

Volume 19

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

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

7 VS: } & A-96-253

8 DARLIE LYNN ROUTIER } Kerr Co. Number

9

10

11

12

13 STATEMENT OF FACTS

14 JURY VOIR DIRE

15 INDIVIDUAL JURORS HEARING

16 VOL. 19 OF VOLS.

17 November 6, 1996

18 Wednesday

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Sandra M. Halsey, CSR, Official Court Reporter

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1 C A P T I O N

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4 BE IT REMEMBERED THAT, on Wednesday, the 6th 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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1 A P P E A R A N C E S

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4 HON. JOHN VANCE
5 Criminal District Attorney
6 Dallas County, Texas
7

8 BY: HON. TOBY L. SHOOK
9 Assistant District Attorney
10 Dallas County, Texas

11

12 AND:

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

16

17 AND:

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

21

22 APPEARING FOR THE STATE OF TEXAS

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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
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19 Kerrville, TX 78028
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21 AND: HON. S. PRESTON DOUGLASS, JR.
22 Attorney at Law
23 Wallace, Mosty, Machann, Jackson & Williams
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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
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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 1st, 1996
4 Friday
5 8:30 a.m.
6

7 (Whereupon, the following
8 proceedings were held in
9 open court, in the presence
10 and hearing of the
11 defendant, being
12 represented by her attorneys
13 and the representatives of
14 the State of Texas,
15 as follows:)

16

17

18 THE COURT: All right. You are Ms.

19 Franklin?

20 THE PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: All right. Ladies and

22 gentlemen, we are back on the record in the Darlie
23 Routier matter. This is Wednesday, November the 6th, and
24 all parties in the proceedings are present. And this is
25 Ms. Kerri, K-E-R-R-I, Sue Franklin. She is number 50 on
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1 our list, 153 on the juror's list. That is your name,
2 ma'am?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: If you will raise your
5 right hand.

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Thank you. That's fine.

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

12 THE PROSPECTIVE JUROR: Yes, I do.

13

14 (Whereupon, the prospective
15 juror was duly sworn by the
16 Court to true answers make
17 to the questions propounded,
18 concerning qualifications, after
19 which time, the proceedings were
20 resumed as follows:)

21

22 THE COURT: Okay. You're here as a
23 potential juror in the Darlie Routier case. This is Mrs.
24 Routier, she is right there with her counsel, Mr. Preston
25 Douglass, who is from Kerrville. She is also represented
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1 by Mr. Richard Mosty from Kerrville, and Douglas Mulder
2 and Curtis Glover from Dallas. They are not here now.

3 The State is represented by Mr. Toby

4 Shook and Ms. Sherri Wallace. They are Assistant

5 District Attorneys in Dallas County, and another

6 gentleman named Greg Davis, he is not here either.

7 So, there are no wrong answers to

8 these questions. You can be a member of the Flat Earth

9 Society, and no one is going to disagree with you.

10 So just relax and answer them just as

11 you see fit. All right?

12 THE PROSPECTIVE JUROR: Okay.

13 THE COURT: I'll ask you to say yes or

14 no all the time. Don't say uh-huh or huh-uh because Ms.

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

16 nods or grunts. You understand?

17 Okay. Go ahead, Mr. Shook.

18 MR. TOBY SHOOK: Thank you, Judge.

19

20

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1 Whereupon,

2

3 KERRI SUE FRANKLIN,

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. Franklin, again, my name is Toby

14 Shook and I am one of the prosecutors on the case and I

15 will be asking you some questions on behalf of the State

16 this morning. I will go over a few things on your

17 questionnaire and then we will talk some about the death

18 penalty and how you feel about it and the laws that apply

19 to the case. Okay?

20 A. Yes.

21 Q. Like Judge Tolle told you, there are

22 not any right or wrong answers, we just want your honest

23 opinions.

24 A. Okay.

25 Q. Have you ever been down on jury

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1 service before?

2 A. No.

3 Q. Okay. Usually we talk to everyone in

4 one big group, but since this is a death penalty case, we

5 talk to everyone individually. We're not trying to put

6 you on the spot or put you on trial or anything like

7 that. Okay? Looking on your questionnaire, it looks

8 like you and your husband own the Donut King; is that

9 right?

10 A. Yes, sir.

11 Q. Okay. That is how you all make your

12 living, running that store?

13 A. Uh-huh. (Witness nodding head

14 affirmatively.) Yes.

15 Q. And you have lived here in Kerrville,

16 what, about eight years?

17 A. Yes, sir.

18 Q. Where did you live prior to that?

19 A. New Hampshire.

20 Q. New Hampshire?

21 A. Uh-huh. (Witness nodding head

22 affirmatively.)

23 Q. What brought you down here?

24 A. My husband.

25 Q. Okay. You all met up there?

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1 A. Well, no, we actually met here. I

2 came here with a friend of mine and I met my husband

3 here.

4 Q. Oh, okay. And I believe you said you

5 had an uncle that passed away that was a police officer?

6 A. Yes, sir.

7 Q. Where was he a police officer?

8 A. New Hampshire.

9 Q. Okay. We also always ask the

10 question: Do you know anyone in jail or prison? And you

11 put down someone by the name of Zanford?

12 A. Yes, that was my dad.

13 Q. Okay. What happened on that case?

14 A. Well, he had a bunch of kids that

15 lived in the neighborhood where he was living, and he

16 wouldn't do what they wanted him to do, like go buy beer

17 for them and stuff like that. So, one of them came out
18 and said that he sexually assaulted them. And my dad
19 fought and fought and he came down here to Texas and then
20 wound up going back up there, and all the charges were
21 dropped against him.

22 Q. They were dropped?

23 A. Yes.

24 Q. Did that cause you any problem with
25 the justice system at all? Or do you feel he was finally
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1 vindicated, was treated fairly?

2 A. Yes, I feel like he was finally taken
3 care of the right way.

4 Q. Okay. Now, you put here on your
5 questionnaire that you did hear some of the details about
6 the case in the newspaper and TV; is that right?

7 A. Yes. That was before we were told not
8 to read the paper.

9 Q. Oh, sure, sure. What did you hear?

10 A. I just heard about the -- some of the
11 evidence that they found.

12 Q. What do you remember about that?

13 A. That there was a knife in the kitchen
14 and blood on the kitchen area. That's about -- I didn't
15 read much of it because I am not really a newspaper
16 reader.

17 Q. Okay. And you heard some on TV also?

18 A. I heard very little on TV, because I
19 don't get a whole lot on my TV.

20 Q. Okay. Well, there is not anything
21 wrong with watching TV or reading the newspaper and
22 reading about the case, obviously, because you were not a
23 juror yet. It is just now you have to follow Judge
24 Tolle's instructions.

25 A. Okay.

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1 Q. The thing we need to look at is to
2 make sure you haven't formed any opinions about guilt or
3 innocence from reading that?

4 A. No.

5 Q. Okay. All right. Let me then go to
6 the heart of the matter. Obviously, this is a death
7 penalty case in which the State is seeking the death
8 penalty. So let me ask you about your personal opinions
9 about that law. Are you in favor of the death penalty?

10 A. Yes.

11 Q. Okay. Tell us in your own words why
12 you think we need the death penalty as a law in this
13 State?

14 A. Well, because the people that are
15 accused of killing other people, you know, if they are
16 going to kill somebody, then they don't deserve to live,
17 unless they really didn't do it. I mean everybody is
18 innocent until --

19 Q. Proven guilty.

20 A. That's right.

21 Q. But if they are guilty, if it is
22 proven against them, you feel that is the just
23 punishment?

24 A. Right.

25 Q. What types of cases, in your mind,
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1881

1 would be the kinds that call for the death penalty?

2 A. Murder.

3 Q. Murder?

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

6 Q. Any specific type of murder? Or do
7 you think all murders?

8 A. Well, I wouldn't say all murders. But
9 I would say, I believe a lot of the murderers should be
10 put to death, I think they should.

11 Q. Okay. That is fine. Don't act like
12 your apologizing for your opinions. Okay? I mean, that
13 is all we want is your opinion.

14 A. Well, I have never been in this
15 situation before.

16 Q. Yes, well, you know, there are no
17 right or wrong answers, we just want your honest
18 opinions.

19 A. Okay.

20 Q. Now, have you ever followed any cases
21 in the newspapers or TV involving high profile murder
22 cases?

23 A. Have I ever done what?

24 Q. Followed them? Murder cases?

25 A. Not really, just one up north that I
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1 followed quite a bit.

2 Q. Is that the one you told us about?

3 A. Yes. The only reason I followed that

4 is because I graduated from that high school.

5 Q. Okay. Is that the teacher that had
6 her husband killed by one of her students?

7 A. Yes.

8 Q. What happened? They made a movie of
9 that --

10 A. Yes, they made a movie, a book and I
11 believe the book and the movie was about all they did on
12 it.

13 Q. What happened in that case?

14 A. Well, she went to jail.

15 Q. Do you remember how long?

16 A. No.

17 Q. So she was found guilty?

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

20 Q. Okay. Any other cases you ever
21 followed in the news, like the O.J. Simpson case?

22 A. No, I had nothing to do with O.J.
23 Simpson.

24 Q. Susan Smith case. Do you remember
25 that case?

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1 A. The one that drowned her two boys?

2 Q. Right.

3 A. No, I didn't really follow that one
4 either.

5 Q. Do you have any opinions about that
6 case? The verdict in that case or the punishment in that
7 case?

8 A. No. I don't know anything about it.

9 Well, I mean I knew about it, but I don't know what the
10 verdict was or anything like that. I never followed it.

11 Q. Okay. Let me ask you: Have you ever
12 felt differently about the death penalty? Have you ever
13 been against it at all?

14 A. Well, in some cases I probably did. I
15 mean, some people, you know, they may not have deserved
16 to get the death penalty, but maybe life in prison, which
17 is almost the same thing.

18 Q. Okay. Have you ever discussed your
19 beliefs about the death penalty, let's say with a friend
20 or your husband or anything like that?

21 A. No.

22 Q. Okay. Do you even know how he feels
23 about the death penalty?

24 A. No, I don't, we never talk about it.

25 Q. All right. So, you all never even
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1 talked about it?

2 A. No, sir.

3 Q. All right. Let me kind of go over
4 what the procedure is in this case, as with all death
5 penalty cases. The trial is divided into two parts.

6 First of all, for it to be a death
7 penalty in Texas, it has to be a murder case. And it has
8 to be a certain type of murder case. We have many brutal
9 murders that you can only get life imprisonment for, that
10 is the maximum punishment.

11 You have to have murder plus something
12 else: Murder of a police officer can be a death penalty
13 case; murder during a felony, like the guy that goes into
14 a grocery store or 7-Eleven, let's say, and shoots the
15 clerk while he is robbing him. That can be a death
16 penalty case. Someone that comes into your home and
17 kills you during the course of a burglary, that can be a
18 death penalty case. During a rape, murder during a rape
19 or during a kidnapping, or during an arson; those are all
20 death penalty eligible cases.

21 Mass murder, several people killed in
22 the same transaction; serial killer; murder for hire,
23 like a hit man situation, can be a death penalty case;
24 and as Judge Tolle read you the indictment in this case,
25 murder of a child under the age of six can be a death
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1 penalty case.

2 Let me, in fact, let you look at the
3 indictment in this case. Do you see that piece of paper
4 there, that paragraph in the middle? Read that to
5 yourself.

6

7 THE COURT: That is the typewritten
8 part he is directing your attention to, ma'am.
9

10 BY MR. TOBY L. SHOOK:

11 Q. Okay. It sets out allegations of an
12 intentional killing of a child under the age of six. I
13 can't ask you for your verdict, obviously, you have not
14 heard any evidence.

15 A. Right.

16 Q. But is that the type of case that you
17 personally feel can be eligible for the death penalty
18 under the proper facts and circumstances?

19 A. Yes, sir.

20 Q. Okay. Now the procedure is this:

21 First we have to prove that allegation beyond a
22 reasonable doubt, we have to get the defendant guilty.

23 A. Sure.

24 Q. If we do that, we go to the next
25 phase. Of course, if we don't do that, we all go home.
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1 A. Yes.

2 Q. That's if we don't prove our case. If
3 we do prove our case beyond a reasonable doubt, it's not
4 over with. We go to a punishment phase, and you may hear
5 additional evidence. You can hear evidence about
6 background and things like that, if it exists. Of
7 course, it may be a long punishment hearing; it may be
8 very short, you might not hear hardly any evidence at
9 all.

10 At the close of that, you get these
11 questions. Okay? We will go over those in a little more
12 detail, but to kind of summarize, that first question is
13 a "yes" or "no" question, and we ask the jurors will the
14 defendant be a continuing danger to society. Basically,
15 are they going to be dangerous?

16 A. Yes, sir.

17 Q. If you answer that question "yes," you
18 move to the second question which we call the mitigation
19 issue, and that question basically says this: The jurors
20 look at all the evidence and if they see something
21 mitigating, something that tells them that the defendant
22 should not get the death penalty, but should get a life
23 sentence, some piece of evidence, then they will answer
24 it that way, and you put a "yes" answer down.

25 If they don't think there is any
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1 mitigating evidence to avoid the death penalty, they will
2 answer it "no." But a "yes" to that first one, and a
3 "no" answer to the second, equals the death penalty.
4 Judge Tolle would sentence the defendant to death in that
5 situation.

6 A. Yes.

7 Q. Any other answer would equal to a life
8 sentence. But there's only two choices: Life or death.
9 You don't write them down, but depending on how you
10 answer those questions, that is how Judge Tolle sentences
11 the defendant. Is that clear to you?

12 A. That is clear.

13 Q. Okay. If it's a "yes" and "no," like

14 I said, it would be a death sentence. And in Texas, the
15 method of execution is by lethal injection. Are you
16 aware of that?

17 A. Yes, sir.

18 Q. Okay. Sometimes these things are in
19 the news. You know probably that in Texas these
20 executions are actually carried out. There are many
21 states where they have the death penalty on the books,
22 but the death penalties are never enforced. There are a
23 lot of states up from where you are from.

24 A. Yes, that is true.

25 Q. A lot of them in the northeast don't
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1 even have the death penalty, and if they do, no one has
2 ever been executed. It is just on the books.

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

5 Q. A lot of people have life in prison,
6 but no one has been executed. In Texas there have been
7 over 100 people executed. Texas leads the nation by a
8 lot. I think you could just about add everyone else up
9 and we would still be in the lead. The execution, as I
10 said, is by lethal injection. Someday, I couldn't tell
11 you when in this case, if that were the verdict, the
12 Judge would someday actually mark out a real execution
13 date.

14 And in our procedures the defendant
15 would then be brought into Huntsville, Texas, taken to
16 what they call the death chamber, placed there on a
17 hospital gurney and strapped down.

18 There will be witnesses there that can
19 view all of this. Held down by force, if necessary,
20 needles are put in the arm, the death warrant read,
21 chance for some last words, but within a very, very short
22 time, virtually minutes, poisons would be injected, the
23 heart would stop, the lungs would stop, she would be
24 dead.

25 And quite frankly, that is our goal.
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1 We feel we have the type of evidence that will prove the
2 defendant guilty, and cause the jury to answer these
3 questions in a way which would result in her ultimate
4 execution. I don't mean to go about that to be morbid or
5 anything, but I want you to know, we want to put all of
6 our cards on the table.

7 A. Yes, sir.

8 Q. And let you know it's a very real
9 issue we're talking about. It's one thing to talk about
10 it philosophically; it's another thing when we talk about
11 actually participating in this type of trial.

12 Now, you have told me,
13 philosophically, you think there are some crimes that
14 call for the death penalty.

15 A. Right.

16 Q. Not all, but some murder cases.

17 A. Right.

18 Q. What I need to know is: Do you think
19 you can sit and listen to the evidence and if we do prove
20 these issues to you, you could answer them knowing that
21 the defendant would be executed someday?

22 A. Yes, sir.

23 Q. Okay. Fair enough then. Let's talk
24 about these special -- well, before we get to those
25 special issues, let's talk about a couple of things

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1 regarding the evidence. You have probably seen trials on
2 TV, like that trial you were interested in, I don't know
3 if you ever saw the movie or not or read the book?

4 A. No, I never saw the movie. I did read
5 the book.

6 Q. Read the book. Okay. You know
7 evidence comes in through the witnesses, and we call it
8 direct evidence or indirect evidence. Direct evidence is
9 an actual eyewitness to the crime. Okay? If you left
10 the courthouse today and were robbed, say of your purse
11 by someone, that person was arrested soon afterwards, and
12 you identified him, you would be the direct witness, the
13 eyewitness to the case.

14 Any other evidence is indirect
15 evidence, or what we call circumstantial evidence. Okay?

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

18 Q. It is anything else that links the
19 defendant to the crime. It could be your fingerprints,
20 you have probably heard of DNA evidence?

21 A. Yes.

22 Q. Blood evidence, any kind of scientific
23 evidence, the crime scene, what the defendant said
24 before, during, and after, those kinds of things. From
25 that book, I didn't read that book, but I saw some

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1 special on it, or maybe it was the movie, but I think

2 they had one of the -- they had the actual killer testify
3 against the teacher; is that right?

4 A. Yes, they did.

5 Q. Okay. And there were letters and
6 things like that; is that right?

7 A. There were letters and photos and
8 stuff like that.

9 Q. Okay. The letters and photos and all
10 that, that is circumstantial evidence.

11 A. Yes.

12 Q. Okay. Anything that links the
13 defendant.

14 Now, oftentimes in a murder case, the
15 State only has circumstantial evidence to work with. You
16 have the person killed, and the killer.

17 A. Yes.

18 Q. Obviously, the person killed can't
19 testify. What I need to know is -- and the law is this:
20 Whether it's an eyewitness, or it's circumstantial
21 evidence, the burden of proof is the same; beyond a
22 reasonable doubt. Okay?

23 A. Yes.

24 Q. What I need to know is, can you sit as
25 a juror and listen to a case and if we prove the case to
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1 you using only circumstantial evidence, could you find
2 the defendant guilty, if you believed that evidence
3 beyond a reasonable doubt?

4 A. Yes.

5 Q. Okay. Here is another thing. In
6 murder cases we always talk about the motive. Okay?

7 A. Yes.

8 Q. The reason why the crime occurred.

9 A. Yes.

10 Q. You always see that in murder movies
11 and trial movies. In Texas, that is not a requirement
12 for us to prove in order to obtain a guilty verdict.
13 Okay?

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

16 Q. Now, it may become very apparent once
17 the evidence comes in. Could be as plain as the nose on
18 your face. Or it may never be known to anyone, it could
19 be locked away in the killer's mind. It could be what we
20 call a senseless killing, or one that no one is quite
21 sure why the killer murdered the victim.
22 Or there could be several possible

23 motives and everyone might have their own opinions. The
24 point is this: We're not required to prove it. It is
25 very hard to prove what goes on in someone's mind when
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1 they decide to do something like that.

2 A. Yes.

3 Q. You notice in that indictment it

4 doesn't say anywhere in there why the murder happened,
5 just more or less how it happened. Okay?

6 A. Yes, sir.

7 Q. Could you follow that law and not

8 require the State to prove motive in order to get a
9 guilty verdict in this case?

10 A. Yes.

11 Q. Okay. Like I said, it might become

12 very apparent to you, but there is some -- you know, if I
13 suddenly as I'm talking to you, pulled out a gun and shot
14 Ms. Wallace in the head, and I mean that is all there was
15 to it, they had a murder, but no one really might not
16 ever know why I did it.

17 A. That is true.

18 Q. She is just as dead and we have about

19 nine witnesses here that saw me do it, it doesn't change
20 that fact. So that is what we're talking about. Like I
21 said, it might be apparent or it may not. You would be
22 able to follow that law?

23 A. Yes.

24 Q. Okay. Now let me talk a little bit

25 about these punishment issues. You don't get to these
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1 unless the defendant has been found guilty, and then you
2 move to the punishment issues. A person doesn't
3 automatically get the death penalty if they are found
4 guilty of capital murder. You have to wait and listen to
5 this evidence that comes in. Okay?

6 A. Yes.

7 Q. Like I said before, this first

8 question kind of asks the jury to make a prediction about
9 how they are going to behave in the future. And if you
10 would, read along with me silently as I read aloud this
11 first question.

12 "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 Do you see where that question is

17 asking the jury to make a prediction about how the
18 defendant is going to behave in the future?

19 A. Yes.

20 Q. Are they going to be a continuing
21 danger?

22 A. Yes.

23 Q. Now, like I said, you will get the
24 facts of the case itself, you will get to review that.

25 You have already found the defendant guilty, the murder,
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1 how brutal it was, what kind of thought process, how it
2 was committed, any signs of remorse after the crime, all
3 that goes into your deliberations. Plus, anything else
4 you learned about the defendant -- about the defendant's
5 background, maybe in the punishment stage. You might
6 hear about a long criminal history and bad character
7 evidence, you might hear good character evidence, and you
8 might hear no criminal history at all. Okay? But you
9 take all that and then you make that decision.

10 There might be a situation where you
11 only have the facts of the crime itself. Okay? There is
12 no requirement that a person has been to the pen a few
13 times or anything like that to be prosecuted for capital
14 murder.

15 A. Yes.

16 Q. A person could be good all their life
17 and then commit a horrible crime. So you may only have
18 the facts itself to work with. Again, I can't preview
19 the facts for you and go into the fact situation, and ask
20 you what you would do. But do you think that if you had
21 a case of no criminal history, where you just had to
22 decide the case, this answer, on the facts from the
23 murder itself, could you do that, depending on those
24 facts?

25 A. Yes.

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1 Q. Okay. The words you see here in the
2 question number 1, you will be given no legal definitions
3 to them, they are up to you and the other jurors. Okay?

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

6 Q. Other parts of the trial, you will be
7 given plenty of definitions, but these will be up to you.
8 So I want to go over a couple of those words. We have to
9 prove beyond a reasonable doubt that there is a
10 probability that the defendant would commit criminal acts

11 of violence. When we use the word "probability" what
12 does that mean to you?

13 A. That they might do it again.

14 Q. Okay.

15 A. Or they might do something else again.

16 Q. Okay. Do you understand that we don't

17 have to prove it's an absolute certainty?

18 A. Yes.

19 Q. No one could really do that.

20 A. No.

21 Q. Okay. We have to prove that the

22 defendant would commit criminal acts of violence. When

23 we use the words "criminal acts of violence," what does

24 that -- what comes to mind?

25 A. Well, going into a store maybe and

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1 robbing it and shooting somebody while they are in the
2 process of doing it or something like that.

3 Q. Murder, of course, obviously would

4 fall in that?

5 A. Yes.

6 Q. Just threatening someone, would that

7 fall into that? Like a --

8 A. No.

9 Q. Didn't you say that some man came in

10 and threatened you in your store at one time?

11 A. Yes, he did.

12 Q. Tell me a little bit about that.

13 A. Okay. Well, he had come into the

14 video store where I worked at at the time and the night

15 before and had a \$2.50 late charge. And he paid it to my

16 husband because my husband was working there too. And

17 the next day he came in and just started ranting and

18 raving about the late charge. And I tried to explain to

19 him, I said, "Well, you paid it the night before. You

20 never had any problems with paying it. What is the

21 problem coming in here today." I don't know if he just

22 thought he was going to get his \$2.50 back or what he

23 thought he was going to do. But he threatened me, and I

24 mean there was people in the store when he did it, he

25 told me he was going to knock my head off. That is not

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1 the words that he used.

2 Q. Did you feel threatened at that point

3 when the man said?

4 A. Yes, I did.

5 Q. Okay. Would you consider that an act
6 of -- a criminal act of violence?

7 A. Yes.

8 Q. Threatening other people?

9 A. Yes.

10 Q. Okay. My point is, it doesn't have to
11 be another murder case. It can be any type of act of
12 violence.

13 A. Right.

14 Q. Okay. Going back to your story, were
15 the police called?

16 A. Yes, they were called and I went to
17 court.

18 Q. Oh, really?

19 A. Yes.

20 Q. What happened on that?

21 A. He was found guilty and fined \$300.

22 Q. For threatening you?

23 A. Yes.

24 Q. Okay. This first question is presumed
25 to be answered "no." Just like someone starts out a
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1 trial presumed to be innocent, it is presumed to be
2 answered "no." We have to prove that to you beyond a
3 reasonable doubt.

4 A. Yes.

5 Q. But you can follow that rule of law?

6 A. Yes.

7 Q. Okay. Now, if you do answer that
8 question "yes," you move on to this second issue, and
9 that is the mitigation issue. And this question is kind
10 of lengthy. Believe me, none of us sat down and wrote it
11 out, the legislature did that a long time ago.

12 It says: "Taking into consideration
13 all of the evidence, including the circumstances of the
14 offense, the defendant's character and background, and
15 the personal moral culpability of the defendant, is there
16 a sufficient mitigating circumstance or circumstances to
17 warrant that a sentence of life imprisonment rather than
18 a death sentence be imposed?" Okay? Like I said, it
19 gets rather lengthy.

20 A. Yes.

21 Q. And people get hung up on this word,
22 mitigation. Everyone has their own kind of definition of
23 it. But basically, this is what I think this question
24 says, and you can disagree with me or not. But,
25 basically, it is kind of a safety valve or safety net.
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1 Okay? You have already found the defendant guilty of
2 capital murder, you have already found that they would be
3 a continuing danger to society, but you look at all of
4 the evidence, all of their background, and if you believe
5 there is sufficient evidence that tells you that, "Hey, I
6 know they are dangerous, but I think a life sentence
7 should be imposed in this case rather than a death
8 sentence." You could answer the question that way. And
9 if you don't see there's that type of evidence, you could
10 answer it "no," and they would get the death penalty.

11 A. Okay.

12 Q. You see what it is? It's kind of a
13 way out for the jury to say, the just thing to do -- and
14 you have to do it based on some evidence, is that the
15 defendant get a life sentence rather than a death
16 sentence.

17 A. Okay.

18 Q. Okay. So that is what it is.

19 Mitigation has been describes as something that lessens
20 someone's moral blameworthiness, whatever that means.

21 A. Yes.

22 Q. They don't get off, but they have to
23 do a life sentence. Now, the great thing about this
24 question is, like I said, mitigation won't be defined to
25 you. It's going to be up to you, whatever you decide
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1 mitigating evidence is.

2 A. Okay.

3 Q. And you don't have to agree with
4 anyone else, any of the other jurors what it is. Okay?

5 A. Okay.

6 Q. And like I said, it is up to you.

7 Obviously, you have to see some evidence, then you have
8 to decide.

9 A. Okay.

10 Q. Let me give you some examples. Let's
11 say you are on a capital murder case, and the evidence
12 comes out, we have reached the punishment stage that the
13 defendant went to Harvard; had a Ph.D. in physics. Okay?
14 One juror might say, "You know, I think that is
15 mitigating evidence."

16 One juror might say, "That didn't
17 matter to me one way or the other, what their education
18 is." Another juror might say, "Well, you know, that
19 could be mitigating. Someone that has worked hard at his
20 education, he is very smart. I would consider that

21 mitigating." Someone might consider it so mitigating,
22 that they say, "A life sentence should be imposed."
23 Another juror might say, "Well, that
24 might be mitigating, but in some ways, but I really think
25 someone that smart should not commit capital murder. In
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1 fact, I will hold it against them." You know, they can
2 disagree. Someone could actually -- what they think is
3 mitigating, another person might think is aggravating.
4 Do you see where I am coming at?

5 A. Yes, sir.

6 Q. You don't have to agree with the other
7 jurors. As you sit here today, and I know you don't
8 think about these things, at least I hope you don't, but
9 does anything come to mind that you think might be
10 mitigating, any type of evidence come to mind?

11 A. No.

12 Q. Okay. That is what most people say.

13 Most people don't sit around the donut shop discussing
14 what mitigating evidence is obviously?

15 A. Well, they discuss a lot of things at
16 the donut shop.

17 Q. Sure. That is the place to meet.

18 A. Yes, it is.

19 Q. But let me run a few things by you.

20 And like I said, you don't have to agree with any of
21 these things. These are things different jurors have
22 come up with over the years now.

23 Sometimes you have capital murders
24 that are committed while a person is under the influence
25 of drugs or alcohol. And I am not talking about a
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1 situation where someone slipped them a Mickey or forced
2 them to drink or anything, they voluntarily get drunk or
3 high on drugs. Under Texas, that is no defense, you
4 still have to be held accountable for your actions. Some
5 people feel that is mitigating. They say, "Well, maybe I
6 might view that as a mitigating circumstance." Other
7 jurors actually hold it against a person even more if you
8 go out and commit a crime under that situation. Does it
9 cut one way or the other with you?

10 A. Well, I think if they do the drugs, I
11 still think that they are guilty of what they did.

12 Q. Sure.

13 A. And it doesn't matter what kind of
14 influence they were under, they make their own decisions.

15 Q. Okay. You would still hold them
16 accountable?

17 A. Yes.

18 Q. Okay. Fair enough. Sometimes you
19 might hear evidence that the person came from a bad
20 economic background. Maybe they came from a poor
21 neighborhood. Some people think that is mitigating,
22 other people say, "No, I came from a poor background. It
23 is what you do with your life." Does that cut one way or
24 the other with you?

25 A. I agree with it. I mean, I disagree
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1 with it, it doesn't matter what kind of background you
2 have.

3 Q. Sometimes you get people that may have
4 had some type of physical abuse when they were growing
5 up, or maybe they were sexually abused or just mentally
6 abused. But, like I said, some people view that as
7 mitigating evidence; other people say, "No. A lot of
8 people have suffered like that and they don't go around
9 killing people." Does it fall one way or the other with
10 you?

11 A. I still say the same thing.

12 Q. Okay. People should still be held
13 accountable?

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

16 Q. Okay. Like I said, you don't have to
17 agree with any of those. But the point is this: If you
18 can keep your mind open to that type of evidence. And if
19 you see it, and it tells you in your heart more or less
20 that, you know, a life sentence should be imposed, I'll
21 answer it that way. And if I don't see that evidence or
22 it doesn't go to the level that I think a life sentence
23 should be imposed, I can answer it no. Could you do
24 that?

25 A. Yes.

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1905

1 Q. Keep your mind open?

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

4 Q. Okay. Fair enough then.

5 Now, there are certain rules of law
6 that Judge Tolle went over that apply in all criminal
7 cases. And I am going to kind of touch on those again.
8 Presumption of innocence: Every defendant who is charged

9 with a crime, the jury has to start out with the
10 presumption of innocence.
11 A. Yes.
12 Q. You can presume them to be innocent?
13 A. Yes.
14 Q. And can you follow that rule of law?
15 A. Yes.
16 Q. Okay. The fact that a person has been
17 indicted, you read the indictment, the fact that a Grand
18 Jury has indicted them, and Judge Tolle explained, that
19 is just a piece of paper?
20 A. Yes.

21 Q. It can't be used as evidence against
22 them. The fact that a person has been arrested, you
23 can't use that against them. The fact that we're even
24 going through this process, or the case is in the news,
25 you can't use that against them in any way.

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1 A. Right.
2 Q. You have to wait until the witnesses
3 testify.
4 A. Right.
5 Q. Can you follow that rule of law?
6 A. Yes.

7 Q. The defendant has an absolute right
8 not to testify. If they want to testify, no one can stop
9 them. Okay? If they choose not to testify, the Judge
10 would instruct the jurors that you can't use that as
11 evidence against them in any way. You just have to look
12 at all the other evidence. Could you follow that rule of
13 law?

14 A. Yes.
15 Q. Okay. In fact, I believe that you
16 even mentioned that and wrote a little bit about that,
17 that you agree with that law?

18 A. Yes, I do.
19 Q. Okay. The State has the burden of
20 proof in this case. We have to prove it beyond a
21 reasonable doubt. Right?

22 A. Right.
23 Q. That is true in every criminal case.
24 Would you follow that rule of law?
25 A. Yes.

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1907

1 Q. Require the State to prove this case
2 to you beyond a reasonable doubt?

3 A. Yes.

4 Q. Okay. Going a little further with
5 that, that also means the defense does not have to prove
6 anything to you. And let me kind of elaborate on that a
7 little bit. These guys, all they are obligated -- I'm
8 sorry, these lawyers, they just have to show up. Okay?

9 A. Yes.

10 Q. Now, I'm sure they are going to ask
11 questions, cross-examine, and make arguments. But if
12 they wanted to, they could just read the comic books or
13 work crossword puzzles, because they are not required to
14 prove anything to you. If we don't get over that hurdle
15 of reasonable doubt, then it's not guilty. No matter if
16 they ask a question or not. Some jurors will come in and
17 say, "Well, I am going to require them to prove their
18 client's innocence." They are not required to do that.
19 They very well may try that, but they are not required
20 to. You can't require them to, you have to require us to
21 prove the case beyond a reasonable doubt.

22 A. Yes.

23 Q. Could you follow that rule of law?

24 A. Yes.

25 Q. Okay. Obviously, you will hear from
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1 the witnesses in a criminal case and many of them may be
2 police officers. You had an uncle that was a police
3 officer?

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

6 Q. And you have a donut shop, so I'm sure
7 officers come in there sometimes for their breaks?

8 A. Yes.

9 Q. They are known for that.

10 A. Yes.

11 Q. You can't start out officers ahead as
12 witnesses just because they are police officers alone.
13 Do you see what I am saying?

14 A. Yes.

15 Q. All witness have to start out on the
16 same level. Now after you listen to them, of course, you
17 are going to judge them all differently. But just
18 because a person is a police officer you don't
19 automatically say, "Well, I am going to believe them over
20 any other witness?"

21 A. Right.

22 Q. Okay?

23 A. Because that doesn't mean that they
24 are always right.

25 Q. Right. There are some good officers
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1909

1 and some bad officers.

2 A. Right.

3 Q. Hard working officers, some lazy
4 officers.

5 A. I agree.

6 Q. Okay. So you could follow that rule
7 of law?

8 A. Yes.

9 Q. Also, the Judge would instruct you
10 that, you know, sometimes we read and hear about the
11 parole laws, when people are being released, that kind of
12 thing. You can't consider those when you going into your
13 deliberations in any way. Okay? You could only consider
14 the evidence. Could you follow that rule?

15 A. Yes.

16 Q. Okay. The trial will start January
17 6th, and we think it will last, at the most, two weeks.
18 We can't say for sure, but it is not going to be like the
19 O.J. Simpson case.

20 A. I hope not.

21 Q. It's two weeks. And Judge Tolle
22 usually works on a schedule of 9:00 to 5:00. You get to
23 go home at night, you would not be sequestered. The only
24 time you would be sequestered is if you were deliberating
25 and it went on into the evening, then you probably would

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1 have to stay overnight in a hotel with the other jurors.
2 That is only during deliberations, but not while the
3 evidence is coming, not a great majority of time. Okay?

4 A. Okay.

5 Q. You don't know any of the attorneys
6 from Dallas, I take it? None of the prosecutors?
7 A. No, sir.

8 Q. Okay. Doug Mulder and Mr. Glover here
9 from Dallas, retained counsel. You don't know either one
10 of them, do you?

11 A. I have never even been to Dallas.

12 Q. Okay. A couple of local attorneys
13 have also been retained. Preston Douglass?
14 A. I do know him.

15 Q. How do you know Mr. Douglass?
16 A. He was the lawyer that was there when
17 I went to the court about that guy that threatened me.
18 Q. Okay. Was he the prosecutor or the

19 defense attorney?

20 A. He was mine.

21 Q. Okay. He was the prosecutor?

22 A. Yes.

23 Q. He used to be a prosecutor here in

24 Kerrville?

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)

2 Q. Now, obviously, he is in private

3 practice.

4 A. Yes.

5 Q. But he won that case for you?

6 A. Yes.

7 Q. Good job, Mr. Douglass. Let me ask

8 you: Would that cause you a problem now that he is on

9 the other side and is representing the defense?

10 A. No.

11 Q. Okay. You don't think, "Well, gosh,

12 he did a good job for me. I'm going to go with him on

13 this type of case."

14 A. No.

15 Q. Okay. Do you understand we're from

16 out of town here. You have had Mr. Douglass, he has been

17 a prosecutor in your case, now he is a defense attorney.

18 We might wonder, well, when it comes down to brass tacks

19 we get even to the guilt/innocence, he may stand up there

20 and argue very strongly, "No, the State has not proven

21 its case." Could you just listen to that argument,

22 listen to what he says but not decide the case just

23 because he was your prosecutor at one time or you like

24 him as an individual?

25 A. I wouldn't go either way.

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1 Q. He could come into the Donut King and

2 you could say, "Sorry I found your client guilty, Mr.

3 Douglass, but that was what the evidence showed"?

4 A. Right.

5 Q. Okay. Same thing as far as answering

6 these questions that result in someone's death. Could

7 you answer those even if Mr. Douglass says, "Don't answer

8 them that way"?

9 A. Yes.

10 Q. Okay. Fair enough. Do you have any

11 questions over anything that we have gone over?

12 A. No.

13 Q. Okay. Well --

14 A. I understand most of it.

15 Q. Yeah, I know it's kind of -- you know,

16 we're not giving you a test. We're kind of running these

17 things by you pretty quickly, but let me ask you about

18 one other area. And when you are filling this out, I

19 know you are doing it pretty quickly.

20 You have ranked people on their

21 objectives and -- we had a little area there about how

22 you would rank objectives of punishment, in order of

23 importance to you. "You put rehabilitate those

24 convicted; deter others; and punish those convicted." Do

25 you remember that at all?

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1 A. No, I don't remember.

2 Q. All right. That is fine. May I

3 approach the juror?

4

5 THE COURT: You may indeed.

6

7 BY MR. TOBY L. SHOOK:

8 Q. Because like I say, it is 13 pages

9 long.

10 A. Yes.

11 Q. This first question, that is what I am

12 talking about. If you would read that over again,

13 please?

14 A. Okay.

15 Q. Okay. We kind of gave you three

16 choices on how to rank them and I want to go over those.

17 Now that you have gone over it again, how do you feel

18 about it? What we are talking about there is the

19 objective of punishment. Do you think, first of all,

20 should it be to punish the one that is convicted, to

21 deter, you know, try to stop other people, or that person

22 from committing that type of crime again, or to change

23 and rehabilitate? What do you think, how do you feel as

24 far as theories of punishment go?

25 A. Well, I mean if it's not murder or

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1 something like, then they should be able to be

2 rehabilitated, I mean given a second chance.

3 Q. Yeah. Just kind of a general scheme,

4 if it's not a violent murder, you would try to change

5 them and give them a second chance?

6 A. Yes.

7 Q. As far as murder goes, are you more
8 inclined to punishment for punishment sake?

9 A. Yes.

10 Q. Okay. But do you agree with the kind
11 of the scheme we have set up here? I know it's the first
12 time you have been through it, but you see how there are
13 different steps that we have to go through to get to a
14 death penalty?

15 A. Yes.

16 Q. Okay. It's not just, you found them
17 guilty, let's go string them up or anything like that.

18 A. No.

19 Q. There's things we have to prove to
20 you. Obviously, I think you have said it yourself, not
21 every murder case is a death penalty case?

22 A. Right.

23 Q. Some are, some aren't. It depends on
24 each fact situation.

25 A. Right.

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1 Q. But you could follow this scheme the
2 way it's been set out for you and follow the law?

3 A. Yes.

4 Q. The bottom line is, keep your mind
5 open to everything and then make up your decision after
6 all of the evidence is in.

7 A. Yes.

8 Q. Okay. Well, thank you. You have been
9 very patient.

10

11 MR. TOBY SHOOK: We will pass this
12 juror.

13 THE COURT: Mr. Douglass.

14 MR. S. PRESTON DOUGLASS, JR: Thank
15 you, Your Honor.

16

17 VOIR DIRE EXAMINATION

18

19 BY MR. S. PRESTON DOUGLASS, JR:

20 Q. Mrs. Franklin, the Judge introduced us
21 earlier, and you have seen me walk by the window a few
22 times at the Donut King there. Do you know Richard
23 Mosty? I am just trying to --

24 A. I know the name, I don't know the
25 person.

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1 Q. Okay. All right.

2 A. I have just heard the name.

3 Q. Let me ask you on question about over

4 at Donut King, from a personal standpoint before we get

5 started, there is a lot of opinionated people that gather

6 at Donut King every morning.

7 A. Yes.

8 Q. Starting at about 6:30 in the morning

9 and finishing about 9:00.

10 A. Sometimes about 6:00.

11 Q. Right. I don't get over there ever by

12 6:00, and I don't go by there. I don't sit with those

13 guys. I don't want to leave the wrong impression. But I

14 want to know if there is people that come in there that

15 have strong opinions one way or the other? Sometimes

16 that can be like being on a jury, you can get back in a

17 jury room and you can say to yourself, "Man, I don't

18 agree with what some of these guys are saying." And you

19 might say, "But I know what I believe."

20 A. Right.

21 Q. And I am going to stick by that. And

22 I use the donut shop as an analogy because a jury is your

23 own individual vote. When you get back in the jury room,

24 it isn't at like Donut King where everybody talks about

25 it and forms a majority opinion and said, "Well, that is

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1 what we all believe, about half of us believe that."

2 And a jury, it's your vote. Your vote

3 can't be forfeited and it's only your vote, and you don't

4 have to vote based on what you believe a majority of

5 people want you to believe. If you were to be on a jury

6 and you get back there and you think, "Man, that is the

7 way it is. I know what I believe, I know the way I think

8 this case ought to come out." Would you stand by your

9 beliefs? Would you stand up for what you believe?

10 A. Yes, I don't listen to those old men

11 over there.

12 Q. All right.

13 A. They do have their own opinions and

14 most of the time when they come in in the mornings I am

15 gone.

16 Q. Tom Pollard's an old man, isn't he?

17 A. Yes.

18 Q. I just want to put that on the record

19 so if I want to write that up one day.

20 A. All right.

21 Q. Let me ask you this: You understand

22 that in picking a jury, we're looking for people who can

23 be absolutely fair and impartial to both sides?

24 A. Yes.

25 Q. They start out the trial saying, "I'm
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1 not leaning one way or the other." This pen is straight
2 up and down and exactly neutral, we want people who don't
3 have a shade or leaning one way or the other.

4 And you may have seen on TV people say
5 things like, "Well, we have hired a jury consultant or
6 somebody who looks at the way people -- where they are
7 from, or maybe how much education they have, and what
8 they do for a living, and how many kids they have, and
9 all of these kinds of things. They think they can come
10 to a conclusion as to how a case ought to work out.

11 Well, I think that stereotypes people.

12 I think it doesn't really work in my mind. And I think
13 in the final analysis, what it all comes down to, is just
14 what you are willing to tell us about yourself, knowing
15 that we're not trying to pry into your background?

16 A. Okay.

17 Q. But just what you're willing to tell
18 us about yourself so that we, relying on what you say,
19 can decide whether you feel like, for this very important
20 case, that you feel like, "Yes, I can handle that. I am
21 fair about that and that make sense to me."

22 On the same plane, we have been
23 through close to 50 people, maybe even over 50 people,
24 who have different opinions one way or the other. No
25 opinion is wrong. There is nowhere in Kerr County that
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1 your right to your opinion is going to be more fiercely
2 protected than in this room. So, you know, if you
3 disagree with something I say, please understand that you
4 are not hurting my feelings. I just want to know what
5 you think about things.

6 A. Okay.

7 Q. Because our perspective is different,
8 I want to talk to you about the guilt/innocence phase of
9 the trial.

10 A. Okay.

11 Q. As Mr. Shook told you correctly, there
12 are two phases to a trial possibly. But you know there
13 is going to be a guilt/innocence phase, that is always
14 going to be that in a trial.

15 A. Yes.

16 Q. But there doesn't have to be a

17 punishment phase. All right. Darlie Routier has entered
18 a plea of not guilty. She will enter that plea of not
19 guilty before the jury that is selected in this case, and
20 she will stand behind that plea of not guilty 100
21 percent. Because of that it's those issues of law
22 concerning the burden of proof and the indictment and
23 those things I want to go through with you a little bit.

24 A. Okay.

25 Q. The indictment sitting in front of you
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1920

1 is a piece of paper, and I don't think anyone in this
2 room will tell you that it stands for anything more than
3 a piece of paper that lets someone know what the charges
4 are against them. Do you remember Judge Tolle talking
5 about the indictment when you came in two weeks ago?

6 A. Yes.

7 Q. Do you remember him saying that in
8 Dallas County that over 25,000 indictments are issued
9 each year? And that one Grand Jury, maybe on a given
10 day, within one eight hour period, let's say, might
11 return 125 indictments against people.

12 And did you remember Judge Tolle

13 saying that many of those people don't even know they are
14 being investigated, and because they don't know they are
15 being investigated, they don't even have a chance to come
16 down and tell their side of the story? Sometimes even if
17 they want to tell their side of the story, the Grand Jury
18 doesn't have to let them. Did you know any of that? Did
19 that surprise you?

20 A. Yeah, well, I didn't know any of it,
21 no.

22 Q. Okay. Does it -- because someone
23 might not even know they are being indicted, or because a
24 Grand Jury of 9 to 12 people might sit there and hand out
25 125 indictments all at one time, can you understand why
Sandra M. Halsey, CSR, Official Court Reporter
1921

1 an indictment really is no evidence of guilt at all?

2 A. Yes.

3 Q. Now, I am really don't want to pry
4 into something that might be near and dear to your heart,
5 but there is something I want to bring up a little bit,
6 and that is the deal about your dad. You can understand
7 why there is a presumption of innocence, can't you?

8 A. Yes.

9 Q. If we started out -- if I am accused
10 of beating up my wife and everybody says, "Well, you

11 know, Preston, he just beats up his wife." And I start
12 out presumed guilty, then that is fundamentally unfair.
13 Because it is kind of hard to start with that old
14 question, "When did you stop beating your wife?" I mean,
15 how do you prove that you never did it.
16 You might be able to say, "Well, she
17 doesn't have any bruises." But other than that, she said
18 "Well, it happened five years ago." It's pretty
19 difficult to come along and have to prove your innocence.
20 And because of that, the law says that
21 you start out with the presumption of innocence, because
22 that is the only fair way to handle it. And that the
23 people who are doing the accusing, they are the ones who
24 have got to prove it.
25 A. Right.

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1922

1 Q. Okay. Can you see where it might have
2 been an extremely difficult proposition if, for instance,
3 somebody presumed your father guilty to begin with?

4 A. Yes.

5 Q. And you went through this and said,
6 "That even though it took a long time, he finally had the
7 charges dropped, and was able to put it behind him." Is
8 that right?

9 A. Yes.

10 Q. Can you understand that maybe the
11 reason those charges were dropped were the State realized
12 it had a burden of proof?

13 A. Yes.

14 Q. And they said, "Well, you know, rumors
15 aren't going to do it. You have to have proof. And if
16 we don't have proof, we're not going to charge this guy."
17 Does that sound fair to you?

18 A. Yes.

19 Q. All right. Now, we're in a situation
20 here where the burden of proof in a criminal trial rests
21 solely with the attorneys representing the State. It
22 never shifts over to the defendants. You could -- Mr.
23 Shook said you could -- that we could sit over here and
24 do crossword puzzles, or something, and he has got a
25 point.

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1923

1 The point is: You can go through a
2 whole trial, the State could put on evidence for you.
3 And you might think, "Well, you know, they are telling me
4 a crime occurred, and they are bringing me evidence that

5 says somebody did it.

6 And they are bringing me evidence that

7 says that maybe they think this person did it. But they
8 have not proven it to me to the very high standard of
9 beyond a reasonable doubt." And you are sitting there
10 and you are saying, "Well, I wonder what happened; I
11 don't think they have got it".

12 And then one of the lawyers

13 representing the State may stand up and say, "We rest our
14 case. We have no other evidence to produce."

15 Well, in that situation, representing

16 a person charged with a crime, a defense lawyer can stand
17 up and say, "They have not proven their case. We don't
18 have to bring any evidence." And stand up and they look
19 at the Judge and say, "We have no evidence to present,
20 Your Honor," and sits down. Now, in that situation you
21 have not heard one iota of evidence from the defense.

22 Would you be comfortable with that?

23 A. Yes.

24 Q. Would you, if you had a question in
25 your mind that amounted to a reasonable doubt, but the
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1924

1 defendant had not put on any evidence at all, but that
2 reasonable doubt was there, what would be your verdict in
3 that situation?

4 A. Well, I don't know.

5 Q. Let me go back through it, because now
6 you know what the question is going to be.

7

8 THE COURT: I don't think she
9 understood the question.

10

11 BY MR. S. PRESTON DOUGLASS, JR:

12 Q. Let me rephrase it another way. If

13 you know you have to vote in a criminal trial, and you
14 have heard the State put on evidence, and they have put
15 on some evidence, but like we just talked about, there is
16 a reasonable doubt in your mind. You are thinking to
17 yourself, I have a doubt, a reasonable doubt about this
18 case; about whether they have proved the charges. And
19 they don't bring you enough evidence and then the
20 defendant doesn't put on any evidence.

21 And then in that situation, you have

22 that reasonable doubt, but you have not heard any
23 testimony or any evidence presented by the defense
24 lawyers. Same question. What do you believe would be a
25 verdict in that situation?

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1925

1 A. Well, I really wouldn't say guilty.

2 Q. Right. That is because you have a
3 reasonable doubt?

4 A. Right.

5 Q. Okay. So I assume that that means a
6 verdict of not guilty is what you feel like you would be
7 required under your oath to do?

8 A. Right.

9 Q. Okay. The burden of proof beyond a
10 reasonable doubt is the highest burden anywhere. One of
11 my partners uses an analogy or an example: He will draw
12 a circle. And he will say, "Imagine that before a trial
13 starts, there is a circle and coming out of this circle
14 is a beam of light, and that beam of light is the
15 presumption of innocence. And that as a defendant starts
16 a trial, the defendant's absolutely presumed innocent.
17 And that the State has the burden to come along and
18 produce evidence, some evidence might be small; some
19 evidence might be big, but they have to completely
20 blacken out that circle, so that there is not one beam of
21 light coming out. When you blacken it out, you have
22 obliterated the presumption of innocence."

23 In that example, if there is just one
24 little beam of light coming through, that amounts to a
25 reasonable doubt, no matter how small, even if it's just
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1926

1 a little pin light coming through, and that amounts to a
2 reasonable doubt: Do you agree that unless the State has
3 completely blackened out that circle, that the correct
4 verdict when there is just that little reasonable doubt
5 is not guilty?

6 A. Yes.

7 Q. Is that a right that you feel strongly
8 should be given to the defendant?

9 A. Yes.

10 Q. And I would assume from that, that you
11 are comfortable with that if you don't hear evidence from
12 a defendant, and you have not heard a word, that you will
13 look at the State's case under a microscope and examine
14 it knowing that that is the evidence. And I can't worry
15 about, "I wish those guys over there had said something."
16 I am only going to look at their evidence.

17 A. Well, like you said, you guys don't
18 have to say anything or do anything.

19 Q. Let me take that one step further.

20 The State may put on a bunch of witnesses, but we get to

21 ask them questions. The defense lawyers get to
22 cross-examine. Do you remember in that trial that you
23 had, they got to ask you questions?

24 A. Yes.

25 Q. All right. And, those questions
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1927

1 sometimes you could hear -- let's say a person claims
2 they are an eyewitness, a hypothetical gets on the stand
3 and says, "I saw Preston run in the bank and rob the
4 bank."

5 And you say -- and the State brings
6 that witness, and you say, "Boy, that is a pretty big --
7 that is an eyewitness."

8 And the defense lawyer says, "Well,
9 how did you know it was Preston?"

10 "Oh, I knew it was Preston."

11 "How do you know?"

12 "Well, he drives a silver car."

13 "Well, how many people do you know
14 drive silver cars?"

15 "Well, a lot of them."

16 "Well, how do you know he was robbing
17 a bank?"

18 "Well, he had bag."

19 A. That doesn't mean anything.

20 Q. Right. Well, even though the defense
21 lawyers may not have put on any witnesses, can you agree
22 that maybe they can discredit the State's witnesses, such
23 that they don't need to prove anything. The State's
24 proof by itself was insufficient?

25 A. Yes.

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1928

1 Q. Okay. Along with that, is the right
2 that a defendant has an absolute right not to testify.

3 A. I agree.

4 Q. Many times that decision is made by
5 that person's lawyers for them. They can certainly ask
6 them, but many times, lawyers make the decision. They
7 have not proven anything, there is no reason for you to
8 get up there.

9 A. Right.

10 Q. There are three groups of people, I
11 think. There are some people that say, "If I was on
12 trial, I would get up there and I am going to say
13 something, no matter what."

14 There is a second group of people that

15 say, "Well, if I am on trial and I have hired a lawyer,
16 and I am going to trust that lawyer, if he tells me,
17 don't get up there, I'm not going to get up there. I am
18 going to do what that lawyer tells me to do because he
19 knows."

20 And then a third group of people that
21 will say, "I am really a nervous person. And I don't
22 remember how you -- I remember talking to you before that
23 trial, but I cannot jump into your mind. I remember you
24 were a little nervous."

25 A. Yes, I was.

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1929

1 Q. Right.

2 A. Because I had never been in a
3 courtroom, or never been in trouble with the cops in my
4 life.

5 Q. I remember that. And I guess what I
6 am getting at is, some people would be nervous and they
7 would say, "I don't want to get on the stand, because I'm
8 afraid that one of these lawyers will twist around what I
9 say and make me look guilty, even though I am telling the
10 truth." So you get three groups of people. Is there any
11 one of those groups of people you think you kind of
12 identify with more closely?

13 A. Not really.

14 Q. Can you understand all three groups of
15 people?

16 A. Yes, uh-huh. (Witness nodding head
17 affirmatively.)

18 Q. Do you think any them are wrong? Or
19 do you think, "Well, I could see all of those positions"?

20 A. I could probably see all of those
21 positions.

22 Q. Okay. I want to talk to you a little
23 bit about circumstantial evidence and direct evidence.
24 Sometimes we talk about indirect evidence and direct
25 evidence. When you consider evidence as a juror, it is
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1930

1 your -- the Judge will tell you in a written piece of
2 paper, that you are the sole judge of the credibility and
3 believability of a witness.

4 And for that matter, you are the sole
5 judge of all of the evidence. And if you want to believe
6 part of what you hear from one witness, if you want to
7 believe everything one witness says, or you want to toss
8 the whole thing out the window, and say, "I don't believe

9 that guy from word go." That is your choice. Nobody can
10 tell you, you have to believe someone. No one can tell
11 you, "Well, I believe that fingerprint means everything
12 to me." That is your decision.

13 In that regards, do you think you
14 would be willing to judge different kinds of evidence,
15 maybe direct evidence as opposed to indirect evidence,
16 circumstantial evidence, and judge it and say, "Some
17 stuff I am going to put more weight on. I might put more
18 weight on an eyewitness, I may not. I might put more
19 weight on a picture, but I might not." Can you do that?

20 A. Yes.

21 Q. Okay. I want to talk a little bit
22 about motive with you. Mr. Shook was correct that the
23 State does not have to prove a motive. In that
24 indictment there are elements, is what people call that
25 sometimes. And, for instance, not in that typewritten
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1931

1 part, but up at the very top of it, you might see that it
2 says in that indictment --

3

4 MR. S. PRESTON DOUGLASS, JR: May I
5 approach?

6 THE COURT: You may.

7

8 BY MR. S. PRESTON DOUGLASS, JR:

9 Q. You might see in that indictment that
10 it says, "In the County of Dallas, that on or about a
11 date in Dallas County," something -- their allegation is
12 they say that is what happened.

13 Now, one of the hurdles they must jump
14 over is on or about a date, you see they have set out a
15 date. And then another hurdle they have got to jump over
16 is they have got to show that it happened in Dallas
17 County, because they have said it there in that
18 indictment.

19 A. Yes.

20 Q. That is something they said that they
21 have got to prove. Well, he is right. Motive is not
22 written down, it doesn't say why.

23 A. Right.

24 Q. But, I would submit to you that
25 motive, while it may not be an element they have got to
Sandra M. Halsey, CSR, Official Court Reporter
1932

1 prove, may be something you can consider in deliberating.
2 A. Right.

3 Q. What I mean by that is, let's say it's
4 a circumstantial evidence case. You have a bunch of
5 evidence about fingerprints or hair samples or, you know,
6 different things. And you listen to it and you say, "You
7 know, I understand that evidence, but I can't fit it
8 together." You know, it is kind of like doing a quilt,
9 and the pieces to that quilt don't fit together. Can you
10 understand that somehow the why something happened might
11 be the thread that puts the quilt together?

12 A. Yes.

13 Q. All right. Now, where I take that
14 from is, it is possible in a case that you might say,
15 "You know, they don't have to prove me a motive, but the
16 fact that there was no proof of motive, it never was even
17 talked about, the fact that I just don't understand this,
18 causes me to have a reasonable doubt. The pieces don't
19 fit together in the puzzle." Could you agree with me in
20 that situation that a lack of proof of a motive could
21 create a reasonable doubt in your mind?

22 A. Yes.

23 Q. You would be open to the fact that
24 you, sitting as a juror and making a very important
25 decision in a person's life might say, "I know they
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1933

1 brought me a bunch of evidence about stuff, but it
2 doesn't fit. If they could tell me why this happened,
3 then it might fit. But they can't, so I don't understand
4 it." Could you understand that might happen?

5 A. Yes.

6 Q. And if that did happen and it raised a
7 reasonable doubt in your mind, would you be able to say,
8 "Well, I have got a reasonable doubt, I am voting not
9 guilty"?

10 A. Yes.

11 Q. Along those lines, also, there is not
12 a requirement -- jurors aren't asked to solve a case.
13 There is no doubt in my mind, not one doubt, that you are
14 going to believe that a very terrible crime took place.

15 I don't have a question about that in my mind at all.
16 But the issues is not to be -- a jury is not a detective,
17 a jury decides: Did the State prove the allegations in
18 that indictment beyond a reasonable doubt?

19 So, can you understand the difference,
20 that a jury doesn't say, "Well, we can't figure out who
21 did it, so it must be the person they charged"?

22 A. Right.

23 Q. The question is: Did they prove the
24 person they charged is guilty beyond a reasonable doubt?

25 Can you appreciate that difference?
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1934

1 A. Yes.

2 Q. Okay. Also, I feel real confident
3 that you are going to see pictures. And I don't think --
4 I have not been involved in a lot of murder cases. But I
5 can tell you that I haven't been involved in one that
6 didn't have pictures and the pictures were not
7 disturbing. It's just, you know, it's the fact of the
8 matter.

9 A. Right.

10 Q. And many times pictures like that will
11 be blown up, for whatever reason, to show you some minute
12 piece of evidence or something, but because they are
13 blown up, they look terrible.

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

16 Q. And where that causes me concern is
17 some people will get so upset about a picture just
18 because of the way it looks, that they become enraged and
19 mad, and they want to punish somebody because of what
20 they saw in that picture.

21 A. No.

22 Q. You don't feel that way?

23 A. No.

24 Q. Would you be able to judge a picture
25 for what it is? For just a picture of what somebody is
Sandra M. Halsey, CSR, Official Court Reporter
1935

1 hoping to prove?

2 A. Yes.

3 Q. Your dad was able to move down here?

4 A. Yes, he has been here for about five
5 years.

6 Q. All right. There are a couple of
7 things I want to go through in your questionnaire. One
8 is that you had said that you feel like the death penalty
9 ought to be assessed in every capital murder case. And I
10 want to talk to you about that a little bit.

11

12 THE COURT: The word used is
13 appropriate, not assess.

14 MR. S. PRESTON DOUGLASS, JR: That is
15 correct, I'm sorry.

16 THE COURT: It has a totally different
17 meaning.

18 MR. S. PRESTON DOUGLASS, JR: That is

19 true.

20

21 BY MR. S. PRESTON DOUGLASS, JR.:

22 Q. It says: I believe that the death

23 penalty is appropriate in all capital murder cases. And

24 the question, as I sit here listening, is whether that

25 means that you believe that if somebody is found guilty

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1936

1 of capital murder, regardless of their background,
2 regardless of the circumstances, that you automatically

3 are going to believe they should die?

4 A. In a lot of cases -- well, in a lot of

5 murder cases, yes.

6 Q. Okay.

7 A. Because somebody else died and they

8 didn't need to die.

9 Q. All right. My question to you is:

10 When you say a lot, does that mean that you believe in

11 every case the death penalty ought to be assessed?

12 A. No.

13 Q. Okay. Where that is important is, we

14 get to these two questions over here. And in order to be

15 a juror in the case, you have to be able to consider

16 evidence about these two questions. You don't, Ms.

17 Franklin, you don't get to these questions unless you

18 have found someone guilty of capital murder.

19 A. Right.

20 Q. And if a person started out with these

21 questions saying, "Well, I found them guilty of capital

22 murder, so I don't care what the evidence is. I am going

23 to answer these questions so that somebody gets the death

24 penalty."

25 A. No.

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1937

1 Q. You understand there is no use in even

2 having a trial with people that think like that?

3 A. Right.

4 Q. Okay. Now, I want to talk about these

5 questions for a second. The burden of proof on this

6 question is, again, on the attorneys representing the

7 State. It's not the defendant's burden to prove that he

8 or she would not be a continuing threat to society. They

9 have to show that the defendant is a continuing threat.

10 So that burden is theirs, too?

11 A. Right.

12 Q. Okay?

13 A. Yes.

14 Q. Now, again, they use the word

15 "reasonable doubt." That very high burden, they have got
16 to prove to you beyond a reasonable doubt.

17 They want you to predict in the future

18 beyond a reasonable doubt in your mind, that the person
19 would be a future danger. But not only that, they want
20 you to predict that the person be a reasonable doubt

21 (sic) in the future to a probability.

22 Now, I don't know if Mr. Shook asked

23 you this, what does probability mean to you?

24 A. That they would probably do something

25 again.

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1938

1 Q. Would you agree with me that that

2 statement means it's more likely than not that they would
3 do something?

4 A. Yes.

5 Q. That it is probable?

6 A. Yes.

7 Q. Likely to happen?

8 A. Right.

9 Q. So that means that they have to prove

10 on them beyond a reasonable doubt, that it's probable
11 that a person will be a continuing threat to society.

12 Now, does that sound like a heavy burden on them?

13 A. Yes.

14 Q. Okay. Now, I want to talk to you

15 about the second special issue. We have used different
16 kind of phrases for that, they call this the mitigation
17 question. I sometimes have said that it is the kind of
18 question that you can stop the train, some people say a
19 safety net.

20 What I think happens is, and what I

21 think ought to happen, is if someone gets found guilty of
22 capital murder, and then a juror finds out and believes,
23 "Well, they have proved future danger, too."

24 I have made a suggestion before that

25 that is a point where the jury takes a break. Goes out

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1939

1 and walks under those pecan trees over at the courthouse
2 and says, "You know, now the last issue is, is there a
3 reason, based on the defendant's background, based on
4 this person's character, that we don't have a death
5 penalty, that we issue a life sentence."

6 Now, you clear your mind and you say,

7 "Now we're down to the last question." And there is no
8 burden of proof in this situation, they don't have to
9 prove to you that there is no mitigating circumstances.
10 This is -- I like to say sometimes the burden is kind of
11 on the jury, because this is where you sift through the
12 evidence and think to yourself, "Well, now what is the
13 right result."

14 Now, they are not -- mitigating is a
15 word that I never used before I got in this business. We
16 have had a lot of people come in here and say, "I have
17 never heard that word before."

18 A. Well, no, I have never heard it
19 either.

20 Q. And, quite frankly, it is kind of a
21 difficult word, because the best analogy that some people
22 can say is, "It lessens the moral blameworthiness."
23 Well, that doesn't help me very much either.

24 And sometimes I have said it
25 lessens -- and in lessening their responsibility is
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1940

1 sometimes not good either. I think it means that the
2 person -- mitigates means it's kind of a check in their
3 favor, it's kind of a plus for them, a reason not to give
4 them the death penalty.

5 A. Right.

6 Q. Okay. And I don't know many people
7 that when Mr. Shook or Ms. Wallace say, "Tell us what you
8 think is mitigating." I don't know many people that just
9 run up and say, "Oh, I think this, this, and this is, I
10 have thought about this a lot." Nobody thinks about this
11 stuff.

12 A. No.

13 Q. But, what I am going to do is I'll
14 give you some suggestions about some things you might
15 consider as mitigating evidence. For instance, some
16 people might believe that because a defendant is very
17 young that that might mitigate against a death penalty.
18 That may lean them against a death penalty. How do you
19 feel about that? Do you think if a person is very young
20 that maybe that would be a reason to consider as
21 mitigation against the death penalty?

22 A. Yes.

23 Q. Some people might say, "You know, it
24 doesn't matter to me if the person is young. What
25 matters to me is that person had a terrible childhood,
Sandra M. Halsey, CSR, Official Court Reporter
1941

1 grew up in a bad environment." How do you feel about
2 that? Do you think that could be mitigating?

3 A. No.

4 Q. Okay. Some people -- and what is
5 important about that is you just made a determination
6 that some certain stuff might be mitigating to you and
7 some may not. Now you can get in a jury box, get back in
8 deliberating on that question, and somebody say, "Ms.
9 Franklin, I believe that it mitigates because this person
10 had a terrible background." And you might say, "Well, I
11 respect your opinion, but I disagree with you on that
12 one." But I will say this, "I believe, Ms. Franklin, I
13 believe that youth might mitigate." Can you understand
14 that in deliberating on the mitigation issue that you may
15 both decide that a life sentence is appropriate, but you
16 can decide for different reasons? It doesn't have to be
17 the same reason?

18 A. Yes.

19 Q. One person might say, "Bad
20 background." Somebody else might say, "This is a young
21 person. And for that reason we don't agree on what, but
22 we both agree it ought to be a life sentence." Does that
23 sound right to you?

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

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1942

1 Q. Okay. The last thing I am going to
2 ask you about the death penalty: Have you always felt
3 kind of the way you do about the death penalty? Have you
4 ever thought about it at great length?

5 A. Not really thought about it, no. I
6 mean, I don't see things on TV, and I don't watch a lot
7 of TV. But I think that, yes, I think the death penalty
8 should be imposed; if it's a bad case and if they have
9 enough proof, then I think that they should.

10 Q. And I'm going to ask you this question
11 and I'm not doing it by any means to pick on you, I am
12 curious about one thing. I heard you say that at the
13 Donut King you are gone by the time a lot of people come
14 in there. And I'm assuming that you are the one that
15 goes in there at three o'clock in the morning and does
16 the --

17 A. Right, actually me and my husband both
18 go in there.

19 Q. All right. Well, you all do the hard
20 work at 3:00 or 4:00 in the morning. Right?

21 A. Well, we start about nine o'clock at
22 night.

23 Q. Okay.

24 A. And we're done usually by about 5:30

25 or so.

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1943

1 Q. In the morning?

2 A. Yes.

3 Q. I thought that was the case and the
4 reason I'm asking you this, and I'm not trying to pick on
5 you, is: If you here at trial and you are sitting all
6 day as a juror, and you have been working hard at night,
7 are you going to feel like that is something you can do,
8 that you feel comfortable with?

9 A. Well, we have somebody else that works
10 there. I don't do it on a continuous basis because I
11 have a full-time job that I still work at that I am
12 fixing to quit and go down to my shop.

13 Q. Where are you working now?

14 A. I am the assistant manager at Payless
15 in the mall.

16 Q. Right, I was just curious because I
17 have driven by there at night. You know my office is
18 next door, and I have driven by at night and I have seen
19 those lights on, and I know it is a hard job and I just
20 wanted to ask you --

21 A. Well, my husband is down there 99
22 percent of the time. I just go in there when he has a
23 lot of big orders to do.

24 Q. You got it figured out.

25 A. Yes.

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1944

1 Q. Okay. All right.

2

3 MR. S. PRESTON DOUGLASS, JR: I might
4 not have any other questions, Judge.

5 THE COURT: Thank you.

6 MR. S. PRESTON DOUGLASS, JR: I don't
7 have any further questions, Your Honor.

8 THE COURT: Thank you. Can you step
9 outside briefly, ma'am.

10 THE PROSPECTIVE JUROR: Me?

11 THE COURT: Yes. Don't go away. We
12 will bring you back in a minute, thank you, ma'am.

13 THE PROSPECTIVE JUROR: Thank you.

14

15 (Whereupon, the prospective
16 juror was excused from the

17 room, and the following
18 proceedings were held,
19 outside of her presence
20 as follows:)

21

22 THE COURT: All right. Who says?
23 MR. TOBY L. SHOOK: The State accepts
24 the juror.

25 THE COURT: Defense?
Sandra M. Halsey, CSR, Official Court Reporter
1945

1 MR. S. PRESTON DOUGLASS, JR: We
2 accept the juror.

3 MR. CURTIS GLOVER: Yes, sir.

4 THE COURT: All right. Well, wait a
5 minute, we have to it the right way. If you will have
6 Ms. Franklin step back in, please.

7 Ms. Franklin, you have been accepted
8 as a juror in this case.

9 THE JUROR: Okay.

10 THE COURT: Now, this trial will start
11 on the 6th of January.

12 THE JUROR: Okay.

13 THE COURT: Mr. Navarre back there
14 will tell you -- he will give you a call later, it will
15 be at the courthouse down there, when to check in and all
16 that.

17 THE JUROR: Okay.

18 THE COURT: Between now and then,
19 please do not discuss this case with anybody,
20 particularly at the donut shop in the morning. Now, I
21 know you are going to tell your husband, that always
22 happens. Even if we told you not to, you are still going
23 to tell him, but tell him not to say anything about it.

24 THE JUROR: Okay.

25 THE COURT: Because when the trial is
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1946

1 over, you can talk to or not talk to anybody as you see
2 fit. That includes lawyers, members of the press,
3 anybody. If you want to talk to them, you can. If you
4 don't want to, you don't have to.

5 THE JUROR: Yes.

6 THE COURT: But it is going to be much
7 fairer for this defendant and better for all concerned if
8 nobody says anything until the trial is complete.

9 THE JUROR: Okay.

10 THE COURT: We do have a gag order. I

11 can impose monetary or jail time sanctions.

12 THE JUROR: Oh, no.

13 THE COURT: I'm not threatening you,

14 and I know it won't be necessary. But I do know, having

15 been raised in private business myself, how those things

16 can get around, particularly, in what is obviously a

17 place of great ambiance in the local Kerrville community.

18 THE JUROR: Yes.

19 THE COURT: So, if we could -- mum is

20 the word until then. Fair enough?

21 THE JUROR: Yes, sir. Fair enough.

22 THE COURT: Thank you very much, thank

23 you very much.

24 THE JUROR: Thank you.

25 THE COURT: All right. We'll take a

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1947

1 brief break.

2

3 (Whereupon, a short

4 recess was taken,

5 after which time,

6 the proceedings were

7 resumed on the record,

8 in the presence and

9 hearing of the defendant

10 as follows:)

11

12 THE COURT: All right. Let's bring in

13 the next potential juror. This is Mr. Goodale.

14 THE PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: Okay. Good.

16 THE PROSPECTIVE JUROR: Like good ale,

17 like good beer.

18 THE COURT: Yes, I got that, wonderful

19 indeed.

20 Will you raise your right hand,

21 please, sir.

22 THE PROSPECTIVE JUROR: Sure.

23 THE COURT: Do you solemnly swear or

24 affirm you will true answers make to all the questions

25 propounded to you concerning your qualifications as a

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1948

1 juror, so help you God?

2 THE PROSPECTIVE JUROR: Yes, sir, I

3 do.

4

5 (Whereupon, the prospective
6 juror was duly sworn by the
7 Court to true answers make
8 to the questions propounded,
9 concerning qualifications, after
10 which time, the proceedings were
11 resumed as follows:)

12

13 THE COURT: All right. This is juror
14 51 on our list, 155 on the jury list.
15 Charles B. Goodale, G-O-O-D-A-L-E.
16 And Mr. Goodale, you are a potential juror in the Darlie
17 Routier case.
18 Mrs. Routier is sitting there in the
19 brown dress, represented by her attorneys, Curtis Glover
20 and Preston Douglass. Mr. Glover is from Dallas and Mr.
21 Douglass, of course, is here locally from Kerrville. She
22 is also represented by Doug Mulder from Dallas and by
23 Richard Mosty from Kerrville, they are not here.
24 Today the State is represented by Toby
25 Shook and Sherri Wallace. They are Assistant District
Sandra M. Halsey, CSR, Official Court Reporter
1949

1 Attorneys from Dallas County. Another District Attorney,
2 Greg Davis, is also representing the State, he is not
3 here either today.

4 They are going to ask you some
5 questions, both sides are. There are no wrong answers,
6 there will not be a test. So any way you feel about
7 things, just let us know. Is that fair enough?

8 THE PROSPECTIVE JUROR: Sure.

9 THE COURT: Okay. And if you could
10 answer yes or no, instead of uh-huhs or huh-uhs like we
11 all want to do, because Ms. Halsey is taking all of this
12 down, and you can't get down all those other sounds.

13 So, Ms. Wallace.

14 MS. SHERRI WALLACE: Thank you, Your
15 Honor.

16

17

18

19

20

21

22

23

24

25

Sandra M. Halsey, CSR, Official Court Reporter

1950

1 Whereupon,

2

3 CHARLES BINGHAM GOODALE,

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. Again, good morning. I am Sherri

14 Wallace and I am the prosecutor that is going to be
15 asking you some questions. Thanks for filling out your
16 questionnaire, it has been a great help to us.

17 I am going to start by asking you some

18 questions about that and a little bit about your

19 background, and get into the death penalty in general and
20 how you feel about it. And end up with principles of
21 law, general principles of law that apply in criminal
22 cases.

23 I see from your questionnaire that you

24 have testified before so although that seat is probably
25 not comfortable, it is probably not as uncomfortable as

Sandra M. Halsey, CSR, Official Court Reporter

1951

1 it is to some folks.

2 A. Yes, ma'am.

3 Q. How often have you testified, Mr.

4 Goodale?

5 A. I believe it's been twice, possibly
6 three times, I can't remember all of them.

7 Q. Couple times?

8 A. Right.

9 Q. Let me ask you, you know we have some
10 Dallas lawyers that were hired or retained by the
11 defendant in this case, and that is Doug Mulder and
12 Curtis Glover. Do you know either of those gentlemen?

13 A. No, ma'am, I do not.

14 Q. Okay. And then they retained local
15 counsel as well, and that is Preston Douglass who is here
16 today, and Richard Mosty. Do you know either of those
17 gentlemen?

18 A. Yes, ma'am, I do.

19 Q. Okay. Do you know both of them?

20 A. I know Mr. Mosty.

21 Q. All right. Do you know Mr. Douglass

22 who is here?

23 A. No, I sure don't.

24 Q. Okay. What is your relationship with

25 Mr. Mosty?

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1952

1 A. Mr. Mosty attends my church at St.

2 Peters Episcopal Church. We have known each other

3 through church for almost 18 years.

4 Q. Okay. How would you characterize your

5 relationship with him?

6 A. I would say we are friends. I have

7 been to their home through different church functions,

8 and our children are the same age, so we have attended

9 sporting events and gatherings and sat together.

10 Q. All right. So that is not unusual, of

11 course, here in Kerrville for folks to know each other.

12 Is there anything about your friendship with Mr. Mosty

13 that would affect you or influence you in this case?

14 A. No, ma'am, not at all.

15 Q. Okay. Let's say we get to a point

16 where one of the prosecutors, obviously you don't know

17 any of us, says one thing, and Mr. Mosty says another.

18 Would you just wait and listen to what we both have to

19 say and come judge us equally based on what you heard?

20 A. Yes, ma'am, I would.

21 Q. Okay. So there is nothing about that

22 relationship that would influence you?

23 A. No, ma'am.

24 Q. Okay. Fair enough. But you see where

25 I am coming from?

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1953

1 A. I do. If I may?

2 Q. Sure, please.

3 A. As I was on the city council, I

4 mentioned that in there, we were involved in a lawsuit

5 having to do with our damn in this town. Mr. Mosty was

6 the representative of the engineer who we were suing.

7 So --

8 Q. You have been in this position?

9 A. I have been on both sides with Mr.

10 Mosty and had no problems with it.

11 Q. That is fine. Fair enough. Let me

12 ask you: Are you still on the city council?

13 A. No, ma'am, I am not.

14 Q. How long did you serve in that
15 capacity?

16 A. I served four and a half years.

17 Q. Okay. Was it a positive experience
18 for you?

19 A. Oh, yes, ma'am.

20 Q. Good. I want to ask you too a little
21 bit about your job. I see that you are a medical
22 technologist here at the hospital. Oh, excuse me, you
23 are the director of laboratory services. You used to be
24 in medical technology. What do you do as the director?

25 A. I administer the clinical laboratory,
Sandra M. Halsey, CSR, Official Court Reporter

1954

1 I am over 25 employees at the Smith-Peterson Laboratory.
2 They do the testing and I still have the ability to do
3 the testing, it's just the administrative work takes all
4 of my time; that's budgets, the fiscal portion, total
5 quality management portion, and that part of it.

6 Q. Okay. Let me ask you, Mr. Goodale,
7 when you had testified previously, you said that you
8 testified in DWI trials as to blood levels, and whatnot.
9 Was that in your capacity as administrator testifying for
10 one of your technicians, or was that work that you did
11 yourself?

12 A. Both.

13 Q. Okay.

14 A. For both.

15 Q. Have you had any training in DNA?

16 A. No, ma'am, I have not.

17 Q. Okay. Or any training in blood
18 spatters?

19 A. No, ma'am, I have not.

20 Q. So, with regards to your position,
21 primarily your training is in the blood-alcohol levels?

22 A. It's in blood-chemistry tests and
23 blood-alcohol happens to be one of the tests that we do
24 test for.

25 Q. Okay. Have you ever testified in any
Sandra M. Halsey, CSR, Official Court Reporter

1955

1 other type of criminal case other than DWI?

2 A. No, ma'am.

3 Q. I think -- and your father had this
4 job before you did; is that right?

5 A. No, ma'am.

6 Q. Okay. I thought it said -- occupation
7 before, but that is when you were referring to yourself?

8 A. Yes.

9 Q. Okay. Are your parents here in town?

10 A. No, ma'am, they are both deceased.

11 Q. They are deceased?

12 A. Yes.

13 Q. Okay. And I also see from your

14 questionnaire that you did serve on jury service and said
15 it was a positive experience?

16 A. Yes, ma'am.

17 Q. Can you tell me a little bit about

18 that?

19 A. The case that I served on was a
20 criminal case, having to do with the competency of the --
21 actually he was already had been found guilty, and it was
22 bringing him back from Rusk State Hospital to recertify
23 his competency.

24 Q. Just one of those check-up things they
25 do?

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1956

1 A. Yes.

2 Q. Okay. I would like to talk to you a
3 little bit now about the death penalty. Before we get
4 into that, do you have any questions for me?

5 A. No, ma'am.

6 Q. Okay. On your questionnaire you said
7 that you were in favor of the death penalty, and there
8 were certain situations where the death penalty should be
9 imposed. And you believe that you could return a verdict
10 resulting in death in the proper case, is that still how
11 you feel?

12 A. Yes, ma'am. In the last week, well,
13 since the questionnaire, I visited with my assistant
14 rector to make sure that my feelings were still of this
15 nature, and, yes, I do still feel the same way.

16 Q. Okay. Have you always felt that way?
17 Or have you changed your opinion recently?

18 A. No, ma'am, I believe I have always
19 felt that way.

20 Q. Okay. It's not something we like to
21 have to have, but do you feel like it's necessary?

22 A. Yes, ma'am, I do.

23 Q. Okay. Are there any particular types
24 of crimes where you believe that the death penalty is
25 appropriate?

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1957

1 A. I believe there are several different
2 kinds. I think one being, of course, I believe strongly
3 that if a police officer, you know, if it's a police
4 officer that is the victim. Also, hideous (sic) crimes
5 where they involve, basically, premeditation, and, of
6 course, in capital cases where there is robbery involved
7 and things like that. So, I do, pretty much in those
8 aspects.

9 Q. Okay. You have pretty much touched on
10 some of the crimes that are eligible for the death
11 penalty in Texas. Let me tell you, in summary, what
12 those are and see if you agree with that list. If you
13 would add to it or change it in any way.

14 As you said, police officer, fireman,
15 or prison guard while in the line of duty, if they are
16 killed, that is eligible for a capital murder.
17 Additionally, if someone kills two or more people, that
18 would be a person who would be eligible for the death
19 penalty. A murder in the course of a robbery,
20 kidnapping, rape, would qualify as well.

21 A murder for hire, in other words, if
22 I hire a hit man to kill someone, I would be eligible for
23 the death penalty, as well as the person I hired who was
24 killing for money. Those types of people would be
25 eligible for the death penalty. And, as in this case, if
Sandra M. Halsey, CSR, Official Court Reporter

1958

1 you kill a child under the age of six years of age. Are
2 those types of crimes that you agree with?

3 A. Yes, ma'am, I do.

4 Q. Okay. Anything about that list that
5 you would change or add to?

6 A. Not that I can think of at this
7 moment.

8 Q. Okay. Here is how the scheme for
9 death penalty works in Texas. In a trial, there are two
10 phases of a criminal trial. There were not in the type
11 of trial you were, because you were just asked to answer
12 one question. But in a criminal trial where you are
13 determining guilt or innocence, you first have the first
14 phase: Guilty or not guilty.

15 And if the defendant is found not
16 guilty, it's over and everybody goes home. If the
17 defendant is found guilty in a death penalty case, you go
18 to the second phase of the trial, called the punishment
19 phase. It used to be that at that phase a juror said:
20 Life or death. It was very clear-cut.

21 The legislature changed it and now the
22 jury must answer questions. And based on their answers,
23 it computes to a formula and the Judge has no option but
24 to impose a certain sentence. So, to further explain,
25 these are the two questions. And for a death penalty to
Sandra M. Halsey, CSR, Official Court Reporter
1959

1 result, first, you have to have a guilty, then this
2 question must be answered "yes," and this question must
3 be answered "no." And if you would, go ahead and read
4 that first question silently to yourself and let me know
5 when you are finished.

6 A. Okay.

7 Q. Okay. As in -- if you remember a
8 couple of weeks ago from the Judge's instructions, the
9 defendant is presumed innocent?

10 A. Yes.

11 Q. You vote her not guilty if you have to
12 vote right now.

13 A. Yes.

14 Q. It's another way of saying, we have
15 the burden of proof. Similarly, in this first question,
16 this question is presumed to be answered "no," until we
17 present evidence and prove to you beyond a reasonable
18 doubt that, in fact, she probably will be a future
19 danger; is really the way to summarize that question.
20 And when we convince you of that beyond a reasonable
21 doubt, you will find her -- you will say "yes" to that
22 question.

23 Well, let me go ahead and stop right
24 here and say this to you: It is our goal and desire in
25 this case to see that this woman down here is executed.
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1960

1 We believe we have the type of case and the quality of
2 evidence to do that. Would you have any trouble in
3 participating in that process?

4 A. No, ma'am.

5 Q. When -- if you were to serve on the
6 jury, you could look at all of the evidence in the case.
7 Now, here is kind of where it gets tricky, so follow me
8 and if I am not clear, let me know. Okay?

9 A. Okay.

10 Q. It may be in the second phase of the
11 trial, that you hear no more evidence. Okay? Or you may
12 hear things that you are not allowed to hear at the first
13 phase of the trial about the defendant and her character
14 and that sort of thing.

15 I can't tell you in this case what
16 it's going to be, I'm not allowed to go into that. But
17 what I need to know from you, and with your background
18 you don't strike me like the kind of man that might do
19 this, but I must ask you the question, you can't
20 automatically say, "I have convicted a person of killing
21 a child under the age of six, so therefore, absolutely, I
22 don't need to hear anything else, she is going to be a
23 future danger." It may be that the crime is all you
24 hear.

25 A. Uh-huh. (Witness nodding head
Sandra M. Halsey, CSR, Official Court Reporter
1961

1 affirmatively.)

2 Q. But you must promise the Court that
3 you will -- if you find her guilty, that is a cutoff, you
4 go to the next phase and you revisit the issue. Okay?
5 Would you be able to do that?

6 A. I believe I can, yes.

7 Q. Okay. Would you be able to find that
8 someone is probably going to commit criminal acts of
9 violence that would constitute a continuing threat to
10 society, based on the facts of the case alone?

11 A. I don't understand exactly what you
12 mean by that.

13 Q. Okay. You had said, in your
14 questionnaire, that past crimes should have no bearing.

15 A. That is true.

16 Q. And that you would be able to look
17 solely at the crime that is on trial and make the
18 judgment call, if you will, whether or not the person
19 should --

20 A. I'm sorry. My aspect there -- my
21 comment there is, of course, I have not served on a trial
22 of this nature. But what I am feeling there is, having
23 to do with the guilty/not guilty, not the punishment
24 phase, that the past character or anything really is not
25 a part of the evidence. And so I am not looking at what
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1962

1 they have done, but what they --

2 Q. Well, you may have never served, but
3 your instincts are absolutely right, Mr. Goodale, it is
4 not admissible. The Judge won't even allow you to know
5 about her past in the first part of the trial. In the
6 second part of the trial, if we want to bring anything or
7 if the defense wants to bring anything, they can.

8 A. Okay.

9 Q. So your instincts are right on target.
10 What I would like to know from you is, would you be able
11 to -- this is why I said it is kind of a trick question,
12 I have just asked you will you not automatically answer
13 something?

14 A. Right.

15 Q. And will you wait and revisit the
16 issue? Now I'm kind of asking you the flip side of that
17 question. And that is this: Is your mind open to the
18 fact that there may be a crime that is so heinous and so
19 awful that that is really all you need to hear to realize
20 that someone is going to be a future danger?

21 A. I believe so.

22 Q. Okay. And with that, let me say this:
23 I am not trying to commit you to anything.

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

Sandra M. Halsey, CSR, Official Court Reporter
1963

1 Q. What we are looking for is a juror
2 that will wait and hear the evidence in this case and not
3 be closed to anything. And I just want to make sure that
4 is where you fit. And that is really what all of these
5 questions are about. Okay?

6 A. Okay. I understand that.

7 Q. Okay. Along with that, you had said
8 that you heard about this case from TV, newspaper, and
9 word of mouth, and that's fine. This case has received a
10 whole lot of publicity. And frankly, that is the reason
11 we're in Kerrville to get away from some of the
12 publicity. But we're still in Texas and we can't get
13 away from it all.

14 There is nothing wrong with having
15 seen the facts and things about the case.

16 A. Basically, I haven't seen any facts,
17 just what the newspapers -- I guess since it has moved to
18 Kerr County, has only been what I have seen. I don't
19 even remember the case originally.

20 Q. Okay. Okay. That is really what we
21 are looking for. Somebody that will, again, wait and
22 hear the evidence in the courtroom.

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

25 Q. And, I tell people that I have read
Sandra M. Halsey, CSR, Official Court Reporter
1964

1 most of the stuff that the newspapers have written. And
2 some of it is right and some of it is not, and that is

3 really not what this is all about.

4 A. Well, being a former city councilman,

5 I believe very little that I read in the newspaper.

6 Q. You are very aware of the love for the

7 press.

8 A. Yes.

9 Q. Well, good. Fair enough. I

10 appreciate that.

11 Let me move on, if you will. In front

12 of you, there is an indictment. If you would read just

13 the typewritten portion to yourself, and then let me know

14 when you have finished.

15 A. Okay.

16 Q. Okay. That is the crime that we must

17 prove to you, if you are selected as a juror, beyond a

18 reasonable doubt. That is the elements that we have the

19 burden of proof on. Now, that is what we have to do. We

20 have to prove to you beyond a reasonable doubt. Now, how

21 we do that, doesn't really matter. Okay?

22 And, let me tell you where I am going

23 with this. To prove the case, we can do it through

24 direct or indirect evidence. Direct evidence is an

25 eyewitness.

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1965

1 Now, as I'm sure you can imagine, it's

2 not something you sit around and think about. But if I

3 am a criminal, and I am going to go commit a criminal

4 act, I am not going to do it down here at the Superstore

5 Wal-Mart on Saturday afternoon in the parking lot.

6 I'm going to try to do it at a time

7 where there are the fewest witnesses around. So, I am

8 sure you can imagine, in many murder cases, there is no

9 eyewitness, because the eyewitness is dead.

10 A. Right.

11 Q. And, as you know, the defendant

12 doesn't have to testify, and you can't use that against

13 her. So, in many murder cases the State must rely on

14 indirect or circumstantial evidence. Neither one is

15 better than the other as long as we convince the jury

16 beyond a reasonable doubt.

17 And indirect or circumstantial

18 evidence is, really, well, like you testified to,

19 blood-alcohol, anything like that, DNA, blood spatters,

20 photographs, statements by the defendant that don't

21 comport with the crime scene, fibers, anything else,

22 really, is circumstantial or indirect evidence.

23 What I would like to know from you,

24 if, by circumstantial evidence alone we prove this case

25 to you beyond a reasonable doubt, would you be able to
Sandra M. Halsey, CSR, Official Court Reporter
1966

1 return a verdict of guilty in a capital murder case?

2 A. Yes, I could.

3 Q. Okay.

4 A. With no reasonable doubt.

5 Q. Right, and that is our burden and we
6 gladly accept it.

7 A. I understand.

8 Q. But some people say, "Well, no, I
9 would have to see the crime."

10 A. No.

11 Q. And, obviously, we can't always
12 produce an eyewitness.

13 Additionally, on that piece of paper

14 is all we have to prove to you. We don't have to prove
15 anything else. We don't have to prove motive, it is not
16 required in Texas, and really there is a good reason for
17 that. As you know, the defendant doesn't have to
18 testify, and we can't get into her mind. So, it may be
19 after you have heard the case, it is abundantly clear why
20 this crime happened. Or it may be that there is one of
21 several reasons, you may think it is one reason, another
22 juror may think it is another reason. But bottom line,
23 it may be that you don't ever know. I mean, a lot of
24 times I'll talk to a jury after the case is over and they
25 will say, "I don't understand why this crime happened, it

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1967

1 doesn't make sense." So that is really pretty common,
2 because most crimes don't make sense.

3 What I need to know from you is even

4 after you have heard all of the evidence, if you don't

5 understand the motive, but we have proved the case to you
6 beyond a reasonable doubt, would you still be able to

7 return a conviction?

8 A. If that is the law that we don't have

9 to, then, yes, I can.

10 Q. Okay. So you can just follow the law

11 as the Judge gives it to you?

12 A. Yes, I would.

13 Q. Okay. Moving away from the

14 guilt/innocence to the second phase, if the defendant is
15 found guilty, we will move into the punishment phase.

16 And I want to talk to you a little bit about these two

17 questions. As I told earlier, the first question must be

18 answered "yes" in order for the defendant to die. And

19 that gets us halfway there.

20 And I would like to ask you what some

21 of the words in that sentence mean to you. And here is

22 why I want to do that, Mr. Goodale -- excuse me, Goodale.

23 The Judge is going to give you a lot of law, and he is

24 going to give you a lot of definitions, but he is not

25 going to give you a single one on this question. And so

Sandra M. Halsey, CSR, Official Court Reporter

1968

1 what you think of these words is very important to me.

2 What does the word "probability" mean to you?

3 A. Chances.

4 Q. Okay. And what does the phrase

5 "criminal acts of violence," what does that conjure up in

6 your thoughts?

7 A. Criminal acts of violence would be any

8 act having to do with inflicting harm on anyone else.

9 Q. Okay.

10 A. Against anyone.

11 Q. And the next words I will ask you

12 about is "society," but I am going to tell you where I am

13 going with that because that is the last word. It's hard

14 to find that question. And I'm sorry, I have looked at

15 it, for I feel like days now, and if I am going too fast,

16 just slow me down.

17 Would "society" in your mind include

18 everyone? And, by that I mean, including people in the

19 prison, prison guards, psychiatrists or psychologists

20 that are there as administrative help, chaplains, cooks,

21 maintenance people, inmates, relatives visiting inmates,

22 would society include everyone to you?

23 A. Well, I never thought of it that way

24 until you put it that way. Yes, I would, I would say it

25 would have to.

Sandra M. Halsey, CSR, Official Court Reporter

1969

1 Q. Well, it's not -- we don't sit around

2 thinking in these sort of terms. And so that is why I

3 preface my question with -- the way I did. So that would

4 be fair to you to include all of those folks?

5 A. Yes, it would.

6 Q. Okay. If you find from the evidence,

7 again, that question is presumed to be answered "no," and

8 we must convince you beyond a reasonable doubt to change

9 your answer to a "yes." Then you would go to the next

10 question. And if you would just read that silently and

11 let me know when you finish.

12 A. Okay.

13 Q. To summarize, basically it says: You
14 have heard everything. And after you have heard
15 everything, do you believe there is sufficient reason to
16 impose a life sentence instead of a death sentence? This
17 is kind of what I want to talk to you a little bit about.
18 It's a long question; I didn't write it, the legislature
19 did. And it is a safety net, it is an out.
20 Here is where you are when you finally
21 get to that question. You have found the defendant
22 guilty of capital murder, you have found the defendant
23 guilty of killing a child under the age of six. You have
24 found that she is a future danger, a threat to our
25 society. But something came up where you decided that
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1970

1 even though those two things have occurred, you believe
2 that a life sentence is appropriate in this case.
3 Now, you may be sitting there
4 thinking, "I can't imagine what it would be," and that is
5 fine, you don't have to. But what you do have to promise
6 the Court as a juror, is that you will keep an open mind.
7 It may be, Mr. Goodale, that you will
8 sit on 5,000 criminal capital murders. And you may never
9 hear something that, in your mind, is sufficient enough
10 to warrant a life sentence in that kind of a case, in a
11 death penalty case. But you still must promise the Court
12 that you will keep an open mind. And it's kind of that
13 deal, you don't know what it is, but you will know it
14 when you see it. Can you follow that law?

15 A. I believe I can.
16 Q. Okay. Let me talk to you a little bit
17 about -- this is kind of another area that you probably
18 don't sit around and think about, it wouldn't be normal
19 if you did. But that word "mitigating" has also been
20 defined in other legal cases as something that would
21 lessen somebody's moral blameworthiness.
22 In other words, they are still just as
23 guilty and they still are as much of a threat, but
24 something about their background or their character makes
25 the jury not want to give the death penalty. Okay? Is
Sandra M. Halsey, CSR, Official Court Reporter
1971

1 there anything that comes to your mind that would fall in
2 that category of mitigation?
3 A. Not at this time, I can't think of
4 any.
5 Q. Well, and that is about the response
6 we hear from almost everyone that sits where you're

7 sitting. Let me just kind of run through some things
8 with you and then see how you feel about that. Some
9 people say that if the defendant had a Ph.D. from Harvard
10 that that would be mitigating because they have done
11 something with their life, they have gotten an education.

12 Other folks think, "Well, if they are
13 that well educated and still do this heinous crime, I am
14 going to cut them no slack. As a matter of fact, I think
15 that is the other direction, I think that is aggravating
16 because they have been given every opportunity." How
17 would education play with you?

18 A. I don't believe education would have a
19 place on that form there, as far as mitigating.

20 Q. Okay. All right. What about young
21 age?

22 A. Well, I don't believe that would
23 affect my opinion.

24 Q. Okay. What about a poor upbringing?
25 In other words, economically deprived?

Sandra M. Halsey, CSR, Official Court Reporter
1972

1 A. If it's just economically deprived, I
2 don't believe that it would be mitigating circumstances.

3 Q. What about some sort of childhood
4 sexual abuse?

5 A. Well, again, I would have to --
6 depending upon the case and the situation and what is
7 presented to me, that is a possibility that it could be
8 mitigating circumstances.

9 Q. Okay. That is really all we're
10 looking for. Again, I am not trying to commit you to
11 say, "That would be mitigating and that wouldn't."
12 Because, obviously, you don't know, you have not heard
13 anything. So that is exactly the frame of mind that we
14 are looking for. Do you have any questions for me so
15 far?

16 A. No.

17 Q. Okay. I want to talk to you a little
18 bit now about general principles of law that will apply
19 in this case as they do in all criminal cases.

20 One, as I referred to and the Judge
21 referred to a couple of weeks ago, the defendant is
22 presumed innocent. It's another way of saying, "We have
23 the burden of proof." If you voted right now, you would
24 have to find her not guilty. Additionally, the Judge
25 went over the fact that the indictment is no evidence of

Sandra M. Halsey, CSR, Official Court Reporter
1973

1 guilt. It is a piece of paper that just tells us what we
2 have got to prove to the jury. Could you follow both of
3 those rules of law?

4 A. Yes, ma'am.

5 Q. Okay. And, as you know, the defendant
6 has an absolute right not to testify. That can't be held
7 against her in any way. Can you follow that rule of law?

8 A. Yes, ma'am.

9 Q. Okay. I anticipate that police
10 officers will testify in this case. Well, I don't
11 anticipate, they will. And, I ask you this next question
12 because of that. As a juror you must start all witnesses
13 out on the same plane regardless of occupation.

14 Sometimes a defense attorney will ask a question this
15 way: Would you believe a police officer simply because
16 he is a police officer? And that really is a trick
17 question, because you can't believe anybody simply
18 because they walk in here, and they might have a uniform
19 on. You have to promise the Court that you will wait and
20 hear from the witness, decide if they are shooting
21 straight with you, and then go from there. Would you be
22 able to do that?

23 A. Yes, ma'am.

24 Q. Okay. I saw some hesitation?

25 A. Well, the hesitation is that some
Sandra M. Halsey, CSR, Official Court Reporter
1974

1 witnesses are presented as expert witnesses and I have
2 to -- would have to take in their credentials and
3 their -- I have dealt with a lot of expert witnesses
4 through my days of my testifying. And I have to assume
5 that some expert witnesses when you take their
6 credentials will be a little more believable than
7 somebody without the credentials.

8 Q. Precisely. And that is after you have
9 heard their credentials?

10 A. Yes, ma'am.

11 Q. What I am looking for is that you
12 will -- you know with a police officer -- there will be
13 experts in this case to?

14 A. Yes.

15 Q. After you have heard from them, after
16 you have heard their training, their experience, their
17 credentials, their educational background, sure, I mean
18 their credibility could go through the roof and you can
19 believe everything they said. But all I want to know
20 from you is that you will wait?

21 A. Oh, yes, ma'am.

22 Q. Okay. Fair enough. In this case

23 there will be gory photographs as well. And working in
24 hospitals, I'm sure that you have seen things in the lab,
25 I know you are in the lab, but I am sure you have crossed
Sandra M. Halsey, CSR, Official Court Reporter
1975

1 paths with many gruesome things?

2 A. Yes.

3 Q. We still -- will you still hold us to
4 our burden of proof in this case even though you are
5 going to see some bad photographs?

6 A. Yes, ma'am.

7 Q. Okay. Again, the defense doesn't have
8 to do anything. We are seeking the death penalty and
9 they are fighting us every step of the way. However, if
10 they wanted to, they could sit over there and battle each
11 other with tic-tac-toe. They have no obligation to do
12 anything other than show up, which they have fulfilled.

13 Another rule of law that the Judge
14 will give you is that you will not be able to consider
15 parole. There is really a good reason for that. The
16 parole board changes, as you know, with every governor,
17 the parole laws change, the Judge has no control over
18 that issue, and so, you must not consider it for any
19 purpose. Would you be able to follow that law?

20 A. Yes, ma'am.

21 Q. Okay. That's all I have got for you,
22 Mr. Goodale. Do you have any questions for me?

23 A. No, ma'am.

24 Q. Thanks for your candor and thanks for
25 your open mind.

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1976

1
2 MS. SHERRI WALLACE: We will pass the
3 juror.

4 THE COURT: Thank you, Ms. Wallace.
5 Mr. Glover.

6

7 VOIR DIRE EXAMINATION

8

9 BY MR. CURTIS GLOVER:

10 Q. Mr. Goodale, I noticed that on your
11 questionnaire you indicated that you had learned some
12 things about the facts of this case via the radio, the
13 TV, and perhaps in conversation with friends and whatnot.
14 Can you tell us and share with us what you were able to
15 determine?

16 A. Basically, that the trial had been

17 moved here because of publicity in the Dallas-Fort Worth
18 area. That the defendant is suspected of murdering her
19 two children, and that some items ascertained had been --
20 some of the stuff about the windows and dust on the
21 windowsills. And that is basically pretty much all it
22 was, and that's recent. That is all recent.

23 Q. Okay. Did you have occasion to
24 discuss that information perhaps with family members?

25 A. Not really.

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1977

1 Q. Anybody at your place of employment
2 that you may have discussed that with?

3 A. No, sir.

4 Q. You further indicated, Mr. Goodale,
5 that you had spoken recently with your pastor or some
6 pastor concerning this issue of capital punishment?

7 A. Yes, sir.

8 Q. Okay. When was that?

9 A. It was actually on Thursday of last
10 week.

11 Q. Can you tell us why you did that?

12 A. I did it because of knowing that I

13 would be here today and really wanted to know, is this
14 something that, looking at all sides of having a person's
15 life in your hands, which is basically, this is the first
16 time I have ever been in this position; and realizing, is
17 this something that I really feel as strongly as I have
18 thought I have felt in the past. You can feel strong
19 about something until you are really put into that
20 position, and then it becomes a little bit more of a
21 question.

22 In trying to find out a moral side of
23 it, and that is why I went to my rector, and basically,
24 he made me feel that it is -- if the death penalty is a
25 problem, then it is not me carrying it out, it is

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1978

1 society, because as society we have not. So, therefore,
2 everyone is at fault for the carrying out of any death
3 sentence, not just one person sitting on a juror, or a
4 judge behind, in the courtroom.

5 Q. May I kind of gather from what you
6 just told the Court that you discussed that with your
7 rector and took his advice concerning it?

8 A. Yes, sir.

9 Q. Okay. Do you feel like the advice
10 that you got from him kind of lessened, perhaps, any

11 feeling or any burden that you might have had on yourself
12 concerning this particular issue?

13 A. Yes, sir, it did.

14 Q. Okay. Can you tell us precisely what
15 he did tell you concerning that?

16 A. Well, actually, he would not give me
17 a -- it's okay, it's not okay. And I think that was what
18 I wanted, was him to say, you know, as an Episcopal, you
19 can't support, you can't sit in judgment of another human
20 being. That is not what he did. And I was -- that is
21 what I really wanted was somebody to say one or the
22 other.

23 He, basically, we went through, as I
24 just got through saying. It was that society, because
25 somebody else who is totally against the death penalty

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1979

1 doesn't go out and protest in front of legislation to
2 change it; or thousands of people go stand in front of
3 the prisons and protest this, they are as guilty as
4 anybody. And, therefore, to change it, we are all guilty
5 because we have not done anything to perpetuate the
6 change.

7 So, right now it is the law of the
8 land, and, therefore, serving until every person that
9 really feels strongly about it one way or the other,
10 stands up and takes a stand, whether they are for it,
11 they are just as guilty, too.

12 Q. Did you all discuss this case?

13 A. No, sir, we did not.

14 Q. He didn't mention this capital murder
15 case?

16 A. No, sir. He knew there was a capital
17 murder and I was a prospective juror and I am having
18 problems.

19 Q. Did he -- he didn't seem to be
20 familiar with the case. Is that what you are saying?

21 A. If he was, he didn't ask, and we did
22 not discuss any aspects of it, other than the fact that I
23 am -- was a prospective juror.

24 Q. Okay. As the Judge told you and the
25 prosecutors have talked with you about, as she sits there

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1980

1 now, she is presumed to be innocent.

2 A. Yes, sir.

3 Q. Do you in your heart of hearts feel
4 that?

5 A. Yes, sir, I do.

6 Q. Okay. Are you telling the Court,
7 under oath, that you are not influenced at all by
8 anything that you read in the newspaper?

9 A. Yes, sir, I am.

10 Q. Okay. And in that connection, she has
11 no burden.

12 A. That's correct.

13 Q. Okay. Can you tell us why you
14 understand that a defendant does not have a burden in a
15 criminal case?

16 A. Well, we're all, by the law of our
17 land, basically protected, that we are innocent. And if
18 we are suspected, then it falls upon the State to prove
19 to anyone that we did it without a reasonable doubt --
20 beyond a reasonable doubt.

21 Basically, that's the way I have
22 always felt, because someday there go I, if it's
23 somewhere in the future. To say that I have not done
24 something, then it falls on someone else to prove my
25 guilt, not me to prove my innocence.

Sandra M. Halsey, CSR, Official Court Reporter
1981

1 Q. So, you would not call upon her to do
2 anything in this case?

3 A. Not at all.

4 Q. If she sat there silent and you and
5 your fellow jurors went back to the jury room, and you
6 were discussing various issues that might have arisen
7 during the course of this case, and a fellow juror said
8 to you, "Well, you know, I have a question concerning
9 this particular point, and Darlie Routier could have
10 solved that for us." What would you say to that person?

11 A. I would say, basically, if there is a
12 question about it, then it's not beyond a reasonable
13 doubt. There is reasonable doubt. It is not her point
14 to prove her innocence, it is theirs to prove it, to
15 answer that question a juror has.

16 Q. So, you are assuring her that you will
17 admonish your fellow juror if that point comes up, that
18 she has no burden?

19 A. That's correct.

20 Q. And the Judge will tell you that in
21 the charge.

22 A. Yes.

23 Q. She has no burden to prove anything.

24 And if she sits there silent, you must not hold that
25 against her. Allow her to remain silent and put the
Sandra M. Halsey, CSR, Official Court Reporter

1982

1 burden -- let it stay right over there.

2 A. That is correct.

3 Q. And you will do that?

4 A. Yes, sir.

5 Q. I feel that you will.

6

7 MR. CURTIS GLOVER: That is all we

8 have, Judge. Thank you.

9 THE COURT: All right. Would you step

10 outside briefly, sir. Don't leave, we will call you back

11 in.

12

13 (Whereupon, the prospective

14 juror was excused from the

15 room, and the following

16 proceedings were held,

17 outside of his presence

18 as follows:)

19

20 THE COURT: Are we ready?

21 MS. SHERRI WALLACE: Yes, sir.

22 MR. CURTIS GLOVER: We need some more

23 time to confer, Judge. Give us about five minutes.

24 THE COURT: I don't see any heads

25 together over there. What says the State?

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1983

1 MS. SHERRI WALLACE: The State will

2 accept the juror.

3 MR. CURTIS GLOVER: We will strike the

4 juror.

5 THE COURT: You will strike the juror?

6 MR. CURTIS GLOVER: Yes, sir.

7 THE COURT: Okay. Can you bring Mr.

8 Goodale in, please?

9

10 (Whereupon, the prospective

11 juror returned to the

12 room and the proceedings

13 were resumed as follows:)

14

15 THE COURT: Mr. Goodale, we thank you

16 for coming, you will be excused from further requirements

17 for jury service. We do thank you for coming.

18 You just remember not to say anything

19 about what went on here today. We will be most

20 appreciative; until the trial is over, about the first of

21 February.

22 THE PROSPECTIVE JUROR: Yes, sir.

23 Okay. Thank you.

24 THE COURT: All right. Thank you very

25 much. Who will be next? Reginald Peterson, number 53 on
Sandra M. Halsey, CSR, Official Court Reporter

1984

1 our list, 158 on the jury list. All right. If you will
2 have a set right up here, please. And you are Reginald
3 Peterson?

4 THE PROSPECTIVE JUROR: Right.

5 THE COURT: All right. That is number

6 53 on our list, number 158 on the jury list. If you will
7 raise your right hand, please.

8 Do you solemnly swear or affirm you

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

12 THE PROSPECTIVE JUROR: I do.

13

14 (Whereupon, the prospective
15 juror was duly sworn by the
16 Court to true answers make
17 to the questions propounded,
18 concerning qualifications, after
19 which time, the proceedings were
20 resumed as follows:)

21

22 THE COURT: Thank you. You are here
23 as a potential juror in the Darlie Routier trial, which
24 will be held in January. Mrs. Routier is the defendant.
25 She is sitting right there with her attorney Mr. Curtis
Sandra M. Halsey, CSR, Official Court Reporter

1985

1 Glover, he is from Dallas. Another attorney from Dallas
2 is Doug Mulder is also representing her, he is not here.
3 Local attorneys, Richard Mosty and Preston Douglass will
4 also represent Mrs. Routier. Mr. Douglass is here, he is
5 on the telephone or something out there, and he will be
6 back in shortly.

7 The State is represented by Toby Shook
8 and Sherry Wallace, from the Dallas County District
9 Attorney's Office, they are Assistant District Attorneys.
10 And another Assistant, Greg Davis, will be here later, he
11 is not here now.

12 What's going to happen now is you are
13 going to be asked questions by both sides. There are no
14 wrong answers, no test is given, just tell it the way you

15 feel it. And if you could answer your questions briefly
16 and to the point, and always say yes or no, because Ms.
17 Halsey has to take all this down. And, of course, a lot
18 of us like to say uh-huh or huh-uh and we can't take that
19 down. Fair enough?

20 THE PROSPECTIVE JUROR: Okay.

21 THE COURT: All right. Go ahead, Mr.

22 Shook, I assume.

23 MR. TOBY L. SHOOK: Yes, sir.

24 THE COURT: All right.

25

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1986

1 Whereupon,

2

3 REGINALD JOHN PETERSON,

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. Mr. Peterson, my name is Toby Shook, I
14 am one of the prosecutors in the case and I'll be asking
15 you questions this morning on behalf of the State. Like
16 Judge Tolle said, we're just looking for your honest
17 opinions on all of these issues, and I appreciate you
18 being forthright with us. I am going to go over some of
19 the things in your questionnaire, then go over some of
20 the laws that apply in this case. All right?

21 A. Right.

22 Q. You put here in the very back -- we
23 have a couple of questions about whether there is
24 something in your personal background why you couldn't
25 sit as a juror. And one of the items you brought up is
Sandra M. Halsey, CSR, Official Court Reporter

1987

1 you have had a heart bypass operation. And I guess you
2 are on some medication for that?

3 A. Yes, Mevacor and other medication.

4 Q. You put unknown on here. Basically,

5 what the question is asking and you know yourself better
6 than anyone else?

7 A. Uh-huh. (Witness nodding head

8 affirmatively.)

9 Q. So, we need to depend on you for your
10 answers. This trial will probably last a couple of
11 weeks, and obviously, we need everyone's full attention.
12 Sometimes when people have had medical problems,
13 medication they are on or just the disability they are
14 having, they physically won't be able to sit as a juror.
15 It's either because they can't pay
16 careful enough attention to the testimony; or they are
17 just not physically up to it. It just depends on each
18 situation.

19 But we have to depend on you to give
20 us those answers. In your condition, would you be able
21 to sit as a juror in this type of case? Or are you
22 physically disabled at this time?

23 A. I'm not physically disabled, I don't
24 feel like, you know, two weeks or three weeks is out of
25 line. I can't, you know, propose what my reaction --
Sandra M. Halsey, CSR, Official Court Reporter

1988

1 physical reaction would be if it were any longer. I have
2 had no problems in the last four years.

3 Q. Okay. Fair enough. Then let me get
4 to the more important part of what we want to get to.
5 Obviously, you know that -- from what Judge Tolle has
6 told you, that the State has indicted the defendant for
7 capital murder, and the State in the particular case is
8 actively seeking the death penalty.

9 A. Right.

10 Q. So, we want to talk to each juror
11 about how they feel about the death penalty. And like I
12 said, there aren't any right or wrong answers. Every
13 person has their own opinion on the death penalty as a
14 law, everyone feels differently, and that is why we bring
15 down a whole lot of jurors.

16 You put on your questionnaire that --
17 when we asked the question, "Are you in favor of the
18 death penalty?" You put "no," and then gave us some of
19 the reasons for it when we asked you to explain, and
20 circled some -- a category we asked you that best
21 represented your feelings. Now, what I want to do is let
22 you expand on that a little, okay? Why are you opposed
23 to the death penalty; or not in favor of the death
24 penalty?

25 A. Well, I'm not really opposed to any
Sandra M. Halsey, CSR, Official Court Reporter
1989

1 deep philosophy or a religious viewpoint. Basically, on

2 a practical viewpoint, from what I have read, over the
3 last few years, there is a more likelihood of a person
4 going into the death sentence with these minorities, if
5 he's poor, if he's black, if he's brown.

6 And, also, I think there is still a
7 possibility of error. There's human error, whether it's
8 the laboratory or a witness is being wronged or something
9 like that. I think there is a very good likelihood, you
10 know, that the juror is right and the Court has found
11 favorably. But I think there are possibilities of
12 mistakes.

13 Q. There is always that chance for a
14 mistake?

15 A. Right.

16 Q. As far as sending someone, let's say,
17 to the penitentiary for life or a long sentence, that is
18 a mistake that could be rectified someday?

19 A. Right.

20 Q. If execution is carried out,
21 obviously, that is never going to be rectified if a
22 mistake is found out. Okay?

23 A. I agree.

24 Q. And we have had people that feel that
25 way. They are not -- for -- obviously, we get people for
Sandra M. Halsey, CSR, Official Court Reporter

1990

1 religious or moral reasons that are opposed to the death
2 penalty, but other people just say, "Look, that is a
3 mistake that can't be changed."

4 A. Well, I am basic Lutheran. And I
5 discussed it before with my brother-in-law who is a
6 Lutheran pastor in Birmingham, Alabama. He has been on a
7 murder case, and he was on the jury and it's not
8 really -- like I said, like he said, too, it's not really
9 a religious problem or a philosophical problem.

10 Q. It's more of an intellectual belief
11 you have from looking at how the system works?

12 A. Yes.

13 Q. Okay. Have you given a lot of thought
14 to this before?

15 A. Not really, just in the last two
16 weeks, three weeks.

17 Q. Have you thought about it more since
18 we obviously brought you down and we talked to you about
19 it?

20 A. Right. You know, in high school or
21 college it's always been a topic of debate, debate topics
22 and things like that, but in day-to-day life it's never
23 affected me that much. I did live in Huntsville for

24 about a six-month, a seven-month period in there.

25

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1991

1 THE COURT: Huntsville, Texas?

2 THE PROSPECTIVE JUROR: Right.

3 THE COURT: All right. Thank you.

4

5 BY MR. TOBY L. SHOOK:

6 Q. An execution probably took place when
7 you were living there?

8 A. Right.

9 Q. So, you know it is a very real
10 punishment in the State of Texas?

11 A. Right. And Texas is one of the few

12 states that carry out --

13 Q. That actually --

14 A. Actively carry it out.

15 Q. There's a lot of states that have it
16 on the books, but never impose it or carry it out just
17 very rarely. Texas has over 100 executions.

18 A. Right.

19 Q. They beat the nation by a long shot.

20 And you living there in Huntsville are very aware of
21 that?

22 A. Yes. I know there were protesters

23 there, you know, three or four times while I was there.

24 Q. Right. Do you feel -- from what you

25 put down on your questionnaire, you had a couple of weeks

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1992

1 to reflect on it, do you feel the same, along the same
2 lines?

3 A. Pretty much so, yes.

4 Q. You have not changed your mind at all?

5 A. No.

6 Q. Okay. And I know it's been a while

7 and we asked you to answer a lot of questions, but you
8 remember there were some categories we asked you to

9 circle. And I'll just refresh your memory. You circled:

10 I believe the death penalty is appropriate in some

11 capital murder cases, but I could never return a verdict

12 which would assess the death penalty.

13 And there is another section that you

14 put down that we do ask about: If there is a moral

15 belief that prevents you? And you said "no" to that,

16 which I guess goes along with what you have been telling

17 us, it is not a religious or moral belief.

18 A. Right. In a perfect world, I think
19 the death sentence would be appropriate.
20 Q. But you also put down that you had
21 some personal beliefs that would prevent you from
22 returning a verdict that would result in the execution of
23 a woman. You put "yes" to that.
24 A. I think it's not the case that she's a
25 woman or a man. It's just personal beliefs in the
Sandra M. Halsey, CSR, Official Court Reporter
1993

1 category.
2 Q. Just a human being?
3 A. Right.
4 Q. All right. It doesn't matter if it's
5 a man or a woman?
6 A. No.
7 Q. All right. And that is fair enough.
8 I am not going to argue with your position.
9 A. Right.
10 Q. Obviously, everyone wants to be
11 concerned. But obviously, both sides are concerned with
12 how everyone feels about the death penalty. Let me --
13 I'm going to ask you some more questions about that. You
14 have been pretty clear to me, but before I ask you these
15 questions, I want to kind of preview how a death penalty
16 case works and then kind of plug in how your philosophy
17 works. Okay?

18 A. Okay.
19 Q. All trials are divided into two parts:
20 The guilt/innocence stage where we have to prove the
21 indictment beyond a reasonable doubt. Okay? Obviously,
22 if we don't that, everyone goes home, not guilty. If we
23 do prove that case beyond a reasonable doubt, it's a
24 guilty finding, then we go to the punishment stage.
25 Now, in Texas, you may hear additional
Sandra M. Halsey, CSR, Official Court Reporter
1994

1 evidence about the person's background usually. But at
2 the close of that evidence, you consider the murder
3 itself and then the other issues, and you get these "yes"
4 or "no" questions.
5 That first question, if you will just
6 read it to yourself very quickly.
7 A. Okay.
8 Q. You see where that is a "yes" or "no"
9 question based on the facts of the case and all of the
10 other evidence, but we're asking the jurors to make a
11 prediction whether they are going to be a continuing

12 danger.

13 A. Right.

14 Q. The State has to prove that beyond a
15 reasonable doubt. If we do, the juror will return a
16 verdict, write in the answer "yes." Okay? And then you
17 would move on to the second question, which is a little
18 longer. So, let me preface that before you read that, I
19 didn't write that, none of the lawyers wrote that. The
20 legislature did that. If you could read that to yourself
21 for a moment.

22 A. Okay.

23 Q. Okay. Like I said, that question gets
24 a little lengthy.

25 A. Uh-huh. (Witness nodding head
Sandra M. Halsey, CSR, Official Court Reporter
1995

1 affirmatively.)

2 Q. It gets a little --

3 A. -- complicated.

4 Q. Right. Let me kind of summarize what
5 I think it means, it's the mitigation question. You
6 don't get to it unless you have found the defendant
7 guilty. You don't get to it until you -- a juror would
8 have already found the person is going to be a continuing
9 danger. You review all the evidence and you decide,
10 based on the evidence, "Well, I think a life sentence
11 should be imposed rather than a death sentence." Plus,
12 you have to base that reason on some evidence.

13 Or if you don't see such evidence,

14 mitigating evidence, you would answer it "no." But the
15 point of this is, if you answer that first question
16 "yes," and "no" to the second special issue, that there
17 is no mitigating evidence, then the Judge in this case,
18 as in all capital cases in Texas, would sentence the
19 defendant to death. A "yes" and a "no" answer equals
20 death. You don't write in death or life. If they are
21 answered any other way, it's a life sentence. Okay?

22 But if you reach the punishment stage,

23 there's only two outcomes: A life sentence or a death
24 sentence. And Judge Tolle would sentence the defendant
25 according to how the jurors answer those questions. Is
Sandra M. Halsey, CSR, Official Court Reporter
1996

1 that scheme clear to you?

2 A. Yes.

3 Q. Okay. As you well know living in
4 Huntsville, that execution, if it was a "yes" and a "no,"
5 and the Judge did sentence the defendant, would

6 ultimately be carried out someday. I can't say when,
7 but, obviously, executions are carried out.

8 A. Right.

9 Q. You have told us that you are really,
10 you know, not in favor of the death penalty for practical
11 reasons. You talked about how, obviously, any case could
12 be fallible, and it's not really a question of finding
13 someone -- well, you could send someone to prison, but
14 it's the fact that if an execution is carried out, it
15 can't be rectified, and that is where your opposition to
16 the death penalty comes in. You have told us on your
17 questionnaire that this personal belief would prevent you
18 from returning a verdict resulting in an execution of --
19 well, let's just say, a human being, not necessarily a
20 woman.

21 A. Right.

22 Q. I have explained to you how the
23 process works, and we don't want to argue with how you
24 feel.

25 A. Uh-huh. (Witness nodding head
Sandra M. Halsey, CSR, Official Court Reporter
1997

1 affirmatively.)

2 Q. Because we have some people come in
3 here and they want to give the death penalty to
4 everybody, regardless of the facts. Obviously, they
5 couldn't qualify. Other people are in favor of it in
6 certain cases and they could sit and listen to the
7 evidence and write those answers in, knowing the person
8 will be executed, and it wouldn't bother them, or they
9 could live with themselves.

10 Other people, even though they are in
11 favor of the death penalty, personally, couldn't answer
12 those questions because it would weigh on their
13 conscience too much. And other people, for religious
14 reasons, or moral reasons, are opposed to the death
15 penalty. You know, they tell us, "I don't care how much
16 you prove those issues to me, I have a deep religious
17 conviction, I can't participate in this type of
18 proceeding, put me on some other type of case." Okay?
19 You are a little different, obviously,

20 from the religious point of view. You have a practical
21 point of view about your objections to the death penalty,
22 and it is fine that you feel that way. What I need to
23 know is: Do you feel strongly enough -- are your beliefs
24 strong enough that -- are you telling us that you are not
25 the type of juror that could sit in a death penalty-type
Sandra M. Halsey, CSR, Official Court Reporter

1998

1 case and actually render those questions that would
2 ultimately result in someone's execution?

3 A. Yes. I believe in, you know, what I
4 basically said. Just my true beliefs, and I don't think
5 I could really change.

6 Q. Okay. Well, we appreciate that.

7 Because you have thought about this, I guess? You have
8 given some thought to it?

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

11 Q. All right. And like I said, I am not
12 trying to argue you out of that position, I just want to
13 be fair with you, and it's something you believe strongly
14 in?

15 A. Right.

16 Q. Okay. You are just being honest with
17 us. You understand, and I am just going to go a little
18 further with you because that is what the law requires me
19 to do. Okay? You understand, these questions, for
20 instance, in the punishment stage, they are obviously
21 just fact questions. Okay? Put on evidence, prove facts
22 to you.

23 You can see where we could prove those
24 fact questions to you in your mind intellectually? I
25 mean, I am sure I can prove to you, put on tons of
Sandra M. Halsey, CSR, Official Court Reporter

1999

1 evidence, and I could probably -- you can imagine a
2 situation where you could prove a guy has killed 20 or 30
3 people in his life, just one mean killing machine. And
4 you know in your heart of hearts he is going to be a
5 danger just from his background, but that is not the
6 objection you have. It's not the situation where we
7 prove it to you, it's the factor of human error. And you
8 are not removing these objections, it's your personal
9 beliefs.

10 A. Right. The process of justice can be
11 fallible.

12 Q. Okay. So, you are not saying, "Look,
13 I am just not open to the evidence. I know
14 intellectually you could prove it to me, but I could
15 never answer the questions in a way that could result in
16 a death penalty case, or execution."

17 A. Right, correct.

18 Q. Okay. You see where I am coming from?

19 A. Yes.

20 Q. Sometimes lawyers will split hairs

21 with jurors. They will sit there and tell you up and
22 down, "Look, we have even had deeply religious people go,
23 I can't make those decisions." And then the lawyer will
24 ask them, "Well, look, we're just asking you. Can you be
25 open and honest and fair?"

Sandra M. Halsey, CSR, Official Court Reporter
2000

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

3 Q. If someone proves something to you,
4 could you answer "yes." Well, yeah, I guess so.

5 A. Okay.

6 Q. I am just asking you to look at the
7 overall picture. It's not really a question of the
8 evidence, it's a question of your personal objections?

9 Is that what we are talking about?

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

12 Q. Okay. I have had other people tell
13 me, "Well, look, I might could answer question number 1
14 'yes,' and I know that is headed towards the death
15 penalty, but this second question, I am always going to
16 answer that question in a way that I can avoid the death
17 penalty." Because that question gives you an out, we
18 don't tell you what mitigation evidence is.

19 Jurors tell me -- because I have had

20 some jurors tell me, "That there can be absolutely no
21 evidence, mitigating evidence, there can be absolutely no
22 evidence that I think someone doesn't deserve the death
23 penalty. I mean, they very well morally might deserve
24 it, but I am going to answer it 'yes,' because that is my
25 way out." Okay?

Sandra M. Halsey, CSR, Official Court Reporter
2001

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

3 Q. "And I am not going to make a decision
4 that is going to allow someone to be executed. I will
5 put in a 'yes' answer if I hear no evidence because I
6 know if I write in 'yes,' the Judge will sentence the
7 defendant to a life imprisonment." Do you see where I am
8 coming from? Do you think you could ever answer these
9 questions in a way that would result in someone's
10 execution?

11 A. No, I don't think I could.

12 Q. Okay. And, again, I'm not trying to
13 argue with you, that is just your honest opinion?

14 A. Right.

15 Q. Okay. The other, if you feel that
16 way, that is fine, I have got no quarrel with it. The
17 other thing I wanted to get into, you did say you heard
18 something about the case on the news, on the TV maybe?

19 A. Well, you know, in the last three or
20 four months.

21 Q. Sure.

22 A. I have some friends in the Fort Worth
23 area.

24 Q. Okay.

25 A. So I have talked to them before
Sandra M. Halsey, CSR, Official Court Reporter

2002

1 about -- some about the case. I think in magazines like
2 Texas Monthly, and I subscribe to daily newspapers in San
3 Antonio and Kerrville, so I have some basic knowledge.

4 Q. Sure.

5 A. Or prior knowledge.

6 Q. And, obviously, if it's in the news,
7 people are going to read it. Tell us a little bit about
8 what you remember about the case?

9 A. Well, just primarily that the two
10 sons, five and six year olds were found dead in the
11 house, and there wasn't any basic evidence of an
12 intruder. However, the mother had said that someone had
13 come in. The father and the one-year-old son were
14 upstairs at the time. I really don't have any knowledge
15 of what the father had said or anything.

16 Q. Did you form any opinions as to what
17 you heard?

18 A. No. Just preliminary evidence, like
19 you would in any crime scene. There are so many drive-by
20 shootings and murders in San Antonio, that Kerrville gets
21 everything filtered through, like I said, the San Antonio
22 TV stations or the newspapers.

23 Q. Okay. But the bottom line on this
24 particular type of case, if this were some other -- let's
25 say a burglary case or a civil case, you wouldn't have a
Sandra M. Halsey, CSR, Official Court Reporter

2003

1 problem sitting as a juror?

2 A. No.

3 Q. If the punishment involved just prison
4 time?

5 A. Right.

6 Q. But you are telling us, just how you
7 told us, I guess, a couple of weeks ago, that you have a

8 personal belief that would prevent you from returning a
9 verdict that would result in the execution of another
10 human being?

11 A. Correct.

12 Q. And that belief is not going to leave
13 you?

14 A. No.

15 Q. You are always going to have it?

16 A. Yes.

17 Q. Okay.

18

19 MR. TOBY L. SHOOK: That's all the
20 questions I have.

21 THE COURT: Thank you.

22 Mr. Glover?

23 MR. CURTIS GLOVER: Thank you, Your
24 Honor.

25

Sandra M. Halsey, CSR, Official Court Reporter
2004

1 VOIR DIRE EXAMINATION

2

3 BY MR. CURTIS GLOVER:

4 Q. Sir, my name is Curtis Glover. And I
5 will be sitting here with Darlie Routier throughout her
6 case as well as another lawyer who is not in the
7 courtroom and some other lawyers who will not be here at
8 all today. And I just want to kind of talk with you a
9 little bit.

10 You are, obviously, an intelligent
11 person, and have had a lot of experience in life, and
12 bring those experiences here with you today.

13 And that is precisely what we want,
14 are folks that have experienced life, and can bring that
15 experience into a jury room, and reach proper decisions
16 based on an input of 12 people who all have varying
17 experiences. Would you not agree that that is a good
18 principle?

19 A. I agree.

20 Q. Okay. Have you ever served on a jury
21 in the past?

22 A. No, not actually served. I have been
23 called.

24 Q. As a prospective juror?

25 A. Right.

Sandra M. Halsey, CSR, Official Court Reporter
2005

1 Q. You have lived in a number of

2 different places.

3 A. Right. I have never really

4 participated -- well, I have been a salesman in marketing

5 and sales and travelled quite a bit and been transferred

6 quite a bit, so, I never really got too much community

7 roots as far as --

8 Q. Okay. You don't have any problem, I

9 guess, with the basic principles that go on here in a

10 criminal case. You have answered these questions. It

11 seems that you do understand what a criminal trial is all

12 about. Do you feel like you do?

13 A. Yes, yes. You know, with no prior

14 experience directly, it's all filtered through mass media

15 and books and things like that. So, yes.

16 Q. Okay. You understand and the Judge

17 has told you, and they have told you, they bring charges

18 in criminal cases, the prosecution always does. And the

19 law says that those that bring them, and do the accusing,

20 they have to do the proving. That makes sense to you,

21 doesn't it?

22 A. Right.

23 Q. There is no burden on her to do

24 anything. However, she very well may. And in connection

25 with that, she can take the witness stand in her own

Sandra M. Halsey, CSR, Official Court Reporter

2006

1 behalf, or she can refuse to do that. That is usually

2 based on advice from her attorney.

3 And it is usually based on what the

4 prosecution has or has not proven as to whether that is a

5 wise decision on her part. It is such a basic principle

6 in our law that the Constitution contains a statement

7 concerning it. And you can't hold anything -- her

8 silence against her in any regard. Do you adhere to that

9 principle?

10 A. Yes, I do.

11 Q. Any problem with that?

12 A. Yes, we have the instructions that the

13 Judge gave us initially; you know, that she doesn't have

14 to testify against herself, or basically in the trial at

15 all. And in most murder cases, from what I understand,

16 the defendant doesn't testify.

17 Q. Okay. You used a term there, "against

18 herself." That is not really what that means, that just

19 because --

20 A. Well, right.

21 Q. -- a person doesn't --

22 A. Uh-huh. (Witness nodding head

23 affirmatively.)

24 Q. -- just because --

25 A. Well, the evidence can turn against

Sandra M. Halsey, CSR, Official Court Reporter

2007

1 her or --

2 Q. Right.

3 A. -- you know, depending on the

4 circumstances.

5 Q. Okay. Simply because a person doesn't

6 testify in their own behalf, it is not necessarily an

7 implication that if they did testify, they would be

8 testifying against themselves. You don't feel that, do

9 you?

10 A. No.

11 Q. It's simply a support of the principle

12 that the burden of proof lies over there and never shifts

13 here.

14 A. Right.

15 Q. So, you can't look to her for

16 anything. You look to them for everything. Do you

17 adhere to that?

18 A. Yes.

19 Q. Okay.

20 A. You are innocent until proven guilty.

21 Q. This is true. That is a very basic

22 democratic principle that we have here in our society. I

23 assume you have no problem with that?

24 A. No, I agree with it.

25 Q. Okay. You have indicated here that

Sandra M. Halsey, CSR, Official Court Reporter

2008

1 you have given some thought to capital punishment. Can

2 you tell us when you -- at what period in your life, or

3 when you -- this notion that you have, that you couldn't

4 participate in a capital case; can you tell us when that

5 arose?

6 A. Just really within the last month. I

7 have never had any direct experience with it.

8 Q. Okay. You made the --

9 A. I may have been in the back of my

10 mind, just like you have an opinion on anything, but

11 until it's -- I really haven't actively discussed it with

12 anyone else.

13 Q. Okay. So, your decision concerning

14 your beliefs about capital punishment have come about as

15 a result of getting a jury summons in this particular

16 case. Is that what you are saying?

17 A. Well, it's formulated my beliefs, you

18 know, just brought them forward. Like I have said, I
19 have had some experience with like debates on the forums
20 of -- or on capital punishment. And, you know, like,
21 it's a typical discussion topic in college.

22 Q. Okay. Can you recall what your
23 position was then?

24 A. I really don't think I had a strong
25 position either way.

Sandra M. Halsey, CSR, Official Court Reporter
2009

1 Q. That position didn't come about until
2 just recently then, is that what you're saying?

3 A. Right.

4 Q. Okay. Do you not agree with me
5 that -- and you understand the jury system that we have,
6 there will be 12 people on this jury. And, you have
7 heard the phrase, "That people should be -- if somebody
8 is going to hold -- or sit in judgment of someone, it
9 should be a jury of their peers"?

10 A. Right.

11 Q. You understand that?

12 A. Right.

13 Q. And agree with that?

14 A. Right.

15 Q. Okay. And don't you think it is a
16 good idea for those 12 people who go into a jury room to
17 be of diverse opinions and notions and experiences in
18 order for them to arrive at an appropriate decision, that
19 would consider all aspects of the case?

20 A. I agree, yes.

21 Q. And --

22 A. You know, everybody should be
23 open-minded, and, you know, at least consider other
24 people's beliefs and backgrounds.

25 Q. And you would have no opposition to
Sandra M. Halsey, CSR, Official Court Reporter
2010

1 sitting on a jury in which all 12 of you had diverse
2 notions and opinions about various philosophies, or how
3 punishment should be meted out. Do you adhere to that?

4 A. Yes, I --

5 Q. Do you think that is a good idea?

6 A. Yes.

7 Q. Okay. Now, I assume that you would
8 have no objection to sitting on a case of this nature,
9 where you would be called upon to make a decision as to
10 the guilt or the innocence of a person who was charged
11 with murder?

12 A. Correct.

13 Q. You have no opposition to sitting on a
14 murder case; do you?

15 A. Well, you know, basically, on any jury
16 case not involving the death sentence.

17 Q. Well, you have no opposition to making
18 a determination as to whether or not somebody is guilty
19 or innocent; do you?

20 A. No.

21 Q. Okay. Do you think you could sit in
22 this case and listen to the evidence and make a
23 determination as to whether or not this defendant was
24 guilty or innocent?

25 A. Yes, I could.

Sandra M. Halsey, CSR, Official Court Reporter
2011

1 Q. Okay. Well --

2 A. It's just in the sentencing phase.

3 Q. I understand. We anticipate, Mr.

4 Peterson, that this case will never go to the sentencing
5 phase. It is our position that the jury will hear the
6 evidence in this case, they will go out and deliberate,
7 and they will return a verdict of not guilty based on
8 that evidence.

9 A. Right.

10 Q. And we will all go home. It will
11 never go to the punishment phase.

12 A. I understand that.

13 Q. Okay. And you maintain the notion
14 that certainly we need diverse people on a jury and
15 whatnot. You agree with that?

16 A. I agree.

17 Q. And as a, you know, concerned citizen,
18 you would want jurors to be that way, would you not?

19 A. I agree. If I was on the other side
20 of fence, I would want a diverse jury.

21 Q. Okay. You understand that when you --

22 say you were sitting in a murder case, or in this case,
23 making a determination of guilt or innocence, you would
24 have to take an oath to render a true and proper verdict.

25 You could do that, could you not?

Sandra M. Halsey, CSR, Official Court Reporter
2012

1 A. Yes, I could.

2 Q. Okay. Looking at that first special
3 issue up there: "Do you find from the evidence beyond a
4 reasonable doubt that there is a probability that the
5 defendant would commit criminal acts of violence that

6 would constitute a continuing threat to society?" The
7 prosecutors told you that if that question is answered
8 "yes" you are halfway to the death penalty. And they
9 have the burden of proof concerning that.

10 A. Right.

11 Q. They can bring additional evidence at
12 the punishment phase, if they happen to have it. They
13 may or may not. There is no requirement that they do.
14 Or they may simply rely on the evidence from the case in
15 chief. That is the case in which you as a juror would be
16 sitting and making a determination of guilt or innocence.
17 They could rely on that given evidence.

18 A. Right.

19 Q. Do you understand that?

20 A. Yes.

21 Q. Now, do you find anything terribly
22 difficult about making a decision like that? "Do you
23 find from the evidence beyond a reasonable doubt that
24 there is a probability that any given defendant would
25 commit criminal acts of violence that would constitute a

Sandra M. Halsey, CSR, Official Court Reporter

2013

1 continuing threat to society?"

2 A. No.

3 Q. That is not difficult decision, is it?

4 A. It's a difficult decision depending on
5 the evidence. Well, I mean in a practical viewpoint,
6 probably not.

7 Q. Okay. Well, it's not a complex
8 question. You could make that decision about anybody.
9 We could go out here in the hall and hear evidence about
10 a person on the street and make a decision like that and
11 determine that they were not a threat to society, or
12 perhaps they were, based on evidence.

13 A. Yes, but you would still have to read
14 somebody else -- I mean, the defendant's mind or state of
15 mind, maybe.

16

17 THE COURT: Let me interrupt. Sir,
18 all these questions assume you believe the evidence.

19 THE PROSPECTIVE JUROR: Right.

20

21 BY MR. CURTIS GLOVER:

22 Q. You wouldn't have any trouble
23 answering that first issue, would you?

24 A. No.

25 Q. And moving on to the second issue, it

Sandra M. Halsey, CSR, Official Court Reporter

2014

1 says: Taking into consideration all of the evidence,
2 including the circumstances of any given offense, which
3 you might happen to be sitting on hypothetically, the
4 defendant's character and background, and moral
5 blamability -- does culpability mean blamability to you?
6 Blameworthiness?

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

9 Q. Okay. -- of a defendant, is there a
10 sufficient lessening circumstance -- mitigating means
11 lessening, do you degree with that?

12 A. Yes.

13 Q. -- lessening circumstance or
14 circumstances to warrant that a sentence of life
15 imprisonment rather a death sentence be imposed? You
16 could answer a question like that, could you not?

17 A. Yes.

18 Q. Okay. And, again, if you had taken an
19 oath to return a true and proper verdict, and you were
20 called upon to answer issues like that, you would have no
21 problem doing that based on your oath, would you?

22 A. Well, I might have some problem.

23 Q. Well, certainly.

24 A. But based on the evidence, I could
25 come to a decision.

Sandra M. Halsey, CSR, Official Court Reporter

2015

1 Q. Okay. I feel like you could, and that
2 is what we're looking for. And it's just like I told you
3 as I was talking with you earlier, you, as a concerned
4 citizen, should know that in any jury we need people of
5 diverse opinions and backgrounds in order to make a fair
6 determination in any criminal case. Isn't that a good
7 notion?

8 A. It is.

9 Q. And you want to participate in that,
10 do you not?

11 A. Yes.

12 Q. All right. They may have some
13 additional questions for you, Mr. Peterson. Thank you.

14

15 THE COURT: No. Once passed, that is
16 it. Mr. Peterson, just because you have an opposition to
17 the death penalty, that does not necessarily disqualify
18 you as juror. Do you understand that?

19 THE PROSPECTIVE JUROR: Right.

20 THE COURT: If you are selected as a

21 juror in this case, can you set aside your beliefs, which
22 is an opposition to the death penalty, and follow the law
23 as I give it to you?

24 THE PROSPECTIVE JUROR: I don't
25 believe I can set aside my belief.

Sandra M. Halsey, CSR, Official Court Reporter
2016

1 THE COURT: Thank you. Can you step
2 outside just briefly, please? Don't leave.

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: Don't run away.

5

6 (Whereupon, the prospective
7 juror was excused from the
8 room, and the following
9 proceedings were held,
10 outside of his presence
11 as follows:)

12

13 THE COURT: Okay.

14 MR. TOBY L. SHOOK: Judge, the State
15 would challenge the juror under section 35.16(b)(1),
16 based on his answers.

17 THE COURT: Motion for cause granted.

18 Have Mr. Peterson step back in.

19 MR. CURTIS GLOVER: Judge, we would
20 note for the record that we feel like Mr. Peterson didn't
21 make an unequivocal statement concerning that notion.

22

23 (Whereupon, the prospective

24 juror returned to the
25 room and the proceedings

Sandra M. Halsey, CSR, Official Court Reporter
2017

1 were resumed as follows:

2

3 THE COURT: Well, sir, to make it
4 clear: Could you set aside your belief and follow the
5 law as I give to you even though it might result in the
6 defendant getting a death sentence?

7 THE PROSPECTIVE JUROR: No.

8 THE COURT: All right. I think that
9 is pretty unequivocal.

10 MR. CURTIS GLOVER: Thank you.

11 THE COURT: You will no longer be
12 required to serve. If you could, we ask you not to
13 discuss this with anybody, what went on here today,
14 because the trial is a long way from being started or

15 being over.

16 It's going to be over about the first

17 part of February, then you may talk or not talk, as you
18 see fit. Until that time, please do not, we have a gag
19 order. I can impose monetary or jail time penalties,
20 which I am not threatening you with, I just have to tell
21 you that.

22 THE PROSPECTIVE JUROR: All right.

23 THE COURT: Thank you so much.

24 MR. TOBY L. SHOOK: Thank you, Mr.

25 Peterson.

Sandra M. Halsey, CSR, Official Court Reporter

2018

1 THE COURT: When did you finish

2 Northwestern?

3 THE PROSPECTIVE JUROR: Pardon me?

4 THE COURT: When did you finish

5 Northwestern?

6 THE PROSPECTIVE JUROR: '71.

7 THE COURT: '71. Okay.

8 THE PROSPECTIVE JUROR: When the

9 football team was with --

10 THE COURT: That is the Sloan school

11 up there, is it not? Is that the Sloan? Is that what

12 they call it?

13 THE PROSPECTIVE JUROR: No, it is just

14 the Northwestern School of Management. I went basically

15 downtown campus.

16 THE COURT: Oh, I see. Thank you.

17 All right. Anybody else out there now? Who is next?

18 You are Mr. Moon; is that correct?

19 THE PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: All right. This is number

21 54 on our list, number 160 on the jury list. Mike, I

22 assume that is Michael is your first name?

23 THE PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: L. M-O-O-N; is that right?

25 THE PROSPECTIVE JUROR: Yes, sir.

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1 THE COURT: Raise your right hand,

2 please.

3 Do you solemnly swear or affirm you

4 will true answers make to all the questions propounded to

5 you concerning your qualifications as a juror, so help

6 you God?

7 THE PROSPECTIVE JUROR: Yes, sir.

8

9 (Whereupon, the prospective
10 juror was duly sworn by the
11 Court to true answers make
12 to the questions propounded,
13 concerning qualifications, after
14 which time, the proceedings were
15 resumed as follows:)

16

17 THE COURT: All right. Mr. Moon,
18 you're here as a potential juror in the Darlie Routier
19 case. Mrs. Routier is sitting there with her attorney,
20 Mr. Curtis Glover, he is from Dallas. And she is also
21 represented by another Dallas attorney, Doug Mulder, and
22 by two attorneys from here, Richard Mosty and Preston
23 Douglass. Mr. Douglass is not here currently, he may be
24 back shortly.

25 The State is represented by Toby Shook
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1 and Sherri Wallace, and another attorney, Greg Davis from
2 Dallas. Mr. Shook and Ms. Wallace are here now. And you
3 will be answering questions from both sides. There are
4 no wrong answers, tell it just like you feel. There
5 won't be a test. If you could say "yes" or "no" plainly
6 to your answers instead of uh-huh or huh-uh, Ms. Halsey
7 is taking all this down. Okay?

8 THE PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: All right. Ms. Wallace,
10 go ahead.

11 MS. SHERRI WALLACE: May it please the
12 Court?

13

14

15

16 Whereupon,

17

18 MICHAEL LYNN MOON,

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. Again, good morning, and thank you for
5 waiting on us. I know you have been out there for a
6 while and I want to tell you we appreciate it. We never
7 know how long the jurors are going to take to speak with,
8 and so we have to get a bunch of folks down here because
9 the Judge likes to move very rapidly. So, we have been
10 working while you have been waiting. Thank you for your
11 patience.

12 I am just going to ask you some
13 questions about your questionnaire and talk to you a
14 little bit about how you feel about the death penalty;
15 and then talk to you about some principles of law that
16 apply in all criminal cases as will apply in these.

17 First off, I do want to start talking
18 with you about your questionnaire, but before I get into
19 that, do you know either of the local lawyers, Richard
20 Mosty or Preston Douglass? They were introduced to you a
21 couple weeks ago.

22 A. No.

23 Q. Okay. Not familiar with any?

24 A. No.

25 Q. And you don't know any of us from
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1 Dallas?

2 A. No.

3 Q. All right. Mr. Moon, it says here
4 that you have heard about this case on the radio, and
5 seeing it on the television, and read about it in the
6 newspaper. And that is a pretty common thread amongst
7 people because this trial has gotten a lot of publicity.

8 Frankly, that is the reason we're here in Kerrville,
9 because it got so much press in Dallas. And there is
10 nothing wrong with you having seen or read about the
11 case, but what you cannot do as a juror is use that as
12 evidence.

13 Let me just tell you, I have read most
14 of the stuff they have printed. Some of it is right and
15 some of it is not. Really, that doesn't matter, we have
16 to wait until we get the facts in the courtroom. A real
17 good example of this happened last week. You remember
18 that guy in Georgia, Richard Jewell that was supposed to
19 have planted the bomb at the Olympics?

20 A. Yes.

21 Q. Okay. And the media pretty much
22 tried, convicted and hung him out to dry. And then the
23 FBI turns around and says, "We have zero evidence on
24 him." And it's cases like that that really bring home

25 the point that we don't try our trials in the media, we
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1 try them in the courtroom. Would you be able to follow
2 that rule of law?

3 A. Sure, yes.

4 Q. Okay. In here you said that -- the
5 question is: Do you know of any reason why you could not
6 sit as a juror for this trial and be absolutely fair to
7 the defendant and the State; and render a verdict based
8 solely on the evidence presented to you? And you
9 answered, "Yes, because you have a personal belief that
10 being a parent yourself, that anyone who kills a child or
11 hurts a child is something very evil."

12 And I want to talk to you a little bit
13 about that statement as well. It is normal to hate
14 people who hurt kids. I mean, they are the most
15 defenseless victims around. And you would be less than
16 human if you didn't feel the way do you. I mean, to hurt
17 a child is, most people say, is as bad as it gets. But
18 that doesn't disqualify you for jury service. Certainly
19 we want people on the jury who are mad about crime or mad
20 about crimes against children, that's appropriate. We
21 want parents on the jury. People that understand the
22 relationship of a parent and a child. Okay?

23 A. Yes.

24 Q. And, certainly, if someone kills a
25 child, they probably are very evil. And those are all --
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1 it's fine to have those ideas as a citizen, but as a
2 juror, just like you must put the press out of your mind,
3 you must go to the jury box with an open mind. We need
4 people like you to be a juror. We need people with your
5 experiences and your thoughts. But what we must have as
6 a juror is a juror with an open mind, because that is
7 what the law is. The Judge will render an oath that you
8 follow the law and hold us to our burden of proof. The
9 reason that is so important is that, let's say, I mean,
10 there is no question there is a brutal crime committed.
11 I mean, two kids are dead, and that is horrible. Okay?
12 But if we have the wrong person, it does no good to
13 convict that person. You follow where I am going?

14 A. Yes.

15 Q. Okay. So, what I want to hear from
16 you is that you can keep an open mind and wait until you
17 hear the evidence before you make up your mind one way or
18 another whether we have proven our case. Can you do

19 that?

20 A. Yes.

21 Q. Okay. I would like to talk to you a

22 little bit about how you feel -- well, you said you had a
23 cousin that was an Assistant D.A., and now is in private
24 practice; is that right?

25 A. Yes.

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1 Q. Where do they work?

2 A. Chickasha, Oklahoma.

3 Q. Okay. Anything about that that would

4 influence you or affect you in this type of case?

5 A. No.

6 Q. Okay. Are they defense attorneys now?

7 A. Yes, they are.

8 Q. Okay. So they have been on both sides

9 of the fence?

10 A. Yes.

11 Q. Tell me a little bit -- you own your

12 own print shop; is that right?

13 A. Detail shop.

14 Q. Okay. Tell me a little bit about

15 that.

16 A. I started five years ago when we moved

17 down here, I have been going pretty strong ever since. I

18 stay about two weeks behind.

19 Q. Sounds like it's a good successful

20 business then?

21 A. Yes, I will see a check this year

22 maybe.

23 Q. It takes a while when you are starting

24 up a business, doesn't it?

25 A. Yes, it does.

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1 Q. And I see your wife -- does she work

2 there with you?

3 A. Yes, she does.

4 Q. Okay. I see, also, that you have had

5 prior jury service. Can you talk to me a little bit

6 about that? No, wait a minute. Oh, I'm sorry, sir. I

7 thought he had said prior jury service, I didn't remember

8 reading it. But what he wanted me to ask you was: This

9 trial is going to take about two weeks, three weeks on

10 the outside, but it could be even less than two weeks.

11 Obviously, being a juror is difficult

12 for anyone, and financial hardship is not a reason not to

13 be a juror. I think we all may be rather be doing
14 something else, that is a pretty normal feeling. But
15 what I need to know from you is, if you can do your civic
16 duty in this type of case and respond to your call for
17 service?

18 A. If I have to.

19 Q. Okay. So you can be away from your
20 business; we work about 9:00 to 5:00. And, like I said,
21 it should be less than two weeks, actually. So you could
22 do that?

23 A. Well, no, but if I have to.

24 Q. Okay. Nobody wants to and you would
25 rather be out making money, but if you have to, you have

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1 to?

2 A. Well, that is my only income.

3 Q. Okay.

4 A. It's my wife and I and my son.

5 Q. Okay. And your son works with you as
6 well?

7 A. No, he is only 10 years old.

8 Q. I didn't know if you were starting to
9 train him early?

10 A. No, he wants nothing to do with it.

11 Q. Okay. All right. Fair enough. Mr.

12 Moon, here it says that you believe the death penalty is
13 appropriate in all capital murder cases and you are in
14 favor of it. You feel like an eye for an eye?

15 A. Yes, ma'am.

16 Q. We have seen quite a bit of that and I
17 want to talk to you a little bit about that. Here is how
18 the death penalty scheme works in Texas. First off: It
19 is two phases. In the first phase you have the
20 guilt/innocence phase. You have to decide if we have
21 proved to you beyond a reasonable doubt that the
22 defendant is guilty of capital murder. If we don't prove
23 it, you find the defendant not guilty, and we all go
24 home.

25 If we do prove it, there is a guilty
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1 verdict, and then we go to the second phase of the trial,
2 the second part. And that part is called the punishment
3 phase. Okay? In the punishment phase, it used to be
4 that the jury decided life or death, and they wrote that
5 in a blank. Okay?

6 Well, now they still make the life and

7 death decision, but they don't actually write the words.
8 They have to answer two questions. And the two questions
9 are printed over here on this board. And for the
10 defendant to die, you have to first find that she is
11 guilty, then this question has to be answered "yes," and
12 this question has to be answered "no."

13 A. Okay.

14 Q. If they are answered any other way,
15 it's a life sentence. Okay?

16 A. Okay.

17 Q. If you would, look with me a minute on
18 that first question. It says: "Do you find from the
19 evidence beyond a reasonable doubt that there is a
20 probability that the defendant could commit criminal acts
21 of violence that would constitute a continuing threat to
22 society?"

23 Do you remember from the Judge's
24 comments a few weeks ago, he said that the defendant is
25 presumed innocent. That means if you voted right now,
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1 you would have to find her not guilty.

2 A. Right, yes.

3 Q. And that is for the first phase of the
4 trial. For the second phase of the trial, he didn't
5 really speak to it, but on that first question, it is
6 presumed to be answered "no." And we have to convince
7 you beyond a reasonable doubt to change your mind to
8 answer it "yes." And find that, "yes," there is a
9 probability that she will be a future danger, to
10 summarize it. Okay? That she will be a threat to
11 society. That is how the system works.

12 Now, on your questionnaire you said

13 that the death penalty is appropriate in all capital
14 murder cases. And I want to talk to you a little bit
15 about what capital murder cases -- well, have you always
16 felt this way about the death penalty?

17 A. Pretty much, yes, ma'am.

18 Q. Okay. Always been in favor of it?

19 A. Yes.

20 Q. Can you tell me a little bit about why
21 that is?

22 A. I feel like it's wrong to take a life,
23 and you should pay with your life if you take a life.
24 But beyond self-defense or something of that nature, but
25 other than, just no.

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1 Q. Okay. So that is just pretty much an
2 eye for an eye, just like you wrote here?

3 A. Pretty much, yes, ma'am.

4 Q. All right. Mr. Moon, in Texas not all
5 murder cases are cases that are eligible for the death
6 penalty. There is six or seven of them, and let me kind
7 of go over that with you. If you do a murder kind of
8 plus something else, if you will, if you do a murder of
9 two or more people, that is a crime that is eligible for
10 the death penalty.

11 If you murder a police officer, a
12 fireman, a prison guard while they are in the line of
13 duty, on the job, that is a crime that is eligible for
14 the death penalty. If you murder in the course of doing
15 another felony, like if you kidnap somebody and then
16 murder them; or rape them and then murder them; or go to
17 Circle-K over there, and rob the clerk and then kill him,
18 that is the type of crime that would be eligible for the
19 death penalty.

20 Or, if you hire a hit man, murder for
21 hire, please go out and kill so-and-so, and you pay them,
22 the person that pays is eligible and the person that
23 kills for money is also eligible. And then there is the
24 one that this case is involved which is a murder of a
25 child under the age of six. Let me ask you: Do you
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1 think that all of those types of cases are good
2 contenders for the death penalty, or death penalty
3 appropriate in the right circumstances?

4 A. Yes, I do.

5 Q. Okay. Is there anything -- if you
6 were Governor of Texas, is there anything that you would
7 add to that list or change in any way?

8 A. No.

9 Q. Okay. Or any other types of crimes
10 that you think should be appropriate for the death
11 penalty?

12 A. No, not really.

13 Q. Okay. It sounds like a fair list to
14 you?

15 A. Yes.

16 Q. And as part of that, not all of those
17 cases you don't automatically get the death penalty, that
18 is why we have the second phase of the trial. If it was
19 automatic, we wouldn't need the second phase of the
20 trial. That would be it. You would find them guilty,
21 then the death penalty. I want to tell you and I want to
22 be up front, it is our goal and our desire to see that

23 that woman down there is executed. We believe we have
24 the type of case and the quality of evidence to do that.

25 Would you be able to participate in that sort of process?
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1 A. Yes.

2 Q. Okay. Now, you kind of hesitated and
3 that is fine, we don't want somebody who is auditioning
4 for the job, we don't want somebody that wants this
5 position. We just need jurors that can keep an open mind
6 and listen to the evidence. And I think you said you
7 could do that; is that right?

8 A. Yes.

9 Q. Okay. Getting back to the death
10 penalty not being automatic. As I told you, that first
11 question is presumed to be answered "no"?

12 A. Yes.

13 Q. And it may be -- this is kind of hard
14 to follow so bear with me, I have not thought of a good
15 way to say it. It may be that you don't hear anything
16 else, all you hear is about the crime. Or you may hear
17 other things. Okay? You may hear other stuff about the
18 defendant. I can't tell you in this case which it will
19 be. But what I have to know from you is a promise or a
20 commitment that you will revisit the issue.

21 In other words, you won't have an

22 automatic answer. "Well, I have just found her guilty of
23 killing a child under the age of six, of course, she is
24 going to be a continuing threat." We can't have that.

25 There has to be kind of a break, and even though you
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1 might not hear any new evidence, you must look at the
2 question and rethink about the evidence. Can you do

3 that, Mr. Moon?

4 A. Yes, I could.

5 Q. Okay. In front of you is the
6 indictment that we have to prove to you beyond a
7 reasonable doubt. And if you look at it, and just read
8 kind of that typewritten portion in the middle there.

9

10 THE COURT: It is that typewritten
11 portion that we are directing your attention to.

12 THE PROSPECTIVE JUROR: Okay.

13

14 BY MS. SHERRI WALLACE:

15 Q. Just let me know when you are
16 finished.

17 A. Okay.

18 Q. That is what we have to prove to you

19 beyond a reasonable doubt, and we can do that in any way

20 possible. We can do it through either direct or indirect

21 evidence. Direct evidence is an eyewitness. Okay? I

22 saw John kill Sue.

23 But very often in murder cases, as I

24 am sure you can imagine, it's not something you sit

25 around and think about; but if you think about it, a lot

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1 of times there is no eyewitness because the eyewitness is

2 dead. Because the defendant controls how many witnesses

3 there are to the crime. Do you follow me?

4 A. Yes.

5 Q. So, often in a murder case, the State

6 must prove the case beyond a reasonable doubt based on

7 circumstantial evidence alone. And circumstantial

8 evidence is everything else: DNA; statements by the

9 defendant that don't comport with the crime scene;

10 fibers; blood spatters; photographs; anything else is

11 circumstantial evidence.

12 If we present circumstantial evidence

13 to you that convinces you beyond a reasonable doubt that

14 the defendant is guilty of capital murder, would you be

15 able to find her guilty?

16 A. If I am convinced, yes.

17 Q. All right. In your questionnaire you

18 said that -- you mention self-defense a couple of times.

19 I want to talk to you a little bit about that. If there

20 is self-defense, then it's possible that the defendant is

21 not guilty of capital murder. Okay?

22 That would just depend on the facts

23 that you hear. So, you are not going to have a case

24 where you found somebody guilty of capital murder and you

25 believe it was in self-defense. If it's self-defense,

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1 they are not guilty. Okay?

2 A. Right.

3 Q. Do you follow where I am coming from?

4 A. Yes.

5 Q. So, I just wanted to kind of touch on

6 that because you will have found that not in self-defense

7 that she committed a murder of a child under the age of

8 six.

9 A. Yes.

10 Q. Okay. Before -- we talked about the

11 indictment and that is what we have to prove to you.
12 What we do not have to prove to you is why she did it.
13 We don't have to prove to you a motive in Texas, and that
14 is the law. Okay?

15 A. Okay.

16 Q. It may be after you have heard the
17 evidence it becomes abundantly clear what the motive is,
18 or it may be that it is one of several motives. You and
19 another juror may think it's one and another juror may
20 think it's something else. Or it may be after you have
21 heard all of the evidence, you still don't have any idea
22 why, and that is not uncommon. Really, horrible crimes
23 are very difficult to understand.

24 Oftentimes, I will have jurors talk to
25 me after a trial is over and say, "Well, why? I don't
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1 know, I mean, they are a criminal. I don't know why they
2 did it." The defendant doesn't have to testify, and we
3 can't get into the defendant's mind. So, it may be that
4 you do not know the motive in this case. However, if we
5 prove the case to you beyond a reasonable doubt, even if
6 you didn't know the motive, you could convict her?

7 A. Yes.

8

9 MR. S. PRESTON DOUGLASS, JR: Your
10 Honor, I think one thing that is happening, we're getting
11 away from the hypothetical of a defendant, he or she, and
12 we're talking about this specific defendant.

13 THE COURT: The State does not have to
14 prove motive, and you -- we're not going to talk about
15 this particular defendant, we're talking in generalities.
16 So, we're not going to pin witnesses
17 down, disregard that comment by Ms. Wallace. Let's
18 rephrase the question.

19 MS. SHERRI WALLACE: I will move on,
20 Judge.

21

22 BY MS. SHERRI WALLACE:

23 Q. Once the defendant is found guilty,
24 then we would go to the first question over here. And we
25 have read that before: "Do you find from the evidence
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1 beyond a reasonable doubt that there is a probability
2 that the defendant would commit criminal acts of violence
3 that would constitute a continuing threat to society?"
4 I want to talk to you a little bit

5 about that. I want to you ask you what a few of these
6 words mean to you, and the reason I do that Mr. Moon is
7 this: The Judge is not going to give you any definitions
8 for these words.

9 He will give you a lot of definitions,
10 but none for these words. It's really what this question
11 means to you, and that is what I want to know. What does
12 the word "probability" mean to you?

13 A. Maybe they would and maybe they
14 wouldn't.

15 Q. Okay. It's possible then?

16 A. It's possible.

17 Q. Okay. Could it be more likely than
18 not?

19 A. Yes.

20 Q. Okay. "Criminal acts of violence,"
21 what comes to mind when I say that phrase?
22 A. Doing the wrong thing. You know, this
23 question here, "You have to find beyond a reasonable
24 doubt there is a probability that the defendant would
25 commit criminal acts of violence," I don't know what they
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1 are going to do.

2 Q. It's asking you to predict the future.

3 A. I can't do that, I don't know.

4 Q. Okay. What we need to know is that
5 you could look at the evidence and make a determination
6 that because of the past, there is a probability that
7 future harm or future dangerousness would result. Would
8 you be able to do that?

9 A. I could feel comfortable with judging
10 what had been done, but what is going to be done, I don't
11 know. I couldn't tell you if they would or wouldn't.

12 Q. Can you tell me a little bit about

13 what you are thinking there?

14 A. Well, the way I read the question is,
15 like I say, the future, what they are going to do in the
16 future. I don't know if they will or not. And what
17 we're here to do is to decide on their -- on what they
18 have done.

19 Q. Well, can you --

20

21 THE COURT: I think if both sides --
22 if you read the question carefully the word
23 "probability," you might want to explore that word
24 please.

25

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1 BY MS. SHERRI WALLACE:

2 Q. Probability does not mean certainty.

3 A. Right.

4 Q. Obviously, we can't predict the

5 future. Okay? There is no guarantees and we're not
6 asking you to -- if you could predict the future,
7 everybody would be coming to see you. But what we're
8 looking at is, is there a probability? Is it more likely
9 than not that future crime -- future criminal acts of
10 violence could occur?

11 A. From the defendant?

12 Q. Yes.

13 A. I couldn't tell you until the
14 defendant was -- until --

15 Q. Well, all we're asking is that you
16 wait and hear the evidence? This question is based --
17 A. Yes, right.

18 Q. -- based on the evidence. So based on
19 the evidence you could make or answer that question?

20 A. Well --

21 Q. This has to be based on the evidence.

22 A. It has to be based on the evidence,
23 yes.

24 Q. Okay. And, the last part I want to
25 talk to you about is "society". Society, to you, does
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1 society include everyone?

2 A. Law-abiding citizens, yes.

3 Q. Okay. Does that also include people
4 that work in the prisons, the psychiatrists, the
5 psychologists, the prison guards?

6 A. Yes.

7 Q. The people that prepare the meals, all
8 those types of folks?

9 A. Yes.

10 Q. Okay. Once that question is answered
11 "yes," then you go to the next question. And the second
12 question is this: "Taking into consideration all of the
13 evidence, including the circumstances of the offense, the
14 defendant's character and background, and the personal
15 moral culpability of the defendant, is there a sufficient
16 mitigating circumstance or circumstances to warrant that
17 a sentence of life imprisonment rather than a death
18 sentence be imposed?"

19 Let me tell you, I didn't write this
20 thing. I think it is complicated and hard to understand,

21 but if I could kind of summarize it. Basically, after
22 you have heard everything, if you decide the defendant
23 should live instead of die, this is your safety net.

24 Okay? This is kind of your way out, and it is based on
25 what you think. Okay?

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1 It may be, Mr. Moon, that you sit on
2 five million murder cases, capital murder cases. And it
3 may be that you never hear something where you think it's
4 sufficient mitigation, or something that lessens
5 somebody's blame. Okay?

6 But, what we need to know from you is,
7 will you be able to follow the law and keep an open mind?
8 And it may be that you have no idea what type of evidence
9 that would be, but it's something that you would know it
10 when you saw it. If you decided in your heart that the
11 right thing to do was for the defendant to receive a life
12 sentence, then you could do that. Could you do that?

13 Could you follow that law?

14 A. Yes.

15 Q. Okay. Let me talk to you a little bit
16 about some of the words in there. The sufficient, well,
17 mitigating is really the word I want to talk about. That
18 has been defined in other cases as something that lessens
19 somebody's moral blameworthiness. Okay.

20 It doesn't make them any less guilty.

21 They are just as guilty of capital murder, and they are a
22 future danger. Okay?

23 But something about the evidence makes
24 you believe that they deserve to live instead of die.

25 There is no burden of proof here, it's just more of a gut

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1 feeling-type of question.
2 This question came about when there
3 was this guy who committed a capital murder, and he was a
4 future danger, but he was mentally retarded. Okay? He
5 didn't have the mental capacity, it was diminished, very,
6 very, very much diminished.

7 He knew the difference between right
8 and wrong, but he really wasn't capable of learning. And
9 because of that, the court's felt that there ought to be
10 some way out for a juror.

11 That they couldn't think of all of the
12 circumstances, and that is not necessarily the only one,
13 but there might be some reason why a defendant should
14 live. The jury should have that kind of a safety net, if

15 you will.

16 You know, this is something you

17 probably never thought about. But is there anything that
18 comes to your mind that would be mitigating to you?

19 A. That would be one, what you just said.

20 Q. Okay. Mental retardation?

21 A. Yes. But that would really have to be

22 proved beyond a reasonable doubt. But as far as
23 circumstances, or the character and background, to me
24 that makes no difference at all. There is right and
25 there is wrong and you have got a brain.

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1 Q. Okay.

2 A. You know what is going to happen if

3 you do it, and so --

4 Q. Okay. All you have to promise the

5 Court here is that you will consider the evidence

6 presented and keep an open mind. You don't have to think
7 of anything that is mitigating, like I said, you know, it
8 may be that you never hear anything.

9 But you just have to keep an open

10 mind. And if your heart and your gut said, "I think that
11 defendant ought to get a life sentence," that you would
12 be able to do that. Even though you found them guilty of
13 capital murder, and you found that they were a future
14 danger, if you made up your mind that the right thing to
15 do, you couldn't live with yourself unless the defendant
16 got a life sentence, then you could do that? You strike
17 me as the kind of man who could do that?

18 A. I am, in certain circumstances.

19 Q. Okay. Like I said, you don't have to

20 tell us what they are. Just kind of wait and see. I

21 want to talk to you a little bit about -- do you have any
22 questions for me so far?

23 A. No, I don't.

24 Q. Okay. I want to talk to you a little

25 bit about some general principles of law. I kind of
Sandra M. Halsey, CSR, Official Court Reporter

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1 mentioned some and the Judge mentioned some a couple
2 weeks ago. I want to touch on them again.

3 The defendant is presumed innocent. I

4 think I have said that a couple of times. It's another
5 way of saying we have the burden of proof. It's another
6 way of saying that she doesn't have to do anything. She
7 doesn't have to prove her innocence. We have to prove
8 her guilt. Okay?

9 If you voted right now, you must find
10 her not guilty. Now, on your questionnaire you have
11 said: That if a person is accused of capital murder, she
12 should have to prove her innocence, and you said you
13 strongly agree.

14 And that is pretty common. People
15 think, "Well, if I was charged with capital murder, I
16 would want to say something," and most people feel like
17 that. But as a juror, you will need to have the mental
18 discipline to not consider, if she chooses not to
19 testify.

20 A. Right. On that statement it was the
21 lawyers would have to prove the innocence, right.

22 Q. Well, that -- and I appreciate what
23 you are saying. But let me just tell you, it's our
24 job -- it's our job here to work.

25 A. Right.

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1 Q. It's our job to prove everything to
2 the jury. They -- if they wanted to, could sit over
3 there and play a mean game of tic-tac-toe. They don't
4 have to do anything but show up, and they have done that.
5 They have fulfilled that burden, and
6 that obligation. So, they are finished. Now, I don't
7 anticipate that they are just going to sit there. But
8 the point is, as a juror, you can't look to them to prove
9 anything. You have to look here for us to prove to you
10 that she is guilty. Can you follow that law?

11 A. Yes.

12 Q. All right. Again, in your
13 questionnaire you said that if the police arrest somebody
14 for capital murder, the person is probably guilty, and
15 you said you strongly agree. And that is a common
16 sentiment among folks, and there is nothing wrong with
17 feeling like that. But as a juror, you can take nothing
18 from the fact that she has been arrested. Remember the
19 Judge talking to you about the fact that she had been
20 indicted is no evidence?

21 A. Right.

22 Q. He talked about how many people get
23 indicted a day in Dallas County. I mean, it's a lot.
24 Okay? And you can't consider that at all. You have to
25 wait on the facts. Will you be able to do that, Mr.

Sandra M. Halsey, CSR, Official Court Reporter
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1 Moon?

2 A. Yes.

3 Q. And on this questionnaire, it went
4 further and it said: If the District Attorney tries a
5 person for capital murder, the person is probably guilty.
6 And you said you strongly agree with that, and I
7 appreciate the confidence in our office, and I am glad
8 there are people out there that think like that. Okay?
9 But as a juror, you can't think like that. As a juror,
10 you have to close your mind to knowing that she was
11 arrested, knowing that she was indicted, knowing that
12 we're trying her. Okay? And you have to look to us, and
13 say, "Prove it, convince me beyond a reasonable doubt."
14 It's a burden we gladly accept.

15 Will you follow that law and hold us

16 to that burden?

17 A. Yes.

18 Q. In here you said that -- it asked you
19 how you felt about a person that was accused not having
20 to testify; how did you feel about that constitutional
21 right, and you said you felt okay about it. You are fine
22 with the fact that she does not have to testify, her
23 lawyers don't have to do anything, and you look to us to
24 prove the case to you; is that right?

25 A. Yes.

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1 Q. In this case, part of the evidence
2 that you will hear will be -- could possibly be from
3 police officers. Okay?

4 A. Okay.

5 Q. And I want to talk to you a little bit
6 about witnesses' testimony and how, as a juror, you have
7 to view it. Before a witness testifies, you have to
8 treat them all the same.

9 You have to sit there and wait until
10 they speak before you judge them. Okay? Wait until you
11 hear about their training, their credentials, their
12 education, their background, and decide if they are
13 shooting straight with you.

14 You can't judge someone because they
15 may come in here in a blue uniform with a badge on.
16 Okay? You have to wait and hear from them. And I am
17 sure in your business, regularly, you judge people
18 everyday. You might not realize it, but you make calls,
19 "Well, I wonder if they are going to pay me? I think
20 they look like the kind of person that will," things like
21 that. But you have to wait until you hear from the
22 witnesses.

23 Sometimes a defense attorney will ask
24 a question this way: "Would you believe a police officer

25 simply because he was a police officer?" Most folks say,
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1 "Well, sure I believe a police officer." But it's really
2 kind of a trick question, because you can't believe
3 anybody before you hear from them. Would you be able to
4 follow that rule of law?

5 A. Yes.

6 Q. Okay. In this case you also will
7 see -- I anticipate that there will be photographs that
8 are gruesome and difficult to look at. Can you consider
9 them as evidence in the case, and still hold us to our
10 burden of proof?

11 A. Yes.

12 Q. Okay. And one of the last things I
13 want to talk to you about, Mr. Moon, is parole. In this
14 case, the Judge will instruct you you may not consider
15 parole for any reason.

16 There is good reason for that. The
17 parole laws in Texas change. We don't have any control
18 over them. So you are not to consider them for any
19 purpose. You are to assume that a life sentence means
20 just that, a life sentence. Okay? Will you be able to
21 follow the laws the Judge gives you based on not
22 considering parole?

23 A. Well, yes.

24 Q. Do you have any questions for me?

25 Because I think I have about run out.

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1 A. No.

2 Q. Okay. Thank you and I appreciate you
3 keeping an open mind and waiting to hear the evidence.

4 Thank you, Mr. Moon.

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

7 Q. Okay.

8

9 MS. SHERRI WALLACE: I'll pass the
10 juror.

11 THE COURT: Mr. Glover.

12 MR. CURTIS GLOVER: Thank you, Your
13 Honor.

14

15 VOIR DIRE EXAMINATION

16

17 BY MR. CURTIS GLOVER:

18 Q. Mr. Moon, I was looking at your
19 questionnaire that you filled out in preparation for
20 today, and you indicated on the front page that you had
21 read some information concerning this case, or perhaps
22 you heard it on the radio or television. Can you tell us
23 about that?

24 A. Not much, no.

25 Q. Well, what is not much?

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1 A. Well, just, I listen to the news a
2 lot, and so, I couldn't tell you one way or the other.

3 Q. Okay. You were familiar with the
4 case, however, before you came down?

5 A. Well, I had heard about it, yes, sir.

6 Q. Okay. Could you tell us what you
7 understood what it involved?

8 A. Just the murder of two children and
9 there was an arrest.

10 Q. Okay. And who was arrested?

11 A. The lady.

12 Q. Okay. Anything else about perhaps the
13 crime scene or anything of that nature?

14 A. No. I kind of figure the press is
15 sensationalism, a lot of it, so I don't pay it much mind.

16 Q. But you did read it or hear it?

17 A. Yes, I heard it, yes.

18 Q. Okay. You further stated in your
19 questionnaire and the question was asked of you: "Do you
20 know of any reason why you could not sit as a juror for
21 this trial? Be absolutely fair to the defendant and the
22 State and render a verdict based solely upon the evidence
23 presented to you." And you checked the box there "yes."
24 And your answer was, "Personal belief that being a parent
25 myself anyone who kills a child or hurts a child is

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1 something very evil." Do you recall that?

2 A. Yes.

3 Q. As a result of what you have heard
4 about this case, have you arrived at an opinion as to the
5 guilt or innocence of the defendant?

6 A. No, I have not.

7 Q. Okay. Not even prior to coming here
8 today?

9 A. No.

10 Q. Is there anything based on that
11 statement that you just said there, that would indicate

12 to you that perhaps you do have an opinion about it?

13 A. It is just one of the worst things I

14 can think of to do, but as far as -- I couldn't tell you.

15 Q. I'm sorry. Tell me.

16 A. Well, as far as passing judgment on

17 anybody or anything, I couldn't do that right now.

18 Q. Okay. Do you think in that statement

19 that it might indicate that perhaps you had arrived at an
20 opinion?

21

22 MS. SHERRI WALLACE: I'm going to

23 object to that question. It doesn't matter what the

24 statement is, it's whether or not he has.

25 THE COURT: I'll sustain the

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1 objection. You may want to rephrase the question. I
2 think what you're saying is that you have not arrived at
3 any opinion as to whether or not Mrs. Routier is guilty
4 or not guilty; is that correct? Is that what you're
5 saying?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Okay. Thank you. Go
8 ahead. Let's move on.

9

10 BY MR. CURTIS GLOVER:

11 Q. Can you see, Mr. Moon, why it's
12 absolutely imperative that you look into your heart of
13 hearts before you would get on a jury that involves the
14 taking of another human being's life as to whether or not
15 you have arrived at any kind of an opinion about the
16 guilt or innocence of that person?

17 A. Yes.

18 Q. And can you assure her here today that
19 you have done that? Looked into your heart?

20 A. I have thought about that, and it's
21 tough. To have to think that you may be one of the
22 people that does sentence somebody to death or life in
23 prison.

24 Q. Well, can you see why it is important
25 for her to know, and for us to know in her behalf,
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1 whether or not you have any kind of opinion concerning
2 this case?

3 A. Yes, I can understand that.

4 Q. And you are assuring us here under

5 oath at this time that you do not have an opinion

6 concerning this case?

7 A. Yes.

8 Q. Okay. Now, you further made the
9 statement on page 3: That if a person is accused of
10 capital murder, she should have to prove her innocence.
11 And you said, "I strongly agree with that." Do you still
12 feel that way here today?

13 A. Yes.

14 Q. Okay. In other words, if this case
15 progressed on and the prosecution put on their case, and
16 the Judge instructed you as you went back to the jury
17 room, and you had heard nothing from the defense; and
18 there is no burden on the defense to put on any kind of a
19 case.

20 And you went back to the jury room and
21 the Judge had instructed you that you were not to
22 consider her silence as any evidence of her guilt, or any
23 evidence of anything, by that statement right there, you
24 indicate to me that you would expect to hear from her
25 concerning her position in this case.

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1 A. Well, not especially her, I would
2 expect to hear from you.

3 Q. Well, you made the statement here:
4 "If a person is accused of capital murder, she should
5 have to prove her innocence."

6 A. Through her lawyer or whatever, yeah.

7 Q. You are not saying that she has to
8 prove her innocence?

9 A. No, not if she doesn't have to say
10 anything at all.

11 Q. Okay. You are looking again into your
12 heart of hearts and telling us that that is the way you
13 feel?

14 A. Yes.

15 Q. Are you saying that simply because
16 that is the law? Or are you saying it because you have
17 made that decision here today?

18 A. Well, I have always felt that way.

19 Q. All right. That she has no burden.

20 Is that what you are saying?

21 A. Well, you do.

22 Q. Well, let me kind of explain something
23 to you. The law is, Mr. Moon --
24

25 THE COURT: Well, let me explain this.

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1 They don't have to do one thing.
2 THE PROSPECTIVE JUROR: These people
3 don't?
4 THE COURT: No, those people do. Mr.
5 Shook and Mr. (sic) Wallace and whoever they bring down,
6 they have got to do it all.
7 THE PROSPECTIVE JUROR: Yes.
8 THE COURT: Okay. They put their
9 whole case on. Okay?
10 THE PROSPECTIVE JUROR: Yes.
11 THE COURT: The defense over here
12 doesn't have to do anything, doesn't have to say
13 anything; nada, zilch, nothing. There is no requirement
14 that they do anything. Show up when the trial starts,
15 they have done that.
16 Now, then, you think over there,
17 "Well, the State really didn't do too much in this thing.
18 I would like to hear something else." Or you think the
19 State did pretty good, one way or the other. But I want
20 to hear something else. Are you going to require them to
21 put on any evidence at all in this case?
22 THE PROSPECTIVE JUROR: Yes.
23 THE COURT: Okay. Anything else?
24 MR. CURTIS GLOVER: We submit the
25 juror.
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1 THE COURT: All right. Motion for
2 cause granted. Thank you. You will not -- we appreciate
3 your coming and you will be excused from further jury
4 service.
5 THE PROSPECTIVE JUROR: Yes.
6 THE COURT: We would ask if you would
7 not say anything about what went on here today until the
8 trial is over. The trial will be held in January and
9 about February it will be over, and then you can talk or
10 not talk to anybody as you see fit. Thank you very much
11 for coming. There is a gag order, and I can impose
12 monetary or jail time penalties. I'm not threatening
13 you, I just have to tell you that.
14 THE PROSPECTIVE JUROR: Yes, sir.
15 THE COURT: We want to thank you very
16 much for coming.
17
18 (Whereupon, a short
19 recess was taken,
20 after which time,

21 the proceedings were
22 resumed on the record,
23 in the presence and
24 hearing of the defendant
25 as follows:)
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1
2 THE COURT: All right. This is after
3 the lunch recess. Bring in the next juror.
4 Good afternoon, ma'am. You are Fay
5 Faulkner, F-A-U-L-K-N-E-R; is that correct?
6 THE PROSPECTIVE JUROR: That is
7 correct.
8 THE COURT: Raise your right hand,
9 please.
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. You are here
25 as a potential juror in the Darlie Routier matter. This
Sandra M. Halsey, CSR, Official Court Reporter
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1 is Mrs. Routier to your far right.
2 She is represented by her attorneys,
3 Mr. Curtis Glover and Preston Douglass. Mr. Glover is
4 from Dallas, Mr. Douglass, of course, is from Kerrville.
5 And we have today Mr. Toby Shook from
6 Dallas, and Sherri Wallace from Dallas, they are
7 Assistant District Attorneys.
8 Both sides are going to be asking you
9 some questions. There are no wrong answers, just tell it
10 like it is. There won't be a test. All right. Go
11 ahead, please.
12 Mr. Shook.
13
14

15

16 Whereupon,

17

18 FAY REATHERFORD FAULKNER,

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 MR. TOBY L. SHOOK:

4 Q. Ms. Faulkner, again my name is Toby
5 Shook and I will be asking you questions on behalf of the
6 State. And like Judge Tolle has told you we only want
7 your honest opinions. Okay?

8 A. Okay.

9 Q. We get all kinds of folks down here
10 and I want to ask you some questions on your
11 questionnaire, because you bring something up. You are a
12 Jehovah's Witness; is that right?

13 A. I am one of Jehovah's Witnesses,
14 that's correct.

15 Q. We had another member of your
16 congregation, I think, down here Friday. And you all
17 have very strong beliefs as far as sitting in judgment of
18 other people; is that correct?

19 A. That's correct.

20 Q. And you feel very strongly about this
21 part of your faith?

22 A. Yes, I do.

23 Q. Just tell us in your own words what
24 your belief is.

25 A. Well, I believe that no one would be
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1 able to judge another human being. I think as far as
2 judgment is concerned, that is God's right.

3 Q. Okay. And I have spoken to many
4 members of your faith over the years, and that is premise
5 in y'all's teachings. I mean, everyone I have spoken to
6 has told me that, that they cannot sit in judgment in
7 these type of trials because of their very strong
8 religious convictions.

9 A. That's correct.

10 Q. Okay.

11 A. Although, all of us -- I would hope

12 that all of us would follow our own conscience.

13 Q. Oh, yeah. But the ones I have spoken

14 to have talked about -- they feel deeply about this as

15 far as what their faith teaches them and they are not

16 going to leave that outside.

17 A. That's correct.

18 Q. Now, are you telling us that is how

19 you feel today?

20 A. Yes, sir.

21 Q. Okay. Because of your religious

22 beliefs you could not sit in judgment of another person?

23 A. That's correct.

24 Q. And that is a strong conviction that

25 you have, obviously?

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1 A. Yes, sir, I do.

2 Q. We're talking about, you are not going

3 to be able to even render a verdict of guilty or not

4 guilty?

5 A. That's correct.

6 Q. Because of your religious beliefs.

7 A. That is correct.

8

9 MR. TOBY L. SHOOK: Well, Judge --

10 THE COURT: Let me ask you this: Who

11 enforces the law and makes judgments then?

12 THE PROSPECTIVE JUROR: I believe that

13 God has allowed what Romans called a superior authority

14 to sit in judgment. And I am sure that you have decided

15 in your career that this is what you wanted to do. So,

16 you have that authority and you can that. However, I

17 have chosen not to do that.

18 THE COURT: So, both sides agree?

19 MR. CURTIS GLOVER: We will agree to

20 excuse her.

21 MR. TOBY L. SHOOK: Yes, Judge.

22 THE COURT: All right. Thank you for

23 coming, ma'am. If you would not discuss any of this

24 until this trial is over, it won't be over until the

25 latter part of January. So, if you could just keep it

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1 quiet until then it would be appreciated.

2 THE PROSPECTIVE JUROR: I sure will.

3 THE COURT: All right. This is Ms.

4 Tammy Criss; is that right?

5 THE PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: C-R-I-S-S?

7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Fine. How are you doing?

9 Raise your right hand, please.

10 Do you solemnly swear or affirm you

11 will true answers give to all the questions propounded to

12 you today concerning your qualifications as a juror, so

13 help you God?

14 THE PROSPECTIVE JUROR: Yes, sir.

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 Now, you are here today as a potential juror in the

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1 Darlie Routier trial.

2 Mrs. Routier is sitting there with her

3 attorneys, Mr. Curtis Glover and Preston Douglass. Mr.

4 Glover is from Dallas, Mr. Douglass is from Kerrville.

5 Richard Mosty is an attorney from Kerrville and also

6 represents Mrs. Routier and so does Doug Mulder, who is

7 an attorney from Dallas.

8 The State today is represented by Mr.

9 Toby Shook and Ms. Sherri Wallace, they are attorneys

10 from Dallas, from the Dallas County District Attorney's

11 Office. And there is another attorney, Greg Davis, who

12 will be here later.

13 Now, we are going to ask you some

14 questions. There are no wrong answers. So, just

15 whatever you feel, please answer them as briefly and to

16 the point as you can. And say yes or no to yes and no

17 answers so Ms. Halsey can take those down.

18 THE PROSPECTIVE JUROR: Okay.

19 THE COURT: Go ahead, please. Mr.

20 Shook.

21

22

23

24

1 Whereupon,

2

3 TAMMY HARE CRISS,

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. Criss, again my name is Toby
14 Shook, I am one of the prosecutors from Dallas and I will
15 be asking you questions on behalf of the State. As Judge
16 Tolle told you, we just want your honest opinions on
17 these things. Have you ever come down for jury service
18 before?

19 A. No, sir.

20 Q. Okay. Since this is a death penalty
21 case, we talk to every juror individually. Usually it's
22 in a group, but this is a special type of case and the
23 law prescribes a method of individual jury voir dire.
24 But we don't want you to make you feel uncomfortable, put
25 you on trial or anything like that, but that is the best

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1 procedure we have.

2 A. Okay.

3 Q. What I want to do is go over a couple
4 of things here on your questionnaire, but primarily, I
5 want to talk to you, first of all, how you feel about the
6 death penalty. We get all kinds of folks down here.
7 Obviously, you know, from what Judge Tolle has told you,
8 this is a death penalty case in which the State is
9 actively seeking the death penalty. So we want to
10 explore your thoughts about that.

11 On your questionnaire you said, yes,

12 you were in favor of the death penalty as a law, and I
13 would like for you to tell me a little more about that in
14 your own words.15 A. Well, like if it is deserved, if I
16 feel that it's deserved, you know, and if they are found
17 guilty, then yes, I do.

18 Q. Okay. What types of crimes come into

19 your mind when you think about, "Well, that is a
20 deserving death penalty case"?

21 A. Just depends. Murder, if it was just
22 deliberate.

23 Q. Okay.

24 A. Not for protection.

25 Q. Not self-defense.

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1 A. Right.

2 Q. When you mean deliberate, what do you
3 mean by that?

4 A. You just did it to do it.

5 Q. Any other crimes other than murder?

6 A. Rape, if it's -- you know, keeps on
7 happening.

8 Q. Okay.

9 A. Or is not a first offense.

10 Q. Okay. Have you ever followed any
11 cases in the news media involving murder cases?

12 A. No, not -- I'm not real up on that.

13 Q. Right. Sometimes, obviously, some
14 cases get just local news; some cases get national news;
15 like --

16 A. I lived in San Antonio and Austin, and
17 there was always --

18 Q. There was always a lot there.

19 A. Yeah. And I just never really
20 followed any of them.

21 Q. Let me ask you this: I bet you
22 probably watched a little bit of the O.J. Simpson case
23 they had?

24 A. Well, I sit with elderly people, and
25 they would watch it, but I wasn't real interested in it,
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1 and, you know, I never really paid close attention to it.

2 Q. Okay.

3 A. And a lot of times I would read while
4 they were doing that or do something else. But I do sit
5 with elderly people and they really enjoyed that O.J.
6 case.

7 Q. Did they?

8 A. Yes.

9 Q. Did you develop any opinions about
10 that?

11 A. No, not really.

12 Q. Okay. Have you ever talked about --

13 let me ask you this: Have you ever felt differently
14 about the death penalty? Ever been against it at all?

15 A. Where I felt it was not fair to

16 somebody?

17 Q. Right.

18 A. That got it?

19 Q. Yeah.

20 A. Well, I don't -- I don't know, no.

21 Q. Okay. Okay.

22 A. I never really paid attention much

23 to --

24 Q. Most people don't sit around thinking

25 about it.

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1 A. No, I have never really had to think

2 about it.

3 Q. You have never spoken to it say with
4 your husband or friend or family member?

5 A. No.

6 Q. Okay. But pretty much you felt this
7 way: If the crime is deserving of it, it should be
8 imposed?

9 A. Right, right.

10 Q. Okay. In Texas there are only certain
11 types of crimes which are eligible for the death penalty.

12 Used to be, for instance, you said some types of rape
13 cases.

14 A. Well, children and stuff like that.

15 Q. Yeah. Abuse of children?

16 A. No.

17 Q. Or murder of children?

18 A. Rape.

19 Q. Raping children?

20 A. Yeah.

21 Q. In Texas now, you have to have an
22 actual death though.

23 A. Oh, okay.

24 Q. You could get a life sentence for
25 those other types of crimes, but you can't get the death

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1 penalty. In Texas, you have to have murder plus
2 something else. Like murder during a felony; like a
3 person who might rob a grocery store and kill the clerk.

4 A. Oh, okay.

5 Q. You have seen those --

6 A. Well, it's not somebody that keeps on

7 doing it? A habitual criminal or what, you know, they
8 don't get the death penalty?

9 Q. Well, you are eligible, it just
10 depends on the facts. Okay?

11 A. Okay.

12 Q. And I will go over the process in a
13 minute of how that works. For certain -- there is a
14 certain sequence the State has to go through, just
15 because you are guilty of a particular offense, you don't
16 automatically get the death penalty.

17 A. Right.

18 Q. The first thing we have to do is find
19 the person guilty, and there is only a particular type of
20 charge. And like I said, one of these murders during a
21 felony. Also, murder of a police officer, that might be
22 a death penalty case. As Judge Tolle read to you, the
23 murder of a child under the age of six could be a death
24 penalty case.

25 A. Right.

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1 Q. In fact, that indictment is in front
2 of you, I think. See that paragraph right there?

3 A. Yes.

4 Q. Read that to yourself for a moment,
5 and then let me know when you're finished.

6 A. What do you mean, what do I think?

7 Q. Well, I'm going to ask you some
8 questions in a second.

9 A. Okay.

10 Q. That sets out allegations of an
11 intentional killing of a child under the age of six. Is
12 that the type of case -- I can't ask you for your verdict
13 in this case because you haven't heard from a witness,
14 but is that the type of case you think might be eligible
15 for the death penalty?

16 A. Yes.

17 Q. Under the proper facts?

18 A. Yes, sir.

19 Q. Okay. Now, the way the trial is set
20 up is this: There is two parts. First of all, we have
21 to prove that indictment beyond a reasonable doubt. If
22 we don't do that, then everyone goes home.

23 A. Right.

24 Q. If we do prove beyond a reasonable
25 doubt and the jury returns a verdict of guilty, then we
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1 move to the punishment stage where you hear additional
2 evidence, or you could hear additional evidence. You
3 might hear a lot about background, you may hear very
4 little additional evidence; it depends on each case.

5 At the close of that evidence, you get
6 this first question here, and I am going to go over those
7 in more detail in a moment. But the first question
8 basically asks the jury this: Is the defendant going to
9 be a danger in the future? Are they going to continue to
10 commit criminal acts of violence? Okay? We have to
11 prove that they are going to be a continuing danger.

12 Now, that is a "yes" or "no" question.

13 If it's answered "no," you stop there. If you answer
14 "yes," you move on to the next question. It's kind of
15 like a train, as it's been described sometimes, we have
16 got to get to various stops. If you do believe they are
17 going to be a continuing danger, you go to this last
18 question, which is kind of -- quite lengthy, but to sum
19 it up, it is this: The jury looks at all the evidence,
20 everything they have seen in the trial, and if they think
21 there is some type of evidence, we call it mitigating
22 evidence, that tells them that a life sentence should be
23 imposed, rather than a death sentence, they could answer
24 it that way. If they don't see that type of evidence,
25 they answer it "no." Okay?

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1 A. Yes.

2 Q. Now, what happens is this: If there
3 is a "yes" answer to that first question, and a "no"
4 answer to the second, the Judge will sentence the
5 defendant to death. If there is any other type of
6 answer, it's a life sentence. But those are the only two
7 alternatives; death or life.

8 A. Life without parole or is that --

9 Q. Well, there is no life without parole
10 in Texas.

11 A. Oh, okay.

12 Q. And the Judge would give you an
13 instruction that you don't consider the parole law.

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

16 Q. You know, those come up in the news.

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

19 Q. Just a life sentence.

20 A. Oh, okay.

21 Q. Now, but those are the two choices.

22 And the jury doesn't write down life or death. They

23 answer those questions. And depending on how they answer
24 them --

25 A. Okay.

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1 Q. -- the Judge then sentences the
2 defendant. He has no choice. If it's a "yes" and a
3 "no," he must sentence the defendant to death. If there
4 is any other answer, he must sentence the defendant to
5 life. Is that clear to you?

6 A. Yes, sir.

7 Q. Okay. If it is a "yes" and a "no,"
8 the Judge would sentence the defendant to death. The
9 defendant would be put in Huntsville, Texas, and housed
10 on death row, and someday, couldn't tell you when, but
11 someday an actual date of execution would be set.

12 Now, you have probably read a little
13 or maybe seen on the news about an execution in Texas?

14 A. Yes, sir.

15 Q. Are you familiar that the method is by
16 lethal injection.

17 A. Yes, sir.

18 Q. Okay. The procedures, in every case
19 where there has been a death penalty imposed, call for on
20 that date of execution that the defendant be moved to a
21 special cell, given time with, say your family, or maybe
22 your minister. But at 6:00 p.m. the guards would come to
23 the cell, take the defendant by force, if necessary, down
24 about 30 feet down a hallway, into the death chamber,
25 where there is a hospital gurney.

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1 And I believe you are a care giver?

2 You have seen these gurneys?

3 A. Yes, sir.

4 Q. Okay. This one is different though,
5 because there's leather straps constructed to it. And
6 she, literally, would be cinched down with ankles, legs,
7 chest, and arms. Needles placed in each arm; those have
8 tubes that go back to another room. I think there's
9 about three different tubes that contain poison. At that
10 point, there are visitors there, a curtain is opened, the
11 death warrant is read, there's an opportunity for a last
12 statement, and then, very soon after that, those poisons
13 are released, and within minutes the heart and lungs
14 stop. It doesn't take long. It's kind of like the same
15 procedure we use on animals; dogs, cats.

16 And I don't mean to go over this to be

17 morbid or anything, but in Texas it's a very real
18 punishment. We have certain states that have the death
19 penalty and never impose it. But in Texas we have had
20 over 100 executions. It is something that will happen in
21 this case if the questions are answered "yes" and "no."

22 Now, you have told me philosophically
23 you think the death penalty should be imposed in some
24 cases?

25 A. Yes, sir.

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1 Q. And what I need to know is this: Can
2 you sit on a jury and listen to the evidence and answer
3 those questions in a way, if it's proven to you, knowing
4 that the defendant would be executed in the manner I have
5 described?

6 A. Yes, sir, if I felt that it was
7 supposed to end up like that.

8 Q. Okay. Now, I want to get back to your
9 questionnaire for a moment because on that
10 questionnaire -- I know it's been a couple of weeks, but
11 we had five, well, six categories. We wanted you to
12 circle the one that best reflects how you feel. Okay?

13 A. Okay.

14 Q. And you circled two. Some people,
15 they can't narrow it down sometimes.

16 A. Right.

17 Q. Or they change their mind, one. So I
18 want to show you that and kind of refresh your memory.
19 Number two and three; if you could just read those real
20 quickly for me.

21 A. Okay.

22 Q. Okay. Does that refresh your memory?

23 A. A little bit.

24 Q. Okay. Were you planning on circling
25 both of those or did you just mean one of those?

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1 A. Probably the first one.

2 Q. The two?

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

5 Q. Okay. You see the difference between
6 the two?

7 A. Yes.

8 Q. The first one: "I believe the death
9 penalty is appropriate in some capital murders and I

10 could return a verdict in the proper case." The second
11 one is: "I don't believe that the death penalty ever
12 ought to ever be invoked, but if I were called upon, I
13 could do it."

14 A. Right.

15 Q. But you are more along with the first
16 one?

17 A. Right.

18 Q. Now, let me get into one area here
19 about these special issues. Now again, you don't get to
20 these special each unless the defendant was found guilty.

21 A. Right.

22 Q. And then special issue number 1, and I
23 will go over that now, if you will read along with me:
24 "Do you find from the evidence beyond a reasonable doubt
25 that there is a probability that the defendant would

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1 commit criminal acts of violence that would constitute a
2 continuing threat to society?" That is asking the jurors
3 to make a prediction. Do you think you could make that
4 type of prediction if you were given sufficient evidence?

5 A. Yes, sir.

6 Q. What would be important to you in
7 making that -- answering that question?

8 A. Knowing all the circumstances and
9 everything that actually happened.

10 Q. Of the murder itself?

11 A. And before, what led up to it.

12 Q. Okay. In this punishment portion of
13 the trial, you might hear more evidence. Obviously, in
14 the guilt/innocence stage you are going to hear about the
15 murder. In the punishment portion -- and I can't preview
16 the facts for you, so we are talking about hypotheticals.

17 Okay?

18 You may hear that the defendant had a
19 bad past, maybe crimes were committed. Or you might hear
20 bad character evidence. Okay? Or you might hear the
21 exact opposite, absolutely no criminal record, good
22 character evidence, those kinds of things. You may be
23 faced with a situation where a person could be good their
24 whole life, and then commit a brutal capital murder.

25 There is no requirement that the

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1 person has been to prison or committed murders before the
2 State tries them for the death penalty. So, you may have
3 only the facts of the crime itself to reach this

4 decision. Again, I can't preview the facts for you, but
5 do you think the facts of the crime itself could give you
6 enough information to answer that question?

7 A. If all of the facts were there, yes.

8 Q. Okay. You see where I am coming from?

9 Some people tell us, "Well, I know the facts could be
10 real brutal, but before I could answer that question, I
11 would have to see some type of bad history; either a
12 murder before or even a trip to the pen or something,
13 some other crime before I could just do it on the facts
14 of the case alone."

15 Other people tell us, "Well, you know,
16 it depends on the brutality, maybe if I knew what led up
17 to it, if there was any true remorse shown or total lack
18 of remorse, if they were so callous. That would tell me
19 a lot." How do you feel about that?

20 A. Why?

21 Q. Okay. Why it happened?

22 A. Right.

23 Q. That would be important to you?

24 A. Yes.

25 Q. That brings up another point I want to

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1 get into then. The why is also what we call the motive.

2 Okay?

3 A. Okay.

4 Q. You know, you have heard that term
5 before, the reason a murder occurred?

6 A. Yes.

7 Q. Okay. Now, when we prove the case,
8 that indictment you have read, we have to prove all of
9 those allegations, and we put on evidence, and it might
10 become very apparent to you, the motive, or the reason
11 why a murder occurred. Okay? It might be plain as day
12 out there, or it may not be apparent at all. For
13 instance, as we were talking here and suddenly I stopped,
14 pulled out a gun and shot Ms. Wallace in the head, three
15 or four times, and then put the gun down. The bailiffs
16 arrest me, say they didn't shoot me, but they arrested
17 me.

18 I am charged with a brutal murder.

19 The jury may never know why I did that, maybe I just
20 decided I wanted to kill her. I don't have to testify,
21 obviously, so that reason may not ever be apparent.

22 Could be what the newspapers sometimes call a senseless
23 killing. Okay? Or, like I said, it could be a
24 situation where we very well know the motive. Or there
25 could be a situation where there is about four or five

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1 possible motives out there and everyone has their own
2 opinion.

3 The law says this: The State is not
4 required to prove a motive, the reason it happened, to
5 get a guilty verdict. In that indictment there, there is
6 no place on there that tells you. It doesn't say why it
7 happened. We only have to prove that it did happen and
8 who committed the murder. Would you be able to follow
9 that law?

10 A. If I knew enough about it.

11 Q. Okay. Do you understand how hard it
12 would be in some cases to prove a real motive?

13 A. I still would wonder why.

14 Q. Okay. Do you think you would have to
15 know the why before you could answer this question?

16 A. Just depends.

17 Q. In the punishment stage?

18 A. It just depends.

19 Q. Okay. That is something you would
20 definitely want to know then?

21 A. Yes. Why?

22 Q. Okay.

23

24 THE COURT: Ma'am, the State never has
25 to prove motive. Listen to the question, never, never.

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1 THE PROSPECTIVE JUROR: Uh-huh.

2 (Witness nodding head affirmatively.) Okay.

3 THE COURT: I just want you to
4 understand that, they never do. Are you going to make
5 them do it or not?

6 THE PROSPECTIVE JUROR: Well, I'm not
7 sure.

8 THE COURT: Go ahead.

9 MR. TOBY L. SHOOK: I might get back
10 to that in a minute. Let's go on to this second issue.

11

12 BY MR. TOBY L. SHOOK:

13 Q. This is a longer question, and if you
14 will read along with me silently while I read aloud,
15 "Taking into considering all of the evidence including
16 the circumstances of the offense, the defendant's
17 character and background, and the personal moral
18 culpability of the defendant, is there a sufficient
19 mitigating circumstance or circumstances to warrant that

20 a sentence of life imprisonment, rather than a death
21 sentence be imposed?"
22 That is what we call the mitigating
23 issue question. The way I summarize this question is
24 this: You don't get it unless you have found the
25 defendant guilty, and you have already found they are a
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1 continuing danger. But you look at all their background
2 and the murder itself, and decide is there some
3 mitigating evidence that lets you know that they should
4 get a life sentence rather than a death sentence. Do you
5 see where they are coming from there?
6 A. Uh-huh. (Witness nodding head
7 affirmatively.)
8 Q. It is kind of a safety net for the
9 jurors to jump into. Now, we can't tell you what
10 mitigating evidence is. It is going to be up to you and
11 the other jurors, you decide that. Okay? You don't have
12 to agree with the other jurors either.
13 Let me give you an example: You might
14 have a case where a defendant, it turns out they might
15 have a Ph.D. Okay. One juror might say, "That is
16 mitigating, they have done something useful with their
17 life." Another juror might say, "That is not mitigating,
18 in fact, that is aggravating. Someone that smart
19 shouldn't commit a capital murder." You don't have to
20 agree, it could cut either way.
21 Now, as you sit there you don't have
22 to think of a mitigating circumstance, you just have to
23 be able to keep your mind open to it. But let me preview
24 a few things to you. Okay? Like I say, you don't have
25 to agree with any of these, but we have talked to a lot
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1 of jurors and they have brought up different things to
2 us.
3 Some people consider young age. I'm
4 not talking about a nine or ten or eleven year old, but
5 maybe a young person goes out and commits a capital
6 murder. Some people feel that is mitigating, that could
7 lessen their blameworthiness. Other people feel, no,
8 that doesn't lessen their blameworthiness at all. Do you
9 feel one way or the other about that?
10 A. No, I don't think it lessens.
11 Q. Okay. Sometimes you might hear
12 evidence that a person commits a crime under the
13 influence of drugs or alcohol. And I'm not talking about

14 someone slipping them a Mickey or anything, they go out
15 and get drunk or get high and commit murder. In Texas
16 that is not a legal defense at all, but some people might
17 view it as mitigating in the punishment area. Other
18 people view it the exact opposite, and they really hold
19 it against the person. Does that cut one way or the
20 other with you?

21 A. No, I don't think that drugs --

22 Q. Mitigating?

23 A. No.

24 Q. Okay. Sometimes you might hear
25 evidence of child abuse in growing up.

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1 A. I don't think that --

2 Q. You don't think that mitigates?

3 A. No.

4 Q. Sexual abuse or mental abuse?

5 A. No, sir.

6 Q. Okay. The bottom line is this: Can
7 you keep your mind open to that type of evidence?

8 A. Yes, sir, I have always felt that way.

9 Q. Okay. There are certain rules that

10 Judge Tolle went over that apply to this case.

11 A. Uh-huh. (Witness nodding head

12 affirmatively.)

13 Q. One is the presumption of innocence,

14 every defendant starts out with that presumption. Could
15 you follow that rule of law?

16 A. Yes, sir.

17 Q. Okay. The State has to prove this

18 case beyond a reasonable doubt, the defense is not
19 required to prove anything to you. We have to do all the
20 proving. If we don't reach our burden, then you find the
21 defendant not guilty. Can you follow that rule of law?

22 A. Yes, sir.

23 Q. Okay. And I think we -- I know the

24 answer to this because you talked about it in your
25 questionnaire. Obviously, a person, if they want to

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1 testify in their own behalf, they can, no one can stop
2 them. But if they choose not to, the Judge will instruct
3 you that you can't hold that against them. Can you
4 follow that rule of law?

5 A. Well, I think it's better if they do,

6 but if --

7

8 THE COURT: Ma'am, that is our right
9 under the Fifth Amendment to the Constitution of the
10 United States, in the Bill of Rights, our founding
11 fathers put that in.

12 THE PROSPECTIVE JUROR: Yes, sir.

13

14 BY MR. TOBY L. SHOOK:

15 Q. You could follow that rule of law?

16 A. Yes, sir.

17 Q. Oh, and the Judge also instructed you
18 that the indictment that you read is no evidence of
19 guilt?

20 A. Right.

21 Q. You could follow that rule of law?

22 A. Yes, sir.

23 Q. Okay. I believe, ma'am, that you
24 work -- you sit with, is it elderly people?

25 A. Elderly people.

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1 Q. Okay. And what are your hours?

2 A. Right now I'm working from 10:00 until
3 3:00 or 4:00. 10:00 in the morning.

4 Q. 10:00 in the morning until 3:00 or
5 4:00 in the afternoon?

6 A. Yes, 3:00 or 4:00 in the afternoon.

7 Q. And is that for a doctor you work for?

8 A. No, I work by myself.

9 Q. By yourself.

10 A. Yeah. For different individuals, I
11 worked for a lady for a year and a half and she just
12 passed away, and I just started for another one. The one
13 on there, she went into a nursing home shortly after I
14 started for her.

15 Q. Okay. And so now do you have --

16 A. Now I have one, right.

17 Q. Okay.

18 A. It's a couple.

19 Q. And you are just paid by them?

20 A. Uh-huh, they take my taxes out and
21 everything, it's by their trusts.

22 Q. Okay. And how is it that you get
23 employment? Is it word of mouth primarily?

24 A. Right, a lot of nurses from home

25 health care know me.

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1 Q. Okay. What -- our trial is slated to

2 begin January 6th. The best prediction we can give you
3 is two weeks. Judge Tolle goes from 9:00 in the morning
4 until 5:00 in the afternoon, and then you are allowed to
5 go home. The only time you would be sequestered would be
6 during deliberations. Would that cause you a problem at
7 all if you were put on the jury?

8 A. No, sir. My daughter gets home from
9 school at five o'clock, so --

10 Q. Okay. Let me get back then to this
11 situation we're talking about motive, the reason why the
12 crime has -- as it's been explained to you by the Court,
13 the State is not required to prove motive?

14 A. Right.

15 Q. Okay. But some people disagree with
16 that. Some people tell us, "If I don't know the
17 motive -- or I will require the State to prove motive or
18 I can't find the person guilty. That is just me." Other
19 people tell us, "Well, I would like to know it, but I can
20 abide by the law. If it's proven to me, I will find the
21 person guilty." How do you feel, now that you know what
22 the law is?

23 A. Well, I would like to know it, but I
24 will abide by the law.

25 Q. Okay. And as far as these issues, the
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1 punishment issues, now the motive might be very important
2 to someone, and it may not be important to other jurors.
3 Would you be able to answer these question in a way, if
4 it's proven to you that the defendant would be a future
5 danger, would you be able to answer "yes"?

6 A. Yes, sir.

7 Q. Even if you were not clear on the
8 motive of the crime?

9 A. Yes, sir, if I knew the danger.

10 Q. Okay. Do you have anything?

11 A. No, sir.

12 Q. Any questions about anything we have
13 gone over?

14 A. No, sir.

15 Q. All right. That's all I have then.

16 Thank you.

17 A. Sure.

18

19 MR. TOBY SHOOK: We pass the witness.

20 THE COURT: Thank you, Mr. Douglass.

21 MR. S. PRESTON DOUGLASS, JR: Thank

22 you, Your Honor.

23

24

25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. S. PRESTON DOUGLASS, JR:

4 Q. Ms. Criss, I know you have been up
5 there a while, and, obviously, we get the same
6 opportunity the State has to talk to you. And as a
7 matter of course, we have to go second, and late in the
8 day and after lunch and after you have been up there a
9 while, I understand that you aren't usually -- most
10 people aren't used to sitting up there and getting
11 interrogated for 30 or 40 minutes.

12 A. Right.

13 Q. I am not meaning that he has done
14 anything untoward to you or anything, I am just saying
15 that not that many people get asked a lot of questions.

16 A. Right.

17 Q. And I hope you will understand that in
18 Darlie Routier's life, this is a vitally important
19 moment. And that if I take some more time that you won't
20 hold it against me, and more importantly, hold it against
21 her, because I have some more questions to ask. Is that
22 all right?

23 A. That is fine, sir.

24 Q. As you might also understand, our
25 perspective and our view of this case is absolutely 180
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1 degrees different than that of the attorneys that
2 represent the State.
3 There are two phases to a trial
4 possibly. But there always -- if you are going to have a
5 trial, is the guilt/innocence phase. That is the phase
6 of the trial that we are most interested in, and that's
7 obviously the phase of the trial we are concentrating on.
8 Darlie Routier has entered a plea of
9 not guilty. She will enter a plea of not guilty to the
10 jury and she will stand behind that plea of not guilty
11 100 percent. So, in death penalty cases, it seems -- it
12 happens quite a bit, that what we end up concentrating a
13 lot on is the death penalty.

14 And the questions that come at the end
15 of the trial, not the beginning of the trial. And I
16 think that is normal, because not many people get a

17 chance to think about the death penalty. And so, the
18 questions almost naturally go toward the death penalty
19 because we're interested in what you think about it, but
20 that is kind of the stuff not that many people have had
21 time to talk about.

22 So, I want to start back at the
23 beginning a little bit. You had put back before when you
24 filled out your questionnaire that you hadn't heard a
25 thing about the case. Is that still where you stand?

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1 A. Well, just like y'all -- the moving
2 that y'all were going to move it, and stuff like that,

3 and I heard about the jurors. But I really haven't heard
4 about what happened or anything like that. I don't know.

5 Q. You said you heard about the moving,
6 and there was one other thing?

7 A. The moving of the trial.

8 Q. Right.

9 A. And then I have heard about the jury
10 selection here lately, but I haven't really heard nothing
11 on the actual --

12 Q. Okay. Did you -- do you have any idea
13 how jury selection's going? Did you pick up any articles
14 or news reports about that?

15 A. I heard yesterday on the radio that
16 there were six jurors, that was it.

17 Q. Okay. What is important is that when
18 you become a juror, obviously, a lot of trouble has been
19 taken to move this case from Dallas County down here.
20 And obviously, the intent is to find 12 people to sit as
21 jurors who have a clean slate, a complete absence of
22 knowledge about what is going on with the case.

23 And one step removed from that is that
24 it is not a person who has formed any opinion about the
25 trial, how it ought to end up. Do you feel like, as you

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1 sit there today, that is where you are? That you have no
2 opinion about how this case ought to end up?

3 A. Yes, sir, I don't.

4 Q. As Darlie Routier sits here right now
5 she is presumed innocent. If the trial was to start just
6 this minute, and you are sitting over there in that box
7 and the State said, "Well, we are not going to put on any
8 evidence." And the Judge says, "Okay. Well, the trial
9 is over."

10 What would be your verdict in that
11 situation? Knowing as much as you know right now?

12 A. I wouldn't know.

13 Q. Because you don't have any evidence?

14 A. Right.

15 Q. What would be your verdict knowing

16 that you have had no evidence?

17 A. That she wasn't guilty. Is that what

18 you are saying?

19 Q. Right. See, you agree with me that

20 until there is proof, the mere fact that she sits here as

21 a person accused, means nothing in terms of whether they

22 can prove their case.

23 A. Right.

24 Q. All right. Talking about the

25 indictment, do you remember -- do you recall it's been a

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1 couple of weeks now, that Judge Tolle talked a little bit
2 about indictments in Dallas County and he mentioned that
3 in Dallas County, more than 25,000 indictments are issued
4 in a year against people that live there.

5 And that, well, what surprised me more

6 maybe was that in one given day, a Grand Jury, people,
7 maybe 9 or 12 people that hear cases as a Grand Jury,
8 that in that maybe that 8-hour period, they might return
9 as many as 125 indictments, do you remember Judge Tolle
10 talking about that?

11 A. A little bit.

12 Q. A little bit.

13 A. Yes.

14 Q. He also went on to say that many of
15 those 125 people that might get indicted in one day, or
16 the 25,000 that get indicted in a year, might not even
17 know that their case had been taken up, might not even
18 know they were investigated. Because they didn't know,
19 they obviously didn't have a chance to tell their side of
20 the story. Does that surprise you to know that someone
21 can be indicted and not even know that their case is
22 being considered?

23 A. Uh-huh. (Witness nodding head

24 affirmatively.) A little bit.

25 Q. Okay. For that reason, would you

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1 agree with me that if a person ends up in a situation
2 where they are charged with a crime for an indictment,
3 and perhaps, let's say a police officer came into the

4 Grand Jury and said, "I want you to indict this person,"
5 and they only hear one side of it.

6 Can you understand that is why the law
7 says that you cannot place any importance on that
8 indictment. You can't say, "Well, somebody has been
9 indicted, that means there has got to be something
10 there." Do you agree that you can't put any importance
11 on the fact that an indictment has come about?

12 A. Yes, sir.

13 Q. There are two classes of people, quite
14 frankly. I think there are people that believe that
15 where there is smoke, there is fire. Some people might
16 say, "You know, all these lawyers and a Judge and a court
17 reporter, and all these people don't just show up by
18 coincidence." And, of course, when you walk in the
19 courthouse back two weeks ago, you saw all of the
20 commotion that was going on.

21 Do you believe that you are in a group
22 of people that say, "Where there is smoke, there's fire"?

23 Or do you believe that you are kind of in a group that
24 says, "I am not going to consider all of that"? Where do
25 you think you are?

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1 A. Well, I am not going to consider it
2 until I hear it.

3 Q. Okay. The burden of proof is on the
4 State, the burden of proof rests with the State's
5 attorneys. And, basically, it's whoever does the
6 accusing has to do the proving. That burden never shifts
7 over here to where I sit. There is never a requirement
8 that the lawyers for a defendant have to get up and prove
9 to you anything.

10 And, I believe, in your questionnaire,
11 you were a little unsure about that. There was a
12 statement that was made that said: If a person is
13 accused of capital murder, she should have to prove her
14 innocence. I guess, I am wondering -- and you put, you
15 don't know, you said you were not sure about that. Tell
16 me what you think about that. What is your feeling that
17 way?

18 A. Could you read that again?

19 Q. I can show it to you, it might be
20 easier for you. It's kind of hard when you don't have it
21 in front of you to remember what you wrote two weeks ago.

22 On this question right here, it said: If a person were
23 accused of capital murder, she should have to prove her
24 innocence. And you had circled, don't know. What is
25 your feeling about that as you sit here today?

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1 A. Well --
2 Q. I will just leave that up there in
3 case you want to look at it.
4 A. To prove that they didn't do it.
5 Q. Right. The question I am asking you,
6 I guess, is: Do you think a defendant should have to
7 come prove that they didn't do it?
8 A. Yes.
9 Q. Okay. If you're sitting as a juror,
10 and you hear evidence from the State, and then you weigh
11 that evidence, and in the course of weighing that
12 evidence, you say, "Well" -- and then you hear that
13 evidence, I didn't finish my hypothetical.
14 And then they say, "Okay, we have put
15 on all of our evidence." And then the defendant says,
16 "We're not putting on any evidence." They don't bring a
17 witness, the defendant doesn't testify.
18 At that point, are you going to say,
19 "Well, I wanted to hear from that defendant. I wanted
20 her to prove her innocence to me, and that is going to
21 affect how I deliberate"? Do you think in fairness to
22 yourself, you might be the kind of person who says, "I
23 want to hear from that person, or I want to have those
24 lawyers bring me some evidence"?

25 A. Not necessarily hear from the person,
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1 but the lawyers, yes.
2 Q. Okay. And so, when you say, "I want
3 those lawyers to bring me some evidence to prove her
4 innocence," if I understand you right, you are saying
5 that is the way you feel?
6 A. Yes, sir.
7 Q. And as you sit as a juror, would you
8 feel that that is a feeling that, "If I am going to be a
9 juror, and I am going to deliberate, it will affect my
10 deliberations if those lawyers don't bring me any
11 evidence, because I want them to"?

12 A. Yes, sir.
13
14 MR. S. PRESTON DOUGLASS, JR: We
15 submit the juror, Your Honor.
16 THE COURT: Granted. Thank you for
17 coming, ma'am, we appreciate your coming. Ms. Criss, can
18 I see you a minute?
19 THE PROSPECTIVE JUROR: Me?

20 THE COURT: Yes. Please don't discuss
21 anything that went in here because the trial is not even
22 started yet. When the trial is over you may talk or not
23 talk about it, as you see fit.

24 THE PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: We do have a gag order on.

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1 I can impose monetary or jail time sanctions, I am not
2 threatening. I know it won't be necessary, but I do have
3 to tell you about it.

4 THE PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Thank you for coming. We
6 appreciate it.

7 Okay. Next juror.

8

9 (Whereupon, a short
10 recess was taken,
11 after which time,
12 the proceedings were
13 resumed on the record,
14 in the presence and
15 hearing of the defendant
16 as follows:)

17

18 THE COURT: All right. You are --

19 THE PROSPECTIVE JUROR: Jason
20 McMurray.

21 THE COURT: All right. This is Jason

22 McMurray, M-C-M-U-R-R-A-Y, that is the correct spelling,
23 sir?

24 THE PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Okay. This is number 57

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1 on our list, 165 on the jury list. If you would raise
2 your right hand, please.

3 Do you solemnly swear you will true
4 answers make to all the questions propounded to you
5 concerning your qualifications as a juror, so help you
6 God?

7 THE PROSPECTIVE JUROR: I do

8

9 (Whereupon, the prospective
10 juror was duly sworn by the
11 Court to true answers make
12 to the questions propounded,
13 concerning qualifications, after

14 which time, the proceedings were
15 resumed as follows:)

16

17 THE COURT: You are a potential juror
18 in the Darlie Routier matter.

19 Mrs. Routier is the defendant. She is
20 sitting there next to her attorneys, Curtis Glover and
21 Preston Douglass. Mr. Glover is from Dallas, Mr.
22 Douglass is here from Kerrville.
23 She is also represented by Mr. Douglas
24 Mulder from Dallas and Richard Mosty from Kerrville.
25 The State is represented by Toby Shook
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1 and Ms. Sherri Wallace. They are Assistant District
2 Attorneys from Dallas. Greg Davis is another Assistant
3 District Attorney up there, he is not here now.

4 There are no wrong answer to these
5 questions, answer them just as you honestly feel.

6 THE PROSPECTIVE JUROR: Yes, sir.
7 THE COURT: So, we will start with Ms.

8 Wallace.

9 THE PROSPECTIVE JUROR: Okay.

10 THE COURT: All right. Thank you.

11 MS. SHERRI WALLACE: Thank you.

12

13 Whereupon,

14

15 JASON RAY MCMURRAY,

16

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

21

22 VOIR DIRE EXAMINATION

23

24 BY MS. SHERRI WALLACE:

25 Q. Again, hello. How are you?

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1 A. Very well.

2 Q. Thanks for coming in early, we really
3 appreciate it. We finished with the other two jurors
4 quicker than we thought we were going to. So, thank you
5 for accommodating our schedule.

6 Mr. McMurray, I want to ask you a few
7 questions about your questionnaire. Thanks for taking

8 the time to fill it out.

9 I want to talk to you a little bit

10 about how you feel about the death penalty, and kind of
11 explain that scheme. I know you are a trooper, but I
12 want to talk to you a little bit about how it actually
13 works here in the courtroom. And then talk to you about
14 some principles of law that I am sure will be redundant
15 for you, but I would just like to go over them.

16 First off, on your questionnaire, you

17 said that you knew Preston Douglass. Can you tell me a
18 little bit about that?

19 A. Well, I have known him through some of
20 the people that I have arrested before. Although, I have
21 never personally been in a situation where I have been in
22 the courtroom with him where I have been on the witness
23 stand, but through my associations here in the Kerr
24 County law enforcement, I do know him.

25 Q. Okay.

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1 A. And I believe we also go to the same
2 church.

3 Q. All right. Would you characterize
4 yourself as friends or acquaintances or good friends?

5 A. Acquaintances.

6 Q. Okay. Anything about that
7 relationship that would influence you or affect you as a
8 juror in this case?

9 A. No, ma'am.

10 Q. What about Mr. Mosty? Do you know
11 Mr. Richard Mosty?

12 A. Just by reputation, never met him.

13 Q. Okay. Fair enough. So, there is
14 nothing about either of those lawyers that would affect
15 you?

16 A. No, ma'am.

17 Q. Okay. Up front, just so you know
18 where we're coming from, and I guess it's abundantly
19 clear, this is a death penalty case. It is our goal and
20 desire to see that that woman down there is executed. We
21 believe we have the type of case and the quality of
22 evidence to do that.

23 However, in order to do that, we must
24 get 12 jurors who can not form an opinion ahead of time,
25 wait until we get in the courtroom and evidence is
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1 presented, and then, at that point, make up their mind

2 whether or not we have proved our case beyond a
3 reasonable doubt. Could you do that?
4 A. It would be a little bit difficult,
5 and I will explain my bias. Like most police officers,
6 and especially I know how I was trained, we don't file a
7 case unless we feel there is sufficient evidence to
8 support a conviction. I would hope other police officers
9 do the same. I cannot always guarantee that, but that is
10 what I strive to do.

11 Q. Uh-huh. (The attorney nodding head
12 affirmatively.)

13 A. So, in that respect, you know, I would
14 probably be a little biased.

15 Q. Okay. It's fine to kind of have those
16 feelings. You know, I noticed in your questionnaire you
17 said, "If the police arrest somebody for capital murder,
18 they are probably guilty. And if we try them for capital
19 murder, they are probably guilty," and you agreed. Not
20 strongly with those statements, but you agreed.

21 And as a general premise in the course
22 of your job that is kind of the road you have to take, if
23 you will. But as a juror, you must follow the law. You
24 will take an oath to that effect, and you will have to
25 decide the case based on the evidence and not on anything

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1 you have learned or kind of think outside of the
2 courtroom.

3 And, I guess, the best example that we
4 have seen of that, recently, is Richard Jewell. The
5 gentlemen in Georgia who the FBI said was a suspect in
6 the bombing at the Olympics, and then came back and said,
7 "We have zero evidence on him." But in the meantime, the
8 press and the public had basically tried and convicted
9 him and hung him out to dry.

10 That is probably the best example
11 recently of a case where it's so important to wait until
12 you get to the courtroom and hear the evidence. Could
13 you follow that law and hold us to our burden?

14 A. I could follow the law. Understand,
15 that human nature is always going to preclude me from
16 what I have done in the past. I don't feel a person can
17 just totally separate themselves from their experiences.

18 Q. Well, and we wouldn't want you to do
19 that, that is not really what we're asking for you do to.
20 I mean, obviously, that makes up who you are, and we need
21 all sorts of different types of jurors in the case. And
22 just because you have a law enforcement background,
23 doesn't make you ineligible to sit on a jury.

24 What would make you ineligible is if
25 you said, "Well, I am not going to follow that law. You
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1 know, if they are arrested, they are charged, they are
2 indicted, so, therefore, they have got to be guilty."
3 You don't strike me as the kind of man that would just
4 knee-jerk automatically before you heard anything, do
5 that sort of thing?

6 A. No, ma'am, I am not. And you are
7 right, I would follow the law on that. But I do feel, to
8 your question, that say -- well, I am sure you have dealt
9 with many police officers throughout your career, if they
10 arrest them, they want them tried and convicted.

11 Q. And I understand your feeling about
12 that on your own personal cases, but what I'm asking you
13 to do is can you look at the police officers that may
14 testify in this case, judge them like you would any other
15 witness, and see if you think they did a good job? If
16 they are shooting straight with you?

17 A. Without a doubt.

18 Q. Okay. Because, you will agree, police
19 officers are human and there's good ones and bad ones?

20 A. Absolutely.

21 Q. All right. And all we need to do in
22 this case is prove to you beyond a reasonable doubt.
23 Now, a terrible crime has occurred, but if we don't have
24 the right person, then it doesn't do anybody any good to
25 convict her? Do you agree with me on that?

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1 A. I agree with you on that.
2 Q. And that is why these rules of
3 evidence are so important. Do you agree with that?

4 A. Yes, ma'am.

5 Q. Okay. What are your duties? Are you
6 in patrol? Or what do you do?

7 A. Yes, I am a highway patrolman here in
8 Kerr County.

9 Q. And how long have you worked as a
10 trooper?

11 A. Eight years.

12 Q. Let me, Mr. McMurray, kind of explain
13 how the death penalty -- how it actually works, and talk
14 to you a little bit about it. There is two phases of the
15 trial, and some of this I am sure that you are familiar
16 with, so I am just going to try to run through it fairly
17 quickly.

18 Just like any other case, there's two
19 phases to the trial. There is the guilt/innocence phase,
20 and then there's a punishment phase. The guilt/innocence
21 phase, obviously, the jury decides if they are guilty or
22 not guilty. If they are not guilty, we go home. If they
23 are guilty, then we go to the punishment phase.

24 Used to be in Texas, that in the
25 punishment phase after the jury considered the evidence,
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1 they either say death or life. Well, it's not that
2 simple anymore. Now, the jury has to answer questions.
3 You don't just say, life or death. Your verdict has the
4 same result, but there is not just a single blank.

5 Now the legislature has provided two
6 questions for the jury to answer, and they are these two
7 right here. The first question: "Do you find from the
8 evidence beyond a reasonable doubt that there is a
9 probability that the defendant would commit criminal acts
10 of violence that would constitute a continuing threat to
11 society?"

12 In order for the defendant to die,
13 that question must be answered "yes." That you believe
14 there is a probability that the defendant would be a
15 future danger. Okay?

16 A. Okay.

17 Q. If that question is answered "yes,"
18 you go to the second question. And that is: "Taking
19 into consideration all of the evidence, including the
20 circumstances of the offense, the defendant's character
21 and background, and the personal moral culpability of the
22 defendant, is there a sufficient mitigating circumstance
23 or circumstances to warrant that a sentence of life
24 imprisonment rather than a death sentence be imposed?"

25 So, to sum that up: Basically, after
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1 you heard everything, if you decide that it should be
2 life instead of death, that is kind of your out or your
3 safety net. In order for the defendant to die, that
4 question must be answered "no."

5 We have a punishment phase. And a
6 death penalty is not automatic at the close of testimony,
7 or at the finding of guilt in a capital murder. We move
8 to the punishment phase. It may be in that phase, and I
9 am sure you have been associated with trials, where at
10 punishment they presented no other evidence. Am I right?

11 A. Yes, ma'am.

12 Q. Okay. And then sometimes at
13 punishment, you do hear other things? I can't tell you
14 what is going to happen in this case. But what I need to
15 hear from you is that you can follow the law in this case
16 and that is this: That first question, just like the
17 defendant is presumed not guilty, presumed innocent, that
18 first question you must presume to be answered "no." You
19 must presume "no," until we convince you beyond a
20 reasonable doubt, that, in fact, the defendant would be a
21 continuing threat to society. We have the burden of
22 proof in that question.

23 Now, it may be, as in some of the
24 trials you have been associated with, you won't hear any
25 more evidence. But, nevertheless, you must promise the
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1 Court that you will not automatically answer that
2 question. It's kind of like, if you can imagine, you
3 found somebody guilty and then you have to stop, and then
4 look to this question and rethink it.

5 Now, you may be rethinking the same
6 evidence that you just found the defendant guilty on, and
7 maybe nothing more. But nevertheless, you have to
8 revisit the issue and see if we have proved that burden
9 to you. Can you follow that law?

10 A. Yes, ma'am.

11 Q. In the event that the defendant -- you
12 answer that question "yes," and you move on to what is
13 called the mitigation issue. And it may be that you
14 hear -- you are a juror on 500 capital murder cases, and
15 you hear nothing where you think the right thing to do is
16 to give the defendant a life sentence. But to be a juror
17 in this case, you must keep an open mind.

18 You don't have to tell us something
19 that you absolutely would find mitigating, you don't have
20 to do that. But what you have to promise the Court is
21 that you will keep an open mind.

22 And you don't know what it is, but if
23 you, in your heart, after you found the defendant guilty
24 of capital murder, and after you found the defendant was
25 a future danger, that in your heart, if you thought the
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1 right thing to do was give a life sentence, instead of a
2 death, and you thought that there was sufficient evidence
3 to support that decision, regardless of what other jurors
4 thought; that you could do that?

5 A. Yes, ma'am.

6 Q. Could you follow that law?

7 A. Yes, ma'am.

8 Q. There's a couple of things that

9 quickly I will go over with you. The indictment is there
10 before you, that is one of the ways that we can convict
11 somebody of capital murder in Texas. I noticed you have
12 your criminal justice degree, so you are aware of the
13 different types of ways that somebody is eligible for the
14 death penalty in Texas.

15 That includes: Murder in the course

16 of another felony; or killing a police officer or fireman
17 or prison guard in the line of duty; a murder for hire; a
18 child under the age of six; or two or more people. Is
19 that a pretty fair list to you?

20 A. Well, to the best of my recollection,

21 I think you have covered it all.

22 Q. Okay. Do you agree with what the

23 legislature set out for that?

24 A. Yes, ma'am.

25 Q. Okay. The evidence before or --

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1 excuse me, the indictment before you is not evidence as
2 you -- I mean, you are well aware of that. And that's
3 what we have to prove beyond a reasonable doubt. I will
4 give you a second to read it.

5 A. Okay.

6 Q. As you know, we prove that through
7 either direct or indirect evidence, indirect evidence
8 being circumstantial evidence. And in many murder cases
9 there is no eyewitness because the eyewitness is dead.
10 It doesn't matter how we prove the case to you, we just
11 have the burden to prove it to you beyond a reasonable
12 doubt. If we do that through other types of evidence,
13 for instance: fingerprint, DNA, statements by the
14 defendant, photographs, or whatnot, being it is
15 circumstantial evidence, if you believed it beyond a
16 reasonable doubt, could you convict the defendant?

17 A. Yes, ma'am.

18 Q. Okay. As you know, as well, we don't
19 have the obligation to prove motive in Texas. It may be
20 that it becomes clear to you, and it may not. The
21 defendant doesn't have to testify. So, if you are not
22 sure of the motive in this case, but you believe the
23 case, that we proved the case to you beyond a reasonable
24 doubt, could you return a verdict of guilty?

25 A. Yes, ma'am.

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1 Q. On question number -- if you found the
2 defendant guilty, we move to these questions. And we
3 talked a little bit about them, and I want to ask you
4 some questions about them.

5 You know, in trials the Judge is going
6 to give the charge which has the law in it, and that
7 contains always a whole lot of definitions. But this
8 question, this first question doesn't contain any
9 definitions. He won't give you any definitions for this
10 part, for these words. So, what does the word
11 "probability," what does that mean to you?

12 A. That it is likely to occur again.

13 Q. Okay. And "criminal acts of
14 violence," how would you characterize that phrase?

15 A. Well, intentionally commit an act to
16 hurt somebody. I mean, it's fairly self-explanatory to
17 me.

18 Q. Sure. I just usually -- there are
19 jurors -- so if I am a little bit on automatic pilot,
20 please forgive me. "Society," let me tell you where I am
21 coming from in asking you about that word. In your mind,
22 would that include: Prison guards, people that work in
23 the prison, chaplains, that sort of thing, inmates?

24 A. Absolutely.

25 Q. Relatives visiting inmates?

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1 A. Absolutely.

2 Q. Okay. We go to the second question if
3 that question is answered "yes." And in that question is
4 there anything that would come to mind, Mr. McMurray,
5 that would be mitigating in your mind? Like I said, you
6 don't have to think of anything, but does anything strike
7 you off the top of your head?

8 A. Maybe a complete mental breakdown.

9 Q. Okay. This question originated from a
10 gentlemen that was mentally retarded. That's kind of
11 what the courts had in mind, but left it open to other
12 types of things. So you would think a mental breakdown
13 would be mitigating?

14 A. Yes.

15 Q. Okay. Anything else?

16 A. Off the top of my head, no.

17 Q. Okay. Let me just run by a couple of
18 things and see how they cut with you. How about age?

19 A. No.

20 Q. Past abuse? Childhood abuse?

21 A. No.

22 Q. I want to talk to you now about some
23 general principles -- Mr. McMurray, I went over this a
24 little bit, but I want to talk to you a little bit more
25 about this second question. As I said, you don't have to
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1 think of what would be mitigating, but I think you just
2 told me that a complete mental breakdown, you might
3 consider mitigating.

4 What we want is somebody that will
5 keep an open mind and just consider whatever evidence is
6 presented. There is no burden of proof on this question.
7 It could come from the State, it could come from the
8 defense. But what it really is is just kind of your gut
9 and your heart. Based on the evidence, would you
10 consider whatever came up?

11 A. Absolutely.

12 Q. Okay. That is really all we're
13 looking for. Somebody that would keep an open mind and
14 would be open to the possibility that they may hear
15 evidence that they found sufficient to make a life
16 sentence appropriate. You could do that?

17 A. Yes, ma'am.

18 Q. As you know, the defendant is presumed
19 innocent. The fact that she has been charged or filed or
20 indicted or that we are trying her can't be used against
21 her, and I know you said that you felt a little bit of
22 reservation about that. And, as I said, that is pretty
23 much instinct being a law enforcement personnel. But it
24 is critical as a juror, that you put those feelings aside
25 and follow the law, hold us to our burden of proof. And
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1 you said you would do that; is that right?

2 A. Yes, ma'am.

3 Q. The defendant has an absolute right
4 not to testify. You know they don't have to do anything,
5 they could just sit over there and play tic-tac-toe if
6 they want to. And you could follow that law, couldn't
7 you?

8 A. Yes, ma'am.

9 Q. We touched on the fact that all
10 witnesses need to be treated the same from the start.
11 After you hear from them, based on their training and
12 their experience, you may give them even higher
13 credibility than another person. But, I don't know,
14 sometimes defense attorneys -- you may have heard this

15 question asked: Would you believe a police officer
16 simply because he is a police officer?

17 Well, obviously, if you don't know who
18 they are talking about, or if you haven't heard from that
19 person, you can't make up your mind ahead of time.
20 Again, it's all about keeping an open mind until you hear
21 the evidence. Could you do that?

22 A. Yes, ma'am.

23 Q. And, as you know, the Judge will
24 instruct you that you cannot consider parole for any
25 reason. There is really a good reason for that. The
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1 Board of Pardons and Paroles changes with every governor,
2 the parole laws change. So, as a juror, you must not
3 consider parole. And assume a life sentence is just
4 that, a life sentence. Could you follow that law?

5 A. Yes, ma'am.

6 Q. Mr. McMurray, do you know anybody from
7 Rowlett? From the Rowlett Police Department?

8 A. No. Not from the Rowlett Police

9 Department, no. I grew up in Garland.

10 Q. Okay.

11 A. But I don't anybody that works for the
12 Rowlett Police Department.

13 Q. Okay. I think you have agreed with me
14 earlier that there are some bad police officers and some
15 good police officers. And all we need is somebody who
16 can judge whether or not we have proved our case. We
17 need somebody that can keep an open mind, make sure the
18 police did it right, make sure we have done our job
19 right, and hold us to our burden. Will you be able to do
20 that?

21 A. Yes, ma'am.

22 Q. Okay.

23

24 MS. SHERRI WALLACE: I don't have
25 anything else. Thank you, Judge.
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1 I pass the juror.

2 THE COURT: All right. Thank you.

3 Mr. Glover.

4 MR. CURTIS GLOVER: Thank you, Your
5 Honor.

6

7 VOIR DIRE EXAMINATION

8

9 BY MR. CURTIS GLOVER:

10 Q. Mr. McMurray, I noticed in looking at
11 your information that you have given us, that you gave us
12 at the courthouse sometime back, that you graduated from
13 University of Texas at Dallas with a degree in criminal
14 justice?

15 A. Yes, sir.

16 Q. You probably had being in mind a
17 police officer or someone in law enforcement at the time
18 that you did that. Did you not?

19 A. Yes, sir.

20 Q. I would gather that a person like
21 yourself who started in at least in their advanced
22 education, their college and whatnot, had in mind that
23 you wanted to be a professional law enforcement person?

24 A. Yes, sir.

25 Q. You are probably -- you're working for
Sandra M. Halsey, CSR, Official Court Reporter

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1 the State's form of policing agency, the Department of
2 Public Safety?

3 A. Thank you.

4 Q. You're probably very proud of that?

5 A. Yes, sir.

6 Q. You are probably very proud of what
7 you have accomplished, are you not?

8 A. Yes, sir.

9 Q. Okay. And, rightfully so. As you sit
10 there now, you are probably in a different position than
11 anybody else that we have talked to in this courtroom,
12 any other prospective jurors, in the exposure that you
13 have had?

14 A. I would assume so, yes, sir.

15 Q. Both in college, as well as a law
16 enforcement man?

17 A. Yes, sir. I don't know what other
18 people have -- what their backgrounds are that are on the
19 jury.

20 Q. Well, we have not had any police
21 officers.

22 A. Okay.

23 Q. And you strike me as being a very
24 sincere person. I noticed that when you got on the
25 witness stand originally, you looked very sincere, and
Sandra M. Halsey, CSR, Official Court Reporter

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1 you looked at her and you said, "You know, I have a
2 certain biases." And you were concerned about the

3 position that you are in right now. Are you not?

4 A. Yes, sir, I am.

5 Q. Okay. And probably more so than

6 anybody that we have had in here, and I can appreciate

7 that. And I want to commend you for that. But, you, as

8 probably more than anybody that we have had here,

9 probably ought to be concerned about her rights. Are you

10 not?

11 A. Yes, sir.

12 Q. You want her to have a fair trial. Do

13 you not?

14 A. Her, like anybody else.

15 Q. Right. And that is commendable, I

16 appreciate your candor in that regard. The thing that I

17 want you to do is not pay lip service to our talking

18 about laws and this sort of thing. Can you do that? And

19 can you do this and can you do that? And you say, "Yes,

20 I will follow the law." I am sure you do follow the law.

21 There is nobody that is more cognizant of it than you

22 are. But I want you to look into your heart of hearts

23 and tell this Judge whether or not when you take an oath

24 as a juror in this case, in your heart of hearts, that

25 you can presume her to be innocent, based on what you

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1 know?

2 A. Yes, sir, I can.

3 Q. And you will?

4 A. I can if called. Yes, sir.

5 Q. Now, there is a difference to me

6 between the word can and will?

7 A. Okay. I will. Let me, if I may --

8 Q. Okay. Let me say, the reason I got to

9 that is you expressed some concern when you got in, and

10 you were talking about your biases.

11 A. Okay.

12 Q. And they didn't give you a chance to

13 talk about what those biases were.

14 A. Those biases can work both ways.

15 Q. Okay.

16 A. Just as I might feel that the

17 investigating officer and/or officers in this case are

18 going to be telling the truth, and have not made anything

19 up.

20 By the same token, I feel that I would

21 be a little bit more critical of their testimony because

22 I have had background in some criminal investigations, do

23 know procedure in criminal investigations.

24 Whereas a plumber that might be on
25 there might never be exposed to a criminal investigation
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1 and would have no idea what DNA might mean, what
2 dactyloscopy (sic) might mean. So, in that respect,
3 those biases can work both ways.

4 Q. You are telling and assuring Darlie
5 Routier that if you get on this jury, that you will not
6 make any presumption that she is guilty?

7 A. No, I will not tell her that.

8

9 MR. CURTIS GLOVER: Okay. That's all
10 we have, Judge.

11 THE COURT: All right.

12 I didn't understand that last answer.

13 You will not presume her guilty?

14 THE PROSPECTIVE JUROR: I will not
15 presume her guilty, no.

16 THE COURT: Okay. Thank you. Can you
17 step outside briefly, please. Don't go away yet.

18 MR. CURTIS GLOVER: I see you are from
19 Mechanicsburg, Pennsylvania.

20 THE PROSPECTIVE JUROR: No, my wife
21 is.

22 MR. CURTIS GLOVER: Oh, I'm sorry. I
23 thought you were.

24 THE PROSPECTIVE JUROR: I was born and
25 raised in the Dallas area.

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1 MR. CURTIS GLOVER: Okay.
2 THE COURT: Just step out briefly and
3 we will bring you back in shortly.

4

5 (Whereupon, the prospective
6 juror was excused from the
7 room, and the following
8 proceedings were held,
9 outside of his presence
10 as follows:)

11

12 THE COURT: All right. The State
13 accepts the juror?

14 MS. SHERRI WALLACE: Yes, Your Honor,
15 we're going to accept that juror.

16 MR. CURTIS GLOVER: Oh, my.

17 MR. S. PRESTON DOUGLASS, JR: Wow,

18 wait a minute. I wish I hadn't written this in ink.
19 MS. SHERRI WALLACE: He is going to be
20 critical of the police. I am sure you all will, too.
21 MR. CURTIS GLOVER: He was trying to
22 tell you something when he came in here. Judge, we told
23 the Court what our view of this matter is.
24 MS. SHERRI WALLACE: For the record.
25 THE COURT: All right. Thank you very
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1 much. Just state into the record.
2 MR. S. PRESTON DOUGLASS, JR: We would
3 exercise a peremptory challenge.
4 THE COURT: Okay. Thank you. That's
5 all we wanted to know.
6 MR. CURTIS GLOVER: Judge, if the
7 prosecution had allowed that juror to express himself, I
8 think he was trying to wiggle his way out of it.
9 MS. SHERRI WALLACE: That's a
10 compliment, thank you, Curtis.
11 MR. CURTIS GLOVER: Didn't you see him
12 up there, he was ready to --
13 MS. SHERRI WALLACE: He said all I
14 needed to hear.
15 THE COURT: Okay. Let's bring Officer
16 McMurray back in.
17 THE DEFENDANT: Well, I think, just
18 like he said, he would know if there was something done
19 that wasn't right.
20 THE COURT: That's right.
21 MR. CURTIS GLOVER: Don't never trust
22 your instincts.
23 THE DEFENDANT: That's right.
24 THE COURT: Are you all firm on that,
25 or do you want to talk more about it?
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1 MR. CURTIS GLOVER: No, we are sure,
2 Your Honor.
3
4 (Whereupon, the prospective
5 juror returned to the
6 room and the proceedings
7 were resumed as follows:)
8
9 THE COURT: Officer, thank you very
10 much, but you are going to be excused. I know that
11 astonishes you. Please don't talk about the case or

12 anything that went on in here, because it is not over
13 until the first of February.

14 THE PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: And we do have a gag order
16 on it. I like this: The biggest problem in the criminal
17 justice system is the leniency of judges. Tell the
18 people back home about me when you see them.

19 THE PROSPECTIVE JUROR: I like it down
20 here, I am going to stay here.

21 THE COURT: How long have you been
22 down here now?

23 THE PROSPECTIVE JUROR: I have been
24 living in Kerrville almost three years. I spent the
25 first five years of my career in Caldwell, near
Sandra M. Halsey, CSR, Official Court Reporter
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1 Bryan-College Station.

2 THE COURT: Oh, yes. Well, good luck
3 to you.

4 Anybody else? Is that it?

5

6 (Whereupon, a short
7 recess was taken,
8 after which time,
9 the proceedings were
10 resumed on the record,
11 in the presence and
12 hearing of the defendant
13 as follows:)

14

15 THE COURT: You are Ms. Castillo?

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: All right. This is
18 Estella, E-S-T-E-L-L-A, Castillo, C-A-S-T-I-L-L-O, number
19 173 on the jury list, number 59 on ours. I want to thank
20 you for coming in on such short notice.

21 THE PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: If you can raise your
23 right hand, please.

24 Do you solemnly swear or affirm you
25 will true answers make to all the questions propounded to
Sandra M. Halsey, CSR, Official Court Reporter
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1 you concerning your qualifications as a juror, so help
2 you God?

3 THE PROSPECTIVE JUROR: I do.

4

5 (Whereupon, the prospective

6 juror was duly sworn by the
7 Court to true answers make
8 to the questions propounded,
9 concerning qualifications, after
10 which time, the proceedings were
11 resumed as follows:)

12

13 THE COURT: All right. It is obvious
14 that you are totally fluent in the English language. I
15 just have to ask you for the record, you do read, write,
16 and speak English fluently and don't need a Spanish
17 interpreter for these proceedings?

18 THE PROSPECTIVE JUROR: Yes, I can
19 speak English.

20 THE COURT: All right. Ms. Castillo,
21 you are here as a potential juror in the Darlie Routier
22 matter.

23 There is Mrs. Routier right there, she
24 is the defendant. Sitting next to her is her attorneys,
25 Curtis Glover and Preston Douglass. Mr. Glover is from
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1 Dallas, Mr. Douglass is from Kerrville.
2 She is also represented by Doug Mulder
3 from Dallas and Richard Mosty from Kerrville.
4 The State is represented by Greg Davis
5 from Dallas who is not here. We have Toby Shook and
6 Sherri Wallace, they are both Assistant District
7 Attorneys from Dallas County.
8 Both sides are going to ask you some
9 questions, there are no wrong answers. Please answer
10 them frankly, and don't consider yourself auditioning for
11 anything because this is not a selection, it is more of
12 an elimination process than a selection process.

13 Mr. Shook.

14 MR. TOBY L. SHOOK: Thank you, Judge.

15

16

17 Whereupon,

18

19 ESTELLA GARCES CASTILLO,

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. Ma'am, again, my name is Toby Shook

5 and I am one of the prosecutors on the case. I will be
6 asking you questions on behalf of the State this
7 afternoon. As Judge Tolle has told you, we just want
8 your honest opinions. Okay?

9 A. Uh-huh. (Witness nodding head

10 affirmatively.)

11 Q. We have called a lot of people down

12 here because everyone feels differently, and everyone is
13 from a different type of background. Okay. You have
14 filled out a lot of information here on the
15 questionnaire, and you were real up-front with some
16 information. We appreciate that. But I just have to go
17 into some of that. Okay?

18 A. Yes, that is fine.

19 Q. Okay. A couple of times on here you

20 have said that you have formed an opinion on things you
21 have read and how you feel?

22 A. I haven't -- well, what I believe and

23 I am honest, I don't think I could pass judgment.

24 Q. Okay. And that is the part that I

25 want to get into. You have, from what you told us here,
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1 some very strong religious convictions; is that right?

2 A. Yes, sir.

3 Q. Tell us: What is your denomination?

4 A. Pentecostal.

5 Q. Okay. And have you been in the

6 Pentecostal religion for a long period of time?

7 A. Since I was 17.

8 Q. Okay. And, in fact, I think, not only

9 had you graduated from high school, but you went to

10 Bible --

11 A. I went to the Bible Institute, I am a

12 graduate.

13 Q. Okay.

14 A. In my organization, I am the president

15 of our youth group, and real active in our church.

16 Q. You even have a license to preach?

17 A. Yes, I do.

18 Q. Okay. So we're not talking about just

19 someone that goes to church and is taught some things.

20 You have studied these --

21 A. Have studied. Uh-huh. (Witness
22 nodding head affirmatively.)
23 Q. Okay. And you know the doctrine
24 pretty well, I take it?
25 A. Uh-huh. (Witness nodding head
Sandra M. Halsey, CSR, Official Court Reporter
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1 affirmatively.)
2
3 THE COURT: Ma'am, could you say yes
4 or no, so Ms. Halsey can take it down.
5 THE PROSPECTIVE JUROR: I'm sorry.
6 Yes, sir.
7 THE COURT: That's all right. Thank
8 you.
9

10 BY MR. TOBY L. SHOOK:
11 Q. And I have talked to people of your
12 faith before, and, obviously, we have all kinds of folks
13 come down here. Tell us is it part of your faith, your
14 religious beliefs that you cannot stand in judgment of
15 another human being?
16 A. No, sir. I feel I can't pass
17 judgment, because in the Bible it says only God can judge
18 us. I don't think I could live with myself if I were to
19 pass judgment on somebody. I would feel guilty. I
20 will -- I mean, I think only God can judge what we did.
21 I know that God put law upon this earth for people to --
22 if they did wrong, to pass judgment. But in my beliefs
23 and what I can -- I have to live with this. After I pass
24 judgment, if I am selected, I have to live with this.
25

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1 MR. TOBY L. SHOOK: We can agree on
2 this one.
3 THE COURT: All right. Well, we want
4 to thank you very much for coming, we hate to take you
5 all this way down, but we did have to see you in person.
6 We had to talk to you about this.
7 THE PROSPECTIVE JUROR: No problem.
8 THE COURT: Thank you very much. If
9 you could, don't say anything about whatever went on here
10 today until this trial is over about the first of
11 February. And after that you may talk or not talk to
12 anybody you see fit. There is a gag order. I can impose
13 monetary or jail sanctions. I'm not threatening you, I
14 just have to tell you. Okay? Fair enough?

15 THE PROSPECTIVE JUROR: Yes, sir.
16 THE COURT: Thank you. Good luck to
17 you.

18 MR. TOBY L. SHOOK: Judge, for the
19 record, we will submit the juror.

20 THE COURT: All right. The State's
21 motion for cause is granted. Thank you.
22 Is that it? All right, gang, see
23 everybody in the morning. Thank you.

24

25

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1 (Whereupon, the proceedings
2 Were recessed for the
3 day, to return on the
4 next day, October 31, 1996,
5 at 9:00 a.m. at which
6 time the proceedings
7 were resumed in open
8 court, in the presence
9 of the defendant, with her
10 attorney, and the State
11 being represented by the
12 D.A., as follows:)

13

14 (These proceedings are continued to
15 the next volume in this cause.)

16

17

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25

Sandra M. Halsey, CSR, Official Court Reporter
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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

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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 MARK TOLLE, JUDGE

21 Criminal District Court Number 3

22 Dallas County, Texas

23

24

25

Sandra M. Halsey, CSR, Official Court Reporter

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