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

VOLUME 6 OF 53

Trial Court Cause No. 380-80047-01

| | | |
|---|---|---|
| THE STATE OF TEXAS | * | IN THE 380TH DISTRICT COURT |
| | * | |
| V. | * | |
| | * | |
| IVAN ABNER CANTU | * | OF COLLIN COUNTY, TEXAS |

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REPORTER'S RECORD - VOLUME 6

MAIN JURY PANEL

CAPITAL MURDER JURY TRIAL

COPY

On the 21st day of August, 2001, the Voir Dire came on to be heard outside the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

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

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PROCEEDINGS

(Open court, venire present.)

THE COURT: Please remain standing, and I'll administer the oath to you. Please raise your right hands.

(All prospective venirepersons sworn at this time.)

THE COURT: Please be seated.

Good morning, Ladies and Gentlemen. My name is Charles Sandoval. I'm the presiding judge in the 380th District Court, and I believe that your jury service is going to be very interesting to you today. In every legal proceeding there's a certain sequence. What you find yourself doing is moving from one phase to the next, and the first thing that we're going to do this morning is determine if everyone is qualified to serve as a juror, and then I'm going to state to you the exemptions established by the Legislature for exemption from jury service. I'm going to ask you to listen carefully as I read these things to you.

To serve on a jury there are certain qualifications that you must meet. If you are not qualified and you sit on a jury, the case might need to be retried and everyone's time will have been wasted. First of all, you must be at least 18 years of age. Secondly, you must be a citizen of Texas and this county and qualified under the Constitution and laws to vote in this county. Next, you must be able to read and write the English language. Next, you must be of sound mind and



good moral character. You must not have served as a petty juror for six days during the preceding six months in the district court or during the preceding three months in the county court. You must not have been convicted of a felony. You must not be under indictment or other legal accusation of theft or of any felony. Any of these reasons requires that you not serve.

But there are also exemptions. The following persons are entitled to claim an exemption from jury service. You are not disqualified, but you are entitled to claim an exemption. If you waive your decision and choose to serve, we would be pleased to have you serve. The decision is yours. First, all persons over 70 years of age. Second, all persons who have legal custody of a child or children under the age of 10 if jury service by you would necessitate leaving the child or children without adequate supervision. Third, all students of public or private secondary schools. Fourth, all persons who are enrolled and in actual attendance at an institution of higher education. Fifth, all persons who are officers, employees of the Senate, the House of Representatives or any department, commission, board, office or other agency in the legislative branch of state government. Six, any person summoned for service who has served as a petty juror in the county during the 24-month period preceding the date of appearance for jury service here. And finally, any person who



is the primary caretaker of a person who is an invalid unable to care for himself or herself.

Please notice that there is no disqualification that permits you to be excused because you are too poor or too sick, because you are too busy, because you are in business for yourself or because you are not interested. That applies to me, too.

(Laughter.)

THE COURT: Jury service is one of the few obligations that asks each citizen to sacrifice his or her time. You may claim an exemption if you choose or may serve if you desire.

If you want to talk about a disqualification or exemption, or an extraordinary reason why you cannot serve, I'm going to ask you to line up outside of this auxiliary courtroom number 3, which is through these doors and straight ahead. And I'll hear all the things that I need to hear with regard to any qualifications or exemptions, and it will take us a few minutes to set up. Let's see here, those who have an excuse or want me to hear something, I'm going to ask you to remain behind, and everyone else I'm going to give a recess to until 10:30. So we'll take about an hour to do what we need to do, and then we'll all come back at 10:30, and we'll begin the next step in this process.

So, typically we have 10 or 15 people who line up,



and I have no idea how many people there will be. If we were through that much sooner, naturally I'd be happy to get started sooner. But we can expect to start again at about 10:30, except for those people who want me to hear -- or tell me something they want me to hear. Is there anything else from either side in this case?

MS. FALCO: No, sir.

MR. GOELLER: May I approach, Judge?

THE COURT: Yes.

MR. GOELLER: Have you been provided a list of no-shows yet?

THE COURT: Yes, I do. I tell you what, we'll have the clerk make you-all a copy.

MR. GOELLER: That would be great, Judge.

THE COURT: All right. We're in recess for about an hour, except for those people who line up out here and who want me to hear exemptions.

(Brief recess taken.)

THE COURT: We're on the record in the Cantu case, and this one is Cause Number 380-80047. And the Defendant is -- the attorneys for the Defendant are present, and the State is present by its attorneys. We have some jurors waiting outside the courtroom so I can hear their excuses, but I understand that their -- and let me say, too, I have given both sides -- the clerk has given both sides a copy

of the people who were absent, and let me read their names into the record. They're Thomas B. Walsh, Jerry Glover -- Jerry L. Glover, Richard A. Weiss, Jayne H. Green, Elvin -- Alvin L. Cooper, Judy S. Strother, Patricia L. Farmer and Debra S. Sulaica -- S-U-L-A-I-C-A. And let me see, that's one, two, three, four, five, six, seven, eight people who are absent, and I believe the attorney for the Defendant before we get started hearing excuses wanted to put some things on the record.

MR. GOELLER: Yes, Your Honor.

Judge, regarding the list of absent prospective jurors that the Court just read into the record, at this time comes now Ivan Abner Cantu, Defendant, and we request the court for Writ of Attachment for those absent jurors in accordance with Article 35.01 in accordance with the Texas Code of Criminal Procedure.

THE COURT: All right. I tell you what, I'm going to deny the motion for Writ of Attachment. I'm going to order the clerk to handle these absentees the same way we handle all the absentees for juror panels. And they may, at some future date, find themselves the object, rather than the subject, in a lawsuit. But is there anything from the State?

MS. FALCO: No, Your Honor.

THE COURT: And I believe you also had a Motion to Quash?



MR. GOELLER: Yes, Judge.

Judge, I would urge, on behalf of Ivan Abner Cantu, in both of these cause numbers his motion challenging the array. The gist of the motion, Your Honor, and I've given the Court the original. The court files were not in the District Clerk's office this morning as logically they would be here. I'd ask the Court to order that motion be filed with the papers in this cause.

Your Honor, we filed this motion challenging the array under Article 35.07 of the Texas Code of Criminal Procedure. My client will be and has been denied his right to a representative, fair cross-section of the community because the members of the Hispanic/Latino race have been systematically excluded. Attached to this is the United States Department of Commerce 2000 -- the most recent United States census, census 2000. And attached to that -- or within that attachment, Your Honor, is a general profile of the State of Texas, and the last page of that census report is specifically for Collin County, Your Honor.

The Court will note that on the -- in the second column under Hispanic or Latino and race, total population -- the total population of Collin County. The next line is the percentage, Hispanic or Latino, and if the Court would note the percentage is 10.3. Per the United States Department of Commerce 2000 census has determined that 10.3 is the



percentage of Hispanic/Latino people in Collin County.

Now, according to the jury questionnaires that were submitted, Your Honor, there are only five total persons who indicated that they were Hispanic or Hispanic other. Now, I have counted the Hispanic other as Hispanic, so we have a total of five. That equals only 2.5 percent of this jury panel that we have called on this case, Your Honor.

10.3 percent should equal a little over 20 persons -- 20.6 persons, so we can, I guess, round it up to 21 or round down to 20 for whole people, I suppose. But anyhow, we have a difference, Judge, of 24 percent less than we ought to have, and that is quite a significant difference. Five out of only 200 people where 10 percent ought to be Hispanic -- 10 percent plus.

Now, if you note, Your Honor, if you look at Asian, all right, this last page breaks down Asian population of Collin County as 6.9 percent. Now, the people that reported themselves of Asian or Asian mix were 14. Now 6.9 percent of 200 is 13.8. So, more -- it's right on the number, maybe just a little bit more. We were supposed to have 13.8; call it 14. 14 people reported they were Asian. Exactly on point with the Census 2000.

Look at black, or African-American jurors. Collin County U.S. Census says there ought to be 4.8 percent blacks in this county. Now, 4.8 percent of 200 is 9.6. Call it 9;



call it 10. Well, Your Honor, guess how many blacks reported they were black or African-American on your jury questionnaires? None. Right on the number.

So, the three distinct racial minorities in this county, Asians and blacks and Hispanics, Asians and blacks are right on the number. Hispanics somehow have been systematically excluded or grossly under-represented in this panel.

Therefore, I'm asking the Court to quash this panel. I'd ask the Court to order the clerk of court to summons 200 additional jurors so that my client could be represented -- or my client in his case would have a fair cross-section of the community. I would submit to the Court that the panel as constituted at the present time forcing, my client to select jurors from that panel would deny him, number one, his Sixth Amendment right to effective assistance of counsel. He will be denied, and at this point and has been denied his Fourteenth Amendment of the United States Constitution due process rights, and his equal protection as a citizen of the United States and his equal protection as a citizen of the State of Texas under the Texas Constitution. For all those reasons, Your Honor, I'd ask the Court to quash the panel. Thank you.

THE COURT: Anything from the State?

MR. SCHULTZ: Just very briefly, Judge.

Although there was an attachment to the motion, we'd certainly object to the Court considering that as evidence. It's merely an attachment. It doesn't have any self-proving characteristics.

It's certainly far from any demonstration, other than just the suggestions of defense counsel, about any systematic exclusion. For example, I dare say that a large percentage of people who might find themselves within the Hispanic ethnic group might well be noncitizens; thereby, making them, of course, ineligible for jury service under our law. It doesn't mean they're unlawfully in the United States, but they do not have citizenship status that would address that issue. I doubt seriously those same considerations would apply for African-Americans who would, it would seem logical to me, would naturally be born with United States citizenship.

Other than just reference to some unadmitted hearsay statistical information, there's no information of any systematic exclusion of any cognizable group or gender or race. And while I understand the nature of the motion and respect the nature of the motion, it's certainly totally lacking any type of proof that the Court should give credence to.

THE COURT: All right. I'll deny the motion.

Is there anything else from either side before we bring in the jury?



MR. GOELLER: Just very briefly, Judge. I'd like to file and ask the Court to -- I have filed Defendant's Objection to the Court's ruling of Juror Number 16, Franklin Ferrell, due to financial reasons in violation of the Texas Government Code 62.110, and I'd request a Writ of Attachment from the Court for absent Juror Number 16, Frank Ferrell.

In support of my motion, Your Honor, it became apparent after the Court, and I don't recall specifically the State asked any questions. I know I was asking him questions, it became apparent to the defense that the primary reason why Mr. Ferrell sought to be excused from jury service was financial. I believe he talked about airplane tickets and lodging, matters that were already set up in West Virginia, and things of that nature. I had asked him if he was not able to attend this ceremony how would that impact him, and all of his reasons were financial. So, at this time I'd ask the Court to order his presence, Writ of Attachment for Franklin S. Ferrell in that he is not exempt from this jury service.

THE COURT: All right. The objection is overruled, and the request is denied.

MR. GOELLER: Yes, sir.

THE COURT: Is there anything else from either side?

MS. FALCO: Your Honor, just briefly I've had an opportunity this morning to look over the instruction you



intend to read to the jury when we get back from the break. And my only objection would be on the second page under the heading, "You are now instructed as follows." The third paragraph makes reference to the definition of reasonable doubt as set out in Geesa. But since Paulson has overruled Geesa, we would object to you giving that definition of reasonable doubt to the jury.

THE COURT: All right. Is there anything else from either side?

MS. FALCO: One moment, Your Honor.

THE COURT: Let's invite the first juror in to see what kind of excuse he has.

Good morning. What is your name, ma'am?

VENIREPERSON: Monica Thibeau.

THE COURT: How do you spell your last name?

VENIREPERSON: T-H-I-B-E-A-U, Thibeau.

THE COURT: She appears to be on the -- Juror Number 5954-0560.

All right. Tell me what you want to tell me.

VENIREPERSON: I'm a part-time student in the evenings at UD (sic) Dallas. I wasn't sure if that was...

THE COURT: Let's see here. Technically, it says all persons who are enrolled in and in actual attendance at an institution of higher education.

VENIREPERSON: It starts next week.



THE COURT: Are you enrolled at this time?

VENIREPERSON: Yes.

THE COURT: And you start next week?

PROSPECTIVE JUROR: Yes.

THE COURT: Is there any questions from either side?

MR. GOELLER: No, Your Honor.

MR. SCHULTZ: No, sir.

THE COURT: Then, Ms. Thibeau, you are finally excused. Would you ask the next one to step in, please?

Come on up to the bench, please. Tell me your name.

VENIREPERSON: Daniel Blackwell.

THE CLERK: 54-2601, Number 138.

THE COURT: Okay. Tell me.

VENIREPERSON: Don't get me wrong, I'd love to serve on a jury, but currently I'm prosecuting a case in Houston, Harris County. I'm meeting with the DA this afternoon to look at the federal prosecution of a RICO Act.

THE COURT: Are you an assistant attorney?

VENIREPERSON: I do courtroom investigation. We arrested (inaudible) and filed cases. We're supposed to meet with the (inaudible) County Sheriff Department and the DA's office, Houston Police Department and (inaudible).

THE COURT: I tell you what, you don't appear

to come under any of the exceptions, so it's just business, right?

VENIREPERSON: It's business. If I'm going to stay, I need to contact them to get a delay. I'd love to do jury duty. It's what I do.

THE COURT: All right, sir. Are there any questions from the State?

MR. SCHULTZ: Nothing. Well --

DIRECT QUESTIONS

BY MR. SCHULTZ:

Q. What you're really saying is it's a business situation; is that a pretty fair statement?

**A. I would say so. I mean, I've been called for jury duty five or six times, and because I do courtroom investigations and I'm a police officer, they always tell me they're interested in me, but that's what's (sic) going on here.**

Q. You're not going to hold that against anybody if the judge denies your request?

**A. No, absolutely not.**

Q. You won't take it out on the State or the Defense?

**A. Absolutely not. I'd love to be on jury duty.**

Q. We'd love to give you the chance.

(No omissions.)



CROSS-EXAMINATION

BY MR. GOELLER:

Q. Why is it you'd love to?

**A. Because I've been involved in law enforcement since I was seventeen years old.**

Q. Who do you work for?

**A. I work for Petco.**

Q. What's Petco?

**A. They're retail -- specialty retail.**

Q. Retailing what?

**A. Petco.**

Q. Like, dog food and pet stuff?

**A. Yes.**

Q. Corporate security?

**A. Corporate investigator, not security. We do loss prevention and do internal cases, and the case we're involved in --**

Q. Employee stealing dog food?

**A. It's a little more advanced than that, but they stole trucks, and five of them that are -- this is where the RICO Act comes in, where they have an organized group to take it from one place to another place for sale in exchange.**

MR. GOELLER: That's all I have, Judge.

THE COURT: Is that all from both sides? All right, sir. I tell you what, based on what you told me, I



cannot excuse you at this time.

VENIREPERSON: If we're going to meet back at 10:30, I need to make calls now if can I do that?

THE COURT: You've got plenty of time.

Yes, sir. Tell me your name.

VENIREPERSON: John Lau.

THE COURT: And you're Juror Number 7. Tell me your excuse.

VENIREPERSON: I'm asking a question. I have never been serving jury duty. I have always been serving in downtown Dallas. This is first time I get called.

THE COURT: Is your residence 5622 Harbor Town Drive? Is that in Collin County?

VENIREPERSON: In boundary, I always go to downtown.

THE COURT: I tell you what, let me see if I can get a Mapsco and take a look and see whether you're in Dallas County or Collin County, because I have a strong suspicion that you belong here.

VENIREPERSON: Does it mean if I come here that I don't have to go downtown anymore? I just want to clarify that, sir.

THE COURT: Are you north of Frankford?

VENIREPERSON: South.

MS. FALCO: I used to live in that zip code,



and that is Collin. The line across the Tollway and Preston is actually as far down as -- it's beyond Frankford. It's a little bit further down.

THE COURT: I tell you what, you're at 5622. I tell you what, it appears from the Mapsco that all of Harbor Town runs east and west.

VENIREPERSON: Uh-huh.

THE COURT: And all of it is in Collin County and it looks like it may be -- looks like it may be within a hundred yards of Dallas County.

VENIREPERSON: Yes, sir.

THE COURT: But it all looks like Collin County, so you appear to be qualified.

VENIREPERSON: Can I ask a question? If I am get called in Dallas, can I say that I serve here?

THE COURT: What I don't know is if -- I don't know that you're compelled to serve on a city jury in Dallas or not, and I guess they call jurors for city cases down to the courthouse, right?

MR. SCHULTZ: Did you go down to Main and Harwood? That's their city courts.

THE COURT: But if he was called for county cases I would assume -- here's what you must do if you're ever called down there. Make sure they know exactly where you live. But at any rate, you are going to sit.

VENIREPERSON: From now on, I belong to this court -- this district I suppose?
THE COURT: For a few days, I suppose.
VENIREPERSON: I just want to clarify that, sir.
THE COURT: Truthfully, I cannot tell you. I'm not trying to be allusive, but here's what I do know. I do know you're qualified to serve in Collin County, and that's the only inquiry I need to make.
All right. Let's talk to the next one. Are you Cathy? Let's see here, you are Juror Number 32. Tell me.
VENIREPERSON: As much as I would love to serve, I've got two boys; 13 and 8, that I might have to take to school and pick up every day. One of them goes to a private school in Dallas, Winston School, and it gets out at 3:15, and I'm the only one to take and pick him up.
THE COURT: And one of them is under the age of 10?
VENIREPERSON: Yes.
THE COURT: All right.
VENIREPERSON: But I hope you ask me again, but my husband is traveling for the next two weeks, otherwise I'd love to be here.
THE COURT: Any questions from the State?
MR. SCHULTZ: (Shakes head.)



THE COURT: Any questions?
MR. GOELLER: No, Your Honor.
THE COURT: You are finally excused.
Bring in the next person. Please come up to the bench.
VENIREPERSON: I just have --
THE COURT: What is your name?
VENIREPERSON: Salvador Aceves.
THE COURT: This is Juror Number 1, Aceves.
VENIREPERSON: I was just curious. I moved out of the county, like, two and a half, three weeks ago.
THE COURT: Where did you move to?
VENIREPERSON: To, I guess it's kind of borderline Denton. It's Frankford and Marsh, like --
THE COURT: What's the address?
VENIREPERSON: 2726 Renwick.
THE COURT: Are you sure it's in Denton County?
VENIREPERSON: It's definitely not in Collin. It's either Dallas or --
THE COURT: Where is it?
PROSPECTIVE JUROR: Marsh and Frankford -- Marsh and Trinity Mills, actually.
THE COURT: Marsh and Trinity Mills.
VENIREPERSON: It's on the northwest side of



Marsh.
THE COURT: How far from Marsh and Trinity Mills?
VENIREPERSON: 2726.
THE COURT: Is it by Renwick, R-E-N-W-I-C-K?
VENIREPERSON: Old Mill Road is like another road.
MR. SCHULTZ: When you send mail and receive mail, what is the address?
VENIREPERSON: Carrollton, Texas. I mean, I just moved. I just don't want it to be a mistrial.
THE COURT: Old Mill?
VENIREPERSON: Yes, sir. Like, Marsh and Old Mill, and then that's a subdivision where Renwick is.
THE COURT: Tell me the address again.
THE DEFENDANT: 2726.
THE COURT: It appears to me that it's in Collin County, but you guys take a look right here. Let me just show you. It's right here, okay. So it's right under the M, and he said it was 2726, but it looks to me like it's clearly in Collin County right under M. Right there is where Renwick is presented.
MR. GOELLER: I think it's Denton. I guess this separates Denton from Dallas.
VENIREPERSON: It's really right.



THE COURT: That's Denton, isn't it?
MR. GOELLER: But I don't know where --
THE COURT: Take a look at the next map. I'm sure it would be right on the edge.
VENIREPERSON: Maybe it's a couple of hundred yards southwest of it. It's weird. I can be in Denton, Dallas or Collin by half a second.
THE COURT: Is there any question from the State?
MR. SCHULTZ: (Shakes head.)
THE COURT: Mr. Goeller?
MR. GOELLER: (Shakes head.)
THE COURT: Then, Mr. Aceves, you are finally excused.
THE COURT: Lynnette Riggio, Number 64.
Yes, ma'am. Tell me why you should be excused.
VENIREPERSON: I'm a supervisor/investigator for the Food and Drug Administration, and I have an 8-year old son, who I am the sole caregiver and who's in third grade.
THE COURT: Boy or girl?
VENIREPERSON: And he's in school during the day and goes to daycare, and I have a certain time I have to pick him up by and certain sports --
THE COURT: What time do you pick him up?
VENIREPERSON: I have to be there before 6:30.

He stays there until close to 6:30.
THE COURT: I think we can accommodate you.
VENIREPERSON: The sessions don't -- will always get me out by 5:30 so I can get there in time?
THE COURT: Yes.
VENIREPERSON: And it doesn't matter to anybody that I am in law enforcement?
THE COURT: A question for down the road.
VENIREPERSON: Okay.
THE COURT: Any questions from the State?
MR. SCHULTZ: Not on excuses.
THE COURT: Any questions from the defense?
DIRECT QUESTIONS
BY MR. GOELLER:
Q. You said you were in law enforcement?
**A. I'm a supervisor/investigator. We're in charge of enforcing food drug and regulations associated with that act.**
Q. And you work for the FDA?
**A. Yes.**
Q. Are you a police officer?
**A. No.**
Q. Have you ever been a police officer?
**A. No.**
Q. What kinds of investigations do you --
**A. We have authority to go in and inspect,**



**investigate. We don't have automatic detention or warrant, although we do work with obtaining warrants and seizures and injunctions from --**
Q. With the FBI?
**A. Well, we work with them. We work with the office of criminal investigations. We work with several different other regulatory agencies.**
Q. What's your educational background?
MR. SCHULTZ: Excuse me. I can't see why they need to individually voir dire the juror on whether or not she would have been excused when it doesn't have anything to do with anything that may be an issue. It may be if she remains on the panel, but I can't see how this would relate to whether or not she's excused for (inaudible).
THE COURT: If you've got a question with regard to the excuse she's put forth or anything, tell us with regard to her qualifications.
Q. BY MR. GOELLER: With regards to your son, what time in the morning -- do you take him somewhere?
**A. Yes. I have to -- he catches the bus at 20 after 7 in the morning.**
MR. GOELLER: Okay. Okay. Thank you, ma'am.
THE COURT: Thank you, ma'am. You are not excused.
Are you Michael Hooper?



VENIREPERSON: Yes, Your Honor.
THE COURT: Tell me your excuse.
VENIREPERSON: I'm a third-year law student at Texas Weslyan, which would qualify me for an exemption. I don't want to be permanently exempted; however, at this particular time I'm doing a summer law internship, and I've been asked to accompany (inaudible) for trial on Sunday and given a rare, but exceptional, opportunity to argue a motion in federal court on September 4th once I get down there for pretrial.
THE COURT: Is there anything from the State?
MR. SCHULTZ: Are you going to be in school in the fall?
VENIREPERSON: I'm in school right now, but also finishing my internship right now.
MR. SCHULTZ: But what I'm saying, are you actually enrolled and buying law books?
VENIREPERSON: Exactly. I had class last night, my first class.
MR. SCHULTZ: No questions.
THE COURT: Mr. Goeller, any questions of this juror?
MR. GOELLER: You want to be a prosecutor?
VENIREPERSON: Yes, as a matter of fact.
MR. GOELLER: That's all I have.



THE COURT: Mr. Cooper, you are finally excused. Let's see, bring in the next one.
Ma'am, you're Patsy Cooper, and you appear to be Number 108, Patsy Cooper. Tell me what you need to tell me, ma'am.
VENIREPERSON: Well, my son was wrongfully convicted of a crime I feel, and I have got a poor opinion of how things were handled and of the justice -- some of the people in the justice system.
THE COURT: Okay. Let me ask you this: With regard to the whether or not you're qualified and what you heard me read, you seem to be qualified as a juror; is that correct?
VENIREPERSON: Yes.
THE COURT: And you don't appear to have stated any exemption.
VENIREPERSON: No, I don't have any exemption.
THE COURT: All right.
VENIREPERSON: I just have personal kinds of biases that I don't know if I could be totally fair.
THE COURT: I understand. But I cannot excuse you at this time. You may join the others outside.
All right. How about the next one? Yes, ma'am. Dawn Price, you are Number 46.
VENIREPERSON: I've been selected for a jury

for next Tuesday, also.
THE COURT: Where is that?
VENIREPERSON: In Plano Municipal Court.
THE COURT: And when were you selected?
VENIREPERSON: I'm sorry. I need to appear for something. I'm doing it today.
THE COURT: That's okay. You'll remain here.
THE DEFENDANT: And I just wanted to inform you that I have travel plans for the following Saturday, so I just thought I'd give you FYI on that as well.
THE COURT: Let me ask: Is there any questions from the Defendant?
MR. GOELLER: Your traveling plans, Ms. Price, when would you be returning?
VENIREPERSON: I'm not leaving until September 1st, which is Saturday, and I'll be returning the following Thursday, which will be after Labor Day, Wednesday or Thursday.
THE COURT: Anything from the State?
Say, Ms. Price, would you do this: Call the municipal court and tell them that you're -- let's see, you're Number 46.
VENIREPERSON: I called them and told them I was selected, and they said for me to appear and say the same thing, and if that's the case --



THE COURT: And actually that's on Tuesday? I suppose you can appear and tell them on Tuesday. That's a week from today.
VENIREPERSON: Yeah, it's a week from today.
THE COURT: I tell you what, we will cross that bridge when we come to it.
VENIREPERSON: Okay.
THE COURT: Let's hear from the next one.
Yes, ma'am. You're Mrs. Blanchard, Juror Number 183, Sherrie Blanchard.
VENIREPERSON: My husband accepted a job with a corporation in Austin. We are moving now to Williamson County, and I've got a mortgage proposal with my realtor who listed my house.
THE COURT: When do you actually move?
VENIREPERSON: I'm packing now.
THE COURT: Are you?
VENIREPERSON: Yeah. He's one of those engineers caught in lay-offs. We're fortunate that we even have a job.
THE COURT: All right. Is there anything else? Any questions from the State?
MR. SCHULTZ: No Judge.
THE COURT: Is there any question?
MR. GOELLER: No, sir.



THE COURT: Does either side have any objection to excusing Mrs. Blanchard?
MR. GOELLER: We'd like to agree to excuse the juror, Judge.
THE COURT: You are finally excused. You may leave.
Mr. Powell, let's talk to the next one.
MR. SCHULTZ: Before we bring this one in, can I address the Court very briefly? It's going pretty well right now, but I believe if you ask us in front of a juror, one side or the other, like the dog food guy (inaudible). It goes both ways and both puts us in a bad spot.
THE COURT: Why don't you guys give each other the "hi sign," and if you agree to something let me know and we'll do it. Then I'll know we got a problem and need to discuss the matter.
MR. SCHULTZ: Yes, sir.
MR. GOELLER: That's good with us, Judge.
THE COURT: What is your name, sir?
VENIREPERSON: Ed Landrum.
THE COURT: Juror Number 48. And tell me what you need to tell me.
VENIREPERSON: Well, my last DWI was a felony, so you said something about a felony.
THE COURT: What court were you in?



VENIREPERSON: Here in McKinney.
THE COURT: Do you remember who the judge was?
VENIREPERSON: No, sir, not for sure. It's been probably 6 or 8 years ago.
THE COURT: Were you -- did you plead?
VENIREPERSON: I got a year's probation.
MR. SCHULTZ: A year's probation?
VENIREPERSON: Yes, sir.
MR. GOELLER: One year?
VENIREPERSON: Might have been two years.
MR. SCHULTZ: Why do you think it was a felony?
PROSPECTIVE JUROR: That's what they told me.
MR. GOELLER: Do you remember the name --
THE COURT: Go ahead.
MR. GOELLER: Do you know the name of the judge?
VENIREPERSON: No, I sure don't. My memory isn't real good. It was over at the courthouse over here.
MR. GOELLER: How many years ago?
VENIREPERSON: About 6 or 8 years. It was a third one. That's what they told me.
MR. GOELLER: Do you remember what the judge looked like?
VENIREPERSON: Little judge, pretty young.
MR. GOELLER: Male or female?

VENIREPERSON: Male.
MR. GOELLER: Little judge?
VENIREPERSON: If I wished I had brought my paperwork with me. I didn't realize --
THE COURT: Is wasn't Judge Copeland?
VENIREPERSON: That sounds familiar.
THE COURT: What do you show on your form?
MS. FALCO: I can't tell from what we have done, to answer your question.
Did you have a DWI in 1971, Mr. Landrum?
VENIREPERSON: Yes, ma'am. I believe --
MS. FALCO: Looks like you got probation for that. It was --
MR. SCHULTZ: It was in Collin County, the last time you got a felony?
VENIREPERSON: The last one was here.
MR. SCHULTZ: Did you have some trouble in Garland back in 1975?
VENIREPERSON: Yes, sir. Yes, sir.
MR. SCHULTZ: Was that a burglary?
PROSPECTIVE JUROR: No, but it was dropped.
MR. SCHULTZ: And then you had a couple of frauds in Dallas, but must not have been -- you had one in '77 and '78, and looks like they gave you one day on them.
VENIREPERSON: I don't remember those.



MR. SCHULTZ: But you don't know if it was a felony?
PROSPECTIVE JUROR: That's what they told me. It was a felony.
THE COURT: Let's do this. I'm going to ask the DA to take a look at your record. I'm not going to excuse you for now, but I may excuse you if we find out what we need to find out. And let me make sure I've got your name. Eddie Landrum?
VENIREPERSON: Yes, sir.
THE COURT: Let me ask you to wait outside then, and we'll see you back in the courtroom.
MR. GOELLER: Can I ask you one more question? Did you serve out probation successfully?
VENIREPERSON: From --
MR. GOELLER: You were never revoked?
VENIREPERSON: No.
MR. GOELLER: Never went to the penitentiary?
VENIREPERSON: No.
MR. GOELLER: Never went to the county jail?
VENIREPERSON: Just the time I was in --
MR. GOELLER: When they first arrested you?
VENIREPERSON: Yes.
MR. GOELLER: Thank you, sir.
THE COURT: Just go back in.



Do you want to call the next one in?
Yes, ma'am. Come on up to the bench, please, and let's see, ma'am, you are Roberta Alexander-Eads, and you appear to be Number 144.
VENIREPERSON: Actually, I live in Allen. We're in Plano schools, but I'm moving into Allen. And my husband is out of town on business, and the children go to school in Allen, and I have no way to get back and forth.
THE COURT: How old are your children?
VENIREPERSON: They're in high school?
THE COURT: And you moved where within Collin County?
VENIREPERSON: I lived in Plano ISD, but we bought a home so they can go to Allen schools. So until he comes back from his trip --
THE COURT: Ma'am, I haven't heard anything from you that makes you either unqualified or exempt.
VENIREPERSON: I'm just trying to figure out how to pick them up at 3:20. They have no way.
THE COURT: How old are they?
VENIREPERSON: They're in high school, 15 and 17.
THE COURT: Okay. Any questions from the State?
MR. SCHULTZ: No.



THE COURT: Any questions from the defense?
MR. GOELLER: No, Your Honor.
THE COURT: I cannot excuse you.
VENIREPERSON: Okay.
THE COURT: Let me hear the next one.
Are you Eric Thiel?
VENIREPERSON: Yes, I am.
THE COURT: And you had called one of the jury clerks. Step back.
VENIREPERSON: We are basically moving out of Dallas in a week and moving to San Antonio, Texas, and I've got a letter to show -- I don't know if I should give that to you, but we're going to be out of the area, and we've already signed a lease on a new house there while we're transitioning.
THE COURT: Let me take a look at it. Is there any questions from the State?
MR. SCHULTZ: Is this a permanent relocation?
VENIREPERSON: It's permanent. It's a relocation.
THE COURT: With Southwestern Bell?
VENIREPERSON: My last position just ended, and I took a voluntary layoff position -- voluntary layoff package and got a new job. I'm supposed to start there on the 27th.
THE COURT: This indicates no later than August 27th, which would be six days from now.

MR. GOELLER: Sir, where are you living?
VENIREPERSON: We're in Frisco.
MR. GOELLER: Do you have a home?
VENIREPERSON: Yes.
MR. GOELLER: Have you sold your home?
VENIREPERSON: It's under contract to be sold in a day or two.
MR. GOELLER: You're closing?
VENIREPERSON: Closing.
MR. GOELLER: You bought a new home?
VENIREPERSON: We're living in San Antonio, and the lease agreement will be signed today. I would have brought it in, but it wasn't final.
THE COURT: Do you and Mr. Schultz need to confer, or does either side have any other questions?
MR. SCHULTZ: No, sir.
MR. GOELLER: I don't have any questions.
THE COURT: All right, sir. I am going to finally excuse you from service here.
VENIREPERSON: Thank you.
MR. SCHULTZ: Did you let him go?
THE COURT: This juror is finally excused.
Let's see, bring in the next juror.
Yes, ma'am. You are Patricia Barr?
VENIREPERSON: I just want to preface this with



my concern is I have an elderly mother who moved here a few weeks ago. She lives in the apartment next to me. I do live there full time. I'm not there with her. She has home help come in, but I see about her after work and have gone to some doctor's appointments. She has been ill for a few weeks and been in Presby Plano and sent her to Healthsouth for three weeks. My concern is if this were more than a couple of days, I would be concerned for my mother. I'm the only relative besides my husband here not being with her but if -- and you probably could tell me how long it will last, but if something happened, can I go, and that kind of thing?
THE COURT: It's going to last quite a while, but you're not the primary caretaker of your mom?
VENIREPERSON: I guess that would mean, like, home healthcare person? No, because I do work full time.
THE COURT: I cannot excuse you.
VENIREPERSON: Thank you.
THE COURT: Let me get your name.
VENIREPERSON: Fatemeh Farazianfardkoh.
THE COURT: Number 153. Tell me what you need to tell me. What would you like to tell me?
VENIREPERSON: I don't know. This is first time I came to the court, and I don't have any idea what. This is interesting for me.
THE COURT: Good. Well, I hope your service is



interesting.
VENIREPERSON: Yes.
THE COURT: Is there anything else you'd like to tell me?
VENIREPERSON: No.
THE COURT: All right, sir. Then we'll see you in the other courtroom about 10:30.
VENIREPERSON: Yes, sir.
THE COURT: Thank you very much.
Send the next one in. Jim Rountree, Number 82.
VENIREPERSON: I'd like to request a reschedule for jury summons. I have two visitors -- high-level management visitors from Japan that will be here on Thursday, and this trial may not go that long, but I would not want to chance -- we have a major contract negotiation on Thursday and a meeting Wednesday evening. I understand business is not an exception.
THE COURT: That's true.
VENIREPERSON: I hate to see people come from Japan, but I can understand that.
THE COURT: I have all the sympathy in the world because I've been in the same situation, but the law doesn't.
VENIREPERSON: I understand the law.
THE COURT: So, I'm sorry.



VENIREPERSON: No problem. Thank you.
THE COURT: How do you do, sir? And you are Mr. Bergman?
VENIREPERSON: Yes, sir.
THE COURT: Gregory Bergman, and you appear to be Number 60. Tell me what you need to tell me.
VENIREPERSON: I'm traveling Thursday night. I'm the best man in my brother's wedding. The bachelor party is Saturday. We've got a chartered boat on Saturday as well. I'd have to change my ticket, and I don't know if I would be -- if I have to eat that cost. If I'm selected or not, I don't know if you'll be done. If I knew it would be done by Friday but with 200 folks --
THE COURT: You're the best man?
VENIREPERSON: I'm the best man. We've got -- this is for the bachelor party. It's fun. I'll admit that.
THE COURT: When is the wedding?
VENIREPERSON: September 20th or September 22nd.
THE COURT: All right. I'm afraid I cannot excuse you.
VENIREPERSON: Okay.
(Venireperson exits the courtroom.)
MR. GOELLER: Judge, we can agree to excuse him so he can go to that wedding.

THE COURT: Would you please tell Mr. Bergman that he's finally excused.

All right, sir. You are Jonathan Fisk, Number 194. Tell me what you need to tell me.

VENIREPERSON: August 23rd is mine and my wife's anniversary, and I have purchased tickets for us to go out of town, and it's possible that it could go -- interfere with our prearranged tickets. And, secondly, I have a letter from my employer excusing me, but my primary concern is the anniversary that I have scheduled.

THE COURT: And if you didn't go down, you would have to go later.

VENIREPERSON: Reschedule the trip, but I purchased the tickets the middle of June for this flight.

THE COURT: I'm sorry. I cannot excuse you.

VENIREPERSON: Okay.

THE COURT: I cannot excuse you.

VENIREPERSON: Good morning.

THE COURT: Your name is Albert Ferrari. Tell me what you need to tell me.

VENIREPERSON: I just talked to one of the cops out there because I'm moving to New York Friday. So, if this thing was going to go into Friday, there was a going to be a problem for me.

THE COURT: What cop did you talk to?



VENIREPERSON: One of the ladies out there.

THE COURT: What did she tell you?

VENIREPERSON: She said I should speak to you about it.

THE COURT: Anything else?

VENIREPERSON: No, that's it.

THE COURT: And you're planning to move on Friday?

VENIREPERSON: Yeah. Me and my wife and with our kids.

THE COURT: What are you going to do?

VENIREPERSON: I'm originally from New York, and I was transferred to the Stanford, Connecticut office. I work for Perot Systems.

THE COURT: Did the attorneys need to confer?

VENIREPERSON: Friday morning.

THE COURT: And you're going to be with Perot Systems?

VENIREPERSON: That's correct.

MR. GOELLER: I think we've reached an agreement, Your Honor.

THE COURT: All right. You are finally excused.

VENIREPERSON: Okay.

THE COURT: Is this agreeable to your client, Mr. Goeller?



MR. GOELLER: Yes, Your Honor.

THE COURT: You are finally excused, Mr. Ferrari.

This man appears to be named Bill Butcher and -- well, let's see, number 30, James Butcher.

VENIREPERSON: My mother is 95. She lives in Sarasota -- excuse me -- Florida, and on June 10th she broke her hip. She's, as I said, 95. She was --

THE COURT: Do you want to be excused?

VENIREPERSON: It would just be postponed.

THE COURT: All right. Then I'll tell you what, I'll tell the clerk to put you on a list to pass you.

VENIREPERSON: Yes, sir.

THE COURT: Thank you, Bill. You are finally excused.

VENIREPERSON: Thank you.

THE COURT: Simms, Gary Simms, Number 47.

VENIREPERSON: I've got a doctor's appointment this Friday afternoon and got medication, and I'm going to a new doctor. And I was wondering if this would be wrapped up and determine if I can keep that, if this case may be wrapped up.

THE COURT: Your commitment is for Friday afternoon?



VENIREPERSON: Yes.

THE COURT: I can tell you that, regardless of what happens, you can keep that commitment on Friday.

VENIREPERSON: That's all I needed to know. I can keep that.

THE COURT: Is there any question from either side?

MR. SCHULTZ: No, Judge.

MR. GOELLER: No, Your Honor.

THE COURT: Then let me ask you to join the larger group. You are not excused, but you will be able to keep that commitment.

All right. The next one is Enrique Hernandez, Number 162.

VENIREPERSON: (Inaudible) about eight and a half (inaudible).

THE COURT: He indicated he was arrested about a year ago.

VENIREPERSON: Eight and a half years for drunk driving.

THE COURT: Let me ask you to speak up so she can hear you.

VENIREPERSON: Yes, that was it. I just needed to know if you needed to know that.

THE COURT: That's fine, and we'll see you in

there about 10:30.
THE BAILIFF: That's everybody, Judge.
THE COURT: And the time is 10:32. So is there anything else from either side?
MR. SCHULTZ: No, sir, nothing I can think of.
MR. GOELLER: So we'll seat the entire panel, minus those who have been excused or didn't show, or which have been waived by the Court in its rulings. Then will there be -- will we have enough time to examine people or decide whether or not we need a shuffle?
THE COURT: We still have a chance to shuffle. Do you want to have them reseated?
MR. SCHULTZ: There's no one in there.
THE COURT: And tell me if you want a shuffle. And the main thing we're going to do as far as when we go back in there is pass out questionnaires, but we can't do that if we find out we're going to do a shuffle.
Incidentally, I've asked the clerk to do that -- prepare a shuffle. So, it's just a matter of taking them out and bringing them back in, so a shuffle is not going to take long.
MR. SCHULTZ: The shuffle has already been done.
MR. HIGH: Let me ask a question.
THE COURT: Yes, sir.



MR. HIGH: I don't think I got the names of the jurors that are absent.
THE COURT: She put a seat number on there so that solves that.
Is there any way you can get a quick read on Eddie Landrum?
MR. SCHULTZ: That's obviously what he was talking about, and that's not a felony for sure, but I've got -- I'd at least have to call an investigator. We'll get him to come over -- Jerry Johnson, the investigator.
THE COURT: I kind of suspect he is, too, but who knows.
Let me show you-all something with regard to one of the absent jurors, and I just noticed this. This was given to me, I understand, yesterday, and it's a letter from a medical doctor named Jack Zigler, who's at Texas Back Institute. And the memorandum reads as follows:
August 17th, 2001, concerning Richard Weiss, and Weiss is the fourth one on the list of absent jurors.
To Whom It May Concern: He's got current HNP with L-5 to S-1. This is a patient I have been treating for above diagnosis for quite some time. Due to this, the patient is very limited in his ability to sit and/or walk for any period of time. As such, I am recommending that this patient be excused for jury duty for the time being due to his physical



condition. Extended sitting would only exacerbate the patients's pain and hinder the healing process.
So, from this letter alone it seems to be reliable and credible and appears if Mr. Weiss would have shown up, in all likelihood he would have been excused anyway, but I guess he decided to take some help and not show up. But I thought I'd tell you that on the record.
MR. GOELLER: Judge, may I address the Court?
THE COURT: Sure.
MR. GOELLER: Just for the record, I'd like to file this with the Court. Obviously, I could not file this with the District Clerk this morning until I was able to see what jurors did not appear for their service.
It's motions or requests for writs of attachment for absent jurors. Comes now Ivan Cantu and requests the Court, under 35.01 of CCP to order attachment for absent jurors (inaudible), and I have attached an order with the two choices for you to make.
THE COURT: And as I said on the record earlier, and I'll state again, the request is denied. And I tell you what, I'm going to go ahead and file stamp this myself in the lower, right-hand corner, filed on August 21st, 2001 at 10:40 a.m.
All right, sir. And the order denying the motion is signed. And so I suppose we need to move the Defendant



back in before we start seating the jurors, and then once we get in there you guys give me the hi sign if you want a shuffle. If you don't, all I'm going to do is ask them to pass out the questionnaires, and tell them to come back, everybody to complete the questionnaires and go to lunch.
THE BAILIFF: All rise.
(Recess taken.)
(Back on the record in the central jury room.)
THE COURT: Please remain standing, Ladies and Gentlemen. You're here in a particular order and in a specific, particular order. And now I'm going to tell you that I'm going to ask you to move back outside, and we're going to put you in another order, in a completely different order. There is something that has to be done and -- let me start over again. As you know, you're seated in a particular order. Everybody has an assigned seat, and we're going to redo it. I'm going to ask everybody to step outside, and I know you're probably thinking to yourself why are we doing this, but there is a reason for it. And so I'm going to ask you-all to step outside, and then we're going to reseat you in a completely different order.
(Brief pause in proceedings.)
THE COURT: We're back on the record in Cause Number 380-8-double 0-47; State of Texas versus Ivan Abner Cantu. And Mr. Cantu and his attorneys are present, two

attorneys -- two attorneys for the State are present, and we had the panel in here a minute ago, and the attorney for the Defendant has asked for a shuffle, which we are doing at this time, and they're going to be reseated in here. Is there anything else from anybody before we start seating the jury again?

MR. SCHULTZ: Not on that issue, but kind of thinking ahead to when we're going to do group voir dire today, I'm thinking physically where we might put them with the tables here. And that maybe if we can do it in this far to-your-left section (indicating) I think it would be better because, for one thing, one of the posts are going to obscure us, and we'd find it more comfortable for them being able to sit at a table.

THE COURT: If that works better for you.

MR. GOELLER: And expand so they're not so deep, maybe at -- go to nine or ten just by reconfiguring the folding chairs. What we'll need to do is renumber the seats, come on and put them back on the correct seat, but we can do it any way you guys want to do it.

THE COURT: One through seven are going to remain, so is there anything else from either side? Let's make sure that we get with the jury clerks here and understand what they're proposing so that they don't sit on that side, so they have just that area and won't be any posts in between



them.

So I tell you what, are both sides ready to begin seating the jury once again?

(Discussion off the record.)

MR. SCHULTZ: We think we solved the problem on Juror Landrum because it did come into our office presented as a felony, and for whatever reason, it was not filed that way. It was filed as a misdemeanor and that reflects the sentence that he's talking about.

THE COURT: Okay. Wait until the Star Courier hears about this.

MR. GOELLER: We'd like to seat him as 12 at this time.

(Discussion off the record.)

(11:30 a.m. on the record.)

THE COURT: Mr. Powell, do we have everybody?

THE BAILIFF: We have them all.

THE COURT: Ladies and Gentlemen, thank you for your patience. I know this is a very cumbersome process, and there are reasons we do what we do.

Under your seats you'll find a clipboard and a pen, and I'm going to ask you to pull those out, and I'm going to ask the clerk to please begin handing to you some questionnaires. They are somewhat lengthy, and they are to be answered under oath, and so it's going to take a while to



answer the questionnaires. And what we're going to do is fill out the questionnaires right where we are, and after you finish and complete all the questions on your questionnaire, then you will take a break for lunch, and we're all going to come back at 2:00, all 185 of us.

And when you come back from lunch, then I'll have some additional instructions, and we'll do some other things in the case that you're going to hear.

Incidentally, this is a new central jury room, and you folks are one of the first juries to use this room.

(Discussion off the record.)

THE COURT: All right. As you know, you have a new seat number. I'm going to ask you, not only to put your seat number on the questionnaire in the upper right-hand corner, but also to put your new seat number on your badges so that when you return at 2:00, and everybody will return at 2:00, you'll be able to find the seat that you're going to come back to this time.

After the questionnaires are complete, I'll ask you to leave the clipboards and the pens in your seats. And as I said, just take the questionnaire alone to the door, and the clerk will get them from you.

All right. Is there anything else from either side in this case?

MR. GOELLER: No, sir, Your Honor.



THE COURT: Have I done everything I'm supposed to do?

THE CLERK: Yes, sir.

THE COURT: Then I'll leave it to you folks to do what you're supposed to do, and I'll see everybody at 2:00.

(Recess taken.)

(On the record at 2:06 p.m.)

THE BAILIFF: All rise.

THE COURT: Good afternoon, Ladies and Gentlemen. You've been summoned here as prospective jurors in a felony criminal case. The case on trial is the State of Texas versus Ivan Abner Cantu. He's charged with the offense of capital murder. The State will be seeking the death penalty in this case.

Let me introduce you to the parties who are here today. Seated to my left and representing the State are Jami Lowry.

MS. LOWRY: Good afternoon.

THE COURT: Gail Falco.

MS. FALCO: Good afternoon.

THE COURT: And Bill Schultz.

MR. SCHULTZ: Hello.

THE COURT: The person at the next table closet to me is Ivan Abner Cantu, the Defendant here. He's

represented by Don High.

MR. HIGH: Good afternoon.

THE COURT: And Matt Goeller.

MR. GOELLER: Good afternoon.

THE COURT: You have been qualified as jurors, and now I'm going to instruct you as prospective jurors in the case. Day after tomorrow we will begin individually interviewing you as prospective jurors in the case. Each one of you will be scheduled some time over the next month for an individual interview. Individual interviews are required by law in capital murder cases. The scheduling will be done as we work through a list of your names, so if you are toward the end of the list you may not hear back from us for a month or so. Just because you have not heard from us does not mean that you have been excused from the case or from your obligations as a juror.

During the individual interviews the State and the Defendant through their respective attorneys will be allowed to ask questions of you concerning your qualifications, your background, your experiences and your attitudes. In questioning you, they will not be permitted to meddle in your personal affairs, but will be trying to select fair and impartial jurors who are free from any bias or prejudice in this particular case.

Ladies and Gentlemen, I want to go over with you



some of the law that applies in a case like this. And I want to tell you that the law will be further explained to you during your individual interviews. I want to ask you not to ask anyone about law that applies in this case or discuss the case with anyone throughout this process.

The Defendant in this case is charged with the offense of capital murder. The State alleges that the Defendant participated in the capital murder of Jose Mosqueda on November 4th of the year 2000. First of all, the Defendant is presumed to be innocent. The presumption of innocence alone is sufficient to acquit him unless the State proves to the jury beyond a reasonable doubt that the Defendant is guilty. The law does not require a Defendant to prove his innocence or to produce any evidence at all. It is not required that the State prove the Defendant's guilt beyond all possible doubt, but it is required that the State's proof exclude all reasonable doubt concerning the defendant's guilt.

The return of an indictment by a Grand Jury is no evidence of guilt. The fact that a person has been arrested, confined, indicted for or otherwise charged with an offense gives rise to no inference of guilt at his trial. To be a juror you must be free from any bias or prejudice. This does not mean that you cannot have heard about the case. It does not mean you have to condone the kind of conduct charged. It means you have to keep an open mind during the trial and



consider all the evidence admitted before you. Your role as a juror is to decide whether the Defendant is guilty or not guilty based upon the evidence that you hear.

Before you begin deliberations, the Court will issue a further set of instructions that set out the exact laws which the jury will apply to the case. To be qualified as a juror you must be able to take and follow your oath as a juror. The oath will state as follows: You and each of you do solemnly swear that in the case of the State of Texas versus Ivan Cantu you will a true verdict render according to the law and the evidence, so help you God.

A person is criminally responsible as a party to a criminal offense if the offense is committed by his own conduct, by the conduct of another, or by the conduct of another for whom he is criminally responsible, or by both.

If the jury decides the Defendant is guilty of capital murder, the same jury is called upon to participate in the punishment phase of the trial by answering certain special issues submitted by the Court in another jury charge. The Court then has the responsibility of sentencing the Defendant to death by lethal injection or life in prison, depending on the answers to special issues, and the special issues read as follows: Special Issue Number 1, do you find from the evidence beyond a reasonable doubt that there is a probability the Defendant would commit criminal acts of violence that



would constitute a continuing threat to society? Answer, yes or no. Special Issue Number 2, do you find from the evidence beyond a reasonable doubt that the Defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another, or anticipated that a human life would be taken. Answer, yes or no.

If the jury unanimously answers Special Issues 1 and 2 yes, then they must answer Special Issue Number 3. Special Issue Number 3, taking into consideration all the evidence, including the circumstances of the offense, the Defendant's character and background and the personal moral culpability of the Defendant, do you find that there is sufficient mitigating circumstance or circumstances to warrant a sentence of life imprisonment, rather than a death sentence should be imposed? Answer, yes or no.

The offense of capital murder contains elements of murder, burglary of a habitation and robbery as lesser included offenses. Murder and burglary of a habitation are lesser offenses because the punishment range for each is imprisonment for life, for not more than nine, or less than five years, and in addition, a fine of up to 106,000 dollars can be imposed. The punishment range for robbery is not less than two, nor more than 20 years, plus a fine of up to 10,000 dollars. In murder, burglary of habitation and robbery cases

where the punishment assessed by the jury is ten years or less, a jury is asked to consider granting the Defendant a probated sentence.

In order to grant a probated sentence, the jury must not only decide if the sentence should be ten years or less, but also must find that the Defendant has never before been convicted of a felony and that the Defendant deserves a probation. To be a juror in such a case, you do not have to promise to give a probated sentence; however, you must be able to keep an open mind to the possibility that a probated sentence could be the appropriate punishment in some cases.

It is important that you not try to discuss this case or these instructions with anyone else, including your spouse, or allow anyone to discuss any of these things with you. It also would be improper for you to read anything about this case in the newspaper, to view anything about it on television, or to listen to any broadcast regarding the case on radio. It is only from the Court that you should receive instructions about the case and only from the witness stand that you should learn anything about the facts.

Ladies and Gentlemen, I have instructed you and given you a summary with regard to the law in the case, or the applicable law, and just very quickly I talked to you about the presumption of innocence and the fact that it stays with the Defendant throughout the trial and that unless the jurors



are satisfied beyond a reasonable doubt of the Defendant's guilt, after careful and impartial consideration of all the evidence, unless they are convinced beyond a reasonable doubt, they must acquit. And the law does not require a Defendant to prove his innocence or produce any evidence at all.

We talked about the burden of proving the Defendant guilty, and I talked about the fact that an indictment by a Grand Jury is no evidence of guilt. And finally I will tell you, Ladies and Gentlemen, once again, the Defendant may, but is not required to testify. The right to testify is a right accorded a Defendant. If the Defendant chooses not testify, you cannot consider that fact against the Defendant for any purpose whatsoever.

Here's what I want to ask you: Is there anyone here who cannot or will not follow these fundamental principles of law? All right, apparently not.

To be a juror in a criminal case you must be free from bias or prejudice in that particular case. This does not mean that you cannot have heard about the case. It does mean that you have to -- and it does mean that you have -- it does not mean that you have to condone the kind of conduct charged. It means that you have to keep an open mind during the trial and consider all the evidence admitted before you and apply the evidence to the law, which will be given to you by the Court in its written charge.



The State of Texas here alleges in this case that the Defendant, Ivan Cantu, participated in the capital murder of James Mosqueda, on or about November 4th of the year 2000. Has anyone here either heard or read anything about the facts of this case? All right. There's a lady back in the back. Could I have your name, please, ma'am.

VENIREPERSON: Lorna Bonner.

THE COURT: Could you say it again?

VENIREPERSON: Lorna Bonner.

THE COURT: Bonner, B-O-N-N-E-R. All right, is there anybody else? Thank you, ma'am.

Does anyone because of hearsay or otherwise have established in his mind such a conclusion as to the guilt or innocence of the Defendant as would influence him in this action in a -- in finding a verdict? All right.

All persons who are guilty of acting together in the commission of a criminal offense are what our law calls parties to that offense. A person that's criminally responsible is a party to criminal offense if the offense is committed by his own conduct, by the conduct of another for whom he is currently responsible, or by both. A person is criminally responsible for the conduct of another person if he acts with intent to promote or assist the commission of the offense and solicits, encourages, aids, directs or attempts to aid another person to commit the offense. A person does not



have to participate in the actual commission of the offense to be a party. However, a person's mere presence at the scene of the commission of the offense will not automatically make him a party.

To be qualified to be a juror you must be able to take and follow your oath as a juror, and the oath is as follows: You and each of you do solemnly swear that in the case of the State of Texas versus Ivan Cantu you will a true verdict render according to the law and the evidence, so help you God.

Criminal cases in Texas are tried in two separate phases; the guilt/innocence phase and the punishment phase. The first issue to be resolved by a criminal trial jury is whether the defendant is guilty or not guilty of the offense as charged. If the jury finds the defendant guilty of an offense, that same jury is then called upon to participate in the punishment phase of the trial. If a defendant is found guilty of capital murder, the actual punishment is assessed by the judge. There are two possible punishments for a defendant found guilty of the offense of capital murder; death by lethal injection or life in prison.

The punishment to be assessed by the judge in a capital murder case is decided by the way the jury answers certain special issues. In answering special issues, the jury shall consider all the evidence submitted to them in the

guilt/innocence phase of the trial, as well as that submitted during the punishment phase, including any evidence of the defendant's background or character, or the circumstances of the offense that militate -- or mitigate against the imposition of the death penalty.

Once again, I don't want to be redundant, but I think some of these issues you'll hear again, anyway, and I think they bear repeating, so let me repeat Special Issue Number 1 that will be asked of the jury if the Defendant is found guilty of the offense. Do you find from the evidence beyond a reasonable doubt that there is a probability that the Defendant would commit criminal acts of violence that would constitute a continuing threat to society? Answer, yes or not. Special Issue Number 2: Do you find from the evidence beyond a reasonable doubt that the Defendant actually caused the death of the deceased, or did not actually cause the death of the deceased, but intended to kill the deceased or another or anticipated that a human life would be taken? Answer, yes or no. If the jury answers Special Issue Number 1 and 2 yes, then it answers the third special issue which reads as follows: Taking into consideration all the evidence, including the circumstances of the offense, the Defendant's character and background, and the personal moral culpability of the Defendant, do you find there's sufficient mitigating circumstance or circumstances to warrant that a sentence of



life imprisonment, rather than a death sentence, should be imposed? Answer, yes or no.

Until the case is submitted to the jury for determination, no juror, or prospective juror, may discuss the case with anyone or remain within hearing of anyone discussing it, nor may you read any article, newspaper article, listen to any radio broadcasts or view any radio program that discusses the case. After the case has been submitted to the jury, the jury may discuss it only in the jury room when all the members of the jury are present. All the jurors must keep an open mind and must not decide any issue in this case until it is submitted to the jury for deliberation under the Court's instruction.

Between now and the time that you individually return, please give some thought to where you stand on the legal issues in this case, especially the death penalty. These matters will be discussed with you further during your individual interviews. At the end of the individual interview you will be told whether you need to return to court for further proceedings in the case. Ultimately a jury of 12 persons will be impaneled to try the case. You will be contacted by a representative of the court and directed when to report for your individual interview.

The individual interviews will be conducted on the fourth floor of the courthouse, and my courtroom is the 380th



District Court, which is the last court on the right when you exit the elevators on the fourth floor. It is very important that you report to the court at the time you are instructed.

And I can see that you-all have gotten back your report-back papers, and so I suppose you know when to come back now.

There is a possibility that the trial jury will have to be sequestered during the trial of the case. Whether sequestration will be necessary will depend on the intensity of the local media coverage of the trial and other factors that may be brought to bear on the persons selected as trial jurors. The chance that the jury will have to be sequestered is less if you strictly abide by the instructions given by the Court.

If you have an emergency that requires you to leave town, please call the court at 972-548-4762, and that number will be given to you -- you can call the courthouse and just ask for the 380th District Court, and you should call as soon you realize the necessity of leaving.

If we are able to impanel the trial jury before we reach one of you on our list of potential jurors, you will be contacted by a representative of the court and advised that you are excused from jury duty in the case. Until you hear from us one way or another, please be aware that you are a potential juror in the case and that these instructions still



apply to you.

All right. I want to tell both sides that I'm ready to excuse jurors -- just for today jurors Number 65 through the end, and we're going to ask Number 1 through 64 to remain here, but Number 65 through, I suppose, is it 185, whatever it is -- 185 to 190, whatever it goes to, I'm just about ready to excuse you.

Is there anything else that either side would like for me to say to the jury at this time as a whole?

MR. SCHULTZ: Nothing from the State, Judge.

MR. GOELLER: No.

THE COURT: Then Number 65, you're Number 65. Everybody after the gentleman who raised his hand is excused for now, and you'll be coming back at the times and the dates shown on the piece of paper that you have. All right. So, you folks are excused at this time, and you may leave.

(1 through 65 of the venire exit the courtroom.)

THE COURT: And I tell you what we're going to do with you 64 folks, we're going to seat you one more time, and we're going to put everybody in that column right there. So, the first seven people are going to remain where they are, but we'll renumber the seats in that section 1 through 64 and reseat you where you belong. And let me ask you to rise, and we'll reseat you and get started real quickly.

(Brief pause in proceedings.)

THE COURT: All right. The State may proceed.

MR. SCHULTZ: May it please the Court, Judge Sandoval, Mr. Goeller, Mr. High --

MR. GOELLER: Sir.

MR. SCHULTZ: -- Ladies and Gentlemen of the Jury Panel, my name is Bill Schultz, and I'm one of the prosecutors who's been assigned to prosecute this capital murder against this defendant, Ivan Cantu.

I don't recognize any of you, at least not in a day-to-day sense, but when I look at a lot of faces and see people in different contexts, as I do, it's very possible that you and I have had some kind of interaction in the past, that you know me, or we've had some connection. Does anybody think you know me from anywhere?

Okay. I was told this story. It's an aged story now. When I told it the first time it was very fresh. Back during the early '70s gas shortage I was still prosecuting, and we'd have to do really creative things to get a tank of gas during those early winter months, and I got into a fight with a guy over gas at the gas pump on my way to work minding my own business. And it wasn't a fist fight. It was more of a verbal kind of thing, and absolutely guess where I see him next? He's sitting on a jury panel, and I don't know him -- I don't recognize him. I was looking at a hundred faces out there, and I don't recognize him at all. He had the decency



and courtesy that said you're the guy that did something to me, and I was able to do something with him. So, I say that in all sincerity because it's important.

You guys want to be fair and impartial to both sides, and even though I believe you'd rise above any friendship or admiration or disagreement with the attorneys or anybody in this situation, nevertheless we need to know that.

I don't have the impression that you know either of my associates in this case, Ms. Falco or Ms. Lowry, formerly Grant. Does either anybody know either of my two associates in this case or think you've ever dealt with them in the past?

How about the defense attorneys, either Mr. Goeller to the far right at the defense table, or Mr. High here in the middle? Anybody recall meeting either of these people either from church or perhaps professionally, some service organization in Plano, something like that?

And does anybody know the Defendant, or believe that he or she knows the Defendant in this case, Mr. Cantu? I take it. You know, it's also very possible something will click later, but it can't be very big if none of us recognize each other.

This portion of the trial is called voir dire, or actually more appropriately pronounced voir dire. It's French. It's not Latin. A lot of people think it's Latin. It's not; it's French. What it literally means is "to see, to



speak." It's the opportunity the lawyers have -- probably the only time we have any opportunity before this trial is over to have any kind of interaction, any kind of discourse with the lawyer. We can talk with you. You can ask questions of me. It's up to the judge whether or not it's something that I can answer. You can't ask me what happened in this case. I'm not a witness. I wouldn't be giving sworn testimony. But you can ask questions about some proposition of law that might apply. You can ask questions about something that may be in your background that you think would affect how you would be as jurors, and you can offer that, and ask one or the other of us to go over something else. You can ask anything you want to ask, and some of the questions may be answered and some of them may not be answered.

But after that and after 12 people are selected, which is a fairly tedious -- a very tedious process in a capital case. After 12 people are selected and a number of alternates, which I'm guessing, with not having discussed it with the judge, we'll probably pick a pair of alternates, also, to go along with this 12-person jury. Then you can't talk with us anymore until the trial is over.

And that is so important and the perception of that integrity in the criminal justice system is so important that if I don't tell you this now, you're liable to think we're rude. Because, I've got to be honest, if I'm on an elevator



and recognize one of you on the elevator my first reaction is to figure some way to get off the elevator, not because I don't like you, or not because anything negative. I wouldn't want somebody seeing me get off the elevator with you. Somebody down the hall or some newspaper reporter, if the case is covered by the newspapers, might view it differently, and I don't want that and you don't want that, or you wouldn't want to be seeing that. So, that's what I'll try to do.

Doesn't mean I can't say good morning, doesn't mean I can't hold a door for you. If you're coming in and you've got a bundle, I can hold a door for you. Doesn't mean I'm rude, and I don't think you're rude because you don't want to talk to me. Any problem with that with anybody. That's true with defense lawyers, too. They're good people, and they'll respect perceptions just like I will and just like the rest of the prosecutors will.

I know, without even having to ask you, and some of you came up and talked to the judge. I know absolutely some of you have some personal commitments and personal things that are going on, trying to get your kids settled in school, because I know the first couple of three weeks are difficult. Their routine has been disrupted, and you recognize those things. I know some of you have relatives or parents that you're taking care of. I know that even for those of you who ordinarily work outside the home, I know just that concern

about child-care, and who will take care of my children, or who will pick up my kids if this runs late? I know all of these things are important. I suspect probably some of you have vacations that might be affected by this case. And I can only say as honestly and sincerely as I can, I mean this in my heart, so what? I mean it. I tell you why.

You know, I don't know how many of you have ever been to Europe, but go over to the Atlantic Coast in France, and you see those military cemeteries that are just cross after cross, and you think about those young people that went over there paid ultimately with their lives to preserve this kind of a system. And that was certainly a time when this whole society was greatly threatened and the liberty of the world was threatened. Nothing you or I have to do in this trial even begins to compare, so I don't say it like I'm casual with your time or your situation. This is more important than anything that you guys have got going on. And I hope you share my belief in that. I hope you take it to heart, but even if you don't, you won't change my mind. That's how it is.

Anybody got a strong disagreement with that proposition that whatever you have to sacrifice to maintain this free society with worth it, no matter what it is? Anybody disagree with me? Yes, sir.

PROSPECTIVE JUROR: My child is having surgery



on the day that I'm scheduled, so your "so what" doesn't matter to me. I don't care. So, I do disagree.

MR. SCHULTZ: Okay. Is that going to be something that's going to encompass the entire time of the trial?

VENIREPERSON: No.

MR. SCHULTZ: Is it, like, a day surgery?

VENIREPERSON: Yes.

MR. SCHULTZ: Nobody is cavalier about the process, so those kinds of things can be adjusted. I don't mean that. But what I'm saying is this is a -- literally, for this Defendant, it's a life or death situation, or at least potentially a life or death situation. That's what I'm referring to, and so this is just important stuff. We don't have the draft anymore in our society. All we have is jury service. That's the one thing you've got to do that actually involves service. Anybody else? Yes, sir.

VENIREPERSON: And I do have the ultimate respect for your opinion, and I'm not sure if I missed something early on when I should have spoken with the judge. But as far as a protracted situation this may be, and I'll end up in bankruptcy court. I'm the only provider of my family, that kind of stuff. And with all respect, I definitely want to give some service to the court, but an extended period of time would devastate us.



MR. SCHULTZ: I know you do. The law doesn't provide, and Judge Sandoval will tell you the same thing. The law doesn't provide the opportunity for business exemptions.

And I guess in many ways it's kind of like the draft. I mean, if you get drafted for service, when your country thinks it needs you, you can't say, well, I've got a business that's just getting started, Army, or that kind of thing. We're not in deference to it, but I mean, this is a case where the State is seeking to take his life.

VENIREPERSON: I understand that.

MR. SCHULTZ: And my point is, this is big stuff. I don't trivialize it. They don't trivialize it, and I know you're not, either.

We don't have any control over the business exemption, and that's really not Judge Sandoval's call, either. You can't, because the law says business excuses are not those that allow this to happen. You can't be off for business reasons. Many people probably are affected economically by it. So I'm just saying it's not my call. It's not even the judge's call. It's the law.

VENIREPERSON: So not being able to feed my children and pay my mortgage is irrelevant?

MR. SCHULTZ: No. The law doesn't allow that as an exemption, is what I'm trying to say.

VENIREPERSON: Okay.



MR. SCHULTZ: Does that make sense? Do you follow what I'm saying?

There are some things that might be exceptions to your obligation to jury service. By definition, that's not one of them. If you stop and think about it, most jurors are going to be affected economically. I mean, sure, if you're lucky enough to work for a corporation that provides jury service payment for just regular service, there's a lot of corporations that do. That part is good. But many people get affected economically by jury service.

And ordinarily, it's not a huge deal, because ordinarily the trials are short. I mean, if we're calling it a three-day trial, it works out nicely for everybody. This is the kind of thing that might take six weeks. Literally, by the time we finish picking the jury -- this is the very beginning of it. Today is when we first began. We have to pick 12 jurors, plus 2 alternates, and some of you will quickly see how tedious a process that is, and some of you, as Judge Sandoval pointed out, might have to wait for a period of time before you're even called in.

We don't have flexibility. That's the law, and the law says business excuses will not get you off jury service, just like -- I can't think of another example, but that's the one thing that doesn't work.

That all having been said, what we trust with you

people is your absolutely honestly in answering these questions, because we have no way of checking out your answers, practically speaking. You take an oath, and you say you're going to tell us the truth about what you believe about this or that particular aspect of the law. But in reality you could be thinking something entirely different. For example, you could tell the defense, you could say, well, Mr. Goeller, absolutely I will give your client a fair trial, and I will consider all the evidence and that would require the State to produce an enormous amount of proof in order for me to go for a death sentence. And in your heart of hearts you're saying, we need to get tougher in our society, and we need to start dealing with people. He has no protection against what you would do as jurors, other than your own integrity. And we absolutely trust it, and it works beautifully, because very rarely do jurors ever lie to us.

It doesn't take anybody out there that's watched any TV or even thought about it. I mean, everybody sitting out there knows exactly what to say so that you don't have to serve on this jury. And if you're willing to come up before Judge Sandoval and say, my mind is made up. I've already, in my mind, found the defendant guilty, or I've already, in my mind, found the defendant not guilty. I've already decided I'm going to give him the death penalty, or I've already decided I'm not going to give him the death penalty, and you



come up and you're willing to say that under oath, you're gone. I mean, that's a fact. I'm not tipping you off to something you don't already know.

If you come up and tell us that you are so upset by having to serve on this jury and so offended that you're going to take it out on somebody, and you're not going to make a fair decision because you're angry. You're angry at the State because they're making you be here. You're angry at the defense because it's about the accused conduct of the Defendant, you're out of here. And you may not leave with the admiration of your neighbors, but you'll leave, and then you take that along with your conscience.

So, I hope you take that oath seriously because I'm just telling you that if you think otherwise. Does everybody understand that? I mean, we've got no way to check you out other than you're under oath, and we believe you're telling the truth. You know, if you want to do that and you can live with that kind of behavior, then I mean, you can just line up, and you can tell the judge that there's nothing to be done about that. Does everybody understand that.

Thinking about it now and realizing that everybody has got things that are going on, how many of you truly in your hearts consider jury service an important thing -- really important thing in our society? I can't tell if all the hands are raised because we're all on the same level. Is there



anybody that doesn't think jury service is important? Is there anybody that doesn't like the jury system or think the jury system is somehow a bad system or something that ma should be changed? Maybe we should have just a judge or administrative tribunal making these decisions? Anybody f that way?

How many of you have served on juries before? Of those that have served on juries before, how many have ser on criminal juries before? Anybody ever served on a crimi jury?

Ma'am, tell me your name. I didn't look at the questionnaire.

VENIREPERSON: Hilda Lauriello.

MR. SCHULTZ: Can you tell me, first of all, where was it that you served on a criminal jury?

VENIREPERSON: Well, maybe I should find out as well, when you say criminal, as opposed to embezzlemen what?

MR. SCHULTZ: Well, embezzlement could be b For example, if you steal money from your company, that's crime. But it could also be something they could sue you to get the money back. And they may have said, well, you too 10,000 dollars. We're going to file a civil suit against you. It wouldn't be called embezzlement probably. It would be called conversion or unjust enrichment, or some fancier ter



but it's kind of the same idea.

VENIREPERSON: I've served twice. The first time in Los Angeles, and the second time here.

MR. SCHULTZ: When we talk about criminal cas we're talking about something that has a possible outcome o penitentiary time or jail time?

VENIREPERSON: Right.

MR. SCHULTZ: Or a fine, sometimes a fine. There's certain low-grade offenses. Were those the kind of cases that you served on?

VENIREPERSON: Yes, sir.

MR. SCHULTZ: When you were in California, wh was the charge there?

VENIREPERSON: Rape/theft.

MR. SCHULTZ: What kind?

VENIREPERSON: Rape and theft.

MR. SCHULTZ: Was it the same defendant that did both?

VENIREPERSON: Yes.

MR. SCHULTZ: And I'm assuming California has 12 person juries?

VENIREPERSON: Correct.

MR. SCHULTZ: And was the jury able to reach a unanimous verdict in that case?

VENIREPERSON: Yes.

MR. SCHULTZ: Now, Texas has jury punishment, and I know California does in capital offenses, but what about in regular? Did the jury decide the punishment, or was that up to the judge, if you recall?

VENIREPERSON: It's been some time ago. I'm not -- I think it was the judge.

MR. SCHULTZ: Tell me if you would, what did you learn from that experience. I mean, I understand it's been a long time. You wouldn't know the lawyer's names or probably wouldn't know the defendant's name and probably wouldn't remember much about the law. What did you take from that? What do you remember that's important to you?

VENIREPERSON: Well, I think what I learned was if you've ever been charged with something you want a jury.

MR. SCHULTZ: And is that because you think juries are more understanding or more fair, or what do you think?

VENIREPERSON: Probably.

MR. SCHULTZ: Okay. Then I take it from your remarks that you believe in the jury system and think that's very important?

VENIREPERSON: Yes.

MR. SCHULTZ: Did you view your service in California as important work when you did it?

VENIREPERSON: Absolutely.



MR. SCHULTZ: And then you were here in Texas. What kind of a case were you serving on in Texas?

VENIREPERSON: It was robbery, and they wanted a higher, more penalty than the other -- I can't think of the word.

MR. SCHULTZ: Maybe like enhancement, they call it, a previous conviction that might --

VENIREPERSON: No, no. Like, they were in cahoots. I can't think of the word for it.

MR. SCHULTZ: Maybe like engaging in organized criminal activity, conspiracy?

VENIREPERSON: Right, right.

MR. SCHULTZ: Was that here in Collin County?

VENIREPERSON: Yes.

MR. SCHULTZ: Okay. Did your jury reach a unanimous verdict in that?

VENIREPERSON: Yes.

MR. SCHULTZ: Was there jury punishment or judge punishment involved in that, if you recall?

VENIREPERSON: I think -- I'm not positive.

MR. SCHULTZ: Okay. Anybody else ever served on a criminal jury? Yes, ma'am, tell me your name, please.

VENIREPERSON: Vickie Wintrich.

MR. SCHULTZ: What kind of case was that?

VENIREPERSON: DWI.



MR. SCHULTZ: Was that here in this county?

VENIREPERSON: Sherman.

MR. SCHULTZ: Okay. About how long ago was that?

VENIREPERSON: About a year and a half.

MR. SCHULTZ: Did your jury reach a unanimous verdict?

VENIREPERSON: Yes.

MR. SCHULTZ: And that was probably a six-person jury. Most likely it was in -- was it a misdemeanor; is that right?

VENIREPERSON: (Inaudible).

MR. SCHULTZ: Was it a felony case then, or was it --

VENIREPERSON: They said he had previous.

MR. SCHULTZ: Okay. Did you think that was important service for you?

VENIREPERSON: Yes, I did.

MR. SCHULTZ: Did you learn something from that that you didn't know before you did it?

VENIREPERSON: Yes.

MR. SCHULTZ: If called upon again, would you be willing to serve?

VENIREPERSON: Yes.

MR. SCHULTZ: Yes, sir. Anybody else? I think



I saw another hand. Yes, sir. Tell me your name.

VENIREPERSON: Maurice Jacob.

MR. SCHULTZ: What kind of case did you serve on, please?

VENIREPERSON: DWI.

MR. SCHULTZ: How long ago?

VENIREPERSON: One and a half.

MR. SCHULTZ: Jury reached a unanimous verdict in the case.

Did you find that important work?

VENIREPERSON: (Nods head).

MR. SCHULTZ: Anything about that experience that would make you more or less fair in this?

VENIREPERSON: (Inaudible).

MR. SCHULTZ: And if the State asked for your service again, are you willing to give it freely?

VENIREPERSON: (Inaudible).

MR. SCHULTZ: Anybody else on criminal juries?

Again, a civil jury deals with such things as damages, deals with such things as -- sometimes specific performance. You try to buy a house, and the guy backs out of the deal and you really want that. Sometimes juries will get.

(Discussion off the record.)

THE COURT: The reporter indicates that she's having trouble, too.

MR. SCHULTZ: I'll speak up a little more then.

There are no right or wrong answers, and we're going to hit this a couple of times because, first, we're going to do this as a group, and we're going to go over general concepts that apply -- is that better? Great.

We're going to go over general concepts that are going to apply in all criminal trials, and then at some point we're going to bring you in individually, and those will primarily be dealing with what we call the death penalty qualified issues.

There are no right are wrong answers. You don't need to take notes. You really don't need to remember. You can relax a little more and just kind of think about what we're doing and think about whole process because all the written instructions you'll ever need will come from Judge Sandoval at the close of the trial. What I may say is not the law. What the defense attorneys say is not the law. We're not trying to distort or misrepresent the law, but the authoritative statement of the law will come from Judge Sandoval at the close of trial.

But what I'm trying to do is get you in touch with some of the thinking that goes on in terms of jury service, so that when the time comes you'll have a little insight and a little preparation for what occurs. Like I say, there aren't any right or wrong answers. What both sides are looking for



are people that they feel -- what I'm looking for are people I believe will be responsive to the evidence that I'll present, the issues that I anticipate will arise in this case and seem to have the personality traits and views of the world that make them open to all of the things that jurors might be required to do in this case.

And that having been said, there's no magic formula about who can do that. A lot of it is just intuitive on my part. Some of the answers may be so strong in certain directions that one side or the other would be concerned about it and might think, well, this is a great person, and this would be a great juror on some other kind of case. But knowing, as I do or as the defense knows the evidence may be, we may say that this may not be the case where you're the best for us. And so, it's just that simple, and then we get to exercise what are peremptory challenges.

That means we can simply say, well, Your Honor, we wish to Excuse Juror Number 92, Mr. Adams, or Ms. Brown, and we can do that really without explanation, and as long as we don't run out of those peremptory challenges, of which each side has 15, we're fine. I've got some theory of what I want, and I want a certain amount of -- I want this or that, or the defense has some idea of what they want as a jury -- of what they want as a juror, that's okay, and we use those peremptory challenges.



A second kind of challenge is what's called a challenge for cause, and that's really mandatory upon the trial court, and it doesn't cost anybody any of their discretionary strikes. And that occurs when a juror has such a strong opinion or objection to some portion of the law that's applicable in this case that he or she can't fairly follow all of what's required. Obviously, the death penalty is an issue that I guarantee you there are people here who favor it, there are people here who are opposed to it, there are people here who are ambivalent about it, and people who kind of don't like it, but maybe we ought to keep it and they kind of like it, but think it doesn't work very well. There's a lot of attitudes that way.

How many of you are opposed to the death penalty personally? If you could do something about it, you would abolish the death penalty? A smaller number, certainly less than half? How many of you favor the death penalty and believe it is an important tool in society's efforts to make for a safer society? Anybody here that's ambivalent about the death penalty, just almost doesn't care one way or the other? Anybody who feels that way? Did I see a hand back there? Nobody's hand. Okay.

All those ideas are compatible with jury service. Those of you, for example, who say that you are opposed to the death penalty, that doesn't mean you automatically get off



this jury. The real question is not whether you're opposed to it and think it's not a good thing, but whether or not you could vote to impose it if called upon to do it. And those can be two different things.

Now, it's tougher in a death penalty situation. It's very easy for us to say, you know, I don't think people who have drug addictions should go to prison. I think instead of prison they should be sent to rehab, and those people that have that view, that may be a correct view, probably would not have trouble sending somebody to prison for drug usage if that was the only option that's required. But when you talk about death penalty, because of the final nature of it, because of all of the concerns surrounding it, that may well be asking for a lot from a person to say, yes, I'm against the death penalty, but I'll just follow the law and do it, anyway. But there are those that can do that, and they can do it fine and if they say they can do it, they're qualified as jurors.

Sometimes you will get a feel -- and once you start getting into this process, especially in individual voir dire, if you kind of get the opinion that one of the lawyers or the other lawyer seems to be seizing on one particular thing and working real hard on this one issue, talking to you about, well, how can you do this and what about this and do you feel this way, you may get the feeling that lawyer is trying to -- if not put words in your mouth, at least get you to say

something that might have some legal significance, and that can easily be true. Prosecutors do it, defense attorneys do it. I don't know that it will happen in this case, but idea is nobody wants to use peremptory challenges unnecessarily. We protect those. It's extremely important to get the right kind of jury, and so if we could find some way to get somebody excluded by not using a peremptory challenge, that's probably better for us because we're still able to save those for those people who, for whatever reason, don't fit our profiles, but everything they say is right. Does that make sense to everybody what I'm talking about.

There's nothing wrong with it, but sometimes what happens, after a while you get really tired and you give up, and people start putting words in your mouth. And I'm not talking about the lawyers in this case. I'm just talking about it in general. If I were to say to you, for example, all right -- sir, what is your name, Juror Number 1?

VENIREPERSON: Clarence Harrison.

MR. SCHULTZ: If I were to say to you if you were serving on a murder jury, and you found somebody guilty of the murder of somebody else, and I were to say to you, would you be a fair person and consider giving that guy probation after finding him guilty of murder? What's your reaction to that? Would you consider probation for somebody murdering another human being?



VENIREPERSON: Not really.

MR. SCHULTZ: Okay. How many of you, as you sit there right now, think to yourself, well, how could I find somebody guilty of murder, which is intentionally causing the death of another human without justification, and then somebody who would do such a thing, just essentially put them back out in society, albeit with perhaps some supervision? How many of you, as you sit there now, just say no way I could do that? You could never consider giving probation. Think about that for a second. Looks like more than half to me. I'm not keeping count. I'm not keeping up with it.

If once you talked about it with the lawyers, once you thought about it and that ends up being your position, under no circumstances could I ever fairly consider giving probation to somebody for murder, you're probably not going to be qualified, and you will probably be challenged for cause and that will probably be sustained. And the reason for that is, you're unable to follow an important part of the law that might apply to that case.

Now, if you analyze that question a little bit, it doesn't say would you give somebody probation? Would you probably give somebody probation? Are you more on the no probation side or the probation side? It asks you, could you fairly consider probation in a hypothetical murder case, because we're never talking about this case. We're only



talking about hypothetical murder cases.

I tell you why it's important. Let's say I was prosecuting the world's worst person, Adolf Hitler. Let's say somehow we had a murder case on Adolf Hitler. If I asked a question of you right now, how many of you could even consider giving Adolf Hitler probation for one of his murders, no hand would go up. I bet everything I've got that there's not a single vote would be ever given worldwide -- well, not (inaudible) -- giving Adolf Hitler probation for what he did. But that's not how the question would be phrased. It would not be phrased in terms of would you give Adolf Hitler probation, because nobody would, and then you'd say well, all these jurors have to go.

Rather, it's can you, in a proper case, whatever you define that to be, fairly consider, in a sense probation, when you're talking about the crime of murder? That means you can take into account all the possible variety of facts in analyzing that question.

We've all seen these TV shows where someone kills the loved one of somebody else, and they get off on some technicality, and they're laughing and smirking about it as they go outside the courtroom. And maybe the parent of the child that was murdered, or the husband of the wife that was murdered, or son or daughter, whoever it might be, gets a gun and goes and kills the killer. That's murder. It may be a



more understandable murder than this 7-Eleven kind of robbery murder, but it's still murder. It's intentionally causing the death of another person without any justification.

Maybe those facts are quite different, and maybe not, from the I shot him because I've hated him for years and finally I had enough, and I just decided this is the time for him to die. But I think y'all understand, there may be fact situations.

You start thinking about that situation, if the guy has been a good person, he'll be good the rest of his life maybe, you start thinking about probation as a possible thing. Doesn't mean you'd still do it, but it's different. Everybody agree with that.

When you talk about hypothetical murder cases, they consider everything. Mercy killing in this state is murder. It doesn't matter that the victim and the killer prayed about it, and she said, you know, I'm losing all of my faculties. I'm in great pain. I'm not going to get any better. You know that; the doctors know it. Help me -- help me do what I can to kill myself if you love me, and even if those are the facts, and every one of us might be crying when we listen to that evidence, it's still murder. It's still the intentional causing of death of another person without legal justification. But maybe those are the kinds of situations where you could say, you know, there are some murder cases

where I could fairly consider probation. And so, it's never pinning you down to this particular case or that particular case. It's always the hypothetical case.

Now, I'll explain to you why I'm talking about murder and why I'm talking about probation and how it relates. Under our law plain murder -- I hate using the term regular murder because I think that -- yes, sir.

VENIREPERSON: I was wondering, could you speak up a little bit. It's a little hard to hear.

MR. SCHULTZ: Okay. I'll try. This room is just swallowing all the sounds. I'll do the best I can, and just raise a hand if you can't hear me. I'll do my best.

Plain murder has nothing to do with the victim. It has to do with the circumstances under which the killing occurred. What I mean by that is, think in your own mind who the most -- who the best human being you've ever known is. It may be a family member, it may be a clergy person, it may be a politician, it may be an athlete. I don't know who the best person you've even know is; a teacher, a coach, a neighbor. It doesn't matter. Think of that person, and then think of about the worst person you know or ever heard about. It could be Charles Manson. It could be the town bully. It could be a person that's never done a kind deed in his or her life, doesn't really make any difference. Some of you may be thinking of an ex-spouse, whoever it may be that you're



dealing with, think of that person. Who gets murdered has nothing to do with the fact that it's murder. There's no such thing as a person needs killing. There's no such thing as there's a lesser grade of human being. Murder is murder no matter who gets killed. Does anybody disagree?

I'll give you an example. Suppose, for example, you're working in a hospice, and you're a health care provider, and there's somebody in that hospice that's tragically ill, lapsed into unconsciousness. Everybody knows what a hospice is. It's a place -- it's a caring place where people go to die in a peaceful and respectful way. There are people that are -- understand these passages in life, and for many people it's better than being at home or being in a regular hospital, and it seems to do a lot of good.

Let's say you're at the hospice, and you're a worker, and you see a person and they're comatose. I mean, they're at the very end. If I'm treading close to anybody's feelings or any situation, I'm not, but at least you'll understand what I'm saying. Suppose that health care worker says, you know, this person's life isn't much anymore. It's just a matter of time and kills that person. Is that any different kind of a crime than killing somebody in the flower of youth and in good health? Does anybody think that's somehow different because the victims are somehow different? Does anybody feel that way? I mean, you may only have an hour



to live, but it's still your hour. You may have 50 years to live, and it's still your 50 years. We on the same page on that? Everybody agrees, who gets killed really isn't the issue in trying to decide the nature of the crime? Anybody got a problem with that? Because if we do, then we kind of have the authority to go out and judge and kind of justify what we do.

Now, I'm not talking about this case in particular, although if it turns out that this relates to this case in (inaudible), you just know I know their evidence. I'm sure it's no surprise to the 65 of you out there that sometimes people who get murdered probably aren't living the greatest lives themselves. I'm sure that's not a revelation that nobody has ever thought of before. For example, how many think the drug dealing business, for example, is dangerous? How many of you feel that's a real dangerous kind of thing t be in.

Drug dealers get killed all the time. They get killed by their own medicine. They get killed by the people that they deal with. I mean, the very nature of that whole industry is a certain lawlessness and callousness to ordinary kinds of things. Everybody agree that's pretty dangerous stuff? I'm not talking about, you know, your next-door neighbor giving you some beer. I'm talking about the real thing. I'm talking about drugs, narcotics in a transaction.



Everybody agree with that.

If that's the case, that drug dealers are inherently lawless and callous and dangerous individuals, is murdering drug dealer a lesser grade of murder in anybody's mind beca that's who you've murdered rather than the nun at the local parish, for example? Does anybody think there's a differenc

VENIREPERSON: Yes, I do. I think they deserv it.

MR. GOELLER: Could I have the juror's name?

VENIREPERSON: Sandra Strain, S-T-R-A-I-N.

MR. SCHULTZ: What I said before I absolutely mean. There aren't any right or wrong answers. If we can't talk freely as citizens and democratically, where can we talk you know? I want to make sure I'm understanding what you're saying. You're saying you think they deserve to die -

VENIREPERSON: I think people that deal drugs, sell drugs, if they end up dead, they probably deserved it.

MR. SCHULTZ: If you were a juror on a case, for example, and you were to discover that the victim was a drug dealer, are you saying you'd just acquit the other person, and say you did the right thing?

VENIREPERSON: No, I'm not saying that, but I think they would certainly have to convince me of somethin different.

MR. SCHULTZ: Yeah, the guy did it. We've got

a videotape. We've got it on tape, and 30 witnesses that you believe, but the victim's a drug dealer. Are you saying that's not -- are you saying that's a lesser offense than if the victim were more savory in your mind?

VENIREPERSON: Yes, I am.

MR. SCHULTZ: Okay. Who else agrees? Yes.

VENIREPERSON: I totally agree (inaudible).

MR. SCHULTZ: Okay. Would you tell us your name, please?

VENIREPERSON: Rose Preizler.

MR. SCHULTZ: Other hands. This is America, no wrong answers. Yes, sir.

VENIREPERSON: I also agree with her.

MR. SCHULTZ: Okay. Same question. If you're a juror and turns out the drug dealer is, in fact, the murder victim, does that mean it's not a murder in your mind?

VENIREPERSON: It's still a murder, but I feel less compelled to sentence a person for -- if that person was killed (inaudible), to be honest I --

MR. SCHULTZ: Okay. And, of course, we want you to be honest. Yes, ma'am.

VENIREPERSON: I'm kind of with that. I think there's different -- I guess I'm thinking the drug dealer has put hisself in a position to where this is much more likely to happen to him, or a murder is much more likely to happen to



him than, as you put it, the nun in the church or whatever

MR. SCHULTZ: I think everybody would agree that it's -- just like robbery to me. If you think about it, Bonnie and Clyde, the odds are they're eventually going to get killed, if not by the police, by somebody in the same business, or something like that. People sometimes have responsibility. That might apply when you're saying do I have sympathy for the victim? And I think many people could say, you know, why would I have sympathy for him? Did he have sympathy for all the people that were going to be affected and harmed and damaged by what he was doing? Did he care about me? Did he care about kids? Did he care about anything?

Everybody, if you stop and think about that for a moment, I think every one of you would agree. The question is do you have as much sympathy for the drug dealer as you do for the nun that gets murdered just while she's prying someplace. How many of you have as much sympathy for the drug dealer as you do the nun? I mean, I may be a prosecutor, but I know how the world works. I've got feelings, and they have feelings. We have regular emotions, and I understand them completely.

But that's a far cry from saying that -- that doesn't make the act of a killer a bit better simply because he chose to murder somebody that we don't think very highly of. Does anybody think that makes the act of the killer one bit better or one bit more acceptable simply because we don't



like the victim?

What do you think about that, sir? Do you think that makes the killer any more deserving of our respect or our leniency simply because the person he killed is somebody we don't like? We don't have the victim on trial. I mean, I'm not talking about this case in general. There are many cases where they said, Mr. Schultz, how is your victim? I'd say, he stunk, and I'm not being funny. I can do that absolutely if the evidence showed that to be the case and showed the kind of life that, perhaps, that person has lead.

But the second part is, how does that make the killer one bit better? Why should the killer profit because we don't like the victim? What do you think about that, ma'am?

VENIREPERSON: I don't think the killer should profit.

VENIREPERSON: I would feel -- excuse me. I would feel more hostile towards the person that killed the nun, because I mean, if she's just there praying, and somebody just didn't like the way she looked, but it would be someone killed a drug dealer, if they had reasons and all, you know, you couldn't help but sympathize with their situation.

VENIREPERSON: I agree with that.

MR. SCHULTZ: Okay. He owed me some money from the last load of dope I paid him, and he wouldn't pay me



back so I killed him.

VENIREPERSON: Well, no, not -- no, that's two drug dealers together. That's their war --

MR. SCHULTZ: Not to interrupt you. But think about what we're saying. If she's right, and now that I say, well, what if the Defendant is a drug dealer, then all the sudden we're back, and now he's bad again and maybe that all changes. That's a real tricky place to be because we end up, first of all, trying the victims, and then all of the sudden, maybe the victim doesn't look so bad because maybe the guy that killed him looks just as bad.

So, then the question becomes, well, how do you approach this? One approach is, well, here's a chance to get rid of both of them. One of them is already gone, and there's a second possibility, and I'm not being flippant, I'm absolutely serious, but that's where it gets tricky, because when you start attaching moral significance to the victim, you've got to do the same for the defendant. I mean you can't very well say the victim needed to die because he was a dope dealer, and then say, well, this defendant doesn't need the death penalty, even though he is a dope dealer. If you're going to do that, you've got to be consistent throughout. Do you-all agree, if you're going to do that, you've got to be consistent?

MR. GOELLER: Judge, I'm sorry. I've got to

object to Mr. Schultz's comment about the jury being consistent throughout. That mixes law and fact, and we are not there yet. I'd ask the Court to order the panel to disregard that instruction from Mr. Schultz. He's instructing them on what I think he is trying to say is the law, which is clearly not the case. I'd ask the court to step in at this time.

THE COURT: All right. Sustain the objection.

MR. GOELLER: Thank you.

MR. SCHULTZ: Do you think it's important to consider drug dealing on the part of, not only the victim, but the defendants, if that applies, it's that important, in evaluating what's proper in a case?

VENIREPERSON: Yes. I would think that in the case of a parent that kills their child's murderer or molester, give them a message.

MR. SCHULTZ: So then you certainly could give them probation (inaudible).

VENIREPERSON: Yes, absolutely.

MR. SCHULTZ: Everybody understand; that's the point I'm making. You can consider such things in fashioning punishment, of course, because you can consider such things as how they got into it, and why they did it, and what the rest of their life has been like and those kinds of things.

How many of you think it is possibly in our society



to go through a growing-up period and not be told about a thousand times about what drugs do and how dangerous they are and how it affects people, and that kind of this thing? Is it possible for any human being in American society not to be exposed constantly to the don't do drug messages; these are bad and these are wrong? Is that even possible in our society? Does anyone think it's possible for somebody, for example, at age 18 or 21 or 25, to not know that drugs alter your mind, alter your personality, sometimes make you angry when you aren't otherwise angry, and put economic pressure on you that make you have to commit crimes to support you, and nag you sometimes so you can't work. Is it possible for anybody not having been exposed and been taught about it?

VENIREPERSON: What about mentally retarded people?

MR. SCHULTZ: That's one group. And I guess that begs the question, exactly how much to -- the degree of retardation, because if you have some retardation doesn't mean you can't understand the same things or feel the same things everybody else. Does do you agree with that?

VENIREPERSON: Uh-huh.

MR. SCHULTZ: What else? Do you think it's possible? Yes, ma'am

VENIREPERSON: If you have grown up in an atmosphere where the parents or friends of the parents,



whatever, have done drugs all your life and that's all you've ever seen, you may not know it's anything bad. You've seen it used in your home, and mom and dad do it, it can't be all that bad.

MR. SCHULTZ: So you know of its use, but for whatever reason you don't exercise the choice not to do it.

This is a little bit ahead of what I was going to do, but I'm going to take a minute to tell you this. Let me assume -- pick somebody at random here. Where is Mr. Charles Hayden? Mr. Hayden, just pulled a name out of th hat. Let me ask you this: Pardon the analogy, but it's okay when you think about it. You're up here today, and we'll probably finish in a couple of hours. You'll be gone, and then we'll wait on our schedule to come in individually. You go home tonight, wherever you live, when you get there, there's police cars and ambulances and that yellow tape all around your residence. And there's a crowd of people there, and you see a TV truck with that big, old microwave antennae that goes up real high. You get that sinking feeling. You go up, and an officer stops you and says who are you? You say, I'm Mr. Hayden. And he says, you know, I've got some terribl new for you. I'm sorry to tell you this, but the person that you loved most in this whole world has been murdered about a hour ago, and we've got the person that did this murder.

But before you get too upset it's not so bad,



because the person who did the murder had a very unhappy childhood and didn't have the advantages. And I'm not tryin to be funny. What's your -- when you think about that for a second, what's the reaction, not to the crassness that the officers were saying it, because obviously there are certain ways. That wouldn't be the one.

What's your reaction to the proposition that because somebody didn't have the kind of life that maybe we think a ideal people should have, that somehow that in any way eitl excuses or lessons what that person has done as an adult? What's your reaction to that?

VENIREPERSON: I'm not sure.

MR. SCHULTZ: Well, what if it's true. What if, for example, there weren't good, positive role models as this person was growing up so he never got to see people th did the kinds of things that maybe all of us are trying to do in trying to make a life for our kids. Maybe there wasn't anybody for him the way we try to be for our children, and that happens. There's a lot of that in our society. It's not just a poverty issue. It's much more complicated than that.

What if this child was -- as a child was teased or mistreated or bullied, or something like that? He grew up angry, angry at the world. He grew up violent because not told him any different. Does that make any difference in terms of the impact it has when they do these awful crimes

Does that make a difference to you?

VENIREPERSON: (Shakes heads).

MR. SCHULTZ: I know somebody else would look at that differently. Who out there thinks that makes a difference? How many people say, well, I see your point, Officer. It's a good thing if he grew up happy and was in the fraternity in college, I'd be really enraged, but since he didn't have the advantages, and I know you're right because you've done your investigation, it's not so bad. Is there anybody on this panel that thinks simply because a person had a bad growing up that we're all pawns and can't overcome our bad growing up or our bad upbringings? Does anybody feel that we're unable to do that as human beings and that's kind of how we're made as children, and people in society have to accept us as adults? Yes, ma'am.

VENIREPERSON: I think you have to separate the act from punishment. For instance, if a person did the act of murder, and you determine that yes or no, did they do that act? And then in punishment you determine -- you can look at the background and say, this person should have rehabilitation, or the death penalty. That's where their background comes in. It's a yes or no, did they do the act.

MR. SCHULTZ: Yes, it -- perhaps it is. And some people -- what's the other side of that coin? Other people might say that would explain things, like, being a



little more patient with somebody at work if someone has got a new project that they don't understand, and maybe I'll give that person an extra little bit of help because I know he or she is real deficient in this area because the schools didn't do a very good job, or he wasn't able to study as much. That's one thing.

But when we're talking about, like a murder, a murder -- a hard-core murder, is it important to understand -- is it important how an adult got the way the adult got in order to decide what society needs to do with that person for self-protection? Is that important to you, to know how the person got that way?

VENIREPERSON: In the punishment phase.

MR. SCHULTZ: Is there anybody who doesn't consider that to be important, how the person got that way as long as you've satisfied the person is not, as somebody mentioned, retarded, for example, because that's a different -- or absolutely insane and didn't know right from wrong. Those are different. But is there anybody that thinks it's not important how the person got that way in deciding how we need to protect society? Anybody feel that way? Does everybody understand my question?

How many think it is important in deciding how bad the crime is; in other words, how much punishment? How many of you think it's important to understand how the defendant



became a killer? Let me see a show of hands, just kind of get a ballpark.

VENIREPERSON: Rephrase that.

MR. SCHULTZ: How many of you think it's important in deciding how bad the act is, what kind of punishment this crime should have, how many of you think it's important to know how the person got the way he is?

VENIREPERSON: You're saying act and punishment (inaudible).

MR. SCHULTZ: Let's say he's guilty. He's done it in front of a video camera -- you know, nationwide TV, whatever, so there's not a question, did he do the crime?

VENIREPERSON: Did they do the act?

MR. SCHULTZ: Yes. The act's been done. The act's done. Let's assume that. The next phase is the punishment part.

VENIREPERSON: The second phase?

MR. SCHULTZ: Right. How many of you think it's important when you're looking at a crime to decide how the person got that way in order to decide punishment? How many of you think it's not important once you get to that point?

VENIREPERSON: One of the penalties (sic) of circumstances of what the murder is?

MR. SCHULTZ: Right. Robbery, murder, whatever



it might be, sure. I'm not -- it's just a regular, old kind of murder. You murder somebody because you want their money or because you want their -- didn't like how they look at you, or something like that.

I guess the point I'm testing would be and just considering with you is, everybody here probably knows some people that had decent upbringings, and they turned out bad. How many people know someone like that? Somebody that had a pretty decent life growing up, and they just turned out bad. Whatever they do -- I don't mean, like, gangsters necessarily, but they're just not very nice people, and they don't treat people particularly nice. They're not particularly nice to coworkers. How many people know folks like that? Let me see a show of hands. Had a great upbringing; they just didn't turn out very nice.

How many people know somebody that had just a really, pretty bad upbringing, had an awful lot of turmoil in their personal lives and turned out good.

That's the point. When you get right down to it, it's not so much how you grow up as how you present yourself to society when you're finally an adult. Maybe we understand it. Maybe we understand how growing up poor might make you more likely to steal, if it does. But that doesn't --

VENIREPERSON: I think we've got to be responsible for our own -- we've got to be responsible for our

own actions.
MR. SCHULTZ: What if you didn't have a happy childhood?
VENIREPERSON: You can't blame everything on your childhood.
VENIREPERSON: You have freedom of choice. If you choose to do something, you choose to do it, but you have to suffer the consequences.
MR. SCHULTZ: What about -- one of the jurors said, well, if there wasn't anybody around to teach somebody not to shoot or to steal or to shoot up drugs? What about that concept in your mind? What do you think about that part? Does that excuse you? There wasn't anybody there doing good role modeling?
VENIREPERSON: No, it doesn't.
MR. SCHULTZ: Does anybody think that does excuse it?
VENIREPERSON: I would think it's more common sense.
MR. SCHULTZ: Yes, ma'am.
VENIREPERSON: I think it would depend on the age of a defendant.
MR. SCHULTZ: Maybe.
VENIREPERSON: If they were still 18 or 19, they haven't had the chance to have life experience and sort



of get their life together, if they had a bad childhood.
MR. SCHULTZ: You think somebody that could murder somebody -- let's think about murder for a second. Do you think somebody could murder somebody -- essentially execute somebody, if they just had a little more time maybe wouldn't do that. Is that kind of what we're thinking about?
VENIREPERSON: No.
MR. SCHULTZ: I agree with you.
VENIREPERSON: I guess I would be more sympathetic to somebody who hadn't had a chance to turn their life around yet because they haven't had enough years.
MR. SCHULTZ: If somebody commits a murder -- a cold-blooded murder at age 18, are you saying they didn't have a chance to turn their life around? I'm not talking about driving fast.
VENIREPERSON: Yeah, I'm not excusing.
MR. SCHULTZ: I've got teen-age kids.
VENIREPERSON: I'm not saying that's an excuse for murder. I'm just saying that I might be -- you know, putting yourself back, if your spouse was murdered and you walk up and they say, but they had a bad childhood, after the heat of the moment is over and you have months to think about it, it might change your ability to forgive that soul, not necessarily say that they don't have to go to jail. I'm going to give you something -- a prize for killing my spouse, but it



might change your -- your sympathy for that soul. But, no, I don't think it would excuse a murder.
MR. SCHULTZ: I guess my question is, surely you don't think somebody 18 or 19 doesn't know you don't g murder people? That's just the immaturity of youth? You don't think we all go through that, do you?
VENIREPERSON: No.
MR. SCHULTZ: Probably everybody out there ha got some stories they just as soon nobody know. I would assume everybody in this room probably does, but I'm real comfortable knowing nobody out there just went and murde some people. And I'm also very comfortable with the conce that the reason is not because you never had the chance or because you never
were around somebody where that could happen. Instead, it' because every one of us knows you just don't do that. We've got different backgrounds, and we all know you don't murde people, and that never happened, and that wouldn't happen t us when we were 17. It wouldn't happen to us when we wer or 80, if we lived that long. It's something inside us. Anybody disagree? That's my advice to you.
Murder is a crime that has a possible punishment of 99 years in the penitentiary, life, or some term in between, which is really from 5 to 99 years. It can be 18 years or 39 years or 99 years or life. Don't ask what is the difference



in life and 99 years, because, first of all, the judge would always say that's a question of law and doesn't permit me answer. No disrespect. First of all, none of us know the answer, anyway. It's not explained what's the difference i 99 years or life. The practical effect to a defendant is exactly the same. And, of course, fines are possible and s is probation in a proper case of murder.
Why do I talk about murder? Well, the reason is because we're here on a -- what I told you before. Murde the intentional or knowing killing of another individual, a I added that other part, without justification. Because sor murders are, quote, justified in the legal sense, like self-defense, for example would be one. There may be s rare forms where necessity might justify that act. I mean you're on a life boat, and somebody has got -- I don't kno really terribly contagious small pox to the whole bunch o people, there may be some theoretical case where you he that person overboard to keep everybody from getting in That's more law school stuff than reality.
Mostly you're talking about self-defense. When y talk about bad judgment, that's the crime that I call plain or regular murder. That's the one that has punishment ra from 5 to 99 years, or life imprisonment as a possible punishment.
Now, that doesn't have anything to do with who y

kill. For example, it just says "of an individual." That would mean the drug dealer, for example. It's still murder if you killed the drug dealer. That would mean the person that killed the child that got off on the technicality; that would mean Adolf Hitler. If you got to Adolf Hitler and killed him, even though most people would say he ought to be killed for what he did. Or it could be the nun or high school coach that's been important in everybody's life for many years. It only has to do with the, quote, an individual.

No matter how you do it and how awful it is, if that's what you have done, the intentionally causing the death of another person, you can't get the death penalties for that, if that's what you've done. It doesn't matter how mean you were. You can catch them on fire; that's how you killed them. You can burn them alive. You can laugh about it, and you can take out an ad in the newspaper bragging about what you've done. If all you have done is caused the death of another person, intentionally or knowingly, that's plain murder. It may not make sense. It may be different than what you expected, but that's actually how our law is.

To be capital murder, to be a crime for which you could pay for with your life, it has to be murder, plus something else. That's the statute. It has to be a particularly egregious form of murder and relates really, not with -- really relates not to the nature of the victim



ordinary, although there's some exceptions, and I'll explain that to you, rather relates to the enormity of your conduct and usually having to do with the context in which you committed a murder.

A person commits an offense that is capital murder if he commits murder, and he intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction, or retaliation, or the person murders more than one person during the same criminal transaction, or pursuant to the same scheme or course of conduct. Those are really the concepts that most closely would apply in this case based upon the allegations in the indictment.

There are several other varieties of capital murder. There's murder for hire. If I go out and hire somebody to kill someone and that person does the murder, that's capital murder. Not only for him; he pulled the trigger and did it, but for me for hiring that person. The idea is that's murder plus something else. It's a particularly extreme form of murder. As if murder is not bad itself, it's one of those you've gone too far. When you commercialize murder, society believes that's more severe than simply doing it on your own. Right or wrong, that's our law.

Murder of a child younger than the age of six. If I intentionally caused the death of a 4-year old child, that's



capital murder by its definition. I guess, in a sense, that has to do with who the victim is, affecting what the possible punishment range is, and we talked about that earlier. The idea is that children need special protection, because if you think about it they can't protect themselves.

You and I often can't protect ourselves, and we can try to stay out of dangerous situations. If we're in a bar room and things are going to get dangerous, we can leave. We understand that. Hopefully, many of us can stay away from people that we know are dangerous. Maybe not always, but we hope we can, and we can call the police. Children need special protection, and that's why that's capital murder.

Police officers. Agree with it or not, the law provides if you murder a police officer in the discharge of his or her duties, that's capital murder. There's probably a lot of reasons we have that. One, police have a very dangerous job, and we want to try to protect them as much as we can while they're protecting us. And I guess almost legendarily, when you call that cop killings, I think that something that's always, in our jargon, been a little more severe.

Murdering a fire fighter also in their -- there's a history of that. It's the same situation. If you've got somebody out there trying to put out a fire to make neighborhood safe, and somebody else kills him, not on account



of his official duties -- doesn't mean kill him at night. Doesn't mean like his wife kills him at night because she's mad at him. That's not capital murder. That's, again, a regular kind of murder. But if it's while he's in the discharge of his duties as a firefighter, that's capital murder.

Also, murder -- escaping from a penal institution. If you kill a guard on the way out of the pen, for example, even if that guard weren't a police officer -- weren't a peace officer, that's still capital murder. You can kill an inmate in the course of the escape and that was part of the way you made the escape, that's capital murder. Plus, if you think about it, there's nothing you can do in prison that could get you the death penalty. What's holding you back. That's part of the notion behind that.

And then we have a couple of other, perhaps, more obscure varieties. The ones I want to talk about -- or the first one, which is the murder in the course of a serious crime, like burglary, robbery -- burglary or robbery really. And then the second one that's murdering more than one person during the same criminal transaction, or pursuant to the same scheme or course of conduct. I guess the idea of the double murder is that's just -- you've gone too far. It's like murder plus murder, and that's extra. That's just, at some point, just a quantitative decision by the legislature that

that's enough.

Let me tell you what a burglary is real quickly. If you come home this afternoon, and instead of the ambulances and the yellow tape, you come home and your door is ajar, and you go inside and your house has been tossed. Your stereo is gone, your DVD player, your computer, and those kinds of things, first thing you probably say, other than screaming out I've been robbed, you've actually not been robbed, you've been burgled. Robbery is the personal kind, where someone takes it from you. It's actually, like, a gunpoint kind of thing, a person to person -- it's a person-to-person death.

Burglary is really a person-to-property kind of theft. It doesn't mean it's not still burglary of your home because it may be, but most burglaries occur when you're not there and they are. That's what it is.

Burglary is the -- burglary is the nonconsentual entry into the habitation of another person with what we call a burglarious intent -- with a criminal intent of a felony nature. So, if I go into your house without your consent; in other words, you don't know me from Adam and I'm in there, and I either commit or attempt to commit a felony, or a theft (inaudible), then I'm guilty of burglary.

A felony can be all kinds of stuff. If I break into your house, and my purpose for being in your house is to do a dope deal in your house. I said, meet me over at somebody's



house. I break into the house, and that's where we do the dope deal because it's hidden, that's burglary. It may also be a delivery of narcotics crime, also, but it's a burglary because we entered the habitation without consent with intent to commit a felony once we got in there.

That are also, therefore, means if I break into somebody's house, if I enter that person's house without their consent, and my purpose is to commit a murder, then is that also a burglary? Have I entered a habitation without the consent of the person, and do I commit or attempt to commit a felony; that being murder? Well, yeah, it is, and there may be some reasons why we sometimes charge a burglary instead of a murder. There may be technical reasons. It may just simply be a (inaudible) situation, or some legal issue. It's still a burglary.

If I break into someone's house for the purpose of committing a sexual assault on that person, that's a felony, and I've entered the habitation without consent.

Now, it gets a little bit more tricky because under our law consent may seem to be effective, but it's induced by deception or misrepresentation. You get a knock at your door one night, and it's a couple of people out there that say they want to talk to you about your soul, and they've got a Bible with them and some pamphlets, and you say okay. Most of us would probably would say, well, I'm too busy. But some of us



wouldn't, and you say, well, come on in and let's t
that. And they get inside, and they steal your stuf
that a burglary? You let them in. Anybody volun
a burglary or not?

VENIREPERSON: Robbery.

MR. SCHULTZ: Maybe it's a robbery. okay. You go to the bathroom and you come back gone and so is your DVD player. You've got a bu thinks we've got a burglary? Who thinks we don't doesn't care?

(Laughter.)

MR. SCHULTZ: The law provides that has to be effective, and if it's induced by trick or deception, it's not effect. I mean, if you stop and t about it, and you know he's coming in to steal you don't let him in, but he tells you I'm here to talk ab soul and I've got pamphlets and so you do let him wasn't why he was there. The law says that's a bu

The law further says that if the purpose for entry is to commit a crime that's felony in nature, comes to the door and says I'm here to murder yo let me in so people don't see us doing this? Every I mean, I guess that could happen theoretically, bu doesn't happen in the real world. Anybody think would; that would make sense?



So even if you can't tell exactly what the natu the entry is, our law provides that when the felony crime is committed, you may infer from those circu nature of the entry. Does that make sense to everyl Bunch of pamphlets laying around or something lik I'm dead, and you can infer that I maybe invited th in, but it's still a burglary because the entry was do false pretenses. Does that make sense to everybod would be a burglary?

Okay. We're going to talk about robbery no told you before robbery is person to person. If in t of committing theft and with intent to obtain or ma control of the properties, you intentionally, knowir recklessly cause bodily injury to another -- I want wallet so I knock you down and stun you -- I harm you and then I take your wallet -- or I intentionally knowingly threaten or place another in the fear of i bodily injury or death. And that could be one of th situations, give me your money or I'll kill you. Gi money, or I'm going to beat you until my arms get That kind of idea. And that's also robbery. Doesn have to be corporal injury inflicted on somebody i threat of imminent -- serious bodily injury or deatl

Now, we've used the term aggravated with r Can you go to the aggravated screen for me. Real

the course of committing theft, because that's part of robbery, it's threats in the course of committing theft. That includes the intent at the beginning of it, the end of it, and the flight thereafter. That's what that provides. It's a fairly broad thing. If I use a gun before I get your money, or if I use a gun during the time that I get your money, or if I use a gun to help me get away after I've gotten your money, that all becomes robbery.

Robbery is aggravated when it's done -- do we have an aggravated?

MS. LOWRY: Yes.

MR. SCHULTZ: Robbery becomes aggravated under our law when a firearm is used or a deadly weapon is used, and it's otherwise a robbery.

So these are some examples. These two in particular; murder in the course of burglary or robbery, and multiple murder, murder of two or more people, are some examples of capital murders, and they will be the ones most likely dealt with by you in this jury, because those are the allegations in the indictment. That kind of refines what we're going to prove.

Is there anybody out there that thinks to him or herself that doesn't seem like the kind of conduct that ought to be death penalty conduct? Anybody just says, murder while you're burglaring somebody is not, in my mind, serious enough



that it ought to be a death penalty offense? Anybody feel that way? Or murder while robing somebody ought not to be death penalty? Yes, ma'am.

VENIREPERSON: I'm not sure if I'm answering your question, but I just have a struggle with the death penalty, period.

MR. SCHULTZ: Sure, sure. Absolutely. So do other people, and I guess maybe the question doesn't quite hit the mark with you because from what you may be telling me, there may not be any conduct that would, in your mind, be worthy of the death penalty. And if that's the case, then you don't care it it's burglary or Oklahoma City kind of thing, because it doesn't really matter because it's how you feel about the death penalty. Do you follow what I'm saying?

I guess what I'm saying is, is there anybody out there that says, well, yeah, I can understand cop killing being a death penalty case, and I can understand murder of a little infant being a death penalty, but I can't see how murder while you're burglarizing somebody's home would be. I guess that's really more what I'm asking. Anybody feel that way, that that's not serious enough to be a death penalty kind of situation?

How about murdering two people? Do you see a difference between murdering one person and murdering two people in terms of the enormity of the crimes? Anybody have



trouble with that, seeing that difference?

Now, how am I doing on time, Judge?

THE COURT: You've gone about an hour and a half.

MR. SCHULTZ: Wow.

(Discussion off the record.)

MR. SCHULTZ: I want to tell you a few things about what we're doing now. Everybody has had a chance, I think, to look at the defendant. You've seen him. He's the man seated at the defense table there at your far left. If you would, and if you can't see, just humor me for just a minute, if you would. If you can't see him on the back row, just stand up, and I'll ask you to look at the defendant for me if you can't see him. Just do that for me. That's even easier. Thank you, Mr. High.

What I want to tell you, and I don't say this because I think it's funny or I like it or like any part of this kind of work. It is our proposal to present evidence to the 12 of you and two alternates that will prove to you beyond a reasonable doubt that that defendant is guilty of capital murder as has been alleged in the indictment. And then we will move further along into the punishment phase of the trial. This is what I propose for the outcome of this trial to be, and in that punishment phase you will deal with certain, special issues. Those are questions that you have to



actually look at, and we're going to talk about them individually with you, and we believe that we will produce to you sufficient evidence that the answer to those questions should, in fact, be yes. And then we're going to move on to a concept called mitigation, which has to with -- I'll characterize that in a minute when we deal with the mitigation question. That's going to ask you essentially, is there anything about all of this, that even though it's a capital murder and even though he's a dangerous person and even though it was his specific intent the killing occurred, is there anything in this case that makes the death penalty inappropriate in this case? That's not the language, but that's the sense of it. And we believe we will produce, in the minds of 12 people, that the feeling and belief that, no, there's nothing that excuses or lessens the responsibility, and we believe, therefore, that in -- and it is our purpose, and we will do everything we can to receive for him the death penalty. And what that means is he will be sent to the penitentiary, and he has -- he has appellate rights and fairly elaborate appellate rights --

MR. GOELLER: Your Honor, I'm going to object at this point. This is jury argument. Mr. Schultz already has him convicted and sentenced to death. Now he's talking about his appeal. I'd ask the court to step in and put an end to it.

THE COURT: Well, I'll tell you what, I'll overrule the objection, but let's get through it.

MR. GOELLER: I'm going to further object. He's already got him convicted. Now he's got him sentenced to death. Now he wants to talk about his trip to the trial panel -- appellate rights, Your Honor. That is highly improper.

MR. SCHULTZ: Is that improper?

THE COURT: I tell you what, let's do this. That's probably a matter that can be discussed at a later time. So let's just move it along.

MR. SCHULTZ: What I'm asking you about now is ultimately at the end of this entire process, whenever that may be and however long it may take, at some appointed time the executioner will, in fact, call at the defendant's door, and he'll say it's time. And the defendant will have to go. He can either go -- he can walk or be taken there. And they'll bring in sufficient people to make sure that the sentence that has been imposed will actually take effect.

And as we probably all know that we do it by lethal injection in Texas, and that means that, perhaps humanely, but nevertheless finally, the defendant will be executed. And I don't say that lightly, and I don't say it because I think it's funny, and I know there's no one personally in the room that thinks any of this is funny or is enjoying any of this



talk. But we all owe it to one another to understand this is the real thing. That's what we're seeking, and I'm straight up with you when I tell you that.

It isn't going to do any good three years from now or five years from now, you thinking about it. This is something we've got to come to grips with right now. And I sense, because I've done this before on a number of occasions, but I sense when you start putting it in that context, the things that you may think about on the death penalty, when it all the sudden becomes real, it may be exactly the same but feel -- you've got a different feeling. Everybody sensing what I'm saying right now. You've got a different feel about it when we start thinking of it in those terms. And in true compassion for you folks, I don't want you discovering three years from now some part of you that's not good about it anymore without talking about it right now, because that's what's happened, and we're not trying to be funny.

I don't know the defendant. I don't know that I've ever even said hello. In the context of what we do, there's no interaction. He's represented. But I bet he doesn't want to die. I'd be surprised. I've never met a capital defendant who wants to die. If you gave him a choice, I suspect his choice would not be that. And that's what these questions individually really relate to with y'all as jurors, is how you feel about the death penalty, not abstractly. That's okay



when you're voting for politicians to talk about it, or you're talking about it in college or civics class or something. But for 14 of you, it's not going to be abstract. And so the time between now -- I'm getting ready to sit down. The time between now and the individual voir dire that we talk about just time for you to do some thinking about it, and let us know what you think. Anybody got any questions of me? Yes, sir.

VENIREPERSON: When do you anticipate the tr starting, and based on your experience, how long do you thi it might take?

MR. SCHULTZ: I don't have a sense of when it might start. I'd say a range to pick a jury is probably 3 to 5 weeks. That's kind of a range, and as soon as I say that I might be wrong. It's kind of like asking, maybe an obstetrician, when's the baby going to come? It really does vary. It depends on a lot of circumstances. Sometimes difficult legal issue might arise, and the judge might have to take a day, or day and a half to deal with something that wa unexpected.

I mean, somebody gets sick. Let's just say one of the lawyers gets very, very sick, and maybe we don't have a choice. Maybe we've got to wait until we get well. I'm guessing 3 to 5 weeks to pick the jury, and I don't know, maybe two to three weeks to try the case. It's just hard to



say. It ought to be, probably, 6 to 8 weeks total, although you're not going to be working all that time. You will be doing other things until the jury is finally formed. If I'm wrong on it, I don't mean to be. I just can't see the future. Anybody got any other question? Yes, sir.

VENIREPERSON: I've got a child-care issue in about an hour. What length are we going to be here this afternoon.

MR. SCHULTZ: That would be better addressed t the judge because he makes those kinds of decisions.

Let me run through the special issues real quickly just to read them to you and show you what they are. Specia Issue, or Question Number 1, at the punishment phase of the trial, whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. What that really asks is, is the defendant a dangerous person, a person who is probably going to commit criminal acts of violence that would constitute a continuing threat to society.

Probability is not defined. I wish it were. Some people might say that probability means more than 50 percen Some people might say it's a realistic chance. If you turn on the weather report on TV and the weather -- how many of yo have heard there's a 20 percent chance of rain, 20 percent probability of rain. We use that term all the time. Well,

that's not more likely than not. For sure probability has to mean something more than theoretical. I mean, it has to mean more than, yeah, it's a possibility, but how could it ever happen?

Maybe I'll make the Olympics. Maybe I'll be in the 2004 Olympics. Probably not. I mean, theoretically, yeah, I might be a sprinter, but it's very different. But in reality that's probably not going to happen.

Note that question doesn't say, will the person be probably dangerous in the penitentiary. Why I say, the results of your answers are going to be one of two things: A death sentence or a life sentence. The question doesn't ask you can he safely be held in the penitentiary. It merely asks is there a probability that he would commit criminal acts of violence that would constitute a continuing threat to society, and that means any society. He might find himself walking around down by an ice cream stand on a ship on Devil's Island, wherever it might be. It's not limited to one particular venue or one particular place. Everybody understands that.

It is an aim by that question to determine his probability and his propensity for danger, and if we put him in chains and shackles and a straight jacket, will he be dangerous? If we put him on an island all by himself, is this some way to not make him not dangerous.

The next special issue is what I've talked with you



about, and that's the burden of proof. We'll talk about that another time. While it may or may not arise, we will talk about it ahead of time.

If a nontrigger person, a nonshooter, a nondirect killer is going to be susceptible to the death penalty, our law provides that he has to have the equivalent intent of the person shooting. For example, if you and I get together and say, let's steal some liquor from the liquor store, and I stay outside watching to warn you if somebody comes along. The next thing I hear is bang, bang, and somebody is killed inside. And my partner went inside and committed a murder in the course of a robbery, because we talked about that already, I'm subject to the death penalty if I'm a party, and even if I did not actually cause the death of the deceased, but I intended to kill the deceased or another or anticipated a human life would be taken. And if I know you're going into there and I say, shoot if you need to.

If I didn't know anything about that -- him going in there and bundle up our (inaudible) and go on about our business, then the answer to that question would be no. Everybody understand the question.

Like it or not, if you're not the trigger man, you are equivalent with intent with the trigger man. You've got to be thinking the same way the trigger man is. You just didn't pull the trigger.



Mitigation, anybody know the mitigation, what it means?

VENIREPERSON: It means to lessen something.

MR. SCHULTZ: What's your profession or business?

VENIREPERSON: I'm in computers. We do mitigation planning for (inaudible).

MR. SCHULTZ: You see that a lot in banks. They have loss mitigations departments. It's now a term for collection departments. Mitigate means to lessen, to reduce, make not as serious, and that's a term in the law. Are there any lawyers on this panel by chance? There's a term that talks about mitigating your losses. If somebody knocks a hole in your window, they've got some responsibility to mitigate the losses by putting a tarp up to keep the rain from coming in and make it less or worse.

It's everything that's been taken into consideration in the evidence in a case; the defendant's background, circumstances or moral culpability that warrant a sentence of life imprisonment, rather than death being imposed. And that's when you answer the other two questions. If you answer every one no, it's over, and it's a life sentence, and that's an invitation, I suppose, to spare everybody's life, and that's where you plug in some of that childhood stuff, if it's important to you. That's where you look at it, and you say,



well, you know, he had a bad childhood; is that enough? Does that not mean the death penalty shouldn't be given in this case. Maybe it is; maybe it isn't.

Some things may be mitigating to you and may be aggravating to somebody else. If a crime is committed while on drugs, you might say, well, that's not so -- that bad because he was on drugs at the time. Other people might say that's double-bad. That's not mitigating; that's aggravating. Everybody knows if you do drugs that makes you dangerous, and it shows to make yourself dangerous and violate that law, and maybe you'd go out and kill somebody. So that's kind of up to you. We'll talk more about that personally. Some people call it the humanitarian question. Yes, sir.

VENIREPERSON: I'm curious, with all three of the special questions, in order for the jury to comply does it have to be unanimous?

MR. SCHULTZ: It does. It has to be unanimous. Yes answers have to be unanimous. No -- when I say -- when I say have to be unanimous, no answers, there has to be ten or more plurality. Does that make sense? That's what's required. So if you come back and tell the judge we've got eight votes, you know, for example, it's not ten, it's not 12, because it has to be unanimous, or it has to be ten depending on which way you're going.

VENIREPERSON: So, if it doesn't turn out to be

unanimous, then is the question answered in the opposite direction?

MR. SCHULTZ: I can't answer the question the way you're phrasing it. Let me just kind of reiterate, 12 yeses, the question is unanimously answered yes -- not that one. That's different. Ten nos, the question is answered. Those are the ways the questions are to be answered? I'm not at liberty to answer your question. Anybody else got any questions.

Is there anybody on this panel who, for reasons I could probably never anticipate the questions, absolutely knows that you are going to do an injustice to one side or the other because of your background or circumstances, and you're telling us the truth. Again, not taking the opportunity to get off by the magic words, because I could ask questions for hours if the judge would let me, and I'd never get to the root of that. Is there somebody here who are absolutely knows because of circumstances that he or she can't be fair to the defense or to the State in this case?

Hold on just a second. Do we want to do this now, or I'd rather do it now since we've got it.

THE COURT: I tell you what, I don't mind doing it now, but here's what we're going to do. We've been at it for a little over two hours, and, frankly, we've gone longer than I thought we would. Somebody mentioned that he has a



child-care problem. So I think what we're going to do is take a 15-minute recess. There's probably plenty of people that have to go to the bathroom, and we'll take a 15-minute recess and go to the bathroom and take care of the child-care problems. And then as soon as everybody is back, if it's less than 15 minutes, we'll get started in less than 15 minutes. If it's 15 minutes, we'll get started in 15 minutes, but let's not go beyond 15 minutes.

Once again, I think I've said it before. If I haven't, I'll say it now. Don't discuss the case, even now, among yourselves or with anybody else. So, anyway let's take a recess at this time and come back and continue.

(Recess taken.)

THE COURT: We're back on the record in the Cantu case.

Juror Number 55 told me this morning and also today that he's a little hard of hearing, so this is Number 55 that was seated two seats behind where I was seated, and he'll be seated here throughout the rest of the presentation.

All right. Mr. Goeller, are you ready. You're not done. Mr. Schultz, go ahead.

MR. SCHULTZ: Recall my question from before was that catch-all, there could be -- only you know if there is something. There were a couple of hands on the first row. Let me see the first row of hands again. And your name,



sir?

VENIREPERSON: David Armstrong.

MR. SCHULTZ: We're going to do this probably privately with the judge, whatever these are. And your nam sir? Mr. Aston.

VENIREPERSON: Dale Aston.

MR. SCHULTZ: Anybody else on the first row? Second row; I know there's at least one. Tell me your name again, sir.

VENIREPERSON: John McClure.

MR. SCHULTZ: Mr. McClure. Thank you very much.

VENIREPERSON: What was the question?

MR. SCHULTZ: The question is, is there something you know in your heart that makes you unable to fair to one side or the other in this case. That doesn't mean you're strong on crime or sympathetic to defendants, but that's not the kind of thing I'm talking about. I'm talking about stuff that you know in your background that is so important, whatever that is, in your work or something, that you're not going to -- that somebody is going to get less tha what they should in this trial.

VENIREPERSON: Explain that just a little bit more. Less than what they should?

MR. SCHULTZ: Let me give you an example.



Suppose something is going on in your life so strong that you can't concentrate, and you're not going to hear all the evidence. Suppose something is going on in your life, and you've got so much anger over something that's going on or something that's happened, that you're going to take it out on somebody. Somebody has -- somebody in law enforcement has done such a raw deal to you or a member of your family that you just are going to hold it against all law enforcement. Your child was murdered by somebody else. You've been the victim of that sort of thing. Things that are so potent, so powerful that you absolutely know you shouldn't be serving on this jury.

THE COURT: Mr. Schultz, let me interrupt you for just a second.

I just want to make sure that we've got everybody back. Are there any empty chairs, other than Number 55? Thank you. Pardon the interruption.

MR. SCHULTZ: How about the third row? Yes, sir.

VENIREPERSON: You know, your question states that you know whether you can be unfair? How do you really know? If you have a case like that where you had a kid murdered a few years ago, how do you know whether you coul or not? You're asking, do you know? What if you really don't know?

VENIREPERSON: Well, what if you're just afraid that you might not be partial?

VENIREPERSON: The way you're asking the question, I don't know if we could answer.

MR. SCHULTZ: Let me work down to your row.

VENIREPERSON: Sir, are you also referring to death penalty as far as it would be hard to (inaudible)?

MR. SCHULTZ: No, but you bring up a good point. We'll deal with that at a different times, and you're absolutely right because if that's where you are, I mean, I guess the answer is you couldn't be fair to the State. You know what I'm saying? But we deal with that in different -- I'm glad you brought it up. We deal with that in a different part of the trial, and that's not this part right here.

VENIREPERSON: What was that?

MR. SCHULTZ: She said -- the question was, what if you -- if I've got it right. What if you are so opposed to the death penalty that you couldn't be fair to the State? That's kind of the idea. That's a great point, and it certainly would apply. We'll deal with that later. Yes, sir.

VENIREPERSON: You don't mean that if we don't bring back the death penalty, we're not being fair to the State, do you?

MR. SCHULTZ: No. But if you cannot ever give the death penalty, then you would be unfair to the State;



don't you think?

VENIREPERSON: Not necessarily.

MR. SCHULTZ: If the law provides that the death penalty is an option, and you have determined that in your law it will not be an option, how could that be fair to the State?

MR. GOELLER: Judge, I'm sorry. I've got to object to Mr. Schultz's specific question because, for example, it's mixing fact and law. If the juror, after reading mitigation -- Special Issue Number 3 decides it's not an option, it doesn't mean that juror is not being fair to the State. So the way Mr. Schultz is questioning this particular juror, I object to that line of questioning in that sense as far as being fair to the State. I don't want these people to think they're not being fair to their State if they decide to not give the death penalty based on the law the court is going to give them. So, again I'd ask the court to step in and clarify.

MR. SCHULTZ: He knows that wasn't the question.

THE COURT: If that was the inference, I'll ask you to restate it.

MR. SCHULTZ: That wasn't the inference, and I'll state it again.

If you could never give the death penalty, and you



know that there's no way you could be fair to the State; likewise, if you would always give the death penalty in all capital murder cases, no matter what the evidence, you wouldn't be fair to the defendant.

But we deal with that in a separate part of the trial. That's not -- we won't deal with the death penalty question for purposes of my question.

I'm more thinking about background stuff that's so strong and so touches in this area that, I mean suppose, for example, you had a kid on death row. Your own child was down on death row for some crime he was convicted of. Maybe you could be fair to the defendant; maybe you could be fair to the State. I mean, you're the only one that would know. I mean, if you don't know, nobody else would probably know.

Third row. Anybody just in the back couldn't be fair? Fourth row? Fifth row? Sixth, seventh and the eighth row.

To answer your question, sir, I know what you're saying. I guess if you don't know whether it would affect you or not, that sort of might be a pretty good indication that it would. You know what I mean?

VENIREPERSON: Then I guess my answer is yes.

MR. SCHULTZ: So your answer is yes.

VENIREPERSON: (Inaudible).

MR. SCHULTZ: Ma'am, how about you? Is there



something that would make you less than fair; do you think?

VENIREPERSON: Certain circumstances would, I'm afraid.

MR. SCHULTZ: Well, we can talk about that. Anybody else on that row? Yes, ma'am

VENIREPERSON: Things that have happened that make me less than fair and might be biased. I would try not to, but I couldn't guarantee.

MR. SCHULTZ: Tell me your name again, because I know -- I appreciate you brought that up once before. Tell me your name again.

VENIREPERSON: Patsy Cooper.

MR. SCHULTZ: It's Ms. Cooper, Jami.

And your name, sir?

VENIREPERSON: Aldin Franklin.

MR. SCHULTZ: And, ma'am, you said the same thing?

VENIREPERSON: Strain.

MR. SCHULTZ: Ms. Strain, yes. Anybody else on that row?

Next to the last row. And we had to throw off one to the very back.

Ladies and Gentlemen, I thank you very much for the courtesy you've shown me, and I'm not sure what the judge's procedure will be. We'll tell you how we'll handle those of

you that raised your hands.
THE COURT: Well, I tell you what, why don't we give the other side a chance to go through it's side of the case, and then we'll figure out what we're going to do next.
Mr. Goeller, are you going to go for the defense?
MR. GOELLER: Yes, Your Honor.
THE COURT: Please go ahead.
MR. GOELLER: Thank you, Your Honor.
May it please the Court, Ms. Falco, Mr. Schultz, Ms. Lowry. Ladies and Gentlemen, can you hear me in the back? I'll try to stay about here so I project a little bit more.
How many of y'all got up this morning and had any idea you were coming to the courthouse to get yourself involved in something like this?
(Laughter.)
MR. GOELLER: Okay. Lucky me. I get to speak to you after a full day of being kind of herded around, and it's 10 to five, and now I get to talk to you. Lucky, lucky me. I'm not going to take as long as Mr. Schultz. I'm not saying he took too long.
(Laughter.)
MR. GOELLER: I'm not going to be redundant. I going to try not to cover the things. He had to cover a lot of law. In deference to Mr. Schultz, he had to cover a lot of things, I suppose, from the State's standpoint.



It may be a little unclear to some of you, understand right now there is no crime in Texas where there is a mandatory death penalty. We do not have that. I don't want anybody thinking, if you convict somebody of a certain crime, they must get the death penalty. If one is convicted of capital murder, and we don't know that yet. The judge talked to you about lesser-included offenses. There may not be a conviction of capital murder. There may not be a conviction for murder. There may not be a conviction for robbery. There may not be a conviction for burglary. There may be no conviction. Twelve -- 12 and 2, 14 of y'all are going to figure that out.
The burden of proof is on the State. I want to talk to you about my fears in this case. When Mr. Schultz asked, let me see a show of hands of people that -- people that are pro death penalty. That scares me. It's tough. I mean, my job -- and again, my partner here is Don High. He's my co-counsel, and Ivan is sitting there. But when you're sitting next to a human being where the State stands up and tells you, we want to strap him to a gurney and exterminate his life. That's tough stuff, and it's tough stuff as a lawyer to look out at a panel and more than three-quarters of the hands go up and say you're pro death penalty. I can't argue with that. I would love to go on for hours and convince you not to be pro death penalty. But that's not going to



happen and that wouldn't be right for me to do that. But I have fear with so many people pro death penalty in my particular position. Try to appreciate that for a moment.
What we have -- what the state of law is on this jury panel, the panel gets picked; the 12 and the two alternates. I'm going to call it "the 12." All 12 of those people are essentially pro death penalty. That's the way c law is. If you cannot give the death penalty, you cannot s on a jury. Is that fair? I don't know. Over a cup of coffee, we could talk about it for hours. We don't have ti and I'll just move on. But understand, and then -- oh, wh feel good about is I see many people and I heard many pe talking to Mr. Schultz, well, what about this and what abo that? And you have some questions. You have some cor My God, I hope you would. I hope you would.
If anybody is out there -- and again, my job is not to stand up here and take issue with you, disagree with yo pick on you, try to change your mind. That's a waste of n time. It's a waste of your time, and it doesn't do him any good, so I'm not going to do that. But please keep in min you're one of those persons, and I won't quarrel with you, won't argue with you, won't debate it with you, and I thin Mr. Schultz said, all I need is your complete honesty and candor. That's all I need, and I would be -- I would be so appreciative if you tell me that.



In cases in past I've had people stand up on jury panels and say, well, I tell you something, Mr. Goeller, I think people are presumed guilty, and they ought to hav prove their own innocence. Now, you may say, well, in year 2001 in United States of America in this, quote, un democracy we have, a Republican form of Government ignorant statement. I say to you no. Thank God that pe had the intestinal fortitude and the character and the honesty. There's people out there, for whatever reason, they believe if you're accused of a crime, you ought to up, deny, testify and prove your innocence. Again, I w take issue with that, but always thank those jurors for t honest with me. What if they hadn't told me that and g the jury? What a disservice they would have done to t system, themselves, lying to themselves, and that's wh really want to avoid.
You filled out those questionnaires, and there's probably a little bit of fine print at the top that said the answers are made under oath. Well, in a way they we of those questions that were on those jury questionnai there were people that were up and out of here in 20 - think the earliest person was out in 15 to 20 minutes. There were a few folks that were here for -- it went o filling those questionnaires for a long, long time, and people -- that tells me that people were struggling --

not struggling. That's not a good word. But were certainly having to think about a lot of those questions. I mean, when was the last time you had to answer questions like that in an official proceeding, a trial.

When was the last time any of you were asked by your Government to kill somebody? That's really what the death penalty is. I mean, that's tough stuff. So, again, I think Mr. Schultz thinks this, too. There are no right or wrong answers. Just honest, honest answers. That's all we're looking for. I have to have them to do my job. I've got a job. You know, it may be it's to defend that kid sitting there zealously. Mr. High has got the same job. Those three at that counsel table represent the State of Texas.

I analogize everything to baseball it seems. What this trial really is -- a jury trial, the judge is kind of the umpire. He calls the balls and strikes, but he doesn't step into the plate when a runner comes sliding home. You folks are like 12 sitting right on top of home plate. The judge backs out. He'll call balls and strikes, but when a runner crosses, whether the catcher tags him, that's what the 12 of you folks do. You're going to judge the facts.

Now, I know it's five to five. I'm going to go through this as quickly as I possibly can. Give me your attention, and I'll get you out of here a little bit early.

I think the judge asked earlier; has anybody read



anything, heard about anything with this case? I recall maybe one juror say they thought they heard something about this case either through the media or any other source? Anybody out there know anything about this case? I think the judge mentioned the name of the alleged deceased. That's not right. I apologize. There is a deceased in this case, a Mosqueda -- Mr. Mosqueda. Anybody know that individual?

How many people out there on the panel have been victims of serious crime? Okay. I don't have the time, and you don't have the time, you don't want me asking you who keyed your car 12 years ago in the Wal-Mart parking lot. It's a big waste of everybody's time. I'm asking, let me see a show of hands -- I guess I'll go row by row -- somebody out there that's been the victim of a serious crime. Somebody has burgled your house, stuck a gun in your face, dealt dope to your kids maybe, something of that nature. Okay.

Sir, I'll go as quickly as I can. Tell me -- how we'll do this, I'll go name, year, what happened to you. Go.

VENIREPERSON: Kayphet Ratsavong; burglarized during college. I'd say eight years ago.

MR. GOELLER: Okay. Burglary of a college dorm, a residence or house. Okay. Somebody else on the first row. Yes, sir?

VENIREPERSON: Dale Aston; burgled my house; 1971.



MR. GOELLER: Okay.

VENIREPERSON: William Flaherty; burglarized my house maybe 3 years ago, and I was robbed at knifepoint about 20 years ago.

MR. GOELLER: Unlucky. Yes, sir.

VENIREPERSON: Biggs; theft of property for my car, approximately 1970.

MR. GOELLER: Burglary of motor vehicle?

VENIREPERSON: No. They broke into the car and stole articles.

MR. GOELLER: It's actually burglary in Texas -- another form of burglary.

VENIREPERSON: Gregory Johnson; robbery at gunpoint while playing basketball; '89, '90.

MR. GOELLER: Okay. Yes, ma'am

VENIREPERSON: Diane Kerr. My house was broken into in 1997, or '98. I'm sorry.

MR. GOELLER: Burglary. Yes, ma'am.

VENIREPERSON: Hilda Lauriello. My house was broken into about -- almost three years ago.

MR. GOELLER: Okay.

VENIREPERSON: Venora Allen. My car was broken into about 10 years ago.

MR. GOELLER: Next row, yes, sir -- or yes, ma'am. I'm sorry.



VENIREPERSON: Jan Jones; home burglarized while I was sleeping in the next room, 1979.

MR. GOELLER: Yes, sir

VENIREPERSON: Mike McKinney; burglary about 10 years ago and aggravated assault about 10 years ago.

MR. GOELLER: Okay. Next one?

VENIREPERSON: Jeff Vu; my car got broken in last summer.

MR. GOELLER: Yes, ma'am. I'm sorry, your name?

VENIREPERSON: Lynn Duncan; five years ago; burglary of a car.

MR. GOELLER: Burglary of a car, Ms. Duncan, five years ago. Yes, ma'am?

VENIREPERSON: Susan Kolechta. My house was burglarized probably in the late '70s.

MR. GOELLER: Next one?

(Discussion off the record.)

MR. GOELLER: Ms. Price asked if credit card fraud would be a crime? Yes, that is a crime.

VENIREPERSON: About seven years ago.

MR. GOELLER: Okay. Next. Yes, sir?

VENIREPERSON: Lewis Tisdale; burglary of a car about three months ago.

MR. GOELLER: Mr. Tisdale, burglary of a car. You just let me know if you can't hear, and I'll shout it back

out.
Yes, sir?
VENIREPERSON: Auto theft, 1984, Danny Cummings.
MR. GOELLER: Okay. Yes, sir.
VENIREPERSON: Camden Davis; house burgled in '92 and credit card fraud.
MR. GOELLER: Mr. David (sic), house burglary and credit card fraud. Yes, sir.
VENIREPERSON: Mike Foster; house burglarized; '83.
MR. GOELLER: Mr. Foster; house burglary; '83. Yes, ma'am?
VENIREPERSON: Patsy Cooper, and 20 years ago my car was broken into, and then 15 years ago my daughter was robbed at gunpoint for her car and her purse.
MR. GOELLER: Anybody else? Yes, sir.
VENIREPERSON: Burglary in '84; Alden Franco.
MR. GOELLER: Franco; burglary, '84.
Next. Yes, sir -- yes, ma'am. I'm sorry.
VENIREPERSON: Someone selling drugs to your children. My daughter earlier this year bought drugs -- I guess she purchased drugs from a drug dealer. Wintrich.
MR. GOELLER: Ms. Wintrich, daughter purchased drugs from a drug dealer.



VENIREPERSON: Right. She went to rehab.
MR. GOELLER: Okay.
VENIREPERSON: Stanley Johnwell, my house was burglarized 15 years ago, and I had credit card fraud, I think it was 12 years ago.
MR. GOELLER: Yes, ma'am.
VENIREPERSON: Kelly Stone; attempted burglary of my home four years ago.
MR. GOELLER: And the last one, yes, sir.
VENIREPERSON: Gary Spence; home burglary about 12 years ago.
VENIREPERSON: Fred Noddin; vehicle burglar, three years ago.
MR. GOELLER: Mr. Noddin, vehicle burglary, three years ago.
VENIREPERSON: Lawrence Jacob; house burglary, '98?
MR. GOELLER: Yes, ma'am.
VENIREPERSON: Debbie Cole, home burglarized about 9 years ago and my car burglarized way back.
MR. GOELLER: Burglary, as you can see, is a pretty -- I'm sorry, did I forget you? On the last row, yes, ma'am.
VENIREPERSON: Theft of purse in a public place in 1972 and a burglarized house about 1998. Kathy True.



MR. GOELLER: Thank you, ma'am.
Obviously we're going to speak to all of you or mos of you on an individual basis. I think I would concur with Mr. Schultz's estimation of the trial, and I think the judge may have mentioned some of it, too.
You would be called one at a time for a few hours, perhaps in the next two to three weeks, some starting as ea as this Thursday and Friday, some next week and the week after. My best guesstimate is mid-September to actually st the trial and then three to four weeks, so mid-September. Hopefully, at the latest mid-October, all right. And just kind of be keeping that -- thinking about that. You may w to talk to your spouse or significant other, employers, thing like that. That's probably the time frame, if you're selected as a juror in this case, your actual in-courthouse commitme 3 to 4 weeks. Usually, I think the judge would probably te you 9 to 5, something like that. But that's -- I want you to be thinking about that. I know some folks talked about day-care issues, surgeries, and those things are very important.
You're not -- and let me tell you there's nothing wrong with saying, look, I've got things going on in my life Right now is not a good time for me. That's an honest answ if that's true, and why do I want that honest answer? If you're going to be sitting in the courtroom, and you're not



thinking about the facts and the case, I've done something wrong, or I'm not doing my job to protect that kid sitting up there. There's nothing wrong with that. If my child is having surgery and I'm sitting in a courtroom, you know, who -- who would dare tell me, hey, you're not concentrating on that trial. No, I wouldn't be. I don't think anybody wouldn't be. There's nothing wrong with that. Maybe anothe time is better, but that's something we can talk to the judge about. If you know right now something is coming up, and y won't be in the game, so to speak, and you're a human being. There's nothing wrong with that, and we'll talk to the judge about that.
Getting back to -- I'm going to be quick, folks, I promise you. It's two after five.
Getting back to the death penalty. It's okay, and you cannot be disqualified from being a juror in this case if you don't like the death penalty. Don't let anybody, anybody lead you to believe that you wouldn't be a qualified juror just because you have reservations or don't really like the death penalty. I mean, this is -- this is bizarre stuff for lawyers. We don't try a lot of these cases compared to the number of cases we handle. It's the ultimate punishment. There's no undoing it, as you know.
Remember that if somebody is found guilty of capital murder two things must happen; life in the

penitentiary or death. That's it. There is no probation. Life or death; that's it. And that -- those special issues that the jury answer, those determine which of the two. There are no other options. No probation, no going home, no rehab, nothing. Life/death; that's it, if you're found guilty of capital murder. Everybody with me on that? All right.

And they had it up on the screen and just for sake of time, I'll use this board real quick. Everybody kind of remember that? This is that mitigating special issue, okay. That's the last issue the jury answers if you find somebody guilty of capital murder. Now, if you do not find somebody guilty of capital murder, you never see any of these issues. There are no special issues.

As the judge told you -- well, for example, if you found somebody guilty of murder, you're going to be deciding anywhere from probation up to life. Robbery, burglary, anywhere from maybe two years to ten years in the penitentiary, or 20 years in the penitentiary, something like that. But because my time is limited and it's at the end of the day, I'm going to concentrate on the most dire things I need to as a lawyer, and those are the special issues. And then I think I'll sit down and be done because you folks are looking at your watch. I know, I see you looking at your watches, and I'm hustling folks. Trust me.

First special issue if you find him guilty of



capital murder: Probability he would commit criminal acts of violence that would constitute a continuing threat to society. If you get to that issue, you know it's either going to be life in the joint or death. So, I would submit to you that society means the penitentiary. Remember, if you get to these questions you've already found him guilty of capital murder. The only thing you're deciding, do you kill him or does he live out life in the joint.

Continuing threat to society. How would you determine that? Anybody. Tell me how you make a decision like that? How do you answer a question, is there a probability he would be a continuing threat to society? Anybody, just shout it out.

VENIREPERSON: His record.

MR. GOELLER: What kind of record?

VENIREPERSON: Priors.

MR. GOELLER: Violence, been a violent guy in the past. Stuck guns in people's faces, killed people before, raped, right?

Sufficient mitigating circumstances, circumstances to warrant that a sentence of life rather than a death sentence be imposed. Mr. Schultz, and many of you had an exchange about the drug dealer. I want to kind of follow up on the deceased being a drug dealer. I think this issue, consideration of all the evidence, including the circumstances



of the offense, now we do focus -- remember the long conversation about if you killed a nun praying in the church, or if you kill Hitler or Charles Manson, or whoever it was, Mr. Schultz says there's really is no difference. Killing is killing is killing; it's all wrong.

Now, assuming that's true, and I don't know. I have a hard time. I think somebody like Mother Teresa, if somebody rapes and kills her. Then somebody kills Charles Manson or Adolf Hitler, I'm a human being and I see a big difference. Maybe I shouldn't. Maybe I shouldn't say that. Maybe I shouldn't be proud to say that, but I'm being honest with you folks. I see a huge difference.

At least when it comes to this, because now you concentrate on all of the evidence, deceased a dope dealer? Maybe. Deceased a bad guy? And if you read this, we also start concentrating on the defendant. What kind of life, character, background because, remember, when you're answering this question it's just -- does somebody go to the penitentiary for life, or do you kill them? And our courts and our law say you look at everything, everything, everything, everything, because you're making the ultimate decision, okay.

And I'll be honest with you, as lawyer -- I tell you when I go to cocktail parties I don't tell anybody I'm a lawyer anymore because, you know, it's just not good. But if



you're pro death penalty, and you set me down and you kind of figured out that, no, I'm not really into the Government killing people, maybe I'm not into anybody killing anybody. I don't like murderers. I don't like capital murderers. I don't like people killing people. I don't like Governments killing people. I don't like anybody killing. Maybe that's what I'm all about.

If you sat me down and you said, you know, my child was abducted, raped, tortured, cut up, fried and eaten by Jeff Dahmer. Remember that guy? Remember Dahmer? Boy, I'm going to have a tough time justifying not taking his life, right? Or Timothy McVeigh. How many? 168 little kids in that day care. I admit, I'd have a tough time sitting there trying to defend over a cup of coffee no death penalty. Or Adolf Hitler, what did he kill? Joseph Stalin. You know, Hitler was -- if he killed 6, Stalin killed 20 million. I mean, after a while numbers and human lives, that's why I'm so sick of all the killing. But I understand, for you people that are pro death penalty, I'm going to respect you. Try to respect me. That's all I ask. That's all I ask.

That's my biggest fear. I'm going to have a jury of 12 that are pro death penalty, and as a lawyer it's scary. So I want you to know what my fears are. I want you to remember what the special issues are.

The last thing I'm going to say to you, and I'll sit

down. When you were filling out those questionnaires, I saw people -- I watched you. I watched many of you anguish out there. You're scratching your head. You're going like this. I mean, you do what I do (indicate). I was doing that watching you doing that, because I know. I've got the questionnaire up there, and I was trying to go through it like you were trying to go through it about -- trying to pace myself. I flipped pages when y'all were. I know the kinds of things you're thinking about.

You may change. I don't care what you put on that questionnaire. When you come to individual voir dire, shoot straight with me. That's all I ask. I would never take issue with you. I won't argue with you. And if I did, that judge sitting over there should say, Goeller, sit down and shut up because they have a First Amendment right to freedom of speech. That's what this country is all about. Just shoot straight with me from the gut. That's all I can ask for. Thank you, Judge.

THE COURT: Thank you, Mr. Goeller.

Ladies and Gentlemen, we're going to let almost everybody go. I believe that we've got a few people we want to talk to; is that right, at this time?

MR. SCHULTZ: Yes, sir.

THE COURT: All right. Who have you reserved, and has the defense reserved anybody for right now?



MR. HIGH: Not that we know of, Judge.

THE COURT: Give me the names of the people you've reserved, and we'll read them out. We'll ask them to remain behind for a few minutes.

MS. LOWRY: Number 4, Mr. Armstrong; Number 5, Mr. Aston; Number 11, Mr. McClure; Number 50, Mr. Franco; Number 51, Ms. Strain, and Number 47, Ms. Cooper.

THE COURT: Everybody hear that? Let me see your list. Let's see, Number 4 is Mr. Armstrong; Number 5 is Mr. Aston -- in fact, I won't say Mr. or Mrs. All I've got is the name. Number 11 is McClure; Number 50 is Franco; 51 is Strain and 67 is Patsy Cooper -- excuse me, 47. That's everybody. Everybody got that? Everybody hear me.

Then I tell you what -- pardon me?

VENIREPERSON: You add my name to it?

THE COURT: What's your name?

VENIREPERSON: Fatemeh Farazianfardkoh.

THE COURT: Let's see, what number are you?

VENIREPERSON: 33.

THE COURT: 33. All right.

I tell you what, we're going to start off on Thursday morning with the first four jurors, and then at 1:00, we're going to have the next four. And you'll be Number 8, I believe, sir. So, you will be the people that we see next, and then we're going to see the next eight on the following



day, which is Friday.

But other than having told the first 16 people what I've just told them, that we're going to be seeing more of them this week, and other than the people whose names I re everyone else is excused at this time until your sheet tells you to come back. When you come back, you're going to b coming to the courtroom, which is on the fourth floor of the main courthouse.

(Recess taken and venire exits.)

(Reserved jurors only present.)

THE COURT: Let's see, I suppose we ought to -- I suppose the State reserved these people, so we'll let the State go first. The oath that you took is still in effect. So, I'll let the State ask you whatever questions they want to ask you. In fact, if you want to remain seated there, that would be fine.

DIRECT QUESTIONS

BY MR. SCHULTZ:

Q. My question was open-ended on purpose, and in the event that it's intimate I didn't want to ask anybody what the real focus was. My question was designed to ask, is there something in your background or experience or your life or something that would make you unfair to either side. Becaus I'm just -- you know, I'm not looking for ringer on my side. That's not what I'm trying to do. So, why don't you just tell



me what your story is?

**A. Okay, sure. The reason I would not be fair -- I wouldn't be fair to the defendant if, in fact, he was found guilty. I would automatically want to return the death penalty, period. I thought I would be coming in for a typical case, but this one hit very close to home. Back, let's see, 17 years ago, my father's two half-brothers went on a robbery and murder rampage.**

**In fact, one of them is dead, killed a cop, killed a service man. The other one is in prison, life without parole. They destroyed my whole family doing that. As far as -- my father is on medication for depression. He's under counseling still after all these years for this, and I just feel that the one brother who could have stopped the other one from doing all this stuff, he's just as guilty. They were both convicted. Arizona doesn't have the death penalty, so I'm really angry. I don't think I'd be fair to the defendant. If they found him guilty, that's it. Death.**

Q. You wouldn't listen to anything that anybody had to say?

**A. It's done. You can tell the way I'm speaking, I'm kind of nervous about it. I'm still very upset even about it, just from my personal level.**

Q. Well, I believe you're qualified.

MR. GOELLER: Are you done with him?

MR. SCHULTZ: I'm done.
MR. GOELLER: What you're telling us, sir, just so the record is clear -- I challenge the juror, Your Honor.
THE COURT: All right. Then, you are Mr. Armstrong; is that correct?
VENIREPERSON: Yes.
MR. GOELLER: I think you're going home.
THE COURT: Mr. Armstrong, you are finally excused.
VENIREPERSON: Thank you, sir.
THE COURT: Let's bring the next one in. Let's bring in the next one.
MR. SCHULTZ: We got an agreement on this juror.
THE COURT: What is your name, sir?
VENIREPERSON: John McClure.
THE COURT: And what was your juror number?
VENIREPERSON: 11.
THE COURT: All right. Both sides agree then that this --
MR. GOELLER: Can I ask one question.

DIRECT QUESTIONS

BY MR. GOELLER:

Q. You were the juror that said that if you had to serve it would basically ruin your business?



**A. No, I'm employed, and after a brief conversation we had and after considering it, I was actually going to investigate because I do take my civic duties seriously, and I do take the situation that presents here very seriously. I was going to investigate because I'm coming back Friday, I guess, to see if I could do something about my personal circumstances so that it would not affect my personal issues. And after I raised my hand, I thought about it and that was --**

Q. What is your personal circumstance regarding?

**A. Basically I get paid for my company for three days or four days of service.**

Q. I got you.

**A. Other than that, the six dollars a day, or whatever it is -- but I was going to see if I could get my employer to make some exception, or actually talk to someone that may be able to help me out with that circumstance, because I am trying to fulfill my duty to the court and to the gentleman.**

MR. HIGH: I've got a question. What kind of work do you do?
VENIREPERSON: I fix Mercedes Benz.
(Discussion off the record.)
THE COURT: You guys want to confer a little bit?
MR. SCHULTZ: We agree.



MR. GOELLER: We agree, Judge.
THE COURT: Both sides agree and your client agrees?
MR. GOELLER: Yes, sir.
THE COURT: Then, Mr. McClure, you are finally excused.
MR. SCHULTZ: Don't tell them out there, though. Do us a favor.
VENIREPERSON: If you want to call me back tomorrow for something else, I'll be here.
THE COURT: You may leave the courthouse. Thank you, sir. Who's the next one?
Yes, sir, what was your name?
VENIREPERSON: Alden Franco.
THE COURT: If you'll have a seat in that Juror Number 4 seat. And, Mr. Franco, it appears that you are Number 50, Juror Number 50. All right. The State, I believe, wants to ask you some questions.

DIRECT QUESTIONS

BY MR. SCHULTZ:

Q. Your point was well-taken. It was just a catchall. I mean, you're the best one to know whatever the circumstance is, and we try to deliberately be vague so it's never embarrassing to anybody. I don't know if it's big or little or important or not.



What is it that makes you think you might not be kind of down the middle like you might need to be?

**A. Well, my grandmother's -- I grew up with a lot of cousins, and I grew up with my grandmother's maiden name was relation to either the deceased or the defendant in this case, and I don't know if I could have partiality or bias in the case.**

Q. Have you heard something about the case just through family?

**A. No. I don't even know, but it's just the way -- the way I guess Latinos are raised. So, it's just -- I don't know if I could -- if someone or another would come into play or not.**

Q. Well, give me an idea. Do you know the defendant?

**A. No.**

Q. Have you ever met him? Just know of him?

**A. Don't even know him.**

Q. How do you know you're related?

**A. I don't know if I'm related.**

Q. You might be, same name?

**A. I said defendant or deceased.**

THE COURT: Say, do you mind if I ask a question? Are you saying it could be the defendant or the deceased that you're related to?
MR. SCHULTZ: They're related, Judge.

VENIREPERSON: Well, I wanted to say that because I didn't want to point it out. It shouldn't matter. What it does cause is problems with my own judgment to me, the way I was raised.

THE COURT: Let me let the attorneys continue. Go ahead.

Q. BY MR. SCHULTZ: Help me out a little because I'm not maybe understand -- I think I'm not exactly understanding what you're saying.

**A. So, okay. So I grew up with a lot of relatives.**

Q. Right.

**A. With the defendant's last name.**

MR. GOELLER: Cantu.

**A. Cantu. So can I be fair? I don't know. I mean, even with all the evidence, if it was someone else -- you know, I just don't know. The evidence falling on either side, however it comes out, would it have some kind of bias in my judgment? I don't know. You said would you know. I don't know. I'm telling you the truth I don't know.**

Q. BY MR. SCHULTZ: Well, you mentioned -- I forget exactly how you phrased it. I'm just trying to learn about every juror. Is it especially a different -- like, a Latino issue, because it doesn't sound to me --

**A. I could see how it would be difficult if it was Smith or Johnson, but I guess with us we grow up -- I grew up,**



**and when we had Christmases, or whatever, it was relatives. I mean, everybody; we knew everybody.**

Q. Right.

**A. And you grow up with a bunch of them. And some, you go to different cities, and then you find out, hey, let me introduce you to so and so. He's your cousin. Didn't even know they existed. Now I do.**

Q. Are you saying that maybe the ethnicity might play -- I'm trying to understand what you're saying.

**A. It might. I don't know if it's the ethnicity. It's the facts that I don't know, right.**

Q. Okay. I mean, I guess it's possible we could have the whole trial, and you would never know if he was one of the Cantus you're related to; is that correct?

**A. Correct.**

Q. But what if -- would it be different if he was a relative than if he wasn't, if you don't know him anyway?

**A. I'm sorry?**

Q. Let's say he is a relative, but you don't know that because you never met him and you don't know his mom or dad or any of that.

**A. Would it make a difference?**

Q. What difference would that make if he's so distant you don't know him; you know what I'm saying?

**A. That's where the cultural raising comes up. We**



**don't look at it that way. I know second cousins and third cousins where you might not know your first or second cousins. And when I go to family, and we meet my mom's second cousin, from that point on we know that -- we know the cousins, and we can count on them and talk to them and call them anytime. I don't know how to explain it.**

Q. Are you saying that you think the victim and the defendant are related because you know both names?

**A. No. I just didn't want to say. You made me say it.**

Q. What?

**A. It's the defendant's name, Cantu. I don't think -- go ahead.**

Q. So where does that leave us with you? Because that's what I'm saying. I don't know you. You're the best judge of yourself.

**A. I know. And that's why you said do you know, and I said, no, I don't know. But is there a possibility, that's why I asked you, how come you didn't know.**

Q. If he's not a relative, are you a fair juror in your opinion?

**A. I would think so. I would like to think I am.**

Q. But if he is a relative?

**A. Even if he's not, right, or even if you go back or say there's no way we can sit here and trace that through the**



**tree and find out if he's your relatives or not, not in the time frame that we got. So, I think it would be difficult. I think it would play mind games in myself, after hearing evidence and whether I would question some of the stuff simply on that.**

Q. So it might be a problem for the State or it might not. You just don't know. You're just being up front?

**A. Right I'm -- it might, might not.**

MR. SCHULTZ: Okay. That's all the questions I've got.

THE COURT: Do you have any questions, Mr. Goeller? Say, if you don't, I do.

You were scheduled to be back here -- you were supposed to be in last Friday, right? Aren't you the one that called --

VENIREPERSON: I sure did.

THE COURT: Why were you coming in on Friday?

VENIREPERSON: I was going to go out of town, and I rescheduled for business reasons.

THE COURT: What kind of business do you have?

VENIREPERSON: Texas Tech (sic) -- Texas Instruments, and I was going to go out of town on a training assignment, but we finally found someone else that could go.

THE COURT: All right. Thank you.

Do you have any? I'm done.

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MR. GOELLER: I don't want to step on you, Judge.

THE COURT: I'm done. Go ahead.

CROSS-QUESTIONS

BY MR. GOELLER:

Q. Would you always follow the law as the judge gave it to you if you were a juror?

**A. Yes.**

Q. If somebody were guilty of capital murder, and the evidence the state proved that beyond a reasonable doubt, you'd find them guilty, wouldn't you?

**A. If he was guilty beyond a reasonable doubt?**

Q. Sure.

**A. Okay. I can answer that question as long as I can say -- you know, if it was my brother, and I was on the jury and if he was beyond a reasonable doubt, I probably would say, yeah, he's still guilty. But I don't know if it would -- I don't know if it comes into play where, obviously, they'd have to present some very good evidence as to good evidence, right?**

Q. Right. I understand what you're trying to say.

But as you sit there right now, Cantu is a very common -- I say Hispanic. You say Latino. Is there a difference?

**A. Not really.**

Q. Okay. What do you prefer?

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**A. Either one.**

Q. Cantu is an extremely common Hispanic name.

**A. Not to me.**

Q. You don't think there's hundreds of Cantus in all the big cities across the country, LA, San Diego, San Antonio?

**A. There's a lot in San Antonio, and probably some in Dallas and plenty here and plenty where I grew up.**

Q. And Mosqueda, M-O-S-Q-U-E-D-A, that's a pretty common name, too? Not as common.

**A. I've never heard of it.**

Q. You've never heard of that one?

**A. Huh-uh.**

Q. You've never heard the name Mosqueda?

**A. Huh-uh.**

Q. I'm sorry. I thought you said you may have thought you may have been related to the deceased?

**A. I didn't want to say which one I was related to.**

Q. Oh, okay. I got you.

**A. You guys made me say which one I was related to. I didn't think it mattered. All I was trying to say is that it might cause me to have some problems with my judgments.**

Q. But don't know --

**A. It is Cantu.**

Q. You don't know any Mosqueda, and you don't know the deceased?

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**A. Right.**

Q. You have no issue there.

Well, you are saying you know Cantus.

**A. And I'm related to some Cantus.**

Q. Okay. But you have no -- as you sit there right now you have no independent knowledge of any relationship whatsoever with Ivan Cantu?

**A. No.**

MR. GOELLER: Okay. That's all I have, Judge.

THE COURT: Anything else from the State?

MR. SCHULTZ: No, sir.

THE COURT: We'll see you August 31st at 8:45, sir.

VENIREPERSON: Okay.

THE COURT: Thank you very much. Let's have the next one in here.

Could I get your name, please?

VENIREPERSON: Sandra Strain.

THE COURT: Sandra Strain. And could somebody -- Ms. Strain is Number 51, I believe. All right. State goes first.

MR. SCHULTZ: Yes, it does. Thanks for coming back for a little bit more.

DIRECT QUESTIONS

BY MR. SCHULTZ:

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Q. Tell us what your circumstance is that makes you think you might not be fair to one side or the other.

**A. I'm just afraid. I'm so nervous, y'all. Forgive me. But deep down in my heart I just know I would not be a good juror. First of all, I have a real sense of right and wrong. It's either right or it's wrong, and I have no sympathy for people who do wrong and that I hate that about myself, but that's how I am.**

Q. Right.

**A. And also what worries me the absolute most is I have a very brief attention span. You were driving me crazy because you were so redundant. Do you know what I'm saying? I mean, it's like if he repeats that in one other way, I'm going to lose it. You were driving me nuts. And because you said the same thing over and over and over, four or five different ways, every time you were trying to make a point. Well, I got it the first time. So, that was, like, really bothering me. I tuned you out. That's how I control that about myself. I'm sorry.**

THE COURT: Hey, that's okay. You got to tell the truth. All right.

**A. It was scaring me so bad that you -- or you would be saying something and I would tune you out because it was just bothering me. So, it just would scare me to death. I don't think I could be fair, and it petrifies me to think that**

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**someone's life that I would have to -- that's a big thing.**

Q. I understand. Did I understand you -- and I might be mistaken, but I was thinking, was there some drug dealer that was involved with your family or something?

**A. No. I just -- like I said, to me drug dealers are right there with child molesters.**

Q. Right.

**A. And I guess I'm a person that basically thinks you reap what you sow. If you are going to deal drugs, you probably will end up dead, and that's all right. That embarrasses me to say that. It really embarrasses me to say that, but that's how I feel.**

Q. Hypothetically, how would it affect you if a defendant were a drug dealer, like a capital murder defendant were also a drug dealer? Would that --

**A. See, I would probably think he was scum of the earth. That's how I feel about people like that.**

Q. That's my question. So, I mean in your mind it goes both ways. I mean, a defendant, who's also a drug dealer, that's about as bad as he can be when he's a capital murderer, also, that kind of thing; is that where you are with it?

**A. Are you saying the defendant. I'm getting confused. I'm so nervous. You mean, like the victim was a drug dealer?**

Q. Let's say --

**A. And the guy that shot him was a drug dealer?**

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Q. Yeah.

**A. Well, then, you know, I just have no sympathy for either one of them.**

Q. They probably both deserve to be dead?

**A. Well, yeah -- sort of. You know, but then I'm just so confused after today because I thought I could fill out that questionnaire, and I felt myself scratching it out. And I thought, no, I believe in the death penalty, and then after you spoke, I'm thinking, do I really. I don't think deep in my heart I could be a part and actually say, yes, I want death for this man. You know I just don't think I could do that. I just don't think I would be good at this at all.**

Q. You don't know any of the facts of the case, though, do you?

**A. But see, just by being here today I think this man is very guilty. See, is that not -- that is so wrong of me. So I just automatically think he's guilty because he's sitting there.**

Q. It's not wrong if you believe it. Like, Mr. Goeller said, it's a free country.

**A. It embarrasses me. I'm in turmoil after today. I found a lot about myself I think I don't like.**

Q. So you don't think you're fair as a juror?

**A. I'm afraid I'm not fair, right. I'm afraid I could not be fair.**

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MR. SCHULTZ: That's all the questions I got.

THE COURT: All right. Let me ask you to wait outside -- do you have some more?

MR. GOELLER: I haven't had any yet.

THE COURT: Seems like you have.

CROSS-QUESTIONS

BY MR. GOELLER:

Q. Did I get tuned out, by the way?

**A. No. I heard every word that you said.**

Q. Oh, perfect. I like that.

Let me ask you something. I'll cut right to the chase. If you were me and I was defending that kid sitting there and -- let me start over.

Should I worry -- should I be worried if you get on this jury as the defense lawyer?

**A. Yes.**

Q. Okay.

**A. I mean, yes. I think anybody should worry about a person like me because, first of all, my attention span is -- I just can't -- I can't sit still. I wanted to stand up and sit down. I mean, you were about to get the best of me.**

Q. If you found somebody guilty of capital murder, will they be getting the death penalty?

**A. Before you started speaking, I probably would have said, oh, yes. But, you know, when I really think -- not so**

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**much as even you speaking as when I was filling out that questionnaire. You know, it just kind of -- some of the things I thought I truly believed I'm not so certain on now. I just don't know.**

MR. GOELLER: Okay. Thank you, ma'am.

THE COURT: Where are you from, Ms. Strain?

VENIREPERSON: Originally?

THE COURT: Yeah.

VENIREPERSON: New York.

THE COURT: I tell you what, if you would wait right outside that door.

(Discussion off the record.)

THE COURT: Tell me your name again.

VENIREPERSON: Fatemeh Farazianfardkoh.

THE COURT: Please be seated over there.

Ms. Farazianfardkoh, I remember that the attorneys didn't want to reserve you, but you put up your hand and you said that you wanted to be reserved. And you also showed up earlier when we were in the courtroom because you came in the courtroom and told me that you found it nice to be here, I believe?

VENIREPERSON: Yes, but I'll be honest with you. I don't understand very well. Most of this talking about, I misunderstood the reason I cannot be here. I can't talk really, but I cannot like this.

THE COURT: What kind of work do you do?
VENIREPERSON: I don't know.
THE COURT: What kind of work do you do?
VENIREPERSON: Oh, I'm working. I'm a teacher. I'm the kindergarten teacher.
THE COURT: Where?
VENIREPERSON: McKinney.
THE COURT: What's the name of the school.
VENIREPERSON: McKinney Montessori Academy.
THE COURT: You're a kindergarten teacher. You teach in English?
VENIREPERSON: Yes.
THE COURT: Who wants to go first? Would the defense like to go first or the State?
MR. GOELLER: I think Bill gets to go first.
MR. SCHULTZ: I'll defer to the defense.
MR. GOELLER: Why thank you.

DIRECT QUESTIONS

BY MR. GOELLER:

Q. Ma'am, I just have a few questions of you. None of this is meant to pry. What is your origin? What's your ethnicity?

**A. I'm from Iran.**

Q. Iran?

**A. Yes.**



Q. How long have you been in the United States?

**A. 23 years.**

Q. Do you read and write English?

**A. What?**

Q. Do you read and write English?

**A. I read, but writing I have difficult.**

Q. What about hearing? You mentioned something that you were having difficulty understanding --

**A. Yes.**

Q. -- what people were saying?

**A. Yes.**

Q. Can you tell me a little bit about that. In what sense were you having difficulty?

**A. Difficulty with the words commitment or defendant or something, or something like that. Really be honest, I don't know anything --**

Q. About the case?

**A. And the law and I --**

Q. Let me ask --

**A. -- I don't want to a -- missing something.**

Q. And I'm glad you're bringing that up. When Mr. Schultz was talking --

**A. Yeah.**

Q. -- and I was talking, if you grouped our two talks together, 0 percent to 100 percent, how much do you think you



understood what we were saying, what percentage?

**A. From 1 to 10 or --**

Q. 0 to 100 percent. Did you understand half of what we talked about? That would be, like, 50 percent, 25 percent, 75 percent, three-quarters, what do you think?

**A. For this, maybe 25 percent I understood.**

Q. Okay.

**A. It is very hard for me.**

MR. GOELLER: I'll pass, Your Honor.
MR. SCHULTZ: I don't have any questions.
THE COURT: All right. Let me ask you to join the others outside and talk to you again in a minute. Thank you. She's Number 33, I believe.

Does anybody have anything to say about Mrs. Farazianfardkoh?

MR. SCHULTZ: I think she's actually telling the truth because if I remember she's the lady that came up and you didn't know why she was there. As I remember, she came up to say that she just was enjoying it all, and was liking it. That's my recollection of her.
THE COURT: Do both sides agree?
MR. SCHULTZ: We have an agreement on Ms. Farazianfardkoh.
MR. GOELLER: This last one.
THE COURT: Is that okay with your client?



MR. GOELLER: You don't want her?
THE COURT: Is your client --
MR. GOELLER: Yes. Ivan, you're in agreement to release that last juror, Ms. Farazianfardkoh.
THE DEFENDANT: Absolutely.
THE COURT: Ms. Farazianfardkoh, you are finally excused. You may go home. You don't have to come back at all.
VENIREPERSON: Thank you. I appreciate it.
THE COURT: Say, was there a motion on Ms. Strain?
MR. SCHULTZ: I make a motion to put her on the jury. We can deal with Ms. Strain at another date.
THE COURT: Tell Ms. Strain that she'll be coming back on, is it July 30th -- excuse me, August 30th. Let's see here. Tell Ms. Strain that we'll see her August 31st at 8:45. And ask the next juror to step in, please.
THE COURT: Would you tell me your name, please?
VENIREPERSON: Patsy Cooper.
THE COURT: And do you remember your juror number?
VENIREPERSON: Yes, it's 47.

DIRECT QUESTIONS

BY MR. SCHULTZ:

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Q. If memory serves me, you came up earlier -- and I guess it would have been earlier today, and there had been some problem in your family with law enforcement. It seems like what I got from that was that a relative or somebody had, at least been done wrong, if not almost wrongfully convicted?

**A. I said my son was wrongfully convicted of a felony.**

Q. Can you give me a little background just so I know what we're talking about?

**A. Okay. He was convicted of aggravated robbery.**

Q. Right.

**A. And I believe him when he says he didn't do it.**

Q. Okay.

**A. And I didn't like the process that they went through to convict him. I didn't like the way they had a girl come in -- they showed her him in a car, and then take him downtown to the lineup, and then call her back in and show her him in a lineup, and then she picks him out of a lineup. And I thought it was atrocious. And I lost a lot of faith in the justice system.**

Q. Was that our county, Mrs. Cooper, or was that a different county?

**A. That was Harris County.**

Q. Okay.

**A. But do I think that just happens in Harris County? No.**

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Q. Okay. All that being said, I mean, obviously, if you were a juror, and you think that a defendant didn't do it, or he's being railroaded or framed or identification is wrong or something like that, that's not only your right, but your duty as a juror to look at that and say that isn't right. You'd agree with that?

**A. Uh-huh.**

Q. Was it a jury trial he had down in Harris County?

**A. Yes, it was.**

Q. So I guess 12 jurors probably listened to all of that, and maybe his lawyer wasn't any good. I don't know what the circumstances were. But apparently a jury disagreed with your assessment of the case, right?

**A. That's absolutely correct. If they convicted him, they obviously --**

Q. Right. Did you lose respect for juries, too, out of that?

**A. I really thought maybe 12 jurors would be smarter than that, and my personal assessment was that they were vastly, badly misled.**

Q. Yeah.

**A. (Shrugs.)**

Q. Okay. Well, all that being said --

**A. They only knew what they were told.**

Q. Okay.

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**A. And they had an eyewitness -- they had a little girl standing there saying that's him.**

Q. Understand I wasn't there, so I don't know.

**A. Yeah.**

Q. It could be another way of looking at it is you're the only one that can see the truth. You don't know. You're his mother, and you obviously love him.

**A. And I can see the other things that he did that he deserved to go to the penitentiary for.**

Q. Right.

**A. And I'll tell you this, he did things that he deserved to go, but I don't think the thing he went for was the thing he did.**

Q. And maybe you're right; maybe you're wrong. I don't know, and I wasn't there. So, my concern is, you would agree with me it wouldn't be fair to the Collin County District Attorney's office to hold against us in our trial what happened in Harris County with different judges, prosecutors, jurors. Surely you don't think that's a fair thing to do?

**A. No. I would try to be objective, but I'm not sure that I would -- I would be in danger of letting somebody go free that did something because if I'm going to make a judgment, I would tend to err on the side of letting somebody go free than putting somebody innocent in prison.**

Q. That's probably how everybody sees it, don't you

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think?

**A. I hope.**

Q. That sounds normal to me.

**A. Okay.**

Q. If you don't know, it seems to me the judge's instructions would tell you, if you're not sure, you're supposed to acquit?

**A. But then if there's all this the jury can't hear this and the jury can't hear that, then I'm going to think you're trying to keep something from me that I need to know. I don't think there should be all this stuff kept from the jury, and the law says you can do that evidently because you do. I don't think it's right. I'd want to know the whole story.**

Q. Of course. You know, your job as a juror is to see what the judge allows you to see, and if you have a disagreement with that, that's okay. You're certainly entitled to your disagreement. You're not entitled to sit as a juror if you're going to be holding that against somebody, the fact that the judge made a decision.

It would be the same thing. You wouldn't want to be holding it against the defendant, either. Suppose your child had been murdered down in Houston, and somebody got acquitted, and you thought that was a bum deal that this person was acquitted. You shouldn't be holding that against the

defendant. Well, the killer of my loved one got away, so I'm going to take it out on you. You know, what I'm saying? That's not right.

**A. No, but if -- now, my daughter again -- it came out here -- my daughter had a gun stuck in her face. They took her purse and her car. Had they killed her, I would want the person dead. I would push the button or put the needle in.**

Q. Yeah.

**A. You know.**

Q. If the judge kicks the jury out and you don't get to hear something, are you saying --

**A. I'm not going to like it. I'm telling you I'm not going to like it.**

Q. Nobody cares what you're not going to like. That's not important.

**A. Yes. It could affect my --**

Q. You'd hold that against the State because the judge excluded some evidence, or it had a hearing outside the jury's presence. You'd hold that against us somehow?

**A. I would still -- I would think that it might be an indication that you're -- something is being covered up that might help the defendant, so I would probably lean --**

Q. So you'd hold it against us?

**A. I might.**

Q. And wouldn't matter if the judge told you not to do



that. You're going to -- because you know it's right, and what you think is going to be how you're going to act, and if the judge says don't hold that against anybody, you would disregard that instruction?

**A. If I had moral feelings and felt in my heart, then I would go with what I felt. I mean, the judge cannot make my heart or my feelings be different than what they are.**

Q. So judge -- if the judge tells you I instruct you not to consider something, okay, and you decide you want to consider that because you think your heart tells you you ought to be considering that, you're telling us you're going to go ahead and do what your heart tells and disregard what the judge tells you in that case?

**A. I might.**

Q. Well, you are or you're not. I thought you just said you would?

**A. I would. I think if a judge -- you put it in another concept (sic). I think judges can be wrong, too. And one concept is I don't believe in abortion. If the judge told me to have an abortion --**

Q. No, no. We're talking about trial procedures. We're talking about a judge telling you do not consider the fact that we had a hearing outside your presence and don't speculate on what that might have been about, and you're telling me you think that would be hiding something from me?



**A. Yes.**

Q. And you're going to continue to think your way, even if a judge tells you not to consider that for any purpose?

**A. I probably would.**

MR. SCHULTZ: Challenge her for cause, Judge.

MR. GOELLER: Judge, can I --

THE COURT: Yes, go ahead.

CROSS-QUESTIONS

BY MR. GOELLER:

Q. I understand a lot of jurors don't like when they get sent back to the jury room, and they know something is going on in the courtroom and kind of wonder. You mentioned that in your son's case they drove him by a witness.

**A. Yeah. They brought the witness to the car where he's sitting --**

Q. Right. And then they did a lineup later?

**A. Yes.**

Q. See, if I was his lawyer, I'd be trying to get out that ID. I'd keep out the lineup. I'd keep out the show-up. I think I'd be able to do that as a lawyer. So I'm going to ask the judge, jury -- Judge, get that jury out of there. The State violated, whatever, the show-up and the lineup, it's all tainted. I don't want that evidence coming in. Do you see how it works, though.

It may be that I want the jury out or Mr. Schultz



wants the jury out because maybe we don't know about something. We want the judge to handle it, but it could be what's going on is vital to the protection of his rights. And that's why I would ask you, I guess the same question Mr. Schultz asked you, you don't know. Speculating could be dangerous. You could be hurting him when you think you might be helping him. And you can be helping him when you think you might be hurting him, if you're speculating. And that's why we put our faith in the judge to do right, so to speak, by the way of the law.

Do you see the different angle? If I was defending your son, I would have been having that jury out all the time, jackrabitting y'all all the time; do you see what I'm saying?

**A. And I think he probably wasn't a real good attorney because he wasn't a high-dollar attorney.**

Q. I understand.

**A. I wish I had had the money to hire Racehorse.**

Q. Or me.

**A. Or you, okay. But I didn't.**

Q. I know, I know. All I'm asking is, you know, you'd agree with me -- I mean, you're obviously a very intelligent woman -- speculating is not the way to handle anything, right? I mean, you can't decide a case based on, I wonder what happened when we were outside the presence of the jury. But with my example of how maybe it was to a defendant's benefit,

and maybe it would be to the State's benefit, who knows? But if the judge told you base your decision on the law that I give you, and the evidence that I -- that you hear and you received in the courtroom and just let the chips fall where they may, could you do that?

**A. When it concerned a death penalty?**

Q. Yeah.

**A. That would be awfully hard to do.**

Q. Why?

**A. Because you're talking about somebody's life.**

Q. Uh-huh.

**A. And you're basing it on something you don't know. If you don't know it -- and I've got to trust that the judge knew whether I needed to know it. If I'm smart enough to be on a jury and make a decision, why not let me hear, then let me decide if it's in.**

Q. I don't want you to think that it's up to the judge because of how the judge feels about it. There are laws and case law and rules. The Government makes the rules, and they say what's admissible --

**A. And all of those aren't right.**

Q. Okay.

**A. All of those aren't right, either.**

Q. I understand.

**A. And I think we ought to be changing the ones that**



**are wrong.**

Q. Okay. When you filled out your questionnaire today, there were two questions. One said, do you want to serve on this jury? What was your answer?

**A. No.**

Q. Why?

**A. Because I wasn't sure I could be totally unbiased.**

Q. Okay. Obviously Mr. High and I represent Ivan sitting here. Should we be worried if you were on this jury?

**A. Well, no. I think he should be more worried.**

MR. SCHULTZ: Let the record reflect she's indicating the State's table, Judge.

THE COURT: All right.

MR. GOELLER: I don't think we have any other questions.

REDIRECT QUESTIONS

BY MR. SCHULTZ:

Q. Just so we're clear, and I know you're being honest, and you and I aren't fighting, not in any way. You're telling me that because of what happened in Harris County we don't -- we don't have a fair shot coming from you?

**A. I'm scared that you wouldn't.**

Q. And you're also saying that if you thought you ought to be hearing the evidence, and the judge instructed you not to, but in your heart you thought you ought to be hearing



some evidence, you'd be thinking about that, anyway?

**A. Yeah. It would bother me, bad.**

MR. SCHULTZ: That's all I've got, Judge.

THE COURT: All right.

MR. SCHULTZ: Cause, Judge.

THE COURT: All right. Motion is granted. You are finally excused.

Let's call the next one in.

The State goes first.

THE COURT: Your name, please.

VENIREPERSON: Patricia Barr.

MR. SCHULTZ: It may be that the reason you're here is because of that death penalty issue, right? And I apologize. We just got confused. I assumed we would do all that, Judge, when we did the individual, and I didn't mean to hold you.

VENIREPERSON: That's okay.

THE COURT: Was that your only issue?

VENIREPERSON: Yes, sir. My fear was I didn't want you to feel that I had come to you about my mother, and on top of that I was trying to get out of this with the death penalty thing and I'm not.

THE COURT: I understand.

VENIREPERSON: I am absolutely not, but if you want to wait.



MR. SCHULTZ: The only reason -- it's up to the judge. The only reason I would think that would, number one, be a longer issue than probably we have time for. And number two, I guess it's individual because she's in here, but I'm not sure we want to plow into that today.

THE COURT: We can put it off for another day.

VENIREPERSON: All right.

THE COURT: We'll see you. Mrs. Barr, you are -- you know when you're scheduled, and we'll see you when you're scheduled.

What was your name?

VENIREPERSON: Dale Aston.

THE COURT: You were Number 5, I believe. All right, Mr. Schultz.

DIRECT QUESTIONS

BY MR. SCHULTZ:

Q. Mr. Aston, tell us what is it that makes you think you might not be fair?

**A. I don't think I could be fair to the State because I don't believe in the death penalty.**

Q. I guess it's the same thing. That's an absolute, exact answer to what I'm saying, and that's fine. What we contemplate doing is more that issue when you come in individually, and the only reason we probably wouldn't do it now is I would guess -- I have a feeling it wouldn't be quick

process. I don't think it would be a five-minute discourse. I think it would it be much more lengthy. It makes more sense to bring you in with everybody else, if that's the issue.

**A. That's fine. If you want to deal with that at the other hearing, that's fine.**

MR. SCHULTZ: I appreciate your candor. Is that okay with you guys?

MR. GOELLER: That's fine.

THE COURT: See you on Thursday at 1:00.

MR. SCHULTZ: Thanks, Mr. Aston.

THE COURT: Is that all, Billy?

THE BAILIFF: That's all, Judge.

THE COURT: I tell you what I've got just from the last batch. I excused Number 4, Armstrong; Number 11, McClure; Number 47, Patsy Cooper; and Number 33, Farazianfardkoh, and those were all the ones excused in this last go-round. Everybody agree with that?

MR. HIGH: Yes, sir.

THE COURT: Do we have anything else for today?

(Discussion off the record.)

(End of Volume 6.)



REPORTER'S CERTIFICATE

THE STATE OF TEXAS *
*
COUNTY OF COLLIN *

I, Lisa M. Renfro, Official Court Reporter in and for the 380th District Court of Collin County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and -numbered cause, all of which occurred in open court or in chambers and were reported by me.

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

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

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