

Volume 14

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

10

11

12

13 STATEMENT OF FACTS

14 JURY VOIR DIRE

15 INDIVIDUAL JURORS HEARING

16 VOL. 14 OF VOLS.

17 October 30, 1996

18 Wednesday

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1 C A P T I O N

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3

4 BE IT REMEMBERED THAT, on Wednesday, the 30th 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
2
3 HON. JOHN VANCE
4 Criminal District Attorney
5 Dallas County, Texas
6
7 BY: HON. GREG DAVIS
8 Assistant District Attorney
9 Dallas County, Texas
10
11 AND: HON. TOBY SHOOK
12 Assistant District Attorney
13 Dallas County, Texas
14
15 AND: HON. JOHN GRAU
16 Assistant District Attorney
17 Dallas County, Texas
18
19 AND: HON. SHERRI WALLACE
20 Assistant District Attorney
21 Dallas County, Texas
22
23 APPEARING FOR THE STATE OF TEXAS
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
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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 AND:
9 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 AND:
17 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 30th, 1996

4 Wednesday
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 THE COURT: All right. We're back on
18 the record in the Darlie Routier matter.
19 Let the record reflect that today is
20 October 30th, 1996, Wednesday, and we are continuing the
21 individual voir dire for prospective jurors.

22 And on the stand now, is Mr. Fred L.
23 Richardson.

24 Is that your name, sir?

25 THE PROSPECTIVE JUROR: Yes, sir.
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1 THE COURT: If you will raise your
2 right hand, please.
3 Do you solemnly swear or affirm you
4 will true answers make concerning your qualifications as
5 a juror to all the questions propounded to you in this
6 room or in any room or court to which you may be sent, so
7 help you God?

8 THE PROSPECTIVE JUROR: Yes, sir.
9
10 (Whereupon, the prospective

11 juror was duly sworn by the
12 Court to true answers make
13 to the questions propounded,

14 concerning qualifications, after
15 which time, the proceedings were
16 resumed as follows:)
17

18 THE COURT: Thank you. We have for
19 the State, Mr. Greg Davis.

20 MR. GREG DAVIS: Good morning.

21 THE PROSPECTIVE JUROR: Good morning.

22 THE COURT: Mr. Toby Shook.

23 MR. TOBY SHOOK: Good morning.

24 THE PROSPECTIVE JUROR: Good morning.

25 THE COURT: Ms. Sherri Wallace.

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1 MS. SHERRI WALLACE: Hi.

2 THE PROSPECTIVE JUROR: Hi.

3 THE COURT: For the defense, Mr. Doug

4 Mulder.

5 MR. DOUGLAS MULDER: Good morning.

6 THE PROSPECTIVE JUROR: Good morning.

7 THE COURT: Mr. Richard Mosty.

8 MR. RICHARD MOSTY: Good morning.

9 THE PROSPECTIVE JUROR: Hello.

10 THE COURT: Mr. Preston Douglass.

11 MR. PRESTON DOUGLASS: Good morning.

12 THE PROSPECTIVE JUROR: Good morning.

13 THE COURT: And the defendant is Mrs.

14 Darlie Routier there in the herringbone jacket.

15 Go ahead, please, Mr. Davis.

16 MR. GREG DAVIS: May it please the

17 Court?

18

19 Whereupon,

20

21 FRED LEE RICHARDSON,

22

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

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

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

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1 true, testified in open court, as follows:

2

3 VOIR DIRE EXAMINATION

4

5 BY MR. GREG DAVIS:

6 Q. Good morning, Mr. Richardson. How are

7 you?

8 A. Doing fine.

9 Q. Mr. Richardson, as the Judge has told

10 you, my name is Greg Davis, along with Mr. Shook and Ms.

11 Wallace, we represent the State of Texas in this case.
12 I'm going to be given about 30 or 45 minutes to talk with
13 you this morning.

14 During that time I am going to talk to
15 you about three general areas. I'm going to talk to you
16 about some of the answers that you have given to us on

17 your questionnaire.

18 I am going to talk to you about the
19 death penalty, and also, about some of the general laws
20 that apply in all criminal cases here in the State of
21 Texas.

22 Before I do, again, let me make our

23 position very clear. The State of Texas in this case is
24 actively seeking the death penalty. That means that we
25 want, and we fully expect that at the conclusion of the
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1 evidence in this case, that the young lady seated down
2 here at my far left, Darlie Lynn Routier, will be found

3 guilty of capital murder. That she will be sentenced to
4 die, and at some day in the future, she will be executed.
5 That is our goal in this case. That is what we want to
6 see happen at the conclusion of this case.

7 Now, obviously, she has five very fine
8 attorneys who oppose that position. That is why we're
9 picking a jury down here in Kerrville.

10 But at the conclusion of this case, we
11 will stand before you, and we are going to ask you to
12 answer special issues one and two, "yes" and "no," that
13 being the combination that requires Judge Tolle to impose
14 a sentence of death. That is what we're going to do at
15 the end of this case.

16 Now, if that occurs, and if Judge
17 Tolle does sentence Mrs. Routier to death, let me, just
18 briefly, tell you what is going to transpire, because I
19 think you have a right to know, if you are going to sit
20 on this jury.

21 If that occurs, then at some date in
22 the future, Mrs. Routier will be transferred to the Ellis
23 I Unit, she will be transferred to Huntsville. On the
24 date affixed for her death, she will be taken to the
25 Walls Unit where the death chamber is and she will be
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1 taken there no matter what she is saying or doing.

2 She may be professing her innocence.
3 She may be claiming that all twelve jurors down in
4 Kerrville, Judge Tolle, and the State of Texas, have all
5 conspired against her. She may be naming another person
6 as the true killer in this case. She may be praying.
7 She may be asking for forgiveness, but no matter what she
8 is doing, she is going to be taken to that death chamber.
9 And once there, if we were to look

10 inside it this morning, we would see a gurney with very
11 large, thick, leather straps attached to it. And the

12 guards will take her to that gurney, and they will place
13 her on that gurney, and they will strap her down, until
14 she is motionless and defenseless on that gurney.

15 Again, that is going to occur no
16 matter what is being said or done.
17 Now, beside that gurney will be a bag
18 suspended above her with a tube and a needle leading
19 down, and that bag contains poison.
20 Prison personnel will take that needle
21 and they will place it into her arm, and a guard or
22 personnel there in the prison system, will then open the
23 valve and allow that poison to course through that tube
24 into that needle and into her arm.
25 And when that happens, any number of
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1 things may happen. Her eyes might roll back in her head,
2 she may gurgle, she may grow short of breath. But within
3 15 minutes, Darlie Lynn Routier is going to lay there
4 dead on that gurney.

5 And, I guess, for lack of any better
6 description, she will have been put to death much like we
7 put a dog to death here in Texas. And her loved ones,
8 her family, her friends will be then allowed to take her
9 body for burial.

10 Now, there are a lot of people that

11 come down here, and I have talked to a lot of them, and
12 they tell me, "Well, you know, I am really in favor of
13 the death penalty, in the abstract. I think it's
14 something that we need. Something that is good, it is
15 necessary for this State."

16 But if you will look at Mrs. Routier,
17 she is not abstract. She is a human being just like you
18 and me. And I can assure you, the last thing she wants
19 is to die on that gurney.

20 Now, let me just ask you, Mr.

21 Richardson, is this something that you feel you could do?

22 Or is this something that you feel, that after you have

23 taken a look at the situation and thought about it, you

24 feel like you would rather us pass to the next juror?

25 Because if you say that, I will do the same thing to you

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1 that I say to everyone else. I respect your honesty.

2 Because I have had a number of people say that to me in

3 the past.

4 How do you feel about participating in

5 this case?

6 A. I don't have any problem.

7 Q. Okay. You were laughing as I was

8 talking about some portions of that. Why were you

9 laughing about my description of that? What did you find

10 humorous about that?

11 A. I don't remember.

12 Q. You indicated that you knew one of the

13 three court-appointed attorneys: Mr. Withrow, Parks, or

14 Mr. Huff. Which one of those individuals do you know?

15 A. I beg your pardon?

16 Q. Okay. All right. I'm sorry. Instead

17 of a "yes," that is actually a "no." You didn't know any

18 of the court-appointed attorneys previously, did you?

19 A. No.

20 Q. Okay. You had indicated on your

21 questionnaire that you thought that there were some

22 crimes which called for the death penalty, "Solely

23 because of their facts and circumstances, regardless of

24 whether or not the guilty person has committed prior

25 violent acts." And you indicated "yes"; is that right?

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1 A. That is correct.

2 Q. Can you give me an idea of what types

3 of offenses that you are thinking of? What examples come

4 to your mind?

5 A. Murder.

6 Q. Sir?

7 A. Violent murder.

8 Q. Okay. And any particular set of

9 circumstances?

10 A. It seems like to me most of the people

11 that I have seen through the media in the last few years
12 that have received the death penalty, it seemed like they
13 deserved it.

14 Q. Okay. Did you follow the Susan Smith
15 case in South Carolina?

16 A. Yes.

17 Q. All right. What were your feelings
18 about that case?

19 A. It -- from a professional standpoint,
20 it seemed very reasonable to me. That that type of
21 personality could commit that kind of crime.

22 Q. All right. And when you talk about
23 that type of personality, what are you talking about?

24 A. Somebody that is -- appeared to me to
25 be very narcissistic and self-centered and concerned
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1 about their own interest.

2 Q. All right. How about the outcome in
3 that case?

4

5 MR. RICHARD C. MOSTY: Your Honor, I
6 don't think it is appropriate to be asking about the
7 outcome and what this person feels about the outcome of
8 another case.

9 THE COURT: Well, overruled. I will
10 let him go ahead. Go ahead.

11

12 BY MR. GREG DAVIS:

13 Q. What did you think about the outcome,
14 the life sentence that was imposed on Susan Smith as
15 opposed to the death penalty?

16 A. I think that was probably -- it is six
17 of one, half dozen of the other. Without knowing Susan
18 Smith, or knowing whether she had any remorse or any
19 guilt about it, if she did have remorse and guilt about
20 it, it could be worse than death.

21 Q. Okay. Let me ask you, also, you had
22 indicated that you have been a victim of a crime; is that
23 correct?

24 A. Yes.

25 Q. All right. Can you give me just some
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1 of the details there? You, personally? Or someone that
2 you know?

3 A. Theft and burglary.

4 Q. All right.

5 A. Nothing violent.

6 Q. Okay. Tell me a little bit about your

7 son's case where you indicated he was on probation out of

8 Bexar County for burglary of a habitation?

9 A. That's right.

10 Q. All right. When did that occur?

11 A. When he was 17.

12 Q. All right. And how long ago was that?

13 A. He is 26 now.

14 Q. Okay. How did you feel about the way

15 he was treated in that case?

16 A. I felt very badly about it.

17 Q. All right.

18 A. He cooperated totally with the

19 Sheriff's Department, went down and talked to them. Made

20 restitution as far as the things that he and the other

21 two boys took, they took everything back.

22 Two years later -- he was no-billed -- Steve

23 Hill, big in Bexar County, attorney, and they issued a

24 warrant. At the time he was living in New Mexico, and

25 was trying to go to school, and was holding down a job.

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1 They picked him up and threw him in jail.

2 We brought him back to Texas. He

3 wanted to continue school and he needed to continue his

4 job, so he pleaded no contest and accepted a plea

5 bargain.

6 Q. How did that leave you feeling about

7 the criminal justice system?

8 A. It sucked.

9 Q. Feelings changed about the criminal

10 justice system?

11 A. Not much.

12 Q. Okay. How about law enforcement, the

13 district attorney, Sheriff's department; same feeling?

14 A. Seems to me that most of our people

15 involved in law enforcement and prosecuting cases are

16 real black and white, that they are adversarial. And,

17 oftentimes, I feel like we need to be protected from the

18 protectors.

19 Q. Well, you know, I am part of that

20 criminal justice system, and I am part of the people that

21 make up law enforcement. Just bluntly, do you think I

22 suck? Or do you think that we suck in this case?

23 A. Well, I think that you were elected,
24 and I think that we have a vote and that we can unelect
25 you. But knowing you personally, no, I don't.
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1
2 THE COURT: Well, actually the three
3 district attorneys here are appointed, they are Assistant
4 District Attorneys. The Dallas County District Attorney
5 is elected.
6 In Texas, it's the County Attorney, or
7 the District Attorney, which is a sole-elected official,
8 and then the assistants are merely appointed by him.
9 None of these ladies and gentlemen are
10 elected officials.

11
12 BY MR. GREG DAVIS:

13 Q. You know, I noted, and I listened, you
14 know, and one thing I always tell people, there are not
15 any right or wrong answers. I mean, everybody has had

16 different experiences. I am sure that you have had that
17 with clients and other people that you have worked with.
18 And your perspective is certainly valid just as mine is
19 from my viewpoint about the criminal justice system.

20 But, I guess, it gets down to this:
21 We're looking for people who can come in here with a
22 clean slate, more or less. I mean, that is what both
23 sides deserve.
24 We're looking for people who, maybe

25 their life experiences have been such that when they come
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1 in here, they can look at us and they don't have any
2 preconceived ideas about what we stand for, what we are
3 doing. And the same thing for the defense over here. We
4 don't want somebody that comes in with a life experience
5 where they are suspect to what these individuals over
6 here are doing, too.
7 And that is the way this system is
8 supposed to work. And, frankly, not everybody can come
9 in here and say that is the case. Not everybody is
10 qualified to sit on this jury because of their
11 experiences.
12 And I just need to ask you, because of

13 the experience that you have had with your son's case,

14 which was, obviously, a very strong experience for you:
15 Do you feel like, in this case, that you might be

16 somewhat biased against the State in this case?

17 A. I don't know how I could not have

18 emotion and feelings about my past experiences.

19 Q. Is it going to be very difficult or

20 impossible for you to put those feelings aside?

21 A. No, sir, it's not going to be

22 impossible to do that.

23 Q. Well, are those feelings -- do you

24 think that those feelings are going to play a part in

25 your perception of police officers, for instance?

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1 Because we're going to have a number of police officers

2 testify in this case.

3 A. They would certainly play a part, yes.

4 Q. All right. And, in what way would

5 they play a part?

6 A. (No response.)

7 Q. Do you feel like that you might start

8 a police officer a little bit behind another witness?

9 A. Probably.

10 Q. Just the way that you judge him?

11 A. Probably.

12 Q. Do you think it might be a little bit

13 more difficult for him to convince you that he is telling

14 you the truth, as opposed to, say a civilian off the

15 street who is not part of law enforcement?

16

17 MR. DOUGLAS MULDER: Judge, I think he

18 ought to tell the juror first, that they are to judge --

19 the law requires that they judge all witnesses by the

20 same standard.

21 MR. GREG DAVIS: Judge, I am going to

22 object to this.

23 THE COURT: All right. Both you

24 gentlemen just sit down. Thank you.

25 MR. GREG DAVIS: Yes, sir.

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1 THE COURT: Ask your questions, and

2 then you will get to ask your questions, Mr. Mulder. We

3 got 45 minutes a side.

5 BY MR. GREG DAVIS:

6 Q. Go ahead, if you would. If you would
7 answer that question.

8 A. I think, if I were to be on the jury,
9 that I would work real hard to be objective, but I don't
10 think that I could make my feelings go away, and I don't
11 think that I could make my biases go away. They are a
12 part of who I am.

13 Q. Okay. And that is regardless of
14 whether -- as Mr. Mulder was stating, the law requires
15 jurors to put their biases aside. The law requires that
16 they judge all witnesses the same. But, frankly, there
17 are people who come down here and say, "I just simply

18 can't do that." That happens. Is that what you are
19 saying to me?

20 A. I'm saying that I would attempt to
21 follow the law to the best of my ability.

22 Q. All right. But you are also --

23 A. But it is also like asking me to not
24 think about an elephant.

25 Q. Right. You would try, but in all
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1 honesty, you are telling me that you think you would have
2 a very difficult time doing that in this case?

3 A. It's a part of me, yes. It is a
4 strong part of me. My feelings are very strong.

5 Q. Okay. And those are feelings that, as
6 I understand it, would go to your ability to listen to
7 police or other members of law enforcement, and it would
8 make it difficult for you to judge their testimony like

9 you would a member who is not a member of law
10 enforcement; is that right?

11 A. I think my feelings probably extend
12 even wider than that, even toward all government.

13 Q. Okay. So, that if, for instance, in
14 this case, something I might say, I mean, as a part of
15 law enforcement or as a part of government, if you will,
16 an argument that we may make on this side of the table,
17 as opposed to an argument that you may hear from the

18 defense attorneys who are not a part of government, do
19 you think that your feelings may color the way that you
20 listen to us, as opposed to the way that you listen to
21 the defense attorneys?

22 A. Well, they are affecting my feelings

23 right now as I am having this conversation with you.

24 Q. Okay. And what kind of feelings is

25 this engendering in you?

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1 A. Well, I feel put on the spot and I
2 feel defensive.

3 Q. Do you think then that because both
4 sides are going to be arguing, we are going to be saying
5 things during this trial, do you think that those
6 feelings then might affect the way that you would filter
7 out what we would say to you?

8 A. Yes, sir, I do.

9 Q. And do you think that you might be
10 less likely, because of your feelings, to accept what we
11 say to you in the case, as opposed to what the defense
12 attorneys might say to you in the case?

13 A. As I have stated, I will try to be
14 fair and objective, irregardless of my feelings.

15 Q. And what I'm trying to get at is your
16 feelings, you know. Do you think that your feelings
17 might affect you to the point where if I say something,
18 let's say I say something is white, and the other side
19 says something is black, just to kind of give you a

20 concrete example here, do you think because of your
21 feelings and your experiences, that you might be a little
22 bit less likely to believe that something is white as
23 opposed to something being back?

24

25 MR. RICHARD C. MOSTY: Your Honor, I'm

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1 going to object to that because neither the Assistant
2 District Attorney or any of the defense lawyers are going
3 to testify in this case. They are not going to judge our
4 credibility. Now, he is going to be --

5 THE COURT: I understand. I
6 understand what you are saying, and I'll certainly take

7 it into consideration. But he just asked him a generic
8 question. Go ahead, answer the question.

9 THE PROSPECTIVE JUROR: Yes, sir, I

10 think there is certainly a possibility of that happening.

11

12 BY MR. GREG DAVIS:

13 Q. And, Mr. Richardson, I know that on

14 the questionnaire we asked you certain questions as to
15 whether you strongly agreed or strongly disagreed, and
16 one of them that you -- one of them that we asked you to
17 answer was: "I trust the criminal justice system in the
18 State of Texas." And that went from, strongly agree to
19 agree to disagree to strongly disagree, and don't know.
20 And you circled strongly disagree. Do you still feel

21 that same way?

22 A. Which question was that?

23 Q. That was the one: "I trust the
24 criminal justice system in the State of Texas?"

25 A. And I said I strongly disagree?

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1 Q. Yes, sir.

2 A. That is true.

3 Q. You had indicated, also, that you had
4 heard certain things about the case. And you were nice
5 enough to tell us that you -- radio in Dallas; TV,
6 Dallas, San Antonio; newspapers, Dallas, San Antonio and

7 Kerrville. Can you tell me what you have heard about the
8 case?

9 A. Well, I travel to Dallas quite often,
10 and to Fort Worth. And I stay up there and I am an avid
11 newspaper reader, and I listen to the radio, mostly news,
12 not music. And what I have heard, primarily, is negative
13 about the defendant.

14 Q. Okay. And what opinions, if any, have
15 you formed because of what you read in the newspaper or
16 heard on radio or seen on television?

17 A. From what all they have put in the
18 media, you would think that she was guilty.

19 Q. Okay. And is that what you think, as
20 a result of what you have heard and seen in the media?

21 A. Well, I don't have an opinion at this
22 point in time, but from what I have heard, the

23 information I have heard, has all been negative.

24 Q. Anything in particular that stands
25 out, that you feel is particularly negative?
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1 A. They talked about the evidence of

2 there being dust on a windowsill; and not being footsteps
3 in the flower bed or in the back yard where there could

4 have been places for an intruder to have made footsteps;
5 they talked about the lack of evidence to support her
6 story about an intruder.

7 Q. If you would, if you would look at
8 question number 1 up here, and if you would just read
9 that to yourself, as well as question number 2, and let
10 me know when you have finished.

11 A. Okay.

12 Q. Okay. Question number 1, you can see
13 that we are talking about the future there, trying to

14 predict the future behavior or actions of the defendant
15 there. And let me just ask you, some of these words, how
16 you look at them, how you define them: Probability; what
17 does that mean to you in the context of question number
18 1, Mr. Richardson?

19 A. Probability is a statistical guess, I
20 would assume.

21 Q. If I had --

22 A. Toward something.

23 Q. If I had a scale of zero to 100, with
24 zero being the slightest chance ever of something
25 occurring, 100 being absolute certainty. On that scale,
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1 where would you place probability in the context of
2 question number 1?

3 A. Above 50 percent, 50 percent would be
4 chance.

5 Q. How about society, how do you look at
6 society?

7 A. Like the blind man trying to describe
8 an elephant, it's got many components.

9 Q. Okay. Is it everybody to you, or are
10 there some people that are excluded as part of society?

11 A. No, society means everybody.

12 Q. Okay. When you look at special issue
13 number 1, you have to understand that you have already

14 found this individual, in order to get to question number
15 1 in this case, you will have already found that the
16 defendant intentionally took the life of a child younger
17 than six years of age. Okay, that is already a given.
18 You have already found that to be true beyond a
19 reasonable doubt.

20 Now, when you look at special issue

21 number 1, there is some people that when they get to that
22 they say, "Well, if I have already found someone
23 intentionally killed a child younger than six years of
24 age, when I get to question number 1, that is going to be
25 'yes.' Anybody that would do that, in my mind, would
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1 constitute a continuing threat to society." Do you see
2 what I mean?

3 How do you look at question number 1?

4 A. Well, a continuing threat either would

5 reflect a pattern of behavior or it would reflect the
6 violent nature of someone's character, that their
7 potential for violence is very high.

8 Q. Okay. Is there going to be anything

9 that you would require to be shown to you before you
10 could answer question number 1 "yes"?

11 A. Certainly evidence in regards to the
12 defendant's character and personality.

13 Q. Okay. Like what?

14 A. Like whether they are a person that

15 doesn't have much of a conscience, or a person that is so
16 self-centered and narcissistic that they don't care about
17 other people. That they only care about themselves.

18 That they will use any means to obtain a goal.

19 Q. All right. If you don't have that

20 evidence, if that is not shown to you, do you feel like
21 you could answer question number 1?

22 A. Well, you see, I balance it between

23 probability of continuing to be a threat versus an
24 impulsive act. If it was an impulsive act or a
25 spontaneous act of passion versus a premeditated, thought
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1 out, or whether it was done while someone was in a mental
2 state of not knowing what they were doing. Those were
3 the things that I would look on both sides.

4 Q. All right. So, if you are shown

5 premeditation, for instance, if you are shown some sort

6 of a mental state that shows you that this is something
7 other than an impulsive act, do I understand you to say,
8 if that is shown to you, then you can answer question
9 number 1?

10

11 MR. RICHARD C. MOSTY: Your Honor,

12 that is asking impermissably for a commitment from this
13 juror as what they will or will not do.

14 THE COURT: Sustain the objection.

15 Let's move on.

16 MR. GREG DAVIS: I'm sorry. What I'm

17 trying to do, is I'm trying to determine whether this

18 juror will require the State to show certain, specific

19 things in order to --

20 THE COURT: Just ask him that.

21 MR. GREG DAVIS: Yes, sir.

22

23 BY MR. GREG DAVIS:

24 Q. Let me just rephrase that and ask

25 you --

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1

2 THE COURT: Just rephrase it.

3 MR. RICHARD C. MOSTY: Your Honor,

4 I'll object to that because he has already been asked and

5 the witness (sic) went through and gave a little litany

6 of things that might weigh on his --

7 THE COURT: All right. I am aware of

8 that, I'll let him ask one more time. Go ahead. Let's

9 move on.

10

11 BY MR. GREG DAVIS:

12 Q. Mr. Richardson, let me just ask you:

13 What things will you require the State of Texas to show

14 you in order for you to answer question number 1 "yes"?

15

16 MR. DOUGLAS MULDER: Judge, that is

17 not proper. That is an attempt to pledge the venireman.

18 He can't ask him what he would require, totally improper.

19 THE COURT: Why don't you rephrase it?

20 Let's rephrase it.

21

22 BY MR. GREG DAVIS:

23 Q. Mr. Richardson, will you require the

24 State of Texas to show you any particular thing on

25 question number 1 before you can answer "yes"? And if

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1 so, what will that be?

2

3 MR. DOUGLAS MULDER: Judge, the

4 question is in English and it speaks for itself, he will

5 require them to prove it beyond a reasonable doubt.

6 THE COURT: I sustain the objection.

7 I sustain the objection.

8

9 BY MR. GREG DAVIS:

10 Q. Mr. Richardson, do you think that

11 question number 1 could be answered? There are some
12 people that think it can't be answered.

13 A. Yes, sir, I think it can be answered.

14 Q. Do you think it can be answered beyond
15 a reasonable doubt?

16 A. Yes, sir.

17 Q. Okay. And what types of things -- are
18 you going to require anything?

19

20 MR. DOUGLAS MULDER: Judge, he is

21 going to require them to prove it beyond a reasonable
22 doubt.

23 THE COURT: Well, I think he is

24 phrasing the question correctly. Are you going to
25 require them to prove anything beyond a reasonable doubt?

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1 He is not asking what he is going to require. Go ahead.

2

3 BY MR. GREG DAVIS:

4 Q. Are you going to require the State of
5 Texas to prove anything, specifically, before you can
6 answer that question beyond a reasonable doubt?

7 A. Prove that the question is true.

8 Q. What do you mean "true"?

9 A. That the person is a continuing threat
10 to society.

11 Q. When you look at question number 1,
12 after finding the defendant guilty of capital murder, the
13 law says you are supposed to start that presuming it to
14 be a 100 percent "no." Do you think that you will be
15 able to do that in this case?

16 A. I'm sorry. Would you repeat the
17 question?

18 Q. The law requires you to start your --
19 look at question number 1 --

20

21 MR. DOUGLAS MULDER: Judge, that is an
22 improper statement of law. There is no such law, and no
23 such requirement.

24 THE COURT: Overruled. Go ahead. It
25 is all right. Go ahead. Ask that question.
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1 MR. DOUGLAS MULDER: Are you saying
2 that the law requires him to start at zero? Or assume
3 that it is untrue?
4 THE COURT: He has phrased the

5 question correctly. I don't think he is asking that. Go
6 ahead.

7

8 BY MR. GREG DAVIS:

9 Q. The law says that when you look at
10 question number 1, when you begin your deliberations, you
11 are to presume that to be "no," 100 percent "no." And

12 I'm asking you: Can you do that? Or are you going to
13 feel like that should be -- that you are going to be
14 leaning toward a "yes" answer on question number 1,

15 because you have found this defendant guilty of killing a
16 child younger than six years of age?

17 A. I don't see much difference in regards
18 to age.

19 Q. Okay.

20 A. To determine that factor.

21 Q. Okay. Well, just leave aside the
22 issue of age then. How are you going to be looking at
23 question number 1 when you start your deliberations, when
24 you start looking at question number 1? Are you going to
25 be at 100 percent "no"? Is it going to be somewhere in

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1 the middle? I'm just trying to figure out how you are
2 going to look at question number 1 after you have found a
3 defendant guilty of capital murder.

4

5 MR. DOUGLAS MULDER: Judge, this whole
6 thing begs the question. The issue is clear, the way
7 it's written. And is the Court going to charge in
8 accordance with what the --

9 THE COURT: The Court is going to
10 write the Charge appropriately to what the evidence and
11 testimony requires. But I think Mr. Davis is asking this
12 question in a correct manner concerning question number
13 1. Let's go ahead.

14 THE PROSPECTIVE JUROR: If I have

15 found the defendant guilty?

16

17 BY MR. GREG DAVIS:

18 Q. Yes, sir.

19 A. Then I would presuppose that there is
20 a bias toward the continuing threat. If you can do it
21 once, then you can do it again.

22 Q. Okay.

23 A. If you had never done it, then the
24 odds of you doing it would be less.

25 Q. So, if you found someone guilty of
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1 capital murder, you are going to have that same
2 presupposition or bias toward a continuing threat to
3 society; is that right?

4 A. That's correct.

5 Q. Let's look at question number 2. You
6 see there is no burden of proof on question number 2. It
7 is a different type of question. There is a burden on
8 number 1, but there is not a burden on either side on
9 question number 2.

10 Now, some people have told us that if
11 they find someone guilty of capital murder, and if they
12 have found that that person would constitute a continuing
13 threat to society -- so you would have to have done both
14 of those before you get down to question number 2. Some
15 folks have told us, "No problem, I could still answer
16 question number 2 'yes,' change death to life."

17 Some people have told us, "No, I
18 cannot do that. I would have a moral or a conscientious
19 problem doing that. If guilty, and I think they are
20 going to be a threat to society in the future, I am not
21 going to be able to say 'yes' to question number 2,
22 knowing that that is going to change a death sentence to
23 a life sentence."

24 Your feelings about question number 2?

25 A. It depends upon what the mitigating
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1 circumstances are, or the circumstances that warrant a
2 life imprisonment. I'm not clear in my mind right now
3 what those would be.

4 Q. Okay. Well, there is no laundry list.

5 It's basically whatever a juror wants them to be. You
6 see, though, it has to be sufficient. That is a key word
7 there. Is there a sufficient mitigating circumstance?

8 Not is there a mitigating circumstance, but is it
9 sufficient to rise to such a level to change a death
10 sentence to a life sentence. See what I mean?
11 A. Uh-huh. (Witness nodding head
12 affirmatively.)
13 Q. So that is what the law really
14 contemplates that you do. You take a look at every fact
15 and circumstance in the case, decide whether it is
16 sufficient, change death to life, and then you answer
17 that question accordingly. Do you feel like you could do
18 that?

19 A. Yes.

20 Q. I need to ask you a couple of other
21 questions regarding information that you have given on
22 your questionnaire, if you don't mind.
23 You had indicated that you had a "yes"
24 answer to having undergone counseling or treatment for
25 emotional or psychiatric behavior or substance abuse
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1 programs; and you had a "yes" answer, I believe. Can you
2 just tell me a little bit about that?

3 A. I am a psychotherapist.

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

6 A. And, as a part of the process of being
7 a psychotherapist, you are in therapy.

8 Q. All right. Okay. You had also
9 indicated, "I am a recovering substance abuser."

10 A. That's correct.

11 Q. All right. Can you give me some
12 details there?

13 A. I came home from Viet Nam with a
14 substance abuse problem.

15 Q. All right. And underwent counseling
16 for that?

17 A. No, sir. I never underwent counseling
18 for it. I started going to Alcoholics Anonymous.

19 Q. How do you think that our personal
20 freedoms have been controlled or taken away?

21 A. Too much government.

22 Q. Any examples, any particular things?

23 I mean, I may agree with a lot of what you are saying
24 here. I mean, I think there is way too much government
25 too. But anything that stands out in your mind?

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1 A. It seems to me that in the last few

2 years that most people are guilty until proven innocent.
3 And that is the main problem that I have with the justice
4 system, is that people are having to prove that they are
5 innocent, and they are assumed guilty. I see that in
6 state agencies, such as Child Protective Services. I see
7 it in the legal system, civil cases and criminal cases.

8 Oftentimes people are tried in the media.

9 Q. You know there has been lot of press
10 on this case?

11 A. There sure has.

12 Q. Do you feel like that that may be the
13 case here too?

14 A. Uh-huh. (Witness nodding head
15 affirmatively.) I mean I heard one article -- or read
16 one article where they were polling people in the
17 defendant's hometown. And people were offering their
18 opinion about whether they thought she was guilty or not.
19 So it's a public opinion poll on whether she is guilty or
20 not, which I think is inappropriate.

21 Q. In this case then you feel like Mrs.

22 Routier is -- do you think that she is in a position
23 where she is going to have to prove her innocence?

24 A. I certainly do.

25 Q. Do you think that is unfair to her?

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1 A. Yes.

2 Q. You had indicated that you had trouble
3 getting the police to come to crime scenes on occasions.

4 Are those to the burglary and thefts that you have
5 suffered?

6 A. That's correct.

7 Q. Did they actually come to the scene at
8 some point?

9 A. No, sir.

10 Q. And how recently was that?

11 A. Well, here in Kerrville, we did get
12 them to come to a crime scene. In Houston, we could not
13 get them to come, that was about 10 years ago.

14 Q. Mr. Richardson, my time is about up
15 with you.

16

17 THE COURT: You have seven -- eight
18 minutes left.

19

20 BY MR. GREG DAVIS:

21 Q. And I want to tell you, I don't envy
22 you sitting up there and facing a bunch of lawyers this
23 early in the morning, and having to talk about your

24 personal life. I wouldn't want to do it either. But I
25 appreciate the fact that you have tried to answer my
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1 questions.

2 You have been responsive to me, and I
3 think you have been honest with me, and I appreciate

4 that. I always respect people's opinions, even if I
5 disagree with them. So I appreciate you talking to me.
6 Is there anything that maybe I have

7 not gone over that you think that we need to go over? Is
8 there something I said to you that didn't make sense? I
9 spoke nearly 40 minutes. I bet you there is at least one
10 thing I said that didn't make sense. But is there
11 anything that you feel like we need to talk about before
12 I pass you to Mr. Mulder so he can question you a little
13 bit?

14 A. No, sir.

15 Q. All right. I thank you.

16

17 THE COURT: Thank you, Mr. Davis.

18 Who will speak for the defense? Mr.
19 Mulder?

20 MR. DOUGLAS MULDER: Yes, sir.

21 THE COURT: All right.

22

23 VOIR DIRE EXAMINATION

24

25 BY MR. DOUGLAS D. MULDER:

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1 Q. Mr. Richardson, I just need to visit
2 with you a little bit, and discuss with you a few rather

3 fundamental principles of law, and make sure we're on the
4 same wave length. And I am not going to hopefully waste
5 your time.

6 The Judge will tell you that the true
7 bill of indictment is simply the pleading and paper by
8 which the defendant is brought into this particular
9 Court. It is absolutely no evidence of her guilt. You
10 can appreciate that?

11 A. Yes, sir.

12 Q. Okay. It simply advises her of the

13 charges against her, so that she can prepare a defense.

14 Just as it informs you as a juror of what the State must
15 prove beyond all reasonable doubt. Fair enough?

16 A. Yes, sir.

17 Q. The law says that the burden of proof
18 is on the State to establish the guilt of the accused.

19 Another way of saying, whoever does the accusing, has to
20 do the proving. Does that make sense to you?

21 A. Yes.

22 Q. The law says that the yardstick or the
23 standard by which their proof is gauged or measured is
24 beyond all reasonable doubt. You can appreciate that?

25 A. Yes, sir.

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1 Q. The law says that if you, as jurors,
2 have a reasonable doubt, you must resolve that doubt in
3 favor of the accused. That makes sense to you?

4 A. Yes, sir.

5 Q. It doesn't make any difference whether
6 there is one doubt or 10 doubts or 21 doubts or 101
7 doubts. All doubts must be resolved in favor of the
8 accused. You can do that?

9 A. Yes, sir.

10 Q. The law says that at this stage of the
11 proceedings that Darlie Routier is presumed to be
12 innocent. Okay?

13 A. Yes, sir.

14 Q. I'm really not so much -- you know,

15 oftentimes it's difficult to walk into a courtroom and
16 not say to yourself, look at the defendant and say to
17 yourself, "I wonder what he has done. Or I wonder what
18 she has done." I mean, it's only natural, you see the
19 Jugde here, you see the prosecutors here, the defense

20 lawyers here. And I'm not so concerned, really, I guess,
21 with you presuming that she is -- or a juror in the
22 abstract, presuming that she is innocent; so much as I am
23 concerned with the fact that they might presume her
24 guilty.

25 What I want to do is start out -- I

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1 don't need a head start. I just want to start out even.

2 I don't want anybody coming to court presuming that she
3 has done something, presuming that she is guilty. So,

4 like I said, we don't need a head start, we just want to
5 start out even. You don't have any problem with that?

6 A. No, sir.

7 Q. With respect to the procedure, the
8 State goes first because they have the burden of proof.
9 If I had my druthers, I would prefer to go first. I

10 think first impressions are mighty important. It will
11 take discipline on your part to, you know, kind of, not
12 make up your mind until we get a chance at bat. Fair
13 enough?

14 A. Yes, sir.

15 Q. You can do that?

16 A. Yes, sir.

17 Q. As a juror, it will be your duty and

18 your responsibility to determine what the facts are. The
19 jury is the sole and exclusive judge of the facts proved,
20 the credibility of the witnesses, and the weight that you
21 want to assign to the testimony of each witness. In
22 other words, you can embrace and believe 100 percent of
23 what one witness tells you; and absolutely nothing of
24 what another one tells you. You can appreciate that?

25 A. Yes, sir.

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1 Q. The facts are what you say they are.
2 Let me give you an example, and I'm going to go to the
3 extreme to make my point. Okay?

4 A. Okay.

5 Q. Let's just assume, for example, that

6 you are sitting on a jury down in Austin, over in Austin.
7 And let's say it's a federal -- let's say it's a bank
8 robbery case. And that you are sitting there on the
9 jury, and a witness comes in and testifies that they were
10 there on the town square at high noon, and their
11 attention was attracted to the bank by a gunshot. And
12 they looked over there and saw someone coming out of the
13 bank, and they had a sack of money in one hand, and they
14 had a gun in the other hand, and they had a mask on. And
15 they left the bank and they got into a black stretch

16 limousine and headed south toward San Antonio. Okay?

17 A. Yes, sir.

18 Q. Suppose the next witness takes the
19 stand and swears to tell the truth and says that, "I,
20 too, was in town square. And I heard a gunshot and my

21 attention was attracted to the bank. And I looked over

22 there and I saw a man coming out of the bank, and he had
23 a sack of money in one hand, and he had a gun in the
24 other hand. He had a mask on and he got on a white horse
25 and headed north toward Dallas."

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1 And that creates in your mind and in
2 the minds of the other jurors a reasonable doubt as to
3 the method of escape. Perhaps, maybe it goes to
4 identification. Okay?

5 But you have a reasonable doubt as to
6 whether it was a white horse headed north toward Dallas,
7 or it was a black stretch limousine headed south toward
8 San Antonio. If it benefits the defendant to resolve

9 that doubt and say that it was a black stretch limousine,
10 you would do that. You see? Then it is a black stretch
11 limousine from then on.

12 You see, as a juror, your power and

13 authority is really awesome. Now, if the Judge -- the
14 Judge is the judge of the law. You don't have to know
15 any law to serve on a jury, and probably a whole heck of

16 a lot better off if you don't know a lot of law. Because
17 he will give you all the law that is applicable to the
18 particular case in a written charge, and you will have
19 that law to go back and it will govern your
20 deliberations.

21 But, if the Judge makes a mistake with
22 respect to the law, we can appeal to a higher court and
23 get it corrected. But there is no appeal on the facts.

24 You see?

25 A. Yes, sir.

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1 Q. That is one reason that the benefit of
2 the doubt goes to the defendant, because there is no
3 appeal on the facts. I mean, from that point forward,
4 it's either a white horse headed north, or a black
5 stretch limousine headed south, and no changing it. You
6 can't wish it away or wash it away. Fair enough?

7 A. Yes.

8 Q. You are telling us that if you have
9 reasonable doubts, you can resolve those doubts in favor

10 of the defendant. It doesn't make any difference whether
11 it is 1 or 21 or 101; is that right?

12 A. Yes, sir.

13 Q. Okay. You would, Mr. Richardson, do
14 your dead-level best to be fair?

15 A. Yes, sir.

16

17 MR. DOUGLAS MULDER: I believe that's
18 all we have. Thank you.

19 THE COURT: All right. You stated

20 earlier some reservations about the way your son was
21 treated.

22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Can you put that out of

24 your mind if you are selected as a juror in this case and
25 decide this case on the testimony you hear and the
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1 evidence you receive in this courtroom?

2 THE PROSPECTIVE JUROR: That's
3 correct.

4 THE COURT: And you will follow the
5 law?

6 THE PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Regardless of your feeling
8 in that regard?

9 THE PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: All right. Thank you.

11 You may step outside just a minute briefly, please.

12

13 (Whereupon, the prospective

14 juror was excused from the
15 room, and the following

16 proceedings were held,
17 outside of his presence
18 as follows:)
19

20 THE COURT: Both sides ready?

21 MR. GREG DAVIS: Yes, sir.

22 MR. DOUGLAS MULDER: Yes, sir.

23 THE COURT: What says the State?

24 MR. GREG DAVIS: The State challenges

25 this juror for cause.
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1 MR. DOUGLAS MULDER: We will accept
2 the juror.

3 THE COURT: The Court finds the juror
4 qualified.

5 MR. GREG DAVIS: Well, if I may --

6 THE COURT: Go ahead and make a record
7 on it.

8 MR. GREG DAVIS: Yes, sir, please.

9 Several grounds of challenge for cause
10 on this juror. First of all, the juror's biased in favor
11 of the defendant. He stated that he thinks she has been
12 treated unfairly by the media. She is going to be forced
13 to prove her innocence in this case.
14 His feelings that he has expressed

15 about his son's experience with police officers, law
16 enforcement, his statement, "The criminal justice system
17 sucks." That he feels that he is going to have a very
18 difficult time putting aside his feelings. That he
19 believes it's possible that he will filter out what the
20 State says differently than what he says he will do with
21 the defense in this case.
22 Secondly, this juror has stated that
23 he has a bias or prejudice against the face of the law

24 upon which the State is entitled to rely. Namely, he has
25 very clearly stated to this Court that he will judge the
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1 testimony of a police officer differently than he will
2 that of a civilian. There has been no rehabilitation on
3 that whatsoever.

4 He very clearly stated he would do
5 that because of his experiences. He has stated that he
6 would put that witness behind others, and he would have a
7 harder time believing that a police officer is telling
8 the truth, than a civilian would.

9 THE COURT: Well, let's bring him in
10 and ask him.

11 MR. GREG DAVIS: Well, I have another
12 one, also.

13 THE COURT: All right. Proceed.

14 MR. GREG DAVIS: Yes, sir. And this
15 again was not rehabilitated either. Where he has stated
16 that on question number 1, that he has a predisposition

17 to answering question number 1 "yes," simply because this
18 defendant has been found guilty of capital murder.

19 The statement was, "If they have done
20 it before, then I think they would probably do it again."
21 So, again, he is disqualified on special issue number 1.

22 THE COURT: Bring the juror in,

23 please.

24

25 (Whereupon, the prospective
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1 juror returned to the
2 room and the proceedings
3 were resumed as follows:
4

5 THE COURT: Mr. Richardson.

6 MR. DOUGLAS MULDER: Judge, I can
7 clear this up.

8 MR. GREG DAVIS: If the Court would do
9 it, I would appreciate it. Thank you.

10 THE COURT: All right. If you will

11 have a seat one more time, please. This should not take
12 too long.

13 During your questioning by both -- by
14 Mr. Davis, in this case, you mentioned that the criminal
15 justice system, I believe the term was "sucked." Many
16 people believe that, in other words, it was a pejorative
17 statement on your part. Could you put that out of your
18 mind, and decide this case on what you hear in this

19 courtroom? And put that belief aside and follow the law?

20 THE PROSPECTIVE JUROR: Well, I was
21 standing out front thinking about this, and I basically
22 believe that I am a fair and honest person that will do
23 my best to do the job of being a juror.

24 I do have my biases and I have my
25 prejudices, and they are part of who I am.

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1 THE COURT: We understand that. Can
2 you put those aside and decide this case on the testimony
3 you hear, and the evidence you receive in this courtroom?
4 And if you feel the State has proven their case, find the
5 defendant guilty? And if you feel the State has not
6 proven their case, find the defendant not guilty. Can
7 you do that?

8 THE PROSPECTIVE JUROR: Well, I think
9 I would have a difficult time with the process. I would
10 have difficulty with the trial itself probably, in that I
11 would -- I have found myself being critical of this
12 process this morning.

13 THE COURT: Do you think you would be
14 an unfair juror in this case to either side?

15 THE PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Which side? You don't
17 need to say which side, but you think you would be
18 unfair?

19 THE PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: All right. Thank you. Go
21 ahead. Anything else, Mr. Mulder? I will give you a
22 chance.

23 MR. DOUGLAS MULDER: Yes, sir.

24

25 VOIR DIRE EXAMINATION

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1

2 BY MR. DOUGLAS D. MULDER:

3 Q. Mr. Richardson, do you understand that
4 both sides are entitled to a fair trial?

5 A. Yes, sir.

6 Q. And you, I assume, pride yourself on

7 being a -- I mean, you appear to be an honest man, you
8 wouldn't have gone into the detail that you have gone
9 into. You pride yourself on being an honest man and a
10 fair man. Do you?

11 A. Yes, sir.

12 Q. Okay. Can you follow the law that is
13 given to you by the Judge in the Charge? Will you do
14 your dead-level -- that is all anybody can ask of anyone,
15 that you will do your best to follow the law. I realize
16 that everyone -- everyone in this room has certain biases
17 and certain prejudices, maybe they are not as outspoken
18 about them as you are, but everybody has them.

19 The law simply requires that you set

20 any unpleasant experience that you have had aside, and
21 decide this case strictly on the evidence that is brought
22 to you from the witness stand. No one is going to
23 require that you leave your common sense out in the
24 parking lot. You know, you can draw on your experiences
25 as an adult. You are simply required to --

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1 A. I would --

2 Q. -- follow the law, as best you can?

3 A. I would certainly attempt to do that.

4 The ability to set my feelings and my judgments about the
5 process aside is what I have trouble with. I'm not sure
6 I would be able to set those aside, because I see them as
7 very much a part of who I am, and how I function as a
8 human being.

9 Q. Well, I can appreciate that.

10 A. I don't think I can move up into my
11 head and be objective, totally about this process.

12 Q. Well, you don't have any problem with
13 these prosecutors over here. I dare say, you don't know
14 them. Do you?

15 A. I didn't have a lot of fun answering
16 this gentleman's questions, but, no, I don't know them.

17 Q. Well, they may have been designed to
18 agitate you?

19 A. It feels that way sometimes, yes, sir.

20 Q. Well, maybe that is -- maybe he had a
21 reason for it. I don't know. But he could have been
22 goal-directed. But, again, you are not going to find her
23 not guilty simply because of some unpleasant experience
24 that you have had with the law, are you? If they prove
25 her guilty?

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1 A. No.

2 Q. If they prove her guilty, you will
3 find her guilty. Won't you? If they prove to your

4 satisfaction beyond all reasonable doubt that she is
5 guilty, you will find her guilty, I assume?

6 A. Yes, sir.

7 Q. If they don't do that, then the law
8 would require you to find her not guilty?

9 A. Yes, sir.

10 Q. The law would require, you know, some
11 people don't agree with various aspects of the law. And
12 they don't have to agree with those aspects of the law,
13 but if they serve as a juror they have to follow the law.

14 You see?

15 A. Yes, sir.

16 Q. You could do that, I assume?

17 A. Yes, sir.

18 Q. You will apply just the law that Judge
19 Tolle gives you in his written instrument called the

20 Charge, that you will have with you when you go back to
21 the jury room to deliberate. You will just apply that

22 law. Is that fair to say?

23 A. Yes, sir.

24 Q. All right. And let me ask you this:

25 And you know I don't want to beat a dead horse, but are
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1 you telling us that you will be as fair as you possibly
2 can?

3 A. Yes, sir.

4 Q. You will be fair; is that correct?

5 A. Yes, sir. I certainly would attempt
6 to be fair.

7 Q. Well, don't you figure that that is
8 all anyone can do? I mean, there isn't anybody that can
9 walk in here and just blank out every experience that
10 they have had in their life. Is there?

11 A. No, sir.

12 Q. And you are an adult male, you have
13 had many experiences. You have served your country in
14 Viet Nam. You know, like I say, you don't have to leave

15 your common sense in the parking lot. You can take those
16 life's experiences with you.

17 You know a lot of people don't approve
18 of the way Judge Ito handled the O.J. Simpson case. In
19 fact, you won't find a lot of people who do approve of
20 it. But, at any rate, you realize that this is -- this
21 is a separate situation, and both sides are entitled to a
22 fair trial?

23 A. Yes, sir.

24 Q. Will you give both sides in this case
25 a fair trial?

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1 A. Yes, sir.

2 Q. And will you follow the law?

3 A. Yes, sir.

4 Q. And you are sure about that? About
5 both of those?

6 A. I have no reason to do anything else.

7 Q. Okay. Real fine.

8

9 THE COURT: All right, here is the

10 thing. You have been saying one thing to Mr. Davis and
11 another thing to Mr. Mulder.

12 MR. DOUGLAS MULDER: Well, Judge --

13 THE COURT: Just a minute. All right.

14 I have got to make a call, the buck stops here. Are you
15 through talking?

16 MR. DOUGLAS MULDER: No, I had one
17 other thing.

18 THE COURT: One other thing. Say it.

19

20 BY MR. DOUGLAS MULDER:

21 Q. All right. They talked a little bit
22 about your impression of police officers and that you may
23 have some bias with respect to police officers because of
24 the way they answered a burglary call or whatever it was,
25 and the problem that your son had.

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1 And apparently they reneged on a -- or
2 the gist of the conversation that I got was that they may
3 have reneged on an agreement that they had made with your
4 son; or they took unfair advantage of him, or whatever it
5 was.

6 But, at any rate, the law requires
7 that you apply the same standard to all witnesses who
8 testify. That you don't give anybody special treatment
9 or preferential treatment because they are a police
10 officer, or because they are not a police officer. You
11 see?

12 Apply the same standard to them when
13 you determine whether or not you believe they are telling
14 the truth. It may be the way they fidget on the witness
15 stand, or the way they won't look at you when they answer
16 a question. Or there may be a variety of things that you
17 pick up on when you determine, as a juror, whether or not
18 you believe somebody is telling the truth. But the law
19 says that you have to apply the same standard to all of
20 them. Can you do that?

21 A. I think that is probably the area that
22 I would have the most difficulty with, is with a
23 policeman.

24 Q. You know, it is not going to be -- of
25 course, these policemen that are going to testify in this
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1 case are -- the majority of them are from Rowlett, Texas,
2 a little area outside of Dallas. And I dare say, you

3 probably have not had any experience with any of them.

4 A. That's true.

5 Q. Okay. The law will simply require

6 that you judge them by the same standard that you would

7 judge anyone. You know, you may have a higher standard

8 for everyone, including Mr. Davis over here. Okay?

9 A. Okay.

10 Q. But can you judge them all by the same

11 standard.

12 A. I --

13 Q. You don't raise or lower your standard

14 depending on what their station in life is.

15 A. I tend to judge most law enforcement

16 people in rather a negative light.

17 Q. Well, you have had some negative

18 experiences and that is understandable. But for this

19 trial, can you judge them all by the same standard?

20 A. I think that my prejudice is that I

21 believe that certain personality types enter law

22 enforcement, and that they are black and white, and that

23 they are very adversarial. And that they are out to get

24 people instead of to help people.

25 Q. You know, some are and some are not.

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1 I think we have all had good experiences and bad

2 experiences with police officers. You are just going to

3 have to judge those who come in here and testify.

4 A. Yes, sir.

5

6 THE COURT: I think we understand the

7 question.

8 Are you going to -- I think -- the

9 answer wasn't the answer to the question. Are you going

10 to judge the police negatively; is that correct?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. I think we

13 have gotten that settled. Anything else?

14

15 BY MR. DOUGLAS D. MULDER:

16 Q. Well, will you apply the same standard

17 to all witnesses?

18 A. Even with my negative bias, I would

19 try to be fair.

20 Q. All right. And you pride yourself on

21 trying on being a fair man. Don't you?

22

23 MR. GREG DAVIS: I'm sorry, this has
24 already been asked and answered several times.

25 THE COURT: I know and I understand
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1 what we are saying. All right. Trying to be fair
2 doesn't get -- I know you are a trained psychotherapist.
3 You know more about human behavior than all of us put
4 together probably. And the right questions to ask, and
5 things like this. We have got to get down -- we're sort
6 of fundamental here.

7 We are going to have to ask you for a
8 "yes" or a "no." And I know you are going to try to be
9 fair. Could you be fair? Do you think you could do it?
10 Be a fair juror in this case?

11 THE PROSPECTIVE JUROR: No, sir, I
12 couldn't.

13 THE COURT: All right. Thank you.

14 You may step outside, please. All right. Based on the
15 totality of the testimony, the State's challenge for
16 cause is granted.

17 We will take a brief break.
18

19 (Whereupon, a short

20 Recess was taken,
21 After which time,

22 The proceedings were
23 Resumed on the record,
24 In the presence and

25 Hearing of the defendant
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1 And the juror, as follows:

2
3 THE COURT: All right. Back on the
4 record. Mr. Richardson, we thank you very much for your
5 candor today, and you are excused. Thank you, sir.

6 All right. Let's bring in the next
7 juror.

8 Come on in please, sir, and have a
9 seat right here.

10 All right. This is Mr. Scott
11 Carpenter; is that correct?

12 THE PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: If you will raise your

14 right hand, please?

15 Do you solemnly swear or affirm you

16 will true answers make to all the questions propounded to

17 you concerning your qualifications as a juror in this

18 room or any room to which you may be sent, so help you

19 God?

20 THE PROSPECTIVE JUROR: Yes, I do.

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 COURT: All right. The State of

6 Texas is represented by Assistant District Attorneys from

7 Dallas County, Mr. Greg Davis, Mr. Toby Shook and Ms.

8 Sherri Wallace. And the defense, by Mr. Douglas Mulder

9 and Preston Douglass. And this is the defendant, Mrs.

10 Darlie Routier here.

11 All right. Go ahead, please, Mr.

12 Davis.

13 MS. SHERRI WALLACE: Your Honor, I

14 will be questioning this juror.

15 THE COURT: Okay. Thank you, Ms.

16 Wallace.

17 MS. SHERRI WALLACE: Thank you,

18 may it please the Court?

19

20 Whereupon,

21

22 SCOTT EDWARD CARPENTER,

23

24 was called as a prospective juror, having been first duly

25 sworn by the Court to speak the truth, the whole truth,

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1 and nothing but the truth, testified in open court, as
2 follows:

3

4 VOIR DIRE EXAMINATION

5

6 BY MS. SHERRI WALLACE:

7 Q. Good morning. Again, I am Sherri
8 Wallace, and you met all of us last week, I think, when
9 the Judge introduced us. There is another local counsel
10 who is not present right now for the defense named
11 Richard Mosty. Do you know either of the two local
12 counsel here from Kerrville?

13 A. I don't believe so.

14 Q. Okay. You don't recognize them?

15 A. No.

16 Q. All right. And you don't know any of
17 us from Dallas; do you?

18 A. No.

19 Q. Okay. Let me just tell you right now,
20 just sit back and relax. We're just going to talk about
21 a few things about your questionnaire. No right or wrong
22 answers. We just want to get your feelings and opinions
23 on some things. Okay?

24 A. Okay.

25 Q. And if I ask you a question that is
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1 not clear to you, that is my fault, not yours. So let me
2 know and I'll clear it up. Okay?

3 A. Okay.

4 Q. First thing I want to talk to you
5 about is your questionnaire, and then I want to talk to
6 you about the death penalty in general. And then we will
7 talk to you about the principles of law that will apply
8 in this case.

9 A. Okay.

10 Q. On your questionnaire, you said that
11 you had heard about this case through the media. It's
12 been highly publicized. That is one of the reasons we're
13 here in Kerrville.

14 To be a juror in this case, you must
15 set aside all pretrial publicity. I have read most of
16 the media reports, and some of it they have gotten right,
17 and some of it they haven't. But the important thing is
18 that as a juror you can set aside what you have heard and
19 read in the media, and wait until you hear the evidence
20 in the courtroom, and receive the instructions from the

21 Judge, and then make your decision and opinion. Could

22 you do that?

23 A. Yes.

24 Q. Okay. I want to make my position

25 clear before I really start talking about this. We're

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1 seeking the death penalty on that woman down there. It
2 is our goal to kill her. It is our goal to get a verdict
3 of guilty, and then have these two questions answered in
4 a way that will result in her death. I see from your
5 questionnaire that you said you are in favor of the death
6 penalty. Can you talk to me about that a little bit?

7 A. Sure.

8 Q. Why are you in favor of it?

9 A. In some cases, I believe that is

10 probably about the only way that true justice is served.

11 Q. Okay. Are there any cases you have in

12 mind when you say, "In some cases, that is the only way
13 true justice is served?"

14 A. It's -- I mean, it's usually when

15 another life is taken. I mean, that is usually what I

16 base my opinion on.

17 Q. Okay. Here in Texas, not all murder

18 cases are eligible for the death penalty. The death

19 penalty is reserved for the most heinous of crimes. For

20 instance: If a person killed a police officer, or they

21 killed a prison guard, or killed more than one person, or

22 they murder in the course of committing another felony,

23 like robbing somebody or kidnapping somebody or raping

24 somebody, something like that, or if they kill a child

25 under the age of six. Killing a child under the age of

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1 six is the type of case that we're addressing for this
2 defendant.

3 A. Okay.

4 Q. Are there any other cases that come to

5 mind where you think the death penalty would be

6 appropriate?

7 A. None that come to mind, no.

8 Q. Okay. I believe on your questionnaire

9 you said that you believe the death penalty is

10 appropriate in some capital murder cases. And you could

11 return a verdict of death in the proper case. Is that

12 still how you feel?

13 A. Yes.

14 Q. Okay. In Texas, you don't make a
15 decision of death or life. You are not asked to write
16 those two words. You actually, instead, once the

17 defendant is found guilty, which we believe she will be
18 in this case, then you move to the second phase of the
19 trial and are asked to answer these questions. And if

20 you would, would you just look at particularly that first
21 question with me.

22 It says: "Do you find from the
23 evidence beyond a reasonable doubt that there is a
24 probability that the defendant would commit criminal acts
25 of violence that would constitute a continuing threat to
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1 society?" In order for the defendant to die, that
2 question must be answered "yes."
3 Then you would proceed to the next
4 question which is special issue number 2: "Taking into
5 consideration all of the evidence including the
6 circumstances of the offense, the defendant's character
7 and background, the personal moral culpability of the
8 defendant, is there sufficient mitigating circumstance or
9 circumstances to warrant that a sentence of life
10 imprisonment rather than a death sentence be imposed?"

11 For her to die, that question must be answered "no."

12 Okay?

13 A. Okay.

14 Q. On the first question, it is required
15 that once you have found the defendant guilty, you must
16 revisit the evidence. You cannot automatically answer
17 that first question "yes," just because you have found
18 her guilty of killing a child under the age of six.

19 The law contemplates that you may hear
20 more testimony and more evidence in the second phase, and
21 you may not. But what I need from you is a commitment
22 that you will not answer that question automatically,
23 that you will wait and hear the evidence and again
24 revisit this after -- in the second phase of the trial.

25 Could you do that?

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1 A. Yes.

2 Q. Is that complicated enough? No

3 problem with that?

4 A. No.

5 Q. Okay. On your questionnaire, you said

6 that you -- I will just read the question: "If you are
7 in favor of the death penalty in some cases, do you agree
8 that a life sentence rather than the death penalty would
9 be appropriate under the proper circumstances." And you
10 put "no." And I think that question is a little
11 convolutedly written.

12 What I want to know from you is, if --

13 if you believed after you had heard and decided beyond a
14 reasonable doubt that the defendant had committed capital
15 murder, and if you believed that she was a continuing

16 threat to society, and you answered that first question
17 1, but from either side, from either the State or the

18 defense, you heard evidence that you decided, I mean, in
19 your heart, that it was not right to kill her. Could you
20 answer that second question "yes," that there was
21 mitigating circumstances and she should receive life
22 imprisonment for capital murder. If you decided it was
23 the right thing to do?

24 A. Instead of the death penalty?

25 Q. Yes, sir.

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1 A. Well, there is a possibility.

2 Q. Okay. There is -- let's talk a little

3 bit about that second question. On the first part of the
4 trial, we have the burden of proof and gladly accept it.
5 On the first special issue the State has the burden of
6 proof, we gladly accept that.

7 On this last special issue there is no

8 burden of proof. There is no burden of proof on the
9 defense, there is no burden of proof on us. It's just,
10 some people call it, a safety net.

11 We are not asking you: Would you ever

12 return a life sentence? Because you have not heard the
13 facts of this case. All we're asking you to do is to
14 keep an open mind, and wait until you hear the evidence.

15 Could you do that?

16 A. I can do that.

17 Q. Now you may sit, as a juror, God

18 forbid, in five million death penalty cases, and never
19 hear a case where you think a life sentence is
20 appropriate. There is nothing wrong with that. But what
21 you must promise the Court is that you will wait and
22 decide how to answer that question based on the evidence.

23 Can you do that?

24 A. I can do that.

25 Q. Okay. Before you -- just in front of
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1 you on your left, is a copy of the indictment. Would you
2 mind taking a look at that for a second?

3 Let me direct your attention to

4 particularly that type-written portion. If you could
5 just read that to yourself? Let me know when you are
6 finished.

7 A. Okay.

8 Q. Okay. That is what we must prove to
9 the jury beyond a reasonable doubt. Now, to prove an
10 indictment, we can do that any number of ways. We can do
11 it through direct evidence, or indirect, what is
12 sometimes called circumstantial evidence.

13 I want to talk to you about those

14 different types of evidence. There is no amount of
15 evidence that we have to present to you, but what we do
16 have to do is convince you beyond a reasonable doubt.
17 Now, in a murder case, as you can

18 imagine, the defendant -- well, in all cases, all
19 criminal cases, the defendant has more control over how
20 many witnesses, if any, there are to the crime, than
21 anyone else. Do you follow that?

22 A. Right.

23 Q. So oftentimes, very often, in a murder
24 case, the eyewitness is dead. Do you see how that can
25 happen?

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1 A. True, yes.

2 Q. Okay. As you know from school and
3 from the Judge's instructions last week, the -- we can

4 not call the defendant to the stand. She has an absolute
5 right not to testify. And you may not, by law, use that
6 against her in any way.

7 So, at times, particularly murder
8 cases, we must present to you evidence called indirect
9 evidence. Now, some people think indirect evidence is
10 better because it can't be twisted, it doesn't lie, it is
11 just absolutely, scientific evidence.

12 A lot of people prefer that type of
13 evidence. It is evidence like fingerprints, DNA, maybe

14 statements by the defendant that don't comport with the
15 crime scene, blood spatters, things like that.

16 Would you be able to return a verdict
17 in a capital murder based on circumstantial evidence?

18 A. I think so, yes.

19 Q. Okay. Additionally, before you, in
20 the indictment, that is what we have to prove to you. We
21 must prove that beyond a reasonable doubt. But, we're
22 not required by law to prove motive.
23 There is no requirement in Texas that
24 we prove why a defendant did something, and there is a
25 reason for that. Because as I just told you, you know,
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1 we cannot call her to the stand.

2 And, so the motive in this case may
3 become apparent to you in the trial, or it may be that it
4 may be one of several motives, or it may be that you
5 don't ever know. Would you be able to return a verdict
6 of guilty regardless of whether we proved motive in this
7 case?

8 A. Sure.

9 Q. I would like, again, once the
10 defendant has been found guilty, that is when we will go
11 to these special issues, and if we could go back to that
12 for a minute. The first special issue says that, asked
13 you: "If there is a probability that the defendant would
14 commit criminal acts of violence." What does the word
15 probability mean to you?

16 A. That they possibly could, they might.

17 Q. Okay. And what about criminal acts of
18 violence? What does that phrase mean to you?

19 A. Well, to me it means actually hurting
20 someone, I guess, in a violent way.

21 Q. Okay. Any sort of injury?

22 A. Right.

23 Q. All right. And what does "a
24 continuing threat to society," what does society mean to
25 you?

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1 A. All the people living here.

2 Q. Okay. And in your mind, would that
3 include prison guards, people in the prison, the people
4 that visit prison, chaplains, caretakers in there?

5 A. Sure.

6 Q. Okay. Going on to special issue
7 number 2, bottom one on that board, is there anything

8 that automatically comes to mind? I know you don't sit
9 around thinking about this stuff, but is there anything
10 that comes to mind that would be mitigating to you?

11 A. No, I'm not familiar with exactly what
12 the word mitigating is.

13 Q. Okay. It has been described in law
14 and in cases, as something that would lesson the
15 defendant's moral blameworthiness. Another bunch of
16 words, but basically, let me tell you how this question
17 came about.

18 There was a capital murder case where,
19 you know, no doubt about it, lock, stock, and barrel, the
20 guy did it. But he was mentally retarded. He was
21 competent. Okay? He knew the difference between right
22 and wrong, but he just had a lower -- I mean, a really,
23 really, really, low IQ. Okay.

24 And because of that, the courts looked
25 at it and thought, "We might need some sort of question
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1 to make sure that even though we know he is a continuing
2 threat, and even though we know he is guilty of capital
3 murder, there is some sort of safety net there."

4 And like I said earlier, you do not
5 have to give us any examples of what you would find

6 mitigating. Mitigation is different for different folks.

7 An example is alcohol. Some people think if the
8 defendant was drunk during the time of the crime, that
9 that is mitigating. And some people think that is
10 aggravating. Okay?

11 So, all I really need to know from you
12 is that you would wait and listen. And if you found
13 something mitigating or something that lessened the
14 defendant's moral blameworthiness, you would know it when
15 you saw it. Can you do that?

16 A. Yes.

17 Q. Okay. In talking with you about the
18 general principles of law that will apply in this case,
19 that really apply in every case, I'm going to go back
20 over some of the things the Judge said. And one of them
21 is that the defendant is presumed innocent. And the
22 penitentiary is full of people that started out presumed
23 innocent. All that means is, is that right now, if you
24 were to vote, you must find the defendant not guilty
25 because you have heard no evidence.

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1 A. True.

2 Q. Okay. All presumed innocent means is
3 it's another way of saying "We have the burden of proof."
4 Could you follow that law?

5 A. Sure.

6 Q. Okay. Additionally, I touched on this
7 a little bit, but the defendant has an absolute right not
8 to testify. You may not use that against her if she
9 chooses not to. If she wants to, no one can stop her.
10 But if she chooses not to, you may not use that as
11 evidence of guilt. Could you follow that law?

12 A. Sure.

13 Q. When we bring you evidence, it is
14 highly likely that police officers will testify in this
15 case. And the law requires all witnesses to start out
16 the same and to be treated the same. You can't judge a
17 book by its cover, if you will. Okay?

18 You can't see a man walk in here in a
19 police uniform and say, "I'm going to believe whatever he
20 has to say." You have to wait and hear from the evidence
21 and hear from the witness, their training, their
22 experience, and then decide if they are shooting straight
23 with you.

24 Sometimes defense attorneys, and I'm
25 not saying these would, but sometimes defense attorneys
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1 will ask a question like this, "Would you believe a
2 police officer simply because he was a police officer?"
3 Well, that is really a trick question. You can't believe
4 anybody simply because of their job.

5 A. Right.

6 Q. You have to wait and hear from them.

7 A. True.

8 Q. Okay. Another thing I would like to
9 talk to you about is parole. When you make these
10 decisions of death or life by answering these particular
11 questions, you are not entitled in any way to consider
12 parole. And there is really a good reason for that.
13 The parole laws change like the winds.

14 The parole board changes, the people who decide that

15 issue. It may be that a defendant serves a full life
16 sentence and you may -- you have to consider that she
17 will, and not consider parole in any way. Could you
18 follow that law?

19 A. Yes.

20 Q. Okay. I think I have one more
21 question about your questionnaire. Didn't you have a
22 relative that is an attorney?

23 A. Actually, I have three or four, yes.

24 Q. Okay. Any of them do criminal law?

25 A. I'm not for sure what they do, most of
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1 them are pretty distant relatives.

2 Q. Okay. Nothing about that that would
3 affect you in this case?

4 A. No.

5 Q. All right. Well, Mr. Carpenter, I am
6 about finished visiting with you. Do you have any
7 questions for me?

8 A. No. I don't think so.

9 Q. I'm sorry?

10 A. No.

11 Q. Okay. Before the defense attorney
12 asks you any questions, I'll just remind you that all we
13 are trying to do is get 12 people that will wait and hear
14 the testimony in the courtroom and get the law from the
15 Judge. And I think you said you would do that. Right?

16 A. Yes, I can.

17 Q. All right. Thank you, Mr. Carpenter.

18 THE COURT: Mr. Mulder.

19

20 VOIR DIRE EXAMINATION

21

22 BY MR. DOUGLAS D. MULDER:

23 Q. Mr. Carpenter, as the Judge told you,
24 my name is Doug Mulder and I need to visit with you a
25 little bit. Kind of get to know you a little bit better,
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1 I guess?

2 A. Okay.

3 Q. I'm not going to ask any questions
4 that -- I don't intend to pry into your background or

5 anything like that. I just want to kind of discuss a few
6 principles of law with you. And I'll, I dare say, I'll
7 not take more time than the State took.

8 I noticed that you work for -- is it
9 fishing lure manufacturing company?

10 A. Well, actually we just -- it's a

11 catalog sales, is what it is, on fishing.

12 Q. Okay. But it is mainly fishing

13 equipment?

14 A. Yes, sir.

15 Q. Is it fresh water or salt water or

16 both?

17 A. It's all of it, yeah.

18 Q. Okay. And that is located here in the

19 Kerrville area?

20 A. Yes.

21 Q. What is the name of your catalog?

22 A. It's just Champion Fishing Company.

23 Q. Champion Fishing Company?

24 A. Yes, sir.

25 Q. Do they manufacture any products?

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1 A. No, sir.

2 Q. Okay. How long have you been in that

3 business?

4 A. About a year and a half.

5 Q. I take it that this is a family

6 business, isn't it?

7 A. Yes, sir.

8 Q. Was your brother in the business

9 longer than that, or did you all put this together?

10 A. Me and my brother basically started it

11 together.

12 Q. Okay. All right. You are what, 32

13 years old?

14 A. Yes, sir.

15 Q. Five children?

16 A. Yes.

17 Q. You appear to be a man who knows his

18 mind. Would you say that is fair?

19 A. Yes, sir.

20 Q. Pretty well says what he believes, and

21 we can count on that and take it to the bank?

22 A. Definitely.

23 Q. Okay. And I doubt that there is going

24 to be anything -- your opinions, I assume, are fairly

25 well set. I'm not going to say anything to change your

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1 mind about capital punishment, am I?

2 A. I doubt it. No, sir.

3 Q. I mean, this is a -- these are

4 feelings that you have probably held since you were old
5 enough to reason as a child. Fair to say?

6 A. Yes, sir.

7 Q. Okay. You have read and heard
8 something, I guess, on the radio or TV or whatever about
9 this case. Have you not?

10 A. Minimal, yeah.

11 Q. What you heard, I assume, was not
12 good, as far as from the defendant's standpoint?

13 A. It really wasn't biased, what I heard.

14 Q. Okay. Well, you know, what you hear
15 on the radio or see and hear on television or read the

16 newspapers, nothing more or less than some reporter's
17 hearsay account which may or may not be accurate. Many
18 times, they don't -- you know, there is not a jurat at

19 the end of their statement where they swear to the facts.
20 They write, and a lot of times the purpose in writing the
21 story is to create controversy so that they create
22 interest on the part of the readers. Would you go along
23 with that?

24 A. True.

25 Q. What did you hear about this
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1 particular case? Could you tell us?
2 A. I mean, it was very brief. All I
3 heard is that the trial was coming to Kerrville on a
4 woman accused of -- I don't know if it was killing or

5 stabbing her two sons, and that was basically all I have
6 heard.

7 Q. Okay. When did you find out that you
8 were summoned for jury duty?

9 A. When did I find out?

10 Q. Yes, sir.

11 A. About two weeks ago, or two and a half
12 weeks ago.

13 Q. I guess, did you know that it was
14 going to be this particular case?

15 A. No, I didn't. I didn't hear about
16 this until about a day before I --

17 Q. Okay. And at that time, did you -- I
18 think there were some more articles in the Kerrville
19 paper here, and I think when you came down last Monday to
20 the jury room down at the county courthouse, they had
21 some TV trucks out there. You saw that, didn't you?

22 A. Yes.

23 Q. And, usually, there's some talking
24 back and forth between the prospective jurors. I assume
25 you knew some of the people that were down there, didn't
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1 you?
2 A. I knew a couple of them.
3 Q. Was anything said about the particular
4 case?
5 A. No.

6 Q. Okay. The law has no quarrel, Mr.
7 Carpenter, with a citizen having read or heard something
8 about a particular case, and then serving as a member of
9 the jury that actually tries that case. So long as you
10 don't have the formed or fixed opinion as to the guilt or
11 innocence of the accused. Did you hear enough to form
12 any kind of an opinion?

13 A. No, I -- like I said, I don't really
14 know anything. I don't believe what the radio says
15 anyway about half the time.
16 Q. Well, you are probably giving them the
17 benefit of the doubt. But that is a good position to

18 take and I like your position on that. And, I assume,
19 that that is as fixed and fast as your opinions, for
20 example, on capital punishment?

21 A. Yes.
22 Q. Okay. Now, you filled out this

23 questionnaire back, I guess, it was last Tuesday, wasn't
24 it?
25 A. Yes.
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1 Q. Okay. And had plenty of time to, I
2 guess, read the questions and think about them. And so

3 that we can pretty well assume that the answers that you
4 gave here are how you felt back then?

5 A. Pretty well.
6 Q. And how you feel now, I assume?
7 A. There might have been some
8 misunderstanding on some of them. But, yeah, it's
9 basically the way I feel.
10 Q. Okay. For example, under death
11 penalty, it says: Are you in favor of the death penalty,
12 and you checked "yes." Correct?
13 A. Right.

14 Q. Then, it says: Please explain your
15 answer. And you say, "If proven guilty of taking someone
16 else's life voluntarily, then I think they deserve their
17 life to be taken, also." In other words, an eye for an
18 eye, and a tooth for a tooth, and a life for a life.

19 A. Basically.

20 Q. Fair enough? That is basically the
21 way you feel?

22 A. Yes.

23 Q. Okay. No question about that?

24 A. No.

25 Q. Nothing I am going to do to change

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1 your mind, I guess, in the next few minutes?

2 A. I don't think so.

3 Q. Okay. So, then you went a step
4 further on that and said: "If you were in favor of the
5 death penalty, in some cases, do you agree that a life
6 sentence, rather than the death penalty would be
7 appropriate under the proper circumstances?" And you
8 marked that "no."

9 A. Right.

10 Q. Okay. Again, you feel strongly about
11 that? I would assume?

12 A. Yeah. I mean, we went over it with
13 her just a minute ago but --

14 Q. But I'm not --

15 A. -- it would have to be a certain
16 circumstance to change my mind, but I would prefer the
17 death penalty, yes.

18 Q. What I guess you are saying is that
19 you still believe in an eye for a eye, a tooth for a

20 tooth, and a life for a life?

21 A. Yes.

22 Q. Or a life for two lives. I mean, if
23 she killed two son's, you figure her life ought to be
24 forfeited at least once, I guess?

25 A. Yes.

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1 Q. Okay. And you feel strongly about
2 that, I assume?

3 A. Yes, sir.

4 Q. I mean, I can't wish it away or wash

5 it away, can I?

6 A. No, sir.

7 Q. Okay. And just so that I am -- I

8 understand what you are saying here: Regardless of any
9 misunderstanding, the way Mr. Carpenter feels right now,

10 that if it has been proven that someone took another life
11 voluntarily, then you think their life should be
12 forfeited?

13 A. Yes.

14 Q. Okay. And this business about -- and
15 nobody has any quarrel with that. Okay? Nobody is going
16 to fuss with you. There are no right or wrong answers.

17 The only thing wrong is feeling one
18 way or the other and not making it known to both sides,
19 so that both sides can get a fair trial. You can
20 appreciate that?

21 A. Yes.

22 Q. Okay. And is it not fair to say, Mr.

23 Carpenter, that if you feel that someone deliberately
24 intentionally, and voluntarily, and it is proven to you,
25 Mr. Carpenter, that someone intentionally took the life
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1 of a child under the age of six years --

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

4 Q. -- without any just cause or excuse,
5 and it is proven to you, beyond all reasonable doubt,
6 isn't it fair to say that you could not consider, if that
7 is proven, that you could not consider any penalty other
8 than death?

9 A. I almost feel like this is a trick
10 question.

11 Q. It's not a trick question.

12 A. It sounds like one.

13 Q. Well, I'm not trying to trick you.

14 We're just trying to find out how you feel. Okay?

15 A. My first preference is the death
16 penalty.

17 Q. No, I understand that. And I
18 suspect -- and I am not quarreling with you or fussing
19 with you because you feel that way. I mean, a lot of
20 people do. I may feel that way myself. I have
21 prosecuted these cases; I have been on both sides. I

22 have prosecuted a lot more of them than I have defended.
23 So, you have got plenty of company on

24 both sides. They have got six choices for you on this
25 questionnaire, if you recall?

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1 A. Right.

2 Q. And I am just reading what you wrote
3 down there. And, the answer to your question was: "If
4 you are in favor of the death penalty in some cases, do
5 you agree that a life sentence rather than the death
6 penalty, would be appropriate under the proper

7 circumstances?" And you said "no," that you didn't think
8 it would be appropriate.

9 You said that if you thought someone
10 was guilty of taking another person's life, then their
11 life should be taken. Okay?

12 A. Yeah.

13 Q. Okay. I'm not trying to trick you.

14 I'm just trying to figure out -- it looks to me like you
15 believe that if it is proven to your satisfaction beyond
16 all reasonable doubt that somebody killed a six year old
17 child --

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

20 Q. Then, adios, that person is gone.

21 They are going to get death as far as Mr. Carpenter is
22 concerned.

23 A. If that choice is available, yes.

24 Q. So, what you are saying is, that if
25 you -- if it is proven to you, and again --

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

3 Q. -- I'm not fussing with you. And it's
4 not a trick question. I think I read from the way you

5 answer the questions, that if you found somebody guilty
6 of capital murder wherein they killed a child under six

7 years of age, that is proven to you beyond all reasonable
8 doubt --

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

11 Q. -- that the only punishment that you

12 will entertain will be death, if that is available to
13 you?

14 A. That's right.

15

16 MS. SHERRI WALLACE: Your Honor, I
17 will object. We have been over this, the juror has said
18 that he could consider the evidence.

19 THE COURT: I understand what he said.

20 Thank you. I understand what he said. Thank you.

21

22 BY MR. DOUGLAS MULDER:

23 Q. Now, you know, again, I'm not going to
24 try to -- I just want to make sure our minds have met. I
25 am not going to try to change your mind or talk you into
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1 or out of anything else. I read what you say here, and I
2 hear what you are saying to me now.

3 A. I mean, like if the death penalty is
4 not available, then, yes, a life sentence would be my
5 next choice.

6 Q. All right. But if the death penalty
7 is available, that is what you are going to entertain --

8 A. That's right.

9 Q. -- and the only thing you are going to
10 go for?

11 A. Yes.

12 Q. This is a well thought out answer?

13 All our cards are on the table, I guess?

14 A. I guess.

15 Q. Okay. But, you are telling me as sure
16 as you can be right now, that if it is proven to you that
17 somebody kills a child under the age of six years, and

18 that is proven to you beyond all reasonable doubt, that
19 you are going to give them death if that is available,
20 regardless of the -- is that it?

21

22 THE COURT: All right. This is the
23 fourth time the question has been asked. I'll let him
24 answer it one more time. Anything -- what is your
25 answer?

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1 MS. SHERRI WALLACE: Well, Judge, I am
2 going to object to the defense attorney trying to commit
3 this juror before he has heard the facts.

4 THE COURT: I understand what you are
5 saying. I intend to ask a question in a minute. Thank
6 you.

7 THE PROSPECTIVE JUROR: Well, I still
8 feel like you are trying to trick me into answering the
9 question here.

10 MR. DOUGLAS MULDER: No, I'm not. All
11 I'm trying to do is commit you into telling me how you
12 feel. And I think what you have told me three or four
13 times, and again, I promise you I am not trying to trick
14 you, I'm just trying to find out how you feel, and see if
15 you are qualified as a juror in this case.

16 But you have told me three times, that
17 if it is proven to you that somebody killed a child under
18 the age of six years, if that is proven to you, beyond
19 all reasonable doubt, that you are going to give them
20 death, if that penalty is available.

21 MS. SHERRI WALLACE: I'm going to
22 object, it's been asked and answered.

23 THE COURT: I'll sustain the
24 objection. Let's move on. We have heard that. He said
25 he would. Let's move on.

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1 MR. DOUGLAS MULDER: Well, I don't
2 think there is any place to move, Judge.

3 THE COURT: Well, all right. Then
4 let's ask him the question one more time, and if that is
5 the last question you have, we'll stop it.

6 MR. DOUGLAS MULDER: No, you can go
7 ahead and ask it, if you want to ask it.

8 THE COURT: Well, go ahead, answer the
9 question. Whatever the -- state it one last time, Mr.
10 Mulder.

11 THE PROSPECTIVE JUROR: Without
12 sitting through the trial and hearing everything, yes,
13 that is my answer. Now, I might change after I sit
14 through the trial.

15 MR. DOUGLAS MULDER: Okay. All right.

16 THE PROSPECTIVE JUROR: Because I
17 can't make a decision until I hear the trial.

18 BY MR. DOUGLAS D. MULDER:

19 Q. So we're saying we really don't know,
20 you are saying you didn't understand this question when
21 you answered it, where you said that --
22 A. I guess, that's right. I didn't
23 understand it.

24 Q. Okay. And, again, I just want to find
25 out how you feel. You understand, if we take you as a
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1 juror, Mr. Carpenter, and you have got your mind made up,
2 that the only punishment that is applicable to this
3 particular case is death?

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

6 Q. That is not fair to her. Does that
7 make sense to you?

8 A. Yeah.

9 Q. Okay. And this is what I am trying to
10 find out from you, whether or not you are closed -- your
11 mind is closed to a life sentence?

12

13 MS. SHERRI WALLACE: Judge, I am going
14 to object. We have been over this, he said he would be
15 open-minded.

16 THE COURT: I will let him answer this
17 one last time. I think he stated his mind is open to a
18 life sentence if it is appropriate.

19 Is that a true statement or not?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: All right. Thank you.

22

23 BY MR. DOUGLAS D. MULDER:

24 Q. All right. You have got a number of
25 friends who are police officers; is that right?
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1 A. A couple. Yes, sir.

2 Q. I think your uncle is a sergeant with
3 the Kerrville Police Department; is he not?

4 A. Right.

5 Q. Then you have a buddy, a fishing
6 friend on the --

7 A. Right, he works there now.

8 Q. -- on with Kerrville or with the
9 sheriff's office?

10 A. He was at the sheriff's office.

11 Q. He is with the Kerrville Police
12 Department now?

13 A. No, he is working for me right now.

14 Q. Oh, working for you now. All right.

15 You have not discussed this case with him, have you?

16 A. No, sir.

17 Q. Okay. I guess your relationship with

18 those police officers wouldn't cause you to be a little
19 bit in favor of police officers, would it?

20 A. Not at all.

21 Q. Okay. You realize that some of them
22 will fudge and even downright lie?

23 A. Yes, sir.

24 Q. They had one in out in California that
25 plead guilty to perjury. Are you aware of that?

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1 A. Yes, sir.

2 Q. Okay.

3

4 MR. DOUGLAS MULDER: Judge, I submit
5 the juror for cause.

6 THE COURT: For what?

7 MR. DOUGLAS MULDER: For his -- Mr.
8 Carpenter, we're not going to ask you to serve on this
9 jury. I appreciate you coming down. Thank you.

10 THE COURT: What is your motion for
11 cause?

12 MR. DOUGLAS MULDER: We're going to
13 excuse the juror, Judge.

14 THE COURT: Oh, peremptory?

15 MR. DOUGLAS MULDER: Yes, sir.

16 THE COURT: Okay. Thank you very
17 much.

18 THE COURT: All right.

19 MS. SHERRI WALLACE: Judge, for the
20 record, if we could ask the juror to leave the room.

21 THE COURT: Yes, if you will step
22 outside the room.

23 MR. DOUGLAS MULDER: Appreciate your
24 coming down. Thank you.

25

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1 (Whereupon, the prospective
2 juror was excused from the
3 room, and the following

4 proceedings were held,
5 outside of his presence
6 as follows:)

7

8 THE COURT: Well, we have to put this
9 back on. I want to do it a certain way to keep my record
10 straight. All right.

11 All right. What says the State as
12 regards this juror?

13 MS. SHERRI WALLACE: The State accepts
14 this juror.

15 THE COURT: What do you do, Mr.

16 Mulder?

17 MR. DOUGLAS MULDER: We excuse the
18 juror.

19 THE COURT: Thank you very much. Have
20 Mr. Carpenter step back in, please.

21 MR. DOUGLAS MULDER: Judge, excuse me.

22 I submitted him for cause and I assume you overruled.

23 THE COURT: I overruled, yes, I
24 overruled your cause. Absolutely, I did.

25 MR. DOUGLAS MULDER: Well, I
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1 absolutely challenge it.

2 THE COURT: Okay. Thank you. All
3 right.

4

5 (Whereupon, the prospective
6 juror returned to the
7 room and the proceedings

8 were resumed as follows:)

9

10 THE COURT: Thank you. You have been
11 excused. You will no longer have to serve. Thank you
12 very much, we appreciate your time and patience. Oh,
13 yes. Sir, Mr. Carpenter, come back in just a minute,
14 please. There is a gag order in effect in the case. If
15 you could not please speak to anything that went on in
16 here this morning, to anybody until this trial is over.
17 Probably about the first part of February, is that fair
18 enough?

19 THE PROSPECTIVE JUROR: Sure.

20 THE COURT: Okay. Otherwise, I might
21 have to impose some sanctions. They would be monetary
22 sanctions or time in the county jail, and we don't want
23 to do that.

24 THE PROSPECTIVE JUROR: All right.

25 THE COURT: All right. Two jurors
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1 outside. Bring the first one.
2 Have a seat right there, please. Your
3 name is?
4 THE PROSPECTIVE JUROR: Edmund Sly.
5 THE COURT: Yes, sir. Will you raise
6 your right hand, please?
7 Do you solemnly swear or affirm you
8 will true answers make concerning all the questions
9 propounded to you concerning your qualifications as a

10 juror in this room or any room to which you may be sent,
11 so help you God?

12 THE PROSPECTIVE JUROR: Yes, sir.
13
14 (Whereupon, the prospective

15 juror was duly sworn by the
16 Court to true answers make
17 to the questions propounded,

18 concerning qualifications, after
19 which time, the proceedings were
20 resumed as follows:)
21

22 THE COURT: Thank you very much. Now,
23 we have for the State of Texas today, Mr. Greg Davis, Mr.
24 Toby Shook, and Ms. Sherri Wallace, they are Assistant
25 District Attorneys for the Dallas County District
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1 Attorney's Office. Mrs. Darlie Routier is the defendant
2 in today's case, and she is represented by Mr. Douglas
3 Mulder, and Mr. Preston Douglass, and Mr. Richard Mosty.
4 Mr. Mosty and Mr. Douglass may be back in a minute. Oh,
5 here is Mr. Mosty right here.

6
7 Whereupon,
8

9 EDMUND STEWART SLY,
10
11 was called as a prospective juror, for the purpose of

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

16 THE COURT: Would you state your name
17 for the record.

18 THE PROSPECTIVE JUROR: My name is
19 Edmund Sly. E-D-M-U-N-D, Sly, S-L-Y.

20 THE COURT: Thank you very much, sir.

21 All right. Mr. Shook will ask you questions first.

22 MR. TOBY SHOOK: Thank you, Judge.

23

24 VOIR DIRE EXAMINATION

25

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1 BY MR. TOBY L. SHOOK:

2 Q. Mr. Sly, again, my name is Toby Shook,
3 I am one of the prosecutors representing the State of
4 Texas in this particular case. And I don't believe you

5 are familiar with any of the prosecutors or lawyers from
6 Dallas; is that right?

7 A. No, sir.

8 Q. We have a couple of lawyers on the

9 case that are from Kerrville. Mr. Mosty here and Mr.
10 Preston Douglass. Are you familiar with them at all?

11 A. I only know Mr. Mosty's name, but I
12 don't know him.

13 Q. Okay. Don't know him personally?

14 A. No.

15 Q. You haven't seen his name in the
16 newspapers or around town?

17 A. Yes, sir.

18 Q. Okay. Would that affect you in any
19 way if you sat as a juror in this case?

20 A. No, sir.

21 Q. Okay. There are not any right or
22 wrong answers to any of these questions. Since this is a
23 death penalty case, we call each juror down individually.

24 We appreciate your patience so far
25 waiting out there. We don't know how long each juror

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1 will take. Sometimes they take a real long time, and
2 other times, it's only around five minutes.

3 So we have to call several down at one

4 time, but I appreciate your patience waiting on us.

5 A. Thank you.

6 Q. All right. What I'm going to do is go

7 over a few questions on your questionnaire about your
8 background and then get into your personal feelings about
9 the death penalty, and some of the laws that apply in

10 this case if you were a juror. I don't believe you have
11 ever sat as juror before; is that right?

12 A. No, sir, I have not.

13 Q. Have you've been called down to jury
14 service over the years?

15 A. One time.

16 Q. Was that in Michigan?

17 A. No, that was here.

18 Q. Okay. Do you remember what type of
19 case that was?

20 A. No, I don't.

21 Q. Okay. And you have lived here for the
22 last 11 years?

23 A. Yes.

24 Q. Okay. And originally you are from
25 Michigan, and I think you worked there for -- was it 38
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1 years?

2 A. Yes.

3 Q. Okay. What type of -- I see, what was
4 the name of that corporation?

5 A. K-Mart Corporation.

6 Q. K-Mart. Okay. What did do you with
7 K-Mart?

8 A. Everything.

9 Q. Okay. Let's go over that a little bit
10 more.

11 A. No, really --

12

13 THE COURT: Well, before we go any
14 further in this case, I notice that Mr. Sly is over 65.
15 You have an exemption you can claim, but you have waived
16 that exemption. Is that not so?

17 THE PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Thank you very much. That
19 is just for the record. Excuse me, go ahead, please.

20 THE PROSPECTIVE JUROR: Yes, sir. To
21 answer your question, I was in store management with
22 K-Mart Corporation. I was in a buying position with
23 K-Mart Corporation.

24 I was -- worked with one of the
25 vice-presidents for a few years. And my last 13 years we
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1 set up a quality control department which I was the
2 director of.

3

4 BY MR. TOBY SHOOK:

5 Q. Thank you. Okay. So you did do a
6 little bit of everything?

7 A. Yes.

8 Q. Okay. What brought you down here to
9 Kerrville when you retired?

10 A. I have a brother who lived here, and
11 we visited him here a few years in Kerrville. And it
12 appeared to be a real good place to move to when I
13 retired. That is what we did.

14 Q. Okay. In this particular case being
15 brought here on a change of venue, there was some

16 publicity that was on TV, newspapers. There is a lot of
17 people have heard some things about the case. You put
18 down you heard something on television, radio, and
19 newspapers; is that right?

20 A. Oh, yes.

21 Q. How much information did you read or
22 hear about?

23 A. Well, really, I had no realization of
24 the case until it was announced locally here that the
25 case would be held here.

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1 Q. It's fine for jurors especially when
2 they have been called down, obviously, to have read or
3 heard about the case, but what we're concerned about is
4 that you won't use anything you have heard to form any
5 opinions or use that as evidence against the defendant.

6 You can only judge the case on the facts you hear in the
7 courtroom. Would you be able to do that in this case?

8 A. Yes.

9 Q. You have not formed any opinions so
10 far?

11 A. No.

12 Q. Okay. Mr. Sly, let me talk to you a
13 little bit about the death penalty. Obviously, that is
14 what we are here about. The State has charged Mrs.

15 Routier with capital murder, and we are actively seeking
16 the death penalty. Because we're doing that, we want to
17 explore every juror's personal feelings about the death
18 penalty as a law. Do you agree that we should have the
19 death penalty as a law?

20 A. Yes.

21 Q. Okay. Tell me why you feel that the
22 death penalty is appropriate as it is?

23 A. I think this is God mandated according
24 to the written word.

25 Q. Okay. Have you always felt that way
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1 about the death penalty?

2 A. In my adult years, pretty much, yes.

3 Q. Have you -- what types of cases do you
4 think can be appropriate for the death penalty?

5 A. Well, this is just my conjecture, but
6 it would be murder.

7 Q. Okay. Any particular type of murder
8 come to mind?

9 A. Especially premeditated murder.

10 Q. Okay. Any other crimes other than
11 murder?

12 A. I'm sorry?

13 Q. Any other crimes other than murder?

14 Some people tell us sometimes they think rape or child
15 abuse should be a death penalty-type case?

16 A. I am using the Bible as a guidance in
17 this area, and I don't see any other evidence.

18 Q. Okay. All right. Mr. Sly, do you
19 think the death penalty -- well, we had several

20 categories down here. The category you chose, and I will
21 read it to you because I'm sure you didn't memorize
22 everything you chose. But it says: "I believe the death
23 penalty is appropriate in some capital murder cases. I
24 can return a verdict of death in a proper case." I take
25 it you still feel that way?

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1 A. I'm feeling what way again?

2 Q. You still feel that way, that the
3 death penalty is appropriate in some murder cases? Not
4 in every case, but in some murder cases?

5 A. Well, I mention the word

6 "premeditated."

7 Q. Okay.

8 A. In all of those cases it would seem to
9 me that the death penalty would be logical.

10 Q. Okay. Fair enough. Have you ever

11 followed any cases in the news that were in the media,
12 locally or nationally, that you thought were appropriate
13 death penalty cases, or cases involving the death
14 penalty?

15 A. Not off hand.

16 Q. I know the case that has always been
17 in the news, it seems the last two years, is the O.J.

18 Simpson case. Did you follow that case at all?

19 A. Well, the first few days.

20 Q. You got tired of it pretty quick?

21 A. Yes.

22 Q. Do you have any opinions or thoughts
23 about that case, the outcome of that case?
24 A. The only strong opinion I have for
25 that case is the jury that resulted. I thought it was a
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1 very improper jury, the makeup of the jury.

2 Q. What did you think about it? Exactly

3 what was improper about the makeup?

4 A. Well, we all being human as we are, I

5 feel that there is strong evidence that color always
6 plays a part, whether it's black or white.

7 Q. I understand.

8 A. Or probably any other color. But

9 we're human that way, and for that reason, I don't know
10 why they ended up with the jury they had.

11 Q. Right. Do you recall the Susan Smith

12 case that happened a year or maybe two years ago now?

13 A. Not too clearly.

14 Q. Okay. In Texas, there is only certain

15 types of cases that are eligible for the death penalty.

16 They are murder cases, intentional murder cases. But we
17 have to have another aggravating fact that comes into
18 play. We can have brutal murders that are not exactly --
19 that you can get a life sentence for, but don't call for
20 the death penalty. To get the death penalty, you have to
21 have the murder plus something else.

22 For instance, a murder that occurs

23 during a robbery. A guy that goes into a bank and maybe
24 shoots the teller, that could be a death penalty case.

25 Or somebody breaks in a home and kills the homeowner,

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1 that could be a death penalty case, during the course of
2 a rape or a kidnapping.

3 Also, if you murder someone for money,
4 the hit man situation, if you will, or the serial killer,
5 that type of case. Murdering a police officer, while he
6 is on duty can be a death penalty case.

7 Additionally, the type of case that
8 Judge Tolle told you -- informed you what this was, he
9 read the indictment, the murder of a child under the age
10 of six. That also, can be a death penalty case under the
11 proper facts.

12 Do you agree with that type of case?

13 I can't ask you for your verdict, because you have not
14 heard any evidence, but is that the proper -- the type of
15 case you feel might be appropriate for the death penalty?

16 A. Well, I think as you are indicating,
17 it would all depend on the facts surrounding the case.

18 But I think we come back to the word premeditated. If
19 it's a premeditated murder, definitely, I think that it
20 would mean death.

21 Q. What does premeditation mean to you?

22 A. Thinking beforehand to kill a person.

23 Q. Okay. Is that a real long thought
24 process, or could it be a relatively short one?

25 A. If it's relatively short --

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1 premeditated, in other words, you are determined that you
2 are going to kill that person.

3 Q. Okay. Is it something you feel should
4 be decided on a case by case basis?

5 A. Well, here we come back -- you take

6 self-defense. If a person is going to do you in, and
7 premeditatedly, right away you say, "Hey, I'm going to
8 kill this mugger"?

9 Q. Okay.

10 A. I think under that condition, that the
11 person has a right to self-defense. But it is
12 premeditated, at least for a moment, that he is going to
13 get that person before he gets him.

14 Q. Would you agree, Mr. Sly, that every
15 murder situation calls for a different factual situation?

16 A. Yes, sir.

17 Q. So every case is different?

18 A. Yes.

19 Q. Okay. Mr. Sly, let me go over the way

20 the procedure works here. In a death penalty case, the

21 trial is divided into two parts: The first part being

22 the guilt/innocence stage.

23 We have to prove the indictment. That

24 the crime occurred. If we do that, if we prove that

25 beyond a reasonable doubt, then the jury finds the

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1 defendant guilty.

2 At that point, we move to the

3 punishment stage. Where you get additional evidence.

4 You may hear a whole lot more evidence, you may just hear

5 a little bit. It just depends on the case. I can't go

6 into the facts of this case, we can't get into that.

7 So, we deal with hypotheticals a lot.

8 You may hear about a lengthy criminal background, or you

9 may hear nothing about a criminal background. You may

10 hear about bad character or good character. But at the

11 close of that evidence, you get these questions, what we

12 call special issues. And I will go over those more in a

13 moment.

14 But the first one deals with, we have

15 to prove that there is a probability that the defendant

16 would commit criminal acts of violence in the future. In

17 other words, they would be a danger to our society.

18 If you answer that one "yes," then we

19 move to that second question. And that is what we call

20 the mitigation question. That allows the jurors to

21 review all of the evidence, and if they feel there is

22 mitigating evidence which calls for a life sentence

23 rather than a death sentence, they can answer it that

24 way. If they don't, they will answer it "no."

25 But what happens is once we have

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1 reached the punishment stage, if it is a "yes" answer and

2 a "no" answer, then the Judge sentences the defendant to

3 death. If you answer it any other way, it will be a life

4 sentence.

5 But those are the only two possible

6 punishments once a person has been found guilty, death or

7 life. Does that sound like a fair process to you?

8 A. Yes, sir.

9 Q. Okay. Let me ask you, Mr. Sly, you
10 have told us that in certain cases you feel the death
11 penalty could be appropriate, depending on the facts. If
12 you were called to sit as a juror in this case, could you
13 listen to the evidence and if we prove these issues to

14 you, prove the case to you beyond a reasonable doubt,
15 could you answer those questions in a way that would
16 result in the defendant's execution?

17 A. Yes.

18 Q. Okay. There may be a situation in

19 regards to this first question, like I said, you can hear
20 more evidence. You could hear about a prior criminal
21 history that exists, or you may just get the facts of the
22 case alone. The person could have been a choir boy
23 before it happened, but then commit a brutal capital
24 murder.

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)

2 Q. Do you think you could answer that
3 question, question number 1, based on the facts of the
4 offense alone, depending on what those facts were?

5 A. There again, it would depend on the
6 facts, you know.

7 Q. Okay. Let me go into a couple of

8 things that we will go over what could happen in the
9 guilt/innocence stage. First of all, obviously, we have
10 to put on evidence for the jury to listen to. In
11 criminal cases we often hear the term circumstantial
12 evidence. I am sure you have heard that over the years?

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

15 Q. A lot of times we call that direct

16 evidence or indirect evidence. Direct evidence is an
17 eyewitness to a case. You see a crime occur, you are the
18 eyewitness, that is direct evidence. Any other evidence
19 is indirect evidence or circumstantial evidence. That
20 includes classic fingerprints, trace evidence, scientific
21 evidence like DNA or blood spattering, things like that.
22 How the crime scene was left, what clues the crime scene
23 tells you about the case, how it links the defendant to
24 the crime. Statements made by the defendant before,
25 during, or after the crime. Anything that links the
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1 defendant to the crime that proves the guilt, that can be
2 circumstantial evidence.

3 Now, in a murder case we often only

4 have circumstantial evidence to prove our case, because
5 you have got the victim who is dead, and the criminal.

6 Therefore, we have to rely on circumstantial evidence.

7 A. Uh-huh. (Witness nodding head

8 affirmatively.)

9 Q. Do you feel that you could convict

10 someone of capital murder based solely on circumstantial
11 evidence, if it is proven to you beyond a reasonable
12 doubt?

13 A. Yes.

14 Q. Okay. Another area I want to get into
15 is what we call motive. Again, I am sure you have heard
16 that term before, the reason the crime occurs. Now, in
17 the State of Texas we're not required to prove motive.

18 Okay? We don't have to prove to you the reason a crime
19 occurred. We only have to prove those allegations the
20 Judge told you about in the indictment.

21 Now, during the trial, it may become
22 very apparent for the motive. It might be right out

23 there where anyone could see it, or there might be a
24 whole lot of motives that might come out. People might
25 argue over the motive, maybe everyone comes up with their
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1 own theory.

2 No doubt about the crime, who did it,
3 and how it was committed, but some people might differ on
4 the true motive. Or you may never know the motive. It
5 could be locked away in the defendant's mind. But, the
6 point is, the State is not required to prove that to you.

7 Could you follow that? Do you agree
8 with that law?

9 A. Yes.

10 Q. Okay. Let me talk to you about these
11 special issues in a little more detail. If you would

12 read special issue number 1 to yourself. You may have
13 already, I don't know.

14 A. Okay.

15 Q. That first question asks the jury to
16 make a prediction about the future, after they have
17 listened to the evidence. Do you feel you could answer
18 that question if you received enough evidence?

19 A. I'm not following your question at
20 this point.

21 Q. Well, some people tell us, "I could
22 never predict how someone is going to behave in the

23 future. I just can't predict human behavior." Other
24 people tell us, "If you give me enough evidence, I can
25 answer that question if I feel it has been proven to me,
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1 beyond a reasonable doubt." I just want to know if you
2 are comfortable with that question, and answering that
3 question if you are given sufficient evidence?

4 A. You are asking if I agree with the

5 special issue --

6 Q. Number 1.

7 A. -- statement or number 1.

8 Q. Yeah. Special issue number 1 there at
9 the top. What I want to know is if you are given enough
10 evidence, do you think you could answer that question
11 "yes"?

12 A. Well, let me reread it again.

13 Q. Okay.

14 A. I don't think that would be
15 necessarily so.

16 Q. What do you mean? That you -- right.

17 Based on the crime itself you are saying?

18 A. Yes.

19 Q. Okay. It would just depend on the
20 facts of the case?

21 A. Yes.

22 Q. Okay. If you were given enough
23 evidence, do you think you could answer that question?
24 In other words, are you comfortable answering that
25 question if the State proves it to you? Some people tell
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1 us, "I could never answer that question. I don't care
2 how much evidence you have. People change."

3 Other people tell us, "You prove it to
4 me beyond a reasonable doubt, and I'll answer it 'yes.'"

5 A. Well, there are certain psychological

6 people in our communities that you certainly have to
7 wonder if they wouldn't continue those kind of acts.

8 Again, we would have to know a lot about that person, and
9 we have to listen to a few experts looking into that

10 person's actions. Under some conditions, it might be
11 that I would have to feel that they would continue,

12 generally, though, not. I don't think simply because a
13 person committed a certain crime is going to mean that
14 they are going to continue to do that crime. I think
15 people can change.

16 Q. Okay.

17 A. Mentally and socially and spiritually.

18 Q. What evidence would you want to hear
19 that would cause you to believe that? Does anything come
20 to mind?

21 A. Would cause me to believe what now?

22

23 MR. RICHARD C. MOSTY: Your Honor, I
24 believe that is improperly asking for a commitment from
25 the juror --

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1 THE COURT: Okay.

2 MR. RICHARD C. MOSTY: -- as to how he
3 is going to interpret the evidence that he has not even
4 heard.

5 THE PROSPECTIVE JUROR: Thank you.

6 THE COURT: Well, you might ask him,
7 if he had sufficient evidence, would you be able to
8 answer the question. We are not going to -- go ahead.
9 Rephrase it.

10 MR. TOBY L. SHOOK: Well, again, I
11 cannot get into the facts. But you tell me the types of
12 things you would want to hear before you answered that
13 question.

14 MR. RICHARD C. MOSTY: That is same
15 question, asking him for a commitment, now.

16 THE COURT: I'll let him answer it.

17 MR. TOBY L. SHOOK: I'm not asking for
18 a commitment. I just want to know what kinds of things
19 that he would like to hear that would be beneficial to
20 him.

21 THE COURT: All right. That is fine.

22 Go ahead.

23 THE PROSPECTIVE JUROR: Well, here we
24 come back to the word God again. And I have to believe

25 that certain people who will commit certain crimes,
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1 murder is not one of them, but other crimes, I think they
2 can change spiritually, under the right conditions and
3 the right urging by certain spiritualities, they can
4 change. Thereby, they wouldn't repeat that crime.

5

6 BY MR. TOBY SHOOK:

7 Q. Okay. Now, this question, this first
8 one, the State has to prove that to you beyond a
9 reasonable doubt. You start out this question with a

10 "no" answer, just like you start the defendant out with
11 the presumption of innocence. You start that out with a
12 "no" and the State must prove that to you beyond a
13 reasonable doubt. Do you have any problems following
14 that part of the law?

15 A. No.

16 Q. If you answered that first question
17 "yes," you would move on to this last question. That is
18 the lengthy mitigation question. Let's go over that

19 together. If you will read along with me. It's so long,
20 I usually have to refresh my memory with it. None of us
21 wrote this question, the legislature did this.

22 "Taking into consideration all of the
23 evidence, including the circumstances of the offense, the
24 defendant's character and background, and the personal
25 moral culpability of the defendant, is there a sufficient

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1 mitigating circumstance or circumstances to warrant that
2 a sentence of life imprisonment rather than a death

3 sentence be imposed?"

4 That is the last question you get.

5 Sometimes we term it as "the safety net." You have
6 already found the defendant guilty, you have already
7 found they are a continuing danger, but somewhere in the
8 evidence, somewhere in their background, you feel that a
9 life sentence should be imposed in the case, rather than
10 a death sentence. Mr. Sly, does that seem like a fair
11 question for you to have?

12 A. Well, it would except for murder.

13 Q. Okay. Are you telling -- okay. Let
14 me go into a couple of words here: Mitigating evidence,
15 we can't give you a definition as to what mitigating

16 evidence would be. That is up to you and the other
17 jurors. And you don't have to agree with the other

18 jurors, whatever you decide is mitigating counts. Okay?
19 Anything in their background. The law says: If you can
20 keep your mind open to something, and you view it to be
21 mitigating evidence, then you could answer it in such a
22 way that the defendant would get a life sentence. Okay?

23 Now, you have told us that makes sense
24 as a question in anything but murder. Now, we're only
25 talking about a capital murder situation. I can't get
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1 into the facts.

2 Would you be able to keep your mind
3 open to this type of evidence, and in this question,
4 answer it "yes." Give it a "yes" answer, that the
5 defendant should get a life sentence rather than a death
6 sentence, if you saw that type of evidence that was
7 mitigating?

8 A. Again, with the exception of
9 premeditated murder.

10 Q. Okay. Premeditated murder?

11 A. Yes.

12 Q. Okay. And premeditated murder is kind
13 of -- well, it's a fact situation in your mind what
14 exactly premeditated is. In other words, it changes from
15 case to case?

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

18 Q. Is that what you are saying?

19 A. Yes.

20 Q. Okay. So, it all depends on the facts
21 of the murder case?

22 A. Yes, sir.

23 Q. Okay. You are not saying that just
24 because you find someone guilty of capital murder and
25 answer that first question "yes," you are never going to
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1 answer that question a certain way. It is just going to
2 depend on the facts of the case?

3 A. Yes.

4 Q. Okay. Your mind will be open to all
5 of the evidence then and then you will make your
6 decision?

7 A. Yes.

8 Q. Okay. Fair enough. Mr. Sly, let me

9 go over just a few things that the Judge went over with
10 you last week. General principles of law that apply in

11 all criminal cases. Number 1: Presumption of innocence.

12 Any criminal or defendant must start out with the

13 presumption of innocence from the jurors. Do you agree

14 with that law?

15 A. Yes, sir.

16 Q. And could you follow that law in this

17 case?

18 A. Yes.

19 Q. Okay. In every criminal case, the

20 State must prove the case beyond a reasonable doubt. We

21 have the burden of proof. Do you agree with that law?

22 A. Yes, sir.

23 Q. And would you follow that law?

24 A. Yes.

25 Q. Okay. That burden of proof never

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1 shifts to the defense. You know, they are good lawyers.

2 They are going to ask questions, they are going to make

3 their arguments, but they are not obligated to prove

4 anything to you. You understand what I am saying?

5 A. Yes, sir.

6 Q. Okay. If we fail to meet our burden,

7 you are obligated to find the defendant not guilty.

8 A. Yes.

9 Q. You could do that?

10 A. Yes.

11 Q. All right. The Judge also talked to

12 you about the defendant's right not to testify. If a

13 person charged with an offense wants to take the witness

14 stand, no one can stop them.

15 However, if they choose not to

16 testify, you can't hold that against them. In other

17 words, you can't use that as evidence against them in

18 making your decision. You just have to disregard it,

19 that they didn't take the stand. Do you agree with that

20 law?

21 A. Yes, sir.

22 Q. And could you follow it?

23 A. Yes, sir.

24 Q. Okay. Additionally, we sometimes read

25 about the parole laws and how they affect sentences. The

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1 Judge will instruct you that during your deliberations,
2 you cannot use parole laws, consider parole laws in any
3 way. You must disregard anything you have read or heard
4 about the parole laws. Could you do that?

5 A. Yes, sir.

6 Q. Okay. Mr. Sly, also, police officers,
7 obviously, are called in criminal cases. People feel
8 strongly one way or the other. Sometimes we have jurors
9 that have negative feelings, that would prejudge a police
10 officer, and other people have very positive feelings

11 about them. But the law says that you have to start
12 every witness out on the same foot. Okay?

13 A. Okay.

14 Q. And after they testify you can decide
15 whether they are a credible witness or not a credible
16 witness. Can you follow that rule?

17 A. Yes, sir.

18 Q. Okay. Mr. Sly, do you have any
19 questions about anything I have gone over?

20 A. No, sir.

21 Q. Okay. I appreciate you coming down
22 here. Judge Tolle talked to you about, obviously, you
23 could have taken the easy way out, taken an exemption,
24 and we appreciate that; that you have stayed down here
25 and been through this.

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1 A. Yes.

2 Q. Why did you decide to do that? Why
3 did you decide to go through with the process?

4 A. I like this country.

5 Q. Okay. Well, I appreciate it. Thank
6 you for your patience.

7

8 THE COURT: Mr. Mosty.

9

10 VOIR DIRE EXAMINATION

11

12 BY MR. RICHARD C. MOSTY:

13 Q. Mr. Sly, my name is Richard Mosty.

14 And sitting to my right is Doug Mulder from Dallas. And
15 to my left is our client, Darlie Routier. We'll be --
16 we're splitting up some of this so there will be

17 different -- some different attorneys at different
18 points. If you are selected on the jury, you might meet
19 some of the others.

20 One of the things Mr. Shook has talked
21 about is the burden of proof, and the presumption of

22 innocence. And one of the things that as a defense
23 lawyer I always hate about criminal trials is that the
24 State always gets to go first. That goes with their

25 burden of proof, and they get to go first. And I would
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1 much rather go first myself and present our side of it.
2 And, particularly, when the State spends as much time
3 talking about punishment, in my mind that is putting the
4 cart way out in front of the horse.

5 Because what I want to talk to you
6 about is: Reasonable doubt, and the presumption of
7 innocence, and circumstantial evidence, and the State's
8 obligation to remove all that doubt, and the jury's
9 obligation to give every inference and give every benefit
10 of the reasonable doubt to a defendant.

11 So those are sort of the things that I
12 want to focus on. And you appear to be a disciplined

13 enough man and a fair enough man to where even at a
14 trial, you won't make up your mind just because the
15 defense doesn't get to go first. Will you?

16 A. I didn't know whether that was a
17 statement or a question there.

18 Q. Well, it was inartfully stated.

19 A. No, I would not do so.

20 Q. You will wait, and you will wait until
21 you hear all of the evidence?

22 A. Yes, sir.

23 Q. One of things I think Judge Tolle told
24 you last week was that in Dallas County there are some
25 25,000 true bills of indictment a year, and that an
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1 indictment is neutral. All it is is a piece of paper
2 that gives jurisdiction and brings a case and starts the
3 process of a trial. And that there is no presumption of
4 any kind that attaches to it.

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

7 Q. Are you comfortable with that concept?

8 A. Yes.

9 Q. And you made the comment about your

10 love for the country, and that is absolutely one of the
11 fundamental principles. And, actually, all the
12 principles I am going to be talking about today are
13 constitutional principles that have guided this country
14 for over two hundred years.

15 A. Yes.

16 Q. Part of your job or part of your role
17 in this process, or maybe all of your role in the

18 process, I should say, is that a jury's job is to
19 determine the credibility of witnesses. To look at the
20 witnesses, and to weigh their testimony. And you may
21 say, "I don't believe anything that that person said."
22 That is your prerogative. Or you might wholeheartedly
23 endorse what that person said. Or, another option is,

24 you may say, "Well, you know, I believe what that person
25 says, however, it doesn't have anything to do with

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1 whether or not this defendant is guilty. And it just
2 sort of fits over in that other category of an
3 interesting fact, but it doesn't have anything to do with
4 the case."

5 Judge Tolle will instruct you on what
6 the law is. So you don't need to know any law, and your
7 job is simply to judge the credibility of witnesses. And
8 you wouldn't have any problem sitting and paying
9 attention and listening objectively throughout the trial,
10 and then weighing the credibility or the weight to be
11 given a witness' testimony?

12 A. No, sir.

13 Q. In that sense, the State is obligated
14 to bring you the evidence which convinces you beyond a
15 reasonable doubt of someone's guilt. And as you weigh
16 that evidence, you look at the evidence, and it may be
17 the evidence itself that the State brings you, that in
18 and of itself doesn't make common sense, doesn't
19 logically flow, doesn't fit together, or maybe there are
20 just gaps in it. What there is is okay, but there are
21 just gaps in it.

22 And, so, it may be the lack of
23 evidence, it may be the evidence itself, it's
24 contradictory, or it just doesn't carry much weight. Or

25 it may be simply lack of evidence, the gaps or holes to
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1 where the chain doesn't link together and fully exclude
2 all reasonable doubt.
3 Mr. Shook talked a little bit about
4 the difference between direct and circumstantial evidence
5 and I have and illustration of that that has gotten mixed
6 reviews on how clear it is, but let me try it with you
7 and see. And I'm going to suggest to you that I look at
8 reasonable doubt as being this circle.

9 That that circle constitutes

10 reasonable doubt. And as we sit here right now with the
11 presumption of innocence that circle is entirely clear.

12 It has not been blocked out at all.

13 And the State's obligation is to

14 entirely blacken that circle; to remove any light or ray
15 of reasonable doubt. And what the State may do is come
16 in with direct evidence, and they come in with something
17 and it blocks out reasonable doubt, and all reasonable

18 doubt is removed.

19 On the other hand, the State may come

20 with circumstantial evidence. And that is, that the
21 State would come in and attempt to, with bits and pieces
22 of evidence, create a set of circumstances that blackens
23 that same circle, that excludes all reasonable doubt out
24 of that circle. And if the State doesn't, if there is
25 still a ray of light of reasonable doubt coming through,

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1 then the jury's obligation is to find the defendant not
2 guilty.

3 Do you have any problem with that
4 whatsoever?

5 A. No, sir.

6 Q. Not only must the State exclude all
7 light of reasonable doubt, but any -- anything that you
8 see, that as a juror raises a question, and you may see
9 some evidence of something that just doesn't quite fit.
10 Then, you are obligated to indulge that presumption in
11 favor of the defendant. Does that sound fair to you?

12 A. In other words, it's reasonable.

13 Q. All right. And that is -- that's when
14 it's your judgment.

15 A. Yes.

16 Q. Now, you may have a reasonable doubt
17 about something that just doesn't have anything to do
18 with the case, that is not what we are talking about.
19 I'm talking about reasonable doubt as to an element, as
20 to one of the things the State is required to prove.

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

23 Q. Now, Mr. Shook accurately stated that
24 the State does not have to prove motive. But, let me
25 give you an example of that. And, you know, there may be
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1 a case in where the State brings you proof, and as I have
2 drawn here, circumstantially, and as attempting to bring
3 you proof, and it sort of fits together.

4 You know, some of it makes sense, some
5 of it you have got some question about, and some of it,
6 if you just had an explanation for it, maybe it would
7 make more sense. But there is just no motive, for
8 instance. The State is not required to prove motive, but
9 on the other hand, that lack of motive might create that
10 glimmer of light of reasonable doubt, and say, that, you
11 know, taken altogether, this just doesn't make sense.

12 And if I had a motive, maybe it would, but it doesn't.

13 So, can you appreciate that

14 distinction between the State not being required to prove
15 motive, but on the other hand, that lack of motive might
16 create reasonable doubt. Can you appreciate that
17 distinction?

18 A. Well, I realize there is a distinction
19 there. Again, it would depend on all the facts of the
20 case. You come back to reasonable again.

21 Q. That's right. And every time you come
22 back to reasonable doubt, you come back to the indulgence
23 that when you have a reasonable doubt, you are always
24 going to resolve it in favor of this defendant. And you
25 can do that, can't you?

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1 A. Well, that would be part of being a
2 juror.

3 Q. That's right. And what I want to
4 focus on is, that you have got to make, in your exclusion
5 province, the determination of: Is this a reasonable

6 doubt? But once you make that determination, then it
7 always swings over to this side of the room.

8 A. Well, it would have to be that way.

9 Q. Do you understand that?

10 A. Yeah, yeah.

11 Q. You say, "A reasonable doubt. But,
12 you know, I think maybe I will resolve that in favor of
13 the State." You can't do that.

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

16 Q. That is a matter of law, and that is
17 not within your discretion.

18 A. Okay.

19 Q. Am I making that clear, sir?

20 A. Yes, sir.

21 Q. Your job is to see: Is there
22 reasonable doubt?

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

25 Q. But once you find it, then it always

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1 belongs to the defense.

2 A. Okay.

3 Q. Does that seem fair enough to you?

4 A. Yes, sir.

5 Q. How long did you say you had lived in
6 Kerrville?

7 A. Eleven and a half years.

8 Q. Did you retire here --

9 A. Yes, sir.

10 Q. -- or work for K-Mart here?

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

13 Q. It looks like you like to work in your
14 garden, and fiddle around the house, and things like that
15 in your spare time?

16 A. We do some of that, uh-huh. (Witness
17 nodding head affirmatively.)

18 Q. What else do you do in your leisure
19 time?

20 A. We do a little church work. Both my
21 wife and I are members of the Navy league here. I
22 volunteer at the Chamber of Commerce on Saturday
23 afternoons, and beyond that, we enjoy the Hill Country.

24 Q. Okay. It looks like you drive down to
25 San Antonio every Sunday for church?

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1 A. We do.
2 Q. To see Mr. Hagy?
3 A. You know him?
4 Q. Well, most everybody does. He is
5 quite a dynamic man.
6 A. He is quite a man.
7 Q. And, that is -- I have some friends
8 that go to that church. It is quite a place.
9 A. Uh-huh. (Witness nodding head
10 affirmatively.)
11 Q. I got too many kids to get up early in
12 the morning to drive that far to church, I need a church
13 that is a little closer to home.
14 A. It is 150 miles round trip.
15 Q. I can't get my teenagers up to do
16 that. We have to stay here.
17 In that vein, let's talk a little bit,
18 because you have mentioned several times your spiritual
19 and theological rationale which is obviously a great deal
20 of your underpinning of who you are. And, you used the
21 phrase premeditated murder several times, and in

22 actuality in the law, there is no such definition.
23 Let me share with you just a little
24 bit about the definitions. And, ultimately, I want to
25 make sure that you are comfortable, that you will give
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1 full consideration and a fair consideration to either
2 sentence.
3 And, again, let me say that the only
4 reason I am even talking to you about punishment, is that
5 this is the only chance I ever get to talk to you,
6 really, one to one.
7 And, so, the law requires that I talk
8 to you about punishment at this time. Even though, all I
9 really want to talk to you about is reasonable doubt, and
10 the constitutional protections. But the law requires
11 that I do so.
12 In Texas, murder is defined as
13 intentionally and knowingly taking the life of another
14 individual without justification. And justification is
15 self-defense, to put it simply. That if you take a life
16 in self-defense, then you are not convicted of anything.
17 That is not murder.
18 A. Uh-huh. (Witness nodding head
19 affirmatively.)

20 Q. Because it is done in the defense of
21 your person or your property or your family.
22 A. Uh-huh. (Witness nodding head
23 affirmatively.)
24 Q. So, to convict someone of murder, you
25 necessarily -- a jury would necessarily have to find
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1 there is no justification. That someone intentionally
2 and knowingly took the life of another individual.
3 A. Uh-huh. (Witness nodding head
4 affirmatively.)
5 Q. That is punishable by a maximum
6 sentence of life in prison.
7 A. Uh-huh. (Witness nodding head
8 affirmatively.)
9 Q. Now, capital murder is a step above
10 that. Capital murder has a narrow, defined set of
11 circumstances that are murder, but include some other
12 aspect. For instance: Murder committed during a

13 burglary or a robbery, murder of a police officer,
14 multiple murders. So there is some -- there is something
15 in addition that the legislature has said this is a step
16 higher type of murder.
17 A. Uh-huh. (Witness nodding head
18 affirmatively.)
19 Q. It's still intentionally and knowingly
20 taking the life of another individual, but it has this
21 additional feature to it. And you used the phrase
22 premeditated, can you share with me -- and let me also
23 say this: I think a lot of times it's very unfair for
24 lawyers to sit here and ask you questions that you don't
25 spend a lot of time thinking about. And so, excuse me
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1 for that, but I am really trying to get a feel for how
2 you think.
3 Could you share with me what your
4 thought is on what you view as premeditated? And I
5 understand that that might be some broad spectrum of
6 things, but --

7 A. Well, you used the word a minute ago,
8 which I think would apply to this. And that would be the
9 intention or intending to really --

10 Q. To cause the death?

11 A. Yes.

12 Q. Okay. Now let me share with you,

13 because I want to make sure you are clear on how the

14 process works. Before you ever get around to answering
15 these questions, you will have made the determination, as
16 a jury, 12 of you, that a defendant intentionally and

17 knowingly committed capital murder. Took the life --
18 intentionally and knowingly took the life of another

19 individual and there is one of these additional special
20 features.

21 For instance, that a child under six
22 years of age was the victim. So, before you ever even
23 get to answering these questions, you, as a juror, know
24 beyond any reasonable doubt, that the person in front of
25 you has intentionally and knowingly taken the life of a
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1 child under six.

2 And then, there may be or there may
3 not be additional evidence presented to you. May just be
4 that the State rests and the defense rests. And so based
5 upon the -- just the crime that you have heard about, you
6 would be called upon to answer these questions. There
7 may, on the other hand, be some other evidence. But
8 whatever it is, you are going to have a body of evidence,
9 part of which is the crime itself, and that is part of

10 the evidence that you have to take into consideration.

11 And then, the question is: Do you
12 find from the evidence beyond a reasonable doubt, that

13 this convicted person -- that there is a probability that
14 this convicted person would commit future acts of
15 violence that would constitute a continuing threat to
16 society?

17 Now, where am I wrestling with, and

18 where I want to make sure that you and I are on the same
19 wave length is, if you feel that someone has
20 intentionally and knowingly taken the life of a child

21 under six, can you conceive that the answer to this
22 question may ever be "no"?

23 A. Well, you have a lot of positives and

24 negatives in your questioning here.

25 Q. And let me apologize, I sincerely

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1 apologize.

2 A. But I would have to answer this just

3 as I did before. In most cases, I would have to feel

4 this way. However, there would be, at times, people who

5 you would have to feel probably would not commit that act

6 again.

7 Q. Okay. Can you -- are you saying then

8 that you could conceive and would be open to the concept,

9 that even though you had found someone guilty of

10 premeditated murder, and I will use your word, that that

11 person may not be a continuing threat to society?

12 A. If it's premeditated murder, an

13 intended murder, I think they should receive the death

14 penalty.

15 Q. And, let me say this: I am a product

16 of who I am and what my life experiences are, and you are

17 too. And everyone in this room is. We all carry with us

18 certain baggage, for lack of a better term, and in this

19 courtroom here today, there is, the only wrong answer

20 there is, would be one that is not heartfelt on your

21 part.

22 So anything you say, any opinion you

23 hold, any beliefs you have, are the right answers. And

24 that is all we're trying to get to. So feel, be sure and

25 understand you are not trying to answer it some way that

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1 I should hear or the Judge should hear, it's simply what

2 your response is.

3 Is it -- do I take it from your

4 statement, that if you have found someone guilty of

5 intentionally and knowingly committing capital murder,

6 that you think that the answer to question number 1 is

7 necessarily "yes"? That person would be a continuing

8 threat and should receive the death penalty?

9 A. I wouldn't have that feeling -- may I

10 just put it this way, so you understand?

11 Q. Well, you can probably state it better

12 than I can.

13 A. Where I am trying to come from.

14 Q. Okay.

15 A. The word of God tells us very clearly

16 that if we take a life of another individual, we have all
17 been created by God Almighty. And if we take a life, and
18 we premeditate to do that, we're eliminating something
19 that God Almighty has put here, and we don't have a right
20 to do that.

21 Q. Yes, sir.

22 A. Because of God Almighty. So this is
23 between myself and God.

24 Q. That's right.

25 A. Or it's between ourselves and God.

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1 Q. And that is the very fabric of who you
2 are?

3 A. Yes.

4 Q. And I can sit here and I know that
5 your commitment to God is one that was made a long time
6 ago.

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

9 Q. And is absolute above every commitment
10 that -- any other commitment that you have in life?

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

13 Q. Okay. Do I take it from that, then,
14 that if someone -- if you find someone intentionally and
15 knowingly committed capital murder, we have taken out

16 justification, we have taken out self-defense, that the
17 only appropriate penalty, because of your religious

18 convictions, and scriptural teachings, that the only
19 proper sentence is a death sentence?

20 A. If it's premeditated.

21 Q. Yes, sir. And that -- that to impose
22 a life sentence would violate your religious convictions?

23 A. If it's premeditated.

24 Q. Yes, sir. And when you use the word
25 premeditated, just so we're clear, when I use the words
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1 intentionally and knowingly taking the life of another,
2 is that the same thing as premeditated?

3 A. I can see somebody doing something and
4 creating a murder. If it's not premeditated, but just on
5 the spur of the moment, they do this act, and it is not
6 premeditated, they don't really mean to do it, but it is

7 done. I don't think God Almighty would hold that against
8 them.

9 Q. I'm talking about someone that

10 intentionally and knowingly, I'm not talking about a
11 sporadic --

12 A. If they planned and created a murder,
13 I believe they should receive the death sentence.

14 Q. And does that fit within the
15 definition of someone who intentionally and knowingly
16 commits a murder? Is that --

17

18 MR. TOBY L. SHOOK: Judge, I will
19 object to that. He has asked that question, and he has
20 answered it a number of times.

21 THE COURT: He sure has, but I'll let
22 him answer it one more time.

23 THE PROSPECTIVE JUROR: Well, I
24 can't --

25

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1 BY MR. RICHARD C. MOSTY:

2 Q. Please excuse me, because I certainly
3 don't mean to --

4

5 THE COURT: I think we have gone over
6 it about four times. He stated, if it's premeditated, he
7 thinks they ought to get the death sentence. If it's
8 not, if it's done on the spur of the moment, he is not --
9 he is open to a life sentence. Is that a fair statement,
10 sir?

11 THE PROSPECTIVE JUROR: Yes, sir.

12

13 BY MR. RICHARD C. MOSTY:

14 Q. Okay. Please don't -- please don't
15 hold anything that the objections or the Court says
16 against me. I apologize to you. Because I am trying to
17 get to the bottom of this, so that I understand. Maybe
18 everybody here understands but me, so I apologize.

19 Are you open to a life sentence for
20 someone that you believe intentionally and knowingly
21 caused the death of another individual?

22 A. No, sir.

23

24 MR. RICHARD C. MOSTY: I'll pass the
25 witness.

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1 THE COURT: All right. You have said
2 two things. What I want to know is this: On that first
3 issue up there, are you telling both sides here -- well,
4 tell us exactly what you are saying on the first issue
5 finally, because we have to get a fair juror in this
6 case.

7 THE PROSPECTIVE JUROR: Okay.

8 THE COURT: You are saying one thing
9 to the State, and another thing over here, but the

10 lawyers are very skillful. They ask you questions in
11 certain ways to couch your answers in certain ways. What
12 we need to know is this: If you find this defendant

13 guilty, of capital murder, is your mind open to that
14 first issue answering either "yes" or "no," depending on
15 the evidence you hear?

16 THE PROSPECTIVE JUROR: If the murder
17 was premeditated --

18 THE COURT: That is not going to get
19 the answer. Is your mind open to answering that issue

20 "yes" or "no," depending on the evidence you are going to
21 hear?

22 THE PROSPECTIVE JUROR: Well, you see,
23 I have difficulty answering this as a complex question,
24 because if the person does not premeditate murder, it
25 changes the question considerably.

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1 THE COURT: That is my point. So it
2 is going to depend on the evidence you hear, is that
3 right or not right?

4 THE PROSPECTIVE JUROR: You can also
5 bring in the fact that some people change.

6 THE COURT: We understand that, but is
7 your mind open to that question? Answering that question
8 "yes" or "no," depending on the evidence you hear, and
9 the charge of the Court, and what you hear in this
10 courtroom, and the testimony you hear, and the evidence
11 you receive?

12 THE PROSPECTIVE JUROR: I see criminal
13 acts -- we're not even tying this down to murder. It's a
14 very complex question.

15 THE COURT: All I want to is: Is your
16 mind open to answering that question, "yes" or "no,"
17 depending upon the evidence you receive?

18 THE PROSPECTIVE JUROR: There would be
19 a probability, considering everything there.

20 THE COURT: Is your mind open to
21 answering that question "yes" or "no," depending on the
22 evidence you receive -- on the testimony you hear, and
23 the evidence you receive in this courtroom through the
24 trial of this case?

25 THE PROSPECTIVE JUROR: There would be
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1 a probability that my answer would be "yes."

2 THE COURT: Well, probability doesn't
3 get it either. Is your mind open, it's either open or
4 it's not open?

5 THE PROSPECTIVE JUROR: Yes, sir, it's
6 open.

7 THE COURT: Thank you. Now, if you
8 answer that "yes" or "no," can you then answer the
9 second, well, if you answer -- if you answer that first
10 question "yes," can you then answer that second question
11 "yes" or "no," depending upon the same criteria, the
12 evidence you hear -- the evidence you hear -- the
13 evidence you receive, and the testimony you hear in this
14 courtroom during the trial of this case?

15 THE PROSPECTIVE JUROR: It would be a
16 possibility of life imprisonment.

17 THE COURT: Yes. But is your mind
18 open? That is all I want, is your mind open or not open?

19 THE PROSPECTIVE JUROR: Yes, sir, it
20 is open.

21 THE COURT: You have no conclusion as
22 of right now; is that correct?

23 THE PROSPECTIVE JUROR: It is open.

24 THE COURT: Fine. Thank you. You may
25 step outside briefly, please. Don't go away yet.

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1 THE PROSPECTIVE JUROR: Okay. Thank
2 you.

3 THE COURT: If you will just step
4 outside briefly, please.

5

6 (Whereupon, the prospective

7 juror was excused from the
8 room, and the following

9 proceedings were held,

10 outside of his presence

11 as follows:)

12

13 THE COURT: All right. What says the

14 State?

15 MR. TOBY L. SHOOK: The State will
16 accept the juror.

17 MR. DOUGLAS MULDER: Judge, wait a
18 second. We're not ready to -- we submitted him for cause
19 on this one issue.

20 THE COURT: I am finding him
21 qualified.

22 MR. DOUGLAS MULDER: Well, we haven't
23 finished our questioning.

24 MS. SHERRI WALLACE: They passed the
25 witness.

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1 MR. TOBY L. SHOOK: You passed the
2 witness.

3 MR. DOUGLAS MULDER: All this -- all
4 this -- I mean, he is obviously disqualified. I liked
5 the guy until his last answer. I mean, I intended to

6 take him.

7 THE COURT: Well, let's bring him back
8 in and ask him some more questions.

9 MR. DOUGLAS MULDER: But you can't --

10 MR. GREG DAVIS: Can I just --

11 THE COURT: Yes.

12 MR. GREG DAVIS: Are we going to have
13 a situation where the defense is going to reserve all of
14 their time to try to rehab these people to see what we

15 want?

16 THE COURT: Well, we're not going to
17 have it, but here is the thing. Let's do this: Both

18 sides have agreed -- from now on if you pass the witness,
19 that is the end of it. All right?

20 MR. DOUGLAS MULDER: Yes, sir.

21 THE COURT: All right. With that
22 witness.

23 MR. RICHARD C. MOSTY: Well, it's okay
24 with me, but yesterday we --

25 THE COURT: All right. Both sides, I
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1 think both sides have had a fair crack at the thing.
2 Here is my ruling right now: This gentleman is qualified
3 based on what I have heard.
4 Now, if you want to peremptory

5 challenge it, challenge him. If you don't, I will
6 overrule your motion for cause. Put it in the record,
7 put his questionnaire in, if that is an error, the Court
8 of Appeals can handle it.
9 And from now on, when a witness is
10 passed, he is passed, or she is passed. Now then, I am
11 holding this witness -- this potential juror, qualified.
12 I am saying -- are you -- you submitted him for cause.
13 The cause -- the defense motion to excuse the juror for
14 cause is overruled. And so if there is any error in

15 that, I think, I have preserved it for whatever error
16 there might be, if the case goes on appeal.

17 And if you want to put his
18 questionnaire in as Court's Exhibit Number 7, it goes in.
19 So, that being the case, are you going to take him or not
20 take him?
21 MR. DOUGLAS MULDER: Well, we want to
22 finish our questioning.
23 THE COURT: Well, you should have
24 finished your questioning. What is the next question?
25 MR. DOUGLAS MULDER: Well, Judge, you
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1 should have made that clear then, or at least be
2 consistent.
3 THE COURT: All right. Then here is
4 what I am going to do. In this case, you are going to
5 get a chance to bring him back, from now on, not. Fair
6 enough? But we're not going to go over this question any
7 more.
8 Bring him back in and put him back up.
9 MR. DOUGLAS MULDER: Well, this juror
10 is hung up with -- this juror believes that premeditation
11 is the same thing as intentional and voluntary.
12 THE COURT: We have gone up -- he does
13 not believe that in my opinion. We have gone over that.
14 If you have any more questions to ask him, bring him back
15 in, and let's ask him.
16 MR. RICHARD MOSTY: Your Honor, are we

17 precluded from asking him about that question?
18 THE COURT: We are through with that
19 question right there. We are not going to ask him about
20 that anymore.
21 MR. RICHARD C. MOSTY: The Court is
22 instructing us not to ask any more questions on
23 intentionally or knowingly.
24 THE COURT: That's is correct. We
25 have beat that horse to death and smashed it into the
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1 ground and run over it.
2 MR. RICHARD MOSTY: Well, I would like
3 to define for him intentionally and knowingly as provided
4 by law. But I understand the Court's prohibiting us
5 from --
6 THE COURT: Right, I think we have
7 gone over that plenty. Any other questions you want to
8 ask him?
9 MR. DOUGLAS MULDER: And we object to
10 the Court telling the prospective venireman that the
11 lawyers are skilled at couching their questions in such a
12 fashion as to commit the juror to a particular answer.
13 THE COURT: Well, the Court will
14 refrain from doing that in the future.
15 MR. RICHARD C. MOSTY: And, on that
16 same note, when I was talking about intentionally and
17 knowingly, I can't remember what the Court's comment was,
18 but it was to the effect that I was trying to -- that I
19 was the only one who is going over this six or seven
20 times.
21 THE COURT: Well, the Court would ask
22 both sides, ask a question and move on, the Court likes
23 direct questions.
24 MR. RICHARD C. MOSTY: Well, I
25 understand that, Your Honor, and I will apologize to the
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1 Court, too, as I apologized to him. But this lady's life
2 is at stake here.
3 THE COURT: We understand that.
4 MR. RICHARD C. MOSTY: And I think
5 we're entitled to understand the feelings of these
6 people.
7 THE COURT: Well, I am trying -- I am
8 trying and I think I have been very fair in this case
9 with everyone, but if we could just ask one question. I

10 think what is happening, when they give an answer you

11 don't like, you keep going around with it to make sure
12 you get the answer you like, and both sides have been
13 doing this.

14 MR. RICHARD C. MOSTY: Well, I don't

15 mind if the Court thinks that, but I do mind if the Court
16 says that in front of a prospective juror.

17 THE COURT: Well, I have not said that
18 in front of a prospective juror yet and I don't intend to
19 say it in front of a prospective juror.

20 MR. RICHARD MOSTY: Well, I think -- I
21 thought you did say it in front of him when I was
22 questioning, that is the way I took it.

23 THE COURT: Well, you took it the
24 wrong way.

25 But I would like direct questions
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1 asked. And from now on, when the juror is passed, they
2 are passed. That is it. All right. So what are we
3 going to do now? If you want to call him back and ask
4 him some new questions, that is fine, but we are not
5 going over this anymore. And this is the last one we're
6 going on that. All right.

7 MR. DOUGLAS MULDER: Judge, we want to
8 talk to the defendant alone.

9 THE COURT: That is fine.

10

11 (Whereupon, a short

12 recess was taken,
13 after which time,

14 the proceedings were
15 resumed on the record,
16 in the presence and

17 hearing of the defendant
18 as follows:)

19

20 THE COURT: Back on the record.

21 MR. RICHARD C. MOSTY: Based on the
22 Court's ruling, for not allowing us to proceed further
23 with this, we will exercise a peremptory strike.

24 THE COURT: You want to ask -- what
25 other questions do you want to ask?
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1 MR. RICHARD C. MOSTY: I wanted to ask
2 him -- I wanted to go over the definition of
3 intentionally and knowingly and go through that
4 definition, that is what I wanted to ask.

5 THE COURT: I think we have been over
6 that enough. Thank you.

7 MR. RICHARD C. MOSTY: I don't think
8 it's been defined, but we understand the Court's ruling,
9 and based on that ruling, we will exercise a peremptory
10 strike.

11 MR. DOUGLAS MULDER: Well, we are
12 doing this simply because the Court won't allow us to go
13 back into -- I think the record is abundantly clear that
14 this venireman feels that premeditation and knowingly and
15 intentionally, knowing and voluntarily, are the same
16 thing.

17 MR. TOBY L. SHOOK: Judge, I think he
18 said premeditation, he talked about planned, then he
19 talked about spur of the moment, those kinds of things --

20 THE COURT: I think he has covered
21 that sufficiently, my ruling stands. Let's move on. All
22 right. So you are going to exercise peremptory

23 challenge. Is that correct?

24 MR. DOUGLAS MULDER: Yes, sir.

25 MR. RICHARD MOSTY: Because of the
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1 Court's ruling.

2 THE COURT: Because of the Court's
3 ruling. Thank you.

4 MR. TOBY L. SHOOK: I think it was on
5 the record, that I did say before all that, we accepted
6 the juror, is that right?

7 THE COURT: Yes, the State has
8 accepted the juror.

9 MR. RICHARD C. MOSTY: And for the
10 record, may we place his juror questionnaire in as
11 Court's Exhibit Number 7?
12 May we do that, Your Honor?

13 THE COURT: Sure. Oh, sure.

14

15 (Whereupon, the following
16 mentioned item was
17 marked for
18 identification only

19 as Court's No. 7,
20 after which time the
21 proceedings were
22 resumed on the record
23 in open court, as
24 follows:)
25
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1 MR. RICHARD MOSTY: I thought you were
2 learning from the West Texas guys about never ruling. I
3 thought Judge Sherrill told you about that.
4 THE COURT: No, I try to rule. And I
5 would appreciate it if everyone would -- well, I think we
6 have been over this question time and time again and get
7 the same kind of answers.
8 All right. Let's bring Mr. Sly in.
9
10 (Whereupon, the prospective
11 juror returned to the
12 room and the proceedings
13 were resumed as follows:)
14
15 THE COURT: Mr. Sly, we want to thank
16 you very much for all your time and your attendance and
17 your patience, but you will be excused as a juror in this
18 case.
19 THE PROSPECTIVE JUROR: All right.

20 THE COURT: We would ask you to be
21 kind enough not to discuss this case with anybody until
22 the trial is over, probably around the first part of
23 February. That goes for the press or anybody else.
24 There is gag order in effect, and, of course, I'm not
25 threatening you, I just have to tell you what it means.
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1 I can impose sanctions, either monetary fines, or
2 confinement in the Kerr County Jail. I know it won't
3 apply to you, but I am required to tell that. Thank you
4 very much. We appreciate your coming.
5 When did you finish Dartmouth?

6 THE PROSPECTIVE JUROR: 1947.
7 THE COURT: '47. Good. Good. Thank
8 you.
9 All right. Bring in the next one,

10 please.

11 We're going back now, ladies and
12 gentlemen, this is John Hastings. Right?
13 THE PROSPECTIVE JUROR: Right.

14 THE COURT: All right. If you will
15 have seat here please. He was scheduled on October 28th,
16 and he has been moved to today by agreement, because he
17 couldn't get there. Right?

18 THE PROSPECTIVE JUROR: Right.

19 THE COURT: Okay. If you will raise
20 your right hand, please?

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

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1 THE PROSPECTIVE JUROR: I do

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: Thank you. Have a seat. All
12 right. Please state your name.

13 THE PROSPECTIVE JUROR: John M. Hastings.

14 THE COURT: All right. This is -- from the
15 Dallas County District Attorney's Office, we have Mr.

16 Toby Shook, Ms. Sherri Wallace, and Mr. Greg Davis. This
17 is the defendant, Mrs. Darlie Routier, and she is
18 represented by Mr. Douglas Mulder and Mr. Richard Mosty.
19 And Mr. Toby Shook will have the first
20 crack.

21

22 Whereupon,

23

24 JOHN MICHAEL HASTINGS,

25

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

5

6 VOIR DIRE EXAMINATION

7

8 BY MR. TOBY L. SHOOK:

9 Q. Mr. Hastings, I appreciate you coming
10 down here. You put on your questionnaire that you
11 probably would be moving, I think that is where you were.
12 You were up in Oregon on a job interview or something?

13 A. That's right.

14 Q. What is your situation now?

15 A. They said they would let the
16 successful candidate know late this week.

17 Q. Does it depend on -- whether you are
18 going to move, does that depend on what?

19 A. Whether I get the job.

20 Q. Whether you get the job. Right. You
21 are not moving --

22 A. Or a job.

23 Q. What type of job is it?

24 A. With the water department.

25 Q. Okay.

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1 A. In Springfield, Oregon.

2 Q. And if you get that job, you will be
3 moving in the next month?

4 A. Right.

5 Q. But you won't know until later this
6 week?

7 A. Right.

8 Q. You also said you had heard some stuff
9 on the TV and word of mouth and the radio; is that right?

10 A. Right.

11 Q. What exactly have you heard?

12 A. I had heard something about --
13 something about some screen windows or something,

14 apparently had been at odds with what she was claiming
15 happened.

16 Q. Okay. And based on that, I think you
17 said here in your questionnaire, you formed an opinion or

18 have you not formed an opinion?

19 A. Well, not a definite opinion. An

20 opinion, yes.

21 Q. Okay.

22

23 THE COURT: Before we go any further,

24 when are you going to know about your job?

25 THE PROSPECTIVE JUROR: Late this

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1 week.

2 THE COURT: Should we postpone this

3 juror briefly, a while longer, because if you get the

4 job, when do you leave?

5 THE PROSPECTIVE JUROR: Probably no

6 later than two weeks after they tell me.

7 THE COURT: Will both sides agree to

8 postpone the juror until he finds out about his job?

9 It's going to be academic if we don't.

10 MR. RICHARD C. MOSTY: Well, I think

11 it might be prudent to develop this opinion question

12 first.

13 THE COURT: Well, that would be fine,

14 but if both sides --

15 MR. TOBY SHOOK: Well, we can do that,

16 and then if there is nothing further on that, then we

17 would perhaps postpone it.

18 THE COURT: All right. Well, let's go

19 ahead.

20

21 BY MR. TOBY SHOOK:

22 Q. A lot of people have heard some stuff

23 on TV and radio and so forth. And it's fine to do that,

24 you are free to listen to the radio, read newspapers, or

25 watch TV. But what we're concerned about is if you

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1 formed an opinion as to the person's guilt or not, just

2 based on what you hear. You understand we have to have

3 jurors that can just decide the evidence on what they

4 hear in the Court. Okay?

5 A. Okay.

6 Q. You can't come in and say, "I have

7 already heard some bad stuff. You know, they are guilty

8 in my mind." That is what we need to know. Have you

9 formed an opinion as to guilt yet or is your mind open?

10 A. Well, I would think probably guilty,
11 but not, you know, absolutely positive.

12 Q. And, obviously, if you hear bad
13 things, you think bad things, a lot of times. If you

14 hear bad facts, you think bad facts. What we need to
15 know is if you have already formed an opinion in your

16 mind that would influence your decision in this case as a
17 juror? Or is it going to be a situation, if you are on
18 the jury, you are going to wait and listen to the
19 evidence? Either way is fine by us.

20 A. It's possible.

21 Q. It is possible that you have already
22 formed an opinion?

23 A. It's possible that it would be an
24 influence on my decision.

25 Q. All right.

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1

2 MR. RICHARD C. MOSTY: Your Honor, we
3 would submit the juror.

4 THE COURT: The challenge for cause is
5 granted. Thank you. You may step down.

6 Good luck.

7 THE PROSPECTIVE JUROR: Thank you.

8 THE COURT: All right.

9 MS. SHERRI WALLACE: Judge, we'll
10 offer this as Court's Exhibit Number 7 (sic).

11 THE COURT: That is Court's Exhibit
12 Number 8.

13

14 (Whereupon, the above

15 mentioned item was
16 received in evidence
17 as Court's Number 8,
18 for all purposes

19 after which time,
20 the proceedings were
21 resumed on the record,
22 as follows:)
23

24 THE COURT: Why don't we just take a
25 short break while we are waiting for the next juror to
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1 arrive.

2

3 (Whereupon, a short

4 recess was taken,

5 after which time,

6 the proceedings were

7 resumed on the record,

8 in the presence and

9 hearing of the defendant

10 as follows:)

11

12 THE COURT: All right. Let's bring in

13 Mr. Malm. Mr. Malm is number 22 scheduled for tomorrow

14 morning, we're going to take him out of order, we are

15 going to take him now.

16 Bring Mr. Malm in. This is number 22,

17 Richard Malm. He is the number 1 juror tomorrow morning,

18 number 69 on the jury list.

19 How are you doing?

20 THE PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: We are back on the record

22 in the Darlie Routier matter. Let the record reflect

23 that all parties in the these proceedings are present.

24 And this is Juror Number 69 on the jury list, number 22

25 on our list, Richard F. Malm, M-A-L-M. Is that your

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1 name, sir?

2 THE PROSPECTIVE JUROR: Yes, sir, that

3 is correct.

4 THE COURT: Mr. Malm was to be here

5 tomorrow morning at eight o'clock, but by agreement he is

6 here today, at one o'clock. So if you will raise your

7 right hand, please.

8 Do you solemnly swear or affirm you

9 will true answers make to all the questions propounded to

10 you concerning your qualifications as a juror in this

11 room or any courtroom to which you may be sent, so help

12 you God?

13 THE PROSPECTIVE JUROR: I do.

14

15 (Whereupon, the prospective

16 juror was duly sworn by the

17 Court to true answers make

18 to the questions propounded,

19 concerning qualifications, after
20 which time, the proceedings were
21 resumed as follows:)

22

23 THE COURT: All right. Thank you.

24 This is the State's attorneys, the Assistant District

25 Attorneys of Dallas County, Ms. Sherri Wallace, Mr. Toby
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1 Shook, Mr. Greg Davis.

2 The defense attorneys are Mr. Douglas

3 Mulder, Mr. Richard Mosty, and the defendant is Mrs.

4 Darlie Routier sitting over here at the end of the table.

5 Who will go for the State?

6 Mr. Shook.

7 MR. TOBY L. SHOOK: Thank you.

8

9 Whereupon,

10

11 RICHARD FRANK MALM,

12

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

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

17

18 VOIR DIRE EXAMINATION

19

20 BY MR. TOBY L. SHOOK:

21 Q. Is it Mr. Malm?

22 A. Yes, sir.

23 Q. Again, my name is Toby Shook, I am one
24 of the prosecutors on the case, and I will be asking you
25 questions on behalf of the State. What I'm going to do
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1 is ask you a few questions on your background from your
2 questionnaire. And then we will go through some of your
3 opinions about the death penalty and how the law applies
4 in this case, and how the law actually applies in all
5 criminal cases. Have you ever been on jury before, sir?

6 A. No, sir.

7 Q. Okay. Usually, we bring all the

8 jurors down in one big bunch, kind of like we did Monday,
9 not usually that quite large a group, and talk to them as
10 a panel. Since this is a death penalty case in which the
11 State is seeking the death penalty, we talk to each juror
12 individually.

13 We don't mean to make you feel like
14 you are the one on trial or anything, but it is a
15 procedure that is called for by law. What we are looking
16 for is your honest answers to our questions.

17 Your questionnaire says that you are
18 the team director, the mission director for the Team
19 Missions; is that right?

20 A. Yes, sir.

21 Q. Tell us a little bit about that? What
22 is that and what do you do?

23 A. Well, I just returned to the U.S.
24 about two months ago, I lived in Guatemala, Central
25 America for the last six years. I served four years down
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1 there as a missionary with another mission, and then two
2 years ago we founded this mission. And I have been
3 directing that from there for the last two years, and
4 it's just grown to a point where we needed to be here to
5 direct it. It's mostly administrative, overseeing, and
6 helping other missionaries on the field.

7 Q. And for now, you will be staying here,
8 I guess?

9 A. Yes.

10 Q. Okay. There were some -- on your
11 questionnaire you noted that you had heard a little bit
12 about case through the radio and newspaper.

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

15 Q. This case got a lot of publicity, and
16 obviously, a lot of people, when they come down have read
17 or heard about it. The important thing is that people

18 don't prejudge the case, don't use what they have heard
19 as evidence, anything like that. If you are a juror in
20 the case, obviously, you have to listen to the
21 evidence --

22 A. Right.

23 Q. -- in the courtroom, and decide it
24 there, you can't use anything outside of the courtroom.
25 Can you follow that rule of law?

1 A. Sure.

2 Q. Okay. You have not prejudged this

3 case then?

4 A. No. And very little, it just caught

5 my attention. I was in Houston, and I heard they were

6 possibly moving it to Kerrville on the radio, so it

7 caught my attention.

8 Q. It caught your attention. Okay. You

9 checked on your questionnaire that you do believe in

10 death penalty as a law.

11 A. Yes.

12 Q. Would you tell us why you believe

13 that? What purpose you think the death penalty serves in

14 our society?

15 A. Well, it's pretty obvious from my

16 answers that I am Christian, and it is the duty of the

17 State to reward those who do right, and punish those who

18 do wrong. And the scriptural punishment for murder is

19 the death penalty.

20 Q. Okay. In Texas, not every case is a

21 capital murder. It's not every murder case.

22 A. Right.

23 Q. It used to be we had several crimes,

24 even other than murder, that would be punishable by the

25 death penalty. Now it's only certain types of murder

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1 cases, and you might be familiar with some of them. You

2 have to have a murder, plus some other aggravating fact,

3 such as a murder during the course of a felony.

4 A guy that goes in and robs the

5 grocery store, kills the clerk; robs a bank, kills the

6 teller; someone that breaks into a home, kills someone in

7 the home; those type of offenses during a felony. Also,

8 serial murderer, mass murderer, if you murder a police

9 officer while he is on duty, that could be a death

10 penalty case depending on the facts.

11 Also, in this case, Judge Tolle read

12 to you the indictment which calls for -- it is an

13 intentional killing of a child under the age of six.

14 Under the proper facts and circumstances, that could be a

15 capital murder case that imposes the death penalty. But
16 just those specific types of crimes.

17 And if you are found guilty under our
18 law, you don't automatically get the death penalty.
19 There is a procedure we go through where questions have
20 to be answered.

21 If someone is guilty of capital
22 murder, ultimately, they will either get a death sentence
23 or a life sentence. But not every capital murder case
24 results in the death sentence. It is not an automatic
25 decision. It just depends on the facts of each case.

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1 Does that seem fair to you?
2 A. Does that seem fair to me?
3 Q. The way the law is set up that way.
4 A. Well, that is the way the law reads,

5 so that is the way it reads.
6 Q. Okay. Well, there are some people

7 that tell us, "Look, if you take a life, no matter what
8 the facts or circumstances surrounding it, the

9 aggravating facts or the mitigating facts" -- because

10 there are a million ways a murder could occur -- "I don't
11 care what the facts are, they should get the death
12 penalty."

13 A. Well, I do have a lot of problem with
14 the way it's been stretched. You know, I mean, the idea
15 of temporary insanity, you have to be insane to kill
16 someone anyway, so, it is like, who wouldn't come under
17 that clause, you know. But if that is the way the law,
18 you know, states, then, fair enough. That is the way it
19 is.

20 Q. Okay. That is kind of the bottom line
21 here. People come in, obviously, everyone has their own
22 opinion, and what we need is jurors as people that can
23 wait and listen to all of the evidence and then make
24 their decisions, and be able to follow the law.

25 A. Right.
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1 Q. If you can't follow the law, just tell
2 us.

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

5 Q. It is not going to offend anyone. I
6 think jurors can pretty well figure out pretty quick, if

7 you don't want to be on the jury, you can be dishonest

8 and say, "I can't follow that area of the law," and you
9 are out of here.

10 A. Right.

11 Q. Of course, you know, we don't want

12 dishonest jurors anyway. But if you can't follow the
13 law, that is fine. If you can follow the law, that is
14 fine, too. I mean, a lot of people may even disagree

15 with parts of the law, but if they can follow it, that is
16 fine, and be fair. That is what we are looking for.

17 A. Yes, sir.

18 Q. In this case, the capital murder

19 statute sets up that the trial is divided into two parts:
20 The guilt/innocence stage where we have to prove the

21 indictment to you beyond a reasonable doubt. If we do
22 that, we move to the punishment phase, where you get
23 these questions.

24 That first question deals with future

25 dangerousness. The State has to prove that the defendant
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1 would be a continuing danger to society. If we do that,
2 we get a "yes" answer.

3 We go on to the second question, which

4 we call the mitigation question. That allows the jurors
5 to look at all the evidence, everything they know about
6 the defendant, and if they think in their hearts that a
7 life sentence should be imposed, rather than a death
8 sentence, they could answer the question that way.

9 So -- but if they don't find that type

10 of evidence, they would answer it "no." So a "yes" and a
11 "no" would equal death. Any other way those are
12 answered, it is a life sentence. That is how the statute
13 works.

14 Let me ask you this, Mr. Malm: You

15 have told us that you philosophically believe that
16 capital punishment should be the law in certain cases.

17 Do you think you could sit as a juror and listen to the
18 evidence, and if we did prove these things beyond a
19 reasonable doubt, could you take pen in hand and answer
20 those questions in a way knowing that the defendant would
21 be executed as a result of your answers?

22 A. It wouldn't be easy, but, yes, I
23 could.

24 Q. Sure, and I think that is the normal

25 answer. No one wants to really volunteer for the job.

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1 If they did, I think we would all be a little hesitant to
2 put them on there. But if it's proven to you, could you
3 answer the questions?

4 A. Yes, sir.

5 Q. Okay. This -- in all criminal cases,
6 evidence is put on, through witnesses, primarily. You

7 probably have heard the term circumstantial evidence?

8 A. Uh-huh. (Witness nodding head

9 affirmatively.)

10 Q. Well, what we usually term it is
11 direct or indirect evidence. Direct evidence is an

12 eyewitness to a case. If you were robbed when you left
13 the courthouse today, or the sheriff's office, I guess,
14 this really is, and the police caught that person, and

15 you identified them, you are the eyewitness in that case.
16 That is direct evidence.

17 Any other evidence that links the
18 defendant to a crime is indirect evidence, or
19 circumstantial evidence, anything but the eyewitness. It
20 can be, you know, fingerprints, scientific evidence, the
21 crime scene itself, statements made by the defendant, all
22 of these things, whatever -- however we can prove our
23 case.

24 A. Okay.

25 Q. Now many times in a murder case, we
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1 only have circumstantial evidence. Obviously, you have
2 the defendant and the person killed. So, we rely on
3 circumstantial evidence.

4 Do you feel, and I can't preview any
5 of the facts for you, obviously, but do you feel if the
6 State proves this case to you beyond a reasonable doubt,
7 using circumstantial evidence, could you find the
8 defendant guilty?

9 A. I think so.

10 Q. Okay. Another thing, we often hear
11 the term "motive," you know, the reason the crime
12 occurred. Everyone wants to know the motive. That is a
13 natural response. But in Texas, the State is not

14 required to prove to you the motive to get a guilty

15 verdict. It might come out and be obvious to everyone
16 during the trial, or several motives might come out.

17 Everyone might have their own opinion.

18 It might not be any doubt that the murder occurred and
19 the person being tried, committed the murder, just people
20 might vary on what the true motive was, or you may never
21 know the motive. It could be locked away in their mind.

22 The point is, the State is not

23 required to prove it. Could you follow that law?

24 A. Yes.

25 Q. Okay. Now, let me talk a little bit

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1 about these special issues.

2 As I said before, the trial is divided

3 into two parts: The first part, we have to prove the

4 indictment beyond a reasonable doubt, that this is a
5 knowingly and intentional killing, and the way this

6 indictment is alleged, of a child under the age of six.

7 If we prove that beyond a reasonable

8 doubt, a verdict of guilty, then we move to the second

9 part of the trial, where you may hear additional

10 evidence. You may not hear anything, you may just have

11 the facts of the case. Or you could hear about criminal
12 history, lack of a criminal history, character evidence,
13 good and bad. You might hear from psychiatrists,
14 psychologists, I don't know, family background, things of
15 that nature. You get kind of a much broader picture of
16 the defendant's life. In other words, lots of things can
17 come in, kind of a this is your life, look at everything.

18 After you get all of that evidence in,

19 then you consider these questions. You can reconsider
20 the facts of the crime itself, and then, of course, any

21 background information.

22 Let me read this question out loud and

23 you can go along with me.

24 It reads: "Do you find from the

25 evidence beyond a reasonable doubt that there is a

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1 probability that the defendant would commit criminal acts
2 of violence that would constitute a continuing threat to
3 society?"

4 Obviously, we're asking the jurors to

5 make a prediction there about how the defendant will

6 behave, based on the evidence. Do you feel you could
7 answer that if you were given sufficient quantities of
8 evidence proven to you beyond a reasonable doubt?

9 A. Well, yes, with the evidence, yes.

10 Q. Okay. It is a factual decision based
11 on the evidence.

12 Like I said before, every case is
13 different, the facts in every case is different. There
14 is no automatic answers in any of these questions. Just
15 because you found the defendant guilty, you don't go
16 checking off a "yes" answer to question number 1.

17 A. Right.

18 Q. The law, in fact, says that you start
19 this answer out with a "no." Just like you start the

20 defendant out with the presumption of innocence, you
21 start that out with a "no," and the State has to prove it
22 to you beyond a reasonable doubt. Could you follow that
23 law?

24 A. Oh, yes.

25 Q. Okay. You notice that we say
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1 probability. And these words, the definitions will be
2 left up to you and the other jurors. You will get no
3 legal definitions from the Judge in regards to this
4 sentence.

5 A probability, obviously, doesn't mean
6 a certainty. We're not required to prove that it's an

7 actual certainty. When you look at probability in the
8 context of that sentence, what does it mean to you?

9 A. Probability?

10 Q. Yes, sir.

11 A. In the context of that sentence.

12 Well, I would say probability is a greater than 50
13 percent likelihood.

14 Q. Okay. Fair enough. Do you think that
15 is a fair way to ask the question?

16 A. That particular question?

17 Q. Yes, sir.

18 A. Yes, it seems like a fair way to ask
19 it.

20 Q. Now, if you answer that question

21 "yes," that is when you move to this last question, the
22 one I kind of refer to as "the safety net." It is a
23 longer question.

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

6 Like I said before, you don't get to
7 this question until you have found the defendant guilty
8 of capital murder. Found that beyond a reasonable doubt
9 that there is a probability they're going to be
10 dangerous.

11 And then you take into consideration
12 everything, and then if you feel there is a mitigating
13 factor that tells you, more or less in your heart, that

14 this person should get a life sentence, should be spared,
15 instead of a death sentence, you can answer it that way.
16 They don't get off, obviously, they
17 have to serve a life sentence. But it's a way of sparing
18 them at the end, based on something you see in their
19 background.

20 We can't tell you what the mitigating
21 evidence would be. The courts and our lawmakers down
22 there have left that up to the jurors. Mitigating
23 evidence has been defined as something that lessens a
24 person's moral blameworthiness, somewhat, so they are
25 spared the death penalty.

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1 But what's mitigating to you, may not
2 be mitigating to the other jurors. What you have to be
3 able to do is keep your mind open to that type of
4 evidence, and then, if you think it rises to that level,
5 you could answer the question "yes." Do you think you
6 could do that in this case if you were a juror?

7 A. Yes, I think I could.

8 Q. Okay. I may have asked you this
9 before, but do you think that is a fair question to have
10 in a death penalty-type case?

11 A. Well, fair, perhaps. I have a problem

12 with the appropriateness of it, because it seems to be
13 missing the whole point of the issue.

14 Q. What is the whole issue to you?

15 A. Well, the whole point to me is there
16 have been -- someone -- two lives have been taken by
17 someone, and there seems to be very little concern
18 expressed over those two lives.

19 Q. Okay.

20 A. You know, I can understand the purpose
21 for the legal system, that being to -- well, again, as I
22 understand government, the purpose is to reward those who
23 do right and punish those who do wrong.

24 And it seems here, that there is an
25 avoidance. If we can avoid it at all, any way

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1 whatsoever, if there is no question whether the person is
2 guilty or not, then how can we give them every break.

3 When -- if the person is found guilty, then no breaks
4 were given to the victims in the first place.

5 Q. I understand.

6 A. So, you know, I can follow the rules.

7 I can apply it as it's laid out, but as to whether or not
8 I think it is just, I would have to say no.

9 Q. Okay. And that is why we ask your
10 personal opinions. But then the bottom line is again, if
11 you could follow these rules and the law?

12 A. Yes, I could follow them.

13 Q. Okay. That is what we need to know.

14 Because, you know, most people, you ask them, you lay out
15 some bad facts for them, they are going to go, "Gosh,
16 that is bad. That person needs to be punished." If you
17 preview bad facts to everyone, and you had jurors say,

18 "Well, I don't know, that doesn't sound that bad. He
19 doesn't sound like a bad guy." You might get a little
20 scared.

21 We recognize that people do not like
22 violent -- people that are guilty of violent crimes.

23 What we need to know though is if you could follow the
24 law and be fair as the law is applied?

25 A. Sure. And as I read it, it makes it
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1 easier on the jury, than to have to just, oh, what did
2 you say? As you were talking earlier about signing
3 guilty or whatever.

4 Q. Yes. Right. I think, in years past,
5 the jury would actually sign death or life, but here, you
6 just answer questions. Of course, Judge does sentence
7 accordingly.

8 This allows the jurors to view all the
9 evidence and if there is something that tells them, and
10 you don't have to tell us what it is, but you have to be
11 able to tell the Judge, my mind is open to it. If I see
12 this type of evidence, I will give it that weight that a
13 life sentence should be imposed rather than a death
14 sentence. And you can do that?

15 A. I think I can do that, yes.

16 Q. Okay, let me go over a few of the
17 rules Judge Tolle went over, when he had everyone down.
18 They apply in every criminal case.

19 The presumption of innocence: Every
20 person charged with a crime is presumed to be innocent,
21 at the beginning of the trial. You can't start them out
22 guilty in any way. You have got to presume them to be
23 innocent.

24 Can you follow that rule of law?

25 A. Yes, I think so.

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1 Q. The State has to overcome that
2 presumption by putting on evidence. But you have got to
3 start them out as we begin with the presumption of
4 innocence.

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

7 Q. The fact that they have been indicted
8 by a Grand Jury, as Judge Tolle told you, that is just a
9 piece of paper. It is no evidence of their guilt. The
10 fact that they have been arrested, or have lawyers
11 representing them, that bailiffs are here, that we are
12 even going through this procedure is no evidence. Okay?
13 You have to wait until the witnesses take the stand, and
14 then start judging whether they are guilty or not.

15 Can you do that?

16 A. Yes, I believe so.

17 Q. Okay. Also, the State has the burden
18 of proof. In every criminal case, we have to prove our
19 case beyond a reasonable doubt. That is the highest
20 burden under the law.

21 Can you follow that rule of law?

22 A. Yes.

23 Q. Okay. That burden never shifts to the
24 defense. Okay?

25 A. Okay.

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1 Q. They are not obligated to prove her
2 innocence to you. They could sit there, if they wanted

3 to, and read comics during the trial, they don't have to
4 ask questions.

5 Now, I know they are not going to do
6 that. They are real good lawyers. They are going to ask
7 questions, and make arguments, and make objections, that
8 sort of thing. But they are not under an obligation,
9 from the jury's point of view, to prove her innocence.

10 And you can't make them prove anything to you. You have
11 to require the State to do all the proving in this case.

12 Can you follow that rule of law?

13 A. Yes, I can.

14 Q. Okay. Every defendant has a right not
15 testify, if they choose not to. I mean, no one can stop
16 them if they want to get up there, but if they chose not
17 to testify, the Judge will instruct the jury that the
18 fact that they didn't testify can't be used against them
19 in any way. In other words, you can't use that as
20 evidence. "Well, they are obviously guilty, because they
21 didn't say anything."

22 Do you agree with that rule of law?

23 A. Yes.

24 Q. You could follow that rule of law?

25 A. Yes.

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1 Q. Okay. The law says that as a juror
2 you are judging the credibility of the witnesses. You
3 have to start all of the witnesses off on an equal

4 footing. After they have testified, then, obviously, you
5 will give them different weight.

6 A lot of people come in here, and it
7 cuts both ways; police officers obviously testify in
8 criminal trials. A lot of people have police officers as
9 friends, they have had good experiences with them. They
10 trust police officers on the whole.

11 However, you can't start them out
12 ahead of the other witnesses. You can't say, "Just
13 because they are a police officer, I am going to believe
14 them over the other witnesses." You have to wait and see
15 what they have to say. Obviously, they are human like
16 anyone else, there's good ones, there's bad ones.

17 Do you agree with that law?

18 A. Yes. Just be honest, I would have to

19 say that, you know, given equal footing, I would believe
20 an officer above someone else, I would think. Well,
21 depending on the character of the person.

22 Q. Well, you would have to actually hear
23 the witnesses, though?

24 A. Yes, exactly.

25 Q. Okay.

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1 A. But I'm saying, all things being
2 equal, I would have to -- if two men are saying the exact
3 opposite and everything else is equal, I would have to
4 tend to lean in that direction.

5 Q. Would that be --

6 A. That doesn't really answer your
7 question, does it?

8 Q. Well, again, I can't get into
9 hypotheticals.

10 A. But I understand what you are saying.

11 Q. It's judging each witness' credibility
12 on their own.

13 A. Yes.

14 Q. You have seen the news, I think it is
15 that Mark Fuhrman out in California, he has plead guilty
16 to perjury.

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

19 Q. Obviously, a lot of people may not
20 believe him when he takes the stand even though he is a
21 police officer.

22 A. Right.

23 Q. So you have those situations.

24 A. Right.

25 Q. And just because a person is a police
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1 officer doesn't mean that they are a truth teller.

2 A. Right.

3 Q. Or that they never make a mistake.

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

6 Q. Now, of course, if they come up and
7 testify and you believe they are very credible and very
8 well trained, you know, perhaps you will believe them.
9 But you have to wait and listen to them testify before
10 you make those judgments. Is that clear to you?

11 A. Yeah, I think I can follow that.

12 Q. Okay. I mean, if it comes down to it,
13 you make a judgment, but you make that judgment after you
14 have heard them testify, that is the point.

15 A. Right.

16 Q. You don't want to say, "He's a cop,
17 therefore, I believe him over the other guy."

18 A. Right.

19 Q. You take it all into consideration.

20 A. Yes.

21 Q. Okay. We read about the parole laws a
22 lot, that comes out in the news sometimes. The parole
23 laws are always changing.

24 The Judge will give you an instruction
25 that during your deliberations you can't consider the
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1 parole laws. How they might apply to the case or
2 anything like that. You can only base your decisions on
3 the evidence in the case.

4 Can you follow that rule of law?

5 A. Yes, I think so.

6 Q. Okay. There was a -- we asked each
7 and every one, if they know someone that has been charged
8 with an offense. And you knew a man, I think it, is it
9 Ben?

10 A. Yes.

11 Q. What was his last name?

12 A. Saenz.

13 Q. Saenz. Who was actually convicted of
14 murder 12 or 15 years ago.

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

17 Q. Tell us a little bit about that case.

18 A. Well, actually, it was a -- actually a
19 friend of mine, who was actually pastoring a church in

20 Corpus Christi at the time, and was convicted of murder.
21 It's hard for me to believe he did it, but apparently he
22 did.

23 Another friend of mine, an elder in
24 our church, was the captain of the state police there,

25 who talked with the investigating Ranger, and apparently,
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1 it was an open and shut case.

2 Q. Okay. Do you recall what kind of
3 sentence he got?

4 A. No, I don't, it's been 15 or 20 years
5 ago, and he was recently released.

6 Q. Okay. So, he was there a while, at
7 least?

8 A. Yeah, he was.

9 Q. And did you know anything about the
10 facts of that case; who the victim was, or anything?

11 A. No, I didn't. It was just a young
12 girl, and it happened on Padre Island Beach.

13 Q. Okay. So, you were not real familiar
14 with what happened exactly, it is just something you just
15 heard?

16 A. Well, no. I didn't follow the case or
17 anything like that.

18 Q. Okay. Do you have any questions over
19 anything we have gone over?

20 A. No.

21 Q. Okay.

22 A. I don't think so.

23 Q. Well, I appreciate your patience with
24 us. I think you have stated this very clearly that as
25 far as the rules go in this case, you can keep your mind
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1 open, and will answer the questions according to the
2 evidence, after all of the evidence is in, and follow the
3 rules and laws that apply in this case.

4 And we appreciate you for your
5 honesty. Thank you.

6 A. Okay.

7

8 THE COURT: Thank you, sir. Mr.
9 Mosty.

10

11 VOIR DIRE EXAMINATION

12

13 BY MR. RICHARD C. MOSTY:

14 Q. Mr. Malm, my name is Richard Mosty. I
15 have a feeling we have met sometime along the way, but I
16 can't remember exactly when.

17 A. I don't know. I lived here four years
18 before, or six years ago, we lived here for four years.

19 Q. What did you do back then?

20 A. I pastored the church on Bandera

21 Highway.

22 Q. Okay.

23 A. Maybe we have run into each other here
24 or there.

25 Q. All right. This is Doug Mulder from
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1 Dallas who is to my right, and our client, Darlie
2 Routier, seated to my left. And I wanted to visit with
3 you to cover some of the same ground, perhaps in a little
4 different light.

5 But let me first say this: That at

6 various times the lawyers here will use some legalese
7 because that is the way the statutes are written. So,

8 we -- sometimes people feel, "You are unfairly trying to
9 pin me down," about a description or a word, and part

10 of -- some of what I'm going to talk about is whether or
11 not you have a bias or a prejudice against certain
12 aspects of the law. And let me say first, that there is
13 nothing wrong with that.

14 A. Uh-huh. (Witness nodding head
15 affirmatively.) How can you help it?

16 Q. That is right, that comes with life.

17 And so, some people react and say, "Well, I'm not biased,
18 I'm not prejudiced." Well, I think that is sort of a

19 shallow interpretation. We're all biased about some
20 things, we are all prejudiced about some things, and
21 there is absolutely nothing wrong with it.

22 So, feel free to just tell us candidly
23 and openly, if you are biased; if you do have a bias or a
24 prejudice against a certain aspect of the law, tell us.

25 And we will deal with it then.

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1 Let's first talk about the police
2 officers, the issues.

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

5 Q. And if I heard you right, what you
6 said was, certainly everything depends on the
7 circumstances of what is testified to. But, all things,
8 if things were otherwise equal, you would give more
9 credence to what a police officer said than what some

10 other person said?

11 A. Right. Well, by that, of course,

12 never are all else equal. But, if everything else being
13 equal, I would do that because of their training. And,
14 because of -- probably having no bias in the case,
15 nothing to gain by lying.

16 Q. All right. Perhaps we'll say it this

17 way: Do you judge their testimony by -- that they have a
18 little higher standard in your mind to begin with, than
19 another person?

20 A. No, that would depend on the person.

21 You know, I just mentioned to you that a good friend of
22 ours was the Captain of the State Police there in the
23 Corpus Christi area, but another good friend of mine was
24 a police officer here, David Guillam. If you have been
25 around here a while, you knew him. And so, you know, I
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1 understand they can go both ways, you know.

2 Q. And we all understand that. But, I

3 guess, what I am concerned about is that -- is that if
4 you are sitting in that situation where things are sort
5 of even --

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

8 Q. -- will the fact that one person is
9 there with a badge and a uniform tend to --

10 A. Well, if everything is even, if
11 everything were even, and you had to make a choice, you
12 are going to have to rely on something to make that
13 choice. And if everything is even, I'm saying if this
14 witness appeared as credible as this witness, and this
15 witness were trained in observation techniques --

16 Q. Well, let's say a defense witness is
17 trained in observation, let's make them equal.

18 A. Okay.

19 Q. Let's say they have the same numbers
20 of years in school, they have got the same manner of

21 experience, you have got everything in terms -- they had
22 the same ability to see whatever it was they saw?

23 A. Okay. I see what you are saying.

24 Q. And one is not a police officer, has
25 never been one, but he is called by the defense.
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1 A. Uh-huh. (Witness nodding head
2 affirmatively.)

3 Q. And the other one has 50 years of
4 experience because he --

5 A. Well, again, you are never going to
6 end up in that situation where everything is equal. If
7 everything is equal, you can't make a decision. So I

8 don't -- no -- I would have to say in that case, no, I
9 don't think I would give precedence, if everything is
10 equal, equal training, equal -- no, I don't think I
11 would, just because of the badge, feel that way.

12 Q. You made several references to
13 scriptural laws and dealing with some of the death

14 penalty issues, and in the event of a conflict between
15 your understanding of scriptural law, as opposed to what
16 you may be instructed as the secular law, which of those
17 prevails?

18 A. Well, there is no conflict, because
19 the scripture says that you are to submit to those who
20 have the authority over you. So if the Judge is saying,
21 you decide it this way, then in accordance with
22 scripture, I decide it that way.

23 Q. Okay. Let's talk about these special

24 issue for a minute, and I want to focus on, for one: You
25 have made one statement, well, a couple of statements and
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1 also, used those backdrops for --
2 A. I have made several statements.
3 Q. One is, you said, "That capital

4 punishment is just retribution for murder," and I presume
5 that is a scripturally-based statement?

6 A. Well, yeah, it is.
7 Q. And the other one: "I believe the

8 death penalty is appropriate in all capital cases. In
9 cases of murder, how many people should it be necessary
10 that they murder before equal penalty is imposed?"

11 And another question: "What else
12 might be important in helping you make this decision?"
13 And you said, "I'm not certain I would need to know
14 anything more. If it is obvious that a person is guilty

15 as determined by a jury, I see no reason the State should
16 assume care for this person for the rest of their life."

17 Now, let me explain just little bit

18 about the procedure that we're going to go through.

19 Before you ever get to these special

20 issues, you have got to find someone guilty of capital

21 murder.

22 A. Uh-huh. (Witness nodding head

23 affirmatively.)

24 Q. Now, murder is defined in Texas as:

25 "Intentionally and knowingly taking the life of another

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1 individual, without justification." And justification is
2 the legalese for self defense.

3 A. Right.

4 Q. If someone acts in self defense with
5 justification, you never convict them of murder.

6 A. Right.

7 Q. So, first, that part. Now, murder is
8 only -- the maximum punishment is life in prison. Now,

9 there is another step above murder, called capital
10 murder. And that is murder, but always with some
11 additional aggravating circumstance.

12 It might be murder during the
13 commission of another felony; during a robbery or

14 something; escape from a penal institution and committing
15 a murder; a murder of a police officer; murder of a child
16 under the age of six years old. There is another
17 category above murder that, if convicted, there are only
18 two possible punishments: That is life in prison or
19 death.

20 So, before you get to the stage of
21 this, you will have heard evidence, if you are sitting on
22 a jury, that an individual has intentionally and
23 knowingly committed murder with some aggravating
24 circumstance. And, of course, all reasonable doubt is
25 removed from your mind. In fact, you are talking about a
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1 convicted murderer.

2 Then, the State may present some

3 additional evidence, or they may not. The defense may
4 present evidence, or they may not. And then you go out,
5 and the jury after hearing arguments, deliberates on
6 these questions.

7 What the Court will instruct you is
8 that you take into consideration all of the evidence that
9 you have heard about the crime itself, and if there was
10 any specific punishment information, you can take that

11 into consideration. And then you would answer these
12 questions.

13 Now, I want to first focus on this
14 one, because that is what comes to mind, now that you

15 mentioned something about it. This is what is called the
16 mitigation question. And Mr. Shook defined mitigating
17 circumstance as, and again, there is no legal definition,
18 but I will adopt what he said, if there is something that
19 tends to lessen a person's moral blameworthiness.

20 Now, let me first talk to you from the
21 scriptural aspect. Do you think that you can consider --
22 or do your beliefs, your scriptural beliefs, do you
23 believe that that would make it difficult for you to
24 reduce -- to consider reducing a person's moral
25 blameworthiness?

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1 A. You better rephrase that. With what?
2 The mitigating circumstances?
3 Q. That there is any mitigating
4 circumstance, if there is anything that in your mind,

5 could reduce -- and I am not asking for a commitment.

6 A. Okay. I see what you are saying.
7 Q. Let me rephrase how you are saying
8 that.
9 A. Okay.

10 Q. Do you believe that your scriptural
11 beliefs would impair your ability to consider reducing a
12 person's moral blameworthiness? And this is this
13 convicted murderer you are talking about.

14 A. Well, it seems to me we're really
15 dealing with two things here, in that, one -- one is, I
16 am being asked to make a judgment based upon the law

17 whether I believe that law is right, or just, or correct,
18 or whatever.

19 Q. And I think you said you didn't think
20 this one was just or --
21 A. Yeah. I think I could, what I am
22 saying is, I think I could apply -- and I am not looking
23 for a job here. But I think I can apply what the law

24 says, as best I can understand it.

25 Q. Okay.

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1 A. To the situation, without necessarily
2 feeling that it comes out with the right conclusion.
3 Q. Okay. Let's follow that reasoning for
4 a minute. You said, and I believe it was when you were

5 talking about this special issue, and you said, "I don't
6 think that is just --"

7 A. Right.

8 Q. "-- but I understand it is the law."

9 A. Yeah.

10 Q. So, this special issue, I take it,

11 that if you were writing the law, or you were in the
12 legislature, you would argue, "This is not what the law
13 ought to be."

14 A. Yes, most definitely.

15 Q. "I don't like that law."

16 A. Precisely.

17 Q. "I don't like the way that you other
18 legislators have proposed it."

19 A. Right.

20 Q. "And I'm going to fight with every
21 ounce of my being to say, No, that is wrong."

22 A. Well, if there were not more important
23 fights, yes. I choose my fights carefully.

24 Q. Let's take my all things being equal
25 statement: This is the only law you are talking about

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1 that is a legislature --

2 A. Yeah.

3 Q. -- as a legislator, you would fight
4 with all of your being to say, "That is wrong."

5 A. Right.

6 Q. "That law is wrong."

7 A. Right.

8 Q. Now, would it be fair to say then,
9 that you have a bias or a prejudice against this law?

10 A. Oh, yes, no doubt about that.

11 Q. Okay.

12

13 MR. RICHARD C. MOSTY: Your Honor, I'm

14 not passing the witness at this time, but in the interest
15 of time, I would submit him for cause.

16 THE COURT: Well, I have heard him say
17 that he can -- you can put aside whatever bias or
18 prejudice you have, that you have voiced, and follow the
19 law as given to you in the charge of the Court? That is
20 the charge I am going to give you when the trial is over.
21 After you have heard all the testimony and reviewed of
22 the evidence.

23 THE PROSPECTIVE JUROR: Well, I think
24 I can. And as I said, it really makes it easier.

25 THE COURT: All right. And, you will
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1 answer those questions, those two special issues, however
2 they should be answered, from your point of view, from
3 the law and the evidence you have received in this
4 courtroom and nothing else?

5 THE PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: All right. Then I hold
7 the juror is qualified. So let's continue on, as we say
8 in Texas.

9

10 BY MR. RICHARD MOSTY:

11 Q. Now, if I hear you right --

12

13 MR. RICHARD C. MOSTY: Note our
14 exception to that.

15 THE COURT: Oh, by all means. Yes, I
16 will note your exception.

17

18 BY MR. RICHARD C. MOSTY:

19 Q. If I hear you right, it is your
20 belief, and I'm talking about your personal belief, that
21 if you found, beyond any reasonable doubt that a person
22 had committed capital murder, that the only just sentence
23 is a death sentence?

24 A. Well, my friend, for instance, he is
25 what -- it's been 16 or 17 years now. The girl that he
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1 murdered, you know, I mean, her parents are still without
2 their daughter, you know. And, you know, he is a friend
3 of mine, but if I killed somebody, I would expect to die.

4 Q. And this may be a hard question for
5 you: But, deep down inside, even though that is your
6 friend, really, you don't feel like justice was served in
7 that case?

8 A. No, I really don't. I don't hold him,
9 you know, and I am not upset with him or anything, and he
10 is still a friend.

11 Q. And, apparently, it sounds like that
12 was not a capital murder case. It was just a murder
13 case. I don't know that.

14 A. I don't know.

15 Q. From what you described?

16 A. Well, I don't know either, but
17 apparently not.

18 Q. Do you believe that your beliefs would
19 cause you to lean toward a death sentence?

20 A. No. Well, let me say -- you say my
21 beliefs, you know, there again, we are getting back to by
22 personal feelings. It would be hard for me to do that,
23 as a person. No, I would not be looking for anything. I
24 have no axe to grind or -- well, I think I could apply
25 what is written.

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1 And, as I said, it would be much
2 easier to not go that route. It would be much easier to
3 answer the questions in a way that is going to end up
4 with something lesser. So, I don't think I am going to
5 be looking for that or leaning toward that.

6 Q. And really -- don't -- and don't --
7 please don't misunderstand me, I'm not at all suggesting
8 that.

9 A. No.

10 Q. All I am trying to focus on is where
11 your leanings are. And to the -- and you know, to be

12 perfectly candid with you, to the extent that those
13 leanings might impair your ability to be a fair and
14 impartial juror, and to fairly consider everything in
15 front of you.

16 A. Sure, sure.

17 Q. And you said, in particular with
18 special issue number 2, that you have a bias or a

19 prejudice against that law as written?

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

22 Q. And that is correct; isn't it?

23 A. Yes.

24 Q. All right. And --

25 A. I'm not -- well, like I say, I'm not

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1 trying to sell anything here, but there is an awful lot
2 of laws that I have a bias and prejudice against, but I
3 obey them anyway.

4 Q. Yeah, that is true. But by the same

5 token, for instance, if the State, under the old law were
6 prosecuting someone for going 56 miles an hour in a 55
7 zone, and you said, "You know, I think a 55 mile an hour
8 speed limit is just a bunch of hogwash. I don't like
9 it."

10 A. But that is what the law is.

11 Q. "Well, I don't like it. But, at the
12 same time, I am a law-abiding person."

13 A. Right.

14 Q. "But at the same time, as a juror, my
15 ability to apply that law, might be impaired or deep down
16 inside, you know, my personal beliefs are somehow coming
17 out." And --

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

20 Q. And you could see where, you know, the
21 State might say, "Well, I'm not sure I want a juror who
22 says that is a terrible law."

23 A. Right. I understand what you are
24 saying, however, though, I think going back again to the
25 belief system, of my beliefs, there is a respect for what
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1 the law says. And if the law says this, then whether I
2 agree with that or disagree with that, I'm going to walk
3 in a accordance with it as best I can.
4 I may not like it. I may fight to

5 change it, but if that is what it says, then as best as I
6 am able, I will try to live in accordance with that. And
7 the same thing here: Whether I agree with it or disagree
8 with it, if that's what it says, that's what it says. My
9 only responsibility then is to, as best as I can, walk in
10 accord with that.

11 Q. Mr. Malm, in view of your -- your
12 beliefs about the death penalty, do you think that in all
13 candor and all fairness deep down inside, that that puts
14 a defendant in a capital case at a disadvantage compared
15 to the State?

16 A. Well, why would you think -- I mean,
17 explain it maybe a little bit more, I don't see why it
18 might, but it might. Tell me why you think that it

19 might.

20 Q. Well, you have said that you have

21 substantial bias and prejudice against the special issue

22 number 2, in particular, and --

23

24 MR. TOBY L. SHOOK: Judge, I object.

25 He didn't actually say that.

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1 THE COURT: The Court sustains the

2 objection.

3 MR. RICHARD C. MOSTY: I'll take the

4 word substantial out.

5

6 BY MR. RICHARD MOSTY:

7 Q. You said you have a bias and a

8 prejudice against special issue number 2. I apologize.

9 A. Uh-huh. (Witness nodding head

10 affirmatively.)

11 Q. You have said that you thought that

12 the only just penalty was really death.

13 A. Right.

14 Q. Those are two that come to mind.

15 A. Uh-huh. (Witness nodding head

16 affirmatively.)

17 Q. In all candor and in all fairness,

18 just trying to lay all of the cards out on this table,

19 does it seem to you that those beliefs would put the

20 defendant at a -- in any capital case, where the death

21 penalty was the potential -- that those beliefs would

22 place the defendant at a decided disadvantage at the

23 outset?

24 A. Well, let me go back. First of all,

25 the way we are talking here, we're assuming guilt. We're

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1 assuming that that is going to be the outcome of the

2 trial.

3 Q. And again, that is the only time we

4 ever talk about punishment.

5 A. Right.

6 Q. So we necessarily have to do that.

7 A. Okay. So, we're coming to the point

8 where we have made the assumption that the State has

9 proven their case beyond a shadow of a doubt?

10 Q. That's right. Add that to my
11 question.

12 A. Okay.

13 Q. Assume that you --

14 A. That is the point where we are.

15 Q. -- that you are looking at a convicted

16 capital murderer.

17 A. No doubt about it.

18 Q. No reasonable doubt in your mind about
19 that, or your 11 peers.

20 A. Okay. Well, obviously, it's going

21 to -- in the one, the question was, could I go through
22 there and answer those questions, "yes" or "no." And,
23 yes, I think I could, without thinking about what the

24 outcome of that would be. You know, because that is not
25 what I am asked to do. I'm not asked to think about the
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1 outcome, I am only asked to answer those questions. So I
2 think I could do that.

3 Q. But you will know the result? There
4 is no doubt.

5 A. But what I am saying is, I don't think
6 I would take that into account. I mean, you know, you
7 can't -- but I don't think that I would take that into
8 account.

9 But on the other hand, you get
10 somebody here who obviously is just opposed on any case,
11 you know, they are just not -- then, obviously, you are
12 going to prefer that juror over me.

13 Q. Well, those jurors are disqualified.

14 Let me state that. Someone who walks in here and says,
15 "I will not and cannot impose the death penalty," is
16 never going to get to sit on a jury.

17 A. Well, I thought that was the type of
18 person you were asking me to compare myself to.

19 Q. No, I am not.

20 A. Okay.

21 Q. The only person --

22 A. You mean you would be at a
23 disadvantage as compared to --

24 Q. The State of Texas.

25 A. Oh, I see.

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1 Q. A decided disadvantage as to whether

2 or not you are heading toward a death penalty or a life

3 penalty, or whether you are standing right in the middle,
4 waiting to make a decision.

5 A. Well, again I don't -- from what I am
6 being told this morning, that is not the decision I am
7 going to be making. The decision I am going to be making
8 is "yes" or "no" to those questions.

9 Q. If you answer "yes"?

10 A. But you see, I don't believe -- I
11 don't believe I would take that into account.

12 Q. But --

13 A. If anything, it would be very hard to
14 answer whatever is going -- it would be very difficult to
15 answer to whatever is going to result in the death
16 penalty.

17 Q. Even though that is the only
18 punishment that you really think is just?

19 A. Oh, yeah, it's the only one that is
20 just, but I didn't say I like it.

21 Q. Well, and I don't think any Christian
22 person would like that.

23 A. There is something wrong with you if
24 you did. Yeah, it's like spanking your children.

25 Q. And really, that is not where I am
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1 trying to get to. And I don't want to try to talk about
2 a commitment, and I don't want you to commit. But I am
3 talking about, as we're sitting here today, and you are
4 on this hypothetical capital case.

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

7 Q. And you have convicted this

8 hypothetical defendant. Based upon your beliefs, at that
9 point, you have a decided leaning toward a death penalty
10 as being the only just punishment at that point.

11 Correct?

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

14 Q. All right.

15 A. But again, that is not what I am being
16 asked to do.

17 Q. Well, I understand that.

18 A. And the belief -- my belief system is,
19 you know, again, that in the book of Romans it tells us
20 that we're to be submissive to those who have the

21 authority over us. Which is -- what that is saying is

22 simply this: If I am called to answer those questions,
23 that is what I will do. As under God, that is what I
24 will do. And that is all I will do.

25 Q. Okay. Let me be clear.

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

3 Q. Because -- and I don't think I have
4 been, from what you are saying. They are going to tell

5 you that this is what the law is, but the Judge is never
6 going to tell you what the facts are. The facts are what
7 is your job. And you have got to take the facts and run
8 them through Richard Malm's brain and process them.

9 A. You are saying facts as to what
10 occurred?

11 Q. No, because you know what has
12 occurred.

13 A. Okay.

14 Q. You know this defendant is guilty.

15 A. Okay.

16 Q. You know that that person -- and you
17 take those facts, and any others, and you process them
18 through Richard Malm's brain, and then you answer this.
19 And the Judge is never going to tell you how to.

20 A. Right.

21 Q. He is going to say, "You process
22 them." And so my question really relates to how Richard
23 Malm processes facts?

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

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1

2 MR. TOBY L. SHOOK: Well, Judge, then
3 we are going to object to him trying to commit him to a
4 specific set of facts.

5 THE COURT: Sustained. Let's move on.

6

7 BY MR. RICHARD C. MOSTY:

8 Q. I am not asking you to commit to

9 anything. But when you process the facts --

10 A. Uh-huh. (Witness nodding head

11 affirmatively.)

12 Q. -- and part of your processing is,

13 that the only just result is a death sentence. Correct?

14 A. Well, I don't see how that figures

15 into the question.

16 Q. I'm not talking about the question.

17

18 MR. TOBY SHOOK: Judge, I'll object.

19 These questions have been asked and answered numerous

20 times.

21 THE COURT: Sustained. These are

22 duplicated questions. I am being very lenient with time.

23 Let's get on with it, please.

24 MR. RICHARD C. MOSTY: Am I prohibited

25 from going into --

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1 THE COURT: Well, no, keep asking

2 them, but, my goodness, we have gone over this, this is

3 the fourth or fifth time.

4 MR. RICHARD C. MOSTY: Your Honor,

5 again, I'm going to object to the Court making that kind

6 of comment in front of the juror.

7 THE COURT: Thank you. Thank you very

8 much. But duplicated questions are not allowed, but I am

9 allowing them in this case. Please go forward.

10 MR. RICHARD C. MOSTY: I apologize,

11 Mr. Malm. I am trying to do the best I can to represent

12 my client.

13 THE PROSPECTIVE JUROR: I understand

14 what you are trying to do.

15 MR. RICHARD C. MOSTY: And, I'm not

16 trying to trick you.

17 THE PROSPECTIVE JUROR: Right. You

18 are trying to figure out who I am --

19 MR. RICHARD C. MOSTY: Right, and I am

20 trying to understand where you are --

21 THE PROSPECTIVE JUROR: -- in 30

22 seconds. Yeah.

23 MR. RICHARD MOSTY: -- and who you

24 are.

25 THE PROSPECTIVE JUROR: Uh-huh.

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1 (Witness nodding head affirmatively.)

2 MR. RICHARD MOSTY: And, how you are

3 going to process things.

4 THE PROSPECTIVE JUROR: I have been a
5 pastor long enough that I am pretty hard to offend, so
6 don't worry about it.

7

8 BY MR. RICHARD C. MOSTY:

9 Q. Do you think, as you are sitting here
10 today, after having convicted a defendant of capital
11 murder, that you are equally open to a life sentence as
12 to a death sentence?

13 A. Yes, I think I am. And the reason
14 being that there is reality and then there is the ideal.
15 And, you know, I would like to strive for the ideal, but
16 if you are going to live in this world, you live with

17 reality. And the reality is, that that is not where we
18 are.

19

20 MR. RICHARD C. MOSTY: We will pass
21 the witness.

22 THE COURT: All right. Can you step
23 out briefly, please, sir?

24 THE PROSPECTIVE JUROR: Sure.

25

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1 (Whereupon, the prospective
2 juror was excused from the
3 room, and the following

4 proceedings were held,
5 outside of his presence
6 as follows:)

7

8 THE COURT: What says the State?

9 MR. GREG DAVIS: The State accepts the
10 juror.

11 THE COURT: What says the defense?

12 MR. RICHARD C. MOSTY: Your Honor, we
13 will challenge the juror for cause, on the basis that he
14 has a bias or a prejudice against the law, a portion of
15 the law, upon which the defendant is entitled to rely.

16 And that is, in particular, that he said, unequivocally,
17 a number of times, that he has a bias or a prejudice

18 against special issue number 2. And, the fact that he

19 says that he could set that aside, does not cure that.

20 As long as he has a bias or prejudice against that aspect
21 of the law, he is disqualified.

22 THE COURT: All right. Challenge for
23 cause is denied. Do you take the juror or not?

24 MR. RICHARD C. MOSTY: No, sir, we
25 won't.

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1 THE COURT: Thank you. All right.

2 Bring the juror in, please.

3

4 (Whereupon, the prospective
5 juror returned to the
6 room and the proceedings

7 were resumed as follows:)

8

9 THE COURT: Mr. Malm, we want to thank
10 you very much for your time and your attendance. You are
11 going to be excused from further required jury service.
12 If you could please not discuss this case with anyone,
13 including members of the press or anyone like that, until
14 the trial is finally over. That will be sometime in
15 February, probably.

16 THE PROSPECTIVE JUROR: Okay.

17 THE COURT: There is a gag order in

18 effect, so I can impose sanctions of either monetary
19 fines or imprisonment in the Kerr County Jail. I'm not
20 threatening you, I just have to warn you of that right.

21 THE PROSPECTIVE JUROR: Okay.

22 THE COURT: Thank you very much for
23 coming.

24 THE PROSPECTIVE JUROR: Thank you.

25 THE COURT: All right. Moving right

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1 along. We come to Juror Number -- Number 61, all right.

2 Well, this is going to be Mr. Moretich.

3 Let's take a very short break.

4

5 (Whereupon, a short

6 recess was taken,

7 after which time,

8 the proceedings were
9 resumed on the record,
10 in the presence and
11 hearing of the defendant
12 as follows:)

13

14 THE COURT: All right. Let's bring
15 Mr. Moretich in.

16 What is the correct pronunciation of
17 your name, sir?

18 THE PROSPECTIVE JUROR: Moretich.

19 THE COURT: Moretich, thank you. If
20 you will have a seat right here, please. This is Mr.
21 Gene Moretich, M-O-R-E-T-I-C-H. Is that correct, sir?
22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: If you will raise your
24 right hand, please.

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

5 THE PROSPECTIVE JUROR: Yes, sir.

6

7 (Whereupon, the prospective

8 juror was duly sworn by the
9 Court to true answers make
10 to the questions propounded,

11 concerning qualifications, after
12 which time, the proceedings were
13 resumed as follows:)

14

15 THE COURT: All right. Thank you.

16

17 Whereupon,

18

19 GENE LOUIS MORETICH,

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 THE COURT: Now, for the State of

2 Texas, we have from the District Attorney's Office from

3 Dallas: Ms. Sherri Wallace, Mr. Toby Shook, Mr. Greg

4 Davis.

5 The defendant, Mrs. Routier, is

6 sitting over here to your right, your extreme right. And

7 we have Mr. Doug Mulder and Mr. Richard Mosty, they are

8 the defense lawyers.

9 THE PROSPECTIVE JUROR: Okay.

10 THE COURT: All right, Mr. Davis.

11

12 VOIR DIRE EXAMINATION

13

14 BY MR. GREG DAVIS:

15 Q. Is it Mr. Moretich?

16 A. Yes, sir.

17 Q. Mr. Moretich, as the Judge has told

18 you, my name is Greg Davis. I am one of the three

19 prosecutors handling this case for the State of Texas. I

20 have been given some time this afternoon to talk to you,

21 and I intend to use my time talking to you about three

22 different areas.

23 First, about some of the information

24 that you gave to us on your questionnaire. Second, about

25 the death penalty here in Texas. And third, about some

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1 of the general principles that apply in all criminal

2 cases.

3 Mr. Moretich, let me just be real up

4 front with you. I think from what the Judge has told

5 you, you know where we stand in this case. We are

6 seeking the death penalty.

7 A. Sure.

8 Q. Our goal in this case is at the

9 conclusion of all the testimony, what we want to see

10 happen, is for this Judge to impose a sentence of death

11 on Darlie Lynn Routier. And for that sentence to be

12 carried out at some date in the future. That is our

13 goal.

14 If we reach the penalty phase, we're

15 going to stand before you and we are going to ask you to

16 answer special issues 1 and 2, "yes" and "no." That is a
17 combination that requires Judge Tolle to impose a
18 sentence of death.

19 Now, if that happens, certain things
20 will occur. I think it is only fair that we let you know
21 what those things will be. If we're going to ask you to
22 sit on a jury, take on this kind of job, I think it's
23 only fair that you know what is going to happen.

24 If Judge Tolle imposes a sentence of
25 death in this case, Darlie Lynn Routier will be
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1 transported to the Texas Department of Criminal Justice.
2 She will be housed on death row. She will be housed in a
3 cell about half the size of this jury box over here. And
4 she will stay there until the date affixed for her death.
5 And on that date, personnel will come to her cell, and
6 they will take her from her cell, and they will take her
7 to the death chamber.

8 Now, that is going to happen, no
9 matter what is being said or done at the time. Whether
10 she is on her knees praying, asking for forgiveness,
11 whether she is fighting with the guards, whether she is
12 professing her innocence, and naming another person as
13 the killer in this case. She is going to be taken.

14 A. Could I maybe just save you a whole
15 lot of time?

16 Q. All right.

17 A. I know all about that. I know exactly
18 how it works. And I'm going to just tell you something:
19 You may have a problem with me, but I am -- I'm not going
20 to get up on the street corner and wave flags or anything
21 like that. But, I am against the death penalty. And
22 there is nothing anybody here in this room is going to be
23 able to say that is going to change my mind.

24 It doesn't have anything to do with
25 this lady or anybody else. That is just my personal
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1 belief, and it's there in concrete. So, if that is what
2 you are getting at, there is your answer.

3 Q. Well, yes, sooner or later it's going
4 to get to that.

5 A. Well, let's just get down to the
6 nitty-gritty and you don't have to tell me all about that
7 other stuff. And I will just say this: I don't think
8 you can show me a single, civilized country in the world,
9 where the death penalty has made any kind of effect on

10 crime in that country.

11 Q. Okay. So, is it fair to say -- what

12 you're saying to me is, you cannot and you will not
13 impose the death penalty in this case regardless of the
14 facts?

15 A. Yes, sir.

16 Q. Or whatever else --

17 A. Exactly right. But I don't want these

18 guys here to think I am trying to be your buddy in the

19 case, because I'm not. That is just simply my belief,
20 and I'm not for it. And if somebody shot my mother
21 today, and I knew it, and I watched them do it, I would
22 not go out and execute that person. It's just not my
23 place.

24 Q. Well, listen, you know --

25 A. Okay.

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1 Q. I may disagree with you.

2 A. Sure.

3 Q. And obviously, I do, since I am
4 sitting at this table.

5 A. Sure.

6 Q. But I respect what you say to me.

7 A. Sure.

8 Q. Because I would rather have you come
9 down here and disagree with me and tell me the truth,
10 instead of us beating around the bush for 45 minutes, and
11 me trying to figure out what you think. Believe me, we
12 have got other things to do. And we have got other
13 people waiting, and so, I appreciate you being honest
14 with me.

15 A. And I'm not trying to say that because
16 I do or don't want on the jury. I'm just telling you,
17 that is the way it is. You will see it on my
18 questionnaire. There is no doubt about it.

19 Q. Let me just ask you a couple of more
20 questions, and that will probably be about it.

21 A. Sure.

22 Q. When we get down here to question
23 number 1: If you answer that question "yes," if you find
24 somebody guilty of capital murder, you are halfway to a
25 death sentence.

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1 A. Hey, just a second. I have to read

2 this slower. If you want to read it to me, read it to
3 me. I am dyslexic.

4 Q. All right. Let me: "Do you find from
5 the evidence beyond a reasonable doubt that there is a
6 probability that the defendant would commit criminal acts
7 of violence that could constitute a continuing threat to
8 society?" You see, that is the question you have got to
9 answer.

10 A. Okay. Okay.

11 Q. You see, if you answer that thing
12 "yes," you are basically half way to the death penalty,
13 because you have already found him guilty of capital
14 murder. So if you say "yes" up there, you are one step
15 closer to a death sentence.

16 Do I hear you saying, that regardless
17 of what the facts are, you are not going to answer that
18 thing "yes," because that would be committing you to
19 going to a death penalty.

20 A. Hold on a second. I am confused here.

21 I don't understand where that says, that sort of person
22 getting the death penalty. I mean, it seems like after
23 it's over, if it could say, they would get life in prison
24 without parole.

25 Q. All right. But we don't have that in
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1 Texas, we don't have life without parole.

2 A. Well see, I didn't know that.

3 Q. Well, let me just tell you, if you say
4 "yes" to question number 1?

5 A. Then I am halfway putting that
6 person --

7 Q. That's right. See, if you say "yes"
8 up there, and "no" to number 2, then Judge Tolle over

9 here, has got to impose death on this woman. See, you
10 don't get to write life or death back there as a juror.

11 A. Okay.

12 Q. What you do is, you write "yes" and
13 "no," and that forces Judge Tolle to write death, and he
14 will impose a death sentence on this woman. He won't

15 have any wiggle room under the law. See, even though you
16 are not actually writing life or death --

17 A. Okay. I got you.

18 Q. -- your answers are forcing him to do
19 that for you, basically. So, I guess, my question is:
20 Because of your beliefs, you are not going to be able to

21 answer number 1 "yes," knowing that Judge Tolle is going
22 to be forced to give death?

23 A. Well, no, I'm not going to do it.

24 Q. You are not going to do that?

25 A. No.

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1 Q. Same thing on number 2. See, if you
2 answered "yes," to one; and you answered number 2, "no,"
3 see so it's "yes" and "no," then that is the one -- that
4 is the combination that forces Judge Tolle to put death
5 as a sentence. So are you saying to me, that regardless
6 of what the facts are, you are never going to write "no"
7 on question number 2? Knowing that if you did, Judge

8 Tolle over here would have to impose death on this woman?

9 A. Well --.

10 Q. Because if you said "no" --

11 A. Well, I never like to say never, man.

12 That is a tough -- you are asking a very tough question
13 right there, you know.

14 Q. Yeah, but I am just saying --

15 A. It's kind of like if somebody gives

16 him the right to go rob a grocery store, will I help you
17 spend the money, and I probably would, you know. That is
18 very difficult. I may have to sit there and think about
19 it. There's so many variables that could come up, you
20 know.

21

22 THE COURT: Why don't you go
23 through -- let's just go through the regular, both sides,
24 the regular voir dire and see what we have.

25

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1 BY MR. GREG DAVIS:

2 Q. Okay. Well, let me just ask you, you
3 have got obviously very strong feelings about this
4 matter. Do you feel like your feelings are strong enough
5 that they would impair your ability to impose death in
6 this case?

7 A. Yeah. I tell you, I don't have no
8 kids, but I work with kids daily. But I still -- I just
9 wouldn't -- it's very difficult for me to say I will give
10 somebody the death penalty.

11 Q. Okay.

12 A. Let's put it like this: Say, if I am
13 the one that has to pull the switch on or off, I am not

14 pulling the switch. If it is left up to me, there ain't
15 no way. I'm not going to do it.

16 Q. You see, in way, it would be left up
17 to you. You are one of the 12 that is going to --

18 A. Then I guess you can just say I'm not
19 going to do it, because I'm not.

20 Q. It doesn't matter what I show you,
21 what I say to you, what is the evidence, I mean, your
22 feelings --

23 A. You see, my feelings are this: That I
24 can not create life. And so, I don't believe it's my
25 right to take the life. I'm not saying that I think it

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1 is right for them to run around on the street and do all
2 that stuff, but I can not be the one that takes that life
3 away.

4 Q. You know, there may be laws that I
5 don't like. I might have a bias or a prejudice against
6 them, and that is okay. You see, right now, I'm going to
7 tell you, there are not any right or wrong answers. As
8 long as you tell me the truth, and I think you are.

9 A. That is what you asked for, and that
10 is what I'm telling you.

11 Q. That is exactly right. And the fact
12 that you have got a bias or a prejudice against the death
13 law here, there is nothing wrong with that either. You
14 are entitled to that opinion.

15 A. Sure.

16 Q. I have heard it before from others.

17 A. Sure.

18 Q. In Dallas County, I have heard it. So
19 you are not the first one that has told me that, so there
20 is nothing wrong with that. And, you have pretty much
21 convinced me, that is something that you have got a very
22 heartfelt, it's not something that you thought up on the
23 spot.

24 A. No. Like I told you, I'm not trying
25 to be a jerk. That is it. That is it. I'm sorry.

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1 Q. You are not, you are really not.

2 Trust me.

3

4 THE COURT: Mr. Mulder, any questions?

5 MR. DOUGLAS MULDER: Well, Judge, I'm
6 going to wait until he has passed the witness.

7 THE COURT: Well, are you passing the

8 witness?

9 MR. GREG DAVIS: Well, no, sir, I'm

10 not.

11 THE COURT: Okay.

12

13 BY MR. GREG DAVIS:

14 Q. Now, let me ask you another question.

15 This is going to deal with police officers. You gave us
16 a response: "Just a bunch of yes men for the most part."

17 A. Yes.

18 Q. Can you tell me a little bit more

19 about that feeling?

20 A. Sure.

21 Q. About police officers.

22 A. Sure.

23 Q. Okay.

24 A. You can check my records, my family's

25 records; there is nobody ever been to jail.

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1 Q. Uh-huh. (Witness nodding head

2 affirmatively.)

3 A. Three years ago, I asked my family's

4 permission to go to jail if I was forced to do something.

5 They were trying to force me to pay restitution on

6 something I didn't do. And, the family said, "Yeah. If

7 you have to go to jail, go to jail."

8 I had 15 witnesses that I was not at

9 the scene. Witnesses from all over the State of Texas,

10 but the cops just decided to write a ticket and impose a

11 fine on me. And let me tell you something, this thing

12 went on for two and a half years. It went through the

13 Judicial Conduct Commission, it went through my State

14 Representative, State Senator, it went to U.S. Attorney's
15 office.

16 The end result was, and I got friends

17 in the U.S. Attorney's office, and I said, "Why was my
18 case not carried on?"

19 And they said, "Well, we couldn't get

20 it cleared through Washington."

21 So I went to jail for something that I

22 didn't do, a damn thing, I was not even remotely in the
23 area.

24 Then, once I got in jail, they bring

25 in Big Bubba, who is going to work me over. Well, I
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1 happen to be very proficient with the martial arts, and I
2 know all this intimidation, interrogation bull.
3 They put me in a chair, and they are
4 going to work me over, but I turned the tides on them.
5 And Big Bubba went out the room with his tail between his
6 legs.
7 But let me tell you something: They
8 beat the hell out of many people, which I will prove.
9 The cases have already gone to court, they have already
10 been settled. But I was kind of like the little guinea
11 pig that went through that thing.
12 And, I have -- there are many people
13 in law enforcement that are very, very, good people. I'm
14 not saying they all are, but the majority -- there's many
15 of them that are going to do just exactly what they are
16 told.
17 When it gets down to the nitty-gritty,
18 you know, they tried to force those cops to handcuff me
19 and throw me in jail. There were a few cops, the ones
20 close to me, and they said, "No. We refuse to handcuff
21 this guy because this guy did nothing wrong here. This
22 is a corrupt court, going against a very decent person.
23 We will walk him down there if we have to."
24 They said, "Yeah, it's your job if you
25 don't."

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1 They walked me down there, but nobody
2 ever put a handcuff on me.
3 And then secretly, some of the cops
4 started leaking tapes of what was going on, so that the
5 public could see what was going on and try to get some of
6 it straightened out.
7 Q. Uh-huh. (Attorney nodding head
8 affirmatively.)
9 A. And for me to turn around and have
10 great respect for the law enforcement, no, sir. If you
11 know anything about true law, you look at the patches

12 they wear on their shirt, and tell me what they mean. I
13 know what they mean.
14 Q. What patches are you talking about?
15 Are you talking about the ones --
16 A. You read, you evidently read through
17 my stuff there?

18 Q. Uh-huh. (Attorney nodding head
19 affirmatively.)

20 A. You read through there. Some of it is
21 in there, you won't have to ask me that question.

22 Q. Are you talking about the last
23 portion, where you talked about --

24 A. Let's just get down to the
25 nitty-gritty on that: How about the flag on the side of
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1 their shirt.

2 Q. Okay.

3 A. What flag is that? Would you like to
4 explain it to the courtroom what that flag represents?

5 Q. To me it looks like the flag of the
6 United States, but to you --
7 A. Well, evidently you have not read your
8 high school civics, because that is not the United States
9 flag. It is very simple for us all to go down to the

10 public library and prove that fact. Don't take my word
11 for it. That is not what it is.

12 Q. All right.

13 A. So, when they are told what they are
14 going to do, they do it.

15 Q. Let me kind of just get down to you
16 with the police officers. The reason I get around to
17 this is this: There are probably going to be police

18 officers that testify here. I mean, I would anticipate a
19 number of police officers are going to come down here.
20 They may have, you know, what looks to me like an

21 American flag on the side of their shoulder here.
22 A. Uh-huh. (Witness nodding head
23 affirmatively.)

24 Q. Okay. Now, the law says that you are
25 supposed to be able to judge their testimony the same way
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1 you would a milkman or your next door neighbor or, you
2 know, civilians, and --

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

5 Q. And judge them the same way, start
6 everybody off the same way. And some people say, "I can

7 do that. I don't have a problem with that." Some people
8 say they are going to start police officers ahead of
9 everybody because they are wearing a uniform, and they
10 respect the officers.

11 And there are other people that say,
12 "No, I am going to have to start them behind, because of
13 what I have had to deal with in my life, and those guys
14 are going to have to show me a little bit more before I
15 am going to believe them, because of what I have had to
16 deal with."

17 Where do you fit in there?

18 A. I think I have already answered that.

19 I said there are some that are very good, and some that
20 are not worth a flip. I'll sit there, and I'll look at
21 that man straight in the eyes, and I will make my
22 decision.

23 Q. All right. So you are going to judge
24 them on what you hear from them. Is that right?

25 A. I'm going to watch his body language,
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1 I'm going to watch him walk in the room. I'm going to
2 look at his eyes, and I'm going to watch his face. I'm

3 going to watch his hands, because he is going to give it
4 away if he is lying.

5 Q. All right.

6 A. If they do their job, he will.

7 Q. You know, in this case -- and believe
8 me, some of these questions I have to ask you, I'm
9 required by law to ask some of these questions. But

10 believe me, I would rather, you know, it is 2:10 on a
11 nice afternoon, and, you know, I would --

12 A. Here again, I want to shake hands with
13 you and be able to be a friend when I walk out. Okay?

14 Q. Okay. So let me ask you: There are
15 just some things I have just go to do. These are things
16 I get paid to do, all right?

17 A. Go ahead. Have at it. I am getting
18 paid for answering them to.

19 Q. All right. You know, the law says,
20 again, this is what the law says: The law says that if
21 you intentionally murder a child younger than six years
22 of age, that is a capital murder. All right.

23 There are some people that say, "I

24 don't think that is what the law ought to be. That

25 should not be a capital murder, where you get the death
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1 penalty."

2 Some people say, "I don't see any
3 distinction, why we ought to have a distinction between a
4 child under the age of six as opposed to a child over the
5 age of six."

6 A. Okay. I got it.

7 Q. Do you agree or disagree with that
8 law?

9 A. Well, first of all, let me ask you

10 this: Is that a state law or a federal law or what kind
11 of law is it?

12 Q. That is a state law.

13 A. Okay. Before I would ever answer

14 anything on that, I would want to read the law and
15 decipher that law. I am not going to take your word for
16 it that that is the true law.

17 Q. All right. Well, why aren't you going
18 to take my word for it?

19 A. Well, first of all, let me ask you
20 this: What -- have you read the law?

21 Q. Yeah.

22 A. Could you tell me what the official
23 dictionary of the State of Texas is when they write those
24 laws?

25 Q. I can tell you --

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1 A. Well, I can tell you this: You can't
2 tell me what that law means then, because you have not
3 read it in the official dictionary.

4 Q. Well, you see, the official dictionary
5 for us is called the Code of Criminal Procedure and the
6 Penal Code.

7 A. No, sir. Every law that the state or
8 the federal government pass is passed according -- and
9 only written with one official dictionary.

10 Do you know the official dictionary of
11 the United States Congress?

12 Q. Huh-uh. (Attorney shaking head
13 negatively.)

14 A. Do you have one?

15 Q. No.

16 A. Have you ever seen it?

17 Q. Nope.

18 A. Then you can't sit here and honestly
19 tell me what that law means.

20 Q. Okay. Let me ask you: Have you?

21 A. Yes, I have one of those dictionaries
22 at my service.

23 Q. Okay.

24 A. And I have read many of those laws.

25 And a lot of times when I turn around and ask the
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1 attorney what that law says, he has no earthly idea. I
2 say, "No, look, here is the book. Let's figure out what
3 all this means," and they are appalled.

4 Q. Let me ask you: For the State of
5 Texas, is there an official dictionary for the State of
6 Texas, like there is for the United States?

7 A. I'm sure there is. That is your job,
8 you tell me.

9 Q. All right.

10 A. Or ask him.

11 Q. Okay. What I'm saying to you is, that
12 the official book that we go by, what this Judge, and
13 what all of us here in this room go by, we go by the
14 Penal Code which has been established by the legislature
15 in Austin.

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

18 Q. We go by the Code of Criminal
19 Procedure which has been written by the Legislature in
20 Austin.

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

23 Q. That is where I get all this, and that
24 is what the Judge goes by. That is what these
25 attorneys -- if they ask you a question, that is what
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1 they are going to be relying on too. And I'm telling you
2 from the Penal Code, it says: If you kill a child under
3 the age of six intentionally, that is a capital murder
4 and you can get death.

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

7 Q. Now my question to you is: Do you
8 think that is a fair law? Do you agree with the law? Do
9 you think it's not fair? You don't agree with it? I

10 mean, where do you stand on that?

11 A. Okay. My answer to that question is:

12 I don't care what that law book says. If it goes against

13 what I think is morally right or wrong, you can put me in

14 a jail, you can put me to death, but I'm not going to

15 change my idea for some silly book you have got on a
16 desk, or some bunch of people in Austin, or Washington
17 that wrote something on paper. It don't mean squat to
18 me.

19 Q. And again, when it comes down, your
20 moral law versus whatever is written in this book here,
21 your moral law is going to control; right?

22 A. That's right.

23 Q. Okay. And your moral law as I
24 understood you, I mean, I don't think I misunderstood

25 you. I think you said it pretty clearly: Your moral law

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1 says the death penalty is morally wrong. Period. Is
2 that right?

3 A. Exactly right.

4 Q. And that is going to be over whatever
5 these books say about the death penalty in Texas, or

6 whatever I say here, or the Judge says to you, or Mr.
7 Mosty or Mr. Mulder over here, that doesn't mean squat,
8 if it contradicts with your moral beliefs. Correct?

9 A. Exactly right.

10 Q. Just a couple more questions. You
11 know, a lawyer is -- we are all famous for saying, "I got
12 one more question," and about 100 questions later, you

13 know, a poor old fellow looks up, you know, trying to
14 catch his breath.

15 A. Sure.

16 Q. Going back to number 2 here, just a
17 moment. See, that is that question, I call it kind of

18 like a "safety net question." That is the one that there
19 is no burden of proof, there is no real law about it.
20 It's just basically, if a juror wants to change a death
21 sentence to a life sentence, they can. Okay?

22 "Taking into consideration all of the
23 evidence, including the circumstances of the offense, the
24 defendant's character and background, and the personal
25 moral culpability of the defendant, is there a sufficient
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1 mitigating circumstance or circumstances to warrant that
2 a sentence of life imprisonment, rather than a death
3 sentence be imposed?"

4 You see, it just says: Do you think
5 there is facts here that ought to change from a death
6 sentence to a life sentence? You see, nobody has got to
7 persuade you on that. Nobody has got to say, "You know,
8 beyond a reasonable doubt there is or there isn't."

9 This is just a personal decision on

10 the part of each juror. You see, people that are opposed
11 to the death penalty, for instance, could say, "I am
12 always going to answer that thing 'yes.' That is my way
13 out of having to impose the death sentence. I am just
14 morally against it. So, when I get down to Number 2,
15 personally, I am always going to say there are facts and
16 circumstances that ought to change a death sentence to a
17 life sentence."

18 Do you see how this could work?

19 A. You are basically just saying it's an
20 out.

21 Q. It's an out, exactly right.

22 A. Well, y'all do what you want. I will
23 just say this: If this lady is guilty of what they say
24 she did, which I have no idea or not, then sure, I think
25 she ought to get life in prison without parole. I have
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1 no problem with that whatsoever.

2 Q. Uh-huh, but you have got a problem
3 with death? Obviously.

4 A. I sure do.

5 Q. So, if -- even if you thought she was
6 a danger, even if you thought she was guilty, when you
7 get down to number 2, you are telling me: "It's life
8 instead of death." And I am, basically, wasting my time
9 and breath because, again, what I am saying to you

10 contradicts and conflicts with your moral beliefs?

11 A. Yes, sir. Could I ask you a question?

12 Q. Sure, that is only fair.

13 A. Okay. Could you name any wealthy
14 person, and I'm talking about megabuck wealthy, that has
15 ever been executed in this country, in a so-called fair
16 trial? I don't know of any.

17 Q. You see, I know that was one of your
18 concerns here. I saw that.

19 A. Yeah. Y'all are asking me if I am
20 going to get up here and lie and I have got to take an
21 oath, and everybody saw that O.J. Simpson trial, and we
22 know that cop got up there and lied like a dog. And what
23 is going to be done to him? He will probably get a
24 medal. He got to retire with honors probably.

25 Q. Well, you know, actually what happened
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1 to him? He had to plead guilty to a felony charge of
2 perjury the other day.

3 A. Yeah. Is he in jail?

4 Q. No, he got probation.

5 A. Yeah, probation.

6 Q. I think he is going to go up to Idaho
7 and retire.

8 A. Y'all do me a favor and give me
9 probation. I mean, you know what I'm saying?

10 Q. Yeah, I understand.

11 A. Let's just get realistic.

12 Q. I understand. Well, let me just say:

13 You have been as honest as anybody I have ever dealt
14 with. I appreciate that. Ain't nothing I'm going to say
15 that is going to change your mind, is there?

16 A. Well, no. I hope we can be friends
17 when this is over, you know. Well, we are not enemies,
18 but I'm just telling you --

19 Q. Well, like I said -- like I said, I
20 would have a real problem if I thought you were trying to
21 say something to trick me, or to make sure you are on

22 this jury, or do something -- I would really have a
23 problem, and I would get angry with you then. But you
24 can sit up here and disagree with me on the law and the
25 facts, and I don't care.

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1 A. Yeah.

2 Q. Because you see, I respect an honest
3 man, and you have been honest with me. So, no, as you
4 walk by here, and if you are not on this jury, I will

5 shake your hand. That is not a problem.

6 A. Okay.

7 Q. But the bottom line: You can't ever
8 give death on this case?

9 A. I'm not going to give death to
10 anybody.

11 Q. Okay. Well, Mr. Moretich --

12 A. Well, let me just say this one quick
13 thing: I mean, for whatever it is worth.

14 It's like, I knew it was going to be

15 very difficult for me to go into the military, because if
16 I had to shoot at somebody, I thought maybe I was a
17 flake. And you know something, I found out what the
18 statistics are.

19 And you go look in the Civil War or

20 any war there is, there is only 15 percent of the guys in
21 the trenches that will pull the trigger. Even when the
22 enemy is running at you, shooting at you, and knowing
23 your life is on the line, it is very difficult to pull
24 that trigger.

25 It's a very big problem with the

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1 military, all military. And so, they have got to
2 psychologically wash that out of those guy's minds. So,
3 it's not a simple, easy, -- if it is a simple, easy thing
4 for somebody to do, there is something wrong with that
5 person. You know?

6 Q. Right. Okay. I appreciate it. I

7 appreciate your being honest with me. I will conclude
8 mine right now.

9 A. Okay.

10 Q. Thank you, sir.

11

12 THE COURT: Mr. Mulder. Do you wish
13 to ask some questions?

14 MR. DOUGLAS MULDER: Yes, sir. Just a
15 thing or two.

16

17 VOIR DIRE EXAMINATION

18

19 BY MR. DOUGLAS D. MULDER:

20 Q. I, too, appreciate your honesty. I'm
21 not going to pick at you or quarrel with you.

22 A. Have at it, I don't care.

23 Q. But, I take it, you have not served as
24 a juror before?

25 A. Well, for some strange reason, they
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1 never pick me.

2 Q. This may be your day.

3 A. Well, this is only the second one I
4 have ever been on. This is only the second trial I have
5 ever been called up for.

6 Q. What we're used to seeing is people
7 who would like to be entertained, and people who want to
8 get on the jury, and people who will say most anything
9 they can to --

10 A. So they can write that book.

11 Q. Yeah, so they can write the book, or
12 so that they can --

13 A. I'm not interested.

14 Q. And you know full well, when you are
15 talking to that person, that they don't believe what they
16 are saying. You know, you can look at them, and you know
17 full well, that they believe that death is the only
18 punishment for any capital murder case.

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

21 Q. You see?

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

24 Q. But they will say whatever it takes,
25 to keep from disqualifying themselves. So, like I said,
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1 you are like a breath of fresh air.
2 Let me run a few things by you:
3 As a juror, the facts are what you say
4 they are. You have got to listen to the witnesses. You
5 determine whether a witness is telling the truth or
6 whether he isn't. The Judge can't, under the law, tell
7 you whether a witness is being truthful or not. That is
8 up to you and the other 11 jurors.

9 A. I know.

10 Q. Okay.

11 A. I know exactly what you are saying.

12 Q. No appeal on the facts. The facts are
13 what you and the other 11 jurors say they are. If he
14 makes a mistake with respect to the law, then we can
15 appeal it to a higher court and get it corrected. But if
16 you make a mistake with respect to the facts, we can't
17 appeal that. Okay?

18 A. True.

19 Q. All right. That is another reason
20 that the law says that the burden of proof is on the
21 State. Whoever does the accusing, has to do the proving.
22 That makes sense, doesn't it?

23 A. Sure.

24 Q. All right. The law says that they --

25 the standard or the benchmark by which their proof is
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1 measured, is proof beyond all reasonable doubt.

2 A. Sure.

3 Q. The law says, if you have a reasonable
4 doubt, resolve it in favor of the defendant.

5 A. Sure.

6 Q. Any quarrel will that?

7 A. No, I understand.

8 Q. The law says that the indictment is no
9 evidence of guilt. It simply is the pleading and paper
10 by which the defendant is brought into court. It informs
11 her of the charges against her, so that she can prepare
12 her defense. And it advises you, as a juror, of what the
13 State must prove beyond all reasonable doubt.

14 The law says, if you have a reasonable
15 doubt, or you have two reasonable doubts, or 10 or 20 or
16 50, all of those must be resolved in her favor.

17 A. Okay.

18 Q. I take it, that if the State proves

19 somebody guilty, you are going to find them guilty to
20 your way of thinking?

21 A. Yes.

22 Q. Fair enough?

23 A. Yes.

24 Q. Okay. Then you are confronted with
25 some -- what we call special issues. The jury doesn't
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1 write death anymore. When I first started trying
2 lawsuits, many years ago, 30 years ago, the jury wrote
3 death in the verdict form in a capital murder case. They
4 don't do that anymore. The law says now, all the jury
5 does is answer some special issues. Okay?

6 A. Well, why is that? To confuse it or
7 what? Are they trying to confuse us or trying to make it
8 easy on us?

9 Q. Well, you know, I don't know.

10 A. I mean, they just basically don't want
11 to talk plain talk.

12 Q. Well, maybe they just don't want to

13 face the reality of the whole thing. I don't know. I
14 didn't write the law. If I wrote the law, it probably
15 wouldn't be like it is. Okay?

16 A. Okay.

17 Q. But, I think, from where you are
18 coming from, that you are honest, that you are going to
19 do what you believe is the right thing to do. And, I
20 guess, what I am asking you is: Will you answer these

21 special issues, in accordance with the evidence that you
22 receive? You will get the evidence from the witness
23 stand, right where you are. And, I guess, it's just as
24 simple as that.

25 If you believe, beyond a reasonable
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1 doubt, that the evidence shows that there is a
2 probability that the defendant would commit criminal acts
3 of violence that would constitute a continuing threat to
4 society, then you and the other 11 jurors answer it
5 "yes." If you don't, you answer it "no." But it's based
6 on the evidence.

7 A. All I have got to say is, if I am a
8 juror and I try to -- and I see that they are trying to
9 trick me into answering "yes" or "no" to some question to
10 get me to go along with the death penalty, I think I have
11 made myself very, very, clear, but this right here is not
12 clear to me.

13 Q. You know, the best thing I like, the
14 thing I like about what you said was that if she did what
15 they say she did, then I think she ought to be convicted.
16 You know, the thing that that tells me is that you have
17 not made up your mind as to whether she is guilty or not,
18 regardless of what you have read in the newspaper or what
19 you saw on TV.

20 A. I have no earthly idea.

21 Q. That is what I like.

22 A. I was not there.

23 Q. That is what I like. That is what she
24 is entitled to, you see?

25 A. I know, sure.

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1 Q. She is entitled to 12 people who have
2 not made up their minds, who will come down here and just
3 listen to the evidence, and call a spade a spade.
4 If she is guilty, find her guilty. If
5 she is not guilty, and if they have not proven it, find
6 her not guilty. Everybody goes on about their business,
7 and you don't even get here. Okay?
8 A. Okay.

9 Q. But, I guess, the bottom line is, can
10 you read those questions, study the questions, and answer
11 them truthfully, based on the evidence as you perceive
12 it?

13 A. Well, this is very difficult for me to
14 read and to put it together.

15 Q. Hey, I didn't write that stuff. I
16 think it's --

17 A. I can't really understand the
18 question.

19 Q. I don't think it is a very hard
20 question.

21 A. Could you explain that question to me?
22

23 THE COURT: Well, I believe you
24 stated, and we're not trying to embarrass you.

25 THE PROSPECTIVE JUROR: You won't
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1 embarrass me.

2 THE COURT: That you are dyslexic.

3 THE PROSPECTIVE JUROR: Right.

4 THE COURT: All right. The first
5 special issue reads as follows: "Do you find from the
6 evidence beyond a reasonable doubt that there is a
7 probability that the defendant would commit criminal acts
8 of violence that would constitute a continuing threat to
9 society?"

10 That is what the first special issue
11 says.

12 THE PROSPECTIVE JUROR: Okay. Well,
13 here is what I don't understand: It says, do you find
14 from the evidence? Well, how in the world can I answer
15 that?

16 It should be, if I find from the
17 evidence.

18

19 BY MR. DOUGLAS MULDER:

20 Q. Well, that is true. This is after you
21 have heard all of the evidence. The Judge will give you
22 a Charge, and this will be contained in it.

23 A. Yes. Okay. If I saw everything --

24 Q. Right.

25 A. And I saw it, yeah, I could probably
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1 answer that question one way or the other.

2 Q. Well, you would do it truthfully,

3 wouldn't you? Based on the evidence as you perceived it?

4 A. Well, why would I want to lie about
5 it?

6 Q. Well, I'm saying you wouldn't want to
7 lie about it.

8 A. That's right.

9 Q. The same thing with special issue
10 number 2. And it reads: "Taking into consideration --"

11

12 THE COURT: Well, read it slowly, Mr.
13 Mulder.

14 MR. DOUGLAS MULDER: Yes, sir.

15 THE PROSPECTIVE JUROR: Go ahead. I
16 am keeping up with him.

17 MR. DOUGLAS MULDER: Yes, sir.

18

19 BY MR. DOUGLAS D. MULDER:

20 Q. "Taking into consideration all of the
21 evidence, including the circumstances of the offense, the
22 defendant's character and background, and the personal
23 moral culpability of the defendant, is there a sufficient
24 mitigating circumstance or circumstances to warrant that
25 a sentence of life imprisonment, rather than a sentence
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1 of death be imposed?"

2

3 THE COURT: Do you understand that?

4 MR. DOUGLAS MULDER: Based on the
5 evidence.

6 THE PROSPECTIVE JUROR: Well, I think
7 I do. I mean, like what kind of evidence would you have
8 that says that, no, it ought to be a death penalty,
9 rather than a life penalty? I mean, what kind of
10 evidence are you talking about?

11

12 BY MR. DOUGLAS MULDER:

13 Q. Well, you might, for example, at the
14 punishment stage, for example, you might -- and this is
15 just taking another case, not this case in particular.
16 But, you know, I have seen cases and tried

17 cases, where they could show and the evidence could show,
18 that the defendant was on an escalating scale of

19 violence. Maybe he started out stealing a car.

20 The next thing he did, he burglarized
21 somebody's home. The next thing he did, he robbed a

22 7-Eleven Store at gunpoint. The next thing he did, he
23 killed somebody, raped and killed somebody. And the next
24 thing, you know, God knows, but you can see an escalating
25 scale of violence.

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1 Now, you are just trying him for
2 killing a person, but you find out all this baggage that
3 he is carrying, and, you say, "Hey, this guy is a bad

4 apple. And, no, I don't find any reason." Or, on the
5 other hand you might find --
6 A. A moment of passion, it was a once in
7 a lifetime deal.

8 Q. Sure, yeah. And you might say, "Well,
9 hey, you know, this person, in this particular situation,
10 is probably not inclined to do this again. And, yeah,
11 you know, I can see there is a reason to give them life
12 rather than death."

13 The bottom line is, listen to all of
14 the evidence, and just answer it truthfully, and that is
15 it.

16 A. Okay.

17

18 THE COURT: I think the question was:
19 Could you or could you not do that? Is that the
20 question, Mr. Mulder?

21 MR. DOUGLAS MULDER: That is the
22 question, Your Honor.

23 THE COURT: Okay.

24 THE PROSPECTIVE JUROR: Well, I don't
25 think there is any distinction. One dead body is just as
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1 important as the other dead body. And, regardless, if
2 they have got a track record of doing it, or if they did
3 it on the spur of the moment just because they felt like
4 it, there is still somebody dead. And, I don't see
5 that -- I don't see anything like that swaying me one way
6 or the other.

7

8 BY MR. DOUGLAS MULDER:

9 Q. Well, here is what we can't do. I

10 can't give you a list of the facts and say, "Hey, you
11 could vote 'yes' on this if you had this particular

12 laundry list of evidence come in." Any more than they

13 can ask you, "Would you vote 'no' if we prove thus and
14 so?" You cannot pledge a juror. Okay?

15 A. It just looks to me like there are so
16 many variables in that question, it would be very
17 difficult for me to answer.

18 Q. There are a lot. And, like I said, if
19 I were going to write this question, I could make it a
20 lot plainer, I think. But I didn't write it.

21 A. Well, then don't expect me to give any
22 great answer to it.

23 Q. Well, all I am asking you is this:
24 Can you listen to all of the evidence, pay attention to
25 the witnesses, decide who is telling the truth and who
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1 isn't, and then answer the questions accordingly,
2 honestly? That's all anybody can ask of a juror.

3 A. I have already told you the answer to
4 that.

5 Q. You said you could.

6 A. I would be as honest as I could try to
7 be and that is it. If it gets down to me trying to -- if
8 it gets down to you trying to get me to do something
9 against what I think is morally wrong --.

10 Q. I am the last guy that would do that.

11 A. I'm just not going to do it. I don't
12 care what the books say, what the law is, I think I have
13 been over it, you know. This is to me just a bunch of
14 trick stuff, and I don't know what you want. And I'm not
15 going to try to appease you.

16 Q. You don't have to.

17 A. I'm not going to say -- if I'm on the
18 jury, when it is said and done, I will tell you what I

19 think.

20 Q. Hey, that's fine.

21 A. That's all I can do. Regardless of
22 what y'all have got up here.

23 Q. Yeah. The Judge is going to charge
24 the jury. There are two issues to answer: Will you pay
25 attention to the evidence, and will you answer them
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1 honestly? That is all I care about.

2 A. Now, that is your job. You figure it

3 out if I will or not. I mean, I don't what else I can
4 say.

5 Q. You have told me that you would, and I
6 think you will.

7

8 MS. SHERRI WALLACE: No, that is not
9 what he said.

10 THE COURT: I think I understand what
11 he said.

12 THE PROSPECTIVE JUROR: Well, you know
13 what I think really, honestly?

14 THE COURT: We would like to hear it.

15 THE PROSPECTIVE JUROR: I think there
16 is probably -- I just think this is just a bunch of
17 trickery, and you know, and shuffling of cards and all

18 that. Why don't you just say it plain, blank, straight
19 forward? And I'll give you a plain, blank,
20 straightforward answer.

21 "Hey, man, I'm not for the death

22 penalty. There is no way you can change my mind."
23 If something else comes up here, that
24 I think is very morally and ethically wrong, I don't care
25 what the judge says, I don't care if I go to jail, I'm
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1 answering it just exactly the way my moral character
2 tells me to answer it. And, if that makes people unhappy
3 or not, I don't give a damn.

4 All this trickery, hocus-pocus stuff
5 is just that. I don't care to answer any more questions
6 about that. If you don't know what I am going to do now,
7 well, then just forget it. You can take that chart and
8 chunk it.

9 BY MR. DOUGLAS MULDER:

10 Q. That is their chart. It's not my
11 chart.

12 A. Well, I don't care whose chart it is.
13 It is a bunch of hocus-pocus stuff, and I don't want to
14 listen to it.

15 Q. Hey --

16 A. I'm not arguing with you either, I'm
17 just telling you my position. I am through with it.
18 Don't get mad -- I'm not trying to start an argument with
19 you. I am just saying, I think I have made myself very
20 clear on the issue, that issue.

21 Q. Okay. Just so I am clear on what you
22 are saying, you are going to listen to the evidence.

23 Aren't you?

24 A. To the best of my ability.

25 Q. And you will answer the questions

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1 truthfully to the best of your ability?

2 MR. GREG DAVIS: Your Honor, I am

3 going to object. That has been asked and answered at
4 least three times.

5 THE COURT: Sustained.

6 THE PROSPECTIVE JUROR: Thank you.

7 MR. DOUGLAS MULDER: Well, Your Honor,

8 I have not heard it that many times. But I am

9 comfortable with your hearing, if you have heard him
10 answer it in a positive --

11 THE PROSPECTIVE JUROR: Well, I'll

12 write it down on a piece of paper and send it to you.

13 THE COURT: I have heard the gentlemen

14 say that he will listen to the evidence.

15 MR. DOUGLAS MULDER: And that he will

16 answer the special issues truthfully according to the
17 evidence as he --

18 THE COURT: No. No, he has not said

19 that. He said he is going to answer the questions, so

20 ask him again. You can ask him again, and I'll show you
21 what he is saying --

22 THE PROSPECTIVE JUROR: You are

23 getting into all that hocus-pocus legal terms and those
24 legal technology -- technicalities that you just don't
25 want to put in plain, simple English, see.

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1

2 BY MR. DOUGLAS D. MULDER:

3 Q. I'm going to make it as plain as I
4 can. Okay? I thought we were --

5 A. We are not buddies.

6 Q. No.

7 A. We're not doing nothing here. We're
8 just talking.

9 Q. No, I understand that. This isn't an
10 experiment in bonding.

11 A. Yeah.

12 Q. I am not trying to --

13 A. It sure is a lot different than
14 People's Court, I'll tell you that.
15 Q. Well, he is a lot like Judge Wapner.
16 A. Yeah.

17

18 THE COURT: Well, I don't know.
19 THE PROSPECTIVE JUROR: Do you ever
20 fall asleep during this? Because I was thinking about,

21 you know, I may be on a jury, and I may just conk out and
22 fall asleep, and I would have to answer absolutely no,
23 because I didn't hear some of it, because I got so bored,
24 I fell asleep.

25 THE COURT: Well, I might have to
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1 refuse to answer that on the grounds that it might tend
2 to incriminate me. Let's go ahead.

3 THE PROSPECTIVE JUROR: Well, probably
4 what I have got to do is say that everything I have
5 answered to this point is based on if, and that is if I
6 stay awake, and if y'all don't bore me to death.

7

8 BY MR. DOUGLAS MULDER:

9 Q. Well, that is fair enough. And I
10 guarantee you we will keep you awake. I don't know about
11 them, but we will.

12 Anyway, the bottom line is, we have
13 got to have this on the record. Fair enough?

14 A. Sure.

15 Q. All right. You will listen to the
16 evidence, you will make a decision, based on the
17 evidence, and you will do it honestly and truthfully,
18 based on your conscience. Fair enough?

19 A. Fair enough.

20

21 THE COURT: You have more time.

22 MR. DOUGLAS MULDER: Anything else? I
23 have had enough, if you have.

24 THE PROSPECTIVE JUROR: Well, I
25 thought you were going to say you have had enough of me.
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1 MR. DOUGLAS MULDER: No. I would like
2 to see you on this jury.

3 THE PROSPECTIVE JUROR: Well, I don't
4 really care what you want.

5 THE COURT: You would follow your

6 conscience as opposed to the law as I would give it to
7 you?

8 THE PROSPECTIVE JUROR: Well, that is
9 pretty much how I try to live my life. I think it is
10 pretty evident.

11 THE COURT: All right. Thank you. If
12 you could just step out briefly, please. Don't go yet.

13 THE PROSPECTIVE JUROR: Okay.

14 THE COURT: Thank you very much.

15 THE PROSPECTIVE JUROR: I'll say a
16 prayer for each and every one of us here tonight.

17 THE COURT: Thank you.

18

19 (Whereupon, the prospective

20 juror was excused from the
21 room, and the following

22 proceedings were held,
23 outside of his presence
24 as follows:)
25

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1 THE COURT: All right. What says the
2 State?

3 MR. GREG DAVIS: The State will submit
4 the juror for cause.

5 THE COURT: The challenge for cause is
6 granted. I assume the defense will accept the juror.

7 MR. DOUGLAS MULDER: We accept the
8 juror and except to your --

9 THE COURT: I appreciate that. Thank
10 you very much.

11 THE COURT: All right. Mr. Moretich
12 can step back in, please.

13

14 (Whereupon, the prospective
15 juror returned to the
16 room and the proceedings
17 were resumed as follows:)

18

19 THE COURT: All right. Mr. Moretich,
20 thank you very much. We appreciate your candor, but you
21 will be excused from further jury service.

22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: We would ask you one
24 thing, please, sir: Do not discuss this case with
25 anyone, until it is over in early February, please.
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1 There is a gag order in effect --
2 THE PROSPECTIVE JUROR: I wish there
3 was somebody to talk to where I work, there is nobody
4 there.
5 THE COURT: All right. There is a gag
6 order in effect, and sanctions can be imposed, including
7 monetary fines or jail time.

8 THE PROSPECTIVE JUROR: Can I shake
9 hands with this guy right here?
10 THE COURT: Oh, by all means, with
11 both of them.

12 THE PROSPECTIVE JUROR: Good luck.

13 MR. GREG DAVIS: Thank you. I
14 appreciate it.

15 THE COURT: All right. Fine.

16 MR. RICHARD C. MOSTY: Your Honor, I
17 think it is appropriate to inquire into Mr. Davis' law
18 license, because I am not sure that he has all of the
19 books required to represent the State.

20 THE COURT: Well, I don't know where
21 these dictionaries are. I need to have one myself.
22 All right. The next juror, Ms. Wilke,
23 has been excused by agreement. That brings us to Ms.
24 Nancy Arlington. Is she here? This will be our last
25 prospective juror for the day.

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1
2 (The next prospective
3 juror was brought into
4 the courtroom, and the
5 proceedings were had
6 as follows:)
7

8 THE COURT: Ms. Arlington, if you will
9 come forward, please. You are Nancy Arlington?
10 THE PROSPECTIVE JUROR: Yes.
11 THE COURT: Thank you. If you will
12 raise your right hand?
13 Do you solemnly swear or affirm you

14 will true answers make to all the questions propounded to
15 you concerning your qualifications as a juror in this

16 room or any courtroom to which you may be sent, so help
17 you God?

18 THE PROSPECTIVE JUROR: I do

19

20 (Whereupon, the prospective

21 juror was duly sworn by the
22 Court to true answers make
23 to the questions propounded,

24 concerning qualifications, after
25 which time, the proceedings were
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1 resumed as follows:)

2

3 THE COURT: All right. Thank you. We
4 have for the State of Texas today the Assistant District
5 Attorneys from Dallas County, Ms. Sherri Wallace, Mr.
6 Toby Shook, and Mr. Greg Davis.

7 MS. SHERRI WALLACE: Good afternoon.

8 MR. TOBY SHOOK: Hi.

9 MR. GREG DAVIS: How are you?

10 THE COURT: And to my far right, Mrs.

11 Darlie Routier and her attorneys, Mr. Douglas Mulder and
12 Mr. Richard Mosty.

13 MR. DOUGLAS MULDER: How are you?

14 THE PROSPECTIVE JUROR: I'm fine.

15 MR. DOUGLAS MULDER: Good.

16 THE COURT: All right. Who will go
17 for the State?

18 MS. SHERRI WALLACE: I will.

19 THE COURT: Ms. Wallace.

20 MS. SHERRI WALLACE: May it please the
21 Court?

22

23 Whereupon,

24

25 NANCY KAY ARLINGTON,
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1

2 was called as a prospective juror, for the purpose of
3 voir dire, having been first duly sworn by the Court to
4 speak the truth, the whole truth, and nothing but the

5 true, testified in open court, as follows:

6

7 VOIR DIRE EXAMINATION

8

9 BY MS. SHERRI WALLACE:

10 Q. My name is Sherri Wallace, and for the
11 next several minutes I am going to be asking you some
12 questions. And, there are no right or wrong answers.

13 Are you nervous at all? Some people are.

14 A. Well, kind of, I have never done this.

15 Q. Okay. Well, just let me assure, you
16 know, just listen to our questions and answer them as
17 truthfully as you can. That is all we're asking.

18 A. Okay.

19 Q. I'm going to start by asking you some
20 questions about your questionnaire.

21 A. Okay.

22 Q. And then talk to you a little bit
23 about the death penalty in general. And then talk to you
24 about some general principles of law.

25 If I don't explain something well,
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1 it's not your fault, it's my fault. So ask me to reask
2 the question, and I will try to do a better job. Okay?

3 A. Okay.

4 Q. Fair enough?

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

7 Q. Okay. First off, let me just say up

8 front: We are actively seeking the death penalty against
9 that woman down there. It is our intention to get a
10 conviction of capital murder, and see that she is
11 executed. Do you have any --

12

13 THE COURT: This is Ms. Arlington.

14 Right?

15 MS. SHERRI WALLACE: Yes, sir.

16 THE COURT: Let me get on the right
17 page here. Just a minute.

18

19 BY MS. SHERRI WALLACE:

20 Q. Do you have any problem with that?

21 A. No.

22 Q. Okay. On your questionnaire, it says
23 that you have heard about the case from the Kerrville
24 newspaper.

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)
2 Q. This case has been highly publicized
3 and that is why we're here in Kerrville instead of
4 Dallas. There is nothing wrong with having heard of the
5 case, and maybe even being familiar with some of the

6 facts of the case. What there is a problem with is
7 having already formed an opinion.
8 To be a juror in this case, you can't
9 get your information from the newspaper. You have to set
10 that aside, anything you have heard, wait, and hear the
11 evidence here in the Courtroom, and be governed by the
12 law the Judge gives you. Could you do that?

13 A. Yes, because I don't know anything
14 about it.

15 Q. Okay. You said that you had seen some
16 stuff in the newspaper?

17 A. All they printed here was that it was
18 coming to trial here. I thought it said they shot her,
19 but, I mean, they were shot. But it was stabbed,
20 something like that.

21 Q. Okay.

22 A. That's all they printed in the paper.
23 I don't know anything else.

24 Q. All right. So --

25 A. I don't know anything else about it,
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1 to tell you the truth.
2 Q. You don't have anything set out in
3 your mind. Right?
4 A. I don't know how it happened, I mean,
5 yeah. I don't know how I missed it, to tell you the
6 truth, but I did miss it.

7 Q. Okay. Well, that's fine. That's
8 fine. It's four and a half hours away from here, where
9 it occurred.

10 A. Well, I know. But something like
11 that, I don't know how I missed it. To tell you
12 truthfully, I don't.

13 Q. No problem. No problem. That is
14 exactly what we're looking for, is somebody that can wait
15 on the evidence that comes out in the Courtroom and not
16 have already made a decision. So there is no problem.

17 A. And nobody seems to be talking about
18 it.

19 Q. Okay. Fair enough.

20 On your questionnaire you said that
21 you were in favor of the death penalty.

22 A. Yes.

23 Q. Can you tell me a little bit about
24 why?

25 A. I figure if someone has taken someone
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1 else's life, they are proved beyond a doubt that they are
2 guilty, why should they live? Unless we torture them
3 before we kill them. I mean, I am really for it. I
4 mean, I am sorry, but I am really for it.

5 Q. You do not need to apologize to me.

6 A. I think we let too many out. They do
7 it too many times and we let them -- they do it once, and
8 we let them out. They do it again, and then we send them
9 back.

10 Q. Okay.

11 A. I mean, I'm sorry, I'm really for it.

12 Q. Well, like I said, no need to
13 apologize to me. Have you always felt that way?

14 A. Yes.

15 Q. Okay. Let me talk to you a little bit
16 about how capital murder works, and how it's set up here
17 in Texas.

18 There are several different ways to be
19 found guilty of capital murder, and therefore be eligible
20 for the death penalty. To kill someone, doesn't in and
21 of itself, make you eligible for the death penalty. You
22 have to have a murder plus something else.

23 For instance, if you murder a police
24 officer, that is a death penalty. If you murder a prison
25 guard, that is a death penalty crime. If you commit a
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1 murder while doing another felony, like if you are
2 robbing a bank, or if you kidnap somebody or rape

3 somebody, then you are eligible for the death penalty.
4 If you kill more than one person, a
5 serial killer, it applies. If you hire somebody,

6 murder-for-hire sort of scheme, that is a possible death
7 sentence. Or, if you kill a child under the age of six,
8 which is what we're concerned with here.

9 Those are, roughly, the crimes that
10 are eligible for the death penalty in Texas. Is there

11 anything else that you can think of that comes to mind
12 that you think should be covered by the death penalty

13 sentence?

14 A. Well, can I just ask you a question?

15 Q. Sure. You can ask me anything.

16 A. Why are policemen, I mean, was it

17 because they were premeditated or something? Why just a
18 policeman or an officer of the law? And not just a
19 person?

20 Q. Well, police officers and firemen are

21 protected when they are working in the line of duty.

22 They are working to protect society and for our safety.

23 And so, in the line of duty, I mean, if a police officer

24 is just shopping at the grocery store --

25 A. Oh, he has to be in the line of duty?

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1 Q. Right.

2 A. Then it's automatic, then?

3 Q. Right.

4 A. Okay.

5 Q. Does that clear that up?

6 A. Yes, on that.

7 Q. Yeah, it's not automatically. We have

8 to prove it, of course.

9 A. Well, yeah. But I mean that is what

10 you could see for that.

11 Q. Right. Correct.

12 A. That penalty for that. Okay.

13 Q. Is there anything else, or any

14 concerns you have about those different types of crimes?

15 A. No.

16 Q. Okay. Once the defendant is found

17 guilty -- it used to be years and years ago, I think

18 about when Mr. Mulder started practicing law.

19

20 MR. DOUGLAS MULDER: When I was born.

21

22 BY MS. SHERRI WALLACE:

23 Q. Yes, or something like that. It used

24 to be the juror said: Death or life. Okay? They don't

25 do that anymore. They have to answer these two

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1 questions. And I am going to go over with you, in
2 detail, a little bit about them, but I would like to talk
3 with you about the first one right now.

4 I'm going to read it: "Do you find
5 from the evidence beyond a reasonable doubt, that there
6 is a probability that the defendant would commit criminal
7 acts of violence that would constitute a continuing
8 threat to society?" Okay?

9 The key of this question, is that
10 after you have found the defendant guilty, you must
11 revisit the evidence. In the second phase of the trial,
12 the punishment phase of the trial, you may get to hear
13 more evidence, and you may not. Even if you don't, you
14 have to kind of close your mind to guilt, and then reopen
15 it, and look at all of the evidence again to decide this
16 question. You can't automatically say, "Yes, the
17 defendant would be a continuing threat, because she did
18 this crime." Okay?

19 Could you wait and make your
20 determination in the second phase, and not automatically
21 answer this question "yes"?

22 A. Okay. You are saying that I have got
23 to decide if they are going to do this again, before I
24 can give them the death penalty?

25 Q. Uh-huh. (Attorney nodding head

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1 affirmatively.)
2 A. By just this one act, of what they
3 have done, that you have proven that they have done?
4 Q. Well, what I am saying, that you may
5 just hear this one act.

6 A. So, a person can kill someone else,
7 and we have to decide if they are going to kill someone
8 else?

9 Q. Well, let's talk a little bit --

10 A. Well, I mean --

11 Q. Yeah, let's just talk a little bit
12 about --

13 A. I mean, if they have killed somebody,
14 they killed somebody, and you have proved it.

15 Q. Right.

16 A. So, we don't have to necessarily give
17 them the death penalty.

18 Q. No, you don't. That is a second --

19 A. Well --

20 Q. We have -- okay, let, me start over.

21 Let me try this again. In a capital murder case, the
22 first part is, have we proved the indictment, in that she
23 killed a child under the age of six? Okay?

24 A. Okay.

25 Q. Have we proved that to you beyond a

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1 reasonable doubt? That is the first phase. Once you
2 decide that she is guilty of that, then we go to the
3 second phase. The second phase of the trial is called
4 the punishment phase. Okay? Now, I can't tell you about
5 the facts of the case.

6 A. Oh, yeah.

7 Q. And I can't tell you about the
8 punishment part of the case. All I can say is really
9 nothing. You may hear more evidence, and you may not.
10 Okay? But you cannot automatically say, "I found her
11 guilty, so I am going to answer that first question
12 'yes.'"

13 A. I can say this much, and be truthful
14 with you: If a kid is involved, I would say "yes."

15 Q. Okay. You had said that --

16 A. They are defenseless.

17 Q. You said that there were crimes that
18 called for the death penalty solely because if a child
19 was hurt or killed.

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

22 Q. And people -- many people feel like
23 you do.

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

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1 Q. It may be that you don't need any more
2 evidence. Once we have proved to you that she actually
3 committed this crime, and you found her guilty, that is
4 all you need to know.

5 A. I'm sorry, it is.

6 Q. Okay. However, the law in this case,
7 and the Judge will instruct you, that you can't
8 automatically answer the questions in such a way that
9 would result in a death sentence. You must relook at the
10 evidence. What this is all about, Ms. Arlington --

11 A. Well, it would be fine, if it wasn't a
12 child, I might, because an adult might do it. I mean,
13 there might be a reason why.

14 Q. Okay.

15 A. But you are talking about somebody
16 that young, they have done nothing to you.
17 Q. Well, hang on a second.
18 A. Okay.
19 Q. What this is all about, what we need
20 here, and I kind of talked about it on the pretrial
21 publicity part. What we need, are 12 people that have
22 not prejudged the case. It is okay to have strong
23 feelings.
24 A. Uh-huh. (Witness nodding head
25 affirmatively.)

Sandra M. Halsey, CSR, Official Court Reporter 938

1 Q. It is okay to be angry if a child is
2 hurt or killed. That's all okay. But what is not okay,
3 is to be a juror and say, "I haven't heard anything, but
4 if this happens, I'm voting this way." Okay? You can't
5 do that and be a juror.
6 A. That is fine.
7 Q. That is human nature to have those
8 feelings. But what I want to know from you is: Will you
9 make us prove to you; one, she is guilty. And then, two,
10 make us prove to you, from the evidence beyond a
11 reasonable doubt, that she would commit criminal acts of
12 violence in the future that would constitute a continuing
13 threat to society. Can you hold us to that burden, that
14 we gladly accept in this case? Because that is the law.
15 A. I know, but if you could prove it.
16 But I don't know how you can prove it. How do you know
17 what she is going to act like?
18 Q. Okay.
19 A. How do you know? You don't even know
20 what she has done now, or what they have done now. How
21 are you going to prove what they are going to do
22 tomorrow?
23 Q. Well, what does probability, what does
24 that word mean to you?
25 A. It might, probable.

Sandra M. Halsey, CSR, Official Court Reporter 939

1 Q. Okay. It might happen again?
2 A. Uh-huh. (Witness nodding head
3 affirmatively.)
4 Q. What does "criminal acts of violence",
5 what does that mean to you?
6 A. To hurt someone.
7 Q. Okay. So you wouldn't require another
8 murder, just any sort of hurt or injury? Most people

9 feel like you do.

10 A. I mean, if you prove to me that she

11 has done that to a child, you don't -- I don't see how
12 you can prove that she is not going to do it again, or if
13 she is going to do it again. I mean, I don't know how
14 you are going to prove that, because nobody knows.

15 Q. Well, I hear you, and what you are

16 saying is that we can't always predict the future. Is
17 that --

18 A. That's right. So I don't know how you
19 can prove it or disprove it.

20 Q. Okay. And --

21 A. That is just --

22 Q. And what you said is -- is that once
23 you found the defendant guilty of that, then because of
24 that --

25 A. Because of what? The age.

Sandra M. Halsey, CSR, Official Court Reporter 940

1 Q. Because --

2 A. Now an adult might be something
3 different.

4 Q. Okay.

5 A. That adult might have done something
6 to have provoked her or whatever. But a child?

7 Q. Okay.

8 A. That is just my feeling about it. I
9 can't change that.

10 Q. Well, I don't want to you to change
11 it. But what I want to know is, that if you will wait
12 until --

13 A. Well, you would have to prove her
14 guilty, if that is what you are saying.

15 Q. Right.

16 A. But I'm saying, if she was proved
17 beyond a doubt in my mind that she was guilty, I would --
18 the death penalty, I'm sorry. There would be no life
19 sentence for me.

20 Q. Okay. If you -- folks have said
21 before, you know, "If the child was killed, then I think
22 she deserves to die." And we certainly understand those
23 feelings.

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

Sandra M. Halsey, CSR, Official Court Reporter 941

1 Q. A lot of people feel like you do. But
2 to sit as a juror in this case --

3 A. Well, that's all I can tell you, that
4 is the way I feel.
5 Q. To sit as a juror, you are not going
6 to make the call, death or life. You are not going to be
7 asked to make that decision. Okay?
8 A. Uh-huh. (Witness nodding head
9 affirmatively.)
10 Q. You are going to be asked to answer
11 those two questions. The first one we have talked about
12 a little bit: "Is there a probability that the defendant
13 would commit criminal acts of violence that would
14 constitute a threat to society?"
15 You are going to be asked to answer
16 that "yes" or "no." Okay? You don't have to think of a
17 set of circumstances where you would answer that question
18 "no." And you don't have to think of a set of
19 circumstances where you would answer that question "yes."
20 You just have to promise the Court that you will wait and
21 hear the evidence in this case. And then make us prove
22 to you, beyond a reasonable doubt, question number 1
23 is -- should be answered "yes." Can you do that, Ms.
24 Arlington? Could you follow --
25 A. I can only tell you what I am saying.

Sandra M. Halsey, CSR, Official Court Reporter 942

1 Q. Okay. Well, could you follow the law?
2 A. If you proved beyond a reasonable
3 doubt that she did it, then I think you would have proved
4 that she is a threat to society. I'm sorry.
5
6 MR. RICHARD C. MOSTY: We will submit
7 her.
8 MR. GREG DAVIS: Do we have an
9 agreement?
10 MR. RICHARD MOSTY: Yes.
11 MS. SHERRI WALLACE: We thank you, Ms.
12 Arlington.
13 THE COURT: Ms. Arlington, thank you
14 very, very much for your time, your attendance, and your
15 patience.
16 THE PROSPECTIVE JUROR: Thank you.
17 You are welcome.
18 THE COURT: Oh, Ms. Arlington, one
19 thing. If you would please remember, do not talk about
20 anything today, or this case, until the trial is over,
21 which should be in early February. We have a gag order
22 in effect and sanctions can be imposed, which include
23 monetary fines or jail time.
24 MR. DOUGLAS MULDER: Especially to Mr.

25 Moretich.

Sandra M. Halsey, CSR, Official Court Reporter 943

1 THE COURT: Yes. All right. Thank
2 you. I think they came down together.
3 Can we have an agreement card signed
4 out there, Ms. Wallace? I'll use you to do that.

5 MS. SHERRI WALLACE: Judge, we can
6 just say we will accept the juror and you want to submit
7 her for cause.

8 MR. DOUGLAS MULDER: We will just
9 submit her for cause.

10 THE COURT: Motion for cause on the
11 part of the defense is granted.

12

13 (Whereupon, the proceedings

14 Were recessed for the

15 day, to return on the

16 next day, October 31, 1996,

17 at 9:00 a.m. at which

18 time the proceedings

19 were resumed in open

20 court, in the presence

21 of the defendant, with her

22 attorney, and the State

23 being represented by the

24 D.A., as follows:)

25

Sandra M. Halsey, CSR, Official Court Reporter 944

1 (These proceedings are continued to
2 the next volume in this cause.)

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Sandra M. Halsey, CSR, Official Court Reporter 945

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 946

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 947