

Volume 17

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

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

7 VS: } & A-96-253

8 DARLIE LYNN ROUTIER } Kerr Co. Number

9

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13 STATEMENT OF FACTS

14 JURY VOIR DIRE

15 INDIVIDUAL JURORS HEARING

16 VOL. 17 OF VOLS.

17 November 4, 1996

18 Monday

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Sandra M. Halsey, CSR, Official Court Reporter 1326

1 C A P T I O N

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3

4 BE IT REMEMBERED THAT, on Monday, the 4th day of
5 November, 1996, in the Criminal District Court Number 3
6 of Dallas County, Texas, the above-styled cause came on
7 for 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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Sandra M. Halsey, CSR, Official Court Reporter 1327

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

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3

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

5 2650 Maxus Energy Tower

6 717 N. Harwood

7 Dallas, TX 75201

8

9 AND: HON. CURTIS GLOVER

10 Attorney at Law

11 2650 Maxus Energy Tower

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15 AND: HON. RICHARD C. MOSTY
16 Attorney at Law
17 Wallace, Mosty, Machann, Jackson & Williams
18 820 Main Street, Suite 200
19 Kerrville, TX 78028
20
21 AND: HON. S. PRESTON DOUGLASS, JR.
22 Attorney at Law
23 Wallace, Mosty, Machann, Jackson & Williams
24 820 Main Street, Suite 200
25 Kerrville, TX 78028
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1
2 AND: HON. JOHN HAGLER
3 Attorney at Law

4 901 Main Street, Suite 3601
5 Dallas, TX 75202
6 ALL ATTORNEYS REPRESENTING THE
7 DEFENDANT: DARLIE ROUTIER
8 MR. HAGLER HANDLING THE APPEAL
9 AND:
10 HON. ALBERT D. PATILLO, III
11 Attorney at Law
12 820 Main Street, Suite 211
13 Kerrville, TX 78028
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 November 4th, 1996

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

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

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

18 THE COURT: This is Monday, November
19 4th, back on the record in the Darlie Routier matter.
20 All right. This is our number 33,
21 juror number 91, Jimmie, J-I-M-M-I-E, Ellis, E-L-L-I-S,
22 Samford, S-A-M-F-O-R-D. Right?
23 THE PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: If you will raise your
25 right hand, please.
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1 Do you solemnly swear or affirm you
2 will true answers make to all the questions propounded to
3 you concerning your qualifications as a juror, so help
4 you God?
5
6 (Whereupon, the prospective

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

9 to the questions propounded,
10 concerning qualifications, after
11 which time, the proceedings were
12 resumed as follows:)
13
14 THE PROSPECTIVE JUROR: Yes, sir, I
15 do.

16 THE COURT: All right. Mr. Samford,
17 the State is Texas is represented by Mr. Toby L. Shook.

18 MR. TOBY L. SHOOK: Good morning.

19 THE COURT: And Ms. Sherri Wallace.

20 MS. SHERRI WALLACE: Good morning.

21 THE COURT: The defendant is Darlie

22 Routier in the burgundy dress to your right. She is

23 represented by Mr. Preston Douglass.

24 MR. PRESTON DOUGLASS: Good morning.

25 THE COURT: Please be seated.

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1 Who will go for the State? Mr. Shook?

2 MR. TOBY L. SHOOK: I will, Judge.

3 THE COURT: All right.

4

5 Whereupon,

6

7 JIMMIE ELLIS SAMFORD,

8

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

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

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

12 true, testified in open court, as follows:

13

14 VOIR DIRE EXAMINATION

15

16 BY MR. TOBY L. SHOOK:

17 Q. Mr. Samford, again, my name is Toby

18 Shook, I am one of the prosecutors, and I will be asking

19 you questions this morning.

20 A. Yes, sir.

21 Q. Have you been down for jury service

22 before, Mr. Samford?

23 A. Yes, sir. It's been about a year and

24 a half ago or so.

25 Q. Okay. Did you serve on the jury? Did

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1 you get picked?

2 A. Yes, sir, I did.

3 Q. You did? Do you remember what type of

4 case it was?

5 A. It was something about somebody at

6 school over at Center Point.

7 Q. Oh, yeah?

8 A. It was --

9 Q. Go ahead.

10 A. It was some things that happened on
11 the school ground.

12 Q. Was it a civil case? Were they

13 fighting over money? Or was it a criminal case?

14 A. It was not a criminal case.

15 Q. Okay. So it was -- what happened on
16 that case? How long were y'all out?

17 A. Just one day.

18 Q. Oh, a short trial?

19 A. Yes, sir.

20 Q. Did y'all reach a verdict?

21 A. Yes, sir.

22 Q. Do you remember what the verdict was?

23 A. He was found guilty, swearing against
24 this other person with a coach or something over there.

25 Q. Oh, okay. So they got in some kind of
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1 argument or something like that?

2 A. Yes, sir. There were some words over
3 something there that happened on the school grounds.

4 Q. Okay. So you were just there one day?

5 A. Yes, sir.

6 Q. Okay. This case -- you probably

7 remember when they picked the jury, they talked to
8 everyone in one big group?

9 A. Yes, sir. I do.

10 Q. We do it one at a time here because
11 it's a death penalty case, and the law claims that you
12 have got to talk to every juror one at time.

13 A. Okay.

14 Q. We don't mean to make you feel like
15 you are on trial or anything like that.

16 A. Yes, sir.

17 Q. So, what we want you to do, Mr.

18 Samford, is just relax, and just answer our questions as
19 honestly as you can. Okay?

20 A. Okay.

21 Q. And if you have got any questions of

22 us, you let us know, because we have got to go over a few
23 things that apply in this case. We're not trying to test
24 you or anything, we just want to see if you can follow
25 some of the laws that apply to this case. Okay?

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1 A. Okay.

2 Q. Let me ask you first, there are
3 obviously some Dallas lawyers involved. I don't think
4 you know any of them. Do you?

5 A. No, sir.

6 Q. There's a couple of local Kerrville
7 attorneys, Mr. Douglass here.

8 A. Yes, sir.

9 Q. And Mr. Mosty. Remember Mr. Mosty?

10 A. Yes, sir.

11 Q. Do you know either one of them?

12 A. No, sir, I do not.

13 Q. Okay. And it looks like, I think, you
14 were in highway construction for like 29 years?

15 A. Yes, sir.

16 Q. And then now you work at the HEB?

17 A. Yes, sir.

18 Q. Okay. You have been doing that for a
19 couple of years?

20 A. Four years.

21 Q. Four years?

22 A. Yes, sir.

23 Q. Okay. And you live at home with your
24 wife?

25 A. Yes.

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1 Q. She has you doing some stuff, too?

2 A. Well, just me and my wife and no kids.

3 Q. Okay. Let me ask you, Mr. Samford, as
4 you know, Judge Tolle has said that the defendant is
5 charged with capital murder, and the State is seeking the
6 death penalty. So we want to talk to every juror about
7 how they feel about the death penalty, just your personal
8 feelings.

9 Let me ask you this: Do you think
10 that it is a law that we should have in our state?

11 A. Yes, it should be.

12 Q. Okay. And tell me why you think we

13 should have -- certain crimes should call for the death
14 penalty?

15 A. Well, I don't know.

16 Q. You don't have to give me any long
17 answer.

18 A. Well, if a person does wrong, they
19 should be punished for the crime.

20 Q. Okay. In certain types of murder
21 cases, do you think the death penalty is the appropriate
22 punishment?

23 A. Yes, in some cases, yes.

24 Q. It just depends on the facts of the
25 case?

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1 A. Yes, sir.

2 Q. Okay. Let me kind of tell you how it
3 works in Texas because we have murder cases, and in some
4 murder cases we can seek the death penalty on, and some
5 we just go for prison time. It just depends on the type
6 of case it is.

7 Not everyone -- and when we're talking
8 about murder, we're talking the intentional killing of

9 another human being. Not every murder case is eligible
10 for the death penalty in Texas. What you have got to
11 have really is murder plus something else.

12 I'll give you a few examples: If

13 someone goes in and murders someone while they are
14 committing another felony, like you may have read about
15 the situation where a guy goes into a 7-Eleven and shoots
16 the clerk while he is robbing him?

17 A. Yes, sir.

18 Q. Okay. That is a murder during a

19 robbery, that could be a death penalty-type case, you
20 know. Or a guy that goes in and kills a bank teller
21 while he is robbing the bank, that could be a death

22 penalty case, because it happens during another robbery.
23 Or if someone breaks in your house, if

24 someone kills you while they are breaking into your
25 house. Since they are breaking into your house, that

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1 could be a death penalty-type case. Those kind of

2 things. Also, if you murder someone for money, like a
3 hit man, you see on TV, those types of shows.

4 A. Yeah, some of the good stuff.

5 Q. Yeah, those could be those. Or
6 murdering a police officer while he is on duty can be a
7 hit man (sic) or mass murderer or something like that.

8 A. Yes, sir.

9 Q. Also, the Judge told you in this case

10 the defendant is charged with the crime of murdering a
11 child under the age of six. That type of murder can be a
12 death penalty case, depending on the facts.

13 A. Yes, sir.

14 Q. Now, I can't ask you for your verdict

15 because you have not heard from any of the witnesses, but
16 that type of case, the murder of a child under six, do
17 you think that is the type of case that could be eligible
18 for the death penalty?

19 A. I do.

20 Q. Okay. Let me ask you, Mr. Samford,
21 have you heard anything about this case on the radio or
22 on the TV?

23 A. No, sir. I haven't heard anything on
24 radio or TV.

25 Q. Okay. Haven't formed any opinions or
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1 anything like that?

2 A. No, sir.

3 Q. Okay. Let me kind of go over with you
4 how the trial would work. It's divided into two parts:
5 There is the guilt/innocence stage, where we have to
6 prove where the crime occurred. Then we move -- and if
7 we don't do that, everyone goes home. Okay?

8 A. Yes, sir.

9 Q. And if we do prove beyond a reasonable
10 doubt that it occurred, we move to the punishment stage
11 where you get some more questions.

12 A. Yes, sir.

13 Q. In the punishment stage you hear

14 additional evidence. You can hear about a person's
15 background and things like that. Bad things, good

16 things. If they have a criminal history, for instance,
17 you can hear that.

18 A. Yes, sir.

19 Q. But at the end of that you will get
20 these questions. And I'll go over those in more detail
21 in a moment, but let me summarize those questions. The
22 first question is this: We have to prove that they will
23 be a future danger to society. Okay?

24 A. Yes, sir.

25 Q. If we do that, you answer "yes."

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1 A. Yes, sir.

2 Q. The last question is: Looking at all
3 of the evidence, if you think there is some -- what we

4 call mitigating evidence, in other words, evidence that
5 tells you in your heart that they should get a life
6 sentence rather than a death sentence, could you answer
7 the questions "yes" that way?

8 A. Yes.

9 Q. And prevent them from getting the
10 death penalty?

11 A. Yes, sir.

12 Q. Okay. But the point of it is this:

13 Depending on how the jury answers those questions, the
14 Judge would sentence the defendant to death or life.

15 Okay?

16 A. Yes, sir.

17 Q. If you give a "yes" and a "no" answer,
18 it equals death. If you answer it any other way, they
19 get a life sentence. But those are the only two possible
20 outcomes once a defendant has been found guilty, death
21 and life. Is that clear to you?

22 A. Yes, sir, that's clear.

23 Q. Okay. Let me ask you this Mr.

24 Samford, you said that you believe the death penalty is a
25 law we need to have?

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1 A. Yes, sir, it is.

2 Q. And is one that should, I guess, be
3 invoked in certain kind of cases.

4 A. I do.

5 Q. Okay. Do you think that you are the
6 type of juror that could sit on a jury and listen to the
7 evidence, and if we did prove these things to you, you
8 could answer the questions in a way that would result in
9 the defendant's death?

10 A. Yes, sir, I do.

11 Q. You could do that?

12 A. Yes, sir.

13 Q. If it's proven to you?

14 A. If it is proven to me.

15 Q. Okay. Are there any type of cases

16 that come to mind that you think -- you know, and we

17 talked about murder cases in general, but have you ever
18 seen any cases in the news where you say, "You know, that
19 is kind of a death penalty case."

20 A. Yes, at times. Yes, sir.

21 Q. Do you remember any by facts or

22 anything?

23

24 THE COURT: Mr. Samford, this is

25 Curtis Glover, another one of Mrs. Routier's defense

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1 attorneys.

2 MR. CURTIS GLOVER: Good morning. How

3 are you?

4 THE PROSPECTIVE JUROR: Okay, sir.

5

6 BY MR. TOBY L. SHOOK:

7 Q. Okay. Anything come to mind at all?

8 Any cases you followed in the news? Of course, the only

9 one that has been in the news lately is that O.J. Simpson

10 case.

11 A. Yes, it's been a nightmare.

12 Q. It has.

13 A. Yes, sir, it has.

14 Q. Do you have any opinions about that

15 case, how that turned out the first time?

16 A. No, I don't guess so.

17 Q. Okay. This first question that we

18 have to prove beyond a reasonable doubt, I'm going to

19 read that question and if you will just follow along with

20 me. It asks: "Do you find from the evidence beyond a

21 reasonable doubt that there is a probability that the

22 defendant would commit criminal acts of violence that

23 would constitute a continuing threat to society?"

24 Summarizing again, that is asking the

25 jurors: Do you think that the defendant is going to be a

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1 danger to society in the future?
2 We have to prove that from the facts
3 of the case, the murder itself, and any other evidence
4 you may have heard about the background.

5 Do you think, Mr. Samford, that if we
6 gave you enough evidence you could answer that question
7 correctly? I mean, "yes."
8 A. Yes, sir, I could I guess.
9 Q. Okay. Now, would the facts of the

10 offense itself, how the murder occurred, would that be
11 important to you in answering a question like that?
12 A. Well, I don't guess so.
13 Q. Okay. What about details about
14 whether there -- you know, there was much time thinking
15 about the killing, how cruel and brutal it was, those
16 kinds of things.
17 Was there any -- did they show any
18 remorse that they were sorry for it in any way? Would

19 that be important to you? Would that let you know about
20 what kind of person they are, in other words?
21 A. I don't think so.
22 Q. Okay. Why wouldn't that be important
23 to you? How they actually committed the murder.
24 A. Well, I don't know. It all depends on
25 what the circumstances, I guess, of how it was committed.
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1 Q. Okay. About how it was committed?
2 A. Yes, sir.
3 Q. Okay. And the thing is, Mr. Samford,
4 we can't tell you what we think the facts will be. So,
5 we kind of -- that is what makes this kind of interview
6 hard. Because we can't preview the facts for you, kind
7 of like they do in the movies or anything.
8 A. No.
9 Q. But do you think the facts might be
10 important just depending on what they are?
11 A. Yes, they would be.
12 Q. Okay. Are you aware of the method of
13 execution in Texas, Mr. Samford?
14 A. Yes, I am.

15 Q. What is your understanding on how they

16 take place now?

17 A. Well, it's with injection, I guess.

18 Q. Right, lethal injection. It used to
19 be by the electric chair.

20 A. Yes, sir.

21 Q. And now they do it by lethal

22 injection.

23 A. Yes, sir.

24 Q. And, you know, I think probably from
25 watching TV, that executions actually do take place in
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1 Texas; is that right?

2 A. Yes, sir, they do.

3 Q. Okay. And my point is this, Mr.

4 Samford, it is a very real thing. You know, there are
5 some states out there that have the death penalty law?

6 A. Yes, sir.

7 Q. But they never actually impose it.

8 A. Yes, sir.

9 Q. They just have it, I guess, for show,

10 I don't know, but no one has ever been executed. In

11 Texas it has been.

12 A. Yes, it has.

13 Q. There have been over 100 executions in
14 Texas in the last -- about 15 years or so.

15 A. Yes, sir.

16 Q. And, as you know, the method of
17 execution is by lethal injection.

18 A. Yes, I do.

19 Q. I don't know if those executions that
20 you have ever read, how they are actually described, but,
21 you know, there are witnesses there.

22 A. Yes, sir, there are.

23 Q. It takes place in Huntsville, Texas.

24 They are strapped down on a hospital gurney and a needle
25 is put in their arm and a poison is injected into them.

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1 A. Yes, I do.

2 Q. Are you telling me that you think you
3 could take part in this process if the case is proven to
4 you?

5 A. I guess so.

6 Q. Okay. What about the fact that the
7 defendant in this case is a woman? Does that make any
8 difference to you?

9 A. No, not at all.

10 Q. Do you think it should apply equally?

11 A. Yes, sir, it does.

12 Q. Okay. Judge Tolle went over a few

13 rules that apply to all cases. You have probably heard

14 of these: The presumption of innocence.

15 A. Yes, sir.

16 Q. The defendant has to be presumed to be

17 innocent at the beginning of the trial. Could you follow
18 that rule?

19 A. Yes, sir.

20 Q. Okay. The defendant has a right not

21 to testify. You know, if they want to get up there and
22 testify as a witness on their own behalf, they can. No
23 one could stop them.

24 But if they choose not to, you can't

25 hold it against them as a juror. You can't use that as
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1 evidence against them. Can you follow that rule of law?

2 A. Yes, sir.

3 Q. Okay. Also, the State has the burden

4 of proof, we have to prove the case beyond a reasonable
5 doubt. They don't have to prove anything to you. You

6 have to require the State to prove this to you beyond a
7 reasonable doubt. Can you follow that rule?

8 A. Yes, sir.

9 Q. Okay. Mr. Samford, in your work

10 experience, did you -- or just your life experience, have
11 you ever seen any violent crimes, personally been a
12 witness to that, or been a victim of it?

13 A. No, sir, I have not.

14 Q. Okay. And I think you grew up in this
15 area of the country, right, Burnet?

16 A. Yes, about 80 miles northeast of here.

17 Q. Okay. Oh, this last question, this is
18 the last area I would like to get into. It's what we
19 call the mitigating question.

20 A. Yes, sir.

21 Q. And they won't give you a definition
22 of what mitigating evidence is, sometimes I don't know
23 what they mean by mitigating. But all it means is, you
24 know, by the time you have reached that question, you
25 have already found the defendant guilty of capital
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1 murder.

2 And you have already found that they

3 are going to be a future danger. Okay? So it's looking

4 pretty bad for them, they are a bad person.

5 But the situation is this: The law

6 says that if you see any evidence in their background

7 that you think in your heart and mind believe that they

8 should get a life sentence rather than a death sentence,

9 you could answer the question that way. It's kind of a

10 way out for the jury to show some mercy.

11 A. Yes, sir.

12 Q. I mean, they don't get off, they still

13 have to do a life sentence. You understand where they

14 are coming from?

15 A. Yes, sir.

16 Q. Okay. And whatever is mitigating is

17 going to be up to you. Okay?

18 A. Yes, sir.

19 Q. You don't have to agree with the other

20 jurors at all, it's just a decision you have to make.

21 Let me give you a couple of examples: Let's say if you

22 had a capital murder defendant that had a degree from

23 Harvard, let's say, and he is a doctor.

24 A. Yes, sir.

25 Q. Some people would say, "Well, that

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1 could be mitigating. That is good and it works in his

2 favor. Because he is real smart and has done something

3 good with his life." Other people will say, "No, that is

4 wrong. Someone that smart should not do this kind of

5 thing."

6 A. Yes, sir.

7 Q. So you can see where it works both

8 ways?

9 A. Yes, sir.

10 Q. Okay. Some people tell us, well, here

11 is an example: If you ever commit a murder, if -- let's

12 say, you go out and get drunk or you do drugs, and I mean

13 intentionally, in Texas, that is not a defense. You are

14 still held liable, you know.

15 A. Yes, sir.

16 Q. You are still held accountable.

17 However, sometimes people think that

18 should be mitigating in some way, should lessen a
19 person's blameworthiness. Other people say, "Actually,
20 no. You should hold it against them even more." How do
21 you feel about that?

22 A. I don't know.

23 Q. Does that strike you one way or the

24 other at all?

25 A. Not really.

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1 Q. Okay.

2 A. I guess a person should be held
3 accountable for what he does.

4 Q. Okay. Mr. Samford, I went over the
5 different types of crimes that could get the death
6 penalty in Texas. We talked about murder of a police
7 officer, murder during a robbery, things like that.

8 A. Yes, sir.

9 Q. And in this particular case, murder of
10 a child under the age of six.

11 A. Yes, sir.

12 Q. Some people -- I mean, let me ask you
13 how you feel about that: Do you think that is the type
14 of crime that should be eligible for the death penalty?

15 A. Yes, sir.

16 Q. Because there are just our children as
17 victims?

18 A. Yes, sir, I do.

19 Q. Okay. Do you think you can keep an
20 open mind and wait until all of the evidence is in before
21 these decisions are made?

22 A. Yes, sir, I do.

23 Q. Okay. Well, I appreciate your
24 patience with me.

25 A. Okay.

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1 VOIR DIRE EXAMINATION

2

3 BY MR. S. PRESTON DOUGLASS, JR:

4 Q. Mr. Samford, my name is -- excuse me,
5 I'm sorry, your Honor. Thank you.

6

7 THE COURT: That is quite all right.

8

9 BY MR. S. PRESTON DOUGLASS, JR:

10 Q. Mr. Samford, my name is Preston
11 Douglass, the Judge introduced me a minute ago.

12 A. Yes, sir.

13 Q. One thing, and I know you don't

14 remember me, but I just want to make sure that if it is
15 something that comes up, you and I have talked about, so
16 no one thinks that I forgot to say something I should
17 have said.

18 Do you remember testifying in a trial

19 not too long ago about something to do with your work at
20 HEB? It may have been a year or two ago, and I think it
21 was in the municipal court.

22 A. Oh, yeah, I remember that.

23 Q. Do you remember that?

24 A. Oh, yeah. Yes, sir. I sure do. It's
25 been a while ago.

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1 Q. And it may have been longer than a
2 couple years ago. It was when I was city attorney, and I
3 can't remember --

4 A. Oh, yeah. Okay. About the old
5 fellow, yes, sir.

6 Q. Well, I can't -- I remember reading

7 your questionnaire, Mr. Samford, and I can't remember
8 what it was about. Do you remember what it was about?

9 A. About a customer coming in there. It
10 was --

11 Q. Oh, it was the guy that cussed
12 everybody out.

13 A. Yeah.

14 Q. Okay. All right.

15 A. I forgot about that.

16 Q. It was a major crime.

17 A. I'm sorry about that. I forgot about
18 that.

19

20 THE COURT: That occurred in Kerr
21 County?

22 MR. S. PRESTON DOUGLASS, JR: Yes,

23 sir, it occurred in Kerr County. One of the few rude
24 people we have here.

25

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1 BY MR. S. PRESTON DOUGLASS, JR:

2 Q. I was involved in that when I did some

3 work for the city, but you don't remember me at all from
4 then?

5 A. No, sir.

6 Q. I am pretty forgettable.

7 A. No.

8 Q. Okay. All right. But if it's --

9 there is nothing obviously. If you snap and remember
10 that I was involved in that thing, that won't cause you
11 any problem?

12 A. Okay. No, I don't care. I had forgot

13 about that thing, it's been a good long while back.

14 Q. Obviously, in representing our client,

15 we have a different perspective than the State does.

16 They are here to see that -- they have an objective and

17 they have a result that they want to obtain. And,

18 obviously, we, representing Darlie Routier, have a much
19 different objective. We have a different goal.

20 A. Yes, sir.

21 Q. And I know you have been up there a

22 little bit, but I want to talk to you for a little bit
23 about our perspective.

24 A. Okay.

25 Q. Mr. Shook said correctly that there is
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1 often two phases of a trial. There's often -- there is
2 always a guilt/innocence phase.

3 A. Yes, sir.

4 Q. Where you decide whether or not a

5 person did what they said he did. And, then, if you
6 think the person is guilty, then there is a punishment
7 phase, but there is not always a punishment phase.

8 You -- obviously, if someone decides that -- if the jury
9 decides that the person is not guilty, you don't ever
10 talk about punishment.

11 A. Yes, sir.

12 Q. We anticipate that we're not going to
13 be talking about punishment. That there is just going to
14 be the guilt/innocence phase. And I want to talk to you
15 a little bit first about the law in the guilt/innocence
16 phase. Okay?

17 A. Yes, sir.

18 Q. If I get going too fast or something,
19 just stop me and make me repeat myself, because I can be
20 confusing.

21 A. Yes, sir.

22 Q. You understand that Darlie Routier, as
23 she sits here, is presumed and is not guilty?

24 A. Yes, sir, at the time.

25 Q. Right, right now.

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1 A. Yes, sir.

2 Q. They have not proved a single thing.

3 Do you agree with that?

4 A. Right. As far as I know, nothing has
5 been proven.

6 Q. Now, there has been what is called an
7 indictment, and that is a piece of paper that lets the
8 Judge have a trial.

9 A. Yes, sir.

10 Q. That indictment is merely what the

11 State -- what the people representing the State believe
12 they can prove.

13 A. Yes, sir.

14 Q. But that doesn't mean that she has
15 done anything. Do you agree with that?

16 A. Yes, sir.

17 Q. Okay. There's -- some people use a
18 phrase and say, "That the people who do the accusing,
19 have to do the proving." Meaning: They say she did

20 something, so they have got to prove it.

21 A. Yes, sir.

22 Q. Does that sound fair to you?

23 A. Yes, sir, it does.

24 Q. Now, in a trial, it may come along
25 that they do some proving, but they have not satisfied to

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1 Jimmie Samford that they have proven anything.

2 A. Yes, sir.

3 Q. They may have tried to say -- let me
4 give you an example: They may try to say that this crime
5 occurred a certain way. That a person was killed, maybe
6 hit in the head with a baseball bat or something.

7 A. Yes, sir.

8 Q. But, actually, you find out, that it's
9 not even the same -- they haven't even proven that the

10 person they say did it, did it. What do you think ought
11 to happen if they don't prove their case?

12 A. If they don't prove the case, I guess

13 the person will go free.

14 Q. Right. How do you feel about that?

15 A. Well, that is the law. I guess that

16 would be all right.

17 Q. Is that a law you follow? Do you

18 believe that?

19 A. If it cannot be proven, yes, sir.

20 Q. Now, you as a juror, would take an

21 oath. And you took an oath in that other case.

22 A. I did.

23 Q. Do you remember that?

24 A. Yes, sir.

25 Q. And you take an oath and that oath --

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1 part of that oath is that you are going to follow the
2 law, and that is that you would hold these guys to their
3 burden of proof. That you make them prove their case?

4 A. Yes, sir.

5 Q. Okay. Would you do that if you take
6 that oath?

7 A. They need to prove it.

8 Q. Right. Now, taking that one step

9 further, Mr. Samford, there is no obligation on the
10 attorneys representing the defendant to put on any case
11 at all. We don't have to put on any evidence. If we
12 believe that they have not proven their case. Now, if

13 you get in a trial, and you have not -- and you hear one
14 side of the story --

15 A. Yes, sir.

16 Q. -- but the defendant doesn't put on
17 any evidence --

18 A. Yes, sir.

19 Q. -- we don't have to. Do you agree
20 with that?

21 A. Well, it should be proven, I guess.

22 Q. Okay. I was looking at your
23 questionnaire and there was one question in there that
24 you answered that said that you were not sure if a
25 defendant would have to prove that he or she is innocent.

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1 The way our law works is that we don't
2 have to bring you proof that someone is innocent or not
3 guilty. The burden is on them, and there is no burden on

4 the State (sic) to prove someone's innocence. Do you
5 agree with that?

6

7 THE COURT: I think you said that
8 wrong -- there is no burden on the defense.
9 MR. S. PRESTON DOUGLASS, JR: Yeah,

10 I'm sorry. There is no burden on the defense to prove
11 that a client or the person charged is not guilty.

12 THE COURT: Clear that up. The State
13 has to prove her guilty. The defendant -- the defense
14 does not have to prove her innocence. If they can't

15 prove her guilt, she goes free. Do you understand that?

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: And they don't have to do
18 one thing. Do you understand that?

19 THE PROSPECTIVE JUROR: I do.

20 THE COURT: Okay. I just wanted to
21 clear that part up.

22 THE PROSPECTIVE JUROR: Yes, sir.

23 MR. S. PRESTON DOUGLASS, JR.: Thank
24 you, Your Honor.

25

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1 BY MR. S. PRESTON DOUGLASS, JR:

2 Q. So if the defendant decides not to put
3 on any evidence, you understand that that is the
4 defendant's right?

5 A. Yes, sir.

6 Q. Okay. Likewise, a defendant does not
7 have to come and sit in that chair you are sitting in and
8 testify. They can if they want to, but they don't have
9 to tell anything.

10 A. I see. Okay.

11 Q. They can't be forced to testify.

12 A. Yes, sir.

13 Q. Some people don't testify because they
14 are afraid they are going to be so nervous that they will
15 be confused.

16 A. Yes, sir.

17 Q. Some people may not testify because

18 their lawyers will say, "They haven't proven a thing.
19 There is no reason for you to testify. They have not
20 proven anything."

21 A. Yes, sir.

22 Q. Meaning the State. Do you agree that
23 a person who is accused of a crime should not have to
24 testify?

25 A. I believe they should testify.

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1 Q. Should or should not?

2 A. Should.

3 Q. Okay. If you are listening to a
4 trial --

5 A. Yes, sir.

6 Q. -- and the Judge tells you that it is
7 the law, that the person accused does not have to take
8 the stand, does not have to say anything --

9 A. Yes, sir.

10 Q. -- can you follow that law? Can you
11 put that aside?

12 A. Well, I will have to, yes. I would
13 have to.

14 Q. Okay. What really becomes important
15 about that, Mr. Samford, is if you have heard the State
16 put on evidence --

17 A. Yes, sir.

18 Q. -- and you have not heard anything
19 from the defendant, can you judge the evidence as a juror
20 only on what the State has put on? Only the evidence
21 they have brought to you. Can you judge it only on that
22 evidence?

23 A. I guess so. Yes, sir.

24 Q. In a trial, this side has to bring the
25 State, the lawyers representing the State, have to bring
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1 evidence to prove someone guilty. Do you agree with me
2 on that?

3 A. Yes, sir.

4 Q. All right. And in the course of the
5 trial, you, as a juror, have the ability to sit and
6 listen to that evidence and say, "That evidence proves
7 something to me," or "That evidence doesn't prove
8 anything."

9 A. Yes, sir.

10 Q. Do you -- when you were in a trial
11 over in the Center Point case, was that up at the
12 courthouse at the Kerr County Courthouse?

13 A. Yes, sir, it was.

14 Q. All right. Was that that trial about
15 two coaches that got in a fight right out in the middle

16 of the field?

17 A. Only one, only one was a coach.

18 Q. Okay. So it was a coach that got in a
19 fight with another person. Right?

20 A. No, there was some -- I don't think it
21 was a fight. I think it was just some words.

22 Q. Okay. Was there anything about that
23 trial that you remember? Or anything about being a juror
24 that you didn't like?

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

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1 Q. Did you like being a juror?

2 A. Well, it's hard to prosecute somebody,

3 yes.

4 Q. It's hard work, right?

5 A. Yes, it is.

6 Q. Now, when you say it's hard to

7 prosecute somebody, you understand that as a defendant
8 sits on trial, they have the absolute right to be
9 presumed innocent?

10 A. Yes, sir, they do.

11 Q. All right. And you are not going

12 to -- and really, what is more important about that is
13 that you not believe someone is guilty just because they
14 are having a trial.

15 A. Yes, sir.

16 Q. Do you feel like that because there is

17 a trial that you can say, "I am not going to believe that
18 person did anything until they prove it"?

19 A. They need to prove it to me.

20 Q. Okay. And who do you believe are the
21 ones that need to prove the case?

22 A. Well, I guess the State would need to
23 prove it.

24 Q. Okay. Great. In a trial they have to
25 prove their case, there is a level that they have to

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1 prove their case to. And you have probably heard the
2 term "reasonable doubt"?

3 A. Yes, sir, I have.

4 Q. Okay. And reasonable doubt means that

5 if you come along during the trial, and you believe you
6 have a doubt about the case, and that doubt is based on
7 what you think is a reasoned doubt, you think to
8 yourself, I have thought this thing through, and I
9 believe that there are questions in my mind. If you have

10 a question in your mind about an outcome about whether or
11 not the State has proven its case, what do you believe
12 it's your obligation to do?

13 A. Well --

14 Q. If you are sitting there and you hear

15 the evidence --

16 A. Yes, sir.

17 Q. -- and you think, I have a doubt about

18 whether they have proven their case, the State. In that
19 situation, what do you believe the result is supposed to
20 be?

21 A. Well, I think -- I don't know myself.

22 Q. All right. I'm saying -- I am

23 confusing you on that.

24 A. Yes, I think so.

25 Q. Let's say we were in a trial in a

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1 make-believe situation.

2 A. Okay.

3 Q. And you hear a police officer come

4 testify.

5 A. Yes, sir.

6 Q. The police officer says, "I believe
7 that the person who is sitting over there, the defendant,
8 did this. And let me tell you why." And the police
9 officer gives three reasons they think the person
10 committed the crime.

11 A. Yes, sir.

12 Q. But to you it doesn't make sense, it
13 doesn't add up. So you have a reasonable doubt in your
14 mind.

15 A. Yes, sir.

16 Q. If you have a reasonable doubt in your
17 mind about what is being told to you, do you agree that
18 the law says that you have to say not guilty?

19 A. Well, I guess not.

20 Q. Okay.

21

22 THE COURT: I don't think he

23 understands the question.

24 THE PROSPECTIVE JUROR: I don't

25 understand.

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1 BY MR. S. PRESTON DOUGLASS, JR:

2 Q. Let me try it one other way. And I am

3 the one confusing you, and I understand that. Reasonable
4 doubt --

5

6 THE COURT: Sir, I know you are a
7 little nervous.

8 THE PROSPECTIVE JUROR: Yes, I am.

9 THE COURT: I can tell that by your
10 voice. All you do -- there are no right or wrong answers
11 here, there is not going to be a test. You can be a
12 member of the Flat Earth Society, nobody is going to
13 disagree with you.

14 THE PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: So, just relax and answer
16 the questions. Nobody is trying to trick you.

17 THE PROSPECTIVE JUROR: All right.

18

19 BY MR. S. PRESTON DOUGLASS, JR:

20 Q. If you are a juror --

21 A. Yes, sir.

22 Q. -- you have to decide, did they prove
23 their case?

24 A. Yes, sir.

25 Q. You have to say, "Well, the Judge told
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1 me, they are the ones that have to prove their case."

2 A. Yes, sir.

3 Q. Did they prove their case? If you
4 have a reasonable doubt --

5 A. Yes, sir.

6 Q. -- if you think, I don't think they
7 proved it.

8 A. No.

9 Q. What do you believe happens when they
10 don't prove their case?

11 A. Well --

12 Q. If they don't prove their case, do you
13 believe that the person goes free? Or, if they prove
14 their case, do you think they go to jail?

15 A. If they prove their case, they go to
16 jail.

17 Q. Okay. What happens if they don't
18 prove their case?

19 A. The person will go free.

20 Q. Okay. Now, do you agree with that?

21 That if they don't prove what they say they are going to
22 prove --

23 A. Yes, sir.

24 Q. -- that the person should go free?

25 A. If they can't prove it, yes, sir, they
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1 go free.
2 Q. Do you agree with that?
3 A. I do.
4 Q. All right. I want to ask you a little
5 bit about police officers. I believe that there will be
6 a number of police officers testify.
7 A. Yes, sir.
8 Q. Can you listen to a police officer's

9 testimony, and as a juror, judge it just like any other
10 person?

11 A. Yes, sir, I think so.
12 Q. Okay. By that I mean, would you tend
13 to believe or put more weight on a police officer's
14 testimony, or do you judge it just like everybody else?
15 A. Weigh what the policeman says?

16 Q. Okay. Hold on one second here.

17
18 THE COURT: You need to clarify that a
19 little bit.

20 MR. S. PRESTON DOUGLASS, JR: Can I
21 approach the bench, your Honor?
22 THE COURT: Yes, you may.

23
24 (Whereupon, a short
25 Discussion was held

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1 Off the record, after
2 Which time the
3 Proceedings were resumed
4 As follows:)
5
6 THE COURT: All right. Sir, I know
7 are nervous this morning.
8 THE PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: You are not going to
10 believe -- you can't believe anybody just because of who
11 they are.
12 THE PROSPECTIVE JUROR: Yes, sir.
13 THE COURT: Now, if a police officer
14 gets up here and testifies, you have got to decide, does
15 his testimony -- does that comport with reality as I know

16 it? You are not going to believe him just because he is
17 a police officer, are you?

18 THE PROSPECTIVE JUROR: No, sir.

19 THE COURT: All right. Now, can you

20 listen to the testimony from both sides? If you don't
21 think Mr. Shook has proven his case, you can find her not
22 guilty. Is that a fair statement?

23 THE PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: And she doesn't have to do

25 one thing other than just sit there the whole trial. You
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1 understand that?

2 THE PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: That is her right under

4 the Fifth Amendment of the Constitution of the United

5 States. That is yours also, if you were ever on trial,
6 you can do that.

7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: And you can put aside any

9 belief you may have, pro or con, or anything, and follow
10 the law. Is that a fair statement?

11 THE PROSPECTIVE JUROR: I do.

12 THE COURT: All right.

13 THE PROSPECTIVE JUROR: I will.

14 THE COURT: Okay. Anything else you

15 want to ask?

16 MR. S. PRESTON DOUGLASS, JR: Yes,
17 just a few things.

18 THE COURT: Sure. Go ahead.

19 I know you are nervous this morning.

20 THE PROSPECTIVE JUROR: Yes, I am.

21 THE COURT: I can tell you are

22 nervous.

23 THE PROSPECTIVE JUROR: Yes, sir, I

24 am.

25 THE COURT: But just calm down.

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1 THE PROSPECTIVE JUROR: Okay.

2

3 BY MR. S. PRESTON DOUGLASS, JR:

4 Q. So, Mr. Samford, if I understand

5 right, if she doesn't -- if a defendant in a case
6 decides, either because the lawyers tell the person to or
7 because they just decide they are too nervous, if that

8 person decides they are not going to testify, are you
9 going to hold it against that person?

10 A. No, sir.

11 Q. You understand that is their right?

12 A. Yes, sir, that is their right.

13 Q. Okay. I want to ask you a little bit

14 about the death penalty. I don't like to talk about this
15 part of it, because that is a part of the trial that we
16 are expecting not to get to.

17 A. Yes, sir.

18 Q. But I want to ask you: Have you
19 always felt in favor of the death penalty?

20 A. Yes, sir.

21 Q. Do you feel like if a person is
22 charged with capital murder --

23 A. Yes, sir.

24 Q. -- and then is found guilty of capital
25 murder --

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1 A. Yes, sir.

2 Q. -- do you believe that means that they
3 automatically get the death penalty? Or do you believe
4 that you could consider a life sentence?

5 A. Well, I guess a life sentence.

6 Q. You could consider that?

7 A. Yes, I could consider it.

8 Q. All right. I noticed in your
9 questionnaire that you put down that you feel like the
10 death penalty -- you made a statement about the death
11 penalty. I want to ask you if this is the way you feel

12 about it now. You said that, "Although I do not believe
13 that the death penalty ever ought to be invoked, as long
14 as the law provides for it, I could assess the death
15 penalty under proper circumstances."

16 A. Yes, sir, I could.

17 Q. Let me break that down in parts. Do
18 you agree with the statement that you don't think the
19 death penalty ought to be invoked?

20 A. It should be.

21 Q. Okay. Do you think it should be
22 invoked all the time or under proper circumstances?

23 A. Proper circumstances, yes, of course.

24 Q. Okay.

25

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1 THE COURT: Anything else?

2 MR. S. PRESTON DOUGLASS, JR: Hold on
3 one second.

4

5 BY MR. S. PRESTON DOUGLASS, JR:

6 Q. Mr. Samford, thank you very much.

7 A. Okay.

8

9 MR. S. PRESTON DOUGLASS, JR: I don't
10 have any further questions.

11 THE PROSPECTIVE JUROR: I am pretty
12 nervous.

13 THE COURT: Can you step outside just
14 a minute, please, sir. Don't go away yet. We will be
15 calling you back in a minute.

16 Just for the record, are you any
17 relation to Charles Samford?

18 THE PROSPECTIVE JUROR: I guess not.
19 Samford, right?

20 THE COURT: Just a cousin someplace,
21 but you don't know him. Right?

22 THE PROSPECTIVE JUROR: No, sir, I
23 didn't know him until I moved here.

24 THE COURT: Thank you very much. All
25 right.

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1 THE PROSPECTIVE JUROR: Thank you.

2

3 (Whereupon, the prospective

4 juror was excused from the
5 room, and the following

6 proceedings were held,
7 outside of his presence
8 as follows:)

9

10 THE COURT: All right.

11

12 (Whereupon, a short

13 Discussion was held

14 Off the record, after

15 Which time the

16 Proceedings were resumed

17 as follows:)

18

19 THE COURT: All right. What says the

20 State?

21 MR. TOBY L. SHOOK: The State accepts

22 the juror.

23 THE COURT: What says the defense?

24 MR. S. PRESTON DOUGLASS, JR: We would

25 accept the juror.

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1 THE COURT: Thank you. Bring in Mr.

2 Samford.

3 Mr. Samford, I have some good news for

4 you, you have been accepted as a juror in this case.

5 THE JUROR: Oh, I have been accepted,

6 huh?

7 THE COURT: Yes, that's right, quality

8 and talent shows. This trial is not going to start until

9 the 6th of January.

10 THE JUROR: Okay, sir.

11 THE COURT: So, if you could just

12 remember between now and then, just don't speak about

13 anything to anybody about the trial. When you leave

14 today if somebody asks you what happened, then you can

15 just tell them they asked you some questions.

16 THE JUROR: Yes, sir.

17 THE COURT: And don't talk about the

18 trial with anybody. If you see anything in the paper, on

19 TV, or hear it on the radio, just ignore it. Fair

20 enough?

21 THE JUROR: Yes, sir, it is.

22 THE COURT: And just be back -- we

23 will be calling you.

24 Mr. Navarre, you will be calling them

25 after the first of the year telling them when and where

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1 to come.

2 We will be having it in the courthouse

3 down here. People have accused me of wanting to have it

4 here, but that is just a bald-faced rumor. We are not
5 going to have it here, we are going to have it down at
6 the courthouse.

7 THE JUROR: Okay, sir.

8 THE COURT: So, we will see you then.

9 Here's two things I have to tell you: There is gag order
10 on it, so don't talk about it. I can impose monetary
11 sanctions or jail time. I'm not trying to threaten you,
12 but I have to tell you. Okay?

13 THE JUROR: Yes, sir.

14 THE COURT: Fair enough? So we will
15 see you on the 6th.

16 THE JUROR: Okay, sir.

17 THE COURT: Good luck.

18 THE JUROR: You bet.

19 THE COURT: Thank you. All right.

20 Who is the next one?

21 Your name, sir?

22 THE PROSPECTIVE JUROR: Kody Bradshaw.

23 THE COURT: Okay. All right. This is
24 112, ladies and gentlemen, on the jury list, but it's
25 number 40 on our list.

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1 I notice you spell your name with a

2 "K"; is that correct?

3 THE PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: So it's K-O-D-Y, A.

5 Bradshaw; is that right, sir?

6 THE PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: If you will raise your

8 right hand, please.

9 Do you solemnly swear or affirm you

10 will true answers give to all the questions propounded to
11 you concerning your qualifications as a juror, so help
12 you God?

13 THE PROSPECTIVE JUROR: I do.

14

15

16 (Whereupon, the prospective

17 juror was duly sworn by the
18 Court to true answers make
19 to the questions propounded,

20 concerning qualifications, after

21 which time, the proceedings were

22 resumed as follows:)

23

24 THE COURT: All right. You are here

25 on the Darlie Routier matter, Mrs. Routier is sitting

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1 there in the burgundy dress. She is represented by Mr.

2 Preston Douglass and Mr. Curtis Glover.

3 MR. S. PRESTON DOUGLASS, JR: Good

4 morning.

5 MR. CURTIS GLOVER: Good morning.

6 THE COURT: The State of Texas is

7 represented by Mr. Toby Shook and Ms. Sherri Wallace.

8 MR. TOBY L. SHOOK: Good morning.

9 MS. SHERRI WALLACE: Good morning.

10 THE PROSPECTIVE JUROR: Good morning.

11 THE COURT: Both sides are going to

12 ask you some questions. If you don't understand any

13 question, just tell them to say it again.

14 You might lean up and speak into that

15 microphone because Ms. Halsey has to take all of this

16 down.

17 So who will go for the State?

18 MS. SHERRI WALLACE: I will, Your

19 Honor.

20 THE COURT: Ms. Wallace, very well.

21 Go ahead.

22

23

24

25

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1 Whereupon,

2

3 KODY A. BRADSHAW,

4

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

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

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

8 true, testified in open court, as follows:

9

10 VOIR DIRE EXAMINATION

11

12 BY MS. SHERRI WALLACE:

13 Q. Hello, Mr. Bradshaw.

14 A. Hello.

15 Q. My name, as the Judge just introduced
16 me, is Sherri Wallace, I am an Assistant District
17 Attorney in Dallas. I'm going to spend the next few
18 minutes talking to you about your questionnaire, and how
19 you feel about the death penalty, and the general
20 principles of law that will apply in this type of case.

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

23 Q. And if you have got any questions for
24 me, just let me know because I will try to answer them.

25 A. Okay.

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1 Q. I first off want to thank you for
2 filling out your questionnaire, it was a big help. I

3 appreciate the time that it took, I know it was lengthy.
4 Did it take long?

5 A. No.

6 Q. Okay. Good. Good. Some people say
7 it took them forever, so I appreciate it.

8 A. Okay.

9 Q. There are no right or wrong answers,
10 just to kind of let us know how you feel about things,
11 and we will get through with this. Okay?

12 A. Okay.

13 Q. I don't expect you know any of the
14 folks from Dallas. Do you?

15 A. No.

16 Q. Okay. Do you know the two guys that
17 are from -- that have been hired to represent the
18 defendant here from Kerrville?

19 A. No.

20 Q. Preston Douglass is one. Richard
21 Mosty was introduced last week, no, excuse me, two weeks
22 ago. You didn't recognize him either?

23 A. No.

24 Q. Fair enough.

25 In here it says that you have heard

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1 about the case from television.

2 A. Uh-huh. (Witness nodding head

3 affirmatively.)

4 Q. And I want to talk to you a little bit
5 about that. What we're looking for are two things: One,
6 we need a juror that will wait, and wait until the
7 evidence is presented in the courtroom before they make
8 up their mind.

9 A. My mind is made up.

10 Q. Well, I want to talk to you a little
11 bit about that.

12 A. I'm not changing it.

13 Q. Okay. Well, just hear me out.

14

15 THE COURT: We have to have some
16 questions that have to be answered, so please be
17 cooperative for a few minutes.

18 THE PROSPECTIVE JUROR: Okay.

19

20 BY MS. SHERRI WALLACE:

21 Q. It's pretty much human nature to read
22 about something --

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

25 Q. -- and kind of make up your mind.

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1 Let's talk about a case that is in the news right now.
2 You know that guy in Atlanta that had supposedly done the
3 bombing, Richard Jewell. Well --

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

6

7 THE COURT: Sir, could you say yes or
8 no, Ms. Halsey has to get all this down. We can't take

9 down the uh-huhs.

10 THE PROSPECTIVE JUROR: Okay.

11 MS. SHERRI WALLACE: Thank you.

12

13 BY MS. SHERRI WALLACE:

14 Q. Pretty much probably in everybody's
15 mind he was good for it, and he was as good as convicted.
16 And I think we have now seen that the FBI just made a
17 huge error, and a guy got his life ruined because of the
18 press. Now, would you agree with that?

19 A. Yes.

20 Q. Okay. So I will tell you, I have
21 seen, not everything the press has printed about this
22 case, but I have seen most of it. And I'm just going to
23 be up front with you, some of it they have gotten right,

24 and some of it is just flat wrong, and that is why it is
25 so important to wait. This decision is a huge, important
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1 decision. It is the life or death of that woman sitting
2 over there. And in your own personal affairs, I assume
3 that you get all of the facts before you make decisions.
4 Isn't that right?

5 A. Yes.

6 Q. Business and stuff like that?

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

9 Q. And what we're looking for here is
10 somebody that cannot have an automatic, knee-jerk
11 reaction. Can have the mental discipline to set aside
12 the junk they have heard or seen and wait until you get

13 the absolute facts from -- in the courtroom. Do you have
14 that mental discipline, Mr. Bradshaw?

15 A. No.

16 Q. Okay. So, are you telling me that you
17 have formed an opinion about this case?

18 A. Yes.

19 Q. Okay. And are you telling me that
20 your opinion would influence your verdict?

21 A. Yes.

22

23 MS. SHERRI WALLACE: Thank you, sir.

24 THE COURT: All right. Pass the

25 juror.

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1 MR. S. PRESTON DOUGLASS, JR: Judge, I
2 would assert challenge for cause.

3 THE COURT: What opinion have you
4 formed?

5 THE PROSPECTIVE JUROR: That she is
6 guilty.

7 THE COURT: And how have you formed
8 that opinion?

9 THE PROSPECTIVE JUROR: Well, just
10 from what I have seen and heard.

11 THE COURT: From hearsay and things
12 you have heard?

13 THE PROSPECTIVE JUROR: Uh-huh.
14 (Witness nodding head affirmatively.)

15 THE COURT: Do you feel that would

16 influence your verdict?
17 THE PROSPECTIVE JUROR: Yes, sir.
18 THE COURT: All right. Thank you.
19 All right. Either side challenge the witness?
20 MR. S. PRESTON DOUGLASS, JR: Yes,
21 Your Honor, we challenge for cause.
22 THE COURT: All right. Challenge for
23 cause is granted. Thank you for coming. You may leave.
24 All right. Let's go ahead and bring
25 in the next -- this is Charles Samford, another Samford
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1 here.
2 Can I see Mr. Bradshaw again just a
3 minute, please.
4 Sir, there is a gag order in effect in
5 the case. Please talk about nothing that have you heard
6 here. Is that clear?
7 THE PROSPECTIVE JUROR: Yes, sir.
8 THE COURT: Fine. Thank you.

9 THE PROSPECTIVE JUROR: Uh-huh.
10 (Witness nodding head affirmatively.)
11 THE COURT: I can impose monetary
12 sanctions or Kerr County Jail time if you --
13 THE PROSPECTIVE JUROR: No, I'm not
14 going to talk about it.
15 THE COURT: Thank you.
16 THE PROSPECTIVE JUROR: Uh-huh.
17 (Witness nodding head affirmatively.)
18 THE COURT: All right. Come on in,
19 sir, and make yourself comfortable.
20 All right. If you will raise your
21 right -- you are Charles Samford, S-A-M-F-O-R-D.
22 THE PROSPECTIVE JUROR: Yes, sir.
23 THE COURT: If you will raise your
24 right hand, please.
25 Do you solemnly swear or affirm you
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1 will true answers make to all the questions propounded to
2 you concerning your qualifications as a juror, so help
3 you God?
4 THE PROSPECTIVE JUROR: I do.
5
6 (Whereupon, the prospective
7 juror was duly sworn by the

8 Court to true answers make

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

13

14 THE COURT: All right. Just for the
15 record, you are Charles Samford, S-A-M-F-O-R-D.
16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: That is juror 95 on the
18 list, 34 on our list. Are you any relation to Jimmie
19 Samford who was here just before you, that you know?

20 THE PROSPECTIVE JUROR: About fifteen
21 times removed, I guess.

22 THE COURT: Fifteen times removed,
23 well, I think that is far enough.

24 THE PROSPECTIVE JUROR: I don't know
25 where it is, but --

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1 THE COURT: Well, I'm sure it is
2 somewhere back along the line.

3 THE PROSPECTIVE JUROR: Shirttail
4 cousins.

5 THE COURT: There you go, shirttail
6 cousins, with long shirttails. Got it. All right.

7 All right. You are here on the Darlie
8 Routier matter, and Mrs. Routier is the lady in the
9 burgundy dress right here. She is the defendant. She is
10 represented by Mr. Curtis Glover from Dallas, and Mr.
11 Preston Douglass from Kerrville.

12 MR. CURTIS GLOVER: Good morning.

13 MR. S. PRESTON DOUGLASS, JR.: Good
14 morning.

15 THE PROSPECTIVE JUROR: Good morning.

16 THE COURT: The State is represented
17 by the Dallas County District Attorney's Office. Today
18 we have Mr. Toby Shook and Ms. Sherri Wallace.

19 MR. TOBY L. SHOOK: Good morning.

20 MS. SHERRI WALLACE: Good morning.

21 THE COURT: They will both be asking
22 you questions. There are no right or wrong answers, just
23 relax. Who is going to go for the State?

24 MS. SHERRI WALLACE: I will, your
25 Honor.
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1 THE COURT: All right.
2 MS. SHERRI WALLACE: May it please the
3 Court?
4
5 Whereupon,
6
7 CHARLES SAMFORD,
8
9 was called as a prospective juror, for the purpose of

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

13
14 VOIR DIRE EXAMINATION
15
16 BY MS. SHERRI WALLACE:

17 Q. Hi.
18 A. Hello.
19 Q. Again, my name is Sherri Wallace and I
20 am an Assistant District Attorney in Dallas. And let me
21 ask you, Mr. Samford, when we were introduced last week,
22 did you know any of the Dallas lawyers?

23 A. No, I don't know any of them.
24 Q. Okay. And you don't even know the
25 guys here locally from Kerrville?

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1 A. No.
2 Q. Mr. Douglass or Richard Mosty?
3 A. I know Richard Mosty's name, I don't
4 know him personally.
5 Q. Okay. Anything about what you know
6 about his name --
7 A. No.
8 Q. -- that would affect you here?
9 A. No, his name is Richard Mosty is all I
10 know.
11 Q. Okay. You just heard it around town?
12 A. Yes, ma'am.
13 Q. All right. I'm going to talk with you
14 a little bit about your questionnaire and a little bit

15 about how you feel about the death penalty. And then
16 talk to you about some general principles of law that
17 will apply in this type of case.

18 A. Okay.

19 Q. And, there is no right or wrong
20 answers, just let me know how you feel. And, I
21 appreciate you filling out your questionnaire, it was

22 very helpful. And thank you for the time you took to do
23 that.

24 If you have any questions for me, just
25 let me know. Just ask them. Because if I am not
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1 explaining it well enough, that is my fault, not yours.

2 Okay?

3 A. Okay.

4 Q. I see here that you are in favor of
5 the death penalty. Can you tell me a little bit about
6 why you have that opinion?

7 A. Not really, it's just a belief or

8 feeling or whatever you want to call it that I have. And
9 if I don't have -- I mean, I don't want to sentence no

10 one to death. But, you know, if it needs to be, I feel
11 that I can do it.

12 Q. All right. Do you have any thoughts
13 about what a person -- what kind of person needs to be
14 sentenced to death?

15 A. Well --

16 Q. I know it's not something you sit
17 around and think about.

18 A. It would have to be a pretty bad
19 offense.

20 Q. All right.

21 A. Bad, bad.

22 Q. Bad, bad?

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

25 Q. All right. Would it be something that
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1 you could tell from one crime, if the crime was bad
2 enough, could you sentence somebody to death based on
3 that?

4 A. Honestly, I would have to look at all
5 of their previous life, I think.

6 Q. Okay.

7 A. To see how they dealt with that part
8 of it.

9 Q. All right. Well, let's say, I mean,
10 you got a church choir boy. Okay? And he is good, has
11 not ever done anything wrong. But then he goes out and
12 does something that is just so horrible, so brutal, and
13 so heinous, that you cannot almost even imagine it.

14 Could it be possible for you to
15 consider the death penalty in that sort of case?

16 A. If need be, if it was -- I would have
17 to go by each case own by its own.

18 Q. That's all we're looking for.

19 A. But I mean, if something was so
20 heinous, I could -- I wouldn't have -- I am not going to
21 say I wouldn't have a problem doing it, but I could do
22 it.

23 Q. All right.

24 A. Anybody that don't have a problem
25 doing it needs help theirself.

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1 Q. We don't want anybody that is applying
2 for the job, Mr. Samford. Nobody feels like that, I
3 don't think.

4 Well, let me just stop right here for
5 a minute and tell you this: Do you see that woman down

6 there?

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

9 Q. It is our goal to see that she is put
10 to death. We believe we have the type of case and the
11 quality of evidence to do that. And what that method

12 will be is by lethal injection. She will be strapped
13 down on a gurney with many straps, she may be kicking and
14 screaming, she may be pleading her innocence even at that
15 point after everything is exhausted.

16 But, nevertheless, after the jury has
17 made their finding, she will be put to death. Could you
18 participate in that sort of process?

19 A. If that is what it takes.

20 Q. If that is what you decide is right?

21 A. Yes, ma'am.

22 Q. All right. I see that you have served
23 on a jury before. What kind of experience was that for
24 you?

25 A. It was not really no experience. It
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1 was a jailer -- a jailer that couldn't speak English, and
2 he miswrote some papers, and a guy was in there for DWI
3 and got off. That was about the end of it.

4 Q. Okay. The jailer didn't really

5 understand the system?

6 A. They didn't either. Hispanic, there
7 you go.

8 Q. Okay. He didn't even speak English
9 that well?

10 A. Not real good.

11 Q. All right. You listened to the
12 evidence and thought he was not guilty.

13 A. We didn't even get to do nothing, the
14 Judge kicked it out himself.

15 Q. Oh, before it even went to y'all?

16 A. Yes.

17 Q. All right. Fair enough. I see that
18 you have not heard about this case; is that right?

19 A. No ma'am. And I do not read about it,
20 and I do not watch it on TV.

21 Q. Okay. So you are not really familiar
22 with the facts?

23 A. No, ma'am.

24 Q. That is what we're really looking for,
25 somebody that will wait and hear the evidence in this
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1 courtroom. It sounds like you won't have any problem
2 doing that. Will you?

3 A. No.

4 Q. All right. In Texas, we have a death
5 penalty statute that is very specific, in that there are
6 only certain crimes where you can get the death penalty.
7 You can't get the death penalty for every murder in
8 Texas.

9 You have to have murder, kind of plus
10 something else. It might be the type of victim, or it
11 might be another crime in conjunction with the murder.

12 Let me give you some examples: If you

13 have a murder of a police officer while he is in the line
14 of duty or a fireman, that would be a death penalty case,
15 or the murder of a prison guard while he is on duty.

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

18 Q. If you have the murder of more than
19 one person, that would be a crime that would be eligible
20 for the death penalty.

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

23 Q. Or if you are murdering for money,
24 murder for hire, either the person hiring the murder done
25 or the actual hit man. Two people that would be eligible
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1 for the death penalty.

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

4 Q. Or it could be murder in the course of
5 another type of offense, like a robbery or kidnapping or
6 a rape, something like that.

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

9 Q. Or as in this case, it could be a
10 murder of a child under the age of six. Let me ask you,
11 Mr. Samford, do you think those are all appropriate types
12 of cases for the death penalty?

13 A. Yes, ma'am.

14 Q. Okay. Is there anything else you
15 would add to that list if you were Governor of Texas?

16 A. No. There is, but we don't have time
17 to go through the list.

18 Q. Well, I've got some time.

19 A. Well, never mind.

20

21 THE COURT: All right. Maybe you want
22 to go on to the next question.

23

24 BY MS. SHERRI WALLACE:

25 Q. That seems like a fair list to you; is
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1 that right?

2 A. Yes, ma'am.

3 Q. All right. Well, here in Texas, we

4 don't just say, "Guilty, life, or guilty, death." Here

5 is how it goes: You have your first phase of the trial,
6 that is called the guilt/innocence phase. And I think
7 that it's kind of the part that you sat half way through
8 in that DWI case.

9 And that is when the State has to

10 prove the indictment to a juror. If we do that, the
11 defendant is found guilty. If we don't do that, the
12 defendant is found not guilty.

13 But if we do that, you go on to answer
14 two questions, and they are up here on the board. But
15 let me talk to you a little bit about the guilt/innocence
16 phase before we get to the questions in the death penalty
17 phase.

18 A. Okay.

19 Q. In the guilt/innocence phase we have
20 to prove the indictment. And the indictment is in front
21 of you, I think, right there, Mr. Samford. Do you see
22 it?

23 A. Yes, I will in a minute.

24 Q. See that type-written portion?

25 "Unlawfully then and there, intentionally and knowingly
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1 caused the death of Damon Christian Routier, an
2 individual, herein after called deceased, by stabbing
3 said Damon Christian Routier with a knife. And the
4 deceased was at the time of the offense under six years
5 of age."

6 That is what we must prove to you
7 beyond a reasonable doubt. And we can do that several
8 ways. We can do that through direct evidence or

9 indirect, what is sometimes called circumstantial
10 evidence.

11 Direct evidence would be eyewitness
12 testimony. In other words, I saw her kill him in this
13 manner. Okay? But in murder cases, oftentimes we won't
14 have an eyewitness. And if you think about it, it makes
15 sense, because the eyewitness to the crime is dead.

16 And you know from the Judge's comments
17 two weeks ago, that you can't call the defendant to the
18 stand. She doesn't have to testify. So, we might have
19 to prove that case other ways.
20 Do you follow where sometimes in a

21 murder case or oftentimes you would not have an
22 eyewitness?

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

25 Q. Okay. You see, the defendant picks
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1 the time and the place for the crime, not the victim. So
2 the defendant has the most control over whether or not
3 there's witnesses. Do you follow that part?

4 A. Uh-huh. (Witness nodding head

5 affirmatively.)

6 Q. So it may be that we must prove our

7 case through indirect or circumstantial evidence. And
8 that is everything else: Fingerprints, DNA, blood
9 spatters, fibers, statements by the defendant that don't
10 comport with the crime scene, it could be any number of
11 things. And we can use that type of evidence, that

12 circumstantial evidence, to convince you beyond a
13 reasonable doubt that the defendant is good for it.

14 Could you convict somebody of capital
15 murder if we proved it beyond a reasonable doubt, based
16 on circumstantial evidence alone?

17 A. If you proved it beyond a reasonable
18 doubt.

19 Q. All right. Additionally, on there --

20

21 THE COURT: In all these question, let
22 me interject, assume that you believe the evidence.

23 THE PROSPECTIVE JUROR: Yes, sir.

24

25

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1 BY MS. SHERRI WALLACE:

2 Q. On there, on that indictment, it told
3 you what we have to prove to you. And one of the things
4 it didn't say, was it didn't say that we had to prove

5 motive to you. Okay? We don't have to prove motive.

6 Now, there is really a good reason for that.

7 And the reason is, is that we can't
8 call the defendant to the stand, and we can't get into
9 the defendant's mind, and she has an absolute right not

10 the testify.

11 So, it may be that through the course
12 of things, that the motive becomes clear as day to you.
13 And it may be that there are several different types of
14 motive, different kinds of motive. You may believe one
15 was the most important, another juror may believe another
16 one is most important, and that is just kind of
17 interesting stuff, but really that is not what we have to
18 prove. It may be that you just don't ever know the
19 motive, you might not ever, ever know.
20 Could you convict, if we prove the
21 case to you beyond a reasonable doubt, even if you didn't
22 know the motive?
23 A. If you proved beyond a reasonable
24 doubt, there is a lot of things there is no reason for.
25 You know, the reason why, but I don't let that bother me.
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1 Q. Okay. Once the case has been proved
2 to you and you found the defendant guilty, we go to the
3 next phase of the trial. And in that phase, it's called
4 the punishment phase, you may or may not hear more
5 evidence, it just kind of depends.
6 A. Uh-huh. (Witness nodding head
7 affirmatively.)

8 Q. As you know, I can't talk to you about
9 the facts of this case. But when we move to that phase
10 after whatever evidence, if any, is presented, you will
11 be asked to answer these two questions. And like I said,
12 you don't just say, "Death or life." You answer these
13 questions and if you answer this one "yes," and this one,
14 "no," she dies. The Judge has no option but to impose a
15 death sentence on the defendant. Okay?

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

18 Q. Okay. If you answer this anything
19 other than "yes," "no," and if you answer this
20 differently than "no," then it's a life sentence. Okay?

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

23 Q. Is that confusing enough?

24 A. Yes, ma'am.

25

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1 THE COURT REPORTER: Excuse me, I

2 cannot hear his answers, if he is answering.

3 MS. SHERRI WALLACE: I'm sorry.

4 THE COURT: Could you lean up, pull
5 that mike back and just speak into it.

6 MS. SHERRI WALLACE: She has to -- she
7 has a little thing that looks kind of like a typewriter
8 up there, and she has to take it all down. She can't
9 take down nods or a shake.

10 THE PROSPECTIVE JUROR: I forgot about
11 the stenographer.

12 MS. SHERRI WALLACE: Okay.

13

14 BY MS. SHERRI WALLACE:

15 Q. Do you find from the evidence beyond a
16 reasonable doubt that there is a probability that the
17 defendant would commit criminal acts of violence that
18 would constitute a continuing threat to society?

19 Let me ask you a few things about that
20 question. What does the word "probability" mean to you,
21 Mr. Samford?

22 A. Probably did it or probably did
23 something, but not sure they did it.

24 Q. Okay. And, what does the phrase "that
25 the defendant would commit criminal acts of violence,"
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1 what are criminal acts of violence to you?

2 A. Well, violence is hurting somebody and
3 a criminal act would be hurting somebody pretty bad.

4 Q. Okay. So some sort of harm or injury
5 to another person?

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

8 Q. And "a continuing threat to society,"
9 I want to ask you what you think about the word
10 "society". Some people think -- well, do you believe
11 that society includes people such as prison guards,
12 people visiting the prison, chaplains, or people doing
13 volunteer work in the prison, even other inmates? Do you
14 think that is included, that everyone is included in
15 society?

16 A. Everybody is society.

17 Q. Okay. So, from that question: Do you
18 find from the evidence beyond a reasonable doubt -- that
19 question is presumed to be answered "no," just like the
20 defendant is presumed to be not guilty. You have to
21 presume the answer "no." And we have the obligation and
22 the duty to prove to you beyond a reasonable doubt that
23 the defendant will be a continuing threat to society.

24 Can you hold us to that burden, Mr. Samford?

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)

2 Q. Okay. What that really means, it's

3 another way of saying that you have just found somebody

4 guilty of capital murder of killing a child under the age

5 of six. You can't automatically answer that question

6 "yes." Okay?

7 Now let me back up a minute. It may

8 be that you don't hear anything else. It may be that the

9 crime is so bad, that's all you need to know. But you

10 can't -- you have got to just tell the Court that you

11 will rethink about the evidence, just kind of revisit the

12 question, if you will, and not automatically do anything.

13 Could you do that?

14 A. Uh-huh. (Witness nodding head

15 affirmatively.)

16 Q. All right.

17

18 THE COURT: Is that a yes?

19 THE PROSPECTIVE JUROR: Yes, ma'am,

20 I'm sorry.

21 THE COURT: Ms. Halsey is taking all

22 this down. She can't take down --

23 THE PROSPECTIVE JUROR: I'm sorry,

24 Your Honor.

25 THE COURT: No problem. We're doing

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1 it for her, but she can't take down either uh-huh or

2 huh-uh.

3

4 BY MS. SHERRI WALLACE:

5 Q. After that question is answered "yes,"

6 you go to the next question: "Taking into consideration

7 all of the evidence, including the circumstances of the

8 offense, the defendant's character and background, and

9 the personal moral culpability of the defendant, is there

10 a sufficient mitigating circumstance or circumstances to

11 warrant that a sentence of life imprisonment rather than

12 a death sentence be imposed?"

13 And just to summarize, it's a long

14 question. I didn't write it, it was written by the

15 legislature. I think it's kind of -- I would have

16 written it differently. I'm not sure how, but not like
17 that.

18 What it means is, after you have heard
19 everything else, if you decide in your heart that the

20 right thing to do, even though you found the defendant
21 guilty of capital murder, even though you believe that
22 she is a continuing threat to society, if you decide
23 because of whatever reason that she should be given a

24 life sentence instead of a death sentence, then you would
25 answer that "yes."

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1 Could you do that?

2 A. Whatever comes out of here.

3 Q. All right. Your heart?

4 A. Yes, ma'am.

5 Q. You were pointing to your heart.

6 A. Yes, ma'am.

7 Q. Okay. And that is really what we're
8 looking for, Mr. Samford.

9 A. Yes, ma'am.

10 Q. Let me ask you a little bit about

11 sufficient mitigating circumstance or circumstances. Is
12 there anything that comes to mind that is mitigating or
13 lessens somebody's moral blameworthiness? Anything you
14 can think of that would be mitigating to you?

15 A. What is mitigating?

16 Q. Well, it's somebody that -- let me

17 tell you how this question came about. There was a guy
18 who committed a capital murder, and he was a continuing
19 threat to society, but he was mentally retarded. Now, he
20 wasn't insane. Okay? He was just -- had a lower -- had
21 a very, very, very low IQ. He knew the difference
22 between right and wrong.

23 But the jury thought -- the judges

24 actually that reviewed it thought that maybe the jury
25 should have been given a chance to give him a life

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1 sentence because of his intellect. It wasn't his fault
2 that he didn't have all the brain power that, you know,
3 most of us have. Okay?

4 That was a case where -- in that case

5 they decided that being mentally retarded was mitigating.

6 Does that bring anything to your mind?

7 A. Not really.

8 Q. Okay. Let me ask you: Some people

9 think that to have a college degree from, you know, one
10 of those schools out East, like Yale or Harvard or
11 something like that, some people think, well, if a man
12 like that did a crime, that that would be good, that he
13 was educated and that he had done something with his
14 life, and that might be mitigating.

15 Another person may think that if he
16 had that sort of education and he still did this bad

17 crime, that that is not mitigating at all, that is bad,
18 that is aggravating and they would use it against them.

19 Is there anything that you would feel
20 that would be mitigating?

21 A. You mean, you talk about this person
22 with a high education and another one that don't?

23 Q. Yeah.

24 A. Well, I guess even people with lots of
25 education has a lot of stress or something, and that is
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1 the only thing that I could think of that might cause
2 them to do something that someone without a lot of stress
3 might do, or would do. I don't know if that answers your
4 question or not.

5 Q. Okay. How would you feel if somebody
6 said that they were abused as a child when they were
7 younger? How would that affect you? Do you think that
8 would be something that would give somebody a life
9 sentence? Or would you just have to see?

10 A. I would have to wait and hear about it
11 or hear the testimony and stuff.

12 Q. How do you feel about that?

13 A. Well, for someone to get just a life
14 sentence instead of the death penalty for that what you
15 just said?

16 Q. Yes, sir.

17 A. It wouldn't bother me if they had just
18 like Down's syndrome or something like that and they did
19 something like that.

20 Q. Okay. In here I see that you -- your
21 first cousin is DEA. Right?

22 A. Well, I don't know if it is DEA, but

23 it's kind of like an alcoholic -- I mean, it's
24 Tobacco, Alcohol and Firearms.

25 Q. Oh, yes, ATF.
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1 A. ATF.

2 Q. Yeah, there is a lot of these -- all
3 these initials. That is that Alcohol, Tobacco and
4 Firearms?

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

7 Q. He is with that agency?

8 A. Yeah.

9 Q. Does he work around here?

10 A. No, he works down in Robstown.

11 Q. Okay. If you are going to be a juror
12 on this case, and there is good chance that you will, Mr.
13 Samford. If you are going to be a juror on this case,
14 you have to -- and I have said this a couple times, but
15 you have to wait and hear the testimony and the evidence
16 in the courtroom, and you have to start all witnesses out
17 the same.

18 In other words, you can't say

19 automatically, "Well, I would give them more weight
20 because they are a police officer." Or, "I would give
21 them more weight because they are a preacher." You have
22 to wait to hear from them.

23 Could you do that?

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

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1 Q. All right.

2 A. Yes, ma'am.

3 Q. It may be that after you hear from
4 them, because of their training and their experience --
5 sorry -- it may be that after you hear from them because
6 of their training and experience that you believe that

7 they are shooting straight with you, or you may hear them
8 and it doesn't sound right. Could you wait and hear from
9 them?

10 A. I would have to hear all of what they
11 say.

12 Q. All right.

13 A. Because it might be a Jim Bakker or
14 something like that mess.

15 Q. I hear you. Okay. You know, the
16 Judge has told you that the defendant is presumed
17 innocent, and what that means, it's really another way of
18 saying that we have the burden of proof. Because,
19 really, the penitentiary is filled with people that
20 started out presumed innocent, and then the State proved
21 their case, and now that is where they are. Okay? Could
22 you hold us -- or could you presume the defendant
23 innocent until we prove our case to you?

24 A. Yes, ma'am.

25 Q. Okay. We -- the defendant has an
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1 absolute right not to testify and you can't use that
2 against her. Could you follow that rule of law?

3 A. Yes, ma'am.

4 Q. The Judge also told you last -- a
5 couple of weeks ago that you couldn't use the indictment
6 against her in any way, that that was just a piece of
7 paper that set out what we have to prove to you. Could
8 you follow that law?

9 A. Yes, ma'am.

10 Q. Additionally, the Judge will instruct
11 you that you cannot consider parole in this case. That
12 you just follow the evidence, answer the questions, and
13 don't worry about anything else. Could you do that?

14 A. Yes, ma'am.

15 Q. I see you have two kids, and what are
16 they about 26 and --

17 A. Twenty-nine.

18 Q. Twenty-nine.

19 A. And twenty-six.

20 Q. Okay. Is your daughter married?

21 A. Yes, ma'am.

22 Q. Okay. Does she have any children?

23 A. She has two.

24 Q. All right. What about your son, is he
25 married?

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1 A. Not yet.

2 Q. Okay. He is holding out, huh?

3 A. He is cohabitating right now.

4 Q. All right. Does he have any children?

5 A. Huh-uh. (Witness shaking head

6 negatively.)

7 Q. Okay. What does he do for the
8 Department of Transportation?

9 A. Road maintenance.

10 Q. Okay. I see you served in the Navy
11 for four years?

12 A. Yes, ma'am.

13 Q. When was that?

14 A. '62 to '66.

15 Q. Okay. And your wife was in Vietnam in
16 combat?

17 A. Who?

18 Q. Your spouse?

19 A. She wasn't, I was.

20 Q. Oh, you were.

21

22 THE COURT: No, ma'am.

23

24 BY MS. SHERRI WALLACE:

25 Q. Oh, you were. Well, it's on the next
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1 line, so it looked like that. So, you served in Vietnam?

2 A. Yes, ma'am.

3 Q. Okay. Tell me a little bit about that
4 experience.

5

6 THE COURT: Sir, if you don't want to
7 say anything about that, feel free not to.

8 THE PROSPECTIVE JUROR: Well, it was a
9 time -- it was a time in my life that I wouldn't give you
10 a dime for it again, but I wouldn't take a million
11 dollars for the experience that it gave me.

12

13 BY MS. SHERRI WALLACE:

14 Q. You wouldn't want to do it again, but
15 glad you had the opportunity to serve?

16 A. Yes, ma'am.

17 Q. Okay. Where do you work, Mr. Samford?

18 A. Kerrville State Hospital in
19 maintenance.

20 Q. Okay. How long have you been over
21 there?

22 A. Ten years.

23 Q. That is a long time.

24 A. I got tired of chasing cranes in big
25 cities.

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1 Q. You like it here?

2 A. Oh, yeah.

3 Q. This area?

4 A. I guess, I been here since '72.

5 Q. That is a long time.

6 A. Yes.

7 Q. Do you have any questions for me?

8 A. No, I don't guess.

9 Q. Okay.

10 A. None that I can think of.

11 Q. All right. Fair enough. Thank you,

12 Mr. Samford.

13 A. You're welcome.

14

15 THE COURT: Mr. Douglass.

16 MR. S. PRESTON DOUGLASS, JR: Yes.

17

18 VOIR DIRE EXAMINATION

19

20 BY MR. S. PRESTON DOUGLASS, JR:

21 Q. Mr. Samford, my name is Preston

22 Douglass and I am just going to ask you a few questions.

23 I know you have been up there for a while and I hope you

24 understand that our perspective in representing Darlie

25 Routier is completely different and drastically different

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1 than that of the State of Texas. You understand we look

2 at this a whole different way than they do.

3 A. Uh-huh. (Witness nodding head

4 affirmatively.) Yes, sir.

5 Q. Because of that, they start off

6 talking about punishment issues, they start talking about

7 the death penalty. And it isn't until the end that they

8 typically talk about the first phase of the trial.

9 Because our perspective is so different, I want to talk

10 to you a little bit, and you talked about it briefly, but

11 I want to talk to you about the trial, the

12 guilt/innocence phase of the trial.

13 Darlie Routier has plead not guilty.

14 She will enter a plea of not guilty before the jury, and

15 she will stand behind that plea of not guilty

16 wholeheartedly.

17 We don't expect to be talking about

18 punishment. We only expect that this is going to be a

19 trial about guilt or innocence. And in that regards I

20 want to talk to you a little bit more about the law
21 regarding the guilt/innocence part of the trial.
22 Starting with the indictment, you
23 heard -- you probably remember a couple of weeks ago

24 Judge Tolle telling you that in Dallas County some 25,000
25 people -- excuse me -- are indicted each year. And do
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1 you remember him telling y'all that many of those people
2 who are indicted, many of those 25,000 people, never even
3 know that they are being investigated. Do you remember
4 that?

5 A. Somewhat.

6 Q. Yeah. He also -- the Judge also told
7 you that since those people obviously don't know they are
8 being investigated, they have not even had a chance or an
9 opportunity or being given even notice so they could go
10 down to the Courthouse and tell their side of the story.
11 So, can you understand that if 25,000 Grand Jury
12 indictments are issued, and many of those people don't
13 even know that they are being investigated, that an
14 indictment really is no proof of anything. Do you agree
15 with that?

16 A. Yes, sir.

17 Q. It's really just the piece of paper
18 that allows the defendant to know what he or she has to--
19 what the heck I have been charged with, and also tells

20 the Judge what to have a trial about. So -- but even
21 though it's just a piece of paper, there are some people
22 that think, well, you know, there's all these lawyers in
23 here, there is a judge, there's a court reporter, with

24 all of these people sitting in there, there's some people
25 that think, well, "Where there is smoke, there's fire."
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1 And then there is another group of
2 people that say, "No, I don't believe a Grand Jury
3 indictment stands for anything." Where do you find
4 yourself? Do you believe you are over here "Where there
5 is smoke, there is fire?" Or do you believe you're a
6 person that believes that a Grand Jury indictment means
7 nothing?
8 A. Well, I think I am about right in the
9 middle of both of them.

10 Q. Okay. You understand that you haven't
11 heard any evidence in this case?

12 A. I have not.

13 Q. If the State stood up in the middle
14 right now, and said -- the Judge called the case for

15 trial and the defendant entered a plea of not guilty, and
16 the State stood up and said, "We rest our case." They
17 put on no evidence at all. What would be your verdict in
18 that situation?

19 A. If it was up to me, right then she
20 would go home.

21 Q. Okay. Not guilty?

22 A. Right.

23 Q. Because they haven't proved anything,
24 is that right?

25 A. Right.

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1 Q. Now, when you say you are right in the
2 middle about the indictment, that causes me a little
3 concern, because since there has been no proof, and since
4 an indictment means nothing, would you agree with me that
5 you really should be a person that believes, if she has
6 been indicted, I am not going to put any weight on that
7 at all?

8 A. Well, is that what you meant a while
9 ago?

10 Q. Yes.

11 A. That is not the way I took it.

12 Q. Okay. Where do you think you are? Do
13 you think that just because a person is indicted you
14 think they are guilty?

15 A. No.

16 Q. Okay. Now, the presumption of
17 innocence is something that is talked about a lot. Some
18 people talk about it like being a shield that surrounds
19 the defendant, and it is the State's obligation to
20 present evidence that eats away at that shield. Do you
21 agree with me that a defendant at the start of a trial is
22 absolutely innocent?

23 A. To me the person is innocent.

24 Q. Okay. Now, the law says that the
25 people that do the accusing, have to do the proving.
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1 What that means is that the State of Texas when they say,

2 "We're going to bring a citizen in for a trial. And we
3 are going to make this person stand trial."

4 That it is the State of Texas'
5 obligation to bring the evidence and prove beyond a

6 reasonable doubt that that person is guilty. Do you
7 agree with that? That it is their burden of proof?
8 A. Yes, sir.

9 Q. Now, what is important about that is,
10 that there is absolutely no requirement on the defendant
11 to put on any evidence at all. A defendant in a trial
12 doesn't have to call one witness. A lawyer could sit
13 there and say, "You know, I heard everything that the
14 State had to say about this case. I saw every witness
15 they brought on. And I am not putting on any evidence,
16 because they didn't prove anything." Now, do you think
17 that is a law you agree with? That a defendant does not
18 have to prove his or her innocence.

19 A. I can agree with that.

20 Q. If you are a juror in a case and you
21 hear things about a defendant, but you have a doubt in
22 your mind. How do you resolve that doubt? Do you
23 resolve that doubt in favor of the defendant?

24 A. I would have to lean toward the
25 defendant and work it back the other way.

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1 Q. Now, you talk a lot about reasonable
2 doubt. And I have heard you say, "If the State proves it
3 beyond a reasonable doubt, and if they prove it beyond a
4 reasonable doubt." And that is a phrase that is
5 important to you; is that right?

6 A. Right.

7 Q. It used to be that there was not a
8 definition of reasonable doubt. There was a time when
9 they let people just decide what reasonable doubt meant
10 for themselves. Some people would say, "Well, I am a
11 reasonable person. If I have a doubt, it is a reasonable
12 doubt, then I am going to say not guilty."

13 Now, the legislature, the Court came
14 along -- the Court now has a definition of reasonable
15 doubt. And the definition basically says that it is
16 proof that is so convincing that you would not hesitate
17 to rely on that proof in making your most important
18 decisions.

19 Now, that is kind of a convoluted
20 definition. But what it means to you is you have got to

21 be proven to where you are sure beyond a reasonable
22 doubt. Does that sound correct to you? That it has to
23 be that much proof?

24 A. Well, if I followed you right, yes.

25 Q. One of my partners draws a circle, and
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1 he says, "That if you look at this circle and imagine
2 this circle at the start of a trial, there has been no
3 proof. And that this blank in here amounts to a

4 presumption of innocence. And that it is the State that
5 has to come along and bring you evidence such that
6 eventually they block out this entire circle. They make
7 it completely black, so that there is no light coming
8 through." And then he says, "If there is just even one
9 little ray of light coming through that black of that
10 circle, and you believe that is a reasonable doubt, you
11 must vote not guilty."

12 Do you agree with that? That even if
13 the tiniest light comes through, that is a reasonable
14 doubt, that that benefit you give to the defendant, and
15 you say not guilty?

16 A. I would give that benefit to the
17 defendant.

18 Q. All right. Now, in the course of a
19 trial you will hear witnesses, and the Judge will tell
20 you that you, as a juror, are the sole judges of who you
21 want to believe. You can believe everything a witness

22 says, you can believe just a part of what a witness says,
23 or you can believe it all. And I anticipate that you
24 will hear from witnesses from all walks of life.

25 You will probably hear from police
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1 officers. You will hear from everyday civilians. And I
2 want to ask you: If a police officer comes and
3 testifies, would you judge that police officer just like
4 everybody else? Or would you put any more weight on them
5 just because they are police officers?

6 A. No, I wouldn't. I would judge them
7 like everybody else.

8 Q. All right. The State talked about
9 motive for a period of time, and Ms. Wallace said
10 correctly, they don't have to prove motive. In an
11 indictment, there's things they have to prove. Like what
12 day it may have occurred on, on or about a certain day,

13 or that it occurred in Dallas County. If they say, we
14 are going to prove it occurred in Dallas County, they
15 have got to prove it happened in Dallas County.

16 But they don't have to prove motive as
17 a hurdle they have to jump over. But while they don't
18 have to prove it, could you agree with me, that if the
19 evidence just doesn't add up, if there is no proof as to
20 motive and because of that, as you, Mr. Samford, it just
21 doesn't make sense; could you agree with me that the lack
22 of a motive, the absence, the fact that they have not
23 proved a motive, might raise a reasonable doubt in your
24 mind?

25 A. It could.

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1 Q. Because it just doesn't -- you know
2 two and two just -- it leads to five, and you can't

3 figure it out. Could you understand that might be a
4 reasonable doubt?

5 MS. SHERRI WALLACE: Your Honor, I
6 object to the fact that the juror has to figure the case
7 out, that is not the law.

8 THE COURT: Well, I understand what

9 you are saying. Let's phrase our question another way.

10 MR. S. PRESTON DOUGLASS, JR: Let me
11 rephrase that.

12

13 BY MR. S. PRESTON DOUGLASS, JR:

14 Q. You might hear a lot of evidence. You
15 might say, "They told me this, and they brought me
16 evidence of that, but it just doesn't make sense to me,
17 and they can't prove to me why this happened." Would you
18 agree that in some circumstances you might say, "Because
19 I don't understand the motive, and they haven't brought
20 me this proof, I have a doubt?"

21

22 MS. SHERRI WALLACE: Your Honor, I
23 object to that. We don't have to prove motive. He
24 doesn't have know why.

25 THE COURT: I understand. Please be
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1 seated.

2 I think -- do you understand the
3 question?

4 THE PROSPECTIVE JUROR: I believe I

5 did.

6 THE COURT: I think that -- the State

7 doesn't have to prove motive.

8 THE PROSPECTIVE JUROR: Yes, sir. I

9 understand what he's talking about. Yes, sir, I could go
10 on and decide on behalf of the defendant.

11 THE COURT: All right. I think the
12 witness (sic) understands the question.

13

14 BY MR. S. PRESTON DOUGLASS, JR:

15 Q. Because it might raise a question in
16 your mind; is that right?

17 A. Yes, sir.

18 Q. All right. Now, a jury -- when you

19 get back in a jury box, a jury and each juror have their
20 own vote. It's not a democracy. You don't go in there
21 and decide, "Well, there's seven in favor of this, and
22 five in favor of that, so I'm going to go with the
23 seven." It doesn't work that way. You have your own
24 vote?

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)

2 Q. And I was looking at your
3 questionnaire and I noticed that you said, "I follow my
4 own ideas rather than do what others expect."

5 A. Yes, sir.

6 Q. I take that to mean that if you are
7 back in the jury room and you believe that in your heart
8 and mind that something is the way it is, that the
9 evidence makes you come to a conclusion, that you are
10 going to stick with that, even if other people disagree
11 with you; is that right?

12 A. Whatever I decide in my mind and my
13 heart, that is what I stay with.

14 Q. Now, if you find yourself back in a
15 room and maybe there's 11 people who disagree with you,
16 does that mean that you are going to stick with it?

17 A. If I think that I am right, yes, sir.

18 Q. Okay. Now, another thing Ms. Wallace
19 said, and she was right in correcting me about it, was
20 that a juror is not here to solve the case. A juror is
21 just here to decide whether or not the State met its

22 burden of proof beyond a reasonable doubt, of proving the
23 person guilty that they accused, not here to be a mystery

24 solver.

25 Now, where that is important is, there

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1 is no question that you are going to believe that a very
2 terrible crime took place. I know that is true. You are
3 going to believe that. But are you going to be able to

4 say, "Well, I know there was a crime, and I know it was
5 terrible." Are you going to be able to put that aside
6 and say, "But I need to make sure that the right person
7 is accused." And hold the State to the burden to prove
8 the person accused is the person that they say is the
9 person accused, is guilty or not guilty. Are you going
10 to make them prove that?

11 A. Yes, sir.

12 Q. Or are you going to say, "Well, you
13 know, I am so mad about this because of what happened,
14 that I am going to find somebody guilty regardless of
15 whether they prove it."

16 A. No, sir.

17 Q. I also think and know that you are
18 going to see some photographs, and I think the
19 photographs you are going to see are going to be gory,
20 and they are not going to look pretty. And I think,

21 also, you may expect that these photographs will be blown
22 up, made bigger, maybe just to look worse.

23 And some people will look at a
24 photograph like that and they get so mad that they just
25 want to punish somebody. In other words, that photograph
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1 overruns their common sense.

2 Do you feel like there is a risk of
3 that with you? Or can you look at a photograph for just
4 what it is?

5 A. I have seen things that are pretty
6 gory, and I think I can look at a photograph and tell
7 just about what it is.

8 Q. Okay. It's not going to cause you to
9 not be able think straight?

10 A. No, sir.

11 Q. I noticed that -- I am just going to
12 touch on one thing very briefly -- I noticed in your
13 questionnaire you said -- there was a question asked of
14 you, you said, if a person was accused of capital murder,

15 that person should have to prove her innocence. And you
16 said, you strongly disagree with that.

17 A. Well, that is just what we all have
18 been talking about.

19 Q. All right. Does your wife work for
20 Johnny Hill?

21 A. Yes, sir.

22 Q. Okay. How long has she worked out
23 there?

24 A. Eighteen years.

25 Q. Okay. Did she work for him when he
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1 was JP?

2 A. Yes, sir.

3 Q. Did she have some strong opinions
4 about when he was charged with DWI?

5 A. I don't want to get into Johnny Hill.

6 Q. Okay.

7 A. Ask me a question about this, and that
8 is a lot of gray area there.

9 Q. I would imagine that your wife is
10 pretty loyal to Judge Hill after all.

11 A. Yeah.

12 Q. Does she deal with the public out at
13 the insurance agency?

14 A. Yes, sir.

15 Q. One of the things that is really hard,
16 from where I sit, is that because the State has the
17 burden of proof they get to go first. And, we don't have
18 the right while they are putting on evidence to say,

19 "Wait a minute. Wait a minute. We want to call a
20 witness to prove something about what that witness that
21 they called just said." We have to go second.

22 Because we have got to go second it
23 makes me concerned that some people make their mind up
24 before they hear the whole case. Psychologists, if you
25 believe anything they say, say, "That what goes in first
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1 sometimes sticks, and people can't get that out of their
2 mind." But a juror has to keep an open mind.

3 Do you think you can listen to all of
4 the evidence and not judge just based on what you hear
5 first?

6 A. Yes, sir.

7 Q. I think it's pretty easy to tell that
8 by the way they have been talking they are not going to
9 say a single thing -- they are not going to say a single
10 thing nice about my client, in the first part of trial.
11 I mean, you know that by the way they are talking.

12 So, can you anticipate that and expect
13 that and say, "I know that is what they going to do. I
14 am going keep an open mind until I hear the whole story."
15 A. Yes, sir.

16 Q. Okay. Now, you had put down that you
17 hadn't heard a single thing about the case. I am curious
18 if that means that you knew nothing about it when you
19 came down here?

20 A. I am not talking about -- not even a
21 word. I'm talking about I haven't read it in the paper
22 and I have not -- I can honestly say that when it comes
23 in the TV, I change the channel, and I don't read it in
24 the newspaper.

25 Q. Okay. All right. Because, obviously,
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1 you understand we have come a long way, these people have
2 all come from Dallas, to try to find people that know
3 nothing about the case. So, in that regard, you think
4 you are a pretty good person?

5 A. If that is what they are looking for.

6 Q. You are the man?

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

9 Q. Okay. How do you feel about being a
10 juror in a case like this? What is your -- how do you
11 feel about it?

12 A. The way I feel about it is this is the
13 reason that I was over there where I was, so we can have
14 these kind of days like this.

15 Q. If I understand what you are saying,
16 you risked your life so we can all be here doing this

17 kind of stuff?

18 A. Yes, sir.

19 Q. Okay. Now, is it something that you
20 want to do or is it something you feel is a duty?

21 A. I don't think anybody wants to do it.

22 Q. Okay. Now, I am not going to have

23 another chance to talk to you before this trial starts.
24 And I know you heard me say that I am not interested in
25 talking about anything other than the presumption of

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1 innocence and reasonable doubt and those very important
2 issues.

3 But I am not going to have a chance to
4 talk to you about the punishment, so I am required to
5 talk to you about punishment issues a little bit. And
6 let me direct your attention to these two questions: Ms.
7 Wallace asked you, I think, a little bit about
8 probability. Let me just ask you again: How do you

9 define probability? What does that word mean to you?

10 A. He probably would do it, but no proof
11 that he may do it.

12 Q. What this question is: Do you think
13 that there is a probability that the person would be a
14 future danger to commit other acts of violence? Do you
15 agree that they have got to prove that it's more likely
16 than not -- that it's probable that this person would
17 commit other acts of violence?

18 A. Ask me that question again.

19 Q. Let me ask you something else: Does
20 probable, probability, does that to you mean more than
21 it's just possible?

22 A. Anything is possible. Maybe they are

23 saying what is probability, not possibility, or something
24 like that.

25 Q. Well, would you agree with me that if
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1 something is possible, anything is possible --

2 A. Right.

3 Q. -- but that probable means that it's
4 likely to happen? Probable means it is almost for sure
5 that someone is going to do something.

6

7 MS. SHERRI WALLACE: I will object to
8 the defense attorney's definition.

9 THE COURT: Yes, we're getting into
10 semantics here.

11

12 BY MR. S. PRESTON DOUGLASS, JR:

13 Q. How about more likely than not?

14 A. Well, I know what probably means,
15 so -- if that is what you are talking about.

16

17 THE COURT: I understand Mr. Samford's
18 thinking, I think he has answered the question.

19

20 BY MR. S. PRESTON DOUGLASS, JR:

21 Q. So you would agree that probably is
22 not just a chance, it is more than a chance?

23 A. Yes.

24 Q. Now, this question is you deciding as
25 a juror whether you believe beyond a reasonable doubt,
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1 that high level of proof, that someone probably would be
2 a future threat. Do you agree with me? Does that sound
3 right?

4 A. Probably.

5 Q. Okay. Do you agree that before you
6 can decide on this question that someone is probably
7 going to be dangerous, you have to decide that they are
8 probably going to be dangerous beyond a reasonable doubt.

9 So, you have got to decide, not only
10 is it -- it's not just possible, it's probable. And it's
11 probable that that person can be dangerous beyond a
12 reasonable doubt, and the State has to prove that to you.

13 Will you make them prove that to you?

14 A. Yes, sir.

15 Q. That if they get to that part of the
16 trial, you are going to make them prove to you beyond a
17 reasonable doubt that a person probably would be
18 dangerous?

19 A. Beyond a reasonable doubt.

20 Q. All right. Now, we talked about
21 mitigating, and lawyers throw that word around like
22 everybody in the world understands it. I am not so sure
23 everybody in the world understands mitigating. I don't
24 use that word, I don't walk around and say, "Well, that
25 mitigates this," or I don't use that word. Some people
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1 say that mitigating means that a person is not as
2 responsible, or not as blameworthy. Does that make sense
3 to you, that it lessens their responsibility?

4 A. I don't never use that word in my line
5 of work, so I don't know.

6 Q. Okay. Let me give you an example:

7 Someone might say, "Look, this is a very young person,
8 and I am not going to give this person the death penalty

9 because they are so young." And because they are so

10 young, someone might say, that is a reason not to give
11 the death penalty, that that mitigates, should not give
12 the death penalty because the person is so young.

13 Or somebody might say, "You know, that
14 person has some sort of learning disability, and because
15 of that learning disability, I am not going to give that
16 person the death penalty."

17 Could you consider things like the
18 background of the defendant, their past history, and use
19 that background to decide whether or not that person
20 should get a death sentence? Can you do that?

21 A. I can't answer that yes or no.

22 Q. Until you hear the evidence?

23 A. Yes, sir.

24 Q. Okay. But just daydream with me for a
25 little bit and think: Are you open to thinking about a
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1 defendant's past history?

2 A. It depends on what the history is.

3 Q. Okay. Do you agree that there are

4 some things in a person's life that sometimes mean they
5 start out behind the eight ball and it makes it harder
6 for them?

7 A. Not given an equal chance and raised
8 wrong?

9 Q. Yeah. Some people get a bad draw
10 every once in a while.

11 A. Oh, yeah.

12 Q. And because somebody -- some people

13 get a bad draw, could you consider that in deciding what
14 you think the right punishment is?

15 A. Yeah. Well, depends. You know,
16 people got to -- you got to play with the cards you are
17 dealt, and how you play them is how everything comes out.

18 Q. Okay. Do you feel like that in
19 considering the death penalty, that a person's background
20 has nothing to do with it? Or do you think it has
21 something to do with it?

22 A. The background in a death penalty
23 would have something to do with it, if they had something
24 in their background, if they had done something like they
25 were supposed to have done before.

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1 Q. Okay. Obviously this is a very
2 serious case. It is the most important moment in Darlie
3 Routier's life, no question about it. And what becomes
4 important is finding jurors, people that sit, from here
5 in Kerr County that don't lean one way or the other.
6 They start absolutely straight up on
7 this case. And I guess the question I want to ask you:
8 If you, God forbid, found yourself sitting where my

9 client sits, charged with a crime, would you be satisfied
10 with somebody like yourself being a juror?

11 A. I would hope there would be somebody
12 like me on the jury.

13 Q. Okay.

14

15 MR. S. PRESTON DOUGLASS, JR: May I
16 have one minute, Your Honor?

17

18 (Whereupon, a short

19 discussion was held
20 Between the attorneys
21 For the defendant,

22 and the defendant
23 off the record, and outside
24 of the hearing of the
25 Juror, after which time,
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1 the proceedings were
2 resumed on the record,
3 as follows:)

4

5 THE COURT: Mr. Douglass.

6

7 BY MR. S. PRESTON DOUGLASS, JR:
8 Q. Do you have any questions of me, Mr.
9 Samford? I know I can be incredibly confusing. Is there
10 anything you want me to straighten out for you or any
11 questions you have?

12 A. No, sir.

13 Q. Okay. I appreciate your time coming
14 down here, doing all these questions and then answering
15 all of our questions.

16

17 MR. S. PRESTON DOUGLASS, JR: Judge, I

18 don't have any other questions.

19 THE COURT: Thank you. Mr. Samford,

20 could you step out briefly, please, don't leave.

21 THE PROSPECTIVE JUROR: I will be

22 right out there.

23 THE COURT: There you go.

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. Ms. Wallace or

8 Mr. Shook?

9 MS. SHERRI WALLACE: The State will

10 accept the juror.

11 MR. S. PRESTON DOUGLASS, JR: We

12 accept the juror.

13 THE COURT: All right. Can you have

14 Mr. Samford step in, please.

15

16 (Whereupon, the prospective

17 juror returned to the

18 room and the proceedings

19 were resumed as follows:)

20

21 THE COURT: Mr. Samford, come on in.

22 You have been accepted as a juror. So, what will happen

23 is this trial is going to start on the 6th of January.

24 So you will be -- Mr. Navarre or someone will be calling

25 you. It's going to be at the Courthouse downtown, the

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1 time to come in there and all this. Between now and then

2 don't talk about this case to anybody.

3 Obviously, you are not. I know you

4 will tell your wife you were selected, but I understand

5 how that works. But if the two of you could keep it

6 quiet beyond that, it would be most -- it would be

7 beneficial to all concerned, if you will do that.

8 THE JUROR: Yes, sir.

9 THE COURT: Don't talk about the case

10 among yourselves or anybody else, and I know you won't do

11 it. But I have to tell you this: I know it has to be

12 out there, but there is a gag order on and I can impose

13 monetary or jail sanctions. That won't apply to you, I'm

14 sure, but we have to tell you that.

15 We appreciate you coming and we will

16 see you back here on the 6th of January.

17 THE JUROR: Okay.

18 THE COURT: Thank you. All right.

19 When you have a person who has been in

20 combat, ask them, "Would you care to answer questions

21 about that?" Because you might -- a lot of them don't

22 want to, and I am not going to make anybody who doesn't

23 want to do it.

24 Okay. Secondly, I would appreciate

25 everybody referring to the other side as the attorneys

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1 for the other side, not those guys. I think that is

2 extremely unprofessional.

3 Thank you.

4 We are going to take a brief break to

5 let Ms. Halsey and Ms. Biggerstaff have a short recess,

6 not to mention the Court itself.

7

8 (Whereupon, a short

9 Recess was taken,

10 After which time,

11 The proceedings were

12 Resumed on the record,

13 In the presence and

14 Hearing of the defendant,

15 as follows:)

16

17 THE COURT: Ms. Cooper, come on up,

18 please. This is number 35 on our list, 96 on the jurors

19 list, Betty Cooper.

20 Ms. Cooper, just have a seat there,

21 and speak into microphone.

22 THE PROSPECTIVE JUROR: Okay.

23 THE COURT: And if you could raise
24 your right hand, please.
25 Do you solemnly swear or affirm you
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1 will true answers make to all the questions propounded to
2 you concerning your qualifications as a juror, so help
3 you God?
4 THE PROSPECTIVE JUROR: I do.
5
6 (Whereupon, the prospective

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

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

13

14 THE COURT: All right. Now, ma'am,
15 you are Betty Cooper.

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: And we want you -- I know
18 you are probably a little nervous, don't be nervous.
19 You are here on the Darlie Routier
20 matter. Mrs. Routier is the defendant, she is the young
21 lady sitting in the burgundy dress right there. She is
22 represented by Mr. Curtis Glover from Dallas, and Mr.

23 Preston Douglass who is from Kerrville.
24 And the State of Texas is represented
25 by Mr. Toby Shook and Ms. Sherri Wallace. They are
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1 Assistant District Attorneys with the Dallas County
2 District Attorney's Office.
3 So, both sides will ask you some
4 questions. Just relax, no right or wrong answers. You
5 can be a member of the Flat Earth Society, and no one is
6 going to disagree with you. There is not going to be a
7 test on anything.
8 So who is going to go? Mr. Shook?
9 Okay. Thank you.
10
11 Whereupon,

12

13 BETTY LOUISE COOPER,

14

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

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

19

20 VOIR DIRE EXAMINATION

21

22 BY MR. TOBY L. SHOOK:

23 Q. Ms. Cooper, again, my name is Toby

24 Shook and I'm one of the prosecutors on the case and I

25 will be asking you questions on behalf of the State. And
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1 we appreciate you filling out this questionnaire, it's

2 very helpful to us to review this.

3 I am going to go over a few things in

4 here, then I want to ask you some questions about the

5 death penalty as a law and how you feel about it, and
6 some of the other laws and rules that might apply to this
7 case. Okay?

8 A. Okay.

9 Q. Again, Ms. Cooper, there is no -- as

10 the Judge said, no right or wrong answers. We just want
11 your honest opinions. All right?

12 A. Okay.

13 Q. If you have any questions of anything

14 we go over, feel free to ask them. Okay?

15 A. Okay.

16 Q. First of all, Ms. Cooper, it's been a

17 couple of weeks since you filled out this questionnaire.

18 Has anything changed in any way? Anything you feel we
19 might need to know about that you feel you didn't provide
20 us with here?

21 A. Not that I know of.

22 Q. Okay.

23 A. That I remember.

24 Q. All right. And it looks like that you

25 work for -- are you a commercial librarian for Lasmer
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1 Industries?

2 A. Yes, sir.

3 Q. And what does that company do?

4 A. We manufacture -- the company

5 manufactures spare parts for tank and automotive for the
6 government.

7 Q. Okay. And you lived in Fort Worth for

8 28 years?

9 A. Yes, sir.

10 Q. And then you all moved here?

11 A. Yes, sir.

12 Q. Okay. What brought you to this part
13 of the country?

14 A. We wanted to start a new business with
15 another person and we wanted to get out of a big city.

16 We wanted to raise our child in a small town.

17 Q. And, I guess you like it here now that

18 you have been here?

19 A. Yes, sir.

20 Q. Okay. Ms. Cooper, let me talk to you
21 about the death penalty a little bit. Have you ever been
22 on a jury before?

23 A. No, sir.

24 Q. Okay. Been called down for jury
25 service before?

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1 A. Yes, sir.

2 Q. Okay. Usually, in an -- well, in
3 every other type of criminal case we talk to each juror
4 in a big panel. Since this is a death penalty case, we
5 talk to each juror individually, because people feel

6 strongly and have their own opinions about the death
7 penalty. We're not trying to put you on trial or
8 anything like that. Okay?

9 A. Okay.

10 Q. Let me ask you: What do you think of
11 the death penalty as a law? Do you think it is a law we
12 need to have?

13 A. Yes, sir.

14 Q. Okay. Tell me why?

15 A. In certain cases, the criminal -- just
16 nothing can be done with him, and there is no reason for
17 him to be allowed to live. He's done -- I am talking

18 about real serious cases, and I just don't think they
19 should be allowed back out on the street or that they
20 could ever serve any purpose for society.

21 Q. What kind of cases come to mind?

22 Obviously we are talking about a murder kind of case.

23 A. I'm talking about serial rapists or

24 some of these bombers that have deliberately set out to
25 kill judges or certain people.

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1 Q. I'm sure Judge Tolle will agree with

2 that one wholeheartedly. But like the Unabomber that has
3 been in the news last year?

4 A. Yes, sir.

5 Q. And then you said like serial rapists,
6 like, oh, what's his name? Ted Bundy?

7 A. Yes, sir.

8 Q. Okay. Have you followed many cases in
9 the news that had to do with the death penalty or were

10 murder cases? Have you ever followed any of those types
11 of cases in the news?

12 A. Just to a certain extent, not on a
13 day-to-day basis or anything.

14 Q. What cases have you followed in the
15 news? Do you remember any of the names?

16 A. I don't remember the names. The
17 serial rapist or the rapist on that little girl that was
18 just sentenced not too long ago.

19 Q. In California?

20 A. Yes, uh-huh.

21 Q. Did you think that was a good verdict
22 in his particular case?

23 A. Yes, sir.

24 Q. Let me ask Ms. Cooper: Did you follow
25 the Susan Smith case at all? The case involving a mother

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1 in South Carolina and the death of her two children?

2 A. I saw it on TV. Our paper down here

3 doesn't get into much about that.

4 Q. So, you didn't follow that one real
5 closely?

6 A. No, sir.

7 Q. Any opinions on that case at all?

8 A. Did she get the death penalty?

9 Q. Actually, in that case she got life,
10 life in prison.

11 A. That is what I thought. I thought it

12 was a good verdict.

13 Q. Okay. Have you ever discussed your
14 views on the death penalty. You know, you say it's good
15 to have in cases like the Unabomber and serial rapists.

16 A. Yes, sir.

17 Q. What purpose do you think the death
18 penalty serves? Is it just to punish or punishment or
19 just to stop that particular person?

20 A. It's just to stop that particular

21 person, because if they escape from prison, they -- I
22 feel they would probably do it again and that would
23 injure society.

24 Q. Okay. Have you ever felt differently
25 about the death penalty?

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1 A. No, sir.

2 Q. Is it a subject that you have ever
3 given a whole lot of thought to or is it --
4 A. I have talked about it, I had not
5 thought as deeply about it until this case came up.

6 Q. Sure. Who have you talked about it
7 with?

8 A. My husband basically, and a few
9 friends.

10 Q. Okay. Does he share the same
11 viewpoints you have?

12 A. Yes, sir.

13 Q. What about your friends?

14 A. Yes, sir.

15 Q. Okay. In Texas there's only certain
16 types of murder cases that fall under the death penalty
17 statute. Okay? It has to be a murder, but it has to be
18 something -- something else, plus something else, another
19 aggravating fact. Such as: A murder during a robbery.

20 A guy goes into a bank, robs the teller, kills the
21 teller, that would be a capital murder case.

22 A murder during a burglary; someone
23 comes in your home. A murder during a rape could be a
24 capital murder case. Okay? Mass murders, serial murders
25 like you have talked about can be also. Murder of a
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1 police officer while on duty could be a capital murder
2 case; that the death penalty could be invoked.

3 And as the Judge said, in this case,
4 obviously, the defendant has been indicted for the

5 offense of murder of a child under the age of six.
6 And I believe the indictment is in
7 front of you.

8

9 MR. TOBY L. SHOOK: Is that right,
10 Judge?

11 THE COURT: There is one there. They
12 are going to draw your attention to the printed -- the
13 typed section right there.

14 THE PROSPECTIVE JUROR: Okay.

15

16 BY MR. TOBY L. SHOOK:

17 Q. If you could read that paragraph that
18 Judge Tolle just pointed out to you, please.

19 A. Read it?

20 Q. Yes, to yourself.

21 A. Okay.

22 Q. Okay. That sets out an allegation of
23 an intentional killing of a child under the age of six.
24 I can't ask you for your verdict, obviously, you haven't
25 heard the evidence. But that type of case, murder of a
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1 child under six, do you personally feel that is the type
2 of case that should be eligible for the death penalty?

3 A. No, sir.

4 Q. And why not?

5 A. I feel that if she is guilty and had
6 to serve a life sentence by the time she got out she
7 would not be able to have children anymore; therefore,
8 she would not be a threat to society.

9 Q. Okay. And is that on any type of case
10 involving the murder of children?

11 A. Well, if it was a rape and a murder,
12 no, that wouldn't be the same thing, but just a murder, I
13 don't -- I don't feel --

14 Q. Okay. But that particular type of
15 case, the murder of a child under the age of six, you
16 don't feel is a death penalty-type case?

17 A. No, sir.

18 Q. Life in prison --

19 A. Yes, sir.

20 Q. -- is fine, but does not call for the
21 death penalty?

22 A. Yes, sir.

23 Q. Fair enough. That is why we ask those
24 questions because some people say they believe in the
25 death penalty, but they would only do it for Adolf
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1 Hitler.
2 A. Uh-huh. (Witness nodding head
3 affirmatively.)
4 Q. Other people believe in the death
5 penalty on any type of murder case. So everyone has
6 their own range, so to speak. All right?
7 A. Okay.

8 Q. And we just want your honest opinions.
9 Now, Ms. Cooper, you also put down in
10 your questionnaire -- we have several -- you said you are
11 in favor of the death penalty, and you put down some of
12 the same reasons you told me about today. But there
13 is -- well, we have six different statements that best
14 follow how you feel about the death penalty.
15 You have circled number four and I'm
16 going to read that to you: "I believe the death penalty
17 is appropriate in some capital murder cases, but I could
18 never return a verdict which would assess the death
19 penalty."
20 A. Yes, sir.
21 Q. Do you remember answering it that way?
22 A. Yes, sir.
23 Q Do you still feel that way?
24 A. Well, when I phrase it like I did
25 before with the serial rapist, then, yes, I think I could
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1 do that.
2 Q. If it was a case where the person was
3 charged with the murder that occurred during a rape; or
4 that they were, as you said, serial rapists and they
5 would rape again and again, that is the type of case you
6 could return it in?
7 A. Yes, sir.
8 Q. But other than that, you couldn't?
9 A. I don't think so.

10 Q. Okay. Ms. Cooper, let me tell you, we
11 can't preview the case for you. We can't give you, "Hey,
12 this is what I think we are going to prove." You know,
13 and their past, we're going to put this all on for you.
14 What kind of verdict can you give us? Obviously, we

15 can't do that.

16 So, we're dealing in hypotheticals

17 here, so it is a little difficult for us. But what we
18 can talk about is the exact indictment that the defendant
19 is charged with. And, also, if you think you can answer
20 these questions, or if you just can't.

21 Let me give you an example. Well, let

22 me lay all my cards out on the table, Ms. Cooper, because
23 you have been pretty honest with us so far. As you know,
24 we have indicted Mrs. Routier with capital murder, and
25 Judge Tolle has read that indictment and you have read it

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1 again today.

2 The trial proceeds this way: There's
3 two parts. The first part, we have to prove that
4 indictment beyond a reasonable doubt. Okay?

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

7 Q. If we do that, the jury finds the

8 defendant guilty. Of course, if we don't meet that
9 burden, it's not guilty, then everyone goes home. Okay?
10 But if we do prove guilty, then we move to the punishment
11 stage.

12 At the punishment stage, you may get
13 more evidence on the defendant's background, you may hear
14 nothing on their background, they may not have anything.

15 It can go either way, good or bad. You understand that?

16 But at the end of that evidence, you get these special
17 issues. Special issue number 1, and I'll go over these
18 in more detail in a moment.

19 But special issue number 1: The State
20 has to prove that the defendant would be a continuing
21 danger to society. All right.

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

24 Q. Now, if we do that, the juror answers
25 "yes." Then you move to this last question. That last

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1 question, and I want to summarize it; it is what we call
2 the mitigation question.

3 Basically, you look at all the
4 evidence and if you think a life sentence should be
5 imposed rather than a death sentence, you could answer
6 the question that way.

7 If you don't think there is evidence

8 that shows a life sentence should be imposed, that their
9 life should be spared, then you answer it "no." But if

10 you answer "yes" to that first question, and then "no" to
11 the second question, Judge Tolle won't have any choice,
12 he will sentence the defendant to death. All right?

13 If you answer it any other way, the
14 defendant will get a life sentence. Those are the only
15 two choices, the only two possible outcomes once the
16 defendant has been found guilty of capital murder, death
17 or life. Is that clear to you?

18 A. Yes.

19 Q. You don't write death in or life in,
20 but the Judge sentences the defendant according to how
21 you answer those questions. Okay?

22 A. Yes.

23 Q. Now, if that happens in this case, a

24 "yes" and "no," the defendant would be sentenced by Judge
25 Tolle to death. She will be taken to Huntsville, Texas,
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1 and placed on death row. I don't know if you have read
2 anything about death row. Have you?

3 A. Just that there is a lot of appeals
4 and that it is lethal injection.

5 Q. Right. The method is lethal
6 injection. Used to be by electrocution, now it's lethal
7 injection. Sometimes the methods or the descriptions of
8 execution appear in the paper.

9 But, Ms. Cooper, let me tell you, we
10 believe we have the type and quality of evidence to prove
11 that case beyond a reasonable doubt, prove that
12 indictment. And to prove these questions should be

13 answered "yes" and "no." The defense, obviously,
14 disagrees and will be fighting us all the way, but that
15 is where we will be coming from.

16 In a death penalty case, if the Judge
17 did sentence the defendant to death, like I said, they
18 would be put in Huntsville, Texas, and they wait.

19 Now, someday, I can't tell you when,
20 Judge Tolle would actually give an execution date, a
21 death warrant.

22 On that date, the defendant would be
23 moved to another location, the Walls Unit in Huntsville,
24 Texas, where the execution takes place, where they all
25 take place.

1 They might be given time with family
2 or friends, a minister perhaps, someone to talk to, and
3 to say their last goodbyes. But at 6:00 p.m., in fact,

4 shortly after 6:00 p.m. guards would come to her cell and
5 take her about 30 feet down a hallway into the execution
6 chamber.

7 They would place her on a gurney, that
8 you might see in the hospital, except this one is a
9 little different, there's leather straps on there. Her
10 legs, her arms, her chest, would be strapped down, where
11 she could not move. Technicians, doctors can't
12 participate in this proceeding, but technicians would
13 place needles in her arm, and on one side of the room are
14 witnesses that have to be there by law.

15 Now, after those needles are placed,
16 they go to another room, they lead to another room where
17 there are poisons. And after the defendant is given a

18 last chance to say her goodbyes, or her last statement,
19 poison would be injected into her veins. The process
20 takes 10 to 12 minutes usually. Her heart would stop.
21 You might read about her last words, could be anything.
22 But that is how the process happens,

23 and if that is how the case is proven in this case, that
24 eventually will happen. And I don't mean to get into the
25 description to be morbid, Ms. Cooper, but to let you know
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1 that executions do take place in Texas. There have been
2 over 100 people executed in the State of Texas.
3 And let you know that if you
4 participate in this case and the State proved it and you
5 answered those questions, that is what the outcome would
6 be. Okay? Now, you told us that you feel that in some
7 cases, and you have told us what they are, the death
8 penalty could be the appropriate out. Everyone, like I
9 said, feels differently about it.
10 Some people are just opposed to the

11 death penalty on all grounds; religious, moral opposition
12 to it. And they could not participate, because they

13 couldn't be a fair juror in this type of case. Other

14 people are for it in every case, like I said. Some
15 people are for it in some cases and they say, "Well, you
16 know, I could sit here and listen to the evidence and
17 answer those questions in a way. It might be hard for
18 me, but if you prove it, I could do it." Even though I
19 know the defendant will be executed.
20 And other people tell us this, "Look,
21 I am for the death penalty in some situations, but I am
22 not the kind of person who can sit here and make these

23 decisions, and know the person will be executed. I can't
24 have that on my conscience."
25 One example I give of describing that
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1 is, in Dallas there used to be a lot of skyscrapers going
2 up all the time, they don't have that many going up now,
3 but they used to. And I used to sit there and watch
4 those guys walk around, you know, at the very top on
5 those I-beams. I was glad they were building skyscrapers
6 because I thought that showed the city was growing. I

7 thought that was a good thing. But you couldn't have
8 drug me up there on top of them and helped them out in
9 any way. I am scared of heights. Okay?

10 A. Uh-huh. (Witness nodding head
11 affirmatively.)
12 Q. Some people feel the same way about
13 the death penalty. They think it is a law we need, but

14 in that particular type of case, they are not going to be
15 able to make those type of decisions.

16 Let me know how you feel, Ms. Cooper.
17 Do you think you could sit as a juror and make these
18 decisions, knowing the defendant would be executed
19 someday? Or is this just not your cup of tea?

20 A. I couldn't do it.
21 Q. Okay. And tell me why.
22 A. Well, I am having a hard time with
23 words on that.
24

25 THE COURT: Just go ahead, ma'am, just
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1 relax.
2 THE PROSPECTIVE JUROR: He kind of
3 shook me up a little bit talking about it.

4 THE COURT: I understand what you are
5 saying, just relax and tell us how you feel.
6 THE PROSPECTIVE JUROR: Well, I don't
7 think I could live with myself on -- I mean, I don't know
8 a great deal about the case and what little bit I know, I
9 don't think that I could live with myself if I had to
10 sentence her to death, and know that I had caused her to
11 die.

12 MR. TOBY L. SHOOK: Okay.

13

14 BY MR. TOBY L. SHOOK:

15 Q. Okay. Fair enough, Ms. Cooper. And
16 that is why we ask these questions. This isn't a test of
17 good citizenship, and this isn't a test to see if you
18 could be a juror in just any case, just this particular
19 type of case is what we are concerned about. Some people
20 can and some people can't, and that is why we just want
21 your honest opinions. And I believe you are being honest
22 with us now.

23 A. Yes, I am.

24 Q. Okay. Like I said, we can't preview
25 the case, but as best you know yourself, you couldn't
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1 answer the questions in this way and just live with
2 yourself; is that right?

3 A. That's right.

4 Q. Okay. You couldn't have that on your
5 conscience?

6 A. That's right.

7 Q. It's not a questions of what type of
8 evidence we put on, or if we have proven it to you
9 intellectually, it's just a matter of your own conscience
10 and how you feel?

11 A. That's right.

12 Q. I guess you have no objections about
13 sending someone to prison, it's the death penalty that --

14 A. That's right.

15 Q. -- that would hurt you?

16 A. That's right.

17 Q. And this is something you feel
18 strongly about, Ms. Cooper?

19 A. Yes.

20 Q. Okay. Something you are not going to
21 change your mind about.

22 A. No, I'm not going change my mind.

23 Q. All right. Well, you are being very
24 clear to me, but the law requires me to ask you just a
25 few more questions. So if you will bear with me. Okay?

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1 A. Okay.

2 Q. I'm not trying to argue with you. Let
3 me kind of go through this step-by-step. First of all,
4 as far as proving a person guilty, you know, the first
5 part of the trial where they committed that crime or not.
6 Would you be able to do that in a
7 capital murder case, or would your conscience bother you
8 even there? In other words, if we prove this thing to

9 you beyond a reasonable doubt with the evidence, could
10 you find her guilty of capital murder? Or would your
11 conscience prevent you from even making that initial
12 decision?

13 A. I could find her guilty as long as I
14 knew the death penalty was not involved.

15 Q. Okay. So you could make that --

16

17 THE COURT: Was what ma'am? The death
18 penalty was what?

19 THE PROSPECTIVE JUROR: Was not
20 involved.

21 THE COURT: Thank you, ma'am.

22

23 BY MR. TOBY L. SHOOK:

24 Q. So you could make that initial
25 decision?

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1 A. Yes, sir.

2 Q. It's in this punishment issue is where
3 you are going to have the problem?

4 A. Yes, sir.

5 Q. Okay. Now, I went over these so I
6 want to go in detail a little more, and then ask you some
7 more questions. Okay?

8 A. Okay.

9 Q. Do you understand, as I told you

10 before, the Judge sentences the defendant depending on
11 how these questions are answered. Do you understand
12 that?

13 A. Yes, sir.

14 Q. Okay. Let me read this first question
15 to you: "Do you find from the evidence beyond a

16 reasonable doubt that there is a probability that the
17 defendant would commit criminal acts of violence that
18 would constitute a continuing threat to society?"
19 Do you see that question is asking
20 you, the jurors, to make a prediction about how the
21 defendant would behave in the future?
22 A. Yes.

23 Q. And you could use the evidence of the
24 crime itself plus anything else you know about it. Let
25 me ask you, Ms. Cooper, that is asking you to make a
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1 prediction and the State has to prove that. If we get
2 you to answer "yes," we go on, you know, that is on the
3 way to the death penalty. "No" answer, obviously, then

4 there is no death penalty. "Yes" answer, we're still on
5 our way. Do you understand that?

6 A. Yes, sir.

7 Q. Okay. But we have got to prove a
8 "yes" answer. Are you telling me that because of your
9 conscientious scruples against the death penalty, in

10 imposing a death penalty sentence, would you be able to
11 answer that question "yes"? Or would you just have to
12 say, "No, I couldn't answer question number 1 that way.
13 I just couldn't do it."

14 A. If it was going to be for the death
15 penalty, no, I could not.

16

17 MR. S. PRESTON DOUGLASS, JR: Your
18 Honor, I'm going to object to that. The way he phrased
19 that is, would she even be able to answer the question.
20 I think the way it should be phrased is, "Would she

21 listen to the evidence and be able to arrive at a
22 verdict?" Not would she just not even write in --

23 THE COURT: Well, I'll let you ask
24 that question. Go ahead.

25 MR. S. PRESTON DOUGLASS, JR: Thank
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1 you.
2 THE COURT: I wouldn't want to deprive
3 you of your time with her.

4 MR. S. PRESTON DOUGLASS, JR: Thank
5 you.

6

7 BY MR. TOBY L. SHOOK:

8 Q. Do you understand that is where we are
9 heading when we are talking about these questions?

10 A. You are heading toward the death
11 penalty, okay.

12 Q. We have to prove that first one "yes"
13 to get to it.

14 A. Okay.

15 Q. And defense counsel brings up a good
16 point, because this is a major issue here. There's
17 people that you can say, intellectually, you know, you
18 could put on evidence and I know that that could be
19 answered "yes."

20

21 THE COURT: Ms. Cooper, to interrupt,
22 this is Mr. Richard Mosty of Kerrville who is also a
23 defense attorney.

24 THE PROSPECTIVE JUROR: Hello.

25 MR. RICHARD C. MOSTY: How are you?
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1 THE COURT: Who is also representing
2 Mrs. Routier. Excuse me, go ahead, Mr. Shook.
3 MR. TOBY L. SHOOK: Thank you, Judge.

4

5 BY MR. TOBY L. SHOOK:

6 Q. You know you could sit there and say,
7 "Look, I know what you are doing. You know, you can
8 prove to me this person is the meanest killer that has

9 walked the earth. Sure. I know that. You have proven
10 that to me with the evidence intellectually. But I,
11 personally, can't make that decision. So even though I
12 know it is a "yes" answer in my mind, my -- I am going to
13 be prevented from doing that. My conscience will prevent
14 me from answering this. I am going to answer it 'no.'"

15 You understand what I am saying?

16 A. Yes.

17 Q. There is a difference between being
18 proven by the evidence -- some people can go, "Look, if
19 you prove it, then I will answer it 'yes.'" Okay?

20 Other people tell me, "You can prove
21 it to me all day long, but my conscience is going to
22 interfere, I know myself that well." Do you understand
23 what I am saying?

24 A. Yes, sir.

25 Q. Okay. Is that how you feel?
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1 A. Yes, sir.
2 Q. So, what you are telling me is it's
3 not a question of the evidence, it's that your conscience
4 is still going to kick in in this punishment phase?
5 A. Yes, sir.
6 Q. And even though in your mind you know
7 that it has been proven to you beyond a reasonable doubt,
8 they are going to be a danger, they are a violent person,
9 you wouldn't be able to answer "yes" because you know a
10 "yes" answer is halfway there to the death penalty?
11 A. Yes, sir.
12 Q. Okay. Fair enough. Like I said, you
13 have been very open with me, and I appreciate it. I have
14 to keep asking you some more questions. Okay?
15 A. Okay.
16 Q. All right. Now, this last question,
17 you don't get to that question unless you found the

18 defendant guilty, and you answer that first question
19 "yes," and then you are almost to the death penalty.

20 Now, a "no" answer will equal a death
21 sentence. A "yes" answer to this last question will
22 equal a life sentence. And it is kind of lengthy, so let
23 me just read through it once. Okay?

24 A. Okay.
25 Q. "Taking into considering all of the
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1 evidence, including the circumstances of the offense, the
2 defendant's character and background, and the personal,
3 moral culpability of the defendant, is there a sufficient
4 mitigating circumstance or circumstances to warrant that
5 a sentence of life imprisonment rather than a death
6 sentence be imposed?"
7 Like I said, that question gets kind
8 of lengthy, and you won't be given any definitions of
9 what that question is. But what the question is asking,
10 I think, is this: If you look at all of the evidence,
11 and if you see something in the evidence where you can
12 give a life sentence or you think a life sentence should
13 be imposed rather than a death sentence, you will answer
14 it that way. But it is a question that is supposed to be
15 based on the evidence. Do you understand what I am
16 saying?

17 A. Yes, sir.

18 Q. Okay. Some people tell us, "Look, I
19 don't want to ever sentence anyone to death. You know, I
20 just couldn't do it. Even though I know that they are
21 guilty of this crime. I know that they are going to be a
22 continuing danger to society, I still couldn't do it."
23 Okay? "And even if there is, you know, I'm not going to
24 need any mitigating evidence. I am going to answer that
25 last question 'yes,' to give them a life sentence."

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1 Okay? Because if it is answered "yes," they get a life
2 sentence. That is a way out for the jurors.
3 Now, under the law you are supposed to
4 do it according to the evidence. If there is not
5 mitigating evidence, you have got to answer it "no."
6 But, you know what happens if that occurs? If there is a
7 "no" answer to that second question, it is a death
8 sentence from Judge Tolle. Do you understand that?

9 A. Yes, sir.

10 Q. Some people tell us, "That because of
11 my conscience, because I have to live with myself,
12 because I couldn't personally answer questions that would
13 result in someone's death, I am always going to answer

14 that second question with a 'yes' answer. I am always
15 going to answer that question in a way that would give
16 that person a life sentence, rather than a death
17 sentence. I don't care what the evidence is, that is my
18 way out, and I am going to take it." Is that how you
19 feel?

20 A. In this case, yes.

21 Q. Okay. You don't have any qualms

22 answering the question in a way to give them a life
23 sentence, but you are not going to answer it in a way
24 that would give them a death sentence?

25 A. That's correct.

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1 Q. Do you understand that -- are you
2 telling me that even if -- and what you are supposed to
3 do is look at the case, and if there is mitigating
4 evidence, you would answer it "yes," but if there is no
5 mitigating evidence, you would answer it "no." But you
6 couldn't do that, could you?

7 A. No, sir.

8 Q. Because a "no" answer to that would
9 equal a death sentence?

10 A. Yes, sir.

11 Q. So, are you telling the Judge that --
12 and we have to deal with hypotheticals, Ms. Cooper: If
13 you were placed, let's say, on a capital murder jury,

14 because of the way you feel about the death penalty, this
15 second question wouldn't be a matter of the evidence,

16 that you are always going to answer it "yes," so the
17 person would get life, rather than a death sentence?

18 A. Other than the cases I talked about
19 earlier.

20 Q. Okay. Unless it was a serial rapist?

21 A. Or something, yes, something like
22 that.

23 Q. But this type of case, the indictment
24 you have read, the murder of a child under the age of
25 six, you wouldn't be able to answer the question "yes" on
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1 that?

2 A. I could not --

3 Q. Okay.

4 A. -- give her the death sentence, no.

5 Q. Only in questions of serial rapist
6 murderer, and like the guy in California, and the
7 Unabomber type.

8 A. Right.

9 Q. The one that plans out and kills a
10 whole lot of people with bombs, those kind?

11 A. Right.

12 Q. But the indictment of a murder of a
13 child under the age of six, you couldn't do it in that
14 type of case?

15 A. No, sir.

16 Q. Okay. And does this also go back to,
17 ma'am, in your questionnaire we have a question that

18 says: Do you have any moral, religious or personal
19 beliefs that would prevent you from returning a verdict
20 which would result in the execution of a woman? And you
21 wrote "yes."

22 A. Yes.

23 Q. Do you remember that?

24 A. Yes.

25 Q. Okay. Is that, along the same lines
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1 here, you just could not return a verdict that would
2 result in the execution of a woman?

3 A. Yes, sir.

4 Q. Okay. Tell us a little bit about
5 that. Is it just a woman on trial, you just couldn't do
6 it in the case of a woman?

7 A. I think that is more it, and I don't
8 know a lot about women on trials for murder.

9 Q. Right.

10 A. You generally associate it more with
11 men.

12 Q. Sure. The first thing that comes to
13 mind usually is a man when we talk about murder and
14 capital murder.

15 A. Yes, sir.

16 Q. Because that is what we see on the
17 news.

18 A. Yes, sir.

19 Q. Obviously, though, the law doesn't say
20 man or woman, but some people do come and tell us, they
21 say, "Look, if it was a man on trial, I wouldn't have a
22 problem, but I just -- I couldn't do it if the case were
23 a woman." Is that how you feel?

24 A. Yes, sir.

25 Q. Okay. Fair enough. So kind of a
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1 recap.

2 A. Okay.

3 Q. Okay. And I am almost done, Ms.

4 Cooper.

5 A. Okay.

6 Q. But because of the type of a case this
7 is, murder of a child under the age of six, you are
8 telling us that your conscience wouldn't allow you to
9 answer these questions in a way, that is the "yes" and a
10 "no," in a way that would result in the person's
11 execution?

12 A. That's correct.

13 Q. Okay. As far as question number 1

14 goes, it wouldn't be a question of us proving that to
15 you, I mean, we could prove that to you in your mind
16 probably?

17 A. Yes, sir.

18 Q. But you couldn't bring yourself to

19 answer "yes," because you know that would be on the way
20 to the death penalty?

21 A. That's correct.

22 Q. Okay. And you are not going to forget
23 about how your conscience feels; is that right?

24 A. No, sir.

25 Q. And as far as the second question, no

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1 matter what the evidence there is, you are always going
2 to answer the question "yes," so that you can avoid the
3 death penalty?

4 A. That's correct.

5 Q. And that is no matter what the
6 evidence is, if there is mitigating evidence or not, you

7 are going to answer it that way because that is what your
8 conscience is going to tell you to do?

9 A. Yes, sir.

10 Q. And the fact that the defendant in

11 this case is a woman, that is not going to allow you to
12 answer the questions in a way that would result in the
13 death penalty either, is it?

14 A. No, sir.

15 Q. Okay. Ms. Cooper, is there anything
16 else that you think might be important?

17 A. Not that I'm aware of, sir.

18 Q. Okay. The bottom line is, ma'am, in
19 this type of case, this type of defendant, you are not

20 going to be able to forget about your conscience and your
21 objections to it, to giving someone the death penalty in
22 that type of case, are you?

23 A. I'm not going to change my mind, no,
24 sir.

25 Q. Okay. I appreciate your honesty with
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1 me, Ms. Cooper.

2

3 THE COURT: Is that it?

4 MR. TOBY L. SHOOK: That's all we
5 have, Judge.

6 THE COURT: Mr. Douglass?

7 MR. S. PRESTON DOUGLASS, JR: Yes,

8 Your Honor, thank you.

9

10 VOIR DIRE EXAMINATION

11

12 BY MR. S. PRESTON DOUGLASS, JR:

13 Q. Ms. Cooper, my name is Preston

14 Douglass. And I, together with Curtis Glover and Richard

15 Mosty represent Darlie Routier as the Judge told you

16 earlier.

17 When the State's attorneys get into

18 this, what they expect out of the case, obviously, they

19 have a perspective which is dramatically different than

20 my perspective sitting here. And as they correctly told

21 you, trials are in two possible phases in our State. The

22 first phase of a criminal trial is the guilt/innocence.

23 And the second phase, if there needs to be one, is the

24 punishment phase.

25 Now, I can tell you that we expect

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1 that there will not be a punishment phase in this trial.

2 Darlie Routier has entered a plea of not guilty, and she

3 will plead not guilty before this jury, and she will

4 wholeheartedly stand behind that plea of not guilty.

5 We get a little bit backwards in our

6 approach because the attorneys representing the State get

7 to go first, and their objective is punishment. So they

8 talk to you about punishment first. And that is the area

9 that, obviously, Mr. Shook has concentrated on because

10 it's what is more interesting to him in this case, the

11 punishment phase.

12

13 MR. TOBY L. SHOOK: Judge, I will

14 object to that.

15 THE COURT: I'll sustain the

16 objection.

17 MR. TOBY L. SHOOK: The whole case is

18 interesting to me.

19 MR. S. PRESTON DOUGLASS, JR: His goal

20 relates to punishment.

21 MR. TOBY L. SHOOK: Well, my goal

22 first is to get the defendant guilty.

23 THE COURT: We understand.

24 MR. TOBY L. SHOOK: I will object to

25 that.

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1 THE COURT: All the objections are
2 sustained, let's phrase our questions right. Both sides
3 are interested in seeing that justice is done. Thank
4 you.

5

6 BY MR. S. PRESTON DOUGLASS, JR:

7 Q. So, typically, what happens is a great
8 deal of emphasis is placed on the State on those
9 questions and on the death penalty. And since there has
10 been some concern you have raised, I am going to go to
11 that portion of the trial first. Even though, that is
12 not where my interest is, but I want to talk about that
13 first, the punishment phase.

14 The law doesn't require that jurors,

15 when they come and sit where you are sitting and
16 answering all of these questions, have to deposit their
17 common sense in a wastebasket when you come in the door.
18 And the term, "a jury of your peers" most certainly means
19 that that includes people of all backgrounds, all walks
20 of life, all feelings, all life experiences.

21 And the question, the operative

22 question is: Whether or not a juror can take what is
23 called a written charge, the Judge will prepare a long
24 document, that gives you as a juror every law that could
25 possibly apply to this case; and then, a juror who

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1 listens to the facts, takes what he or she has heard
2 about the facts and applies that to the law that the
3 Judge gives.

4 And then in that framework, that

5 narrow framework of following the law, the juror makes
6 certain determinations about what they heard from the
7 facts. In a guilt/innocence stage of the trial,
8 obviously, the first determination is: Has the State

9 proven its case beyond a reasonable doubt? If so, guilty
10 or not guilty.

11 You take the facts you have heard and
12 you apply the law the Court gives you, and you arrive at
13 a decision. That is what you take an oath to do. And if
14 you should decide that a defendant who is charged is

15 guilty, then and only then, do you move to this second
16 phase of the trial.

17 And then if you go through the same
18 process again, the State may or may not bring you

19 evidence, but they may bring you evidence that is
20 different, they may add to the evidence that they brought
21 at the first part of the trial.

22 The defense might bring you evidence.

23 You take all of that evidence in your fact finding, and
24 then the Judge, again, will give you another written
25 piece of paper that says, "This is the law".

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1 And, again, you apply those facts and
2 you will be given questions. And the questions, in this
3 particular case, would be written very much the same as
4 what you see on that board. And a juror would evaluate
5 the facts, and based on the facts that the juror, in his
6 or her own opinion, solely his or her own opinion,
7 believes answer the questions that the Court gives you,
8 in following your oath.

9 Now, you may have heard from things

10 like on TV, like the O.J. Simpson trial and things, that
11 there are people who pretend or make money thinking they
12 are jury consultants. And they might tell you, "Well,
13 you don't want to pick people who wear blue shoes. Or
14 you don't want to do this or that."

15 And quite frankly, I think that that

16 is just some high-priced guesswork. And what we rely on,
17 in the final analysis, is what people think about their
18 experiences. Those experiences are your experience and
19 no one else's experiences.

20 What becomes important is not that we
21 get people that are all the same to sit on a jury. Not
22 that we get people that all think alike, but only that we
23 get people that are fair, and people that are impartial,
24 and people that are willing to listen to all the
25 evidence. You might get people who have drastically

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1 different opinions about all kinds of issues.

2 But, you might agree with me, that

3 it's the difference of opinion that makes a jury a good
4 system; people from all walks of life, and all
5 backgrounds.

6 So, when we talk about the death

7 penalty, it is not necessarily so that every person has
8 to be the same about their feelings about the death
9 penalty. And I don't think anyone would disagree with
10 the statement that I am going make, that people who are
11 eager to serve just want to be on a jury so bad it just

12 kills them and they come up here and they audition for
13 it, those really are not the kind of people that you are
14 looking for in a very serious case. You want people who
15 think seriously; people who consider things seriously.
16 Now, I took from your questionnaire,

17 before you walked in, and I read them last night at home,
18 that you believe and favor the imposition of the death
19 penalty in certain circumstances. Am I right about that?

20 A. Yes, sir.

21 Q. Okay. As we sit here today, you have
22 not heard circumstance one about this case. You do know
23 that there is an indictment, and you do know that that
24 indictment has certain allegations. You might recall
25 that Judge Tolle told the big sea of people, in the very
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1 beginning, that in Dallas County 25,000 people a year get
2 an indictment. And that many, many of those people may
3 not even know that they are being considered for an
4 indictment, so they didn't get to tell their side of the
5 story. And Judge Tolle told you because of that, you can
6 consider that indictment as no evidence of proof of
7 anything. Do you agree with that?

8 A. Yes, sir.

9 Q. Because of that -- because the only
10 thing you have heard is an indictment, and we have to
11 talk in hypothetical situations, you really know nothing
12 about this case.

13 A. I do know something about it.

14 Q. You know what the allegations are?

15 A. I know what was in the newspaper.

16 Q. Right.

17 A. In Fort Worth.

18 Q. But would you agree with me, that that
19 is not evidence? That is just what people have claimed
20 about something.

21 A. Well, sometimes the media does get
22 things correct, not all the time, but sometimes.

23 Q. Well, let me give you an example: All
24 of us know about this poor fellow Richard Jewell, out in
25 Georgia.

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1 A. Yes, sir.

2 Q. He was hounded, followed by media
3 people, chased down the street like a criminal.

4 A. Yes, sir.

5 Q. And now we have found out he has been
6 cleared.

7 A. Well, that is because of the FBI.

8 Q. Okay. But also, the people in the
9 newsprint said, "Well, the FBI says he is guilty," and
10 put an incredible amount of scrutiny on him.

11 And now, what we have read in the
12 paper has not panned out to be true. And that is why we

13 don't try lawsuits in the newspaper. That is why, as the
14 Judge said, there is a gag order in this case. There has
15 been steps taken by our Judge to see that this case is
16 not tried in the newspaper because of the abuses that
17 occur. The only place this case is going to be tried is
18 with witnesses sitting in that chair that you are sitting
19 in right now.

20

21 THE COURT: The courthouse downtown,
22 of course.

23 MR. S. PRESTON DOUGLASS, JR: Yes,
24 sir, yes, sir.

25

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1 BY MR. S. PRESTON DOUGLASS, JR:

2 Q. We're not going to try the case here,
3 we're going to try it in the courthouse, but there will
4 be a chair in court like what you are sitting in.

5 So, what it comes down to is, is you
6 would agree with me, wouldn't you, that terms of facts,
7 under oath, hard evidence, that you haven't heard
8 anything about this case?

9 A. Not under oath, no, sir.

10 Q. Okay. And the question really comes
11 down to, yes, it's a serious case, but can you listen to
12 evidence as a juror, evaluate that evidence, and make

13 decisions, applying the law, based only on that evidence?
14 Could you do that as a juror? Say, "Well, that is what
15 the evidence showed me. And if the evidence showed me
16 that that person is going to be a future danger, I can
17 say that. I can say the person is a future danger." Can
18 you do that?

19 A. I don't know.

20 Q. Let me take that a step further. If
21 we were to get to the phase of the trial where you are
22 trying to make a determination of whether a person is a
23 future danger to society, one thing you said, Ms. Cooper,
24 is, "Well, if a lady goes to prison for a life sentence

25 and she gets out, she is going to be at an age where she
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1 won't have kids anymore and she can't commit that crime."
2 The law does not say, "Do you think

3 she is going to do the same thing again?" It doesn't
4 say, "Do you think there is a probability she will do

5 this same crime again?" The question is: Do you believe
6 that the defendant would commit criminal acts of
7 violence? That could be against anyone. And, you know,
8 you said "Well, I could give to someone who is a bomber,
9 or I could give it to a serial rapist."

10 We don't know what the State is going
11 to say about a defendant until we get there. They may
12 bring you facts that just curl your hair about a
13 defendant. And when you sit here right now, we don't
14 know what they are going to bring.

15 So, the question is: Could Ms. Cooper
16 listen to evidence of all different kinds, and say, based
17 on that evidence, "I believe the person is a future
18 danger." Could you keep your mind open, listen to the
19 evidence and make your own mind up about that?

20 A. I don't know.

21 Q. Let me take it one other way. If you
22 take an oath as a juror, and you say, "I will listen to
23 the evidence and I will make a decision." You wouldn't
24 change your answer if you believe the evidence told you
25 something, and you believed the evidence meant to you a

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1 certain answer, you wouldn't change your answer and lie
2 to yourself to get a different result. Would you?

3 A. No.

4 Q. Okay. So I take that to mean that
5 what you would do is, if they proved A, B, and C to me,
6 and that means that the answer in my mind is "yes," then
7 you on your oath, would be willing to write "yes" if you
8 felt in your heart that is the truth?

9 A. I would not write "yes" because that
10 leads to the death penalty, and I will not do it.

11 Q. Does that mean then that even if you
12 believe that the evidence proved that a person was a
13 future danger, if you in your heart of hearts believed,
14 well, the person is going to be dangerous as heck, that

15 you would then say, "But, I am going to put 'no,' because

16 I know if I say 'yes' it means the death penalty. I am
17 going to say 'no' just because I am going to change my

18 answer." Would you do that?

19 A. I have stated this case that --

20 because of the death penalty and a woman and what little
21 bit of circumstances I know, I could not send her to the
22 death penalty. I could not do it, under any
23 circumstances.

24 Q. Such that, even if you believe the

25 evidence proved one way, you would change your question
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1 or --

2

3 MR. TOBY L. SHOOK: We would object to
4 that.

5 THE COURT: Well, I know, yeah, I
6 think this will solidify it, but go ahead with the
7 question.

8

9 BY MR. S. PRESTON DOUGLASS, JR:

10 Q. But such that if you believed the

11 evidence meant that the person would be a future danger,
12 nevertheless, you would disregard what you believed, and
13 say, "I am not going to answer what I believe the
14 evidence showed. I am going to answer contrary to that,
15 and 'no' just because I am going to ensure a life
16 sentence takes place." Is that what you are saying?

17 A. I would assure that she would get a
18 life sentence, but not the death penalty.

19

20 THE COURT: That is fine. That is it.

21 MR. TOBY L. SHOOK: Judge, we would
22 move for cause.

23 THE COURT: Well, wait a minute. Just
24 a minute, just a minute. Is that the end of the
25 questioning?

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1 MR. S. PRESTON DOUGLASS, JR: Well,
2 Judge, when we had talked about how we were going to
3 handle certain issues, there was some discussion, and we
4 would deal with just that direct issue and then go back
5 to it should it determine -- to determine that that
6 person is not --

7 THE COURT: Well, that is fine. You

8 still have time, go ahead. I understand where we are.

9 Go ahead, you have plenty of time.

10 In other words, I am going to give you
11 an oath to follow the law.

12 THE PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Okay. And I am going to
14 ask you, I would ask you now: Could you set aside your
15 bias, against no death penalty? You have got to get a
16 death penalty to follow the law. If I gave you an oath,
17 knowing that by following it that you found that that
18 first question should be answered "yes," you would still
19 say, "Forget the oath, forget the law. If I answer 'yes'
20 and then I answer 'no,' she is getting death. No way am
21 I going to do that. No-how, no way"?

22 THE PROSPECTIVE JUROR: That's
23 correct.

24 THE COURT: That's it?

25 THE PROSPECTIVE JUROR: That's it.

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1 THE COURT: Okay. I think we have
2 dealt with that issue. I believe we have that one pretty
3 well nailed down.

4 MR. S. PRESTON DOUGLASS, JR: Your
5 Honor, I think in that regard that I would pass the
6 witness.

7 THE COURT: All right. Thank you.

8 Anything else Mr. Shook?

9 MR. TOBY L. SHOOK: Your Honor, we
10 move for the juror to be struck for cause, under
11 35.16(b)(1).

12 THE COURT: All right. Motion
13 granted.

14 We want to thank you very much for
15 your time and your attendance, and we appreciate your
16 candid answers, but you will be excused from further jury
17 service. We would ask that you not discuss anything with
18 anybody about what went on in here today until this trial
19 is over.

20 There is a gag order in the case and
21 if you violate it, I can impose monetary or jail time
22 sanctions. I'm not threatening you, I am just telling
23 you what I have to tell you.

24 THE PROSPECTIVE JUROR: I know.

25 THE COURT: I know you will probably
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1 tell it to your husband, but if the two of you could not
2 say anything else until after this trial is over which
3 should be at the end of January, first part of February,
4 we would be most appreciative. Thank you very much for
5 coming.

6 THE PROSPECTIVE JUROR: Yes, sir, all

7 right. Thank you.

8 THE COURT: All right. Anybody,

9 nobody else? That is it until after lunch? Right?

10 MR. RICHARD C. MOSTY: Your Honor, I
11 do have one thing I need to put on the record, Your
12 Honor.

13 THE COURT: All right. Silence,

14 please.

15 MR. RICHARD C. MOSTY: This came to my
16 attention, my legal assistant brought this to my
17 attention.

18 Salvador Monroy, is juror number 2.

19 THE COURT: Yes.

20 MR. RICHARD C. MOSTY: And I can't

21 remember exactly what he was asked about knowing me or
22 not knowing me. But -- and I had no recollection of it,
23 but my legal assistant told me that I had met with Mr.
24 Monroy in 1988, and that I had opened a file on him on a
25 divorce case. And they found the file, and as a matter
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1 of fact, there is my handwriting on a little interview
2 with him at 42 Cedar Drive West, which is where the guy
3 is, and I didn't believe it, but Sam corrected me.

4 And I did file for a divorce in 1988,
5 and I have no record. The last thing I have in the file
6 is I wrote him a letter saying that we sent his wife a
7 waiver of citation, but she never responded. I think the
8 case got dismissed for want of prosecution.

9 THE COURT: Probably did.

10 MR. RICHARD C. MOSTY: And my staff
11 seems to think that that wife died.

12 THE COURT: No doubt of natural
13 causes.

14 MR. RICHARD C. MOSTY: Well, at least
15 I wasn't involved. At least I don't think, unless it's
16 through divorce. I did not remember it. Obviously, Mr.
17 Monroy didn't remember it, but I thought I better bring

18 it to the Court's attention.

19 THE COURT: Thank you. All right.

20 You have brought it to the Court's attention. I assume
21 that the defense would have accepted that last juror if
22 she had been qualified.

23 MR. S. PRESTON DOUGLASS, JR: Oh, yes,
24 we would.

25 THE COURT: Well, all right, we'll see
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1 everybody --

2 MR. S. PRESTON DOUGLASS, JR: She and
3 Jimmie would be big pals.

4 THE COURT: Yes, she and Jimmie had a
5 thing going there. All right. See everybody at 1:30,
6 excuse me, 1:00.

7

8 (Whereupon, a short

9 Recess was taken,

10 After which time,

11 The proceedings were

12 Resumed on the record,

13 In the presence and

14 Hearing of the defendant,

15 As follows:)

16

17 THE COURT: This is after the lunch
18 recess. All right. Let's bring the juror in.
19 Mr. Arlie Lammers.

20 THE PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: All right. Have a seat

22 right up here please, sir.

23 If you will raise your right hand,

24 please, sir.

25

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1 (Whereupon, the prospective

2 juror was duly sworn by the

3 Court to true answers make

4 to the questions propounded,

5 concerning qualifications, after

6 which time, the proceedings were

7 resumed as follows:)

8

9 THE PROSPECTIVE JUROR: I do.

10 THE COURT: A-R-L-I-E, L-A-M-M-E-R-S,

11 is that correct?

12 THE PROSPECTIVE JUROR: Yes, sir,

13 that's correct.

14 THE COURT: All right. Thank you.

15 You are here today as a potential juror in the Darlie

16 Routier case. Mrs. Routier is the young lady sitting in

17 the burgundy dress to your right, she is the defendant.

18 She is represented by Mr. Curtis

19 Glover and Mr. Preston Douglass. Mr. Glover is from
20 Dallas, and Mr. Douglass is from Kerrville.

21 The State is being represented by Ms.

22 Sherri Wallace and Mr. Toby Shook.

23 MS. SHERRI WALLACE: Good afternoon.

24 MR. TOBY L. SHOOK: Hello.

25 THE COURT: Are you ready to go first,
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1 Mr. Shook?

2 MR. TOBY L. SHOOK: Ms. Wallace will,

3 Your Honor.

4 THE COURT: Okay. Go ahead.

5

6 Whereupon,

7

8 ARLIE GALE LAMMERS,

9

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

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

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

13 true, testified in open court, as follows:

14

15 VOIR DIRE EXAMINATION

16

17 BY MS. SHERRI WALLACE:

18 Q. Again, good afternoon, Mr. -- is it

19 Lammers?

20 A. Lammers, uh-huh, Arlie Lammers.

21 Q. All right. I am going to spend some

22 time talking with you a little bit about your

23 questionnaire and a little bit about the death penalty

24 and how you feel about it.

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)
2 Q. And some general principles of law
3 that apply to this case. Thanks for filling out your

4 questionnaire, that is a big help for us. And there is
5 no right or wrong answers, just let us know how you feel.
6 A. Sure.
7 Q. Thanks. First off, I see that you
8 know several lawyers here in town. Do you know either of
9 the local counsel; either Preston Douglass or Richard
10 Mosty?

11 A. Yes, I do.
12 Q. Okay. Tell me about how you know
13 which one or both, do know both of them?
14 A. I know both of them. I have met Mr.
15 Mosty, I don't know him well. I don't know that I know
16 Mr. Douglass real well, but we have had some Emmaus
17 activities together, which is a church function.

18 Q. Okay. So you all go to the same
19 church?
20 A. No, we don't. The Emmaus community is
21 a religious group of folks that meets on monthly basis.
22 Q. Okay.

23 A. Sometimes a weekly basis, we used to
24 meet on a weekly basis.
25

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1 THE COURT REPORTER: Excuse me. Can
2 you spell that, please?
3 THE PROSPECTIVE JUROR: E-M-M-A-U-S.
4
5

6 BY MS. SHERRI WALLACE:
7 Q. And what does that stand for? To show
8 my ignorance.
9 A. The walk to Emmaus.

10 Q. Okay.
11 A. When the pilgrims were walking.
12 Q. That is where it is from?

13 A. Yes, uh-huh.
14 Q. Okay.
15 A. And Jesus appeared to them.
16 Q. Uh-huh. I didn't know if that also
17 was an acronym for something?
18 A. No, no.

19 Q. Okay. How often do you all meet?

20 A. My reunion group, which is graduates,

21 meets once a week. And the community at large meets once
22 per month, the first Monday of each month.

23 Q. So, do you see Mr. Douglass about once
24 a month?

25 A. Well, no. I don't get to make it all

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1 the time nor does he. Probably maybe every three months

2 I am able to see Mr. Douglass.

3 Q. I know that Kerrville is a small town,

4 and it's not uncommon to run into the local lawyers.

5 A. Yes.

6 Q. Is there anything about that that

7 would influence you in this case?

8 A. Not at all.

9 Q. Okay. I also see you are a Cowboy

10 fan?

11 A. Was that on the questionnaire?

12 Q. Well, it says you like to watch the

13 Cowboys.

14 A. Oh, yes, uh-huh. I used to live in

15 Dallas.

16 Q. They didn't give you much to look at

17 yesterday, did they?

18 A. Not until the last minute.

19 Q. Mr. Lammers, what did you do in the

20 Navy?

21 A. I was an electronic technician,

22 aviation electronic technician, radio operator, airborne.

23 Q. Okay. Did do you that the whole 20

24 years?

25 A. No. The first four years I was

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1 sea-going electronic technician, and then I finished up

2 in the reserves, as an aviation electronic technician and

3 radio operator in transports and anti-submarine warfare.

4 Q. It sounds interesting.

5 A. It was.

6 Q. I see now that you work for, I think

7 it is M.H.M.R. Is that right?

8 A. Yes, I do.

9 Q. Tell me a little bit about your duties

10 there as a case manager.

11 A. Okay. In essence, a case manager

12 works with outpatients from the State hospital. In fact,

13 not all of them have been in the State hospital, but for
14 one reason or another, they need assistance with
15 maintaining independent living in the community.
16 And I have a caseload of like 26 folks
17 that I assist and maintain in this independence, and keep
18 them out of the State hospital to the best of my ability.
19 It's a lot less expensive to treat them outside than it
20 is inside.

21 Q. Sure. Do you visit them there in
22 their homes?

23 A. Yes, I do, a minimum of once per
24 month.

25 Q. And you have been doing that about
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1 three years?

2 A. Yes, a little over three years.

3 Q. And I see you have a couple of kids.

4 Do you have any grandkids?

5 A. Yes, I do. I have a grandson that was
6 two in July.

7 Q. My mom says that is the best part of
8 having kids is having grandkids.

9 A. Well, mine lives in California, so I
10 don't get to see them very often.

11 Q. Tell me a little bit about your radio
12 broadcasting background. What did you do?

13 A. It's gone on and off for years. I
14 first started in the military on AFRS as a rock and roll
15 DJ back in the mid '50s, that ages me a little bit. The
16 past ten years, I have been broadcasting on local
17 stations, two stations as a matter of fact.

18 Some DJ work, mostly talk shows, and
19 one program I have had running for over ten years. It's
20 called Radio-Tradio on Saturday mornings where people
21 call in and buy, sell and trade, and this type of thing.

22 We kibitz back and forth on the air
23 and so forth. Recently, just last Friday, I resigned
24 from that position.

25 Q. Okay. Just had enough?

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1 A. I got tired of working on the
2 weekends.

3 Q. I understand that. And the talk
4 shows. What sort of talk shows?

5 A. I had one talk show for a year, it was
6 called Do You Believe, it was a ministry of my own on the

7 air. I interviewed pastors and preachers where they
8 maybe called from the different denominations as to their
9 beliefs. I paid for that air time myself, and that was
10 only for a year.

11 Other talk shows, well, of course, the
12 Tradio thing is a talk show. And then I have been
13 hosting the Hill Country Garden Show for about the past
14 year, which we have a fellow that comes in and talks
15 about gardening and landscaping; and here again, and we
16 kibitz back and forth.

17 Q. I could probably use some help there
18 if I listened to that one. Do you have any questions for
19 me, before we get into this a little more deeply?

20 A. No, I really don't.

21 Q. Okay. Let me tell you up front: It
22 is our goal to kill that woman down there at the other

23 end of this table. I'll be up-front about that. We
24 believe we have the type of case and the quality of
25 evidence to do that. Would you have any trouble in
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1 participating in that process?

2 A. No, I don't have any problem with
3 that.

4 Q. All right. I see here that you,
5 excuse me, read a little bit about this case here in the
6 Kerrville paper.

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

9 Q. And, you know, this case has received
10 a lot of publicity, that is the main reason we're down
11 here.

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

14 Q. There is nothing wrong with having
15 read anything or seeing anything on television or hearing
16 anything on the radio, that doesn't disqualify you from
17 being a juror. But what we are looking for is 12 folks
18 that will wait and hear the evidence in the courtroom and
19 not make judgments based on what they read in the press.

20 A. Okay.

21 Q. I -- from your intellect and your
22 background I don't think you would have any problem doing
23 that. Would you?

24 A. I don't think I would.

25 Q. Okay. So you will wait, listen to the
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1 evidence in the case, and then make the judgment if you
2 are called as a juror.

3 A. Yes, I would.

4 Q. All right. I also see that it says

5 that you are in favor of the death penalty if someone has
6 willfully taken another person's life. Can you tell me a
7 little bit about your feelings with that, Mr. Lammers?

8 A. Well, I believe if a person has

9 intentionally or willfully taken another's life, that
10 they should pay with their own life. I don't believe in
11 having them rot in prison. I think they should just go
12 ahead and pay with their life.

13 Q. Okay. Here in Texas not all murder

14 cases are capital murder cases. In Texas you have got to
15 have murder plus something else, if you will. It just
16 depends on the -- sometimes certain victims make a murder
17 qualify for the death penalty.

18 A. Uh-huh. (Witness nodding head

19 affirmatively.)

20 Q. And sometimes murder plus maybe

21 another crime.

22 Let me kind of go over what are

23 death-penalty-appropriate cases here in Texas, if you
24 will. If you murder a police officer while he is in the
25 line of duty, or a fireman in the line of duty, or a
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1 prison guard while they're on the job. Those are
2 possible death penalty cases.

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

5 Q. Additionally, if you kill more than
6 one person, that is a crime that you would be eligible
7 for the death penalty. If you murder for hire, if I am
8 the one who pays somebody to murder and I would be

9 eligible for the death penalty, or the person who
10 actually takes the money, and for money kills someone.

11 Either end of that murder for hire scheme, you are
12 eligible for the death penalty here.

13 Additionally, if you do a murder plus
14 something else: Rape, robbery, a kidnapping, something
15 like that, another enumerated felony, then you could be
16 eligible for the death penalty.

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

19 Q. Or, as in this case, the murder of a

20 child under the age of six. Let me ask you, Mr. Lammers:
21 Do you believe those are appropriate types of cases for
22 the death penalty?

23 A. All of them?

24 Q. Yes, sir.

25 A. Yes, I do.

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1 Q. Okay. Is there anything you would add
2 to that list, if you were Governor of Texas?

3 A. Well, I don't know if it was included,
4 or did you say more than one person?

5 Q. Yes, sir.

6 A. Like in a mass murder?

7 Q. Yes, sir.

8 A. Something of that nature? Okay, yes.

9 Q. If you kill more than one, two or
10 more.

11 A. If you kill more than one, yes,
12 absolutely.

13 Q. Okay. Anything else come to mind?

14 A. I can't think of anything. My mind
15 doesn't run in those circles, I'm sorry.

16 Q. It's not something that you sit around
17 and think about?

18 A. I don't sit around and think about
19 those things. I can't think of any right offhand.

20 Q. All right. But those sound fair to
21 you?

22 A. Yes, they do.

23 Q. In your questionnaire you said -- it's
24 been a couple weeks since you filled this out, so I will
25 read it to you.

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1 A. Okay.

2 Q. You said that, "I believe the death
3 penalty is appropriate in all capital murder cases."

4 A. Okay.

5 Q. That is a common opinion of folks when
6 you are just talking about the death penalty and you are
7 talking about capital murder cases. Sure, if it's
8 capital murder, they ought to get the death penalty. And
9 that is fine to have that opinion as a citizen, but as a
10 juror, you cannot automatically say, "Somebody is guilty
11 of capital murder, therefore, they must get the death
12 penalty." The State has to jump through a couple more
13 hoops, and I want to talk to you today a little bit about

14 that.

15 The hoops, if you will, that we have

16 to jump through, well, let me back up a bit. There's two

17 phases to a trial. The first phase is the

18 guilt/innocence phase of the trial, we have to prove to

19 you beyond a reasonable doubt. You are familiar with

20 that?

21 A. Yes.

22 Q. Have you had jury service before?

23 A. No.

24 Q. Okay. And, if we find -- if you find

25 the defendant guilty, then we proceed to the punishment

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1 phase of the trial. In that phase, you may or may not

2 hear more evidence.

3 Now I can't really get into that, but

4 the commitment I will need from you is that when we get

5 to the punishment phase of the trial, you won't

6 automatically do anything. You will wait and evaluate

7 the entire evidence at that point. Will you do that, Mr.

8 Lammers?

9 A. Yes.

10 Q. Now, the evidence that you will have

11 to evaluate will be based on these two questions. The

12 first question is: "Do you find from the evidence beyond

13 a reasonable doubt, that there is a probability that the

14 defendant would commit criminal acts of violence that

15 would constitute a continuing threat to society?"

16 Now, as in the first phase of the

17 trial, the guilt/innocence phase, we have the burden of

18 proof. Here again, we have the burden of proof. We have

19 to prove to you beyond a reasonable doubt that there is a

20 probability that the defendant would be a future danger,

21 actually, if you want to just summarize that.

22 A. Uh-huh, yes.

23 Q. What does probability mean to you?

24 And let me tell you why I ask you these questions. The

25 Judge is going to give you, if you are a juror in this

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1 case, a bunch of definitions, but he will not give you

2 any definitions for this question. So, that is why it is

3 important to us to know kind of what these words mean to

4 you.

5 A. Okay. Proven beyond a reasonable

6 doubt that the defendant would very likely commit another

7 criminal act of violence.

8 Q. Okay. What is criminal acts of
9 violence? What sort of things would you be looking for
10 with that?

11 A. Well, a criminal act is something that
12 is against the law.

13 Q. Okay.

14 A. And violence, meaning to -- with
15 intent to injure another person.

16 Q. So any sort of injury?

17 A. An injury to a person. Although
18 violence could be constituted as destroying property, but
19 I would look at it more as an act of violence against a
20 person, on another person.

21 Q. Now that is just individual
22 preference?

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

25 Q. How you look at it. And constitute a
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1 continuing threat to society. Society and -- I will --
2 instead of putting you on the spot and asking you what

3 that means to you, I'll kind of give you some guidance in
4 what I am looking for.

5 In your mind, would society include
6 people in the prison; that means prison guards,
7 chaplains, folks in there doing rehabilitation, if you
8 will, relatives visiting inmates or inmates, would
9 society include everyone to you?

10 A. I think society has to include
11 everybody because we're all in society. I would consider
12 if a person was an inmate and they were a threat to

13 another inmate, then certainly that would be part of
14 society. But I take it more so to mean law-abiding
15 citizens more than anything else.

16 Q. And you would agree with me, wouldn't
17 you, Mr. Lammers, that there are law-abiding citizens
18 that work in the prisons as well, they may be a chaplain
19 or a guard?

20 A. Oh, absolutely, yes.

21 Q. Okay.

22 A. I would hope so.

23 Q. We all would hope so, yes, sir. So,
24 would you hold us to our burden in that case, to prove to
25 you that it is probable that the defendant would be a

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1 future danger and not automatically answer that question;
2 but wait and hear the evidence?

3 A. I would have to have all of the
4 evidence before I would make a decision, yes.

5 Q. And that is, yeah --

6 A. I got a little bit lost there when you
7 asked the question. I think I drifted off for a minute.

8 Q. Well, it's probably my fault. We have
9 talked to a bunch of folks, and so if I am not making
10 sense --

11 A. Well, in order to answer that
12 question, I believe that all of the evidence would have
13 to be presented, because I think sometimes the last
14 things said might sway a person one way or another. I
15 believe it should all be in.

16 Q. Okay. So you would wait until you
17 heard everything to make up your mind.

18 A. Yes, I would.

19 Q. Perfect. In order for the defendant
20 to die, I'm sure you have probably already figured this
21 out, but that question must be answered "yes."

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

24 Q. And then we would move -- if it's
25 answered "yes," you would move to the second special
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1 issue. And if you would read that along with me. It
2 says: "Taking into consideration all of the evidence,
3 including the circumstances of the offense, the
4 defendant's character and background, and the personal

5 moral culpability of the defendant, is there a sufficient
6 mitigating circumstance or circumstances to warrant that
7 a sentence of life imprisonment rather than a death
8 sentence be imposed?"

9 And, obviously, for the death penalty
10 to result, that question must be answered "no."

11 Some people call this second question
12 a safety net. Let's say you found that she is guilty of
13 capital murder, killing a child under the age of six, you
14 believe she is a continuing threat, but something, and
15 you do not even have to imagine what in the world it
16 would be, but something in your mind, in your heart here,
17 makes you believe that the right thing to do, the only

18 thing you could do to live with yourself, is see a life
19 sentence is imposed.

20 Again, what we're looking for here,
21 Mr. Lammers, is somebody that will wait and not answer
22 that question before they have heard anything. And it's
23 kind of a deal, some people say, "You know it when you
24 see it." You don't have to think of what it is.

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

2 Q. You may sit on five million death
3 penalty cases and never hear anything that is sufficient
4 mitigating circumstance in your mind. But if you do, you
5 will know it when you see it. Can you do that?

6 A. Yes.

7 Q. All right. Is there anything that
8 comes to mind when you read that question about
9 sufficient mitigating circumstance? And I am not trying
10 to commit you here.

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

13 Q. Does anything, just off the top of

14 your head, sound mitigating to you in that it would
15 lessen somebody's moral blameworthiness?

16 A. Well, this would be like a tangible
17 situation. Right?

18 Q. Whatever you --

19 A. Is the way I would understand that.

20 Q. Right.

21 A. Something tangible that you could
22 really put your finger on. But then again you said
23 something that may be in the back of your mind, do you
24 know what it is that is keeping you from making this
25 judgment.

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1 Q. Let me give you an example: Some
2 people think that if the crime was committed while the
3 defendant was drinking or was drunk.

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

6 Q. That that would be mitigating, because
7 they didn't really -- I mean, they knew what they were

8 doing, and they knew the difference between right and

9 wrong, but they were so drunk that they don't think they
10 should have the death penalty.

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

13 Q. Other people think, well, alcohol, if
14 it's involved, I mean, nobody put it down their throat,
15 that ought to be aggravating. Okay?
16 Some people think that child abuse in
17 the background, they were sexually abused as a child,
18 that that would be something to look at.

19 A. Uh-huh. (Witness nodding head
20 affirmatively.)
21 Q. Or that they had a sufficient
22 education. Some people look at education two ways.

23 Well, they had the opportunities, so they should have
24 known better, or they have done something with their

25 life, so we will give them a chance. You see how things
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1 can cut both ways?

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

4 Q. Is there anything in talking like that
5 that comes to mind in your mind about what would be
6 mitigating to you?

7 A. No, I think if there are circumstances
8 of that nature, that it should be brought to the Court's
9 attention by experts in the field; psychiatrists, or a
10 social worker, or psychologist, somebody that has worked
11 with these things all the time. And should be -- should
12 bring it up to light, and as a presentation to all. And
13 then to make an opinion or judgment on that basis.

14 Q. Okay. There is nothing automatically
15 that you would say, "That is mitigating." You would just
16 have to wait and hear it?

17 A. I would have to wait and here it, yes.

18 Q. Fair enough. And is your mind -- you
19 know -- in your questionnaire you put that you believe
20 the death penalty is appropriate in all capital murder
21 cases.

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

24 Q. And again, I know I am probably
25 repeating myself on a couple of things, but I want to
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1 make it real clear, because they are going to have some
2 opportunity to ask you some questions, and I want to make
3 sure that I have covered all my bases.

4 A. Okay.

5 Q. You can't just automatically say, "You
6 know, guilty equals death."

7 A. No.

8 Q. You have seen now from the questions

9 that you don't even ever write death or life. You just
10 answer these questions in such a way that that sentence
11 is the only sentence. The Judge puts it in a formula,
12 computes it, and he has no choice.

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

15 Q. Could your mind be open to a death or
16 life sentence? In other words, could you follow the law
17 and answer these questions, according to your beliefs?

18 A. Yes.

19 Q. On the second question, the other

20 thing I wanted to mention that I didn't say was, there is
21 no burden of proof in that question. That is just,

22 again, the safety net. So the sufficient mitigating
23 circumstance, if there is one, could come from either
24 side.

25 A. Okay.

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1 Q. Okay. I want to talk with you a
2 little bit now about the indictment. And it's before
3 you, Mr. Lammers, it's there, it should be on your desk.

4 A. Oh, okay.

5

6 THE COURT: If you will read the
7 typewritten portions.

8

9 BY MS. SHERRI WALLACE:

10 Q. The typewritten paragraph there. Just
11 let me know when you are finished.

12 A. Okay.

13 Q. I think the Judge read that to you a
14 couple of weeks ago.

15 A. The first day, uh-huh. (Witness
16 nodding head affirmatively.)

17 Q. And that is what we must prove to you
18 beyond a reasonable doubt.

19 In any case, that is our burden. And

20 we can do it several different ways; we can do it through
21 direct evidence or indirect, what is sometimes called
22 circumstantial evidence.

23 Direct evidence is an eyewitness, that
24 is it. In most or in many murder cases, the eyewitness
25 is dead. The defendant doesn't have to testify, we can't
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1 call the defendant to the stand, and you can't use that
2 against us or her in any way.
3 So, because of that, in murder cases
4 oftentimes, we must present and prove our case through
5 indirect evidence; what is called circumstantial
6 evidence. And that is everything else: Fingerprints,
7 DNA, blood spatters, statements by the defendant that

8 don't comport with the crime scene, fibers, anything like
9 that.

10 Would you be able to convict the
11 defendant of capital murder based on circumstantial
12 evidence alone, if we proved it to you beyond a
13 reasonable doubt?

14 A. Okay. That is -- yes.

15 Q. Okay. But your mind is not closed to
16 that?

17 A. No.

18 Q. Okay. Additionally, on that piece of
19 paper is everything we have to prove to you beyond a
20 reasonable doubt, and we no other burden. And -- where
21 am I going with this? Let me tell you where I am going.
22 We don't have to prove motive to you, it's not a
23 requirement in Texas.

24 And there is really a good reason for
25 that. As I just mentioned earlier, and the Judge had
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1 mentioned a couple of weeks ago, the defendant has an
2 absolute right not to testify.

3 A. Yes.

4 Q. If we called her to the stand, the
5 case would be reversed in a heartbeat. So because of
6 that, we're not required to prove why a defendant did

7 something. It may be after you have heard the case that
8 the motive is clear as a bell. And it may be that there
9 are several motives. You may think one is a primary
10 motive, another juror may think another one is a primary
11 motive. Or it may be that you heard everything and you

12 still, you know, scratch your head and go, "I don't know
13 why, but I know she did it."

14 Would you follow the law in that

15 respect and not require the State to prove motive?

16 A. Yes.

17 Q. Okay. Now, I want to talk with you a

18 little bit about some general principles of law. The

19 Judge went over some of these but it's been a couple
20 weeks, so I am just going to restate them.

21 The defendant has an absolute right to

22 be presumed innocent. All that means is, another way of
23 saying we have the burden of proof, which we gladly
24 accept. If you voted right now, you would have to find
25 her not guilty, because you have not heard anything.

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1 A. Okay.

2 Q. Additionally, the indictment is no

3 evidence of guilt. You can't use that in any way. And
4 she has an absolute right not to testify, and you would
5 not use that against her, would you?

6 A. No, it's her privilege.

7 Q. All right. One other thing I don't

8 think the Judge did cover was that all witnesses must be
9 treated equally when they start. They are all going to

10 come in, they are all going to take an oath, and they are
11 all going to start telling their story, they are all

12 going to start testifying. Okay? And you have to wait
13 until you hear from a witness to judge their credibility.

14 Let me tell you where I am going here.

15 Sometimes defense attorneys, I'm not saying these guys,
16 but sometimes defense attorneys would say, "Would you
17 believe a police officer simply because he is a police
18 officer?" Well, that is kind of a trick question because
19 you can't do that, because you have to wait to hear it.

20 A. Right.

21 Q. Would you be able to wait and judge

22 all the witnesses equally?

23 A. Oh, yes.

24 Q. And one other thing is you are not

25 entitled to consider parole. And I know parole is

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1 something you see in the newspapers and hear about, but
2 there really is a great reason for that. And it is that

3 it changes, like the wind, with the folks that are on the
4 Board of Pardons and Paroles, with whoever the Governor
5 is, with whatever the law is, with whatever the
6 legislature says.

7 And so, because of that and because
8 there is no certainty, you must assume that a life
9 sentence is just that, a life sentence, and you may not
10 consider parole in any way. Would you be able to do
11 that?

12 A. Yes.

13 Q. Okay. I think that is about all of my
14 questions, Mr. Lammers. Do you have any questions for
15 me?

16 A. No, I don't.

17 Q. Okay. Again, what we're looking for
18 is somebody that can keep an open mind and wait until
19 they hear the evidence in the courtroom.

20 A. Okay.

21 Q. Thank you for your candor.

22 A. Thank you.

23 Q. Okay.

24

25 MS. SHERRI WALLACE: We will pass this
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1 juror.

2 THE COURT: Thank you, Ms. Wallace.

3 All right. Go ahead, Mr. Douglass.

4 MR. S. PRESTON DOUGLASS, JR: Thank
5 you, your Honor.

6

7 VOIR DIRE EXAMINATION

8

9 BY MR. S. PRESTON DOUGLASS, JR:

10 Q. Mr. Lammers, I have been thinking
11 about probably this question more than any other ones and
12 I would hope you feel as awkward calling me Mr. Douglass
13 as I feel calling you Mr. Lammers.

14 A. I do.

15 Q. Okay.

16

17 THE COURT: Well, feel free to call
18 each other whatever you wish.

19 MR. S. PRESTON DOUGLASS, JR: Well,
20 it's hard not to call someone what you call them
21 everyday.

22 THE COURT: Well, perhaps we better
23 keep it on the record.

24 MR. S. PRESTON DOUGLASS, JR: Well, as

25 long as it's with a smile.
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1 THE PROSPECTIVE JUROR: Right.

2

3 BY MR. S. PRESTON DOUGLASS, JR:

4 Q. So, if I don't call you Mr. Lammers
5 and I say Arlie a couple of times, it's not out of
6 disrespect.

7 A. I understand that, I know that.

8 Q. Okay. You can call me whatever you
9 want to call me.

10 A. That's okay, Preston.

11 Q. In this matter, obviously, from where
12 I sit representing, along with Curtis and Richard Mosty
13 and Mr. Mulder from Dallas, all of us have a very

14 different perspective from that of the attorneys
15 representing the State.

16 In that regards, and I know you have
17 been up there, I know you have been answering questions
18 very honestly and forthrightly for a while. Obviously,
19 since this is the only opportunity anybody from this side
20 of the deal will get to talk to you, it's going to take
21 me a little bit of time, and I hope you will just bear
22 with me?

23 A. Sure, you bet.

24 Q. When the death penalty is involved in
25 a case, it seems almost necessarily that a great deal of
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1 the discussion centers around that penalty, about the
2 death penalty and someone's feelings about it. To be

3 very candid and up front with you, Arlie, Darlie Routier
4 has entered a plea of not guilty. She is going to enter
5 a plea of not guilty in front of the jury, and will stand
6 behind that plea 100 percent throughout the trial.

7 It is our expectation that we will not
8 be talking about punishment issues, in that the
9 guilt/innocence stage of this trial is what the whole
10 thing is about. So, while I will talk to you a little
11 bit about punishment issues, because it's my only
12 opportunity and I am required to do so, I want to talk to
13 you about the guilt/innocence phase of the trial.

14 Do you recall back when Judge Tolle
15 was talking about indictments, that in Dallas County
16 there are some 25,000 indictments issued each year. Do

17 you remember that?

18 A. I don't remember him giving that exact
19 number, I really don't.

20 Q. Okay. He said that as an estimate
21 that there are approximately 25,000 indictments are
22 issued every year.

23

24 THE COURT: There are slightly over
25 25.

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1 MR. S. PRESTON DOUGLASS, JR: Over
2 25,000 indictments.

3 THE PROSPECTIVE JUROR: I'm sure
4 there's a lot. I used to live there, it's a large city.

5

6 BY MR. S. PRESTON DOUGLASS, JR:

7 Q. Not only that, but he pointed out to
8 the panel, when you all came in the first day, that any

9 one single Grand Jury panel meeting on any one single day
10 might return as many as 100 or maybe 125 indictments
11 against people, just in their one period of time they are
12 sitting there during the day, is what I recall Judge
13 Tolle saying.

14 And he went on to say that in many of
15 those situations the person who is accused and the person
16 who finds themselves with an indictment, never knew that
17 they were being investigated, never had the opportunity
18 to come down to the courthouse and tell their side of the
19 story.

20 Does that surprise you to hear that?

21 A. Well, it doesn't surprise me in that,
22 since there's a lot of things happen in Dallas County of
23 a lesser nature. It would surprise me that an indictment
24 for capital murder would go by so callously, I would
25 think that a person accused of capital murder would be
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1 aware that there is something going on.

2 Q. And that brings up another point.

3 When you came up here, obviously, you saw the TV trucks
4 sitting out there --

5 A. Oh, yeah, sure.

6 Q. -- and you saw a roomful of people and
7 you saw judges and you saw lawyers representing the State
8 that have come a long way. And really there are two

9 groups of people that look at things that way. So you

10 will find people that say, "Let me tell you, if someone
11 is indicted and all those trucks and all this stuff is
12 going on, I believe where there is smoke there is fire."
13 And they tend to believe that there has just got to be

14 something to something if all this commotion is going on.

15 There are also people that say, "Well,
16 I heard what the Judge said that an indictment is no
17 evidence," and they discount that. They discount the
18 fact that an indictment has been issued.

19 How do you feel about it?

20 A. Where there is smoke, there is fire?

21 Q. Uh-huh. (The attorney is nodding head
22 affirmatively.)

23 A. And all the news media and everything?

24 Q. Yes. What do you think about that?

25 A. First of all, I believe the news media

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1 is there because it's newsworthy someplace, back in

2 Dallas, Houston or San Antonio. Being a part of the

3 media for a number of years, I know that your news story
4 sells better if you have got something hot and spicy on
5 it, you know.

6 And that is part of the broadcasting I

7 did, too, was news for quite a while. To me that doesn't
8 have any bearing, you know, the satellite dishes are

9 there, the high technology, the big to-do, the circus
10 atmosphere is something just to gather news and sell
11 newspapers and radio and TV time I believe.

12 Q. Do you place any importance as far as
13 your prospective service as a juror, does that mean
14 anything to you, thinking about being a juror?

15 A. No, not at all.

16 Q. As you know, everyone in our state

17 that has been accused of a crime is presumed innocence?

18 A. Yes, thank goodness.

19 Q. Do you -- based on the fact that there

20 has been an indictment issued, do you believe that that
21 in any way affects the presumption of innocence, lessens
22 the presumption of innocence?

23 A. No.

24 Q. Simply put, an indictment is nothing

25 more than a piece of paper that tells a defendant, puts
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1 them on notice as to just what in the world they are
2 charged with.

3 A. Right.

4 Q. And it's the piece of paper that gives
5 this Judge jurisdiction to conduct a trial. Can you tell
6 us, Arlie, that I don't care what an indictment says, I
7 am going to make the State prove its case. I am not
8 going to believe that there is any evidence associated
9 with an indictment.

10 A. Are you asking me if I believe that?

11 Q. Right.

12 A. That there is no evidence associated
13 with the indictment?

14 Q. That an indictment itself is no
15 evidence of guilt?

16 A. Yes, I believe that.

17 Q. You go along with that?

18 A. Yes, I do, uh-huh. (Witness nodding
19 head affirmatively.) It's up to the State to prove it --
20 this.

21 Q. Okay. Now, getting to that, the
22 burden of proof lies with the attorneys representing the
23 State and never shifts to the defendant.

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

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1 Q. I have heard it said before that in
2 the other courtroom where they have some ceiling fans,
3 that one judge said that Preston could just simply sit

4 there during the whole trial, watch the ceiling fans spin
5 around, and then if he determined that he didn't think

6 the State had proved it's case, do nothing more, than
7 just stare at the ceiling fans until the trial is over.

8 It's kind of a silly example, but I
9 think it accurately shows that there is absolutely no

10 obligation on a defendant -- of a citizen charged with a
11 crime, to prove anything. Do you think that it is
12 incumbent upon a citizen who is charged with a crime to
13 prove his or her innocence?

14 A. To prove that they are innocent?

15 Q. Do you think that should be required?

16 A. No, I think they are letting you know
17 that when they say they are not guilty. I don't think
18 they have to prove anything.

19 Q. Let me ask you about a hypothetical
20 situation.

21 A. Okay.

22 Q. Assume you are a juror and you have
23 heard some evidence in the case and the State calls -- I

24 don't know, a bunch of witnesses. And you as a juror sit
25 there and you say, "Boy, this is a close question." But
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1 the last witness gets off the stand and one of the
2 attorneys representing the State stands up and says, "The
3 State rests its case." And Judge Tolle looks over at the
4 defense lawyer and says, "Do you want to call a witness?"
5 "No. We don't want to call anybody. We rest our case."
6 And you are sitting there and you say,
7 "Wow. They have proven -- the State maybe has proved
8 something happened, but I have got some questions in my
9 mind."

10 Now, how do you handle that? What do
11 you think, how do you resolve the questions left when you
12 say to yourself, there is no more evidence that is going
13 to be presented?

14 A. You still have some questions about
15 what is going on? Is that what you are saying?

16 Q. Let's say you have heard the evidence.

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

19 Q. And the evidence has raised some
20 questions in your mind. You know there was a crime.

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

23 Q. You know there is a lot of people
24 maybe pointing fingers.

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

2 Q. And you know we're having a trial, but
3 maybe the evidence has not absolutely convinced you, and
4 you are thinking, boy, I would sure like to hear a little
5 more. But the defense, they decide they are not going to
6 say a word. How do you deal with that?

7 A. Well, not ever having been on a jury
8 before, I probably would ask the judge to -- maybe to

9 clarify something, or whoever does that in a court.
10 Maybe to clarify some of the past questions that had been
11 answered, maybe I just don't have it clear in my mind.
12 If that is possible to do that.
13 Or if that is not possible, I would

14 have to rely upon the evidence that has been presented.
15 And if the State thinks they have proved their case, I
16 would have to rely on that evidence alone, if I am not
17 allowed to ask for further clarification.

18 Q. All right. In any event, you wouldn't
19 feel like the defendant has to put on some evidence to
20 respond?

21 A. No.

22 Q. Okay.

23 A. And as in her defense lawyer,
24 attorney, then it would be up to you to say something
25 else if you wanted to or not.

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1 Q. Would you agree that there is no
2 requirement that any evidence be put on?

3 A. There is no requirement, no. The
4 evidence, well, going back to the prosecutor here, they
5 are the ones that have to prove the guilt, not the
6 defendant.

7 Q. Now, same situation, and you are
8 sitting there and you are thinking to yourself, but I
9 have some questions in my mind. I have some doubts about
10 the outcome of the case.

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

13 Q. If the burden of proof is on the State
14 to prove their allegation beyond a reasonable doubt, and
15 you still have doubts, what is your verdict in that
16 situation?

17 A. If I still have doubts, then that is
18 not beyond a reasonable doubt, if I am still doubtful

19 about this.

20 Q. Right.

21 A. I would have to go with not guilty.

22 Q. Okay. One of my partners has used as
23 an analogy a circle and a light flashing through the
24 circle as the presumption of innocence. That you have a

25 clear circle and there's light coming through it. If you
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1 will just kind follow along with me, and that when a
2 trial starts, there is no proof that has been brought.

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

5 Q. But then as the trial goes along, the
6 State may bring different types of evidence which begin
7 to perhaps block out the light coming through.

8 A. Okay, uh-huh. (Witness nodding head
9 affirmatively.)

10 Q. Would you agree with me that in order
11 for the State to meet its burden of proof, it has to

12 completely obliterate any light coming through this
13 circle, as an analogy. It has to completely block out
14 any rays of reasonable doubt that might be coming
15 through.

16 A. So, if there is just one little

17 pinnacle of light coming through, that would be some
18 doubt. Right?

19 Q. Right.

20 A. That is the inference you are making?

21 Q. Right, right.

22 A. Okay. It would have to be filled
23 completely.

24 Q. So, and that is exactly where I was
25 headed. Is if you have it completely black, but in your
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1 mind, you sit there and you say, "But there is a doubt
2 that I have that I cannot resolve."

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

5 Q. Can you pledge to this Court and to
6 this defendant that you would resolve any reasonable
7 doubt that you have in favor of the defendant?

8

9 MS. SHERRI WALLACE: Judge, I was
10 standing to object to saying any doubt, but he cleared it
11 up by reasonable doubt.

12 THE PROSPECTIVE JUROR: Reasonable
13 doubt, yes, yes.

14

15 BY MR. S. PRESTON DOUGLASS, JR.:

16 Q. And you realize that just like the

17 saying the tie goes to the runner, that any doubt which
18 you can base on reason that you believe is a doubt that
19 is just not something you pull out of the air, but you
20 base it on what you reasoned.

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

23 Q. That if you have a doubt, no matter
24 how great, that you must resolve that in favor of the
25 defendant?

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1 A. Yes.

2 Q. Are you comfortable with that?

3 A. Yes.

4 Q. All right. Now, I know you mentioned
5 in your questionnaire that you felt that it's an
6 important right of a defendant not to testify. There are
7 some people that feel like, that if they were on trial --
8 there are really like three groups. There is the -- some
9 group that says, "If I was on trial for something, I dang
10 sure would get up there and say anything I can think of
11 saying."

12 Some people say, "I don't know, I'm
13 not sure. I would probably rely on what my lawyers tell
14 me to make that decision." Then there is another group
15 that says, "I'm not a very good talker, and I have never
16 done this before. They are liable -- And I would be so
17 nervous, they are liable to twist everything around I say
18 to where nothing comes out the way I want to say it.

19 Don't get me near there."

20 Can you identify with any one of those
21 particular groups?

22 A. Yes.

23 Q. Which would you identify with?

24 A. Well, I would probably rely on my
25 attorneys, accept their advice. And because, even though
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1 I am used to speaking before people, I'm sure some real
2 hot-shot lawyer could get my words twisted around. So I
3 would rely on my attorneys.

4 Q. Some people use the example, and I
5 know this is certainly true of me, if I went to a
6 mechanic and he said I needed to change my distributor
7 cap, or the electrical engineering or something, I'm
8 going to believe them, because I don't know a dang thing
9 about that stuff.

10 A. Sure.

11 Q. Okay. Let's talk about motive for a
12 minute.

13 The State has said, and correctly so,
14 Ms. Wallace has said that motive is not a procedural

15 hurdle, an element that they must prove. Let me give you
16 an analogy: You can probably see in that indictment
17 where it says that on or about a certain date, in Dallas
18 County, that they allege a crime was committed.

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

21 Q. For instance --

22 A. It doesn't give a date or anything.

23 Q. Okay.

24

25 THE COURT: Well, it does up at the
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1 top.

2 THE PROSPECTIVE JUROR: Oh, at the
3 top, oh, okay.

4 THE COURT: The whole thing is the
5 indictment.

6 THE PROSPECTIVE JUROR: Oh, I see.

7 MS. SHERRI WALLACE: That preprinted
8 part.

9 THE PROSPECTIVE JUROR: Oh, okay.

10 MR. S. PRESTON DOUGLASS, JR: And
11 you'll see it gives a date.

12 THE PROSPECTIVE JUROR: Oh, the 6th of
13 June, okay.

14 MR. S. PRESTON DOUGLASS, JR: And you
15 will notice it also says in Dallas County.

16 THE PROSPECTIVE JUROR: Uh-huh.
17 (Witness nodding head affirmatively.)

18

19 BY MR. S. PRESTON DOUGLASS, JR:

20 Q. For instance, those are the things

21 that the State has the burden to prove to you beyond a
22 reasonable doubt. For instance, they must resolve, you
23 know, they must prove it happened in Dallas County?

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

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1 Q. That is a hurdle they have got to
2 cross. As you correctly pointed out, motive is not

3 listed, it does not say why this happened. So, it's not
4 a procedural burden we have got to get over. But, as a
5 juror, you have an ability to sit through the evidence.
6 It's your right to listen to all of the evidence and

7 decide based upon what you hear whether they have met
8 that very high burden of proof.

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

11 Q. Can you agree with me that while they
12 may not have to prove why from the standpoint of a
13 motive, that in some circumstances the absence of proof
14 of motive may raise questions in your mind?

15

16 MS. SHERRI WALLACE: Your Honor, I'll
17 object to him attempting to commit the juror based on
18 things we do not have to prove.

19 MR. S. PRESTON DOUGLASS, JR: Your
20 Honor, we have been through this, I think.

21 THE COURT: Well, I'll let him ask his
22 question, but I see what you are saying. The State never
23 has to prove motive. You understand that?

24 THE PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: So they are not trying to
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1 commit you, I won't let anybody commit you on something
2 they don't have to prove. But if you will listen to Mr.
3 Douglass's questions, I think it becomes rather clear.

4 THE PROSPECTIVE JUROR: Would you
5 restate the question, please, Preston?

6

7 BY MR. S. PRESTON DOUGLASS, JR:

8 Q. Sure. What my question is: While
9 they don't have a burden that the Judge requires them to
10 prove why a crime happened, could you agree that in some

11 circumstances if you have evidence that you are trying to
12 piece together as a juror, that the absence of proof of a
13 motive might raise questions in your mind, such that you
14 may develop a reasonable doubt? Could you foresee a
15 situation where that could happen?

16 A. The absence of proof of a motive?

17 Q. Right.

18 A. There won't be any proof of motive.

19 Q. Okay. Imagine a situation where you

20 say to yourself -- well, first off, you don't really know
21 what proof there is going to be of anything.

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

24 Q. The fact that they don't have the
25 burden doesn't mean they can't come try to explain
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1 something.

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

4 Q. You know, I mean --

5 A. Oh, they can try to explain the
6 motive, even though they don't have to prove it?

7 Q. Yes. It's not required.

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

10 Q. But they may try to put on evidence.

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

13 Q. In a hypothetical case, you just can't
14 determine. For instance, if they are trying a bank

15 robbery case, and someone goes in to rob a bank, they
16 don't have to prove the reason they went in. But we all
17 know they are going to say, "Well, and he grabbed the
18 money and he walked out the door. He went in there to
19 grab money."

20 What I am getting at is, can you see
21 that if you are trying to weigh different parts of
22 evidence, and you are trying to see what makes sense to
23 resolve the burden of proof beyond a reasonable doubt in
24 your mind, decide whether they have met that burden of
25 proof?

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

3 Q. That, perhaps, if the story doesn't
4 fit, you have just got one piece of evidence, you have
5 another, but they just don't mesh together. Can you

6 understand that the fact that there is an absence of
7 proof of motive, you might say, "Well, I understand point
8 A, I understand point B, but it doesn't lead to point C.
9 And because there is no proof as to how you connect these
10 two things together, I would have a question my mind."

11 A. There would be a reasonable doubt

12 then.

13 Q. Right. And what I'm saying is, we

14 can't tell you what the evidence is going to be.

15 A. Right.

16 Q. I am going to say, can you understand

17 that in some situations that the absence of proof -- the

18 absence of proof of why, may cause you to say, "Well, I

19 needed that glue to hold these different pieces of

20 evidence together." Can you understand that?

21 A. Yes, I understand that, okay. That

22 would lead to the reasonable doubt then.

23 Q. Could.

24 A. Could, yes.

25 Q. Would agree it might be able to lead

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1 to reasonable doubt?

2 A. It might be.

3 Q. All right. Now, taking it one step

4 further. I do not in any way believe, Arlie, that after

5 hearing the evidence in this case you are not going to

6 believe that there was a terrible crime committed. Okay?

7 We all know that. As a juror, can you appreciate that

8 your duty as a juror is not to solve the crime, but to

9 determine whether the allegations in the State's

10 indictment are proven beyond a reasonable doubt? Can you

11 appreciate the difference between that?

12 A. Yes.

13 Q. All right. Ms. Wallace earlier talked

14 about -- she may not have in so many words, but there has

15 been talk, and we have talked to different people, so

16 sometimes I forget which ones we have talked to different

17 people about. Direct versus indirect evidence. Direct

18 evidence being an eyewitness that says, "I saw this."

19 And indirect evidence being circumstantial evidence.

20 You, as a juror, are not given any

21 scale or any kind of formula for determining which

22 evidence means more to you, what you are going to put

23 more weight on. You might hear an eyewitness and say, "I

24 don't believe a word that guy said." Person who claims

25 to be an eyewitness. You might hear other kinds of

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1 evidence and say, "I believe everything about that

2 evidence, but I don't believe any of it, or I believe

3 part of it." That is within your sole discretion as a
4 juror.

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

7 Q. What Ms. Wallace was asking you is,
8 can you, if the case -- if a case that is presented is
9 based solely on circumstantial evidence, fingerprints,
10 hair fibers or things, if it's based only on that, can
11 you then judge the case and hold the State to proof
12 beyond a reasonable doubt? You said, "Yeah, I could?"

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

15 Q. I also am curious as to whether you
16 can appreciate that there can often be a difference

17 between direct and indirect evidence? And that you may
18 put some weight, heavy weight, on some evidence and some
19 you might say I don't think it is worth any weight, but
20 that is your choice. Do you understand that?

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

23 Q. Are you comfortable with that?

24 A. Well, you are talking about indirect
25 evidence?

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1 Q. Circumstantial evidence.

2 A. Circumstantial evidence, right. Yes,
3 I am comfortable with that.

4 Q. Can you appreciate sometimes
5 eyewitness testimony may be better than circumstantial
6 evidence? And sometimes circumstantial evidence may be
7 better than eyewitness testimony? But it's up to you to
8 make that decision in your mind as to which persuades
9 you --

10 A. In my mind the eyewitness testimony,
11 if they are telling the truth, would carry more water

12 than circumstantial evidence.

13 Q. All right.

14 A. If they are truthful.

15 Q. All right. And I am just going to go
16 back one more time to one issue I think we went through.
17 When we talk about the presumption of
18 innocence, what really, from my situation gets more
19 important is, that you don't presume us guilty.
20 A. Yes, right.

21 Q. I don't think in this trial we're

22 asking for a head start, we're just asking to start even.

23 A. Uh-huh. (Witness nodding head

24 affirmatively.)

25 Q. And it certainly isn't even if it

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1 begins with a presumption, and we have got to start two
2 pegs down. Do you believe, Arlie, that regardless of

3 where you are from and your background and all those
4 things, that you indulge that presumption of innocence to
5 us and let us all start equal.

6 A. Absolutely, and I don't know anything

7 about this case other than what the Daily Times said.

8 Q. Have you ever done any reading or

9 studying about reasonable doubt as a level of proof?

10 Have you ever had any classes in that or anything?

11 A. No, I don't think I have. I am trying
12 to think back in college work.

13 Q. It used to be, and I know probably

14 once or twice while we were in the same reunion group, we
15 might have talked about court cases and things like that.

16 But I don't think it was often.

17 A. Not very often, no.

18 Q. Okay. Reasonable doubt is the highest
19 burden of proof there is in our State.

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

22 Q. If you are on a civil jury deciding
23 damages, money --

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

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1 Q. -- the level of proof is a
2 preponderance of the evidence.

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

5 Q. For instance, somebody gets in a
6 wreck, hurts their neck and they want some money. All
7 that the plaintiff must show in that case is 51 percent,
8 the greater weight of the evidence. You see the old

9 scales of justice wherever they are tipped, ever so
10 slight. That is who carries the burden of proof.

11 Obviously, that is much lighter degree

12 of proof than in a criminal. Do you agree with me on
13 that?

14 A. Yes.

15 Q. One up from that is the burden of

16 proof called clear and convincing evidence. Clear and
17 convincing evidence speaks for itself, it's obviously
18 very strong evidence. And that is the kind of evidence
19 in family law cases, for instance, it has to be that

20 burden of proof, before, for an example, you would take a
21 child away from a mother. You have to prove your
22 allegations by clear and convincing evidence. Can you
23 appreciate that that is higher than preponderance?

24 A. Yes.

25 Q. But still, believe it or not, clear

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1 and convincing evidence is even lower than beyond a
2 reasonable doubt.

3 Can you pledge that you would hold the
4 State to that very high burden of proof in this case of
5 reasonable doubt?

6 A. Yes, I can pledge that.

7 Q. All right. Now, as you know -- well,
8 one last thing: I anticipate that in this trial you will
9 see photographs. And the photographs, I would assume,
10 would be bloody and gruesome.

11 And I imagine that those photographs
12 might even be blown up, for whatever purpose to blow them
13 up. If you receive photographs that are of a graphic
14 nature, is there any possibility that the fact that you
15 are made to look at those photographs would cause you any
16 problems in sitting as a juror?

17 A. I would have to say that it would
18 cause me a problem to see photographs like that. I think
19 I would be less than human if I said no. Okay? I
20 realize that things like that have to be done in cases
21 like this, and so it's something that I can live with.

22 Q. Okay. The question in my mind is: If
23 because you see photographs like that, it would so
24 overwhelm your senses that you think, I am going to make
25 somebody pay for this, regardless of the proof in the

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1 trial.

2 A. No, I would not be swayed like that.

3 Q. Okay. Can you appreciate that there

4 is a fundamental difference in what you see in a picture
5 and whether that is proof of who done it?

6 A. Yes.

7 Q. Okay. Now, as I told you earlier, I
8 am not going to have an opportunity to talk with you
9 again. And I want to go through the punishment issues

10 for a second because, I mean, at this point it is my last
11 chance.

12 A. Take all the time you need, Preston.

13

14 THE COURT: Well, you have exactly 17
15 minutes left.

16 MR. S. PRESTON DOUGLASS, JR: Well,
17 the Judge will tell me --

18 THE COURT: You can take all the time
19 you need until 10 minutes after.

20

21 BY MR. S. PRESTON DOUGLASS, JR:

22 Q. I want to go through a couple of
23 issues that came up in your questionnaire.

24 A. All right.

25 Q. Arlie, before you ever get to this
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1 special issue, before you ever start to resolve this
2 question at all, you absolutely have found someone guilty
3 beyond a reasonable doubt of a capital murder.

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

6 Q. And as the word was that you had put

7 in your questionnaire, that is an intentional killing.

8 A. I believe I put the word willfully.

9 Q. Right. Before you even get to the
10 issue of these issues, a jury has already made the

11 decision beyond a reasonable doubt, that whoever the
12 defendant is, that that person committed a willful act of
13 violence that results in a death.

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

16 Q. And not only that, that it might have
17 been coupled with a robbery, or a rape, or an arson. It
18 might have been the killing of a police officer.

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

21 Q. It might have been the killing of a
22 child under six.

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

25 Q. So, running through a hypothetical,
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1 you understand, that before you ever get to this
2 question, that has been decided. Okay?

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

5 Q. My question to you then is: If you
6 have already decided someone willfully took a life, in
7 your mind, are you open to consideration of evidence of
8 these two issues? Or do you believe that you are
9 starting out with the death penalty as a proper result,
10 if they prove a person guilty of capital murder?

11 A. Well, if they have proven the person
12 is guilty of capital murder, that they willfully took
13 this person's life?

14 Q. Right.

15 A. Would I still be in favor of the death
16 penalty?

17 Q. Well, let me rephrase that.

18 A. I'm sorry. I misunderstood that.

19

20 (A brief interruption due to a fire alarm
21 test was experienced.)

22

23 THE COURT: I guess the walls won't
24 come tumbling down, so let's continue on as we say. You
25 might explain that a little bit more.

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1

2 BY MR. S. PRESTON DOUGLASS, JR:

3 Q. Before you ever reach these issues, a
4 jury has already found someone guilty of capital murder.

5 A. Okay.

6 Q. And that, whether you use the word
7 willfully or not, that means that that person
8 intentionally took a life, maybe more than one life.

9 A. Okay.

10 Q. And from your questionnaire, I thought
11 it was fairly clear that if someone, you used the word
12 willfully, and I am going to use the word intentionally
13 because that is what the law says, if someone
14 intentionally took a life, then it seems to me that your
15 heartfelt belief was that that person would automatically

16 receive a death sentence. Is that the way you feel
17 today?

18 A. Yes.

19 Q. Now, in fairness to yourself, if you
20 have already heard the evidence in the first phase of the
21 trial and you have decided beyond a reasonable doubt that
22 the person is guilty, and intentionally took a life, in
23 fairness to yourself, do you think that you can consider
24 these special issues knowing that you believe a death
25 sentence in that situation is appropriate?

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1 A. Could I consider both of those special
2 issues?

3 Q. Yes.

4

5 THE COURT: Have both sides made it

6 clear how the death sentence is given in this State? I
7 don't think either side has brought that out.

8 MR. S. PRESTON DOUGLASS, JR: Well,
9 let me take a stab at that.

10 THE COURT: Take a stab at that.

11 MR. S. PRESTON DOUGLASS, JR: Yes,
12 sir.

13 THE COURT: Well, let me say, if you
14 do not find -- you do not assess the death penalty, it's
15 how you answer after the guilt or innocence. If you find
16 Mrs. Routier not guilty, everybody goes home. If you
17 find her guilty, then you answer those two issues.

18 THE PROSPECTIVE JUROR: Okay.

19 THE COURT: And I, depending on how
20 you answer them, set a death sentence depending on your
21 answers.

22 Go ahead, Mr. Douglass.

23

24 BY MR. S. PRESTON DOUGLASS, JR:

25 Q. The question that I am asking is: If
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1 you have come through the guilt/innocence phase of the
2 trial, and you have resolved in your mind that the person
3 intentionally took a life.

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

6 Q. My question to you earlier was from my
7 reading of your questionnaire, it is your feeling that
8 that person should be sentenced to death; is that right?
9 A. That's right.

10 Q. Okay. Now, to me, the question next
11 flows is, after you believe that that person, and you
12 have found them guilty and you believe that person should
13 be sentenced to death.

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

16 Q. Would your mind then be made up, for
17 instance, that these questions were going to be answered
18 such that the person got a death sentence? That the
19 death penalty was imposed?

20 A. That these questions -- we have
21 already stated that the person is guilty.

22 Q. Right.

23 A. And that the death penalty would be
24 imposed.

25 Q. Right.

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1

2 THE COURT: No. You are not
3 getting -- both sides are not making this point clear.

4 MR. S. PRESTON DOUGLASS, JR: All
5 right. Let me --

6 THE COURT: Please explain how those
7 questions have to be answered for a death penalty to be
8 imposed.

9 MR. S. PRESTON DOUGLASS, JR: All
10 right.

11

12 BY MR. S. PRESTON DOUGLASS, JR:

13 Q. Before a person receives a death

14 penalty --

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

17 Q. -- the jury first has to determine

18 beyond a reasonable doubt, and answer the question "yes,"
19 that that person would probably commit criminal acts of
20 violence that would constitute a continuing threat to

21 society. Okay?

22 First question, you believe that --
23 that is what people call a future danger question.

24 A. Uh-huh. (Witness nodding head

25 affirmatively.) Right.

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1 Q. Do you believe that that person would

2 be a future danger to society?

3 A. Uh-huh. (Witness nodding head

4 affirmatively.)

5 Q. If that answer is "yes," and that is

6 one step. Then second, this is the second question in

7 this situation, is called the mitigation question. And

8 that is, taking into consideration all the evidence, do

9 you believe that there is a mitigating circumstance, or

10 any mitigating circumstances, that means that in the

11 final analysis a life sentence should be given. That

12 there is sufficient mitigation, such that a life sentence

13 should be imposed. If you answer that question "no,"

14 that there are no sufficient mitigating circumstances,

15 you have the "yes" to future danger and the "no" to

16 mitigation?

17 A. Uh-huh. (Witness nodding head

18 affirmatively.)

19 Q. Then in that situation the Judge

20 resolves that and says, "Well, that is the death

21 sentence, the way the jury answered those questions." I

22 believe that is the way that is set out.

23 A. Okay, uh-huh. (Witness nodding head

24 affirmatively.)

25 Q. Okay. Now, going back, knowing that

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1 it is a "yes" and a "no," if it's "no" to future danger,

2 or "yes," there is sufficient mitigation, a life sentence

3 is imposed.

4 A. Okay.

5 Q. Either one of those.

6 A. Uh-huh. (Witness nodding head

7 affirmatively.)

8 Q. Now, my question to you is: If you

9 have reached the point in your mind that an intentional

10 killing has taken place and a person has been convicted

11 beyond a reasonable doubt of capital murder, is it your

12 opinion, to begin with the first issue, that you are

13 going to believe that a person would be a future danger

14 to society, regardless of the evidence, and that you are

15 going to resolve this question "yes," simply because a

16 person has been convicted of a capital murder without

17 respect to the evidence that is presented?

18 A. Okay. Okay. My answer would be that

19 the person has been convicted beyond a reasonable doubt,
20 or proven beyond a reasonable doubt that they are guilty.

21 I don't believe it necessarily means that they would be a
22 threat to society later on, because they did that one
23 crime.

24 Q. Okay. So if I understand --

25 A. In all cases, that would not be true.

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1 Q. Okay. So, if I understand what you
2 are saying, you wouldn't automatically answer this
3 question "yes"?

4 A. Well --

5 Q. You would?

6 A. Well, no. Okay. I would not agree to
7 that whole thing, you're right, I would not automatically
8 answer "yes."

9

10 THE COURT: You would listen to the
11 testimony?

12 THE PROSPECTIVE JUROR: Yes, sir, I
13 would listen to the testimony.

14

15 BY MR. S. PRESTON DOUGLASS, JR:

16 Q. You are open to the proposition that a
17 person could be guilty of capital murder, yet not be a
18 future danger?

19 A. Absolutely.

20 Q. All right. Okay. Now, let's walk
21 through this one more step. If you have found somebody
22 guilty of capital murder, and then as you deliberate, you
23 have determined that you believe the person would be a
24 future danger to society, would you be able -- and now
25 you said guilty of intentional killing?

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

3 Q. And second, the person is a future
4 danger.

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

7 Q. Could you, with an open mind, consider

8 evidence of mitigation, such that a life sentence would

9 be imposed? Or would you say, "That there is no way I
10 could consider a life sentence in that situation."

11 A. I think there could be mitigating

12 circumstances.

13 Q. Now, you have had some time to think
14 about it.

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

17 Q. So, if I understand what you are

18 saying, you could say, "Yes, there are mitigating
19 circumstances."

20 A. Yes, if there were mitigating
21 circumstances, I could say "yes."

22 Q. All right. Let me talk to you a
23 little bit about mitigation. Mitigating is a term that
24 gets thrown around by lawyers, but I'm not sure it gets
25 talked about much in the real world. I tend to use, and
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1 I think Ms. Wallace said it a little bit earlier when she
2 was talking to you, that mitigating circumstance might be
3 a circumstance that lessens the moral blameworthiness of
4 someone. Do you accept that as a proposition that makes
5 some sense?

6 A. Moral blameworthiness?

7 Q. It may be it lessens the person's
8 responsibility.

9 A. Well, I think there could be some
10 circumstances where that would be. I do believe that
11 most people should take responsibility for their actions,
12 but since I work in the mental health field, I do believe
13 that could be a circumstance that could be used.

14 Q. I think they asked you earlier, maybe
15 you have had some time to think about it. Can you think
16 of anything that mitigates in your mind as you just sit
17 there right now?

18

19 THE COURT: He is not required to
20 conjure up any set of circumstances.

21 MR. S. PRESTON DOUGLASS, JR: I
22 understand. I am just curious as to whether he can think
23 of any.

24 THE PROSPECTIVE JUROR: Could I think
25 of a circumstance that might come up as a mitigation?
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1 MR. S. PRESTON DOUGLASS, JR: Yes.

2 THE PROSPECTIVE JUROR: I probably
3 can, but I won't tell you.

4

5 BY MR. S. PRESTON DOUGLASS, JR.:

6 Q. Okay. Let me ask you this:

7 Mitigating circumstances between me and you can be
8 completely different. We might be on a jury and you

9 might say, "Preston, I think because the person is young,
10 in light of his background, that that mitigates in this
11 situation." And I might say, "Arlie, I disagree with you
12 about youth, but I believe this child's background is so
13 bad that that mitigates."

14 The law does not require, if you

15 deliberate as a juror, that you and I as jurors agree as
16 to the specific mitigating circumstance.

17 A. Uh-huh. (Witness nodding head

18 affirmatively.)

19 Q. But only let's us consider different
20 circumstances. Can you appreciate that?

21 A. Yes.

22 Q. Okay. If I understand what you are
23 saying, you would be open to considering evidence of
24 mitigation.

25 A. Definitely, I am open, yes.

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1 Q. Okay. The last thing about these
2 special issues.

3 You notice that the top one talks
4 about reasonable doubt?

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

7 Q. And says: Do you find from the

8 evidence beyond a reasonable doubt, that there is a
9 probability? And it's probably slipped my mind, did you
10 define probability for us earlier in your mind?

11 A. Yes, I did to Ms. Wallace.

12 Q. Yes. And how did you feel about
13 probability?

14 A. Let me see if I can remember. Well,
15 the probability that -- the likelihood that this -- that
16 another criminal act would be committed. Likelihood, I
17 believe, is the way I expressed that, as I recall.

18 Q. Would you agree that that is more than
19 a mere possibility?

20 A. Yes.

21 Q. Okay. Would you also agree, from a
22 reading of that special issue, that it requires the State
23 to prove beyond a reasonable doubt that likelihood that
24 you have spoken of?

25 A. Yes.

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1 Q. Okay.

2 A. It does.

3 Q. Does that seem like a high burden?

4 A. Does it seem like a high burden to the
5 State?

6 Q. Yes.

7 A. Yes, it is a high burden, yes. It
8 would be a hard job, I imagine.

9 Q. All right. I don't remember -- you
10 had --

11

12 THE COURT: You have four minutes
13 left.

14 MR. S. PRESTON DOUGLASS, JR: I'm not
15 going to use it, I promise.

16

17 BY MR. S. PRESTON DOUGLASS, JR:

18 Q. With respect to your opinions, your
19 opinions are solely yours?

20 A. Yes.

21 Q. And when you become a juror, there is
22 no requirement that you vote with the majority, or that
23 you voice anything other than what is your opinion. It
24 is your vote.

25 A. That's right.

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1 Q. Are you, Arlie, the kind of person
2 that when you get back in the jury room, if you look

3 around, and they take a -- let's say they take a quick
4 vote, and you realize that you are on the short end of

5 the stick for an issue. Are you the kind of person that
6 will stick by your convictions and vote that way, even
7 though it appears that you might be in the minority?

8 A. Yes, I can do that. I have done that,
9 that is the way I am.

10 Q. It probably is over -- isn't
11 completely obvious, but in a case as serious as this,

12 there might be some heated discussions about things
13 amongst jurors. Would that cause you any problem? Do
14 you feel like you are comfortable with the fact that you
15 may have to stick by an opinion or even advocate your
16 opinion to the other jurors?

17 A. Yes, I can do that.

18 Q. Okay.

19

20 MR. S. PRESTON DOUGLASS, JR: Can I

21 have one minute, your Honor?

22 THE COURT: It still counts.

23

24 BY MR. S. PRESTON DOUGLASS, JR:

25 Q. The last thing. I was looking at your
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1 questionnaire and it looked like your son, Lance, had
2 interviewed with a sheriff's department, but it wasn't

3 clear whether he had accepted that job or he had gotten
4 it.

5 A. Oh, I had spoken with his fiancee

6 about a week ago, and they hadn't had any reports at that
7 time. This is in Santa Cruz County, California.

8 Q. Okay.

9 A. And it's his life, he can become a
10 deputy sheriff if he wants to. I would rather him not,
11 but it's his life.

12 Q. Do you have any children that are in
13 law enforcement right now?

14 A. No, I do not. I don't have any family
15 member at all in law enforcement.

16 Q. All right. You know that in
17 determining the credibility of the witnesses, it is your
18 sole -- you are the only judge in our court, nor anyone
19 else can tell you how you are going to receive certain
20 witnesses.

21 How do you feel about police officers
22 testifying as opposed to civilians? Or do you place any
23 particular weight on any testimony? How do you feel
24 about that?

25 A. No, there is no particular weight
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1 placed either way, I just want to hear the truth. I
2 don't care if they are in uniform, or police officer, or
3 civilian, whatever.

4 Q. Did you ever serve on a court-martial

5 when you were in the Navy?

6 A. No, nor was I ever court-martialed.

7 Q. I certainly didn't ask that. Do you
8 have any questions of me?

9 A. No, I don't.

10 Q. Looking on the way you judge yourself,
11 what you know about yourself, if you, God forbid, were

12 sitting in a position where you were accused of a crime,
13 would you be satisfied as knowing that a person of your
14 background and the way you feel about things would be

15 sitting in judgment of you as a juror?

16 A. Yes, I would like to have 12 people on
17 the jury that would be able to think like myself.

18 Q. Okay.

19

20 MR. S. PRESTON DOUGLASS, JR: Thank
21 you. I appreciate it very much.

22 THE COURT: Thank you. Mr. Lammers,
23 could you step outside briefly, please, don't leave.

24 THE PROSPECTIVE JUROR: Don't leave?

25 THE COURT: Don't leave, we'll be
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1 calling you back in in just a minute, don't run away.

2 THE PROSPECTIVE JUROR: Okay.

3

4 (Whereupon, the prospective

5 juror was excused from the
6 room, and the following

7 proceedings were held,
8 outside of his presence
9 as follows:)
10

11 THE COURT: Okay. After we hear from
12 each side on this juror, we are going to take a brief
13 break.

14 MS. SHERRI WALLACE: Excuse me. The

15 State will accept the juror.

16 THE COURT: Okay. What says the
17 defense?

18 MR. S. PRESTON DOUGLASS, JR: We
19 excuse the juror; and exercise our peremptory.

20 THE COURT: Peremptory challenge?

21 MR. S. PRESTON DOUGLASS, JR: Yes.

22 THE COURT: All right. Thank you. I
23 appreciate it. Let's have Mr. Lammers back in.
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: All right. Mr. Lammers,
6 we want to thank you very much for coming, but you will
7 be excused from jury service.

8 THE PROSPECTIVE JUROR: Okay.

9 THE COURT: I would appreciate it if
10 you would not speak about anything you have heard here

11 until the trial is over, it won't be over until the first
12 part of February. If you could just keep it quiet and to
13 yourself, the Court is appreciative of that too. The gag
14 order is in effect, and it does require either monetary
15 or incarceration penalties. So, thank you, very much.

16 THE COURT: Who is next? We will take
17 a break.

18
19 (Whereupon, a short

20 Recess was taken,
21 After which time,

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

25 Hearing of the defendant,
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1 As follows:
2

3 THE COURT: Have a seat right here,
4 please, ma'am. You are Rosie Gutierrez?
5 THE PROSPECTIVE JUROR: Yes, sir.
6 THE COURT: G-U-T-I-E-R-R-E-Z.
7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: All right. Raise your
9 right hand, please, ma'am.
10 Do you solemnly swear or affirm you
11 will true answers make to all the questions propounded to
12 you concerning your qualifications as a juror, so help
13 you God?
14 THE PROSPECTIVE JUROR: I do.
15
16 (Whereupon, the prospective

17 juror was duly sworn by the
18 Court to true answers make
19 to the questions propounded,

20 concerning qualifications, after
21 which time, the proceedings were
22 resumed as follows:)
23

24 THE COURT: All right. Thank you,
25 ma'am.
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1 As you know, you have been called to
2 be a potential juror in the Darlie Routier case. Mrs.
3 Routier is sitting right there in a burgundy dress to

4 your right. She is represented by her attorneys, Mr.
5 Curtis Glover from Dallas, and Mr. Preston Douglass from
6 Kerrville.

7 MR. S. PRESTON DOUGLASS, JR.: Hello.
8 MR. CURTIS GLOVER: Good afternoon.
9 THE COURT: The State of Texas is
10 represented today by Mr. Toby Shook, Ms. Sherri Wallace.
11 MR. TOBY L. SHOOK: Good afternoon.
12 MS. SHERRI WALLACE: Good afternoon.
13 THE PROSPECTIVE JUROR: Good
14 afternoon.
15 THE COURT: They are Assistant
16 District Attorneys in Dallas County. And you will be

17 asked some questions now, there is no wrong answers.
18 There is not going to be a test or anything. Please give
19 frank and candid answers.

20 If you are nervous, relax. And if you
21 want some time to relax when you are asked a question, we
22 would be happy to do that for you. Fair enough?

23 All right. Mr. Shook.

24

25

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1 Whereupon,

2

3 ROSIE D. GUTIERREZ,

4

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

9

10 VOIR DIRE EXAMINATION

11

12 BY MR. TOBY L. SHOOK:

13 Q. Ms. Gutierrez, my name is Toby Shook.

14 I am one of the prosecutors on the case and I'll be
15 asking you questions on behalf of the State. Have you
16 ever been down on jury service before?

17 A. No, sir.

18 Q. Okay. Usually, we talk to everyone in
19 one big panel, but since this is a capital murder case in
20 which the State is seeking the death penalty, we talk to
21 each and every juror individually. We don't mean to put
22 you up there like you are on trial or anything like that,
23 but it's the procedure the law prescribes. And all we're
24 looking for are your honest answers. Okay?

25 A. Okay.

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1 Q. All right. If you have any questions
2 at any time, feel free to ask.

3 A. Okay.

4 Q. You checked off on your questionnaire
5 that you had heard about this case in the news and word
6 of mouth; is that right?

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

9 Q. Just tell us what you have heard.

10

11 THE COURT: Ma'am, could you say yes
12 or no, Ms. Halsey has to take all this down.

13 THE PROSPECTIVE JUROR: Oh, I'm sorry.

14 THE COURT: That's all right.

15

16 BY MR. TOBY L. SHOOK:

17 Q. Tell us what you have heard about this
18 case.

19 A. Just that she had stabbed the children
20 and that they thought that it was cold, you know. Just
21 everybody has a different -- say different things. Some
22 go in and out my ear, I don't have room.

23 Q. Was it on the news or did you read
24 about it? What did you hear?

25 A. No, just what people were saying. I
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1 would see it on the news, but stuff like that I tend to
2 turn off, you know, because, like we can't have any
3 children and want children. I just as soon just turn it
4 off.

5 Q. Okay. From what you have heard, did
6 you form any opinions about the case?

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

9 Q. Tell me a little bit about that.

10 A. Well, I don't think you would want to
11 hear what I had said about it.

12

13 THE COURT: Well, ma'am, please.

14 Please, this is a very serious matter and we want candid
15 responses.

16 THE PROSPECTIVE JUROR: I understand.

17 THE COURT: It doesn't go beyond this
18 room. Go ahead.

19 THE PROSPECTIVE JUROR: Just that she
20 should go through the same thing the children did, they
21 couldn't defend themselves, they were small.

22

23 BY MR. TOBY L. SHOOK:

24 Q. And you are basing that on what you
25 have heard, word of mouth and the news?

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1 A. No, that is my feeling.

2 Q. Okay. Well, let me ask you this
3 ma'am: Have you formed an opinion that is -- a
4 conclusion as to the defendant's guilt from what you
5 know?

6 A. Yes.

7 Q. Would that opinion influence you in
8 your verdict do you believe?

9 A. Well, I believe -- I do believe that
10 she is guilty.

11

12 THE COURT: Well, that was not -- you
13 have formed an opinion as to her guilt or innocence; is
14 that correct?

15 THE PROSPECTIVE JUROR: Correct.

16 THE COURT: All right. Now, having
17 formed that opinion, is that such that it would impair
18 your performance as a juror, you think? That would
19 influence your verdict as a juror?

20 THE PROSPECTIVE JUROR: I guess.

21 THE COURT: Well -- unfortunately,
22 guesses don't do it here.

23 THE PROSPECTIVE JUROR: I said yes.

24 THE COURT: Okay. Yes.

25 All right. Thank you very much,
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1 ma'am. Either side have anything further? I think --

2 MR. S. PRESTON DOUGLASS, JR: Your
3 Honor, we challenge for cause.

4 THE COURT: Well, yes, that is fine.

5 I'll grant the challenge for cause. You may step down,
6 ma'am.

7 We thank you for coming. We would
8 appreciate it if you would not discuss anything that has
9 happened to anyone until the trial is over. The trial
10 will be over sometime in January.

11 THE PROSPECTIVE JUROR: Uh-huh.
12 (Witness nodding head affirmatively.)

13 THE COURT: There is still a gag order
14 in effect. I can, of course, impose monetary sanctions
15 or Kerr County jail time. So, please, mum is the word
16 until February. Fair enough?

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

19 THE COURT: Okay. Thank you for
20 coming. You may step down.

21 THE PROSPECTIVE JUROR: All right.
22 Thank you.

23 THE COURT: Okay. Anybody else still
24 out there or not? All right.

25 Come on up, please, ma'am. All right.

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1 Have a seat up there. Thank you.
2 All right. This is juror number 3 on
3 our list, number 108 on the jury list. Daryl, D-A-R-Y-L,
4 Jean, J-E-A-N, Schladoer, S-C-H-L-A-D-O-E-R. Is that
5 your name, ma'am?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: All right. Raise your
8 right hand, please.

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

13 THE PROSPECTIVE JUROR: I do.

14

15 (Whereupon, the prospective

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

19 concerning qualifications, after
20 which time, the proceedings were
21 resumed as follows:)
22

23 THE COURT: All right. Thank you. If
24 you can lean up and pull the mike back and speak into it
25 loudly. If you are nervous, please relax.

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1 You are here as a potential juror in
2 the Darlie Routier matter. Mrs. Routier is the
3 defendant, she is sitting right there in the burgundy
4 dress to your right. She is represented by her
5 attorneys, Mr. Curtis Glover from Dallas, and Mr. Preston
6 Douglass from Kerrville.
7 And the State of Texas is represented
8 by Assistant District Attorneys from Dallas County, Mr.

9 Toby Shook and Ms. Sherri Wallace.
10 Now, it's natural to be a little
11 nervous today, we want you to relax and answer the
12 questions just as they are asked, candidly. There are no
13 right or wrong answers. Okay?

14 THE PROSPECTIVE JUROR: Okay.

15 THE COURT: Okay. Go ahead.

16

17 Whereupon,

18

19 DARYL JEAN SCHLADOER,

20

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

25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. TOBY L. SHOOK:

4 Q. Ms. Schladoer, I am Toby Shook. I am
5 one of the prosecutors in the case and I will be asking
6 you questions on behalf of the State.

7 A. Okay.

8 Q. Judge Tolle told you, there are no

9 right or wrong answers. We are just looking for your
10 honest answers. Okay?

11 A. Okay.

12 Q. Have you been down on jury service
13 before?

14 A. No.

15 Q. Okay. Usually, we talk to jurors in
16 one big group, but since it's a death penalty case in
17 which the State is seeking the death penalty, we do it
18 one at a time.

19 A. Okay.

20 Q. We don't mean to put you on the spot

21 or make you feel like you are the one on trial, but it's
22 the best way we know how and the way the law prescribes
23 it be done. Okay?

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

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1 Q. I believe you checked that you had
2 heard something about the case in the newspaper and TV;
3 is that right?

4 A. Yes, that's right.

5 Q. Most jurors have heard something, it's
6 a highly publicized case. That is why we're down here in
7 this county, as a matter of fact. Tell us kind of
8 briefly what you have heard.

9 A. Just that the children were stabbed.

10 Mrs. Routier was cut on the throat, but that the police
11 could find no evidence of anyone getting in the house,
12 because of dust on the windowsill, things like that. And
13 because of the direction of the cut that it was kind of
14 suspicious.

15 Q. Okay. Like I said, it's not unusual
16 for jurors to have read or heard about a case. Here is
17 the problem we want to make sure we look at: Is that,

18 obviously, we don't want jurors deciding the case on
19 something they read about or hear about on the TV or

20 news. Okay? They have to listen to the evidence as it
21 comes into the courtroom.

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

24 Q. I think the best example of that is
25 what happened last week. As you may have seen on the
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1 news, this Mr. Richard Jewell, who was first suspected of
2 being the bomber at the Olympics.

3 A. Right.

4 Q. And last week he had the big news
5 conference, they were all over this guy and it turns out
6 he is not involved. His life has been pretty much
7 screwed over, ruined, and who knows what will happen.

8 A. Right.

9 Q. But that is what happens when you
10 start believing everything that you see on the news.

11 Okay?

12 A. Right.

13 Q. And that is why we have to have jurors
14 that can sit and listen to the evidence as it comes in.
15 So that is the first thing. Despite having read a few
16 things, if you were chosen as a juror in this case, could
17 you wait and listen to the evidence as it comes into the
18 courtroom through the witnesses, and then make the proper
19 judgments?

20 A. I don't think so mainly because when
21 it is a case involving a child, I have a tendency to
22 think that that person is guilty until they can show me
23 otherwise.

24 Q. Okay. Well, let me talk about that

25 then for a moment.

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1 Obviously, you talk about -- and we

2 can't get into the facts of the case at all.

3 A. Uh-huh. (Witness nodding head

4 affirmatively.)

5 Q. You know that?

6 A. Uh-huh. (Witness nodding head

7 affirmatively.)

8 Q. But anytime anyone talks about capital

9 murder, you automatically think very bad thoughts,

10 obviously.

11 A. Right.

12 Q. I mean very bad things come to mind.

13 A. Uh-huh. (Witness nodding head

14 affirmatively.)

15 Q. Murder, general -- capital murder

16 especially. And then when you talk about, as Judge Tolle

17 had to tell you, the allegation here is a murder

18 involving a child under the age of six. You think real

19 bad thoughts.

20 A. Right.

21 Q. Okay. That is natural. Right?

22 A. Right.

23 Q. And it's natural for jurors to not

24 like violent crime and not want to tolerate it in any

25 way. Do you understand that?

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1 A. Uh-huh. (Witness nodding head

2 affirmatively.)

3 Q. But we have to have jurors who can,

4 you know, listen to the evidence and then make their

5 decisions. Okay?

6 A. Right.

7 Q. It's all right to feel strongly

8 against crime.

9 A. Uh-huh. (Witness nodding head

10 affirmatively.)

11 Q. We wouldn't have a very good jury

12 system if we only allowed people on juries that like

13 crime or thought criminals were all right. You

14 understand that?

15 A. Right.

16 Q. Obviously, though you can't have

17 jurors who go, "I don't care what the evidence is. If a
18 child died, let's string somebody up." Do you understand
19 what I am talking about?

20 A. Right.

21 Q. "Who cares what the evidence is, let's
22 string them up. The first guy you bring in off the
23 street."

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

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1 Q. We would have real problems if jurors
2 felt that way. That is why the law requires that even if
3 it's a bad allegation, obviously, a bad crime, you have
4 to wait and require the State to prove its case beyond a
5 reasonable doubt.

6 A. Right.

7 Q. Okay? Obviously, many times in
8 criminal cases, defendants accused of very violent crimes
9 are found not guilty. Sometimes people afterward will
10 go, "Well, that guy got off on a technicality."

11 Sometimes it is because they weren't guilty.

12 A. Right.

13 Q. But jurors have to wait until all of
14 the evidence comes in first. If you find them guilty,

15 and then if you hear more additional evidence in
16 punishment, eventually when you go through all the
17 procedures in a capital case think that the right

18 decision, if the State has proven the case, you could
19 also -- the correct punishment might be death penalty,
20 you could answer it that way.

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

23 Q. But the thing is, we can't have jurors
24 that are just going to ignore the evidence, and just
25 because it is a bad crime, go ahead and find a person
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1 guilty, or try to do their best to get the person
2 executed. You understand what I am saying?

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

5 Q. What we need to know if you are the
6 kind of person that can keep their mind open and listen
7 to the evidence, and if the State does prove it, you

8 could answer the questions in that way.

9 A. Right.

10 Q. But first hearing the evidence. Could
11 you do that?

12 A. Well, I think it would be real
13 difficult. Because I have, you know, heard enough, and
14 just a lot of evidence, you know, ingrained, and like you
15 said, it's in the newspaper, and it's not always the true
16 facts.

17 Q. Sure. A lot of times they get it
18 completely wrong.

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

21 Q. That is why we wait for the evidence
22 to come in.

23 A. Right.

24 Q. And we have to have jurors that will
25 just wait and listen to the witnesses rather than read
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1 some newspaper and then find someone guilty.

2 A. Right.

3 Q. I mean, you wouldn't want to be in
4 that situation?

5 A. No.

6 Q. Okay. And that is what we're talking
7 about here.

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

10 Q. I mean, you say it would be difficult.

11 Are you saying you just can't put these things out of
12 your mind, you are going to find the defendant guilty of
13 committing something?

14 A. It would be real hard. Well, it would
15 be hard. It would be real hard just because, you know,
16 you think about the kids and you know.

17 Q. Would you just because the child --

18 the victim is a child and it is a brutal murder, would
19 you want to go ahead and find the person that has been
20 charged guilty? No matter what the evidence is?

21 A. Well, the evidence would have to be
22 very strong showing that that person didn't commit it,
23 before I could change my mind.

24 Q. Would you agree that if we charged the
25 wrong person, and there wasn't a lot of evidence there --
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1 A. Right.

2 Q. -- that obviously it would not do any
3 good to convict them, would it?

4 A. Right.

5 Q. First of all, the first injustice
6 would be an innocent person would be convicted?

7 A. Right.

8 Q. Secondly, the guilty person would be
9 out there running around free?

10 A. Right.

11 Q. You said it would be difficult or that
12 it would have to be strong evidence that they didn't do
13 it. Under our law, what we have to do is prove that they
14 did do it.

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

17 Q. Okay. The defense is under no
18 obligation to prove that they didn't.

19 A. Right.

20 Q. We have to prove that they did do it.

21 If we didn't prove that the defendant is not guilty
22 beyond a reasonable doubt --

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

25 Q. -- then the jury has to find the
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1 defendant not guilty.

2 A. Right.

3 Q. Okay. We just have to get over that
4 hurdle, and it's a very high hurdle.

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

7 Q. Okay. Do you agree with that law?

8 A. Right.

9 Q. And that is how it works. It's not a
10 situation, I think it's France used to do that, where if
11 the police arrested someone, then that person had to
12 prove his innocence.

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

15 Q. No matter how much money they had or
16 lack of money or anything like that.

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

19 Q. Here we do it completely opposite.

20 Our cornerstone of the Constitution is that if the State

21 decides to indict you, we have to do the proving.

22 A. Uh-huh. (Witness nodding head

23 affirmatively.)

24 Q. If we don't reach that hurdle, the

25 jury finds the person not guilty. Do you agree with

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1 that?

2 A. Uh-huh. (Witness nodding head

3 affirmatively.)

4 Q. If you were chosen as a juror in this

5 case, would you follow that law?

6 A. I would say I would try.

7 Q. Okay. And that is an answer we

8 usually get.

9 A. Uh-huh. (Witness nodding head

10 affirmatively.)

11 Q. Because you have never been in the

12 position.

13 A. Right.

14 Q. But we have to ask you, as you know

15 yourself best, the Judge will instruct you what the law

16 is. He is going to tell you there are no ifs, ands, or

17 buts about it. The law is you have to require the State

18 to prove its case beyond a reasonable doubt. Can you do

19 that or can't you?

20 A. Well, I would try. I would.

21

22 THE COURT: Well, that is not going to

23 get it, because it's either going to be a yes or a no.

24 Mrs. Routier doesn't have to do anything but show up.

25 THE PROSPECTIVE JUROR: Right.

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1 THE COURT: She doesn't have to say

2 one thing or do anything. The State has to prove

3 everything in that indictment beyond a reasonable doubt.

4 Would you require that they do that?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: All right. Thank you. Go

7 ahead.

8

9 BY MR. TOBY L. SHOOK:

10 Q. And, another position on that, just to

11 go a little further, is they are not required to prove

12 anything to you.

13 A. Uh-huh.

14 Q. Okay?

15 A. Uh-huh. (Witness nodding head

16 affirmatively.)

17

18 THE COURT: Is that yes? Can you

19 answer you or no?

20 THE PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Thank you.

22

23 BY MR. TOBY L. SHOOK:

24 Q. Let me give you an example, and this

25 is kind of a far out example. We have the burden of
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1 proof and it never shifts. The defense is under no

2 obligation to prove anything to you. I mean, if they

3 wanted to these guys -- these attorneys could show up

4 with comic books and read them throughout the trial. Not

5 ask any questions, not make any arguments.

6 But that is not going to happen. But

7 they don't have to do anything because the burden of
8 proof never leaves this table. Do you understand?

9 A. Yes, sir.

10 Q. If we just put on a little bit of

11 evidence, and if in your mind we haven't proved beyond a

12 reasonable doubt, you find her not guilty. You don't

13 say, "Okay, you have put on a little evidence, let's hear

14 what the defense has to say." You understand?

15 A. Right.

16 Q. We have to jump that hurdle in your

17 mind to what beyond a reasonable doubt is. Okay?

18 A. Okay.

19 Q. You can't force them to prove her

20 innocence. They very well may try to do that, you know,

21 I am sure they are going to ask questions, but they can't

22 be forced to in your mind. You understand that?

23 A. Right.

24 Q. The burden of proof stays here.

25 A. Right.

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1 Q. Okay. Going along those same lines,

2 Judge Tolle told you when you came down here that every

3 person has a right not to testify. Okay?

4 A. Yes.

5 Q. If you want to get up there and

6 testify, you can, no one can stop you. But if you choose
7 not to testify, the jury would be instructed by the
8 Judge, that you can't use that as evidence against them.

9 Okay?

10 A. Right.

11 Q. You just have to look at all of the
12 other evidence and then make a decision. Could you
13 follow that rule of law?

14 A. Yes.

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

16 A. Yes.

17 Q. I mean, we get some people down here
18 and they go, "Look, if I didn't commit capital murder,
19 and they charged me, wild horses couldn't keep me from
20 getting up there." But there is many reasons why a

21 person may not want to testify in their own behalf.
22 Their lawyer may advise them not to, and they just follow
23 his advice.

24 They may be real guilty, and cross
25 examination may make them look guilty. They may be of
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1 lower education, or may be real nervous when they
2 testify, and the prosecutor could make them look guilty.
3 The law takes care of that just by

4 instructing the jurors not to follow that, not to even
5 consider that. Could you follow that rule?

6 A. Yes.

7 Q. Okay. And Judge Tolle also told you
8 that we start this case off with a presumption of
9 innocence. It's like the fact that this case has been in
10 the paper, that is no evidence of guilt.

11 The fact that a person has been
12 indicted, Judge Tolle told you that, you know, there's
13 25,000 or more indictments a year in Dallas County. That
14 is just a piece of paper. Okay? You can't use that as
15 evidence. There is a piece of paper, that is evidence of
16 her guilt.

17 You have to wait again and listen to
18 what the witnesses say. Can you follow that rule of law?

19 A. Yes.

20 Q. Going a little further with that, the
21 fact that the defendant has been arrested and sitting
22 here, the fact that we're even going through this

23 process, is no evidence of guilt in any way. You have
24 to, again, wait until you hear the witnesses. Can you do
25 that?

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1 A. Yeah.

2 Q. Okay. You understand kind of what
3 we're getting at here?

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

6 Q. We know people -- the average American
7 citizen doesn't like violent crime. However, that
8 doesn't preclude you from sitting as a juror.

9 A. Right.

10 Q. And if you ask them, do you think

11 violent criminals who have been found guilty should be
12 treated harshly. People are going to say, "Yes, that
13 they are very violent." That doesn't preclude you from
14 being a juror.

15 You just have to be able to be fair

16 and wait until all of the evidence is in before you make
17 these decisions. And if these things are proven to you,
18 you can answer them one way. And if they are not proven
19 to you, you have the integrity and the guts to say, "No,
20 you didn't prove it to me." You understand what I am
21 saying?

22 A. Right. Yes, sir.

23 Q. Are you that type of person that can
24 keep your mind open and listen to the evidence?

25 A. Well, I hope so.

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1 Q. Okay. And then make your decision?

2 A. Yes.

3 Q. What I am driving at is: People don't
4 make your mind up for you, do they?

5 A. No.

6 Q. I mean on a major decision, you wait
7 to hear everything, don't you?

8 A. Yes.

9 Q. Okay. I think you are in -- is it
10 nursing care?

11 A. Yes.

12 Q. Okay. Obviously, when you are caring
13 for a person, you make decisions in nursing. When to do
14 something, how to react in a situation? Especially when

15 you have an emergency situation.

16 A. Yes.

17 Q. And you work with doctors on a
18 day-to-day basis also.

19 A. Right.

20 Q. When y'all make medical decisions, how
21 to treat someone, you get all of the information you can,
22 right?

23 A. Right.

24 Q. It's not just something -- it's not a
25 knee-jerk reaction?

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1 A. Right.

2 Q. Okay. And that is kind of like what
3 we look at as jurors.

4 A. Yes.

5 Q. You don't just because you find a
6 person guilty answer a question in a way -- just because
7 something has been in the newspaper, just because someone
8 has been arrested you answer a question in a certain way.

9 You wait until everything is in and then make your
10 decisions.

11 A. Right.

12 Q. Okay. Let me kind of tell you how the
13 procedure works.

14 Not every crime, first of all, in

15 Texas not every murder is a death penalty case. It's
16 only certain types of cases and not every one of them

17 turns out to be a death penalty. There are certain hoops
18 we have to jump through.

19 A. Right.

20 Q. Certain things we must prove to each
21 juror.

22 A. All right.

23 Q. Now you know in this case the
24 defendant has been charged with the intentional killing
25 of a child under the age of six?

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

3 Q. And as we stated before, that sounds
4 bad. And that is just a charge right now, as she sits
5 here today, she is presumed innocent. I believe, from
6 your answers, that you feel that, obviously, in the

7 appropriate case, that could be a death penalty case?

8 A. Right.

9 Q. Okay. There are certain procedures

10 that will apply in this case as in all capital murder

11 cases. And let me go over those, so they are clear.

12 First of all, in the first part of the

13 trial, we have to prove that indictment to you beyond a

14 reasonable doubt. Okay? And we have been over that,

15 that is the State's burden of proof. If we don't ever

16 get there, we all go home. Okay?

17 A. Right.

18 Q. If you have a reasonable doubt about

19 it, then the defendant would be found not guilty. If we

20 do prove it to you beyond a reasonable doubt, then we

21 move to the second stage. Okay? It's not an automatic

22 death. All right. If you found that it is an

23 intentional killing of a child, of course, that sounds

24 bad, and again we conjure up bad facts. And I can't

25 preview anything to you, so let's just talk about it

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1 hypothetically.

2 A. Uh-huh. (Witness nodding head

3 affirmatively.)

4 Q. Again, you don't go, "Okay, they get

5 the death penalty, let's go string them up," just because

6 you found them guilty.

7 We have to go through a punishment

8 phase because there may be additional information you

9 hear that could be obviously very helpful in the

10 decisions you make. Okay?

11 A. Okay.

12 Q. First of all, in the punishment stage,

13 you might hear additional information. It could be bad

14 information, like say for example a person may have a

15 long criminal record, or may be bad character evidence.

16 Or it could be the exact opposite, you know, it could be

17 good character evidence, no criminal record, may be

18 something what we call mitigating evidence, something

19 about their background which would cause them to act a

20 certain way. Okay?

21 Who knows? But it is a lot broader
22 than the evidence that comes in the guilt/innocence
23 stage. Guilt/innocence stage is concerned with whether
24 the State can prove that she committed the crime. The
25 punishment phase goes much broader range, their entire
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1 background. Okay? Do you remember that show, This Is
2 Your Life?"

3 A. Right.

4 Q. Kind of like that. They bring in

5 everything because we want the jurors to have all the
6 information they can before they make a decision like
7 this. Does that sound like a fair way to do it?

8 A. Yes.

9 Q. I mean, if you are going to make a

10 decision where literally, it's a life or death decision,
11 you would want to have all of the information, would you
12 not?

13 A. Yes, I would.

14 Q. Okay. Question number 1, that starts
15 out with a "no" answer. Okay.

16 A. Yes.

17 Q. Just like a defendant is presumed to
18 be innocent, you have to presume this answer to be "no"
19 and the State has to prove that to you beyond a
20 reasonable doubt. Okay?

21 A. Okay.

22 Q. Can you follow that law?

23 A. Yes.

24 Q. All right. It asks: "Do you find
25 from the evidence beyond a reasonable doubt, that there
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1 is a probability that the defendant would commit criminal
2 acts of violence that would constitute a continuing
3 threat to society?" You see where that question is
4 asking the jurors to make a prediction?

5 A. Right.

6 Q. The State has to prove that to you.

7 If we don't prove that to you beyond a reasonable doubt,
8 you keep the answer as a "no." If we do, then you answer
9 it "yes." Now you can use the facts of the offense to

10 consider that and then any background information about

11 the defendant. Okay? Again, I want to caution you not
12 to automatically start conjuring up bad thoughts, bad
13 facts, I mean, that is automatic kind of ideas that pop
14 in everybody's mind.

15 But the point of the law is this: You
16 don't automatically go back and check off a "yes" answer,
17 just because you found the defendant guilty of capital
18 murder. Do you know what where I coming from?

19 A. Yes.

20 Q. There wouldn't be any sense to have
21 that question otherwise.

22 A. Right.

23 Q. Even though you found them guilty, you
24 go, "Okay. Let's go back and look at all the evidence
25 and then decide has the State proven that they will be a
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1 future danger." Because there might be situations where
2 yes, you found them guilty and sure enough the evidence
3 is going to show from the crime itself and everything
4 else that they will be a danger.

5 Or there could be situations where,
6 even though he is guilty, the defendant is guilty of an
7 intentional killing, the intentional killing of a child,
8 whatever the capital charge is, it may be the evidence
9 doesn't show that they will be a future danger.

10 And you can sit on five million
11 capital murder cases and maybe think, you know, every one
12 of them except one, the defendant is going to be a future
13 danger. But if you come across that one where you say,
14 "No, even though they are guilty of capital murder, I
15 don't think they are going to be a future danger. I will
16 answer it 'no.'"

17 But the bottom line is we have to
18 prove it to you. Can you follow that law? I have to get
19 a yes or no from you. I'm sorry.

20 A. Yes.

21 Q. Okay. And the reason I go over that
22 is because, like I say, a lot of people conjure up bad

23 thoughts, and as lawyers, we can sit around and think of
24 hypotheticals all the time. We're guilty of that. I

25 could set out a fact situation, where a guy goes in and
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1 robs a bank, kills a teller. But not only that, he comes
2 out and kills everybody else in the bank. He is just a
3 vicious killing machine. And you say, "Sure, looking at
4 all the facts, that guy is going to be a future danger to
5 society."

6 You could take another situation where
7 a guy goes in and robs a bank and kills a teller; but on
8 the way out, the police have been called and he gets run
9 down by the police, because he runs out in the front of
10 the street.

11 That person is just as dead, but let's
12 say now this guy is a quadriplegic. It might change the
13 fact situation. You might think, well, yeah, he is a
14 capital murderer, but he is no danger to anyone else, he
15 can just move his jaw. So you might answer that "no."

16 That is a way-out example. But that
17 is just an example to show you you have to wait until all
18 the evidence is in before you make that decision.

19 A. Right.

20 Q. All right. Now this last issue, this
21 last question, neither side has the burden of proof.
22 That is the mitigation question. You don't get to that
23 until you have found the defendant guilty, until you have
24 found the defendant is going to be a future danger. This
25 is the last question you consider. Neither side has to
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1 prove it to you.
2 Let me go over it real quick. It's
3 kind of lengthy: "Taking into considering all of the

4 evidence including the circumstances of the offense, the
5 defendant's character, background, and the personal moral
6 culpability of the defendant, is there a sufficient
7 mitigating circumstance or circumstances to warrant that
8 a sentence of life imprisonment rather than a death
9 sentence be imposed?" Okay?
10 It is kind of a -- this is kind of a
11 safety net, is the way I view this question. Because

12 even though you found them guilty and you know they will
13 be a future danger, there is something in their
14 background that you think in your heart tells you a life
15 sentence should be imposed rather than a death sentence.
16 They are not going to get up and walk away, obviously,
17 they are going to be getting a life sentence. But it is
18 a way out for the jurors to show mercy if there is some
19 evidence that tells them that there should be some mercy
20 shown. Do you understand?

21 A. Yes.

22 Q. Okay. I can't tell you what

23 mitigating evidence is going to be, it is going to be up
24 to you and the other jurors. In fact, you don't even

25 have to agree. We come up with a lot of examples. The

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1 reason this question came about is there have been some
2 cases where a defendant was mentally retarded. Not to
3 the point where he didn't know right from wrong, but he
4 was extremely, not through his own fault, he was born
5 that way, a lot slower than the average adult.

6 Some jurors might view that as

7 mitigating, other people don't, you know. If he knows
8 right from wrong, make him responsible for his actions.

9 But it depends on each case you see.

10 A. Right.

11 Q. Does that sound like a fair question

12 in a capital murder case where the State is seeking
13 death?

14 A. Yes, it does.

15 Q. Okay. Do you understand that it's

16 going to be up to you and the other jurors?

17 A. Yes.

18 Q. You could hear again five million

19 capital cases and maybe just come up with one situation
20 where you think, well, even though they are guilty, and

21 even though they are a danger to society, in this case I
22 have heard some mitigating evidence where I think the

23 right thing to do is give them a life sentence -- or
24 something in their background.

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)

2 Q. And you are not required to think of

3 what that would be, as long as you can tell Judge Tolle,

4 my mind will be open to it.

5 A. Yes.

6 Q. And if you think the correct answer is

7 "yes," you will answer it that way?

8 A. Uh-huh. (Witness nodding head

9 affirmatively.)

10 Q. Can you do that?

11 A. Yes, I can.

12 Q. Okay. Fair enough. Another area I

13 meant to get into is, I think you have known -- well, it
14 looks like a jailer, I don't know if they are a police
15 officer or someone else that was in DPS. You have known
16 some people at least that have been in law enforcement;
17 is that right?

18 A. Yes.

19 Q. Okay. In any criminal case, you
20 usually have police officers testify. Now, you are not
21 going to have any Kerr County police officers testify, I
22 don't foresee, because they didn't investigate the case.
23 A lot of people have respect for police officers. But
24 the law says that you have to treat them like any other
25 witness. Do you see where I am coming from?

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1 A. Yes, I do.

2 Q. There are good cops and bad cops.

3 Okay? There are real smart ones and there are some that
4 are not as smart, there are some that are lazy, and some
5 that are real industrious. So they are just like anybody
6 else, you know.

7 A. Yes.

8 Q. And what jurors have to do is wait

9 until they testify, and then judge their credibility.

10 Okay?

11 A. Yes.

12 Q. You can't automatically give them a
13 head start over other witnesses. Can you follow that
14 rule?

15 A. Yes, I can.

16 Q. Okay. Also, in every criminal case

17 the Judge will instruct you that you cannot consider the
18 parole laws as they apply in Texas. Those change all the
19 time. We read about them sometimes, but they are not to
20 come in any part in any play during your decisions. Can
21 you follow that rule?

22 A. Yes, sir, I can.

23 Q. Okay. Sometimes in a murder case,
24 obviously, gruesome photographs can be introduced. You
25 have probably seen some things being a nurse, obviously,
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1 you are used to that more than the average person.

2 A. Yes.

3 Q. That is something that just can't be

4 helped because of the nature of the offense. Can you

5 look at those objectively though? What I am saying is
6 some people will say, "Golly, that is a bad photograph.
7 Again, let's string somebody up." What you have got to
8 do is say, you know, look at it, why was this photograph
9 introduced? Does it prove anything in the case, that
10 sort of thing? That is what we want to caution you on,
11 just so you won't say, "Golly, we need to punish someone
12 for this."

13 A. Right.

14 Q. There is the nearest person, the

15 person that is on trial, let's get him. You won't do
16 that, will you? Will you just listen to the evidence,
17 and if we prove her guilty, you can find her guilty?

18 A. Yes.

19 Q. Okay.

20 A. Yes, sir.

21 Q. You see where I am coming from?

22 A. Uh-huh. (Witness nodding head

23 affirmatively.)

24 Q. You have to make your decisions --

25 base your decisions on the evidence. And you have been
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1 real honest with us that you hear the word murder,
2 involving a child victim, that upsets you?

3 A. Right.

4 Q. You don't like that?

5 A. No.

6 Q. Okay. And, I hope that is the natural
7 response in most human beings, you know. People don't
8 like that sort of thing. But, again, we can't get into
9 the facts. But we have to have jurors that will wait and
10 listen to all of the evidence and follow the law and then
11 make their decisions, and let the cards fall where they
12 may. We can't prove the case, you will find her not

13 guilty. If we do prove the case, you can find the
14 defendant guilty. Can you do that?

15 A. Yes.

16 Q. Okay. And the same thing with these
17 punishment issues. You don't just automatically answer

18 them "yes." You wait until all of the evidence is in
19 before you reach these decisions?

20 A. Yes.

21 Q. If we can't prove that first one, you
22 will leave it as a "no" answer?

23 A. Yes.

24 Q. If we can prove it, you will write in
25 a "yes" answer?

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1 A. Yes.

2 Q. That last question again on the
3 mitigation issue, if your heart tells you based on the
4 evidence that a life sentence should be imposed rather
5 than a death sentence, that you will do that?

6 A. Yes.

7 Q. Okay. So, even though when we mention
8 the words and it sounds like a bad offense, you are not
9 the kind of person that has a knee-jerk reaction, and

10 starts writing in guilty, or let's give her death, or
11 anything like that. You will listen to the evidence
12 first?

13 A. Yes.

14 Q. Okay. Well, that is only fair. I

15 appreciate it. Do you have any questions over anything I
16 have gone over?

17 A. No.

18 Q. Okay.

19

20 MR. TOBY L. SHOOK: That's all the
21 questions I have, Your Honor.

22 THE COURT: Thank you, Mr. Shook.
23 Mr. Glover.

24

25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. CURTIS GLOVER:

4 Q. Ms. Gutierrez (sic), I noticed that
5 you mentioned something in here about having a skiing
6 trip coming up here during the month of January?

7 A. Yes, that's right.

8 Q. They kind of predict that this case
9 will probably go right to the middle of your ski trip.

10 A. Right.

11 Q. If you were on the jury and that is

12 not an excuse to be excused in order to go on a vacation.

13 A. Right.

14 Q. The Judge explained that to you all
15 the other day.

16 A. Yes.

17 Q. And if it should be that the jury went
18 into deliberations, say shortly before your skiing trip
19 was to occur; or the jury was to -- or this case was
20 still ongoing during the middle of your ski trip, would
21 that have any kind of tendency on your part to try to
22 want to speed things up and maybe reach a quick verdict,
23 or something of that nature simply because it interrupted
24 your ski trip?

25 A. No.

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1 Q. Wouldn't influence it?

2 A. Well, it would already be canceled.

3 It wouldn't be able to be rescheduled.

4 Q. So that is not going to be any problem
5 for you?

6 A. No.

7 Q. Well, we do anticipate it will go into
8 that period.

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

11 Q. I notice, Ms. Gutierrez (sic), that
12 you have answered a number of the questions that indicate
13 that you have probably either discussed this case with
14 friends or read about it in the newspaper.

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

17 Q. Or saw it on the television, that kind
18 of got you to thinking about it because you did seem to
19 know what some of the alleged facts were.

20 A. Right.

21 Q. That were in the newspaper and
22 whatnot.

23 A. Right.

24 Q. And, of course, you understand, they
25 may or may not be true?

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1 A. Correct, yes.

2 Q. And you have indicated that. But

3 sometimes, I think it is just human nature that when we
4 see something like that and the facts are in such a
5 position and they are so overwhelming and whatnot, we
6 have a tendency to perhaps reach an opinion about that
7 particular thing. And you think you have an opinion as
8 to her guilt or innocence at this time?

9 A. Yes.

10 Q. Okay. And is that opinion that you
11 find her to be guilty at this time?

12 A. Yes.

13 Q. Okay. And you are a person of firm
14 commitment as to your views, and you are an intelligent
15 woman, I can tell that by talking to you. And you made
16 up your mind about that sometime back, I assume?

17 A. Yes.

18 Q. Okay.

19

20 MR. CURTIS GLOVER: Submit the juror,
21 your Honor.

22 THE COURT: Ma'am, you are saying two
23 things here. You are saying that -- you are telling them
24 you can be fair, and you are telling them you can't be
25 fair.

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1 So, can you put whatever opinions you
2 may have aside and follow the law in this case?

3 THE PROSPECTIVE JUROR: Well --

4 THE COURT: And if you feel the State
5 has not proven their case, find her not guilty? And if
6 you feel the State has proven their case, find her
7 guilty?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: So your mind is open?

10 THE PROSPECTIVE JUROR: I could make
11 up my mind, you know, first impressions after reading

12 everything, you know, what I read. And people discussing
13 it before I was called for jury duty. You know, the
14 first opinion is, the first thought is, you know, that it
15 is, you know, is that she is guilty.

16 THE COURT: That is the first thought.

17 THE PROSPECTIVE JUROR: Right.

18 THE COURT: But Mr. Glover's question
19 is, but could you have an open mind in this case?

20 MR. CURTIS GLOVER: Judge, we would to
21 any further interrogation in this regard, and we feel
22 like the statute sets it out pretty clearly.
23 THE COURT: Well, the statute does,
24 but she is saying two different things, and I think you
25 could keep on going and explore that line. But she says
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1 one thing here and one thing here and then tells me she
2 can follow the law, and I think it may be a question of
3 semantics.

4

5 BY MR. CURTIS GLOVER:

6 Q. Well, I feel like that that is a
7 pretty clear and unequivocal statement on your part, was
8 it not, Ms. Gutierrez (sic)?

9 A. Well --

10 Q. That you had made up your mind.

11 A. I would try -- do my best to be -- you
12 know, I would listen to the facts.

13 Q. Well, let me ask you this: Would you
14 kind of feel like that, you know, you made up your mind,
15 you indicated that you reached an opinion that she was

16 guilty.

17 A. My original opinion, yes.

18 Q. Okay.

19 A. But like y'all said, the newspapers,
20 print evidence that is found, and it's printed out of

21 context, and yes sometimes it is not -- does not give the
22 true picture.

23 Q. Do you feel like then that, perhaps,
24 if you got into the case and you were on the jury that
25 you would want her to come forth and explain her position
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1 concerning -- and overcome your feeling, that is your
2 opinion that she is guilty? Would you kind of require us
3 to overcome that?

4 A. Well --

5 Q. In other words, you have got that
6 deep-set opinion about it all?

7 A. Right.

8 Q. And do you feel like you need to kind
9 of overcome that before you can change your mind about
10 it?

11 A. I think if I heard the evidence and it
12 pointed to her guilt or her innocence, either way, I
13 could make that decision.

14 Q. Okay. But you have made -- prior to
15 coming here to Court today, you made a decision that you
16 felt in your mind that was she was guilty?

17 A. Yes.

18 Q. Based on what you read in the papers?

19 A. Yes, based on what I read, yes.

20 Q. All right. Of course, and that is
21 just like I asked you a while ago and I can tell by
22 talking to you, that you are a person of strong motives
23 and you have your views and you are an intelligent
24 person, you are expressing yourself here very well today.

25 Don't you feel in your heart of hearts

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1 that it would take some evidence to overcome this feeling
2 that you have in your heart of hearts and this opinion
3 that she, indeed, is guilty, based on what the newspaper
4 said?

5

6 MR. TOBY L. SHOOK: Judge, that has
7 been asked and answered.

8 THE COURT: I will sustain that. I
9 think we have gone over that, she said she can do it. I
10 think we ought to get on to another question.

11 MR. CURTIS GLOVER: We submitted that
12 particular objection to the Court a while ago, Judge.
13 Once that statement is made that she has opinions,
14 well --

15 THE COURT: She has made a lot of
16 statements, but I think, right now, I think she is still
17 qualified. Do you want to stay on it? Maybe we can get
18 something done.

19

20 BY MR. CURTIS GLOVER:

21 Q. Let me ask you this, Ms. Gutierrez
22 (sic), on your questionnaire you answered certain
23 questions. Do you recall filling out the questionnaire?

24 A. Yes.

25 Q. Let me kind of refer back to it here.

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1 The statement was made here: The Constitution says a
2 person accused of a crime does not have to testify in her
3 own behalf. How do you feel about the Constitutional
4 right? Do you recall what you said in response to that?

5 A. I believe I said I agree with it.

6 Q. Now you made the statement: "Would
7 like to hear what the person has to say." Are you
8 talking about the defendant in that case?

9 A. Anyone --

10 Q. Okay.

11 A. -- who is in that case. Yeah, I would
12 like to hear what they have to say, but it's their right
13 and I won't hold it against them if they don't testify.

14 Q. Okay. You further said that -- do you
15 know of any reason why you could not sit as a juror for
16 this trial? Do you recall that question?

17 A. Yes.

18 Q. To be absolutely fair to the defendant
19 and the State and render a verdict based solely upon the
20 evidence presented to you?

21 A. Yes.

22 Q. And you stated: When the case
23 involves abuse, murder of children, I have a tendency to
24 vote guilty until proven innocent.

25 A. Right.

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1 Q. And you feel that way today here? You
2 still feel that way, do you not?

3 A. Well, I do, but I feel like I would --
4 if I was chosen I would try to keep an open mind and do
5 the best of my ability to --

6 Q. In spite of the fact that you have
7 reached an opinion as to her guilt or innocence?

8 A. Yes.

9 Q. Is your answer yes?

10 A. Yes.

11 Q. And that the opinion is that she is
12 guilty?

13 A. Yes.

14 Q. Okay.

15

16 MR. CURTIS GLOVER: We would resubmit
17 this to the Court, Judge, it is about the third time. We
18 submit to the Court that the statute is very clear in
19 that regard.

20 THE COURT: All right. I'll grant the
21 motion, you are no longer required to serve. Thank you.

22 THE PROSPECTIVE JUROR: Thank you.

23 THE COURT: All right.

24 MS. SHERRI WALLACE: Judge, we will
25 ask you to reconsider that. He did not go far enough.

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1 THE COURT: Well, you know, not going

2 far -- I have granted the motion.

3 You may step out, ma'am. You are

4 excused.

5 THE PROSPECTIVE JUROR: Thank you.

6 THE COURT: Here is what I am telling

7 both sides to do from now on, and no jurors in the room.

8 Ma'am, don't talk about this yet,

9 please.

10 THE PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: I am telling both sides

12 that from now on I am tired of questions that are doing

13 nothing but making the juror say exactly what you want

14 them to say. Now --

15 MR. CURTIS GLOVER: Let me point this

16 out to you, Judge, she said it on paper, and then she

17 comes in here and affirms it.

18 THE COURT: Very weak, very weak, I

19 have granted your motion. Is that clear? I have granted

20 your motion. But I want questions asked that are direct

21 and germane and to the point.

22 Now, I'm tired of this beating around

23 the bush, we're wasting a ton of time, when you get to

24 the last minute to ask a question that you could ask up

25 at the front of the whole interrogation, and we could

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1 stop it if the juror is not ready.

2 MR. CURTIS GLOVER: In all deference

3 to the Court, Judge, that was the first area I approached

4 with her, was her opinion about that.

5 THE COURT: I know it, that is why I

6 granted your motion. So you are all set.

7 MR. S. PRESTON DOUGLASS, JR: Your

8 Honor, may I respond to that, just briefly.

9 THE COURT: You sure can.

10 MR. S. PRESTON DOUGLASS, JR: If you

11 read the questionnaire and she says --

12 THE COURT: I have read it. I have

13 read each one and I know she says one thing here and one

14 thing there.

15 MR. S. PRESTON DOUGLASS, JR: I

16 understand. But then when they spend ten minutes saying,

17 "Well, we can't do it that way."

18 THE COURT: I am not picking on you,

19 I'm picking on both of you.

20 MR. S. PRESTON DOUGLASS, JR: Well, I
21 think we should have the equal time to be able to go back
22 through the area.

23 THE COURT: You can certainly do it,
24 but both sides ought to get right to the nitty-gritty,
25 and attack the very question that they are talking about

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1 there. Let's get on it. Those are the points and anyone
2 can come in and say something. I mean, you know, I know
3 what you saying there. I granted the motion for cause, a
4 very weak granting of the motion for cause. I will admit
5 the State has a lot of -- but anyway, err on the side of
6 caution, that is what we do. The tie goes to the
7 defendant.

8 Next witness.

9 THE PROSPECTIVE JUROR: Up here?

10 THE COURT: Yes. All right have seat
11 please. Your name is?

12 THE PROSPECTIVE JUROR: Donald Davis.

13 THE COURT: What number are you, sir?

14 THE PROSPECTIVE JUROR: Number 115.

15 THE COURT: All right. This is number
16 42 on our list, ladies and gentlemen, and it's number --
17 juror number 115, scheduled for tomorrow and coming into
18 today.

19 Thank you very much.

20 THE PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: All right. Will you raise
22 your right hand, please, sir?

23 Do you solemnly swear or affirm you

24 will true answers make to all the questions propounded to
25 you concerning your qualifications as a juror, so help

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1 you God?

2 THE PROSPECTIVE JUROR: I do.

3

4 (Whereupon, the prospective
5 juror was duly sworn by the
6 Court to true answers make
7 to the questions propounded,
8 concerning qualifications, after
9 which time, the proceedings were
10 resumed as follows:)

11

12 THE COURT: Thank you very much. Mr.
13 Davis, you are here as a potential juror in the Darlie

14 Routier matter. Mrs. Routier is the defendant, she is
15 sitting there in the burgundy dress. She is represented
16 by Mr. Curtis Glover and Mr. Preston Douglass.

17 MR. CURTIS GLOVER: Hello.

18 MR. S. PRESTON DOUGLASS, JR.: Good
19 afternoon.

20 THE COURT: Mr. Glover is from Dallas,
21 and Mr. Douglass is from Kerrville. And we have for the
22 State of Texas, Mr. Toby Shook and Ms. Sherri Wallace.

23 MR. TOBY L. SHOOK: Good afternoon.

24 MS. SHERRI WALLACE: Good afternoon.

25 THE PROSPECTIVE JUROR: Good
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1 afternoon.

2 THE COURT: And there are no wrong
3 answers down here. Anything that -- you just state it
4 just as you feel.

5 Listen to the questions and answer

6 only the question that is asked. Okay?

7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: All right. Go ahead,

9 please, Mr. Shook.

10 MR. TOBY L. SHOOK: Ms. Wallace.

11 THE COURT: Oh, Ms. Wallace, excuse
12 me. Okay.

13 MS. SHERRI WALLACE: Thank you, Your
14 Honor.

15

16 Whereupon,

17

18 DONALD DAVIS,

19

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

24

25

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1 VOIR DIRE EXAMINATION

2

3 BY MS. SHERRI WALLACE:

4 Q. Hello Mr. Davis. I am Sherri Wallace,
5 and I am an Assistant District Attorney from Dallas. And
6 I am going to ask you some questions, starting with your
7 questionnaire, and then kind of how you feel about the
8 death penalty, and go on from there.

9 First, let me ask you: Did you know
10 either of the local lawyers, Richard Mosty, or this
11 gentleman here, Preston Douglass?

12 A. No, ma'am.

13 Q. And you don't know any of the people
14 from Dallas?

15 A. No, ma'am.

16 Q. Okay. In your questionnaire, it says:

17 Do you know of any reason why you could not sit as a
18 juror in this trial? And you said, that you had already
19 formed your opinion and decision.

20 And I want to talk to you a little bit
21 about that. You said that you had heard about this case
22 from radio and the newspaper.

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

25 Q. And what we need here, Mr. Davis, are

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1 12 people that will not have a knee-jerk reaction to what
2 they have read in the paper, and will wait and hear the
3 actual facts, the true facts in the courtroom. And that
4 is really important.

5 Let's take for example: You know that
6 guy in Georgia, the man named Richard Jewell, he was
7 alleged to have done that bombing at the Olympics?

8 A. Yes, ma'am.

9 Q. And then, I think it was last week,
10 the FBI came out and cleared him, and basically gave him
11 an apology and said, "He is not good for it."

12 A. Yes, ma'am.

13 Q. That is why it's so important to try a
14 trial in the courtroom and not in the press.

15 A. Yes, ma'am.

16 Q. And I have read, not all of the
17 accounts of this case, of Mrs. Routier's case, but I have
18 read most of them. And let me just tell you, some of it
19 they have right, and some of it they don't. But that
20 doesn't really matter.

21 What does matter is that we get 12
22 people that will not make up their mind ahead of time,
23 but judge the facts from the evidence in the courtroom.

24 Could you do that, Mr. Davis?

25 A. I don't believe I could.

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1 Q. Okay. And why is that, sir?

2 A. Well, just the way I believe in some

3 of this justice is not right in some cases and it's
4 abused in other cases. So, some is right and some is
5 wrong.

6 Q. Okay. And what about this case?

7 A. Just what I have read in the papers
8 and heard on the news and just formed my own opinion.

9 Q. Okay. Can you set that opinion aside,
10 and wait until you hear the true facts from the witness
11 stand?

12 A. I don't know whether I could or not.

13 Q. Okay. Well, I'm really not arguing

14 with you, it's just kind of up to you, you know in your
15 heart. What we need are 12 people that -- well, let me
16 ask you this: In your personal life, before you make a
17 major decision, you get all of the facts. Don't you?

18 A. I try to, yes, ma'am.

19 Q. Okay. Do your best to do that?

20 A. Yes, ma'am.

21 Q. And, that's all we're asking for here,
22 is that you wait and get all of the facts. Could you do
23 that?

24 A. I don't believe I could, no.

25 Q. Okay. Would your opinion, you said

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1 you had formed an opinion, would that influence your
2 verdict in this case?

3 A. Yes, it would.

4

5 MS. SHERRI WALLACE: Judge, we will
6 agree.

7 THE COURT: Thank you very much for
8 coming, sir, we appreciate it. You will be excused from
9 further jury service.

10 THE PROSPECTIVE JUROR: Thank you.

11 THE COURT: All right. Please do not
12 discuss anything you heard here today until this trial is
13 over, that will be about the first part of February.

14 There is a gag order in effect and I can impose monetary
15 or jail sanctions. Please, if you would just keep it to
16 yourself until the first part of February.

17 THE PROSPECTIVE JUROR: I am excused
18 from jury duty?

19 THE COURT: You are, that's right.

20 THE PROSPECTIVE JUROR: Thank you,
21 sir.

22 THE COURT: That is what you wanted,
23 wasn't it?

24 THE PROSPECTIVE JUROR: All right.

25 THE COURT: Okay. Anybody else?

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1 THE CLERK: That's all.

2 THE COURT: All right. Is that it?

3 That's all, that's all today.

4

5 (Whereupon, the

6 Proceedings were

7 Recessed for the day,

8 To be resumed the

9 Following day, in

10 Open court, as follows:)

11

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Sandra M. Halsey, CSR, Official Court Reporter 1621

1 CERTIFICATION PAGE

2 THE STATE OF TEXAS)

3 THE COUNTY OF DALLAS)

4 I, Sandra M. Halsey, was the Official Court

5 Reporter of Criminal District Court Number 3, of Dallas

6 County, Texas, do hereby certify that I reported in

7 Stenograph notes the foregoing proceedings, and that they

8 have been edited by me, or under my direction and the

9 foregoing transcript contains a full, true, complete and

10 accurate transcript of the proceedings held in this

11 matter, to the best of my knowledge.

12 I further certify that this transcript of the

13 proceedings truly and correctly reflects the exhibits, if

14 any, offered by the respective parties.

15 SUBSCRIBED AND SWORN TO, this _____ day of

16 _____, 1997.

17 _____

18 Sandra M. Day Halsey, CSR

19 Official Court Reporter
20 363RD Judicial District Court
21 Dallas County, Texas
22 Phone, (214) 653-5893
23
24 Cert. No. 308
25 Exp 12-31-98

Sandra M. Halsey, CSR, Official Court Reporter 1622

1 STATE OF TEXAS)
2 COUNTY OF DALLAS)
3
4 JUDGES CERTIFICATE
5
6
7

8 The above and foregoing transcript, as certified
9 by the Official Court Reporter, having been presented to
10 me, has been examined and is approved as a true and
11 correct transcript of the proceedings had in the
12 foregoing styled cause, and aforementioned cause number
13 of this case.

14
15
16
17
18
19
20 _____

21 MARK TOLLE, JUDGE
22 Criminal District Court Number 3
23 Dallas County, Texas
24
25

Sandra M. Halsey, CSR, Official Court Reporter 1623