

Volume 12

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
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12
13 STATEMENT OF FACTS
14 JURY VOIR DIRE
15 INDIVIDUAL JURORS HEARING
16 VOL. 12 OF VOLS.
17 October 28, 1996
18 Monday
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25

Sandra M. Halsey, CSR, Official Court Reporter 126

1 C A P T I O N

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3
4 BE IT REMEMBERED THAT, on Monday, the 28th day of
5 October, 1996, in the Criminal District Court Number 3 of
6 Dallas County, Texas, the above-styled cause came on for
7 a hearing before the Hon. Mark Tolle, Judge of the
8 Criminal District Court No. 3, of Dallas County, Texas,
9 without a jury, and the proceedings were held, in open
10 court, in the City of Kerrville, Kerr County Courthouse,
11 Kerr County, Texas, and the proceedings were had as
12 follows:
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1 A P P E A R A N C E S

2

3

4 HON. JOHN VANCE

5 Criminal District Attorney

6 Dallas County, Texas

7

8 BY: HON. TOBY 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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13 AND: HON. RICHARD C. MOSTY

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1 AND: HON. JOHN HAGLER
2 Attorney at Law

3 901 Main Street, Suite 3601
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5 ALL ATTORNEYS REPRESENTING THE
6 DEFENDANT: DARLIE ROUTIER
7 MR. HAGLER HANDLING THE APPEAL
8

9 AND: HON. ALBERT D. PATILLO, III
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11 820 Main Street, Suite 211
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13 APPEARING FOR: Witness-
14 Detective Jimmy Patterson
15 only on one date in trial
16

17 AND: HON. STEVEN J. PICKELL
18 Attorney at Law
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22 Officer Chris Frosch
23 only on one date in trial
24
25

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1 P R O C E E D I N G S
2
3 October 28th, 1996
4 Monday
5 9:30 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, but
15 outside the presence of the
16 jury panel, as follows:)
17

18 THE COURT: We are back on the record
19 in the Darlie Routier matter. Let the record reflect all
20 the parties at trial are present. And these proceedings
21 are being held in the Kerr County Courthouse. And this
22 is October the 28th, of 1996. We're beginning the
23 individual voir dire in picking the jury. The first --
24 MR. TOBY SHOOK: Judge, could we get
25 you to rule on the record about -- we had a discussion

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1 with Mr. Parks in your chambers, if we could get you to
2 rule on the record, the defendant was not there, about
3 the lesser included offense.

4 THE COURT: The ruling is this: There
5 is no lesser included offense in the charge against Mrs.
6 Routier. The State will either prove capital murder or
7 nothing. Because this offense is capital murder because
8 of the fact that the decedent is under 6 years of age.
9 That being the case it's either going to be a finding of
10 guilty of capital murder or a finding of not guilty, or
11 maybe a hung jury. But, I mean, there is no lesser
12 included offense. So we won't be voir diring on
13 probation or anything like that.

14 MR. TOBY SHOOK: Well, I think we
15 talked about, Judge, the motions for cause on that
16 ground.

17 THE COURT: There are no motions,
18 we're not going to get into any of that. There are no
19 motions for cause.

20 MR. TOBY SHOOK: Right. We discussed
21 that, I think, we talked about it, if you want to use a
22 peremptory challenge for that.

23 THE COURT: If that can be used, but
24 there is no challenge for cause on that. That's the
25 rule. There is no challenge for cause.

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1 MR. RICHARD MOSTY: But we're not
2 prohibited from talking about it.
3 THE COURT: Oh, you can talk about it.
4 But there's no challenge for cause on it. I mean, no
5 need to challenge. All right. Is that enough?
6 All right. Is everybody ready for the
7 first juror?
8 MR. RICHARD MOSTY: Your Honor, there
9 is one other thing that we talked about here --
10 THE COURT: Yes.
11 MR. RICHARD MOSTY: What counsel and I
12 talked about originally was, if the State hits
13 something -- because there are a few people in here who
14 are quacks, and -- or if they have some disqualification,
15 with the Court's permission, we may just let them pass on
16 that subject and we may just say, thank you very much.
17 And we agree to challenge for cause or perhaps
18 rehabilitate them if we can, and then go back to whatever
19 else you want.
20 THE COURT: That is absolutely fine.
21 That's fine. Bring in the first prospective juror.
22 If you will have a seat right here,
23 sir, and please state your name for the record.
24 THE PROSPECTIVE JUROR: Stephon David
25 Sloan.

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1 THE COURT: And that is Juror Number
2 2. All right. And just to be on the safe side, if you
3 will raise your right hand again.
4 Do you solemnly swear or affirm to
5 true answers make to all questions propounded to you
6 concerning your qualifications as a juror in this room or
7 in any courtroom or room you may be sent, so help you
8 God?
9 THE PROSPECTIVE JUROR: I do.
10 THE COURT: Thank you.
11 (Whereupon, the prospective
12 juror was duly sworn by the
13 Court to true answers make
14 to the questions propounded,
15 concerning qualifications, after
16 which time, the proceedings were
17 resumed as follows:)
18
19 Whereupon,
20
21 STEPHON DAVID SLOAN,
22

23 was called as a prospective juror, for the purpose of
24 voir dire, having been first duly sworn by the Court to
25 speak the truth, the whole truth, and nothing but the

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1 truth, testified in open court, as follows:

2

3 VOIR DIRE EXAMINATION

4

5 BY MR. TOBY SHOOK:

6 Q. Mr. Sloan, my name is Toby Shook. I

7 am an Assistant District Attorney in Dallas, Texas. I am

8 one of the prosecutors assigned to the case. This is

9 Sherri Wallace behind me, she is also an Assistant

10 District Attorney. And I am going to be asking you some

11 questions this morning.

12 I want to emphasize that there are not

13 any right or wrong answers to any of these questions. We

14 just want your true opinions on these questions.

15 It's not a test of good citizenship or

16 anything like that. We're going to go over various

17 aspects of the law, how you feel about various aspects of

18 the law. You don't have to agree with us at all. This

19 is not a test of good citizenship or anything like that.

20 We just want to find out your honest opinions on some

21 issues to see if you can follow the law on certain areas;

22 okay?

23 A. Okay.

24 Q. I don't think -- you put down that you

25 haven't ever served on a jury before, have you?

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1 A. No, sir.

2 Q. Okay. Usually jury selection is a

3 little bit different. We usually have everyone out in

4 the courtroom in one big bunch and talk to everyone in a

5 group and ask a few individual questions. But since this

6 is a capital murder case in which the State is seeking

7 the death penalty, we have this individual voir dire

8 where we talk to each juror.

9 It can be a little intimidating

10 sometimes. I know jurors sometimes feel like they're on

11 trial because they are up on the witness stand, but we

12 don't want you to feel that way at all. This gives us an

13 opportunity to talk to you for a while, and then the

14 defense will have an opportunity to talk to you for a

15 while. All right?

16 A. Sure.

17 Q. I see on your questionnaire, I believe
18 that you are a forklift driver; is that right?
19 A. No, sir. I am on the nursing staff at
20 La Hacienda Treatment Center.
21 Q. Okay. How long have you been there?
22 A. Altogether 14 years. I took a leave
23 of absence in '94.
24 Q. Okay. What was that leave of absence
25 about?

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1 A. I moved to Mississippi.
2 Q. Okay.
3 A. Where I was born and raised.
4 Q. Okay. So you were born and raised in
5 Mississippi, and then you came --
6 A. I have been in Texas about 15 years.
7 Q. Okay. And what do you do at the
8 treatment center?
9 A. Admit patients into the detox unit, do
10 assessments, search their luggage.
11 Q. Okay.
12 A. Take their vital signs.
13 Q. Okay. And you have been there off and
14 on for about 14 years?
15 A. I was there for 12 years, and then I
16 have been back almost two years.
17 Q. Okay. You know we put on our
18 questionnaire, that there's some personal questions that
19 just stay right here, and one of them was a question
20 about have you had any counselling at all? Any type
21 of --
22 A. Yes, sir, I have been treated twice
23 for alcoholism.
24 Q. Okay. And, when was the last time you
25 were in treatment?

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1 A. 1984.
2 Q. Okay. So it's been?
3 A. I have been sober since then.
4 Q. Okay. It's been a long time then?
5 A. Yes.
6 Q. Okay. As far as the trial goes, Judge
7 Tolle told you that the trial will begin on January 6.
8 A. Uh-huh. (Witness nodding head
9 affirmatively.)
10 Q. And Judge Tolle's schedule usually, I

11 don't think it will change for this trial, it's 9:00 in
12 the morning about so, until about 5:00 in the afternoon.
13 And he goes pretty steady throughout the day with certain
14 breaks.

15 A. Yes.

16 Q. We can't give you an exact time on how
17 long the trial will take. We're looking at about two
18 weeks, probably three weeks at the most; more like two
19 weeks. Would that interfere with your schedule at that
20 time at all?

21 A. I work nights.

22 Q. Okay. So that is not going to
23 interfere with your schedule?

24 A. And I told them I have to be here.

25 Q. They understand?

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1 A. Oh, yes.

2 Q. Okay. Mr. Sloan, let me get into
3 then, kind of the heart of the matter. Obviously, you
4 have been told that we can't get into the facts of the
5 case at all, but you know this is a capital murder case.
6 It's one in which the State is actively seeking the death
7 penalty in this case. So we want to explore each juror's
8 feelings about the death penalty.

9 A. For me, you know, you never really
10 think about the death penalty until it happens to you or
11 to your family. So, you know, this lady, if she is not
12 guilty, she has -- they have to prove to me that she is
13 guilty before I say -- I would rather let somebody guilty
14 go before I sentence somebody for the death penalty.

15 Q. Okay. So, as the law in general, are
16 you in favor of the death penalty?

17 A. But if she is proven guilty, she needs
18 to face the consequences.

19 Q. Okay. So you are in favor of the
20 death penalty as a law?

21 A. Well, that is what is wrong with this
22 country now. Nobody wants to take responsibility for
23 their actions.

24 Q. Okay. Have you given the death
25 penalty much thought before you were called down, and

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1 told that you could be on a death penalty case?

2 A. No, I have thought about it since I
3 have been summoned to be on the jury.

4 Q. Tell us a little bit about your

5 thoughts. What's gone through your mind?

6 A. Well, is it right or is it wrong?

7 Q. You have just been debating with
8 yourself, more or less, kind of weighing both sides of
9 the issue?

10 A. Yes.

11 Q. And tell us what you have come up
12 with.

13 A. Well, let me put myself in her place
14 for a minute. The death penalty, you know, if you kill
15 somebody by lethal injection, that is not really facing
16 the consequences. Locking them up in prison for the rest
17 of their life, then they face consequences.

18 Q. So you think the death penalty might
19 almost be --

20 A. That is just a way out.

21 Q. The easy way out?

22 A. Yes.

23 Q. Okay. Do you think that life
24 imprisonment would be more appropriate a punishment?

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)

2 Q. Okay.

3 A. Prison ain't no place to be.

4 Q. Okay. Anything else come to mind when
5 you were discussing with yourself whether the death
6 penalty is right or wrong? Did you come up with anything
7 else?

8 A. No.

9 Q. Okay. Have you ever -- what types of
10 crimes do you think might be appropriate for the death
11 penalty?

12

13 MR. RICHARD MOSTY: Your Honor, I am
14 going to object to that unless counsel gives some
15 definition of what the law allows in that regard.

16 THE COURT: Yes, I will sustain that.

17 Well, you might give a little more information.

18 MR. TOBY SHOOK: Judge, I am just
19 trying to get his personal feelings about how he feels
20 about the death penalty. I'm not trying to tie him down
21 to any facts.

22 THE COURT: Okay. Well, go ahead with
23 it then.

24

25 BY MR. TOBY SHOOK:

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- 1 Q. Is there anything that comes to mind
2 as far as the types of crimes you think are appropriate
3 for the death penalty?
4 A. Well, I guess murder is about the
5 worst thing you can do; isn't it?
6 Q. Right.
7 A. That is a violent crime.
8 Q. Is there any certain types of murder,
9 or do you just think --
10 A. Well, that would be number one, I
11 guess.
12 Q. Okay. Let me ask you: On your
13 questionnaire, we had you fill out this long 13 page
14 questionnaire, and on the second page we asked, "Are you
15 in favor of the death penalty," and on that day you
16 checked off "no." Do you remember that?
17 A. Yes, because I should have wrote,
18 unsure on that.
19 Q. Okay. And why were you unsure on that
20 day?
21 A. Because I hadn't even thought about
22 it. You hear about people, you know, getting sentenced
23 to death, and, you know, you just don't think about it.
24 Q. Okay.
25 A. Until it involves you, yourself.

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- 1 Q. Okay. And we also, on that day, it
2 may not have been fair to ask you on that day, we had
3 certain categories we had you check off, you had circled
4 Number 3. And I'll read it for you because I'm sure you
5 don't remember how you answered some of the questions.
6 "Although I don't believe the death penalty ever ought to
7 be invoked, as long as the law provides for it, I can
8 assess it under the proper set of circumstances."
9 A. Read that again.
10 Q. "Although I do not believe the death
11 penalty ever ought to be invoked, as long as the law
12 provides for it, I can assess it under the proper set of
13 circumstances."
14 Is that how you feel about it, or have
15 you changed your mind on that issue?
16 A. Well, why not, I guess.
17 Q. I'm sorry?
18 A. I guess so.
19 Q. Okay. You see, what I am getting down
20 to is, obviously, the core issue here is the State is

21 actively seeking the death penalty.
22 A. Okay.
23 Q. We're going to be going for that. The
24 defense over here, they are good lawyers and they are
25 going to be fighting us every inch of the way. So, it's

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1 going to be a very contested issue. And we need to know
2 if there are jurors that can have an open mind to both
3 sides, and let me give you kind of a preview.
4 What happens in a capital murder case,
5 is it's divided into two parts. There is the
6 guilt/innocence stage where we have to prove our
7 indictment beyond a reasonable doubt, whether they are
8 guilty of the crime itself. If we do that, we move to
9 the punishment phase, which you can then hear additional
10 evidence. You might hear background evidence. You may
11 not hear any additional evidence. But at the close of
12 that you will be asked to answer these questions.
13 We may go over those in more detail in
14 a minute. But basically, question number 1, we have
15 to -- the State has to prove there is a probability that
16 the defendant would commit criminal acts of violence,
17 they would be a danger to society in the future. If you
18 put it another way, they would be a future danger to
19 society.
20 The second question that comes up, is
21 whether there is any mitigating evidence. Any evidence
22 that the jurors feel that despite them being guilty of
23 the crime, and being a danger, they feel that a life
24 sentence should be imposed, rather than the death
25 sentence. But if you answered "yes" to that first

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1 question, and "no" to the second question, Judge Tolle
2 would have no discretion in this matter, he would
3 sentence the defendant to death.
4 If it's answered any other way, it's
5 an automatic life sentence, you see. It's one of the
6 two, once you have found someone guilty. It's going to
7 be a life sentence or a death sentence. All depending on
8 how the jurors answered these questions. Of course, if
9 it's a "yes" and a "no" in a death sentence, the
10 execution is death by lethal injection. Have you read
11 about that at all in the State of Texas?
12 A. No, I haven't read about it, but I
13 have seen it on the news.
14 Q. You have seen it on the news? Okay.

15 A. I read in the paper about it.
16 Q. You know full well then that it is
17 something that actually does occur in the State of Texas?
18 A. Oh, yes.
19 Q. The procedures are that if a person is
20 sentenced to death they are housed obviously down in
21 Huntsville, but at sometime in the future, given an
22 actual death date, and on that date they are moved to a
23 special unit, given time with family and friends, maybe a
24 minister, but after 6 p.m., the guards will take them
25 from the room, and they are taken to a special chamber

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1 where there are witnesses, they are put on a gurney,
2 needles put in their arms, and they are injected with a
3 substance that causes their heart to stop. I think
4 there's been over 100 death penalties.
5 And that is our goal in this case. We
6 need to know if you can actually sit on a case of this
7 kind and listen to the evidence, and if we prove the
8 case, take pen in hand, and give those answers that would
9 result in Mrs. Routier's death.
10 Would you be able to do that? Is this
11 the type of case you could sit on? Or is this just not
12 your cup of tea?
13
14 MR. RICHARD MOSTY: I am going to
15 object to that question because he mixed in two things.
16 One, he talked about Mrs. Routier --
17 THE COURT: I'll sustain it.
18 MR. RICHARD MOSTY: -- and then he
19 said --
20 THE COURT: All right. I'll sustain
21 it. Just because he has an objection to the death
22 penalty, that does not disqualify him.
23
24 BY MR. TOBY SHOOK:
25 Q. Well, is this the type of case you

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1 could sit on, that could result in someone's death?
2 A. (Witness shakes head.)
3 Q. Okay. And tell us why.
4
5 THE COURT REPORTER: What was that
6 reply?
7
8 BY MR. TOBY SHOOK:

9 Q. If I could get you to -- you shook
10 your head negatively, didn't you? You mean no? Was your
11 answer no?
12 A. Yes. No. (Witness nodding head
13 affirmatively.)
14
15 THE COURT: Okay. Wait a minute. We
16 can't take down head shakes or nods, you know, or uh-huhs
17 or huh-uhs.
18 THE PROSPECTIVE JUROR: Yes, sir, I
19 understand.
20 THE COURT: Just answer, and go ahead
21 and elaborate if you like.
22 THE PROSPECTIVE JUROR: Well, no, sir,
23 I don't want to be responsible for someone dying.
24
25 BY MR. TOBY SHOOK:

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1 Q. Okay. And that is fine. Like I said,
2 we just want your honest answers to our questions, and I
3 appreciate your honesty on that. You just don't want to
4 take that type of responsibility?
5 A. Uh-huh. (Witness nodding head
6 affirmatively.)
7 Q. You don't want that weighing on your
8 conscience, that kind of thing?
9 A. Uh-huh. (Witness nodding head
10 affirmatively.)
11 Q. Okay. Again, it's fine to feel that
12 way, Mr. Sloan. That is what we're looking for is your
13 honest answers. If this were a case that just involved
14 prison time, like a burglary case --
15 A. Yes, but you lock somebody up in
16 prison from now on, don't you think they are going to
17 face it? They are going to have to deal with reality.
18 And when you die, when you are dead, you are dead and you
19 can't face nothing.
20 Q. Sure. And I'm not here to argue with
21 you. I just want to explore your feelings, so it's clear
22 to everyone what they are. Even though you feel that
23 prison time is more punishment, still you don't want the
24 responsibility of deciding whether someone dies or not;
25 is that right?

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1 A. Yes. I don't have any problems
2 sentencing anybody to life in prison.

3 Q. Right.
4 A. But I just don't want --
5 Q. Okay. It is that person that --
6 A. I believe that is God's decision.
7 Q. I'm sorry?
8 A. I believe that's God's decision.
9 Q. Okay. Do you feel strongly about
10 that, Mr. Sloan?
11 A. Oh, yes.
12 Q. And have you thought about that a lot
13 since we had you come down here last Monday and fill out
14 the questionnaire?
15 A. Uh-huh. (Witness nodding head
16 affirmatively.)
17 Q. Have you discussed it with anyone
18 else?
19 A. Huh-uh. (Witness shaking head
20 negatively.)
21 Q. These have been just inner thoughts?
22 A. Uh-huh. (Witness nodding head
23 affirmatively.)
24 Q. Okay. Would you feel that that is a
25 strong conviction on your part now about how you feel

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1 about not wanting to be responsible for someone's death?
2 A. Uh-huh. (Witness nodding head
3 affirmatively.) Yes, sir.
4 Q. Okay. Do you feel you would change
5 your mind on that in way, or is your mind made up about
6 that? You don't want to be responsible for someone's
7 death?
8 A. Yes, sir.
9 Q. It's not something you take lightly,
10 is it?
11 A. No, sir.
12 Q. Okay. And if this was a case, another
13 type of case, where it just involved prison time you
14 wouldn't have a problem sentencing someone to prison?
15 A. No, sir.
16 Q. It's just the fact that this is -- the
17 ultimate punishment here is death, and if you answer
18 those questions a certain way, the defendant could be
19 sentenced to death, and that is what your objection is to
20 sitting and making that type of decision is; is that
21 right?
22 A. Uh-huh. (Witness nodding head
23 affirmatively.) You know if you all have all the proof
24 and the facts within a reasonable doubt, then she --

25 somebody is going to have to face the consequences.

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1 Q. Right. But you don't want to be the

2 one that has to make that decision?

3 A. Of death?

4 Q. Right.

5 A. No, sir. Life in prison, yes.

6 Q. Life in prison, that is not an issue

7 for you, you could do that?

8 A. Life in prison with no parole, yes, I

9 have no problem with that.

10 Q. Okay. But I want to concentrate on

11 the death issue, that is where your objection is and your

12 problem comes in, right?

13 A. That's right.

14 Q. Now you understand, and like you said,

15 this is a strong conviction on your part; is that right?

16 A. Yes, sir.

17 Q. It's something you have thought about

18 and you feel strongly about?

19 A. Yes, sir.

20 Q. Okay. You understand how our

21 situation works here: You don't actually write death or

22 life in prison in. We have to prove, first of all, this

23 first question, can be a continuing danger.

24

25 THE COURT: Maybe Mr. Sloan would want

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1 to read those.

2 MR. TOBY SHOOK: Yes, sir.

3 THE COURT: Maybe you would want to

4 stand up and read those if you could?

5 MR. TOBY SHOOK: Yeah. All right.

6 THE COURT: Step over there. That's

7 fine. Take your time.

8 THE PROSPECTIVE JUROR: I can see

9 here.

10 MR. TOBY SHOOK: In fact, why don't I

11 just read the first question aloud and if you will go

12 along with me.

13 THE PROSPECTIVE JUROR: Okay.

14

15 BY MR. TOBY SHOOK:

16 Q. First question: "Do you find from the

17 evidence beyond a reasonable doubt that there is the

18 probability that the defendant would commit criminal acts

19 of violence that would constitute a continuing threat to
20 society?"

21 You know we actually have to prove
22 there would be a continuing danger. The second
23 question, -- if we get a "yes" to that, then you move on
24 to this second question. That is what we call the
25 mitigation issue.

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1 "Taking into consideration all of the
2 evidence, including the circumstances of the offense, the
3 defendant's character and the background, the personal
4 moral culpability of the defendant, is there a sufficient
5 mitigating circumstance or circumstances to warrant that
6 the sentence of life imprisonment, rather than a death
7 sentence be imposed."

8 That is a real long question. We
9 didn't think it up ourselves, the legislature did that.
10 But basically, it has the jurors look at all the
11 evidence, and if they find anything where they think,
12 well, a life sentence should be imposed rather than a
13 death sentence, they would answer it that way.
14 And thus, spare the defendant the death penalty. It's a
15 way for the jurors -- it's kind of a safety net.
16 Mitigating evidence can be whatever
17 you feel it is. Go ahead and have a seat.
18 Are you telling us, Mr. Sloan, that
19 because of your personal feelings about not being able to
20 take responsibility for putting someone to death, or
21 answering questions that would actually lead to their
22 execution, that this is just not the type of case you
23 could sit on and make that particular decision?
24 A. Sentence her to what?
25 Q. To death.

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1 A. To death? Well, I probably could, but
2 I still wouldn't change my mind on it. I don't think.
3 Q. You wouldn't change your mind on what?
4 A. To sentence her to the death penalty,
5 to lethal injection.
6 Q. You still have your objections to
7 doing that?
8 A. Uh-huh. (Witness nodding head
9 affirmatively.) It just isn't right though, to take
10 somebody's life.
11 Q. Okay. And that is fine that you feel
12 that way. But, I get some concern when then all of a

13 sudden you say, I probably could.
14 You see, there is all different --
15 everyone comes in here with a different opinion and each
16 one is fine on its own. And you have told me clearly
17 several times that you don't feel that you have the right
18 to sit there and judge someone so that they might be
19 executed. That you don't have the right to do that, and
20 you don't want to take that responsibility. And then --
21 but then you just said you probably could.
22 A. Well, I could sentence her to --
23 sentence somebody to life in prison.
24 Q. Sure.
25 A. I have no problem with that at all.

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1 Q. Okay. Well, I think that we are all
2 clear on that. It's the death issue you have a problem
3 with.
4 A. It's the death issue. I'm not going
5 to sentence nobody.
6 Q. You are just not going to sentence
7 someone to death?
8 A. No.
9 Q. That is just how you personally feel?
10 A. Yes.
11 Q. And it's a strong conviction on your
12 part?
13 A. Yes.
14 Q. Okay. Again, that's fine. I know I
15 have been over this with you. I don't mean to beat a
16 dead horse, but we need everything to be clear to Judge
17 Tolle and clear on the record about how you feel.
18 So you are never going to answer these
19 questions in a way that would actually result in her
20 death. Life in prison, that's fine. But resulting where
21 she would -- Judge Tolle would have to sentence her to
22 death, you couldn't do that; is that right?
23 A. No.
24 Q. You just couldn't take that type of
25 responsibility yourself?

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1 A. No.
2 Q. And you are sure about that?
3 A. Uh-huh. (Witness nodding head
4 affirmatively.) Positive.
5 Q. Okay. It's not something you would
6 change your mind on lightly; is that right?

7 A. No, sir.

8 Q. Okay. And you could never -- and I

9 know I just want to make it clear, answer the questions,

10 you understand that you don't write life or death, but

11 you can never answer the questions with a yes and a no

12 answer so that it would cause Judge Tolle to sentence the

13 defendant to death?

14 A. Yes, sir.

15 Q. Okay. All right.

16

17 MR. TOBY SHOOK: Judge, why don't we

18 stop there for a moment and let Mr. Mosty -- maybe he

19 wants to ask you some questions.

20

21 VOIR DIRE EXAMINATION

22

23 BY MR. RICHARD MOSTY:

24 Q. Mr. Sloan, how are you this morning?

25 A. Fine.

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1 Q. Did you come in from La Hacienda this

2 morning?

3 A. No, sir, I work nights. I come in

4 from Pipe Creek Parkway.

5 Q. Okay. I thought you might not be able

6 to get here from La Hacienda this morning.

7 A. No, sir.

8 Q. My name is Richard Mosty, and I am

9 representing Darlie Routier who is seated behind me here.

10 And this is Preston Douglass, who is my partner. And I

11 want to visit with you a little bit about some of what

12 you have testified to, and told us about this morning.

13 And let me be candid with you, I sort

14 of have mixed -- I am hearing mixed things from you, in

15 my judgment, of what you are saying.

16 Let me first say this: I don't think

17 anybody wants the responsibility of being here. I don't

18 think there is any juror ever who has sat on any case who

19 wants the responsibility of sitting on a case that may

20 result in a death penalty. That, people -- I have just

21 never seen anybody stand up and say that is what they

22 want to do. It's a terrific responsibility. But in a

23 lot of ways it's no different than a lot of

24 responsibilities that we have as citizens.

25 We have a responsibility to follow the

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1 law. We have a responsibility to defend our country when
2 we are called upon to do that. Those are the
3 responsibilities that go with the constitutional rights
4 that we have.

5 So, what I want to explore, is those
6 responsibilities. And, what I heard you say, and you
7 tell me if I am not right, but I heard you say was, that
8 you don't have a problem with the death penalty, you just
9 don't want to be -- you don't want to be placed in that
10 very difficult position.

11 A. You're right. I don't have a problem
12 with it, as long as it don't concern me.

13 Q. Okay. Well, you don't have any
14 objection to the law, or to the death penalty law as
15 such?

16 A. No, sir.

17 Q. All right. And let me first say that
18 the death penalty only ever even applies in a very small
19 number of circumstances. And that is, where there is a
20 murder of police officer, or a multiple murder, or a
21 murder committed during the course of some other felony.
22 So there is a very limited range and they are all murder
23 cases in which the death penalty is even possible. And,
24 you don't have any objections to that I take it?

25 A. No, sir.

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1 Q. To that limitation?

2 A. No, sir.

3 Q. The procedure is that if you find a
4 defendant guilty, and that is the first big if, you never
5 even talk about this unless you find the defendant guilty
6 of capital murder, then you go and you answer these
7 questions. And the questions that you have to deal with
8 is, can you, can you answer those questions based upon
9 the evidence that is presented to you, knowing your
10 reservations about your responsibility, but can you take
11 an oath to answer those two special issues that are on
12 the board truthfully and honestly, based upon the
13 evidence?

14 A. Well, if she is locked up -- number
15 one, if she is locked up for life, if someone is locked
16 up for life, they can't --
17

18 THE COURT: That wasn't the question.

19 Please listen to the question and answer the question.

20

21 BY MR. RICHARD MOSTY:

22 Q. Okay. We won't -- just focus on these

23 two questions, because that is what I am asking you, and
24 that is what Judge Tolle is eventually going to ask any
25 juror. And I don't want to talk about this case, but in

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1 any case in which there is a capital murder defendant
2 that is found guilty, that is what Judge Tolle or
3 whomever the Judge is going to be, is going to say, "You,
4 the jury, need to go out and answer these special issues.
5 Follow the law, and base your decision upon the evidence
6 that is presented to you." Can you do that?

7 A. Yes, sir.

8 Q. And knowing that the result may be one
9 that you have a very difficult time with?

10 A. Yes, sir.

11 Q. Knowing that the result could be the
12 death penalty, nonetheless, you could honestly and
13 truthfully answer those questions?

14 A. I would just have to deal with it.

15 Q. Okay. And again, nobody wants to.

16 And, you might not be picked on this jury, but that is,
17 you know, that is one of the awesome responsibilities
18 that comes with being a citizen of the United States.
19 And you could, even though you don't like it, you could
20 get up and do that task honestly and truthfully?

21 A. Yes, sir.

22 Q. Thank you.

23

24 THE COURT: Either side have anything
25 else?

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1 MR. TOBY SHOOK: I would like to ask
2 some more questions, Your Honor.

3 THE COURT: All right. You have used
4 18 minutes.

5 MR. TOBY SHOOK: Thank you, Judge.

6 THE COURT: Thank you.

7

8 FURTHER VOIR DIRE EXAMINATION

9

10 BY MR. TOBY SHOOK:

11 Q. We don't mean to beat you down with
12 the same type questions.

13 A. It's okay. It's all right.

14 Q. But obviously --

15 A. I'm not in a hurry.

16 Q. But you know the way that lawyers are,

17 we can ask -- we can ask questions from here until the
18 world ends. We love to ask questions, talk to people,
19 and we can phrase things differently and get different
20 answers a lot of times.
21 But what I want to get down to again
22 are your honest opinions. Because, Mr. Mosty has asked
23 you, can you answer these questions honestly based on the
24 evidence.
25 And then you have also given me

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1 answers where, I think, one of your answers was, you
2 said, "We just don't have the right to take someone's
3 life." You didn't have any problem with fashioning a
4 sentence or giving a sentence of life in prison, but as
5 far as the death penalty is concerned, we just don't have
6 that right.
7 You told me several times that you had
8 a strong conviction, and you thought about it and you
9 just can't sit on a death-penalty-type case, and answer
10 questions in a way that would result in a defendant's
11 death. Life imprisonment is no problem, but if it's the
12 death, you couldn't do that.
13 You told me that you couldn't answer
14 those questions that way. You told me that was a strong
15 conviction on your part. Have you changed your mind in
16 any way, or do you still feel that way?
17 A. Well, I need to answer you, don't I?
18
19 THE COURT: Well, it would be very
20 helpful.
21 THE PROSPECTIVE JUROR: Yes.
22
23 BY MR. TOBY SHOOK:
24 Q. Do you still feel that way?
25 A. Yes.

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1 Q. Okay. The life imprisonment issue,
2 you could do that to someone?
3 A. Yes.
4 Q. It is just sentencing someone to
5 death, you could never do that personally. You don't
6 feel you have that right?
7
8 MR. RICHARD MOSTY: Well, Your Honor,
9 again, I think that is an unfair question, because he
10 does not sentence them.

11 THE COURT: Well, I'll sustain the
12 objection. He answered the question, we understand that.
13 THE PROSPECTIVE JUROR: Well, you
14 never think about this until you are in it.
15
16 BY MR. TOBY SHOOK:
17 Q. Sure.
18 A. If it was my brother or my mother,
19 yeah, I could do it.
20 Q. Sure. I understand, but you couldn't
21 be on a jury though where your mother or brother were the
22 victim.
23 A. Well, no.
24 Q. Obviously. We wouldn't expect you to
25 want to do it.

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1
2 MR. TOBY SHOOK: Defense counsel might
3 lose their bar card if that happened.
4 THE COURT: Yes, well -- with a
5 brother-in-law maybe.
6
7 BY MR. TOBY SHOOK:
8 Q. Yeah, brother-in-law, maybe.
9 A. Mother-in-law.
10 Q. Yes, well, the defense might want you
11 on the jury if it was your mother-in-law. But when it
12 gets down to it, I mean, you feel very strongly about
13 that, just the way you talked about it before; is that
14 right?
15 A. Uh-huh. (Witness nodding head
16 affirmatively.)
17 Q. Okay. And that is all we are looking
18 for, is your honest opinions. You know, I have talked to
19 a lot of jurors on these type of cases, and sometimes we
20 get jurors that feel so strongly, they are so strongly
21 for the death penalty, they think it's appropriate in all
22 cases. They can't wait to get on the jury, and they will
23 honestly tell us, "I don't care what your evidence is,
24 I'm going to answer those questions in a way that is
25 going to get them dead."

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1 Obviously that is not fair either,
2 especially not fair to the defense, because they are
3 entitled --
4 A. Well, that is just the way some people

5 think, though.

6 Q. Yes. They are entitled to honest
7 jurors who can answer these questions and aren't
8 pre-bound. But in the same way, the State is entitled to
9 jurors who could fairly assess that. Some people can and
10 some people can't. And I think what you have told me
11 before, is that life imprisonment, that is not problem;
12 it's answering these questions the way that result in the
13 defendant's death is what you have a problem with and you
14 cannot do; is that right?

15 A. Yes, sir.

16 Q. Okay. It's not a question of what
17 evidence we have to prove this case, to prove that she is
18 a future danger or whatever, you just, that doesn't
19 matter, it's the fact --

20

21 MR. RICHARD MOSTY: Your Honor, I want
22 to object to the reference to she.

23 THE COURT: Sustained.

24

25 BY MR. TOBY SHOOK:

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1 Q. Okay. It's not a question of what
2 type of evidence we have to prove question Number 1,
3 right? It's the fact, the bottom line is, that you don't
4 feel that you have the right to answer that question in
5 the way that would result in her death; is that right?

6 A. Yes, sir.

7 Q. Okay. And it's just something you
8 could do. It's not a question of what we prove to you,
9 it's just something you feel strongly about; is that
10 right?

11 A. Yes, sir.

12 Q. And so, no matter how much evidence I
13 put on on that question or the second question, you are
14 just not going to be able to answer the questions in a
15 way that would result in her death?

16 A. Yes, sir.

17 Q. Is that right?

18 A. Yes, sir.

19 Q. You feel strongly about that?

20 A. Yes, sir.

21 Q. Life imprisonment, that is fine, but
22 you are not going to be able to forget about how you feel
23 about the death penalty, are you?

24 A. No, sir.

25 Q. I mean, you feel pretty strongly about

1 those things, don't you?

2 A. Yes, sir.

3 Q. Okay. And that is just something to

4 be honest about, and you are just being honest with us

5 about it, is that right?

6 A. Yes, sir, I'm totally honest.

7 Q. Okay.

8

9 MR. TOBY SHOOK: Again Judge, we will

10 pass the juror.

11 MR. RICHARD MOSTY: May we approach

12 the bench, Your Honor?

13 THE COURT: Yes.

14

15 (Whereupon, a short

16 Discussion was held

17 Off the record, after

18 Which time the

19 Proceedings were resumed

20 As follows:)

21

22 BY MR. TOBY SHOOK:

23 Q. Well, let me talk about question

24 Number 1 again, just for a moment. "Do you find from the

25 evidence beyond a reasonable doubt that there is a

1 probability that the defendant would commit criminal acts

2 of violence that would constitute a continuing threat to

3 society."

4 That is something we would have to

5 prove to you in the punishment stage. That there is that

6 probability would exist. Do you understand where that

7 question is trying to ask you to predict the future?

8 A. Yes.

9 Q. That they would be a continuing threat

10 to society?

11 A. Well, you mean that somebody may kill

12 somebody else?

13 Q. Well, it doesn't actually say kill

14 someone else. Some people feel that way, but just be a

15 continuing threat to society.

16 A. They might commit another crime?

17 Q. Right. That is something that we have

18 to prove, that question. Do you think that you could

19 answer a question like that based on the evidence?

20 A. Yes, sir.

21 Q. You think you could predict the future
22 that way based on the evidence?
23 A. Yes, sir.
24 Q. Okay. What comes to mind when you
25 think about criminal acts of violence? What does that

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1 mean to you?
2 A. Criminal acts? What do I think?
3 Q. Yes.
4 A. Why do people do such things?
5 Q. We --
6
7 THE COURT: Will you please listen to
8 Mr. Shook's questions?
9
10 BY MR. TOBY SHOOK:
11 Q. We have to prove -- and you are not
12 going to get definitions of what these words are. It is
13 going to be up to you. One of the things we have to
14 prove is that there is a probability the defendant would
15 commit criminal acts of violence. When we say criminal
16 acts of violence, what does that mean to you?
17 A. Murder, rape or child abuse.
18 Q. Okay. Let me ask you this personally:
19 What type of evidence would you like to hear? What would
20 be good for you to hear to make you be able to make a
21 decision like that?
22 A. What type of evidence would I like to
23 hear?
24 Q. Yes. On this first issue, where we
25 are trying to prove that the defendant would be a future

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1 danger. Personally, what types of evidence would you
2 like be comfortable in hearing in order to make that
3 decision?
4 A. Is this this person's first offense?
5 Q. Okay.
6 A. Criminal offense.
7 Q. Okay. Anything else?
8 A. Were they in the right state of mind
9 when this happened?
10 Q. Okay. Let me go to one other area of
11 the questionnaire, Mr. Sloan. I don't mean to skip
12 around, but on page 3, you had answered, we have a
13 statement, in fact, let me just let you look at it. I
14 know you had -- may I approach the juror?

15

16 THE COURT: Oh, yes.

17 MR. TOBY SHOOK: Page 3. You see that
18 question there? If you could just read that for a
19 moment.

20 THE PROSPECTIVE JUROR: Okay.

21

22 BY MR. TOBY SHOOK:

23 Q. The statement we asked there is, "If a
24 person is accused of a capital murder, should she have to
25 prove her innocence?" And you put strongly agree.

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

3 Q. Okay. How do you feel about that? Do
4 you still feel that way?

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

7 Q. Tell us a little bit about that.

8 A. People are not accused for no reason.

9 I mean, y'all wouldn't have this person up here for no
10 reason, would you?

11 Q. Okay. Would you require the defendant
12 then to prove her innocence, or would you require a
13 criminal defendant to prove innocence, a person that is
14 charged with capital murder?

15 A. Yes, sir.

16 Q. Okay.

17 A. They have to prove it.

18 Q. Okay. You would want, I guess, these
19 lawyers to put on some type of evidence, that type of
20 thing?

21 A. Yes, sir.

22 Q. Okay. If they didn't put on any type
23 of evidence, would you then, after the State presented
24 it's case, would you find the defendant guilty because
25 they had not presented any evidence?

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1 A. Of her being innocent?

2 Q. Right.

3 A. No, sir.

4 Q. Okay.

5 A. If they don't prove that she is
6 innocent, she is -- evidently she is guilty then, if they
7 can't prove that she is innocent.

8 Q. This is kind of how it works, though:

9 There are certain rules of law. The State, since we do
10 the charging, we have the burden of proof. We have to
11 prove the case beyond a reasonable doubt. And that
12 burden never shifts, it never goes over to the defense.
13 Do you understand?
14 A. Uh-huh. (Witness nodding head
15 affirmatively.)
16 Q. If we don't meet that burden, then the
17 jurors are obligated to find the defendant not guilty.
18 However, some jurors feel strongly
19 that, well, if you are excused of the crime, then you
20 should have to prove your innocence, through your lawyers
21 or whatever. However, the law doesn't require that at
22 all. It only requires the State to prove it. If we
23 don't prove it, then it's not guilty.
24 They are not obligated to put on
25 witnesses. They are not obligated to even ask questions

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1 if they don't want to. So it's all up to whether the
2 State proves the case or not. Would you require the
3 defense though, from your own personal standpoint, to
4 prove the defendant's innocence?

5 A. Well, if it was me, I would want to
6 prove my innocence.

7

8 THE COURT: Please listen to the
9 question.

10

11 BY MR. TOBY SHOOK:

12 Q. Would you require the defense to prove
13 the defendant's innocence?

14 A. If you can't prove that, she is
15 guilty.

16 Q. If we put our case on, beyond a
17 reasonable doubt, if we finished putting on our evidence,
18 are you going to require the defense to prove her
19 innocence in any way?

20 A. No, sir.

21 Q. Okay. How do you feel about the
22 defendant's -- the Judge went over this -- the
23 defendant's right not to testify. Everyone has the
24 constitutional right. They can testify if they want to,
25 but if they don't want to, they are not required to by

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1 law.

2 Some people can follow that rule of

3 law and other people feel strongly about, that they would
4 want the defendant to testify. They might find the
5 defendant -- they feel the defendant is guilty if they
6 didn't take the stand in their own defense. How do you
7 feel about it?
8 A. That is their right.
9 Q. So you have no problem in that area?
10 A. No, I have no problem.
11 Q. Okay. You understand that we have to
12 prove this case beyond a reasonable doubt?
13 A. Yes, sir.
14 Q. Okay. Some people feel that in a case
15 where the State is seeking the death penalty, they would
16 require the State to prove it's case even beyond that, to
17 a greater extent than beyond a reasonable doubt. How do
18 you feel about that?
19 A. I don't know. If you prove that she
20 is guilty beyond a reasonable doubt, what else do they
21 want?
22 Q. Let me go back to what we talked
23 principally about: Your objection as to sitting on this
24 type of case and not having the right to make decisions
25 where someone would ultimately be executed. You have not

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1 changed your mind about that, have you?
2 A. No, sir.
3 Q. You just couldn't answer these
4 questions in a way that would result in a defendant's
5 death; another human being's death; is that right?
6 A. Yes, sir.
7 Q. Okay. And no ifs, ands, or buts about
8 that?
9 A. No, sir.
10 Q. It's not a matter of what type of
11 evidence we put on, to intellectually let you answer the
12 questions a certain way. You know that if you answered
13 them a certain way that it would result in her death and
14 that's just something that you personally could not do;
15 is that right?
16 A. Yes, sir.
17 Q. Life imprisonment is fine, it's just
18 answering those questions in a way that would result in
19 her death is just something you can't do?
20 A. Yes, sir.
21
22 MR. TOBY SHOOK: That's all the
23 questions we have then, Judge.
24 THE COURT: All right. Mr. Mosty?

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1 FURTHER VOIR DIRE EXAMINATION

2

3 BY MR. RICHARD MOSTY:

4 Q. Mr. Sloan, we were introduced briefly,

5 and when we first started this, and I am just going to

6 cover a few things with you. And I think that you talked

7 a little bit about, and the prosecutor talked to you

8 about the presumption of innocence and Grand Jury

9 indictment, and those kind of things. And I just want to

10 reemphasize, really what Judge Tolle told you the other

11 day, that a Grand Jury indictment is absolutely no

12 evidence of guilt whatsoever. It means nothing, because

13 it is, as Judge Tolle described it, neutral. And, it is

14 simply the vehicle by which 25,000 people in Dallas

15 County are charged every year. Many of whom don't even

16 know that their is case being presented to the Grand

17 Jury. You understand that?

18 A. Yes, sir.

19 Q. And actually, I think you said it,

20 maybe better than anybody, when one of the first things

21 you said when we were here was, this lady is not guilty.

22 A. Oh, yes, she is not.

23 Q. Those were your words and that is the

24 honest and the truthful way of describing the presumption

25 of innocence. What you have said was simply: I presume

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1 this lady is not guilty.

2 A. Uh-huh. (Witness nodding head

3 affirmatively.)

4 Q. And you won't have any problems

5 keeping that presumption all through these trial

6 proceedings?

7 A. No.

8 Q. And, do you agree with me that it's

9 only fair that the State of Texas is responsible for

10 proving, for bringing you evidence that completely takes

11 away that presumption of innocence beyond any reasonable

12 doubt?

13 A. They are going to have to prove it to

14 me, before I can sentence anybody.

15 Q. And, until they do prove it to you,

16 you are going to continue to presume her innocent?

17 A. Oh, yes, sir. She is not guilty at

18 all.

19 Q. And if the State fails in any regard,
20 then you wouldn't have any problem, in all honesty and
21 truthfulness, saying this lady is not guilty?

22 A. If they can not prove to me what has
23 happened, then let her go. She is innocent.

24 Q. Sort of in that same regard, the State
25 is required to prove, beyond a reasonable doubt, the

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1 guilt of any defendant, and part of your job as a juror
2 is to judge the credibility of that evidence. They could
3 parade a hundred witnesses in there, and if a juror, if
4 as a juror you thought that they were not credible, then
5 that is in your discretion.

6 You may say, that is no evidence at
7 all. It doesn't remove any reasonable doubt in my mind.
8 I think even, I believe in your questionnaire, you
9 brought out the question of a case in which you thought
10 the police had done sloppy work. You pointed to the O.J.
11 Simpson case.

12 Well, that might be an example where
13 that evidence -- there is evidence that was presented,
14 but as a juror, you say it's not credible. It's not
15 believable. And just because they paraded a hundred
16 witnesses in here, that doesn't remove any doubt. You
17 know, there is reasonable doubt all over this case.

18 And that is your job as a juror, to
19 look at those witnesses and to judge their credibility,
20 or to look at the physical evidence and judge whether or
21 not it proves anything. And, do you have any problem
22 serving in that capacity? Making those judgments?

23 A. No, sir.

24

25 MR. RICHARD MOSTY: That's all I have,

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1 Your Honor.

2 THE COURT: Mr. Shook, by -- you have
3 12 minutes left, if you want to use them.

4 MR. TOBY SHOOK: That's all I needed,
5 Your Honor.

6 THE COURT: All right. Here is what I
7 want to know from you: Do you understand that first
8 issue up there? "Do you find from the evidence beyond a
9 reasonable doubt that there is a probability that the
10 defendant could commit criminal acts of violence that
11 would constitute a continuing threat to society?" Do you
12 understand what that says?

13 THE PROSPECTIVE JUROR: Yes, sir.
14 THE COURT: If you thought the State
15 had proven that, beyond a reasonable doubt, could you
16 answer that "yes"?
17 THE PROSPECTIVE JUROR: Yes.
18 THE COURT: All right.
19 The second issue down there, taking
20 into consideration all the evidence, do you understand
21 everything that is?
22 THE PROSPECTIVE JUROR: Yes, sir.
23 THE COURT: All right. If you thought
24 there was not sufficient mitigating circumstances, could
25 you answer that question "yes," too?

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1 THE PROSPECTIVE JUROR: Yes, sir.
2 THE COURT: In other words, even
3 though you have reservations against the death penalty,
4 you would still be able to follow the law, as I give it
5 to you?
6 THE PROSPECTIVE JUROR: Yes, sir.
7 THE COURT: All right. Fine.
8 Anything else?
9 MR. RICHARD MOSTY: No, your Honor.
10 THE COURT: All right. The Court
11 holds the defendant (sic) qualified -- holds the witness
12 (sic) qualified.
13 MR. TOBY SHOOK: Judge, if we could
14 then have a minute, maybe have the juror excused, we
15 could --
16 THE COURT: Okay. That's fine. Just
17 step outside just briefly, please. Don't leave yet.
18 THE PROSPECTIVE JUROR: Okay.
19 THE COURT: While we're at this, may I
20 see the nice young lady from San Antonio for a minute,
21 please?
22 THE OBSERVER: Me? I'm from Dallas.
23 THE COURT: You are from Dallas?
24 THE OBSERVER: Uh-huh. Okay. I am
25 from Channel 11.

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1 THE COURT: Your name again?
2 THE OBSERVER: Angela Hale.
3 THE COURT: I apologize.
4 THE OBSERVER: That is okay. I also
5 have a sketch artist.
6 THE COURT: Well, that is fine, except

7 we're going to be a little jammed in here.

8 Off the record.

9

10 (Whereupon, a short

11 discussion was held

12 at the side of the

13 bench, between the Court

14 and the attorneys for

15 both sides in the case,

16 off the record,

17 after which time,

18 the proceedings were

19 resumed on the record,

20 as follows:)

21

22 THE COURT: All right. We are back on

23 the record. Mr. Shook.

24 MR. TOBY SHOOK: Judge, going back to

25 Mr. Sloan's answers, we would challenge the juror under

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1 35.16(b)(1). That the juror has conscientious scruples

2 with regards to the infliction of the punishment of death

3 for a crime, in a capital case, and as the State is

4 seeking the death penalty, because he stated on several

5 occasions that his objections, he just personally didn't

6 feel he could do that. And he stated several times that

7 he couldn't answer those questions in the way that it

8 would result in the defendant's death. He had no

9 problem with life in prison, but something he did feel

10 strongly about. The defense asked the questions

11 obviously, he came around and said, "Oh, yes, I can

12 answer those questions."

13 Judge, I think what we have here is

14 what case law refers to again and again as the

15 vacillating juror. And in those situations, it's up to

16 the trial court's discretion, after looking at them and

17 hearing them and their demeanor, make a decision as to

18 whether they could actually answer those questions or

19 whether their objections to the death penalty or their

20 personal feelings would substantially impair their

21 decision making process, because they give opposite

22 answers.

23 Judge, I think after listening to Mr.

24 Sloan, it is clear that, indeed, he could not -- he would

25 not have a problem giving life in any type of case. But

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1 as far as the death penalty is concerned, he could never
2 answer those questions the way -- or would not answer
3 them. Just the way I asked the questions, and we would
4 ask that you excuse the juror for cause under those
5 grounds.

6 THE COURT: Overruled. The Court
7 holds the first juror qualified.

8 MR. TOBY SHOOK: Judge, then the State
9 would, then, exercise their peremptory challenge.

10 THE COURT: Very well. Let's call Mr.
11 Sloan back in.

12
13 (The prospective juror
14 was brought back into
15 the hearing room and the
16 proceedings were resumed
17 as follows:)

18
19 THE COURT: All right. Mr. Sloan, we
20 want to thank you very much for your time and for your
21 attendance. You will not be required to be a juror in
22 this case.

23 Thank you very much for your candid
24 answers and for coming down here on such a rainy day.
25 Thank you very much. We appreciate it.

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1 THE PROSPECTIVE JUROR: Thank you.

2 THE COURT: All right. Number --
3 Juror Number 2.

4 MR. RICHARD MOSTY: Your Honor, could
5 you clarify for me what the time rules are?

6 THE COURT: Well, I think, by
7 agreement, the time rules, were I setting the time rules,
8 the time rules would be 30 minutes a side very strictly.
9 But, if I am in any way being unreasonable about this,
10 and prior to the commencement of these proceedings, both
11 sides had agreed on 45 minutes to a side maximum.

12 However, the Court is happy to go
13 along with that, as long as we're plowing new grounds, so
14 to speak. But let's don't keep going over things over
15 and over again. If once he says he doesn't like the
16 death penalty, we understand that. Or, if he says he
17 does like it -- if you will step outside just one moment,
18 if you could. If he says he does like the death penalty,
19 that is fine. If he says he doesn't like it, that's fine
20 too. But we need to sort of -- we need to understand
21 where we're going here.

22 MR. TOBY SHOOK: Well, Judge, the

23 reason I go on a little more is, jurors lot of time will
24 waffle like that. And it's going to be a decision by the
25 Judge, the Judge makes. And, you know, a lot of times I

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1 I think the jurors really feel -- and I don't think they
2 ever could answer those questions that way. A good
3 attorney like Mr. Mosty can get them to say, "Oh, I will
4 answer those questions." But when it comes down to it --
5 and then that is what becomes so important on your part
6 to make that decision.

7 THE COURT: I understand my function
8 and I understand my part.

9 MR. TOBY SHOOK: The Court of Appeals
10 is going to look to you, and they are going to love your
11 discretion. We just want you to have it.

12 THE COURT: We welcome the Court of
13 Appeals looking to me. And the Court would merely point
14 out, that once the Court has heard it once, I think the
15 Court has heard it enough. One waffle is enough. We
16 understand when they waffle or wiggle or wobble.

17 MR. TOBY SHOOK: Well, but my point is
18 Judge, just because they waffle, they are not qualified
19 jurors. I just want to give you enough information where
20 you can make your decision whether --

21 THE COURT: We appreciate your
22 solicitude, but the Court is well briefed.

23 MR. TOBY SHOOK: All right.

24 THE COURT: Thank you. With that in
25 mind, we will call Juror Number 2.

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1 Mr. Douglass, did you want to say
2 something?

3 MR. PRESTON DOUGLASS: Well, I was
4 testing my voice.

5 THE COURT: All right. Fine. Have a
6 seat right there, please. Raise your right hand please,
7 sir.

8 Do you solemnly swear or affirm that
9 you will true answers make, to all questions propounded
10 to you, concerning your qualifications as a juror, in
11 this case, in this room, or any courtroom, or any you may
12 be sent, so help you God?

13 THE PROSPECTIVE JUROR: I do.

14

15 (Whereupon, the prospective
16 juror was duly sworn by the

17 Court to true answers make
18 to the questions propounded,
19 concerning qualifications, after
20 which time, the proceedings were
21 resumed as follows:)
22
23 THE COURT: Thank you very much. Will
24 you please state your name?
25 THE PROSPECTIVE JUROR: Richard

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1 Rodriguez.
2 THE COURT: Richard Rodriguez, and,
3 that is number 5. All right. Richard M. Rodriguez,
4 thank you very much. Now, go ahead, Mr. Shook.
5 MR. TOBY SHOOK: Thank you, Judge.
6
7 Whereupon,
8
9 RICHARD M. RODRIGUEZ,
10
11 was called as a prospective juror, for the purpose of
12 voir dire, having been first duly sworn by the Court to
13 speak the truth, the whole truth, and nothing but the
14 true, testified in open court, as follows:
15
16 VOIR DIRE EXAMINATION
17
18 BY MR. TOBY SHOOK:
19 Q. Thank you, Judge. Mr. Rodriguez, my
20 name is Toby Shook. I am an Assistant District Attorney
21 in Dallas, Texas; one of the prosecutors on this case.
22 This is Sherri Wallace, another prosecutor. The defense
23 counsel present today is Mr. Richard Mosty and Preston
24 Douglass, who are both Kerrville attorneys sitting here
25 at the end of the table.

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1 First of all, let me ask you: It
2 looks like -- are you from Kerrville originally and then
3 you went to the Army for some 22 years and then you came
4 back; is that correct?
5 A. Right, right.
6 Q. It's that how it worked?
7 A. Yes.
8 Q. Okay. And how long have you been back
9 now?
10 A. Since '93.

11 Q. Okay. Are you familiar with any of
12 the lawyers on the case? More likely the local counsel
13 at all?

14 A. The name Mosty sounds familiar. It's
15 a family name here.

16 Q. Yes. I think Mr. Mosty said all the
17 Mostys are related, and a lot of them here in Kerrville.

18 A. Yeah.

19 Q. But you have never dealt with Mr.
20 Mosty himself?

21 A. No, sir.

22 Q. Okay. And, it looks like you made a
23 career in the Army, for what looks like, what was it, 22
24 years?

25 A. Right. Two years in the Marine Corps,

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1 and 20 in the Army.

2 Q. What were your duties in the Army?

3 A. Personnel sergeant.

4 Q. And now, you work, I believe at a
5 hospital?

6 A. Right, the VA hospital.

7 Q. Okay. What do you do there?

8 A. I'm an administrative clerk there for
9 the nursing service.

10 Q. All right. And you have not been on a
11 jury before; is that right?

12 A. No, sir.

13 Q. Okay. Usually, Mr. Rodriguez, when we
14 talk to jurors, we talk to them in a big panel all at
15 once in most cases. Because it's a capital case in which
16 the State is seeking the death penalty, we talk to each
17 and every juror individually. And we don't mean to put
18 you on trial, or put you up on the witness stand or
19 anything, it's just the best procedure we have for this.
20 What we want are your honest opinions
21 on these issues that we are going to be asking you about.
22 There is no right or wrong answers. It's not a test of
23 good citizenship or anything like that. Obviously, you
24 know that the State is actively seeking the death penalty
25 in this case. That is what we are going to be going for,

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1 and the defense is going to be fighting us all the way.

2 So it's a very contested issue.

3 We want to spend some time then going

4 over your personal beliefs about the death penalty. Tell

5 me what you feel about the death penalty. Do you agree
6 with it as a law?

7 A. Well, I think it all depends on the
8 offense and circumstances behind it and so forth.

9 Q. Okay. What types of crimes come to
10 mind when you think of the death penalty? Or certain
11 crimes should be death-penalty-eligible type crimes?

12 A. Outright murder situation, somebody
13 just killing somebody just for the heck of it or
14 something like that. Like -- and some other instances
15 maybe life in prison, just throw away the key, no parole
16 is good enough. It depends on the circumstances, I
17 think.

18 Q. Have you always felt -- been in favor
19 of the death penalty as a law?

20 A. Yeah. Again, like, you know, it is
21 hard. It depends on the circumstances. A serial killer,
22 I think, something is wrong with that person, you know,
23 mentally, you know. Again, you know, the reason behind
24 it and so forth like that.

25 Q. Okay. What do you think the purpose

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1 of the death penalty is?

2 A. Taking one's life like, you know, the
3 person took that life.

4 Q. Okay. Have there been any cases in
5 the news, any murder cases that you have followed to any
6 great extent that you feel are definitely
7 death-penalty-type cases, anything like that?

8 A. Not really. Just the O.J. trial that
9 was publicized.

10 Q. Oh, yeah, I guess everyone paid
11 attention to the O.J. trial.

12 A. Right.

13 Q. Did you have any particular views on
14 that about the verdict or the way the trial was conducted
15 or anything like that?

16 A. Well, it was a long trial, and I think
17 it was too long. But -- I don't know what I should say
18 about guilty or not guilty. I have no opinion on that.

19 Q. Okay. You never really formed an
20 opinion on that?

21 A. Well, I think it was made too racial
22 and so forth, and the evidence was not really looked at
23 hard. I think the blood evidence was really strong.

24 Q. Okay. In Texas there are only certain
25 types of cases that can get the death penalty. You have

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1 murder cases, intentional killings, that could be murder,
2 where a person could get life and not the death penalty.
3 You have to have an intentional
4 killing, that's just a certain type of crime. There is a
5 list of them and I will briefly go over some of those.
6 You have intentional killings during a
7 felony, where the guy is robbing a 7-Eleven, murders the
8 clerk; or you go into someone's house and murder them;
9 during a rape; during an arson; that type of thing.
10 You brought up serial killing. That
11 is another type of capital offense. If we can prove
12 someone is killing more than one person in the same
13 transaction; or a series of events; that could be a death
14 penalty case.
15 A. Okay.
16 Q. Killing of a police officer, or a
17 fireman, or a prison guard while they are on duty, or
18 during a prison escape, for instance, could be a
19 death-penalty-type case.
20 Also Judge Tolle has read to you the
21 indictment in this case. A murder of a child under the
22 age of six in Texas is the death penalty. Do you agree
23 with those types of crimes could be eligible, depending
24 on the facts of the case, the death penalty-type crimes?
25 A. Yes. Yes, sir.

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1 Q. The particular indictment in this
2 case, the murder of a child under the age of six; do you
3 feel that is the type of crime that should be eligible
4 for the death penalty?
5 A. Yes, sir.
6 Q. Okay. The way the procedure works,
7 the jury is impaneled, we divide the trial into two
8 parts: There's the guilt/innocence stage and the
9 punishment phase. If the State proves it's case beyond a
10 reasonable doubt, in the guilt/innocence stage, the jury
11 returns a verdict of guilty of capital murder. At that
12 point, there is only two alternatives left; life or
13 death. And you can hear additional evidence, you may
14 not.
15 The additional evidence, after its all
16 in, you will be given these questions, which are behind
17 me. And we will go over those in more detail in a
18 moment.
19 Basically, the State has to prove that
20 first issue, would the defendant be -- is there a

21 probability they would be a continuing threat to society.
22 If you answered yes to that question, we would move to
23 this second one. Which is the mitigation issue.
24 Basically, the jurors review all of the evidence, and if
25 they think there is evidence that the defendant's life

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1 should be spared, and get a life sentence, they could
2 answer it that way.
3 But there's only two alternatives once
4 the defendant has been found guilty of capital murder,
5 life or death. Is that clear to you?
6 A. Yes, sir.
7 Q. The Judge sentences the defendant
8 based on how the jury answered those questions. A "yes"
9 and a "no" will equal death, a "yes" and a "yes," or a
10 "no" to that first question would equal life in prison.
11 In Texas, the method of injection is
12 by -- the method of execution is by lethal injection.
13 You have probably read or seen that on TV. And it's a
14 very real matter, I want to tell you. You know, there
15 has been over 100 executions in the State of Texas.
16 Sometimes we read and hear about them.
17 What we need to know, Mr. Rodriguez,
18 though, is, you know, you talk philosophically that there
19 are some cases and some facts of each case that you think
20 people are eligible for the death penalty.
21 We need to know if you could
22 personally sit on a jury and listen to the evidence, and
23 if the State proves its case and proves these special
24 issues in such a way that you could take pen in hand and
25 write those answers knowing that the way you write them

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1 could result in the defendant's death. Could you do
2 that?
3 A. Yes, sir, if it was proven to me.
4 Yes, sir.
5 Q. Okay. I think you had answered this
6 question on the questionnaire, it is -- obviously the
7 defendant is a woman. Usually when we think of hardened
8 criminals, or criminals eligible for the death penalty,
9 we always think of men, I mean, that is just natural.
10 Some people come in and they have told us that they
11 couldn't sit on a death penalty case involving the taking
12 of a woman's life. I believe in your questionnaire, you
13 don't have any conscientious scruples against that, do
14 you?

15 A. No, sir.
16 Q. It doesn't matter one way or the other
17 if it's a man or a woman in your eyes; is that right?
18 A. No, sir.
19 Q. Okay. Let me go -- we had a question
20 on our questionnaire that asks if you have ever felt
21 differently about the death penalty than you do now. You
22 put yes, do you remember that?
23 A. Uh-huh. (Witness nodding head
24 affirmatively.) Yes, sir.
25 Q. Tell us a little bit about that.

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1 A. Well, again like I said, going back to
2 what I said about throwing away the key and leaving them
3 there forever.
4 Q. Uh-huh. (Witness Nodding head
5 affirmatively.)
6 A. Because sometimes a person might
7 suffer there, knowing that they killed somebody, and
8 keeping that feeling inside, than just eliminating
9 somebody just -- an execution.
10 Q. Okay. Your answer is quite lengthy,
11 and I want to be fair to you. Let me let you read this
12 to yourself. Take a look at the bottom of that page
13 there. Page 3.
14 A. I said that the death penalty does not
15 really bring out the -- the victim back. And life in
16 prison without parole can be more punishment than killing
17 somebody or the offender.
18 Q. Okay. And then, look at the last part
19 there.
20 A. But if a person kills more than one or
21 two or three or four, and how they were killed -- well,
22 also, if how they were killed maybe they might deserve a
23 quick death.
24 Q. Okay. That is the part -- you
25 scratched something out there, so I wasn't real clear on

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1 that. What did you mean by the last part of that
2 statement?
3 A. Well, it depends on the offense, on
4 how that person was killed, you know, with no feelings or
5 the situation on the offense.
6 Q. Okay. There's different ways the
7 State has of proving its case. I'm probably sure you
8 have heard the term circumstantial evidence, haven't you?

9 A. Uh-huh. (Witness nodding head
10 affirmatively.)
11 Q. We hear it on TV and movies a lot.
12 A. Uh-huh. (Witness nodding head
13 affirmatively.)
14 Q. What lawyers call a lot is direct
15 evidence or indirect evidence.
16 A. Okay.
17 Q. Direct evidence is someone -- an
18 eyewitness to a crime. Okay? If someone -- if you left
19 the courthouse today and someone came up and robbed you,
20 and they were caught later, and you were able to identify
21 them, your testimony would be direct testimony, direct
22 evidence. Okay?
23 Indirect evidence is any other
24 evidence that links the defendant to a crime. It could
25 be fingerprints, physical evidence; you talked about

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1 blood evidence in the O.J. case, DNA evidence.
2 It could be items or things that link
3 the defendant before, during, or after the crime. It
4 could be statements by the defendant that link them
5 before, during, or after the crime. Things that are
6 found at the crime scene. Things of that nature. That
7 is all indirect evidence, and that is also called
8 circumstantial evidence.
9 Any other evidence, other than the
10 direct eyewitness to a crime, is circumstantial evidence.
11 Do you understand that?
12 A. Yes, sir.
13 Q. Okay. Now many times, especially in a
14 murder case, we have no, obviously, eyewitness to a
15 crime. There's the perpetrator and the victim.
16 Obviously, the perpetrator has not left a live person to
17 testify.
18 So we have to prove our case using
19 indirect evidence, or i.e. circumstantial evidence. Do
20 you have any problem with circumstantial evidence; the
21 State proving its case?
22 A. No, sir.
23 Q. Do you feel that if you get enough of
24 it, you can find the defendant guilty beyond a reasonable
25 doubt using just circumstantial evidence?

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1 A. Yes, sir.
2 Q. Okay. And do you feel you could do it

3 in a death penalty case?

4 A. Yes, sir.

5 Q. Okay. Another factor I want to go --

6 or another area I want to go over is motive. We always
7 hear about motive. I know I did watching Perry Mason and
8 crime shows. You got to have a motive; or what's the
9 motive in this case. Motive being the reason for the
10 killing. Why did it happen? In Texas the State is not
11 required to prove motive. The reason it happened. Okay?
12 It's not a requirement at all.

13 And in the first part of the case, we

14 just have to prove the indictment. That it is an
15 intentional killing; knowingly and intentionally killing.

16 And did the defendant commit it the way we say it was
17 committed. Okay? That is what we have to prove. We
18 don't have to prove why it happened or the reason behind
19 it happening.

20 The motive might be clear once all the

21 evidence is in, you know, it might be clear as a bell.

22 Or, it might be very unclear. There could be three or
23 four or five motives. Everyone could have their opinion
24 as to what the motive is. Maybe the defendant only knows
25 the motive, and it's not obvious to anyone else. So, it

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1 could be very well that you hear a case where it's proven
2 to you, but you never know the reason for it or the
3 motive behind it.

4 Does that bother you in any way?

5 A. No, sir.

6 Q. Okay. Would you require the State to
7 prove motive in any way?

8 A. No, it's just if the evidence is there
9 and so forth, then whatever you have, you know, I will
10 listen to what you have.

11 Q. Do you understand the difficulty could
12 be, obviously, and even everyone could have their own
13 opinion as to what the true motive was to a crime?

14 A. Well, it depends again on the
15 evidence.

16 Q. Right. It may be one case where it's
17 clear as a bell, and may not be. But you would not let
18 that stand in your way as far as finding someone guilty
19 of capital murder; is that right?

20 A. Right.

21 Q. What about as far as these punishment
22 issues: Would you be able to answer those questions in a
23 way, even if you never knew fully, clearly what the
24 motive was to a crime?

25 A. Yeah, I would be able to answer.

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1 Q. Okay. That is fair enough. Let's
2 talk about these punishment questions. You don't get to
3 these unless the defendant has been found guilty beyond a
4 reasonable doubt. Okay?
5 Once that happens we go into the
6 second phase of the trial, where you may hear additional
7 evidence or you may not. It could be a situation where
8 both sides rest, or you might hear days and days of
9 punishment. It could possibly be anything about the
10 defendant's background or anything like that. Good
11 things, bad things, all goes into consideration.
12 The State has to prove this first
13 special issue. We have to prove that beyond a reasonable
14 doubt. That question reads, and if you will just go
15 along with me: "Do you find from the evidence beyond a
16 reasonable doubt that there's a probability the defendant
17 would commit criminal acts of violence that would
18 constitute a continuing threat to society?"
19 Do you see where that question is
20 asking you to make a prediction of how the defendant is
21 going to behave in the future?
22 Do you feel you could answer a
23 question like that?
24 A. Yes, sir.
25 Q. What type of evidence or what type of

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1 background information, what types of things would you
2 want to know before you answered a question like that?
3 A. Well, the -- to answer that question,
4 probably, the way the person -- how she lived, and how
5 her life and environment and all this, that led to this
6 offense.
7 Q. Okay. Would there -- if there was any
8 criminal background, would that be important to you?
9 A. Yes.
10 Q. Okay. Is that what you meant by how
11 she lived and things like that?
12 A. Well, it says a continuing threat to
13 society.
14 Q. Right. Okay. First of all, let me
15 tell you the definitions of the words -- that you will be
16 given no definitions for this particular question. On a
17 lot of the other issues you get plenty of legal
18 definitions. But the legislature has left it up to each

19 and every -- the jurors, what these definitions may be.
20 Probability. We have to prove that
21 there is a probability that the defendant would commit
22 criminal acts of violence. What does probability mean to
23 you?
24 A. That it's possible that she could
25 commit another violent act in the future.

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1 Q. Are you comfortable with that type of
2 language? What the State has to prove?
3 A. Yes.
4 Q. Okay. Some people come in and tell
5 us, I want you to prove to an absolute certainty that
6 that is going to happen. Obviously, that is not what the
7 question says. Is that okay with you?
8 A. Yes.
9 Q. All right. We have to prove that the
10 defendant would commit criminal acts of violence. When
11 you see the words, criminal acts of violence, what do
12 those words mean to you?
13 A. That the person would go out and
14 commit a violent act again in the future. That it is
15 possible that they will kill somebody else later on.
16 Q. Okay. Kill someone else, another
17 murder, that would be --
18 A. Another murder or another offense or
19 whatever.
20 Q. Okay. Would it solely be a murder in
21 your case, or are there other types of criminal acts of
22 violence that you are able to think of?
23 A. Well, yes. There are other types of
24 violence, you know, rape, burglary or anything like that.
25 Q. Okay. Any major felony offense,

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1 things like that?
2 A. Right. Right.
3 Q. Okay. We had a question regarding
4 this. You know, we've talked about you might hear a lot
5 of background information, good or bad -- and we can't go
6 over the facts of the case, obviously, but we're just
7 talking about general items here. But there could be a
8 situation where the defendant -- a defendant could go out
9 and commit capital murder. Okay?
10 The State puts them on trial and
11 proves that, but as far as their other lives are
12 concerned, before the capital murder ever occurred, they

13 were a saint. They never did anything wrong in their
14 life.

15 So you could be faced with a situation
16 of no criminal history, anything like that. You just
17 have to look at that question number 1, based on the
18 facts of the offense alone.

19 Do you feel you could answer that
20 question or the State could prove that question to you
21 beyond a reasonable doubt just based on the facts of the
22 offense alone? Would you need additional background
23 evidence?

24 A. Yeah. I think I would be able to
25 answer that question.

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1 Q. Just on the facts of the offense
2 alone?

3 A. Yes.

4 Q. Okay. And what is important to you on
5 the facts of the offense alone. Do you think that tells
6 you a lot about the person, the way the crime occurred,
7 or what is it about that?

8 A. I would have to hear what you have,
9 you know, the offenses and what you have.

10 Q. Okay. Again, I know it's kind of hard
11 since we can't preview the case. What do you think you
12 are going to do on this, Mr. Rodriguez, and that kind of
13 thing. But would the facts of the offense alone be
14 pretty important to you in making your decision whether
15 they would be a future danger?

16 A. Yes.

17 Q. Okay. Just sitting there, is that --
18 would that be the most important factor or is their
19 background more important or what is your thought
20 about --

21

22 MR. RICHARD MOSTY: Your Honor, I
23 think that is asking for a commitment from the juror
24 beyond what is allowed.

25 THE COURT: Well, let's rephrase the

Sandra M. Halsey, CSR, Official Court Reporter 205

1 question. Listen to it very carefully.

2

3 BY MR. TOBY SHOOK:

4 Q. Just looking at all the things you
5 could possibly hear: The facts of the crime itself,
6 possible background, good or bad things like that; what

7 do you feel is more important to you as far as that
8 question goes?

9 A. Well, I think the facts of the case is
10 more important.

11 Q. Okay. Okay. Do you understand that
12 we have to prove that beyond a reasonable doubt?

13 A. Yes, sir.

14 Q. It starts out with a no answer?

15 A. Yes.

16 Q. If we do that we are entitled to a
17 yes. Then, if we did that, you go into the second
18 question. That is the long one. It gets kind of
19 confusing, but let me read that.

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

Sandra M. Halsey, CSR, Official Court Reporter 206

1 sentence be imposed?"

2 A. Okay.

3 Q. That question gets kind of lengthy;
4 the legislature wrote that thing out. That is kind of a
5 safety net, though. You don't get to this question
6 unless you found the defendant guilty of capital murder,
7 unless you found they are a continuing threat to society.
8 Then you review all the evidence, the crime itself, and
9 any background you may have heard, and decide: Is there
10 something there that I think, rather than a death
11 sentence should be imposed, a life sentence should be
12 imposed. Okay?

13 And then you could answer it that way.

14 Now this question: Neither side has
15 the burden of proof. Okay? It is just out there. And,
16 as far as mitigation goes, you don't have to agree on
17 what mitigation is. You are not going to be given a
18 definition of what mitigation is, and you don't have to
19 agree with any of the other jurors. You just have to be
20 able to keep your mind open to it.

21 Do you think this is a fair question
22 to have in a death penalty case?

23 A. Yes, sir.

24 Q. Okay. When we talk about mitigating
25 evidence, evidence that you would -- you would think that

Sandra M. Halsey, CSR, Official Court Reporter 207

1 would have sufficient mitigating circumstances, that they
2 get a life sentence rather than a death sentence, does
3 anything come to mind at all? What you might consider as
4 possible mitigating evidence?

5 A. Well, again, I have to listen to the
6 case and the offense.

7 Q. And that is the normal answer we get
8 because most people don't sit around thinking about these
9 things, luckily. Like I said, mitigating is just going
10 to be whatever you want it to be. It's going to be up to
11 you. You don't have to agree with any of these things.
12 Let me run a few things by you, and see how you feel
13 about them.

14 Sometimes we have had cases where
15 there is history of -- well, the defendant could be very
16 young. I am not talking about a 12-year-old or anything
17 that, but could be a very young person. Do you think
18 youth is mitigating in any way?

19 A. No.

20 Q. Okay. Sometimes you have cases where
21 a person commits a crime that are under the influence of
22 drugs or alcohol. That is no legal defense in Texas, but
23 it can be used in mitigating evidence and punishment. Is
24 that mitigating in any way?

25 A. No.

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1 Q. You might hear evidence of a person
2 who has been sexually abused or physically abused in
3 their past when they were growing up. Would that be
4 mitigating in any way?

5

6 MR. RICHARD MOSTY: Your Honor, again,
7 I think that is a little over broad. That is asking for
8 a commitment there. I think the proper question is,
9 "Could you consider that type of evidence," or talk about
10 it, is what way he might give it or how important it is.
11 But he says, "Is it mitigating?" I think is asking for a
12 commitment.

13 THE COURT: All right. Well, let's
14 rephrase the question to: "Could you do it?"

15

16 MR. TOBY SHOOK:

17 Q. Is that the type of evidence you think
18 could be mitigating? I'm not asking you if you think it
19 is, because you haven't heard any of the facts. I'm
20 talking real general.

21 A. Right. I don't know nothing about --

22 Q. But you have heard those situations,

23 I'm sure? The defendant was -- maybe grew up in a very
24 abusive environment, those types of things. Might cause
25 them to act a certain way, people might make that

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1 argument. Is that the type of evidence you might
2 consider to be mitigating?

3 A. Well, it depends again, on the offense
4 and so forth.

5 Q. Okay. The bottom line is, is if you
6 can keep your mind open to that type evidence, and if
7 something comes up that is mitigating where you think a
8 life sentence is more deserving, you could do that?

9 A. Right.

10 Q. Okay. Let me go over a couple of
11 other things on your questionnaire.

12 A. Okay.

13 Q. We had put down that: "Have you known
14 anyone that has been to jail or prison?" You had put
15 down a person for drugs and put some prison time.

16 A. Right.

17 Q. Who was that?

18 A. My little nephew.

19 Q. How long ago was that?

20 A. Well, he is still in the system.

21 Q. He is still in the system?

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

24 Q. Do you know -- was it a drug case of
25 some sort?

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1 A. Yes, it was a drug case.

2 Q. Do you know anything about the facts
3 of the case or were you away?

4 A. No. I was away at the time.

5 Q. Do you know how long a sentence he was
6 given?

7 A. I think it was -- I really can't say.

8 Q. You are not really that familiar with
9 the fact then, are you?

10 A. No. He just messed up.

11 Q. Okay. Do you think he was treated
12 fairly by the justice system?

13 A. I think so. Like I say, I was away,
14 I'm not sure.

15 Q. All right. Sometimes you will hear
16 from psychiatric testimony from one side or the other.

17 You might hear from a psychologist or a psychiatrist that
18 can give their opinions on either mitigation or whether a
19 person will be a continuing danger.
20 How do you feel about that type of
21 expert testimony coming from psychiatrists? Do you put a
22 lot of stock in that type of testimony? Would you keep
23 your mind open to it? Or is it something you just would
24 not listen to?
25 A. No, I keep my mind open, you know,

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1 they specialize in that. That is their field.
2 Q. Okay. So your mind would be open to
3 it?

4 A. Yes.

5 Q. Okay.

6

7 MR. TOBY SHOOK: If I could have just
8 one moment, Judge?

9 THE COURT: You may.

10

11 BY MR. TOBY SHOOK:

12 Q. I am almost finished, Mr. Rodriguez,
13 and I am sure you are glad to hear that. You have never
14 sat on a jury before; is that right?

15 A. No, sir.

16 Q. And I believe the only -- I asked you
17 if you have followed any cases in the news and you really
18 hadn't, other than the O.J. Simpson case. But you have
19 no scruples against sitting on a case and listening to
20 the evidence, and if we prove our case, you could answer
21 these questions that result in a person's death; is that
22 right?

23 A. Right, sir.

24 Q. Okay. It just depends on what the
25 facts were?

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1 A. Right.

2 Q. Okay. Have you heard -- you have
3 heard some facts of this case on the TV, I believe you
4 put down; is that right?

5 A. Right, sir.

6 Q. Did you follow the case closely?

7 A. No, just that they moved the trial to
8 Kerrville.

9 Q. Okay. Did you get any of the facts or
10 background of the crime from the TV?

11 A. No, sir.
12 Q. So you really don't know what this is
13 all about at all?
14 A. No. Just what, you know, it's a
15 murder trial, that's all.
16 Q. Okay. As far as the news goes, you
17 can disregard that and just listen to the evidence as it
18 comes in the courtroom?
19 A. Right.
20 Q. Have you ever followed any cases in a
21 trial that involved women defendants? I know we always
22 see one with men.
23 A. No.
24 Q. It's unusual to have a woman on trial.
25 You never have done that?

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1 A. No, sir.
2 Q. You remember a couple of years ago, it
3 was in the news a lot, the Susan Smith case?
4 A. I don't recognize the name.
5 Q. Okay. You probably didn't follow it
6 much then?
7 A. No.
8 Q. The case involving a woman tried for
9 the death penalty in South Carolina? Murder of her
10 children? You don't remember that one?
11 A. Oh, yes. It's the one about the car
12 found in the lake or something like that.
13 Q. Yes, that is the one. Did you follow
14 that case at all?
15 A. Well, for -- you know, of course, it
16 was on TV and so forth.
17 Q. Did you draw any opinions, conclusions
18 about that trial, its outcome or anything like that?
19 A. Well, I know they found her guilty.
20 Q. Uh-huh. Were you aware of what the
21 punishment was?
22 A. I know she went to prison. I'm not
23 sure.
24 Q. But you didn't follow the case that
25 closely?

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1 A. No.
2 Q. Okay. All right. Mr. Rodriguez, do
3 you have any questions about anything I have gone over?
4 A. No, sir.

5 MR. TOBY SHOOK: Okay. That's all the
6 questions I have.

7

8 THE COURT: Thank you, Mr. Shook. Mr.
9 Mosty?

10

11

12 VOIR DIRE EXAMINATION

13

14 BY MR. RICHARD MOSTY:

15 Mr. Rodriguez, I am Richard Mosty.

16 This is Preston Douglass, my partner seated behind me,
17 and Darlie Routier, our client, seated back there. Did
18 you graduate from Tivy?

19 A. Right, sir.

20 Q. What year?

21 A. '67.

22 Q. '67. All right. Well, you were a
23 couple of years ahead of me. I was a '69 graduate. You
24 didn't play golf in high school, did you? I noticed that
25 is one of your things you do now.

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1 A. No, I played basketball, mostly.

2 Q. With Willie Bratcher, that group?

3 A. Yes, sir.

4 Q. I was not much of a basketball star.

5 In spite of my height, I was not very good. Let's talk
6 about what we were talking about just at the end there
7 about what you know about, what you have heard about the
8 case.

9 What papers do you ordinarily and
10 regularly read?

11 A. Right now, just the Kerrville local
12 paper.

13 Q. All right. You don't read the San
14 Antonio paper on a consistent basis?

15 A. No.

16 Q. Now what do you recall about hearing
17 about the case from the Kerrville paper or the news
18 media, about this case?

19 A. Like I said, that it was moved to
20 Kerrville for a murder trial, and it involved the murder
21 of the two children.

22 Q. All right. And would you think that
23 you heard about that or read about that just shortly
24 before you were called up for jury duty last week?

25 A. Well, I didn't know that it was going

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1 to be -- I know I got called up for jury duty. And then
2 Sunday -- Sunday night the news they said they were going
3 to select jurors for this trial on Monday morning. Well,
4 I was scheduled to come in on Monday morning.

5 Q. So when you got your jury summons, you
6 didn't have any idea what kind of case it was?

7 A. That's correct.

8 Q. And from what you have heard, have you
9 formed any opinions whatsoever about this case?

10 A. I don't think so.

11 Q. The reason I say that is, that -- and
12 maybe this is a reflection of our perspectives. Mr.
13 Shook spent a great deal of time talking about the death
14 penalty and punishment, and, in fact, that is just the
15 reverse of how I want to talk to you about it. Because I
16 want to talk to you about the first part of trial. And
17 then, in order of proceedings, the first part of the
18 trial is, is this defendant guilty?

19 Does the State of Texas present enough
20 evidence, enough believable, credible, solid evidence
21 that removes any reasonable doubt. And so I want -- that
22 is what I want to focus on.

23 And so, that is why I begin with the
24 question about any opinions about the case. That as we
25 sit here right now, you are instructed and have been

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1 instructed by Judge Tolle to presume Mrs. Routier
2 innocent. Do you have any problem whatsoever with that?

3 A. No, sir.

4 Q. Is there anything in your background
5 or what you know about the case that would prohibit you
6 from doing that?

7 A. No, sir.

8 Q. Judge Tolle gave, I thought, some
9 really fine explanations last week of -- frame that part,
10 will you, please -- that in Dallas County, there are
11 25,000 people who are indicted every year, 125, I think
12 he said per day or session, and many of whom never, ever
13 know they are under suspicion or investigation. So it
14 sort of seems only fair to me that that Grand Jury
15 indictment means nothing. It just means absolutely
16 nothing; as Judge Tolle described it as neutral. Does
17 that seem all right with you? Is that fair?

18 A. Yes.

19 Q. Just because a person has been
20 indicted and brought up here, that doesn't in any way

21 remove the presumption of innocence that my client
22 enjoys. Could you stick with that?
23 A. Yes, I believe that they have to prove
24 somebody guilty.
25

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1 THE COURT: All right.
2 THE COURT REPORTER: Excuse me, Judge,
3 I need a short break.
4
5 (Whereupon, a short
6 recess was taken,
7 After which time,
8 The proceedings were
9 Had as follows:)
10
11 THE COURT: All right. Let's continue
12 on as we say in Texas.
13
14 BY MR. RICHARD MOSTY:
15 Q. Now, when you and Mr. Shook were
16 talking about mitigating circumstances a little bit, you
17 said several times, and in the first part of your voir
18 dire examination, you talked several times about it
19 depends upon the circumstances of the case. It depends
20 upon the circumstances in a proper case. I could do
21 something, but it depends upon the facts.
22 Well, in my judgment that is a way of
23 saying that you presume this lady to be innocent. That
24 you will require the State to prove beyond a reasonable
25 doubt that she is guilty. And that you won't draw any

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1 inferences against her; that it depends upon the facts.
2 A. That's correct.
3 Q. Okay. And, when you talk about it
4 depending upon the facts, do you understand that that is
5 the State of Texas' responsibility to bring you those
6 facts, to bring you those facts to remove any reasonable
7 doubt?
8 A. Right.
9 Q. And the defendant can do nothing. Can
10 never ask a question, if we choose not to do so. Knowing
11 the lawyers in this case, it's unlikely, that we will sit
12 totally mum, but we might. And Judge Tolle, knowing him,
13 will be thankful, but probably it won't work. And you
14 can stick with those presumptions, and that burden of

15 proof and require the State to prove its case. That
16 won't be a problem for you?

17 A. No, no problem.

18 Q. And if, in fact, the State doesn't

19 prove its case, would you have any problem, in all good

20 faith and honesty, just saying not guilty? You did not

21 prove this lady guilty?

22 A. Right, after I listen to the facts.

23 Q. Right. Let me talk -- I have a --

24

25 MR. RICHARD MOSTY: Is this y'all's

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1 board?

2 MR. TOBY SHOOK: It belongs to Dallas

3 County.

4

5 BY MR. RICHARD MOSTY:

6 Q. I want to talk to you just briefly

7 about circumstantial and direct evidence. Mr. Shook

8 talked about that, and I like to envision this circle as

9 being reasonable doubt. That that circle is reasonable

10 doubt. And the State's obligation that we just talked

11 about was to remove reasonable doubt.

12 Their obligation is to take that

13 circle and blacken it entirely. Take away all reasonable

14 doubt. And as Mr. Shook said one of the ways they do

15 that is with direct evidence. And if this pad is direct

16 evidence, and it goes and it covers that circle,

17 reasonable doubt is gone. Directly because of direct,

18 credible evidence.

19 Now, you can get into a debate about

20 did the eyewitness really see what they said they saw.

21 And maybe they present some direct evidence, but it

22 doesn't -- I mean, the credible part of that evidence

23 does not remove reasonable doubt. You still got

24 reasonable doubt and the jury has to find the defendant

25 not guilty.

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1 Now, circumstantial evidence is

2 different. What circumstantial evidence does is an

3 attempt by the State to exclude reasonable doubt based

4 upon a whole bunch of, perhaps, but maybe not many,

5 circumstances. That when you take all of those

6 circumstances, that those circumstances completely

7 blacken out this circle. They exclude any other

8 reasonable hypothesis. Other than the fact that this

9 defendant, in whatever case you are on trial on, is
10 absolutely guilty.

11

12 MR. TOBY SHOOK: Judge, we will object
13 to the definition of -- with any other reasonable
14 hypothesis, I don't believe it's the law.

15 THE COURT: All right. I'll sustain
16 the objection.

17

18 BY MR. RICHARD MOSTY:

19 Q. The evidence must exclude all
20 reasonable doubt. That whatever evidence they prove must
21 exclude all other reasonable doubt.

22 Does that -- can you appreciate that
23 distinction between circumstantial and direct evidence,
24 and how it may play in how you evaluate a case?

25 A. Well --

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1 Q. Or is my drawing more confusing than
2 helpful?

3 A. Well, I understand the direct, but the
4 other is -- to me it all depends on the evidence; on what
5 they have to make a decision.

6 Q. And the important thing that I am
7 trying to draw here is that when they present -- when the
8 State presents these bits and pieces of evidence, the
9 burden of proof is still the same. The State must
10 exclude and remove all reasonable doubt; they must
11 blacken that circle with a whole set of circumstances
12 that blackens the circle. And, it does depend on the
13 circumstances of a case.

14 Mr. Shook made the comment that the
15 State is not required to prove motive, and that is a true
16 statement. However, a jury may also conclude that lack
17 of motive might create some doubt; might create a
18 reasonable doubt. Just the simple fact that the lack of
19 motive here just pokes a hole and it creates light in
20 that circle, and creates reasonable doubt by itself. Can
21 you appreciate that there might be some circumstances
22 like that?

23 A. Yes.

24 Q. So, motive, although the State is not
25 required to prove it, it might be a very important issue

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1 for a jury.

2 A. Yes.

3 Q. That is what -- a lot of what a jury
4 does is -- maybe all of what a jury does, is weigh the
5 evidence and give a certain amount of weight to it; or
6 determine whether or not the evidence is credible. Is it
7 believable, how it's presented? Does it make common
8 sense? Does it logically fit together like the links in
9 a chain that would logically fit and tie together and
10 form a circle. Or are there parts of it that just don't
11 fit?
12 And a jury may take those parts that
13 don't fit, and give them no weight at all. Say they are
14 not material; they are not credible; they are not
15 logical. And it's a fact and I accept it, but it doesn't
16 prove anything with respect to whether or not this
17 defendant is on trial; is guilty beyond a reasonable
18 doubt.
19 Do you think you would have any
20 problem as a juror weighing the evidence and giving
21 whatever weight, if any, you thought it deserved working
22 with your other jurors to go through that process?
23 A. No, I don't think I would have a
24 problem with that.
25 Q. What was your assignment in the

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1 military? What primarily did you do?
2 A. I was a supervisor of the personnel
3 center.
4 Q. Is that during your entire -- was it
5 22 years?
6 A. Well, two years in the Marine Corps,
7 and -- yes, it was all personnel. It was all personnel.
8 Q. So you dealt with human beings and
9 human relations on a regular basis?
10 A. Yes.
11 Q. What rank did you achieve?
12 A. E-7, Sergeant First-class.
13 Q. One of the things that sometimes, or
14 frequently happens is, in a capital murder case you have
15 a lot of very graphic photos of terrible crimes. And let
16 me first tell you that there is no question that a
17 terrible crime was committed.
18 You will hear evidence of a terrible
19 crime. That is not going to be what this case is about.
20 The case is going to be about whether or not the State
21 can prove beyond a reasonable doubt who did it.
22 So, I just want to caution you that
23 you will, in all likelihood, see some gruesome crimes,
24 gruesome photos. And, my question is: Do you think

25 that -- and I think I know the answer to this, but I am

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1 going to ask it. Do you think that just seeing those
2 photographs would cause you so much anguish or rage that
3 you would necessarily want to find someone guilty?

4 A. No.

5 Q. One -- in that sense, you are not

6 here -- the jury is not here to solve the case. That is

7 not the jury's job. That is the State of Texas' job; is

8 to solve the case and to bring the testimony to a jury.

9 And a jury may walk out and say this is a terrible case.

10 And perhaps the O.J. Simpson jury did

11 this, I don't know, walked out and said, this is terrible

12 case and I wish someone would solve it, but the State in

13 this instance has not proved this defendant guilty.

14 So, when I talk about the photographs

15 and some of the evidence, don't feel compelled that you

16 have got to solve the case or that you have got to figure

17 out who did the case; who committed the crime. Because

18 that is not your job. Your job is to be a fact-finder,

19 and to weigh the evidence and determine whether or not

20 it's credible or believable or even material. Is there

21 anything about that process that you don't think that you

22 could work through?

23 A. No.

24 Q. Do you feel like that you could sit

25 with your fellow jurors and weigh the evidence together

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1 and come to a verdict?

2 A. Yes, sir.

3 Q. Now having spent most of my time

4 talking about the first part of the trial, I always hate

5 to even have to discuss punishment. Because I don't ever

6 want a prospective juror to think that the fact that I am

7 going to discuss the punishment with you, or the range of

8 punishment, could in any manner, make you take away the

9 presumption of innocence.

10 But the law requires -- this is the

11 only opportunity I am going to get to talk to you -- the

12 law requires that I talk to you about punishment. So I'm

13 going to have to.

14 In a capital case there are only two

15 possible punishments, if a jury finds a defendant guilty.

16 That is either life or the death penalty. And the

17 procedure that the legislature has set up is a special

18 issue type procedure. And that is, that the jury is

19 asked to answer these two special issues over here.
20 The process is that you hear the
21 evidence at the first part of the trial. The Judge gives
22 you a charge, a written charge of the law. The lawyers
23 argue the case. And the jury goes out and determines
24 whether or not the State has proved beyond a reasonable
25 doubt that the defendant is guilty. If the jury finds

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1 the defendant not guilty, then the jury is discharged and
2 everybody goes home.
3 If the State -- if the State has met
4 its burden of proof and the jury finds the defendant
5 guilty, then, in essence, there is a second trial. It
6 starts immediately. And, you may, or you may not, be
7 presented any additional evidence that bears particularly
8 to the issue of punishment. And the Court reads you
9 another charge on punishment, the lawyers make another
10 argument that focuses on punishment, and jury goes out
11 and makes its determination; again based on the evidence.
12 The first question is: "Do you find
13 beyond a reasonable doubt that there is probability that
14 the defendant would commit criminal acts of violence that
15 would constitute a continuing threat to society?" And I
16 want to clarify one thing with you. I think, by and
17 large, you said with respect to these questions as well,
18 it would depend on the evidence.
19 A. Right.
20 Q. And I don't want to ask you for any
21 kind of commitment, but there might be a lot of things
22 that you would take into consideration. But the one
23 thing I did want to clarify with you was, you used the
24 word possibility.
25 I believe when Mr. Shook asked you

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1 about that and you said, "yes," there is a possibility
2 that a defendant would commit criminal acts. I want to
3 focus with you for a moment on the word probability.
4 That is what the State is required to
5 prove. Not a mere possibility, but a probability that a
6 defendant would commit criminal acts of violence that
7 would constitute a continuing threat. And probability
8 won't be defined for you. But, in your mind is there a
9 distinction between probability and possibility?
10 A. What was the question again?
11 Q. All right. Is there a distinction --
12 and let's pull this down -- that the defendant -- we're

13 talking about in a hypothetical way, that the defendant
14 probably would commit a future act of violence, or that a
15 defendant possibly would commit a future act of violence.
16 Are those different statements in your mind? Or are they
17 the same statement?

18 A. The defendant will probably commit an
19 offense.

20 Q. Is that a stronger statement than if a
21 defendant will possibly commit?

22 A. Yes.

23 Q. Okay. Now, I would say that in my
24 mind probability -- and you are not going to be given a
25 legal definition that you are bound by, so you have got

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1 to use your common sense. But in my mind I would say
2 that probability means that it is more likely than not
3 that something is going to happen.

4 A. Right.

5 Q. Possibility is, well, maybe it's more
6 likely; maybe it's less likely.

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

9 Q. It's possible. And we all say
10 anything is possible. But that a probability is more
11 likely than not.

12 A. Right.

13 Q. So with that in mind, and I believe
14 you used maybe the word possibility in the second phase,
15 but let's stay with the first one. Can you -- now that
16 we have sort of clarified that -- can you enforce that as
17 saying the statement, proved beyond a reasonable doubt
18 there is a probability that a defendant would commit
19 future acts of violence?

20 A. Yes.

21 Q. That it is more likely than not?

22 A. Right.

23 Q. And the State has to prove it?

24 A. Yes.

25 Q. The second question is often referred

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1 to as the mitigation question. And that is, this is a
2 question that is really up to the jury's discretion. And
3 it's something that is open for a jury to take into
4 consideration, what the charge requires you to do, is to
5 take into consideration all of the evidence before you.
6 And then, in your discretion, to give it whatever amount

7 of importance, or weight or credibility, or emphasis that
8 the jury collectively desires.
9 And it tells you to take into
10 consideration all these things and then come to a really
11 collective decision. Are there sufficient mitigating
12 circumstances to spare that person's life? That is
13 certainly a weighty decision. And I suspect that a jury
14 could get back there and there would be something that
15 was very important to me that I might say, "You know,
16 this is a really young defendant. And I think that that
17 is a mitigating circumstance." And you might say, "Well,
18 Richard, I don't know about that. But, you know, that
19 person's background is really important to me. And in my
20 mind, that is a mitigating circumstance."
21 But we have agreed on one thing; and
22 that is that there are mitigating circumstances. We
23 don't necessarily agree on what they are, and under the
24 law you are not required to. Now, a jury does not have
25 to agree that that circumstance, is a mitigating

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1 circumstance. A jury just simply needs to agree that,
2 taking all of us, all of the jurors together, that there
3 are mitigating circumstances that we think warrants
4 sparing this defendant's life.
5 So, again, I sort of draw back to what
6 you said which I think was a wonderful way of saying it.
7 "It depends on the circumstances." It depends upon your
8 good judgment; and your analysis of the circumstances;
9 and what kind of weight you give it.
10 Do you think that you can, along with
11 11 other jurors, if you ever get to that stage in a
12 capital case, and let me reemphasize that over and over
13 again -- that if you ever get to that stage in a capital
14 case, that you could sit with 11 other people and answer
15 those special issues?
16 A. Yes, sir.
17 Q. Did you ever have any experience
18 sitting on any court-martial panels?
19 A. No.
20 Q. And you have not had any jury service
21 since you have been back in Kerr County, I guess?
22 A. No, no, sir.
23 Q. When did you come back?
24 A. In '93, in July of '93.
25 Q. So you must have gone in the military

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1 just about straight out of --
2 A. I was 19 or 20. I went to San Antonio
3 when I graduated from Tivy.
4 Q. And did you see service in Viet Nam?
5 A. No, I went to Okinawa.
6 Q. Mr. Rodriguez, I saw some movie, I
7 can't remember what it was, I know where they were. They
8 were in a submarine and the commander said to somebody in
9 the group, said, "You have got to remember that we're not
10 here to practice democracy, we're here to preserve it."
11 And that is what the jury system is, and part as your
12 function as a jury. A jury is not a democracy. It is
13 not a majority rule.
14 It is circumstance where one person
15 can say, "I do not agree. And I am going to hold out for
16 my verdict and I am going to exercise -- and I am going
17 afford this defendant the right of an impartial jury and
18 reasonable doubt and all those things."
19 Do you have any problem with that
20 circumstance? If you, for instance, are the one who is
21 sitting there and everybody else is saying, "Golly, we
22 all agree on this." Can you -- are you the kind who can
23 hold out and hold on to your beliefs and say, "I have
24 thought about" -- and I am not asking you to be
25 closed-minded, but after having thought through your

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1 position, if you say, "There is still doubt in my mind.
2 There is still reasonable doubt in my mind."
3 Do you feel like you can hold out in
4 spite of what 11 others are saying to you?
5 A. Yes, sir, I am.
6 Q. The other part of jury not being a
7 democracy is that this is actually the only time you are
8 ever going to get to speak in this case. You are not
9 going to get the opportunity to ask questions of the
10 witnesses. You are not going to get the opportunity
11 to -- you may get some opportunities, but rarely, to
12 write written notes to the Judge asking for instruction
13 but, in essence, this is your opportunity to speak.
14 And I don't think anybody, and I know
15 you would not ever think anything but that this is the
16 most important thing that has ever happened in Darlie
17 Routier's life. Her life is literally hanging in the
18 balance here. And unfortunately, as you have been called
19 to service to your country before, you are called to
20 service to your country again at this point of that
21 awesome responsibility.
22 So I say that in the sense of if there

23 is any reason in your mind that you feel like that you
24 cannot be fair and impartial, this is your opportunity to
25 give it. And I often ask jurors to sit and think as if

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1 they were on trial; or as if their son or daughter or
2 mother or father were on trial, and think about what kind
3 of juror would you want, if your loved one was on trial.
4 And what kind of person would you want: That is open and
5 honest, and is willing to listen to the evidence, and is
6 willing to require the State to meet its burden; willing
7 to require that all reasonable doubt be blackened out of
8 this case.

9 And then sort of search your soul.

10 Are you that kind of person right now, sitting as this
11 case is preparing for trial; are you the kind of person,
12 and is your mind open and ready and able to make that
13 solid, unbiased, unfair decision.

14 A. Well, I believe that -- I believe in
15 the system. And I believe everybody should get a fair
16 trial. And again, like you said, if I was sitting in
17 some kind of trial, I believe I should get a fair trial.
18 And I believe to be open-minded and listen to the
19 evidence.

20

21 MR. RICHARD MOSTY: I believe you
22 will, too.

23 THE COURT: All right. Let's take a
24 10 minute break and be back at 11 minutes after. Is that
25 enough time Ms. Biggerstaff? All right, if you would

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1 step out briefly, please.

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: Is everybody ready? All

13 right. Let's go back on the record in the Darlie Routier

14 matter. Does either side have any further questions for

15 the prospective juror, Mr. Richard Rodriguez?

16 MR. TOBY SHOOK: No further questions

17 from the State.
18 THE COURT: All right.
19 MR. RICHARD MOSTY: None, Your Honor.
20 THE COURT: What says the State?
21 MR. TOBY SHOOK: Your Honor, the State
22 will exercise a peremptory challenge.
23 THE COURT: All right, sir, thank you.
24 May we have Mr. Rodriguez come in, please.
25

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1 (Whereupon, the prospective
2 juror was brought into
3 the courtroom, and the
4 proceedings were had as
5 follows:)
6
7 THE COURT: Mr. Rodriguez, thank you
8 very much. We appreciate your candor and your coming
9 down on this very inclement day, but your services will
10 no longer be needed.
11 Thank you very much for coming, we
12 appreciate all of it.
13 Very well. Let's move on to the next
14 juror, please.
15 THE CLERK: Judge, after this next
16 your juror, I don't think we have anybody until 1:00.
17 THE COURT: All right. Here is the
18 situation, ladies and gentlemen. Juror Number 4 today,
19 John Hastings, had to be postponed until October 30th at
20 9:30. So we have Ms. Dana Evans coming in next. I
21 assume that is Ms. Evans, and after Ms. Evans, we will
22 recess until 1:00 when Mr. Norlander will be back.
23 MR. TOBY SHOOK: It's Mr. Evans.
24 THE COURT: Mr. Evans, sorry. All
25 right. Sorry about that. Well, anyway, would you have

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1 the next prospective juror come in, please.
2
3 (Whereupon, the prospective
4 juror was seated in the
5 courtroom, and the
6 proceedings were resumed
7 as follows:)
8
9 THE COURT: All right, sir, if you
10 will have a seat right there, please.

11 I think the mikes are working. All
12 right. If you will raise your right hand.
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 in this
16 courtroom, or in any room to which you may be sent, so
17 help you God?
18 THE PROSPECTIVE JUROR: I do.
19
20 (Whereupon, the prospective
21 juror was duly sworn by the
22 Court to true answers make
23 to the questions propounded,
24 concerning qualifications, after
25 which time, the proceedings were

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1 resumed as follows:)
2
3 THE COURT: Mr. Shook, go ahead,
4 please.
5 MR. TOBY SHOOK: Thank you, Judge.
6 Mr. Evans, my name is Toby Shook.
7 THE COURT: Have a seat.
8
9 Whereupon,
10
11 DANA EDWIN EVANS,
12
13 was called as a prospective juror, for the purpose of
14 voir dire, having been first duly sworn by the Court to
15 speak the truth, the whole truth, and nothing but the
16 truth, testified in open court, as follows:
17
18 VOIR DIRE EXAMINATION
19
20 BY MR. TOBY SHOOK:
21 Q. Mr. Evans, my name is Toby Shook. I
22 am an Assistant District Attorney for Dallas County, one
23 of the prosecutors assigned to this case. This is Sherri
24 Wallace, she is also on this case. The defense attorneys
25 present today are Mr. Richard Mosty and Mr. Preston

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1 Douglass.
2
3 MR. RICHARD MOSTY: Good morning.
4 MR. PRESTON DOUGLASS: Good morning.

5

6 BY MR. TOBY SHOOK:

7 Q. The defendant, Mrs. Routier, is there

8 at the corner table.

9 Do you know any of the lawyers

10 involved in the case, particularly any of the Kerrville

11 attorneys?

12 A. No, sir.

13 Q. Okay. As you know, this is a capital

14 murder case in which the State is seeking the death

15 penalty in this case. Have you ever sat on a jury

16 before?

17 A. No, I have not.

18 Q. Have you ever been called down for

19 jury service before?

20 A. No.

21 Q. Okay. Usually when we select a jury,

22 we have everyone out here and we talk to them all as a

23 group. But because this is a capital murder case, we

24 talk to each juror individually. We don't mean to throw

25 you up there, and put you on trial or anything like that.

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1 But it's the best way we have of getting true and honest

2 answers from each juror. Okay? Now, we want you to be

3 as comfortable as possible, and all we are interested in

4 are your honest opinions; all right?

5 A. Okay.

6 Q. I'm going to go over a couple of

7 things in your questionnaire and then ask you some

8 questions. Since this is a death penalty case, obviously

9 how you feel about the death penalty. And we are going

10 to go over different areas of the law. All right? It

11 looks to me that you were born in Junction, Texas, and

12 spent your life, I think, primarily here in the area; is

13 that right?

14 A. Yes, sir.

15 Q. Okay. And you have a wife and, was it

16 three children?

17 A. Yes, sir.

18 Q. Okay. And you work general delivery,

19 Kerrville, at the Kerrville Post Office; is that right?

20 A. Sir?

21 Q. You are at the post office in general

22 delivery?

23 A. No, I am in construction.

24 Q. Okay. That is your address?

25 A. Yes.

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1 Q. Okay. I got that mixed up. So what

2 type of work do you do?

3 A. I build homes.

4 Q. Okay. And how long have you been in

5 that?

6 A. Oh, about 14 years.

7 Q. Okay. And you are also in the

8 National Guard?

9 A. Texas State Guard.

10 Q. Okay. Texas State Guard. And I think

11 you said that you meet twice a month on that; is that

12 right?

13 A. Right.

14 Q. What days are those?

15 A. Usually it is either a Tuesday or

16 Wednesday night and a Saturday all day.

17 Q. Okay. And what rank do you hold in

18 the Texas State Guard?

19 A. Second Lieutenant.

20 Q. Okay. How long have you been with the

21 Guard?

22 A. About six-and-a-half years.

23 Q. Okay. Judge Tolle has told you this

24 trial will begin on January the 6th. It's probably -- we

25 don't know how long it will last. We are thinking about

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1 two weeks. It's certainly not going to be anything like

2 that O.J. Simpson case in California that went on four or

3 five months. At the most, probably three weeks. And he

4 generally keeps hours from around 9:00 in the morning,

5 Judge, until 5:00 in the afternoon.

6 Would that interfere -- obviously, it

7 is going to interfere with your schedule, but would that

8 be any substantial interference where you just couldn't

9 pay attention to the evidence, or would you be able to

10 sit for that time if you are chosen as a juror?

11 A. Well, it would be pretty tough as far

12 as work.

13 Q. Okay. And we understand it would be

14 tough on everyone. But that is the parameters we can

15 give you. Would you be able, if you were chosen -- if we

16 took a vote, none of the jurors, obviously, would want to

17 be on a jury like this. Or if they did jump up and down

18 and want to be on one, we probably wouldn't want them.

19 But would you be able to sit as a juror, listen to the

20 evidence, and make these decisions?

21 A. I think so.
22 Q. Okay. Let me go, Mr. Evans, right to
23 the heart of the matter. It's a death penalty case in
24 which the State is actually seeking the death penalty.
25 And let me ask you your own personal viewpoints about the

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1 death penalty. First of all, are you in favor of it as a
2 law?

3 A. If it's appropriate for the crime.

4 Q. Okay. Tell me what about the death
5 penalty you favor. Why do you feel we should have the
6 death penalty as a law?

7 A. (No response.)

8 Q. Some people give us different views.

9 They think, you know, it's just for certain crimes the
10 death penalty is appropriate. Some people think -- they
11 go back to their own religious upbringing. They think
12 just certain types of murder cases. Some people think
13 other types of cases. What comes to mind when you think
14 of a death penalty case?

15 A. (No response.)

16 Q. Let me ask you this, Mr. Evans:

17 Because we know that, usually, hopefully, you don't sit
18 around thinking of death penalty cases, and things like
19 that. It's not a happy type of topic, obviously. Most
20 people don't sit around and say, I think this is a death
21 penalty case, that is a death penalty case. Have you
22 given much thought to the death penalty really? Or have
23 you ever discussed it, say with your wife or friend or
24 anything like that?

25 A. Not that much really.

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1 Q. Okay. Have you ever followed any
2 cases that were, you know, in the news here in Texas or
3 anywhere that were death penalty cases, or you thought
4 should be possibly death penalty cases?

5 A. No.

6 Q. What types of crimes do you think, and
7 I'm not asking for, you know, definitely saying it is a
8 death penalty case or not, but what types of crimes do
9 you think could be a death penalty case under the proper
10 facts and circumstances?

11 A. Just basically cold-blooded murder.

12 Q. Okay. Any other crimes other than
13 murder? Or would you, if it was up to you, would you
14 just keep it at a murder case?

15 A. Well, I don't think it would be just
16 strictly a murder case.

17 Q. Okay. Have you ever felt differently
18 about the death penalty?

19 A. No.

20 Q. Okay. Let me go over what the law is
21 in Texas. In Texas you can only get the death penalty
22 for a murder case, but just not any murder case. We can
23 have intentional killings and they not fall in our death
24 penalty parameters. You can get a very strict -- stiff
25 life sentence, but not necessarily the death penalty.

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1 For the death penalty you have to have a knowingly and
2 intentionally killing, plus some other fact or
3 circumstance.

4 For instance, murdering during the
5 course of a felony, you have heard people that go into a
6 bank, maybe they rob a bank and shoot the teller. That
7 is a murder during the course of a robbery. You can get
8 the death penalty for that in Texas. And murder -- if
9 someone breaks into your home, breaks into a home and
10 kills the homeowner or someone in the house, that is a
11 murder during the course of a felony; a burglary. Murder
12 during a course of a sexual assault, or rape, or
13 kidnapping, that could be a death penalty case.

14 Also, the serial murders, these people
15 that kill several people, either all at once or just a
16 series of transactions. If the State can prove those are
17 all connected, that can be a death penalty case. In
18 addition, if you murder a certain class of citizens, like
19 a police officer on duty, a fireman on duty; that could
20 be a death penalty case.

21 Do you agree with those types of
22 crimes being possibilities of the death penalty under the
23 law?

24 A. Yes, I do.

25 Q. Also, in this particular case, the

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1 Judge has read you the indictment. The indictment
2 alleges intentionally and knowingly killing of a child
3 under the age of six. That type of case is eligible for
4 the death penalty. In your own personal beliefs, is that
5 the type of crime you feel could be appropriate for the
6 death penalty under the proper facts and circumstances?

7 A. Yes, I do.

8 Q. Okay. Now the way the scheme works is

9 a trial is divided into two parts. The guilt/innocence
10 stage and the punishment phase. What we have to do in
11 the first part of the trial is prove to you beyond a
12 reasonable doubt that the defendant committed the crime,
13 just the way we have alleged it. If we do that, we then
14 move to the punishment phase.
15 You might hear additional evidence,
16 you may not. But you may hear some more evidence about
17 background, things like that. And at the close of that
18 evidence, you go back and consider anything new you have
19 heard, and then, of course, the facts of the crime
20 itself. And then you have to answer these questions that
21 we will go over on this board here in a moment.
22 Basically, the State has to prove to
23 you though in a punishment phase that the defendant
24 would -- there is a probability they would be a
25 continuing threat to society. We have to prove that

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1 beyond a reasonable doubt; that they would be a future
2 danger. If we prove that beyond a reasonable doubt, then
3 you should answer that "yes."
4 The last question the jury considers
5 is what we call the mitigation issue. You look at all
6 the evidence and if you think that there is some evidence
7 somewhere that the defendant's life should be spared, you
8 can answer the question that way. Now, they will get a
9 life sentence, but they would not get the death sentence.
10 But once you find someone guilty of capital murder in
11 Texas, there's only two alternatives; a death sentence or
12 a life sentence. And the Judge enters that sentence
13 based on how you answer those questions; is that clear to
14 you?
15 A. Yes, sir.
16 Q. Okay. Does that seem like a fair way
17 of doing it to you?
18 A. I think so.
19 Q. The way we have it set up?
20 A. Yes.
21 Q. Okay. There is no automatic answers,
22 obviously. The State has to prove these things to you,
23 and there is a always an out for the jury at the end. If
24 they hear something and they decide the defendant needs a
25 life to be spared, they can do that. You think that's a

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1 good way of doing it?
2 A. Yes, sir.

3 Q. Okay. Let ask you, Mr. Evans: You
4 told us that your own personal belief, you think the
5 death penalty is appropriate in some type of murder
6 cases. Would you be the type of juror that could sit on
7 a case and listen to the evidence, and if the State
8 proved to you, first of all, that the defendant was
9 guilty; and secondly, that issue, first issue, should be
10 answered yes. And that no, there is no mitigating
11 evidence that the defendant's life should be spared.
12 Could you take pen in hand, write down the answers
13 knowing that if you answer that a "yes" and "no" that the
14 defendant would be executed someday? Could you actually
15 do that as a juror?

16 A. Yes.

17 Q. If it was proven to you?

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

20 Q. Okay. I just want to get that out of
21 the way because obviously, that is our goal in this case.
22 And the defense, they are going to fight us every inch of
23 the way. But you feel if you are given the right
24 evidence you could answer those questions?

25 A. Yes, sir.

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1 Q. Okay. When we prove a case, we put on
2 different types of evidence. Now you have heard of
3 circumstantial evidence, I'm sure, from watching TV or
4 reading a book or something, the term has come up before;
5 is that right?

6 A. Yes.

7 Q. Okay. Actually, what we put on, is
8 what we call as lawyers, direct evidence or indirect
9 evidence. Direct evidence is when you see a crime.
10 Okay? That is an eyewitness to it. Say if you left the
11 courthouse today and someone robbed you at gunpoint and
12 ran off with your wallet, they were caught later and you
13 were able to identify them, that is direct evidence. You
14 were able to identify the criminal that robbed you. Any
15 other type of evidence is indirect evidence. The other
16 word for that is circumstantial evidence. It could be
17 fingerprints, it could be -- you have heard of DNA
18 testimony, I'm sure?

19 A. Yes, sir.

20 Q. -- hairs, fibers, the crime scene
21 itself, things left at the crime scene, statements by the
22 defendant, before, during, or after the crime that would
23 link them to the crime. Anything other than just
24 eyewitness testimony is circumstantial evidence. Many

25 times in a murder case that is all we have to rely on to

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1 prove the defendant's guilt. Obviously, there might just
2 be two people there: The person who commits the crime
3 and the victim. So we rely on circumstantial evidence.
4 Basically, what you do is use all your
5 common sense as a juror, that is your main tool, and ask
6 yourself: Has the State proven its case using
7 circumstantial evidence? Would you be able to find a
8 defendant guilty of capital murder if you were given --
9 if it's a circumstantial case -- and we prove the case to
10 you beyond a reasonable doubt?

11 A. Yes, sir.

12 Q. Okay. There are some people we have
13 come in here and go, "Look, I could sit on a death
14 penalty case, but I need an eyewitness to the crime."
15 Obviously, we can't always provide that. That is why I
16 want to talk to you about circumstantial evidence. You
17 wouldn't be one of those jurors that would require an
18 actual eyewitness to the crime; is that right?

19 A. No, I think I would.

20 Q. You would require an eyewitness to the
21 crime?

22 A. Yes.

23 Q. Is that just on a capital murder case
24 or any type of murder case?

25 A. Capital.

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1 Q. Okay. Tell me a little bit about
2 that. Why would you require an eyewitness to the crime?

3 A. I think you would need absolute proof,
4 you know, you would have to have a witness.

5 Q. Okay. If someone is going to get the
6 death penalty; is that right?

7 A. Yes.

8 Q. Can you understand why it might be
9 difficult for the State to provide an eyewitness to a
10 crime in a murder case?

11 A. Yes, I can understand.

12 Q. Obviously, a lot of times, it's not
13 the State that chooses when a crime is committed or who
14 is around or what witnesses are present when that crime
15 is committed.

16 A. Yes.

17 Q. But you feel that would be a
18 requirement for you that you are going to have to have an

19 eyewitness there to say that is the person who did it?
20 A. I don't know, that's a tough one.
21 Q. Well, let me get back to that again,
22 Mr. Evans, because I want to cover that with you,
23 obviously. Let me go over the -- let me go over another
24 area that the State does not have to prove; that is
25 motive. You know, we always hear about motive, the

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1 reason why someone committed a crime. However, the State
2 is not required to prove that. Okay? Once all of the
3 evidence is in, you may very well be able to figure out
4 what the motive was. On the other hand, it may be a
5 whole bunch of motives. Everyone may have their own
6 opinion as to what the motive is. It may not be real
7 clear.

8 Or the motive, the reason for the
9 killing, could be locked away in the defendant's mind,
10 and we may never know what it was. It could be what a
11 lot of people call a senseless killing. It makes no
12 sense why they did it. But we can't go digging that out
13 of their mind and proving it to the jury necessarily.
14 Again, you can use your common sense and come up with
15 motives, but there is no requirement under the law that
16 the State prove that.

17 Do you agree with that area of the
18 law?

19 A. Yes, I think so.

20 Q. Okay. Can you see where it might be
21 difficult for the State just to prove absolutely what the
22 motive is for a certain crime?

23 A. Yes, sir.

24 Q. Would you require the State to prove
25 motive? Or is that something you would just consider

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1 along with the rest of the evidence?

2 A. No, it's just -- like you say, there
3 may not be any way to prove it, you know, what it is.

4 Q. Okay. Let me get into the special
5 issues. Again, the Special Issue Number 1 over here, you
6 don't get to that unless you have found the defendant
7 guilty of capital murder. If you find him guilty, we
8 move on to that punishment phase, where you could hear
9 additional evidence. Now that question, if you will read
10 along while I read aloud, says: "Do you find from the
11 evidence beyond a reasonable doubt that there is a
12 probability that the defendant would commit criminal acts

13 of violence that would constitute a continuing threat to
14 society?" Do you see where that question is asking the
15 jurors to make a prediction of how the defendant is going
16 behave in the future?

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

19 Q. Okay. Do you think you could get
20 enough evidence to make that type of prediction? That
21 they would be a continuing danger to society?

22 A. Yes.

23 Q. Okay. What type of evidence would you
24 want to hear as a juror in making that decision?

25 A. (No response.)

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1 Q. Just anything that might come to mind.

2 Well, one thing, obviously, you have already heard the
3 facts of the case. Would the facts of the case, how the
4 crime occurred, would that be important to you?

5 A. I think so.

6 Q. The brutality of the crime, what
7 happened before, any remorse shown afterwards, would
8 those types of things be very important evidence?

9 A. Yes.

10 Q. Okay. You may be able to hear
11 background evidence. Maybe they have been in trouble in
12 the past. That could be evidence that could be put on,
13 would that be important to you?

14 A. I think so.

15 Q. Or vice versa. It could be a
16 situation -- a person can go out and commit capital
17 murder and never done anything wrong in their life.
18 Jurors may have just the facts of the crime itself to
19 make that decision. Do you feel you could answer that
20 question based on the facts of the crime itself depending
21 on what those facts were?

22 A. Yes, sir.

23 Q. Okay. That question is not automatic.

24 In other words, just because you found someone guilty of
25 capital murder, you cannot just automatically answer that

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1 question "yes." The State has to prove that beyond a
2 reasonable doubt. It starts out with a "no," just like
3 someone starts out being presumed to be innocent. Could
4 you do that?

5 A. Yes, sir.

6 Q. Another thing; the Judge will not give

7 you definitions of these words. That will be up to you
8 how you read those words. So I'm going to go over those.
9 You see, it says we have to prove beyond a reasonable
10 doubt that there is a probability that the defendant
11 would commit criminal acts of violence? What does the
12 word probability mean to you? What do you think of when
13 we have to prove that?
14 A. Well -- that the -- that there is a
15 good chance of the person doing it again.
16 Q. Okay. And, under the law we're not --
17 we don't have to prove that it is a certainty.
18 Obviously, that would be kind of tough to prove a
19 certainty; just a probability. Do you feel comfortable
20 with that? Does that seem fair to you?
21 A. I think so.
22 Q. We also have to prove that he would
23 commit criminal acts of violence. It doesn't say we have
24 to prove the defendant would commit murder or anything
25 like that, just criminal acts of violence. Does that

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1 seem fair to you?
2 A. I think so.
3 Q. Okay. Now that second special issue,
4 that question is long. I'm going to go over it, but I
5 get confused when I read it half the time. The
6 legislature came up with these things. "Taking into
7 consideration all the evidence, including the
8 circumstances of the offense, the defendant's character
9 and background, and the personal moral culpability of the
10 defendant; is there sufficient mitigating circumstance or
11 circumstances to warrant that a sentence of life
12 imprisonment rather than a death sentence be imposed?"
13 Basically, what I -- like I said
14 before, that is the last question you get as a juror.
15 You had already found them guilty. You had already found
16 that they are a continuing danger to society. But you
17 might hear some evidence somewhere in their background
18 that you think a life sentence should be imposed rather
19 than a death sentence. Neither side has to prove that to
20 you, you just view the evidence and decide if something
21 is mitigating or not.
22 Do you think you could keep your mind
23 open and answer that question a "yes" or a "no" depending
24 on the evidence?
25 A. Yes.

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1 Q. Okay. Do you think that is a fair
2 question to have?

3 A. I think so.

4 Q. Okay. Again, I know you don't sit
5 around thinking of these issues. At least I hope you
6 don't. But does anything come to mind when we talk about
7 mitigating evidence that would mitigate a life sentence
8 to you?

9 A. I don't know.

10 Q. Okay. That is what most people's
11 answer is because they don't think about it. In fact,
12 under the law you are not required to imagine any facts.
13 You just have to be able to say, I will keep my mind open
14 to it, and if I think something is mitigated for a life
15 sentence I can answer the question that way. Can you do
16 that?

17 A. Yes, sir.

18 Q. Let me go over a couple of things, and
19 you don't have to agree with any of these. But we have
20 talked to a lot of jurors on death penalty cases and
21 certain people bring up certain things. Does young age
22 of the offender, does that seem mitigating to you in any
23 way?

24 A. What was the question?

25 Q. Young age, let's say the person who

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1 committed the crime is a young person. Not a child, but
2 a young person. Some people say, "You know, that is

3 mitigating." If they are a young teenager, say, or
4 someone young. Other people tell us, "No, they are an
5 adult, they are responsible for their actions."

6 A. I don't think so.

7 Q. Okay. Sometimes you might hear a
8 history that a person was physically or mentally or
9 sexually abused in the past. Some people view that as
10 mitigating evidence; other people say, "No, you know,
11 that is not mitigating. A lot of people, that has
12 happened to. And they have to be responsible for their
13 acts." Where do you fall in that area?

14 A. Well, I think everybody is responsible
15 for their own actions.

16 Q. Okay.

17

18 THE COURT: I know this is unusual for
19 you, sir, you are not used to it. But could you speak up
20 a little bit. You are going to hear your voice echo, but
21 don't worry about it.

22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Thank you, there you go.

24

25 BY MR. TOBY SHOOK:

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1 Q. But you could keep your mind open to
2 this issue, and if you found something mitigating, you
3 could give a life sentence?

4 A. Yes, sir.

5 Q. Okay. Now obviously, in this case the
6 defendant is a woman, female. Usually when we think of
7 capital murders or murders, we think of male defendants.
8 That is what is usually in the news. Is there anything
9 in your background that would prevent you from sentencing
10 a woman to death, or actually answering those questions
11 that would result in a woman getting the death penalty?

12 A. No.

13 Q. Okay. You think the law should apply
14 equal to a man and a woman; is that right?

15 A. Yes, sir.

16 Q. Okay. Now let's go back to your
17 question that you might require an eyewitness to the
18 crime before you could find someone guilty of capital
19 murder. That is what we will be talking about first; the
20 guilt/innocence part. We have to prove that the
21 defendant knowingly or intentionally caused the death in
22 the way we have alleged in this case.

23 Again, I have told you we don't, as
24 the State, prove -- we don't have a way of putting
25 witnesses there at the crime or when the defendant

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1 strikes or where they strike. We just have the evidence
2 as it happened.

3 And many times in a murder case,
4 obviously, there is no eyewitness, besides the defendant
5 who, under their rights do not have to take the stand and
6 explain their actions in any way. That is a
7 constitutional right. And just while we're on that, do
8 you agree with that right that a person should not have
9 to take the stand if they don't want to?

10 A. That's right, I agree.

11 Q. Okay. So that is why the State might
12 be left with what we call circumstantial evidence. And
13 again, circumstantial evidence is anything but an
14 eyewitness to the crime; fingerprints, you know, trace
15 evidence, the way the crime scene was left; anything like

16 that. Okay. Anything but an eyewitness in other words.

17 A. Yes.

18 Q. Do you think you could find a

19 defendant guilty of capital murder based on

20 circumstantial evidence?

21 A. It just depends on the evidence.

22 Q. Okay. And again, the burden of proof

23 is the same, whether there is an eyewitness or not. It's

24 beyond a reasonable doubt. You understand that?

25 A. Right.

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1 Q. Some people just get real hinked up by

2 the word circumstantial evidence. But really, once you

3 think about it, all it is is applying your common sense.

4 For instance, I know the rain started pretty early

5 yesterday. But if you had gone to bed and it was dry out

6 and woke up this morning with the way the weather

7 conditions are, streets all wet, water rising, schools

8 closing, that kind of thing, you may not have seen it

9 rain last night, but you could pretty well guess that it

10 rained a lot last night. You understand?

11 A. Yes, sir.

12 Q. Even though you didn't see it with

13 your own eyes, you see all the rain everywhere, water is

14 running around everywhere, it's cloudy skies, and it's

15 not just in your front yard, it's all over the place.

16 Common sense tells you it rained. That is what a

17 circumstantial case is like. You use all your common

18 sense, you draw all the evidence in and make your

19 decision. You didn't have to see it with your own eyes

20 or there didn't have to be a witness there necessarily

21 with their own eyes, but you look at all the other

22 evidence. And if you prove it beyond a reasonable doubt;

23 then you can find the defendant guilty. Do you think you

24 could do that?

25 A. Yes, sir.

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1 Q. Okay. When you said earlier about the

2 wanting an eyewitness, is that just having to do with

3 wanting to be sure?

4 A. Yes.

5 Q. Okay. Judge Tolle went over some

6 other rights briefly there in his voir dire. He talked

7 about the burden of proof that the State has to prove

8 this thing beyond a reasonable doubt. Do you agree with

9 that law?

10 A. Yes, sir.
11 Q. Okay. That burden never shifts to the
12 defense, they are not required to prove anything to you.
13 You know, if we don't reach our burden of proof, they
14 don't even have to ask a question. I suspect they will,
15 but they don't have to. Would you require the State to
16 prove its case beyond a reasonable doubt?

17 A. Yes, sir.

18 Q. And you would not require the defense
19 to prove anything? I mean, it's up to the State to prove
20 this case.

21 A. Right.

22 Q. Okay. We have already gone over the
23 defendant's right not to testify. That is a right
24 everyone has. If they chose not to testify, you cannot
25 hold it against them, you know. If they want to testify,

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1 they can. No one can stop them. But if they chose not
2 to testify, that is just something you don't even
3 consider. Could you follow that rule?

4 A. Yes, sir.

5 Q. Okay. The law says all witnesses are
6 treated equally, you know. In a criminal case y'all have
7 police officers; some people feel strongly about police
8 officers. They like them; they are friends. Other
9 people have had bad experiences. You have got to treat a
10 police officer and any witness equally when they start
11 out; listen to what they have to say and then judge their
12 credibility. Could you do that?

13 A. Yes, sir.

14 Q. Okay. And also, the defendant is
15 presumed to be innocent, as Judge Tolle told you. All
16 persons that are accused, the indictment is no evidence
17 against them. They are presumed to be innocent. You
18 have to start out with that presumption in your mind.
19 Can you do that?

20 A. Yes, sir.

21 Q. Okay. I don't believe you put down in
22 your questionnaire that you have heard anything about the
23 facts of this case; is that right?

24 A. Nothing at all.

25 Q. You have not heard anything since last

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1 Monday when you filled this questionnaire out?

2 A. No.

3 Q. I believe in some of our questions

4 about the criminal justice system you put down that you
5 believe society is declining. And the reason you put
6 down is people just are not being educated by their
7 parents and the responsibility has been left up to
8 others. I think in your questionnaire you put down you
9 actually are home schooling your children; is that right?

10 A. Yes, sir.

11 Q. Who does it? Does your wife do that
12 or do both of y'all do that?

13 A. Mostly my wife, but I help her.

14 Q. Okay. How long have you all been
15 doing the home schooling?

16 A. About five or six years.

17 Q. Okay. Are you satisfied with it, I
18 guess, so far?

19 A. Yes, sir.

20 Q. And I know some of these questions get
21 personal, and we don't mean them to be. This
22 questionnaire won't be released to anyone, but we do have
23 to ask these questions. And also, your place of worship,
24 you stay there at the home; is that right?

25 A. Yes, sir.

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1 Q. And teach your children the laws or
2 principles -- I have heard of this -- how do I pronounce
3 that, Yahweh?

4 A. Yahweh.

5 Q. Yahweh. Tell me a little bit about
6 that.

7 A. That is God.

8 Q. Okay. That is what I thought, but I
9 just read about it. Sometimes we hear from -- in a
10 murder case like this -- from psychiatrists or
11 psychologists from one side or the other or both. Do you
12 have any opinion about those types of experts?

13 A. No.

14 Q. You could sit there and listen to them
15 like any other witness?

16 A. I believe so.

17 Q. Okay. You could keep your mind open
18 to all of the evidence and then make the decisions; is
19 that right?

20 A. Yes, sir.

21 Q. Okay. But you do feel that, as far as
22 the death penalty goes, if the State proves these things
23 to you, a person should be held responsible for their
24 actions; and you could answer them in a way that would

25 result in the defendant's execution some day?

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1 A. I think so.

2 Q. If the State proved it to you?

3 A. Right.

4 Q. Okay. I have been doing all the

5 talking and asking a lot of questions, Mr. Evans. Do you
6 have any questions of me?

7 A. No.

8 Q. Okay. Well, you have been very honest

9 with us. We appreciate your patience coming here and
10 being here all morning long.

11

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

13 Judge.

14 THE COURT: Thank you Mr. Shook. Mr.

15 Mosty?

16 MR. PRESTON DOUGLASS: Judge, I think

17 I am going to try this one --

18 THE COURT: Oh, that will be fine,

19 Mr. Douglass. We welcome you into the Court.

20 MR. PRESTON DOUGLASS: I appreciate it

21 very much.

22

23 VOIR DIRE EXAMINATION

24

25 BY MR. PRESTON DOUGLASS:

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1 Q. Mr. Evans, as you can probably tell, I

2 have Cedar fever this time of year, and it gets to where

3 I can't speak very well. My wife is convinced that this

4 was the most pleasant weekend we have ever had at our

5 house, because I couldn't talk, but it causes me some

6 trouble here this morning. So, if you can't hear me, if

7 I confuse you which I'm likely to do, stop me. And I

8 will do my best to repeat myself and make myself a little

9 more clear.

10 You have been up there a while. And I

11 appreciate your patience. And I hope you understand that

12 because the rules require that we go second, we don't get

13 to interrupt, we don't get to ask our questions as time

14 goes by. So we have to wait until you have been up there

15 a while before we get to ask you some questions.

16 And, obviously, our perspective in

17 representing Darlie is much different than that of the

18 State. So we have some additional questions to ask. And

19 I hope you will understand that if it takes a little
20 while longer, I am going to try to move as quick as I
21 can. So either the time will be up or my voice will go
22 out, or one or the other will happen.
23 This is Richard Mosty, my law partner.
24 Darlie Routier is the defendant in this case; we
25 represent her. Do you know either Richard or myself?

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1 A. No.
2 Q. Okay. I was curious about some of the
3 answers in your personal questionnaire. About the Texas
4 National Guard -- this is showing my ignorance which I am
5 likely to do lots of times. Is that the Texas Republic
6 National Guard, or is that the Texas State National
7 Guard?
8
9 THE COURT: I believe he said he was
10 in the Texas State Guard; is that right?
11 THE PROSPECTIVE JUROR: Yes, sir.
12 THE COURT: As opposed to the National
13 Guard, they are different altogether.
14 THE PROSPECTIVE JUROR: That is right.
15
16 BY MR. PRESTON DOUGLASS:
17 Q. You understand, around the Kerrville
18 area, there are some people who align themselves with the
19 Republic of Texas, and are in a different type of guard.
20 Are you familiar with the distinction between the two?
21 A. Yes.
22 Q. Okay. And I notice in your
23 questionnaire you refer to the common law quite a bit.
24 Which of those two Guards do you align yourself with?
25 A. I am under the State of Texas. Okay?

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1 Q. Not the Republic of Texas?
2 A. No.
3 Q. Okay.
4 A. We fall under the Adjutant General of
5 the State of Texas.
6 Q. Okay. All right. And you know that
7 around our town there's different groups that call
8 themselves Republic of Texas Guards and those things?
9 A. Yes, I know that.
10 Q. Now with respect to your commitment to
11 that guard duty -- I notice you said on Wednesdays --
12 does that interfere with your ability to fairly and

13 impartially sit on this jury?

14 A. No.

15 Q. You can put that aside, your

16 commitment, and perform your function as a juror?

17 A. Yes, I can.

18 Q. Also, I was curious from your

19 questionnaire, do you live out in the county, or do live
20 in Kerrville proper?

21 A. Out in the county.

22 Q. Which part of the county?

23 A. Kerrville, Cypress Creek Road.

24 Q. How long have you lived out that way?

25 A. Four-and-a-half years.

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1 Q. Okay. With respect to this case, the

2 State of Texas has told you they are seeking the death

3 penalty. And, obviously, their emphasis and perspective

4 is on their desired result in this case. Obviously, our

5 perspective is dramatically different.

6 Mrs. Routier has entered a plea of not

7 guilty. She will enter a plea of not guilty before the

8 jury. And she will persist in that plea of not guilty,

9 wholeheartedly throughout the trial. So our primary

10 emphasis, of course, is on the guilt/innocence phase of

11 the trial.

12 While Mr. Shook correctly went through

13 some of the principles of law, I hope you will allow me

14 to go back through them again in a little bit more depth.

15 Because that is where we obviously are very much

16 concerned, first with respect to the indictment.

17 You heard Judge Tolle mention in his

18 opening remarks that in Dallas County there is some

19 25,000 indictments issued against people each year. And

20 that an indictment is to be considered absolutely no

21 evidence of guilt.

22 Quite frankly, an indictment is

23 nothing more than a piece of paper that gives this Judge

24 jurisdiction. It is a piece of paper that says, "Judge

25 Tolle, you can have a trial." But other than that, it

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1 doesn't tell Judge Tolle anything other than what the

2 allegation is.

3 One of the things that people

4 frequently are amazed at: Is that you can be considered

5 for a Grand Jury indictment, there can be an

6 investigation taking place in your county, and you would

7 not even have the knowledge that investigation is taking
8 place. And obviously, since you don't have the
9 knowledge, you don't have the ability to tell your side
10 of story. Was that a surprise to you to learn that is
11 the way our system works?

12 A. No.

13 Q. Have you ever sat on a Grand Jury?

14 A. No.

15 Q. Now, the fact that a group of people
16 have issued a Grand Jury (sic), does that cause you to,
17 if you imagine my pen as being straight up and down as
18 neutral, does that cause you to have a preconceived
19 leaning or notion in any direction just because there is
20 an indictment?

21 A. No.

22 Q. When another issue that was brought up
23 by the Court was that if the trial began and you were
24 seated in those chairs as a juror, and the State did not
25 produce one shred of evidence and the trial ended, you

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1 would be forced to render what verdict?

2 A. Not guilty.

3 Q. Do you agree that as we sit here right
4 now, Darlie Routier is absolutely presumed innocent and
5 is not guilty?

6 A. Yes.

7 Q. Now, lots of people have referred to
8 the presumption of innocence as a kind of protective
9 shield, a bubble around them. And that is the State's
10 burden, and only the State's burden throughout the trial,
11 to erode that protective bubble, and that that shield is
12 diminished by competent evidence.

13 In a trial, you as a juror have the
14 sole ability to place whatever weight you feel is
15 appropriate on different evidence. If you feel that some
16 evidence just doesn't hold any water with you and it
17 doesn't mean anything, you have the right to toss it out.
18 However, if there is evidence that you think is probative
19 or means something, you have the right to put your hands
20 on it.

21 You talked a little bit about the
22 differences between eyewitness testimony, a photograph or
23 something that directly shows something, and
24 circumstantial evidence.

25 Do you agree with me that sitting in

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1 your place as a juror, that it is solely your ability and
2 solely based on your common sense to say, "I believe that
3 evidence means something to me. Or I believe that
4 evidence doesn't mean anything to me at all."

5 A. Yes, sir.

6 Q. Now, when you get back to the jury box
7 in the jury room, there is nobody that says that you have
8 to exercise your own personal conscience and belief based
9 on a majority or based on some sort of pulling straws in
10 a lot or something like that.

11 Only you can do what you believe is
12 right and fair. If you were to believe that some
13 evidence is not as persuasive to you as another type of
14 evidence -- say you believe that a partial fingerprint or
15 something is not as persuasive as an eyewitness, would
16 you persist in that conviction that you have? That you
17 want certain degrees of proof brought to you. Would you
18 make your opinion known and would you stand by that
19 opinion?

20 A. Yes.

21 Q. Okay. During the trial, the burden of
22 proof rests solely with the State. There is no -- excuse
23 me -- there is no requirement that the defendant put on
24 any evidence or that she testify. Now, one time I kind
25 of took offense at it but it's very true, Judge said that

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1 Mr. Douglass can sit in this courtroom and watch these
2 fans going around for a whole trial and that would be
3 fine. And if the State didn't prove their evidence, that
4 he could continue to just look at that fan. And if they
5 did not prove their case, it was your obligation and your
6 duty under your oath, to render a verdict of not guilty.

7 If I did that, if I just stood here
8 and daydreamed, but you didn't feel the State proved it's
9 case, what would be your verdict?

10 A. Not guilty.

11 Q. Now sometimes it becomes very
12 difficult, in a hypothetical, and obviously, I can't talk
13 about the facts of this case; but, obviously, there can
14 be situations where a person can be sitting there as a
15 juror and say, "You know, well, they brought some proof
16 of something, we certainly know that there was a death
17 that occurred, but I didn't hear anything from them, and
18 I didn't hear anything from that defendant," and you are
19 put in a quandary. How do you resolve that in your mind?

20 A. Would you repeat the question?

21 Q. Let's say you are sitting there and
22 you have listened very carefully to all of the evidence

23 that the State has had to bring, and there are still
24 questions that you have rattling around in your mind, the
25 State stands up and you are thinking, well, I hope they

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1 bring another witness.
2 And the State says, "We rest our case
3 in chief." Judge looks at you and says, "That is all the
4 evidence you are going to hear in this case."
5 You are sitting there and you go, "Oh,
6 my gosh, I got some questions."
7 And then the Judge looks over at us
8 and says, "Now it's time for the defense to put on a
9 case, if it chooses to do so."
10 Defense lawyers stand up and they say,
11 "Your Honor, we rest."
12 Then you sit there and you go, "Oh, my
13 God. They are not even going to bring me anything
14 either."
15 How do you resolve that in your mind?
16 What thoughts go through your mind?
17 A. You have seen all of the evidence, you
18 know, there is --
19 Q. If there is a question in your mind at
20 that point, that you think is based on reason, and you
21 have thought through and you say, "Well, I have not
22 totally resolved this question in my mind." What do you
23 think is the correct result in that situation?
24 A. Not guilty.
25 Q. And even if it came to that point that

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1 you came to that conclusion, and you say, "I sure wish
2 that I had heard from that defendant in that trial. I
3 wish that person had said something." Can you put that
4 aside and say, "But I can't consider that," and base it
5 solely on the evidence, not on what you wish you had?
6 A. Yes, sir.
7 Q. Okay. It has been said before that
8 the mere absence of proof can lead to a reasonable doubt.
9 Would that be a statement that you agree with?
10 A. Yes.
11 Q. That the absence of proof can create
12 enough of a question?
13 A. Yes.
14 Q. Now, Mr. Shook was absolutely correct
15 when he said that the State is not held to a burden of
16 proving a motive. Would you agree, however, that the

17 State, or that you as a juror, have an absolute right to
18 consider whether there was a motive and to wonder about
19 that? Do you understand there is a difference between
20 what they have to prove and what you have an ability to
21 consider?

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

24 Q. Okay. And what I mean by that is,
25 would you agree with me then that if the State could not

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1 produce a motive that that might cause you concern and
2 cause you a reason to doubt the guilt of a person charged
3 with a crime?

4 Am I not making myself very clear?

5 A. I don't understand.

6

7 THE COURT: Well, what he is saying is
8 that the State never has to prove motive; do you
9 understand that?

10 THE PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: You don't know why someone
12 did something. I think the question is if the State
13 didn't prove motive, or would you require the State to
14 prove a motive?

15 THE PROSPECTIVE JUROR: No.

16

17 BY MR. PRESTON DOUGLASS:

18 Q. Let me take one more pass at it, and I
19 will try to be very clear. If though, you have the right
20 to consider, "Well, I don't understand what the motive
21 is. I don't understand the facts and circumstances of
22 why this would happen." Would you agree that you could
23 consider that as creating a reasonable doubt in your
24 mind?

25 A. Yes.

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1 Q. The mere -- I don't understand might
2 cause you to say, "But I have a reasonable doubt because
3 I can't figure it out." It just doesn't make sense.

4 A. That's right.

5 Q. Think you can buy that?

6 A. Yes, sir.

7 Q. All right. Now, let me also let you
8 know, a juror is a fact-finder, but a juror is not a case
9 solver. In a verdict form, it does not say, "We, the
10 Jury" -- it will say, "We, the Jury, either find the

11 defendant guilty or not guilty." But it does not say,
12 "We -- the defendant is the person who did this crime,"
13 if it's someone else.

14 Do you understand and appreciate the
15 difference between trying to figure out who may have
16 caused the crime, and determine if the State has proven
17 the person they are pointing the finger at, did it?
18 A. Yes.

19 Q. Okay. They talked a little bit about
20 eyewitness versus circumstantial evidence. And I just
21 want to touch on one thing about that again. If -- one
22 thing that the Judge does not do is require you to
23 deposit your common sense in a receptacle when you walk
24 through the door. And what that means is you have the
25 right based on your life experience to say, "I want

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1 certain things proven to me to a certain degree." Do
2 you agree with that?

3 A. Yes, sir.

4 Q. And along those lines, can you
5 appreciate the difference, or at least that they may
6 bring you some proof that you say, "Well, I am happy with
7 that." But that that proof may not raise up to your
8 standards, and in that situation you can disregard that
9 kind of proof, if you don't think it's good enough for
10 you.

11 A. Yes.

12 Q. And will you do that based on your own
13 personal conviction?

14 A. Yes.

15 Q. All right. I assume that if you are a
16 juror that is going to sit in this case, that you are
17 going to see some photographs. And, no one is going to
18 sit here and tell you that this case does not involve a
19 horrible set of circumstances and a horrible crime. And
20 I have every reason to believe that those photographs,
21 whether they are small photographs or whether they are
22 blown up for some reason, will depict a horrible crime.
23 Obviously, sitting in my place, I fear
24 that when someone looks at a horrible photograph that has
25 been blown up, to illustrate obviously the most gruesome

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1 parts of that photograph, that it may so stampede
2 someone's common sense, that they say, "My God. I got to
3 punish the next available person for whoever did this."
4 Do you feel like that you could look

5 at photographs objectively and not feel like your common
6 sense would say, "God, this is just horrible. I have got
7 to do something based on this picture alone"?

8 A. No, I could do that.

9 Q. How do you feel about receiving that
10 kind of evidence? How do you feel about looking at
11 evidence like that?

12 A. I think it's important. I don't
13 know -- understand what you are trying to ask.

14 Q. How do you feel personally about the
15 fact that you may have to review evidence that is
16 untasteful, it's unpleasant, that you don't want to look
17 at it. Is it something that you feel like you are
18 prepared to do?

19 A. Yes, sir.

20 Q. Okay. In general, how do you feel
21 about sitting as a juror in a case that involves murder,
22 and involves a death penalty?

23 A. I would feel it was my duty to sit.

24 Q. Okay. I want to ask you and I want to
25 preface what I want to say with: That, obviously, the

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1 way our rules are set up, I will never get another
2 chance. No one representing Darlie Routier will get a
3 chance to talk to you after today.
4 Once the trial starts, we can't stand
5 up and say, "Now, Mr. Evans, we want you to think about
6 this a certain way."

7 We can't ask you any more questions.

8 We can't ask you any more of your opinions. In that
9 regards, I have an obligation to ask you about
10 punishment, even though I don't like to talk to you about
11 punishment.

12 Even though I believe -- that there
13 are two different phases of the trial, and I am more
14 interested in the guilt/innocence phase of this trial.
15 But since I will never have another chance to talk to you
16 about punishment, and not wanting you to believe that
17 we're going to get to that point, I want to talk to you
18 though about those special issues, okay?

19 A. Okay.

20 Q. Okay. Inasmuch as we conduct trials
21 in the State of Texas in two parts, what that means is
22 before you ever receive evidence about these special
23 issues, you, obviously have already found someone guilty
24 of capital murder.

25 You have already, obviously, found

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1 someone guilty of a crime; committed a murder committed
2 in the course of another felony, or two murders or three
3 murders committed at the same time, or the murder of a
4 child under the age of six.

5 So you have already made that
6 decision, that has already happened by the time you ever
7 get to consider any of these other special issues. As a
8 juror in a hypothetical case, if you have already made
9 that decision that a person is guilty of capital murder,
10 do you believe that you can maintain an open mind and
11 answer those special issues, knowing that they could
12 result in a life sentence?

13 A. Yes.

14 Q. I notice from your questionnaire, that
15 you had answered one question, that you said that you
16 were in favor of the death penalty in some cases. And
17 you agree and you said -- let me just read you the whole
18 thing. May I approach the witness?

19

20 THE COURT: You may.

21

22 BY MR. PRESTON DOUGLASS:

23 Q. Let me just hand you this. And I am
24 referring to page 2. You can see where I circled the
25 question there. And to paraphrase, you said, that while

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1 you believe the death penalty is appropriate in certain
2 cases, the question is: Do you agree that a life
3 sentence, in certain circumstances, is also appropriate?
4 And it's a very difficult question the way they word it,
5 and you had put in there that you said no.

6 And the way I read it was that you did
7 not believe a life sentence would be a appropriate in
8 certain circumstances. I don't know that I explained it
9 any better than the question. But is that still the way
10 you feel, that if a person is found guilty of capital
11 murder, that you could not consider a life sentence?

12 A. No, that is incorrect.

13 Q. Okay. You meant to say yes?

14 A. Yes.

15 Q. All right. This is one of those
16 questions that says do you not, I mean, it's a double
17 negative, so it's easy to answer it no. If I understand
18 what you are saying, you would have an open mind, and you
19 can still consider evidence even though a person has been
20 found guilty of capital murder. And in an appropriate

21 circumstance, render a verdict that would result in a
22 life sentence?
23 A. Yes.
24 Q. Directing your attention over to that
25 board, on that first question, it is couched -- there are

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1 two important terms. One is reasonable doubt. That is
2 one definition that you will get, the legislature -- it
3 used to be the legislature gave us no definition of
4 reasonable doubt.
5 A few years ago they did give us a
6 definition. And to paraphrase it very quickly, it says:
7 That you need proof of such convincing character, that
8 you would rely on that proof and without hesitation in
9 the conducting of your most important personal affairs.
10 That to remove a reasonable doubt is proof of such
11 convincing character that you would rely on it without
12 hesitation.

13 Now, do you agree that is a high
14 degree of proof?

15 A. Yes.

16 Q. All right. Probability is not defined
17 for you. So the way that question is phrased is: First,
18 you have to have proof beyond that most high degree of
19 proof, that there is a probability, I would submit to you
20 that that is more likely than not.

21 That you have to be convinced beyond
22 any reasonable doubt that more likely than not, a
23 defendant would continue to be a threat to society. Does
24 that -- when you hear that read to you, how does that
25 question sound to you? What does that mean? Does it

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1 sound like a high degree of proof?

2 A. Yes.

3 Q. Does it sound to you like, when you
4 think of probability and more likely than not, would you
5 agree with me that that is certainly more than a
6 possibility?

7 A. Yes.

8 Q. Would you agree with me that that is
9 certainly more than a chance that something would happen?

10 A. Yes.

11 Q. Would you agree that the State has to
12 prove, not -- no burden of proof over here -- the State
13 has to prove that beyond a reasonable doubt, it is
14 probable that a person would be a continuing threat to

15 society?

16 A. Yes.

17 Q. Would you hold the State to that

18 burden of proof?

19 A. Yes, sir.

20 Q. Now, mitigation is a word that we use

21 and we throw around amongst us lawyers, that I am not

22 sure -- you know, I had never heard the word mitigation

23 to be real honest with you, until I went to law school.

24 And we talk about it like, well, this mitigates that and

25 this is mitigating. I think mitigation, my definition,

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1 is that it lessens a person's blameworthiness. It

2 lessens their blame for the crime.

3 Does that -- do you agree with that as

4 mitigating, it lessens their blameworthiness? Does that

5 sound okay to you?

6 A. Yes.

7 Q. Okay. Now, before you ever get to

8 that question, you have now decided in a hypothetical

9 case; that a person has been convicted of capital murder;

10 that a person is a continuing threat to society; and now

11 you must consider whether there is something about their

12 background, their character, or the circumstances; that

13 lessens their responsibility.

14 Now, Mr. Evans, if you have already

15 found someone guilty of capital murder, and you have

16 already found that they would be a future danger, could

17 you keep an open mind and consider evidence of

18 mitigation?

19 A. Yes.

20 Q. I have likened that to, you just stop

21 the train. You say -- you put on the brakes and you say,

22 wait a minute. I know I found the person guilty of

23 capital murder, I know that I found that they may be a

24 future danger; but I am going to listen to whatever

25 evidence there is to stop the train and enter a life

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1 sentence.

2 Do you feel you can keep an open mind

3 about that?

4 A. Yes.

5 Q. All right. Now, mitigating evidence

6 can be different to everybody. You and I could be on a

7 jury and I could say, you know, "I think that because

8 this person is very young, that that mitigates; that they

9 should get a second chance." You might look at me and
10 say, "Preston, that is crazy. I don't think that is it
11 at all, but I tell you what do I believe. I believe this
12 person had a terrible childhood. And based on that
13 really bad childhood, I am going to give that person a
14 second chance."

15 Now, we don't all have to agree as to
16 what is mitigating. But there has to be an agreement if
17 you are going to find that, yes, that there is some
18 mitigating circumstances. Do you understand and agree
19 that it is still your personal vote in the jury, and you
20 don't have to have the same reason, but you just have to
21 have a reason for mitigating evidence; do you agree that?
22 A. Yes.

23 Q. All right. You had mentioned that you
24 felt punishment should be ranked in these categories:
25 First, you think that a person should be punished to

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1 deter other people from committing a crime; other crimes.
2 And then you said: Second, I believe, if you are going
3 to punish people, you punish them to make them better; to
4 rehabilitate them. And, last, you said, the only reason
5 I punish people -- the last reason is to just flat punish
6 them; hurt them, kill them.

7 Is that still the way you rate that?
8 That you think the most important is to prevent other
9 people from doing the same thing?

10 A. Yes.

11 Q. And, that second to that, is to make
12 the defendant better?

13 A. Yes.

14 Q. All right. And that the last reason
15 you do that is just simply to punish someone?

16 A. Right.

17 Q. Do you still feel that way?

18 A. Yes, sir.

19

20 MR. PRESTON DOUGLASS: Just give me
21 one second, please.

22 THE COURT: All right.

23

24

25 BY MR. PRESTON DOUGLASS:

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1 Q. Am I right that both you and your
2 father are doing appliance repair?

3 A. No.
4 Q. He did, but you are not doing that?
5 A. No, before he passed away we worked
6 together.
7 Q. What year did you graduate from Tivy?
8 A. In '81.
9 Q. And I'm going to ask a different
10 version of the question Mr. Shook asked: Is Yahweh your
11 term for Jesus?
12 A. Yes.
13 Q. Obviously, this trial, this 5 or 10
14 minutes are some of the most important minutes in Darlie
15 Routier's life. She is faced, literally, with her life
16 hanging in the balance in this case.
17 If you, God forbid, were the person in
18 her situation, or a friend of yours or loved one was
19 sitting in her predicament, would you be satisfied with a
20 juror of your background and your thought process and the
21 way you feel about things, sitting in judgment of one of
22 your loved ones or even yourself?
23 A. Yes.
24 Q. Okay.
25

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1 MR. PRESTON DOUGLASS: May I have one
2 minute, Your Honor?
3 THE COURT: You may.
4 MR. PRESTON DOUGLASS: I appreciate
5 your time. And if you didn't even hear what I was
6 saying, you played like you did, and I appreciate it very
7 much.
8 Your Honor, I pass the juror.
9 THE COURT: Anything else, Mr. Shook?
10 MR. TOBY SHOOK: No, sir.
11 THE COURT: All right. I want to
12 clear up one thing on this eyewitness business. What I
13 understand you to say, from all of -- the totality of all
14 your answers, you would like the State to have an
15 eyewitness, but you are not going to require it; is that
16 correct?
17 THE PROSPECTIVE JUROR: Yes, sir.
18 THE COURT: In other words, if they
19 didn't produce an eyewitness, and you still felt they
20 proved their case, you could find the defendant guilty?
21 THE PROSPECTIVE JUROR: Yes, sir.
22 THE COURT: And set the defendant's
23 punishment anywhere within the range provided by law?
24 THE PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: All right. Thank you. If

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1 you will step outside briefly, please.

2 All right. We are off the record.

3 That clock up there is wrong, it's actually 11:16.

4 What says the State?

5 MR. TOBY SHOOK: The State accepts the

6 juror.

7 THE COURT: What says the defense?

8 MR. PRESTON DOUGLASS: We will accept

9 the juror.

10 THE COURT: All right. Thank you. If

11 you will bring the juror in, please. You had me scared

12 there for a minute.

13 Mr. Evans, you have been accepted as a

14 juror in this case. So you are instructed that a gag

15 order is in effect. Please do not talk to anybody about

16 the case. Don't talk to any members of the press or

17 anybody else. Please ignore radio, TV, or newspaper

18 articles, or broadcasts you see about it.

19 We will commence this trial on the 6th

20 of January. And we will tell you when to be back here on

21 the 6th of January. We will be contacting you in regard

22 to the correct time of that. Oh, if you will be back

23 here at 9:00 o'clock on the 6th of January, we will

24 commence trial then.

25 THE JUROR: Yes, sir.

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1 THE COURT: Please don't talk to other

2 people. If you talk to other people, the following may

3 result in monetary fines, and/or incarceration in Kerr

4 County jail, for violating this order. Thank you very

5 much.

6 THE JUROR: All right.

7 THE COURT: All right. Ladies and

8 gentlemen, the press that I know of, well, I know every

9 member of the press in here, they are all from Dallas. I

10 know you won't try to contact the jurors, but that could

11 result in the case having to be started all over again

12 because of a mistrial. So please do not until the trial

13 is over. They may talk or not talk as they see fit and

14 you are free to contact them then.

15 All right. The next juror, the next

16 prospective juror, unfortunately, cannot get in right

17 now. So, we're going to recess until one o'clock. It is

18 now 11:20, and I want to thank both sides for their

19 succinctness in examining these jurors and moving on with
20 this. Thank you.

21

22 (Whereupon, a short

23 Recess was taken,

24 After which time,

25 The proceedings were

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1 Resumed on the record,

2 In the presence and

3 Hearing of the defendant,

4 as follows:)

5

6 THE COURT: All right. Back on the

7 record. Is everybody ready?

8 MS. SHERRI WALLACE: Yes, sir. The

9 State is.

10 MR. PRESTON DOUGLASS: Yes, sir. The

11 Defense is.

12 THE COURT: All right. Well, let's

13 bring in the next one. Who is the next one?

14 THE CLERK: Norlander, I believe.

15 THE COURT: Norlander. All right.

16 THE CLERK: Ready for him?

17 THE COURT: Right. Have a seat right

18 there, yes, sir. All right. If you will please let the

19 record reflect that we are back on the record in the

20 Darlie Routier matter. This is jury selection,

21 individual examination of each prospective juror. Let

22 the record reflect that all parties to the trial are

23 present. And the witness (sic) we have now is Mr. Allan,

24 A-L-L-A-N, Keith, K-E-I-T-H, Norlander. Is that correct,

25 sir?

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1 THE PROSPECTIVE JUROR: Yes, sir, it

2 is.

3 THE COURT: Raise your right hand,

4 please, sir.

5 Do you solemnly swear or affirm that

6 you will true answers make to all questions propounded to

7 you in this courtroom or any room which you may be sent

8 concerning your qualifications as a juror, so help you

9 God?

10 THE PROSPECTIVE JUROR: Yes, sir.

11

12 (Whereupon, the prospective

13 juror was duly sworn by the
14 Court to true answers make
15 to the questions propounded,
16 concerning qualifications, after
17 which time, the proceedings were
18 resumed as follows:)
19
20
21 THE COURT: Thank you. Go ahead
22 please, Mr. Shook.
23
24
25

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1
2 Whereupon,
3
4
5 ALLAN KEITH NORLANDER,
6
7
8 was called as a prospective juror, for the purpose of
9 voir dire, having been first duly sworn by the Court to
10 speak the truth, the whole truth, and nothing but the
11 truth, testified in open court, as follows:
12
13
14 VOIR DIRE EXAMINATION
15
16 BY MR. TOBY SHOOK:
17 Q. Mr. Norlander?
18 A. Yes, sir.
19 Q. All right. My name is Toby Shook. I
20 am an Assistant District Attorney in Dallas County,
21 Texas, and I am one of the prosecutors assigned to this
22 case. I, along with Greg Davis who is not here, and
23 Sherri Wallace. Some of the defense attorneys are
24 present today, Kerrville attorneys, Mr. Mosty and Mr.
25 Douglass, and of course, the defendant, Darlie Routier is

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1 present.
2 Do you know any of the attorneys,
3 especially any of the Kerrville attorneys?
4 A. No, sir.
5 Q. Okay. As you know, this is a capital
6 murder case in which the State of Texas is actively

7 seeking the death penalty. Have you sat on a jury
8 before?

9 A. No, sir.

10 Q. Okay. Usually, when we do a jury
11 selection in a criminal case, we talk to all of the
12 jurors in a panel as a whole. But since this is a death
13 penalty case, the law calls for individual juror
14 questioning. We don't mean to throw you up there like
15 you are some kind of a defendant on the witness stand or
16 anything, but this is the best way we found to get our
17 information. We'll talk to you for a while, then the
18 defense will talk to you.

19 All we are interested in is your
20 honest answers to our questions. I'm going to ask you
21 some questions about your background, some of the things
22 on the questionnaire, and explore some of your feelings
23 about the death penalty, and how the law applies to this
24 case. If you have got any questions at any time, just
25 let us know. Okay?

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1 A. Yes, sir.

2 Q. All right. Looking at your
3 questionnaire, you have retired here in Kerrville, and
4 you were a police officer, was it in Albuquerque?

5 A. Yes, sir.

6 Q. For 25 years?

7 A. Yes, sir.

8 Q. All right. Tell us what type of --
9 what were your duties as a police officer?

10 A. I was patrolman for seven years. They
11 varied all the way from academy instructor, traffic law
12 enforcement, SWAT team, routine patrol, then I was
13 promoted to detective where I was -- worked as juvenile
14 detective, then a school detective, and then was promoted
15 to sergeant; was a sergeant for seven years. During my
16 tenure as a sergeant, I was with the bomb squad, the
17 airplane, K-9, horse patrol, routine patrol.
18 I was in planning back in the academy.
19 I was certified law enforcement instructor for the State
20 of New Mexico; promoted to lieutenant for five years
21 during which time I was a watch commander. I was
22 commander of planning. I was also commander of the SWAT
23 team. Then I was promoted to captain; was a captain for
24 six years; was SWAT team commander, area commander, and
25 then, property management commander.

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1 Q. Well, you have done it all sounds
2 like?
3 A. Some.
4 Q. You were a sergeant over the K-9 unit?
5 A. Yes, sir.
6 Q. Did you actually work with the dogs or
7 were you just supervising over them?
8 A. Both, sir.
9 Q. Okay. And what type of dogs were you
10 all using?
11 A. We were using German shepherds at the
12 time.
13 Q. What were their duties?
14 A. Basically, search and some drug; drug
15 hadn't really come into it's own with K-9s at that time.
16 So we used them mostly on building searches.
17 Q. Searching for suspects in buildings;
18 that kind of thing?
19 A. Yes, sir.
20 Q. Okay. And you were a detective for
21 some time and actually school detective; is that right?
22 A. Yes, sir.
23 Q. What type of detective -- what types
24 of crimes did you investigate as a detective?
25 A. Basically, I was a sex crimes expert.

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1 Q. Okay. Children or just any type?
2 A. Children, sir.
3 Q. Okay. And were you ever a detective
4 involved in a murder case?
5 A. No, sir.
6 Q. Ever involved, in any of your other
7 duties, become involved in a murder case?
8 A. Yes, sir.
9 Q. What happened there? How were you
10 involved? Just arriving officer at the scene?
11 A. Arriving officer at the scene,
12 supervisor at the scene.
13 Q. Okay. I take it then over the 25
14 years you have testified many, many times in criminal
15 trials?
16 A. Yes, sir.
17 Q. Of all sorts and kinds?
18 A. Yes, sir.
19 Q. And you have seen a little bit of
20 everything as a police officer?
21 A. Yes, sir.
22 Q. How do you feel? Do you feel, I mean

23 obviously, you have a lot of experience more than the
24 average juror. Do you think you could be fair in a
25 criminal case?

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1 A. Yes, sir.

2 Q. Sitting as a juror?

3 A. Yes, sir.

4 Q. Okay. You probably well know there is

5 good police officers, there is bad police work sometimes,

6 you have been exposed to it all?

7 A. Yes, sir.

8 Q. One of the portions of our

9 questionnaire we have: Have you ever seen a case that

10 had not been properly investigated? Were those some

11 cases you might have supervised, or became involved in?

12 A. I have seen some that have not been

13 investigated in my opinion properly, sir.

14 Q. Okay. And your brother is also a

15 police officer; is that right?

16 A. Yes, sir.

17 Q. Okay. Let me go into your specific

18 feelings about the death penalty. Obviously, our goal in

19 this case is to prosecute the defendant, prove her

20 guilty, and try to prove these answers so they may be

21 answered by a jury in a way which will someday result in

22 her execution. The defense has taken the opposite view.

23 And it will be a hard fight on both sides. What we want

24 to know is your personal feelings about the death

25 penalty.

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1 Do you agree with the death penalty as

2 a law?

3 A. Yes, sir.

4 Q. Okay. Tell me, in your own words, why

5 you believe in the death penalty; what purpose you feel

6 it serves?

7 A. I think that in some situations, under

8 some mitigating circumstances, that it's warranted. Per

9 the State per any number of reasons.

10 Q. Okay. Give us a couple of examples of

11 those, if you could.

12 A. Well, basically, people who are beyond

13 rehabilitation, people that have shown a propensity for

14 that type of thing.

15 Q. Okay. Any -- have you ever followed

16 any cases in the news or from your own work where you

17 feel the criminal or the defendant should get the death
18 penalty or should have gotten the death penalty or
19 followed any cases closely involved in that?
20 A. Yes, sir, I have.
21 Q. What were those? From work or just in
22 the news?
23 A. Just at work, sir.
24 Q. Okay. And in New Mexico, do they have
25 the death penalty?

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1 A. They do, sir. They haven't executed
2 anyone though since 1950 something.
3 Q. Really. And some of the cases you
4 were actually involved in, were they death-penalty-type
5 cases?
6 A. Yes, sir.
7 Q. Okay. Did the person receive the
8 death penalty?
9 A. No, sir.
10 Q. Okay. Did they go to a jury trial?
11 A. Yes, sir.
12 Q. Okay.
13 A. They were sentenced but the governor
14 then elect, Toney Anaya, or Anaya rather, commuted all
15 the sentences.
16 Q. I see. So sentenced to death but then
17 commuted by the --
18 A. Yes, sir, commuted by the governor.
19 Q. How did you feel about that?
20 A. Not my option.
21 Q. You didn't have any control over it?
22 A. No, sir.
23 Q. All right. Let me ask you, obviously,
24 most violent criminals oftentimes involve males.
25 Obviously, we have a female on trial here in a death

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1 penalty case. Do you think that would affect you in any
2 way?
3 A. No, sir.
4 Q. Okay. You talked about people that
5 cannot be rehabilitated or people that show a propensity
6 for violence. I take it you are talking about people
7 with a long criminal record; is that right?
8 A. In some instances.
9 Q. Okay. Obviously, you look at this
10 first question, that is one of the questions we have to

11 prove in punishment. "Do you find from the evidence
12 beyond a reasonable doubt that there is a probability
13 that the defendant would commit criminal acts of violence
14 that would constitute a continuing threat to society?"
15 You may hear a lot of evidence on
16 someone's past record; or it could be a case where
17 someone who is a saint, never committed a criminal
18 offense before. We may have only the facts of the crime
19 itself for a jury to make that determination. Do you
20 think you could answer that question based on just the
21 facts of the offense alone, depending on what those facts
22 were obviously?
23 A. Depending on what the facts were, yes,
24 sir.
25 Q. Do you think you could gain enough

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1 information about the defendant by the brutality of the
2 crime and what lead up to it, things of that nature?
3 A. I think probably so.
4 Q. Okay. All right. Sometimes, and you
5 will know this better than most people, the State, when
6 proving a murder case, puts on what we call
7 circumstantial evidence. Circumstantial evidence is
8 anything but an eyewitness to a crime. You know, the way
9 we determine is direct or indirect evidence. If you have
10 an eyewitness, that is direct evidence. Any other
11 evidence that links them, fingerprints, things taken from
12 the crime scene, anything else the defendant might have
13 said before, after or during the crime, things of that
14 nature, is indirect evidence or circumstantial evidence.
15 Do you think you would have a problem
16 finding someone guilty of capital murder if it was proven
17 to you through circumstantial evidence?
18 A. I think beyond a reasonable doubt
19 would be my key to that, if I was beyond a reasonable
20 doubt.
21 Q. All right. In Texas, you know, we
22 always hear about motives. And police officers,
23 prosecutors, everyone is interested in the motive. Why a
24 crime occurred? But oftentimes you may not know the true
25 motive. In Texas, we're not required to prove to you

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1 what the motive is, the reason for the killing. And it
2 may become very apparent through the testimony. It may
3 be one of several motives or it may be a motive known
4 only to the defendant. But it's not required under law

5 that we prove a motive.

6 Are you comfortable with that area of
7 law?

8 A. Yes, sir, I am.

9 Q. Okay. Let's talk about Question

10 Number 1 at a little greater length. Now you don't reach
11 that question until the State of Texas has proven its
12 case beyond a reasonable doubt. Then, once we get to the
13 punishment stage, as I said, you might hear additional
14 evidence about the defendant's background and you may
15 not. You might hear bad things about her character; you
16 may hear a lot of good things about her character. But
17 at the close of that evidence you go back into the jury
18 room and the first thing you do is decide, did the State
19 prove this question, yes, beyond a reasonable doubt. You
20 start out with a presumption of no. Just like there is a
21 presumption of innocence starting out at any trial. And
22 the State has to overcome that presumption.

23 The definitions contained in that
24 question -- you won't be given legal definitions from the
25 Judge like you will in other areas of the trial. In

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1 other words, whatever those words mean to you, that is
2 what you go with back there in the jury room. So, let me
3 go over a couple of those things. We have to prove
4 beyond a reasonable doubt that there is a probability
5 that the defendant would commit criminal acts of
6 violence. When we use the word probability, what does
7 that mean to you?

8 A. Most likely.

9 Q. Okay. More than likely?

10 A. More than likely. Most likely.

11 Q. You understand that it doesn't mean we
12 have to prove it's an absolute certainty or anything like
13 that?

14 A. Yes, sir.

15 Q. Are you comfortable with the word
16 probability used in this context?

17 A. Yes, sir.

18 Q. Okay. We also have to prove that they
19 would commit criminal acts of violence. When you see
20 those words, what comes to mind?

21 A. They violated the statutory
22 description legislature put out.

23 Q. Could it mean any type of felony, any
24 type of crime of violence at all?

25 A. Commit criminal acts of violence.

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1 Q. You understand that just because you
2 find someone guilty of intentionally killing someone,
3 that doesn't mean you answer that question yes
4 automatically. You have to go back and reevaluate all of
5 the evidence and then decide if the State proved its
6 case. It's not an automatic answer at all. Could you
7 follow the law in that regard?

8 A. Yes, sir.

9 Q. All right. Just call it case by case
10 basis. The second question you get to is that mitigation
11 question. Now, neither side has the burden of proof in
12 that case. It's just something the jurors look at. You
13 look at all the evidence that came up. But I want to
14 read that one out loud. If you would follow along, it is
15 kind of lengthy.
16 "Taking into consideration all the
17 evidence, including the circumstances of the offense, the
18 defendant's character and background, the personal, moral
19 culpability of the defendant, is there a sufficient
20 mitigating circumstance or circumstances to warrant that
21 a sentence of life imprisonment rather than a death
22 sentence be imposed?"
23 We kind of call that a safety net
24 question sometimes. Before you get to it, you have
25 already found the defendant guilty beyond a reasonable

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1 doubt. You found beyond a reasonable doubt that they --
2 that there is a probability that they would commit
3 criminal acts of violence, be a continuing danger.
4 However, there is something in the
5 evidence; something in the crime or the background of the
6 defendant that tells you that instead of a death
7 sentence, a life sentence should be imposed. And then
8 you could answer it that way, if that evidence occurred.
9 No one can tell you what the mitigating evidence is, that
10 would be up to you.

11 Does that sound like a fair question
12 to you in a death penalty case?

13 A. Yes, sir.

14 Q. Do you think you could keep your mind
15 open to that type of testimony?

16 A. Yes, sir.

17 Q. Okay. Now, like I said, whatever is
18 mitigating is up to you and the other jurors. You won't
19 get any further definitions. In fact, you don't even
20 have to agree with the other jurors what mitigating is.

21 Does anything come to mind as to what you might regard as
22 mitigating?
23 A. Well, mental stability.
24 Q. Okay.
25 A. A lot of other things along that

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1 particular line.
2 Q. Sometimes jurors bring that up, they
3 say mental retardation. A person can be born that
4 certain way through no fault of their own, but still know
5 what they are doing, but might be a lot slower, mentally
6 retarded, things like that. Is that what you are talking
7 about, those types of things?
8 A. No, sir. I think, you know, state of
9 mind, at the time.
10 Q. Okay.
11 A. Anything happens, I have seen people
12 that were not of their mind at times.
13 Q. Okay. You are talking about, more or
14 less, are you going as far as like temporary insanity?
15 Where they just were not rationally thinking?
16 A. Well, I don't like to use that term,
17 because it's too legal. But I mean I have seen people
18 under crisis situations and all types of situations and
19 they didn't act or react in a way that you would have
20 thought they would have, or that was in character.
21 Q. Okay. Have you also seen, as a police
22 officer, just senseless, cruel crimes?
23 A. Yes, sir, I have.
24 Q. Made by rational people, but they just
25 commit them?

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1 A. Yes, sir.
2 Q. Those can be kind of hard to
3 understand also, but they are legally responsible for
4 those?
5 A. Yes, sir.
6 Q. Okay. But the bottom line is, can you
7 keep your mind open to this type of evidence? And if you
8 think it is appropriate, first of all, if you hear the
9 evidence and it's mitigating, does it rise to the level
10 that you think a life sentence should be imposed: Would
11 you answer the question that way?
12 A. Yes, sir.
13 Q. And of course, the alternative is, if
14 you don't think it rises to that level, you could answer

15 it "no," knowing that the defendant could receive the
16 death penalty.

17 A. Yes, sir.

18 Q. Okay. That is the bottom line. We
19 have to know if jurors can honestly listen to all the
20 evidence and then make these decisions. In this case,
21 unlike New Mexico, Texas, obviously, does have a lot of
22 executions. We lead the nation in executions. We have
23 had over 100. So it is a very real issue. Talking about
24 convicting someone and then ultimately being executed.
25 The method here is by lethal injection. You may have

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1 read or seen that on the news.

2 Let me ask you, Mr. Norlander, do you think
3 you are the type of juror that would listen to the
4 evidence, and if these things are proven to you, you
5 could take pen in hand and answer those questions in a
6 way knowing that if you answer a "yes" and a "no," the
7 defendant would be executed?

8 A. Yes, sir.

9 Q. Okay. The Judge went over a number of
10 rights that apply in every criminal case and you being a
11 police officer are probably a lot -- very familiar with
12 these: Presumption of innocence being one; every
13 defendant starts out with the presumption of innocence.
14 No matter if they have been arrested or indicted. Can
15 you follow that rule of law?

16 A. Yes, sir.

17 Q. Okay. The right not to testify; if
18 you want to testify, you can; but if you don't, the jury
19 cannot hold that against you. Would you follow that
20 rule?

21 A. Yes, sir.

22 Q. Okay. The burden of proof; the State
23 has the burden to prove this case beyond a reasonable
24 doubt. That burden never shifts to the defense, you
25 know. I don't expect them to do this, but if those

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1 lawyers wanted to, they could sit over there and read the
2 comics or play tiddlywinks. They are not going to do
3 that, but they could do that, because if we don't meet
4 our burden even by our own testimony without any
5 questions, you have an obligation to find the defendant
6 not guilty. They are not obligated to put on witnesses,
7 or ask questions, or prove their client's innocence. We
8 have to prove this case beyond a reasonable doubt.

9 Will you require the State to do that?

10 A. Yes, sir.

11 Q. Will you not shift the burden to their

12 side of the table?

13 A. No, sir.

14 Q. Okay. Another area, obviously, in a

15 criminal case, you have police officers that come in and

16 testify, like you did many, many times. The law says you

17 have -- as a juror, have to start all the witnesses off

18 on the same foot. A lot of people respect police

19 officers, but you cannot start them out ahead of other

20 witnesses, you have to judge them like you would any

21 other witness. And after you have listened to them,

22 obviously, you judge each witness differently.

23 I guess, from all the police officers

24 you have worked with, you recognize there are real good

25 police officers, and there are a few bad apples

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1 sometimes.

2 A. Yes, sir.

3 Q. They are human beings like anyone

4 else. Could you follow the rule that start all the

5 witnesses off on an equal footing and not give extra

6 credit or extra credibility to a police officer?

7 A. Yes, sir.

8 Q. Okay. Sometimes people talk about the

9 parole laws. Those -- you will get an instruction from

10 the Judge that you are not to consider the parole laws in

11 any way during any time during your decisions. Could you

12 follow that rule of law?

13 A. Yes, sir.

14 Q. Okay. You put on your questionnaire

15 that you were, I think, subject to a lawsuit once in

16 regards to your duties as a police officer.

17 A. Yes, sir.

18 Q. What was that about?

19 A. It was a Title 1987, '88, and '89,

20 wherein I fired or terminated a police officer. He sued

21 11 of us for racial discrimination.

22 Q. Okay. What happened on that lawsuit?

23 A. We were found not guilty.

24 Q. Okay. It actually went to trial?

25 A. Yes, sir, it actually went to trial.

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1 Q. Oh, your other -- I think it is your

2 other brother, is back in Albuquerque also. He is

3 involved in TV news?
4 A. Yes, sir.
5 Q. What does he do?
6 A. He is the assistant news director of
7 KOAT-TV News.
8 Q. Okay. And you retired from
9 Albuquerque and then came here to Kerrville?
10 A. Yes, sir.
11 Q. What brought you to Kerrville?
12 A. I like this part of the country; have
13 for years.
14 Q. Okay. So you have known about it and
15 came here?
16 A. Yes, sir.
17 Q. Okay. Well, you made a good choice.
18 A Thank you.
19 Q. And you spend your time, it looks
20 like, fishing and woodworking, that kind of thing?
21 A. And raising my kids.
22 Q. And raising your kids. Well, that is
23 a full time job in and of itself.
24 A. Right now it is.
25 Q. Can you --

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1
2 MR. TOBY SHOOK: Judge, if I could have just
3 one moment?
4 THE COURT: Yes, sir.
5
6 BY MR. TOBY SHOOK:
7 Q. Mr. Norlander, obviously, you know
8 from your experience as a police officer that a jury
9 decides the case just on the facts that are brought up in
10 the courtroom from witnesses on the witness stand and,
11 you know, exhibits that are introduced, that kind of
12 thing, not tried in the press or the newspaper.
13 This case has got a lot of publicity
14 and I believe you did read something here in the local
15 paper about it; is that right?
16 A. Yes, sir.
17 Q. Did it contain much of the facts or
18 anything like that?
19 A. No, sir. I just barely recall the
20 case.
21 Q. All right. You haven't formed any
22 opinion about this case at all?
23 A. No, sir, I have not.
24 Q. You could decide this case, if you

25 were chosen as a juror, just based on the evidence in the

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1 case?

2 A. Yes, sir.

3 Q. And you could tell us you could keep

4 your mind open and would require the State to prove its

5 case in the guilt/innocence stage? Then, if the

6 defendant was found guilty, you could go on and make the

7 State prove its case in the punishment phase?

8 A. Yes, sir.

9 Q. But if we did prove it, you could

10 answer those questions accordingly?

11 A. Yes, sir.

12 Q. Okay. Do you have any questions over

13 anything we have gone over or any questions of me?

14 A. No, sir.

15 Q. Okay. The trial is slated to begin

16 January 6th, and we think it is going to last about two

17 weeks. And Judge Tolle works pretty steady on through

18 the day, but he doesn't go into the evening hours. We

19 don't expect the jury to be sequestered, especially

20 during -- while the trial is going on. Maybe if there is

21 deliberations going on, but no longer than that. So it's

22 not going to be anything like the O.J. Simpson case where

23 we go on for months or anything like that.

24 A. Okay.

25 Q. That's all the questions I have.

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1 Thanks for your patience, sir.

2 A. Yes, sir.

3

4 THE COURT: Thank you, Mr. Shook. Mr.

5 Mosty.

6

7 VOIR DIRE EXAMINATION

8

9 BY MR. RICHARD MOSTY:

10 Q. Mr. Norlander, my name is Richard

11 Mosty and I am one of the lawyers representing Darlie.

12 Here is Preston Douglass to my left, my partner. And the

13 defendant, Darlie Routier. She is also represented by a

14 couple of co-counsel from Dallas who are not here. We're

15 splitting up some of this.

16 And I don't believe we have ever met.

17 A. No, sir, not to my knowledge.

18 Q. Do you live in the Center Point School

19 District?

20 A. Yes, sir, I do.

21 Q. I took that from -- your kids are in

22 school down there?

23 A. Yes, sir.

24 Q. What ages are they? What grades?

25 A. I have four children: One is 28, one

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1 is 25, and then the two that I have at home; one is 15

2 and he is a sophomore, and the other is 12 and she is in

3 the 7th grade.

4 Q. Okay. I am an old Center Point boy

5 myself.

6 Did -- how did you happen to even know

7 about the Hill Country? Had you visited here, or hunted

8 or something?

9 A. No, sir, my grandparents lived in

10 LaFeria, Texas, and they would come up here on a lot of

11 their Bible retreats and that type of thing. And they

12 really loved the Hill Country and I had come through it a

13 few times and liked it very much myself.

14 Q. Did they come to the Cowboy camp

15 meeting in August?

16 A. You know, it's been so many years, I

17 don't even really recall, but I knew that they came up

18 here a lot and they really loved it.

19 Q. And I guess you grew up in

20 Albuquerque?

21 A. Yes, sir.

22 Q. I want to focus -- I really want to

23 focus on the first part of the trial. Sometimes we sit

24 here and talk so much about what the punishment is that I

25 want to make sure that we don't get lost over what we're

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1 really here about. And that is, whether or not the State

2 can prove my client guilty beyond a reasonable doubt.

3 And so that is what I want to sort of

4 dwell on with you and focus on with you. And I want to

5 be perfectly candid, defense lawyers sit over here and

6 see someone with 28 years of police experience, that

7 causes our hearts to twinge a little bit, and so let's be

8 perfectly -- let's just be perfectly candid.

9 A. That is why I have never been on a

10 jury before.

11 Q. Well, I suspect -- I have, in fact,

12 picked the police chief in Fredericksburg to serve on a

13 jury over there. And after they committed me to the
14 state hospital and I got out, I still thought it was a
15 good idea.

16 A. I think we can make good jurors, I
17 truthfully do.

18 Q. I think so, and I think that what we
19 need -- I need to understand exactly where you are on
20 these cases.

21 Have you ever personally been involved
22 as a police officer in a case that you really perhaps
23 thought the defendant was not guilty, even though you had
24 been part of the investigation and they were tried?

25 A. (No response.)

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1 Q. Even though you were called to testify
2 and testified honestly on your part, that you really had
3 some doubts in your mind about whether or not the person
4 really committed the crime?

5 A. That would be difficult for me to say.

6 The cases that I personally investigated, or was deeply
7 involved in, no, sir. I made an honest effort to try to
8 at least if nothing else, be convinced myself, of what I
9 was doing. I had some partial, you know, just
10 assistance, in a few situations where, yes, I had my
11 doubts. I was not that much of an element towards the
12 proof, you know, just some substantiating issues and some
13 things like that, and I had some questions, yes, sir.

14 Q. Okay. Have you ever participated in a
15 case when someone was found not guilty in which you were
16 deeply involved that you thought that there was a
17 miscarriage of justice?

18 A. No, sir.

19 Q. Felt like the result in the instances
20 that you were involved in was proper?

21 A. Generally, yes, sir. Misdemeanor
22 cases, that is a different issue. But felony cases, no,
23 sir, generally.

24 Q. Of course, you know that your days of
25 solving crime are now over?

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1 A. Long been over.

2 Q. And that this jury is never going to
3 be called upon to solve this crime?

4 A. Yes, sir.

5 Q. It's just going to be the narrow issue
6 of what can the State prove?

7 A. Yes, sir.

8 Q. And that doesn't cause you any --

9 A. No, sir.

10 Q. -- or else I suppose you would not

11 have retired if you still had a burning desire to be out

12 there solving cases.

13 A. I had not been actually involved in

14 cases probably for 15 to 20 years. I was more into the

15 administrative end as a lieutenant and a captain and have

16 been retired for five years, so, I would say for a good

17 15 years, I really have not been involved in

18 investigating any cases.

19 Q. Did -- in your experience -- did you

20 find as a police officer, that having a motive was

21 helpful to you in really ascertaining what happened in a

22 crime?

23 A. I think it was helpful, yes.

24 Q. And could you conceive that there

25 might be cases where the State had some evidence, but

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1 that the lack of motive just put such a glaring hole in

2 it that their story just didn't quite make sense and

3 would create reasonable doubt?

4 A. I will be honest with you. I don't

5 have a problem with the term reasonable doubt. If I have

6 reasonable doubt, I'm independent enough to state that I

7 have reasonable doubt.

8 Q. Did New Mexico define reasonable doubt

9 for you?

10 A. Well, I have lectured on that

11 particular subject as a matter of fact. I think I have

12 been through three or four volumes on the subject, and I

13 don't know if I could define it for you.

14 Q. Well, you just took away my next

15 question because I was going to ask you --

16 A. Well, to me, basically, what it means

17 is that after everything has been said and done, that a

18 reasonable person would believe, without any questions,

19 that this particular thing had happened or that this

20 particular person had done it.

21 Q. You are not far from the Texas

22 definition. It says if someone would act without

23 hesitation --

24 A. Yes, sir.

25 Q. -- in the most important of their own

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1 affairs.

2 A. Yes, sir.

3 Q. How -- and I guess you would not have

4 any problem doing the same, making that same analysis and

5 application to a circumstantial evidence case?

6 A. No, I don't think I would.

7 Q. I have drawn an analogy of reasonable

8 doubt as being a block or a circle that the State must

9 paint completely black in order to remove reasonable

10 doubt. And that is, you know, oftentimes done with an

11 eyewitness who says, "I saw this happen." And there is

12 one big piece of evidence that removes reasonable doubt.

13 On the other hand, circumstantial

14 evidence is a number of pieces of evidence in which the

15 State attempts to again blacken out that reasonable

16 doubt. There might be instances where that

17 circumstantial evidence really isn't relevant. It might

18 not be anything in terms of removing reasonable doubt.

19 Have you seen situations like that?

20 A. Smoking mirrors, yes, sir.

21 Q. Adding two and two and getting five

22 and it just doesn't quite add up.

23 A. Yes, sir.

24 Q. Tell me, what newspapers do you

25 regularly subscribe to?

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1 A. The Kerrville Daily Times is the only

2 one I subscribe to. I read the San Antonio paper

3 occasionally.

4 Q. What do you -- what is your ordinary

5 daily routine? What do you do most days?

6 A. I get up about 6:00; get the kids up,

7 help them get off, go down and feed my horses, go to work

8 in my shop if I have any orders or anything I can do down

9 there.

10 Q. You are actually working at cabinet

11 making or --

12 A. Well, knickknacks, goo-gahs, cabinets,

13 little things.

14 Q. Where do you live outside the --

15 outside Center Point?

16 A. I live behind the airport on Johnson

17 Drive.

18 Q. Okay. In the Shady Grove area?

19 A. Yes, sir, that is the addition.

20 Q. And your older kids are where?

21 A. One of them is in Ruidoso, New Mexico,

22 on the fire department; and my daughter is in Alamogordo,

23 New Mexico, with her husband who works for one of the
24 missile companies over there. I don't remember, and he
25 just changed the phone company, so I don't remember.

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1 Q. Did you have any feelings about when
2 the governor pardoned or commuted the death sentence, did
3 that cause you any consternation at the time?

4 A. Well, yes, I would say it caused me
5 some consternation only from the standpoint that I feel
6 very strongly that we as a citizen, we get basically what
7 we deserve. And when we go to the polls and make our
8 votes and do our things; I had accepted that philosophy
9 long before being a law enforcement officer, not to get
10 too upset about a lot of the things that transpired.

11 I believe in the judicial system of
12 America. I have some problems sometimes with the
13 individuals who are involved with it. But I do believe
14 in the system of checks and balances and our whole basic
15 system. So rather than get upset, I basically adopted a
16 fairly philosophical view about the whole thing.

17 Q. At what stage in your life do you
18 think you sort of developed that philosophical view?

19 A. Oh, about 35, 40 years old. I think,
20 you know, I think to survive in municipal law enforcement
21 today in the crisis with gangs, you know, and so on and
22 so forth. I think if you don't adopt a philosophical
23 view, you are liable to end up with more trouble than you
24 have got.

25 Q. What kind of law enforcement is your

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1 brother in?

2 A. He was an Albuquerque city policeman
3 for 25 years. He retired and he went back as a -- works
4 in the school, in a high school there as a -- works for
5 the City Police Department, but as a school -- I don't
6 want to call them a guard, I don't want to call them a
7 detective, just a police officer attached to the school.

8 Q. All right. And is that a high school
9 there in Albuquerque?

10 A. Yes, sir, it is, El Dorado High.

11 Q. In your questionnaire, you were asked
12 do you believe that there are some crimes which call for
13 the death penalty solely, and solely is underlined,
14 because of the facts and circumstances regardless of
15 whether or not the guilty person has committed prior
16 violent acts? And you answered in your questionnaire,

17 no, or checked the no questionnaire in there. And I was
18 thinking that when Mr. Shook and you discussed this,
19 perhaps you changed or rethought that position a little
20 bit. That simply the facts and circumstances themselves
21 could or could not be enough to influence you to impose a
22 death sentence?

23 A. Well, the way that question sounded to
24 me like, it is a matter of fact. The person did this,
25 therefore this occurs. And I don't necessarily believe

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1 that, I believe that the mitigating circumstances can
2 surround any particular situation.

3 Q. Okay.

4 A. And change it.

5 Q. Well, I will say to you that I had
6 nothing do to with writing these question, so you can say
7 anything you want to about them. So, if I understand
8 what you are saying is that just because somebody is
9 guilty, it doesn't necessarily follow they ought to get
10 the death penalty?

11 A. That's correct.

12 Q. And that is what you were trying to
13 express in there?

14 A. Yes, sir.

15 Q. Do you think that there could be
16 circumstances which a person was convicted of murdering a
17 child under ten -- under six, that would still warrant a
18 life sentence?

19 A. Yes, sir.

20 Q. You are open to that?

21 A. Yes, sir.

22 Q. To that concept?

23 A. Yes, sir.

24 Q. I think Mr. Shook asked you this
25 question but let's be certain: You would judge the

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1 credibility of the police officer just the same as you
2 would any other person?

3 A. To me a police officer is an everyday
4 person. I dealt with them everyday. And they have the
5 same faults, the same good points and everything as
6 anybody else does, so to me they are the same.

7 Q. Okay.

8

9 MR. RICHARD MOSTY: I'll pass the
10 witness.

11 THE COURT: Would you, mind stepping
12 outside just a minute, sir?
13 THE PROSPECTIVE JUROR: Yes, sir.
14 THE COURT: Don't go.
15 THE PROSPECTIVE JUROR: No, sir.
16 THE COURT: Don't go, all right.
17 Thank you.
18
19 (Whereupon, a short
20 Discussion was held
21 Off the record, after
22 Which time the
23 Proceedings were resumed
24 As follows:)
25

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1 THE COURT: What says the State?
2 MR. TOBY SHOOK: The State accepts the
3 juror.
4 THE COURT: What says the --
5 MR. RICHARD MOSTY: The defense will
6 exercise conventional wisdom, Your Honor, and we will
7 strike the juror.
8 THE COURT: The Court is nonplussed
9 over that decision. All right. If you will call the
10 juror in, please.
11 All right. Well, Mr. Norlander, we
12 want to thank you very much for your time and your
13 attendance, but you will not be needed any further.
14 THE PROSPECTIVE JUROR: Thank you.
15 THE COURT: Please do not speak to
16 anyone about the case until it's over. Be kind enough to
17 do that.
18 THE PROSPECTIVE JUROR: Okay.
19 THE COURT: Yes, sir. Thank you very
20 much.
21 All right. The next witness -- the
22 next prospective juror, Mr. Charles Rives. Bring him in.
23 All right. Have a seat right here,
24 please, sir.
25 Will you please raise your right hand,

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1 sir?
2 Do you solemnly swear or affirm that
3 you will faithfully answer all the questions propounded
4 to you -- truthfully answer all the questions propounded

5 to you in this courtroom or any room to which you may be
6 sent concerning your qualifications as a juror, so help
7 you God?
8 THE PROSPECTIVE JUROR: I do.
9 THE COURT: Please state your name.
10 THE PROSPECTIVE JUROR: My name is
11 Charles Rives, R-I-V-E-S.
12 THE COURT: Thank you. All right, Mr.
13 Shook.
14 MR. TOBY SHOOK: Thank you, Judge.
15
16 Whereupon,
17
18 CHARLES O. RIVES,
19
20 was called as a prospective juror, for the purpose of
21 voir dire, having been first duly sworn by the Court to
22 speak the truth, the whole truth, and nothing but the
23 truth, testified in open court, as follows:
24
25

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1 VOIR DIRE EXAMINATION
2 BY MR. TOBY SHOOK:
3 Q. Mr. Rives, my name is Toby Shook, I am
4 an Assistant District Attorney for Dallas County. I am
5 one of the prosecutors assigned to this case, along with
6 Greg Davis, who is not here, and Sherri Wallace.
7 The attorneys that are present for the
8 defense today are Mr. Richard Mosty and Mr. Preston
9 Douglass. And obviously, the defendant is seated at the
10 corner, Mrs. Darlie Routier.
11 Do you know either of the local
12 counsel?
13 A. No, sir.
14 Q. And I guess you don't know any of us
15 from Dallas?
16 A. No, sir.
17 Q. Okay. What we are down here today on
18 obviously, is individual voir dire on a death penalty
19 case. You sat on a civil jury, looked like they had you
20 there for what, eight weeks?
21 A. Yes, sir.
22 Q. Have you ever sat on a criminal jury?
23 A. No, sir.
24 Q. Okay. Usually a jury selection is
25 done from a panel, but because this is a death penalty

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1 case we interview each juror individually. We're not
2 trying to put you on trial up there or anything, but we
3 each get a certain amount of time with you, and we just
4 want your honest opinions. And I can tell you, you won't
5 be here for eight weeks like the civil trial.

6 A. Thank you.

7 Q. We think the trial, we can't say for
8 sure, but we think it will last about two weeks, starting
9 January 6th. Outside shot, a little more than that, but
10 no more than that, as far as we can guess. It's not
11 going to be anything like the case you were on or the
12 O.J. Simpson case or anything like that.

13 Does that cause you any problems then,
14 obviously, besides the regular inconvenience?

15 A. Well, regular inconvenience, and if it
16 were to go longer than that then it would start to
17 jeopardize compensation employment.

18 Q. We can fairly well tell you, not more
19 than three weeks. We think it is going to be about two
20 weeks.

21 A. All right.

22 Q. All right. Mr. Rives, it is Mr.

23 Rives, right?

24 A. Yes.

25 Q. Okay, Mr. Rives, you obviously saw

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1 something about the case; got a lot of publicity here in
2 the Kerrville paper, San Antonio, some of the news
3 stations had a little bit on it. Obviously, as a juror,
4 you are to hear the evidence and make your decisions on
5 what you hear here in the courtroom. Have you heard a
6 lot of publicity about the facts of this case at all?

7 A. Very little. Once the Judge told us
8 last week not to pay attention, I did my best not to.

9 Q. Okay. So if you are selected as a
10 juror, that won't be an issue with you. You will make
11 your decision just on what you hear in the courtroom?

12 A. Yes, sir.

13 Q. Okay. Let me ask you a little bit --
14 what type of jury were you on? It was a civil case?

15 A. Yes, sir.

16 Q. Twenty-three million dollar verdict?

17 What was it about?

18 A. A Japan Airlines 747 had slipped off
19 the runway in Anchorage, Alaska. And the Japan Airlines
20 was suing the State for negligence in maintenance and

21 operation of the airport.
22 Q. Okay. And you found in favor of
23 the --
24 A. Of Japan Airlines.
25 Q. Japan Airlines.

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1 A. Well, it was a split --
2 Q. Split deal --
3 A. -- kind of deal, yes.
4 Q. How long ago was that?
5 A. That was probably 15 years ago.
6 Q. Okay. And you yourself have been an
7 expert in the exotic animal industry; is that right?
8 A. Yes, sir.
9 Q. What type -- were you ever called and
10 testified in a trial?
11 A. I testified in one trial. It was
12 later declared a mistrial, but I took the stand and
13 discussed the exotic animal industry as answering the
14 questions.
15 Q. Okay. And you were involved in that
16 as a director, it looked like, of the exotic animal
17 industry; is that right?
18 A. Yes, sir.
19 Q. Okay. What did you do as director?
20 A. It was the typical functions and
21 duties of someone that has the paid officer's position of
22 an association, because it was an association.
23 Q. Okay. And right now you are
24 self-employed, grant writing, and you work for a Mexican
25 corporation; is that right?

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1 A. Yes, sir.
2 Q. Okay. I also saw on your
3 questionnaire that -- I think it is your daughter, was
4 the victim of an assault; is that right?
5 A. Yes, sir.
6 Q. Was anyone ever arrested in regards to
7 that?
8 A. Yes, sir.
9 Q. Okay. How long ago was that?
10 A. Two years ago.
11 Q. Okay. Did you have any problem with
12 the police work that was done on that?
13 A. No, they didn't even get that far,
14 because we didn't learn about it until several years

15 after the -- two years after the fact.

16 Q. Okay. Let me go into your personal

17 feelings about the death penalty. Obviously, the State's

18 goal in this case is to present evidence and argue for

19 guilt in this case. And ultimately, to answer these

20 questions in the way that will result in the execution of

21 the defendant. The defense obviously, has taken the

22 opposite view and it will be a dog fight I'm sure. So we

23 want to know personal feelings about each and every

24 juror.

25 First of all, are you in favor of the

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1 death penalty as law?

2 A. If it's -- if I have to give a yes or

3 no answer, I would have to say yes. But a qualified

4 answer would be in the appropriate situation.

5 Q. Okay. Depending on the case?

6 A. Yes.

7 Q. Okay. What purpose do you think the

8 death penalty serves?

9 A. I think it perhaps serves more than

10 one. One is that it perhaps defers others, it would

11 defer me. The other is that if we look at it from a

12 religious issue, it would be an eye for an eye, and that

13 is what would be appropriate.

14 Q. What types of crimes do you think

15 could be appropriate for the death penalty?

16 A. First degree murder. Perhaps sexual

17 abuse cases in situations that it was chronic sexual

18 abuse cases involving children.

19 Q. Okay.

20 A. That sort of thing.

21 Q. Okay. In Texas -- well, I'll get to

22 that in a moment. Have you followed any type of cases in

23 the media, capital murder cases, death penalty cases,

24 ever?

25 A. Nothing with any special interest. If

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1 it came on, I watched it. If it was in the paper, I read

2 it, but I didn't go to any effort to look for more

3 information.

4 Q. Okay. Some of the big, actually,

5 everyone, I guess, saw a little bit of the O.J. Simpson

6 case. But it was not really a death penalty case, but it

7 certainly did saturate the news for a while. Any

8 thoughts about that case at all?

9 A. The case again?
10 Q. O.J. Simpson case.
11 A. I'm weary of it.
12 Q. Okay. Just about like everyone else I
13 guess. It's back in the news, I guess, now that it's a
14 civil trial. Susan Smith case. Remember that case?
15 A. Where the car went in the creek, or
16 something like that?
17 Q. Right. Involving a woman in South
18 Carolina.
19 A. Right.
20 Q. Did you follow that case closely at
21 all?
22 A. Nothing more than if it was in front
23 of me, I looked at it. If not, I didn't pursue it.
24 Q. In this case, obviously, the defendant
25 is female. Usually when we think about murder cases,

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1 capital murder cases, especially, the defendant is
2 usually a male. Would that cause you any problems at all
3 that the defendant is a female?
4 A. It causes me to probably think a
5 little longer about it, as I have daughters and a wife
6 and I live in a house full of females. So it would cause
7 me to think a little longer about it, but I don't think
8 that I would -- if you know -- if the law is there and if
9 it's right to me, I can do that.
10 Q. Okay. You put down, we had one
11 question about finding someone -- a case calling for --
12 calls for the death penalty based solely on the facts and
13 circumstances of the crime itself. We cannot preview the
14 facts and circumstances to you, obviously. We cannot
15 talk about the facts at all.
16 The way our system is set up is the
17 case is tried with first the guilt/innocence stage which
18 just involves the crime itself. If we prove to you
19 beyond a reasonable doubt that it occurred, there is a
20 guilty finding. Then in the punishment phase, you may
21 hear additional evidence. That could include criminal
22 background or it may not.
23 And if you answer the first question
24 yes, the second question no -- the first question
25 basically being: "Will the defendant be a future danger

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1 to society?" And the second question is basically: "Is
2 there mitigating evidence which calls for a life sentence

3 rather than a death sentence?"
4 If we prove those to you, then the
5 defendant -- then the Judge would sentence the defendant
6 to death. If proven any other way, it's a life sentence.
7 But those are the two alternatives. Now you put down
8 that: yes, in certain cases you could decide a case for
9 death based on the facts of the offense. And you put
10 premeditated down.
11 Is that just depending on the -- is it
12 a case by case method, what you were talking about there?
13 A. I think it has to be case by case. I
14 have learned well enough not to say always and not to say
15 never.
16 Q. Right. But do you feel there are
17 certain cases, just by the facts of the case itself, the
18 brutality of what happened, that could give you enough
19 information where you think a death sentence could be
20 warranted?
21 A. Possibly. Possibly.
22 Q. It would just depend on the evidence?
23 A. Yes, very much so.
24 Q. Okay. In Texas, there are only
25 certain types of murder cases that come -- come under our

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1 death penalty statute. We can have a murder case. If I,
2 for instance, suddenly got mad at Ms. Wallace and pulled
3 out a gun and shot her, it's a cruel, vicious crime, but
4 I couldn't get the death penalty for that.
5 A. Yes, sir.
6 Q. I could get life, but not the death
7 penalty.
8 A. Right.
9 Q. The crimes in Texas are murders that
10 occur during felonies; robbery, burglary, sexual assault,
11 that type of thing; murders of police officers, firemen
12 on duty. And I am just trying to give you a quick
13 rundown: Murders for hire, your hit man situation, if
14 you hire someone to murder someone you could get the
15 death penalty, serial murders.
16 And in this case, as the Judge read
17 the indictment to you, and I believe it's there to your
18 right. Do you see that? That is a copy of the
19 indictment. If you would just read a portion, you see
20 the name Darlie Lynn Routier. There is some allegations
21 there of the indictment in this case which the State has
22 to prove.
23 If you could take a moment and just
24 read that to yourself.

25 A. (Witness complies.) Okay.

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1 Q. Okay. That is the indictment in the
2 case. It sets out allegations of intentionally and
3 knowingly killing of a child under the age of six. And
4 that is the type of offense that falls under our statute
5 that a person could be eligible for the death penalty.
6 I, obviously, cannot ask you what your verdict would be
7 in this case. You have not heard one witness.

8 But is that a type of case, that type
9 of crime, the type that you feel could be appropriate for
10 the death penalty under the proper facts and
11 circumstances?

12 A. Under the proper facts and
13 circumstances, yes.

14 Q. Again, it just depends on the facts?

15 A. Correct. If the child were terminally
16 ill and there were no other options and she did it as a
17 crime of mercy, well, then, that would --

18 Q. That would be a different situation.

19 A. -- would dictate other circumstances.

20 Q. You recognize that there is,
21 obviously, there is about a million different ways these
22 crimes can occur and they all have different mitigating
23 facts and aggravating facts?

24 A. Yes, sir.

25 Q. Okay. Now you may have read or heard

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1 on the news, Texas unlike a lot of other states, the
2 death penalty is a real punishment. There has been over
3 100 persons executed in the State of Texas since the
4 death penalty was put back in effect. Very likely, if
5 you sat on a jury, someday you could fully expect, if you
6 found the defendant guilty and answered these questions
7 in a way, then you might read about her execution
8 someday; execution by lethal injection. You might read
9 about her last words, I don't know.

10 Some people philosophically believe in
11 the death penalty. They think it is a good law, but they
12 don't want to participate in the process, or don't feel
13 they can. Most people don't want to participate in the
14 process, obviously. We need to know, you know you have
15 told us philosophically, there are certain crimes you
16 feel that are appropriate for the death penalty. You
17 told us this type of crime could be, could not be,
18 depending on the facts of the case.

19 We need to know if we prove our case
20 to you beyond a reasonable doubt, prove these issues to
21 you, are you the type of person that could take pen in
22 hand and render these decisions knowing the defendant
23 could be executed?

24 A. I think so.

25 Q. Again, would it just depend on the

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1 facts of the case?

2 A. Right.

3 Q. Okay. Let me talk for a moment about

4 this -- well, let me go to a couple of issues that come
5 up in the guilt/innocence stage. In any type of case we
6 put on evidence, obviously. In proving a case, we call
7 it direct evidence or indirect evidence. Direct evidence
8 is an eyewitness to a crime. If you were to leave the
9 courthouse today and someone robbed you, police
10 apprehended that suspect later, and you identified him,
11 you would be the eyewitness in the case. That would be
12 direct testimony.

13 Indirect testimony or indirect

14 evidence is any another type of evidence: Fingerprints;
15 hair; fibers; DNA testimony; things taken from the crime
16 scene; things the defendant might have said before,
17 during, or after the crime; things of that nature.

18 Actually, anything other than eyewitness testimony is
19 indirect evidence. And the other word for that is the
20 one you probably heard, circumstantial evidence.

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

23 Q. Okay. In a murder case, the State may
24 have only circumstantial evidence to prove its case.
25 Logically you have the victim of a murder and the

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1 perpetrator. Many times you don't have a lot of other
2 people around, or any other witnesses around. So we use
3 circumstantial evidence to prove our case. The burden of
4 proof is the same, whether there is an eyewitness or it's
5 circumstantial evidence; it's beyond a reasonable doubt.
6 Do you feel you could convict someone
7 of capital murder based solely on circumstantial
8 evidence?

9 A. If it suffices to fill the beyond --
10 beyond the shadow of a doubt, then I could do it.

11 Q. Okay. And you said beyond a shadow of
12 a doubt, our legal burden is beyond a reasonable doubt.

13 A. Reasonable doubt. Whatever the
14 instructions are from the Judge.

15 Q. That is the key. We have to prove it
16 beyond a reasonable doubt by whatever evidence. But you
17 don't have any problem with circumstantial evidence as
18 long as it is beyond a reasonable doubt?

19 A. Yes. As long as it is credible and it
20 meets all of the other criteria.

21 Q. Sure. And another area that comes up
22 is motive. You probably heard of motive. Especially in
23 regards to a murder case. I know I used to watch Columbo
24 and all that when I was growing up, and everyone always
25 talked about what is our motive for this crime. The

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1 reason a murder occurs. In Texas we are not required to
2 prove what the motive is.

3 In the guilt/innocence stage what you
4 just read, those allegations, that is what we have to
5 prove. And you will see in there, there is no area
6 regarding motive, or deciding who or why the crime
7 occurred. It might come out in the case, the motive
8 might be very obvious there, or, you know, vice versa.
9 It could come out and the motive is not so clear. That
10 it could be two or three motives. Twelve jurors could
11 have twelve different opinions about what the motive is.
12 Six different police officers might have different
13 motives. The motive might be known only to the defendant
14 and never known to anyone else. It could be what is
15 viewed from the casual observer as just a senseless,
16 cruel killing, and you would never know the reason for
17 it. But we're not required to, by the law, to prove
18 motive.

19 Are you comfortable with that area of
20 the law?

21 A. Trying to ascertain anyone's motive
22 for doing anything is difficult at best. The concept of
23 being comfortable with it is perhaps too informal. I may
24 not like it, I may not be at ease with it. But once
25 again, if that is the directions that we are given --

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1 Q. Okay.

2 A. -- then I think I could do that.

3 Q. Okay. Obviously, most people, as a
4 juror especially, are you going to want to know as much
5 information as you can about the crime?

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

7 affirmatively.)

8 Q. Motive being included?

9 A. Uh-huh. (Witness nodding head

10 affirmatively.)

11 Q. But there are some jurors that tell

12 us, "Look, if you don't give me the rock-solid reason why

13 the defendant did it, I'm not going to find them guilty."

14 And the law doesn't require that, that we're not required

15 to prove that. You are not saying that, I take it?

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

17 Q. Okay. Fair enough then. Let's move

18 on to these special issues. As I said, the trial is

19 divided into two parts. The first part we have to prove

20 beyond a reasonable doubt the allegations in that

21 indictment. If we do that, we move to the second part of

22 the trial. This first special issue, again, the burden

23 of proof for that is beyond a reasonable doubt. And you

24 start out with a "no" answer. Just like at the beginning

25 of all criminal trials, you start out with the

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1 presumption of innocence. This answer to Special Issue

2 Number 1 starts out as a "no." We have to prove that.

3 Now you can use the facts of the case

4 itself to do that. You will get to reevaluate all the

5 evidence you heard in the guilt/innocence stage, plus any

6 additional evidence you hear in the punishment phase.

7 And you can hear character evidence, you can hear about a

8 criminal record, if they have one, convictions, or lack

9 of criminal record, good character references, you can go

10 both ways. You might hear from psychiatrist or a

11 psychologist, who knows. But it can come in all types of

12 forms. Then, after all that evidence is in, like I said,

13 you take the evidence you heard in the guilt/innocence

14 stage, plus whatever you have heard in the punishment

15 phase; and then the first thing you do is decide: Did

16 the State prove its case, or prove this issue beyond a

17 reasonable doubt?

18 Now the words you see in Question

19 Number 1, you will not be provided definitions, legal

20 definitions by Judge Tolle. What your definitions will

21 be up to you and the other jurors, how you view them.

22 So, I want to go over a couple of those words.

23 We have to prove beyond a reasonable

24 doubt that there is a probability that the defendant

25 would commit criminal acts of violence. Probability:

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1 What does that mean to you in context with that sentence?
2 A. It means that there is a -- more
3 likely than not --
4 Q. Okay.
5 A. -- that the defendant would commit the
6 same kind of acts given the same circumstances, or even
7 different circumstances.
8 Q. What about criminal acts of violence?
9 A. I would have to equate criminal acts
10 of violence with those things we're all familiar with;
11 murder, assault and battery, that kind of -- that is how
12 I see it.
13 Q. Okay. Just common everyday
14 understanding?
15 A. Yes, sir.
16 Q. All right. You can see where that
17 question is asking you to make a prediction about how the
18 defendant would behave in the future?
19 A. Yes, sir.
20 Q. And do you feel you can get enough
21 evidence to make that determination? Depending on what
22 that evidence is again?
23 A. Well, I guess whether we get enough
24 information is up to you guys.
25 Q. Right.

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1 A. But if assuming we do get enough
2 information to make that decision, I think that the 12
3 people who have to make that decision could probably
4 render a pretty reasonable assessment.
5 Q. Okay. One area I want to go over and
6 I think I know the answer, obviously, there is no
7 automatic answers to this. Just because you find the
8 defendant guilty, you don't automatically go in there and
9 answer that "yes." You have to reevaluate the evidence
10 and then make that determination. And I feel confident
11 you will do that in this type of case?
12 A. Uh-huh. (Witness nodding head
13 affirmatively.)
14 Q. Okay. The second special issue --
15 let's go over that for a moment. And I will just read it
16 aloud. It's kind of lengthy. "Taking into consideration
17 all of the evidence, including the circumstances of the
18 offense, the defendant's character and background, the
19 personal moral culpability of the defendant, is there a
20 sufficient mitigating circumstance or circumstances to
21 warrant that a sentence of life imprisonment rather than
22 the death sentence should be imposed?"

23 That is the last question you consider
24 as a juror. And unlike that first question, there is no
25 burden of proof on either side. We don't have a burden

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1 to prove that beyond a reasonable doubt. The defense
2 doesn't have a burden to prove it. It's just a review of
3 all the evidence that you have heard as a juror. Then
4 you decide, "I found the defendant guilty. I believe
5 they will be a continuing danger, but there is something
6 there in the evidence that tells me that a life sentence
7 should be imposed rather than a death sentence."
8 Do you feel that is a fair question in
9 this type of case?

10 A. Yes, sir.

11 Q. Okay. We can't tell you what
12 mitigating evidence is. You will be given no real
13 definition. It is going to be up to you and the other
14 jurors. Also, you don't have to agree with the other
15 jurors as to what is mitigating. What is mitigating to
16 one juror may not be mitigating to another.
17 For instance, one example we give, you
18 might hear the defendant had two or three college
19 degrees. One juror might think that is mitigating. They
20 have done something with their lives; they are a smart,
21 intelligent person. And then another juror might say,
22 "Actually, that is aggravating. Someone that intelligent
23 should never get themselves in this situation." So it
24 can cut either way. It's just up to you and each juror.
25 You also might hear evidence that you

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1 consider mitigating, but it just doesn't rise to the
2 level where you give an answer to that question to spare
3 the defendant's life. It might be mitigating, but you
4 don't think they should be excused from the death
5 penalty. It will just be -- it's a call each juror makes
6 on their own.

7 A. Okay.

8 Q. Does anything come to mind as to what
9 you might consider mitigating evidence?

10 A. (No response.)

11 Q. Well, I know you don't sit around
12 thinking about these things. At least I hope you don't.

13 A. No, nothing comes to mind immediately;
14 specifically in relation to this case, no.

15 Q. Okay. Could you keep your mind open
16 to this type of evidence and answer it accordingly, if

17 you hear evidence that is sufficiently mitigating to you?
18 A. If it is sufficiently mitigating to
19 me, yes. I would want to consider that.
20 Q. Let me go over and just give you a
21 couple of examples, and obviously, you do not have to
22 agree with any of these. We talked to a lot of jurors.
23 Some people think the young age of the defendant could be
24 a mitigating factor. And I'm not talking about a child
25 defendant or someone in their teens. An adult, but still

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1 a young person. Other people say, "No, you are
2 responsible for your actions even if you are a young
3 person as long as you are an adult."
4 How do you feel about that?
5 A. Well, I think that we are all
6 accountable to a certain extent. The younger we are, the
7 more accountable perhaps our parents are for our actions.
8 But there is a threshold, and I don't think I could
9 define it, but once you step over it, you are responsible
10 for what you do.

11 Q. Okay. Sometimes you may hear evidence
12 that a person is under the influence of alcohol or drugs
13 when they committed a crime situation. Legally, in
14 Texas, that is not a legal defense at all. But some
15 people can view it and it can be viewed as mitigating
16 evidence. Does that strike you as mitigating?

17 A. No.

18 Q. Okay. Sometimes, you will hear
19 testimony about a person growing up in an abusive home.
20 Maybe they were physically abused or mentally abused or
21 even sexually abused as a child. Would you view that
22 necessarily as being mitigating?

23 A. Not necessarily, no.

24 Q. Okay. Sometimes we hear evidence of
25 mental retardation. A person is born a certain way

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1 through no fault of their own. They know what the
2 difference between right and wrong, but perhaps their
3 brain just doesn't function on the same level. It's not
4 an insanity issue, it is just a -- it works slowly, maybe
5 just works a little differently. Would that be possibly
6 mitigating?

7 A. Well, I don't want to say that, yes, I
8 would consider it mitigating and then have someone
9 misunderstand that I would say that that is under every
10 circumstance mitigating, whether it be the alcohol, drug

11 abuse, or whatever. I would consider it as a possible
12 mitigating circumstance.

13 Q. Okay. And I am not trying to box you
14 into anything.

15 A. Okay.

16 Q. I think it's goes -- the bottom line
17 is, it's just going to be a case by case.

18 A. Exactly, exactly.

19 Q. And that is what the law stands for.

20 If you see something, no matter what it is, if it rises
21 to that level, then you could answer the question?

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

24 Q. All right. Let me go over a few of
25 the rules that Judge Tolle touched upon. And I am sure

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1 you are familiar with these, just growing up in our
2 society. The presumption of innocence; every defendant
3 has a right to be presumed to be innocent. Just because
4 they are indicted or arrested or here in a courtroom
5 doesn't mean they are guilty. You have to wait and
6 listen to the evidence.

7 Do you agree with that law?

8 A. Yes, sir.

9 Q. And would you follow that in this
10 particular case and presume the defendant to be innocent?

11 A. Yes, sir.

12 Q. Okay. The burden of proof, that law
13 applies in every case, that the State has the burden of
14 proof. We have to prove this case beyond a reasonable
15 doubt.

16 Do you agree with that law?

17 A. Yes, sir.

18 Q. That burden of proof never shifts to
19 the other table. They can put on witnesses if they want,
20 they can cross-examine and make arguments, but they are
21 not required to prove their defendant's innocence. The
22 State always has that burden. And I am sure they will do
23 their best to poke holes in it, and ask questions, but
24 they are not required to. And you can't require them to
25 under the law, you have to require us to prove the case.

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1 Will do you that?

2 A. Yes.

3 Q. All right. The defendant has an
4 absolute right not to testify. If they want to testify,

5 they can. No one can stop them. But if they choose not
6 to, then the Judge would instruct you that you just can
7 not consider that in any shape or form. You have to look
8 at all of the other evidence that came. Can you follow
9 that rule of law?

10 A. Of all those you've mentioned, that is
11 the one that leaves a bit of a question in my mind.

12 Q. Okay. A lot of people feel that way.

13 There could be a lot of reasons why a person might choose
14 not to testify, and this is the reason, I think, we have
15 that rule. First of all, they could be real guilty. And
16 if they got up on the stand under cross-examination that
17 wouldn't hold up well. That is the first thing I always
18 think of.

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

21 Q. Secondly, it might be a situation
22 where their lawyer sits over and tells them, "Look, I
23 don't think the State has proved their case. So you
24 don't need to get up there. This jury is just going to
25 decide this case on the evidence introduced. You don't

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1 have to get up there and proclaim your innocence because
2 you are not guilty." Of course, a lot of people would
3 say, "Look, if I wasn't guilty of a crime, wild horses
4 couldn't keep me from getting on that stand and telling
5 what I know." And all jurors naturally want to hear
6 everything they can about the case, so they want to hear
7 the defendant's side.

8 But there could be other reasons. It
9 could be a person is not very well educated. They may
10 not have committed the crime, but they could get up there
11 and a good prosecutor could cross-examine them and make
12 them look guilty. They may not hold up well; they could
13 be very nervous when they are up there and they look
14 guilty when they are not. There are a lot of reasons
15 that could come into play. So the law takes care of that
16 by saying, "Look, if a defendant decides not to testify,
17 you can't hold that against him."

18 In other words, you can't use that as
19 evidence against them. A lot of people say I would like
20 to hear it, but I will follow the law. If they don't
21 testify, I am not going to say, well, that means they are
22 guilty or anything like that. I can make the decision on
23 the other evidence I have heard.

24 Can you follow that rule of law?

25 A. I think so.

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1 Q. Okay. And, as lawyers, whenever we
2 hear I think so, then we always go, well, there is a
3 possibility that he won't do it.

4 A. Well --

5 Q. As best as you know yourself?

6 A. I would be as objective as I possibly
7 could under those circumstances.

8 Q. And follow that rule of law as Judge
9 Tolle gave it to you for that situation?

10 A. Right.

11 Q. Okay. All witnesses also are treated
12 equally or should be treated equally at the beginning of
13 the trial. In a criminal case, for instance, you almost
14 always have a police officer who testifies. A lot of
15 people respect police officers, but you can't start them
16 out ahead of the other witnesses. You have to wait until
17 they testify, and then judge their credibility. They are
18 just like anyone else.

19 There's good cops and bad cops. Some
20 do a great job, some do a poor job. You have to judge
21 them accordingly to their testimony. You can't give them
22 a head start. Or some people feel strongly the other
23 way, you can't start them behind the other witnesses
24 either. You just have to start them out on the same
25 foot.

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1 Can you do that?

2 A. Yes.

3 Q. The Judge will also tell you that in
4 Texas we always hear and talk about parole laws.

5 A. Say again?

6 Q. Parole laws.

7 A. Okay.

8 Q. When a person might be released. It
9 changes -- it's an issue that comes up in the news. But
10 in a criminal trial, when you are making these decisions
11 in the guilt/innocence stage and also in the punishment
12 stage, the Judge will instruct you that you cannot
13 consider the parole. That won't be an issue. You just
14 have to make your decisions on the evidence that you
15 heard.

16 Could you follow that rule of law?

17 A. Well, I have a bit of a little
18 heartburn with the current parole situation, but once
19 again, I would do my best to follow the Judge's
20 instructions.

21 Q. The reason we do that is that the
22 parole situation changes from time to time. The public
23 gets upset, they will change the parole laws and you
24 never know what is going to apply in a certain case. So
25 we can't have jurors say, "Well, I'm going to decide this

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1 amount of years for this because I have heard that the
2 parole laws are this," and that kind of thing. So they
3 just have to make their decision, obviously, on what they
4 hear in the case.

5 So you could follow that rule?

6 A. Yes, sir.

7 Q. Okay. The bottom line is, in order to
8 be qualified as a juror, you have to follow the law, and
9 you have to be able to keep your mind open, and not make
10 your decision until all the evidence is in. And require
11 the State to prove these issues to you.

12 Could you do that?

13 A. Yes.

14 Q. All right. I have been talking at you
15 for while here, Mr. Rives. Do you have any questions
16 over anything that I have gone over?

17 A. So far nothing.

18 Q. Okay. I think that is all the
19 questions I have, and I appreciate your patience with us.

20 A. Thank you.

21

22 THE COURT: Mr. Mosty.

23 MR. PRESTON DOUGLASS: Your Honor, I
24 think I will try this one if my voice will hold out.

25 THE COURT: Mr. Douglass, all right.

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1

2 VOIR DIRE EXAMINATION

3

4 BY MR. PRESTON DOUGLASS:

5 Q. Mr. Rives, my name is Preston
6 Douglass, I am from Kerrville, and my law partner is
7 Richard Mosty. We represent Darlie Routier along with
8 Doug Mulder and Curtis Glover who are from Dallas. The
9 air conditioner is running and you have been up there for
10 a while. If you can't hear me at any time, or if I
11 confuse you, why don't you go ahead and stop me.

12 A. I will.

13 Q. And make me repeat myself, and I
14 apologize for my voice. I will do the best I can.

15 Obviously, our perspective in
16 representing Darlie is tremendously different than that
17 of the State of Texas.
18 You have been up there a great deal of
19 time. The Judge, it seems like almost miraculously, when
20 it gets to my turn his back starts hurting and he is
21 standing up --
22
23 THE COURT: Well, actually it's my
24 knee, but that is quite all right.
25 MR. PRESTON DOUGLASS: All right.

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1 Your knee.
2 THE COURT: It's a pain whatever it
3 is.
4
5 BY MR. PRESTON DOUGLASS:
6 Q. And I know you have been waiting
7 outside for quite a while. So I'm going to do my best to
8 go as quick as I can. However, you understand that in
9 Darlie's life, this is critically important.
10 A. Yes, I know.
11 Q. Literally, her life hangs in the
12 balance literally. What you say and what she gathers
13 from what you say is of critical importance to her. So
14 forgive me if I seem a little worried.
15 A. I understand.
16 Q. Personal questions: I notice that you
17 are president of your school board. Was that prior to
18 Fred Cannon?
19 A. That is after Fred. I am in my fifth
20 month.
21 Q. So you succeeded Janie Van Hoozer?
22 A. No. I succeeded Manuel Benavides, who
23 was in between.
24 Q. And were you elected to that position?
25 A. Yes.

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1 Q. And when do you come up again for
2 reelection?
3 A. In May of '98.
4 Q. Okay. The other thing I have just got
5 to ask, I noticed in your things you like to do --
6 A. Yes, sir.
7 Q. Am I correct that you have gold
8 prospecting down as a hobby?

9 A. Yes, sir.

10 Q. And certainly there is no stream I can
11 run to in Kerr County and find any gold?

12 A. Well, I don't -- you can go to any
13 stream in Kerr County you would like, whether you would
14 find gold or not is the issue.

15 Q. No use following you around?

16 A. No, no, sir. It's always mystery
17 creek.

18 Q. I am assuming that is a hobby that you
19 had when you were in Alaska?

20 A. Yes.

21 Q. Okay. Some of the issues Mr. Shook
22 went through, and he went through correctly, but I would
23 like to go through a little bit more with you, relate to
24 the first part of this trial. Trials in Texas are
25 bifurcated, and what that means is that you have a

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1 guilt/innocence phase of the trial. And there is every
2 possibility sometimes that you never get to a punishment
3 phase. Obviously, from the State's perspective, they
4 look at this a little backwards. They look at the end
5 result they are hoping to achieve. So they concentrate a
6 lot of their attention on punishment issues.

7 Darlie Routier has entered a plea of
8 not guilty. She will plead not guilty before the jury
9 and stand behind that plea wholeheartedly. So, for that
10 reason, obviously, the guilt/innocence phase of the trial
11 is what we, as defense lawyers representing her, are more
12 concerned with and quite interested in. Beginning with
13 some of the general issues of the law that you will hear
14 regarding guilt/innocence, you always hear about the
15 presumption of innocence, but along with that is the
16 return of the indictment.

17 You probably remember Judge Tolle
18 letting you know that in Dallas County alone, there are
19 some 25,000 indictments issued each year. And I think he
20 also gave a number of maybe 125 or so might be issued by
21 a Grand Jury in a given day. What I would like to ask
22 you along those lines, were you surprised to find out
23 that the Grand Jury process can take place with that type
24 of volume?

25 And, also, were you surprised to hear

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1 Judge Tolle advise you that many defendants, people who
2 are citizens of our state, can find themselves charged by

3 Grand Jury, have little or no idea that they are being
4 investigated, and obviously then, because of that, have
5 no chance to come tell their side of the story to the
6 Grand Jury.

7 Did you know that or did that surprise
8 you?

9 A. That surprised me.

10 Q. So, obviously, you can tell that if a
11 person has no opportunity to have a lawyer present, to
12 come say what's on their mind to the Grand Jury, that a
13 Grand Jury indictment is only one side of the story?

14 A. Right.

15 Q. Truly, I heard a Judge describe one
16 time that all it is is a piece of paper that gives the
17 Judge jurisdiction to have a trial. It doesn't hold any
18 weight. It doesn't have any importance other than that
19 first piece of paper that goes in the file, so that you
20 can have a trial. Now, there are other people, however,
21 who believe in the theory of, well, where there is smoke,
22 there is fire. We didn't end up with a room full of
23 people, we don't have a camera truck out front. All of
24 this doesn't happen just by some happenstance. And in
25 that regards, there is another class of people that say,

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1 "I don't care, Preston, if you tell me that it's just a
2 piece of paper. I believe that that means something."
3 Now, there is an extreme over here and
4 an extreme over here. Where do you find yourself in that
5 regards? What side do you most closely align yourself
6 with?

7 A. Perhaps, I would have to look at it
8 that we're starting over. That there is a whole new game
9 once we come into the courtroom. What happened outside
10 is -- in the Grand Jury arena, really has no effect on
11 what happens in the trial.

12 Q. So, to point out the obvious, you
13 disagree with somebody who says, "Where there is smoke,
14 there is fire"?

15 A. Uh-huh. Because I might get indicted
16 someday.

17 Q. All right. Now, with respect to
18 burden of proof, obviously, because of that, because an
19 indictment is absolutely no evidence of guilt at all, the
20 burden of proof is set on the State. And it's a burden
21 that they must prove beyond a reasonable doubt. That
22 burden never shifts to the defense. We have no
23 obligation, no requirement to put on a single shred of
24 evidence.

25 Do you agree with that notion?

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1 A. Yes.

2 Q. Now, you had said a little bit earlier

3 that you -- obviously, evidence would include a defendant
4 testifying.

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

7 Q. You said earlier that you might have

8 some reservations if the defendant did not take the

9 stand. There is no way to know in a criminal trial,

10 until maybe frequently, right the minute that you get the

11 opportunity to put on witnesses that you know what is

12 going to happen in that regard.

13 But what concerns me is that there are

14 situations where a juror can be sitting there and say,

15 "You know, I have heard a lot of evidence. But, I am not

16 too sure that the State has proven this beyond a

17 reasonable doubt. It sure is close. But if I had the

18 chance to hear from a defendant, that might totally let

19 me know the way I feel about this."

20 How do you feel about that? If you

21 found yourself in that situation, how would you respond?

22 A. Well, after the prosecutor clarified

23 some of the reasoning, you know, I had not gone into too

24 much depth on thinking why I would have reservations

25 about the defendant testifying. But I can understand

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1 being nervous, I can understand being not, you know, not

2 performing well in the chair as a witness. I can

3 understand that. And with those, as I will use a new

4 term to me as mitigating circumstances, perhaps, it would

5 be a little bit more justifiable in my mind as to why a

6 defendant would not testify. The issue of whether or not

7 I would use that lack of testimony in making a decision,

8 I could only respond that I will do my best to be

9 objective about it. And that is the defendant's right

10 not to testify, and that I would use whatever evidence we

11 had at hand to make a decision.

12 Q. Would you be able to say to yourself:

13 That would be a nice thing to hear from a defendant, what

14 they have to say, but I am under an oath not to do that,

15 not to consider that, and I am going to base it only on

16 the evidence?

17 A. I can do that.

18 Q. Okay. Now, the presumption of

19 innocence, for want of an analogy, means that a defendant
20 comes into court and they are in effect, protected by
21 this presumption, this shield. You start with a
22 completely clean slate. And that is that the defendant
23 is not guilty. And, the State attempts to provide
24 evidence that erodes, perhaps, that presumption. It's
25 been said that many times an absence of proof can create

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1 a reasonable doubt.
2 Back years ago, we didn't have a
3 definition of reasonable doubt. Just in the short time I
4 have been practicing law, they have come up with a
5 definition of reasonable doubt. Used to be when there
6 was no definition, you would hear things likes, "Well, if
7 you are a reasonable person, and you have a doubt, then
8 you have a reasonable doubt. Now the legislature, I
9 guess, has helped us, and says, that reasonable doubt is
10 proof of such a convincing character that you would be
11 willing to rely upon it without hesitation in conducting
12 your most important personal affairs. Now --

13 A. Say that again.

14 Q. You want me to say it again?

15 A. Uh-huh.

16 Q. I'll try. It's that level of proof,
17 proof beyond a reasonable doubt, is that level of proof
18 of such a convincing character that you, in making your
19 decision, would be willing to rely upon it without
20 hesitation in the most important of your own personal
21 affairs? Now, there is a longer definition that you will
22 get. But they have not jumped up, and the Judge hasn't
23 said I am crazy, so that is a paraphrase of it.

24 It is the kind of proof that if you
25 were trying to decide some of the most important things

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1 in your life, some people have likened it to surgery for
2 a loved one, the purchase of a home, or some major
3 expense, that you would use that proof without hesitation
4 in acting. Does that sound like -- does that explain or
5 is that a concept you can put your hands and your teeth
6 into and say, I understand that?

7 A. If you substituted the word, instead
8 of without hesitation, with deliberation, I'm not going
9 to do anything like that without hesitation. I'm going
10 to think about the decision before I make it.

11 Q. Sure. I don't think anybody in this
12 kind of case would sit there and say, "I'm going to have

13 a knee-jerk reaction. Or I'm just going to go in there
14 and write something down."

15 A. Well, without hesitation indicates to
16 me it's a knee-jerk kind of thing, and I won't do that.

17 Q. If -- let me talk to you a little bit
18 about reasonable doubt -- you were in a civil trial, and
19 in a civil trial, and I'm assuming this would be the same
20 in Alaska, the burden of proof that the plaintiff had was
21 a preponderance of the evidence, that is known -- if you
22 imagine the scales of justice, and they call that the
23 greater weight of the credible evidence. Just 51% is
24 enough to find for a plaintiff in the State of Texas.
25 Obviously, that is the kind of proof

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1 we have, I used to say in a sore neck case, if you have a
2 little sore neck case and somebody gets hit by a car,
3 it's just a preponderance of the evidence. Now, one up
4 from that is clear and convincing evidence. Clear and
5 convincing evidence is the kind of proof, for instance,
6 in our State that is required before you can take a child
7 away from a mother. If you were in a child custody case
8 and you wanted to remove a child from the mother, you
9 would have to meet a burden of clear and convincing
10 evidence if that should happen.

11 Now, still up from that is reasonable
12 doubt. Reasonable doubt is much higher, it is the
13 highest our law allows. You use the words shadow of a
14 doubt, which of course, I believe you did, which is not
15 legally correct, but I would submit to you is on the same
16 concept as beyond a reasonable doubt.

17 Can you appreciate how high, even
18 above what it would take to take a child away from a
19 mother, can you appreciate how high a burden that is?

20 A. Uh-huh, yes.

21 Q. Do you have any problem holding the
22 State to that high a burden of proof?

23 A. I don't think so.

24 Q. Is there any reason that you could
25 foresee, that with respect to certain facts that you

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1 would say, "Well, you know, I have a doubt. I think that
2 doubt is based on reason. They didn't bring me enough
3 evidence to satisfy my curiosity about this particular
4 question in my mind."

5 But knowing that is just one doubt,
6 would you be able to say that that is enough for me under

7 my oath?

8 A. Well, it would have to be a qualified
9 doubt. It certainly can't be a doubt on an issue that is
10 relatively minor to the whole thing.

11 Q. I agree with that. But I'm talking
12 about something that you would think is an issue that is
13 of substance. And you say they still have not brought me
14 proof to that; or the proof they have brought me is not
15 sufficient in my mind and because the Judge tells me it's
16 a reasonable doubt, such a high burden, that one doubt
17 alone is enough under my oath to say not guilty.

18 A. Under the assumption that it's a
19 linchpin kind of a concept, that it has to be something
20 that the whole thing rests upon, yes.

21 Q. Do you agree that it is a linchpin
22 concept?

23 A. If it -- perhaps, yes, depending on
24 the issue. I mean we have to define a linchpin concept.
25 But I can't say that I would -- would not make a

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1 decision, make a decision on a relatively minor issue
2 where there is some doubt.

3 Q. Okay. In terms of burden of proof,
4 it's been said and Mr. Shook used that we could do comic
5 books, I don't know if he did that while you were in
6 here, one time the Judge said that I could just sit and
7 look at the fans spin around through the whole trial.
8 And I have no obligation to do anything. If you were to
9 receive evidence from the State, evidence comes in and
10 you -- then it comes to the end of the case and you are
11 wanting to hear more evidence, and Mr. Shook stands up
12 and says, "The State rests its case in chief." Judge
13 Tolle looks over to one of us over here and says, "Do you
14 all want to put on evidence, it's your option." We say,
15 "No, we rest." Resting on the fact that the State has
16 not met its burden of proof.

17 Are you willing under that
18 circumstance to scrutinize the State's case very closely
19 under a microscope without any evidence from the defense,
20 and realizing that we have no obligation to put on
21 evidence?

22 A. Yes.

23 Q. Would there be a lingering feeling in
24 your mind, you know, I don't understand why they didn't
25 bring me any evidence. Or would you be able to block

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1 that out?
2 A. Presumably, if the State, with the
3 State's case, if it were weak enough to the extent that
4 you, that -- I need to couch this carefully.
5 Presuming that the State's evidence
6 was so weak that it was blatantly obvious at that point
7 when he rested his case, that there was no need for a
8 defense, then I would say, "Yes. I could make that
9 decision."
10 Q. With respect to motive, Mr. Shook
11 again correctly stated that the State does not have, as
12 an element of proof in its indictment, that they have to
13 prove motive.
14 I would submit to you, however, that
15 that does not mean that because it's not something they
16 must prove, that it's not something that you as a juror,
17 as a fact-finder, might consider in trying to arrive at
18 your verdict.
19 It has been said that the lack of
20 proof of a motive may, in fact, raise some question about
21 reasonable doubt. As a proposition that the lack of
22 motive, lack of proof, might raise questions about doubt.
23 Do you disagree or agree with that
24 general proposition?
25 A. Let me try and understand you. That

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1 the lack of motive --
2 Q. Lack of proof of motive.
3 A. Lack of proof of motive is lack of a
4 reasonable doubt, or is a reasonable doubt.
5 Q. As you are sitting as a juror and
6 weighing the evidence while the Judge is not going to
7 require Mr. Shook to bring evidence that says, this is
8 the motive, and we proved motive. He is not required to
9 do that.
10 A. Uh-huh. (Witness nodding head
11 affirmatively.)
12 Q. However, I would submit to you that
13 you as a juror, in your province as a juror, can consider
14 the fact that no evidence was brought to you of motive.
15 I believe you can consider that in arriving at your
16 verdict. And I would also submit to you, as a general
17 proposition, that a juror can arrive at a conclusion,
18 that if there is an absence in proof as to motive, that
19 that may create a reasonable doubt.
20 Did I say that any better?
21 A. Well, communication is a two-way
22 process. And I am probably as guilty as -- maybe that is

23 the wrong word, I didn't understand you very well.

24

25 THE COURT: I think what they are

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1 trying to say is that the State doesn't have to prove

2 motive in this case at all.

3 THE PROSPECTIVE JUROR: Right. I

4 understand that part. I'm having a hard time getting

5 over this making a decision based -- you know, if we

6 can't consider motive, if we're instructed not to

7 consider motive in the case, then I will do my dead-level

8 best not to consider that.

9

10 BY MR. PRESTON DOUGLASS:

11 Q. Let me give you an example: The

12 indictment alleges a date, for instance.

13 A. Uh-huh. (Witness nodding head

14 affirmatively.)

15 Q. It says on or about this date. Or let

16 me give you another example: The indictment says Dallas

17 County. That is in effect an element of proof.

18 A. Okay.

19 Q. Now the indictment does not say

20 motive. You know, it doesn't say because.

21 A. Okay.

22 Q. Now, my point is, because it is not

23 one of the elements set out in the indictment, you know,

24 they don't have to prove Dallas County, they don't have

25 to prove motive.

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1 A. Uh-huh. (Witness nodding head

2 affirmatively.)

3 Q. Lawyers kick that around as an element

4 of the offense. And what Mr. Shook has correctly stated

5 is, that is not something that we are obligated to prove

6 as an element. It is not a hurdle that we must jump

7 over.

8 A. I see.

9 Q. But I submit to you that even though

10 it's not a hurdle the State must clear procedurally, that

11 the absence of proof of motive might be considered by a

12 juror as a factor in deciding as to whether there is a

13 reasonable doubt.

14 A. I'll qualify it -- under the proper

15 set of circumstances, I can consider that, yes.

16 Q. You could perhaps consider that I know

17 they didn't have to prove motive, but something doesn't
18 make sense?

19 A. Correct.

20 Q. And if I knew what the motive was it

21 might make sense, and since it does not make sense, I'm

22 going to acquit. Could you -- can you follow that

23 proposition?

24 A. Yes. I could consider that logic,

25 yes.

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1 Q. All right. I'm sorry I took so long.

2 A. I'm sorry. It's probably my fault,

3 too.

4 Q. About circumstantial evidence, and I

5 promise I am near the end, about circumstantial evidence.

6 Obviously, there is eyewitness, "I saw

7 this person do this." And then there is, obviously, the

8 type of evidence of, "We take the fingerprint off this

9 cup."

10 A. Uh-huh. (Witness nodding head

11 affirmatively.)

12 Q. Now, it is your sole and exclusive

13 luxury I say, to hear evidence of we picked a fingerprint

14 off a cup, or, eyewitness testimony. And you get to make

15 your own choices as to which you feel is more persuasive.

16 Can you appreciate the difference in the quality of

17 evidence sometimes between an eyewitness and maybe one

18 fingerprint?

19 A. Yes.

20 Q. Okay. Can you rely in your province

21 of your jury, can you rely on your own independent

22 judgment and tell us that, "Yes, I will weigh different

23 types of evidence and make a decision on my own as to

24 which is more persuasive to me"?

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.) I can do that.

2 Q. All right. A jury is by no means a

3 democracy. I don't know if they allowed 10-2 verdicts in

4 your civil case, or what the mix was in Alaska. But,

5 regardless of what the situation is in a criminal case,

6 you are your own vote. And when you go back and retire

7 to that jury room, if you are on this jury, no one can

8 make you vote based on a majority or based on some

9 agreement of the whole jury.

10 Are you the kind of person in a case

11 this serious, if you believe and you believe with your
12 heart, that something is one way, and everybody in that
13 room disagrees with you, could you hold out for what you
14 believe?

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

17

18 THE COURT: Is that a yes?

19 THE PROSPECTIVE JUROR: Yes, sir, that
20 is a yes. Yes, sir.

21 THE COURT: Thank you.

22

23 BY MR. PRESTON DOUGLASS:

24 Q. You might receive some photographs in
25 this case. I would assume there's never been a murder

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1 trial, that I'm ever aware of, that there are no
2 photographs. And as often happens, photographs are blown
3 up, and sometimes, I think, with the intent to show a
4 particularly gruesome set of facts.
5 And in my chair sometimes it leads to
6 a concern that the fact that they are gruesome pictures,
7 and I can assure you in this case there will be gruesome
8 pictures, that that leads me to a concern that that fact
9 might overwhelm or stampede consciences somewhat. They
10 might say, "All right. I can't believe I have to look at
11 this, and I am going to punish the first available
12 person."

13 How do you feel about the fact -- are
14 you comfortable with the fact that those types of -- that
15 evidence might be presented? And do you feel like you
16 would be overwhelmed by that type of evidence?

17 A. I'm not comfortable with that kind of
18 evidence. I wouldn't want to look at it. But as an
19 obligation, I perhaps would do what I had to. No, it
20 would strengthen my resolve to make sure that the right
21 person paid the right price.

22 Q. Now, let me go on that from one issue.

23 And I am not picking on what you said, so please don't
24 think I am.

25 A. It doesn't bother me.

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1 Q. A juror is deciding -- you will
2 receive a charge from the Judge. And there will be a
3 verdict form. And that verdict form will say: Do you
4 find beyond a reasonable doubt that the defendant -- it

5 will be somewhere in this charge -- is guilty as charged
6 of the indictment, or is not guilty as charged in the
7 indictment? There is not a third verdict form that says:
8 Who do you really believe did this?
9 And I can assure you that while law
10 enforcement officers, and I am not talking, I have to
11 speak in hypothetical terms --
12 A. Uh-huh. (Witness nodding head
13 affirmatively.)
14 Q. -- while law enforcement officers, we
15 have all watched enough T.V. to know that they look at
16 many different suspects, but I have never been in a
17 murder trial where they say, "Well, we looked at suspect
18 A, B, C, and D."
19 A. As soon as I said that, I knew that
20 that was wrong.
21 Q. You are not going to hear that in a
22 trial.
23 A. I understand.
24 Q. All you are going to hear is we
25 believe it is the person charged.

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1 A. I understand.
2 Q. Do you understand that the idea is
3 that you will not have to solve the crime, you just only
4 decide who.
5 A. Well, when I said the right crime, the
6 right person for that crime, I knew that I was wrong as
7 soon as it came out. To decide whether the defendant is
8 the person that committed that crime.
9 Q. Okay. All right. Finally, this is
10 the only chance I have to talk to you about punishment
11 issues.
12 And it's always with great reservation
13 that you begin to talk to a juror about punishment
14 issues, because obviously, our emphasis is on the
15 guilt/innocence portion of this trial. But since I have
16 no opportunity to talk to you about punishment issues, I
17 need to do it now, obviously.
18 Have you ever had differing opinions
19 about the death penalty?
20 A. Clarify that, please.
21 Q. Some people will say, you know,
22 earlier in life, I was absolutely for the death penalty.
23 But later, as I have kind of gone through some
24 experiences, and I have known some different people, I
25 am not so sure that I agree with the death penalty

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1 anymore.

2 I guess I'm wondering if your opinion

3 has ever changed?

4 A. It's evolved. But it's been an

5 evolutionary process, but I didn't change my mind as to

6 what that evolution was.

7 Q. All right. Do you feel that there are

8 offenses -- do you tend to believe -- or do you put more

9 weight on the crime committed or the defendant charged?

10 Sometimes people say punishment should fit the crime,

11 sometimes people say punishment should fit the defendant.

12 Is there one of those that you feel

13 more particularly aligned with?

14 A. No. I wouldn't want to have to choose

15 that. I think that it is a combination of both, it's the

16 crime and the defendant.

17 Q. Before you ever reached the First

18 Special Issue at the top of that chart, obviously, a jury

19 has determined that a person is guilty of capital murder.

20 So that means, just as a matter of course, obviously,

21 that a person has been found guilty of committing a crime

22 in the course of a rape or a burglary or an arson; or is

23 found guilty of killing a police officer or a firefighter

24 in the line of duty; a child under six; those sort of

25 crimes. You have probably already heard a great deal of

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1 evidence and you have been convinced at that point of the
2 verdict.

3 Do you feel like after you have

4 received that kind of proof and you have come that far in

5 the trial, that you can, with an open mind, consider

6 those two issues?

7 A. As separate? As separates issues? Or

8 as --

9 Q. As separate issues and as a separate

10 matter even though you have already convicted somebody of

11 an obviously very -- the most serious crime in our State.

12 Can you then say, "Okay, now I am going to consider these

13 issues with an open mind as to both, a result that

14 results in a death penalty, or a result that would result

15 in a life sentence?

16 A. Well, I guess, not knowing as I sit

17 here, the exact criteria we would be given to define -- I

18 guess I would have a hard time separating if I didn't

19 have a little recovery time.

20 You know, going through convicting

21 someone of a capital murder and then asking them to
22 sentence them immediately I think is not something
23 that -- that I would be comfortable with. I would want
24 to first reconcile that first decision and then say,
25 okay, now let's look at the second one now that I've had

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1 a little time to recuperate and then go on to what is
2 presented next.

3

4 THE COURT: Well, that will occur.

5 THE PROSPECTIVE JUROR: Oh, good.

6

7 BY MR. PRESTON DOUGLASS:

8 Q. With that in mind, the fact that the

9 Judge has told you there would be some period of time

10 that you would have to gather your thoughts and come

11 back, do you feel like you could openly consider the full

12 range of punishment, which in that situation would be a

13 life sentence, or the death penalty?

14 A. Yes.

15 Q. Now, I believe -- I might be incorrect

16 about this -- you had put down in your questionnaire,

17 there was a question on deciding about a sentence of life

18 confinement or death.

19 A. Uh-huh. (Witness nodding head

20 affirmatively.)

21 Q. And you remember it said: Which would

22 you like to know -- what facts would you like to know

23 about the crime?

24 A. Uh-huh. (Witness nodding head

25 affirmatively.)

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1 Q. About the defendant, about the victim?

2 And what else might be important in making a decision

3 about a life or death sentence? And you had said:

4 Possibility of parole and pardon and that issue.

5 Do you believe that you would be able

6 to -- let me back up.

7 The Court will instruct you that you

8 cannot consider parole in arriving at that decision.

9 And, of course, I read this as that is something that you

10 would like to hear evidence about. But the Judge will

11 tell you that that is something you cannot consider for

12 any purpose.

13

14 THE COURT: The law states that you

15 cannot consider it for any purpose whatsoever. That
16 comes from the sole province of the Board of Pardons and
17 Paroles and of the Governor of this State.

18 THE PROSPECTIVE JUROR: Correct.

19

20 BY MR. PRESTON DOUGLASS:

21 Q. Now, with that fairly unequivocal
22 statement, would you be able to consider the evidence and
23 put any questions you have about parole out of your mind?

24 A. I think that that would be difficult.

25 I think that having made decisions before with the

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1 intention of an end result, and then, having that
2 intention undermined, or having that intention diluted by
3 someone else is a frustrating process.

4 I think that if the jury is given the

5 prerogative to determine a sentence, then perhaps, I

6 mean, then the sentence should be carried out as the jury

7 decided it to be done.

8

9 THE COURT: The law is that you cannot

10 consider parole for any reason whatsoever. Could you do

11 that? Could you follow the law?

12 THE PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Okay. Thank you.

14

15 BY MR. PRESTON DOUGLASS:

16 Q. In arriving at your decision, all

17 right, and I will leave this after this question, do you

18 believe that in good conscience you could consider a life

19 sentence, if the question about parole is not answered

20 for you? Is it going to cause you a hang-up?

21 A. No.

22 Q. You can keep a completely open mind

23 about that?

24 A. Yes. I would have to consider the

25 fact that the decision was made not for capital

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1 punishment -- it was made against capital punishment. So
2 now, it's just a matter of degree in terms of term.

3 Q. Okay. That's fine. Directing your

4 attention to that first Special Issue, you defined

5 probability exactly as I do. You said more likely than

6 not; is that right?

7 A. Uh-huh. (Witness nodding head

8 affirmatively.)

9 Q. Do you realize that what that means is
10 that with respect to that Special Issue, that that puts
11 the burden on the State to first say, beyond a reasonable
12 doubt, that very high level of proof, beyond a reasonable
13 doubt, it is probable, more likely than not, that that
14 particular defendant would continue to commit criminal
15 acts.

16 Do you agree with me that that is an
17 extremely high burden, because first, you have to predict
18 what is more likely than not to happen. And then that
19 prediction in your mind has to be satisfied to you beyond
20 any reasonable doubt?

21 A. I think that I could make that
22 decision.

23 Q. Does that seem like a high burden to
24 you?

25 A. No.

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1 Q. Doesn't seem high?

2 A. Well, it seems like a high burden to
3 me. And, no, I don't necessarily want to have to make
4 that decision, but, yes, I could.

5 Q. I don't think anybody wants to be put
6 in this position. And I think it was Mr. Shook that
7 said, if anybody really did, I don't know that we would
8 really want that person, if they were lining up here and
9 auditioning.

10 My only question to you is: Does that
11 sound like a high burden? Do you agree that you will
12 hold the State to that high burden?

13 A. Yes.

14 Q. All right. Now, after you -- by the
15 time you get past that Special Issue, and you go to
16 consider mitigation, you are at a point where you have,
17 obviously, one, found the person guilty of capital
18 murder; and two, you have made the decision to that high
19 burden that the person would be a future threat to
20 society.

21 After you have come that far, would
22 you still have an open mind as to mitigation?

23 A. I think so, yes.

24 Q. The interesting part about that
25 Special Issue if you look at the Court's charge, it is

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1 the only one that does not have the burden of proof in
2 it. It doesn't say reasonable doubt, and I would submit

3 to you that that burden has not been allocated to either
4 the State or the defendant.

5 I like to say that that is the last
6 question stopping the train or taking a breath, as you
7 say, to collect yourself. And you start thinking not
8 about the facts or the evidence, but you also think about
9 the person involved.

10 Do you agree with me that that is a
11 personal decision, regarding mitigation, a personal
12 decision regarding that particular defendant?

13 A. Yes.

14 Q. We lawyers kick around the word,
15 sufficient mitigating circumstance. Mitigation has been
16 likened to reducing a person's moral blameworthiness.
17 Would you accept that as a concept that that is what
18 mitigating might mean?

19 A. That's what mitigating might mean,
20 yes.

21 Q. Does that sound right to you?

22 A. Uh-huh. (Witness nodding head
23 affirmatively.) It might mean that.

24 Q. Mr. Shook had asked you a little bit
25 earlier, it's been a while, about whether there were any

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1 particular types of evidence that might be mitigating?

2 If I remember right, you had said that off the top of
3 your head, you couldn't think of any.

4 Have you been able -- have you thought
5 of any more that might be persuasive to you as
6 mitigating?

7 A. Self-defense. I mean, once again,
8 gentlemen, I don't think in these terms very often. And
9 so, it's pretty difficult to respond under this kind of
10 pressure to those kind of questions.

11 Q. I understand. I have not thought
12 about them in two years, so it's one of these things you
13 have to get back to thinking about.

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

16 Q. Are you receptive to the idea that
17 mitigation can take all kinds of forms?

18 A. Yes.

19 Q. Okay. Are you receptive to the idea
20 that when you get back in the jury room, that you may
21 have a feeling that mitigation could be one thing, for
22 instance, youthful age. And I could say, I don't agree
23 with that. I don't think that youthful age is
24 mitigating. But I do believe that a bad childhood, or a

25 childhood abuse might be mitigating.

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1 You and me might not agree as to the
2 actual mitigating factor, but we might agree on the end
3 result. Does that make sense to you, and are you okay
4 with that?

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

7 Q. I don't mean to pry, but you had
8 mentioned that you write grants for a Mexican
9 corporation; is that right?

10 A. No. I work principally for Hays
11 County. The Mexican corporation is a totally unrelated
12 energy business, propane business.

13 Q. And I noticed that you had written
14 grants for the DARE Program in Hays County?

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

17 Q. Obviously, in that position you work
18 closely with either civic leaders, lawmakers in that
19 county, prosecutors, or maybe even police officers?

20 A. Yes.

21 Q. Who do you coordinate your efforts
22 with when you write those grants?

23 A. Ordinarily, it is the DARE officer
24 himself, the Hays County has a grants officer, at times,
25 with the county judge.

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1 Q. How do you have a connection with Hays
2 County?

3 A. The grants coordinator I knew whenever
4 he worked at the Texas Department of Agriculture. And I
5 had written grants as the director of the Exotic Wildlife
6 Association.

7 Q. Were you executive -- is that building
8 still out there on Junction Highway? Is that where that
9 office still is?

10 A. It's out -- it's in Ingram, right
11 across -- it's a pretty old building.

12 Q. Oh.

13 A. I think I need to tell you that not
14 only have I written for DARE, but I have written for
15 Victims of Crimes Assistance. I've also written, just
16 finished one for the San Marcus Police Department.

17 Q. Okay.

18 A. For equipment, and there I interact

19 with the chief.
20 Q. Obviously, you were in the room here
21 Monday of last week when a large number of neighbors here
22 in Kerr County were brought in to fill out these forms.
23 And it's apparent that there is a great deal of effort
24 being made to select 12 completely fair people to hear
25 this evidence in this trial.

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1 And while it's a bad word to use,
2 lawyers tend to use the word prejudice or bias in one
3 way, is a way of saying, well, you may be prejudiced or
4 you may be biased. I pretend -- I prefer to say I lean,
5 whether a person has a leaning one way or the other.
6 Sitting where I am and knowing that
7 you are actively involved in those types of issues,
8 should that cause me concern knowing what you know about
9 yourself?
10 A. No, because I do very little with the
11 actual implementation of any of those programs.
12 Q. Okay. Am I -- I am just presupposing
13 cause I want to presuppose that your friend could call
14 you and say, "Hey, you could help us because you have
15 written grants before. Would you write this one for us?"
16 A. Yes.
17 Q. All right. Your wife works with Byron
18 Dahse; is that right?
19 A. Well, she will start on Friday.
20 Q. Okay. In fairness, because I don't
21 want this to be something that would come up later, if
22 you were to learn that my law firm represents Mr. Dahse,
23 and when you go back and she says, "Oh, you know, I just
24 found out that the guy I just went to work for, you know,
25 he calls those lawyers and they do work for him."

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1 Would that cause you any problem at
2 all?
3 A. No, because I have learned enough to
4 keep my mouth shut about this.
5 Q. Okay. It's totally unrelated to you?
6 A. I understand.
7 Q. And the last thing I have just been
8 wanting to ask someone, but I didn't get the chance,
9 there is a question on your questionnaire that says:
10 Regarding your prior jury service, please check all that
11 apply to you.
12 A. Uh-huh. (Witness nodding head)

13 affirmatively.)

14 Q. And they have, "I can tell pretty

15 easily when a person is telling a lie. When I make up my

16 mind I rarely change it. I always follow my own ideas

17 rather than do what others expect."

18 A. Uh-huh. (Witness nodding head

19 affirmatively.)

20 Q. You did not check: "When I make up my

21 mind, I rarely change it." Does that indicate that many

22 times you are willing to reexamine your first impressions

23 about things?

24 A. Yes.

25

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1 THE COURT: You have five minutes

2 left, Mr. Douglass.

3 MR. PRESTON DOUGLASS: Thank you, Your

4 Honor.

5

6 BY MR. PRESTON DOUGLASS:

7 Q. You had written down quite helpfully

8 the dates that you had received information about the

9 case.

10 A. Uh-huh. (Witness nodding head

11 affirmatively.)

12 Q. One was, it must have been a Warrior

13 football game; is that right?

14 A. Yes.

15 Q. And based upon -- obviously, we moved

16 this trial a great distance to try to find people that

17 have no opinions or notions about this case. Do you feel

18 like based on what you have read, that you have formed

19 any opinion?

20 A. The only opinion I would have is there

21 appears to be questions that need to be answered that are

22 unresolved at this point, you know, in my mind. That's

23 all.

24 Q. Did you read anything about summaries

25 about what was supposedly the allegations in this case?

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1 A. No. The only things that I can

2 recall, that come straight to mind, Mr. Douglass, are

3 tidbits of presumably -- of presumed evidence; cut

4 screens, footprints, windowsills, that kind of thing. I

5 read no summary of anything like that.

6 Q. When you say questions that need to be

7 answered, who do you believe needs to answer those
8 questions for you as a juror?

9 A. The State does.

10 Q. Okay.

11

12 MR. PRESTON DOUGLASS: Judge, if I
13 might have one second, less than five minutes?

14 THE COURT: Okay. Fine. Well,

15 actually you have four minutes now.

16 MR. PRESTON DOUGLASS: I appreciate
17 you being very patient with me. I don't have any further
18 questions, Your Honor.

19 THE COURT: Would you mind stepping
20 outside briefly, please?

21 THE PROSPECTIVE JUROR: Sure.

22 THE COURT: All right. While they
23 talk about it. Thank you.

24

25 (Whereupon, a short

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1 recess was taken, after

2 which time, the

3 proceedings were

4 resumed in open court,

5 in the presence and

6 hearing of the

7 Defendant, being

8 represented by her

9 Attorney, as follows:)

10

11 THE COURT: All right. Back on the
12 record now. Is everybody ready? All right. What says
13 the State?

14 MR. TOBY SHOOK: The State accepts the
15 juror.

16 THE COURT: What says the Defense?

17 MR. PRESTON DOUGLASS: We would
18 exercise a strike.

19 THE COURT: All right. Thank you.

20 Has Mr. Rives returned? All right.

21 Mr. Rives, we want to thank you very
22 much for your time and for your attendance, but your
23 continued attendance will not be necessary.

24 THE PROSPECTIVE JUROR: Thank you.

25 THE COURT: Thank you very much for

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1 coming.
2 THE PROSPECTIVE JUROR: You're
3 welcome.
4 THE COURT: All right. We're going to
5 take a brief break, like ten minutes. Then come on back,
6 and then we will go with our last prospective juror,
7 Jason McCulloch.
8
9 (Whereupon, a short
10 Recess was taken,
11 After which time,
12 The proceedings were
13 Resumed on the record,
14 In the presence and
15 Hearing of the defendant
16 And her attorneys, as follows:)
17
18 THE COURT: All right. Let's go on
19 the record. We are on the record in the Darlie Routier
20 matter. Let the record reflect that all parties to the
21 proceedings are present. And, we're awaiting the arrival
22 of Mr. Jason McCulloch, M-C-C-U-L-L-O-C-H, as a
23 prospective juror.
24 And Mr. Shook, if you and Mr. Mosty
25 want to state something into the record?

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1 MR. TOBY SHOOK: Yes, Judge, having --
2 both sides have agreed to excuse Jason McCulloch, I
3 believe that is how you pronounce his name, from jury
4 service.
5 THE COURT: Is that satisfactory, Mr.
6 Mosty?
7 MR. RICHARD MOSTY: Yes, sir, it is.
8 THE COURT: Very well. If you will
9 have Mr. McCulloch step in, please.
10 THE COURT: All right.
11 MS. SHERRI WALLACE: Judge, we will
12 provide the Court this for the file, the written
13 agreement to excuse Mr. McCulloch.
14
15 (Whereupon, the following
16 mentioned item was
17 marked for
18 identification only
19 as Court's Exhibit 1,
20 after which time the
21 proceedings were
22 resumed on the record

23 in open court, as
24 follows:)
25

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1 THE COURT: Thank you very much. That
2 will be placed in the record then. Thank you.
3 All right. That will be marked and
4 received in evidence for record purposes as Court's
5 Exhibit Number 1.

6
7 (Whereupon, the above
8 mentioned item was
9 received in evidence
10 for record purposes
11 only, after which time,
12 the proceedings were
13 resumed on the record,
14 as follows:)

15
16 THE COURT: Please state your name,
17 sir.

18 THE PROSPECTIVE JUROR: Jason
19 McCulloch.

20 THE COURT: Mr. McCulloch, we want to
21 thank you very much for your filling out your
22 questionnaire, and your prompt attendance at this
23 afternoon's session. It will no longer be necessary for
24 you to be concerned about being a juror in this case.
25 You are going to be excused.

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1 THE PROSPECTIVE JUROR: All right.

2 THE COURT: Thank you very much.

3 THE PROSPECTIVE JUROR: Thank you,
4 Your Honor.

5 THE COURT: All right. Then we
6 will -- Court's Exhibit Number 1 will be the agreement to
7 excuse Mr. McCulloch. We will have Ms. Halsey mark that
8 and just place it with the record for trial.
9 And that brings us to the end of the
10 day's proceedings. Mr. McCulloch being the last juror.
11 And so, we will reconvene at 8:00 a.m.

12 tomorrow morning.

13 THE RICHARD MOSTY: Are we coming at
14 8:00 or 8:30, Your Honor?

15 THE COURT: Well, we got them coming
16 in at 8:00. I mean we get here at 8:00. Normally, we

17 start about 8:15. So, it's not going to be that big a
18 difference. And I think that is a satisfactory time, we
19 beat the traffic that way. I have been up since 5:00,
20 and you know the day is half gone but that is all right.
21 But I think that 8:00, and if we
22 say -- like we started today -- we had our first juror
23 today, we started talking to him at 8:10. The State
24 started at 8:10. So we will be going about 8:10, 8:15,
25 8:20 anyway.

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1 But the sun is out, I noticed now, and
2 it may dry out; you never can tell what -- how many will
3 be coming in tomorrow morning. They may be knocking our
4 doors down. We will see everybody tomorrow morning at
5 8:00.

6
7 (Whereupon, the
8 Proceedings were
9 Recessed for the day,
10 To be resumed the
11 Following day, in
12 Open court, as follows:)

13
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Sandra M. Halsey, CSR, Official Court Reporter 403

1 COURT'S EXHIBIT NO. 1
2
3
4
5
6 (AFFIDAVIT REGARDING JASON McCULLOCH)

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25

Sandra M. Halsey, CSR, Official Court Reporter 404

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 405

1 STATE OF TEXAS)
2 COUNTY OF DALLAS)
3
4 JUDGES CERTIFICATE

5

6

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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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19 _____
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 406