

# Volume 23

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

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

7 VS: } & A-96-253

8 DARLIE LYNN ROUTIER } Kerr Co. Number

9

10

11

12

13 STATEMENT OF FACTS

14 JURY VOIR DIRE

15 INDIVIDUAL JURORS HEARING

16 VOL. 23 OF VOLS.

17 November 13, 1996

18 Wednesday

19

20

21

22

23

24

25

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 Wednesday, the 13th 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 13th, 1996  
4 Wednesday  
5 8:30 a.m.  
6  
7 (Whereupon, the following

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

16

17 THE COURT: All right. Are you ready?  
18 MR. S. PRESTON DOUGLASS, JR: Yes,  
19 sir.

20 MR. TOBY L. SHOOK: Yes, sir, we're  
21 ready.

22 THE COURT: All right. Bring in the  
23 first juror. Mr. Cecil McGehee, M-C-G-E-H-E-E; is that  
24 correct, sir?

25 THE PROSPECTIVE JUROR: Yes, sir.

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1 THE COURT: Will you raise your right  
2 hand, please, sir.  
3 Do you solemnly swear or affirm that  
4 you will true answers make to all questions propounded to  
5 you concerning your qualifications as a juror, so help  
6 you God?

7

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

15

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Thank you, sir. I  
18 understand you are a very popular man. You not only got  
19 a summons the last time, but on the new panel coming up,  
20 you have another summons.

21 THE PROSPECTIVE JUROR: I have a new  
22 summons.

23 THE COURT: They want you. Seriously,  
24 you can just ignore the one coming up. You are a  
25 potential juror -- still a potential juror in the Darlie  
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1 Routier matter.

2 Mrs. Routier is the young lady sitting  
3 there next to her attorney, Mr. Preston Douglass.  
4 The State is represented by two  
5 Assistant District Attorneys from Dallas County, Toby  
6 Shook and Sherri Wallace.  
7 Mr. Douglass will be joined shortly by  
8 Curtis Glover, another attorney from Dallas. But both  
9 sides want to ask you some questions.  
10 There are no wrong answers, there  
11 won't be a test. We just have to know how you feel about  
12 being a juror in this case.  
13 So, who will go for the State? Ms.  
14 Wallace.  
15  
16  
17 Whereupon,  
18  
19 CECIL RAY MCGEHEE,  
20  
21 was called as a prospective juror, for the purpose of  
22 voir dire, having been first duly sworn by the Court to  
23 speak the truth, the whole truth, and nothing but the  
24 true, testified in open court, as follows:  
25  
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1 VOIR DIRE EXAMINATION  
2  
3 BY MS. SHERRI WALLACE:  
4 Q. Good morning. How are you?  
5 A. Fine.  
6 Q. Thanks for coming in. I want to thank  
7 you for taking the time to come in, it sounds like you  
8 have a tight schedule with your truck driving.  
9 A. Yes, ma'am.  
10 Q. So, we really appreciate it. Also, we  
11 want to thank you for the time you took to fill out your  
12 questionnaire. It has been really helpful to us and this  
13 process may seem like it might take a while, but it would  
14 take longer if you didn't take the time to do that. So,  
15 thank you ahead of time.  
16 Before we get started, do you have any  
17 questions for me?  
18 A. No, ma'am.  
19 Q. Okay. Do you know either of the local  
20 lawyers, either the gentlemen that's here today, Preston  
21 Douglass or Richard Mosty who was introduced a few weeks  
22 ago?  
23 A. Well, I just don't know Richard Mosty

24 personally, but I know of him.

25 Q. You know the name?

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1 A. Yes.

2 Q. Anything about that that would affect  
3 you as a juror in this case?

4 A. No, ma'am.

5 Q. Okay. And you didn't know any of the  
6 people from Dallas, did you?

7 A. No, ma'am.

8

9 THE COURT: This is Mr. Glover.

10 MR. CURTIS GLOVER: Good morning.

11 THE PROSPECTIVE JUROR: Good morning.

12

13 BY MS. SHERRI WALLACE:

14 Q. He is one of the Dallas defense

15 attorneys. Mr. McGehee, am I saying your name right?

16 A. McGehee.

17 Q. Okay. In your questionnaire it said  
18 your route took you through the Dallas area. That you  
19 have read -- that you have heard extensively about this  
20 case?

21 A. Yes, ma'am.

22 Q. And this case has received a lot of  
23 press and a lot of publicity. And that really, frankly,  
24 the reason we're here in Kerrville is to try to get away  
25 from some of that.

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1 Having heard about the case does not  
2 disqualify you as a juror, but having already made your  
3 mind up would disqualify you as a juror. There is a real  
4 good reason why we need jurors that will wait to hear the  
5 evidence in the courtroom, and it came up a couple of  
6 weeks ago. Do you remember Richard Jewell, that fellow  
7 that was accused of bombing the Olympics?

8 A. I heard about it.

9 Q. Heard about -- security guard. He  
10 called it in. And in the press pretty much he was tried  
11 and convicted and then hung out to dry. And then two  
12 weeks ago, I think, the FBI came out and said, "Oh, well,  
13 we don't have any evidence against him."

14 You know, he was never charged and he  
15 never went to court but his life is pretty much destroyed  
16 or his reputation is from all of the negative press that

17 he received.

18 So, it's cases like that that make it

19 so important that this rule of law is followed. What I  
20 need to know from you if your opinion -- well, have you  
21 formed an opinion?

22 A. Well, yes. I have formed an opinion,  
23 but I'm not saying it couldn't be changed in court.

24 Q. Okay. Here is kind of the legal  
25 question I have to ask you: If your opinion affects your  
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1 verdict, or would affect your verdict, you can't sit as a  
2 juror. If it would not affect your verdict, you can sit  
3 as a juror. So, would your opinion affect your verdict  
4 in this case?

5 A. I think so.

6 Q. Okay. Fair enough. Thank you, sir.

7

8 THE COURT: Is your mind open to  
9 hearing new testimony? You have not totally made your  
10 mind up now, have you?

11 THE PROSPECTIVE JUROR: No, sir.

12 THE COURT: In other words, if the

13 State doesn't prove their case, you could find the  
14 defendant not guilty; if they prove the case, you could  
15 find the defendant guilty; is that correct?

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Okay. Fine.

18 MR. S. PRESTON DOUGLASS, JR: Your  
19 Honor, I would go ahead and submit Mr. McGehee. I think  
20 he said pretty clearly --

21 THE COURT: Well, he said two things.

22 It was not said the proper way. He said his mind was  
23 open, then he said he could change. So, I think -- is  
24 your mind open or not?

25 THE PROSPECTIVE JUROR: Yes, sir, it  
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1 is still open.

2 THE COURT: All right.

3 MR. S. PRESTON DOUGLASS, JR: But,  
4 also in fairness to Mr. McGehee in response to her  
5 question said would it influence you when you deliberate  
6 and might have an effect on your verdict. He answered  
7 very honestly that he thought it would.

8 THE COURT: Well, yes, he has not  
9 heard anything. That's beside the -- is that why you  
10 said that?

11 THE PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: I think that is a very  
13 fair answer. I am going to hold -- if you could just  
14 keep -- you might want to, let's go through the whole  
15 thing and get him either qualified or not qualified.

16

17 BY MS. SHERRI WALLACE:

18 Q. Mr. McGehee, as long as you can  
19 promise the Court, you have to promise the Court that  
20 your opinion will not affect your verdict. Can you  
21 follow that law?

22 A. Yes, ma'am.

23 Q. Okay. Fair enough.

24

25 MR. S. PRESTON DOUGLASS, JR: Let me  
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1 just -- I hate to interrupt. I would assume, Your Honor,  
2 that my motion to submit for cause is denied.

3 THE COURT: Oh, yes, that is denied.

4 That's right.

5

6 BY MS. SHERRI WALLACE:

7 Q. I want to talk to you a little bit, if  
8 I could, about how you feel about the death penalty. It  
9 says here that you're in favor of it. And I will read  
10 what you wrote, it's been a while since you have written  
11 it. It says: "I believe if proven guilty for a murder,  
12 you should be executed for that crime committed."

13 Can you tell me a little bit about why  
14 you are in favor of the death penalty?

15 A. Well, I just feel like if you take  
16 someone's life intentionally that you should be punished  
17 for it. And our jails are overcrowded now with death row  
18 people who, you know, have been sentenced. That are not  
19 meeting their sentence.

20 Q. Okay. Have you always been in favor  
21 of the death penalty or has this evolved, something that  
22 you --

23 A. Well, I think I have kind of always  
24 been for it all along.

25 Q. Okay. Here in Texas not all murders  
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1 qualify for the death penalty. You have to have a murder  
2 plus something else, if you will. Murder of a police  
3 officer in the line of duty or of a fireman or a prison  
4 guard; murder of more than one person; murder of a --

5 murder for hire, in other words, I hired somebody to go  
6 kill somebody, I would be eligible for the death penalty  
7 and so would the person I hired that killed for money; or  
8 a murder in the course of another felony.

9 If you went over here to the Circle K

10 and robbed the attendant and then killed him, that would  
11 be a crime that would be eligible for the death penalty;  
12 or rape or kidnapping or murder in the course of those  
13 types of crimes; or a murder of a child under the age of  
14 six, which is, of course, the indictment that is on trial  
15 here.

16 Do you have any quarrel with that

17 list? Would you add to it or change it if you were in  
18 charge?

19 A. No.

20 Q. Okay. Does it sound like a pretty  
21 fair lineup to you, crimes that should be eligible for  
22 the death penalty?

23 A. Yes, ma'am.

24 Q. Okay. The second thing I want to talk  
25 to you a little bit about is being eligible for the death  
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1 penalty and receiving a death sentence is two different  
2 things. It's not automatic. We have to first convince  
3 you beyond a reasonable doubt that a capital murder has  
4 occurred. Okay?

5 If we fail to meet that burden, it's a  
6 not guilty, and everybody goes home. But if the jury  
7 believes the defendant is guilty beyond a reasonable  
8 doubt, we go to the second phase of the trial, and that  
9 is called the punishment phase.

10 Were you on a jury before?

11 A. No, ma'am.

12 Q. Okay. This is true in all types of  
13 cases, criminal cases, not just capital murders. There  
14 is the first phase, and the second phase is called the  
15 punishment phase. And different types of evidence can  
16 come in, more evidence. It may be that you hear more  
17 evidence, it may not.

18 A lot of these questions I'm going to  
19 ask you are real hard because I can't go into the facts,  
20 I'm not allowed to talk about this case, so we have to  
21 just talk in hypotheticals. Okay?

22 But it may be that you hear more  
23 evidence, and you may not. But whether or not you do,  
24 you still have to look at the evidence again, a second  
25 time, and decide if the defendant is worthy of a death  
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1 sentence.

2 Let me stop right here and tell you  
3 that woman down here at the end of table in the print  
4 outfit, it is our goal and our desire to see that she is  
5 executed. We believe we have the type of case and the  
6 quality of evidence to do that.

7 Would you have any problem in  
8 participating in that process, if we proved the case to  
9 you?

10 A. Yes, I think I would.

11 Q. I'm sorry?

12 A. Yeah.

13 Q. You would? Can you tell me a little  
14 bit about that?

15 A. Well, I just hate -- I would hate to  
16 be the one to say --

17 Q. Okay. Do you have a religious or  
18 moral reason or is it just something that would make you  
19 uncomfortable?

20 A. It is just something that would make  
21 me uncomfortable.

22 Q. Okay. Let me ask you, Mr. McGehee,  
23 well, an example I heard said was, you know, let's say  
24 you are in Dallas or San Antonio, one of the big cities,  
25 and you see those tall skyscrapers, and you see those  
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1 people that are up there on the 90th floor cleaning the  
2 windows, and I can look up there and say, "Well, I think  
3 that is a good idea. Somebody needs to do it. And I  
4 appreciate that there is somebody that will do it, but I  
5 could not do that job."

6 Is that how you feel about the death  
7 penalty?

8 A. Yes, ma'am.

9 Q. Okay. So, while you believe in it,  
10 you wouldn't be able to carry out such a sentence  
11 yourself; is that right?

12 A. No, ma'am.

13 Q. And is that regardless of the evidence  
14 that we brought to you?

15 A. Yeah.

16 Q. I have got to go a little further with  
17 you.

18 A. Okay.

19 Q. I'm sorry.

20 A. That's fine.

21

22 THE COURT: So, the bottom line is,  
23 you couldn't be a fair juror in this case. Is that what  
24 you are saying?

25 THE PROSPECTIVE JUROR: Yes, sir.

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1 THE COURT: Mr. Douglass, do you have  
2 a motion for the Court?

3 MR. S. PRESTON DOUGLASS, JR: I would  
4 resubmit the previous one, and also --

5 THE COURT: The Court having  
6 reconsidered your motion, grants it. Is that  
7 satisfactory?

8 MR. S. PRESTON DOUGLASS, JR: Thank  
9 you.

10 THE COURT: Thank you, very much, sir.

11 You may step down. Sir, if you could not discuss this  
12 with anybody until the trial is over, it will be in late  
13 January. Then you can talk or not talk as you see fit.  
14 I do have a gag order in effect, I can impose monetary  
15 sanctions or jail time. I am not threatening you, I just  
16 have to tell you that.

17 THE PROSPECTIVE JUROR: Okay.

18 THE COURT: Where do you drive all the  
19 time?

20 THE PROSPECTIVE JUROR: Mainly in  
21 Texas.

22 THE COURT: In Texas.

23 THE PROSPECTIVE JUROR: All over  
24 Texas.

25 THE COURT: Well, good for you. Thank  
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1 you for coming in. And listen, ignore the summons for  
2 next time, you don't have to come back.

3 THE PROSPECTIVE JUROR: Okay.

4 THE COURT: We appreciate it. All  
5 right. Thank you very much. Let's bring them in. And  
6 your name, ma'am?

7 THE PROSPECTIVE JUROR: Ardie  
8 Garrison.

9 THE COURT: All right. This is number  
10 247, number 81 on our list. And your name is Ardie,  
11 A-R-D-I-E, Garrison, G-A-R-R-I-S-O-N; is that correct,  
12 ma'am?

13 THE PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: If you will raise your

15 right hand, please, ma'am.

16 Do you solemnly swear or affirm that

17 you will true answers make to all questions propounded to

18 you concerning your qualifications as a juror, so help

19 you God?

20 THE PROSPECTIVE JUROR: I do.

21

22 (Whereupon, the prospective

23 juror was duly sworn by the

24 Court to true answers make

25 to the questions propounded,

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1 concerning qualifications, after

2 which time, the proceedings were

3 resumed as follows:)

4

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

6 have been called to be a potential witness (sic) in the

7 Darlie Routier matter.

8 Mrs. Routier is the defendant, she is

9 the young lady sitting to your far right up here.

10 Next to her attorneys, Curtis Glover

11 from Dallas, and Preston Douglass who is from Kerrville.

12 The State is represented by two

13 Assistant District Attorneys from Dallas, Toby Shook and

14 Sherri Wallace. Both sides are going to ask you

15 something. Mr. Shook is going to ask you some questions,

16 and Mr. Douglass will.

17 And there are no wrong answers, no

18 test or anything. Please answer forthright and as

19 briefly as you can. If you could say yes or no, not

20 uh-huh or huh-uh, Ms. Halsey is taking all of this down

21 and can't take that down.

22 THE PROSPECTIVE JUROR: Okay.

23 THE COURT: All right, Mr. Shook.

24

25

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1 Whereupon,

2

3 ARDIE FRANCIS GARRISON,

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. Again, Mrs. Garrison, my name is Toby  
14 Shook, I am one of the prosecutors on the case, and I  
15 will be asking you questions on behalf of the State.

16 A. Okay.

17 Q. If you have any questions of us at any  
18 time, feel free to go ahead and ask. Okay?

19 A. Okay.

20 Q. I'll go over a little bit of your  
21 background information that was here on your  
22 questionnaire, then we will talk a little bit about the  
23 law. I understand that you have seen or heard something  
24 about the case on TV; is that right?

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

2

3 THE COURT: Is that a yes?

4 THE PROSPECTIVE JUROR: Yes, I'm  
5 sorry.

6

7 BY MR. TOBY L. SHOOK:

8 Q. Tell me what you have heard on TV.

9 A. Really just about the main --

10

11 THE COURT REPORTER: Excuse me, I  
12 can't hear what you are saying, ma'am.

13 THE COURT: If you could just slide  
14 right up there and speak into that mike.

15 Now, your voice is going to resonate,  
16 but don't get upset about that.

17 THE PROSPECTIVE JUROR: Okay. Mainly  
18 just that supposedly she killed her two kids while her  
19 husband was upstairs and that is about it.

20 And about the sock at the neighbor's  
21 house or something like that.

22 I'm not really sure I have it. I  
23 really don't know.

24

25

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1 MR. TOBY L. SHOOK:

2 Q. And you heard that on TV; is that

3 right?

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

6

7 THE COURT: Is that a yes?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Thank you, ma'am.

10

11 BY MR. TOBY L. SHOOK:

12 Q. Did you form any opinions at all in  
13 regards to what you heard?

14 A. No.

15 Q. Okay. Now, I understand that you were  
16 born in, I guess, it's McAllen, Texas?

17 A. Yes, sir.

18 Q. And you have lived in various Texas  
19 towns?

20 A. Yes, sir.

21 Q. And how long have you lived in  
22 Kerrville now?

23 A. About two and a half years.

24 Q. What brought you to Kerrville?

25 A. My parents decided to retire here, so  
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1 I came up with them.

2 Q. Okay. And now you work as a cashier  
3 at Albertsons?

4 A. Yes.

5 Q. How long have you been working there?

6 A. Almost three months.

7 Q. Okay. What were you doing before  
8 that?

9 A. Nothing, just staying home with my  
10 daughter.

11 Q. Okay. Well, do you live at home with  
12 your parents?

13 A. No, I have my own home.

14 Q. Does your daughter live with you?

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

17 Q. Okay.

18

19 THE COURT: Is that a yes?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: Thank you.

22

23 BY MR. TOBY L. SHOOK:

24 Q. Let me ask you this then: What are

25 your hours at Albertsons?  
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1 A. Usually 7:00 a.m. to 4:00 p.m. or  
2 sometimes 10:00 to 7:00.  
3 Q. Okay. Judge Tolle has scheduled the  
4 start of this trial for January 6th. Okay?  
5 A. Uh-huh. (Witness nodding head  
6 affirmatively.)  
7 Q. And we think it will last about two  
8 weeks, maybe three, but probably two. It goes from 9:00  
9 in the morning until 5:00 in the afternoon, then you can  
10 go home, unless you are in deliberations, then you might  
11 be sequestered. All right?  
12 I don't know what your situation is on  
13 caring for your child, but you didn't take your  
14 exemption. So, what we need to know, what I want to get  
15 out of the way before I get any further is: If you were  
16 placed on a jury for that two week period, are you going  
17 to be able to, with your job and taking care of your  
18 child, are you going to be able to concentrate on the  
19 case, or is that going to be a problem?  
20 A. No, that is no problem.  
21 Q. Okay. So you have adequate  
22 supervision?  
23 A. Yes.  
24 Q. And you can work around your schedule.  
25 Okay. Now, I want to -- you have never been on a jury  
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1 before; is that right?  
2 A. Right.  
3 Q. Let me ask you: Is it Arthur  
4 Garrison? That is your father, right?  
5 A. Right.  
6 Q. Had a felony back in 1983 or '84?  
7 A. Yes.  
8 Q. Tell me a little bit about that. What  
9 type?  
10 A. Well, I had to ask my mom about it  
11 because I really didn't know. She said it was for armed  
12 robbery.  
13 Q. Okay. Do you know what happened on  
14 it?  
15 A. He was found guilty and they gave him  
16 10 years probation, and he stayed in jail for about 10  
17 months and that was it.  
18 Q. Okay. How old were you when that

19 happened?

20 A. Well, I was young. I was about six or  
21 seven.

22 Q. Okay. Does he ever talk about that?

23 A. No, not really.

24 Q. Anything like that?

25 A. Huh-uh. (Witness shaking head)

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1 negatively.)

2 Q. Do you think that would affect you in  
3 any way?

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

5 Q. Okay. Do you feel that he was -- from  
6 what you know about it or what little you know about the  
7 case, do you think he was treated fairly by the criminal  
8 justice system?

9 A. Yeah. Yeah, he was.

10 Q. Okay. Let me ask you then: You know  
11 from coming down on the voir dire, the big panel, that  
12 the State is seeking the death penalty in this case?

13 A. Yes.

14 Q. So we want to talk to every juror  
15 about their personal feelings about the death penalty.  
16 Are you in favor of the death penalty as a law?

17 A. Yes.

18 Q. Okay. Tell me why.

19 A. Well, I just feel that if somebody  
20 wants to commit a crime, kill somebody or murder  
21 somebody, that the same thing should be done to them.

22 Q. Okay. Have you always felt that way?

23 A. Yes.

24 Q. Have you ever followed any cases in  
25 the news? Any big murder cases that you thought should

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1 be death penalty cases or actually were death penalty  
2 cases?

3 A. No.

4 Q. Have you -- do you just think then it  
5 should be done just because, as a just punishment for  
6 some killings; is that right?

7 A. If they did it, yes.

8 Q. Okay. If it's proven?

9 A. Right.

10 Q. Okay. In Texas, there's only certain  
11 types of murder cases that call for the death penalty.  
12 We have a lot of murder cases that you can get life in

13 prison, but you can't get the death penalty.  
14 You have to have an intentional  
15 killing plus some other aggravating fact, something else,  
16 like murder during the course of a robbery.  
17 A guy goes into 7-Eleven and shoots  
18 the clerk during a robbery; or someone comes in and  
19 breaks in your home; someone who murders someone during  
20 the course of a rape or kidnapping; those type of  
21 offenses.  
22 A. Uh-huh. (Witness nodding head  
23 affirmatively.)  
24 Q. A mass murderer, or a serial killer,  
25 you know, that falls in the category; murder of a police  
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1 officer while he is on duty.  
2 A. Uh-huh. (Witness nodding head  
3 affirmatively.)  
4 Q. And murder of a child under the age of  
5 six. In fact, you could take a moment to read that  
6 indictment which is in front of you. You see that  
7 typewritten portion? Read that to yourself.  
8 A. Okay.  
9 Q. That sets out the intentional killing  
10 of a child under the age of six. What I want to know,  
11 and obviously, I can't ask you what your verdict in this  
12 case would be because you have not heard any witnesses,  
13 but is that the type of case you think would be  
14 appropriate for the death penalty under the proper facts  
15 and circumstances?

16 A. Yes.  
17 Q. In Texas the way our system is set up  
18 is the trial is divided into two parts. In the first  
19 part we have to prove that case to you beyond a  
20 reasonable doubt. If we don't do that, everybody goes  
21 home. If we do do that, obviously, we go to the second  
22 part of the trial.  
23 In the second part of the trial you  
24 might hear additional evidence, maybe about the  
25 defendant's background. You may not. At the close of  
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1 that evidence you get these questions: This first  
2 question you get is a "yes" or "no" question. It  
3 basically asks: Is the defendant going to be a  
4 continuing danger to society?  
5 The second question is what we call  
6 the mitigation question. It asks the jurors to review

7 all the evidence. They decide if there is some evidence  
8 where they think a life sentence should be imposed rather  
9 than a death sentence. If they don't see it, they answer  
10 it "no."

11 But if you answer "yes" to the first  
12 question and "no" to the second question, the Judge in  
13 this case, he has no discretion, he would sentence the  
14 defendant to death. If you answer them any other way,  
15 it's a life sentence.

16 Those are the two alternatives, death  
17 or life. Is that clear to you?

18 A. Yes.

19 Q. You don't write in death or life, but  
20 that's how the Judge sentences according to those  
21 answers. In Texas the method of execution is by lethal  
22 injection. Were you aware of that?

23 A. Yes.

24 Q. Okay. The procedures in this case if  
25 there was a "yes" or "no" and the Judge did sentence the  
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1 defendant, would call for this, someday, somewhere down  
2 the line, the Judge would actually issue what's called a  
3 death warrant in the case, with an execution date.

4 And on that day, actually the day  
5 before the defendant would be moved to the Walls Unit in  
6 Huntsville, Texas, placed in a special cell, would be  
7 given time to maybe talk with family, friends, a  
8 minister.

9 But at 6:00 p.m., guards would come to  
10 that cell and take the defendant away. Probably, you may  
11 have read about it or heard about it. They strap you  
12 down to a gurney, there's witnesses there, needles are  
13 put in, the death warrant is read, there's a chance for a  
14 last statement, the poisons are then injected, and it  
15 happens pretty quickly, about ten minutes, the heart and  
16 lungs are stopped.

17 That is the method that would happen  
18 in this case, it happens in every case. Some states have  
19 the death penalty and they never invoke it. Texas, as  
20 you are probably well aware, does. There have been over  
21 100 executions in the State of Texas.

22 What I need to know is this: If you  
23 could listen to the evidence and if we prove our case,  
24 prove these questions to you, that they should be  
25 answered "yes" and "no," can you actually take pen in  
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1 hand and write those answers out knowing that the  
2 defendant would be executed in the manner I described?

3 A. Yes.

4 Q. Okay. If we proved it?

5 A. Right.

6 Q. Okay. Also, let me talk to you about  
7 this: You see this first question? It asks: "Do you  
8 find from the evidence beyond a reasonable doubt that  
9 there is a probability that the defendant would commit  
10 criminal acts of violence that would constitute a  
11 continuing threat to society?" That is the first  
12 question we have to get a "yes" on.

13 Ask the jurors to make a prediction  
14 that the defendant is going to be a danger. Do you see  
15 that? You might get additional evidence in the  
16 punishment phase. Obviously, you have had heard all  
17 about the murder itself. Okay?

18 You might get additional evidence  
19 about the defendant's background, if they have been in  
20 prison before, or had a criminal history, you would hear  
21 that. Vice versa, they may have never been in trouble in  
22 their lives. Okay?

23 The law doesn't require that someone  
24 be convicted or have a long criminal history before they  
25 are tried for capital murder, intend to get the death

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1 penalty. You may have a situation where they have been  
2 good or haven't gotten into any trouble and then they go  
3 out and commit capital murder.

4 So, you only have the facts of the  
5 case itself to answer question number 1.

6 Again, I can't preview the facts for  
7 you. I can't commit you to any facts. But what I need  
8 to know is: Do you think that you could answer question  
9 number 1 based on the facts of the case alone? Based on  
10 the murder itself?

11 Would that give you enough information  
12 to answer question number 1 "yes"?

13 A. No.

14 Q. Okay. And why not?

15 A. Well, you mean just the facts that I  
16 know right now?

17 Q. Well, you don't know any facts right  
18 now.

19 A. Just the --

20

21 THE COURT: Mr. Shook is referring to  
22 after the trial is over.

23 THE PROSPECTIVE JUROR: Oh, okay.

24

25

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1 BY MR. TOBY L. SHOOK:

2 Q. Yeah, what I'm referring to is if,  
3 what you have to assume is this: You have already found  
4 the defendant guilty. Okay?

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

7 Q. Of the killing. So you would have  
8 already heard all of the facts surrounding the offense  
9 itself.

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

12 Q. The murder. But you may not get any  
13 more information, maybe they have done nothing else wrong  
14 in their life. So you have already found them guilty  
15 beyond a reasonable doubt, and now we're looking at this  
16 punishment phase.

17 So, I can't get into what facts you  
18 might know, but you have to assume at least that you have  
19 found the defendant guilty of capital murder. Okay?

20 A. Okay.

21 Q. What I need to know is: If that might  
22 be the only fact you know about the defendant, the facts  
23 surrounding the murder itself.

24 A. And if I -- so say that I found her  
25 guilty. Is that what you are saying?

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1 Q. Uh-huh. (Attorney nodding head  
2 affirmatively.)

3 A. After the trial is over?

4 Q. Well, the trial is still going to be  
5 going on.

6 A. Okay.

7 Q. It's not going to be over. The first  
8 part of the trial --

9 A. You are asking me if I would think she  
10 would be a threat to society?

11 Q. Well, I'm asking you if you think that  
12 it's possible for you to answer -- yeah. To say she is a  
13 threat to society just based on the murder itself.

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

15 Q. You would have to know something more?

16 A. Probably, yeah.

17 Q. Would you require -- does that mean  
18 you would require a criminal history or something like  
19 that?

20 A. Yes.

21 Q. Okay. So, and like I said, there is  
22 no right or wrong answers. Would you want a criminal  
23 history or some type of other -- you know, a prison  
24 sentence or something like that something in their  
25 background before you could answer "yes"?

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1 A. Yes.

2 Q. Okay. If they had no criminal  
3 history, you couldn't do that, you couldn't answer it  
4 yes?

5 A. No.

6 Q. Okay. So, you would want some type  
7 of, I guess, kind of track record for prison?

8 A. Well, not just prison, just  
9 background, I guess.

10 Q. Okay. Something more than just the  
11 murder itself?

12 A. Right.

13 Q. Okay. Let me go into a couple of  
14 other things the Judge talked about. The defendant has a  
15 presumption of innocence when we start out the trial.  
16 Okay?

17 The fact that the defendant has been  
18 indicted, the Judge told you is no evidence --

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

21 Q. -- of guilt, or been arrested, or  
22 anything like that. Some people feel that way and some  
23 people say, "When there is smoke, there is fire." How do  
24 you feel about that?

25 A. Well, I believe she is innocent until  
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1 whatever we decide, the jury.

2 Q. So, you could follow that rule of law?

3 A. Yes.

4 Q. The presumption of innocence. Also,  
5 the Judge explained to you about the Fifth Amendment, the  
6 defendant has a right not to testify.

7 A. Right.

8 Q. And if she chooses not to testify, you  
9 can't hold that against her?

10 A. Right.

11 Q. Could you follow that rule of law?

12 A. Yes.

13 Q. Okay. The Judge also told you that

14 the State has the burden of proof. You have to prove to  
15 this case beyond a reasonable doubt.

16 A. Right.

17 Q. Okay. The defense is under no  
18 obligation to prove anything to you. Okay? They don't  
19 have to prove her innocence. Can you follow that rule of  
20 law?

21 A. Yes.

22 Q. Also, you would get an instruction  
23 about the parole laws in this case. You may have heard  
24 about our parole laws, early release. However, the Judge  
25 will tell you that you can't consider that for any reason  
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1 in your deliberations. Could you do that?

2 A. Yes.

3 Q. Okay. Is there any other reason you  
4 can think -- any other information we need to know about  
5 you as far as making a decision on you? Anything  
6 important in your background?

7 A. I don't think so.

8 Q. Okay.

9

10 MR. TOBY L. SHOOK: That's all we have  
11 then, Judge.

12 THE COURT: Mr. Glover.

13

14 VOIR DIRE EXAMINATION

15

16 BY MR. CURTIS GLOVER:

17 Q. Ms. Garrison, just a few comments to  
18 you. I am going to go over some things that you have  
19 already heard and they have talked with you about. As  
20 Darlie Routier sits there right now, she is presumed to  
21 be innocent.

22 A. Right.

23 Q. You have heard nothing, nobody has  
24 heard anything. There simply has been an indictment  
25 returned there. That was returned by a Grand Jury in  
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1 Dallas. That is a group of people that meet in secret,  
2 and it's conducted by the district attorney. They can  
3 hear from whomever they want to. They can hear 60  
4 seconds worth of something read off of a paper. They can

5 read the newspaper and return an indictment if that is  
6 what they want to do. Nobody knows what they did. It's  
7 all done in secret.

8 People can be indicted and never even  
9 know that they are even being investigated.

10 So, can you see the insignificance of  
11 that document that is before you?

12 A. Yes.

13 Q. It's merely a charging instrument, it  
14 just says those words. It tells the district attorney  
15 what he is going to have to prove in order to have her  
16 found guilty. It informs her of what she is charged  
17 with, and what she is going to have to answer to.

18 Can you see the importance of  
19 presuming her to be innocent?

20 A. Yes.

21 Q. Likewise, in connection with that  
22 presumption of innocence, the law says that the burden of  
23 proving this case is right over there.

24 Now, you understand what the burden of  
25 proof means? It means they have brought the charge, they  
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1 made the accusation, they have to prove it. Does that  
2 seem fair to you?

3 A. Right.

4 Q. That burden of proof never ever shifts  
5 to this side of the room. It never comes to this table.  
6 Darlie Routier does not have to do anything. She can sit  
7 here silent throughout this entire trial and if she opted  
8 to do that Judge Tolle would tell you that you are not to  
9 consider that as any evidence at all against her, you are  
10 not to consider it, talk about it, to do anything about  
11 it.

12 In fact, if you go back to the jury  
13 room and your other fellow jurors start talking about  
14 what, "Well, I would have liked to have heard this, that,  
15 or the other." It would be your job to say, "Judge Tolle  
16 has told us we're not to consider that at all."

17 You know a lot of people are puzzled  
18 about that rule. It is the presumption of innocence that  
19 kind of protects her, it is her Fifth Amendment  
20 privilege.

21 That is a rule in the Constitution  
22 that says that she is presumed to be innocent, she has no  
23 burden to prove anything and in that connection she may  
24 sit silent throughout the entire affair.

25 Some people will say, "Well, shoot. I  
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1 think she ought to get up there and tell her side of it."

2 How do you feel about that?

3 A. That is her right. If she doesn't

4 want to talk about it, well that is up to her. I would

5 like to hear it, but maybe not.

6 Q. There may be nothing to talk about.

7 A. Right.

8 Q. There may be nothing to talk about.

9 Just think about the fact that that indictment is there

10 and you have read something in the newspaper, it may be

11 all phony-baloney.

12 A. Right.

13 Q. And just assume for the moment that in

14 God in His Heaven knows that she is innocent, there's

15 nothing she can do, all she can do is sit there silent

16 and shrug her shoulders.

17 That is the rule. No burden is on her

18 at all. Do you believe that?

19 A. Yes.

20 Q. Okay. Can you follow it?

21 A. Yes.

22 Q. Would you have any trouble judging the

23 credibility of witnesses that might testify in this case?

24 For example, if, judging the credibility means you

25 determine, the jury and you, if you are on the jury, you

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1 determine who is telling the truth and who isn't. You  
2 can disbelieve everything a witness says, you can believe  
3 part of it, or you can believe all of it.

4 That is your job as a juror, to

5 believe or not believe what the witnesses say. To judge  
6 those witnesses and tell whether or not they are telling  
7 the truth. Can you do that?

8 A. Yes.

9 Q. If a police officer should testify and

10 a non-police officer should testify and they testify  
11 virtually to the same thing, but they have diametrically  
12 or completely opposite notions about what happened in  
13 that regard.

14 And you say, "Well, you know, I have  
15 got to believe one or the other of them, because it's  
16 critical to this entire case."

17 Would you have a tendency to believe a  
18 police officer, simply because he is a police officer?

19 A. No. I hope I could believe a police  
20 officer.

21 Q. You would hope that you could?

22 A. Yeah.

23 Q. Well, my question to you is: If you

24 had two witnesses and you didn't know which one to  
25 believe and you wanted to give credibility to both of  
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1 them, but you had to make a choice, would you choose the  
2 policeman just simply because he was a policeman?

3 A. Yes.

4 Q. In other words, you would give some  
5 credibility to him just simply because he was a police  
6 officer? In other words, you're saying that policemen  
7 never lie?

8 A. No, I'm not saying that.

9 Q. Well, that is kind of the way I heard  
10 it.

11 A. Well, I would have to hear what they  
12 have to say first.

13 Q. Well, I understand that. But I'm just  
14 giving this to you as kind of a theoretical matter. You  
15 know, if Jesus Christ was on one side testifying and a  
16 police officer was on the other side testifying, would  
17 you have a tendency to say, "I'm going to believe the  
18 police officer --"

19 A. No.

20 Q. "-- simply because he is the  
21 policeman"?

22 A. No.

23 Q. Can you see the point I am making  
24 here?

25 A. Yes, I can.

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1 Q. In other words, you don't give  
2 credibility to somebody's testimony simply because they  
3 wear a uniform or they have a status or a title in our  
4 society. You understand that?

5 A. Yes.

6 Q. What is your answer? Are you going to  
7 believe a cop just because he is a cop?

8 A. No.

9 Q. Can you be fair in this case?

10 A. Yes.

11 Q. What have you heard about it, Ms.  
12 Garrison?

13 A. Just what I have heard on the news  
14 about this woman killing her two children in her Dallas

15 home.

16 Q. Do you believe everything you hear on  
17 the radio?

18 A. No.

19 Q. You have had experience where what you  
20 heard was not the truth at all?

21 A. Right.

22 Q. Just like the guy that was arrested  
23 down in Georgia for bombing somebody; I believe his name  
24 was Jewell. The FBI arrested him and investigated him  
25 for months on end and then announced that he was  
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1 completely innocent after they destroyed his reputation.

2 Do you recall that?

3 A. No, I don't.

4 Q. You didn't read about that?

5 A. No.

6 Q. During the Olympics down there.

7 A. Oh, yeah. Okay.

8 Q. You read about him, that big, fat,  
9 red-faced fellow on television?

10 A. Right.

11 Q. So, you know that accusations can be  
12 brought against people that are false?

13 A. Oh, yes.

14 Q. Any reason why you can't be fair in  
15 this case?

16 A. No.

17

18 MR. CURTIS GLOVER: I believe that's  
19 all we have. Thank you, Judge.

20 THE COURT: All right. Thank you,  
21 sir.

22 You may step outside briefly please.

23 Don't run away, ma'am, we're going to call you back here  
24 in a minute.

25 THE PROSPECTIVE JUROR: Okay.

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1

2 (Whereupon, the prospective  
3 juror was excused from the  
4 room, and the following  
5 proceedings were held,  
6 outside of her presence  
7 as follows:)

8

9 THE COURT: All right. The Court will  
10 note into the record that Mr. Keith Birdsong does not  
11 even come near the size of Mr. Richard Jewell.

12 MR. TOBY L. SHOOK: The State will  
13 exercise a peremptory.

14 THE COURT: All right. Thank you.

15 Will you have Ms. Garrison come in here, please.

16

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

21

22 THE COURT: Ma'am, we want to thank  
23 you for your attendance, but your further attendance will  
24 not be required.

25 THE PROSPECTIVE JUROR: Okay.

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1 THE COURT: You will be excused.

2 THE PROSPECTIVE JUROR: Okay.

3 THE COURT: Now, the trial isn't over  
4 yet, it won't be over until probably the first part of  
5 February. If you could not talk about anything going on  
6 here today, it would be most appreciated.

7 THE PROSPECTIVE JUROR: Okay.

8 THE COURT: We have a gag order in  
9 effect, I can impose monetary or jail time sanctions. I  
10 am not threatening you, I just have to tell you that. We  
11 have to try this case in the courtroom and not outside.  
12 And I know people will be coming down asking you, "What  
13 happened down there today?" Just tell them they asked  
14 you some questions and you were excused, that's all you  
15 need to do.

16 THE PROSPECTIVE JUROR: Okay.

17 THE COURT: When the trial is all over  
18 you may talk or not talk as you see fit, it's strictly up  
19 to you.

20 Thank you so much for coming. We  
21 appreciate it.

22 THE PROSPECTIVE JUROR: Uh-huh.

23 (Witness nodding head affirmatively.)

24 THE COURT: Okay. All right. Who is  
25 next? No one is next? That's it?  
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1 MS. SHERRI WALLACE: We have one  
2 coming in at 9:00.

3 THE COURT: Two down, six to go.  
4 MS. SHERRI WALLACE: Mr. Salzman is  
5 coming at 9:00 and Mr. Hurt is out of town. His wife  
6 didn't give him the message.

7 THE CLERK: We have got a Mr. Henry  
8 Salzman.

9 THE COURT: All right. Let's bring  
10 them in.

11 MR. S. PRESTON DOUGLASS, JR: What is  
12 going to happen now? What are we doing today?

13 THE COURT: Pardon me?

14 MR. S. PRESTON DOUGLASS, JR: Are we  
15 doing Lewis Hurt today?

16 THE COURT: We're supposed to have  
17 eight coming in today.

18

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

2

3 THE COURT: All right. This is Henry  
4 Salzman, S-A-L-Z-M-A-N; is that the correct spelling,  
5 sir?

6 THE PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Number 254 on the jury  
8 list, number 83 on our list.

9 Raise your 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: Yes, sir.

24 THE COURT: Sir, you are here today as

25 a potential juror in the Darlie Routier case. Mrs.  
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1 Routier is the young lady sitting to your far right here,  
2 she is the defendant. She is with her attorneys, Curtis  
3 Glover from Dallas, and Preston Douglass who is from  
4 Kerrville.

5 The State is represented by two Dallas  
6 County Assistant District Attorneys, Toby Shook and  
7 Sherri Wallace. Both sides are going to ask you some  
8 questions, there are no wrong answers. Just relax and  
9 speak into that mike so Ms. Halsey can hear you, and  
10 please say "yes" or "no" to your question, not uh-huh or  
11 huh-uh, and things will come out quicker.

12 THE PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Give them your answers  
14 directly and quickly.

15 So, Mr. Shook.

16

17

18 Whereupon,

19

20 HENRY LOUIS SALZMAN,

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 VOIR DIRE EXAMINATION

2

3 MR. TOBY L. SHOOK:

4 Q. Mr. Salzman, again, my name is Toby  
5 Shook, I am one of the prosecutors, and I will be asking  
6 you some questions on behalf of the State. Okay?

7 A. Yes, sir.

8 Q. We will go over some of the things  
9 that are here in your questionnaire and then we will talk  
10 a little bit about the law. I see on your questionnaire  
11 that you have read or heard something about the case on  
12 TV or newspaper; is that right?

13 A. Yes, sir.

14 Q. Nothing unusual about that, obviously,  
15 because it was in the news.

16 A. Yes, sir.

17 Q. But tell us what you heard.

18 A. Well, it was, you know, before I knew

19 I was on jury duty for this case. And I just heard, you  
20 know, well, how was it again? Let's see. That she said  
21 somebody came in the house and killed the babies or her  
22 kids and then cut her, and then they thought that she did  
23 it to them and then cut herself up and make it look like  
24 it, then they found the knife in the house or something  
25 like that.

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1 Q. Okay. I want to turn -- and like you  
2 said, there is nothing wrong with watching it on the  
3 news. You didn't even know you were a juror.

4 A. Not for this case, I didn't know.

5 Q. Yeah. And it's fine to watch stuff on  
6 TV, comes on, and even form opinions on what you hear.

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

9 Q. Okay. But you said at the end of your  
10 questionnaire that as far as sitting as a juror, you  
11 said, "To be honest, I think she is guilty."

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

14 Q. Is that based on what you --  
15

16 THE COURT: Sir, could you say "yes"  
17 or "no" and not just uh-huh?

18 THE PROSPECTIVE JUROR: Yes, sir.  
19

20 BY MR. TOBY L. SHOOK:

21 Q. Is that just based on what you heard,  
22 read in the newspaper, or heard on TV?

23 A. Yes, sir.

24 Q. Okay. Here is what I need to get to:

25 Obviously, people do form opinions on what they hear.

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1 But as a juror you can't, you know, go into a case and  
2 have already formed an opinion.  
3 You have got to wait and listen to the  
4 evidence. You can't have formed an opinion that is going  
5 to influence your verdict, in other words. If you have  
6 heard something, you have got to disregard that and wait  
7 until the witnesses testify.

8 If you have formed an opinion in your  
9 mind, you need to let us know that too.

10 A. I did.

11 Q. Well, one thing about forming an  
12 opinion and then there is another thing about forming an

13 opinion that is going to influence your verdict. Do you  
14 see the difference?

15 A. Yes, sir.

16 Q. Like I said, you have got to wait  
17 until the evidence is in and make your decisions on the  
18 evidence. Some people can do that and some people can't.  
19 Do you understand the difference I am talking about?

20 A. Yes, sir.

21 Q. Okay. So where is it that you stand?

22 A. Still -- same place.

23 Q. You still have an opinion?

24 A. Yes, sir.

25

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1 THE COURT: Well, can you please state  
2 the place you're in? We would like to know that.

3 THE PROSPECTIVE JUROR: Okay.

4

5 BY MR. TOBY L. SHOOK:

6 Q. Tell us a little more where your mind  
7 is right now.

8 A. Well, I don't know. From what I have  
9 heard, it might change after I hear all of it. But who  
10 knows, I don't think so, but we will see.

11 Q. Well, what I need to know then is  
12 this: Is the conclusion of guilt that you have reached  
13 in your mind so far gone that you think it is going to  
14 influence your verdict? Or are you going to be able to  
15 put what you have heard out and then just listen to the  
16 evidence?

17 A. Well, I really can't tell you that.

18 Q. Okay. Maybe I can turn it over to the  
19 Court for further inquiry.

20

21 THE COURT: All right. Here is the  
22 thing: To be a fair juror on the case --

23 THE PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: -- you have to be able to  
25 say that whatever you feel about the case now, you will

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1 put it out of your mind and follow the law. Can you do  
2 that?

3 THE PROSPECTIVE JUROR: Probably not.

4 THE COURT: Probably not. In other  
5 words, you have formed an opinion right now that  
6 regardless of what you hear, you are still going to feel

7 that she is guilty. Is that what you are saying?

8 THE PROSPECTIVE JUROR: Well,

9 probably.

10 THE COURT: Probably doesn't get it

11 down here. I mean, is it going to influence your

12 verdict? In other words, let's assume that you listen to

13 testimony and review evidence, you don't think the State

14 has proven its case.

15 Can you find her not guilty? Or is

16 your determination that she is guilty so fixed in your

17 mind that it's going to influence your verdict?

18 THE PROSPECTIVE JUROR: To be honest,

19 yes, sir.

20 THE COURT: All right. Thank you.

21 Any motion?

22 MR. S. PRESTON DOUGLASS, JR: We

23 submit the juror, Your Honor.

24 THE COURT: All right. Thank you, you

25 are excused.

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1 We thank you very much for coming.

2 MR. TOBY L. SHOOK: Thank you, sir.

3 THE COURT: Okay. Who filed a motion

4 for cause? The State?

5 MR. TOBY L. SHOOK: I think the  
6 defense did.

7 THE COURT: The defense?

8 MR. S. PRESTON DOUGLASS, JR: Yes,  
9 sir.

10 THE COURT: All right. This is Vivian  
11 Mason? All right.

12 All right. This is Vivian Mason, that  
13 is your name, ma'am?

14 THE PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: Juror number 256 on the  
16 list, number 85 on our list. Ma'am, if you will raise  
17 your right hand, please.

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: Yes, sir.

7 THE COURT: Ma'am, you are a potential  
8 juror in the Darlie Routier matter.

9 Mrs. Routier is the defendant in this  
10 case, she is sitting there to your far right, next to her  
11 attorneys, Curtis Glover from Dallas, and Preston  
12 Douglass from Kerrville.

13 The State is represented by the

14 District Attorney's Office in Dallas. We have Assistant  
15 District Attorneys, Toby Shook and Sherri Wallace.

16 Both sides are going to ask you some

17 questions, there are no wrong answers. Please relax and  
18 answer the questions exactly how you feel.

19 If you would speak into the microphone  
20 please, pull it back towards you.

21 THE PROSPECTIVE JUROR: Here?

22 THE COURT: Yes, pull it back towards  
23 you. It comes right back, it's all right.

24 And please speak distinctly so that

25 Ms. Halsey can hear you, she is taking all of this down.  
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1 Mr. Shook.

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

3

4 Whereupon,

5

6 VIVIAN ELIZABETH MASON,

7

8 was called as a potential juror, having been first duly  
9 sworn by the Court to speak the truth, the whole truth,  
10 and nothing but the truth, testified in open court, as  
11 follows:

12

13 VOIR DIRE EXAMINATION

14

15 BY MR. TOBY L. SHOOK:

16 Q. Ms. Mason, again, my name is Toby  
17 Shook, and I am one of the prosecutors on the case. I am  
18 going to ask you questions on behalf of the State. As  
19 Judge Tolle has informed you, we are just looking for  
20 your honest opinions. Okay? We bring all kinds of  
21 people down here, that's why we had such a big bunch come  
22 down. Everyone feels differently about these issues, and

23 we just want your honest opinions.

24 A. Okay.

25 Q. And have you ever been down on jury

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1 service before?

2 A. No, sir.

3 Q. Okay. We usually talk to the jurors

4 in one big bunch, like with the group down there. But

5 since it's a death penalty case, which the State is

6 seeking the death penalty, we talk to every juror

7 individually.

8 Again, we're not trying to put you on

9 trial or intimidate you or make you feel nervous. We

10 just want your honest opinions. Okay?

11 A. Okay.

12 Q. Obviously, you know from what the

13 Judge told you, the defendant is charged with capital

14 murder and we're seeking the death penalty. And that's

15 why we spent a lot of time on the questionnaire at the

16 beginning asking about your feelings about the death

17 penalty, and I want to talk to you about that now.

18 You told us pretty plainly that as far

19 as the death penalty goes you are not in favor of that

20 law?

21 A. No, sir.

22 Q. Okay. Tell me a little bit about

23 that. Why you --

24 A. Why?

25 Q. Yes.

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1 A. Well, I just feel like if whoever is

2 killing them is a killer as well as they are.

3 Q. All right. And I believe you told us

4 that you have always felt that way; is that right?

5 A. Uh-huh. (Witness nodding head

6 affirmatively.)

7 Q. Okay. And let me tell you now, Ms.

8 Mason, I'm not here to argue with you at all.

9 A. Oh, I know that.

10 Q. You know that. But the law requires

11 me to ask you -- to go a little further with you and ask

12 you questions about that. Although you make yourself

13 pretty clear in the questionnaire.

14 A. Okay.

15 Q. And I'm not trying to change your

16 mind, I just need to go a little further.

17 A. Well, you can't, so --

18 Q. Good, good. But you have always felt  
19 this way?

20 A. Yes, sir.

21 Q. You just think it's wrong for anyone  
22 to take anyone's life, including the State?

23 A. That's right.

24 Q. Okay. I believe you put down in the  
25 questionnaire that the one that pulls the switch or gives  
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1 the injection is guilty as -- and they are punished.

2 A. That's right.

3 Q. So in your mind, even though the State  
4 is doing it under the sanction of law, that that is  
5 murder the same as the person who has been convicted of  
6 it?

7 A. That's right.

8 Q. Okay. And I take it that you feel  
9 pretty strongly about it?

10 A. I sure do.

11 Q. And I also take it from kind of  
12 reading your questionnaire and listening to you talk  
13 here, you stand by your opinions and your convictions?

14 A. Right.

15 Q. Okay. Fair enough then. And that I  
16 am not going to be changing your mind, and you're not  
17 going to be changing your mind at any time soon?

18 A. No, I have too many who tried.

19 Q. Okay. And you finally said that as  
20 far as sitting on this type of case that you in being  
21 absolutely fair to the defendant and the State, you said  
22 I wouldn't vote for death?

23 A. I sure won't.

24 Q. That goes back to your feelings. It's  
25 not a question, I guess, of what the facts show in the  
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1 case, it's a question of your being opposed to the death  
2 penalty?

3 A. That's right.

4 Q. Okay. If this were some other type of  
5 case where only prison time were considered, would you be  
6 able to sit on that case?

7 A. Sure.

8 Q. It's just the fact of the death  
9 penalty?

10 A. The death penalty.

11 Q. Okay. And again, you're being clear  
12 to me and I just have to ask you a couple more questions.

13 A. Okay.

14 Q. So it can all be clear on the record.

15 The way that the State obtains a death penalty is this:

16 We have to first prove a defendant is guilty of a crime,

17 the indictment, and the Judge went over that.

18 The indictment in this case alleges

19 the intentional killing of a child under the age of six.

20 The first part of the trial is, we

21 prove that crime occurred. If we don't get a guilty,

22 everyone goes home.

23 If we get a guilty, we move to the

24 second part of the trial where you might hear more

25 evidence, evidence about the defendant's background. And

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1 at the close of that evidence, the jurors then get these  
2 two questions.

3 This first question asks: "Do you

4 find from the evidence beyond a reasonable doubt that

5 there is a probability that the defendant would commit

6 criminal acts of violence that would constitute a

7 continuing threat to society?"

8 That question is asking the jurors

9 obviously to predict the future, based on the evidence of

10 the case. Now, if we get -- if we convince the jurors of

11 that, they answer "yes." And that puts you on the way to

12 the death penalty. You have to get a "yes" answer first.

13 I've heard it described as kind of a train, and that is

14 one of the stops we have to make.

15 But if we go on from there, you go to

16 this last question, and that is the mitigation question.

17 It allows the jurors to look at all of the evidence and

18 if they think there is mitigating evidence, evidence that

19 they believe that the defendant's life should be spared,

20 they will answer the question "yes."

21 But if they don't see any of that type

22 evidence, they will answer it "no." But a "yes" and a

23 "no" equals death. Okay? You don't write in death or

24 life. You used to, but now they changed the law that you

25 answer these questions.

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1 But if the jury answered "yes" to  
2 question number 1 and "no" to question number 2, Judge  
3 Tolle wouldn't have any discretion, he wouldn't have any  
4 choice, he would sentence the defendant to death.

5 If they are answered any other way,  
6 they get a life sentence. Okay? But a "yes" and "no"  
7 would equal death. And you know that executions do take  
8 place in Texas?

9 A. I know.

10 Q. I mean there has been over 100, so  
11 we're talking about a real punishment. What you have  
12 told me, let me make sure I am reading you right, is that  
13 you have been opposed to the death penalty -- all of my  
14 life.

15 A All my life.

16 Q. And no one has changed your mind about  
17 that?

18 A. No.

19 Q. I want to ask you: On this particular  
20 case, since the State is seeking the death penalty,  
21 you're telling us from the get-go, you are not going to  
22 be able to sentence anyone to death?

23 A. No, sir.

24 Q. And what you are telling me, it's not  
25 a question of evidence, it's a question of just how you  
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1 feel?

2 A. I'm not saying it's guilty or not  
3 guilty, I do not believe in the death penalty.

4 Q. Right. And you understand that to get  
5 to the death penalty, we have to prove and we have to get  
6 the jurors to answer these questions "yes" and "no"?

7 A. Right.

8 Q. Are you telling me that you won't be  
9 able to answer those questions in that manner? A "yes"  
10 and a "no," because if you did that, the person would get  
11 the death penalty?

12 A. Right.

13 Q. Okay. You understand that -- and  
14 these objections you have about the death penalty, they  
15 are not leaving you, are they?

16 A. No.

17 Q. See this first question, it's a fact  
18 question, you know. It just asks: Do you think the  
19 defendant is going to be a continuing threat to society?  
20 And I have had people come in and tell me, "Look, you  
21 know, you can put on evidence, you can prove to me in my  
22 mind that this person is real dangerous, they are a lean,  
23 mean, killing machine, I know that.

24 "But I know if I answer 'yes,' well,  
25 that is on our way to the death penalty. So, either I  
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1 won't answer it 'yes,' or I will answer it 'no,' or I  
2 just won't answer it. Because I'm telling you, I am not  
3 going to be a part of this proceeding." To give someone  
4 death; do you understand?

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

7 Q. Sometimes they will tell us they will  
8 just refuse to answer because their objections aren't  
9 going to leave. But they know it's a fact question in  
10 their mind, but they are not going to remove their  
11 conviction against death.

12 A. Right.

13 Q. Is that what you are telling me?

14 A. Yes, sir.

15 Q. Okay. So it's not a matter of me  
16 proving that question to you, it's a matter of you being  
17 opposed to the death penalty?

18 A. Right.

19 Q. So I'm not going to be able to prove  
20 it to you that way, or at least I'm not going to be able  
21 to convince you to write "yes," because you are not going  
22 to have these convictions leave your mind, are you?

23 A. No.

24 Q. Okay. Fair enough. And going along  
25 those same lines, you're never going to answer that  
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1 second question "no" because you know a "no" answer --  
2 A. -- means death.

3 Q. Means death. You would always that  
4 question in a way, regardless of what the evidence is,  
5 if -- and this is a hypothetical, if you somehow found  
6 yourself on a capital murder jury, you would never answer  
7 that question in a way that would equal a person's death,  
8 would you?

9 A. No.

10 Q. Okay. Bottom line is, it's not a  
11 question of the facts, it's just that you are opposed to  
12 the death penalty and would never answer questions that  
13 way?

14 A. For death, no.

15 Q. Okay. I think I am about finished  
16 with that issue because you have been real clear on it.  
17 And I mean no one is going to change your mind as far as  
18 that goes; is that right?

19 A. No, sir.

20 Q. One other quick question I have then

21 is you did put, we talk about a person having a right not  
22 to testify if they don't want to.

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

25 Q. And you put there, I think, you felt  
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1 that they should; is that right?

2 A. I don't remember.

3 Q. Okay. Let me see if I can look it up?

4 A. I don't even remember filling that  
5 out.

6 Q. Okay. "I believe they have the right,  
7 but I also think the jury should hear their side of it  
8 also." And you put that, I believe, on another part of  
9 the questionnaire, that you feel a person should, you  
10 agreed that they should have to prove their innocence in  
11 a trial.

12 But what the Judge would instruct you  
13 is this: If a person wants to testify they can, but they  
14 don't have to. And if they don't want to testify, the  
15 jurors are not to use that as evidence.

16 A. Oh, I know that.

17 Q. Some people agree with that law and  
18 can follow it. Other people disagree and say, "You know,  
19 I'm sorry. I just disagree too much with it." And all I  
20 wanted to know is how you felt about that.

21 A. Oh, I don't know. I think whoever it  
22 is should prove that they did not do it.

23 Q. Okay.

24 A. I mean the lawyers weren't there. How  
25 do they know what happened?

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

3 A. Yes.

4 Q. Okay.

5

6 MR. TOBY L. SHOOK: Judge, I will turn  
7 over the questioning to see if the defense lawyers have  
8 any questions. Thank you.

9 THE COURT: Thank you.

10 MR. CURTIS GLOVER: We have no  
11 questions.

12 THE COURT: All right.

13 Ma'am, just because you can't -- or  
14 don't believe in the death penalty doesn't mean you are

15 disqualified as a juror. Can you put that out of your  
16 mind and follow the law even though by following it it  
17 might result in a death penalty?

18 THE PROSPECTIVE JUROR: As long as I  
19 know I wasn't part of it.

20 THE COURT: In other words, you  
21 wouldn't follow the law knowing it would result in a  
22 death penalty?

23 THE PROSPECTIVE JUROR: I don't know.  
24 I really don't know.

25 THE COURT: Okay. Both sides will  
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1 submit the juror?

2 MR. TOBY L. SHOOK: Judge, yeah. We  
3 would submit the juror under 35.16(b)(1).

4 THE COURT: What says the defense?

5 MR. CURTIS GLOVER: No objections.

6 THE COURT: All right. Thank you.

7 Both sides want to agree to excuse the juror? Is that  
8 satisfactory?

9 MR. CURTIS GLOVER: Yes, sir.

10 MR. TOBY L. SHOOK: Yes, sir. We  
11 agree.

12 THE COURT: All right. Thank you,  
13 ma'am, you are excused. Ma'am, if you could do this:  
14 Don't talk about these proceedings yet because the trial  
15 hasn't been had.

16 THE PROSPECTIVE JUROR: I don't know  
17 nothing about it.

18 THE COURT: Well, I mean about what  
19 went on here today, because when you go home tonight they  
20 are going to say, "What happened?"

21 THE PROSPECTIVE JUROR: Well, I don't  
22 live with nobody.

23 THE COURT: Okay. Well, that's fine.

24 When the trial is over you may talk or not talk as you  
25 see fit.

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1 THE PROSPECTIVE JUROR: I don't care  
2 about talking about or nothing else.

3 THE COURT: Thank you very much. We  
4 do have a gag order on. I can impose jail time or  
5 monetary fines or jail time. I am not threatening you, I  
6 just have to tell you. Fair enough?

7 THE PROSPECTIVE JUROR: Right.

8 THE COURT: Okay. Well, listen,

9 thanks a bunch for coming.

10 THE PROSPECTIVE JUROR: Uh-huh.

11 (Witness nodding head affirmatively.)

12 THE COURT: We appreciate it.

13 Yes, we are moving right along.

14 Excused by agreement, both sides?

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

16 sir.

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

18 THE COURT: All right. You might get

19 Ms. Wallace to get that thing signed.

20 MS. SHERRI WALLACE: I will do it

21 right now, Judge. Thank you.

22 THE COURT: All right.

23

24 (Whereupon, the following

25 mentioned item was

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1 marked for

2 identification only

3 as Court's Exhibit 14,

4 after which time the

5 proceedings were

6 resumed on the record

7 in open court, as

8 follows:)

9

10 MS. SHERRI WALLACE: We will offer

11 Court's Exhibit Number 14.

12 THE COURT: All right.

13 MR. CURTIS GLOVER: No objection.

14 THE COURT: Admitted. All right.

15 Thank you.

16

17 (Whereupon, the items

18 Heretofore mentioned

19 Were received in evidence

20 As Court's Exhibit No. 14,

21 For all purposes,

22 After which time, the

23 Proceedings were resumed

24 As follows:)

25

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1 (Whereupon, a short

2 recess was taken,

3 after which time,  
4 the proceedings were  
5 resumed on the record,  
6 in the presence and  
7 hearing of the defendant  
8 as follows:)  
9

10 THE COURT: That is number 87 on your  
11 book, on our book number 258. We're ready. Janiet,  
12 looks like J-A-N-I-E-T. Ma'am, if you will have a seat  
13 right here, please.

14 You are Ms. Reither, R-E-I-T-H-E-R; is  
15 that correct?

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: And your first name is  
18 spelled J-A-N-I-E-T?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: How do you pronounce that?

21 THE PROSPECTIVE JUROR: Janet.

22 THE COURT: Janet. Okay. Thank you.

23 Ms. Reither, if you will raise your right hand, please.

24 Do you solemnly swear or affirm that

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

3

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

11

12 THE PROSPECTIVE JUROR: I do.

13 THE COURT: Thank you. Ma'am, you are  
14 a potential juror in the Darlie Routier case.

15 Mrs. Routier is the defendant, she is  
16 the young lady sitting here to your far right, next to  
17 her attorneys, Curtis Glover from Dallas, and Preston  
18 Douglass from Kerrville.

19 The State is represented by two  
20 Assistant District Attorneys from Dallas, Toby Shook and  
21 Sherri Wallace from Dallas.

22 Now, you are going to be asked some  
23 questions. There are no wrong answers, it is just  
24 however you feel, please say that.

25 THE PROSPECTIVE JUROR: Okay.  
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1 THE COURT: All right. And when you  
2 answer questions if you could say yes or no.  
3 THE PROSPECTIVE JUROR: Okay.  
4 THE COURT: I know you are of the age  
5 that will do that. And not just uh-huh or huh-uh because  
6 Ms. Halsey is taking all this down.  
7 THE PROSPECTIVE JUROR: Yes, sir.  
8 THE COURT: Okay. Thank you. All  
9 right, Mr. Shook.  
10 MR. TOBY L. SHOOK: Thank you, Judge.

11

12 Whereupon,

13

14 JANIET REITHER,

15

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

20

21 VOIR DIRE EXAMINATION

22

23 BY MR. TOBY L. SHOOK:

24 Q. Is it Ms. Reither?

25 A. Yes, it is.

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1 Q. Okay. Ms. Reither, my name is Toby  
2 Shook, and I am one of the prosecutors on the case. I'll  
3 be asking you questions on behalf of the State. I'll be  
4 going over some of the information you put down here in  
5 the questionnaire, and then some of the rules of law that  
6 apply in this case. Okay?

7 A. Okay.

8 Q. I noticed that you are life-long  
9 resident of Kerrville it looks like; is that right?

10 A. Yes, sir.

11 Q. Born and raised here?

12 A. Yes, sir.

13 Q. And, so you know everyone in  
14 Kerrville. It looks like you know some people that have  
15 been or are with the Kerrville Police Department; is that  
16 right?

17 A. Yes, sir.

18 Q. Are they presently with the police

19 department?

20 A. Not -- one of them is.

21 Q. David Long is, I guess?

22 A. Yes, yes.

23 Q. How do you know those officers?

24 A. Well, Ben Peek was my cousin and David

25 Long is a cousin, well, it's kind of removed, but he is a  
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1 cousin.

2 Q. Kind of a cousin?

3 A. Yeah.

4 Q. Do you talk a lot about his work or

5 you just know he is a policeman?

6 A. No, no.

7 Q. Okay. I take it that you don't know

8 any of the Dallas attorneys that are involved?

9 A. No, sir.

10 Q. Okay. There have been two Kerrville

11 attorneys also retained by the defense, Preston Douglass

12 here and Mr. Richard Mosty.

13 Do you know either one of those

14 gentlemen?

15 A. I know Mr. Mosty.

16 Q. How do you know him?

17 A. I went to school with him.

18 Q. Okay. Did y'all graduate together?

19 A. No, there was several years in between

20 us.

21 Q. Okay. Are you close friends or just

22 knew him from high school?

23 A. I just knew him from high school.

24 Q. Okay. Do you think that would affect

25 you in any way as a juror?

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1 A. I don't know, I don't know.

2 Q. Okay. When is last time you had any

3 dealings with him?

4 A. It's been a long time.

5 Q. Years?

6 A. Yeah, years.

7 Q. Obviously, our point is when you are

8 trying a case, you lived here in a small town and you

9 always know the lawyers, or usually know at least one of

10 them. We just have to make sure that you will be able to

11 evaluate the evidence according to the facts, not just

12 the lawyers, obviously. Do you understand that?

13 A. Yes.

14 Q. Do you think you could do that?

15 A. I don't know.

16 Q. Well, what is causing you some  
17 concern?

18 A. I don't know. I have got mixed  
19 feelings.

20 Q. What are your mixed feelings?

21 A. Well, I don't know. Just -- I just  
22 do.

23 Q. Do you have mixed feelings about  
24 anything else?

25 A. No.

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1 Q. Just about Mr. Mosty being on the  
2 case?

3 A. No, not that. Just other things.

4 Q. Okay. Tell me about those then?

5 A. Well --

6

7 THE COURT: Ma'am, this isn't going to  
8 go beyond us down here, and both sides do have to know  
9 how you feel.

10 THE PROSPECTIVE JUROR: Right.

11 THE COURT: So, you are not going to  
12 offend anybody by any statement you make.

13 THE PROSPECTIVE JUROR: Well, I have  
14 two sons of my own. And I know I could never, you know,  
15 physically hurt my kids, never. And so that is why I  
16 have mixed feelings about, you know, the case.

17

18 BY MR. TOBY L. SHOOK:

19 Q. I know that you had mentioned  
20 something about that in your questionnaire that you have  
21 a lot of feelings for victims.

22 A. Yes.

23 Q. In fact, let me see, you get very  
24 emotional about victims?

25 A. Yes.

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1 Q. Like you are right now?

2 A. Yes.

3

4 THE COURT: Well, let me interrupt and  
5 make one thing clear. Mrs. Routier is presumed to be  
6 innocent, not guilty.

7 THE PROSPECTIVE JUROR: I know. I  
8 know that.

9 THE COURT: As she sits there right  
10 now, if we put you and 11 other people over there and  
11 asked you how you voted, and you have not heard anything,  
12 you have got to find her not guilty. Do you understand  
13 that?

14 THE PROSPECTIVE JUROR: Yes, sir, I  
15 know that.

16 THE COURT: Okay. Well, good. Just  
17 so we understand that.

18 THE PROSPECTIVE JUROR: I'm sorry.

19 THE COURT: Don't apologize, but I  
20 just want to make that clear. All right. Go ahead, Mr.  
21 Shook.

22

23 BY MR. TOBY L. SHOOK:

24 Q. That kind of leads us to another  
25 matter that I wanted to get into. I think you actually  
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1 throw papers for the Kerrville --

2 A. -- Times, yes, sir.

3 Q. Okay. You get every morning, early  
4 morning?

5 A. Oh, no, it's afternoon paper.

6 Q. Okay. Good. You don't have to get up  
7 in the morning then?

8 A. No.

9 Q. But you do throw it every day?

10 A. Yes.

11 Q. But you have heard something about the  
12 case?

13 A. Yes.

14 Q. Tell us what you have heard.

15 A. Well, I just heard what we have  
16 discussed in the courtroom, you know. That's all I have  
17 heard.

18 Q. Okay. Okay. But you have not drawn  
19 any opinions from that, opinions that would affect you as  
20 a juror in this case?

21 A. Well, like I say, it's still mixed.

22 Q. Well, let me explain myself a little  
23 further. You hear things and you draw opinions on what  
24 you hear obviously, that sounds bad and that sounds good,  
25 that kind of thing. Do you understand what I'm saying?

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1 A. Yeah.

2 Q. However, as a juror, you have to be  
3 able to wait and listen to the evidence as it comes in  
4 and then make your decisions. We have some jurors that  
5 have drawn such an opinion on what they have read they  
6 have already formed an opinion and won't let it out of  
7 their mind, it will affect their verdict.

8 We have other jurors that have read or  
9 heard about the case and they will be able to set that  
10 aside and wait until the evidence comes in.

11 Do you see the difference?

12 A. Well, I don't know if I can be that  
13 objective. I'm sorry.

14 Q. Okay.

15

16 THE COURT: That's all right, ma'am.

17 Just tell it like it is.

18 THE PROSPECTIVE JUROR: Well, I'm  
19 trying.

20

21 BY MR. TOBY L. SHOOK:

22 Q. Well, don't get upset. That is what  
23 we're looking for is your honest --

24 A. I know. I'm sorry. (Crying)

25 Q. So, are you telling us that from what  
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1 you have read you feel now that you might have reached a  
2 conclusion in your mind, that would affect your verdict?

3 A. Yes.

4 Q. And are you telling us, I guess, that  
5 is from the victims in this case, are you reaching a  
6 conclusion of guilt, is what you're telling us?

7 A. I don't know which way, you know, I  
8 don't know.

9 Q. But you have reached a conclusion in  
10 your mind you think will affect your verdict, as best you  
11 can tell right now?

12 A. Yes.

13

14 MR. TOBY L. SHOOK: I think we can  
15 agree on this juror.

16 THE COURT: All right. Well, thank  
17 you very much, ma'am.

18 THE PROSPECTIVE JUROR: I'm sorry.  
19 (Crying)

20 THE COURT: Don't -- we don't want you  
21 feeling sorry. We just want your candid answers.  
22 THE PROSPECTIVE JUROR: I know.

23 THE COURT: Ma'am, please, do not  
24 discuss this case with anyone.

25 THE PROSPECTIVE JUROR: Trust me, I  
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1 won't.  
2 THE COURT: I know. They are going to  
3 ask you what happened down there and you say, "Well, that  
4 crazy old Judge sitting up there and bunch of these  
5 lawyers asked me a bunch of crazy questions."  
6 But if you could just not say anything  
7 until after it's over with we would appreciate it.

8 THE PROSPECTIVE JUROR: I won't.

9 THE COURT: Thank you very much.

10 THE PROSPECTIVE JUROR: Thank you.

11 MR. TOBY L. SHOOK: I appreciate your  
12 honesty.

13 THE CLERK: The next one is here.

14 THE COURT: Okay. Pritchard, that is  
15 number 78 on our list, number 238 on the jury list.

16 THE CLERK: Have a seat right up  
17 there.

18 THE PROSPECTIVE JUROR: Oh, boy, I get  
19 to go all the way up to the front, huh?

20 THE COURT: You sure do, yes, ma'am,  
21 right up here. You are Lois --

22 THE PROSPECTIVE JUROR: Pritchard.

23 THE COURT: P-R-I-T-C-H-A-R-D?

24 THE PROSPECTIVE JUROR: That's right.

25 THE COURT: All right. That is number  
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1 238 on the jury list, 78 on our list.  
2 THE COURT: All right. Ma'am, if you  
3 will raise your right hand, please.  
4 Do you solemnly swear or affirm that  
5 you will true answers make to all questions propounded to  
6 you concerning your qualifications as a juror, so help  
7 you God?  
8

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

17 THE PROSPECTIVE JUROR: Yes, I do.

18 THE COURT: Thank you. You can lower  
19 your hand, please. Ma'am, you are a potential juror in  
20 the Darlie Routier case.

21 Mrs. Routier is the defendant, she is  
22 the young lady sitting right there with her attorneys.  
23 Curtis Glover is from Dallas, next to her is Mr. Preston  
24 Douglass from Kerrville.  
25 The State is represented by two  
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1 Assistant District Attorneys, Mr. Toby Shook and Ms.  
2 Sherri Wallace.

3 THE PROSPECTIVE JUROR: I don't  
4 remember any of their names, nor do I remember yours.

5 THE COURT: Well, that is not unusual,  
6 and mine is not very memorable. And so, I understand  
7 that.

8 THE PROSPECTIVE JUROR: Okay.

9 THE COURT: You are going to be asked  
10 some questions today, there are no wrong answers. We  
11 just have to see how you feel about certain things.

12 So, if you will just answer them  
13 directly and to the point, we would all be most  
14 appreciative.

15 THE PROSPECTIVE JUROR: Okay.

16 THE COURT: Can you speak into the  
17 mike because Ms. Halsey is taking all this down?

18

19 Whereupon,

20

21 LOIS PRITCHARD,

22

23 was called as a potential juror, for the State of Texas,  
24 having been first duly sworn by the Court, to speak the  
25 truth, the whole truth, and nothing but the truth, was  
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1 examined and testified in open court, as follows:

2

3 THE COURT: All right, ma'am, both  
4 sides will want to ask you some questions.

5 THE PROSPECTIVE JUROR: Okay. Can I  
6 remind you that I am 65 years old?

7 THE COURT: All right. You are 65?

8 THE PROSPECTIVE JUROR: Yes, I am.

9 THE COURT: I wouldn't have guessed

10 that.  
11 THE PROSPECTIVE JUROR: Yes, uh-huh.  
12 (Witness nodding head affirmatively.)  
13 MR. TOBY L. SHOOK: She just turned  
14 that, Judge. She is the lady that asked us that on voir  
15 dire.

16 THE COURT: Yeah. Do you wish to  
17 claim your exemption?  
18 THE PROSPECTIVE JUROR: I would love  
19 to.

20 THE COURT: Well, that is fine.  
21 Although, we're happy to have you here. And I ask people  
22 not to do it because you have the life experience we  
23 need, but if you wish to claim it you may do so.  
24 THE PROSPECTIVE JUROR: Well, I wish  
25 to claim it.

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1 THE COURT: Okay, fine. Thank you for  
2 coming, we appreciate that.  
3 THE PROSPECTIVE JUROR: Thank you.  
4 THE COURT: You bet.  
5 MR. TOBY L. SHOOK: Thank you, Ms.  
6 Pritchard.  
7 THE PROSPECTIVE JUROR: Bye.  
8 MR. TOBY L. SHOOK: Bye-bye.  
9 THE COURT: Thank you. Well, that  
10 took care of that one. All right.  
11 MS. SHERRI WALLACE: Judge, we have  
12 agreed to excuse the following jurors, Joseph Vorhes. I  
13 don't have the numbers. Do you see him? He has a theft  
14 conviction.  
15 THE COURT: Joseph Vorhes, 261?  
16 MS. SHERRI WALLACE: Yes, sir.

17  
18 (Whereupon, the following  
19 mentioned item was  
20 marked for  
21 identification only  
22 as Court's Exhibit No. 15,  
23 after which time the  
24 proceedings were  
25 resumed on the record  
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1 in open court, as  
2 follows:)

4 THE COURT: Disqualified because of  
5 conviction.

6 MS. SHERRI WALLACE: Yes, sir, and Jo  
7 Anna Mathis.

8 THE COURT: 265?

9 MS. SHERRI WALLACE: 265.

10 THE COURT: Why is she being  
11 disqualified?

12 MS. SHERRI WALLACE: She has a hot  
13 check disqualification as well.

14 THE COURT: All right. That will be  
15 admitted.

16

17 (Whereupon, the items

18 Heretofore mentioned

19 Were received in evidence

20 As Court's Exhibit No. 15

21 For all purposes,

22 After which time, the

23 Proceedings were resumed

24 As follows:)

25

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1 THE COURT: All right. Let's go to  
2 lunch and everybody be back in one hour.

3

4 (Whereupon, a short  
5 recess was taken,  
6 after which time,  
7 the proceedings were  
8 resumed on the record,  
9 in the presence and  
10 hearing of the defendant  
11 as follows:)

12

13 THE COURT: All right. Here's what we  
14 did today. I have logged everybody down. So far today  
15 we're on number -- this next juror will be our 86th juror  
16 we have talked to.

17 Now, I included Vorhes and Mathis as  
18 jurors we talked to because they are disqualified, I  
19 included those in the record.

20 Okay. So who is the next one?

21 THE BAILIFF: Wagoner.

22 THE COURT: Wagoner, that is going to  
23 be number -- that is Lola Jean Wagoner, she is number 287  
24 on the jury list, 100 on our list.

25 All right. Let's bring Ms. Wagoner

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1 in.  
2 Have a seat right there, ma'am. Thank  
3 you very much for altering your schedule and coming down,  
4 we appreciate that.  
5 All right. This is juror number 287,  
6 Lola Jean Wagoner, W-A-G-O-N-E-R, is that how you spell  
7 your name, ma'am?  
8 THE PROSPECTIVE JUROR: Yes, sir.  
9 THE COURT: All right. And she is  
10 number 100 on our list, 287 on the overall list.  
11 Can you raise your right hand, please,  
12 ma'am?  
13 Do you solemnly swear or affirm that  
14 you will true answers make to all questions propounded to  
15 you concerning your qualifications as a juror, so help  
16 you God?  
17  
18 (Whereupon, the prospective  
19 juror was duly sworn by the  
20 Court to true answers make  
21 to the questions propounded,  
22 concerning qualifications, after  
23 which time, the proceedings were  
24 resumed as follows:)

25  
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1 THE PROSPECTIVE JUROR: Yes.  
2 THE COURT: Fine. Thank you, ma'am.  
3 You can pull that mike up to you, it's on a wire it will  
4 come across there, and speak right into it and speak  
5 loudly so Ms. Halsey can get it down.  
6 You are a prospective juror in the  
7 Darlie Routier matter. Mrs. Routier is the defendant in  
8 this case. She is the young lady sitting to your right,  
9 next to her attorneys, Mr. Curtis Glover from Dallas, and  
10 Mr. Preston Douglass from Kerrville. She is also  
11 represented by Doug Mulder from Dallas and Richard Mosty  
12 from Kerrville.  
13 The State is represented by two  
14 Assistant District Attorneys here, Toby Shook and Sherri  
15 Wallace and another district attorney from Dallas, Greg  
16 Davis, he is not here right now.  
17 There are no wrong answers down here.  
18 Just tell it like you feel it. Okay?  
19 THE PROSPECTIVE JUROR: Okay

20 THE COURT: Thank you. Mr. Shook.

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

22

23

24

25

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1 Whereupon,

2

3 LOLA JEAN WAGONER,

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. Wagoner, again, my name is Toby  
14 Shook, and I am one of the prosecutors and I will be  
15 talking to you on behalf of the State today. Okay?

16 A. Okay.

17 Q. I'm going to go over a few things that  
18 are here in your questionnaire and then we'll go over  
19 some of the law that applies and how you feel about some  
20 of the rules that apply. All right?

21 It is my understanding from looking at  
22 the questionnaire that you have been on a jury before, I  
23 think?

24 A. Yes, sir.

25 Q. Okay. I'm sure that you will recall  
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1 at that time that the jury selection was done usually in  
2 one group. Since this is a capital murder case, we do  
3 individual voir dire, one at a time. That's the way it's  
4 prescribed to be by law.

5 We don't mean to put you up there on  
6 trial yourself or anything like that. But it is the best  
7 way we have of getting your honest opinions which is all  
8 we're interested in. Okay?

9 A. Okay.

10 Q. It looks -- from your questionnaire,  
11 that you grew up in San Antonio and you have lived here  
12 in Kerrville about the last nine and a half years?

13 A. Yes, sir.

14 Q. What brought you to Kerrville?

15 A. I got married.

16 Q. Okay. And you have lived here about

17 almost 10 years. I don't believe you know any of the  
18 Dallas attorneys, do you?

19 A. No, sir.

20 Q. For the State or the defense. There

21 is also two Kerrville attorneys that have been retained,  
22 Mr. Douglass here and Mr. Richard Mosty.

23 Do you know either one of those

24 gentlemen?

25 A. No, I don't know -- I have heard of

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1 them, but I don't know them.

2 Q. You don't know them personally. Okay.

3 And let me ask you: You have two children?

4 A. Three.

5 Q. Three. That's right. One of them is

6 graduated, one is in 8th grade, and one is in second  
7 grade?

8 A. Right.

9 Q. Kind of spread out there.

10 A. Yes.

11 Q. The jury you were on, was that here in  
12 Kerr County?

13 A. Yes, sir.

14 Q. Was that a civil case or a criminal?

15 A. Yes, sir.

16 Q. Involving an accident of some sort?

17 A. Right.

18 Q. What -- give me a little bit of

19 background on that case.

20 A. It was an accident where a lady just  
21 rear-ended another lady.

22 Q. Oh, okay. Someone hurt their neck or  
23 something like that?

24 A. Yes, sir.

25 Q. Okay. And I think it was that you

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1 found not guilty or found against the person that was  
2 doing the suing?

3 A. Right.

4 Q. Okay. How long did that trial last?

5 A. Two days.

6 Q. Okay. So it was pretty short and

7 quick?

8 A. Right.

9 Q. Was there any great dissension there  
10 in the jury room or did y'all come to a decision pretty  
11 quick?

12 A. It was real quick.

13 Q. Okay. And now you are working for an  
14 energy corporation?

15 A. Yes, sir.

16 Q. Bookkeeper, office duties, those kinds  
17 of things?

18 A. Right.

19 Q. Okay. And I see you checked off that  
20 you had, as most of our jurors, heard something about the  
21 case; is that right?

22 A. Yes, sir.

23 Q. And you heard it from -- is it your  
24 music minister?

25 A. Yes, sir.

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1 Q. You didn't hear anything on TV or  
2 newspapers?

3 A. No, sir.

4 Q. Tell us what you heard from your music  
5 minister.

6 A. Oh, he was just telling me, well,  
7 there were several of us, about the case and, you know,  
8 just a few things that had happened.  
9 We talked about so many different

10 things.

11 Q. Sure.

12 A. And when it was mentioned, we didn't  
13 really talk much on it.

14 Q. Did you form any opinions or anything  
15 like that?

16 A. No, sir.

17 Q. Okay. Good. We always want to guard  
18 against people bringing opinions in, they have to just  
19 judge the case on the evidence that they hear.

20 I don't think you would have any  
21 trouble doing that, would you?

22 A. No, sir.

23 Q. Okay. Ms. Wagoner, we want to talk --  
24 let me ask you this: Has anything changed from -- you  
25 put a lot of information down on the questionnaire, it  
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1 was very helpful.

2 Has your situation changed at all  
3 since you filled out this information about three weeks  
4 ago or so?

5 A. Well, about the only big change that  
6 there has been, my son has gotten into some trouble and  
7 we have been dealing with that the last couple of weeks.

8 Q. What type of trouble did he get in?

9 A. Well, he was caught shoplifting.

10 Q. Okay. Is this the boy that's in the  
11 8th grade?

12 A. Right.

13 Q. Okay. Does it look like that is going

14 to work out as far as you can tell?

15 A. Well, we have pretty much got it  
16 worked out.

17 Q. Okay. You also said that you were --  
18 is it your whole family is going through some counseling  
19 right now?

20 A. Yes, sir.

21 Q. What type of counseling is that?

22 A. My son was sexually abused when he was  
23 younger. And, too, we're also going to -- she is also a  
24 marriage counselor, and so, we are seeing her for that  
25 too.

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1 Q. Okay. That is on going right now?  
2 A. We have not gone the last couple of  
3 weeks. There has been so much we have had going on, we  
4 just have not had time to do it.

5 Q. Okay. Do you think that would  
6 interfere in any way sitting as a juror in January? If  
7 you were selected as a juror?

8 You don't foresee that being a  
9 problem, do you?

10 A. No, sir.

11 Q. Okay. As far as your son being  
12 sexually abused when he was a child, was anyone ever  
13 prosecuted for that?

14 A. No, sir.

15 Q. Do you all know who did that?

16 A. Yes, sir.

17 Q. And again, this is just going to stay  
18 between us. What was the situation there?

19 A. It was by another boy that lived down  
20 the street from us.

21 Q. Okay. Another juvenile?

22 A. Yes, sir.

23 Q. Let me ask you now, Ms. Wagoner, you

24 know from Judge Tolle's discussions when we had the whole  
25 panel down that this is a capital murder case, that the  
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1 State is seeking the death penalty.  
2 So, we want to talk to every juror  
3 about their personal feelings about the death penalty.  
4 So, let me kind of start off there.  
5 You checked off that you are in favor  
6 of the death penalty as a law. Do you still feel that  
7 way?  
8 A. Yes, sir.  
9 Q. I would like you just to explain, you  
10 know, why you feel we need the death penalty in our  
11 society, maybe the purpose that it serves.  
12 A. Well, I feel that we need it because  
13 I -- especially if there is a death caused, but I feel  
14 like it really has got to be something, you know, that is  
15 really proven.  
16 Q. Got to be proven first to you?  
17 A. Right.  
18 Q. Proven beyond a reasonable doubt?  
19 A. Right.  
20 Q. Do you think it's a good punishment  
21 for murder cases?  
22 A. Yes.  
23 Q. Okay. Would you have it for any other  
24 crimes other than murder? Or would you reserve it just  
25 for where someone has lost their life?  
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1 A. Yes.  
2 Q. Okay. Have you ever felt differently  
3 about the death penalty?  
4 A. No.  
5 Q. Has it been a subject that you have  
6 really given a whole lot of thought to?  
7 A. Yeah, well, I have talked about it.  
8 Q. Okay.  
9 A. Quite a bit with my husband before.  
10 Q. Yeah. And what is your -- at least  
11 your conclusion you have come to after you discussed it,  
12 or these debates? Did you all agree pretty much on using  
13 the death penalty?  
14 A. Well, it's just something that I have  
15 felt for a long time.  
16 Q. You have always felt --  
17 A. Just growing up.

18 Q. Okay. I just want to make sure. I  
19 have had a few jurors that, you know, they are  
20 diametrically opposed to their spouse and get in these  
21 big heated arguments.  
22 Of course, if one of them made it on  
23 the jury, it might cause a problem. So, you have thought  
24 about it, and reflected on it, and I guess as long as you  
25 have been an adult felt that it was a good law?  
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1 A. Right.  
2 Q. Okay. What types -- have you ever  
3 followed any cases on TV or in the media that have been  
4 what you feel those are appropriate death penalty cases  
5 or possibly it's a death penalty case?  
6 A. Well, I haven't really actually  
7 followed one, no.  
8 Q. Okay. Sometimes you see these  
9 different types of cases on the news. I know the case we  
10 couldn't get away from was O.J. Simpson. Did you ever  
11 follow that one very closely?  
12 A. Well, you know, I always heard.

13 Q. Right.  
14 A. You know, about it, but as far as  
15 following it, no, not really.  
16 Q. Did you draw any conclusions or  
17 opinions about that case?  
18 A. No.  
19 Q. Other than it lasted too long?  
20 A. Right.

21 Q. How about the Susan Smith case? Do  
22 you remember that case at all?  
23 A. Yes, sir.

24 Q. The case about the woman up in North  
25 Carolina?

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1 A. Yes, sir.  
2 Q. Did you have any conclusions about the  
3 outcome of that case?  
4 A. No, sir.  
5 Q. Do you even know what the outcome was?  
6 A. No, I really didn't.  
7 Q. Okay. You just remember when it first  
8 happened?  
9 A. Right.  
10 Q. Okay. Fair enough. Thankfully, most  
11 people don't follow these things, they are not the most

12 pleasant things to follow.

13 In Texas, there's only certain types

14 of crimes that fall under our death penalty statute. It  
15 has to be a murder case, but not just every murder case,  
16 you have to have something else. Another, what we call,  
17 an aggravating factor.

18 For instance, the murder of a clerk at

19 a 7-Eleven store or a convenience store, or grocery  
20 store, where the guy goes in and robs it, and he shoots  
21 the clerk, and someone is killed during a robbery,  
22 someone takes someone's property, that could be a capital  
23 murder case.

24 A. Yes.

25 Q. Someone that breaks into someone's

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1 home and kills someone there in the home, that could be a  
2 capital murder case. During a rape, during a kidnapping,  
3 those could be capital murder cases.

4 Or the murder of a police officer on  
5 duty, or a prison guard, or murder for hire, those fall  
6 under our capital murder statutes.

7 Also, the murder of a child under the  
8 age of six could be a capital murder case.

9 In fact, let me let you take a moment  
10 to look at that indictment that we have, down there in  
11 front of you. You see that typewritten portion? Read  
12 that to yourself.

13 A. Okay.

14 Q. Ms. Wagoner, those are the allegations  
15 we have in this case. That is the type of case it is,  
16 the murder of a child under the age of six. Now, I can't  
17 possibly ask you for your verdict because you have not  
18 heard from any witnesses yet.

19 But is that the type of case you feel  
20 might be appropriate for the death penalty under the  
21 proper facts and circumstances?

22 A. Yes, sir.

23 Q. Okay. Now, let me kind of preview how  
24 the trial works. This is going to be a little different  
25 from the civil trial you were on.

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1 It's divided into two parts. The  
2 first part being the guilt/innocence stage, where we have  
3 to prove that indictment there that you just read, beyond  
4 a reasonable doubt. If we don't do that, it's a not  
5 guilty, and we can all go home.

6 If we do prove it beyond a reasonable  
7 doubt, the jury finds the defendant guilty. But that is  
8 not the end of the trial.  
9 We then move to the punishment portion  
10 of the trial. And you may hear more evidence at that  
11 time and you may not. But at the end of the evidence, at  
12 the close of that, you get these questions to answer,  
13 which are "yes" or "no" questions.  
14 And I'm going to go over those in some  
15 detail, but to summarize the first question is this: Did  
16 the State prove that the defendant would be a continuing  
17 danger to society?  
18 If we prove it "yes," the jury answers  
19 "yes." And then you move on to the second question. And  
20 that second question is what we call the mitigation  
21 question. And it allows the jurors to review all the  
22 evidence and all the background of the defendant, and if  
23 they feel there is some evidence which warrants a life  
24 sentence rather than a death sentence, they can answer  
25 the question "yes."  
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1 However, if they don't see any  
2 evidence that warrants a life sentence, if they think  
3 that is the right thing to do, they will answer it "no."  
4 If there is an answer on the -- to the  
5 first question of "yes," and a "no" answer to the second,  
6 the Judge has no choice, he would sentence the defendant  
7 to death.  
8 If they are answered any other way, it  
9 would be a life sentence. But those are the only two  
10 possible outcomes in the punishment portion of this  
11 trial. Do you realize that?  
12 A. Yes, sir.  
13 Q. Okay. And again, you don't write  
14 death or life, but the decision is made by the way you  
15 answer those questions. The Judge has no discretion, he  
16 sentences one way or the other.  
17 Now, in Texas, if it is a death  
18 sentence, Judge Tolle would eventually some day, I can't  
19 tell you when, would actually have an execution date set  
20 aside, named and everything.  
21 In Texas, the method of execution is  
22 by lethal injection. Were you aware of that?  
23 A. Yes.  
24 Q. Okay. Under our procedures, on that  
25 execution date that the Judge gives, on that date at 6:00  
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1 p.m. the execution will take place. Now there are things  
2 that lead up to it. You know, they go through a strict  
3 procedure there that you read about in the paper  
4 sometime, taken from their cells a day or so before and  
5 given time with family and prepared to be executed, time  
6 with a minister, that kind of thing.

7 But at 6:00 p.m. the execution would  
8 take place. Basically, it happens the same in every  
9 case. The person is brought in before witnesses; placed,  
10 forcibly if necessary, on a gurney, and strapped down.  
11 There's needles placed in the defendant's arm and a death  
12 warrant is read, and a technician administers poisons;  
13 poisons which react quickly to the body, cause the heart  
14 and lungs to stop. It is over in about 10 to 12 minutes.

15 Now, this has happened over 100 times  
16 in Texas, you know. We're not just talking about a  
17 philosophical end here.

18 Some states have the death penalty and  
19 never invoke it. Texas does. I think we average about  
20 17 a year, and you do read about these. So, we're  
21 talking about a real punishment.

22 A. Right.

23 Q. Now, Ms. Wagoner, you told me that you  
24 feel and have felt all of your life that the death  
25 penalty is a law that we do need in this society for  
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1 certain types of murder case. And, I have told you that  
2 obviously, this is the type of case that falls under our  
3 statute.

4 What I need to know is if you are the  
5 kind of person that can listen to the evidence, and if we  
6 prove our case beyond a reasonable doubt, you can answer  
7 these questions "yes" and "no," if we prove it that way,  
8 knowing that the defendant would be executed as a result?

9 A. Yes.

10 Q. As long as it is proven to you?

11 A. Right.

12 Q. Okay. Fair enough then. Another area  
13 I want to get into first has to do with the  
14 guilt/innocence stage. Now, you have some background  
15 because you have heard some evidence and made a decision  
16 as a juror, although that was a civil case and the rules  
17 are a little bit different. But let me talk to you about  
18 the evidence.

19 We have direct evidence and indirect  
20 evidence. Direct evidence is an eyewitness to a case.

21 Say if you left this courthouse and were robbed in the  
22 parking lot, a man took your purse, pulled a gun on you  
23 and took your purse, escaped, but was caught some time  
24 later and you identified him, you would be the direct  
25 evidence, the eyewitness to the case.

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1 Any other type of evidence is indirect  
2 evidence. Okay?

3 And the other word for that is called  
4 circumstantial evidence. You have heard that.

5 Circumstantial evidence is any type of evidence that  
6 links the defendant to the crime. It could be, you know,  
7 fingerprints, DNA testimony, hair, fiber, it can be the  
8 crime scene itself, analyzing the crime scene itself, it  
9 can be things the defendant said before, during, or after  
10 the crime.

11 It can be literally anything that  
12 links the defendant to the crime.

13 Of course, all we can tell you about  
14 that is, as when you are analyzing any of the evidence,  
15 you just use your common sense to put it together. But  
16 the point I want to make is this: Obviously, many times  
17 in a murder case the State only has circumstantial  
18 evidence to prove its case. You have the person that is  
19 killed and the person we've accused of doing the killing,  
20 and there is no eyewitness.

21 The law says this: That there is no  
22 difference between the two types of evidence, whether you  
23 have an eyewitness or circumstantial evidence, we still  
24 have to prove our case beyond a reasonable doubt.

25 What I want to know is: If we, in a  
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1 capital murder case, prove our case solely using  
2 circumstantial evidence, could you convict, if you  
3 believe that evidence beyond a reasonable doubt?

4 A. I believe, yes.

5 Q. That is what I want to clarify, you  
6 would believe it beyond a reasonable doubt?

7 A. Right.

8 Q. Okay. Here is the other thing: You  
9 often probably heard of motive, the reason a killing  
10 occurs. Okay? I know any time I watch a show involving  
11 a criminal trial, they always talk about the motive, or a  
12 police show, the motive. Everyone wants to know the  
13 motive, and once the evidence is produced, the motive  
14 might be clear to everyone in the courtroom.

15 On the other hand, it might be a case  
16 where the motive is not clear. It might be locked away  
17 in the killer's mind. You know, I could pull a gun out  
18 now and kill Ms. Wallace and just set it down and not  
19 tell anyone why I did it, and it no one may ever know.  
20 It could be what the press sometimes  
21 calls a senseless killing. Or there could be several  
22 motives out there or possible motives and everyone could  
23 have their own opinion. The law says this: The State is  
24 not required to prove motive to get a guilty verdict.  
25 Nowhere in that indictment does it say the reason why the  
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1 crime occurred. Do you understand that?  
2 A. Yes, sir.  
3 Q. Could you follow that rule of law?  
4 A. Yes, sir.  
5 Q. Okay. Let me talk about these  
6 questions for a minute. Like I said, you don't get to  
7 these unless you found the defendant guilty of capital  
8 murder. If you did find them guilty, we would move to  
9 the punishment stage, and you may hear additional  
10 evidence at that time.  
11 Obviously, you would have already  
12 heard all about the murder itself. Then you might hear  
13 additional evidence about the defendant's background.  
14 Maybe they had a criminal record,  
15 maybe they had a bad character evidence, or maybe they  
16 didn't have any criminal record, it can go either way.  
17 But at the close of that, the first  
18 question you look at is question number 1, which starts  
19 off with a "no" answer. We have to overcome that. Just  
20 like a person is presumed to be innocent at the beginning  
21 of a trial, this answer is presumed to be "no" and we  
22 have to prove to you beyond a reasonable doubt that it  
23 should be answered "yes."  
24 That question asks: "Do you find from  
25 the evidence beyond a reasonable doubt that there is a  
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1 probability that the defendant would commit criminal acts  
2 of violence that would constitute a continuing threat to  
3 society?" You see where that question is asking the  
4 jurors to make a prediction about how the defendant will  
5 behave in the future?  
6 A. Right.  
7 Q. Okay. Let me first ask you this: Do  
8 you think you could answer a question like that if you

9 are given sufficient evidence to make a prediction like  
10 that?

11 A. Yes, sir.

12 Q. Okay. You can use the facts of the  
13 crime itself, and any background evidence that you may  
14 find about the defendant to answer that question.

15 Now, here is the thing, I can't  
16 preview the case. That's the hardest thing for the  
17 lawyers, I think, in this case is we can't preview the  
18 case, we can't commit you to the facts, so we're talking  
19 in hypotheticals here. All right?

20 So it's kind of hard, we're kind of

21 vague sometimes, so you have to bear with us.

22 The law does not require us -- does

23 not require a defendant to have been to prison or  
24 committed other criminal acts before you try them for  
25 capital murder. You may have a defendant who has had a  
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1 long criminal history. Or you may have someone that has  
2 not done really anything wrong in their life and then  
3 they go out and commit a terrible, brutal capital murder.

4 The jurors may have only the facts of  
5 the crime itself, the murder itself to give them  
6 information to answer this first question about how they  
7 are going to behave.

8 What I want to know is, is your mind  
9 open? Do you think you could answer this question based  
10 on the facts of the offense alone, depending on those  
11 facts?

12 A. Yes, sir.

13 Q. Okay. Do you feel that the type of  
14 murder it is, that type of thing, could tell you a lot  
15 about the defendant?

16 A. Yes, sir.

17 Q. Okay. Fair enough then. Now, the  
18 words in these two questions, you won't be given any  
19 legal definitions from the Judge in this case. Those  
20 definitions will be left up to you and the other jurors.  
21 That is what the legislature has said we will do.

22 So, I want to go over a few of these  
23 words with you. We have to prove beyond a reasonable  
24 doubt that it's a probability the defendant would commit  
25 criminal acts of violence. When you see the word  
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1 "probability" in that sentence, in that context, what  
2 does it mean to you?

3 A. Most likely.

4 Q. Okay. You understand we don't have to  
5 prove it's a certainty?

6 A. Right.

7 Q. Just a probability?

8 A. Right.

9 Q. Okay. We have to prove the defendant  
10 would commit criminal acts of violence. When you see the  
11 words "criminal acts of violence" what does that mean to  
12 you?

13 A. Criminal acts of violence.

14 Q. Okay. Murder obviously would be  
15 included?

16 A. Right.

17 Q. But could other crimes also be  
18 included?

19 A. Right.

20 Q. Robbery, assault, threats, things of  
21 that nature?

22 A. Yes.

23 Q. Okay. We're not required to prove  
24 another murder will be committed, only criminal of acts  
25 of violence. Does that seem fair to you?

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1 A. Yes.

2 Q. And finally we have to prove that they  
3 would be a continuing threat to society. When you see  
4 the word "society" what does society mean to you? What  
5 does it include?

6 A. That would be their surroundings and  
7 people they are in contact with.

8 Q. Okay. Anyone and everyone they might  
9 come in contact with?

10 A. Right.

11 Q. Could that include people in the  
12 prison system; guards, visitors, people that work there?

13 A. Sure.

14 Q. Okay. If you answer that first  
15 question "yes," then you move to the second question.  
16 And this question is a little bit longer so bear with me.

17 "Taking into consideration all of the  
18 evidence, including the circumstances of the offense,  
19 the defendant's character and background, 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 Like I said, it gets kind of lengthy.

25 It's what we call the mitigation question. You don't  
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1 answer this question unless you have found someone guilty  
2 and found them a continuing danger to society. And we  
3 can't tell you what mitigating evidence is, that will be  
4 up to you and the other jurors.

5 You just have to determine that there  
6 is mitigating evidence and then decide is this the type  
7 of evidence I think a life sentence should be imposed  
8 rather than the death sentence. You don't have to sit  
9 there today and even imagine what those might be. You  
10 just have to be able to keep your mind open to it. Do  
11 you think you could do that?

12 A. Yes, sir.

13 Q. Okay. Now, like I said, you are not  
14 required to think what mitigating evidence is, but let me  
15 go over a couple of examples. Okay? And you don't have  
16 to agree with anything I say here. Mitigating evidence,  
17 you might hear a case -- well, here's an example of how  
18 you don't have to agree. You might hear a case where  
19 maybe the defendant has a Ph.D. from some college. One  
20 juror might think that is mitigating because they have  
21 done something constructive with their life, and another  
22 juror might say, "No, someone that smart shouldn't get in  
23 trouble." So, it could go either way, you understand.

24 We have heard from a lot of jurors so  
25 I am going to go over a few things. Sometimes a capital  
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1 murders are committed when someone is on drugs or  
2 alcohol. They just go out and get drunk or get high and  
3 commit murder, voluntarily. In Texas, that is no legal  
4 excuse. Okay? You are still held accountable.

5 However, some people might view that  
6 as mitigating evidence, in some way, lessen their moral  
7 culpability, you might say. Other people say, "No,  
8 actually, you go out and take drugs, or get drunk and go  
9 out and start murdering people, you have got to be held  
10 accountable for your actions." Does it cut one way or  
11 the other with you?

12 A. I'm sorry?

13 Q. Do you feel that that is mitigating  
14 evidence, or could that be more aggravating to you to  
15 have someone commit murder under the influence of drugs  
16 or alcohol?

17

18 MR. S. PRESTON DOUGLASS, JR: Your

19 Honor, again, I am going to object. It seems like that  
20 is leading towards a commitment. I think we get back to  
21 the question of --

22 THE COURT: I'll sustain it. You  
23 might want to rephrase it.

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

25

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1 BY MR. TOBY L. SHOOK:

2 Q. Well, I'm not trying to commit you to  
3 any facts because, obviously, you haven't heard any. But  
4 I'm just using that as an example. Do you understand  
5 where some people might think that is possibly  
6 mitigating, but other people -- another juror might  
7 think, you know, that is actually aggravating, I'm going  
8 to hold it against them.

9 I'm just wondering if it cuts one way  
10 or the other with you?

11 A. Well, I'm still not quite sure what  
12 your asking.

13

14 THE COURT: Well, many things can be  
15 mitigating, you understand.

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: I think that is what Mr.

18 Shook is asking you. What is mitigating to one person  
19 may not be mitigating to another person. You understand  
20 that?

21 THE PROSPECTIVE JUROR: Right.

22 THE COURT: Now on that question  
23 there, all the jurors don't have to agree on what is  
24 mitigating.

25 THE PROSPECTIVE JUROR: Okay.

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1 THE COURT: Does that clear that up  
2 enough, I hope? Is that all right, Mr. Shook?

3 THE PROSPECTIVE JUROR: Yes.

4 MR. TOBY L. SHOOK: Right.

5

6 BY MR. TOBY L. SHOOK:

7 Q. You don't have to agree at all. Now  
8 what I'm doing is just giving you some examples of what  
9 some jurors say is mitigating evidence and other jurors  
10 say it's not. Okay?

11 A. Okay.

12 Q. And I am just trying to get a feel for

13 you to see if -- you know, if these things mean anything  
14 to you one way or the other.

15 Because I know -- at least I hope you  
16 don't sit around thinking about these issues.

17

18 THE COURT: Well, nobody is trying to  
19 pin you down to a thing.

20

21 BY MR. TOBY L. SHOOK:

22 Q. Right. I'm just trying to get a feel  
23 because we have got to know about you so we can make some  
24 judgments about you.

25 And like I said, sometimes people  
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1 commit crimes under the influence of alcohol or drugs,  
2 and that is no legal defense. But some people might view  
3 that as mitigating evidence, and other people say, "No,  
4 you commit a crime under the influence of drugs, I'm  
5 going to hold you accountable for it." Do you feel one  
6 way or the other about it?

7 A. Yes.

8 Q. Okay.

9 A. I think they should be held  
10 accountable.

11 Q. Okay. That is fine. That is how --  
12 you know, people might disagree, but that is fine, but it  
13 is going to be up to you. Sometimes you hear evidence  
14 that a person may have grown up in a poor economic  
15 background, you know, maybe they were deprived or in a  
16 poor neighborhood, didn't have a lot when they grew up.

17 Some people view that as mitigating,  
18 that they didn't have the same opportunities, other  
19 people say, "No, there has been plenty of people from  
20 that background that don't go out killing people." And  
21 they would hold them accountable.

22 Does that make any difference to you  
23 one way or the other?

24 A. It would depend on the person.

25 Q. To every individual case?  
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1 A. Yes, sir.

2 Q. Okay. Fair enough. But you wouldn't  
3 have any problem keeping your mind open to that type of  
4 evidence?

5 A. No, sir.

6 Q. Now, of course, to answer that

7 question "yes," you do have to hear some evidence that  
8 you view as mitigating. And what might be mitigating may  
9 never reach the level where you think, you know, the  
10 death sentence should be avoided. Do you understand  
11 that?

12 A. Yes, sir.

13 Q. And neither side has the burden of  
14 proof on this question. You know we have to prove that  
15 first question "yes," but we don't have to prove that  
16 question should be answered "no" or "yes," and the  
17 defense doesn't either. That's kind of an overview look  
18 at the whole thing, then you make your decision. Okay.  
19 But no one has the burden of proof as to that last  
20 question. Does that sound fair to you?

21 A. Yes.

22 Q. Okay. Now, Ms. Wagoner, there are  
23 some rules that Judge Tolle went over that apply in every  
24 criminal case. The presumption of innocence, every  
25 person starts out with the presumption of innocence.  
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1 Could you follow that rule of law?

2 A. Yes, sir.

3 Q. Okay. The burden of proof. The State  
4 has to prove its case beyond a reasonable doubt. Okay?  
5 We have to do the proving. Could you follow that rule of  
6 law?

7 A. Yes, sir.

8 Q. Okay. The Judge also told you that a  
9 defendant has a right not to testify. And if she -- you  
10 know, if you want to testify in your case, no one can  
11 stop you. But if you choose not to, the Judge will  
12 inform the jury they can't hold that against them. Could  
13 you follow that rule of law?

14 A. Yes, sir.

15 Q. The Judge would also tell you that in  
16 a criminal case that police officers testify, at time to  
17 time. And you have to start all the witnesses out on the  
18 same foot. You can't give them a head start because they  
19 are a police officer, or you can't start them behind  
20 anyone because they are a police officer. You have to  
21 start them out the same and then judge their credibility.  
22 Could you follow that rule of law?

23 A. Yes.

24 Q. Okay. We asked you about police  
25 officers and how you feel about them. Have you ever had  
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1 any negative experiences with police officers?

2 A. No, sir.

3 Q. Okay. Have you had many dealings with

4 police officers though? Had any that are friends?

5 A. Well, we do have some friends who are.

6 Q. Here locally?

7 A. Yes, sir.

8 Q. Okay. Oh, I was going to ask you:

9 Through you-all's business I think you might have had

10 some hot checks; is that right?

11 A. Yes, sir.

12 Q. And that business was -- what did you

13 say, was it a service station?

14 A. Yes, sir.

15 Q. Okay. But have you ever taken anyone

16 to trial over that or anything?

17 A. No, sir.

18 Q. Okay. We asked on the questionnaire

19 about, if you know anyone who has been in jail or prison,

20 and you put down a man's name by the name of Calvin

21 Noble.

22 A. Yes, sir.

23 Q. Who is that?

24 A. He is a man that goes to our church.

25 I don't know him very well at all.

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1 Q. Okay. So you don't know anything

2 about the circumstances of his case?

3 A. No.

4 Q. Okay. And then if any of your friends

5 or yourself have used a lawyer, you checked: An accident

6 with an employee in the death of a child. That was some

7 type of automobile accident?

8 A. Yes, sir.

9 Q. Who was that?

10 A. We used to also have a tire store in

11 Bandera and we also operate U-Haul business out of there.

12 And he was picking up the trailer and a baby crawled

13 underneath the truck.

14 Q. Okay. So, you all -- did you all help

15 get a lawyer for him?

16 A. Well, U-Haul represented us.

17 Q. U-Haul represented you?

18 A. Yes, sir.

19 Q. Was it a civil lawsuit?

20 A. I don't know.

21 Q. Was even a lawsuit filed?

22 A. Well, it was filed, but it never --

23 Q. It never went to trial?

24 A. No.

25 Q. Okay. Ma'am, do you have any -- you  
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1 have been up there a little while now, you have been very  
2 patient with me. Do you have any questions over anything  
3 we have gone over?

4 A. No, sir.

5 Q. Anything you think we might need to  
6 know about you before we make any decisions on you?

7 A. No, sir.

8 Q. Okay. Well, thank you for being  
9 patient with me.

10

11 MR. TOBY L. SHOOK: That's all I have,  
12 Judge.

13 THE COURT: Thank you, Mr. Shook. Mr.  
14 Douglass.

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

17

#### 18 VOIR DIRE EXAMINATION

19

20 BY MR. S. PRESTON DOUGLASS, JR:

21 Q. Ms. Wagoner, I've got good news and  
22 bad news. The bad news first is: There are more  
23 questions that I have to go through with you. The good  
24 news is that the attorneys representing the State are  
25 thorough and what that means is that many times there are  
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1 areas that I don't have to go back over because you took  
2 a lot of time filling out your questionnaire, and they  
3 took some time talking to you about some things, and so  
4 it usually cuts down on the amount of time I have to talk  
5 to you about things.

6 However, there is one thing I hope you  
7 understand and that is that there is no more important  
8 moment in Darlie Routier's life than right now.

9 A. Right.

10 Q. She is on trial for her life and that  
11 is a very serious business. And sitting in the position  
12 I sit in, you kind of hate to start out apologizing for  
13 asking for more questions because it is very important to  
14 her. So, if you will bear with me, I hope you'll think I  
15 won't take up your time and waste it at all.

16 Along those lines, our perspective is

17 absolutely, completely different from that of the  
18 attorneys representing the State.  
19 Death penalty cases it seems like  
20 always gravitate to talking about the death penalty. And  
21 in a way, the issue of that ultimate penalty kind of  
22 takes a lot of the focus. But the only thing you know  
23 for sure in a trial in Texas is, in criminal trials, that  
24 there is going to be a guilt/innocence phase.  
25 There is no guarantee certainly that  
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1 there will ever be a punishment phase. The reason I go  
2 into that is Darlie Routier has plead not guilty. She  
3 will plead not guilty to the 12 people that are selected  
4 to hear this case, and she will stand behind that plea of  
5 not guilty wholeheartedly and not waver.  
6 Because of that, we don't expect that  
7 we're going to be talking about those special issues on  
8 punishment. And I want to go through with you about the  
9 guilt/innocence part of the trial because those are  
10 things I want to go through with you and see if you, just  
11 see how you feel about those issues.  
12 I want to say one more thing, the  
13 preface is that there is a lot of discussion about, can  
14 you follow that law? A lot of the questions are: Well,  
15 that's a law, is that a law you can follow?  
16 I think all of us certainly want to  
17 believe that we're law-abiding citizens. So, it's kind  
18 of hard to say, "Well, that is a law I don't believe in."  
19 I mean, it's against our nature to do that. However,  
20 there are some ideas that people get in their mind and  
21 they say, "You know, I know that is the law, but it's  
22 something that is kind of foreign to me. Maybe a law I  
23 disagree with."  
24 I can think of a number of laws that  
25 are on the books that I just don't think are terribly  
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1 good laws. That doesn't mean that I go out and willfully  
2 break them. That just means that there are some that I  
3 am kind of not as happy about as others.  
4 I have become much more happier now  
5 that the speed limit has been raised. I feel like the  
6 laws are a little more fair in that regards, but that was  
7 just my perspective.  
8 So, when I talk to you about is that a  
9 law you can follow, I hope you understand that when we're  
10 picking a jury, you may have heard people say, "Well, you

11 know, they have jury consultants and people that can come  
12 up with, you know, what color a person's hair is and what  
13 they do for a living, and how they are educated," and you  
14 come out with who is a good juror and who is a bad juror.

15 And I think to a large extent that is

16 bunk. Because it tends to stereotype people and put them  
17 in pigeonholes or cubbyholes or whatever you want to say.

18 And along those lines, I think you can

19 only rely on what people tell you. So, there are no  
20 wrong answers in here. And if you say, "Well, I know  
21 that's the law, but that's one I have got to tell you I  
22 have problem with," then feel free to do that because  
23 that is why we're here.

24 I want to ask you, I am just starting

25 with the beginning of the questionnaire, and it said that  
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1 you had spoken to your music minister who is from Fort  
2 Worth about the case.

3 And I guess I'm curious, obviously,

4 you know, there has been a lot of attention and a lot of  
5 work done to move this case from Dallas so that we have  
6 people that start off as fair and impartial as we can  
7 get.

8 What do you know about the case,  
9 factually?

10 A. Factually, not really anything.

11 Q. Do you know any details?

12 A. No, not really.

13 Q. Okay. And I am assuming, and this

14 kind of steps one question ahead, but I'm assuming that  
15 if you know something whatever you know wouldn't cause  
16 you to start out with a preconceived leaning or notion  
17 towards one side.

18 A. No.

19 Q. What -- I mean, other than the fact

20 that this trial has been moved, what can you tell us that  
21 the music minister what he told you?

22 A. Oh, he was just telling us that, you

23 know, there had been something about the two boys being  
24 stabbed.

25 Q. Did he tell you any more facts about

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1 it?

2 A. No, he didn't.

3 Q. Okay. Did he give you any opinion

4 about what he thought about the case?

5 A. No.

6 Q. So, now, is anything that he said that  
7 caused you to have any opinions about the case?

8 A. No, no. He didn't -- well, at the  
9 time, he didn't really have any opinions.

10 Q. Okay. So, as you sit out today, you  
11 don't have any leaning one side or the other because you  
12 know very little about the case; is that right?

13 A. Right.

14 Q. I want to talk to you a little bit  
15 about the presumption of innocence. As Darlie Routier  
16 stands and sits before you now, she is presumed innocent.  
17 If the trial was to end at this moment, if you were  
18 sitting over there in the jury box and the State says,  
19 "We don't have any evidence to produce," by your oath,  
20 your verdict in the case, would be not guilty because you  
21 have heard absolutely nothing. Do you agree with me  
22 about that?

23 A. Yes.

24 Q. Okay. I want to talk to you a little  
25 bit about the indictment. Have you ever had the  
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1 opportunity to be on a Grand Jury?

2 A. No, sir.

3 Q. Okay. Judge Tolle, and I don't know  
4 if you remember, it's been now going on four weeks since  
5 this was said to you back when you came in before to  
6 initially report, but Judge Tolle -- you might  
7 remember -- do you remember him talking about the  
8 indictments, and the indictments in Dallas County. Do  
9 you remember any of that?

10 A. Yes, sir.

11 Q. Do you remember him telling you that  
12 in Dallas County that over 25,000 indictments are issued  
13 each year, and that any one Grand Jury, sitting for one  
14 eight-hour period of time, may return as many as 125  
15 indictments from those people, in one day's work. Do you  
16 remember any of that?

17 A. Yes.

18 Q. Okay. And you might also remember  
19 that Judge Tolle said, "Because of that volume there are  
20 a large number of people that never know they are being  
21 investigated. Grand Juries are in secret, they're  
22 conducted in secret.

23 And there is a large number of people  
24 that didn't know that they were being investigated and  
25 because they didn't know they were being investigated,

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1 they didn't have a chance to come down and tell their  
2 side of the story.

3 Even if they wanted to tell their side  
4 of the story, sometimes the Grand Jury doesn't have to  
5 listen to it.

6 Did any of that surprise you when you  
7 heard it?

8 A. No, sir.

9 Q. Did it make sense to you that if some  
10 people get investigated or there is a huge volume or that  
11 people get investigated never know they are being  
12 investigated? That because of that, you can't put any  
13 weight on the indictment, that it's only a piece of  
14 paper. Do you agree with that?

15 A. Yes, sir.

16 Q. Okay. Now, there's some groups of  
17 people, two groups, of course, there's people in between,  
18 but there's some people that say, "Well, you know, if  
19 there's all these lawyers in here, there's a Judge," you  
20 saw all that rigmarole going on when you came in the  
21 first day.

22 If there is all these people here and  
23 where there is an indictment, that means, where there is  
24 smoke, there is fire.

25 There's another group of people that

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1 say, "Well, I don't believe that. I believe it's just  
2 simply somebody that's been accused, and I'm not going to  
3 put any weight on that at all."

4 Now, where do you find yourself? What  
5 group do you think you are more closely aligned with? Do  
6 you believe, where there is smoke, there is fire? Or do  
7 you say, "Well, I'm in the group that doesn't put any  
8 weight on any of that stuff"?

9 A. I'm in the group that doesn't put any  
10 weight on it.

11 Q. All right. Can you assure the  
12 defendant that the fact that there has been an  
13 indictment, that you will not put any more weight on that  
14 than the fact that it just tells a defendant what he or  
15 she is charged with and it gives the Judge jurisdiction,  
16 without that, without that piece of paper, we can't have  
17 a trial.

18 You have got to have that, to let  
19 someone know what they are charged with. But other than

20 that, it's just a piece of paper and it has no value.  
21 Can you live with that? Do you think you can put out of  
22 your mind that someone's been indicted and look at only  
23 the evidence?

24 A. Yes, sir.

25 Q. Okay. One of the things that concerns  
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1 me where I sit is that the State gets to go first. And  
2 there are a lot of psychologists and people that give a  
3 lot of theories about things, and say, "You know, what  
4 people hear first, what goes in their head first is what  
5 sticks with them."

6 And unfortunately, a trial doesn't  
7 work to where one side can kind of insert evidence if  
8 they want to at certain points. So the concern that  
9 causes me is because they have the burden of proof they  
10 get to go first, just like today they got to ask you  
11 questions first.

12 Are you the kind of person that, and I  
13 can assure you you won't hear anything good about a  
14 client from the State. I mean, you are not going to  
15 hear, "Well, this is a really nice person, but let me  
16 tell you why we have them on trial." That doesn't  
17 happen. So, I guess, the question I want to ask you is:  
18 Can you keep an open mind to listen to all of the  
19 evidence before you start to form an opinion?

20 A. Yes, sir.

21 Q. Okay. The burden of proof is on the  
22 State. It lies at their table and the burden of proof  
23 never shifts to the defendant. The defendant has  
24 absolutely no burden to prove anything to you. Are you  
25 comfortable with that? Do you think that is fair?

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1 A. Yes, sir.

2 Q. It's kind of like that question like,  
3 you know, if you were asked, "When did you stop beating  
4 your wife?" You have probably heard that before. It's  
5 kind of hard if you have never beaten your wife before,  
6 it makes an assumption, and then if you have never done  
7 it, it's kind of hard to disprove something. And if you  
8 would agree with me, you would start out behind the  
9 8-ball.

10 The way it ought to work is, quite  
11 simply put, the people that do the accusing, have to do  
12 the proving. And that is the way it is and it never  
13 changes. And I just -- I want to know if you are

14 comfortable with that, and you wouldn't require the  
15 defendant to prove his or her innocence?

16 A. Yes, sir.

17 Q. Well, I mixed two questions with you.

18 Let me ask you first: Do you agree  
19 that the burden of proof should stay over there?

20 A. Yes, sir.

21 Q. Now second, let me ask you the second  
22 question: Knowing that the burden of proof is on the  
23 State, would you ever require the defendant to bring you  
24 evidence to prove that he or she is innocent?

25 A. No, sir.

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1 Q. All right. The burden of proof that  
2 the State has to bring you to convince you is beyond a  
3 reasonable doubt.

4 Now, you sat on a civil jury, and you  
5 probably remember that the Judge gave you what is called  
6 a Charge. It was a written piece of paper that gave you  
7 all of the law. And he probably read it to you right at  
8 the end of the case.

9 And in criminal cases you will get  
10 that Charge also. But I want to talk to you about the  
11 burden of proof. It will be defined, reasonable doubt is  
12 defined for you in the Charge. In the civil case you sat  
13 on, the burden of proof you probably heard was  
14 preponderance of the evidence. Do you remember that?

15 A. Yes, sir, I do.

16 Q. Imagine the scales of justice and the  
17 preponderance of the evidence is just 51 percent. If the  
18 plaintiff brought you one grain of sand that tipped the  
19 scales more than the other side, then that is who you  
20 found for. Even if it was very slight, and just whoever  
21 had the greater weight of the credible evidence, that's  
22 what they say.

23 Now, criminal cases are much higher.

24 Let me give you an example: In a child custody case, for  
25 instance, the burden of proof is clear and convincing  
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1 evidence. For instance, if you are going to take a child  
2 away from a mother, you can't do that unless you have  
3 clear and convincing evidence that that needs to happen.

4 Now believe it or not, clear and  
5 convincing obviously is higher than the preponderance of  
6 the evidence. But clear and convincing is even, I mean,  
7 beyond a reasonable doubt, is even higher than that.

8 Even higher than the amount of proof it takes to take a  
9 child away from a mom, you've got to have much more proof  
10 to convict a citizen of a crime.

11 Knowing that it's that high of a  
12 burden of proof, and knowing that the State must meet  
13 that very high burden, are you comfortable with that?  
14 Do you think that is the fair way to  
15 do it? And will you guarantee that right to the  
16 defendant?

17 A. Yes, sir.

18 Q. I want to give you an example just  
19 very quickly: Imagine for a second -- I have drawn this  
20 circle, and imagine for a second that coming out of the  
21 circle is a beam of light. And that beam of light is the  
22 presumption of innocence. Okay?

23 And it's the attorneys representing  
24 the State's burden to absolutely obliterate that beam of  
25 light. To where there is not one ray of light coming  
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1 through that represents the presumption of innocence.

2 Are you with me?

3 A. Yes, sir.

4 Q. Okay. Now, they may bring you  
5 eyewitness testimony and you might think, as they start  
6 to blot at, you might think, "You know, that's pretty  
7 persuasive." Well, then they bring you a fingerprint and  
8 you might say, "Well, that's not as persuasive, but it  
9 kind of blocks out a little bit."

10 And they might start to fill that up,  
11 but if they don't completely block it out, and you take  
12 an oath as a juror, you have to guarantee to the  
13 defendant that your verdict would be not guilty, unless  
14 there is no light shining through. Do you agree with me  
15 on that?

16 A. Yes, sir.

17 Q. Do you further agree that down here at  
18 the very bottom there is a pin, just a pin light of light  
19 coming out. And you believe that light is a doubt that  
20 you have on reason, a reasonable doubt. You have thought  
21 about it and you thought, "This isn't just some pie in  
22 the sky doubt. I believe this is based on reason."

23 Okay? And that little light is coming out.  
24 Would you assure the defendant that no  
25 matter how small the reasonable doubt, that you would  
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1 resolve that in her favor?

2 A. Yes, sir.

3 Q. Okay. I want to talk to you a little

4 bit about motive. The State brought up motive for a  
5 minute, and Mr. Shook is correct. You might notice on  
6 that indictment that it doesn't say committed this crime  
7 with a comma, and then this says because or why. You  
8 notice it doesn't say that? And he is right, they don't  
9 have the burden of proving motive as an element.

10 Let me give you an example: You might  
11 notice on that indictment in front of you, up at the very  
12 top part, that it says, "On or about June 6th." You  
13 might see that on there? It says a date?

14 A. Yes.

15 Q. Okay.

16

17 MR. S. PRESTON DOUGLASS, JR: May I  
18 approach, Your Honor?

19 THE COURT: Yes.

20 THE PROSPECTIVE JUROR: Oh, yes.

21

22 BY MR. S. PRESTON DOUGLASS, JR:

23 Q. You might see that, I always have to  
24 look at it myself, right there.

25 A. Oh, yes.

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1 Q. You might also -- it says, on or about  
2 the 6th day of June in the County of Dallas. Do you see  
3 that on there?

4 A. Yes, sir.

5 Q. Those are hurdles, let's say. Lawyers  
6 call them elements, but it's better to look at them as  
7 hurdles. Those are hurdles that they have to prove.  
8 They have to prove on or about the date, they have to  
9 prove in Dallas County, so that the Court has  
10 jurisdiction.

11 Those are elements or hurdles. And  
12 they are right, they don't have a hurdle to clear as  
13 motive. But where I'm going is, I would submit to you  
14 that motive is not something that you have to put out of  
15 you mind.

16 You, as a juror, are not told by the  
17 Judge, "Well, they don't have to prove motive, so you  
18 have to quit thinking about it." Are you with me?

19 A. Yes, sir.

20 Q. Okay. Motive can be considered by a  
21 jury. And I am going to ask you for a minute to think  
22 about whether or not in your mind, and I can't give you  
23 any facts, but whether or not in your mind you could

24 agree that the absence of proof of motive, could possibly  
25 create a reasonable doubt in a juror's mind? Let me give  
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1 you an example before I ask you to answer that.  
2 Let's imagine that you have got  
3 fingerprint evidence, you have got hair evidence, you  
4 have got things that mean something. Some of it you  
5 believe, some of it you may not believe. But you believe  
6 it stands for something, but like a jigsaw puzzle, it  
7 doesn't quite fit together.  
8 There's no glue to bind it together.  
9 There's no thread to sew the pieces together. And you  
10 might say, "You know, because there is no proof of  
11 motive, this evidence doesn't make sense to me. It  
12 doesn't fit together, neatly. And because it doesn't fit  
13 together neatly, I've got a reasonable doubt."  
14 Now, I can't commit you, and I can't  
15 give you a set of facts and ask you to commit. But I'm  
16 asking you: Could you foresee, or could you think of how  
17 it could be possible that if it just didn't make sense,  
18 and what would make sense as motive, that that might  
19 raise a reasonable doubt in your mind?

20 A. Yes, sir.  
21 Q. Okay. You can buy into that?  
22 A. Yes, sir.  
23 Q. All right. I touched on it briefly,  
24 and I think I know the answer, I just want to do it real  
25 quick with you again. I have heard it said one in a  
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1 criminal trial when I was defending someone. Over at the  
2 courthouse you might remember there was some old fans up  
3 there in the old courthouse, and the Judge said, "That if  
4 Preston wanted to during the trial, he could sit --  
5 because he doesn't have the burden of proof, he could sit  
6 and watch those fans spin around through the whole trial  
7 and never do anything. And the jury would have to honor  
8 that right."  
9 And, if you came to the end of a trial  
10 and the State had brought you evidence and you said, "You  
11 know, some of that evidence is persuasive, but I have got  
12 one question," or maybe you have three questions. And  
13 they haven't resolved that for you.  
14 And an attorney representing the State  
15 stands up and says, "Your Honor, we rest our case." And  
16 the defense stands up and says, "We're not going to put  
17 on any evidence." Probably thinking, they haven't proven

18 their case, why do we have to do anything? Under the  
19 law, if they haven't proven it, we have to do nothing.  
20 Could you go along with that? And say, "Well, the  
21 defense is not going to put on any evidence, and I have  
22 to look at the State's case under a microscope to decide  
23 if they met their burden of proof."

24 Could you do that?

25 A. Well --

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1 Q. Did I bury the question?

2 A. Yes.

3 Q. Okay. What I'm only asking you is:

4 If the defendant didn't put on any evidence for you,  
5 could you honor that right and say, "Well, they don't  
6 have to. I only have to look at this case, the State's  
7 case, and if they failed to produce -- if they failed to  
8 convince me beyond a reasonable doubt, I can't worry  
9 about whether they put on evidence or not. I can only  
10 look at their case." Or are you going to say, "I have to  
11 hear something from the defendant?"

12 A. No.

13 Q. Okay. So, if the defendant says, "I'm  
14 not going to put on any evidence," you are okay with  
15 that?

16 A. Yes, sir.

17 Q. All right.

18 Last thing about on that same vein,  
19 there's three groups of people I think about whether a  
20 defendant should testify or not. Many times that  
21 decision is not made until the end of a trial and  
22 frequently made by the defendant's attorneys only.

23 Some people say, "If I was charged  
24 with a crime, I am going to get up there. You couldn't  
25 hold -- wild horses couldn't hold me back. And I'm going

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1 to testify."

2 Some people say, "Look, I hired  
3 lawyers. You know, these guys come do this everyday, I  
4 guess. If they tell me not to testify, that I don't need  
5 to, I'm going to believe them. I'm going to follow my  
6 lawyer's advice."

7 Then there is the third group of  
8 people that say, "I don't talk very well. You know,  
9 I'm -- these lawyers they could twist me around and make  
10 me sound like I'm lying when I'm telling the truth. So,  
11 I'm too nervous to get up there."

12 Now, do you feel like you identify  
13 with any of those three groups of people in particular?

14 Or do you understand each position?

15 A. Yes, I understand.

16 Q. More importantly, are you going to  
17 hold it against a defendant if he or she does not  
18 testify?

19 A. No.

20 Q. Okay. We're not asking, you know,  
21 with the presumption of innocence, what is really  
22 important is that you don't presume us guilty?

23 A. Right.

24 Q. You won't do that, will you?

25 A. No.

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1 Q. We're not asking for a head start. We  
2 don't want a head start. What we want is a level playing  
3 field. And the question to you is: Would you ensure  
4 that the defendant in this case gets a level playing  
5 field from you?

6 A. Yes.

7 Q. Okay. I have never seen a murder case  
8 that doesn't have pictures. And I have never seen a  
9 murder case where the pictures weren't blown up. I can  
10 assure you in this case that no matter what you believe,  
11 you will come away with the inescapable conclusion that  
12 there has been a horrible crime. No question about that.

13 And I'm sure you are going to see  
14 blown up pictures that really are not very pleasant to  
15 look at.

16 Now, some people can say, "Well, you  
17 know, I understand I'm going to see pictures." They work  
18 through that in their head. Some people, what I'm  
19 concerned about is whether some jurors, and whether you  
20 would be this kind of person would say, "If I looked at a  
21 picture like that, I'm going to be so overwhelmed that  
22 it's going to make me want to punish the first person I  
23 see."

24 My question to you, Ms. Wagoner, is:

25 How do you feel about pictures like that?

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1 A. As to how I would react to them?

2 Q. Yeah. Would they make you so angry  
3 that it would overpower your thinking about the evidence?

4 A. No.

5 Q. Could you look at a picture for what

6 it is? That it's meant as evidence to show something?  
7 And look at it not for the fact that it is gruesome to  
8 look at, but that it might be some part of the evidence  
9 in the case?

10 A. Yes, sir.

11 Q. Well, along those lines, a juror's  
12 oath in this case is not to solve a crime. That is not  
13 what a juror is supposed to do. A juror is supposed to  
14 hold the State to their burden of proof and see if they  
15 have proved it beyond a reasonable doubt.

16 Do you appreciate that difference?

17 That you are not here to solve the crime, but you are to  
18 determine if the allegations are proven beyond a  
19 reasonable doubt?

20 A. Yes, sir.

21 Q. Okay. The law -- I don't get another  
22 chance to talk to you. So, I'm required to talk to you  
23 about these special issues. I don't get a chance to come  
24 back and say, "Well, now, let me ask you your opinion  
25 about some things." So, knowing that this is the portion  
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1 of the trial that we don't expect to be at, I need to ask  
2 you some questions about it.

3 In your questionnaire, you checked a  
4 statement.

5

6 MR. S. PRESTON DOUGLASS, JR: May I  
7 approach, Your Honor?

8 THE COURT: Yes, you may.

9

10 BY MR. S. PRESTON DOUGLASS, JR:

11 Q. In your questionnaire, it's been a  
12 while since you have seen this, I'm sure. You said on  
13 this one, this question on page 2: If you are in favor  
14 of the death penalty in some cases, do you agree that a  
15 life sentence rather than the death penalty would be  
16 appropriate under the proper circumstances? And you  
17 checked yes. Is that still the way you feel?

18 A. Yes, sir.

19 Q. I'm assuming that by that you mean  
20 that you can foresee cases where a person is convicted of  
21 capital murder, but they still get a life sentence. Am I  
22 right?

23 A. Yes, sir.

24 Q. Okay. Because where that necessarily  
25 goes is -- Ms. Wagoner, do you understand with me that if  
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1 you convict someone of capital murder, you have already  
2 found them guilty of an intentional killing? And in your  
3 questionnaire you have said, "Well, if there is an  
4 intentional killing, I think that person should be  
5 killed." You kind of implied that.

6 Then in your second question you said,  
7 "But I could consider a life sentence." And they kind of  
8 go against each other, and I'm trying to see where you  
9 fall out.

10 If you can't consider these issues,  
11 then all you're thinking is, "Well, it's an automatic  
12 death penalty."

13 And, I guess what I'm wondering is, if  
14 someone is convicted of capital murder, do you feel that  
15 that automatically means they get a death sentence?

16 A. No.

17 Q. Okay. I'm assuming that means that  
18 you are receptive to determining this issue. That you  
19 will listen to the evidence before you make your mind up  
20 about this?

21 A. Yes.

22 Q. Okay. You said that you believe  
23 probability meant more likely than not? Is that what  
24 you -- most likely; is that what you said?

25 A. Right.

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1 Q. Okay. What is -- from my perspective  
2 what is important is, is that the State has the burden,  
3 it doesn't shift to the defendant, the State has the  
4 burden of proving beyond a reasonable doubt that it is  
5 most likely that this person would commit a future act of  
6 violence.

7 Do you agree that predicting in the  
8 future what is most likely, and then predicting in the  
9 future what is most likely beyond a reasonable doubt, is  
10 a very high burden?

11 A. Yes.

12 Q. Okay. Would you hold the State to  
13 that burden if we got to this point?

14 A. Yes.

15 Q. Okay. Now, mitigating. That is a  
16 word that I never heard that word before I went to law  
17 school. And there have been a lot people that we talk  
18 about mitigating and we just keep on talking about  
19 mitigating and finally people say, "I have never heard  
20 that word before. What does that mean?" Some people --

21 it's kind of a hard word to define too. Some cases will  
22 say that it lessens the moral blameworthiness of a  
23 person.

24 And mitigating evidence could be all  
25 kinds of evidence. And it really is hard to say, "Well,  
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1 would you believe this, or would you believe that,"  
2 because we don't know what all the evidence is going to  
3 be.

4 My question to you is: Can you see  
5 that mitigating evidence could take all different kinds  
6 of forms or shapes? And more importantly, you and  
7 another juror could get back in the back room  
8 deliberating and say, "You know, I think the person is a  
9 future danger, but there are circumstances that mean a  
10 life sentence is appropriate."

11 The question to you is: Even after  
12 you have found someone guilty of capital murder and found  
13 them a future danger to society, would your mind still be  
14 open to considering mitigating evidence such that a life  
15 sentence might be imposed?

16 A. Yes, sir.

17 Q. Okay. And can you also appreciate  
18 that you and I might be on a jury and I might say, "I  
19 believe that because this person has had a terrible  
20 childhood, that that goes against giving this person the  
21 death penalty and I want a life sentence because of  
22 that."

23 And you might say, "Well, I don't  
24 agree with you on your point. But I think the person  
25 shows a lot of remorse or was cooperative or something  
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1 like that and I think that is the reason why we should  
2 give a life sentence."

3 Would you agree that you don't have to  
4 agree on what the reason is? You just have to agree that  
5 there is a mitigating circumstance. Okay?

6 A. Yes, sir.

7 Q. Okay. I'm almost finished. I seem to  
8 remember in your questionnaire, there was a question in  
9 there that says, yes -- it says that you always follow  
10 your own ideas rather than what other people expect of  
11 you. Do you remember checking that?  
12 There were three little questions and  
13 you say, "I can tell pretty easily when a person is  
14 telling a lie." The second one is, "When I make my mind

15 up, I rarely change it." And the third one that you  
16 checked is, "I always follow my own ideas rather than do  
17 what others expect."

18 A. Yes.

19 Q. Is that a good description of you?

20 A. Yes, sir, I believe so.

21 Q. The reason I'm asking that is,  
22 obviously, if you get back in the jury room, there may be  
23 a vote, you might find yourself in the minority.

24 A. Yes, sir.

25 Q. And a jury is not a democracy. And  
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1 what will happen is you may believe firmly on your oath  
2 that you gave to the Court, that this is the way this  
3 ought to go. My question to you is: Would you stand by  
4 your convictions and not waver if you felt like that is  
5 the way it is?

6 A. Yes, sir.

7 Q. Okay. Just a couple of other  
8 questions off your questionnaire. I noticed that you had  
9 worked for Puma Energy for seven months. Is that always  
10 been at the location that that company is at now?

11 A. No, sir.

12 Q. Okay. You were over on Commerce at  
13 one time?

14 A. Well, I know they moved before I  
15 started working there, I'm not real sure.

16 Q. Okay. All right. That is what I'm  
17 saying. The move was before you got there?

18 A. Yes, sir.

19 Q. All right. Okay. The only reason I'm  
20 asking that is it may happen that you get back to your  
21 employer and your employer says, "Well, who is involved  
22 in this case?" And my name may come up. You said -- had  
23 you heard of Mosty's name or my name?

24 A. Mosty.

25 Q. Okay. You have not heard of my name  
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1 before?

2 A. Well, I have heard of it, but --

3 Q. Okay. Well, let me just bring up a  
4 silly point. It's silly, but I want to ask you about it.

5 The lady who was the landlord back where Puma Energy last  
6 was, over there by Wal-Mart.

7 She is a client of one of my partners,  
8 and she was the landlord for your employer, and I think I

9 sent a letter to your employer. And your employer, when  
10 the lease was up, moved to another place. And I don't  
11 think there was any big any controversy about it, but  
12 went ahead and moved.

13 And, you know, rattling around in the  
14 back of my mind, when you try to get people who have  
15 absolutely no involvement, I saw Puma Energy, I thought,  
16 "Well, I better check with Ms. Wagoner to see if that is  
17 where she heard my name."

18 Second, if you go back and they say,  
19 "Well, who was involved?" And you say, "Well, Douglass,  
20 you know, he was involved in us moving."

21 That wouldn't influence you, would it?

22 A. No.

23 Q. All right. I know it's silly, but  
24 it's one of those things I just want to check and make  
25 sure. Do you have any questions of me?

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1 A. No, sir.

2 Q. Knowing what you know about yourself,  
3 if God forbid, you were sitting in the circumstance where  
4 the defendant is sitting, a person charged with a crime,  
5 would you be comfortable -- knowing what you know about  
6 yourself, would you be comfortable with a juror of your  
7 background and your experience and the way you feel about  
8 yourself sitting in judgment in your case?

9 A. Yes.

10 Q. Okay. Thank you very much. You have  
11 been very patient.

12

13 THE COURT: Okay. Thank you, ma'am.  
14 You can step outside briefly, please, and we will call  
15 you back in in a minute.

16 THE PROSPECTIVE JUROR: Thank you.

17

18 (Whereupon, the prospective  
19 juror was excused from the  
20 room, and the following  
21 proceedings were held,  
22 outside of her presence  
23 as follows:)

24

25 THE COURT: All right. Are we ready?

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1 What says the State?

2 MR. TOBY L. SHOOK: The State will

3 accept the juror.

4 THE COURT: What says the defense?

5 MR. S. PRESTON DOUGLASS, JR: We

6 accept the juror.

7 THE COURT: All right. Thank you.

8 Bring in Ms. Wagoner, please.

9

10 (Whereupon, the prospective

11 juror returned to the

12 room and the proceedings

13 were resumed as follows:)

14

15 THE COURT: All right. Ms. Wagoner,

16 you have been accepted as a juror in this case. Come on

17 up here briefly. You can stand, you don't need to sit

18 down. You have been accepted as a juror. Now, this

19 trial isn't going to start until the 6th of January.

20 Between now and then, we would

21 appreciate it very much if you would not talk to anybody

22 about your being accepted or what went on here today.

23 Obviously, you will tell your husband,

24 we understand that. If the two of you could not say

25 anything I think things will go a lot better.

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1 When the trial is over, you may talk

2 or not talk as you see fit about this case. And please

3 don't discuss it with anybody. I have a gag order on. I

4 can impose monetary sanctions or jail time for violations

5 of it. I'm not trying to threaten you, but I just have

6 to tell you what it is.

7 Please, because you will decide this

8 case on the testimony you hear and the evidence you

9 receive in this courtroom and nothing else.

10 So, if you see it in the newspaper, on

11 TV, radio, please ignore it. Seemingly, you are doing

12 that already, just continue that if you would please.

13 Mr. Navarre back there will be giving

14 you a call over the holidays, probably the early part of

15 January telling you when to come down here. The trial

16 will be in the main courthouse down there.

17 THE JUROR: Okay.

18 THE COURT: Thanks a bunch, appreciate

19 your coming.

20 All right. Do you wish to take a

21 break?

22

23 (Whereupon, a short

24 recess was taken,

25 after which time,  
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1 the proceedings were  
2 resumed on the record,  
3 in the presence and  
4 hearing of the defendant  
5 as follows:)  
6  
7 THE COURT: Ma'am, you are Margie  
8 Ashley Hooker, H-O-O-K-E-R; right?  
9 THE PROSPECTIVE JUROR: Right.  
10 THE COURT: This is number 269 on the  
11 jury list, juror number 94 on our list. All right. If  
12 you can raise your right hand, please.  
13 Do you solemnly swear or affirm that  
14 you will true answers make to all questions propounded to  
15 you concerning your qualifications as a juror, so help  
16 you God?  
17

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

25  
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1 THE PROSPECTIVE JUROR: So help me  
2 God.  
3 THE COURT: Thank you, ma'am. If you  
4 will lower your hand, please. Ma'am, you are a  
5 prospective juror in the Darlie Routier matter.  
6 Mrs. Routier is the defendant in this  
7 case. She is the young lady sitting right there on the  
8 far right.  
9 She is represented by her attorneys  
10 from Dallas, Mr. Curtis Glover, another Dallas attorney,  
11 Douglas Mulder, who is not here now. Also, she has two  
12 Kerrville attorneys. Present, we have Mr. Preston  
13 Douglass, and Mr. Richard Mosty, who is not here now.  
14 The State is represented today by  
15 Assistant District Attorneys Toby Shook and Sherri  
16 Wallace. There is another Assistant District Attorney,  
17 Greg Davis, who will also be involved in this case, he is  
18 not here now either.

19 What is going to happen now, is you  
20 are going to be asked some questions by both sides.  
21 There is no wrong answers. So we just want you to just  
22 to tell it like it is, your exact feelings.  
23 THE PROSPECTIVE JUROR: Okay.  
24 THE COURT: All right. Mr. Shook.  
25 MR. TOBY L. SHOOK: Thank you, Judge.  
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1 Whereupon,  
2  
3 MARGIE ASHLEY HOOKER,  
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. Hooker, again, my name is Toby  
14 Shook, I'm one of the prosecutors on the case and I will  
15 be asking you questions on behalf of the State. I'm  
16 going to go over a few things you have written in your  
17 questionnaire and then we will go over the death penalty  
18 as a law and some of your opinions on that and some of  
19 the rules that apply to a criminal case.  
20 A. Okay.

21 Q. I see that you have lived here in  
22 Kerrville for about the last six and a half years?  
23 A. Uh-huh. (Witness nodding head  
24 affirmatively.)  
25 Q. And lived in Conroe for 20 years?  
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1 A. Yeah.  
2 Q. And Florida, it looks like?  
3 A. Uh-huh. (Witness nodding head  
4 affirmatively.)  
5 Q. Winter Park?  
6 A. Uh-huh. (Witness nodding head  
7 affirmatively.)  
8  
9 THE COURT: Ma'am, is that a yes?  
10 THE PROSPECTIVE JUROR: I'm sorry,  
11 yes.  
12 THE COURT: Can you say "yes" or "no"?

13 Ms. Halsey is taking all this down and she can't take  
14 down nods or uh-huhs or huh-uhs.

15 THE PROSPECTIVE JUROR: I'm sorry.

16 THE COURT: Thank you.

17

18 BY MR. TOBY L. SHOOK:

19 Q. And you work now as freelance writer?

20 A. Yes.

21 Q. What type of writing do you do?

22 A. I do a column for the Kerrville Daily

23 Times. I have done poetry for anthologies, magazine

24 articles.

25 Q. Okay. What type of articles do you

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1 write for the Kerrville Times?

2 A. My column centers usually on two

3 things: The relationship between us and our family, and

4 the relationship between people and God.

5 I believe that if you have those two

6 things in your life you can pretty much surmount

7 everything.

8 Q. Okay. I see also that you have been

9 on a jury before?

10 A. Yes, just one day.

11 Q. One day. Very, very simple one-day

12 case?

13 A. Uh-huh. (Witness nodding head

14 affirmatively.) Yes.

15 Q. What did it involve?

16 A. A young man had said some things to a

17 gentleman, an older gentleman who was walking across the

18 parking lot, and they -- one was driving and some words

19 were spoken, and they got into a scuffle and the older

20 man was pushed. And that was it.

21 Q. Okay. And it says one year probation

22 was the punishment?

23 A. That's -- yes.

24 Q. And the Judge set that?

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.) Yes, sir.

2 Q. How long ago was that?

3 A. Oh, it was just last month.

4 Q. Okay. Was that down here at the

5 courthouse where we were?

6 A. Yes.

7 Q. Okay.

8 A. It might have been the earlier part of  
9 this month, I can't remember. Did I write it down on  
10 there?

11 Q. No. Is there some -- that brings up a  
12 point. Since you have recently served on a jury within  
13 the last six months, and this is up to you, you can  
14 exercise an exemption?

15 A. I had heard that I had to serve over  
16 five days.

17 Q. Oh, that might have been it.

18

19 THE COURT: That's right. You didn't  
20 do over five days?

21 THE PROSPECTIVE JUROR: No, just one  
22 day.

23 THE COURT: Okay. Thank you.

24 MR. TOBY L. SHOOK: Just one day?

25 Okay.

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1 THE COURT: No exemption. Okay.

2 MR. TOBY L. SHOOK: No exemption.

3 THE COURT: Not that you would want  
4 one anyway.

5 THE PROSPECTIVE JUROR: No.

6

7 BY MR. TOBY L. SHOOK:

8 Q. Nothing though about that recent jury  
9 service that caused you any discomfort? You didn't have  
10 a bad experience, did you?

11 A. No.

12 Q. Now, you have lived here locally, I  
13 guess you don't know any of the Dallas attorneys from the  
14 State or the defense. Do you?

15 A. No, sir, I don't.

16 Q. Do you know either of the local  
17 attorneys that have been hired for the defense?

18 A. No.

19 Q. Mr. Douglass or Mr. Richard Mosty?

20 A. No, I don't.

21 Q. Okay. And I see also, your son, back  
22 sometime in the Eighties had some type of possession  
23 case?

24 A. Yes, he did.

25 Q. He has straightened up now, it looks

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1 like?

2 A. Yes. Miraculously, it's wonderful,

3 yes.

4 Q. Where did that take place?

5 A. That was in Conroe.

6 Q. Okay. Do you think he was treated

7 fairly by the criminal justice system?

8 A. Oh, yes, yes.

9 Q. Okay. Let me then turn your attention

10 to some issues that I want to talk to you about, your

11 personal opinions about the death penalty.

12 You know from Judge Tolle's voir dire

13 that this is a capital murder case, one in which the

14 State is seeking the death penalty. So, we want to talk

15 to every juror about how they feel about the death

16 penalty as a law.

17 I believe you checked off that you

18 believe in the death penalty as a law. And I would like

19 you just to put in your own words why you favor the death

20 penalty as a law, or why you think it's necessary in our

21 society? Maybe the purpose it serves?

22 A. I do believe in the death penalty, but

23 with fear and trembling. It's never an easy thing. I

24 don't think it should be an easy thing to say that this

25 person should be put to death. I would have to do an

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1 awful lot of soul-searching and prayer and listen very

2 carefully to the facts of the case before I could say

3 yes, but I do believe in it. Because I believe in God's

4 word, he says, "The murderer should die."

5 There is no place in our society for

6 people who take another life. But that is robbing that

7 person of the chance to be everything that God has

8 planned for them. It's putting ourselves in the place of

9 God, taking a life.

10 And yet, I don't believe that the

11 death penalty is murder. I believe it's justice. And I

12 also believe it's a deterrent.

13 Q. Okay. Have you always been in favor

14 of the death penalty?

15 A. No, sir, I have not.

16 Q. When were you not in favor of the

17 death penalty?

18 A. I think before I was a Christian.

19 Q. Okay. When was that?

20 A. In the early Seventies.

21 Q. Okay. Twenty years ago?

22 A. Yes, sir.

23 Q. And just through your readings of the  
24 Bible, that changed your mind?

25 A. Yes.

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1 Q. Okay. Have you followed any cases,  
2 let's say in the media, or any cases anywhere that you  
3 thought, maybe they were death penalty cases or  
4 high-profile murder cases that involve the death penalty?

5 A. I don't follow -- I don't follow these  
6 things very closely. Of course, when the Simpson trial  
7 was going on, you couldn't help but hear something. But  
8 I didn't listen to it that closely.

9 Q. You didn't draw any opinions or  
10 conclusions about that case?

11 A. To be quite honest with you, I would  
12 have had to have had a lot more facts than I got through  
13 the media.

14 Q. Okay.

15 A. To have drawn any conclusions on it.

16 Q. Did you not get enough facts? Or you  
17 just weren't paying that much attention?

18 A. I just didn't pay that much attention  
19 to it.

20 Q. Let me ask you: Did you, by any  
21 chance, pay any attention to the Susan Smith case? Does  
22 that name ring a bell at all?

23 A. Yes, I did. I didn't follow it  
24 closely, because there wasn't as much coverage as there  
25 was in the Simpson case.

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1 Q. Uh-huh. (Attorney nodding head  
2 affirmatively.)

3 A. However, it was a heartbreakin case.

4 Q. Did you have any conclusions or  
5 opinions about the outcome of that case?

6 A. Again, I didn't sit in on a jury, so I  
7 don't know that much.

8 Q. Okay. One point I want to bring up  
9 with that is usually when we hear about these cases it's  
10 usually the defendant in any capital murder case, you  
11 usually think of a man. I mean that is the first thought  
12 that comes to mind.

13 The law, of course, doesn't  
14 distinguish between the two. Obviously, in this case a  
15 woman is on trial. You have told us you have reflected  
16 on it and you do believe in the death penalty. Do you

17 think the fact that a woman is on trial, would that  
18 affect you in any way? Or do you think the law should  
19 apply both to a man and a woman?

20 A. The law should apply to both sexes.

21 Q. Okay.

22 A. We're all human beings.

23 Q. Okay. Now, do you feel that the death  
24 penalty applies in all murder cases, or it just depends  
25 on the facts of each case?

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1 A. Well, it would have to be the facts of  
2 the case.

3 Q. Okay. Now, in Texas, the death  
4 penalty is not -- we don't use it, it's not applicable in  
5 every murder case. There's only certain types of cases.  
6 You have to have a murder plus something else, plus an  
7 aggravating factor.

8 And let me kind of go over some of  
9 those: Murder of a police officer on duty, falls in our  
10 statute. Murder during a felony, murder if someone is  
11 robbing a bank and kills the teller, that can fall under  
12 the statute.

13 Someone breaks into a house and kills  
14 someone in the home, that could fall under the statute.  
15 Those are murders that are occurred while other felonies  
16 were being committed. Murder during a rape or during a  
17 kidnapping, for instance. Murder for hire, someone just  
18 does it for money, and that could be a death penalty  
19 case.

20 And as in this case, murder of a child  
21 under the age of six. In fact, if I could get you just  
22 for a moment to review the indictment in this case, which  
23 is in that piece of paper before you. See that?

24 A. Yes.

25 Q. There is a paragraph typewritten there  
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1 in the center. And if you will just read that to  
2 yourself.

3 A. Okay.

4 Q. Those are the allegations in the case,  
5 and essentially, that is what we have to prove to get a  
6 guilty verdict.

7 Now, I can't ask you what your verdict  
8 would because you haven't heard from any witnesses yet,  
9 obviously. But is that the type of case, in your mind,  
10 you think might be eligible for the death penalty,

11 depending on the facts of the case?

12 A. Depending on the facts, yes, sir.

13 Q. Okay. Now, you have checked off on

14 your questionnaire that you've heard about the case.

15 Most people have heard something about the case, because,

16 you know, it's a high publicity case, that's why we moved

17 here.

18 There was some, obviously, local media

19 about it being moved here. It's okay to hear about a

20 case, you just can't go into a jury box and make

21 decisions on what you have heard or read in the

22 newspaper.

23 A. Uh-huh. (Witness nodding head

24 affirmatively.)

25 Q. You realize that?

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1 A. Uh-huh. (Witness nodding head

2 affirmatively.)

3 Q. First of all, do you have any opinions

4 like that? Or would you be able as a juror to just

5 listen to the evidence, judge the case on what the

6 witnesses told you?

7 A. To make up my mind, I would have to

8 listen to the evidence. The people outside on the street

9 know nothing.

10 Q. Okay. What have you heard about the

11 case?

12 A. A friend of mine said that the case

13 was coming to Kerrville, another friend said that she

14 didn't believe that the defendant was guilty.

15 Q. Okay. And who was the friend that

16 told you that? Close friend?

17 A. An acquaintance of mine who is the

18 grandmother of several grandchildren. And I think it's

19 because she was a woman that she said that she didn't

20 believe that a woman could do something like that.

21 Q. To their own kids?

22 A. To anybody.

23 Q. To children?

24 A. To anybody, anyone.

25 Q. Did that have any effect on you at

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1 all?

2 A. No.

3 Q. Okay. Because sometimes you hear

4 comments about that?

5 A. Sure.

6 Q. Okay. But your mind is still open?

7 A. Yes, it is.

8 Q. As far as one way or the other? Okay.

9 The way -- you have sat on one criminal trial this month.

10 A. Uh-huh. (Witness nodding head

11 affirmatively.)

12 Q. They operate in that they are divided

13 into two parts. The guilt/innocence stage, where we have

14 to prove that indictment beyond a reasonable doubt, is

15 the first part.

16 A. Uh-huh. (Witness nodding head

17 affirmatively.) Right.

18 Q. If we don't get there, then we all go

19 home. If we do prove those allegations of guilt, then we

20 move to the punishment stage, and that is when you get

21 these questions.

22 You might hear additional evidence at

23 that stage, I can't say, I can't preview the facts. But

24 at the close of that evidence, what you do is you get

25 these "yes" or "no" questions. And I am going to go over

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1 those in a little more detail in a minute.

2 But the first question asks the jurors

3 to make a prediction: Do you feel the defendant would be

4 a continuing danger to society? If you answer "yes" to

5 that, you move to the second question.

6 A. Uh-huh. (Witness nodding head

7 affirmatively.)

8 Q. The second question is a little

9 longer, but basically to summarize it it says this: If

10 jurors look at all of the evidence, everything they have

11 seen in the trial, the defendant's background, and they

12 decide: Is there mitigating evidence in which they feel

13 a life sentence should be imposed rather than a death

14 sentence?

15 If they feel that way, they would

16 answer it "yes." If they don't feel there is that type

17 of mitigating evidence, they would answer "no." But a

18 "yes" and a "no" equals a death sentence. Okay? The

19 Judge has no choice if the juror answers "yes" to number

20 1 and "no" to number 2, he would sentence the defendant

21 to death.

22 If they are answered any other way,

23 the defendant would be sentenced to life. You don't

24 write life or death in, but that determination is made by

25 how the jurors answer those questions. Is that clear to

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1 you?

2 A. Yes.

3 Q. Okay. You probably know from reading  
4 the paper or watching the news that the method of  
5 execution in Texas is by lethal injection. Were you  
6 aware of that?

7 A. Yes.

8 Q. Okay. You also might be aware that  
9 those executions actually do take place in the State of  
10 Texas. There are some states that have the death penalty  
11 and never impose it. But here in Texas, well, Texas  
12 leads the nation in executions. I'm not bragging about  
13 that, it's just that it is a very real fact. The  
14 procedure is the same in every case. Every case where a  
15 "yes" and a "no" answer comes in the punishment stage,  
16 the Judge sentences the defendant to death.

17 They wait sometime in Huntsville,  
18 Texas, but at some day, the Judge will give an actual  
19 execution date. And on that date they are taken from  
20 their cell, they may have been given time with their  
21 family or minister.

22 But after 6:00 p.m. they are taken for  
23 a short walk, put in what we call the death chamber, and  
24 forcibly, if necessary, put on a hospital gurney, and  
25 needles put in their arms, witnesses are there, the  
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1 warden is there, but very soon poisons would be injected,  
2 it takes about 10 minutes. Lungs and heart stop very  
3 quickly and they die.

4 Quite frankly, that is our goal in  
5 this case. We think we have the type of evidence to  
6 prove the defendant guilty to answer those questions  
7 "yes" and "no," and the defense goes the opposite way.

8 So we have a big battle here.

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

11 Q. Now, you have told me that you feel  
12 that in certain murder cases you feel the death penalty  
13 is appropriate, depending on those facts. And I can't  
14 give you any of the facts of this particular case.

15 But what I need to know is this: Do  
16 you think you could sit as a juror and listen to the  
17 evidence, and if these issues were proven to you, proven  
18 to you beyond a reasonable doubt, could you take pen in  
19 hand and answer "yes" and "no," knowing the defendant's  
20 death would result from those answers?

21 A. If they were fully proven, yes.

22 Q. Okay. Now, let me kind of go over

23 some issues that may come up. In any criminal case the  
24 State has the burden of proof and we put on evidence.

25 We have what we call direct evidence

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1 and indirect evidence. Direct evidence is an eyewitness  
2 to a crime.

3 If you were to leave and someone

4 robbed you of your purse coming out of this courthouse,  
5 and that person were caught later, you identified them,  
6 you would be the eyewitness to the case. That is the  
7 direct evidence.

8 Any other evidence is indirect

9 evidence. Okay? Circumstantial evidence, in other  
10 words.

11 I'm sure you have heard that term  
12 before?

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

15 Q. That could be DNA evidence,  
16 fingerprints, evidence from the crime scene, the crime  
17 scene itself, statements by the defendant, anything that  
18 links the defendant to the crime; anything that your  
19 common sense pieces together.

20 The law says there is no difference  
21 between those two types of evidence. The State still has  
22 the same burden. We have to prove it beyond a reasonable  
23 doubt. Right?

24 In a murder case, obviously, you may  
25 not have an eyewitness. You have the person killed, the  
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1 victim, and the person we have accused of the crime. No  
2 other eyewitness there. So, we rely on circumstantial  
3 evidence. What I want to know is: Could you convict a  
4 person of capital murder, based solely on circumstantial  
5 evidence, if you believe that evidence beyond a  
6 reasonable doubt?

7 A. Only if I believe that there is no  
8 doubt left.

9

10 THE COURT: Well, all of these  
11 questions assume that you believe the evidence.

12 THE PROSPECTIVE JUROR: Okay.

13 THE COURT: They all assume that, yes.

14 Is that a fair statement?

15 THE PROSPECTIVE JUROR: Yes, sir.

16

17 BY MR. TOBY L. SHOOK:

18 Q. Now, when you say "no doubt left" --

19 the legal definition will be given to you of reasonable

20 doubt.

21 A. Reasonable doubt.

22 Q. You know, the way we term it is a

23 reasonable doubt. A lot of times, we hear on TV, beyond

24 a shadow of a doubt, 100 percent certainty, you just said

25 the words, "there is no doubt left."

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1 We may just be playing semantics,

2 obviously. But when we say reasonable doubt, a lot of

3 other people say, "A doubt based on your reason," common

4 sense. I mean, we could probably never reach a verdict

5 beyond all doubt.

6 The reason I say that is, you know,

7 someone could always come up with some -- if we had five

8 eyewitnesses, people could go, "Well, maybe that was a

9 twin brother, you never know." Even though they didn't

10 hear any evidence, you understand.

11 A. Yes, sir.

12 Q. That might be viewed as ridiculous

13 doubt, but it's a doubt. But what we have to do is

14 beyond a reasonable doubt, something you base with your

15 common sense?

16 A. Uh-huh. (Witness nodding head

17 affirmatively.)

18 Q. Okay. Is that the kind of doubt you

19 are talking about?

20 A. Yes.

21 Q. Okay. Obviously, beyond a reasonable

22 doubt is the highest burden. It is a burden we fully

23 accept.

24 Another issue that may come up is

25 motive. The motive is the reason for the crime. You

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1 always hear in police shows, "What is the motive for this  
2 murder?"

3 In a criminal case, in a murder case,

4 the motive may become very apparent. You know, clear to

5 everybody once the trial -- all the evidence is in.

6 Or, the motive may never be apparent

7 to anybody.

8 You know, I could pull a gun out right

9 now and kill Ms. Wallace and laugh about it, set the gun  
10 down, with all of these witnesses around, and I could be  
11 charged with murder, but no one may ever know the motive.  
12 No one may never know why I did it. It could be locked  
13 away in my mind. I don't have to testify, I don't have  
14 to tell anyone why I did it.

15 So, the State may never be able to  
16 prove motive. That doesn't make Ms. Wallace any less  
17 dead or me less guilty. It may be what the press  
18 sometimes calls a senseless, random killing. Or there  
19 might be several motives out there.

20 Everyone might have their opinion as  
21 to what the motive is before it's all over with.

22 The point is this: The law doesn't  
23 require the State to prove the motive in order to obtain  
24 a guilty verdict. You notice in that indictment nowhere  
25 in there did it say, why this murder occurred, just how  
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1 it occurred.

2 Could you follow that law?

3 A. I think so.

4 Q. Okay. Are you having some doubts  
5 about following that law?

6 A. You know, this is just all such a  
7 heavy burden, it requires some thought.

8 Q. Uh-huh. (Attorney nodding head  
9 affirmatively.)

10 A. But following the law is something  
11 that I have been taught from the ground up.

12 Q. Okay.

13 A. If that is the law, I will follow it.

14

15 THE COURT: Ma'am, the State just has  
16 to prove what is in the indictment.

17 THE PROSPECTIVE JUROR: Yes, sir, I  
18 understand.

19 THE COURT: They do not have to prove  
20 any motive at all.

21

22 BY MR. TOBY L. SHOOK:

23 Q. Some people disagree with that, but  
24 they could still follow the law, you understand. And you  
25 paused there, and I'm just -- what I'm thinking is, and  
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1 let me know if I'm wrong, you take this all very  
2 seriously and you think about your answers?

3 A. Yes, sir, I do.

4 Q. Okay. I just want to make sure that

5 you are not saying, "Well, you are saying that, but if  
6 you don't prove the motive, I'm not going to find that  
7 person guilty."

8 A. No, like you said, things happen every  
9 day. We may never know the motive behind the actions,  
10 but the actions speak for themselves.

11 Q. Ms. Hooker, just let me say this, and  
12 I think I can say it on behalf of all the lawyers, we  
13 can't get into the facts of the case at all, so we're  
14 kind of hampered by it when we ask you these questions.

15 We're just kind of giving you a hypothetical.

16 We're not trying to pin you down.

17 It's just the best way we have of feeling you out as a  
18 juror and seeing what, you know, your thought process is.

19 A. Okay.

20 Q. So, if you will just bear with us  
21 while we give you these hypotheticals.

22 A. Yes, sir.

23 Q. Okay. Now, the next area I want to  
24 get into are these punishment issues. You wouldn't get  
25 to these unless you found the defendant guilty. Then, as  
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1 I said, you may hear more evidence about the defendant's  
2 background.

3 You know, if there is a criminal  
4 history there, you could hear about that; prison record,  
5 you could hear about that; bad character evidence, you  
6 could hear about that; and vice versa, if there is no  
7 criminal history, you could hear about that; or you know,  
8 good evidence, good background, you could hear about  
9 that.

10 And at the close of that you get these  
11 questions. This first question, the State has to prove  
12 to you beyond a reasonable doubt. You start off with a  
13 "no" answer, just like the defendant is presumed to be  
14 innocent, you start off with a "no" answer here. And we  
15 have to prove it should be answered "yes," based on all  
16 of the evidence.

17 And the question asks this: "Do you  
18 find from the evidence beyond a reasonable doubt that  
19 there is a probability that the defendant would commit  
20 criminal acts of violence that would constitute a  
21 continuing threat to society?"

22 Do you see where that question is  
23 asking the jurors to make a prediction about the  
24 defendant's future?

25 A. Yes.

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1 Q. Again, I can't get into the facts.

2 But do you think you could get enough information about a  
3 defendant to answer a question like that, to make a  
4 prediction like that?

5 A. I think so, yes.

6 Q. Okay. Like I said, you can use  
7 everything you hear to go into that question. And it  
8 might be a situation where you have a long criminal  
9 history, or it could be a situation where someone has  
10 never done anything wrong in their life and then they go  
11 out and commit capital murder.

12 There is no requirement that a person  
13 have been in prison or have a long arrest record before  
14 we can prosecute. You may have just the facts of the  
15 case alone. Maybe what led up to the murder, how brutal  
16 the murder was, what happened afterwards, to give you  
17 information to answer that question.

18 Do you think you could answer that  
19 question "yes," based on the facts of the offense alone,  
20 depending on what those facts were?

21 A. I think so.

22 Q. Okay. Fair enough. Now, the words  
23 contained in both of these questions, you won't be given  
24 legal definitions on. The definitions will be left up to  
25 you and the other jurors. So, I want to go over a couple  
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1 of them.

2 We have to prove beyond a reasonable  
3 doubt that there is a probability that the defendant  
4 would commit criminal acts of violence. What does  
5 "probability" mean to you, used in that context?

6 A. That the defendant was a violent  
7 person, and that this would not be the only act of  
8 violence.

9 Q. Okay.

10 A. That you could expect from the  
11 defendant.

12 Q. A lot of people when we say  
13 probability, the answer we're given the most is, more  
14 likely than not, that someone would commit criminal acts  
15 of violence. Does that seem fair to you?

16 A. Yes.

17 Q. We use the words "commit criminal acts  
18 of violence." The law doesn't require us to prove that

19 murder would occur again, only criminal acts of violence.

20 When we use the words, criminal acts of violence, what

21 types of offenses come to mind?

22 A. Well, threatenings, beatings.

23 Q. Okay. Any type of violence toward

24 another human being?

25 A. Yes.

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1 Q. Okay. If you do answer that question

2 "yes," you go to this last question. And this question,

3 neither side has the burden of proof. Okay? We're not

4 required to prove it should be answered "no," the defense

5 is not required to prove it should be answered "yes."

6 You just kind of look at all the

7 evidence when you get to this question. It's kind of

8 lengthy, and let me tell you, we didn't write it this

9 way. The legislature did that. So, we're not -- you

10 can't blame us for it.

11 "Taking into consideration all of the

12 evidence, including the circumstances of the offense,

13 including the defendant's character and background, and

14 the personal moral culpability of the defendant, is there

15 a sufficient mitigating circumstance or circumstances to

16 warrant that a sentence of life imprisonment, rather than

17 a death sentence be imposed?"

18 It gets kind of lengthy, but the way I

19 summarize that question is this: The jurors, they have

20 already found the defendant guilty of capital murder,

21 they found they are a continuing danger, but this

22 question allows the jurors to stop the train at the last

23 moment, if you will.

24 It allows you, the jurors, to view the

25 evidence, and if they think there is a mitigating

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1 circumstance that they think the fair thing to do is give

2 a life sentence, rather than a death sentence, they will

3 actually question that law.

4 Now, we can't tell you what mitigating

5 evidence is. That will be up to you and the other

6 jurors. Okay? And as you sit there, you don't have to

7 think of mitigating evidence. In other words, you just

8 have to be able to have your mind open to this question

9 and answer it accordingly, according to the evidence.

10 Could you do that?

11 A. Yes.

12 Q. Okay. You don't have to agree with

13 the other jurors, so let me give you an example about  
14 what mitigating evidence is. And these are just  
15 hypotheticals. Okay? Let's say you are on a capital  
16 murder case and you heard evidence that the defendant had  
17 a degree from Harvard. Okay?  
18 One juror might view that as  
19 mitigating evidence because the person has done something  
20 constructive with their life, that they are an  
21 intelligent person.

22 And another juror might say, "Well,  
23 actually, I will hold that against them. Someone that  
24 smart with those kinds of opportunities shouldn't get  
25 themselves in this situation."

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1 So, it can go either way, you don't  
2 have to agree with the other jurors.  
3 Let me go over just a couple of  
4 situations that some jurors have mentioned to be  
5 mitigating, and some of them have mentioned them to be  
6 aggravating. Just to see if your mind is open to them  
7 and see if they strike you one way or the other. Okay?  
8 A. Okay.

9 Q. In Texas, sometimes you might have a  
10 situation where someone commits capital murder under the  
11 influence of drugs or alcohol. They go out and get  
12 drunk, commit capital murder, get high.

13 I mean, no one has forced them to,  
14 they do it voluntarily. In Texas, that's not any type of  
15 legal defense. Some people might view that as mitigating  
16 evidence.

17 Other people, on the other hand, view  
18 that as aggravating evidence, holding them more  
19 accountable.

20 Does that strike you one way or the  
21 other?

22 A. Well, I don't know how to answer that.  
23 I need to think about it.

24 Q. Okay. Do you need more facts?

25 A. I hate to sound so stupid.

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1 Q. No, you don't.

2

3 THE COURT: No, ma'am.

4

5 MR. TOBY L. SHOOK:

6 Q. Because that is a real broad category

7 I'm going on.

8

9 THE COURT: Neither side, ma'am, is  
10 trying to pin you down to anything, they just want your  
11 feelings about things.

12 THE PROSPECTIVE JUROR: Yes, sir.

13

14 BY MR. TOBY L. SHOOK:

15 Q. Sometimes we hear testimony of a  
16 person growing up and maybe they were physically abused  
17 or mentally abused or sexually abused as a child. Some  
18 people view that as mitigating evidence.

19 Other people say, "No, there have been  
20 other people in those situations, and they don't go  
21 around killing."

22 Does it cut one way or the other with  
23 you, that type of evidence?

24 A. Well, I think after a person reaches a  
25 certain age they can decide for themselves whether there  
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1 are going to be a good citizen or a bad citizen.

2 Q. Okay.

3 A. And it makes no difference where they  
4 came from.

5 Q. Okay. Fair enough. Like I said,  
6 there aren't any right or wrong answers to any of these  
7 questions. But do you feel, and could you tell the  
8 Judge, that your mind is open to this type of question?  
9 And if you do see some type of evidence that you yourself  
10 deem as mitigating, that you can consider it? And then  
11 if it does reach the level where you think a life  
12 sentence should be imposed, you could answer the question  
13 "yes"? If you think that is what the evidence shows you?

14 A. Yes.

15 Q. And, then again, if you don't see my  
16 mitigating evidence you could answer it "no." Or, if you  
17 do see some mitigating evidence but it just doesn't reach  
18 that level where you think a life sentence should be  
19 imposed, you could answer it "no"?

20 A. Yes.

21 Q. Okay. You just have to hear it and  
22 see it for yourself?

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

25 Q. Fair enough. The other area I want to  
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1 get into real quickly is going to be old hat because all  
2 these rules apply on the same trial you were just sitting  
3 on. So, I presume you will be familiar with them and you  
4 can follow them. The presumption of innocence, the  
5 defendant starts out with that presumption.

6 A. Yes.

7 Q. And you can do that in this case?

8 A. Yes.

9 Q. The burden of proof, we have to prove  
10 our case beyond a reasonable doubt. And that burden  
11 never leaves this table. Could you follow that rule of  
12 law?

13 A. Yes.

14 Q. That also means the defense is not  
15 required to prove their client's innocence to you. Do  
16 you realize that?

17 A. Yes, I do.

18 Q. Okay. They may decide to put on  
19 witnesses, they may not. But that burden of proof never  
20 leaves this side.

21 The defendant has a right not to  
22 testify if they choose not to. And in your case you just  
23 sat on, did the defendant testify?

24 A. Yes, he did.

25 Q. Okay. If you want to testify you can,  
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1 no one can stop you.

2 A. Right.

3 Q. But if you choose not to, the Judge  
4 would instruct that you can't hold that against the  
5 defendant. Could you follow that rule of law?

6 A. Yes.

7 Q. Okay. Police officers are often  
8 called to testify in criminal cases. A lot of people  
9 have respect for police officers, and sometimes we have  
10 people who have no respect for them depending on what has  
11 happened to them.

12 But the law says you have to start all  
13 witnesses off the same, no matter if they are police  
14 officers, whoever they are. They start off the same and  
15 then you judge their credibility after they testify.

16 Could you follow that rule of law?

17 A. Yes.

18 Q. Okay. We also -- jurors sometimes  
19 obviously have read or heard about our parole laws, or  
20 early release laws, or something of that nature. The  
21 Judge would instruct you that you are not to consider our  
22 parole laws or when a person might be released for any

23 reason during your deliberations.  
24 The reason for that being is that we  
25 have no control over that at this level. Those things  
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1 are always changed. So, you just have to base your  
2 decision on the evidence that you hear.  
3 You can't guess as to what might  
4 happen after your decisions are made. Could you follow  
5 that rule of law?  
6 A. Yes.  
7 Q. Okay. You understand that, obviously,  
8 you know, sometimes they will have articles about when a  
9 person might be released or something like that. But at  
10 this level, the Judge has no control, and obviously the  
11 jurors won't, so that is why you just make your decision  
12 on the facts of the case.  
13 In a murder case, obviously, there is  
14 going to be photographs of the crime scene introduced.  
15 And, you know, they are not going to be pretty  
16 photographs, they will be quite gruesome.  
17 What we need to know though is that  
18 even though you see gruesome photographs, you are not  
19 just going to have a knee-jerk reaction and not want to  
20 string someone up or find someone guilty. You can just,  
21 I mean, they might be hard to look at, but you can look  
22 at them objectively and look at them as a piece of  
23 evidence, and then put it in with all of the other  
24 evidence.  
25 Could you do that?

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1 A. Yes.  
2 Q. Okay. Oh, you also had said that, I  
3 think, that it is a friend of yours that had a son that  
4 went to prison for a short time; is that right?  
5 A. Yes.  
6 Q. What did that involve?  
7 A. He was on probation and moved from  
8 Austin here in Kerrville without checking with his  
9 probation officer.  
10 Q. And they revoked the probation?  
11 A. Yes.  
12 Q. Okay. How long ago was that?  
13 A. Oh, he just recently got out, several  
14 months ago.  
15 Q. Were you involved closely with that at  
16 all, or just your friend telling you about it?

17 A. I'm simply friends with his mother.

18 She is a church member where I go.

19 Q. Okay. And I think your husband's

20 uncle was a prison guard at T.D.C.?

21 A. Yes.

22 Q. Did you know him very well? Have you

23 talked to him about his duties out there?

24 A. That was years and years ago, he has

25 died since. He didn't really talk about his job much, he

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1 talked more about hunting and fishing and that.

2 Q. Okay. Well, you have been very

3 patient with me going through all these things with you,

4 and giving me, what I feel are very honest answers. Do

5 you have any questions over anything we have gone over?

6 A. No, sir.

7 Q. Anything about yourself that you feel

8 we might need to know before we finish talking to you?

9 A. I don't know what it would be.

10 Q. Okay. Well, you have given us plenty

11 of information on your questionnaire and plenty on the

12 stand there.

13

14 MR. TOBY L. SHOOK: So, I will

15 conclude my questioning, Judge. Thank you very much.

16 THE PROSPECTIVE JUROR: Thank you for

17 your patience with me.

18 THE COURT: Mr. Glover.

19

20 VOIR DIRE EXAMINATION

21

22 BY MR. CURTIS GLOVER:

23 Q. Ms. Hooker, my name is Curtis Glover,

24 I am just going to talk briefly with you here.

25 A. Okay.

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1 Q. One of the lawyers representing Darlie

2 Routier. I notice your husband works for Immel Motors,

3 where is that?

4 A. In Fredericksburg.

5 Q. And that is -- what kind of a car

6 situation is that? What kind of dealership?

7 A. He just started over there about a

8 week ago. I haven't visited the lot, but I think they

9 sell new cars as well as used.

10 Q. Okay. What did he do prior to that?

11 A. He worked here in Kerrville with  
12 Country Motors.

13 Q. I see. He has always been in the car  
14 sales business?

15 A. No, sir. He was with Braniff

16 International for quite a few years until they went  
17 bankrupt. At his age he didn't have any other job, so he  
18 went into car sales.

19 Q. They kind of came and went there for a  
20 while, and then finally really went.

21 A. Yes, it was sad.

22 Q. It really was. Being from Dallas I  
23 can appreciate that. Let me just ask you again. You  
24 indicated that you had spoken with a friend of yours  
25 concerning the facts of this case?

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1 A. Not really the facts, she just said  
2 that she had heard that the trial was going to be moved  
3 here to Kerrville.

4 Q. Is that what prompted her conversation  
5 concerning this, just that she had heard that this case  
6 was coming to Kerrville?

7 A. Yes.

8 Q. Okay. Do you recall why she started  
9 talking about it? Why you all had the conversation?

10 A. I don't remember. Just out of the  
11 blue she said I hear that the trial is going to be moved  
12 to Kerrville.

13 Q. Had you heard anything about it prior  
14 to that conversation?

15 A. Just bits and pieces. I have to  
16 confess, I don't even read the front page of my own  
17 newspaper.

18 Q. Okay. Did you discuss any of this  
19 with your family, that you recall? And there is nothing  
20 wrong with that.

21 A. The trial or the fact that I was  
22 called?

23 Q. Well, either. Or any of the facts of  
24 the case. Just what you did discuss with them?

25 A. No.

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1 Q. Okay. You are telling us here today  
2 that you have made no decision about this, you have no  
3 opinion one way or the other.

4 A. I have made no decision, sir, no.

5 Q. Okay. You know, you can appreciate  
6 the fact that folks read the newspaper, and I'm as guilty  
7 of it as anybody is, and I should know better. I find  
8 myself tending to make judgments about things that I read  
9 in the newspaper and we all do that.

10 Sometimes those judgments become so  
11 entrenched that we can't set them aside, and I can  
12 understand that. You don't put yourself into that  
13 category at all?

14 A. No, sir, I do not.

15 Q. Okay. Very well. And you can see the  
16 importance of not having somebody on a jury that you go  
17 in with your hands tied behind your back and you have to,  
18 you know, persuade the jury as to the fact that a person  
19 is truly innocent when the law says their presumed to be  
20 innocent. Do you understand that?

21 A. Yes, I do.

22 Q. Okay. You understand, you having been  
23 on a case recently, the burden of proof is right over  
24 there, and it never, ever shifts. Judge Tolle will tell  
25 you that all the way through this case.

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1 A. Yes.

2 Q. She is presumed to be innocent and  
3 that presumption of innocence stays with her until it can  
4 be overcome by legal and competent evidence, and that has  
5 to be beyond a reasonable doubt. It's a high burden of  
6 proof. And, you know, you can go back to the jury room  
7 with your fellow jurors at the conclusion of the evidence  
8 in this case.

9 And I'm not going to talk to you about  
10 punishment in this case. It's our position you won't get  
11 to that part of this case. It's a two-phase deal. The  
12 guilt or innocence phase, and if the person is found  
13 guilty, then you go into the penalty phase.

14 I'm not concerned about that, because  
15 it's our position that she is innocent, and they will not  
16 prove her guilt at all in this case. And the jury will  
17 return a verdict of not guilty.

18 That is our position in this matter.

19 That having been said, we have got a trial ahead of us  
20 and we understand our position concerning all of that.

21 Can you assure her that you will see  
22 to it that the burden of proof stays there, and if they  
23 falter in it in any regard, that you will resolve any --  
24 any doubt whatsoever that's reasonable in her behalf?

25 A. Yes.

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1 Q. You might go back to the jury room  
2 with your fellow jurors and, you know, start listing what  
3 you think to be the reasonable doubts in this case.  
4 There may be one, there may be 101. And the law says you  
5 resolve each and every one in behalf of the accused, and  
6 say by your verdict, if indeed there is one, not guilty.  
7 That is it in a nutshell. That is exactly what you do.  
8 You know, you don't go back to the  
9 jury room, and because this appears to be a heinous  
10 crime, and you reading that indictment you know that,  
11 don't you?

12 A. Yes.

13 Q. Shocking and all of this, but it's not  
14 your job in the jury room to investigate this case and to  
15 find out who did it?

16 A. Right.

17 Q. Frequently, I think, in cases that  
18 involve shocking evidence that a jury is so shocked by it  
19 that they want to hold somebody accountable. And all  
20 they want is for some governmental authority to bring  
21 that -- anybody before them, and because this evidence is  
22 so shocking there is just a drive to hold anybody that  
23 they can bring before them accountable.

24 Can you see how that gets to rolling,  
25 that notion, because it's so shocking and it's so awful  
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1 that I have a need to hold somebody accountable?

2 A. I can see that.

3 Q. Well, that would be called a rush to  
4 judgment, and that is not what we're here for. You are  
5 not here to investigate this case or to resolve it. That  
6 is for them to do and if they falter in that, you are  
7 here to judge that, a judge of those facts.

8 And if they falter in any regard. You  
9 may go back to the jury room with your fellow jurors and  
10 you may say, "You know, I think they have proven this, I  
11 think they have proven that, and I think they have proven  
12 this, and I have all of this anxiety about what my  
13 position in all of this ought to be."

14 But you can turn to your fellow jurors  
15 and you say, "I have a reasonable doubt as to this. And  
16 it's a reasonable doubt as to an element of that case.  
17 And Judge Tolle has told me to stop right there and say  
18 by my verdict, not guilty. They have faltered in their  
19 proof." Can you do that?

20 A. Yes.

21 Q. Just as you learned in the other case  
22 that you were in most recently and from the prosecutor,  
23 you would be the judge of the credibility of the  
24 witnesses, the believability.

25 You can reject all of what a witness  
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1 says, you can accept part of what a witness says, you can  
2 believe every bit of what a witness says, and then you  
3 put it all together. You're solely and totally the judge  
4 of the credibility or believability of the witnesses.

5 You understand that from the  
6 instructions you got in the other case?

7 A. Yes, sir, I do.

8 Q. And the fact that they told you. I  
9 would anticipate in this case that there will be police  
10 officers testifying, as well as non-police officers.

11 We're all non-police officers.

12 You understand the difference? A  
13 police officer has a uniform, he is a commissioned law  
14 officer and all of that?

15 A. Yes, sir.

16 Q. And they enjoy a position in our  
17 society and it varies in everybody's eyes as to how we  
18 look at police officers or people that are in law  
19 enforcement. If it should come to pass in this case that  
20 a police officer should testify and another person over  
21 here should testify who is a non-police officer.

22 They will testify essentially as to  
23 the very same facts, but they are diametrically opposed  
24 as to how they saw those facts. Can you appreciate that  
25 that could occur in a criminal case?

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1 A. Yes.

2 Q. That people will have varying views  
3 about what they saw? That's what makes for lawsuits.  
4 Anyway, if something like that should occur, and you go  
5 back to the jury room and you feel, "Well, that is an  
6 important issue in this case. What they both said was an  
7 important issue in this case. And it was on the same  
8 point, but they were diametrically opposed. And I do not  
9 know which one to believe. I can't decide."

10 Would you have a tendency to say, "I'm  
11 going to believe the police officer simply because he is  
12 a police officer?"

13 A. I don't think so.

14 Q. Okay. You hold him on the same plane

15 that you do any and every other citizen; is that right?

16 A. He is human just like the rest of us.

17 Q. Sure. Subject to the same errors that

18 all of us might make?

19 A. Right.

20 Q. You would simply look at those

21 witnesses and look at the interest that they might have

22 in this case, you would look at their perception and

23 judge it. And if, indeed, there was something about that

24 testimony that was presented by the State that was

25 irresolvable in your mind, and you said, "That

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1 irresolvability raises a reasonable doubt in my mind, the

2 Judge tells me to resolve those reasonable doubts on

3 behalf of the defendant. And if that stays with me," you

4 go back to that jury room with a reasonable doubt, you

5 resolve it in her behalf and say not guilty. Can you do

6 that?

7 A. Yes.

8 Q. Not going to be tormented by the fact

9 that this is a heinous crime, and feel like that you have

10 to solve it back in that jury room, that is not your job

11 to solve this crime. That is their job if they can do

12 it. It is your job to judge their evidence. And you can

13 do that?

14 A. Yes, sir.

15 Q. Okay. They have talked with you about

16 this business of motive, and I agree with that. I have

17 no disagreement with it. They don't have to prove

18 motive. In this state, in a murder case, the law doesn't

19 say and you won't see it in that indictment before you,

20 that motive plays any part of what they have to prove.

21 Simply, by based on the example he gave you, that may be

22 an impossibility. You can appreciate that?

23 A. Yes.

24 Q. Yet again, you may go back to the jury

25 room and you put together all of the facts of this case.

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1 And you say, "You know, I can look to the fact that

2 certain evidence was not produced for me in this case.

3 And the fact that that evidence was not produced raises a

4 reasonable doubt in my mind." Or you can look to the

5 confusion of the evidence and say, "That raises a

6 reasonable doubt in my mind."

7 And you may say, "You know the

8 confusion of this evidence might have been resolved if it

9 had been brought to me what a motive was in this case."

10 Then motive can come to play and it can raise a

11 reasonable doubt in your mind.

12 Can you appreciate that?

13 A. Well, I suppose so.

14 Q. The point I'm making here is: Indeed,

15 motive can raise a reasonable doubt in your mind as to

16 the guilt of a particular person charged with a crime.

17 The fact that they don't have to prove motive, again, the

18 fact that it is missing and it was not brought to you,

19 and all of the evidence that you did hear put together,

20 said, where is the motive.

21 And it was not brought to you. And

22 you say, "That raises a reasonable doubt in my mind." If

23 it raises a reasonable doubt, you resolve that in her

24 behalf and say by your verdict, not guilty. Can you do

25 that?

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1 A. All of that was a little confusing,

2 I'm sorry.

3 Q. Okay. Let me just make it to you, the

4 statement to you in one word. He said to you, "We don't

5 have to prove motive." And they don't have to prove

6 motive.

7 A. No, sir.

8 Q. And I agree with that. But the fact

9 that you go back to the jury room and you have heard all

10 of the evidence in this case.

11 You may say to your mind after putting

12 that and seeing it altogether that, "Perhaps if motive

13 had been proven here, it might have resolved a reasonable

14 doubt as to the sum total of this evidence."

15 And it can raise a reasonable doubt.

16 The lack of motive can raise a reasonable doubt.

17 A. When all the facts point otherwise?

18 Q. Well, they don't have to point

19 otherwise. But you might say, "All of these facts given

20 that I have heard, I have mulled them all over here, I

21 have deliberated about them and the fact that I have

22 heard nothing about motive in this case raises a

23 reasonable doubt as to the guilt of this defendant."

24 A. If it raised a doubt in my mind?

25 Q. A reasonable doubt.

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1 A. A reasonable doubt, then I would vote

2 accordingly.

3 Q. Okay. As the Judge would tell you to  
4 do?

5 A. Right.

6 Q. Okay. Can you think of any reason why  
7 you wouldn't be a fair juror in this case?

8 A. No, sir.

9 Q. Okay.

10

11 MR. CURTIS GLOVER: That's all we  
12 have, Judge.

13 THE COURT: Thank you. Ms. Hooker,  
14 could you step outside briefly, please, and we will have  
15 you come back in just a minute.

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: Thank you very much.

18

19 (Whereupon, the prospective  
20 juror was excused from the  
21 room, and the following  
22 proceedings were held,  
23 outside of his presence  
24 as follows:)

25

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1 THE COURT: All right. Everybody  
2 ready? What says the State?

3 MR. TOBY L. SHOOK: Judge, we will be  
4 accept the juror.

5 THE COURT: Defense.

6 MR. CURTIS GLOVER: We will accept the  
7 juror.

8 THE COURT: Thank you. May I have Ms.  
9 Hooker come in, please.

10

11 (Whereupon, the prospective  
12 juror returned to the  
13 room and the proceedings  
14 were resumed as follows:)

15

16 THE COURT: Ms. Hooker, you have been  
17 accepted as a juror in this case. This trial is going to  
18 start on the 6th of January.

19 THE JUROR: Yes, sir.

20 THE COURT: Mr. Navarre back there  
21 will call you and tell you when to get to the courthouse  
22 that day. The trial will be held downtown in the regular  
23 courthouse.

24 THE JUROR: Okay.

25 THE COURT: Now, we know you are going  
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1 to talk to your husband about it and we understand that.  
2 But if you and your husband could not talk to anybody  
3 else about it until that time, I think things would go  
4 much better.

5 THE JUROR: Okay.

6 THE COURT: We appreciate it. In  
7 fact, you don't have to tell anybody you have been  
8 accepted as a juror.

9 THE JUROR: Okay.

10 THE COURT: And neither does he. If  
11 they ask you what happened down here today, both sides I  
12 think will agree, just say, "Well, they asked me some  
13 questions."

14 I think you won't be pestered that way  
15 and things like this. And if you see any -- of course,  
16 you're already ignoring everything, but I just caution  
17 you again, if you see anything in the newspaper, which  
18 you don't read, or on TV or anyplace else, just please,  
19 you know --

20 THE JUROR: Don't tell my editor.

21 THE COURT: Oh, no, ma'am. I buy a  
22 paper every afternoon, and I won't say a thing.  
23 And just please, please ignore it.

24 And when the trial is over, we anticipate it lasting two  
25 weeks. If the weather is bad, probably three.

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1 THE JUROR: Okay.  
2 THE COURT: When the trial is over,  
3 you will be able to talk or not talk to anybody you see  
4 fit.

5 But if you could just keep -- mum is  
6 the word until then, we would appreciate it.

7 THE JUROR: Okay.

8 THE COURT: And thank you very much  
9 for coming outside of your schedule.

10 THE JUROR: You are welcome.

11 THE COURT: Yes, ma'am. All right.

12 All right. Off the record. We have

13 another juror today. Well, then, let's get on with it.

14 Here are rules.

15 MR. CURTIS GLOVER: We could just tell  
16 that juror we're going to declare a holiday for the rest  
17 of the day.

18 THE COURT: All right. We're on the

19 two yard line.

20 MR. CURTIS GLOVER: Yes, sir.

21 THE COURT: All right. Here are the

22 rules starting now. We're going to get -- I intend to  
23 get four, we're on the record now. I intend to get -- we  
24 have now selected our 12th juror. So we're going into  
25 alternates.

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1 I intend to get four alternates due to  
2 the length of time it's going to be between the time we  
3 pick it and the time that we get down here in January,  
4 due to illnesses and things like that.

5 Now, since I'm getting four  
6 alternates, each side is now going to have two extras --  
7 each side now has two peremptory challenges.

8 MR. S. PRESTON DOUGLASS, JR: Total?

9 THE COURT: Total.

10 MS. SHERRI WALLACE: That is what the  
11 law says.

12 THE COURT: The law says you use  
13 them --

14 MR. S. PRESTON DOUGLASS, JR: Well,  
15 then I think that is a bad law.

16 MS. SHERRI WALLACE: Read the book.

17 THE COURT: Well, you don't have to  
18 agree with the law.

19 MR. S. PRESTON DOUGLASS, JR: I mean,  
20 that is what I'm saying. Judge, you can do whatever you  
21 want.

22 THE COURT: I know. You don't have --  
23 just a minute.

24 MR. S. PRESTON DOUGLASS, JR: I mean,  
25 we have got to have more.

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1 THE COURT: I might give you more.

2 MR. S. PRESTON DOUGLASS, JR: Okay. I  
3 just wanted to clarify something.

4 THE COURT: Well, you could have had  
5 more than your 15, too, I might have done that had we  
6 gotten there.

7 MR. S. PRESTON DOUGLASS, JR: Judge,  
8 do we have a carry over?

9 THE COURT: No, it's use them or loose  
10 them. Now, it's just like, you know, you may not agree  
11 with the law, but you have to follow it. You have no  
12 problem following it, do you?

13 MR. S. PRESTON DOUGLASS, JR: Well, I  
14 know where I may end up.

15 THE COURT: All right. As of right  
16 now, each side has two peremptory challenges. Now, if  
17 the defense uses their two peremptory challenges, the  
18 Court may very well entertain motions to give them extra  
19 peremptory challenges, just as the Court would have done  
20 had you exhausted your challenges in the -- before we got  
21 the 12th juror picked. The Court is not a martinet about  
22 those things, and understands the situation.

23 So, we're now going to alternates, and  
24 that's where we are.

25 MR. TOBY L. SHOOK: Are you sure the  
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1 Court wouldn't consider just using two alternates, Judge?

2 THE COURT: No, because the Court  
3 being, shall we say, in a similar age group than many of  
4 the jurors down here understands what can happen between  
5 the first, between, shall we say, Thanksgiving and New  
6 Year's Day.

7 MR. TOBY L. SHOOK: The --

8 THE COURT: Hips break, people fall,  
9 folks get sick.

10 MR. TOBY L. SHOOK: Well, Judge, could  
11 we do this perhaps? Pick -- just say we would be looking  
12 at two alternates, and don't dismiss this panel, and if  
13 something happens to the two jurors --

14 THE COURT: No, we aren't doing that,  
15 I'm getting all four.

16 MR. TOBY L. SHOOK: Then we could  
17 bring -- then we could come back and get two more  
18 alternates.

19 THE COURT: No, I'm getting all four  
20 right now. I'm getting four right now. I can't -- that  
21 is too complicated. I got --

22 MR. TOBY L. SHOOK: Do we have room  
23 for four jurors in that jury box?

24 THE COURT: Oh, we do not have in the  
25 jury box, but we do in the courtroom and I will make sure  
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1 they all sit there. Don't worry about a thing.

2 We may be sitting on each other's  
3 laps, but I can assure you that we will have four  
4 alternates.

5 MR. TOBY L. SHOOK: All right, Judge.

6 THE COURT: If for some reason, I can

7 get it under the code, under the law, and that is what I  
8 intend to do.

9 So, that is where we are going.

10 MS. SHERRI WALLACE: Judge, one other  
11 thing.

12 THE COURT: Yes.

13 MS. SHERRI WALLACE: Looking ahead to  
14 Monday, will we still be meeting our new panel?

15 THE COURT: Well, it all depends. It  
16 depends -- let's see what happens on Thursday and Friday.

17 MS. SHERRI WALLACE: All right.

18 THE COURT: We're nearing greatness

19 here, we just persevere.

20 MS. SHERRI WALLACE: Here we go.

21 THE COURT: Fair enough. Bring in the  
22 next potential juror.

23 MR. S. PRESTON DOUGLASS, JR: Could we  
24 have a brief break?

25 THE COURT: Oh, yes, take a little  
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1 brief break, a brief break.

2

3 (Whereupon, a short  
4 recess was taken,  
5 after which time,  
6 the proceedings were  
7 resumed on the record,  
8 in the presence and  
9 hearing of the defendant  
10 as follows:)

11

12 THE COURT: All right. Let's bring in  
13 Ms. Gladys Simpson, number 86.  
14 Ms. Simpson, we want to thank you very  
15 much for altering your schedule to come down here today.  
16 All right. This is Gladys, G-L-A-D-Y-S, Simpson,  
17 S-I-M-P-S-O-N. That is the correct spelling, ma'am?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: All right. This is juror  
20 number 257 and 86 on our list here. Mrs. Simpson, you  
21 are a potential alternate juror in this case.  
22 We have selected 12 jurors so far, and  
23 so now we're going to select some alternates. That means  
24 that you will listen to the case, should you be selected,  
25 you will be listening to the case.  
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1 When the case is over and they go into  
2 deliberations, of course, that will terminate your  
3 requirement to be there. But you will be an alternate  
4 juror should any one of them be unable to serve, you are  
5 going to be our first alternate, if you are accepted.

6 Do you understand that?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Now, both sides -- you  
9 are -- this is in the Darlie Routier matter. She is the  
10 defendant.

11 She is the young lady sitting right  
12 there to your far right. Next to her are her attorneys.

13 She is represented by Mr. Curtis Glover from Dallas and  
14 Douglas Mulder from Dallas, he is not here. She has two  
15 Kerrville attorneys, Preston Douglass, and Richard Mosty.  
16 Mr. Mosty is not here now.

17 The State is represented by Toby Shook  
18 and Sherri Wallace. They are Assistant District  
19 Attorneys from Dallas County. And they are going to  
20 be -- both sides will ask you some questions.

21 There are no wrong answers. If you  
22 could just speak into the microphone and tell us exactly  
23 how you feel about things, we would be most appreciative.

24 THE COURT: Ms. Wallace.

25 MS. SHERRI WALLACE: Thank you.  
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1 Whereupon,  
2  
3 GLADYS COSBY SIMPSON,  
4  
5 was called as a potential juror, testified in open court,  
6 as follows:

7  
8 (Juror not sworn by Court.)  
9

10 VOIR DIRE EXAMINATION

11

12 BY MS. SHERRI WALLACE:

13 Q. Again, good afternoon. I know you  
14 have been out there waiting on us for a while, and we  
15 appreciate your patience. I want to tell you a little  
16 bit about how this is going to run.

17 First off, I'm going to ask you some  
18 questions about your questionnaire, talk to you a little  
19 bit about how you feel about the death penalty, and then  
20 talk to you about criminal law in general.

21 But before we get started, I want to  
22 ask you: Do you know any of the lawyers from Dallas?

23 I think you saw us all three and a  
24 half weeks ago now.

25 A. No.

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1 Q. Okay. Do you know either of the local  
2 attorneys who have been hired on this case?

3 A. No.

4 Q. You don't know them, Mr. Mosty or Mr.  
5 Douglass?

6 A. No.

7 Q. Okay. Let me ask you: Ms. Simpson,  
8 what grade do you teach?

9 A. I teach high school.

10 Q. Okay. What do you teach there?

11 A. Math.

12 Q. Okay. And I also see here that it  
13 says you have heard about the case, and I want to talk to  
14 you a little bit about that. That is one of the reasons  
15 we're in Kerrville. Well, that is the reason we are in  
16 Kerrville, is that this case has received so much  
17 publicity.

18 And because you have heard about the  
19 case that does not make you ineligible to be a juror.  
20 What you must promise the Court is that you will set  
21 aside anything you have heard about the case, wait to  
22 hear the evidence in the courtroom, and then make up your  
23 mind whether or not we have proved the case to you.

24 There is a good reason for that. As  
25 an example, a couple of weeks ago, a man by the name of  
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1 Richard Jewell, you know, he was accused of -- or a  
2 suspect in the bombing there at the Olympics.

3 Do you know who I'm talking about?

4 A. Yes.

5 Q. Okay. And pretty much the paper tried  
6 and convicted him and hung him out to dry. And then the  
7 FBI a couple of weeks ago comes out and says, "We have no  
8 evidence against him." So it's cases like that that  
9 really bring the point home.

10 Let me ask you: Can you set aside  
11 what you have heard about this case and wait until you  
12 hear the evidence in the courtroom?

13 A. Yes.

14 Q. In here you say that you believe in  
15 the death penalty, you are in favor of it. And it's been  
16 a while, so let me read your response. "When someone

17 takes the life of another, he or she, gives up his or her  
18 right to life."

19 Can you tell me a little bit about  
20 your belief about being in favor of the death penalty?  
21 A. I feel that everyone has the right to  
22 live, and if you want to end your own life, that's one  
23 thing, but you cannot end someone else's life.  
24 So, if you end someone else's life,  
25 then the only fair punishment for you is for your life to  
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1 be taken.

2 Q. Okay. Here in Texas, there are --  
3 it's not a death penalty -- let me start over. Not all  
4 murder cases are eligible for the death penalty. To be  
5 eligible for the death penalty you have to have murder  
6 plus something else.

7 For instance: A murder in the course  
8 of a felony like a robbery, a burglary, a kidnapping,  
9 rape, something like that. If someone goes into the  
10 Circle K, and robs the attendant and then kills them,  
11 that would be a capital murder.

12 Or if you hire somebody to murder  
13 somebody, murder for hire scheme. You as the person that  
14 was hiring the hit man would be eligible for the death  
15 penalty, as well as the person who was killing for money.

16 If you kill two or more people, that  
17 would be a person that would be eligible for the death  
18 penalty. To kill a police officer, fireman, prison  
19 guard, in the line of duty, that is a crime that is  
20 eligible for the death penalty. Or, as we have here, a  
21 murder of a child under the age of six.

22 Are those the types of crimes that you  
23 believe are appropriate for the death penalty?

24 A. Yes.

25 Q. Okay. If you were Governor of Texas,  
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1 is there anything you would change about that list?

2 A. I don't think so.

3 Q. Okay. Now, once we have that list of  
4 crimes, and I'm specifically talking about the murder of  
5 a child under the age of six, death is not automatic once  
6 defendant is found guilty. You have been on a criminal  
7 jury before, right?

8 A. About 20 years ago.

9 Q. So, it's been a while?

10 A. Yes.

11 Q. Good. Then I won't be repeating too  
12 much, and if you know what I'm talking about you can stop  
13 me or just let me rattle on, it makes me no difference.  
14 There is two phases in a criminal trial. There is the  
15 guilt/innocence phase, which is the first phase. If the  
16 defendant is found not guilty, we all go home.  
17 If the defendant is found guilty, we  
18 meet our burden of proof beyond a reasonable doubt, then  
19 we go to the next phase of the trial, the second phase,  
20 which is called the punishment phase. And there is that  
21 phase in every criminal trial, as in a death penalty.  
22 Now, as I said, guilty of capital  
23 murder does not equal an automatic death. You must  
24 relook at the evidence and consider any new evidence that  
25 is presented in the punishment phase. Now, it may be  
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1 that you don't hear any new evidence in the punishment  
2 phase. It may be that you do.  
3 And this is where it kind of gets hard  
4 because I can't tell you how this case is going to be.  
5 We have to talk in hypotheticals because we're not  
6 allowed to get into the facts of the case. All right?  
7 But once we get to that punishment  
8 phase, it used to be, the jury had a blank and they  
9 wrote, life or death. And it was a pretty clear-cut  
10 verdict. Now, there are two questions that must be  
11 answered by the jury. And based on the jury's answers to  
12 those questions, the Judge has no choice in how to  
13 sentence.  
14 The questions are over here, we will  
15 look at them in a minute, you don't need to read them  
16 right now. But if the first question is answered "yes"  
17 and the second question is answered "no," that equals  
18 death. Okay?  
19 If they're answered any other way, the  
20 Judge must impose a life sentence. Do you follow me so  
21 far?  
22 A. Yes.  
23 Q. Okay. Now, if you could, let's look  
24 at the first question. It says: "Do you find from the  
25 evidence beyond a reasonable doubt that there is a  
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1 probability that the defendant would commit criminal acts  
2 of violence that would constitute a continuing threat to  
3 society?"  
4 So, with this question, we have the

5 burden of proof. Okay? The State must prove to you  
6 beyond a reasonable doubt, that probably the defendant  
7 will be, to summarize, a future danger. Okay?  
8 Now, if you remember from the comments  
9 a few weeks ago the Judge told you that you must presume  
10 the defendant innocent. That means if you voted right  
11 now, you would have to find her not guilty. Do you  
12 remember that?

13 A. Yes.

14 Q. Okay. This question is similar. You  
15 must presume it is answered "no." Until you consider  
16 evidence which would change your mind, convince you  
17 beyond a reasonable doubt, that probably the defendant  
18 would be a future danger, and then it would be answered  
19 "yes." Do you follow me?

20 A. Yes.

21 Q. Okay. Now, as I was saying earlier,  
22 it may be that you don't hear any new evidence. It may  
23 be that you only hear about the facts of the case.  
24 Nevertheless, your answer can't be automatic. You must  
25 revisit the issue.

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1 You just have to -- it's kind of a  
2 mental exercise. You have heard the evidence and believe  
3 the defendant is guilty of capital murder, then you go to  
4 the next stage and you look at the question, you  
5 reconsider the evidence, and then you may answer the  
6 question "yes," based on the facts alone, or anything  
7 else you hear. Would you be able to do that?

8 A. I think so.

9 Q. Okay. Let me also tell you, Ms.  
10 Simpson, usually mention this up front, I want to let you  
11 know there is no secret here. You see that woman down  
12 there at the end of the row?

13 A. Yes.

14 Q. It is our goal and desire to see that  
15 she is executed. We believe we have the type of case and  
16 the quality of evidence to do that. So that's how we  
17 want to end up here.

18 What I would like to know from you is:

19 No one wants to volunteer for the job. But if we present  
20 the right type of case to you and the right evidence,  
21 could you participate in that process?

22 A. I think so.

23 Q. Okay. Before you, you will see the  
24 indictment. If you would take a minute to read just the  
25 typewritten portion there in the middle. Let me know  
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1 when you have had a chance to read that.

2 A. Okay.

3 Q. All right. That is what we have to

4 prove to you beyond a reasonable doubt. That is what the  
5 defendant is charged with and I think the Judge read that  
6 to you a few weeks ago as well. I want to talk to you a  
7 little bit about how we go about doing that.

8 We may prove a case to you any way we

9 can. What I mean by that, we may use direct or indirect,  
10 what is sometimes called circumstantial evidence.

11 Direct evidence is an eyewitness.

12 Indirect evidence is everything else. Fingerprints, DNA,  
13 blood spatters, fibers, statements by the defendant,  
14 anything else. Okay?

15 Now in a murder case, this isn't

16 probably something that you have thought about, but in a  
17 murder case, if you think about it, very often the  
18 eyewitness is dead.

19 The victim of the crime is deceased

20 and no longer available to testify. Because you see, the  
21 defendant has the most control over how many witnesses  
22 there are to the crime.

23 Do you follow me?

24 A. Yes.

25 Q. Okay. So, very often in a murder

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1 case, the State will use circumstantial evidence to  
2 convict a defendant.

3 If we bring you circumstantial

4 evidence that you believe beyond a reasonable doubt to  
5 every element of the indictment, will you be able to  
6 convict the defendant on circumstantial evidence alone?

7 A. Yes.

8 Q. Additionally, in that indictment is

9 everything that we have to prove to you. We don't have  
10 to prove anything else.

11 We don't have to, by law, prove

12 motive, in Texas.

13 Now, there is a real good reason for

14 that. You know, the Judge told you in his comments that  
15 the defendant has the absolute right not to testify. You  
16 can't use that against her.

17 So, it may be, Ms. Simpson, after you

18 have heard the evidence, that the motive becomes very  
19 clear. Or it may be that it's one of several motives and  
20 you are not really sure which one. But bottom line, if

21 we have convinced you beyond a reasonable doubt, even if  
22 you don't have any idea why the crime occurred, if you  
23 believe that, in fact, the defendant did it, and we  
24 convinced you beyond a reasonable doubt, you must find  
25 the defendant guilty.

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1 Would you be able to do that, even if

2 you didn't know the motive?

3 A. I think so, but I'm not absolutely

4 sure.

5 Q. Okay. Let me talk to you a little bit

6 more about that. It is human nature to kind of want to

7 know why. But I have had jurors who after the trial was

8 over, they will say, "Why? Why did the defendant do it?"

9 And so often I'll have to say, I mean,

10 I might have this speculation or I may think I know, but

11 a lot of times I will have to say, "I don't know."

12 Because, really, most heinous crimes don't make sense.

13 And it may be that the only person that knows the real

14 reason is the defendant, and we may not call the

15 defendant to the stand.

16 You may not use that against her or us

17 and that is the law. So, could you follow that?

18 A. Yes.

19 Q. Okay. Once the defendant is found

20 guilty that is when we move to the second phase of the

21 trial. We have talked a little bit about the first

22 question and I want to talk a little bit more about it,

23 and then move on to the second question.

24 The first question; in that question

25 there are several words. And I want to ask you what you

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1 think about what they mean to you, and this really isn't  
2 a test.

3 The Judge is going to give you many

4 different definitions. And -- but he is not going to

5 give you any definitions for this question. All right?

6 And so what these words mean to you is

7 important to me.

8 Do you find from the evidence beyond a

9 reasonable doubt that there is a probability. What does

10 the word "probability" mean to you, Ms. Simpson?

11 A. That the person likely or could very

12 easily commit another crime.

13 Q. Okay. Would you agree with me that it

14 is not an absolute certainty? That it is a probability?

15 That it is more likely than not?

16 A. Yes.

17 Q. And that the defendant would commit  
18 criminal acts of violence. What does the phrase  
19 "criminal acts of violence" bring to your mind, the  
20 thoughts?

21 A. That they would be doing something to  
22 harm another person.

23 Q. Okay. Any sort of harm?

24 A. Yes.

25 Q. All right. And it would "constitute a  
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1 continuing threat to society." In your mind, would  
2 society include everyone?

3 A. Yes.

4 Q. Okay. And let me tell you where I'm  
5 headed with that. I think you had a -- was it a relative  
6 that worked in the prison?

7 A. Yes.

8 Q. Prison guard?

9 A. Yes.

10 Q. Okay. Would society in your mind  
11 include the people that worked in the prison, or with the  
12 prisoners, inmates, prison guards, chaplains?

13 A. Yes.

14 Q. Fair enough. If that question is  
15 answered "yes," you believe the defendant would be a  
16 continuing threat, then we move to this second question.

17 It's a little longer. I don't think it is very well  
18 written, but the legislature did it and that is what we  
19 have to live with. Okay? If you would read along with  
20 me.

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

3 To sum it up, after you have heard  
4 everything, this is the safety net. If in your heart you  
5 decide that even though you have convicted the defendant  
6 of capital murder, and even though you believe the  
7 defendant is a future danger, that something you've  
8 heard, that could be from the State or the defense, you

9 decide that there is sufficient reason to spare the  
10 defendant's life, you would do that. Could you do that?

11 A. Yes.

12 Q. Okay. And so, in so doing, if you  
13 decide that there is not sufficient mitigation or  
14 circumstances which lessen the harshness, then you would  
15 answer that "no"?

16 A. Yes.

17 Q. Which would result in a death  
18 sentence?

19 A. Yes, ma'am.

20 Q. Okay. It may be, Ms. Simpson, that  
21 you sit on five million murder cases, capital murder  
22 cases as a juror, and you may never hear evidence that is  
23 sufficiently mitigating in your mind to warrant changing  
24 that verdict basically from death to life.

25 But you don't have to sit here and  
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1 tell me anything or think of a set of circumstances where  
2 you would find them sufficiently mitigating. You just  
3 have to promise the Court that you will be open-minded,  
4 and kind of -- you will know it when you see it.

5 Can you do that?

6 A. Yes.

7 Q. Okay. I want to ask you -- I just  
8 said I don't want to commit you, because you haven't  
9 heard anything, you haven't heard any facts, but I want  
10 to know what you would consider as mitigating.

11 Now, it may be that after you hear it,  
12 you didn't find it mitigating or it may not. Is there  
13 anything that comes to your mind that you would consider  
14 as mitigating?

15 A. Not right now.

16 Q. Okay. Let me just run down kind of a  
17 list and see how it cuts with you. Would you consider a  
18 youthful age as mitigating?

19 A. Yes.

20 Q. All right. Would you consider  
21 someone -- it is not a defense in Texas if you have  
22 committed an offense while you were drunk or high. Would  
23 you consider that mitigating; someone who is drunk or  
24 high on drugs?

25 A. No.

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1 Q. What about if they had a childhood  
2 abuse, physical or sexual or something like that?

3 A. No.

4 Q. Along those lines, is there anything

5 else that comes to mind?

6 A. No.

7 Q. Okay. When you say "young age

8 possibly could be mitigating," do you have an age in

9 mind?

10 A. Something where someone is too young

11 to protect themselves.

12 Q. Okay. I want to look back at your

13 questionnaire, and you said if the police arrested

14 someone for capital murder, the person is probably

15 guilty. You said you agreed and you were uncertain. And

16 if the district attorney tries a person for capital

17 murder the person is probably guilty, and you put,

18 "agree, uncertain."

19 And those are pretty common thoughts

20 to have. You know, "Well, they have arrested somebody

21 and they are going to a lot of trouble and all that sort

22 of thing."

23 But as a juror, it's important for you

24 to follow the law. And the law says that you must give

25 no regard to the fact that the defendant has been

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1 indicted, is charged, or arrested for this crime.

2 Can you follow that law?

3 A. I think so.

4 Q. Okay. Additionally, you said that

5 you -- if the defendant didn't testify, you wouldn't hold

6 that against her; is that correct?

7 A. Well, I wouldn't hold it against a

8 person, but I would feel like that if I was charged I

9 would want to testify because I would want to give my

10 thought, I mean, say why.

11 Q. Well, yeah, I think, Ms. Simpson, that

12 that's pretty common. When people think, "Well, if I was

13 in the defendant's shoes, I would want to testify."

14 There are many different reasons why the defendant

15 wouldn't testify. And that is why you are really not

16 allowed to speculate.

17 I mean, it may be that the defendant

18 is guilty; or it may be the defendant has a past criminal

19 record; or it may be that the lawyers tell the defendant

20 not to; or the defendant may stutter. I mean, there

21 could be a million reasons why a defendant would not

22 testify and that is why you're not allowed to speculate.

23 So, would you follow that law and not require the

24 defendant to testify?

25 A. Yes.

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1 Q. Okay. Along that same lines, we have  
2 the burden of proof, you have to look to this table for  
3 everything. Okay? Those lawyers over there, don't have  
4 to do anything. They can visit with each other, they can  
5 work crossword puzzles, all they have to do is show up.  
6 And they have done.

7 Now, I don't expect that these lawyers  
8 will do that, but if they wanted to, they could. And  
9 what I need to know from you is: If you could follow  
10 that law and not put any burden on them? The burden is  
11 over here. Could you follow that law?

12 A. Yes.

13 Q. Okay. When you were on the criminal  
14 jury about 20 years ago or so, what type of case was it?

15 A. Someone that was accused of shooting  
16 at a policeman.

17 Q. Okay. And did they harm the  
18 policeman?

19 A. No.

20 Q. Okay. Did they actually fire shots?

21 A. Yes.

22 Q. And y'all found the person guilty?

23 A. Yes.

24 Q. Okay. And then you gave them  
25 probation?

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1 A. Yes.

2 Q. Okay. Why did you feel like probation  
3 was proper in that case?

4 A. Well, at this time they didn't show  
5 any evidence of anything that he had done in the past.  
6 The best I can remember, I think that is why we probated  
7 his sentence.

8 Q. Okay. You had said that when we asked  
9 the question, what did you like or dislike about your  
10 jury service? You said too many argued.

11 A. Yes, on the jury.

12 Q. Okay. So, it was a heated battle back  
13 there?

14 A. Yes.

15 Q. Okay. This is a death penalty case.  
16 I don't know that it will be a heated battle, but it's  
17 possible that emotions may run high in this sort of  
18 deliberation. Is that going to be a problem or concern

19 for you?

20 A. Well, it wouldn't be a problem with

21 the way I thought, but then it might be disgusting to me  
22 because I feel the -- well, sometimes I feel that because  
23 of my -- the field I'm in that I don't always, like I'm a  
24 math major, I don't always see -- I feel like well, "I'm  
25 right here, I wish you could come over to this part," I'm  
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1 thinking this way.

2 Q. I'm not -- it might be the end of the

3 day. I don't follow you. I'm sorry.

4 A. Okay.

5 Q. That's my fault.

6

7 THE COURT: Are you saying you like

8 certitude?

9 THE PROSPECTIVE JUROR: I guess so.

10

11 BY MS. SHERRI WALLACE:

12 Q. Okay. So you just want a kind of

13 black and white situation? Is that what you are saying?

14 A. I just would like for it to be a

15 little more certain.

16 Q. Okay. Now, something that you said

17 about the reason you gave the gentleman probation, the  
18 defendant probation, on your past jury service, was that  
19 he had committed no prior acts.

20 And one of the things that I asked you

21 about, and I want to know again is, on this first

22 question: It may be that all you have are the facts of  
23 the crime. It may be that you are asked to decide if the  
24 defendant will probably be a future danger, based on the  
25 facts of the crime alone.

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1 Now, I can't tell you about the crime.

2 But based on the facts of the crime alone, is it possible

3 that you could -- that we could convince you beyond a  
4 reasonable doubt to answer that question "yes"?

5 A. Yes.

6 Q. Okay. Now, Ms. Simpson, just a few

7 more points of law and then I will be finished with this  
8 one. That all witnesses must be -- must start out on the  
9 same plane. And what that means is, sometimes a defense  
10 attorney will ask a question this way: "Would you  
11 believe a police officer simply because he is a police  
12 officer?" Really that is a trick question. You have to

13 wait to hear every witness regardless of their occupation  
14 and then decide whether or not you believe them.

15 Could you follow that law?

16 A. Yes.

17 Q. Additional evidence in this trial

18 could be photographs. It's a murder case, and I  
19 anticipate there will be some gruesome photographs.

20 Would you be able to view them as evidence and not have a  
21 knee-jerk reaction? Just, it's a piece of evidence and  
22 consider it as such?

23 A. Yes.

24 Q. Additionally, the Judge will instruct

25 you that you may not consider parole for any -- anything  
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1 whatsoever. And there is a good reason for that, the  
2 parole board are the group of people that has the sole  
3 determination about parole.

4 The Judge has nothing do with it, we  
5 have nothing to do with it, the jury has nothing to do  
6 with it. Okay?

7 It is up to the Board of Pardons and  
8 Paroles. That changes, the parole laws change. So  
9 therefore, as a jury you must consider the fact that life  
10 means just that, life. And you may not consider parole  
11 at all. Can you follow that question?

12 A. May I ask a question?

13 Q. Sure.

14 A. Life means that they could never be  
15 paroled. Is it like that?

16 Q. Well, we do not -- well, this is where  
17 it's kind of one of those things. We do not have life  
18 without parole in Texas.

19

20 MS. SHERRI WALLACE: I'm sorry, Judge.

21 Did you --

22 THE COURT: Well, no, ma'am. You just  
23 can't worry about the parole laws. The Governor of the  
24 State, the Board of Pardon and Paroles will govern the  
25 parole laws.

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1 The governor of any state in the union  
2 could come out tomorrow morning and parole everybody in  
3 the penitentiary. Now, they are not going to do that,  
4 but theoretically they could.

5 The legislature of the state can  
6 change parole laws. They may have a life without parole

7 this year, next year they change the law to be something  
8 else. We don't have life without parole in Texas. So  
9 like Ms. Wallace says, you can't consider parole for any  
10 purpose whatsoever.

11

12 BY MS. SHERRI WALLACE:

13 Q. Did that clear it up?

14 A. Yes, but I forgot -- what was your  
15 question?

16 Q. Well, what I want to know is: Just to  
17 make sure that you can follow that law and that you won't  
18 consider parole. The Judge is going to tell you that is  
19 law and will you follow that law?

20 A. It might influence me.

21

22 THE COURT: Well, ma'am, you are going  
23 to get an instruction. It will talk about parole, that  
24 you won't be able to consider parole for any reason  
25 whatsoever.

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1 THE PROSPECTIVE JUROR: I know I  
2 couldn't consider it. But then the --

3 THE COURT: In other words, it's no  
4 concern of yours. Because I can't do anything about it,  
5 the lawyers can't do anything about it.

6 If you don't like the parole laws, you  
7 take out your voter certificate, and you get your state  
8 rep and your state senator, call them, call the governor.  
9 They are the ones that handle this, we don't handle it.  
10 That is just the way it is.

11

12 BY MS. SHERRI WALLACE:

13 Q. And let me kind of elaborate on that,  
14 Ms. Simpson. We can't have a situation where a juror  
15 would say, "We want him to serve 30 years. So, I heard  
16 that they get out in a third of the time, or I heard they  
17 get out in a fourth of the time," and have them adjust  
18 their sentence accordingly.

19 That is not appropriate and not  
20 proper. You don't strike me as the kind of lady that  
21 would disobey any of the Judge's instructions. So let me  
22 ask you again for the record: Will you follow the law  
23 and not consider parole as instructed by the Judge?

24 A. Yes.

25 Q. Okay. And, you know, it is fine to be

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1 human, and as a citizen wonder about that sort of thing;  
2 wonder about the crime, be angry about that sort of  
3 thing. But as a juror you must have the mental  
4 discipline to put that out of your mind and just answer  
5 the questions as asked and apply the law the Judge gives  
6 you. Okay?

7 A. Okay.

8 Q. Do you have any questions for me?

9 A. I don't think so.

10 Q. All right.

11

12 MS. SHERRI WALLACE: Judge, that's all

13 I have for this juror.

14 THE COURT: All right. Thank you.

15 Mr. Douglass, Preston Douglass.

16 MR. S. PRESTON DOUGLASS, JR: Thank

17 you, Judge.

18

19 VOIR DIRE EXAMINATION

20

21 BY MR. S. PRESTON DOUGLASS, JR:

22 Q. We have been here a long time, and,

23 ma'am, I'm just going to go straight to the point and I  
24 hope you appreciate that what -- that my perspective from  
25 where I sit in representing Darlie Routier is completely  
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1 different than that of the attorneys representing the  
2 State.

3 We have been here a long, well, all  
4 day, and your questionnaire helps a great deal. You  
5 filled it out without any preconceived notions, without  
6 any discussion, and you filled it out based on what was  
7 on your mind at the time, and the way you felt just from  
8 a cold reading of what was in the questionnaire.

9 And, you know, we have talked about --

10 and a great many of the questions have been couched in  
11 the terms of, "Can you follow the law"?

12 And, I don't know anybody that wants  
13 to say, "No, I can't follow the law."

14 It goes -- it goes against our

15 ingrained citizenship to say, "That's right. I'm a  
16 rebel. I'm a renegade. I don't want to follow the law."

17 Nobody -- I have not heard anybody

18 come in here and say that. And you are well into the  
19 80th-some-odd person we have spoken with.

20 But there are opinions that people

21 have and the fact that those opinions run contrary to the  
22 law doesn't mean that person is a bad citizen.

23 It just means that that person has  
24 feelings that they have about a certain law that might  
25 influence whether they should be a juror in a particular  
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1 case. The law absolutely does not say that a person has  
2 to deposit their common sense and their experience in a  
3 waste basket when you walk in the door.

4 What makes juries good is the fact  
5 that everybody comes from different backgrounds. What is  
6 a necessary part of our system is that that means that  
7 they also have feelings about things before -- before it  
8 starts.

9 The reason I go into that is, you said  
10 very clearly, that if the police arrest someone for  
11 capital murder, the person is probably guilty. And you  
12 did agree, and uncertain and that is the way you felt  
13 about it, I am assuming back in October.

14 A. Yes.

15 Q. And is that the way you feel about it  
16 now?

17 A. I feel in most cases that they have a  
18 lot of evidence, otherwise they wouldn't be going and  
19 arresting a person.

20 Q. Some people think, "Where there is  
21 smoke, there is fire." Do you believe that might be  
22 true?

23 A. Possibly.

24 Q. What is important is if you feel  
25 honestly like you do, and you start with a feeling of, "I  
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1 think a person that is charged with a crime is probably  
2 guilty," that may be how you feel. But in some respects,  
3 that may mean that in some instances, it may not be fair.  
4 And you are the only one that knows

5 that. This is a very serious deal. We have gone through  
6 80-some-odd people to arrive at 12, and you would  
7 potentially be the first alternate as the Judge has said.

8 So, obviously, if you go through 80  
9 people and you end up with 12, there is some reason for  
10 that. People have feelings. And no one is going to ask  
11 you to change your feeling.

12 All we're going to do is ask you to  
13 say, absolutely, honestly what is in your heart. Do you  
14 believe that a person that is charged with a crime starts  
15 out as probably guilty?

16 Is that the way you feel about it?

17 A. Not necessarily. But, when it goes  
18 back to when the police have gone to all of this trouble  
19 collecting evidence, then I have heartfelt, you know, I  
20 kind of -- I guess maybe sometimes I kind of form an  
21 opinion when I shouldn't.

22 Q. Okay. Well, there is no reason to  
23 apologize for that, that is the way it is. And believe  
24 me, you are not the first person that has come in and  
25 said that.

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1  
2 THE COURT: Please, you're not sparing  
3 us anything by holding anything back. If that is the way  
4 you feel, please state it. We're happy to hear it.

5 MR. S. PRESTON DOUGLASS, JR: We just  
6 need to know.

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Okay. Thank you. Now,  
9 you have formed an opinion on the case, in other words?

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: Okay. And that would  
12 influence your verdict; is that correct?

13 THE PROSPECTIVE JUROR: It might, yes,  
14 sir.

15 THE COURT: Okay.

16 MR. S. PRESTON DOUGLASS, JR: I submit  
17 the juror.

18 THE COURT: All right. Well, thank  
19 you very much for coming, ma'am. We appreciate your  
20 candor and we want -- and, ma'am, if you could -- you  
21 will be excused from further jury service.

22 If you could not tell anybody about  
23 your experiences here today. The trial isn't over yet,  
24 and we have other jurors to pick. And when the trial is  
25 over at the tail end of January, you may talk or not talk

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1 as you see fit. Thank you very much.

2 THE PROSPECTIVE JUROR: Okay. Thank  
3 you.

4 THE COURT: There is a gag order in  
5 effect, remember that. I can impose monetary or jail  
6 time sanctions. I'm not trying to threaten you, but I  
7 know we can do that, please.

8 THE PROSPECTIVE JUROR: Okay. Thank  
9 you.

10 THE COURT: Thank you, ma'am.

11 Certitude, C-E-R-T-I-T-U-D-E. The Latin, certanus.

12

13 (Whereupon, the

14 Proceedings were

15 Recessed for the day,

16 To be resumed the

17 Following day, in

18 Open court, as follows:)

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Sandra M. Halsey, CSR, Official Court Reporter

2918

1 CERTIFICATION PAGE

2 THE STATE OF TEXAS )

3 THE COUNTY OF DALLAS )

4 I, Sandra M. Halsey, was the Official Court

5 Reporter of Criminal District Court Number 3, of Dallas

6 County, Texas, do hereby certify that I reported in

7 Stenograph notes the foregoing proceedings, and that they

8 have been edited by me, or under my direction and the

9 foregoing transcript contains a full, true, complete and

10 accurate transcript of the proceedings held in this

11 matter, to the best of my knowledge.

12 I further certify that this transcript of the

13 proceedings truly and correctly reflects the exhibits, if

14 any, offered by the respective parties.

15 SUBSCRIBED AND SWORN TO, this \_\_\_\_\_ day of

16 \_\_\_\_\_, 1997.

17 \_\_\_\_\_

18 Sandra M. Day Halsey, CSR

19 Official Court Reporter

20 363RD Judicial District Court

21 Dallas County, Texas

22 Phone, (214) 653-5893

23

24 Cert. No. 308

25 Exp 12-31-98

Sandra M. Halsey, CSR, Official Court Reporter

2919

1 STATE OF TEXAS )

2 COUNTY OF DALLAS)

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4 JUDGES CERTIFICATE

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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.

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20 MARK TOLLE, JUDGE

21 Criminal District Court Number 3

22 Dallas County, Texas

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Sandra M. Halsey, CSR, Official Court Reporter

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