

Volume 13

1 IN THE CRIMINAL DISTRICT COURT NO. 3
2 DALLAS COUNTY, TEXAS

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6 THE STATE OF TEXAS } NO. F-96-39973-J

7 VS: } & A-96-253

8 DARLIE LYNN ROUTIER } Kerr Co. Number

9

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11

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13 STATEMENT OF FACTS

14 JURY VOIR DIRE

15 INDIVIDUAL JURORS HEARING

16 VOL. 13 OF VOLS.

17 October 29, 1996

18 Tuesday

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1 C A P T I O N

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4 BE IT REMEMBERED THAT, on Tuesday, the 29th day of
5 October, 1996, in the Criminal District Court Number 3 of
6 Dallas County, Texas, the above-styled cause came on for
7 a hearing before the Hon. Mark Tolle, Judge of the
8 Criminal District Court No. 3, of Dallas County, Texas,
9 without a jury, and the proceedings were held, in open
10 court, in the City of Kerrville, Kerr County Courthouse,
11 Kerr County, Texas, and the proceedings were had as
12 follows:

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1 A P P E A R A N C E S

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3

4 HON. JOHN VANCE
5 Criminal District Attorney
6 Dallas County, Texas
7
8 BY: HON. TOBY SHOOK
9 Assistant District Attorney
10 Dallas County, Texas

11

12 AND:
13 HON. JOHN GRAU
14 Assistant District Attorney
15 Dallas County, Texas

16

17 AND:
18 HON. SHERRI WALLACE
19 Assistant District Attorney
20 Dallas County, Texas

21

22 APPEARING FOR THE STATE OF TEXAS
23
24
25

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1 HON. DOUGLAS D. MULDER
2 Attorney at Law
3 2650 Maxus Energy Tower
4 717 N. Harwood
5 Dallas, TX 75201
6

7 AND: HON. CURTIS GLOVER
8 Attorney at Law
9 2650 Maxus Energy Tower
10 717 N. Harwood

11 Dallas, TX 75201
12

13 AND: HON. RICHARD C. MOSTY
14 Attorney at Law
15 Wallace, Mosty, Machann, Jackson & Williams
16 820 Main Street, Suite 200
17 Kerrville, TX 78028
18
19 AND: HON. S. PRESTON DOUGLASS, JR.
20 Attorney at Law
21 Wallace, Mosty, Machann, Jackson & Williams
22 820 Main Street, Suite 200
23 Kerrville, TX 78028
24
25
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1 AND: HON. JOHN HAGLER
2 Attorney at Law
3 901 Main Street, Suite 3601
4 Dallas, TX 75202
5 ALL ATTORNEYS REPRESENTING THE
6 DEFENDANT: DARLIE ROUTIER
7 MR. HAGLER HANDLING THE APPEAL
8
9 AND: HON. ALBERT D. PATILLO, III
10 Attorney at Law
11 820 Main Street, Suite 211
12 Kerrville, TX 78028
13 APPEARING FOR: Witness-
14 Detective Jimmy Patterson

15 only on one date in trial
16
17 AND: HON. STEVEN J. PICKELL
18 Attorney at Law
19 620 Earl Garrett Street
20 Kerrville, TX 78028
21 APPEARING FOR: Witness
22 Officer Chris Frosch
23 only on one date in trial
24
25
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1 P R O C E E D I N G S
2
3 October 29th, 1996

4 Tuesday
5 8:30 a.m.
6
7 (Whereupon, the following
8 proceedings were held in

9 open court, in the presence
10 and hearing of the

11 defendant, being
12 represented by her attorneys
13 and the representatives of
14 the State of Texas,
15 As follows:)
16
17

18 THE COURT: All right. Let's go on
19 the record now. This morning -- this is Tuesday, October
20 the 29th, 1996, and all parties to the proceedings are
21 present. And if you will raise your right hand, please,
22 ma'am.

23 Do you solemnly swear or affirm you
24 will true answers make to all the questions propounded to
25 you in this room or any room or court which you may be
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1 sent to concerning your qualifications as a juror, so
2 help you God?

3 THE PROSPECTIVE JUROR: I do.

4
5 (Whereupon, the prospective

6 juror was duly sworn by the
7 Court to true answers make

8 to the questions propounded,
9 concerning qualifications, after
10 which time, the proceedings were
11 resumed as follows:)
12

13 THE COURT: Will you please state your
14 name and spell it for the court reporter.
15 THE PROSPECTIVE JUROR: Keri Hagan,
16 K-E-R-I, H-A-G-A-N.
17 THE COURT: Thank you. And we have on
18 this side Ms. Sherri Wallace and Mr. Toby Shook who
19 represent the State of Texas. Mr. Richard Mosty

20 represents the defendant, Mrs. Darlie Routier, who is
21 sitting in front of you there. Go ahead, please.

22 MS. SHERRI WALLACE: Thank you, Your
23 Honor.

24

25

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1 Whereupon,

2

3 KERI L. HAGAN,

4

5 was called as a prospective juror, for the purpose of
6 voir dire, having been first duly sworn by the Court to
7 speak the truth, the whole truth, and nothing but the
8 true, testified in open court, as follows:

9

10 VOIR DIRE EXAMINATION

11

12 BY MS. SHERRI WALLACE:

13 Q. Good morning.

14 A. Good morning.

15 Q. Let me -- again, the Judge just
16 introduced me, I am Sherri Wallace, and I am going to be
17 asking you some questions, and Mr. Mosty will as well.
18 There is no right or wrong answers.

19 If you are nervous, it's natural. Most people are. So
20 we're just going to sit back and ask you some questions.
21 Just tell us how you feel, and we will get through this.

22 Okay?

23 A. Okay.

24 Q. Let me start by asking you, do you

25 know any of the lawyers from the State, from Dallas?

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1 A. No.

2 Q. We were introduced, including Greg

3 Davis.

4 A. No.

5 Q. Okay. And, did you know any of the
6 Dallas defense attorneys?

7 A. No.

8 Q. Do you know Mr. Mosty or Preston
9 Douglass?

10 A. I know of Mr. Mosty, but I don't know
11 him personally.

12 Q. Okay. Just acquainted with his name?

13 A. Yes.

14 Q. Anything about that that would affect
15 you in this case?

16 A. No.

17 Q. Okay. I'm going to talk to you about
18 three different areas, starting with your questionnaire.
19 And then talk to you about the death penalty, in general,
20 and your personal feelings about that. And then talk to
21 you about general principles of law. If you have any
22 questions, it's my fault, not yours. I'm not explaining
23 it well enough, so just let me know. Okay?

24 A. Okay.

25 Q. First off, has anything changed since
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1 you filled out your questionnaire last week?

2 A. I think the only thing I left out was
3 about the law enforcement, do you know anybody in the law
4 enforcement-type thing.

5 Q. Okay.

6 A. And it's a really long, drawn out by
7 marriage-type thing.

8 Q. So you are distantly related by
9 marriage to somebody in law enforcement?

10 A. My stepchildren are.

11 Q. Okay.

12 A. Frances Kaiser is their aunt by
13 marriage for me.

14 Q. Okay. Anything about that
15 relationship that would affect you in this trial?

16 A. No.

17 Q. Okay. I'm going to tell you right up
18 front, our goal in this case is to get 12 jurors that can
19 come into the courtroom with an open mind, not having

20 prejudged the case, and decide whether or not the State
21 has proved their case beyond a reasonable doubt. And

22 then, proceed, in the event we do, then proceed to answer
23 the questions with regard to the death sentence.

24 There has been some pretrial publicity
25 in this case. Generally, in a case when you are called
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1 down for jury service, a juror walks in and really
2 doesn't know about the case. They kind of wander in and
3 are not even sure why they are called. And they may look

4 up at the counsel table and figure out who the defendant
5 is. And commonly, in a scenario like that, they may
6 wonder what the defendant did. And that is just human
7 nature, there is nothing wrong with that.
8 But what you cannot do is take that

9 attitude into the jury box. I know you mentioned from
10 your questionnaire that you had seen this on television,
11 and read it the newspaper, and heard it on the radio.

12 At the end of your questionnaire you
13 said that, that you felt that she was probably guilty
14 from what you have read and what you have heard.
15 A. Yes.
16 Q. Let me state again that it is human

17 nature to have those types of feelings. But you may not
18 sit as a juror if you have already formed an opinion
19 about this case. We do not want a juror that has
20 prejudged the evidence. You have not heard it all, no
21 matter how much you have seen, because I have seen most
22 of it and they have not gotten it all right. Okay. So
23 you have to withhold that opinion or feeling and wait to
24 hear the evidence.

25 Can you do that, Ms. Hagan?

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1 A. Probably not.
2 Q. Okay. Tell me what your feeling is or
3 where you are coming from on that.

4
5 MR. RICHARD MOSTY: Your Honor, I
6 think that under, I think it's 35.16, that once she says
7 that that opinion, that she probably could not set it
8 aside or that it would influence her, I think that she is
9 subject to a challenge for cause.

10 THE COURT: Oh, I understand that.

11 But I don't think we have quite gotten to that final
12 point yet. As soon -- you know, I agree, as soon as we
13 get there, if we get there, certainly she will be

14 challenged for cause. I will excuse her myself.

15

16 BY MS. SHERRI WALLACE:

17 Q. Ms. Hagan, what the defense attorney
18 is saying, is once that you state that you have formed an
19 opinion, you may not sit as a juror on this case.

20 A. Uh-huh. (Witness nodding head
21 affirmatively.)

22 Q. And, having a feeling or being curious
23 or knowing about the pretrial publicity and seeing all
24 that does not make you ineligible in any way. But what
25 we're asking you is: Will you follow the law and set
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1 your feeling aside? Wait to hear the evidence in the
2 courtroom and then render a just verdict. Could you do
3 that?

4 A. I would like to, but I don't think
5 that that would probably happen.

6 Q. Okay.

7 A. I mean truthfully.

8 Q. And I'm not arguing with you, but you
9 say probably. And we are going to have to have a yes or
10 no. If you can do it, let us know; if you can't do it,
11 well, you have to say that.

12 A. I would probably say no.

13

14 THE COURT: Well --

15 THE PROSPECTIVE JUROR: No probably.

16 Okay. Well --

17 THE COURT: We are still probably.

18 THE PROSPECTIVE JUROR: Okay. No.

19 THE COURT: Here is the point. If you
20 listen, let's assume you are a juror on this case. If

21 you feel the State has not proven their case, has not
22 proven Mrs. Routier guilty beyond a reasonable doubt,

23 could you find her not guilty? Or is your mind shut, no
24 matter what you hear, you are going to find her guilty?

25 THE PROSPECTIVE JUROR: I would say my
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1 mind is shut.

2 THE COURT: All right. Well, thank

3 you very much ma'am. Thank you for coming.

4 THE PROSPECTIVE JUROR: I am finished?

5 Thank you.

6 THE COURT: All right.

7

8 (Whereupon, the

9 Prospective

10 Juror was excused,

11 after which time,

12 the proceedings were

13 resumed as follows:)

14

15 THE COURT: All right. Next juror.

16 If you will have a seat right here

17 please, sir?

18 THE PROSPECTIVE JUROR: All right.

19 THE COURT: Will you raise your right

20 hand, please?

21 Do you solemnly swear or affirm you

22 will true answers make to all the questions propounded to

23 you in this courtroom or any room or courtroom which you

24 may be sent concerning your qualifications as a juror, so

25 help you God?

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1 THE PROSPECTIVE JUROR: Yes, sir.

2

3 (Whereupon, the prospective

4 juror was duly sworn by the

5 Court to true answers make

6 to the questions propounded,

7 concerning qualifications, after

8 which time, the proceedings were

9 resumed as follows:)

10

11 THE COURT: All right. If you will

12 please state your name and spell your last name for the

13 court reporter?

14 THE PROSPECTIVE JUROR: Robert L.

15 King, K-I-N-G.

16 THE COURT: We have today before you,

17 this is Mr. Toby Shook and Ms. Sherri Wallace of the

18 Dallas County District Attorney's Office. They represent

19 the State. Mr. Richard Mosty represents the defense.

20 The defendant, Mrs. Darlie Routier, sitting in the black

21 dress at the end of the table.

22 Go ahead, please.

23 MR. TOBY SHOOK: Thank you, Judge.

24

1 Whereupon,

2

3 ROBERT LEE KING,

4

5 was called as a prospective juror, for the purpose of
6 voir dire, having been first duly sworn by the Court to
7 speak the truth, the whole truth, and nothing but the
8 true, testified in open court, as follows:

9

10 VOIR DIRE EXAMINATION

11

12 BY MR. TOBY SHOOK:

13 Q. Again, Mr. King, my name is Toby
14 Shook. I am the Assistant District Attorney in Dallas
15 County, and I am one of the prosecutors on the case, and
16 I will be asking you questions here today.
17 Because it's a death penalty case, we
18 ask each juror individual questions. We don't mean to19 throw you up there on the stand like you are some type of
20 defendant or anything. I will ask you some questions and
21 then I think Mr. Mosty will have some questions for you.

22 Okay?

23 A. Okay.

24 Q. There are not any right or wrong
25 answers to any of our questions. We just want your
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1 honest opinions. Okay? We get all kinds of people down
2 here with different opinions, different life experiences.

3 That is why we call a lot of people down here. Okay?

4 A. Okay.

5 Q. One of the principle areas I want to
6 talk about is your personal feelings about the death
7 penalty. Obviously, you know this is a capital murder8 case in which the State is actively seeking the death
9 penalty. That is our ultimate goal in this case, and
10 obviously, the defense will be doing everything to stop
11 us.12 You have told us on your questionnaire
13 that as far as being in favor of the death penalty, you
14 are not; is that correct?

15 A. No, sir.

16 Q. Tell us a little bit about your
17 reasons behind that?

18 A. Well, since, you know, I have never
19 been on a murder trial, and there has been times, you
20 know, when I have read the paper and somebody murdered
21 somebody or killed somebody one way or another, and I,

22 you know, say they should be sent to the electric chair.
23 But then, when I stop and think, if I am sitting on the
24 jury, and if I thought I had the deciding vote to kill
25 somebody, I couldn't do it.

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1 Q. Okay. Fair enough. We appreciate
2 that. And you also stated, you remember, we had the

3 different categories down here, and which one circled,
4 you circled the one that most represented your feelings,
5 and you circled the one that said: I could never under
6 any circumstances return a verdict which assessed the
7 death penalty.

8 Do you still feel that way?

9 A. Yes, sir.

10 Q. Okay. And that is fine. We have

11 people that are just adamantly for the death penalty.
12 Obviously, they would want to do it in every case. And,
13 obviously, they are not qualified as jurors, because they
14 more or less prejudged the case. And then we have other
15 people that could do it in some cases and so forth, are
16 not opposed to sitting on a jury.

17 Then we have other people that are
18 just, because of how they believe, they are
19 philosophically opposed to the death penalty, and don't
20 feel they can sit and make those type of decisions. And
21 that is fine. When we get you down here and swear you in
22 as jurors, we don't ask you to abandon your moral
23 beliefs, your convictions. Okay?

24 A. Uh-huh. (Witness nodding head
25 affirmatively.)

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1 Q. You don't have to throw those out of
2 the window. We have all types of jurors down here and
3 when they come down for a certain case, sometimes because

4 of how they believe, personal convictions or what's
5 happened to them, they can't sit on a certain type of
6 case.

7 For example, sometimes a DWI case, you
8 will have a member who has had a family member hurt by a
9 DWI. Maybe they are actively in MADD. And they just
10 say, "Well, because my life was touched that way, if this
11 is a DWI case, I just can't intellectually listen to the
12 evidence fairly. You know, I have strong feelings
13 against it."

14 Or maybe someone has been a victim of
15 a violent crime. And they come down on a violent
16 offense, and they say, "That happened to me or similar

17 offense happened to one of my children. I just can't be
18 fair. I can't listen to the evidence and make these
19 decisions just on the evidence because my emotions would
20 come into it. I can't be fair." And it cuts both ways.

21 Sometimes you have people that may

22 have had a bad experience with a police officer. And
23 they just can't be fair in certain cases, if a certain
24 department was involved. And they let us know that.

25 And then, in such as this case, you
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1 have let us know that you just can't sit and make these
2 type of decisions because of your opposition to the death
3 penalty; is that right?

4 A. Yes, sir.

5 Q. Okay. You also checked off that you
6 have moral, religious, and personal beliefs that prevent
7 you from sitting in judgment of another human being. You
8 said yes to that, too. Is that along the same lines?

9 A. Yes, sir. I believe it would be.

10 Q. Okay. And then, again, you checked
11 off that you have moral, religious, and personal beliefs
12 that would prevent you from returning a verdict which
13 would result in the execution of a woman.

14 Does that go back to just a woman or
15 just any human being?

16 A. Any human being.

17 Q. Okay. Have you felt this way a long
18 time, sir?

19 A. Well, it's something I have never had
20 to think about.

21 Q. Okay. And you have never been
22 involved in this situation?

23 A. You know, I have never been called to

24 sit before.

25 Q. Okay. Have you ever been on a jury
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1 before?

2 A. No, sir.

3 Q. Okay. But do you feel -- have you
4 reflected on it a lot since you were called down here and
5 the Judge talked about what type of case it is?

6 A. No, I really tried not to. I have
7 problems with anxieties.

8 Q. Oh, do you?

9 A. And the more I think about it, you
10 know, it could change my answer either way, you know.
11 And since, you know, I have sat in questioning for juries
12 before.

13 Q. Uh-huh. (Attorney nodding head
14 affirmatively.)

15 A. You know, I didn't want to put myself
16 in a position of trying to make a decision before I heard
17 a question.

18 Q. Sure. But what I need to know, and

19 obviously, a lot of people, you know, change their minds
20 on certain issues. But you have told me quite clearly

21 here, that you don't believe you could ever sit on a case
22 which would involve the decision on the execution of
23 someone. You are firm on that, aren't you?

24 A. I'm pretty firm, yes, sir.

25 Q. Okay. Because I'm sure, if I finish
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1 asking you, Mr. Mosty will want to know, "Well, can you
2 do it in some case?"

3 A. Uh-huh. (Witness nodding head
4 affirmatively.)

5 Q. If you feel that way, that is fine.

6 The worst thing to come down here, is for someone to get
7 on -- a juror that just would answer my questions one way
8 because they think I want those answers. And then just

9 turn right around, and flip-flop, and go the other way.

10 But, obviously, from your
11 questionnaire, it's quite apparent that, you know, this
12 just was not your type of case. You were opposed to the
13 death penalty, and that you could not sit and render
14 these types of judgments. Am I reading you right then?

15 A. Yes, sir.

16 Q. And that is a strong conviction you
17 have?

18 A. Yes, sir, I believe it is.

19 Q. If this were some other type of case,
20 you know, that didn't involve the death penalty, maybe
21 some jail time or something like that, could you be a

22 juror on that type of case?

23 A. Probably.

24 Q. Okay. Would you still maybe have some

25 problems judging someone?

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1 A. Yeah. I guess if I could pay

2 attention and heard every answer, you know, I think that
3 and then --

4 Q. That is on another type of case?

5 A. On any other type of case, yes, sir.

6 If it could be discussed, you know --

7 Q. Okay. But because this is a death

8 penalty case, which could regard evidence that would show
9 the way you answer these questions, the defendant
10 ultimately could be executed, that is just not the type
11 of decision that you can morally make; is that right?

12 A. Not morally, I couldn't.

13 Q. Okay. And you are not going to leave

14 your morals outside the courtroom, are you?

15 A. No, sir.

16 Q. That is a part of you. Right?

17 A. Yes, sir.

18 Q. Okay. Something that you stick by?

19 A. Yes, sir.

20 Q. At least your moral beliefs; is that

21 right?

22 A. Yes, sir.

23 Q. Okay. That is fair enough.

24 Mr. King, your answers are very

25 apparent to me. And I wish I could say, you can be on

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1 your way, but the law requires us to ask you a few more
2 questions. Okay? Just to test your moral convictions
3 for one thing, but also to make sure that we're hearing
4 you right. So, I'm not trying to argue with you in any
5 way.

6 I need to explain a couple of things

7 to you before I ask my next series of questions. Okay?

8 The way a death penalty case works is,
9 if a person were on a jury, it's divided into two parts.

10 First, the State has to prove its case
11 beyond a reasonable doubt, on the indictment.

12 A. Uh-huh. (Witness nodding head
13 affirmatively.)

14 Q. And if the 12 jurors believe that they
15 have, they would find the defendant guilty. At that
16 point we would move to the punishment phase, where you
17 may or may not hear additional evidence. At the close of
18 that part of the trial, you are given these questions.

19 We will go over those maybe in a minute.

20 That first question, basically, asks
21 you, and the State has to prove beyond a reasonable
22 doubt: "Do you feel that there is a probability that the
23 defendant would commit criminal acts of violence that
24 would constitute a continuing threat to society?" It
25 asks the jurors to make a prediction. Would the
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1 defendant be a continuing danger? If they look at the
2 evidence and if we had proven that, they would answer
3 that "yes."

4 This next question is a long question.

5 It is called the mitigation question. Basically, what
6 that question says, Mr. King, is if you see any evidence
7 after you have made these other decisions that tells you
8 that a life sentence should be imposed, rather than a

9 death sentence, you can answer the question that way,
10 If the jurors said "no," then the
11 judgment would be death, if there was no evidence,

12 mitigating evidence where a life sentence should be
13 imposed.

14 If they answered "yes," it would be
15 life in prison. You see these questions, if it's a "yes"
16 and a "no," Judge Tolle would sentence the defendant to
17 death. The Judge has no choice in the matter. It's just
18 how the jurors answer that question.

19 If it's any other answers, if you
20 answered "no" to that first one, and a "yes" to the
21 second one, it's a life sentence. You see what the two
22 choices are in a capital case? You see how that works?

23 A. Not really.
24 Q. Okay.

25 A. I lost you somewhere.

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1 Q. All right. You know, what it comes

2 down to, most people think you come in and you answer

3 death or life.

4 A. Uh-huh. (Witness nodding head

5 affirmatively.)

6 Q. You don't do that. You answer these

7 questions. But because of the way you answer those

8 questions, that is how the sentence comes out.

9 A "yes" question -- a "yes" answer to

10 that first question: Are they a future danger, and a

11 "no" question (sic) to the second, the Judge would

12 sentence the defendant to death. No ifs, ands, or buts

13 about it. If you answer it any other way, it's a life

14 sentence.

15 Is that clearer to you?

16 A. Yes.

17 Q. Okay. You don't actually sentence

18 life or death, but the way you answer the questions, that

19 is what will result.

20 A. Uh-huh. (Witness nodding head

21 affirmatively.)

22 Q. You probably know in Texas the death

23 penalty is a very real issue. We have executed more than

24 100 people in this State. Have you read about that and

25 heard about that?

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1 A. Uh-huh. (Witness nodding head

2 affirmatively.)

3 Q. Okay. Some states have the death

4 penalty and they never enact it. Texas leads the nation

5 in executions. We average about 17 a year. Okay? The

6 method of execution is by lethal injection. Okay?

7 Our procedures call for if a person

8 has been found guilty and this question is answered in a

9 way that it would result in their death, the Judge

10 sentences them to death and they go down to Huntsville,

11 Texas. And they wait.

12 And I can't tell you when, but some

13 day the Judge would actually give them what is called a

14 death warrant. And the day before that, they would be

15 moved from their prison cell to a special Walls Unit

16 where they might be given a time for family and friends,
17 maybe a minister, but under our law after 6:00 p.m, the

18 guards will come to that cell and --

19 This is Mr. Mulder, he is the lead

20 attorney in the case.

21 They would come to that cell, and take

22 the defendant to the death chamber, and strap the

23 defendant down on a gurney, insert needles in their arms.

24 They might be given some last words, but within a few

25 moments, poison would be injected into their body which

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1 would cause their heart to stop.

2 And as I said, that has happened over

3 100 times. So the death penalty is a very real thing.

4 Okay?

5 A. Okay.

6 Q. But what you are telling me is,

7 because of your opposition to the death penalty, that you

8 morally can't make that decision. That you are not the

9 type of juror that can sit on this particular type of

10 case because of the death issue; is that right?

11 A. Yes, that's right.

12 Q. Okay. It's not a matter of proving to

13 you intellectually the evidence we give you, whether the

14 questions should be answered a certain way; is that

15 right? It's a matter of, "I just can't do it, because I

16 don't believe in it."

17 A. Right.

18 Q. You could prove it to me all day long.

19 I could say, "Yeah, there is enough evidence that I think

20 they are a continuing danger. I don't see any mitigating

21 evidence, but I can't answer the questions that way.

22 Because I can't sit in judgment of another human being

23 and give them death. I, morally, can't abandon my

24 principles."

25 A. Right.

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1 Q. Am I reading you right?

2 A. Yes.

3 Q. Do you feel strongly about that?

4 A. Yes, sir.

5 Q. Okay. Well, that is what it gets down

6 to. You understand that the State is entitled to jurors

7 who can listen to that evidence. If you can't feel that

8 way, no one is going to hold it against you. All right?

9 A. Yes, sir.

10 Q. I just need you to be fair and honest
11 with me to make sure I am reading you right. Am I
12 reading you right?

13 A. Yes, sir.

14 Q. Okay. In fact, do you feel strongly
15 about it that you know yourself, that no matter what the
16 evidence is, you can't answer these questions in a way
17 that would result in the Judge sentencing the defendant
18 to death?

19 A. Yes, sir, right.

20 Q. You are sure about that?

21 A. Yes, I am.

22 Q. Okay. All right. Well, I appreciate
23 that, Mr. King. And I am going turn you over to Mr.
24 Mosty because I'm sure he has some questions along those
25 same lines. Okay?

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1 A. Okay.

2 Q. All right.

3

4 VOIR DIRE EXAMINATION

5

6 BY MR. RICHARD MOSTY:

7 Q. Good morning, Mr. King. My name is
8 Richard Mosty, and I represent Darlie Routier, here to my
9 right. And this is my assistant, Doug Mulder here beside
10 me.

11 Now, Mr. King, I am not -- I want to
12 reemphasize to you, that the only thing that you are ever
13 going to be asked to do, is to sit as a juror, in any
14 case this is true, sit as a juror, and, openly, and
15 objectively listen to whatever evidence is presented to
16 you, and then answer certain questions.

17 In a civil case it may be: Did John
18 Doe run the red light? In a criminal case it may be: Is
19 so and so guilty as charged in the indictment?

20 So, the way the system is set up, is
21 that the jury's obligation is to weigh that evidence in
22 an honest and forthright manner and then to respond to
23 the questions that are given to them by the Court.

24 And, I want to make sure, I thought I
25 heard a little confusion on your part about how the
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1 procedure works. And let me tell you just generally what
2 happens in a capital case, and so you will have an
3 understanding of it.

4 The first thing that happens, is that
5 after the jury is selected, the lawyers have an
6 opportunity to make an opening statement and they tell
7 you what they think the case is going to be about. Then
8 the State presents whatever evidence it has which they
9 believe tends to show the defendant guilty. And the jury
10 listens carefully to that.

11 The defense then, may or may not, put
12 on evidence, has no obligation to do so. But after you
13 have heard all of the evidence, then the jury goes out
14 and they only answer one question. And that is: Did the
15 State prove beyond a reasonable doubt that this defendant
16 committed capital murder?

17 So you have all of that evidence of
18 whatever the State can muster that shows and proves to a
19 jury beyond any reasonable doubt that that person is
20 guilty of capital murder.

21 And capital murder is a very
22 limited -- it is the most limited range of murders, and
23 they are all murders that have some additional bad factor
24 to them. It may be a murder of a police officer; it may
25 be murder of a prison guard; it may be a murder of a
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1 child; it may be multiple murders; but it's all with an
2 aggravating factor to the murder. So the jury has found,
3 at that point, has found that defendant guilty of the
4 worst crime in the books in Texas.

5 After you have done that, then and
6 only then, does a jury even begin to think about
7 punishment.

8 And at that point, then, the State --
9 the State has an opportunity to present additional

10 evidence that bears particularly on the question of
11 punishment. And the defense also has that right, but
12 neither has an obligation to do so at that point.

13 But, you hear additional evidence that
14 is related to the guilt. And at this point, of course,
15 you are dealing with a guilty murderer, that you know

16 beyond any reasonable doubt is guilty.

17 So, after you have heard that
18 evidence, then the Judge will give you another charge.
19 And it will give you some general instructions, but it
20 will ask you to answer two questions. And what a juror
21 has to be able to do is simply to say, honestly and
22 truthfully, I can weigh this evidence and I can answer

23 these questions.

24 Now, the questions in a capital case

25 that you are going to be given are these. And Judge
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1 Tolle, or whomever the Judge will be, will ask these
2 questions to the jurors. Let me say, that a jury is not
3 a democracy. Every one has their own voice. And every
4 one participates. And I'm not saying being closed
5 minded, but you have the ability to think for yourself
6 and answer in both of these questions, as do the other
7 jurors, and you interact in that manner.

8 But what you have got to do is to be
9 able to honestly and truthfully answer these questions
10 based upon the evidence. All of us -- but never leaving
11 your common sense, and as Mr. Shook said, your good

12 thinking and moral beliefs aside. But you have got to be
13 able to answer these questions honestly based on the
14 evidence.

15 And the first one is: "Do you find,
16 from the evidence, beyond a reasonable doubt, that there
17 is a probability that the defendant on trial would commit
18 future acts of violence that would constitute a
19 continuing threat to society?" You will be instructed as
20 a jury to answer that yes or no.

21 Now, could you answer, knowing now the
22 procedure that you are going through, and you are dealing
23 with someone that you know is guilty of the highest crime
24 in this State, could you answer that question based upon
25 the evidence?

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1 A. Yes, sir.

2 Q. All right. And, on Special Issue 2,
3 then you only answer this one if you have answered that

4 one "yes": "Taking into consideration again, taking into
5 consideration all of the evidence, including the
6 circumstances of the offense, the defendant's character,
7 background, the personal moral culpability of the
8 defendant, is there a sufficient mitigating circumstance
9 or circumstances that warrant a sentence of life in
10 prison, rather than a death sentence?" Could you
11 honestly and truthfully answer that question based on the
12 law?

13 A. I believe so.

14 Q. All right. The Judge will instruct
15 you that -- and again, jury service is one of the
16 greatest rights that we have, and one of the greatest
17 obligations we have. There is an interesting thing to
18 jury service, and that is, that for a while you lose your
19 rights. You can dissent with the law. You can
20 peacefully say, "I don't agree with the 70-mile-an-hour
21 speed limit, but I must obey it. I have the right to
22 disagree with the law, if I can obey it. But I must obey
23 it."

24 So when the Judge tells you that this
25 is the law, can you follow that instruction, and follow
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1 the Court's instruction, and base your evidence upon what
2 the Court tells you the law is -- base your verdict on
3 what the Court tells you the law is in evaluating the
4 evidence?

5 A. Yes, sir.

6 Q. All right. Thank you.

7

8 MR. RICHARD MOSTY: Your Honor, I
9 believe he is qualified.

10 THE COURT: All right. Mr. Shook.

11

12 VOIR DIRE EXAMINATION

13

14 BY MR. TOBY SHOOK:

15 Q. Let me follow that, Mr. King. You told
16 Mr. Mosty that you could listen to the evidence and
17 answer that question, if it was proven to you. And you
18 could listen to the evidence and answer that question one
19 way or the other if it was proven to you. Right?

20 A. Yes, sir.

21 Q. And, you know, I explained to you if
22 you answer that first question "yes," and then you go to
23 that second question and answer "no," do you realize what
24 would happen to the defendant?

25 A. She would get death.

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1 Q. She would get death, you are right.
2 And when we first talked and when you said on this

3 questionnaire, you said you could never, under any
4 circumstances, return a verdict which assessed the death
5 penalty.

6 We told you that -- you told me that,

7 you know, morally you were opposed to the death penalty
8 and just could not sit on this type of jury that would
9 make those types of decisions.

10 A. Uh-huh. (Witness nodding head
11 affirmatively.)

12 Q. Okay. And then, when Mr. Mosty asked
13 you the questions about, just answer the questions, you
14 said you could do that. You see where there's two
15 different answers there?

16 A. No, sir, I can't.

17 Q. So you can't do it?

18 A. I can't see where there is two
19 different answers.

20 Q. Okay. Well, you can --

21 A. Because he didn't ask me my answer for
22 either one of those questions. He asked me if I could
23 answer them.

24 Q. Okay. All right. You were ahead of
25 me then. Okay. What would your answers be then in this
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1 type of case?

2 A. Beyond a reasonable doubt, I could say
3 yeah, I mean, you know, to the special issue. If it was
4 proven to me beyond a reasonable doubt, I would have to

5 say yes.

6 Q. Okay.

7 A. But then, taking into consideration
8 all of the evidence, the defendant -- is there a
9 sufficient mitigating circumstance or circumstances to
10 warrant the sentence of a life in prison rather than a
11 death.

12 Q. You would always answer that --

13 A. I would probably answer that --

14

15 MR. RICHARD MOSTY: Well, now wait a
16 minute.

17 THE COURT: Well, each side has 45
18 minutes. Don't worry. You have got plenty of time left.

19 THE PROSPECTIVE JUROR: I would
20 probably answer it yes.

21

22 BY MR. TOBY SHOOK:

23 Q. Okay. Because of the way you feel
24 about the death penalty?

25 A. Right.

1 Q. All right. This question is kind
2 of -- it's the last question the jurors get. It's
3 answered based on the evidence and it's kind of a safety
4 net if there is any mitigating evidence.
5 We can't tell you what mitigating
6 evidence is. It's going to be up to you and the rest of
7 the jurors. But I have -- we have had jurors come up and
8 tell us that, "Look, you know, I can answer that
9 question, that first question. I can judge the facts and
10 tell you, yeah, they are going to be a continuing danger.
11 But what I am telling you, because of my opposition to
12 the death penalty, I could never answer that second

13 special issue 'no,' because I know if I did that, the
14 result would be a death sentence. I just couldn't do
15 that, because of my opposition to the death penalty."

16 A. Right.

17 Q. Is that what you are telling me?

18 A. Uh-huh. (Witness nodding head

19 affirmatively.)

20 Q. Okay. I need to get a verbal answer
21 from you?

22 A. Yes, sir.

23 Q. Okay. So, I mean, even if there was
24 no evidence of any mitigating circumstances whatsoever,
25 okay, whatever those may be, but if intellectually, you
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1 said, "Look, there is no mitigating evidence here, but I
2 know that if I answer this as a 'no,' the defendant will
3 get the death penalty."

4 A. Uh-huh. (Witness nodding head

5 affirmatively.)

6 Q. "I just can't do it. I'm going to
7 check 'yes,' because of my opposition to the death
8 penalty. That way she will get a life sentence and avoid
9 the death sentence. And I am doing that based on my
10 moral principles, my moral convictions, and opposition of
11 the death penalty."

12 Is that how you would answer that

13 question because of your moral convictions?

14 A. I think I would have to be in that

15 position to make that decision. It's hard to say, you
16 know, I mean right now. My moral says I would have to

17 answer it where she would receive life imprisonment
18 instead of death.

19 Q. Okay. Because of your moral
20 convictions? The way you believe?

21 A. Uh-huh. (Witness nodding head
22 affirmatively.)

23 Q. We can't preview the facts for you,
24 you know, we can't even go into the facts. That is why

25 we have to talk to you kind of in hypotheticals, but want
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1 to examine what your convictions are also. And like I
2 said, I don't want to argue with you, and feel free --
3 feel free any way you want to.

4 But you understand where I am coming
5 from? If someone comes in and tells me, "Look, I am

6 against the death penalty. And I can't make those types
7 of decisions." I would have some concern if that person
8 ever wound up on the jury.

9 If you can't do it, that is fine. I'm
10 sure you will be called again on some other case, that is
11 just the way it works.

12 But you understand that I am -- the

13 State is also entitled to jurors that can say, "Look, I
14 am not opposed to the death penalty. That is not going
15 to be a moral thing with me. I can just judge this case
16 from the facts itself. If I see there is no mitigating
17 evidence, I am going to answer 'No.'"

18

19 MR. RICHARD MOSTY: I'll object to

20 that statement. The State is not entitled to that kind
21 of juror.

22 THE COURT: Sustain the objection.

23 Let's move on.

24

25

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1 BY MR. TOBY SHOOK:

2 Q. But what you are telling me is, you
3 are not going to be able to remove your moral
4 convictions. You are going to -- if we get to that last
5 issue because of your moral convictions --

6

7 MR. DOUGLAS MULDER: Judge, excuse me.
8 We have been over this before. He has clearly answered
9 the question.

10 THE COURT: I think we have.

11 MR. DOUGLAS MULDER: He said he could
12 be fair. He said he would have to hear the evidence
13 before he could make a decision.

14 THE COURT: Well, I'll sustain that.

15 MR. TOBY SHOOK: Well, he said he
16 can't answer that question because of his moral
17 convictions.

18 THE COURT: Well, I have heard that
19 two or three times, I am very -- I understand what he
20 said. Let's move on. Do you have any other questions?

21 MR. TOBY SHOOK: Well, I just wanted
22 to finish that one, then I could move on.

23 THE COURT: Okay. That will be fine.

24

25 BY MR. TOBY SHOOK:

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1 Q. Is that what you are telling us,
2 because of your opposition to the death penalty?

3

4 MR. DOUGLAS MULDER: Judge, that is
5 not what he said.

6 THE COURT: I understand what he said.

7 You are going to get another chance, and then I am going
8 to get a chance.

9 MR. DOUGLAS MULDER: Your Honor, I
10 know it. But he said that he would have to hear the
11 evidence first.

12 THE COURT: I understand what he said.

13 I understand what he is saying.

14 MR. TOBY SHOOK: Okay.

15 THE COURT: We are not trying to run
16 you in the ground, Mr. King. Hang on.

17 MR. TOBY SHOOK: Judge, do you want to
18 go into this issue with this juror, Mr. King?

19 THE COURT: Well, I'd be happy -- all
20 I want to know is this: Do you have any more questions
21 you want to ask?

22 MR. RICHARD C. MOSTY: Well, just very
23 briefly.

24 THE COURT: He is answering Mr. Shook
25 one way and you another way, and I want to know how he
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1 feels.

2 VOIR DIRE EXAMINATION

3 BY MR. RICHARD MOSTY:

4 Q. What I heard you say to Mr. Shook was,

5 that in order to answer this question, it would depend on
6 the evidence. You would have to listen to the evidence.

7 A. Yes, I think that is what I said.

8 Q. And you aren't going to leave -- you

9 appear to be an honest man, and you aren't going to leave
10 your honesty and your integrity behind, and answer that
11 based on anything other than the evidence, are you?

12 A. Most likely not.

13 Q. All right.

14

15 THE COURT: All right. Mr. King, can

16 you set aside -- if you are selected as a juror, can you
17 set aside all of your beliefs against the death penalty
18 and things of this nature, and follow the law, if you are
19 selected as a juror?

20 THE PROSPECTIVE JUROR: And follow the

21 law, yes, sir.

22 THE COURT: And you will do it, you
23 will follow the law?

24 THE PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: All right. The Court
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1 holds the juror qualified.

2 MR. TOBY SHOOK: May I have one
3 moment, please?

4 THE COURT: Thank you. Is that all
5 you need? Is that all the questions you have?

6 MR. TOBY SHOOK: I have a couple more
7 questions, Judge.

8 THE COURT: All right. Well, I think
9 he's -- all right. Go ahead.

10 VOIR DIRE EXAMINATION

11 BY MR. TOBY SHOOK:

12 Q. Let me ask you, Mr. King, you know we
13 talked about this Special Issue Number 1. "Do you find
14 from the evidence beyond a reasonable doubt that there is
15 a probability that the defendant would commit criminal
16 acts of violence that would constitute a continuing
17 threat to society?"

18 Do you see where that question is
19 asking the jurors to predict the future, how the
20 defendant would behave? Do you feel you could answer
21 that question based on the evidence?

22

23 MR. RICHARD C. MOSTY: Your Honor, I
24 think we have been over that six or seven times.

25 THE COURT: Sustain the objection.
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1 Please move on to the next question.

2

3 BY MR. TOBY SHOOK:

4 Q. Sometimes when we reach that point in
5 the case, you obviously would have already found the

6 defendant guilty. So you will get to re-evaluate the
7 facts of the crime itself. You might hear additional
8 evidence at that point; maybe about their background,
9 maybe a criminal record, some bad things. Or, vice

10 versa, it may be a situation where they have no criminal
11 record, maybe they have never done anything in their
12 life. You may be called to answer that question based on
13 the facts of the offense alone. Okay? Just how the
14 crime happened.

15 Do you think, sir, that -- and I can't
16 go into the facts obviously, but do you feel you could

17 answer that question based on the facts of the offense
18 alone, and make that type of prediction?

19 A. Well, I don't think I could make any
20 kind of prediction.

21 Q. Okay. What do you mean by that?

22 A. Well, you know, I don't really know
23 what you meant by that.

24 Q. Well, what I meant by prediction, I
25 mean could you answer that question. Could you answer
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1 that question on the facts of the offense alone?

2

3 MR. DOUGLAS MULDER: Judge, excuse me.
4 Judge, he said he could based on the evidence. He would
5 have to hear the evidence first, that is what he is
6 saying.

7 MR. TOBY SHOOK: Well, Judge, I get to
8 ask him questions.

9 THE COURT: Gentlemen, all I need is
10 an objection. I understand what he said. Let Mr. Shook
11 go on. Then your side can go on.
12 Let's don't jump up and down and yell

13 at each other. The next juror is not coming in until
14 9:30, so let's move on.

15 MR. TOBY SHOOK: Do you --

16 THE COURT: Prospective juror.

17

18 BY MR. TOBY SHOOK:

19 Q. Do you think you could answer that
20 question based on the facts of the case alone?

21 A. Yes, sir.

22 Q. Okay. That could provide you enough
23 information?

24 A. Yes, sir.

25 Q. Okay.

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1

2 THE COURT: Anything else?

3

4 BY MR. TOBY SHOOK:

5 Q. Mr. King, do you have any questions
6 over anything we have talked about?

7 A. No, sir.

8

9 MR. TOBY SHOOK: That's all the
10 questions we have, Judge.

11 THE COURT: The Court holds the juror
12 qualified.

13 Can you step outside just a minute,
14 please, Mr. King?

15 All right. What says the State?

16 MR. TOBY SHOOK: The State would
17 exercise a peremptory challenge.

18 THE COURT: All right. That brings us
19 to Juror Number 10 who has not yet arrived.

20 All right. Bring Mr. King in, please.

21 Mr. King, we want to thank you very
22 much for your time and your attendance, but you will not
23 be needed as a juror in this case. Just remember not to
24 discuss anything you said with anybody, including members
25 of the press, please.

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1 THE PROSPECTIVE JUROR: Okay.

2 THE COURT: Thank you very much. We
3 appreciate you being here.

4 THE COURT: Next juror. The next one
5 is Lori Schreiner. Let's take a brief break.

6

7 (Whereupon, a short

8 recess was taken,
9 after which time,

10 the proceedings were
11 resumed on the record,
12 in the presence and

13 hearing of the defendant
14 as follows:)

15

16 THE COURT: Okay. Let's go back on
17 the record.

18 If you will just have a seat right
19 there, and raise your right hand, please.
20 Do you solemnly swear or affirm to
21 true answers make to all questions propounded to you

22 concerning your qualifications as a juror in this room or
23 any courtroom to which you may be sent, so help you God?

24 THE PROSPECTIVE JUROR: Yes, sir.

25

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1 (Whereupon, the prospective
2 juror was duly sworn by the
3 Court to true answers make

4 to the questions propounded,
5 concerning qualifications, after
6 which time, the proceedings were
7 resumed as follows:)

8

9 THE COURT: All right. Fine, thank
10 you.

11 This is Mr. Toby Shook.

12 MR. TOBY SHOOK: Good morning.

13 THE PROSPECTIVE JUROR: Hi.

14 THE COURT: And Miss Sherri Wallace of
15 the Dallas County District Attorney's office.

16 MS. SHERRI WALLACE: Good morning.

17 THE PROSPECTIVE JUROR: Hi, good
18 morning.

19 THE COURT: And Mr. Doug Mulder.

20 MR. DOUG MULDER: Hi.

21 THE PROSPECTIVE JUROR: Hi there, Mr.

22 Mulder.

23 THE COURT: And Mr. Richard Mosty.

24 MR. RICHARD MOSTY: Hi.

25 THE PROSPECTIVE JUROR: Hi, how are
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1 you?

2 THE COURT: Representing the Defendant

3 Mrs. Darlie Routier, who is sitting in the back.

4 THE PROSPECTIVE JUROR: Hi there.

5 THE COURT: All right.

6 Go ahead, please, Mr. Shook.

7 MR. TOBY SHOOK: Thank you, Judge.

8

9

10 Whereupon,

11

12 LORI LYNN SCHREINER,

13

14 was called as a prospective juror, for the purpose of

15 voir dire, having been first duly sworn by the Court to

16 speak the truth, the whole truth, and nothing but the

17 true, testified in open court, as follows:

18

19 VOIR DIRE EXAMINATION

20

21 BY MR. TOBY SHOOK:

22 Q. Ms. Schreiner, my name again is Toby

23 Shook. I am an Assistant District Attorney from Dallas,

24 and I will be asking you questions on behalf of the State

25 this morning.

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1 A. Okay.

2 Q. I'm sure you probably don't know any

3 of the attorneys from Dallas. Do you?

4 A. No, sir.

5 Q. Okay. How about Mr. Mosty or Mr.

6 Douglass?

7 A. Well, he goes to my church. But I

8 mean, you know --

9 Q. Big church?

10 A. St. Peter's Episcopal.

11 Q. Okay.

12 A. He probably knows my husband better

13 than he knows me.

14 Q. The fact that he is on the case, would
15 that influence you in any way, do you think?

16 A. I don't believe so.

17 Q. Okay. Could you just judge the facts
18 of the case based on the evidence that is produced in the
19 Court?

20 A. Yes, sir.

21 Q. Okay. You all ever socialize together
22 or anything like that?

23 A. No, just the church picnic.

24 Q. Okay. All right. As you know, there
25 has been some publicity in regards to this case up in
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1 Dallas, obviously a lot, but even down here locally
2 because the case was moved here. And all of our
3 potential jurors, obviously, probably saw a little bit of
4 it.

5 Now, we can't have jurors that will
6 judge a case based on what they have read or seen on the
7 TV, obviously. You have to wait and hear the facts in
8 the Court. And you put down that you have seen some
9 stuff and know a little bit about what was reported at
10 least by some of the TV stations.

11 A. Right, at the time that it happened.

12 Q. Right.

13 A. On the news and stuff.

14 Q. Would you be able to set aside
15 anything that you have read and seen on TV if you were
16 selected as a juror on this case and just judge the case
17 on its facts?

18 A. Yes, sir.

19 Q. Okay. You would not have any problem
20 with that?

21 A. No, sir.

22 Q. Okay. Ms. Schreiner, let me --
23 obviously, this is a capital murder case which the State
24 is seeking the death penalty, so we want to go over your
25 personal feelings about the death penalty.

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1 A. Uh-huh. (Witness nodding head
2 affirmatively.)

3 Q. Start out, there are not any right or
4 wrong answers to any of these questions.

5 A. Right.

6 Q. We want to know how you feel, and we
7 want to know if you will be able to follow certain areas

8 of the law. First of all, as a law, do you believe in
9 the death penalty, that it is a law we should have?

10 A. I do.

11 Q. All right. Tell me your own personal
12 reasons why you think it is an appropriate law.

13 A. Well, I guess, prison overcrowding. I
14 am from Beeville, and we have three prisons there.

15 Q. Oh, really?

16 A. Yes, sir. So, probably, that would be
17 my biggest reason.

18 Q. What types of crimes do you think the
19 death penalty is appropriate for? What comes to mind?

20 A. Murder.

21 Q. Every type of murder case, or it just
22 depends on the facts of each case?

23 A. Probably the facts.

24 Q. Okay. Case by case?

25 A. Uh-huh. (Witness nodding head
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1 affirmatively.)

2 Q. All right. Have you ever followed any
3 cases in the media closely that you thought were like the
4 death penalty cases, or deserving the death penalty or
5 trying death penalty cases?

6 A. Well, I mean, not like, you know, like
7 the O.J. trial. It wasn't like it was going to be on,
8 and I had to watch it type.

9 Q. But you just saw it if was on the
10 news?

11 A. Yes, you know.

12 Q. Did you have any special thoughts, for
13 instance, on the O.J. trial? Any viewpoints about that?

14 A. No, I was tired of it.

15 Q. You got tired of it?

16 A. Yes, sir.

17 Q. Okay. Have you ever been on a jury
18 before?

19 A. No, sir.

20 Q. Okay. In Texas there are only certain
21 types of cases which call for the death penalty. There
22 are murder cases for one thing, but only specific types
23 of murder cases. Murder during the course of a felony,
24 you know, when the guy that goes in and robs a 7-Eleven
25 and goes into the convenience store and shoots the clerk,
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1 that would be a capital murder case.

2 A. Right.

3 Q. Murder during a burglary, someone

4 breaks into a home, and murders someone in the home, that
5 could be one. During a rape, that could be one or during
6 a kidnapping.

7 A. Uh-huh. (Witness nodding head
8 affirmatively.)

9 Q. Also, murder of a police officer or a
10 fireman while on duty.

11 A. Uh-huh. (Witness nodding head
12 affirmatively.)

13 Q. Mass murder, murder a lot of people at
14 once, or even a serial killer type of situation falls in
15 that category.

16 A. Uh-huh. (Witness nodding head
17 affirmatively.)

18 Q. Murder for hire, you know, a hit man
19 type of situation.

20 A. Uh-huh. (Witness nodding head
21 affirmatively.)

22 Q. In addition, we have, and Judge Tolle
23 read to you, the indictment in this case; an allegation
24 involving the murder of a child under the age of six.
25 That, under certain circumstances, can be a death penalty
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1 type case.

2 Do you agree with those types of cases
3 being possible for death penalty cases?

4 A. Yes, sir.

5 Q. Okay. And the case that we're here on
6 today, the indictment, we're not asking you to judge the
7 case yet, because you have not heard any of the witnesses
8 yet. But is that the type of case you personally feel
9 could be appropriate for the death penalty under the
10 proper facts and circumstances?

11 A. Yes, sir.

12 Q. Okay. In Texas the death penalty case
13 is divided into two parts. Okay? First part is the
14 guilt/innocence where we have to prove our case beyond a
15 reasonable doubt.

16 A. Uh-huh. (Witness nodding head
17 affirmatively.)

18 Q. And if we do that, then we go to the
19 second part of the case.

20 A. Uh-huh. (Witness nodding head

21 affirmatively.)

22 Q. There you may hear additional
23 evidence, you may not. At the end of that, you get these
24 questions to answer. We will go over those more with you
25 in a minute.

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1 But in summary, that first question
2 the State has to prove that the defendant would commit --
3 there is a probability would commit criminal acts of
4 violence in the future and would be a danger to society.

5 This last question, neither side has
6 to prove. The jurors view all of the evidence and decide
7 if there is any mitigating evidence that would call for a
8 life sentence rather than a death sentence.

9 And if you answer that first question
10 "yes," and the second one "no," the Judge will sentence
11 the defendant to death. Okay?

12 If you answer them any other way, it
13 is a life sentence. But those are the only two choices,
14 after the defendant has been found guilty, it's a life
15 sentence or a death sentence. Is that clear to you?

16 A. Yes, sir.

17 Q. Okay. And the way that occurs is the
18 way the jurors answer those questions. Now, you probably
19 know from watching TV that the method of execution in

20 Texas is by lethal injection. Were you aware of that?

21 A. Yes, sir.

22 Q. Okay. It's a very real punishment.

23 You know some states have the death penalty, but they
24 never invoke it. Texas leads the nation in executions.

25 A. Right.

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1 Q. There have been over 100. And from
2 time to time you hear about them in the newspapers.

3 A. Right.

4 Q. It's a very real punishment. And,
5 quite frankly, that is our goal in this case. That is

6 what we're going to attempt to prove. It's the type of
7 verdict we want to see. The defense will, obviously,
8 fight us every inch of the way.

9 A. Uh-huh. (Witness nodding head
10 affirmatively.)

11 Q. You have told us, personally, you feel
12 that the death penalty is a law that we should have under
13 certain situations, that it should be invoked depending
14 on the facts of those cases.

15 A. Yes, sir.

16 Q. What I need to know is, are you the
17 type of person that will listen to the evidence? And
18 then if we do prove these things, answer these question

19 in a way knowing that the defendant would be executed as
20 a result of those answers?

21 A. I believe so.

22 Q. Okay. I know you have never been in
23 this position.

24 A. Yes, I know.

25 Q. Okay. But some people just say, "Hey,
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1 this isn't my cup of tea. I can't do that."

2 Other people say, "I don't really want
3 to be here, but if you prove it to me, I will answer

4 those questions," and that is what we need to know.

5 Do you think you could do that if it
6 is proven to you?

7 A. If it is proven to me.

8 Q. Okay. Fair enough. One area I want
9 to get into is the different types of evidence we might
10 put on. We can't go into the facts of the case.

11 A. Right.

12 Q. But the terms we use a lot of times is
13 direct and indirect evidence to prove the case. Direct
14 evidence is what an eyewitness saw. If you were to leave
15 the courthouse today and were robbed, let's say, someone
16 got your money at gunpoint or knife point, and that
17 person were caught later and you identified them. You
18 would be an eyewitness to the offense.

19 A. Right.

20 Q. That is direct evidence. Indirect
21 evidence is any other type of evidence that links the
22 defendant to the offense. Okay?

23 A. Uh-huh. (Witness nodding head
24 affirmatively.)

25 Q. And another term for that is what we
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1 always hear, circumstantial evidence: Fingerprints,
2 fibers, DNA, things about the crime scene, what was left
3 at the crime scene, statements by the defendant before,
4 during, or after, anything, literally anything, other
5 than an eyewitness, really is indirect or circumstantial
6 evidence.

7 A. Right.

8 Q. Now, many times in a murder case you
9 don't have an eyewitness obviously. You have the person
10 that committed the crime and the victim. So, the State
11 relies on what we call circumstantial evidence to prove
12 its case.

13 Do you feel -- now the standard of

14 proof is the same, whether you have an eyewitness or
15 circumstantial evidence, we have to prove it beyond a
16 reasonable doubt.

17 A. Right.

18 Q. So could you find someone guilty if it
19 was proven to you beyond a reasonable doubt?

20 A. Yes.

21 Q. Could you find someone guilty of
22 capital murder based on circumstantial evidence?

23 A. Yes, sir.

24 Q. If it was proven to you?

25 A. Yes, sir.

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1 Q. All right. Another area is what we
2 call motive, you know, motive. We always hear about
3 motive watching Perry Mason or what was the motive for
4 the crime.

5 Now, in Texas, we're not required to
6 prove motive. We're just required to prove the
7 indictment. Which I think is up there to your left. Is
8 there a copy there, Judge?

9

10 THE COURT: Yes, right here.

11

12 BY MR. TOBY SHOOK:

13 Q. If you could overlook that, there is a
14 paragraph there in the middle that sets out the
15 allegations.

16 A. (No response.)

17 Q. Right here.

18 A. Thank you. Uh-huh. (Witness nodding
19 head affirmatively.)

20 Q. Okay. That is what we have to prove.

21 A. Okay.

22 Q. Beyond a reasonable doubt. Nowhere in
23 there does it say why the murder occurred or the reason
24 behind the murder. That is the motive.

25 Now, as the evidence comes out, the
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1 motive might be real apparent to you and the other
2 jurors, or it may never come out. Or there could be a
3 whole lot of different motives, you could have your own

4 opinion. The State is not required to prove the motive,
5 the reason for the killing. Does that seem fair to you?

6 A. Yes, sir.

7 Q. Now, obviously, a lot of people want
8 to know as much as they can in a case like this. Like I
9 say, it might be kind of apparent to you, but it's not a
10 requirement.

11 A. Okay.

12 Q. Let me get into the punishment issues

13 for just a moment. Okay? Like I said, we can't get into
14 any of the facts, so we have to kind of go over
15 everything in a hypothetical-type situation.

16 A. Right.

17 Q. You don't get to these punishment
18 issues unless the defendant has been found guilty of
19 capital murder. Okay?

20 A. Right.

21 Q. But just because you find a defendant
22 guilty, the case isn't over there. We go into the second
23 part of trial then.

24 A. Uh-huh. (Witness nodding head
25 affirmatively.)

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1 Q. That part of the trial you may hear
2 additional evidence about the defendant's background

3 possibly, if there is criminal record, you could hear
4 that. If there is no criminal record, you will hear
5 about that.

6 A. Yes.

7 Q. Bad things, good things, all kinds of
8 things.

9 A. Uh-huh. (Witness nodding head
10 affirmatively.)

11 Q. At the close of that evidence you will
12 be given these questions and you reevaluate, obviously,
13 the evidence you have heard about the crime itself, and
14 anything else you have heard.

15 A. Uh-huh. (Witness nodding head
16 affirmatively.)

17 Q. And then you make these decisions. We
18 have to prove Question Number 1 beyond a reasonable
19 doubt. Okay?

20 A. Uh-huh. (Witness nodding head
21 affirmatively.)

22 Q. It starts out with a "no" answer.

23 A. Uh-huh. (Witness nodding head
24 affirmatively.)

25 Q. You know, you probably know, that
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1 obviously, all defendants are presumed innocent at the
2 beginning of the trial.

3 A. Right.

4 Q. And that applies in this case.

5 A. Yes.

6 Q. The same thing here. That is presumed
7 to be "no" and the State has to prove to you beyond a
8 reasonable doubt it should be answered "yes."

9 A. Right.

10 Q. Let me go over that question with you,
11 if you will just read along with me. It asks: "Do you
12 find from the evidence beyond a reasonable doubt that
13 there is a probability that the defendant would commit
14 criminal acts of violence that would constitute a
15 continuing threat to society?" Okay.

16 Do you see where that question is
17 asking you to make a prediction?

18 A. Right.

19 Q. Do you think, and again, I can't
20 preview the evidence, but could you get enough evidence
21 that you could answer that question?

22 A. Right.

23 Q. If it could be proven to you?

24 A. Right.

25 Q. Okay. The words in that question, and
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1 you won't be given legal definitions, they are just going
2 to be up to you and the other jurors. Okay?

3 A. Okay.

4 Q. So I want to go over a couple of

5 those. We have to prove it's a probability that the
6 defendant would commit criminal acts of violence. What
7 do you think of when we use the word probability?

8 A. A possibility.

9 Q. Okay. Could it mean more likely than
10 not?

11 A. Well, I don't know. I mean --

12 Q. Okay. Sometimes, like I have had
13 accountants who have come in, and they said,
14 "Probability, if there is .1 percent chance, that is
15 probability." But I have other people go, "Well, when I
16 think of probability, I think of the 60 percent chance of
17 rain," something like the weatherman would predict.

18 A. Right.

19 Q. But the common term I find most people
20 say, it's more likely than not. Obviously, not an
21 absolute certainty, but a probability.

22 A. Yes.

23 Q. Okay. Criminal acts of violence, we
24 have to prove the defendant would commit criminal acts of
25 violence. What do you think of when we use the term,
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1 "criminal acts of violence?"

2 A. Something criminal, something you can
3 get in trouble for.

4 Q. Okay. Any type of criminal offense?

5 A. Right.

6 Q. Okay. And that is fair. Whatever you
7 want it to mean, that is up to each and every juror. The
8 point on this question is, you use all the evidence that
9 you have heard. There is no automatic answers. Okay?

10 Just because you found the defendant guilty of capital
11 murder, you didn't automatically go, "Okay. They are
12 going to be a danger." You have to reevaluate the
13 evidence.

14 A. Right.

15 Q. Look at it again and then decide.

16 A. Uh-huh.

17 Q. Do you feel you could do that?

18 A. I don't know. I mean, I guess.

19 Q. Okay. I know you have never been in
20 this situation.

21 A. No, I haven't. I am so nervous, this
22 just makes me nervous being here.

23

24 THE COURT: Just calm down.

25 THE PROSPECTIVE JUROR: I know, I
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1 know. I'm trying to listen.

2

3 BY MR. TOBY SHOOK:

4 Q. Well, that is understandable.

5 A. Right.

6 Q. But, what I want to make sure is, you

7 wouldn't just automatically check off "yes" because you

8 found someone guilty.

9 A. Right, no, I wouldn't. I would look
10 at the circumstances.

11 Q. You would look at the evidence?

12 A. Yes, sir.

13 Q. Would the facts of the offense itself,
14 the way the murder occurred, would that be real important
15 to you?

16 A. That would.

17 Q. Okay. You could use everything you

18 have heard and then decide that question, and the State
19 has to prove it to you?

20 A. Right.

21 Q. Okay. Now, if you do answer that
22 "yes," you move on to this last question. That is the
23 lengthy one.

24 The mitigation issue. So I will go

25 over that one. It says: "Taking into consideration all
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1 of the evidence, including the circumstances of the
2 offense, the defendant's character and background, and
3 the personal moral culpability of the defendant, is there
4 a sufficient mitigating circumstance or circumstances to
5 warrant that a sentence of life imprisonment, rather than
6 a death sentence, be imposed?"

7 It gets rather long, that question

8 does. Basically, that is what a lot of us call the

9 safety net, you know. You have found the defendant
10 guilty. You found they are going to be a continuing
11 danger, but you look at all the evidence and somewhere
12 -- at all their background that you know about the

13 defendant, and if there is something that you view as

14 mitigating where a life sentence should be imposed rather
15 than a death sentence, you can answer the question that
16 way.

17 If you don't feel that that is

18 evidence, then you answer it "no." Okay? But it allows
19 the jury a way out, even though this is obviously a bad
20 person or could be a dangerous person, I think they need
21 a life sentence rather than a death sentence. Does that
22 seem like a fair question to you?

23 A. Uh-huh. (Witness nodding head

24 affirmatively.)

25 Q. Okay. Now, there is no burden of
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1 proof on that particular issue. Okay?

2 A. Yes.

3 Q. Neither side has to prove that to you.

4 A. Okay.

5 Q. Both side will argue it, I'm sure.

6 But neither side is required under the law to prove these
7 things to you, like the State has to on these other
8 issues.

9 A. Yes, sir.

10 Q. And whatever mitigating evidence is,
11 it is going to be up to you. Okay?

12 A. Okay.

13 Q. The Judge isn't going to tell you what
14 it is. It's going to be up to you and the other jurors.
15 In fact, you don't even have to agree with the other
16 jurors as to what mitigating evidence is.

17 A. Uh-huh. (Witness nodding head

18 affirmatively.)

19 Q. You first have to determine if it is
20 mitigating evidence and then if it reaches the level
21 where you think a life sentence should be imposed rather
22 than a death sentence. I know you don't sit around
23 thinking about this stuff, but does anything come to mind
24 that you might think could be mitigating evidence?

25 A. Well, no -- what is litigating (sic)

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1 evidence, I'm sorry?

2 Q. Mitigating?

3 A. Mitigating.

4 Q. The way they describe it at all, is

5 something, evidence that lessens the defendant's moral

6 blameworthiness. They don't get excused for the conduct,
7 in fact, they get a life sentence.

8 A. Uh-huh. (Witness nodding head
9 affirmatively.)

10 Q. But it's something that lessens their
11 blameworthiness for the crime.

12 A. Oh.

13 Q. Maybe something in their background.

14 A. Right.

15 Q. Some people tell us, well, you know,
16 it comes out the defendant is actually mentally retarded.
17 They might know right from wrong, but they were born that
18 way, so that might be mitigating. Spare their life. It
19 is something to spare the defendant's life.

20 A. Okay.

21 Q. It could be anything.

22 A. Okay.

23 Q. What I need to know is, can you keep
24 your mind open to that type of evidence?

25 A. I believe so.

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1 Q. And if you see something, some
2 evidence that you think the defendant's life should be
3 spared, and they get a life sentence instead of a death

4 sentence, could you answer the question that way? Do you
5 think that is the right thing to do?

6 A. I think so.

7 Q. Okay. Again, I can't ask you what it
8 would be --

9 A. Right.

10 Q. -- you will just have to be able to
11 hear it. What the Judge needs to know is if you can keep
12 your mind open to that type of evidence?

13 A. Right.

14 Q. You can do that?

15 A. Yes, sir.

16 Q. Okay. Now there are certain rules
17 that Judge Tolle went over that apply to all criminal
18 cases, and I will go over some of those again. I already
19 talked about one: The presumption of innocence.

20 A. Uh-huh. (Witness nodding head
21 affirmatively.)

22 Q. Everyone starting out is presumed to

23 be innocent, and the State has to overcome that

24 presumption. Do you agree with that rule of law?

25 A. Yes.

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1 Q. And can you follow that rule of law?

2 A. Yes, sir.

3 Q. You can presume the defendant to be

4 innocent and require the State to prove its case?

5 A. Right.

6 Q. Proving the case, the State has the

7 burden of proof. We have to prove our case beyond a
8 reasonable doubt, which is a very high burden. Highest
9 burden in law. Okay?

10 A. Uh-huh. (Witness nodding head

11 affirmatively.)

12 Q. Do you agree with that rule of law?

13 A. Right, that you have to prove it.

14 Q. And would you require the State to

15 prove this case to you beyond a reasonable doubt?

16 A. Yes, sir.

17 Q. That also means the defense, they

18 don't have an obligation to prove the client is innocent.
19 I'm sure, when it comes down to it, they are going to ask
20 questions, they are going to cross-examine, and they are
21 going to make arguments, they are going prove their
22 points.

23 A. Right.

24 Q. But the defense is not obligated, you

25 can't require them to prove innocence. Do you

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1 understand?

2 A. Right.

3 Q. Okay. And are you telling the Court,

4 you won't do that? You will just require the State to

5 prove this case beyond a reasonable doubt?

6 A. Yeah, I think that they should, yes.

7 Q. Okay. I just want to make sure you

8 won't put any obligations on the defense. There is some

9 people come in here and go, "Well, if the State puts on

10 any evidence, I'm going to require the defense to put on

11 evidence, or I am going to -- or prove her innocence to

12 me, or I'm going to find the defendant guilty of capital

13 murder."

14 A. Well, I mean, I would expect them to
15 prove some innocence. I mean --

16 Q. Sure. I mean, as a juror, you would
17 expect them --

18 A. Right. To -- yeah.

19 Q. -- to put on evidence. But what I'm
20 saying is you can't require them to.

21 A. Okay.

22 Q. See, let's say this is a reasonable
23 doubt. Right?

24 A. Can I get a Kleenex?

25 Q. Sure.

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1 A. I'm sorry.

2 Q. That is all right. Let's say
3 reasonable doubt -- let's make it this line.

4 A. Uh-huh.

5 Q. This is what hurdle the State has to
6 get over to prove its case. Okay?

7 A. Right.

8 Q. And if we start putting on evidence
9 getting over a hurdle.

10 A. Uh-huh.

11 Q. Now, if we only get to this level, we
12 don't reach reasonable doubt, you are obligated to find
13 the defendant not guilty.

14 A. Right.

15 Q. You understand that? We didn't jump
16 the hurdle.

17 A. Right.

18 Q. Okay? Once in a while, we get a juror
19 that says, "Well, if they put on any evidence, I want the
20 defense to come back over and prove her innocence or jump
21 over the hurdle themselves."

22 A. Right.

23 Q. They don't have to do that. If we
24 never get to this hurdle of beyond a reasonable doubt, if
25 we don't get there, you know, you can't find the

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1 defendant guilty if we don't get to our hurdle.

2 A. Right.

3 Q. And that is what you will require us
4 to do.

5 A. Okay.

6 Q. I mean, that is what it gets down to.

7 A. Reasonable doubt, yeah.

8 Q. You have to get over the reasonable
9 doubt standard.

10 A. Uh-huh. (Witness nodding head
11 affirmatively.)

12 Q. Okay. The Judge also mentioned that
13 in any type of case, if a defendant wants to, they can
14 testify on their own behalf.

15 A. Right.

16 Q. However, if they chose not to testify,
17 they don't have to. No one can force them up there. And
18 if a defendant chooses not to testify, then the jurors
19 can't use that against them. They can't use that as
20 evidence and weigh it against them. Okay.

21 A. Okay.

22 Q. Most jurors want to hear from
23 everybody, obviously. But if you don't hear from the
24 defendant, the rule of law says you can't use that
25 against the defendant. You understand?

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1 A. Right.

2 Q. Can you follow that rule of law?

3 A. Yes, sir.

4 Q. Okay. Now, the reason we have that,
5 is there could be many reasons that the defendant might
6 not want to testify. It could be they are real guilty
7 and they don't want to look guilty.
8 Could be they are real nervous up

9 there when they testify. You know, they might look
10 guilty. It could be their lawyer tells them don't worry
11 about it, the State hasn't proved its case. Just sit
12 tight. They may not be very smart. So, they may even
13 look guilty under cross-examination.

14 So the law takes care of that by just
15 requiring the jurors to ignore that and decide the case
16 on what they have heard. Can you do that?

17 A. Yes, sir.

18 Q. Okay. In a criminal case, you will
19 often get police officers coming up to testify.

20 A. Uh-huh. (Witness nodding head
21 affirmatively.)

22 Q. The law says that you have to start
23 all witnesses off on the same foot. Okay?

24 A. Uh-huh. (Witness nodding head
25 affirmatively.)

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1 Q. You can't give anyone extra
2 credibility to begin with.

3 A. Right.

4 Q. You have to wait and listen to them
5 testify. Because police officers are just like anyone
6 else, there are good ones and there is bad ones.

7 A. Right, Mark Fuhrman.

8 Q. Exactly.

9 A. Yeah.

10 Q. Okay. You can't start him -- start
11 them off ahead of anyone else. You have to wait until
12 they testify and then judge their credibility.

13 A. Right.

14 Q. Can you do that?

15 A. Yes, sir.

16 Q. Sometimes, we read about parole laws
17 and how they apply in criminal cases.

18 A. Uh-huh. (Witness nodding head
19 affirmatively.)

20 Q. But in a case, if you are sitting as a
21 juror, you can't consider parole laws, no matter what you
22 have read or heard. Okay?

23 A. Okay.

24 Q. The Judge would instruct you, "Don't
25 think about parole. Don't use it in your decision in way
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1 whatsoever." Could you follow that rule of law?

2 A. Yes, sir.

3 Q. Okay. The bottom line is: Are you
4 the type of person that can keep your mind open and

5 listen to the evidence and then make your decisions?

6 A. I guess so.

7 Q. Okay.

8 A. I mean, I guess. I don't know.

9 Q. Well, what we need to know is to make
10 sure you are not going to prejudge the case in any way,
11 and automatically make your decisions? You will listen
12 to the evidence first?

13 A. Uh-huh. (Witness nodding head
14 affirmatively.)

15 Q. Okay. I see that you had your car
16 broken into once?

17 A. Uh-huh. (Witness nodding head
18 affirmatively.)

19 Q. And --

20

21 THE COURT: Can you say yes or no,
22 ma'am?

23 THE PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Ms. Halsey has to take all
25 this down, it is hard to take down a nod.

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1 THE PROSPECTIVE JUROR: Okay. Okay.

2 I'm sorry.

3 THE COURT: That's quite all right.

4 THE PROSPECTIVE JUROR: Yes, sir. I
5 have had my car broken into.

6

7 BY MR. TOBY SHOOK:

8 Q. And the cellular phone was taken?

9 A. Yes, they did. They took my phone and
10 some work-out clothes.

11 Q. They made some -- did they make some
12 calls on your phone?

13 A. Yes, they did. You know, how you have
14 that itemized call list?

15 Q. Right.

16 A. And I got my phone bill, you know, it
17 had the itemized list. And, I mean, it was in Corpus,
18 but I thought that, you know, the police could get that
19 call list and they could maybe --

20 Q. Figure out who did.

21 A. Track them down, yeah. I think my

22 phone probably paid for an abortion, it was to the free
23 clinic or something like that, I don't know.

24 Q. All right. But no one was ever caught
25 in regards to that?

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1 A. No.

2 MR. TOBY SHOOK: Judge, if I could
3 just have one moment.

4

5 THE COURT: Yes, sir.

6

7 BY MR. TOBY SHOOK:

8 Q. Do you have any questions about
9 anything that we've gone over? I know I have had you up
10 there for a while.

11 A. No, sir, no questions. I don't know
12 if I could look at any graphic pictures, though. That
13 was the only comment that I wanted to make.
14 I mean, my husband and I are
15 considering starting a family and I don't know if that
16 would, you know.

17 Q. In any murder case, and I know in this
18 murder case, graphic pictures are introduced. Okay?

19 A. Uh-huh. (Witness nodding head
20 affirmatively.)

21 Q. Sometimes they are introduced,
22 obviously, to show the crime scene and sometimes there's
23 valuable pieces of evidence there.

24 A. Uh-huh. (Witness nodding head
25 affirmatively.)

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1 Q. They are hard to look at, obviously.

2 A. Right.

3 Q. No one wants to look at those types of
4 pictures, you know.

5 A. Right.

6 Q. It's just real hard to do. If we had
7 a juror say, "Boy, I can't wait to see the pictures --"

8 that would be --

9 A. You would be kind of worried about
10 them, I guess.

11 Q. We would be wondering about them. Do
12 you understand that?

13 A. Uh-huh. (Witness nodding head
14 affirmatively.)

15 Q. And jurors have a tough time looking
16 at those pictures sometimes. And maybe, sometimes, they
17 need to take a moment after they do and pause and, you
18 know, get themselves together again.

19 But what we need to know is if
20 sometimes someone will see a graphic picture and then

21 they will just say, "I'm going to hang whoever is being
22 on trial. I don't care what the evidence is." You
23 understand? You still have to make your decisions on the
24 evidence.

25 A. Yes.

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1 Q. Whether there's graphic pictures or
2 not. This is a brutal crime, most murders are. You
3 understand that?

4 A. Uh-huh. (Witness nodding head
5 affirmatively.)

6 Q. Okay. Do you think if there are, you
7 know, graphic, brutal pictures introduced, you could
8 still base your verdict on the evidence and listen to all
9 of the evidence?

10 A. Maybe, I don't know, I mean --

11 Q. Well, you see my point?

12 A. Right.

13 Q. Just because there is a bad picture --

14 A. Right.

15 Q. -- you don't say, "Okay. The person
16 is guilty."

17 A. They did it.

18 Q. Right. You understand my point?

19 A. Right.

20 Q. Just because someone introduces a
21 photograph, a photograph may mean nothing more than this
22 is what the crime scene looked like.

23 A. Right.

24 Q. Do you understand that?

25 A. Uh-huh. (Witness nodding head
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1 affirmatively.)

2 Q. You have to find the person that --
3 requires to prove them guilty based on the evidence and
4 what connects them to the crime itself, not that the
5 crime was brutal.

6 A. Right

7 Q. Do you see where I am coming from?

8 A. Uh-huh. (Witness nodding head
9 affirmatively.)

10 Q. Okay.

11 A. Yes, sir.

12 Q. Can you do that?

13 A. Yes, sir. I believe so.

14 Q. Okay. You wouldn't want to find
15 someone guilty just because there is a bad picture in a
16 case, in other words?

17 A. Right.

18 Q. Okay. You might be outraged what had
19 happened to the victim, but obviously, you don't want to

20 convict the wrong person.

21 A. Right.

22 Q. Okay. Any other questions on anything
23 we have gone over?

24 A. No, sir, I don't believe so.

25 Q. Well, I appreciate your patience with
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1 us.

2 A. Okay.

3

4 MR. TOBY SHOOK: Judge, that's all the
5 questions I have for now.

6 THE COURT: Thank you, Mr. Mosty, or
7 Mr. Mulder. Who is going to do this?

8 MR. DOUGLAS MULDER: Judge, I will.

9 THE COURT: Okay.

10

11 VOIR DIRE EXAMINATION

12

13 BY MR. DOUGLAS MULDER:

14 Q. All right. Ms. Schreiner, I need to
15 visit with you just a little bit. Kind of touch on your
16 qualifications as a juror in this case.

17 I have read your questionnaire here.

18 It seems very complete. I notice that you seem to have
19 quite a bit of knowledge about the offense. Was most of
20 that gained from the papers?

21 A. Yeah. I commute about an hour and 10
22 minutes everyday, so I listen to the radio a lot.

23 Q. Where do you live?

24 A. I live on the YO Ranch, north of
25 Fredericksburg, about 65 miles away.

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1 Q. Okay. So you listen to the talk
2 shows?

3 A. Talk shows and -- uh-huh (witness
4 nodding head affirmatively), things like that.

5 Q. Read the newspaper, I guess?

6 A. Yeah, the newspaper. I watch the
7 Today Show and CNN.

8 Q. You watch television?

9 A. Yeah.

10 Q. Okay. I notice that -- could you tell
11 us, just briefly, what you recall reading about or

12 hearing about this particular case?
13 A. Just that two children were killed and
14 that it appeared that it was the defendant who did it,
15 because there weren't any footprints leading away from
16 the crime, and the screen door was from the wrong
17 direction.
18 But then it was kind of odd that, you
19 know, her husband was upstairs, and a child was upstairs,
20 but nobody heard anything.
21 I mean, I'm sorry, if something was
22 happening like that happened in my house, I'm sure my
23 husband would wake up and hear something.
24 And then, the pictures of the funeral,
25 I guess, with the bubbles and the cheerful --
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1 Q. The celebration?
2 A. -- celebration, yes, sir. Uh-huh.
3 (Witness nodding head affirmatively.)
4 Q. And that could not help but have an
5 impression -- have made an impression on you?
6 A. Right.
7 Q. I guess it did.
8 A. Right, kind of strange. You know, I
9 mean, I would be hysterical.
10 Q. Well, you thought the whole thing, the
11 explanation was rather implausible, kind of unbelievable?
12 A. Uh-huh. (Witness nodding head
13 affirmatively.)
14 Q. Like you said, the husband upstairs,
15 the little baby upstairs, that just didn't ring true to
16 you?
17 A. Right.
18 Q. In your life experiences?
19 A. Yes, sir.
20 Q. Okay. And that would be fair to say
21 that, I mean, we are all a -- I guess, a composite of our
22 experiences, would it be fair to say that that influenced
23 you some?
24 A. I would say so.
25 Q. Okay. Would you say, Ms. Schreiner,
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1 that as a result of what you heard on the radio or heard
2 and saw on television or perhaps read in the newspaper,
3 that you formed an opinion that would influence you?
4 Would that be fair to say?
5 A. From what I have heard, I mean, as of

6 yet I have. I mean, an opinion.

7 Q. All right.

8 A. I guess.

9 Q. And your opinion, I guess, right

10 now --

11 A. -- of guilt.

12 Q. Is that she is guilty?

13 A. Yes, sir.

14 Q. Is that fair to say?

15 A. Well, from now, yes, sir.

16 Q. And you impress me as an honest

17 person.

18 A. Uh-huh. (Witness nodding head

19 affirmatively.)

20 Q. I mean, a person who wants to be fair

21 to both sides.

22 A. Yes.

23 Q. Is that right?

24 A. Yes, sir.

25 Q. And, you hold the opinion right now

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1 that she is guilty, that she killed her two children?

2 A. Well, yes, sir. I mean, from what I

3 have heard.

4 Q. From what you have heard?

5 A. Yes, sir.

6 Q. Right. And, you also, I believe in

7 your questionnaire, said that you believed that she ought

8 to prove her innocence. In other words, if she didn't do

9 it, she ought to be --

10 A. Uh-huh. (Witness nodding head

11 affirmatively.)

12 Q. Is that fair to say?

13 A. Yes, sir.

14 Q. Okay. I take it that you think that

15 she ought to testify or you --

16 A. Well, I mean, I would.

17 Q. You would testify?

18 A. I mean, I would. Yeah.

19 Q. What?

20 A. If I thought I was innocent.

21 Q. She probably wouldn't get up here if

22 she were guilty. Is that right? Or would be less

23 likely --

24 A. Unless I was a good liar, I mean, I

25 guess, I don't know.

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1 Q. Okay. Is it fair to say that based on
2 what you know or believe to be the facts of the case that
3 you have formed an opinion, like I said, that she is
4 guilty that would influence your verdict? And be fair
5 with us.

6 A. Well, I guess it would depend on the

7 evidence. I mean, from what I have heard on the radio,
8 and from television, I would assume that she was guilty.

9 Q. All right. All right. And would,
10 that that you think, that feeling as you do, that she is
11 guilty, that that would influence your verdict? This
12 opinion that you have formed?

13 A. I don't know. I mean, I would think
14 that if someone came up and said, you know, "No, there

15 was enough evidence that said no, she didn't do it," then
16 I'm sure that I would change my mind.

17 Q. But you would --

18 A. But --

19 Q. Go ahead.

20 A. But I mean, I don't know. I mean, I'm
21 so confused.

22 Q. All right. Well, we are at that stage
23 where you think she is guilty?

24 A. Right.

25 Q. Fair enough?

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1 A. Fair enough.
2 Q. No question about that, is there?
3 A. No, sir.

4 Q. I mean, the way you sit here today,
5 you believe she is guilty?

6 A. Right, from what I have heard on the

7 television.

8 Q. From what you have heard?

9 A. Yes, sir.

10 Q. Sure. Okay. And, isn't it fair to

11 say that, Ms. Schreiner, that that would affect your

12 verdict?

13 A. Possibly.

14 Q. Would it influence you if she did not

15 testify?

16 A. Probably, I guess. I don't know. I

17 mean, I have heard so much from y'all, you know, and

18 about all this stipulations and how we are supposed to
19 keep an open mind. So, am I just supposed to answer this
20 question?

21 Q. Sure.

22 A. I would think it might influence me
23 some if she didn't testify.

24 Q. Okay. And that coupled with the fact
25 that you think she is guilty right now. And there are no
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1 right or wrong answers.

2 A. I know there is not.

3 Q. You know we're just looking for
4 honesty.

5 A. Right.

6 Q. I think you have been very candid with
7 us in saying that you -- I mean, I suspect people that
8 would try to get on the jury and say that they had no
9 opinion, when in fact they did.

10 A. Right.

11 Q. So, I think it's very --

12 A. Yes, I would think she should testify.

13 Q. All right. You would require her to
14 testify, wouldn't you, to overcome your feelings that she
15 is, in fact, guilty?

16 A. Yes, sir.

17 Q. Okay. I'm not going to change your
18 mind, am I?

19 A. No, no, you are not.

20 Q. So, just to kind of capsulize and
21 figure out where we are right now, Ms. Schreiner, is it
22 fair to say that you formed the opinion that she is, in
23 fact, guilty? Right now, based on what you have heard?

24 A. From what I have heard, yes, sir.

25 Q. Okay. Fair to say that that would
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1 probably, and I'll use the definition, more likely than
2 not, influence your verdict, the fact that you feel that
3 she is guilty? Fair to say?

4 A. Influence my verdict?

5 Q. Influence your verdict.

6 A. I mean, from the point now, I guess.

7 Q. You are going to have to be a little
8 bit more definite.

9 A. I know I am --

10 Q. You know what you have heard.

11 A. Right.

12 Q. You know what you have read.

13 A. Right.

14 Q. You know how you feel right now.

15 A. Right. And I feel that she is guilty

16 from what I have heard, yes.

17 Q. And you feel that that would, in all

18 fairness to her, you feel that that would influence your

19 verdict, don't you? The fact that you formed the opinion

20 that she is guilty right now?

21 A. I suppose it would.

22 Q. You are going to have to -- is that --

23 can I take that as a "yes"?

24 A. Yes, I guess.

25 Q. All right. So the fact that you feel

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1 that she is -- you have formed the opinion that she is
2 guilty now, would influence your verdict; is that right?

3 A. Right.

4 Q. No question about it, and I'm not

5 going to change your mind?

6 A. Right, you are not.

7 Q. How long have you held that opinion,

8 that she is guilty, Ms. Schreiner?

9 A. Just from what I saw on television, I

10 mean.

11 Q. Several months?

12 A. Well, how many months ago did it

13 happen? June or July.

14 Q. In June, yes.

15 A. Yes. Just, you know, I mean, I

16 remember hearing it and thinking it was like the lady

17 that had driven off the embankment with her children,

18 Susan Smith.

19 Q. Susan Smith, the same thing?

20 A. Right, yes. Same thing, you know,

21 high profile-type case and then they said "Well, it

22 appeared that she had done it." And so --

23 Q. And that is when you formed your

24 opinion?

25 A. Well, I mean, that was my opinion that

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1 I formed at the time. I mean, I didn't dwell on it.

2 Q. Okay.

3

4 MR. DOUGLAS MULDER: Judge, we would
5 submit the juror.

6 THE COURT: Any other questions?

7 MR. DOUGLAS MULDER: I don't think
8 there can be any other questions.

9 THE COURT: No, I wondered if Mr.
10 Shook had any other questions.

11 MR. TOBY SHOOK: No, we just put it to
12 you, Judge, if you have any.

13 THE COURT: All right. Here is the
14 thing, Ms. Schreiner. You are familiar with the
15 Constitution of the United States?

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: You believe in it?

18 THE PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Well, the first 10
20 Amendments are the Bill of Rights? Do you understand
21 that?

22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: The 5th Amendment states
24 that you can't require someone to be a witness against
25 themselves. Do you understand that?

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1 THE PROSPECTIVE JUROR: Right.

2 THE COURT: That is her right, that is
3 your right if you are ever where she is.

4 THE PROSPECTIVE JUROR: Right.

5 THE COURT: If this defendant elects
6 not to testify, would you hold that against her?

7 THE PROSPECTIVE JUROR: I might.

8 THE COURT: All right. Well, I have
9 got to have a little more -- would you or would you not
10 do it?

11 THE PROSPECTIVE JUROR: Yes, I would.

12 THE COURT: You would hold it against
13 her?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: Now, is your mind open now
16 or not as regards to her guilt? In other words, if you
17 were selected as a juror in this case, would you go into
18 the case with an open mind, totally open mind, as to
19 whether or not she is guilty? And if the State did not
20 prove her guilty, would you be able to find her not
21 guilty?

22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: If the State proves her
24 guilty, would you be able to answer those two issues
25 right up there?

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1 THE PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: As you saw fit?

3 THE PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Would you -- can you put

5 aside anything you have heard now on radio, TV,
6 newspapers, or whatever it is, put it out of your mind
7 and enter this case with an open mind, and follow the

8 law?

9 THE PROSPECTIVE JUROR: I don't know

10 if I could or not, no.

11 THE COURT: Is that a "no" answer you

12 are giving me?

13 THE PROSPECTIVE JUROR: Yes, sir. I

14 mean, I really think that that would be in the back of my
15 mind.

16 THE COURT: We understand that. But

17 there are a lot of things in the back of people's minds.

18 Can you put it out of your mind and follow the law and
19 come into the case with an open mind?

20 THE PROSPECTIVE JUROR: No, sir.

21 THE COURT: All right. Challenge for

22 cause granted.

23 MR. DOUGLAS MULDER: Thank you, Ms.

24 Schreiner.

25 THE COURT: Thank you for coming.

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1 Ma'am, if you will please remember not to speak to
2 anybody about what is going on in here until the whole
3 thing is all over with.

4 THE PROSPECTIVE JUROR: All right.

5 THE COURT: Thank you very much.

6 THE PROSPECTIVE JUROR: Thank you.

7 THE COURT: All right.

8 THE DOUGLAS MULDER: Judge?

9 THE COURT: Yes?

10 MR. DOUGLAS MULDER: Once she says she
11 has an opinion with respect to the guilt or innocence of
12 the defendant and that opinion would influence verdict,
13 she is to be discharged without further questioning.

14 THE COURT: Thank you for reminding
15 me, Mr. Mulder. I appreciate your help, thank you.
16 MR. DOUGLAS MULDER: Did you want me
17 to point that out when I submitted her for cause? Or did
18 you think I was submitting --
19 THE COURT: I thought you were
20 submitting her for cause. I just wanted to make sure

21 what she said. I am aware of what it says. But the
22 point is, she was wishy-washy around. She would say
23 probably, possibly. We never could pin her down. I

24 think I finally pinned her down, that is why I excused
25 her for cause. Probably, I think I can, maybe; that
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1 doesn't get it.
2 MR. DOUGLAS MULDER: Well, Judge, I
3 think I did pin her down. I don't think the Court can
4 inquire further is the way I read the law.

5 THE COURT: Well, are you objecting to
6 my excusing her for cause?
7 MR. DOUGLAS MULDER: No, no, I'm not.
8 THE COURT: Well, fine. I don't see
9 where you have an objection then. But if you wish to
10 object, and appeal my decision in excusing her for cause,
11 feel free to do so.

12 MR. DOUGLAS MULDER: Judge, I don't
13 think we are going to have to appeal your decision.

14 THE COURT: Thank you very much.

15 Anybody else here?

16 THE BAILIFF: Yes, sir, we have
17 another one.

18 MR. DOUGLAS MULDER: Just so we can be
19 clear on this.

20 THE COURT: I understand, you may
21 point that out. I understand what it says, and you may
22 point that out. I just wanted to make sure, when you are
23 dealing with a young lady like this, she was bouncing to
24 me.

25 MR. DOUGLAS MULDER: Judge, I just
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1 thought it might speed things up.
2 THE COURT: Well, we appreciate it.
3 The Court always likes to speed things up, Mr. Mulder.

4 But she seemed to say one thing to the State, and another
5 thing to you. And I wanted to make sure she said the
6 correct thing to me, and that is why I asked her.

7 So, we appreciate your solicitude for
8 the Court's well being.

9 MR. DOUGLAS MULDER: And I appreciate
10 your clearing that up for us.

11 THE COURT: Thank you very much, Mr.
12 Mulder. Let's move on to the next juror.

13 Good morning.

14 THE PROSPECTIVE JUROR: Good morning.

15 THE COURT: Glad you made it in, rain
16 and all.

17 THE PROSPECTIVE JUROR: I almost
18 didn't, I'm out of breath.

19 THE COURT: Are you okay now?

20 THE PROSPECTIVE JUROR: Well, it's the
21 medicine I'm on when I climb the stairs.

22 THE COURT: Okay.

23 THE PROSPECTIVE JUROR: First, you
24 told me --

25 THE COURT: Just a minute, we have to
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1 swear you in. Do you want to rest a minute?

2 THE PROSPECTIVE JUROR: No, I would
3 have to lay down to get over it. I would really rather
4 get this through with.

5 THE COURT: Well, let's just calm down
6 for a minute. Do you want a little break before you
7 start?

8 THE PROSPECTIVE JUROR: No.

9 THE COURT: All right. Can I ask you
10 to raise your right hand?

11 THE PROSPECTIVE JUROR: Yes, that I
12 can do.

13 THE COURT: Okay. Do you solemnly
14 swear or affirm you will true answers make concerning the
15 questions propounded to you in this room, or any

16 courtroom which you may be sent, concerning your
17 qualifications as a juror, so help you God?

18

19 (Whereupon, the prospective
20 juror was duly sworn by the
21 Court to true answers make
22 to the questions propounded,

23 concerning qualifications, after
24 which time, the proceedings were
25 resumed as follows:
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1
2 THE PROSPECTIVE JUROR: Yes, I do.
3 THE COURT: Thank you very much.
4 Could you please state your name?
5 THE PROSPECTIVE JUROR: Ethel Jones.
6 THE COURT: All right. Then we have
7 here Ms. Sherri Wallace.
8 MS. SHERRI WALLACE: Good morning.

9 THE COURT: Mr. Toby Shook from the
10 Dallas County District Attorney's Office.
11 MR. TOBY SHOOK: Hi.
12 THE COURT: Mr. Doug Mulder and Mr.
13 Richard Mosty.
14 MR. RICHARD MOSTY: Hi.
15 MR. DOUGLAS MULDER: How are you?
16 THE COURT: They are the defense
17 lawyers, and they represent Mrs. Darlie Routier who is
18 sitting there in the back there, in the black dress.
19 Go ahead, please, Ms. Wallace.
20 THE PROSPECTIVE JUROR: Wait just a
21 minute. You told me to tell them --

22 THE COURT: Okay. But they are going
23 to ask you questions first.
24 THE PROSPECTIVE JUROR: But you said
25 for me to do this before it started, I told you last
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1 week.
2 THE COURT: All right. What are you
3 going to tell them?
4 THE PROSPECTIVE JUROR: The questions,
5 to clarify something on my questionnaire. If I knew any
6 of the lawyers, I do not know any of the attorneys
7 personally. But after I got home, I remembered Mr. Mosty
8 had represented the opposition in a civil suit against my
9 husband. So I wanted to get that cleared up before we go
10 into anything else.
11 THE COURT: All right.

12 MS. SHERRI WALLACE: Is there anything
13 else you wanted to tell us, Ms. Jones?
14 THE PROSPECTIVE JUROR: No, that's it.

15 MS. SHERRI WALLACE: Okay.

16

17 Whereupon,

18

19 ETHEL RUTH JONES,

20

21 was called as a prospective juror, for the purpose of

22 voir dire, having been first duly sworn by the Court to
23 speak the truth, the whole truth, and nothing but the
24 true, testified in open court, as follows:

25

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1 VOIR DIRE EXAMINATION

2

3 BY MS. SHERRI WALLACE:

4 Q. I am Sherri Wallace. Again, I am one

5 of the Assistant District Attorneys on this case. I will
6 be asking you some and talking to you about some of the
7 things that you wrote in your questionnaire.

8 And, let me just tell you, I mean,

9 there are no right or wrong answers. Whatever you feel,
10 whatever you are thinking. Are you nervous a little bit?

11 A. No.

12 Q. Okay. Some people are when they feel

13 like they are on the witness stand or whatever. And this
14 is just, really just kind of visiting about how you feel
15 about these issues.

16 Since you started with talking about

17 how you were acquainted with Mr. Mosty, is there anything
18 about he being on the opposite side of your husband's
19 civil case that would affect you in this case?

20 A. No.

21 Q. Okay. You just wanted to let us know

22 that?

23 A. Yes.

24 Q. Okay. I also see, Ms. Jones, in your

25 questionnaire that you have been having some health

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1 difficulties?

2 A. Yes.

3 Q. How are you doing?

4 A. Well, that is one of the reasons I am

5 out of the breath. I am on Captopril and Coumadin, and I

6 will have to be on Coumadin for another three months.

7 They think by the end of six months my body will absorb
8 the blood clots. I do have to have blood tests
9 regularly.

10 Sometime around the middle of January
11 they think they will take me off the Coumadin. I will

12 have to have another examination and a blood test. And
13 then they put me on high doses of vitamin K for a few
14 days, to build the clotting factor back up.

15 So, I will have to have time off
16 should I be chosen to do this.

17 Q. We are planning on starting, as you
18 know, on January 6th, and we do not expect this case to
19 take longer than two weeks. It is possible it will go

20 into the third week. But there is no way, it's just very
21 unlikely. Never say never. But just very remote that it
22 would go any further than that.

23 A. Well, it's imperative though, when you
24 are on Coumadin, that you take your blood test regularly,
25 because of the clotting factor.

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1 Q. Okay. What time of the day do you go
2 in for that blood test?

3 A. Well, I normally go around 10 or
4 10:30.

5 Q. Okay.

6 A. It's not as crowded at the lab then.

7 Q. When is clinic open?

8 A. I think they open at 8:00, but I'm not
9 certain.

10 Q. Okay. Just for time during the trial,
11 I think the Judge is planning on working probably
12 around -- starting at 9:00 and going to about 5:00. He
13 generally takes an hour to an hour and a half for lunch.
14 Would that be okay with your schedule
15 with your drug?

16 A. As long as I can get the blood test,
17 yes.

18 Q. Okay. I'm sure he would accommodate
19 you.

20

21 THE COURT: We will accommodate you,
22 ma'am, on the test.

23

24 BY MS. SHERRI WALLACE:

25 Q. Okay. Is there anything about this
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1 drug that affects your ability to concentrate or anything
2 like that?

3 A. Well, both, what I was on, both of
4 those causes diarrhea, so that is another problem.

5 Q. Okay. He will take -- I mean, all you
6 have to do is lift your hand and he will take a break. I
7 assure you of that.

8

9 THE COURT: Yes.

10

11 BY MS. SHERRI WALLACE:

12 Q. Anything else about that, Ms. Jones?

13 A. No, that is it.

14 Q. Okay. That is enough.

15 A. Yes.

16 Q. Yes, I appreciate that. That is
17 plenty, I'm sure. As you know, we are seeking the death
18 penalty in this case. We are attempting to get the death
19 penalty on this woman right down here. And we believe we
20 have the type of case and the quality of evidence to do
21 that.

22 The defense, on the other hand, is
23 going to fight us every step of the way. And that is the
24 kind of issues that I want to talk to you about a little
25 bit.

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1 I see that you wrote on your
2 questionnaire, that you are in favor of the death
3 penalty?

4 A. Yes.

5 Q. Have you always felt that way?

6 A. Yes.

7 Q. Okay. Why are you in favor of it?

8 Tell me how you feel about it.

9 A. Well, I just think that there is

10 crimes when people know what they are doing, and commit a
11 crime, they should pay for it.

12 Q. Fair enough. Fair enough.

13 A. There's too many times they put them
14 in jail and they get out and do the same thing again.

15 Q. Okay. The death penalty in this State
16 is reserved for the most heinous crimes.

17 Not all murder cases, are eligible to
18 receive the death penalty. The crimes that are eligible,
19 are -- just an abbreviated list would be this: If you
20 murder a police officer or a prison guard; if you commit

21 a murder in the course of another felony, like if you are
22 robbing somebody and then you kill them; if you commit a
23 serial murder, that is, you kill more than one person; or
24 if you murder for hire.

25 Another way is, what is applicable in
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1 this case, is if you kill a child under the age of six.
2 And before you to your left, there is a copy of the
3 indictment. I will just ask that you look it over for a
4 second. I think the Judge read that to you all when you
5 all were here last week but --

6

7 THE COURT: Basically, this is what
8 she is talking about here.

9 THE PROSPECTIVE JUROR: Yes.

10

11 BY MS. SHERRI WALLACE:

12 Q. Yes, just that typewritten part.

13 Okay. So, that is what this case is about. Now, on your
14 questionnaire that you said that you believe the death
15 penalty is appropriate in all capital murder cases.

16 Let me ask you: Is there anything
17 else, other than the things that I have mentioned, that
18 you think would be appropriate, if you were in charge,
19 that you would make death penalty cases?

20 A. Well, I think any murder case. One
21 person is just as important as a cop or anybody else.

22 Q. All right. So you think the death
23 penalty should be examined for all murder cases?

24 A. Yes.

25 Q. Okay. With regards to proving our
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1 case and getting the death penalty in this case, the, you
2 said, again I will read it: You said that you believe

3 the death penalty is appropriate in all capital murder
4 cases.

5 Now, in order to receive the death
6 penalty, first the defendant has to be found guilty of
7 the capital murder. Now that is step 1.

8 Then you go to the second phase of the
9 trial which is the phase in which the jury is going to be
10 asked to answer these two questions. And, just, we will

11 talk more in detail about them, but briefly let me read
12 them. Read them along with me. "Do you find from the
13 evidence beyond a reasonable doubt that there is a
14 probability that the defendant would commit criminal acts
15 of violence that would constitute a continuing threat to
16 society?"

17 In order for the defendant to die that
18 question must be answered "yes."

19 The second special issue: "Taking
20 into consideration all of the evidence, including the
21 circumstances of the offense, the defendant's character
22 and background, and the personal moral culpability of the
23 defendant, is there a sufficient mitigating circumstance
24 or circumstances to warrant that a sentence of life in
25 prison rather than a death sentence be imposed."

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1 And to execute the defendant, that
2 must be answered "no."
3 If those are answered any other way,
4 other than "yes" and "no," a life sentence would result.

5 Now, looking at the first question,
6 once you found the defendant guilty, you must answer the
7 question: "If you find from the evidence beyond a
8 reasonable doubt that there is a probability that the
9 defendant would constitute a continuing threat by
10 committing future criminal acts." Okay.

11 That question cannot be answered
12 automatically. In other words, you can't say, "Well, I
13 found the defendant guilty of capital murder, and so

14 therefore, i.e., she is a criminal. She is a threat."
15 Okay.

16 You are required by law to revisit the
17 issue. You may get more evidence. You may not. But you
18 can't automatically answer that question.

19 Will you be able to revisit that
20 issue?

21 A. Uh-huh. (Witness nodding head
22 affirmatively.)

23 Q. Okay. So you will not automatically
24 answer that question "yes"?

25 A. No.

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1 Q. Would you require, in the same with
2 the special issue, the second special issue, that is the
3 mitigation issue. Some people call it the safety net.

4 In other words, you found her guilty of capital murder,
5 you have decided from the other special issue she should
6 die.

7 But because of certain facts that you
8 hear, it might be from the State, it might be from the

9 defense, you decide that she should live. And that is
10 just the safety net.

11 Could you look at all the evidence and
12 make that determination independently as well?

13 A. Uh-huh. (Witness nodding head
14 affirmatively.)

15 Q. Okay. The indictment that you just
16 looked at earlier, we must prove to you beyond a
17 reasonable doubt. It's our burden, we gladly accept it
18 in this case, as it is in all cases. We can prove that
19 indictment to you several different ways, as long as we
20 meet our burden. We can do it by direct evidence, or
21 indirect, sometimes called circumstantial evidence.

22 Direct evidence would be an
23 eyewitness. Okay?

24 A. Okay.

25 Q. I saw that person do that crime. Very
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1 simple. But as I am sure you can imagine in a murder
2 case, a lot of times, our eyewitness is dead. There is
3 nobody to speak for them.

4 And, as you know from the Judge's

5 comment, the defendant has an absolute right not to
6 testify. So very often in murder cases, we must rely on
7 the other type of evidence, which is indirect or
8 circumstantial evidence in order to obtain a conviction.
9 That evidence is stuff like:

10 Fingerprints, or DNA, or blood spatters, or maybe
11 statements by the defendant that doesn't comport with the
12 crime scene, fibers, things like that.
13 Could you convict the defendant of

14 capital murder if you believed that we proved the case
15 beyond a reasonable doubt to you on circumstantial
16 evidence?

17 A. Yes.

18 Q. Okay. Another thing that the Judge
19 mentioned in his comments was that we must prove the
20 indictment to you.

21 And the indictment is the only thing
22 we have to prove. Now, some people think, and where am I
23 going with this? Where I am going is, we don't have to
24 prove motive. Okay?

25 The reason we don't have to prove
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1 motive is, as you know, we can't call the defendant to
2 the stand. And, you can't hold that against us or her.
3 So, it would be impossible for us to
4 know what the defendant was thinking at the time.

5 Now, maybe as we go through the trial,
6 the motive becomes very apparent to you. It may be that
7 it could be one of several different things. Or it may

8 be that we never know.
9 But, could you find the defendant
10 guilty if we proved the case beyond a reasonable doubt
11 even if you did not know the motive?
12 A. I'm not sure.

13 Q. Okay. So you would want to know what
14 the defendant was thinking?
15 A. Yeah.
16 Q. Okay. Let's talk about that a little
17 bit. It is human nature to kind of want to figure
18 this -- kind of solve the crime, you know, kind of figure
19 it out. So, you are right thinking in that regard. But,
20 the law says, that we have to prove to you the
21 indictment. Okay?
22 A. Yes.

23 Q. And it may be that we're not sure of
24 the motive. It may be that the motive is unclear. It
25 may be that they are many motives. Or it may be that the
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1 criminal is just plain mean, and there isn't necessarily
2 a motive. So, are you telling me that if perhaps this
3 criminal is just flat mean, and there is no motive that
4 maybe we can understand, that even if we prove the case
5 to you beyond a reasonable doubt, you would find her not
6 guilty?

7 A. No. I think that you would have to
8 know more about her character, and her life, and if she
9 was involved with someone else, and weigh all the
10 evidence, and if you think she was, then I think I could
11 convict her.

12 Q. That's all we need to know. Once
13 we -- in the event the defendant is found guilty, we go
14 to these special issues that we talked about a little

15 bit, and I want to talk to you about them a little bit
16 more. That will be the second phase of the trial. The
17 second phase of the trial you may hear more evidence,

18 and, again, as I say, you may not. But the first special
19 issue says, that you have got to find that there is a
20 probability that the defendant would commit criminal acts
21 of violence that would constitute a continuing threat.

22 And, as you may or may not know, when you serve on jury
23 service, we give a lot of definitions. The Judge is
24 going to give you a bunch of definitions, but he is not
25 going to give you any definitions for this question.

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1 So let me ask you, how do you feel
2 about -- what does the word "probability" mean to you?

3 A. There is a very good chance it will
4 happen.

5 Q. Okay. So more likely than not.

6 A. Uh-huh. (Witness nodding head
7 affirmatively.) More likely than not.

8 Q. Fair enough. And what is the word
9 "criminal acts of violence"? What does that mean?

10 A. Well, it could be, maybe not killing
11 someone but hurting someone. Or anything that would
12 inflict bodily injury on someone.

13 Q. Okay. So any sort of injury to a
14 person?

15 A. Yeah.

16 Q. All right. What about, some people
17 think criminal acts of violence is violence against

18 property, breaking in a home or something like that.
19 Would that fall in your category?

20 A. Well, that is a criminal act, but I
21 don't think I would want to send somebody to the death
22 penalty for breaking into a house.

23 Q. Okay. So you would need to feel, more
24 likely than not, the defendant would injure somebody
25 again?

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1 A. Yeah.

2 Q. Fair enough. Okay. All right. In
3 the event that question is answered "yes," you would go
4 to the next question, the mitigation issue. And, as I
5 said, this is a safety net. And there has to be

6 sufficient mitigating circumstance, after you've already
7 decided she should die, that you decided that there is

8 something, there is a reason to save her. Okay? Now,
9 that can be anything. Is there anything, off the top of
10 your head, that you know right away would be mitigating
11 to you?

12 A. Well, I hadn't really thought about it
13 that much.

14 Q. Yeah, it's not something that we sit
15 around and think about, is it?

16 A. I think that if you, if we could be
17 positive, or if I could be positive, if they got a life
18 sentence, if it was mitigating circumstances, and it
19 meant a life sentence, but not serving eight or ten years
20 and be out, I think I might be inclined maybe to go with
21 that. If, or to the second one, but if -- nearly every
22 case that I read about a life sentence doesn't mean a
23 life sentence.

24 Q. Well, I want to talk to you about
25 parole in a little bit. And we will definitely touch on
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1 that. But, while we are kind of on this mitigation deal,
2 some people say like alcohol would be mitigating. Some
3 people say alcohol, if they were drunk at the time of the
4 offense or they were an alcoholic, that that would be
5 aggravating. One of the classic -- the reason that this
6 question came to be was in a case where the defendant was
7 mentally retarded. He knew the difference between right
8 and wrong, but he just, you know, was of lesser mind than
9 the rest of us. That was a mitigation issue in that
10 case.

11 But all we really need to know from
12 you is, could you listen to all of the evidence, whether
13 it came from the State or the defense, and make a
14 determination on that issue?

15 A. Yes.

16 Q. Okay. The important thing to remember
17 about this issue is there is no burden of proof on the

18 State. There is a burden of proof on the State in the

19 indictment, there is a burden of proof on the State on

20 the first question, but not on the second question. It's
21 just as I said earlier, that safety net.

22 Let me talk to you now about the

23 parole. One of the things -- one of instructions the
24 Judge will give you is that you absolutely, under no
25 circumstances, may consider parole. You can't think
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1 about it. You can't refer to it in your deliberations.

2 Now, I know sitting out here as a

3 citizen, you may have some concerns about parole. But as
4 a juror, we need to inform you that you will use your
5 mental discipline to not consider parole.

6 The reason for that is is that, you

7 don't know, we don't know, the Judge doesn't even know,
8 about parole issues. They could change like the winds.

9 So you can't consider that, for any reason. Could you
10 follow that law, Ms. Jones?

11 A. Sure could.

12 Q. Okay. And, to go a little bit

13 further, could you promise to the Court that you could
14 think of a life sentence as a life sentence and not
15 consider parole?

16 A. To be honest, I'm not sure.

17 Q. Okay. Let's go back over that then.

18 The Judge is going to instruct you that you can't

19 consider parole. Okay? And you have said that you could
20 accept that instruction and follow that. Right?

21 A. Uh-huh. (Witness nodding head
22 affirmatively.)

23 Q. Right. So, if you were to follow
24 that, and you were to consider a life sentence, then you
25 would have to make the assumption that the defendant
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1 would serve a life sentence.

2 Would you be able to do that, Ms.
3 Jones?

4 A. Well, it would depend on the evidence.

5 I know I am probably evading the answer, but if I thought
6 that she -- and was very convinced that she actually
7 murdered those children, then I think she should get the
8 death penalty. Period.

9 Q. Well, all right. In order to sit on
10 this case, you have got to keep an open mind. And I

11 think you have said earlier that you would do that.

12 You know, I see from your

13 questionnaire that you had heard about this in, I think,

14 different places like the TV --

15 A. Yes.

16 Q. -- and the newspaper, radio. And you

17 know, a lot of people have. This made the news and it

18 was a high profile case for a while. So it's not

19 uncommon or unusual that you heard about the case.

20 A. Uh-huh. (Witness nodding head

21 affirmatively.)

22 Q. But what is critical to be a juror in

23 this case is that you void your mind of that information

24 and get your facts and your information from the

25 courtroom only. And that is, again, the mental

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1 discipline I was talking about as a juror. Would you be
2 able to do that?

3 A. Yes.

4 Q. Okay. Now you said if she killed

5 those two kids, she deserves the death penalty. In Texas

6 we don't answer the question like that. You know, we

7 don't just say guilty, so death. You actually have to

8 jump through these hoops and it is the Judge that imposes

9 the death sentence. The jurors don't write death or

10 life. Okay?

11 A. Uh-huh. (Witness nodding head

12 affirmatively.)

13 Q. They answer these questions in a way

14 that gives the Judge absolutely no option. So, could you

15 hold the State, you have found the defendant guilty of

16 capital murder, okay, of killing the child in the

17 indictment, who is under the age of six, then we proceed

18 to the next phase of the trial.

19 Would you follow the law and hold the

20 State to our burden, which we gladly accept, in the first

21 special issue, and make us prove to you that because of

22 this crime and whatever else, if anything, that the

23 defendant would commit criminal acts of violence that

24 would constitute a continuing threat to society?

25 A. Yes.

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1 Q. So you could do that?

2 A. Uh-huh. (Witness nodding head
3 affirmatively.)

4 Q. So it would not be an automatic, "If
5 she did it, I would kill her"?

6 A. No. I wouldn't automatically sentence
7 anyone to death or invoke the death penalty just --

8 Q. Okay. All right. The defendant is --

9 the Judge went over some principles that I just want to
10 talk to you briefly about, some general principles of
11 law. The defendant is presumed innocent at this point.

12 And that is what this burden of proof

13 is all about. If you voted right now, you would have to
14 find the defendant not guilty. Could you do that?

15 Because you have heard no evidence.

16 A. Probably, because I really haven't
17 heard any.

18 Q. Right. The defendant also has an
19 absolute right not to testify. That is guaranteed by the
20 Constitution and you can't use that against her. Now
21 again, this gets back to human nature. You may want to
22 hear from her, you may think it would be interesting, a
23 lot of folks like to hear both sides of the story, that
24 sort of thing.

25 But as a juror, you must not consider
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1 her if she chooses not to testify. That is a right
2 afforded her and it cannot be considered against her in
3 any way.

4 Could you follow that law?

5 A. I think so.

6 Q. All right. With regards to proving
7 our case, Ms. Jones, proving it to you beyond a
8 reasonable doubt, it may come to pass that there are some
9 police officers that testify.

10 Now, all the witnesses, this is
11 another instruction the Judge will give you, all of the
12 witnesses must start out on the same plane. You cannot
13 give more credibility to somebody because of a job or an
14 occupation.

15 Once you hear from that person, you
16 may give them more credibility because of their
17 experience, their training, things like that. But you

18 can't just, automatically, see somebody in a uniform and

19 say I'm going to believe whatever they say, you know.

20 A police officer could come in here
21 and say, "You know, today is April and it's snowing
22 outside." Well, it is neither. Okay?
23 So could you just wait and hear all of
24 the witnesses and determine their credibility
25 individually?

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1 A. Yes.

2 Q. Okay. Sometimes defense attorneys
3 will ask a question like this. Now I'm not saying these
4 guys would, but would you believe a police officer simply
5 because he is a police officer? Okay?

6 And really, that is kind of a trick
7 question. Because you have got to wait and determine the
8 witness's credibility.

9 Would you be able to do that?

10 A. Yes.

11

12 MS. SHERRI WALLACE: Just a second.

13

14 (Whereupon, a short

15 discussion was held
16 off the record, after
17 which time the

18 proceedings were resumed

19 as follows:)

20

21

22 BY MS. SHERRI WALLACE:

23 Q. Ms. Jones, I want to kind of go back
24 over a couple things: What is critical in this case is
25 that you remain open. That you don't prejudge anything,
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1 and that you withhold your opinion until you get into the
2 jury box and hear from the witnesses, and get the law
3 from the Judge. And I think you said that you could do
4 that.

5 And, with regards to the mitigation
6 question, the second special issue, it is up to you to
7 decide what you think mitigation is. You do not have to
8 tell us what you find mitigating.
9 You don't have to decide at this point

10 what you have to find mitigating. But, after you hear

11 all of the evidence, in your heart, if you felt it was
12 sufficient, and that word is key there, if you felt it
13 was sufficient, mitigating evidence, even after you had
14 found the defendant guilty of killing a child under the
15 age of six, and you had decided that she probably would
16 be a continuing threat to society.

17 If you felt, in your heart, that what
18 you have heard from the facts were sufficient, could you
19 answer that question "yes," knowing it would result in a
20 life sentence for the defendant? Not somebody else's
21 opinion, just yours.

22 A. Well, it would have to be pretty good
23 mitigating circumstances.

24 Q. Okay. What you think should be
25 mitigating circumstances is your business, you know. I
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1 mean it's different for every other person. But, and
2 like I said, you don't even have to think of a set of
3 facts where you would answer that question yes.

4 But you do have to keep an open mind,
5 and say, "If it was there, well, I would know it when I
6 saw it." Could you do that?

7 A. I think so.

8 Q. All right. I think that is all I have
9 for you. The defense attorney is going to ask you some
10 questions.

11 A. Are they going to try to trip me up?

12

13 THE COURT: Now, ma'am, calm down,
14 nobody is trying to trip you up.

15 MS. SHERRI WALLACE: Judge, I'm sorry.

16 I wanted to ask about one thing.

17 THE COURT: Yes, ma'am.

18

19 BY MS. SHERRI WALLACE:

20 Q. One of your -- one of your questions,
21 you said that the first thing that comes to mind when you
22 think of defense attorneys is getting a guilty person off
23 or sometimes twisting statements.

24 Now, I certainly appreciate that
25 opinion. But, as a juror, of course, you will to have
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1 set that aside?

2 A. I know.

3 Q. And, you will have to hold us to our
4 burden, and give both sides the credibility, even playing
5 field, if you will. Will you be able to do that?

6 A. I think so.

7 Q. Okay.

8

9 MS. SHERRI WALLACE: That's all.

10 Thank you, Judge.

11 THE COURT: Thank you, Ms. Wallace.

12

13 VOIR DIRE EXAMINATION

14

15 BY MR. RICHARD MOSTY:

16 Q. Ms. Jones, let me ask you a few
17 questions and I want to start off with, you know I have
18 sat through these things for a while now, and in
19 different cases. And I want to emphasize one thing with
20 you, some people say there are no right or wrong answers
21 and I disagree with that a little bit. I will say there
22 are no wrong answers. The only wrong answer is a
23 dishonest answer.

24 And all of the answers are right that

25 a juror gives, if they are honestly given and they are
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1 your opinion. And I say that in the sense of it is no
2 reflection on any person, we are all molded by our
3 influences and bias and our opinions and there are some
4 cases, quite frankly, that I just couldn't be a fair
5 juror on. It doesn't mean that I am a bad person. It
6 doesn't mean that I couldn't be a good juror on another
7 case.

8 It just is some cases, because maybe I
9 know something about the case, maybe it's about
10 circumstances, maybe it's who is involved, maybe it's
11 because what my opinion of defense lawyers, maybe I would
12 be a great juror on a civil case and couldn't be one on a
13 criminal case. So, all we are looking for are your
14 candid answers.

15 And please be just brutally honest,

16 because you can imagine the importance of this day to
17 Darlie Routier. And any right-minded person would say,
18 "Listen, you know, an unfair or biased person just ought

19 not to be on a jury."

20 So, please say exactly what's on your

21 mind and tell us exactly where you are coming from.

22 And, let me be perfectly candid with

23 you, some of your questions cause me a little concern.

24 Sitting here today as to whether or not we really are on

25 an even keel. My partner, Preston Douglass, always talks

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1 about putting up a pen, and when we are sitting here
2 right now, are you just perfectly upright, right down the
3 middle, fair and open to both sides, or do you actually
4 have some leaning one way or another? And, let me be
5 candid with you. It seems to me like maybe you have got
6 a little leaning toward Mrs. Routier being guilty here
7 today.

8 A. Well, I don't know that I have, that I

9 can say she is guilty. But being a mother and a
10 grandmother, I cannot fathom anyone killing her children.

11 And, if she did do it, then I think,

12 like I said, she should get the death penalty.

13 Q. Then you are sort of predisposed that

14 if, in fact, you find her guilty --

15 A. If she did it.

16 Q. -- that the death penalty is the only

17 proper thing?

18 A. I think so.

19 Q. And, so, the other thing I want to say

20 to you is that I have been in a lot of these cases and
21 people say, you know, if the Judge tells you this is the
22 law, will you follow the law. I have never heard a
23 person yet say, I won't follow the law, when asked by a
24 Judge, or actually by any lawyer.

25 However, they also get around and say,

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1 you know, deep down inside to be perfectly honest, "I
2 just don't think that I can do that. I, you know, I just
3 don't think that I can set my personal feelings aside, no
4 matter what you tell me the law is."

5 And is that sort of the way you feel

6 about, if you found a defendant guilty of -- based on

7 what you know about this case, that you don't think you

8 could consider a life sentence at all?

9

10 MR. TOBY SHOOK: Well, Judge, I'll

11 object to that. He is trying to tie her into specific

12 facts in this case.

13 THE COURT: Sustain the objection.

14

15 BY MR. RICHARD MOSTY:

16 Q. Well, let's talk about it in any case.

17 Do you think that you could ever consider giving a life

18 sentence to someone who killed a child under six years of

19 age?

20 A. Well, it would depend on the

21 circumstances. But like I say, if she did it and the

22 evidence is there, then I think that she should get the

23 death penalty.

24 Q. Well, let's talk about it because you

25 are making some references to she, and when you make that

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1 reference --

2 A. Well, anyone.

3 Q. Let's talk about what you know about

4 this particular case. Tell me a little bit about what

5 you know about this case.

6 A. About all I know is that her husband

7 was upstairs supposedly asleep with the infant son, and

8 she was downstairs with the other two, and she says that

9 robbers or burglars or somebody broke in, and stabbed the

10 children and stabbed her. And the paper says that there

11 was no evidence that anyone was in the house, there was

12 no disturbance of any dust on the windowsills, and that

13 is about all I know.

14 Q. Okay.

15 A. They think that she inflicted the

16 wounds herself.

17 Q. Okay. So, you have got a fair amount

18 of detail about what you understand the facts of the case

19 to be?

20 A. Yes.

21 Q. And, you made a couple of statements

22 in there about her husband was supposedly, you used the

23 word supposedly, and that she allegedly did something, do

24 I take it from that that you find that story hard to

25 believe, that the explanation to be implausible?

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1 A. Well, I don't know that her husband

2 was upstairs. I don't know that she was downstairs with

3 the children, because we have not really heard any

4 evidence. But, I keep going back to the Susan Smith

5 thing and the first time I saw her give her little crying
6 speech on TV and pleading for somebody to bring her kids
7 back.

8 I looked at my husband and said then,
9 she is not really crying, she is putting on.

10 So, I would have to see more than just
11 sitting here looking at her now, you know.
12 I mean, sitting here I can't say that
13 she is guilty.

14 Q. And I don't think anybody would, no
15 person even if they had an opinion right now about
16 someone's guilt, would say, "I have enough evidence to
17 convict." And that is not what I'm asking you.
18 But, I guess what I'm asking you is

19 based upon what you have heard today, just as you sit
20 right now, do you have an opinion that Mrs. Routier is
21 probably guilty?

22 A. Leaning toward that.

23 Q. Does that mean that your opinion is
24 that she is probably guilty?

25 A. Just could be, but I would not ever
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1 send anybody to the death penalty just on that.

2 Q. I understand that, you know, I
3 understand that. And let me reassure you, that is not
4 what I am asking. I am not at all asking that. Because
5 I don't think any right-minded person would ever do that.
6 But what I am asking you is about your opinion right now,
7 just based upon what you know?

8 A. Leaning toward guilty.

9 Q. Okay. And do you think that that
10 opinion is such that it may influence you in your
11 deliberations toward a verdict?

12 A. Not if the evidence wasn't there to
13 prove it. I would never send anyone to the -- give them
14 the death penalty if the evidence wasn't there.

15 Q. Okay. Let's make sure I am being
16 clear because I'm not asking you how you would vote. I'm
17 asking you if your opinions would be an influencing
18 factor. If what you know, let's, for instance, that
19 somehow some of the evidence comes out that supports what
20 you know, and some of it comes out that maybe perhaps

21 doesn't support what you presently know. Do you think
22 that your current opinions would have an influence, or
23 may have an influence, in your deliberations as a juror?

24 A. No. I would go strictly on the

25 evidence.

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1

2 THE COURT: All right. I think we
3 have covered that point, let's move on.

4

5 BY MR. RICHARD C. MOSTY:

6 Q. All right. Let's talk about parole.

7 You expressed some opinions about what your understanding
8 of parole laws are. And the Court will tell you that you
9 cannot consider parole laws. That it will go back to
10 that is the law.

11 And, I guess, the question that I have

12 got to you is that notwithstanding that that is what you
13 will be instructed, do you think that your understanding
14 of the parole laws will have an influence when you
15 consider whether or not someone gets a life or death
16 sentence?

17 A. Maybe to some degree. Like I said, if

18 I was positive that it meant a life sentence, meant a
19 sentence without parole would be one thing, but just a
20 life sentence is something else.

21 Q. Well, there is not a life sentence

22 without parole. There is no such sentence in Texas as a
23 life sentence without parole.

24 A. Well, then I think if she killed them,
25 she ought to get the death penalty.

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1 Q. So, because of your understanding of
2 the parole laws, and in spite of what the Court may tell
3 you, not to consider that, would you automatically
4 then -- and I don't want to use the word automatically
5 because nobody does anything automatically of that
6 importance. But, after having found someone guilty of

7 capital murder, and based on your understanding of the
8 parole laws, and in spite of what the Court may say to --
9 that you cannot concern yourself, would you necessarily
10 conclude that a defendant who you had convicted of murder
11 of a child under six should have the death penalty?

12 A. Probably.

13 Q. Okay. Can you -- probably is -- and I
14 hate, I always hate these because it's unfair really to
15 try to get people to commit, but you are the only one
16 that can tell us --

17 A. Well, then I will say yes.

18 Q. Will you foreclose, or would you be

19 predisposed to a death penalty under those circumstances?

20 A. Well, yes.

21 Q. Okay. And you would not, under those

22 circumstances, you wouldn't give fair consideration to a

23 life sentence based upon your -- your honest beliefs?

24 A. I don't think so, if I had all the

25 evidence and absolutely found her guilty.

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1 Q. Well, you, of course, by that time,

2 you are dealing with someone that you know for a fact is

3 of capital murder of a child under six years of age?

4 A. I think she should pay the penalty.

5 Q. And then that penalty in your mind,

6 the only penalty, applicable is death?

7 A. It would be the first one, yes.

8 Q. Is that -- well, you only get two

9 choices. Life in prison or death. And would you only

10 consider the death penalty?

11 A. I would consider life in prison, like

12 I said, if there was really, really good circumstances.

13 But, my first thing, if I was convinced that she did it,

14 I think it should be the death penalty. But it would

15 depend on what I found out from the evidence.

16

17 THE COURT: I think we have covered

18 that.

19

20 BY MR. RICHARD C. MOSTY:

21 Q. I am not sure I understand what you

22 mean by what you found from the evidence.

23 A. Well, the evidence that was presented

24 to us.

25 Q. On guilt or innocence?

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1 A. Yes.

2 Q. Of course, again, remember you are

3 talking about someone that is absolutely guilty.

4 A. Okay. Well, I don't know what else I

5 can say to you.

6

7 THE COURT: I think Ms. Jones has

8 answered the question.

9

10 BY MR. RICHARD MOSTY:

11 Q. Mrs. Jones, in all fairness, are you

12 saying that after you had found, beyond any reasonable

13 doubt, that an individual had intentionally and

14 knowingly, without any justification, taken the life of a

15 six year old, a child under six years of age, that you

16 could consider giving that person a life sentence?

17

18 MS. SHERRI WALLACE: Your Honor, I am

19 going to object, she has answered this question.

20 THE COURT: I sustain the objection.

21 We went over that three times now, let's go on.

22 MR. DOUGLAS MULDER: Judge, I have not

23 heard her answer that question.

24 THE COURT: Well, she has answered the

25 question, because she said she would listen to the

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1 evidence. Is that a fair statement?

2 THE PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: And do what you think is

4 right.

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: All right. I think we

7 have answered that.

8 MR. DOUGLAS MULDER: Well, Judge --

9 THE COURT: Well, ask the question.

10 I'll let you ask it one more time.

11 MR. DOUGLAS MULDER: All right.

12

13 BY MR. RICHARD MOSTY:

14 Q. And, I know you would do what you

15 thought was right, and that is what I am trying to answer

16 is: Will you consider giving fair consideration to the

17 full range of punishment?

18 And, let me restate my question,

19 because it is: Are you saying, that if after you had

20 found the defendant guilty beyond any reasonable doubt,

21 of intentionally and knowingly murdering a child under

22 the age of six years of age, without any justification,

23 that you could give consideration to a life sentence for

24 that person?

25 A. I could give consideration, but I

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1 still think my first thing would be death penalty, but I
2 would consider it.

3 Q. Well, are you saying that you think
4 you could give full and fair consideration, I mean, there
5 are lots of things we would give passing consideration
6 to?

7 A. No. I would give full consideration,
8 I take the death penalty very serious. I wouldn't want
9 anybody to lose their life without real serious
10 consideration.

11 Q. Tell me about -- there are a couple of
12 things that I want to talk about in your comments. You
13 made the comment in your questionnaire that defense
14 lawyers were to trying to get -- I don't whether you
15 used, guilty people off.

16 A. I think they do.

17 Q. Twisted statements. You made the
18 comment a minute ago, when you first started this, that
19 the defense lawyers are now -- the defense lawyers get an
20 opportunity to try to trip you up, and you made the
21 comment that I had represented someone against your
22 husband?

23 A. You were.

24 Q. What case was that? Who is your
25 husband? What is his name?

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1 A. Charles Jones.

2 Q. All right. And, what do you remember
3 about that case?

4 A. Well, I remember quite a bit about it.

5 Q. Pardon?

6 A. I remember quite a bit about it.

7 Q. And, what is your feeling about how
8 that case progressed?

9 A. Well, I think it was asinine case to
10 start with.

11

12 THE COURT: A civil case, no doubt.

13 THE PROSPECTIVE JUROR: Yes, sir, it
14 was a civil case.

15 THE COURT: Thank you.

16

17 BY MR. RICHARD MOSTY:

18 A. At the time I wondered -- do you
19 really want me to tell you?

20 Q. Yes, ma'am, I want you to.

21 A. At the time I had some choice words

22 for you, because I couldn't imagine why any lawyer would
23 take a case that should never have gone to trial in the
24 first place.

25 And, I don't hold anything against you

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1 about that. I would not ever hold anything against her
2 because of what some case that you did. It's over with,
3 and I am not holding any hard feelings.

4 I only told the Judge and you both

5 because I did not want this to come up later and have a
6 mistrial. Because I didn't think about it at the time I
7 filled out the questionnaire.

8 Q. And, I want to be, you need to be

9 perfectly honest.

10 A. I am.

11 Q. And I want you to be, to say

12 everything that is on your mind. Because, that does
13 cause me some concern about whether or not, if I get up
14 and say something or argue a position, that I would be
15 given the same consideration that the State's lawyers

16 would.

17 A. Yes, you would, because like I said, I

18 would not ever punish her for something that maybe I
19 didn't like what you did, months and months ago.

20 Q. Well --

21 A. And, like I said, I don't even know

22 you, the 21st is the first time that I ever saw you.

23 Q. Well, obviously, you have a fairly low

24 opinion of me?

25 A. Well, not anymore than any lawyer.

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1 Q. Does that include the prosecuting
2 attorneys?

3 A. That includes all lawyers. I have a
4 daughter that is an attorney. I just don't like a lot of
5 things that attorneys do. My husband told our daughter
6 when become an attorney, as a daughter he would always
7 love her, as an attorney, he didn't know.

8 Q. What was it that you thought about the

9 way I handled that case was asinine?

10 A. I said the case, the whole thing to

11 begin with, should not have ever gone to trial. This was

12 a real SOB from Dallas that goes around preying on people
13 in bankruptcy courts. The other guy declared bankruptcy,
14 and we called him Parasite Broadcasting, that wasn't his
15 name, but you remember him. And he bought off the guy
16 that owed the money and turned him lose and come after
17 us. That is what it was. And I thought the case should
18 never have gone to court.

19 Q. And presently, we have \$100,000 plus

20 judgment against you --

21 A. Well, not against me.

22 Q. -- against your husband over that?

23 A. Against my husband.

24 Q. And, it's your testimony that the fact

25 that I obtained a \$100,000 judgment against your husband,
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1 oh, within the last six months?

2 A. Well, it's been a little longer than

3 that, I think. Now that wouldn't affect me, because they
4 are not going to get \$100,000 anyway because we don't
5 have it. So --

6 Q. Well, I'm not so concerned about that.

7 What I'm concerned about is my -- how I -- what kind of
8 shake I get.

9 A. You get a fair shake. Like I said, I

10 got a daughter that is an attorney. I just do not have a
11 real high opinion of attorneys period.

12 Just like I don't have high opinion of
13 attorneys -- of the oil companies, and I have a
14 son-in-law that is an engineer with Exxon. And he knows
15 how we feel about the oil companies or insurance
16 companies.

17 I mean, they are all just kind of run
18 in there together. So, I am being perfectly honest with
19 you. I don't even like some judges because I think they
20 are too liberal, that they give too light of sentences.

21 Or too many of the plea bargains, you know, are made in
22 the justice system.

23 THE COURT: Well --

24 THE PROSPECTIVE JUROR: Now how much

25 more honest can I get?

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1 THE COURT: Well, I think that is
2 wonderful. I hope I don't fall in that category.

3 THE PROSPECTIVE JUROR: Well, I don't
4 know you, so I will have to see.

5 THE COURT: All right.

6

7 BY MR. RICHARD MOSTY:

8 Q. What about the statement, that the

9 defense lawyers are here to twist statements. Is that
10 what you think of lawyers?

11 A. Well, sometimes from watching the --

12 I'll say O.J. Simpson trial, for one thing. I think

13 everybody that has got any common sense at all, knows
14 that he is guilty, but yet he got off. And defense

15 attorneys twisted everything that they possibly could, to
16 make it seem like he was a perfect citizen and never done
17 a thing in the world wrong in his life. That is what I
18 was talking about.

19 Q. Do you think that is what Mr. Mulder

20 and I are here to do?

21 A. Well, I hope not.

22 Q. Well, I understand that. But what is
23 your feeling sitting there today? You -- again, you are
24 the only one that can answer that.

25 A. I don't think you would. Like I say,
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1 I don't even hold anything against you about this lawsuit
2 because, like I said, they are not going to get anything
3 anyway because we don't have anything. So what are you

4 so worried about? I mean, it just doesn't bother me any
5 more. They got a judgment and that is it.

6

7 THE COURT: I think that we have
8 covered that point.

9 MR. DOUGLAS MULDER: We would like to
10 pursue that a little bit, Judge.

11 THE COURT: Well, all right. Let's
12 get on to something new in that area. I think Ms. Jones
13 has been quite candid in answering. She is not going to
14 hold it against your client for whatever may have

15 happened in this suit, or judgment or whatever.

16 And, go ahead. I think we understand

17 what Ms. Jones is saying. The Court certainly does.

18 THE PROSPECTIVE JUROR: How many more
19 witnesses like me do you want now?

20 THE COURT: We would just as soon have
21 everyone just like you, ma'am.

22

23 BY MR. RICHARD MOSTY:

24 Q. Ms. Jones, you do not feel that your
25 health -- or do you feel that your health situation will
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1 interfere with your ability to listen carefully and
2 participate and all that stuff for what we are estimating
3 to be a two or three week period in January?
4 A. At this point, I hope not, as long as
5 I can get my blood test.

6

7 THE COURT: Well, we will let you get
8 your blood test.

9 THE PROSPECTIVE JUROR: And my
10 medication.

11 THE COURT: We will let you get your
12 blood test and take your medication.

13 THE PROSPECTIVE JUROR: And go to the
14 bathroom.

15 THE COURT: I can assure you, you will
16 be able to do that.

17 THE PROSPECTIVE JUROR: All right.
18

19 BY MR. RICHARD MOSTY:

20 Q. In your questionnaire one of the
21 things that you said was if the District Attorney tries a
22 person for capital murder, then the person is probably
23 guilty. Is that how you feel? That it is just as a
24 general proposition?

25 A. Well, not automatically, but I think
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1 there's evidence there to lean in that direction.
2 Q. And it is phrased as the person is
3 probably guilty. Now, is it your view that if someone
4 has been indicted that they are probably guilty?

5 A. Maybe not probably, but more to that
6 that side than the other side.

7 Q. All right. But that is, that creates
8 some leaning in your side or some presumption that there
9 is some guilt there?

10 A. Well, there is something there or they
11 wouldn't have been indicted in the first place.

12 Q. Okay. And, again, I think that is an
13 opinion that many people have, and you understand and

14 heard Judge Tolle tell you about the presumption of

15 innocence and those things. And again, we're just

16 talking about your perfectly honest opinions. And that
17 is an opinion that you hold notwithstanding this case,
18 just in general?

19 A. Just in general, yes.

20 Q. Now, in particular, you know that Mrs.

21 Routier has been indicted. Do you not?

22 A. Do I know what?

23 Q. You know that Mrs. Routier has been
24 indicted by a Dallas County Grand Jury of capital murder?

25 A. Yes.

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1 Q. And does that fact lend you to -- and

2 you know we're trying the case? Let me go to the next

3 step, you know we're down here trying this case. Does
4 that -- does it then to follow that you think that she is
5 probably guilty?

6 A. Well, I think there is probably
7 evidence there to lean in that direction. But then, when
8 all of it comes out, it may not be what it appears now.

9 Q. Are you going to require that Mrs.

10 Routier do something to remove that evidence from your
11 mind?

12 A. No, I'm going to require that they
13 prove it.

14 Q. What part is that -- your present
15 opinion of guilt, based on the indictment, how does that
16 play into your deliberations or your thinking when you
17 deliberate on the verdict?

18 A. Well, I don't think it's going to

19 affect me at all after I hear all of the evidence.

20 Q. Will that be part of your -- would
21 that be part of your -- of the evidence that, in fact,
22 someone was indicated?

23 A. Well, I think so. I think anybody
24 would consider that they had been -- that they were

25 indicted, there had to be something there. But then

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1 there may not be as much, there may not be enough to
2 convict her. It may be entirely different evidence after

3 you hear it.

4 Q. But in your mind, do you think you

5 would consider that indictment to be part of the evidence
6 against someone?

7 A. No, I don't think so.

8 Q. And, now, taking that with your

9 knowledge of the case, the facts that you know, do you

10 think that the facts that you know about this case, that
11 you would take that to be part of the evidence against
12 Mrs. Routier?

13 A. Very little, if any. Because like I

14 say, that is just what was in the newspaper. I don't

15 know whether that is what really happened or not.

16 Q. Well, and I believe you said that in

17 your mind she was -- based upon your opinion, that she
18 was probably guilty, I believe that is what you said?

19 A. Uh-huh. (Witness nodding head

20 affirmatively.) I said I was leaning toward that side.

21 Q. Okay. Now, taking that with your idea
22 that the indictment is probable evidence of guilt and
23 that you would give some consideration to that in your
24 verdict, do you also feel that you would give some
25 consideration to your opinion regarding the facts of this
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1 case?

2 That that would be a part of and an

3 influence into your verdict as you consider all of the
4 evidence? That that would be part of the evidence that
5 would influence your verdict?

6 A. Probably.

7 Q. Lawyers and judges don't like the word

8 probably very much.

9 A. Well, I'm sorry.

10 Q. And, I guess, my question is, if you
11 needed to answer in either a "yes" or "no" based upon
12 that --

13 A. You see, that is why I'm talking about
14 lawyers. You can't always answer every question with a
15 "yes" or "no."

16 If there -- there is circumstantial

17 evidence and you have to explain stuff. That is one of
18 the things I'm talking about lawyers.

19 When you get up -- when somebody gets

20 up to give evidence or something, you always say answer
21 it a "yes" or "no." You can't always say "yes" or "no."
22 Everything is not always just black and white.

23 THE COURT: I think the Court
24 understands Ms. Jones' answers to this. So let's just
25 move on.
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1 MR. RICHARD MOSTY: I'm sorry, I
2 didn't hear the Court.
3 THE COURT: Well, I understand the
4 answers. We're going over the same questions, we're
5 asking the same questions different ways to try get Ms.
6 Jones to say things, and I think she has cleared it up
7 pretty well, at least she has to my satisfaction.

8 So, let's get on to something,
9 whatever you want to get on to.
10 MR. RICHARD C. MOSTY: Well, I think I
11 am going to have to object to the Court's reference to
12 the defense counsel attempting to get her to say
13 something.
14 I think that unduly places defense
15 counsel in a tenable position.
16 THE COURT: I'm going to let you keep
17 asking your questions, but I understand the questions. I
18 think Ms. Jones has answered them satisfactorily. What
19 is the next question?
20 MR. DOUGLAS MULDER: Judge, maybe you
21 can enlighten us then. Are you satisfied then that she
22 will presume -- that she presumes the defendant not
23 guilty?
24 THE COURT: I am not satisfied. She
25 said one thing to Mr. Shook, another thing to the
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1 defense.
2 MR. DOUGLAS MULDER: She said she
3 would presume her guilty.
4 THE COURT: She did not say she would
5 presume her guilty.
6 MR. DOUGLAS MULDER: She said she
7 considers the indictment evidence of her guilt.
8 THE COURT: No, I believe she said she
9 leans that way, and then she said she is going to listen
10 to the testimony and review the evidence.

11 So, I think she is, every time she
12 leans one way, she leans back the other way. So just
13 keep asking her questions, Mr. Mosty, we won't stop you.
14 Go ahead.

15 MR. RICHARD C. MOSTY: We submit the
16 juror for cause, Your Honor.

17 THE COURT: Ms. Jones, do you have an
18 open mind about this case?

19 THE PROSPECTIVE JUROR: Well, I
20 thought I did.

21 THE COURT: Okay, all right. Can you
22 put aside any reservations you have about parole, the
23 indictment, anything you have heard about this case, and
24 follow the law and decide this case on the evidence you
25 receive and the testimony you hear in this courtroom

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1 during this trial?

2 THE PROSPECTIVE JUROR: I think so.

3 THE COURT: And once you do that, can
4 you answer each one of these special issues according to
5 the law and the evidence?

6 THE PROSPECTIVE JUROR: I think so.

7 THE COURT: All right. The Court
8 holds the defendant (sic) qualified. Holds the
9 witness -- the juror qualified.

10 Will you please step outside briefly
11 please?

12 All right.

13 MS. SHERRI WALLACE: We will accept
14 the juror.

15 MR. RICHARD C. MOSTY: Your Honor, we
16 would like to place her questionnaire as an exception as
17 part of our record. I don't know how the Court wants to do --
18 wants to handle this.

19 THE COURT: Just make it Court's
20 Exhibit Number 2, I am happy to receive it.

21

22 (Whereupon, the above
23 mentioned item was

24 marked for

25 identification only

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1 as Court's Exhibit No. 2,

2 after which time the

3 proceedings were

4 resumed on the record

5 in open court, as

6 follows:)

7

8 MR. RICHARD MOSTY: I am going to have
9 to find a clean copy.

10 THE COURT REPORTER: I have one.

11 THE COURT: Here we have one, we will
12 give you one. Mr. Mosty, you can go ahead and Xerox that
13 one.

14 MR. RICHARD C. MOSTY: That Juror
15 Number 11, who is 23 on the original panel will be part
16 of the record as Court's Exhibit Number 2.

17 THE COURT: Right. And if you want to
18 Xerox that and stick it in, that is fine.

19 MR. RICHARD MOSTY: Okay. I will need
20 to get a clean one.

21 THE COURT: Whenever you get a chance,
22 we will just -- by agreement of both sides that will be
23 Court's Exhibit Number 2. And let's go on from there.
24 And what says the State?

25

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1 (Whereupon, the above
2 mentioned item was
3 received in evidence
4 as Court's Exhibit No. 2,
5 for all purposes

6 after which time,
7 the proceedings were
8 resumed on the record,
9 as follows:)

10

11 MS. SHERRI WALLACE: The State accepts
12 the juror.

13 THE COURT: What says the defense?

14 MR. RICHARD C. MOSTY: We challenge --
15 or we will excuse the juror.

16 THE COURT: A peremptory, thank you.

17 Can you have Ms. Jones step back in, please.

18 Ms. Jones.

19 THE PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: We want to thank you very
21 much for your time and your attendance and your
22 refreshing and candid answers, but your services will no
23 longer be needed.

24 THE PROSPECTIVE JUROR: All right.

25 THE COURT: Thank you very much for

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1 coming. We appreciate it. Thank you.
2 If you could be kind enough not to say
3 anything about these proceedings until this trial is

4 totally over. Anybody, including the members of the
5 press.

6 THE PROSPECTIVE JUROR: All right.

7 Thank you very much.

8 THE COURT: Thank you. All right.

9 The next juror, the next prospective juror. We have the
10 next prospective juror. All right.

11

12 (Whereupon, a short

13 recess was taken,
14 after which time,

15 the proceedings were
16 resumed on the record,
17 in the presence and

18 hearing of the defendant
19 as follows:)

20

21 THE COURT: All right. Be back here
22 at 1:30, okay?

23 MS. SHERRI WALLACE: 1:30 or one
24 o'clock?

25 THE COURT: One o'clock, I forgot.

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1
2 (Whereupon, a short
3 recess was taken, after
4 which time, the

5 proceedings were
6 resumed in open court,
7 in the presence and
8 hearing of the
9 Defendant, being

10 represented by her
11 Attorney, as follows:)

12

13 THE COURT: All right. We are back on

14 the record in the Darlie Routier matter.
15 Mr. Monroy, if you will raise your
16 right hand, please.
17 Do you solemnly swear or affirm you
18 will true answers make, to all the questions propounded
19 to you in this room, or any courtroom to which you may be
20 sent to concerning your qualifications as a juror, so
21 help you God?
22 THE PROSPECTIVE JUROR: I do.
23
24 (Whereupon, the prospective
25 juror was duly sworn by the
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1 Court to true answers make
2 to the questions propounded,
3 concerning qualifications, after
4 which time, the proceedings were
5 resumed as follows:)
6

7 THE COURT: Okay. If you will please
8 state your name and spell it for the court reporter.

9 THE PROSPECTIVE JUROR: Salvador,
10 S-A-L-V-A-D-O-R, middle name is Luis, L-U-I-S, last name,
11 Monroy, M-O-N-R-O-Y.
12 THE COURT: We have from the District
13 Attorney's Office in Dallas, Mr. Toby Shook.
14 MR. TOBY SHOOK: Good afternoon.
15 THE COURT: And Ms. Sherri Wallace.
16 MS. SHERRI WALLACE: Good afternoon.
17 THE COURT: And for the defense, Mr.
18 Doug Mulder and Mr. Richard Mosty, and this is the
19 defendant, Mrs. Darlie Routier, sitting back there in the
20 black dress.
21 Go ahead please.
22 MR. TOBY SHOOK: Thank you, Judge.
23
24
25

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1
2 Whereupon,
3
4 SALVADOR LUIS MONROY,
5

6 was called as a prospective juror, for the purpose of
7 voir dire, having been first duly sworn by the Court to
8 speak the truth, the whole truth, and nothing but the
9 true, testified in open court, as follows:

10

11 VOIR DIRE EXAMINATION

12

13 BY MR. TOBY SHOOK:

14 Q. Mr. Monroy, again, my name is Toby
15 Shook. I am one of the prosecutors on the case, and I
16 will be asking you some questions this afternoon.

17 What I will do is cover a few things
18 on your questionnaire, and then we will talk about your

19 personal feelings about the death penalty and some of the
20 laws that will apply to the case. Okay?

21 Have you ever been down on a jury
22 before, Mr. Monroy?

23 A. No, sir.

24 Q. Okay. Usually we talk to the jurors
25 as a panel, but because this is a death penalty case in
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1 which the State is seeking the death penalty, we talk to
2 each juror individually.

3 We are not trying to make you feel
4 uncomfortable bringing you up there, treating you more or
5 less like a witness or anything, but that is a procedure
6 that the law calls for. And all we are looking for are

7 your honest opinions. Okay?

8 A. Yes, sir.

9 Q. All right. Looking over your
10 questionnaire, you are retired from the Navy; is that
11 right?

12 A. Yes, sir.

13 Q. How long were you in the Navy?

14 A. Twenty years.

15 Q. When did you retire from the Navy?

16 A. '91, 1991.

17 Q. You have been here ever since? In
18 Kerrville?

19 A. Well, I went to the Valley. I went to
20 the Valley for a year and worked and then I was here
21 since.

22 Q. Okay. I believe you put on your
23 questionnaire that you are self-employed; is that right?

24 A. Yes, sir.

25 Q. What type of work do you do?
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1 A. Oh, just anything. It doesn't matter.
2 I mow yards, I work on plumbing, whatever there is.
3 Q. Just kind of a handyman?
4 A. Yes, sir.
5 Q. All right. And how do you get your
6 jobs?
7 A. Well --
8 Q. Do you advertise?
9 A. Well, I lived here for 20 years. I
10 was raised here since I was one year old so --
11 Q. Okay.
12 A. -- my dad and I know all kinds of
13 people here.
14 Q. Do you work with anyone or are you by
15 yourself?
16 A. Most of the time, by myself.
17 Q. Okay. So word of mouth more or less,
18 I guess, is how you get your jobs?
19 A. Yes, sir.
20 Q. So your schedule varies, that kind of
21 thing?
22 A. Yes, sir.
23 Q. All right. You also put down that
24 your daughter, a problem you might have as a juror
25 because she has been involved in some drug treatment; is
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1 that right?
2 A. Yes, sir.
3 Q. Tell us a little bit about that.
4 A. Well, I raised my daughter since she
5 was three years old. So, we have had a lot of time when
6 we were apart. And, she has had a lot of problems
7 because of that, and she got mixed up with some things
8 that she shouldn't have when she was about 12 years old,
9 13 years old. So, we have had a couple of hard years.
10 We're coming out of it pretty well.
11 We're doing well now. But I think it's real important
12 that I spend as much time as I can with her.
13 So, if this would draw away from my
14 time with my daughter, I realize this is my duty, but I
15 also realize that she is my duty, also.
16 Q. How old is she now?
17 A. She is now 14.

18 Q. Okay. Does she live with you now?

19 A. Yes, sir.

20 Q. Does anyone else live at the house

21 with you?

22 A. No, sir.

23 Q. She goes to school, I take it?

24 A. Yes, sir, she's in school today.

25 Q. Is she in drug treatment still?

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1 A. No, sir, she is done. It was just a
2 very short period of time, about a month she was
3 involved. I guess she just wanted somebody to listen,
4 somebody to help her.

5 Q. So, hopefully, you have those things
6 past you?

7 A. Yes, it's behind us.

8 Q. Okay, good. All right. Well, the
9 trial is slated to begin January 6th. And we can't tell
10 you exactly how long it will take, but we can tell you,
11 it will take a couple of weeks. Probably no more than
12 two weeks. Okay?

13 It's nothing like the O.J. Simpson

14 case, you know, you saw that went on for months. And
15 Judge Tolle, he keeps a schedule of more or less about
16 9:00 in the morning until about 5:00 in the afternoon,
17 then you can leave.

18 The only time you have heard of the

19 jury being sequestered away from their families, the only
20 time that happens, can happen in this case, might be
21 during deliberations if they went on into the evening.
22 Okay?

23 But during the course of the trial,
24 the majority of the trial when the testimony is being put
25 on, you will be free to go home. So, it's not one of
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1 these situations you hear about where you are locked away
2 from everyone.

3 A. Okay.

4 Q. And it's only going to be a couple

5 week period. And, like you said, jury service is an
6 inconvenience to everyone, obviously, to take you out of
7 your schedule. But with those explanations in mind, if

8 you were put on the jury, would you be able to pay
9 attention to the evidence as it came in and render the
10 decision based solely on the evidence?

11 A. Yes, sir, there is no problem there.

12 Q. Okay. That doesn't cause you a

13 problem with your daughter if you are able to get home at
14 5:00 o'clock?

15 A. Well, what I could do, is I could just
16 have someone -- if it was just a short period of time
17 like that, I could have someone pick her up every
18 afternoon. My entire family lives in town. So, that
19 would be no problem.

20 Q. So, you have family members here that
21 could help out?

22 A. Yes, sir.

23 Q. All right. Mr. Monroy, let me get to
24 some of your personal feelings about the death penalty.
25 Obviously, this is a capital murder case in which the
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1 State is seeking the death penalty.
2 We want to ask each and every juror
3 their personal feelings about it. Okay. And I believe
4 you checked off that you are in favor of the death
5 penalty as a law; is that right?

6 A. Yes, sir.

7 Q. Okay. Tell me a little bit about how

8 you feel about that. Why do you think we need the death
9 penalty? What purpose it might serve in our society?

10 A. Well, it is a hard thing to talk
11 about, you know, that you are going to make a decision to
12 put someone to death.

13 But, obviously, if it is proven and
14 the individual is proven, it is proven that that
15 individual did commit such an act, that would warrant
16 that, the fact that we do have that death penalty would
17 not keep me from doing what I needed to do based on the
18 information that I received.

19 Q. Most people, at least I hope they
20 don't, just sit around thinking about the death penalty?

21 A. Oh, no, sir.

22 Q. Have you done that from time to time?

23 Followed any cases that are in the news maybe or anything
24 like that?

25 A. No, sir.

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1 Q. You have always been aware there is a
2 death penalty statute in Texas?

3 A. Right, yes, sir.

4 Q. Do you think that it is important to
5 have that type of law on the books, that certain crimes
6 should have the death penalty?

7 A. Well, I don't feel that I am in any
8 position to say that that has any kind of importance. I
9 feel the only thing, that if the State of Texas and the
10 people that make our laws feel that such acts warrant
11 such, then I follow the law, if that is the law.

12 Q. You can follow the law?

13 A. Yes, sir.

14 Q. But you never followed any cases in
15 the news?

16 A. No, sir.

17 Q. Like the O.J. Simpson?

18 A. No, sir, I feel that would be rather
19 morbid. I don't --

20 Q. All right. Now then, in Texas, let me
21 go over the law just briefly.

22 In Texas, there's only certain types
23 of cases where a person is eligible for the death
24 penalty.

25 First of all, it's got to be a murder
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1 case. Okay? But it's not just any murder case. It's
2 got to be a murder case where there is another fact that
3 comes into play, what we call an aggravating fact.

4 For instance, a murder that occurs
5 during a felony. You have heard of the situations where
6 someone goes in and robs a bank, let's say, and maybe
7 shoots the bank teller and kills them.

8 That is a felony, robbing the bank,

9 and a murder that occurs while that is going on, that
10 could be a capital murder case. Okay?

11 A. Yes, sir.

12 Q. Okay. Same thing if someone breaks
13 into a house and kills one of the people that live in the
14 house. That is a felony break in, murder occurs, it
15 could be a capital murder case. That falls under our
16 statute.

17 Same thing with kidnapping someone, or
18 a murder that occurs during a rape. Also, a murder of a

19 certain class of citizen, such as a police officer on
20 duty. I'm sure you have heard of that occurring.

21 A. Yes, sir.

22 Q. That can be a capital murder case.

23 A. Yes, sir.

24 Q. Okay. This particular case, I believe

25 the indictment is there to your left. If you could just
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1 read the allegations to yourself for a moment there, that
2 paragraph. You see that?

3 A. Yes, sir.

4 Q. Read that to yourself for a moment.

5 A. Okay.

6 Q. That sets out allegations of the
7 murder, knowingly and intentionally killing of a child
8 under the age of six. That could be a capital murder
9 case under the proper facts and circumstances, you know,
10 under our statutes.

11 A. Yes, sir.

12 Q. I can't ask you for your verdict,
13 obviously, because you have not heard from any witnesses.
14 But that type of case, murder of a child under the age of
15 six, do you personally feel that is the type of case that
16 could be worthy of the death penalty given the proper
17 facts and circumstances?

18 A. Yes, sir.

19 Q. Okay. In Texas, the way the death
20 penalty statute works is this: A death penalty trial.
21 The first part of the trial is the guilt/innocence phase.
22 And we have to prove, that paragraph
23 you just read, we have to prove that beyond a reasonable
24 doubt. If you do that -- if we do that, the jury would
25 return a verdict of guilty. It's not over then.
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1 Then we go to the punishment phase and
2 you can hear additional testimony. You may not, but you
3 can. At the close of that, we give you these questions.
4 And I will go over those in more detail in a minute. But
5 that first question: The State has to prove to you, to

6 summarize, that the defendant would be a future danger.

7 Okay?

8 The second question is what we call
9 the mitigation question. And it allows the jurors to
10 look at all the evidence and if they decide that a life

11 sentence should be imposed rather than a death sentence,
12 they could do that.

13 The way this thing works is, if we get
14 a "yes" answer to that first question, and the jurors
15 find no mitigating evidence, in other words, a "yes" and
16 a "no," the Judge will sentence the defendant to death.
17 If you answer them any other way, it
18 is a life sentence. But my point is once we reach the
19 punishment phase, there is only two alternatives: A
20 death sentence or a life sentence. Is that clear to you?

21 A. Yes, sir.

22 Q. Okay. When we get there, by the way,
23 the jurors answer those questions. If that happens, then
24 the defendant would be sentenced to death. Put down in
25 Huntsville, Texas, and some day in the future, the Judge
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1 would actually issue what is called a death warrant.

2 In Texas there are -- executions

3 actually do take place. You may have heard about them or
4 read about them in the newspapers.

5 Some states have the death penalty and
6 they never enact them. Texas does. We lead the nation.

7 Okay? We have had over 100 executions.

8 So it is a very real thing we're
9 talking about.

10 A. Okay.

11 Q. What I need to know is this: You have
12 told me that, you know, you don't have any disagreement
13 with the law. If the law is there, you could follow it.
14 You have told me that you do think certain crimes could
15 be worthy of the death penalty, you know, depending on
16 the facts.

17 What I need to know is, if you are the
18 type of person that can listen to the evidence with an
19 open mind, and if we do prove these things to you, could
20 you render verdicts, and put pen in hand, and answer
21 these questions in a way, knowing that it could result in
22 the death penalty?

23 A. Yes, sir, I could.

24 Q. Okay. Fair enough then.

25 Let me go over a couple of things: We
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1 can't get into the facts of this case at all. Okay? You
2 will hear about the facts from sworn testimony once you
3 are in the courtroom.

4 This case got a lot of publicity, you
5 know. It was on TV, probably when y'all were brought
6 down, I believe you heard a little about it, you put down
7 it was on TV; is that right?

8 A. Yes, sir, just a little bit, just very
9 briefly.

10 Q. Remember anything about it at all?

11 A. About the same amount of information
12 as I read here.

13 Q. Okay. So not much right there?

14 A. No, sir.

15 Q. Just the allegation, in other words?

16 A. Yes, sir.

17 Q. The law says that you can't take
18 whatever you heard outside the courtroom and use that as
19 evidence. You have got to just wait and listen to what
20 comes in as testimony.

21 A. Yes, sir.

22 Q. Do you understand that?

23 A. Oh, yes, sir, very definitely.

24 Q. Okay. You can't bring any opinion,
25 you can't form an opinion, until you actually hear the
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1 testimony. Can you follow that rule of law?

2 A. Yes, sir.

3 Q. Okay. Whatever you may have heard on
4 TV, can you just put that out of your mind and listen to
5 what comes on through the witnesses in the courtroom?

6 A. No problem.

7 Q. Okay. Do you understand that is the
8 only fair way to do this?

9 A. If I was going to have to eventually
10 render such a verdict or say such a thing, I would
11 definitely want to listen to all of the information.

12 Q. Okay. Keep your mind open and listen
13 to everything?

14 A. Yes, sir.

15 Q. All right. Fair enough.

16 Now, when we put on this case, we put
17 on witnesses, exhibits might come in, and we put on what
18 is called direct evidence or indirect evidence.

19 And this is what I mean: An
20 eyewitness to a case is direct evidence. If you left the
21 courthouse today and got robbed, the man that robbed you
22 was captured and you could identify him, that is direct

23 evidence. You are the eyewitness to the case.
24 Any other evidence is indirect
25 evidence: Fingerprints, scientific evidence, things like
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1 that. Anything other that connects the defendant, other
2 than an eyewitness is indirect evidence. And the other
3 word we use for that is circumstantial evidence. You
4 have probably heard that term before?

5 A. Yes, I have.

6 Q. Circumstantial evidence, like I said,
7 is anything but an actual eyewitness. In a murder case,

8 many times, you don't have an eyewitness, obviously. You
9 have got the person charged or the person that the State
10 thinks did it, and then the victim, who is dead.

11 So you have to prove your case with
12 circumstantial evidence. The burden of proof is the same
13 whether you have an eyewitness or circumstantial evidence
14 beyond a reasonable doubt.

15 Would you have any problem convicting
16 a person of capital murder if it was proven to you
17 through circumstantial evidence beyond a reasonable
18 doubt?

19 A. No, sir, no problem.

20 Q. All right. Bottom line: What most
21 lawyers tell people, is just to use your common sense in
22 any type of case, especially in a circumstantial evidence
23 case. See if everything is connected up and the State
24 has proven it's case.

25 Here is another thing: We talk about
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1 motive sometimes, you know. Motive is the reason a crime
2 occurred. Why in a murder case, why would someone kill
3 another human being? I know when I was growing up we
4 used to watch these lawyers shows and detective shows and
5 they were always searching for the real motive of the
6 crime.

7 The thing is under the law, we're not
8 required to prove to you the motive. We're required to
9 prove to you, just what we have set out and what you have
10 read in that indictment.

11 We don't have to prove motive, and the
12 reason for that could vary. I mean, the motive might get
13 blocked away in the defendant's mind and no one will know
14 what it is.

15 The motive very well might come out in

16 the trial and you do know what it is, or there might be
17 several out there and everyone could have their own
18 opinion. But it's not a requirement. Okay?

19 It might come out in the trial, but
20 it's not a requirement. Do you feel that is fair?

21 A. Yes, sir, that is fair.

22 Q. Like I said, the first part of the

23 trial is the guilt/innocence stage where we can prove
24 that allegation. If we do that, we then move to the

25 punishment phase. And in the punishment phase, you might
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1 hear additional information.

2 If there is a criminal background, you
3 could hear that. If there is no criminal background, you
4 will hear that. Bad character, good character evidence,
5 things of that nature. All right.

6 At the close of that evidence, you go
7 back and review everything. And you get to talk about
8 and review the facts of the crime itself. How the murder
9 occurred, that sort of thing. All that goes into this
10 first special issue. Okay?

11 A. Okay.

12 Q. And just read along, if you would,
13 with me. The first question asks: "Do you find from the
14 evidence beyond a reasonable doubt, that there is a
15 probability that the defendant would commit criminal acts
16 of violence that would constitute a continuing threat to
17 society?" Do you see where that question is asking the
18 jurors to make a prediction based on the evidence?

19 A. Yes, sir.

20 Q. Okay. Like I said, you can use
21 everything you know about the defendant at that time to
22 answer that question.

23 Now, it may be a situation where the
24 person has never committed a criminal offense before,
25 before capital murder. You may have only the information
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1 surrounding the crime itself; the brutality, exactly what
2 happened, before, during and after the crime, that kind
3 of thing.

4 Do you think you could get enough
5 information about the person from the crime itself to be
6 able to answer that question, under the proper facts and
7 circumstances?

8 A. I would assume so provided the case
9 was presented as such.

10 Q. Okay. Again, I can't preview a case
11 for you or anything like that.

12 A. Right.

13 Q. But you understand that there is no
14 requirement that there be a long, criminal history, but
15 it's just going to depend on the facts of each case.

16 A. Right.

17 Q. Okay. The words in special issue
18 number 1, you are not going to get any legal definitions,
19 you are going to get plenty of legal definitions on some
20 of these things, but the legislature has said that these
21 words, the definitions on them will be up to you and the
22 other jurors. So let me go over a couple of those.

23 We have to prove beyond a reasonable
24 doubt that there is a probability that the defendant
25 would commit criminal acts of violence. When you see
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1 that word probability, what does that mean to you?

2 A. That it could happen again.

3 Q. Okay. Not an absolute certainty?

4 A. No, sir.

5 Q. But a probability.

6 A. Yes.

7 Q. Okay. We have to prove that the
8 defendant would commit criminal acts of violence. Okay?
9 When you see the words "criminal acts of violence," what
10 does that mean to you?

11 A. Well, a violent act against another
12 individual, just criminal acts.

13 Q. Okay,

14 A. Violent acts.

15 Q. Okay. Not just murder, but any type
16 of violent act?

17 A. Well, this individual would probably
18 do these things again.

19 Q. Okay.

20 A. Or this -- maybe not the same kind of
21 violence, or maybe not as violent, but somewhat --
22 something like that.

23 Q. Okay. Fair enough. What you need to
24 remember is on this particular issue, it starts out with
25 a "no" answer. Okay? And we have to prove to you that
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1 that should a "yes" answer.

2 A. Yes, sir.

3 Q. Just like you start out a trial with
4 someone who is presumed to be innocent. We start out
5 this part of the trial with a "no" answer and the State
6 has to prove that beyond a reasonable doubt. Does that
7 seem fair to you?

8 A. Yes, sir.

9 Q. Okay. There is no automatic answers.

10 You have got to go back to the jury room and review all
11 of the evidence. In other words, just because you found
12 the defendant guilty of committing capital murder, you

13 don't go back there and, "Okay. That is 'yes' for Number
14 1, now let's move on to Number 2."

15 You have to reevaluate the evidence
16 and then determine if we proved that. Does that sound
17 fair to you?

18 A. Yes, sir.

19 Q. Could you follow that rule of law?

20 A. Yes, sir, no problem.

21 Q. Okay. Good. Now, this next special
22 issue, that is the long question that gets kind of
23 confusing. That is what we call mitigating question.

24 Okay? It's the last thing you look at.

25 This question, neither side has the
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1 burden of proof. It's just a review of all the evidence.

2 Okay? And you decide to answer it, one way or the other,
3 "yes" or "no."

4 That question asks: "That taking into
5 consideration all of the evidence, including the
6 circumstances of the offense, the defendant's character
7 and background, and the personal moral culpability of the
8 defendant, is there a sufficient mitigating circumstance
9 or circumstances to warrant that a sentence of life

10 imprisonment rather than a death sentence be imposed?"

11 Long sentence there.

12 A. Yes, sir.

13 Q. And, again, you won't be given
14 definitions of those words. It will be left up to you
15 and the other jurors. Whatever you feel is mitigating
16 circumstances, you decide on your own.

17 The point of that question is this:

18 You don't get to it until you have already found the

19 defendant guilty of capital murder. You don't get to it
20 until you have already found that they will be a future
21 danger to society.

22 But somewhere in the evidence it tells
23 you that their life should be spared. And instead of the
24 death sentence being imposed, a life sentence should be
25 imposed. Okay?

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1 Some mitigating factors comes in. It
2 doesn't get them off at all, but they could get a life

3 sentence. It is kind of a safety net, a safety belt.

4 You understand how that works?

5 A. Yes, sir. In other words, every
6 opportunity is given to the individual who committed the
7 offense.

8 Q. Right. Right. It is the last -- just
9 so you could review everything, it's almost like it's a
10 heart felt response. If you think there is something
11 mitigating where a life sentence should be imposed,
12 rather than a death sentence, then you can answer it that
13 way. Does that seem a fair thing to do at that time?

14 A. Yes, sir.

15 Q. Now, like I said, we cannot tell you
16 what the mitigating evidence is. First of all, you
17 yourself will decide if it's mitigating.

18 And then, even if it is, you have got
19 to decide if it rises to that level where you should give
20 a life sentence rather than a death sentence. And that
21 is going to be left up to you.

22 A. Okay.

23 Q. Does anything come to mind, I know you
24 don't sit around thinking about this stuff, but does
25 anything come to mind, where you think, "Well, this could
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1 be mitigating"?

2 A. No, sir.

3 Q. Okay. That is what most jurors say
4 because luckily they don't sit around and think about it.
5 But let me throw out a couple of things. Okay? Like I
6 said, you don't have to agree with any of these.
7 Some people tell us education might be
8 mitigating. Let's say the defendant, it comes out, has
9 got a degree from Harvard, you know. One juror might
10 say, "That is mitigating, because they have done
11 something with their lives."

12 Another juror might say, "Well, no,
13 someone that smart should not get into this kind of
14 trouble. I think that is aggravating." You understand
15 what I am saying?

16 A. Yes, sir.

17 Q. Jurors don't have to agree. Does that

18 strike you one way or the other?

19 A. No, sir.

20 Q. Okay. Sometimes people commit

21 offenses under the influences of drugs, intentionally

22 taking drugs, and that is no defense in the State of
23 Texas.

24 But some people might think that is
25 mitigating, other people view it as aggravating. Do you
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1 feel one way or the other about that?

2 A. No, sir.

3 Q. Okay. The bottom line is, you have to
4 be able to keep your mind open. And if you see something
5 that is mitigating where you think a life sentence should
6 be imposed, you could answer the question that way.

7 Could you do that?

8 A. Yes, sir.

9 Q. Okay. Let me go over another area.

10 Obviously, the defendant in this case is a female.

11 Usually, when we think of criminals and murder cases, we
12 always think of a male.

13 I mean, that is what first pops into
14 your mind. Sometimes, obviously, females are on trial,
15 are tried, also.

16 Would that cause you any less
17 consideration that it is a female on trial rather than a
18 male?

19 A. Never having been in a situation like
20 this before, no.

21 Q. Okay.

22 A. I want to say it wouldn't affect me
23 one way or the other.

24 Q. Nothing pops up right now though?

25 A. No, sir.

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1 Q. All right. You feel the law should
2 apply equally to men and women?

3 A. Yes, sir.

4 Q. Okay. There's some rules of law that
5 apply in each case, and Judge Tolle went over these rules
6 of law. And what I want to know is if you are going to
7 be able to follow those rules of law?

8 The first one, I think Judge Tolle

9 went over, is the presumption of innocence. You have
10 heard of that, no doubt?

11 A. Yes, sir.

12 Q. Okay. Starting out each trial, the
13 defendant is presumed to be innocent, and the State has
14 to overcome that presumption.

15 The fact that the defendant has been

16 indicted or arrested or even here today is no evidence of
17 guilt. Okay?

18 A. Yes, sir.

19 Q. You can't think about. You just
20 have to decide the case on the facts that you hear in
21 court.

22 A. Yes, sir.

23 Q. Could you follow that rule of law?

24 A. Yes, sir.

25 Q. Okay. Secondly, Judge Tolle told you
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1 that in all criminal cases, the State has to prove its
2 case beyond a reasonable doubt. That is the highest
3 burden we have under the law. Could you do that?

4 Could you force the State to prove
5 this case to you beyond a reasonable doubt? Or require
6 the State to prove it?

7 A. Yes, sir.

8 Q. Okay. That also means that the

9 defense here doesn't have to prove anything to you.
10 Okay? You know, as a way of example, I know this won't
11 happen, but the lawyers here as the case is being put on
12 could read comic books or play tiddlywinks or whatever,
13 they are under no obligation to answer questions -- I

14 mean, to ask questions or cross-examine. No doubt, they
15 will, but they are not under any obligation. Because the
16 burden of proof never leaves our side of the table. Does
17 that seem fair to you?

18 A. Yes, sir.

19 Q. Okay. Another rule of law Judge Tolle
20 went over is the defendant's right not to testify. If
21 someone wants to testify on their own behalf, there is no

22 one to stop them. Okay?

23 They can get up there and tell their

24 story. However, if they decide not to, no one can force

25 them up there. It is their right. And if a person

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1 chooses not to testify, the jury would be instructed not
2 to use that as evidence against them. Do you understand
3 that?

4 A. Yes, sir.

5 Q. Okay. Does that sound like a fair law

6 to you?

7 A. Yes, sir.

8 Q. Could you follow that rule of law?

9 A. Yes, sir.

10 Q. Okay. Another area that sometimes

11 pops up is the parole laws. You know, you read or hear

12 about the parole laws sometimes in Texas. The Judge

13 would instruct you that if you are a juror on the case, a

14 juror in this case, you can't consider what you have read

15 or heard about the parole laws in any parts of your

16 deliberations. Okay?

17 A. Yes, sir.

18 Q. Could you follow that rule?

19 A. Yes, sir.

20 Q. Okay. Now the lawyers have all been

21 introduced to you, the ones here today, and then last

22 Monday. Did you know any of them?

23 A. No, sir.

24 Q. Most of them were from Dallas, but Mr.

25 Mostly here is from Kerrville along with Preston Douglass.

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1 Do you know either one of them?

2 A. No, sir.

3 Q. Okay. When you were in the Navy, what

4 were your duties in the Navy? I believe you said it was

5 a missile --

6 A. Yes, sir, a missile technician aboard

7 nuclear submarines.

8 Q. How long did you do that?

9 A. Twenty years.

10 Q. The whole time you were on nuclear

11 subs?

12 A. Well, the first year and a half I went

13 to school, and then went to the submarines.

14 Q. So, you would go down for six months

15 at a time or so forth?

16 A. Yes, sir.

17 Q. Those close quarters really don't

18 bother you, I guess?

19 A. Oh, no, sir, that is why I work

20 outside.

21 Q. You get back there in the jury room

22 and there is 12 people in a heated discussion, you are

23 going to be able to handle that, I guess?

24 A. Oh, yes, sir, no problem.

25 Q. Okay. Do you have any questions over

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1 anything we have gone over?

2 A. No, sir.

3 Q. Okay. You have been real honest with

4 us. The bottom line is what we started out with. You

5 have to be able to wait until the evidence is in, and

6 then make your decisions. Could you do that?

7 A. Yes, sir, no problem.

8 Q. All right. Well, I appreciate your

9 patience with me.

10 MR. TOBY SHOOK: That's all the

11 questions I have, Judge. I think the defense might have

12 some.

13

14 THE COURT: Mr. Mulder.

15 MR. DOUGLAS MULDER: Yes, sir.

16

17 VOIR DIRE EXAMINATION

18

19 BY MR. DOUGLAS MULDER:

20 Q. Mr. Monroy, just a thing or two. I

21 would like to kind of visit with you a little bit about

22 some of the legal concepts that we have, and just kind of

23 get your views on them.

24 The Judge showed you, or maybe Mr.

25 Shook did, a copy of the true bill of indictment. Do you

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1 see up there with you?

2 A. Yes, sir.

3 Q. Do you -- you may remember that Judge

4 Tolle told you all back, I guess last Monday, that that

5 was no evidence in and of itself of the defendant's

6 guilt?

7 A. Yes, sir, I remember that.

8 Q. Simply the pleading on paper by which
9 she is brought into this particular Court?

10 A. Yes, sir.

11 Q. And the purpose of that indictment is
12 to inform you as a juror of what the State must prove

13 beyond a reasonable doubt. And to inform her of the
14 charges against her, so that she can prepare her defense.

15 And that is all it does.

16 A. Yes, sir.

17 Q. Now, the law says that in all criminal
18 cases, the burden of proof is on the State.

19 And that is another way of saying that
20 whoever does the accusing has to do the proving. Does
21 that make sense to you?

22 A. Yes, sir.

23 Q. Okay. And the law says that the
24 measure or the standard by which their proof is measured,
25 is beyond all reasonable doubt.

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1 Does that make sense to you?

2 A. Yes, sir.

3 Q. Okay. The law says that they have a
4 burden of proving the indictment to you as jurors beyond
5 all reasonable doubt.

6 A. Yes, sir.

7 Q. Now, if you and I were to draw up the
8 rules that govern the trial of a criminal case, we, I'm
9 sure in the discussion of things, would appreciate the

10 fact that since 12 jurors are going to hear the case, and
11 they are all going to hear it maybe slightly different

12 and put more emphasis on one thing than others do, that
13 they may in the course of their discussions, they may
14 have doubts, based on the evidence that they have heard
15 or the lack of evidence.

16 You see, you can get a reasonable

17 doubt from either the evidence, because you didn't
18 believe it, or from the lack of evidence.

19 Those are two ways that you could have
20 a reasonable doubt about something there in the
21 indictment.

22 A. Okay.

23 Q. And, we -- if you and I were brought
24 up these rules that would govern the trial in a criminal
25 case, we want the jury to dispose of the case to render

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1 some sort of a decision in the case. Right?
2 A. Yes, sir.
3 Q. If at all possible.
4 A. Yes, sir.
5 Q. So we want to figure out a way to
6 resolve these reasonable doubts. Right?
7 A. Yes, sir.
8 Q. How are we going to help the jury if
9 they have doubts based on reason about evidence that they
10 have heard, or the lack of evidence, how are we going to
11 help them resolve these reasonable doubts?
12 A. Present the case as clearly and as
13 simply as possible, just all the information.
14 Q. But even if it is -- even if they have
15 all of the information, and they still, you have got 12
16 jurors back there discussing the case, and they have got
17 some doubts. Okay?
18 Now, you and I may figure that the

19 easiest way to resolve these doubts would be to make a
20 list of the doubts that the jurors have, and to number
21 them from 1 to 21 or 1 to 101. Okay?
22 And we would give the State the
23 benefit of all the odd numbered reasonable doubts. We
24 would give the defendant the benefit of all the even
25 numbered reasonable doubts.

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1 And we may say to ourselves, "Well,
2 that is the fairest way to resolve these reasonable

3 doubts that the jury might have." Do you see? You
4 follow me?

5 A. Well sir, you are getting too long and
6 drawn out for me.

7 Q. Well, I know. But I'm going to make a
8 point here in a minute.

9 A. Okay.

10 Q. But that is not what the law says.

11 The law says that if you, as a juror, have a reasonable

12 doubt based on the evidence or the lack of evidence, that
13 as a juror you are duty bound to resolve that reasonable
14 doubt in favor of the defendant. Okay?

15 A. Yes, sir.

16 Q. All right. So it doesn't make any
17 difference whether there is one reasonable doubt or there
18 is 21 or 101, every time you, as a juror, have a
19 reasonable doubt either raised by the evidence or the
20 lack of evidence, the law says that you must resolve that
21 reasonable doubt in favor of the defendant. Okay. Can
22 you do that?

23 A. Yes, sir.

24 Q. Absolutely?

25 A. Well, like every other -- in my mind I

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1 am going to make every effort to say that that individual
2 is not guilty until it has been proven to me. I
3 couldn't --

4 Q. Well, let me make a deal with you
5 right here and now. The law says that she is presumed to
6 be innocent?

7 A. Yes, sir.

8 Q. And that is hard to do. You are here
9 and the Judge is here, the prosecutors are here, the
10 court reporter, she's here, the lawyers are here
11 representing her, so it's hard to presume that she is
12 innocent. The law says that as a juror you must do that.

13 Okay?

14 A. Okay.

15 Q. All I care about, I just don't want
16 you to presume that she is guilty. Okay?

17 A. No, sir.

18 Q. Just let me start out even. That's
19 all we ask.

20 A. Yes, sir.

21 Q. Just don't presume that she is guilty,
22 Mr. Monroy, simply because she is here.

23 A. Yes, sir. I make no assumption in
24 that direction.

25 Q. Just let us start out even. That's
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1 all we want.

2 A. When I meet individuals on a
3 day-to-day basis, I never make an assumption as to what
4 kind of individual that is, no matter what.

5 Q. You wait to let them prove themselves
6 one way or the other?

7 A. Yes, sir.

8 Q. Fair enough. And you will let us do
9 the same thing?

10 A. Yes, sir.

11 Q. Okay. Now, this is sometimes a little

12 difficult to do, because another one of the rules that I
13 want to talk to you about is the order of proof here in
14 the procedure that we follow.

15 The law says that because the State

16 has the burden of proof, they go first with their
17 evidence. Okay? They present their side first. Now, if
18 I had my druthers, I would prefer to go first. You see?

19 A. Yes, sir.

20 Q. Because first impressions are mighty

21 important. Now, a lot of times, and I do it just as much
22 or more than anybody else, I suspect, but a lot of times
23 you hear one side of the story, and you form an opinion
24 at that time.

25 And then, when the other side presents

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1 their side, you know, it's hard to swing back or change.

2 Do you know what I mean?

3 A. Yes, sir.

4 Q. So, as a juror, what you have got to

5 do is keep an open mind until we get a chance at bat. Do
6 you see?

7 A. Yes, sir.

8 Q. Until we get a turn to present our
9 side of the case. Can you do that?

10 A. Yes, sir, no problem.

11 Q. And not make up your mind, you know,
12 if you have your mind made up when you hear their side of
13 the evidence, I mean, we might as well just fold our tent
14 right now. You see?

15 A. Yes, sir.

16 Q. That wouldn't be fair to us.

17 A. No, sir.

18 Q. So you are telling me that you can
19 keep an open mind?

20 A. Yes, sir, I can.

21 Q. Until you hear from both sides in this
22 case?

23 A. Yes, sir.

24 Q. And if you have a doubt, based on the
25 evidence or the lack of evidence, you are going to do

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1 what with that reasonable doubt?

2 A. It will be in favor of the defendant.

3 Q. Absolutely. And that is not a rule

4 that was made up just for this defendant. That is a rule
5 that applies to everybody not only in this State, but in
6 the United States.

7 A. Yes, sir.

8 Q. Right. Same thing that you would
9 want, you know, if a loved one of yours were on trial.
10 Right?

11 A. Yes, sir.

12 Q. Okay. Now, as a juror, it's going to
13 be your duty and responsibility to listen to the
14 evidence, and to decide what the facts of the case are.
15 You're the exclusive judges of the facts proved, the

16 credibility of the witnesses, that is whether or not a
17 witness is telling the truth.

18 You have 20 years in the Navy, you
19 have seen some people fudge from time to time. Haven't
20 you?

21 A. Yes, sir, day in and day out.

22 Q. Sure. And, I guess, you know, with
23 your life experience, would it be fair to say that you
24 are reasonably good at telling when somebody is fudging
25 and when they are not, or maybe when they are outright
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1 lying?

2 A. Well, it's like I said earlier, I make
3 no assumption. I will let that individual, you know,
4 have his rope and run out with it.

5 Q. Okay. Now, like I said, you are the
6 exclusive judges of the facts proven. The facts are what
7 you say they are, you as jurors. Okay?
8 Your authority and your power in this
9 case is simply awesome. If the Judge makes a mistake

10 with respect to the law, Mr. Monroy, then we can appeal
11 to a higher court and get it corrected. There is no

12 appeal on the facts. The facts are what you 12 jurors
13 say they are.

14 Let me give you an example, and this
15 is going to be a silly kind of example, but I do it just
16 to kind of make my point, so just bear with me. Okay?

17 Let's say that we're in Austin, Texas,
18 and you are on a jury in Austin. And let's say that you
19 hear a witness take the stand and says that I was in the
20 town square at high noon, and I heard a gunshot, and my

21 attention was attracted to the bank. And I saw a man
22 come out of the bank and he had a sack of money in one
23 hand, and he had a gun in the other hand, and he had a
24 mask on. And he got in a black limousine and headed

25 south towards San Antonio. Okay? Then you hear the next
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1 witness, he takes the stand and he swears to the tell the
2 truth.

3 He gets on the stand, and he says, "I,
4 too, was in the town square on such and such a date, high
5 noon, and I heard a gun shot. And I looked over at the
6 bank and I saw a man come out of the bank. He had a sack
7 of money in one hand, he had a gun in the other hand. He
8 had a mask on. He came out of the bank and he got on a
9 white horse, and headed north toward Dallas."

10 And that raises in your mind as a
11 juror, a reasonable doubt as to the -- it may go to
12 identification, you see, but it raises a reasonable doubt
13 as to the mode or medium of escape, whether it was a
14 white horse headed north toward Dallas, or a black
15 stretch limousine headed south toward San Antonio. Okay?

16 A. Yes, sir.

17 Q. If it benefits the defendant, you see,
18 once you have got that reasonable doubt, if it benefits
19 the defendant to call it a white horse headed north
20 toward Dallas, that is what you call it, it's a white
21 horse from that day forward. You see?

22 A. Uh-huh. (Witness nodding head
23 affirmatively.)

24 Q. On the other hand, if it benefits the
25 defendant to call it a black limousine headed south
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1 toward San Antonio, that is what you would do. You see?

2 A. Uh-huh. (Witness nodding head
3 affirmatively.)

4 Q. You give the defendant the benefit, if
5 you have a reasonable doubt, and like I said, I am going
6 to the extreme to make my point, but you see what I am
7 talking about?

8 A. Yes, sir.

9 Q. And you are telling me you can do
10 that.

11 A. Yes, sir, no problem.

12 Q. And you will do that?

13 A. Yes, sir.

14 Q. We're looking, Mr. Monroy, for 12
15 people who can be fair to both sides, and you appear to
16 be a fair man. Any reason why you could not be
17 absolutely fair to both sides?

18 A. No, sir.

19 Q. Do your dead-level best to?

20 A. Yes, sir.

21 Q. Have you had prior criminal jury
22 service?

23 A. No, sir.

24 Q. Did you serve on any court-martial, or
25 anything of that nature in the service?

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1 A. Yes, sir, I did.

2 Q. When was that?

3 A. Well, it was several instances that we
4 had individuals who went AWOL or things like that.

5 Q. What was the most serious

6 court-martial --

7

8 THE COURT: Let the record reflect
9 that AWOL is an acronym for absence without leave.

10 THE PROSPECTIVE JUROR: Excuse me, I
11 didn't hear you.

12

13 BY MR. DOUGLAS MULDER:

14 Q. Yes. What was the most serious
15 court-martial that you sat on?

16 A. That was probably the most serious, I
17 think.

18 Q. AWOL?

19 A. Dereliction of duty, things like that.

20 Q. All right. Nothing, no violent
21 criminal acts?

22 A. No, sir.

23 Q. Okay. You know, Mr. Monroy, when we
24 watch TV and we see some of these lawyer shows or cop
25 shows on television, a lot of times, we want to see some

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1 solution or resolution to the offense. We want to see
2 the crime solved. Right?

3 A. Yes, sir.

4 Q. Do you understand that as a juror, in
5 this particular case, or in any criminal case, you're not
6 here to solve this crime?

7 A. No, sir, I'm not.

8 Q. You are simply here to determine

9 whether or not the people who have done the accusing can
10 do the proving, and prove to your satisfaction beyond all
11 reasonable doubt, that the defendant is guilty?

12 A. Yes, sir.

13 Q. You are not here to solve the crime?

14 A. No, sir.

15 Q. Okay. I appreciate that. Thank you.

16 A. Yes, sir.

17

18 MR. DOUGLAS MULDER: Judge, we will

19 pass the juror.

20 THE COURT: All right.

21 THE COURT: Do you mind stepping

22 outside briefly, please, sir. Don't go away. We will be
23 right back with you in a minute.

24 THE COURT: Off the record.

25

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1 (Whereupon, a short

2 discussion was held

3 at the side of the

4 bench, between the Court,

5 and the attorneys for

6 both sides in the case,

7 off the record,

8 after which time,

9 the proceedings were

10 resumed on the record,

11 as follows:)

12

13 THE COURT: What says the State?

14 MR. TOBY SHOOK: The State will accept

15 the juror.

16 THE COURT: What says the defense?

17 MR. DOUGLAS MULDER: We would be proud

18 to have Mr. Monroy on the jury.

19 THE COURT: Thank you. Let's let Mr.

20 Monroy come back in, please.

21 Mr. Monroy, you have been selected as

22 a juror in this case, so this trial will commence on the

23 6th of January.

24 THE JUROR: All right.

25 THE COURT: Now please do not discuss

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1 anything about the case you have heard in this room or
2 anything else with anybody, pending this trial. That is
3 the press or anybody.

4 THE JUROR: All right, sir.

5 THE COURT: You are also cautioned and
6 ordered to not read anything about it, or if it's on TV,
7 ignore it, or if it is in the newspapers ignore it,
8 or anything like this.

9 THE JUROR: All right.

10 THE COURT: We do have a gag order in
11 effect, violation of it might result in monetary
12 penalties or incarceration in the Kerr County Jail.

13 Thank you very much.

14 We will have it in this courthouse,

15 probably in this courtroom, so if you will just be here
16 on the 6th of January, we will call you as to the time.
17 Thank you very much. All right.

18 That brings us to the next --

19

20

21 (Whereupon, a short

22 discussion was held
23 off the record, after
24 which time, the

25 proceedings were
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1 resumed as follows:)

2

3 MR. DOUGLAS MULDER: Judge, while
4 we're right here, we got some reports and things that we
5 need to get to the defendant.

6 THE COURT: I think the next juror is
7 going to be excused. She is the lady who is, shall we

8 say, rather clearly pregnant, and is delivering on the
9 27th of December.

10 MR. RICHARD MOSTY: I think that is
11 the one after --

12 MR. TOBY SHOOK: That is the one
13 after.

14 THE COURT: Oh, Mr. Dart? Olga

15 Vega -- and you wanted to visit about what, sir?

16 THE PROSPECTIVE JUROR: I am planning

17 a move prior to --

18 THE COURT: Moving out of the city?

19 THE PROSPECTIVE JUROR: Out of the

20 state.

21 THE COURT: Okay. And you will be

22 moving to where, sir?

23 THE PROSPECTIVE JUROR: Augusta,

24 Georgia.

25 THE COURT: Have you a job there and

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1 all of that?

2 THE PROSPECTIVE JUROR: My wife's

3 company transferred her down there.

4 THE COURT: All right. Let's go on

5 the record then. Please state your name, sir.

6 THE PROSPECTIVE JUROR: Steven Douglas

7 Dart.

8 THE COURT: Okay. And you were juror

9 206; is that correct?

10 THE PROSPECTIVE JUROR: That is

11 correct.

12 THE COURT: You were scheduled to be

13 here on the 13th of November. And you wanted to apprise

14 us -- and you have been sworn.

15 Raise your right hand.

16

17 THE COURT: Do you solemnly swear or

18 affirm that you will true answers make to all questions

19 concerning your qualifications as a juror in this room or

20 any courtroom to which you may be sent, so help you God?

21

22 (Whereupon, the prospective

23 juror was duly sworn by the

24 Court to true answers make

25 to the questions propounded,

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1 concerning qualifications, after

2 which time, the proceedings were

3 resumed as follows:)

4

5 THE PROSPECTIVE JUROR: I do.

6 THE COURT: All right. So you will be
7 on the list on December the 13th. And let's just get
8 over there, gentlemen. Okay. That is Wednesday,
9 November 13th, and you were scheduled to be here at 9:30
10 that day. Everybody got that?

11 MS. SHERRI WALLACE: Yes, Your Honor.

12

13 Whereupon,

14

15 STEVEN DOUGLAS DART,

16

17 was called as a prospective juror, for the purpose of

18 voir dire, having been first duly sworn by the Court to
19 speak the truth, the whole truth, and nothing but the
20 true, testified in open court, as follows:

21

22 THE COURT: All right. You are

23 moving, and tell us briefly what your situation is.

24 THE PROSPECTIVE JUROR: Well, I

25 anticipated moving sometime between the 2nd of November
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1 and the 14th of December. And that plan was finalized a
2 couple of days ago. And I anticipate moving next Monday,
3 which I believe is the 4th of November, if that is
4 possible.

5 THE COURT: All right. And your wife
6 has secured employment where?

7 THE PROSPECTIVE JUROR: In Augusta,
8 Georgia. She works for Lockheed Martin.

9 THE COURT: You will both be moving
10 over there?

11 THE PROSPECTIVE JUROR: Yes, sir. She
12 is already living there and I am just going to be joining
13 her. I am under contract to Schreiner College. My
14 contract expires on the 14th of December, but they are
15 going to let me leave early.

16 THE COURT: All right. Both sides?

17 MR. TOBY SHOOK: State has no
18 objection.

19 MR. DOUGLAS MULDER: No, sir. See
20 you.

21 THE COURT: All right. Thank you very
22 much, you will be excused. Let the record reflect
23 that -- can we have an agreement to this one?

24 MS. SHERRI WALLACE: I will be happy

25 to fill one out, Judge.
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1 THE COURT: That will be fine. Thank
2 you.

3 All right. We have Ms. Vega, I
4 believe, is the next one.

5 MS. SHERRI WALLACE: Judge, we will
6 give this as Court's Exhibit 3.

7

8 (Whereupon, the above
9 mentioned item was
10 marked for
11 identification only
12 as Court's Exhibit No. 3,
13 after which time the
14 proceedings were
15 resumed on the record
16 in open court, as
17 follows:)

18

19 THE COURT: All right. This will be
20 admitted as Court's Exhibit 3.

21

22 (Whereupon, the above

23 mentioned item was
24 received in evidence

25 as Court's Exhibit No. 3,
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1 for all purposes
2 after which time,

3 the proceedings were
4 resumed on the record,
5 as follows:)

6

7 THE COURT: Ma'am, if you will just
8 come over and have a seat right here, please, ma'am. All
9 right. If you will raise your right hand, please, ma'am.
10 Do you solemnly swear or affirm you
11 will true answers make to all the questions propounded to
12 you concerning your qualifications as a juror in this

13 room or any room or court to which you may be sent, so
14 help you God?

15

16 (Whereupon, the prospective

17 juror was duly sworn by the
18 Court to true answers make
19 to the questions propounded,

20 concerning qualifications, after
21 which time, the proceedings were
22 resumed as follows:)
23

24 THE PROSPECTIVE JUROR: I'm sorry, but
25 I am hard of hearing.

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1 THE COURT: Okay. Do you solemnly
2 swear or affirm that you will true answers make to all
3 questions propounded of you, concerning your

4 qualifications as a juror, in this room or to any room or
5 courtroom to which you may be sent, so help you God?

6 THE PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Can you hear me now?

8 THE PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: All right. If you will,
10 please state your name -- first, let me introduce the
11 people in the room. The State of Texas is represented by
12 Mr. Toby Shook and Ms. Sherri Wallace, of the Dallas
13 County District Attorney's Office.

14 Over here we have Mr. Doug Mulder and
15 Mr. Richard Mosty, they are defense attorneys. They
16 represent Mrs. Darlie Routier who is the defendant who is
17 sitting back there in the black dress. Okay? Is that a
18 yes?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: All right, thank you. Are
21 you hearing everybody all right?

22 THE PROSPECTIVE JUROR: Uh-huh.

23 (Witness nodding head affirmatively.)

24 THE COURT: All right. If you will
25 just state your name and spell your last name for Ms.
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1 Halsey, please.

2 THE PROSPECTIVE JUROR: Olga A. Vega,

3 V-E-G-A.

4 THE COURT: All right. Go ahead,

5 please, Mr. Shook.

6 MR. TOBY SHOOK: Thank you, Judge.

7

8 Whereupon,

9

10 OLGA VEGA,

11

12 was called as a prospective juror, for the purpose of

13 voir dire, having been first duly sworn by the Court to
14 speak the truth, the whole truth, and nothing but the
15 true, testified in open court, as follows:

16

17 VOIR DIRE EXAMINATION

18

19 BY MR. TOBY SHOOK:

20 Q. Ms. Vega, again, my name is Toby

21 Shook. Am I talking loud enough for you?

22 A. Yes, sir.

23 Q. Is that a note you brought to Court.

24 I saw you come in with a piece of paper. That is not
25 anything you have for us, is it?

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1 A. Well, I'm sorry, but I can't hear you.

2 Q. Okay. Let's me start this way: You

3 put on your questionnaire that you have dizzy spells?

4 A. Yes.

5 Q. And you are hard of hearing?

6 A. Yes.

7 Q. Okay. And, you are very nervous?

8 A. Yes.

9 Q. You have never been on a jury before?

10 A. Never.

11 Q. Okay. Never?

12 A. No.

13 Q. All right. Do you have anything else
14 wrong with you physically or medically beside those
15 things?

16 A. I am anemic.

17 Q. Okay. What's wrong with you

18 physically, would that cause you to not be able to sit as
19 a juror and listen to the evidence and be able to pay
20 attention to all the evidence that comes in because of
21 what is wrong with you physically?

22 A. I would not understand, you know, a

23 lot of words. I wouldn't understand what they were
24 saying, really.

25 Q. Okay. Did you fill out your
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1 questionnaire last Monday?

2 A. Yes, sir.

3 Q. Okay. Did you understand a lot of it?

4 A. No, sir.

5 Q. Okay. I believe you wrote down that

6 you have a sixth grade education; is that right?

7 A. Uh-huh. (Witness nodding head

8 affirmatively.) Yes, sir.

9 Q. Okay. And the questions we asked you,

10 were a lot of them just something you really couldn't
11 understand and comprehend?

12 A. Yes, they were complicated. I mean, I

13 don't, you know, understand really a lot, I wouldn't
14 know.

15 Q. Okay. And we are not trying to

16 embarrass you, Ms. Vega. We just want to talk to you

17 about these things. Okay? I'm not trying to embarrass
18 you in any way. I just want you to be honest with us.

19 A. Uh-huh. (Witness nodding head

20 affirmatively.)

21 Q. Do you think because of your limited

22 education that -- would you be able to sit on this jury
23 and understand what is going on? Or is it just too much
24 for you? All of these legal concepts and things?

25 A. I just don't know. I just don't know.

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1 I don't think I would understand everything.

2 Q. Okay. Tell us a little bit about

3 these dizzy spells you are having.

4 A. Oh, I have been like this ever since I
5 was a teenager.

6 Q. Okay. How often do they happen?

7 A. Like when I am in a very crowded room,

8 I get so nervous, especially when I am in church, too.

9 Q. Oh, really?

10 A. And it's so crowded. And like
11 anywhere that I go, that it's a lot of people, and I just
12 can't handle it.

13 Q. Okay. If you were stuck with 12 other
14 jurors in a little jury box, do you think that might make

15 you nervous and dizzy?

16 A. Very.

17 Q. Okay. When you are nervous and dizzy

18 you can't pay attention really, give your full attention

19 to what is going on?

20 A. No, I cannot.

21 Q. Okay. Last Monday when you were stuck

22 in here with all those people around you, was it real

23 hard on you?

24 A. It was.

25 Q. You couldn't pay attention?

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1 A. I'm glad I made it, but I don't know

2 how I made it.

3 Q. Okay. Okay. And I believe you said

4 you had just started a new job, for about a month now, as

5 a maid; is that right?

6 A. Yes, I am a maid, uh-huh. (Witness

7 nodding head affirmatively.)

8 Q. Who do you work for?

9 A. Camlu Retirement Center.

10 Q. What are your hours there?

11 A. 8:00 to 4:30.

12 Q. Okay. This trial is supposed to begin

13 in January.

14 A. Uh-huh. (Witness nodding head

15 affirmatively.)

16 Q. And we don't know how long it will

17 last, but we're guessing about two weeks, maybe a little

18 bit longer. If you couldn't go to work for those two

19 weeks, what would that do to you? Would that cause you

20 some problems?

21 A. I am the only one. I mean, I am by

22 myself. If I don't work --

23 Q. The bills don't get paid?

24 A. No.

25 Q. Okay. And I guess you wouldn't get

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1 paid if you are not there, right?

2 A. Like right now, I'm not getting paid.

3 Q. You are not getting paid for today?

4 A. No.

5 Q. Well, unfortunately, we can't force

6 your employer to pay you if you are down here.

7 A. Oh, no.

8 Q. So you wouldn't be paid. Would that

9 cause you a pretty big problem economically? If you
10 couldn't come in, would that cause you a lot of problems?

11 A. Oh, yes, uh-huh. (Witness nodding
12 head affirmatively.)

13 Q. Okay. You just couldn't get your
14 bills paid, could you?

15 A. Do what?

16 Q. If you couldn't work, you can't pay
17 your bills, can you?

18 A. No. Oh, no.

19 Q. Okay.

20

21 THE COURT: All right. Keep going.

22

23 BY MR. TOBY SHOOK:

24 Q. All right. And if you can't get paid,
25 are you going to be worrying about that?

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1 A. Oh, yes.

2 Q. Okay.

3 A. How do I pay my bills, my rent?

4 Q. Okay.

5 A. I am the only one that --

6 Q. You won't be able to pay attention to
7 what is going on down here, if you are thinking about all
8 the bills and money that are mounting up; is that right?

9 A. Uh-huh. (Witness nodding head
10 affirmatively.)

11 Q. I have to get you to answer yes or no.

12 A. Yes.

13 Q. Okay. You will be worried about that.

14 That is something you cannot forget about; isn't it?

15 A. Uh-huh. (Witness nodding head
16 affirmatively.)

17 Q. Ms. Vega, if I could get you to say
18 yes or no?

19 A. Do what?

20 Q. Can you say yes or no, please? I mean
21 you are nodding your head, but she can't take that down.

22 A. Oh, uh-huh. (Witness nodding head
23 affirmatively.)

24 Q. Okay. You wouldn't -- you would be
25 worrying about your bills that have to be paid instead of
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1 the trial; is that right?

2 A. Yes.

3 Q. Okay. And you would still have these
4 dizzy spells and things like that with all these people
5 around you; is that right?

6 A. Uh-huh. (Witness nodding head
7 affirmatively.)

8 Q. And, again, if I could get you --

9 A. I was on medication, you know, when I
10 was younger, I used to be on medication.

11 Q. Okay.

12 A. But I am growing older and older so I
13 don't know.

14 Q. Okay. And because of the way you are,
15 you just don't understand what is going on; is that
16 right?

17 A. Yes, sir.

18 Q. Okay. You have never been down on a
19 jury before, have you?

20 A. No.

21

22 MR. TOBY SHOOK: Well, Judge, maybe I
23 can stop there, the defense might want to ask her some
24 questions on these issues.

25 MR. DOUGLAS MULDER: Judge, I don't

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1 have anything on the issues that have occurred so far.

2 THE COURT: All right. Go ahead.

3 Keep -- how bad is your hearing, ma'am? Do you wear a
4 hearing aid?

5 THE PROSPECTIVE JUROR: No, I have not
6 been able to go to a doctor.

7 THE COURT: Are you nervous now,
8 ma'am?

9 THE PROSPECTIVE JUROR: Uh-huh.

10 (Witness nodding head affirmatively.) Yes.

11 THE COURT: All right. Do you want to
12 take a recess? Would you like to step down for a minute?

13 THE PROSPECTIVE JUROR: No, I can go
14 ahead and finish.

15 THE COURT: Well, let the record
16 reflect that the witness (sic) is crying at this point.

17 Are you able to go on, ma'am?

18 THE PROSPECTIVE JUROR: Yes, I can.

19 All right.

20 THE COURT: Go ahead, Mr. Shook.

21 MR. TOBY SHOOK: Well, Judge, perhaps
22 we can take something outside of the presence of the

23 juror for a moment. Or we can do it in the presence, it
24 doesn't matter to me.

25 THE COURT: Could you step -- would

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1 you mind stepping outside briefly, please, ma'am?

2 THE PROSPECTIVE JUROR: Yes.

3

4 (Whereupon, the prospective

5 juror was excused from the

6 courtroom and the proceedings

7 were had as follows:)

8

9 THE COURT: Thank you. Yes, sir,

10 MR. TOBY SHOOK: Judge, I don't think

11 this juror is qualified in that she doesn't know what is

12 going on. You have observed her demeanor here, and she

13 is highly nervous, and has just a 6th grade education,

14 and really doesn't understand what we're even talking

15 about.

16 THE COURT: Well, I think her hearing

17 is such that she is not going to be able to hear in the

18 courtroom. What says the defense?

19 MR. DOUGLAS MULDER: Well, Judge, you

20 know, I have watched her and watched her demeanor, too,

21 and when you spoke to her and people spoke to her, she

22 answered right up.

23 THE COURT: Well, she understands the

24 English language when you are sitting in here and

25 speaking in a loud voice, no question about that.

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1 MR. DOUGLAS MULDER: Well, Judge, I

2 anticipate that this trial will conducted in English.

3 THE COURT: Indeed, it will, Mr.

4 Mulder, but it's going to be in the courtroom out there.

5 And I have my reservations about whether or not she can

6 hear in that courtroom.

7 MR. DOUGLAS MULDER: Well, maybe we

8 ought to go into the courtroom then and test her. I mean

9 right now she has said absolutely nothing that

10 disqualifies her. And I submit that the Court is --

11 THE COURT: Well, I am agreeing with

12 you, as of right now she's hasn't said anything. But I

13 think we can go further and we may do it. But both sides

14 do not want to distinguish -- or to excuse her if the

15 defense would agree, is that right?

16 MR. DOUGLAS MULDER: They can exercise

17 a peremptory strike if they want to.

18 THE COURT: We understand that, Mr.

19 Mulder.

20 MR. DOUGLAS MULDER: All right.

21 THE COURT: I think if Mr. Shook wants

22 to get out now, are you willing to excuse her?

23 MR. DOUGLAS MULDER: Judge, I am not

24 willing to now and I was not willing to before she left.

25 THE COURT: All right, fine. We will

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1 just bring her in and let the State of Texas continue on
2 with her examination.

3

4 (Whereupon, the prospective

5 juror returned to the

6 room and the proceedings

7 were resumed as follows:)

8

9 THE COURT: How do you feel? Okay?

10 You feeling any better? All right. Go ahead, Mr. Shook.

11

12 BY MR. TOBY SHOOK:

13 Q. Ms. Vega, let me ask you a few

14 questions about the death penalty. Okay? You know that
15 is what we're here about. The State has charged the
16 defendant with the death penalty, are you aware of that?

17 A. Uh-huh. (Witness nodding head

18 affirmatively.)

19 Q. I mean, I have to get you to answer

20 out loud.

21 A. Yes, I have read it in the papers.

22 Q. Okay. You underlined newspaper and

23 TV. Is that right?

24 A. Yes.

25 Q. Did you hear about it on the TV? What

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1 did you hear? Tell us what you heard.

2 A. Well, that she just murdered her two

3 sons.

4 Q. Okay. Do you remember any of the

5 facts they gave?

6 A. No.

7 Q. Okay. Did you form any opinion about

8 that, about what you heard?

9 A. Well, to me if she killed her sons --

10 Q. What?

11 A. She should be punished.
12 Q. Okay. But did you form any opinion on
13 what you heard in the newspaper or read in the newspaper
14 about her being guilty of this crime?
15 A. Well, not really, because I don't -- I
16 just would hear little things here and there that I
17 didn't pay too, too, much attention to it.
18 Q. Okay. So you didn't form an opinion
19 one way or the other?
20 A. Uh-huh. (Witness nodding head
21 affirmatively.)
22 Q. All right. Let me ask you some
23 questions about the death penalty. You know that Texas
24 has the death penalty; is that right?
25 A. The what?

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1 Q. The death penalty.
2 A. Yes, sir. Uh-huh. (Witness nodding
3 head affirmatively.)
4 Q. You know we have that as a punishment?
5 A. Yes, sir.
6 Q. Okay. Do you agree that we should
7 have that law as a punishment in some cases?
8 A. I really don't know.
9 Q. You don't know? Ever thought about it
10 before?
11 A. (Witness shaking head negatively.)
12 THE COURT: Is that a no?
13 THE PROSPECTIVE JUROR: No.
14
15 BY MR. TOBY SHOOK:
16 Q. Okay. Well, since you have been down
17 here and seen that we are trying the defendant in a death
18 penalty case, have you thought about it anymore?
19 A. No.
20 Q. What does that mean to you? The death
21 penalty. What do you know about it?
22 A. Prison or death.
23 Q. So you are aware that we execute
24 people here in the State of Texas?
25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)
2 Q. Is that a yes?
3 A. Yes.
4 Q. Okay. Let me ask you this, Ms. Vega,

5 do you think that people, some people, deserve to be
6 executed for what they have done?

7 A. Some, yes.

8 Q. Okay. Why do you think some people
9 should be executed for things they have done?

10 A. When they kill.

11 Q. Okay. Kill anyone or any type of case
12 or what kinds of cases do you think people should get the
13 death penalty for?

14 A. I don't know.

15 Q. This type of case, the Judge has told
16 you is the murder of a child under the age of six. Is
17 that the type of case you think a defendant should get
18 the death penalty for?

19 A. I guess so.

20 Q. Well, do you have any thoughts about
21 that at all?

22 A. No.

23 Q. Okay. Do you think children should be
24 protected from people that would kill them?

25 A. Yes.

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1 Q. Okay. Do you think you could be on a
2 jury and make that decision, about whether someone should
3 get the death penalty or not?

4 A. No.

5 Q. Why not?

6 A. I just wouldn't.

7 Q. Okay. Is there a religious reason for
8 that or just something you cannot do?

9 A. Well, not really, but --

10 Q. Or just don't want to do that?

11 A. No.

12 Q. No? Could you -- you just don't want
13 to do that? Or you just couldn't do that?

14 A. I couldn't do that.

15 Q. Couldn't do it?

16 A. Uh-huh. (Witness nodding head
17 affirmatively.)

18 Q. And why is that?

19 A. Well, I have never, never been
20 involved in nothing, nothing like this.

21 Q. Okay.

22 A. I have never been involved.

23 Q. All right. But as far as your dizzy
24 spells go, and you are hard of hearing --
25

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1 MR. DOUGLAS MULDER: Judge, we have
2 been over this before.
3 THE COURT: I will let him ask one
4 more question on this. I think it would be wise to
5 explore this in just a little more detail. Let's just
6 get through this as quick as we can.

7

8 BY MR. TOBY SHOOK:

9 Q. You don't think you would be able to
10 pay attention to the evidence and what was going on in
11 the trial; is that right? You would be too nervous?

12 A. I would get nervous and I wouldn't
13 understand exactly what they were --

14 Q. Okay. And as far as this
15 questionnaire, you didn't really understand what we were
16 asking on that?

17 A. A lot of questions, no.

18 Q. Okay. And as far as our Judge
19 questioning you out there, and things we have gone over,
20 you just don't understand a lot of that?

21 A. Well, like the first time when we
22 came, when we were over there, I didn't hear anything he
23 was saying. I didn't hear nothing.

24 Q. Out there in the courtroom?

25 A. Yes.

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1 Q. So you didn't hear anything he was
2 saying?

3 A. No, I was just going along with it.

4 Q. Okay. So you wouldn't be able to
5 really hear anything out there in the courtroom?

6 A. No.

7 Q. Okay. Okay.

8

9 MR. TOBY SHOOK: That's all the
10 questions I have, Judge.

11 MR. RICHARD C. MOSTY: Your Honor, may
12 I make just one statement for the record?

13 THE COURT: Yes, sir.

14 MR. RICHARD C. MOSTY: Where she was
15 seated the other day, there are no speakers.

16 THE COURT: I understand.

17 MR. RICHARD C. MOSTY: And the way the
18 jury is situated here in Kerr County, we have microphones
19 on the table and the speakers are above the jury box and
20 the acoustics in the jury box --

21 THE COURT: I understand.
22 MR. RICHARD MOSTY: She will be able
23 to hear up there.
24 THE COURT: I understand.
25 MR. DOUGLAS MULDER: We don't have

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1 anything, Judge.
2 THE COURT: Do you have anything else
3 you want to ask, Mr. Shook?
4 MR. TOBY SHOOK: No, Judge.
5 THE COURT: All right.
6 MS. SHERRI WALLACE: One second,
7 Judge.
8 THE COURT: Sure.
9 MR. TOBY SHOOK: I just have a couple
10 more questions.
11 THE COURT: Yes, you agreed to 45
12 minutes per side.
13
14 BY MR. TOBY SHOOK:
15 Q. Sometimes in trial, the defendant
16 might testify. Do you understand what I am saying?
17 A. No.
18 Q. Okay. They might get up there and
19 want to tell what happened. Do you understand that?
20 A. (Witness shaking head negatively.)
21 Q. You don't? You are shaking your head
22 no?
23 A. No.
24 Q. You don't know what I am talking
25 about, do you?

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1 A. No.
2 Q. Could you read that special issue
3 there, the one at the top, for us, Ms. Vega?
4 A. "Do you find from the evidence beyond
5 a reasonable doubt there is a" -- I don't know how to say
6 that word.
7 Q. Probability.
8 A. "That a defendant would commit
9 criminal acts of violence and would" -- I don't know that
10 word.
11 Q. Constitute.
12 A. "A continued threat"?

13 Q. That's right.
14 A. "To society."

15 Q. Society. That is what we have to
16 prove. Do you have any idea what that is about, really,
17 Ms. Vega?

18 A. No.

19 Q. I mean, you could read most of those
20 words, you had trouble with some, but do you know what
21 it's even talking about?

22 A. No.

23 Q. Okay. And I am not trying to
24 embarrass you, Ms. Vega, I just want to make this all
25 clear. Okay?

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1 A. Okay.

2 Q. What about this second special issue.

3 Could you read that for us, please?

4 A. "Taking into consideration all of the
5 evidence, including the circumstances of the offense, the
6 defendant's character, the background and the personal
7 moral" --I don't know that word.

8 Q. That is culpability.

9 A. "Of the defendant."

10 Q. You don't know what culpability means,
11 do you?

12 A. I don't even know what --

13 Q. I'm sorry?

14 A. I don't know what that means.

15 Q. Okay. Go on.

16 A. "Is there a sufficient"?

17 Q. Sufficient.

18 A. I don't know that word.

19 Q. That is mitigating.

20 A. "Circumstance or circumstances to
21 warrant that a sentence of life in prison rather than a
22 death sentence be imposed"?

23 Q. Imposed. Do you have any idea what
24 that sentence or what that question was asking you?
25 A. Not really.

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1 Q. Okay. Did you not understand a lot of
2 those words?

3 A. No.

4 Q. Okay.

5

6 MR. TOBY SHOOK: That's all the
7 questions I have at this time, Judge.

8 THE COURT: All right.

9 MR. TOBY SHOOK: If we could have the
10 juror excused for a moment, Judge?
11 THE COURT: Could you step out?
12 MR. DOUGLAS MULDER: Well, let me ask
13 a thing or two.
14 THE COURT: Okay.

15

16 VOIR DIRE EXAMINATION

17

18 BY MR. DOUGLAS MULDER:

19 Q. Ms. Vega, you would do your dead-level
20 best to be fair, wouldn't you? To be a fair person?

21 A. Do my what?

22 Q. You are a fair person and you would be
23 fair, wouldn't you? Well, you are an honest person?

24 A. I don't know.

25 Q. Well, you are an honest person, aren't

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1 you, Ms. Vega?

2 A. I am a nice person.

3 Q. Honest, excuse me, honest.

4 A. Honest?

5 Q. Yes.

6 A. Yes.

7 Q. And you are a fair person, are you

8 not?

9 A. Yes.

10

11 MR. DOUGLAS MULDER: I believe that's
12 all we have. Thank you. Thank you. That's all I have,
13 Judge.

14 THE COURT: I heard you. Thank you.

15 Thank you very much. I am hearing. I can hear quite
16 well without amplification. You said that's all you had
17 and the Court, of course, is very happy to see that.

18 Could you step out briefly, please, Ms. Vega? Thank you.

19 Let's go off the record a minute

20 before you put it on the record. What did you want?

21 MR. TOBY SHOOK: Yes, Judge, we were
22 going to move under 35.16(a)(5) that this juror is not
23 qualified.

24 THE COURT: Well, let's go on the
25 record. Let the record reflect that Ms. Vega has left

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1 the room, the small room we're in.

2 MR. TOBY SHOOK: Judge, under

3 35.16(a)(5), I don't know if you are there yet.

4 THE COURT: I am right there. That

5 is what I was reading up here myself, when she was out
6 there.

7 MR. TOBY SHOOK: "That he has such a
8 defect in the organs of feeling or hearing or such bodily
9 or mental defect as these to render him unfit from jury
10 service, or that he is legally blind, and the Court has
11 discretion, not satisfied that he is fit for jury service
12 in that particular case."

13 The Court had ample opportunity to
14 observe Ms. Vega. She, obviously, because of her limited
15 education and physical defects as to hearing and
16 dizziness and nervousness, just can't serve and is unfit
17 for jury service under this provision, Judge. She didn't
18 know what was going on when she answered this
19 questionnaire, really. And she certainly didn't know
20 what was going on when we were asking her questions.
21 She can't hear well. She has told us
22 that she didn't know what was going on out there, Judge.
23 She didn't know anything about the defendant's right not
24 to testify. She didn't know what we were talking about,
25 and cannot comprehend legal principles. She cannot

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1 comprehend testimony, and she is just unfit, Judge, and
2 is not the type of juror that is qualified. And it's
3 within the Court's discretion, under this section, after
4 you have observed her, and we would ask you to remove her
5 for cause.

6 THE COURT: Well, the Court has

7 observed her. Anything, Mr. Mulder?

8 MR. DOUGLAS MULDER: Yes, sir, Judge.

9 Ms. Vega answered all of the questions that were directed
10 to her. She was able to read the special issues. The

11 special issues were not explained to her and they could
12 have been. I think she comprehends what is going on.

13 She was able to fill out this questionnaire. I don't
14 think there is any question, but what she is qualified.

15 If the State wants to strike her, then strike her,

16 exercise a peremptory strike.

17 MR. RICHARD C. MOSTY: And the record

18 also ought to reflect that in this courtroom, where we
19 are now, there is no mechanical amplification, and in the
20 courtroom where we will try this case, there will be.

21 THE COURT: Well, I am going to put

22 her back on the stand and you can continue asking her
23 questions, Mr. Shook. I want to see how much further she
24 goes. She didn't complete this questionnaire very much;

25 there is "don't know" all the way through.

Sandra M. Halsey, CSR, Official Court Reporter 639

1 MR. RICHARD C. MOSTY: But, Your
2 Honor, all that is required in that regard, is reading
3 and writing. And she has --

4 THE COURT: We understand that, that
5 is why I want Mr. Shook to continue asking her some
6 questions, and I will make my own mind up. Let's bring
7 her back in.

8 We have plenty of time before the next
9 juror gets here. Let's go right through the regular voir
10 dire, and see what she says. All right.

11 MR. DOUGLAS MULDER: Judge, I thought
12 she had been passed?

13 THE COURT: Well, she had been passed,
14 but we have agreed to 45 minutes a side, and I think that
15 we can safely exam this juror a little bit longer, at
16 least for my satisfaction I want it done. If you don't
17 mind going on Mr. Shook.

18 MR. TOBY SHOOK: All right.

19 BY MR. TOBY SHOOK:

20 Q. All right. Ms. Vega, what types of
21 crimes --

22 MR. DOUGLAS MULDER: Judge, we are
23 going to object to going further on this after the State
24 has passed the venireman. We passed the venireman.

25 THE COURT: You want me to rule right

Sandra M. Halsey, CSR, Official Court Reporter 640

1 now?

2 MS. SHERRI WALLACE: Judge, we had an
3 agreement.

4 THE COURT: You want me to rule right
5 now?

6 MR. DOUGLAS MULDER: Yes, sir.

7 THE COURT: Juror disqualified, thank
8 you.

9 Thank you, ma'am. You may step down.

10 We will now await the arrival of Ms.

11 Lori Werckle.

12 MR. RICHARD C. MOSTY: We would like
13 to put Ms. Vega's jury questionnaire in, as I believe, it
14 would be Court Exhibit Number 4 now.

15

16 (Whereupon, the following

17 mentioned item was

18 marked for

19 identification only
20 after which time the
21 proceedings were
22 resumed on the record
23 in open court, as
24 follows:)
25

Sandra M. Halsey, CSR, Official Court Reporter 641

1 THE COURT: Well, it was rather plain
2 to the Court that Ms. Vega did not understand much of
3 what was going on here.
4 MR. RICHARD C. MOSTY: Your Honor, I
5 don't think that is a disqualification, all she has got
6 to do is be able to read and write.
7 THE COURT: Well, I think her hearing
8 was to the point where she was not going to be able to do
9 much out there. At any rate, if I have made an error, I
10 am sure it will be appealed at the appropriate time.
11 MR. RICHARD C. MOSTY: I just want to
12 make sure that I understand the Court is disqualifying
13 her based on her lack of understanding, or --
14 THE COURT: Her hearing -- her hearing
15 was such -- her hearing was rather plain to the Court,
16 that she is going to have to be -- I don't think she will
17 be able to hear things in the courtroom out there, and
18 that is why I am disqualifying her. Likewise, she had
19 such mental defects, to me, that she was clearly not
20 understanding what she would answer. She could read,
21 basically, what was said up there, but could not
22 understand most of it.
23 At any rate, I am holding her
24 disqualified and we will put her questionnaire in as
25 Court's Exhibit Number 4.

Sandra M. Halsey, CSR, Official Court Reporter 642

1
2 (Whereupon, the above
3 mentioned item was
4 received in evidence
5 as Court's Number 4,
6 for all purposes
7 after which time,
8 the proceedings were
9 resumed on the record,
10 as follows:)
11
12 THE COURT: All right. This lady is

13 going to have a child on the 27th of December, so both
14 sides might want to -- I did not excuse her for this. I
15 wondered if both sides wanted to excuse her.

16 MS. SHERRI WALLACE: Judge, I don't
17 think that the defense is agreeing to anything these
18 days.

19 MR. DOUGLAS MULDER: Well, we will
20 agree to let her go. We're wasting our time with her.

21 THE COURT: Well, let's --

22 THE PROSPECTIVE JUROR: That's right.

23 THE COURT: All right. Come on in and
24 have a seat right here, please, ma'am. All right. Raise
25 your right hand.

Sandra M. Halsey, CSR, Official Court Reporter 643

1 Do you solemnly swear or affirm you
2 will true answers make to all the questions propounded to
3 you concerning your qualifications as a juror in this
4 room or any room or court which you may be sent, so help
5 you God?

6 THE PROSPECTIVE JUROR: Yes, sir, I
7 do.

8

9 (Whereupon, the prospective
10 juror was duly sworn by the
11 Court to true answers make
12 to the questions propounded,
13 concerning qualifications, after
14 which time, the proceedings were
15 resumed as follows:)

16

17 Whereupon,

18

19 LORI WERCKLE,

20

21 was called as a prospective juror, for the purpose of
22 voir dire, having been first duly sworn by the Court to
23 speak the truth, the whole truth, and nothing but the
24 true, testified in open court, as follows:

25

Sandra M. Halsey, CSR, Official Court Reporter 644

1 THE COURT: Okay. Please state your
2 name and spell your last name for the court reporter.

3 THE PROSPECTIVE JUROR: Lori Werckle,

4 W-E-R-C-K-L-E.

5 THE COURT: Ms. Werckle, we understand
6 that you will be delivering a baby on about what?

7 THE PROSPECTIVE JUROR: December 27.

8 THE COURT: Of this year. All right.

9 Both sides -- what says the State?

10 MR. TOBY SHOOK: We can agree on Ms.

11 Werckle.

12 THE COURT: Thank you very much. Does

13 the defense agree?

14 MR. DOUGLAS MULDER: Yes, sir.

15 THE COURT: All right. Thank you very

16 much for coming, ma'am, we appreciate it.

17 THE PROSPECTIVE JUROR: Thank you,

18 guys. Good luck. Thank you very much.

19

20 (Juror excused by agreement.)

21

22 THE COURT: All right. Thank you very

23 much.

24 MS. SHERRI WALLACE: We will offer the

25 questionnaire of Ms. Werckle.

Sandra M. Halsey, CSR, Official Court Reporter 645

1

2 (Whereupon, the following

3 mentioned item was

4 marked for

5 identification only

6 after which time the

7 proceedings were

8 resumed on the record

9 in open court, as

10 follows:)

11

12 THE COURT: Received for record

13 purposes.

14

15 (Whereupon, the above

16 mentioned item was

17 received in evidence

18 as Court's Exhibit No. 5,

19 for all purposes

20 after which time,

21 the proceedings were

22 resumed on the record,

23 as follows:)

24

25 THE COURT: Well, that terminates

Sandra M. Halsey, CSR, Official Court Reporter 646

1 today's proceedings.

2 MR. DOUGLAS MULDER: You know, Judge,
3 we probably ought to have a few more here, so that --
4 THE COURT: I am all ready to do it.

5 I think we should have a few more here every day.

6 MR. DOUGLAS MULDER: Well, we have an
7 extra guy.

8 MR. TOBY SHOOK: Yeah, we have an
9 extra guy.

10 MR. DOUGLAS MULDER: We have got some
11 information that needs to go over with the defendant,
12 some reports and things of that nature. We have got them
13 in notebooks like this. Is she allowed to have those in
14 the jail, or do you want them put in something like this?

15 What is your pleasure?

16 THE COURT: What are the jail rules?

17 THE BAILIFF: No metal brads, no
18 staples.

19 THE COURT: All right. All right. I
20 think whatever the rules are over there,

21 THE BAILIFF: They need to take them
22 to the jail and leave them.

23 THE COURT: I have no problem with
24 Mrs. Routier reviewing anything you want her to review as
25 long as they comport with the various rules of the Kerr

Sandra M. Halsey, CSR, Official Court Reporter 647

1 County Jail.

2 MR. DOUGLAS MULDER: Judge, just so
3 that I make myself clear on this --
4 THE COURT: But I am not ordering the
5 Kerr County Jail to change any rules for that. What are
6 the rules over there?

7 MR. DOUGLAS MULDER: I don't have any
8 problem what that. That is why I asked the Court --

9 THE BAILIFF: I can have it in
10 writing, you know, like when he -- Doug Mulder comes
11 over.

12 THE COURT: Whatever they --

13 MR. DOUGLAS MULDER: That is fine. I
14 don't intend to take them over there and let them -- you
15 know, I don't mind them looking through them to see if
16 there is anything in there that should not be in there,
17 but I don't intend to take them over there and let them
18 read it.

19 THE COURT: Well --

20 MR. DOUGLAS MULDER: Or we can do
21 it -- I will just bring them to Court tomorrow.

22 THE COURT: Well, bring them to Court,

23 and have Mrs. Routier, she can read them while they are
24 here.

25 MR. DOUGLAS MULDER: Well, she is not

Sandra M. Halsey, CSR, Official Court Reporter 648

1 going to read them while we are doing this, Judge. That
2 doesn't make sense. But the bailiffs at that time can go
3 through it and make sure there isn't any contraband
4 there.

5 THE BAILIFF: Judge, every time she
6 goes to jail they check her out, top to bottom. We have
7 nothing to do with that.

8 THE COURT: All right.

9 THE DEFENDANT: And they just go
10 through everything, but they don't -- I don't know
11 exactly how they do it.

12 THE COURT: Well, whatever -- here is
13 the rules: Now, whatever the Kerr County Jail rules are,
14 I will follow those. So, if the Kerr County Jail let's
15 them come in, they come in. If they don't, they don't.
16 Period.

17 MR. DOUGLAS MULDER: Judge, let's see
18 what happens, she is going to have an opportunity to read
19 them.

20 THE COURT: I am not denying her the
21 opportunity to read them.

22 MS. SHERRI WALLACE: You can visit her
23 in the jail, Mr. Mulder.

24 THE COURT: If you want to visit her
25 in the jail, and put her in a room and read them, that is

Sandra M. Halsey, CSR, Official Court Reporter 649

1 fine with me. But, I mean, I am not going to add new
2 rules to --

3 MR. DOUGLAS MULDER: Let's just see
4 what happens. If we have a problem, then we will let you
5 know. But if I don't find it acceptable, whatever the
6 rules are -- let's just see what happens.

7 THE COURT: Thank you very much. We
8 appreciate your solicitude for the rules of the jail.

9 MS. SHERRI WALLACE: Judge, before we
10 break for the day, I just want to get on the record I
11 have offered State's Exhibit -- excuse me, Court Exhibit
12 Number 5, the agreement to excuse the last juror.

13 THE COURT: Thank you.
14 Is there not a visiting room in the
15 jail, Mr. Mosty?

16 MR. RICHARD MOSTY: Not a very good

17 one. There is not -- there is no contact visiting room
18 where a lawyer can sit down with somebody.

19 MS. SHERRI WALLACE: No, I was told
20 there was.

21 MR. RICHARD C. MOSTY: Well, you can,
22 but you have to clear everybody out and it is in a big
23 dayroom.

24 THE COURT: All right. Would you like
25 to stay while we vacate the premises here and let Mrs.

Sandra M. Halsey, CSR, Official Court Reporter 650

1 Routier read some this afternoon?

2 MR. DOUGLAS MULDER: Judge, it's
3 voluminous. We were talking about hundreds, there are
4 literally hundreds.

5 MR. RICHARD MOSTY: Actually, once we
6 move out there, this might solve itself because we can
7 almost set up an area out there tomorrow.

8 THE COURT: Well, we're going to be
9 moving out there tomorrow. Can we hold this in abeyance
10 until tomorrow morning? We're going to be out there
11 tomorrow morning.

12 All right. See everybody at new place
13 tomorrow morning, 8:30.

14

15 (Whereupon, a short
16 discussion was held
17 at the side of the
18 bench, between the Court
19 and the attorneys for
20 both sides in the case,
21 off the record,
22 after which time,
23 the proceedings were
24 resumed on the record,
25 as follows:)

Sandra M. Halsey, CSR, Official Court Reporter 651

1
2 THE COURT: All right. Let the record
3 reflect that the Court held Ms. Vega disqualified, under
4 Article 35.16(a)(5) for an obvious, serious hearing
5 defect. Thank you.

6 And the Court is satisfied that she is
7 not fit for jury service in this particular case due to
8 that. The Court in its discretion is satisfied.

9 MR. TOBY SHOOK: The Court also
10 mentioned the hearing, but that in addition the juror is

11 unsound.

12 THE COURT: Well, that's right. Ms.

13 Vega -- obviously, but I mean, the hearing is bad, plus
14 the fact that she obviously was not understanding the
15 questions and answers.

16 MR. TOBY SHOOK: Which all falls under
17 that.

18 THE COURT: The whole thing falls
19 under 35.16(a)(5), and that is what I am holding it under
20 and I am holding her disqualified for that in my
21 discretion.

22 MS. SHERRI WALLACE: At this time we
23 will offer Court's Exhibit Number 6, agreement to excuse
24 jurors Patricia Beetham and Virginia Wilke.

25

Sandra M. Halsey, CSR, Official Court Reporter 652

1 (Whereupon, the following
2 mentioned item was
3 marked for
4 identification only
5 after which time the
6 proceedings were
7 resumed on the record
8 in open court, as
9 follows:)

10

11 THE COURT: They are tomorrow? The
12 first one tomorrow?

13 MS. SHERRI WALLACE: One is in the
14 morning and one is the afternoon. I am going to tell the
15 clerk who is going to call them.

16 MR. RICHARD C. MOSTY: So we will
17 still have somebody at 8:30 though?

18 MS. SHERRI WALLACE: Oh, yes.

19 THE COURT: All right. So Patricia
20 Beetham and who is the other one?

21 MS. SHERRI WALLACE: Wilke.

22 Juror Number, I think, is 20, Judge.

23 THE COURT: All right. That will be
24 admitted.

25

Sandra M. Halsey, CSR, Official Court Reporter 653

1 (Whereupon, the above
2 mentioned item was
3 received in evidence
4 as Court's Exhibit No. 6,

5 for all purposes
6 after which time,
7 the proceedings were
8 resumed on the record,
9 as follows:)

10

11 THE COURT: Let's see if we can get
12 somebody else in here for that one.

13 MR. TOBY SHOOK: For the afternoon?

14 THE COURT: Yes, I hate to waste these
15 afternoons.

16 MR. RICHARD MOSTY: I don't like to go
17 out of order too much.

18 MS. SHERRI WALLACE: Me either,
19 because I haven't read that far. Okay. I'll see what I
20 can do.

21 MR. RICHARD MOSTY: Particularly, as
22 we get closer to a jury, I don't like to do it.

23 MS. SHERRI WALLACE: Right.

24 MR. RICHARD MOSTY: But we are sort of
25 far away.

Sandra M. Halsey, CSR, Official Court Reporter 654

1 MS. SHERRI WALLACE: Okay. I will
2 mention it to them.

3

4 (Whereupon, the proceedings
5 Were recessed for the
6 day, to return on the
7 next day, October 30, 1996,
8 at 8:00 a.m. at which
9 time the proceedings
10 were resumed in open
11 court, in the
12 presence of the
13 defendant, with her
14 attorney, and the State
15 being represented by the
16 D.A., as follows:)

17

18 (These proceedings are continued to
19 the next volume in this cause.)

20

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Sandra M. Halsey, CSR, Official Court Reporter 655

1 COURT'S EXHIBIT NO. 2

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5 (Questionnaire of Ms. Jones)

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Sandra M. Halsey, CSR, Official Court Reporter 656

1 COURT'S EXHIBIT NO. 3

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6 (Questionnaire of Mr. Dart)

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Sandra M. Halsey, CSR, Official Court Reporter 657

1 COURT'S NO. 4
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5 (Questionnaire of Ms. Vega)
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Sandra M. Halsey, CSR, Official Court Reporter 658

1 COURT'S NO. 5
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5 (Agreement of Werckle)
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Sandra M. Halsey, CSR, Official Court Reporter 659

1 COURT'S EXHBIT NO. 6

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6 (Agreement to jurors: Beetham & Wilke)

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Sandra M. Halsey, CSR, Official Court Reporter 660

1 CERTIFICATION PAGE
2 THE STATE OF TEXAS)
3 THE COUNTY OF DALLAS)
4 I, Sandra M. Halsey, was the Official Court
5 Reporter of Criminal District Court Number 3, of Dallas
6 County, Texas, do hereby certify that I reported in
7 Stenograph notes the foregoing proceedings, and that they
8 have been edited by me, or under my direction and the

9 foregoing transcript contains a full, true, complete and
10 accurate transcript of the proceedings held in this
11 matter, to the best of my knowledge.

12 I further certify that this transcript of the
13 proceedings truly and correctly reflects the exhibits, if
14 any, offered by the respective parties.

15 SUBSCRIBED AND SWORN TO, this _____ day of
16 _____, 1997.

17 _____

18 Sandra M. Day Halsey, CSR

19 Official Court Reporter

20 363RD Judicial District Court

21 Dallas County, Texas

22 Phone, (214) 653-5893

23

24 Cert. No. 308

25 Exp 12-31-98

Sandra M. Halsey, CSR, Official Court Reporter 661

1 STATE OF TEXAS)
2 COUNTY OF DALLAS)

3

4 JUDGES CERTIFICATE

5

6

7

8 The above and foregoing transcript, as certified
9 by the Official Court Reporter, having been presented to
10 me, has been examined and is approved as a true and
11 correct transcript of the proceedings had in the
12 foregoing styled cause, and aforementioned cause number
13 of this case.

14

15

16

17

18 _____

19 MARK TOLLE, JUDGE

20 Criminal District Court Number 3

21 Dallas County, Texas

22

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Sandra M. Halsey, CSR, Official Court Reporter 662