

# Volume 20

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

3

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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. 20 OF VOLS.

17 November 7, 1996

18 Thursday

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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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3

4 BE IT REMEMBERED THAT, on Thursday, the 7th 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

2  
3

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

11

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

16  
17 AND:  
18 HON. SHERRI WALLACE

19 Assistant District Attorney  
20 Dallas County, Texas  
21  
22 APPEARING FOR THE STATE OF TEXAS

23  
24  
25

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1 ADDITIONAL APPEARANCES:

2  
3 HON. DOUGLAS D. MULDER  
4 Attorney at Law  
5 2650 Maxus Energy Tower  
6 717 N. Harwood  
7 Dallas, TX 75201  
8  
9 AND: HON. CURTIS GLOVER  
10 Attorney at Law  
11 2650 Maxus Energy Tower  
12 717 N. Harwood  
13 Dallas, TX 75201

14  
15 AND: HON. RICHARD C. MOSTY  
16 Attorney at Law  
17 Wallace, Mosty, Machann, Jackson & Williams  
18 820 Main Street, Suite 200  
19 Kerrville, TX 78028  
20  
21 AND: HON. S. PRESTON DOUGLASS, JR.  
22 Attorney at Law  
23 Wallace, Mosty, Machann, Jackson & Williams  
24 820 Main Street, Suite 200  
25 Kerrville, TX 78028  
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1  
2 AND: HON. JOHN HAGLER  
3 Attorney at Law  
4 901 Main Street, Suite 3601  
5 Dallas, TX 75202  
6 ALL ATTORNEYS REPRESENTING THE  
7 DEFENDANT: DARLIE ROUTIER  
8 MR. HAGLER HANDLING THE APPEAL  
9 AND:  
10 HON. ALBERT D. PATILLO, III  
11 Attorney at Law  
12 820 Main Street, Suite 211  
13 Kerrville, TX 78028  
14 APPEARING FOR: Witness-  
15 Detective Jimmy Patterson  
16 only on one date in trial  
17 AND:  
18 HON. STEVEN J. PICKELL  
19 Attorney at Law  
20 620 Earl Garrett Street  
21 Kerrville, TX 78028  
22 APPEARING FOR: Witness  
23 Officer Chris Frosch  
24 only on one date in trial  
25  
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1 P R O C E E D I N G S  
2  
3 November 7th, 1996  
4 Thursday  
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, as  
15 follows:)

16

17

18 THE COURT: All right. Today is  
19 Thursday, November 7th, 1966. Let's go back on the  
20 record. Are we ready? Let's bring in Ms. Jefferson.

21 Your name, ma'am?

22 THE PROSPECTIVE JUROR: Maria  
23 Jefferson.

24 THE COURT: Maria Jefferson. All  
25 right. If you will just have a seat and make yourself  
Sandra M. Halsey, CSR, Official Court Reporter

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1 comfortable.

2 If you will raise your right hand,  
3 please?

4 Do you solemnly swear or affirm you  
5 will true answers make to all the questions propounded to  
6 you concerning your qualifications as a juror, so help  
7 you God?

8 THE PROSPECTIVE JUROR: I do.

9

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

17

18 THE COURT: Thank you, ma'am. You  
19 have been called to be a potential juror in the Darlie  
20 Routier matter. Mrs. Routier is the defendant in today's  
21 case, she is sitting right there to your far right, next  
22 to her attorneys, Mr. Richard Mosty and Mr. Curtis  
23 Glover.

24 The State of Texas is represented by  
25 Toby Shook and Sherri Wallace, they are Assistant  
Sandra M. Halsey, CSR, Official Court Reporter

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1 District Attorneys of Dallas. They are both going to be

2 asking you some questions, there are no wrong answers,  
3 there won't be a test. Just answer it as calmly and  
4 briefly as you can, and tell your exact feelings about  
5 the questions. Fair enough?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: All right. Are you a

8 little bit nervous?

9 THE PROSPECTIVE JUROR: More nervous  
10 than you know.

11 THE COURT: Well, just relax. And if  
12 you can speak into the microphone, and answer yes or no.  
13 Ms. Halsey is taking this down, and can't take down head  
14 nods and uh-huhs or huh-uhs.

15 THE PROSPECTIVE JUROR: Okay.

16 THE COURT: All right. Mr. Shook.

17 MR. TOBY L. SHOOK: May it please the  
18 Court?

19

20 Whereupon,

21

22 MARIA DELPILAR JEFFERSON,

23

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

3

4 VOIR DIRE EXAMINATION

5

6 BY MR. TOBY L. SHOOK:

7 Q. Ms. Jefferson, again, my name is Toby  
8 Shook. I am one of the prosecutors on the case and I am  
9 going to ask you some questions on behalf of the State  
10 this morning. And as Judge Tolle told you, we're just  
11 interested in your honest opinions. Okay? This isn't a  
12 test or anything like that. We don't want you to answer  
13 the questions the way you think we want them answered, we  
14 just want your honest opinions. Okay?

15 A. Okay.

16 Q. Everyone feels differently about these  
17 issues, and that is what we are here to explore. I want  
18 to go over some things that are here on your  
19 questionnaire, because you brought up some things at the  
20 end of it about -- we have a question if you have any  
21 personal health problems that would prevent you from  
22 giving full attention to the testimony during the trial,  
23 and you checked yes.

24 And you put down some information I  
25 believe, about your mother having a stroke, and you are  
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1 under lot of pressure for several things; is that right?

2 A. Yes.

3 Q. Tell us what is going on in your  
4 personal situation.

5 A. I'm sorry. (Witness crying.)

6

7 THE COURT: Just calm down now, it's  
8 not going to go beyond here.

9 THE PROSPECTIVE JUROR: Well for one  
10 thing, I am an only child, and when my mother had the  
11 stroke we almost lost her. And having to deal with my  
12 family, my father, my home, my work, it's been very  
13 stressful. Due to the fact that I am an only child, I  
14 have to help my dad care for mother. She is in a good  
15 nursing home, and she is being very well taken care of.  
16 But from work I go home for 30 to 45  
17 minutes and see what I am going to get started for  
18 dinner, when I get home. Then I go feed mother, and she  
19 won't let us leave until she is ready to go to bed, which  
20 here lately, it's been 6:30 to seven o'clock. Then I  
21 still have to go home and feed my father, feed my family.  
22 All summer long we haven't done

23 anything, we haven't had a vacation. My husband and I  
24 haven't had a vacation. We didn't get to do anything due  
25 to the fact of my mother. His mother had a triple

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1 bypass, she has had a leg amputated, so everything is  
2 coming down.

3 Q. Okay. So, at your present situation,  
4 you have a lot of things going on in your life.

5 A. Yes. It's hard for me, like you ask  
6 me a question, I just break down. You know?

7 Q. Right. Would you say you are just not  
8 emotionally stable at all at this time?

9 A. Not at this time. I had a friend tell  
10 me to go to the doctor to get some antidepressants,  
11 because by the end of the weekend, or by Friday, I want  
12 to go home and rest, and I can't.  
13 I am constantly having to do things  
14 for people. You know, not only for my family, but I have  
15 to go and help my dad with clothing and --

16

17 THE COURT: Well, ma'am, thank you,  
18 we're not trying to delve entirely into your life. Any  
19 motions, gentlemen?

20 MR. TOBY L. SHOOK: We can agree,  
21 Judge.

22 MR. CURTIS GLOVER: We can agree,  
23 Judge.

24

25 (Whereupon, the above  
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1 mentioned item was  
2 marked for  
3 identification only  
4 as Court's No. 10,  
5 after which time the  
6 proceedings were  
7 resumed on the record  
8 in open court, as  
9 follows:)

10

11 THE COURT: Okay, both sides can  
12 agree. Thank you for coming, ma'am. You can relax, and,  
13 please don't talk about what went on in here until the  
14 trial is over. It will be most appreciated. Thank you  
15 very much.

16 THE PROSPECTIVE JUROR: I'm sorry.

17 THE COURT: Don't worry about a thing,  
18 don't worry about a thing.

19 Ma'am, please don't talk about the  
20 case to anybody until the trial is over. The trial will  
21 be over in the latter part of January or the first part  
22 of February, then you may talk or not talk as you see  
23 fit. Fair enough?

24 THE PROSPECTIVE JUROR: Fair enough.

25 THE COURT: Thank you very much,  
Sandra M. Halsey, CSR, Official Court Reporter  
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1 ma'am. I hope things go better for you. Thank you.

2 THE PROSPECTIVE JUROR: Thank you.

3

4 (Whereupon, the above  
5 mentioned item was  
6 received in evidence  
7 for record purposes  
8 only, after which time,  
9 the proceedings were  
10 resumed on the record,

11 as follows:)

12

13 THE CLERK: The next one is here.

14 THE COURT: All right. What is his --

15 her name? Is that Ms. Scharein --

16 THE CLERK: Nelda Bill.

17 THE COURT: Nelda Bill number 62. All

18 right. Come on in.

19 You are Ms. Nelda Bill. N-E-L-D-A,

20 Ozuna, O-Z-U-N-A, Bill, B-I-L-L.

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Is that correct?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: This is number 62 on our

25 list, number 183 on the jury list. If you can raise your

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1 right hand, please.

2 Do you solemnly swear or affirm that

3 you will true answers make to all questions propounded to

4 you concerning your qualifications as a juror, so help

5 you God?

6

7 (Whereupon, the witness

8 Was duly sworn by the

9 Court, to speak the truth,

10 The whole truth and

11 Nothing but the truth,

12 After which, the

13 Proceedings were

14 Resumed as follows:)

15

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Thank you. Ma'am, you

18 have been called here today as a potential juror in the

19 Darlie Routier matter. Mrs. Routier is the defendant in

20 this case, as I told you earlier. Mrs. Routier is

21 sitting over there to your far right, with her attorneys

22 are Richard Mosty and Mr. Curtis Glover.

23 The State is represented by Mr. Toby

24 Shook and Ms. Sherri Wallace. They are Assistant

25 District Attorneys from Dallas. Both sides are going to

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1 ask you some questions, there are no wrong answers. You

2 can be a member of the Flat Earth Society and nobody is

3 going to disagree with you. Just give your answers as

4 succinctly possible, and answer them very directly. Fair

5 enough?

6 THE PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: All right. Go ahead,

8 please, Mr. Shook.

9

10 Whereupon,

11

12 NELDA OZUNA BILL,

13

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

18

19 VOIR DIRE EXAMINATION

20

21 BY MR. TOBY L. SHOOK:

22 Q. Mrs. Bill, again, my name is Toby

23 Shook, I am one of the prosecutors. I will be asking you  
24 some questions on behalf of the State this morning.

25 As Judge Tolle told you, all we're

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1 interested in are your honest opinions. I want to go  
2 over some of the things here in your questionnaire and  
3 talk to you about some areas of the law that we go over  
4 with every juror. Okay?

5 Have you ever been down on jury

6 service before?

7 A. No, sir.

8 Q. Okay. We usually talk with the jurors

9 in a big group, but we do it through individual voir dire  
10 because the law prescribes it because it is a death  
11 penalty case.

12 We're not trying to put you on trial

13 or anything like that, but each side gets a little while  
14 to talk with you.

15 I don't believe you probably know any  
16 of the Dallas attorneys; is that right?

17 A. No.

18 Q. Any of the prosecutors or any of the  
19 defense attorneys?

20 A. No.

21 Q. From the Dallas area?

22 A. No, sir.

23 Q. There have been two Kerrville  
24 attorneys that have been retained to represent Mrs.

25 Routier also. Mr. Richard Mosty, do you know Mr. Mosty?

Sandra M. Halsey, CSR, Official Court Reporter

1 A. Through work, yes, sir.  
2 Q. Okay. What type of work do you do?  
3 A. I work for a title company.  
4 Q. Okay. And you come in contact with  
5 Mr. Mosty through that work?  
6 A. Some.  
7 Q. Okay. How well do you know him?  
8 A. I don't.  
9 Q. Okay. You just know who he is?  
10 A. Right.  
11 Q. All right. Do you think that would  
12 affect you in any way?  
13 A. No, sir.  
14 Q. Okay. Do you know the other attorney,  
15 Preston Douglass?  
16 A. No, sir, I don't.  
17 Q. Okay. And I believe you had listed  
18 that you were a witness at one time in your brother's  
19 trial; is that right?  
20 A. It was just a city-type disturbance.  
21 Q. Okay.  
22 A. It was very small.  
23 Q. What exactly was that?  
24 A. It was an argument.  
25 Q. An argument?  
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1 A. Uh-huh. (Witness nodding head  
2 affirmatively.)  
3 Q. Were you a witness to it?  
4 A. Yes.  
5 Q. You had a city trial over it?  
6 A. Yes.  
7 Q. What happened in that case?  
8 A. My brother -- we were all at a  
9 gathering, and this guy kept coming up and bothering him.  
10 And my brother kept telling him to get away and he  
11 wouldn't, so it started into a fight and he filed  
12 charges, but the other guy was guilty.  
13 Q. He was found guilty?  
14 A. Uh-huh. (Witness nodding head  
15 affirmatively.)  
16 Q. Okay. And I believe there was --  
17 yeah, back in, it looks like years ago, back in '71 you  
18 knew someone by the name Paul Antevorros (phonetic  
19 spelling), charged with murder.  
20 A. Yes.

21 Q. Charged with murder?  
22 A. Manslaughter, I believe.  
23 Q. How do you know him?  
24 A. He was a personal friend.  
25 Q. Okay. So, that happened, I guess,  
Sandra M. Halsey, CSR, Official Court Reporter  
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1 about 26 years ago, or 25 years ago now?  
2 A. Uh-huh. (Witness nodding head  
3 affirmatively.)  
4 Q. Do you remember any of the facts of  
5 the case at all?  
6 A. It was a bar fight, you know, I wasn't  
7 there.  
8 Q. You were not a witness to it or  
9 anything?  
10 A. No, he was just a friend.  
11 Q. Do you feel he was treated fairly from  
12 what you knew about the case?  
13 A. Well, I didn't know him real well at  
14 the time. I just, you know, was not a close friend. And  
15 I don't know all the details, all I know is that it  
16 happened and the lights were off, and nobody really knew  
17 what happened.  
18 Q. Okay. You checked off, also, that you  
19 have heard some of the publicity, I believe, reading --  
20 the radio, TV, and newspaper in this case?  
21 A. Uh-huh. (Witness nodding head  
22 affirmatively.)  
23 Q. That is fine. Obviously, the reason  
24 we're here is because there was a lot of publicity, so  
25 moving it here would also cause some, but tell us what  
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1 you remember hearing about the case?  
2 A. Just that somebody went in through the  
3 window, and just basically what it said in the newspaper,  
4 that the children were killed.  
5 Q. Did you form any opinions at all about  
6 what you read?  
7 A. Kind of, yes, sir.  
8 Q. Okay. Tell us what those are?  
9 A. Well, you know, the majority of the  
10 time it's a family member that does it. And it's just --  
11 that stays in my mind.  
12 Q. Okay. I mean, do you get that from  
13 other things you have read?  
14 A. Well, in other cases, yes. Things

15 that have happened and what I have read in the  
16 newspapers.

17 Q. Okay. Well, let me ask you this then:

18 Are you saying, then, in your mind, you might have some  
19 feelings that Mrs. Routier is guilty?

20 A. Yes.

21 Q. Okay. Well, then the question I need  
22 to ask you is this: It's okay to form opinions as to  
23 what you read. I mean, we form opinions on what we read  
24 all the time. But I need to know is if your opinion is  
25 in your mind and it's a conclusion you have reached in  
Sandra M. Halsey, CSR, Official Court Reporter

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1 your mind that you think it is going to affect your  
2 verdict in this case?

3 A. It would

4

5 MR. RICHARD C. MOSTY: We submit the  
6 juror.

7 THE COURT: All right. Thank you for  
8 coming, ma'am, you are excused.

9 Ma'am, don't discuss any of your  
10 testimony here today, please, until the trial is over  
11 with, the first part of February. We do have a gag order  
12 where I can impose monetary or jail time sanctions. I am  
13 not threatening you, I know that won't be necessary.

14 THE PROSPECTIVE JUROR: Yes, sir, I  
15 understand.

16 THE COURT: Thank you, you bet.

17 MS. SHERRI WALLACE: Judge, we will  
18 offer Court's Exhibit No. 10.

19 THE COURT: All right, No. 10, Court's  
20 Exhibit is admitted. That is fine.

21

22 (Whereupon, a short  
23 recess was taken,  
24 after which time,  
25 the proceedings were  
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1 resumed on the record,  
2 in the presence and  
3 hearing of the defendant  
4 as follows:)

5

6 THE COURT: Okay, we're ready. Let's  
7 go back on the record after a short recess.  
8 This is number 185, number 63 on our

9 list. How are you doing, sir?

10 THE PROSPECTIVE JUROR: Good morning.

11 THE COURT: You are Dock, D-O-C-K,

12 Rollins, R-O-L-L-I-N-S; is that right?

13 THE PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: That is number 185 on the

15 juror's list, 63 on our list. If you will raise your

16 right hand, please?

17 Do you solemnly swear or affirm that

18 you will true answers make to all questions propounded to

19 you concerning your qualifications as a juror, so help

20 you God?

21

22 (Whereupon, the prospective

23 juror was duly sworn by the

24 Court to true answers make

25 to the questions propounded,

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1 concerning qualifications, after

2 which time, the proceedings were

3 resumed as follows:)

4

5 THE PROSPECTIVE JUROR: I do.

6 THE COURT: Mr. Rollins, you are here

7 as a potential juror in the Darlie Routier matter. This

8 is Mrs. Routier, the defendant. She is sitting right

9 there to your far right with her attorneys, Mr. Richard

10 Mosty from Kerrville and Mr. Curtis Glover from Dallas.

11 The State is represented by two

12 Assistant District Attorneys from Dallas County, Toby

13 Shook and Sherri Wallace.

14 They are going to be asking you

15 questions. No wrong answers; won't be a test. Just

16 answer it as briefly and succinctly as you can. And if

17 you could say yes or no instead of uh-huh or huh-uh, I

18 know you won't, because Ms. Halsey takes all of this

19 down.

20 THE PROSPECTIVE JUROR: Okay.

21 THE COURT: Okay. Thank you. Go

22 ahead, Mr. Shook.

23

24

25

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1 Whereupon,

2

3 DOCK ADDISON ROLLINS,

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. Rollins, again, my name is Toby  
14 Shook, I am one of the prosecutors on the case. I will  
15 be asking you some questions on behalf of the State this  
16 morning. I am going to go over just some of the things  
17 you filled out here on your questionnaire, and then we  
18 will go over how you feel about the death penalty and  
19 some of the laws that apply. Okay?

20 A. Okay.

21 Q. I noticed that you -- it looks like  
22 you lived in Houston and work for Southwestern Bell?

23 A. Yes, sir.

24 Q. Okay. And it looks like you did a  
25 little bit of everything with them; is that right?

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1 A. Yes, sir.

2 Q. What all were your duties with  
3 Southwestern Bell?

4 A. Sir, I started out at the very  
5 beginning and I worked in every department at  
6 Southwestern Bell except being an operator.

7 Q. Okay. So, you have done a little  
8 bit --

9 A. I maintained the switchboards, but I  
10 never was classed as an operator.

11 Q. Okay. And then you have lived here in  
12 Kerrville for the past 11 years?

13 A. Yes, sir.

14 Q. Okay. I don't believe you know any of  
15 the Dallas attorneys involved in the case for the State  
16 or the defense; is that right?

17 A. Yes, sir.

18 Q. There's a couple of Kerrville  
19 attorneys that have also been retained for the defense,  
20 Mr. Mosty and Preston Douglass. Do you know either one  
21 of them?

22 A. No, sir.

23 Q. Okay. And I see that you have served  
24 on a jury before; is that correct?

25 A. Yes, sir.  
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1 Q. That was, I believe, you said a drug  
2 case?  
3 A. Yes, sir.  
4 Q. Was that in Houston?  
5 A. Yes, sir.  
6 Q. How long ago was that?  
7 A. Probably 20 years ago.  
8 Q. Okay. And the verdict was guilty?  
9 A. No, sir, it was a hung jury.  
10 Q. Hung jury? Okay. Tell me a little  
11 bit about that case.  
12 A. The person had been caught and as the  
13 policeman walked up to the car, and they threw the  
14 evidence out, and we had one lady on the jury who was  
15 given a parking ticket, and she said all policemen were  
16 crooks. And she would not --  
17 Q. Okay.  
18 A. It was just that simple, we had one  
19 person that didn't like the policemen.  
20 Q. Okay. So, it was 11 to 1?  
21 A. Yes, sir.  
22 Q. And that is the only time you have  
23 served on a jury?  
24 A. No, sir. I served once here in  
25 Kerrville on a same thing. It was a narcotics case of a  
Sandra M. Halsey, CSR, Official Court Reporter  
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1 doctor who was dispensing narcotics illegally.  
2 Q. Okay. And what happened on that case?  
3 A. It was guilty.  
4 Q. Did the jury assess punishment or did  
5 the Judge? Or do you recall?  
6 A. It was the Judge, I believe, sir. I  
7 don't recall assessing any punishment.  
8 Q. Okay. Did you have -- as far as your  
9 jury experiences go, did those go pretty smoothly?  
10 A. Yes, sir.  
11 Q. Okay. When we're selecting a capital  
12 jury, we do it a little differently. Do you recall that  
13 from your prior jury service that everyone is talked to  
14 kind of in one large group? But since this is a death  
15 penalty case, we interview every juror individually.  
16 A. Yes, sir.  
17 Q. I want to get right at the heart of  
18 the matter. You know that the State is seeking the death

19 penalty in this case?

20 A. Yes, sir.

21 Q. And, so, we want to talk to each juror

22 about the death penalty. Do you agree that we should  
23 have the death penalty as a law in this State?

24 A. Yes, sir. Mainly, because I have been

25 taught, and I believe, there is some place in the Bible  
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1 that says "An eye for an eye, and a tooth for a tooth."

2 For having the death penalty, per se, no, sir.

3 Q. Okay. Tell me a little bit about

4 that.

5 A. Well, I would not think that you would  
6 have the death penalty just to have the death penalty and  
7 use it randomly. I think if a person is quite serious --  
8 if you have a law, then I think we should uphold the law.  
9 If you don't like the law, change the law. As long as it  
10 is on the books, I think it should be upheld.

11 Q. Okay. What types of cases do you

12 think it should be upheld in?

13 A. Sir, I don't know how to answer that,  
14 could you ask it a little bit different?

15 Q. Well, let me ask you this, and you  
16 probably don't go around thinking things like this  
17 because it is kind of a morbid -- morbid thoughts. Do  
18 any cases come to mind, anything maybe you have seen in  
19 the news or heard about that you think, well, this is the  
20 type of case I think could be deserving of the death  
21 penalty?

22 A. No, sir, but I would think the death  
23 penalty should be if someone planned or set about or --  
24 let me say this, if it was premeditated and a lot of  
25 planning went into it, that is it. Spontaneous, that is  
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1 questionable. Defense, that is questionable. If they

2 set out and planned this, I think that would --

3 Q. Let me go over kind of how the law is

4 set up here in Texas. There are only certain types of  
5 crimes that we can invoke the death penalty. First of  
6 all, it has to be a murder case, but not every murder  
7 case. We have -- well, let me give you an example. If I  
8 suddenly just pulled out a gun and shot Ms. Wallace, a  
9 cruel murder in front of everyone here, it is not a death  
10 penalty in Texas. I could get life in prison, but not a  
11 death penalty case.

12 For it to come under our death penalty

13 statute, you have to have a murder plus something else.  
14 For example, murder during felony, you go in -- you have  
15 probably read about the situations where someone goes in  
16 and robs a grocery store and shot the clerk during the  
17 robbery. That could be a death penalty case in Texas  
18 because it happens during a felony. If someone comes and  
19 breaks into a house and kills someone in there, one of  
20 the homeowners, that could be a death penalty case.  
21 Murder during a rape or a kidnapping or an arson, those  
22 types of situations could be death penalty cases.  
23 Also, if you murder a police officer  
24 while he is on duty or a fireman on duty, it could be a  
25 death penalty case.  
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1 Murder for hire, someone that just  
2 kills someone for money, could be a death penalty case.  
3 Or your mass murder situations or the  
4 serial killer situations. And, in addition, the type of  
5 case we have indicted here. And I believe that  
6 indictment is in front of you. If you could take a  
7 moment to read that to yourself, and just the printed  
8 portion there in the middle.  
9 A. All right.  
10 Q. All right. That sets out the  
11 allegations of intentional killing of a child under the  
12 age of six. That type of case falls under our death  
13 penalty statute, of course, depending on the facts.  
14 Let me ask you: Is that the type of  
15 case you feel personally, and I'm not asking you for your  
16 verdict because you have not heard from any witnesses,  
17 but is that the type of case you feel that could be  
18 appropriate for the death penalty under the proper  
19 circumstances?  
20 A. Yes, sir.  
21 Q. Okay. Those other areas I went over,  
22 murders that occur during a felony, murders of a police  
23 officer, are those also the types of murders you think  
24 could be appropriate for the death penalty?  
25 A. Well, sir, I would like to know the  
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1 circumstances. For example, you mentioned that if  
2 someone went in to rob somebody, they planned to do that,  
3 that was not a spontaneous thing. To kill a police  
4 officer, there are all kind of circumstances that prevail  
5 there. Was it something that happened off duty, that

6 they run together when he was on duty. So, personally, I  
7 would like to know some circumstances.

8 Q. And, as for this particular case, I  
9 can't get into the facts, obviously.

10 A. No, sir.

11 Q. Okay. But those other situations  
12 again, like you say, there can be all different types of  
13 fact situations.

14

15 THE COURT: Sir, you are just going to  
16 be asked general questions by both sides, they can't get  
17 into the facts of this case.

18 THE PROSPECTIVE JUROR: Right, I  
19 understand, sir.

20 THE COURT: All right. Good.

21

22 BY MR. TOBY L. SHOOK:

23 Q. You bring up a good point, though. A  
24 lot of jurors bring up the word "premeditation", was it  
25 planned. And when you think about premeditation in your  
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1 own mind, are you talking about a crime that was planned  
2 out far along in advance, or could it happen rather  
3 quickly?

4 A. It could happen quickly. If you went  
5 into the next room to get a weapon that wasn't with you,  
6 to me, you planned to use that weapon when you went into  
7 the room to get it. So, if two people were just getting  
8 in a fight here that is one thing, but if you go to get a  
9 weapon, to me, that is something else. Then you are  
10 planning to use it.

11 Q. Okay. So you don't have to sit down  
12 and think about it for days on end or anything like that,  
13 but if you make a determined decision to go and kill; is  
14 that what you're talking about?

15 A. Yes, sir.

16 Q. We have always seen these situations  
17 of maybe two guys drinking in a bar, exchange some heated  
18 words, and a fight breaks out, more of a -- maybe they  
19 are fighting over a woman, who knows. That is not what  
20 you are talking about?

21 A. No, sir.

22 Q. For a death penalty case. You are  
23 talking about someone makes a determined effort to kill  
24 someone?

25 A. Yes, sir.

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1 Q. Okay. The way -- let me kind of go  
2 over the procedure of how the trial would work. It is  
3 divided into two parts. The first part is the  
4 guilt/innocence stage. We have to prove that indictment  
5 to you beyond a reasonable doubt. Okay? Now, obviously,  
6 if we don't do that, it is a not-guilty finding.  
7 If we do prove that to you beyond a  
8 reasonable doubt, we go to the second stage of the trial,  
9 okay? Now, the first part of the trial we have to prove  
10 the indictment -- the facts involved in the crime itself.  
11 The second part you might hear additional evidence, in  
12 the punishment phase. If you do hear additional evidence  
13 or even if you hear very little, you will get these  
14 questions at the end of that. And the jury answers these  
15 questions, and I am going to go over those in more detail  
16 in a moment, but they are "yes" or "no" questions.  
17 This first question is a fact question  
18 that the jury is called on to answer it. Basically it  
19 says this: Has the State proven that the defendant would  
20 be a continuing danger to society? Okay?  
21 If we prove that "yes," you move on to  
22 the next question, and the next question is what we call  
23 the mitigating question. It allows the jurors to review  
24 all of the evidence that they have heard. And if they  
25 think, in their hearts and in their minds, that a life  
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1 sentence should be imposed rather than a death sentence,  
2 they can answer that question "yes."  
3 However, if they reviewed the  
4 evidence, and they don't think there is any mitigating  
5 evidence, they will answer it "no." If they answer that  
6 second question "no," the Judge has no choice in this  
7 case, he would sentence the defendant to death. If you  
8 answer it any other way, the Judge would sentence the  
9 defendant to life. Okay?  
10 But those are the two alternatives,  
11 the two possible outcomes once the defendant has been  
12 found guilty of capital murder, a life sentence or a  
13 death sentence. And the Judge sentences according to how  
14 you answer these questions.  
15 Is that clear to you?  
16 A. Yes, sir.  
17 Q. You know from living in Texas all of  
18 your life, that executions do take place. Okay? Some  
19 states have the death penalty statute and never invoke  
20 it, but Texas does. We have over 100 people since the

21 death penalty has been reinstated that have been  
22 executed. Okay?

23 Many jurors have answered these  
24 questions, and, like I said, there have been over 100  
25 executions take place.

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1 You have told me that  
2 philosophically -- well, maybe not philosophically, but  
3 you feel that since the death penalty statute is on the  
4 books, you think it should be enforced in the proper  
5 circumstances.

6 I want to know if you are the type of  
7 juror who can listen to the evidence and that if we do  
8 prove these things to you, you could answer these  
9 questions in the way, knowing that the defendant would be  
10 executed someday?

11 A. Yes, sir.

12 Q. Okay. I take it you are not  
13 volunteering for the job?

14 A. Nope.

15 Q. But if you were chosen to sit on this  
16 jury, you could do that?

17 A. Yes, sir.

18 Q. Okay. In a criminal case, and you are  
19 familiar with this because you have been over a couple.  
20 The State, obviously, has the burden of proof and we have  
21 to put on witnesses.

22 We can do that two ways: We call that  
23 direct evidence or indirect evidence. Direct evidence is  
24 an eyewitness to the case. All right? Maybe, in your  
25 case, it was the police officer that saw the drugs come  
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1 out of the car when he made the arrest. He was an  
2 eyewitness, saw an event, to the offense.

3 You also have what we call  
4 circumstantial evidence, I am sure you are familiar with.  
5 That is any other type of evidence that links the  
6 defendant to the crime. It could be the DNA evidence,  
7 you have heard of DNA, I'm sure?

8 A. Yes, sir.

9 Q. Blood evidence; scientific evidence,  
10 hair, fiber; it could be fingerprints; blood spatter  
11 evidence; the crime scene itself what that could tell  
12 investigators and the jury about the case; statements  
13 made by the defendant, before, during, and after the  
14 crime; all of these things, anything but a direct

15 eyewitness is circumstantial evidence.  
16 Now, many times in a murder case all  
17 the State has to rely on is circumstantial evidence. The  
18 reason for that being, you have the person that committed  
19 the murder and the person that was killed, obviously.  
20 The law says that there is no  
21 difference between the two types of evidence. The State  
22 still has the same burden, to prove beyond a reasonable  
23 doubt.  
24 What I need to know is: If the State  
25 proves its case using solely circumstantial evidence, and  
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1 we prove that to you beyond a reasonable doubt, would you  
2 be able to find the defendant guilty?  
3 A. Well, to answer that, I would just  
4 have to hear it, sir. To give you an answer right now, I  
5 can't honestly do it.  
6 Q. Okay. I know you have to hear the  
7 evidence, but I want to know is -- are you predisposed to  
8 be against circumstantial evidence, or is your mind open?  
9 A. My mind is open, that is the reason I  
10 didn't answer you yes or no.  
11 Q. Okay. Fair enough then. Let me go  
12 over another part of the law with you. You often hear  
13 the term "motive," the reason a crime occurred,  
14 especially in a murder case.  
15 When the evidence is produced to the  
16 jury, many times the motive becomes very clear. Okay?  
17 Other times it may not be clear at all. Everyone might  
18 have their own opinion on it. There could be several  
19 possible motives. It could be what sometimes is called  
20 just a senseless killing, and no motive is apparent, it  
21 is locked away in the killers mind, and we may never know  
22 what it is. The person is just as dead, the proof is  
23 still there, but we don't know what the motive is.  
24 In Texas, the law does not require the  
25 State to prove what the motive is. We just have to prove  
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1 those allegations that you have read to get a guilty  
2 verdict, we don't have to prove the motive. Would you be  
3 able to follow that law?  
4 A. Yes, sir.  
5 Q. Okay. I want to go then into some of  
6 these punishment issues, okay? Like I said, you don't  
7 get to these unless the defendant was found guilty of  
8 capital murder. At that point, we would move to the

9 punishment stage, and you may hear additional evidence.

10 You could hear evidence about the

11 person's background, maybe their criminal history, or

12 moral character, anything like that. Good or bad, it

13 could go both ways.

14 At the end of that evidence, you get

15 this first question. It starts out with a "no" answer

16 and we have to prove beyond a reasonable doubt that it

17 should be answered "yes."

18 If you would read that first question

19 to yourself, please.

20 A. Okay.

21 Q. It's a fact question. It calls for

22 the jurors to make a prediction on how the defendant will

23 behave in the future. Let me ask you: Do you think --

24 and again, I can't get into any facts, but just looking

25 at what that question asks you -- do you think you could

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1 answer that question if it was proven to you beyond a

2 reasonable doubt?

3 A. Yes, sir.

4 Q. Okay. What kinds of things would be

5 important for you to know? Or would you want to know

6 before you answered that question?

7 A. The purpose for this crime, and would

8 it -- you think that someone is going to do this in the

9 future.

10 For example: Robbery, drive-by

11 shootings, or things like that, is what you mentioned a

12 moment ago. But I would want to know how this would look

13 into the future.

14 Q. Okay.

15 A. For example, a man and his wife, we

16 only have one wife or one husband, so we are not going to

17 go down the street killing wives and husbands.

18 Q. Okay. Do you feel if a man kills his

19 wife, say a brutal killing, his wife is gone now, what is

20 that going to tell you about him, how he will act in the

21 future?

22 A. I don't think I could say that he is

23 going to get married and kill another one.

24 Q. Okay. The words in this question, you

25 won't be given any legal definitions. It will be up to

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1 you and the other jurors. We have got to prove -- so I

2 am going to go over a few of those, for instance,

3 probability. We have to prove beyond a reasonable doubt  
4 that it is a probability that the defendant would commit  
5 criminal acts of violence. What does probability mean to  
6 you in this context?

7 A. A chance.

8 Q. Okay. How about "criminal acts of  
9 violence," when you see those words, what does that mean  
10 to you?

11 A. Some form of violence committed  
12 against me, for the purposes of gain for that individual,  
13 or for violation of the law, let's put it that way.

14 Q. Okay. It doesn't necessarily mean  
15 murder, although, obviously, that is included?

16 A. No, sir.

17 Q. Okay. Like I said, you may get more  
18 background about the defendant when you get to answer  
19 these questions. Maybe they had a long criminal history,  
20 maybe they didn't have any criminal history, it could go  
21 either way.

22 You could be faced with the situation  
23 that you had only the facts of the crime itself to answer  
24 this question. The brutality of it, like you said, maybe  
25 what led up to it, what happened afterward, was there any  
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1 remorse shown, things of that nature.

2 Again, I can't preview the facts for  
3 you, but do you think that you could get enough  
4 information from the crime itself, to be able to answer  
5 that question?

6

7 MR. RICHARD C. MOSTY: Your Honor, I  
8 will object, unless he characterizes that as in a proper  
9 case.

10 THE COURT: Well, that is sustained.

11 All of these questions assume, sir, that you believe the  
12 evidence and assume that the evidence is adequate. We  
13 are not trying to pin you down to anything.

14 THE PROSPECTIVE JUROR: Yes, sir.

15 MR. TOBY L. SHOOK: Okay.

16

17 BY MR. TOBY L. SHOOK:

18 Q. Again, what kinds of things would be  
19 important about the crime itself that could tell you a  
20 lot about a person?

21 A. Well, mainly the cause.

22 Q. Okay. Just what led up to it?

23 A. Yes, sir.

24 Q. Okay. I want to go to this last

25 question. You don't get to that unless you have found  
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1 the defendant guilty, and found that they would be a  
2 continuing danger to society. And if you would, just  
3 take a moment.

4 This one is a lot lengthier, and  
5 believe me, Mr. Rollins, none of the lawyers here thought  
6 up this question, the legislature did that.

7 Read that to yourself for a moment.

8 A. All right.

9 Q. That is what we call the mitigation  
10 question. That is the one where the jurors at the end  
11 review all of the evidence, and then decide: Is there  
12 evidence that shows this defendant should get a life  
13 sentence or is there not? Okay?

14 We can't tell you what circumstantial  
15 evidence is -- I mean, what the mitigating evidence is,  
16 that is going to be left up to you and the other jurors.

17 In fact, you don't have to sit there  
18 and conjure up facts which you think the mitigating  
19 evidence is, and you don't have to agree with the other  
20 jurors.

21 You just have to be able to keep your  
22 mind open to it. Do you think you can do that?

23 A. Yes, sir.

24 Q. Okay. Well, we have talked to lots of  
25 juror, and people have different ideas and you don't have  
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1 to agree with any of them. But let me go over a few  
2 things and see how they cut with you one way or the  
3 other.

4 Sometimes, we have jurors that say,  
5 "Well," -- or you have a situation maybe where the  
6 defendant was drunk or on drugs when they committed the  
7 crime.

8 Some jurors might view that as  
9 mitigating, other jurors would really hold that against a  
10 person.

11 How do you feel about it one way or  
12 the other?

13 A. I would hold that against the person.

14 Q. Okay. Sometimes you might hear  
15 evidence that a person grew up in a poor economic  
16 neighborhood. They were deprived maybe when they grew  
17 up. Some people feel that might be mitigating evidence,  
18 other people say no, that is not mitigating.

19 A. I don't agree with that.

20 Q. Sometimes you hear evidence of a  
21 person that was physically or mentally abused as a child;  
22 or sexually abused as a child. Again, people feel both  
23 ways on that.

24 A. I have a very strong feeling about

25 that, I believe that is a crutch.

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1 Q. Okay. Someone is using that as a  
2 crutch?

3 A. Yes, sir.

4 Q. Okay. So you wouldn't find that to be  
5 mitigating at all?

6 A. No, sir.

7 Q. But you can keep your mind open to  
8 that type of evidence? And if you see it, you can give  
9 it that proper weight?

10 A. Yes, sir.

11 Q. Okay. Judge Tolle went over some  
12 rules of law that apply in every case, and I am sure you  
13 are familiar with those. The presumption of innocence,  
14 the defendant is presumed to be innocent. You could  
15 follow that rule of law?

16 A. Yes, sir.

17 Q. Okay. The defendant's right not to  
18 testify. If someone wants to testify, they can. You  
19 can't hold it against them, if they choose not to. Could  
20 you follow that rule of law?

21 A. I can follow it, I don't understand  
22 it, though.

23 Q. Okay. But you feel you could follow  
24 it?

25 A. Yes, sir.

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1 Q. All right. The State has the burden  
2 of proof, we have to prove this case beyond a reasonable  
3 doubt. That burden of proof never shifts to the defense.  
4 If we fail in our burden anywhere along the line, you  
5 have to find the defendant not guilty. Can you do that?

6 A. Yes, sir.

7 Q. Okay. Like I said, the defense is not  
8 required to prove anything to you. They might try their  
9 hardest to prove something to you, but they are not  
10 required to, and you can't require them to. They are  
11 under no obligation to you. You can follow that rule of  
12 law?

13 A. Yes, sir.

14 Q. Okay. The Judge will also tell you

15 that during any part of your deliberations you are not to  
16 consider the parole laws. Could you follow that rule of  
17 law?

18 A. I didn't understand you.

19 Q. You cannot consider parole laws. You  
20 can't consider those at all.

21

22 THE COURT: Both sides might state the  
23 reason why that is.

24

25

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1 BY MR. TOBY L. SHOOK:

2 Q. The reason for that is the parole laws  
3 change all the time, and we never know what they may be.  
4 But the jury has no control over them, whatsoever.

5

6 THE COURT: We cannot control the  
7 parole laws at this level.

8 THE PROSPECTIVE JUROR: All right,  
9 sir.

10 MR. TOBY L. SHOOK: Judge Tolle has no  
11 control. So he would just instruct you that you are not  
12 to consider those or use those in your deliberations in  
13 any way. Could you follow that rule of law?

14 THE PROSPECTIVE JUROR: Yes, sir.

15

16 BY MR. TOBY L. SHOOK:

17 Q. Mr. Rollins, you have been very  
18 patient with me. Do you have any questions about  
19 anything I have gone over?

20 A. No, sir.

21 Q. Okay.

22

23 MR. TOBY L. SHOOK: That's all I have  
24 then, Judge. Thank you.

25 THE COURT: Thank you, Mr. Shook. Mr.  
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1 Mosty.

2

3 VOIR DIRE EXAMINATION

4

5 BY MR. RICHARD MOSTY:

6 Q. Mr. Rollins, good morning. How are

7 you doing today?

8 A. Just fine.

9 Q. Mr. Rollins, this is really the only

10 time that we or any of the lawyers get an opportunity to

11 visit with you, and really for you to express your views

12 and opinions about the case, about the law or about

13 anything that might come up to you.

14 So, I want to encourage you to feel

15 free to open up. If you have got a question, let's get

16 it out on the table.

17 If you have got some concern or lack

18 of understanding about something I ask, let's get it out

19 and we will talk about it, and we will sort through it.

20 Once you get in that jury box, you

21 don't get to ask any more questions. I tried a jury case

22 yesterday, and one of the jurors when I got out, talked

23 to her and she said, "You know, I had a whole lot of

24 questions that I needed to ask." And I had warned her at

25 the beginning that you don't get to do that.

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1 So, this is your time to speak up.

2 So, please take that opportunity if there is anything at

3 all that we need to talk about. All right?

4 A. Uh-huh. (Witness nodding head

5 affirmatively.)

6 Q. Now, the State, I think, by their

7 question, they spent a lot of time talking about the

8 death penalty and these special issues, and in my

9 judgment that is completely getting the cart before the

10 horse.

11 Because what I really want to

12 emphasize to you is the issues related to whether or not

13 this lady is guilty at all; the burden of proof, a

14 reasonable doubt, the presumption of innocence.

15 Those things that the law has afforded

16 us for over 200 years. And you have made several

17 comments in here about, "If that is the law, then I am

18 going to follow it."

19 And do you agree with me that those

20 laws, those presumption of innocence, that burden of

21 proof, that those laws are every bit as important as any

22 law relating to the death penalty?

23 A. Yes, sir.

24 Q. In a lot of ways we may say more

25 important, because, you know, you never even talk about

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1 punishment unless someone is found guilty. Okay?

2 Are you all right with that?

3 A. Yes, sir.

4 Q. Do you know anything about this case?

5 A. No.

6 Q. Well, let me preface that by saying,

7 nobody ever really knows anything about a case until they

8 sit and hear. But from what you have read or heard --

9 what have you heard about this case?

10 A. That one jury (sic) was selected, sir,

11 and that is all I know.

12 Q. That one juror was selected?

13 A. Yes, sir.

14 Q. Do you know anything about the facts

15 of the case or what the facts of this case are supposed

16 to be?

17 A. No, sir.

18 Q. You have lived in Kerrville for a

19 pretty good while?

20 A. Yes, sir.

21 Q. And you go to Trinity Baptist?

22 A. Yes, sir.

23 Q. What Sunday school class do you teach

24 over there?

25 A. I have taught three or four of them,

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1 sir. The Agape class and I substitute teach for quite a  
2 few of them.

3 Q. Okay. My partner, Keith Williams, has  
4 taught, I guess just a little bit of everything, but in  
5 the younger bracket, mainly.

6 Let me cover a little bit with you  
7 about what the law requires of you as a juror. And if  
8 any of these things bother you and we need to discuss  
9 them, let's talk about them.

10 The first thing that the law requires,  
11 the law says and Judge Tolle told you this, that the fact  
12 that an indictment has been issued means absolutely  
13 nothing at all. Are you okay with that?

14 A. I'm aware of that, yes, sir.

15 Q. All right. And from your  
16 experience -- you know that from your previous jury  
17 experience. The law says that all reasonable doubts will  
18 be resolved in favor of the defendant. That every  
19 reasonable doubt that any juror has always belongs to  
20 Darlie. Do you have any problem with that at all?

21 A. No, sir.

22 Q. You know, some people might say as

23 they are filtering through the evidence that, they say,  
24 "Well, you know, I sort of have a reasonable doubt about  
25 that. You know, the defense sort of has the better end  
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1 of that argument. And I have got a reasonable doubt  
2 about this and maybe the State really has sort of the  
3 better end of that one."  
4 Some jurors might say, "Well, I am  
5 going to give that reasonable doubt to the defendant, and  
6 I am just going to go ahead and cast that reasonable  
7 doubt over in favor of the State."  
8 The law says you can't do that. That  
9 once it's a reasonable doubt, and once you have any  
10 reasonable doubt, that you always park it on the side of  
11 the defendant.

12 Would you have any problem with that  
13 concept at all?

14 A. Nope. No, sir.

15 Q. And the law says: Any reasonable  
16 doubt or a reasonable doubt. There don't have to be 20  
17 reasonable doubts, or 100 reasonable doubts, it's just  
18 one reasonable doubt is enough to acquit a defendant.  
19 And that is okay with you?

20 A. I agree.

21 Q. Do you think that is fair?  
22 A. I would like to know all the  
23 circumstances, but, yes, that would have to be.

24 Q. You know, one thing -- one thing that  
25 jurors do not get to do in a criminal case is solve the

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1 case. You are judges of the facts presented to you.  
2 And you are the exclusive judges of  
3 those facts. And whatever you say the facts are, that is  
4 what they are.  
5 And sometimes that reasonable doubt --  
6 there may be the facts that are presented, and within  
7 those facts, there are gaps, there are inconsistencies,  
8 there are things that just don't quite make sense, they  
9 don't have a common thread to them. And within those  
10 facts, you may say there is reasonable doubt.  
11 On the other hand, it may just simply  
12 be that there is something left out. Just a fact not  
13 covered, that in your mind says, there is a reasonable  
14 doubt.  
15 And you may say, "Gosh, I would really  
16 like to know who committed this crime." But -- and you

17 may be sitting there like you were saying a minute ago,  
18 saying, "Boy, I would really like to know more about  
19 this," but you may not.

20 And at that point you just have to as  
21 a juror say, "I am going to make my decision based on the  
22 facts that are before me."

23 A. Yes, sir.

24 Q. And even if there were still those  
25 questions lingering in your mind about who did this, or  
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1 what happened, in any criminal case, and I am just  
2 talking in generalities here, that even though that is  
3 left in your mind -- and you might even think, "You know,  
4 I think that defendant is probably guilty. Dadgumit, I  
5 have got this nagging doubt, and I think it's a  
6 reasonable doubt."

7 At that point, you might have to make  
8 a hard call and say not guilty. Do you have any problem  
9 with that at all?

10 A. No, sir. My problem is that what you  
11 are saying here -- because I have not heard anything, I  
12 mean, I realize what you are saying and these are  
13 situations that I don't know whether I am in, or whether  
14 I will be in. I would have to wait and be there.

15 Q. That's correct. And all I am trying  
16 to glean is if I can give you some understanding of the  
17 law, between Mr. Shook talking to you, and me talking to  
18 you about the law, that you can follow those, and that  
19 you can take those facts?

20 A. I believe I can.

21 Q. And say, if there is a reasonable  
22 doubt, then that's it?

23 A. That's it.

24 Q. Not guilty? It's the end of the  
25 story. And does that seem fair to you?  
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1 A. Right. Because he just told me the  
2 burden of proof is on the State, so if they don't prove  
3 it, then I don't have any recourse.

4 Q. Okay. One of the lawyers who's going  
5 to help in this case is Doug Mulder, and he always says,  
6 "That those who do the accusing, ought to have to do the  
7 proving." And does that make sense to you?

8 A. In a manner of speech, yes, sir.

9 Q. Now, there was some conversation with  
10 Mr. Shook about circumstantial evidence. And what the

11 State has to prove as circumstantial evidence is no  
12 different than what they have to prove with direct  
13 evidence.

14 But what they have got to do, the  
15 State has got to come together with all the bits and  
16 pieces of the evidence, and that all of them fit together  
17 in a logical sequence, and that all of those bits and  
18 pieces of circumstantial evidence just obliterate  
19 reasonable doubt.

20 The burden is the same, but the State  
21 has got to bring all of those bits and pieces of evidence  
22 and wipe out reasonable doubt completely. And I think  
23 you said that you could sit and judge the evidence and  
24 see if it made common sense or not, and require the  
25 State, whether it be direct or circumstantial evidence to  
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1 always prove guilt beyond a reasonable doubt, no matter  
2 what type of evidence it might be.

3 A. Yes, sir.

4

5 MR. RICHARD C. MOSTY: May I have a  
6 moment, Your Honor?

7 THE COURT: Yes, sir.

8

9 BY MR. RICHARD MOSTY:

10 Q. I can't remember whether this has been  
11 covered or not. But in any criminal case a defendant has  
12 no obligation to testify. I think Mr. Shook mentioned  
13 that the defense has no obligation to bring forward  
14 evidence, but do you think that you would draw any  
15 inference in a criminal case if a defendant did not  
16 testify?

17 A. Again, I am going to have to say I  
18 would need to know what led up to it, what advantage  
19 would it be, what disadvantage would it be.

20

21 THE COURT: Well, sir, that is the  
22 Fifth Amendment to the Constitution of the United States.

23 THE PROSPECTIVE JUROR: I understand.

24 THE COURT: No one is required to  
25 testify in any criminal trial if they are a defendant.

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1 Our founding fathers put that in to protect us from an  
2 all powerful sovereign accusing us of something we didn't  
3 do and you can't prove negatively, when did you stop  
4 beating your wife, things like this.

5 So, the defendant never has to do  
6 anything but show up when a trial starts, and cannot be  
7 asked to be a witness one way or another.  
8 If she wants to testify, no one can  
9 stop her. If she doesn't want to testify, no one can  
10 make her.  
11 If she testifies, she is to be  
12 considered like any other witness; what is her demeanor  
13 on the witness stand, what does she have to gain or lose  
14 by testifying the way she testifies, does her testimony  
15 comport with reality.  
16 But if she chooses not to testify, you  
17 cannot hold that against her for any reason whatsoever,  
18 nor can you require the defense attorneys to put on any  
19 evidence at all.  
20 When the State rests their case, they  
21 can say, "We rest," that is it. Whether you are decided  
22 or not on that, and you can't hold it against anybody  
23 over here because they didn't do anything.  
24 Some people can't do that. If you  
25 can't, both sides need to know that. Is that fair  
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1 statement?  
2 MR. RICHARD C. MOSTY: Yes, sir.  
3 THE COURT: If you require them to do  
4 anything other than show up, they have to know it.  
5 THE PROSPECTIVE JUROR: I was not  
6 aware of that, sir.  
7 THE COURT: Okay. You may be yearning  
8 to hear something, but you may not hear anything.  
9 But on the other hand, they may take  
10 three weeks to put their stuff on. But if they say  
11 nothing, you can't hold that against them for any reason  
12 whatsoever, or infer anything from it.  
13 MR. RICHARD C. MOSTY: Or we might  
14 take three weeks to put on testimony in a case and never  
15 call the defendant.  
16 THE COURT: That's right.  
17

18 BY MR. RICHARD MOSTY:  
19 Q. And the point of that is that you have  
20 to just say, like I said earlier, about you just judge it  
21 on whatever evidence is presented, and you don't  
22 speculate on what is not presented. Do you think you  
23 could do that?  
24 A. Yes, sir. I was not aware of what was  
25 just told to me.

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1 Q. Just that it's a non-event. If the  
2 defendant doesn't testify, that is a non-event. And you  
3 don't draw any inference from it whatsoever.

4 A. Yes, sir.

5 Q. Mr. Rollins, is there anything from  
6 what you have heard so far from either side or from the  
7 Court or that has just come up in your mind that we need  
8 to address? Is there any question you have got? Or any  
9 issue you have got in your mind that we need to address?

10 A. No, sir.

11 Q. Do you feel like you have got a fair  
12 understanding of -- you have got some understanding from  
13 your previous experience, but do you think you have got a  
14 fair understanding of what is going to happen in this  
15 case, and how a capital case differs a little bit from  
16 another one?

17 A. Yes, sir.

18 Q. This case is set to start trial in  
19 January, January 6th, for two, maybe three weeks.  
20 Timing-wise, is that any problem for you?

21 A. No, sir, I am retired.

22 Q. Okay. Some retired people are way  
23 more busy and more on the road than -- particularly  
24 around here, it seems like a lot of them take off a lot.  
25 Is there any reason you can think of

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1 that you could not be fair and impartial?

2 A. No, sir, none.

3 Q. Okay.

4

5 MR. RICHARD C. MOSTY: I will pass the  
6 witness.

7 THE COURT: Sir, would you mind  
8 stepping outside briefly, please. Don't go, we will call  
9 you back in just a minute.

10

11 (Whereupon, the prospective  
12 juror was excused from the  
13 room, and the following  
14 proceedings were held,  
15 outside of his presence  
16 as follows:)

17

18 THE COURT: What says the State?

19 MR. TOBY L. SHOOK: Judge, we are  
20 going to exercise a peremptory.

21 MR. RICHARD C. MOSTY: We'll excuse  
22 the juror.

23 THE COURT: Both sides exercise  
24 peremptories?

25 MR. RICHARD C. MOSTY: What did you  
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1 say?

2 MR. TOBY L. SHOOK: We already did it.

3 MR. RICHARD C. MOSTY: Oh, then I will  
4 save my strike.

5 THE COURT: All right.

6 MR. RICHARD C. MOSTY: I can't believe  
7 that. There just went all my jury selection knowledge  
8 right out the window.

9 THE COURT: Okay.

10 MR. TOBY L. SHOOK: I knew that would  
11 surprise you, Judge.

12 THE COURT: All right.

13 MR. RICHARD C. MOSTY: The Judge is  
14 astonished on both sides.

15 MR. CURTIS GLOVER: We want to  
16 reconsider the whole thing.

17

18 (Whereupon, the prospective  
19 juror returned to the  
20 room and the proceedings  
21 were resumed as follows:)

22

23 THE COURT: All right. Mr. Rollins,  
24 we want to thank you for coming, but you will be excused  
25 from further jury service. Don't discuss anything down  
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1 here that has occurred because the case isn't over yet.  
2 When it's over in February you can talk or not talk as  
3 you see fit. We have a gag order in effect until then,  
4 so please don't violate it. I can impose monetary or  
5 jail time sentence. I am not threatening you, I just  
6 have to tell you that.

7 THE PROSPECTIVE JUROR: All right,  
8 sir.

9 THE COURT: Thanks a bunch, we  
10 appreciate you coming.

11 THE PROSPECTIVE JUROR: All right,  
12 sir.

13 THE COURT: All right. Bring in the  
14 next juror. You are Sandra McElhannon,

15 M-C-E-L-H-A-N-N-O-N; is that correct, ma'am?

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: That's 203 on the jury

18 list, 71 on our list. All right. Ms. McElhannon, if you  
19 will raise your right hand, please.

20 Do you solemnly swear or affirm you

21 will true answers make to all the questions propounded to  
22 you concerning your qualifications as a juror, so help  
23 you God?

24 THE PROSPECTIVE JUROR: Yes, sir, I

25 do.

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1

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

9

10 THE COURT: You are here as a  
11 potential juror in the Darlie Routier matter. Mrs.  
12 Routier is the defendant, she is sitting over here to  
13 your far right. She is represented by her attorneys, Mr.  
14 Richard Mosty and Mr. Curtis Glover.

15 The State by Assistant District

16 Attorneys Toby Shook and Sherri Wallace. They are both  
17 from Dallas. Mr. Glover is from Dallas, and Mr. Mosty is  
18 from Kerrville. And we have also have involved from  
19 Dallas, Greg Davis, he is not here now; Douglas Mulder  
20 for the defense, he is not here now, and Preston Douglass  
21 for the defense, he is also from Kerrville.

22 You are going to be asked some

23 questions by both sides. If you will just answer them as  
24 briefly and right to the point as you can. There are no  
25 wrong answers. So just relax and tell us what you feel.

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1 Ms. Wallace. Okay.

2

3 MS. SHERRI WALLACE: May it please the  
4 Court.

5

6 Whereupon,

7

8 SANDRA S. MCELHANNON,

9

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

14

15 VOIR DIRE EXAMINATION

16

17 BY MS. SHERRI WALLACE:

18 Q. Good morning.

19 A Good morning.

20 Q. Are you nervous at all?

21 A. Yes.

22 Q. Okay. That is a pretty common  
23 feeling. And as the Judge said, there are no wrong  
24 answers, however you feel is all we're looking for.

25 I am going to talk to you a little bit

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1 about your questionnaire and talk to you about the death  
2 penalty in general, and how you feel about it. Then talk  
3 to you about some principles of law that apply in all  
4 criminal cases. Okay? Before we get started, do you  
5 have any questions for me?

6 A. No.

7 Q. I wanted to ask you: You saw all of  
8 the lawyers a couple of weeks ago. Did you know anyone?  
9 Particularly the local lawyers, either Richard Mosty, who  
10 is here, or Preston Douglass, who isn't with us right  
11 now?

12 A. I have seen them around the  
13 courthouse.

14 Q. Okay. And you work at the title  
15 company; is that right?

16 A. Yes.

17 Q. Okay. So, you just know them through  
18 business?

19 A. Yes.

20 Q. Okay. Anything about that  
21 relationship that would affect you as a juror?

22 A. No.

23 Q. Okay. And do you know both of them or  
24 just Mr. Mosty?

25 A. Both of them.

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1 Q. Okay. Let me ask you: How long have  
2 you lived in Kerrville? About 10 years, 11 years?

3 A. Yes, ma'am.

4 Q. You have got two children. How -- it  
5 says here that you are in favor of the death penalty if  
6 the defendant is proven guilty.

7 Tell me a little bit about your  
8 feelings about the death penalty. Why are you in favor  
9 of it?

10 A. I just am.

11 Q. What -- so you think it is a good law,  
12 you think it's a good idea?

13 A. Yes.

14 Q. What are your thoughts on that as to  
15 why?

16 A. I think if you are proven guilty, then  
17 it should be carried out.

18 Q. Okay. You said that you believe a  
19 death penalty is appropriate in all capital murder cases.

20 We had that list of things to circle. And I want to talk  
21 to you a little bit about the death penalty and the  
22 scheme of how it works here in Texas.

23 First off, not every murder is a  
24 capital murder. You have to have a murder kind of plus  
25 something else. For instance, if you murder two or more

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1 people, that is a capital murder.

2 If you murder a police officer in the  
3 course or in the line of duty, or prison guard or a  
4 fireman in the line of duty.

5 If you murder in the course of  
6 committing another felony; like, if you are raping  
7 someone and then you kill them; or you kidnap someone and  
8 then you kill them; and you go up here to the Circle-K  
9 and rob the clerk, and then kill the clerk.

10 Those would be crimes that would be  
11 eligible for the death penalty.

12 Additionally, if you -- murder for  
13 hire. If you hire a hit man, if you are the person that  
14 hires the hit man, you are eligible for the death  
15 penalty.

16 And, if you are the hit man, if you  
17 take money to perform a killing, then you are eligible  
18 for the death penalty. Or if you murder a child under  
19 the age of six which is the type of crime on trial here.

20 If you were the Governor of Texas,  
21 would you change that list in any way? Add to it, take  
22 away, alter it in any way?

23 A. No.

24 Q. Okay. That sounds like a fair --

25 types of cases that should be eligible for the death  
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1 penalty?

2 A. Yes.

3 Q. Okay. Let me tell you up front, is it

4 Ms. McElhannon; is that right?

5 A. McElhannon.

6 Q. It is our goal and desire to see that

7 that that woman down there is executed. We believe we

8 have the type of case and the quality of evidence to do

9 that. This penalty is a very real penalty. It's been

10 carried out in Texas over a hundred times. Could you

11 participate in that process?

12 A. I wouldn't want to, no.

13 Q. Okay. We wouldn't want somebody that

14 was auditioning for the job. What I want to know is: If

15 called on to serve, could you answer the questions

16 accordingly knowing that a death sentence would result?

17 A. Yes.

18 Q. Here in Texas it used to go like this:

19 You have two phases of the trial, you still have two

20 phases of the trial.

21 The first phase, you have the guilt or

22 innocence phase. You decided the State has proved their

23 case, yes or no, guilty or not guilty.

24 If it is not guilty, everybody goes

25 home. If we prove our case, if you believe the defendant

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1 committed the capital murder, you go to the punishment  
2 phase. And it's not automatic, the death penalty is not  
3 an automatic sentence. You can be convicted for capital  
4 murder and there's two choices; life or death.

5 Used to be, that is what the jury

6 wrote. There was a blank and the jury wrote either life

7 or death. That is not how it is anymore. Now the jury

8 answers two question.

9 And the two questions are up here and

10 we will get to them in a minute. But, basically, that is

11 the scheme. In order for the defendant to die, there

12 must be a guilty, a "yes" and than a "no." Okay?

13 Now, that first question, it says:

14 "Do you find from the evidence beyond a reasonable doubt

15 that there is a probability that the defendant would

16 commit criminal acts of violence that would constitute a

17 continuing threat to society?"

18 That question is presumed to be

19 answered "no." In other words, like the defendant is  
20 presumed not guilty; it is presumed that the defendant is  
21 not a continuing threat.

22 We must convince the jury beyond a  
23 reasonable doubt. You have to revisit the evidence, if  
24 you will. You cannot automatically say, "Well, I have  
25 found the defendant guilty of killing a child under the  
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1 age of six, so, therefore, automatically, I am not even  
2 going to rethink it, that equals 'yes.'"  
3 You have to look at the evidence. And  
4 here's where it's a little tricky; in the punishment  
5 phase, you may hear more evidence, and you may not. It  
6 might be that, at that phase, all you do is rethink about  
7 the first phase. Do you follow me?

8 A. Yes.

9 Q. Okay. It might be that you are called  
10 on to answer that question without having any more  
11 evidence, other than the facts of the offense alone.  
12 Do you believe in the proper case that  
13 you would be able to answer that question? That there  
14 would be a probability that the defendant would commit  
15 criminal acts of violence that would constitute a  
16 continuing threat to society, based on the facts of an  
17 offense alone?

18 A. Yes.

19 Q. Just depending on the case?

20 A. Yes.

21 Q. Is there anything that comes to  
22 mind -- or are there any types of crimes that come to  
23 mind -- well, let me back up a little bit. As I said,  
24 that question is presumed to be answered "no."

25 We have the burden of proof on that  
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1 question. You have to hold us to our burden to convince  
2 you beyond a reasonable doubt that she would probably be  
3 a future danger to summarize it.

4 Can you do that?

5 A. Yes.

6 Q. On your questionnaire you wrote that:

7 If you are in favor of the death penalty in some cases,  
8 do you agree that a life sentence, rather than the death  
9 penalty would be appropriate under the proper  
10 circumstances? And you checked no.

11 That is okay to have that feeling as a  
12 citizen, but as a juror, you must keep an open mind.

13 Will you do that?

14 A. Yes.

15 Q. And will you hold us, I think you said

16 you will hold us to our burden of proof on that first

17 question?

18 A. Yes.

19 Q. Let me ask you, ma'am, what does the  
20 word "probability" mean to you?

21 A. I'm not real sure.

22 Q. Okay. Let me tell you why I am asking  
23 you these things. The Judge is going to give you a lot  
24 of definitions. He will give you what is called a  
25 charge, and it has all sorts of law and it defines many  
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1 words, but you won't get a single definition for the  
2 words in that question. So, what those words mean to you  
3 matters to us. And there isn't a wrong or right answer,  
4 just whatever you think they mean.

5 Some people define the word

6 probability, the gentleman that was before you said, "A  
7 chance." I have heard, "more likely than not,"  
8 "possible," "probable," that is kind of using the word to  
9 define it. Where do you fit in there?

10 A. It's probable.

11 Q. More likely than not?

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

14 Q. Okay. Let me ask you: What comes to  
15 mind when you think of the phrase "criminal acts of  
16 violence"?

17 A. Where someone murders someone or rapes  
18 or assaults.

19 Q. What about -- so any sort of -- any  
20 sort of harm or injuries, is that what you are saying?

21 A. Yes.

22 Q. Okay. Would there have to be a weapon  
23 involved, or could it be injury or harm with your hand?

24 A. It doesn't have to be a weapon.

25 Q. Okay. And the word "society," before  
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1 I ask you that, I want to explain where I am coming from.  
2 We have had some people that think of society and they  
3 think, that gentlemen yesterday said, "All law abiding  
4 citizens." Okay? But I want to know if the word society  
5 for you includes people that are in the prisons?

6 For instance, prison guards, chaplains

7 that may be ministering help there, or psychiatrists or  
8 psychologists, cooks, relatives visiting inmates, inmates  
9 themselves; would society include everyone for you?

10 A. Yes.

11 Q. Before you there is an indictment in  
12 this case. If you could read the typewritten portion and  
13 let me know when you finish.

14 A. Okay.

15 Q. That is what we must prove to you  
16 beyond a reasonable doubt. We have that burden of proof.  
17 And, I see on your questionnaire that you have heard  
18 about this case and read about it in the newspapers.

19 A. Yes.

20 Q. And television, I think -- no, word of  
21 mouth. That is fine. This case has gotten a lot of  
22 publicity and a lot of press. And that is frankly the  
23 reason why we're here in Kerrville is to try to get away  
24 from Dallas and get away from some of the -- we know we  
25 can't get away from all of it.

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1 There is nothing wrong with having  
2 heard about the case. There is nothing wrong with being  
3 curious about the case, finding the case interesting,  
4 finding the case horrible. All of those feelings are  
5 fine as a citizen. But as a juror, you must set aside  
6 what you have heard and hold us to our burden of proof on  
7 the indictment.

8 I guess the best reason for that  
9 happened, well, now it's been a couple of weeks. Do you  
10 remember the case in Georgia, Richard Jewell? The  
11 gentleman that was accused, in the press anyway, of  
12 planting the bomb at the Olympics.

13 A. Yes.

14 Q. Okay. And, you know, pretty much the  
15 press had tried him and hung him out to dry. And then  
16 the FBI comes back and says, "We have zero evidence."  
17 And it's because of cases like that  
18 that this part of the law is so important. That you wait  
19 and hear the evidence in the courtroom and come to the  
20 courtroom with an open mind and hold us to our burden of  
21 proof. Could you do that?

22 A. Yes.

23 Q. On the indictment, again, is what we  
24 must prove to you beyond a reasonable doubt. And we can  
25 do that through all sorts of types of evidence. Okay?

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1 Really, they come down, they fall into  
2 two categories; either direct or indirect evidence.  
3 Direct evidence is an eyewitness. Okay? "I saw John  
4 kill Sue."  
5 As you can imagine, I know this isn't  
6 something you sit around and think about, but in many  
7 murder cases, we don't have an eyewitness because the  
8 eyewitness is dead.  
9 The defendant, the murderer, controls  
10 how many witnesses there are to a crime. They pick the  
11 time, they pick the place, they pick the witnesses. So,  
12 if you are going to be a murderer, you are going to pick  
13 the time when there is only one witness and you kill  
14 them. Fair enough?  
15 A. Okay.  
16 Q. So, many times in murder cases, the  
17 State must rely on another type of evidence known as  
18 indirect evidence or circumstantial evidence, and that is  
19 everything else.  
20 That is: Fingerprints, photographs,  
21 DNA, defendant's statements that don't comport with the  
22 crime scene, blood spatters, blood evidence, fibers,  
23 things like that. It is everything else. If we prove to  
24 you from circumstantial evidence alone the indictment,  
25 beyond a reasonable doubt, would you be able to find the  
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1 defendant guilty of capital murder?  
2 A. Yes.  
3 Q. Also, on that indictment, it's all we  
4 have to prove to you. Let me tell you where I am going  
5 with this: Motive or why a crime happened is not  
6 required to be proved in the State of Texas. There is a  
7 great reason for that. As you know from the Judge's  
8 comments a couple weeks ago, the defendant has an  
9 absolute right not to testify. You can't use that  
10 against her.  
11 So, in any number of cases, it may be  
12 that you hear the evidence and the motive is clear, it's  
13 clear as a bell.  
14 Or, it may be that it is one of  
15 several motives and you are not really sure which, but  
16 you haven't heard from the defendant, so you don't know.  
17 Or it may be -- I have had many trials where juries have  
18 said, "Why?"  
19 And it may be that we never know.  
20 Because we can't -- the reason is locked in the mind of  
21 the defendant. The victim is just as dead, but we may  
22 never know why.

23 If you don't know why, if you don't  
24 know the motive, but if you believe the defendant did it  
25 beyond a reasonable doubt, would you be able to return a  
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1 verdict of guilty?

2 A. Yes.

3 Q. If, in fact, a verdict of guilty was  
4 returned, then we go to this first question. We talked  
5 about that, that would be the second phase of the trial.  
6 And we talked a little bit about what that means to you,  
7 the words, "probability and criminal acts of violence,  
8 and a continuing threat to society."

9 If that question is answered "no," if  
10 we don't meet our burden of proof, if we fall on that  
11 question in your mind, it's "no" and we all go home.  
12 Well, the defendant gets a life sentence. But, I mean,  
13 we don't go on to the next question.

14 If, in fact, you answer the question  
15 "yes," we do go to the next question. And let's take a  
16 look at that, if you would.

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

24 If I could summarize that, basically,  
25 it says, after you have heard everything, if you decide,  
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1 only you, not the Judge, not us, or not another juror,  
2 but if you think that the right thing to do in this case  
3 is for the defendant to get a life sentence, will you be  
4 open-minded to that? Okay?

5 Now, it may be that you hear and you  
6 sit as a juror in 500,000 capital murder cases, and you  
7 may never hear something where you think it is sufficient  
8 mitigation, or something that lessens somebody's  
9 responsibility or moral blameworthiness, you may never  
10 think there is a good reason to change the verdict to a  
11 life sentence.

12 But as a juror, you must keep an open  
13 mind and say, "Well, I don't know what it is, but I will  
14 know it when I see it." Can you do that?

15 A. Yes.

16 Q. Is there anything that comes to mind  
17 when you see the word "mitigating"? I mean, that word  
18 has been defined in case law, as I think I said earlier,  
19 something that lessens somebody's moral blameworthiness.  
20 In other words, the defendant is still guilty, and the  
21 defendant is still a continuing threat or a future  
22 danger, but something in their background, for some  
23 reason you don't think it's right or just to give them a  
24 death sentence.  
25 This question came about from a person  
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1 who was mentally retarded, that is kind of the  
2 background. It's not always a reason to give a life  
3 sentence, but it's -- the Court's decided that there  
4 needed to be a safety net, some sort of an out for the  
5 jury. I have heard it described as stopping the train.  
6 Okay?

7 Is there anything that comes to your  
8 mind that could be mitigating?

9 A. Yes.

10 Q. Okay. What would that be?

11 A. I think, like you said, if they had a  
12 problem.

13 Q. Okay. A mental defect of some sort?

14 A. Right.

15 Q. Let me also run by some other things  
16 and see how they cut with you. As I said earlier, you  
17 don't have to tell me right now what you find mitigating.  
18 Certainly, you haven't heard anything.

19 I don't want you to know  
20 automatically. But just see what your -- how your  
21 instincts are about certain things.

22 For instance, young age. Some people  
23 think, "Well, if they are already doing this at this  
24 young age, then that is really bad, that is aggravating."

25 And some people think, "Well, if they  
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1 are that young, maybe a death penalty is not appropriate.  
2 That would be mitigating." How do you feel about age?

3

4 MR. RICHARD C. MOSTY: Your Honor, I  
5 think that unfairly asks for a commitment.

6 THE COURT: I'll sustain the  
7 objection. Let's move on.

8

9 BY MS. SHERRI WALLACE:

10 Q. Well, let me ask you: Is age  
11 something you would consider?

12 A. Yes.

13 Q. Okay. Is a poor upbringing or  
14 background something you would consider?

15 A. No.

16 Q. What about an allegation of prior  
17 abuse as a child?

18

19 MR. RICHARD C. MOSTY: Again, I think  
20 that also calls for --

21 THE COURT: I'll sustain the  
22 objection. Let's move on. We're not talking about  
23 specifics here.

24

25

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1 BY MS. SHERRI WALLACE:

2 Q. Is there anything else that comes to  
3 your mind that you would consider?

4 A. Not that I can think of right now.

5 Q. Okay. I want to talk to you a little  
6 bit about all of the laws that apply in all criminal  
7 cases, as in a death penalty.

8 The Judge has covered the fact that

9 the defendant is presumed innocent. That is another way  
10 of saying we have the burden of proof in this case. And  
11 I want to refer to your questionnaire. It says that: If  
12 a person is accused of capital murder, she should have to  
13 prove her innocence. And you said, you strongly agree.

14 We have seen a lot of that, and I

15 think that is a pretty common feeling among the people.  
16 That if you were charged with capital murder, you would  
17 want to stand up and say something, but the law doesn't  
18 provide for that. We have the burden of proof, you must  
19 look to this table to prove everything.

20 These lawyers do not have to do a  
21 single thing. Okay? I told you we were actively seeking  
22 the death penalty, and they are going to fight us every  
23 step of the way, but they don't have to.

24 All they have to do is show up, the  
25 defendant has to show up, and she has met that

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1 obligation. And as you know, she has an absolute right  
2 not to testify and you may not use that against her.

3 Now, it's human nature to want to hear

4 both sides of the story, and that is fine as a citizen,  
5 but that is not fine as a juror. So, can you follow the  
6 law and hold us to our burden of proof, and not make them  
7 prove anything?

8 A. Yes.

9 Q. In this case, you have looked at the  
10 indictment and the Judge told you a couple weeks ago the  
11 indictment is no evidence of guilt. You cannot consider  
12 that for any reason. Could you follow that law?

13 A. Yes.

14 Q. The fact that she has been arrested or  
15 charged means nothing until we prove the case?

16 A. Right.

17 Q. In this case, you may also see  
18 gruesome photographs. They are part of the evidence or  
19 could be part of the evidence in this case. And can you  
20 just look at those for what they are and still hold us to  
21 our burden of proof?

22 A. I don't know.

23 Q. Okay. It is difficult in many murder  
24 cases for a jury to look at a photograph, but what I am  
25 asking with this question is: We still have to be held  
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1 to our burden of proof.  
2 Even if -- a horrible crime has been  
3 committed. But if we have the wrong person, it doesn't  
4 do anybody any good to convict the wrong person. Fair  
5 enough?

6 A. Right.

7 Q. Okay. So, if you see gruesome and  
8 gory photographs, you can't automatically convict this  
9 defendant. We still have to prove that this defendant  
10 did it. Fair enough?

11 A. Right.

12 Q. Okay. All the witnesses that testify  
13 must start off the same. In other words, anybody, before  
14 you hear from them, you have to judge them the same.  
15 There will be police officers that will testify in this  
16 case. And I have heard a defense attorney say, "Would  
17 you believe a police officer simply because he is a  
18 police officer?"

19 Really that is kind of a trick

20 question. I'm not saying that these gentlemen would do  
21 it, but you can wait and hear someone's training and  
22 experience, and after you hear that, you may give them  
23 credibility. But you just can't have somebody walk in  
24 here in a uniform and say, "I am automatically going to  
25 believe whatever they say." And when you put it like

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1 that, of course, that doesn't even make sense.

2 But could you hold all witnesses on

3 the same plane and judge them equally, and wait until you

4 hear from them to decide if they are telling you the

5 truth?

6 A. Yes.

7 Q. The -- in the punishment phase, the

8 Judge will instruct you that you cannot consider parole

9 for any reason. And there is a really good reason for

10 that, the Parole Board is in charge of parole.

11 The Judge has nothing to do with it,

12 the jury doesn't, we don't, no one except the Board of

13 Pardons and Paroles, and that changes with every

14 governor. And because of that and because there is no

15 control over that issue, the jury must not consider

16 parole for any reason, and assume that a life sentence is

17 just that, a life sentence. Could you do that and follow

18 that law?

19 A. Yes.

20 Q. Do you have any questions for me?

21 A. No.

22 Q. All right. Thank you so much.

23 MS. SHERRI WALLACE: We will pass the

24 juror.

25 THE COURT: Mr. Glover.

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## 1 VOIR DIRE EXAMINATION

2

3 BY MR. CURTIS GLOVER:

4 Q. Ms. McElhannon, I noticed on your

5 questionnaire that you indicated that you had read or

6 perhaps talked with some folks about the facts of this

7 case. Can you kind of tell us what that was all about?

8 A. I just read it in the newspaper and we

9 discussed it at work.

10 Q. Okay. Was that back when it occurred,

11 or when it came here to Kerrville? Or do you recall?

12 A. When they said they were going to

13 transfer it.

14 Q. Okay. What do you recall that you

15 read?

16 A. That some woman killed her two kids.

17 Q. Okay.

18 A. Was accused of it.

19 Q. Okay. And who did you discuss that

20 with?

21 A. The people at work.

22 Q. Okay. That is --

23 A. And my husband.

24 Q. Okay. What did they have to say about

25 it?

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1 A. I don't really remember. We just

2 talked about it, that it was being transferred here.

3 Q. Okay. What did you conclude as a

4 result of what you read or what they said?

5 A. Nothing really, we just talked about

6 it.

7 Q. Okay. Did you gather any kind of an

8 opinion one way or the other?

9 A. No.

10 Q. Okay. So, you are telling us here

11 today that you have no opinion whatsoever about the guilt

12 or the innocence of the defendant in this case?

13 A. No.

14 Q. Okay. Of course, they have gone over

15 with you the rules of law that are going to be involved,

16 the fact that an indictment is no evidence of guilt, and

17 the burden of proof lies here. And I just want to get

18 back to something that you said here in your

19 questionnaire: That if a person is accused of capital

20 murder, she should have to prove her innocence. Do you

21 agree with that?

22 A. I think it should be proven, yes.

23 Q. Okay. You made the statement though

24 that you feel like she should have to prove her

25 innocence. Do you feel that way today?

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1 A. Yes.

2 Q. Okay. And that is knowing that the

3 burden of proof is on the State. That if you went back

4 to the jury room, and certain questions came up and you

5 said, "Only she could resolve that," or "Only she has the

6 answers to those questions," then you feel in your heart

7 of hearts that she should have to prove her innocence in

8 a capital murder case?

9 A. I think it should be proven, yes. As

10 to who proves it, I don't know.

11 Q. Okay. But you made the statement in

12 your questionnaire that if she is accused of capital

13 murder, she should have to prove her innocence. Do you

14 agree with that?

15 A. I guess.

16 Q. We need an answer yes or no.

17 A. Yes.

18 Q. Okay.

19

20 MR. CURTIS GLOVER: We submit the

21 juror, your Honor.

22 THE COURT: Ma'am, you will receive an

23 instruction that the State does the accusing, they have  
24 to do the proving. They don't have to do one thing.

25 They show up when the trial starts, that's all they have

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1 to do.

2 Mrs. Routier doesn't have to testify.

3 They don't have to offer any evidence. Are you still  
4 going to require them to say something before you could  
5 find her not guilty?

6 THE PROSPECTIVE JUROR: Not if they

7 are not required, no.

8 THE COURT: Okay. Do you understand

9 when the State's case is over, if you have a lot of  
10 questions about what they did --

11 THE PROSPECTIVE JUROR: Right.

12 THE COURT: -- and the defense says

13 nothing, and you are saying to yourself, "I sure wish  
14 that I could hear from her." Can you ignore that and  
15 follow the law? Put aside your predisposition that you  
16 wanted her to prove something and follow the law?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. Go ahead.

19

20 BY MR. CURTIS GLOVER:

21 Q. You understand, Ms. McElhannon, that

22 there is no requirement under our law that you agree with  
23 the law. I mean, there are many laws that I disagree  
24 with.

25 And simply because you are here in  
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1 this courtroom today, if there is particular law that you  
2 are confronted with, if you are predisposed to say,  
3 "Well, I don't agree with that." Then you have a perfect  
4 right to do that.

5 And you had made the statement here

6 that if a person is accused of capital murder then she  
7 should have to prove her innocence. And you strongly

8 agreed with that. And you checked that on your  
9 questionnaire. Do you recall that?

10

11 MS. SHERRI WALLACE: Your Honor, I am  
12 going to object as asked and answered.

13 THE COURT: Well, she said two -- I'm  
14 going to go ahead and let her go into this because she  
15 said one thing to you and said another thing over here,  
16 and we have got to find out what she means.

17 MR. CURTIS GLOVER: Let me show you  
18 the questionnaire, if I could, Ms. McElhannon.

19 THE PROSPECTIVE JUROR: Okay.

20

21 BY MR. CURTIS GLOVER:

22 Q. It says: If a person is accused of  
23 capital murder, she should have to prove her innocence.  
24 And you circled strongly agree.

25 A. Okay.

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1 Q. Do you still feel that way today?

2 A. I think it should be proven, yes.

3

4 THE COURT: Thank you. Anything?

5 MR. CURTIS GLOVER: We submit the  
6 juror.

7 THE COURT: Thank you. You are  
8 excused, ma'am, thank you very much for coming. Please  
9 don't say anything about what went on here today.

10 When the trial is over, you may talk  
11 or not talk as you see fit. I do have a gag order on,  
12 and I can impose monetary or jail time sanctions.  
13 I'm not trying to threaten you, but I  
14 know you won't do it. Thank you so much.

15 THE PROSPECTIVE JUROR: Okay.

16 THE COURT: All right. Let's take a  
17 brief break, a 10 minute break.

18

19 (Whereupon, a short  
20 recess was taken, after  
21 which time, the  
22 proceedings were  
23 resumed in open court,  
24 in the presence and  
25 hearing of the

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1 Defendant, being

2 represented by her  
3 Attorney, as follows:)

4

5 THE COURT: All right. Back on the  
6 record. What we will do in the future is call the jurors  
7 in order as much as they are able to be called in order,  
8 absent any illness, emergencies, things of this nature.  
9 You might want to go through these things with both  
10 sides. If there are some that are obvious, let us know.  
11 We have a couple of these judgmental people for religious  
12 or philosophical reasons, and we know where that is  
13 going.

14 MS. SHERRI WALLACE: Richard, do you  
15 want to agree already on Mr. Lardie this afternoon? He  
16 is a Jehovah's Witness.

17 THE COURT: Well, let's go off the  
18 record a minute.

19

20 (Whereupon, a short  
21 Discussion was held  
22 Off the record, after  
23 Which time the  
24 Proceedings were resumed  
25 As follows:)

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1  
2 THE COURT: All right. Let's bring in  
3 the juror. All right. Have a seat right over here  
4 please.

5 You are Carl, C-A-R-L, Scott,  
6 S-C-O-T-T, Farris, F-A-R-R-I-S?

7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: All right. This is -- Mr.  
9 Farris is number 65 on our list, 187 on the jury list.  
10 If you will raise your right hand,

11 please.  
12

13 Do you solemnly swear or affirm you  
14 will true answers make to all the questions propounded to  
15 you concerning your qualifications as a juror, so help  
16 you God?

17 THE PROSPECTIVE JUROR: I do.  
18

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

24 which time, the proceedings were  
25 resumed as follows:  
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1  
2 THE COURT: All right. You are here  
3 as a potential juror in the Darlie Routier case.  
4 Mrs. Routier is the defendant. She is  
5 sitting right there with her attorneys, Richard Mosty and  
6 Curtis Glover. Mr. Mosty is from Kerrville and Mr.  
7 Glover is from Dallas. There are two other attorneys  
8 representing her, Preston Douglass from Kerrville and Mr.  
9 Douglas Mulder from Dallas.  
10 The State of Texas is represented  
11 today by representatives from the District Attorney's  
12 Office of Dallas, Toby Shook and Sherri Wallace. There  
13 is another District Attorney, Greg Davis, he is not here  
14 yet, and won't be here for these proceedings.  
15 What we are going to do today, both  
16 sides are going to ask you some questions about how you  
17 feel about certain things, there are no wrong answers.  
18 We just want you to lean up and you can speak into that  
19 mike, pull the mike back. If you could answer questions  
20 right to the point, briefly, and tell exactly how you  
21 feel about certain things. Nobody is trying to trick you  
22 or anything.

23 THE PROSPECTIVE JUROR: Okay.

24 THE COURT: All right. Fair enough.

25 Okay. Mr. Shook.

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1 Whereupon,  
2  
3 CARL SCOTT FARRIS,  
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. Farris, again, my name is Toby  
14 Shook, I am with the prosecution and I am going to ask  
15 you some questions on behalf of the State this morning.  
16 Like Judge Tolle said, we just want your honest opinions  
17 on these issues. Okay?

18 A. Okay.

19 Q. Let me go over a couple of things here  
20 in your questionnaire. You started off, you did check  
21 yes that you had heard about the case and read about the  
22 case.

23 A. Yeah.

24 Q. Tell me a little bit about what you  
25 have heard.

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1 A. I read in the Kerrville Daily Times  
2 that five and six year old boys were stabbed to death,  
3 knife was found outside in a dumpster near garbage cans,  
4 wrapped up in a sock. That's all I have heard.

5 Q. Okay. Let me ask you this: It's all  
6 right for jurors to read things, but sometimes jurors,  
7 obviously, form opinions about what they read. Have you  
8 formed any opinions about guilt or innocence at all?

9 A. No.

10 Q. Okay. So, you can keep your mind open  
11 to that?

12 A. Yeah.

13 Q. All right. And you have lived here in  
14 the Kerrville area for most of your life; is that right?

15 A. Yes, sir.

16 Q. Okay. And it looked like, going over  
17 your questionnaire --

18 A. I was born in Dallas, Texas.

19 Q. Right.

20 A. And we moved to Kerrville in 1972.

21 Q. You have had a kidney transplant?

22 A. Yes, sir.

23 Q. And I guess you take medication for  
24 that now; is that right?

25 A. Yes, sir. I have also been a diabetic

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1 for 31 years, been a diabetic all of my life.

2 Q. Is there anything about your medical  
3 condition that would cause you any problems sitting as a  
4 juror?

5 A. No. Huh-uh. (Witness shaking head  
6 negatively.)

7 Q. So you are fine right now?

8 A. Oh, yeah.

9 Q. Okay.

10 A. Fine, no problem.

11 Q. You have worked as a ranch manager, I

12 believe, and --

13 A. Worked as a ranch manager for Roma

14 (phonetic spelling) Corporation out of Bandera, Texas. I

15 worked for Pep Boys Automotive, also worked for Scotties

16 Mobile Home Service.

17 Q. Okay. Are you employed at this time?

18 A. No.

19 Q. What are you doing at this time?

20 A. Right now I'm disabled, they won't let

21 me go to work. I also have diabetic retinopathy, that is

22 the third leading cause of blindness.

23 Q. Okay.

24 A. And I'm blind in my left eye, I am

25 going blind in my right eye.

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1 Q. Okay. So that --

2 A. See, my eye sight doesn't let me -- I

3 can't see, I don't have depth perception. I don't have

4 peripheral vision either, so, it's kind of hard to --

5 Q. Okay. Kind of hard on ranch work and

6 that kind of stuff?

7 A. Yes, sir.

8 Q. Let me go directly then to how you

9 feel about the death penalty. You know from what the

10 Judge has told you and maybe what you have read, that the

11 State is seeking the death penalty in this case. We want

12 to explore everyone's personal feelings about the death

13 penalty. How do you feel about the death penalty as a

14 law?

15 A. It's fair. I figure if you kill

16 somebody and you get caught doing it, and you get tried

17 and you get found guilty, why waste the taxpayer's money

18 throwing them in jail, go ahead and kill them.

19 Q. Okay. What types of crimes do you

20 think are appropriate for the death penalty?

21 A. Well, killing somebody.

22 Q. Any type of murder case?

23 A. Yes, sir.

24 Q. Okay. Have you ever been against the

25 death penalty?

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1 A. Nope.

2 Q. Okay. Well, Let me ask -- well, I

3 think I know the answer, you have had an interesting

4 answer, I like this: We talk about criminal history,

5 sometimes people are tried with long criminal histories;

6 and sometimes people are tried for the death penalty that  
7 have no criminal history. Just can decide some of these  
8 issues on the facts of the case alone.

9 We asked you this question: Do you  
10 believe that there are some crimes which call for the  
11 death penalty solely because of their facts and  
12 circumstances, regardless of whether or not the guilty  
13 person has committed prior violent acts?

14 And you said yes. And your answer  
15 was, "If the facts and circumstances point, you did it,  
16 oh, well, cancel Christmas."

17 A. That's right.

18 Q. That is how you feel about it?

19 A. Yes, sir.

20 Q. Okay. Just kind of let the cards fall  
21 where they may, but you commit the crime, then you should  
22 be punished for it?

23 A. That's right.

24 Q. Okay. In Texas, there are only  
25 certain types of crimes that call out for the death  
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1 penalty. First of all, it has to be a murder case. It  
2 has to be a specific type of murder case.  
3 You have to have murder plus something  
4 else. You probably read about some of them; murder  
5 during the course of a felony.

6 Go into a 7-Eleven and shoot the clerk  
7 during a robbery, that could be a death penalty case.  
8 Going into someone's house and  
9 breaking into it, that could be a death penalty case, you  
10 break in, commit a burglary; during a rape; during a  
11 kidnapping; those are death penalty-type cases. Also,  
12 murder of a police officer while he is on duty, or a  
13 fireman on duty, or a prison guard on duty, mass murder,  
14 or murdering someone for hire, that could be a death  
15 penalty situation.

16 Let me let you look at the indictment  
17 in this case, which I think is in front of you. Do you  
18 see that piece of paper there, with the paragraph set  
19 out? Read that to yourself real quick.

20 That sets out allegations of  
21 intentional killing of a child under the age of six. I  
22 can't ask you for your verdict in this case, but is that  
23 the type of case you think should call out for the death  
24 penalty under the proper facts and circumstances?

25 A. Yeah.

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1 Q. Okay. Just depending on the facts and  
2 circumstances?

3 A. Yes, sir.

4 Q. Okay. The way the procedure works is  
5 this: If the -- in the first part of the trial we have  
6 to prove that indictment to you beyond a reasonable  
7 doubt. If we do that, we're entitled to a guilty  
8 verdict. We then move to the punishment phase. You  
9 might hear more evidence, you may not hear anything.  
10 Okay?

11 At the close of that evidence, you get  
12 these first questions. That first question asks you  
13 this: "Do you find from the evidence beyond a reasonable  
14 doubt that there is a probability that the defendant  
15 would commit criminal acts of violence that would  
16 constitute a continuing threat to society?"

17 See that question asks the jury to  
18 make a prediction about the future. We have to prove  
19 that it should be answered "yes."

20 Let me ask you, Mr. Farris: Do you  
21 think that you could answer that question "yes" depending  
22 on the facts of the case, if it was proven to you?

23 A. Yeah, but it depends on the facts of  
24 the case.

25 Q. Okay. What would be important to you  
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1 in deciding about predicting someone's future behavior?

2 A. Frame of mind.

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

4 A. Well, what set her off to supposedly  
5 do what she did in the first place, and could it happen  
6 again.

7 Q. Okay. That would be some of the  
8 important factors to you?

9 A. Yeah.

10 Q. Okay. We have to prove and -- and let  
11 me tell you this: These words contained in the sentence,  
12 you're not going to get legal definitions. Those are  
13 going to be up to you and the other jurors. Okay?

14 A. Okay.

15 Q. We have to prove that it's a  
16 probability the defendant would commit criminal acts of  
17 violence. When you see the word "probability" there,  
18 what does that mean to you?

19 A. It could happen.

20 Q. Okay. What about "criminal acts of

21 violence," what does that mean to you?

22 A. Going out and killing somebody,

23 breaking and entering, stealing, selling drugs, about it.

24 Q. Okay. All types of felony offenses?

25 A. Yes.

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1 Q. Okay. Let me go to this second

2 question, that is the last question you get to. That is

3 what is called the mitigation question, and it gets kind

4 of lengthy. We didn't write these things up, the

5 legislature did that.

6 A. Okay.

7 Q. "Taking into consideration all of the

8 evidence, including the circumstances of the offense, the

9 defendant's character and background, and personal moral

10 culpability of the defendant, is there a sufficient

11 mitigating circumstance or circumstances to warrant that

12 a sentence of life imprisonment rather than a death

13 sentence be imposed?"

14 See where that question there -- it's

15 kind of a safety valve question. You have already found

16 the defendant guilty, you have already found they're a

17 continuing danger to society. Which you can look at the

18 evidence and decide, "Well, I see something maybe in the

19 background here that they should get a life sentence

20 rather than a death sentence."

21 Your mind has to be open to that type

22 of question. We can't tell you what that type of

23 evidence would be. Do you think you could keep your mind

24 open to that type of evidence? After you have found them

25 guilty, and after you have found them to be a continuing

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1 danger?

2 A. No, if I found them to be a continuing

3 danger because killing a five or six year old kid, they

4 haven't had a chance to live, no way.

5 Q. Okay.

6 A. Nope.

7 Q. All right. If you found someone

8 guilty for the charge, and I can't commit you to any

9 facts, but guilty of the offense of murdering a child

10 under the age six, do you think they should ever -- their

11 life should ever be spared?

12 A. No.

13 Q. Because the child is a victim; is that

14 why you feel that way?

15 A. Yep.

16 Q. Okay. Do you think that if you found  
17 someone guilty of capital murder in an indictment where  
18 it was the murder of a child, would you always answer  
19 question number 1 "yes"? That they would be a continuing  
20 danger because of that type of act?

21 A. Yes.

22 Q. Okay. And if you had found someone  
23 guilty of that type of capital murder, you are never  
24 going to answer that last question "no"? I mean "yes,"  
25 in order to spare their life. That should be answered

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1 "no" then?

2 A. That's right.

3 Q. Okay. You see the way this question  
4 works, you don't write life or death in, you know. We  
5 get a "yes" answer to that first question, and a "no"  
6 answer to the second, it's a death sentence. Judge Tolle  
7 has no choice. Okay?

8 A. Okay.

9 Q. If you answer them any other way, a  
10 "no" to that first question, or a "yes" answer to the  
11 second one, he will give a life sentence. And that last  
12 question is a way out for the jurors to look at the  
13 evidence, and if they think even though the person is  
14 guilty of capital murder, or even though they are a  
15 continuing danger, they might see something in the  
16 defendant's background that they think a life sentence  
17 should be appropriate.

18 You are telling me that because of the  
19 indictment, murder of a child under the age of six, that  
20 you would always answer that first question "yes," they  
21 would be a continuing danger? And you are not going to  
22 answer that question in a way that they are going to get  
23 a life sentence?

24 A. Nope.

25 Q. They just need a death sentence for  
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1 their offense?

2 A. That's right.

3 Q. Okay. Well, that is fair enough.

4 Then your mind is not open to that last question?

5 Because you don't think anyone's life should be spared  
6 for that type of offense; is that what you're telling us?

7 A. Yes, sir.

8 Q. Okay. Let me go with you -- I hear

9 what your saying. Okay? But sometimes we have to ask  
10 more questions, so I'm not trying to argue with you. All  
11 right?

12 A. Go ahead.

13 Q. Can you be a little bit more patient  
14 with me?

15 A. Sure, go ahead.

16 Q. Okay. This second question on  
17 mitigation, that -- I can't tell you what mitigating  
18 evidence is going to be. That is going to be up to you  
19 and the other jurors?

20 A. Right.

21 Q. Okay. For instance, I'll give you  
22 some examples: One juror, some guy had a Ph.D. from  
23 Harvard, he might think that is mitigating evidence that  
24 the guy should get a life sentence.

25 Another juror might say, "No, someone  
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1 that smart shouldn't commit capital murder anyway." See,  
2 they don't have to agree.

3 Mitigation could be anything.

4 Mitigation can cover things like, maybe the defendant is  
5 mentally retarded, you know. Knew right from wrong, but  
6 because of the way they were born they have a defect.

7 Okay?

8 Still knows right from wrong, they're  
9 not saying anything like that. Okay?

10 A. Okay.

11 Q. Some people say, "Maybe that is  
12 mitigating," and other people say, "No. If you go out  
13 killing people, even if you're slow, that doesn't excuse  
14 your conduct." Do you understand where I am coming from?

15 A. Yes, sir.

16 Q. Do you -- does that cut one way or the  
17 other with you?

18 A. No.

19 Q. Do you still feel they should be  
20 accountable for their acts?

21 A. That's right.

22 Q. Okay. Fair enough. Sometimes people  
23 go out and commit crimes under the influence of drugs or  
24 alcohol. Some people might view that as mitigating,  
25 other people say, "No, got to be held accountable."

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1 A. That's right, you shouldn't have been  
2 taking the drugs to begin with.

3 Q. Okay. Sometimes you hear testimony,  
4 well, this person has had a real bad childhood. Maybe  
5 they were sexually abused, mentally abused, physically  
6 abused; some people say, "That's mitigating." Other  
7 people say, "No, it's happened to lots of people. You  
8 can't go out killing."

9 A. That's right.

10 Q. Okay. So, you would say that the way  
11 you feel is, if someone is guilty of capital murder for  
12 this type of offense, your mind is not going to be open  
13 to this mitigating evidence? They have got to pay?

14 A. That's right.

15 Q. Okay. So, you would never answer that  
16 question the way it's going to spare anyone's life; is  
17 that what you are telling us?

18 A. That's right.

19 Q. Okay. In fact, this first question  
20 about the continuing danger, if you had found them guilty  
21 of capital murder you are always going to answer that one  
22 "yes"?

23 A. Yes, sir.

24 Q. Okay.

25

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1 MR. TOBY L. SHOOK: Judge, we will  
2 submit the juror.

3 MR. RICHARD C. MOSTY: No objection.

4 THE COURT: Thank you for coming, sir.

5 Your services will no longer be needed. We do have a gag  
6 order in effect, please do not discuss the case with  
7 anybody. I can impose monetary sanctions or jail time.  
8 I'm not threatening you. At any rate, when the trial is  
9 over, later part of January, first part of February, you  
10 may talk to anybody as you see fit. Good luck to you.

11 THE PROSPECTIVE JUROR: Yes, sir.

12 Thank you, sir.

13 THE COURT: Okay.

14

15 (Whereupon, a short  
16 Recess was taken,  
17 After which time,  
18 The proceedings were  
19 Resumed on the record,  
20 In the presence and  
21 Hearing of the defendant,  
22 As follows:)

23

24 THE COURT: All right. Let's go back

25 on the record. This is after the lunch recess, I thought  
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1 that we had agreed that we could call some of these  
2 people out of order.  
3 Ms. Schilling, come on up here please,  
4 ma'am. Would you have a seat right up there, please.  
5 You are Ella, E-L-L-A, Schilling, S-C-H-I-L-L-I-N-G; is  
6 that correct?

7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: If you will raise your  
9 right hand, please.

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

14

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

22

23 THE PROSPECTIVE JUROR: I do.  
24 THE COURT: Thank you, ma'am. You are  
25 a prospective juror in the Darlie Routier matter. Mrs.  
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1 Routier is sitting right there to your right between her  
2 attorneys, Mr. Richard Mosty and Curtis Glover. Mr.  
3 Mosty is from Kerrville and Mr. Glover is from Dallas.  
4 Also, Mr. Preston Douglass from Kerrville is here also.  
5 The State is being represented today  
6 by two Assistant District Attorneys from Dallas County,  
7 Toby Shook and Sherri Wallace.  
8 They are going to ask you some  
9 questions now, there are no wrong answers down here. If  
10 you will listen to the question and answer it briefly,  
11 right to the point. If you could say yes or no all the  
12 time instead of uh-huh or huh-uh sometimes, so Ms. Halsey  
13 can take it all down. Okay?  
14 Go ahead, please. Mr. Shook.

15

16

17 Whereupon,

18

19 ELLA WILLIAMS SCHILLING,

20

21 was called as a potential juror, having been first duly  
22 sworn by the Court to speak the truth, the whole truth,  
23 and nothing but the truth, testified in open court, as  
24 follows:

25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. TOBY L. SHOOK:

4 Q. Ms. Schilling, my name is Toby Shook.

5 I am one of the prosecutors on the case. And I want to  
6 go over some of the things that are here in your  
7 questionnaire first. Okay?

8 A. Yes.

9 Q. Now, you wrote on the outside here, "I  
10 have formed a personal opinion," and you have a 10 year  
11 old son that needs supervision also.

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

14 Q. And later on you again told us about  
15 your personal opinions? Is this an opinion about  
16 something you have read or seen on TV?

17 A. It's an opinion about everything I  
18 have seen and read.

19 Q. What have you heard or read or seen on  
20 TV?

21 A. It's like what supposedly happened and  
22 stuff like that.

23 Q. And you formed an opinion from what  
24 you have read; is that right?

25 A. Yes.

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1 Q. What opinion have you formed?

2 A. I think she is guilty.

3 Q. Let me ask you then this, Ms.

4 Schilling, have you formed -- is the opinion that you  
5 have formed in your mind, the conclusion that you have  
6 reached, is it one that would affect you in your jury  
7 deliberations, do you feel?

8 A. Yes, I do.

9

10 MR. S. PRESTON DOUGLASS, JR: I would  
11 submit the juror.

12 THE COURT: All right. And you could

13 not put that aside, I assume?

14 THE PROSPECTIVE JUROR: No, I could

15 not.

16 THE COURT: Okay. Thank you for

17 coming, ma'am, we appreciate it. This was a very brief  
18 appearance, but nonetheless, it was necessary on your  
19 part. Please do not discuss the case yet, it's not over,  
20 like what went on down here or anything. In the first  
21 part of February it will be over, then you will be able  
22 to talk or not talk, as you see fit.

23 THE PROSPECTIVE JUROR: Okay.

24 THE COURT: Thanks a bunch.

25 THE PROSPECTIVE JUROR: Okay.

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1 THE COURT: You bet.

2 The defense motion for cause is

3 granted, obviously.

4 MR. RICHARD C. MOSTY: Preston is  
5 really earning his pay today, isn't he, Judge?

6 MR. S. PRESTON DOUGLASS, JR: Aren't  
7 you glad I'm back, Judge?

8 THE COURT: He is knocking them dead,  
9 I sure am.

10 MR. RICHARD C. MOSTY: I'll take the  
11 next one.

12 THE COURT: All right. We're ready.

13 Your name, sir?

14 THE PROSPECTIVE JUROR: Jesus Romero.

15 THE COURT: All right. You speak

16 Spanish, do you speak English?

17 THE PROSPECTIVE JUROR: A little bit.

18 THE COURT: Are you able to speak

19 English, or do you need a Spanish interpreter?

20 THE PROSPECTIVE JUROR: Well, I can  
21 speak English.

22 THE COURT: You can speak English.

23 All right. If you will just have a seat, please. If you  
24 will raise your right hand.

25 Do you solemnly swear or affirm that

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1 you will true answers make to all questions propounded to  
2 you concerning your qualifications as a juror, so help

3 you God?

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 PROSPECTIVE JUROR: I do.

14 THE COURT: All right. Your name,  
15 sir?

16 THE PROSPECTIVE JUROR: Jesus Romero.

17 THE COURT: Jesus Romero. That is  
18 number 58 on our list, and 166 on the jury list.

19 Mr. Romero, you speak both Spanish and  
20 English; is that correct?

21 THE PROSPECTIVE JUROR: Well, I speak  
22 English some.

23 THE COURT: You don't need a Spanish  
24 interpreter for these proceedings?

25 THE PROSPECTIVE JUROR: Well, if it's  
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1 problem pronounce the words.

2 THE COURT: Well, if you don't  
3 understand anything, just say you don't understand it,  
4 and we'll get along. But obviously, you are able to  
5 speak English; is that correct?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Okay. And you have been  
8 in this country how long?

9 THE PROSPECTIVE JUROR: About 14  
10 years.

11 THE COURT: Okay. Are you here on a  
12 green card?

13 THE PROSPECTIVE JUROR: No, I am  
14 citizen.

15 THE COURT: You're a citizen?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: Well, okay, back then --  
18 when were you naturalized?

19 THE PROSPECTIVE JUROR: Last year, May  
20 25th.

21 THE COURT: Okay. Well, I think you  
22 can probably speak enough English.

23 All right. What is going to happen  
24 here today is that you are here as a prospective juror in  
25 the Darlie Routier matter.

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1 This is Mrs. Routier sitting here, she  
2 is the defendant in today's case. She is between Mr.  
3 Richard Mosty, her Kerrville attorney, and Mr. Curtis  
4 Glover, one of her attorneys from Dallas. This is also  
5 Preston Douglass, who is from Kerrville.  
6 The State today is represented by Mr.  
7 Toby Shook and Ms. Sherri Wallace, they are Assistant  
8 District Attorneys from Dallas.

9 Now, both sides are going to ask you  
10 some questions, there are no wrong answers. So just  
11 listen to what the question is and answer them straight,  
12 just like you feel. Okay?

13 THE PROSPECTIVE JUROR: Okay.

14 THE COURT: All right. Go ahead.

15 BY MR. TOBY L. SHOOK: Thank you,  
16 Judge.

17

18 Whereupon,

19

20 JESUS OLIVARES ROMERO,

21

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

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1  
2 VOIR DIRE EXAMINATION  
3

4 BY MR. TOBY L. SHOOK:

5 Q. Mr. Romero, again, my name is Toby  
6 Shook and I am going to be asking you questions on behalf  
7 of the State.

8 A. Okay.

9 Q. If at any time you don't understand a  
10 question, feel free to, you know, have me re-explain it,  
11 or if you have any questions at any time, just jump in at  
12 any time. Okay?

13 A. Okay.

14 Q. We question every juror one at a time,  
15 and we don't mean to make you feel uncomfortable or put  
16 you on trial or anything like that.

17 A. Okay.

18 Q. The law requires us to talk to each  
19 juror individually. Okay?

20 A. Okay.

21 Q. Okay. Has your situation changed at  
22 all since the two weeks when you filled out the

23 questionnaire?

24 A. No, sir.

25 Q. Okay. You are working? Where is it?

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1 A. Camp Stewart.

2 Q. You do maintenance there?

3 A. Yes, sir.

4 Q. All right. We, Mr. Romero, talk to

5 every juror about how they feel about the death penalty,  
6 and let me just preface my questions like this: There is  
7 no right or wrong answers. Okay? We just want your  
8 honest answers on this. Are you in favor of the death  
9 penalty as a law?

10 A. No, I am not.

11 Q. Okay. Tell me why.

12 A. Well, death penalty would never solve  
13 the problem, that is my beliefs.

14 Q. Does not solve the problem at all?

15 A. No.

16 Q. Taking someone's life for a crime they  
17 committed, that --

18 A. Well, that is like, it's like if they  
19 have -- how do you put it, a lots of murder, probably so,  
20 because they are a danger to the public.

21

22 THE COURT REPORTER: Judge, I can't  
23 understand what he is saying.

24 THE COURT: He said if they have a lot  
25 of murders, maybe so, because they are a danger to the  
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2252

1 public.

2 THE COURT REPORTER: Thank you, Judge.

3

4 BY MR. TOBY L. SHOOK:

5 Q. Okay. But, personally, you are not in  
6 favor of the death penalty?

7 A. No, I am not.

8 Q. Okay. Mr. Romero, we can't get into  
9 the facts of the case. You know, we can't talk to you  
10 about what we think we're going to prove or anything like  
11 that.

12 That is why we have to talk through  
13 examples or hypothetical situations or just how you feel  
14 about the death penalty. Okay?

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

17 Q. But have you ever been for the death  
18 penalty, or have you always been against it?

19 A. Well, I am against it.

20 Q. Is it a religious belief?

21 A. Well, yeah, I think.

22 Q. Okay. Or just a personal objection?

23 A. Well, the personal and religion, too.

24 Q. Personal and religious?

25 A. Yes.

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1 Q. Okay. Well, let me ask you this, Mr.

2 Room: You know, when we call jurors down, like we did  
3 you, we call them down and they don't know what type of  
4 case they are coming down for.

5 You know, it could have been any type  
6 of case. It could have been a DWI, it could be a  
7 burglary case, or it could be a civil case, maybe a  
8 divorce or child custody, something like that. It just  
9 kind of happens on what day you get called down on.

10 Now, you know from what Judge Tolle  
11 has told you that we are attempting to put on a case,  
12 present an indictment to the jury that will ultimately  
13 find this defendant guilty. We are pursuing the death  
14 penalty.

15 You realize that, don't you?

16 A. Yes, I know.

17 Q. Let me ask you this: You know  
18 yourself pretty well, Mr. Romero, don't you?

19 A. Well --

20 Q. You know how you feel about things,  
21 don't you?

22 A. Yes.

23 Q. Are you the kind of person that could  
24 sit on a jury like this and make these decisions or  
25 because of the way you feel, how you are against the  
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1 death penalty, is this not your type of case?

2 A. Well, I guess the way I feel.

3

4 THE COURT: Well, that was not the  
5 question. Listen to the question carefully.

6

7 BY MR. TOBY L. SHOOK:

8 Q. Because of the way you feel, would you  
9 be unable to make these types of decisions?

10 A. Repeat it again.

11 Q. Because of the way you feel -- because  
12 you are against the death penalty as a law, would you be  
13 unable to serve on this type of case?

14 A. Yes.

15 Q. Okay. Let me ask you, sir: You,  
16 obviously, understand English very well?

17 A. Well, more or less.

18 Q. Okay. Can you read English pretty  
19 well?

20 A. Yes.

21 Q. Can you read these question that we  
22 have?

23 A. You mean those questions there?

24 Q. Yes.

25 A. Yes.

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1 Q. Okay. This first question -- well,  
2 let me stop before I get into those questions. The way a  
3 death penalty case works, you don't decide life or death.  
4 Okay?

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

7 Q. What happens is we have to prove,  
8 first of all, whether the defendant committed the  
9 offense, whether they are good for the crime. If we do  
10 that, we then go to the punishment phase. It's not a  
11 death penalty unless we prove them guilty. We have got  
12 to prove that these questions should be answered "yes" or  
13 "no." All right?

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

16 Q. Now, this first questions asks: "Do  
17 you find from the evidence beyond a reasonable doubt,  
18 that there is a probability that the defendant would  
19 commit criminal acts of violence that would constitute a  
20 continuing threat to society?"

21 You see that question is asking the  
22 jurors to answer "yes" or "no" about how the defendant  
23 might be behave in the future?

24 A. Well, what do I have to say yes or no?

25 Q. Well, if we prove it to you, you are  
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1 supposed to say "yes."

2 A. Yes.

3 Q. What do you think that question is  
4 asking?

5 A. Well, if you find from the evidence  
6 that this person is guilty, you can -- that the criminal  
7 will commit again more acts in the future.

8 Q. Uh-huh. (Attorney nodding head  
9 affirmatively.) We're asking you to make a prediction of  
10 how -- if they are going to be a danger to society?

11 A. Well, yes.

12 Q. Okay. Do you think you could answer  
13 that question "yes"?

14 A. Yes.

15 Q. All right. Let me tell you how this  
16 works: If you answer that first question "yes," and then  
17 you answer this second question "no," and that second  
18 question is longer. But, basically, the second question  
19 is this: If you look at the evidence, and something in  
20 the evidence tells you that a life sentence should be  
21 imposed, rather than a death sentence, you could answer  
22 the question that way. It's a way for you to spare the  
23 life of the defendant. Do you see that?

24 A. Yes.

25 Q. However, if you answer it "no," then  
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1 the death penalty would be imposed. Okay?

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

4 Q. These are different hurdles we have to  
5 get over. If we first get a "yes," and if we get a "no"  
6 to the second question, Judge Tolle would sentence the  
7 defendant to death. Now, if you answered them any other  
8 way, he would sentence the defendant to life. But those  
9 are the only two possible outcomes; death or life. Is  
10 that clear to you?

11 A. Yes.

12 Q. Okay. And that sentence occurs by how  
13 you answer these questions. All right?

14 A. Yes.

15 Q. You don't write in life or death. But  
16 a "yes" answer and then a "no" answer will equal the  
17 death penalty. Is that clear to you?

18 A. Yes.

19 Q. Mr. Romero, have you heard how  
20 executions take place in the State of Texas?

21 A. Some.

22 Q. Do you know what the method is? How  
23 they do it?

24 A. With lethal injection.

25 Q. That is right, that is right. And I  
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1 don't know, maybe you have read about it, but they  
2 actually do take place in the State of Texas.

3 A. Yes, the place is -- I don't remember  
4 now.

5 Q. Huntsville, Texas.

6 A. Yes, Huntsville.

7 Q. Huntsville. That is where most of our  
8 prisons are located. And every execution takes place in  
9 Huntsville, Texas. And the procedures for that  
10 execution, as would be in this case, if the defendant  
11 were found guilty and the questions were answered yes or  
12 no, are the same.

13 That is, on the date of execution that  
14 the Judge would give, the defendant would be taken from  
15 her cell, put in a special room, the execution chamber  
16 where there are witnesses, strapped down to a gurney and  
17 needles put in her arms, and poisons injected.

18 It has happened over a hundred times.

19 And that is because they ultimately would get there by  
20 the way the jury answers these questions, a "yes" and a  
21 "no" would equal death.

22 Let me ask you, Mr. Romero, you told  
23 me that you are personally against the death penalty.

24 Right?

25 A. Yes, I am.

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1 Q. Okay. And you have religious and  
2 personal objections to it?

3 A. Yes.

4 Q. Would you be able to answer those  
5 questions in a way that would result in the defendant's  
6 death? Or are you going to have -- are those objections  
7 you have about the death penalty going to stay with you  
8 and prevent you from doing that?

9 A. Well, again, I mean, well, let's take  
10 some consideration some people like this, I don't know  
11 what about this case, but this person is guilty; if the  
12 evidence seems she is guilty or whatever.

13 Q. Right.

14 A. Well --

15 Q. You know, Mr. Romero, and I am not  
16 going to disagree with whatever you say. Okay?

17 A. Yes.

18 Q. I am not here to argue with you at  
19 all.

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

22 Q. But you are saying, if you found her  
23 guilty -- I mean, I can't go into the fact situation. I  
24 am just trying to get a good read on you on if your  
25 objections are strong enough where you don't think you  
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1 could take part in this type of decision.  
2 Or they're not so strong, and you  
3 think you could make these decisions. That is where I am  
4 coming from.

5 Some people are strongly opposed to  
6 the death penalty and they have a good religious or moral  
7 conviction against it. And, you know, that is not going  
8 to leave them.

9 They couldn't make a decision that  
10 they know would cause a person to die someday. Other  
11 people can make those decisions, it doesn't matter to us,  
12 but that is what I am trying to get from you. You have  
13 told me you are opposed to the death penalty, personally,  
14 I want to know if you could sit on this jury and make  
15 those decisions or not?

16 A. Yes, I could.

17 Q. Even though you are opposed to the  
18 death penalty?

19 A. Yes.

20 Q. Okay. Why -- can you tell me why you  
21 would do that even though you are opposed to the death  
22 penalty?

23 A. That is the law I have to come for  
24 jury, right?

25 Q. Well, that is the law, if you can make  
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1 that decision, you know. Some people can follow that law  
2 and some people can't. Are you telling us that you would  
3 follow that law even though you are opposed to the death  
4 penalty?

5 A. Yes, I would follow that law.

6

7 THE COURT: Okay. That is pretty  
8 clear, so let's move on.

9

10 BY MR. TOBY L. SHOOK:

11 Q. Another area I want to get into, you  
12 said that -- well, let me just show it to you, because I  
13 know I had you fill out a lot here. But do you remember

14 we had you read these sentences and you would circle  
15 which one you agreed with? Okay. Read that sentence  
16 there and review that for me, please.

17 A. If a person is accused of a crime, she  
18 should have to prove her innocence.

19 Q. And you agree with that?

20 A. Yes, I agree. She needs to prove her  
21 innocence.

22 Q. Okay. Let me talk to you about that.

23 Again, how you feel is most important. We're the State,  
24 and if we bring the indictment, we have to prove that  
25 case, the burden of proof is on us. That is what the  
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1 Judge will inform you the law is. Okay?

2 A. Yes.

3 Q. Okay. The defense is not obligated to  
4 prove you -- anything to you. They don't have to prove  
5 their client's innocence. The defendant does not have to  
6 prove her innocence. She doesn't have to testify. If  
7 the defendant chooses not to testify, the Judge would, in  
8 fact, instruct you not to consider that as evidence. Do  
9 you understand that?

10 A. Yes.

11 Q. Okay. The lawyers for the defense,  
12 they are under no obligation to prove -- they don't have  
13 to do anything. You know, they could sit there and  
14 twiddle their thumbs if they wanted to, because the  
15 burden of proof never leaves this table. Some people  
16 feel strongly the other way though, and they will force  
17 the defense to prove her innocence, you know, in this  
18 type of situation.

19 And like I said, it doesn't matter one  
20 way or the other. The law says you can't consider that.  
21 Some people can follow that law, and some people can't.

22 You have said on here that: You feel that a person  
23 accused of capital murder should have to prove her  
24 innocence.

25 A. Yes.

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1 Q. Is that still how you feel?

2 A. Yes.

3 Q. Okay. Would you feel that way if you  
4 sat as juror on this case?

5 A. Yes.

6 Q. Okay. And if the Judge instructed you

7 that the defendant does not have to prove her innocence,  
8 would you still want her to prove her innocence?

9 A. Yes.

10 Q. Even though the Judge told you that  
11 was a law that you couldn't do that?

12 A. Well, like, the person needs to prove  
13 her innocence. If she cannot, she must be guilty.

14 Q. Okay. So, you would disagree with  
15 that law, personally?

16 A. Yes.

17 Q. And that is just something you can't  
18 overcome; is that right?

19 A. Yes.

20 Q. And you wouldn't be able to follow  
21 that particular instruction?

22 A. No.

23 Q. And would require the defendant to  
24 prove her innocence?

25 A. Yes.

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1 Q. Let me ask you: Do you think the  
2 defendant should testify in their own behalf?

3 A. The defendant?

4 Q. Right.

5 A. The defendant is the person who --

6 Q. The defendant is the person that's  
7 accused. Should they have to testify?

8 A. Yes, I think so.

9 Q. Now, most people, if you asked them  
10 would say, "I want to hear their side of the story."

11 A. Yes, I would.

12 Q. But, the law says that they are not  
13 required to testify, and if they chose not to testify,  
14 the Judge would say, "You have got to ignore that. You  
15 can't use that as evidence against them."

16 And, again, some people can abide by  
17 that law, and some people can't. Some people would say,  
18 "No. If I don't hear from the defendant, that must mean  
19 they are guilty. They didn't testify for some reason."

20 Some people can follow the law, and

21 some people can't.

22 How do you feel about that, Mr.

23 Romero?

24 A. Well, that means that the defendant  
25 cannot testify against him or --

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1

2 THE COURT: Well, here is the rule.

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: Under the Fifth Amendment

5 to the Constitution of the United States, a defendant has  
6 the right not to testify.

7 THE PROSPECTIVE JUROR: Oh, not to  
8 testify.

9 THE COURT: If she wants to testify,

10 no one can stop her. If she does not want to testify, no  
11 one can make her. If she testifies, she is to be  
12 considered like any other witness.

13 What does her testimony sound like?

14 Does it look like she's telling the truth or not? What  
15 does she have to gain or lose by the way she is  
16 testifying?

17 If she elects not to testify, you

18 can't hold that against her for any reason whatsoever.

19 Do you understand that?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: That is not just her  
22 right, that is all of our rights, your right, my right,  
23 his right, her right, his right, if we're ever sitting  
24 where Mrs. Routier is now.

25 Some people still feel, "Well, I don't  
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1 care what the law is, I still want her to testify, and I  
2 would require her," wanting her and requiring her are two  
3 different things. Now, if you would require her to  
4 testify, we have to know it.

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: You would require her to  
7 testify?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: And, you would -- if she  
10 does not testify, you would hold that against her. Is  
11 that what you are saying?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: All right.

14 MR. TOBY L. SHOOK: Judge, then we  
15 would submit the juror.

16 MR. CURTIS GLOVER: Yes, sir.

17 THE COURT: Everybody agreed?

18 MR. CURTIS GLOVER: Yes, sir.

19 THE COURT: All right. Thank you very  
20 much.

21 Does the defense want to move for  
22 cause?

23 MR. TOBY L. SHOOK: The State would  
24 submit the juror, Judge.

25 THE COURT: Any objection from the  
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1 defense?

2 MR. S. PRESTON DOUGLASS, JR: No, sir.

3 THE COURT: None.

4 MR. S. PRESTON DOUGLASS, JR: None,  
5 Your Honor.

6 THE COURT: Thank you. All right.

7 Thank you very much for coming, sir, we appreciate your  
8 time and attention.

9 Please do not discuss this case with  
10 anyone now, because it isn't over yet. In February, you  
11 will be able to discuss it, we will probably be through  
12 then, with anyone you want to, but not until then.

13 Anybody else? Thank you.

14

15 (Whereupon, a short  
16 Recess was taken,  
17 After which time,  
18 The proceedings were  
19 Resumed on the record,  
20 In the presence and  
21 Hearing of the defendant,  
22 As follows:)

23

24 THE COURT: All right. This is juror  
25 number 73 on our list, 213 on the juror list. This is  
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1 Mr. Lardie. Would you raise your right hand, please.

2 Do you solemnly swear or affirm that

3 you will true answers make to all questions propounded to  
4 you concerning your qualifications as a juror, so help  
5 you God?

6

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

14

15 THE PROSPECTIVE JUROR: I do.

16 THE COURT: Sir, you are here as a

17 potential juror in the Darlie Routier matter. Mrs.

18 Routier is the defendant. She is sitting right there in

19 front of you between her attorneys, Mr. Richard Mosty,

20 and Mr. Curtis Glover.

21 Mr. Glover is from Dallas, Mr. Mosty

22 is from Kerrville. And she is also represented by Mr.

23 Preston Douglass from Kerrville.

24 The State is represented by Mr. Toby

25 Shook and Ms. Sherri Wallace, they are Assistant District

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1 Attorneys from Dallas. You are going to be asked some  
2 questions concerning your qualifications to be a juror,  
3 there are no wrong answers. Listen to them and answer  
4 them as succinctly as you can. Okay? Let's go right to  
5 the point.

6 All right. Mr. Shook.

7 MR. TOBY L. SHOOK: Thank you, Your  
8 Honor.

9

10 Whereupon,

11

12 LAWRENCE VINCENT LARDIE,

13

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

18

19 VOIR DIRE EXAMINATION

20

21 BY MR. TOBY L. SHOOK:

22 Q. Again, my name is Toby Shook, and I am  
23 one of the prosecutors in this case, and I will be asking  
24 you some questions on behalf of the State. We just want  
25 your honest opinions.

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1 You put some things down here in your  
2 questionnaire I want to ask you about. Okay? You are  
3 very clear here, you said that you are a member of one of  
4 Jehovah's Witnesses.

5 A. Yes.

6 Q. I have dealt with Jehovah's Witnesses

7 several times. We have had two, so far, come up on our  
8 panel. And, it's my understanding, and I think you have

9 made it pretty clear here, that as a cornerstone of your  
10 religion, one of your doctrines is that you cannot sit in  
11 judgment of another human being; is that right?

12 A. That's correct.

13 Q. And is that a religious conviction  
14 that you yourself believe strongly in?

15 A. Yes, it is.

16 Q. You can't even find someone guilty of  
17 a criminal offense because you cannot pass judgment on  
18 them yourself; is that right?

19 A. That's right, that's correct.

20 Q. Something you have believed in a long,  
21 long time?

22 A. All my life, really.

23 Q. Were you raised in that particular  
24 denomination?

25 A. Yes.

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1

2 MR. TOBY L. SHOOK: Okay. We would  
3 agree on this juror, Judge.

4 THE COURT: All right. Thank you for  
5 coming, sir, we appreciate it.

6 MR. TOBY L. SHOOK: Judge, for the  
7 record, we would submit the juror.

8 THE COURT: All right. State's motion  
9 for cause is granted. Thank you, sir.

10 MR. S. PRESTON DOUGLASS, JR: No  
11 objection, Your Honor.

12 THE COURT: All right. And you are  
13 Barbara Jo Murray, M-U-R-R-A-Y.

14 THE PROSPECTIVE JUROR: Yes, sir, I  
15 am.

16 THE COURT: Please raise your right  
17 hand, please, ma'am.

18 Do you solemnly swear or affirm that  
19 you will true answers make to all questions propounded to  
20 you concerning your qualifications as a juror, so help  
21 you God?

22

23 (Whereupon, the prospective  
24 juror was duly sworn by the  
25 Court to true answers make  
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1 to the questions propounded,  
2 concerning qualifications, after

3 which time, the proceedings were  
4 resumed as follows:)

5

6 THE PROSPECTIVE JUROR: I will.

7 THE COURT: All right. Ma'am, you  
8 have been called here today to be a potential juror in  
9 the Darlie Routier matter. Mrs. Routier is sitting right  
10 over here in the jacket, between her attorneys, Mr.  
11 Richard Mosty, who is from Kerrville. I am sure you know  
12 him. And her other attorney from Kerrville is Preston  
13 Douglass, you know him, and this is Mr. Curtis Glover, he  
14 is from Dallas.

15 The State is represented today by two  
16 Dallas County District Attorneys, Toby Shook and Sherri  
17 Wallace.

18 And they are going to ask you some  
19 questions, ma'am, there are no right or wrong answers.  
20 You won't be given a test. So, if you will answer them  
21 right to the point, we would be most appreciative.

22 All right, Mr. Shook.

23 MR. TOBY L. SHOOK: Thank you, Judge.

24

25

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1 Whereupon,

2

3 BARBARA JO MURRAY,

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. Murray, my name is Toby Shook. As  
14 the Judge told you, I am one of the prosecutors on the  
15 case and I will be asking you questions on behalf of the  
16 State.

17 And what I want to do is go over a few  
18 things that are here in your questionnaire, and then, get  
19 some of your personal feelings about the death penalty  
20 and some of the law as it applies to this case. Okay?

21 A. Okay.

22 Q. As he said, there aren't any right or  
23 wrong answers, we are just looking for your honest  
24 opinions. Have you ever been down on jury service

25 before?

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1 A. No.

2 Q. Okay. Usually we talk to everyone in  
3 one big group, but since it is a death penalty case the  
4 law prescribes that we talk to each juror individually.  
5 And you have given us a lot of information here. It  
6 looks like you were born in Germany?

7 A. Yes, I was.

8 Q. Your father was in the military?

9 A. Yes.

10 Q. What branch was he in?

11 A. Army intelligence.

12 Q. Okay. And then you came back here and  
13 been to several schools, UT and Northwestern.

14 A. Yes. And Centenary.

15 Q. And are now teaching English here in  
16 Kerrville, and debate and speech?

17 A. Right.

18 Q. As I understand it, also you sponsored  
19 the mock trial team?

20 A. Right.

21 Q. Is that right? And you know Mr. Mosty  
22 and Mr. Douglass?

23 A. Yes, I do.

24 Q. Okay. And how do you know them?

25 A. I know Mr. Douglass because he has  
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1 worked with the mock trial students in the courtroom. I  
2 sponsor, but they actually are the ones that -- I sort of  
3 sit on the side.

4 Q. Okay. And I believe you put in the  
5 questionnaire that you taught Mr. Mosty's children?

6 A. Yes, both of his children.

7 Q. Okay. Do you teach his daughter now?

8 A. No.

9 Q. Okay. Do you teach a particular grade  
10 in English?

11 A. I teach AP English 3, those are  
12 juniors.

13 Q. Okay.

14 A. And I piloted a program last year in  
15 SAT and ACT preparation. I don't teach that now.  
16 I piloted it and it was successful  
17 so -- and it was taken over by a couple of teachers in  
18 the department.

19 Q. Okay. Anything about knowing Mr.  
20 Mosty or Mr. Douglass that would affect you one way as a  
21 juror?

22 A. I don't think so.

23 Q. Okay. Obviously, in a smaller town,  
24 some of the jurors are almost always going to know the  
25 local attorneys.

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1 A. Uh-huh. (Witness nodding head  
2 affirmatively.) Right.  
3 Q. We just want to make sure of the fact  
4 that you can listen to the case and judge the case on its  
5 facts, and not weigh particularly one side or the other.  
6 Because you know them obviously, you might after  
7 listening to the facts and listening to one of the  
8 lawyers argue, you might go one way with them because of  
9 the fact -- you can't do it on personalities, you have to  
10 do it on the facts.

11 Do you feel you could do that?

12 A. Well, you just want sort of an  
13 extemporized answer. First of all, both of these  
14 gentlemen are very fine individuals in our community, and  
15 I don't know them personally. I do know them  
16 professionally, in the sense of mock trial and things  
17 like that. I don't think they can change any of the  
18 facts of the case any more than you can.

19 Q. Right, and that is my point. It's the  
20 facts that the jury will ultimately judge and not -- it  
21 is not a personality contest or anything like that.

22 A. Right.

23 Q. Okay. Let me then get into how you  
24 feel about the death penalty. You obviously know the  
25 State is actively seeking the death penalty in this case.

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1 We can't get into the facts of the case. I think you  
2 have read just a little bit, but not much, about the  
3 facts; is that right?

4 A. I read an article in the Kerrville  
5 Times about the jury selection.

6 Q. Okay. Did it just talk about moving  
7 the case here? Did it go into the facts at all?

8 A. No. This was after I had been  
9 notified that I was going to be a juror and it came out  
10 in the paper where I was supposed to report.

11 Q. Okay.

12 A. I don't take the Kerrville paper,  
13 please don't tell anybody in Kerrville though.

14 Q. All right.

15

16 THE COURT: Everything here is secret,

17 ma'am. Don't worry about a thing.

18 THE PROSPECTIVE JUROR: Okay.

19 THE COURT: It will not be published.

20 THE PROSPECTIVE JUROR: I don't read

21 local -- very much news like that. Because my students

22 do extemporaneous speeches about Bosnia and Herzegovina,

23 I keep fairly quasi up on world news, and I study Texas

24 news around March and April. Other than that, I just

25 don't have time, I am an English teacher.

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1 Q. Right. Let me get into then your  
2 personal opinions about the death penalty. You have  
3 been -- gave us some very good insights here, where we  
4 had this small space for you to explain how you feel  
5 about the death penalty. But I just wanted to let you do  
6 it verbally now. You checked off the chart, you favor  
7 the death penalty as a law. And I would like for you to  
8 explain to me why, and what purpose you feel the death  
9 penalty serves.

10 A. I was raised in Europe, Germany, and  
11 it was postwar. And, so, one of the things my father  
12 wanted to be sure that all of his children understood was  
13 what man could do to other people. And, so, he took us  
14 to Dachau and Treblinka; and so, when you go through  
15 something like that, you become very aware that most  
16 people are very, very good, and some people are not. And  
17 that there really is no way of making up for some of  
18 those things. I don't want to get corny here.

19

20 THE COURT: Well, that's fine. Go  
21 ahead.

22 THE PROSPECTIVE JUROR: I read a lot  
23 of philosophy and Immanuel Kant is a philosopher who  
24 basically said, our own actions set how people respond,  
25 have the right to respond.

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1 So, it is sort of like your own  
2 actions is the maximum of the rule. If someone, in fact,  
3 commits a murder, we really don't have a whole lot of --  
4 if we believe in autonomy, we don't have a lot of option  
5 in return.

6

7 BY MR. TOBY L. SHOOK:

8 Q. And you circled, also -- that we have  
9 different categories. The one you circled was number 2  
10 which is the category that most people circle. That is:  
11 I believe that the death penalty is appropriate in some  
12 capital murder cases. And I could return a verdict that  
13 would result in death in the proper case. Not every  
14 case, but in some case under the proper circumstances.  
15 And I take it you still feel that way?

16 A. Yes.

17 Q. Okay. Have you ever felt differently  
18 about the death penalty?

19 A. The law went out when I was nine years  
20 old. I was on the east side, I was taken to the west  
21 side in the middle of the night, I guess, so when people  
22 jumped over walls and died doing so and I think that is  
23 when I decided that some things have to -- that society,  
24 if it's going to stay sound, is going to have to make a  
25 decision.

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1 When I said, in some cases, I think  
2 that there are sometimes mitigating circumstances, and  
3 those mitigating circumstances could be a wide variety of  
4 things. But if a person is cognizant of their acts, and  
5 know what they are doing, they intend to do it, and it is  
6 beyond the pale, then they fall under capital -- that is  
7 a capital crime.

8 Q. Okay. Let me -- I want to give you a  
9 couple of explanations and then go into a couple of other  
10 questions. The way a capital murder trial works, as far  
11 as procedure-wise, is this: It is divided into two  
12 portions; the guilt/innocence stage is the first portion,  
13 and we have to prove beyond a reasonable doubt the  
14 indictment.

15 And let me let you read that very  
16 quickly. It is right there in front of you, I think.  
17 The typed portion is --

18

19 THE COURT: In the middle of the page.

20 MR. TOBY L. SHOOK: Yes, in the middle  
21 of the page.

22

23 BY MR. TOBY L. SHOOK:

24 Q. Those are the allegations we have to  
25 prove in the guilt/innocence stage. If we don't do that,  
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1 obviously, we all go home, it's a not guilty. If we do  
2 do that, we move to the second portion of the trial.  
3 In the second portion of the trial,  
4 you may hear additional evidence. You can hear evidence  
5 regarding a person's background, good and bad. It may be  
6 a long hearing, it may be short. It just depends on each  
7 case, and I can't get into any of the facts, obviously,  
8 of this particular case. So, we are going to be talking  
9 in hypotheticals.

10 But at the close of that evidence, the  
11 jury does get these questions. And I want to go over  
12 those, and I will go in more detail in a moment. But to  
13 summarize: Question number 1 is the question the State  
14 has to prove beyond a reasonable doubt. And, basically,  
15 what it says is: We have to prove that the defendant  
16 would be a continuing danger to society.

17 Now, if we do prove that, using all of  
18 the evidence, and the jury gives us a "yes" answer, you  
19 move to this second question. If you will take a moment  
20 just to read that.

21 A. Okay.

22 Q. That is the mitigation question. It  
23 kind of covers what you have already brought up, that  
24 there could be mitigating circumstances. It's a question  
25 that allows the jurors to look at all of the evidence and  
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1 if they think there is sufficient mitigating evidence,  
2 they could answer the question "yes," in which case, the  
3 defendant would get a life sentence. Now, if that  
4 question is answered "no," it's a death sentence. But  
5 there are only two possible outcomes, once the person has  
6 been found guilty of capital murder. The death sentence  
7 or a life sentence, and that is determined by how the  
8 jurors answer those question.

9 And you probably know from reading the  
10 paper that in Texas the method of execution is by lethal  
11 injection. Were you aware of that?

12 A. Actually, I was not.

13 Q. Okay. It used to be by electrocution,  
14 now it is by lethal injection. The procedures are the  
15 same in every case on the execution date, which happens  
16 somewhere down the line, there is obviously an execution  
17 chamber where witnesses are prescribed to be there by law  
18 with the warden present. And it's a procedure where the  
19 person is strapped down, and needles placed in the arm,  
20 and poisons are injected which stop the heart and lungs.

21 It's happened in Texas over a hundred  
22 times. There are some states where we have the death  
23 penalty statute and it's never invoked. In Texas, it has  
24 been invoked more than any other state. And my point is  
25 this: It is one thing to talk about the death penalty

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1 philosophically, you know, I agree with it or I don't  
2 agree with it, whatever. But it's quite another thing to  
3 say, "Well, I know what I believe."

4 Now, we need to decide if you are able  
5 to sit and listen to the evidence and make these  
6 decisions. Actually knowing that if you did answer "yes"  
7 and "no" to these questions, the defendant would be  
8 executed someday. We're not down here looking for  
9 volunteers. If someone came down here volunteering, I  
10 think we would all be pretty afraid to put that person on  
11 the jury.

12 But we get all kinds of folks down  
13 here. What I need to know is you have told me  
14 philosophically some cases do call for the death penalty.  
15 And I want to know if you could listen to the evidence,  
16 and if we did prove these things to you, you could answer  
17 it "yes" and "no"; knowing it would result in an  
18 execution?

19 A. Nobody wants to do that.

20 Q. Right. But if you were placed on the  
21 jury, do you think you would have the strength to do  
22 that, if it was proven to you?

23 A. Yes, I would.

24 Q. Okay. I know you have never been put  
25 in that position. But as best you know yourself, you  
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1 feel you could do that if it was proven to you?

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

4 Q. Fair enough. I want to get into a  
5 couple of other issues that come up in criminal trials,  
6 well, in all trials. And I believe you have even been to  
7 law school for at least one year; is that right?

8 A. Yes.

9 Q. These are all going to be familiar to  
10 you then.

11 A. Well, I don't know, it's been a long  
12 time.

13 Q. Well, they are even familiar to folks  
14 who just watch -- if you had watched Perry Mason at all.

15 Circumstantial evidence is one issue that comes up. You  
16 have heard that term time and time again?

17 A. Yes.

18 Q. When we put on evidence, it's either  
19 direct evidence or indirect evidence, what we call it.  
20 An eyewitness to a crime is direct evidence. Any other  
21 type of evidence is indirect evidence or circumstantial  
22 evidence. It's anything that can link the defendant to  
23 the crime, anything we can use to prove our case. It can  
24 be: Fingerprints, DNA evidence, scientific evidence,  
25 blood spattering, the crime scene itself, statements made  
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1 by the defendant, anything that we can use to link the  
2 defendant to the case.

3 My point of it is this: The law says  
4 that there is no difference between the two. Our burden  
5 of proof is the same, we have to prove the case beyond a  
6 reasonable doubt, whether we have an eyewitness or we use  
7 circumstantial evidence. We still have to reach that  
8 particular hurdle, but one is not thought of to be a  
9 greater weight than the other by the law. Ultimately, of  
10 course, once it comes out in the courtroom, you will  
11 judge its credibility.

12 I need to know if you could sit and  
13 listen on a capital murder case and find someone guilty  
14 of capital murder, based solely on circumstantial  
15 evidence, if it was proven to you beyond a reasonable  
16 doubt?

17 A. I mean, if it's proven beyond a  
18 reasonable doubt, that is a pretty serious burden you are  
19 carrying.

20

21 THE COURT: All of these questions  
22 will assume that you believe the evidence in all that,  
23 ma'am.

24

25

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1 BY MR. TOBY L. SHOOK:

2 Q. What we do, and I asked this question  
3 earlier, it's just to make sure no one has a bias against  
4 circumstantial evidence. Some people do. We come across  
5 a person once in a while that would require an  
6 eyewitness, even though, obviously, in a murder case, you  
7 don't have an eyewitness. You just have the person  
8 killed and the killer. But you would be able to that if

9 it was proven to you beyond a reasonable doubt?

10 A. Yes.

11 Q. Okay. Another point I want to bring

12 up is motive. Everyone has heard of motive, the reason  
13 why a crime occurs. And many times when you put on a  
14 case, the motive comes out. It could be very clear,  
15 other times, it may not be so clear.

16 Everyone might have their own opinion.

17 There could be two or three motives circling around out  
18 there and you could have your own opinion of it, or it  
19 might not be apparent to anyone.

20 It could be locked away in the

21 killer's mind. It could be what we call a senseless  
22 killing, and no one can really make a whole lot of sense  
23 of it, but the person is just as dead and the evidence is  
24 still strong that they committed the act.

25 But in Texas the State is not required

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1 to prove motive to get a guilty verdict. You will see in  
2 that indictment, obviously, it wasn't listed anywhere why  
3 we think the crime occurred, only how, when and who was  
4 killed, who did the killing.

5 We're not required to prove motive.

6 Could you follow that rule of law?

7 A. Where no particular motive is proven?

8 Q. Uh-huh. And like I said, I can't

9 preview the case. My point is this is: Some jurors  
10 again would require us to prove motive before they could  
11 even find someone guilty, but the law does not call for  
12 that.

13 We only have to prove that the crime  
14 occurred and who committed the crime.

15 A. So, your question is what now?

16 Q. The question would be could you follow  
17 that rule of law and not require us to prove motive in  
18 order to prove our case in guilt or innocence?

19 A. Yes.

20 Q. Okay. Now, and I'm sure that the  
21 defense will talk to you about this. Lack of motive  
22 sometimes might be worked in as reasonable doubt, you  
23 know, depending on each case.

24 But just on the face of it, you can  
25 understand why it might be hard for the State to prove  
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1 motive. It's kind of hard to prove why a person commits  
2 a certain crime sometimes.

3 A. Well, it's very much in like in  
4 literature, intent.

5 Q. Right, everyone has their own  
6 interpretation of it.

7 A. Right.

8 Q. Let me kind of go to these questions  
9 now for a minute that we will get to in the punishment  
10 stage.

11 First of all, like I said, you don't  
12 get to them unless you have found the defendant guilty.

13 This first question, you start out  
14 with a "no" answer. The State has to prove to you beyond  
15 a reasonable doubt it should be answered "yes."

16 Just like you start out the trial with  
17 the presumption of innocence. Okay?

18 And you can use the evidence of the  
19 crime itself and then any background information you  
20 might hear. You might hear about a long criminal record,  
21 prison trips, things like that, other crimes, or it could  
22 be a situation where a person has never committed a  
23 criminal act in their life.

24 You could hear bad character evidence  
25 or very good character evidence, but you use all that  
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1 when you make this decision.

2 Again, I can't preview the facts, but  
3 you might be faced with a situation where you only have  
4 the crime itself, or the murder itself to look to on  
5 deciding the answer to that question.

6 Do you think the facts of the crime  
7 itself could give you enough information to answer that  
8 question "yes," under the proper facts and circumstances?

9 A. Well, hypothetically, yes.

10 Q. Again, I can't preview any facts for  
11 you, so it's kind of hard to answer that question. But  
12 we do have jurors from time to time that say, "No, one  
13 act itself could never tell me enough."

14 But other jurors tell us, "Well, it  
15 just depends, the brutality involved, how the person  
16 acted after the crime," those kinds of things. But your  
17 mind is open to that fact situation, where if the facts  
18 could prove that to you?

19 A. Well, I think so. It would kind of  
20 depend on how I viewed or I perceived motive.

21 Q. Okay. Motive might become important  
22 to you then?

23 A. At least in my head it would be.

24 Q. Okay. Now, in the guilt/innocence

25 stage, you will be given some definitions by the Judge,  
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1 some legal definitions that you have to apply.  
2 Interesting thing about this, on both these questions,  
3 the words we use there, the definitions will be up to you  
4 and the other jurors. He will provide you with no  
5 guidance there.  
6 So, I want to over a couple of the  
7 words and see how they apply to you. And since you're an  
8 English teacher, you should not have much of a problem.  
9 We have to prove beyond a reasonable  
10 doubt that there is a probability that the defendant  
11 would commit criminal acts of violence. When you see the  
12 word "probability" used in that context, what does that  
13 mean to you?  
14 A. More likely than not.  
15 Q. Okay. That is the answer most people  
16 give us. How about "criminal acts of violence"? What  
17 kinds of acts do those conjure up in your mind?  
18 A. Assault.  
19 Q. Okay. It doesn't say, obviously, that  
20 we have to prove murder again, just a criminal act of  
21 violence. Does that seem like a fair question to you?  
22 The way we worded it?  
23 A. Yes.  
24 Q. Okay. And society, when we say  
25 "constitute a continuing threat to society," who do you  
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1 think of in regards to "society"?  
2 A. Well, everybody.  
3 Q. Okay. Would that then include  
4 everyone also in our prison systems; prisoners, guards,  
5 administrators?  
6 A. Everybody.  
7 Q. Okay. If you do answer that question  
8 "yes," you move to this last question: The mitigation  
9 issue. That is the lengthy question that the legislature  
10 has written. We didn't form that question. It gets kind  
11 of confusing, but, again, the words we use in that  
12 question, those definitions will be left up to you. We  
13 can't tell you what mitigating evidence is.  
14 In fact, you don't have to sit there  
15 and think of what mitigating evidence might be. And you  
16 don't even have to agree with the other jurors as to what  
17 mitigating evidence is. What might be mitigating to one,  
18 may not be mitigating to the other.

19 What you have to be able to do though  
20 is listen to all the evidence, and even though you have  
21 found someone guilty of capital murder, and you feel  
22 they're a continuing danger, there still might be some  
23 fact situation, something in their past or their  
24 character which tells you that they deserve a life  
25 sentence rather than a death sentence. Okay?  
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1 It is kind of a way out, kind of a  
2 safety valve or a safety net you might say. Other people  
3 have described it as a way to stop the train at the last  
4 minute. A person doesn't get off, they still have to  
5 serve a life sentence, but it could be anything.  
6 And, like I said, different people  
7 think different things about mitigating evidence. We've  
8 had people tell us, "Well, perhaps young age is  
9 mitigating." And I'm not talking about like a ten year  
10 old. But, you know, a young person who is an adult.  
11 Some people view that as mitigating evidence and other  
12 people say, "No, they are held just as accountable."  
13 Does that cut one way or the other  
14 with you; young age of the defendant?

15 A. No.  
16 Q. Okay. Sometimes capital murders are  
17 committed under the influence of drugs or alcohol. A  
18 person goes out and gets drunk or high and commits a  
19 capital murder.

20 In Texas, that is not a legal defense  
21 at all, but some jurors view that as mitigating. Other  
22 people take a harsh view to it, they think it's even  
23 worse, more aggravating. Does it cut one way or the  
24 other with you?

25 A. I don't know.  
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1 Q. Okay.  
2 A. I think I would have to have more  
3 information than that.  
4 Q. All right. You might hear a person  
5 from a childhood that had physical or sexual abuse in  
6 their past when they were growing up. Some people,  
7 again, view that as possible mitigating evidence, other  
8 people feel that is not mitigating at all. How does that  
9 cut one way or the other with you?  
10 A. Once again, I have to say I would have  
11 to know more information than that.  
12 Q. Okay. I take it from the answer you

13 gave me, even when you were describing your own feelings  
14 about the death penalty though, that your mind is open to  
15 this type of evidence?

16 A. Well, I would like to think I was  
17 open-minded on a lot of things. I am going to have to go  
18 back to, I guess, my definition of total responsibility.  
19 I think we are responsible for our actions.  
20 I think that there are things that  
21 occur beyond our control that might, in fact, have some  
22 factor in our reactions.  
23 There are some circumstances though  
24 that are beyond the pale. I'm just -- I don't think age  
25 is a factor. I'm not even sure that age is a factor in a  
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1 16 year old or an 18 year old. I think once you reach an  
2 age of accountability, you are accountable. As far as  
3 sexual abuse, there is a harm there, but I still think  
4 that there is choice. And I think that that is where,  
5 you know, how much degree of choice.

6 Q. Right. Again, that is where we're  
7 kind of hampered, we obviously can't preview the facts  
8 for you.

9 A. I understand.

10 Q. I probably should have started out  
11 with this type of explanation: The reason this question  
12 came into being, we used to not have this question until  
13 several years ago. But there was a person convicted of  
14 capital murder, knew right from wrong, but was  
15 diagnosed -- well, he was, he was mentally retarded.

16 Okay?

17 He was born that way, no fault of his  
18 own. Still dangerous, but mentally retarded. Some  
19 people, obviously, view that as a mitigating circumstance  
20 where a life sentence should be imposed rather than a  
21 death sentence. And, it's again, it's a fact, it's a  
22 case by case question.

23 A. Right.

24 Q. But it is a way out for the jurors to  
25 view the evidence. And we just want to make sure you can  
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1 keep your mind open to it and answer it "yes" or "no,"  
2 depending on the facts.  
3 One other important thing is, this  
4 question, there is no burden of proof from either side.  
5 You know, we have to prove that first question to you  
6 beyond a reasonable doubt, the State does.

7 Here the State doesn't have to prove  
8 it one way or the other, or there is not a burden,  
9 obviously, we are going to try.

10 A. Right.

11 Q. And the defense is not obligated,  
12 there is no burden for them to prove a "yes" answer.

13 It's something you could -- it might  
14 be something neither lawyer brings up, something you see  
15 in the case.

16 A. For clarification: In other words,  
17 the jury gets to debate this within -- within the --  
18 wherever they put juries. I have never done this before.

19 Q. Right.

20 A. And they get to debate whether or not  
21 that is a "yes" or "no" answer.

22 Q. Right. All they have to do is, as far  
23 as following the law is, they have to base it on some  
24 evidence, you know?

25 A. Then it would have to depend on that

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1 evidence.

2 Q. Right.

3 A. I mean, that is my best answer.

4 Q. Okay. Fair enough.

5 The other area I want to get into

6 is -- well, I know that you have had some training in  
7 this because it's the basic Constitution and Judge Tolle  
8 has gone over that: Presumption of innocence.

9 A. Uh-huh. (Witness nodding head

10 affirmatively.)

11 Q. Every defendant starts out with that.

12 And you could do that, follow that rule of law?

13 A. Uh-huh. (Witness nodding head

14 affirmatively.)

15 Q. Fifth amendment: Everyone has a right

16 not to testify. If you want to testify, no one can stop  
17 you.

18 A. Right.

19 Q. But if you choose not to, the Judge,  
20 obviously, will instruct the jury that if a defendant  
21 chooses not to testify, you can't use that as evidence.

22 You could follow that rule of law?

23 The burden of proof is on the State of  
24 Texas. We have to prove that beyond a reasonable doubt  
25 and that burden never leaves the table. If we don't  
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1 reach our burden, then you could find the defendant not  
2 guilty?

3 A. Right.

4 Q. That burden never shifts to the  
5 defense. Obviously, they are not obligated to prove  
6 anything to you. You can't require them to prove  
7 anything to you.

8 They are very good lawyers, I am sure  
9 they are going to try hard. But by way of example, if  
10 they wanted to they could sit there and read English  
11 books or work crossword puzzles while the trial is going  
12 on.

13 A. I don't think they will do that.

14 Q. They won't do that. But they are not  
15 obligated to prove anything to you, the burden never  
16 leaves the State.

17 A. Okay.

18 Q. One other area I need to get into.

19 Oh, yes, the parole system. Sometimes we read about  
20 parole, early release, people get angry about that. But  
21 the Judge will instruct you that you can't consider  
22 parole laws when you enter any of your deliberations.

23 Okay? You just have to base your verdicts on the  
24 evidence.

25 A. Right.

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1 Q. You can follow that rule of law?

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

4

5 THE COURT: The reason for that,  
6 ma'am, is that at this level, we don't control parole.

7 THE PROSPECTIVE JUROR: Right.

8 THE COURT: That is controlled by the  
9 governor, the legislature, the Board of Pardons and  
10 Paroles. Do you understand?

11 THE PROSPECTIVE JUROR: Right.

12 THE COURT: All right. Thank you.

13

14 BY MR. TOBY L. SHOOK:

15 Q. As Judge Tolle told you the  
16 indictment, that you just read is no evidence of anyone's  
17 guilt. The fact that someone has been indicted, it's  
18 just a piece of paper.

19 A. Right.

20 Q. The fact that anyone has been  
21 arrested, the fact that we are even going through this  
22 process is not evidence. You have to wait for the

23 evidence to come out through the witnesses.  
24 Obviously, in a criminal case you are  
25 going to hear from police officers. The Judge will  
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1 instruct you that all witnesses have to start out on the  
2 same foot. Okay? You can't start a police officer ahead  
3 of another witness, just because he is a police officer,  
4 or behind any other witness just because he is a police  
5 officer. You have to judge him just like you would any  
6 other witness. Could you follow that rule of law?

7 A. Yes. I have students that are police  
8 officers.

9 Q. Okay.

10 A. I graded all of their papers.

11 Q. So, you know they are like anyone  
12 else?

13 A. Yes.

14 Q. Obviously, in a murder case, there are  
15 going to be some graphic pictures, some bloody pictures,  
16 some pictures that are not easy to look at. They are  
17 introduced for various reasons, but they can have an  
18 effect on jurors.

19 But what you have to be able to do,  
20 and I'm sure you are not going to be one of these  
21 persons, that just have a knee-jerk reaction and want to  
22 go out and find someone guilty just because you have seen  
23 a bloody crime scene.

24 You just have to still judge the  
25 evidence as it is. In other words, we don't want people  
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1 to get all upset and just want to find someone guilty  
2 because they know something bad happened. That is going  
3 to be obvious, the point is whether the State proved the  
4 defendant committed the crime.

5 Could you follow that rule of law?

6 A. No problem.

7 Q. Okay. Oh, let me go over the -- you  
8 had mentioned the O.J. Simpson trial, did you pay -- I  
9 guess you could not help but get some information on the  
10 O.J. Simpson trial, I mean we were saturated with it; but  
11 you mentioned it in your questionnaire about a case where  
12 the police may have taken a shortcut in their  
13 investigation.

14 Did you pay close attention to the  
15 O.J. Simpson case?

16 A. Not really. I mean, frankly, I think

17 I answered two questions that come from different  
18 directions with the same answer.

19 I mean, that was so sensationalized,  
20 it was kind of embarrassing, I think, for the judicial  
21 system.

22 Q. Right, I agree. This trial will not  
23 be anything like the O.J. Simpson case.

24 A. Good.

25 Q. It will start January 6 and last  
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1 probably, at the most, two weeks. There is a possibility  
2 of it going three weeks, but we don't think so. Judge  
3 Tolle moves everyone along.

4 We don't rush through anything, but we  
5 don't slow down either, unnecessarily.

6 We go from -- Judge Tolle usually goes  
7 from 9:00 in the morning to 5:00 in the afternoon.

8 Breaks, obviously, are taken during the day, and you will  
9 be able to go home at night. Unless you are in  
10 deliberations, that is probably the only time you would  
11 be sequestered. Okay?

12 Does that cause any conflict that  
13 cannot be overcome with your schedule?

14 A. Well, I am a teacher. I mean, you  
15 know, I have a lot of students. And, you know, it's a  
16 dilemma because I have a lot of students, and they are  
17 very important. I think a fair trial is also very  
18 important. I guess I could overcome it. I mean, I could  
19 work at night.

20 Q. Sure. Well, here is the point:

21 Obviously, any jury service, especially if it goes  
22 several days, is an inconvenience to the average citizen.

23 Sometimes we get jurors that say, "My business will  
24 suffer so much I am not going to pay attention to the  
25 evidence." They will tell us that, even though it's a  
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1 death penalty case.

2 Obviously, we want jurors that want to  
3 pay close attention to the evidence. What you just have  
4 to be able to assure us is even though, obviously, you  
5 will be inconvenienced, but when you are here, you will  
6 pay close attention and give the case your full  
7 attention?

8 A. Yes, I will.

9 Q. Okay. Well, I have kind of gone over  
10 this fast, but you have been very forthright in your

11 answers. Do you have any questions over anything we have  
12 gone over?

13 A. No.

14 Q. Okay. Anything -- any insights about  
15 yourself that you think we ought to know before we make  
16 our decisions?

17 A. I don't know, I'm a fairly serious  
18 person. I think I am a good teacher. I am really  
19 honest, embarrassingly so sometimes. I have a fairly  
20 good sense of humor, and I am real nervous.

21 Q. Okay.

22 A. This is my first time to do this.

23 Q. Well, you have done great.

24

25 THE COURT: Well, ma'am, just relax.

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1 We're all friends here, please just relax.

2 THE PROSPECTIVE JUROR: Okay.

3 MR. TOBY L. SHOOK: You have done  
4 exactly what we have asked and that is fill out this  
5 questionnaire honestly and given us plenty of information  
6 here with honest answers.

7 THE PROSPECTIVE JUROR: Thank you very  
8 much.

9 MR. TOBY L. SHOOK: That is all the  
10 questions I have, Your Honor.

11 THE COURT: All right. Mr. Glover.

12

13 VOIR DIRE EXAMINATION

14

15 BY MR. CURTIS GLOVER:

16 Q. Ms. Murray, my name is Curtis Glover  
17 as the Judge told you. And you started your talk with  
18 the prosecution about having lived in Germany after  
19 postwar -- in postwar Germany. And that you learned to  
20 appreciate how bad a tyrannical system can be, having  
21 seen it firsthand there.

22 Well, let me just say to you, that I  
23 somewhat feel that being a juror in a criminal case is  
24 kind of the front runner or on the forefront of a  
25 democratic system.

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1 You are kind of -- you know you may  
2 think you live in a democracy and that tyranny can't take  
3 over, well it can, and it can be insidious, it can be  
4 blatant.

5 But you, as a juror, are kind of the  
6 bulwark or the difference between tyranny and a  
7 democracy. You're just kind of the forefront of it,  
8 being on a jury. Can you appreciate that?  
9 Being on a jury is probably the most  
10 democratic thing we can do in a democratic society. I  
11 guess we're one of the few countries in the world that  
12 does have it, and it keeps us from being overtaken by  
13 maybe overzealous, possible tyranny or whatever. Can you  
14 appreciate that?

15 A. Yes.

16 Q. Anyway, the prosecutors have gone over  
17 some very important things with you here. They have  
18 talked essentially about the second part of a criminal  
19 trial.

20 There are two parts: There is the  
21 guilt or innocence phase, and the penalty phase. And  
22 they put a lot of emphasis on these special issues over  
23 here which talk about life or death.

24 I am not going to talk about those  
25 issues, because I am so confident that the jury in this  
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1 case will never get to those. And I am not just paying  
2 lip service to a notion here, that the jury is, we hope,  
3 going to acquit her, we feel confident that she will be  
4 acquitted. And I just want to go over some things with  
5 you and kind of firm up in your mind of what your  
6 function will be on this jury.

7 As they told you, the burden of proof  
8 lies over there. And it is so easy to pay lip service to  
9 the fact, yes, I will hold them accountable for that  
10 burden of proof, and I will never shift it here. But,  
11 you know, when you go back to that jury room, you or any  
12 other juror, will have a tendency to have little  
13 questions come up in your mind, and you will say, "You  
14 know, either by the lack of evidence, or the confusion of  
15 evidence, or the failure to call this witness, there is a  
16 doubt in my mind."

17 And then you say, "Well, is that a  
18 reasonable doubt?" And there may be one of those, there  
19 may be two of them, or there may be 100 of those little  
20 reasonable doubts. And then you start weighing in your  
21 mind, are those reasonable, is this one reasonable.

22 And then, sometimes you will want to  
23 say, "Well, you know, perhaps the defendant didn't  
24 testify in this case, and she could have perhaps  
25 enlightened the jury about that."

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1 Well, you know the minute you have  
2 done that, you have denied her a fair trial, because she  
3 has no burden. And the law says that if she doesn't take  
4 the witness stand in this case that you cannot consider  
5 that for any purpose. And the law further says that if  
6 any of those little reasonable doubts come up, you are to  
7 resolve every last one of them in her behalf.

8 That is sometimes confusing to people  
9 because they say, "A person should step forth and prove  
10 their innocence. A person should step forth and do  
11 whatever, you know, we the jury think perhaps because of  
12 these reasonable doubts, think that she should have  
13 done." The law says no.

14 So, you know, you are in a big  
15 position to see that democracy works right when you get  
16 back there in that jury room. Are you of the frame of  
17 mind to do that?

18 A. Oh, yes.

19 Q. Okay. You can look her in the eye and  
20 say I will do that?

21 A. I will do that.

22 Q. Okay.

23 A. I think that that's what I learned at  
24 nine. If anything, you know, the United States is the  
25 one place in the world where, when you are tried, the  
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1 burden is a serious burden and it ought to be.

2 Q. You can assure her that you will never  
3 shift that burden to here?

4 A. No.

5 Q. And if anything should come up in the  
6 deliberations of this case that appear to you to be  
7 shifting that burden, you would be quick to correct it,  
8 and say, "No, we do not do that."

9 A. I would try to.

10 Q. And if that shifting or that attempt  
11 to shift that burden involves a reasonable doubt you'll  
12 say, "That raises a reasonable doubt, and we will do as  
13 Judge Tolle tells us to do, and we will resolve that in  
14 her behalf."

15 And if it's one or it's ten or it's  
16 100, all it takes is one, Ms. Murray. One reasonable  
17 doubt as to an element of this case, and you resolve that  
18 in her behalf and say by your verdict say, "Not guilty."  
19 That is what the Judge will tell you to do. Will you do  
20 that?

21 A. Yes, sir.

22 Q. You know in a case of this nature, and

23 they have talked about the fact that you are going to see  
24 evidence of perhaps a heinous crime, and I feel that you  
25 will.

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1 And so frequently, and it's only human  
2 nature, and I am sure you will agree with me, that when a  
3 juror sees something like that, it so shocks their  
4 conscience and their feeling about mankind and  
5 everything, that they just scream out, "We need to hold  
6 somebody accountable for this."

7 And the government has come forth and  
8 they have said, "We have got the person that is  
9 accountable for it. You know, this is the person that we  
10 have got."

11 And there is a reasonable doubt in  
12 your mind as to whether or not they have that person.  
13 You are not going to be of the frame of mind that you  
14 say, "Well, we, the jury, have got to solve this case."  
15 That is not your job to solve this case, that is their  
16 job to solve this case.

17 Can you assure her that if you go back  
18 to that jury room and you are so shocked by what you see,  
19 that you will not attempt to solve the case for them?

20 That is their job. That is not the jury's job. You are  
21 to base your verdict on what they tell you in the  
22 evidence they have got. And if it's inadequate or  
23 insufficient, it is not your job to go probing around and  
24 trying to figure out, "Well, what is this all about?"

25 That should raise a reasonable doubt in your mind if you  
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1 have to go back there and try to resolve this case.

2 Can you assure her and look her in the  
3 face and say, "I will not do that. I will hold them  
4 accountable to solve this case, if they can. And if they  
5 can't, you will walk free from this courtroom." Will you  
6 do that?

7 A. Yes, I would.

8 Q. Okay. And as she sits there now, you  
9 will presume her to be innocent and not just pay lip  
10 service to that. You have heard some things about this  
11 case, and you have read some things about it, and can you  
12 tell her that those things have not influenced you in any  
13 way in this case?

14 A. I made a real concerted effort not to.

15 Q. Can you assure her that you will set  
16 aside anything that you have read or any preconceived  
17 notions about this case? And base this case on what you  
18 hear from either there or here? Can you assure her that  
19 you will do that?

20 A. Yes.

21 Q. Do you have any questions of us, Ms.  
22 Murray?

23 A. I guess I want to know if the  
24 gentlemen that I am familiar with are comfortable with  
25 the idea of me being on this jury?

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1 Q. Well, they both said you are an  
2 excellent English teacher.

3 A. I work real hard at it. I am lousy  
4 cook, but I work in the classroom.

5 Q. Now, getting to this business about  
6 your time being very valuable. My wife was formerly a  
7 high school English teacher --

8 A. No more valuable than anyone else. I  
9 mean, I wasn't implying --

10 Q. -- well, let me tell you this. My  
11 wife was an English teacher in high school and graduated  
12 from Centenary, by the way. And she would get up at 4:30  
13 in the morning, and I -- being an English teacher is an  
14 awful task.

15 You know, I just can't imagine why  
16 they don't pay them like they pay coaches, you know?  
17 They work as hard. But would that present a problem for  
18 you? The fact that I know it's a horrendous job?

19 A. Well, it wouldn't be easy.

20 Q. Would it detract anything from your  
21 concern for this woman? This is who you should be  
22 concerned with in this courtroom.

23 A. You asked me if I needed to share  
24 something. I'll be honest with you, it would have been  
25 real easy on that form to fill it out in a way to get  
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1 around working on this jury, it really would have been.  
2 But you asked the question of 65 year old people in the  
3 audience. Do you remember that?

4

5 THE COURT: Oh, yes, I ask that all  
6 the time.

7 THE PROSPECTIVE JUROR: There were  
8 three answers. And one was very chilling. And so I

9 said, "Okay. They are looking for something in  
10 particular." And I don't know what you look for in  
11 jurors, but I know your best shot of getting a fair trial  
12 was for me to answer all the questions very honestly.  
13 But that chilling answer, was, you  
14 know, this was a person who really wanted to work on the  
15 jury, and that was a little bit disturbing. That  
16 disturbs the whole system. And so, I guess my students  
17 can do without me. I am replaceable. I don't want to  
18 think I am replaceable, but, you know, some things are  
19 more important.

20

21 BY MR. CURTIS GLOVER:

22 Q. Okay, I think you are being very  
23 honest with us and I appreciate that.

24

25 MR. CURTIS GLOVER: That's all we  
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1 have, Judge.

2 THE COURT: Ma'am, could you step  
3 outside briefly, please. Don't run back to the classroom  
4 yet, we'll be calling you back in here in just a few  
5 minutes.

6

7 (Whereupon, the prospective  
8 juror was excused from the  
9 room, and the following  
10 proceedings were held,  
11 outside of her presence  
12 as follows:)

13

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

16 MR. TOBY L. SHOOK: The State will  
17 accept the juror.

18 THE COURT: What says the defense?

19 MR. CURTIS GLOVER: We will strike the  
20 juror, Your Honor.

21 THE COURT: Strike the juror?

22 MR. CURTIS GLOVER: Yes, Your Honor.

23 THE COURT: All right. If you will

24 have Ms. Murray come in, please.

25

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1 (Whereupon, the prospective  
2 juror returned to the

3 room and the proceedings  
4 were resumed as follows:)

5

6 THE COURT: Ms. Murray, I want to  
7 thank you for your attendance, but you will be excused  
8 from further service.

9 THE PROSPECTIVE JUROR: Okay. Thank  
10 you.

11 MR. TOBY L. SHOOK: Thank you.

12 THE COURT: Please don't discuss  
13 anything. Ma'am, when the trial is over, you may talk or  
14 not talk about this thing. But please don't talk about  
15 anything until it is over. Is that fair enough?

16 THE PROSPECTIVE JUROR: Okay.

17 THE COURT: Thanks a bunch.

18 THE PROSPECTIVE JUROR: Thank you.

19 Bye-bye.

20 THE COURT: We appreciate it. All

21 right.

22

23 (Whereupon, the proceedings  
24 were recessed for the  
25 day, to return on the  
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1 next day, November 8, 1996,  
2 at 8:00 a.m. at which  
3 time the proceedings  
4 were resumed in open  
5 court, in the presence  
6 of the defendant, with her  
7 attorney, and the State  
8 being represented by the  
9 D.A., as follows:)

10

11

12 (These proceedings are continued to  
13 the next volume in this cause.)

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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

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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 MARK TOLLE, JUDGE  
20 Criminal District Court Number 3  
21 Dallas County, Texas  
22  
23  
24  
25  
Sandra M. Halsey, CSR, Official Court Reporter  
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