

1 Mr. Walsh.

2 Are you ready to proceed?

3 MR. PARKER: Yes, Your Honor.

4 THE COURT: Go ahead.

5  
6 ARGUMENT ON BEHALF OF THE DEFENSE

7 MR. PARKER: May it please the Court,  
8 attorneys for the prosecution.

9 Ladies and gentlemen of the jury, this  
10 is the last time I will get a chance to speak to  
11 you. Again, I thank you for your time and  
12 attention. It's getting late in the day; we  
13 have been here a month. We appreciate the time  
14 you have spent in seeking and arriving at your  
15 verdict, but don't, because it is late, because  
16 it is Friday, don't rush off and make a decision  
17 now in the punishment stage.

18 Henry Lucas is still having his day in  
19 court. This is the most important part of your  
20 deliberations thus far, because now your only  
21 decisions are life and death. Please don't be  
22 in a hurry.

23 Mr. Walsh has told you and it is in  
24 the charge; the prosecution still has the burden  
25 of proof to prove to you beyond a reasonable

1 doubt the answers to these questions. I am  
2 convinced of the way I feel and the way I feel  
3 about Henry Lucas and the evidence in this case,  
4 just as I know Mr. Walsh is convinced at his  
5 side. Mr. Walsh is a fine prosecutor. It's my  
6 privilege to have been able to try this case  
7 with him. And I know he would not be arguing to  
8 you today about the death penalty unless I know  
9 he was convinced in his own heart that it was  
10 deserved. In my feeling, it's not deserved, and  
11 I'm convinced in my heart. I have reasonable  
12 doubt as to Henry Lucas's guilt. I have  
13 reasonable doubt as to whether he needs the  
14 death penalty.

15 But no matter what our feelings are,  
16 we don't have to make the decision. And don't  
17 tell yourself that the Judge makes this  
18 decision; you make the decision. You know the  
19 answers to these questions will determine  
20 whether he gets life or death, and you're the 12  
21 persons that are going to have to go on home and  
22 live with the decision, and whether you can  
23 sleep at night and whether you can live with  
24 yourselves if you give him the death penalty.  
25 You can't come back up here tomorrow, next week,

1 two months from now, a year from now, and say,  
2 "I want to change my mind. I have a reasonable  
3 doubt as to whether or not he was in Florida. I  
4 have a reasonable doubt as to whether he killed  
5 this girl. I have a reasonable doubt whether he  
6 deserves the death penalty." This is your last  
7 chance.

8 Please, I'm begging you to please  
9 deliberate carefully, think carefully before you  
10 give your vote. You have told us in voir dire  
11 and I'll emphasize it to you again; you said if  
12 you found yourself in the minority, even if  
13 everyone else was against you -- and it takes 12  
14 persons to answer one of these questions "Yes,"  
15 all of them -- that you would stick to your  
16 decision. And this is when I must emphasize it  
17 to you the most; it is our last chance. It is  
18 Henry's last chance. I would emphasize to you  
19 that the Charge says you can consider all the  
20 evidence that was presented at the  
21 guilt-innocence stage as well as the evidence at  
22 the punishment stage.

23 Now, you have heard some new evidence.  
24 You have now heard for the first time that Henry  
25 has confessed to some of these crimes, and it

1 wasn't true. He confessed to killing his  
2 teacher, and she's still alive. He confessed to  
3 killing a lady where he identified the clothes;  
4 he took them to where -- very close, I think  
5 within a hundred feet to where the body was  
6 found. And then they find out he was in a  
7 Maryland jail. Consider these and this new  
8 evidence when you think, and think back on the  
9 evidence of alibi and so forth, because if  
10 you've got a doubt, if you've got a reasonable  
11 doubt as to whether he was even there or not, he  
12 couldn't have killed this girl deliberately,  
13 because he wasn't there.

14 And this is your last chance. You can  
15 still consider that evidence, and you can answer  
16 deliberateness "No, he wasn't there," but this  
17 is your last chance. Fault us if we didn't  
18 bring you this evidence sooner, don't fault  
19 Henry.

20 Now, as far as a continuing threat to  
21 society, it may be that you want to answer that  
22 one "No," because he's got one life sentence and  
23 another life sentence stacked onto that. Maybe  
24 you don't think he would constitute a continuing  
25 threat to society, so you can answer that

1 question, "No, he wouldn't be."

2 I don't have much time; we're  
3 splitting up our arguments. There is another  
4 area that I'm biased and I'm prejudiced. And I  
5 couldn't sit on this jury as you 12 people have,  
6 because I couldn't have gotten past voir dire.  
7 And what I am about to tell you is my own  
8 personal opinion, my own personal beliefs,  
9 something that all of you have already disagreed  
10 on, but this is my last chance to speak for  
11 Henry, and I'm going to talk about it. I'm  
12 allowed to talk about it.

13 MR. WALSH: Your Honor, I'm going to  
14 object. He's not allowed to talk about his own  
15 personal beliefs about the death penalty. He is  
16 allowed to talk about the evidence in this case.

17 MR. PARKER: Your Honor, it's by  
18 statute in the Code of Criminal Procedure that  
19 we are allowed to discuss and argue about the  
20 death penalty.

21 MR. WALSH: It has to be based on the  
22 evidence against the death penalty, not his  
23 personal opinion. I would like to see wherever  
24 in the law that is, that a lawyer can argue his  
25 personal opinion to the jury.

1 MR. PARKER: "The State and the  
2 Defendant or his counsel shall be permitted to  
3 present argument for or against sentence of  
4 death." 37.07(1).

5 MR. WALSH: There is nothing in there  
6 that says about his personal opinion about it,  
7 though, Your Honor.

8 MR. PARKER: That's all it could be,  
9 Your Honor.

10 THE COURT: I don't think it's  
11 personal opinion, but you can talk against the  
12 death penalty, or for the death penalty.

13 MR. PARKER: I'm against the death  
14 penalty.

15 All of you have stated some religious  
16 preference. All, if I remember correctly, all  
17 are some sort of Christian preference. It says  
18 in the Bible, "Judge not lest ye be judged;"  
19 "Thou shalt not kill." Jesus went further in  
20 the New Testament: "Do you believe in an eye  
21 for an eye and a tooth for a tooth? And Jesus  
22 said, 'If some man slaps you on one cheek, turn  
23 the other.'"

24 I'm not trying to put you on some  
25 guilt trip, but I'm telling you, what right do

1 we have to say that a man should die? What  
2 makes us better than Henry Lucas if we say he  
3 should die? Jesus said when the man asked him,  
4 "How many times should I forgive a man when he  
5 commits sin, seven times?;" He said, "Seven  
6 times seven."

7 Do you remember Jesus, when they  
8 brought the prostitute to Him, which was a death  
9 penalty issue: "Stone her to death." They  
10 said, "We caught her in the act of adultery."  
11 And He says, "Whoever is without sin, let him  
12 cast the first stone."

13 I'm saying to you, I can't stand up  
14 here and tell you Henry is a good man. I can't  
15 tell you that Henry Lucas is not a killer. I  
16 can't disagree with these psychiatrists and tell  
17 you he's not dangerous, but you didn't hear any  
18 psychiatrist say he deserves to die.

19 Henry Lucas is not an animal. If he  
20 was, you would find he was mentally ill, and you  
21 didn't find that. He's a human being. I don't  
22 believe that our Savior could sit on that jury  
23 and say it's a death penalty; you may. If you  
24 can rationalize that, it's your opinion. But as  
25 a human being, I am asking you out of humanity,

1 in your oath to humanity, on the evidence that  
2 you have had here don't give Henry Lucas the  
3 death penalty.

4 They've got these other cases; maybe  
5 some of these other cases link him to the crime  
6 more than this one. Maybe they've got some  
7 physical evidence; maybe they don't have the  
8 alibi defense. You're going to have to live  
9 with your decision. If you can live with it, I  
10 can't criticize you. But this is your last  
11 chance, and it's a decision that you can't get  
12 in a hurry about, and it's a decision that you  
13 can't compromise.

14 Thank you very much.

15 MR. MCCOLLOUGH: May it please the  
16 Court --

17 THE COURT: Yes, sir.

18 MR. MCCOLLOUGH: -- counsel.

19 Ladies and gentlemen, on behalf of  
20 Henry Lucas and the other lawyers in this case,  
21 I want to thank you for your careful  
22 deliberations because I know you worked hard;  
23 you took your time. You went through that  
24 evidence, and that's what we asked you to do.  
25 We couldn't ask for a harder working jury than

1 what you have shown us. And that was in the  
2 first stage of this trial, and we are in the  
3 second stage of this trial. And as has been  
4 said, it is late and it's a Friday, but please,  
5 please, do not rush in.

6 This is the most important phase of  
7 this trial. Let's don't fool ourselves. This  
8 is life or death, and we all know it, talked to  
9 you about it when we talked to you in voir dire.  
10 When we questioned each one of you, we said,  
11 "Will you consider all the evidence? Will you  
12 not rush in and make an ill-considered decision  
13 about something as serious as whether a man  
14 lives or dies?" And each one of you said, "Yes,  
15 I will. I wouldn't do it any other way."

16 You also said that if you had a doubt  
17 and you were the only one in that jury room and  
18 you thought that your doubt was reasonable, you  
19 would stand your ground. Please consider all  
20 the evidence, because the Court has instructed  
21 that you may consider all the evidence that has  
22 come in during both phases of this trial.

23 I want to address briefly the second  
24 issue, continuing threat to society. As has  
25 been stated, we had some new evidence brought in

1 to you today, the testimony concerning the two  
2 other cases in which Henry Lucas has confessed,  
3 testimony from a Texas Ranger concerning the  
4 sentences that Henry Lucas has already received  
5 for the murders of Kate Rich and Becky Powell.  
6 Further, testimony from the Texas Ranger that  
7 Henry Lucas has given him false confessions  
8 before. Henry Lucas talked about killing his  
9 fifth grade teacher; Ranger Ryan found his fifth  
10 grade teacher, who is still alive. About a  
11 confession made in -- concerning a case where he  
12 took them real close, but it turns out he was in  
13 jail and he couldn't have done that.

14 Now, Mr. Walsh -- well, let me just  
15 say this: It is a real privilege for me to live  
16 in a county where Ed Walsh is our District  
17 Attorney. I feel good having him as my District  
18 Attorney. You've seen us kind of go at it here  
19 in the courtroom a little bit, but he's my  
20 friend and I'm proud of him for the job that he  
21 does, because he's a a good prosecutor. Do not  
22 let, however, the eloquence of Mr. Walsh sway  
23 you from the facts, and let's look at the facts  
24 on the two cases that they brought to you today.

25 And we cannot deny that a crime was

1 committed, and they are brutal crimes. But  
2 let's look at them one at a time. Let's look at  
3 the -- at Ms. Grey in Abilene. You heard  
4 Detective Berry from Abilene Police Department  
5 come in here and tell you about that case, when  
6 it happened in 1980, what he saw, what he  
7 discovered when he arrived at the scene. Then  
8 he talked about Henry Lucas. And you have in  
9 evidence a confession from Henry Lucas, another  
10 confession of Henry Lucas. What else do they  
11 have besides a confession?

12 Now, in our case here, the case that  
13 you deliberated on for so long and for so hard,  
14 you had five statements from Henry Lucas. And I  
15 know that you took each one of those statements,  
16 whether it was the videotapes or the audiotapes  
17 or the handwritten statement, and you went back  
18 and you looked at those. And I know that you  
19 looked at them hard because you must have worked  
20 hard at that.

21 But what do we have here other than  
22 one statement from Henry Lee Lucas? No charges  
23 have been filed. There is no other physical  
24 evidence relating Henry Lee Lucas to this case  
25 in Abilene, other than Henry Lee Lucas's own

1 confessions.

2           Consider what we talked to you about  
3 in the guilt-innocence stage concerning what  
4 Henry Lee Lucas says. We asked you to  
5 disbelieve Henry Lucas, and we presented some  
6 evidence where Henry Lucas has lied before,  
7 that has been proven up to be false by the  
8 State's own physical evidence. So please  
9 consider that when you consider this statement  
10 that he gave to Detective Berry.

11           Look at the Dubbs case. In this  
12 particular situation, you have a date of death  
13 or a date of discovery of the body on October  
14 8th. Now, we brought to you physical evidence  
15 from Florida concerning an alibi defense, and I  
16 know you worked hard in going through all of the  
17 documents that we brought to you concerning that  
18 particular case.

19           Please take those documents back in  
20 there and look at them again, and go back over  
21 these work records, if you will, to consider the  
22 validity of the confessions that Henry Lucas  
23 gave on the Dubbs case. Because if you have a  
24 doubt about whether he was in Jacksonville,  
25 Florida, consider that doubt because you will

1 see from the work records, the body of Sandra  
2 Dubbs was found on October 8th in a field  
3 outside of Austin, last seen alive late on  
4 October 2nd, 1979. "October 1, 1979, Foreman  
5 Fred Ellis;" you will see "Henry Lucas, 8  
6 hours," and a check mark through there. You  
7 will see October 4th, a Thursday, Mack Caulder  
8 is the foreman; "Henry Lucas, kettle man." Even  
9 their own witness testified that he worked as a  
10 kettle man, and you have a check mark there and  
11 the number of hours. "October 5th, Friday,  
12 Lucas present. That's the Friday the body is  
13 found here on Monday.

14 Consider this, please, when you  
15 consider the validity of the statement that  
16 Henry Lucas gave to Detective Cutler of the  
17 Travis County Sheriff's Office. Consider also  
18 the fact that Detective Cutler took a statement  
19 from Henry Lucas June 24th, 1983. Consider when  
20 that was, also; that was two days after our  
21 statement was taken here, the very first  
22 confession. Consider the fact that in -- on  
23 June 24th, Henry Lucas says, "I was going  
24 northbound; I was traveling from San Antonio to  
25 Dallas on Interstate 35 and was going northbound

1 on Interstate 35."

2 THE COURT: Ten minutes, Mr.  
3 McCollough.

4 MR. MCCOLLOUGH: Thank you, sir.

5 "On August 3rd, I was traveling with  
6 Ottis Toole," another story, "and we were  
7 traveling south on Interstate 35, near Austin,  
8 just south of Austin." Of course, this is all  
9 typed up for Mr. Lucas to sign. He didn't sign  
10 any of this in his own handwriting. And look at  
11 this in connection with the same questions that  
12 we asked you during our argument on Wednesday:  
13 Where is the physical evidence linking Henry  
14 Lucas to these other two cases that they have  
15 brought in here? There is none. There are no  
16 fingerprints; there are no witnesses who  
17 say -- they have nothing other than the  
18 confessions of Henry Lucas.

19 You have heard some new evidence. You  
20 have heard some things that we couldn't present  
21 to you. And as Mr. Parker said, if you don't --  
22 if you're mad about that, mad about the fact  
23 that we couldn't tell you about these things,  
24 hold it against us but please don't hold that  
25 against Henry Lucas.

1 MR. WALSH: Your Honor, I'm going to  
2 object to his statement that he couldn't have  
3 told you about these things; that's a  
4 misstatement of fact and everything else.

5 THE COURT: The objection is  
6 sustained.

7 MR. MCCOLLOUGH: Now, with regard to  
8 the second issue, the continuing threat to  
9 society, I cannot get up here and tell you that  
10 Henry Lucas is a good man. I told you that the  
11 other day. But how can he be a continuing  
12 threat to society if he has a 75-year sentence,  
13 a life sentence that he hasn't started serving,  
14 and other cases, other charges awaiting him?  
15 And he is -- if he does not receive a death  
16 sentence in this case, he will receive a life  
17 sentence. So Henry Lucas will not get out of  
18 prison.

19 MR. WALSH: I'll object to that,  
20 Your Honor.

21 THE COURT: Sustained.

22 MR. MCCOLLOUGH: You are the ones that  
23 you have to live with your conscience. If you  
24 go in and make an ill-considered decision about  
25 the fate of this man, you cannot come back

1 tomorrow, you cannot come back next week and  
2 say, "Judge, I don't think I made the right  
3 decision. I have been bothered by that,"  
4 because it will be too late; the verdict will  
5 have already been in and it cannot be changed.

6 So please, take your time, consider  
7 the evidence carefully. As I told you yesterday  
8 or the day before, you do not park your common  
9 sense outside the courtroom. Use the ability  
10 that you have to consider all the evidence and  
11 work as hard as you have on these issues,  
12 because in my mind there are other cases.

13 This is not a strong case. I have a  
14 doubt in my own mind that Henry Lucas --

15 MR. WALSH: I'm going to object as to  
16 what counsel has in his own mind.

17 THE COURT: Sustained.

18 MR. McCOLLOUGH: Please, take your  
19 time. Consider all the evidence. If you want  
20 to go back through these tapes again, you may do  
21 so. You will be permitted to take all that  
22 evidence back in there and consider it as you  
23 have before. But look at it again, because we  
24 have a life or death situation here.

25 I want to thank you for your time.

1 It's been a real privilege and an honor for me  
2 to be here in this beautiful courtroom. I know  
3 you paid attention; it has been long, it has  
4 been hard work. I appreciate it. Thank you  
5 very much.

6 THE COURT: Mr. Higginbotham, you have  
7 21 minutes left.

8 MR. HIGGINBOTHAM: May it please the  
9 Court and counsel.

10 A month ago I didn't know any of you,  
11 and you knew none of us. A month ago, when all  
12 of you -- or sometime when you answered during  
13 voir dire, the question was asked all of you,  
14 "Do you know the attorneys in this case?," and  
15 you said, "No." Well, now you know them and you  
16 know why we're here, and you know how far we've  
17 come. But I want you to think of how far we're  
18 going. And think about how fate has thrown us  
19 together in this situation.

20 There was a time when I did not know  
21 Henry Lee Lucas; I do now. And the memory of  
22 that knowledge will carry forward with me for  
23 the rest of my life. There was a time when you  
24 had not heard of Henry Lee Lucas or Ed Walsh or  
25 Don Higginbotham or Judge Carter or any of us

1 involved in this very human drama that we've  
2 been going through, but you know it now and will  
3 carry it forward with you for the rest of your  
4 life. You will be asked to answer two simple  
5 questions on a sheet of paper. Those answers to  
6 those two questions will carry forward with you  
7 for the rest of your lives.

8 About 40 years ago, from the evidence  
9 you have before you, sometime in the '40s  
10 probably, there was a little boy in Virginia by  
11 the name of Henry Lee Lucas. He had a terrible  
12 home life. He had a father that had no legs,  
13 that drank. He had a mother that was of very  
14 questionable reputation. He was quite retired,  
15 poor. In addition to everything else, he was  
16 missing a left eye.

17 Henry Lee Lucas, as you have seen in  
18 this case, evolved into a killer. And he is a  
19 killer, and I'm not going to stand here and deny  
20 to you that he is not a killer. So what happens  
21 when you have a mad dog? You shoot it. What  
22 happens when you have a person; do you kill that  
23 person?

24 I submit to you that an animal, if you  
25 believe like you have all said you believe, has

1 no soul. A person has a soul. So what do you  
2 do? Let's think about punishment. Let's think  
3 about why do we punish. We punish for  
4 deterrence, to keep other people from doing  
5 something. We punish for retribution. We  
6 punish for rehabilitation.

7 The death penalty is very unique  
8 because there is no rehabilitation involved in  
9 that one; killing somebody doesn't rehabilitate  
10 them towards anything. Deterrence, we could  
11 argue that back and forth all day long. But do  
12 you think from the evidence that you have seen  
13 right here, do you think from what you've heard  
14 in this court that by killing somebody, would it  
15 deter Henry Lee Lucas? Of course not. Do you  
16 think by killing Henry Lee Lucas you're going to  
17 deter others of his ilk? You may deter Henry  
18 Lee Lucas by physically putting him to death,  
19 and that brings me to my third point,  
20 retribution. So if you're going to kill him,  
21 let's talk about what it's really all about:  
22 We're going to kill him to get even for society.  
23 That's what it's all about. He killed, so let's  
24 kill him. An eye for an eye, let's kill Henry  
25 Lee Lucas.

1                   You people on the jury have been  
2                   thrown into by fate into a situation to make one  
3                   of the hardest decisions, I believe, that you  
4                   shall ever have to make in your life, and a  
5                   decision that will live with you throughout the  
6                   rest of your life. You didn't ask for this job;  
7                   you're doing it because you're good citizens and  
8                   you came here to do your work as good citizens.

9                   The prosecutor in this case is a good  
10                  man. The prosecutor in this case is a very  
11                  persuasive man. I've been on other cases; I've  
12                  heard him. He wants you, and it's his job, to  
13                  come back with the death penalty, and he will  
14                  ask you for that. And that's his job, and he's  
15                  good at his job.

16                 I am saying to you, look behind the  
17                 rhetoric; look behind the talk and think in your  
18                 own minds what you're really being asked to do.  
19                 You're being asked to kill Henry Lee Lucas for  
20                 retribution, pure and simple. It's not going to  
21                 bring anybody back. As it has been so amply put  
22                 before, if he gets life in this case he has  
23                 already got 75 years and life. He is going to  
24                 be locked away; he's not going to be a threat to  
25                 society.

1                   Is he dangerous? Yes, he is dangerous.  
2 I agree with Dr. Fogelman; Henry Lee Lucas needs  
3 to be placed some place for the rest of his life  
4 and left there under treatment. He is sick.

5                   Look at the crimes that have been  
6 before you. Whether you believe them or whether  
7 you don't, I don't know, but look at them.  
8 Assuming you believe them, those are sick crimes.  
9 Henry is not just mean. You saw it on the tapes  
10 and you can consider those tapes. He said,  
11 "I've been asking for help for this for 33  
12 years." He says, "I don't care if I die. Let  
13 somebody kill me." And I believe him when he  
14 says that. And I have a job to do, too, and  
15 fate has thrown me into a role just like it's  
16 thrown you into a role. It has thrown us all  
17 into roles that we are having to play throughout  
18 this drama. And my job is to defend Henry Lee  
19 Lucas to the best of my ability; that's my job,  
20 and that's what I've tried to do. And you saw  
21 it on the tape; I tried to do it despite Henry  
22 Lee Lucas. And I will continue to try to do  
23 that. It's sometimes very difficult when you  
24 know the obligation you have and that the only  
25 thing that stands in between a man's life -- and

1 he's a person; he's not an animal -- between his  
2 life and death is my meager ability to talk to  
3 people, words. Words can inflame you; evidence  
4 can inflame you.

5 Remember, we asked all of you to reach  
6 down inside and tell us what you feel. Send him  
7 off for life; get him out of society. I think  
8 that's what should happen. Get him the help  
9 he's yelling about. I know the prosecutor is  
10 probably going to say, "He doesn't deserve  
11 anything. Did he ever give anybody any help?"  
12 Of course he didn't; of course he didn't. But  
13 are we so callous as a people that we can be  
14 talked into, stampeded into killing a person  
15 because of inflammatory words, because the  
16 blood boils hot? That's why I asked you ladies  
17 and gentlemen to take your time and think about  
18 it.

19 What are we really accomplishing if  
20 we give Henry Lee Lucas death? If we are  
21 accomplishing that, we're going to kill him and  
22 deter him from ever doing this again, I submit  
23 to you that all you're doing, all you're doing  
24 is retribution. That's all you're doing, an eye  
25 for an eye and a tooth for a tooth. And I'm not