

Volume 15

1 IN THE CRIMINAL DISTRICT COURT NO. 3
2 DALLAS COUNTY, TEXAS
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6 THE STATE OF TEXAS } NO. F-96-39973-J
7 VS: } & A-96-253
8 DARLIE LYNN ROUTIER } Kerr Co. Number
9
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13 STATEMENT OF FACTS
14 JURY VOIR DIRE
15 INDIVIDUAL JURORS HEARING
16 VOL. 15 OF VOLS.
17 October 31, 1996
18 Thursday
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22
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25

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1 C A P T I O N

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3
4 BE IT REMEMBERED THAT, on Thursday, the 31st 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

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3

4 HON. JOHN VANCE

5 Criminal District Attorney

6 Dallas County, Texas

7

8 BY: HON. TOBY L. SHOOK

9 Assistant District Attorney

10 Dallas County, Texas

11

12 AND:

13 HON. JOHN GRAU

14 Assistant District Attorney

15 Dallas County, Texas

16

17 AND:

18 HON. SHERRI WALLACE

19 Assistant District Attorney

20 Dallas County, Texas

21

22 APPEARING FOR THE STATE OF TEXAS

23

24

25

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1 ADDITIONAL APPEARANCES:

2

3 HON. DOUGLAS D. MULDER

4 Attorney at Law

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7 Dallas, TX 75201

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9 AND: HON. CURTIS GLOVER

10 Attorney at Law

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15 AND: HON. RICHARD C. MOSTY

16 Attorney at Law

17 Wallace, Mosty, Machann, Jackson & Williams

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21 AND: HON. S. PRESTON DOUGLASS, JR.

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1

2 AND: HON. JOHN HAGLER

3 Attorney at Law

4 901 Main Street, Suite 3601

5 Dallas, TX 75202

6 ALL ATTORNEYS REPRESENTING THE

7 DEFENDANT: DARLIE ROUTIER

8 MR. HAGLER HANDLING THE APPEAL

9 AND:

10 HON. ALBERT D. PATILLO, III

11 Attorney at Law

12 820 Main Street, Suite 211

13 Kerrville, TX 78028

14 APPEARING FOR: Witness-

15 Detective Jimmy Patterson

16 only on one date in trial

17 AND:

18 HON. STEVEN J. PICKELL

19 Attorney at Law

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22 APPEARING FOR: Witness

23 Officer Chris Frosch

24 only on one date in trial

25

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1 P R O C E E D I N G S

2

3 October 31st, 1996

4 Thursday

5 8:25 a.m.

6

7 (Whereupon, the following

8 proceedings were held in

9 open court, in the presence

10 and hearing of the

11 defendant, being

12 represented by her attorneys,

13 and the representatives of

14 the State of Texas,

15 as follows:)

16

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

18 on the record in the Darlie Routier case.

19 Ms. Huckobey, come on up here, please,

20 ma'am. If you will be kind enough to have a seat here.

21 THE PROSPECTIVE JUROR: All right.

22 THE COURT: Ma'am, raise your right

23 hand.

24 Do you solemnly swear or affirm you

25 will true answers make to all the questions propounded to

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1 you concerning your qualifications as a juror, so help

2 you God?

3 THE PROSPECTIVE JUROR: I do.

4

5 (Whereupon, the prospective

6 juror was duly sworn by the

7 Court to true answers make

8 to the questions propounded,

9 concerning qualifications, after

10 which time, the proceedings were

11 resumed as follows:)

12

13 THE COURT: Thank you.

14 Ms. Huckobey, we have the State of

15 Texas today represented by Mr. Toby Shook and Ms. Sherri

16 Wallace from the Dallas County District Attorney's

17 Office.

18 The defense is represented by Mr.

19 Douglas Mulder and Mr. Richard Mosty. And, of course,
20 this is the defendant, Darlie Routier, sitting over here
21 to your far right.

22 All right. Mr. Shook.

23 MR. TOBY SHOOK: Thank you, Judge.

24

25

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1 Whereupon,

2

3 SUSAN ROBERTA HUCKOBEY,

4

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

9

10 VOIR DIRE EXAMINATION

11

12 BY MR. TOBY L. SHOOK:

13 Q. Ms. Huckobey, again, my name is Toby

14 Shook. I'm one of the Assistant District Attorneys in
15 the case, and I will be asking you questions on behalf
16 of the State today. All right?

17 A. Uh-huh. (Witness nodding head

18 affirmatively.)

19 Q. I want to thank you for providing us

20 with a lot of information on your questionnaire and
21 filling that out. It has been very helpful.

22 Let me ask you: Has anything changed,
23 any more information or anything important come up within
24 the last two days?

25 A. No. There's -- the question about,
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1 "If you could pronounce the death penalty," I did answer
2 that "yes," but I don't want to. I don't want to live
3 with that.

4 Q. Well, actually, I think you may have
5 answered it two ways. Another part of the questionnaire,
6 you said that you couldn't do that.

7 A. Right.

8 Q. Okay. Well, that is what we want to
9 talk about a lot today.

10 A. Uh-huh. (Witness nodding head
11 affirmatively.)
12 Q. Ms. Huckobey, what we are looking for
13 are just your honest answers, and no one knows yourself,
14 obviously, better than yourself.
15 A. Uh-huh. (Witness nodding head
16 affirmatively.)
17 Q. We call a lot of people down and get
18 all kinds of folks down here on any of these cases. Have
19 you ever served on a jury before?
20 A. No, sir, I have not.
21 Q. Have you ever been called down before?
22 A. Yes, sir.
23 Q. Okay. Usually we talk to jurors in
24 one great big panel. But since this is a death penalty
25 case, the law requires us to talk to each and every one
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1 individually. People feel strongly one way or the other
2 about this issue, so we want to be sure to air it out
3 very carefully.
4 Like I said, there are no right or
5 wrong answers, just your honest opinion. We're not down
6 here giving you a test for good citizenship, and we don't
7 want jurors that will just answer questions the way they
8 think the lawyers want them answered. You know what I am
9 saying?
10 Sometimes we get jurors who will
11 answer questions one way on one side, and will give the
12 exact opposite answers to the other lawyer. Okay?
13 A. I understand.
14 Q. All right. Like I said, we get all

15 kinds of folks down here. Some people are qualified to
16 sit on some types of cases, and not qualified to sit on
17 other types of cases.
18 A couple of examples: Sometimes we
19 will have a DWI case, and someone may have had a loved
20 one killed in a DWI-type accident. They will say, "Look,
21 if it was any other type of case, I could sit and listen
22 to the evidence. But I have had this experience in my
23 life and I feel this way. I am so much against drinking,
24 I couldn't be fair in this case." That is fine, if they
25 feel that way.
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1 We have had other people that may have

2 had a bad experience with a police officer, or maybe one
3 of their family members has. And if they know a certain
4 agency is going to be involved, they will say, "I just

5 couldn't listen to the evidence fairly that way." Or
6 maybe they have been a victim of a violent crime, and
7 they just couldn't sit and be fair to the defendant in
8 that way. So it cuts both ways. You understand?

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

11 Q. The bottom line is, obviously, the
12 State is seeking the death penalty in this case. That is
13 our goal. That is what we want to prove to the jury.
14 And so, we ask each and every juror about their feelings
15 about the death penalty.
16 The first question we had on here, we
17 said: "Are you in favor of the death penalty?" And you
18 said, "No." And then you wrote in, "Do not feel this
19 should be man's decision to end a life."

20 A. Exactly.

21 Q. And later on you said that you had a
22 moral, religious, and personal belief that would prevent
23 you from returning a verdict that would result in the
24 execution of a woman.

25 A. Yes, sir, or a man.

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1 Q. Or a man? Okay.

2 A. Yes, sir.

3 Q. Just a human being?

4 A. Yes, sir.

5 Q. Okay. And that's fine. And I wish we
6 could just let you go because you checked yours off, but
7 the law requires us to inquire into these details a
8 little more. Okay?

9 A. All right.

10 Q. So if you will, just bear with me?

11 A. Okay.

12 Q. Tell us in your own words why you feel
13 you couldn't do that, and your opposition to the death
14 penalty as a law. Why do you feel that way?

15 A. You noticed that I am registered
16 nurse?

17 Q. Yes, ma'am.

18 A. So, I have spent my whole adult life
19 preserving life.

20 Q. Okay.

21 A. And I do believe in that. Morally, I

22 do not participate in abortions, for the same reason. I
23 made that decision over 30 years ago. It's just
24 something you cannot undo. Okay? Twenty years from now,
25 you can't say, "Gee, I'm sorry, we made a mistake," and
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1 undo that. And I just think that only really the Lord
2 can decide when life ends.

3 Q. Okay. And how long have you felt this
4 way?

5 A. Many years.

6 Q. Okay. So, this is not something you
7 just came up with?

8 A. No, not at all.

9 Q. Okay. And it's something you have
10 given some thought to, I take it?

11 A. Yes, I have.

12 Q. And something --

13 A. Especially since I found out about
14 this particular case.

15 Q. Sure. You have thought about it more
16 over the last ten days?

17 A. Yes.

18 Q. Okay. And, are you positive of the
19 way you feel about it?

20 A. I am very positive.

21 Q. Okay. Would it be safe to say you
22 have a deep conviction about the way you feel?

23 A. It would be very safe to say.

24 Q. Okay. The same way you feel about not
25 participating in abortions?

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1 A. Exactly.

2 Q. Okay. And, again, I appreciate your
3 honesty, and I hear what you are saying. But the law
4 requires me to go into a little further detail with you
5 though. Okay?

6 A. Okay.

7 Q. So I'm not arguing with you, and I
8 just want you to bear with me. Okay?

9 A. All right.

10 Q. Okay. In a death penalty case, like
11 this one, and we can't get into the facts or anything

12 like this, but the procedure is this: The first part of
13 the trial, we have to prove whether the defendant

14 committed the crime or not. It is a fact question:
15 Guilt or innocence. The Judge told you about the

16 indictment in the case. That is what we have to prove.
17 If we prove that to a jury, they would return a verdict
18 of guilty.

19 We then move to the punishment stage,
20 where you might hear additional evidence about
21 background, and things like that. But at the close of
22 that, you will get these questions.

23 That first question, if you would just
24 read that real quickly to yourself.

25 A. Okay.

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1 Q. Okay. That asks the jury to make a
2 decision as to whether we have proven they would be a
3 future danger. Do you understand that?

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

6 Q. Okay. It's another fact question.

7 A. Yes.

8 Q. This last question is a little longer,
9 if you would just take a moment to read that to yourself.

10 A. Okay. I have read it. I don't really
11 understand it, but I read it.

12 Q. Well, let me tell you right now, we
13 didn't think that one up.

14 A. Okay.

15 Q. It's a bit confusing. Here is the
16 bottom line on that question: It's what we call the

17 mitigation question, kind of a "safety net." You know,
18 that is the last question you get. You have already
19 found them guilty.

20 A jury would have already found her a
21 future danger, but you review the evidence and decide,
22 well, is there evidence, mitigating evidence, that shows
23 a life sentence should be imposed, rather than a death
24 sentence?

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)

2 Q. It gives the jury a way out to give a
3 life sentence. But they have to do it based on the
4 evidence. Okay?

5 A. I understand.

6 Q. Anyway, my point is this: A "yes"
7 answer to that first question, and a "no" answer to the
8 second, the Judge would have no choice but to sentence

9 the defendant to death. Okay?

10 Now, if you answer it any other way,
11 he would give a life sentence. But the way our system is
12 set up, there is only two choices once a person has been
13 found guilty: Death or life. And that is determined by
14 how the jurors answered those factual questions. Do you
15 understand that?

16 A. I believe so.

17 Q. Okay. "Yes" answer that they are a
18 future danger, and "no," there is no mitigating evidence,
19 the Judge has no choice but to sentence the defendant to
20 death.

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

23 Q. Any other way, he would give them a
24 life sentence. My point is this: You don't go back
25 there as a juror and write death or life. Okay?

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

3 Q. You answer these factual questions.
4 But, it's safe to say, obviously, the way you answer
5 those equals a death or life sentence. Do you understand
6 what I am saying?

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

9 Q. You don't write it, but, ultimately,
10 the same thing occurs.

11 A. Right.

12 Q. Okay. Now you have told me that you
13 are opposed to the death penalty, morally.

14 A. Yes, sir.

15 Q. You have thought about it and it's
16 something that you can't participate in?

17 A. Yes, sir.

18 Q. That is just the way you feel and no
19 one is going to change your mind about that?

20 A. No, I'm afraid not.
21 Q. And that is fine if you feel that way.
22 A. Uh-huh. (Witness nodding head
23 affirmatively.)
24 Q. Because you see, we don't require
25 jurors to come down here and violate their moral
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1 convictions. Okay? If you are being honest with us?
2 All right.
3 A. Uh-huh. (Witness nodding head
4 affirmatively.)
5 Q. Some people can come in here and say,
6 "I can listen to those questions and I'll answer them and
7 if it results in death, that it is fine. I don't have
8 any qualms about it."
9 I have talked to other people, such as
10 yourself, that are opposed to the death penalty. And
11 they go, "Look, intellectually, I know what you are
12 telling me. You just have to prove these things by the
13 evidence."

14 A. Right.
15 Q. "And we answer questions, but I can't
16 change the way I feel. And I could never bring myself,
17 no matter what the evidence is, to answer these questions
18 in a way that would result in someone's death. I know I
19 don't have to write death in here, but I could never
20 answer those questions, because I can't remove how I feel
21 about my opposition to the death penalty." Do you
22 understand what I am saying?
23 A. Yes, sir. I think so.
24 Q. "It's something I can't do. I am just
25 morally opposed to it, and I could never answer those
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1 questions in a way, regardless of the evidence, that
2 would cause a person to be executed." Do you see what I
3 am saying?

4 A. Yes, sir, I do.

5 Q. Okay. Because we don't ask you in any
6 of these questions if you are opposed to the death
7 penalty or not?

8 A. I understand.

9 Q. That first question just asks: "Is
10 there enough evidence here, that you think there is a
11 probability that the defendant would continue to commit
12 criminal acts of violence?" It doesn't bring up the
13 death penalty?

14 A. Uh-huh. (Witness nodding head
15 affirmatively.)
16 Q. I have had people tell me, "I know you
17 could prove that to me all day long in my mind, but I am
18 still going to feel the same way about the death penalty.
19 So I'm not going to answer that question for you. I'm
20 just telling you right now."
21 And I have had people tell me who are
22 opposed to the death penalty that -- this last question,
23 it allows a way for the juror to get out.
24 You know, you can always answer it in
25 a way that they will get a life sentence. And they are
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1 telling me, "You know, I don't know how bad this person
2 may ultimately be. I mean, they could be the most
3 vicious criminal that ever walked the face of the earth,
4 the most dangerous person. But I am going to answer that
5 question in a way to give them a life sentence, because I
6 am opposed to the death penalty."

7 Do you understand what I am saying?

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

10 Q. We had a guy just yesterday, he is
11 what we call a bottom-line guy, I guess. He said, "I
12 don't care what your questions say, I'm telling you, I am
13 opposed to the death penalty. And I'm not going to
14 answer those questions in a way so anyone is going to get
15 the death penalty. I'm sorry if I hurt your feelings,
16 but that is the way I feel."

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

19 Q. Okay.

20 A. I think I would have a lot of trouble
21 getting past "sufficient mitigating circumstances."

22 Q. Okay.

23 A. That would have to be very narrowly
24 defined.

25 Q. Again, are you going to be able to
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1 forget how you feel about the death penalty?

2

3 MR. RICHARD C. MOSTY: Your Honor, now
4 wait a minute, she is not obligated to forget how she
5 feels about the death penalty. She can take those
6 beliefs in, all she has got to do is follow the law.

7 THE COURT: Sustained. Sustained.

8 Just because you are opposed to the death penalty, ma'am,
9 does not mean that you are disqualified as a juror.

10 THE PROSPECTIVE JUROR: I understand.

11 THE COURT: Thank you very much.

12

13 BY MR. TOBY L. SHOOK:

14 Q. Now, we have some people -- or I have
15 talked to some people that tell us that they really are
16 opposed to the death penalty, but, I guess, that they can
17 just sit there and answer those questions knowing that a
18 person will be executed. Okay?

19 And then other people, like I say,
20 say, "No, I just can't do it. I am telling you, I just
21 couldn't answer those questions." They are honest with
22 us. Okay? And that is what we're looking.

23 You have equated your opposition to
24 the death penalty with how you feel about not
25 participating in abortions.

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1 A. Exactly. Or euthanasia, or --

2 Q. I'm sorry?

3 A. Or euthanasia. Or any other medically
4 induced --

5 Q. -- any other medical procedure for
6 ending life?

7 A. Exactly.

8 Q. Okay. And no one will change your
9 mind about that?

10 A. No, sir.

11 Q. Okay. It's something that you won't
12 participate in?

13 A. Exactly.

14 Q. Okay. Not if a doctor said, "Look,
15 you didn't make the decision. You are just going through
16 some medical procedures you are trained to do."

17 A. No.

18 Q. You wouldn't do it?

19 A. No, because I have that right within
20 my profession to refuse.

21 Q. Okay. And no one can force you on a
22 jury, either.

23 A. Well, I didn't know that.

24 Q. Well, it depends on how you feel
25 morally.

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1 A. Yes, I understand.

2 Q. If you have oppositions to this type
3 of law, moral oppositions, that you can't remove from

4 your mind that would prevent you from answering these
5 questions, that is fine.

6 Now, if you don't, that is fine, too.

7 But that is up to you because you know yourself best.

8 Okay?

9 A. All right.

10 Q. Now, I may be hearing you wrong, but

11 if you tell me that you feel the same about the death

12 penalty as you do about not participating in abortions,
13 what I'm hearing you tell me is, "I can't participate in
14 this type of case."

15 A. Exactly.

16 Q. Okay. It is not a question of

17 evidence?

18 A. No.

19 Q. It is a question of how I feel

20 morally?

21 A. Yes, it is.

22 Q. Okay. And I'm not going to change

23 your mind about that?

24 A. No, you are not.

25 Q. Just like I could never convince you,

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1 or a doctor could never convince you, to participate in
2 an abortion procedure?

3 A. No.

4 Q. We couldn't convince you, in any way,

5 to participate and to answer those questions that would

6 result in someone's death?

7 A. No, not if they are going to result in

8 death.

9 Q. Okay. You understand again, a "yes"

10 answer and a "no" answer to those --

11 A. I understand.

12 Q. -- would result in a person's

13 execution?

14 A. I do understand.

15 Q. Okay. But that is the bottom line on

16 how you feel. Am I right, Ms. Huckobey?

17 A. Yes, it is.

18 Q. Okay. Sometimes, and you know how we

19 lawyers are, we always like to ask questions. And
20 sometimes we ask some of the same questions, but a
21 different phrase to it. Okay? Sometimes I'll ask these
22 same type questions of a juror, and they will answer me
23 one way. And then another attorney might come in and

24 say, "Look, that first question, that is just a fact
25 question. Don't you think if you got enough evidence,
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1 you could answer that intellectually? Couldn't you be
2 fair and honest and answer that question?"
3 And they will say, "Yes." Then they
4 will say, "Well, look at the second question. Couldn't

5 you keep your mind open, if you saw something mitigating,
6 you could answer it that way? And if there was not
7 mitigating evidence, you would give it a 'no' answer.
8 Couldn't you just do that intellectually?"
9 And these people say, "Well, yes, I
10 guess so. I mean, I'm a fair person. I can decide these
11 things." But, ultimately, what that would do is then a
12 "yes" and "no" answer equals an execution.

13 A. Exactly.

14 Q. You understand that?

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

17 Q. Okay. Are you telling me, you know,
18 that it's not a fact issue with you? It is that this is
19 how you are morally opposed?

20 A. Exactly.

21 Q. So you could never answer those
22 questions in a way, a "yes" and a "no," that is going to
23 cause the Judge to sentence the defendant to die? It's a
24 procedure you can't --

25 A. Factually or morally?

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1 Q. Well, there is our point. Some people
2 can come in here and be like computers. Okay?
3 They can get the information and spit
4 out the answers, and their morals don't come into it.
5 Other people can't remove their morals. They feel
6 strongly about it. The way you are telling me you feel
7 about abortion. Okay?

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

10 Q. You know, factually, you can do
11 procedures and assist a doctor in an abortion, and maybe
12 remove -- some people can do that and not think about
13 that morally.

14 A. Exactly, uh-huh. (Witness nodding
15 head affirmatively.)

16 Q. Same thing here, some people can do
17 that. They can sit there and tell us, you know, a person
18 can come in and say, "I don't believe in abortion, but I
19 can do these procedures. It's not my decision, you know.
20 I will do what I am trained to do."

21 Other people like yourself, you would
22 come in, I take it, and say "Look, I can assist a doctor
23 in these procedures, but I am not going to."

24 A. Exactly.

25 Q. "I couldn't live with myself. I am
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1 morally opposed to it."

2 A. Right.

3 Q. Some people feel the same thing about
4 the death penalty. "Factually, I know I could answer the
5 questions, but I am not going to remove my morals from
6 that point." Do you understand what I am saying? "I am
7 not going to participate in this procedure, because
8 morally I could not follow this type of law. I don't
9 believe in it."

10 A. Exactly.

11 Q. You understand what I'm saying?

12 A. Yes.

13 Q. I'm not trying to trick you or
14 anything?

15 A. Okay.

16 Q. My point is this: We do have folks
17 that come in here and tell us, "I can't participate, but,
18 gosh, I'll answer your questions." Okay?

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

21 Q. But the bottom line is what you need
22 to know is, if you answer the questions in a way, it
23 could result in someone's death. And when they get down
24 to brass tacks in the jury box, I think they start
25 thinking about that, and maybe they couldn't do it. Do

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1 you understand it?

2 A. Yes, sir. That is where I would come

3 in. I just couldn't --

4 Q. You just couldn't do it?

5 A. I couldn't do it.

6

7 MR. DOUGLAS MULDER: Judge, I think

8 this is repetitious.

9 THE COURT: Sustained.

10

11 BY MR. TOBY L. SHOOK:

12 Q. Okay. But I'm not going to change

13 your mind on any of that?

14 A. No, you are not.

15 Q. Okay. I appreciate your honesty with

16 me, Ms. Huckobey.

17 A. Thank you.

18 Q. The only other area I had to go in is

19 it looks like, is it you and your husband own, is it some

20 type of --

21 A. A home health agency.

22 Q. Yeah, okay. It's looks like you do a

23 lot of the work, is that right?

24 A. I am the only R.N. for 21 home-bound

25 patients.

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1 Q. What are your hours when you work?

2 A. We actually work 8:00 to 5:00, but we

3 are on call all the rest of the time. An R.N. has to be

4 on call.

5 Q. This trial is slated to begin January

6 the 6th, and we think it will last two weeks. And it

7 will be about 9:00 to 5:00, is when you will be -- having

8 to be down listening to the evidence.

9 Would that cause, and I know --

10 obviously, it's going to be an inconvenience to everyone,

11 but some people, because of their job situation, just

12 wouldn't be able to sit as jurors and listen to the

13 evidence because of something involved with their job.

14 Other jurors say, "Look, it's an

15 inconvenience, but if I am on the jury, I will listen to

16 the evidence." What is your job situation as far as

17 those two weeks? Would you able to serve,

18 hypothetically, if you ever did get on the jury?

19 A. It would be very difficult. I am the

20 only one that coordinates the care and directs my L.V.N.s

21 and knows my patients. Okay? There are 21 home-bound

22 patients. It would be a real problem, and I would

23 probably end up working all evening, after I got out of

24 Court, because there is just stuff I have to do. We deal

25 with Medicare, primarily. And so, you know, there is

1 paperwork, a lot of it.

2 Q. What we need to know, bottom line, is
3 if -- and again, we are talking hypotheticals, but if you
4 got on a jury for two weeks, would you be able to
5 concentrate on the evidence or would you be thinking
6 about --

7 A. I would be at work mentally.

8 Q. You would be at work mentally?

9 A. Yes.

10 Q. So you wouldn't be able to sit there
11 and give this trial your full concentration, and listen
12 to the evidence?

13 A. Well, if I were selected, and that was
14 my duty, I would --

15 Q. Then you could?

16 A. I would do it.

17 Q. Okay. Again, we're talking about
18 hypothetically. But, getting back to what we really have
19 been talking about here --

20

21 MR. DOUGLAS MULDER: Judge, we are
22 going to object to any repetition.

23 THE COURT: Sustained. Let's move on.

24 MR. TOBY L. SHOOK: That's all the
25 questions I have, Judge.

1 THE COURT: Thank you.

2

3 VOIR DIRE EXAMINATION

4

5 BY MR. DOUGLAS D. MULDER:

6 Q. Ms. Huckobey, as Judge told you, my
7 name is Doug Mulder, and I need to visit with you a
8 little bit.

9 A. All right.

10 Q. I just kind of want to get to know you
11 a little bit better.

12 A. All right.

13 Q. Let me make one thing real clear here
14 at the start: When the indictment is read by the
15 prosecution to Darlie --

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

18 Q. And the Judge asks her what her plea
19 will be, she will enter an unequivocal plea of not

20 guilty.
21 A. Uh-huh. (Witness nodding head
22 affirmatively.)
23 Q. And we contend that we're never going
24 to get to these special issues. Okay?
25 A. Okay.
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1 Q. The trial is not going to go that far.
2 A. All right.
3 Q. We suspect that a jury will find her
4 not guilty, based on the evidence. Now that is our
5 position.
6 A. Uh-huh. (Witness nodding head
7 affirmatively.)
8 Q. Now, I need to visit with you a little
9 bit, and tell you a little bit about how things are done
10 since you have not served on a jury before.
11 A. All right.
12 Q. Procedurally, for example, the State
13 goes first, just like they talk to you first.
14 A. Uh-huh. (Witness nodding head
15 affirmatively.)
16 Q. If I had my druthers, I would prefer
17 to go first, because I think first impressions are mighty
18 important. But as a juror, you need to keep this in your
19 mind, because we don't get a chance to bring our case to
20 you until after they are through with their case. And if
21 you make up your mind based on what they brought you,
22 then we might as well fold up our tent right now. You
23 see? And that wouldn't be fair to us.
24 A. Uh-huh. (Witness nodding head
25 affirmatively.)
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1 Q. The law lets them go first because
2 they have the burden of proof. You see? The law says:
3 Whoever does the accusing, has to do the proving. Does
4 that make sense?
5 A. Yes, sir.
6 Q. She doesn't have to prove anything,
7 she just has to be here.

8 A. Okay.
9 Q. We're going to bring evidence, but we
10 don't have to. Now, the law says, that as a juror, you
11 will measure their proof by a benchmark or a standard

12 called beyond all reasonable doubt.
13 Now have you heard those terms before?
14 A. Certainly.
15 Q. Now, you know, back years ago on
16 Peyton Place they always talked about beyond a shadow of
17 a doubt, but that is not the law.
18 But anyway, you know, you hear various
19 renditions of that term, but the term is beyond all
20 reasonable doubt. And, you know, if you and I were to
21 sit down and draw up the rules that would govern the
22 trial of a criminal case, of course, we want to provide
23 for rules that would resolve as many criminal cases as we
24 possibly could.
25 And we would probably discuss the fact
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1 that, you know, when those 12 jurors get back to the jury
2 room, and they start deliberating this case, they are
3 going to have some doubts, perhaps. And we need a way to
4 revolve these doubts, so that they can arrive at a
5 verdict. Because if they just go back there and they
6 have these doubts and there is no resolution of the
7 doubts, then they will say, "Hey, we can't resolve this
8 case," and it has to be tried before another jury.
9 And we want to encourage juries, as
10 much as possible, to be honest about it, and to resolve
11 their doubts. And so the law says this, and we might, at
12 first blush, we might think it would be fairer if we had
13 those jurors go back there and make a list of the
14 reasonable doubts. And put them on a piece of paper and
15 list them all and number them, say from 1 to 21, or maybe
16 1 to 101, or whatever.
17 And we give the State the benefit of
18 all the odd number doubts, and we give the defendant the
19 benefit of all the even numbered doubts, and we would
20 say, "Well, maybe that is the fairest way to do it."
21 But the law says no. And the law says
22 that each time a juror has a reasonable doubt, they must
23 resolve that doubt in favor of the defendant. That is
24 the law. Not just in this state, but in all 50 states
25 and in the federal courts.
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1 Do you have any problem with that?
2 A. No.
3 Q. Okay. You know, the reason, I guess,
4 for that is, as jurors, you are the judges of the facts
5 proved. The facts are what you say they are. Okay?

6 A. Okay.

7 Q. Judge Tolle is the Judge of the law.

8 You see? But if he makes a mistake with respect to the
9 law, we can appeal it to a higher court, and get it

10 corrected. Okay? So, no, he can't do us any harm,
11 really, because we can always get it corrected by a
12 higher court.

13 But as jurors, you are supreme as to
14 what the facts are. The facts are what you say they are.

15 Okay? There is no appeal on the facts. The facts are
16 what you say they are.

17 Let me give you an example, and I'm

18 going to go to the absurd, really, to make this point.

19 Assume, if you will, with me, that you are sitting on a
20 jury down in Austin, and I guess I should say over in

21 Austin, or up in Austin, because we are not in Dallas, we
22 are up here --

23 A. Right.

24 Q. -- or down here. But anyway, assume

25 you are on a jury in Austin and they are trying a bank
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1 robbery case. You hear a witness get on the witness
2 stand and swear to tell the truth. And the witness says,
3 "I was there at the town square at high noon, and I heard
4 a gunshot, and my attention was attracted over to the
5 bank, and I saw a man come out of the bank, and he had a
6 sack of money in one hand, and he had a gun in the other
7 hand, and he had a mask on, and he ran out of the bank,
8 and he jumped in a black stretch limousine, and he headed
9 south towards San Antonio."

10 And the very next witness gets on the
11 stand and swears to tell the truth, and says, "I, too,
12 was in the town square at high noon on that day, and I,
13 too, heard a gunshot, and my attention was attracted to
14 the bank. And I saw a man come out of the bank, and he
15 had a mask on, and he had a sack of money in one hand and
16 he had a gun in the other hand. And he ran out and he
17 jumped on a white horse and he rode north towards
18 Dallas." Okay?

19 A. Okay.

20 Q. It can't be both ways. Right?

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

23 Q. So, maybe it goes to identity. But
24 you go back into the jury room and you say, "Hey, I have

25 got a reasonable doubt as to the mode of escape. I mean,
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1 was it a white horse headed north toward Dallas, or was
2 it a black stretch limousine headed south toward San
3 Antonio?"
4 And the other jurors agree, "You know,
5 we have reasonable doubt, too."
6 Suppose it benefits the defendant to
7 call it a black stretch limousine headed south toward San
8 Antonio. That's what it is. You see?
9 A. Yes.

10 Q. You resolve that doubt in favor of the
11 defendant. And from that point forward, it is a black

12 limousine headed south toward San Antonio. That is the
13 way that works. And like I said, I go kind of to the
14 extreme to make my point. But as jurors, your power is
15 awesome, it's awesome. It really is.

16 You also determine the credibility of
17 the witnesses. That is, whether or not they are telling
18 the truth. You may look at them, and it may be the way
19 they fidget on the witness stand, or it may be the way
20 they won't look at you, you know how people are?

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

23 Q. You know, you have had experience with
24 that?

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

2 Q. In your adult years.

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

5 Q. Maybe with children sometimes. Maybe
6 with -- but you just get that feeling about it, that,

7 "Hey, this ain't the way it is, you know. I can tell
8 that person is lying." And maybe it is his body
9 language, and maybe it is the way his hands shake, or the
10 way his voice cracks, or whatever it might be, but, you

11 know, that inner sense that tells you something is not

12 right.

13 So, you as jurors will be the judges

14 of the credibility of the witnesses, and the weight that

15 you want to assign to the testimony of each witness.

16 In other words, you may believe what

17 one witness tells you 100 percent. You may believe

18 absolutely nothing of what another witness tells you.

19 But you, as jurors, will make those decisions. You see?

20 Judge Tolle won't advise you as to

21 the -- and the law doesn't permit him to, he can't tell

22 you, you know, "Don't believe that second witness. You

23 know he is a liar."

24 But at any rate, you will have those

25 duties and responsibilities. And then, at the conclusion

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1 of the trial, the Judge will give you his instructions on

2 the law. You don't have to know any law to serve on a

3 jury. You are probably a whole heck of a lot better off

4 if you don't know any law. Okay?

5 A. Uh-huh. (Witness nodding head

6 affirmatively.)

7 Q. Because Judge Tolle will give you all

8 the law that is applicable to the particular case in a

9 written instrument called the Charge. You will have that

10 when you go back into the jury room, and if anybody has

11 any questions as to what the law is, it will be right

12 there. You will probably all have a copy of the Charge.

13 You all will go back and read it, so that you understand

14 what the law is that applies to this particular case.

15 And, you know, one thing I have

16 noticed about your jury questionnaire here is that you

17 don't know anything about this case.

18 A. No, I don't.

19 Q. That is what we like. That is ideal,

20 somebody who doesn't know anything about it, who can just

21 go back and, you know, and sit in that jury box and just

22 listen to the evidence, and just call it the way you see

23 it.

24 Many, many years ago when I started

25 practicing law, and trying cases in Texas, I was a

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1 prosecutor like these folks are. And the law in a

2 capital murder case, the law required that the jury

3 foreman would take pen in hand and write "death" in the
4 jury form, in the verdict form, and then sign his name to
5 it.

6 And they changed that law. And, I

7 guess, they did it to -- so that more people could serve
8 on a jury in a capital case. And the fact that some
9 people oppose, and don't like capital punishment, doesn't
10 disqualify them from serving as a juror in a capital

11 case, so long as they do this: So long as they can
12 follow the law.

13 Now, there are a lot of people that
14 don't like the law. I didn't particularly like the law
15 that -- remember the blue laws that we had here years
16 ago, where you couldn't shop on Sundays?

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

19 Q. I mean, it seemed -- a long time ago.

20 But anyway, the stores couldn't stay open on Sundays,
21 probably the Judge is the only one in this courtroom old
22 enough to remember that.

23

24 THE COURT: I remember it very well,
25 yes.

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1 BY MR. DOUGLAS MULDER:

2 Q. But anyway, they had the blue laws,
3 and you couldn't shop on Sundays. They couldn't stay
4 open on Saturday and Sunday both.

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

7 Q. And anyway, they repealed, I didn't

8 like it. And some people didn't like the 55-mile-an-hour
9 speed limits. You know.

10 But again, the situation is that if

11 you are qualified as a juror, so long as you can raise
12 your hand and take an oath, that you will follow the law
13 as given to you by the Court. You are an honest person.

14 Do you feel like you could do the?

15 A. I could do it, certainly.

16 Q. Sure. And part of that -- and again,

17 the only time we have to talk to you about punishment is
18 at this stage. And it's like I said, we're not going to

19 get there. Okay?
20 But to be a qualified juror, you have
21 to be able to say that you will, regardless of how you
22 feel about capital punishment, and I dare say this is a
23 far cry from -- I see a great distinction between
24 abortion and capital punishment, myself. You know, I
25 just don't think they are even close.
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1 A. Well, that is the whole issue, isn't
2 it? Right now?
3 Q. Right. I am with you as far as
4 abortion is concerned, but -- and capital punishment.

5 You have got a lot of -- I think you checked number 3
6 here which said --

7 A. Yes, that was the answer that I told
8 him that I had had time to reflect on.

9 Q. Yes, that comes most close to how you
10 feel about it.

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

13 Q. And there's a lot of company there. I
14 dare say, that I fit in that category myself. Where --
15 you know, many times we wish there was another way. But
16 you could still, under your oath as a juror, answer
17 questions truthfully based on the evidence, not based on
18 how you personally feel.

19 You could set aside, just like -- you
20 know, if you had read something about this case, or heard
21 something about it on the radio, or seen it and heard it
22 on TV, the law has no quarrel with a citizen being
23 informed of what goes on in their community.

24 And then on down the line serving as a
25 juror, when that case is tried. So long as they can put
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1 out of their mind what they have heard, or what they have
2 read in the newspaper, or what they have seen and heard
3 on television, and decide the case strictly on the
4 evidence that comes into Court. Okay?

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

7 Q. There will be witnesses; each witness,
8 before they take the stand, will raise their hand and
9 swear to God to tell the truth, and hopefully the
10 majority of them will do that.

11 Sometimes you have, well, you know,

12 the O.J. Simpson case is a good example. Where they had
13 Mark Fuhrman, who is the police officer who later on
14 plead guilty to perjury. You know? So, you have those,
15 as unfortunate as those situations are, you have them in
16 trials, occasionally. And, like I said, it's up to you
17 as a juror to be on guard for anything like that.

18 Discussing this second phase, the
19 first phase in any capital case involves guilt or
20 innocence. We have in Texas what we call a bifurcated
21 procedure.

22 The first stage of the trial deals

23 with guilt or innocence. If the defendant is found not
24 guilty, everybody goes home. It's only if the defendant
25 is found guilty that you go into the penalty stage.

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1 And then in a capital case, the

2 penalty consists of evidence by both sides, or both sides
3 are at least given the opportunity to offer evidence.

4 They may or may not offer evidence. I only know what our
5 position is going to be if they get that far.

6 But, again, there are just two issues

7 to be decided, and that is based on the evidence, not

8 based on how you feel personally. You set that aside and

9 just decide it based on the evidence.

10 Can you do that?

11 A. On the guilt or innocence part?

12 Q. On the guilt or innocence part, yes.

13 A. I'm certain I could do that.

14 Q. No question about that?

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

17 Q. All right. Then you go into the

18 second phase of the trial. Okay?

19 A. Okay.

20 Q. Again, you don't take another oath,

21 but the same oath applies; that you will listen to the

22 facts and the evidence as it comes to you from the

23 witness stand, and decide these two special issues based

24 solely on the evidence that comes to you. Okay?

25 A. Okay.

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1 Q. You have to listen to the evidence and

2 decide what you believe and what you don't believe,

3 disregard what you don't believe, and then decide those
4 special issues simply on the evidence that you receive in
5 Court.

6 Special issue number 1: And you

7 listen. And if the State brings you evidence, that
8 proves to your way of thinking, beyond a reasonable

9 doubt, that there is a probability, and that means more
10 likely than not, I suspect?

11 A. Uh-huh. (Witness nodding head

12 affirmatively.)

13 Q. That the defendant would commit

14 criminal acts of violence that would constitute a
15 continuing threat to society? You answer it "yes," if
16 there is a probability. If the State has brought you

17 evidence to satisfy you, beyond all reasonable doubt, you
18 answer that "yes." Okay?

19 A. Uh-huh. (Witness nodding head

20 affirmatively.)

21 Q. Could you do that?

22 A. Uh-huh. (Witness nodding head

23 affirmatively.)

24 Q. If the State has brought you evidence?

25 A. Yes.

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1 Q. Okay. Now you would have to, under

2 your oath as a juror, wouldn't you?

3 A. Yes.

4 Q. Okay. Then you get to the second

5 issue: Taking into consideration all of the evidence,

6 including the circumstances of the offense, that is the

7 facts that you relied on to find the defendant guilty.

8 Okay? The defendant's character, that is the evidence of
9 her character, and background, and the personal moral
10 culpability, that is the moral responsibility of the
11 defendant, is there sufficient mitigating circumstance or
12 circumstances to warrant that a sentence of life
13 imprisonment rather than a sentence of death be imposed?

14 You would have to look at all of the

15 evidence, to see if there is sufficient mitigating

16 circumstance or circumstances to warrant imposing a life

17 sentence as opposed to a death sentence. But that is

18 based on the evidence. Okay?

19 A. Uh-huh. (Witness nodding head

20 affirmatively.)
21 Q. Now, under your oath, as an honest
22 person, could you do that?
23 A. Well, now here is where the situation
24 comes in. I'm not a robot and I don't turn off morals
25 and ethics.
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1 Q. I know that.
2 A. Okay? So this is where the problem
3 comes in here.
4 Q. Sure.
5 A. In the moral and ethical issue. Could
6 I do it? Yes. Could I live with it? I don't know.
7 Q. Okay. Well, you know, it's not
8 supposed -- it should not be easy to answer any of these
9 questions.
10 A. Uh-huh. (Witness nodding head
11 affirmatively.)
12 Q. Don't you agree?
13 A. Oh, I agree.
14 Q. I mean it should be a difficult,
15 heartfelt decision.
16 A. Uh-huh. (Witness nodding head
17 affirmatively.)
18 Q. Don't you agree?
19 A. I agree with that, yes.
20 Q. And, you know, sometimes under your
21 oath, you just have to, you know, do what you feel the
22 evidence calls for. And you could do that? And it's not
23 going to be easy.
24 A. Well, I am an intelligent person.
25 But, again, I am going to have a real problem.
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1 Q. I know it.
2 A. Because I am going to have to live
3 with this forever, whatever decision is made.
4 Q. We all are.
5 A. Yes.
6 Q. All of us will.
7 A. Exactly.
8 Q. And it should not be any decision that
9 would be taken lightly.
10 A. Right.
11 Q. Don't you agree?
12 A. I understand that, yes.
13 Q. I mean, it should be a soul-searching,

14 heartfelt, come from the inside, know absolutely that you
15 are making the right decision, type of decision.

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

18 Q. And you could do that it? It may be
19 difficult to live with one way or the other, depending on
20 how it goes. Right?

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

23 Q. Either way it could be difficult to
24 live with.

25 A. Exactly.

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1 Q. Couldn't it?

2 A. I understand, yes.

3 Q. But you could do it, if called upon to
4 do it; is that right?

5 A. I probably could, but I wouldn't want
6 to. But I really -- I don't want to be in this position.

7 Q. I know that. And I don't want to act
8 like I'm picking on you. You don't think I am picking on
9 you. Do you?

10 A. Well, I think you keep coming at me,
11 yeah.

12 Q. Well, I don't mean to.

13 A. It's the same issue, I think I have
14 already answered it.

15 Q. I think you have too.

16 A. I have answered you several times.

17 Q. You have.

18 A. On the same issue.

19 Q. But I have a responsibility to her --

20 A. I understand you do.

21 Q. -- to ask these questions. And I know
22 where you are coming from, but the record has to be
23 clear. She is taking everything down that is said by
24 both of us.

25 A. Uh-huh, I understand.

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1 Q. And it's got to be clear in there that
2 you could do it, but it wouldn't be easy, and it may be
3 difficult to live with on down the line. And that is how
4 you feel, is that right?

5 A. Yeah. I'm not going tell you, yes, I
6 can do it, absolutely. I don't know. I have never been
7 in this situation. I don't know what you are going to

8 say, I don't know what they are going to say.

9 Q. But that is kind of the way -- don't

10 you think that is kind of the way it should be. Don't

11 you think it would be unfair, to one side or the other,

12 if I got a chance to come up here and say, "Look, now if

13 we prove 1, 2, 3, 4, 5, and 6, can you assure me that you

14 will do such and such and such?" Don't you think that

15 would be unfair, maybe to them?

16 A. I'm sorry, I don't understand your

17 question.

18 Q. Okay. If I tried to commit you, and I

19 said, "If I prove A, B, C, and D, can you assure me and

20 promise me that you will do such and such? That you will

21 vote such and such a way?"

22 A. Uh-huh. (Witness nodding head

23 affirmatively.)

24 Q. Don't you think that would be unfair,

25 perhaps, to them?

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1 A. To the prosecution?

2 Q. Yes. If I tried to commit you as to

3 how you would vote, given a set of circumstances?

4 A. Well, certainly.

5 Q. Right. So, don't you think you are

6 better off, I mean, I know you have not been in that

7 situation before. And, of course, there are very few

8 people that serve on more than one death penalty jury,

9 really. At least that has been my experience.

10 I mean, it's an awesome

11 responsibility. It is. And I would not think much of

12 anyone who didn't take it very seriously. I mean, it is

13 a serious business. I mean, you can't get much more

14 serious.

15 A. Uh-huh. (Witness nodding head

16 affirmatively.)

17 Q. Did I leave your jury questionnaire,

18 did I take it back?

19 A. Yes, you did.

20 Q. Did I? I'm sorry.

21 Let me touch on a couple other things

22 real quick.

23 A. Uh-huh. (Witness nodding head

24 affirmatively.)

25 Q. The Judge will tell you that the

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1 indictment is no evidence of guilt. Okay? It is simply
2 the pleading and paper by which the defendant is brought
3 into court. It informs her of the charges against her,
4 so that she can prepare her defense. Just as it advises
5 you, as jurors, of what the State must prove beyond a
6 reasonable doubt.

7 A. Okay.

8 Q. Okay?

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

11 Q. No problem with that?

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

13 Q. All right.

14 A. I don't know enough about it.

15 Q. Do you feel that you can keep an open
16 mind until we get a chance to bring our side of this case
17 to you?

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

20 Q. Understand that there are oftentimes
21 two sides to any case.

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

24 Q. Right?

25 A. Yes, I have been in administration a
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1 long time.

2 Q. All right. So, you know you can't
3 really make a decision until you hear both sides?

4 A. Exactly.

5 Q. And probably, with what you have been
6 doing, you are good at withholding judgment until you
7 hear both sides.

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

10 Q. And give both sides a fair shake.

11 A. Right, I don't have a problem with
12 that. No.

13 Q. You would give us both a fair shake?

14 A. I would hope so. Certainly, yes.

15 Q. You don't have any reason, other than
16 what we have touched on, why you couldn't be perfectly
17 fair to both sides?

18 A. No.

19 Q. You would do your dead-level best to
20 be fair to both sides?

21 A. Yes, I would.

22 Q. Okay.

23

24 MR. DOUGLAS MULDER: Ms. Huckobey,
25 thank you very much.
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1 THE PROSPECTIVE JUROR: You're

2 welcome.

3 THE COURT: Ms. Huckobey, let me ask
4 you this: You understand that if you listen to testimony
5 and review the evidence, and you feel the State has not
6 proven their case, you can find the defendant not guilty?

7 THE PROSPECTIVE JUROR: Oh, yes, sir.

8 THE COURT: Well, if that occurs, that
9 is it.

10 THE PROSPECTIVE JUROR: Right.

11 THE COURT: Everybody goes home.

12 THE PROSPECTIVE JUROR: Yes, sir, I
13 understand.

14 THE COURT: Do you understand that?

15 THE PROSPECTIVE JUROR: Yes, sir, I
16 do.

17 THE COURT: If you feel the State has
18 proven their case, could you find the defendant guilty?

19 THE PROSPECTIVE JUROR: Yes, I could.

20 THE COURT: All right. Now then, you

21 stated in your questionnaire: "Although I do not believe
22 the death penalty ever ought to be invoked, as long as
23 the law provides it -- for it, I could assess it in the
24 proper set of circumstances." That was your answer?

25 THE PROSPECTIVE JUROR: Yes, it was.

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1 THE COURT: You also state: That you
2 do have moral, religious, or personal beliefs that would
3 prevent you from returning a verdict which would result
4 in the execution of a woman. You answered that "yes."

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: All right. Mrs. Routier
7 is obviously a woman?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: If you are selected as a
10 juror and you find the defendant guilty, we go to special
11 issue number 1.

12 Could you follow the law as I would
13 give it to you, and answer that depending on the
14 testimony you hear and the evidence you receive
15 concerning that issue?

16 THE PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Knowing that if you answer
18 it "yes," you would go to special issue number 2.

19 THE PROSPECTIVE JUROR: Yes, sir. I
20 understand.

21 THE COURT: You could do that?

22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: All right. Special issue
24 number 2: Could you listen to the testimony and review
25 evidence and answer that according to the law and the
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1 evidence? And if you thought the correct answer to that
2 was "no," that there were no mitigating circumstances,

3 could you answer it "no," knowing that by answering it
4 "no," that I would impose a death sentence on the
5 defendant?

6 THE PROSPECTIVE JUROR: I don't
7 believe I could do that.

8 THE COURT: All right. No matter what
9 you heard?

10 THE PROSPECTIVE JUROR: No, sir, I
11 don't think I could.

12 THE COURT: You would just answer it
13 "yes," regardless of what you heard, even though you
14 thought the State had proven it; is that right?

15 THE PROSPECTIVE JUROR: If that were
16 the -- if I knew that was the end result, I don't believe
17 I could do it.

18 THE COURT: Well, that is the end
19 result.

20 THE PROSPECTIVE JUROR: That is what
21 I'm saying to you.

22 THE COURT: All right. The Court
23 holds the defendant (sic) --

24 MR. DOUGLAS MULDER: Well, Judge, let
25 me ask her one last thing.

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1 MR. TOBY L. SHOOK: Judge, we will

2 object to that, we have finished questioning.

3 THE COURT: Well, I will let Mr.

4 Mulder, since it is the defendant, ask one last question.

5

6 BY MR. DOUGLAS D. MULDER:

7 Q. Ms. Huckobey, we're touching on your

8 qualifications, whether or not you are qualified to sit

9 on a jury.

10 A. Yes, sir.

11 Q. That is what we are talking about

12 here. You don't impress me as a woman who would answer a

13 question dishonestly, you know, regardless of what the

14 consequences were. You wouldn't do that, would you?

15 A. No. I am just looking at the

16 mitigating circumstances, and I can't imagine there not

17 being any, you know, in a case like this.

18 Q. Well, are you saying --

19

20 THE COURT: Well, we have gone over

21 that point. Assuming there are mitigating circumstances,

22 or there are none, let's assume there are none, no

23 mitigating circumstances, none whatsoever. Would you

24 still answer that question, so as to make sure that the

25 defendant would not receive a death penalty, regardless

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1 of what you heard?

2 THE PROSPECTIVE JUROR: I have to feel

3 like I would morally.

4 MR. DOUGLAS MULDER: Are you saying

5 you would answer it dishonestly?

6 MR. TOBY L. SHOOK: Judge, we are

7 going to object. She has made herself very clear, Judge.

8 THE COURT: We understand that. I am

9 going to hold the prospective juror disqualified.

10 MR. TOBY L. SHOOK: Judge, we will

11 submit the juror under 35.16(b)(1), that she does have a

12 problem with --

13 THE COURT: All right. I'll grant the

14 State's motion for disqualification.

15 Thank you very much for coming. We

16 appreciate your candor. We would ask you, ma'am, not to

17 discuss this with anybody, particularly members of the

18 press, until this trial is over, that is going to be

19 sometime in February. I'm not threatening you, but I do

20 have a gag order in effect.
21 THE PROSPECTIVE JUROR: I wouldn't
22 discuss it.
23 THE COURT: I know you wouldn't, but I
24 have to advise you. It could result in monetary
25 sanctions or jail time if you did.
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1 THE PROSPECTIVE JUROR: Okay. That's
2 fine.
3 THE COURT: I hate to say that, but I
4 have to say it.
5 THE PROSPECTIVE JUROR: That is all
6 right, I won't talk to anybody about it.
7 THE COURT: All right. Thank you.
8 All right. Moving right along.
9 MR. TOBY L. SHOOK: Judge, this next
10 juror, Vada Smith, has a criminal record that shows out
11 of this County.
12 THE COURT: Well, let's ask her when
13 she comes in, off the record first and then on.
14 MR. TOBY L. SHOOK: Do you want to
15 handle that first?
16 THE COURT: Yes, I think we should.
17 Can you have Ms. Smith come in, please?
18 MR. TOBY L. SHOOK: She mentioned
19 something about that.
20 THE COURT: We're going to answer that
21 off the record first, and then we will put it on the
22 record.
23 This is Ms. Vada Viola Smith.
24 Ma'am, come on up, please. Can we ask
25 you a question first?
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1 THE PROSPECTIVE JUROR: Yes.
2 THE COURT: We have a -- do you have
3 any theft conviction on your record, ma'am?
4 MR. TOBY L. SHOOK: It's a check case
5 in 1990, I think.
6 THE PROSPECTIVE JUROR: Uh-huh.
7 (Witness nodding head affirmatively.)
8 THE COURT: You do?
9 THE PROSPECTIVE JUROR: Yes.
10 THE COURT: All right. Let's go on
11 the record then. Your name is, is it Vada or Vada?
12 THE PROSPECTIVE JUROR: Vada.

13 THE COURT: Vada, V-A-D-A, Viola
14 Smith; is that correct?
15 THE PROSPECTIVE JUROR: That's
16 correct.
17 THE COURT: Ma'am, you do have a
18 conviction, what we call a hot check conviction on your
19 record in this County?
20 THE PROSPECTIVE JUROR: Yes.
21 THE COURT: When did that occur?
22 MR. TOBY L. SHOOK: 1990.
23 THE COURT: 1990.
24 MR. TOBY L. SHOOK: July 30th, 1990,
25 theft by check.
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1 THE COURT: Is that correct, ma'am?
2 THE PROSPECTIVE JUROR: That's
3 correct. I didn't pick it up in time.
4 THE COURT: All right. Well, ma'am,
5 the law requires that I excuse you --
6 MR. DOUGLAS MULDER: Judge, not so
7 fast. If you just might give us chance.
8 THE COURT: That will be fine.
9 MR. DOUGLAS MULDER: She may have
10 gotten deferred adjudication probation.
11 THE COURT: Did you get --
12 MR. DOUGLAS MULDER: If she got
13 deferred adjudication, she doesn't have a conviction.
14 THE COURT: We understand that, but
15 what happened?
16 MR. TOBY L. SHOOK: This shows theft
17 by check, court costs \$119 and a fine in the amount of
18 \$50.

19 MR. DOUGLAS MULDER: It could still be
20 deferred.
21 THE COURT: Well, was it deferred, or
22 was it regular probation, or what happened?
23 THE PROSPECTIVE JUROR: I really don't
24 remember, it's been so long.
25 MR. TOBY L. SHOOK: Do you remember
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1 paying a fine? A \$50 fine?
2 THE PROSPECTIVE JUROR: Yes, I paid a
3 fine.
4 MR. RICHARD C. MOSTY: Well, you can
5 pay a fine under deferred, too.

6 THE COURT: I understand that. Well,
7 do you want to check on it? Maybe we can check on it in
8 this County. Do we have a computer we can use?
9 MR. TOBY L. SHOOK: Have you ever

10 received any type of dismissal or anything like that?
11 THE PROSPECTIVE JUROR: Dismissal?
12 MR. TOBY L. SHOOK: Yes.
13 MR. DOUGLAS MULDER: He means on the
14 case.

15 MR. TOBY L. SHOOK: On the case of the
16 check.
17 MR. DOUGLAS MULDER: Any notice that
18 the case was dismissed?
19 THE PROSPECTIVE JUROR: No. I don't
20 remember, it's been so long. I know I paid a fine on it.
21 MR. DOUGLAS MULDER: Did go to a JP
22 court?
23 THE PROSPECTIVE JUROR: Yeah, I
24 went -- no, I didn't go to a court. I just went up
25 there, and then I paid at another place.
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1 MR. DOUGLAS MULDER: Probably doesn't
2 even have --
3 THE COURT: Why don't we do this: Can
4 we take a little recess? Is there any place we can call,
5 Mr. Navarre, and find out about this?
6 MR. TOBY L. SHOOK: We can look it up,
7 Judge, I'm sure.
8 THE COURT: I think Jan is checking
9 right now. If you could step outside briefly, ma'am, and
10 we'll see what happens.
11 THE PROSPECTIVE JUROR: Okay.

12 THE COURT: All right. Off the
13 record.
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 THE COURT: All right. Back on record

23 now with Ms. Viola Smith.
24 Ms. Smith, at the current time, due to
25 your situation with your hot check case, the records
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1 reflect that it was a deferred probation, but there has
2 been no dismissal signed, so I am still considering it a
3 pending case. So currently, you are going to be excused
4 from jury service.
5 THE PROSPECTIVE JUROR: Okay.

6 MR. DOUGLAS MULDER: Excuse me, Judge.
7 Not excused from jury service, but just put her on hold
8 at this time?

9 THE COURT: No, I am excusing her
10 right now. We can bring her back if you want to bring
11 her back. If we can show anything that gets -- that it
12 is dismissed, and she is eligible, then we will certainly
13 consider her again. But as of right now, she is not
14 eligible to serve.

15 MR. DOUGLAS MULDER: Well, why don't
16 you just put her on hold so that we can bring her back,
17 in the event --

18 THE COURT: Is that agreeable to both
19 sides?

20 MR. TOBY L. SHOOK: Well, as of now,
21 apparently the law stands in that situation.

22 THE COURT: As of now, she is
23 disqualified to serve.

24 MR. DOUGLAS MULDER: Well, Judge, we
25 disagree with that.

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1 THE COURT: Why?

2 MR. DOUGLAS MULDER: She has not been
3 convicted. And her case is -- if she received a deferred
4 adjudication probation, she was not convicted. She has
5 successfully lived out the probationary term, and the
6 case should have been dismissed.

7 THE COURT: Well, my ruling right now,
8 is that she is disqualified. Now then, what I intend to
9 do is this: If she can be shown qualified, I will
10 certainly bring her back toward the end of these
11 proceedings. And we will consider her as a juror. Can
12 you come back if you are considered -- if we find out
13 that your conviction has been, in fact, set aside? It
14 doesn't look that way now.

15 THE PROSPECTIVE JUROR: I can come

16 back.

17 THE COURT: You can.

18 MR. RICHARD C. MOSTY: Because we
19 would like the opportunity to go down and actually read
20 the file.

21 THE COURT: I am all for it. I am
22 just saying right now I am holding her disqualified, but
23 the records are unclear. Due to the fact that they are
24 unclear, and there is no dismissal in there, I am holding
25 her disqualified now. But we are going to put her on
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1 hold, so to speak, and if we can have any showing that
2 she is qualified, we will bring her back at an
3 appropriate time, if both sides agree that she is
4 qualified, and then we will hear her then. Does that
5 satisfy everyone?

6 MR. DOUGLAS MULDER: Well, I mean, how
7 do we know, if the record is unclear? How do we know
8 that she --

9 THE COURT: We don't. That is why I
10 am not dismissing her right now. I am just holding her
11 disqualified as we know right now, but if we can clear

12 this up before the final jury is picked, we will bring
13 her back, and give her a chance to be examined by both
14 sides.

15 MR. DOUGLAS MULDER: You are saying
16 you are not dismissing her?

17 THE COURT: I am holding her
18 disqualified now. We are not dismissing her. I am
19 telling her that if we can show -- if you can show -- if
20 either side -- if you can show that she is qualified to
21 be examined as a juror, then we will bring her back and
22 examine her then. But we are not going to hold these

23 proceedings up today.

24 MR. RICHARD C. MOSTY: And we're not
25 asking you to, Your Honor, we would just want to make
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1 sure we have the opportunity and I hear the Court saying
2 that we will have an opportunity to show whether she is
3 qualified.

4 THE COURT: You would have the

5 opportunity to show -- the way it looks right now, she is
6 disqualified. And if you ask me to rule right now, I am

7 going to hold her disqualified.
8 But we are not going to hold the
9 proceedings up, we're going to go on with Mr.
10 Bierschwale.
11 MR. DOUGLAS MULDER: Judge, we
12 wouldn't ask you to do anything to hold the proceedings
13 up. We wouldn't deliberately do that for a minute.
14 THE COURT: That is fine. If you can
15 show me that she is qualified, we will bring her back and
16 examine her. But as of right now, it appears she is
17 disqualified.
18 MR. RICHARD MOSTY: That is fair
19 enough.
20 MR. DOUGLAS MULDER: From the
21 incomplete records?
22 THE COURT: Yes, from the incomplete
23 records. Now, if you can clear it up, fine. If the
24 records stay incomplete, I am still going to hold her
25 disqualified.
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1 MR. DOUGLAS MULDER: Well, having not
2 seen the incomplete records, I don't --
3 THE COURT: Well, nor have I. We're
4 telling the local people, Mr. Navarre has called the

5 District Clerk of Kerr County, and this is what the
6 situation appears to be now.
7 MR. DOUGLAS MULDER: It's a kind of
8 hearsay, on hearsay, on hearsay type of case.
9 THE COURT: Well, Mr. Navarre did tell
10 me and I have great faith in what Mr. Navarre tells me,
11 and the Kerr County Clerk's office.
12 MS. SHERRI WALLACE: We will go pull
13 it all up this afternoon.
14 THE COURT: We will go pull it all up
15 this afternoon. Ma'am, you will be given another time to
16 come back, if, in fact, you are qualified.
17 THE PROSPECTIVE JUROR: Thank you.
18 THE COURT: All right. Thank you. If
19 not, we can both agree into the record here that she is
20 not.
21 We will continue on, as we say in
22 Texas, with Mr. Charles Bierschwale, a fine Irish name.
23 Mr. Bierschwale, come in please. Do
24 you pronounce your name Bierschwale?
25 THE PROSPECTIVE JUROR: Bierschwale.
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1 THE COURT: Okay. This is juror
2 number 77, number 25 on our list. Mr. Charles
3 Biershwale, B-I-E-R-S-C-H-W-A-L-E. Is that how you
4 correctly spell your name, sir?
5 THE PROSPECTIVE JUROR: Yes, sir.
6 THE COURT: Raise your right hand,
7 please.

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

12 THE PROSPECTIVE JUROR: I do.
13
14 (Whereupon, the prospective

15 juror was duly sworn by the
16 Court to true answers make
17 to the questions propounded,

18 concerning qualifications, after
19 which time, the proceedings were
20 resumed as follows:)

21
22
23
24
25

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1 Whereupon,
2

3 CHARLES LANE BIERSCHWALE,
4

5 was called as a prospective juror, for the purpose of
6 voir dire, having been first duly sworn by the Court to
7 speak the truth, the whole truth, and nothing but the
8 true, testified in open court, as follows:
9

10 THE COURT: Thank you. You will first
11 be talked to by a member of the District Attorney's
12 Office of Dallas County, Ms. Sherri Wallace.

13 MS. SHERRI WALLACE: Good morning.

14 THE COURT: Mr. Toby Shook. The
15 defendant, Mrs. Routier, is to your far right. And she
16 is represented by Mr. Douglas Mulder and Mr. Richard
17 Mosty.

18 All right. So who will be for the
19 State?
20 MS. SHERRI WALLACE: I will, Your
21 Honor.
22 THE COURT: All right. Thank you.

23
24
25

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1 VOIR DIRE EXAMINATION

2

3 BY MS. SHERRI WALLACE:

4 Q. Hi.

5 A. Hi.

6 Q. Again, as the Judge has introduced me,
7 my name is Sherri Wallace and I am one of the Assistant
8 District Attorneys in Dallas that is going to be trying
9 this case. I know you have met us all, or saw us all, at
10 least, last Monday, Tuesday. Did you recognize any of us
11 or know any of us then?

12 A. No, I don't.

13 Q. With regards to the defense attorneys,
14 do you know either of the local counsel, Richard Mosty or
15 the man that is not here, Preston Douglass?

16 A. No, I don't.

17 Q. Okay. You don't recognize them or
18 know them from around Kerrville?

19 A. No.

20 Q. Okay. Fair enough. Let me just be up
21 front with you about a couple of things. One, we are

22 actively seeking the death penalty in this case. It is
23 our goal to see that the woman down there in pink is

24 executed. We believe we have the type of case and the
25 quality of evidence to do that.

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1 The second goal in this case is to get
2 12 people who won't jump to conclusions, because of the

3 media. That they will wait, and listen to the evidence
4 in this case, and wait until the Judge gives them the
5 law, then decide the case based on what is heard in the
6 courtroom and not what is played out in the press. Can

7 you do that?

8 A. Yes.

9 Q. Okay. You said you had heard about

10 the case and I just asked you that, because if you have

11 already formed an opinion, you may not be a juror in this

12 case. You must set aside anything you heard or read or

13 seen, and wait to hear the evidence.

14 I have seen not all of the news

15 reports, but a lot of them, and let me just tell you,

16 some of it they get it right, and sometimes they don't.

17 So that is why it is so critical for a juror to wait, and

18 I believe you said you could do that; is that right?

19 A. Right.

20 Q. Okay. On your questionnaire -- well,

21 first of all, let me just tell you the order we are going

22 to go in. We are going to talk to you a little bit about

23 your questionnaire and the death penalty and how you feel

24 about that, and then talk to you about the general

25 principles of law. Okay?

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1 A. Okay.

2 Q. You said you are in favor of the death

3 penalty, and that you find that it is necessary in some

4 crimes. And you also circled that you believe the death

5 penalty is appropriate in all capital murder cases. I

6 want to talk to you a little bit about that.

7 In this trial, it is two phases. The

8 first phase is where we must prove to you that she

9 committed the crime of killing a child under the age of

10 six. We must prove that to the jury beyond a reasonable

11 doubt, and we gladly accept that burden in this case.

12 Once the defendant is found guilty,

13 then we go to the second phase of the trial, that is

14 really the punishment phase. And in the punishment phase

15 for a capital murder there is two choices: There is life

16 or death.

17 In Texas not all murder cases are

18 eligible for the death penalty. There are certain crimes

19 that are, a murder plus something else, if you will.

20 Murder plus involving the death of a police officer that

21 is on duty, or a prison guard that is on duty, or

22 murdering more than one person, or murdering for hire, or

23 murdering while doing something else, like robbing a bank

24 or kidnapping or raping somebody, murder in the course of

25 another felony, or murder of a small child under the age
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1 of six. That is what we have there. Okay? Those are
2 different types of capital murders in Texas.
3 Once you're convicted of those, you
4 are not automatically sentenced to death. Okay? If
5 there was an automatic sentence for death, we would have
6 no reason for this second phase of the trial. And the
7 second phase of the trial is where the jury decides life
8 or death. Okay?
9 Now, used to be, the jury actually

10 wrote life or death, that was the decision. But that is
11 not how it is anymore.
12 Now the jury has to answer the two
13 questions. Okay? And the questions are right there, and
14 we will go over those in just a minute. But basically
15 for the defendant to die, the first question has to be
16 answered "yes," and the second question has to be
17 answered "no."
18 That cannot be done automatically.
19 And it's just like the first phase of the trial where we
20 have the burden of proof, you have to wait until you hear
21 the evidence. Will you be able to do that?
22 A. Yeah.
23 Q. Well, let's talk about that first
24 special issue. It says: "Do you find from the evidence,
25 beyond a reasonable doubt, that there is a probability
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1 that the defendant would commit criminal acts of violence
2 that would constitute a continuing threat to society?"
3 We have the burden of proof. All

4 right? It is presumed to be answered "no." In other
5 words, remember how the Judge told you last week, for
6 guilty or not guilty, if you were going to vote right
7 now, you would have to find the defendant not guilty,
8 because you have not heard anything. We have not
9 presented lickety-split to you. Okay?
10 This is the same way, in the

11 punishment phase. You have got to presume it "no," until
12 we prove to you beyond a reasonable doubt, that there is
13 a probability, or it's more likely than not, that the
14 defendant would do something else to hurt somebody. Can
15 you hold us to that burden?

16 A. Yes.

17 Q. Okay. The second special issue, some
18 people call it a safety net. Let me talk to you about
19 that for a little bit. Let's read it, read it along with
20 me if, you would. "Taking into consideration all of the
21 evidence, including the circumstances of the offense, the
22 defendant's character and background, the personal moral
23 culpability of the defendant, is there sufficient
24 mitigating circumstance or circumstances to warrant that
25 a sentence of life imprisonment rather than a death
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1 sentence be imposed?"

2 Now, this question, there is no burden
3 of proof. You may hear something mitigating. In other
4 words, something that makes you think the defendant is
5 not as responsible for her actions.
6 Something that, I think case law says,
7 lessens her moral blameworthiness. After you have heard
8 all of the evidence and you decide, not the other people
9 with you, not the lawyers, not anybody else, if you
10 decide in your heart that because of the evidence there
11 is sufficient evidence in your mind, that you could not
12 live with yourself unless you imposed a life sentence in
13 this crime, would you able to answer that question
14 appropriately with a "yes," in order to get a life
15 sentence?

16 A. I don't understand. What is the --
17 answer the question, what question?

18 Q. The second one. Okay. In order for
19 the defendant to die, this question must be answered
20 "yes" and this question must be answered "no." And all I
21 am really asking you, a bunch of mumbo jumbo, but all I
22 am really asking you is, are you the kind of person that
23 is going to make up your mind before you hear anything,
24 or will you promise the Court that you will wait until
25 you hear the evidence?

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1 A. I can wait until I hear the evidence.

2 Q. All right. Just like you would in any
3 other decision that you would make about your personal
4 affairs or business or whatever. Right?

5 A. Right.

6 Q. All right. And in here it says: That
7 you believe the death penalty is appropriate in all
8 capital murder cases, and it is perfectly fine to have
9 that opinion. But to be a juror in this case, okay, you

10 have got to keep an open mind about the second phase of
11 the trial, knowing there is two options.

12 I mean, it's not life and death, but

13 really, that is what it is. I mean, once you answer

14 these questions, the Judge has no choice. He has to

15 impose the sentence even if he disagrees with it. It's

16 by law, absolute, you know, it is a no-brainer for him.

17 Okay?

18 So, it's okay to be angry about crime.

19 It's okay to think that everybody deserves the death

20 penalty that commits a capital murder, but it is not okay

21 to take that feeling into the jury box. You must have

22 the mental discipline to wait and make us do our job.

23 Can you do that?

24 A. Uh-huh. (Witness nodding head

25 affirmatively.) Yes, I think so.

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1 THE COURT: Is that a yes?

2 THE PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Okay. Thank you. Mrs.

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

5 nods.

6

7 BY MS. SHERRI WALLACE:

8 Q. She is the court reporter, and she is

9 not able to write down nods. So, when we present the

10 indictment to you, we can prove it to you a couple of

11 different ways. We can do that by direct evidence or by

12 indirect or circumstantial evidence.

13 A direct evidence presentation would

14 be an eyewitness. Most of the time in murder cases, you

15 know, the defendant chooses when a murder happens. You

16 agree with me on that? The defendant decides when he or

17 she will kill somebody.

18 A. Uh-huh. (Witness nodding head

19 affirmatively.) Assuming guilt, yes.

20 Q. Right, right. So, the defendant has

21 more control over how many witnesses there are to a crime

22 than anyone else. Do you follow me with that?

23 A. Yes.

24 Q. So, if you are a criminal and you are

25 about to commit a crime, are you going to do it in the

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1 Wal-Mart Superstore parking lot on Saturday afternoon, or

2 are you going to do it when nobody else is around?

3 Obviously, when nobody else is around.

4 A. Uh-huh. (Witness nodding head

5 affirmatively.)

6 Q. So, oftentimes in a murder case, there

7 will not be any direct evidence. In other words, there

8 will not be an eyewitness because the eyewitness is dead.

9 Okay?

10 A. Uh-huh. (Witness nodding head

11 affirmatively.)

12 Q. Okay. And, as you know from the

13 Judge's comments, we cannot call the defendant to

14 testify.

15 A. Uh-huh. (Witness nodding head

16 affirmatively.)

17 Q. You cannot use that against us, and

18 you cannot use that against them. That is just her

19 right, as it would be every defendant's right. Do you

20 have any problem with that?

21 A. No.

22 Q. Okay. So, because of that, we, in

23 murder cases must look to indirect evidence. Lots of

24 folks believe indirect evidence or circumstantial

25 evidence is better, because it's not -- sometimes it

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1 involves scientific evidence which can't be twisted,

2 which can't be fabricated, it just -- that is the way it

3 is. Things like: Fingerprint, DNA, hair particle,

4 fibers, things like that. You also my hear about

5 statements from the defendant during, before, or after

6 the crime that might not comport with the crime scene.

7 All that sort of things -- all those sort of things are

8 indirect or circumstantial evidence.

9 If we prove to you, beyond a

10 reasonable doubt, the indictment with circumstantial

11 evidence, indirect evidence, and you believed it, would

12 you be able to convict the defendant?

13 A. Yes.

14 Q. Additionally, before you -- I think in

15 front of you there is the indictment, do you see that

16 piece of paper? Is it not there?

17 A. No.

18 Q. Okay.

19

20 THE COURT: Here, I believe it is
21 right here. That is the indictment in the case. They
22 are going to direct your attention to the typewritten
23 part right there.

24

25

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1 BY MS. SHERRI WALLACE:

2 Q. That typewritten portion, let me know

3 when you have had a chance to read it.

4 A. Okay. I've read it.

5 Q. Okay. That is what we must prove to

6 the jury beyond a reasonable doubt. If you are a juror,

7 we intend to prove that to you beyond a reasonable doubt

8 from the evidence in the courtroom. However, in Texas it

9 is not required for the State to prove motive. And that

10 gets back to what I was saying earlier; we can't call the

11 defendant to the stand.

12 Now, in the trial -- I cannot get into

13 the facts right now, but in the trial, the motive may

14 become very apparent to you. Or it may be that it is one

15 of several motives, you are not really sure which one.

16 Or it may be that you just flat don't ever know. You

17 know? If she doesn't testify, you can't consider that,

18 you may never know the motive. But if you believe that

19 we have proved the case beyond a reasonable doubt, we're

20 entitled to a conviction. Could you follow that law?

21 A. Yes, I can.

22 Q. Okay. Now, if we don't prove our case

23 beyond a reasonable doubt, the defendant is found not

24 guilty and we all go home. If you do find the defendant

25 guilty, that is when we go to these two questions. And I

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1 want to talk to you just a little bit more about them.

2 The first special issue: "Do you find from the evidence,

3 beyond a reasonable doubt, that there is a probability

4 that the defendant would commit criminal acts of violence

5 that would constitute a continuing threat to society?"

6 Let me ask you: What does the word

7 "probability," what does that mean to you?

8 A. High likelihood.

9 Q. Okay. And the phrase -- and the

10 reason I'm asking you what these mean to you is that

11 we're kind of notorious down here for giving definitions
12 for about every word you can think of, but you are not

13 going to get a single definition for this question. It's
14 up to each individual juror. So that is why it's
15 interesting to me what you think. Okay? What does the
16 phrase "criminal acts of violence," what does that mean
17 to you?

18 A. Unlawful, causing harm.

19 Q. Okay. Any sort of unlawful injury,
20 anything like that?

21 A. Yes.

22 Q. All right. Society, does that mean
23 everybody, or is there some group that you would exclude?

24 Or does that include like prison guards or people that
25 are visiting the prison, maybe chaplains there, social
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1 workers there, relatives that come to visit, that sort of
2 thing?

3 A. Society would include everybody.

4 Q. All right. Okay. Let me talk to you

5 a little bit about how that question is answered. Let's

6 take a fact situation, for example. You know, I

7 mentioned earlier that you can't automatically say that

8 the defendant is guilty of committing capital murder.

9 She killed a small child. Automatically, I am going to

10 answer that question "yes."

11 You are not entitled to do that, and

12 there are some good reasons for that. Just like we

13 talked about, you don't jump to conclusions, and you are

14 going to consider and weigh everything carefully. We

15 appreciate that.

16 Take, for example, a situation where I

17 go in and I rob a bank. And I decide I don't want any

18 witnesses while I am in there, and I just kind of blow

19 everybody away. I kill about 15 people. A baby that is

20 there with her mom while they are waiting in line,

21 everybody in the bank. Take some money and I leave, and

22 I have committed capital murder.

23 As I am leaving the bank, I don't hear

24 the sirens that are coming to get me. Before I killed

25 the teller, she buzzed an emergency button. A police car

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1 comes around the corner and hits me and renders me a

2 quadriplegic, and the only thing I can do is close my

3 eyes.

4 Now, because of that, you may decide
5 that I am not going to be a continuing threat, because I
6 can't do squat. Okay? You may not. You may still think
7 I am mean as a snake, and I can still hurt somebody. But
8 the point of that example is that you have not heard the
9 facts or the evidence, and so you must wait to do that,
10 and revisit that issue in the punishment phase. Could
11 you do that?

12 A. Yes.

13 Q. All right. The second special issue:

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

21 Okay? Now some folks say, "I can't

22 even imagine what would be sufficient evidence for me
23 after I decided a kid was killed, and after I decided
24 that person would be a continuing threat. I can't even
25 fathom what would be sufficient for me to think that
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1 person still ought to live." Okay? But good news: You
2 don't have to fathom. You could sit on five million

3 death penalty cases and never hear a case where you
4 thought the right thing to do was impose a life sentence.

5 Nothing wrong with that. All right?

6 What you must do though is say, "I

7 will know it when I see it. I don't know what is

8 sufficient mitigating evidence, but if I hear something

9 and I decide in my heart that I think the right thing to

10 do is to answer that question in a way that would result

11 in a life sentence," in other words, answer that question

12 "yes," "Then I could do it. I will keep an open mind. I

13 will not prejudge anything." And I think you have said

14 you could do that; is that right?

15 A. I can do that, yes.

16 Q. All right. In talking to you about

17 general principles of law, I am going to go over a couple

18 of things that the Judge went over last week, and then

19 ask you a few questions.

20 One of the things I think I touched on

21 earlier is that the defendant is presumed innocent.

22 Okay? That means, really, that if you voted right now
23 you would find her not guilty.
24 Another thing it means is: It's
25 really another way of saying that the State has the
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1 burden of proof. The penitentiary is full of people that
2 were at one time presumed innocent.
3 Once the State has presented the
4 evidence, proved the defendant guilty beyond a reasonable
5 doubt, that presumption goes away. You follow that?

6 A. Right.

7 Q. Okay. So if you voted right now,
8 would you find the defendant not guilty?

9 A. Yes, I would.

10 Q. All right. Additionally, the Judge
11 touched on this last week, that the indictment is no
12 evidence of guilt. It is a piece of paper that gives him
13 jurisdiction to be in this Court, and you could not use
14 that as any evidence of guilt against this defendant.

15 Could you follow that law?

16 A. Yes.

17 Q. The defendant has an absolute right
18 not to testify. And I think you have already told me

19 that you could follow that law and not hold that against
20 her if she chose not to in any way; is that correct?

21 A. Yes, it is.

22 Q. All of the witnesses when they come in
23 the courtroom, must be treated the same. In other words,
24 it's just getting back to what we have been talking about
25 all along, which is you cannot prejudge a case. Same
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1 thing, you can't prejudge a witness. You have to keep an
2 open mind.

3 Now, you may wonder, where in the heck
4 am I going with this? Let me tell you where I am going.
5 I suspect that there is going to be -- well, I don't

6 suspect, I know there are going to be police officers
7 that are going to testify in this case. Okay? And some
8 defense attorneys, I'm not saying these would, but some
9 of them will say, "Would you believe a police officer

10 simply because he is a police officer?" Well, that is a
11 trick question. Okay?

12 It's designed to get you to say, "Yes,
13 I believe a police officer." Well, you can't do that.
14 You have got to wait and hear from any witness,
15 regardless of what uniform they may wear when they walk
16 in the building. Okay? You have got to wait and hear
17 about their training and their experience and decide if
18 they are shooting straight with you. Could you do that
19 for all witnesses?

20 A. Yes, I could.

21 Q. One other thing is that the Judge will
22 instruct you that you cannot, in any way, consider
23 parole, and there is a good reason for that. The parole
24 laws change. They change with every governor. They
25 change with every legislature. They change with whoever
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1 is on the Board of Pardons and Paroles. And we don't
2 have any control of that. All right?
3 So you must assume, that parole does
4 not exist. Because you do not know, you cannot predict
5 that -- how long a life sentence will be. You must
6 assume that a life sentence is a life sentence and not
7 consider parole in any way. The Judge will instruct you
8 that is the law.

9 Will you be able to have the mental
10 discipline to follow the law and not consider parole?
11 A. Yes.

12 Q. I am about finished visiting with you.
13 Do you have any questions for me?

14 A. No.

15 Q. Are you sure?

16 A. No.

17 Q. I feel like I have done most of
18 talking.

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

21 Q. That is all right. Good. All right.

22 Then before the defense attorneys ask you some questions,
23 I'm just going to ask you again, if you would, please, in
24 this case, keep an open mind. That is the most important
25 thing. And wait until you hear the evidence in the
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1 courtroom, and that is really all we're asking of the
2 jury. Thank you.

3 A. Okay.

4

5 THE COURT: Thank you, Ms. Wallace.

6 Mr. Mosty.

7

8 VOIR DIRE EXAMINATION

9

10 BY MR. RICHARD C. MOSTY:

11 Q. Mr. Bierschwale, I wanted to visit

12 with you a little bit and just explore some of your

13 feelings and find out where you are on some of the
14 principles that apply in general in criminal cases, and
15 some that might uniquely apply to this case. I want to
16 tell you that when we talk about these propositions, we
17 are really talking about them in the abstract, and not
18 necessarily as it relates in this case.

19 The other thing is that this is the
20 only time a juror really has an opportunity to speak.

21 After this, if you are selected as a juror, you simply
22 sit and listen to what is going on. So, this is the

23 opportunity for you to tell us how you feel about things.

24 And you are not going to hurt anybody's feelings with
25 whatever those are, and this is your opportunity to say
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1 what is on your mind.

2 A. Okay.

3 Q. You are the only person that can tell

4 us that. So, be open and honest and don't hold anything
5 back.

6 A. Okay.

7 Q. First, would you tell me -- you had

8 mentioned in your questionnaire some knowledge of the
9 case from, I believe, newspapers, TV, and discussion.

10 Would you tell me what -- and let me first preface this:

11 I think it's unfair for everybody else to say, would you
12 vote this lady guilty? No right-minded person would vote
13 this lady guilty just on TV.

14 However, you know, all of us do

15 sometimes form some opinions or some leanings or some
16 thoughts based upon the reports. So, all I'm asking you

17 about is, what have you heard and what do you, as you sit
18 there right now, believe to be the facts of this case, if

19 anything? Could you tell me what you have heard and know
20 about the case?

21 A. Just some basic things. That she

22 supposedly killed two children. Let's see, it was also

23 reported that the knife that had been used to cut the
24 screen, they said was found in the butcher block.

25 And the -- there was supposed to have
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1 been another person who committed this and then left.
2 And some of the family was originally from the Lubbock
3 area, I think. That the dust on the windowsill, where
4 the other person was supposed to have exited, was not
5 disturbed. That is about as much as I can remember
6 hearing.

7 Q. You said that -- and I wasn't sure I
8 got this right, you said there was supposed to be another
9 person who left. What did you mean or is that what you
10 said?

11 A. What I read in the paper that this was
12 supposed to have been done by someone who broke in,
13 killed the children and attacked her and left.

14 Q. And has that information been gathered
15 from the newspaper or television?

16 A. That was the newspaper.

17 Q. You also mentioned some conversation
18 with other people because your knowledge --

19 A. Well --

20 Q. Is your knowledge based really upon
21 the media reports?

22 A. Media reports.

23 Q. As opposed to other people?

24 A. Well, they got what they heard was
25 from the media.

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1 Q. And -- but you have seen some of this
2 media yourself, firsthand?

3 A. Yes.

4 Q. And is this something that you have
5 known about or been hearing about for some months before
6 this case ever came to Kerrville?

7 A. No.

8 Q. This is stuff you have really learned
9 quite recently?

10 A. Yes.

11 Q. You need to answer out.

12 A. Yes.

13 Q. Now, you also made the comment, I

14 believe, in your questionnaire, "That if the district

15 attorney brings the person to trial for capital murder,
16 that that person is probably guilty." Do you recall
17 making that statement?
18 Let me show you your questionnaire,
19 this was on page 3. The first question was: If the

20 police arrest someone for capital murder, the person is
21 probably guilty. You circled uncertain. And the second
22 question: If a district attorney tries a person for
23 capital murder, the person is probably guilty. And you
24 indicated that you agree with that statement?
25 A. Yes. Not absolutely, but I would tend
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1 to agree.
2 Q. And again, no right-minded person
3 would ever sign a verdict form, guilty, based on that.
4 But I am just trying to get, you know, where you are

5 coming from. But that is your basic belief is that a
6 person who the district attorney tries for capital murder
7 is probably guilty?

8 A. Yes.
9 Q. Okay. Now, with that background and
10 with your knowledge of the case, and you have pretty
11 substantial details about what you have heard about the
12 case, as you sit right there, right now, do you have an
13 opinion that Mrs. Routier is probably guilty?

14 A. No.
15 Q. You have no opinion whatsoever in that
16 regard?

17 A. No.
18 Q. I'm not asking whether or not you
19 would sign a verdict form, remember. I'm just saying as
20 you sit there right now, is your opinion that Mrs.
21 Routier is guilty?

22 A. No.
23 Q. What is your opinion of it?
24 A. Well, I would have to see the actual
25 evidence to form a better opinion.

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1 Q. Is your opinion that she is not
2 guilty?

3 A. Yes, it would be.

4 Q. Now, the indictment in front of you
5 there, the typewritten portion, is the case that is going
6 to be tried. The first part is some legalese, but the

7 fundamental part there is that this is a capital murder
8 case, because it is -- the allegation is that Mrs.
9 Routier killed a child under the age of six years of age.
10 Do you see that part?

11 A. Yes.

12 Q. Do you need me to point that out?

13 A. Yes. The deceased was --

14 Q. It's probably about the middle of the
15 page.

16 A. -- a child under six years of age.

17 Q. Right. About the middle of the page.

18 Yes, this typewritten part: That the -- intentionally
19 and knowingly caused the death of Damon Christian
20 Routier, an individual, by stabbing him with a knife.

21 A. Yes.

22 Q. At the time the deceased was under the
23 age of six, or six years of age. Now, that is what Ms.
24 Wallace told you was one of the crimes that the
25 legislature has set out as being a capital offense.
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1 Let me tell you a little bit about the
2 procedure. And, again, I am going to be talking about in
3 the abstract, but I am going to be talking about a
4 capital murder case in which the allegation is murder of
5 a child under six.

6 What happens is that a jury is picked,
7 the case is called for trial, opening statements might be
8 made, and then the State proceeds to put on whatever
9 evidence it has.

10 The defense may or may not put on
11 evidence. After all of the evidence is heard, then the
12 Judge will give you, the jury, a written charge that
13 says: This is the law in the State of Texas.

14 And the juries (sic) will make
15 arguments, and then the jury will go out. And the jury
16 has to follow the law given to them by the Court, but the
17 jury is the exclusive judges of the facts.

18 And so the jury goes out and
19 determines what the facts are, and has the State proven
20 beyond a reasonable doubt that that defendant, that
21 hypothetical defendant, has, in fact, intentionally and
22 knowingly caused the death of an individual under the age
23 of six.

24 Now, if a jury finds that, then the
25 jury would find that person guilty of capital murder.
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1 At that point, then, the jury is -- in
2 effect, there is a second trial immediately after the

3 first, but it is, in effect, a second trial. And the
4 focus of that trial or that part of the trial, is
5 punishment. What would be the appropriate punishment?
6 And, in Texas, if you found someone

7 guilty of capital murder, there are only two punishments
8 allowed. One is life; one is death. And you may hear
9 additional evidence, the State may put on some additional
10 evidence, the defense may put on some additional

11 evidence, but neither side has to at that point.
12 Again, the Judge will prepare a

13 written charge on the law, and he will tell you in that
14 charge that what the jury is going to have to do is
15 answer these two special issues. The lawyers would have
16 another opportunity to argue, and then the jury goes out
17 and answers these two special issues. So let's talk
18 about those.

19 Remember, at this point, when you are
20 sitting in the jury room thinking about this, you are

21 dealing with a convicted murderer, a convicted capital
22 murderer, who you know beyond any reasonable doubt has
23 killed a child under the age of six. So, you are not

24 dealing abstractly with these questions anymore, because
25 you will see that both of these questions say: Do you
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1 find from the evidence? And special issue number 2 is:
2 Taking into consideration all of the evidence.
3 What they tell you is that you will
4 consider the evidence, all of the evidence you have
5 heard. Well, now, the biggest part of that probably is
6 the crime itself that you have found the person guilty
7 of, that is part of the evidence that you consider.
8 Now, there may or may not be

9 additional evidence at the punishment phase. But part of
10 the evidence that you are going to consider is that you
11 know that this person in front of you intentionally and
12 knowingly murdered a child under the age of six.
13 Now, having said that, do you think

14 that a death sentence is the only appropriate sentence
15 for someone who has murdered a child under the age of six
16 years old?

17 A. That is the only one I can imagine.

18 Q. Okay. And let me reemphasize here,
19 your opinions are your opinions and everybody here is
20 going to respect them. And all we want to know is what
21 they are.

22 Now, do you believe that having

23 considered -- having determined that someone has
24 intentionally and knowingly taken the life of a child
25 under six, that you just couldn't imagine of a situation
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1 where there might be a mitigating circumstance?

2

3 MS. SHERRI WALLACE: Your Honor, I am
4 going to object to that question because he doesn't have
5 to imagine one.

6 THE COURT: Sustained.

7 MS. SHERRI WALLACE: He just has to be
8 openminded to it.

9 THE COURT: Sustained.

10

11 BY MR. RICHARD C. MOSTY:

12 Q. Do you believe, in all fairness, that
13 if you were on a jury that had convicted a murderer,
14 capital murderer of killing a child under six, that you
15 really could not give fair consideration to a life
16 sentence?

17 A. Well, I could consider it, but I would
18 have to see some pretty strong --

19 Q. Well, I could consider running across
20 the freeway in rush hour traffic. I wouldn't consider it
21 very long, as long as I was being right-minded. But, the
22 question is: Can you -- or let me state it another way.

23 Do you believe that you are where you
24 are right now, just in any case, where you have a child
25 under six, that your personal beliefs would substantially
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1 impair your ability to consider a life sentence?

2 A. No.

3 Q. Are you saying you could or could not
4 consider a life sentence?

5 A. I could consider a life sentence.

6 Q. Even for a murder of a child under
7 six?

8 A. Well --

9 Q. That you had found no reasonable doubt
10 that murderer intentionally and knowingly murdered a
11 child under the age of six?

12 A. Well, I cannot think of the mitigating
13 circumstances.

14 Q. And I am not asking you to, I'm not
15 asking you to. And let me give a little illustration and
16 then I'll come back to what my question is.

17 I had a lot of trouble with the
18 55-mile-an-hour speed limit. I didn't think that that
19 was a proper law. And, if I were called into traffic
20 court to be on a speeding ticket, I might say, "I
21 understand that is the law, and I can consider it, but my
22 personal beliefs would really impair my ability to be
23 fair." That those beliefs, and nobody is ever going to
24 ask you to check your common sense or your life
25 experiences at the door, they are part of you. It's not
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1 fair to try to segregate that. But I might say, "My life
2 experiences are such, that it would just -- it would
3 impair my ability to sit on a traffic case because of my
4 beliefs about the 55-mile-an-hour speed limit. Now, I
5 can do it. If you call me up there, I will do it. But,
6 there is a substantial impairment of my ability to be
7 fair, and to consider that 55-mile-an-hour speed limit."
8

9 MS. SHERRI WALLACE: Your Honor, I am
10 going to object. That is an improper question. That is
11 not the law.

12 THE COURT: Sustain the objection.
13 Let's move on.

14

15 BY MR. RICHARD C. MOSTY:

16 Q. Now, my question is: Would your
17 beliefs about what you think would be a death sentence,
18 and I think you said that you thought that a death
19 sentence would be the proper sentence for a child under
20 six.

21

22 MS. SHERRI WALLACE: I object. That
23 is a misstatement of what the juror said.

24 MR. RICHARD C. MOSTY: Is that what
25 you said?

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1 MS. SHERRI WALLACE: He said it is the
2 only way he could imagine --
3 THE COURT: I understand what the
4 juror said to both Ms. Wallace and to Mr. Mosty.
5
6 BY MR. RICHARD C. MOSTY:
7 Q. Now, my question is: Do you believe

8 that your beliefs about the death sentence as opposed to
9 a life sentence, and a convicted murderer of a child

10 under six, do you think that that would substantially
11 impair your ability to consider a life sentence?

12 A. No.

13 Q. All right.

14

15 THE COURT: We have covered that

16 point.

17

18 BY MR. RICHARD MOSTY:

19 Q. Would you require, in order to achieve
20 a finding of a life sentence, for instance, would you
21 require a defendant to testify?

22 A. No.

23 Q. What about on guilt and innocence?

24 Would you expect the defendant to testify?

25 A. No.

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1 MR. RICHARD C. MOSTY: Pass the
2 witness.

3 THE COURT: Can you step out briefly,
4 please. Don't leave, just step outside briefly. Don't
5 run away.

6 THE PROSPECTIVE JUROR: Yes, sir.

7

8 (Whereupon, the prospective

9 juror was excused from the
10 room, and the following

11 proceedings were held,
12 outside of his presence
13 as follows:)

14

15 THE COURT: All right. What says the
16 State?
17 MS. SHERRI WALLACE: The State will be
18 accept the juror.
19 THE COURT: What says the defense?
20 MR. RICHARD C. MOSTY: Oh, I guess we
21 will strike him.
22 THE COURT: All right. Will you have
23 Mr. Bierschwale come back in please?
24
25 (Whereupon, the prospective
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1 juror returned to the
2 room and the proceedings
3 were resumed as follows:)
4

5 THE COURT: Mr. Bierschwale, we want
6 to thank you very much for coming, but you will be
7 excused from further requirements from jury service.

8 Now, there is still a gag order in
9 effect, so please don't discuss this case anybody,
10 particularly members of the media until it's over, that
11 will be sometime in mid-February. I have to tell you the
12 next thing. I can impose monetary sanctions or Kerr

13 County Jail time should you violate those. I'm not
14 threatening you, I have to just tell you. Okay?

15 THE PROSPECTIVE JUROR: Okay.
16 THE COURT: Thank you very much. We
17 sure do appreciate it.
18 THE PROSPECTIVE JUROR: Thank you.
19 THE COURT: All right. Who is next?

20 Who is next? Just have a seat right there, please. Your
21 name, ma'am?
22 THE PROSPECTIVE JUROR: Cynthia Vega.
23 THE COURT: All right. This is juror
24 number 85, number 30 on our list, supposed to be here
25 tomorrow morning but is here today.
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1 Ms. Vega, if you will raise your right
2 hand, please.
3 Do you solemnly swear or affirm you

4 will true answers make to all the questions propounded to
5 you concerning your qualifications as a juror in this
6 case, so help you God?

7 THE PROSPECTIVE JUROR: I do

8

9 (Whereupon, the prospective

10 juror was duly sworn by the
11 Court to true answers make
12 to the questions propounded,

13 concerning qualifications, after
14 which time, the proceedings were
15 resumed as follows:)

16

17 Whereupon,

18

19 CYNTHIA ANN VEGA,

20

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

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

25

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1 THE COURT: Thank you very much. You
2 will be asked questions, and you are Cynthia Vega; is
3 that correct?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: V-E-G-A.

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Mr. Toby Shook and Ms.

8 Sherri Wallace are district attorneys from Dallas County,

9 Assistant District Attorneys, and they will be

10 representing the State.

11 Mrs. Darlie Routier, to your right, is

12 the defendant. She is represented by Mr. Douglas Mulder

13 and Mr. Richard Mosty.

14 And so you will be asked questions by

15 Mr. Shook first. Go ahead, please.

16 MR. TOBY SHOOK: Thank you.

17

18 VOIR DIRE EXAMINATION

19

20 BY MR. TOBY SHOOK:

21 Q. Again, my name is Toby Shook, and I am

22 one of the prosecutors on the case, and I will be asking

23 you questions today on behalf of the State.

24 A. Okay.

25 Q. All we're interested in are your
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1 honest answers to our questions. Okay?

2 A. Okay.

3 Q. All right. Have you ever been down on
4 jury duty before?

5 A. No.

6 Q. Ever called down on a panel at all?

7 A. I have been called a couple of times,
8 but I have never been picked.

9 Q. You have just been on the big panel,
10 people may have asked you questions. But you have never
11 been on the jury before?

12 A. Right.

13 Q. Usually we ask jurors questions just
14 out there on one big panel, but since this is a capital
15 murder case in which the State is seeking the death

16 penalty, we interview each juror individually. Okay?

17 A. Okay.

18 Q. We don't mean to make you feel like
19 you are the defendant up there on trial or anything, it's
20 just the way the law calls for it. And we especially
21 want your honest answers. Okay?

22 A. Okay.

23 Q. If you have any questions during any
24 of this process, you let us know. Okay?

25 A. Okay.

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1 Q. What I'm going to do is review a few
2 things here on your questionnaire, and then go into your

3 personal feelings about the death penalty and some of the
4 law that applies?

5 A. Okay.

6 Q. Looks like you are a lifelong resident
7 of Kerrville?

8 A. Yes.

9 Q. Born and raised here?

10 A. Yes.

11 Q. Okay. And married and have, I guess,
12 three kids?

13 A. Three.

14 Q. What are their ages again?

15 A. Ten, 12, and 13.

16 Q. Okay. You work, I believe it is at

17 Sid Peterson Hospital?

18 A. Yes.

19 Q. You have been there a couple of years?

20 A. Yes.

21 Q. Okay. At one time, it looks like

22 about ten years ago, you worked with the Texas Rural

23 Legal Aid; is that right?

24 A. Yes.

25 Q. What did you do with them?

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1 A. Receptionist.

2 Q. Okay. What type of organization is

3 that?

4 A. It's government funded, they help

5 low-income families, you know, that can't afford a

6 lawyer.

7 Q. Okay. And I think you said -- you

8 indicated that you stayed friends with one of the lawyers

9 there over the years?

10 A. Yes.

11 Q. You don't know any of the Dallas

12 lawyers involved in this case. Do you?

13 A. No.

14 Q. How about Mr. Mosty? He is a local

15 lawyer here?

16 A. I have heard the name, but I don't

17 know him.

18 Q. Okay. Don't personally know him at

19 all?

20 A. No.

21 Q. Okay. How about Preston Douglass, the

22 other Kerrville lawyer?

23 A. No.

24 Q. Okay. And after high school, it

25 looked like you went to -- took some classes was it at

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1 the Texas A & M Extension Service?

2 A. Yes, sir.

3 Q. And what kind of certificate did you

4 get there?

5 A. Medical transcriptionist.

6 Q. Okay. Has anything changed in between
7 the time you filled out -- you took the time to fill out
8 all the questions we have here between now and today?

9 A. No.

10 Q. All right. Ms. Vega, let me get to
11 the heart of the matter. Obviously, this is a capital
12 murder case in which the State is seeking the death
13 penalty. We will be attempting to prove our case beyond
14 a reasonable doubt and to prove these questions to a jury
15 that will enable the Judge to sentence the defendant to
16 death. Obviously, her attorneys will be fighting us all
17 the way. So, it's going to be a big battle. All right?

18 But that is our goal in this case, and
19 I think that is clear to everyone. So we want to talk to
20 each juror about their feelings about the death penalty.

21 Let me ask you: Do you feel that we
22 should have the death penalty as a law in this state?

23 A. In some cases, yes.

24 Q. Okay. In what type of cases do you
25 think the death penalty should be imposed or the
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1 possibility at least of being imposed?

2 A. In what type?

3 Q. Yes, what comes to mind?

4 A. Murder, repeat cases, you know, like
5 serial killers.

6 Q. Okay. That is one thing that comes to
7 mind.

8 A. Yes.

9 Q. Any other types of murders?

10 A. Well --

11 Q. I know you probably don't sit around
12 thinking about this. I hope you don't at least.

13 A. No.

14 Q. Is there any other type? Go ahead.

15 A. Yes. Just, you know, I guess, someone
16 who goes out and kills a bunch of people at once.

17 Q. More than one person?

18 A. Yes.

19 Q. What about a person that just kills
20 one person?

21 A. First offense or --

22 Q. It could be.

23 A. Well, I don't know, not really.

24 Q. Okay. Have there been any cases that
25 you have followed in the media that you think -- that,
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1 you know, involved the death penalty, or just any high
2 profile murder cases that have you followed in the news?

3 A. No, I don't really watch TV that much.

4 Q. Okay. Did you watch the O.J. Simpson

5 case at all? I know it has come back up recently.

6 A. No. No, I work so I don't have time

7 to do that.

8 Q. Did you ever hear about this -- that

9 was in the news about a year ago, the Susan Smith case?

10 A. Yes, I heard about that.

11 Q. What did you hear about that case?

12 A. Just that she drowned her kids.

13 Q. Okay. Did you have any opinions on

14 the outcome of that case?

15 A. No. I really didn't keep up with it,

16 or know the specifics of what exactly happened.

17 Q. Okay. Do you recall what punishment

18 she got?

19 A. I don't know, life, I think.

20 Q. Okay. Did you have any thoughts about

21 that when you heard that?

22 A. No.

23 Q. Just didn't hear much of the facts of

24 that case?

25 A. No.

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1 Q. Okay. In Texas there is only certain

2 types of crimes that call for the death penalty. Okay?

3 Is has to be a murder, the intentional taking of a life,

4 but not just every murder. There's a lot of murders that

5 would not be a death penalty case.

6 Let me give you an example: I can sit

7 here and be talking to you and I don't like Mr. Mulder's

8 tie, I pull out a gun and shoot him right in the head,

9 and laugh about it. Mean, vicious crime, I couldn't get

10 the death penalty for that. I could get a life sentence,

11 but I could not get the death penalty.

12 In Texas you have to have murder plus,

13 what we call another aggravating fact, something else has

14 to happen, or it has to be a certain type of victim. For

15 instance, the guy that goes in and robs a 7-Eleven store

16 and shoots the clerk, that is a capital murder. It could

17 be a death penalty case depending on the facts. All

18 right?

19 Same thing if someone breaks into your

20 house and kills you while you are asleep in bed, that

21 could be a capital murder case. Someone that murders
22 someone during a rape or a kidnapping; during another
23 felony, that is a capital murder case, those types of
24 cases. Okay?

25 Murdering a police officer or a
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1 fireman while he is on duty could be a capital murder
2 case. A couple of examples you gave about a serial
3 killer or a mass murderer, those could be capital murder
4 cases. All right? Just depending again on the facts of
5 each case.

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

8 Q. Also, the Judge read to you the
9 indictment a few days ago. And I think the Judge has a
10 copy of that indictment up here. Do you not?

11

12 THE COURT: Yes, I think it should be
13 right there.

14 MR. TOBY SHOOK: It should be right in
15 front of you. Okay. See the paragraph there?

16 THE COURT: The typewritten print
17 there.

18 THE PROSPECTIVE JUROR: Uh-huh.

19 (Witness nodding head affirmatively.)

20

21 BY MR. TOBY L. SHOOK:

22 Q. Just read that to yourself for a
23 moment.

24 A. All right. Okay.

25 Q. Okay. That sets out allegations of
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1 intentional killing of a child under the age of six.

2 Okay? That is another type of case that a person can be
3 eligible for the death penalty, depending on the facts of
4 the case.

5 Let me ask you, Ms. Vega, is that the
6 type of case -- I am not asking you for your verdict yet
7 because you have not heard any evidence, but is that the
8 type of case, the murder of a child under six, that you
9 think could be appropriate for the death penalty under
10 the proper facts?

11 A. It could be.

12 Q. All right. Do you feel that that is

13 the type of offense that maybe the death penalty should
14 be deserving?

15

16 MR. DOUGLAS MULDER: Judge, we are
17 going to object to any specifics.

18 MR. TOBY L. SHOOK: I'm just talking
19 about the type of offense, Judge.

20 THE COURT: All right. Well, let's
21 phrase our questions correctly.

22

23 BY MR. TOBY L. SHOOK:

24 Q. Again, I'm not trying to tie you down
25 to your verdict because you have not heard any evidence,
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1 but I am talking about types of offenses. You talked
2 about serial killers. I'm not talking about a serial
3 killer here, just murder of a child.
4 Some people say, "No, I don't think
5 that type of case should ever be a death penalty case,

6 maybe life imprisonment." Other people tell us, "Well,
7 depending on the facts, maybe that would be one."

8 A. Well, depending on the facts, I guess,
9 I don't know.

10 Q. Okay. You would just have to hear the
11 facts first?

12 A. Yes.

13 Q. Okay. Ms. Vega, let me go over kind
14 of the procedure in this case. All right? Death penalty
15 cases are a little bit different.

16 The first part of the trial we have to
17 prove the indictment, that is what is in front of you.

18 We have to prove that beyond a reasonable doubt. If we
19 don't prove it beyond a reasonable doubt, and you find
20 the defendant not guilty, we all go home. Okay? If we

21 do prove it beyond a reasonable doubt, the jury finds the
22 defendant guilty.

23 Now that is when we move to the
24 punishment stage. Okay? You might hear additional
25 evidence. You might hear about the background, criminal
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1 record, or lack of criminal record, good background.
2 Okay? And at the close of that evidence, the jury will

3 get these questions. And I will go over those in a
4 minute.

5 You get to consider the facts of the
6 offense as they happened, and, also, anything else you
7 might have heard. Okay?

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

10 Q. But we have to prove this first

11 question to you beyond a reasonable doubt. I'm going to
12 read that. Okay?

13 "Do you find from the evidence beyond
14 a reasonable doubt that there is a probability that the
15 defendant would commit criminal acts of violence that

16 would constitute a continuing threat to society?" Okay?

17 Do you see where that question is asking you to predict
18 the future?

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

21 Q. Whether the defendant would be a
22 continuing danger?

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

25 Q. First of all, let me ask you: Do you
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1 think you could get enough information about the
2 defendant where you could answer that question, if it was
3 proven to you?

4 A. Yes, sir, if it was proven.

5 Q. Again, I'm not going to tie you down
6 to any facts. I know you don't sit around thinking about
7 these things. But let me ask you: What types of
8 information would you want to know about a person before
9 you could answer that question?

10 A. Criminal record, temper, violent
11 temper, what type of person.

12 Q. Okay. All of those things are
13 admissible in that part of the trial, if they exist. If
14 they have a long criminal record, if they have had a
15 temper, and vice versa, if they have never had a criminal
16 record.

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

19 Q. Never done anything. Obviously, you
20 consider the facts of the offense, how brutal the murder
21 was. You know, what led up to it, if you know, and what
22 happened afterwards, those types of things.

23 Now, there could be a case -- there
24 could be a case where they have a long criminal record,
25 it could be where they have done nothing wrong in their
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1 life before they committed capital murder. It could be
2 faced with a situation where when you are answering that
3 question, you are just looking to the facts of the

4 offense to decide if they would be a future danger.
5 Okay? They may not have a criminal record.
6 Do you think you could answer question
7 number 1 based on the facts of the offense alone, how the
8 murder occurred? Could you answer that question if it
9 was proven to you? Just using the facts of the offense
10 alone.

11
12 MR. DOUGLAS MULDER: She doesn't have
13 to be confined to the facts of the offense alone, Judge.
14 THE COURT: I'll sustain the
15 objection.

16 MR. TOBY L. SHOOK: Well, Judge, there
17 are certain situations where she may do that. I'm just
18 asking her if --

19 THE COURT: Well --

20 MR. TOBY L. SHOOK: -- if she thinks
21 she could on the facts alone.

22 THE COURT: Could you do it alone?

23 THE PROSPECTIVE JUROR: I don't think
24 so.

25 MR. TOBY L. SHOOK: You think you
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1 would need more information?

2 THE PROSPECTIVE JUROR: Yes.

3 MR. TOBY L. SHOOK: Okay. Fair
4 enough.

5 MR. DOUGLAS MULDER: Well, Judge, of
6 course, she is not going to know until she hears the
7 facts.

8 THE COURT: I understand.

9 MR. DOUGLAS MULDER: It kind of begs
10 the question; it is kind of a trick question.

11 THE COURT: Well, yes, excuse me.

12 Yes, we want to ask questions that are very straight to
13 the point.

14

15 BY MR. TOBY L. SHOOK:

16 Q. You see I can't preview the facts for
17 you. I can't go, "This is what we think is going to

18 happen," and are you going to give death or not, just
19 based on the facts. I'm just asking you how you feel
20 now, do you think you would need more than the facts of
21 the offense alone?

22

23 THE PROSPECTIVE JUROR: Well, no, I
24 don't --

25 MR. DOUGLAS MULDER: Well, Judge, she
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1 can't tell whether she needs more than the facts of the
2 offense alone.

3 THE COURT: I understand that.

4 MR. DOUGLAS MULDER: Since she hasn't
5 heard the facts of the offense alone.

6 THE COURT: I understand that. I will
7 sustain the objection.

8 You will listen to the testimony and

9 review the evidence and do what you think is right under
10 the circumstances. Is that a fair statement?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Fine. Let's go ahead.

13 MR. DOUGLAS MULDER: No more trick
14 questions.

15 MR. TOBY L. SHOOK: Judge, I can
16 inquire as to --

17 THE COURT: You can inquire, go ahead
18 and inquire. But you are not required to conjure up any
19 set of facts. Do you understand that?

20 MR. TOBY L. SHOOK: No, I'm not
21 attempting to do that, Judge. I'm just inquiring whether
22 she thinks she could do that.

23 THE COURT: I knew you wouldn't be.

24 MR. TOBY L. SHOOK: Like I said, I
25 can't preview --

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1 THE COURT: And we appreciate Mr.
2 Mulder's comment as regarding the question, the trick
3 question, we think that's very nice.

4

5 BY MR. TOBY L. SHOOK:

6 Q. Anyway, are you telling me, Ms. Vega,
7 you think you would need more information than just the
8 facts of the murder before you can answer that question?
9

10 MR. DOUGLAS MULDER: Judge, again,

11 that begs the question. She hasn't heard the facts of
12 murder, how does she know whether she needs more facts or
13 not?

14 MR. TOBY L. SHOOK: I could always go

15 into the facts, but that is not --

16 THE COURT: No, don't go into the
17 facts. We will -- just answer it if you can, and if you
18 can't, just say you can't answer it. Let's get on to the
19 next question.

20 THE PROSPECTIVE JUROR: I don't know.

21 MR. TOBY L. SHOOK: All right.

22 THE COURT: Fine. Thank you.

23

24 BY MR. TOBY L. SHOOK:

25 Q. All right. You talked to me earlier
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1 when I asked you about crimes you thought might be
2 appropriate for the death penalty, and you said serial
3 murder, things like that.

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

6 Q. Would you require that the State prove
7 to you that the defendant has committed murder before?

8 A. No.

9 Q. Okay. Let me go over some of the
10 words here in question number 1 because you are not going
11 to get any legal definitions. Those words will be --
12 those definitions will be left up to you and the other
13 jurors. Okay?

14 A. Yes.

15 Q. We have to prove that there is a
16 probability that the defendant would commit criminal acts
17 of violence that would constitute a continuing threat to
18 society. You see we use the word criminal acts of
19 violence. What do you think of when we use those
20 words? What does criminal acts of violence mean to you?

21 A. Toward society?

22 Q. Well, let me start just with criminal
23 acts of violence. How would you define that?

24 A. Assault, murder, rape.

25 Q. Okay. We also have to prove that it's
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1 a probability that the defendant would commit criminal
2 acts of violence, not that it is a certainty, just a
3 probability. Do you think you can answer that question
4 if you were given enough evidence?

5 A. Can you say that again?

6 Q. We only have to prove that it is a
7 probability. Okay? But we have to prove that beyond a
8 reasonable doubt. The question is asking the jurors to
9 make a prediction that the defendant is going to behave
10 or be a danger to society in the future. Do you think
11 you could answer that question, if you were given enough
12 evidence?

13 A. I guess, depending on the evidence and
14 the facts.

15 Q. Okay. Let me get into the second
16 question. That is kind of lengthy, but if you would just
17 read along. And let me tell you, I didn't write
18 that question, the legislature did, and it gets kind of
19 lengthy.

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

2 Like I said, that gets pretty long.

3 But, basically, this is how I view that thing, it is kind
4 of the safety net. You don't get to this question unless
5 you have already found the defendant guilty of capital

6 murder; found that they are going to be a future danger
7 to society; and, then, finally you review all the
8 evidence and decide, well, is there something in her

9 background? Or let me just say, do it hypothetical,
10 something in the defendant's background that tells me
11 that a life sentence should be imposed rather than a
12 death sentence? Okay?

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

15 Q. Okay. Now, you are not required to

16 think what mitigating evidence is, just that if you see
17 that evidence you give it that weight. Okay? It is a
18 way to let the jury have an out in giving a life
19 sentence. Is that clear to you?

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

22 Q. Now, like I say, I can't tell you what
23 mitigating evidence is going to be. It's going to be up
24 to you and the other jurors. And you don't have to agree
25 with the other jurors what mitigating evidence is. But
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1 let me preview a couple of things, we talk to a lot of
2 people, and see if you agree or disagree. Okay?
3 Well, an example might be this:

4 Sometimes you might have a defendant that has got a
5 degree from Harvard. Okay? One juror might view that as
6 mitigating evidence, because he says, "You know, that
7 person has done something good with their life, they have
8 a degree, they have a good education, they have a brain."
9 Another juror might say, "Well, that
10 is actually bad, that is aggravating. Because someone
11 that smart should never have committed capital murder.
12 They have wasted their life." So they view that and hold
13 it against them.

14 Do you see where jurors could differ
15 on what mitigating evidence is?

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

18 Q. Sometimes people come in here and tell
19 us, "Well, if the person is young when they commit the
20 offense, that might be mitigating," whether they should
21 get a life sentence, and other people say no. How do you
22 feel about that?

23 A. I don't really think it matters what
24 your -- I mean what kind of education you have or how
25 young you are.

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1 Q. Okay. That wouldn't cut one
2 mitigating with you?

3 A. No.

4 Q. Okay. Sometimes people commit these
5 capital murders under the influence of drugs or alcohol,

6 they voluntarily take them. The law says that is no

7 legal defense, but you can view that as mitigating if you
8 choose to. How do you feel about that?

9 A. If you are under the influence when
10 you commit it?

11 Q. Right. And I am talking about going
12 out and taking it voluntarily, no one forced it down
13 them. Okay?

14 A. Yes. Again, I don't think it matters.

15 I mean, you are responsible for your actions, whether you
16 are drunk or sober.

17 Q. Okay. It could be you could hear
18 information that maybe a defendant has been abused as a
19 child, maybe physically abused, or mentally abused, or
20 even sexually abused, you know that comes up a lot. Some
21 people feel that could be mitigating, other people feel,
22 no, that's happened a lot. How do you fall? What do you
23 think about that kind of stuff?

24 A. Well, I don't know. I guess it
25 depends on the person's mentality. I mean, some people
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1 can take more than others.

2 Q. Okay. But your mind can be open to
3 that type of evidence?

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

6 Q. Ms. Vega, you have -- have you ever
7 read much about the death penalty in Texas? The method
8 of execution?

9 A. No.

10 Q. Are you aware that it is by lethal
11 injection?

12 A. I have heard, but I don't --

13 Q. You have not really followed it?

14 A. -- follow it.

15 Q. It is kind of a morbid, kind of
16 gruesome topic.

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

19 Q. Let me tell you. I have gone over the
20 procedures here, you know. The trial is divided into two
21 parts. The first part, we have to prove guilt or
22 innocence. And if we prove these special issues that

23 first one "yes," that yes they would be a danger, and
24 that there is no mitigating evidence, that would be a

25 "yes" and "no," then under our law, the Judge would
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1 sentence the defendant to death.
2 Now, if they are answered any other
3 way, it's a life sentence. Okay? The jurors don't write
4 death or life in there, but depending on how you answer
5 those questions, the Judge will sentence the defendant to
6 either death or life. Is that clear to you?
7 A. Uh-huh. (Witness nodding head
8 affirmatively.)
9 Q. Okay. The death penalty is a very
10 real punishment here in Texas, there has been over 100
11 executions.
12 Usually, we average between 15 to 17 a
13 year now, and you can read about them from time to time.
14 As I told you before, the executions are by lethal
15 injection.
16 If these questions are answered as a
17 "yes" or "no," and the defendant is found guilty, the

18 Judge will sentence the defendant to death. Okay? If
19 that happens some day down the line, he would actually
20 issue a death warrant.
21 What happens in that case, is the
22 defendant would be taken to a special cell, given time
23 with family and friends, maybe a minister or a priest,
24 whoever she wants to see.
25

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1 MR. DOUGLAS MULDER: Judge, what does
2 this have to do with it?
3 THE COURT: Well, I'll let him
4 describe it.
5 MR. TOBY L. SHOOK: Judge, I want to
6 get her feelings on it, and it's my time to interview the
7 juror.
8 THE COURT: I know. I think I'll let
9 you go ahead with that.
10 MR. TOBY L. SHOOK: It's my right to
11 do it.
12 THE COURT: I think I'll let you go
13 ahead with that. Go ahead.
14
15 BY MR. TOBY L. SHOOK:
16 Q. But under our law a person that has
17 been convicted of capital murder, sentenced to die, at

18 6:00 p.m. on that execution date they would be taken from
19 their cell, taken to an execution chamber, strapped down
20 on a gurney with leather straps, needles would be put in
21 their arm, family and friends could be there to watch,
22 but not to intervene, obviously.
23 The warden would give a last chance
24 for the defendant to say something, they can say
25 anything. "I didn't do it. Don't do this to me." But
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1 the process is going to go on.
2 Fluids, poisonous fluids will be
3 injected into the veins, and within about 10 to 15
4 minutes, she would be dead.

5 That is how executions take place, and
6 are taking place in the State of Texas. We have had
7 jurors come in here and tell us, "Look, I believe in the
8 death penalty as a law, and I think it should be imposed
9 in certain crimes. But I am not the kind of person that
10 can sit down and participate in this type of procedure."
11 Other jurors tell us, "Look, I am not asking to volunteer
12 for it, but if you prove it to me, I can."
13 What I need to know is if you are the
14 kind of person who can sit on the jury, listen to the
15 evidence, and if we do prove these things to you beyond a
16 reasonable doubt, answer those questions. Knowing if you
17 answer a "yes" and a "no" in the punishment stage, the
18 defendant would be executed in the manner I have
19 described.
20 Do you think you could do that?
21 A. Uh-huh. (Witness nodding head
22 affirmatively.) If it's proven?
23 Q. If it is proven.
24 A. I don't think I would have a problem
25 with it.
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1 Q. You could do it?
2 A. Uh-huh. (Witness nodding head
3 affirmatively.)
4
5 THE COURT: Ma'am, you have to answer
6 yes or no. Ms. Halsey is taking it down and we can't
7 take down nods.
8 THE PROSPECTIVE JUROR: Yes.
9 THE COURT: Thank you.
10

11 BY MR. TOBY L. SHOOK:

12 Q. Ms. Vega, in a -- well, in any

13 criminal case we put on evidence. We have to -- we call

14 it direct or indirect evidence. You have heard the term

15 circumstantial evidence, haven't you?

16 A. Yes.

17 Q. Okay. That is another word for

18 indirect evidence. Let me give you a couple of examples.

19 If you left the courtroom today and

20 were robbed, say at gunpoint, and the fellow ran off with

21 your purse, and if he was caught later and you identified

22 him, you could be called in as a witness against him and

23 you would be the eyewitness. That is direct evidence.

24 Any other evidence against the defendant is

25 circumstantial evidence or indirect evidence:

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1 Fingerprints, scientific evidence, you may have heard

2 about DNA, hair, fiber, those kind of things, things left

3 at the crime scene, statements by the defendant, before,

4 during, or after the crime, anything other than an

5 eyewitness is circumstantial evidence. Okay?

6 Now, in a murder case, we may have

7 only circumstantial evidence to prove our case.

8

9 THE COURT: Sir, you are not a

10 prospective juror in case. Are you?

11 THE OBSERVER: No, Your Honor.

12 THE COURT: That is fine, I just

13 wanted to make sure. Thank you.

14 MR. RICHARD C. MOSTY: He thinks he is

15 a lawyer.

16 THE COURT: I understand, I

17 understand. Thank you.

18

19 BY MR. TOBY L. SHOOK:

20 Q. You may have only circumstantial

21 evidence. The victim is killed, and you have the person

22 being tried. There could be only two people there, you

23 understand that? So we may have to rely on

24 circumstantial evidence.

25 Do you think you could convict a

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1 person of capital murder based solely on circumstantial

2 evidence? If it was proven to you beyond a reasonable

3 doubt?

4 A. Well --

5 Q. Would you require an eyewitness to the
6 crime?

7 A. I don't know if it would require an
8 eyewitness, but I guess --

9

10 MR. DOUGLAS MULDER: Judge, it is hard
11 for her or for any juror to answer that question until
12 they hear the evidence.

13 THE COURT: I understand.

14 MR. DOUGLAS MULDER: If they heard the
15 evidence, and they believed it beyond a reasonable doubt,
16 they would convict.

17 THE COURT: I understand. Do you have
18 a question to develop that?

19 MR. DOUGLAS MULDER: You said no more
20 trick questions.

21 THE COURT: Well, yes.

22 MR. TOBY L. SHOOK: Judge, this is not
23 a trick question. I am just getting her feelings.

24 THE COURT: All right. You might
25 amplify that a little bit. You might amplify that.

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1 MR. TOBY L. SHOOK: I just want to get
2 her true feelings on that.

3 THE PROSPECTIVE JUROR: I was going to
4 say that, I guess, depending on the evidence, I mean how
5 strong it is.

6

7 BY MR. TOBY L. SHOOK:

8 Q. Okay. Here is another area I want to
9 go into, Ms. Vega. It's called motive. You have heard
10 of motive before?

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

13 Q. I used to see it when I was growing up
14 on police shows all the time. What is the motive for
15 this crime?

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

18 Q. Another word, definition: Why it
19 happened? Why did the person do that?

20 In Texas, under the law, we don't have
21 to prove the motive to the crime. Okay? You have read
22 the indictment, intentional killing. Nowhere in it does
23 it put the reason why the crime happened. Okay? We are
24 not required to prove the motive, or why it happened.

25 Once the evidence is produced, you may
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1 know the motive, it might come out. Or there could be
2 several motives out there in evidence. Everyone might
3 have their own opinion.

4 The motive may never become apparent.
5 It could be a senseless killing. You have heard of
6 those? But the bottom line is this: We're not required
7 under the law to prove that to you. It's not one of our
8 requirements in the indictment. Do you agree with that
9 law?

10 A. Not really. To prove that -- why they
11 did it?

12 Q. Yes.

13 A. There's people who have killed for no
14 reason, I mean.

15 Q. Right. And you could never know the
16 motive.

17 A. No.

18 Q. Now, obviously, as a juror, you want
19 all of the information possible, I'm sure; is that right?

20 A. Yes.

21 Q. If the reason is known, you would want
22 that too?

23 A. Yes.

24 Q. My point is, we're not required to
25 prove the motive under law. Do you agree with that?

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1 A. Yes.

2 Q. In other words, would you require us
3 to prove the motive to you? Or if we just proved that
4 indictment to you beyond a reasonable doubt, could you
5 find the defendant guilty?

6 A. If it's proved without a doubt, yes, I
7 could.

8 Q. Okay. Ms. Vega, I have gone over with
9 you different questions for a while now. Do you have any
10 questions about anything I have gone over?

11 A. No.

12 Q. Okay.

13

14 MR. TOBY L. SHOOK: That's all the

15 questions I have then, Judge.
16 THE COURT: Thank you, Mr. Shook.
17 Now, Mr. Mulder or Mr. Mosty?

18 MR. DOUGLAS MULDER: Yes, sir.
19 THE COURT: All right, Mr. Mulder.
20 MR. DOUGLAS MULDER: Thank you.
21 THE COURT: Go ahead.

22
23
24
25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. DOUGLAS D. MULDER:

4 Q. Ms. Vega, as the Judge told you, my
5 name is Doug Mulder. I need to visit with you a little
6 bit and try to get to know you a little bit better.

7 First, let me make one thing just real
8 clear here. And -- at the time the indictment is read to
9 Darlie, she will enter an unequivocal plea of not guilty.
10 And we suggest to you that after you
11 hear both sides of the case here, you hear from them and
12 you hear from us, you are going to find the defendant not
13 guilty. We're not even going to get to this special
14 issue. Okay? I just want to make that clear.
15 A. Uh-huh. (Witness nodding head
16 affirmatively.)
17 Q. But the procedure is that in criminal
18 cases, the State goes first with their evidence. Now, if
19 it were up to me, I would prefer to go first, because I
20 think first impressions are mighty important. But the

21 law says that since they have the burden of proof, they
22 are the ones who have brought the charges, the law says
23 they go first. The law says the burden of proof is on

24 the State. And that means whoever does the accusing, has
25 to do the proving. Does that make sense to you?

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1 A. Yes.

2 Q. Whoever accuses -- she doesn't have to
3 do anything except be here.

4 A. Uh-huh. (Witness nodding head

5 affirmatively.)

6 Q. But I can assure you that when it

7 comes to our turn, we're going bring you evidence as

8 well. Okay?

9 You can hold us to that.

10 Now, the law says that the standard or

11 the benchmark upon which you measure their proof is

12 beyond all reasonable doubt. Okay?

13 A. Uh-huh. (Witness nodding head

14 affirmatively.)

15 Q. They have to prove their case to you,

16 they have to prove her guilt beyond all reasonable doubt.

17 Okay?

18 A. Yes.

19 Q. That means if you, as a juror, have a

20 doubt, or have half a dozen doubts, or 21 doubts, all of

21 those doubts have to be resolved in favor of Darlie. You

22 understand that?

23 A. Yes.

24 Q. Okay. And you will do that?

25 A. Yes.

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1 Q. You can assure us that you will?

2 A. Yes.

3 Q. Okay. Now, the Judge told you back a

4 week ago Monday that the indictment was no evidence of

5 guilt, that it was simply the pleading and paper by which

6 she was brought into court. That it informs you, as a

7 juror, of what the charges are, and what the State must

8 prove beyond a reasonable doubt. Just as it advises her

9 of the charges against her so that she can prepare a

10 defense. Do you understand that?

11 A. Yes.

12 Q. Okay. Do you feel that you can give

13 both sides a fair trial in this case? Do your dead-level

14 best to be fair?

15 A. Yes.

16 Q. And you would do that, wouldn't you?

17 A. Yes.

18 Q. You will presume her to be innocent at

19 this time?

20 A. Yes.

21 Q. The law does. Okay? And you would

22 make them prove everything that they have alleged against

23 her beyond all reasonable doubt?

24 A. Yes.

25 Q. And if you had a reasonable doubt, you

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1 I would be able to say by your verdict, not guilty,
2 wouldn't you?

3 A. Yes.

4

5 MR. DOUGLAS MULDER: I think that's
6 all we have at this time. Thank you. You have been very
7 fair with us.

8 THE COURT: Ma'am, could you step
9 outside briefly, please. Don't leave.

10 THE PROSPECTIVE JUROR: Okay.

11

12 (Whereupon, the prospective

13 juror was excused from the
14 room, and the following

15 proceedings were held,
16 outside of his presence

17 as follows:)

18

19 THE COURT: All right. What says the
20 State?

21 MR. TOBY L. SHOOK: The State will
22 exercise their peremptory strike.

23 THE COURT: What says the defense?

24 MR. RICHARD C. MOSTY: We would accept
25 the juror.

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1 THE COURT: I would like it on the
2 record that you have accepted the juror.

3 MR. DOUGLAS MULDER: Yes, sir.

4 THE COURT: I just wanted that.

5 MR. DOUGLAS MULDER: Yes, sir.

6 THE COURT: All right. Thank you. If
7 you would have Ms. Vega step back in, please.

8 MR. DOUGLAS MULDER: Would you

9 admonish Mr. Shook no more trick questions, Judge?

10 THE COURT: Yes, I will admonish both
11 sides.

12 MR. RICHARD C. MOSTY: He finally ran
13 out.

14

15 (Whereupon, the prospective
16 juror returned to the
17 room and the proceedings

18 were resumed as follows:)
19

20 THE COURT: Ms. Vega, we want to thank
21 you very much for coming and your candid answers, but you
22 will be excused from further jury service.

23 THE PROSPECTIVE JUROR: Okay. Thank
24 you.

25 THE COURT: Thank you for coming.
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1 THE PROSPECTIVE JUROR: Thank you.

2 THE COURT: All right. Do we have

3 anybody else? That's all until after lunch? Very well.

4

5 (Whereupon, a short

6 recess was taken,
7 after which time,

8 the proceedings were
9 resumed on the record,
10 in the presence and
11 hearing of the defendant
12 as follows:)

13

14 THE COURT: All right. And you are
15 Ms. Wallace?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: All right. Can you raise
18 your right hand, please, ma'am.

19 Do you solemnly swear or affirm you

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

23

24 THE PROSPECTIVE JUROR: Yes.

25

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1 (Whereupon, the prospective
2 juror was duly sworn by the
3 Court to true answers make

4 to the questions propounded,
5 concerning qualifications, after
6 which time, the proceedings were
7 resumed as follows:)

8

9 Whereupon,

10

11 PATSY LEACH WALLACE,

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 true, testified in open court, as follows:

17

18 THE COURT: Thank you very much. And

19 you are Patsy, P-A-T-S-Y, Wallace; is that correct?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: All right, ma'am. This

22 is -- the State of Texas in this case is represented

23 today by Ms. Sherri Wallace and Mr. Toby Shook. And this

24 is Mrs. Darlie Routier, the defendant, the young lady in

25 the pink dress sitting right there. She is represented

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1 by Mr. Douglas Mulder.

2 MR. DOUGLAS MULDER: How are you?

3 THE COURT: Mr. Richard Mosty.

4 MR. RICHARD C. MOSTY: Yes, sir.

5 THE COURT: And Mr. Preston Douglass.

6 And so who will go first for the State, Mr. Shook?

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

8

9 VOIR DIRE EXAMINATION

10

11 BY MR. TOBY L. SHOOK:

12 Q. Ms. Wallace, again, my name is Toby

13 Shook, and I am one of the prosecutors on the case and I

14 will be asking you questions on behalf of the State.

15 Okay?

16 A. Okay.

17 Q. What we are interested in are your

18 honest answers to all our questions. What I want to do

19 is go over some of your answers on your questionnaire and

20 then maybe talk about the death penalty. Okay?

21 A. Okay.

22 Q. I notice on the very back page, the
23 last page, we have an area there about your health.

24 A. I am in bad health.

25 Q. Right. And you put down a number of
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1 things. That you are on medication, and also checked off
2 that you have personal health problems that would prevent
3 you from giving full attention to the testimony and to
4 the trial. And, I guess, it involves the medication you
5 are on?

6 A. Yes.

7 Q. Tell us a little bit about your health
8 problems.

9 A. I don't know if anyone here knows what
10 lupus erythematosus systemic is, but in any case, it is
11 fairly debilitating, it's the first cousin of rheumatoid,
12 however, is probably more deadly.

13 Q. Okay.

14 A. It keeps me on a roller coaster. I

15 mean, I would love to serve, but I cannot be counted on
16 because I could end up in the hospital, it can affect
17 kidneys, you know, plus, I have also got necrosis, and
18 cardiopulmonary.
19 I have got three things that are

20 fairly debilitating. So, as much as I would like to
21 serve, I don't know that I could be counted on.

22 Q. Okay. Well, Ms. Wallace, you know
23 your situation as best -- you know yourself and the

24 medical problems that you have. And that is the thing,
25 if someone comes in here and they are suffering from an
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1 illness that would prevent them from sitting as a juror,
2 that is fine. You know, obviously, we need to know that.
3 Is that what you are telling us?

4 A. Well, I put everything down that I
5 could on that paper to try to give full warning, as I
6 said. When I'm up, I'm up, but --

7 Q. So this kind of comes and goes?

8 A. Well, if you know anything about it or
9 know anything about rheumatoid, it's up one day and down
10 the next. It's a roller coaster ride.

11 Q. So, this is actually just a day to day

12 ordeal you go through?

13 A. Yes.

14 Q. Some days you have good days, other
15 days you are very sick.

16 A. The thing that would worry me mostly

17 about this case, would be being sequestered somewhere,
18 and I would end up having to leave or be in the hospital
19 or something. As I said, I would love to serve, because
20 I think it's my duty.

21 Q. Uh-huh. (Attorney nodding head

22 affirmatively.) Well, let me ask you, you are the best

23 judge of this: The only time you would be sequestered is
24 during deliberations, and who knows how long those would
25 last.

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1 During the trial you would have to sit
2 here from about 9:00 to 5:00 everyday listening to the
3 evidence, but you would go home during the evening. The
4 trial should last about two weeks at the outset. I guess
5 our longest prediction would be about three weeks, but
6 best guess, about two weeks. Are you telling you us that
7 because --

8 A. I'm telling you I don't know, and
9 that's all I can say. I don't know. As I said, I can
10 give it a shot, but I don't think that is really good for
11 a juror.

12 Q. But if you get sick, you are telling
13 us when you get sick, you are really sick?

14 A. I am sick.

15 Q. You wouldn't be able to sit as juror
16 then, if you were sick?

17 A. Well, I couldn't even drive. Because
18 I end up having to take -- I am on Plaquenil, Paxil, when
19 the pain gets unbearable then I am on hydrocodone, which
20 prevents me from being behind the wheel of a car. I
21 don't think you would want me sitting here with all of
22 those drugs in me.

23 Q. Right. You would be totally
24 incapacitated then, wouldn't you?

25 A. I could not take them, I guess. I
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1 could sit here in severe pain, I have done that.

2 Q. But that wouldn't be very prudent, I
3 guess, would it?

4 A. Well, you are asking me questions I
5 can't answer. I have only had this disease for seven

6 months, so I am still kind of new to it.

7 Q. Okay. Let me go on to a couple of
8 other areas, Ms. Wallace. Again, I want to tell you, you
9 have been real open and honest with us on this
10 questionnaire, too. Okay? And I want to go over some of
11 the things on that questionnaire.

12 Like I said, we are just interested in
13 your honest opinions, and you have made the statement a
14 couple of times, you want to come down and serve, and
15 that is fine. We want people to come down.

16 A lot of people just don't show up for
17 jury service. Okay? But just because you come down and
18 serve, obviously, doesn't mean you are on the jury. That
19 is why we had about 180 something people actually show
20 up.

21 A. I understand.

22 Q. Every case -- every person that comes
23 down there, obviously, has had a different life
24 experience and feels strongly one way or another on
25 different issues. Now this is a death penalty case.

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1 A. I know that.

2 Q. It's been very clear to you?

3 A. Yes.

4 Q. Obviously, the State of Texas is
5 seeking the death penalty.

6 A. I understand that.

7 Q. In this case.

8 A. Yes.

9 Q. And, so we want to explore every
10 juror's viewpoints about the death penalty.

11 A. I think I put that on there.

12 Q. You did, you made it very clear. But
13 the law requires us to go into a little more detail, so I
14 am not arguing with you.

15 A. Okay. Okay. Well, I'm not very good
16 with the law.

17 Q. Okay. But it just requires you have
18 to verbalize it to us. Okay?

19 A. Okay.

20 Q. I am not trying to argue with you or
21 anything like that.

22 A. I wouldn't either.

23 Q. You put down on your questionnaire
24 when we asked: If you were in favor of the death

25 penalty? You said no.
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1 A. Right.

2 Q. Tell us why.

3 A. Well, because I, being a Christian,
4 believe that there is a point in time, if this woman
5 indeed is guilty, when all of that can be forgiven and
6 she can find the Lord.

7 I'm not assuming that she is guilty.

8 I am just saying, that if she is, that there would be
9 time for her to get her life back together.

10 Q. How would you best -- and so, you are
11 opposed to the death penalty?

12 A. I am opposed to the death penalty.

13 Q. Is it a religious reason?

14 A. Yes, strictly religious.

15 Q. Strictly religious.

16 A. There was a time when I was in favor
17 of it.

18 Q. And that was?

19 A. Before I became what I consider a
20 Christian.

21 Q. When was that?

22 A. Goodness. Probably back in the late
23 '60s.

24 Q. Okay. Since that time you have had a
25 chance to change your mind on how you viewed the death

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1 penalty?

2 A. Right.

3 Q. So would it be safe to say you felt
4 that way for a number of years?

5 A. Yes.

6 Q. Okay. Is this an issue you have
7 thought about before in any great detail?

8 A. Probably when it came to the courts
9 when we outlawed the death penalty. Y'all may not be old
10 enough to remember all of that.

11 Q. Back in the '60s.

12

13 THE COURT: Oh, yes, ma'am, I remember
14 that.

15 THE PROSPECTIVE JUROR: Are they old
16 enough?

17 THE COURT: Oh, yes, ma'am. Several

18 of the others, and Mr. Mulder and I are, too. Yes,
19 ma'am.

20 THE PROSPECTIVE JUROR: Oh, you are?

21

22 BY MR. TOBY L. SHOOK:

23 Q. So this is a subject you have thought

24 of previously?

25 A. For a number of years, yes.

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1 Q. And, obviously, when you were brought
2 down last Monday, I'm sure it went through your mind
3 then. It was very apparent that this was a death penalty
4 case.

5 A. Yes, it was.

6 Q. And have you reflected on it since you
7 filled out the questionnaire?

8 A. Oh, I don't know what you mean by
9 that. I have reflected on? Well, I tried to put myself
10 in the place of someone who was being accused of
11 something of this sort, and it's got to be probably one
12 of heaviest things that anybody can lay on someone.

13 As I said, I don't know whether she is
14 guilty or not guilty. That really doesn't matter at this
15 point of my reflection.

16 Q. Have your -- has your opposition to
17 the death penalty changed at all though?

18 A. No.

19 Q. You still feel that way?

20 A. I still feel that way.

21 Q. You also checked off on the
22 questionnaire, we asked the question: Do you have any
23 moral, religious, or personal beliefs that would prevent

24 you from sitting in judgment of another human being? You
25 checked off "yes" on that.

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1 A. Yes.

2 Q. Does that go back to --

3 A. Of course.

4 Q. -- the same thing we have been talking
5 about? And you also checked off: Do you have any moral,
6 religious, or personal beliefs that would prevent you
7 from returning a verdict which would result in the
8 execution of a woman? And you checked off "yes" to that
9 also. Again, is that along the same lines --

10 A. Yes.
11 Q. -- we have been talking about?
12 A. Yes, sir.
13 Q. Okay. That is fine that you feel that
14 way. But, again, we have got to talk about that a little
15 more. Okay? If you will just bear with me then?
16 A. Okay.
17 Q. Okay. Let me kind of -- I'm going to
18 ask you some more question along those lines, but let me
19 preface it by telling you how a capital murder trial
20 works. Okay?
21 A. Okay.
22 Q. First of all, the trial is divided
23 into two parts. The guilt/innocence stage where we have
24 to prove the indictment to you beyond a reasonable doubt.
25 I think you will find the indictment in front of you.
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1 A. Is this it right here?
2 Q. That paragraph that is set out in the
3 middle.
4
5 THE COURT: The typewritten paragraph.
6 THE PROSPECTIVE JUROR: Yes. Okay.
7 Unlawfully then and there --
8
9 BY MR. TOBY L. SHOOK:
10 Q. If you could just read that to
11 yourself, and let me know when you finish.
12 A. It makes me cry.
13 Q. Those are the allegations we have to
14 prove in the guilt/innocence stage. If we don't prove it
15 beyond a reasonable doubt, then it's not a guilty
16 verdict. Okay?
17 A. Okay.
18 Q. And then we all go home then, if it's
19 a not guilty verdict.
20 A. Okay.
21 Q. If the State does prove that beyond a
22 reasonable doubt, then we go on to the second portion of
23 the trial. Okay?
24 A. Okay.
25 Q. The second portion of the trial, you
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1 would get -- a juror would get to hear additional
2 evidence. And if there is additional evidence, you would
3 get these special issues at the end of that. Okay? And

4 I want to go over those just briefly with you.

5 You see, that first question, the

6 State has to prove beyond a reasonable doubt. And it
7 asks: "Do you find from the evidence, beyond a
8 reasonable doubt, that there is a probability that the
9 defendant would commit criminal acts of violence that
10 would constitute a continuing threat to society?"
11 That is asking the jurors to make a
12 prediction about how a person will behave, if they are

13 going to be a continuing danger. If we prove that beyond
14 a reasonable doubt, the jury answers "yes." Okay? It's
15 a "yes" or "no" question.

16 If the jury answered "yes," you would
17 move on to that second question. That is a lengthier
18 question. It asks: "Taking into considering all of the
19 evidence, including the circumstances of the offense,
20 the defendant's character and background, and the
21 personal moral culpability of the defendant, is there a
22 sufficient mitigating circumstance or circumstances to
23 warrant that a sentence of life imprisonment rather than
24 a death sentence be imposed?"

25 That is what we call the mitigation
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1 issue. It's kind of a safety net. You don't get to that
2 question as a juror unless you have found the defendant
3 guilty, found that they are going to be a danger to
4 society, but somewhere in the evidence it tells you that
5 a life sentence should be imposed rather than a death

6 sentence. Allows the juror to spare the life. Do you
7 understand that?

8 A. Yes.

9 Q. If you answer that question "no," the
10 defendant will get life. I mean, I'm sorry, if you
11 answer it "yes," that there is sufficient mitigating
12 evidence, then the defendant would get a life sentence.
13 If you didn't find the mitigating evidence there, if you
14 answered "no," it would be a death sentence. The jurors
15 don't actually write in death sentence or life sentence.
16 They used to, but they don't now.
17 But I can tell you that if you write
18 in -- if a juror writes in "yes" and a "no," the Judge

19 has no choice. He would sentence the defendant to death.
20 Now, if they are answered any other way, that second

21 question is answered "yes," or you never even get past
22 that first issue, then it is a life sentence. But those
23 are the two possible outcomes once a person has been

24 found guilty of capital murder. Is that clear to you?

25 A. Yes, it is.

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1 Q. Okay. If it does -- if it is a
2 situation where the Judge imposes the death sentence
3 based on these answers from the jury, the method of

4 execution is by lethal injection. I don't know if you
5 have read or heard anything about the method for
6 execution.

7 A. Yes. I was married to a doctor for 18
8 years, I know what that means.

9 Q. So you know about it. And you
10 probably know that those executions actually take place
11 in the State of Texas?

12 A. Yes, I know that.

13 Q. They are in the paper from time to
14 time. Some states have the death penalty and they never
15 impose it. Texas leads the nation in executions. They
16 have had over 100. I think the average is 15 or 16 or 17
17 a year.

18 The execution, as you are well aware,
19 is by lethal injection where you actually strap the
20 defendant down, and with witnesses there, put a needle in
21 their arm, inject poisons that stop the heart. It's a

22 very quick process, but it's a very real process. And I
23 just want to lay all my cards on the table.

24 Now, you have told me that
25 philosophically, because of your religious beliefs, you
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1 don't believe in the death penalty?

2 A. No.

3 Q. And you have told me that these
4 beliefs are strong enough that they would prevent you
5 from returning a verdict that would result in someone's
6 execution?

7 A. That's correct.

8 Q. You feel that way?

9 A. Yes.

10 Q. Okay. Now, you understand these

11 questions don't ask you to write in death or life.

12 A. Right.

13 Q. But you understand if you answer them

14 a certain way what is going to happen?

15 A. Yes.

16 Q. Okay. It's either going to be death

17 or life?

18 A. Yes.

19 Q. Now, we have had different jurors come

20 down here, and we're just looking for your honest

21 opinions, we have had them come down here and they want

22 the death penalty on everything, no matter what the facts

23 or circumstances, and that is just not fair.

24 We have had jurors come down here and

25 just say, "I am not opposed to the death penalty. I can

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1 answer these questions though. It's not going to bother

2 me, or I can do it if it is proven to me."

3 We have had other jurors come down

4 here and they say, "Look, I know it's a law, but for

5 whatever reasons, moral reasons, religious reasons, I am

6 personally opposed to the death penalty." And we can ask

7 you, and we can require you as citizens to come down here

8 to answer the jury summons. But we cannot force you to

9 abandon your moral and religious principles.

10 A. Nobody can.

11 Q. Okay. You understand that?

12 A. Yes.

13 Q. Some people would be fine on different

14 types of cases. You know? We have people come down here

15 and maybe they would be fine on a case where only jail

16 time were imposed; or maybe if was a civil case. We have

17 had people come down here that maybe had lost loved ones

18 in a DWI accident, and they are called down and sure

19 enough, it's a DWI case. And they say, "Look, this is

20 hitting a little too close to home. I couldn't be fair

21 because of my background. Or I don't believe in drinking

22 at all, you know, I couldn't be fair."

23 We have had other people come down

24 that have had bad experiences with police officers.

25 Maybe their son had a bad experience, and they will tell

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1 us, "Look, I just can't be open-minded to police officers

2 that are testifying. Put me on civil case or something."
3 We have had other people down here
4 that are victims of violent crime, and they couldn't sit
5 on a violent crime case. My point is that different
6 people come down for jury service with different
7 viewpoints. And some people can sit on this type of
8 case, and some people cannot.
9 From what you are telling me is this
10 isn't the type of case, because of your religious

11 objections, that you could sit on, and answer these
12 questions that would result in someone's execution?
13 A. No.

14 Q. Okay. Am I reading you right then?

15 A. Yes.

16 Q. Okay. Let me go just a little further
17 because sometimes -- you understand that these questions
18 don't call for life or death answers, they call for you
19 to look at the facts, let you know I am just using the
20 juror as a hypothetical, and answer the questions if the
21 State proves it. Just listen to the facts and answer the
22 questions.

23 However, jurors are not like
24 computers, you still have emotions and belief systems.
25 You can't divorce those emotions and beliefs many times.
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1 It is one thing to think, yes, you have proven it to me,
2 but I can't sit there and answer the questions in a way
3 that would result in someone's death. I don't care how
4 much evidence you give me.

5 A. Right.

6 Q. I had a guy in here yesterday, he told
7 us, "Look, you can talk about all the evidence you can.
8 You can prove this guy is the most dangerous, vicious
9 criminal that walked the face of the earth. I am morally
10 opposed to the death penalty. And I cannot answer those
11 questions in a way, no matter what the evidence is, I

12 can't answer them in a way that would result in the
13 defendant's execution." Life imprisonment, he didn't
14 have a problem.

15 A. I don't have any problem with that.

16 Q. But it is execution, and he was honest
17 with us and we appreciated that.
18 Sometimes we run across people that

19 tell us they are opposed to the death penalty, and then,
20 I guess, they just abandon those convictions and say,
21 "Okay. I can sit here and answer your questions." Maybe
22 they didn't really believe in it that much, I don't know.

23 A. Well, I am not one of those.

24 Q. You are not one of those?

25 A. No.

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1 Q. You have felt this way a number of
2 years?

3 A. A number of years.

4 Q. We're not changing your mind?

5 A. I am too old to change.

6 Q. And that is fine. But you are telling
7 me that it's not a question of us proving it to you?

8 A. No.

9 Q. Not at all?

10 A. Not at all.

11 Q. It's not a question of you being
12 intellectually able to decide the evidence?

13 A. Well, you can intellectually decide
14 anything, but it still does not have any bearing on your
15 convictions about -- your actions, you can
16 intellectualize anything.

17 Q. Yes, that is true.

18 A. Otherwise it gets to be something
19 else.

20 Q. And you see the difference that we're
21 talking about here, and you are telling me that you are
22 not going to abandon those convictions that you have in
23 your heart?

24 A. No, never.

25 Q. Okay. Well, then I appreciate your
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1 honesty about that.

2

3 MR. TOBY L. SHOOK: And that's all the
4 questions I have, Judge.

5

6 VOIR DIRE EXAMINATION

7

8 BY MR. DOUGLAS D. MULDER:

9 Q. Ms. Wallace, I need to visit with you
10 a little bit if I may?

11 A. All right.

12 Q. As the Judge told you, my name is Doug

13 Mulder. And I am not going to waste a lot of your time,

14 but I'm going to get right to the heart of the question

15 here. I am perplexed a little bit by the way they have

16 asked you some questions, and I am going to be a little

17 more direct and maybe a little more blunt.

18 A. I will answer to the best of my

19 intelligence.

20 Q. You were asked something like, "Would

21 you answer the questions," I don't remember exactly how

22 he asked you the question, "but would you answer the

23 questions in such a fashion to avoid giving the defendant

24 death?"

25 A. Yes.

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1 Q. I think something like that.

2 A. Yes.

3 Q. Let me put it to you straight out:

4 You will take an oath as a juror. Raise your hand and

5 take an oath to God, to render a just and true verdict

6 according to the facts and the evidence, so help you God.

7 Okay?

8 A. Uh-huh. (Witness nodding head

9 affirmatively.)

10 Q. Now, what they are asking you is, if

11 the State proves this issue, and if the State proves this

12 issue to you, will you deliberately answer these falsely?

13 A. Oh, no. I didn't understand that.

14 Q. See, that is the --

15 A. No, that has me confused.

16

17 MR. TOBY L. SHOOK: Judge, that is not

18 what I said.

19 THE PROSPECTIVE JUROR: That did

20 confuse me.

21 MR. DOUGLAS MULDER: Well, that is not

22 what he said, but that is what he meant, Judge.

23 THE COURT: Well, I'll determine what

24 he meant. I understand what Mr. Shook said. Go ahead

25 Mr. Mulder.

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1 MR. DOUGLAS MULDER: Bottom line, Your

2 Honor --

3 THE COURT: Yes, sir.

4 MR. DOUGLAS MULDER: Yes, sir.

5

6 BY MR. DOUGLAS D. MULDER:

7 Q. Is whether or not a juror will take an

8 oath and violate that oath and answer these falsely, once

9 they have been proven to your satisfaction, will you

10 answer it falsely to avoid giving her death, or would you

11 answer it truthfully, according to your oath?

12 A. I would have to be truthful.

13 Q. That's right. And you would do that,

14 wouldn't you?

15 A. Yes, I would.

16 Q. Regardless of what the consequences

17 are?

18 A. Are you telling me that I would no

19 longer have the choice?

20 Q. You don't have the choice. It's up to

21 him. Your only choice is whether or not you answer these

22 issues truthfully, or if you deliberately answer them

23 falsely to avoid the consequences?

24 A. No, I couldn't, I could not be

25 dishonest, that would go against everything.

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1 Q. So you would answer them truthfully

2 then according to the evidence that was presented?

3 A. I would have to do that.

4 Q. All right. And you would do that?

5 A. Yes.

6 Q. Okay. Let me visit with you a little

7 bit about some other aspects of this case. First of all,

8 Ms. Wallace, I want to make it abundantly apparent. I

9 don't think you are ever going to get to those issues,

10 okay, as a juror. I think after you hear all of the

11 evidence from both sides, that you will vote to acquit

12 Darlie. Okay? So I don't think we are ever going to get

13 there, but this is the only time that we can ever discuss

14 these issues with you.

15 When the indictment is read to her,

16 she is going to enter an unequivocal plea of not guilty.

17 Now, from a procedural standpoint, the

18 law says that the State, because they have the burden of

19 proof, they go first with their evidence. If I had my

20 druthers, I would prefer to go first, because I think

21 first impressions are mighty important.

22 And I think a lot of times people hear

23 that first argument, and then they have a tendency to

24 make up their mind, and then when it's our turn at bat,
25 they have closed their mind as to the reception of our
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1 evidence.

2 So, you can't do that. You can keep
3 an open mind, I take it, until we got a chance at bat,
4 and could bring forth our witnesses and our evidence?

5 Could you do that?

6 A. Oh, yes. I think I have that much
7 intelligence.

8 Q. Sure. The law says that they go first
9 because they have the burden of proof. They brought the
10 accusation. And the law says, whoever does the accusing,
11 has to do the proving. Does that make sense to you?

12 A. Yes.

13 Q. Okay. She doesn't have to do anything
14 except be here. The law requires that she be present in
15 court. But I can assure you that we will come forward
16 with evidence.

17 Now, as jurors, you and the other 11
18 members are the exclusive judges of the facts proved, the
19 credibility of the witnesses, and the weight that you

20 want to assign to the testimony to each witness? Okay?

21 A. Okay.

22 Q. The Judge won't tell you who you can
23 believe and who you can't believe. You don't have to
24 know any law to serve on a jury. In fact, you are
25 probably a whole heck of a lot better off if you don't.
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1 A. Okay.

2 Q. Because he is going to give all the
3 law that is applicable to this case in a written
4 instrument called the Charge. And you will have that
5 when you go back to deliberate, so that you can fit the
6 law with the facts and arrive at your verdict.

7 Now, your power and your authority as
8 a juror is simply awesome.

9 A. Yes.

10 Q. Simply awesome.

11 A. Yes, and frightening.

12 Q. It is frightening. If Judge Tolle
13 makes a mistake with respect to the law, we can appeal it
14 to a higher court and get it corrected. But there is no
15 appeal with respect to the facts. The facts are what the

16 jury decides they are, and that is it. There is no
17 appeal on that.
18 Now, because there is no appeal, the
19 law says that when jurors have reasonable doubts that
20 either come from the evidence or from the lack of
21 evidence, that they should resolve those doubts in behalf
22 of the defendant.
23 And, you know, if you and I were to
24 draw up the rules that would govern the trial of a
25 criminal case, we would want to encourage jurors to
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1 arrive at a verdict to have some sort of a resolution of
2 that case. Right?

3 A. Yes.

4 Q. And we would probably, in our
5 discussions, recognize that when the jury went back to
6 deliberate, they would have reasonable doubts either
7 based on the evidence or the lack of evidence. Right?

8 A. Yes.

9 Q. And we would want a way for them to
10 resolve those reasonable doubts. And we might say,

11 "Well, the fair way would be to make a list of those
12 doubts, those reasonable doubts, and number them from 1
13 to 21, or 1 to 101, and we will give the State the
14 benefit of the odd number reasonable doubts and we will
15 give the defendant the benefit of the even numbered
16 doubts." But the law says not so. The law says every
17 time, you as a juror, have a reasonable doubt, you are
18 duty-bound to resolve it in favor of the defendant. Is
19 that fair enough?

20 A. Fair enough.

21 Q. So if there's one, that's fine. If
22 there's 21, that is fine, if there's 101, that is fine,

23 too. But all reasonable doubts are decided in her favor.

24 And I guess that gets back to that old
25 point that I made a few minutes ago when I said that you
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1 are the exclusive judges of the facts proved. The facts
2 are what you say they are, and there is no appeal on
3 that, like there is on the law, if the Judge makes a
4 mistake.

5 At this stage of the proceedings, the
6 law says that the defendant is presumed to be innocent.

7 It's mighty hard when you walk into a courtroom like this
8 in the well-lighted, almost sterile, laboratory
9 conditions, and you see the defendant seated there with
10 her lawyers, and you see the prosecutors there, and you
11 see the Judge on the bench, and it's almost not normal to
12 think to yourself, "You know, I wonder what she has
13 done."
14 But the law says that she is presumed
15 to be innocent. And I am not really so much concerned
16 with whether or not the jury presumes her to be innocent,
17 as I am concerned with the prospect or idea that they may
18 presume that she is guilty.
19 I don't need a head start.
20 A. No.
21 Q. So I don't need you to even presume

22 that she is innocent, just so long as you don't presume
23 that she is guilty. If you will let me start out even
24 with them, that's all I need, and that's all I want.

25 Okay? Fair enough?
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1 A. Uh-huh. (Witness nodding head
2 affirmatively.)
3

4 THE COURT: Is that yes, ma'am?

5 THE PROSPECTIVE JUROR: Yes. I'm
6 sorry.

7 THE COURT: Thank you. That is all
8 right. Ms. Halsey is taking all this down.

9 THE PROSPECTIVE JUROR: Oh, darling,
10 I'm sorry. It's hard for you to read my mind, isn't it?
11

12 BY MR. DOUGLAS D. MULDER:

13 Q. The law says that the indictment is no
14 evidence of guilt, that it is simply the pleading and
15 paper by which she is brought into Court. It advises her
16 of the charges against her so that she can prepare her

17 defense, and informs you, as a juror, of what the State
18 has charged and what they must prove.

19 Like I said before, the law says that
20 whoever does the accusing, has to do the proving. That
21 makes sense, doesn't it?

22 A. Yes.

23 Q. Would you do your dead-level best to
24 be absolutely fair to both sides in this case?

25 A. Oh, yes. I didn't even know about
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1 this case until I was called up. I didn't even know why
2 I was called up for jury duty.

3 Q. Well, that is the frame of mind that
4 we really prefer, both sides. Ms. Wallace, thank you
5 very much for your time and your attention.

6
7 THE COURT: Ma'am, in your
8 questionnaire you state that although you don't believe
9 in the death penalty, you could assess it in the proper
10 set of circumstances.

11 You also stated that you have a moral,
12 religious, or personal beliefs that would prevent you
13 from sitting in judgment of another human being. Is that
14 correct?

15 THE PROSPECTIVE JUROR: That's
16 correct.

17 THE COURT: Now, just because you are
18 opposed to these things or have these beliefs does not

19 disqualify you as a juror. What I want to know is this:
20 Can you set those beliefs -- if you are chosen to be a
21 juror in this case?

22 THE PROSPECTIVE JUROR: Well, first of
23 all, I have to tell the truth.

24 THE COURT: Well, let me finish this
25 first and then we will let you. If you are chosen as a
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1 juror in this case, can you set those beliefs aside?

2 THE PROSPECTIVE JUROR: No.

3 THE COURT: Let me finish the
4 question: And follow the law as I give it to you, and
5 answer, and make findings, dependent on the law and the
6 evidence as you hear it, and if you find the defendant
7 guilty, if you think the State has proven the defendant

8 guilty, you will find her guilty. If you think they have
9 not proven her guilty, you will find her not guilty.

10 And if you find her guilty, can you
11 set those beliefs aside and answer those questions
12 honestly, even though your honest answers may result in
13 her execution?

14 THE PROSPECTIVE JUROR: Yes, I have to

15 tell the truth, but y'all have put me in a cage.
16 THE COURT: No, ma'am. Nobody is
17 going to put you in a cage. I just need to know: Can
18 you set those reservations you have aside, and follow the
19 law?
20 THE PROSPECTIVE JUROR: I will have to
21 tell the truth.
22 THE COURT: Even though by following
23 it, it may result in her execution. Can you do that?
24 THE PROSPECTIVE JUROR: Well, if it's
25 a matter of having to tell the truth, yes, I would have
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1 to do that.
2 THE COURT: Can you do it?
3 THE PROSPECTIVE JUROR: I don't know.
4 THE COURT: Well, we have to have an
5 answer of either you can do it or you cannot.
6 THE PROSPECTIVE JUROR: Well, maybe
7 I'm not understanding.
8 THE COURT: All right. Could you set
9 your beliefs aside, and follow the law as I give it to
10 you even though it might result in her execution?
11 THE PROSPECTIVE JUROR: I don't know
12 those things. You are asking me things I don't know.

13 MR. DOUGLAS MULDER: Judge, if I
14 could, excuse me, I think the Court is going a little too
15 far.
16 THE PROSPECTIVE JUROR: Maybe I am
17 misunderstanding you.
18 THE COURT: Well, here is what I want
19 to know: Can you set those beliefs aside and follow the
20 law?
21 THE PROSPECTIVE JUROR: Maybe I am
22 misunderstanding.
23 MR. DOUGLAS MULDER: I think the
24 question is: Can she answer the special issues
25 truthfully?
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1 THE COURT: That is what I asked her.
2 MR. TOBY L. SHOOK: The question is:
3 If she can overcome her conviction that she is against
4 the death penalty?
5 THE COURT: That is what I am asking
6 her. If you can overcome your conviction, answer those
7 truthfully, even though a truthful answer may result in

8 her execution? Can you do that?
9 THE PROSPECTIVE JUROR: I don't know.
10 You are asking me something I can't answer.
11 MR. RICHARD C. MOSTY: Your Honor, I
12 don't think -- what she said is, that in spite of her
13 convictions, she will stand true and honest and answer
14 them honestly based on the evidence.
15 THE COURT: Gentlemen, I understand
16 what she is saying. Can you do it? Can you answer them
17 honestly?

18 THE PROSPECTIVE JUROR: I will have to
19 answer honestly.
20 THE COURT: That is all I wanted to
21 know.
22 THE PROSPECTIVE JUROR: That is part
23 of my conviction.
24 THE COURT: Even though it might
25 result in her execution?
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1 MR. DOUGLAS MULDER: Well, she has
2 nothing to do once she has answers the questions
3 honestly, that is it.
4 MR. TOBY L. SHOOK: Judge, she has
5 clearly said she would not overcome it.
6 THE COURT: Just a minute. I think
7 she said --
8 THE PROSPECTIVE JUROR: I could never
9 overcome my convictions, dear. I didn't say I wouldn't
10 answer honestly.
11 THE COURT: You would answer it
12 honestly, but --
13 MS. SHERRI WALLACE: Judge, the juror
14 does not have to be put in this position. She is having
15 to -- she is between -- I mean, the way the defense wants
16 the question worded, she is having to choose between, in
17 their words, lying or violating her opposition to the
18 death penalty.
19 THE COURT: Thank you. I understand
20 what you are saying. All right.
21 MS. WALLACE: And that is not a fair
22 question for this juror.
23 THE COURT: Thank you very much. I
24 appreciate that. But you could answer all of the
25 questions honestly.
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1 THE PROSPECTIVE JUROR: Honestly.
2 THE COURT: Depending on the law and
3 the evidence.
4 THE PROSPECTIVE JUROR: No, I could
5 never waive my convictions.
6 THE COURT: Even though you couldn't
7 waive your convictions, you would still answer those
8 questions honestly?
9 THE PROSPECTIVE JUROR: That's part of
10 my convictions.
11 THE COURT: All right. Thank you very
12 much. All right.
13 I hold the juror qualified. Does
14 either side want to submit her or not?
15 MR. TOBY L. SHOOK: Judge, we will
16 submit her under 35.16(b)(1). In that she has clearly
17 told me she has had a deeply-held belief since the '60s
18 that she is opposed to the death penalty.
19 She has told me that it's not a
20 question of what we prove to her, it's a question of her
21 being unable, in this type of case, to answer questions
22 in a way that would result in the execution.
23 THE COURT: Well, I'm overruling that.
24 I think she has stated she can overcome those beliefs and
25 answer the questions honestly.
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1 So, does either side want to -- Can
2 you step outside briefly, please. Don't go away.
3 MR. TOBY L. SHOOK: Judge, we would
4 also ask the juror to be excused because of what she has
5 told us about her health under 35.16(5).
6 She is in bad health right now. She
7 doesn't know when she could serve and when she couldn't
8 serve.

9 THE COURT: Well, she looks all right,
10 and she came down here today. So nothing from the doctor
11 has been seen.
12 THE PROSPECTIVE JUROR: I have all of
13 these papers, but nobody has asked to look at them.

14 MR. RICHARD C. MOSTY: Your Honor,
15 that is what alternates are for anyway.
16 THE COURT: Well, I understand all
17 that, Mr. Mosty. We intend to get to alternates in this
18 case.
19 MR. DOUGLAS MULDER: Thank you for
20 pointing that out.

21 THE COURT: We do appreciate that.

22 MR. RICHARD MOSTY: Sure.

23

24 (Whereupon, the prospective

25 juror was excused from the

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1 room, and the following

2 proceedings were held,

3 outside of his presence

4 as follows:)

5

6 THE COURT: What says the State?

7 MR. TOBY SHOOK: The State exercises a

8 peremptory challenge.

9 THE COURT: Would the defense have

10 accepted the juror?

11 MR. RICHARD C. MOSTY: Yes, sir.

12 THE COURT: All right. Thank you.

13 Bring her back in.

14

15 (Whereupon, the prospective

16 juror returned to the

17 room and the proceedings

18 were resumed as follows:)

19

20 THE COURT: Ma'am, we appreciate your

21 time and attendance here, but your services will no

22 longer be required. You are being excused from further

23 jury service.

24 THE PROSPECTIVE JUROR: Thank you.

25 THE COURT: Hope everything goes well

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1 with you.

2 THE PROSPECTIVE JUROR: Thank you.

3 THE COURT: Next juror. Your next --

4 bring them in. All right.

5 You are Mr. Ayala?

6 THE PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: All right. This is juror

8 number 27 on our list, number 80 on the overall list.

9 Henry Ayala, A-Y-A-L-A. Is that correct, sir?

10 THE PROSPECTIVE JUROR: That is

11 correct.
12 THE COURT: Can you raise your right
13 hand, sir?
14 Do you solemnly swear or affirm you
15 will true answers give to all the questions propounded to
16 you concerning your qualifications as a juror, so help
17 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: All right. Sir, the State
4 of Texas in this case is represented by Mr. Toby Shook
5 and Sherri Wallace.
6 The defendant is Mrs. Darlie Routier
7 sitting there in the pink dress. She is represented by
8 Mr. Doug Mulder, Mr. Richard Mosty, and Mr. Preston
9 Douglass.
10 And so you are going to be questioned
11 first by the State, then by the defense. And please give
12 your answers loudly, and say yes or no. Don't nod or

13 anything, because Ms. Halsey has to take all of this
14 down.
15 THE PROSPECTIVE JUROR: Okay.

16 THE COURT: So, Ms. Wallace.
17 MS. SHERRI WALLACE: Thank you, Your
18 Honor. May it please the Court?
19
20 Whereupon,
21
22 HENRY S. AYALA,
23
24 was called as a prospective juror, for the purpose of
25 voir dire, having been first duly sworn by the Court to
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1 speak the truth, the whole truth, and nothing but the
2 true, testified in open court, as follows:

3

4 VOIR DIRE EXAMINATION

5

6 BY MS. SHERRI WALLACE:

7 Q. Again, my name is Sherri Wallace, and

8 I am an Assistant District Attorney, and I am going to be

9 asking you a couple of questions. It's not a couple, but

10 some questions about your questionnaire. And talk to you

11 a little bit about your feelings about the death penalty

12 and what we're doing down here, and some general

13 principles of law.

14 If you have got any questions, let me

15 know. Because it is my job to explain everything well,

16 and if I am not explaining it well enough, I need to

17 rephrase my questions. Okay?

18 A. Okay.

19 Q. Let me first start and ask you, Mr.

20 Ayala: Do you know either of the local counsel, Preston

21 Douglass or Richard Mosty?

22 A. Mr. Mosty.

23 Q. Okay. How do you know him?

24 A. Well, let's see, from back in high

25 school.

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1 Q. Okay. Y'all went to high school

2 together?

3 A. Yes.

4 Q. How close were you?

5 A. Acquaintances.

6 Q. All right. Have you kept regular

7 contact with him?

8 A. Have not.

9 Q. Okay. Anything about going to high

10 school with Mr. Mosty that would influence you in any way

11 in this case?

12 A. Not to my knowledge.

13 Q. What do you think of him?

14 A. Just another attorney.

15 Q. Okay. And you don't know any of the

16 folks from Dallas or the defendant. Right?

17 A. No, do not.

18 Q. All right. In here I noticed that --

19 in your questionnaire I noticed that you used to be a

20 police officer?

21 A. Yes, ma'am.

22 Q. Okay. I know they get -- police
23 officers get paid horribly. I was wondering why you left
24 the police force?
25 A. The chief of police and I didn't have
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1 an eye-to-eye agreement on everything.
2 Q. Okay. Can you tell me a little bit
3 about that or what happened?
4 A. Well, they just didn't like the way I
5 was working, I guess.
6 Q. Okay. How long were you a police
7 officer?
8 A. Five years.
9 Q. And how long have you been away from
10 law enforcement?
11 A. About 20 years.
12 Q. So it was a long time ago?
13 A. Yes.
14 Q. Okay. Mr. Ayala, one of the
15 principles of law that would apply in this case is that
16 all of the witnesses in the case must start out equally.
17 In other words, what I need to know
18 from you, is there something in your past, any kind of
19 disagreements with the police chief that would influence
20 you?
21 A. I wouldn't think there is.
22 Q. Okay. Nothing about that that would
23 bother you?
24 A. No.

25 Q. Okay. There's a couple of things that
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1 I want to let you know up front. One: It is our goal to
2 get a guilty verdict in this case, and an execution of
3 that woman down there.
4 Up front, I want to tell you, I think
5 we have the type of case and the quality of evidence to
6 do that. Would you have any problem in serving on a jury
7 and doing that?
8 A. Nope, I don't believe so.
9 Q. Okay. Additionally, we want 12 people
10 who end up in the jury box that can set their personal
11 opinions or, excuse me, their -- well, I see here you
12 have heard some pretrial publicity. You have heard about
13 the case a little bit?
14 A. It is sad.

15 Q. And what is very important is that a
16 juror, whatever they have heard, sets that aside and

17 waits until we get to the courtroom to present the
18 evidence and makes us prove our case beyond a reasonable
19 doubt in the courtroom.

20 You could hold us to that burden,
21 couldn't you?

22 A. Yes, I can.

23 Q. Okay. To sit as a juror you cannot
24 have formed an opinion. And you don't strike me as the
25 kind of man who just forms an opinion just from stuff --
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1 hearsay and stuff like that. You look like you might
2 take your time and carefully consider your decisions; is
3 that correct?

4 A. Well, at least I hope to be that type
5 of person.

6 Q. Okay. Well, that's all we're asking
7 for you to do here. How this trial will work is it's two
8 phases. The first phase is the guilt/innocence phase,
9 and we refer to that a little bit.

10 Now, before you, in front you, there
11 is a copy of an indictment. And that typewritten part,
12 that is what the defendant is charged with. If you could
13 just read that to yourself, and let me know when you are
14 finished.

15 A. Okay.

16 Q. Okay. That is what we must prove to
17 the jury beyond a reasonable doubt, and there are a
18 couple ways that we could bring that. There is no amount
19 of evidence, there is no number of witnesses that is
20 required. We're required to prove that indictment beyond
21 a reasonable doubt. If we don't, you find the defendant
22 not guilty. If we do, you find the defendant guilty.

23 Could you do that?

24 A. I believe so.

25 Q. All right. We may prove that
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1 indictment through direct or indirect evidence. Direct
2 evidence is an eyewitness. Now, I'm sure if you thought
3 about it you could see that many murder cases we don't
4 have an eyewitness, because the eyewitness is dead. And

5 the defendant has picked the time and the place to commit

6 the crime.

7 And generally, when you are going to
8 commit a crime, a serious felony, you don't do it at the
9 Wal-Mart Superstore parking lot on Saturday afternoon
10 with everybody around. You generally pick a time when no
11 one is watching.

12 A. Right.

13 Q. So, as you know, we can't call the
14 defendant to the stand. The State is not entitled to do
15 that. And you can't use that against the defendant if
16 she chooses not to testify. You understand that?

17 A. Yes, ma'am.

18 Q. So, what we look to is what is called
19 indirect or circumstantial evidence. That is things
20 like: DNA, fingerprints, fibers, maybe statements by the
21 defendant that don't comport with the crime scene, things
22 such as that.

23 Some people prefer circumstantial
24 evidence because it being scientific, there is no legal
25 name, if you will. Okay?

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1 A. Yes, ma'am.

2 Q. Could you convict a defendant for
3 capital murder on circumstantial or indirect evidence
4 alone?

5 A. I really don't know.

6 Q. Okay. We have the burden of proof of
7 beyond a reasonable doubt. And you can see, we talked
8 about you can see in a murder case where it would hardly
9 be fair to the victim or to society if we said, "Okay,

10 Mr. or Ms. Defendant, if you killed the witness, then you
11 go free."

12 A. Right.

13 Q. That doesn't really make any sense.

14 A. No, it does not.

15 Q. So, what the law is is that we must

16 prove the case to you beyond a reasonable doubt. And
17 that is our burden no matter if there is no witnesses or
18 a hundred witnesses. Okay?

19 Could you hold us to our burden, and
20 if we meet our burden, prove circumstantial evidence,

21 would you find the defendant guilty?

22 A. Probably, yes, ma'am.

23 Q. Okay. You say probably. Can you tell

24 me about that?

25 A. Well, like I said, you know, the
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1 evidence is going to have -- you are going to have to
2 prove that within --

3 Q. Absolutely.

4 A. -- absolute doubt.

5 Q. Absolutely. Beyond a reasonable
6 doubt.

7 A. Yes.

8 Q. Okay.

9 A. Yes, ma'am.

10 Q. If the defendant is found not guilty,

11 we all go home. If she is found guilty, we go to the

12 second phase of the trial, which is the punishment phase.

13 Let me ask you, Mr. Ayala, when you were a police

14 officer, did you have to testify in court some?

15 A. Yes, I did.

16 Q. Okay. So this is kind of old hat for

17 you, I guess?

18 A. It's been a while, but, yes.

19 Q. Okay. Well, death penalties are a

20 little bit different, because, you know in a normal case,

21 you have two phases: You have the guilt/innocence phase;

22 then you have the punishment phase. In the punishment

23 phase the jury, when they decide the verdict in the

24 punishment phase, they just say, "We want the defendant

25 to serve 40 years or whatever," and they put the answer

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1 down. But a death penalty is different because the jury

2 doesn't decide life or death. They make that decision,

3 but they do it by answering questions. And based on the

4 answers to those two questions, the Judge has no option

5 but to take those answers and compute it.

6 Here is how it goes: This first

7 question, special issue number 1: "Do you find from the

8 evidence, beyond a reasonable doubt, that there is a

9 probability that the defendant would commit criminal acts

10 of violence that would constitute a continuing threat to

11 society?" In order for the defendant to die, that must

12 be answered "yes." The second question, which we will

13 get to in a minute, must be answered "no." But I want to

14 talk to you a little bit about the first question.

15 We have the burden of proof in this

16 first question as well that we have to prove to you
17 beyond a reasonable doubt that there is a probability
18 that the defendant would commit criminal acts of
19 violence. What does the word probability, what does that
20 mean to you?

21 A. That more than likely they will commit
22 this criminal act again.

23 Q. Okay. And criminal acts of violence,
24 what does that bring to mind?

25 A. Well, somewhere where you lose your
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1 temper real bad and start fights for no reason at all,
2 you know.

3 Q. Okay. Any sort of violence?

4 A. Any sort of violence.

5 Q. All right. And, society: Let me ask

6 you Mr. Ayala, in your mind, would that include being a
7 continuing threat -- would that include -- would society
8 include people in the prison, such as prison guards,

9 maybe psychiatrists or maybe sociologists that are in
10 there visiting relatives or visiting other inmates,
11 people in there doing the cooking, maintenance work, that
12 sort of thing? Would society include everyone?

13 A. Yes, ma'am.

14 Q. In the event that question is answered

15 "yes," would you find more likely than not that the
16 defendant would be a continuing threat?

17

18 THE COURT: Gentlemen, just a minute.

19 Please keep the conversation down, it affects our
20 recording devices, you are talking too loud, please. It
21 is bothering me listening to this.

22 MR. DOUGLAS MULDER: What?

23 THE COURT: When you are talking over

24 there, it's bothering me listening to this. I want to
25 hear this.

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1 BY MS. SHERRI WALLACE:

2 Q. When -- if that question is answered

3 "yes," you then move to the second special issue, the
4 second question. And if you would read that along with
5 me: "Taking into consideration all of the evidence,
6 including the circumstances of the offense, the
7 defendant's character and background, and the personal
8 moral culpability of the defendant, is there a sufficient

9 mitigating circumstance or circumstances to warrant that
10 a sentence of life imprisonment rather than a death
11 sentence be imposed?"

12 Now, Mr. Ayala, in your questionnaire

13 you wrote you believe that if a person is found guilty of
14 capital murder, they should have to pay the price?

15 A. Yes, ma'am.

16 Q. And you went on to say that you

17 believe the death penalty is appropriate in all capital
18 murder cases.

19 One of the things, I need to back up a

20 little bit, one of the things I didn't really talk with

21 you about on that first question; that first question,

22 just like guilty or not guilty, that first question can

23 not be answered automatically.

24 The law requires you to take a look at

25 the evidence again, just to kind of reexamine what you

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1 have heard.

2 In the punishment phase, you may get

3 to hear more evidence. You may not. But what you cannot

4 do, is you cannot say, "I found the defendant guilty of

5 capital murder."

6 Therefore, automatically, without

7 thinking, "Yes, she is probably going to be a continuing

8 threat to society." And really there is a reason for

9 that. You don't have any facts, you do not --

10

11 MR. RICHARD C. MOSTY: Your Honor, I'm

12 going to object to that statement. They do have facts,

13 because they have got the facts of the crime itself.

14 MS. SHERRI WALLACE: Your Honor, I'm

15 talking about right now he has no facts.

16 THE COURT: You have not heard the

17 evidence yet, that is what you are saying.

18 THE PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: All right. Thank you.

20 Continue on.

21

22 BY MS. SHERRI WALLACE:

23 Q. So, it's kind of hard to ask these

24 questions of you without you hearing any of the evidence

25 at this point, and we recognize that. But we must talk

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1 about this, because this is the only time we will get to

2 talk to you about it.

3 If you could kind of follow along on
4 this example: Let's say that I go into a bank to rob it,
5 and I decide I don't want any witnesses. So I kill
6 everybody in there. There is five or six people in
7 there, including a woman that came to get some money and
8 she has got her baby with her and I kill them.
9 So, I have committed a capital murder,
10 actually, several capital murders, but anyway I am a
11 capital murderer. I leave the bank, and I don't hear a
12 siren coming, but before I killed the teller, she pressed
13 an emergency police notification button. Okay?
14 So they were coming to get me while I
15 was busy killing all these people. I step out of the

16 bank and step off the sidewalk, and police car comes
17 around and hits me, and renders me a quadriplegic.

18 Now, you are at my trial, and you --
19 yeah, you have found me guilty of capital murder, but
20 there is some other things to look at. It's not an

21 automatic answer whether or not I will be a continuing
22 threat to society.

23 You may examine the evidence and say,
24 "She is mean as a snake, and I don't care if she is a
25 quadriplegic, I am going to answer that question 'yes.'"
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1 But you may look at that circumstance and say, "I don't
2 think she is going to be a continuing threat to society."
3 Do you follow what I am saying?

4 A. Yes, ma'am.

5 Q. Could you wait to hear the evidence
6 before you decide question number 1?

7 A. I believe so.

8 Q. All right. Moving on to the special
9 issue number 2, it asks you: If there is sufficient --
10 bottom line, what that question says, there is no burden
11 of proof, it's a safety net.

12 Just if you decide, nobody else, not
13 the other 11 people you are with on the jury, not the
14 lawyers, not the Judge, no one else, if you, in your
15 heart, think after you have heard all of the evidence,
16 the right thing to do is to see that this defendant gets
17 life, then you just answer that question "yes."

18 Now, you may hear a million capital

19 murder cases. And you may never hear one where you think

20 that there is sufficient, in your mind, mitigating
21 evidence. But, to be a juror in this case, you have to
22 wait to hear the evidence before you make up your mind on
23 that issue. Could you do that?

24 A. I believe so.

25 Q. Okay. Is your mind open to answering
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1 that question in a way that would result in a life
2 sentence? In other words, if you heard the evidence, you
3 would know it when you saw it?

4 A. I think so, yes, ma'am.

5 Q. Given your background, Mr. Ayala, some
6 of the stuff I am going to go over with you probably is
7 old hat. But just to let me feel better, so if you will
8 bear with me, I appreciate it.

9 A. Not a problem.

10 Q. Okay. You know the defendant is
11 presumed innocent.

12 A. Yes, ma'am.

13 Q. That means if you vote right now, you
14 have got to find her not guilty. That means that we have
15 the burden of proof. That is just a different way of
16 saying that. Do you understand that?

17 A. Yes, ma'am.

18 Q. You could follow that law?

19 A. Yes, ma'am.

20 Q. You know that the defendant has an
21 absolute right not to testify?

22 A. I do.

23 Q. And that can't be used against her?

24 A. Correct.

25 Q. All right. And you would not do that,
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1 would you?

2 A. No, ma'am.

3 Q. Additionally, we talked about this
4 earlier, that all witnesses must be started on the same
5 plane. Sometimes a defense attorney will say, "Would you
6 believe a police officer simply because he is a police
7 officer?"

8 And I am not saying these guys would,
9 but really it's a trick question, because you can't
10 believe a witness because of their job, or disbelieve a
11 witness because of their job. You have to wait and hear
12 from them, and you decide if they are shooting straight

13 with you. Could you do that?

14 A. Yes, ma'am.

15 Q. Additionally, parole may not be

16 considered in this case in any way. The Judge will

17 instruct you that is the law. And your choices are just

18 to answer those questions "no" or "yes," knowing that

19 they will result in life or death. But parole is not an

20 issue that you may consider.

21 A. I know that.

22 Q. Could you follow that law?

23 A. I understand that, yes, ma'am.

24 Q. Okay. Mr. Ayala, you said that you

25 believe the death penalty was appropriate in all capital

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1 cases. Can you tell me a little bit about your feelings

2 about why you are in favor of the death penalty?

3 A. Well, I really don't know for sure

4 why, other than, you know, it's -- if you take a life,

5 you ought to be willing to give up your life.

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

7 A. Yes, ma'am.

8 Q. Are there any types of cases that come

9 to mind that you think should be capital murder?

10 A. Well, no, I really can't right

11 offhand.

12 Q. Okay. Let me tell you what they are

13 here in Texas and just see if you kind of agree with the

14 list or if there is anything you would add: The killing

15 of a police officer in the line of duty, or a fireman in

16 the line of duty; killing of a prison guard in the line

17 of duty; murder of more than one person; murder in the

18 course of another felony, like a robbery or a kidnapping

19 or a rape, something like that; or, murder for hire, or

20 murder of a child under the age of six. Do you agree

21 with all those?

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

23 Q. Is there anything else that you would

24 add to that list?

25 A. Well, no, I don't believe so.

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1 Q. I want to ask you a little bit about,
2 while we are still talking about the death penalty,
3 obviously, in this case, the defendant is a woman. Would
4 you have any problem at all returning a conviction and a
5 death sentence for a woman?

6 A. No, I don't believe so.

7 Q. So you could impose the death penalty
8 equally to a man or a woman?

9 A. Yes, ma'am.

10 Q. When you worked as police officer, I
11 guess you were a police officer and a deputy sheriff?

12 A. Yes, ma'am.

13 Q. Okay. How long were you on the
14 Kerrville Police Department?

15 A. Yes, ma'am.

16 Q. That was for five years?

17 A. Yes, between both of them, the
18 sheriff's office and the police department.

19 Q. Okay. Where did you start out?

20 A. At the P.D.

21 Q. Okay. And then you came over to
22 the --

23 A. Sheriff's office.

24 Q. Sheriff's office, okay.

25 A. Then I worked my way back to P.D.
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1 Q. And then you went back to P.D.?

2 A. Yes, ma'am.

3 Q. All right. Did you ever work on any
4 murder cases or anything such as that? Ever called to
5 the scene of a murder case?

6 A. Do you want me to tell you a story?

7 Q. No, I don't.

8 A. I really can't remember.

9 Q. All right.

10 A. Well, I take it back. When I was on

11 the sheriff's department, yes, we did have a murder case.

12 Judge Kennedy had been murdered up in

13 Ingram at that time, so the investigator was working a
14 murder case.

15 Q. What was your role in that?

16 A. Very little, I mean, I didn't have

17 hardly anything to do with it. I just knew that the case
18 was going on, and, you know.

19 Q. Yeah.

20 A. Just knew the Judge and what have you,
21 the family.
22 Q. Okay. When you were an officer, do
23 you remember roughly how often you testified?
24 A. I would say probably about twice a
25 month.
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1 Q. So you have been on the stand before,
2 huh?
3 A. Yes, ma'am.
4 Q. Okay.
5
6 MS. SHERRI WALLACE: Just a second,
7 Judge.
8

9 BY MS. SHERRI WALLACE:
10 Q. As a police officer, Mr. Ayala, were
11 you ever assaulted by anyone?
12 A. No, threatened several times, but --
13 Q. But they never got you?
14 A. No.
15 Q. Mr. Ayala, we've already touched on
16 this but, obviously, we're from out of town, and you said
17 that you know Mr. Mosty. And you also told me that that
18 wouldn't affect your deliberations; is that correct?
19 A. That's correct.
20 Q. And there is nothing there more than
21 you went to high school and were acquainted with him; is
22 that right?
23 A. That's correct.
24 Q. Okay. Was he ever the prosecutor or
25 the defense attorney on any of your cases?
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1 A. No.
2 Q. Do you have any questions for me?
3 A. No, ma'am.
4 Q. I have been doing most of the question
5 asking. Nothing?
6 A. Nothing at all.
7 Q. Thank you very much.
8 A. Thank you
9
10 THE COURT: Thank you, Ms. Wallace.
11 Mr. Douglass.
12 MR. PRESTON DOUGLASS: Thank you,
13 Judge.

14

15 VOIR DIRE EXAMINATION

16

17 BY MR. PRESTON DOUGLASS:

18 Q. All right. Mr. Ayala, my name is

19 Preston Douglass, the Judge introduced me briefly. I

20 have had some trouble with my voice the last couple of

21 days. This is the best it's been in about a week, but

22 it's still not quite up to par. So, if you get to where

23 you can't understand what I am saying, or I am not making

24 any sense, which is probably more likely, stop me, and

25 make me repeat myself, because I want to make sure I

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1 don't do what I am pretty good at, and that is confuse

2 you. I don't want to confuse anybody.

3 I am interested in a few things just

4 at the outset, and that is: When you were with the

5 sheriff's department, who was the sheriff at that time?

6 A. Schreiber.

7 Q. Okay. And, after that or before that,

8 you were with the P.D. and then went back to the P.D. as

9 I understand it?

10 A. Yes, sir.

11 Q. Who was the police chief during that

12 time?

13 A. Ron Cooper.

14 Q. All right. Do you know anybody that

15 is still with the P.D. that was there when you were

16 there?

17 A. Yes, sir.

18 Q. Who would still -- who would that be?

19 A. Scotty Evans, Ken Crosthwait.

20 Q. Cortez?

21 A. Cortez.

22 Q. Those guys were all together at the

23 same time.

24 A. Harvey.

25 Q. Were you there when Rosie was there?

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1 A. Yes, sir.

2 Q. Okay. Did the police chief, did he

3 leave soon after you left P.D.?

4 A. Yes, he did.

5 Q. And is that the reason you went back
6 to the P.D. later?

7 A. No, no, he left after.

8 Q. Okay. So, he was the police chief,
9 and then you came over and worked at the sheriff's
10 department and went back again?

11 A. Right.

12 Q. All right. Was there any reason in
13 particular you left the sheriff's department?

14 A. I couldn't handle working 24 hours a
15 day, 7 days a week.

16 Q. Kerr County Sheriff's Department is
17 pretty famous for not having enough people; isn't that
18 right?

19 A. Yes, sir.

20 Q. And I can tell you, even though that
21 is a big building, that is carried on through today.

22 A. It has been that way for a long time.

23 Q. That's right, that's right. When you
24 were with the sheriff's department, did you have any
25 particular duties that you did at that job?

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1 A. No.

2 Q. Patrol?

3 A. Patrol, yeah.

4 Q. Were you ever a jailer?

5 A. No. Well, yes, because that was part
6 of -- you did everything. You booked prisoners in,
7 escorted them to the jail, served warrants, did patrol,
8 it was just --

9 Q. Now, when you were with the P.D., did
10 you do pretty much the same type of work?

11 A. Yes, sir.

12 Q. Was it all patrol at the P.D.?

13 A. Yes, most of it was, yes, sir.

14 Q. Okay. Did you go to academy in Uvalde
15 or where did you?

16 A. San Antonio.

17 Q. Okay. And once you went through
18 academy, I'm assuming that when you took classes there,
19 you had classes in different types of investigation
20 techniques?

21 A. Yes, sir.

22 Q. What do you -- if anything sticks out
23 in your mind, what sticks out in your mind from your
24 academy days?

25 A. As far as?
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1 Q. Are there any particular classes or
2 types of investigation or anything you really liked or
3 enjoyed more than other things?
4 A. No, not really.

5 Q. Okay. After you were on the -- at the
6 P.D., or even at the time you were with the sheriff's
7 department, did they ever send you off for any other
8 training courses or classes or further education after
9 you were a peace officer?

10 A. Well, we were always holding some sort
11 of class while, you know, at the P.D.

12 Q. What would those be about?

13 A. Anything from firearm training to, you
14 know, lifting fingerprints.

15 Q. Okay.

16 A. And what have you.

17 Q. So, you appreciate there is a
18 difference between what we call direct evidence and
19 indirect evidence.

20 For instance, if I see someone do
21 something, we call that direct evidence.

22 A. Right.

23 Q. Indirect evidence would be the
24 fingerprints and things of that nature.

25 A. Right.

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1 Q. What is your opinion, or is there an
2 opinion that you have about the different weight between

3 those two kinds of evidence. Is there anything you think
4 or feel about those kinds of evidence? Do you think one
5 is stronger than other one?

6 A. No, not really.

7 Q. Okay. When we pick juries in Texas,

8 there is no form or formula. There have been a lot of
9 lawyers and experts have come along and said, "Well, you
10 know, you need to watch out for people with blue eyes,
11 who wear green shoes, and things like that." But,

12 generally, I don't think much of that is reliable.

13 When it comes down to the final

14 analysis, it comes down to what people like you are
15 willing to say from your heart and from your experience
16 and what you believe honestly about yourself. And we
17 rely on that absolutely 100 percent. We don't have the

18 ability to pick and choose, we have just got to hear what
19 you have to say. And there are a few things that are
20 interesting to me, in particular, about what I have read
21 in your questionnaire.
22 As you know, you saw a room full of

23 people up there at the courthouse, and you know that
24 there is a lot effort being given to find 12 people to
25 sit in that jury box that really and truly are the most
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1 fair and impartial people to give the State their fair
2 day in court, and absolutely to give Darlie Routier her
3 fair shake in this trial.
4 Along those lines, as you might well
5 agree, there are people who have different life

6 experiences which don't disqualify them. It doesn't mean
7 they can't serve. But what it means is they may know

8 some things about different things that other people
9 don't know. And because of what they may know, from
10 their other past life experiences, they themselves

11 sometimes say, you know, "I know something about what is
12 going on, and maybe I am not the right person to be a

13 juror in the case." I can't tell that, only you really
14 know that. And I want to ask you about a couple things.
15 First, with respect to you having been
16 a police officer. There was one question which caught my
17 attention that I want to go over with you. You said
18 there were some quotes, some statements made to you, and
19 you were able to give your opinion as to whether you
20 agree or disagree with the statement. And one of them
21 was that: "Police officers enforce the laws in a
22 professional and fair way." And you indicated that you
23 disagreed with that statement.

24 A. Yes.

25 Q. Can you explain kind of what was your
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1 thought process? What were you thinking about at the
2 time?

3 A. Well, a lot of times, you know, police
4 officers -- you have to understand, a police officer is
5 dealing with quote, unquote criminals day in and day out.
6 Okay? Sometimes they have a tendency to lean on these

7 types of people, more than they would John Henry, you
8 know, just an everyday person walking down the street.

9 Q. Uh-huh. And I am assuming that you
10 feel like that is unfair?

11 A. Well, yeah. It's not always, you
12 know, necessary, is what I am saying.

13 Q. Okay. And, do you also feel like
14 sometimes that is not professional for a person who has

15 gone to school or has been trained to be a police officer
16 to jump to conclusions?

17 A. Most of the time, no.

18 Q. Okay. All right. Do -- also, you
19 understand that some people who work in law enforcement
20 come to conclusions rather rapidly. And they base that
21 supposedly on their experience and that experience may be
22 wrong, that they may have jumped to conclusions that are
23 incorrect. Do you agree with that?

24 A. Yes, I do.

25 Q. Okay. Now, sitting in my chair, as I
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1 sit here right now, normally, the question that concerns
2 a person sitting in my perspective, and obviously, my
3 perspective is very different from that of the State. I
4 used to sit where they sit, but I can tell you right now,
5 I have a different perspective.

6 And, that is, that we want to make
7 sure that everyone sees this thing straight up and down
8 in a neutral and fair fashion, for sure at the beginning.
9 And the question, from my chair, that
10 I have is: After serving as a police officer for a
11 period of time, if you feel that brings any life
12 experience to this trial that you feel starts you off
13 with any leanings one with or the other? If it starts
14 you off with any feelings that you are going to shake one
15 side out of the box, either the defense or the State,

16 with a lead right from the beginning, just because of
17 that prior experience? Do you feel that way?

18 A. No, I don't believe so.

19 Q. I think, while you are very candid in

20 answering it, that there were police officers that you
21 took exception with the way they did things. That you
22 say -- you are telling me that, "I don't feel that way.

23 I feel straight up. I can call it the way I see it." Is
24 that right?

25 A. Yes, sir, right.

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1 Q. Okay. Let me ask you about the
2 questionnaire. When you get this questionnaire,
3 obviously, you get it in a scenario where no one is
4 giving you hypotheticals, no one is giving you things to
5 think about. You are just relying on what you yourself
6 are thinking when you fill this out.

7 A. Correct.

8 Q. And it was pretty clear, and
9 unequivocal, when you filled this out that you were of

10 the opinion at that point, that if a person was convicted
11 of capital murder, that they should pay with their
12 life --

13 A. Yes, sir.

14 Q. -- for that. It's very clear in here,
15 and I want to thank you for being honest. If people
16 aren't honest, we don't have anywhere to go. And where
17 I -- I want to ask you from that standpoint is: Is that,
18 in fact, your honest opinion?
19 If we go through a capital murder

20 trial, and the State puts on evidence; and the State
21 satisfies you beyond a reasonable doubt that a defendant
22 is guilty, no matter what kind of class of crime it is

23 that classifies capital murder; as long as you have found
24 it's capital murder, that a life was taken, and those
25 circumstances are present; and you have resolved that
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1 beyond any reasonable doubt; is it your honest opinion
2 that that person, who is charged with that crime and then
3 is convicted of that crime, should pay with their life?

4 A. Yes, sir.

5 Q. Now, obviously, I think that is an
6 honest answer on your part. Honestly, that caused me
7 concern, and just you and me speaking honestly with each
8 other, with that notion in your mind, that you think that

9 that person should then pay with their life: Do you

10 think that will affect your ability to listen to those
11 next two questions and answer them because you already
12 believe that that person should pay with their life?
13 A. I doubt it.

14 Q. Okay. If I understand right, you are
15 saying it would cause you a problem? Am I right about
16 that?

17 A. No.

18 Q. It would not?

19 A. No, I don't believe it would.

20 Q. When you come to these questions, you

21 know that you don't get to these questions unless someone
22 has been found guilty.

23 A. Uh-huh, (Witness nodding head
24 affirmatively.) has been found guilty.

25 Q. Okay. And when you get there, you
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1 have already made that determination, and I may have
2 confused you with my question. But if I understood you,
3 you said, at that point, before you would consider that
4 question, it's your heartfelt opinion that that person
5 should pay with their life for what they did.

6 A. I'm sorry. Yes, you did confuse me.

7 Yes, that is the way I feel.

8 Q. I mean, you feel like if that person
9 is found guilty before I get to those questions, that
10 person should be executed.

11 A. If he is found guilty, yes.

12 Q. Okay. Now, and on that I am going to
13 try not to confuse you because that was my fault.

14 In that regards, do you agree with me
15 that in your situation it would impair your ability to
16 listen to those questions because that is the way you
17 feel? That it would be -- in order to answer those
18 questions, it would be difficult for you to answer those
19 questions based on the evidence, because you feel like
20 the person should be executed?

21 A. I would say I would have a tendency to
22 lean toward the first special issue there.

23 Q. You would tend to believe that because
24 a person had been convicted of capital murder that they
25 are going to be a future danger?

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1 A. Yes, sir.

2 Q. Okay. And that would roll around in

3 your head. And wouldn't you agree with me, that with all

4 this trouble we're going through, you know, we had 400

5 some-odd people summoned, and 200 people filled out all

6 these things, don't you -- wouldn't you agree with me

7 that in all honesty and fairness to the Court and to

8 yourself, that perhaps you need to have someone that

9 doesn't start out with the same feeling that you do about

10 it?

11 A. Probably, yes, sir.

12 Q. Mr. Ayala, there are very few people

13 that want to come in and just call it straight up, and I

14 can't tell you how much I appreciate you being honest

15 about it.

16 A. Uh-huh. (Witness nodding head

17 affirmatively.)

18 Q. I just want to follow with one other

19 thing: Does that mean that that would impair your

20 ability to be a juror as to those two questions?

21 A. Well, like I said, it would probably

22 make me lean toward the first issue.

23 Q. So before you have heard any evidence,

24 you already start out with a leaning that you would

25 probably find a person convicted of capital murder as a

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1 future danger?

2 A. Yes, sir.

3 Q. Well, let me ask you this: Then,

4 would you believe it would be the responsibility of the

5 defendant to prove to you that that defendant would not

6 be a future danger?

7 A. I would probably have more questions.

8 Q. Okay. Well, let me -- I didn't make

9 my question very clear, and I'm sorry again.

10 What I mean by that is, if you already

11 believing that a defendant convicted of capital murder is

12 going to be a future danger, would that -- would you

13 then, as a juror, say, "I need that defendant to show me

14 that he or she is not going to be a future danger."

15 Would you require that?

16 A. Yes, probably would.

17 Q. And, in that regards, you would
18 require a defendant to bring you proof that he or she
19 would not be a future danger to society?

20 A. Yes.

21 Q. Okay. The special issue can be --

22 this special issue -- this second special issue can be
23 particularly confusing. But if I understand right, I
24 just want to follow up on what we have been talking

25 about, about a feeling about the death penalty.

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1 Let me just paraphrase, and if I

2 paraphrase wrong, I'm sure I will be corrected by the
3 Judge or somebody.

4 This question comes at the very last

5 and says: Do you believe, even though you have found the
6 person guilty, and even though you have found that person
7 is a future danger; let's just follow through the steps
8 for a minute. Before you get to this one, you've agreed
9 with me, you have found someone guilty. You get to this
10 question and let's you say, "Yes, the person would be a
11 future danger to society."

12 So, now you have decided, I have

13 convicted the person of capital murder. I have found the
14 person to be a future danger to society. I am, beyond a
15 reasonable doubt, certain, by a probability, I believe it
16 is very probable, in your words, more likely than not,

17 that that person would be a continuing threat and would
18 commit continuing acts of criminal violence.

19 Would you be able to consider a

20 question that says: Even though you have found the
21 person to be a future danger, there may be a reason not
22 to give this person a death penalty. Would you be able
23 to say, "Well, even though I think they are a future

24 danger, I know they committed capital murder, I still
25 might decide not to give them a life sentence." Would

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1 you agree that would be hard?

2 A. Agree not to give them a life
3 sentence?

4 Q. Agree to give them a life sentence.

5

6 MS. SHERRI WALLACE: Your Honor, I'm

7 going to object the question, would that be hard for you,
8 this is all hard.

9 THE COURT: Sustained.

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

12

13 BY MR. S. PRESTON DOUGLASS:

14 Q. Could you consider evidence of some
15 reason to give someone a life sentence? Could you
16 consider evidence of a reason to give a person a life
17 sentence, if you have already found them a future danger?

18 A. I don't think so.

19 Q. So your mind would be closed to that?

20 A. Probably, yes, sir.

21 Q. If you find someone has committed
22 capital murder, convicted, and is going to be a future
23 danger, you believe a life -- a death sentence is
24 appropriate?

25 A. Yes, sir.

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1 Q. In all circumstances?

2 A. Yes, sir, I believe so.

3 Q. And that would probably be your only
4 decision?

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

7 Q. That's a yes?

8 A. Yes.

9 Q. Let me go on to some other things. In
10 looking through your questionnaire, it's been estimated
11 and I think rightly so, by the State, that the trial
12 could take two or three weeks to try. They believe three
13 weeks at the outside or two weeks as a pretty good
14 estimate. And I noticed from your questionnaire that you
15 have to leave Kerr County frequently with your
16 employment?

17 A. I am truck driver.

18 Q. Okay. Who do you drive trucks for?

19 A. Myself.

20 Q. Are you long-haul?

21 A. No, sir. We run only in the State of
22 Texas.

23 Q. What kind of problem would that cause
24 for you?

25 A. That is my livelihood.

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1 Q. Simply put, you are not going to be
2 making any money.
3 A. I don't drive, wheels don't turn, I
4 don't make any money, my company goes under.
5 Q. Okay. Obviously, you owe money on
6 those trucks?
7 A. Yes, sir.
8 Q. Do you have children?
9 A. Yes, they are all adults.
10 Q. Okay. If you are sitting as a juror,
11 and you know that you are missing your work and it's
12 causing you this hardship, would you be able to continue
13 to listen to the evidence and not be distracted by the
14 fact that you are not able to work?
15 A. Probably not. I would be thinking
16 primarily of where I am going to come up with payments
17 and what-have-you.
18 Q. All right. If I mean -- if I am not
19 able to make any money, I don't know how I'm going to do
20 it.
21 A. Right.
22 Q. Okay. Do you think it would affect
23 your ability to serve as a juror?
24 A. Yes, I do.
25 Q. Let me ask you a few questions
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1 about -- you had stated that you had heard about this
2 case?

3 A. Yes, sir.

4 Q. And it was on radio and television.

5 What television stations do you watch?

6 A. Well --

7 Q. All of them?

8 A. All of them.

9 Q. Okay.

10 A. You know, like I said, I may spend the
11 night in Brady or Houston, a night in San Angelo, and
12 it's just stations out of Waco, out of Dallas.

13 Q. All right. Let me ask you: What have
14 you heard about this case?

15 A. Just that, you know, just -- defendant
16 had -- was accused of killing her two children.

17 Q. Okay. Did you hear anymore facts
18 like, when, what time of day, how they think it happened,
19 the location?

20 A. Not that I recall.

21 Q. You didn't hear anything about what

22 was the suspected murder weapon, anything like that?

23 A. Other than a knife, I mean, you know.

24 Q. And you had heard -- had you heard

25 anything regarding the defendant's side of the story on
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1 this?

2 A. Not that I recall.

3 Q. Okay. Based on --

4 A. You know how the news media is, they

5 only present their side.

6 Q. Right. Based on what you heard, and

7 obviously, you have seen -- you know there has been a lot

8 of effort to move this case to Kerr County. Based on

9 what you have heard, have you derived an opinion about

10 the guilt or innocence of Darlie Routier?

11 A. I have not.

12 Q. You have a completely open mind about

13 that?

14 A. Yes, sir.

15 Q. Let me go into one other issue with

16 you briefly. As a police officer, I am assuming you have

17 testified at Grand Juries before?

18 A. I have not.

19 Q. Never before?

20 A. Never before, was not lucky enough.

21 Q. But you understand, obviously, that in

22 order for us all to be sitting here, there has to be a

23 Grand Jury convened. And the people in Dallas County who

24 are impaneled and selected as Grand Jurors had to make a

25 decision whether to issue a true bill of indictment?

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1 A. Correct.

2 Q. Okay. There are two groups of people.

3 There are the people who believe that an indictment is

4 only a piece of paper and it is absolutely no evidence of
5 guilt.

6 There's also other people, on the

7 other side of the spectrum, that probably walked into the

8 Kerr County Courthouse last week, and they saw all these

9 television trucks and they saw all these lawyers and they

10 saw a nice Judge and all this work going on, and they

11 thought to themselves, "My God, she must have done

12 something." Those are the
13 where-there-is-smoke-there's-fire people. And, I guess,
14 I would ask you: Where do you find yourself in that
15 regards?

16 A. Well, I'm not one of those
17 where-there-is-smoke-there-is-fire people.

18 Q. Okay. Judge Tolle, as he said
19 correctly, obviously, stated, that there is some 25,000
20 indictments issued in Dallas County in a year, and that
21 many of those people don't even know they are being
22 investigated. So would you agree with me that an
23 indictment is proof of nothing?

24 A. Right.

25 Q. Okay. I'm going to be done, but I
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1 just want to ask you one more question, follow up.
2 Because they are sending me notes and I have got to ask
3 them.

4 Essentially, do you believe because of
5 the financial hardship that jury service would put on

6 you, that it would distract you from your ability to
7 listen to the evidence and deliberate fairly?

8 A. I think it would.

9 Q. Thank you.

10

11 MR. S. PRESTON DOUGLASS, JR: I will
12 pass the juror.

13 THE COURT: Now, you have said one
14 thing to the State, and one thing to the defense.

15 Could you put aside any bias or
16 prejudices you may have and follow the law in this case?

17 THE PROSPECTIVE JUROR: In regards to?

18 THE COURT: In regards to the whole
19 case. Or do you feel you would be an unfair juror to
20 either side?

21 THE PROSPECTIVE JUROR: I think I
22 would probably be an unfair juror.

23 THE COURT: All right. Thank you.

24 Either side submit the juror?

25 MS. SHERRI WALLACE: We will accept
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1 the juror.

2 THE COURT: All right. The State
3 accepts the juror. Does the defense submit the juror?

4 MR. S. PRESTON DOUGLASS, JR: We would
5 submit for cause, Your Honor.
6 THE COURT: All right. Thank you.
7 Motion for cause is granted.
8 All right. Thank you very much.
9 MR. S. PRESTON DOUGLASS, JR: Thank
10 you, Mr. Ayala.
11 MR. RICHARD MOSTY: Thank you, Henry.
12 THE COURT: All right. Next juror,
13 Ms. Huth.
14 All right. This is Ms. Donna Huth,
15 H-U-T-H, number 82 on the list, 28 on our list.
16 If you will raise your right hand,
17 please, ma'am.
18 Do you solemnly swear or affirm you
19 will true answers make to all the questions propounded to
20 you concerning your qualifications as a juror, so help
21 you God?
22
23 THE PROSPECTIVE JUROR: I do.
24
25
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1 (Whereupon, the prospective
2 juror was duly sworn by the
3 Court to true answers make

4 to the questions propounded,
5 concerning qualifications, after
6 which time, the proceedings were
7 resumed as follows:)
8

9 THE COURT: Ms. Huth, the State of
10 Texas is represented by Mr. Toby Shook and Ms. Sherri
11 Wallace, from the Dallas District Attorney's Office.

12 Mrs. Darlie Routier in the pink dress
13 is the defendant. She is represented by Mr. Preston
14 Douglass, Mr. Richard Mosty, and Mr. Doug Mulder.
15 Mr. Shook will begin by asking you
16 some questions.

17 MR. TOBY SHOOK: Thank you, Judge.

18

19 Whereupon,

20

21 DONNA G. HUTH,

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 true, testified in open court, as follows:

2

3 VOIR DIRE EXAMINATION

4

5 BY MR. TOBY L. SHOOK:

6 Q. Ms. Huth, correct?

7 A. Yes.

8 Q. My name is Toby Shook. I am one of
9 the prosecutors on the case and I will be asking you
10 questions on behalf of the State of Texas. I will go

11 over just a couple of things here in your questionnaire,
12 and we'll talk about the death penalty and the law, and
13 some of the rules and laws that apply to this case and
14 all criminal cases. Okay?

15 A. Okay.

16 Q. We appreciate you taking the time to
17 fill out this questionnaire. I know it took a while, but
18 it's been quite helpful. On the very first page, of
19 course, we ask about publicity, because there was a lot
20 of publicity, I know up in Dallas. And then, of course,
21 when we moved here, there was some publicity at least
22 last week. And you saw a little bit, I think you said,
23 on TV. Although, you really don't follow that many
24 criminal cases?

25 A. No, I don't.

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1 Q. You did see some on TV. What did you
2 see on TV? What type of story do you remember seeing, if
3 anything?

4 A. Well, I don't remember anything except
5 there was a case of a lady who has been accused of
6 killing her children.

7 Q. Okay. So you don't remember any of
8 the details or anything like that?

9 A. No, sir.

10 Q. Okay. I take it from that then that
11 you have not formed any opinions or anything like that?

12 A. No.

13 Q. Okay. And you now here live here in

14 Kerrville. Your husband, it looks like he was in the

15 military?

16 A. That's correct.

17 Q. For 20 years.

18 A. Twenty.

19 Q. And y'all moved around a little bit?

20 A. A little bit.

21 Q. And now y'all reside here?

22 A. Yes.

23 Q. Okay. Obviously, Ms. Huth, this is a

24 death penalty case.

25 A. Yes, sir.

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1 Q. The State is actively seeking the

2 death penalty. So we want to know and explore with each

3 and every person their personal feelings about the death

4 penalty as a law. Okay?

5 So, tell us in your words how you feel

6 about the death penalty.

7 A. I have always approved of it. I think

8 that if a person premeditates and is malicious, people

9 like -- that go into McDonald's and shoot just

10 indiscriminately, people like that; I have no qualms with

11 the death penalty.

12 Q. Okay. And when you say

13 "premeditation," what do you mean by that?

14 A. Plan to kill someone.

15 Q. Sit down and plan it for a long time?

16 A. Pretty much so, yes.

17 Q. Okay. Because some people when they

18 say premeditation, they talk about a guy that has planned

19 out, you know, like the Unabomber or something, picks his

20 victim, chooses his victim and that sort of thing.

21 A. Yes.

22 Q. Then there's other people that are,

23 for instance, capital murder in Texas could be a murder

24 during a robbery. A guy goes into a 7-Eleven on his way

25 home, and he wants to rob it, takes the money and just

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1 executes the clerk.

2 A. Well, I think if he carrying a gun

3 with the purpose to rob, he probably would commit murder.

4 Q. Okay. He may not have sat down and
5 thought it all out --
6 A. Right.
7 Q. -- and say, "I am going to kill this
8 guy." But, my point is, sometimes people kill, don't
9 think about it a long time, but they sure do mean to kill
10 the victim.
11 A. Yes.
12 Q. Okay. Do you see where some cases
13 like that could be deserving of the death penalty?
14 A. Yes, I do.
15 Q. Okay. Have you ever followed any

16 crimes? I know, in fact, I think I remember on your
17 questionnaire, you don't really follow criminal cases.
18 A. That is not where my interests lie.
19 Q. Good.
20 A. No, sir. I prefer to be more
21 positive, I guess.
22 Q. You don't read murder --
23 A. No.
24 Q. -- my mom reads all the true crime
25 books she can get her hands on. You don't read those
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1 type things?
2 A. No. Mostly autobiographies,
3 historical novels, things of that nature.
4 Q. Okay. So you are not really following
5 any of the criminal cases like we have, obviously, the
6 O.J. Simpson case? I don't think anyone could get away
7 from that.
8 A. Well, I was going to say, that would
9 be one that I don't think you could get away from.
10 Q. Did have you any opinions about that
11 case? How it was handled or the outcome?
12 A. Oh, I thought it was a carnival.
13 Q. We can assure you that this trial will
14 not be anything like that one. It's not going to go on
15 for months, we think about two weeks.
16 A. Two weeks?
17 Q. Yes.

18 A. Okay.
19 Q. Things are done a little differently
20 here than out in Los Angeles. Let me ask you: Do you
21 remember the Susan Smith case?
22 A. Vaguely.
23 Q. Okay. Do you remember the outcome of

24 that case?

25 A. She is in prison.

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1 Q. Right. Any thoughts or opinions about
2 that case?

3 A. No, just the sadness of it, I guess.

4 Q. Okay. But you tell me that you have
5 always been for the death penalty, that there are certain
6 crimes you think could be deserving of it?

7 A. I do.

8 Q. Okay. Is it a subject that you have
9 thought about a lot or discussed maybe with your husband
10 or friends?

11 A. No.

12 Q. Does it really ever come up much?

13 A. No.

14 Q. Okay. But you have felt this way, I
15 guess, ever since your early adult years?

16 A. Yes, I think so. Like I said, I don't
17 dwell on things of this nature. I paint and I do
18 creative things, so, it's just a different world I live
19 in, I guess.

20 Q. Okay. But as a law, you think it's a
21 law we should have on the books?

22 A. Yes, sir, I do.

23 Q. And do you think it is a law that
24 should be enforced?

25 A. I do indeed.

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1 Q. Okay. Have you ever sat on any type
2 jury before?

3 A. No, sir.

4 Q. Been called down to jury service?

5 A. Only civil.

6 Q. Only civil.

7 A. Yes.

8 Q. Okay. In Texas, there are only
9 certain types of cases that can be capital murder cases.
10 We have, obviously, laws against murder. But not every
11 murder is a capital murder case. You have to have murder
12 plus some other aggravating factor. Like the example I
13 gave was the guy that goes in and kills the clerk.

14 A. Yes, sir.

15 Q. That is a murder during a robbery;

16 that is a capital murder case. The same thing, if
17 someone came into your home and killed the homeowner or
18 someone in the house. That is a murder during a
19 burglary; that could be a capital murder case. See, you
20 are committing it during a felony.

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

23 Q. Murder during a rape or a kidnapping
24 can be a capital murder case in Texas.

25 A. Yes.

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1 Q. The murder of a certain type of
2 victim, such as a police officer or a fireman or a prison
3 guard who are on duty --

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

6 Q. -- can be a capital murder case in
7 Texas.

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

10 Q. The kind you said, the guy that goes
11 into McDonald's and kills everyone, mass murder, can be a
12 capital murder case, or a serial murderer.

13 A. Right.

14 Q. Also, if you murder people for hire,
15 like a hit man, somebody to just do it for money, the hit
16 man can get the death penalty as well as the person that
17 pays him to kill someone, in Texas, both of those
18 situations.

19 In addition, and as what Judge Tolle
20 told you, the defendant in this case is indicted for the
21 murder of a child under six years of age.

22 In fact, I think the indictment there
23 is in front of you. See that paper and that paragraph?
24 If you could read that to yourself for a moment and let
25 me know when your finished.

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1 A. Okay.

2 Q. That sets out allegations of an
3 intentional killing of a child under the age of six.
4 Now, you haven't heard any facts yet.

5 A. No.

6 Q. You haven't heard from any witnesses.

7 What I need to know if that is the type of case you think
8 could be appropriate for the death penalty under the
9 proper facts and circumstances?

10 A. Yes, under the proper facts and
11 circumstances.

12 Q. Okay. Now, the way the trial works is
13 this: It's divided into two parts. First, there is the
14 guilt/innocence stage where we have to prove that
15 indictment beyond a reasonable doubt.

16 A. Yes.

17 Q. Okay. Now, if we don't prove it

18 beyond a reasonable doubt, you find the defendant not
19 guilty, and we all go home.

20 A. Okay.

21 Q. If we do prove it beyond a reasonable
22 doubt, the jury enters a finding of guilty of capital

23 murder. The job is not over yet, though. That is when
24 we move to the punishment phase.

25 Now, you may hear additional evidence
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1 in the punishment phase. You may hear a lot, or you may
2 hear very little.

3 That can include background evidence;

4 it can include a criminal history, if there is one; it

5 can include bad character reference; you might hear from

6 psychiatrists from one side or the other, or both; it may

7 not have any criminal history; it may be all good

8 character reference; I don't know, I mean we can't

9 preview the facts for you. Okay? But it can be

10 additional evidence.

11 At the close of that evidence, you go

12 back and you are given these questions. And we will go

13 over those in detail in a moment. Okay?

14 A. Okay.

15 Q. In fact, why don't we read them now.

16 That first question says: "Do you find from the

17 evidence, beyond a reasonable doubt, that there is a

18 probability that the defendant would commit criminal acts

19 of violence that would constitute a continuing threat to

20 society?"

21 A. Okay.

22 Q. It asks the jurors to make a

23 prediction about whether the defendant is going to be a

24 danger in the future.

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)

2 Q. Okay. You review the murder itself;
3 all the facts surrounding the murder; and then any other
4 additional evidence you have heard to make this
5 determination. The State has to prove it to you.

6 A. Okay.

7 Q. Now, if you answer that "yes," you go
8 to this last question. If the answer is "no," you can

9 stop there. But if you answer it "yes," you go to this
10 last question here, which is the longer one: "Taking
11 into consideration all of the evidence, including the
12 circumstances of the offense, the defendant's character

13 and background, and the personal moral culpability of the
14 defendant, is there a sufficient mitigating circumstance
15 or circumstances to warrant that a sentence of life
16 imprisonment rather than a death sentence be imposed?"
17 It's a long question.

18 A. Okay.

19 Q. We call that the mitigating question,
20 it's kind of a safety net. It allows you, even though
21 you have you found the defendant guilty, even though you
22 believe that they are a future danger, that they should
23 get a life sentence rather than the death sentence. Do
24 you see that?

25 A. Okay. Yes, I see it.

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1 Q. Now, the juror does not write in life
2 or death, once we get to the punishment phase. The Judge
3 determines the punishment by how you answer these
4 questions. A "yes" answer to the question number 1, that
5 you believe they are a future danger; and a "no" answer

6 to number 2, that there is no mitigating evidence that
7 rises to the level; a "yes" and a "no," then the Judge
8 will sentence the defendant to death.

9 A. Okay.

10 Q. He has no choice in the matter. Okay?

11 A. All right.

12 Q. Now, if you answer those questions any
13 other way --

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

16 Q. If you don't answer "yes" to the first
17 one, or you decide there is mitigating evidence that the
18 defendant should get a life sentence, then the Judge will
19 sentence the defendant to life. But my point is: The

20 Judge's sentencing is based on how the jurors answer
21 these questions.

22 A. Okay.

23 Q. And there's only two choices: Death
24 or life.

25 A. Okay.

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1 Q. Okay. Is that clear to you?

2 A. Yes, I think so.

3 Q. Okay. Now, I bet you have not read
4 much about it because you spend your time, as you say, on
5 more positive things, which is good. But the method of
6 execution in Texas is lethal injection.

7 A. Okay.

8 Q. Have you heard about that?

9 A. I have.

10 Q. Okay. In Texas, let me tell you, that
11 it is a very real punishment. There are many states in
12 our union that have it on the books that don't ever go to
13 the death penalty.

14 A. Okay.

15 Q. Like California, they have never done
16 it.

17 A. No.

18 Q. New Mexico has never done it.

19 A. Okay.

20 Q. But in Texas we have. In fact, we
21 have executed over 100 human beings since it has been
22 held constitutional again, in the '70s.

23 A. Okay.

24 Q. We average about 15 to 18 executions a
25 year in the State of Texas.

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1 So, let me lay all of my cards out on
2 the table. Okay? I have explained to you the process
3 and you have told me that, philosophically, you believe
4 that we should have the death penalty statute on the
5 books.

6 A. I do.

7 Q. And you have agreed with -- such as
8 the crime we have here is the type of case that could be
9 eligible for the death penalty, of course, depending on
10 the facts.

11 A. Depending on the evidence, yes.

12 Q. Now, what I need to know is this:

13 Obviously, we believe we can prove the defendant guilty.

14 And that we can prove these special issues should be

15 answered in a way that would result in Mrs. Routier's
16 execution someday.

17 A. Okay.

18 Q. Now, the defense, obviously, believes

19 the opposite and will fight us all the way.

20 A. Okay.

21 Q. What we need to know is: If you are

22 the type of juror who can listen to the evidence, and if

23 we do prove these things to you beyond a reasonable

24 doubt, and take pen in hand and answer that, if we prove

25 it to you, knowing that the defendant would be executed

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1 someday?

2 A. I don't think it would be a problem

3 for me.

4 Q. Okay.

5 A. I am pretty logical.

6 Q. Okay. Some people tell us, "Look, I

7 believe in it, but I -- just don't ask me to do it. It's

8 not my cup of tea." Other people, some people can't wait

9 to do it.

10 A. Oh, no.

11 Q. None of us really want them down

12 there.

13 A. Yes.

14 Q. They volunteer. Other people tell us,

15 "Look, I ain't down here for a job interview. I really

16 would much rather be at home, but if I am on the jury, I

17 can follow the law. And it might be hard, but if you

18 prove these things to me, I will answer the questions

19 that way."

20 A. Yes, that is true.

21 Q. That is what you are telling me?

22 A. That is what I am telling you.

23 Q. Okay. I appreciate your honesty

24 there.

25 Let me go into a couple of things now.

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1 In any criminal trial, obviously, the State puts on

2 evidence to prove it's case. Through witnesses, through

3 exhibits, through scientific tests, or whatever. A term

4 you may have heard is circumstantial evidence.

5 A. Yes, sir.

6 Q. Okay. We call it a lot of times,

7 direct and indirect evidence. But what it is, is this:

8 Circumstantial evidence is any type of evidence that

9 links the defendant to the crime, other than an

10 eyewitness. Okay?

11 A. Yes, sir.

12 Q. Now, if you were to leave the

13 courthouse today, let's say, and God forbid this would

14 happen, but you were robbed, let's say, at gun point.

15 A. Okay.

16 Q. Some man took your purse.

17 A. Right.

18 Q. The police apprehend a suspect and you

19 identify him. "That is the man that took my purse." If

20 it went to trial, you could be called as a witness and

21 could identify him. You are an eyewitness to the case,

22 that is direct evidence. Okay?

23 A. Yes, sir.

24 Q. You saw the criminal take your purse,

25 and you can identify him.

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1 A. Yes, sir.

2 Q. Any other type of evidence, if they

3 found him with the purse, you know, in his possession,

4 that kind of thing, that would be circumstantial

5 evidence. Okay?

6 A. Okay.

7 Q. Do you understand where I am coming

8 from?

9 A. Yes, I think so.

10 Q. Okay. Circumstantial evidence is

11 anything. It can be fingerprints, scientific evidence

12 such as hairs, fibers, DNA. You have probably heard of

13 DNA evidence?

14 A. Yes.

15 Q. Okay. Blood evidence, blood spatter

16 evidence, the crime scene itself, what that tells you, if

17 that is linked in any way.

18 A. That is all circumstantial?

19 Q. Yes, anything. Literally anything

20 that could connect and prove the case, the State can use

21 as circumstantial evidence.

22 A. I see.

23 Q. You see? And it's a matter of -- and

24 I think the jury's best tool is this: You just use your

25 common sense.

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1 A. Yes, sir.

2 Q. Okay. And then like you said, you are

3 a logical person, you can piece it altogether.

4 My point about it is this: Many times

5 in a murder case, the State only has circumstantial

6 evidence to prove its case.

7 You have got the victim, who is dead.

8 And then the person we charge with the crime. So you

9 only have two people there and one is living now.

10 A. Right.

11 Q. Obviously, a defendant has an absolute

12 right not to testify, so you may never hear one side.

13 A. Uh-huh. (Witness nodding head

14 affirmatively.)

15 Q. We may only have circumstantial

16 evidence. The law says there is no difference between

17 the two. Whatever we have, either an eyewitness or

18 whatever other evidence, we have to prove that case

19 beyond a reasonable doubt. Okay?

20 A. Okay.

21 Q. I want to know this: If we use solely

22 circumstantial evidence in a capital murder case, could

23 you convict the defendant on circumstantial evidence? If

24 you believed it beyond a reasonable doubt?

25 A. If I believed it beyond a reasonable

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1 doubt, I think I could, yes.

2 Q. Okay. Fair enough then. Another area

3 that comes up is motive. You probably heard that term

4 before?

5 A. Yes.

6 Q. Okay. Motive is the reason a crime

7 occurred.

8 A. Right.

9 Q. And I know in these cop shows they're

10 always talking about, "We need a motive. We have got to

11 have motive." And it is always good to know the motive.

12 I mean, I think it --

13 A. It does make a difference.

14 Q. Yeah. And a lot of jurors, obviously,

15 they want to know as much as they can about the crime.

16 But in Texas, it's not a requirement for the State to

17 prove to you the motive. Okay?

18 A. Okay.

19 Q. You have read the indictment there?

20 A. Yes.

21 Q. You see those allegations set out the

22 name of the defendant, they set out the victim. They set
23 out, you know, how it happened.

24 A. Right.

25 Q. Just in real short terms. Okay?

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1 A. Okay.

2 Q. That is the crime. A murder of an

3 individual, by stabbing. Now, it doesn't say anywhere in
4 there it happened because of this.

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

7 Q. Or that, or the reasoning of it.

8 A. Right.

9 Q. You see? Now, once the trial begins

10 the motive may become very, very clear to everyone,
11 crystal clear. Anyone. You don't need Sherlock Holmes
12 to figure out the motive.

13 A. Right.

14 Q. Or, there could be a lot of motives,

15 more than one. Okay? There could be several motives out
16 there and everyone have their own opinion as to what the
17 real one is, or the primary motive. You know what I
18 mean? It could be more than one motive.

19 Or, it could be a senseless, cruel
20 crime that no one understands, but nevertheless it
21 occurred. You have heard of senseless -- I think they
22 term it in the newspapers, a senseless killing?

23 A. Yes.

24 Q. A person is just as dead, and you know

25 who did it, but we really don't know why.

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1 A. Yes.

2 Q. We may never know why. The fact is,
3 the State is not required to prove the motive though. Do
4 you understand that?

5 A. Okay.

6 Q. Okay. What I want to know is: Do you
7 have any disagreement with that law?

8 A. No, I guess not. If the evidence is
9 there, I wouldn't. If you don't need to have a motive,
10 it wouldn't.

11 Q. Okay. You see how -- some of it, of

12 course, obviously, a motive can go and get you into the

13 mind of the defendant. And you can't get into it, crawl
14 into someone's mind a lot of times.

15 A. Yes.

16 Q. An example, and this is a rather silly
17 example I give sometimes, is this: Let's say it was

18 against the law to wear a tie like this, which some
19 people might want to make it against the law.

20 A. Yes.

21 Q. Because it's kind of -- I don't know,
22 it's the closest thing I have to a Halloween tie. But
23 anyway, whatever it is, say it was against the law to

24 wear this type of tie. Now, I could be charged with
25 that. Okay?

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

3 Q. Because I have got it around my neck.

4 But the State could never prove why I chose to wear this
5 tie. Do you understand?

6 A. I see.

7 Q. Because that is a decision I made.

8 A. Yes.

9 Q. Okay. They could prove that I am
10 wearing it, but it is awful hard to prove why I am
11 wearing it. You understand that?

12 A. Yes.

13 Q. Now, it might become apparent if I was
14 ever tried or it may not. The point is in a murder case:
15 We have to prove who committed the crime. Okay?

16 A. Okay.

17 Q. But we don't have to prove why.

18 A. Why.

19 Q. Okay?

20 A. I understand.

21 Q. Now, let me get into a couple of areas
22 involving the punishment issues. We have to kind of talk
23 about all parts of the case here.

24 A. Right.

25 Q. This is the only time we get to talk
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1 to you individually and the only time you get to ask
2 questions of us.

3 A. Okay.

4 Q. Like I said, you don't get to these
5 special issues unless you have found the defendant guilty
6 of capital murder.
7 A. Okay.
8 Q. Okay. That question about deciding if
9 there is a probability that the defendant would be a
10 future danger, you might hear more evidence, and you may
11 not.
12 A. Uh-huh. (Witness nodding head
13 affirmatively.)
14 Q. You may, you know -- it could be a
15 situation where the person has a long criminal record, or
16 they may not have any criminal record. Do you understand
17 that?
18 A. Yes, I do.
19 Q. They may just go out one day and
20 commit a horrible capital murder.
21 A. Absolutely.
22 Q. So you may be faced with a situation
23 where you only have the evidence of the crime itself --
24 how brutal it was, how it happened, maybe what led up to
25 it, what happened afterwards, any remorse shown, things
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1 like that -- to decide this question.
2 A. Okay.
3 Q. Now, I can't tie you down to any
4 specific fact situation, and we can't preview any fact
5 situation?
6 A. Right.
7 Q. You understand that?
8 A. I understand that.
9 Q. We're all dealing in hypotheticals.
10 A. Yes, sir.
11 Q. Okay. But do you think you would be
12 able to answer this question, based solely on the
13 evidence of the crime itself, depending on what that
14 evidence was?
15 A. I think so.
16 Q. Okay.

17 A. Yeah.
18 Q. Do you think you could gain a lot of
19 insight from that person about the way they committed a
20 murder?
21 A. Probably.
22 Q. Okay.
23 A. I don't know. I have never had to.
24 But I would think I could, yes.

25 Q. Again, we're just dealing in
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1 hypotheticals here.

2 A. Yes, sir, I understand.

3 Q. Okay. Now the words in this

4 question -- you will get a lot of legal definitions in

5 what we call the Court's Charge, but for these particular

6 two questions here, you won't get any.

7 A. Okay.

8 Q. The definitions will be left up to you

9 and the other jurors. Okay? Just whatever your common,

10 everyday definitions of them are. So, I want to go over

11 a couple of those with you. We have to prove beyond a

12 reasonable doubt that it's a probability that the

13 defendant would commit criminal acts of violence. What

14 do you think of when you see the word "probability?"

15 What does that mean to you?

16 A. That it is possible, that they do

17 that.

18 Q. Okay. You understand that we don't

19 have to prove it is a certainty?

20 A. Right.

21 Q. No one could ever do that.

22 A. That is true.

23 Q. Okay. But just a probability?

24 A. Absolutely.

25 Q. Okay. We have to prove that the

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1 defendant would commit criminal acts of violence. Okay?

2 A. Yes, sir.

3 Q. When you see the words, "criminal acts

4 of violence," what types of things do you think?

5 A. Another murder.

6 Q. Okay. That is an obvious one.

7 A. Yes.

8 Q. Another killing. Any other types of

9 things you can think of are criminal acts of violence?

10 A. Well, it wouldn't apply in this case,

11 but for me, rape, to continue on on that type of crime.

12 Q. That is my point. These definitions

13 are left up to you, it doesn't necessarily -- it doesn't

14 say murder, obviously, I think anyone would agree a

15 murder is a criminal act of violence.

16 A. Yes, certainly.

17 Q. But it can include rape.

18 A. Yes.

19 Q. Any type of violence to another human
20 being.

21 A. Right.

22 Q. It's up to you and the other jurors.

23 I have had jurors tell me they thought hot check writing

24 is a criminal act of violence because it's against the

25 law, that is going a little far.

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1 A. Yes.

2 Q. Obviously. But some jurors have told

3 me --

4 A. Although it is a criminal act, I would

5 assume, but not violence.

6 Q. But you understand that we're not

7 required just to prove that the defendant would commit

8 murder again?

9 A. True.

10 Q. But do you feel that the wording,

11 "criminal acts of violence," is that a fair way to answer

12 that question?

13 A. Yes.

14 Q. Okay. Now this question is presumed

15 to be answered "no." Okay? Just like every defendant is

16 presumed to be innocent when the trial begins?

17 A. Yes.

18 Q. Even though you have found this

19 defendant guilty of capital murder, you don't just go

20 back there and check off there, okay, they are dangerous,

21 and a "yes" answer.

22 That is presumed to be answered "no,"

23 and what you have to do is wait for the rest of the

24 evidence to come in. And then, after that is done,

25 reevaluate the guilt/innocence evidence, the murder

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1 evidence, and decide if the State has proven that

2 question. Okay?

3 A. You get more evidence when?

4 Q. In the punishment stage.

5 A. In the punishment stage.

6 Q. You can.

7 A. Okay.

8 Q. Okay. You might get more background

9 evidence. My point is this: Just because you found

10 someone -- "All right. You are guilty of capital murder,
11 you are a future danger." You don't to do that. You
12 have to wait and then look at all of the evidence and
13 then decide if we have proven that.

14 A. Okay.

15 Q. Very well, you might have, because the
16 crime itself might tell you enough that they are going to
17 be a future danger.

18 A. Okay.

19 Q. But you can't make an automatic
20 decision. You understand what I am saying? What we need
21 is jurors that will keep their mind open and listen to
22 all of the evidence, and then make their decision.

23 A. Okay.

24 Q. And that's what we are talking about
25 here.

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1 A. I see.

2 Q. You don't get this question until all
3 of the evidence is in in the punishment phase.

4 A. I see.

5 Q. Okay. Can you follow the law in that
6 regard and wait until all of the evidence is in?

7 A. I would think so, yes.

8 Q. Okay. And can you start that question
9 out with a "no" answer? And --

10 A. Probably, yes.

11 Q. And require the State to prove that to
12 you?

13 A. Prove it, absolutely.

14 Q. See we have to prove that to you
15 beyond a reasonable doubt.

16 A. Yes, sir.

17 Q. If we don't, it's a "no" answer.

18 A. Yes.

19 Q. Okay. Now, if you did, again, this is
20 a hypothetical, answer "yes" to that, we go to this last
21 question, and that is the one that gets pretty lengthy.
22 That is the question that always allows a jury a way out.

23 What it talks about is mitigating

24 evidence. You review all of the evidence in the case;

25 the murder itself; all of the background evidence on the

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1 defendant's character; and you look at it, and ask
2 yourself, "Is it mitigating?" And if it is mitigating,
3 is it of a sufficient quantity that you feel a life

4 sentence should be imposed rather than a death sentence?

5 Okay?

6 A. Okay.

7 Q. Now, I can't tell you what mitigating

8 evidence is, that's going to be up to you. In fact, it's

9 going to be up to you and the other jurors. In fact, you

10 don't have to agree with the other jurors, what it is.

11 A. Yes, sir.

12 Q. It's all on your own.

13 A. Right.

14 Q. And you don't have to sit here and

15 tell us what you think mitigating evidence is.

16 A. Okay. Well, I really don't know at

17 this point.

18 Q. Well, most people obviously can't

19 because they don't sit around and think about it.

20 A. Yes.

21 Q. What you have to be able to do is say,

22 "Look, I can keep my mind open to it."

23 A. Okay.

24 Q. And if I see something in the

25 defendant's background, maybe it was the way they were

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1 raised --

2 A. Uh-huh. (Witness nodding head

3 affirmatively.)

4 Q. Or maybe something surrounding the

5 offense --

6 A. Uh-huh. (Witness nodding head

7 affirmatively.)

8 Q. But something tells me that I know the

9 defendant is guilty, and I know that they are a danger,

10 there is something that tells me in the heart that a life

11 sentence should be imposed rather than a death sentence.

12 A. Okay.

13 Q. Then I will answer the question that

14 way.

15 A. Right.

16 Q. Do you understand where I am coming

17 from?

18 A. Yes, I do.

19 Q. It allows a way for the jury to show

20 mercy. It's still a life sentence.

21 A. I understand.

22 Q. But you only do that if you see

23 sufficient mitigating evidence.

24 A. Okay.

25 Q. Okay. And as you sit here today, I

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1 take it, that you really don't know what that would be?

2 A. No, I don't. The only thing that I

3 will say, if the sentence is guilty or not guilty, I can
4 handle that. But if it's not guilty, for reasons of
5 insanity, to me it's an illogical conclusion. You either
6 did it or didn't do it. Now, in the phase, this other
7 phase, I would then consider a mental state as
8 mitigating.

9 Q. Sure. I can tell you this, as you
10 know, sometimes the sanity issue comes up.

11 A. Yes.

12 Q. But there are no motions filed.

13 A. Well, I have always thought that
14 illogical.

15 Q. Okay. So, I don't think that is going
16 to -- insanity issue?

17 A. Well, I just wanted you to know that.

18 Q. Now, oftentimes the mental issue does
19 come up, like you said, in this period.

20 A. Yes.

21 Q. Like this: Sometimes, and you don't
22 have to agree with it, sometimes jurors tell us, "Well,
23 maybe if they had sexual abuse as a child, or maybe
24 mental abuse in some way. I might view that as
25 mitigating." Other people tell us, "No. There are
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1 plenty of people that are victims of those things and
2 don't go around killing people."

3 A. I understand.

4 Q. But it can cut either way.

5 A. Yes.

6 Q. So how do you feel about that type of
7 evidence?

8 A. Well, I probably would consider it.

9 Q. You would consider it?

10 A. Yes, yes. I think we're the sum total
11 of everything that has happened to us, yes.

12 Q. It's kind of like, I saw this movie,
13 Sleepers, that is out now at the theaters here, I didn't
14 have anything to do, so I went and saw it. But these

15 guys were all victims of sexual abuse in a boys' home.

16 A. Yeah, I saw it.

17 Q. Horrible sexual abuse. And two of
18 them turned out to be murderers, vicious murders.

19 A. Yes, sir.

20 Q. Some people might say, "Well, maybe
21 they are that way because of how they were horribly,
22 horribly abused." That argument could be made.

23 A. Yes.

24 Q. Okay. What you have to be able to say
25 again is -- is that your mind can be open to it?

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1 A. I think so.

2 Q. Now, you are not telling us that any
3 type of sexual abuse comes up or physical abuse you are
4 saying that is mitigating evidence, are you? I mean,
5 that you think that that person should be spared?

6 A. Should be spared?

7 Q. Right.

8 A. The death penalty, you mean.

9 Q. Yes.

10 A. No.

11 Q. You are just waiting to hear?

12 A. I just don't know.

13 Q. Okay. Fair enough.

14 Sometimes you might hear from
15 psychiatrists, psychologists from one side or the other.
16 Some people put a whole lot of faith in those experts.
17 Other people say, "Look, you can find one that will say

18 anything if you look long enough." And other people say,
19 "I treat them like any other witness. If what they say
20 makes sense, I will follow that. If it doesn't make
21 sense, I won't."

22 A. I think they are part of the whole. I
23 wouldn't weigh one way or the other more, I don't think.

24 Q. All right.

25 A. I don't know, but I don't think so at
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1 this point.

2 Q. Fair enough. There are several rules,
3 and I will go over these pretty quickly, because I
4 think -- I am sure you are familiar with them, but
5 several rules apply in every criminal case and Judge
6 Tolle talked about these: The presumption of innocence.

7 A. Yes.

8 Q. Every defendant is presumed to be
9 innocent when the trial begins and you have to start them
10 out with that. Would you follow that rule?

11 A. Yes, I would. I would want that for
12 me.

13 Q. Sure, that applies in every criminal
14 case.

15 A. Yes.

16 Q. Then the State, as we put on evidence,
17 our attempt is to break down that presumption and prove
18 the guilt.

19 A. Absolutely.

20 Q. But the starting point is the
21 presumption of innocence.

22 A. Right.

23 Q. The State has to prove its case --
24

25 THE COURT: Calm down the
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1 conversation, I'm not going to tell you again. All
2 right. Please.

3

4 BY MR. TOBY L. SHOOK:

5 Q. The State has to prove its case beyond
6 a reasonable doubt. Okay? That burden of proof never
7 shifts from this table. Okay?

8 A. Okay.

9 Q. If we fail to prove the case to you,
10 you have to find the defendant not guilty.

11 A. Okay.

12 Q. If we prove our case, you are
13 obligated to find the defendant guilty.

14 A. Okay.

15 Q. This side of the table, they are going
16 to defend their client, I'm sure, but they are not
17 obligated to prove her innocence. Okay?

18 A. All right.

19 Q. I'm sure they will ask questions and
20 cross-examine and make arguments, but they are not
21 obligated to. You can't require them to, in other words?

22 A. All right.

23 Q. Because the burden of proof never
24 leaves here. Could you require the State to prove this
25 case to you beyond a reasonable doubt?

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1 A. Yes, sir.

2 Q. Okay. Judge Tolle talked about the
3 defendant's right not to testify.

4 A. Yes, I understand.

5 Q. And have you heard that before?

6 A. Yes.

7 Q. If you want to testify, no one can

8 stop you from getting up there.

9 A. Okay.

10 Q. I mean there is no law or rule that

11 will keep a person from testifying on their own behalf.

12 A. Okay.

13 Q. On the other hand, is if you choose

14 not to testify, the Judge will instruct the jurors that

15 you can't use that as evidence against the defendant.

16 A. Okay.

17 Q. Okay?

18 A. Yes.

19 Q. Does that sound fair?

20 A. It does.

21 Q. All right. You could follow that

22 rule?

23 A. Yes.

24 Q. The indictment, you have read the

25 indictment, and the fact that a Grand Jury has indicted a

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1 defendant is no evidence of guilt. Okay?

2 A. Okay.

3 Q. As Judge Tolle said, "That is just a

4 piece of paper."

5 A. Okay.

6 Q. The fact that they have been indicted

7 or arrested or even going through this process here, it's

8 no evidence of guilt.

9 A. Okay.

10 Q. You have to wait for the witnesses to

11 testify.

12 A. Yes.

13 Q. Okay. In a criminal case, we often

14 have police officers that come down to testify. Okay?

15 And some people respect police officers a lot, they

16 appreciate the job they do. Some people have had

17 negative dealings with police officers, they don't like

18 them. But what the law says is this: You have to start

19 them out on the same foot as you would any other witness.

20 Okay?

21 A. Makes sense.

22 Q. Just because they are a police

23 officer, you don't automatically believe them. You have

24 to wait until they testify and then judge their

25 credibility.

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1 A. All right.

2 Q. Could you follow that rule of law?

3 A. Yes, sir.

4 Q. Okay. Oh, yeah. You sometimes may

5 have heard the parole laws in Texas. How they make --

6 they make the headlines sometimes.

7 A. Yes.

8 Q. The Judge would instruct you that you

9 cannot consider parole laws, anything you have read about

10 parole laws, you can't factor in parole laws, anything

11 like that during your deliberations.

12 A. Yes.

13 Q. Can you follow that rule?

14 A. Yes, I certainly could.

15 Q. Okay. How long have you lived in

16 Kerrville, ma'am?

17 A. Nineteen years, I believe.

18 Q. Okay. I don't believe you knew any of

19 the Dallas lawyers.

20 A. No, I didn't know anyone at all.

21 Q. There are two local attorneys right

22 here.

23 A. I do know one.

24 Q. Which one do you know?

25 A. Mr. Mosty.

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1 Q. How do you know Mr. Mosty?

2 A. My husband and his brother have

3 business dealings in the nursery business and we

4 socialized occasionally with his brother. And naturally,

5 we know him, although we have never socialized ourselves.

6 Q. Okay. Never been over to his house or

7 to your house?

8 A. No, no.

9 Q. Now is it Mr. Mosty's brother?

10 A. Yes.

11 Q. Okay. So you know him better, but

12 obviously, you have seen Mr. Mosty?

13 A. Right, I do.

14 Q. Okay. How do you think that might
15 affect your service as a juror?

16 A. He has a job to do, and I know nothing
17 of his business dealings or anything.

18 Q. Okay. Obviously, if he is sitting --
19 and he has a very good reputation as an attorney?

20 A. Yes.

21 Q. And you know that?

22 A. Yes.

23 Q. Okay.

24 A. In a small town you know things like
25 that.

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1 Q. Yeah, yeah. And you are always going
2 to have a situation where the lawyers are usually
3 familiar with some of the jurors.

4 A. Oh, yes.

5 Q. I mean, obviously, it's going to be
6 hard to seat a juror that doesn't know Mr. Mosty?

7 A. I would think so.

8 Q. But what we need to know is this: In
9 Dallas we don't run into that problem.

10 A. I am sure you don't.

11 Q. Actually, I did have one one time, a
12 high school buddy of mine got on the jury. That's when I
13 was a defense attorney -- I don't know if it was a
14 mistake, but he made it on the jury.

15 A. Yes.

16 Q. But our situation is this: Obviously,
17 Mr. Mosty is going to try real hard to represent his
18 client. He may -- it may come down to the situation
19 where he is sitting there asking you, "Don't answer those
20 questions in a way that she is going to get the death
21 penalty."

22 A. No.

23 Q. "Don't do it. Don't do it."

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

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1 Q. But you feel that the State has proven
2 the case in a way that you could answer it that way, do
3 you think that that would affect you?

4 A. No, because I will make up my mind.

5 Q. Good. Good. After the trial you will

6 feel free to walk up to him if you saw him on the street
7 or whatever and say, "Sorry."

8 A. I probably would, yes.

9 Q. You wouldn't -- but that you could --

10 from the little that you do know him or actually his

11 brother, you could go ahead make your decisions, just
12 based on --

13 A. Yes, I could.

14 Q. Okay. Okay.

15

16 THE COURT: Anything else?

17 MR. TOBY L. SHOOK: One second, Judge.

18 THE COURT: All right. You may visit

19 now. You may talk to Mr. Mosty now. I will be very

20 happy to have that happen now.

21 MR. RICHARD C. MOSTY: We can't

22 remember that long, Your Honor.

23 THE COURT: I figured something like

24 that.

25

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1 BY MR. TOBY L. SHOOK:

2 Q. Ma'am, do you have any -- you have

3 been real cooperative with me and real patient. Do you

4 have any questions over anything I have gone over?

5 A. I can't think of anything.

6 Q. All right. I appreciate it, you are

7 very attentive. I rushed you through this, I know, but I

8 appreciate your answers.

9 A. Thank you.

10

11 THE COURT: And now, Mr. Mosty.

12

13 VOIR DIRE EXAMINATION

14

15 BY MR. RICHARD MOSTY:

16 Q. Ms. Huth.

17 A. Yes.

18 Q. I want to go over a few things with

19 you. And forgive me, because some of them, I am going to

20 cover some of the same areas.

21 A. Yes.

22 Q. But I think it is important to let you

23 know that we're coming from a completely different

24 perspective.

25 A. Okay.

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1 Q. When we open this trial, Darlie
2 Routier is going to enter a plea of not guilty. And we
3 fully expect we're never going to get to any punishment
4 phase of this trial.
5 A. All right.

6 Q. There are a couple of things that sort
7 of bother me. If I were choosing to make the rules about
8 a criminal trial and that is number 1 is that I would
9 have liked to have talked to you first today, because I
10 think that fits with the presumption of innocence. That
11 we're presumed innocent, and I would like to start off
12 talking about the presumption of innocence and reasonable
13 doubt and the burden of proof. Instead of the State, as
14 they talked a lot about the death penalty.

15 A. Yes.

16 Q. And, in fact, that is getting the cart
17 before the horse.

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

20 Q. That is the main thing I want to drive
21 home to you today. Is that just because somebody sits

22 here and talks about these special issues, or the death
23 penalty, or life imprisonment, that we never expect to
24 get there. And we want to make sure that you are
25 entirely comfortable with some of the principles of law
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1 that govern criminal trials.

2 A. Okay.

3 Q. These are things that you undoubtedly
4 will have heard about.

5 A. Maybe not.

6 Q. And again, it's not the kind of thing
7 you sit around --

8 A. No I don't.

9 Q. -- too many times under pecan trees
10 and talk about it.

11 A. That's right.

12 Q. So, sometimes these are the first
13 times people have ever really started talking about these
14 things. So, and these are all things that the law
15 requires of jurors.

16 A. Okay.

17 Q. Everything I tell you is required of

18 you as a juror. It is the law. And you are required to
19 follow it. The first thing the law says --
20

21 THE COURT: Mr. Mosty, I don't know.

22 I'm not going to take -- I will give you plenty of time.

23 I normally break every 2 hours. We have been here 2

24 hours now, I think. If -- can we -- does anybody need a

25 10 minute break or something?

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1 MR. RICHARD C. MOSTY: Yes. I would

2 rather do it now before I really get wound up.

3 THE COURT: Well, yeah. That is what

4 I figured. Let's take a brief break right now.

5

6 (Whereupon, a short

7 recess was taken,

8 after which time,

9 the proceedings were

10 resumed on the record,

11 in the presence and

12 hearing of the defendant

13 as follows:)

14

15 THE COURT: Thank you, ma'am.

16 THE PROSPECTIVE JUROR: Thank you.

17 THE COURT: All right. Okay. All

18 right.

19 We're back on record then. Mr. Mosty.

20

21 VOIR DIRE EXAMINATION (Resumed)

22

23 BY MR. RICHARD C. MOSTY:

24 Q. What I wanted to start with was what

25 Judge Tolle said last week when we all met for the first

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1 time, and that is regarding the Grand Jury indictment.

2 Some people think that because there is some -- there has

3 been an indictment that there must be something to the

4 case. And as Judge Tolle told you, in Dallas County

5 there are 25,000 indictments a year; 125, maybe on any

6 given day. And any number of those people don't even

7 know that their case has been presented or that they are

8 under investigation or anything. The Grand Jury doesn't
9 even have to listen to a defendant or listen to anything
10 other than a police officer reading a report, if that is
11 what they chose to do.

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

14 Q. So, would you agree with me, that it
15 would be fundamentally unfair to place any kind of weight
16 on a Grand Jury indictment?

17 A. I don't know about things like that,
18 to the point, I mean, you called me for jury on this, and
19 I really don't know.

20 Q. Okay. The law says you will draw

21 absolutely no inference, whatsoever, from a Grand Jury
22 indictment.

23 A. Absolutely.

24 Q. And you can do that?

25 A. I hope I can, yes.

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1 Q. The next thing the law says, and this
2 goes with the State getting to go first. The State has
3 the burden of proof.

4 A. Right.

5 Q. The State is the one who has accused
6 our client of doing something.

7 A. Okay.

8 Q. Seems only fair to me if they want to
9 accuse somebody, they ought to have to prove that that
10 person is guilty.

11 A. Well, I thought they had to.

12 Q. Seem fair to you?

13 A. Yes.

14 Q. All right. And the standard that they
15 must prove that is beyond any reasonable doubt. And
16 reasonable doubt is really what -- you will be given a
17 definition. But you, as a person who has watched people,
18 who have known people over the years, and the other 11
19 jurors will be the same way, your job is to judge the
20 facts.

21 A. Yes.

22 Q. You are the absolute last word on the
23 facts. The jury decides the facts. And what a jury says
24 is reasonable doubt, is reasonable doubt. Period.

25 A. Okay.

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1 Q. That's it.

2 A. Yes.

3 Q. And so your job is to look and see,

4 and always be challenging the State: Have they proved

5 their case beyond a reasonable doubt?

6 A. All right.

7 Q. And the Court will tell you the law is

8 that if you have a reasonable doubt, and you might say,

9 "Well, there is a reasonable doubt here, and there is a

10 reasonable doubt there, and there is a reasonable doubt

11 here and there is a reasonable doubt there, they are sort

12 of about even. The State and the defense are about even

13 on reasonable doubt."

14 A. Okay.

15 Q. But that is not what the law says.

16 A. Okay.

17 Q. The law says if there is a reasonable

18 doubt, you bring it over here, and you give it to this

19 lady on trial.

20 A. All right.

21 Q. And it's hers forever. Any reasonable

22 doubt belongs to the defense.

23 A. All right.

24 Q. Is that fair enough?

25 A. Sounds good.

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1 Q. Okay. It goes back to the basic laws

2 that we're talking about; the burden of proof.

3 A. Yes.

4 Q. The State being the accuser. And we

5 can sit here silent, as we sit here right now, this lady

6 is cloaked with a shield of innocence around her, the

7 presumption that she is not guilty.

8 A. Okay.

9 Q. And she will stay with that shield

10 throughout this trial. She is protected by that shield

11 that is afforded by the United States Constitution.

12 A. All right.

13 Q. And you can live with that, can't you?

14 A. I can live with that.

15 Q. All right. Matter of fact, if you

16 were sitting where she is sitting --

17 A. Yes, that would be absolutely true.

18 Q. -- you would want somebody sitting in

19 that jury box that says, "That lady is protected by the

20 shield of innocence." And I am going to make the
21 State --
22 A. Until proven otherwise.
23 Q. That's right. Until the State proves
24 it.
25 A. All right.

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1 Q. Okay. One thing that I do also want
2 to say is that when you are looking at this case with
3 reasonable doubt, one of the -- the jury is not here to
4 solve the case.
5 There may be absolutely no doubt in
6 your mind, and I suspect in this case there will be no
7 doubt in your mind, that a terrible crime was committed.
8 A. Uh-huh. (Witness nodding head
9 affirmatively.)
10 Q. But it's not your job to solve the
11 case.
12 A. Uh-huh. (Witness nodding head
13 affirmatively.)
14 Q. Your job is to resolve reasonable
15 doubts in favor of the defendant. So, at the end of the
16 case, you may still -- you may have reasonable doubts as
17 to who did this.
18 A. Uh-huh. (Witness nodding head
19 affirmatively.)
20 Q. In that instance, you have got to say
21 not guilty. Is that okay?
22 A. Yes, that is fine.
23 Q. And you will walk out say,
24 "Dad-gum-it, I don't know who committed that terrible
25 crime." And that is just going to have to be what you

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1 have to do as a juror.
2 A. All right.
3 Q. Now, the State talked some about two
4 areas that I want to talk to you about. One is about
5 direct and circumstantial evidence, and the other relates
6 to motive. And I want to tie these together a little bit
7 at the end of that.
8 The State talked about proof of a
9 direct evidence. And I have drawn at various times a
10 circle, which I submit, and in my -- since Mr. -- since
11 the district attorney said that they gave a silly
12 example, I feel compelled to give a silly example as
13 well.

14 A. Okay.

15 Q. Mine is that this circle represents
16 reasonable doubt.

17 A. Okay.

18 Q. And that circle is completely open,

19 disregard any dots in there. Now, this is a completely

20 open circle, and that is reasonable doubt. And that is

21 the shield of innocence and the cloak of the presumption

22 of not guilty that sits with any defendant in a case.

23 And the State must absolutely blacken that circle so that

24 there is not a ray of reasonable doubt shining through.

25 A. Okay.

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1 Q. And they may take direct evidence, and

2 they may bring it in, and they just obliterate reasonable

3 doubt and it is gone.

4 A. Okay.

5 Q. Or the State may try to prove its case

6 through circumstantial evidence. And I analogize this to

7 my children's dot-to-dot figures; where they have got to

8 come in and the State has got to, through bits and pieces

9 of evidence, absolutely exclude any light of reasonable

10 doubt.

11 A. Okay.

12 Q. And if they exclude most of it, then

13 there is still reasonable doubt. And once there is

14 reasonable doubt, you are always going to give it to this

15 defendant.

16 A. Okay.

17 Q. So, do you see what I am saying?

18 A. I see what you are saying.

19 Q. The true circumstantial evidence, the

20 burden of proof is still the same.

21 A. Yes.

22 Q. It's just a different manner. But

23 what the State has to do is take every speck of evidence

24 and completely obliterate any reasonable doubt.

25 A. Okay. And direct and circumstantial

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1 evidence is the same though in the end. Right?

2 Q. Well, if you say it is.

3 A. Oh, okay.

4 Q. If you say it is.

5 A. Okay.

6 Q. You may have circumstantial evidence

7 that you say, "You know, that just doesn't add up."

8 A. Right, yes.

9 Q. Because one of things that

10 circumstantial evidence has to do is it has got to fit

11 together well enough to blacken out this circle.

12 A. All right.

13 Q. And it might not fit together well

14 enough. And that is what a jury does really. Is they

15 look at witnesses and they look at bits of evidence and

16 say, "Is it credible? Is it believable?"

17 You know, if I look at that witness

18 and how they are reacting, does what they say make sense?

19 I think this is an important thing. Does what they say

20 make sense?

21 A. Yes. Okay.

22 Q. And does this evidence fit with or not

23 fit with what the State thinks. Because the State --

24 it's always got to fit with the State, they are the ones

25 who have got to prove beyond a reasonable doubt.

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1 So, one of the areas that the State

2 said they are not required to prove, and I agree with

3 them, is motive. They are not required to prove motive.

4 But you know I can envision a case

5 where you might say, you might walk in there and say,

6 "You know, the State has proved a lot of evidence there.

7 But for some reason it just doesn't quite fit together.

8 The links of the chain just don't quite match up, and

9 it's because there is no explainable reason for this.

10 There is no motive to it." And that motive may say --

11 may cause you reasonable doubt. That lack of motive.

12 And you may say, "There is a gap of light there, because

13 there is a lack of motive." And that gap of light

14 creates reasonable doubt.

15 A. Okay.

16 Q. And once there is one hole in the

17 State's case, that is it. Once there is one hole of

18 reasonable doubt, that is the end for the State. Whether

19 it's one reasonable doubt or 10 reasonable doubts or 100

20 reasonable doubts, you are always going to resolve them

21 in favor of the defendant.

22 A. Okay.

23 Q. All right.

24 A. Yes.

25 Q. Are you okay with that?

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1 A. Yes, that sounds reasonable.

2 Q. Okay. You may see some photographs.
3 I bet you will see photographs.
4 A. Okay.
5 Q. That will be very disturbing to any
6 normal human being.
7 A. Yes. I'm sure.
8 Q. And what I need to know from you is:
9 Will you take those photographs as just what they are,
10 and not look up and say, "Somebody needs to pay a price
11 because of what I see here."
12 A. Well, without seeing photographs it
13 would be hard to say. But somehow I feel like knowing
14 there is a murder, and knowing it was stabbing, there's
15 going to be some gore, and you just have to be prepared
16 for that.
17 Q. That's right. And that doesn't --
18 that won't overwhelm you to where you just get so enraged
19 that you have got to convict the next person that you
20 look at?
21 A. No, because I'm going to try to be
22 with an open mind. I mean, that is what I would be here
23 for.
24 Q. That's right. And just because a
25 crime is committed, that doesn't create any presumption

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1 in your mind?
2 A. No.
3 Q. That this lady is guilty?
4 A. No.
5 Q. Let's talk a little bit about that
6 indictment that is in front of you there, that
7 typewritten part. And particularly, it in essence says:
8 That my client is accused of intentionally and knowingly
9 causing the death of a child under the age of six years.
10 A. Yes.
11 Q. And I wrote down what the district
12 attorney said to you. And he asked you, "The charge in
13 that indictment is -- is it -- do you consider that a
14 charge such that might be appropriate for a death
15 sentence?"
16 And I believe you said, "That it would
17 be appropriate under the proper circumstances."
18 A. Under the proper circumstances.
19 Q. My question to you is: Can you also
20 accept the premise that a life sentence may be
21 appropriate for that same charge there, under the proper
22 circumstances?
23 A. Under the proper circumstances, yes.

24 Q. Okay. That's -- you know all we want
25 is to start off even.

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1 A. I understand.

2 Q. And I better back up and remind you
3 where I started, because we never expect to be answering
4 these questions.

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

7 Q. But all any person ought to be
8 entitled to is just to start off even. We don't need a
9 head start.

10 A. Okay.

11 Q. Just let us start even. And so, what
12 you are telling me is that that kind of charge, if any
13 defendant was up there, that you could look at a life
14 sentence or you could look at a death sentence, depending
15 on the circumstances?

16 A. I believe I can, yes.

17 Q. Okay. Y'all have closed the art shop?

18 A. Yes, we sold it in '89.

19 Q. Okay. Are you still --

20 A. -- painting.

21 Q. Painting?

22 A. Three times a week.

23 Q. What is Walt doing with his time?

24 A. He is cutting wood for me and making
25 things for the grandchildren. He has an orchid hobby,

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1 and, of course, hunting and fishing.

2 Q. I guess he is going tomorrow?

3 A. No, he is not actually.

4 Q. Really?

5 A. No, he doesn't have a lease anymore.

6 Q. Yeah. They lost the lease.

7 A. Yes.

8 Q. Where do your girls live?

9 A. One lives here and one lives in
10 Leander which is just northwest of Austin, and the other
11 lives in Groves, which is down near Port Arthur.

12 Q. Who lives here?

13 A. Our oldest daughter.

14 Q. Catherine?

15 A. Catherine.

16 Q. Who is he she married to?

17 A. Keith Jones.

18 Q. One of your favorite TV shows is NFL
19 football?

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

22 Q. What do you like to watch?

23 A. Well, Dallas, of course. I am in the
24 company of friends.
25

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1 THE COURT: We appreciate that.

2 MR. RICHARD C. MOSTY: I guess that is
3 the only --

4 THE COURT: Thank you. Make sure that
5 is in the record.

6 MR. RICHARD C. MOSTY: That is the
7 politically correct --

8 THE PROSPECTIVE JUROR: As a matter of
9 fact our grandson who is a Troy Aikman fan, and my
10 heavens, I just went and bought him a shirt -- a Troy
11 Aikman shirt, you know. Merciful heavens, these boys
12 don't need that kind of money they spend on them.

13 MR. RICHARD C. MOSTY: I have a 17
14 year old daughter who is a rabid Dallas Cowboys fan. I
15 came down last Sunday and I saw her on the couch, and she
16 had a blue bandana tied around the top of her head.

17 THE PROSPECTIVE JUROR: Well, I don't
18 go to that extent. Sometimes I don't have a choice to
19 watch, you know.

20 MR. RICHARD MOSTY: I understand.
21

22 BY MR. RICHARD C. MOSTY:

23 Q. Ms. Huth, this is the only opportunity
24 that you really have to speak in this process. Once a
25 jury is impaneled, what you do is you sit and you listen,

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1 and sometimes you will sit over there and you will think,
2 "Gosh, I wish they wouldn't answer that question again."

3 A. Oh.

4 Q. Sometimes you will sit over there and
5 say --

6 A. It's kind of like politics?

7 Q. -- "I wish they would ask this. You
8 know, nobody has asked this question and I am dying to
9 know." And that just may be where you sit. You just
10 say, "There is -- you know, somebody didn't ask a
11 question."

12 And once you are sitting there, your
13 job is to just to ferret through that evidence along with
14 the other jurors, and judge the credibility of it, and
15 see if there is proof beyond a reasonable doubt. And it
16 may be, that there is reasonable doubt in the evidence
17 that was presented, or it may be the lack of evidence
18 that was presented, just a hole that is unfilled.
19 A. Uh-huh. (Witness nodding head
20 affirmatively.)
21 Q. That creates reasonable doubt.
22 A. Uh-huh. (Witness nodding head
23 affirmatively.)
24 Q. But your job is to take the evidence
25 and to filter through it and process it.

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1 So, I say that in the sense of -- I'm
2 going to ask you just a general global question of: Is
3 there anything that we have not covered? Is there
4 anything we haven't asked? Or is there anything that you
5 think is important for the Court and the lawyers to know
6 about; where you are or how you might sit as a juror,
7 that we haven't asked?

8 A. No.

9 Q. Anything that on your mind that
10 could --

11 A. Well, no, I don't -- I can't think of
12 anything. Of course, like he mentioned and it's in my
13 deposition, that we were military. And the need to know
14 is, you know, the right to know, is there. I worked for
15 the CIA for a while right out of college. So, you know,
16 you take it from there. There are just some things you
17 take at face value and that is what you work with.

18 Q. Well, and in this instance, just
19 taking that statement, you know, if there is a need to
20 know something?

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

23 Q. And the State doesn't bring it to you?

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

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1 Q. And that need to know in your mind is
2 a reasonable doubt?

3 A. Yes.

4 Q. Then at that point you just have to
5 say not guilty.

6 A. Okay.
7 Q. You don't get the chance to say,
8 "Well, I got a --"
9 A. "I got a question."
10 Q. If the State doesn't bring it to you,
11 and you need to know it to find a verdict, then you
12 resolve that in favor of this defendant and say by your
13 verdict not guilty? And you can do that all right?
14 A. I think so. I would look at what was
15 in front of me, that's all I can say. I have no idea.
16 Q. I think that is all anybody is
17 entitled to, quite frankly.
18
19 MR. RICHARD C. MOSTY: That's all the
20 questions I have.
21 THE COURT: All right. Ma'am, would
22 you mind stepping outside just briefly, please.
23 THE PROSPECTIVE JUROR: Sure.
24
25 (Whereupon, the prospective

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1 juror was excused from the
2 room, and the following
3 proceedings were held,
4 outside of his presence
5 as follows:)
6
7 THE COURT: All right. What says the
8 State? Is everybody through? What says the State?
9 MR. TOBY L. SHOOK: The State accepts
10 the juror.
11 THE COURT: What says the defense?
12 MR. RICHARD C. MOSTY: We will accept
13 the juror.
14 THE COURT: All right. Can you have
15 Ms. Huth step back in.
16
17 (Whereupon, the prospective
18 juror returned to the
19 room and the proceedings
20 were resumed as follows:)
21
22 THE COURT: All right. Ma'am, can you
23 come up?
24 THE PROSPECTIVE JUROR: Yes.
25 THE COURT: Ma'am, you have been

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1 accepted as a juror in this case. You don't need to sit
2 down.

3 THE JUROR: Okay.

4 THE COURT: You have been accepted as
5 a juror in this case. We anticipate the trial starting
6 on the 6th of January.

7 THE JUROR: Oh.

8 THE COURT: So, between now and then,
9 don't talk about the case with anybody. In fact, you
10 don't have to -- no member of the media has been in here,
11 so nobody is going to know you are a juror except you.
12 So, please don't tell anybody. I know you will tell your
13 husband.

14 THE JUROR: Well, yes, that's hard not
15 to.

16 THE COURT: I understand that and that
17 is fine. But if you could just keep it as quiet as
18 possible, and don't read anything about the case.

19 THE JUROR: I won't.

20 THE COURT: Or if you see it on TV,
21 just ignore it. And there is a gag order in effect,
22 which calls for monetary or jail time sanctions. I know
23 it's not going to cause you any problem, I just have to
24 tell you that.

25 THE JUROR: Well, like I said, I paint

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1 with three groups during the week. And last Monday and
2 Tuesday, I had no idea this was for criminal court, and I
3 told them I had jury summons. So, now they are all going
4 to want to know. And I don't know -- how do I handle
5 that?

6 THE COURT: All you have to do, is
7 just tell them you went down, and that you got a jury
8 summons.

9 THE JUROR: Okay. Okay. And I can
10 leave town? I would like to buy an airplane ticket.

11 THE COURT: That will be fine, yes,
12 ma'am. We sure hope you come back by January 6th.

13 THE JUROR: I will, I am just going to
14 Virginia.

15 THE COURT: That is perfectly fine.

16 Yes, ma'am, that will be fine.

17 THE JUROR: All right. I will do my
18 best.

19 THE COURT: All right. Thank you,
20 ma'am.

21 Okay, gang, good work today. Thank
22 you very much.
23 MR. RICHARD C. MOSTY: Judge, Mr.
24 Mulder has tickets to the Cowboys game.
25 We're thinking, if it's okay with the

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1 Court, we would fly her up Sunday for the game?
2 THE COURT: That will be fine. That
3 will be fine.
4 Mr. Mulder usually sits up there in
5 the box with the Big J up there so, J.J. Aren't you and
6 Jerry good friends?
7 MR. DOUGLAS MULDER: No, I have got my
8 own box.
9 THE COURT: Oh, I figured that as
10 much. I figured that as much. All right. That is quite
11 right.
12 Well, okay. Well, you will be here
13 tomorrow?
14 MR. DOUGLAS MULDER: No, I will be
15 thinking about you.
16 MR. RICHARD C. MOSTY: After we got
17 admonished for talking in class --
18 MR. DOUGLAS MULDER: I mean, anytime
19 you can't confer with your client.
20 THE COURT: Well, you may confer with
21 your client.
22 MR. DOUGLAS MULDER: Well, Mr. Mosty
23 is limited.
24 THE COURT: We hope it will be done
25 in, shall we say, in modulated tones.

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1 MR. RICHARD C. MOSTY: We're just glad
2 you didn't see us chewing gum, Judge.
3 THE COURT: Thank you very much.
4 That's quite all right. Gum's quite all right. Mr.
5 Douglass will get a gold star for his decorum. We'll
6 start giving gold stars down here.
7 MR. TOBY SHOOK: So we have three
8 jurors coming tomorrow, Judge?
9 THE COURT: We have three coming
10 tomorrow.
11 Everyone please be prompt in the
12 morning, we will see everyone here at 8:00 a.m.
13 MR. TOBY SHOOK: Yes, sir, the State
14 will be here.

15 MR. RICHARD MOSTY: Yes, sir, Mr.
16 Douglass will be here until I get here, I'm sure.
17 THE COURT: That will be fine.
18
19
20 (Whereupon, the parties were
21 thereby excused for the
22 day, to return on the
23 next day, November 1, 1996,
24 at 8:00 a.m. at which
25 time the proceedings

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1 were resumed in open
2 court, but in the
3 presence of the
4 defendant, with her
5 attorney, and the State
6 being represented by the
7 D.A., as follows:)
8
9 (These proceedings are continued to
10 the next volume in this cause.)
11
12
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25

Sandra M. Halsey, CSR, Official Court Reporter 1241

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

Sandra M. Halsey, CSR, Official Court Reporter 1242

1 Exp 12-31-98
2 STATE OF TEXAS)
3 COUNTY OF DALLAS)

4
5 JUDGES CERTIFICATE

6
7
8

9 The above and foregoing transcript, as certified
10 by the Official Court Reporter, having been presented to
11 me, has been examined and is approved as a true and
12 correct transcript of the proceedings had in the
13 foregoing styled cause, and aforementioned cause number
14 of this case.

15
16
17
18
19
20 _____

21 MARK TOLLE, JUDGE
22 Criminal District Court Number 3
23 Dallas County, Texas
24
25

Sandra M. Halsey, CSR, Official Court Reporter 1243