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A P P E A R A N C E S

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: We're on the record. We're here  
3 on the State of Florida versus Adam Matos. Defense  
4 is here with Mr. Matos. The State is present.

5 I have had three people write letters. One is  
6 Mr. Kenneth Shushman [sic], who we talked about  
7 yesterday. The gentleman with the rape case in  
8 Ohio and his friend.

9 MR. PURA: Mr. Strohman.

10 THE COURT: Strohman. I'm sorry. Strohman,  
11 S-t-r-o-h-m-a-n. Bernard Strohman.

12 MR. PURA: We excused him.

13 THE COURT: We didn't actually excuse him  
14 yesterday, because we were kind of talking about  
15 it, and it was not on the record, so I didn't feel  
16 comfortable, and we didn't have his phone number.  
17 But do I need to bring him up? We can just all  
18 agree he's a cause challenge.

19 MR. SARABIA: We'd move for cause, Judge.

20 MR. LIVERMORE: Yes.

21 THE COURT: All right. Send downstairs and  
22 tell them that they're going to --

23 MR. PURA: What's his note say?

24 THE COURT: I didn't read it all. It's pretty  
25 funny. It says, "Robot?? Not feeling. No

1 opinion. Bringing bad things in my head. Was a  
2 10. Still a 10. Don't want to screw up. Fits of  
3 rage." I don't know. It's just like him. It's  
4 just kind of thoughts written down on a piece of  
5 paper.

6 So he was on Seat Number 40. Is everybody  
7 agreeing, Seat 40?

8 MR. PURA: Yes, Judge.

9 MR. SARABIA: Yes, Judge.

10 THE COURT: All right. So he will be a cause  
11 challenge and they won't bring him up.

12 MR. LABRUZZO: Judge, we also would have --

13 THE COURT: Hold on. I got notes.

14 MR. LABRUZZO: Oh, okay.

15 THE COURT: So we're going to talk about my  
16 notes and then we'll talk about what you want to  
17 talk about.

18 MR. LABRUZZO: All right.

19 THE COURT: So I have Kristine, Kristine Rulo,  
20 R-u-l-o. I don't know where she is on this list.

21 MR. LONGHORN: Seat 60.

22 THE COURT: Seat 60. And her note says that,  
23 "I can no longer do this. I have medical problems  
24 that this is affecting me. Please excuse me.  
25 Please. Thank you." So I'm bringing her up.

1           And then a Mr. Cunningham is also downstairs.  
2           He doesn't write well. So instead of writing a  
3           letter, I told them just to bring him up. So he's  
4           Number 55. So he's 55.

5           And they're going to bring them up, and as  
6           soon as they're ready, we're going to bring them  
7           in. We'll deal with them, and then if there's any  
8           additional causes of people that we'll strike and  
9           we can release before we bring in the whole panel  
10          up, we can do that.

11          Do we have Rulo and Cunningham? Okay.

12          This is Mr. Cunningham's note, right?

13          THE CLERK: Uh-huh.

14          THE COURT: Mr. Cunningham said, "Five years  
15          ago I had cancer, which put me out of work for  
16          eight months. After returning, they downsized.  
17          With my age and cancer hanging over my head, it was  
18          hard to get my job back, and I'm afraid if I sit on  
19          the jury that they will fire me. It has broken me  
20          over four years to go from --" I don't know,  
21          something about finances.

22          So we'll bring in Ms. Rulo first. If you can  
23          bring her on in and just sit her in the front row.

24          Good morning, ma'am.

25          PROSPECTIVE JUROR RULO: Hi.

1 THE COURT: We're just going to have you come  
2 sit up front so it's easier to talk with you.  
3 Okay?

4 I got your note. You said you're having  
5 medical problems and it's affecting you?

6 PROSPECTIVE JUROR RULO: Yes.

7 THE COURT: And based on that, you're asking  
8 to be excused?

9 PROSPECTIVE JUROR RULO: Yes, ma'am.

10 THE COURT: Can you go into a little bit more  
11 detail for me?

12 PROSPECTIVE JUROR RULO: Well, I have a brain  
13 cyst except I didn't have to -- and it's just too  
14 overwhelming.

15 THE COURT: Okay. Take a deep breath. It's  
16 okay. So as the days have gone by with what you  
17 have going on medically, it's been causing you more  
18 and more stress?

19 PROSPECTIVE JUROR RULO: Yes.

20 THE COURT: And you're to the point where you  
21 think that it would affect your ability to sit any  
22 longer as a juror in this matter?

23 PROSPECTIVE JUROR RULO: Yes, ma'am.

24 THE COURT: Okay. State, any questions?

25 MR. LABRUZZO: No, Your Honor.

1 THE COURT: Defense?

2 MR. PURA: No, ma'am.

3 THE COURT: All right. Thank you, ma'am.  
4 We're going to have you step outside. We'll give  
5 you further directions. Okay?

6 PROSPECTIVE JUROR RULO: Thank you.

7 THE COURT: And then we'll have Mr. Cunningham  
8 come in.

9 THE BAILIFF: Yes, Your Honor.

10 THE COURT: Hi, Mr. Cunningham. Sir, you can  
11 sit in the front row just so we can talk to you  
12 without shouting. Well, I shout anyway, but  
13 without everybody else shouting.

14 Mr. Cunningham, I appreciate you wrote the  
15 note. It looks like between your cancer a couple  
16 years ago and work --

17 PROSPECTIVE JUROR CUNNINGHAM: Five years ago.

18 THE COURT: Five years ago. That being on the  
19 jury is starting to cause a financial issue for  
20 you?

21 PROSPECTIVE JUROR CUNNINGHAM: I don't want to  
22 go there again.

23 THE COURT: Okay. And go there, meaning not  
24 having money? Being broke? Not being able to pay  
25 your bills?

1 PROSPECTIVE JUROR CUNNINGHAM: Yes, ma'am.

2 THE COURT: Okay. And you think if you had to  
3 sit as a juror, you're not being paid; is that  
4 correct?

5 PROSPECTIVE JUROR CUNNINGHAM: Yes, ma'am.

6 THE COURT: Okay. And so it would be a  
7 significant financial hardship, and you think it  
8 would affect your ability to sit as a juror?

9 PROSPECTIVE JUROR CUNNINGHAM: Oh, I might be  
10 here physically, but not mentally.

11 THE COURT: Okay. State, any questions?

12 MR. LABRUZZO: No Judge.

13 THE COURT: Defense?

14 MR. PURA: No, ma'am.

15 THE COURT: All right. Mr. Cunningham, I'll  
16 have you step out in the hallway and my bailiff  
17 will give you further directions. Okay?

18 All right. State, as to Juror Number 60,  
19 which is Ms. Rulo, where do you stand?

20 MR. SARABIA: We're okay excusing her, Judge.

21 THE COURT: Defense?

22 MR. PURA: No objection.

23 THE COURT: All right. She'll be released as  
24 a cause challenge.

25 And then, State, as to Mr. Cunningham, who's

1 Number 55?

2 MR. SARABIA: We'll be excusing him as well.

3 THE COURT: Defense?

4 MR. PURA: No objection.

5 THE COURT: All right. So Juror Number 55,  
6 Mr. Cunningham, will also be excused. You can tell  
7 both of them that they're free to go, stop back  
8 downstairs and drop off their jury badge, but  
9 they're released. Okay?

10 THE BAILIFF: Yes, Your Honor.

11 THE COURT: All right. Don't bring up the  
12 jury yet. I think we have a couple of others that  
13 we might release also. Okay?

14 State, I think you had some other people that  
15 weren't the three that we just discussed that you  
16 want to talk about now before we bring the panel?

17 MR. LABRUZZO: Yes, Judge. Judge, the State  
18 would move for a cause challenge on Seat 69,  
19 Michelle Dillard. I believe her responses  
20 yesterday was basically she's an automatic and  
21 could not follow the law.

22 THE COURT: Automatic for death?

23 MR. LABRUZZO: For death.

24 THE COURT: Okay. Mr. Pura?

25 MR. PURA: We agree, Judge.

1           THE COURT: Okay. So Ms. Michelle Dillard can  
2 be released as a cause challenge. Downstairs, if  
3 she's checked in, she can be released.

4           State.

5           MR. LABRUZZO: We'd also move for cause on  
6 Mr. Tookes, Seat 70. He also placed himself as an  
7 automatic for death and could not follow the law.

8           MR. PURA: We agree.

9           THE COURT: Okay. I had him as a 5, but okay.

10          MR. PURA: No. He was a 10, and said he's  
11 still a 10.

12          THE COURT: Okay.

13          MR. PURA: He said if it was proven beyond a  
14 reasonable doubt.

15          THE COURT: That's fine. You two agree. I  
16 don't want to argue it. Mr. Tookes is released.  
17 That's Richard Tookes.

18          All right. State, anyone else?

19          MR. LABRUZZO: Yes, Judge. Finally, juror in  
20 Seat Number 8, Lori Zelinski-Lopez also indicated  
21 that she could not follow the law and would not  
22 give meaningful consideration to the penalties,  
23 both of them, and that regardless of the verdict,  
24 she would automatically vote for life.

25          THE COURT: I'm sure Mr. Pura wants to see if

1 he can rehabilitate her.

2 MR. PURA: Well, she did initially rate  
3 herself as a 3, and she remembered that. She said  
4 over the last couple of days she's changed to a 1.  
5 So I would like the opportunity to ask her about  
6 that.

7 THE COURT: Okay. See if you can make her  
8 come off of that. She was pretty clear that after  
9 contemplation and reflection that she did not see  
10 any reason that she would ever impose the death  
11 penalty, but you have more than a right to see if  
12 you can rehabilitate.

13 MR. PURA: Thank you.

14 THE COURT: And if the State wants to talk to  
15 her --

16 MR. LABRUZZO: Sorry, Judge.

17 THE COURT: Go ahead.

18 MR. LABRUZZO: I just don't think that you can  
19 rehabilitate someone who says definitively, "I  
20 can't follow the law as to that issue." And I know  
21 it's their right, but we're going to be in the same  
22 spot, we'll be making the same argument, that she  
23 has gone on record saying, "After consideration of  
24 the thought and time, I can't follow the law".

25 THE COURT: Well, I appreciate that. But I

1 think that the Supreme Court is very clear that  
2 before I cause challenge, both sides get an  
3 opportunity to voir dire the juror. So whether we  
4 are at the same place at the end we were yesterday,  
5 we're going to give him that opportunity.

6 MR. LABRUZZO: Could we do it outside, since  
7 she's already said --

8 THE COURT: Sure. Why don't we have  
9 Ms. Zelinski-Lopez brought up, Lori Zelinski-Lopez.

10 And other than Ms. Zelinski-Lopez, everybody  
11 else is okay?

12 MR. LABRUZZO: Yes, Your Honor.

13 MR. PURA: Yes.

14 THE COURT: For now?

15 MR. LABRUZZO: Yes, for now.

16 THE COURT: All right. Are we ready with Lori  
17 Zelinski-Lopez?

18 THE BAILIFF: Yes.

19 THE COURT: All right. Bring her on in.

20 Good morning, ma'am. How are you?

21 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Good  
22 morning.

23 THE COURT: If you can go ahead. It's kind of  
24 your seat anyway. We just figured we would ask you  
25 a few more questions about something that came up

1 yesterday.

2 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Okay.

3 THE COURT: So we could see if maybe we can  
4 release you today. If not, we'll have you stay.

5 When you were being questioned by the State  
6 Attorney, we talked about that scale.

7 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Right.

8 THE COURT: And the aggravating factors,  
9 weighing those, versus the mitigating  
10 circumstances.

11 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Right.

12 THE COURT: And whether as a juror if you  
13 could, based on the law and those items, return a  
14 verdict for death. And you put yourself on a scale  
15 from 1 to 10, you said originally you were a 3.

16 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Correct.

17 THE COURT: Meaning you could see yourself  
18 giving death maybe in small rare cases.

19 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes.

20 THE COURT: But after reflection and thought  
21 and prayer probably, you think that you're really a  
22 1.

23 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes.

24 THE COURT: All right. And I'm going to go  
25 ahead and let each side ask you a few more

1 questions about that. Okay? And it's easier to  
2 answer these questions when you're by yourself than  
3 when you have other people looking at you, so  
4 that's why we brought you up. Okay?

5 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Thank you.

6 THE COURT: State, you've already questioned,  
7 so I'm going to go ahead and let the Defense go,  
8 and then if you have any further questions. Okay?

9 MR. LABRUZZO: Thank you, Your Honor.

10 MR. PURA: Good morning.

11 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Good  
12 morning.

13 MR. PURA: I think we can probably assume that  
14 you're never been in a position of having to decide  
15 whether someone should live or die?

16 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes.  
17 That's correct.

18 MR. PURA: Well, first of all, as far as your  
19 opposition and aversion to the death penalty, you  
20 should know that many people -- probably not as  
21 many people share your views regarding the death  
22 penalty.

23 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I'm aware  
24 of that.

25 MR. PURA: But I want to ask you about

1 something besides your opposition to the death  
2 penalty. I want to talk, first of all, about the  
3 law and how it applies to the death penalty. Okay?

4 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Okay.

5 MR. PURA: And the first thing you should  
6 know, if you don't, is that the law never requires  
7 a death verdict. Did you know that?

8 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes.

9 MR. PURA: And what that means, then, is that  
10 if you or anybody else were picked as a juror in  
11 this trial and proceeded to the penalty phase, you  
12 would never be put in a situation where you would  
13 have to vote for death if that's against your  
14 personal judgment. Did you know that?

15 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes.

16 MR. PURA: So you're familiar I think -- we  
17 talked about the two phases of the trial, the guilt  
18 phase, and then if the defendant is found guilty of  
19 first-degree murder, it proceeds to the penalty  
20 phase.

21 And during the guilt phase you will be  
22 instructed to basically make the best efforts to  
23 reach an agreement with the other jurors as to the  
24 evidence and the facts and then decide whether you  
25 can decide unanimously on a verdict, whether it be

1 guilty or not guilty. Do you understand?

2 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I do.

3 MR. PURA: And if for some reason there is no  
4 decision on the important facts or no unanimous  
5 decision on the verdict, we have a hung jury, we  
6 have a mistrial, and it has to be done all over  
7 again in front of another jury. Okay?

8 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I  
9 understand.

10 MR. PURA: But the penalty phase, if it  
11 proceeds that point, it's entirely different. If  
12 you were on the jury during that part, you would be  
13 instructed, as the other jurors, to reach your own  
14 individual verdict.

15 The defendant in that situation is entitled to  
16 12 individual verdicts. And you would be  
17 instructed to reach your individual verdict based  
18 on your own individual moral judgment, your own  
19 walk of life, all those things that make you you.  
20 Do you understand that?

21 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I do.

22 MR. PURA: Okay. And in reaching that  
23 decision, you would be looking at mitigation, what  
24 we call mitigation, which is basically any reason  
25 to choose life over death. Okay?

1 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Right.

2 MR. PURA: And jurors are allowed to decide  
3 what is mitigation. And it could be basically  
4 anything that leans them towards life rather than  
5 death. Okay?

6 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Uh-huh.

7 MR. PURA: And you don't have to articulate  
8 your reasons. You don't have to explain it to  
9 anybody. Nobody else has to agree with you. You  
10 can find a mitigating circumstance and you can give  
11 that mitigating circumstance the weight of life.  
12 You can vote for life based on that alone. Do you  
13 understand that?

14 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes.

15 MR. PURA: And even if you felt that the  
16 aggravators that the State has proven beyond a  
17 reasonable doubt outnumbered and outweighed the  
18 mitigating circumstances, you can still give a life  
19 verdict based on what you believe to be a  
20 mitigating circumstance. Do you understand that?

21 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I do  
22 understand.

23 MR. PURA: Now, you would agree, I think, that  
24 a defendant in a criminal trial is entitled to a  
25 jury of his peers?

1 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Absolutely.

2 MR. PURA: And presumably that means a  
3 cross-section of his community, right? I mean,  
4 we're not going to fly people in from Madagascar to  
5 try this case, right? Or God forbid, California,  
6 right?

7 And so it wouldn't be fair to a defendant in a  
8 criminal trial if certain people were excluded,  
9 were prevented from serving on this jury like for  
10 racial reasons or because of their religion or  
11 their gender, right?

12 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Right.

13 MR. PURA: That wouldn't be fair to a  
14 defendant?

15 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Right.

16 MR. PURA: So by the same token would you  
17 agree that a defendant in a death penalty trial, a  
18 defendant who is facing the possibility of a death  
19 sentence, it wouldn't be fair to him if the jury  
20 was stacked only with people who favored the death  
21 penalty, right?

22 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Correct.

23 MR. PURA: So, you know, many people have  
24 moral opposition to the death penalty, okay, but  
25 they have been qualified to serve on capital cases.

1 Just because of they are morally or religiously  
2 opposed to the death penalty doesn't by itself  
3 disqualify them from serving on a jury in a capital  
4 case. Okay?

5 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Okay.

6 MR. PURA: The question becomes whether they  
7 could or in this situation you could put those  
8 feelings aside long enough to listen to the Judge's  
9 instructions, long enough to give consideration,  
10 meaningful consideration is the actual language, to  
11 give consideration to both possible punishments,  
12 but then to reach the ultimate decision on your own  
13 without having to suffer any criticism from anybody  
14 else for your decision?

15 Is that something that you can do? We want  
16 you to serve on this jury. We need you to put  
17 aside your personal feelings long enough to follow  
18 the law and give consideration to both penalties,  
19 but then ultimately make your own decision as to  
20 what is appropriate. Can you do that?

21 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I can  
22 certainly give meaningful consideration.

23 MR. PURA: Thank you.

24 THE COURT: Okay.

25 MR. LABRUZZO: Good morning, ma'am.

1 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Good  
2 morning.

3 MR. LABRUZZO: And that's kind of why we  
4 brought you back, because yesterday we got the  
5 impression that because of your beliefs, that you  
6 may have some difficulty in giving meaningful  
7 consideration to the potential penalties in this  
8 case. Okay?

9 So I just want to try to crystalize that if I  
10 can. First of all, what's important for us is not  
11 to have a jury stacked with people who want to go  
12 one way or the other, it's really people that are  
13 willing to follow the law. I kind of said that  
14 yesterday at one time.

15 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I  
16 understand.

17 MR. LABRUZZO: So that's why we brought you  
18 back. And sometimes people's beliefs can affect  
19 their ability to follow the law. It happens for  
20 all sorts of reasons.

21 And it was our understanding yesterday, based  
22 on your thoughts about the death penalty, that you  
23 could not consider that, you could not participate  
24 in the weighing of the aggravator versus the  
25 mitigator. That you thought that you'd have some

1 difficulty in that, and that may not actually be a  
2 process for you.

3 PROSPECTIVE JUROR ZELINSKI-LOPEZ: (Indicating  
4 .)

5 MR. LABRUZZO: You're nodding your head and  
6 I'm just going to ask you. Am I wrong in my  
7 perception of the question yesterday?

8 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I don't  
9 think so. I mean, I can certainly give meaningful  
10 consideration.

11 MR. LABRUZZO: Right.

12 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I can't  
13 conceive of handing down a death sentence.

14 MR. LABRUZZO: Okay.

15 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I can't  
16 conceive of that.

17 MR. LABRUZZO: Okay. Well, they seem to kind  
18 of be in contradiction. Okay. So if you can't  
19 conceive of something, then it's probably not  
20 possible in your mind, right? That you can't think  
21 of any circumstance that would warrant it in your  
22 mind? Does that sound fair?

23 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Well, there  
24 may be circumstances, yes.

25 MR. LABRUZZO: Okay. And I said

1           circumstances. I probably should have said  
2           factors, because I'm trying to stay consistent with  
3           the law.

4                     Are there factors that you would consider,  
5           that could push you to a situation where you would  
6           consider death?

7                     PROSPECTIVE JUROR ZELINSKI-LOPEZ: Perhaps.

8                     MR. LABRUZZO: Okay. Well, if the law said  
9           such there are certain ones that you need to  
10          consider, okay, if you're going to even contemplate  
11          the death penalty, would you follow the law and  
12          say, okay, these are things that I should consider,  
13          I will evaluate it and I'll follow the law as it  
14          relates to aggravators and then I'll weigh them  
15          against the mitigators?

16                    PROSPECTIVE JUROR ZELINSKI-LOPEZ: That may be  
17          difficult in the way you term it.

18                    MR. LABRUZZO: Well, I'm not trying to  
19          trick --

20                    PROSPECTIVE JUROR ZELINSKI-LOPEZ: No. I  
21          know.

22                    MR. LABRUZZO: I just want to make sure we're  
23          clear, because it seems to me that -- and, again, I  
24          don't want to put words in your mouth. It seems to  
25          me that you're having some difficulty with the

1 process as far as your ability to do it, not  
2 understanding it.

3 And in that difficulty is where we want to  
4 make sure that you can give us a commitment to do  
5 it, to follow the law and, you know, give fair  
6 consideration without reservation, without  
7 concerns.

8 PROSPECTIVE JUROR ZELINSKI-LOPEZ: No, I can't  
9 do that without reservation or concerns, if that's  
10 the question.

11 MR. LABRUZZO: All right. Thank you, ma'am.

12 THE COURT: Defense, any other questions?

13 MR. PURA: No. Thank you.

14 THE COURT: Ma'am, I just have a question.  
15 When you say you can't do it without reservations  
16 or concerns, is that because you don't know how  
17 it's done? You've never done it before.

18 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Well, I  
19 haven't, but I understand how it's done.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I  
22 understand the process.

23 THE COURT: Okay. And so you believe that if  
24 called upon to do it, if you were picked as a  
25 juror, you have reservations on whether you -- I

1 mean, in your mind you would like to believe that  
2 you would follow the law, because you seem like  
3 that kind of --

4 PROSPECTIVE JUROR ZELINSKI-LOPEZ: That's a  
5 good way to put it.

6 THE COURT: You seem like that kind of a  
7 person.

8 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes.

9 THE COURT: A rule follower, let's say.

10 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Uh-huh.

11 THE COURT: But when you're in those quiet  
12 moments in contemplating this in the last couple of  
13 days, you believe that you might have real problems  
14 even considering aggravation trying to weigh it  
15 against mitigation?

16 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes. I  
17 would have difficulty.

18 THE COURT: Because when it gets to that, you  
19 may just say, I can't weigh it, it's just going to  
20 be life, and then I don't have to put things in any  
21 weighing thought process?

22 PROSPECTIVE JUROR ZELINSKI-LOPEZ: That would  
23 be a good way to put it.

24 THE COURT: Okay. So you truly believe that  
25 you would like to say that you could follow the

1 law?

2 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yeah.

3 THE COURT: But you can't say for certain that  
4 you would?

5 PROSPECTIVE JUROR ZELINSKI-LOPEZ: I cannot  
6 say for certain.

7 THE COURT: Okay. And I think we talked about  
8 it a little bit, I'm not sure, but we have a judge  
9 that uses example of like you're flying from, you  
10 know, New York to Tampa, and they come on the loud  
11 speaker and they say, okay, folks, buckle up, we're  
12 getting ready to land, I'm hoping I can land here  
13 in Tampa, a little stormy, I'm going to give it my  
14 best try, and we're going to give it, you know, my  
15 best try. Do you feel comfortable with that person  
16 being your pilot?

17 PROSPECTIVE JUROR ZELINSKI-LOPEZ: No.

18 THE COURT: Okay. Would you be that pilot,  
19 I'm going to go give it my best try, hopefully  
20 we're going to get you on the ground, but you're  
21 not, hey, folks, we're going to get you on the  
22 ground?

23 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Probably  
24 not, no.

25 THE COURT: You're the hopefully we'll get you

1 on the ground, not I'm going to get you on the  
2 ground person, right now without this death penalty  
3 issue?

4 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Well,  
5 hopefully.

6 THE COURT: Okay. But you can't give that  
7 solid, we will get you on the ground? You'd be the  
8 hopefully I could do it, but I can't give you any  
9 guarantees? Is that kind of a good way to put it?

10 PROSPECTIVE JUROR ZELINSKI-LOPEZ: That's that  
11 fair characterization, yes.

12 THE COURT: Okay. All right. Thank you.  
13 Any other questions?

14 MR. PURA: Yes, Judge. If Hitler is the  
15 defendant, would you give meaningful consideration  
16 to the death penalty?

17 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes.

18 MR. SARABIA: Judge, objection, Judge.

19 THE COURT: Sustained. You can give a  
20 scenario.

21 MR. PURA: Okay.

22 THE COURT: You keep using the word  
23 "meaningful consideration." She's already said she  
24 would try, but the issue is whether she would  
25 actually do it. So if you give her another

1 example, I will allow it.

2 MR. PURA: A guy walks into a first grade  
3 classroom and slaughters 20 innocent students. The  
4 only reason he didn't slaughter 21 is because she  
5 plays dead amongst her 20 dead friends. And that  
6 guy brags about it later and said that he'd do it  
7 again if he had another opportunity. Would you  
8 give consideration to the death penalty in that  
9 situation?

10 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes, I  
11 would.

12 MR. PURA: A guy slaughters 58 people going to  
13 a concert for no reason whatsoever, just to see how  
14 many people he could kill, injures over 500, would  
15 you give meaningful consideration if that guy was  
16 on trial to the death penalty?

17 PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes.

18 MR. PURA: Thank you.

19 THE COURT: All right, ma'am. I'll have you  
20 step outside, and my bailiff will give you further  
21 directions. Okay?

22 State?

23 MR. LABRUZZO: Judge, the State would move for  
24 cause on Ms Zelinski-Lopez. I think there is at  
25 least reasonable doubt whether or not she could

1 follow the law and be fair and impartial as to the  
2 issue that are going to be presented to her.

3 THE COURT: That will be denied. She'll stay  
4 on the panel for now.

5 Are we good to go for everybody else? Have we  
6 got the jury lined up?

7 THE BAILIFF: Yes, Your Honor. I'll check to  
8 see if there's anybody in the bathroom real quick.

9 THE COURT: Okay. Just so everyone knows,  
10 we're down to 67 jurors left. We only need 15. So  
11 we're good to go.

12 Mr. Pura, is it going to be Mr. Michailos  
13 first?

14 MR. PURA: Yes, ma'am.

15 THE COURT: Okay.

16 MR. PURA: Thank you.

17 THE COURT: Okay.

18 THE BAILIFF: Judge, we have all jurors back.

19 THE COURT: I have one lawyer in the restroom.  
20 So just give me one second.

21 THE BAILIFF: Yes, Your Honor.

22 THE COURT: Are you ready?

23 MR. MICHAÏLOS: Yes, Judge.

24 THE COURT: All right. We can start bringing  
25 them in.

1 THE BAILIFF: Prospective jurors entering the  
2 hearing of the Court, Your Honor.

3 (Prospective Jurors Present.)

4 THE BAILIFF: All prospective jurors present  
5 and seated, Your Honor.

6 THE COURT: Thank you.

7 Good morning, ladies and gentlemen. How are  
8 you?

9 THE PROSPECTIVE JURY PANEL: Good.

10 THE COURT: Was everybody able to follow my  
11 instructions? No watching about the case? No  
12 talking about the case? No tweeting? No texting?  
13 No blogging? Yes?

14 THE PROSPECTIVE JURY PANEL: Yes.

15 THE COURT: All right. Mr. Michailos, I  
16 believe it's your turn. Would you like to begin?

17 MR. MICHAILOS: Yes, Your Honor.

18 THE COURT: All right.

19 MR. MICHAILOS: If it please the Court and  
20 Counsel.

21 Good morning, ladies and gentlemen.

22 THE PROSPECTIVE JURY PANEL: Good morning.

23 MR. MICHAILOS: My name is Nick Michailos.

24 I'm one of the attorneys representing Adams Matos.

25 As you all know, we have a constitution in

1           this country that has a Bill of Rights, many  
2           constitutional rights. Most of us are familiar  
3           with the First Amendment. That's why we have that  
4           camera there in this room. A lot of us are  
5           familiar with the Second Amendment.

6           Well, I'm here to talk to you briefly about  
7           the Sixth Amendment. The Sixth Amendment of the  
8           United States Constitution affords every U.S.  
9           citizen the right to a fair trial. The only way we  
10          can have a fair trial is if we start with a fair  
11          and impartial jury, like Mr. LaBruzzo explained  
12          yesterday.

13          In addition, like it was explained yesterday,  
14          the law in Florida requires that the same jury that  
15          decides whether a defendant is guilty of  
16          first-degree murder has to decide whether he or she  
17          gets sentenced to life without parole, without the  
18          possibility of parole, or the death penalty.

19          That's why this jury selection process has  
20          taken us days, because not only do we have to make  
21          sure you can be fair and impartial for the trial,  
22          but we also have to make sure that you are  
23          appropriate jurors to sit in on the death penalty  
24          trial, if Mr. Matos is found guilty of first-degree  
25          murder, and that's a big if.

1           But the problem is when we're talking about  
2           the death penalty and Mr. Matos has yet to be found  
3           guilty of any crime. He sits before you presumed  
4           innocent. It's a classic case of the cart coming  
5           before the horses. And the danger is that you as  
6           potential jurors may be tainted because of an  
7           implication that he's already guilty.

8           THE COURT: Counsels, can I have you at the  
9           bench.

10          (Bench Conference.)

11           THE COURT: Mr. Michailos, I brought you up  
12           here because I saw that Mr. LaBruzzo moving in his  
13           chair. So I'm sure what's coming next is an  
14           objection.

15           MR. LABRUZZO: There was.

16           THE COURT: So I thought I'd bring you up here  
17           without one.

18           I will remind you this is voir dire, not  
19           opening statement, and it sounds more like a speech  
20           than a question.

21           MR. MICHAIILOS: Okay.

22           THE COURT: So I know you write down  
23           everything you say, and I appreciate that you are  
24           well prepared; however, again, this is voir dire.

25           MR. MICHAIILOS: Yes, Your Honor.

1           THE COURT: I would expect questions at some  
2 point.

3           MR. MICHAÏLOS: Yes, Your Honor.

4           THE COURT: And that sounded more like a  
5 soliloquy or a speech. So why don't we move on to  
6 the question part and save ourselves the long  
7 speech. Okay?

8           MR. MICHAÏLOS: Okay.

9           THE COURT: So I have no problem you talking  
10 about the right to a trial and the cart before the  
11 horse, but you might want to throw in a question to  
12 a juror in there.

13          MR. MICHAÏLOS: Yes, Your Honor.

14          THE COURT: All right. Thanks.

15 (Open Court.)

16          THE COURT: I'm sorry for the interruption.  
17 Please proceed.

18          MR. MICHAÏLOS: Thank you, Your Honor.

19                Ladies and gentlemen, Mr. Matos has tendered  
20 pleas of not guilty for all the charges against him  
21 and he is presumed innocent until, as Mr. LaBruzzo  
22 explained to you yesterday, he is proven guilty  
23 beyond a reasonable doubt, which means that before  
24 you can find Mr. Matos guilty of any crime, the  
25 State has to prove each element of each crime he's

1 charged with beyond and to the exclusion of every  
2 reasonable doubt.

3 Mr. Matos does not have to prove anything.  
4 Does everybody understand that?

5 THE PROSPECTIVE JURY PANEL: Yes.

6 MR. MICHAÏLOS: Now, some of you were  
7 prescreened and obviously you've gone through some  
8 questioning, and some of you have said that you  
9 think you may be fair, you feel you can be fair,  
10 and I'm going to give you an analogy that's  
11 actually a common one in this courthouse.

12 Let's say you're on a plane taking off from  
13 Tampa. You're going on vacation with your family.  
14 You're going to California. You're on this plane.  
15 The plane takes off -- it hasn't taken off yet.  
16 The pilot gets on the speaker and says, hi, good  
17 morning, we're on schedule, we're going to be in  
18 California, we should be there in about four hours,  
19 it's going to be pleasant, no humidity, when we get  
20 there, 75 degrees Fahrenheit. By the way, I'm a  
21 brand-new pilot, I just got my license, this is my  
22 first actual commercial flight, and I feel pretty  
23 good that I'll get you there in one piece. A show  
24 of hands, would anybody perhaps insist on getting  
25 off that plane?

1           Okay. As the State has made clear we're here  
2           on four counts of first-degree murder and there is  
3           a life at stake. So basically we need to know  
4           whether anyone here cannot be fair or favors one  
5           side over the other right now before any of you are  
6           picked for this jury for any reason. Whether it be  
7           media coverage that you heard or the nature or  
8           seriousness of the crimes charged. Possible  
9           allegations -- I know Mr. LaBruzzo brought up there  
10          might be some evidence of domestic violence.

11          Any reason. If there's any reason. If you  
12          are a fan of Law and Order as opposed to Matlock.  
13          It doesn't matter. But when you get picked for  
14          this jury, you have to be right straight in the  
15          middle. Objective and neutral. Like the Lady of  
16          Justice that's depicted in the courtroom,  
17          blindfolded. So when she weighs the evidence, she  
18          doesn't pick, she doesn't put her weight to one  
19          side or the other. She's a hundred percent  
20          neutral. So we have to know that that's the case.

21          Now, Ms. Coleman, two days ago when you had an  
22          opportunity to be questioned, I wrote down in my  
23          note you said you thought you could be fair. Those  
24          were your words. What we need to know is whether  
25          or not you will be fair or if anything in your own

1 life might affect you in deliberating if you are  
2 picked for this jury?

3 PROSPECTIVE JUROR COLEMAN: Well, I think the  
4 question was will my past experiences affect it,  
5 and I said I can't predict how I'm going to feel  
6 about something that I haven't experienced yet.

7 MR. MICHAÏLOS: Right. Okay.

8 PROSPECTIVE JUROR COLEMAN: But I can tell you  
9 that I don't know this man. I am not going to look  
10 at him and see anybody else from my past. I don't  
11 know if he's guilty. I don't know anything.

12 MR. MICHAÏLOS: Right.

13 PROSPECTIVE JUROR COLEMAN: So I can be fair.

14 MR. MICHAÏLOS: But you can't promise us  
15 that -- you don't know what's going to come out in  
16 evidence, so you can't promise us if something  
17 comes up that might have a connection with your own  
18 life, that you can be fair in this case?

19 PROSPECTIVE JUROR COLEMAN: I can't promise or  
20 predict how I'm going to feel about something I  
21 see, that I haven't seen yet.

22 MR. MICHAÏLOS: Correct. And I thank you,  
23 ma'am. I thank you for your candor. That's why  
24 I'm asking these questions.

25 PROSPECTIVE JUROR COLEMAN: Correct.

1 MR. MICHAILOS: I thank you so much.

2 PROSPECTIVE JUROR COLEMAN: Is that it?

3 MR. MICHAILOS: That's it.

4 Ms. Janis Cooper. Now, I'm sorry, ma'am, I  
5 didn't mean to call you yet again. I know you've  
6 been questioned a lot yesterday. And I know, I can  
7 tell by looking at you, that you want to be fair  
8 and impartial.

9 PROSPECTIVE JUROR COOPER: Yes, sir. I do.

10 MR. MICHAILOS: But you did mention yesterday  
11 that you're an emotional person and sometimes you  
12 get angry. And honestly, do you think you could be  
13 fair and impartial in this case?

14 PROSPECTIVE JUROR COOPER: In all honesty, I  
15 am sick to my stomach right now. I do not know  
16 that guy. I don't even watch the news. That's the  
17 truth.

18 MR. MICHAILOS: Okay.

19 PROSPECTIVE JUROR COOPER: I hear it. I  
20 listen. I want to. I don't think I can go through  
21 with it.

22 MR. MICHAILOS: Thank you, ma'am.

23 PROSPECTIVE JUROR COOPER: I really don't.

24 MR. MICHAILOS: Thank you. I appreciate that,  
25 ma'am.

1           Anyone else who would like to stand up and  
2           think they cannot be fair and impartial if you're  
3           picked for this jury?

4           THE COURT: I believe you have a hand.

5           MR. MICHAILOS: Stand up, sir. I'm sorry.  
6           Your name again?

7           PROSPECTIVE JUROR BESUGLOW: Besuglow.

8           MR. MICHAILOS: Besuglow.

9           Mr. Besuglow, does what you have to say refer  
10          to the death penalty?

11          PROSPECTIVE JUROR BESUGLOW: That and other  
12          things.

13          MR. MICHAILOS: Okay. Because I'm going to  
14          try to be brief. Mr. Pura is going to get up after  
15          me. He's going to address the death penalty. I'm  
16          here more concerned now with the trial phase, the  
17          first trial.

18          PROSPECTIVE JUROR BESUGLOW: Yeah. But you  
19          just said something, though.

20          MR. MICHAILOS: Okay. Go ahead.

21          PROSPECTIVE JUROR BESUGLOW: If you're going  
22          to be on the jury.

23          MR. MICHAILOS: Yes.

24          PROSPECTIVE JUROR BESUGLOW: You're going to  
25          have be on the death.

1 MR. MICHAILOS: That's correct.

2 PROSPECTIVE JUROR BESUGLOW: So if I'm already  
3 telling you --

4 MR. MICHAILOS: I'm not telling you not to  
5 tell me. I'm just saying maybe it's better if you  
6 tell Mr. Pura; but you go ahead.

7 PROSPECTIVE JUROR BESUGLOW: That I wouldn't  
8 be too fair there.

9 MR. MICHAILOS: Okay. And I know you've made  
10 that clear earlier too. So thank you, sir. I  
11 appreciate that.

12 Now, does anybody know -- well, you already  
13 know because we told you several times. The burden  
14 of proof on a criminal case is beyond a reasonable  
15 doubt. Does anybody know why the burden of proof  
16 is so high in a criminal case? Does anybody think  
17 that might be too high of a burden?

18 PROSPECTIVE JUROR LEAVY: The stakes are high.

19 MR. MICHAILOS: Ms. Leavy.

20 PROSPECTIVE JUROR LEAVY: The stakes are high.

21 MR. MICHAILOS: The stakes are high. Thank  
22 you, ma'am. Because there's liberty at stake.  
23 There's life at stake.

24 PROSPECTIVE JUROR LEAVY: Yes. This is a very  
25 serious situation.

1           MR. MICHAILOS: And it's at times like this  
2           that I wish Mr. Strohman was here, because he  
3           brought up some good points that perhaps sometimes  
4           an innocent person can be convicted. The burden is  
5           so high so an innocent person is not convicted.  
6           Because our Founding Fathers believed that it's  
7           better to let a hundred guilty people go free than  
8           one innocent person be convicted.

9           MR. LABRUZZO: Judge, we're objecting to that  
10          and also the previous reference.

11          THE COURT: Let's move on.

12          MR. MICHAILOS: Now, Ms. Zelinski.

13          PROSPECTIVE JUROR ZELINSKI-LOPEZ: Yes.

14          MR. MICHAILOS: What if you're picked for this  
15          jury and you sit throughout the whole trial  
16          obviously, and at the end of the trial you have a  
17          gut instinct that tells you Mr. Matos is guilty,  
18          but it has not been proven to you beyond a  
19          reasonable doubt by the State Attorney's Office.  
20          How do you vote with regard to your verdict, guilty  
21          or not guilty?

22          PROSPECTIVE JUROR ZELINSKI-LOPEZ: Not guilty.

23          THE COURT: Anybody disagree with that?

24          THE PROSPECTIVE JURY PANEL: (No audible  
25          response.)

1           MR. MICHAILOS: Not guilty means not proven  
2 beyond a reasonable doubt.

3           Now, Mr. -- is it Schambeau?

4           PROSPECTIVE JUROR SCHAMBEAU: Schambeau.

5           MR. MICHAILOS: Schambeau?

6           PROSPECTIVE JUROR SCHAMBEAU: Yes.

7           MR. MICHAILOS: Mr. Schambeau, a similar  
8 question, only in your question the State has  
9 proven that Mr. Matos probably committed the crimes  
10 he's been charged with, but there still remains a  
11 reasonable doubt. How do you vote on your verdict  
12 form?

13          PROSPECTIVE JUROR SCHAMBEAU: Not guilty.

14          MR. MICHAILOS: Thank you, sir. Anybody  
15 disagree with that?

16          THE PROSPECTIVE JURY PANEL: No.

17          MR. MICHAILOS: Ms. Crook, same question, only  
18 in your situation the evidence shows that it's  
19 highly probable, highly likely that Mr. Matos is  
20 guilty, but there still remains reasonable doubt.  
21 How do you vote in that situation?

22          PROSPECTIVE JUROR CROOK: He's not guilty.

23          MR. MICHAILOS: Does anybody disagree with  
24 that?

25          THE PROSPECTIVE JURY PANEL: No.

1           MR. MICHAILOS: Anybody here who cannot follow  
2           the law and vote not guilty under those  
3           circumstances?

4           THE PROSPECTIVE JURY PANEL: No.

5           MR. MICHAILOS: Thank you.

6           Now, Ms. Hartmann.

7           PROSPECTIVE JUROR HARTMANN: Yes.

8           MR. MICHAILOS: If a person is innocent, do  
9           you think they should take the stand and testify on  
10          their own behalf?

11          PROSPECTIVE JUROR HARTMANN: That's up to  
12          their lawyers.

13          MR. MICHAILOS: Thank you, ma'am.

14          Does anybody think that Mr. Matos has to  
15          testify on his own behalf?

16          THE PROSPECTIVE JURY PANEL: No.

17          MR. MICHAILOS: Would anybody hold that  
18          against him if he chose not to testify on his own  
19          benefit?

20          THE PROSPECTIVE JURY PANEL: No.

21          MR. MICHAILOS: Now, do you all understand  
22          that the Defense does not have to put on a case at  
23          all?

24          THE PROSPECTIVE JURY PANEL: Yes.

25          MR. MICHAILOS: Okay. We can sit around and

1 just pay attention and ask some questions, but at  
2 the end of the day we don't have to put on any  
3 defense. You still would have to make the same  
4 facts and determination and apply the law at the  
5 end and see whether or not the State Attorney  
6 proved the cases, the charges against Mr. Matos  
7 beyond and to the exclusion of every reasonable  
8 doubt. You all understand that, right?

9 THE PROSPECTIVE JURY PANEL: Yes.

10 MR. MICHAILOS: Would anybody just hold that  
11 against us and say, hey, they didn't even bother  
12 making any argument?

13 THE PROSPECTIVE JURY PANEL: No.

14 MR. MICHAILOS: Is there anyone here who has  
15 had a relative or a close friend who was a victim  
16 or could have been a victim of a violent crime and  
17 had to defend themselves?

18 THE PROSPECTIVE JURY PANEL: (No audible  
19 response.)

20 MR. MICHAILOS: Anybody here who had to use  
21 force to defend their own selves in any scenario?

22 PROSPECTIVE JUROR COLEMAN: (Indicating.)

23 MR. MICHAILOS: Ms. Coleman, you've been in  
24 that situation?

25 PROSPECTIVE JUROR COLEMAN: Yes.

1 MR. MICHAILOS: Do you think everybody has a  
2 right to defend themselves?

3 PROSPECTIVE JUROR COLEMAN: Yes, I do.

4 MR. MICHAILOS: Does anybody disagree with  
5 that?

6 THE PROSPECTIVE JURY PANEL: No.

7 MR. MICHAILOS: Mr. Weaver, do you believe  
8 that somebody has a right to defend themselves with  
9 a firearm?

10 PROSPECTIVE JUROR WEAVER: Yes.

11 MR. MICHAILOS: Anybody disagree with that?

12 THE PROSPECTIVE JURY PANEL: No.

13 THE COURT: Can Mr. Weaver sit down?

14 MR. MICHAILOS: I think that Mr. LaBruzzo made  
15 it clear that there may be testimony regarding  
16 firearms in this case. Anyone here who cannot be  
17 fair and impartial when it comes to firearms if  
18 there's any testimony regarding firearms?

19 THE PROSPECTIVE JURY PANEL: No.

20 MR. MICHAILOS: A show of hands who here owns  
21 at least one gun?

22 THE PROSPECTIVE JURY PANEL: (Indicating.)

23 MR. MICHAILOS: Anybody here who is a licensed  
24 hunter?

25 THE PROSPECTIVE JURY PANEL: (Indicating.)

1 THE COURT: Are you sure that's the question  
2 you want to ask?

3 MR. MICHAÏLOS: Can everybody here be fair  
4 regardless of their ownership of firearms or what  
5 they do for sportsmanship?

6 THE PROSPECTIVE JURY PANEL: Yes.

7 PROSPECTIVE JUROR COOPER: A question, please.

8 MR. MICHAÏLOS: Yes, ma'am.

9 PROSPECTIVE JUROR COOPER: I don't own a gun,  
10 but my husband does and it's in the house, but I  
11 don't know if that counts.

12 MR. MICHAÏLOS: It counts.

13 PROSPECTIVE JUROR COOPER: Okay.

14 MR. MICHAÏLOS: But that wouldn't affect your  
15 decision in this case?

16 PROSPECTIVE JUROR COOPER: No, sir.

17 MR. MICHAÏLOS: You would still be  
18 open-minded?

19 PROSPECTIVE JUROR COOPER: Absolutely.

20 MR. MICHAÏLOS: And consider all the evidence?

21 PROSPECTIVE JUROR COOPER: Yes.

22 MR. MICHAÏLOS: Ma'am, your name again is?

23 THE COURT: Cooper.

24 PROSPECTIVE JUROR COOPER: Janis Cooper.

25 MR. MICHAÏLOS: Janis Cooper.

1           Now, there's a procedure in a trial. There's  
2           rules, there's law, and there's a procedure. And  
3           the State's gets to go first. And as you probably  
4           got a hint, that this is going to be a long trial.  
5           There's going to be several witnesses. It could be  
6           a 15-day trial for all we know. And I'm talking  
7           about the first trial phase; not the penalty phase.

8           If you are picked to serve on this jury, can  
9           you keep an open mind and withhold your judgment  
10          until you have heard all the evidence and the facts  
11          of this case?

12          THE PROSPECTIVE JURY PANEL: Yes.

13          MR. MICHAILOS: Can you wait until you have  
14          been instructed by Judge Handsel as to what the law  
15          is?

16          THE PROSPECTIVE JURY PANEL: Yes.

17          MR. MICHAILOS: So you can determine if, in  
18          fact, Mr. Matos is guilty of the crimes he's been  
19          charged?

20          THE PROSPECTIVE JURY PANEL: Yes.

21          MR. MICHAILOS: Because Mr. LaBruzzo made  
22          clear yesterday if you're picked, you're going to  
23          be fact finders, you're also going to be law  
24          appliers I think was the term that he used. You  
25          would agree you can't apply the law if you don't

1 know what the law is yet, right?

2 THE PROSPECTIVE JURY PANEL: Yes.

3 MR. MICHAÏLOS: And like I said, you might not  
4 hear from us at all, and if you do, it might not be  
5 until the very end. Can you all promise me that  
6 you will keep that open mind until the very end?

7 THE PROSPECTIVE JURY PANEL: Yes, sir.

8 MR. MICHAÏLOS: Thank you, ladies and  
9 gentlemen.

10

11 THIS HAS BEEN PROOFED WILLIE PURA - JURY SELECTION

12 THE COURT: All right. Ladies and gentlemen,  
13 just so you know, they're not done. Sorry. I  
14 agreed to let them split some questioning. So  
15 Mr. Pura is going to continue with some other  
16 questions. Okay. But the first half is done.  
17 There are only two of them who are going to talk.  
18 Okay?

19 MR. PURA: Good morning, everybody.

20 PROSPECTIVE JURY PANEL: Good morning.

21 MR. PURA: I am going to be asking you, as  
22 you've already been alerted, about your opinions  
23 regarding the death penalty.

24 And the first thing I want you all to know is  
25 that I think we can all agree that deciding whether

1           somebody should live or die is a deeply moral  
2           decision to make for anybody, and that you have a  
3           right to your opinion. I want you to know you have  
4           a right to your opinion. I'm not going to  
5           criticize you for your opinion whatever it is. I'm  
6           not going to try to get you to change that opinion.

7                     But even as important, being such a deeply  
8           moral decision and opinion, I promise I will treat  
9           your opinion with the dignity and the respect that  
10          it deserves throughout this process.

11                    And if you think when I'm questioning you that  
12          I'm being critical of you or condescending or  
13          negative in any way, I want you to promise that you  
14          will call me on the carpet and let me know. All  
15          right? Do we have that agreed upon?

16                    PROSPECTIVE JURY PANEL: Yes.

17                    MR. PURA: Okay. Now, Mr. Michailos touched  
18          upon it, but I'm placed in a bit of an awkward  
19          situation talking about the death penalty because  
20          Mr. Matos is presumed innocent and he has not been  
21          found guilty.

22                    But the problem is is that we have to prepare  
23          for any possible outcome of the guilt phase of the  
24          trial, because if for some reason Mr. Matos is  
25          found guilty of any of the four counts and we

1 proceed to a penalty phase, we won't be able to  
2 talk to you then about your opinion regarding the  
3 death penalty. So we have to do that now. Okay.  
4 Does everybody understand that?

5 By talking about the death penalty, I'm not  
6 conceding Mr. Matos's guilt. In fact, I expect  
7 Mr. Michailos and Mr. Vizcarra will put on a  
8 vigorous defense. Does everybody understand where  
9 I'm going on that?

10 PROSPECTIVE JURY PANEL: Yes.

11 MR. PURA: Okay. Thank you.

12 So I'm not going to cut corners here, but I  
13 want to make sure that you understand I'm going to  
14 try to be as efficient with our time as I can.  
15 Obviously, I'm not going to cut corners given the  
16 serious nature of these proceedings.

17 And I'm going to do that by presenting to you  
18 as a group a hypothetical situation that I want you  
19 all to place yourselves into. And by the time I  
20 get to you individually, after I present the  
21 hypothetical situation to you as a group, if you  
22 have any questions about the hypothetical that I  
23 posed before you're able to answer any of the  
24 questions that I follow up on, please let me know  
25 and I'll go over it with you. Okay?

1           So here is the hypothetical: I want you all  
2           to imagine yourselves as jurors in a capital murder  
3           trial. Okay? Not this trial. Let's say a trial  
4           down the hall. Okay? And unlike this trial, in  
5           that trial you have sat through the entire trial,  
6           you've heard the State present its case, you heard  
7           the Defense put on a defense, and you and the other  
8           11 jurors decided unanimously that that defendant  
9           was guilty of first-degree premeditated murder.  
10          Okay?

11           You've already went through that process and  
12           you decided that the State proved their case beyond  
13           a reasonable doubt. There wasn't any doubt in your  
14           mind that the defendant was guilty of first-degree  
15           premeditated murder. All right?

16           And in reaching that decision, you as a group  
17           considered the possibility that the defendant had  
18           acted in self-defense, that he perhaps acted in  
19           defending a third party, and that perhaps he acted  
20           in the midst of a heat of passion, that he saw  
21           something that made him flip out and  
22           uncontrollable.

23           You considered all those possibilities and you  
24           determined that none of them applied, there was no  
25           issue about self-defense, there was no issue about

1           defending another, there was no issue about acting  
2           in the heat of passion, that this murder was done  
3           premeditated in a cold-blooded fashion. All right?

4                   PROSPECTIVE JURY PANEL: Yes.

5                   MR. PURA: Okay. Are we good so far?

6                   PROSPECTIVE JURY PANEL: Yes.

7                   MR. PURA: Okay. And also in reaching that  
8           decision, that the State had proven their case  
9           beyond a reasonable doubt, you considered the  
10          possibility that the defendant suffered from some  
11          sort of mental condition, that he was perhaps  
12          mentally retarded or as we say now intellectually  
13          disabled or that somehow his mental condition  
14          rendered him unable to form the intent to commit  
15          this murder.

16                  You all considered that, all 12 of you, and  
17          you all unanimously decided that none of that came  
18          into play, that he acted with a clear mind, a clear  
19          conscience when he committed this murder. Okay?  
20          Are we good with that?

21                  PROSPECTIVE JURY PANEL: Yes.

22                  MR. PURA: All right. And, lastly, you  
23          considered the possibility that the defendant in  
24          your hypothetical trial was perhaps too drunk or  
25          too high on drugs to form the intent to commit the

1 murder and you dismissed that possibility as well.

2 Despite anything you might have heard that  
3 there might have been the presence of alcohol or  
4 drugs, you've decided unanimously and beyond a  
5 reasonable doubt that it didn't rise to the level  
6 of preventing that defendant from making that  
7 decision to kill. Okay? All right. Are we good  
8 with that?

9 PROSPECTIVE JURY PANEL: Yes.

10 MR. PURA: All right.

11 MR. LABRUZZO: Judge, may we approach.

12 THE COURT: Sure.

13 (Bench Conference.)

14 THE COURT: Yes.

15 MR. LABRUZZO: Judge, I'm familiar with the  
16 hypothetical. And it's not the hypothetical, it's  
17 the addition of the fact that he's mentally  
18 retarded and intelligently disabled. There are  
19 rules preventing, you know, putting someone to  
20 death that suffers from certain mental -- or  
21 mentally retarded.

22 I mean that's not a legal defense to a crime,  
23 and I understand that he's trying to present that  
24 they consider all the defenses to a case, but the  
25 fact that someone is mentally retarded is not a

1 defense, and I don't want the jury thinking that  
2 somehow that a defense to the guilt phase can be  
3 that someone is mentally retarded.

4 And again I understand where he's going with  
5 it, and I don't have a problem with the other  
6 defenses that he's talked about, even legal ones or  
7 not legal ones. But the suggestion that the State  
8 would seek the death penalty on a mentally retarded  
9 person or as it would be a defense I think is  
10 inappropriate and not valid.

11 The other defenses, I'm not objecting to  
12 those, it's that specific mention.

13 MR. PURA: Well, I mean I'm moving on. So  
14 it's not like I'm going to dwell on mental  
15 retardation. I don't think the State has anything  
16 to worry about. We're not presenting a defense  
17 during the guilt phase a defense of mental  
18 retardation. I mean there's no danger of that  
19 happening.

20 MR. LABRUZZO: And I don't mean in this case.  
21 I'm just saying this is a hypothetical that -- and,  
22 again, it's not the facts of this case, I agree  
23 with that, but that's my objection.

24 THE COURT: What am I going to do, go back?

25 MR. LABRUZZO: Well, no. Having sat through

1           these before, and I don't doubt Mr. Pura, I know  
2           he's not going to go through every one, but it's  
3           going to be a feature if he's going to continue to  
4           go over the fact that, oh, he presents mentally  
5           retarded and the State is seeking the death on him.

6           THE COURT: Let's move on and not mention  
7           mental retardation.

8           MR. PURA: Yes. That's fine.

9           THE COURT: I have no problem with you saying  
10          that they were insane, I mean insanity is a  
11          defense.

12          MR. PURA: Right.

13          THE COURT: But mental retardation is not a  
14          defense. You see what I'm saying? I can kind of  
15          see their point.

16          MR. PURA: It could be. But I'm moving on  
17          from that. I'm not going there.

18          THE COURT: Okay. Thanks. We just won't go  
19          there anymore.

20          (Open Court.)

21          THE COURT: You may proceed.

22          MR. PURA: Thank you.

23          And lastly, ladies and gentlemen, you all  
24          considered the possibility that the defendant in  
25          that hypothetical was insane at the time he

1 committed this act, okay, that he was legally  
2 unable to form the requisite intent for  
3 premeditation, and you ruled out that possibility.

4 There was no doubt in your mind that the  
5 defendant was sane, that he committed this act in a  
6 cold, calculated fashion, that he made the decision  
7 to kill, that he had time to reflect on that  
8 decision, and he carried it out and killed an  
9 innocent victim with no justification and no  
10 excuse. Okay?

11 PROSPECTIVE JURY PANEL: Yes.

12 MR. PURA: All right. That's the  
13 hypothetical.

14 Mr. Weaver?

15 PROSPECTIVE JUROR WEAVER: Yes.

16 MR. PURA: Do you mind, can I get you to stand  
17 up again, sir. Thanks.

18 Mr. Weaver, what are your feelings about the  
19 death penalty being the only appropriate penalty  
20 punishment for that killer, that murderer of that  
21 innocent victim?

22 PROSPECTIVE JUROR WEAVER: I said yesterday, I  
23 think -- I think the --

24 MR. PURA: I'm sorry?

25 PROSPECTIVE JUROR WEAVER: I think yesterday

1           what I was talking about that the punishment should  
2           fit the crime. And like I told them here  
3           yesterday, it's our duty to decide guilt or  
4           innocent.

5                     And the more I've been in this trial right  
6           here, the more prejudice I'm getting on this. My  
7           grandfather always told me honesty and attorney  
8           should never be used in the same. And I was very  
9           insulted yesterday with the questioning that you  
10          had, that we cannot use common sense, we had to use  
11          the facts only. That we cannot -- the mitigating  
12          circumstances here, that we cannot use them. Black  
13          and white, there's just too many other colors than  
14          just black and white on a trial. And I'm just --  
15          I'm just getting more and more disgusted with this  
16          as I listen.

17                    MR. PURA: I mean believe me we all appreciate  
18          your candor. You said you're getting more and more  
19          prejudice. More and more prejudice in what  
20          direction?

21                    PROSPECTIVE JUROR WEAVER: About the line of  
22          questioning yesterday of what we could and could  
23          not use. That we could not use common sense. That  
24          we could not use our own judgment one way or the  
25          other. We had to obey the law strictly. And I'm

1 getting where I don't want to be on this trial.

2 MR. PURA: I can assure you that if you think  
3 that's what Mr. LaBruzzo said is that you are to  
4 abandon your common sense, you misunderstood him.  
5 I know that he wouldn't say that and the Judge  
6 wouldn't say that. You are to apply your common  
7 sense. You're not to leave it out the door,  
8 outside the door. Okay?

9 Knowing that you can apply your common sense,  
10 given the hypothetical scenario that I presented to  
11 you, my question to you is in that hypothetical  
12 scenario, is death the only appropriate punishment  
13 for that murder?

14 PROSPECTIVE JUROR WEAVER: No. That's what I  
15 said.

16 MR. PURA: Okay. What kind of things, what  
17 else would you need to know before you make a  
18 decision on whether the appropriate punishment for  
19 that killer is death or life without parole? What  
20 else would you need to know before making that  
21 decision?

22 PROSPECTIVE JUROR WEAVER: You had a scenario.  
23 If they're sitting there and they told me he  
24 bludgeoned somebody to death. If you tell me that  
25 he took a baseball bat a half mile away and killed

1 a guy, killed him on purpose, I'm going to question  
2 that. That's a fact that I can't accept.

3 As for extenuating circumstances, like I said,  
4 there's no black or white on any type of decision  
5 as far as extenuating circumstances. So the death  
6 penalty, the person that said the other day an eye  
7 for an eye, I don't believe an eye for an eye, but  
8 I believe the punishment should fit the crime, and  
9 he has to be guilty before he can get that  
10 punishment.

11 MR. PURA: Well, let me suggest that in the  
12 scenario that you mentioned the guy throwing a bat  
13 from a long distance away and it strikes somebody  
14 and kills somebody, it would be normal to question  
15 whether that guy intended to kill that person,  
16 right?

17 PROSPECTIVE JUROR WEAVER: Yes.

18 MR. PURA: I mean that would be a pretty  
19 miraculous aim with the bat there. I mean it's not  
20 like he's shooting through a scope rifle from far  
21 away, correct?

22 PROSPECTIVE JUROR WEAVER: Yes.

23 MR. PURA: Okay. So in that question, yes, if  
24 you have a question about the person's premeditated  
25 intent, that would be normal.

1           In my hypothetical scenario there's absolutely  
2           no question about the defendant's intent that he  
3           intended to kill this person. Okay? Does that  
4           lend you toward one penalty or another?

5           PROSPECTIVE JUROR WEAVER: That's what I said.  
6           The punishment should fit the crime. If it was  
7           premeditated, no, I believe the death penalty  
8           should be brought in. If he didn't do it,  
9           absolutely not.

10          MR. PURA: Okay. And I'm talking about  
11          someone who did it. Okay. No question in your  
12          mind he did it, premeditated, did it.

13          PROSPECTIVE JUROR WEAVER: Then I believe in  
14          the death penalty.

15          MR. PURA: Okay. And in that situation you  
16          wouldn't consider life to be a sufficient  
17          punishment for that?

18          PROSPECTIVE JUROR WEAVER: No, sir.

19          MR. PURA: You wouldn't be interested in  
20          hearing about things not directly related to the  
21          murders, things like --

22          PROSPECTIVE JUROR WEAVER: That's what we're  
23          talking about. Depending on the circumstances.  
24          What was the cause? What happened? Yes, that  
25          brings in a lot right there.

1           MR. PURA: Again, but as far as if you're  
2           convinced that it was a premeditated act with no  
3           justification, no excuses, you're saying that your  
4           vote would be death?

5           PROSPECTIVE JUROR WEAVER: Yes, sir.

6           MR. PURA: Thank you, sir.

7           THE COURT: Before you go further, Mr. Weaver,  
8           I'm concerned about what you said about using your  
9           common sense. And maybe somebody else  
10          misunderstood like you did what the prosecutor was  
11          trying to get at.

12          If you're chosen as a juror in this case,  
13          anyone, anyone on this panel, I'll give you a set  
14          of instructions. I've got a lot of them -- there's  
15          a little book, I give each of you a copy of them --  
16          but one of the most important ones is weighing the  
17          evidence. So we give you a bunch of evidence, we  
18          give you a bunch of testimony, we give you a bunch  
19          of things to look at.

20          At the end one of the instructions I would  
21          give any juror is that it is up to you individually  
22          to decide what of that evidence is reliable. So  
23          you got 12 of you or 14 of you, each one of you,  
24          it's up to you to decide in your own mind what is  
25          reliable.

1           You should use your common sense in deciding  
2           what is the best evidence and which evidence should  
3           not be relied upon in deciding your verdict. Okay?  
4           You may find some of the evidence not reliable or  
5           less reliable than other evidence.

6           And I'll give you some things to use to make  
7           that decision, and that would include any evidence  
8           from an expert witness. You can treat expert  
9           witnesses -- the only thing we say is, if we  
10          consider them an expert, we let them do  
11          hypotheticals. But in the end it will be up to  
12          each juror individually to decide whether to rely  
13          on an expert witness. You can discount any expert  
14          as you could discount any other witness.

15          Does that help you? I don't want you left  
16          with the idea that we give you a bunch of evidence  
17          and say you must believe this. It's up to each  
18          individual juror to look at that evidence, to  
19          examine that evidence, to use their common sense,  
20          and decide what evidence they believe is reliable.

21          Does that help you?

22                 PROSPECTIVE JUROR WEAVER: When he said  
23                 yesterday you can only go by the facts that we give  
24                 you.

25                 THE COURT: And, again, I'm not exactly sure

1           where. We were talking a lot yesterday. We're all  
2           getting a little tired, a little punchy. So he may  
3           not have understood. He might have been using it  
4           in a different scenario.

5                     But I just want you and all the other people  
6           who are out here to know that if you are chosen as  
7           a juror, you most certainly bring your common sense  
8           here. We don't want you to leave it outside the  
9           door. And I even give an instruction that says  
10          you're to rely on your common sense in you making  
11          your own decision on which evidence is reliable to  
12          you individually and some evidence may be less  
13          reliable or not reliable and you can discard it, if  
14          you wish. Okay?

15                    So I just want to make sure you understood  
16          that and all the other jurors understood that.  
17          Okay?

18                    I apologize, Mr. Pura, for interrupting.  
19          Okay?

20                    MR. PURA: Not at all. Not at all.

21                    Thank you, sir. Thank you, Mr. Weaver.

22                    So does anybody else agree with Mr. Weaver  
23          that under the hypothetical scenario that I  
24          presented, that the death penalty is the only  
25          appropriate punishment for that killer of that

1 innocent victim? Does anybody else agree with  
2 that?

3 PROSPECTIVE JUROR MORGAN: (Indicating.)

4 MR. PURA: Yes. And that would be Mr. Morgan?

5 PROSPECTIVE JUROR MORGAN: Yes.

6 MR. PURA: Could you stand up, please.

7 So you wouldn't think that life would be  
8 sufficient punishment for that killer?

9 PROSPECTIVE JUROR MORGAN: I do not.

10 MR. PURA: Okay. So you wouldn't be  
11 interested in hearing about anything regarding  
12 childhood or anything not directly related to --

13 PROSPECTIVE JUROR MORGAN: Well, in your  
14 scenario we've heard everything that we needed to  
15 hear to know without a reasonable doubt that that  
16 person did the crime. So, yes, my vote would be  
17 for the death penalty.

18 MR. PURA: Thank you, Mr. Morgan.

19 Anybody agree with Mr. Morgan?

20 PROSPECTIVE JUROR PETERS: (Indicating.)

21 MR. PURA: Yes. That would be Mr. Peters.

22 PROSPECTIVE JUROR PETERS: In your scenario,  
23 knowing only those facts, I agree.

24 MR. PURA: So in that scenario life would  
25 never be sufficient punishment? Is that what you

1 think?

2 PROSPECTIVE JUROR PETERS: Knowing only the  
3 facts that you just presented, I would be  
4 comfortable voting for the death penalty.

5 MR. PURA: I mean, yes, the question is would  
6 the death penalty be the only appropriate sentence  
7 in that scenario?

8 PROSPECTIVE JUROR PETERS: Given the facts  
9 that you presented?

10 MR. PURA: Yes.

11 PROSPECTIVE JUROR PETERS: Only those facts,  
12 yes.

13 MR. PURA: Thank you, sir. Thank you,  
14 Mr. Peters.

15 Who else?

16 PROSPECTIVE JUROR MIXON: (Indicating.)

17 MR. PURA: Yes. And that would be -- I'm  
18 sorry. Is that Mr. Mixon?

19 PROSPECTIVE JUROR MIXON: Yes, it is.

20 MR. PURA: Mr. Mixon.

21 PROSPECTIVE JUROR MIXON: With that scenario,  
22 found guilty, the death penalty.

23 MR. PURA: No doubt in your mind of the guilt  
24 of the man, there's no defenses, no justification.

25 PROSPECTIVE JUROR MIXON: We have in the law

1 to be used.

2 MR. PURA: And life in that situation would  
3 never be sufficient?

4 PROSPECTIVE JUROR MIXON: Correct.

5 MR. PURA: Thank you, sir. Thank you,  
6 Mr. Mixon.

7 I saw another hand.

8 PROSPECTIVE JUROR SCHLITT: (Indicating.)

9 MR. PURA: Yes. Is that Mr. Schlitt?

10 PROSPECTIVE JUROR SCHLITT: Yes.

11 MR. PURA: Yes. Mr. Schlitt, could you stand  
12 up, please.

13 PROSPECTIVE JUROR SCHLITT: Yes.

14 MR. PURA: So you remember my scenario, right,  
15 sir?

16 PROSPECTIVE JUROR SCHLITT: I do, yes.

17 MR. PURA: You know, no justification, no  
18 defenses, you think death is the only appropriate  
19 penalty for that killer?

20 PROSPECTIVE JUROR SCHLITT: Yes, sir.

21 MR. PURA: And again the same question, you  
22 don't think life would ever be sufficient  
23 punishment for that killer?

24 PROSPECTIVE JUROR SCHLITT: No. The victim  
25 didn't have a choice.

1 MR. PURA: Yes, sir. Thank you. Thank you,  
2 Mr. Schlitt.

3 Anybody else, please?

4 PROSPECTIVE JUROR KURTZ: (Indicating.)

5 MR. PURA: I'm sorry. Is that Ms. Kurtz?

6 PROSPECTIVE JUROR KURTZ: Yes.

7 MR. PURA: Yes, Ms. Kurtz.

8 PROSPECTIVE JUROR KURTZ: I would agree with  
9 the death penalty.

10 MR. PURA: Okay. Ms. Kurtz, thank you. We  
11 appreciate you coming back today.

12 Anybody else agree?

13 PROSPECTIVE JUROR CHILDERS: (Indicating.)

14 MR. PURA: And we have is it Ms. Childers?

15 MR. LABRUZZO: Judge, can we approach.

16 THE COURT: Sure. Give us a second, ladies  
17 and gentlemen.

18 (Bench Conference.)

19 MR. LABRUZZO: Judge, my issue is that  
20 multiple people are saying based only on those  
21 facts. Well, and that the Defense is conceding  
22 that they're not giving them any mitigation.

23 So in this hypothetical when they're saying if  
24 that's all I'm going to get and I'm not going to  
25 get any other -- because they all understand the

1           concept, at least yesterday, that there would be a  
2           weighing of the aggravator versus the mitigator.

3           And according to this hypothetical, I think  
4           it's becoming confusing to the jurors, and I base  
5           that on the fact that many of them are saying,  
6           based only on those facts, if you're not going to  
7           tell me any mitigation.

8           THE COURT: Well, I take notes.

9           MR. LABRUZZO: And that's not the process that  
10          they're going to go through -- and I understand  
11          that they've been presented with defenses; but,  
12          again, the Defense is also going to say and has  
13          said that mitigation can come from anywhere.

14          And if they're not going to inform the juror  
15          that there's going to be no mitigation, I think  
16          then that's an inaccurate presentation of what the  
17          law is, and it is confusing the jury because they  
18          are not being told that what they're going to  
19          receive as mitigation.

20          And I think that if he's going to say, listen,  
21          there's no mitigation or that the mitigation you  
22          heard, you know, then my objection is different.  
23          But we've now gone through two or three people that  
24          keep saying -- that are piggy-backing based on the  
25          misconception that there is no mitigation or the

1 Defense is choosing not to put on any mitigation,  
2 and I think that that is what is confusing the  
3 jury. So either he can correct it or we just ask  
4 that we abandon the hypothetical.

5 THE COURT: Or you could get back up and  
6 rehabilitate.

7 MR. LABRUZZO: Am I going to be given an  
8 opportunity to get up?

9 THE COURT: Absolutely. The case is clear --

10 MR. LABRUZZO: Okay.

11 THE COURT: -- that he makes his hypothetical,  
12 you have absolutely a right to rehabilitate these  
13 witnesses.

14 I agree that I believe in the hypothetical  
15 that has been given to the jurors, Mr. Pura has not  
16 yet said, of course we're going to show some  
17 mitigation, would you consider it?

18 You have yet to use the word "mitigation."  
19 You have yet to ask these people would they  
20 consider any mitigation? You can't strike  
21 something unless they say they cannot consider any  
22 mitigation. You keep saying some stuff, some  
23 stuff.

24 MR. PURA: I said like background, childhood,  
25 I mentioned that.

1           THE COURT: Well, we went over yesterday at  
2           nauseam aggravating factors and mitigating  
3           circumstances. You've yet used the word. And I  
4           know you're doing it purposely, you're doing it  
5           purposely.

6           MR. PURA: No, I'm not. That's not true.

7           THE COURT: Well, then why won't you say, will  
8           you consider mitigating circumstances?

9           MR. PURA: I will.

10          THE COURT: What if you found out about his  
11          background --

12          MR. PURA: I will.

13          THE COURT: -- or something bad about his  
14          childhood, would you consider those? Because if  
15          they say they won't, I completely agree.

16          But I think Mr. Weaver has already said it's  
17          not black and white, I'd have to hear it, I have to  
18          hear it, I don't know. You said, will you listen  
19          to stuff? That's what he said, it's not black and  
20          white, I have to hear it.

21          But you haven't used the words "mitigating  
22          circumstances," or "weighing". So in your  
23          hypothetical you kind of left them with the idea  
24          that there is no mitigating circumstances, he's a  
25          cold-blooded killer who did it because he wanted to

1 do it and there's no redemption left for him.

2 MR. PURA: Yes.

3 THE COURT: And I agree. I understand. But I  
4 think this makes the list. And then if you want to  
5 rehabilitate them, we'll bring them back up and  
6 see. Just like Ms. Sulinski-Lopez, they come back  
7 and say, oh, I didn't understand, of course I would  
8 weigh it and if I thought it did not weigh, then I  
9 would consider death and I would consider life,  
10 and then they may not be a cause challenge.

11 But just like you did, I wasn't going to stop  
12 him, but I most certainly will give you an  
13 opportunity to rehabilitate, based on the law,  
14 whether they could, can or will consider  
15 mitigation.

16 I think there's a couple people out there the  
17 answer is going to be no, that based on the  
18 hypothetical, I find that it's cold, calculating  
19 and premeditated, I find that he did it. You could  
20 tell me he grew up in the worse scenario ever and  
21 you could tell me that all these, you know,  
22 horrible things about his childhood and that he's  
23 good with little children or he's nice to puppies  
24 or whatever, I'm still going to give him the death  
25 penalty.

1           I think you're going to probably find two or  
2           three, but I don't think all of the people so far  
3           are going to stay that way, but I'll give you an  
4           opportunity to rehabilitate them. Okay?

5           MR. LABRUZZO: Thank you, Your Honor.

6           THE COURT: And we can even do it outside the  
7           presence of the rest of the jury if you want at the  
8           end. Okay?

9           MR. PURA: Thank you.

10          THE COURT: That he could also speak to them  
11          again. All right.

12          (Open Court.)

13          THE COURT: Mr. Pura, you may proceed.

14          MR. PURA: Mr. Schlitt, can I have you stand  
15          up again, please.

16          I'm going to backtrack a little bit. Okay?  
17          The hypothetical scenario that I presented, you  
18          responded that based just on those hypothetical  
19          facts that death is the only appropriate penalty in  
20          your mind. Okay?

21          And, you know, don't let me put words in your  
22          mouth, but from what I understand you're saying is  
23          that you wouldn't be interested in that situation  
24          to hear about things unrelated to the crime and the  
25          guilt and the act that was committed? For example,

1 would you be interested in hearing about the  
2 defendant having a rough childhood?

3 PROSPECTIVE JUROR SCHLITT: Everybody has  
4 different upbringings and with that, you know,  
5 sometimes you got to -- and this is what I teach my  
6 daughters, sometimes you have to rise above your  
7 situation and do what's right in life. And when  
8 you don't do what's right in life, well, there's  
9 consequences to that.

10 MR. PURA: So it wouldn't factor into your  
11 decision on the appropriate penalty as far as  
12 any --

13 PROSPECTIVE JUROR SCHLITT: I don't believe  
14 so, no. Again, we all have hardships in life.

15 MR. PURA: Okay.

16 PROSPECTIVE JUROR SCHLITT: It's what you do  
17 after those hardships is what makes you who you  
18 are.

19 MR. PURA: And how about things like, you  
20 know, let's say -- and again let me remind  
21 everybody, I'm presenting a hypothetical situation.  
22 Okay? We're not talking about necessarily anything  
23 that you're going to hear if you're picked as a  
24 juror.

25 What if you heard about the defendant in my

1           hypothetical situation, you know, suffered from a  
2           drug addiction, you know, that didn't affect his  
3           intent to commit the crime, you know, he had a  
4           clear mind when he did it, would you care that, you  
5           know, he suffered from a drug addiction?

6                   PROSPECTIVE JUROR SCHLITT: It would be tough  
7           for me. And, again, I'm going back to my life  
8           experiences. As a parent, you know, I teach my  
9           daughters. You know, I have two daughters, one is  
10          getting ready to graduate high school and one is  
11          going to high school. And, you know, I teach  
12          them that -- this is me again. I'm being candid.  
13          Is that being a drug user is an easy thing because  
14          you always give into it, but when you go against  
15          those things, well, then you are essentially being  
16          a stronger person.

17                   MR. PURA: All right. Thank you, Mr. Schlitt.

18                   If I can back up to you, Mr. Peters, for a  
19          second. Okay? You know, yesterday -- and I'll  
20          direct this question to everybody as well.  
21          Yesterday we talked about aggravators and  
22          mitigators, right? Remember that? Right?

23                   And, you know, you really haven't been given a  
24          legal definition of mitigator or aggravator, but  
25          you know that at some point, if we get to the

1 penalty phase, there will be some sort of weighing  
2 of aggravators versus mitigators. Okay?

3 And basically a mitigator is anything -- any  
4 juror who feels makes life the more appropriate  
5 sentence than death. Okay. That's essentially  
6 what a mitigator is. Okay?

7 Mr. Peters, back to my hypothetical scenario.  
8 You're convinced beyond a reasonable doubt that  
9 this killer killed with cold-blooded premeditated  
10 intent a completely innocent victim, no defenses,  
11 no justification whatsoever for his act, and you've  
12 already expressed your opinion that under that  
13 basic scenario, with those facts, that you would  
14 think life is the only appropriate punishment.  
15 Would you consider any possible mitigating  
16 evidence?

17 PROSPECTIVE JUROR PETERS: That there scenario  
18 you just said with his past history of poor  
19 childhood, something like that?

20 MR. PURA: Right.

21 PROSPECTIVE JUROR PETERS: It would probably  
22 give me some pause, but I still would think it's  
23 probably a situation where you can rise above  
24 something like that and I would have to -- I just  
25 feel more comfortable voting for death.

1 MR. PURA: You would still feel comfortable?

2 PROSPECTIVE JUROR PETERS: I guess if I was  
3 told the severities to it. It depends how badly  
4 the abuse was, if we're talking about as a child,  
5 it would give me pause. But in the end, if he was  
6 of a clear mind, it was premeditated, I still  
7 wouldn't have any problems with giving death.

8 MR. PURA: And I understand you say you still  
9 would have no problem. I guess the issue is would  
10 it be pretty much an automatic decision for you?  
11 You said it would give you pause, but would you  
12 still --

13 PROSPECTIVE JUROR PETERS: Well, I guess it  
14 would be -- I guess I would say how severe was he  
15 abused? Was there a father situation or a mother  
16 situation that maybe verbally put the child down or  
17 was it a physical situation where the child was  
18 beaten for years? Was the child in foster care?  
19 All those scenarios, I would have to have pause to  
20 those kinds of situations.

21 MR. PURA: Okay. Okay.

22 PROSPECTIVE JUROR PETERS: But if it wasn't  
23 severe, it was just a parent that maybe wasn't the  
24 best parent in the world.

25 MR. PURA: But you can imagine a situation

1           where you might actually consider life as the  
2           appropriate sentence even though the person -- you  
3           know, there's no doubt in your mind it was  
4           premeditated murder?

5                    PROSPECTIVE JUROR PETERS:  I think at that  
6           point, if it's premeditated and it's a situation  
7           where it really is callous and brutal, then I would  
8           have no problem voting for the death penalty I can  
9           honestly say.

10                   MR. PURA:  But, again, I hate to kind of pull  
11           back, and I understand that you wouldn't have a  
12           problem voting for the death penalty.  The question  
13           is --

14                    PROSPECTIVE JUROR PETERS:  I would strongly  
15           consider it.

16                    MR. PURA:  -- would you ignore any possible  
17           mitigating evidence and just vote for death?

18                    PROSPECTIVE JUROR PETERS:  No.  Like I said,  
19           nothing is absolute, like I said yesterday.  So if  
20           other facts came into the proceeding where the  
21           child or the person had a background where there  
22           was problems and situations, I certainly would give  
23           that pause and consider it.

24                    MR. PURA:  That's what I'm asking, sir.

25                    PROSPECTIVE JUROR PETERS:  Okay.

1           MR. PURA: Thank you. Thanks for letting me  
2 go back to you.

3           Let me see. Who's the young lady -- not  
4 Ms. Kurtz. There was another young lady. Was it  
5 Ms. Harman?

6           Yes, ma'am, Ms. Childers, back to you on that.  
7 You know, you heard the question, right?

8           PROSPECTIVE JUROR CHILDERS: Uh-huh.

9           MR. PURA: You indicated that just based on  
10 the hypothetical facts that I posed to you, that  
11 death would be your only appropriate penalty that  
12 you would vote for.

13          Would you be in a position to consider any  
14 kind of mitigating evidence?

15          PROSPECTIVE JUROR CHILDERS: Of course.

16          THE COURT: So if you heard something  
17 regarding the defendant's background, rough  
18 childhood, you know, abusive father, things like  
19 that, would you consider that before making a  
20 decision on whether death or life is the  
21 appropriate penalty?

22          PROSPECTIVE JUROR CHILDERS: Yes.

23          THE COURT: You would?

24          PROSPECTIVE JUROR CHILDERS: Yes, sir.

25          MR. PURA: Thank you, ma'am.

1           Does anybody here think that, you know, under  
2           the factual hypothetical that I laid out, you know,  
3           I don't really care, there really isn't anything  
4           about the person's past, drug addiction or anything  
5           like that, that would influence me to change my  
6           mind? Everybody who kills in a cold-blooded  
7           fashion, a premeditated fashion, with no excuse, no  
8           defense whatsoever, innocent victim, anybody who  
9           does that deserves the death penalty? Does anybody  
10          feel that way?

11           PROSPECTIVE JUROR MORGAN: (Indicating.)

12           MR. PURA: Yes. Okay. Mr. Morgan, I  
13          mentioned mitigation. Can I just have you stand up  
14          real briefly. You are of the mind that you can't  
15          be bothered to hear about any kind of mitigation?

16           PROSPECTIVE JUROR MORGAN: Well, I would  
17          follow what the Judge tells me to do. But I can't  
18          think of any mitigating circumstances that would  
19          give a free pass to someone not being accountable  
20          for their actions.

21           MR. PURA: I understand. Thank you, sir.

22           Anybody agree with Mr. Morgan?

23           PROSPECTIVE JUROR MIXON: (Indicating.)

24           MR. PURA: Okay. Thank you. That would be  
25          Mr. Mixon.

1 PROSPECTIVE JUROR MIXON: Yes.

2 MR. PURA: So you've heard me again kind of  
3 reask the question and inject the element of  
4 possible mitigating circumstances.

5 PROSPECTIVE JUROR MIXON: Right.

6 MR. PURA: You wouldn't be interested in  
7 hearing about that?

8 PROSPECTIVE JUROR MIXON: No. I would give  
9 the death penalty.

10 MR. PURA: Okay. Thank you, sir.

11 Anybody else agree with Mr. Mixon?

12 PROSPECTIVE JUROR WEAVER: (Indicating.)

13 MR. PURA: Mr. Weaver, you agree that you  
14 wouldn't be interested in hearing mitigating  
15 evidence?

16 PROSPECTIVE JUROR WEAVER: I believe everybody  
17 is responsible for their own doing. And just  
18 because his mother wouldn't let him suck his thumb  
19 when he was younger, I don't think has anything to  
20 do with what's happening here.

21 MR. PURA: Okay. Thank you, Mr. Weaver.

22 PROSPECTIVE JUROR BESUGLOW: (Indicating.)

23 MR. PURA: I'm sorry. That's Mr. Besuglow?

24 PROSPECTIVE JUROR BESUGLOW: Yeah. I had a  
25 question.

1 MR. PURA: Yes, sir.

2 PROSPECTIVE JUROR BESUGLOW: It's more, for  
3 example, if -- and I would like to address the  
4 people. If for example --

5 MR. LABRUZZO: Judge, I'm going to object.

6 THE COURT: Mr. Besuglow, you can answer the  
7 questions of lawyers, but you don't get to talk to  
8 the rest of the jurors.

9 PROSPECTIVE JUROR BESUGLOW: Okay. Okay.

10 THE COURT: Would you like him to approach the  
11 bench?

12 MR. PURA: Yes, Judge.

13 MR. LABRUZZO: Yes, sir.

14 THE COURT: Sir, come on up.

15 (Bench Conference.)

16 THE COURT: Yes.

17 PROSPECTIVE JUROR BESUGLOW: Okay. For  
18 example, when I explain both -- this is a question  
19 that needs to be asked. My son, because of lack of  
20 defense, cannot prove -- he had meth on him. Okay.  
21 But he just had a chainsaw accident, that's that  
22 reason why he had his splint. But the prosecutor  
23 is saying that that's why he had a splint was to  
24 hide his machete.

25 And he's asking that he needs medical, you

1 know, since he has a drug problem, and because of  
2 the points it's not allowing him to supposedly get  
3 into like a drug rehab.

4 And this is the question that needs to be  
5 answered. Even if there's mitigating and all the  
6 facts are there but there's no medical to help  
7 people that are in a drug addiction because of the  
8 money situation and that's the law. You  
9 understand?

10 THE COURT: I understand.

11 PROSPECTIVE JUROR BESUGLOW: So that's the  
12 law. Since there's no help for people, we're just  
13 going to kill people because there's no helping,  
14 and this is what I'm getting at.

15 THE COURT: Okay. So what I hear you saying  
16 is --

17 THE WITNESS: And, for example -- hold on.  
18 And I'm not used to and --

19 THE COURT: Mr. Besuglow.

20 PROSPECTIVE JUROR BESUGLOW: This is my first  
21 thing --

22 THE COURT: Stop. Sir, sir.

23 PROSPECTIVE JUROR BESUGLOW: -- I don't want  
24 to be the last one.

25 MR. PURA: Sir, sir.

1           THE COURT:  Sir, you have to stop.  Take a  
2           deep breath.  Okay?

3           PROSPECTIVE JUROR BESUGLOW:  If one of these  
4           are for the death penalty --

5           THE COURT:  Sir, sir.

6           PROSPECTIVE JUROR BESUGLOW:  -- I don't want  
7           it to be me.

8           THE COURT:  Listen.  I want to make it clear.  
9           We ask these questions so that the lawyers who  
10          represent the defendant can make a good choice on  
11          who they want on the jury.  Okay?  They get a  
12          choice.  So when people say something that might  
13          be --

14          PROSPECTIVE JUROR BESUGLOW:  Like I want out  
15          and they're not kicking me out.

16          THE COURT:  Okay.  Well, if they say something  
17          that would be very bad for their client, they're  
18          not going to put them on the jury.  Okay.  So you  
19          don't have to get upset about what other people  
20          say.  I can guarantee you that's why he's asking  
21          the question.

22          PROSPECTIVE JUROR BESUGLOW:  But this is what  
23          I'm getting at.  If you put people that are for the  
24          death penalty without thinking about there's no  
25          help for people that are on drugs and stuff like

1           that.

2           THE COURT: I understand.

3           PROSPECTIVE JUROR BESUGLOW: So these people  
4           are just for death penalty. I'm going to be the  
5           only one that's going to --

6           THE COURT: No, no, no, no, no, no. Stop. If  
7           they say the things -- let's say they cannot  
8           consider anything else, they're not going to be on  
9           this jury.

10          We're trying to find people who can hear both  
11          sides. If they're saying I'm not hearing anything,  
12          they're not going to be on this jury. Okay?

13          Just like if I had someone who said -- I had a  
14          pastor yesterday, no matter how bad the facts of  
15          this case, I would always give them --

16          PROSPECTIVE JUROR BESUGLOW: For example,  
17          another question. And I'm litigating my son.  
18          Might as well. I'm doing my duty, right?

19          THE COURT: Sir.

20          PROSPECTIVE JUROR BESUGLOW: Ma'am, ma'am, I  
21          cannot ask the hospital.

22          THE COURT: I understand what you're saying.

23          PROSPECTIVE JUROR BESUGLOW: Can I get proof  
24          to show the judge that he did have meth and he's  
25          not selling the meth? It was for his consumption.

1           Because I'm not allowed to go get --

2           THE COURT: I understand.

3           PROSPECTIVE JUROR BESUGLOW: So a lot of shit  
4 is there.

5           THE COURT: I understand. All right.

6           MR. PURA: No further questions.

7           THE COURT: Can I have the witness go back and  
8 sit down.

9           PROSPECTIVE JUROR BESUGLOW: I want out.

10          THE COURT: I understand. Go ahead and back  
11 up.

12          MR. PURA: Judge.

13          MR. LABRUZZO: For the third time we'd move  
14 for cause.

15          MR. PURA: We agree. Perhaps you should wait  
16 until we have a break or something.

17          THE COURT: Yes. We'll release him.

18          MR. PURA: I won't ask him any questions if he  
19 raises his hand.

20          MR. LIVERMORE: Now would be a good time for a  
21 break.

22          THE COURT: I was trying to say, you wouldn't  
23 want those people on the jury, but he was trying to  
24 explain to me.

25          MR. PURA: He's obviously still talking. Is

1 he the one that talked about Asma Ali represented  
2 his son and trying to get him in drug --

3 MR. LIVERMORE: Yes.

4 THE COURT: Yes. So I'll hear all about it  
5 next time you're in court in December.

6 MR. LABRUZZO: The 21st.

7 THE COURT: The 21st. Got it.

8 MR. PURA: So we're good on cause on him.

9 THE COURT: Yeah. We're going to cause him  
10 but we'll do it on a break.

11 MR. PURA: Are we taking a break now?

12 MR. LABRUZZO: Now would be a good time.

13 THE COURT: Now would be a good time?

14 MR. LABRUZZO: Yes.

15 THE COURT: Okay.

16 (Open Court.)

17 THE COURT: Ladies and gentlemen, we voted  
18 that we need to use the restroom. So you get to  
19 use the restroom.

20 So I had a couple of questions. So you guys  
21 can stand up, walk outside, use the restroom, and  
22 ten minutes we'll line you back up and bring you  
23 back out. Okay?

24 (Bench Conference.)

25 THE COURT: And Mr. Besuglow is released.

1 THE BAILIFF: Yes. Are we going to wait until  
2 everybody goes out of the courtroom, Judge?

3 THE COURT: Yes.

4 (Recess Taken.)

5 THE COURT: Are we ready to bring the jury  
6 back in?

7 MR. LABRUZZO: We're ready, Judge.

8 THE COURT: All right. Tell Rich he can go  
9 ahead and bring the jury back in.

10 Deputy Cleaver, we are ready.

11 THE BAILIFF: We're just waiting for one  
12 juror, Your Honor.

13 THE COURT: Okay. Juror Number 48 has been a  
14 cause challenge. Mr. Pura, are you moving along at  
15 a good pace for yourself?

16 MR. PURA: I am.

17 THE COURT: Maybe we can get done before lunch  
18 if lunch is at 1:00? Mr. Livermore is saying no.

19 MR. PURA: I don't think so, Judge. I mean  
20 again I appreciate what's been going on.

21 THE BAILIFF: Ready, Judge.

22 Prospective jurors entering the hearing of the  
23 Court, Your Honor.

24 (Jury Present.)

25 THE COURT: Thank you.

1           THE BAILIFF: All prospective jurors present  
2 and seated, Your Honor.

3           THE COURT: Thank you.

4           Mr. Pura, if you want to continue.

5           MR. PURA: Yes. Thank you.

6           Mr. Peters, sorry. I imagine when you went  
7 through school and classes, your teachers always  
8 called on you to answer questions?

9           PROSPECTIVE JUROR PETERS: No. I usually  
10 tried to hide in the back.

11          MR. PURA: Sorry. You're assigned to the  
12 front row here.

13          Let me double-back just a second. Now, you've  
14 made your position clear. And I want to ask you,  
15 let's say you're on the jury, you wouldn't expect  
16 12 jurors to all make the same moral decisions in  
17 their lives, right, on how to raise their kids, how  
18 to punish their kids?

19          PROSPECTIVE JUROR PETERS: Of course not.

20          MR. PURA: What church to go to, right?

21          And you would agree that everyone is entitled  
22 to respect for their moral decisions?

23          PROSPECTIVE JUROR PETERS: Of course.

24          MR. PURA: Okay. I mean you would expect them  
25 to respect your moral decisions, right?

1 PROSPECTIVE JUROR PETERS: Of course.

2 MR. PURA: And in turn you would agree that  
3 you would respect the moral decisions of the other  
4 jurors?

5 PROSPECTIVE JUROR PETERS: Absolutely.

6 THE COURT: And even if you don't agree with  
7 them, right?

8 PROSPECTIVE JUROR PETERS: Absolutely.

9 MR. PURA: And would you also agree -- and I  
10 think you would, but let's hear it -- that  
11 intimidation and bullying is absolutely  
12 inappropriate in a jury deliberation room?

13 PROSPECTIVE JUROR PETERS: Of course.

14 MR. PURA: Okay. And if you were on a jury  
15 and you saw that happening, would you step in and  
16 ask that it be stopped?

17 THE WITNESS: I would probably report it to --

18 MR. PURA: -- the bailiff. Knock on the door,  
19 let the bailiff know that, you know, something is  
20 going on here, somebody is being bullied for their  
21 moral decisions?

22 PROSPECTIVE JUROR PETERS: Of course.

23 MR. PURA: You would do that?

24 PROSPECTIVE JUROR PETERS: Absolutely.

25 MR. PURA: Thank you, sir.

1           Mr. Weaver, would you respect the moral  
2           decisions of other people even though that they  
3           don't agree with yours?

4           PROSPECTIVE JUROR WEAVER: Oh, nobody agrees  
5           with me.

6           MR. PURA: You wouldn't bully or intimidate  
7           anybody just because they disagreed with you?

8           PROSPECTIVE JUROR WEAVER: No.

9           MR. PURA: All right.

10          Mr. Schlitt, same question. Where's  
11          Mr. Schlitt? Stand up, please.

12          You wouldn't expect the 11 other jurors  
13          sitting in the deliberation room with you to all  
14          have the same, you know, moral persuasions, to all  
15          make the same moral decisions regarding their  
16          lives? You wouldn't expect that to happen, right?

17          PROSPECTIVE JUROR SCHLITT: No.

18          MR. PURA: I mean it's one of the things that,  
19          you know, makes this country what it is, right, is  
20          that people come with different backgrounds,  
21          different religions, different moral principles,  
22          correct?

23          PROSPECTIVE JUROR SCHLITT: Yes, sir.

24          MR. PURA: And so you would expect your moral  
25          decisions to be respected as you would respect

1 those of the other jurors in that situation; is  
2 that correct?

3 PROSPECTIVE JUROR SCHLITT: Yes, sir.

4 MR. PURA: And also you would agree that  
5 intimidating and bullying is completely  
6 inappropriate in that scenario?

7 PROSPECTIVE JUROR SCHLITT: Yes, sir.

8 MR. PURA: Okay. Thank you, Mr. Schlitt.

9 So back to my hypothetical. I think just to  
10 make sure, is there anybody out there who feels  
11 that, you know, in that situation -- again, you  
12 know, premeditated murder, no defense, no  
13 justification, you know, cold-blooded, calculated,  
14 innocent victim -- anybody think that just under  
15 those circumstances that death is the only  
16 appropriate punishment and they wouldn't be  
17 interested in hearing anything related to any kind  
18 of mitigating circumstances? Is there anybody out  
19 there?

20 PROSPECTIVE JUROR HARVEY: (Indicating.)

21 MR. PURA: And that would be Mr. Harvey?

22 PROSPECTIVE JUROR HARVEY: Yes.

23 MR. PURA: Yes, sir.

24 PROSPECTIVE JUROR HARVEY: I want to  
25 understand --

1 MR. PURA: Yes.

2 PROSPECTIVE JUROR HARVEY: -- the penalty  
3 phase.

4 MR. PURA: Yes, sir.

5 PROSPECTIVE JUROR HARVEY: I understand the  
6 trial phase.

7 MR. PURA: Yes, sir.

8 PROSPECTIVE JUROR HARVEY: The penalty phase,  
9 the way I look at it, if we're having a penalty  
10 phase, then we're trying to decide whether this  
11 individual spends the rest of his life in prison or  
12 whether or not he's executed?

13 MR. PURA: Exactly.

14 PROSPECTIVE JUROR HARVEY: It's not our job to  
15 rubber-stamp the death penalty. And something that  
16 I can't ignore would be mitigating circumstances.  
17 You can't ignore any mitigating circumstances. It  
18 may not change your decision, but you have to at  
19 least weigh it.

20 And in the event that you think the death  
21 penalty, even though your scenario indicates that  
22 it is very appropriate, there may be some  
23 mitigating circumstances that would cause you to  
24 say, he really -- I think we need to keep him in  
25 prison, death penalty is not appropriate.

1 MR. PURA: Yes, sir. Thank you, sir.

2 PROSPECTIVE JUROR HARVEY: If that's the case,  
3 that's the way I understand it anyway.

4 MR. PURA: Yes, Mr. Harvey.

5 PROSPECTIVE JUROR HARVEY: Okay.

6 MR. PURA: Thank you.

7 So does everybody understand? I mean very  
8 well said, Mr. Harvey.

9 Anybody disagree with him and say, you know, I  
10 don't think any mitigating circumstances should  
11 have any effect in my decision? I mean if you kill  
12 somebody, it's an eye for an eye, end of story. I  
13 don't care if he had a rough childhood. I don't  
14 care if his mother was an addict and he was born  
15 with an addiction.

16 Does anybody think that they would just not be  
17 able to consider, as Mr. Harvey described, any  
18 mitigating circumstances whatsoever? Does anybody  
19 feel that way?

20 PROSPECTIVE JURY PANEL: (No audible  
21 response.)

22 MR. PURA: No? Okay.

23 Ms. Taylor.

24 PROSPECTIVE JUROR TAYLOR: YES.

25 MR. PURA: Okay. Ms. Taylor, so we're through

1 with my scenario. And I'm assuming, then, that  
2 based on the questions I've asked and you haven't  
3 raised your hand, you still have an open mind as to  
4 the appropriate penalty in that situation?

5 PROSPECTIVE JUROR TAYLOR: Yes. But without  
6 hearing all of the evidence and all of the  
7 mitigating circumstances and all of the  
8 circumstances that caused it, it would be hard for  
9 me to make a decision until I got to that point. I  
10 would have to weigh both sides.

11 MR. PURA: And what are the types of things  
12 that you think you would need to know before you  
13 have enough information to make a decision on the  
14 appropriate penalty?

15 PROSPECTIVE JUROR TAYLOR: I need to hear all  
16 of the evidence in the case.

17 MR. SARABIA: Judge, I would object.

18 THE COURT: Okay. And the objection is?

19 MR. SARABIA: May we approach?

20 THE COURT: Sure.

21 (Bench Conference.)

22 THE COURT: I assume the objection is that  
23 you're asking her to say exactly what she would  
24 find?

25 MR. SARABIA: Right. He's trying to get her

1 to answer, what would you need to know? She hasn't  
2 been instructed on how to go through the decision,  
3 how to do all that.

4 He's basically trying to catch her in a trap  
5 of there's things she needs to know in order to  
6 make the decision that the law may say she doesn't  
7 get. So I don't think that's appropriate.

8 MR. PURA: Well, first of all, I resent the  
9 comment that I'm trying to catch her in a trap.  
10 It's a neutral question. I haven't said, you know,  
11 what do you need to know to vote for life? What do  
12 you need to know to vote for death?

13 It's a neutral question. And she said that  
14 she would need to know more information before she  
15 could make a decision. Those are her words. It's  
16 a normal follow-up question, what kind of things do  
17 you think you would need to know before you're able  
18 to make a decision on whether somebody should live  
19 or die?

20 It's a completely neutral decision. We need  
21 to be put in a situation, assuming that she's a  
22 Rice cause, which I have no reason to believe, you  
23 know, that she won't, to intelligently use our  
24 peremptory challenges. So I've got to feel out  
25 these people about, you know, which way they go.

1           THE COURT: But the problem -- and I see the  
2           State's point -- is that anything can be  
3           mitigation.

4           MR. PURA: I didn't say mitigation, Judge.  
5           I'm not using the word mitigation. I said, "What  
6           else do you need to know?" It wasn't mitigation or  
7           aggravation.

8           THE COURT: No, no, no. She said that, you  
9           know, "I'd have to know more information. I'd have  
10          to know what the mitigations are." And you said,  
11          "Like what would you need to know?" So she's  
12          talking about mitigation. That's what she was  
13          talking about. You've already given her a  
14          hypothetical. She already knows the hypothetical.

15          MR. PURA: And the danger, Judge, what happens  
16          a lot is that people confuse defense with  
17          mitigation. Even though I've already presented a  
18          hypothetical scenario where I've eliminated any  
19          defenses, people still are, like, well, I need to  
20          know more in mitigation.

21          THE COURT: Well, what is she --

22          MR. PURA: May I finish, please? What do you  
23          need to know in mitigation? Sorry, Judge, I don't  
24          want to be rude like this gentleman was. But they  
25          may say, well, I need to know if he was acting in

1 self-defense or if he was just --

2 THE COURT: You have to slow down.

3 MR. PURA: You know, so they often  
4 confuse defenses with mitigation. So I just want  
5 to make sure, you know, we're still clear on the  
6 mitigation. I'm not going to get into specifics,  
7 you know.

8 THE COURT: Well, you just laid a hypothetical  
9 for this jury. You did it. You said, this is  
10 isn't an issue, this isn't an issue, this isn't an  
11 issue and this isn't an issue.

12 MR. PURA: Defenses.

13 THE COURT: You've already said that. So now  
14 you're asking what does she need to know. She has  
15 no idea. So my point is the law requires that she  
16 will listen to any and all mitigation no matter  
17 whether she -- you know, and make sure that she  
18 feels it's mitigation. So asking her what does she  
19 need does not properly determine whether she'll  
20 listen.

21 So I'll sustain the objection. You can  
22 rephrase the question like, are you talking about  
23 you need to know his background? Do you need to  
24 know what we're going to show?

25 I mean, the problem is is that if you want, I

1 can read the definitions -- not right now --  
2 because that's what we're getting to. Because I  
3 understand you're trying to be as broad as you can,  
4 but this conversation has to move in a direction.

5 You formed it by starting a hypothetical and  
6 you've now narrowed the questioning by your  
7 hypothetical. You can't then say what is it that  
8 you need to know, because you've already ruled out  
9 15 things. You ruled them out.

10 MR. PURA: On defenses. Not mitigation.

11 THE COURT: But you didn't give them that  
12 information. You keep refusing to say that just  
13 because it's not a defense doesn't mean it's not  
14 mitigation. Can you consider it, even if it's not  
15 a defense, as mitigation? You could say that. But  
16 you're not saying that. You're just basically  
17 saying this is the worse case scenario ever and  
18 would you give him death?

19 So you're the one with the hypothetical.  
20 You're the one that narrowed your scope. So,  
21 again, I'm going to sustain the objection, but most  
22 certainly you can ask her further questions. Okay?

23 (Open Court.)

24 THE COURT: Take a deep breath. Don't run.

25 All right. You may rephrase.

1           MR. PURA: Back to you, Ms. Taylor. Correct  
2 me if I'm wrong, all right, from what I understand  
3 is that, you know, given my hypothetical, it's not  
4 enough information for you to make a decision on  
5 the appropriate punishment in that situation?

6           PROSPECTIVE JUROR TAYLOR: Yes.

7           MR. PURA: Okay.

8           PROSPECTIVE JUROR TAYLOR: Could I? Yes. If  
9 the evidence sustained it with a clear conscience,  
10 I could make the decision.

11          MR. PURA: Yes.

12          PROSPECTIVE JUROR TAYLOR: But without hearing  
13 everything and not having a clue, I don't know  
14 which way I would go.

15          MR. PURA: Would you be interested in hearing  
16 things not directly related to the guilt phase of  
17 the trial regarding the background of the defendant  
18 in my hypothetical before you make a decision?

19          PROSPECTIVE JUROR TAYLOR: Well, I'm hoping  
20 that that would be part of what we were told, prior  
21 to making that decision, that we'd have all the  
22 evidence.

23          MR. PURA: Right.

24          PROSPECTIVE JUROR TAYLOR: Both sides.

25          MR. PURA: Right. So you would keep an open

1 mind and actually listen to the mitigating  
2 circumstances and decide if that means that the  
3 appropriate penalty is life rather than death?

4 PROSPECTIVE JUROR TAYLOR: Yes.

5 MR. PURA: Okay. Now, do you understand that  
6 there's a major difference between the guilt phase  
7 and the penalty phase of a trial? In the guilt  
8 phase you're asked to try to reach a unanimous  
9 decision with the other jurors and reach a verdict,  
10 a unanimous verdict of either guilty or not guilty.  
11 You understand that, right?

12 PROSPECTIVE JUROR TAYLOR: Yes. We were told  
13 that yesterday.

14 MR. PURA: And if you don't, it's a hung jury,  
15 it's a mistrial, and another jury is going to have  
16 to do it all over again, it's been a big waste of  
17 time. You understand that, right?

18 PROSPECTIVE JUROR TAYLOR: Yes.

19 MR. PURA: Okay. Do you also understand that  
20 in the penalty phase it's entirely different? Each  
21 juror, each individual juror is instructed to come  
22 back with their own individual verdict on what  
23 should be the penalty. Did you know that?

24 PROSPECTIVE JUROR TAYLOR: No, I didn't. I do  
25 now. Thank you.

1           MR. PURA: Well, now that you know that, is  
2           that something you would be able to do as an  
3           individual, reach your own individual conclusion as  
4           to the appropriate penalty?

5           PROSPECTIVE JUROR TAYLOR: Yes, sir. I have  
6           my own opinions. I respect everybody else's,  
7           but --

8           MR. PURA: And that's a deeply moral decision  
9           to make -- right? -- whether somebody should die or  
10          not, right? It doesn't really get any moral than  
11          that, right?

12          PROSPECTIVE JUROR TAYLOR: It is a deeply  
13          moral decision.

14          MR. PURA: Right. Yes. And in making that  
15          decision, you wouldn't expect you would agree with  
16          all the other 11 jurors, right? Is that right?

17          PROSPECTIVE JUROR TAYLOR: Well, no. You put  
18          12 people together and not everybody is going to  
19          agree with everybody.

20          MR. PURA: Right. And would you have any  
21          trouble respecting the other decisions of the other  
22          jurors?

23          PROSPECTIVE JUROR TAYLOR: No, sir.

24          MR. PURA: Even if they disagree with you?

25          PROSPECTIVE JUROR TAYLOR: Absolutely not.

1           MR. PURA:  Would you also expect your decision  
2           to be respected by others?

3           PROSPECTIVE JUROR TAYLOR:  Yes.

4           MR. PURA:  So if you come to your own personal  
5           decision on the appropriate penalty and others  
6           disagree with you, would you stand up to them and  
7           stick to your guns, if you will?

8           PROSPECTIVE JUROR TAYLOR:  Oh, yes, sir.  I  
9           don't back down.

10          MR. PURA:  And if people start pushing you  
11          around, will you stand up against them?  And if it  
12          continues, will you knock on the door and report it  
13          to the bailiff?

14          PROSPECTIVE JUROR TAYLOR:  Yes.

15          MR. PURA:  Thank you, ma'am.

16          PROSPECTIVE JUROR TAYLOR:  Can I sit down?

17          MR. PURA:  Yes, ma'am.  Thank you.

18          Ms. Ackerman?  Where's Ms. Ackerman?  There  
19          you are.  Ms. Ackerman, obviously you heard my  
20          scenario.  Based upon that, you know, you're not  
21          automatic for the death penalty or life in prison  
22          at that point; is that correct?  You would need to  
23          know more information before making that decision?

24          PROSPECTIVE JUROR ACKERMAN:  Yeah.  You'd like  
25          to hear all the evidence and everything to make a

1 decision wisely about that, yes.

2 MR. PURA: So do you have any questions about  
3 mitigation evidence? Would you be willing to  
4 listen to things about -- and again I'm in my  
5 hypothetical scenario. This defendant, who you've  
6 decided is a cold-blooded killer, would you be  
7 interested in hearing things about his background,  
8 adverse background, things like that? Would that  
9 play into your decision on what the appropriate  
10 penalty should be?

11 PROSPECTIVE JUROR ACKERMAN: If it's put to  
12 everybody that they have to address that, yes. You  
13 have to listen to it all. You have to weigh out  
14 what -- the evidence, you have to weigh it out  
15 against everything that's put in front of you.

16 MR. PURA: Okay. And same question to you.  
17 In reaching your decision, you would agree that's a  
18 very deeply moral decision to make for anybody?

19 PROSPECTIVE JUROR ACKERMAN: Yes, it is. It  
20 is.

21 MR. PURA: And you would respect the moral  
22 decision of other jurors?

23 PROSPECTIVE JUROR ACKERMAN: Absolutely.

24 MR. PURA: And you would expect them to  
25 respect your moral decision, right?

1 PROSPECTIVE JUROR ACKERMAN: Yes.

2 MR. PURA: Would you agree that, you know,  
3 nobody has the right to intimidate or bully anybody  
4 in making that type of a decision?

5 PROSPECTIVE JUROR ACKERMAN: Correct.

6 MR. PURA: I mean in the guilt phase of the  
7 trial, right, let's say the State's case rests  
8 mainly on the credibility of a witness. Let's say  
9 one juror thinks a witness was all over the map,  
10 inconsistent, totally unbelievable, and let's say  
11 another juror believed everything that witness  
12 said.

13 You can imagine in the jury room and going  
14 over the evidence, there would be a lively  
15 difference of opinion regarding the credibility of  
16 that witness, right?

17 PROSPECTIVE JUROR ACKERMAN: Yes.

18 MR. PURA: And that's normal. That would be  
19 expected, right? And that's what you'd want,  
20 right?

21 PROSPECTIVE JUROR ACKERMAN: Yes.

22 MR. PURA: You want the jury to hash out their  
23 differing opinions about the facts and the  
24 evidence, right?

25 PROSPECTIVE JUROR ACKERMAN: Correct.

1           MR. PURA: And now we're talking about moral  
2 decisions. Would you agree with me that everybody  
3 has the right to have their own individual moral  
4 decision?

5           PROSPECTIVE JUROR ACKERMAN: Yes.

6           MR. PURA: And it's to be respected by  
7 everybody else, right?

8           PROSPECTIVE JUROR ACKERMAN: Yes.

9           MR. PURA: Correct?

10          PROSPECTIVE JUROR ACKERMAN: Yes.

11          MR. PURA: Thank you, ma'am.

12          PROSPECTIVE JUROR ACKERMAN: You're welcome.

13          MR. PURA: Mr. Lake? Thank you, Mr. Lake.  
14 Back to you. Scenario. You're not automatic? You  
15 would, you know, not automatically vote for death?  
16 It's, you know, not enough information for you to  
17 make a decision; is that accurate?

18          PROSPECTIVE JUROR LAKE: That's correct.

19          MR. PURA: Do you have any questions about my  
20 hypothetical scenario?

21          PROSPECTIVE JUROR LAKE: It sounds to me like  
22 your hypothetical didn't go to the penalty phase.

23          MR. PURA: Okay. Well, not in your mind.

24          PROSPECTIVE JUROR LAKE: It seems like an  
25 inappropriate question.

1           MR. PURA: Okay. Well, I mean some people  
2 think that, you know, they don't need to hear any  
3 more. Eye for an eye. You don't believe that?

4           PROSPECTIVE JUROR LAKE: No.

5           MR. PURA: Okay. So you've heard us talk  
6 about mitigating evidence, any evidence which would  
7 tend to have somebody vote for life as opposed to  
8 death, right?

9           PROSPECTIVE JUROR LAKE: Right.

10          MR. PURA: So is it your position, then, that  
11 you would be open-minded and be willing to consider  
12 possible mitigating evidence about, again back to  
13 my hypothetical, about this cold-blooded killer's  
14 background?

15          PROSPECTIVE JUROR LAKE: Correct. I would.

16          MR. PURA: You would? You'd give it some  
17 weight and decide whether or not it rises to the  
18 level where you think it makes life the appropriate  
19 sentence? Is that what you would do?

20          PROSPECTIVE JUROR LAKE: Yes.

21          MR. PURA: Okay. And, again, would you agree  
22 that that decision to kill somebody or, you know,  
23 sentence them to life is deeply moral and whatever  
24 decision you make in that matter deserves the  
25 respect of the other jurors?

1 PROSPECTIVE JUROR LAKE: Yes. I would respect  
2 their decision.

3 MR. PURA: If another juror disagrees with  
4 you, you would still respect their decision?

5 PROSPECTIVE JUROR LAKE: Yes. Of course.

6 MR. PURA: And you wouldn't intimidate them or  
7 try to get them to change their opinion?

8 PROSPECTIVE JUROR LAKE: No.

9 MR. PURA: Okay. Thank you, Mr. Lake.

10 Mr. Darner, you know, you look to be a little  
11 bit in pain and you're squirming around in your  
12 chair. I mean these benches are horrible, as you  
13 already know. You've become quite closely  
14 acquainted with these benches. They're horrible.  
15 Are you okay?

16 PROSPECTIVE JUROR DARNER: Yes.

17 MR. PURA: Okay. I appreciate it.

18 Mr. Darner, again, you've heard my scenario.  
19 Do you have any questions about my hypothetical  
20 situation?

21 PROSPECTIVE JUROR DARNER: No.

22 MR. PURA: Okay. And evidently you would not  
23 in that situation, just based on what I've told  
24 you, you would not just say, okay, I don't need to  
25 hear any more, death is the only appropriate

1 penalty? You're not in that situation, are you?

2 PROSPECTIVE JUROR DARNER: No. I need to hear  
3 everything.

4 MR. PURA: Everything meaning?

5 PROSPECTIVE JUROR DARNER: Everything relating  
6 to the case.

7 MR. PURA: Okay. Well, and when we're talking  
8 about mitigation, we're talking about things that  
9 are not directly related to the guilt or innocence  
10 of the defendant in that situation. Okay.

11 PROSPECTIVE JUROR DARNER: Correct.

12 MR. PURA: In my scenario you've heard all the  
13 evidence relating to his guilt or innocence and  
14 you've decided beyond a reasonable doubt he's  
15 guilty of being a cold-blooded killer. Okay.

16 So my question is in that scenario if he's  
17 convicted and you go to the penalty phase, would  
18 you have an open mind as to circumstances that  
19 aren't directly related to his guilt or innocence?

20 PROSPECTIVE JUROR DARNER: Yes. I would have  
21 an open mind.

22 MR. PURA: You'd listen to things maybe about  
23 his background and things like that?

24 PROSPECTIVE JUROR DARNER: Correct.

25 MR. PURA: Okay. And you would agree that,

1           you know, whatever decision you make is to be  
2           respected by the others as the jury?

3                   PROSPECTIVE JUROR DARNER:  Yes.

4                   MR. PURA:  And that 12 jurors are not likely  
5           to, you know, agree on all their moral issues,  
6           right?

7                   PROSPECTIVE JUROR DARNER:  Right.  Everyone  
8           has their own opinions.

9                   MR. PURA:  And they're entitled to their own  
10          opinion?

11                   PROSPECTIVE JUROR DARNER:  Yes.

12                   MR. PURA:  And if you see any intimidating or  
13          bullying going on, you'll do what you can to  
14          prevent that from happening?  I mean not, you know,  
15          take physical action, but you know what I mean,  
16          right?

17                   PROSPECTIVE JUROR DARNER:  Absolutely.  Yes.

18                   MR. PURA:  All right.  Thank you, sir.

19                   Mr. Storminger, I got it right, right?

20                   PROSPECTIVE JUROR STORMINGER:  Yes, you did.

21                   MR. PURA:  It's the first time too.  Of  
22          course, I heard I said it the wrong way.

23                   PROSPECTIVE JUROR STORMINGER:  Not  
24          necessarily.

25                   MR. PURA:  It only took a mispronunciation

1 three times for me to get it right.

2 Okay. Mr. Storminger, do you have any  
3 questions about my hypothetical scenario?

4 PROSPECTIVE JUROR STORMINGER: No. I got a  
5 pretty clear picture of what you're trying to  
6 describe.

7 MR. PURA: Okay. You know, you've eliminated  
8 all possible defenses, all possible justifications,  
9 there's just --

10 PROSPECTIVE JUROR STORMINGER: All 12 jurors  
11 have to determine he's guilty.

12 MR. PURA: Just a cold-blooded killer of an  
13 innocent victim. All right. I assume, because you  
14 didn't raise your hand earlier, that at that point  
15 you're still not ready to make a decision on what  
16 the appropriate penalty would be; is that correct?

17 PROSPECTIVE JUROR STORMINGER: I would need to  
18 hear everything. I never believe that death is the  
19 only scenario, the only answer. I will say it's on  
20 the table. I mean I can be swayed by mitigating  
21 circumstances or aggravating circumstances, but  
22 it's definitely not the only answer.

23 MR. PURA: Okay. Very good. Let's say you're  
24 presented with possible mitigating evidence,  
25 possible because ultimately it's your decision on

1           how much weight to give to that evidence. Okay.  
2           And let's say that you dismiss it as, no, you know,  
3           that's not good enough; but let's say another juror  
4           thinks that is good enough for them, that that tips  
5           the scale for them and --

6                    PROSPECTIVE JUROR STORMINGER: I would be open  
7           to debate within the confines of the jury room.  
8           You know, I would be willing to listen, but at the  
9           same time if I've made my decision, that's not  
10          going to change.

11                   MR. PURA: Right.

12                   PROSPECTIVE JUROR STORMINGER: Okay. But it's  
13          not -- you know, it's not going to be a slam dunk  
14          as soon I walk in and I've made my decision and  
15          it's done.

16                   I'm going to listen to the, you know, opinions  
17          of others, and then I'll form my own decision based  
18          on the evidence I had and the opinions of others  
19          and hopefully come to some kind of consensus that  
20          if they convince me one way or the other. Like I  
21          said, I'm open to -- I feel like I'm open to make  
22          that decision based on the circumstances and the  
23          evidence I'm given.

24                   MR. PURA: And, Mr. Storminger, you said, "I  
25          would make my own decision"?

1 PROSPECTIVE JUROR STORMINGER: Yes.

2 MR. PURA: And you understand that's exactly  
3 what the law instructs you to do as to the penalty  
4 phase?

5 PROSPECTIVE JUROR STORMINGER: Yes.  
6 Regardless how much we've discussed, it's still my  
7 decision and I wouldn't change it once I made it.

8 MR. PURA: And every other juror is instructed  
9 to make their own decision as well, right?

10 PROSPECTIVE JUROR STORMINGER: Correct.

11 MR. PURA: And so would you agree that if  
12 there's a difference of --

13 PROSPECTIVE JUROR STORMINGER: We're all  
14 entitled to our opinions and our decisions. That's  
15 the best I can say. I mean, yes, we can debate  
16 each other, we can agree to disagree, but we are  
17 all entitled to those decisions. Those are our  
18 choices.

19 MR. PURA: Thank you, sir.

20 Mr. Laskaris.

21 PROSPECTIVE JUROR LASKARIS: Yes, sir.

22 MR. PURA: Good morning, sir.

23 PROSPECTIVE JUROR LASKARIS: Good morning.

24 MR. PURA: Back to my hypothetical scenario.  
25 Okay. Do you have any questions about that? Do

1           you remember?

2                   PROSPECTIVE JUROR LASKARIS: Yes, I remember.

3                   MR. PURA: Okay. What is your opinion about  
4           the death penalty being the only appropriate  
5           punishment for that person?

6                   PROSPECTIVE JUROR LASKARIS: Well, I believe  
7           that, you know, if you're proven guilty without a  
8           reasonable doubt, I believe in it.

9                   MR. PURA: Sure.

10                   PROSPECTIVE JUROR LASKARIS: It's not the only  
11           reason because you've got to listen to all the  
12           facts and the mitigation. And I think if you  
13           listen to the mitigation and you listen to the  
14           complete story on what happened, then you make your  
15           own decision.

16                   MR. PURA: Okay. So based on my, you know,  
17           hypothetical scenario, you're still not able to  
18           make a decision on the appropriate penalty? You  
19           would need to know more?

20                   PROSPECTIVE JUROR LASKARIS: Yes, sir.

21                   MR. PURA: And you heard us talk about  
22           mitigating evidence. You think you would need to  
23           know if there is any mitigating evidence out there  
24           that would persuade you to vote for life rather  
25           than death? Is that what I'm hearing?

1 PROSPECTIVE JUROR LASKARIS: Right. I would  
2 listen to everything and then make my decision.

3 MR. PURA: And, again, if you were on a jury  
4 in a death case and it went to the penalty phase,  
5 that's exactly what you would be instructed to do  
6 is make your own decision. You're saying that you  
7 could do that?

8 PROSPECTIVE JUROR LASKARIS: Yes, sir.

9 MR. PURA: And would you expect that that  
10 decision you make is going to be respected by the  
11 other jurors?

12 PROSPECTIVE JUROR LASKARIS: I sure hope so.

13 MR. PURA: You would respect other jurors's  
14 decisions in that regard whether or not you agree  
15 with them?

16 PROSPECTIVE JUROR LASKARIS: Yes.

17 MR. PURA: Is that right?

18 PROSPECTIVE JUROR LASKARIS: Uh-huh.

19 MR. PURA: Thank you, sir.

20 PROSPECTIVE JUROR LASKARIS: Yes, sir.

21 MR. PURA: Ms. Hendley, there you are. Hi.

22 Ms. Hendley, I see you rated yourself  
23 initially a five and I think yesterday you kind of  
24 reaffirmed that basically, right?

25 PROSPECTIVE JUROR HENDLEY: Yes.

1           MR. PURA: All right. So that leads me to  
2 believe that, you know, you can go either way --

3           PROSPECTIVE JUROR HENDLEY: Yes.

4           MR. PURA: -- regarding the death penalty?

5           Okay. The hypothetical scenario I laid out,  
6 you remember that? Do you have any questions about  
7 that?

8           PROSPECTIVE JUROR HENDLEY: No.

9           MR. PURA: Okay. So what are your feelings  
10 about that killer of that innocent victim? Do you  
11 think that death is the only appropriate penalty?

12          PROSPECTIVE JUROR HENDLEY: Not necessarily.

13          MR. PURA: So you'd need to know more? You've  
14 heard us talk about mitigation and aggravating  
15 factors and, you know, weighing them? You've heard  
16 all about that, right?

17          PROSPECTIVE JUROR HENDLEY: Yes.

18          MR. PURA: Do you have any questions about  
19 mitigating evidence, mitigating circumstances?

20          PROSPECTIVE JUROR HENDLEY: No.

21          MR. PURA: So are you saying that you would  
22 need to know whether there are, in fact, mitigating  
23 circumstances that would push you toward voting for  
24 life as opposed to death?

25          PROSPECTIVE JUROR HENDLEY: Yes.

1           MR. PURA: And do you also agree that in  
2           reaching your decision -- let's say that you  
3           reviewed all of the mitigating circumstances that  
4           was presented and the aggravators that the State  
5           has to prove beyond a reasonable doubt and you  
6           decide that the mitigating circumstances were  
7           negligible at best, you know, not worthy of giving  
8           any, you know, weight to, would you have any  
9           trouble reaching your decision on the appropriate  
10          penalty in that situation?

11          PROSPECTIVE JUROR HENDLEY: No.

12          MR. PURA: And the penalty would be what?

13          PROSPECTIVE JUROR HENDLEY: The penalty would  
14          be -- I would have to hear everything before I  
15          could decide what the penalty would be.

16          MR. PURA: Okay. Well, let's say that you  
17          don't give any weight to a particular set of  
18          mitigating circumstances but some other juror does,  
19          some other juror thinks that's important to know  
20          and for that reason that juror votes for life,  
21          would you respect that decision?

22          PROSPECTIVE JUROR HENDLEY: Yes.

23          MR. PURA: Even if you disagree with it?

24          PROSPECTIVE JUROR HENDLEY: Yes.

25          MR. PURA: And the reverse side of that, let's

1 say that you think that the mitigating  
2 circumstances make life the appropriate sentence as  
3 opposed to death, would you expect your decision to  
4 be respected by the other jurors?

5 PROSPECTIVE JUROR HENDLEY: Of course.

6 MR. PURA: And you wouldn't put up with any  
7 bullying or intimidation?

8 PROSPECTIVE JUROR HENDLEY: No.

9 MR. PURA: Thank you, ma'am.  
10 Mr. Garcia?

11 PROSPECTIVE JUROR GARCIA: Yes, sir.

12 MR. PURA: Good morning, sir.

13 PROSPECTIVE JUROR GARCIA: Good morning.

14 MR. PURA: You've heard my hypothetical  
15 scenario.

16 PROSPECTIVE JUROR GARCIA: Yes.

17 MR. PURA: Do you have any questions?

18 PROSPECTIVE JUROR GARCIA: No, sir.

19 MR. PURA: You know what I'm getting at,  
20 right?

21 PROSPECTIVE JUROR GARCIA: Yes.

22 MR. PURA: No legal justification, no legal  
23 defense, cold-blooded, calculated, premeditated  
24 murder on a completely innocent victim, what are  
25 your feelings about the death penalty being the

1           only appropriate penalty?

2           PROSPECTIVE JUROR GARCIA: Well, I would have  
3           to hear the mitigating circumstances.

4           MR. PURA: So you'd keep an open mind? You  
5           wouldn't, you know, be able to make a decision?

6           PROSPECTIVE JUROR GARCIA: Yeah. I'd keep an  
7           open mind.

8           MR. PURA: May I have a second, please, Judge?

9           THE COURT: You may.

10          MR. PURA: Thank you, Mr. Garcia. No, I'm not  
11          done with you.

12          THE COURT: Nice try, though.

13          MR. PURA: You said you'd need to know if  
14          there's any mitigating circumstances.

15          PROSPECTIVE JUROR GARCIA: Yeah.

16          MR. PURA: Like what?

17          PROSPECTIVE JUROR GARCIA: A crime of passion.  
18          Something like that.

19          MR. PURA: Anything else you can think of?

20          PROSPECTIVE JUROR GARCIA: A troubled  
21          childhood.

22          MR. PURA: Okay. Before making your decision  
23          on the appropriate penalty, those are some of the  
24          types of things that you would want to know about?

25          PROSPECTIVE JUROR GARCIA: Yeah.

1           MR. PURA: Okay. I'm sorry. How old are you,  
2           sir?

3           PROSPECTIVE JUROR GARCIA: Twenty-nine.

4           MR. PURA: Twenty-nine. Okay. You look to me  
5           to be somebody who stands up for their own opinion?

6           PROSPECTIVE JUROR GARCIA: Yes, sir.

7           MR. PURA: Okay. The flip side of that, you  
8           agree to respect the opinion of others?

9           PROSPECTIVE JUROR GARCIA: Yes, sir.

10          MR. PURA: And you understand that in a  
11          penalty phase of a trial, everybody is asked to  
12          come to their own individual verdict, right?

13          PROSPECTIVE JUROR GARCIA: Yes, sir.

14          MR. PURA: Would you agree that if you  
15          disagreed with any of the others, that that's  
16          perfectly acceptable?

17          PROSPECTIVE JUROR GARCIA: Yes, sir.

18          MR. PURA: There's no such thing as a hung  
19          jury in a penalty phase. You know, one vote for  
20          life means that's the verdict. Do you understand  
21          that?

22          PROSPECTIVE JUROR GARCIA: Yes, sir.

23          MR. PURA: Thank you, Mr. Garcia.

24          Ms. Springfield? Hi.

25          PROSPECTIVE JUROR SPRINGFIELD: Good morning.

1           MR. PURA: Ms. Springfield, any questions  
2           about my hypothetical situation that I posed?

3           PROSPECTIVE JUROR SPRINGFIELD: No.

4           MR. PURA: What are your feelings about the  
5           death penalty being the only appropriate penalty  
6           for that murder?

7           PROSPECTIVE JUROR SPRINGFIELD: I don't feel  
8           that it's the only option. I feel as though if  
9           there are other circumstances that are willing to  
10          be presented to us, that we do need to take them  
11          into account and to have an open mind, to also take  
12          those into our decision.

13          MR. PURA: What if the guilt phase involved  
14          you and the other jurors reaching a unanimous  
15          decision that the defendant was guilty of killing  
16          four people, would you still be able to consider  
17          mitigating circumstances before making a  
18          determination on the appropriate penalty?

19          PROSPECTIVE JUROR SPRINGFIELD: I'd have to  
20          say, yes. I would have to take everything into  
21          account. I don't know if that answers your  
22          question.

23          MR. PURA: No. It does. And how old are you?

24          PROSPECTIVE JUROR SPRINGFIELD: I'm 25.

25          MR. PURA: Okay. If you come to your own

1 individual moral decision during the penalty phase,  
2 would you expect that decision to be respected by  
3 the other jurors?

4 PROSPECTIVE JUROR SPRINGFIELD: Oh,  
5 absolutely.

6 MR. PURA: Okay. So you wouldn't put up with  
7 any bullying or intimidation; is that right?

8 PROSPECTIVE JUROR SPRINGFIELD: No. I can  
9 stand up for myself.

10 MR. PURA: Okay. Thank you.

11 So I mentioned before, does anybody have a  
12 change of mind that I talked to, well, now that you  
13 mention it, you know, if your hypothetical  
14 includes, you know, that he's been guilty of four  
15 premeditated murders, that I don't need to know  
16 anything after that, that's it, automatic death?  
17 Anybody change their opinion about that?

18 PROSPECTIVE JURY PANEL: (No audible  
19 response.)

20 THE COURT: Just for the record, I see no  
21 hands.

22 MR. PURA: Ms. Furler? Where is Ms. Furler?  
23 There you are.

24 Ms. Furler, back to my hypothetical. Again,  
25 any questions about that?

1           PROSPECTIVE JUROR FURLER: I don't have any  
2 questions.

3           MR. PURA: I'm sorry?

4           PROSPECTIVE JUROR FURLER: No questions.

5           MR. PURA: And what are your feelings about  
6 the death penalty being the only appropriate  
7 penalty for someone who killed four people without  
8 justification?

9           PROSPECTIVE JUROR FURLER: I don't think that  
10 is the only option.

11          MR. PURA: So you can keep an open mind and  
12 you'd want to hear what we've talked about being  
13 mitigating evidence? Is that something that you  
14 would want to consider before you decide the  
15 appropriate sentence?

16          PROSPECTIVE JUROR FURLER: Yes.

17          MR. PURA: And I mean like what? What kind of  
18 things do you think would be important to you?

19          PROSPECTIVE JUROR FURLER: Like you already  
20 mentioned, childhood, drug use, abuse or addiction.  
21 Really just anything that would be brought up at  
22 that time at that phase.

23          MR. PURA: And you understand that -- you  
24 heard me talk about the difference between the  
25 guilt phase and the penalty phase -- that any juror

1 can decide basically anything is mitigating  
2 evidence, anything that tends to make life the  
3 appropriate sentence is mitigating evidence? Do  
4 you understand that?

5 PROSPECTIVE JUROR FURLER: Yes.

6 MR. PURA: And that any juror can give weight  
7 of life to a single mitigating circumstance; do you  
8 understand that? They can say that's all I need to  
9 know, life is the appropriate sentence; do you  
10 understand that?

11 PROSPECTIVE JUROR FURLER: Yes.

12 MR. PURA: Even if that same juror thinks that  
13 the State has proven aggravators, more aggravators  
14 than there are mitigating circumstances, and even  
15 if you think the aggravators outweigh the  
16 mitigating circumstances, do you understand that  
17 the juror can give the weight of life to a single  
18 mitigating circumstance?

19 PROSPECTIVE JUROR FURLER: Yes, I understand.

20 MR. PURA: And do you agree that that decision  
21 is a very deep and moral decision to make whether  
22 someone should live or die?

23 PROSPECTIVE JUROR FURLER: I think it's a  
24 moral decision, yes. But, as you said, you have to  
25 weigh -- it's going to be individual weighing of

1 the mitigating factors that you mentioned.

2 MR. PURA: And do you feel that you yourself  
3 would have any difficulty reaching that very deeply  
4 moral decision, you know, assuming that you're  
5 given all the information you need to know to do  
6 it, do you think you can make that decision one way  
7 or the other?

8 PROSPECTIVE JUROR FURLER: I do, yes.

9 MR. PURA: And would you agree that other  
10 jurors may not agree with you?

11 PROSPECTIVE JUROR FURLER: Yes.

12 MR. PURA: In fact, that might be expected,  
13 right?

14 PROSPECTIVE JUROR FURLER: Yes.

15 MR. PURA: And, again, there's no such thing  
16 as a hung jury. You know, maybe I should review  
17 this with everybody. Just stay right there.

18 In order to sentence a defendant to death, it  
19 does have to be unanimous. Every single of the 12  
20 jurors have to agree that death is the appropriate  
21 sentence. But if there is anything less than 12,  
22 then life would be the sentence. Do you understand  
23 that?

24 PROSPECTIVE JUROR FURLER: I do.

25 MR. PURA: If one juror says life, life will

1 be the sentence. Do you understand?

2 PROSPECTIVE JUROR FURLER: Yes.

3 MR. PURA: So you can stand up for yourself  
4 against other jurors even if they disagree with  
5 you?

6 PROSPECTIVE JUROR FURLER: I believe I can.  
7 Yes, I know I can.

8 MR. PURA: Okay. Thank you, ma'am.

9 THE COURT: Just to clarify. We've talked  
10 about it a lot. But just so you know, the  
11 instruction about mitigating circumstances, we keep  
12 using that word, and people are kind of trying to  
13 figure out what -- you know, come up with something  
14 for that.

15 The definition that I would give you, if  
16 you're chosen as a juror, is that a mitigating  
17 circumstance can be anything in the life of the  
18 defendant which might indicate that the death  
19 penalty is not appropriate.

20 It is not limited to the facts surrounding the  
21 crime itself. A mitigating circumstance may  
22 include any aspect of the defendant's character,  
23 background or life, or any circumstance of the  
24 offense that may reasonably indicate that the death  
25 penalty is not an appropriate sentence in this

1 case.

2 So it's pretty much broad, as broad as you can  
3 get. It fits into that category. Okay?

4 You may proceed.

5 MR. PURA: Thank you. Thank you, Your Honor.

6 Mr. Hawbecker?

7 PROSPECTIVE JUROR HAWBECKER: Yes.

8 MR. PURA: How are you doing? It's almost  
9 afternoon. Good morning, sir. How are you?

10 PROSPECTIVE JUROR HAWBECKER: I'm fine.

11 MR. PURA: Mr. Hawbecker, yesterday you  
12 indicated that, you know, yeah, I did put myself as  
13 an eight before, but now I'm more of a five or six,  
14 now that I understand, you know, the meaning of the  
15 gravity.

16 PROSPECTIVE JUROR HAWBECKER: Yes.

17 MR. PURA: That leads me to believe that, you  
18 know, you want to keep an open mind.

19 PROSPECTIVE JUROR HAWBECKER: I'm eight  
20 because it said ten was always and one was never.  
21 So an eight was I can take other things into  
22 consideration. That's why.

23 MR. PURA: Okay. So back to my hypothetical  
24 scenario. Let's say now it includes, you know,  
25 four victims.

1 PROSPECTIVE JUROR HAWBECKER: Okay.

2 MR. PURA: What are your feelings about death  
3 in that situation being the only appropriate  
4 penalty?

5 PROSPECTIVE JUROR HAWBECKER: It would not be  
6 the only appropriate one.

7 MR. PURA: You would need to know more?

8 PROSPECTIVE JUROR HAWBECKER: Yes.

9 MR. PURA: Okay. And her Honor just talked  
10 about -- you know, just redefined mitigating  
11 evidence. Is that the type of thing that you would  
12 be willing to consider before making your decision  
13 on the appropriate penalty?

14 PROSPECTIVE JUROR HAWBECKER: Yes. That's the  
15 kind of thing that I would consider.

16 MR. PURA: You would? And do you understand  
17 that you may not agree with other jurors in making  
18 that assessment as to mitigating circumstances  
19 versus aggravators?

20 PROSPECTIVE JUROR HAWBECKER: Yeah. I  
21 understand that completely.

22 MR. PURA: And you respect that, that people  
23 come from different walks of life and could come to  
24 different conclusions on moral issues such as that?

25 PROSPECTIVE JUROR HAWBECKER: Yes.

1           MR. PURA: Now, let me put in one more  
2           hypothetical. Let's say that you've heard all the  
3           evidence in the penalty phase and you decide that  
4           either something about the character or past of the  
5           defendant or the circumstances of the offense,  
6           something, whatever it is, leads you to vote for  
7           life, okay, but let's say 11 other jurors disagree  
8           with you, will you agree to stand up and --

9           PROSPECTIVE JUROR HAWBECKER: I have no  
10          problem standing up for myself.

11          MR. PURA: -- and not putting up with being  
12          pushed around or anything like that?

13          PROSPECTIVE JUROR HAWBECKER: No. I'm the  
14          youngest kid of five. No.

15          MR. PURA: So you've had enough being pushed  
16          around? All right. I get it. Thank you,  
17          Mr. Hawbecker.

18          PROSPECTIVE JUROR HAWBECKER: Thank you.

19          MR. PURA: I talked to you, Ms. Springfield,  
20          right? I forgot to check you off. Sorry.

21          Ms. Crook? There you are. Ms. Crook, back to  
22          my hypothetical scenario. Now I'm including it to  
23          having five victims, no justification, no defense,  
24          no excuses, cold-blooded, calculated murder of four  
25          innocent victims. What do you feel about the death

1 penalty being the only appropriate punishment?

2 PROSPECTIVE JUROR CROOK: We covered yesterday  
3 that death is not required as a form of punishment.  
4 So then that can't be the only appropriate action  
5 of punishment.

6 MR. PURA: So you would keep an open mind as  
7 it proceeds to the penalty phase of the trial as to  
8 whether there are --

9 PROSPECTIVE JUROR CROOK: Yes.

10 MR. PURA: -- any mitigating circumstances?

11 PROSPECTIVE JUROR CROOK: Absolutely.

12 MR. PURA: And then you would listen to the  
13 State and whether they're able to prove beyond a  
14 reasonable doubt the presence of any aggravators,  
15 right?

16 PROSPECTIVE JUROR CROOK: Absolutely. Because  
17 like you said, we should remain fair and impartial  
18 until we have heard everything and then we make a  
19 judgment. It wouldn't be fair to decide before we  
20 heard all the factors.

21 MR. PURA: So you'd want to know a little bit  
22 more of things that weren't related to the guilt of  
23 the defendant? You'd want to know a little bit  
24 more about his background, for example?

25 PROSPECTIVE JUROR CROOK: Absolutely. Yes.

1           MR. PURA: And the circumstances of -- you  
2 know, I mean you can't assume the crime happened in  
3 a vacuum. So is it fair to say you'd want to know  
4 a little bit more about the circumstances leading  
5 up to it?

6           PROSPECTIVE JUROR CROOK: Yes.

7           MR. PURA: And how old are you, young lady?

8           PROSPECTIVE JUROR CROOK: I'm 40.

9           MR. PURA: Oh, okay. I'm sorry. Forty is  
10 okay. Forty is still young.

11          THE COURT: Wow.

12          MR. PURA: I'd like to be 40 again.

13          Let's say you decide, you know, I can't kill  
14 this man, okay, and everybody else wants to kill  
15 him. Can you stand up for yourself?

16          PROSPECTIVE JUROR CROOK: Absolutely.

17          MR. PURA: Thank you.

18          Let's see. Mr. Darlington. Good morning.

19          PROSPECTIVE JUROR DARLINGTON: Good morning.

20          MR. PURA: Do you have any questions about my  
21 hypothetical scenario, Mr. Darlington?

22          PROSPECTIVE JUROR DARLINGTON: No, sir.

23          MR. PURA: Okay. Again, I'm now including  
24 four victims, four innocent victims, you know,  
25 cold-blooded killer of four innocent victims. What

1 are your feelings about the death penalty being the  
2 only appropriate punishment?

3 PROSPECTIVE JUROR DARLINGTON: I believe that  
4 it's not the only option. I always feel like  
5 there's more than one option. So I'll just leave  
6 it at that.

7 MR. PURA: Okay. So you've heard us talk  
8 about mitigating circumstances.

9 PROSPECTIVE JUROR DARLINGTON: Uh-huh.

10 MR. PURA: And, again, the Judge gave you the  
11 legal definition. Do you have any questions about  
12 that?

13 PROSPECTIVE JUROR DARLINGTON: No, sir.

14 MR. PURA: And are those the types of things  
15 that you would want to know before making a  
16 decision on what the appropriate penalty is?

17 PROSPECTIVE JUROR DARLINGTON: Yes, sir.

18 MR. PURA: And you understand that during the  
19 penalty phase of a trial, there's no such thing as  
20 a hung jury, that people are asked to come to 12  
21 individual verdicts?

22 PROSPECTIVE JUROR DARLINGTON: Yes.

23 MR. PURA: And would you agree that, you know,  
24 you can't necessarily expect everybody to agree on  
25 moral decisions such as that?

1 PROSPECTIVE JUROR DARLINGTON: Yes, sir.

2 Everyone's different.

3 MR. PURA: Everyone's different.

4 And were you to reach a conclusion, a decision  
5 that does not agree with the other jurors, are you  
6 confident in yourself that you would stand up and  
7 stick to your moral decision?

8 PROSPECTIVE JUROR DARLINGTON: Yes, sir.

9 MR. PURA: And not be pushed around by  
10 anybody?

11 PROSPECTIVE JUROR DARLINGTON: Nobody is going  
12 to be pushing me around.

13 MR. PURA: Okay. Thank you, sir.

14 Ms. Goodrich?

15 PROSPECTIVE JUROR GOODRICH: Yes.

16 MR. PURA: Good morning, ma'am.

17 PROSPECTIVE JUROR GOODRICH: Good morning.

18 MR. PURA: Do you have any questions about my  
19 hypothetical scenario?

20 PROSPECTIVE JUROR GOODRICH: No.

21 MR. PURA: Okay. And, again, now I'm  
22 including four victims here. Okay? Do you think  
23 under those circumstances -- again, no defense  
24 whatsoever, no justification whatsoever, no mental  
25 issues, you know, not insane. What are your

1 feelings about the death penalty being the only  
2 appropriate punishment?

3 PROSPECTIVE JUROR GOODRICH: I don't think  
4 that's the only appropriate punishment.

5 MR. PURA: Okay. So you'd still want to know  
6 more?

7 PROSPECTIVE JUROR GOODRICH: Yes.

8 MR. PURA: Things unrelated to the guilt or  
9 innocence of the defendant, is that what you're  
10 saying?

11 PROSPECTIVE JUROR GOODRICH: Uh-huh.

12 MR. PURA: So do you have any questions  
13 regarding mitigating evidence, mitigating  
14 circumstances?

15 PROSPECTIVE JUROR GOODRICH: No, I don't.

16 MR. PURA: Do you understand that any juror  
17 can find mitigation anywhere basically, any reason  
18 why the defendant deserves life? Do you understand  
19 that?

20 PROSPECTIVE JUROR GOODRICH: Yes.

21 MR. PURA: And whatever that circumstance is,  
22 do you understand that a juror can base a like  
23 verdict on that single circumstance? Do you  
24 understand that?

25 PROSPECTIVE JUROR GOODRICH: Yes.

1           MR. PURA: And even if the State convinces you  
2 beyond a reasonable doubt there are, you know,  
3 multiple aggravators -- right? -- do you realize,  
4 do you know that a juror can still vote for life  
5 based on a single mitigating circumstance?

6           PROSPECTIVE JUROR GOODRICH: Yes.

7           MR. PURA: And hypothetically were you to do  
8 that, do you feel that your decision would deserve  
9 the respect of the other people in the jury room?

10          PROSPECTIVE JUROR GOODRICH: Yes, I do.

11          MR. PURA: As you would respect their  
12 decisions, correct?

13          PROSPECTIVE JUROR GOODRICH: Absolutely.

14          MR. PURA: Okay. Now, let's say that, you  
15 know, an extreme hypothetical situation, let's say  
16 you're the only one who thinks that the mitigating  
17 circumstance makes life the appropriate sentence,  
18 you're the only one who believes that and everybody  
19 else disagrees with you, do you understand that the  
20 defendant in that situation is entitled to have you  
21 carry out a life verdict?

22          PROSPECTIVE JUROR GOODRICH: Yes.

23          MR. PURA: And you feel that you're capable --

24          PROSPECTIVE JUROR GOODRICH: And I would stick  
25 to my guns.

1           MR. PURA:  -- to knock on that door and say,  
2           we've reached a decision, I've made up my mind?  
3           Even though you're the only one, all it takes is  
4           one.  Do you understand that?  For a life  
5           verdict --

6           PROSPECTIVE JUROR GOODRICH:  Yes.

7           MR. PURA:  -- all it takes is one.

8           So in that hypothetical scenario you've made  
9           up your mind life is my decision, do you understand  
10          that that's it, we're done here?

11          PROSPECTIVE JUROR GOODRICH:  Yes.

12          MR. PURA:  Okay.  Thank you, ma'am.

13          Mr. Banks, did I talk to you yet this morning?

14          PROSPECTIVE JUROR BANKS:  No, sir.

15          MR. PURA:  Thank you.  Okay.  Mr. Banks,  
16          originally you said you were an eight, but now  
17          after more thought you're kind of more in the  
18          middle; is that accurate?

19          PROSPECTIVE JUROR BANKS:  That's correct.

20          MR. PURA:  On whether the death penalty is  
21          appropriate, either never or always -- sometimes, I  
22          guess, is your answer; is that right?

23          PROSPECTIVE JUROR BANKS:  Yes, sir.

24          MR. PURA:  Now, given my hypothetical  
25          scenario, which now includes four victims, do you

1 have any questions about my hypothetical?

2 PROSPECTIVE JUROR BANKS: No, sir.

3 MR. PURA: You know what I'm getting at,  
4 right? No defenses, no justification, you know, no  
5 mental issues.

6 PROSPECTIVE JUROR BANKS: Yes, sir.

7 MR. PURA: All right. It's premeditated,  
8 cold-blooded murder of four innocent victims. What  
9 are your feelings about death being the only  
10 punishment?

11 PROSPECTIVE JUROR BANKS: It's not the only  
12 appropriate punishment.

13 MR. PURA: It's not the only appropriate  
14 punishment?

15 PROSPECTIVE JUROR BANKS: That's correct.

16 MR. PURA: Uh-huh. So am I to understand,  
17 then, that you'd want to hear more about things the  
18 Judge had talked about? Background of a defendant?

19 PROSPECTIVE JUROR BANKS: Mitigating  
20 circumstances.

21 MR. PURA: Circumstances of the crime, right?  
22 You'd want to know more?

23 PROSPECTIVE JUROR BANKS: Yes, sir.

24 MR. PURA: And do you understand that, you  
25 know, even though aggravators may outnumber

1 mitigators or outweigh mitigators, that any juror  
2 can give a life sentence just based on one  
3 mitigating circumstance? Do you understand that?

4 PROSPECTIVE JUROR BANKS: Yes.

5 MR. PURA: And would you agree to respect that  
6 decision of the other jurors? I mean, you know,  
7 deciding whether somebody should die or not is a  
8 deeply moral decision to make for everybody, right?  
9 You've never had to make that decision, right?

10 PROSPECTIVE JUROR BANKS: No, sir.

11 MR. PURA: And hopefully you never will again.  
12 So you pledge to respect the decision of others?

13 PROSPECTIVE JUROR BANKS: Yes, sir.

14 MR. PURA: And would you agree that  
15 intimidation and bullying is completely  
16 inappropriate in that circumstance?

17 PROSPECTIVE JUROR BANKS: Completely  
18 inappropriate, yes.

19 MR. PURA: Okay. Thank you, sir.

20 Ms. Chamberlain?

21 PROSPECTIVE JUROR CHAMBERLAIN: Yes.

22 MR. PURA: There you are.

23 Ms. Chamberlain, if I recall, I think  
24 originally you've rated yourself a ten, but upon  
25 afterthought, you're --

1 PROSPECTIVE JUROR CHAMBERLAIN: After  
2 clarification, yes.

3 MR. PURA: Okay. So for a premeditated  
4 murder, death isn't always the only appropriate  
5 sentence, is that what you're saying?

6 PROSPECTIVE JUROR CHAMBERLAIN: That is  
7 correct.

8 MR. PURA: And even if that situation involves  
9 four innocent victims?

10 PROSPECTIVE JUROR CHAMBERLAIN: That is  
11 correct.

12 MR. PURA: Do you have any questions about my  
13 hypothetical being, you know, there's no defenses,  
14 no mental issues about his intent, that in that  
15 hypothetical you decided as a juror that beyond a  
16 reasonable doubt that this was a cold-blooded  
17 killing, premeditated killing of four innocent  
18 victims? Any other questions about my  
19 hypothetical?

20 PROSPECTIVE JUROR CHAMBERLAIN: No, sir.

21 MR. PURA: And so in that situation, what  
22 would be your feelings about death being the only  
23 appropriate penalty?

24 PROSPECTIVE JUROR CHAMBERLAIN: I believe in  
25 decision-making. That no matter what part of life

1           you are in, you want to know as much history and  
2           background as possible before making a decision on  
3           death.

4           MR. PURA:   And do you also understand that  
5           mitigation could be anything that you think would  
6           make life the appropriate sentence?  Do you  
7           understand?

8           PROSPECTIVE JUROR CHAMBERLAIN:  Can you  
9           rephrase that, please.

10          MR. PURA:  Yes.  That mitigating circumstances  
11          could be anything that would make life the  
12          appropriate sentence as opposed to death?

13          PROSPECTIVE JUROR CHAMBERLAIN:  Yes.

14          MR. PURA:  Okay.  And that mitigating  
15          circumstances might be something that you don't  
16          want to have to explain, you don't want to explain  
17          or you may not even be able to articulate what it  
18          is, why you think life is the appropriate sentence;  
19          do you understand that?

20          PROSPECTIVE JUROR CHAMBERLAIN:  Yes.

21          MR. PURA:  And were you in a penalty phase of  
22          a first-degree murder trial and you decided that  
23          the mitigator means to you that life is the  
24          appropriate sentence, do you understand that the  
25          defendant in that situation is entitled to a

1 verdict of life?

2 PROSPECTIVE JUROR CHAMBERLAIN: Yes.

3 MR. PURA: Based on just one juror's vote for  
4 life; do you understand that?

5 PROSPECTIVE JUROR CHAMBERLAIN: Yes.

6 MR. PURA: And if you were up against 11  
7 jurors who disagreed with you, will you stick to  
8 your guns and see that that defendant gets the  
9 verdict he's entitled to, which is a life verdict,  
10 based on your individual moral judgment?

11 PROSPECTIVE JUROR CHAMBERLAIN: Yes.

12 MR. PURA: And if somebody starts arguing with  
13 you and trying to convince you that you're wrong,  
14 would you report that? Any intimidating or  
15 bullying, would you knock on the door and report  
16 that to the bailiff?

17 PROSPECTIVE JUROR CHAMBERLAIN: Yes.

18 MR. PURA: And, in fact, once you've up your  
19 mind that you're voting for life, do you understand  
20 that that ends the deliberation because it only  
21 takes one vote for life? Do you understand that?

22 PROSPECTIVE JUROR CHAMBERLAIN: Yes.

23 MR. PURA: So if you made up your mind and  
24 vote for life, you can knock on that door and let  
25 everybody know that we're done, we're done with

1 this, were done with our deliberations, this is the  
2 verdict; do you understand?

3 PROSPECTIVE JUROR CHAMBERLAIN: I do.

4 MR. PURA: Okay. Thank you.

5 Ms. Zacco. 12:07. Good afternoon, Ms. Zacco.

6 PROSPECTIVE JUROR ZACCO: Good afternoon.

7 MR. PURA: Ms. Zacco, again, you've heard my  
8 hypothetical, which now includes four innocent  
9 victims. Okay? No self-defense, no defense of  
10 others, not heat of passion. Okay? Clear cold,  
11 calculated, premeditated murder of four innocent  
12 victims. What are your feelings about death being  
13 the only appropriate punishment?

14 PROSPECTIVE JUROR ZACCO: No. I don't think  
15 death is the only appropriate punishment.

16 MR. PURA: So you'd need to know more before  
17 making that decision?

18 PROSPECTIVE JUROR ZACCO: Yes.

19 MR. PURA: And when we talk mitigating  
20 circumstances, is that what you're talking about?

21 PROSPECTIVE JUROR ZACCO: Yes, sir.

22 MR. PURA: I mean those are things not  
23 directly related to the guilt or innocence of the  
24 defendant in that situation; do you understand?

25 PROSPECTIVE JUROR ZACCO: Yes.

1           MR. PURA: So you'd need to know more than  
2 simply whether he was guilty or not, which you've  
3 already made up your mind beyond a reasonable doubt  
4 that he is?

5           PROSPECTIVE JUROR ZACCO: Right.

6           MR. PURA: But you'd need to know more about  
7 him or about the circumstances surrounding the  
8 crime?

9           PROSPECTIVE JUROR ZACCO: Yes, sir.

10          MR. PURA: Okay. So Ms. Zacco, do you also  
11 understand that a juror can use one mitigating  
12 circumstance and vote for life?

13          PROSPECTIVE JUROR ZACCO: Yes.

14          MR. PURA: And that it only takes one juror's  
15 vote for life and that will be the verdict? That  
16 will be the verdict, it will be life, do you  
17 understand that --

18          PROSPECTIVE JUROR ZACCO: Yes.

19          MR. PURA: -- as opposed to death?

20          In order for a jury to sentence a defendant to  
21 death, all 12 have to agree --

22          PROSPECTIVE JUROR ZACCO: Right.

23          MR. PURA: -- that death is the appropriate  
24 sentence, right?

25          PROSPECTIVE JUROR ZACCO: Yes.

1           MR. PURA: But if only one person agrees to  
2 life, that's it, it's a life verdict; do you  
3 understand that?

4           PROSPECTIVE JUROR ZACCO: Yes.

5           MR. PURA: So if under the circumstances  
6 you've reviewed everything and you felt that life  
7 is the appropriate sentence, will you agree that  
8 the deliberations are over and the jury has reached  
9 its verdict?

10          PROSPECTIVE JUROR ZACCO: Yes, sir.

11          MR. PURA: Even though other jurors who  
12 disagreed with you are trying to persuade you to  
13 change your mind?

14          PROSPECTIVE JUROR ZACCO: Right.

15          MR. PURA: You'll stand up for yourself and  
16 knock on that door and let them know that we're  
17 done here?

18          PROSPECTIVE JUROR ZACCO: Yes, sir.

19          MR. PURA: Thank you, ma'am.

20                 Everything okay? I mean we're kind of  
21 clipping along here, right? Do you understand? I  
22 mean I'm not cutting corners, but I do need to talk  
23 to everybody. So I'm trying to be as efficient as  
24 possible. I appreciate everybody paying attention.

25                 Mr. Kotliar, any questions that you might have

1 regarding my hypothetical scenario?

2 PROSPECTIVE JUROR KOTLIAR: No, sir.

3 MR. PURA: And would you be able to reach a  
4 verdict based on that hypothetical scenario?

5 PROSPECTIVE JUROR KOTLIAR: Yes.

6 MR. PURA: I mean on punishment?

7 PROSPECTIVE JUROR KOTLIAR: Yes, sir.

8 MR. PURA: You would be able to? And what  
9 would that be?

10 PROSPECTIVE JUROR KOTLIAR: It depends on the  
11 scenario. I mean even in your hypothetical, we  
12 haven't heard everything. So I could reach a  
13 decision once I've heard everything. I can't judge  
14 from your scenario.

15 MR. PURA: Okay. In my hypothetical, at  
16 least, you know, I tried to present a hypothetical  
17 where there is absolutely -- you've heard  
18 everything you need to know to come to a decision  
19 on whether the defendant is guilty of first-degree  
20 murder, right?

21 PROSPECTIVE JUROR KOTLIAR: I would weigh -- I  
22 would weight each individual aggravator, weigh each  
23 aggravator and each mitigator.

24 MR. PURA: So you would be interested in  
25 hearing more about the defendant's background, for

1 example, and the circumstances surrounding --

2 PROSPECTIVE JUROR KOTLIAR: I would listen to  
3 everything that is presented from both sides.

4 MR. PURA: And if you are in the jury room and  
5 you see somebody being bullied or, you know,  
6 intimidated by someone else, would you agree that  
7 you --

8 PROSPECTIVE JUROR KOTLIAR: Yes. Because they  
9 have to live with their decision, so I don't  
10 believe in bullying.

11 MR. PURA: And that's a good point. I mean I  
12 suggest that the only reason you're asked to make  
13 individual decisions is because you're going to  
14 have to live with it the rest of your life.

15 So you would step up, speak up and make sure  
16 that nobody is pushing anybody around in that room?

17 PROSPECTIVE JUROR KOTLIAR: Yes.

18 MR. PURA: Each moral decision is to be  
19 respected?

20 PROSPECTIVE JUROR KOTLIAR: Yes, sir.

21 MR. PURA: Thank you, sir.

22 Ms. Eck?

23 PROSPECTIVE JUROR ECK: Yes, sir.

24 MR. PURA: Good afternoon, Ms. Eck.

25 PROSPECTIVE JUROR ECK: Good afternoon.

1           MR. PURA: You also, I think, rated yourself a  
2 five. You're still a five. So sometimes death is  
3 the appropriate sentence; sometimes not? Is that  
4 what I'm getting?

5           PROSPECTIVE JUROR ECK: Yes. But we have to  
6 listen to the facts.

7           MR. PURA: I cannot hear you.

8           PROSPECTIVE JUROR ECK: I'm sorry. We have to  
9 listen to the facts and have to hear everything.

10          MR. PURA: Well, regarding whether or not the  
11 defendant is guilty, you know, let's assume that  
12 you've heard all the facts you need to hear and  
13 you've made the determination that he's a  
14 cold-blooded killer of four innocent victims, would  
15 you be able to reach a decision on the appropriate  
16 sentence?

17          PROSPECTIVE JUROR ECK: I would be able.

18          MR. PURA: I'm sorry?

19          PROSPECTIVE JUROR ECK: I would be able to  
20 reach a decision.

21          MR. PURA: And that would be what? What would  
22 be your decision?

23          PROSPECTIVE JUROR ECK: It would be --

24          MR. PURA: Let me rephrase it. Okay?

25          PROSPECTIVE JUROR ECK: I'm sorry.

1           MR. PURA: You've heard all the evidence that  
2           you need to know to decide that that defendant is  
3           guilty of killing four innocent victims in cold  
4           blood without a defense, without any justification.  
5           Okay?

6           So all the information you need to know to  
7           determine with 11 other jurors beyond a reasonable  
8           doubt that that defendant is guilty of four counts  
9           of first-degree murder. Would you be able to make  
10          a decision on the appropriate penalty at that  
11          point?

12          PROSPECTIVE JUROR ECK: I would be able to.

13          MR. PURA: I'm sorry?

14          PROSPECTIVE JUROR ECK: I would be able to  
15          make a decision.

16          MR. PURA: And that decision would be?

17          PROSPECTIVE JUROR ECK: What I would say?

18          MR. PURA: Yes.

19          PROSPECTIVE JUROR ECK: I would probably  
20          not -- not do the -- I probably wouldn't go with  
21          the death penalty.

22          MR. PURA: I'm sorry?

23          PROSPECTIVE JUROR ECK: I probably wouldn't go  
24          with the death penalty. I would have to listen to  
25          everything that is said to make -- you know, it

1 goes into how his life was. You know, everyone has  
2 their own life. Everyone has problems. People are  
3 brought up a certain way. And, you know, sometimes  
4 people just...

5 MR. PURA: Okay. So you say you would  
6 probably not vote for the death penalty. But are  
7 you saying that, you know, I mean you'd need to  
8 know more before you make --

9 PROSPECTIVE JUROR ECK: I would need to know  
10 more. I know that everyone's talking about, you  
11 know, if there's one, that he would be -- one who  
12 would say, no, he would be off. So he would get  
13 life. So it takes one to do that.

14 MR. PURA: Okay. So you wouldn't be able to  
15 make a decision based on my hypothetical?

16 PROSPECTIVE JUROR ECK: I would be able to  
17 make a decision.

18 MR. PURA: I'm sorry?

19 PROSPECTIVE JUROR ECK: I would be able to  
20 make a decision.

21 MR. PURA: Okay. You would? Okay. Back  
22 to --

23 PROSPECTIVE JUROR ECK: I'm sorry.

24 MR. PURA: That's okay. And I asked you what  
25 would that decision be and you said something like

1 I probably would vote for life or something like  
2 that; is that right?

3 PROSPECTIVE JUROR ECK: Probably.

4 MR. PURA: I mean would you be automatic?

5 PROSPECTIVE JUROR ECK: No. I'd have to  
6 listen to what everyone says. But I'm just saying  
7 it could be life; it could be -- you know, I'm in  
8 the middle, I'm in five, so I'd have to listen to  
9 everything and not be bullied. I would not be  
10 bullied. I'm, like, don't worry about that.

11 MR. PURA: Okay. Because, you know, you speak  
12 quite softly.

13 PROSPECTIVE JUROR ECK: I know there's a --  
14 I'm sorry.

15 MR. PURA: But there's a real, you know,  
16 animal inside, right? You won't be bullied?

17 PROSPECTIVE JUROR ECK: No. I won't be  
18 bullied. And I will listen to all the facts and I  
19 will do the best that I can.

20 MR. PURA: And if you disagree with all 11  
21 jurors when you decide, if you decide that  
22 mitigating circumstances call for a life sentence,  
23 would you knock on that door and let them know  
24 you're done and you've reached a verdict?

25 PROSPECTIVE JUROR ECK: Yes.

1           MR. PURA: And would you resist anybody's  
2 attempts to intimidate or bully you into changing  
3 your mind?

4           PROSPECTIVE JUROR ECK: No. I would knock on  
5 the door immediately.

6           MR. PURA: All right. Thank you, ma'am.

7           PROSPECTIVE JUROR ECK: Thank you.

8           MR. PURA: Thank you.

9           Ms. Hackbarth? There you are. You hid from  
10 me that you can get away with this.

11           Ms. Hackbarth, you were a ten and you're still  
12 a ten. Any questions about my hypothetical  
13 situation? Four innocent victims, no defense, no  
14 justification, no mental issues, cold-blooded  
15 killing of four innocent victims, what are your  
16 feelings about death being the only appropriate  
17 sentence?

18           PROSPECTIVE JUROR HACKBARTH: That there's  
19 always other mitigating situations that I'd have to  
20 listen to in order to make a decision.

21           MR. PURA: So after ten, which I know it might  
22 have been kind of a confusing question, but --

23           PROSPECTIVE JUROR HACKBARTH: But I changed to  
24 a five.

25           MR. PURA: Oh, you did? Oh, I didn't write

1           that down. Okay.

2           THE COURT: It's the end of the day.

3           PROSPECTIVE JUROR HACKBARTH: Yes. I was a  
4           ten and I changed to a five.

5           MR. PURA: Okay.

6           PROSPECTIVE JUROR HACKBARTH: And I also made  
7           it clear on that it all depended on the facts.

8           MR. PURA: I understand. My mistake. I  
9           thought you said you were still a ten.

10          PROSPECTIVE JUROR HACKBARTH: No.

11          MR. PURA: Okay. So you've heard us talk  
12          about mitigating circumstances. Are those the kind  
13          of things that, you know, you're saying that you  
14          would want to know before you make a final decision  
15          on the appropriate penalty?

16          PROSPECTIVE JUROR HACKBARTH: Absolutely.

17          MR. PURA: And do you understand that the  
18          State has to prove any aggravators beyond a  
19          reasonable doubt, right?

20          PROSPECTIVE JUROR HACKBARTH: Yes.

21          MR. PURA: But in mitigators, it could be, you  
22          know, any reason, any juror thinks that life is the  
23          appropriate sentence?

24          PROSPECTIVE JUROR HACKBARTH: Right.

25          MR. PURA: Okay. And it could be just one

1 mitigating circumstance and you could say that's  
2 enough for me, I'm voting for life; do you  
3 understand?

4 PROSPECTIVE JUROR HACKBARTH: Yes.

5 MR. PURA: Even if you believe that the  
6 aggravators outnumber and outweigh that mitigating  
7 circumstance, you could still give that mitigating  
8 circumstance the weight of life; do you understand  
9 that?

10 PROSPECTIVE JUROR HACKBARTH: Yes.

11 MR. PURA: Okay. Follow me with that. Let's  
12 say you're in that situation and everybody else  
13 disagrees with you, what are you going to do in  
14 that situation?

15 PROSPECTIVE JUROR HACKBARTH: Knock on the  
16 door.

17 MR. PURA: Thank you, ma'am.

18 PROSPECTIVE JUROR HACKBARTH: You're welcome.

19 MR. PURA: Mr. New?

20 PROSPECTIVE JUROR NEW: Yes, sir.

21 MR. PURA: Good afternoon, Mr. New.

22 I have you down as, you know, you originally  
23 rated yourself a ten. That's on paper, so you  
24 can't dispute that. Okay? But then I have a  
25 question mark under that. I believe there was a

1 follow-up question about that yesterday from the  
2 State.

3 Go to my scenario, my hypothetical scenario,  
4 which now includes, of course, four innocent  
5 victims, no defenses, no mental issues, a  
6 cold-blooded, calculated murder of four innocent  
7 victims. What are your feelings about death being  
8 the only appropriate punishment?

9 PROSPECTIVE JUROR NEW: In my heart it would  
10 still be a ten. I would still have to say the  
11 death penalty.

12 MR. PURA: And believe me, right, everybody's  
13 opinion is deserving of respect. I'm not going to  
14 be criticizing that. But I just want to, you know,  
15 flush that out a little bit, you know, in your  
16 heart, which is hopefully where is the basis where  
17 we're making this type of a decision, right?

18 PROSPECTIVE JUROR NEW: Uh-huh.

19 MR. PURA: All right. So you've heard us talk  
20 about mitigating circumstances. Is that something  
21 that you don't feel that you would be able to give  
22 any kind of due consideration?

23 PROSPECTIVE JUROR NEW: I made that decision.  
24 I'm sorry.

25 MR. PURA: Yes, sir. Thank you, sir.

1           Is it Mr. Abde?

2           PROSPECTIVE JUROR ABDE: Yes.

3           MR. PURA: Everybody has been sitting  
4 patiently listening. You've heard my scenario. Do  
5 you have any questions about any hypothetical  
6 scenario?

7           PROSPECTIVE JUROR ABDE: No, sir.

8           MR. PURA: Okay. What are your feelings about  
9 the death penalty being the only appropriate  
10 punishment for that killer?

11          PROSPECTIVE JUROR ABDE: I don't believe it's  
12 the only appropriate punishment.

13          MR. PURA: Okay. So you would need to know  
14 more before making that decision?

15          PROSPECTIVE JUROR ABDE: Absolutely.

16          MR. PURA: Okay. And, again, you've heard us  
17 talk about mitigating circumstances. Those are  
18 circumstances that are unrelated to the guilt or  
19 innocence of the defendant. Do you understand  
20 that?

21          PROSPECTIVE JUROR ABDE: Correct.

22          MR. PURA: Are those the types of things that  
23 you would need to know before making a decision on  
24 whether death is appropriate?

25          PROSPECTIVE JUROR ABDE: Correct.

1           MR. PURA: And, again, do you understand that  
2 any juror, you or anybody else, can give the weight  
3 of life to any single mitigating circumstance? Do  
4 you understand that?

5           PROSPECTIVE JUROR ABDE: Yes.

6           MR. PURA: Even in the face of multiple  
7 aggravators or aggravators that outweigh  
8 mitigators, they can attach a life verdict to any  
9 mitigating circumstances; do you understand that?

10          PROSPECTIVE JUROR ABDE: I do.

11          MR. PURA: Okay. And if somebody does that,  
12 let's say, but you disagree with them, would you  
13 pledge to respect their decision?

14          PROSPECTIVE JUROR ABDE: Yeah. Absolutely.

15          MR. PURA: I mean even let's say again  
16 hypothetically you think somebody should die and  
17 you have some 40-year-old young lady, you know,  
18 saying, no, I think he should live, would you agree  
19 to respect her decision?

20          PROSPECTIVE JUROR ABDE: I would.

21          MR. PURA: All right. Thank you, sir.

22          PROSPECTIVE JUROR ABDE: It's her opinion.

23          MR. PURA: Well, you don't have to point to  
24 her. I didn't mean to point to her either. Thank  
25 you very much.

1 Ms. Riley? Ms. Riley, good afternoon.

2 PROSPECTIVE JUROR RILEY: Good afternoon.

3 MR. PURA: Ms. Riley, do you have any  
4 questions about my hypothetical situation?

5 PROSPECTIVE JUROR RILEY: I do not.

6 MR. PURA: Okay. And as you know now, it  
7 includes four innocent victims. What are your  
8 feelings about death being the only appropriate  
9 penalty?

10 PROSPECTIVE JUROR RILEY: That is not the only  
11 option.

12 MR. PURA: It's not the only option?

13 PROSPECTIVE JUROR RILEY: No. I would need to  
14 hear all the evidence.

15 MR. PURA: All of the evidence.

16 PROSPECTIVE JUROR RILEY: And the aggravators  
17 and mitigators.

18 MR. PURA: Okay. When you mean all the  
19 evidence, you're talking about evidence not related  
20 to the guilt or innocence of the defendant? Is  
21 that what you're talking about?

22 PROSPECTIVE JUROR RILEY: Uh-huh.

23 MR. PURA: Things about the background  
24 perhaps?

25 PROSPECTIVE JUROR RILEY: Yes.

1           MR. PURA: Obviously events don't happen in  
2 vacuums. You'd want to know a little bit more  
3 about what led up to the crime?

4           PROSPECTIVE JUROR RILEY: Correct.

5           MR. PURA: Is that what you're saying?

6           PROSPECTIVE JUROR RILEY: Yes. That is what  
7 I'm saying.

8           MR. PURA: And, again, you've heard me talk  
9 about the fact that, you know, any single juror can  
10 give the weight of life to any mitigating  
11 circumstance. Do you know what I'm saying?

12          PROSPECTIVE JUROR RILEY: Yes.

13          MR. PURA: Even in the face of multiple  
14 aggravators; do you understand that?

15          PROSPECTIVE JUROR RILEY: Yes.

16          MR. PURA: And would you respect that in other  
17 jurors even if you disagree with them?

18          PROSPECTIVE JUROR RILEY: I would respect  
19 that, absolutely.

20          MR. PURA: And would you agree that bullying  
21 and intimidation is completely inappropriate in  
22 that circumstance?

23          PROSPECTIVE JUROR RILEY: I may be  
24 intimidated, but I don't go for bullying on myself  
25 or others.

1           MR. PURA: And 12 people can't necessarily be  
2 expected to agree on moral decisions, correct?

3           PROSPECTIVE JUROR RILEY: Yes.

4           MR. PURA: Thank you, ma'am.

5           Mr. Lennox? Mr. Lennox, good afternoon.

6           PROSPECTIVE JUROR LENNOX: Good afternoon.

7           MR. PURA: You've heard everything so far.  
8 What do you think? Cold-blooded killer of four  
9 innocent victims.

10          PROSPECTIVE JUROR LENNOX: Well, I was always  
11 taught to think before I do. So I would refrain  
12 from jumping to conclusions and being rash, and I  
13 would listen to all the circumstances and listen to  
14 all the mitigating and aggravating and I would make  
15 a decision based on that.

16          MR. PURA: So even though you were convinced  
17 beyond a reasonable doubt that this person that  
18 you're talking about is a cold-blooded killer of  
19 four innocent victims, you'd still need to know  
20 more before deciding on the appropriate penalty?

21          PROSPECTIVE JUROR LENNOX: Yes. Because you  
22 never know what, like you said, the background is,  
23 what the situation was. He could have been in a  
24 different state of mind. I know you said the  
25 person was sane, but they could have still been in

1 a different state of my mind, emotional.

2 MR. PURA: And you said that you've been  
3 taught to think before you act, right?

4 PROSPECTIVE JUROR LENNOX: Yes.

5 MR. PURA: Okay. How old are you?

6 PROSPECTIVE JUROR LENNOX: I'm 19.

7 MR. PURA: Nineteen. Okay. I was going to  
8 say don't say you're 40.

9 All right. Do you agree that people can come  
10 to different decisions when they're making  
11 decisions such as this, you know, based on their  
12 moral judgment?

13 PROSPECTIVE JUROR LENNOX: Everybody comes  
14 with different backgrounds; so, yes.

15 MR. PURA: And you respect that?

16 PROSPECTIVE JUROR LENNOX: Yes, sir.

17 MR. PURA: I can tell. So if you're the only  
18 one, you know, you've made your own individual  
19 moral judgment and it's one way or the other and  
20 you're the only one, do you agree that your  
21 judgment is entitled to the respect and dignity of  
22 the other jurors?

23 PROSPECTIVE JUROR LENNOX: Yes, I do. And I'm  
24 also very stubborn.

25 MR. PURA: You're also very stubborn?

1 PROSPECTIVE JUROR LENNOX: Yes.

2 MR. PURA: Okay.

3 PROSPECTIVE JUROR LENNOX: Once I come to my  
4 decision. I'm willing to listen to others, but at  
5 the end of the day what I think is final.

6 MR. PURA: Okay. And at the end of the day  
7 let's say you come down and you've heard everything  
8 you need to know and you vote for life, but all the  
9 11 other jurors disagree with you, would you pledge  
10 to knock on the door and say, we're over, we're  
11 done, deliberation is over, the verdict is life?

12 PROSPECTIVE JUROR LENNOX: Yes, sir.

13 MR. PURA: Thank you.

14 PROSPECTIVE JUROR LENNOX: Thank you.

15 MR. PURA: Ms. Cinisoma?

16 PROSPECTIVE JUROR CINISOMA: Yes.

17 MR. PURA: How did I do?

18 PROSPECTIVE JUROR CINISOMA: Good. Perfect.

19 MR. PURA: Well, I've heard it a few times, so  
20 I'm at an advantage when it comes to that.

21 Ms. Cinisoma, you rate yourself a five. My  
22 understanding would be that, you know, sometimes  
23 the death penalty is appropriate; sometimes it  
24 isn't. Is that kind of how we can read you?

25 PROSPECTIVE JUROR CINISOMA: Yes.

1           MR. PURA: Okay. So again back into my  
2 scenario. Now we're talking about, you know, four  
3 innocent victims, a cold-blooded killer. You think  
4 in that situation, well, you know, death is the  
5 only appropriate penalty?

6           PROSPECTIVE JUROR CINISOMA: No, sir. I think  
7 mitigating factors are huge. Childhood has a big  
8 play on what --

9           MR. PURA: I'm sorry, ma'am?

10          PROSPECTIVE JUROR CINISOMA: That's okay. I  
11 think childhood backgrounds, child abuse, things  
12 like that, that does play a part in someone's life.  
13 I think that would be fair for the defendant for  
14 those facts be known to someone deciding on their  
15 life.

16          MR. PURA: And do you understand that in a  
17 penalty phase, if you're on the jury, each  
18 individual juror has to reach their own individual  
19 verdict, right, based on their own moral  
20 background, their own moral judgment?

21          PROSPECTIVE JUROR CINISOMA: Absolutely.

22          MR. PURA: Do you understand that?

23          PROSPECTIVE JUROR CINISOMA: Yes, sir.

24          MR. PURA: And that's because, you know,  
25 you're going to have to live with your decision,

1 right?

2 PROSPECTIVE JUROR CINISOMA: Absolutely.

3 MR. PURA: So you'd agree it would be  
4 improper -- it would be expected that you might not  
5 agree with the others on moral issues, right?

6 PROSPECTIVE JUROR CINISOMA: Absolutely. I  
7 can't imagine some people we'd all have the same  
8 thoughts.

9 MR. PURA: Right. And you wouldn't appreciate  
10 somebody telling you how to raise your children,  
11 how to punish your children?

12 PROSPECTIVE JUROR CINISOMA: Absolutely not.

13 MR. PURA: What church to attend, right?

14 PROSPECTIVE JUROR CINISOMA: No, sir.

15 MR. PURA: You wouldn't appreciate that,  
16 right? So would you pledge to -- you know, if you  
17 make a decision and that decision, you know, let's  
18 say you looked at the mitigating circumstances and  
19 you think that life is the appropriate penalty,  
20 would you agree with --

21 PROSPECTIVE JUROR CINISOMA: I would not. I  
22 would announce that immediately.

23 MR. PURA: You would announce that  
24 immediately --

25 PROSPECTIVE JUROR CINISOMA: Yes, sir.

1           MR. PURA: -- that you've got a verdict here,  
2           right?

3           PROSPECTIVE JUROR CINISOMA: Absolutely.

4           MR. PURA: Thank you.

5           PROSPECTIVE JUROR CINISOMA: You're welcome.

6           MR. PURA: Ms. Rein?

7           PROSPECTIVE JUROR REIN: Yes.

8           MR. PURA: Good afternoon, Ms. Rein.

9           PROSPECTIVE JUROR REIN: Hello.

10          MR. PURA: Ms. Rein, what are your thoughts on  
11          my scenario, on my hypothetical? Again, four  
12          innocent victims, cold-blooded killer, no excuses,  
13          no defenses.

14          PROSPECTIVE JUROR REIN: I look at it that we  
15          have the who, what and where and when, and the  
16          separate reason why. Getting an understanding of  
17          why somebody would do something like that. So I  
18          think you need to understand all the pieces. And  
19          Lady Liberty, and that's the scale, you have to  
20          weigh the pluses and minuses and make a decision.

21          MR. PURA: So if I understand you, the Judge  
22          was talking about mitigating circumstances,  
23          including the circumstances surrounding the crime.  
24          Is that what you're talking about?

25          PROSPECTIVE JUROR REIN: Rephrase the

1 question.

2 MR. PURA: You heard the Judge talking about  
3 and define what mitigating circumstances are,  
4 anything in the character or background of the  
5 defendant or the circumstances surrounding the  
6 crime, right?

7 PROSPECTIVE JUROR REIN: Yes.

8 MR. PURA: Go ahead. Can you tell me what you  
9 said that you would need to know more before making  
10 any decision?

11 PROSPECTIVE JUROR REIN: The why.

12 MR. PURA: Uh-huh.

13 PROSPECTIVE JUROR REIN: You know, the  
14 circumstances that led to the why. It could be  
15 there's lots of different pluses and minuses that  
16 can make up why.

17 MR. PURA: Okay. So in the guilt phase where  
18 the State has to prove beyond a reasonable doubt  
19 that the defendant is guilty of premeditated  
20 murder, you understand they don't have to prove  
21 why, right? They don't have to prove motive --

22 PROSPECTIVE JUROR REIN: Right. We don't need  
23 to know the why.

24 MR. PURA: -- in order to decide someone is  
25 guilty or not. But you're saying in order to

1           decide what the appropriate penalty is, that's  
2           something that you would need to know?

3           PROSPECTIVE JUROR REIN: Well, you're saying  
4           that if their background is why. So the background  
5           or abuse or whatever, you're making that basis to  
6           lead into the why. So I don't know what the  
7           purpose of putting that out there would be for  
8           other than to explain the person and how they got  
9           to that place.

10          MR. PURA: And let's say that you're given  
11          enough information to make a decision as to the  
12          appropriate penalty. Obviously making the decision  
13          as to whether someone should live or die is a  
14          deeply moral and momentous decision. I'm assuming  
15          you've never been put in a position of having to do  
16          that before?

17          PROSPECTIVE JUROR REIN: No, I have not.

18          MR. PURA: Would you expect your decision to  
19          be respected by the other jurors?

20          PROSPECTIVE JUROR REIN: Yes.

21          MR. PURA: Even if they disagreed with you?

22          PROSPECTIVE JUROR REIN: Correct.

23          MR. PURA: Thank you, ma'am.

24          PROSPECTIVE JUROR REIN: I would respect the  
25          judicial process.

1           MR. PURA: Because you would respect their  
2 decisions, right?

3           PROSPECTIVE JUROR REIN: Correct.

4           MR. PURA: Okay. Thank you.

5           Ms. Wanamaker?

6           PROSPECTIVE JUROR WANAMAKER: Yes.

7           MR. PURA: Good afternoon, Ms. Wanamaker.

8           PROSPECTIVE JUROR WANAMAKER: Good afternoon.

9           MR. PURA: I've got you as a five. And, you  
10 know, so you're kind of in the middle there.

11          PROSPECTIVE JUROR WANAMAKER: I would want to  
12 hear the mitigating circumstances. I don't feel  
13 every case is cut and dry.

14          MR. PURA: Well, in my hypothetical scenario,  
15 I tried to present it, as far as the guilt or  
16 innocence, as cut and dry. Right? That there's no  
17 doubt that the defendant is guilty.

18          PROSPECTIVE JUROR WANAMAKER: Right.

19          MR. PURA: There's no question in your mind  
20 that it is a cold-blooded, calculated, premeditated  
21 murder. No question in your mind that these four  
22 victims were completely innocent. They didn't ask  
23 for it and they didn't do anything to provoke it.  
24 Completely innocent victims.

25          So, you know, in that scenario, what do you

1 think about death being the only appropriate --

2 PROSPECTIVE JUROR WANAMAKER: I would still  
3 need to hear the mitigation. I would still need to  
4 find everything out. And I would respect  
5 everybody's opinions and I would have my own. No  
6 one's going to persuade me of my opinions, and I  
7 understand.

8 MR. PURA: Okay. You strike me as someone who  
9 will stand up for yourself?

10 PROSPECTIVE JUROR WANAMAKER: Yes.

11 MR. PURA: And if you see somebody else being  
12 intimidated, you'll speak up?

13 PROSPECTIVE JUROR WANAMAKER: Yes, I will.  
14 I'll knock on the door.

15 MR. PURA: Thank you.

16 PROSPECTIVE JUROR WANAMAKER: You're welcome.

17 MR. PURA: Ms. Hartmann?

18 PROSPECTIVE JUROR HARTMANN: Here.

19 MR. PURA: There you are. Sorry. There you  
20 are.

21 Ms. Hartmann, I haven't talked to you yet,  
22 right?

23 PROSPECTIVE JUROR HARTMANN: No.

24 MR. PURA: Okay. Ms. Hartmann, a hypothetical  
25 scenario.

1 PROSPECTIVE JUROR HARTMANN: Okay.

2 MR. PURA: Any questions?

3 PROSPECTIVE JUROR HARTMANN: No. I got it.

4 MR. PURA: You get where I'm going on that,  
5 right?

6 PROSPECTIVE JUROR HARTMANN: I do.

7 MR. PURA: Okay.

8 PROSPECTIVE JUROR HARTMANN: My only question  
9 is, we've used the word "mitigating" about a  
10 thousand times this morning.

11 MR. PURA: Okay.

12 PROSPECTIVE JUROR HARTMANN: Okay. Can we  
13 hear about the other side of it? What might we  
14 hear that would sway us? And I'm a five, so I'm  
15 ready to be swayed one way or the other. I will  
16 listen. Everybody is going to go into the penalty  
17 phase with their own monkey on their back and take  
18 care of their own monkey.

19 MR. PURA: Okay. So, you know, the other side  
20 is aggravators, right?

21 PROSPECTIVE JUROR HARTMANN: Right.

22 MR. PURA: Okay. Right. So you're saying  
23 you'd need to know?

24 PROSPECTIVE JUROR HARTMANN: I kind of do,  
25 yes.

1 MR. PURA: You'd want to know --

2 PROSPECTIVE JUROR HARTMANN: Maybe I don't  
3 need to know now. But I think we're kind of like  
4 walking this way now with all these mitigating  
5 circumstances, and I would like to know what an  
6 aggravating circumstance might be. Perhaps the  
7 Judge can just read us what those might be.

8 THE COURT: Certainly I can do that.

9 MR. PURA: She will.

10 THE COURT: Give me a moment.

11 PROSPECTIVE JUROR HARTMANN: Other than that,  
12 are we good?

13 MR. PURA: No. We're going to wait.

14 THE COURT: I'm going to read that for you. I  
15 just have to click all the right buttons to get to  
16 it. I don't like to read something that I don't  
17 have right in front of me.

18 The only reason I stopped, the way the law is  
19 set up when we talk about aggravating factors,  
20 those are specific and they have to be specifically  
21 alleged by the State and they have to be told to  
22 the other side before the trial begins.

23 Mitigating circumstances can be anything, and  
24 they can arise during the trial or during testimony  
25 of the trial, and they can go into background, and

1           they can be anything. But as for aggravating  
2           factors, they have to be specifically laid out in  
3           advance by the other side, by the State. Okay?

4           PROSPECTIVE JUROR HARTMANN: Before trial?

5           THE COURT: So they can't make them up while  
6           they go around. So I'm going to have the lawyers  
7           come to the bench just one second and then I'll be  
8           right with you.

9           (Bench Conference.)

10          THE COURT: I just want to make sure.

11          MR. SARABIA: I don't think it's a road we're  
12          supposed to go down.

13          THE COURT: I understand. I'm not going to  
14          make the decision, but in this case we only have  
15          cold, calculating and heinous, atrocious, right?

16          MR. LIVERMORE: Right.

17          THE COURT: Multiple.

18          MR. SARABIA: Prior violent felony.

19          THE COURT: Oh, okay.

20          MR. SARABIA: That's going to take us down an  
21          interesting road unless --

22          MR. PURA: I'm not doing cold and calculating.

23          MR. SARABIA: No. Heinous, atrocious and  
24          cruel and prior violent felony, which without an  
25          explanation about that --

1           THE COURT: Will be just multiple victims,  
2           right? That's what you're saying, that there's  
3           multiple.

4           MR. SARABIA: Right.

5           THE COURT: It's not that's something  
6           different. Okay. So it's the amount, then?

7           MR. SARABIA: Right.

8           THE COURT: If I put it in small terms?

9           MR. SARABIA: Sure.

10          THE COURT: Just the number of victims, I  
11          could say that. And that it was done in a heinous,  
12          atrocious and cruel manner, and I'd make that  
13          definition later. Can I say that?

14          MR. PURA: Yes.

15          MR. SARABIA: If Defense is okay with that.

16          MR. PURA: Yes.

17          THE COURT: Okay.

18          MR. SARABIA: But once we do that, because of  
19          the nature of the allegations, if the Defense  
20          starts using the hypothetical and having them weigh  
21          aggravators and mitigators --

22          THE COURT: We're not going to be weighing  
23          anything.

24          MR. SARABIA: -- I don't think that's  
25          appropriate.

1           MR. PURA: And I would suggest you even give  
2           kind of a paraphrased definition, in addition to  
3           what you were talking about, anything that would  
4           make the crime worse or something to that effect.

5           MR. LIVERMORE: In light of our objections  
6           previously, we object to both aggravators as being  
7           unconstitutional.

8           THE COURT: So do you want me to read  
9           something or not? I can give them an example of  
10          different aggravators without saying these  
11          aggravators. So what I can say is that you have to  
12          find them first.

13          MR. SARABIA: I think it would be more  
14          appropriate to instruct the jury they'll be  
15          informed of the specific aggravators in the future.

16          THE COURT: Later. Right.

17          MR. SARABIA: But that they will be able to  
18          consider those as aggravators. If you get into any  
19          of them, then I think we're going down a road that  
20          gets dangerous.

21          THE COURT: It's up to you guys. What do you  
22          want me to do?

23          MR. PURA: Well, Mr. Livermore makes a good  
24          point. We've objected to the aggravators based on  
25          constitutionality, and I don't think we're in a

1 position to specifically agree to an instruction.

2 I know the position you're in.

3 THE COURT: I can give them a definition of  
4 what types of aggravators might be out there, but  
5 we're not going to into specific details of which  
6 ones in this case.

7 MR. LIVERMORE: All 16.

8 THE COURT: Well, I can just use a few. How  
9 about that?

10 MR. LIVERMORE: I think that's reasonable.

11 THE COURT: I'll use cold and calculating; you  
12 know, heinous, atrocious; prior violent felonies,  
13 just as an example, three. How about that? The  
14 three that a lot of people have heard. I'm not  
15 saying those are in this case because we're not  
16 going to into the facts, but those are three that  
17 come up. How about that?

18 MR. PURA: Well, I'm concerned about the use  
19 of the word "Cold, calculating," since you're not  
20 going to be trying to prove that anyway.

21 MR. SARABIA: Yes. If you put that out there,  
22 then they may view that as -- I agree with you,  
23 Mr. Pura.

24 MR. PURA: I've used that phrase, you know, in  
25 my hypothetical scenario, cold, calculated.

1           THE COURT: That's why I was kind of going to  
2           use it because you kind of used it in your  
3           hypothetical a couple of times. So I thought,  
4           well, we've already said the words.

5           MR. SARABIA: You know, it would be a good  
6           time to break for lunch.

7           THE COURT: I'm not going to go without giving  
8           them a definition.

9           I think I have something I can read. The  
10          definition says, "An aggravating factor is a  
11          standard to guide the jury in making the choice  
12          between recommending life in prison without the  
13          possibility of parole or death. It is a  
14          statutorily enumerated circumstance that increases  
15          the gravity of a crime or the harm to the victim."  
16          How about that?

17          MR. PURA: That's a good one.

18          THE COURT: How about I read that?

19          MR. PURA: That's a good one.

20          THE COURT: Okay.

21          MR. SARABIA: (Indicating affirmatively).

22          THE COURT: Okay.

23          (Open Court.)

24          THE COURT: We've huddled together. I think a  
25          couple of times it's been brought to your attention

1 is that we try not to go into the facts of the  
2 case, because in reality we don't know what the  
3 facts are until they come out on the witness stand.

4 I know a little bit about this case, but I  
5 don't know everything about this case. The lawyers  
6 have a belief of what they believe the facts are,  
7 but as lawyers -- and I am a lawyer -- facts do not  
8 exist until they come from the witness stand under  
9 oath in the form of testimony or evidence admitted  
10 into a trial. And that's the reason why we're  
11 really, really specific about not wanting to go  
12 into, quote, "The facts of the case," because we  
13 don't know what they are until somebody testifies  
14 to them.

15 But an aggravating factor is a standard to  
16 guide the jury in making the choice between a  
17 recommendation of life in prison without the  
18 possibility of parole or the death penalty. It is  
19 a statutorily enumerated circumstance that  
20 increases the gravity of a crime or the harm to a  
21 victim, and it comes from the actual facts of how  
22 the crime was committed. So it is bracketed in the  
23 law based on the facts that come out at trial.

24 Mitigating circumstances can be outside what  
25 occurred in the trial; what exactly happened to

1           commit the murder, for you all to convict them of  
2           murder, if you do; and can go to their background,  
3           their upbringing and all the other things I talked  
4           about.

5           So the aggravating factors that we talk about  
6           would be because the murder was -- it's something  
7           that's written down in law, we've already decided  
8           what they are, we can't add to them. The statute  
9           is clear the State tells the Defense what they  
10          believe the facts will be when it comes out in  
11          trial; but ultimately it's something that increases  
12          the gravity of the murder or the harm to the victim  
13          during the act of the murder.

14          So it's not something that happened before or  
15          something that happens after. It has to have  
16          something to do with the actual conviction for  
17          murder.

18          Does that help you?

19          PROSPECTIVE JUROR HARTMANN: Yes.

20          THE COURT: Okay. All right. And after we  
21          speak to you, we're probably going to take lunch,  
22          just so you know.

23          I know Mr. Pura wants to speak to every single  
24          person, and so we're going to have lunch and then  
25          we're going to come back and we should be able to

1 finish. But it's been a long time, we're almost  
2 two hours in, so I definitely want to take lunch  
3 after we're finished.

4 MR. PURA: Ms. Hartmann.

5 PROSPECTIVE JUROR HARTMANN: Yes.

6 MR. PURA: Okay. Let's pick up where we left  
7 off. I'm not sure. You would want to know more  
8 than my hypothetical scenario in order to  
9 determine --

10 PROSPECTIVE JUROR HARTMANN: That's correct.  
11 To make that kind of a decision. If we've already  
12 decided in your hypothetical situation that someone  
13 is guilty, I guess what Judge is saying now is that  
14 we should have gotten the information on the  
15 aggravating during the trial to make that decision.

16 MR. PURA: Yes.

17 PROSPECTIVE JUROR HARTMANN: And I think all  
18 of us have come to the conclusion that we would be  
19 on our own to make that decision and to stick to  
20 our decision and not try to influence anybody else  
21 at that point.

22 MR. PURA: Okay. And so you think that you  
23 would be willing to decide --

24 PROSPECTIVE JUROR HARTMANN: Yes.

25 MR. PURA: -- decide whether the State has

1 proven beyond a reasonable doubt aggravating  
2 circumstances and aggravating factors?

3 PROSPECTIVE JUROR HARTMANN: Yes.

4 MR. PURA: And also you'd be willing to decide  
5 whether any mitigating circumstances existed as  
6 well?

7 PROSPECTIVE JUROR HARTMANN: Absolutely.

8 MR. PURA: And weigh them against each other?  
9 Do you understand that the weighing process is not  
10 a mechanical or mathematical process when you're  
11 weighing aggravators versus mitigators? Do you  
12 understand that?

13 PROSPECTIVE JUROR HARTMANN: Yes.

14 MR. PURA: So you can decide that the State  
15 has -- and I'm speaking hypothetically -- proved a  
16 dozen, you know, aggravators. Okay.

17 PROSPECTIVE JUROR HARTMANN: Right.

18 MR. PURA: As Judge Handsel said, they would  
19 have to be statutorily, you know, listed. So  
20 that's a hypothetical. We're not talking about 20,  
21 but in my hypothetically we are. Okay.

22 So you can be convinced that the State has  
23 proven beyond a reasonable doubt the presence of 20  
24 aggravating factors, okay, and do you understand  
25 that if you determine that there is existing one

1 mitigating circumstance, that you can vote for  
2 life?

3 PROSPECTIVE JUROR HARTMANN: Yes.

4 MR. PURA: You can give that circumstance,  
5 mitigating circumstance the weight of life; do you  
6 understand that?

7 PROSPECTIVE JUROR HARTMANN: Yes.

8 MR. PURA: Even if you're convinced that the  
9 State has proven multiple aggravators, even if you  
10 think those aggravators outnumber and outweigh that  
11 mitigating circumstance, you can still vote for  
12 life?

13 PROSPECTIVE JUROR HARTMANN: Yes.

14 MR. PURA: And stand up for yourself if you do  
15 that and disagree with everybody else? You  
16 understand that the defendant in that situation is  
17 entitled to a life verdict based on your individual  
18 moral judgment?

19 PROSPECTIVE JUROR HARTMANN: Absolutely.

20 MR. PURA: And you can make sure that that  
21 verdict is carried out in that jury deliberation  
22 room?

23 PROSPECTIVE JUROR HARTMANN: Yes.

24 MR. PURA: Thank you.

25 THE COURT: All right. Ladies and gentlemen,

1 we'll have you back down in the jury pool room at  
2 1:45. Okay? Still no talking about it, no  
3 tweeting, no texting, no blogging.

4 THE BAILIFF: The prospective jurors are out  
5 of the hearing of the Court, Your Honor.

6 (Prospective Jurors Absent.)

7 THE COURT: We're off the record.

8 (Off the Record.)

9 (Recess Taken.)

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13 (CONTINUED IN VOLUME XI.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF PASCO )

I, MARIA FORTNER, Registered Professional  
Reporter for the Sixth Judicial Circuit, do certify that  
I was authorized to and did stenographically report the  
foregoing proceedings and that the transcript is a true  
record.

DATED this 10th day of March, 2019.

/S MARIA A. FORTNER  
MARIA A. FORTNER  
Registered Professional Reporter

