the punishment phase. We're still
12:29 18 backtracking the State's witnesses into the punishment
12:29 19 phrase of the trial. But I'm not going to buy into
12:30 20 that, ladies and gentlemen.

12:30 21 What's occurring here is a subtle effort
12:30 22 to make you somehow feel responsible for the decision,
12:30 23 for the evidence of this case, and you are not. And
12:30 24 don't you ever let a defense attorney shift you some
12:30 25 responsibility for the situation you are in. Because I

12:30 1 want to tell you something, among others, this
12:30 2 defendant, this killer, has made y'all victims, too,
12:30 3 because, the fact of the matter is, this isn't fun.
12:30 4 Yeah, we've had some laughs. And it might almost be the
12:30 5 kind of laugh you have got to laugh because you are
12:30 6 going to cry if you don't.

12:30 7 Well, there isn't any laughing now, and
12:30 8 there's nothing funny about this case. And I don't mind
12:30 9 them trashing the State of Texas. If that's the best
12:30 10 they've got, I'm pretty -- I guess we've done a good
12:30 11 job. Because if the best they can say about this case
12:30 12 is look at how mean we are and how Old Testament we are
12:30 13 and how blood thirsty we are, I would a whole lot rather
12:30 14 that be the evidence than them be able to say, "Let me
12:30 15 tell you some good things about the client." I'm still
12:30 16 waiting for that, and we don't have a whole lot of it.

12:30 17 We hear references. We hear these little
12:30 18 fleeting references to this jailhouse conversion. And
12:31 19 you know, there really isn't any evidence of that.
12:31 20 Where is a minister that's been meeting with him and
12:31 21 been talking? Where is somebody from the jail to say,
12:31 22 yeah, I'm a cell mate? I'm down the hall, and this
12:31 23 person is doing some type of preaching to me.

12:31 24 Where is some real evidence other than the
12:31 25 creation cut out of the whole fabric by these attorneys

12:31 1 of the existence of a jailhouse conversion? But who
12:31 2 cares if it's true or not? I can't look into somebody's
12:31 3 heart and make that determination. So what if it is?
12:31 4 What does that got to do with whether or not he's a
12:31 5 probable danger to our society?

12:31 6 What does that got to do with the fact
12:31 7 that what he did is not mitigated by any evidence
12:31 8 presented to you that would justify anything less than a
12:31 9 death sentence?

12:31 10 You know, if you allow them to put burdens
12:31 11 on the State of Texas that aren't in the law, it's
12:31 12 hopeless for us. If you allow this group of attorneys
12:31 13 to place upon the State of Texas the obligation to prove
12:31 14 that a defendant cannot be safely housed in the
12:31 15 penitentiary, we give up.

12:31 16 We can't do it because their own experts
12:31 17 both agreed the penitentiary can hold anybody. If we
12:31 18 want to spend our tax dollars, if we want to assign
12:32 19 three, four, five, ten guards to each inmate, if we want
12:32 20 to pay them enough to make sure that they can be safely
12:32 21 monitored and those guards won't bring in any drugs, if
12:32 22 we want to have people walking down the cell blocks with
12:32 23 machine guns looking for trouble. Many ways it can be
12:32 24 done, but that's not the burden that the law places upon
12:32 25 us.

12:32 1 The burden first places upon the State of
12:32 2 Texas proving the person's capital murder and proving
12:32 3 that to you beyond a reasonable doubt. And if we do
12:32 4 that, he's guilty of capital murder, and we look at the
12:32 5 death penalty as a possible sanction.

12:32 6 If we can't do that, for example, in
12:32 7 Mr. Davis's situation because it wasn't a capital murder
12:32 8 situation. The State can't prove it. It doesn't matter
12:32 9 how dangerous the person is. None of that matters.
12:32 10 It's not a death penalty situation.

12:32 11 Secondly, the law very clearly provides us
12:32 12 the responsibility. And it's charitable, it's kind,
12:32 13 it's decent to defendants, the opportunity for there to
12:32 14 be a reasonable doubt of their situation, of their
12:32 15 character, of their personality that would demonstrate
12:32 16 to you some reasonable doubt that this person wouldn't
12:32 17 be dangerous in the future.

12:32 18 MR. GOELLER: Objection. That's a
12:32 19 misstatement of the law. It shifts the burden. The
12:33 20 burden is on the State to prove beyond a reasonable
12:33 21 doubt, not the future dangerous. Probability,
12:33 22 continuing acts of violence.

12:33 23 THE COURT: Overruled.

12:33 24 MR. SCHULTZ: And it's so extra protecting
12:33 25 the defendant, that special issue obliges the State to

12:33 1 prove beyond a reasonable doubt the probability of
 12:33 2 danger in the future. Not that it will happen, but
 12:33 3 probability of a dangerous condition. You know, it's --
 12:33 4 MR. GOELLER: Objection. That's a
 12:33 5 misstatement of the law. Not a probability of a
 12:33 6 dangerous condition. A probability the defendant would
 12:33 7 commit criminal acts of violence, acts, plural.
 12:33 8 Misstatement of the law.

12:33 9 THE COURT: Overruled.

12:33 10 MR. SCHULTZ: Their own expert, it's very
 12:33 11 interesting. And I'm going to talk about the experts
 12:33 12 for a minute. Their own expert said, yeah, that "would"
 12:33 13 isn't "will." It's an assessment of this person's
 12:33 14 personality. And I'll ask you the simple question
 12:33 15 because if your answer to this question is no or you got
 12:33 16 a reasonable doubt about it, I mean, the trial is over.

12:33 17 Is this defendant the kind of person, if
 12:33 18 given the opportunity, will hurt, will commit crimes of
 12:34 19 violence, will hurt people when he doesn't get his way?
 12:34 20 When he doesn't get his drugs, he doesn't get his money,
 12:34 21 he doesn't get his recognition, he doesn't get the --
 12:34 22 the lap-dog behavior by his women, his wives, his mom,
 12:34 23 anybody?

12:34 24 Is he the kind of person, if given the
 12:34 25 opportunity, would endanger people by his criminal-act-

12:34 1 of-violence-type personality? And that's a yes or no.
 12:34 2 And to borrow a phrase from cross-examination of some of
 12:34 3 those experts. That's what that is. That's a yes or no
 12:34 4 question that you are asked beyond a reasonable doubt.

12:34 5 If you think he's safe, if you think his
 12:34 6 personality is not such, then the answer to that
 12:34 7 question ought to be no.

12:34 8 MR. GOELLER: Objection, Judge. That's a
 12:34 9 misstatement of the evidence. It's not whether the jury
 12:34 10 thinks he's safe. The State has the burden. They are
 12:34 11 subtly trying to shift it.

12:34 12 THE COURT: Overruled.

12:34 13 MR. SCHULTZ: You know, again, I do not
 12:34 14 mind. If the best they've got is to criticize our use
 12:34 15 of examples, Hitler or Stalin or anybody else, if that's
 12:34 16 the best they got, that's a pretty good spot for us to
 12:35 17 be in.

12:35 18 You know, you know the purpose of those
 12:35 19 examples? You know why we talk so much about Hitler,
 12:35 20 because it's an illustration. Everybody knows and
 12:35 21 everybody knows how you can work the Hitler issue in
 12:35 22 that mitigation.

12:35 23 Everyone remembers when you were selected
 12:35 24 on this jury. We talked about the concept of the bigger
 12:35 25 the crime, perhaps the bigger the mitigation to somehow

12:35 1 justify less than that. And I want to talk about
 12:35 2 Dr. Cunningham. Now, he's a charlatan. The evidence
 12:35 3 shows that's what he is -- a huckster. And I don't mind
 12:35 4 saying it.

12:35 5 You are going to tell me an expert that's
 12:35 6 seen 75 or 80 people in capital murder situations, and
 12:35 7 he can't name a single one that he would ever say would
 12:35 8 be a yes answer to that question? I ain't asking about
 12:35 9 Adolf Hitler.

12:35 10 I said, "Okay. Since none of the people
 12:35 11 that you ever represented for your fees have been people
 12:35 12 you could say yes about, how about Adolf Hitler? Could
 12:35 13 you say yes?" Adolf Hitler would probably be dangerous
 12:35 14 in the future because of his personality, his
 12:35 15 background, his character, his ideations, his thought
 12:35 16 process. He couldn't even do that, if you recall.

12:36 17 Even that witness, though, told you very
 12:36 18 clearly that this defendant can't restrain himself.
 12:36 19 This defendant can't restrain himself from violence.
 12:36 20 It's society's responsibility. And his assessment is
 12:36 21 it's through the prison system. So did Dr. Quijano.
 12:36 22 Everybody agrees. Even their experts agree, this is a
 12:36 23 dangerous man. Even their experts agree, this is a
 12:36 24 dangerous man.

12:36 25 And I told you before, the law doesn't

12:36 1 require us to prove that he can be safely held or that
 12:36 2 he can't be safely held in prison. It doesn't require
 12:36 3 us to do that because we can't do that. Everybody would
 12:36 4 agree. You can bring guards. You can bring anybody up
 12:36 5 here, and they would all agree, yes, no matter who you
 12:36 6 send us, we can, if we take the time and attention,
 12:36 7 probably control those people as long as they are there.
 12:36 8 We probably can.

12:36 9 On the other hand, there certainly are
 12:36 10 killings down there. There certainly are knifings down
 12:36 11 there. There certainly are significant incidences of
 12:37 12 violence that occurred in this case. You know, one of
 12:37 13 the troubles when you prosecute a case is that everybody
 12:37 14 is so polite and well-behaved.

12:37 15 By the way, you want to talk about the
 12:37 16 defendant, he's not a kid. That's cute language to make
 12:37 17 you somehow get the image of a 15-year-old or a
 12:37 18 17-year-old, but he's 28.

12:37 19 Mr. Goeller talks about what 40 years
 12:37 20 means. Twenty-eight years is a lot of time to learn a
 12:37 21 lot of lessons. And you see the -- you see the result
 12:37 22 of those lessons. But the truth of the matter is when
 12:37 23 you evaluate this evidence, ladies and gentlemen,
 12:37 24 there's not a single good thing about this defendant
 12:37 25 that has emerged. Not a single good thing that's been

12:37 1 presented.
 12:37 2 What good things could have been presented
 12:37 3 to you? Again, people from the jail saying he's helping
 12:37 4 me, if this is a real conversion. People in his life,
 12:37 5 employers.

12:37 6 Well, you know, we've got these little
 12:37 7 certificates. You know, y'all live in this world.
 12:38 8 What's the deal about a Taco Bell certificate of being
 12:38 9 good employee? But if it's really true, go get that
 12:38 10 boss. Bring him up here and say, yeah, this defendant
 12:38 11 was great. He was good to the customers. He behaved.
 12:38 12 He helped us all out. Where is somebody like that?
 12:38 13 Where is somebody from the school?

12:38 14 Where is a single person, other than the
 12:38 15 lawyers in their creations and inferences, where is a
 12:38 16 single hard witness that's come up here and told you
 12:38 17 anything good about this defendant? I don't say that
 12:38 18 out of meanness. I say that out of a factual
 12:38 19 realization.

12:38 20 Not one decent act that this defendant has
 12:38 21 committed has been brought to you, and they are good
 12:38 22 lawyers. It's not like they are lazy. It's not like
 12:38 23 they are unenergetic. They go all the way to Nashville,
 12:38 24 Tennessee, to get a man that it seems like he's doing
 12:38 25 very well.

12:38 1 It has nothing to do with this defendant.
 12:38 2 It's not State of Texas versus Pastor Davis. And I
 12:38 3 guess -- I guess the thinking somehow is, well, we'll
 12:38 4 bring this man in from Nashville, Tennessee. We'll fly
 12:38 5 him in. Pay the expenses of doing that. We'll bring
 12:38 6 him in for the jury. And somehow they'll say, well,
 12:39 7 since this man appears to have turned his life around,
 12:39 8 that must be some evidence this defendant will turn his
 12:39 9 life around. But that's nonsense.

12:39 10 That's about as silly as us bringing in
 12:39 11 some hard-core killer and putting him up there and
 12:39 12 saying, yeah, I got life, and I can't wait until I got
 12:39 13 paroled so I can kill again. And somehow that's
 12:39 14 supposed to be attribute to this defendant. That's
 12:39 15 nonsense.

12:39 16 What has Pastor Davis got to do with Ivan
 12:39 17 Cantu? Because he doesn't even know Ivan Cantu. He
 12:39 18 hasn't had any connection with him. If that's the best
 12:39 19 they've got, we're okay with that. If the best they've
 12:39 20 got is to bring somebody unrelated to this case and not
 12:39 21 knowing this defendant, to somehow try to influence you
 12:39 22 that this defendant is like him. If that's the best
 12:39 23 they got, that's not too much. And I don't say that
 12:39 24 critically of them. I say it with a realization.

12:39 25 You've seen their best. Everything they

12:39 1 could bring you, everything they, in their judgment,
 12:39 2 chose to bring you that they thought would help him,
 12:39 3 you've seen.

12:39 4 You go back and sift it and you say, where
 12:39 5 is there any evidence of this defendant? Where is the
 12:39 6 evidence of remorse? Where is that? We're pretty --
 12:39 7 you know, let's go party. Let's kick back. Let's go to
 12:40 8 Seven. Let's go do more drugs. I'm going to shoot him
 12:40 9 again. You know, that's probably not remorse. Where is
 12:40 10 the evidence of it? You know, they could have had
 12:40 11 psychologists examine him if they wanted to.

12:40 12 Did you know -- did it occur to you that
 12:40 13 people come in here and assess him and are telling you
 12:40 14 things about the defendant? They have never met him.
 12:40 15 Did it occur to you that that was a little odd? Did it
 12:40 16 occur to you that -- I mean, do you think the law
 12:40 17 prevents them from using their expert to actually
 12:40 18 examine them so they could come in and say, yeah, I've
 12:40 19 done that.

12:40 20 Dr. Cunningham's clever. He's got a
 12:40 21 cottage industry of testifying all over this country.
 12:40 22 It's like pulling teeth to get him to tell the truth.

12:40 23 He comes in with his pedigree. I'm
 12:40 24 licensed in 11 different states. That sounds great.
 12:40 25 Why, this is a world-renowned expert, I think, as

12:40 1 Mr. High called him. The world's greatest, brilliant
 12:40 2 scientist. He gets those licenses so he can go up there
 12:40 3 and pander his wares in all these other states in these
 12:40 4 death penalty cases. That's his business.

12:40 5 Now, it's a legal business. I don't
 12:40 6 quarrel with people doing legal business, but let's call
 12:40 7 it like it is. His job is to come in, bring a bunch of
 12:41 8 statistics, put them up in front of you and say, well,
 12:41 9 because of these generic statistics, this defendant is
 12:41 10 not going to be dangerous in prison.

12:41 11 By the way, he stays away because his
 12:41 12 whole approach is, let's convert this question. Let's
 12:41 13 pervert this question. Let's bastardize this question
 12:41 14 in some way so that the jury's going to say, well, since
 12:41 15 Dr. Cunningham says, will he be safe in prison? Yes, he
 12:41 16 will, statistically speaking. Then the answer to that
 12:41 17 question should be no. That's not what the question
 12:41 18 says.

12:41 19 And their other expert that they brought,
 12:41 20 and it is really interesting with Dr. Cann, a great guy.
 12:41 21 We've used him in our capital cases. He does -- he
 12:41 22 probably does more defense work, as he said, than he
 12:41 23 does State work, but we'd use him tomorrow. And I'm
 12:41 24 sure the defendant would use him tomorrow, too. He's
 12:41 25 honorable, and he's decent.

12:41 1 He said that that question means would, if
 12:41 2 given the opportunity, a defendant have the personality
 12:42 3 that would probably result in violence? Not -- not can
 12:42 4 we put him in an iron suit or can we make him comatose?

12:42 5 I use those examples, not for amusement,
 12:42 6 but it's a demonstration. We can do it. There are many
 12:42 7 ways we could control the world's most dangerous person,
 12:42 8 but we shouldn't have to, ladies and gentlemen. We
 12:42 9 shouldn't have to put ourselves in that position. We
 12:42 10 should -- we should not have to do more than the law
 12:42 11 requires.

12:42 12 And that is, if we prove somebody is just
 12:42 13 awful, wanton, atrocious. Can you imagine what it's
 12:42 14 like? Can you imagine how dangerous somebody is that
 12:42 15 can go and shoot somebody laying down? Put a bullet in
 12:42 16 that person's head and then turn it on a woman? Can you
 12:42 17 imagine how frightful?

12:42 18 Probably none of you there can exactly get
 12:42 19 there. You probably can't even exactly imagine what
 12:42 20 that must feel like, and I'm glad for you. Because the
 12:42 21 truth of the matter is, this defendant is very very
 12:42 22 different from -- from what we deal with.

12:42 23 No. He's probably not the worst of the
 12:42 24 worst, but maybe he is. I don't know how to make those
 12:42 25 judgments. The law doesn't say execute only the worst

12:43 1 of the worst. The law says, execute dangerous capital
 12:43 2 murderers.

12:43 3 MR. GOELLER: Objection. That's a
 12:43 4 misstatement of the law, Your Honor. That's not what
 12:43 5 the special issues call for.

12:43 6 THE COURT: This is argument, ladies and
 12:43 7 gentlemen. This is the opportunity for the attorneys to
 12:43 8 tell you how they view the evidence, and what they think
 12:43 9 it means. All right. The objection is overruled.

12:43 10 MR. SCHULTZ: I can't imagine. I'm not
 12:43 11 sure there's anything that anyone would even call
 12:43 12 mitigation. Although, true to my words, I suppose we
 12:43 13 all have something that's mitigating. But sufficient
 12:43 14 mitigation? Taking all this into account, what can you
 12:43 15 point to that makes an otherwise appropriate death
 12:43 16 sentence not appropriate? What is there about this
 12:43 17 case?

12:43 18 I don't know if you are feeling in your
 12:43 19 heart somehow guilty with the responsibility you have.
 12:43 20 I hope not. You sure don't deserve it. The reason you
 12:43 21 are here is because you were summoned. And the reason
 12:43 22 you were summoned is because of this defendant.

12:44 23 But we're so caring as a people, and we're
 12:44 24 so compassionate to people that we do it. And we sit
 12:44 25 inside ourselves, many of us if not all of us, and we

12:44 1 say, boy, I don't want to do that.

12:44 2 And if you are not careful, the mitigating
 12:44 3 evidence that you end up thinking you're finding is your
 12:44 4 own reluctance to do what's unnatural to you because it
 12:44 5 seems -- it doesn't quite seem right to us. We are the
 12:44 6 ones that will help somebody that's got a flat tire. We
 12:44 7 are the ones that will help our neighbor lift something
 12:44 8 up heavy because it's too heavy for him or her to be
 12:44 9 lifting.

12:44 10 We see little kids crying. We see that we
 12:44 11 are the ones that go say, why are you crying? What's
 12:44 12 wrong? Can we help? That's how we are as people, but
 12:44 13 we have a right to protect ourselves. And we have a
 12:44 14 right, whether it's as a nation to protect ourselves
 12:44 15 from the people that do awful things to us or whether
 12:44 16 it's as a society, whether it's as a county.

12:44 17 We have a right to self-defense, and we're
 12:44 18 entitled to it. And we have a right to defend
 12:44 19 ourselves, not only from this defendant, by identifying
 12:44 20 his characteristics and by giving him a fair trial and
 12:44 21 doing what the evidence requires. We have a right to
 12:44 22 tell other people like him what happens.

12:45 23 You know, Mr. Goeller makes an interesting
 12:45 24 point. What are we doing about the Carloses, and the
 12:45 25 Metals and the Lips and the Lances, and all that other

12:45 1 hall of shame that I put up on that board? *The Name the*
 12:45 2 *Doper People*. You know, those people talk. They go
 12:45 3 down to their parties.

12:45 4 And one of the things we can do and one of
 12:45 5 the things we can recognize is, hey, did you hear what
 12:45 6 happened in that Cantu case? He got out. He did the
 12:45 7 same things we're doing, which interestingly they
 12:45 8 haven't done.

12:45 9 I mean, it's very interesting, and we want
 12:45 10 to blame the drugs, but they are doing drugs, too. They
 12:45 11 are not killing people. You know, however they want to
 12:45 12 trash James, he's not killing people because of the
 12:45 13 drugs.

12:45 14 That's a smoke screen that they are trying
 12:45 15 to lay before you with no evidence. Because there are
 12:45 16 people, there are drug treatment people that know about
 12:45 17 that stuff. There are physicians that actually know
 12:45 18 about that if it weren't true, if this was somehow a
 12:45 19 product of some kind of addiction. But the absence of
 12:45 20 those kinds of witnesses in this kind of case states the
 12:45 21 obvious in terms of this defense.

12:45 22 But what do you want them saying? Do you
 12:46 23 want those people down in those bars and clubs saying,
 12:46 24 boy, did you hear what happened to Ivan? Why, he almost
 12:46 25 got executed for murdering people and all that wife

12:46 1 beating and cocaine and tricking the probation
12:46 2 department. All those things almost caught up with him,
12:46 3 and he almost got the death penalty. Fortunately, he
12:46 4 had good lawyers, and he got away with it. And he
12:46 5 claimed --

12:46 6 MR. GOELLER: Objection to the phrase he
12:46 7 got away with it, Your Honor. That's a misstatement of
12:46 8 the law. It's improper argument.

12:46 9 THE COURT: Overruled.

12:46 10 MR. SCHULTZ: All he got was life, but it
12:46 11 was close. And do you want them saying, you know, we
12:46 12 all knew Ivan. We heard how he talked about women. We
12:46 13 heard how he talked about mobsters. We knew what he
12:46 14 did. We knew what his abilities were. We knew how he
12:46 15 wasted those abilities, and he went and murdered some
12:46 16 people, and he got a death sentence for it. If you stop
12:46 17 and think about it, that's what we want.

12:46 18 If this case is righteous and this
12:46 19 evidence is righteous, we want 12 people doing the right
12:47 20 thing in this case, and the next 12 people with the next
12:47 21 Ivan Cantus doing the right thing in that case, and we
12:47 22 want the message to get out.

12:47 23 We deal so much with this concept of the
12:47 24 crime of punishment because we're good people. And
12:47 25 somehow I know. I know in your hearts some of you have

12:47 1 been twisted into the view that you are doing something
12:47 2 wrong in evaluating this evidence. That it's somehow
12:47 3 your fault because we're people that care about life.
12:47 4 But we have a right to protect ourselves when we're
12:47 5 threatened, and that can be through our military if we
12:47 6 have to fight other countries. That can be in a
12:47 7 courtroom when we have to fight people that endanger us.

12:47 8 This was vicious. This was awful. This
12:47 9 wasn't some drug deal gone bad. What this was was
12:47 10 absolute jealousy by this defendant. This wasn't some
12:47 11 snap decision. He had been talking about it before. He
12:47 12 didn't just find the gun on the street and say, I wonder
12:47 13 what I can go do with this? He actually obtained the
12:48 14 gun. He used it. He practiced with it. He practiced
12:48 15 it with Amy's head the night before.

12:48 16 I suppose, who knows, who knows exactly
12:48 17 why he did that? What was in his mind? One thing we do
12:48 18 know is it made sense to him in his value system. That
12:48 19 was a sensible act to him, to take a shot at the person
12:48 20 he's supposed to love. That's his value system. It's
12:48 21 that value system that makes him so dangerous.

12:48 22 I can't convince you that they can't
12:48 23 control him in prison. I can't convince you that if you
12:48 24 believe what you said you did when you all were
12:48 25 selected, you need to stick by that conviction because

12:48 1 that was a true decision that you had made about it.

12:48 2 If you thought about it, and you came back
12:48 3 and you said, yes, in the right kind of case, when the
12:48 4 State proves those things to me, I can vote yes. And if
12:48 5 you don't prove it, I can vote no. It's up to you to do
12:48 6 whatever you want.

12:48 7 You can -- there's nothing to stop you
12:48 8 from nullifying the law effectively. There's nothing to
12:48 9 stop one of you or anybody from saying, I'm not going to
12:48 10 do it. I don't care about the evidence. I just refuse
12:48 11 to do it. I don't want that responsibility.

12:49 12 But you ought to want this responsibility.
12:49 13 You don't want to be here, but you ought to want the
12:49 14 responsibility for helping our society be better.

12:49 15 A lot of good men and women are going to
12:49 16 have to perhaps lose their lives in a responsibility
12:49 17 that's brewing right now in our society. And that's
12:49 18 certainly no harder than what we're asking you to do.

12:49 19 We're asking for justice. And justice
12:49 20 demands a death sentence for this defendant. Not
12:49 21 because we do it, not because of what we want, but
12:49 22 because of the evidence in this case.

12:49 23 And I believe your hearts are resolute.
12:49 24 And I meant what I said. I can't imagine any place I'd
12:49 25 rather be than up here with the 12 you. And now you've

12:49 1 waited on us for weeks and weeks. And now we'll all
12:49 2 very politely wait for you. Thank you so much.

12:49 3 THE COURT: Thank you, Mr. Schultz.

12:49 4 Ladies and gentlemen, at this point you've
12:49 5 heard the Court's Charge, the arguments of counsel. I'm
12:49 6 going to hand, once again to the bailiff, the Charge and
12:49 7 Verdict Form that will be left with you in the jury
12:49 8 deliberation room.

12:49 9 Once all the members of your jury are
12:49 10 present and assembled, the case is formally submitted to
12:50 11 you, you may begin your deliberations. Please step down
12:50 12 from the jury box and accompany the bailiff into the
12:50 13 jury room.

12:50 14 All right. We're in recess until the jury
12:50 15 comes back.

16 (Jury retires for deliberations.)
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REPORTER'S CERTIFICATE

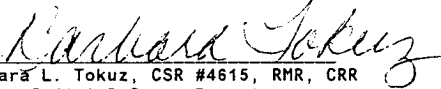
1
2 THE STATE OF TEXAS
3 COUNTY OF COLLIN

4 I, Barbara L. Tokuz, CSR, RMR, CRR, Deputy Official
5 Court Reporter in and for the 380th Judicial District
6 Court of Collin County, State of Texas, do hereby
7 certify that the above and foregoing contains a true and
8 correct transcription of all portions of evidence and
9 other proceedings requested in writing by counsel for
10 the parties to be included in this volume of the
11 Reporter's Record, in the above-styled and -numbered
12 cause, all of which occurred in open court or in
13 chambers and were reported by me.

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

17 WITNESS MY OFFICIAL HAND this the 11th day of
18 February, 2002.

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