

# Volume 15

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

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12

13 STATEMENT OF FACTS

14 JURY VOIR DIRE

15 INDIVIDUAL JURORS HEARING

16 VOL. 15 OF VOLS.

17 October 31, 1996

18 Thursday

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1 C A P T I O N

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4 BE IT REMEMBERED THAT, on Thursday, the 31st day of

5 October, 1996, in the Criminal District Court Number 3 of

6 Dallas County, Texas, the above-styled cause came on for

7 a hearing before the Hon. Mark Tolle, Judge of the

8 Criminal District Court No. 3, of Dallas County, Texas,

9 without a jury, and the proceedings were held, in open

10 court, in the City of Kerrville, Kerr County Courthouse,

11 Kerr County, Texas, and the proceedings were had as

12 follows:

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

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4 HON. JOHN VANCE

5 Criminal District Attorney

6 Dallas County, Texas

7

8 BY: HON. TOBY L. SHOOK

9 Assistant District Attorney

10 Dallas County, Texas

11

12 AND:

13 HON. JOHN GRAU

14 Assistant District Attorney

15 Dallas County, Texas

16

17 AND:

18 HON. SHERRI WALLACE

19 Assistant District Attorney

20 Dallas County, Texas

21

22 APPEARING FOR THE STATE OF TEXAS

23

24

25

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1 ADDITIONAL APPEARANCES:

2

3 HON. DOUGLAS D. MULDER

4 Attorney at Law

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6 717 N. Harwood

7 Dallas, TX 75201

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9 AND: HON. CURTIS GLOVER

10 Attorney at Law

11 2650 Maxus Energy Tower

12 717 N. Harwood  
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15 AND: HON. RICHARD C. MOSTY  
16 Attorney at Law  
17 Wallace, Mosty, Machann, Jackson & Williams  
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19 Kerrville, TX 78028  
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21 AND: HON. S. PRESTON DOUGLASS, JR.  
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1  
2 AND: HON. JOHN HAGLER  
3 Attorney at Law  
4 901 Main Street, Suite 3601  
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6 ALL ATTORNEYS REPRESENTING THE  
7 DEFENDANT: DARLIE ROUTIER  
8 MR. HAGLER HANDLING THE APPEAL  
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10 HON. ALBERT D. PATILLO, III  
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14 APPEARING FOR: Witness-  
15 Detective Jimmy Patterson

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

2  
3 October 31st, 1996  
4 Thursday  
5 8:25 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. Let's go back  
18 on the record in the Darlie Routier case.  
19 Ms. Huckobey, come on up here, please,  
20 ma'am. If you will be kind enough to have a seat here.

21 THE PROSPECTIVE JUROR: All right.  
22 THE COURT: Ma'am, raise your right  
23 hand.

24 Do you solemnly swear or affirm you  
25 will true answers make to all the questions propounded to  
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1 you concerning your qualifications as a juror, so help  
2 you God?

3 THE PROSPECTIVE JUROR: I do.

4

5 (Whereupon, the prospective

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

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

12

13 THE COURT: Thank you.  
14 Ms. Huckobey, we have the State of

15 Texas today represented by Mr. Toby Shook and Ms. Sherri  
16 Wallace from the Dallas County District Attorney's  
17 Office.

18 The defense is represented by Mr.

19 Douglas Mulder and Mr. Richard Mosty. And, of course,  
20 this is the defendant, Darlie Routier, sitting over here  
21 to your far right.

22 All right. Mr. Shook.

23 MR. TOBY SHOOK: Thank you, Judge.

24

25

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1 Whereupon,

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3 SUSAN ROBERTA HUCKOBAY,

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

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10 VOIR DIRE EXAMINATION

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12 BY MR. TOBY L. SHOOK:

13 Q. Ms. Huckobey, again, my name is Toby  
14 Shook. I'm one of the Assistant District Attorneys in  
15 the case, and I will be asking you questions on behalf  
16 of the State today. All right?

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

19 Q. I want to thank you for providing us  
20 with a lot of information on your questionnaire and  
21 filling that out. It has been very helpful.

22 Let me ask you: Has anything changed,  
23 any more information or anything important come up within  
24 the last two days?

25 A. No. There's -- the question about,  
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1 "If you could pronounce the death penalty," I did answer  
2 that "yes," but I don't want to. I don't want to live  
3 with that.

4 Q. Well, actually, I think you may have  
5 answered it two ways. Another part of the questionnaire,  
6 you said that you couldn't do that.

7 A. Right.

8 Q. Okay. Well, that is what we want to  
9 talk about a lot today.

10 A. Uh-huh. (Witness nodding head

11 affirmatively.)

12 Q. Ms. Huckobey, what we are looking for

13 are just your honest answers, and no one knows yourself,  
14 obviously, better than yourself.

15 A. Uh-huh. (Witness nodding head

16 affirmatively.)

17 Q. We call a lot of people down and get

18 all kinds of folks down here on any of these cases. Have  
19 you ever served on a jury before?

20 A. No, sir, I have not.

21 Q. Have you ever been called down before?

22 A. Yes, sir.

23 Q. Okay. Usually we talk to jurors in

24 one great big panel. But since this is a death penalty  
25 case, the law requires us to talk to each and every one  
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1 individually. People feel strongly one way or the other

2 about this issue, so we want to be sure to air it out

3 very carefully.

4 Like I said, there are no right or

5 wrong answers, just your honest opinion. We're not down

6 here giving you a test for good citizenship, and we don't

7 want jurors that will just answer questions the way they

8 think the lawyers want them answered. You know what I am

9 saying?

10 Sometimes we get jurors who will

11 answer questions one way on one side, and will give the

12 exact opposite answers to the other lawyer. Okay?

13 A. I understand.

14 Q. All right. Like I said, we get all

15 kinds of folks down here. Some people are qualified to

16 sit on some types of cases, and not qualified to sit on

17 other types of cases.

18 A couple of examples: Sometimes we

19 will have a DWI case, and someone may have had a loved

20 one killed in a DWI-type accident. They will say, "Look,

21 if it was any other type of case, I could sit and listen

22 to the evidence. But I have had this experience in my

23 life and I feel this way. I am so much against drinking,

24 I couldn't be fair in this case." That is fine, if they

25 feel that way.

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1 We have had other people that may have

2 had a bad experience with a police officer, or maybe one  
3 of their family members has. And if they know a certain  
4 agency is going to be involved, they will say, "I just

5 couldn't listen to the evidence fairly that way." Or  
6 maybe they have been a victim of a violent crime, and  
7 they just couldn't sit and be fair to the defendant in  
8 that way. So it cuts both ways. You understand?

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

11 Q. The bottom line is, obviously, the  
12 State is seeking the death penalty in this case. That is  
13 our goal. That is what we want to prove to the jury.  
14 And so, we ask each and every juror about their feelings  
15 about the death penalty.

16 The first question we had on here, we  
17 said: "Are you in favor of the death penalty?" And you  
18 said, "No." And then you wrote in, "Do not feel this  
19 should be man's decision to end a life."

20 A. Exactly.

21 Q. And later on you said that you had a  
22 moral, religious, and personal belief that would prevent  
23 you from returning a verdict that would result in the  
24 execution of a woman.

25 A. Yes, sir, or a man.

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1 Q. Or a man? Okay.

2 A. Yes, sir.

3 Q. Just a human being?

4 A. Yes, sir.

5 Q. Okay. And that's fine. And I wish we  
6 could just let you go because you checked yours off, but  
7 the law requires us to inquire into these details a  
8 little more. Okay?

9 A. All right.

10 Q. So if you will, just bear with me?

11 A. Okay.

12 Q. Tell us in your own words why you feel  
13 you couldn't do that, and your opposition to the death  
14 penalty as a law. Why do you feel that way?

15 A. You noticed that I am registered  
16 nurse?

17 Q. Yes, ma'am.

18 A. So, I have spent my whole adult life  
19 preserving life.

20 Q. Okay.

21 A. And I do believe in that. Morally, I

22 do not participate in abortions, for the same reason. I  
23 made that decision over 30 years ago. It's just  
24 something you cannot undo. Okay? Twenty years from now,  
25 you can't say, "Gee, I'm sorry, we made a mistake," and  
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1 undo that. And I just think that only really the Lord  
2 can decide when life ends.

3 Q. Okay. And how long have you felt this  
4 way?

5 A. Many years.

6 Q. Okay. So, this is not something you  
7 just came up with?

8 A. No, not at all.

9 Q. Okay. And it's something you have  
10 given some thought to, I take it?

11 A. Yes, I have.

12 Q. And something --

13 A. Especially since I found out about  
14 this particular case.

15 Q. Sure. You have thought about it more  
16 over the last ten days?

17 A. Yes.

18 Q. Okay. And, are you positive of the  
19 way you feel about it?

20 A. I am very positive.

21 Q. Okay. Would it be safe to say you  
22 have a deep conviction about the way you feel?

23 A. It would be very safe to say.

24 Q. Okay. The same way you feel about not  
25 participating in abortions?

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1 A. Exactly.

2 Q. Okay. And, again, I appreciate your  
3 honesty, and I hear what you are saying. But the law  
4 requires me to go into a little further detail with you  
5 though. Okay?

6 A. Okay.

7 Q. So I'm not arguing with you, and I  
8 just want you to bear with me. Okay?

9 A. All right.

10 Q. Okay. In a death penalty case, like  
11 this one, and we can't get into the facts or anything

12 like this, but the procedure is this: The first part of  
13 the trial, we have to prove whether the defendant

14 committed the crime or not. It is a fact question:  
15 Guilt or innocence. The Judge told you about the

16 indictment in the case. That is what we have to prove.  
17 If we prove that to a jury, they would return a verdict  
18 of guilty.

19 We then move to the punishment stage,  
20 where you might hear additional evidence about  
21 background, and things like that. But at the close of  
22 that, you will get these questions.  
23 That first question, if you would just  
24 read that real quickly to yourself.

25 A. Okay.

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1 Q. Okay. That asks the jury to make a  
2 decision as to whether we have proven they would be a  
3 future danger. Do you understand that?

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

6 Q. Okay. It's another fact question.  
7 A. Yes.

8 Q. This last question is a little longer,  
9 if you would just take a moment to read that to yourself.

10 A. Okay. I have read it. I don't really  
11 understand it, but I read it.

12 Q. Well, let me tell you right now, we  
13 didn't think that one up.

14 A. Okay.

15 Q. It's a bit confusing. Here is the  
16 bottom line on that question: It's what we call the

17 mitigation question, kind of a "safety net." You know,  
18 that is the last question you get. You have already  
19 found them guilty.

20 A jury would have already found her a  
21 future danger, but you review the evidence and decide,  
22 well, is there evidence, mitigating evidence, that shows  
23 a life sentence should be imposed, rather than a death  
24 sentence?

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

2 Q. It gives the jury a way out to give a  
3 life sentence. But they have to do it based on the  
4 evidence. Okay?

5 A. I understand.

6 Q. Anyway, my point is this: A "yes"  
7 answer to that first question, and a "no" answer to the  
8 second, the Judge would have no choice but to sentence

9 the defendant to death. Okay?

10 Now, if you answer it any other way,  
11 he would give a life sentence. But the way our system is  
12 set up, there is only two choices once a person has been  
13 found guilty: Death or life. And that is determined by  
14 how the jurors answered those factual questions. Do you  
15 understand that?

16 A. I believe so.

17 Q. Okay. "Yes" answer that they are a  
18 future danger, and "no," there is no mitigating evidence,  
19 the Judge has no choice but to sentence the defendant to  
20 death.

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

23 Q. Any other way, he would give them a  
24 life sentence. My point is this: You don't go back  
25 there as a juror and write death or life. Okay?

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

3 Q. You answer these factual questions.  
4 But, it's safe to say, obviously, the way you answer  
5 those equals a death or life sentence. Do you understand  
6 what I am saying?

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

9 Q. You don't write it, but, ultimately,  
10 the same thing occurs.

11 A. Right.

12 Q. Okay. Now you have told me that you  
13 are opposed to the death penalty, morally.

14 A. Yes, sir.

15 Q. You have thought about it and it's  
16 something that you can't participate in?

17 A. Yes, sir.

18 Q. That is just the way you feel and no  
19 one is going to change your mind about that?

20 A. No, I'm afraid not.

21 Q. And that is fine if you feel that way.

22 A. Uh-huh. (Witness nodding head

23 affirmatively.)

24 Q. Because you see, we don't require

25 jurors to come down here and violate their moral

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1 convictions. Okay? If you are being honest with us?

2 All right.

3 A. Uh-huh. (Witness nodding head

4 affirmatively.)

5 Q. Some people can come in here and say,

6 "I can listen to those questions and I'll answer them and

7 if it results in death, that it is fine. I don't have

8 any qualms about it."

9 I have talked to other people, such as

10 yourself, that are opposed to the death penalty. And

11 they go, "Look, intellectually, I know what you are

12 telling me. You just have to prove these things by the

13 evidence."

14 A. Right.

15 Q. "And we answer questions, but I can't

16 change the way I feel. And I could never bring myself,

17 no matter what the evidence is, to answer these questions

18 in a way that would result in someone's death. I know I

19 don't have to write death in here, but I could never

20 answer those questions, because I can't remove how I feel

21 about my opposition to the death penalty." Do you

22 understand what I am saying?

23 A. Yes, sir. I think so.

24 Q. "It's something I can't do. I am just

25 morally opposed to it, and I could never answer those

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1 questions in a way, regardless of the evidence, that

2 would cause a person to be executed." Do you see what I

3 am saying?

4 A. Yes, sir, I do.

5 Q. Okay. Because we don't ask you in any

6 of these questions if you are opposed to the death

7 penalty or not?

8 A. I understand.

9 Q. That first question just asks: "Is

10 there enough evidence here, that you think there is a

11 probability that the defendant would continue to commit

12 criminal acts of violence?" It doesn't bring up the

13 death penalty?

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

16 Q. I have had people tell me, "I know you  
17 could prove that to me all day long in my mind, but I am  
18 still going to feel the same way about the death penalty.

19 So I'm not going to answer that question for you. I'm  
20 just telling you right now."

21 And I have had people tell me who are  
22 opposed to the death penalty that -- this last question,  
23 it allows a way for the juror to get out.

24 You know, you can always answer it in  
25 a way that they will get a life sentence. And they are  
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1 telling me, "You know, I don't know how bad this person  
2 may ultimately be. I mean, they could be the most  
3 vicious criminal that ever walked the face of the earth,  
4 the most dangerous person. But I am going to answer that  
5 question in a way to give them a life sentence, because I  
6 am opposed to the death penalty."

7 Do you understand what I am saying?

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

10 Q. We had a guy just yesterday, he is  
11 what we call a bottom-line guy, I guess. He said, "I  
12 don't care what your questions say, I'm telling you, I am  
13 opposed to the death penalty. And I'm not going to  
14 answer those questions in a way so anyone is going to get  
15 the death penalty. I'm sorry if I hurt your feelings,  
16 but that is the way I feel."

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

19 Q. Okay.

20 A. I think I would have a lot of trouble  
21 getting past "sufficient mitigating circumstances."

22 Q. Okay.

23 A. That would have to be very narrowly  
24 defined.

25 Q. Again, are you going to be able to  
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1 forget how you feel about the death penalty?

2

3 MR. RICHARD C. MOSTY: Your Honor, now  
4 wait a minute, she is not obligated to forget how she  
5 feels about the death penalty. She can take those  
6 beliefs in, all she has got to do is follow the law.

7 THE COURT: Sustained. Sustained.

8 Just because you are opposed to the death penalty, ma'am,  
9 does not mean that you are disqualified as a juror.

10 THE PROSPECTIVE JUROR: I understand.

11 THE COURT: Thank you very much.

12

13 BY MR. TOBY L. SHOOK:

14 Q. Now, we have some people -- or I have  
15 talked to some people that tell us that they really are  
16 opposed to the death penalty, but, I guess, that they can  
17 just sit there and answer those questions knowing that a  
18 person will be executed. Okay?

19 And then other people, like I say,  
20 say, "No, I just can't do it. I am telling you, I just  
21 couldn't answer those questions." They are honest with  
22 us. Okay? And that is what we're looking.

23 You have equated your opposition to  
24 the death penalty with how you feel about not  
25 participating in abortions.

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1 A. Exactly. Or euthanasia, or --

2 Q. I'm sorry?

3 A. Or euthanasia. Or any other medically  
4 induced --

5 Q. -- any other medical procedure for  
6 ending life?

7 A. Exactly.

8 Q. Okay. And no one will change your  
9 mind about that?

10 A. No, sir.

11 Q. Okay. It's something that you won't  
12 participate in?

13 A. Exactly.

14 Q. Okay. Not if a doctor said, "Look,  
15 you didn't make the decision. You are just going through  
16 some medical procedures you are trained to do."

17 A. No.

18 Q. You wouldn't do it?

19 A. No, because I have that right within  
20 my profession to refuse.

21 Q. Okay. And no one can force you on a  
22 jury, either.

23 A. Well, I didn't know that.

24 Q. Well, it depends on how you feel  
25 morally.

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1 A. Yes, I understand.

2 Q. If you have oppositions to this type  
3 of law, moral oppositions, that you can't remove from

4 your mind that would prevent you from answering these  
5 questions, that is fine.

6 Now, if you don't, that is fine, too.

7 But that is up to you because you know yourself best.

8 Okay?

9 A. All right.

10 Q. Now, I may be hearing you wrong, but  
11 if you tell me that you feel the same about the death

12 penalty as you do about not participating in abortions,  
13 what I'm hearing you tell me is, "I can't participate in  
14 this type of case."

15 A. Exactly.

16 Q. Okay. It is not a question of  
17 evidence?

18 A. No.

19 Q. It is a question of how I feel  
20 morally?

21 A. Yes, it is.

22 Q. Okay. And I'm not going to change  
23 your mind about that?

24 A. No, you are not.

25 Q. Just like I could never convince you,  
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1 or a doctor could never convince you, to participate in  
2 an abortion procedure?

3 A. No.

4 Q. We couldn't convince you, in any way,  
5 to participate and to answer those questions that would  
6 result in someone's death?

7 A. No, not if they are going to result in  
8 death.

9 Q. Okay. You understand again, a "yes"  
10 answer and a "no" answer to those --

11 A. I understand.

12 Q. -- would result in a person's  
13 execution?

14 A. I do understand.

15 Q. Okay. But that is the bottom line on  
16 how you feel. Am I right, Ms. Huckabee?

17 A. Yes, it is.

18 Q. Okay. Sometimes, and you know how we

19 lawyers are, we always like to ask questions. And

20 sometimes we ask some of the same questions, but a  
21 different phrase to it. Okay? Sometimes I'll ask these  
22 same type questions of a juror, and they will answer me  
23 one way. And then another attorney might come in and

24 say, "Look, that first question, that is just a fact  
25 question. Don't you think if you got enough evidence,  
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1 you could answer that intellectually? Couldn't you be  
2 fair and honest and answer that question?"

3 And they will say, "Yes." Then they  
4 will say, "Well, look at the second question. Couldn't

5 you keep your mind open, if you saw something mitigating,  
6 you could answer it that way? And if there was not  
7 mitigating evidence, you would give it a 'no' answer.  
8 Couldn't you just do that intellectually?"

9 And these people say, "Well, yes, I  
10 guess so. I mean, I'm a fair person. I can decide these  
11 things." But, ultimately, what that would do is then a  
12 "yes" and "no" answer equals an execution.

13 A. Exactly.

14 Q. You understand that?

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

17 Q. Okay. Are you telling me, you know,  
18 that it's not a fact issue with you? It is that this is  
19 how you are morally opposed?

20 A. Exactly.

21 Q. So you could never answer those  
22 questions in a way, a "yes" and a "no," that is going to  
23 cause the Judge to sentence the defendant to die? It's a  
24 procedure you can't --

25 A. Factually or morally?

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1 Q. Well, there is our point. Some people  
2 can come in here and be like computers. Okay?  
3 They can get the information and spit  
4 out the answers, and their morals don't come into it.  
5 Other people can't remove their morals. They feel  
6 strongly about it. The way you are telling me you feel  
7 about abortion. Okay?

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

10 Q. You know, factually, you can do  
11 procedures and assist a doctor in an abortion, and maybe  
12 remove -- some people can do that and not think about  
13 that morally.

14 A. Exactly, uh-huh. (Witness nodding  
15 head affirmatively.)

16 Q. Same thing here, some people can do  
17 that. They can sit there and tell us, you know, a person  
18 can come in and say, "I don't believe in abortion, but I  
19 can do these procedures. It's not my decision, you know.  
20 I will do what I am trained to do."

21 Other people like yourself, you would  
22 come in, I take it, and say "Look, I can assist a doctor  
23 in these procedures, but I am not going to."

24 A. Exactly.

25 Q. "I couldn't live with myself. I am

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1 morally opposed to it."

2 A. Right.

3 Q. Some people feel the same thing about  
4 the death penalty. "Factually, I know I could answer the  
5 questions, but I am not going to remove my morals from  
6 that point." Do you understand what I am saying? "I am  
7 not going to participate in this procedure, because  
8 morally I could not follow this type of law. I don't  
9 believe in it."

10 A. Exactly.

11 Q. You understand what I'm saying?

12 A. Yes.

13 Q. I'm not trying to trick you or  
14 anything?

15 A. Okay.

16 Q. My point is this: We do have folks  
17 that come in here and tell us, "I can't participate, but,  
18 gosh, I'll answer your questions." Okay?

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

21 Q. But the bottom line is what you need  
22 to know is, if you answer the questions in a way, it  
23 could result in someone's death. And when they get down  
24 to brass tacks in the jury box, I think they start  
25 thinking about that, and maybe they couldn't do it. Do  
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1 you understand it?

2 A. Yes, sir. That is where I would come  
3 in. I just couldn't --

4 Q. You just couldn't do it?

5 A. I couldn't do it.

6

7 MR. DOUGLAS MULDER: Judge, I think  
8 this is repetitious.

9 THE COURT: Sustained.

10

11 BY MR. TOBY L. SHOOK:

12 Q. Okay. But I'm not going to change  
13 your mind on any of that?

14 A. No, you are not.

15 Q. Okay. I appreciate your honesty with  
16 me, Ms. Huckabee.

17 A. Thank you.

18 Q. The only other area I had to go in is  
19 it looks like, is it you and your husband own, is it some  
20 type of --

21 A. A home health agency.

22 Q. Yeah, okay. It's looks like you do a  
23 lot of the work, is that right?

24 A. I am the only R.N. for 21 home-bound  
25 patients.

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1 Q. What are your hours when you work?

2 A. We actually work 8:00 to 5:00, but we  
3 are on call all the rest of the time. An R.N. has to be  
4 on call.

5 Q. This trial is slated to begin January  
6 the 6th, and we think it will last two weeks. And it  
7 will be about 9:00 to 5:00, is when you will be -- having  
8 to be down listening to the evidence.

9 Would that cause, and I know --

10 obviously, it's going to be an inconvenience to everyone,  
11 but some people, because of their job situation, just  
12 wouldn't be able to sit as jurors and listen to the  
13 evidence because of something involved with their job.

14 Other jurors say, "Look, it's an  
15 inconvenience, but if I am on the jury, I will listen to  
16 the evidence." What is your job situation as far as  
17 those two weeks? Would you able to serve,  
18 hypothetically, if you ever did get on the jury?

19 A. It would be very difficult. I am the  
20 only one that coordinates the care and directs my L.V.N.s  
21 and knows my patients. Okay? There are 21 home-bound  
22 patients. It would be a real problem, and I would  
23 probably end up working all evening, after I got out of  
24 Court, because there is just stuff I have to do. We deal  
25 with Medicare, primarily. And so, you know, there is

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1 paperwork, a lot of it.  
2 Q. What we need to know, bottom line, is  
3 if -- and again, we are talking hypotheticals, but if you  
4 got on a jury for two weeks, would you be able to  
5 concentrate on the evidence or would you be thinking  
6 about --

7 A. I would be at work mentally.

8 Q. You would be at work mentally?

9 A. Yes.

10 Q. So you wouldn't be able to sit there  
11 and give this trial your full concentration, and listen  
12 to the evidence?

13 A. Well, if I were selected, and that was  
14 my duty, I would --

15 Q. Then you could?

16 A. I would do it.

17 Q. Okay. Again, we're talking about  
18 hypothetically. But, getting back to what we really have  
19 been talking about here --

20

21 MR. DOUGLAS MULDER: Judge, we are  
22 going to object to any repetition.

23 THE COURT: Sustained. Let's move on.

24 MR. TOBY L. SHOOK: That's all the  
25 questions I have, Judge.

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1 THE COURT: Thank you.

2

3 VOIR DIRE EXAMINATION

4

5 BY MR. DOUGLAS D. MULDER:

6 Q. Ms. Huckobey, as Judge told you, my  
7 name is Doug Mulder, and I need to visit with you a  
8 little bit.

9 A. All right.

10 Q. I just kind of want to get to know you  
11 a little bit better.

12 A. All right.

13 Q. Let me make one thing real clear here  
14 at the start: When the indictment is read by the  
15 prosecution to Darlie --

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

18 Q. And the Judge asks her what her plea  
19 will be, she will enter an unequivocal plea of not

20 guilty.

21 A. Uh-huh. (Witness nodding head

22 affirmatively.)

23 Q. And we contend that we're never going

24 to get to these special issues. Okay?

25 A. Okay.

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1 Q. The trial is not going to go that far.

2 A. All right.

3 Q. We suspect that a jury will find her

4 not guilty, based on the evidence. Now that is our

5 position.

6 A. Uh-huh. (Witness nodding head

7 affirmatively.)

8 Q. Now, I need to visit with you a little

9 bit, and tell you a little bit about how things are done

10 since you have not served on a jury before.

11 A. All right.

12 Q. Procedurally, for example, the State

13 goes first, just like they talk to you first.

14 A. Uh-huh. (Witness nodding head

15 affirmatively.)

16 Q. If I had my druthers, I would prefer

17 to go first, because I think first impressions are mighty

18 important. But as a juror, you need to keep this in your

19 mind, because we don't get a chance to bring our case to

20 you until after they are through with their case. And if

21 you make up your mind based on what they brought you,

22 then we might as well fold up our tent right now. You

23 see? And that wouldn't be fair to us.

24 A. Uh-huh. (Witness nodding head

25 affirmatively.)

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1 Q. The law lets them go first because

2 they have the burden of proof. You see? The law says:

3 Whoever does the accusing, has to do the proving. Does

4 that make sense?

5 A. Yes, sir.

6 Q. She doesn't have to prove anything,

7 she just has to be here.

8 A. Okay.

9 Q. We're going to bring evidence, but we

10 don't have to. Now, the law says, that as a juror, you

11 will measure their proof by a benchmark or a standard

12 called beyond all reasonable doubt.

13 Now have you heard those terms before?

14 A. Certainly.

15 Q. Now, you know, back years ago on

16 Peyton Place they always talked about beyond a shadow of

17 a doubt, but that is not the law.

18 But anyway, you know, you hear various

19 renditions of that term, but the term is beyond all

20 reasonable doubt. And, you know, if you and I were to

21 sit down and draw up the rules that would govern the

22 trial of a criminal case, of course, we want to provide

23 for rules that would resolve as many criminal cases as we

24 possibly could.

25 And we would probably discuss the fact

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1 that, you know, when those 12 jurors get back to the jury

2 room, and they start deliberating this case, they are

3 going to have some doubts, perhaps. And we need a way to

4 revolve these doubts, so that they can arrive at a

5 verdict. Because if they just go back there and they

6 have these doubts and there is no resolution of the

7 doubts, then they will say, "Hey, we can't resolve this

8 case," and it has to be tried before another jury.

9 And we want to encourage juries, as

10 much as possible, to be honest about it, and to resolve

11 their doubts. And so the law says this, and we might, at

12 first blush, we might think it would be fairer if we had

13 those jurors go back there and make a list of the

14 reasonable doubts. And put them on a piece of paper and

15 list them all and number them, say from 1 to 21, or maybe

16 1 to 101, or whatever.

17 And we give the State the benefit of

18 all the odd number doubts, and we give the defendant the

19 benefit of all the even numbered doubts, and we would

20 say, "Well, maybe that is the fairest way to do it."

21 But the law says no. And the law says

22 that each time a juror has a reasonable doubt, they must

23 resolve that doubt in favor of the defendant. That is

24 the law. Not just in this state, but in all 50 states

25 and in the federal courts.

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1 Do you have any problem with that?

2 A. No.

3 Q. Okay. You know, the reason, I guess,

4 for that is, as jurors, you are the judges of the facts

5 proved. The facts are what you say they are. Okay?

6 A. Okay.

7 Q. Judge Tolle is the Judge of the law.

8 You see? But if he makes a mistake with respect to the  
9 law, we can appeal it to a higher court, and get it

10 corrected. Okay? So, no, he can't do us any harm,  
11 really, because we can always get it corrected by a  
12 higher court.

13 But as jurors, you are supreme as to

14 what the facts are. The facts are what you say they are.

15 Okay? There is no appeal on the facts. The facts are

16 what you say they are.

17 Let me give you an example, and I'm

18 going to go to the absurd, really, to make this point.

19 Assume, if you will, with me, that you are sitting on a  
20 jury down in Austin, and I guess I should say over in

21 Austin, or up in Austin, because we are not in Dallas, we  
22 are up here --

23 A. Right.

24 Q. -- or down here. But anyway, assume

25 you are on a jury in Austin and they are trying a bank  
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1 robbery case. You hear a witness get on the witness  
2 stand and swear to tell the truth. And the witness says,  
3 "I was there at the town square at high noon, and I heard  
4 a gunshot, and my attention was attracted over to the  
5 bank, and I saw a man come out of the bank, and he had a  
6 sack of money in one hand, and he had a gun in the other  
7 hand, and he had a mask on, and he ran out of the bank,  
8 and he jumped in a black stretch limousine, and he headed  
9 south towards San Antonio."

10 And the very next witness gets on the  
11 stand and swears to tell the truth, and says, "I, too,  
12 was in the town square at high noon on that day, and I,  
13 too, heard a gunshot, and my attention was attracted to  
14 the bank. And I saw a man come out of the bank, and he  
15 had a mask on, and he had a sack of money in one hand and  
16 he had a gun in the other hand. And he ran out and he  
17 jumped on a white horse and he rode north towards  
18 Dallas." Okay?

19 A. Okay.

20 Q. It can't be both ways. Right?

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

23 Q. So, maybe it goes to identity. But  
24 you go back into the jury room and you say, "Hey, I have

25 got a reasonable doubt as to the mode of escape. I mean,  
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1 was it a white horse headed north toward Dallas, or was  
2 it a black stretch limousine headed south toward San  
3 Antonio?"

4 And the other jurors agree, "You know,  
5 we have reasonable doubt, too."  
6 Suppose it benefits the defendant to  
7 call it a black stretch limousine headed south toward San  
8 Antonio. That's what it is. You see?

9 A. Yes.

10 Q. You resolve that doubt in favor of the  
11 defendant. And from that point forward, it is a black

12 limousine headed south toward San Antonio. That is the  
13 way that works. And like I said, I go kind of to the  
14 extreme to make my point. But as jurors, your power is  
15 awesome, it's awesome. It really is.

16 You also determine the credibility of  
17 the witnesses. That is, whether or not they are telling  
18 the truth. You may look at them, and it may be the way  
19 they fidget on the witness stand, or it may be the way  
20 they won't look at you, you know how people are?

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

23 Q. You know, you have had experience with  
24 that?

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

2 Q. In your adult years.

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

5 Q. Maybe with children sometimes. Maybe  
6 with -- but you just get that feeling about it, that,

7 "Hey, this ain't the way it is, you know. I can tell  
8 that person is lying." And maybe it is his body  
9 language, and maybe it is the way his hands shake, or the  
10 way his voice cracks, or whatever it might be, but, you

11 know, that inner sense that tells you something is not

12 right.

13 So, you as jurors will be the judges

14 of the credibility of the witnesses, and the weight that  
15 you want to assign to the testimony of each witness.

16 In other words, you may believe what

17 one witness tells you 100 percent. You may believe

18 absolutely nothing of what another witness tells you.

19 But you, as jurors, will make those decisions. You see?

20 Judge Tolle won't advise you as to

21 the -- and the law doesn't permit him to, he can't tell

22 you, you know, "Don't believe that second witness. You

23 know he is a liar."

24 But at any rate, you will have those

25 duties and responsibilities. And then, at the conclusion

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1 of the trial, the Judge will give you his instructions on  
2 the law. You don't have to know any law to serve on a  
3 jury. You are probably a whole heck of a lot better off  
4 if you don't know any law. Okay?

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

7 Q. Because Judge Tolle will give you all  
8 the law that is applicable to the particular case in a  
9 written instrument called the Charge. You will have that  
10 when you go back into the jury room, and if anybody has  
11 any questions as to what the law is, it will be right  
12 there. You will probably all have a copy of the Charge.  
13 You all will go back and read it, so that you understand  
14 what the law is that applies to this particular case.

15 And, you know, one thing I have  
16 noticed about your jury questionnaire here is that you  
17 don't know anything about this case.

18 A. No, I don't.

19 Q. That is what we like. That is ideal,  
20 somebody who doesn't know anything about it, who can just  
21 go back and, you know, and sit in that jury box and just  
22 listen to the evidence, and just call it the way you see  
23 it.

24 Many, many years ago when I started  
25 practicing law, and trying cases in Texas, I was a  
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1 prosecutor like these folks are. And the law in a

2 capital murder case, the law required that the jury

3 foreman would take pen in hand and write "death" in the  
4 jury form, in the verdict form, and then sign his name to  
5 it.

6 And they changed that law. And, I

7 guess, they did it to -- so that more people could serve  
8 on a jury in a capital case. And the fact that some  
9 people oppose, and don't like capital punishment, doesn't  
10 disqualify them from serving as a juror in a capital

11 case, so long as they do this: So long as they can  
12 follow the law.

13 Now, there are a lot of people that

14 don't like the law. I didn't particularly like the law  
15 that -- remember the blue laws that we had here years  
16 ago, where you couldn't shop on Sundays?

17 A. Uh-huh. (Witness nodding head

18 affirmatively.)

19 Q. I mean, it seemed -- a long time ago.

20 But anyway, the stores couldn't stay open on Sundays,  
21 probably the Judge is the only one in this courtroom old  
22 enough to remember that.

23

24 THE COURT: I remember it very well,

25 yes.

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1 BY MR. DOUGLAS MULDER:

2 Q. But anyway, they had the blue laws,  
3 and you couldn't shop on Sundays. They couldn't stay  
4 open on Saturday and Sunday both.

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

7 Q. And anyway, they repealed, I didn't

8 like it. And some people didn't like the 55-mile-an-hour  
9 speed limits. You know.

10 But again, the situation is that if

11 you are qualified as a juror, so long as you can raise  
12 your hand and take an oath, that you will follow the law  
13 as given to you by the Court. You are an honest person.  
14 Do you feel like you could do the?

15 A. I could do it, certainly.

16 Q. Sure. And part of that -- and again,  
17 the only time we have to talk to you about punishment is  
18 at this stage. And it's like I said, we're not going to

19 get there. Okay?

20 But to be a qualified juror, you have

21 to be able to say that you will, regardless of how you  
22 feel about capital punishment, and I dare say this is a  
23 far cry from -- I see a great distinction between

24 abortion and capital punishment, myself. You know, I  
25 just don't think they are even close.

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1 A. Well, that is the whole issue, isn't

2 it? Right now?

3 Q. Right. I am with you as far as

4 abortion is concerned, but -- and capital punishment.

5 You have got a lot of -- I think you checked number 3

6 here which said --

7 A. Yes, that was the answer that I told

8 him that I had had time to reflect on.

9 Q. Yes, that comes most close to how you

10 feel about it.

11 A. Uh-huh. (Witness nodding head

12 affirmatively.)

13 Q. And there's a lot of company there. I

14 dare say, that I fit in that category myself. Where --

15 you know, many times we wish there was another way. But

16 you could still, under your oath as a juror, answer

17 questions truthfully based on the evidence, not based on

18 how you personally feel.

19 You could set aside, just like -- you

20 know, if you had read something about this case, or heard

21 something about it on the radio, or seen it and heard it

22 on TV, the law has no quarrel with a citizen being

23 informed of what goes on in their community.

24 And then on down the line serving as a

25 juror, when that case is tried. So long as they can put

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1 out of their mind what they have heard, or what they have

2 read in the newspaper, or what they have seen and heard

3 on television, and decide the case strictly on the

4 evidence that comes into Court. Okay?

5 A. Uh-huh. (Witness nodding head

6 affirmatively.)

7 Q. There will be witnesses; each witness,

8 before they take the stand, will raise their hand and

9 swear to God to tell the truth, and hopefully the

10 majority of them will do that.

11 Sometimes you have, well, you know,

12 the O.J. Simpson case is a good example. Where they had  
13 Mark Fuhrman, who is the police officer who later on  
14 plead guilty to perjury. You know? So, you have those,  
15 as unfortunate as those situations are, you have them in  
16 trials, occasionally. And, like I said, it's up to you  
17 as a juror to be on guard for anything like that.

18 Discussing this second phase, the  
19 first phase in any capital case involves guilt or  
20 innocence. We have in Texas what we call a bifurcated  
21 procedure.

22 The first stage of the trial deals

23 with guilt or innocence. If the defendant is found not  
24 guilty, everybody goes home. It's only if the defendant  
25 is found guilty that you go into the penalty stage.

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1 And then in a capital case, the  
2 penalty consists of evidence by both sides, or both sides  
3 are at least given the opportunity to offer evidence.  
4 They may or may not offer evidence. I only know what our  
5 position is going to be if they get that far.  
6 But, again, there are just two issues  
7 to be decided, and that is based on the evidence, not  
8 based on how you feel personally. You set that aside and  
9 just decide it based on the evidence.

10 Can you do that?

11 A. On the guilt or innocence part?  
12 Q. On the guilt or innocence part, yes.

13 A. I'm certain I could do that.

14 Q. No question about that?

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

17 Q. All right. Then you go into the  
18 second phase of the trial. Okay?

19 A. Okay.

20 Q. Again, you don't take another oath,  
21 but the same oath applies; that you will listen to the  
22 facts and the evidence as it comes to you from the  
23 witness stand, and decide these two special issues based  
24 solely on the evidence that comes to you. Okay?

25 A. Okay.

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1 Q. You have to listen to the evidence and  
2 decide what you believe and what you don't believe,

3 disregard what you don't believe, and then decide those  
4 special issues simply on the evidence that you receive in  
5 Court.

6 Special issue number 1: And you

7 listen. And if the State brings you evidence, that  
8 proves to your way of thinking, beyond a reasonable

9 doubt, that there is a probability, and that means more  
10 likely than not, I suspect?

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

13 Q. That the defendant would commit

14 criminal acts of violence that would constitute a  
15 continuing threat to society? You answer it "yes," if  
16 there is a probability. If the State has brought you

17 evidence to satisfy you, beyond all reasonable doubt, you  
18 answer that "yes." Okay?

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

21 Q. Could you do that?

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

24 Q. If the State has brought you evidence?

25 A. Yes.

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1 Q. Okay. Now you would have to, under  
2 your oath as a juror, wouldn't you?

3 A. Yes.

4 Q. Okay. Then you get to the second  
5 issue: Taking into consideration all of the evidence,  
6 including the circumstances of the offense, that is the  
7 facts that you relied on to find the defendant guilty.

8 Okay? The defendant's character, that is the evidence of  
9 her character, and background, and the personal moral  
10 culpability, that is the moral responsibility of the  
11 defendant, is there sufficient mitigating circumstance or  
12 circumstances to warrant that a sentence of life  
13 imprisonment rather than a sentence of death be imposed?

14 You would have to look at all of the  
15 evidence, to see if there is sufficient mitigating  
16 circumstance or circumstances to warrant imposing a life  
17 sentence as opposed to a death sentence. But that is  
18 based on the evidence. Okay?

19 A. Uh-huh. (Witness nodding head

20 affirmatively.)

21 Q. Now, under your oath, as an honest  
22 person, could you do that?

23 A. Well, now here is where the situation  
24 comes in. I'm not a robot and I don't turn off morals  
25 and ethics.

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1 Q. I know that.

2 A. Okay? So this is where the problem  
3 comes in here.

4 Q. Sure.

5 A. In the moral and ethical issue. Could  
6 I do it? Yes. Could I live with it? I don't know.

7 Q. Okay. Well, you know, it's not  
8 supposed -- it should not be easy to answer any of these  
9 questions.

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

12 Q. Don't you agree?

13 A. Oh, I agree.

14 Q. I mean it should be a difficult,  
15 heartfelt decision.

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

18 Q. Don't you agree?

19 A. I agree with that, yes.

20 Q. And, you know, sometimes under your  
21 oath, you just have to, you know, do what you feel the  
22 evidence calls for. And you could do that? And it's not  
23 going to be easy.

24 A. Well, I am an intelligent person.

25 But, again, I am going to have a real problem.

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1 Q. I know it.

2 A. Because I am going to have to live  
3 with this forever, whatever decision is made.

4 Q. We all are.

5 A. Yes.

6 Q. All of us will.

7 A. Exactly.

8 Q. And it should not be any decision that  
9 would be taken lightly.

10 A. Right.

11 Q. Don't you agree?

12 A. I understand that, yes.

13 Q. I mean, it should be a soul-searching,

14 heartfelt, come from the inside, know absolutely that you  
15 are making the right decision, type of decision.

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

18 Q. And you could do that it? It may be  
19 difficult to live with one way or the other, depending on  
20 how it goes. Right?

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

23 Q. Either way it could be difficult to  
24 live with.

25 A. Exactly.

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1 Q. Couldn't it?

2 A. I understand, yes.

3 Q. But you could do it, if called upon to  
4 do it; is that right?

5 A. I probably could, but I wouldn't want  
6 to. But I really -- I don't want to be in this position.

7 Q. I know that. And I don't want to act  
8 like I'm picking on you. You don't think I am picking on  
9 you. Do you?

10 A. Well, I think you keep coming at me,  
11 yeah.

12 Q. Well, I don't mean to.

13 A. It's the same issue, I think I have  
14 already answered it.

15 Q. I think you have too.

16 A. I have answered you several times.

17 Q. You have.

18 A. On the same issue.

19 Q. But I have a responsibility to her --

20 A. I understand you do.

21 Q. -- to ask these questions. And I know  
22 where you are coming from, but the record has to be  
23 clear. She is taking everything down that is said by  
24 both of us.

25 A. Uh-huh, I understand.

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1 Q. And it's got to be clear in there that  
2 you could do it, but it wouldn't be easy, and it may be  
3 difficult to live with on down the line. And that is how  
4 you feel, is that right?

5 A. Yeah. I'm not going tell you, yes, I  
6 can do it, absolutely. I don't know. I have never been  
7 in this situation. I don't know what you are going to

8 say, I don't know what they are going to say.

9 Q. But that is kind of the way -- don't

10 you think that is kind of the way it should be. Don't  
11 you think it would be unfair, to one side or the other,  
12 if I got a chance to come up here and say, "Look, now if  
13 we prove 1, 2, 3, 4, 5, and 6, can you assure me that you  
14 will do such and such and such?" Don't you think that  
15 would be unfair, maybe to them?

16 A. I'm sorry, I don't understand your  
17 question.

18 Q. Okay. If I tried to commit you, and I  
19 said, "If I prove A, B, C, and D, can you assure me and  
20 promise me that you will do such and such? That you will  
21 vote such and such a way?"

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

24 Q. Don't you think that would be unfair,  
25 perhaps, to them?

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1 A. To the prosecution?

2 Q. Yes. If I tried to commit you as to  
3 how you would vote, given a set of circumstances?

4 A. Well, certainly.

5 Q. Right. So, don't you think you are  
6 better off, I mean, I know you have not been in that

7 situation before. And, of course, there are very few  
8 people that serve on more than one death penalty jury,  
9 really. At least that has been my experience.

10 I mean, it's an awesome  
11 responsibility. It is. And I would not think much of

12 anyone who didn't take it very seriously. I mean, it is  
13 a serious business. I mean, you can't get much more  
14 serious.

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

17 Q. Did I leave your jury questionnaire,  
18 did I take it back?

19 A. Yes, you did.

20 Q. Did I? I'm sorry.

21 Let me touch on a couple other things  
22 real quick.

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

25 Q. The Judge will tell you that the  
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1 indictment is no evidence of guilt. Okay? It is simply  
2 the pleading and paper by which the defendant is brought  
3 into court. It informs her of the charges against her,  
4 so that she can prepare her defense. Just as it advises  
5 you, as jurors, of what the State must prove beyond a  
6 reasonable doubt.

7 A. Okay.

8 Q. Okay?

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

11 Q. No problem with that?

12 A. No, I don't think so.

13 Q. All right.

14 A. I don't know enough about it.

15 Q. Do you feel that you can keep an open  
16 mind until we get a chance to bring our side of this case  
17 to you?

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

20 Q. Understand that there are oftentimes  
21 two sides to any case.

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

24 Q. Right?

25 A. Yes, I have been in administration a  
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1 long time.

2 Q. All right. So, you know you can't  
3 really make a decision until you hear both sides?

4 A. Exactly.

5 Q. And probably, with what you have been  
6 doing, you are good at withholding judgment until you  
7 hear both sides.

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

10 Q. And give both sides a fair shake.

11 A. Right, I don't have a problem with  
12 that. No.

13 Q. You would give us both a fair shake?

14 A. I would hope so. Certainly, yes.

15 Q. You don't have any reason, other than  
16 what we have touched on, why you couldn't be perfectly  
17 fair to both sides?

18 A. No.

19 Q. You would do your dead-level best to  
20 be fair to both sides?

21 A. Yes, I would.

22 Q. Okay.

23

24 MR. DOUGLAS MULDER: Ms. Huckobey,

25 thank you very much.

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1 THE PROSPECTIVE JUROR: You're  
2 welcome.

3 THE COURT: Ms. Huckobey, let me ask  
4 you this: You understand that if you listen to testimony  
5 and review the evidence, and you feel the State has not  
6 proven their case, you can find the defendant not guilty?

7 THE PROSPECTIVE JUROR: Oh, yes, sir.

8 THE COURT: Well, if that occurs, that  
9 is it.

10 THE PROSPECTIVE JUROR: Right.

11 THE COURT: Everybody goes home.

12 THE PROSPECTIVE JUROR: Yes, sir, I  
13 understand.

14 THE COURT: Do you understand that?

15 THE PROSPECTIVE JUROR: Yes, sir, I  
16 do.

17 THE COURT: If you feel the State has  
18 proven their case, could you find the defendant guilty?

19 THE PROSPECTIVE JUROR: Yes, I could.

20 THE COURT: All right. Now then, you

21 stated in your questionnaire: "Although I do not believe  
22 the death penalty ever ought to be invoked, as long as  
23 the law provides it -- for it, I could assess it in the  
24 proper set of circumstances." That was your answer?

25 THE PROSPECTIVE JUROR: Yes, it was.

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1 THE COURT: You also state: That you  
2 do have moral, religious, or personal beliefs that would  
3 prevent you from returning a verdict which would result  
4 in the execution of a woman. You answered that "yes."

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: All right. Mrs. Routier

7 is obviously a woman?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: If you are selected as a  
10 juror and you find the defendant guilty, we go to special  
11 issue number 1.

12 Could you follow the law as I would  
13 give it to you, and answer that depending on the  
14 testimony you hear and the evidence you receive  
15 concerning that issue?

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Knowing that if you answer  
18 it "yes," you would go to special issue number 2.

19 THE PROSPECTIVE JUROR: Yes, sir. I  
20 understand.

21 THE COURT: You could do that?

22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: All right. Special issue  
24 number 2: Could you listen to the testimony and review  
25 evidence and answer that according to the law and the  
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1 evidence? And if you thought the correct answer to that  
2 was "no," that there were no mitigating circumstances,

3 could you answer it "no," knowing that by answering it  
4 "no," that I would impose a death sentence on the  
5 defendant?

6 THE PROSPECTIVE JUROR: I don't  
7 believe I could do that.

8 THE COURT: All right. No matter what  
9 you heard?

10 THE PROSPECTIVE JUROR: No, sir, I  
11 don't think I could.

12 THE COURT: You would just answer it  
13 "yes," regardless of what you heard, even though you  
14 thought the State had proven it; is that right?

15 THE PROSPECTIVE JUROR: If that were  
16 the -- if I knew that was the end result, I don't believe  
17 I could do it.

18 THE COURT: Well, that is the end  
19 result.

20 THE PROSPECTIVE JUROR: That is what  
21 I'm saying to you.

22 THE COURT: All right. The Court  
23 holds the defendant (sic) --

24 MR. DOUGLAS MULDER: Well, Judge, let  
25 me ask her one last thing.

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1 MR. TOBY L. SHOOK: Judge, we will

2 object to that, we have finished questioning.

3 THE COURT: Well, I will let Mr.

4 Mulder, since it is the defendant, ask one last question.

5

6 BY MR. DOUGLAS D. MULDER:

7 Q. Ms. Huckobey, we're touching on your

8 qualifications, whether or not you are qualified to sit

9 on a jury.

10 A. Yes, sir.

11 Q. That is what we are talking about

12 here. You don't impress me as a woman who would answer a

13 question dishonestly, you know, regardless of what the

14 consequences were. You wouldn't do that, would you?

15 A. No. I am just looking at the

16 mitigating circumstances, and I can't imagine there not

17 being any, you know, in a case like this.

18 Q. Well, are you saying --

19

20 THE COURT: Well, we have gone over

21 that point. Assuming there are mitigating circumstances,

22 or there are none, let's assume there are none, no

23 mitigating circumstances, none whatsoever. Would you

24 still answer that question, so as to make sure that the

25 defendant would not receive a death penalty, regardless

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1 of what you heard?

2 THE PROSPECTIVE JUROR: I have to feel

3 like I would morally.

4 MR. DOUGLAS MULDER: Are you saying

5 you would answer it dishonestly?

6 MR. TOBY L. SHOOK: Judge, we are

7 going to object. She has made herself very clear, Judge.

8 THE COURT: We understand that. I am

9 going to hold the prospective juror disqualified.

10 MR. TOBY L. SHOOK: Judge, we will

11 submit the juror under 35.16(b)(1), that she does have a

12 problem with --

13 THE COURT: All right. I'll grant the

14 State's motion for disqualification.

15 Thank you very much for coming. We

16 appreciate your candor. We would ask you, ma'am, not to

17 discuss this with anybody, particularly members of the

18 press, until this trial is over, that is going to be

19 sometime in February. I'm not threatening you, but I do

20 have a gag order in effect.

21 THE PROSPECTIVE JUROR: I wouldn't  
22 discuss it.

23 THE COURT: I know you wouldn't, but I  
24 have to advise you. It could result in monetary  
25 sanctions or jail time if you did.

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1 THE PROSPECTIVE JUROR: Okay. That's  
2 fine.

3 THE COURT: I hate to say that, but I  
4 have to say it.

5 THE PROSPECTIVE JUROR: That is all  
6 right, I won't talk to anybody about it.

7 THE COURT: All right. Thank you.

8 All right. Moving right along.

9 MR. TOBY L. SHOOK: Judge, this next  
10 juror, Vada Smith, has a criminal record that shows out  
11 of this County.

12 THE COURT: Well, let's ask her when  
13 she comes in, off the record first and then on.

14 MR. TOBY L. SHOOK: Do you want to  
15 handle that first?

16 THE COURT: Yes, I think we should.

17 Can you have Ms. Smith come in, please?

18 MR. TOBY L. SHOOK: She mentioned  
19 something about that.

20 THE COURT: We're going to answer that  
21 off the record first, and then we will put it on the  
22 record.

23 This is Ms. Vada Viola Smith.

24 Ma'am, come on up, please. Can we ask  
25 you a question first?

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1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: We have a -- do you have  
3 any theft conviction on your record, ma'am?

4 MR. TOBY L. SHOOK: It's a check case  
5 in 1990, I think.

6 THE PROSPECTIVE JUROR: Uh-huh.

7 (Witness nodding head affirmatively.)

8 THE COURT: You do?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: All right. Let's go on  
11 the record then. Your name is, is it Vada or Vada?  
12 THE PROSPECTIVE JUROR: Vada.

13 THE COURT: Vada, V-A-D-A, Viola  
14 Smith; is that correct?

15 THE PROSPECTIVE JUROR: That's  
16 correct.

17 THE COURT: Ma'am, you do have a  
18 conviction, what we call a hot check conviction on your  
19 record in this County?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: When did that occur?

22 MR. TOBY L. SHOOK: 1990.

23 THE COURT: 1990.

24 MR. TOBY L. SHOOK: July 30th, 1990,  
25 theft by check.

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1 THE COURT: Is that correct, ma'am?

2 THE PROSPECTIVE JUROR: That's  
3 correct. I didn't pick it up in time.

4 THE COURT: All right. Well, ma'am,  
5 the law requires that I excuse you --

6 MR. DOUGLAS MULDER: Judge, not so  
7 fast. If you just might give us chance.

8 THE COURT: That will be fine.

9 MR. DOUGLAS MULDER: She may have  
10 gotten deferred adjudication probation.

11 THE COURT: Did you get --

12 MR. DOUGLAS MULDER: If she got  
13 deferred adjudication, she doesn't have a conviction.

14 THE COURT: We understand that, but  
15 what happened?

16 MR. TOBY L. SHOOK: This shows theft  
17 by check, court costs \$119 and a fine in the amount of  
18 \$50.

19 MR. DOUGLAS MULDER: It could still be  
20 deferred.

21 THE COURT: Well, was it deferred, or  
22 was it regular probation, or what happened?

23 THE PROSPECTIVE JUROR: I really don't  
24 remember, it's been so long.

25 MR. TOBY L. SHOOK: Do you remember  
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1 paying a fine? A \$50 fine?

2 THE PROSPECTIVE JUROR: Yes, I paid a  
3 fine.

4 MR. RICHARD C. MOSTY: Well, you can  
5 pay a fine under deferred, too.

6 THE COURT: I understand that. Well,  
7 do you want to check on it? Maybe we can check on it in  
8 this County. Do we have a computer we can use?  
9 MR. TOBY L. SHOOK: Have you ever

10 received any type of dismissal or anything like that?

11 THE PROSPECTIVE JUROR: Dismissal?

12 MR. TOBY L. SHOOK: Yes.

13 MR. DOUGLAS MULDER: He means on the  
14 case.

15 MR. TOBY L. SHOOK: On the case of the  
16 check.

17 MR. DOUGLAS MULDER: Any notice that  
18 the case was dismissed?

19 THE PROSPECTIVE JUROR: No. I don't  
20 remember, it's been so long. I know I paid a fine on it.

21 MR. DOUGLAS MULDER: Did go to a JP  
22 court?

23 THE PROSPECTIVE JUROR: Yeah, I  
24 went -- no, I didn't go to a court. I just went up  
25 there, and then I paid at another place.

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1 MR. DOUGLAS MULDER: Probably doesn't  
2 even have --

3 THE COURT: Why don't we do this: Can  
4 we take a little recess? Is there any place we can call,  
5 Mr. Navarre, and find out about this?

6 MR. TOBY L. SHOOK: We can look it up,  
7 Judge, I'm sure.

8 THE COURT: I think Jan is checking  
9 right now. If you could step outside briefly, ma'am, and  
10 we'll see what happens.

11 THE PROSPECTIVE JUROR: Okay.

12 THE COURT: All right. Off the  
13 record.

14

15 (Whereupon, a short

16 Discussion was held

17 Off the record, after

18 Which time the

19 Proceedings were resumed

20 As follows:

21

22 THE COURT: All right. Back on record

23 now with Ms. Viola Smith.

24 Ms. Smith, at the current time, due to

25 your situation with your hot check case, the records

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1 reflect that it was a deferred probation, but there has  
2 been no dismissal signed, so I am still considering it a  
3 pending case. So currently, you are going to be excused  
4 from jury service.

5 THE PROSPECTIVE JUROR: Okay.

6 MR. DOUGLAS MULDER: Excuse me, Judge.

7 Not excused from jury service, but just put her on hold  
8 at this time?

9 THE COURT: No, I am excusing her  
10 right now. We can bring her back if you want to bring  
11 her back. If we can show anything that gets -- that it  
12 is dismissed, and she is eligible, then we will certainly  
13 consider her again. But as of right now, she is not  
14 eligible to serve.

15 MR. DOUGLAS MULDER: Well, why don't  
16 you just put her on hold so that we can bring her back,  
17 in the event --

18 THE COURT: Is that agreeable to both  
19 sides?

20 MR. TOBY L. SHOOK: Well, as of now,  
21 apparently the law stands in that situation.

22 THE COURT: As of now, she is  
23 disqualified to serve.

24 MR. DOUGLAS MULDER: Well, Judge, we  
25 disagree with that.

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1 THE COURT: Why?

2 MR. DOUGLAS MULDER: She has not been  
3 convicted. And her case is -- if she received a deferred  
4 adjudication probation, she was not convicted. She has  
5 successfully lived out the probationary term, and the  
6 case should have been dismissed.

7 THE COURT: Well, my ruling right now,  
8 is that she is disqualified. Now then, what I intend to  
9 do is this: If she can be shown qualified, I will  
10 certainly bring her back toward the end of these  
11 proceedings. And we will consider her as a juror. Can  
12 you come back if you are considered -- if we find out  
13 that your conviction has been, in fact, set aside? It  
14 doesn't look that way now.

15 THE PROSPECTIVE JUROR: I can come

16 back.

17 THE COURT: You can.

18 MR. RICHARD C. MOSTY: Because we  
19 would like the opportunity to go down and actually read  
20 the file.

21 THE COURT: I am all for it. I am  
22 just saying right now I am holding her disqualified, but  
23 the records are unclear. Due to the fact that they are  
24 unclear, and there is no dismissal in there, I am holding  
25 her disqualified now. But we are going to put her on  
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1 hold, so to speak, and if we can have any showing that  
2 she is qualified, we will bring her back at an  
3 appropriate time, if both sides agree that she is  
4 qualified, and then we will hear her then. Does that  
5 satisfy everyone?

6 MR. DOUGLAS MULDER: Well, I mean, how  
7 do we know, if the record is unclear? How do we know  
8 that she --

9 THE COURT: We don't. That is why I  
10 am not dismissing her right now. I am just holding her  
11 disqualified as we know right now, but if we can clear

12 this up before the final jury is picked, we will bring  
13 her back, and give her a chance to be examined by both  
14 sides.

15 MR. DOUGLAS MULDER: You are saying  
16 you are not dismissing her?

17 THE COURT: I am holding her  
18 disqualified now. We are not dismissing her. I am  
19 telling her that if we can show -- if you can show -- if  
20 either side -- if you can show that she is qualified to  
21 be examined as a juror, then we will bring her back and  
22 examine her then. But we are not going to hold these

23 proceedings up today.

24 MR. RICHARD C. MOSTY: And we're not  
25 asking you to, Your Honor, we would just want to make  
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1 sure we have the opportunity and I hear the Court saying  
2 that we will have an opportunity to show whether she is  
3 qualified.

4 THE COURT: You would have the

5 opportunity to show -- the way it looks right now, she is  
6 disqualified. And if you ask me to rule right now, I am

7 going to hold her disqualified.

8 But we are not going to hold the

9 proceedings up, we're going to go on with Mr.

10 Bierschwale.

11 MR. DOUGLAS MULDER: Judge, we

12 wouldn't ask you to do anything to hold the proceedings

13 up. We wouldn't deliberately do that for a minute.

14 THE COURT: That is fine. If you can

15 show me that she is qualified, we will bring her back and

16 examine her. But as of right now, it appears she is

17 disqualified.

18 MR. RICHARD MOSTY: That is fair

19 enough.

20 MR. DOUGLAS MULDER: From the

21 incomplete records?

22 THE COURT: Yes, from the incomplete

23 records. Now, if you can clear it up, fine. If the

24 records stay incomplete, I am still going to hold her

25 disqualified.

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1 MR. DOUGLAS MULDER: Well, having not

2 seen the incomplete records, I don't --

3 THE COURT: Well, nor have I. We're

4 telling the local people, Mr. Navarre has called the

5 District Clerk of Kerr County, and this is what the  
6 situation appears to be now.

7 MR. DOUGLAS MULDER: It's a kind of

8 hearsay, on hearsay, on hearsay type of case.

9 THE COURT: Well, Mr. Navarre did tell

10 me and I have great faith in what Mr. Navarre tells me,

11 and the Kerr County Clerk's office.

12 MS. SHERRI WALLACE: We will go pull

13 it all up this afternoon.

14 THE COURT: We will go pull it all up

15 this afternoon. Ma'am, you will be given another time to

16 come back, if, in fact, you are qualified.

17 THE PROSPECTIVE JUROR: Thank you.

18 THE COURT: All right. Thank you. If

19 not, we can both agree into the record here that she is

20 not.

21 We will continue on, as we say in

22 Texas, with Mr. Charles Bierschwale, a fine Irish name.

23 Mr. Bierschwale, come in please. Do

24 you pronounce your name Bierschwale?

25 THE PROSPECTIVE JUROR: Bierschwale.

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1 THE COURT: Okay. This is juror  
2 number 77, number 25 on our list. Mr. Charles  
3 Biershwale, B-I-E-R-S-C-H-W-A-L-E. Is that how you  
4 correctly spell your name, sir?

5 THE PROSPECTIVE JUROR: Yes, sir.  
6 THE COURT: Raise your right hand,  
7 please.

8 Do you solemnly swear or affirm you  
9 will true answers give to all the questions propounded to  
10 you concerning your qualifications as a juror in this  
11 case, so help you God?

12 THE PROSPECTIVE JUROR: I do.

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

23

24

25

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1 Whereupon,  
2  
3 CHARLES LANE BIERSCHWALE,  
4

5 was called as a prospective juror, for the purpose of  
6 voir dire, having been first duly sworn by the Court to  
7 speak the truth, the whole truth, and nothing but the  
8 true, testified in open court, as follows:  
9

10 THE COURT: Thank you. You will first  
11 be talked to by a member of the District Attorney's  
12 Office of Dallas County, Ms. Sherri Wallace.  
13 MS. SHERRI WALLACE: Good morning.  
14 THE COURT: Mr. Toby Shook. The  
15 defendant, Mrs. Routier, is to your far right. And she  
16 is represented by Mr. Douglas Mulder and Mr. Richard  
17 Mosty.

18 All right. So who will be for the  
19 State?

20 MS. SHERRI WALLACE: I will, Your  
21 Honor.

22 THE COURT: All right. Thank you.

23

24

25

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1 VOIR DIRE EXAMINATION

2

3 BY MS. SHERRI WALLACE:

4 Q. Hi.

5 A. Hi.

6 Q. Again, as the Judge has introduced me,  
7 my name is Sherri Wallace and I am one of the Assistant  
8 District Attorneys in Dallas that is going to be trying  
9 this case. I know you have met us all, or saw us all, at  
10 least, last Monday, Tuesday. Did you recognize any of us  
11 or know any of us then?

12 A. No, I don't.

13 Q. With regards to the defense attorneys,  
14 do you know either of the local counsel, Richard Mosty or  
15 the man that is not here, Preston Douglass?

16 A. No, I don't.

17 Q. Okay. You don't recognize them or  
18 know them from around Kerrville?

19 A. No.

20 Q. Okay. Fair enough. Let me just be up  
21 front with you about a couple of things. One, we are

22 actively seeking the death penalty in this case. It is  
23 our goal to see that the woman down there in pink is

24 executed. We believe we have the type of case and the  
25 quality of evidence to do that.

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1 The second goal in this case is to get  
2 12 people who won't jump to conclusions, because of the

3 media. That they will wait, and listen to the evidence  
4 in this case, and wait until the Judge gives them the  
5 law, then decide the case based on what is heard in the  
6 courtroom and not what is played out in the press. Can

7 you do that?

8 A. Yes.

9 Q. Okay. You said you had heard about

10 the case and I just asked you that, because if you have

11 already formed an opinion, you may not be a juror in this  
12 case. You must set aside anything you heard or read or  
13 seen, and wait to hear the evidence.

14 I have seen not all of the news

15 reports, but a lot of them, and let me just tell you,  
16 some of it they get it right, and sometimes they don't.

17 So that is why it is so critical for a juror to wait, and

18 I believe you said you could do that; is that right?

19 A. Right.

20 Q. Okay. On your questionnaire -- well,  
21 first of all, let me just tell you the order we are going  
22 to go in. We are going to talk to you a little bit about  
23 your questionnaire and the death penalty and how you feel  
24 about that, and then talk to you about the general  
25 principles of law. Okay?

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1 A. Okay.

2 Q. You said you are in favor of the death  
3 penalty, and that you find that it is necessary in some

4 crimes. And you also circled that you believe the death  
5 penalty is appropriate in all capital murder cases. I  
6 want to talk to you a little bit about that.

7 In this trial, it is two phases. The  
8 first phase is where we must prove to you that she  
9 committed the crime of killing a child under the age of  
10 six. We must prove that to the jury beyond a reasonable  
11 doubt, and we gladly accept that burden in this case.

12 Once the defendant is found guilty,  
13 then we go to the second phase of the trial, that is

14 really the punishment phase. And in the punishment phase  
15 for a capital murder there is two choices: There is life  
16 or death.

17 In Texas not all murder cases are  
18 eligible for the death penalty. There are certain crimes  
19 that are, a murder plus something else, if you will.  
20 Murder plus involving the death of a police officer that  
21 is on duty, or a prison guard that is on duty, or  
22 murdering more than one person, or murdering for hire, or  
23 murdering while doing something else, like robbing a bank  
24 or kidnapping or raping somebody, murder in the course of

25 another felony, or murder of a small child under the age  
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1 of six. That is what we have there. Okay? Those are  
2 different types of capital murders in Texas.  
3 Once you're convicted of those, you  
4 are not automatically sentenced to death. Okay? If  
5 there was an automatic sentence for death, we would have  
6 no reason for this second phase of the trial. And the  
7 second phase of the trial is where the jury decides life  
8 or death. Okay?  
9 Now, used to be, the jury actually

10 wrote life or death, that was the decision. But that is  
11 not how it is anymore.  
12 Now the jury has to answer the two  
13 questions. Okay? And the questions are right there, and  
14 we will go over those in just a minute. But basically  
15 for the defendant to die, the first question has to be  
16 answered "yes," and the second question has to be  
17 answered "no."

18 That cannot be done automatically.  
19 And it's just like the first phase of the trial where we  
20 have the burden of proof, you have to wait until you hear  
21 the evidence. Will you be able to do that?

22 A. Yeah.

23 Q. Well, let's talk about that first  
24 special issue. It says: "Do you find from the evidence,  
25 beyond a reasonable doubt, that there is a probability  
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1 that the defendant would commit criminal acts of violence  
2 that would constitute a continuing threat to society?"  
3 We have the burden of proof. All

4 right? It is presumed to be answered "no." In other  
5 words, remember how the Judge told you last week, for  
6 guilty or not guilty, if you were going to vote right  
7 now, you would have to find the defendant not guilty,  
8 because you have not heard anything. We have not  
9 presented lickety-split to you. Okay?  
10 This is the same way, in the

11 punishment phase. You have got to presume it "no," until  
12 we prove to you beyond a reasonable doubt, that there is  
13 a probability, or it's more likely than not, that the  
14 defendant would do something else to hurt somebody. Can  
15 you hold us to that burden?

16 A. Yes.

17 Q. Okay. The second special issue, some  
18 people call it a safety net. Let me talk to you about  
19 that for a little bit. Let's read it, read it along with  
20 me if, you would. "Taking into consideration all of the  
21 evidence, including the circumstances of the offense, the  
22 defendant's character and background, the personal moral  
23 culpability of the defendant, is there sufficient  
24 mitigating circumstance or circumstances to warrant that  
25 a sentence of life imprisonment rather than a death

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1 sentence be imposed?"

2 Now, this question, there is no burden  
3 of proof. You may hear something mitigating. In other  
4 words, something that makes you think the defendant is  
5 not as responsible for her actions.

6 Something that, I think case law says,  
7 lessens her moral blameworthiness. After you have heard  
8 all of the evidence and you decide, not the other people  
9 with you, not the lawyers, not anybody else, if you  
10 decide in your heart that because of the evidence there  
11 is sufficient evidence in your mind, that you could not  
12 live with yourself unless you imposed a life sentence in  
13 this crime, would you able to answer that question  
14 appropriately with a "yes," in order to get a life  
15 sentence?

16 A. I don't understand. What is the --  
17 answer the question, what question?

18 Q. The second one. Okay. In order for  
19 the defendant to die, this question must be answered  
20 "yes" and this question must be answered "no." And all I  
21 am really asking you, a bunch of mumbo jumbo, but all I  
22 am really asking you is, are you the kind of person that  
23 is going to make up your mind before you hear anything,  
24 or will you promise the Court that you will wait until  
25 you hear the evidence?

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1 A. I can wait until I hear the evidence.

2 Q. All right. Just like you would in any  
3 other decision that you would make about your personal  
4 affairs or business or whatever. Right?

5 A. Right.

6 Q. All right. And in here it says: That  
7 you believe the death penalty is appropriate in all  
8 capital murder cases, and it is perfectly fine to have  
9 that opinion. But to be a juror in this case, okay, you

10 have got to keep an open mind about the second phase of  
11 the trial, knowing there is two options.

12 I mean, it's not life and death, but

13 really, that is what it is. I mean, once you answer  
14 these questions, the Judge has no choice. He has to  
15 impose the sentence even if he disagrees with it. It's  
16 by law, absolute, you know, it is a no-brainer for him.

17 Okay?

18 So, it's okay to be angry about crime.

19 It's okay to think that everybody deserves the death  
20 penalty that commits a capital murder, but it is not okay  
21 to take that feeling into the jury box. You must have  
22 the mental discipline to wait and make us do our job.

23 Can you do that?

24 A. Uh-huh. (Witness nodding head

25 affirmatively.) Yes, I think so.

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1 THE COURT: Is that a yes?

2 THE PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Okay. Thank you. Mrs.

4 Halsey is taking all this down, and we can't take down

5 nods.

6

7 BY MS. SHERRI WALLACE:

8 Q. She is the court reporter, and she is  
9 not able to write down nods. So, when we present the

10 indictment to you, we can prove it to you a couple of  
11 different ways. We can do that by direct evidence or by  
12 indirect or circumstantial evidence.

13 A direct evidence presentation would

14 be an eyewitness. Most of the time in murder cases, you  
15 know, the defendant chooses when a murder happens. You  
16 agree with me on that? The defendant decides when he or  
17 she will kill somebody.

18 A. Uh-huh. (Witness nodding head

19 affirmatively.) Assuming guilt, yes.

20 Q. Right, right. So, the defendant has

21 more control over how many witnesses there are to a crime  
22 than anyone else. Do you follow me with that?

23 A. Yes.

24 Q. So, if you are a criminal and you are

25 about to commit a crime, are you going to do it in the  
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1 Wal-Mart Superstore parking lot on Saturday afternoon, or

2 are you going to do it when nobody else is around?

3 Obviously, when nobody else is around.

4 A. Uh-huh. (Witness nodding head

5 affirmatively.)

6 Q. So, oftentimes in a murder case, there

7 will not be any direct evidence. In other words, there

8 will not be an eyewitness because the eyewitness is dead.

9 Okay?

10 A. Uh-huh. (Witness nodding head

11 affirmatively.)

12 Q. Okay. And, as you know from the

13 Judge's comments, we cannot call the defendant to  
14 testify.

15 A. Uh-huh. (Witness nodding head

16 affirmatively.)

17 Q. You cannot use that against us, and

18 you cannot use that against them. That is just her

19 right, as it would be every defendant's right. Do you  
20 have any problem with that?

21 A. No.

22 Q. Okay. So, because of that, we, in

23 murder cases must look to indirect evidence. Lots of

24 folks believe indirect evidence or circumstantial

25 evidence is better, because it's not -- sometimes it  
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1 involves scientific evidence which can't be twisted,  
2 which can't be fabricated, it just -- that is the way it  
3 is. Things like: Fingerprint, DNA, hair particle,  
4 fibers, things like that. You also my hear about  
5 statements from the defendant during, before, or after

6 the crime that might not comport with the crime scene.

7 All that sort of things -- all those sort of things are

8 indirect or circumstantial evidence.

9 If we prove to you, beyond a

10 reasonable doubt, the indictment with circumstantial  
11 evidence, indirect evidence, and you believed it, would  
12 you be able to convict the defendant?

13 A. Yes.

14 Q. Additionally, before you -- I think in

15 front of you there is the indictment, do you see that

16 piece of paper? Is it not there?

17 A. No.

18 Q. Okay.

19

20 THE COURT: Here, I believe it is  
21 right here. That is the indictment in the case. They  
22 are going to direct your attention to the typewritten  
23 part right there.

24

25

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1 BY MS. SHERRI WALLACE:

2 Q. That typewritten portion, let me know  
3 when you have had a chance to read it.

4 A. Okay. I've read it.

5 Q. Okay. That is what we must prove to  
6 the jury beyond a reasonable doubt. If you are a juror,  
7 we intend to prove that to you beyond a reasonable doubt

8 from the evidence in the courtroom. However, in Texas it  
9 is not required for the State to prove motive. And that  
10 gets back to what I was saying earlier; we can't call the  
11 defendant to the stand.

12 Now, in the trial -- I cannot get into  
13 the facts right now, but in the trial, the motive may  
14 become very apparent to you. Or it may be that it is one  
15 of several motives, you are not really sure which one.  
16 Or it may be that you just flat don't ever know. You  
17 know? If she doesn't testify, you can't consider that,  
18 you may never know the motive. But if you believe that  
19 we have proved the case beyond a reasonable doubt, we're  
20 entitled to a conviction. Could you follow that law?

21 A. Yes, I can.

22 Q. Okay. Now, if we don't prove our case  
23 beyond a reasonable doubt, the defendant is found not  
24 guilty and we all go home. If you do find the defendant  
25 guilty, that is when we go to these two questions. And I  
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1 want to talk to you just a little bit more about them.  
2 The first special issue: "Do you find from the evidence,  
3 beyond a reasonable doubt, that there is a probability  
4 that the defendant would commit criminal acts of violence  
5 that would constitute a continuing threat to society?"

6 Let me ask you: What does the word  
7 "probability," what does that mean to you?

8 A. High likelihood.

9 Q. Okay. And the phrase -- and the

10 reason I'm asking you what these mean to you is that

11 we're kind of notorious down here for giving definitions  
12 for about every word you can think of, but you are not

13 going to get a single definition for this question. It's  
14 up to each individual juror. So that is why it's  
15 interesting to me what you think. Okay? What does the  
16 phrase "criminal acts of violence," what does that mean  
17 to you?

18 A. Unlawful, causing harm.

19 Q. Okay. Any sort of unlawful injury,  
20 anything like that?

21 A. Yes.

22 Q. All right. Society, does that mean  
23 everybody, or is there some group that you would exclude?  
24 Or does that include like prison guards or people that  
25 are visiting the prison, maybe chaplains there, social  
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1 workers there, relatives that come to visit, that sort of  
2 thing?

3 A. Society would include everybody.

4 Q. All right. Okay. Let me talk to you  
5 a little bit about how that question is answered. Let's  
6 take a fact situation, for example. You know, I  
7 mentioned earlier that you can't automatically say that  
8 the defendant is guilty of committing capital murder.  
9 She killed a small child. Automatically, I am going to  
10 answer that question "yes."

11 You are not entitled to do that, and

12 there are some good reasons for that. Just like we  
13 talked about, you don't jump to conclusions, and you are  
14 going to consider and weigh everything carefully. We  
15 appreciate that.

16 Take, for example, a situation where I  
17 go in and I rob a bank. And I decide I don't want any  
18 witnesses while I am in there, and I just kind of blow  
19 everybody away. I kill about 15 people. A baby that is  
20 there with her mom while they are waiting in line,  
21 everybody in the bank. Take some money and I leave, and  
22 I have committed capital murder.

23 As I am leaving the bank, I don't hear  
24 the sirens that are coming to get me. Before I killed  
25 the teller, she buzzed an emergency button. A police car  
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1 comes around the corner and hits me and renders me a  
2 quadriplegic, and the only thing I can do is close my

3 eyes.

4 Now, because of that, you may decide  
5 that I am not going be a continuing threat, because I  
6 can't do squat. Okay? You may not. You may still think  
7 I am mean as a snake, and I can still hurt somebody. But  
8 the point of that example is that you have not heard the  
9 facts or the evidence, and so you must wait to do that,  
10 and revisit that issue in the punishment phase. Could  
11 you do that?

12 A. Yes.

13 Q. All right. The second special issue:

14 "Taking into consideration all of the evidence, including  
15 the circumstances of the offense, the defendant's  
16 character and background, the personal moral culpability  
17 of the defendant, is there a sufficient mitigating  
18 circumstance or circumstances to warrant that a sentence  
19 of life imprisonment rather than a death sentence be  
20 imposed?"

21 Okay? Now some folks say, "I can't

22 even imagine what would be sufficient evidence for me  
23 after I decided a kid was killed, and after I decided  
24 that person would be a continuing threat. I can't even  
25 fathom what would be sufficient for me to think that

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1 person still ought to live." Okay? But good news: You  
2 don't have to fathom. You could sit on five million

3 death penalty cases and never hear a case where you  
4 thought the right thing to do was impose a life sentence.  
5 Nothing wrong with that. All right?  
6 What you must do though is say, "I  
7 will know it when I see it. I don't know what is  
8 sufficient mitigating evidence, but if I hear something  
9 and I decide in my heart that I think the right thing to  
10 do is to answer that question in a way that would result  
11 in a life sentence," in other words, answer that question  
12 "yes," "Then I could do it. I will keep an open mind. I  
13 will not prejudge anything." And I think you have said  
14 you could do that; is that right?

15 A. I can do that, yes.

16 Q. All right. In talking to you about  
17 general principles of law, I am going to go over a couple  
18 of things that the Judge went over last week, and then  
19 ask you a few questions.

20 One of the things I think I touched on

21 earlier is that the defendant is presumed innocent.

22 Okay? That means, really, that if you voted right now  
23 you would find her not guilty.

24 Another thing it means is: It's  
25 really another way of saying that the State has the  
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1 burden of proof. The penitentiary is full of people that  
2 were at one time presumed innocent.

3 Once the State has presented the  
4 evidence, proved the defendant guilty beyond a reasonable  
5 doubt, that presumption goes away. You follow that?

6 A. Right.

7 Q. Okay. So if you voted right now,  
8 would you find the defendant not guilty?

9 A. Yes, I would.

10 Q. All right. Additionally, the Judge  
11 touched on this last week, that the indictment is no  
12 evidence of guilt. It is a piece of paper that gives him  
13 jurisdiction to be in this Court, and you could not use  
14 that as any evidence of guilt against this defendant.

15 Could you follow that law?

16 A. Yes.

17 Q. The defendant has an absolute right  
18 not to testify. And I think you have already told me

19 that you could follow that law and not hold that against  
20 her if she chose not to in any way; is that correct?

21 A. Yes, it is.

22 Q. All of the witnesses when they come in  
23 the courtroom, must be treated the same. In other words,  
24 it's just getting back to what we have been talking about  
25 all along, which is you cannot prejudge a case. Same  
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1 thing, you can't prejudge a witness. You have to keep an  
2 open mind.

3 Now, you may wonder, where in the heck  
4 am I going with this? Let me tell you where I am going.  
5 I suspect that there is going to be -- well, I don't

6 suspect, I know there are going to be police officers  
7 that are going to testify in this case. Okay? And some  
8 defense attorneys, I'm not saying these would, but some  
9 of them will say, "Would you believe a police officer

10 simply because he is a police officer?" Well, that is a  
11 trick question. Okay?

12 It's designed to get you to say, "Yes,  
13 I believe a police officer." Well, you can't do that.  
14 You have got to wait and hear from any witness,  
15 regardless of what uniform they may wear when they walk  
16 in the building. Okay? You have got to wait and hear  
17 about their training and their experience and decide if  
18 they are shooting straight with you. Could you do that  
19 for all witnesses?

20 A. Yes, I could.

21 Q. One other thing is that the Judge will  
22 instruct you that you cannot, in any way, consider  
23 parole, and there is a good reason for that. The parole  
24 laws change. They change with every governor. They  
25 change with every legislature. They change with whoever  
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1 is on the Board of Pardons and Paroles. And we don't  
2 have any control of that. All right?  
3 So you must assume, that parole does  
4 not exist. Because you do not know, you cannot predict  
5 that -- how long a life sentence will be. You must  
6 assume that a life sentence is a life sentence and not  
7 consider parole in any way. The Judge will instruct you  
8 that is the law.

9 Will you be able to have the mental  
10 discipline to follow the law and not consider parole?  
11 A. Yes.

12 Q. I am about finished visiting with you.

13 Do you have any questions for me?

14 A. No.

15 Q. Are you sure?

16 A. No.

17 Q. I feel like I have done most of  
18 talking.

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

21 Q. That is all right. Good. All right.

22 Then before the defense attorneys ask you some questions,  
23 I'm just going to ask you again, if you would, please, in  
24 this case, keep an open mind. That is the most important  
25 thing. And wait until you hear the evidence in the

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1 courtroom, and that is really all we're asking of the  
2 jury. Thank you.

3 A. Okay.

4

5 THE COURT: Thank you, Ms. Wallace.

6 Mr. Mosty.

7

8 VOIR DIRE EXAMINATION

9

10 BY MR. RICHARD C. MOSTY:

11 Q. Mr. Bierschwale, I wanted to visit

12 with you a little bit and just explore some of your

13 feelings and find out where you are on some of the  
14 principles that apply in general in criminal cases, and  
15 some that might uniquely apply to this case. I want to  
16 tell you that when we talk about these propositions, we  
17 are really talking about them in the abstract, and not  
18 necessarily as it relates in this case.

19 The other thing is that this is the  
20 only time a juror really has an opportunity to speak.

21 After this, if you are selected as a juror, you simply  
22 sit and listen to what is going on. So, this is the

23 opportunity for you to tell us how you feel about things.

24 And you are not going to hurt anybody's feelings with  
25 whatever those are, and this is your opportunity to say  
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1 what is on your mind.

2 A. Okay.

3 Q. You are the only person that can tell  
4 us that. So, be open and honest and don't hold anything  
5 back.

6 A. Okay.

7 Q. First, would you tell me -- you had

8 mentioned in your questionnaire some knowledge of the  
9 case from, I believe, newspapers, TV, and discussion.

10 Would you tell me what -- and let me first preface this:  
11 I think it's unfair for everybody else to say, would you  
12 vote this lady guilty? No right-minded person would vote  
13 this lady guilty just on TV.

14 However, you know, all of us do

15 sometimes form some opinions or some leanings or some  
16 thoughts based upon the reports. So, all I'm asking you  
17 about is, what have you heard and what do you, as you sit  
18 there right now, believe to be the facts of this case, if  
19 anything? Could you tell me what you have heard and know  
20 about the case?

21 A. Just some basic things. That she

22 supposedly killed two children. Let's see, it was also

23 reported that the knife that had been used to cut the  
24 screen, they said was found in the butcher block.

25 And the -- there was supposed to have  
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1 been another person who committed this and then left.  
2 And some of the family was originally from the Lubbock  
3 area, I think. That the dust on the windowsill, where  
4 the other person was supposed to have exited, was not  
5 disturbed. That is about as much as I can remember  
6 hearing.

7 Q. You said that -- and I wasn't sure I  
8 got this right, you said there was supposed to be another  
9 person who left. What did you mean or is that what you  
10 said?

11 A. What I read in the paper that this was  
12 supposed to have been done by someone who broke in,  
13 killed the children and attacked her and left.

14 Q. And has that information been gathered  
15 from the newspaper or television?

16 A. That was the newspaper.

17 Q. You also mentioned some conversation  
18 with other people because your knowledge --

19 A. Well --

20 Q. Is your knowledge based really upon  
21 the media reports?

22 A. Media reports.

23 Q. As opposed to other people?

24 A. Well, they got what they heard was  
25 from the media.

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1 Q. And -- but you have seen some of this  
2 media yourself, firsthand?  
3 A. Yes.  
4 Q. And is this something that you have  
5 known about or been hearing about for some months before  
6 this case ever came to Kerrville?

7 A. No.

8 Q. This is stuff you have really learned  
9 quite recently?

10 A. Yes.

11 Q. You need to answer out.

12 A. Yes.

13 Q. Now, you also made the comment, I

14 believe, in your questionnaire, "That if the district

15 attorney brings the person to trial for capital murder,  
16 that that person is probably guilty." Do you recall  
17 making that statement?  
18 Let me show you your questionnaire,  
19 this was on page 3. The first question was: If the

20 police arrest someone for capital murder, the person is  
21 probably guilty. You circled uncertain. And the second  
22 question: If a district attorney tries a person for  
23 capital murder, the person is probably guilty. And you  
24 indicated that you agree with that statement?

25 A. Yes. Not absolutely, but I would tend  
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1 to agree.  
2 Q. And again, no right-minded person  
3 would ever sign a verdict form, guilty, based on that.  
4 But I am just trying to get, you know, where you are

5 coming from. But that is your basic belief is that a  
6 person who the district attorney tries for capital murder  
7 is probably guilty?

8 A. Yes.  
9 Q. Okay. Now, with that background and  
10 with your knowledge of the case, and you have pretty  
11 substantial details about what you have heard about the  
12 case, as you sit right there, right now, do you have an  
13 opinion that Mrs. Routier is probably guilty?

14 A. No.  
15 Q. You have no opinion whatsoever in that  
16 regard?  
17 A. No.  
18 Q. I'm not asking whether or not you  
19 would sign a verdict form, remember. I'm just saying as  
20 you sit there right now, is your opinion that Mrs.  
21 Routier is guilty?

22 A. No.  
23 Q. What is your opinion of it?  
24 A. Well, I would have to see the actual  
25 evidence to form a better opinion.

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1 Q. Is your opinion that she is not  
2 guilty?  
3 A. Yes, it would be.  
4 Q. Now, the indictment in front of you  
5 there, the typewritten portion, is the case that is going  
6 to be tried. The first part is some legalese, but the

7 fundamental part there is that this is a capital murder  
8 case, because it is -- the allegation is that Mrs.  
9 Routier killed a child under the age of six years of age.  
10 Do you see that part?

11 A. Yes.

12 Q. Do you need me to point that out?

13 A. Yes. The deceased was --

14 Q. It's probably about the middle of the  
15 page.

16 A. -- a child under six years of age.

17 Q. Right. About the middle of the page.

18 Yes, this typewritten part: That the -- intentionally  
19 and knowingly caused the death of Damon Christian  
20 Routier, an individual, by stabbing him with a knife.

21 A. Yes.

22 Q. At the time the deceased was under the  
23 age of six, or six years of age. Now, that is what Ms.  
24 Wallace told you was one of the crimes that the  
25 legislature has set out as being a capital offense.

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1 Let me tell you a little bit about the  
2 procedure. And, again, I am going to be talking about in  
3 the abstract, but I am going to be talking about a  
4 capital murder case in which the allegation is murder of  
5 a child under six.

6 What happens is that a jury is picked,  
7 the case is called for trial, opening statements might be  
8 made, and then the State proceeds to put on whatever  
9 evidence it has.

10 The defense may or may not put on  
11 evidence. After all of the evidence is heard, then the  
12 Judge will give you, the jury, a written charge that  
13 says: This is the law in the State of Texas.

14 And the juries (sic) will make  
15 arguments, and then the jury will go out. And the jury  
16 has to follow the law given to them by the Court, but the  
17 jury is the exclusive judges of the facts.

18 And so the jury goes out and  
19 determines what the facts are, and has the State proven  
20 beyond a reasonable doubt that that defendant, that  
21 hypothetical defendant, has, in fact, intentionally and  
22 knowingly caused the death of an individual under the age  
23 of six.

24 Now, if a jury finds that, then the  
25 jury would find that person guilty of capital murder.

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1 At that point, then, the jury is -- in  
2 effect, there is a second trial immediately after the

3 first, but it is, in effect, a second trial. And the  
4 focus of that trial or that part of the trial, is  
5 punishment. What would be the appropriate punishment?  
6 And, in Texas, if you found someone

7 guilty of capital murder, there are only two punishments  
8 allowed. One is life; one is death. And you may hear  
9 additional evidence, the State may put on some additional  
10 evidence, the defense may put on some additional

11 evidence, but neither side has to at that point.  
12 Again, the Judge will prepare a

13 written charge on the law, and he will tell you in that  
14 charge that what the jury is going to have to do is  
15 answer these two special issues. The lawyers would have  
16 another opportunity to argue, and then the jury goes out  
17 and answers these two special issues. So let's talk  
18 about those.

19 Remember, at this point, when you are  
20 sitting in the jury room thinking about this, you are

21 dealing with a convicted murderer, a convicted capital  
22 murderer, who you know beyond any reasonable doubt has  
23 killed a child under the age of six. So, you are not

24 dealing abstractly with these questions anymore, because  
25 you will see that both of these questions say: Do you  
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1 find from the evidence? And special issue number 2 is:  
2 Taking into consideration all of the evidence.  
3 What they tell you is that you will  
4 consider the evidence, all of the evidence you have  
5 heard. Well, now, the biggest part of that probably is  
6 the crime itself that you have found the person guilty  
7 of, that is part of the evidence that you consider.  
8 Now, there may or may not be

9 additional evidence at the punishment phase. But part of  
10 the evidence that you are going to consider is that you  
11 know that this person in front of you intentionally and  
12 knowingly murdered a child under the age of six.  
13 Now, having said that, do you think

14 that a death sentence is the only appropriate sentence  
15 for someone who has murdered a child under the age of six  
16 years old?

17 A. That is the only one I can imagine.

18 Q. Okay. And let me reemphasize here,  
19 your opinions are your opinions and everybody here is  
20 going to respect them. And all we want to know is what  
21 they are.

22 Now, do you believe that having

23 considered -- having determined that someone has  
24 intentionally and knowingly taken the life of a child  
25 under six, that you just couldn't imagine of a situation  
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1 where there might be a mitigating circumstance?

2

3 MS. SHERRI WALLACE: Your Honor, I am  
4 going to object to that question because he doesn't have  
5 to imagine one.

6 THE COURT: Sustained.

7 MS. SHERRI WALLACE: He just has to be  
8 openminded to it.

9 THE COURT: Sustained.

10

11 BY MR. RICHARD C. MOSTY:

12 Q. Do you believe, in all fairness, that  
13 if you were on a jury that had convicted a murderer,  
14 capital murderer of killing a child under six, that you  
15 really could not give fair consideration to a life  
16 sentence?

17 A. Well, I could consider it, but I would  
18 have to see some pretty strong --

19 Q. Well, I could consider running across  
20 the freeway in rush hour traffic. I wouldn't consider it  
21 very long, as long as I was being right-minded. But, the  
22 question is: Can you -- or let me state it another way.

23 Do you believe that you are where you  
24 are right now, just in any case, where you have a child  
25 under six, that your personal beliefs would substantially  
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1 impair your ability to consider a life sentence?

2 A. No.

3 Q. Are you saying you could or could not  
4 consider a life sentence?

5 A. I could consider a life sentence.

6 Q. Even for a murder of a child under  
7 six?

8 A. Well --

9 Q. That you had found no reasonable doubt  
10 that murderer intentionally and knowingly murdered a  
11 child under the age of six?

12 A. Well, I cannot think of the mitigating  
13 circumstances.

14 Q. And I am not asking you to, I'm not  
15 asking you to. And let me give a little illustration and  
16 then I'll come back to what my question is.

17 I had a lot of trouble with the  
18 55-mile-an-hour speed limit. I didn't think that that  
19 was a proper law. And, if I were called into traffic  
20 court to be on a speeding ticket, I might say, "I  
21 understand that is the law, and I can consider it, but my  
22 personal beliefs would really impair my ability to be  
23 fair." That those beliefs, and nobody is ever going to  
24 ask you to check your common sense or your life  
25 experiences at the door, they are part of you. It's not  
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1 fair to try to segregate that. But I might say, "My life  
2 experiences are such, that it would just -- it would  
3 impair my ability to sit on a traffic case because of my  
4 beliefs about the 55-mile-an-hour speed limit. Now, I  
5 can do it. If you call me up there, I will do it. But,  
6 there is a substantial impairment of my ability to be  
7 fair, and to consider that 55-mile-an-hour speed limit."

8

9 MS. SHERRI WALLACE: Your Honor, I am  
10 going to object. That is an improper question. That is  
11 not the law.

12 THE COURT: Sustain the objection.

13 Let's move on.

14

15 BY MR. RICHARD C. MOSTY:

16 Q. Now, my question is: Would your  
17 beliefs about what you think would be a death sentence,  
18 and I think you said that you thought that a death  
19 sentence would be the proper sentence for a child under  
20 six.

21

22 MS. SHERRI WALLACE: I object. That  
23 is a misstatement of what the juror said.

24 MR. RICHARD C. MOSTY: Is that what  
25 you said?

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1 MS. SHERRI WALLACE: He said it is the  
2 only way he could imagine --  
3 THE COURT: I understand what the  
4 juror said to both Ms. Wallace and to Mr. Mosty.

5

6 BY MR. RICHARD C. MOSTY:  
7 Q. Now, my question is: Do you believe

8 that your beliefs about the death sentence as opposed to  
9 a life sentence, and a convicted murderer of a child

10 under six, do you think that that would substantially  
11 impair your ability to consider a life sentence?

12 A. No.

13 Q. All right.

14

15 THE COURT: We have covered that  
16 point.

17

18 BY MR. RICHARD MOSTY:

19 Q. Would you require, in order to achieve  
20 a finding of a life sentence, for instance, would you  
21 require a defendant to testify?

22 A. No.

23 Q. What about on guilt and innocence?

24 Would you expect the defendant to testify?

25 A. No.

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1 MR. RICHARD C. MOSTY: Pass the  
2 witness.

3 THE COURT: Can you step out briefly,  
4 please. Don't leave, just step outside briefly. Don't  
5 run away.

6 THE PROSPECTIVE JUROR: Yes, sir.

7

8 (Whereupon, the prospective

9 juror was excused from the  
10 room, and the following

11 proceedings were held,  
12 outside of his presence  
13 as follows:)  
14

15 THE COURT: All right. What says the  
16 State?

17 MS. SHERRI WALLACE: The State will be  
18 accept the juror.

19 THE COURT: What says the defense?

20 MR. RICHARD C. MOSTY: Oh, I guess we  
21 will strike him.

22 THE COURT: All right. Will you have  
23 Mr. Bierschwale come back in 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. Bierschwale, we want  
6 to thank you very much for coming, but you will be  
7 excused from further requirements from jury service.

8 Now, there is still a gag order in  
9 effect, so please don't discuss this case anybody,  
10 particularly members of the media until it's over, that  
11 will be sometime in mid-February. I have to tell you the  
12 next thing. I can impose monetary sanctions or Kerr

13 County Jail time should you violate those. I'm not  
14 threatening you, I have to just tell you. Okay?

15 THE PROSPECTIVE JUROR: Okay.

16 THE COURT: Thank you very much. We  
17 sure do appreciate it.

18 THE PROSPECTIVE JUROR: Thank you.

19 THE COURT: All right. Who is next?

20 Who is next? Just have a seat right there, please. Your  
21 name, ma'am?

22 THE PROSPECTIVE JUROR: Cynthia Vega.

23 THE COURT: All right. This is juror  
24 number 85, number 30 on our list, supposed to be here  
25 tomorrow morning but is here today.

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1 Ms. Vega, if you will raise your right  
2 hand, please.  
3 Do you solemnly swear or affirm you

4 will true answers make to all the questions propounded to  
5 you concerning your qualifications as a juror in this  
6 case, so help you God?

7 THE PROSPECTIVE JUROR: I do

8

9 (Whereupon, the prospective

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

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

16

17 Whereupon,

18

19 CYNTHIA ANN VEGA,

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: Thank you very much. You  
2 will be asked questions, and you are Cynthia Vega; is  
3 that correct?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: V-E-G-A.

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Mr. Toby Shook and Ms.

8 Sherri Wallace are district attorneys from Dallas County,  
9 Assistant District Attorneys, and they will be  
10 representing the State.

11 Mrs. Darlie Routier, to your right, is  
12 the defendant. She is represented by Mr. Douglas Mulder  
13 and Mr. Richard Mosty.

14 And so you will be asked questions by

15 Mr. Shook first. Go ahead, please.

16 MR. TOBY SHOOK: Thank you.

17

18 VOIR DIRE EXAMINATION

19

20 BY MR. TOBY SHOOK:

21 Q. Again, my name is Toby Shook, and I am  
22 one of the prosecutors on the case, and I will be asking

23 you questions today on behalf of the State.

24 A. Okay.

25 Q. All we're interested in are your  
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1 honest answers to our questions. Okay?

2 A. Okay.

3 Q. All right. Have you ever been down on  
4 jury duty before?

5 A. No.

6 Q. Ever called down on a panel at all?

7 A. I have been called a couple of times,  
8 but I have never been picked.

9 Q. You have just been on the big panel,  
10 people may have asked you questions. But you have never  
11 been on the jury before?

12 A. Right.

13 Q. Usually we ask jurors questions just  
14 out there on one big panel, but since this is a capital  
15 murder case in which the State is seeking the death

16 penalty, we interview each juror individually. Okay?

17 A. Okay.

18 Q. We don't mean to make you feel like  
19 you are the defendant up there on trial or anything, it's  
20 just the way the law calls for it. And we especially  
21 want your honest answers. Okay?

22 A. Okay.

23 Q. If you have any questions during any  
24 of this process, you let us know. Okay?

25 A. Okay.

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1 Q. What I'm going to do is review a few  
2 things here on your questionnaire, and then go into your

3 personal feelings about the death penalty and some of the  
4 law that applies?

5 A. Okay.

6 Q. Looks like you are a lifelong resident  
7 of Kerrville?

8 A. Yes.

9 Q. Born and raised here?

10 A. Yes.

11 Q. Okay. And married and have, I guess,  
12 three kids?

13 A. Three.

14 Q. What are their ages again?

15 A. Ten, 12, and 13.

16 Q. Okay. You work, I believe it is at

17 Sid Peterson Hospital?

18 A. Yes.

19 Q. You have been there a couple of years?

20 A. Yes.

21 Q. Okay. At one time, it looks like

22 about ten years ago, you worked with the Texas Rural

23 Legal Aid; is that right?

24 A. Yes.

25 Q. What did you do with them?

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1 A. Receptionist.

2 Q. Okay. What type of organization is

3 that?

4 A. It's government funded, they help

5 low-income families, you know, that can't afford a

6 lawyer.

7 Q. Okay. And I think you said -- you

8 indicated that you stayed friends with one of the lawyers

9 there over the years?

10 A. Yes.

11 Q. You don't know any of the Dallas

12 lawyers involved in this case. Do you?

13 A. No.

14 Q. How about Mr. Mosty? He is a local

15 lawyer here?

16 A. I have heard the name, but I don't

17 know him.

18 Q. Okay. Don't personally know him at

19 all?

20 A. No.

21 Q. Okay. How about Preston Douglass, the

22 other Kerrville lawyer?

23 A. No.

24 Q. Okay. And after high school, it

25 looked like you went to -- took some classes was it at

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1 the Texas A & M Extension Service?

2 A. Yes, sir.

3 Q. And what kind of certificate did you

4 get there?

5 A. Medical transcriptionist.

6 Q. Okay. Has anything changed in between  
7 the time you filled out -- you took the time to fill out  
8 all the questions we have here between now and today?  
9 A. No.

10 Q. All right. Ms. Vega, let me get to  
11 the heart of the matter. Obviously, this is a capital  
12 murder case in which the State is seeking the death  
13 penalty. We will be attempting to prove our case beyond  
14 a reasonable doubt and to prove these questions to a jury  
15 that will enable the Judge to sentence the defendant to  
16 death. Obviously, her attorneys will be fighting us all  
17 the way. So, it's going to be a big battle. All right?

18 But that is our goal in this case, and  
19 I think that is clear to everyone. So we want to talk to  
20 each juror about their feelings about the death penalty.  
21 Let me ask you: Do you feel that we

22 should have the death penalty as a law in this state?

23 A. In some cases, yes.

24 Q. Okay. In what type of cases do you  
25 think the death penalty should be imposed or the  
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1 possibility at least of being imposed?

2 A. In what type?

3 Q. Yes, what comes to mind?

4 A. Murder, repeat cases, you know, like  
5 serial killers.

6 Q. Okay. That is one thing that comes to  
7 mind.

8 A. Yes.

9 Q. Any other types of murders?

10 A. Well --

11 Q. I know you probably don't sit around  
12 thinking about this. I hope you don't at least.

13 A. No.

14 Q. Is there any other type? Go ahead.

15 A. Yes. Just, you know, I guess, someone  
16 who goes out and kills a bunch of people at once.

17 Q. More than one person?

18 A. Yes.

19 Q. What about a person that just kills  
20 one person?

21 A. First offense or --

22 Q. It could be.

23 A. Well, I don't know, not really.

24 Q. Okay. Have there been any cases that  
25 you have followed in the media that you think -- that,  
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1 you know, involved the death penalty, or just any high  
2 profile murder cases that have you followed in the news?

3 A. No, I don't really watch TV that much.

4 Q. Okay. Did you watch the O.J. Simpson  
5 case at all? I know it has come back up recently.

6 A. No. No, I work so I don't have time  
7 to do that.

8 Q. Did you ever hear about this -- that  
9 was in the news about a year ago, the Susan Smith case?

10 A. Yes, I heard about that.

11 Q. What did you hear about that case?

12 A. Just that she drowned her kids.

13 Q. Okay. Did you have any opinions on  
14 the outcome of that case?

15 A. No. I really didn't keep up with it,  
16 or know the specifics of what exactly happened.

17 Q. Okay. Do you recall what punishment  
18 she got?

19 A. I don't know, life, I think.

20 Q. Okay. Did you have any thoughts about  
21 that when you heard that?

22 A. No.

23 Q. Just didn't hear much of the facts of  
24 that case?

25 A. No.

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1 Q. Okay. In Texas there is only certain  
2 types of crimes that call for the death penalty. Okay?  
3 Is has to be a murder, the intentional taking of a life,

4 but not just every murder. There's a lot of murders that  
5 would not be a death penalty case.

6 Let me give you an example: I can sit  
7 here and be talking to you and I don't like Mr. Mulder's  
8 tie, I pull out a gun and shoot him right in the head,  
9 and laugh about it. Mean, vicious crime, I couldn't get  
10 the death penalty for that. I could get a life sentence,  
11 but I could not get the death penalty.

12 In Texas you have to have murder plus,  
13 what we call another aggravating fact, something else has  
14 to happen, or it has to be a certain type of victim. For  
15 instance, the guy that goes in and robs a 7-Eleven store  
16 and shoots the clerk, that is a capital murder. It could  
17 be a death penalty case depending on the facts. All  
18 right?

19 Same thing if someone breaks into your

20 house and kills you while you are asleep in bed, that

21 could be a capital murder case. Someone that murders  
22 someone during a rape or a kidnapping; during another  
23 felony, that is a capital murder case, those types of  
24 cases. Okay?

25 Murdering a police officer or a  
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1 fireman while he is on duty could be a capital murder  
2 case. A couple of examples you gave about a serial  
3 killer or a mass murderer, those could be capital murder  
4 cases. All right? Just depending again on the facts of  
5 each case.

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

8 Q. Also, the Judge read to you the  
9 indictment a few days ago. And I think the Judge has a  
10 copy of that indictment up here. Do you not?

11

12 THE COURT: Yes, I think it should be  
13 right there.

14 MR. TOBY SHOOK: It should be right in  
15 front of you. Okay. See the paragraph there?

16 THE COURT: The typewritten print  
17 there.

18 THE PROSPECTIVE JUROR: Uh-huh.  
19 (Witness nodding head affirmatively.)

20

21 BY MR. TOBY L. SHOOK:

22 Q. Just read that to yourself for a  
23 moment.

24 A. All right. Okay.

25 Q. Okay. That sets out allegations of  
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1 intentional killing of a child under the age of six.  
2 Okay? That is another type of case that a person can be  
3 eligible for the death penalty, depending on the facts of  
4 the case.

5 Let me ask you, Ms. Vega, is that the  
6 type of case -- I am not asking you for your verdict yet  
7 because you have not heard any evidence, but is that the  
8 type of case, the murder of a child under six, that you  
9 think could be appropriate for the death penalty under  
10 the proper facts?

11 A. It could be.

12 Q. All right. Do you feel that that is

13 the type of offense that maybe the death penalty should  
14 be deserving?

15

16 MR. DOUGLAS MULDER: Judge, we are  
17 going to object to any specifics.

18 MR. TOBY L. SHOOK: I'm just talking  
19 about the type of offense, Judge.

20 THE COURT: All right. Well, let's  
21 phrase our questions correctly.

22

23 BY MR. TOBY L. SHOOK:

24 Q. Again, I'm not trying to tie you down  
25 to your verdict because you have not heard any evidence,  
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1 but I am talking about types of offenses. You talked  
2 about serial killers. I'm not talking about a serial  
3 killer here, just murder of a child.  
4 Some people say, "No, I don't think  
5 that type of case should ever be a death penalty case,

6 maybe life imprisonment." Other people tell us, "Well,  
7 depending on the facts, maybe that would be one."

8 A. Well, depending on the facts, I guess,  
9 I don't know.

10 Q. Okay. You would just have to hear the  
11 facts first?

12 A. Yes.

13 Q. Okay. Ms. Vega, let me go over kind  
14 of the procedure in this case. All right? Death penalty  
15 cases are a little bit different.

16 The first part of the trial we have to  
17 prove the indictment, that is what is in front of you.

18 We have to prove that beyond a reasonable doubt. If we  
19 don't prove it beyond a reasonable doubt, and you find  
20 the defendant not guilty, we all go home. Okay? If we

21 do prove it beyond a reasonable doubt, the jury finds the  
22 defendant guilty.

23 Now that is when we move to the  
24 punishment stage. Okay? You might hear additional  
25 evidence. You might hear about the background, criminal  
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1 record, or lack of criminal record, good background.  
2 Okay? And at the close of that evidence, the jury will

3 get these questions. And I will go over those in a  
4 minute.

5 You get to consider the facts of the  
6 offense as they happened, and, also, anything else you  
7 might have heard. Okay?

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

10 Q. But we have to prove this first

11 question to you beyond a reasonable doubt. I'm going to  
12 read that. Okay?

13 "Do you find from the evidence beyond  
14 a reasonable doubt that there is a probability that the  
15 defendant would commit criminal acts of violence that

16 would constitute a continuing threat to society?" Okay?

17 Do you see where that question is asking you to predict  
18 the future?

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

21 Q. Whether the defendant would be a  
22 continuing danger?

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

25 Q. First of all, let me ask you: Do you  
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1 think you could get enough information about the  
2 defendant where you could answer that question, if it was  
3 proven to you?

4 A. Yes, sir, if it was proven.

5 Q. Again, I'm not going to tie you down  
6 to any facts. I know you don't sit around thinking about  
7 these things. But let me ask you: What types of  
8 information would you want to know about a person before  
9 you could answer that question?

10 A. Criminal record, temper, violent  
11 temper, what type of person.

12 Q. Okay. All of those things are  
13 admissible in that part of the trial, if they exist. If  
14 they have a long criminal record, if they have had a  
15 temper, and vice versa, if they have never had a criminal  
16 record.

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

19 Q. Never done anything. Obviously, you  
20 consider the facts of the offense, how brutal the murder  
21 was. You know, what led up to it, if you know, and what  
22 happened afterwards, those types of things.

23 Now, there could be a case -- there  
24 could be a case where they have a long criminal record,  
25 it could be where they have done nothing wrong in their  
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1 life before they committed capital murder. It could be  
2 faced with a situation where when you are answering that  
3 question, you are just looking to the facts of the

4 offense to decide if they would be a future danger.  
5 Okay? They may not have a criminal record.  
6 Do you think you could answer question  
7 number 1 based on the facts of the offense alone, how the  
8 murder occurred? Could you answer that question if it  
9 was proven to you? Just using the facts of the offense  
10 alone.

11

12 MR. DOUGLAS MULDER: She doesn't have  
13 to be confined to the facts of the offense alone, Judge.

14 THE COURT: I'll sustain the

15 objection.

16 MR. TOBY L. SHOOK: Well, Judge, there  
17 are certain situations where she may do that. I'm just  
18 asking her if --

19 THE COURT: Well --

20 MR. TOBY L. SHOOK: -- if she thinks  
21 she could on the facts alone.

22 THE COURT: Could you do it alone?

23 THE PROSPECTIVE JUROR: I don't think  
24 so.

25 MR. TOBY L. SHOOK: You think you  
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1 would need more information?  
2 THE PROSPECTIVE JUROR: Yes.  
3 MR. TOBY L. SHOOK: Okay. Fair  
4 enough.

5 MR. DOUGLAS MULDER: Well, Judge, of  
6 course, she is not going to know until she hears the  
7 facts.

8 THE COURT: I understand.

9 MR. DOUGLAS MULDER: It kind of begs  
10 the question; it is kind of a trick question.

11 THE COURT: Well, yes, excuse me.

12 Yes, we want to ask questions that are very straight to  
13 the point.

14

15 BY MR. TOBY L. SHOOK:

16 Q. You see I can't preview the facts for  
17 you. I can't go, "This is what we think is going to

18 happen," and are you going to give death or not, just  
19 based on the facts. I'm just asking you how you feel  
20 now, do you think you would need more than the facts of  
21 the offense alone?

22

23 THE PROSPECTIVE JUROR: Well, no, I  
24 don't --

25 MR. DOUGLAS MULDER: Well, Judge, she  
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1 can't tell whether she needs more than the facts of the  
2 offense alone.

3 THE COURT: I understand that.

4 MR. DOUGLAS MULDER: Since she hasn't  
5 heard the facts of the offense alone.

6 THE COURT: I understand that. I will  
7 sustain the objection.

8 You will listen to the testimony and

9 review the evidence and do what you think is right under  
10 the circumstances. Is that a fair statement?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Fine. Let's go ahead.

13 MR. DOUGLAS MULDER: No more trick  
14 questions.

15 MR. TOBY L. SHOOK: Judge, I can  
16 inquire as to --

17 THE COURT: You can inquire, go ahead  
18 and inquire. But you are not required to conjure up any  
19 set of facts. Do you understand that?

20 MR. TOBY L. SHOOK: No, I'm not  
21 attempting to do that, Judge. I'm just inquiring whether  
22 she thinks she could do that.

23 THE COURT: I knew you wouldn't be.

24 MR. TOBY L. SHOOK: Like I said, I

25 can't preview --

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1 THE COURT: And we appreciate Mr.  
2 Mulder's comment as regarding the question, the trick  
3 question, we think that's very nice.

4

5 BY MR. TOBY L. SHOOK:

6 Q. Anyway, are you telling me, Ms. Vega,  
7 you think you would need more information than just the  
8 facts of the murder before you can answer that question?  
9

10 MR. DOUGLAS MULDER: Judge, again,

11 that begs the question. She hasn't heard the facts of  
12 murder, how does she know whether she needs more facts or  
13 not?

14 MR. TOBY L. SHOOK: I could always go  
15 into the facts, but that is not --

16 THE COURT: No, don't go into the  
17 facts. We will -- just answer it if you can, and if you  
18 can't, just say you can't answer it. Let's get on to the  
19 next question.

20 THE PROSPECTIVE JUROR: I don't know.

21 MR. TOBY L. SHOOK: All right.

22 THE COURT: Fine. Thank you.

23

24 BY MR. TOBY L. SHOOK:

25 Q. All right. You talked to me earlier  
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1 when I asked you about crimes you thought might be  
2 appropriate for the death penalty, and you said serial  
3 murder, things like that.

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

6 Q. Would you require that the State prove  
7 to you that the defendant has committed murder before?

8 A. No.

9 Q. Okay. Let me go over some of the  
10 words here in question number 1 because you are not going  
11 to get any legal definitions. Those words will be --  
12 those definitions will be left up to you and the other  
13 jurors. Okay?

14 A. Yes.

15 Q. We have to prove that there is a  
16 probability that the defendant would commit criminal acts  
17 of violence that would constitute a continuing threat to  
18 society. You see we use the word criminal acts of  
19 violence. What do you think of when we use those  
20 words? What does criminal acts of violence mean to you?

21 A. Toward society?

22 Q. Well, let me start just with criminal  
23 acts of violence. How would you define that?

24 A. Assault, murder, rape.

25 Q. Okay. We also have to prove that it's  
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1 a probability that the defendant would commit criminal  
2 acts of violence, not that it is a certainty, just a  
3 probability. Do you think you can answer that question  
4 if you were given enough evidence?

5 A. Can you say that again?

6 Q. We only have to prove that it is a  
7 probability. Okay? But we have to prove that beyond a  
8 reasonable doubt. The question is asking the jurors to  
9 make a prediction that the defendant is going to behave  
10 or be a danger to society in the future. Do you think  
11 you could answer that question, if you were given enough  
12 evidence?

13 A. I guess, depending on the evidence and  
14 the facts.

15 Q. Okay. Let me get into the second  
16 question. That is kind of lengthy, but if you would just  
17 read along. And let tell me tell you, I didn't write  
18 that question, the legislature did, and it gets kind of  
19 lengthy.

20 But taking into consideration all of  
21 evidence, including the circumstances of the offense, the  
22 defendant's character and background, and the personal  
23 moral culpability of the defendant, that there is  
24 sufficient mitigating circumstance or circumstances to  
25 warrant that a sentence of life imprisonment rather than  
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1 a death sentence be imposed?  
2 Like I said, that gets pretty long.  
3 But, basically, this is how I view that thing, it is kind  
4 of the safety net. You don't get to this question unless  
5 you have already found the defendant guilty of capital

6 murder; found that they are going to be a future danger  
7 to society; and, then, finally you review all the  
8 evidence and decide, well, is there something in her

9 background? Or let me just say, do it hypothetical,  
10 something in the defendant's background that tells me  
11 that a life sentence should be imposed rather than a  
12 death sentence? Okay?

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

15 Q. Okay. Now, you are not required to

16 think what mitigating evidence is, just that if you see  
17 that evidence you give it that weight. Okay? It is a  
18 way to let the jury have an out in giving a life  
19 sentence. Is that clear to you?

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

22 Q. Now, like I say, I can't tell you what  
23 mitigating evidence is going to be. It's going to be up  
24 to you and the other jurors. And you don't have to agree  
25 with the other jurors what mitigating evidence is. But  
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1 let me preview a couple of things, we talk to a lot of  
2 people, and see if you agree or disagree. Okay?

3 Well, an example might be this:

4 Sometimes you might have a defendant that has got a  
5 degree from Harvard. Okay? One juror might view that as  
6 mitigating evidence, because he says, "You know, that  
7 person has done something good with their life, they have  
8 a degree, they have a good education, they have a brain."  
9 Another juror might say, "Well, that  
10 is actually bad, that is aggravating. Because someone  
11 that smart should never have committed capital murder.  
12 They have wasted their life." So they view that and hold  
13 it against them.

14 Do you see where jurors could differ  
15 on what mitigating evidence is?  
16 A. Uh-huh. (Witness nodding head  
17 affirmatively.)

18 Q. Sometimes people come in here and tell  
19 us, "Well, if the person is young when they commit the  
20 offense, that might be mitigating," whether they should  
21 get a life sentence, and other people say no. How do you  
22 feel about that?

23 A. I don't really think it matters what  
24 your -- I mean what kind of education you have or how  
25 young you are.

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1 Q. Okay. That wouldn't cut one  
2 mitigating with you?

3 A. No.

4 Q. Okay. Sometimes people commit these  
5 capital murders under the influence of drugs or alcohol,

6 they voluntarily take them. The law says that is no

7 legal defense, but you can view that as mitigating if you  
8 choose to. How do you feel about that?

9 A. If you are under the influence when  
10 you commit it?

11 Q. Right. And I am talking about going  
12 out and taking it voluntarily, no one forced it down  
13 them. Okay?

14 A. Yes. Again, I don't think it matters.

15 I mean, you are responsible for your actions, whether you  
16 are drunk or sober.

17 Q. Okay. It could be you could hear  
18 information that maybe a defendant has been abused as a  
19 child, maybe physically abused, or mentally abused, or  
20 even sexually abused, you know that comes up a lot. Some  
21 people feel that could be mitigating, other people feel,  
22 no, that's happened a lot. How do you fall? What do you  
23 think about that kind of stuff?

24 A. Well, I don't know. I guess it  
25 depends on the person's mentality. I mean, some people  
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1 can take more than others.

2 Q. Okay. But your mind can be open to  
3 that type of evidence?

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

6 Q. Ms. Vega, you have -- have you ever  
7 read much about the death penalty in Texas? The method  
8 of execution?

9 A. No.

10 Q. Are you aware that it is by lethal  
11 injection?

12 A. I have heard, but I don't --

13 Q. You have not really followed it?

14 A. -- follow it.

15 Q. It is kind of a morbid, kind of  
16 gruesome topic.

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

19 Q. Let me tell you. I have gone over the  
20 procedures here, you know. The trial is divided into two  
21 parts. The first part, we have to prove guilt or  
22 innocence. And if we prove these special issues that

23 first one "yes," that yes they would be a danger, and  
24 that there is no mitigating evidence, that would be a

25 "yes" and "no," then under our law, the Judge would  
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1 sentence the defendant to death.  
2 Now, if they are answered any other  
3 way, it's a life sentence. Okay? The jurors don't write  
4 death or life in there, but depending on how you answer  
5 those questions, the Judge will sentence the defendant to  
6 either death or life. Is that clear to you?  
7 A. Uh-huh. (Witness nodding head  
8 affirmatively.)  
9 Q. Okay. The death penalty is a very  
10 real punishment here in Texas, there has been over 100  
11 executions.  
12 Usually, we average between 15 to 17 a  
13 year now, and you can read about them from time to time.  
14 As I told you before, the executions are by lethal  
15 injection.  
16 If these questions are answered as a  
17 "yes" or "no," and the defendant is found guilty, the

18 Judge will sentence the defendant to death. Okay? If  
19 that happens some day down the line, he would actually  
20 issue a death warrant.  
21 What happens in that case, is the  
22 defendant would be taken to a special cell, given time  
23 with family and friends, maybe a minister or a priest,  
24 whoever she wants to see.  
25

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1 MR. DOUGLAS MULDER: Judge, what does  
2 this have to do with it?  
3 THE COURT: Well, I'll let him  
4 describe it.  
5 MR. TOBY L. SHOOK: Judge, I want to  
6 get her feelings on it, and it's my time to interview the  
7 juror.  
8 THE COURT: I know. I think I'll let  
9 you go ahead with that.  
10 MR. TOBY L. SHOOK: It's my right to  
11 do it.  
12 THE COURT: I think I'll let you go  
13 ahead with that. Go ahead.  
14  
15 BY MR. TOBY L. SHOOK:  
16 Q. But under our law a person that has  
17 been convicted of capital murder, sentenced to die, at

18 6:00 p.m. on that execution date they would be taken from  
19 their cell, taken to an execution chamber, strapped down  
20 on a gurney with leather straps, needles would be put in  
21 their arm, family and friends could be there to watch,  
22 but not to intervene, obviously.

23 The warden would give a last chance  
24 for the defendant to say something, they can say  
25 anything. "I didn't do it. Don't do this to me." But  
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1 the process is going to go on.  
2 Fluids, poisonous fluids will be  
3 injected into the veins, and within about 10 to 15  
4 minutes, she would be dead.

5 That is how executions take place, and  
6 are taking place in the State of Texas. We have had  
7 jurors come in here and tell us, "Look, I believe in the  
8 death penalty as a law, and I think it should be imposed  
9 in certain crimes. But I am not the kind of person that  
10 can sit down and participate in this type of procedure."  
11 Other jurors tell us, "Look, I am not asking to volunteer  
12 for it, but if you prove it to me, I can."  
13 What I need to know is if you are the  
14 kind of person who can sit on the jury, listen to the  
15 evidence, and if we do prove these things to you beyond a  
16 reasonable doubt, answer those questions. Knowing if you  
17 answer a "yes" and a "no" in the punishment stage, the  
18 defendant would be executed in the manner I have  
19 described.

20 Do you think you could do that?  
21 A. Uh-huh. (Witness nodding head  
22 affirmatively.) If it's proven?  
23 Q. If it is proven.  
24 A. I don't think I would have a problem  
25 with it.

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1 Q. You could do it?  
2 A. Uh-huh. (Witness nodding head  
3 affirmatively.)  
4  
5 THE COURT: Ma'am, you have to answer  
6 yes or no. Ms. Halsey is taking it down and we can't  
7 take down nods.  
8 THE PROSPECTIVE JUROR: Yes.  
9 THE COURT: Thank you.  
10

11 BY MR. TOBY L. SHOOK:

12 Q. Ms. Vega, in a -- well, in any  
13 criminal case we put on evidence. We have to -- we call  
14 it direct or indirect evidence. You have heard the term  
15 circumstantial evidence, haven't you?

16 A. Yes.

17 Q. Okay. That is another word for  
18 indirect evidence. Let me give you a couple of examples.  
19 If you left the courtroom today and  
20 were robbed, say at gunpoint, and the fellow ran off with  
21 your purse, and if he was caught later and you identified  
22 him, you could be called in as a witness against him and  
23 you would be the eyewitness. That is direct evidence.  
24 Any other evidence against the defendant is  
25 circumstantial evidence or indirect evidence:  
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1 Fingerprints, scientific evidence, you may have heard  
2 about DNA, hair, fiber, those kind of things, things left  
3 at the crime scene, statements by the defendant, before,  
4 during, or after the crime, anything other than an  
5 eyewitness is circumstantial evidence. Okay?  
6 Now, in a murder case, we may have  
7 only circumstantial evidence to prove our case.  
8

9 THE COURT: Sir, you are not a  
10 prospective juror in case. Are you?  
11 THE OBSERVER: No, Your Honor.  
12 THE COURT: That is fine, I just  
13 wanted to make sure. Thank you.  
14 MR. RICHARD C. MOSTY: He thinks he is  
15 a lawyer.  
16 THE COURT: I understand, I  
17 understand. Thank you.  
18

19 BY MR. TOBY L. SHOOK:  
20 Q. You may have only circumstantial  
21 evidence. The victim is killed, and you have the person  
22 being tried. There could be only two people there, you  
23 understand that? So we may have to rely on  
24 circumstantial evidence.  
25 Do you think you could convict a  
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1 person of capital murder based solely on circumstantial  
2 evidence? If it was proven to you beyond a reasonable  
3 doubt?

4 A. Well --

5 Q. Would you require an eyewitness to the  
6 crime?

7 A. I don't know if it would require an  
8 eyewitness, but I guess --

9

10 MR. DOUGLAS MULDER: Judge, it is hard  
11 for her or for any juror to answer that question until  
12 they hear the evidence.

13 THE COURT: I understand.

14 MR. DOUGLAS MULDER: If they heard the  
15 evidence, and they believed it beyond a reasonable doubt,  
16 they would convict.

17 THE COURT: I understand. Do you have  
18 a question to develop that?

19 MR. DOUGLAS MULDER: You said no more  
20 trick questions.

21 THE COURT: Well, yes.

22 MR. TOBY L. SHOOK: Judge, this is not  
23 a trick question. I am just getting her feelings.

24 THE COURT: All right. You might  
25 amplify that a little bit. You might amplify that.  
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1 MR. TOBY L. SHOOK: I just want to get  
2 her true feelings on that.

3 THE PROSPECTIVE JUROR: I was going to  
4 say that, I guess, depending on the evidence, I mean how  
5 strong it is.

6

7 BY MR. TOBY L. SHOOK:

8 Q. Okay. Here is another area I want to  
9 go into, Ms. Vega. It's called motive. You have heard  
10 of motive before?

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

13 Q. I used to see it when I was growing up  
14 on police shows all the time. What is the motive for  
15 this crime?

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

18 Q. Another word, definition: Why it  
19 happened? Why did the person do that?  
20 In Texas, under the law, we don't have  
21 to prove the motive to the crime. Okay? You have read  
22 the indictment, intentional killing. Nowhere in it does  
23 it put the reason why the crime happened. Okay? We are  
24 not required to prove the motive, or why it happened.

25 Once the evidence is produced, you may  
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1 know the motive, it might come out. Or there could be  
2 several motives out there in evidence. Everyone might  
3 have their own opinion.

4 The motive may never become apparent.  
5 It could be a senseless killing. You have heard of  
6 those? But the bottom line is this: We're not required  
7 under the law to prove that to you. It's not one of our  
8 requirements in the indictment. Do you agree with that  
9 law?

10 A. Not really. To prove that -- why they  
11 did it?

12 Q. Yes.

13 A. There's people who have killed for no  
14 reason, I mean.

15 Q. Right. And you could never know the  
16 motive.

17 A. No.

18 Q. Now, obviously, as a juror, you want  
19 all of the information possible, I'm sure; is that right?

20 A. Yes.

21 Q. If the reason is known, you would want  
22 that too?

23 A. Yes.

24 Q. My point is, we're not required to  
25 prove the motive under law. Do you agree with that?

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1 A. Yes.

2 Q. In other words, would you require us  
3 to prove the motive to you? Or if we just proved that  
4 indictment to you beyond a reasonable doubt, could you  
5 find the defendant guilty?

6 A. If it's proved without a doubt, yes, I  
7 could.

8 Q. Okay. Ms. Vega, I have gone over with  
9 you different questions for a while now. Do you have any  
10 questions about anything I have gone over?

11 A. No.

12 Q. Okay.

13

14 MR. TOBY L. SHOOK: That's all the

15 questions I have then, Judge.

16 THE COURT: Thank you, Mr. Shook.

17 Now, Mr. Mulder or Mr. Mosty?

18 MR. DOUGLAS MULDER: Yes, sir.

19 THE COURT: All right, Mr. Mulder.

20 MR. DOUGLAS MULDER: Thank you.

21 THE COURT: Go ahead.

22

23

24

25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. DOUGLAS D. MULDER:

4 Q. Ms. Vega, as the Judge told you, my

5 name is Doug Mulder. I need to visit with you a little  
6 bit and try to get to know you a little bit better.

7 First, let me make one thing just real  
8 clear here. And -- at the time the indictment is read to  
9 Darlie, she will enter an unequivocal plea of not guilty.

10 And we suggest to you that after you

11 hear both sides of the case here, you hear from them and  
12 you hear from us, you are going to find the defendant not  
13 guilty. We're not even going to get to this special  
14 issue. Okay? I just want to make that clear.

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

17 Q. But the procedure is that in criminal  
18 cases, the State goes first with their evidence. Now, if  
19 it were up to me, I would prefer to go first, because I  
20 think first impressions are mighty important. But the

21 law says that since they have the burden of proof, they  
22 are the ones who have brought the charges, the law says  
23 they go first. The law says the burden of proof is on

24 the State. And that means whoever does the accusing, has  
25 to do the proving. Does that make sense to you?

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1 A. Yes.

2 Q. Whoever accuses -- she doesn't have to  
3 do anything except be here.

4 A. Uh-huh. (Witness nodding head

5 affirmatively.)

6 Q. But I can assure you that when it  
7 comes to our turn, we're going bring you evidence as  
8 well. Okay?

9 You can hold us to that.

10 Now, the law says that the standard or  
11 the benchmark upon which you measure their proof is  
12 beyond all reasonable doubt. Okay?

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

15 Q. They have to prove their case to you,  
16 they have to prove her guilt beyond all reasonable doubt.  
17 Okay?

18 A. Yes.

19 Q. That means if you, as a juror, have a  
20 doubt, or have half a dozen doubts, or 21 doubts, all of  
21 those doubts have to be resolved in favor of Darlie. You  
22 understand that?

23 A. Yes.

24 Q. Okay. And you will do that?

25 A. Yes.

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1 Q. You can assure us that you will?

2 A. Yes.

3 Q. Okay. Now, the Judge told you back a  
4 week ago Monday that the indictment was no evidence of  
5 guilt, that it was simply the pleading and paper by which  
6 she was brought into court. That it informs you, as a  
7 juror, of what the charges are, and what the State must  
8 prove beyond a reasonable doubt. Just as it advises her  
9 of the charges against her so that she can prepare a  
10 defense. Do you understand that?

11 A. Yes.

12 Q. Okay. Do you feel that you can give  
13 both sides a fair trial in this case? Do your dead-level  
14 best to be fair?

15 A. Yes.

16 Q. And you would do that, wouldn't you?

17 A. Yes.

18 Q. You will presume her to be innocent at  
19 this time?

20 A. Yes.

21 Q. The law does. Okay? And you would  
22 make them prove everything that they have alleged against  
23 her beyond all reasonable doubt?

24 A. Yes.

25 Q. And if you had a reasonable doubt, you  
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1 would be able to say by your verdict, not guilty,  
2 wouldn't you?

3 A. Yes.

4

5 MR. DOUGLAS MULDER: I think that's  
6 all we have at this time. Thank you. You have been very  
7 fair with us.

8 THE COURT: Ma'am, could you step  
9 outside briefly, please. Don't leave.

10 THE PROSPECTIVE JUROR: Okay.

11

12 (Whereupon, the prospective

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

15 proceedings were held,  
16 outside of his presence

17 as follows:)

18

19 THE COURT: All right. What says the  
20 State?

21 MR. TOBY L. SHOOK: The State will  
22 exercise their peremptory strike.

23 THE COURT: What says the defense?

24 MR. RICHARD C. MOSTY: We would accept  
25 the juror.

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1 THE COURT: I would like it on the  
2 record that you have accepted the juror.

3 MR. DOUGLAS MULDER: Yes, sir.

4 THE COURT: I just wanted that.

5 MR. DOUGLAS MULDER: Yes, sir.

6 THE COURT: All right. Thank you. If  
7 you would have Ms. Vega step back in, please.  
8 MR. DOUGLAS MULDER: Would you

9 admonish Mr. Shook no more trick questions, Judge?

10 THE COURT: Yes, I will admonish both  
11 sides.

12 MR. RICHARD C. MOSTY: He finally ran  
13 out.

14

15 (Whereupon, the prospective  
16 juror returned to the  
17 room and the proceedings

18 were resumed as follows:)

19

20 THE COURT: Ms. Vega, we want to thank  
21 you very much for coming and your candid answers, but you  
22 will be excused from further jury service.

23 THE PROSPECTIVE JUROR: Okay. Thank  
24 you.

25 THE COURT: Thank you for coming.

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1 THE PROSPECTIVE JUROR: Thank you.

2 THE COURT: All right. Do we have

3 anybody else? That's all until after lunch? Very well.

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. And you are  
15 Ms. Wallace?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: All right. Can you raise  
18 your right hand, please, ma'am.

19 Do you solemnly swear or affirm you  
20 will true answers make to all the questions propounded to  
21 you concerning your qualifications as a juror, so help  
22 you God?

23

24 THE PROSPECTIVE JUROR: Yes.

25

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

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

8

9 Whereupon,

10

11 PATSY LEACH WALLACE,

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 THE COURT: Thank you very much. And  
19 you are Patsy, P-A-T-S-Y, Wallace; is that correct?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: All right, ma'am. This  
22 is -- the State of Texas in this case is represented

23 today by Ms. Sherri Wallace and Mr. Toby Shook. And this  
24 is Mrs. Darlie Routier, the defendant, the young lady in  
25 the pink dress sitting right there. She is represented  
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1 by Mr. Douglas Mulder.

2 MR. DOUGLAS MULDER: How are you?

3 THE COURT: Mr. Richard Mosty.

4 MR. RICHARD C. MOSTY: Yes, sir.

5 THE COURT: And Mr. Preston Douglass.

6 And so who will go first for the State, Mr. Shook?

7 MR. TOBY L. SHOOK: I will, Judge.

8

9 VOIR DIRE EXAMINATION

10

11 BY MR. TOBY L. SHOOK:

12 Q. Ms. Wallace, again, my name is Toby  
13 Shook, and I am one of the prosecutors on the case and I  
14 will be asking you questions on behalf of the State.

15 Okay?

16 A. Okay.

17 Q. What we are interested in are your

18 honest answers to all our questions. What I want to do  
19 is go over some of your answers on your questionnaire and  
20 then maybe talk about the death penalty. Okay?

21 A. Okay.

22 Q. I notice on the very back page, the  
23 last page, we have an area there about your health.

24 A. I am in bad health.

25 Q. Right. And you put down a number of  
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1 things. That you are on medication, and also checked off  
2 that you have personal health problems that would prevent  
3 you from giving full attention to the testimony and to  
4 the trial. And, I guess, it involves the medication you  
5 are on?

6 A. Yes.

7 Q. Tell us a little bit about your health  
8 problems.

9 A. I don't know if anyone here knows what  
10 lupus erythematosus systemic is, but in any case, it is  
11 fairly debilitating, it's the first cousin of rheumatoid,  
12 however, is probably more deadly.

13 Q. Okay.

14 A. It keeps me on a roller coaster. I

15 mean, I would love to serve, but I cannot be counted on  
16 because I could end up in the hospital, it can affect  
17 kidneys, you know, plus, I have also got necrosis, and  
18 cardiopulmonary.

19 I have got three things that are

20 fairly debilitating. So, as much as I would like to  
21 serve, I don't know that I could be counted on.

22 Q. Okay. Well, Ms. Wallace, you know  
23 your situation as best -- you know yourself and the

24 medical problems that you have. And that is the thing,  
25 if someone comes in here and they are suffering from an  
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1 illness that would prevent them from sitting as a juror,  
2 that is fine. You know, obviously, we need to know that.  
3 Is that what you are telling us?

4 A. Well, I put everything down that I  
5 could on that paper to try to give full warning, as I  
6 said. When I'm up, I'm up, but --

7 Q. So this kind of comes and goes?  
8 A. Well, if you know anything about it or  
9 know anything about rheumatoid, it's up one day and down  
10 the next. It's a roller coaster ride.

11 Q. So, this is actually just a day to day

12 ordeal you go through?

13 A. Yes.

14 Q. Some days you have good days, other  
15 days you are very sick.

16 A. The thing that would worry me mostly  
17 about this case, would be being sequestered somewhere,  
18 and I would end up having to leave or be in the hospital  
19 or something. As I said, I would love to serve, because  
20 I think it's my duty.

21 Q. Uh-huh. (Attorney nodding head  
22 affirmatively.) Well, let me ask you, you are the best

23 judge of this: The only time you would be sequestered is  
24 during deliberations, and who knows how long those would  
25 last.

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1 During the trial you would have to sit  
2 here from about 9:00 to 5:00 everyday listening to the  
3 evidence, but you would go home during the evening. The  
4 trial should last about two weeks at the outset. I guess  
5 our longest prediction would be about three weeks, but  
6 best guess, about two weeks. Are you telling you us that  
7 because --

8 A. I'm telling you I don't know, and  
9 that's all I can say. I don't know. As I said, I can  
10 give it a shot, but I don't think that is really good for  
11 a juror.

12 Q. But if you get sick, you are telling  
13 us when you get sick, you are really sick?

14 A. I am sick.

15 Q. You wouldn't be able to sit as juror  
16 then, if you were sick?

17 A. Well, I couldn't even drive. Because  
18 I end up having to take -- I am on Plaquenil, Paxil, when  
19 the pain gets unbearable then I am on hydrocodone, which  
20 prevents me from being behind the wheel of a car. I  
21 don't think you would want me sitting here with all of  
22 those drugs in me.

23 Q. Right. You would be totally  
24 incapacitated then, wouldn't you?

25 A. I could not take them, I guess. I  
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1 could sit here in severe pain, I have done that.

2 Q. But that wouldn't be very prudent, I  
3 guess, would it?

4 A. Well, you are asking me questions I  
5 can't answer. I have only had this disease for seven

6 months, so I am still kind of new to it.

7 Q. Okay. Let me go on to a couple of  
8 other areas, Ms. Wallace. Again, I want to tell you, you  
9 have been real open and honest with us on this  
10 questionnaire, too. Okay? And I want to go over some of  
11 the things on that questionnaire.

12 Like I said, we are just interested in  
13 your honest opinions, and you have made the statement a  
14 couple of times, you want to come down and serve, and  
15 that is fine. We want people to come down.

16 A lot of people just don't show up for  
17 jury service. Okay? But just because you come down and  
18 serve, obviously, doesn't mean you are on the jury. That  
19 is why we had about 180 something people actually show  
20 up.

21 A. I understand.

22 Q. Every case -- every person that comes  
23 down there, obviously, has had a different life  
24 experience and feels strongly one way or another on  
25 different issues. Now this is a death penalty case.

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1 A. I know that.

2 Q. It's been very clear to you?

3 A. Yes.

4 Q. Obviously, the State of Texas is  
5 seeking the death penalty.

6 A. I understand that.

7 Q. In this case.

8 A. Yes.

9 Q. And, so we want to explore every  
10 juror's viewpoints about the death penalty.

11 A. I think I put that on there.

12 Q. You did, you made it very clear. But  
13 the law requires us to go into a little more detail, so I  
14 am not arguing with you.

15 A. Okay. Okay. Well, I'm not very good  
16 with the law.

17 Q. Okay. But it just requires you have  
18 to verbalize it to us. Okay?

19 A. Okay.

20 Q. I am not trying to argue with you or  
21 anything like that.

22 A. I wouldn't either.

23 Q. You put down on your questionnaire  
24 when we asked: If you were in favor of the death

25 penalty? You said no.  
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1 A. Right.  
2 Q. Tell us why.  
3 A. Well, because I, being a Christian,  
4 believe that there is a point in time, if this woman  
5 indeed is guilty, when all of that can be forgiven and  
6 she can find the Lord.  
7 I'm not assuming that she is guilty.  
8 I am just saying, that if she is, that there would be  
9 time for her to get her life back together.  
10 Q. How would you best -- and so, you are  
11 opposed to the death penalty?  
12 A. I am opposed to the death penalty.  
13 Q. Is it a religious reason?

14 A. Yes, strictly religious.  
15 Q. Strictly religious.  
16 A. There was a time when I was in favor  
17 of it.  
18 Q. And that was?  
19 A. Before I became what I consider a  
20 Christian.  
21 Q. When was that?  
22 A. Goodness. Probably back in the late  
23 '60s.  
24 Q. Okay. Since that time you have had a  
25 chance to change your mind on how you viewed the death  
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1 penalty?  
2 A. Right.  
3 Q. So would it be safe to say you felt  
4 that way for a number of years?  
5 A. Yes.  
6 Q. Okay. Is this an issue you have  
7 thought about before in any great detail?  
8 A. Probably when it came to the courts  
9 when we outlawed the death penalty. Y'all may not be old  
10 enough to remember all of that.  
11 Q. Back in the '60s.  
12  
13 THE COURT: Oh, yes, ma'am, I remember  
14 that.  
15 THE PROSPECTIVE JUROR: Are they old  
16 enough?  
17 THE COURT: Oh, yes, ma'am. Several

18 of the others, and Mr. Mulder and I are, too. Yes,  
19 ma'am.

20 THE PROSPECTIVE JUROR: Oh, you are?

21

22 BY MR. TOBY L. SHOOK:

23 Q. So this is a subject you have thought

24 of previously?

25 A. For a number of years, yes.

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1 Q. And, obviously, when you were brought  
2 down last Monday, I'm sure it went through your mind  
3 then. It was very apparent that this was a death penalty  
4 case.

5 A. Yes, it was.

6 Q. And have you reflected on it since you  
7 filled out the questionnaire?

8 A. Oh, I don't know what you mean by  
9 that. I have reflected on? Well, I tried to put myself  
10 in the place of someone who was being accused of  
11 something of this sort, and it's got to be probably one  
12 of heaviest things that anybody can lay on someone.

13 As I said, I don't know whether she is  
14 guilty or not guilty. That really doesn't matter at this  
15 point of my reflection.

16 Q. Have your -- has your opposition to  
17 the death penalty changed at all though?

18 A. No.

19 Q. You still feel that way?

20 A. I still feel that way.

21 Q. You also checked off on the  
22 questionnaire, we asked the question: Do you have any  
23 moral, religious, or personal beliefs that would prevent

24 you from sitting in judgment of another human being? You  
25 checked off "yes" on that.

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1 A. Yes.

2 Q. Does that go back to --

3 A. Of course.

4 Q. -- the same thing we have been talking  
5 about? And you also checked off: Do you have any moral,  
6 religious, or personal beliefs that would prevent you  
7 from returning a verdict which would result in the  
8 execution of a woman? And you checked off "yes" to that  
9 also. Again, is that along the same lines --

10 A. Yes.

11 Q. -- we have been talking about?

12 A. Yes, sir.

13 Q. Okay. That is fine that you feel that

14 way. But, again, we have got to talk about that a little

15 more. Okay? If you will just bear with me then?

16 A. Okay.

17 Q. Okay. Let me kind of -- I'm going to

18 ask you some more question along those lines, but let me

19 preface it by telling you how a capital murder trial

20 works. Okay?

21 A. Okay.

22 Q. First of all, the trial is divided

23 into two parts. The guilt/innocence stage where we have

24 to prove the indictment to you beyond a reasonable doubt.

25 I think you will find the indictment in front of you.

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1 A. Is this it right here?

2 Q. That paragraph that is set out in the

3 middle.

4

5 THE COURT: The typewritten paragraph.

6 THE PROSPECTIVE JUROR: Yes. Okay.

7 Unlawfully then and there --

8

9 BY MR. TOBY L. SHOOK:

10 Q. If you could just read that to

11 yourself, and let me know when you finish.

12 A. It makes me cry.

13 Q. Those are the allegations we have to

14 prove in the guilt/innocence stage. If we don't prove it

15 beyond a reasonable doubt, then it's not a guilty

16 verdict. Okay?

17 A. Okay.

18 Q. And then we all go home then, if it's

19 a not guilty verdict.

20 A. Okay.

21 Q. If the State does prove that beyond a

22 reasonable doubt, then we go on to the second portion of

23 the trial. Okay?

24 A. Okay.

25 Q. The second portion of the trial, you

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1 would get -- a juror would get to hear additional

2 evidence. And if there is additional evidence, you would

3 get these special issues at the end of that. Okay? And

4 I want to go over those just briefly with you.

5 You see, that first question, the

6 State has to prove beyond a reasonable doubt. And it  
7 asks: "Do you find from the evidence, beyond a  
8 reasonable doubt, that there is a probability that the  
9 defendant would commit criminal acts of violence that  
10 would constitute a continuing threat to society?"

11 That is asking the jurors to make a  
12 prediction about how a person will behave, if they are

13 going to be a continuing danger. If we prove that beyond  
14 a reasonable doubt, the jury answers "yes." Okay? It's  
15 a "yes" or "no" question.

16 If the jury answered "yes," you would  
17 move on to that second question. That is a lengthier  
18 question. It asks: "Taking into considering all of the  
19 evidence, including the circumstances of the offense,  
20 the defendant's character and background, and the  
21 personal moral culpability of the defendant, is there a  
22 sufficient mitigating circumstance or circumstances to  
23 warrant that a sentence of life imprisonment rather than  
24 a death sentence be imposed?"

25 That is what we call the mitigation

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1 issue. It's kind of a safety net. You don't get to that  
2 question as a juror unless you have found the defendant  
3 guilty, found that they are going to be a danger to  
4 society, but somewhere in the evidence it tells you that  
5 a life sentence should be imposed rather than a death

6 sentence. Allows the juror to spare the life. Do you  
7 understand that?

8 A. Yes.

9 Q. If you answer that question "no," the  
10 defendant will get life. I mean, I'm sorry, if you  
11 answer it "yes," that there is sufficient mitigating  
12 evidence, then the defendant would get a life sentence.  
13 If you didn't find the mitigating evidence there, if you  
14 answered "no," it would be a death sentence. The jurors  
15 don't actually write in death sentence or life sentence.

16 They used to, but they don't now.

17 But I can tell you that if you write  
18 in -- if a juror writes in "yes" and a "no," the Judge

19 has no choice. He would sentence the defendant to death.

20 Now, if they are answered any other way, that second

21 question is answered "yes," or you never even get past  
22 that first issue, then it is a life sentence. But those  
23 are the two possible outcomes once a person has been

24 found guilty of capital murder. Is that clear to you?

25 A. Yes, it is.

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1 Q. Okay. If it does -- if it is a  
2 situation where the Judge imposes the death sentence  
3 based on these answers from the jury, the method of

4 execution is by lethal injection. I don't know if you  
5 have read or heard anything about the method for  
6 execution.

7 A. Yes. I was married to a doctor for 18  
8 years, I know what that means.

9 Q. So you know about it. And you  
10 probably know that those executions actually take place  
11 in the State of Texas?

12 A. Yes, I know that.

13 Q. They are in the paper from time to  
14 time. Some states have the death penalty and they never  
15 impose it. Texas leads the nation in executions. They  
16 have had over 100. I think the average is 15 or 16 or 17  
17 a year.

18 The execution, as you are well aware,  
19 is by lethal injection where you actually strap the  
20 defendant down, and with witnesses there, put a needle in  
21 their arm, inject poisons that stop the heart. It's a

22 very quick process, but it's a very real process. And I  
23 just want to lay all my cards on the table.

24 Now, you have told me that  
25 philosophically, because of your religious beliefs, you  
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1 don't believe in the death penalty?

2 A. No.

3 Q. And you have told me that these  
4 beliefs are strong enough that they would prevent you  
5 from returning a verdict that would result in someone's  
6 execution?

7 A. That's correct.

8 Q. You feel that way?

9 A. Yes.

10 Q. Okay. Now, you understand these

11 questions don't ask you to write in death or life.

12 A. Right.

13 Q. But you understand if you answer them

14 a certain way what is going to happen?

15 A. Yes.

16 Q. Okay. It's either going to be death

17 or life?

18 A. Yes.

19 Q. Now, we have had different jurors come

20 down here, and we're just looking for your honest

21 opinions, we have had them come down here and they want

22 the death penalty on everything, no matter what the facts

23 or circumstances, and that is just not fair.

24 We have had jurors come down here and

25 just say, "I am not opposed to the death penalty. I can

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1 answer these questions though. It's not going to bother

2 me, or I can do it if it is proven to me."

3 We have had other jurors come down

4 here and they say, "Look, I know it's a law, but for

5 whatever reasons, moral reasons, religious reasons, I am

6 personally opposed to the death penalty." And we can ask

7 you, and we can require you as citizens to come down here

8 to answer the jury summons. But we cannot force you to

9 abandon your moral and religious principles.

10 A. Nobody can.

11 Q. Okay. You understand that?

12 A. Yes.

13 Q. Some people would be fine on different

14 types of cases. You know? We have people come down here

15 and maybe they would be fine on a case where only jail

16 time were imposed; or maybe if was a civil case. We have

17 had people come down here that maybe had lost loved ones

18 in a DWI accident, and they are called down and sure

19 enough, it's a DWI case. And they say, "Look, this is

20 hitting a little too close to home. I couldn't be fair

21 because of my background. Or I don't believe in drinking

22 at all, you know, I couldn't be fair."

23 We have had other people come down

24 that have had bad experiences with police officers.

25 Maybe their son had a bad experience, and they will tell

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1 us, "Look, I just can't be open-minded to police officers

2 that are testifying. Put me on civil case or something."

3 We have had other people down here

4 that are victims of violent crime, and they couldn't sit

5 on a violent crime case. My point is that different

6 people come down for jury service with different

7 viewpoints. And some people can sit on this type of

8 case, and some people cannot.

9 From what you are telling me is this

10 isn't the type of case, because of your religious

11 objections, that you could sit on, and answer these

12 questions that would result in someone's execution?

13 A. No.

14 Q. Okay. Am I reading you right then?

15 A. Yes.

16 Q. Okay. Let me go just a little further

17 because sometimes -- you understand that these questions

18 don't call for life or death answers, they call for you

19 to look at the facts, let you know I am just using the

20 juror as a hypothetical, and answer the questions if the

21 State proves it. Just listen to the facts and answer the

22 questions.

23 However, jurors are not like

24 computers, you still have emotions and belief systems.

25 You can't divorce those emotions and beliefs many times.

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1 It is one thing to think, yes, you have proven it to me,

2 but I can't sit there and answer the questions in a way

3 that would result in someone's death. I don't care how

4 much evidence you give me.

5 A. Right.

6 Q. I had a guy in here yesterday, he told

7 us, "Look, you can talk about all the evidence you can.

8 You can prove this guy is the most dangerous, vicious

9 criminal that walked the face of the earth. I am morally

10 opposed to the death penalty. And I cannot answer those

11 questions in a way, no matter what the evidence is, I

12 can't answer them in a way that would result in the

13 defendant's execution." Life imprisonment, he didn't

14 have a problem.

15 A. I don't have any problem with that.

16 Q. But it is execution, and he was honest

17 with us and we appreciated that.

18 Sometimes we run across people that

19 tell us they are opposed to the death penalty, and then,  
20 I guess, they just abandon those convictions and say,  
21 "Okay. I can sit here and answer your questions." Maybe  
22 they didn't really believe in it that much, I don't know.

23 A. Well, I am not one of those.

24 Q. You are not one of those?

25 A. No.

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1 Q. You have felt this way a number of  
2 years?

3 A. A number of years.

4 Q. We're not changing your mind?

5 A. I am too old to change.

6 Q. And that is fine. But you are telling  
7 me that it's not a question of us proving it to you?

8 A. No.

9 Q. Not at all?

10 A. Not at all.

11 Q. It's not a question of you being  
12 intellectually able to decide the evidence?

13 A. Well, you can intellectually decide  
14 anything, but it still does not have any bearing on your  
15 convictions about -- your actions, you can  
16 intellectualize anything.

17 Q. Yes, that is true.

18 A. Otherwise it gets to be something  
19 else.

20 Q. And you see the difference that we're  
21 talking about here, and you are telling me that you are  
22 not going to abandon those convictions that you have in  
23 your heart?

24 A. No, never.

25 Q. Okay. Well, then I appreciate your

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1 honesty about that.

2

3 MR. TOBY L. SHOOK: And that's all the  
4 questions I have, Judge.

5

6 VOIR DIRE EXAMINATION

7

8 BY MR. DOUGLAS D. MULDER:

9 Q. Ms. Wallace, I need to visit with you

10 a little bit if I may?

11 A. All right.

12 Q. As the Judge told you, my name is Doug  
13 Mulder. And I am not going to waste a lot of your time,  
14 but I'm going to get right to the heart of the question  
15 here. I am perplexed a little bit by the way they have  
16 asked you some questions, and I am going to be a little  
17 more direct and maybe a little more blunt.

18 A. I will answer to the best of my  
19 intelligence.

20 Q. You were asked something like, "Would  
21 you answer the questions," I don't remember exactly how  
22 he asked you the question, "but would you answer the  
23 questions in such a fashion to avoid giving the defendant  
24 death?"

25 A. Yes.

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1 Q. I think something like that.

2 A. Yes.

3 Q. Let me put it to you straight out:

4 You will take an oath as a juror. Raise your hand and  
5 take an oath to God, to render a just and true verdict

6 according to the facts and the evidence, so help you God.  
7 Okay?

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

10 Q. Now, what they are asking you is, if  
11 the State proves this issue, and if the State proves this  
12 issue to you, will you deliberately answer these falsely?

13 A. Oh, no. I didn't understand that.

14 Q. See, that is the --

15 A. No, that has me confused.

16

17 MR. TOBY L. SHOOK: Judge, that is not  
18 what I said.

19 THE PROSPECTIVE JUROR: That did  
20 confuse me.

21 MR. DOUGLAS MULDER: Well, that is not  
22 what he said, but that is what he meant, Judge.

23 THE COURT: Well, I'll determine what  
24 he meant. I understand what Mr. Shook said. Go ahead  
25 Mr. Mulder.

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1 MR. DOUGLAS MULDER: Bottom line, Your

2 Honor --

3 THE COURT: Yes, sir.

4 MR. DOUGLAS MULDER: Yes, sir.

5

6 BY MR. DOUGLAS D. MULDER:

7 Q. Is whether or not a juror will take an  
8 oath and violate that oath and answer these falsely, once  
9 they have been proven to your satisfaction, will you  
10 answer it falsely to avoid giving her death, or would you  
11 answer it truthfully, according to your oath?

12 A. I would have to be truthful.

13 Q. That's right. And you would do that,  
14 wouldn't you?

15 A. Yes, I would.

16 Q. Regardless of what the consequences  
17 are?

18 A. Are you telling me that I would no  
19 longer have the choice?

20 Q. You don't have the choice. It's up to  
21 him. Your only choice is whether or not you answer these  
22 issues truthfully, or if you deliberately answer them  
23 falsely to avoid the consequences?

24 A. No, I couldn't, I could not be  
25 dishonest, that would go against everything.

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1 Q. So you would answer them truthfully  
2 then according to the evidence that was presented?

3 A. I would have to do that.

4 Q. All right. And you would do that?

5 A. Yes.

6 Q. Okay. Let me visit with you a little  
7 bit about some other aspects of this case. First of all,  
8 Ms. Wallace, I want to make it abundantly apparent. I

9 don't think you are ever going to get to those issues,  
10 okay, as a juror. I think after you hear all of the  
11 evidence from both sides, that you will vote to acquit

12 Darlie. Okay? So I don't think we are ever going to get  
13 there, but this is the only time that we can ever discuss  
14 these issues with you.

15 When the indictment is read to her,  
16 she is going to enter an unequivocal plea of not guilty.

17 Now, from a procedural standpoint, the  
18 law says that the State, because they have the burden of  
19 proof, they go first with their evidence. If I had my  
20 druthers, I would prefer to go first, because I think  
21 first impressions are mighty important.

22 And I think a lot of times people hear  
23 that first argument, and then they have a tendency to

24 make up their mind, and then when it's our turn at bat,  
25 they have closed their mind as to the reception of our  
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1 evidence.  
2 So, you can't do that. You can keep  
3 an open mind, I take it, until we got a chance at bat,  
4 and could bring forth our witnesses and our evidence?

5 Could you do that?  
6 A. Oh, yes. I think I have that much  
7 intelligence.  
8 Q. Sure. The law says that they go first  
9 because they have the burden of proof. They brought the  
10 accusation. And the law says, whoever does the accusing,  
11 has to do the proving. Does that make sense to you?  
12 A. Yes.  
13 Q. Okay. She doesn't have to do anything  
14 except be here. The law requires that she be present in  
15 court. But I can assure you that we will come forward  
16 with evidence.  
17 Now, as jurors, you and the other 11  
18 members are the exclusive judges of the facts proved, the  
19 credibility of the witnesses, and the weight that you

20 want to assign to the testimony to each witness? Okay?

21 A. Okay.  
22 Q. The Judge won't tell you who you can  
23 believe and who you can't believe. You don't have to  
24 know any law to serve on a jury. In fact, you are  
25 probably a whole heck of a lot better off if you don't.  
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1114  
1 A. Okay.  
2 Q. Because he is going to give all the  
3 law that is applicable to this case in a written  
4 instrument called the Charge. And you will have that  
5 when you go back to deliberate, so that you can fit the  
6 law with the facts and arrive at your verdict.  
7 Now, your power and your authority as  
8 a juror is simply awesome.

9 A. Yes.  
10 Q. Simply awesome.  
11 A. Yes, and frightening.  
12 Q. It is frightening. If Judge Tolle  
13 makes a mistake with respect to the law, we can appeal it  
14 to a higher court and get it corrected. But there is no  
15 appeal with respect to the facts. The facts are what the

16 jury decides they are, and that is it. There is no  
17 appeal on that.

18 Now, because there is no appeal, the  
19 law says that when jurors have reasonable doubts that  
20 either come from the evidence or from the lack of  
21 evidence, that they should resolve those doubts in behalf  
22 of the defendant.

23 And, you know, if you and I were to  
24 draw up the rules that would govern the trial of a  
25 criminal case, we would want to encourage jurors to  
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1 arrive at a verdict to have some sort of a resolution of  
2 that case. Right?

3 A. Yes.

4 Q. And we would probably, in our  
5 discussions, recognize that when the jury went back to  
6 deliberate, they would have reasonable doubts either  
7 based on the evidence or the lack of evidence. Right?

8 A. Yes.

9 Q. And we would want a way for them to  
10 resolve those reasonable doubts. And we might say,

11 "Well, the fair way would be to make a list of those  
12 doubts, those reasonable doubts, and number them from 1  
13 to 21, or 1 to 101, and we will give the State the  
14 benefit of the odd number reasonable doubts and we will  
15 give the defendant the benefit of the even numbered  
16 doubts." But the law says not so. The law says every  
17 time, you as a juror, have a reasonable doubt, you are  
18 duty-bound to resolve it in favor of the defendant. Is  
19 that fair enough?

20 A. Fair enough.

21 Q. So if there's one, that's fine. If  
22 there's 21, that is fine, if there's 101, that is fine,

23 too. But all reasonable doubts are decided in her favor.

24 And I guess that gets back to that old  
25 point that I made a few minutes ago when I said that you  
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1 are the exclusive judges of the facts proved. The facts  
2 are what you say they are, and there is no appeal on  
3 that, like there is on the law, if the Judge makes a  
4 mistake.

5 At this stage of the proceedings, the  
6 law says that the defendant is presumed to be innocent.

7 It's mighty hard when you walk into a courtroom like this  
8 in the well-lighted, almost sterile, laboratory  
9 conditions, and you see the defendant seated there with  
10 her lawyers, and you see the prosecutors there, and you  
11 see the Judge on the bench, and it's almost not normal to  
12 think to yourself, "You know, I wonder what she has  
13 done."

14 But the law says that she is presumed  
15 to be innocent. And I am not really so much concerned  
16 with whether or not the jury presumes her to be innocent,  
17 as I am concerned with the prospect or idea that they may  
18 presume that she is guilty.

19 I don't need a head start.

20 A. No.

21 Q. So I don't need you to even presume

22 that she is innocent, just so long as you don't presume  
23 that she is guilty. If you will let me start out even  
24 with them, that's all I need, and that's all I want.

25 Okay? Fair enough?

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

3

4 THE COURT: Is that yes, ma'am?

5 THE PROSPECTIVE JUROR: Yes. I'm  
6 sorry.

7 THE COURT: Thank you. That is all  
8 right. Ms. Halsey is taking all this down.

9 THE PROSPECTIVE JUROR: Oh, darling,  
10 I'm sorry. It's hard for you to read my mind, isn't it?

11

12 BY MR. DOUGLAS D. MULDER:

13 Q. The law says that the indictment is no  
14 evidence of guilt, that it is simply the pleading and  
15 paper by which she is brought into Court. It advises her  
16 of the charges against her so that she can prepare her

17 defense, and informs you, as a juror, of what the State  
18 has charged and what they must prove.

19 Like I said before, the law says that  
20 whoever does the accusing, has to do the proving. That  
21 makes sense, doesn't it?

22 A. Yes.

23 Q. Would you do your dead-level best to  
24 be absolutely fair to both sides in this case?

25 A. Oh, yes. I didn't even know about  
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1 this case until I was called up. I didn't even know why  
2 I was called up for jury duty.

3 Q. Well, that is the frame of mind that  
4 we really prefer, both sides. Ms. Wallace, thank you  
5 very much for your time and your attention.

6

7 THE COURT: Ma'am, in your  
8 questionnaire you state that although you don't believe  
9 in the death penalty, you could assess it in the proper  
10 set of circumstances.

11 You also stated that you have a moral,  
12 religious, or personal beliefs that would prevent you  
13 from sitting in judgment of another human being. Is that  
14 correct?

15 THE PROSPECTIVE JUROR: That's  
16 correct.

17 THE COURT: Now, just because you are  
18 opposed to these things or have these beliefs does not

19 disqualify you as a juror. What I want to know is this:  
20 Can you set those beliefs -- if you are chosen to be a  
21 juror in this case?

22 THE PROSPECTIVE JUROR: Well, first of  
23 all, I have to tell the truth.

24 THE COURT: Well, let me finish this  
25 first and then we will let you. If you are chosen as a  
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1 juror in this case, can you set those beliefs aside?

2 THE PROSPECTIVE JUROR: No.

3 THE COURT: Let me finish the  
4 question: And follow the law as I give it to you, and  
5 answer, and make findings, dependent on the law and the  
6 evidence as you hear it, and if you find the defendant  
7 guilty, if you think the State has proven the defendant

8 guilty, you will find her guilty. If you think they have  
9 not proven her guilty, you will find her not guilty.

10 And if you find her guilty, can you  
11 set those beliefs aside and answer those questions  
12 honestly, even though your honest answers may result in  
13 her execution?

14 THE PROSPECTIVE JUROR: Yes, I have to

15 tell the truth, but y'all have put me in a cage.  
16 THE COURT: No, ma'am. Nobody is  
17 going to put you in a cage. I just need to know: Can  
18 you set those reservations you have aside, and follow the  
19 law?  
20 THE PROSPECTIVE JUROR: I will have to  
21 tell the truth.  
22 THE COURT: Even though by following  
23 it, it may result in her execution. Can you do that?  
24 THE PROSPECTIVE JUROR: Well, if it's  
25 a matter of having to tell the truth, yes, I would have  
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1 to do that.  
2 THE COURT: Can you do it?  
3 THE PROSPECTIVE JUROR: I don't know.  
4 THE COURT: Well, we have to have an  
5 answer of either you can do it or you cannot.  
6 THE PROSPECTIVE JUROR: Well, maybe  
7 I'm not understanding.  
8 THE COURT: All right. Could you set  
9 your beliefs aside, and follow the law as I give it to  
10 you even though it might result in her execution?  
11 THE PROSPECTIVE JUROR: I don't know  
12 those things. You are asking me things I don't know.

13 MR. DOUGLAS MULDER: Judge, if I  
14 could, excuse me, I think the Court is going a little too  
15 far.  
16 THE PROSPECTIVE JUROR: Maybe I am  
17 misunderstanding you.  
18 THE COURT: Well, here is what I want  
19 to know: Can you set those beliefs aside and follow the  
20 law?  
21 THE PROSPECTIVE JUROR: Maybe I am  
22 misunderstanding.  
23 MR. DOUGLAS MULDER: I think the  
24 question is: Can she answer the special issues  
25 truthfully?  
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1 THE COURT: That is what I asked her.  
2 MR. TOBY L. SHOOK: The question is:  
3 If she can overcome her conviction that she is against  
4 the death penalty?  
5 THE COURT: That is what I am asking  
6 her. If you can overcome your conviction, answer those  
7 truthfully, even though a truthful answer may result in

8 her execution? Can you do that?

9 THE PROSPECTIVE JUROR: I don't know.

10 You are asking me something I can't answer.

11 MR. RICHARD C. MOSTY: Your Honor, I  
12 don't think -- what she said is, that in spite of her  
13 convictions, she will stand true and honest and answer  
14 them honestly based on the evidence.

15 THE COURT: Gentlemen, I understand

16 what she is saying. Can you do it? Can you answer them  
17 honestly?

18 THE PROSPECTIVE JUROR: I will have to  
19 answer honestly.

20 THE COURT: That is all I wanted to  
21 know.

22 THE PROSPECTIVE JUROR: That is part  
23 of my conviction.

24 THE COURT: Even though it might  
25 result in her execution?

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1 MR. DOUGLAS MULDER: Well, she has  
2 nothing to do once she has answers the questions  
3 honestly, that is it.

4 MR. TOBY L. SHOOK: Judge, she has  
5 clearly said she would not overcome it.

6 THE COURT: Just a minute. I think  
7 she said --

8 THE PROSPECTIVE JUROR: I could never  
9 overcome my convictions, dear. I didn't say I wouldn't  
10 answer honestly.

11 THE COURT: You would answer it  
12 honestly, but --

13 MS. SHERRI WALLACE: Judge, the juror  
14 does not have to be put in this position. She is having  
15 to -- she is between -- I mean, the way the defense wants  
16 the question worded, she is having to choose between, in  
17 their words, lying or violating her opposition to the  
18 death penalty.

19 THE COURT: Thank you. I understand  
20 what you are saying. All right.

21 MS. WALLACE: And that is not a fair  
22 question for this juror.

23 THE COURT: Thank you very much. I  
24 appreciate that. But you could answer all of the  
25 questions honestly.

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1 THE PROSPECTIVE JUROR: Honestly.

2 THE COURT: Depending on the law and  
3 the evidence.

4 THE PROSPECTIVE JUROR: No, I could  
5 never waive my convictions.

6 THE COURT: Even though you couldn't  
7 waive your convictions, you would still answer those  
8 questions honestly?

9 THE PROSPECTIVE JUROR: That's part of  
10 my convictions.

11 THE COURT: All right. Thank you very  
12 much. All right.

13 I hold the juror qualified. Does  
14 either side want to submit her or not?

15 MR. TOBY L. SHOOK: Judge, we will  
16 submit her under 35.16(b)(1). In that she has clearly  
17 told me she has had a deeply-held belief since the '60s  
18 that she is opposed to the death penalty.

19 She has told me that it's not a  
20 question of what we prove to her, it's a question of her  
21 being unable, in this type of case, to answer questions  
22 in a way that would result in the execution.

23 THE COURT: Well, I'm overruling that.

24 I think she has stated she can overcome those beliefs and  
25 answer the questions honestly.

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1 So, does either side want to -- Can  
2 you step outside briefly, please. Don't go away.

3 MR. TOBY L. SHOOK: Judge, we would  
4 also ask the juror to be excused because of what she has  
5 told us about her health under 35.16(5).

6 She is in bad health right now. She  
7 doesn't know when she could serve and when she couldn't  
8 serve.

9 THE COURT: Well, she looks all right,  
10 and she came down here today. So nothing from the doctor  
11 has been seen.

12 THE PROSPECTIVE JUROR: I have all of  
13 these papers, but nobody has asked to look at them.

14 MR. RICHARD C. MOSTY: Your Honor,  
15 that is what alternates are for anyway.

16 THE COURT: Well, I understand all  
17 that, Mr. Mosty. We intend to get to alternates in this  
18 case.

19 MR. DOUGLAS MULDER: Thank you for  
20 pointing that out.

21 THE COURT: We do appreciate that.

22 MR. RICHARD MOSTY: Sure.

23

24 (Whereupon, the prospective

25 juror was excused from the

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1 room, and the following

2 proceedings were held,

3 outside of his presence

4 as follows:)

5

6 THE COURT: What says the State?

7 MR. TOBY SHOOK: The State exercises a

8 peremptory challenge.

9 THE COURT: Would the defense have

10 accepted the juror?

11 MR. RICHARD C. MOSTY: Yes, sir.

12 THE COURT: All right. Thank you.

13 Bring her back in.

14

15 (Whereupon, the prospective

16 juror returned to the

17 room and the proceedings

18 were resumed as follows:)

19

20 THE COURT: Ma'am, we appreciate your

21 time and attendance here, but your services will no

22 longer be required. You are being excused from further

23 jury service.

24 THE PROSPECTIVE JUROR: Thank you.

25 THE COURT: Hope everything goes well

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1 with you.

2 THE PROSPECTIVE JUROR: Thank you.

3 THE COURT: Next juror. Your next --

4 bring them in. All right.

5 You are Mr. Ayala?

6 THE PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: All right. This is juror

8 number 27 on our list, number 80 on the overall list.

9 Henry Ayala, A-Y-A-L-A. Is that correct, sir?

10 THE PROSPECTIVE JUROR: That is

11 correct.

12 THE COURT: Can you raise your right

13 hand, sir?

14 Do you solemnly swear or affirm you

15 will true answers give to all the questions propounded to

16 you concerning your qualifications as a juror, 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. Sir, the State

4 of Texas in this case is represented by Mr. Toby Shook

5 and Sherri Wallace.

6 The defendant is Mrs. Darlie Routier

7 sitting there in the pink dress. She is represented by

8 Mr. Doug Mulder, Mr. Richard Mosty, and Mr. Preston

9 Douglass.

10 And so you are going to be questioned

11 first by the State, then by the defense. And please give

12 your answers loudly, and say yes or no. Don't nod or

13 anything, because Ms. Halsey has to take all of this

14 down.

15 THE PROSPECTIVE JUROR: Okay.

16 THE COURT: So, Ms. Wallace.

17 MS. SHERRI WALLACE: Thank you, Your

18 Honor. May it please the Court?

19

20 Whereupon,

21

22 HENRY S. AYALA,

23

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

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

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

3

4 VOIR DIRE EXAMINATION

5

6 BY MS. SHERRI WALLACE:

7 Q. Again, my name is Sherri Wallace, and  
8 I am an Assistant District Attorney, and I am going to be  
9 asking you a couple of questions. It's not a couple, but  
10 some questions about your questionnaire. And talk to you  
11 a little bit about your feelings about the death penalty  
12 and what we're doing down here, and some general  
13 principles of law.

14 If you have got any questions, let me  
15 know. Because it is my job to explain everything well,  
16 and if I am not explaining it well enough, I need to  
17 rephrase my questions. Okay?

18 A. Okay.

19 Q. Let me first start and ask you, Mr.  
20 Ayala: Do you know either of the local counsel, Preston  
21 Douglass or Richard Mosty?

22 A. Mr. Mosty.

23 Q. Okay. How do you know him?  
24 A. Well, let's see, from back in high

25 school.

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1 Q. Okay. Y'all went to high school  
2 together?

3 A. Yes.

4 Q. How close were you?

5 A. Acquaintances.

6 Q. All right. Have you kept regular  
7 contact with him?

8 A. Have not.

9 Q. Okay. Anything about going to high

10 school with Mr. Mosty that would influence you in any way  
11 in this case?

12 A. Not to my knowledge.

13 Q. What do you think of him?

14 A. Just another attorney.

15 Q. Okay. And you don't know any of the  
16 folks from Dallas or the defendant. Right?

17 A. No, do not.

18 Q. All right. In here I noticed that --

19 in your questionnaire I noticed that you used to be a  
20 police officer?

21 A. Yes, ma'am.

22 Q. Okay. I know they get -- police  
23 officers get paid horribly. I was wondering why you left  
24 the police force?

25 A. The chief of police and I didn't have  
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1 an eye-to-eye agreement on everything.

2 Q. Okay. Can you tell me a little bit

3 about that or what happened?

4 A. Well, they just didn't like the way I  
5 was working, I guess.

6 Q. Okay. How long were you a police  
7 officer?

8 A. Five years.

9 Q. And how long have you been away from  
10 law enforcement?

11 A. About 20 years.

12 Q. So it was a long time ago?

13 A. Yes.

14 Q. Okay. Mr. Ayala, one of the  
15 principles of law that would apply in this case is that  
16 all of the witnesses in the case must start out equally.  
17 In other words, what I need to know  
18 from you, is there something in your past, any kind of  
19 disagreements with the police chief that would influence  
20 you?

21 A. I wouldn't think there is.

22 Q. Okay. Nothing about that that would  
23 bother you?

24 A. No.

25 Q. Okay. There's a couple of things that  
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1 I want to let you know up front. One: It is our goal to  
2 get a guilty verdict in this case, and an execution of  
3 that woman down there.

4 Up front, I want to tell you, I think  
5 we have the type of case and the quality of evidence to  
6 do that. Would you have any problem in serving on a jury  
7 and doing that?

8 A. Nope, I don't believe so.

9 Q. Okay. Additionally, we want 12 people  
10 who end up in the jury box that can set their personal  
11 opinions or, excuse me, their -- well, I see here you  
12 have heard some pretrial publicity. You have heard about  
13 the case a little bit?

14 A. It is sad.

15 Q. And what is very important is that a  
16 juror, whatever they have heard, sets that aside and

17 waits until we get to the courtroom to present the  
18 evidence and makes us prove our case beyond a reasonable  
19 doubt in the courtroom.

20 You could hold us to that burden,  
21 couldn't you?

22 A. Yes, I can.

23 Q. Okay. To sit as a juror you cannot  
24 have formed an opinion. And you don't strike me as the  
25 kind of man who just forms an opinion just from stuff --  
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1 hearsay and stuff like that. You look like you might  
2 take your time and carefully consider your decisions; is  
3 that correct?

4 A. Well, at least I hope to be that type  
5 of person.

6 Q. Okay. Well, that's all we're asking  
7 for you to do here. How this trial will work is it's two  
8 phases. The first phase is the guilt/innocence phase,  
9 and we refer to that a little bit.

10 Now, before you, in front you, there  
11 is a copy of an indictment. And that typewritten part,  
12 that is what the defendant is charged with. If you could  
13 just read that to yourself, and let me know when you are  
14 finished.

15 A. Okay.

16 Q. Okay. That is what we must prove to  
17 the jury beyond a reasonable doubt, and there are a  
18 couple ways that we could bring that. There is no amount  
19 of evidence, there is no number of witnesses that is  
20 required. We're required to prove that indictment beyond  
21 a reasonable doubt. If we don't, you find the defendant  
22 not guilty. If we do, you find the defendant guilty.

23 Could you do that?

24 A. I believe so.

25 Q. All right. We may prove that  
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1 indictment through direct or indirect evidence. Direct  
2 evidence is an eyewitness. Now, I'm sure if you thought  
3 about it you could see that many murder cases we don't  
4 have an eyewitness, because the eyewitness is dead. And

5 the defendant has picked the time and the place to commit

6 the crime.

7 And generally, when you are going to  
8 commit a crime, a serious felony, you don't do it at the  
9 Wal-Mart Superstore parking lot on Saturday afternoon  
10 with everybody around. You generally pick a time when no  
11 one is watching.

12 A. Right.

13 Q. So, as you know, we can't call the  
14 defendant to the stand. The State is not entitled to do  
15 that. And you can't use that against the defendant if  
16 she chooses not to testify. You understand that?

17 A. Yes, ma'am.

18 Q. So, what we look to is what is called  
19 indirect or circumstantial evidence. That is things  
20 like: DNA, fingerprints, fibers, maybe statements by the  
21 defendant that don't comport with the crime scene, things  
22 such as that.

23 Some people prefer circumstantial  
24 evidence because it being scientific, there is no legal  
25 name, if you will. Okay?

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1 A. Yes, ma'am.

2 Q. Could you convict a defendant for  
3 capital murder on circumstantial or indirect evidence  
4 alone?

5 A. I really don't know.

6 Q. Okay. We have the burden of proof of  
7 beyond a reasonable doubt. And you can see, we talked  
8 about you can see in a murder case where it would hardly  
9 be fair to the victim or to society if we said, "Okay,

10 Mr. or Ms. Defendant, if you killed the witness, then you  
11 go free."

12 A. Right.

13 Q. That doesn't really make any sense.

14 A. No, it does not.

15 Q. So, what the law is is that we must

16 prove the case to you beyond a reasonable doubt. And  
17 that is our burden no matter if there is no witnesses or  
18 a hundred witnesses. Okay?

19 Could you hold us to our burden, and  
20 if we meet our burden, prove circumstantial evidence,

21 would you find the defendant guilty?

22 A. Probably, yes, ma'am.

23 Q. Okay. You say probably. Can you tell

24 me about that?

25 A. Well, like I said, you know, the  
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1 evidence is going to have -- you are going to have to

2 prove that within --

3 Q. Absolutely.

4 A. -- absolute doubt.

5 Q. Absolutely. Beyond a reasonable  
6 doubt.

7 A. Yes.

8 Q. Okay.

9 A. Yes, ma'am.

10 Q. If the defendant is found not guilty,  
11 we all go home. If she is found guilty, we go to the  
12 second phase of the trial, which is the punishment phase.  
13 Let me ask you, Mr. Ayala, when you were a police  
14 officer, did you have to testify in court some?

15 A. Yes, I did.

16 Q. Okay. So this is kind of old hat for  
17 you, I guess?

18 A. It's been a while, but, yes.

19 Q. Okay. Well, death penalties are a  
20 little bit different, because, you know in a normal case,  
21 you have two phases: You have the guilt/innocence phase;  
22 then you have the punishment phase. In the punishment  
23 phase the jury, when they decide the verdict in the  
24 punishment phase, they just say, "We want the defendant  
25 to serve 40 years or whatever," and they put the answer

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1 down. But a death penalty is different because the jury  
2 doesn't decide life or death. They make that decision,  
3 but they do it by answering questions. And based on the  
4 answers to those two questions, the Judge has no option  
5 but to take those answers and compute it.

6 Here is how it goes: This first

7 question, special issue number 1: "Do you find from the  
8 evidence, beyond a reasonable doubt, that there is a

9 probability that the defendant would commit criminal acts  
10 of violence that would constitute a continuing threat to  
11 society?" In order for the defendant to die, that must  
12 be answered "yes." The second question, which we will  
13 get to in a minute, must be answered "no." But I want to  
14 talk to you a little bit about the first question.

15 We have the burden of proof in this

16 first question as well that we have to prove to you  
17 beyond a reasonable doubt that there is a probability  
18 that the defendant would commit criminal acts of  
19 violence. What does the word probability, what does that  
20 mean to you?

21 A. That more than likely they will commit  
22 this criminal act again.

23 Q. Okay. And criminal acts of violence,  
24 what does that bring to mind?

25 A. Well, somewhere where you lose your  
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1 temper real bad and start fights for no reason at all,  
2 you know.

3 Q. Okay. Any sort of violence?

4 A. Any sort of violence.

5 Q. All right. And, society: Let me ask  
6 you Mr. Ayala, in your mind, would that include being a  
7 continuing threat -- would that include -- would society  
8 include people in the prison, such as prison guards,

9 maybe psychiatrists or maybe sociologists that are in  
10 there visiting relatives or visiting other inmates,  
11 people in there doing the cooking, maintenance work, that  
12 sort of thing? Would society include everyone?

13 A. Yes, ma'am.

14 Q. In the event that question is answered  
15 "yes," would you find more likely than not that the  
16 defendant would be a continuing threat?

17

18 THE COURT: Gentlemen, just a minute.

19 Please keep the conversation down, it affects our  
20 recording devices, you are talking too loud, please. It  
21 is bothering me listening to this.

22 MR. DOUGLAS MULDER: What?

23 THE COURT: When you are talking over  
24 there, it's bothering me listening to this. I want to  
25 hear this.

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1 BY MS. SHERRI WALLACE:

2 Q. When -- if that question is answered

3 "yes," you then move to the second special issue, the  
4 second question. And if you would read that along with  
5 me: "Taking into consideration all of the evidence,  
6 including the circumstances of the offense, the  
7 defendant's character and background, and the personal  
8 moral culpability of the defendant, is there a sufficient

9 mitigating circumstance or circumstances to warrant that  
10 a sentence of life imprisonment rather than a death  
11 sentence be imposed?"

12 Now, Mr. Ayala, in your questionnaire  
13 you wrote you believe that if a person is found guilty of  
14 capital murder, they should have to pay the price?

15 A. Yes, ma'am.

16 Q. And you went on to say that you  
17 believe the death penalty is appropriate in all capital  
18 murder cases.

19 One of the things, I need to back up a  
20 little bit, one of the things I didn't really talk with  
21 you about on that first question; that first question,  
22 just like guilty or not guilty, that first question can  
23 not be answered automatically.

24 The law requires you to take a look at  
25 the evidence again, just to kind of reexamine what you  
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1 have heard.

2 In the punishment phase, you may get  
3 to hear more evidence. You may not. But what you cannot  
4 do, is you cannot say, "I found the defendant guilty of  
5 capital murder."

6 Therefore, automatically, without  
7 thinking, "Yes, she is probably going to be a continuing  
8 threat to society." And really there is a reason for  
9 that. You don't have any facts, you do not --

10

11 MR. RICHARD C. MOSTY: Your Honor, I'm  
12 going to object to that statement. They do have facts,  
13 because they have got the facts of the crime itself.

14 MS. SHERRI WALLACE: Your Honor, I'm  
15 talking about right now he has no facts.

16 THE COURT: You have not heard the  
17 evidence yet, that is what you are saying.

18 THE PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: All right. Thank you.

20 Continue on.

21

22 BY MS. SHERRI WALLACE:

23 Q. So, it's kind of hard to ask these  
24 questions of you without you hearing any of the evidence  
25 at this point, and we recognize that. But we must talk  
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1 about this, because this is the only time we will get to  
2 talk to you about it.

3 If you could kind of follow along on  
4 this example: Let's say that I go into a bank to rob it,  
5 and I decide I don't want any witnesses. So I kill  
6 everybody in there. There is five or six people in  
7 there, including a woman that came to get some money and  
8 she has got her baby with her and I kill them.

9 So, I have committed a capital murder,  
10 actually, several capital murders, but anyway I am a  
11 capital murderer. I leave the bank, and I don't hear a  
12 siren coming, but before I killed the teller, she pressed  
13 an emergency police notification button. Okay?

14 So they were coming to get me while I  
15 was busy killing all these people. I step out of the

16 bank and step off the sidewalk, and police car comes  
17 around and hits me, and renders me a quadriplegic.

18 Now, you are at my trial, and you --  
19 yeah, you have found me guilty of capital murder, but  
20 there is some other things to look at. It's not an

21 automatic answer whether or not I will be a continuing  
22 threat to society.

23 You may examine the evidence and say,  
24 "She is mean as a snake, and I don't care if she is a  
25 quadriplegic, I am going to answer that question 'yes.'"  
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1 But you may look at that circumstance and say, "I don't  
2 think she is going to be a continuing threat to society."  
3 Do you follow what I am saying?

4 A. Yes, ma'am.

5 Q. Could you wait to hear the evidence  
6 before you decide question number 1?

7 A. I believe so.

8 Q. All right. Moving on to the special  
9 issue number 2, it asks you: If there is sufficient --  
10 bottom line, what that question says, there is no burden  
11 of proof, it's a safety net.

12 Just if you decide, nobody else, not  
13 the other 11 people you are with on the jury, not the  
14 lawyers, not the Judge, no one else, if you, in your  
15 heart, think after you have heard all of the evidence,  
16 the right thing to do is to see that this defendant gets  
17 life, then you just answer that question "yes."

18 Now, you may hear a million capital

19 murder cases. And you may never hear one where you think

20 that there is sufficient, in your mind, mitigating  
21 evidence. But, to be a juror in this case, you have to  
22 wait to hear the evidence before you make up your mind on  
23 that issue. Could you do that?

24 A. I believe so.

25 Q. Okay. Is your mind open to answering  
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1 that question in a way that would result in a life  
2 sentence? In other words, if you heard the evidence, you  
3 would know it when you saw it?

4 A. I think so, yes, ma'am.

5 Q. Given your background, Mr. Ayala, some  
6 of the stuff I am going to go over with you probably is  
7 old hat. But just to let me feel better, so if you will  
8 bear with me, I appreciate it.

9 A. Not a problem.

10 Q. Okay. You know the defendant is  
11 presumed innocent.

12 A. Yes, ma'am.

13 Q. That means if you vote right now, you  
14 have got to find her not guilty. That means that we have  
15 the burden of proof. That is just a different way of  
16 saying that. Do you understand that?

17 A. Yes, ma'am.

18 Q. You could follow that law?

19 A. Yes, ma'am.

20 Q. You know that the defendant has an  
21 absolute right not to testify?

22 A. I do.

23 Q. And that can't be used against her?

24 A. Correct.

25 Q. All right. And you would not do that,  
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1 would you?

2 A. No, ma'am.

3 Q. Additionally, we talked about this  
4 earlier, that all witnesses must be started on the same  
5 plane. Sometimes a defense attorney will say, "Would you  
6 believe a police officer simply because he is a police  
7 officer?"

8 And I am not saying these guys would,  
9 but really it's a trick question, because you can't  
10 believe a witness because of their job, or disbelieve a  
11 witness because of their job. You have to wait and hear  
12 from them, and you decide if they are shooting straight

13 with you. Could you do that?

14 A. Yes, ma'am.

15 Q. Additionally, parole may not be  
16 considered in this case in any way. The Judge will

17 instruct you that is the law. And your choices are just  
18 to answer those questions "no" or "yes," knowing that  
19 they will result in life or death. But parole is not an  
20 issue that you may consider.

21 A. I know that.

22 Q. Could you follow that law?

23 A. I understand that, yes, ma'am.

24 Q. Okay. Mr. Ayala, you said that you  
25 believe the death penalty was appropriate in all capital  
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1 cases. Can you tell me a little bit about your feelings  
2 about why you are in favor of the death penalty?

3 A. Well, I really don't know for sure

4 why, other than, you know, it's -- if you take a life,  
5 you ought to be willing to give up your life.

6 Q. Okay. Have you always felt that way?

7 A. Yes, ma'am.

8 Q. Are there any types of cases that come  
9 to mind that you think should be capital murder?

10 A. Well, no, I really can't right  
11 offhand.

12 Q. Okay. Let me tell you what they are  
13 here in Texas and just see if you kind of agree with the  
14 list or if there is anything you would add: The killing  
15 of a police officer in the line of duty, or a fireman in  
16 the line of duty; killing of a prison guard in the line  
17 of duty; murder of more than one person; murder in the  
18 course of another felony, like a robbery or a kidnapping  
19 or a rape, something like that; or, murder for hire, or  
20 murder of a child under the age of six. Do you agree

21 with all those?

22 A. Yes, ma'am, I do.

23 Q. Is there anything else that you would  
24 add to that list?

25 A. Well, no, I don't believe so.

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1 Q. I want to ask you a little bit about,  
2 while we are still talking about the death penalty,  
3 obviously, in this case, the defendant is a woman. Would  
4 you have any problem at all returning a conviction and a  
5 death sentence for a woman?

6 A. No, I don't believe so.

7 Q. So you could impose the death penalty  
8 equally to a man or a woman?

9 A. Yes, ma'am.

10 Q. When you worked as police officer, I  
11 guess you were a police officer and a deputy sheriff?

12 A. Yes, ma'am.

13 Q. Okay. How long were you on the  
14 Kerrville Police Department?

15 A. Yes, ma'am.

16 Q. That was for five years?

17 A. Yes, between both of them, the  
18 sheriff's office and the police department.

19 Q. Okay. Where did you start out?

20 A. At the P.D.

21 Q. Okay. And then you came over to  
22 the --

23 A. Sheriff's office.

24 Q. Sheriff's office, okay.

25 A. Then I worked my way back to P.D.

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1 Q. And then you went back to P.D.?

2 A. Yes, ma'am.

3 Q. All right. Did you ever work on any  
4 murder cases or anything such as that? Ever called to  
5 the scene of a murder case?

6 A. Do you want me to tell you a story?

7 Q. No, I don't.

8 A. I really can't remember.

9 Q. All right.

10 A. Well, I take it back. When I was on

11 the sheriff's department, yes, we did have a murder case.

12 Judge Kennedy had been murdered up in

13 Ingram at that time, so the investigator was working a  
14 murder case.

15 Q. What was your role in that?

16 A. Very little, I mean, I didn't have

17 hardly anything to do with it. I just knew that the case  
18 was going on, and, you know.

19 Q. Yeah.

20 A. Just knew the Judge and what have you,  
21 the family.

22 Q. Okay. When you were an officer, do  
23 you remember roughly how often you testified?  
24 A. I would say probably about twice a  
25 month.

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1 Q. So you have been on the stand before,  
2 huh?

3 A. Yes, ma'am.

4 Q. Okay.

5

6 MS. SHERRI WALLACE: Just a second,  
7 Judge.

8

9 BY MS. SHERRI WALLACE:

10 Q. As a police officer, Mr. Ayala, were  
11 you ever assaulted by anyone?

12 A. No, threatened several times, but --

13 Q. But they never got you?

14 A. No.

15 Q. Mr. Ayala, we've already touched on  
16 this but, obviously, we're from out of town, and you said  
17 that you know Mr. Mosty. And you also told me that that  
18 wouldn't affect your deliberations; is that correct?

19 A. That's correct.

20 Q. And there is nothing there more than  
21 you went to high school and were acquainted with him; is  
22 that right?

23 A. That's correct.

24 Q. Okay. Was he ever the prosecutor or  
25 the defense attorney on any of your cases?

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1 A. No.

2 Q. Do you have any questions for me?

3 A. No, ma'am.

4 Q. I have been doing most of the question  
5 asking. Nothing?

6 A. Nothing at all.

7 Q. Thank you very much.

8 A. Thank you

9

10 THE COURT: Thank you, Ms. Wallace.

11 Mr. Douglass.

12 MR. PRESTON DOUGLASS: Thank you,  
13 Judge.

14

15 VOIR DIRE EXAMINATION

16

17 BY MR. PRESTON DOUGLASS:

18 Q. All right. Mr. Ayala, my name is

19 Preston Douglass, the Judge introduced me briefly. I  
20 have had some trouble with my voice the last couple of  
21 days. This is the best it's been in about a week, but  
22 it's still not quite up to par. So, if you get to where

23 you can't understand what I am saying, or I am not making  
24 any sense, which is probably more likely, stop me, and  
25 make me repeat myself, because I want to make sure I  
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1 I don't do what I am pretty good at, and that is confuse  
2 you. I don't want to confuse anybody.

3 I am interested in a few things just  
4 at the outset, and that is: When you were with the  
5 sheriff's department, who was the sheriff at that time?

6 A. Schreiber.

7 Q. Okay. And, after that or before that,  
8 you were with the P.D. and then went back to the P.D. as  
9 I understand it?

10 A. Yes, sir.

11 Q. Who was the police chief during that  
12 time?

13 A. Ron Cooper.

14 Q. All right. Do you know anybody that  
15 is still with the P.D. that was there when you were  
16 there?

17 A. Yes, sir.

18 Q. Who would still -- who would that be?

19 A. Scotty Evans, Ken Crosthwait.

20 Q. Cortez?

21 A. Cortez.

22 Q. Those guys were all together at the  
23 same time.

24 A. Harvey.

25 Q. Were you there when Rosie was there?

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1 A. Yes, sir.

2 Q. Okay. Did the police chief, did he  
3 leave soon after you left P.D.?

4 A. Yes, he did.

5 Q. And is that the reason you went back  
6 to the P.D. later?

7 A. No, no, he left after.

8 Q. Okay. So, he was the police chief,  
9 and then you came over and worked at the sheriff's  
10 department and went back again?

11 A. Right.

12 Q. All right. Was there any reason in  
13 particular you left the sheriff's department?

14 A. I couldn't handle working 24 hours a  
15 day, 7 days a week.

16 Q. Kerr County Sheriff's Department is  
17 pretty famous for not having enough people; isn't that  
18 right?

19 A. Yes, sir.

20 Q. And I can tell you, even though that  
21 is a big building, that is carried on through today.

22 A. It has been that way for a long time.

23 Q. That's right, that's right. When you  
24 were with the sheriff's department, did you have any  
25 particular duties that you did at that job?

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1 A. No.

2 Q. Patrol?

3 A. Patrol, yeah.

4 Q. Were you ever a jailer?

5 A. No. Well, yes, because that was part  
6 of -- you did everything. You booked prisoners in,  
7 escorted them to the jail, served warrants, did patrol,  
8 it was just --

9 Q. Now, when you were with the P.D., did  
10 you do pretty much the same type of work?

11 A. Yes, sir.

12 Q. Was it all patrol at the P.D.?

13 A. Yes, most of it was, yes, sir.

14 Q. Okay. Did you go to academy in Uvalde  
15 or where did you?

16 A. San Antonio.

17 Q. Okay. And once you went through  
18 academy, I'm assuming that when you took classes there,  
19 you had classes in different types of investigation  
20 techniques?

21 A. Yes, sir.

22 Q. What do you -- if anything sticks out  
23 in your mind, what sticks out in your mind from your  
24 academy days?

25 A. As far as?

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1 Q. Are there any particular classes or  
2 types of investigation or anything you really liked or  
3 enjoyed more than other things?  
4 A. No, not really.

5 Q. Okay. After you were on the -- at the  
6 P.D., or even at the time you were with the sheriff's  
7 department, did they ever send you off for any other  
8 training courses or classes or further education after  
9 you were a peace officer?

10 A. Well, we were always holding some sort  
11 of class while, you know, at the P.D.

12 Q. What would those be about?

13 A. Anything from firearm training to, you  
14 know, lifting fingerprints.

15 Q. Okay.

16 A. And what have you.

17 Q. So, you appreciate there is a  
18 difference between what we call direct evidence and  
19 indirect evidence.

20 For instance, if I see someone do  
21 something, we call that direct evidence.

22 A. Right.

23 Q. Indirect evidence would be the  
24 fingerprints and things of that nature.

25 A. Right.

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1 Q. What is your opinion, or is there an  
2 opinion that you have about the different weight between

3 those two kinds of evidence. Is there anything you think  
4 or feel about those kinds of evidence? Do you think one  
5 is stronger than other one?

6 A. No, not really.

7 Q. Okay. When we pick juries in Texas,

8 there is no form or formula. There have been a lot of  
9 lawyers and experts have come along and said, "Well, you  
10 know, you need to watch out for people with blue eyes,  
11 who wear green shoes, and things like that." But,

12 generally, I don't think much of that is reliable.

13 When it comes down to the final

14 analysis, it comes down to what people like you are

15 willing to say from your heart and from your experience  
16 and what you believe honestly about yourself. And we  
17 rely on that absolutely 100 percent. We don't have the

18 ability to pick and choose, we have just got to hear what  
19 you have to say. And there are a few things that are  
20 interesting to me, in particular, about what I have read  
21 in your questionnaire.

22 As you know, you saw a room full of

23 people up there at the courthouse, and you know that  
24 there is a lot effort being given to find 12 people to  
25 sit in that jury box that really and truly are the most  
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1 fair and impartial people to give the State their fair  
2 day in court, and absolutely to give Darlie Routier her  
3 fair shake in this trial.

4 Along those lines, as you might well  
5 agree, there are people who have different life

6 experiences which don't disqualify them. It doesn't mean  
7 they can't serve. But what it means is they may know

8 some things about different things that other people  
9 don't know. And because of what they may know, from  
10 their other past life experiences, they themselves

11 sometimes say, you know, "I know something about what is  
12 going on, and maybe I am not the right person to be a

13 juror in the case." I can't tell that, only you really  
14 know that. And I want to ask you about a couple things.  
15 First, with respect to you having been  
16 a police officer. There was one question which caught my  
17 attention that I want to go over with you. You said  
18 there were some quotes, some statements made to you, and  
19 you were able to give your opinion as to whether you  
20 agree or disagree with the statement. And one of them  
21 was that: "Police officers enforce the laws in a  
22 professional and fair way." And you indicated that you  
23 disagreed with that statement.

24 A. Yes.

25 Q. Can you explain kind of what was your  
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1 thought process? What were you thinking about at the  
2 time?

3 A. Well, a lot of times, you know, police  
4 officers -- you have to understand, a police officer is  
5 dealing with quote, unquote criminals day in and day out.  
6 Okay? Sometimes they have a tendency to lean on these

7 types of people, more than they would John Henry, you  
8 know, just an everyday person walking down the street.

9 Q. Uh-huh. And I am assuming that you  
10 feel like that is unfair?

11 A. Well, yeah. It's not always, you  
12 know, necessary, is what I am saying.

13 Q. Okay. And, do you also feel like  
14 sometimes that is not professional for a person who has

15 gone to school or has been trained to be a police officer  
16 to jump to conclusions?

17 A. Most of the time, no.

18 Q. Okay. All right. Do -- also, you  
19 understand that some people who work in law enforcement  
20 come to conclusions rather rapidly. And they base that  
21 supposedly on their experience and that experience may be  
22 wrong, that they may have jumped to conclusions that are  
23 incorrect. Do you agree with that?

24 A. Yes, I do.

25 Q. Okay. Now, sitting in my chair, as I  
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1 sit here right now, normally, the question that concerns  
2 a person sitting in my perspective, and obviously, my  
3 perspective is very different from that of the State. I  
4 used to sit where they sit, but I can tell you right now,  
5 I have a different perspective.

6 And, that is, that we want to make

7 sure that everyone sees this thing straight up and down  
8 in a neutral and fair fashion, for sure at the beginning.

9 And the question, from my chair, that

10 I have is: After serving as a police officer for a  
11 period of time, if you feel that brings any life  
12 experience to this trial that you feel starts you off  
13 with any leanings one with or the other? If it starts  
14 you off with any feelings that you are going to shake one  
15 side out of the box, either the defense or the State,

16 with a lead right from the beginning, just because of  
17 that prior experience? Do you feel that way?

18 A. No, I don't believe so.

19 Q. I think, while you are very candid in

20 answering it, that there were police officers that you  
21 took exception with the way they did things. That you  
22 say -- you are telling me that, "I don't feel that way.

23 I feel straight up. I can call it the way I see it." Is  
24 that right?

25 A. Yes, sir, right.

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1 Q. Okay. Let me ask you about the  
2 questionnaire. When you get this questionnaire,  
3 obviously, you get it in a scenario where no one is  
4 giving you hypotheticals, no one is giving you things to  
5 think about. You are just relying on what you yourself  
6 are thinking when you fill this out.

7 A. Correct.

8 Q. And it was pretty clear, and  
9 unequivocal, when you filled this out that you were of

10 the opinion at that point, that if a person was convicted  
11 of capital murder, that they should pay with their  
12 life --

13 A. Yes, sir.

14 Q. -- for that. It's very clear in here,  
15 and I want to thank you for being honest. If people  
16 aren't honest, we don't have anywhere to go. And where  
17 I -- I want to ask you from that standpoint is: Is that,  
18 in fact, your honest opinion?  
19 If we go through a capital murder

20 trial, and the State puts on evidence; and the State  
21 satisfies you beyond a reasonable doubt that a defendant  
22 is guilty, no matter what kind of class of crime it is

23 that classifies capital murder; as long as you have found  
24 it's capital murder, that a life was taken, and those  
25 circumstances are present; and you have resolved that

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1 beyond any reasonable doubt; is it your honest opinion  
2 that that person, who is charged with that crime and then  
3 is convicted of that crime, should pay with their life?

4 A. Yes, sir.

5 Q. Now, obviously, I think that is an  
6 honest answer on your part. Honestly, that caused me  
7 concern, and just you and me speaking honestly with each  
8 other, with that notion in your mind, that you think that

9 that person should then pay with their life: Do you  
10 think that will affect your ability to listen to those  
11 next two questions and answer them because you already  
12 believe that that person should pay with their life?  
13 A. I doubt it.

14 Q. Okay. If I understand right, you are  
15 saying it would cause you a problem? Am I right about  
16 that?  
17 A. No.  
18 Q. It would not?  
19 A. No, I don't believe it would.  
20 Q. When you come to these questions, you

21 know that you don't get to these questions unless someone  
22 has been found guilty.  
23 A. Uh-huh, (Witness nodding head  
24 affirmatively.) has been found guilty.  
25 Q. Okay. And when you get there, you  
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1 have already made that determination, and I may have  
2 confused you with my question. But if I understood you,  
3 you said, at that point, before you would consider that  
4 question, it's your heartfelt opinion that that person  
5 should pay with their life for what they did.

6 A. I'm sorry. Yes, you did confuse me.

7 Yes, that is the way I feel.

8 Q. I mean, you feel like if that person  
9 is found guilty before I get to those questions, that  
10 person should be executed.

11 A. If he is found guilty, yes.

12 Q. Okay. Now, and on that I am going to  
13 try not to confuse you because that was my fault.  
14 In that regards, do you agree with me  
15 that in your situation it would impair your ability to  
16 listen to those questions because that is the way you  
17 feel? That it would be -- in order to answer those  
18 questions, it would be difficult for you to answer those  
19 questions based on the evidence, because you feel like  
20 the person should be executed?

21 A. I would say I would have a tendency to  
22 lean toward the first special issue there.

23 Q. You would tend to believe that because  
24 a person had been convicted of capital murder that they  
25 are going to be a future danger?  
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1 A. Yes, sir.

2 Q. Okay. And that would roll around in  
3 your head. And wouldn't you agree with me, that with all  
4 this trouble we're going through, you know, we had 400

5 some-odd people summoned, and 200 people filled out all  
6 these things, don't you -- wouldn't you agree with me

7 that in all honesty and fairness to the Court and to  
8 yourself, that perhaps you need to have someone that

9 doesn't start out with the same feeling that you do about  
10 it?

11 A. Probably, yes, sir.

12 Q. Mr. Ayala, there are very few people  
13 that want to come in and just call it straight up, and I  
14 can't tell you how much I appreciate you being honest  
15 about it.

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

18 Q. I just want to follow with one other  
19 thing: Does that mean that that would impair your  
20 ability to be a juror as to those two questions?

21 A. Well, like I said, it would probably  
22 make me lean toward the first issue.

23 Q. So before you have heard any evidence,  
24 you already start out with a leaning that you would  
25 probably find a person convicted of capital murder as a  
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1 future danger?

2 A. Yes, sir.

3 Q. Well, let me ask you this: Then,  
4 would you believe it would be the responsibility of the  
5 defendant to prove to you that that defendant would not  
6 be a future danger?

7 A. I would probably have more questions.

8 Q. Okay. Well, let me -- I didn't make  
9 my question very clear, and I'm sorry again.

10 What I mean by that is, if you already  
11 believing that a defendant convicted of capital murder is  
12 going to be a future danger, would that -- would you  
13 then, as a juror, say, "I need that defendant to show me  
14 that he or she is not going to be a future danger."

15 Would you require that?

16 A. Yes, probably would.

17 Q. And, in that regards, you would  
18 require a defendant to bring you proof that he or she  
19 would not be a future danger to society?

20 A. Yes.

21 Q. Okay. The special issue can be --

22 this special issue -- this second special issue can be  
23 particularly confusing. But if I understand right, I  
24 just want to follow up on what we have been talking

25 about, about a feeling about the death penalty.

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1 Let me just paraphrase, and if I  
2 paraphrase wrong, I'm sure I will be corrected by the  
3 Judge or somebody.

4 This question comes at the very last  
5 and says: Do you believe, even though you have found the  
6 person guilty, and even though you have found that person  
7 is a future danger; let's just follow through the steps  
8 for a minute. Before you get to this one, you've agreed  
9 with me, you have found someone guilty. You get to this  
10 question and let's you say, "Yes, the person would be a  
11 future danger to society."

12 So, now you have decided, I have  
13 convicted the person of capital murder. I have found the  
14 person to be a future danger to society. I am, beyond a  
15 reasonable doubt, certain, by a probability, I believe it  
16 is very probable, in your words, more likely than not,

17 that that person would be a continuing threat and would  
18 commit continuing acts of criminal violence.

19 Would you be able to consider a  
20 question that says: Even though you have found the  
21 person to be a future danger, there may be a reason not  
22 to give this person a death penalty. Would you be able  
23 to say, "Well, even though I think they are a future

24 danger, I know they committed capital murder, I still  
25 might decide not to give them a life sentence." Would  
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1 you agree that would be hard?

2 A. Agree not to give them a life  
3 sentence?

4 Q. Agree to give them a life sentence.

5

6 MS. SHERRI WALLACE: Your Honor, I'm

7 going to object the question, would that be hard for you,  
8 this is all hard.

9 THE COURT: Sustained.

10 MR. S. PRESTON DOUGLASS: Let me  
11 rephrase that.

12

13 BY MR. S. PRESTON DOUGLASS:

14 Q. Could you consider evidence of some  
15 reason to give someone a life sentence? Could you  
16 consider evidence of a reason to give a person a life  
17 sentence, if you have already found them a future danger?

18 A. I don't think so.

19 Q. So your mind would be closed to that?

20 A. Probably, yes, sir.

21 Q. If you find someone has committed  
22 capital murder, convicted, and is going to be a future  
23 danger, you believe a life -- a death sentence is  
24 appropriate?

25 A. Yes, sir.

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1 Q. In all circumstances?

2 A. Yes, sir, I believe so.

3 Q. And that would probably be your only  
4 decision?

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

7 Q. That's a yes?

8 A. Yes.

9 Q. Let me go on to some other things. In  
10 looking through your questionnaire, it's been estimated  
11 and I think rightly so, by the State, that the trial  
12 could take two or three weeks to try. They believe three  
13 weeks at the outside or two weeks as a pretty good  
14 estimate. And I noticed from your questionnaire that you  
15 have to leave Kerr County frequently with your  
16 employment?

17 A. I am truck driver.

18 Q. Okay. Who do you drive trucks for?

19 A. Myself.

20 Q. Are you long-haul?

21 A. No, sir. We run only in the State of  
22 Texas.

23 Q. What kind of problem would that cause  
24 for you?

25 A. That is my livelihood.

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1 Q. Simply put, you are not going to be  
2 making any money.

3 A. I don't drive, wheels don't turn, I  
4 don't make any money, my company goes under.

5 Q. Okay. Obviously, you owe money on  
6 those trucks?

7 A. Yes, sir.

8 Q. Do you have children?

9 A. Yes, they are all adults.

10 Q. Okay. If you are sitting as a juror,  
11 and you know that you are missing your work and it's  
12 causing you this hardship, would you be able to continue  
13 to listen to the evidence and not be distracted by the  
14 fact that you are not able to work?

15 A. Probably not. I would be thinking  
16 primarily of where I am going to come up with payments  
17 and what-have-you.

18 Q. All right. If I mean -- if I am not  
19 able to make any money, I don't know how I'm going to do  
20 it.

21 A. Right.

22 Q. Okay. Do you think it would affect  
23 your ability to serve as a juror?

24 A. Yes, I do.

25 Q. Let me ask you a few questions

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1 about -- you had stated that you had heard about this  
2 case?

3 A. Yes, sir.

4 Q. And it was on radio and television.

5 What television stations do you watch?

6 A. Well --

7 Q. All of them?

8 A. All of them.

9 Q. Okay.

10 A. You know, like I said, I may spend the  
11 night in Brady or Houston, a night in San Angelo, and  
12 it's just stations out of Waco, out of Dallas.

13 Q. All right. Let me ask you: What have  
14 you heard about this case?

15 A. Just that, you know, just -- defendant  
16 had -- was accused of killing her two children.

17 Q. Okay. Did you hear anymore facts  
18 like, when, what time of day, how they think it happened,  
19 the location?

20 A. Not that I recall.

21 Q. You didn't hear anything about what

22 was the suspected murder weapon, anything like that?

23 A. Other than a knife, I mean, you know.

24 Q. And you had heard -- had you heard

25 anything regarding the defendant's side of the story on  
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1 this?

2 A. Not that I recall.

3 Q. Okay. Based on --

4 A. You know how the news media is, they

5 only present their side.

6 Q. Right. Based on what you heard, and

7 obviously, you have seen -- you know there has been a lot

8 of effort to move this case to Kerr County. Based on

9 what you have heard, have you derived an opinion about

10 the guilt or innocence of Darlie Routier?

11 A. I have not.

12 Q. You have a completely open mind about

13 that?

14 A. Yes, sir.

15 Q. Let me go into one other issue with

16 you briefly. As a police officer, I am assuming you have

17 testified at Grand Juries before?

18 A. I have not.

19 Q. Never before?

20 A. Never before, was not lucky enough.

21 Q. But you understand, obviously, that in

22 order for us all to be sitting here, there has to be a

23 Grand Jury convened. And the people in Dallas County who

24 are impaneled and selected as Grand Jurors had to make a

25 decision whether to issue a true bill of indictment?

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1 A. Correct.

2 Q. Okay. There are two groups of people.

3 There are the people who believe that an indictment is

4 only a piece of paper and it is absolutely no evidence of

5 guilt.

6 There's also other people, on the

7 other side of the spectrum, that probably walked into the

8 Kerr County Courthouse last week, and they saw all these

9 television trucks and they saw all these lawyers and they

10 saw a nice Judge and all this work going on, and they

11 thought to themselves, "My God, she must have done

12 something." Those are the  
13 where-there-is-smoke-there's-fire people. And, I guess,  
14 I would ask you: Where do you find yourself in that  
15 regards?

16 A. Well, I'm not one of those  
17 where-there-is-smoke-there-is-fire people.

18 Q. Okay. Judge Tolle, as he said  
19 correctly, obviously, stated, that there is some 25,000  
20 indictments issued in Dallas County in a year, and that  
21 many of those people don't even know they are being  
22 investigated. So would you agree with me that an  
23 indictment is proof of nothing?

24 A. Right.

25 Q. Okay. I'm going to be done, but I  
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1 just want to ask you one more question, follow up.  
2 Because they are sending me notes and I have got to ask  
3 them.  
4 Essentially, do you believe because of  
5 the financial hardship that jury service would put on

6 you, that it would distract you from your ability to  
7 listen to the evidence and deliberate fairly?

8 A. I think it would.

9 Q. Thank you.

10

11 MR. S. PRESTON DOUGLASS, JR: I will  
12 pass the juror.

13 THE COURT: Now, you have said one  
14 thing to the State, and one thing to the defense.

15 Could you put aside any bias or  
16 prejudices you may have and follow the law in this case?

17 THE PROSPECTIVE JUROR: In regards to?

18 THE COURT: In regards to the whole  
19 case. Or do you feel you would be an unfair juror to  
20 either side?

21 THE PROSPECTIVE JUROR: I think I  
22 would probably be an unfair juror.

23 THE COURT: All right. Thank you.

24 Either side submit the juror?

25 MS. SHERRI WALLACE: We will accept  
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1 the juror.  
2 THE COURT: All right. The State  
3 accepts the juror. Does the defense submit the juror?

4 MR. S. PRESTON DOUGLASS, JR: We would  
5 submit for cause, Your Honor.

6 THE COURT: All right. Thank you.

7 Motion for cause is granted.

8 All right. Thank you very much.

9 MR. S. PRESTON DOUGLASS, JR: Thank

10 you, Mr. Ayala.

11 MR. RICHARD MOSTY: Thank you, Henry.

12 THE COURT: All right. Next juror,

13 Ms. Huth.

14 All right. This is Ms. Donna Huth,

15 H-U-T-H, number 82 on the list, 28 on our list.

16 If you will raise your right hand,

17 please, ma'am.

18 Do you solemnly swear or affirm you

19 will true answers make to all the questions propounded to

20 you concerning your qualifications as a juror, so help

21 you God?

22

23 THE PROSPECTIVE JUROR: I do.

24

25

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

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

8

9 THE COURT: Ms. Huth, the State of  
10 Texas is represented by Mr. Toby Shook and Ms. Sherri  
11 Wallace, from the Dallas District Attorney's Office.

12 Mrs. Darlie Routier in the pink dress  
13 is the defendant. She is represented by Mr. Preston  
14 Douglass, Mr. Richard Mosty, and Mr. Doug Mulder.  
15 Mr. Shook will begin by asking you  
16 some questions.

17 MR. TOBY SHOOK: Thank you, Judge.

18

19 Whereupon,

20

21 DONNA G. HUTH,

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. TOBY L. SHOOK:

6 Q. Ms. Huth, correct?

7 A. Yes.

8 Q. My name is Toby Shook. I am one of  
9 the prosecutors on the case and I will be asking you  
10 questions on behalf of the State of Texas. I will go

11 over just a couple of things here in your questionnaire,  
12 and we'll talk about the death penalty and the law, and  
13 some of the rules and laws that apply to this case and  
14 all criminal cases. Okay?

15 A. Okay.

16 Q. We appreciate you taking the time to  
17 fill out this questionnaire. I know it took a while, but  
18 it's been quite helpful. On the very first page, of  
19 course, we ask about publicity, because there was a lot  
20 of publicity, I know up in Dallas. And then, of course,  
21 when we moved here, there was some publicity at least  
22 last week. And you saw a little bit, I think you said,  
23 on TV. Although, you really don't follow that many  
24 criminal cases?

25 A. No, I don't.

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1 Q. You did see some on TV. What did you  
2 see on TV? What type of story do you remember seeing, if  
3 anything?

4 A. Well, I don't remember anything except  
5 there was a case of a lady who has been accused of  
6 killing her children.

7 Q. Okay. So you don't remember any of  
8 the details or anything like that?

9 A. No, sir.

10 Q. Okay. I take it from that then that  
11 you have not formed any opinions or anything like that?

12 A. No.

13 Q. Okay. And you now here live here in

14 Kerrville. Your husband, it looks like he was in the

15 military?

16 A. That's correct.

17 Q. For 20 years.

18 A. Twenty.

19 Q. And y'all moved around a little bit?

20 A. A little bit.

21 Q. And now y'all reside here?

22 A. Yes.

23 Q. Okay. Obviously, Ms. Huth, this is a

24 death penalty case.

25 A. Yes, sir.

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1 Q. The State is actively seeking the  
2 death penalty. So we want to know and explore with each  
3 and every person their personal feelings about the death  
4 penalty as a law. Okay?

5 So, tell us in your words how you feel  
6 about the death penalty.

7 A. I have always approved of it. I think  
8 that if a person premeditates and is malicious, people  
9 like -- that go into McDonald's and shoot just  
10 indiscriminately, people like that; I have no qualms with  
11 the death penalty.

12 Q. Okay. And when you say

13 "premeditation," what do you mean by that?

14 A. Plan to kill someone.

15 Q. Sit down and plan it for a long time?

16 A. Pretty much so, yes.

17 Q. Okay. Because some people when they  
18 say premeditation, they talk about a guy that has planned  
19 out, you know, like the Unabomber or something, picks his  
20 victim, chooses his victim and that sort of thing.

21 A. Yes.

22 Q. Then there's other people that are,  
23 for instance, capital murder in Texas could be a murder  
24 during a robbery. A guy goes into a 7-Eleven on his way  
25 home, and he wants to rob it, takes the money and just

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1 executes the clerk.

2 A. Well, I think if he carrying a gun

3 with the purpose to rob, he probably would commit murder.

4 Q. Okay. He may not have sat down and  
5 thought it all out --

6 A. Right.

7 Q. -- and say, "I am going to kill this  
8 guy." But, my point is, sometimes people kill, don't  
9 think about it a long time, but they sure do mean to kill  
10 the victim.

11 A. Yes.

12 Q. Okay. Do you see where some cases  
13 like that could be deserving of the death penalty?

14 A. Yes, I do.

15 Q. Okay. Have you ever followed any

16 crimes? I know, in fact, I think I remember on your  
17 questionnaire, you don't really follow criminal cases.

18 A. That is not where my interests lie.

19 Q. Good.

20 A. No, sir. I prefer to be more  
21 positive, I guess.

22 Q. You don't read murder --

23 A. No.

24 Q. -- my mom reads all the true crime  
25 books she can get her hands on. You don't read those  
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1 type things?

2 A. No. Mostly autobiographies,  
3 historical novels, things of that nature.

4 Q. Okay. So you are not really following  
5 any of the criminal cases like we have, obviously, the  
6 O.J. Simpson case? I don't think anyone could get away  
7 from that.

8 A. Well, I was going to say, that would  
9 be one that I don't think you could get away from.

10 Q. Did have you any opinions about that  
11 case? How it was handled or the outcome?

12 A. Oh, I thought it was a carnival.

13 Q. We can assure you that this trial will  
14 not be anything like that one. It's not going to go on  
15 for months, we think about two weeks.

16 A. Two weeks?

17 Q. Yes.

18 A. Okay.

19 Q. Things are done a little differently  
20 here than out in Los Angeles. Let me ask you: Do you  
21 remember the Susan Smith case?

22 A. Vaguely.

23 Q. Okay. Do you remember the outcome of

24 that case?

25 A. She is in prison.

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1 Q. Right. Any thoughts or opinions about  
2 that case?

3 A. No, just the sadness of it, I guess.

4 Q. Okay. But you tell me that you have  
5 always been for the death penalty, that there are certain  
6 crimes you think could be deserving of it?

7 A. I do.

8 Q. Okay. Is it a subject that you have  
9 thought about a lot or discussed maybe with your husband  
10 or friends?

11 A. No.

12 Q. Does it really ever come up much?

13 A. No.

14 Q. Okay. But you have felt this way, I  
15 guess, ever since your early adult years?

16 A. Yes, I think so. Like I said, I don't  
17 dwell on things of this nature. I paint and I do  
18 creative things, so, it's just a different world I live  
19 in, I guess.

20 Q. Okay. But as a law, you think it's a  
21 law we should have on the books?

22 A. Yes, sir, I do.

23 Q. And do you think it is a law that  
24 should be enforced?

25 A. I do indeed.

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1 Q. Okay. Have you ever sat on any type  
2 jury before?

3 A. No, sir.

4 Q. Been called down to jury service?

5 A. Only civil.

6 Q. Only civil.

7 A. Yes.

8 Q. Okay. In Texas, there are only  
9 certain types of cases that can be capital murder cases.  
10 We have, obviously, laws against murder. But not every  
11 murder is a capital murder case. You have to have murder  
12 plus some other aggravating factor. Like the example I  
13 gave was the guy that goes in and kills the clerk.

14 A. Yes, sir.

15 Q. That is a murder during a robbery;

16 that is a capital murder case. The same thing, if  
17 someone came into your home and killed the homeowner or  
18 someone in the house. That is a murder during a  
19 burglary; that could be a capital murder case. See, you  
20 are committing it during a felony.

21 A. Uh-huh. (Witness nodding head

22 affirmatively.)

23 Q. Murder during a rape or a kidnapping  
24 can be a capital murder case in Texas.

25 A. Yes.

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1 Q. The murder of a certain type of  
2 victim, such as a police officer or a fireman or a prison  
3 guard who are on duty --

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

6 Q. -- can be a capital murder case in  
7 Texas.

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

10 Q. The kind you said, the guy that goes  
11 into McDonald's and kills everyone, mass murder, can be a  
12 capital murder case, or a serial murderer.

13 A. Right.

14 Q. Also, if you murder people for hire,  
15 like a hit man, somebody to just do it for money, the hit  
16 man can get the death penalty as well as the person that  
17 pays him to kill someone, in Texas, both of those  
18 situations.

19 In addition, and as what Judge Tolle  
20 told you, the defendant in this case is indicted for the  
21 murder of a child under six years of age.

22 In fact, I think the indictment there  
23 is in front of you. See that paper and that paragraph?  
24 If you could read that to yourself for a moment and let  
25 me know when you're finished.

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1 A. Okay.

2 Q. That sets out allegations of an  
3 intentional killing of a child under the age of six.  
4 Now, you haven't heard any facts yet.

5 A. No.

6 Q. You haven't heard from any witnesses.

7 What I need to know is if that is the type of case you think  
8 could be appropriate for the death penalty under the  
9 proper facts and circumstances?

10 A. Yes, under the proper facts and  
11 circumstances.

12 Q. Okay. Now, the way the trial works is  
13 this: It's divided into two parts. First, there is the  
14 guilt/innocence stage where we have to prove that  
15 indictment beyond a reasonable doubt.

16 A. Yes.

17 Q. Okay. Now, if we don't prove it

18 beyond a reasonable doubt, you find the defendant not  
19 guilty, and we all go home.

20 A. Okay.

21 Q. If we do prove it beyond a reasonable  
22 doubt, the jury enters a finding of guilty of capital

23 murder. The job is not over yet, though. That is when  
24 we move to the punishment phase.

25 Now, you may hear additional evidence

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1 in the punishment phase. You may hear a lot, or you may  
2 hear very little.

3 That can include background evidence;  
4 it can include a criminal history, if there is one; it  
5 can include bad character reference; you might hear from  
6 psychiatrists from one side or the other, or both; it may  
7 not have any criminal history; it may be all good  
8 character reference; I don't know, I mean we can't  
9 preview the facts for you. Okay? But it can be  
10 additional evidence.

11 At the close of that evidence, you go  
12 back and you are given these questions. And we will go  
13 over those in detail in a moment. Okay?

14 A. Okay.

15 Q. In fact, why don't we read them now.

16 That first question says: "Do you find from the  
17 evidence, beyond a reasonable doubt, that there is a  
18 probability that the defendant would commit criminal acts  
19 of violence that would constitute a continuing threat to  
20 society?"

21 A. Okay.

22 Q. It asks the jurors to make a  
23 prediction about whether the defendant is going to be a  
24 danger in the future.

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

2 Q. Okay. You review the murder itself;  
3 all the facts surrounding the murder; and then any other  
4 additional evidence you have heard to make this  
5 determination. The State has to prove it to you.

6 A. Okay.

7 Q. Now, if you answer that "yes," you go  
8 to this last question. If the answer is "no," you can

9 stop there. But if you answer it "yes," you go to this  
10 last question here, which is the longer one: "Taking  
11 into consideration all of the evidence, including the  
12 circumstances of the offense, the defendant's character

13 and background, and the personal moral culpability of the  
14 defendant, is there a sufficient mitigating circumstance  
15 or circumstances to warrant that a sentence of life  
16 imprisonment rather than a death sentence be imposed?"

17 It's a long question.

18 A. Okay.

19 Q. We call that the mitigating question,  
20 it's kind of a safety net. It allows you, even though  
21 you have found the defendant guilty, even though you  
22 believe that they are a future danger, that they should  
23 get a life sentence rather than the death sentence. Do  
24 you see that?

25 A. Okay. Yes, I see it.

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1 Q. Now, the juror does not write in life  
2 or death, once we get to the punishment phase. The Judge  
3 determines the punishment by how you answer these  
4 questions. A "yes" answer to the question number 1, that  
5 you believe they are a future danger; and a "no" answer

6 to number 2, that there is no mitigating evidence that  
7 rises to the level; a "yes" and a "no," then the Judge  
8 will sentence the defendant to death.

9 A. Okay.

10 Q. He has no choice in the matter. Okay?

11 A. All right.

12 Q. Now, if you answer those questions any  
13 other way --

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

16 Q. If you don't answer "yes" to the first  
17 one, or you decide there is mitigating evidence that the  
18 defendant should get a life sentence, then the Judge will  
19 sentence the defendant to life. But my point is: The

20 Judge's sentencing is based on how the jurors answer  
21 these questions.

22 A. Okay.

23 Q. And there's only two choices: Death  
24 or life.

25 A. Okay.

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1 Q. Okay. Is that clear to you?

2 A. Yes, I think so.

3 Q. Okay. Now, I bet you have not read  
4 much about it because you spend your time, as you say, on  
5 more positive things, which is good. But the method of  
6 execution in Texas is lethal injection.

7 A. Okay.

8 Q. Have you heard about that?

9 A. I have.

10 Q. Okay. In Texas, let me tell you, that  
11 it is a very real punishment. There are many states in  
12 our union that have it on the books that don't ever go to  
13 the death penalty.

14 A. Okay.

15 Q. Like California, they have never done  
16 it.

17 A. No.

18 Q. New Mexico has never done it.

19 A. Okay.

20 Q. But in Texas we have. In fact, we  
21 have executed over 100 human beings since it has been  
22 held constitutional again, in the '70s.

23 A. Okay.

24 Q. We average about 15 to 18 executions a  
25 year in the State of Texas.

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1 So, let me lay all of my cards out on  
2 the table. Okay? I have explained to you the process  
3 and you have told me that, philosophically, you believe  
4 that we should have the death penalty statute on the  
5 books.

6 A. I do.

7 Q. And you have agreed with -- such as  
8 the crime we have here is the type of case that could be  
9 eligible for the death penalty, of course, depending on  
10 the facts.

11 A. Depending on the evidence, yes.

12 Q. Now, what I need to know is this:

13 Obviously, we believe we can prove the defendant guilty.

14 And that we can prove these special issues should be

15 answered in a way that would result in Mrs. Routier's  
16 execution someday.

17 A. Okay.

18 Q. Now, the defense, obviously, believes  
19 the opposite and will fight us all the way.

20 A. Okay.

21 Q. What we need to know is: If you are  
22 the type of juror who can listen to the evidence, and if  
23 we do prove these things to you beyond a reasonable  
24 doubt, and take pen in hand and answer that, if we prove  
25 it to you, knowing that the defendant would be executed  
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1 someday?

2 A. I don't think it would be a problem  
3 for me.

4 Q. Okay.

5 A. I am pretty logical.

6 Q. Okay. Some people tell us, "Look, I  
7 believe in it, but I -- just don't ask me to do it. It's  
8 not my cup of tea." Other people, some people can't wait  
9 to do it.

10 A. Oh, no.

11 Q. None of us really want them down  
12 there.

13 A. Yes.

14 Q. They volunteer. Other people tell us,  
15 "Look, I ain't down here for a job interview. I really  
16 would much rather be at home, but if I am on the jury, I  
17 can follow the law. And it might be hard, but if you

18 prove these things to me, I will answer the questions  
19 that way."

20 A. Yes, that is true.

21 Q. That is what you are telling me?

22 A. That is what I am telling you.

23 Q. Okay. I appreciate your honesty  
24 there.

25 Let me go into a couple of things now.

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1 In any criminal trial, obviously, the State puts on  
2 evidence to prove it's case. Through witnesses, through  
3 exhibits, through scientific tests, or whatever. A term  
4 you may have heard is circumstantial evidence.

5 A. Yes, sir.

6 Q. Okay. We call it a lot of times,

7 direct and indirect evidence. But what it is, is this:

8 Circumstantial evidence is any type of evidence that

9 links the defendant to the crime, other than an

10 eyewitness. Okay?

11 A. Yes, sir.

12 Q. Now, if you were to leave the

13 courthouse today, let's say, and God forbid this would

14 happen, but you were robbed, let's say, at gun point.

15 A. Okay.

16 Q. Some man took your purse.

17 A. Right.

18 Q. The police apprehend a suspect and you

19 identify him. "That is the man that took my purse." If

20 it went to trial, you could be called as a witness and

21 could identify him. You are an eyewitness to the case,

22 that is direct evidence. Okay?

23 A. Yes, sir.

24 Q. You saw the criminal take your purse,

25 and you can identify him.

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1 A. Yes, sir.

2 Q. Any other type of evidence, if they

3 found him with the purse, you know, in his possession,

4 that kind of thing, that would be circumstantial

5 evidence. Okay?

6 A. Okay.

7 Q. Do you understand where I am coming

8 from?

9 A. Yes, I think so.

10 Q. Okay. Circumstantial evidence is

11 anything. It can be fingerprints, scientific evidence

12 such as hairs, fibers, DNA. You have probably heard of

13 DNA evidence?

14 A. Yes.

15 Q. Okay. Blood evidence, blood spatter

16 evidence, the crime scene itself, what that tells you, if

17 that is linked in any way.

18 A. That is all circumstantial?

19 Q. Yes, anything. Literally anything

20 that could connect and prove the case, the State can use

21 as circumstantial evidence.

22 A. I see.

23 Q. You see? And it's a matter of -- and

24 I think the jury's best tool is this: You just use your

25 common sense.  
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1 A. Yes, sir.  
2 Q. Okay. And then like you said, you are  
3 a logical person, you can piece it altogether.  
4 My point about it is this: Many times  
5 in a murder case, the State only has circumstantial  
6 evidence to prove its case.  
7 You have got the victim, who is dead.  
8 And then the person we charge with the crime. So you  
9 only have two people there and one is living now.  
10 A. Right.  
11 Q. Obviously, a defendant has an absolute  
12 right not to testify, so you may never hear one side.  
13 A. Uh-huh. (Witness nodding head  
14 affirmatively.)  
15 Q. We may only have circumstantial  
16 evidence. The law says there is no difference between  
17 the two. Whatever we have, either an eyewitness or  
18 whatever other evidence, we have to prove that case  
19 beyond a reasonable doubt. Okay?  
20 A. Okay.  
21 Q. I want to know this: If we use solely  
22 circumstantial evidence in a capital murder case, could  
23 you convict the defendant on circumstantial evidence? If  
24 you believed it beyond a reasonable doubt?  
25 A. If I believed it beyond a reasonable  
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1 doubt, I think I could, yes.  
2 Q. Okay. Fair enough then. Another area  
3 that comes up is motive. You probably heard that term  
4 before?  
5 A. Yes.  
6 Q. Okay. Motive is the reason a crime  
7 occurred.  
8 A. Right.  
9 Q. And I know in these cop shows they're  
10 always talking about, "We need a motive. We have got to  
11 have motive." And it is always good to know the motive.  
12 I mean, I think it --  
13 A. It does make a difference.  
14 Q. Yeah. And a lot of jurors, obviously,  
15 they want to know as much as they can about the crime.  
16 But in Texas, it's not a requirement for the State to  
17 prove to you the motive. Okay?  
18 A. Okay.

19 Q. You have read the indictment there?

20 A. Yes.

21 Q. You see those allegations set out the

22 name of the defendant, they set out the victim. They set  
23 out, you know, how it happened.

24 A. Right.

25 Q. Just in real short terms. Okay?

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1 A. Okay.

2 Q. That is the crime. A murder of an  
3 individual, by stabbing. Now, it doesn't say anywhere in  
4 there it happened because of this.

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

7 Q. Or that, or the reasoning of it.

8 A. Right.

9 Q. You see? Now, once the trial begins  
10 the motive may become very, very clear to everyone,  
11 crystal clear. Anyone. You don't need Sherlock Holmes  
12 to figure out the motive.

13 A. Right.

14 Q. Or, there could be a lot of motives,  
15 more than one. Okay? There could be several motives out  
16 there and everyone have their own opinion as to what the  
17 real one is, or the primary motive. You know what I  
18 mean? It could be more than one motive.

19 Or, it could be a senseless, cruel  
20 crime that no one understands, but nevertheless it  
21 occurred. You have heard of senseless -- I think they  
22 term it in the newspapers, a senseless killing?

23 A. Yes.

24 Q. A person is just as dead, and you know  
25 who did it, but we really don't know why.

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1 A. Yes.

2 Q. We may never know why. The fact is,  
3 the State is not required to prove the motive though. Do  
4 you understand that?

5 A. Okay.

6 Q. Okay. What I want to know is: Do you  
7 have any disagreement with that law?

8 A. No, I guess not. If the evidence is  
9 there, I wouldn't. If you don't need to have a motive,  
10 it wouldn't.

11 Q. Okay. You see how -- some of it, of  
12 course, obviously, a motive can go and get you into the

13 mind of the defendant. And you can't get into it, crawl  
14 into someone's mind a lot of times.

15 A. Yes.

16 Q. An example, and this is a rather silly  
17 example I give sometimes, is this: Let's say it was

18 against the law to wear a tie like this, which some  
19 people might want the make it against the law.

20 A. Yes.

21 Q. Because it's kind of -- I don't know,  
22 it's the closest thing I have to a Halloween tie. But  
23 anyway, whatever it is, say it was against the law to

24 wear this type of tie. Now, I could be charged with  
25 that. Okay?

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

3 Q. Because I have got it around my neck.

4 But the State could never prove why I chose to wear this  
5 tie. Do you understand?

6 A. I see.

7 Q. Because that is a decision I made.

8 A. Yes.

9 Q. Okay. They could prove that I am  
10 wearing it, but it is awful hard to prove why I am  
11 wearing it. You understand that?

12 A. Yes.

13 Q. Now, it might become apparent if I was  
14 ever tried or it may not. The point is in a murder case:  
15 We have to prove who committed the crime. Okay?

16 A. Okay.

17 Q. But we don't have to prove why.

18 A. Why.

19 Q. Okay?

20 A. I understand.

21 Q. Now, let me get into a couple of areas  
22 involving the punishment issues. We have to kind of talk  
23 about all parts of the case here.

24 A. Right.

25 Q. This is the only time we get to talk

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1 to you individually and the only time you get to ask  
2 questions of us.

3 A. Okay.

4 Q. Like I said, you don't get to these  
5 special issues unless you have found the defendant guilty  
6 of capital murder.

7 A. Okay.

8 Q. Okay. That question about deciding if  
9 there is a probability that the defendant would be a  
10 future danger, you might hear more evidence, and you may  
11 not.

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

14 Q. You may, you know -- it could be a  
15 situation where the person has a long criminal record, or  
16 they may not have any criminal record. Do you understand  
17 that?

18 A. Yes, I do.

19 Q. They may just go out one day and  
20 commit a horrible capital murder.

21 A. Absolutely.

22 Q. So you may be faced with a situation  
23 where you only have the evidence of the crime itself --  
24 how brutal it was, how it happened, maybe what led up to  
25 it, what happened afterwards, any remorse shown, things

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1 like that -- to decide this question.

2 A. Okay.

3 Q. Now, I can't tie you down to any  
4 specific fact situation, and we can't preview any fact  
5 situation?

6 A. Right.

7 Q. You understand that?

8 A. I understand that.

9 Q. We're all dealing in hypotheticals.

10 A. Yes, sir.

11 Q. Okay. But do you think you would be  
12 able to answer this question, based solely on the  
13 evidence of the crime itself, depending on what that  
14 evidence was?

15 A. I think so.

16 Q. Okay.

17 A. Yeah.

18 Q. Do you think you could gain a lot of  
19 insight from that person about the way they committed a  
20 murder?

21 A. Probably.

22 Q. Okay.

23 A. I don't know. I have never had to.

24 But I would think I could, yes.

25 Q. Again, we're just dealing in  
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1 hypotheticals here.

2 A. Yes, sir, I understand.

3 Q. Okay. Now the words in this

4 question -- you will get a lot of legal definitions in  
5 what we call the Court's Charge, but for these particular  
6 two questions here, you won't get any.

7 A. Okay.

8 Q. The definitions will be left up to you

9 and the other jurors. Okay? Just whatever your common,  
10 everyday definitions of them are. So, I want to go over  
11 a couple of those with you. We have to prove beyond a  
12 reasonable doubt that it's a probability that the  
13 defendant would commit criminal acts of violence. What  
14 do you think of when you see the word "probability?"

15 What does that mean to you?

16 A. That it is possible, that they do

17 that.

18 Q. Okay. You understand that we don't  
19 have to prove it is a certainty?

20 A. Right.

21 Q. No one could ever do that.

22 A. That is true.

23 Q. Okay. But just a probability?

24 A. Absolutely.

25 Q. Okay. We have to prove that the

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1 defendant would commit criminal acts of violence. Okay?

2 A. Yes, sir.

3 Q. When you see the words, "criminal acts  
4 of violence," what types of things do you think?

5 A. Another murder.

6 Q. Okay. That is an obvious one.

7 A. Yes.

8 Q. Another killing. Any other types of

9 things you can think of are criminal acts of violence?

10 A. Well, it wouldn't apply in this case,  
11 but for me, rape, to continue on on that type of crime.

12 Q. That is my point. These definitions

13 are left up to you, it doesn't necessarily -- it doesn't  
14 say murder, obviously, I think anyone would agree a  
15 murder is a criminal act of violence.

16 A. Yes, certainly.

17 Q. But it can include rape.

18 A. Yes.

19 Q. Any type of violence to another human  
20 being.

21 A. Right.

22 Q. It's up to you and the other jurors.

23 I have had jurors tell me they thought hot check writing  
24 is a criminal act of violence because it's against the  
25 law, that is going a little far.

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1 A. Yes.

2 Q. Obviously. But some jurors have told  
3 me --

4 A. Although it is a criminal act, I would  
5 assume, but not violence.

6 Q. But you understand that we're not  
7 required just to prove that the defendant would commit  
8 murder again?

9 A. True.

10 Q. But do you feel that the wording,  
11 "criminal acts of violence," is that a fair way to answer  
12 that question?

13 A. Yes.

14 Q. Okay. Now this question is presumed  
15 to be answered "no." Okay? Just like every defendant is  
16 presumed to be innocent when the trial begins?

17 A. Yes.

18 Q. Even though you have found this  
19 defendant guilty of capital murder, you don't just go  
20 back there and check off there, okay, they are dangerous,  
21 and a "yes" answer.

22 That is presumed to be answered "no,"  
23 and what you have to do is wait for the rest of the  
24 evidence to come in. And then, after that is done,  
25 reevaluate the guilt/innocence evidence, the murder

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1 evidence, and decide if the State has proven that  
2 question. Okay?

3 A. You get more evidence when?

4 Q. In the punishment stage.

5 A. In the punishment stage.

6 Q. You can.

7 A. Okay.

8 Q. Okay. You might get more background  
9 evidence. My point is this: Just because you found

10 someone -- "All right. You are guilty of capital murder,  
11 you are a future danger." You don't to do that. You  
12 have to wait and then look at all of the evidence and  
13 then decide if we have proven that.

14 A. Okay.

15 Q. Very well, you might have, because the  
16 crime itself might tell you enough that they are going to  
17 be a future danger.

18 A. Okay.

19 Q. But you can't make an automatic  
20 decision. You understand what I am saying? What we need  
21 is jurors that will keep their mind open and listen to  
22 all of the evidence, and then make their decision.

23 A. Okay.

24 Q. And that's what we are talking about  
25 here.

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1 A. I see.

2 Q. You don't get this question until all  
3 of the evidence is in in the punishment phase.

4 A. I see.

5 Q. Okay. Can you follow the law in that  
6 regard and wait until all of the evidence is in?

7 A. I would think so, yes.

8 Q. Okay. And can you start that question  
9 out with a "no" answer? And --

10 A. Probably, yes.

11 Q. And require the State to prove that to  
12 you?

13 A. Prove it, absolutely.

14 Q. See we have to prove that to you  
15 beyond a reasonable doubt.

16 A. Yes, sir.

17 Q. If we don't, it's a "no" answer.

18 A. Yes.

19 Q. Okay. Now, if you did, again, this is  
20 a hypothetical, answer "yes" to that, we go to this last  
21 question, and that is the one that gets pretty lengthy.  
22 That is the question that always allows a jury a way out.  
23 What it talks about is mitigating

24 evidence. You review all of the evidence in the case;  
25 the murder itself; all of the background evidence on the  
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1 defendant's character; and you look at it, and ask  
2 yourself, "Is it mitigating?" And if it is mitigating,  
3 is it of a sufficient quantity that you feel a life

4 sentence should be imposed rather than a death sentence?

5 Okay?

6 A. Okay.

7 Q. Now, I can't tell you what mitigating

8 evidence is, that's going to be up to you. In fact, it's

9 going to be up to you and the other jurors. In fact, you

10 don't have to agree with the other jurors, what it is.

11 A. Yes, sir.

12 Q. It's all on your own.

13 A. Right.

14 Q. And you don't have to sit here and

15 tell us what you think mitigating evidence is.

16 A. Okay. Well, I really don't know at

17 this point.

18 Q. Well, most people obviously can't

19 because they don't sit around and think about it.

20 A. Yes.

21 Q. What you have to be able to do is say,

22 "Look, I can keep my mind open to it."

23 A. Okay.

24 Q. And if I see something in the

25 defendant's background, maybe it was the way they were

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1 raised --

2 A. Uh-huh. (Witness nodding head

3 affirmatively.)

4 Q. Or maybe something surrounding the

5 offense --

6 A. Uh-huh. (Witness nodding head

7 affirmatively.)

8 Q. But something tells me that I know the

9 defendant is guilty, and I know that they are a danger,

10 there is something that tells me in the heart that a life

11 sentence should be imposed rather than a death sentence.

12 A. Okay.

13 Q. Then I will answer the question that

14 way.

15 A. Right.

16 Q. Do you understand where I am coming

17 from?

18 A. Yes, I do.

19 Q. It allows a way for the jury to show

20 mercy. It's still a life sentence.

21 A. I understand.

22 Q. But you only do that if you see

23 sufficient mitigating evidence.

24 A. Okay.

25 Q. Okay. And as you sit here today, I

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1 take it, that you really don't know what that would be?  
2 A. No, I don't. The only thing that I

3 will say, if the sentence is guilty or not guilty, I can  
4 handle that. But if it's not guilty, for reasons of  
5 insanity, to me it's an illogical conclusion. You either  
6 did it or didn't do it. Now, in the phase, this other  
7 phase, I would then consider a mental state as  
8 mitigating.

9 Q. Sure. I can tell you this, as you  
10 know, sometimes the sanity issue comes up.

11 A. Yes.

12 Q. But there are no motions filed.

13 A. Well, I have always thought that  
14 illogical.

15 Q. Okay. So, I don't think that is going  
16 to -- insanity issue?

17 A. Well, I just wanted you to know that.

18 Q. Now, oftentimes the mental issue does  
19 come up, like you said, in this period.

20 A. Yes.

21 Q. Like this: Sometimes, and you don't  
22 have to agree with it, sometimes jurors tell us, "Well,  
23 maybe if they had sexual abuse as a child, or maybe  
24 mental abuse in some way. I might view that as  
25 mitigating." Other people tell us, "No. There are  
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1 plenty of people that are victims of those things and  
2 don't go around killing people."

3 A. I understand.

4 Q. But it can cut either way.

5 A. Yes.

6 Q. So how do you feel about that type of  
7 evidence?

8 A. Well, I probably would consider it.

9 Q. You would consider it?

10 A. Yes, yes. I think we're the sum total  
11 of everything that has happened to us, yes.

12 Q. It's kind of like, I saw this movie,  
13 Sleepers, that is out now at the theaters here, I didn't  
14 have anything to do, so I went and saw it. But these

15 guys were all victims of sexual abuse in a boys' home.

16 A. Yeah, I saw it.

17 Q. Horrible sexual abuse. And two of  
18 them turned out to be murderers, vicious murders.

19 A. Yes, sir.

20 Q. Some people might say, "Well, maybe  
21 they are that way because of how they were horribly,  
22 horribly abused." That argument could be made.

23 A. Yes.

24 Q. Okay. What you have to be able to say  
25 again is -- is that your mind can be open to it?

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1 A. I think so.

2 Q. Now, you are not telling us that any  
3 type of sexual abuse comes up or physical abuse you are  
4 saying that is mitigating evidence, are you? I mean,  
5 that you think that that person should be spared?

6 A. Should be spared?

7 Q. Right.

8 A. The death penalty, you mean.

9 Q. Yes.

10 A. No.

11 Q. You are just waiting to hear?

12 A. I just don't know.

13 Q. Okay. Fair enough.

14 Sometimes you might hear from  
15 psychiatrists, psychologists from one side or the other.  
16 Some people put a whole lot of faith in those experts.  
17 Other people say, "Look, you can find one that will say

18 anything if you look long enough." And other people say,  
19 "I treat them like any other witness. If what they say  
20 makes sense, I will follow that. If it doesn't make  
21 sense, I won't."

22 A. I think they are part of the whole. I  
23 wouldn't weigh one way or the other more, I don't think.

24 Q. All right.

25 A. I don't know, but I don't think so at  
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1 this point.

2 Q. Fair enough. There are several rules,  
3 and I will go over these pretty quickly, because I  
4 think -- I am sure you are familiar with them, but  
5 several rules apply in every criminal case and Judge  
6 Tolle talked about these: The presumption of innocence.  
7 A. Yes.

8 Q. Every defendant is presumed to be  
9 innocent when the trial begins and you have to start them  
10 out with that. Would you follow that rule?

11 A. Yes, I would. I would want that for  
12 me.

13 Q. Sure, that applies in every criminal  
14 case.

15 A. Yes.

16 Q. Then the State, as we put on evidence,  
17 our attempt is to break down that presumption and prove  
18 the guilt.

19 A. Absolutely.

20 Q. But the starting point is the  
21 presumption of innocence.

22 A. Right.

23 Q. The State has to prove its case --

24

25 THE COURT: Calm down the  
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1 conversation, I'm not going to tell you again. All  
2 right. Please.

3

4 BY MR. TOBY L. SHOOK:

5 Q. The State has to prove its case beyond  
6 a reasonable doubt. Okay? That burden of proof never  
7 shifts from this table. Okay?

8 A. Okay.

9 Q. If we fail to prove the case to you,  
10 you have to find the defendant not guilty.

11 A. Okay.

12 Q. If we prove our case, you are  
13 obligated to find the defendant guilty.

14 A. Okay.

15 Q. This side of the table, they are going  
16 to defend their client, I'm sure, but they are not  
17 obligated to prove her innocence. Okay?

18 A. All right.

19 Q. I'm sure they will ask questions and  
20 cross-examine and make arguments, but they are not  
21 obligated to. You can't require them to, in other words?

22 A. All right.

23 Q. Because the burden of proof never  
24 leaves here. Could you require the State to prove this  
25 case to you beyond a reasonable doubt?

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1 A. Yes, sir.

2 Q. Okay. Judge Tolle talked about the  
3 defendant's right not to testify.

4 A. Yes, I understand.

5 Q. And have you heard that before?

6 A. Yes.

7 Q. If you want to testify, no one can

8 stop you from getting up there.

9 A. Okay.

10 Q. I mean there is no law or rule that

11 will keep a person from testifying on their own behalf.

12 A. Okay.

13 Q. On the other hand, is if you choose

14 not to testify, the Judge will instruct the jurors that

15 you can't use that as evidence against the defendant.

16 A. Okay.

17 Q. Okay?

18 A. Yes.

19 Q. Does that sound fair?

20 A. It does.

21 Q. All right. You could follow that

22 rule?

23 A. Yes.

24 Q. The indictment, you have read the

25 indictment, and the fact that a Grand Jury has indicted a

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1 defendant is no evidence of guilt. Okay?

2 A. Okay.

3 Q. As Judge Tolle said, "That is just a  
4 piece of paper."

5 A. Okay.

6 Q. The fact that they have been indicted

7 or arrested or even going through this process here, it's

8 no evidence of guilt.

9 A. Okay.

10 Q. You have to wait for the witnesses to

11 testify.

12 A. Yes.

13 Q. Okay. In a criminal case, we often

14 have police officers that come down to testify. Okay?

15 And some people respect police officers a lot, they

16 appreciate the job they do. Some people have had

17 negative dealings with police officers, they don't like

18 them. But what the law says is this: You have to start

19 them out on the same foot as you would any other witness.

20 Okay?

21 A. Makes sense.

22 Q. Just because they are a police

23 officer, you don't automatically believe them. You have

24 to wait until they testify and then judge their

25 credibility.

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1 A. All right.

2 Q. Could you follow that rule of law?

3 A. Yes, sir.

4 Q. Okay. Oh, yeah. You sometimes may

5 have heard the parole laws in Texas. How they make --

6 they make the headlines sometimes.

7 A. Yes.

8 Q. The Judge would instruct you that you

9 cannot consider parole laws, anything you have read about

10 parole laws, you can't factor in parole laws, anything

11 like that during your deliberations.

12 A. Yes.

13 Q. Can you follow that rule?

14 A. Yes, I certainly could.

15 Q. Okay. How long have you lived in

16 Kerrville, ma'am?

17 A. Nineteen years, I believe.

18 Q. Okay. I don't believe you knew any of

19 the Dallas lawyers.

20 A. No, I didn't know anyone at all.

21 Q. There are two local attorneys right

22 here.

23 A. I do know one.

24 Q. Which one do you know?

25 A. Mr. Mosty.

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1 Q. How do you know Mr. Mosty?

2 A. My husband and his brother have

3 business dealings in the nursery business and we

4 socialized occasionally with his brother. And naturally,

5 we know him, although we have never socialized ourselves.

6 Q. Okay. Never been over to his house or

7 to your house?

8 A. No, no.

9 Q. Now is it Mr. Mosty's brother?

10 A. Yes.

11 Q. Okay. So you know him better, but

12 obviously, you have seen Mr. Mosty?

13 A. Right, I do.

14 Q. Okay. How do you think that might  
15 affect your service as a juror?

16 A. He has a job to do, and I know nothing  
17 of his business dealings or anything.

18 Q. Okay. Obviously, if he is sitting --  
19 and he has a very good reputation as an attorney?

20 A. Yes.

21 Q. And you know that?

22 A. Yes.

23 Q. Okay.

24 A. In a small town you know things like  
25 that.

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1 Q. Yeah, yeah. And you are always going  
2 to have a situation where the lawyers are usually  
3 familiar with some of the jurors.

4 A. Oh, yes.

5 Q. I mean, obviously, it's going to be  
6 hard to seat a juror that doesn't know Mr. Mosty?

7 A. I would think so.

8 Q. But what we need to know is this: In  
9 Dallas we don't run into that problem.

10 A. I am sure you don't.

11 Q. Actually, I did have one one time, a  
12 high school buddy of mine got on the jury. That's when I  
13 was a defense attorney -- I don't know if it was a  
14 mistake, but he made it on the jury.

15 A. Yes.

16 Q. But our situation is this: Obviously,  
17 Mr. Mosty is going to try real hard to represent his  
18 client. He may -- it may come down to the situation  
19 where he is sitting there asking you, "Don't answer those  
20 questions in a way that she is going to get the death  
21 penalty."

22 A. No.

23 Q. "Don't do it. Don't do it."

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

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1 Q. But you feel that the State has proven  
2 the case in a way that you could answer it that way, do  
3 you think that that would affect you?

4 A. No, because I will make up my mind.

5 Q. Good. Good. After the trial you will

6 feel free to walk up to him if you saw him on the street  
7 or whatever and say, "Sorry."

8 A. I probably would, yes.

9 Q. You wouldn't -- but that you could --

10 from the little that you do know him or actually his

11 brother, you could go ahead make your decisions, just  
12 based on --

13 A. Yes, I could.

14 Q. Okay. Okay.

15

16 THE COURT: Anything else?

17 MR. TOBY L. SHOOK: One second, Judge.

18 THE COURT: All right. You may visit

19 now. You may talk to Mr. Mosty now. I will be very  
20 happy to have that happen now.

21 MR. RICHARD C. MOSTY: We can't  
22 remember that long, Your Honor.

23 THE COURT: I figured something like  
24 that.

25

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1 BY MR. TOBY L. SHOOK:

2 Q. Ma'am, do you have any -- you have  
3 been real cooperative with me and real patient. Do you  
4 have any questions over anything I have gone over?

5 A. I can't think of anything.

6 Q. All right. I appreciate it, you are  
7 very attentive. I rushed you through this, I know, but I  
8 appreciate your answers.

9 A. Thank you.

10

11 THE COURT: And now, Mr. Mosty.

12

13 VOIR DIRE EXAMINATION

14

15 BY MR. RICHARD MOSTY:

16 Q. Ms. Huth.

17 A. Yes.

18 Q. I want to go over a few things with  
19 you. And forgive me, because some of them, I am going to  
20 cover some of the same areas.

21 A. Yes.

22 Q. But I think it is important to let you  
23 know that we're coming from a completely different  
24 perspective.

25 A. Okay.

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1 Q. When we open this trial, Darlie  
2 Routier is going to enter a plea of not guilty. And we  
3 fully expect we're never going to get to any punishment  
4 phase of this trial.

5 A. All right.

6 Q. There are a couple of things that sort  
7 of bother me. If I were choosing to make the rules about  
8 a criminal trial and that is number 1 is that I would  
9 have liked to have talked to you first today, because I  
10 think that fits with the presumption of innocence. That  
11 we're presumed innocent, and I would like to start off  
12 talking about the presumption of innocence and reasonable  
13 doubt and the burden of proof. Instead of the State, as  
14 they talked a lot about the death penalty.

15 A. Yes.

16 Q. And, in fact, that is getting the cart  
17 before the horse.

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

20 Q. That is the main thing I want to drive  
21 home to you today. Is that just because somebody sits

22 here and talks about these special issues, or the death  
23 penalty, or life imprisonment, that we never expect to  
24 get there. And we want to make sure that you are  
25 entirely comfortable with some of the principles of law

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1 that govern criminal trials.

2 A. Okay.

3 Q. These are things that you undoubtedly  
4 will have heard about.

5 A. Maybe not.

6 Q. And again, it's not the kind of thing  
7 you sit around --

8 A. No I don't.

9 Q. -- too many times under pecan trees  
10 and talk about it.

11 A. That's right.

12 Q. So, sometimes these are the first  
13 times people have ever really started talking about these  
14 things. So, and these are all things that the law  
15 requires of jurors.

16 A. Okay.

17 Q. Everything I tell you is required of

18 you as a juror. It is the law. And you are required to  
19 follow it. The first thing the law says --

20

21 THE COURT: Mr. Mosty, I don't know.

22 I'm not going to take -- I will give you plenty of time.

23 I normally break every 2 hours. We have been here 2  
24 hours now, I think. If -- can we -- does anybody need a  
25 10 minute break or something?

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1 MR. RICHARD C. MOSTY: Yes. I would  
2 rather do it now before I really get wound up.

3 THE COURT: Well, yeah. That is what  
4 I figured. Let's take a brief break right now.

5

6 (Whereupon, a short

7 recess was taken,  
8 after which time,

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

12 hearing of the defendant  
13 as follows:)

14

15 THE COURT: Thank you, ma'am.

16 THE PROSPECTIVE JUROR: Thank you.

17 THE COURT: All right. Okay. All  
18 right.

19 We're back on record then. Mr. Mosty.

20

21 VOIR DIRE EXAMINATION (Resumed)

22

23 BY MR. RICHARD C. MOSTY:

24 Q. What I wanted to start with was what

25 Judge Tolle said last week when we all met for the first  
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1 time, and that is regarding the Grand Jury indictment.  
2 Some people think that because there is some -- there has  
3 been an indictment that there must be something to the  
4 case. And as Judge Tolle told you, in Dallas County  
5 there are 25,000 indictments a year; 125, maybe on any  
6 given day. And any number of those people don't even  
7 know that their case has been presented or that they are

8 under investigation or anything. The Grand Jury doesn't  
9 even have to listen to a defendant or listen to anything  
10 other than a police officer reading a report, if that is  
11 what they chose to do.

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

14 Q. So, would you agree with me, that it  
15 would be fundamentally unfair to place any kind of weight  
16 on a Grand Jury indictment?

17 A. I don't know about things like that,  
18 to the point, I mean, you called me for jury on this, and  
19 I really don't know.

20 Q. Okay. The law says you will draw

21 absolutely no inference, whatsoever, from a Grand Jury  
22 indictment.

23 A. Absolutely.

24 Q. And you can do that?

25 A. I hope I can, yes.

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1 Q. The next thing the law says, and this  
2 goes with the State getting to go first. The State has  
3 the burden of proof.

4 A. Right.

5 Q. The State is the one who has accused  
6 our client of doing something.

7 A. Okay.

8 Q. Seems only fair to me if they want to  
9 accuse somebody, they ought to have to prove that that  
10 person is guilty.

11 A. Well, I thought they had to.

12 Q. Seem fair to you?

13 A. Yes.

14 Q. All right. And the standard that they  
15 must prove that is beyond any reasonable doubt. And  
16 reasonable doubt is really what -- you will be given a  
17 definition. But you, as a person who has watched people,  
18 who have known people over the years, and the other 11  
19 jurors will be the same way, your job is to judge the  
20 facts.

21 A. Yes.

22 Q. You are the absolute last word on the  
23 facts. The jury decides the facts. And what a jury says  
24 is reasonable doubt, is reasonable doubt. Period.

25 A. Okay.

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1 Q. That's it.

2 A. Yes.

3 Q. And so your job is to look and see,  
4 and always be challenging the State: Have they proved  
5 their case beyond a reasonable doubt?

6 A. All right.

7 Q. And the Court will tell you the law is  
8 that if you have a reasonable doubt, and you might say,  
9 "Well, there is a reasonable doubt here, and there is a  
10 reasonable doubt there, and there is a reasonable doubt  
11 here and there is a reasonable doubt there, they are sort  
12 of about even. The State and the defense are about even  
13 on reasonable doubt."

14 A. Okay.

15 Q. But that is not what the law says.

16 A. Okay.

17 Q. The law says if there is a reasonable  
18 doubt, you bring it over here, and you give it to this  
19 lady on trial.

20 A. All right.

21 Q. And it's hers forever. Any reasonable  
22 doubt belongs to the defense.

23 A. All right.

24 Q. Is that fair enough?

25 A. Sounds good.

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1 Q. Okay. It goes back to the basic laws  
2 that we're talking about; the burden of proof.

3 A. Yes.

4 Q. The State being the accuser. And we  
5 can sit here silent, as we sit here right now, this lady  
6 is cloaked with a shield of innocence around her, the  
7 presumption that she is not guilty.

8 A. Okay.

9 Q. And she will stay with that shield  
10 throughout this trial. She is protected by that shield  
11 that is afforded by the United States Constitution.

12 A. All right.

13 Q. And you can live with that, can't you?

14 A. I can live with that.

15 Q. All right. Matter of fact, if you  
16 were sitting where she is sitting --

17 A. Yes, that would be absolutely true.

18 Q. -- you would want somebody sitting in  
19 that jury box that says, "That lady is protected by the

20 shield of innocence." And I am going to make the

21 State --

22 A. Until proven otherwise.

23 Q. That's right. Until the State proves

24 it.

25 A. All right.

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1 Q. Okay. One thing that I do also want

2 to say is that when you are looking at this case with

3 reasonable doubt, one of the -- the jury is not here to

4 solve the case.

5 There may be absolutely no doubt in

6 your mind, and I suspect in this case there will be no

7 doubt in your mind, that a terrible crime was committed.

8 A. Uh-huh. (Witness nodding head

9 affirmatively.)

10 Q. But it's not your job to solve the  
11 case.

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

14 Q. Your job is to resolve reasonable  
15 doubts in favor of the defendant. So, at the end of the  
16 case, you may still -- you may have reasonable doubts as  
17 to who did this.

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

20 Q. In that instance, you have got to say  
21 not guilty. Is that okay?

22 A. Yes, that is fine.

23 Q. And you will walk out say,  
24 "Dad-gum-it, I don't know who committed that terrible  
25 crime." And that is just going to have to be what you

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1 have to do as a juror.

2 A. All right.

3 Q. Now, the State talked some about two  
4 areas that I want to talk to you about. One is about  
5 direct and circumstantial evidence, and the other relates  
6 to motive. And I want to tie these together a little bit  
7 at the end of that.

8 The State talked about proof of a  
9 direct evidence. And I have drawn at various times a  
10 circle, which I submit, and in my -- since Mr. -- since  
11 the district attorney said that they gave a silly  
12 example, I feel compelled to give a silly example as  
13 well.

14 A. Okay.

15 Q. Mine is that this circle represents  
16 reasonable doubt.

17 A. Okay.

18 Q. And that circle is completely open,  
19 disregard any dots in there. Now, this is a completely  
20 open circle, and that is reasonable doubt. And that is  
21 the shield of innocence and the cloak of the presumption  
22 of not guilty that sits with any defendant in a case.  
23 And the State must absolutely blacken that circle so that  
24 there is not a ray of reasonable doubt shining through.

25 A. Okay.

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1 Q. And they may take direct evidence, and  
2 they may bring it in, and they just obliterate reasonable  
3 doubt and it is gone.

4 A. Okay.

5 Q. Or the State may try to prove its case  
6 through circumstantial evidence. And I analogize this to  
7 my children's dot-to-dot figures; where they have got to  
8 come in and the State has got to, through bits and pieces  
9 of evidence, absolutely exclude any light of reasonable  
10 doubt.

11 A. Okay.

12 Q. And if they exclude most of it, then  
13 there is still reasonable doubt. And once there is  
14 reasonable doubt, you are always going to give it to this  
15 defendant.

16 A. Okay.

17 Q. So, do you see what I am saying?

18 A. I see what you are saying.

19 Q. The true circumstantial evidence, the  
20 burden of proof is still the same.

21 A. Yes.

22 Q. It's just a different manner. But  
23 what the State has to do is take every speck of evidence  
24 and completely obliterate any reasonable doubt.

25 A. Okay. And direct and circumstantial

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1 evidence is the same though in the end. Right?

2 Q. Well, if you say it is.

3 A. Oh, okay.

4 Q. If you say it is.

5 A. Okay.

6 Q. You may have circumstantial evidence  
7 that you say, "You know, that just doesn't add up."

8 A. Right, yes.

9 Q. Because one of things that

10 circumstantial evidence has to do is it has got to fit  
11 together well enough to blacken out this circle.

12 A. All right.

13 Q. And it might not fit together well

14 enough. And that is what a jury does really. Is they  
15 look at witnesses and they look at bits of evidence and  
16 say, "Is it credible? Is it believable?"

17 You know, if I look at that witness

18 and how they are reacting, does what they say make sense?

19 I think this is an important thing. Does what they say

20 make sense?

21 A. Yes. Okay.

22 Q. And does this evidence fit with or not

23 fit with what the State thinks. Because the State --

24 it's always got to fit with the State, they are the ones

25 who have got to prove beyond a reasonable doubt.

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1 So, one of the areas that the State

2 said they are not required to prove, and I agree with  
3 them, is motive. They are not required to prove motive.

4 But you know I can envision a case

5 where you might say, you might walk in there and say,  
6 "You know, the State has proved a lot of evidence there.

7 But for some reason it just doesn't quite fit together.

8 The links of the chain just don't quite match up, and  
9 it's because there is no explainable reason for this.

10 There is no motive to it." And that motive may say --  
11 may cause you reasonable doubt. That lack of motive.

12 And you may say, "There is a gap of light there, because  
13 there is a lack of motive." And that gap of light

14 creates reasonable doubt.

15 A. Okay.

16 Q. And once there is one hole in the

17 State's case, that is it. Once there is one hole of  
18 reasonable doubt, that is the end for the State. Whether  
19 it's one reasonable doubt or 10 reasonable doubts or 100  
20 reasonable doubts, you are always going to resolve them  
21 in favor of the defendant.

22 A. Okay.

23 Q. All right.

24 A. Yes.

25 Q. Are you okay with that?

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1 A. Yes, that sounds reasonable.

2 Q. Okay. You may see some photographs.

3 I bet you will see photographs.

4 A. Okay.

5 Q. That will be very disturbing to any

6 normal human being.

7 A. Yes. I'm sure.

8 Q. And what I need to know from you is:

9 Will you take those photographs as just what they are,

10 and not look up and say, "Somebody needs to pay a price

11 because of what I see here."

12 A. Well, without seeing photographs it

13 would be hard to say. But somehow I feel like knowing

14 there is a murder, and knowing it was stabbing, there's

15 going to be some gore, and you just have to be prepared

16 for that.

17 Q. That's right. And that doesn't --

18 that won't overwhelm you to where you just get so enraged

19 that you have got to convict the next person that you

20 look at?

21 A. No, because I'm going to try to be

22 with an open mind. I mean, that is what I would be here

23 for.

24 Q. That's right. And just because a

25 crime is committed, that doesn't create any presumption

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1 in your mind?

2 A. No.

3 Q. That this lady is guilty?

4 A. No.

5 Q. Let's talk a little bit about that

6 indictment that is in front of you there, that

7 typewritten part. And particularly, it in essence says:

8 That my client is accused of intentionally and knowingly

9 causing the death of a child under the age of six years.

10 A. Yes.

11 Q. And I wrote down what the district

12 attorney said to you. And he asked you, "The charge in

13 that indictment is -- is it -- do you consider that a

14 charge such that might be appropriate for a death

15 sentence?"

16 And I believe you said, "That it would

17 be appropriate under the proper circumstances."

18 A. Under the proper circumstances.

19 Q. My question to you is: Can you also

20 accept the premise that a life sentence may be

21 appropriate for that same charge there, under the proper

22 circumstances?

23 A. Under the proper circumstances, yes.

24 Q. Okay. That's -- you know all we want  
25 is to start off even.

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1 A. I understand.

2 Q. And I better back up and remind you  
3 where I started, because we never expect to be answering  
4 these questions.

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

7 Q. But all any person ought to be  
8 entitled to is just to start off even. We don't need a  
9 head start.

10 A. Okay.

11 Q. Just let us start even. And so, what  
12 you are telling me is that that kind of charge, if any  
13 defendant was up there, that you could look at a life  
14 sentence or you could look at a death sentence, depending  
15 on the circumstances?

16 A. I believe I can, yes.

17 Q. Okay. Y'all have closed the art shop?

18 A. Yes, we sold it in '89.

19 Q. Okay. Are you still --

20 A. -- painting.

21 Q. Painting?

22 A. Three times a week.

23 Q. What is Walt doing with his time?

24 A. He is cutting wood for me and making  
25 things for the grandchildren. He has an orchid hobby,

Sandra M. Halsey, CSR, Official Court Reporter 1230

1 and, of course, hunting and fishing.

2 Q. I guess he is going tomorrow?

3 A. No, he is not actually.

4 Q. Really?

5 A. No, he doesn't have a lease anymore.

6 Q. Yeah. They lost the lease.

7 A. Yes.

8 Q. Where do your girls live?

9 A. One lives here and one lives in  
10 Leander which is just northwest of Austin, and the other  
11 lives in Groves, which is down near Port Arthur.

12 Q. Who lives here?

13 A. Our oldest daughter.

14 Q. Catherine?

15 A. Catherine.

16 Q. Who is he she married to?

17 A. Keith Jones.

18 Q. One of your favorite TV shows is NFL  
19 football?

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

22 Q. What do you like to watch?

23 A. Well, Dallas, of course. I am in the  
24 company of friends.

25

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1 THE COURT: We appreciate that.

2 MR. RICHARD C. MOSTY: I guess that is  
3 the only --

4 THE COURT: Thank you. Make sure that  
5 is in the record.

6 MR. RICHARD C. MOSTY: That is the  
7 politically correct --

8 THE PROSPECTIVE JUROR: As a matter of  
9 fact our grandson who is a Troy Aikman fan, and my  
10 heavens, I just went and bought him a shirt -- a Troy  
11 Aikman shirt, you know. Merciful heavens, these boys  
12 don't need that kind of money they spend on them.

13 MR. RICHARD C. MOSTY: I have a 17  
14 year old daughter who is a rabid Dallas Cowboys fan. I  
15 came down last Sunday and I saw her on the couch, and she  
16 had a blue bandana tied around the top of her head.

17 THE PROSPECTIVE JUROR: Well, I don't  
18 go to that extent. Sometimes I don't have a choice to  
19 watch, you know.

20 MR. RICHARD MOSTY: I understand.  
21

22 BY MR. RICHARD C. MOSTY:

23 Q. Ms. Huth, this is the only opportunity  
24 that you really have to speak in this process. Once a  
25 jury is impaneled, what you do is you sit and you listen,

Sandra M. Halsey, CSR, Official Court Reporter 1232

1 and sometimes you will sit over there and you will think,  
2 "Gosh, I wish they wouldn't answer that question again."

3 A. Oh.

4 Q. Sometimes you will sit over there and  
5 say --

6 A. It's kind of like politics?

7 Q. -- "I wish they would ask this. You  
8 know, nobody has asked this question and I am dying to  
9 know." And that just may be where you sit. You just  
10 say, "There is -- you know, somebody didn't ask a  
11 question."

12 And once you are sitting there, your  
13 job is to just to ferret through that evidence along with  
14 the other jurors, and judge the credibility of it, and  
15 see if there is proof beyond a reasonable doubt. And it  
16 may be, that there is reasonable doubt in the evidence  
17 that was presented, or it may be the lack of evidence  
18 that was presented, just a hole that is unfilled.

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

21 Q. That creates reasonable doubt.

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

24 Q. But your job is to take the evidence  
25 and to filter through it and process it.

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1 So, I say that in the sense of -- I'm  
2 going to ask you just a general global question of: Is  
3 there anything that we have not covered? Is there  
4 anything we haven't asked? Or is there anything that you  
5 think is important for the Court and the lawyers to know  
6 about; where you are or how you might sit as a juror,  
7 that we haven't asked?

8 A. No.

9 Q. Anything that on your mind that  
10 could --

11 A. Well, no, I don't -- I can't think of  
12 anything. Of course, like he mentioned and it's in my  
13 deposition, that we were military. And the need to know  
14 is, you know, the right to know, is there. I worked for  
15 the CIA for a while right out of college. So, you know,  
16 you take it from there. There are just some things you  
17 take at face value and that is what you work with.

18 Q. Well, and in this instance, just  
19 taking that statement, you know, if there is a need to  
20 know something?

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

23 Q. And the State doesn't bring it to you?

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

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1 Q. And that need to know in your mind is  
2 a reasonable doubt?

3 A. Yes.

4 Q. Then at that point you just have to  
5 say not guilty.

6 A. Okay.

7 Q. You don't get the chance to say,

8 "Well, I got a --"

9 A. "I got a question."

10 Q. If the State doesn't bring it to you,

11 and you need to know it to find a verdict, then you

12 resolve that in favor of this defendant and say by your

13 verdict not guilty? And you can do that all right?

14 A. I think so. I would look at what was

15 in front of me, that's all I can say. I have no idea.

16 Q. I think that is all anybody is

17 entitled to, quite frankly.

18

19 MR. RICHARD C. MOSTY: That's all the

20 questions I have.

21 THE COURT: All right. Ma'am, would

22 you mind stepping outside just briefly, please.

23 THE PROSPECTIVE JUROR: Sure.

24

25 (Whereupon, the prospective

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1 juror was excused from the

2 room, and the following

3 proceedings were held,

4 outside of his presence

5 as follows:)

6

7 THE COURT: All right. What says the

8 State? Is everybody through? What says the State?

9 MR. TOBY L. SHOOK: The State accepts

10 the juror.

11 THE COURT: What says the defense?

12 MR. RICHARD C. MOSTY: We will accept

13 the juror.

14 THE COURT: All right. Can you have

15 Ms. Huth step back in.

16

17 (Whereupon, the prospective

18 juror returned to the

19 room and the proceedings

20 were resumed as follows:)

21

22 THE COURT: All right. Ma'am, can you

23 come up?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: Ma'am, you have been

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1 accepted as a juror in this case. You don't need to sit  
2 down.

3 THE JUROR: Okay.

4 THE COURT: You have been accepted as  
5 a juror in this case. We anticipate the trial starting  
6 on the 6th of January.

7 THE JUROR: Oh.

8 THE COURT: So, between now and then,  
9 don't talk about the case with anybody. In fact, you  
10 don't have to -- no member of the media has been in here,  
11 so nobody is going to know you are a juror except you.  
12 So, please don't tell anybody. I know you will tell your  
13 husband.

14 THE JUROR: Well, yes, that's hard not  
15 to.

16 THE COURT: I understand that and that  
17 is fine. But if you could just keep it as quiet as  
18 possible, and don't read anything about the case.

19 THE JUROR: I won't.

20 THE COURT: Or if you see it on TV,  
21 just ignore it. And there is a gag order in effect,  
22 which calls for monetary or jail time sanctions. I know  
23 it's not going to cause you any problem, I just have to  
24 tell you that.

25 THE JUROR: Well, like I said, I paint

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1 with three groups during the week. And last Monday and  
2 Tuesday, I had no idea this was for criminal court, and I  
3 told them I had jury summons. So, now they are all going  
4 to want to know. And I don't know -- how do I handle  
5 that?

6 THE COURT: All you have to do, is  
7 just tell them you went down, and that you got a jury  
8 summons.

9 THE JUROR: Okay. Okay. And I can  
10 leave town? I would like to buy an airplane ticket.

11 THE COURT: That will be fine, yes,  
12 ma'am. We sure hope you come back by January 6th.

13 THE JUROR: I will, I am just going to  
14 Virginia.

15 THE COURT: That is perfectly fine.  
16 Yes, ma'am, that will be fine.

17 THE JUROR: All right. I will do my  
18 best.

19 THE COURT: All right. Thank you,  
20 ma'am.

21 Okay, gang, good work today. Thank  
22 you very much.  
23 MR. RICHARD C. MOSTY: Judge, Mr.  
24 Mulder has tickets to the Cowboys game.  
25 We're thinking, if it's okay with the

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1 Court, we would fly her up Sunday for the game?  
2 THE COURT: That will be fine. That  
3 will be fine.  
4 Mr. Mulder usually sits up there in  
5 the box with the Big J up there so, J.J. Aren't you and  
6 Jerry good friends?  
7 MR. DOUGLAS MULDER: No, I have got my  
8 own box.  
9 THE COURT: Oh, I figured that as  
10 much. I figured that as much. All right. That is quite  
11 right.  
12 Well, okay. Well, you will be here  
13 tomorrow?  
14 MR. DOUGLAS MULDER: No, I will be  
15 thinking about you.  
16 MR. RICHARD C. MOSTY: After we got  
17 admonished for talking in class --  
18 MR. DOUGLAS MULDER: I mean, anytime  
19 you can't confer with your client.  
20 THE COURT: Well, you may confer with  
21 your client.  
22 MR. DOUGLAS MULDER: Well, Mr. Mosty  
23 is limited.  
24 THE COURT: We hope it will be done  
25 in, shall we say, in modulated tones.

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1 MR. RICHARD C. MOSTY: We're just glad  
2 you didn't see us chewing gum, Judge.  
3 THE COURT: Thank you very much.  
4 That's quite all right. Gum's quite all right. Mr.  
5 Douglass will get a gold star for his decorum. We'll  
6 start giving gold stars down here.  
7 MR. TOBY SHOOK: So we have three  
8 jurors coming tomorrow, Judge?  
9 THE COURT: We have three coming  
10 tomorrow.  
11 Everyone please be prompt in the  
12 morning, we will see everyone here at 8:00 a.m.  
13 MR. TOBY SHOOK: Yes, sir, the State  
14 will be here.

15 MR. RICHARD MOSTY: Yes, sir, Mr.  
16 Douglass will be here until I get here, I'm sure.  
17 THE COURT: That will be fine.

18

19

20 (Whereupon, the parties were  
21 thereby excused for the  
22 day, to return on the  
23 next day, November 1, 1996,  
24 at 8:00 a.m. at which  
25 time the proceedings

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1 were resumed in open  
2 court, but in the  
3 presence of the  
4 defendant, with her  
5 attorney, and the State  
6 being represented by the  
7 D.A., as follows:)

8

9 (These proceedings are continued to  
10 the next volume in this cause.)

11

12

13

14

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16

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18

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21

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Sandra M. Halsey, CSR, Official Court Reporter 1241

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

Sandra M. Halsey, CSR, Official Court Reporter 1242

1 Exp 12-31-98

2 STATE OF TEXAS )

3 COUNTY OF DALLAS)

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5 JUDGES CERTIFICATE

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9 The above and foregoing transcript, as certified  
10 by the Official Court Reporter, having been presented to  
11 me, has been examined and is approved as a true and  
12 correct transcript of the proceedings had in the  
13 foregoing styled cause, and aforementioned cause number  
14 of this case.

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21 MARK TOLLE, JUDGE

22 Criminal District Court Number 3

23 Dallas County, Texas

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Sandra M. Halsey, CSR, Official Court Reporter 1243