

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

VOLUME 8 OF 53

Trial Court Cause No. 380-80047-01

THE STATE OF TEXAS

*

IN THE 380TH DISTRICT COURT

*

V.

*

*

IVAN ABNER CANTU

*

OF COLLIN COUNTY, TEXAS

REPORTER'S RECORD
VOLUME 8 - VOIR DIRE
CAPITAL MURDER JURY TRIAL

COPY

On the 24th day of August, 2001, from 9:15 a.m. to 6:00 p.m. the Voir Dire proceedings came on to be heard outside the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

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

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1 PROCEEDINGS
 2 (Open court, jury not present.)
 3 THE COURT: Let's see, with regard to Valerie
 4 Tacy who is moving to Denton County September 1st, have you
 5 got an opinion?
 6 MR. GOELLER: What number?
 7 THE COURT: 25.
 8 MR. GOELLER: What number, Judge, was she?
 9 THE COURT: 25. Do you remember the State's
 10 opinion was that if she's not a citizen of the county on the
 11 day she's sworn in, she's not a citizen? That's still your
 12 opinion, I suppose?
 13 MS. FALCO: Yes, Your Honor.
 14 THE COURT: Did you have some law?
 15 MS. FALCO: We just have one case that
 16 basically just stands for the proposition that it's basically
 17 up to your discretion. If you go ahead and release them, it's
 18 judicial discretion.
 19 MR. GOELLER: Due to county of residency?
 20 MS. FALCO: It's not specific to county of
 21 residency. It's just as far as him making the call whether to
 22 release them.
 23 MR. SCHULTZ: May we have just a moment, Judge?
 24 THE COURT: All right. I tell you what, this
 25 is the case of Moody versus State, and just from the headnotes

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1 there was a venire member who had an out-of-town vacation, and
 2 the judge excused that venire member on his or her own motion,
 3 and the Court of Criminal Appeals, (ck) on bon, affirmed it.
 4 So, that sounds less -- it seems to have lesser facts than
 5 we've got here. Y'all tell me what you think.
 6 I don't want to take a lot of time to do this.
 7 That's why I brought it up last night, and said let's have an
 8 answer this morning, so give me an answer. Do you guys oppose
 9 or agree?
 10 MR. GOELLER: Judge, I think we agree. She's
 11 not going to be a resident.
 12 (Discussion off the record.)
 13 MR. GOELLER: Yeah, we agree, Judge.
 14 THE COURT: You agree, okay. And then Number
 15 25, Valerie Tacy, is stricken by agreement of both sides.
 16 That's in concurrence with your client's wishes, Mr. Goeller?
 17 MR. GOELLER: Yes, Your Honor.
 18 THE COURT: All right. Let's take up the next
 19 one. As you know we had 57 jurors scheduled for September
 20 4th, and three have filed vacation letters, and they indicate
 21 their desire to serve, but one is going to be at the Little
 22 Tree Bed and Breakfast in Taos, and her self-employed
 23 physician husband has already hired a (ck) locum tenens
 24 physician -- nice Latin word -- to take his place while he's
 25 gone. So, she'd like to serve, but she'd like to be excused

1 from appearing that date. Let's see, this is J-O-N-N-E, I
 2 suppose Jonne Eichhorn, and I don't know what number Jonne
 3 Eichhorn is. Jonne Eichhorn is Number 70. So she faxed us a
 4 letter to that effect. She lives in Plano with her physician
 5 husband.

6 Kathryn Cook has the same thing. She has airline
 7 tickets, and she planned on being in Michigan from the 1st
 8 through the 9th. She would also like to serve, but would like
 9 to be excused from the 4th, and Kathryn Cook is Number 68.

10 And finally, Carol Moore has got nonrefundable
 11 airline tickets for September -- and she'll be gone -- well,
 12 she said she'd like to appear prior to September 4th or after
 13 September 7th, and Carol Moore is Number 105. And so I
 14 mentioned this to y'all last night, and ask you how you feel.
 15 What does the State have to say?

16 MR. SCHULTZ: Without getting specific I guess
 17 I'll tell you my philosophy, Judge, about this, and I think
 18 it's the same philosophy sitting over there. If it's
 19 something that is a day or two that requires accommodation and
 20 would still fit within the schedule, I'd like to think we
 21 could find some way to alter their appearance date, put them
 22 in another panel, whatever we need to do if we're dealing with
 23 that.

24 If it's longer, it's going to be a problem. I'm not
 25 sure I'm all -- the kind of juror I think I'd like to have are

1 the kind of jurors that appreciate how important this is, and
 2 vacation or loco tenens or anything else that might interfere
 3 ought to be subordinate. I guess that was brisk tone of my
 4 early voir dire this week because I believe that in my heart
 5 that I've never known a vacation yet that's as important as
 6 what we're doing here with this defendant.

7 So, I mean, if they're just cavalier and want to be
 8 some other time, my first reaction is, nuts, to them. Just
 9 pour it on them just to teach them a lesson, but in reality I
 10 don't think those are the kinds of people that the State
 11 really wants on this case, anyway. So, I guess what I'm
 12 proposing is if they're just going to miss a panel date, and
 13 especially early in the process if we can move them to another
 14 panel I think that's fine. But if it's one of those that
 15 they're going to be gone a long time, or they're not going to
 16 fit, I mean I -- they don't have the right kind of philosophy
 17 for this work anyway in my judgment.

18 I think almost all this is going to be discretionary
 19 with you. I'd like to accommodate, because this is Plano.
 20 And, you know, and just like us, we all have stuff going on
 21 that absolutely has been planned long before any of this took
 22 place, and, you know, these occasional things I'd like to be
 23 flexible. We've done that in the past, and I guess some of
 24 this is going to depend on the defense's point of view. But I
 25 don't know any magic about the fact that they initially fall

1 as Number 82 if they could get in the group with the 100s or
 2 something like that, for example. That's all, but I don't
 3 want to -- I'm not interested in forcing people here who don't
 4 have the right spirit about what we're doing here.

5 MR. GOELLER: Philosophically I agree with
 6 Mr. Schultz, Judge. From a slightly different angle, though,
 7 because I sit at this table, I'd ask the court to accommodate
 8 these people any way it could. I could care less if you put
 9 them at the beginning, the ends, as long as they had a little
 10 bit of notice.

11 People who miss vacation and have prepaid airline
 12 tickets or made arrangements out of state or -- and you know
 13 all the complications that come with that now, fall break and
 14 Labor Day weekend and relatives and PISD, and getting kids
 15 here and scheduling that. I always fear that if somebody is
 16 going to eat those airline tickets and not be able to go on
 17 vacation, they're going to be miserable. And the only person
 18 logically they're going to take that out on, they're not going
 19 to take it out on Bill or Jami or Gail.

20 MR. SCHULTZ: They might.

21 MR. GOELLER: They're going to take it out on
 22 that kid, and I want to avoid that. So, I'm asking the court,
 23 give these people anything they want.

24 THE COURT: You know, and I think I feel
 25 exactly like both sides do here. In a sense the jurors are,

1 from what we know right now, are kind of (ck) fungible, and so
 2 if we put these three off for a while, then where's the harm?
 3 Because we don't know them, and they could be either as good
 4 or as bad as any other juror, and it may say something about
 5 the fact they're requesting a vacation because I also have,
 6 like all of you, have foregone vacations for other purposes,
 7 and it doesn't seem like a huge sacrifice. It may say
 8 something about their willingness to serve. On the other
 9 hand, maybe it's just an ordinary request, "Can I go on
 10 vacation and come back another day?"

11 So I tell you what I'll do. This is Number 68, 70
 12 and 105, and I'll tell my coordinator to reschedule them for
 13 the next general voir dire. It's conceivable we'll have a
 14 jury before they come up again, but if we don't they'll be on
 15 the third group.

16 All right. If you'd give those to Janie, and tell
 17 her to tell those people that they'll be rescheduled to
 18 another date.

19 THE BAILIFF: Yes, sir.

20 MR. SCHULTZ: Judge Sandoval, I'm assuming
 21 it's all right. I don't think we need the agreement anyway,
 22 but I'm assuming that's okay with the defendant to reschedule
 23 those people we discussed?

24 MR. GOELLER: Yes, it is, Your Honor.

25 THE COURT: All right. That's good. Let's see

1 if that's everything on my list then. I think that's
2 everything. Does anybody have anything to bring up before we
3 start?

4 MR. SCHULTZ: Could you give us some idea of
5 how late you plan to work? The reason I say this, I've heard
6 some possibility that you plan on working late this evening,
7 and this is one of those rare occasions where all the State's
8 attorneys have social plans of some kind this evening.

9 THE COURT: Oh!

10 MR. SCHULTZ: If we could make it all work,
11 whatever you choose --

12 THE COURT: The thing is, the spirit of
13 sacrifice would keep us from even entertaining those ideas.

14 MR. SCHULTZ: We're here at your pleasure, but
15 we'd like to know what your pleasure is.

16 THE COURT: Today is Friday, isn't it? And I
17 tell you what, if you're dying to get out of here -- how about
18 the defense? You'd rather work very late, I suppose?

19 MR. GOELLER: Oh, no, sir.

20 MR. SCHULTZ: They're married men, Your Honor.

21 THE COURT: It's the single people that really
22 want to get out of here.

23 MR. GOELLER: I'd like to try and get in my
24 office today. My secretary tells me I've got people ready to
25 explode in my office.

1 the 199th District Court and on loan here for this trial. And
2 to her left is Ms. Jami Lowry, felony prosecutor assisting us,
3 who is normally assigned to the 380th Judicial District Court.
4 Moving further to your right is the defendant, Ivan Cantu, and
5 then next to him is Mr. Don Neely High, a criminal
6 practitioner and general practitioner in Plano, Texas, and
7 assisting him is Mr. Matt Goeller, who is also engaged in the
8 private practice of law down in Plano.

9 And I believe from having asked the question, you
10 don't know any of us personally; is that correct?

11 A. That's correct.

12 Q. You may or may not have met me. I obviously go to
13 Saint Andrew, but I mean it's a large enough church and enough
14 service that we could miss each other completely.

15 A. Right.

16 Q. It wouldn't mean anything. I know I've not been in
17 Sunday school classes or any small group activities with you.

18 I recall when I ask my generic, is there some --
19 something in your background that I may or may not know about
20 that would impact your ability to be fair. I remember you
21 raised your hand and then when we talked, because I believe
22 your concern was your view about the death penalty. Am I
23 right on that?

24 A. Yes, sir.

25 Q. And what I was trying to explain then is that's

1 (Discussion off the record.)

2 THE COURT: Is there anything else from either
3 side?

4 (No response.)

5 THE COURT: Apparently not.

6 All right. Sir, you're Mr. Aston. Is it David
7 Aston?

8 VENIREPERSON: Dale.

9 THE COURT: Dale Aston?

10 VENIREPERSON: Yes, sir.

11 THE COURT: Mr. Aston, I just want to advise
12 you, as you know, you're still under the oath that you took
13 the other day.

14 VENIREPERSON: Yes, sir.

15 THE COURT: And as in all matters the State
16 goes first, so I'll ask Mr. Schultz, are you ready?

17 MR. SCHULTZ: Yes, sir.

18 DIRECT QUESTIONS

19 BY MR. SCHULTZ:

20 Q. Good morning, Mr. Aston.

21 A. Good morning, Mr. Schultz.

22 Q. I'm Bill Schultz. I'm an Assistant District
23 Attorney representing the State in its capital prosecution of
24 the Defendant, Ivan Cantu. To my left is Ms. Gail Falco, the
25 chief felony prosecutor of another district court, assigned to

1 exactly -- this is the part of the jury selection where we ask
2 you to deal with that issue. And we were more interested in
3 things like, I have a son on Death Row, and how could I be
4 fair to this person? My mom and dad were murdered. Those
5 were the kinds of things we were looking for, so it wasn't in
6 any way disrespectful to your views. This is the time that we
7 deal with this.

8 A. Okay.

9 Q. Now, you've indicated -- you've indicated that you
10 are not in favor of the death penalty for starters, and I may
11 have touched on this during jury selection, and I may not
12 have, so let me talk about that. It is absolutely compatible
13 with jury service that a person be opposed to the death
14 penalty on a philosophical basis or thinking it's bad law, or
15 even immoral law, provided in a proper case that individual
16 could vote in a way to impose the death penalty. Now, that
17 having been said, if people have strong convictions on this
18 subject I don't know how -- I don't quite know how -- how a
19 person can do that. But there are people who can be opposed
20 to the death penalty. I think it's wrong, dumb, useless,
21 expensive, risky, but I'll vote for it.

22 And I kind of -- I like to speak in analogies
23 sometimes, and I look for situations or parallels where people
24 might be able to do that. And I'm sort of thinking of the
25 guys that run the trains in Poland heading for the

1 concentration camps during World War II, and I'm thinking, you
 2 could ask them, well, how can you be doing this kind of work
 3 knowing what's going to happen down at the end of the train
 4 track? And their answer might be, well, it's the law of the
 5 land, and so I'm just simply obeying the law. Or I'm just the
 6 train man here. I'm not the guy that's going to pull the
 7 lever that puts the gas into these people. I'm just the train
 8 man, and I'm just -- you know, today it's people. Tomorrow
 9 it's coal that is hauled out of here, and that's all I'm
 10 doing. Maybe you could do that. Maybe you could in your
 11 denial stage say, well, I don't know for sure what's going to
 12 happen down there. There's other people. They'll probably
 13 straighten it out before it all happens.

14 But I think bottom line, if your people of
 15 conscience, and you really believe that what happens at the
 16 end of the train track is wrong, I think it's probably asking
 17 a lot of human beings to say, well, how about going along with
 18 it just because it's the law. Do you agree with me on that,
 19 or not?

20 **A. I see what you're saying and I see the analogy**
 21 **you're drawing, but if you're asking me -- I'm not sure what**
 22 **you're asking me to agree to. I understand you.**

23 **Q. Do you think it's asking a lot of a person to say**
 24 **the end result of your work is going to be something that you**
 25 **think is immoral?**

1 **A. I think it's asking too much.**

2 **Q. And at the same time say, but all you're doing is**
 3 **your job and expect that person to do that job freely. Don't**
 4 **you think that's asking a lot of people?**

5 **A. Oh, absolutely. I mean, I can draw an analogy to**
 6 **the German in -- Germans under Hitler in the war.**

7 **Q. Uh-huh.**

8 **A. They were just doing their jobs, but yet they were**
 9 **held responsible for all the atrocities that they committed.**

10 **Q. And --**

11 **A. We all know that they shouldn't have gone along with**
 12 **this system.**

13 **Q. Okay. And by that -- and I don't -- and I don't get**
 14 **a sense from you that you're doing this -- I'm certainly not**
 15 **analogizing what we're doing to Nazi Germany in the**
 16 **theoretical sense. First of all, this defendant is clearly**
 17 **going to get a fair trial. He's got fine attorneys appointed**
 18 **to help him in this case. They do a good job. Nobody ought**
 19 **to ever criticize professionals assisting people. We'd never**
 20 **get mad at the doctor for treating him if he was sick, and so**
 21 **nobody will ever object to him having fine lawyers to help him**
 22 **with his legal difficulties.**

23 But we give him a trial. We hear evidence. We have
 24 a jury that if he's found guilty of capital murder, will
 25 listen to whatever is presented and will have a lot of

1 interest and understanding. Even people that favor the death
 2 penalty, unlike you, are people of good conscience and
 3 decency, and they will listen to all of it.
 4 But the end result is what I said on Tuesday, and I
 5 didn't do that to be amusing or entertaining. The end result
 6 is that we propose, somewhere down the line, to turn him from
 7 a living person into a dead person. And I don't think that's
 8 funny, and I don't take that lightly, but I don't shy away
 9 from it, either. This is the real thing. It's not
 10 theoretical.

11 So, all of that having been said, when someone says
 12 that you're opposed to the death penalty based on religious
 13 teachings, I think that's even probably more difficult for us
 14 to work with maybe than would be economic reasons or just
 15 philosophical reasons; do you know what I mean?

16 **A. Sure, absolutely.**

17 **Q. Tell me a little bit now about -- tell me why it is**
 18 **that you're a death penalty opponent, kind of how you're**
 19 **thinking works on that subject.**

20 **A. As I've gotten older, I have formulated my opinions**
 21 **on a lot of things.**

22 **Q. Uh-huh.**

23 **A. The death penalty being one of them. As I've grown**
 24 **in my faith, Christian faith, I have -- when I was earlier in**
 25 **my life and younger, I had very little to say about the death**

1 **penalty. I always had a feeling that it was -- something was**
 2 **wrong with it. It didn't quite jive with my faith, but I was**
 3 **never, I guess, put in a position where I had to make a**
 4 **decision on it. And as I've grown through my life and gotten**
 5 **older, I've come to the conclusion that it is absolutely -- it**
 6 **absolutely is in conflict with my religious beliefs, my**
 7 **Christian faith.**

8 **When I -- when we say the Lord's prayer, thy will be**
 9 **done on earth as it is in Heaven, that basically we are saying**
 10 **that we hope that the Lord's will is carried on on Earth as it**
 11 **is in Heaven. And I cannot reconcile God wanting to take a**
 12 **like, the ultimate punishment. It just doesn't jive with the**
 13 **teachings of Christ.**

14 **Q. When we talk about the Ten Commandments, one of**
 15 **them being thou shalt not kill, I don't know if it strikes you**
 16 **as interesting, but there's no modifier in there. It doesn't**
 17 **have, like, exceptions. Kind of like our law a lot of times,**
 18 **it will say, you know, you can't carry a firearm except this**
 19 **time, this time, this time. There's a list of exceptions to**
 20 **the general rule that you can't carry a firearm in Texas.**
 21 **When you read that, it doesn't say thou shalt not kill except**
 22 **in self-defense. It doesn't say thou shalt not kill except in**
 23 **time of war. Thou shalt not kill except for executions.**
 24 **There aren't any exceptions, so I guess that invites**
 25 **individual interpretation to some extent.**

1 You can try and look at historically. They had
 2 death penalties back then, and they had wars back then, and I
 3 guess they had self-defense back then.
 4 **A. I believe there's a time to kill. I served in the**
 5 **military.**
 6 **Q. Uh-huh.**
 7 **A. And I was -- although I didn't have to go to**
 8 **Vietnam, I was ready to go to Vietnam. I had already made up**
 9 **my mind that I was not a conscientious objector to killing**
 10 **people for the reason of war, but that to me is definitely**
 11 **different than the death penalty where the State sanctions**
 12 **death as punishment.**
 13 **Q. Okay. You indicated that you -- in looking for the**
 14 **best argument in favor of the death penalty, you thought the**
 15 **best argument was it removed the worst from society?**
 16 **A. Right.**
 17 **Q. I think that's -- I think that's pretty**
 18 **self-explanatory, but I just want to make sure we're**
 19 **communicating. Tell me a little more what you mean by that.**
 20 **A. If there was a way for me to reconcile the death**
 21 **penalty with my faith, if -- which there is not -- but younger**
 22 **in my life there probably was. And at that time, I would have**
 23 **thought that the death penalty would probably have been the**
 24 **appropriate punishment for an Adolf Hitler or Jeffrey Dahmer,**
 25 **or someone of that caliber. I do not believe that the State**

1 **should be taking a life if it is not someone of that**
 2 **magnitude, who is committing crimes of that magnitude.**
 3 **I think -- again, getting back to my faith, I think**
 4 **it -- hopefully Heaven is based on forgiveness and eternal**
 5 **redemption through forgiveness. And in this case the State**
 6 **leaves no room for redemption with the death penalty.**
 7 **Q. Okay. If it weren't a death penalty case, for**
 8 **example, if you were serving on, oh, let's say, a narcotics**
 9 **case, for example, delivery of a large quantity. You're not**
 10 **opposed to strict or strong punishment. That's not what**
 11 **you're saying, is it?**
 12 **A. Absolutely not.**
 13 **Q. It's this particular form of punishment that you're**
 14 **concerned with?**
 15 **A. Yes.**
 16 **Q. For example, you wouldn't have any problem with the**
 17 **concept of giving somebody life in prison with no parole, if**
 18 **we had such a thing in Texas? That wouldn't bother you any?**
 19 **A. That's correct.**
 20 **Q. And it wouldn't bother you if we put them on an**
 21 **island just big enough to house one person in order to make**
 22 **them secure so they'd never get loose again. That wouldn't**
 23 **bother you any?**
 24 **A. That's correct.**
 25 **Q. Feed them humanely, but you wouldn't be concerned**

1 about the heart-healthy diet, or any of that kind of stuff,
 2 right?
 3 **A. That's correct.**
 4 **Q. It's this killing thing that's -- where you take**
 5 **strong issue with obviously, correct?**
 6 **A. Yes, and primarily because it leaves no room for**
 7 **redemption.**
 8 **Q. Okay. And let's talk about -- and I think I know**
 9 **the answer, but there's a process we have to go through with**
 10 **these questions. I mean, you and I are communicating.**
 11 **There's no problem. Let's assume we go through this entire**
 12 **process, and the defense gets to ask you questions about**
 13 **whatever they want to talk with you about, because that's how**
 14 **our process works anyway. And then at the end all of the**
 15 **sudden, the judge says okay, Mr. Aston, you're Juror Number 2.**
 16 **We'll call you when the time comes for trial, so you're on the**
 17 **jury. You're on the trial jury.**
 18 **Now, State has burdens of proof at two phases of the**
 19 **trial, if there are two phases. We first would have to prove**
 20 **that the defendant was guilty of capital murder, and we talked**
 21 **about that a little bit on Tuesday. That's murder, plus**
 22 **something else that aggravates it or elevates it to the point**
 23 **where it's society's view that you crossed the line, and this**
 24 **now -- you risk your life with this conduct and now we may**
 25 **take it from you. That's kind of the thinking.**

1 I know you don't disagree with the idea that murder
 2 of two people or murder in the course of a burglary or robbery
 3 is horrific conduct by a human being. You'd agree with me on
 4 that, wouldn't you?
 5 **A. Yes.**
 6 **Q. And in terms of ranking -- ranking of the severity**
 7 **of crimes, I bet you wouldn't disagree with all the kind of**
 8 **capital murder cases that we say that's gone too far. Murder**
 9 **of a small child, murdering a police officer trying to**
 10 **discharge his or her duties, murder in the penalty**
 11 **institutions, murder for hire, multiple serial or -- multiple**
 12 **or serial murder, murder in the series of kidnapping or rapes,**
 13 **those kinds of things. I think you can see the logic in**
 14 **society saying this is the worst of the worst, so to speak,**
 15 **right?**
 16 **A. Yes.**
 17 **Q. Not saying that you agree you ought to forfeit your**
 18 **life for that?**
 19 **A. Right.**
 20 **Q. I'm just saying you can certainly see those are more**
 21 **severe crimes than even a simple bar room murder, not saying**
 22 **that's a good thing. But that might be very different from**
 23 **kidnapping somebody, sexually assaulting her and then**
 24 **murdering her to keeping her from talking for the fun of**
 25 **watching her die, or whatever might happen. Do you agree with**

1 me on that?

2 A. Yes.

3 Q. Okay. So philosophically we're not opposed, but
4 let's say you're on the jury, and I produced, or Ms. Falco
5 produces to you sufficient evidence that a defendant, or this
6 defendant, however you want to look at it, caused the death of
7 two people. And with intentional causing of death, or in the
8 alternative that this defendant caused the death of someone
9 while in the course of committing a burglary or in the course
10 of committing a robbery, that is the definition of capital
11 murder. And I'm -- I am -- I guess I'm asking. I won't
12 assume it. I'm assuming that you would be capable of voting
13 guilty for the crime of capital murder if that's what we
14 produced; is that right?

15 A. Sure. If it was proven beyond a doubt that it did
16 occur, I could vote for capital murder.

17 Q. Now comes the hard part.

18 A. Right.

19 Q. And this is what we're going to focus right on.
20 Let's assume you did that. Now, all of the sudden we're at
21 the phase where if I prove to you what the law requires I
22 prove a death sentence should result, and if I fail on that,
23 then a life sentence should result. Is there any way I could
24 ever get a vote for a death sentence out of you with your
25 conscientious scruples about the morality of what we're doing?

1 A. No.

2 Q. It's not personal to me. It's not if I were just a
3 better lawyer, I'd do a better job. That's not what we're
4 talking about?

5 A. No. We were completely on the same road until you
6 just said that, and then we split apart.

7 Q. And there's nothing -- we can go through the -- see,
8 it's not an automatic death sentence, as you know. But what
9 we're entitled to is a fair shot at it?

10 A. Sure.

11 Q. And it's not good enough to say, oh, well, sure if
12 you convince me I'd vote for the death sentence because you
13 know in your heart the world's greatest lawyer with the
14 world's greatest evidence can't do that. I mean, you're (ck)
15 attractible on this, and I don't say that critically. I
16 guess, I've got to admire -- truth is, I guess I'm kind of an
17 admirer of what you're saying. But it's not about evidence.
18 It's about -- it's about a conviction in your heart?

19 A. Absolutely correct.

20 Q. So my -- if we seat you on this jury, there's no way
21 that -- there's no way there could ever be a unanimous verdict
22 in favor of death, no matter what I do?

23 A. Yes, sir.

24 Q. You understand, very respectfully, why I'm getting
25 ready to challenge you for cause with the court. It's because

1 I believe what you're telling me is that you have such an
2 opposition to one part of the trial that we're entitled to
3 rely upon you. You would not -- not only would you not be
4 able to you, you wouldn't want to be able to follow that
5 portion of the law, and you're not asking to be on this jury
6 any way; is that right?

7 A. That's right.

8 MR. SCHULTZ: Mr. Aston, I appreciate your
9 courtesy more than you know.

10 Judge, we respectfully challenge this juror for
11 cause.

12 THE COURT: Do you have any questions?

13 MR. GOELLER: Yes, Your Honor.

14 THE COURT: All right.

15 CROSS-QUESTIONS

16 BY MR. GOELLER:

17 Q. Good morning, Mr. Aston.

18 A. Good morning.

19 Q. I want to ask you a couple of questions. It's
20 obvious the State has challenged you at this point. Mr. Cantu
21 has the right to have jurors sit in this -- on this jury panel
22 that are opposed to capital punishment, okay?

23 MR. SCHULTZ: Excuse me just a moment, Judge.
24 I'm going to object to that as a misstatement of law. There
25 is no such right.

1 THE COURT: Sustained.

2 Q. BY MR. GOELLER: There is nothing that would
3 disqualify you from sitting on this jury because you are
4 opposed to capital punishment, okay?

5 A. Nothing in the law.

6 Q. Nothing in the law. There are two kinds of people
7 that are going to end up on this jury panel; those that favor
8 capital punishment, the death penalty and will follow all the
9 laws the judge will give them. And I suppose the other kind
10 of person is the person who does not favor capital punishment,
11 but can follow the law as the court gives it, okay?

12 A. (Nods head.)

13 Q. What we're talking about here is -- and I think
14 Mr. Schultz cleared it up as far as the first phase of the
15 trial goes. Whether or not somebody is guilty of capital
16 murder, you could certainly follow the law, listen to the
17 evidence, and the instructions from the court in determining
18 whether somebody is guilty or not guilty, correct?

19 A. Sure.

20 Q. You could do that. If somebody were found guilty of
21 capital murder, then we, of course, move into that punishment
22 phase, and the two special issues that I think would be
23 applicable in this case probably is that. That's the first
24 one, that probability that the Defendant would commit criminal
25 acts of violence that would constitute a continuing threat to

1 society. The State has to prove this issue to you. To answer
2 this question yes, it has to be answered unanimously yes. All
3 12 jurors, and the State has to prove that beyond a reasonable
4 doubt to you, okay.

5 If -- if there is not a unanimous verdict on that,
6 the answer is no. If all 12 jurors don't agree on that, or
7 get less than 12 jurors, it's over. An automatic life
8 sentence is going to be imposed. If the jury answers that
9 question yes, it has one more question to answer. That's that
10 mitigation question. Do you -- I think that was probably put
11 up on the big screen, or up on the wall Tuesday, okay?

12 **A. Okay.**

13 **Q.** This is the final -- this question here is really
14 asking the jury to look to the future, would you agree?

15 **A. (Nods head.)**

16 **Q.** The Legislature chose the word probability. It
17 didn't say likelihood. It didn't say possibility. The
18 Legislature chose the word probability, so that really asks
19 the jury to look to the future. This question asks the jury
20 to look at everything really, the past, present and maybe the
21 future.

22 Mitigating circumstance. The word mitigation can
23 mean whatever a juror wants it to mean. All sorts of
24 evidence, probably any evidence either side would like to
25 bring forth to a jury on that special issue is probably

1 admissible. But the key question here is, although you are
2 philosophically opposed to the death penalty, and again that
3 does not disqualify you from sitting on this jury, as a
4 potential juror in this case, if the judge told you, here's
5 the law of capital murder. If you kill in the course of
6 committing a robbery, if you kill in the course of committing
7 a burglary, or if you kill two people during the same criminal
8 transaction, so to speak, and the State proves those things
9 beyond a reasonable doubt to you, each and every element of
10 the offense, I would instruct -- the judge would say, you
11 would be instructed to return a verdict of guilty. If you
12 have a doubt, you say not guilty. Then maybe there's some
13 other offenses that the judge -- the court may give you, other
14 than capital murder. Straight running murder, as I call it,
15 and I hate to use that word, but I can't think of a better
16 one. Straight running murder, burglary, robbery, something
17 like that.

18 Could you -- you could follow all the law the judge
19 would give you in that regard, correct?

20 **A. Up to the point where the judge instructed me to
21 vote for death.**

22 **Q.** Well, I want to talk to you about that. No one --
23 no one instructs you, or can instruct you to vote for death?

24 **A. Exactly.**

25 **Q.** The judge would tell you right now -- it's not

1 proper for me to inject him into this discussion really. But
2 the judge, nor the State, nor I, nor anyone could tell you,
3 you must vote for death. Can't happen. All the judge can
4 tell you is at the punishment phase, if we get there, look at
5 that special issue, then vote your conscience, okay. Based on
6 the evidence you hear, vote your conscience. Same thing on
7 that one, just vote your conscience. Could you do that? If
8 the judge told you, based on the evidence and what you feel in
9 your heart and what you feel in your mind. He won't use those
10 words exactly, but that's what a juror does. A juror looks at
11 the evidence because you don't come in here in a vacuum,
12 neither do the other 11 jurors in this case. You look at all
13 the evidence, and you, as an individual, vote based on how you
14 feel about the evidence. Doesn't matter what the other
15 jurors, how they vote because your vote is an individual vote
16 and you vote your conscience.

17 All the judge tells you is look at the evidence,
18 apply the evidence to the law and then vote your conscience.
19 Could you do that?

20 **A. My conscience tells me I can't put anybody to death.**

21 **Q.** Well, that's where we find ourselves. You may not
22 be voting to put anybody to death?

23 **A. But I may be. You can't tell me that.**

24 **Q.** I know, I know. I suppose in a -- in one sense
25 you're doing neither. You are simply answering questions.

1 **A. But my questions and my answers might lead to the
2 death of a human being.**

3 **Q.** Possibly.

4 **A. Or might contribute to the fact that that person is
5 put to death. I can't live with that.**

6 **Q.** Okay.

7 **A. I don't believe in it.**

8 **Q.** If the judge gave you legal instructions from the
9 court -- the court's the only one that can give you legal
10 instructions. The parties can't, the State, nor the
11 defendant, would you follow the instructions? Would you set
12 aside your personal convictions, follow the instructions from
13 the court?

14 **A. No.**

15 **Q.** No possible way?

16 **A. If those instructions were in line with my personal
17 beliefs, and I knew what I was doing was right, yes, I could.**

18 **Q.** Okay.

19 **A. If they were in conflict with my personal beliefs,
20 no, I could not.**

21 **Q.** Well, we get back there. Do either one of these
22 questions -- are either one of these questions in conflict
23 with your personal beliefs or religious beliefs, the ability
24 to answer these questions?

25 **A. Well, I think I might could answer those questions.**

1 Q. Okay.

2 A. But --

3 Q. That's all you have to be able to do to be a
4 possible qualified juror in this case. Tell the judge that
5 you could answer these questions. I mean, do you see --

6 MR. SCHULTZ: Excuse me just a moment,
7 Mr. Goeller.

8 I'm going to object. What he needs to be able to do
9 is fairly answer the questions so that a life or death
10 questions would result according to the evidence. Not answer
11 the questions that will get a life sentence automatically. He
12 has to be free to do both under the law.

13 VENIREPERSON: Yes, thank you, Mr. Schultz.
14 That's exactly right. Anybody can answer those questions --

15 THE COURT: Thanks for the ruling.

16 A. **Anybody can answer those questions, but would I**
17 **answer those questions if I knew they would lead to the death**
18 **of a human being, no.**

19 THE COURT: All right. Anything else from the
20 defense?

21 MR. GOELLER: Give me 30 seconds, Judge.

22 THE COURT: All right, sir.

23 Q. BY MR. GOELLER: Mr. Aston, you're telling the judge
24 that because of your opposition to the death penalty that
25 might affect your honest judgment of the evidence in the

1 judgment of the evidence. It would also not allow
2 disqualification of their ability to follow the jury's oath to
3 render a true verdict based on the evidence or their
4 understanding of the reasonable doubt standard or application
5 of that standard of facts at either stage. The fact that a
6 juror's opposition to the death penalty will affect their
7 ability to be fair and impartial is also not sufficient to
8 disqualify them under Adams versus Texas.

9 Now, I'll give the court the flip side to that coin,
10 keeping candor with this tribunal. The case does go on to
11 say, there is a combination of several factors that are
12 individually -- well, let me get to the right part -- that may
13 be sufficient to disqualify a juror. The Texas Court of
14 Criminal Appeals -- and they're talking about what the Crim
15 App here did -- held that a juror who strongly opposed the
16 death penalty was subject to a challenge for cause because his
17 views about capital punishment would have affected the
18 assessment of the evidence, the understanding of reasonable
19 doubt and the ability to follow the jury's oath.

20 But, Adams versus Texas is United States Supreme
21 Court, Your Honor. It's the law of the land, and to
22 disqualify this juror because of his views on capital
23 punishment violates my client's Eighth Amendment rights and
24 his 14th Amendment rights to the United States Constitution.
25 And if the court would like me to go down, I'll pull the case

1 second phase of the trial, correct?

2 A. **My honest -- my honest judgment of the evidence?**
3 **No, sir.**

4 Q. Okay. Your beliefs might affect your ability to
5 follow the jury's oath to render a true verdict based on the
6 evidence? You're saying your religious beliefs might figure
7 into that --

8 A. Yes.

9 Q. -- your opposition to the death penalty?

10 Okay. You understand the concept of beyond a
11 reasonable doubt, that very high burden of proof Mr. Schultz
12 talked about at both phases of the trial?

13 A. Yes, sir.

14 Q. Okay.

15 MR. GOELLER: That's all I have, Judge. And I
16 would like to make an argument to the court.

17 THE COURT: All right.

18 MR. GOELLER: May I proceed?

19 THE COURT: Yes, sir.

20 MR. GOELLER: Your Honor, I would ask the court
21 not to sustain Mr. Schultz's challenge for cause. I cite a
22 U.S. Supreme Court case, Adams versus Texas, and here's what
23 that case says, Your Honor. Adams versus Texas does not
24 permit the disqualification of a juror because his or her
25 opposition to the death penalty would affect their honest

1 for you. I'd ask the Court, before it makes a ruling on
2 Mr. Aston, to have the opportunity, and I'll pull it for the
3 State, too, to look at that case.

4 THE COURT: All right. Thank you, Mr. Goeller.

5 The State's motion is granted, and, Mr. Aston, you
6 are stricken for cause and finally released.

7 VENIREPERSON: Thank you sir.

8 (Venireperson exits the courtroom.)

9 THE COURT: When I showed both sides the
10 questionnaire, I indicated that Judge Ence in Dallas told you
11 that it's very common in Dallas -- and at least I don't think
12 Dallas sets the pace -- but it's very common in Dallas for the
13 ones and fives to be agreed to by both sides. And as you-all
14 know, I haven't done this before, but logic tells me there's
15 going to be very limited utility in pursuing the ones and
16 fives. So, think about that as we go along, but let's take up
17 a number one. We've got a number one coming up pretty quick
18 here, and that is number -- let's see here. I believe it is
19 Quigley. Quigley is Number 9, and I think we'll invite him in
20 just so we can have a change of pace here, and we'll see when
21 the trial is over how many of the ones and fives we end up
22 with, and then maybe --

23 MR. SCHULTZ: May I speak to the Court on the
24 Court's statement?

25 THE COURT: Sure.

1 MR. SCHULTZ: I can assure you -- I mean, I
 2 know neither side is interested in the fun of water hauls in
 3 this business, spending 30, 40 minutes just to get the
 4 predictable result. But I believe that experience has shown
 5 me that many of the ones don't understand the question -- we
 6 had a flavor of that from one of the people yesterday,
 7 especially since these questionnaires are answered beforehand.
 8 But I've seen it go the other way, and I've seen some fives
 9 that, by the time they get worked over by the defense for 30
 10 minutes, or at the point where, well, it would have to be
 11 special case, and I guess maybe in the most special -- it's
 12 not quite that clear, and particularly with the Constitutional
 13 pinch, that relates to the the disqualification of what you
 14 would call fives.
 15 I'm not doing their job for them. I can't imagine
 16 why they'd want to give up a chance to make some kind of Adams
 17 or Witherspoon error by forcing us into that situation.
 18 THE COURT: Oh, yeah, sure. And let me tell
 19 you, and both sides to have a right to do what they're doing,
 20 and I understand the rationale. The only thing I'm wondering
 21 is do you need -- you know, what kind of numbers are we
 22 looking at? Do we need to go through 10 to get -- through 20
 23 to get one, and if that's true, how much is it worth it since
 24 we've got the next juror coming along? And that's the
 25 question I raise, what utility but --

1 MR. SCHULTZ: I promise you, we're not -- I
 2 promise you from our point of view we're not doing it to hear
 3 ourselves talk. I would say this, I think it's much more
 4 difficult for the defense to just cavalierly agree on a number
 5 five than it would be for us on a number one. But it's sort
 6 of different because I think more number ones are salvagable
 7 than number fives, but there's not a -- that's my opinion. I
 8 can only speak for myself, but I don't see us wanting to give
 9 up a shot at the one, and were I sitting over there, I --
 10 THE COURT: I don't blame you.
 11 MR. SCHULTZ: -- I'd want to do everything I
 12 could to make us burn a strike. Like this guy was hopeless,
 13 but I want to try to find some way to make the State burn
 14 (sic) a strike on him.
 15 THE COURT: I don't blame you. I suppose what
 16 I'm kind of saying, there are lot of '49 Cadillacs out there
 17 that are salvagable. You know, is it worth it, putting
 18 15,000 dollars into one when you can go buy one that will run
 19 right now. It may be. There's something to be said for a
 20 classic, right.
 21 But anyway, let's take up Mr. Quigley. He's Juror
 22 Number 9. And maybe this will be the one that shows how wrong
 23 I am.
 24 MR. GOELLER: Boy, I hope not.
 25 THE COURT: And maybe every one of them will be

1 rehabilitated.
 2 (Venireperson enters the courtroom.)
 3 THE COURT: Sir, are you Collin Quigley?
 4 VENIREPERSON: Yes, sir.
 5 THE COURT: And I'm sure you recall you took an
 6 oath the other day when you were in the big courtroom, and
 7 that oath is still in effect.
 8 VENIREPERSON: Yes, sir.
 9 THE COURT: As in all things, the State goes
 10 first. So, I'll ask, Mr. Schultz, are you ready to proceed?
 11 MR. SCHULTZ: I am, Judge.
 12 THE COURT: All right.
 13 DIRECT QUESTIONS
 14 BY MR. SCHULTZ:
 15 Q. Good morning, Mr. Quigley.
 16 A. Good morning.
 17 Q. I know you probably spent a lot of time waiting,
 18 and I apologize. You know how important this is, anyway, and
 19 we're working as best we can, and we're not doing anything
 20 else so we appreciate your patience.
 21 When we talked on Tuesday, I know you probably
 22 remember that part of my presentation when I asked you to take
 23 a moment and look at the defendant and understand for real
 24 what we were proposing to be the outcome of this trial. And I
 25 hope you understood it, that I wasn't trying to be funny or

1 entertaining or thought that was somehow a clever things to be
 2 controversial. But I was just as sincere and, frankly, as
 3 compassionate for everybody in this case as I knew how to be.
 4 Did that make any difference to you at all when you
 5 actually thought about it and kind of tried to look down the
 6 road at the possibilities? Did that make any difference in
 7 your feelings at all, have an affect?
 8 A. No, sir, it doesn't.
 9 Q. Because some people tell me -- I do that in any
 10 capital case I'm involved in. I always do that, and some
 11 people tell me that they never really thought directly about
 12 capital punishment, other than the easy chair when they're
 13 watching TV about crimes and stuff like that, and that it made
 14 a difference. I don't know that I ever met anybody whose mind
 15 got changed by it. I don't know that I ever met a juror that
 16 came in and said, you know, Schultz, until that moment I was
 17 in favor of the death penalty and now I'm not.
 18 But I think many people -- not everybody, just many
 19 people it kind of re-enforces perhaps what their views are
 20 anyway maybe to some extent. And then some people say, well,
 21 it doesn't make any difference to me. I knew why we were here
 22 and I knew what it was about, and I didn't need that to jar
 23 me.
 24 You've indicated that you are a proponent of the
 25 death penalty.

1 A. Yes, sir.

2 Q. And since you said it didn't make a big -- I'm
3 assuming you must still be a proponent of the death penalty?

4 A. Yes, sir.

5 Q. Different people have different reasons for favoring
6 the death penalty, and I'm curious about yours. If you could
7 put in words kind of -- like if a child were to say, why do
8 you favor the death penalty, what do you say?

9 A. **Sir, I spent over 30 years of my life defending the**
10 **Constitution. I've seen young men give the ultimate -- or pay**
11 **the ultimate sacrifice and give their lives. I've seen other**
12 **people shed blood for our country and what it stands for, and**
13 **for somebody to take somebody's life without reason or for**
14 **whatever reason they choose to do that, I have a problem with**
15 **that.**

16 Q. Okay. Then I guess -- I kind of offended some of
17 the jurors perhaps when I took my position about, if it's
18 messing up your personal life, too bad. But I bet you
19 understood what I was saying?

20 A. Yes, sir.

21 Q. You understood when I talked about those crosses
22 over on Normandy Beach and what that all is. You understand
23 that?

24 A. Yes, sir.

25 Q. Okay. Now, just as military service, whether it be

1 in a combatant role or support role or peacetime role, just as
2 it requires sacrifices, in many ways I suppose jury service
3 requires sacrifices. But it also requires a willingness to
4 obey, if not orders -- let's call them instructions. I'm not
5 sure it's all that different theoretically whether you get
6 instructions from the judge or orders from the unit commander.
7 If you're doing your job right, you can't individually decide
8 which ones you like and which ones you don't like, and then --
9 I like that order, but that doesn't look very good to me. I
10 don't want to go up that hill, but I'll go around the other
11 way. You can't run an operation like that.

12 The same thing with jurors. You can't say, well, I
13 like this part of what the judge says, so I'll obey that. But
14 this other part, it doesn't seem right to me, so I'm going to
15 do what I want. Do you follow what I'm saying? You have to
16 be able to follow the instructions because this is an orderly
17 society that we all love, and we want it done just right
18 because of the kind of people that we are.

19 So, sometimes it's very easy from what the judge
20 would require of you, which is just what law would require.
21 He's not making it up. He's not saying, I like some of this
22 law, and I don't like the others so I'm going to change it.
23 All he does is he's like the conduit from our law to the jury.
24 He's the messenger of our law, I guess is what I would say.
25 And it's very possible, just like a judge might have some law

1 he doesn't agree with, it's very possible that jurors would
2 say, you know, that's really not something I would do if they
3 asked me what to be doing. But jurors have to be able to
4 follow the law believing that process of being ruled by law is
5 what really makes this country right. And I'm asking, are you
6 the kind of person that believes that, also?

7 A. **I believe you have to obey the law, yes, sir.**

8 Q. Okay. Now, fortunately in America we don't
9 ordinarily have circumstances that put us at tremendous
10 conflict with ourselves by following the law. The good thing
11 about our society is for all of our objections, it's very rare
12 that we come into a situation where following the law becomes
13 a real morale issue. Now, some of us have that in some
14 context, but it's not like Nazi Germany where the guys loaded
15 folks on boxcars, which was the law because it's what the
16 Government said to do. They've got a choice. They know
17 what's going to be at the end of the track, and they either
18 load these people on there who apparently have done nothing,
19 other than be born, or they've got a disregard them all. We
20 don't have that too much in America.

21 We've got some hot issues. For a very few people,
22 the abortion issue is apparently important enough that they
23 take to killing doctors that get involved in that. Most
24 people may agree or disagree with all that, but they don't go
25 taking the law into their own hands.

1 But capital punishment is one of those issues that
2 touches people real strongly. I bet you know that, too, just
3 from talking with different people and what their views are.
4 I can tell you have concerns -- I can tell it's important to
5 you that we have a death penalty. I bet you can think right
6 now of some people that you know and respect and think are
7 decent people who think we shouldn't have a death penalty,
8 don't you?

9 A. Yes, sir.

10 Q. You don't think they're lesser people because that's
11 what they believe in their hearts, do you?

12 A. No, sir.

13 Q. They don't seem to think you're a lesser man because
14 of what's in your heart, right?

15 A. **That's correct.**

16 Q. And both sets of people are eligible for jury
17 service because we don't -- we will ask you what your opinions
18 are, but nobody is ever going to stand up and say well, Judge,
19 I don't want this juror to be in my -- because I don't agree
20 with his opinions, or his opinions are different from my
21 side.

22 What we're looking for is 12 people who can follow
23 the law, analyze the evidence, and allow their decisions to be
24 based on the evidence and not the result they want to achieve
25 down the road. Does that make sense to you?

1 A. Yes, sir.

2 Q. So, for example, let's say you hated the death
3 penalty. Let's say you thought it was as bad as what they
4 were doing in Nazi Germany, and you were just (inaudible).
5 You went to all the antideath penalty meetings. You end up on
6 the jury, that's asking a lot of somebody to say, okay, I go
7 to the anti-death penalty meetings. I think it's like Hitler,
8 but I'll give them -- if they prove it to me, I'll give them
9 votes that will cause this person to be executed. Do you
10 agree with me?

11 A. Yes, sir.

12 Q. It would be very hard to do. And the same thing
13 with somebody on the other side. Not everybody can be a
14 strong advocate of the death penalty, especially for the
15 reasons you've expressed. There's mixtures of patriotism and
16 love of this society and remembrance of things we never saw
17 maybe trying to make for a free society. And then you -- and
18 then people do stuff to destroy life unnecessarily.

19 I mean, it might be asking too much of you to say,
20 well, if the State doesn't prove all that's required for a
21 death sentence, are you the kind of person that can vote the
22 evidence and come back with a sentence that would be life?
23 And I don't know you, so you would have to help me with that.
24 Are you the kind of person that is so committed to the death
25 penalty that no matter what the State failed to prove,

1 A. I'm not sure I can answer that, sir.

2 Q. Okay. We're going to have --

3 A. And the reason for that is, it's hard to know what
4 you're going to do in a life or death situation.

5 Q. Sure.

6 A. When I went to my first tour in combat, I didn't
7 know whether I could kill somebody. Well, you learn real
8 quick whether you can or not.

9 Q. Okay.

10 A. And for me to sit here and say I can make that
11 judgment at this point in time, I can't do that, sir.

12 Q. Well, let me talk with you a little bit about it and
13 if you can't, that's fine. I mean, there's no -- there's no
14 right or wrong. There's things I couldn't do. We're all that
15 way. We have different things that are different for us. I
16 don't know if I can sit through an opera. I swear, I don't
17 know that I could. I don't know.

18 What -- we play a fiction with jurors perhaps, and
19 it's nothing but fiction. We say to you, you know, you're not
20 deciding life or death. All you're doing is answering
21 questions, and the only trouble with that concept is what
22 we're really doing, we're telling you what the result is, and
23 then we're saying, well, but all you're doing is answering
24 questions, but everybody knows exactly what we're doing. It's
25 like Hans at the train station. He knew what he was doing

1 perhaps, or no matter what the defense proved if they wanted
2 to put on evidence, if they chose to, it wouldn't matter if
3 this defendant is convicted, your vote is going to be death.
4 Are you that kind of person?

5 A. I could be, yes.

6 Q. In other words, are you saying that you think you
7 might be the kind of person -- you obviously wouldn't give the
8 death penalty to an innocent person. I know that, right?

9 A. That's correct.

10 Q. So if I'm understanding you, what you'd require us
11 to do is to prove he's guilty of capital murder. If we don't
12 do that, we don't get a conviction, or we don't get a
13 conviction of capital murder. No problem with that, is there?

14 A. That's correct.

15 Q. You'd give him a fair shot at whether he's guilty
16 beyond a reasonable doubt. You'd listen to all their
17 evidence, if there's any, and if they choose to, because
18 that's their business. Listen to all my evidence and put it
19 on the scales of justice, and if we're there we get a
20 conviction, and if we're not there there's an acquittal.
21 You're that kind of person?

22 A. Yes, sir.

23 Q. Now, the question is, is he going to get a fair shot
24 from you at a life sentence depending on the evidence? That's
25 the question?

1 when he loaded the people on the cars. I mean, he can say,
2 I'm just the guy -- you know, today it's people, tomorrow it's
3 coal, and the next day it's, you know, lumber. But he
4 absolutely knew what was going on and to say -- and for him to
5 be able to say, well, I was just a train man, what do I know,
6 that's missing the mark. Do you know what I mean?

7 A. Yes, sir.

8 Q. And for me to say to you, you know, all you're doing
9 is answering questions, you're not really deciding life or
10 death. That's missing the mark, too, because how you answer
11 the questions, you already know, is going to be determinative
12 of the outcome.

13 I get a sense from you that if we were going to,
14 like, rank all the jurors out of that pool and say what's the
15 probability of each of these jurors coming back with a death
16 sentence; in other words, how are they wired? Are they more
17 in favor of the death penalty? Do they do it more freely than
18 others? I have a sense from you you would be pretty far up to
19 that frequency level that you would do it real often. I get
20 that sense. Does that seem fair to you?

21 A. Yes, sir.

22 Q. All right. And there may be somebody just as decent
23 as you with just as much love of this country as you who might
24 be way at the other end, and it would be an extraordinary
25 trial before that person would ever come back voting in a way

1 that would cause a death sentence and maybe you both belong on
2 the jury. Maybe one side would say -- maybe one side -- maybe
3 I would say I don't know that I want this person to do it one
4 out of 100 times. I don't like those odds. I might use a
5 challenge on them of my own, but that doesn't -- that's just
6 my choice because I'm using one of my discretionary
7 challenges. Doesn't mean they're not qualified. It just
8 means that maybe I think they need to be on a different case
9 than mine. Make sense to you?

10 **A. Yes, sir.**

11 **Q.** If I were defending a case some day and you were
12 there I might say, you know, if I can't get this guy excused
13 for cause I might not have him on the jury because I don't
14 like those odds, but all that means is you might be good on
15 another case, just not this one. What we're looking for,
16 though, is jurors who are not going to be automatic. Not
17 jurors who are right in the middle because there's no
18 requirement for that. There's no requirement that jurors come
19 in having no opinion one way or the other. Do you favor the
20 death penalty? I don't know. Do you oppose it? I don't
21 know. Could you be fair in this case? Sure. You don't have
22 to be in the middle.

23 You have to be the kind of person that can fairly
24 consider the evidence and vote how you see that evidence, but
25 do it honestly. It's not like give me a wink and say, oh,

1 yeah, I'd consider a life sentence, but you know that's about
2 like I'd consider jumping off a building. We can consider,
3 but it would never happen; you know that kind of idea?

4 **A. Uh-huh.**

5 **Q.** That's the key. If you're there, and you're telling
6 us that he won't -- that you won't look at the evidence and
7 fairly consider those answers, not with regard to the result
8 of those answers, but rather with regard to the evidence in
9 answering those questions, if you can't do that, tell me that
10 and we're done and it will be fine. It's not a problem. In
11 other words, if what you're telling us is because I'm so
12 strong in favor of capital punishment, if I got to this first
13 question here, which is -- is it turned enough so you can see
14 it?

15 **A. I can see it, yes, sir.**

16 **Q.** That's what we call the future danger question.
17 That's the question that deals with whether or not he's going
18 to be a continuing threat to society. If what you're telling
19 me is I know that a yes answer to that question is required in
20 order for there to be a death sentence. Because you
21 understand that; that has to be answered yes?

22 **A. Yes, sir.**

23 **Q.** If what you're telling me is your desire to impose
24 the death penalty could overcome your ability to fairly answer
25 that question, then, just tell me and we're done.

1 **A. Based on what I've seen, I'd probably tell you, yes,
2 it would impact it.**

3 **MR. SCHULTZ:** Then respectfully, we challenge
4 the juror for cause.

5 **THE COURT:** All right. Any opposition from the
6 Defendant?

7 **MR. GOELLER:** No, sir.

8 **THE COURT:** All right. Mr. Quigley, you are
9 finally excused.

10 (Venireperson exits the courtroom.)

11 (Venireperson enters the courtroom.)

12 **THE COURT:** All right. Are you Charles Biggs?

13 **VENIREPERSON:** Yes, I am.

14 **THE COURT:** All right. I just want to remind
15 you that you're still under the oath that you took the other
16 day.

17 **VENIREPERSON:** Fine, thank you.

18 **THE COURT:** As in all things, the State goes
19 first. So, Mr. Schultz, are you ready to go?

20 **MR. SCHULTZ:** Yes, sir, thank you.

21 **THE COURT:** All right.

22 **DIRECT QUESTIONS**

23 **BY MR. SCHULTZ:**

24 **Q.** Hello, Mr. Biggs.

25 **A. Hello.**

1 **Q.** My name is Bill Schultz. I'm an Assistant District
2 Attorney representing the State of Texas in the capital
3 prosecution of Ivan Cantu. To my left is Ms. Gail Falco, who
4 is the chief felony prosecutor in another court, and to her
5 letter is Ms. Jami Lowry, who is a felony prosecutor assigned
6 to this particular court. The odds are we would be the only
7 prosecutors involved in this case, although from time to time
8 there may be issues that arise involving some point of law
9 where we might have somebody else helping us. There may be
10 some occasion where one prosecutor would come in for just a
11 portion, but mostly it will be the three of us that are
12 involved. And I only tell you that more than anything else
13 just so you'll know us, and if you see us on the elevator and
14 we don't talk to you, you'll understand it's not because we're
15 stuck up or something. It's because we're careful.

16 At the defense table -- the man to your far left at
17 the defense table is the defendant, Ivan Cantu. Next to him
18 is Mr. Don High, an attorney engaged in private practice of
19 law in Plano, Texas, and at the far right of that table is
20 Mr. Matt Goeller, also --

21 **MR. GOELLER:** Morning, sir.

22 **VENIREPERSON:** Morning.

23 **Q. BY MR. SCHULTZ:** -- an attorney engaged in the
24 private practice of law in Plano, Texas. And I do that
25 introduction just since I go first to make sure you don't

1 think you know any of us, and I'm pretty sure that you don't.
2 Collin County is so huge now that the odds of that are ever so
3 much smaller than they used to be.

4 When I took time on Tuesday to talk about some
5 principles, I got a -- I sometimes have a bruskeness about me
6 that I just tend to have a watch, and I was real sincere when
7 I was talking about the fact that even though this is
8 difficult personally for some people, maybe more than others,
9 that that's a very small price to pay for the kind of society
10 that we have, and especially given these issues. And I'm
11 curious, did you agree with me when I was talking about that
12 as a concept?

13 **A. As a concept. I have problems with the parallels**
14 **that you drew between wartime and the commitments that are**
15 **made by citizens compared to what commitments are reasonable**
16 **during peacetime.**

17 Q. Fair enough. Fair enough.

18 Some jury trials are very simple and very short.
19 Did you ever serve on any kind of a jury before?

20 A. No.

21 Q. I can't talk about typical criminal case, but even a
22 typical felony offense, like, let's just say it's a -- some
23 type of theft, let's say. Most of those cases, your duty is,
24 you come in on Monday, you're selected come back Tuesday,
25 Wednesday, maybe Thursday, and it's all over. It's a rare

1 event in Collin County for any trial to last even a whole
2 week, like a five-day week.

3 **A. (Nods head.)**

4 Q. Capital trials are different, and you probably
5 already know that from reading or just intuitively. They take
6 a lot longer. First of all, this jury selection takes a long
7 time. You're going to be here for a period of time, and then
8 we're still in the early phases of that. You're probably -- I
9 don't remember who you are, you're Juror Number 8, I guess, in
10 terms of who we question. So, it's a long process.

11 I get a sense that you'd share the fact when you
12 talk about a person being on trial for his or her life that
13 that is very important. I'm sure that's important to you?

14 **A. Absolutely.**

15 Q. All right, sir. And so -- especially in a
16 hustle-bustle county, like Collin County, with so many
17 workaholics, we're all -- every one of us is always in this
18 switch of, well, I've got the vacation scheduled. I work so
19 hard. The only time I could get my vacation scheduled was
20 during this time and that time, and it's all been taken care
21 of, or Aunt Nellie is coming to visit us. I haven't seen her
22 for three years because I've been so busy. Collectively when
23 you deal with this as trial lawyers in a long trial, probably
24 almost everybody on that jury panel has stuff they planned
25 that are involved in their personal lives.

1 And the notion of a trial -- of a trial by jury,
2 it's almost ironic because if too much understanding is given
3 or too much deference is given to things like vacations, many
4 times it's almost like you lose the very best people people.
5 The people that are the busiest and have the most going on
6 might absolutely be the best and the brightest for this kind
7 of work, and that's one of the things that we work at trying
8 to avoid.

9 All that being said, on small stuff we can be pretty
10 flexible. If there's a -- if you've got a hearing test
11 scheduled for some morning, I mean most of the time -- I can't
12 speak for the Judge, but most of the time things like that
13 seem to work out, or something unusual happens. It's not
14 like -- you're not a prisoner while you're on the jury, is
15 what I'm saying.

16 You've indicated that when asked the question are
17 you in favor of the death penalty, you indicated that you are
18 in favor of the death penalty, and the explanation was you
19 think the penalty is appropriate in certain circumstances.
20 And I mean, that seems just about mainstream for what we
21 have. Tell me why it is that you favor the death penalty.

22 **A. Well, let me just say that whenever we were given**
23 **the questionnaire and what I -- the way in which I responded**
24 **was really a snapshot of my thoughts at that time.**

25 Q. Right.

1 **A. If I were given the opportunity to actually**
2 **contemplate that I was going to be involved in possibly -- in**
3 **a capital murder case, I might have thought more in depth**
4 **about my thoughts. So --**

5 Q. That's fine.

6 **A. -- let me just say that subsequent to our session on**
7 **Tuesday, I -- particularly in response to Mr. Goeller's**
8 **comments, I spent quite a bit of time contemplating what my**
9 **real feelings are on the death penalty. And as I also**
10 **indicated in my questionnaire, I did express a concern on**
11 **moral grounds, and quite frankly, from my lifestyle I'm not in**
12 **a situation where I contemplate my feelings about the death**
13 **penalty on an every-day basis, so I really had not formed a**
14 **strong opinion.**

15 Q. Okay.

16 **A. And it basically followed the norms of society. So,**
17 **what I'm saying is in thinking about my feelings about the**
18 **death penalty since our meeting on Tuesday, I really can't**
19 **square it with my religious convictions.**

20 Q. Okay.

21 **A. When -- when I -- and I -- I certainly, as a**
22 **Christian, use the Ten Commandments as a guide that I follow.**
23 **I certainly wouldn't any more consider that it would be right**
24 **to steal or to have an adulterous relationship with my**
25 **neighbor's wife just because the State said it was okay, and**

1 what I'm saying is, and the conclusion I've come to in the
2 past couple of days in thinking about this, is that I don't --
3 the rule in the State of Texas is really -- it's a rule that's
4 been set by man. It's not been set by God, and I have
5 reservations about being able to carry out a death penalty.

6 Q. Okay.

7 A. So I have difficulty being placed in the position of
8 having to make that kind of decision, and I don't think -- in
9 fact, I would not be a surrogate for State. I would not
10 automatically carry out the laws of the State, if that's what
11 was -- is what was being expected of me.

12 Q. Let's talk about -- let's talk about some of that
13 because I'm not -- I'm not sure exactly what you're saying
14 about some of that. I understand we're communicating fine.
15 I'm just -- I'm not sure, ultimately, what that means. Let me
16 make a couple of quick observations.

17 Nobody is asking you to be an automatic vote for the
18 death penalty. Not only is that not the law, or not your
19 responsibility as a juror, but the State doesn't think that's
20 right. I can't imagine why -- I mean, the object of this
21 trial is to make sure justice is done and people whose minds
22 are made up, i.e. automatic people, it's hard to see how
23 that's justice, anyway. I don't view justice that way.

24 At the same time, both sides have the right to have
25 jurors who, depending on the evidence, can vote either way

1 knowing that a death sentence and life sentence would result,
2 even if that's different from what they in their heart wish
3 would be the case and that means either way. That means if
4 somebody votes for a life -- in a way that causes a life
5 sentence, even though in his heart he thinks, boy, if ever
6 anybody needs to die it's this guy. They're entitled to those
7 kinds of people, just as the State is entitled to say, boy, I
8 don't like any part of this business. They proved their case,
9 and as a juror I've got to vote in conformity with the proof.
10 That's what both sides -- that's what both sides are entitled
11 to. And then after that, from that pool of what I would call
12 eligible or qualified jurors, then we make our decisions of
13 who we keep and might be -- might be in one case that I would
14 think I'd rather not keep that juror because the odds are
15 worse for me keeping that juror than somebody else, and the
16 defense does same thing. We've both got a lot of strikes, and
17 we both use them. Same thing, it's a matter of trying to get
18 the best possible jury for your side out of that pool of
19 qualified people. Does that make sense to you?

20 A. Yes.

21 Q. And what that means is that people who do not favor
22 the death penalty can be eligible to be in that pool just like
23 people that come in here and say, you know, the only thing
24 I've got to say about the death penalty is we're not using it
25 near enough. We need to be tripling our executions and that

1 would help our society. There's nothing wrong with that
2 opinion as long as they're not going to make an instrument out
3 of a particular defendant. Do you know what I mean? Does
4 that make sense to you?

5 A. I think so.

6 Q. They're both eligible. It might be the defense
7 wouldn't want somebody that says we need to triple the number
8 of people we're executing, and it might be that I don't want
9 somebody that thinks it's immoral, but that's what our strikes
10 are for. That's what our discretionary strikes are for.

11 A. I'm just indicating that I've had a shift in my
12 opinion from Tuesday until today. And like I said, I've spent
13 a lot of time thinking about this, and I really feel like the
14 death penalty is a way of a human being extracting vengeance,
15 but I'm not sure it's the right punishment.

16 Q. Okay.

17 A. In my own view, I think that perhaps life in the
18 penitentiary would be a far worse penalty than actually
19 putting someone to death. I would certainly feel that way
20 myself.

21 Q. That's fine. When I talked with the panel about
22 looking at the Defendant and realizing this is the real-life
23 thing, did that -- did you feel a difference? Did you
24 actually think about that?

25 A. Well, I certainly appreciate this is a real, live

1 situation. This young man is the age -- roughly the same age
2 of my own son.

3 Q. Right.

4 A. So I view this as really a tragedy, you know, for
5 someone in his position to be faced with, and so...

6 Q. And I'm sure you'd also feel that the victim's
7 situation is a tragedy?

8 A. Certainly. And so -- there would be no winners in
9 a situation like this.

10 Q. This is not a -- it's not about winning or losing.

11 A. No.

12 Q. It's a trial.

13 Let's talk for a second. What kind of work do you
14 do, Mr. Biggs?

15 A. I'm a program manager for a firm that does
16 webb-based learning.

17 Q. And I'm not -- I'm certainly not high tech in the
18 computer sense, but that seems to me pretty technical work, is
19 it?

20 A. It's technical work, yes.

21 Q. If you don't follow procedures in an orderly
22 fashion, you're probably not going to get the result that you
23 need. You don't -- you don't just program any which way you
24 want to do it. You have to do it in sequence, and you have to
25 do it trying to discourage false trails, and all those kinds

1 of things; is that right?

2 **A. For the most part that's the goal, yes.**

3 Q. And then once it's turned loose on the public, or
4 whoever uses it, then things arise, and you have to go back
5 and correct them --

6 **A. That's correct.**

7 Q. -- and wonder why nobody thought that could happen
8 and it falls over to your initiative. That's kind of what you
9 do, right?

10 **A. Right.**

11 Q. Okay. In many ways, although it's not so regulated
12 and it's not -- there are many ways to do jury service. The
13 fact of the matter is there are certain procedures to be
14 followed. For example, some of them are -- you've already
15 been under. You've been instructed not to talk about your
16 jury service with other people. You can talk about the
17 weather, but not about the defendant and what he's supposed to
18 have done and what your impressions of the law -- all that
19 kind of stuff.

20 And you're not supposed to go out and investigate
21 yourself. You haven't gotten that instruction yet, I don't
22 think. But if seated, you'll get an instruction not to go out
23 to what you believe is the crime scene and take measurements
24 or pictures, or knock on doors to talk to the neighbors about
25 what all they might know. You don't do that, so that's

1 that's a term of art in our law. He will tell you about what
2 consent means. He will tell you about what an owner is. He
3 will tell you about robbery. If there's a firearm issue,
4 he'll tell you what the legal definition of firearm is. And
5 then after all of the explanations, the instructions will move
6 on, and he'll say now, consider whether or not the defendant
7 is guilty of capital murder as I've instructed you on that
8 law, and that would be guilty or not guilty.

9 And then sometimes there are lesser offenses. Maybe
10 for some reason the judge has included the offense of
11 convicting of burglary only or of murder only because of some
12 technical thing that might have happened at the trial that
13 might have even escaped the jury's notice. But if the judge
14 says I want you to consider whether or not he's guilty of this
15 lesser offense, you do all of that. And you seem to me to be
16 the kind of person, and you're obviously intelligent and
17 obviously communicative that could do that just fine. You
18 could look and say, well, who's the owner of this place, or is
19 that really a firearm, or were two people really murdered, or
20 was it really done intentionally as opposed to accidentally,
21 or whatever might be the case.

22 And I don't get a sense from you at all that you
23 have any trouble giving both sides a fair trial on the issue
24 of whether or not this defendant is guilty of the crime of
25 capital murder. Am I right on that?

1 regulated. You'll be told what time to come here, and you're
2 supposed to be here at that time. The Judge will bring you in
3 when he makes that determination, and sometimes you get sent
4 in and out, depending on what's going on in the courtroom.

5 And then when the time comes, after both sides have
6 presented their evidence, you go deliberate, and you're going
7 to do that twice. You're going to at least do that once, and
8 depending on what you do in the first part, you're going to do
9 that a second time. Some other things might happen. There
10 may be some things that happen in court, and the Judge would
11 say disregard what was said. And it's funny because he
12 doesn't say forget what was said, because nobody can do that.
13 That's not expected, but disregard is almost like don't put it
14 on the scales. Take that off. That's not part of this lot.
15 It's the next lot, or something like that; don't weigh it.
16 And most people can do that. We don't think about it in our
17 work, but most people are able to do that. You know, it's
18 like giving -- I think you understand that process.

19 And then you go back to the jury room, and the judge
20 will give you instructions and tell you what the important law
21 is regarding the case. He'll tell you about the presiding
22 jurors. He'll tell you about burden of proof. If the
23 Defendant chooses not to testify, he'll tell you that's not a
24 circumstance against the Defendant. He'll give you the law of
25 burglary and talk to you about what a habitation is because

1 **A. I would think that would be correct.**

2 Q. Here's why I ask that question. There are some
3 people who have such strong feelings against the death penalty
4 that they find themselves in this kind of a bind. If I find
5 the Defendant guilty of capital murder, then as the evidence
6 seems to require me to do, then I know I'm facing that
7 ultimate issue of whether or not to vote in favor of death.
8 On the other hand, if I don't find the Defendant guilty of
9 capital murder necessarily he doesn't get a death sentence
10 because he's not a capital murderer. He'll get something
11 less, and there's some people -- there's nothing wrong with
12 it. There's some people whose views opposing the death
13 penalty that are so strong that they are substantially
14 impaired or even sometimes prevented from being able to fairly
15 consider capital murder because they know what's coming down
16 the road.

17 Can you see how people could approach it that way?

18 **A. (Nods head.)**

19 Q. I need to get you to say yes or no. You and I are
20 communicating --

21 **A. Yes.**

22 Q. -- but she needs to get it in the record.

23 **A. Yes. I understand what you're saying.**

24 Q. Is that a problem with you? Would your opposition
25 of the death penalty be so strong that you think your ability

1 to come back with a verdict, knowing where it can lead, might
 2 be substantially impaired or even prevented?
 3 **A. I think it would be.**
 4 Q. Okay. You know, and it's real easy for the judge to
 5 instruct you on something like, don't read any newspaper
 6 accounts of this trial, because that's not a moral issue. You
 7 know, whether you read what the Dallas Morning News thinks
 8 about what we're doing up here, you know, the judge is not
 9 asking you to do something that conflicts with, not only your
 10 morality, but with your faith, right? That's not a problem.
 11 If he says don't read newspapers, you wouldn't say it's my
 12 God-given right to read it newspapers, and I'm going to do it.
 13 You wouldn't do that, right?
 14 **A. I think humanly it's a great temptation, and I think**
 15 **it's difficult to avoid being exposed particularly in today**
 16 **when the media is so free. So, I think that's a fact of life.**
 17 Q. Well, you're not telling me that you would
 18 disregard --
 19 **A. Oh, no.**
 20 Q. -- the judge's instructions --
 21 **A. No.**
 22 Q. -- not to read the newspaper?
 23 **A. No, no.**
 24 Q. Do you follow what I'm saying? That's not a moral
 25 issue; that's just a curiosity thing?

1 **A. Right, exactly.**
 2 Q. It's kind of like if the judge tells you not to go
 3 out to the crime scene, you're not going to say that's an
 4 immoral request of the judge, and I'm going to go out to the
 5 crime scene?
 6 **A. No. No, that's -- no. I think it's -- we all would**
 7 **agree that I think that is a temptation, not to say that I**
 8 **would, but at the same time, there's always a possibility you**
 9 **would be exposed.**
 10 Q. I'm with you.
 11 **A. Okay.**
 12 Q. Now, but don't you think it's different when the
 13 judge's instructions cause a conflict with your morality and
 14 with your faith? Isn't that a different issue than just a
 15 conflict with your curiosity?
 16 **A. If you give me a more specific example. I'm having**
 17 **trouble with a hypothetical.**
 18 Q. If the judge tells you, you are instructed to answer
 19 those special issues without regard to the desired outcome,
 20 but rather fairly according to the evidence presented as you
 21 see it, what the judge is asking you to do is to vote yes on
 22 this first special issue if the State has truly proved it
 23 beyond a reasonable doubt, vote yes, that there is a
 24 probability that the defendant would commit criminal acts of
 25 violence that would constitute a continuing threat to society.

1 But what you know is that's moving along toward a result that
 2 you consider to be immoral, because a yes answer to that is
 3 moving along toward a death sentence. Do you understand what
 4 I'm saying?
 5 **A. Yeah, I understand what you're saying.**
 6 Q. And I guess my question is -- I can tell you're a
 7 law-abiding citizen. There's no question about that, but
 8 sometimes we ask of people something that they believe is so
 9 immoral they just can't do it, and they're honest about it.
 10 And it's not a weakness, and, heck, it's probably a strength
 11 when you get right down to it. Is that an instruction that
 12 you could follow, that you would be able to fairly answer that
 13 question knowing that a death sentence might result in it?
 14 **A. Well, I think that -- there may be clear-cut cases**
 15 **where I could make that conclusion. There may be others with**
 16 **circumstances where it's not as clear, but I don't know that**
 17 **answering that question affirmatively would necessarily lead**
 18 **to a situation in which -- I'm not quite following you here.**
 19 **By answering this question yes, would it absolutely result in**
 20 **a conclusion that a person would be put to death?**
 21 Q. No.
 22 **A. Because I would think that the end result here would**
 23 **be really to remove that person from society, regardless of**
 24 **whether it's through permanent incarceration or otherwise, so**
 25 **I would think --**

1 Q. To answer your question, a yes answer would not
 2 automatically result in a death sentence. A no answer would
 3 automatically result in a life sentence.
 4 **A. So to answer yes to that question would be result in**
 5 **automatic death penalty?**
 6 Q. No. There's a second question that you deal with,
 7 but only if you answer that question in front of you yes. If
 8 you answer that question no as a juror, then that's one of the
 9 automatics; that it's automatically a life sentence?
 10 **A. Right, okay.**
 11 Q. If that question is answered yes, then you move onto
 12 a second question.
 13 **A. Okay.**
 14 Q. I guess what I'm saying is the law contemplates that
 15 you answer that question truthfully according the evidence --
 16 **A. Right.**
 17 Q. -- without regard to the outcome that will be
 18 derived from the answer.
 19 **A. Right.**
 20 Q. And you told -- and I guess what I'm thinking is you
 21 told me earlier that your view that the death penalty is
 22 immoral would interfere with your fair deliberation of you
 23 finding him guilty of capital murder in the first part of the
 24 trial?
 25 **A. What is the -- if I can just ask this question:**

1 **What is the second question that has to be answered in the**
2 **special issues?**

3 Q. I'm going to show it to you in just a second, but I
4 want to try to do this sequentially.

5 Remember when I asked you, could you -- would you be
6 impaired in your ability to look at the evidence of capital
7 murder knowing that a death sentence might result in that
8 finding? And I thought I understood you to say, yes, that
9 would impair your ability to do that, you thought, your
10 opposition to the death penalty?

11 **A. Well, it was my impression that the first stage of**
12 **the trial was to determine if a murder had been committed.**

13 Q. Right.

14 **A. And if that was determined, the second issue on the**
15 **table was should this person be permanently incarcerated or**
16 **should they be put to death.**

17 Q. That's right.

18 **A. Is that correct?**

19 Q. That's the second issue. And maybe I didn't explain
20 it, or maybe I misunderstood you. My question at the first
21 part was, if you believe that the death penalty is immoral on
22 religious and, I suppose, philosophical mix, would you be
23 substantially impaired in your ability to find capital murder
24 at the first part of the trial knowing that a death sentence
25 might result in that finding?

1 still hypothetical.

2 This is the second question. Can you see it okay?

3 **A. Yes, I can.**

4 Q. Go ahead and take a second and read it.

5 **A. Okay.**

6 Q. Okay. You understand, we didn't write these
7 questions. The Legislature has written them, and we work with
8 them. As you read that question, tell me what you think
9 it's -- what you think it's saying. Tell me what the question
10 is in better words.

11 **A. Well, I think what it's saying, once the first**
12 **question has been answered, is the person going to be a**
13 **continuing danger to society, what's the decision you want to**
14 **make; is it you want to incarcerate him permanently or should**
15 **he be put to death. Is that correct?**

16 Q. Well, (inaudible). I don't know that it just says
17 what do you want to do? It may not seem very directive in
18 what it does, but it tells you some things to take into
19 consideration. Tells you to take all the evidence into
20 consideration.

21 **A. Right.**

22 Q. And it includes some examples of that, which are the
23 circumstances of the offense that you've already heard about,
24 the Defendant's character, and I guess good or bad, and
25 background. I have no idea what personal moral culpability

1 **A. I don't think I'd be Impaired on the first part of**
2 **the trial.**

3 Q. Fair enough. I'm glad we had this talk then.

4 So we move along then to this question, and let's
5 say the fair answer to this question is yes. But if the fair
6 answer is no, then that's the end of it all. Could you
7 give -- would you have any problem answering that question
8 according to the evidence as you look at it now and the way
9 you saw the evidence?

10 **A. That question alone, with no other consideration, I**
11 **would not have a problem answering that question.**

12 Q. You wouldn't be thinking to yourself that you might
13 want to answer it no in order to spare his life or anything
14 like that?

15 **A. Like I said, that question alone with no other**
16 **consideration, I would be able to answer that question.**

17 Q. Okay.

18 **A. But you're asking me hypotheticals, and no one**
19 **knows how they're going to react in a real-life situation, so**
20 **that's one reason I have difficulty with hypothetical**
21 **situations.**

22 Q. Well, until you're sitting there, of course, it's
23 nothing but hypotheticals.

24 **A. I understand.**

25 Q. We could even talk about all the evidence, and it's

1 of the Defendant would be. But if he technically caused the
2 death of two or more people, it's hard to envision that you
3 could be morally inculpable because that doesn't seem to fit
4 with what happened. Whatever that means, you're supposed to
5 consider that, I guess.

6 And the question is, is there sufficient mitigating
7 circumstances to warrant that a death sentence, rather than
8 life imprisonment, be imposed? And even though perhaps you
9 and I would have some differing views on what that means, I
10 can't say you're wrong because if in the punishment phase you
11 were to vote to give a life sentence, then I guess you would
12 find sufficient mitigating circumstances, and if you didn't
13 want to give a death sentence you'd reject that motion, so
14 you're probably right.

15 There's supposed to be some analysis there, but I
16 don't know that lends itself to true analysis. I think it's
17 just feeling stuff almost. But the notion is not -- is not
18 just simply that a mitigating circumstance -- for example,
19 opposition to the death penalty doesn't seem to be a
20 mitigating circumstance that fits in with that because if
21 that's the case, then we'd never have any. Do you know what
22 I'm saying? There would never be a death sentence if the
23 mitigating circumstance was I don't want to do it, or I just
24 don't ever want to do death penalties. Do you follow what I'm
25 saying? It has to be about this case and the evidence.

1 **A. I understand.**

2 Q. And maybe not only about the Defendant, but it sure
3 seems to focus a whole lot on the Defendant's background and
4 nothing about the victim's background or a police officer's
5 professionalism, or none of those kinds of things. It's about
6 the Defendant and the offense that was committed. Also, the
7 circumstances of the offense.

8 **A. Uh-huh, absolutely.**

9 Q. His character and background, the circumstances of
10 the offense might have something to do with -- like that
11 example I used of the person that killed the killer of his
12 child. That's probably, I guess, character of the victim.
13 That couldn't escape anybody's notice, but so is kind of the
14 reason that it all happened. It might technically be a
15 capital murder if it were done just right, but the
16 circumstances of that offense might be as the grieving person
17 who watched his son's killer go out of the courtroom laughing
18 kind of idea.

19 First of all, you've told us, as you've done your
20 thinking about the death penalty, I think there's a portion in
21 the questionnaire where you wrote the taking of a life is
22 contrary to religious beliefs, that all life is sacred. So
23 you said that at the time. You circled that you believe that
24 life confinement is appropriate in some cases. Then one that
25 you answered, do you have any moral, religious or personal

1 a cog in this great, big governmental wheel.

2 And while we can say all I'm doing as a juror is
3 answering questions, you know what the results of those
4 questions are, and particularly on religious and moral
5 grounds, that's why I think it's asking more of human beings
6 than maybe should be done, to say that you're free to answer
7 those questions in a way to have an immorality done. Does
8 that make sense to you what I'm saying?

9 **A. Kind of.**

10 Q. Okay. You believe that an execution -- do you
11 believe that executing this defendant is immoral as you sit
12 there now?

13 **A. I don't see how you can consider it otherwise.**

14 Q. Okay. And you don't know anything about what he's
15 done, other than maybe hearing about the indictment, but you
16 believe that's immoral to execute him?

17 **A. Well, to say it's moral would be in conflict with my
18 religious beliefs.**

19 Q. We're not quarreling. I just want to know you.
20 That's all I'm trying to do.

21 If you think it's immoral, are you free to do what
22 you consider to be immoral, and that's vote in a way that
23 would cause a death sentence? Does your conscience allow you
24 to be free to do that?

25 **A. No.**

1 beliefs that would prevent you from returning a verdict which
2 would result in the execution of another human being? Do you
3 remember that question?

4 **A. I think so.**

5 Q. Let me approach and show you, except for the yellow
6 highlighting that we put in when we go through these things,
7 Mr. Biggs. This question right there, the one -- do you
8 remember that one?

9 **A. Yes. I answered yes.**

10 Q. Okay. And from what you told me, your view there,
11 if anything, is probably just gotten stronger as you've been
12 thinking about it for a couple of days; is that a fair
13 statement?

14 **A. That's correct.**

15 Q. Okay. Now, I guess we could say to ourselves, well,
16 all I'm doing is voting on questions, and so I'm not really
17 returning a death sentence. But that's not really -- we're
18 not being honest with ourselves if we say that because you
19 already know how this all works. And I know you don't like my
20 analogies but I can't help myself. The guy loading people in
21 Poland on the trains to go to the death houses could say, I'm
22 not killing anybody. I'm just -- all I am is just following
23 orders. Today, I load people; tomorrow I load, you know, sand
24 and the next day it's -- you know, coal, and what happens down
25 at the other end is somebody else's responsibility. I'm just

1 Q. What I was saying before is that sometimes it
2 requires -- it requires people do follow some laws that they
3 don't particularly like in order to be on a jury, but most
4 laws aren't moral -- aren't really moral issues. I mean, you
5 might be trying a case where a fellow, if convicted, was going
6 to lose his license -- his real estate license. You've got a
7 real person charged with a crime, and he's up there saying,
8 well, if you convict me I lose my real estate license, and
9 then how do I support my family.

10 That's not a moral issue. I mean, maybe you've got
11 sympathy for him; maybe you don't. But whether he loses his
12 license is not -- it's not a moral issue. He got himself into
13 it. If he ought to be found guilty, he should have thought of
14 his listen beforehand; do you agree? That's not hard for a
15 juror to do that.

16 **A. That's correct.**

17 Q. If he's guilty, he's guilty.

18 But death penalty stuff is very different because
19 many people of conscience believe it is an immoral thing, and
20 you're telling me you're one of those people?

21 **A. Yes.**

22 Q. Well, let me say this, let's do it this way. Is
23 there anything I could do, even if -- I don't get the sense
24 that you and I are disagreeing on anything, but probably a
25 different lawyer might connect with you better than I am.

1 Maybe I get that sense, and that's just fine. But if we got
2 the world's most influential lawyer for you to come in here
3 and prosecute this case, and the evidence was enormous, would
4 you be able to return a death sentence based on your moral
5 views, whatever the evidence might be.

6 A. No.

7 Q. Could you do that?

8 A. No.

9 Q. So it's not a matter -- and people can ask you --
10 one of the things that's interesting about this work, and
11 you're sophisticated and you already know kind of -- you
12 understand the process, and you're thinking about it as we're
13 up there now. If I were, like, on the other side. I'm
14 thinking to myself, all right, I'm the defense lawyer, and so
15 I want a different view. I want to try to keep this juror.
16 I'm not talking to that -- I'm just saying it to myself. I
17 might start saying things like, well, in a proper case, a case
18 that you felt real good about --

19 MR. GOELLER: Excuse me, Mr. Schultz. Judge,
20 I'm going to object to this line of questioning and comments
21 by Mr. Schultz. I believe it's an attempt to -- I don't think
22 it's proper for Mr. Schultz to tell him even if he disguises
23 it with this comment "not these guys," he's attempting to
24 really deny us our right to question him by trying to plant a
25 seed that somehow we may trying to wiggle him or manipulate

1 Is what you're telling me, Mr. Biggs, is that no
2 matter what happens in this trial, if you're sitting on that
3 jury, there will not be a vote from you that would result in a
4 death sentence; is that where we are in this?

5 A. **That's -- that's correct. I lived 56 years on this**
6 **earth. I've never killed anybody else. I've never killed**
7 **anybody yet, and I don't want to start now.**

8 Q. And it wouldn't do any good for me to say you're not
9 going to be the one putting the needle in his arm. That's not
10 what we're talking about?

11 A. **No, because effectively I would be.**

12 Q. And it wouldn't do me any good to tell you there's
13 11 other people in it with you?

14 A. **No.**

15 Q. Because you're part of it?

16 A. **That's correct.**

17 Q. And it's not personal to the State?

18 A. **No.**

19 Q. And it's not personal to the lawyers?

20 A. **No.**

21 Q. And it's not even personal to the defendant in the
22 sense that you know him, or --

23 A. **No.**

24 Q. It's nothing about him; it's about you really?

25 A. **That's correct.**

1 him. I'd ask the court to not allow these type of comments.

2 THE COURT: If you will give me a specific
3 comment, I'll rule on it.

4 MR. GOELLER: Well, it's kind of like unringing
5 the bell, but I guess I'll have to wait, Judge.

6 THE COURT: All right.

7 Q. BY MR. SCHULTZ: Suppose -- let me take the other
8 side of the coin. Suppose I were to say to you, well, if I
9 proved to you that the answers to those questions -- if the
10 State proves to you the answers to those questions first
11 should be yes on the future danger, should be yes on there
12 beyond a reasonable doubt, and then on this mitigation
13 question that the answer should be no, I could ask you if we
14 prove that to you and you were satisfied that the proof was
15 there, would you vote what you believed? And I guess
16 theoretically you could say, well, yeah, if it were proved to
17 me, I could do that. We could say that, right.

18 It's kind of like me asking you the question, if you
19 were on top of this courthouse up here, and you were convinced
20 that the proper thing to do was to jump off it and land on
21 your head down there six stories down, would you do it? Well,
22 sure, if you were convinced it was the proper thing to do. We
23 would all do what we think was the proper thing to do, but
24 that would never happen. Do you know what I'm saying? It's a
25 circumstance that isn't going to happen.

1 Q. And you're being up front with me. There's -- if
2 you're on this jury, it's over for us; is that a fair
3 statement?

4 A. **Well, you indicated Tuesday that if we -- that in**
5 **order to be fair to the State, if we have an objection to the**
6 **death penalty you need to know about that, and that's what I'm**
7 **doing. I'm communicating that.**

8 Q. And I admire you more than I can say. But I want to
9 know what you're telling me is that our object is to get a
10 death sentence on this defendant, that is an absolute
11 impossibility if you're on this jury?

12 A. **Yes.**

13 MR. SCHULTZ: Nothing personal, but you
14 understand I'm going to respectfully challenge this juror for
15 cause, Judge, based on his answers -- I have one other
16 question if I could.

17 I'll submit the juror for cause.

18 THE COURT: All right.

19 MR. GOELLER: Just a couple of questions,
20 Judge.

21 THE COURT: All right, sir.

22 CROSS-QUESTIONS

23 BY MR. GOELLER:

24 Q. It's still morning. Good morning, Mr. Biggs.

25 A. **Morning.**

1 Q. I have just a couple of questions for you.
 2 Understand that a person, or a prospective juror as
 3 yourself who is opposed to the death penalty is not
 4 disqualified from sitting on this jury --
 5 **A. I understand.**
 6 Q. -- you understand that?
 7 And in your questionnaire, I think you answered the
 8 death penalty is appropriate in certain circumstances. It's
 9 society's way of establishing acceptable norms of behavior,
 10 that kind of thing. And when Mr. Schultz was asking you some
 11 questions, he asked you the questions in kind of two -- he
 12 asked you a set of questions, and then he came back and
 13 basically reasked you the same set of questions. The first
 14 go-round, you said your personal views about the death penalty
 15 would not substantially impair with your ability to answer
 16 that question. Is that what you're telling the judge?
 17 **A. Yes.**
 18 Q. Okay. So if the judge gave you an instruction --
 19 and it's all right. I mean, you won't -- if you were a juror
 20 in a case, and you were put back in a jury deliberation room,
 21 you're not -- and it's -- you know, I'm not trying to be trite
 22 or overstate the obvious, but all 12 are not going back there
 23 in a vacuum. There are some people that are going to go back
 24 there with the opinion, I aim for the death penalty. And
 25 other people are going to go back there, my whole life I am

1 against the death penalty. But if the judge gave you an
 2 instruction, and assume when you get to these questions you've
 3 already found somebody guilty of capital murder. And,
 4 Mr. Schultz, is right. Only one of two things are going to
 5 happen; life or death.
 6 The question is not whether the death -- or your
 7 opposition to the death penalty could affect your
 8 deliberations because our law is very clear. That's not a
 9 reason to get rid of you. The law is clear, if the judge told
 10 you based on the evidence and your common sense and things
 11 like that, could you answer that question? Could you do that?
 12 **A. Yes.**
 13 Q. Okay. All right. And then if that, as
 14 Mr. Schultz correctly stated, an answer to that yes means
 15 you've got one more question to go probably. An answer to no,
 16 life sentence. You would answer that question based on the
 17 evidence everything -- well, based on the evidence. And the
 18 State has got to prove that question to you beyond a
 19 reasonable doubt. They've got the only burden of proof on
 20 that question. They've got to prove that beyond a reasonable
 21 doubt. So whatever proof they've got, whatever evidence they
 22 have, and the defendant may have evidence, too, the judge says
 23 base -- the law, as I give it to you as the judge of the 380th
 24 District Court is, you shall answer that question based on the
 25 evidence. Could you do that?

1 **A. I would hope so, yes.**
 2 Q. You'd make your best effort?
 3 **A. That's correct.**
 4 Q. Okay. Probability that the Defendant would commit
 5 criminal acts of violence that would constitute a continuing
 6 threat to society. What kind of evidence -- would you agree
 7 with me that some folks may want to know about, is there a
 8 previous violent --
 9 **A. Yes.**
 10 Q. -- background?
 11 **A. Right.**
 12 Q. What kind of evidence -- of course, when you get to
 13 that question you already know it's life or death, so maybe
 14 you have questions about penitentiary and penitentiary
 15 society, and what kind of controls in the penitentiary are
 16 there to control people like that, and what do people have
 17 access to? Maybe some people might think, well, how do we get
 18 that -- how did that indictment come about? Somebody has
 19 killed somebody. Were they on drugs, liquor, was the deceased
 20 a dope dealer with them, all sorts of things, and you may be
 21 able to say -- some people will say, well, you put them in the
 22 penitentiary. That removes the liquor, that removes the
 23 cocaine, that removes association with other drug dealers in
 24 the sense they have access to lots of drugs and all that kind
 25 of thing.

1 Some people might think that and want that kind of
 2 evidence. But anyhow, all those things the judge would tell
 3 you based on the evidence, if you believe that kind of
 4 evidence, of course, because something is technically
 5 evidence, somebody gets on the witness stand or somebody says,
 6 I believe this, you as a juror are free to say, I don't
 7 believe anything that juror says, or that witness -- I'm sorry
 8 that witness. I believe half of what that witness says. I
 9 believe everything of what that witness says. I wouldn't buy
 10 a used car from that witness, whatever the case may be. But
 11 you can factor all that in, and then you could fairly and
 12 honestly answer that question.
 13 **A. I would, yes.**
 14 Q. Okay. And then, like I said, if there's not a
 15 unanimous verdict of "yes" to that, then the trial is really
 16 over. There's going to be a life sentence.
 17 When we get to this question here, are you the kind
 18 of person that could consider all the evidence, including
 19 circumstances of the character. What this question really
 20 does is -- and I agree with Mr. Schultz. It's really, what's
 21 your feeling on the case? Do you want a life sentence, or do
 22 you want a death sentence? That's really what that question
 23 is talking about because mitigating can be anything and
 24 everything or nothing, in all honesty to the State. Who
 25 knows? I agree with Bill. It's -- there's some phrases in

1 there I'm not really sure what they mean, either.
 2 But that is for the jury, on an individual basis and
 3 collectively, to decide what they want to do with that case,
 4 is what it really boils down to. Could you do that? Could
 5 you take the law from Judge Sandoval and answer that question?
 6 **A. Yes.**
 7 **Q. Okay.**
 8 **A. I would think so.**
 9 **Q. Okay. In your questionnaire, Mr. Biggs, on page --**
 10 **you don't have it in front of you, so the page does not**
 11 **matter. But you know somebody that went to prison, and I**
 12 **couldn't make out your handwriting, Jack Howard?**
 13 **A. Jack Harvard --**
 14 **Q. Oh, oh.**
 15 **A. Mayor of Plano.**
 16 **Q. Okay, all right. How did you know him?**
 17 **A. He was a neighbor.**
 18 **Q. Okay.**
 19 **A. And I campaigned for him in one of his -- during one**
 20 **of his runs for election.**
 21 **Q. Okay. Any feelings in general about how that all**
 22 **turned out, that criminal case?**
 23 **A. From what perspective?**
 24 **Q. Just gut feelings, was justice done, justice not**
 25 **done?**

1 **A. I felt betrayed.**
 2 **Q. By?**
 3 **A. From him personally.**
 4 **Q. From him personally?**
 5 **A. Yes.**
 6 **Q. Okay, okay. I got. I got you.**
 7 **Do you know any other -- he was, what, mayor of**
 8 **Plano for a while?**
 9 **A. For quite a while.**
 10 **Q. Do you know any other elected officials in Collin**
 11 **County?**
 12 **A. None that I can recall. I don't -- none happen to**
 13 **come to mind.**
 14 **MR. GOELLER: Judge, may I address the court,**
 15 **Mr. Schultz? I suppose at this time, I guess the proper thing**
 16 **to do rather than going through my entire individual voir**
 17 **dire, I should tell the court that that's all I have regarding**
 18 **the challenge for cause. I guess the court can rule on it,**
 19 **and then, depending on how the court rules, continue my voir**
 20 **dire? Is that how you think --**
 21 **MR. SCHULTZ: What I was assuming is depending**
 22 **upon -- first of all, based upon the questions relating to**
 23 **that area of challenge, may I have the juror back again?**
 24 **THE COURT: Yes. Then we'll see what we're**
 25 **going to do next.**

1 **MR. GOELLER: I pass the juror.**
 2 **MR. SCHULTZ: Thank you, Mr. Goeller.**
 3 **VENIREPERSON: I'm confused. Should I stay**
 4 **here?**
 5 **THE COURT: Yes, stay here.**
 6 **VENIREPERSON: I'm sorry.**
 7 **MR. SCHULTZ: You've got me some more.**
 8 **REDIRECT QUESTIONS**
 9 **BY MR. SCHULTZ:**
 10 **Q. I know what you said, and I know what Mr. Goeller**
 11 **asked you. He asked you, could you -- would you be able to**
 12 **answer this question. And you said, yes, you thought you**
 13 **could, but in fairness, you've already answered it, haven't**
 14 **you, before we even start the trial? You've answered it in a**
 15 **way that you said would result in a life sentence. Is that**
 16 **where we are?**
 17 **A. That's why I answered the question to him the way**
 18 **that I did, yes.**
 19 **Q. You'd answer the question, but your answer is going**
 20 **to be life, no matter what the evidence?**
 21 **A. Yes.**
 22 **MR. SCHULTZ: That's all I have, Judge.**
 23 **THE COURT: Do you want me to have him step**
 24 **down?**
 25 **MR. GOELLER: Just one more question.**

1 (No omissions.)
 2 **REXCROSS-QUESTIONS**
 3 **BY MR. GOELLER:**
 4 **Q. Sir, is the reason why you say that now, not haven't**
 5 **heard any evidence, is because right now, as you sit there,**
 6 **you are an opponent of the death penalty?**
 7 **A. Correct.**
 8 **Q. But you haven't heard any evidence yet?**
 9 **A. Correct.**
 10 **Q. Okay. Would you still -- I mean, if the judge gave**
 11 **you an oath that you were to answer questions and a true**
 12 **verdict render based on the evidence, could you follow that**
 13 **oath?**
 14 **A. Yes, I could do that.**
 15 **Q. Okay. It's all right. I mean, like I said, going**
 16 **into all this not being a pro -- or being an opponent of the**
 17 **death penalty, that's fine. As long as you can tell the judge**
 18 **you wouldn't violate your oath if you were sworn in as a juror**
 19 **and would answer those questions.**
 20 **A. Well, I'm presuming that in taking the oath, the**
 21 **judge is not telling me how to vote.**
 22 **Q. Absolutely not. You're right. He could -- this**
 23 **judge will tell you, I anticipate if you're a juror, he has no**
 24 **right to indicate to you anything.**
 25 **A. Exactly.**

1 Q. Or his feelings on the case, or how you should vote.
2 And the way this all works is you're an individual vote, and
3 then you're a collective vote, and each individual vote is
4 important. Maybe there will be unanimous verdicts, and maybe
5 there will not be a verdict, you know, that kind of thing.

6 It's -- I suppose it's democracy in its purest form. Each
7 individual is entitled to stick to their guns, no matter what.

8 The judge would also tell you, you know, you should
9 all discuss and debate and try to look at each other's
10 viewpoints and all that, but when it gets right down to it,
11 that special issue there right in front of you -- well, in
12 connection with your questionnaire at one point you had
13 written down, I think the death penalty is appropriate in
14 certain circumstances, and nobody can force you to think of a
15 certain circumstance or a particular case.

16 You were very specific in response to the question,
17 The law in the State of Texas says that a person convicted of
18 capital murder can receive the death penalty solely because of
19 the facts and circumstances of the crime, even if he has
20 committed no other crimes. And you wrote down a very chilling
21 scenario that I think everybody, I suppose, who has ever been
22 a homeowner has crossed your mind when you hear something in
23 the middle of the night.

24 A. Right.

25 Q. There are -- when I read your questionnaire as a

1 whole, and I understand and respect -- I know you know I
2 respect your view on capital punishment. When I read your
3 questionnaire as a whole, you seem to be the kind of person
4 that could say, in this particular case it's so egregious, so
5 bad I may be able to answer questions in such a way where if
6 the death penalty is assessed so be it, when I read this
7 questionnaire as a whole?

8 A. Well, I think in order to square that let me give
9 you this comment. I think that that's the human vengeful side
10 coming out, okay, in terms of a reaction? And as I expressed
11 in my questionnaire, and here -- I mean, that I've always had
12 difficulty from a moral perspective of the death penalty, and
13 whereas from a human perspective it would appear that would be
14 the appropriate punishment. It doesn't square with my moral
15 values, so I have to come down on one side or the other, and
16 that's where I come down.

17 Q. Well, no one can force you to come down on one side
18 or the other. Because understand, Mr. Biggs, there's going to
19 be two kinds of people who end up on this jury -- who are
20 eligible to end up on this jury. First of all, the State has
21 a right to have all 12 jurors say they could give the death
22 penalty, okay? And that probably, you know, being
23 intellectually honest equates to proponents of the death
24 penalty. Likewise, the only other people that can end up on
25 this jury are people who are against the death penalty, but

1 can take the law from the judge and answer the special issues.

2 Now, if there are people who would just say --

3 MR. SCHULTZ: Excuse me just a moment,
4 Mr. Goeller. Judge, I'm going to object to that statement.
5 They have to be able to answer the special issues fairly based
6 upon the evidence. Everybody can answer the special issues,
7 but they have to be able to do it fairly. That's a
8 misstatement of the law.

9 MR. GOELLER: Well, I would -- the court cannot
10 grant challenges in either case for those kind of folks who
11 frankly concede that the prospects of the death penalty may
12 affect what their honest judgments of the facts will be, or
13 what they deem to be a reasonable doubt on the issues. So, I
14 object to his objection.

15 MR. SCHULTZ: Can I get a ruling on my
16 objection?

17 THE COURT: Sustained.

18 Q. BY MR. GOELLER: Well, I'll have to go with what
19 just happened. So, a person who's opposed to the death
20 penalty can be an eligible and qualified juror in this case if
21 they could fairly give weight to the evidence in answering
22 those special issues.

23 I know you're opposed to the death
24 penalty. Are you telling the judge that you would ignore the
25 evidence and manipulate the system to achieve your end result?

1 A. I think manipulate is a very negative term.

2 Q. And I'm sorry, I'm not trying to offend you, sir.
3 You know what I'm trying to do.

4 Not manipulate, but to cause your desired outcome in
5 the case. I mean, you know, before -- I don't think you had
6 any -- from what I recall, I don't think you had a problem
7 being able to answer that question based on the evidence,
8 right?

9 A. Yeah, but I would hope so. I would hope it would
10 be -- if it were clear cut.

11 Q. Well, they've got the burden beyond a reasonable
12 doubt, so I think it's -- clear-cut is a pretty good
13 synonymous term.

14 A. Right.

15 Q. They better give it clear-cut to you, or more,
16 right? You can answer that question.

17 A. Yes. I've already stated that.

18 Q. Okay. And that question?

19 A. Yes.

20 Q. I would anticipate that a juror in a capital case
21 would hear three weeks -- two or three weeks of evidence maybe
22 of that first phase. Then you might hear the first phase of
23 the trial. The second phase you may hear the rest of that.
24 Could you fairly consider that question and answer it based on
25 the evidence or lack of evidence, or whatever you think

1 mitigation might mean?

2 **A. I've already stated that I thought that I could.**

3 Q. And you could answer those two questions -- well, if

4 your answer to both my previous two questions is, yes, you

5 think you could and, yes, you think you could, then you're

6 telling me that you would not answer those questions in a way

7 to achieve Mr. Biggs's desired outcome in the case? You'll

8 call it like you see it. You'll answer those questions based

9 on the evidence, and let the chips fall where they may?

10 **A. I think I also stated that I was not in favor of the**

11 **death penalty, so I'm not quite certain I'll be able to get to**

12 **that conclusion.**

13 Q. That's okay.

14 **A. Okay.**

15 Q. But what you're telling the judge is, the fact that

16 you are opposed to the death penalty could factor into the way

17 you look and answer those questions?

18 **A. I think that's an accurate reflection.**

19 MR. GOELLER: Okay, all right. Thank you. I

20 renew my objection to the State's challenge.

21 FURTHER REDIRECT QUESTIONS

22 BY MR. SCHULTZ:

23 Q. Has Mr. Goeller changed your mind then with the

24 questions he's given you? Is your mind changed again?

25 **A. I don't think Mr. Goeller specifically, but the fact**

1 **of my being here and have to confront this issue has certainly**

2 **changed my view, has forced me to actually address it. No one**

3 **knows how they're going to react exactly until they're placed**

4 **in a certain situation.**

5 Q. No, no. You're misunderstanding me. From what

6 you've told me, your questionnaire answers were probably

7 harsher than what you're really feeling now as you stopped and

8 thought about it?

9 **A. Yes.**

10 Q. I understand that.

11 I'm talking about just now, because I thought you

12 told me that no matter what, if you're on this jury there is

13 zero chance of a death sentence in this case. I thought

14 that's what you told me?

15 **A. As far as I'm concerned, yes.**

16 Q. And one is the same as 12 under our law. Your vote

17 will be, however it takes effect, no death penalty; isn't that

18 so?

19 **A. Yes.**

20 Q. There will not be a death penalty.

21 And however that gets achieved, for example, it

22 might simply be that the answer to this question will always

23 be, yes, that you will always find mitigation, however it

24 needs to be achieved. Because of your moral beliefs, this

25 defendant will never get a death sentence voted by you?

1 **A. I think that's correct.**

2 Q. And you're the only one that knows yourself?

3 **A. That's correct.**

4 Q. And it's not personal to me, and I think if we'd get

5 another prosecutor to come here, it wouldn't matter. That's

6 not the issue, right?

7 **A. Yeah.**

8 MR. SCHULTZ: Thank you, sir.

9 FURTHER CROSS-QUESTIONS

10 BY MR. GOELLER:

11 Q. Could a defendant ever get a death sentence?

12 **A. Pardon me?**

13 Q. When I go back through your questionnaire, and I

14 see -- I see -- I don't want to talk about it because it

15 scares people, but that scenario that you wrote out about --

16 **A. Yeah, I know what you're talking about.**

17 Q. Do you know what I mean? Are there cases that you

18 could think of where your vote could end up in a death

19 sentence?

20 **A. In this case?**

21 Q. Well, in this case the indictment reads murder of

22 two people, or murder while committing a robbery, or murder

23 while committing a burglary, okay? That's all I can tell you

24 about this case, but you haven't heard any evidence?

25 **A. Uh-huh.**

1 Q. It could be, Mr. Biggs, would you agree with me,

2 that whatever the evidence could be, it could affect you in

3 such a way that you could put aside your religious or moral

4 convictions, and answer the questions, even knowing that a

5 death sentence could result?

6 **A. I don't understand why permanent incarceration is**

7 **not an acceptable punishment if it, in fact, removes a person**

8 **from society, removes him from endangering anyone else. I**

9 **don't know why you have to put somebody to death.**

10 Q. You and I would have a very short conversation over

11 a cup of coffee because all I can tell you is I don't know

12 why, either. But the Legislature has said capital punishment

13 for certain crimes, death is an option, and that's --

14 **A. Well, I think that the way that I view it is that**

15 **laws are set by elected officials who are influenced by the**

16 **general population, and so that's why we have the laws we do,**

17 **and --**

18 Q. And under that --

19 MR. SCHULTZ: Excuse me, could we let him

20 finish his answer, Judge?

21 **A. And not everyone is going to agree with the laws**

22 **that have been set.**

23 BY MR. GOELLER: I agree. I suppose if we take --

24 we look at our Republican form of government, we want the

25 death penalty; we being the general citizenry. Theoretically

1 the people we send down to Austin, let's put it that way,
 2 theoretically representing our interests. So, from a
 3 republican standpoint, not the party, although the party is,
 4 too, it makes perfect sense to have the death penalty.
 5 **A. (Nods head.)**
 6 **Q.** Mr. Schultz was asking you, you know, in this case
 7 could we ever get a death sentence out of you? And that's
 8 kind of -- I don't like the way he phrased it. I understand
 9 where he's going with it, because if they prove beyond a
 10 reasonable doubt the future dangerous special issues, and then
 11 nobody has got a burden of proof on that second one. It's
 12 whatever you think ought to happen in the case. And I think
 13 he prefaced this question, in this case could we ever get a
 14 death penalty out of you, or a vote I guess is what he meant?
 15 But in this case you don't know what the facts are. Do you
 16 see what I'm saying? So I'm not sure the question really
 17 elicits your truest, deepest, innermost response because we
 18 can't tell you what the facts are.
 19 **But, again, when I look at your questionnaire as a**
 20 **whole, I see you as a person who could concede that there are**
 21 **fact situations out there that could warrant the imposition of**
 22 **death.**
 23 **A. At the time that I wrote that questionnaire, that's**
 24 **probably a proper conclusion. It's not today.**
 25 **Q.** Is that -- I know we were ping-ponging you here.

1 You know how the game is starting to be played.
 2 **Am I wasting -- is that no longer -- are you telling**
 3 **me that there is no situation out there where you could ever**
 4 **vote based on the evidence and the issues, even to the State's**
 5 **liking, yes on future dangerousness and no on mitigation, that**
 6 **would allow the imposition of the death penalty?**
 7 **A. That's correct.**
 8 **Q.** Okay, all right, sir. I'm sorry to have wasted some
 9 of your time.
 10 **A. I'm sorry to be wasting your time as well.**
 11 **MR. GOELLER:** That's all I have, Judge.
 12 **THE COURT:** Anything else from either side?
 13 **MR. SCHULTZ:** Just a ruling, please.
 14 **THE COURT:** All right. The court will strike
 15 Mr. Biggs for cause.
 16 **VENIREPERSON:** Thank you.
 17 **THE COURT:** All right, sir. You are finally
 18 excused.
 19 **(Venireperson exits the courtroom.)**
 20 **THE COURT:** Ready to bring in the next one?
 21 **MR. GOELLER:** Yes, sir.
 22 **THE COURT:** We'll bring in Mr. Grabb, and then
 23 we'll do Mr. Hand before lunch and then we'll break for lunch.
 24 If we do Mr. Grabb. If we don't excuse Mr. Grabb, we'll do
 25 Mr. Grabb (sic) next.

1 **MR. GOELLER:** Which one are we doing right now?
 2 **THE COURT:** Grabb, Number 12.
 3 **(Venireperson enters the courtroom.)**
 4 **Are you Samuel Grabb, sir?**
 5 **VENIREPERSON:** Yes, sir.
 6 **THE COURT:** Do you remember you took an oath a
 7 couple of days ago, and I just want to remind you that you're
 8 still under oath. Please be seated. I want to ask you a
 9 question to start.
 10 **You had handed somebody, I suppose either my**
 11 **coordinator or my bailiff, this -- well, it's a change of**
 12 **notification from AT&T addressed to you in Quinlan at 1016**
 13 **Woodduck Terrace in Quinlan. What county is Quinlan in?**
 14 **VENIREPERSON:** It's either Rains or Hunt.
 15 **THE COURT:** Do you live there now?
 16 **VENIREPERSON:** Yes.
 17 **THE COURT:** That's your permanent residence?
 18 **VENIREPERSON:** Yes.
 19 **THE COURT:** Do you have any kind of residence
 20 in Collin County?
 21 **VENIREPERSON:** My name is still on a lease
 22 until the end of August.
 23 **THE COURT:** Who lives in that place that you
 24 live --
 25 **VENIREPERSON:** My wife.

1 **THE COURT:** She continues to live there?
 2 **VENIREPERSON:** Yes.
 3 **THE COURT:** But you actually physically occupy
 4 this Woodduck Terrace address?
 5 **VENIREPERSON:** Yes, sir.
 6 **THE COURT:** Did you come here today from there?
 7 **VENIREPERSON:** Yes. Long drive.
 8 **THE COURT:** And where do you work now?
 9 **VENIREPERSON:** I work at Tri-point
 10 Semi-conductor. It's located at 635 and 75 on the TI campus.
 11 **THE COURT:** I suppose at the end of August your
 12 wife will start moving out?
 13 **VENIREPERSON:** No.
 14 **THE COURT:** Okay. Well, I won't get into that.
 15 **But anyway, when did you actually move?**
 16 **VENIREPERSON:** I actually moved on August, I
 17 want to say, 9th.
 18 **THE COURT:** Did you have a lease on this place
 19 at that time?
 20 **VENIREPERSON:** I'm staying with my parents for
 21 right now until I get a place of my own.
 22 **THE COURT:** Sir, you're going to have to speak
 23 up.
 24 **VENIREPERSON:** I'm staying with my parents
 25 right now until I get a place of my own.

1 THE COURT: Do you remember me asking the
 2 question --
 3 VENIREPERSON: Yes. That is my permanent
 4 residence.
 5 THE COURT: But do you remember me asking the
 6 question is everybody a resident of Collin County?
 7 VENIREPERSON: What did you say? Excuse me.
 8 THE COURT: Do you remember when we had the
 9 voir dire a couple of days ago?
 10 VENIREPERSON: Well, I didn't have any proof
 11 that I lived anywhere else.
 12 THE COURT: But do you remember the question?
 13 VENIREPERSON: I suppose, yes.
 14 THE COURT: Okay. And you're saying you didn't
 15 respond because you didn't have any proof?
 16 VENIREPERSON: I guess so, yes.
 17 THE COURT: Okay. And this is a -- this is
 18 just where they're going to send your wireless bill; is that
 19 the idea?
 20 VENIREPERSON: No.
 21 THE COURT: What is this change of
 22 notification?
 23 VENIREPERSON: That's just one of my bills.
 24 That's the first thing I received, so that's what I brought in
 25 showing that I live out there.

1 THE COURT: It's for your wireless phone?
 2 VENIREPERSON: Yes.
 3 THE COURT: All right, sir. State have any
 4 questions of this gentleman?
 5 MR. SCHULTZ: Just a couple if I could, sir.
 6 DIRECT QUESTIONS
 7 BY MR. SCHULTZ:
 8 Q. My name is Bill Schultz. I'm one of the prosecutors
 9 in this case. You seem a little nervous. Are you a little
 10 nervous up here?
 11 A. Yeah, a little bit.
 12 Q. Okay. And you just -- when did you move? Did this
 13 just happen a couple of days ago?
 14 A. No. It's been around the beginning of the month.
 15 It was somewhere -- I want to say approximately August 9th.
 16 Q. I have a sense, and I could be wrong, but I have a
 17 sense that there's probably some -- maybe something that's
 18 happened that's caused you to move. Am I right about that?
 19 A. Yes. My wife and I are having problems.
 20 Q. I'm not trying to pry, but what I'm trying to say is
 21 sometimes those things simmer down or they straighten out, and
 22 then maybe you'd be back again. Do you view this as, like, a
 23 permanent thing where you've actually moved to another county,
 24 or is it -- are you just cooling off, and you're coming right
 25 back to Collin County again, or do you know?

1 A. I don't know. Right now, I see it as a permanent
 2 thing.
 3 Q. So essentially you've moved out of Collin County,
 4 and you view your intent to be permanently in this other
 5 county until something else might change, and you move to
 6 another county or something like that; is that right?
 7 A. Yes, sir.
 8 Q. I hope you don't think -- I wasn't trying to pry,
 9 other than to find out -- this is a legal issue we have to
 10 kind of address, and it's nothing pleasant.
 11 You're not trying to get out of jury service?
 12 That's not exactly -- or are you trying to do it. Is that a
 13 fair statement?
 14 A. Well, I am because it's a 70-mile drive from there
 15 to here, but other than that I'm willing to serve on jury duty
 16 because, I mean, it's part of being a U.S. citizen, correct?
 17 Q. Right, and a county resident, too. Of course,
 18 that's sort of where we are.
 19 A. Yes.
 20 MR. SCHULTZ: That's all I have.
 21 THE COURT: Do you even have any questions?
 22 MR. GOELLER: No, sir.
 23 THE COURT: All right. Then I will find that
 24 you are not a resident of Collin County, and you are finally
 25 excused, sir.

1 VENIREPERSON: Thank you.
 2 (Venireperson exits the courtroom.)
 3 THE COURT: Let's -- and this was Samuel Grabb,
 4 Number 12.
 5 Let's ask Mr. Hand to come in. Mr. Hand has been
 6 waiting since yesterday, and I understand that he's ready.
 7 (Venireperson enters the courtroom.)
 8 THE COURT: All right. Are you David Hand?
 9 VENIREPERSON: Yes, sir.
 10 THE COURT: All right. I'm sorry to keep you
 11 waiting. Sometimes these things take a while, and I just want
 12 to remind you that a couple of days ago I swore everybody in.
 13 So, you're still under that oath that you took to respond
 14 honestly to the questions that are asked.
 15 All right, Mr. Schultz.
 16 MR. SCHULTZ: Thank you, Judge.
 17 DIRECT QUESTIONS
 18 BY MR. SCHULTZ:
 19 Q. Hello, Mr. Hand?
 20 A. How are you doing?
 21 Q. Good, thank you.
 22 My name is Bill Schultz. To my left is Ms. Gail
 23 Falco, and further to my left is Ms. Jami Lowry. We are thr
 24 Assistant District Attorneys that have been assigned to the
 25 capital prosecution of Ivan Cantu, who is the man at the

1 defense table to your far left. Next to him are two
2 excellent, local board certified criminal law specialists,
3 Mr. Don High and Mr. Matt Goeller.

4 I believe from our talk on Tuesday you do not
5 personally know any of us, either --

6 A. No.

7 Q. -- the defendant or the lawyers in the case.

8 Is that correct?

9 A. Right.

10 Q. When you found out early on from Judge Sandoval
11 telling you this was going to be a capital murder case, what
12 went through your mind as soon as you heard that news?

13 A. Well, I didn't know that going for the death penalty
14 and whatever. But I've never been called for jury duty, so I
15 didn't have a whole lot of feelings I don't guess.

16 Q. I bet you realized that it's something that could
17 easily involved a fair amount of your time and energy?

18 A. Right, exactly.

19 Q. How do you feel about that if selected on this case,
20 this may take several weeks of your daytime life, and probably
21 just because of the nature of it, it's going to occupy your
22 thoughts at night; it would anyway?

23 A. Well, like I put on the questionnaire, if I got a
24 choice, I wouldn't do it.

25 Q. Sure.

1 A. But, you know, hey, if it's what -- the way it comes
2 down, then we'll deal with it. I've got a job and family,
3 like most everybody.

4 Q. I know that. And sometimes when I -- you can only
5 imagine how hard this is for lawyers on both sides. I mean,
6 we're people, just like you, that got families and lives and
7 churches that we care about.

8 A. Sure.

9 Q. And the pressures on the attorneys in this kind of a
10 case are enormous. That's both sides, because we're people of
11 good will, and they're good people. I've known them for
12 years, and they know us, too. When I say things like -- that
13 seem to trivialize people's personal lives or that's not
14 important, it's only a because I truly believe that we never
15 ask for sacrifices compared to what these issues are. It may
16 be hard, but ten years from now, you know, every one of us is
17 going to agree that a man on trial for his life is real
18 important. I mean, that's really important stuff. The State
19 thinks it, and the defense thinks it, and I know the jury
20 does, too.

21 First of all, let's talk about your work situation a
22 little bit. And I apologize, I read your questionnaire a
23 couple of days ago. If memory serves me, you are connected
24 with Pilgrim's Chicken; is that right?

25 A. Right.

1 Q. I'm not sure, what exactly what do you do for
2 Pilgrim?

3 A. I'm over all the international sales and all the
4 commodity; and eggs, fresh/fast food and deli. It's quite a
5 bit.

6 Q. Okay.

7 A. And we just recently acquired a company in Virginia
8 that I've been traveling up there some, as well.

9 Q. Tell me what typical -- tell me, like, what a
10 typical day in your job would be like? If you get up in the
11 morning, what's typical?

12 A. Well, there's no typical. If I'm in town, I go to
13 the office, you know, 7 to 7:30, and I leave 5 to 5:30 or
14 4:30, whatever. Cell phone and everything give you some time
15 to -- you don't have to be at a desk or whatever. But
16 travel-wise there's probably two to three weeks out of a month
17 that I'm gone one to three nights, nationwide. We sell
18 nationwide and international. I rarely go overseas but --

19 Q. Different organizations -- there could be different
20 answers to this question. How pivotal in the operation of the
21 Pilgrim's Chicken Company do you consider your job?

22 A. Right now, very important because our acquisition
23 just took place in February, and we've got a lot of issues up
24 on -- out of Virginia is where their company is at, Virginia
25 and North Carolina. People issues, culture and customer

1 issues, and trying to marry up the synergies of the two
2 companies, so we've got a lot going on.

3 Q. Okay.

4 A. And business is very good right now, a lot of
5 contract negotiations come up September, October, usually
6 because that's a weaker time of the year, and people like to
7 negotiate in the weak time of the year.

8 Q. Did y'all do turkeys, too, or only chicken?

9 A. The company we acquired has turkey. Doesn't fall
10 under my responsibility, except for the export end of it.

11 Q. Someone asked me the question on Tuesday, and I
12 don't have a much better answer than now of how long this
13 trial would take. If it makes any difference to you, we've
14 picked one juror now out of 12. We've been at it -- this is
15 our second day. I'm guessing the pace is probably going to be
16 a little slower than one juror a day, but you never know. I
17 do this with some frequency. Sometimes you go two or three
18 days, and nobody is seated and nothing works. Then you have
19 two or three one day, and you can't really tell.

20 I figure jury selection is going to take in excess
21 of three weeks. That's just my guess. I'd like to think
22 three and a half weeks, but you never know. It just -- and
23 then I'm guessing what happens after that is there will
24 probably be a break, and that's going to be up to Judge
25 Sandoval, but usually there's a break for everybody, trying to

1 marshal the number of witnesses that we talk about is
2 important. These attorneys have got lives outside of this
3 particular trial that they're trying to keep going. The jury
4 needs some predictability, so there's probably a break of a
5 few days, and then we get started.

6 And this is probably, once we get started, three to
7 four-week trial. That's my best guess, and if I'm wrong,
8 that's not evidence against me in the trial. It's just one of
9 those I'm trying to give you as much insight as I can. So,
10 we're probably going to be into October very possibly before
11 it's all over. But maybe not.

12 Whatever it is, though, the truth is that 14 people
13 are going to be sitting in the jury box; 12 jurors and two
14 alternates which only exists in the event of the disability of
15 one of the jurors. A trial this long, somebody has a stroke
16 and has to go to the hospital for a long time. The judge can
17 disqualify that juror and bring in alternate and substitute,
18 and we keep forging along.

19 **A. The alternates sit in, as well as the 12?**

20 **Q.** The alternates sit in. We put just a couple of
21 chairs over there, and they hear all the same evidence. They
22 go back to the jury room the same as everybody else, and their
23 duty ends at the point of the trial where the jury is retired
24 to deliberate on guilt/innocence, and then the alternates get
25 to leave and they talk about it, or whatever.

1 But you're not going to be an alternate because
2 you're too early. No such luck. We do the alternates after
3 we do the first 12 jurors. And I will say this, it's probably
4 a life experience nobody would ever forget. I know you're not
5 asking for it, and I know you haven't volunteered for it.
6 I've never met anybody who's gone through something like that
7 and didn't find some teaching in it, maybe not all the
8 teaching you wanted to get, but you don't get board with it.
9 That's a fact. It's important work.

10 I guess what I want to make sure, and I ask
11 everybody this is, even though it would be an inconvenience,
12 you're not going to take it out on the defense or on the
13 State, the fact you're being inconvenienced, and you'll do
14 your duty the best way you know how as a person?

15 **A. Well, I feel that way now. I mean, you know, I
16 don't know. I don't know how I'll feel a month from now.**

17 **Q.** I got you. Does that seem like yourself? You don't
18 see yourself as being that kind of person, anyway really, do
19 you?

20 **A. I think I can be fair, but --**

21 **Q.** I know. I hear everything you're saying and not
22 saying. I hear it all.

23 The way the process works is this: The State gets
24 to go first just because somebody has to go first with this
25 jury selection. We go first. The purpose of this phase is

1 primarily to talk about the death issues because that has to
2 be done one on one. Just the way the law is written, it has
3 to be a one-on-one process. And I guess the idea is that for
4 many people these issues are so deep that they don't want to
5 have to be talking with everybody in a huge room full of
6 people. I guess that's the main idea. And secondly, it's a
7 little easier for us to communicate one on one with the jury
8 if it's just one person, and you with us.

9 Now, you indicated that you are in favor of the
10 death penalty; is that correct?

11 **A. (Nods heads.)**

12 **Q.** And when I talked with you on Tuesday, and I asked
13 you to take a moment and look at the defendant and realize --
14 explained to you what exactly was involved, you understood I
15 wasn't trying to be funny or it wasn't shock value. It wasn't
16 anything like that that I was doing, but I wanted everybody to
17 get in touch with the reality that 12 people are actually
18 going to be involved in that process, and it's not just
19 maybe -- like some people watch TV at night, and say, well,
20 they ought to be executing these people for doing this awful
21 thing that we see on TV. And some people are affected by that
22 more than others, and some people end up changing. Did that
23 change your opinion about the death penalty and your support
24 of it any?

25 **A. I still support it. I'm sure there's some**

1 **situations it's an easier call than others.**

2 **Q.** Sure, sure. I think you're absolutely right. I
3 mean, most people if they were jurors, and we were trying
4 Adolf Hitler for what he had done, I think that's probably an
5 easier call than some other cases where the conduct is a
6 little more odd than it is cruel kind of thing, you know?

7 What is it about the death penalty that makes you
8 favor it? Tell me what you think it does that makes you a
9 supporter of it.

10 **A. Well, some of the severe cases, Oklahoma City and
11 all that, those are easy calls. I mean, I guess the only way
12 I can answer it is I support our system, and if our judicial
13 system has it and our State has it, then, you know, I'm not
14 God. I don't control somebody's life, but, hey, I support our
15 system, and if it's in place, I live with it.**

16 **Q.** Well, suppose somehow we ended up with a referendum.
17 One of those occasional things we get in Texas that, I guess,
18 they're advisory in nature. But let's say we ended up with a
19 referendum, and the question was do we retain the death
20 penalty or do we abolish it? And let's say you went to the
21 polls, and maybe that wasn't your primary reason for being
22 there. Maybe you wanted to vote for the Governor or the
23 president, or something like that, but you're there. How do
24 you think you'd vote on that referendum?

25 **A. I'd probably vote for it.**

1 Q. So there's more to it -- that's what I was getting
2 at. There seems to be more to it in your mind than just
3 simply it's the law of the land. You wish it to be the law of
4 the land because you'd vote in favor of it; is that right?

5 A. Yes, I guess so.

6 Q. Now, you have children don't you, Mr. Hand?

7 A. Right.

8 Q. What are their ages?

9 A. Seven and 9.

10 Q. It's probably a little bit early, but let's say one
11 in a couple of years, your 9-year old, came to you and said,
12 Daddy, I was watching TV, and they're talking about capital
13 punishment. What do you think about that? And you'd explain
14 what your views are, and then maybe your child would say,
15 well, there's some other good people that aren't for it. And,
16 you know, my teacher's a nice lady, and she says it's not a
17 good thing. Why do people oppose it? What do you think the
18 reasons for opposing the death penalty are?

19 A. Well, I guess they don't consider themselves in a --
20 or maybe more connected with God. I don't know. I don't have
21 an answer, I don't guess.

22 Q. Some people express a concern about the idea of
23 mistaken identity, that somehow the wrong person would get
24 convicted. And I guess this new DNA technology and stuff has
25 probably encouraged a lot of that scrutiny I think. Is that a

1 big thing to you; the concern that maybe an innocent person
2 would be executed?

3 A. I guess it's always a concern. I think that's
4 probably why you have 12 people, and you look for a unanimous
5 decision.

6 Q. Okay. Some people express the view that the death
7 penalty falls disproportionately upon certain members of our
8 society, what we often call minority members of our society,
9 and that -- that if we look at the statistic -- particularly
10 on the Texas Death Row, if you look at the statistics, there's
11 a higher frequency of, first of all, males. Obviously, there
12 are lots more than 50 percent of the people on Death Row are
13 males. Secondly, there's a higher frequency of Hispanic and
14 African American Death Row inmates that is reflected in our
15 general population. And assuming that's true, and that's
16 probably simple enough to find out if it's true -- but
17 assuming it's true, they say that tells us that it is being
18 applied unfairly and disproportionately to minority members.
19 And I'm curious, have you ever heard anybody talk about that.
20 Have you ever heard that argument?

21 A. (Shakes head.)

22 Q. Do you have a sense in you that that's the case,
23 that somehow people are more apt to use the death penalty as
24 an instrument of oppression, or males in our society? Do you
25 have a sense that's going on?

1 A. No.

2 Q. As you sit there now, do you see -- do you see
3 yourself being the kind of a juror that would ever consider
4 male or female, Swedish or Hispanic or, you know, black or
5 Asian as any kind of a factor in deciding how to answer the
6 questions that you got do you?

7 A. Well, I'd try not to I guess.

8 Q. Okay. I mean, you don't feel that would be the
9 right thing to do, do you, to consider a person's race or
10 gender --

11 A. No.

12 Q. -- as some kind of evidence?

13 Okay. Some people say they think it's not
14 particularly good of our society -- it's not exactly
15 religious, but they say if we kill people, even after a trial,
16 which is better than murderers give their victims because they
17 don't -- they just kill them. But if we give somebody good
18 lawyers and give them a trial and a jury that cares, but they
19 say even after all that if we kill somebody that we're maybe
20 not any better than the people we're killing because it's just
21 sort of a state-sanctioned murder. What do you think of that
22 argument? Does that make any sense? Does that ring any
23 bells?

24 A. Well, that's the whole deal about capital
25 punishment, I guess. I mean evidently y'all are for it

1 because you're here.

2 Q. But kind of -- it's not so much the lawyers or the
3 parties that are involved. I mean, maybe I'm for it; maybe
4 I'm not. Maybe the defense is for it; maybe they're not.
5 Really what we're looking for is juror's attitudes, and do you
6 think that makes sense? Do you think it's wrong of our
7 society -- do you think we're murderers by executing people, I
8 guess, is what I'm asking you?

9 A. I don't because I support the laws that are in
10 place.

11 Q. Now, you understand that it -- that when we talk
12 about capital murder, that's a distinct crime the same way
13 rape is a crime, has certain things that have to be proved,
14 and it's not an automatic result. If you find somebody guilty
15 of capital murder, they may get death and they may not,
16 depending on the second phase of the trial. You understand
17 that process?

18 A. Right.

19 Q. And I can tell you that the jury is not asked the
20 ultimate question; life or death. And that's sort of true,
21 but it's sort of not true. Because you get asked at least a
22 pair of questions, and there could be three questions, but
23 both sides have been ignoring the third with one because
24 neither of us think it will apply, although you never know.

25 Can you see it okay, or is the handle --

1 A. That's fine.

2 Q. That's what we call the future danger question.
3 Sometimes called the act of violence question, or the
4 protection of society question. That question is hitting at
5 the present personality of the Defendant and the present
6 character of the Defendant. And the question asks itself
7 really is this person dangerous? They talk about acts of
8 violence, but that's what that is.

9 Acts of violence can be the obvious ones, like
10 swatting a guy in the head with a brick that could kill him.
11 That's clearly an act of violence everybody would agree on.
12 Blowing up the federal courthouse, that's an act of violence
13 everybody would agree on.

14 Some people say an act of violence could be violence
15 to property, like if I heave a big, old rock through your
16 plate glass window, that might not hurt you, but it's an act
17 of violence to your property, and you might say that.

18 Some people say that some things could be indirectly
19 an act of violence, like maybe selling hard drugs to somebody.
20 The act of selling probably is not dangerous unless tough guys
21 hop out from the cars and start with their machine guns or
22 something. But where those drugs go and in whose body they
23 go, pretty clearly would do violence to the bodies
24 when they finally get in there. So, some people say, well,
25 yeah, drug dealing is an act of violence because it's

1 to prison for life, could we be meaning prison society? Is he
2 going to be violent down there? And, of course, it could mean
3 prison society because that's where he could be.

4 But that society could just as easily be the outside
5 society. It could just as easily be the concept of what if I
6 saw him on the street corner, or he moves into the house
7 behind me where I live, or what if he gets a job as a janitor
8 at my kid's school, because that's also society. The question
9 doesn't say prison society. It just says society, and it asks
10 you about it right now, is what it asks you. I mean, we could
11 just as easily say it doesn't mean prison society because he's
12 not in prison yet because the trial is still going on, because
13 society is very broad, and it's looking at his personality.
14 Does that seem like a question you could answer if you had the
15 evidence to do it?

16 A. Yeah. I take society to be outside.

17 Q. Okay. Or inside or anything in between. Society
18 can be many things, and I guess the key thing I'm asking you
19 is, do you see how that question doesn't limit you to ask the
20 question can he be safely kept in prison?

21 A. I don't consider that to be prison, I guess,
22 society. I consider that outside.

23 Q. And maybe somebody else has a different view.
24 There's room for how everybody interprets it. Both lawyers --
25 Mr. Goeller or I might talk differently about it, but the fact

1 eventually going to hurt somebody.

2 But that's not defined for you. That's simply what
3 we're looking at. And the law contemplates that if the State
4 proves to you that answer should be yes beyond a reasonable
5 doubt that you'd be able to vote yes, and I sense that you
6 could do that?

7 A. (Nods head.)

8 Q. And the law further contemplates that if we're not
9 convincing enough to you and the other -- or anybody else on
10 that jury, that the answer should be yes and convincing means
11 beyond a reasonable doubt. The law contemplates you'd be free
12 to vote no and that you would vote no, and you seem like the
13 kind of man, to me, that would do that just fine and call it
14 like you see it.

15 Do you ever umpire Little League games or anything
16 like that? Have you done that yet?

17 A. No, the coaching.

18 Q. Same sort of thing. If they need you to umpire,
19 you could do it, and you'd be fair and if it's a strike -- you
20 know, it's -- this is bigger stuff, but it's the same process.
21 Call it like it first comes in, and if it's in the strike
22 zone, it's yes, and if it's not, it's no. That's how that is.

23 We don't know from that question what we mean by
24 society. For example, you might say, well, could it be prison
25 society since -- if the answer to that becomes no, he goes off

1 is neither one of us can say the other one was wrong anyway
2 because neither one of us is wrong about all that.

3 If you answer that question no based upon the
4 evidence, the trial is over. As soon as you answer it no --
5 what happens if there's a no answer to that question; do you
6 know?

7 A. No, I don't know.

8 Q. If there's a no answer to that question, then the
9 defendant automatically gets life. The jury doesn't do
10 anything else. If it answers that question no by ten or more
11 votes, then it's an automatic life sentence for the defendant.
12 If you answer the question yes unanimously by 12 votes, then
13 there's another question for you. It's almost like those IRS
14 forms. If you've got a zero on this line, you don't go to a
15 whole block of other things. But if you've got some money on
16 there, some numbers then you go to the next one.

17 And this is what we call the mitigation question.
18 Take a moment if you would and read that for me. Let me know
19 when you're finished.

20 A. Okay.

21 Q. That question, what I meant when I said the truth is
22 we just ask the jury what do you get life or death? But for
23 all the additional procedures, that's really what that
24 question asks. I mean, it tells you -- it tells you that
25 there has to be sufficient mitigating evidence, but that's in

1 the eye of the beholder, anyway. Whatever you think is
2 sufficient, and it tells you some things to consider, but
3 they're not the only things. It talks about the defendant's
4 character and background and circumstances of the case and
5 moral culpability. But that's just some things they want you
6 to consider. You can consider other stuff, too. It doesn't
7 limit you.

8 And when you get right down to it, nobody would
9 disagree with what I'm going to say; that the answer to that
10 question is exactly what the juror wants it to be because the
11 truth of the matter is probably if the jury wants to give
12 somebody a life sentence that probably means they found
13 sufficient mitigating evidence that's what they want. Do you
14 know what I'm saying? If the jury wants to give the defendant
15 a death sentence, probably that means that the reason they
16 want it is because there is mitigating evidence. That's just
17 the way human beings work. Do you follow what I'm saying?

18 **A. Uh-huh.**

19 **Q.** Even if you answer that first question about future
20 danger yes, you're still given the right of last refusal --
21 the right of last refusal, and perhaps I should say the "veto
22 power" when you automatically pass up the death sentence. So,
23 12 people have to not only find that he's going to be a danger
24 in the future, but they're going to have to find that the
25 death sentence is the right thing to do independent of that,

1 and that's kind of how this whole process really works, it
2 seems to me. Make sense to you?

3 **A. Uh-huh.**

4 **Q.** Now, all those 12 jurors probably aren't going to be
5 like robots with exactly the same views. There may be
6 somebody sitting next to you who said, boy, I hate the death
7 penalty. I think it's unfair to minorities. I think it's
8 ugly of us in society. I read my Bible every day, and it says
9 thou shalt not kill. I'm real concerned about wrongful
10 identity of people. I think it ignores the possibility of
11 rehabilitation, because you can't rehabilitate a rotten old
12 corpse because they've already been executed. And that
13 doesn't mean they don't belong in there with you, although you
14 might have a different view from them.

15 What it means is that they have taken an oath that
16 even though they have views that are pretty strong one way or
17 another, they can still vote according to the evidence, and
18 they are the kind of people that could allow a result to be
19 different from what they think is right in the overall moral
20 sense. Do you understand what I'm saying.

21 And there may be somebody on there a lot stronger
22 for the death penalty -- there is somebody that says, you
23 know, we need to triple or quadruple the executions we're
24 doing. Let's line them up and start killing them, and that
25 person belongs on the jury as long as she can say, I'm still

1 able to answer those questions fairly. Even though I think
2 one thing ought to happen, I'm still going to answer those
3 questions the best way, and if a life sentence comes out of
4 that, even though I'm a strong, strong death penalty advocate,
5 I'm okay with that. Do you follow what I'm saying?

6 **A. (Nods heads.)**

7 **Q.** We may care about your opinions in terms of deciding
8 is this a juror we want to work? But your opinions are --
9 have nothing to do with whether you're qualified to serve, as
10 long as you don't let your opinions take over your obligations
11 under the law. So if the judge, for example, were to tell you
12 don't hold -- don't hold the failure of a defendant to testify
13 against him -- you know, because that's our law. You can't
14 consider failure to testify, and you say, well, I don't like
15 that law. I think if he were innocent he'd say -- he'd get up
16 and tell us so. So, the fact that he sits over there I'm
17 going to say that must mean he's guilty. If that's where you
18 are, you couldn't serve, not because of your opinion that
19 that's a bad law, but because of your unwillingness to follow
20 the law by the court. Do you understand what I'm saying?

21 **A. (Nods head.)**

22 **Q.** As you sit there now, I know you don't want to be --
23 I know you don't want to be on the jury. We're clear on that.
24 But let's say you're on the jury. You're a citizen, and
25 you're going to give it your best effort. Do you see yourself

1 feeling happier -- feeling more at peace coming out of a trial
2 in which a life was spared or a life was ordered taken? What
3 seems better to you?

4 **A. I don't know that I can answer that. I mean, I've
5 never been there, so I can only tell you that I'm for it right
6 now, and if I get picked or whatever, you know, I'll just do
7 the best I can do.**

8 **Q.** Okay. Because some people say, you know, I hope the
9 evidence works out in a way that he ought to get life because
10 were a -- we're a people that are cares about human life.

11 **A. I don't have any preconceived issues, I guess, about
12 going for it. I don't know any facts about the thing.**

13 **Q.** That sounds good to me.

14 What are some of your hobbies?

15 **A. Golf and hunting.**

16 **Q.** What do you like to do?

17 **A. I guess coaching kids in soccer and baseball.**

18 **Q.** What do you like to hunt?

19 **A. Deer.**

20 **Q.** Pretty sure deer season, we'll be finished by then?

21 **A. Just starting.**

22 **Q.** Is this deer season now? I thought that was in
23 November.

24 **A. October, November, December and part of January.**

25 **Q.** What's your opinion of gun control?

1 A. I believe we ought to -- the right to own them and
2 bear arms and all that. I'm not up on all the current issues,
3 but I would certainly have a problem if we weren't able to
4 freely go out and buy guns and stuff, assuming no record, you
5 know, past history, whatever.

6 Q. Sure. Do you think there's a different answer for
7 hand guns and long guns?

8 A. Not really. I like the screening process. I think
9 there's some controls in place that help that situation. I
10 think things will end up in the wrong hands, irregardless
11 sometimes.

12 Q. One of the questions that you were asked was, is a
13 person convicted of capital murder can receive the death
14 penalty solely on the facts of that crime even without other
15 crimes, and you agree with that. You say that it should be
16 judged independently of any other crimes that he committed.
17 Is that still your view?

18 A. If that's what I wrote, yes.

19 Q. Why I ask that is because at the second phase of the
20 trial, the punishment phase -- I'm not talking about this
21 trial at all. I'm just talking about in general. You, first
22 of all, consider what the Defendant did that got him convicted
23 in the first place that you just found him guilty of and
24 consider all that. And then the law allows evidence of other
25 bad acts or crimes to be admitted in the second phase of the

1 differently about the death penalty than you do now? And you
2 indicated yes. And your answer was, the change occurred when
3 I started filling out this questionnaire. The reality of the
4 possibility of having to make that call makes me think more
5 about it and can I really do it? So, tell me what that meant
6 or --

7 A. Well, I guess you never think about it until you
8 start answering those questions, and then it -- you know, it's
9 a big question, and I've thought about it ever since then.
10 And, you know, I think, you know, right situation, right
11 circumstance that I can do it, so...

12 Q. Okay, okay. Do you think the economics of capital
13 punishment should be an issue to be considered? In other
14 words, if it's more expensive -- if it's more expensive to
15 execute somebody than to keep them locked up, do you think
16 that's something we ought to be considering?

17 A. I don't really have a good answer for that. I mean,
18 I guess not.

19 Q. Okay. Does it seem to you that we spend too much
20 time on these capital cases and the jury selection? Do you
21 have a sense that we're going overboard with the care we take
22 in these kinds of cases?

23 A. Like I said, I've never been picked so I -- you
24 know, it's been two and a half days sitting in there, or
25 whatever. So, yeah, there's some tedious processes, and I'm

1 trial.

2 And the idea is that those other crimes may help you
3 answer that question about future danger, if you can see a
4 pattern of criminality, or you can see it going up, or you can
5 see other violent acts, whatever. And the law contemplates
6 that you be able to consider that for whatever weight it has.
7 And you're not saying you wouldn't consider all the other
8 stuff in answering that question. You're just saying that the
9 main thing is the case itself, what he's been convicted of; is
10 that what we're saying?

11 A. I think the case at hand, and then I guess what
12 you're saying is after a verdict has been rendered one way or
13 the other, then other --

14 Q. Right.

15 A. -- past history, or, whatever can come into play?

16 Q. Right. And we always reply on these questions
17 because I can see what you're saying. What he's judged guilty
18 or not guilty of is the crime that's he's charged with right
19 now. That's the only thing. That's what you were saying?

20 A. Yeah.

21 Q. That either he did it --

22 A. That's all the facts we're going to hear is on that
23 case, so why would I judge anything else?

24 Q. You're exactly right.

25 You were asked the question, have you ever felt

1 sure it's very tedious for y'all and the judge and everybody
2 else. So, I'll save that comment I guess.

3 But I -- y'all are doing your job I guess. More
4 people might want to serve on a jury if it was a speedier
5 process maybe. I don't know.

6 Q. These are statistically rare. Even a county this
7 size, this doesn't happen all the time. That's good news.

8 You go to Custer Road United Methodist?

9 A. Right.

10 Q. That's over just south of Legacy and north of Spring
11 Creek; is that right?

12 A. Right.

13 Q. Do you see any conflict between your view on the
14 death penalty and the teachings in the Methodist Church?

15 A. I don't know what their view is. I meant to call
16 and ask, but haven't since I took that questionnaire.

17 Q. What if you had -- like, for example, suppose you're
18 in church next Sunday, and the sermon deals with the death
19 penalty, let's just say. Let's say the nature of the sermon
20 is that it's not a good thing and not compatible with
21 scripture. Would that change your mind in terms of what you
22 were doing here?

23 A. Probably what would change my mind would be a
24 one-on-one with our pastor, and if he was real strong one way
25 or the other, possibly. I don't know. I mean, I'm kind of

1 **just beginning my walk, I guess, reading the Bible a little**
 2 **bit. Try to do it regular, but -- so I can't answer that. I**
 3 **wished I had called him prior to coming here so I could have a**
 4 **better answer maybe.**

5 Q. Probably that's between you and the judge, and I
 6 suspect it would probably be in conflict with the judge's
 7 instructions. It's an awful thing to say you can't seek
 8 spiritual guidance, but it's kind of one of those things
 9 you're not supposed to talk with anybody about what you've got
 10 to until the service is over, you know? That make sense to
 11 you?

12 A. **If he tells me no, I won't do it.**

13 Q. Regarding your jury service, circle the numbers
 14 which apply to you. You circled number two, which says when I
 15 make up my mind, I rarely change it. And then you said, I
 16 could frequently be influenced by the opinion of others.
 17 They're -- that's not inconsistent, is it?

18 A. **Well, I mean, it's not -- if I haven't made my mind**
 19 **up, I can be influenced more so than if I have, is the way I**
 20 **read that thing. If it was a trick question, you need to**
 21 **state it that way. I read them independently.**

22 Q. And your wife is the newspaper editor for the
 23 church?

24 A. **Right.**

25 Q. Is that a paying position there?

1 mind, that keeps us from going around killing each other? I
 2 know you probably never really thought about that before. But
 3 kind of take just a second and think about it. Why is it that
 4 when we have differences or situations, we don't just go
 5 killing people in your mind? Why don't we?

6 A. **Well, I mean just laws and just the way you -- just**
 7 **the way you are. I mean, that's not the way you handle**
 8 **things.**

9 Q. I guess what I'm thinking is, let's just say somehow
 10 that murder suddenly became not against the law. A court
 11 declared that law unconstitutional, or it got repealed. All
 12 the sudden you read in the newspaper effective 12:01 a.m.
 13 tomorrow, it's legal to go out and murder people. Do you
 14 think most of the people in our society would take advantage
 15 of that and go out and start murdering people since it was
 16 suddenly legal?

17 A. **I mean, I guess that's kind of a -- I guess that's a**
 18 **question you have to ask. But I don't know; it's so**
 19 **hypothetical. But, yeah, there's going to be people that take**
 20 **advantage of that certainly.**

21 Q. Okay.

22 A. **Who, I don't know.**

23 Q. But don't you think in general the reason that most
 24 people don't do that is because of their conscience?

25 A. **Because they can, without a penalty probably.**

1 A. **Yeah. She just works -- it's part-time.**

2 Q. Your most admired men are Billy Graham and Bo
 3 Pilgrim. And your most respected women are Kay Baily
 4 Hutchinson and Nancy Lopez.

5 I'm guessing you probably know Bill (sic) Pilgrim
 6 personally, right?

7 A. **Bo, yeah.**

8 Q. Have you ever met Nancy Lopez?

9 A. **No. I mean, those are just somebody I wrote down**
 10 **because I don't really have famous people to look at.**

11 Q. Probably not met Billy Graham, or have you?

12 A. **No.**

13 Q. You may have met Kay Bailey Hutchinson, maybe?

14 A. **I've met her.**

15 Q. And then the people that we least respect, the men
 16 are Jessie Jackson and Dennis Rodman, and the women that you
 17 least respect are Hillary Clinton and Roseanne.

18 A. **Struggle for a name. I mean, not questions I get**
 19 **asked often.**

20 Q. Do you think there's some people who could take
 21 someone else's life and not care any more about that than you
 22 or I might over a flat tire or some piece of property we
 23 damaged?

24 A. **Yeah.**

25 Q. What is it about the bulk of us in society, in your

1 Q. I don't know about you or I -- I know about me. I
 2 don't know about you, but most people probably don't seriously
 3 even contemplate doing murders. But the truth is if we ever
 4 started thinking about it, most of us could probably get away
 5 with it if we really wanted to and did it cleverly.

6 We don't even go there. We don't even delve in that
 7 kind of stuff. And do you think it's the law that controls
 8 most of us, or just some sense of morality that controls us?

9 A. **A combination, but I'd probably say morality more**
 10 **than law. I would hope it would be that way.**

11 Q. In looking at almost anybody we could probably -- if
 12 we knew their background, we could probably point to ways that
 13 I've got -- I'm the way I am; you've become the way you are.

14 Kids become the way kids are. I mean, it may not be
 15 automatic, but we can see -- we can see the influences of
 16 upbringing and how we all turned out. Would you agree with
 17 that?

18 A. **(Nods head.)**

19 Q. And while there are probably better ways to raise
 20 kids, and there are better situations, you've probably known
 21 lots of people in your life that didn't have the greatest of
 22 upbringings. Maybe had parents that didn't nurture them the
 23 way parents -- the way you think parents ought to nurture
 24 their kids, and they turned out okay. You've seen that,
 25 haven't you?

1 A. (Shrugs.)

2 Q. And you've probably seen people that do really bad
3 things, and they seem to have grown up with okay upbringing,
4 for whatever reason. They just -- they're not very admirable
5 people. They may not be killers, but they're just -- maybe in
6 your business setting, there are probably people that grew up
7 okay, but the kind of people, in your company perhaps, that
8 maybe a little bit cut-throat or maybe dishonest or maybe
9 troublemakers, those kinds of things.

10 Do you -- how big -- how big a justification do you
11 think how a person grew up is for committing a serious crime on
12 committing capital murder, just you think about it?

13 A. **Well, I think environment probably molds certain
14 people, but I mean it's not an excuse. We all live by the
15 same laws in my opinion, so...**

16 Q. I guess that's my question. Some of us may have had
17 it better than others?

18 A. **No doubt.**

19 Q. And that might explain why we -- some of us can go
20 to Harvard University and some of us have to go to the
21 community college because we don't have the money for Harvard,
22 or our parents can't get us there, or we didn't have the help
23 when we were growing up to get the grades to into Harvard,
24 whatever it might be, and so our backgrounds play a part.

25 But when we're talking about the really serious

1 stuff, like vicious, awful murders, is that a big thing to you
2 how the person got in a situation where maybe he or she
3 doesn't care about human life any more than you and I care
4 about our tires. Is that an important thing in evaluating
5 this person and the severity of actions?

6 A. **Talking about their background?**

7 Q. Uh-huh, uh-huh.

8 A. **No, not really.**

9 Q. What if the background were great? What if the
10 person grew up with all the advantages in the world, and then
11 went out and did this? Would that be -- would you say, gee,
12 that's extra bad for him because he had all the breaks, and he
13 still committed these crimes, or is background just not a big
14 thing to you?

15 A. **I don't think it's a big thing to me. I mean, I
16 think the crime -- or whatever, alleged crime, stands.**

17 Q. Okay. Now, let's talk a moment about the character
18 of the victims, or the character of the deceased. And I spent
19 some time on that with you on Tuesday. This first question
20 doesn't ask any questions about the -- about the victims. It
21 doesn't say, do you find there's a probability that the
22 victims were violent or that they were bad people. So, this
23 only focuses on the Defendant and his personality. This
24 question really doesn't ask anything except about the
25 defendant in terms of focusing your attention. It says

1 consider all the circumstances of the offense, the
2 Defendant's character and background and personal moral
3 culpability. But it refers up here to taking into
4 consideration all the evidence, and I don't know about this
5 case, but certainly in a lot of murder cases you find out
6 stuff about the victims. And it could be that they were --
7 the victims could be, like I said on Tuesday, the nuns praying
8 in the parish garden, or they could be dope dealers or, I
9 don't know, robbers or scoundrels of some kind themselves.
10 And that often can become part of the evidence in the case.
11 It might relate to motive. It might somehow just be -- you
12 know, that kind of stuff might appear later on in the
13 evidence.

14 Do you think the purpose of judgment of murderer and
15 what could happen to that murderer, do you think who he killed
16 or the character of who he killed is an important part of
17 judging that murderer in terms of his punishment?

18 A. **I think it would have an influence on how you feel.**

19 Q. No doubt, no doubt about that.

20 First of all, does that make the person any less
21 dangerous simply because of who he killed in your mind?

22 A. **Well, I mean -- say it again.**

23 Q. Does who you kill have anything to do with how
24 dangerous a person you are?

25 A. **I guess it shouldn't.**

1 Q. But human nature --

2 A. **Yeah.**

3 Q. You're working down at the railroad yard and
4 somebody gets run over, and you find out it's a dope dealer.
5 You are probably going to be less concerned about that than if
6 you find out he's the Special Olympics coach for children, for
7 example, right?

8 A. **(Nods heads.)**

9 Q. Does the fact that someone was murdered that we
10 don't deem to be all that savory because we don't like what
11 they do or what they're about, is that, in your mind, a
12 circumstance that improves the defendant any, or is it just
13 simply something that you're not going to have that same
14 reaction to just because of who the victim was?

15 A. **I would say it could improve it, I mean, depending
16 on the situation.**

17 Q. Fair enough. And when we talked before about the
18 victim being a drug dealer, because I used that as an example
19 as one that everybody was probably knowledgeable about.
20 That's a circumstance, because of how you feel about drugs and
21 drug dealers, that you wouldn't have the same degree of
22 sympathy for the victim perhaps; is that a fair statement?

23 A. **Yeah.**

24 Q. Okay. Number one, he's not doing good stuff in the
25 first place. Number two, being a drug dealer heightens up

1 your danger a whole lot; isn't that so.
 2 If that's so, and if the death of a drug dealer is
 3 less significant to probably all of us. If that's so, the
 4 death of a drug dealer is less significant than perhaps the
 5 death of somebody else, would that apply to a defendant who's
 6 also a drug dealer whose committed capital murder? In other
 7 words, would his death be of less significance by virtue of a
 8 jury vote in a capital murder case than somebody else who
 9 wasn't a drug dealer who got into murder for some other
 10 reasons. Do you follow what I'm saying?

11 **A. Are you asking if the defendant is a drug dealer**
 12 **would I be more likely to issue the death penalty or not? I**
 13 **don't know what you're --**

14 **Q. Kind of. If murdering a drug dealer is lesser than**
 15 **murdering somebody else, is executing a drug dealer, who's a**
 16 **capital murderer less than executing somebody, else in your**
 17 **mind?**

18 **A. Well, again, I think the facts of the case would**
 19 **sway you one way or the other there, I guess. I guess you**
 20 **could have some feelings -- you know...**

21 **Q. Right. What I'm asking you is, being a drug dealer**
 22 **in your mind is a really bad thing?**

23 **A. Yeah, I don't -- yeah.**

24 **Q. Let's assume for a moment that you were sitting in**
 25 **a capital murder jury, and maybe the question for you was, was**

1 this murder in the course of a burglary or in the course of a
 2 robbery, okay? And let's further assume that you found that
 3 the person's guilty of murder, but you didn't find the person
 4 did it in the course of a robbery or a burglary. For some
 5 technical reason, that proof wasn't there. I would anticipate
 6 the judge would instruct you to find the defendant guilty of
 7 the lesser offense of -- I don't want to say a "regular
 8 murder." That's a bad term. Just murder, not capital murder.
 9 If you found that there was a murder beyond a reasonable
 10 doubt, but not that murder plus that other crime, all right,
 11 in which case you could do that. If you didn't think there
 12 was a burglary, or you didn't think two people were killed,
 13 you could come back with a -- with the lesser included of
 14 simple murder couldn't you? You could do that?

15 **A. Yeah.**

16 **Q. And then it's different, because it would still be**
 17 **jury punishment, but then the issue before you becomes a term**
 18 **of years because then under the law, the term of years for**
 19 **punishment -- there's not more death penalty because it's not**
 20 **capital -- 5 years to 99 years, that range of punishment, and**
 21 **then also a life sentence is also possible. And life to 99**
 22 **years, as I told you before, that's the same thing for all of**
 23 **our purposes. You could do that? You could fall within that**
 24 **punishment range, couldn't you?**

25 **A. Yes.**

1 **Q. Now, the law further provides, and this is where it**
 2 **gets sometimes tough for some jurors. The law further**
 3 **provides that some murders, people are eligible for probation,**
 4 **and even though you've done an intentional murder, or you**
 5 **intentionally and knowingly caused the death of another**
 6 **person, the law provides that you could receive as little as**
 7 **five years confinement in the penitentiary. That five years**
 8 **you don't ever serve. You're put on probation. As long as**
 9 **you behave you walk out of the courtroom, just on probation**
 10 **and supervised. Could you do that, too?**

11 **A. Well, I'm sure y'all could probably name some**
 12 **examples of where I could probably do it, so I guess that**
 13 **answer is probably yes.**

14 **Q. You recognize there's some case out there where that**
 15 **would be an appropriate punishment; is that right?**

16 **A. I'm going to assume you could probably tell me one,**
 17 **yeah.**

18 **Q. Fair enough.**

19 **A. Seems kind of tricky.**

20 **THE COURT: Mr. Schultz, why don't you mark**
 21 **your notes right where you are, and let's take an hour for**
 22 **lunch, get started here at 20 minutes to 2. And, Mr. Hand, I**
 23 **sent -- there were some other jurors in there. I sent them**
 24 **off to lunch and told them not to come back until 2, so if we**
 25 **get started at 20 minutes until 2, it's unlikely that you'll**

1 overlap with them in the jury room, because I wouldn't expect
 2 them back before then. But if they're back, and if you're
 3 back at the same time, I'm going to ask you not to talk to
 4 them about anything that's been asked of you or anything
 5 you've heard or anything like that, so that when they come in
 6 they'll be --

7 **VENIREPERSON: Okay.**

8 **THE COURT: -- we'll be writing on a clean**
 9 **slate.**

10 **So, let's go to lunch and come back at 20 minutes**
 11 **until 2.**

12 **THE BAILIFF: All rise.**

13 **(Lunch recess taken.)**

14 **THE COURT: All right. Mr. Hand, I just want**
 15 **to remind you, as you already know, that you're still under**
 16 **oath.**

17 **VENIREPERSON: Right.**

18 **MR. SCHULTZ: We have an agreement to announce.**
 19 **We have an agreement to move on to the next juror and excuse**
 20 **this juror by agreement.**

21 **THE COURT: All right. You are finally**
 22 **excused.**

23 **VENIREPERSON: Okay.**

24 **(Venireperson exits the courtroom.)**

25 **MR. SCHULTZ: Can we just get on the record**

1 that's okay with the Defendant?
 2 MR. GOELLER: Mr. Cantu, for the record we've
 3 just excused --
 4 THE COURT: David Hand.
 5 MR. GOELLER: -- Mr. David Hand, and do we have
 6 your agreement to excuse him by agreement?
 7 MR. CANTU: Yes, you do, absolutely.
 8 MR. GOELLER: Mr. Hand will be on the Number 1
 9 tee box by 2:00.
 10 (Discussion off the record.)
 11 THE COURT: What impediment is there to
 12 limiting time on voir dire legally?
 13 MR. SCHULTZ: It creates a confrontational
 14 aura.
 15 THE COURT: No. I mean, the legal impediment,
 16 not the moral or impractical one.
 17 MR. SCHULTZ: It takes the chance of a
 18 dangerous infection of the jury that some stone might be
 19 unturned and that would create serious problems of misconduct.
 20 THE COURT: On the part of the juror?
 21 MR. SCHULTZ: Right.
 22 MR. GOELLER: Your Honor, were you saying, what
 23 would be the legal problem with limiting voir dire, like the
 24 court putting a time limit on voir dire?
 25 THE COURT: Yeah.

1 MR. GOELLER: I could tell the court that --
 2 THE COURT: Oh, I know what it is with regard
 3 to the Defendant.
 4 MR. GOELLER: Okay. I just thought you might
 5 want to know my side.
 6 THE COURT: Well, I'm always interested in your
 7 side.
 8 MR. GOELLER: But, you know, I can bring you a
 9 lot of, a lot of U.S. Supreme Court cases and Texas Court of
 10 Criminal Appeals cases that as long as I'm asking questions,
 11 that anything to do with anything in this case if I'm cut off,
 12 the court's in trouble, I can tell you that.
 13 THE COURT: Get together and tell me how much
 14 time you think you'd definitely use.
 15 Next is Bruce Tisdale. Let's invite him in.
 16 (Venireperson enters the courtroom.)
 17 THE COURT: Sir, are you Bruce Tisdale?
 18 VENIREPERSON: Yes, sir.
 19 THE COURT: I think you're Juror Number 39.
 20 VENIREPERSON: That is correct.
 21 THE COURT: I just want to remind you, and I
 22 imagine that you took an oath the other day to answer the
 23 questions truthfully, so you're still under that oath.
 24 VENIREPERSON: Sure.
 25 THE COURT: Mr. Schultz, go ahead.

1 MR. SCHULTZ: Thanks, Judge.
 2 (No omissions.)
 3 DIRECT QUESTIONS
 4 BY MR. SCHULTZ:
 5 Q. Hi, Mr. Tisdale, how are you doing?
 6 A. Hi, fine.
 7 Q. My name is Bill Schultz. You probably remember me
 8 from -- on Tuesday when I was talking to the panel as a whole.
 9 The lady to my immediate left is Ms. Gail Falco, chief felony
 10 prosecutor. Further to my left is Ms. Jami Lowry, a felony
 11 prosecution. I know you saw and were introduced to the
 12 defendant on Tuesday. That's the gentleman in the -- I guess
 13 it's, like, a teal or light blue shirt. To his left, your
 14 right, is Mr. Don High, who's one of his attorneys, and
 15 Mr. Matt Goeller, who is his other attorney. These are both
 16 very fine and capable practitioners of law that work primarily
 17 in Plano, Texas, but travel to all the courts around our state
 18 for important matters.
 19 I do the introductions because, even though I know
 20 the answer, I want to make sure you don't recognize us. And
 21 you might remember I told that gas pump story, which was the
 22 truth. It really did happen to me, and I'd like you to -- if
 23 I'm the guy that knocked your fence down last week I'd want
 24 you to tell me because I might not ever remember you.
 25 With that in mind, let me explain to you that this

1 really isn't about the lawyers or the way we do our cases,
 2 because it's very possible that just because of your
 3 personality there might be one lawyer that you seem to connect
 4 with better, or seems to be making more sense to you the way
 5 the questions are asked and the way she cross-examines a
 6 witness than another lawyer might. Or it might be that just
 7 the nature of the way the defense handles its part of the
 8 business, might seem to you to make seen than how we do it, or
 9 vice versa. You might find yourself communicating better with
 10 the State. And those things are not important really because
 11 I think you realize that what's on trial here is both side's
 12 right to a fair trial, and in particular, the defendant is on
 13 trial for his life, and that's about as simple as we can say
 14 it.
 15 And, yes, the State has to prove beyond a reasonable
 16 doubt that he's guilty of capital murder, or we don't worry
 17 about what punishment to impose upon him. But nevertheless,
 18 what I said on Tuesday is that many of our questions from both
 19 sides are going to assume that you have found him guilty of
 20 capital murder. Doesn't mean you're going to. Doesn't mean
 21 that the burden of proof has somehow been waived, or that
 22 everybody is just conceding that or accepting it. But we make
 23 those assumptions so we can ask you about these death
 24 questions that need to be discussed.
 25 So this is -- so far this has been a very free place

1 where ideas have been exchanged. The lawyers are getting
2 along as well as can be expected in an adversarial situation,
3 and, you know, freely express your ideas because that's all we
4 want, and I think you know that.

5 You have indicated on your questionnaire that you
6 favor the death penalty, that you're a supporter of it. And
7 if you remember on Tuesday when I asked everybody to take just
8 a moment and look at the Defendant and realize that for at
9 least 12 of you it's going to be more than just sitting in our
10 living rooms maybe and saying, we need to be executing these
11 really dangerous offenders that do these horrible, brutal
12 offenses. Because really instead of this, what we need to be
13 doing in general, what we're about here today is what we're
14 going to do with this defendant, Mr. Cantu. And that's kind
15 of why I asked you to do that, because I think -- I wasn't
16 trying to be amusing, and I do not enjoy talking that way.
17 But what I do like is making sure that we're all really on
18 board with what's going to occur, and we understand it. And
19 that means that after your jury service is done, in all
20 probability, whatever you have decided is to be that -- some
21 day is going to take effect, whenever that may be.

22 And when I talked that way, when I asked you to
23 contemplate the idea of introduction of a lethal substance
24 into body, did that have any effect on you at all, or make you
25 think about it any differently than you had before?

1 **A. I would say no, it did not. I take it extremely**
2 **seriously, and the whole concept of the death penalty, while I**
3 **favor it, I don't favor it generally speaking. I think it**
4 **should apply in very serious -- under serious circumstances.**

5 Q. Sure.

6 **A. And I guess probably if I were looking at that**
7 **versus an electric chair or something else, it might be a**
8 **little -- a little more humane way of approaching it, but it's**
9 **still serious.**

10 Q. Sure, sure. When we talk to people a lot of times I
11 ask a question sometime similar to what I'm asking you. Many
12 people say, you know, I would just assume not be on a death
13 penalty jury if given the choice. Number one, because the
14 time it takes, but even more importantly, number two, because
15 I don't have any great desire to have to deal those decisions.
16 It's not a part that I feel particularly great about having to
17 do. Does that make sense to you, that people could have that
18 reaction?

19 **A. Absolutely.**

20 Q. Okay. And further when you ask them, a lot of times
21 people will say, you know, I'm going to do my job the best way
22 I can. I'm going to look at the evidence. I favor the death
23 penalty for certain cases and under certain situations, and
24 I'll vote for it. In my heart of hearts, I kind of hope that
25 when I look at that evidence the evidence is going to suggest

1 it ought to be a life sentence rather than a death sentence.
2 I hope that's what I'm faced with because I would come out of
3 there not maybe feeling so good, or maybe not feeling the same
4 way. Does that make any sense to you, when people would say
5 that, that they hope the evidence would be such that a person
6 wouldn't have to be executed?

7 **A. I would say so, yeah.**

8 Q. Okay. And that can apply in all levels. I mean,
9 I'd say that as a prosecutor. This is not about winning or
10 losing. It's about doing justice and representing the State,
11 and I could say the same thing that I wish the evidence would
12 come in this case that would not direct us all toward a death
13 sentence. And that's not not doing my job, and it's not --
14 it's not disregarding my duties for the State. It's a
15 realization that we've all got compassion about us, and we all
16 have hopes. And some of us with religious feelings have got
17 concepts of redemption and forgiveness, and that all mixed in
18 with this.

19 But nevertheless, we are forging ahead on behalf of
20 the State, and we intend to prove to you what is necessary in
21 order to prevail with what we're trying to do. And doubtless
22 the Defendant would say just the converse of that, and it is
23 their intention to prove that their position is the proper one
24 for the jury to take. And that's -- there's nothing less than
25 fair about that whole process.

1 So, tell me what it is about the death penalty that
2 makes you say you favor it. Tell me what it is that makes
3 something like that, in your opinion, the right thing for
4 society to be doing?

5 **A. Well, I believe that, first of all, that life is**
6 **sacred, and I would see the death penalty as being the most**
7 **extreme used under only the most extreme situations. I think**
8 **I may have mentioned that I think it would be most applicable**
9 **under situations involving violent crimes, in my opinion. I**
10 **think that under those circumstances it should be considered**
11 **because it -- while I don't think it universally will cause**
12 **people to think twice about violent crimes, but it certainly**
13 **would be a measure that society can say that if you do act in**
14 **a violent manner that you will pay consequences and that**
15 **society, in general, will not tolerate those kind of**
16 **behaviors.**

17 Q. Now, your questionnaire indicates you have three
18 children; is that right?

19 **A. Yes.**

20 Q. And they're all grown or at least --

21 **A. Yes.**

22 Q. -- of age? That may not be the same thing some
23 time.

24 As they were growing up, and you seem like the kind
25 of man that would have talked to your kids as they were

1 growing up and sat down and had discussions, maybe family time
2 or even one-on-one kinds of things. If one of your kids had
3 said, Daddy, tell me what your thinking is about capital
4 punishment because we've been studying it in school, and what
5 do you think about that? Are those the kinds of things you
6 would have talked to them about, or what you thought?

7 **A. I would say so, yes.**

8 **Q.** And if the conversation went a little further, and
9 they said well, Daddy, my teacher is a really nice lady and
10 you've met her, and she's against the death penalty and told
11 me so. Why would good people be against the death penalty?
12 How would you explain that? What are the things that good
13 people would say is wrong with the death penalty?

14 **A. Well, I would say, first of all, that everybody is**
15 **entitled to their opinion, and that some people -- or other**
16 **people have different background or different religious**
17 **beliefs or different values that they -- that they bring to a**
18 **situation or to a question like this. And that oftentimes,**
19 **based on that background and those values, they look at things**
20 **differently, and that that doesn't mean they're wrong**
21 **necessarily; that, as an example, their religious belief may**
22 **not allow them to accept someone killing somebody else under**
23 **this situation, or even under a situation where they were in**
24 **the military and were forced to consider killing someone.**

25 **Q.** Okay. There are probably a lot of reasons. I'm

1 far from an expert on the sociology of capital punishment.
2 But probably there are about three or four ideas that are
3 routinely advanced in opposition. One of them you've
4 absolutely hit on, and that is the religious influence in some
5 people who either simply view human life is sacred all by
6 itself, or independent of that, that almost the "thou shalt
7 not kill theme" that follows to scripture. So, that it goes
8 something like -- it says, "Thou shalt not kill," and that
9 doesn't have any exceptions. It doesn't say except executions
10 or except self-defense or in war, or things like that. So,
11 you're absolutely right. You do get the religious opposition.

12 You also, particularly in the last few years when we
13 started coming up with DNA technology, there seems to be an
14 increased concern of wrongful convictions either because of
15 bad eyewitness testimony or something else, just a bunch of
16 circumstances that look very, very strong at the time, but DNA
17 evidence can perhaps overcome all that. So, there is that
18 concern. Is that a concern to you, the concept of, if not
19 wrongful identification, at least the concept of the wrong
20 person being convicted?

21 **A. I would say that certainly it's a consideration that**
22 **would concern me, absolutely.**

23 **Q.** It always depends on which side of the bar you work
24 on, perhaps -- the bar of justice I mean.

25 **A. Right.**

1 **Q.** Many people would say that the frequency of that
2 happening is very, very low and that that's not a reason to
3 scrap the entire system. Other people would say, well, if it
4 happens a single time in 20 years, that's enough to overcome
5 it. We'd all recognize that such a thing could happen. You
6 recognize it. I recognize it, right?

7 **A. Right.**

8 **Q.** Do you think that possibility is significant enough
9 that we should do away with the death penalty because of that?

10 **A. I would say not necessarily. I'm not sure that I've**
11 **got enough information that I can make an absolute opinion,**
12 **but...**

13 **Q.** Do you think an attentive jury and capable lawyers
14 greatly reduce the chance of such a thing happening?

15 **A. I think if everybody is doing their job**
16 **appropriately and assuming that every effort is made to**
17 **present the facts properly, yes, it would minimize it.**

18 **Q.** Some people express concern about capital
19 punishment in America by saying that if you look at the people
20 on Death Row and break them down by race and gender, you'll
21 find, first of all, it's 99 point something percent male. So,
22 I mean, the woman on Death Row is international news all by
23 itself.

24 And secondly, they'll say you find a higher density
25 of Hispanics and blacks on Death Row than their representation

1 within the population.

2 **A. Uh-huh.**

3 **Q.** And then they'll further say, you find essentially
4 no Asian Americans or Asians on Death Row, and that's far
5 lower than their percentage in the general population and so
6 forth. And then taking that evidence further in their minds,
7 they say that must mean that the death penalty, either on
8 purpose or inadvertently, is disadvantaging minorities because
9 how else could there be so many more minorities than men on
10 death row than in our general population.

11 Have you heard that argument, or seen it on TV been
12 addressed and discussed?

13 **A. Not in any depth. I think I have heard it eluded to**
14 **at some point in the past.**

15 **Q.** I know you've not made -- or I think you've not made
16 a study of it, either. Do you have a sense within you that
17 somehow that's the case, that somehow the system is unfairly
18 treating men or minority members of our population?

19 **A. I'm not sure I could tell you. I don't have enough**
20 **information.**

21 **Q.** Well, moving from that general concept, and when we
22 talk almost nationwide (sic), let's talk about you as a
23 potential juror for a second.

24 **A. Uh-huh.**

25 **Q.** And only you know yourself well enough to answer

1 this question for me. Do you see yourself as the kind of
2 person that would involve himself in the race or the gender or
3 the ethnicity of somebody and decide whether to give them the
4 death sentence or not?

5 **A. Absolutely not.**

6 **Q.** Do you think one person or one group is more worthy
7 of the death penalty than another group?

8 **A. Absolutely not.**

9 **Q.** Another -- you touched on this with me, also.
10 Another objection to the death penalty voiced by some is it's
11 hypocritical of us. If we say that calculated, intentional
12 murder is so awful that we give it this punishment, we're
13 doing the same same thing. We're just as calculating in our
14 murder of people that have been convicted as the murderers
15 themselves, and the notion is that's it somehow ugly for us as
16 a society and is hypocritical. What do you think about that
17 concept? How do you feel about that as a notion?

18 **A. Well, I think that certainly is one view that can be**
19 **taken of it. Again, I'll go back to the fact that I mentioned**
20 **that I think life is sacred and that certainly it should not**
21 **be taken lightly. So, I suppose it's, again, an opinion that**
22 **I'm not sure I could say as shrewdly yes or no to.**

23 **Q.** Okay. And that's about it. There may be other
24 objections, but those are certainly the large ones that we
25 routinely hear from the opponents.

1 **Q.** We really don't ask the jury the question directly,
2 do you assess life or death? That having been said, we
3 almost do by the way we -- the way with do these questions, we
4 almost do that. Let me revisit with you very quickly how our
5 procedure works. A Defendant is charged with capital murder.
6 We will put on evidence as his right because we have the
7 burden of proving beyond a reasonable doubt he's guilty of
8 capital murder. The Defendant has a right, if he wishes
9 through his attorneys and they may make a lot of those
10 decisions perhaps to put on evidence -- but he doesn't have
11 to. And the failure to produce evidence is not a circumstance
12 against him?

13 **A. Uh-huh.**

14 **Q.** It's not a circumstance for him, either. We can't
15 say, gee, I bet he had a lot of great evidence he just decided
16 not to put on. It's something that you don't consider, okay?

17 **A. Uh-huh, (nods head.)**

18 **Q.** I bring that up, because there was an answer over
19 here -- there was an answer where it says, "The Constitution
20 says an accused citizen does not have to testify on his or her
21 own behalf. How do you feel about this Constitutional
22 privilege?" And your answer is, I would prefer to hear the
23 person directly, which that's a fine enough answer there. But
24 for that privilege -- I mean, who wouldn't? Everybody would
25 want to know what they think, have the whole story and

1 I bet I know the answer to this because I'm starting
2 to kind of understand you some, and I've learned a lot from
3 your questionnaire. This is obviously taking a lot of time.
4 I mean, I don't know how -- you seem kind of relaxed up there,
5 but maybe you're not. But you're going to be here for a while
6 just being talked to about these issues. Do you have -- do
7 you have a feeling that we're all being too careful; that
8 somehow we needed to have done this lots faster, and we're
9 wasting time by talking with you and learning about this? Do
10 you have a sense of that?

11 **A. I would say from a personal perspective, it**
12 **certainly seems that way to me.**

13 **Q.** Okay.

14 **A. But from the perspective of the nature of what we're**
15 **doing, I think it's extremely important to cover these topics,**
16 **so I understand the seriousness and need for time.**

17 **Q.** And I can speak for everybody here. Nobody is
18 trying to be generous with your time or your situation, but
19 for both of us it's very important. It's a little easier
20 perhaps to see why the defense would be so cautious and so
21 thorough. That's obvious, but if you stop and think about it,
22 you can see the reason we are, too. We may not have a live
23 person here at the table we're representing, but it's the same
24 to us. Just a different side of reality.

25 **A. Sure.**

1 evaluate it and learn something about a Defendant's
2 personality. Everybody would, in a perfect world, desire
3 that. But without the history lesson, that's a privilege that
4 was created in response to some of the trials that the British
5 were making Colonists undergo, and basically sticking
6 them in the dock and making them start talking. And the
7 notion was, if the State is prepared to take away a citizen's
8 rights to freedom or to life, they ought to have to do it all
9 by themselves, and they ought not to be able to make the
10 Defendant be a willing traveler, or unwilling traveler in all
11 that.

12 So the Constitution says you can't consider it, even
13 though you're right, common sense would say, the more you
14 know, the better your decision. But you wouldn't have any
15 problem to follow that rule? If the Judge says don't consider
16 that, you're the kind of man that can do that?

17 **A. Basically what I'm saying, I don't disagree with the**
18 **Constitutional right, but if I had my druthers, I'd like to**
19 **look the person in the eye and hear what they have to say.**

20 **Q.** Okay, okay. But if you don't get that chance,
21 you're still going to hold the State to its burden of proof?

22 **A. Right.**

23 **Q.** And will not hold it against the Defendant that you
24 couldn't look him in the eye?

25 **A. That is correct.**

1 Q. Same thing with producing evidence. If the State
2 comes forth with a whole bunch of evidence of a person's
3 guilt --

4 A. Uh-huh.

5 Q. -- who on a jury wouldn't want to hear evidence from
6 the other side, even if it's not the Defendant testifying?
7 Just what have they got to say, or aren't there two sides to
8 this? Who would not want to hear that?

9 A. (Nods head.)

10 Q. The law says that they don't have to do that if they
11 don't want to, and you can't hold that against them?

12 A. Right.

13 Q. It's not a break for them. They do that at their
14 peril or at their -- for their own success, however that
15 works, and you don't consider it.

16 A. Sure.

17 Q. You fine with that?

18 A. I'm fine, yes.

19 Q. When the case is all finished, both sides will stand
20 up and say "close," and the Judge will retire the jury for a
21 while and prepare the judge's written instructions to the jury
22 that will tell you how to go about deciding whether or not
23 he's guilty of capital murder. And he -- reiterate the law of
24 what is capital murder, and it will all be written down, and
25 he'll say exactly the way he thinks the law requires him to

1 say. What Mr. Goeller might say, we're doing our best. We're
2 not trying to outfox anybody. It's Judge Sandoval who is the
3 law giver.

4 A. Uh-huh.

5 Q. Then you go back and deliberate, which is what you
6 see on TV. There are only going to be 12 of you. There are
7 going to be 14 seated in here for the whole trial, and as soon
8 as you go back to deliberate on guilt/innocence, the two
9 alternates are dismissed. Up to that point, there will be 14,
10 and we'll add a pair of chairs over beside you there.

11 And you'll go and select your presiding juror or
12 foreman, but we call it presiding jurors now. And then you
13 begin deliberations and get to get all the evidence and read
14 it all and then you get to make a decision. If you find the
15 Defendant guilty of capital murder, then we go to the next
16 phase. If you find the defendant not guilty -- absolutely not
17 guilty, then the Defendant leaves, so do you. We all go away
18 because the trial is over. Sometimes you may find him guilty
19 of some lesser offense, and I don't know how that would occur.

20 But let's say you believe there was a murder, but
21 you only thought one person was murdered, not two. Let's say
22 it was a murder, but you didn't know it was a burglary,
23 couldn't be sure it was a robbery. There might be that
24 lesser-included offense, which is different because you can't
25 get death for those lesser offenses.

1 A. Right.

2 Q. Let's say you found the Defendant guilty of capital
3 murder. You move into the next phase of the trial, which is
4 called the punishment phase, or the penalty phase. And the
5 State will be obliged in order to receive a death sentence
6 from the jury, in order to cause that to occur, to have the
7 jury answer this question here beyond a reasonable doubt
8 "yes." Take a moment to read that. You probably remember
9 that from Tuesday.

10 Poorly worded question. We didn't do it here. It's
11 legislative. It's poorly worded for the following reasons:
12 It doesn't tell exactly what a crime of violence is. I mean,
13 some of them we understand, you know, shooting a fellow,
14 that's crime of violence; splitting his head open with an axe,
15 that's a crime of violence. But what about even a brick
16 through a plate glass window. Some people would say it's
17 violence to property. Some people would say, well, to me
18 violence means on people, so that's a little vague. And some
19 people say, what about drug dealing? Is that a crime of
20 violence? Some people say, well, no. If you take money with
21 one hand and give dope with the other, there's no violence
22 there. Other people say, well, those drugs are going to get
23 to somebody. They're going to get into somebody's body, and
24 why isn't that violence, what those drugs to do people? So,
25 the question is a little vague on that issue.

1 Secondly, it doesn't simply ask you to consider all
2 the crimes of violence that the Defendant would commit. It
3 says is there a probability, because there's no definition of
4 probability, because we could never prove anything is going to
5 happen. I can't prove the sun is going to be out tomorrow. I
6 could never prove that. It's probable. It has for millions
7 of years maybe. Probability is not defined. Some people say
8 it's got to be more than 50 percent; some say 20 or 30 percent
9 is improbability. We don't define that.

10 Now, probability the Defendant would commit criminal
11 acts of violence that constitute a continuing threat. We've
12 got no definition of continuing threat. Do we have to find,
13 for example, that he's going to do it every day for him to be
14 a continuing threat, or what about once a month, or every
15 three years? There are no definitions on that. What can you
16 consider in answering that question? Well, first of all, you
17 can consider all the evidence that you've heard already, and
18 we asked you a question, and it's interesting on your
19 questionnaire because I know you're a thoughtful man. You
20 wrote that you didn't believe you had enough information to
21 answer the question. And the question that was in
22 questionnaire was, "Could you find a death sentence
23 appropriate?" Could you find a person was dangerous based
24 solely on the facts of the crime itself. Do you remember tha
25 question at all?

1 A. Vaguely.
 2 MR. SCHULTZ: Approach the juror, Judge?
 3 THE COURT: Yes, sir.
 4 MR. SCHULTZ: I know you gave me leave. I'm
 5 sorry.
 6 Q. BY MR. SCHULTZ: Let's me show you what I'm talking
 7 about. We highlighted it just because anything we get, we
 8 wanted to ask you about.
 9 A. Sure.
 10 Q. We did it.
 11 A. Okay.
 12 Q. And the question probably is not as clear as it
 13 needs to be. The notion is that there are some crimes that
 14 are so brutal and awful that when asked that question there
 15 about probability of danger in the future, of continuing acts
 16 of violence, a person would say, you know, anybody whose
 17 controls are so nonexistent that they could do such an awful
 18 act would, in my mind, be a continuing threat to society for
 19 the rest -- for the rest of their lives.
 20 A. Uh-huh.
 21 Q. Do you see how there could be some crimes where
 22 somebody could do something, and you look at what they've
 23 done, and the fair answer to that question would be anybody
 24 that could do that would probably always be dangerous. Does
 25 that make sense to you as a concept?

1 A. Generally, yeah.
 2 Q. I mean, I guess the classic case everybody thinks of
 3 right now, because it's really in the forefront -- when we
 4 look at that Oklahoma City bombing. And we look and say, you
 5 know, that wasn't chosen accidentally. It couldn't have just
 6 as easily been a warehouse or a Wal-Mart. It was purposefully
 7 targeted knowing who was in there, and these are -- whatever
 8 your gripe with the FBI, you're going after, people in HUDD
 9 and stuff like that are inside that building, too, that have
 10 got nothing to do with anything. And anybody that can do
 11 something like that, understanding the enormity of that device
 12 that was created, that's got to always be dangerous. Do you
 13 see how that thinking can be from the acts itself and nothing
 14 else?
 15 A. Uh-huh.
 16 Q. Okay. But the law authorizes more. The law
 17 authorizes other acts of violence or bad character, or almost
 18 anything. Both sides can bring up almost any evidence that
 19 they wish on that special issue. I mean, the State can bring
 20 evidence of other acts of violence, or even crimes that in and
 21 of themselves are not violent, but they show a personality
 22 trait that might help you in deciding how somebody is violent.
 23 Do you know what I'm saying?
 24 A. Uh-huh, yes, sir.
 25 Q. I mean, maybe going in a store and stealing is not

1 an act of violence. But maybe going in a store and stealing,
 2 coupled with some other examples of violence, is evidence of
 3 how violent that person is going to be in the future. Do you
 4 know what I mean?
 5 A. Yes.
 6 Q. So we can offer that. We further can offer
 7 psychiatric evidence, either in the form of hypothetical
 8 evidence, and I don't need to go into all the details of why
 9 it would have to be hypothetical rather than real life, or
 10 perhaps evidence based upon an examination of the defendant.
 11 They can do the same thing, and they can offer psychiatric
 12 evidence if they want to, and you would assume that their
 13 doctors might say this is not a dangerous person, and our
 14 doctors would say, yes, it is. Do you know what I'm saying?
 15 A. Uh-huh.
 16 Q. How important to you would psychiatric evidence be
 17 in the sense of both sides retaining experts that come in and
 18 assist in the case? How do you think -- what would you think
 19 about this? Is that important or not important, in the
 20 middle?
 21 A. I think it could be an important piece, yeah. I
 22 don't think it's necessarily a sole determinant, but as a
 23 piece of information, yes.
 24 Q. Why I ask that question, sometimes people say --
 25 jurors will say, two things about that; number one, I know the

1 defense could go hire people to come in and say good things
 2 for the Defendant, and the State's no better, because they go
 3 out and get an equal number of degreed professionals to come
 4 in and say just the opposite.
 5 A. Uh-huh.
 6 Q. If we want five more each side, we go get five more,
 7 and people understand that. And they say, so, what's that
 8 really? What's that all mean? And secondly, they say, you
 9 know, that question is not asking me stuff, like, to diagnose
 10 some complicated medical illness.
 11 A. Yeah.
 12 Q. That's asking me to figure out something that we all
 13 do every day. When I go to the circus and I see a tiger, I
 14 enjoy the show. But if I've got my family with me, and I see
 15 that tiger hop over the cage and get loose, I don't know need
 16 a veterinarian to tell me the tiger is dangerous. I've heard
 17 about tigers. They're awful big, they've got a track record,
 18 and I don't need experts to understand the obvious. Do you
 19 know what I mean?
 20 A. Uh-huh.
 21 Q. So, some people say, I'll listen to psychiatric
 22 evidence, and it's fine. It might be interesting, but unless
 23 there's a brain tumor or some incredible metabolic imbalance
 24 that's so severe and real that it would make an otherwise
 25 good fellow bad, I mean, I could figure out if he's dangerous

1 or not just looking at the evidence. Does that make sense to
2 you?

3 **A. Yes.**

4 **Q.** Okay. When we talk about society there, that's
5 another thing that's not defined in that question, and it's
6 not real useful, and you might remember we talked about that
7 on Tuesday.

8 **A. Uh-huh.**

9 **Q.** It doesn't say prison society. It doesn't say, do
10 you find that the prisons can safely hold this person without
11 being a continuing threat to society. And it doesn't say our
12 free-world society. What it really says is -- when -- the day
13 that you answer that question, is that defendant probably
14 going to be a danger to society in the future? And you can
15 answer that, and you can test that hypothesis a lot of
16 different ways. You can say, okay, if he's down at the pen,
17 is he going to be dangerous there? Do they have the kinds of
18 facilities to control him there? You can say if he gets loose
19 today and walks around our streets, is he a threat to our
20 society then? If he moved into my neighborhood, or I saw him
21 walking down the street, would I feel relaxed and comfortable?
22 Do I want my kids having him for a school janitor? You know,
23 those kinds of questions can also be asked because society is
24 also undefined? That question really is aimed at his
25 character trait for being violent, not necessarily the venue

1 in which he could do his violence.

2 **Q.** Because I mean, if we had a rocket ship we could
3 ship him to the space station, and I suppose if he's the only
4 one up there he couldn't be dangerous to anybody else. But it
5 doesn't have to do with the venue of his danger, but rather
6 his character for danger. Does that make sense to you?

7 **A. Yes.**

8 **Q.** It used to be if the answer to that question were
9 yes unanimously by the jury, a death sentence resulted, and
10 good or bad -- and I think it's good personally. It's not
11 quite that cut and dry anymore. The reason I think it's good
12 is there was the occasionally case where a jury would have
13 found a fellow guilty of capital murder, and then would have
14 answered that future danger question "yes," and for whatever
15 reason in their collective wisdom, they felt a death sentence
16 was just not right. Maybe it's how he got there. Maybe he
17 used to be the war hero, and he got all messed up in Vietnam
18 after saving a bunch of lives, and 50 witnesses come in and
19 say what a great man. I'm alive today and had a family and
20 kids and contributed, all because of this defendant over here,
21 but somehow he got all twisted around, and he's dangerous.
22 And the jury goes out and says here's the war hero. We're
23 having to kill him because we answered those questions
24 truthfully. That's a horrible injustice.

25 **Q.** So, the Supreme Court ruled that a jury must still

1 have the final determination to spare the life, irrespective
2 of the mechanical answers to questions. Can you see that
3 okay?

4 **A. Yes.**

5 **Q.** That's what that question is designed to do. If you
6 read it, you'll understand what I'm talking about.

7 **A. Uh-huh.**

8 **Q.** I don't say it disparagingly when I say it's the
9 last chance for the defendant.

10 **A. Uh-huh.**

11 **Q.** You never get to that question if the answer to the
12 danger question is no because that's an automatic life
13 sentence, if it's a no answer. But if it's yes, that question
14 requires the jury to consider the circumstances of the crime
15 and the circumstances surrounding that crime, requires to you
16 consider the defendant's background and character, assuming
17 there's evidence of it. If there's no evidence of it, there's
18 nothing to consider. But I'm sure there will be in some form
19 or fashion. And it requires you to consider the moral
20 culpability, and nobody knows what that means because if you
21 intentionally murder somebody, how are you not morally
22 culpable. They didn't ask me for authorship. They just wrote
23 that.

24 **Q.** And then it says, if there is sufficient mitigating
25 evidence, including those things, and anything else that might

1 be important to you, then your obligation is to vote yes, a
2 life sentence is the appropriate thing. And why I say it, it
3 just asks you what you want to do, anyway. Truthfully it's
4 because there's no standard there. It's what you think is
5 important. If in your mind, not making the high school
6 football team and getting discouraged over all that, if that,
7 in your mind as a juror, is sufficient mitigating evidence,
8 there's nothing legally or otherwise to stop you from saying,
9 yeah, I understand what that might have been like to not have
10 made the football team.

11 **Q.** On the other hand, if you're the kind of person that
12 thinks it would be -- you know, that the snowy day in July
13 when you find something would mitigate against a crime like
14 you just found the person guilty of, that's okay, too, and all
15 views are compatible as long as you are open to the concept
16 and recognize that that's an important thing for the jury to
17 have, and would be willing to vote in favor of mitigation if
18 you saw such a case. And I sense from you that you're the
19 kind of person that makes perfect sense to, but I don't want
20 to sense you. I want to know what you have to say.

21 **A. I would say absolutely.**

22 **Q.** There's no definition really of mitigation.
23 Mitigation means to lessen, but other than that you're not
24 really directed toward anything. So, what one side might
25 think mitigates, the other side might say, hey, you've got

1 that backwards. That aggravates. That makes it even worse.
 2 For example, drugs, that's the one that always comes to mind.
 3 Some people might say, well, since you started doing drugs
 4 voluntarily and became addicted to them and got mean, as all
 5 people probably just about do when they're doing these kind of
 6 drugs. That's mitigating because it was the drugs that was
 7 helping you be extra mean. And then another person could say
 8 just the opposite, that's aggravating. Everybody knows drugs
 9 make you mean, and you consciously took something --
 10 consciously, purposely took something you've been told all
 11 your life will make you mean and do terrible things, and you
 12 choose to do it, and now you have to accept the consequences
 13 for those drugs, and that's aggravating. You're worse than a
 14 regular murderer. You're a drugged-up murderer, and that's
 15 even worse.

16 Do you follow what I'm saying?

17 A. Uh-huh.

18 Q. Both views are fine. There's nothing wrong with
 19 either one. Nobody second guesses that.

20 When I talked -- when I talked about that
 21 hypothetical person coming home and asking that one juror he
 22 came home and a loved one had been murdered, and the officer
 23 said it's not so bad. He had a bad upbringing. Once again, I
 24 wasn't trying to be clever or amusing. I think that puts it
 25 in reality sometimes how this mitigation evidence works as

1 the jurors when I said, well, what if the victim was a drug
 2 dealer. Do you remember that part?

3 A. Uh-huh.

4 Q. And several people on the panel said they ought to
 5 hang a medal on the Defendant for killing the drug dealer.
 6 Kind of tell me how you felt about that, as you were hearing
 7 me talk about that concept?

8 A. **Could you refresh my memory a little bit?**

9 Q. The question went like this: When we're seeking to
 10 punish a capital murderer, should we can considering who his
 11 victim was in terms of, if you kill somebody that you decided
 12 ain't so great, is that a less crime than somebody we think is
 13 wonderful?

14 A. No.

15 Q. Now, you say that, but I'm going to test you on that
 16 and see how you feel about that. You know, if you and I are
 17 walking along the railroad tracks and some guy up in front of
 18 us standing there and the train runs over him and flattens
 19 him, and you and I are horrified. We both try to see what we
 20 can do. By this time he just looks like a big hunk of stew or
 21 something because he's been run over by the train. And we
 22 found out he's a drug dealer, do you think we're going to be a
 23 little bit less concerned about it than if he was the Special
 24 Olympics coach that works with disadvantaged children or
 25 something like that?

1 you're analyzing all this.

2 Do you think -- do you think having a bad family
 3 upbringing lessons society's need to exact punishment on a
 4 person?

5 A. No.

6 Q. And I know from talking with you that you know that
 7 there are people who grew up as kids without the advantages
 8 your children have, and you see the scars of that sometime in
 9 their everyday interaction; isn't that true?

10 A. Correct.

11 Q. And you still are able to say that can't be used to
 12 justify these horrible departures from what we expect?

13 A. Yes, that's true.

14 Q. Have you known some people that grew up bad -- in a
 15 bad childhood and done just remarkably well in life?

16 A. Yes.

17 Q. Have you known some people that just grew up in what
 18 seemed to be an okay environment at home, and they had
 19 reasonable advantages, and both parents were together, and
 20 they did T-ball together, and they've turned out bad?

21 A. Sure.

22 Q. So you think people have the ability to rise above
 23 their surroundings and their upbringings?

24 A. I believe so, yes, sir.

25 Q. When I promote some interest on the part of some of

1 A. **Well, I think it would be a little presumptuous to**
 2 **make that assumption to begin with, that they're a drug**
 3 **dealer. But, no. Again, I'll go back to the fact that life**
 4 **is sacred, whatever the person's vocation or issues that were,**
 5 **and we should try to do what we can to help the person under**
 6 **those circumstances.**

7 Q. Okay, okay. As you sit there now, is there
 8 anything about you that I've talked with you about that
 9 makes -- is there anything I've suggested that would be your
 10 obligation that you find would be difficult for you to do in
 11 this case, in terms of viewing the evidence and listening to
 12 it all?

13 A. **I would say no, other than just the pure**
 14 **seriousness of the issue being difficult just thinking about**
 15 **having to make those decisions. I would say, no, there isn't.**

16 Q. And wouldn't you like to have 11 co-workers in this
 17 that feel that way about how serious -- that's what you want
 18 for a jury of people with you?

19 A. Absolutely.

20 Q. You wouldn't want a guy over there that says, let's
 21 kill them all? You wouldn't want him on the jury with you
 22 particularly, would you?

23 A. **I wouldn't want to have somebody that's a zealot,**
 24 **no.**

25 Q. On either side --

1 A. On either side, yeah. I think there's room for
2 varying opinions, and that's healthy. But I think that beyond
3 that --

4 Q. Do you have any questions of me that you wish to
5 ask?

6 A. Not that I can think of.

7 MR. SCHULTZ: If appreciate it, sir. You've
8 been great. I pass the juror.

9 THE COURT: All right. Mr. Goeller.

10 MR. GOELLER: Thank you, Mr. Schultz.

11 CROSS-EXAMINATION

12 BY MR. GOELLER:

13 Q. Mr. Tisdale, my name is Matthew Goeller. I know we
14 met Tuesday, and you remember Mr. High and Ivan?

15 A. Right.

16 Q. Thank you for taking the time to fill out this
17 questionnaire. What's a very lengthy process to begin with,
18 trust me is cut in at least a quarter, if not more, by this.

19 I think you told Mr. Schultz you understood why we
20 need to go into such detail and ask you very personal
21 questions in a case like this.

22 Have you ever served as a juror in a regular case --
23 a criminal case other than capital?

24 A. No.

25 Q. From time you hit the courthouse to the time you

1 special attention to issues of ethics and morality and in
2 doing the right thing under circumstances as you saw them
3 that time.

4 Q. Okay.

5 A. And I think because I've done that, I've become a
6 fairly good judge of what the right thing is under most
7 circumstances and can apply it well.

8 Q. I don't know whether you'll be on the jury or not.
9 We'll probably be making that decision, really, this
10 afternoon.

11 I start my individual questioning of you with some
12 trepidation due to one of your answers, and -- you know, I'm
13 not stupid. I'm a lawyer, and I think I do good work, and I
14 think I help this world greatly. I mean that. I mean, I
15 don't apologize to anybody for what I do. I understand the
16 perception out there of lawyers is not good. And there are
17 all sorts of kinds of lawyers that maybe foster a little bit
18 of that. But your comment about lawyers, tell me about that.
19 Do you understand why I ask this question?

20 A. Sure.

21 Q. I would never ask you this question, even if this
22 were a DWI case or shoplifting case, or a Plano police officer
23 said you were speeding on Coit Road, I wouldn't ask these
24 questions. But again, you know why I have to?

25 A. Sure, absolutely.

1 start hearing testimony to the time you get the case, you get
2 a verdict, and you're home rarely exceeds two days. But these
3 cases are very different and that's why.

4 On your questionnaire -- and actually before I get
5 to that, as Mr. Schultz said this young man here at the end of
6 the table is really in a fight for his life. I guess you can
7 boil this case down to the essence. Mr. Schultz was very
8 up-front and forward with you into this case. He wants 12
9 people to kill him, and obviously we want the opposite.

10 A. Uh-huh.

11 Q. As you sit there now, knowing yourself -- you're 51?

12 A. Yes.

13 Q. Are you the kind of person you think should sit on a
14 jury where capital murder is the case where you may be asked
15 to impose a death sentence?

16 A. I would say yes. I would hope that I would be the
17 kind of person that could be objective in looking at all the
18 facts and judge him properly.

19 Q. Okay. Are you that kind of person?

20 A. Yes.

21 Q. Tell me why.

22 A. Well, again, I'll go back to what I've said before.
23 Number one, because I -- I value life to begin with and take
24 it seriously. Two, I guess I've spent my whole life, both
25 with the upbringing of my kids and in my business life, giving

1 Q. And I always run the risk -- it's always frightening
2 for me and somehow you take me wrong during this voir dire
3 process, and you get on this jury. That's why I don't sleep
4 at night sometimes.

5 A. Sure.

6 Q. So, let me just ask because I've got to do it for my
7 client and myself, what about lawyers, criminal defense
8 lawyers?

9 A. Criminal defense lawyers. Well, okay. I think
10 that -- and I can't remember exactly how I responded and what
11 the specifics of the questions were, but I don't have a
12 deep-seated hatred or dislike of defense lawyers.

13 Q. Okay.

14 A. Let me start off there.

15 Q. Okay.

16 A. You know, I think that what I object to, or what I
17 have concerns with -- not object -- is that sometimes defense
18 lawyers take positions that I don't necessarily agree with.

19 Q. Okay. You wouldn't get -- that's fine.

20 A. And that's part of their job. I understand that,
21 and that's part of the object of the whole system, to take
22 those positions and try to weed out the truth. So, to say
23 that I don't like them, that's probably an extreme response.
24 It's more that I'm uncomfortable with some of the positions
25 that I hear coming from defense lawyers.

1 Q. Such as? Tell me.

2 A. **Excusing a behavior because of -- what I would say**

3 **is passing the buck on society, just as an example.**

4 Q. Okay.

5 A. **Or we were talking about upbringing. Yes, certainly**

6 **they contribute to a person's values, but I don't think they**

7 **excuse a person taking a person's life, as an example.**

8 Q. Okay. That's a very common theme amongst jurors

9 that somehow we're here to try to excuse conduct. Excuse

10 conduct, or the word "excuse" will probably never figure into

11 this case, certainly a capital case, and here's why. Do you

12 understand the first part of the trial you will be asked, did

13 the State prove beyond a reasonable doubt murder in the course

14 of burglary, murder in the course of a robbery, or the killing

15 of two people?

16 A. **Uh-huh.**

17 Q. State's got the entire burden of proof, got to prove

18 it beyond a reasonable doubt. If they don't, maybe something

19 else is going to happen. Maybe something other than the death

20 penalty. If they do prove it beyond a reasonable doubt, and

21 you find it beyond a reasonable doubt, the case is set in

22 stone as far as what's going to happen next. It's either life

23 or death. So, what concerns me when I hear you use that word

24 "excusal," if there were a defense, self-defense, insanity,

25 something like that, is that what you're saying by excusal, or

1 I need to find out what you mean by sometimes we try to

2 facilitate an excuse for something.

3 A. **Well, I think there are -- you can probably, under**

4 **varying circumstances, have all kinds of reasons why a**

5 **behavior might have been performed by an individual, okay?**

6 Q. Uh-huh.

7 A. **And certainly under some circumstances you -- it**

8 **might make sense, okay, like self-defense.**

9 Q. Right.

10 A. **If I were in that situation, sure, yeah, I might**

11 **have acted in the same way. On the other hand, to say that a**

12 **person, in my mind, okay, because they were on -- let's say on**

13 **drugs?**

14 Q. Uh-huh.

15 A. **That that excuses them from a certain behavior, be**

16 **that alcohol, be that something else.**

17 Q. Tell me why.

18 A. **To me kind of falls flat.**

19 Q. And that's what I'm trying to get at. Who has lead

20 you to believe, or what has lead you to believe that is an

21 excuse? In the questionnaire -- and I'm not debating this

22 with you, but it's very important. In the questionnaire, I

23 think there was the question, you understand in Texas -- it's

24 always been this way -- voluntary intoxication, alcohol,

25 cocaine, whatever it is, is never an excuse.

1 Have you ever heard of people or lawyers trying to

2 excuse criminal conduct because of intoxication on any kind of

3 (inaudible) in Texas?

4 A. **No.**

5 Q. Okay.

6 A. **No, I have not.**

7 Q. Do you have that Impression that that's often done;

8 that criminal defense lawyers in the State of Texas will try

9 to, I guess, get off or excuse the conduct because of

10 intoxication?

11 A. **Now, you asked me to give you an example, and what**

12 **I've given you is an example that I have thought of on the**

13 **spot.**

14 Q. Okay.

15 A. **It's not based on any experience.**

16 Q. Okay. Are you a little bit more clear, on at least

17 the first part of the trial, where we're determining guilt or

18 innocence, excusal, justification, that kind of thing, what

19 that means? There is no concept of excusal the way you've

20 framed it.

21 A. **Uh-huh.**

22 Q. Understand, I'm not debating you. I'm not -- I have

23 family members that tell me the same thing. But, they will

24 never come into play in a courtroom like this. I can promise

25 you that.

1 So, on the front end, the guilt/innocence phase,

2 again if you were to find somebody guilty of capital murder,

3 it's going to be life or death. And I'd submit to you the way

4 that these issues are phrased, life is really the automatic

5 sentence because it's -- it's there to begin with, and it's

6 there by default. To get the death sentence, two more things

7 have to take place. In case of which neither does, it's still

8 life.

9 A. **Uh-huh.**

10 Q. What does that word probability mean to you?

11 A. **A likelihood of it happening.**

12 Q. Okay, likelihood. You were in the human resources

13 field?

14 A. **Yes.**

15 Q. What did you do specifically?

16 A. **Just about everything that falls into that from**

17 **hiring to --**

18 Q. Hiring to firing?

19 A. **-- firing.**

20 Q. Benefits?

21 A. **Benefits, compensation, employee relations,**

22 **grievances.**

23 Q. Sexual harassment policy?

24 A. **Yes.**

25 Q. On and on and on and on?

- 1 A. **Yes.**
- 2 Q. How long were you in that field, Mr. Tisdale?
- 3 A. **Probably about 25 years.**
- 4 Q. When you probably started off, we didn't call it
- 5 human resources, right?
- 6 A. **No.**
- 7 Q. Was it personnel, operations?
- 8 A. **Yeah, personnel.**
- 9 Q. Personnel.
- 10 When you look at that special issue, whether there
- 11 is a probability do you ever think of that, or have you
- 12 thought of that word in terms of percentage, what it might
- 13 mean to you from zero percent to 100 percent?
- 14 A. **Have I thought of it? No.**
- 15 Q. Can you think of it for a second for me?
- 16 A. **Okay.**
- 17 Q. I'm trying to get an idea. I'm trying to get inside
- 18 your head and see what likelihood may mean as far as
- 19 percentage.
- 20 A. **Okay. I guess my own reaction would be that I would**
- 21 **believe that that would mean that there would be at least 50**
- 22 **percent or more.**
- 23 Q. Okay. I think that's a very -- most people end up
- 24 saying that, I think.
- 25 The Legislature -- and I noticed some of the --

- 1 three of the people you admire most of all have been
- 2 legislatures or politicians at one time.
- 3 A. **Yeah. I couldn't think of a lot of people at that**
- 4 **point. I was getting pretty tired.**
- 5 Q. A lot of words they could have used. They could
- 6 have said possibility. They didn't choose that one. Chance.
- 7 They didn't choose that one. They chose the word
- 8 probability. So, you think that probably means more than 50,
- 9 50 percent?
- 10 A. **That would be my perception, yeah.**
- 11 Q. Okay. We know -- what do we know? If the judge
- 12 says, okay, folks, you're coming back tomorrow, and we got
- 13 some more of this trial to do, and you're going to answer some
- 14 special issues. What does that mean to you? What's already
- 15 in place?
- 16 A. **That we've already determined guilt.**
- 17 Q. Right. And if we get to these special issues?
- 18 A. **That we're considering the death penalty.**
- 19 Q. So to get to that special issue, the jury would have
- 20 to have found somebody guilty of capital murder?
- 21 A. **Right.**
- 22 Q. Remember the judge told you that there could be some
- 23 other lesser crimes submitted to you; murder?
- 24 A. **Uh-huh.**
- 25 Q. Robbery, aggravated robbery, or burglary, burglary

- 1 of a habitation, something like that. If those issues come to
- 2 you in a -- is returned on one of those issues -- then we've
- 3 never talked about this.
- 4 A. **Right.**
- 5 Q. These are only in the event of an actual finding of
- 6 guilty on capital murder?
- 7 A. **Right.**
- 8 Q. Are you clear on that?
- 9 A. **Yes, sir.**
- 10 Q. So if the judge says, all right, you're going to
- 11 talk about this first special issue -- or this first special
- 12 issue we're going to give you in this case. The only two
- 13 choices -- the only two things that could happen to the
- 14 Defendant are what?
- 15 A. **Life imprisonment or death.**
- 16 Q. Okay. When you look at this question, would you
- 17 agree with me that really asks you to predict the future?
- 18 A. **I would say yes.**
- 19 Q. Probability the defendant would commit criminal acts
- 20 of violence that would constitute a continuing threat to
- 21 society. In a way it asks to look to the future.
- 22 Mr. Schultz might tell you that, well, you can look at the
- 23 past in predicting the future. You can look at the present in
- 24 predicting the future. But we do know that it's really a look
- 25 to the future if we know somebody is already going to get life

- 1 no matter what, what do you think society means in that?
- 2 A. **What society means in the context of --**
- 3 Q. Of that question.
- 4 A. **-- that question?**
- 5 Q. Knowing that, obviously, the Legislature knew and
- 6 you know that to get to that question life's already in place
- 7 and/or by default?
- 8 A. **Right.**
- 9 Q. Unless a death sentence is returned. So what do you
- 10 think society might mean then?
- 11 A. **Well, that would seem to me that it would limit it**
- 12 **to being a good citizen in the -- in prison.**
- 13 Q. Okay. Mr. Schultz is right. I can't tell you -- I
- 14 can't say, Mr. Tisdale, that's exactly what the Legislature
- 15 intended. He's not going to let me do that, and I'm not going
- 16 to let him tell you, and he wouldn't.
- 17 But logically does that seem to make sense to you,
- 18 that society is probably really talking about prison?
- 19 A. **In that context it does, yes.**
- 20 Q. Okay, okay. How old are your children, Mr. Tisdale?
- 21 A. **28, 25 and 21.**
- 22 Q. Your 28 year old, boy or girl?
- 23 A. **Boy.**
- 24 Q. How did he turn out?
- 25 A. **Very good.**

- 1 Q. Did you spend a lot of time with him growing up?
 2 A. **Probably not as much as I would have liked to --**
 3 Q. None of us do.
 4 A. **-- but, yeah. Yeah, I would say so.**
 5 Q. I heard this the other day. It wasn't a doctor I
 6 heard it from. Nobody -- I never heard it before, but
 7 probably it's a very common saying that a lot of people have
 8 heard. I just haven't. Nobody on their death bed ever said,
 9 gee, I wish I would have spent more time in the office. Man,
 10 that really hits home, especially when you're a parent.
 11 A. **Right.**
 12 Q. Geez. Makes you think when it's 5 or 6:00 at night
 13 and you're going to put in a couple of more hours, I guess.
 14 But you spent a good amount of time with your son
 15 growing up?
 16 A. **I would say a reasonable amount, sure.**
 17 Q. Why did you?
 18 A. **Why?**
 19 Q. Yeah.
 20 A. **Well, it's my obligation as a parent to him, to try**
 21 **to contribute to his upbringing.**
 22 Q. Okay.
 23 A. **And I felt that was important.**
 24 Q. Did you try to teach him things growing up?
 25 A. **Absolutely.**

- 1 Q. I would assume your son was never heavily involved
 2 in illegal activity?
 3 A. **No.**
 4 Q. No drugs?
 5 A. **No.**
 6 Q. Good student?
 7 A. **Pretty good.**
 8 Q. Graduated from high school?
 9 A. **Yeah.**
 10 Q. Any post-high school?
 11 A. **A little bit, yeah.**
 12 Q. Did you impart a sense of responsibility and being a
 13 good citizen to him?
 14 A. **Absolutely.**
 15 Q. That was important to you?
 16 A. **Very important.**
 17 Q. Okay. Were -- I know these are very personal
 18 questions. Were you a married man at the time your son was
 19 growing up?
 20 A. **Yes.**
 21 Q. Everybody resided under the same roof?
 22 A. **Yes.**
 23 Q. Was your wife, the mother of your children, was she
 24 pretty much in agreement with you as to the values that you
 25 wanted to impart to your children?

- 1 A. **Absolutely.**
 2 Q. Did you lead -- you thought you led by example?
 3 A. **Yes.**
 4 Q. Okay. I already know the answer to this question,
 5 but I have to ask it. You weren't the type of man that used
 6 drugs around your kids?
 7 A. **No.**
 8 Q. No way.
 9 A. **No way.**
 10 Q. I know that.
 11 You weren't the kind of man that would -- your
 12 children were not an inconvenience to you?
 13 A. **No.**
 14 Q. You were there for them?
 15 A. **Uh-huh. Still am.**
 16 Q. Okay. Have you ever heard on either talk shows or
 17 reading in the newspaper that about 75 percent of murderers
 18 grew up in a fatherless home?
 19 A. **I don't know that I've heard that specifically, but**
 20 **I --**
 21 Q. Does it surprise you?
 22 A. **-- know that it contributes a high percentage.**
 23 **Doesn't surprise me, no.**
 24 Q. I would assume all of your kids have turned out
 25 pretty good?

- 1 A. **Yes.**
 2 Q. You're proud of them all?
 3 A. **Absolutely.**
 4 Q. Do you think that was just pure luck that they
 5 turned out good, or do you think all the hours you spent with
 6 them, and your wife, and teaching them and showing them and
 7 leading by example, do you think that figured into it all?
 8 A. **I think it figured in very significantly.**
 9 Q. Okay. I want to talk about -- and part of the
 10 reason we do individual voir dire. I want to talk to you
 11 about something that may be a little bit uncomfortable, but
 12 what goes on in this courtroom during these stages -- this
 13 stage of the proceedings pretty much stays in here.
 14 I think you had written something down about some
 15 sexual abuse of your daughter?
 16 A. **Uh-huh.**
 17 Q. Can you tell me -- if it wouldn't offend you too
 18 much, can you tell me what that was about?
 19 A. **Yeah. My daughter, as she approached the age of**
 20 **about 13 or 14, developed an eating disorder.**
 21 Q. Okay.
 22 A. **We struggled with that, and she was starting to**
 23 **exhibit behaviors that weren't consistent with her upbringing,**
 24 **and we got her into an eating disorder program with a**
 25 **therapist. And to move ahead about three years, after three**

1 years of therapy for the eating disorder and involving the
2 family in discussions, we learned that my father-in-law had
3 sexually abused her when she was very young. And --

4 Q. That was somehow --

5 A. -- contributed then to the latent activities that
6 then later exhibited itself in an eating disorder and some of
7 these other things.

8 Q. Was your father-in-law ever investigated or
9 prosecuted?

10 A. No. But he was confronted by her.

11 Q. Really?

12 A. Yeah.

13 Q. How did that -- tell me about that.

14 A. Well, first of all, if you can think imagine that
15 happening to a girl that's, at that time, probably 16 or 17,
16 it was very emotional, but a very courageous thing.

17 Q. Sure.

18 A. He did not deny it. And that was part of the
19 recommended therapy to -- for her to do that if she could, and
20 she did.

21 Q. Was there -- was there a family decision or with
22 the aid of a professional that the matter not be pursued in
23 the criminal justice system?

24 A. At that time my father-in-law was very ill. I
25 would say he had cancer, essentially, and we knew he was not

1 Q. The Defense often will bring in somebody saying not
2 a danger in the future.

3 A. Okay.

4 Q. I'm not -- I guess I'm not asking you what do you
5 think specifically about those kinds of things they may talk
6 to you about, but I guess I'm more interested in getting your
7 reaction to mental health experts testifying in criminal
8 cases? Do you think it's all bogus science, or it is a
9 science? Those types of persons can help a jury. You
10 wouldn't listen to a shrink -- some people say you bring in a
11 shrink, oh, I don't want to hear anymore. I don't like
12 shrinks, don't believe in them. I think they need shrinks.

13 And other people say mental health professionals are
14 professionals. I will listen to them. I'll make my -- I'll
15 draw my conclusions after I hear the expert testify.

16 A. Sure.

17 Q. Three kinds of people; I'll hear it, then call it.
18 I don't want to hear it, because I don't like shrinks because,
19 don't believe in them. And the other one, people are like, if
20 the psychiatrist says it, it must be true. Where do you fall?

21 A. Okay. Well, I think they can have a -- provide a
22 valuable piece of information, but it -- I think that the
23 assessment itself has to be done properly over a period of
24 time, I would think. I think mental health is not an exacting
25 science, okay? That doesn't mean I don't believe in it. In

1 probably going to live beyond another year, and so there was
2 no sense in pursuing along those lines.

3 Q. Did he pass?

4 A. Yes, he did.

5 Q. Okay. I notice your undergraduate major was
6 psychology and sociology.

7 A. Yeah.

8 Q. What do you think about mental health professionals
9 in the context of -- I mean, most of us would tell you that
10 you may hear from, and there's a likelihood in any capital
11 case, you would hear from mental health professionals trying
12 to give the jury some evidence, or attempt to give the jury
13 evidence in aiding the jury in answering that first special
14 issue up there, that probability. What do you think about
15 that?

16 A. Well, I'm not sure I exactly understand what you're
17 asking, but --

18 Q. And that's okay. At this time of the day, I don't
19 know what I'm asking anymore. Probability that a defendant
20 would commit criminal acts of violence.

21 Oftentimes the State would bring in a psychiatrist
22 or a psychologist to say, based on what I know about this case
23 and the Defendant, and dat, da-dat, da, da, he would be a
24 danger in the future.

25 A. Okay.

1 fact, having gone through with this thing of my daughter I
2 just explained, I believe very strongly that they can be
3 helpful.

4 But I also know that an assessment takes time as
5 well, and you can't look somebody in the eye for five minutes
6 and tell a history of what a person is like or who they are.

7 Q. Okay. Why did you choose psychology and sociology
8 as a major in your undergraduate studies?

9 A. Well, number one, I had an interest in it. My
10 father, okay, had background in that area. He wasn't a
11 professional in mental health, by the way. He just had an
12 educational background. And the more courses, the more
13 interest I got, and I could see a lot of application for that
14 in the -- in my future.

15 Q. Okay.

16 A. And, in fact, at one point I considered myself in
17 that profession as a possibility.

18 Q. Your sister is in HR, too?

19 A. Uh-huh.

20 Q. Where does she work?

21 A. She works for a hotel chain out of Atlanta.

22 Q. One of my -- one thing that is just a little fuzzy
23 in the back of my head when Mr. Schultz was asking you
24 questions, you'd stated that life is sacred, no matter what
25 the victim was all about. I'm paraphrasing it. And it was --

- 1 Mr. Schultz was having a discussion with you about the dope
2 dealer --
- 3 A. Yeah.
- 4 Q. -- you find dead on the side of the railroad tracks
5 versus -- you know, Bill likes to use the guy -- Special
6 Olympics coach. I always revert back to, like, Mother Teresa,
7 you know. Somebody that gives up an entire life to work with
8 sick, dying and the dead, or almost dead. But we're on the
9 same sheet of of music with our extremes.
- 10 When I hear you say life is sacred, how does that
11 figure in with the death penalty? I guess some -- I guess I
12 could look at that, or I have looked at it when I hear you two
13 ways that life is so sacred if you take life you forfeit
14 yours?
- 15 A. Uh-huh.
- 16 Q. What do you think about that? I am reading you
17 right on that?
- 18 A. Yeah. And I think that was eluded to earlier, that
19 there's really a dichotomy there in terms of looking at both
20 sides of that question. What I'm saying is and my feelings
21 are that we should not arbitrarily, without very strong
22 evaluation and reason, take somebody's death -- life from
23 them.
- 24 Q. You mean as far as the jury goes?
- 25 A. Yeah, yeah.

- 1 Q. Okay.
- 2 A. You know, I guess I -- while I haven't been in the
3 military and haven't gone through the excruciating conflicts
4 that -- having to kill somebody you don't even know is all
5 about, I would have trouble with that, okay? Not enough that
6 I would not serve my country, but that would be a struggle,
7 and I'm sure it would be for a lot of people.
- 8 Q. Absolutely. I was lucky. Mr. Schultz and I both
9 were in the armed forces, and I think we were both in peace
10 time.
- 11 A. Yeah.
- 12 Q. But as a psychology major, you might be able to
13 appreciate this. Would you agree with me that a lot of what I
14 call a grunt -- you know, I was a grunt. Essentially, your
15 Army and Marine Corp are going to do most of the
16 look-in-the-eye kind of killing, not so much the Navy, not so
17 much the Air Force. You know, it's the guy with the boots and
18 the gun that's going to really do the look-in-the-eye kind of
19 killing, as we call it. You're not at 30,000 feet, although
20 those guys have issues, too, and you're not launching a cruise
21 missile off a frigate, either.
- 22 You probably know a lot of the kids in the military
23 are 17, 18, 19 when they good in. Would you agree with me
24 that human beings are -- there's something about us that
25 killing is unnatural, generally speaking?

- 1 A. I would say yes.
- 2 Q. The military -- the Marine Corp especially -- I
3 don't know too much about the Army. I'd say maybe to a lesser
4 extent, they've got a problem. They've got to turn these kids
5 into people who can kill. And, you know, the psychology
6 involved in converting them into that kind of person is
7 something that the Federal Government spends hundreds of
8 millions of dollars on.
- 9 A. Uh-huh.
- 10 Q. It's unnatural for any of us to want to kill or to
11 kill, I think. I think we're all basically, you know -- maybe
12 my Christian thoughts are figuring into this, but I just don't
13 think we're born killers. To get in a jury box and pull the
14 switch on somebody; in other words return a death sentence,
15 maybe you -- do you think there's some psychology that's got
16 to go, that's got to be involved in helping you -- from the
17 State's standpoint helping you along to get you to be able to
18 do that?
- 19 A. Can you rephrase your question? I don't understand
20 quite what you --
- 21 Q. Not a good question.
- 22 Have you ever heard of the armed forces boot camp
23 and infantry schools spend a lot of time dehumanizing
24 potential enemies?
- 25 A. Yeah, uh-huh.

- 1 Q. And you understand, you being a psychology major,
2 you'd understand that that's part of the process?
- 3 A. Uh-huh.
- 4 Q. How do you think -- as you sit there right now, what
5 do you think about evidence that attempts to dehumanize a
6 person?
- 7 A. Well, first of all, let me start off by saying I try
8 not to over-psychologically analyze anything with my
9 background.
- 10 Q. Yeah.
- 11 A. I don't like to do that. Now, however, I think it
12 would be tough in my mind to dehumanize a situation involving
13 death outside of a military-type situation. I would struggle
14 with it.
- 15 Q. You know yourself. You and I and Mr. Schultz and
16 the rest of us could spend three days ping-ponging you.
- 17 A. Uh-huh.
- 18 Q. And asking you -- first of all, the judge is never
19 going to allow that. If he would then I'll just -- he's never
20 going to allow that. It's not right to you.
- 21 A. Sure.
- 22 Q. And I'll get right to the chase here on this area
23 that I'm going to. If you were to return a verdict as a juror
24 in a capital murder case where you have found somebody guilty,
25 does that person have any chance of getting a life sentence?

1 A. **A chance. Yeah, I would say they do.**
 2 Q. Why?
 3 A. **Because of the rules that apply here.**
 4 Q. Forget the rules.
 5 MR. SCHULTZ: Excuse me, would you let the
 6 record reflect the juror was indicating the special issues on
 7 the board.
 8 THE COURT: All right.
 9 VENIREPRESON: Thank you.
 10 THE COURT: It will so reflect.
 11 Q. BY MR. GOELLER: In your mind could you ever give
 12 life, not because of the special issues, but just your
 13 philosophy on capital punishment having found somebody guilty
 14 of capital murder?
 15 A. **As a hypothetical question, yes.**
 16 Q. Tell me why. Why do you think you could?
 17 A. **Well, I think that I could because, again, as we**
 18 **talk sort of in hypothetical terms here, I'm not sure that**
 19 **without having all the facts in front of me to totally 100**
 20 **percent support a death penalty that I can absolutely say that**
 21 **I would not favor life versus death.**
 22 Q. Okay. Do you lean one way or another -- I mean, the
 23 hypothetical I can pose to you has some facts in it. You
 24 found somebody intentionally -- well, let's just go with the
 25 indictment in this case. You have found somebody

1 intentionally killed two people, okay? Do we have a shot at
 2 life based on that?
 3 A. **I would have to say that while I want to say if**
 4 **that's absolutely true, then, no. I would never say 100**
 5 **percent that that would never occur, okay? There's always a**
 6 **possibility of other facts being there that should be**
 7 **considered?**
 8 Q. Okay.
 9 A. **And as long as that's there, then there is no**
 10 **absolute in my mind.**
 11 Q. But your views on -- would you -- well, do you think
 12 your views on capital punishment would -- from what I hear you
 13 say, if I'm reading you right, there's a very, very slim
 14 chance of anybody every getting a life sentence if they -- if
 15 you have found that they intentionally committed capital
 16 murder. There's a chance, but it is slim. Am I reading you
 17 right?
 18 A. **I would say, yeah, that probably is a correct**
 19 **assumption.**
 20 Q. In your questionnaire you thought that the death
 21 penalty should be available for punishment upon conviction of
 22 other criminal offenses, and you wrote down "any violent
 23 crime." Tell me what you meant by that answer.
 24 A. **Well, I -- and what I think of when I wrote that in**
 25 **terms of violent crime is probably meaning violent crimes**

1 **towards an individual as opposed to against physical**
 2 **property --**
 3 Q. Like property?
 4 A. **-- or some such thing like that, okay? I think if**
 5 **somebody certainly voliciously (sic) kills an individual or**
 6 **attempts to maim them, or does in fact, okay? Then I think it**
 7 **should definitely be a consideration.**
 8 Q. Okay. The second special issue -- I think most of
 9 it is pretty self-explanatory. There is this odd phrase
 10 "Consider all these things and the personal moral culpability
 11 of the defendant, okay."
 12 When you look at that, what do they mean? We've got
 13 to put some stock in the collective intelligence of 244 State
 14 Reps, or however many down there in Austin. Everybody knows
 15 by the time you get to this question a person has been found
 16 guilty of capital murder.
 17 A. **Uh-huh.**
 18 Q. So, obviously they wouldn't be going back and
 19 asking, well, do you think he's really guilty to begin with?
 20 No. Because you've already found that beyond a reasonable
 21 doubt. Moral culpability, moral -- personal moral
 22 culpability. Do you think that might mean remorse.
 23 And before you answer that, let me ask you this
 24 question. Did you keep up with that McVeigh -- Timothy
 25 McVeigh Oklahoma City bombing?

1 A. **A little bit.**
 2 Q. Do you remember what, besides the act -- you know,
 3 he killed about 168 people. Everbody knows about that.
 4 Besides that act and when you first heard about it and all
 5 that and the whole country saw that, does anything else stick
 6 out in your mind about Mr. McVeigh that really incensed
 7 sentenced you?
 8 Let me see if you remember this. Do you remember
 9 the TV interview where they asked him, the children that were
 10 in that day-care -- I guess the federal employees get federal
 11 day-care. I'm not sure how that works. But for whatever
 12 reason, there was a day-care in that building and a lot of the
 13 children were killed. And he said "collateral damage"?
 14 A. **Yeah.**
 15 Q. What did that tell you about his mentality?
 16 A. **Well, it would tell me that he's not very sensitive**
 17 **to human life.**
 18 Q. Maybe like a sociopath?
 19 A. **Could be, yeah.**
 20 Q. Do you think in his case probably?
 21 A. **I'm not sure I'm qualified to say that, but there's**
 22 **a likelihood, yeah, yeah.**
 23 Q. Do you remember from any of your psychology studi
 24 a lack of a conscience?
 25 A. **Uh-huh.**

1 Q. They kind of gear that loosely to sociopaths, no
2 conscience. I think McVeigh would be one, you know? Hey,
3 collateral damage. I killed X number of tiny, little baby
4 children.

5 Do you think maybe they're getting at -- trying to
6 figure out remorse, if somebody sociopathic, personal moral
7 culpability?

8 A. Uh-huh.

9 Q. Obviously, the question is not asking if they're
10 guilty. It's long been over. They're not asking you if they
11 intentionally did it, because you already had to find that to
12 get to this question. Do you think that has to do with
13 remorse, personal moral culpability? How do you accept, or
14 how do you look at what's happened what the jury has found you
15 guilty of?

16 A. In my opinion, I think that it could, yeah.

17 Q. Do you have an opinion other than that as to what
18 maybe that phrase means, personal, moral culpability?

19 A. To be honest with you, I'm not sure at this point.

20 Q. Okay.

21 A. I haven't really reflected on it. In the last
22 couple of days, haven't seen it so...

23 Q. Did it make sense when you came to the courthouse on
24 Tuesday?

25 A. Uh-huh.

1 Q. And that had to be kind of a shock when you found
2 out why you were there. I saw when Mr. Schultz was up there
3 and -- I think maybe Judge Sandoval said it first, but a lot
4 of people I don't think really understood, because Judge
5 Sandoval could just use two words, and then Mr. Schultz gave
6 his speech, and then a lot of people -- you saw a lot of
7 blank -- not blank stares, but people were really in shock,
8 oh, my God. I don't know if they were in shock because it was
9 a death penalty case, or because Judge Sandoval told them they
10 may have to clear their calendars until mid-October. I'm not
11 sure which one brought on the faces.

12 Anything you thought about. Is there anything
13 that's been in your mind since Tuesday that really you've
14 never thought about the rest of your life?

15 A. Yeah. I would have to say that just thinking about
16 the possibility of being involved in something on this kind of
17 consequence has weighed heavily.

18 Q. In your questionnaire you stated -- well, in
19 response to -- you know, where they had that whole page of a
20 statement, and then you strongly agree, agree, uncertain, kind
21 of middle one, and then disagree and strongly disagree at the
22 other end. In response to if someone is accused of capital
23 murder he should have to prove his innocence, you circled
24 agree. And trust me when I tell you I'm not here to debate
25 anything with you. Do you feel that way?

1 A. Now, say again the question. Is a scale --

2 Q. Yeah. It was one of those scale kind of questions.
3 You circle one. This one here, if someone is accused of
4 capital murder, he should have to prove his innocence, and you
5 circled agree. Most people --

6 A. I would say -- I'm sure -- in fact, I know when I
7 was doing this survey I was getting a little bit blurry-eyed
8 towards that point. As I would reflect on it now, I would
9 probably say that I would be more uncertain about it than I
10 would agree, to be honest with you.

11 Q. Okay. And that's all I want. I just -- if you're
12 honest with me, I will thank you, shake your hand, and you and
13 I will be friends forever.

14 What that tells me is, although the law requires
15 that you place no burden on the Defendant as far as -- well,
16 the Defendant has no burden on any issue in this trial.

17 A. Okay.

18 Q. Because in that last special issue, there's no
19 burden on anybody.

20 A. Right.

21 Q. The State, nor the Defendant. But it seems that
22 your honest answer is you will place a burden on the
23 Defendant?

24 A. What does that mean? I'm not sure what that really
25 means, and that's why I'm having a little trouble with it.

1 Does that mean that you-all will have to prove innocence; is
2 that essentially --

3 Q. Yes.

4 A. -- the bottom line?

5 Q. Yes.

6 A. I guess the way I would view it at this point is
7 that there's a certain burden of disproving guilt more than
8 anything else. That's the way I would view it. In other
9 words, the charge would be -- it would be your responsibility
10 to disprove the charge.

11 Q. Okay.

12 A. Or at least the credibility of it.

13 Q. Okay, all right. And I appreciate that, and I
14 appreciate your honest answer because that's the only way I
15 can do my job. Even though the judge might instruct you
16 otherwise, that -- would you feel that way with any kind of --
17 if you were sitting as a juror in any kind of case, would you
18 feel that way?

19 A. I would say so.

20 Q. Maybe shoplifting, DWI?

21 A. (Nods head.)

22 Q. It's nothing really special to capital murder. Just
23 your core values or -- there's nothing wrong with that.

24 A. Yeah.

25 Q. I'm not debating that with you, but as

1 Mr. Tisdale sits there we would need -- since we've been
2 charged, we would need to bring forth some evidence or carry
3 some persuasive obligation with you personally to discredit
4 the charge or prove our innocence?

5 A. Yes.

6 Q. Okay. And have you -- is that a strong conviction
7 that you've held for many years?

8 A. I guess the answer I would give you is that that's
9 my perception of how the legal system should work.

10 Q. Okay, okay.

11 A. Right or wrong -- my perception could be wrong, too,
12 but that's the way I view it.

13 Q. The great thing about this undertaking we find
14 ourselves in today is there is no right or wrong. There is
15 just honest answers. Because some jurors would get up there
16 that have the feelings that you do, but just bold-face lie to
17 me and never tell me that. And maybe they can live with their
18 conscience later on in life. Unfortunately, there are a lot
19 of people that do that. A lot of people get up and say, oh, I
20 could presume him innocent until proven guilty, and the State
21 of Texas would have to prove it. And they give you a little
22 wink and they've in. That's sad.

23 I think you're a man of character. That's somewhat
24 too rare these days. But I sure thank you for your answer,
25 and I hope and pray that you would not be offended when I have

1 Q. And it would seem -- would it seem to you to make
2 sense that if you came in as a juror, in a noncapital case
3 where you're going to set a term of years, does it seem like
4 you ought to be able to consider we need to give him a lot of
5 time because they're going to parole him out real fast,
6 anyway? Would that be a logical way for the jury to consider
7 the sentence in your mind?

8 A. Could you say it again? I'm sorry.

9 Q. I'm talking about a noncapital case. You know that
10 parole means people are released early from prison?

11 A. Sure, sure.

12 Q. And you may not know how quickly they can be
13 released, but you probably got an idea it's pretty quick a lot
14 of times? Even on a long sentence, it can be pretty quick,
15 right?

16 A. Yes.

17 Q. If you just came in, and they put you in a jury and
18 said go back and consider the sentence on this person, would
19 it seem logical to go on and talk about parole and say well,
20 we need to make a long sentence because long isn't going to be
21 very long, anyway? Would that make logical sense to you, to
22 consider parole?

23 A. Would it make sense?

24 Q. The --

25 A. The motivation for doing it doesn't make sense to

1 to stand up and tell the judge, as part of my job, that I
2 would have to challenge you sitting in this case.

3 A. Uh-huh.

4 Q. And I hope again --

5 A. You're right.

6 Q. -- you and I can have a cup of coffee any time and
7 be best of friends.

8 A. Yeah.

9 MR. GOELLER: Judge, at this time I would
10 challenge Mr. Tisdale for cause.

11 REDIRECT QUESTIONS

12 BY MR. SCHULTZ:

13 Q. Nobody has any quarrels with any answers. Mr.
14 Goeller, and I can certainly speak for the State, also.
15 Sometimes there's a line when we ask jurors questions,
16 especially when we've been doing it for a while, asking the
17 juror for the juror's opinion when the juror doesn't know
18 exactly what the law is. Let me give you an example of what
19 I'm saying.

20 You've certainly heard of parole? Everybody has
21 heard of parole?

22 A. Sure.

23 Q. And in general, my perception is the public is not
24 going to ponder parole, right?

25 A. Uh-huh.

1 me.

2 Q. What?

3 A. To ask for a longer sentence so the parole would be
4 longer.

5 Q. I understand. But if you knew about parole, would
6 you not be wanting to consider that he might get paroled in
7 deciding how long a sentence you want to give him, at least to
8 try to make sure he's away for a period of time?

9 A. No. I don't think that weighs into it.

10 Q. Okay. It's interesting because the court would
11 instruct you in such a case not to consider parole in deciding
12 what the proper term is, even though everybody knows about it.
13 And you can't assume that a ten-year sentence, he's going to
14 be gone for ten years. You just have to do it.

15 A. No.

16 Q. Some people have trouble with that. Some people
17 say, well, I know a ten-year -- if I want him to do ten years,
18 I know that I better come up with something more than that
19 because of parole. And what you're saying is that's just not
20 you. You probably wouldn't approach it that way as a juror?

21 A. Correct.

22 Q. Now, you indicated that it would be your preference
23 or your desire, or at least your wish that the defendant would
24 testify in a criminal case. Remember we talked about that --

25 A. Uh-huh.

1 Q. -- quite a while ago. But we talked about the fact
2 that the law provides that a defendant doesn't have to testify.

3 A. Right.

4 Q. And the judge would instruct the jury of that fact,
5 and would also say don't consider failure to testify on any
6 issue related to this case.

7 A. Yeah.

8 Q. And so it seems to me that you didn't have any
9 problem with that. It's almost like a measuring kind of
10 thing, and even though you may have a natural tendency to want
11 something a certain way, you don't seem to me to be the kind
12 of person that insists on having it your way as opposed to the
13 way the judge instructed you in a case. Am I right about
14 that?

15 A. Correct, yeah.

16 Q. If the judge says don't consider failure to testify,
17 you're not going to say I will, too. I've decided that's an
18 important thing, and thanks for your input, Your Honor, but
19 I'm going to consider it and hold it. You wouldn't do that,
20 right?

21 A. No.

22 Q. We have situations every day, and we don't even
23 think about if where we are required by some rule or
24 regulation to do something that would seem to us, if not
25 unnatural, not the way we would maybe do it if we were making

1 think ought to be the case, and yet, the judge gives us
2 instructions that tell us not to, and we do just fine with
3 that.

4 A. Yeah.

5 Q. Let me give you an example. The judge will tell
6 you not to conduct an independent investigation into the facts
7 of this case. You may be the kind of a person that would love
8 to go out to the crime scene and take measurements to
9 understand whether a witness is telling the truth about it all
10 or not. You may want to go out and talk to neighbors, and
11 say, did you hear any shooting back on November 4th of the
12 year 2000, or did you hear some noises because that kind of --
13 well, if the judge tells you, you can't do that.

14 A. Uh-huh.

15 Q. You wouldn't have any problem with following that
16 instruction?

17 A. No, would not.

18 Q. And you might not even agree with him. You might
19 say well, that's -- with respect to the judge, that's a silly
20 instruction. What could be better than a juror that cares
21 enough to do some overtime work, but you'd follow the
22 instruction?

23 A. Absolutely.

24 Q. If the judge tells you not to watch TV or read the
25 newspaper about this case, I mean, you're curious, same as me.

1 the decisions. For example, I know a little bit about your
2 work in HR, and I know that all kinds of incredible secrets
3 come through your department. They can be in the nature of
4 the EAP. They can be in the nature of your sexual harassment
5 committee where complaints are made confidential. It can be
6 all kinds of stuff.

7 A. Sure.

8 Q. I don't know if you do any in-house servicing of the
9 health insurance, but if you do the same people are having
10 medical procedures that are highly confidential. And let's
11 face it, some of the information that comes into your office
12 would be the gossip's delight, and you know that?

13 A. Uh-huh.

14 Q. And I've got to believe one of your big headaches is
15 not only controlling yourself, but controlling other people's
16 interest in all that stuff, salaries and anything else that is
17 confidential. And most of the people manage to do that even
18 though there's temptation. Seems like they ought to be able
19 to tell about something funny that happened, or, boy, you
20 ought to hear about this procedure this guy had done on our
21 health insurance, those kinds of things. But we all can keep
22 that in check if told not to, for the most part, can't we?

23 A. Uh-huh.

24 Q. And many of the things that happens -- that happen
25 in the criminal trial, there may be things we want to do or we

1 You'd like to know what all they are saying about it, but you
2 could not read the newspaper and not watch TV simply following
3 the judge's instructions, even if you figure what harm would
4 it do, or that's what I'd like to be able to do. Fair enough?

5 A. That is, yes.

6 Q. And if the judge, for example, instructed you not to
7 talk with anybody about your service as a juror, and, you
8 know, you're obviously a family man and have people that you
9 care about, and what could be more regular than go home and
10 talk with family members about this, and, boy, this lawyer
11 said that, and then I saw some pictures, and I can't describe
12 how awful the pictures were, that's natural and makes sense.
13 And until the judge would tell you otherwise, you might see
14 what's the harm? They're not in this case. What's the matter
15 what I talk to them about? But if he tells you not to do,
16 you're not bullheaded about it. You could follow his
17 instructions, right?

18 A. Yes.

19 Q. For historical reasons perhaps, but certainly for
20 good societal reasons, we, in America, presume all people in
21 criminal cases innocent.

22 A. Uh-huh.

23 Q. And the reason we do that is the reason we're here
24 now is probably, truthfully because the State has caused an
25 indictment for capital murder being lodged against this

1 Defendant. We can go back and forth with the sophistry, well,
2 we would have done that if the defendant hadn't done whatever
3 he did or didn't do. But the fact of the matter is, the only
4 reason we're here is because an indictment has been brought
5 against the Defendant. We started this with an indictment.

6 **A. Uh-huh.**

7 Q. And we have concluded as a society that if we are,
8 as the State, going to start a proceeding like this, we should
9 have the responsibility to prove otherwise.

10 The Defendant, either through himself or through his
11 lawyers, has the absolute right to say prove it. If you say
12 these things, you prove it, and don't you expect me to help
13 you prove something against me because I don't choose to do
14 it.

15 **A. Uh-huh.**

16 Q. And if you stop and think about it for a while, it
17 would be impossible for somebody most of the time to prove
18 their innocence. If I charge you with a robbery that you're
19 supposed to have done a week ago, how do you prove you didn't
20 do it? The only way it ever makes sense is for us to have to
21 prove it. If you want to give some evidence, like, you want
22 to give an alibi, and say I was in -- I was in my office with
23 the meeting of ten people. That's fine; you can do that. If
24 you want to take the witness stand and say it wasn't me. You
25 got the wrong guy; I'd never rob anybody, fine. But you don't

1 have to, and that's not your responsibility. You can simply
2 say prove it, and if we do it, find the jury convicts you and
3 Mr. Tisdale has to go to wherever robbers go kind of thing,
4 but if we don't do it, you're acquitted. Just as in your
5 case, in this case, also, Judge Sandoval will instruct you the
6 burden of proof is always on the State. We'll talk about
7 special issues in a moment. That's partly true and partly
8 not.

9 Burden of proof is always on the State. It never
10 shifts, and the Defendant has no obligation to offer evidence
11 or refute any of the charges, and an indictment is not
12 evidence of guilt at all. In other words, we've got to bring
13 you proof, and the law is if we fail to prove to you beyond a
14 reasonable doubt, you don't have any choice. You must acquit
15 the Defendant. That's the instruction that you give -- that
16 you get as a juror, and you must acquit the Defendant even if
17 he hasn't had a word to say or a bit of evidence.

18 They can do it -- near as I can tell, they don't
19 even have to pay attention at this trial. All they have to do
20 is be here. They will because they're good lawyers, and the
21 Defendant seems interested in all this and seems attentive.
22 But near as I can tell, as long as they're ordered, they can
23 do anything they want over there. Basically, ignore us all,
24 and that's nothing to do with whether we've proved our case
25 beyond a reasonable doubt.

1 **A. Uh-huh.**

2 Q. Now, if Judge Sandoval instructs you not to oblige
3 them to produce any evidence, because this is almost a
4 weighing process, if he instructs you to disregard -- if he
5 instructs you not to expect, demand, or even inquire into
6 their failure to produce evidence, are you saying you'd still
7 do it your way, and you'd say, well, they didn't prove their
8 innocence to me?

9 **A. No. I think what it amounts to here is when I think
10 of defense, okay, I think of some action --**

11 Q. Right.

12 **A. -- being taken. And in the context of the legal
13 system, I guess I'm learning something here that I didn't
14 really understand fully, and so the answer to the question is,
15 no, certainly not. I am going to abide by the rules that
16 apply to the courts.**

17 Q. Okay. And we talked about this before. I guess
18 we're all this way. We'd love to hear the other side of the
19 story --

20 **A. Yeah.**

21 Q. -- just because that's how we are?

22 **A. Human nature.**

23 Q. But we all manage to work within this framework of
24 well, if they want to give us something, we'll listen to it.
25 But if they don't want to give us something, that's up to

1 them.

2 **A. Yeah.**

3 Q. And for whatever it's worth, that could be -- you
4 say you want some action. Maybe there's a strategic or
5 practical reason. You never know. But doesn't matter if it
6 is an action. The only thing then you can measure is the
7 sufficiency of the State's evidence, because there's no
8 defense evidence to measure because they've chosen to do it
9 that way, which is their right. But you can't hold that
10 against them. You just -- because that's the law?

11 **A. Uh-huh.**

12 Q. And I don't get a sense from you that you're balking
13 at any part of the law once you understand what your
14 obligations are?

15 **A. Yeah.**

16 Q. So if they don't put on any evidence, you're not
17 going to say, well, you didn't prove your innocence. You
18 understand what I'm saying? It's not their burden to prove
19 their innocence?

20 **A. Yeah.**

21 Q. They got no burdens other than to stay here and be
22 orderly. That's the only burden they have.

23 **A. I understand that, and -- you know at this point I
24 understand better, I would agree.**

25 Q. And now that you understand it, would you have an

1 problem doing that --
 2 A. No.
 3 Q. -- once you understand the rules?
 4 A. No.
 5 Q. Okay.
 6 A. And that's part of the reason why when he asked in
 7 the question I moved to uncertain, because I'm really
 8 beginning to understand this a little better.
 9 Q. Pretty soon you can sit in one of our chairs.
 10 A. That's okay. I like what I do.
 11 Q. The other question was asked because I don't -- I
 12 honestly don't remember how the challenge was phrased, but I
 13 want to address it as long as I have you with permission.
 14 You indicated that it would probably be a rare case,
 15 or at least you'd really do some good looking if there were a
 16 double murder in how you answer those special issues, and
 17 whether you could cause a life sentence as opposed to a death
 18 sentence, but you indicated that you could?
 19 A. Uh-huh.
 20 Q. You understand that there may be circumstances
 21 where, even though a person has committed a double homicide,
 22 that that's the only dangerous thing that person has ever done
 23 before and may be the only dangerous thing that person would
 24 ever do again?
 25 A. Yeah.

1 Q. The example I always use, and I used on Tuesday, is
 2 the parent whose child has been murdered and because of a
 3 technicality the killer goes free, and the parent just says, I
 4 don't care about me living. Without my child, I'm watching
 5 that person go free is more than I choose to bear, and I'm
 6 going to intentionally cause that person's death. Well, maybe
 7 there were two murderers of that (sic) children. Maybe they
 8 were co-defendants. Maybe both of them walk out of that
 9 courtroom smirking, and maybe that dad goes to -- you know, I
 10 got two bullets, one for each of you, and uses them.
 11 A. Uh-huh.
 12 Q. Maybe that person is never going to be dangerous
 13 again. But for the actions of those two killers, he wouldn't
 14 have been this time truly. Do you understand how there could
 15 be a situation where it would be double homicide, but we know
 16 this guy is not dangerous. My heart goes out to him. We
 17 can't let him kill because that's wrong. Life is sacred, but
 18 if they're asking me is that man ever going to be a danger
 19 again? No, he's not. Do you understand how you could have a
 20 situation like that?
 21 A. Uh-huh.
 22 Q. And you don't know what the facts of the case may
 23 be, and in your mind, there may only be an occasional case
 24 where the answer would be no, or it might be all the time. We
 25 don't know how you're going to react to that.

1 And secondly -- there are other examples. Maybe he
 2 could be the world's meanest killer, but the police shot him
 3 in the spine when they were arresting him, and he's paralyzed
 4 from the forehead down, so he can't be dangerous because he
 5 can't do anything but wiggle his scalp. That kind of --
 6 that's the only thing he's got left. Do you follow what I'm
 7 saying?
 8 A. Uh-huh.
 9 Q. And maybe you'd say, well, he's the world's worst
 10 killer, but he's not doing anything now except wiggling, and
 11 so he's not a danger. Do you follow how that could be?
 12 A. Uh-huh.
 13 Q. And maybe he had a stroke right before the trial,
 14 and maybe he's never going to be able to move because of a
 15 stroke. There are all kinds of reasons why that could be
 16 answered no. You'd do that, wouldn't you?
 17 A. Yes.
 18 Q. Same thing with this mitigation question. I don't
 19 know what might be mitigating, but truthfully he might have
 20 been a hero. You know, save a hundred sailors that were
 21 getting ready to drown, and he somehow rescued all of them
 22 and been a good, decent man all his life, and something
 23 snapped and he's turned into a mean, old guy. And, yeah, he's
 24 a dangerous fellow and did a capital of murder, but that medal
 25 of honor gallantry might mean something to you. And you might

1 say, his background, his character as a whole is enough to at
 2 least give the guy a life sentence. We're not letting him
 3 loose; we're just sparing his life. Do you see how those
 4 kinds of situations could work?
 5 A. Yes.
 6 MR. SCHULTZ: Thank you. We resist
 7 Mr. Goeller's requested relief.
 8 THE COURT: Anything else?
 9 MR. GOELLER: Request a sub rosa hearing.
 10 THE COURT: All right. I'm going to ask you to
 11 step down for a moment, sir. And even though you're stepping
 12 down, if you happen to come into contact with anybody else,
 13 don't say anything to them about anything we've talked about.
 14 VENIREPERSON: Yes, sir.
 15 (Venireperson exits the courtroom.)
 16 THE COURT: All right.
 17 MR. GOELLER: I guess it's my challenge. I go
 18 first.
 19 THE COURT: Yes, might as well.
 20 MR. GOELLER: Your Honor, I would argue to the
 21 court that the court ought to sustain our challenge for cause.
 22 I pinned him down very good. Despite the judge's instructions
 23 of the State having the burden of proof, he would place a
 24 burden on my client.
 25 Now, I'd cite to the court the Montoya case, a Court

1 of Criminal Appeals case. A challenge for cause is proper if
2 he admits he cannot afford the Defendant his right against
3 self-incrimination.

4 Now that works into this as well. As the court well
5 knows the appellate courts look at the totality of the voir
6 dire, and just as a point of clarification within my argument,
7 Your Honor, are all the juror questionnaires going to be part
8 of the record in this case? I assume they are.

9 THE COURT: I don't see any problem.

10 MR. GOELLER: Just for the record, I'd ask the
11 court to include Mr. Bruce J. Tisdale's individual jury
12 questionnaire, Juror Number 54-2594, be included in the record
13 in this cause.

14 You look at the totality of his testimony and the
15 answers in his jury questionnaire. He puts down -- the
16 defendant, specifically, I would want to hear from him. You
17 couple that with his original answer of agree and, quote, for
18 the record, in a response to the question of if somebody is
19 accused of capital murder, he should have to prove his
20 innocence. First, he circles agree. Well, he's come all the
21 way down to uncertain, and I pinned him down very specifically
22 about that because that's what he's all about. So, I'd object
23 to this juror for cause, not only on the fact he's a Montoya
24 violator -- I hate to use that word -- violates the holding in
25 Montoya. He's going to require him to testify. I'd also

1 that he didn't understand the nature of the question and how
2 it was phrased. You were here to see him. If he seems to you
3 like somebody that would have trouble following your
4 instructions, I can't quarrel because you've got to make that
5 discretionary decision. It's apparent -- he even explained
6 it. When you ask somebody, how do you feel about the
7 Constitutional privilege against self-incrimination, there's
8 nothing incompatible with saying I think they ought to have to
9 testify. I think that's desirable as long as you're willing
10 to follow the instructions.

11 He didn't have any problem with that. He's not
12 balking. He's a decent man. He said the same thing we'd all
13 say, and let's face it, even as lawyers if we were sitting up
14 there we would probably want to hear both sides. I would
15 guess -- if I were a judge, I would guess I'd probably like to
16 hear from the defendant. If he wanted to -- if he wanted to
17 testify, it would probably help me, but I have the ability to
18 put that out of my mind and just weigh the evidence presented,
19 if he chooses not to, and not hold it against him.

20 He indicated he could do all the things that he'd be
21 required to do, like not doing an investigation. All he's
22 saying is, it seems to me, as an unschooled person that that's
23 how it ought to be. He had no reluctance to following your
24 instructions. Also, the court knows, and I guess I
25 could even request you to judicially notice what's within your

1 challenge him for a cause because he has shifted the burden of
2 proof.

3 And finally, Judge, he's the classic Parillo juror.
4 He's going to tell me what I want to hear. He's going to tell
5 Mr. Schultz what Mr. Schultz wants to hear. He's the classic
6 vacillating juror.

7 I would submit, as the court sits up there, if the
8 Court asked itself is this guy going to place a burden of
9 proof on him or not? I would submit the Court says, I really
10 don't know based on Mr. Tisdale. Nice fellow, but he'll tell
11 Bill what Bill wants to hear, and he's going to tell me what I
12 want to hear, and, therefore, I can't effectively exercise a
13 peremptory strike against him because I don't know. He's a
14 Parillo juror, but I think the Court doesn't even have to get
15 there. He's clearly challengeable for cause, and I'd ask the
16 Court to grant my cause under Parillo versus State, Montoya
17 versus State and -- yes. Just -- if Mr. Schultz would want a
18 cite, 819 S.W. 2d, 160, Texas Court of Criminal Appeals. Just
19 in case he wanted the cite.

20 THE COURT: All right. All done?

21 MR. GOELLER: Yes, sir.

22 THE COURT: All right.

23 MR. SCHULTZ: Briefly, Judge. For starters,
24 you've been in here observing the demeanor of this juror for,
25 frankly, a very long period of time. I think it's obvious

1 knowledge, those question were filled out even before we did
2 our voir dire. Some of the jurors expressed the fact that
3 that's sometimes difficult because they truly are unschooled
4 in answering those questions. I'm not sure exactly what
5 significance we're supposed to place on asking them
6 attitudinal questions like that when they haven't even had
7 this all explained to them.

8 Absolutely, he's not a vacillating juror. If you
9 think he is, you can bring him back. You're certainly free to
10 inquire yourself. If Mr. Goeller's objection somehow is that
11 I'm the one that's making him say he would follow your
12 instructions, and if Mr. Goeller is right, and he gets him
13 back again and Mr. Goeller can get him to say -- you know,
14 I'll -- I'll offer that, too. If Mr. Goeller wants to get him
15 back so he can get him to say again he's going to put the
16 burden of proof on the defense, then maybe he's right.

17 I would submit that what he said is fine and that he
18 has indicated unequivocally that he will follow the court's
19 instructions, and he didn't seem to have any belligerence or
20 confusion in that area.

21 If the court somehow believes that it's my oratory
22 that got a man of his sophistication eating out of my hand,
23 then the simple solution is for the court to ask him. That's
24 certainly proper, also. That might be a simple way. You've
25 got to make the decision. It's almost like a credibility

1 thing looking at all the evidence. You've got to make the
2 decision on the man, anyway. I don't think it necessary, but
3 if you've got any doubts about it -- about the record on this
4 juror, I'd request you do it yourself.

5 MR. GOELLER: Judge, my final word on my
6 challenge. I was very specific with him, and I said despite
7 the instructions of the court, and he agreed with me, he would
8 shift the challenge. Mr. Schultz took him on for another,
9 almost, 15 full minutes in this area. I spent about ten
10 minutes with him. Mr. Schultz took another 15. You would
11 think he would have gotten it by then. And taking into
12 consideration the Court discussed this with them on Tuesday
13 morning.

14 So, after all of that -- after all of Mr. Schultz's
15 comments and my comments on this very area, he moves down one
16 notch from agreed to uncertain. That says it all right there.
17 He's a burden shifter, Your Honor. You would think after
18 Mr. Schultz would have been done with him, and I think it was
19 in middle of Bill's attempt to rehab on the juror, he said,
20 well, that's why I moved down to uncertain. For goodness
21 sakes's, Judge, he's a burden shifter.

22 After Mr. Schultz was done with him he should have
23 said, well, that's why I moved all the way down to strongly
24 disagree because I wouldn't place a burden on that kid. So,
25 that's why, again, I'd ask the court to grant that challenge

1 who'll be coming in and sitting to my right, that's
2 Mr. Bill Schultz. He's the first assistant in the District
3 Attorney's office, and the lady to my left is Jami Lowry.
4 She's also an Assistant District Attorney. And at the table
5 to my left, the first person seated is the defendant, Ivan
6 Cantu, and next to him are his two lawyers, Don High and Matt
7 Goeller, and they're both local --

8 MR. GOELLER: Hi.

9 MS. FALCO: -- private practitioners -- very
10 good lawyers -- here in Collin County.

11 And I take it based on that introduction on Tuesday
12 that you don't know any of us; is that correct?

13 A. No, I do not.

14 Q. And the purpose of voir dire, we kind of do it in
15 two parts. Because this is a capital murder case, we started
16 out doing, what we call, the general voir dire, and that's
17 when you were in the group, to kind of give you the basics of
18 the law. Kind of something that is going to apply to
19 everybody, and partly also to get you to start thinking about
20 your position on the death penalty because for a lot of people
21 it's one thing to sit down and talk over coffee, and kind of
22 say what you believe theoretically. But it's a whole
23 different ballgame when you have to actually evaluate yourself
24 to determine whether or not you can participate in a process
25 that can result in a death sentence for somebody. And with

1 for cause.

2 THE COURT: All right. I'll grant the
3 challenge for cause.

4 And we're going to take a five-minute recess.

5 THE BAILIFF: All rise.

6 (Brief recess taken.)

7 THE COURT: Let's bring in Ms. Deirdre
8 Williams.

9 (Venireperson enters the courtroom.)

10 THE COURT: Are you Deirdre Williams, ma'am?

11 VENIREPERSON: Yes.

12 THE COURT: Perhaps you recall you were put
13 under oath a few days ago.

14 VENIREPERSON: Yes.

15 THE COURT: I just want to remind you you're
16 still subject to that oath.

17 VENIREPERSON: Okay.

18 THE COURT: Please be seated. Mr. --

19 MS. FALCO: I'll be doing this one, Your Honor.

20 THE COURT: All right.

21 DIRECT QUESTIONS

22 BY MS. FALCO:

23 Q. Ms. Williams, my name is Gail Falco. I'm an
24 Assistant District Attorney in Collin County, and the
25 gentleman that spoke for the State on Tuesday, the gentleman

1 regard to that, that's why we have what we call this
2 individual voir dire process, which is the one-on-one
3 questioning. And part of the reason it's one on one so you
4 can speak freely, you can express opinions freely, and the
5 only thing that's required of you at this time is your honest
6 answers.

7 A. Uh-huh.

8 Q. Looking at your questionnaire, and obviously you're
9 given these questionnaires -- it's kind of like getting the
10 test before you're given the lesson. I mean, you're asked to
11 fill out these questionnaires before you're actually told what
12 capital murder is or explained how the system works as far as
13 it being a bifurcated system in Texas. As Mr. Schultz told
14 you on Tuesday, in Texas it's bifurcated because the first
15 phase of the trial is the guilt/innocent phase of the trial,
16 and that's where the jury decides whether or not the defendant
17 is guilty of capital murder. And if they find a defendant
18 guilty of capital murder, then they move on to the punishment,
19 or penalty phase of the trial.

20 And in a capital murder case, as he explained to
21 you, it's not a matter of just going back there and circling
22 life or circling death, and that's it. The Legislature has
23 set it up so that the jury takes certain things into
24 consideration before deciding whether or not to assess a death
25 sentence or a life sentence by having you answer those

1 questions in a way that would result in a life or death
2 sentence.
3 Now, prior to you filling out this questionnaire and
4 by looking at your answer, you circled the one that said I
5 believe that the death penalty should be imposed in all
6 capital murder cases, and there's probably a fair number of
7 people out there that agree with you and think that it should
8 be. If you kill somebody and it's a capital murder, then the
9 death penalty ought to apply. That's okay. That doesn't keep
10 you from being disqualified as long as you can still follow
11 the law. I mean, it's okay to have that belief. It's okay to
12 have that feeling and that opinion, but as long as it -- when
13 it comes time at the end of the case, when the court -- when
14 Judge Sandoval gives you the charge, you can follow the law,
15 you can follow the charge and answer the questions fairly.
16 Does that make sense to you?

17 A. Yes.

18 Q. Now, with regard to your belief about the death
19 penalty, why do you favor the death penalty?

20 A. Well, I just feel like if someone takes someone
21 else's life and it's proven that they have taken this life,
22 then they should pay for what they've done.

23 Q. Now, when talking about the death penalty, and
24 Mr. Schultz back on Tuesday had Mr. Cantu stand up and he told
25 you about some time -- what this is all about -- what this

1 trial means is that we anticipate, at some point in future,
2 the trial will start. We anticipate the evidence will show
3 the defendant is guilty, and at some point in time after the
4 jury assesses punishment, or assesses a death penalty, he'll
5 be taken down to TDC and ultimately taken to the death chamber
6 where he's strapped to a gurney and injected with a lethal
7 substance.

8 The reason Mr. Schultz did that was not to be gory
9 or dramatic, but to help you understand the reality of this
10 process and to help you think about whether or not you can
11 participate in a process that could result in a death sentence
12 of somebody.

13 How did you feel? What was your reaction to that on
14 Tuesday?

15 A. I kind of got a little bit of mixed feelings
16 because, I mean, this is terrible. You always hear stories
17 about things, and I'm a nurse. And this is sad. The thought
18 that crossed my mind was you hear of things about when they
19 make the lethal injection that it's -- you know, a doctor or
20 someone can't do it so you alway -- there may be a time when
21 it's not done correctly. And I mean, I know that someone
22 should pay for what they do, but for someone to -- being a
23 nurse I have real mixed feelings on that, and that's the only
24 thought I really had on it.

25 Q. But as far as just the reality of the death penalty,

1 had you given it much thought prior to Tuesday when you were
2 asked to fill out the questionnaire?

3 A. Just than it's more realistic to me than what you
4 see or hear about. Just coming in and seeing a young person
5 sitting over there, you know, that isn't much bigger than my
6 teen-age son, I kind of thought a lot more about it. And, you
7 know, I'm kind of just -- I don't know how to describe it.

8 Q. Have your feelings changed since you filled out this
9 questionnaire on Tuesday?

10 A. Possibly some.

11 Q. And describe -- or tell me about that.

12 A. Just how realistic it is coming in the other day and
13 seeing a young person sitting over there. It's very sad. I
14 mean, I'm not saying I'm totally for it or against it. I'm
15 kind of, like, in between, have mixed feelings about it.

16 Q. And that's kind of what this is all about, is just
17 to kind of decide where you are and if you can be a fair juror
18 in this kind of case because to be a fair juror in this kind
19 of case both sides have to have a chance. Both sides -- as it
20 stands now, you don't know any of the facts of the case at
21 all?

22 A. Uh-huh.

23 Q. And as it stands now obviously we're seeking the
24 death penalty. The defense has -- you know, they need to know
25 if they have a shot at life. So, as it stands now would you

1 say both sides have a shot at either the death penalty or
2 life? Could you go either way?

3 A. I can't predict that because I haven't heard any --
4 you know what I'm saying?

5 Q. Could you keep an open mind at this point?

6 A. I could try. I can answer honestly and say, yes,
7 maybe I could try to do that.

8 Q. As far as your statement, I believe the death
9 penalty should be imposed in all capital murders, despite the
10 fact you have that belief, you wouldn't -- now having
11 understood the process and that it's a step-by-step process,
12 if the judge said, here's the process. You have to find the
13 defendant guilty, and if you find the defendant guilty, you
14 move on to the special issues, would you be able to follow the
15 law in that regard?

16 A. Yes.

17 Q. Now, with regard to the guilt/innocence phase, and
18 you kind of mentioned on one of your -- on the questionnaire
19 when it kind of -- it gave you a bunch of statements, and you
20 had to say you strongly agreed up to strongly disagree; do you
21 remember that?

22 A. Yeah.

23 Q. And do you remember the statement, "If somebody is
24 accused of capital murders, he should have to prove his
25 innocence," and you said agree?

1 A. Uh-huh.

2 Q. And with regard to -- let me talk to you a little
3 bit about -- because the State in his case is doing the
4 accusing -- we're the one accusing Ivan Cantu of capital
5 murder, it only seems fair that we should be the ones that
6 have to prove it. Would you agree with me on that?

7 A. Yes.

8 Q. If somebody accused you of something, wouldn't you
9 want them to prove it?

10 A. Sure.

11 Q. So necessarily, all the citizens of the United
12 States are afforded that same right, that same protection,
13 that if the State is going to point the finger at them, they
14 should have to prove it?

15 A. Right.

16 Q. And you don't have any problem with that, do you?

17 A. No.

18 Q. With regard to that, our burden is to prove to you
19 beyond a reasonable doubt. We have to prove to you beyond a
20 reasonable doubt that a defendant committed the offense
21 of capital murder. Does that seem fair to you?

22 A. Yes.

23 Q. And if you were given that instruction by the Court,
24 that you were not to find the Defendant guilty unless the
25 State proved to you beyond a reasonable doubt, could you do

1 Q. With regard to this particular question, again the
2 burden of proof is on us. It's on the State, and we have to
3 prove to you beyond a reasonable doubt whether there's a
4 probability that he will commit acts of -- criminal acts of
5 violence in the future. Now, with regard to probability that
6 could be defined numerically. People that numerically minded
7 might say that's a certain percentage. Some people may say
8 well, that means more likely than not. So, you understand it
9 can be looked at in several different ways?

10 A. Yes.

11 Q. To you, what does that term "probability" mean?

12 A. Is there a chance.

13 Q. And one thing the question does not ask, it doesn't
14 ask is there a certainty. It doesn't say do you find that he
15 will commit. It's just asking whether or not there's a
16 probability. Do you find beyond a reasonable doubt there's a
17 probability. Do you understand that part?

18 A. Yes.

19 Q. Kind of the next phrase that you get to that's
20 undefined that I want to talk about is criminal acts of
21 violence. And when you get to criminal acts of violence,
22 again some people may say, well, I guess we'd all agree that
23 murder or that sexual assault, that that's a criminal act
24 of violence. And probably most people would agree that any
25 violence committed on another person would be a criminal act

1 that?

2 A. Yes.

3 Q. And you would hold the State to our burden. You'd
4 make us prove our case to you beyond a reasonable doubt?

5 A. Yes.

6 Q. Now, let's assume that you get there, and you go
7 ahead and you prove -- and the State proves the case to you
8 beyond a reasonable doubt and we get on to the punishment
9 phase, and the first question that you're going to get is this
10 probability question. And if you want to take a second just
11 to read back over that question again.

12 A. Uh-huh.

13 Q. And do you remember that question?

14 A. Yes, I do.

15 Q. Now, with regard to that question, first of all, a
16 couple of things, there's a lot of terms in there that are
17 undefined.

18 A. Uh-huh.

19 Q. And I may say that I -- it means this -- can be
20 interpreted this way or it can be interpreted that way. The
21 defense could get up and say it can be interpreted a different
22 way, but the bottom line is it's up to you, as a juror, to
23 decide what that means to you and whether or not, in this
24 particular case, the State has proved it to you.

25 A. Uh-huh.

1 of violence.

2 Some people may say if I take my baseball bat and
3 bang up someone's car, that's a criminal act of violence. Do
4 you see how that can be interpreted --

5 A. Yes.

6 Q. -- by the jury?

7 And how would you interpret criminal acts of
8 violence?

9 A. Physical against another person, I guess. I mean,
10 to go in and steal something, I mean, that's criminal, but I
11 don't say it's necessarily violent.

12 Q. How about destruction of property?

13 A. Possibly.

14 Q. How about drug dealing? Some people may say, well,
15 dealing drugs that's not really -- that doesn't involve any
16 violence. Somebody might take the position, well, putting
17 drugs in your body. Obviously that's doing violence to your
18 body, and it could have destructive, violent effects somewhere
19 down the road. So, that's another crime that people could see
20 both ways; yes, it could be violent or no, it couldn't. How
21 do you see it?

22 A. I see it kind of as a sickness, and it could lead to
23 violence. It's a habit-forming thing that's a sickness to
24 me, and it has violence that rotates around it sometimes,
25 so...

1 Q. And with regard to the last word we kind of get to
 2 that's undefined, and it's ambiguous, and it can be
 3 interpreted different ways by different people is that last
 4 word "society." Granted when you get to this question, it
 5 doesn't ask will the defendant be a continuing threat to the
 6 prison society? It doesn't limit itself to prison. It
 7 doesn't ask will the defendant be safe -- can he be safely
 8 locked up in jail. It doesn't ask if society is safe if he
 9 remains in jail. It just uses the word society. So can you
 10 understand how that can be interpreted to mean -- it could
 11 include the prison population, but it could mean outside just
 12 walking down the street. It could be driving a school bus.
 13 Is he safe driving a school bus or working in the ice cream
 14 store where your kids go to get ice cream. It could be
 15 outside society. Do you see how that can be seen both ways?
 16 **A. Actually, until the other day I thought of that as**
 17 **being in the outside world. I really didn't even think about**
 18 **prison society.**
 19 Q. Okay. And with regard to that question, as I told
 20 you, the burden of proof is on us, and we have to prove that
 21 to you beyond a reasonable doubt. And if you answer that
 22 question yes, and it would take all 12 jurors to say yes,
 23 you're still in the process of assessing a death sentence; do
 24 you understand that?
 25 **A. Yes.**

1 Q. If ten or more jurors say no, we do not think
 2 this is what we call the future danger question -- we don't
 3 think he's a future danger, then it's an automatic life
 4 sentence; do you understand that?
 5 **A. Yes.**
 6 Q. And does that seem fair to you?
 7 **A. Yes.**
 8 Q. Okay. If you get to that point -- you found him
 9 guilty of capital murder, but you get to this point in the
 10 trial and ten or more jurors decide, you know what, we do not
 11 think he's a future danger, automatic life sentence.
 12 **A. It they prove that he -- that the murder was done by**
 13 **that person?**
 14 Q. Yes.
 15 **A. I don't know. I just can't really say because I**
 16 **don't -- I've never really thought about it, and I don't know**
 17 **of any evidence or -- do you know what I'm saying?**
 18 Q. Okay.
 19 **A. I've never really had a thought on it.**
 20 Q. Let me ask you this: When you get to that question,
 21 other than the facts of the crime itself, because obviously
 22 you can take that into consideration, the actual murder
 23 itself -- when you get to punishment phase, that's when
 24 everything can come in as far as the defendant's good
 25 character, bad character, any crimes he might have committed

1 in the past, all that stuff comes in at the punishment phase.
 2 **A. Uh-huh.**
 3 Q. What type of thing would you be looking for to
 4 decide whether or not the Defendant would be a future danger?
 5 **A. Maybe past history.**
 6 Q. What if the State failed to prove to you -- we just
 7 could not prove to you that he would be a danger in the
 8 future?
 9 **A. It would depend on -- you're saying -- and the other**
 10 **evidence proved that he was guilty of this?**
 11 Q. Right. Could you answer that question no if we
 12 failed to prove to you beyond a reasonable doubt that he was a
 13 danger in the future?
 14 **A. I don't know.**
 15 Q. Well, let's take a couple of different situations.
 16 Mr. Schultz on Tuesday kind of told you about the situation --
 17 let's say you have a person whose child was killed, and
 18 because of some loophole or legal technicality the murderer
 19 got off. And that parent became so upset, broke into that
 20 person's house, killed them. That's capital murder.
 21 **A. Uh-huh.**
 22 Q. And when you get to the punishment phase, and you
 23 get to that question, he's got no other criminal history,
 24 hasn't done anything else wrong, and we can't prove to you
 25 he's a future danger, can you see a situation where you might

1 be able to answer that question no?
 2 **A. And say a life sentence?**
 3 Q. By saying no, you would be giving a life sentence?
 4 **A. Yeah, I can see --**
 5 MR. GOELLER: Judge, I'm sorry. I think
 6 they're very close -- Ms. Falco is very close to trying to
 7 qualify her on that special issue with a very specific fact
 8 situation. It tends to cause problems if the juror thinks
 9 that's the only -- when she gets that specific and follows it
 10 up could you give life for that, I think we run the danger on
 11 trying to qualify her on a specific fact situation.
 12 THE COURT: Okay. I'll overrule the objection.
 13 Q. BY MS. FALCO: Let me ask you this, Ms. Williams.
 14 Could you keep an open mind and hold us to our burden and mak
 15 us prove to you that they are a future danger before you
 16 answered that question yes?
 17 **A. I would try to the best of my ability.**
 18 Q. And could you envision a situation, and may only be
 19 one time out of hundred. I mean, you may be stronger on
 20 punishment than the juror sitting next to you. You may be
 21 more likely to give the death penalty than the person sitting
 22 next to you, but can you think of a situation where you can
 23 answer that question no?
 24 **A. I don't know.**
 25 Q. Okay. And when you're telling me I don't know --

- 1 **A. Maybe I'm not completely understanding what you're**
 2 **trying to ask me. Sorry.**
- 3 **Q. Okay. As we explained to you, it's not an**
 4 **automatic death penalty situation --**
- 5 **A. Right.**
- 6 **Q. -- as your juror questionnaire indicated. It's got**
 7 **to be a step-by-step --**
- 8 **A. It's two parts.**
- 9 **Q. When we get to this question, if we don't prove --**
 10 **is there any scenario that you can think of that you would**
 11 **not -- that you could answer that question no, the defendant**
 12 **was not a future danger?**
- 13 **A. Is there any circumstance I could think of?**
- 14 **Q. Yes.**
- 15 **A. I don't know how to answer that. I mean, I would**
 16 **say I would listen to all the evidence and history and --**
- 17 **Q. And that's what I'm asking you is, could you keep**
 18 **an open mind? Could both sides -- and it goes back to both**
 19 **sides have a shot at a life sentence or a death sentence.**
 20 **Just because the Defendant has been found guilty of capital**
 21 **murder, you're not going to automatically say death, and**
 22 **answer the questions in such a way that result in a death**
 23 **sentence?**
- 24 **A. No. I wouldn't automatically think like that.**
- 25 **Q. And would you listen to all the evidence and fairly**

- 1 **answer that first question regarding future dangerousness**
 2 **before you answer that yes or no?**
- 3 **A. Yes.**
- 4 **Q. And it would not be an automatic thing for you to**
 5 **just say yes because you found him guilty of capital murder?**
- 6 **A. Right.**
- 7 **Q. With regard to that first question regarding**
 8 **probability -- first of all, you said you have a nursing**
 9 **background. You've been a nurse for several years; is that**
 10 **correct?**
- 11 **A. Yes.**
- 12 **Q. And obviously you work with doctors on a regular**
 13 **basis?**
- 14 **A. Yes.**
- 15 **Q. How about psychiatrists or psychologists, do you**
 16 **work with them on a regular basis?**
- 17 **A. I have in the past.**
- 18 **Q. What is your opinion of them regarding if they gave**
 19 **courtroom-type testimony? Do you think it's important? Do**
 20 **you think it's not so important?**
- 21 **A. I think it's important.**
- 22 **Q. In regard to this question, what if it's regarding**
 23 **the Defendant's good behavior or bad behavior? It's not**
 24 **talking about diagnosing a brain disease. It's not talking**
 25 **about diagnosing a brain tumor, just strictly to talk about**

- 1 **the Defendant's good behavior or bad behavior. Do you think**
 2 **that would be important to the jury?**
- 3 **A. If there's some kind of psychiatric background**
 4 **maybe, you know, I would think it would be important.**
- 5 **Q. Okay. Do you think that you, as a juror listening**
 6 **to the facts of the case, you saw all the facts of the murder.**
 7 **Now, you've heard all the evidence regarding the Defendant's**
 8 **background, do you think you, as a juror, could make that**
 9 **decision whether or not there's a probability they're a future**
 10 **danger?**
- 11 **A. Individually?**
- 12 **Q. Yes.**
- 13 **A. No, I don't think I could make that decision**
 14 **totally.**
- 15 **Q. Why not?**
- 16 **A. I mean, it would just depend on the evidence and**
 17 **history and --**
- 18 **Q. And after you heard the evidence and you heard the**
 19 **history, do you think you could make that decision?**
- 20 **A. Yes.**
- 21 **Q. Do you feel like you would need the help of a**
 22 **psychiatrist or psychologist to make that decision?**
- 23 **A. No.**
- 24 **Q. Do you feel like just sitting alone listening to**
 25 **everything, evaluating everything on your own you could make**

- 1 **that decision?**
- 2 **A. As to whether they would need the death penalty?**
- 3 **Q. Just to answer that question whether or not they're**
 4 **a future --**
- 5 **A. Oh, a threat to society?**
- 6 **Q. Yeah.**
- 7 **A. I don't know if you say I'd been qualified to do**
 8 **that. I mean, I'm not sure. It would just depend, like I**
 9 **said, on the history of a person.**
- 10 **Q. What would make you think you were not qualified?**
- 11 **A. If I didn't have enough -- if there wasn't enough**
 12 **evidence about -- a person's history tells a lot about**
 13 **themselves, I guess.**
- 14 **Q. But do you think you could answer that question**
 15 **based on whatever you hear, and if we don't -- let me ask you**
 16 **that. Do you think you could answer that question based on**
 17 **the evidence you hear?**
- 18 **A. Yes.**
- 19 **Q. Because it's either going to be yes, or it's going**
 20 **to be no.**
- 21 **A. Yes.**
- 22 **Q. If there's not sufficient evidence, if we don't**
 23 **prove to you sufficient evidence that he's going to be a**
 24 **future danger, what's your answer to that question going to**
 25 **be?**

- 1 A. **If you don't prove enough evidence?**
 2 Q. Right.
 3 A. **And he was found guilty?**
 4 Q. Right.
 5 A. **I'd have to really kind of think about it. I don't**
 6 **know.**
 7 Q. If there's -- if we don't prove to you beyond a
 8 reasonable doubt he's a future danger, what would your answer
 9 be to that question?
 10 A. **That you haven't proved it. I don't know. I don't**
 11 **know if sitting in a prison cell for the rest of your life is**
 12 **punishment as well, you know, so, I mean...**
 13 Q. But without regards -- purely regarding it's a
 14 yes-no question, if we don't prove to you beyond a reasonable
 15 doubt that he's a future danger is your answer yes or no?
 16 A. **No.**
 17 Q. Okay. And what does a no answer mean in
 18 relationship to that question?
 19 A. **Not a threat to prison society.**
 20 Q. And what does that mean in regard to whether that's
 21 a death sentence or a life sentence?
 22 A. **That I guess --**
 23 Q. It would be an automatic life sentence?
 24 A. **Right, sure.**
 25 Q. And if that's what the evidence showed, could you

- 1 answer that question in that way?
 2 A. **Yes.**
 3 Q. Assuming you answered that question yes, you did --
 4 the jury did find -- all 12 of you unanimously found that
 5 beyond a reasonable doubt that the defendant was a future
 6 danger, you're going to move on to the second question.
 7 With regard to the second question go ahead and take
 8 a moment to read that. Do you remember that question?
 9 A. **Yes.**
 10 Q. Now, if you get to this question, obviously this is
 11 asking you to take into consideration everything you've heard
 12 in the trial everything in the guilt/innocence phase,
 13 everything in the punishment phase, and it's asking is there
 14 sufficient evidence that mitigates and that warrants a life
 15 sentence. Do you understand that question?
 16 A. **Yes.**
 17 Q. It's not time for the juror to ask, I don't want him
 18 to get the death penalty so I'm going to answer in such a way.
 19 It's got to be based on facts. It's got to be based on the
 20 evidence, and if there's sufficient evidence to warrant a life
 21 sentence, then that answer should be yes, there is sufficient
 22 evidence that mitigates. Does that make sense to you?
 23 A. **Yes.**
 24 Q. Now, with regard to this last question -- what does
 25 the word "mitigation" mean to you?

- 1 A. **Does it mean to lessen?**
 2 Q. Exactly. Some people might say to reduce the
 3 defendant's morale blame worthiness, or to lessen the -- to
 4 lessen. That's a good word.
 5 With regard to Question Number 2, what some jurors
 6 may consider mitigating or lessen, other jurors may consider
 7 aggravating. An example of that would be drugs. Some people
 8 may say, well, he was on drugs at the time he did it. He
 9 wasn't in his right frame of mind. He'd have never done it if
 10 he wasn't high on cocaine. You might say that's mitigating.
 11 Other people might say, well, we've grown up our whole lives
 12 learning that drugs are bad, shouldn't do drugs, and the
 13 reason you shouldn't do drugs is because stuff like that
 14 happens. So another juror might say that's aggravating. It's
 15 up to the jury to decide. You're not going to get a list of,
 16 here's mitigating evidence, here's aggravating evidence. It's
 17 going to be up to the jury to decide if there's sufficient
 18 evidence that mitigates. Do you understand that?
 19 A. **Yes.**
 20 Q. And you understand there's a difference between
 21 evidence that may explain behavior. You may say well, that
 22 explains it, but it doesn't excuse it. It doesn't mitigate
 23 it. It doesn't lessen it. Does that make sense to you?
 24 A. **Yes.**
 25 Q. With regard to that question, it focuses -- I guess

- 1 there's room where it says, considering all the circumstances,
 2 I guess there's room there to consider the victim's character,
 3 but the rest of the question focuses on the Defendant's
 4 background, the Defendant's character. And in that regard,
 5 how important is the victim or the deceased's character to
 6 you?
 7 A. **It's not important.**
 8 Q. So it doesn't matter. In your eyes is a life a
 9 life?
 10 A. **Yes.**
 11 Q. And in your eyes does it matter who the Defendant
 12 killed as opposed to just the fact that he did kill?
 13 A. **Yeah, it doesn't matter.**
 14 Q. And who the victim is, does that make the Defendant
 15 any better or worse by who he killed?
 16 A. **No.**
 17 Q. With regard to that question in particular, there's
 18 no burden of proof on either the State or the defense.
 19 There's no burden of proof at all. To answer that question no
 20 would take all 12 jurors to agree. All 12 jurors agree, and
 21 the only way you get here is if you already found the
 22 Defendant guilty, you already found -- 12 of you agree he's a
 23 future danger, and now you're at this question. If all 12 of
 24 you agree, no, there's no mitigating evidence and you answer
 25 that question no, that results in a death sentence.

1 A. Uh-huh.
 2 Q. Now, if ten or more jurors decide yes, there's
 3 sufficient mitigating evidence, that automatically results in
 4 a life sentence. Do you understand that?
 5 A. Yes.
 6 Q. Knowing that and knowing how your answers dictate
 7 either a life sentence or a death sentence, could you keep an
 8 open mind in evaluating the evidence and listen to all the
 9 evidence before you answer that question yes or no?
 10 A. Yes.
 11 Q. And you wouldn't just automatically, because you
 12 found the defendant guilty, automatically answer the first
 13 question and the second question in such a way that would
 14 result in a death sentence?
 15 A. Right, I would not.
 16 Q. And both without knowing any of the evidence at this
 17 point, both the State and the defense have a fair shot at
 18 either getting a life sentence or death sentence depending on
 19 what the facts may be?
 20 A. Yes.
 21 Q. And since you've had some time for reflection, also
 22 on your questionnaire on the second page you put, "I believe
 23 that life confinement in prison is never appropriate in any
 24 murder case." Now that you understand how it works regarding
 25 capital murder and the process you have to go through and the

1 steps and we've talked about this, could you follow the law
 2 and could you answer the questions fairly?
 3 A. Yes.
 4 Q. And could you envision a circumstance in which a
 5 life sentence could result if you found the Defendant guilty
 6 of capital murder?
 7 A. If they were found guilty -- found a circumstance
 8 where they could get a life sentence?
 9 Q. Yes.
 10 A. Possibly.
 11 Q. Okay. Another thing I want to talk about goes a
 12 little bit back to the burden of proof. And again, the burden
 13 of proof is on us, and if we prove to you the case beyond a
 14 reasonable doubt, we're entitled to a guilty. If we don't
 15 prove to you the case beyond a reasonable doubt, the Defendant
 16 is entitled to an acquittal or not guilty. Now, obviously the
 17 Defendant has a Constitutional right, a Constitutional
 18 privilege not to testify, and that's his choice. It's between
 19 him and his lawyers to decide whether or not to testify. And
 20 based on the Constitution and the laws, a person cannot be
 21 forced to testify.
 22 And I know in your questionnaire you stated you
 23 would like them to have to take the stand, and that's okay.
 24 Again, that's another opinion that that's okay we all -- I
 25 think it's part of human nature to hear both sides

1 of the story. We want to know what they have to say, and
 2 that's okay as long as you can follow the law, and if you're
 3 instructed by the judge to not take into consideration the
 4 Defendant's failure to testify, could you do that?
 5 A. Yes.
 6 Q. And it's kind of like -- I mean, if you look at it
 7 from your perspective, and assuming you're the defendant in
 8 this situation, and I'm accusing you of a crime, and you're
 9 saying well, prove it -- well, prove I did it. And I try to
 10 prove it, and I can't do it, you've got the right just to sit
 11 there and not put any evidence on to incriminate yourself and
 12 just say you didn't prove it. That's the end. So, you
 13 understand why we have that in place?
 14 A. Yes.
 15 Q. And if the judge were to instruct you to follow the
 16 law and not take in the Defendant's failure to testify against
 17 him, you could do that?
 18 A. Yes.
 19 Q. And regardless of whether or not you feel like we've
 20 proved our case -- if we didn't prove our case to you, that's
 21 a not guilty. If we proved our case to you that's a guilty,
 22 regardless of whether or not the Defendant testifies?
 23 A. Yes.
 24 Q. Does that seem fair to you?
 25 A. Yes, it does.

1 Q. One thing I want to just briefly touch on,
 2 Ms. Williams, and again because this is one on one, and we
 3 don't ask any of these questions to embarrass you or put you
 4 in a bad spot, but just to explore all of your thoughts and
 5 your feelings and your opinions regarding the criminal justice
 6 system, things like that, and I noticed on here that you have
 7 two family members that have had experience with the criminal
 8 justice system?
 9 A. Yes.
 10 Q. And with regard to that, do you feel like -- I
 11 guess, first of all, was one of them your sister?
 12 A. Yes.
 13 Q. And with regard to your sister do, you feel like she
 14 was treated fairly by the system?
 15 A. Yeah. She had to pay the -- pay for what she did, I
 16 guess. So, I think so, yes.
 17 Q. And you don't hold any grudge against the State for
 18 prosecuting your sister?
 19 A. No.
 20 Q. And with regard to your brother, same situation. Do
 21 you feel like he was treated fairly by the system?
 22 A. Yes.
 23 Q. And you don't hold any grudge against the State for
 24 his being prosecuted?
 25 A. No.

1 Q. Now, one thing you did mention, Ms. Williams, is you
2 you have a child that's 11. Obviously if you have a child
3 that's ten or under, that exempts you from jury duty, but your
4 child just misses it by one year. But apparently you have a
5 child with special needs; is that my understanding?

6 A. Yes.

7 Q. How would that impact you if you had to serve on a
8 jury that lasted a couple of weeks?

9 A. **My major concern is I don't really like him walking**
10 **home from school. I mean, he has ADD so that's my only**
11 **concern. I'm not from here, so I just have one relative that**
12 **can pick him up, and my teen-age son if he's not working,**
13 **so...**

14 Q. Could you -- if you were selected for this jury and
15 you had to serve and -- granted, if you were picked today it
16 would be a couple of weeks before you had to come back when
17 the trial started, but assuming the trial lasted two or three
18 weeks, could you make arrangements for those two or three
19 weeks for your child to come home from school?

20 A. Yes.

21 Q. Would you be frustrated at either the State or the
22 defense for having to serve on jury duty knowing that you had
23 that child-care situation?

24 A. No.

25 Q. Okay. You're not going to let an innocent man get

1 convicted, or a guilty man walk free because you're frustrated
2 at having to be here?

3 A. No.

4 Q. So with regard to your questionnaire, Ms. Williams,
5 is it fair to say that you filled this out before you
6 completely understood the law, but -- and like I said, it's
7 okay to have those feelings. But now that it's been explained
8 to you do you feel like you could be fair to both sides in
9 this case?

10 A. Yes.

11 MS. FALCO: Thank you, Ms. Williams. Pass this
12 juror.

13 THE COURT: All right, Mr. High.

14 MR. HIGH: Thank you, Judge.

15 CROSS-QUESTIONS

16 BY MR. HIGH:

17 Q. Good afternoon, Ms. Williams. My name is Don High,
18 just like it sounds, up high in the air, H-I-G-H. And I know
19 you must feel uncomfortable up there sitting on the witness
20 stand. I know I would. Even though I spend a lot of my days
21 in the courtroom, I would feel uncomfortable up there, too.
22 So I'm going to take it a little bit slower if you don't mind.
23 We're going to go through some of the same issues you just
24 discussed with Ms. Falco, and I want to start off by asking
25 you some questions about your background.

1 A. Sure.

2 Q. I notice that you were born in Germany?

3 A. Yes.

4 Q. And are you an Army brat, by any chance?

5 A. Air Force.

6 Q. Air Force. Okay. That's a big base over there,
7 isn't it?

8 A. **I was only six weeks olds. We came to -- that's all**
9 **I was over there, so I wouldn't know.**

10 Q. And you're from a very large family?

11 A. Yes.

12 Q. How many brothers and sisters?

13 A. **Seven brothers and two sisters.**

14 Q. And what did your father do?

15 A. **He was a computer programmer.**

16 Q. Have you lived all over, or where all have you lived
17 in your life?

18 A. **Mainly, myself, in Wichita Falls. I got stuck**
19 **there.**

20 Q. I know Wichita Falls. I've got family there. Still
21 do, as a matter of fact.

22 Is he connected with the service in Wichita Falls?

23 A. **He retired from there.**

24 Q. Is that Lackland?

25 A. **It's Shephard.**

1 Q. That's right, Shephard.

2 Okay. So is that home for you?

3 A. Yes, it is.

4 Q. And I notice that your father is older, and he's in
5 a center of some sort?

6 A. **He's in a nursing home.**

7 Q. Is your mother still living?

8 A. **No. She died this past -- this year.**

9 Q. And you take care of your father's finances?

10 A. Yes.

11 Q. How often is that? how often do you have to go see
12 him?

13 A. **Well, I'd like to go see him every couple of months,**
14 **you know? But with children, you know, the sandwich effect,**
15 **I can't always get away, so...**

16 Q. Is that going to create a problem if you're chosen
17 to sit on this jury in this last mid-October, maybe through
18 October?

19 A. **Only if there was an emergency with him or**
20 **something, because I'm the power of medical attorney, and that**
21 **would be the only thing I would foresee.**

22 Q. Fair enough. Have you ever served on a jury before?

23 A. **No, I have not.**

24 Q. Is this your first experience?

25 A. Yes.

- 1 Q. And you drew the capital murder card, didn't you?
- 2 A. Yes.
- 3 Q. Were you shocked on Tuesday when the judge told you
- 4 we're talking about a capital murder case?
- 5 A. I really was.
- 6 Q. Shook you up a little bit?
- 7 A. Yes.
- 8 Q. Of course, we can't go into the facts really of this
- 9 case, and I know that puts you at a disadvantage because all
- 10 of us have a pretty good idea what the facts are. You have no
- 11 idea what the facts are. The law says it's inappropriate for
- 12 us to discuss the facts with you now. That's why we can't,
- 13 and yet we have to ask you all these questions, and you've got
- 14 to give us answers. And I apologize for that, but that's the
- 15 way it is.
- 16 And you had to answer this questionnaire, too, and
- 17 that took a period of time. How long did it take, about an
- 18 hour, to write through this questionnaire?
- 19 A. I don't really remember. It was long, though,
- 20 because I had been up since 3 a.m.
- 21 Q. You had worked the night before?
- 22 A. The day before that, trying to get back on my day
- 23 shift.
- 24 Q. Okay. Do you now work the day shift?
- 25 A. No. I work nights, only three a week, so, you know,

- 1 you're kind of trying to get back in the swing of things when
- 2 you work off.
- 3 Q. Okay. Tell us more about that. You have a rotating
- 4 schedule?
- 5 A. Actually, it's just three 12-hour shifts a week, and
- 6 I can self-schedule myself.
- 7 Q. So would be there an occasion you'd work a night
- 8 shift and be -- just tell us about that.
- 9 A. And then be what?
- 10 Q. Would you have to work all night, say, this week?
- 11 Would it be a possibility if you were on the jury during the
- 12 trial that you'd have to work all night and come to court the
- 13 next day?
- 14 A. No. They -- people have gotten off for jury duty
- 15 before.
- 16 Q. Gotten off work?
- 17 A. Yes, gotten off work.
- 18 Q. So that wouldn't be a problem?
- 19 A. As far as I know. There's kind of a nursing
- 20 shortage, so they may not like it.
- 21 Q. I understand. And you work at Medical Center of
- 22 Plano?
- 23 A. Correct.
- 24 Q. And what kind of nursing do you do?
- 25 A. Intensive care.

- 1 Q. Like post-op-type nursing?
- 2 A. Just open hearts and trauma, whatever comes our way.
- 3 Q. All right. Did you get a nursing degree?
- 4 A. Yes.
- 5 Q. Where did you go?
- 6 A. **Midwestern State in Wichita Falls.**
- 7 Q. My cousin went there, so I'm familiar with the
- 8 program.
- 9 I noticed you finished the 11th grade in high
- 10 school. So, what, did you get your GED?
- 11 A. Yes, I did.
- 12 Q. And then went on into the nursing program there at
- 13 Midwestern State, or did you have to take a year --
- 14 A. **Actually, I went to LVN school first. It was a year**
- 15 **program at the hospital, and then I did my RN after that.**
- 16 Q. I see. And how long have you been nursing?
- 17 A. Since 1983.
- 18 Q. So as a nurse working in the health field, human
- 19 life is very important to you. Would you say it's sacred?
- 20 A. **In the environment that I'm in, yes. Yeah.**
- 21 Q. Any other answer wouldn't be right. It would be
- 22 very inconsistent, right, with the kind of work that you do?
- 23 A. Right.
- 24 Q. Does the kind of work you do influence your views
- 25 with respect to murder or capital murder?

- 1 A. No.
- 2 Q. No?
- 3 A. **I mean, I really have never really thought about it.**
- 4 Q. Okay. But you're having to think about it a lot
- 5 this week?
- 6 A. Yeah, I guess I am.
- 7 Q. And when you filled out this questionnaire --
- 8 A. Uh-huh.
- 9 Q. -- the very first sentence at the top says, you have
- 10 taken an oath to truthfully answer the following questions?
- 11 A. Uh-huh.
- 12 Q. Do you remember seeing that at the top of the
- 13 questionnaire?
- 14 A. Yes.
- 15 Q. And starts off pretty quick with the death penalty.
- 16 I'm sure that was a shock.
- 17 A. Uh-huh.
- 18 Q. And it says, "Are you in favor of the death penalty?
- 19 Yes. Please explain your answer. I believe an individual
- 20 should suffer severely for taking another one's life." And
- 21 that's your own words, correct?
- 22 A. Yes.
- 23 Q. Now, I mean, I've got a tremendous imagination,
- 24 Ms. Williams, but are you talking about someone should be
- 25 burned at the stake or --

- 1 A. No.
- 2 Q. -- boiled in hot oil or tortured, or what do you
3 mean by "suffer severely"?
- 4 A. **Just suffer the consequences. I don't even really**
5 **remember writing, like, suffer severely. You know, if they're**
6 **proven to be guilty and there's enough evidence and**
7 **background -- I don't know. I guess they should pay for what**
8 **they did.**
- 9 Q. Okay. And I'm not quarreling with you.
- 10 A. Uh-huh.
- 11 Q. I mean, if you feel that way, that's absolutely
12 okay.
- 13 A. Uh-huh.
- 14 Q. And you may think about this some more this week,
15 and decide, hey, look I wrote the right thing. I absolutely
16 meant what I said "suffer severely."
- 17 I guess my job right now, since I represent this
18 young man, is to get to the bottom of what it is you mean by
19 that. When you say suffer severely, I guess does that mean he
20 should die?
- 21 A. **I guess the only way I can answer that is if he was**
22 **proven guilty and background, like I said -- like you said, I**
23 **don't know anything about any evidence or the case, so I'm not**
24 **saying -- you're asking me if he should die. I don't know**
25 **anything about what's -- you know, what has taken place so...**

- 1 Q. Let me go to the next section here. You didn't know
2 anything about the case --
- 3 A. **Right.**
- 4 Q. -- when you filled out this questionnaire.
- 5 A. **Uh-huh.**
- 6 Q. But they gave you a series of answers, and it says
7 which of the following statements best represents your
8 feelings about the death penalty, and it says circle one. And
9 you circled the first one, and it says, "I believe the death
10 penalty should be imposed in all capital murder cases."
- 11 A. **Uh-huh.**
- 12 Q. And you circled that one. Do you recall doing that?
- 13 A. **Yes.**
- 14 Q. And you didn't know anything about the facts in this
15 case really, but it asks you what you thought, and that's what
16 you thought, right?
- 17 A. **Yes.**
- 18 Q. Okay. And I know you've had a series of questions
19 for Ms. Falco here, but, you know, if you were -- if I were to
20 ask you how you really felt about capital murder, and that's
21 what we're trying to do here. We're trying to ask you how
22 really feel, because if we don't find out then you're going to
23 wind up on the jury, and it's going to be too late for us to
24 do anything about it.
- 25 A. **Right.**

- 1 Q. We've got to know now how you really feel.
- 2 A. **Sure.**
- 3 Q. Is this how you really feel when you circled this,
4 and you've had time to think about it and you filled out your
5 answer? Is that how you really feel, "I believe the death
6 penalty should be imposed in all capital murder cases"? Is
7 that how you really feel?
- 8 A. **If you want to honestly know how I feel?**
- 9 Q. I want to honestly know.
- 10 A. **I'm not being dishonest. I'm just saying from my**
11 **experience this week, I'm trying to be fair. But to see a**
12 **young man sitting there, it's a little difficult to say maybe**
13 **if I -- you know what I'm saying. If you think about the**
14 **death penalty, it's all realistic here, and I really never**
15 **thought about it before except for what you see on TV and**
16 **stuff, you know.**
- 17 Q. Well, I want you to take some time and think about
18 it because this is our time to interview you and find out if
19 you think -- I mean, when you filled this out and you signed
20 it --
- 21 A. **Yeah.**
- 22 Q. -- you took a position that you thought that it
23 should be imposed in all capital murder cases.
- 24 A. **Uh-huh.**
- 25 Q. And now we're faced with the dilemma of knowing

- 1 whether you could consider life in prison or only the death
2 penalty.
- 3 A. **Uh-huh.**
- 4 Q. Do you see what I'm asking?
- 5 A. **Yes.**
- 6 Q. And so I'm -- and I'm not arguing with you, and I'm
7 not -- I'm really not mad at you.
- 8 A. **Yeah.**
- 9 Q. I'm not upset with you. I guess, I would be upset
10 if I didn't find out the truth, if I didn't find out how you
11 really feel then I would be upset. So, there's no right or
12 wrong answer. We want to know how you feel. How do you feel?
13 Is this still your --
- 14 A. **Generically about the death penalty, or looking at**
15 **what I've seen this week? You mean, how do I feel now? I may**
16 **have changed the way I feel about some -- about it totally. I**
17 **don't know how to describe it. It's very difficult for me to**
18 **see a young person sitting there, and that's what y'all are**
19 **looking at to think --**
- 20 Q. Let me give you a little more information then.
- 21 You've already been provided this when we were in that big
22 room several days ago. Seems like it was forever, but you
23 know that the indictment says there's allegations of robbery.
24 There's allegations of burglary.
- 25 A. **Uh-huh.**

1 Q. And there's also allegations of a killing of two
2 people; do you remember that?

3 A. Uh-huh, yes.

4 Q. Okay. Not just one person, but two people. And
5 you heard Mr. Schultz talk about the ways that it goes from
6 being murder to capital murder.

7 A. Uh-huh.

8 Q. You know, murder plus, murder with robbery or murder
9 with burglary or murder with two people, okay. And I can't go
10 much past that; do you understand?

11 A. Uh-huh.

12 Q. But let's talk about an indictment, the scenario
13 where you're going to hear evidence of two people being
14 killed. What about in that kind of case? I mean, would you
15 impose the death penalty in that situation? Two people
16 killed, is that -- is death penalty the only answer, or could
17 you consider a life sentence?

18 A. I would have mixed feelings about it depending on
19 what -- I mean, I guess I would have mixed feelings on it.
20 Maybe I couldn't be completely honest about it. I don't know.
21 It's very difficult for me. I know that every situation is
22 different, but I reflect back saying -- seeing a young person
23 like that sitting there that's about the same age, or looking
24 as my son, I don't know. I don't know how I would feel about
25 that, or if I could be honest and fair about it, maybe.

1 Q. Okay. I know you're having a real struggle.

2 A. I am.

3 Q. I know you are because I can see it on your face.

4 A. Yes.

5 Q. And I know that you probably felt fairly strongly
6 about this issue because you circled number one just three
7 days ago, and you're -- you probably circled it fairly quickly
8 and moved through the questionnaire, and you answered these
9 other questions. And now you're confronted with a young man,
10 and now you're having to really think this through.

11 But, you know, we're talking about a situation where
12 there's a multiple killing, where two people are dead, and you
13 being a nurse, you know about life and you know about death.

14 A. (Nods heads.)

15 Q. If you were to sit on the jury and you hear this
16 kind of evidence or -- you know, I mean are you going to --
17 are you going to at all be open to assessing a life sentence,
18 or -- because I understand you want to be fair. We all want
19 to be fair. I sure do, but there are situations where I can't
20 be fair. I wouldn't be right for certain cases. I've been
21 the victim of crime myself. If somebody were to break into my
22 house, you wouldn't want me on that jury --

23 A. No.

24 Q. -- because it's happened to me.

25 A. Uh-huh.

1 Q. Okay. So I guess I'm -- you want me to ask you
2 again, or do you want me to move on to something else? Do you
3 want a little time to think about it?

4 A. I would say probably, maybe I couldn't be fair.
5 That's the best answer I can give you.

6 Q. In other words, you'd tend to lean towards giving
7 the death penalty and probably would?

8 A. No. I'm not saying that at all. I'm saying --

9 Q. You're saying you couldn't be fair?

10 A. I'm just saying -- what my feelings on the whole
11 situation is it's very difficult for me to see a young person
12 in the situation that he's in. That's -- you know, so I
13 might have a hard time saying, yeah, let's put him to death.
14 That's what I'm saying. Is that what you're asking?

15 Q. Not really, but are you saying now that you'd be
16 more likely to give the life sentence as opposed to the death
17 penalty?

18 A. Well, I'm saying maybe I would have a hard time
19 giving a death sentence to someone that's young.

20 Q. So young?

21 A. Pardon?

22 Q. So young, or looks young, anyway?

23 A. Yes.

24 Q. Let's go to the next section. It says life
25 confinement in prison. Who knows what that means, okay? We

1 have to accept it as what it means, life confinement, because
2 we really can't give you too much more instruction on that.
3 But when you answered this questionnaire you said I believe
4 life confinement in prison is never appropriate in any murder
5 case. Do you recall that?

6 A. Yes.

7 Q. Okay. And one thing I find significant about that
8 answer, or that question is it doesn't talk about a capital
9 murder case. It says a murder case, even if it's just
10 straight-running murder where you can't get the death penalty.
11 Have I lost you?

12 A. Yes.

13 Q. Okay. Do you remember we said that it's got to a
14 killing of two people. It's got to be murder plus with
15 robbery or burglary or some other crime associated with it.
16 You've got to kill a cop to make it capital.

17 A. Okay.

18 Q. Okay, murder plus.

19 A. (Nods head.)

20 Q. If you don't do one of those instances, if -- say I
21 just killed my partner here -- sometimes I feel like that
22 but -- you know, if I don't have murder plus, if I'm not
23 committing some other felony against him, you know, then it's
24 just straight-running murder, and I can't get the death
25 penalty for that.

- 1 MR. GOELLER: Unfortunately.
- 2 Q. BY MR. HIGH: That's not a real exact definition,
- 3 but it's pretty close of the difference between murder and
- 4 capital murder. But here you say I believe that life
- 5 confinement in prison is never appropriate in any murder case.
- 6 And I assume when you answered this that you meant in any
- 7 murder case the person should get the death penalty. Is that
- 8 what you meant when you answered this?
- 9 A. Yes.
- 10 Q. If you kill somebody, then, by golly, they should
- 11 get the death penalty?
- 12 A. Yes.
- 13 Q. Okay. What makes us concerned from this side is we
- 14 see no life confinement, and we see death penalty imposed in
- 15 all capital murder cases. Do you see why I'm really pressing
- 16 you on these issues?
- 17 A. Yes, uh-huh.
- 18 Q. And I hope I'm not getting too close or too tight
- 19 with you because I sure don't want to upset you. I've really
- 20 got to understand what you mean. We're talking about a murder
- 21 case. We're talking about a double homicide?
- 22 A. Uh-huh.
- 23 Q. Again, is life confinement out of the question for
- 24 you?
- 25 A. No. No.

- 1 Q. Okay. So you've changed your position between
- 2 Tuesday and now?
- 3 A. I've thought about it a little bit more. Did I not
- 4 fill that questionnaire out before -- I started filling it out
- 5 before I knew anything because when I got to the end of the
- 6 questionnaire, I'm -- whatever it said -- I'm like, so I've
- 7 thought about it a lot more, I guess.
- 8 Q. I think that's fair. I think you guys filled out
- 9 the questionnaire after the judge gave his overview. You
- 10 filled out the questionnaire, then you came back and then the
- 11 lawyers talked.
- 12 A. Uh-huh.
- 13 Q. And I'm sure you learned a whole lot -- probably
- 14 more than you ever wanted to know?
- 15 A. Yeah.
- 16 Q. So I assume that opened your eyes somewhat during
- 17 the discussions, and then being home and thinking about this
- 18 you thought about it and came today, right?
- 19 A. Yes.
- 20 Q. Okay. It says back here that criminal defense
- 21 attorneys are not always honest. I've got to ask you about
- 22 that.
- 23 A. Well --
- 24 Q. And I've known a few, too. I agree that can be
- 25 true. I've known a few. My partner in here -- my partner and

- 1 I, we take pride in the work that we do, and we try to be as
- 2 fair as we can be and as honest as we can be. We try to
- 3 zealously represent our clients, whether they're criminal
- 4 clients or any other kind of client because we -- we feel like
- 5 that's our job and that's what we're supposed to do. That's
- 6 what people have hired us to do. Have you had some dealings
- 7 with some criminal defense attorneys in the past that weren't
- 8 honest with you?
- 9 A. No. And the only reason why I probably said that is
- 10 because I don't know that much about lawyers and law, except
- 11 for what I've dealt with in the medical profession. But I
- 12 don't know whether -- I guess you could kind of reflect back
- 13 on the O J. case.
- 14 Q. Right.
- 15 A. Did he -- does the person you're defending -- I
- 16 guess they don't ever tell you anything, yeah, I did it, or,
- 17 no, I didn't. So I'm just saying are they dishonest
- 18 because -- I mean, are you doing your job by defending him,
- 19 but do you know if that person is guilty? See, I don't know.
- 20 That's what I'm saying.
- 21 Q. Well, I certainly can't answer that today.
- 22 A. That's what I meant by today.
- 23 Q. I wish I could answer that. I can't answer that
- 24 today. Obviously, we're put in some difficult situations
- 25 throughout our career. But also we take an oath to represent

- 1 our client --
- 2 A. Right.
- 3 Q. -- to the best of our ability, and also to uphold
- 4 and defend the laws of our state and U.S. Constitution.
- 5 A. Uh-huh.
- 6 Q. And obviously that's the job we have, and I guess
- 7 tried out for and got.
- 8 A. Uh-huh.
- 9 Q. Obviously, this is not the O.J. Simpson trial, and
- 10 this ain't California, either?
- 11 A. Right.
- 12 Q. We're going to be done before the year is over.
- 13 Probably before the next couple of months is over, so this
- 14 sure ain't the O.J. Simpson trial. And we're not going to be
- 15 playing this case to the media. I can assure you that.
- 16 A. Uh-huh.
- 17 Q. At the same time we're going to do everything we can
- 18 to help this young man. And I guess what I want to know from
- 19 you is if you sit on the jury, are you going to take this idea
- 20 into the jury box that, by golly, he's a criminal defense
- 21 attorney over there, and I can't believe a word he says. And
- 22 if he's speaking for that young man, well, that young man --
- 23 if he's lying, that young man is a liar. Do you see? I mean,
- 24 that's not really fair, is it?
- 25 A. No.

1 Q. Okay. All right. Let me ask you this: Even if you
2 do think -- let me digress just a minute. You clued me into
3 something a while ago and I forgot to ask you about it. I'm
4 sure in your profession you get a number of requests for
5 medical records. You get notices, maybe you might even be
6 requested for a deposition in a personal injury case. Lawyers
7 are wanting to know what the patient said, what they did, how
8 bad they're hurt, things like that?

9 A. Yes.

10 Q. I'm sure that somewhat jades your opinions of
11 attorneys?

12 A. No.

13 Q. It doesn't have anything to do with your perception
14 of attorneys? What did you mean when you said that earlier
15 about the work that you do?

16 A. **I can't remember what I said. Well, I mean, just**
17 **like -- I don't know. I don't know.**

18 Q. Okay. You understand we have a job to do?

19 A. **I understand that totally.**

20 Q. And that's to advocate and advance the position of
21 our client?

22 A. **Right.**

23 Q. What it boils down to is, can you be open-minded
24 with respect to Mr. Cantu's lawyers, as well as the lawyers
25 that the State of Texas puts in here and not hold it against

1 A. **Right.**

2 Q. It stays over there. It will stay over there
3 throughout the trial. It will never come over here. We don't
4 have the burden of doing anything, other than being here. Do
5 you understand that?

6 A. **Yes.**

7 Q. We don't even have to say anything, and along with
8 that -- what's part and parcel of that, probably you learned
9 this in civics in high school is, you have the right to remain
10 silent. And, of course, there's the Miranda warnings that you
11 hear on TV.

12 A. **Uh-huh.**

13 Q. Anything that you say and do say could be used
14 against you in a court of law.

15 A. **Uh-huh.**

16 Q. Obviously if you say anything in a court of law,
17 that can be used against you. That's fair enough, right?

18 A. **Yes.**

19 Q. So we don't have the burden, really, to do anything,
20 other than just be here and act orderly. Is that fair to say?

21 A. **Yes.**

22 Q. Do you understand me?

23 A. **Yes, I do.**

24 Q. Now, that's the way it is in any case, whether it's
25 a speeding ticket --

1 him that, you know, we just happen to be criminal defense
2 attorneys? Do you know what I'm saying?

3 A. **Yes, uh-huh.**

4 Q. And now that you've had time to think about that,
5 can you be fair to both sides?

6 A. **Yes.**

7 Q. And we can change your mind about that.

8 A. **I didn't mean any harm.**

9 Q. I understand, and I don't take it that way. I sure
10 don't.

11 Let's go to -- you make the comment in your
12 questionnaire, "If someone is accused of capital murder, he
13 should have to prove his innocence. Agree." And I realize
14 you don't live in the courtroom, and you didn't go to law
15 school --

16 A. **Right.**

17 Q. -- and you've never sat on a jury before?

18 A. **No.**

19 Q. Do you watch TV?

20 A. **Sure.**

21 Q. You've heard about the burden of proof?

22 A. **Uh-huh.**

23 Q. And Ms. Falco just went over it with you. The
24 burden of proof is -- it never shifts. They always have the
25 burden of proof. We never have the burden of proof.

1 A. **Uh-huh.**

2 Q. -- or you're charged with driving while intoxicated,
3 or robbery, murder, even capital murder. And this question
4 asks you about the most serious crime in the state, capital
5 murder.

6 The way you answered this question gives me pause
7 because you've shifted the burden of proof. You say if
8 someone is accused of capital murder, he should have to prove
9 his innocence. Do you see what you've done?

10 A. **Yes.**

11 Q. You've said it's up to us to come forward and prove
12 that we're innocent.

13 A. **Uh-huh.**

14 Q. And again, I'm not arguing with you. I'm not --
15 well, I guess I am disagreeing with you, but if you feel that
16 way, I need to know that. Do you feel -- if you get into this
17 trial as a juror, you've heard the indictment; a killing of
18 two people. You hear the evidence, maybe you hear issues of
19 robbery and burglary, murder, do you feel like it's going to
20 be our job or maybe his job to say, well, Ms. Williams, no, I
21 didn't do it, okay? Do you feel like it's going to be his job
22 or our job to convince you that it didn't happen the way the
23 State says it happened?

24 A. **No.**

25 Q. Do you understand that if the State's evidence is

1 faulty, if it's deficient, we may choose not to do anything at
2 all. We may just sit here and be quiet. And if the evidence
3 is not strong enough or beyond a reasonable doubt, do you
4 understand that it would be -- you would be duty-bound to
5 acquit him?

6 A. Yes.

7 Q. Do you understand that proof must be beyond a
8 reasonable doubt?

9 A. Yes.

10 Q. Do I need to take a break?

11 A. No, I'm fine.

12 Q. Okay. Is it still your position that if someone is
13 accused of capital murder he should have to prove his
14 innocence?

15 A. No.

16 Q. You sure about that?

17 A. I guess, I totally didn't understand the system.

18 Q. Okay. What would your answer be now? Let me give
19 you your possible answers. "If someone is accused of capital
20 murder, he should have to prove his innocence. Strongly
21 agree, agree, uncertain, disagree or strongly disagree?"

22 A. I guess disagree.

23 Q. Okay. That's how you genuinely feel?

24 A. Uh-huh.

25 Q. Okay. You also say in this questionnaire that, "A

1 states."

2 A. I don't even remember writing that, to be honest
3 with you. What was the question again?

4 Q. Okay. Do you -- I apologize you don't have your
5 questionnaire up there. Do you want to look at?

6 A. No, that's okay.

7 Q. "Do you believe the death penalty is applied fairly
8 in Texas?" The answer is yes. "Please explain. They should
9 do it more in other states."

10 A. Uh-huh.

11 Q. Okay. Tell me what you were thinking when you said
12 that.

13 A. I guess if someone has been found guilty of murder
14 that they should get the death sentence, I guess.

15 Q. Okay. And we do it here in Texas, and I take it you
16 liked that when you answered this question, right, because you
17 said yes, you think it's fairly applied in Texas?

18 A. Yes.

19 Q. And at the time you filled this out, you thought
20 other states in the union, they ought to be doing it, too,
21 right?

22 A. Yeah.

23 Q. Well, obviously Texas has got a lot of press this
24 past year with George Bush running for president, and with us
25 putting so many people to death. Boy, we sure have gotten

1 person convicted of capital murder can receive the death
2 penalty solely because of the facts and circumstances of the
3 crime, even if he has committed no other crimes. Do you agree
4 with this law? Yes. Please explain. Murder deserves the
5 death sentence."

6 Is there anything new to that, or have we covered
7 that earlier?

8 A. Have I changed my feelings about it any?

9 Q. Right.

10 A. Possibly.

11 Q. Okay. Now, your answers earlier, 20 minutes ago,
12 made me sure -- assured me that you'd changed your answers.

13 Are you sure that you've changed your position on that, or
14 are you going back to how you feel that, yeah, murder deserves
15 the death sentence?

16 A. It would depend if they proved that the person was
17 guilty, then going on from there.

18 Q. If he's guilty of capital murder, then it deserves
19 the death sentence?

20 A. Found guilty by their proof? Yes, I guess so.

21 Q. Okay. We'll come back to that.

22 A. Uh-huh.

23 Q. In the next sentence here it says, "Do you believe
24 the death penalty is applied fairly in Texas?" And you say,
25 "Yes. Please explain. They should do it more in other

1 the attention this year.

2 A. Uh-huh.

3 Q. I'm sure you've heard that, right?

4 A. Yes.

5 Q. Some would say maybe it made us look bad. I don't
6 know, but did you think it made us look bad, or did you think
7 it made us look good?

8 A. I mean, I don't think it made us look good. I mean,
9 I guess I'm indifferent on the way it made us look.

10 Q. Right. I mean, were you thinking that, gee, if this
11 was being done more in other states then it would take some of
12 the attention off us here?

13 A. Well, maybe if it was done in other states someone
14 would think twice about doing it. Maybe that's what I'm
15 trying to say.

16 Q. Okay. In other words, it would have more of a
17 deterrent effect?

18 A. Sure, right.

19 Q. We'd have less murdering going on?

20 A. Hopefully.

21 Q. Okay. So is it fair to say that you view the death
22 penalty as a deterrent to other murders, crime like that. Is
23 that fair to say?

24 A. Yes.

25 Q. And you'd like to see it happen more frequently, not

1 only here, but in other states as well?

2 **A. I don't necessarily say that I would like to see it**

3 **more frequently. I would say to me it would be a deterrent to**

4 **make someone think twice about doing something.**

5 Q. Okay. Well, I'm trying to understand what you're

6 saying, because you're the one that says it needs to happen in

7 other states, and you're the one that said that if it was

8 given then there would be -- people would think twice before

9 they did it, right, commit murder?

10 **A. Yes.**

11 Q. So are you saying that it's fair -- is it fair to

12 say that you'd like to see it applied more frequently and in

13 more states? It's fair to say, isn't it?

14 **A. Yes.**

15 Q. Okay. You were also asked to rate, on a scale of 1

16 to 10, if you believed in the death penalty; 1 being the least

17 and 10 being the strongest. We're talking about a continuum

18 here; one meaning I believe in it the least and ten being I

19 believe in it the strongest.

20 **A. Uh-huh.**

21 Q. And you fell at position eight, at least you rated

22 yourself three days ago. So you were up at the upper end of

23 the continuum?

24 **A. Uh-huh.**

25 Q. In other words, you felt fairly strong about the

1 death penalty; is that correct?

2 **A. Yes.**

3 Q. That hasn't changed, has it?

4 **A. Possibly. I mean, I just -- it's hard for me to --**

5 **I know I keep saying this, and I don't know if I could**

6 **completely have an open mind maybe seeing a young person**

7 **sitting over there. So, maybe it has lessened my thought on**

8 **it, because I really have never thought about it. I'm into**

9 **saving lives.**

10 Q. I understand that.

11 **A. That's my job.**

12 Q. I understand.

13 **A. So...**

14 Q. We talked about this earlier, but this question also

15 gives me pause. "The Constitution says an accused citizen

16 does not have to testify on his or her own behalf. How do you

17 feel about this Constitutional privilege?" It means not

18 testifying?

19 **A. Right.**

20 Q. "I feel like an accused citizen should be forced to

21 take the stand." Okay. Now, do I need to go over this again

22 with you, the way the law is? I mean, she --

23 **A. No. They have to prove --**

24 Q. They've explained the law to you, right?

25 **A. Right.**

1 Q. And I've talked to you about remaining silent.

2 **A. Uh-huh. No, you don't have to explain it. They**

3 **have to prove the evidence. You can sit there passively.**

4 Q. Okay. I understand that. What we're talking about

5 is a little deeper issue, though. And it's human nature to

6 want to hear the other side's story.

7 **A. Uh-huh.**

8 Q. Absolutely I do. I bet everybody in here can say

9 that.

10 THE COURT: Let me interrupt you for just a

11 minute.

12 MR. GOELLER: Judge, we need a sub rosa hearing

13 very briefly.

14 THE COURT: I'm going to ask you to step down

15 for just a moment.

16 VENIREPERSON: Sure.

17 MR. GOELLER: Judge, I think based on this

18 juror's responses and the length of time we've been going at

19 it and considering some of the answers in the questionnaire, I

20 think both sides have reached an agreement that we want to

21 jointly excuse this juror.

22 MR. SCHULTZ: We can't figure -- neither side

23 apparently can figure where she is.

24 THE COURT: Is this with the concurrence of

25 your client?

1 MR. CANTU: Yes.

2 MR. GOELLER: And just so the court

3 understands, when we get a juror like this that's I'll always

4 kill and I'll never give life -- from our side, and Bill and

5 Jami and Gail have their own theory. But when we get to where

6 we are now, she does this in three days, who knows where she's

7 going to be three days from now, and it makes it very

8 difficult for us.

9 MR. SCHULTZ: She's the classic Parillo juror,

10 Your Honor.

11 (Discussion off the record.)

12 THE COURT: All right. Well, if you-all

13 insist.

14 MR. SCHULTZ: That's the best example of what

15 we were talking about. That's a one, and look where she ends

16 up in the middle of all, so you can't -- she can always line

17 them up to kill them, and now we're back to the other side.

18 THE COURT: All right, sir. Would you tell her

19 that she is finally excused?

20 THE BAILIFF: Yes, Your Honor.

21 THE COURT: And I suppose we're done for the

22 day. And I tell you what, we'll reconvene August 27th, I

23 guess at 8:45 in the morning.

24 Does anybody else have anything to bring up before

25 we quit for the day?

1 (Discussion off the record.)
2 (End of Volume 8.)
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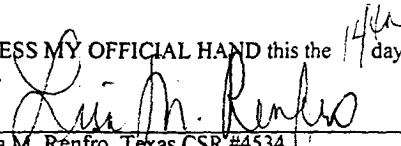
1 REPORTER'S CERTIFICATE
2 THE STATE OF TEXAS *
3 *
4 COUNTY OF COLLIN *

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

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

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

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


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