

Volume 18

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. 18 OF VOLS.

17 November 5, 1996

18 Tuesday

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Sandra M. Halsey, CSR, Official Court Reporter

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1 C A P T I O N

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4 BE IT REMEMBERED THAT, on Tuesday, the 5th day of

5 November, 1996, in the Criminal District Court Number 3

6 of Dallas County, Texas, the above-styled cause came on

7 for a hearing before the Hon. Mark Tolle, Judge of the

8 Criminal District Court No. 3, of Dallas County, Texas,

9 without a jury, and the proceedings were held, in open

10 court, in the City of Kerrville, Kerr County Courthouse,

11 Kerr County, Texas, and the proceedings were had as

12 follows:

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1 A P P E A R A N C E S

2
3

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

7

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

11

12 AND:

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

16

17 AND:

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

21

22 APPEARING FOR THE STATE OF TEXAS

23

24

25

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1 ADDITIONAL APPEARANCES:

2

3 HON. DOUGLAS D. MULDER
4 Attorney at Law
5 2650 Maxus Energy Tower

6 717 N. Harwood
7 Dallas, TX 75201

8

9 AND: HON. CURTIS GLOVER
10 Attorney at Law

11 2650 Maxus Energy Tower
12 717 N. Harwood

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14
15 AND: HON. RICHARD C. MOSTY
16 Attorney at Law
17 Wallace, Mosty, Machann, Jackson & Williams
18 820 Main Street, Suite 200
19 Kerrville, TX 78028
20
21 AND: HON. S. PRESTON DOUGLASS, JR.
22 Attorney at Law
23 Wallace, Mosty, Machann, Jackson & Williams
24 820 Main Street, Suite 200
25 Kerrville, TX 78028
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1
2 AND: HON. JOHN HAGLER
3 Attorney at Law
4 901 Main Street, Suite 3601
5 Dallas, TX 75202
6 ALL ATTORNEYS REPRESENTING THE
7 DEFENDANT: DARLIE ROUTIER
8 MR. HAGLER HANDLING THE APPEAL
9 AND:
10 HON. ALBERT D. PATILLO, III
11 Attorney at Law
12 820 Main Street, Suite 211
13 Kerrville, TX 78028
14 APPEARING FOR: Witness-
15 Detective Jimmy Patterson
16 only on one date in trial
17 AND:
18 HON. STEVEN J. PICKELL
19 Attorney at Law
20 620 Earl Garrett Street
21 Kerrville, TX 78028
22 APPEARING FOR: Witness
23 Officer Chris Frosch
24 only on one date in trial
25
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1 P R O C E E D I N G S
2
3 November 5th, 1996
4 Tuesday
5 8:30 a.m.
6
7 (Whereupon, the following

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

16
17

18 THE COURT: Who is the first one?
19 Angela Valenzuela. All right. Juror number 41, okay.
20 We are back on the record in the
21 Darlie Routier matter, this is Tuesday, November 5th.
22 This is Ms. Angela, A-N-G-E-L-A, Merrill, M-E-R-R-I-L-L,
23 Valenzuela, V-A-L-E-N-Z-U-E-L-A. Is that your name,
24 ma'am, and the correct spelling?
25 THE PROSPECTIVE JUROR: Yes, sir.
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1 THE COURT: Thank you. If you could
2 tap this, there you go. Ms. Valenzuela is number 41 on
3 our list and number 114 on the juror's list. And, ma'am,
4 if you will raise your right hand, please.
5 You solemnly swear or affirm you will
6 true answers give to all questions propounded to you
7 concerning your qualifications as a juror, so help you
8 God?
9

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

17

18 THE PROSPECTIVE JUROR: I do.
19 THE COURT: You are here today as a
20 prospective juror in the Darlie Routier matter, and Mrs.
21 Routier is the defendant in today's case. She is the
22 young lady sitting over here in the dress with the white
23 collar and necklace or whatever.
24 She is represented by Mr. Curtis
25 Glover and Mr. Preston Douglass.
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1 MR. S. PRESTON DOUGLASS, JR.: Good

2 morning.
3 MR. CURTIS GLOVER: Hello.
4 THE PROSPECTIVE JUROR: Hello.
5 THE COURT: And the State of Texas is
6 represented by Mr. Toby Shook and Ms. Sherri Wallace of
7 the Dallas County District Attorney's Office.
8 MR. TOBY L. SHOOK: Good morning.

9 MS. SHERRI WALLACE: Good morning.
10 THE PROSPECTIVE JUROR: Good morning.
11 THE COURT: You are going to be asked
12 some questions from both sides, and I want you to relax.
13 Are you a little bit nervous?
14 THE PROSPECTIVE JUROR: Yes.
15 THE COURT: Okay, relax. There are no
16 wrong answers, there will not be a test. We just want to
17 know how you feel. Listen to each question carefully and
18 just answer that question. Nobody is trying to trick
19 you, okay?
20 THE PROSPECTIVE JUROR: Okay.
21 THE COURT: All right. Mr. Shook.
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23
24
25

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1 Whereupon,
2
3 ANGELA MERRILL VALENZUELA,
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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. Valenzuela, again, my name is Toby
14 Shook. I am one of the prosecutors in the case and I
15 will be asking you questions on behalf of the State. And
16 like the Judge said, this is not a test. We just want
17 your honest opinions. Okay?
18 A. Okay.
19 Q. Have you ever been down on jury duty
20 before?
21 A. No.
22 Q. Okay. Usually we talk to everyone in

23 one big panel, but since this is a capital murder case in
24 which the State is seeking the death penalty, we talk to
25 every juror individually. I want to get a little bit on
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1 your background and then kind of talk about the law
2 involved. Okay?
3 A. All right.
4 Q. First of all, you put a note and you
5 may have said something, I believe, a couple of weeks ago
6 when you were in the big panel, I think you brought it up
7 then, about your children.
8 A. Uh-huh. (Witness nodding head
9 affirmatively.)
10 Q. Was it three boys?
11 A. Four boys.
12 Q. Four boys, okay. One of them is
13 hearing impaired; is that right?
14 A. Yes.
15 Q. And you wanted to write that down
16 because that could cause you some special problems, I
17 would guess.
18 A. Yes.
19 Q. Tell us a little bit about that.
20 A. Which boy? The oldest one?
21 Q. Is he the one that is hearing
22 impaired?
23 A. Yes.
24 Q. Okay. Start with him.
25 A. Well, he is just hearing impaired. He
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1 don't talk, he just does sign language.
2 Q. Okay. How old is he?
3 A. He is 11.
4 Q. Okay. He is 11.
5 A. Yes.
6 Q. Does he go to school?
7 A. Yes.
8 Q. What time does he get out of school?
9 A. He gets home about 10 minutes till
10 4:00
11 Q. Okay. And then you have some other
12 boys that are younger than that I think. Right?
13 A. Yes.
14 Q. Okay. How old are they?
15 A. 10, 8, and 6.
16 Q. Okay. What time do they get out of

17 school?

18 A. I know they get home at 3:45.

19 Q. Okay. Now do you work?

20 A. No.

21 Q. You are housewife, you stay there and

22 take care of the children?

23 A. Yes.

24 Q. Okay. And if -- when they get home, I

25 guess you are there to supervise them; is that right?

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1 A. Yes.

2 Q. Okay. Is anyone else there able to

3 supervise them if you were down here on jury service?

4 A. I can try to get my sister-in-law.

5 Q. Okay. Maybe your sister-in-law?

6 A. Yes.

7 Q. All right. The fact that your one boy

8 is hearing impaired, does that worry you in any way if

9 you were chosen as a juror? I mean, you brought that up.

10 A. Somewhat, because --

11 Q. Tell us a little bit about that.

12 A. He doesn't -- well, they don't do sign

13 language like I do.

14 Q. Okay.

15 A. And I do most of it with him to learn

16 and everything.

17 Q. So he primarily communicates through

18 you?

19 A. Yes.

20 Q. He can't with his brothers?

21 A. Well, the brothers know a little bit.

22 Q. But not like you do?

23 A. No.

24 Q. Okay. All right. Ms. Valenzuela, let

25 me talk to you a little bit then about how you feel about

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1 the death penalty. You wrote down on your questionnaire

2 that you are in favor of the death penalty as a law; is

3 that right?

4 A. Somewhat.

5 Q. Okay. Somewhat. Well, okay. That is

6 what we want to get into is your personal feelings. How

7 do you feel about the death penalty?

8 A. Well, if somebody does a crime or they

9 kill somebody, they should be able to get the death

10 penalty.

11 Q. Okay. Have you always felt that way
12 about the death penalty? I mean, have you ever been
13 against the death penalty?

14 A. No.

15 Q. I mean, you probably don't sit around
16 thinking about it a lot?

17 A. No.

18 Q. At least I hope you don't?

19 A. No.

20 Q. But what types of crimes do you think
21 of when you think about the death penalty?

22 A. If somebody kills somebody or
23 something like that.

24 Q. Okay. Have you ever followed any
25 cases in the news, TV news, that are murder cases that
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1 you thought might -- you know, that is a death penalty
2 case or something like that? Like the O. J. Simpson
3 case, did you follow that case at all?

4 A. No.

5 Q. Okay. How about that -- remember the
6 Susan Smith case?

7 A. No.

8 Q. The case where out of Carolina where
9 the woman involved with her two kids in the car? Does
10 that sound familiar?

11 A. No.

12 Q. Okay. Any cases other than murder
13 cases that you think people should get the death penalty
14 for?

15 A. No.

16 Q. So you would just reserve it, if it
17 was up to you, to just murder cases?

18 A. Some.

19 Q. Some?

20 A. Not all.

21 Q. Not all, but some murder cases. All
22 right. Now, the type of case the defendant has been
23 indicted for is intentional killing of a child under the
24 age of six. You have not heard any witnesses yet, so I'm
25 not going to ask you what your verdict would be. But
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1 that type of case, murdering a child under the age of
2 six, is that the type of case you think a person should
3 be eligible for the death penalty?

4 A. Yes.

5 Q. Okay. Let me kind of tell you --
6 well, let me ask you this: As far as murdering and
7 getting the death penalty, do you think that is -- should
8 we do that because -- well, maybe that would keep people
9 from doing it again or that is just the right thing to do
10 in those situations, if someone murders like that? It's
11 just like -- you know, some people come in here and say,
12 "The Bible says an eye for an eye," and that kind of
13 thing.

14 Where do you come in on the death
15 penalty? Why do you think we should impose it?

16 A. Well, probably when they -- when you
17 hear all of the testimony and all that.

18 Q. Okay. Then, if it's the right thing
19 to do, you should do it?

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

22 Q. And murder of children would be one of
23 those type cases you think might --

24 A. I have four kids of my own and I
25 wouldn't even do it.

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1 Q. You wouldn't do what?

2 A. Even try to kill them. I don't even
3 want to hit them or anything.

4 Q. Okay. You don't strike them or
5 anything. You couldn't understand why someone would
6 murder their children?

7 A. No.

8 Q. Okay. Let me -- Ms. Valenzuela, you
9 know that the death penalty does -- we actually carry
10 that punishment out in Texas. You may have heard about
11 that on TV, or read about it in the paper, I don't know.
12 But do you know what the method of execution is?

13 A. No.

14 Q. It's lethal injection. It's where
15 they put you to sleep. There's been over 100 people that
16 have been executed in the State of Texas. Okay?
17 What happens is, the trial goes on and
18 we have to prove that the defendant, beyond a reasonable
19 doubt --

20 A. Okay.

21 Q. -- committed the crime. And if we do
22 that, the jury returns a verdict of guilty. At that
23 point, if there is a guilty verdict, we go on to the
24 punishment phase. And there we have to put up these two
25 questions.

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1 The first question we have to prove,
2 is that the defendant would be a continuing danger to
3 society. Okay?
4 And the second question allows the
5 jurors to look at all of the evidence and if they think a
6 life sentence should be imposed, they can answer it that
7 way. If they don't think it should be imposed, they can
8 answer the other way. But once you find someone guilty,
9 there is only two possible outcomes. A person can get
10 death or life. Okay?
11 Now, the jurors don't write that in.
12 If they answer a "yes" answer to the first question and a
13 "no" answer to the second, the Judge will sentence the
14 defendant to death. You think they are a danger and
15 there is no evidence that says they should get a life
16 sentence, then the Judge will sentence them to death.
17 There is no -- he has no alternative. Okay? That is
18 what the law says he has to do.
19 If they answer it any other way, then
20 the defendant gets a life sentence. But there's only two
21 outcomes once someone has been found guilty. Is that
22 clear to you?
23 A. Yes.
24 Q. But it all depends on how the jurors
25 answer these questions. "Yes" and "no" equals death.
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1 Like I said, the method of execution is by lethal
2 injection. If a person is sentenced to death in this
3 State, they stay in Huntsville, Texas, on death row. And
4 they wait. I can't tell you, but someday if this
5 defendant were found guilty, and the juror answered "yes"
6 and "no," someday Judge Tolle would issue a death
7 warrant. That gives the actual date of execution.
8 And under our laws, she would be taken
9 from a cell and moved to a special area, the Walls Unit.
10 And at that time, she would be given time with the family
11 and friends, a minister.
12 And the law says that at 6:00 p.m. or
13 after 6:00 p.m., and it always takes place shortly after
14 that, she would be taken from her cell, taken to the
15 death chamber, laid down on one of these hospital
16 gurneys, except this one would have straps that would
17 strap down her legs, her arms, and her chest, and needles
18 would be placed in her arm.
19 At that point in time, she would be
20 given -- the death warrant would be read, she would be

21 given a chance to say something, say anything, she can
22 say, "I didn't do it," whatever.

23 But after that, the poison would be
24 injected in her system. Breathing would stop, heart
25 would stop, it all takes about 10 minutes. That has
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1 happened, like I said, over 100 times. That happened to
2 five individuals that were convicted in Dallas County
3 just last year, they were executed. My point is, that
4 we're talking about a very real punishment. Something
5 that will happen to Mrs. Routier if she is convicted, if
6 the jury answers "yes" and "no."
7 What I want to know is, obviously, I
8 can't commit you to the verdict, but if you hear the
9 evidence, and we prove it to you, would you be able to go
10 along and take pen in hand and write those answers
11 knowing that the defendant would be executed someday? If
12 we prove that it you.

13
14 THE COURT: Is that a yes? You have
15 to -- Ms. Halsey is taking all this down so if you would
16 please answer yes or no.

17 THE PROSPECTIVE JUROR: It's yes.

18 THE COURT: Okay. Thank you.

19 MR. TOBY L. SHOOK: Okay. If I could
20 have one moment, please, Your Honor.

21 THE COURT: Sure.
22

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

4

5 BY MR. TOBY L. SHOOK:

6 Q. Before I go into another area, because
7 I don't want to waste anyone's time, Ms. Valenzuela, but
8 you remember Judge Tolle talked about taking an
9 exemption?

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

12 Q. That is -- an exemption is something
13 you can take if you are eligible, but it's up to you.
14 And if you have children under the age of 10, and you are

15 on jury duty, they wouldn't have any care or have
16 adequate supervision, then you can take that exemption.
17 Now I understand your kids are in school some of that
18 time?

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

21 Q. Okay. The trial would go on until
22 about five o'clock every day. If you were in
23 deliberations, you might be sequestered, meaning you
24 might have to stay during the night. Okay? But we think
25 the trial will last two to three weeks. You know your
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1 situation best as far as that goes, Ms. Valenzuela. If
2 you were put on a jury for two or three weeks and went
3 till five o'clock, would your children have adequate
4 supervision, the ones under 10, or would they not?

5 A. No, I don't know if I could get my
6 sister-in-law to go watch them or not.

7 Q. Okay. So, as your situation exists
8 today, you don't think they would have adequate
9 supervision?

10 A. No.

11 Q. Okay. Would you like to claim your
12 exemption then?

13 A. Yes, let me go ahead and do it,
14 because my husband also is sick.

15 Q. Your husband is also sick?

16 A. Yes, he is out. He is going back to
17 work in two weeks, so hopefully, he will be home.

18 Q. So, as you know yourself today, then
19 you would want to claim your exemption as far as having
20 to care for your children under the age of 10?

21 A. Yes.

22

23 MR. TOBY L. SHOOK: Judge, how would
24 you like us to proceed now?

25 THE COURT: Anything Mr. -- is the
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1 defense going to object to her claiming exemption?

2 MR. CURTIS GLOVER: Well, let me just
3 ask her one question.

4 THE COURT: That will be fine.

5

6 VOIR DIRE EXAMINATION

7

8 BY MR. CURTIS GLOVER:

9 Q. Do you feel, Ms. Valenzuela, that you
10 couldn't make some exception in this case and come down
11 here and serve on a jury and get somebody to take care of
12 your kids?

13

14 MR. TOBY L. SHOOK: Judge, we'll
15 object to that. It's not whether she wants to make
16 exceptions, it is whether she wants to take the
17 exemption.

18 THE COURT: I understand. I
19 understand. Well, I will let them --

20 MR. CURTIS GLOVER: Are you firm in
21 that you do want to take your exemption? I feel like she
22 is, Judge.

23 THE COURT: All right. So no
24 objection from the defense?

25 MR. CURTIS GLOVER: No objection.
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1 THE COURT: Thank you very much. All
2 right. You will be excused, ma'am. Ma'am, we would ask
3 you not to discuss anything that went on in here --

4 THE PROSPECTIVE JUROR: Okay.

5 THE COURT: -- until the trial is
6 over. It won't be over until the end of January, maybe
7 around the first of February. Mum is the word, and we
8 hope things goes well for you.

9 THE PROSPECTIVE JUROR: Thank you.

10 THE COURT: All right. Next juror.
11 We are ready. This gentleman is -- your name, sir?

12 THE PROSPECTIVE JUROR: Duane Simpson,
13 Harris Duane Simpson.

14 THE COURT: That is a number 39. Go
15 ahead and have a seat. That is number 39, Harris Duane
16 Simpson. That is 39 on our list and 110 on the jury
17 list. All right. If you will raise your right hand,
18 please.

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 THE PROSPECTIVE JUROR: I do.
24

25 (Whereupon, the prospective
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1 juror was duly sworn by the
2 Court to true answers make

3 to the questions propounded,
4 concerning qualifications, after
5 which time, the proceedings were
6 resumed as follows:)

7

8 THE COURT: All right. Thank you.

9 All right. You are here today as a potential juror in
10 the matter of the trial of Darlie Lynn Routier.

11 Mrs. Routier is the young lady sitting
12 over here to your far right in the red dress with the
13 white collar. She is represented by Mr. Curtis Glover
14 from Dallas and Mr. Preston Douglass, and also Richard
15 Mosty who is not here right now, from Kerrville.
16 The State is represented in these
17 proceedings by Mr. Toby Shook and Ms. Sherri Wallace,
18 both are Assistant District Attorneys from Dallas.

19 Both sides will ask you some
20 questions. There are no wrong answers, there won't be a
21 test. Just answer them just like, you know, honest
22 answers, nobody is trying to trick you.

23 THE PROSPECTIVE JUROR: Great.

24 THE COURT: All right. Ms. Wallace.

25 MS. SHERRI WALLACE: May it please the
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1 Court?

2

3 Whereupon,

4

5 HARRIS DUANE SIMPSON,

6

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

11

12 VOIR DIRE EXAMINATION

13

14 BY MS. SHERRI WALLACE:

15 Q. Again, good morning. My name is
16 Sherri Wallace and I will be asking you a few questions.
17 First off, thank you for filling out your questionnaire,
18 it was a big help.

19 A. I did my best.

20 Q. It probably took a while.

21 A. It did.

22 Q. And as the Judge said, just let me
23 restate, there is no right or wrong answers, I just kind
24 of want to hear how you feel and talk to you a little bit

25 more about your questionnaire.
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1 Let me first start by asking you: Do
2 you know either of the local counsel? Richard Mosty or
3 Preston Douglass who is here today.
4 A. I know Richard, but not very well. I
5 mean, I know who he is, more or less, no.
6 Q. Okay. Have you ever used him as an
7 attorney or anything like that?
8 A. No.
9 Q. Okay. Anything about that that would
10 influence you in any way in this trial?
11 A. No, I don't believe so.
12 Q. Okay. Just know him from around town?
13 A. Yeah.
14 Q. All right. Lots of folks seem to know
15 him.
16 A. It's a small town.
17 Q. Uh-huh. And you don't know any of the
18 people from Dallas; is that right?
19 A. No, I don't.
20 Q. Including the defendant?
21 A. Absolutely.
22 Q. Okay. Mr. Simpson, up front, let me
23 just tell you: It is our goal and desire to see that
24 that woman down there is executed. We believe we have
25 the type of case and the quality of evidence to do that.
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1 Would you have any problem in participating in that
2 process if we prove the case to you beyond a reasonable
3 doubt?
4 A. Absolutely not.
5 Q. All right. In here it says that you
6 have heard about this case.
7 A. Yes, ma'am.
8 Q. And I want to talk to you a little bit
9 about the pretrial publicity. As you may or may not
10 know, that is what we are doing here in Kerrville.
11 A. You say I have heard about the case?
12 Q. Yes. It says that your wife had just
13 told you about it, that it was a murder case.
14 A. That's all I know.
15 Q. Oh, so that is all you know. So you
16 really don't know much about it?
17 A. No.
18 Q. Okay. Well, along those lines, that

19 is exactly what we're looking for. We're looking for
20 somebody who won't make up their mind ahead of time, who
21 will wait and hear the evidence in the case and in the
22 courtroom. And I think you should have no problem doing
23 that, since you have not heard anything. How is that?
24 Does that sound fair?

25 A. It sounds fair to me.

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1 Q. All right. Here in Texas, let me tell
2 you a little bit about how the death -- well, let me ask
3 you: You said you were in favor of the death penalty.
4 Can you tell me a little bit about that.

5 A. Well, I just feel like if somebody
6 takes somebody else's life, they deserve -- kind of like
7 an eye for an eye. I mean, that is just the way I feel
8 about it.

9 Q. All right.

10 A. Maybe it's right and maybe it's wrong,
11 but that is just the way I feel about it.

12 Q. That is your personal belief.

13 A. If somebody killed a member of my
14 family, or would do anything, I don't care if they are
15 one day old or 100 years old, it's not the way to do it.
16 You deserve to die.

17 Q. Have you always felt that way?

18 A. Pretty much.

19 Q. All right. Let me tell you, here in
20 Texas there are specific crimes that are eligible for the
21 death penalty.

22 Murder is not one of them. You have
23 to have murder plus something else. Okay? It has to --
24 it depends on the type of victim, or other circumstances.

25 Let me be more specific. If you

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1 murder a police officer in the line of duty, that would
2 be a capital murder, or a fireman or a prison guard in
3 the line of duty. If you murder for hire, that is you
4 hire a hit man, or you are the hit man, and you get paid
5 for killing, those types of crimes would be eligible for
6 the death penalty.
7 If you kill more than one person, or
8 if you kill in the course of committing another felony,
9 like, a rape, or a kidnapping or a burglary, something
10 like that. Or if you kill a child under the age of six.
11 Those are a nutshell of the crimes that are eligible for
12 the death penalty in Texas. How does that sound to you?

13 Does that sound fair?

14 A. Like I said earlier, I mean, I don't

15 care if you are one year old or 100, it sounds fair to

16 me, yes.

17 Q. Okay. Is there anything else that you

18 would personally add to that list?

19 A. Well --

20 Q. If you were Governor of Texas?

21 A. Well, I don't think it makes any

22 difference who it is, that is the way I feel about it.

23 Like I say, the number of people, or you would have to be

24 under a certain age or over a certain age, doctor,

25 lawyer, or whatever, it makes me no difference.

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1 Q. Okay. Let me tell you now a little

2 bit about how this scheme works: It used to be that --

3 criminal trials are broken up, they still are. Criminal

4 trials are broken up into two phases; there is the

5 guilt/innocence phase, and then, if the defendant is

6 found guilty, then you move to the punishment phase.

7 A. Uh-huh. (Witness nodding head

8 affirmatively.)

9 Q. Have you ever served as a juror?

10 A. No, I have not.

11 Q. Okay. In the first phase, it's either

12 guilty or not guilty. If it's not guilty, everybody goes

13 home. If it's guilty, you go to the second phase, to

14 punishment.

15 Now, it used to be the jury made the

16 determination at the second phase. They either wrote

17 life or they wrote death in the blank. Okay? That is

18 not how it is anymore, the legislature has changed it. I

19 really don't know why, I had nothing to do with it, but

20 they came up with two questions that the jury must

21 answer, instead of saying death or life. And here are

22 the two questions, and we will go over them in a second,

23 but the first question has to be answered "yes," and the

24 second question has to be answered "no." Okay?

25 So it's guilty, "yes," "no," in order

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1 to get a death sentence. If these questions are answered

2 any other way, the Judge must impose a life sentence.

3 Okay? So, in fact, the jury doesn't really write death,

4 but the effect of their answers gives the Judge no

5 choice. You follow me so far?

6 A. Uh-huh. (Witness nodding head

7 affirmatively.)

8 Q. Okay. That first question it says:

9 "Do you find from the evidence beyond a reasonable doubt
10 that there is a probability that the defendant would
11 commit criminal acts of violence that would constitute a
12 continuing threat to society?"

13 Do you remember the Judge's

14 instructions, I guess it was a couple of weeks ago, when
15 he told you that the defendant is presumed innocent?

16 A. Sure.

17 Q. Okay.

18 A. I have no problem with that.

19 Q. If you voted right now, you would have
20 to find her not guilty.

21 A. Absolutely.

22 Q. Okay. And that is because we have the
23 burden of proof, and that is really just another way of
24 saying we have the burden of proof. With this question,
25 the first question in the punishment phase, we again have

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1 the burden of proof.

2 So, that question is presumed to be

3 answered "no." Just like in the guilt/innocence phase,

4 presumed innocent, this is presumed to be answered "no."

5 We have got to convince you beyond a reasonable doubt

6 that she will be a future danger, basically, to summarize

7 it. And the key to this, Mr. Simpson, is that you can't

8 automatically, knee-jerk, make a decision.

9 Some people say, "Well, if I found the

10 defendant guilty of capital murder, automatically, no

11 question, I would impose the death penalty." And that is

12 not the type of juror we need, because we need somebody

13 that will wait and hear the evidence.

14 Let me give you a little bit of an

15 example: Let's say that I go into a bank and rob a bank,

16 and I want to get some money. And I am in there and I

17 decide I don't want any witnesses, so I'm going to just

18 kill everybody. And I kill the teller, and I kill

19 everybody in line, including a woman with a baby. I

20 mean, just, you know, horrible, horrible crime, 10 people

21 die. And I am running out of the bank, and that is it.

22 Now, if that's all you heard, you may

23 think, "Oh, my God, she ought to get the death penalty.

24 No question in my mind. That's all I need to know." But

25 if you look further at the evidence, while I am escaping

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1 from the bank, a police car is coming to apprehend me.
2 You see, right before I shot the teller, the teller
3 pushed that little emergency button under her counter,
4 and the police are coming to get me.
5 I don't hear anything and I don't see
6 them. They pull -- they run me over, and I live, but I
7 am a quadriplegic.
8 Now, after you hear all that -- now, I
9 know that is a far out example.
10 A. Sure.
11 Q. But I use it for this premise: You
12 don't know what the facts are until you get there?
13 A. Heard all the facts, right.
14 Q. Right, until you get in the courtroom.
15 And if I just told you about that horrible killing, baby,
16 mommy, and you know, a security guard and the teller, all
17 the folks that were killed in that bank; if you knew only
18 about that, you would say, "Heck, yeah, she ought to
19 die." But after you have heard the whole thing, and you
20 don't just decide if I live or die, you have to answer
21 this question: Is there a probability that I would be a
22 continuing threat to society?
23 A. Not if you're a quadriplegic, I don't
24 see how you could be.
25 Q. Right. You may decide after you have
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1 heard the evidence that I am mean as a snake, and I might
2 be able to do something with my, you know, my jaw or
3 my --
4 A. Teeth?
5 Q. Yeah, my teeth, no telling. But the
6 point of the matter is you just have to wait until you
7 hear, and I think you have said you could do that; is
8 that right?
9 A. Uh-huh. (Witness nodding head
10 affirmatively.)
11 Q. Okay. Let me talk to you a little bit
12 about the indictment. I think it's there in front of
13 you. Do you see it, Mr. Simpson? Yeah. Just read that
14 typewritten portion, you don't need to read the whole
15 thing, but just that.
16
17 THE COURT: That is in the middle of
18 that.
19 THE PROSPECTIVE JUROR: This?
20 THE COURT: Yes, right.
21 MS. SHERRI WALLACE: Not the
22 preprinted part.

23

24 BY MS. SHERRI WALLACE:

25 Q. Okay. That is what the defendant is
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1 charged with and that is what we intend to prove to the
2 jury beyond a reasonable doubt. And we do that through
3 several different methods. We can do that through direct
4 evidence or indirect evidence. And indirect evidence is
5 sometimes called circumstantial evidence. I want to
6 spend some time talking about that, but first I want to
7 talk to you about direct evidence. Direct evidence is an
8 eyewitness. That is it, that is what direct evidence is.

9 And often, I'm sure that you can
10 imagine, in murder cases we do not have an eyewitness.
11 The eyewitness is dead. You know the defendant doesn't
12 have to testify and so the State must look to other types
13 of evidence to convince the jury beyond a reasonable
14 doubt that the defendant is guilty.

15 So, circumstantial evidence are things
16 like everything else: Statements by the defendant that
17 don't comport with the crime scene; fingerprints; DNA;
18 blood splatters; fibers; anything else other than an
19 eyewitness.

20 Are you open to the possibility that
21 we could convince you beyond a reasonable doubt that the
22 defendant is guilty of capital murder based on
23 circumstantial evidence alone?

24 A. I would just have to hear the evidence
25 first and then I could make a decision, I guess.
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1 Q. That's all we're looking for.
2 Additionally, on that indictment, no
3 where will you find that we have to prove to you motive.
4 We have to prove to you everything on that indictment
5 beyond a reasonable doubt, but we don't have to prove
6 motive. And there is really a good reason for that.
7 We can't get into the defendant's
8 mind. We can't call the defendant to the stand. So, it
9 may be after you have heard all of the evidence, that the
10 motive becomes abundantly clear to you. Or it may be,
11 after you have heard the evidence, it might be one of
12 several. You could be in the jury box, and think, well,
13 I think it's this, and another juror thinks it's this, or
14 whatever. But the point is, it doesn't matter, the
15 motive, if you believe beyond a reasonable doubt that the
16 defendant is good for it.

17 It may be that you don't ever
18 understand. A lot of crimes, we, as right-minded
19 thinking folks, don't ever, ever get. Would you still be
20 able to sit on this case if you did not know a motive?

21 A. I suppose.

22 Q. Okay. You would be able to follow

23 that law?

24 A. Yes.

25 Q. All right. And, as I said, if we
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1 I don't bring the case to you beyond a reasonable doubt, we
2 go home. But if we do, we go to these questions. And
3 let me talk to you a little bit more about that first
4 question.

5 And let me tell you why I am asking
6 you these things. I am going to ask you what a couple of
7 phrases and words mean to you, and I do that for this
8 reason. A lot of the words that we use that are going to
9 be used in the trial, the Judge will define for you, but
10 he is not going to define a single word in that sentence
11 for you.

12 And so, it's going to be what your
13 understanding of what these words are. So, tell me, Mr.
14 Simpson, what does the word probability -- what would
15 that mean to you?

16 A. It's whether or not you think that she
17 did or she didn't do it. If she had -- or he had cause
18 to do something.

19 Q. Okay. So, if somebody was -- whether
20 or not they were going to probably do something in the
21 future?

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

24 Q. Would that, more likely than not,
25 would that be a pretty fair --
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1 A. That is kind of what it says.

2 Q. Okay. And criminal acts of violence;
3 what sort of things would you be looking for with that
4 phrase?

5 A. You mean what do I consider a criminal
6 act of violence?

7 Q. Yes, sir.

8 A. Murder, assault, rape, physical
9 assault.

10 Q. Okay. So, any sort of injury or harm

11 to a person?

12 A. Yes, bodily harm contact.

13 Q. All right. And, society, that word --

14 let me kind of tell you where I am coming from here.

15 Some people think that society includes all people, and

16 some people think it doesn't include all people. I want

17 to just see where you fit. And by that, I mean, does

18 society in your mind, include prison guards, relatives

19 visiting the inmates, chaplain?

20 A. I never thought about that. That's

21 not the first thing I think of. No, society is just -- I

22 would say the real world, I mean, it's just the world in

23 which we live.

24 Q. Out here?

25 A. Yes, more or less, that is the way I

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1 look at it anyway.

2 Q. Okay. But now that you have had some

3 time to actually kind of think about it, does society

4 include protecting the people who have to work and be in

5 the prisons?

6 A. I guess that is their little society,

7 yes.

8 Q. Okay. And, obviously, there is a lot

9 of people that are in the prison system that are not

10 criminals. There are guards and there are people that

11 are psychologists and psychiatrists and all that sort of

12 stuff that have to come and go and we have to be

13 concerned about their safety as well.

14 If that question -- and remember

15 again, that question is presumed to be answered "no." If

16 we convince you beyond a reasonable doubt that it is

17 probable that the defendant would commit criminal acts of

18 violence that would constitute a continuing threat, then

19 your answer becomes "yes," and you move to the second

20 question.

21 A. If I was convinced beyond a reasonable

22 doubt.

23 Q. Right. The next question is the

24 second special issue, and it's really long, and I will

25 just read it aloud, if you want to read along with me:

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1 "Taking into consideration all of the

2 evidence, including the circumstances of the offense, the

3 defendant's character and background, and the personal

4 moral culpability of the defendant, is there a sufficient

5 mitigating circumstance or circumstances to warrant that
6 a sentence of life imprisonment rather than a death
7 sentence be imposed?"
8 If I could just summarize it, it would
9 go like this: After you have heard everything, do you
10 think there is a reason that she should get a life
11 sentence instead of a death sentence?
12 And there is no burden of proof on
13 that question, this is just kind of the safety net, if
14 you will. It's for your own gut. It is -- you have
15 found the defendant guilty of intentionally -- knowingly
16 and intentionally killing a child under the age of six.
17 Okay? She is guilty of capital murder.
18 You have then gone to the first
19 question and found that she will be a continuing threat
20 to society. Okay? But something comes up, and it may be
21 from the State, and it may be from the defense, but
22 something comes up where you, in your heart, and not
23 anybody else in the jury box, not anybody else in this
24 room, but you decide you couldn't live with yourself if
25 you didn't see that she got a life sentence instead of
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1 death.
2 At that point, you would answer the
3 question "yes," so she would get a life sentence. If
4 there wasn't, in your mind, something sufficient, that
5 question would be answered "no," and she would receive a
6 death sentence. Did you follow all of that?
7 A. Uh-huh. (Witness nodding head
8 affirmatively.)
9 Q. Okay. We have been doing this for a
10 couple of weeks, so forgive me if I get ahead of myself.
11 A. You are pretty familiar with the
12 questions then, aren't you?
13 Q. Yes, I have read them a couple of
14 times. So, I don't want to assume anything. Okay?
15 Because the first time I looked at them I went, "Huh"?
16 A. A lot of big words there.
17 Q. Yeah. Mitigating is one of those
18 words that, really, this is sometimes called the
19 mitigation question. And mitigating -- what does that
20 word -- have you ever thought about what it means to you?
21 A. No, I'm not really sure.
22 Q. Okay. Mitigating has been described
23 in case law, these aren't my words, but as something that
24 would lessen someone's moral blameworthiness. In other
25 words, they did it, but for some reason you don't feel
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1 that they are as responsible for their actions as the
2 next guy.

3 A. Okay.

4 Q. Let me give you an example about where
5 this question came from, and maybe that will help make a
6 little more sense.

7 A few years back there was a man that
8 was tried for capital murder, and he was good for it. He
9 was not insane, he knew the difference between right and
10 wrong. He did it. And he was going to be a future
11 danger, but he was mentally retarded. Okay?

12 Now, he knew the difference between
13 right and wrong, but his mental faculties were so low,
14 that the courts thought there ought to be something for
15 that type of person. Somebody that couldn't help the
16 fact that they just have a severe -- and I don't mean
17 somebody that is just not as bright as the rest of us.
18 I mean this guy was low, low IQ. I
19 mean just borderline competent to stand trial, but he
20 was. Okay? And that is kind of where that question came
21 from.

22 Kind of hearing that background -- now
23 that I have kind of given you that background and that
24 example, is there anything that comes to your mind that
25 would lessen somebody's moral blameworthiness?

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1 A. That is a possibility. Like I said, I
2 don't know a lot about this case, but I don't see how
3 that really pertains to the circumstances of what little
4 I do know about this.

5 Q. Okay. And let me kind of follow that
6 up, Mr. Simpson. Here is the beautiful part. You don't
7 have to tell me or the Judge or the defense lawyers or
8 anybody what would be mitigating to you. Okay?

9 You may sit as a juror in five million
10 capital murder cases, and never once hear something where
11 you decide that a life is appropriate, even though you
12 found the other two, and you don't have to.

13 What you do have to do to be a juror
14 in this case, is to promise the Court that you will
15 follow the law and keep an open mind. It's kind of
16 like -- I don't know what mitigating evidence is, but I
17 will know it when I see it. Okay?

18 A. Yes, that is kind of the way I feel.

19 Q. Is that how you feel?

20 A. Yes.

21 Q. Okay. So after you have heard
22 everything, if you decided right here, "I don't think
23 death is right in this case, I want a life sentence,"
24 here is how the legislature gives you this little out.
25 Fair enough?

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1 A. Yes.

2 Q. Okay. So, again to be a juror you
3 just have to keep an open mind and wait until you hear
4 the evidence. And I think you have said several times
5 that you could do that?

6 A. Yes.

7 Q. Right?

8 A. I think so.

9 Q. Okay. I want to talk to you a little
10 bit about general principles of law and I have referred
11 to presumed innocent, and you said that you had no
12 trouble with that. That if you voted right now you would
13 find the defendant not guilty.

14 A. Absolutely, I know nothing about it
15 so --

16 Q. Perfect. Additionally, the Judge told
17 you that an indictment is no evidence of guilt.

18 A. I knew that.

19 Q. All right. That is another law that
20 you must follow. Will you be able to follow that law?

21 A. Yes, ma'am.

22 Q. All right. As you know, the defendant
23 has an absolute right not to testify. And you can't hold
24 that against her, you can't hold that against us. In
25 other words, you just can't consider it in any way. Can
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1 you follow that law?

2 A. Yes, ma'am.

3 Q. Okay. Another thing I'd like to talk
4 to you a little bit about is all of the witnesses that
5 come in here. Every witness that comes in is going to
6 take an oath and then sit down on the stand and talk to
7 the jury.

8 And you have to start all witnesses
9 off on the same plane. In other words, you can't give
10 somebody more credibility unless you have heard from
11 them. And that makes sense, I mean it sounds stupid for
12 me to even say it. Well, of course, you don't know what
13 you think of them because you have not heard anything.
14 And here's why I ask it. Some defense

15 attorneys and Mr. Preston and Mr. Glover don't do this,
16 but -- I mean, Mr. Douglass, excuse me. We have been
17 here a while. Preston is his first name. They don't do
18 this, but some defense attorneys will say, "Would you
19 believe a police officer simply because he is a police
20 officer?"

21 And that is really kind of a trick
22 question, because, of course, you would believe a police
23 officer. But as a juror, you can't believe anybody until
24 you hear from them. Could you wait until you hear from
25 any witness, police officer, rabbi, defendant, defense
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1 witness, or whatever, until you decide if they are
2 shooting straight with you?

3 A. Absolutely.

4 Q. All right. In the case, Mr. Simpson,
5 you may see bad photographs, graphic, gory photographs.
6 And we ask that you just be able to look at those
7 photographs for what they are, keep an open mind, view
8 them as pieces of evidence.

9 A. Sounds tough.

10 Q. I'm sorry?

11 A. Sounds tough.

12 Q. Well, it is tough. You know being a
13 juror in a capital murder case is a tough job. We
14 wouldn't anybody that was auditioning for it. But I just
15 want to let you know up front that there is going to be
16 those types of photographs.

17 But, as you can see, we have to prove
18 to you that this defendant did it. Because no matter how
19 bad the photographs are, if she didn't do it, then it
20 doesn't do any good to convict her. We have got to get
21 the right person.

22 A. Sure.

23 Q. So, could you hold us to that burden?

24 A. Sure.

25 Q. In talking about punishment, the Judge
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1 will instruct you that you cannot consider parole for any
2 reason, and there is a good reason for that. The parole
3 board, the people on it change, the rules about parole
4 change, and so, we really have no control over it. Judge
5 Tolle has no control over parole. Because of that, you
6 will be instructed that you cannot consider it in any
7 way. Will you be able to follow that law, Mr. Simpson?

8 A. Absolutely.

9 Q. All right. In your questionnaire you
10 wrote that --
11 A. Could you read it?
12 Q. Sure, I could. You wrote that the
13 defendant has the advantage of possibly getting off due
14 to some technicality; take the O.J. Simpson case, for
15 example.
16 That is a real common feeling to have
17 as a citizen, you are not one bit alone. It's a pretty
18 crowded field in that type of feeling. But these types
19 of technicalities are burdens that are put on the State
20 that we gladly accept. I mean if there is a
21 technicality, if we get it wrong, we don't deserve to
22 win. Okay?
23 A. Sure.
24 Q. And those are there to protect the
25 defendant and that is what this whole system is about.
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1 Can you follow those protections and those laws as a
2 juror?
3 A. Yes, I can. But what I was kind of
4 referring though, just so you will know and feel better.
5 Q. Yeah.
6 A. Like the -- what was like the guy's
7 name, the policeman in this case?
8 Q. Fuhrman, the bad guy?
9 A. Yeah. Was he the bad guy?
10 Q. Well, he plead guilty to perjury.
11 A. Well, evidently he was. But just for
12 somebody to use a slang, in my opinion, doesn't make
13 them -- shouldn't make them unacceptable, in my opinion,
14 in that case. But then again, I don't know that much
15 about it. That is just the way I felt about that
16 particular deal, and that happens a lot.
17 Q. I understand how you feel exactly.
18 And let me just talk to you a little bit about that, I
19 think what happened with that slang, and this is just,
20 you know, personal opinion, I think after the jury heard
21 that and knew that he had lied, that threw the rest of
22 his testimony into question. And I think that is one of
23 those things --
24 A. Well, that wasn't necessarily a
25 technicality then, I guess, was it?
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1 Q. Well, it's one of those things that,

2 you know, you know what the press told you, but you were
3 not there.

4 A. Absolutely.

5 Q. And that is just where we have to
6 trust our jury system, and sometimes they make mistakes,
7 but overall, we've got the best jury system in the world
8 and we're proud to abide by the rules. So, if you can
9 just hold us to those rules, that's all we're looking
10 for.

11 A. All right.

12 Q. Mr. Simpson, before I let the defense
13 attorneys ask you some questions, I want to talk to you a
14 little bit further about kind of a general area we talked
15 about.

16 There is nothing wrong with being
17 angry about crime. And there is nothing wrong with
18 hating what it's done to our society, or hating
19 particular types of crimes, especially crimes against
20 children. All those types of feelings are common. But
21 let me just reiterate and say that what we're looking for
22 in a juror is somebody that can hold us to the rules and
23 make us -- and wait until they hear the evidence in this
24 case, and keep an open mind until they hear the evidence.

25 A. I think you said that before.

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1 Q. All right. Would you be able to do
2 that?

3 A. Yes.

4 Q. Do you have any questions for me. I
5 feel like I have done a lot of the talking.

6 A. You sure have. That is kind of what I
7 had expected.

8 Q. Well, that takes some of the heat off
9 you.

10 A. I don't have any questions.

11 Q. You don't have any?

12 A. No.

13 Q. Okay. Thank you so much. I
14 appreciate your candor.

15 A. Sure.

16

17 MS. SHERRI WALLACE: We pass the
18 juror.

19 THE COURT: Thank you, ma'am. Mr. --

20 MR. S. PRESTON DOUGLASS, JR: I'll
21 take it.

22 THE COURT: -- Douglass.

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

24 Thank you very much. Hi, how are you?
25 THE PROSPECTIVE JUROR: Hi.
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1 THE COURT: The senior partner of
2 Douglass, Mosty and Machann.
3

4 VOIR DIRE EXAMINATION

5

6 BY MR. S. PRESTON DOUGLASS, JR:

7 Q. Mr. Simpson, obviously you have been
8 sitting there a while. You have been asked a lot of
9 questions. And the good news is, that I'll be quicker,
10 but the bad news is that it is not over yet. I have some
11 questions that I need to ask.

12 A. That is fine.

13 Q. As you might imagine, my perspective
14 in representing Darlie Routier along with Curtis Glover,
15 sitting here today, is to try to cover the areas and talk
16 to you a little bit from what our perspective is. And as
17 you might imagine, our perspective is dramatically
18 different from that of the attorneys representing the
19 State.

20 A. Sure.

21 Q. Darlie Routier has entered a plea of
22 not guilty. She is going to plead not guilty before the
23 jury, and she will stand behind that plea of not guilty
24 100 percent throughout the trial.

25 In that regards, what typically
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1 happens when we are talking about death penalty cases is
2 a great deal of emphasis is placed upon the death
3 penalty; and a great deal of emphasis is placed upon the
4 death penalty questions. What that tends to do sometimes
5 is take a little of the focus away. I don't think by any
6 intentional means, but I think it takes the focus, from
7 my perspective, on the first phase of the trial, which is
8 the guilt/innocence phase. I expect that is going to be
9 the only phase of the trial, and that is what I want to
10 talk about first.

11 Jury selection is kind of a false term
12 in a way. That is what we're doing, we're selecting a
13 jury, but it is really a little more accurate when you
14 say it's jury elimination.

15 Each side has a certain number of what
16 is called peremptory strikes. And as you go along
17 through the trial, the jury selections, one side will

18 say, "Well, I think I am going to exercise a strike." Or
19 that side will say, "Well, we accept this guy." And the
20 other side, attorneys representing the other side will
21 say, "Well, we will exercise a strike." There are a
22 certain amount of strikes.

23 A. Is that a verbal process?

24 Q. Yes.

25 A. Okay.

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1 Q. And what happens is, and I heard this
2 said one time in a DWI trial, hadn't been said here, for
3 instance, in a DWI the defendant would like to have a
4 jury that is all of their buddies.

5 You know, the defendant wants all of
6 his friends on the jury and the State, in a DWI trial,
7 will probably want a jury of 12 -- or six DPS troopers in
8 that situation. And we all know that that wouldn't be
9 exactly fair.

10 A. That is not fair for anybody, no.

11 Q. So, what happens is, different sides
12 exercise strikes against people they think likes their
13 side too much, and I think correctly so. What happens is
14 the people who are left standing, for want of a better
15 term, are the kind of people in the middle, that work
16 themselves to the middle.

17 There has been a lot of care taken in
18 this case to move this case from Dallas so that Kerr
19 County folk can hear the case that will start off
20 absolutely neutral, no leaning one way or the other. And
21 there is really no test, and if anybody tells you, and if
22 you watched any of the stuff from O.J. Simpson you heard
23 about jury consultants and all these sorts of things.

24 There is really no test that people
25 can put into a computer and come out and say, "Well, a
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1 guy does this for a living; he votes this way; and he
2 lives this place; and he was educated this way." You
3 can't -- you know, they say you can pick your jurors that
4 way.

5 A. It is the stereotype for the perfect
6 juror, in other words.

7 Q. And I think that is unfair, I think
8 that is not always accurate. So, in the final analysis,
9 what happens is, we're relying 100 percent completely on
10 what you tell us. That is what it always comes down to.
11 With respect to what you had heard,

12 I'm just going to start off there because it's the first
13 part of the page looking at me on your questionnaire.
14 Your wife had told you that you were coming down for a
15 murder case, is what I understand. Did she tell you
16 anything about the facts?

17 A. She said somebody has been accused of
18 killing a small child.

19 Q. Okay. How did that make you feel?
20 Did it make you feel any way in particular?

21 A. Well, obviously you get kind of
22 defensive.

23 Q. When you say "defensive," what do you
24 mean?

25 A. Well, you get angry. I have got two
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1 small children myself.

2 Q. Sure, I have four-year-old twins and a
3 seven year old, I know what you mean. That would be your
4 first reaction. I guess the question that follows from
5 that is: As you sit here today knowing what you know
6 about yourself, do you have a leaning one way or the
7 other; or have you been able to put that out of your
8 mind?

9 A. Well, that is the real -- I don't
10 relish the thought of being on this jury, but I still
11 believe that the person that was accused of doing the
12 wrong doing deserves a fair shake.

13 So, I am not leaning one way or the
14 other. I have tried, like the Judge said, just to block
15 my mind out and not listen to anything and walk away from
16 the TV when something comes on there, and I've done that.

17 Q. All right. So, as you sit here today,
18 if I understand what you are saying, you feel like you
19 don't have a leaning with respect to what your wife told
20 you?

21 A. No, I am open-minded so far.

22 Q. All right. Judge Tolle mentioned back
23 two weeks ago now, that because there is an indictment
24 that that indictment is no proof or evidence of guilt on
25 behalf of any defendant.

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1 Do you remember the Judge telling you
2 that there is a approximately 25,000 -- maybe more than
3 25,000 indictments a year issued in Dallas County?

4 A. I don't remember him saying that.

5 Q. Okay. There's a lot of people in

6 Dallas, but still to me that sounds like a lot of
7 indictments.
8 He also -- the Judge said, that any
9 one given Grand Jury might on any one given day in one
10 period of time issue 125 indictments for that day's work.
11 And in that situation, many of those people who are
12 charged and end up being accused citizens never knew they
13 were being investigated.
14 And as a result, of course, never had
15 the opportunity to come and tell their side of the story.
16 Were you ever on a Grand Jury?
17 A. No, sir, I have not.
18 Q. Do you know anybody that has ever
19 served on a Grand Jury? Have you ever talked to them
20 about it?
21 A. I don't believe so, no.
22 Q. Okay. One of the nice things about
23 Kerr County is that frequently you get chances to serve
24 on the Grand Jury, the amount of people are lower.
25 A. Well, it sounds stupid, but I think my
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1 mother did. I forgot.
2 Q. Do you remember anything about that?
3 A. No, she didn't talk about it.
4 Q. All right. Does it surprise you that
5 our system exists that a person could be investigated by
6 a judicial body of Grand Jurors made up of citizens, and
7 that you may not even have noticed that you are being
8 investigated and you might not even have a chance to come
9 tell your side of the story?
10 A. It doesn't sound fair.
11 Q. Most people are surprised by that.
12 Because, like you say, it doesn't sound fair, would you
13 agree with me that the piece of paper that is produced by
14 the Grand Jury really shouldn't be given any weight?
15 Because it's just a -- it's a piece of paper that tells a
16 defendant what he or she has been charged with. Do you
17 agree with me on that?
18 A. Yes, it tells us what she is being
19 charged with, he or she. That's all it is.
20 Q. Some people -- there's two classes of
21 people, I think, I hate to say classes, but areas of
22 people. Some people think, well, if there's all these
23 lawyers and a judge and a court reporter and all of these
24 people around here in this deal, and there has been an
25 indictment, to me, they subscribe to the, "Where there is
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1 smoke, there is fire," theory. There has got to be
2 something there, or all of this wouldn't be going on.

3 A. Sure.

4 Q. And there are some people that say,

5 "Well, I don't subscribe to the 'where there is smoke,
6 there is fire,' theory." What do you think? Do you
7 identify anything with the --

8 A. That's just all part of the process, I
9 guess. That is the way it seems to me.

10 Q. Do you believe at all that if we have

11 come to all of this trouble to be here, and all these
12 people are here, that there has got to be some smoke
13 where there appears to be all this work going on?

14 A. Well, somebody -- they think there is
15 smoke and y'all think there may not be, I guess. I don't
16 know.

17 Q. All right. The very critical issue of
18 a criminal trial, and it's in the guilt/innocence phase,
19 is that for want of a better word, the people that do the
20 accusing, have got to do the proving. That is the
21 attorneys representing the State.

22 A. Yes, they said that earlier.

23 Q. That is their burden. That burden

24 never shifts to the defendant to come forward and prove
25 to you that he or she is innocent. I was looking at your
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1 questionnaire and some of these questions are a little
2 convoluted. But one of them you answered said: If a
3 person is accused of capital murder, she should have to
4 prove her innocence. And you had said that you strongly
5 agreed with that statement. Tell me about that, about
6 that statement.

7 A. I feel like if the defense can -- if
8 the defense can give enough evidence to prove that he or
9 she is innocent.

10 Q. Okay. And your feeling is that if a
11 person is charged with that type of serious crime, then
12 that person needs to bring you some proof that he or she
13 is innocent?

14 A. I think so.

15 Q. Okay. If you are in a trial and a
16 person who is accused of a crime doesn't bring you any
17 proof of his or her innocence, are you likely to say,
18 "Well, I needed that proof. And because of that that
19 affects my deliberations, they didn't bring me what I
20 wanted to hear."

21 A. Probably so.

22 Q. And do you believe that is a

23 conviction that you feel strongly about?

24

25 MS. SHERRI WALLACE: Your Honor, I'm
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1 going to object to the way that last question is worded
2 because if he has found that the State has proved their
3 case beyond a reasonable doubt, then, yeah, if he is
4 going to find her not guilty, he has got to hear from
5 her.

6 They don't have the burden to present
7 anything. But the way the question was phrased, I will
8 object to the form of question.

9 THE COURT: I'll overrule the
10 objection. I understand what he is saying. When an
11 objection is made, I don't want any comment from either
12 side. I'm tired of that. I will rule. If you don't
13 like my ruling, you can go to the Appellate Court.

14 MR. S. PRESTON DOUGLASS, JR: I

15 appreciate that.

16 THE COURT: Now, he has said one thing
17 to her, and he is saying another thing to you. It's the
18 way the questions are couched and I understand that. So,
19 let's go ahead.

20 She is couching them one way; you are
21 couching them another way. So we get one answer there;
22 we get the opposite answer here. He stated to her that
23 he would not require the defendant to testify. And I
24 think --

25 THE PROSPECTIVE JUROR: I said that.

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1 THE COURT: So, here we are. Let's
2 keep going.

3 MR. S. PRESTON DOUGLASS, JR: Your
4 Honor, I'm sorry. I didn't ask you if you would require
5 her to testify.

6 THE PROSPECTIVE JUROR: That is what I
7 thought. I didn't think you asked me that.

8 MR. S. PRESTON DOUGLASS, JR: No, I
9 didn't mean to.

10 THE COURT: Okay. Well, let's clear
11 up the question.

12

13 BY MR. S. PRESTON DOUGLASS, JR:

14 Q. My only question is it says very

15 clearly in your questionnaire: If a person is accused of
16 capital murder, she should have to prove her innocence.
17 And I asked you if you agreed with that statement. If I
18 understood what you said, you feel the same way as you
19 felt when you filled out the questionnaire. And that is,
20 "I strongly agree with that."
21 A. Uh-huh. (Witness nodding head
22 affirmatively.)
23 Q. And that to me means by the very clear
24 reading of what is in this statement, that you would
25 require the defendant to bring you some evidence of her
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1 innocence, if you were a juror.

2 A. If that is what it says.

3 Q. Do you agree with that today?

4 A. Yes, sir.

5

6 MR. S. PRESTON DOUGLASS, JR: May I
7 have one minute?

8 THE COURT: Yes. You do understand
9 that the defense doesn't have to do one thing?

10 THE PROSPECTIVE JUROR: Well, I do
11 now. I was always of the opinion that the defense had to
12 prove their innocence, but I understand that that is not
13 the way it is.

14 THE COURT: No, no. The defense
15 doesn't have to do one thing.

16 THE PROSPECTIVE JUROR: Okay.

17 THE COURT: All the defendant has to
18 do, is show up when the trial starts. Do you understand
19 that?

20 THE PROSPECTIVE JUROR: Yes, I
21 understand.

22 THE COURT: They have the entire
23 burden.

24 THE PROSPECTIVE JUROR: Okay.

25 THE COURT: When it's over, these
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1 gentlemen here can say nothing.

2 THE PROSPECTIVE JUROR: If they choose
3 to.

4 THE COURT: If they choose to.

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: Now, what I hear you
7 saying is, they better say something, or you are going to
8 convict her. Right? Or wrong?

9 THE PROSPECTIVE JUROR: Well, that is
10 tough.

11 THE COURT: We have got to clear this
12 up, and we don't want to waste time on this.

13 THE PROSPECTIVE JUROR: Well, I'm
14 sorry, I'm doing the best I can.

15 THE COURT: Go ahead.
16

17

18 BY MR. S. PRESTON DOUGLASS, JR:

19 Q. Mr. Simpson, I think you are doing the
20 best you can. And I think you answered us honestly and I
21 think you are continuing to do it. And I appreciate
22 people who are willing to come in and say, "This is the
23 way I feel." The Judge has correctly told you the law.

24 The prosecuting attorneys have
25 correctly told you the law. I don't think I have tried
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1 to hide the ball with you, I have just read to you
2 straight from the deal.

3 My question to you is: You can say,
4 "That is a part of the law that I am not cool with. And
5 I believe, as I said right here, that is a person has to
6 prove her innocence."

7 There is nothing wrong with saying,
8 "Judge Tolle, I understand that is the law, but that is
9 the way I feel." That is the way Mr. Simpson feels.

10 All I'm asking you is: Do you believe
11 the defendant, who is charged with a serious crime like
12 capital murder, should have to prove her innocence?

13 A. I think so.
14

15 MR. S. PRESTON DOUGLASS, JR: I submit
16 the juror, Your Honor.

17 THE COURT: Okay. That is your
18 feeling. Can you put aside that feeling and follow the
19 law as I give it to you?

20 THE PROSPECTIVE JUROR: Yes, sure.
21 Yes, sir.

22 THE COURT: All right. You are still
23 qualified. Keep going.

24

25

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1 BY MR. S. PRESTON DOUGLASS, JR:

2 Q. But, if I understand what you are

3 saying, Mr. Simpson, that is a law that you say you
4 disagree with?

5 A. Well, I was not aware that it was a law
6 until this very minute. I was always under the
7 impression that, yes, for example in this case, the State
8 needs to prove the guilt. But I thought it was up to the
9 defense to prove the innocence. So, maybe I was just
10 ignorant of the law, I guess.

11 Q. Well, Mr. Simpson, there's different
12 juries that different people are better suited for.

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

15 Q. And what I get into -- for instance,
16 let me give you an example: If someone tells me that in
17 a fender bender that I have to consider, perhaps, that a
18 person would be entitled to punitive damages, lots of
19 money, for a fender bender.

20 And I may tell the Judge, "I know you
21 are telling me, Your Honor, that I have to be -- to keep
22 an open mind to punitive damages for a lot of money from
23 an accident. But I know in my heart that I don't believe
24 anybody ought to get a million dollars for a whiplash."

25 And, so, I say to myself, "Well, that
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1 is something that may be the law, but that is a part of
2 the law that I don't feel like I can follow, as a juror."
3 And in that situation, I am not the best person to sit on
4 that jury.

5 Now, with respect to proof, you may
6 hear the Court say, "Well, I am telling you that the law
7 is that a defendant does not have to come prove her
8 innocence." Well, it is -- you are the one sitting here
9 right now that has the opinion. No one is saying your
10 opinion is right or wrong, there are absolutely no wrong
11 answers.

12 And if you say, "Judge, if I am
13 supposed to take an oath that I believe the defendant
14 should not have to prove her innocence, I am telling you
15 that is an oath that I disagree with, based on what I
16 believe."

17 In that situation, it's your right to
18 tell, based on what you feel, whether or not you feel
19 comfortable taking that oath, based on what you believe
20 your heart is on that matter, and what your opinion is.
21

22 MS. SHERRI WALLACE: I'll object to
23 the question as it is an improper question, and it's been
24 asked and answered.

25 THE COURT: Well, I'll sustain the
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1 objection. You may want to rephrase the question.

2

3 BY MR. S. PRESTON DOUGLASS, JR:

4 Q. You are the only person that knows how
5 you feel. We have brought in a lot of people to answer
6 questions and we're trying to pick people that are fair
7 and impartial, and also people that feel like they
8 believe that this particular law is the one they
9 subscribe to.

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

12 Q. There is no law that says that you
13 have to forfeit your opinions and blindly follow
14 something. And what I'm asking is: Do you feel, based
15 on your personal feelings, that you would require a
16 defendant to prove her innocence?

17 A. I think I am going to need to see
18 something in my eye that proves he or she is innocent.

19 Q. And if even if the Judge tells you,
20 "Well, I am telling you that that is the law." Do I
21 understand you to be saying, "Well, Judge, that is a law
22 I disagree with. That I think the person --"

23 A. Well, I guess that is what I am
24 saying. Yes, sir, it is.

25 Q. Thank you, Mr. Simpson.
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1

2 MR. S. PRESTON DOUGLASS, JR: I submit
3 the juror.

4 THE COURT: All right. Motion for
5 cause granted, you are excused. Thank you for coming.

6 MR. S. PRESTON DOUGLASS, JR: Thank
7 you, Your Honor.

8 THE COURT: There is a gag order.
9 Please do not discuss this case with anyone. It won't be
10 over until the first of -- probably the first of
11 February.

12 THE PROSPECTIVE JUROR: So, you won't
13 be calling me or anything?

14 THE COURT: No. We don't want to you
15 discuss it with anybody, either. There is a gag order in
16 effect. I can impose monetary penalties or jail time in
17 the Kerr County. I know you won't discuss it with
18 anybody. Just for your information, have you ever read

19 the Constitution?
20 THE PROSPECTIVE JUROR: Well, I can't
21 say as I really ever have.
22 THE COURT: Well, it's pretty
23 important.
24 THE PROSPECTIVE JUROR: Okay.
25 THE COURT: It's got the first -- the
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1 Bill of Rights. You ought to read them sometime.
2 THE PROSPECTIVE JUROR: Thank you.
3 THE COURT: Thank you. All right.
4 Let's take a quick little break.

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: All right. Bring the
16 juror in. Come on in, please. This is Terry Rosinbaum.
17 THE PROSPECTIVE JUROR: I have
18 something to show you, Judge. If I can, if it's all
19 right. I know you said work wouldn't be a reason to get
20 out, but I am kind of a sole owner of my business.
21 THE COURT: I cannot excuse you for
22 business purposes, I am sorry.
23 THE PROSPECTIVE JUROR: I do
24 government contracts, and I have got deadlines to meet.
25 I have got --
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1 THE COURT: I understand all of that.
2 THE PROSPECTIVE JUROR: It is going to
3 be a financial hardship on me, it really will.
4 THE COURT: If there were any way
5 under the law I could do it, I would be happy to do it.
6 I just can't do it.
7 THE PROSPECTIVE JUROR: And I don't
8 think I would be able to focus on this at all, because I
9 will be worried about it.
10 THE COURT: There is no problem with
11 that. We are going to have to go through some questions
12 first.

13 All right. If you will raise your
14 right hand, please?
15 Do you solemnly swear or affirm you
16 will true answers make to all the questions propounded to
17 you concerning your qualifications as a juror, so help
18 you God?

19 THE PROSPECTIVE JUROR: I do
20

21 (Whereupon, the prospective
22 juror was duly sworn by the
23 Court to true answers make
24 to the questions propounded,
25 concerning qualifications, after
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1 which time, the proceedings were
2 resumed as follows:)

3

4 THE COURT: Okay. Now, you are Terry,
5 T-E-R-R-Y, Rosinbaum, R-O-S-I-N-B-A-U-M; is that correct?

6 THE PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: All right. He is number
8 52 on the our list, 157 on the jury list. You are here
9 as a potential juror in the Mrs. Darlie Routier matter,
10 Mrs. Routier is the defendant. She is sitting there in
11 the red dress and the white collar.

12 She is represented by Mr. Curtis

13 Glover and Mr. Preston Douglass, attorneys. Mr. Glover
14 is from Dallas, and Mr. Douglass is from Kerrville.

15 And the State is represented by Mr.

16 Toby Shook and Ms. Sherri Wallace of the Dallas County
17 District Attorney's Office.

18 MR. TOBY L. SHOOK: Good morning.

19 THE COURT: Now, there are no wrong
20 answers down here. Just answer the questions frankly and
21 as you see it. Okay?

22 All right, Mr. Shook.

23

24

25

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1 Whereupon,

2

3 TERRY L. ROSINBAUM,

4

5 was called as a prospective juror, for the purpose of
6 voir dire, having been first duly sworn by the Court to

7 speak the truth, the whole truth, and nothing but the
8 true, testified in open court, as follows:

9

10 VOIR DIRE EXAMINATION

11

12 BY MR. TOBY L. SHOOK:

13 Q. Mr. Rosinbaum, you have brought some
14 materials with you today; is that right?

15 A. Yes.

16 Q. Something about your business?

17 A. Right.

18 Q. What type of business do you have?

19 A. I am a government contractor, I do
20 work for the Department of Defense.

21 Q. What type of work do you do?

22 A. I make aircraft parts, gun parts,
23 military parts. I have a machine shop.

24 Q. You have a machine shop?

25 A. Yes.

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1 Q. Do you have other employees that work
2 with you?

3 A. No, it is just me. I am running the
4 whole thing.

5 Q. Okay. And you make gun parts, that
6 kind of stuff?

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

9 Q. Okay. And, you are also a fireman?

10 A. Well, I am in it. I'm not really too
11 active with it.

12 Q. Okay. That is more of a
13 volunteer-type work?

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

16 Q. So, every day you are in the shop
17 making gun parts?

18 A. Yes, I was there about four o'clock
19 this morning.

20 Q. Okay. And, the last thing you put on
21 here is that you wouldn't be able to pay attention
22 because of the business you have got?

23 A. Yes.

24 Q. I guess you are the only one that
25 works there?

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1 A. Right.

2 Q. And so you are the only one that gets
3 the work done?

4 A. Yes. I do all the bidding and
5 everything on it.

6 Q. You know that the trial is slated to
7 begin January 6 for a two-week period?

8 A. Right.

9 Q. You would be required, if you were on
10 the jury, to be here from nine until five o'clock. The
11 Judge lets you go home after that, unless you were in the
12 middle of deliberations.

13 Are you saying because of your
14 particular business situation, you wouldn't be able to
15 pay attention to the testimony as it came in the trial
16 because you would be thinking about that?

17 A. I would be thinking about my business.

18 My contracts -- see, they go by your delivery and your
19 performance record as far as your rating. You have a
20 rating, they rate everybody.

21 Right now I have a 100 percent rating,
22 I have not been delinquent and my quality has been good.
23 It would jeopardize that, if I start getting delinquent
24 on my contracts. They will put other quotes in front
25 mine, even though I may be the low bidder, on account of
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1 that, they go by your rating. That is what they go by,
2 the government does.

3 Q. Okay.

4

5 MR. TOBY L. SHOOK: Judge, if I could
6 have a moment?

7

8 (Whereupon, a short

9 Discussion was held

10 Off the record, after

11 Which time the

12 Proceedings were resumed

13 As follows:)

14

15 MR. TOBY L. SHOOK: Judge, could we
16 approach the bench?

17 THE COURT: Sure.

18

19 (Whereupon, a short

20 Discussion was held

21 Off the record, after
22 Which time the
23 Proceedings were resumed
24 As follows:)
25
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1 THE COURT: All right. Thank you,
2 very much, we appreciate your coming. Both sides have
3 agreed to excuse you, and you may step down.

4 THE PROSPECTIVE JUROR: I appreciate
5 it.

6 MS. SHERRI WALLACE: The State would
7 offer State's Exhibits 7, 8 and 9. They are the
8 agreements for excused jurors, Mr. Sly, Mr. MacDonald,
9 and Mr. Rosinbaum.

10
11 (Whereupon, the above
12 mentioned items were
13 marked for
14 identification only
15 as State's Exhibits
16 Numbers 7, 8, & 9,
17 after which time the
18 proceedings were
19 resumed on the record
20 in open court, as
21 follows:)

22
23 THE COURT: All right. They will be
24 admitted for record purposes.

25
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1 (Whereupon, the above
2 mentioned items were
3 received in evidence
4 as State's Exhibit.
5 Numbers 7, 8, & 9,
6 for all purposes, after
7 which time, the
8 proceedings were
9 resumed on the record,
10 in open court,
11 as follows:)

12
13 THE COURT: All right. Thank you.
14 All right. Who is next? You are Mr. Pavlica?

15 THE PROSPECTIVE JUROR: Yes, sir.
16 THE COURT: Okay. All right. This is
17 number 43, your name is Terry Pavlica, P-A-V-L-I-C-A; do
18 I have it correct, sir?
19 THE PROSPECTIVE JUROR: That is
20 correct.
21 THE COURT: All right. 43 on our
22 list, number 119 on the jury list. If you will raise
23 your right hand, please?
24 Do you solemnly swear or affirm the
25 testimony you are about to give will be the truth, the
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1 whole truth and nothing but the truth, so help you God?

2 THE PROSPECTIVE JUROR: I do

3

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

11

12 THE COURT: You are here today as a
13 potential juror in the Darlie Routier matter. Mrs.
14 Routier is the defendant in today's case, and she is the
15 young lady sitting there in the red dress with white
16 collar.
17 She is represented by her attorneys,
18 Mr. Curtis Glover and Mr. Preston Douglass. Mr. Richard
19 Mosty of Kerrville, also represents her. He is not here
20 now.

21 The State today is represented by Mr.
22 Toby Shook and Ms. Sherri Wallace. They are Assistant
23 Districts Attorneys from Dallas County.
24 Now, there are no wrong answers down
25 here, everything you say you are going to score 100
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1 percent on. Nobody is trying to trick you.
2 So, we just have to have your feelings
3 as questions are asked. And just for the record, we're
4 transcribing all this. If you could, would you mind
5 please spitting your gum out so we could get all of this
6 down properly.
7 Thank you very much.
8 If you will go ahead, please, Mr.

9 Shook.

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

11 THE COURT: All right.

12 MR. TOBY L. SHOOK: Is the Pavlica?

13 THE PROSPECTIVE JUROR: Pavlica.

14 THE COURT: Sorry about that.

15

16

17 Whereupon,

18

19 TERRY R. PAVLICA,

20

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

25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. TOBY L. SHOOK:

4 Q. My name is Toby Shook, I am one of the
5 prosecutors on the case. I will be asking you questions
6 on behalf of the State this morning.

7 Now, is it my understanding that you
8 have recently had a death in the family?

9 A. Correct.

10 Q. And I believe the funeral was -- was
11 it yesterday?

12 A. Correct.

13 Q. Are you okay to go on today?

14 A. I'm fine.

15 Q. With the questions?

16 A. Yes.

17 Q. Okay. Have you ever been down on jury
18 service before?

19 A. No.

20 Q. Usually, we talk with the jurors as a
21 whole in a group. But since this is a death penalty case
22 involving -- where the State is actively seeking the
23 death penalty, the law prescribes that we talk to each
24 juror individually. Like Judge Tolle said, "There aren't
25 any right or wrong answers." We just want your honest

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1 opinions on some things. Okay?

2 A. Okay.

3 Q. The one area, obviously, we want to
4 get into is how you feel about the death penalty. Okay?
5 Just your personal feelings about it as a law. You wrote
6 on your questionnaire that you are in favor of the death
7 penalty. Tell me a little bit more about that; why you
8 feel we should have the death penalty as a law on the
9 books?

10 A. Well, I just feel like if someone is
11 punished, they should be punished back.

12 Q. Okay. What types of crimes do you
13 think might be appropriate for the death penalty?

14 A. The life of someone.

15 Q. Some type of intentional killing of
16 another human?

17 A. Correct.

18 Q. Okay. Any other crimes other than
19 murder that you think might be appropriate?

20 A. No.

21 Q. Okay. Have you ever felt differently
22 about it?

23 A. Well --

24 Q. In other words, have you ever been
25 against the death penalty or --

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1 A. No.

2 Q. Since you have been old enough --

3 A. No.

4 Q. -- to think about it as a law?

5 A. Correct.

6 Q. Okay. Ever follow any cases in the
7 news that you think would be, "Well, this is an
8 appropriate case for the death penalty," or "That sounds
9 like a death penalty case," anything like that? Any high
10 publicity cases?

11 A. I read the paper and make my own
12 judgments.

13 Q. Okay. Have you made any judgments on
14 any cases you have seen in the last year or two? Whether
15 they are in Texas or elsewhere? Like the one case we
16 couldn't get away from was the O.J. Simpson case, for
17 instance.

18 It was not a death penalty case, but
19 it was in the news every day. I guess it is in the news
20 again now. Did you have any opinions about that case?

21 A. Well, I thought he was guilty.

22 Q. Okay. Any other cases that you have
23 read about?

24 A. No.

25 Q. Okay. Let me ask you, we had another
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1 case, I think it was last year, the Susan Smith case. Do
2 you remember that one at all?

3 A. Yes.

4 Q. What were your -- did you form any
5 opinions reading about that case?

6 A. Well, I thought she was guilty.

7 Q. Okay. Do you recall what the
8 punishment was in that case?

9 A. Life imprisonment.

10 Q. Okay. Did you feel one way or the
11 other about that?

12 A. No.

13 Q. Okay. Now, the -- obviously, in this

14 particular case, and we are not going to get into any of
15 the facts, obviously, you have got to wait to hear that
16 in the courtroom. The law doesn't allow us to get into
17 any facts, so we kind of talk in hypotheticals. But it
18 is obvious the defendant is a woman in this case. Would
19 that cause you any problems sitting as a juror, the fact
20 that a woman, usually we think of a man, that is the
21 first thing that comes to mind, obviously when you talk
22 about violent crime, particularly murder or capital
23 murder. Would that cause you any problems that the
24 defendant is a woman?

25 A. Well, probably not.

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1 Q. Okay. Do you think the law should
2 apply both equally to men and women?

3 A. Yes.

4 Q. Okay. In Texas, there are just
5 certain types of crimes where a person can get the death
6 penalty. It has to be a murder case plus something else.
7 Regular murder, well, I don't like to use the term
8 regular murder, but let's just say a murder, you can get
9 a life sentence for, but you necessarily might not get
10 the death penalty. It just depends on if there is an
11 aggravating fact.

12 For instance, if I suddenly got angry

13 just sitting here and pulled out a gun and shot Ms.

14 Wallace, laughed about it, I mean, just killed her. No

15 good reason, but just mean, shot her right in the head in

16 front of everyone. I couldn't get the death penalty for

17 that. I could get life in prison, but I couldn't get the

18 death penalty.
19 What you have to have is a murder plus
20 some other facts. Such as: Murder during a robbery.
21 You have probably read about the guy who maybe goes into
22 a grocery store and kills the clerk during the robbery,
23 that can be a death penalty case.
24 Murder, if someone breaks into a house
25 and kills one of the homeowners. Murder during a rape or
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1 a kidnapping, those type situations. Or mass murder,
2 kill a whole bunch of people at once. Murder, if someone
3 does it for hire, like a hit man situation, that could be
4 a death penalty case. Or murdering a police officer in
5 the line of duty.
6 Or in this particular case, the Judge
7 has told you it's a murder involving a child under the
8 age of six. In fact, I think the indictment is in front
9 of you. Do you see it there below you? There is a
10 paragraph there set out in the middle of that. If you
11 could read that to yourself for a moment, and let me know
12 when you are finished.

13 A. Okay.

14 Q. Okay. That sets out allegations of an
15 intentional taking of a child's life under the age of
16 six. Now, we can't ask you what your verdict is because
17 you have not heard from any of the witnesses. What I
18 want to know is, is that the type of case you think might
19 be eligible for the death penalty, again, depending on
20 the proper facts?

21 A. Yes.

22 Q. Okay. The way the procedure works is
23 this: All trials are divided into two parts. We have
24 the guilt/innocence stage where we have to prove that
25 indictment to you beyond a reasonable doubt.

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1 If we don't do that, obviously,
2 everyone goes home, not guilty verdict, if we don't prove
3 it.

4 If we do prove it beyond a reasonable
5 doubt, that is not the end of the trial, we have a whole
6 second portion; the punish portion where you can hear
7 additional evidence. You may hear in the punishment
8 portion more evidence about the defendant's background,
9 things like that.

10 You may hear a lot of evidence, you
11 may hear hardly anything. It just goes case by case

12 basis. But at the end of that portion, you get these
13 questions. Okay? And, they are "yes" or "no" questions
14 the jury gets.
15 First question, and I will go over
16 them in more detail, but basically the summary of the
17 first question is: We have to prove the defendant will
18 be a future danger to society. Okay? If that first
19 question is answered "yes," then we move on to the second
20 question.
21 The second question is just an overall view
22 of the evidence and if the jurors feel there is some kind
23 of mitigating evidence, evidence that lessens a person's
24 blameworthiness, evidence that tells them that a life
25 sentence should be imposed rather than a death sentence,
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1 they will answer it that way, if they feel that way.
2 They can answer it "no."
3 I mean, they answer it "no" if they
4 don't think there is that evidence, and "yes" if there
5 is. But it is a "yes" or "no" question also.
6 But my point is this: Once they have
7 been convicted, you move to the punishment stage. If you
8 answer "yes" to that first question and "no," there is no
9 mitigating evidence where they should get a life
10 sentence, the Judge, Judge Tolle in this case, would have
11 no choice, he would sentence the defendant to death.
12 Now, if you answer those questions any other way, it
13 would be a life sentence. Okay? There's only two
14 possible outcomes once a person has been convicted of
15 capital murder; either death or life. And the Judge
16 sentences the defendant according to how the jurors
17 answered those questions. Is that clear on the
18 procedure?
19 A. Yes.
20 Q. Okay. You don't write in life or
21 death, but that determination is made by how you answered
22 those questions.
23 You are probably aware that the method
24 of execution in Texas is by lethal injection, it is in
25 the news sometimes. Were you aware of that?
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1 A. Yes.
2 Q. Okay. You may have even read
3 something about it. The procedures call for if there is
4 finding a of guilty and "yes" and "no," the Judge will
5 sentence the defendant to death in that case. She will

6 be placed on death row in Huntsville, Texas. There's
7 about 400 some people down there. Couldn't tell you
8 when, but someday Judge Tolle would actually issue a
9 death warrant as an actual execution date.
10 And the procedures call for on that
11 date she will be moved to the Walls Unit, given a time
12 with maybe family or a minister, but at 6:00 p.m. or just
13 after 6:00 p.m. on that execution date, she is taken from
14 her cell, just like it happens in every case, put on a
15 gurney, needles put in her arm, there's witnesses there,
16 she is given the chance to say her last piece, but the
17 execution will take place at that point.
18 And like I said, it happens in Texas.
19 There has been over 100 executions in Texas. We lead the
20 nation. Some of these states have the death penalty and
21 they never invoke it. Texas does.
22 Now, what I want to know is this: You
23 have told me that you feel that in some cases you think
24 the death penalty is an appropriate law and an
25 appropriate punishment. And in the type of case on trial
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1 today, you said, you know, that is the type of case that
2 might be eligible for the death penalty, depending on the
3 facts.
4 I want to know if you could sit on a
5 jury and listen to the evidence, and if we do prove these
6 things to you beyond a reasonable doubt, could you answer
7 these questions in a way knowing that the defendant would
8 be executed?
9 A. If I felt that way.
10 Q. Okay. Have to be proven to you?
11 A. Correct.
12 Q. I take it you are not volunteering for
13 the job?
14 A. No.
15 Q. Okay. But if you were placed in that
16 situation, you could openly and honestly listen to the
17 evidence?
18 A. Yes.
19 Q. Okay. Let me get into a couple of
20 things then about the trial that may come up.
21 First of all, obviously, we have to
22 prove the case and we do that by putting on evidence.
23 Okay? We have to prove it beyond a reasonable doubt.
24 Now, there's different kinds of evidence. We call it
25 direct evidence and indirect evidence. Direct evidence,
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1 simply put, is an eyewitness to the case.
2 If you left the courthouse today and
3 someone came and stuck a gun in your face, took your
4 wallet, that person was caught later on, you identified
5 them, you are the direct evidence, you are the
6 eyewitness. You could identify them. Okay?
7 Any other evidence or indirect
8 evidence, is the other term. I am sure you have heard of
9 circumstantial evidence? That is any other evidence that
10 connects the defendant to the crime: Fingerprints, DNA
11 evidence, fibers, scientific evidence, crime scene, it is
12 anything other than an actual eyewitness that we use to
13 prove our case beyond a reasonable doubt. That is
14 circumstantial evidence.
15 Now, in a murder case, oftentimes we
16 only have circumstantial evidence. You got two people,
17 one kills the other, obviously, there's no witnesses.
18 Okay? The law says that we could prove our case if we
19 have an eyewitness, we can put them on, or if we have
20 circumstantial evidence. It's all the same, we have to
21 prove it beyond a reasonable doubt.
22 What I want to know is: Could you sit
23 on a case, a capital murder case, and if we prove our
24 case beyond a reasonable doubt using circumstantial
25 evidence alone, could you convict?
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1 A. Well, I would have to look at it. I
2 don't know.
3 Q. Okay. But if was proven to you beyond
4 a reasonable doubt, could you do it? That is the bottom
5 line.
6 A. If I felt that way.
7 Q. All right. You see, sometimes we get
8 someone in here that says, "I will need an eyewitness to
9 the crime." And, obviously, as I have gone over, a lot
10 of times in a murder case you don't have an eyewitness
11 to a crime, but you can still use all other forms of
12 evidence.
13 I just want to make sure you are not
14 one of those people that is going to require an
15 eyewitness to it or that it is on videotape before you
16 convict them. That you could use your common sense and
17 piece together the circumstantial evidence as we put it
18 on. And in your mind if you think she's is guilty after
19 we put it all on, you could find her guilty. Do you
20 think you can do that?

21 A. Possible.

22 Q. Okay. And that is the regular answer

23 we get, when you say it's possible. When you say it's

24 possible, you mean if we do it and you feel in your mind,

25 if proven to you, you can do it?

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1 A. Yes.

2 Q. Okay. Here is another area I want to

3 get into; it's motive. Motive is the reason for the

4 crime. Why it happened?

5 A lot of times it becomes real

6 apparent once the evidence comes on why someone committed

7 murder. Other times, it may not be apparent to anyone.

8 That reason might be locked away in the defendant's mind.

9 The example I gave is just all of a

10 sudden I pull out a gun and shoot Ms. Wallace in the

11 head. At my trial it may never come out why I did that;

12 it doesn't change the fact that she is dead and I did the

13 killing.

14 The point of it is this: We have to

15 prove exactly what that indictment says that you have

16 read. But you will notice in that indictment it doesn't

17 say why the crime occurred. Okay?

18 The law doesn't require us to prove

19 why the crime occurred. It may become very apparent to

20 you or there could be a lot of reasons out there and

21 everyone can have their own opinion. But it is not an

22 actual requirement that we have to get over the hurdle.

23 Could you follow that rule of law, that the law doesn't

24 require the State to prove the motive for the crime?

25 A. Yes.

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1 Q. Okay. Another area I want to get into

2 are these punishment issues. Let me remind you again, we

3 don't get to those unless you found the defendant guilty,

4 then you move into those. You might hear additional

5 evidence. Let me go over this first question with you.

6 Like I said, it's a "yes" or "no" question.

7 "Do you find from the evidence beyond

8 a 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 Do you see where that question is

12 asking the jurors to make a prediction about how the

13 defendant is going to behave in the future. It is a fact

14 question. And you can use evidence of the murder itself,

15 how it occurred, how brutal it was, whether it was
16 planned, what happened afterwards, if there is any
17 remorse shown at all, those kinds of things, and all of
18 the facts surrounding the murder.

19 You can also, in this portion of the
20 trial, you might hear additional evidence about their
21 background. If they have a long criminal history, you
22 could hear that, bad character evidence. Or vice versa;
23 good character evidence or lack of no criminal history,
24 you understand. And I can't preview the case for you,
25 again, but it could be a lot of things.

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1 Obviously, you could consider anything
2 you heard in the punishment stage and then the facts of
3 the murder itself, and then decide this question. First
4 of all, let me ask you: Do you think you could answer
5 that question if you were given enough evidence and it
6 was proven to you?

7 A. Yes.

8 Q. Okay. There could be a situation
9 where a person has a long criminal history; or it could
10 be a situation where they were a choirboy until one day
11 they went out and committed a horrible, brutal crime.
12 You may just have the facts of the case alone, all the
13 facts surrounding the murder to answer that question.
14 Again, I can't give you an example and try to commit you
15 to anything, I don't want to do that.

16 But do you think, depending on the
17 facts of the case, could you answer that question "yes"
18 on the facts of case alone, if they were bad enough and
19 if you think that they proved to you that the person
20 would be a danger in the future?

21 A. Yes.

22 Q. Okay. It is just going to depend on
23 the facts in your mind?

24 A. Yes.

25 Q. Okay. Now the words you get in these
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1 questions, you're not going to be given any definitions
2 to those.

3 Now, other parts of the case, Judge
4 Tolle will give you plenty of legal definitions. The law
5 says that these words will be up to you and the other
6 jurors. So, I want to get your reading on a couple of
7 them. All right?

8 We have to prove beyond a reasonable

9 doubt that it is a probability that the defendant would
10 commit criminal acts of violence. When you see the word
11 there "probability," what does that mean to you?

12 A. Possibility of committing them.

13 Q. Okay. Obviously, it doesn't mean that

14 it is a certainty. Just a probability?

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

17 Q. Okay. We have to prove that the
18 defendant would commit criminal acts of violence. When
19 we use the words "criminal acts of violence," what do
20 those words mean to you?

21 A. A crime of hurting someone and
22 punishment.

23 Q. Okay. Something that would hurt
24 another human being?

25 A. Correct.

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1 Q. Okay. It could be murder, obviously,
2 but it could also include assaults, rape, or some type of
3 violence?

4 A. Right.

5 Q. Okay. That question has to be proven
6 by the State. Could you follow that law?

7 A. Yes.

8 Q. Okay. It starts out with a "no"
9 answer. Just like someone is presumed to be innocent and
10 then we have to overcome that and prove that to you, with
11 the facts of the case itself, and anything else that
12 might come up in punishment.

13 Now, if you do answer that "yes," you
14 move to the second question. And this is the lengthy
15 one. We didn't write this, the legislature did down
16 there. But, let me read that with you.

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

24 Like I said, it gets kind of lengthy,
25 that is what we call the mitigating question. What I

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1 like to call it is kind of a safety net. You have
2 already found the defendant guilty; you have already

3 found the defendant would be a future danger. But you
4 review all the evidence and if there is evidence that
5 tells you, there has to be some evidence, but if there is
6 evidence that tells you, you know there is something here
7 that I think a life sentence should be imposed rather
8 than a death sentence, you could answer the question that
9 way. Now, if there isn't that type of evidence, you go
10 ahead and answer it "no."

11 The thing about it is, we can't tell
12 you what this mitigating evidence would be. Okay? That
13 will be up to you and the other jurors. It's been
14 described as something that lessens a person's moral
15 blameworthiness.

16 They don't get off with the killing,
17 they have to do a life sentence. But maybe something in
18 their background that you think the right thing to do is
19 that they get a life sentence rather than a death
20 sentence.

21 Like I said, we can't tell you what it
22 is, that is going to be up to you. In fact, you don't
23 have to sit there and imagine what it could be. I don't
24 think you probably have sat around and imagined what
25 mitigating evidence is. You probably haven't thought
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1 about it until we brought it up. But as long as you can
2 keep your mind open to it, that is what is important. Do
3 you think you could do that?

4 A. Yes.

5 Q. Okay. Let me go over a couple of
6 things. And like I said, you don't have to have thought
7 of any of this, you don't have to agree with it, in fact,
8 you don't have to agree with the other jurors.

9 A. Okay.

10 Q. We have had people -- let me give you
11 an example: Let's say you have a defendant who had a
12 Ph.D. from Harvard. Okay? Physics or whatever. One
13 person might say, "You know, I know they committed
14 murder, they are dangerous, but a Ph.D. from Harvard
15 tells me that at least they have accomplished something
16 with their life, they are smart. And so I think they
17 should get a life sentence rather than a death sentence."

18 Another juror says, "Well, I disagree.

19 Someone that smart shouldn't be going around killing
20 people. They should be given the death penalty." So, it
21 could go either way. Do you see where I coming from?

22 A. Yes.

23 Q. A few things we have gone over with
24 jurors in the past that come up, sometimes murders are

25 committed under the influence of drugs or alcohol. That
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1 is not a defense in Texas, you're still guilty. And I am
2 talking about a guy that goes out and voluntarily takes
3 it, not someone that forces it down him.
4 Some people might view that as
5 mitigating. Some people say, "Well, maybe they should
6 get a life sentence, since they were a drug addict or
7 something." Other people say, "Hold it against them even
8 more. You know, they made that choice to take drugs, I'm
9 going to hold it against them." Does that cut one way or
10 the other with you at all?

11 A. No.

12 Q. Okay. Sometimes you might hear about
13 someone that has been abused in the past, maybe they have
14 been physically abused as a child, maybe they were
15 sexually abused. I don't know. You hear about evidence
16 like that.

17 Some people take that into account and
18 they say, "Well, that might be mitigating." Other people
19 tell us, "That has happened plenty of times to people in
20 the past. It is a sad fact, but it's no excuse at all,
21 and I am still going to hold them accountable." Does
22 that cut one way or the other with you?

23 A. Yes.

24 Q. Okay. How does that cut with you?

25 A. If they have been abused, I might
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1 consider that.

2 Q. Okay. Would that be in every case, or
3 just depending again on the circumstances?

4 A. Well, probably every case.

5 Q. Okay. Someone comes in and they said,
6 "I have been knocked around as a kid." You would say,
7 "They should get a life sentence"?

8 A. Well, I would consider it.

9 Q. Okay. Would it depend on how bad that
10 abuse was?

11 A. Maybe.

12 Q. Okay. Because, you know, like every
13 murder case is different, every abuse case might be
14 different is what I'm talking about.

15 A. Right.

16 Q. It's a case by case method?

17 A. Right.

18 Q. What I want to know is: Do you feel

19 so strongly about it that you think that anyone who has
20 had a bad childhood or been a victim of either physical
21 or maybe mental or even sexual abuse, should get a life
22 sentence? Or do you think that, you know, some cases
23 they should, some cases they shouldn't, it just depends
24 on the severity?

25 A. It depends on the severity.

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1 Q. Okay. Have you ever known anyone that
2 has been that type of victim?

3 A. No.

4 Q. Okay. So, what you are talking about
5 are just things you may have read or heard about or
6 things like that?

7 A. Right.

8 Q. Any cases come to mind where you have
9 seen that type of abuse?

10 A. No.

11 Q. Okay. Again, we're just talking about
12 things off the top of your head?

13 A. Yes.

14 Q. Do any other things come to mind which
15 you think might be mitigating?

16 A. No.

17 Q. Okay. There are certain rules of law
18 that Judge Tolle went over that apply in every case.
19 Number one is the presumption of innocence. The
20 defendant is presumed to be innocent, you have to start
21 her out with the presumption of innocence. Can you
22 follow that rule of law?

23 A. Yes.

24 Q. Okay. The defendant has an absolute
25 right not to testify. If a person wants to testify, no
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1 one is going to stop them. No one can stop them. They
2 can get up there on the stand and tell their side of the
3 story. Okay?

4 But if they choose not to testify, the
5 Judge would instruct the jurors that you can't hold that
6 against them in any way. Could you follow rule of law?

7 A. Yes.

8 Q. Okay. The State has the burden of
9 proof, we have to prove this case beyond a reasonable
10 doubt. If we don't get over that hurdle, you will find
11 the defendant not guilty. Could you follow that rule of
12 law?

13 A. Yes.

14 Q. Okay. That also means that the

15 defense, they are not required to prove anything to you.

16 Okay? They very well might put on evidence. They might

17 ask questions, make arguments, or cross examine, or they

18 could just sit there. Because the law doesn't require

19 them to prove anything to the jury, you can't require

20 them to prove her innocence. The burden of proof stays

21 over here. Could you follow that rule of law?

22 A. Yes.

23 Q. Okay. Sometimes we read about parole

24 laws, people get released early from parole. People get

25 upset about that. The Judge will instruct that you don't

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1 bring that up in your jury consideration in any way. You

2 just have to decide the case and make your determinations

3 on the evidence. Could you follow that rule of law?

4 A. Yes.

5 Q. Okay. Sometimes police officers are

6 called to testify. In criminal cases, they are almost

7 always called to testify. The Judge will tell you that

8 under the law all witnesses must be treated the same when

9 they begin their testimony. Okay?

10 Some people have had a bad experience

11 with police officers, they might disbelieve them just

12 because they are police officers. Other people have

13 friends or respect police officers a lot. Some of them

14 tell us, "Well, I am automatically going to believe

15 them?"

16 The Judge says, the law says, as the

17 Judge will instruct you, that all witnesses must start

18 out the same. Would you follow that rule of law?

19 A. Yes.

20

21 MR. TOBY L. SHOOK: If I could have

22 just a moment, Judge?

23 THE COURT: Yes. I mispronounced your

24 name. What is the correct pronunciation?

25 THE PROSPECTIVE JUROR: Pavlica.

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1 THE COURT: Pavlica. Okay, soft C.

2 Thank you. As if it were an S?

3 THE PROSPECTIVE JUROR: Uh-huh.

4 (Witness nodding head affirmatively.)

5 THE COURT: Okay. Thank you.

6

7 BY MR. TOBY L. SHOOK:

8 Q. Let me ask you a couple of things on
9 your questionnaire, and then I will be done with you. We
10 had an area on there about the family members needed
11 services of an attorney. And I think that was with your
12 in-laws; is that right? Had some type of lawsuit, it
13 looks like a civil deal over some kind of business deal?

14 A. There's been two lawsuits, or
15 technically, I have had attorneys twice.

16 Q. Okay. And did you yourself have
17 attorneys?

18 A. Yes, I have.

19 Q. Tell us a little bit about that.

20 A. Well, one of them, Richard Mosty
21 represented me in the case.

22 Q. Oh, okay. That is one question --

23 A. Back in 1985 or so he was retained as
24 a group. And this last lawsuit was my in-laws suing me
25 on a -- over a business deal, and I retained an attorney
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1 out of San Antonio.

2 Q. Tell me about the lawsuit that
3 involved Mr. Mosty.

4 A. It was a bad investment deal that we
5 had, and Mr. Mosty represented us with the State of Texas
6 attorney general. He was our spokesman.

7 Q. Okay. What happened on that lawsuit?

8 A. A settlement was made, you know, but
9 it was pennies on the dollars.

10 Q. Okay. Were you satisfied?

11 A. No.

12 Q. With the way it came out?

13 A. Well, no. I lost a lot of money.

14 Q. What about the way Mr. Mosty
15 represented you? Were you satisfied?

16 A. Well, I can't tell you, because I
17 wouldn't praise him or I wouldn't hold it against him.

18 Q. You just wish it had turned out
19 better?

20 A. Oh, yes, obviously.

21 Q. Well, let me ask you this: Obviously,
22 there is Dallas attorneys involved and you don't know any
23 of us?

24 A. Correct.

25 Q. Defense and prosecution?
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1 A. Correct.

2 Q. And then two local Kerr County
3 attorneys have been retained. Mr. Douglass, do you know
4 Mr. Douglass?

5 A. No, I do not.

6 Q. And, then obviously, Mr. Mosty, who is
7 not here today. But -- well, obviously, will be in the
8 trial and will participate actively in the trial. Do you
9 think that will affect you as a juror in any way?

10 A. Well, I really don't know. I mean, I
11 don't know, I can't answer that truthfully.

12 Q. Okay. Tell us a little bit about what
13 is going on in your mind then. How it might affect you?

14 A. Well, you know, I just -- it hurt to
15 lose all the money that we lost. You know, what I mean,
16 it was not his fault if we didn't get it back, but I had
17 high hopes of getting a majority of it.

18 Q. Okay. Do you think you would hold it
19 against him in any way?

20 A. Well --

21 Q. Or against -- more importantly,
22 against his client?

23 A. Well, I really don't know. I have
24 thought about it, but I never -- I have not come to any
25 conclusions about it. I don't know Mr. Mosty personally.
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1 Q. Okay.

2 A. And that has been a number of years
3 ago, and it might grow back and it might not.

4 Q. Okay. That is fair. Obviously, in
5 Kerr County we're going to encounter a lot of people that
6 know Mr. Mosty and Mr. Douglass?

7 A. Right.

8 Q. And it can cut either way. The other
9 way would be this: Do you think it would affect you in
10 his favor at all? Say, well, obviously, in a death
11 penalty case, you might have Mr. Mosty someone you know
12 there saying, "Don't give her the death penalty," in
13 argument.

14 You don't know any of us, but you may
15 say, "Well, I know him. I will go with him because I
16 think he is a good guy." Or could you decide the case on
17 the facts?

18 A. Well, I don't think it would be fair.
19 I might choose a side, I might not. I don't know.

20 Q. Okay. Is it the more recent lawsuit
21 that involved your in-laws?

22 A. Yes.

23 Q. What was that about?
24 A. A business that I had and they tried
25 to take it away from me.
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1 Q. Okay. What type of business did you
2 have?
3 A. A service station installation
4 service.
5 Q. Okay. How long ago did that lawsuit
6 take place?
7 A. It was finalized in July of '95.
8 Q. Okay. Were you satisfied with the way
9 that thing turned out?
10 A. Yes.
11 Q. Okay. Did you get to retain the
12 business?
13 A. Yes.
14 Q. Okay. So you won that lawsuit?
15 A. Yes.
16 Q. Okay. Do you think the lawsuit you
17 have been in, would that affect you in any way as a
18 juror? I know they are civil cases.
19 A. No.
20 Q. Okay. Oh, and you put on that you
21 don't believe in psychiatrists. Sometimes psychiatrists
22 or psychologists might come in for one side or the other.
23 Tell me a little bit more about that.
24 A. I just don't believe in shrinks.
25 Q. Okay. Have you ever known anyone that
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1 has seen one at all?
2 A. I have known a few people. I don't
3 believe what they are talking about.
4 Q. Okay. Do you have any questions over
5 anything we have gone over?
6 A. No.
7 Q. Okay. Well, I appreciate your honesty
8 with us and your patience with us.
9
10 MR. TOBY L. SHOOK: That's all I have,
11 Your Honor.
12 THE COURT: Mr. Glover.
13 MR. CURTIS GLOVER: Thank you, Your
14 Honor.
15 THE COURT: You may proceed.
16

17 VOIR DIRE EXAMINATION

18

19 BY MR. CURTIS GLOVER:

20 Q. Mr. Pavlica, my name is Curtis Glover,
21 and I will be one of the lawyers sitting here with Darlie
22 Routier. As she sits there now, and this has been
23 explained to you, but I will go over it a little bit more
24 with you. She is presumed to be innocent. How do you
25 feel about that?

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1 A. Today?

2 Q. Yes.

3 A. I don't have a problem with it.

4 Q. Okay. You indicated on your
5 questionnaire that you had read about this case in the
6 newspaper.

7 A. Correct.

8 Q. Do you recall what you read?

9 A. Just the way they assume the crime
10 happened.

11 Q. You say the way they assumed the crime
12 happened?

13 A. The paper, you know, the way the paper
14 writes it.

15 Q. Did you have any discussion with
16 anyone about what you read there, your wife or fellow
17 workers or something of that nature?

18 A. I'm sure fellow workers and my wife.

19 Q. Okay. What did you conclude as a
20 result of that?

21 A. We thought that she was guilty.

22 Q. Okay. Did you form an opinion at that
23 time based on your conclusion having read the newspaper
24 that she was guilty?

25 A. Just by the articles in the paper,
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1 yes.

2 Q. And you are telling the Court that you
3 did form a conclusion at that time that in your opinion
4 she was guilty?

5 A. Yes.

6 Q. Do you still have that here today?

7 A. As far as I know, yes.

8 Q. Do you think that you could set that
9 aside and --

10 A. Probably not.

11 Q. Okay. You seem to be a man who is
12 firm in his belief about -- in other words, I have been
13 noticing as you sit there and you answer these questions,
14 you pause and you give them thought. Which indicates to
15 me that you don't just jump to some conclusion easily.
16 You will mull it over in your mind and
17 then you give an answer based on some thought. You
18 strike me that way.
19 Is there anything I could say here
20 today that might change your mind, based on the newspaper
21 articles that you have read?

22 A. I don't know.

23 Q. You just don't know?

24 A. I don't know.

25 Q. I'm sorry?

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1 A. No, sir, I do not know.

2 Q. Okay. But you are telling us that
3 having discussed it with your fellow workmen, your
4 family, and whatnot, that you concluded in your opinion
5 that she was guilty.

6 A. Yes.

7 Q. And you still feel that way here
8 today?

9 A. Yes.

10

11 MR. CURTIS GLOVER: We will submit the
12 juror, Your Honor.

13 THE COURT: Can I see both sides a
14 minute?

15

16 (Whereupon, a short

17 Discussion was held

18 Off the record, after

19 Which time the

20 Proceedings were resumed

21 As follows:)

22

23 THE COURT: Is this opinion so
24 established in your mind, that it would impair your
25 ability to function as a juror?

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1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Thank you.

3 THE COURT: Motion for cause granted.

4 Will you read 241, and get the whole

5 step, in the process?

6 You may step down. Please don't talk

7 about this among -- with anybody else. Is that fair

8 enough?

9 THE PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Okay. We have a gag order

11 in effect on it. After that, the first of the year,

12 after February 1st, you may discuss this case.

13 THE PROSPECTIVE JUROR: Thank you.

14 THE COURT: All right. Will you read

15 that section of the Code?

16 MR. CURTIS GLOVER: Well, you do it so

17 much better than I do.

18 THE COURT: Well, here is the point:

19 We can dance around it all we want, but I want to get to

20 the point. Now what you have to do if he answers that

21 question yes, he has an opinion, et cetera, et cetera,

22 then you have to inquire if it will impair his ability to

23 function as a juror.

24 That is the key function. He may have

25 this idea, that is fine, he can set it aside. If he can

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1 set it aside, which I will then -- if he says one thing

2 to you and one thing you, and then he can set it aside, I

3 will ask him that.

4 And then he says he can follow the

5 law, he is still qualified. So, rather than beat around

6 the bush and take all this time, let's get right to the

7 point that you want to make. We can move this thing on.

8 MR. S. PRESTON DOUGLASS, JR:

9 Sometimes I'm just afraid to ask, Judge.

10 THE COURT: Well, you ask. I mean,

11 they are either going to say it or not. Let's get on

12 with it.

13 MR. S. PRESTON DOUGLASS, JR: I'll ask

14 him.

15 MR. CURTIS GLOVER: Well, I was

16 disappointed when he came out with that, I figured this

17 guy would make it.

18 THE COURT: Yes, he was a superb

19 juror. I mean, here is the thing: Once you ask that

20 question and inquire it of him, that's it.

21

22 (Whereupon, a short

23 Discussion was held

24 Off the record, after

25 Which time the

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1 Proceedings were resumed

2 As follows:)

3

4 THE COURT: What is your name, ma'am?

5 THE PROSPECTIVE JUROR: Annette Rene

6 Burrer.

7 THE COURT: Are you Annette Rene

8 Munns? M-U-N-N-S?

9 THE PROSPECTIVE JUROR: Yes, sir, that

10 is my maiden name.

11 THE COURT: What is your name now,

12 ma'am?

13 THE PROSPECTIVE JUROR: Burrer,

14 B-U-R-R-E-R.

15 THE COURT: Okay. This is number 49

16 on our list, 146 on the jury list. It was Annette,

17 A-N-N-E-T-T-E, Rene, R-E-N-E, Munns, M-U-N-N-S. Now

18 known as Annette Rene Burrer, B-U-R-R --

19 THE PROSPECTIVE JUROR: -- E-R.

20 THE COURT: -- E-R, Burrer. All

21 right.

22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: All right. Ma'am, if you

24 will raise your right hand, please.

25 Do you solemnly swear or affirm you

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1 will true answers make to all the questions propounded to

2 you concerning your qualifications as a juror, so help

3 you God?

4 THE PROSPECTIVE JUROR: I do.

5

6 (Whereupon, the prospective

7 juror was duly sworn by the

8 Court to true answers make

9 to the questions propounded,

10 concerning qualifications, after

11 which time, the proceedings were

12 resumed as follows:)

13

14 THE COURT: All right. Ma'am, you're

15 called to be a prospective juror in the Darlie Routier

16 matter, Mrs. Routier is the defendant. She is sitting

17 there in the red dress with the white collar.

18 She is represented by Mr. Curtis

19 Glover from Dallas, and Mr. Richard Mosty and Preston

20 Douglass from Kerrville. Mr. Douglass will return

21 briefly.
22 The State is represented by Mr. Toby
23 Shook and Ms. Sherri Wallace.
24 MR. TOBY L. SHOOK: Good morning.
25 MS. SHERRI WALLACE: Good morning.
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1 THE COURT: They will be asking you
2 some questions, and so you will find that there are no
3 wrong answers.
4 If you can just relax, if you are a
5 little nervous and just answer the questions that are
6 asked. All right, Mr. Shook.
7 MR. TOBY L. SHOOK: Thank you, Judge.

8
9 Whereupon,
10
11 ANNETTE RENE BURRER,
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 VOIR DIRE EXAMINATION

19
20 BY MR. TOBY L. SHOOK:
21 Q. Ms. Burrer?
22 A. Yes, sir.
23 Q. All right. Again, my name is Toby
24 Shook and I will be asking you questions on behalf of the
25 State. As Judge Tolle told you there is no right or
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1 wrong answers, we just want your honest opinions. All
2 right?
3 A. Okay.
4 Q. I want to go over some things here in
5 your questionnaire first.
6 A. Okay.
7 Q. You told us that you have seen some
8 things about this case on the TV, newspaper, and in fact,
9 you said I have formed an opinion as a result.
10 A. Yes, sir.
11 Q. Okay. Tell us what you have seen and
12 heard on TV that you formed this opinion.
13 A. I have just seen things of the
14 transfer of the case and some highlights from it. I

15 attended school in Dallas and a lot of my friends would
16 call me knowing when it was coming to Kerrville and we
17 discussed it.

18 Q. Oh, so they talked to you about it?

19 A. So, we had already previously

20 discussed it, and the excitement of having a case in

21 Kerrville. But there were -- I read it in the newspaper.

22 I am a person who frequently reads the newspaper from

23 front to back when possible.

24 Q. So you have read it in the newspaper

25 and your friends in Dallas have told you in detail what

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1 has been in the news up there?

2 A. Yes, sir.

3 Q. Okay. So, you read a whole lot about

4 this case?

5 A. Yes, sir.

6 Q. And formed an opinion as a result.

7 And what is that opinion?

8 A. The opinion that I have formed is

9 guilty. However, I am against the death penalty.

10 Q. And you made that very clear, too.

11 A. Yes.

12 Q. But first of all, you have already

13 formed an opinion as to guilt?

14 A. Yes, sir.

15 Q. Based on what your friends have told

16 you?

17 A. Yes.

18 Q. And based on what you have read in the

19 newspapers?

20 A. Yes.

21 Q. Okay. Let me ask you this then: That

22 you think that the opinion that you have established as

23 to guilt would influence your verdict?

24 A. Well --

25 Q. In other words, we start out with the

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1 guilt/innocence stage, you have already, you know --

2 A. I honestly can't say that it wouldn't.

3 Q. Okay. So, you are saying that it

4 would influence your verdict? Obviously, you have read a

5 lot about it.

6 A. It's possible. If I never had heard

7 the case, then it wouldn't influence me either way.

8 However, since I have previously formed an opinion on the

9 case, I am coming to that point, not being in that
10 position at the moment, I can't say that it wouldn't.

11 Q. Okay. You have formed an opinion.

12 Bear with me here. It's guilt, on everything your
13 friends have told you?

14 A. Yes.

15 Q. And you are being fair and honest with
16 us?

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

19 Q. Okay. As best you know yourself, that
20 might influence you in the first part of the trial as far
21 as the guilt/innocence would go?

22 A. Yes, sir.

23 Q. That would influence you, is that what
24 you are saying?

25 A. Yes.

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1 Q. Okay.

2

3 MR. TOBY L. SHOOK: Judge, then, we
4 would submit the juror under 35.16(10).

5 THE COURT: All right. Motion

6 granted. Thank you, ma'am, you may leave. We're under a
7 gag order, do not discuss the case with anyone, please,
8 ma'am.

9 THE PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: I do have a gag order on
11 it, and I can impose monetary penalties or jail time. I
12 know that won't be necessary.

13 So, after the trial is over, probably
14 the first part of February, you can discuss it.

15 THE PROSPECTIVE JUROR: Okay.

16 THE COURT: All right. Who is next?

17 THE CLERK: No one.

18 MS. SHERRI WALLACE: We have gone
19 through five jurors already.

20 THE COURT: Do we have anyone coming
21 this afternoon?

22 THE CLERK: Yes, sir.

23 THE COURT: All right. So, let's
24 recess until one o'clock, then. All right?

25

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1 (Whereupon, a short

2 recess was taken,

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

9

10 THE COURT: Come on in, please. How
11 are you doing?

12 THE PROSPECTIVE JUROR: Fine.

13 THE COURT: If you will just have a
14 seat right there. And your name is Maylee, M-A-Y-L-E-E,
15 Traweek, T-R-A-W-E-E-K; is that correct?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: All right. That is number
18 46 on our list, 131 on the juror's list.

19 THE COURT: All right. If you will
20 raise your right hand, please, ma'am.

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

25 THE PROSPECTIVE JUROR: I do.

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1

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

9

10 THE COURT: Thank you. You are a
11 prospective juror in the Darlie Routier trial, as you
12 know. Mrs. Routier is sitting right there in the red
13 dress with the white collar on it.
14 She is represented by Mr. Curtis
15 Glover at this hearing, an attorney from Dallas. Also by
16 Mr. Doug Mulder from Dallas, who is not here. Also, by
17 Messrs. Preston Douglass and Richard Mosty from
18 Kerrville. Mr. Douglass will be here shortly.

19 The State of Texas is represented by
20 two representatives of the Dallas County District
21 Attorney's Office, Ms. Sherri Wallace and Toby Shook.

22 MR. TOBY L. SHOOK: Good afternoon.

23 MS. SHERRI WALLACE: Good afternoon.

24 THE COURT: Both sides are going to

25 ask you some questions now. There are no wrong answers
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1 and if you are nervous, just relax. They just want to
2 see how you feel about certain things, so just tell them
3 exactly how you feel. It won't be a test, nobody is
4 going to be mad at you if you answer in ways they don't
5 like. You just tell exactly how you feel about things.

6 Fair enough?

7 THE PROSPECTIVE JUROR: That seems

8 fair.

9 THE COURT: Okay. Let me make sure

10 this is on. Speak into it, ma'am, and if you could

11 answer all questions yes or no. Ms. Halsey is taking all

12 of this down, and we can't take down nods or uh-huhs, you

13 know, things like that.

14 THE PROSPECTIVE JUROR: Okay.

15 THE COURT: Go ahead, Ms. Wallace.

16 MS. SHERRI WALLACE: May it please the

17 Court?

18

19 Whereupon,

20

21 MAYLEE TRAWEEK,

22

23 Was called as a witness, having been first duly sworn by

24 the Court to speak the truth, the whole truth, and

25 nothing but the truth, testified in open court, as

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1 follows:

2

3 VOIR DIRE EXAMINATION

4

5 BY MS. SHERRI WALLACE:

6 Q. Good afternoon, again, is it Traweek;

7 is that right?

8 A. Traweek.

9 Q. Traweek. As the Judge said, we are

10 just going to ask you a few questions, and there are no

11 right or wrong answers. It's normal to be nervous. But

12 don't worry about it because, as it's been, I'll end up

13 doing most of the talking. Okay?

14 A. Oh, good.

15 Q. You just tell us how you feel about

16 things. That is all we need to know from you.

17 I see here -- first, I want to talk to

18 you a little bit about your questionnaire, and then I am

19 going to talk to you about the death penalty and how you
20 feel about that, and then talk to you a little bit about
21 general principles of law.
22 The first thing I noticed on your
23 questionnaire, it is really the first question we asked.
24 Is that you said, "Yes, you have heard about the case."
25 You read the newspapers and you watched it on TV.
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1 A lot of people have seen and heard
2 about this case, it's gotten a lot of pretrial publicity.
3 And frankly that is the reason we're in Kerrville,
4 because it has gotten so much press in Dallas that the
5 Judge felt it was necessary to move it to get a fair
6 trial.
7 There is nothing wrong with having
8 heard about the case. There is nothing wrong with having
9 seen about the case. There is nothing wrong with having
10 your feelings about what you think about the evidence.
11 That is all human nature. When we hear somebody is
12 arrested or charged, it's human nature to say, "God, I
13 wonder what they did." I mean, that is how we are.
14 But as a juror, you may not have an
15 opinion, you may not use any of the evidence you heard
16 out of the courtroom in any way in your deliberations.
17 You have to wait until you hear the evidence in the
18 courtroom.
19 And I guess the best example of that
20 is -- are you familiar with this fellow that they had in
21 Georgia? Richard Jewell? The security guard that was
22 supposed to have set the bomb at the Olympics?
23 A. Yes.
24 Q. And pretty much the media and the
25 press, they tried him, convicted him, and fried him. And
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1 then the FBI comes out, you know, several months later
2 after his life is pretty much ruined, they took his
3 mother's Tupperware, you know, all sorts of things. And
4 the FBI said, "I'm sorry. He is not a suspect. We don't
5 have any evidence against him."
6 It's cases like that that bring home
7 the point that we don't rely on the press to try our
8 cases. We must wait and hear the facts.
9 A. Uh-huh. (Witness nodding head
10 affirmatively.)
11 Q. I will tell you, I have read most of
12 the stuff that the papers and the newspaper and the TV

13 have had about this case. Some of it is right, and some
14 of it is not. But really, that doesn't matter. But what
15 does matter is that you will not knee-jerk, form an
16 opinion, that you will wait until you hear the evidence
17 in the courtroom. Will you be able to do that, Miss
18 Traweek?

19 A. I'm afraid I won't be able to. I work
20 with children every single day. I'm afraid not.

21 Q. Well, let me talk to you a little bit
22 about that.

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

25 Q. I'll tell you, we have talked to
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1 about -- you are about the 45th person we have talked to.
2 And God help us if we talk to somebody who doesn't think
3 that a crime against a child is a horrible, terrible,
4 maybe the worst thing that could possibly happen.

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

7 Q. No one likes that. But, you see, Ms.
8 Traweek, if we don't have the right person, to convict
9 the wrong person, would not be justice.
10 Do you see where I am going?

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

13 Q. So you can be mad as a hornet about
14 crimes against children?

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

17 Q. And you can think all you want to,
18 that it is a horrible thing, because it is. And that is
19 all fine.

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

22 Q. But what you will need to do, you will
23 promise the Court that you will follow the law.

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

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1 Q. And not make your decisions based on
2 the press accounts. Will you be able to do that?

3 A. No.

4 Q. Okay. Have you already formed an
5 opinion as to the guilt or innocence of this defendant?

6 A. Yes.

7 Q. Okay. Is your opinion so strong and
8 of such a nature that it would influence your verdict in
9 this case?

10 A. I'm afraid so.

11 Q. Okay.

12

13 THE COURT: Well --

14 MS. SHERRI WALLACE: I think that is

15 all.

16 THE COURT: Well, if you could be a

17 little bit more definitive. Is that yes or a no? I am

18 afraid so, means it maybe --

19 THE PROSPECTIVE JUROR: Well, it's not

20 a maybe. It's definite.

21 THE COURT: All you have to say is yes

22 or no.

23 THE PROSPECTIVE JUROR: It would

24 influence my opinion.

25 THE COURT: So that is a yes?

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1 THE PROSPECTIVE JUROR: Yes, that is

2 yes.

3 THE COURT: Thank you. Okay. Thank

4 you very much for coming, we appreciate it. We don't

5 mean to be -- we're not trying to -- we just have to pin

6 you down on this thing, we are not trying to be too picky

7 with you.

8 THE PROSPECTIVE JUROR: Sure.

9 THE COURT: But that is what we have

10 to do. Okay?

11 THE PROSPECTIVE JUROR: Okay. Thank

12 you.

13 THE COURT: We thank you, ma'am. Now

14 listen, there is a gag order in the case, so don't

15 discuss anything that went on in here today.

16 When the trial is over, it should be

17 the latter part of January or the first part of February,

18 then you may discuss it. The gag order also provides for

19 monetary sanctions or jail time should you violate it. I

20 know you won't, but I do have to warn you of that.

21 THE PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: All right. Thank you very

23 much for coming. We do appreciate it.

24 Very good. You got to the point right

25 away. All right. Who is our next one?

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1 MS. SHERRI WALLACE: It should be Ms.
2 Martin, but who knows.
3 THE CLERK: The next juror is out
4 here.
5 THE COURT: Who will that be?
6 THE CLERK: Monica Martin.
7 THE COURT: Okay. Bring Ms. Martin
8 in. Ms. Martin, come on in, have a seat right up there,
9 please. All right. This is Monica Martin, she is number
10 45 on our list, number 129, juror number. You are Monica
11 Martin; is that correct?
12 THE PROSPECTIVE JUROR: Yes.
13 THE COURT: If you will raise your
14 right hand, please.
15 Do you solemnly swear or affirm you
16 will true answers make to all the questions propounded to
17 you concerning your qualifications as a juror, so help
18 you God?
19 THE PROSPECTIVE JUROR: I do.
20
21 (Whereupon, the prospective
22 juror was duly sworn by the
23 Court to true answers make
24 to the questions propounded,
25 concerning qualifications, after
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1 which time, the proceedings were
2 resumed as follows:)
3
4 THE COURT: Thank you very much.
5 You're here today as a prospective juror in the Darlie
6 Routier matter. This is Mrs. Routier in the red dress
7 with the white collar.
8 THE PROSPECTIVE JUROR: Okay.
9 THE COURT: She is represented by Mr.
10 Curtis Glover from Dallas, and Mr. Preston Douglass from
11 Kerrville.
12 THE PROSPECTIVE JUROR: Okay.
13 THE COURT: Also by Richard Mosty of
14 Kerrville and Douglas Mulder of Dallas. And the State is
15 represented today by Ms. Sherri Wallace and Toby Shook
16 from the Dallas County District Attorney's Office, and by
17 Mr. Greg Davis, but he is not here.
18 THE PROSPECTIVE JUROR: Okay.
19 THE COURT: Now, we're going to ask
20 you some questions. If you will just answer the
21 questions as you actually feel about them, there are no
22 right or wrong answers. Okay.

23 Go ahead, please. Who is going to do
24 it? Mr. Shook.
25
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1 Whereupon,
2
3 MONICA VALDEZ MARTIN,
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. Martin, my name is Toby Shook and
14 I am one of the prosecutors on the case. And I will be
15 asking you questions on behalf of the State. And like
16 Judge Tolle says, there are not any right or wrong
17 answers. We just want your honest opinions. Okay?

18 A. Uh-huh. (Witness nodding head
19 affirmatively.)
20 Q. Have you ever sat or served on a jury
21 before?

22 A. On a Grand Jury.

23 Q. A Grand Jury?

24 A. Grand Jury, uh-huh. (Witness nodding
25 head affirmatively.)

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1 Q. Okay. That is where you hear all the
2 cases and decide to indict people or no bill people,
3 right?

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

6 Q. Okay. Usually we talk to all of our
7 jurors in one big bash, but since it's a capital murder
8 case, we do them one at a time. We don't mean to throw
9 you up there like you're on trial or anything like that.
10 But like the Judge said, we just want your honest
11 opinions.

12 Everyone has their own viewpoints,
13 especially about capital murder.

14 You filled out a lot of information
15 here, and we appreciate that. Has anything changed in
16 between, it's been a couple weeks now.

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

18 Q. Okay. Let me get right to the heart

19 of matter then. Obviously, you know this is a capital
20 murder case, the State is seeking the death penalty. So
21 I want to ask you about your opinions about the death
22 penalty. You checked off here on your questionnaire:

23 Are you in favor of the death penalty? And you said no.

24 A. Uh-huh. (Witness nodding head

25 affirmatively.)

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1 Q. Tell me, in your own words, why you

2 are not in favor of the death penalty.

3 A. Well, mainly because I don't feel like

4 we have the right to decide who is to die. You know, I

5 just don't feel I have that right.

6 Q. Okay.

7 A. To make that kind of decision.

8 Q. Is that a religious belief or just

9 personal belief or a moral belief?

10 A. No, more personal.

11 Q. And how long have you felt that way?

12 A. How long? Well --

13 Q. I mean, have you ever felt differently

14 or have you always felt that way?

15 A. Well, pretty much always.

16 Q. Okay. And that is, you don't think

17 other humans should make the decision where someone else
18 should be executed?

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

20 Q. Okay. That is fine if you feel that

21 way.

22 A. Yep.

23 Q. Like I said, everyone is entitled to

24 their own opinion, and that is why we bring a whole lot

25 of people down here.

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1 A. Okay.

2 Q. I just need to know how strongly you

3 feel about that. Is that a strong conviction?

4 A. Yes, pretty much. I guess if it was

5 like really severe -- it would depend, I guess, on the

6 crime or -- but pretty much so.

7 Q. What would make a difference about

8 that? I mean, you have sat there and told me you don't

9 think you should make that decision. Now, you are kind

10 of waffling.

11 A. Well, no, I just don't think so.
12 Q. Okay.
13 A. I don't think I could make that
14 decision.
15 Q. That is fine.
16 A. Okay.
17 Q. As long as I know where you are coming
18 from honestly, then I have no argument. It's people that
19 will say one thing and then turn around and say something
20 else is what I have a problem with.
21 A. Okay.
22 Q. I am not trying to pin you down on
23 something. I only want to know your honest opinions.
24 Okay?
25 A. Uh-huh. (Witness nodding head
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1 affirmatively.)
2 Q. Okay. Am I reading you right saying
3 that you yourself don't think you should make that type
4 of decision?
5 A. Right.
6 Q. How about prison time? Do you have
7 any objection about people serving prison time?
8 A. No.
9 Q. Okay. It's just a matter of people
10 being put to death?
11 A. Right.
12 Q. That is where your objection is?
13 A. Yes.
14 Q. Life sentence --
15 A. Uh-huh. (Witness nodding head
16 affirmatively.)
17 Q. You think we can make decisions about
18 that, that's fine. But it is the death sentence where
19 you have a problem?
20 A. Right, uh-huh. (Witness nodding head
21 affirmatively.)
22 Q. Okay. Like I said, that is fine if
23 you feel that way.
24 Do you have a strong belief in that
25 though? I mean, that is something you believe
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1 wholeheartedly in?
2 A. In the death -- you mean -- yeah,
3 uh-huh. (Witness nodding head affirmatively.)

4 Q. About not having -- wanting to execute
5 somebody?

6 A. Right, uh-huh. (Witness nodding head
7 affirmatively.)

8 Q. So that is not something you would
9 just change your mind on at the drop of a hat anything
10 like that?

11 A. No, I'm going to have to say no.

12 Q. Okay. Well, don't feel disappointed
13 about that. Okay? There is an old lawyer in Dallas that
14 says sometimes the only jurors he has problems with are
15 the ones that he calls "human wind socks."

16 One lawyer asks them a question and
17 they blow this way. One lawyer asks them another
18 question and they blow that way. Don't feel bad about
19 the way you feel.

20 A. Okay.

21 Q. I kind of get that feeling. You are
22 almost disappointed, you know --

23 A. Well, no, I am going to have to say
24 no. I don't believe in that at all.

25 Q. You are not hurting my feelings.

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1 A. Okay.

2 Q. Okay. At all. But -- and I kind of
3 read how you are feeling, so I want to go over a few more
4 things with you. Okay?

5 A. Okay.

6 Q. Here is the way it works: Like I
7 said, we call a lot of people down here. You never know
8 what type of case it's going to be.

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

11 Q. Some people are well-suited for one
12 type of case and not suited for another type of case.
13 Some people are fine on civil, sitting on civil cases,
14 some people are fine like being on a Grand Jury like you,
15 that make the decisions to indict or not to indict.

16 Some people, again, are just not
17 suited for certain cases because of the way they feel.

18 A couple of examples: You might have
19 a case, you come down -- a juror comes down and finds out
20 they are on a DWI case, and maybe they have had a loved
21 one killed in a DWI accident. Well, they will have to
22 honestly say, "Look, I can't sit in this type of case.

23 It's too close to home. I don't believe anyone should
24 drink and drive at all. And I am not going to be fair.

25 I can't make a -- you know, pass judgment in this type of

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1 case. I could be fine on some other type of case, just
2 not that specific type of case." And that is fine. No
3 one has an argument with that, as long as that is the way
4 they feel.

5 You have other people that sometimes,
6 you know, maybe they have had a bad experience with a
7 police officer. And they say, "Look, if that police
8 department is used; or I just had a bad experience with
9 police officers, and if this is a criminal case, I can't
10 sit fairly and judge police officers. I hold kind of a
11 grudge, I guess, or couldn't do it open-minded. I am
12 just letting you know." Well, that is fine. It's a
13 civil case; there will be another panel.
14 Some people have been victims of
15 violent crime and they just feel too strongly about it
16 and too soon, and they can't sit fair. But it cuts both
17 ways; you understand?

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

20 Q. Now, this is a death penalty case
21 where the State is seeking the death penalty. You have
22 told me, you personally feel, no, you don't feel you
23 could make that type of decision. And like I said, that
24 is fine.

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

2 Q. Let me preface my next question with a
3 couple of comments and some procedures, so I can lay all
4 of my cards out and you can tell me how you feel. Okay?

5 A. Okay.

6 Q. All right. The way the trial proceeds
7 in a death penalty case is in two parts. First, there is
8 the guilt/innocence stage, where we have to prove the
9 case beyond a reasonable doubt. Did we prove the
10 defendant guilty or is the defendant not guilty. Okay?

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

13 Q. Now, if we don't prove the case, it's
14 a not guilty verdict. If we prove the case, it's a
15 guilty verdict, but that doesn't equal death penalty.
16 Okay?

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

19 Q. Just because you find someone guilty.
20 You have got to go to the punishment phase, where you
21 might hear more evidence in the second part of the trial,
22 evidence about background. You may hear a lot of
23 evidence, you may hear nothing. Okay? It might just be
24 the facts of the case itself. But at the close of that
25 evidence in a capital murder case, the jury then decides
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1 these questions:
2 The first question, it calls for a
3 "yes" or "no" answer. Basically, it says this: The
4 State has to prove will the defendant be a continuing
5 danger to society? Okay? If we prove that using the
6 evidence, the jury answers "yes." If we don't, they
7 answer it "no."
8 A. Uh-huh. (Witness nodding head
9 affirmatively.)
10 Q. But if you answer "yes," we're more
11 along the way to the death penalty. First, we have got
12 to prove them guilty, then we have to prove them a
13 continuing danger. That first "yes" answer moves us much
14 closer to the death penalty. If the jury answered "yes"
15 to that, then they will go on to this second question.
16 And I'll go over that in more detail in a moment.
17 It's a lengthy question, but it is
18 what we call the mitigation question. And it asks,
19 basically, this is what it says: You will look at all of
20 the evidence, and then if you find some evidence that you
21 think a life sentence should be imposed rather than a
22 death sentence, you will answer the question "yes." If
23 you don't see any evidence where a life sentence should
24 be imposed, you would answer it "no." Because a "no"
25 answer, that equals the death penalty. Okay?
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1 A. Yes.
2 Q. A "yes" if they are a danger; and "no"
3 if there is no mitigating evidence, there is the death
4 penalty. Answer it any other way, and it is a life
5 sentence, but those are the only two outcomes. Yes -- a
6 life sentence or a death penalty case. Judge Tolle will
7 sentence the defendant based on how those questions are
8 answered. "Yes" to the first one, and a "no" to the
9 second one, you don't write in death, but that would be a
10 death sentence. Is that clear to you?
11 A. Uh-huh. (Witness nodding head
12 affirmatively.)

13

14 THE COURT: Ma'am, could you say yes

15 or no, Ms. Halsey is taking all this down.

16 THE PROSPECTIVE JUROR: Oh, yes.

17 THE COURT: Thank you.

18

19 BY MR. TOBY L. SHOOK:

20 Q. Now, if that happened in this case, a

21 guilty, a "yes" and then a "no," Judge Tolle would

22 sentence the defendant to death. Procedure for death in

23 this State is lethal injection. Have you heard that?

24 A. Uh-huh. (Witness nodding head

25 affirmatively.) Yes.

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1 Q. Under our procedures, if the guilty

2 and the "yes" and "no" occur, the defendant would be

3 placed on death row in Huntsville, Texas. There's about

4 400 people on death row. At some time in the future, I

5 can't tell you when, Judge Tolle would issue what is

6 called a death warrant. It has the actual date of

7 execution.

8 The day before that date the defendant

9 would be taken from her cell and moved to the Walls Unit

10 in Huntsville, Texas, and placed in a single cell there.

11 And be given an opportunity during the morning and

12 afternoon to say her last goodbyes to family, friends,

13 and maybe be with a minister, or whoever she chooses to

14 be with.

15 But the law calls out for that at 6:00

16 p.m. guards would come to that cell, she may not want to

17 leave, but, obviously, there will be enough there to take

18 her. They would go about 30 feet down the hall. There's

19 a room there with a gurney in it, with leather straps

20 built into it, and if force were necessary, they would

21 put her on that bed and strap her down.

22 There are witnesses there, by law, who

23 watch all these events. And the warden is there, kind of

24 runs the show. Needles would be placed in her arm; there

25 would be an opportunity for her to make a last statement,

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1 but after the death warrant is read, poison would be

2 injected into her body. It takes about ten minutes, and

3 she would be dead.

4 Now, I don't want to do that to be

5 morbid, but just to put all my cards out on the table,

6 that is our goal in this case. We believe we have the

7 type of evidence that would convince the jury to find the
8 defendant guilty; and the type and quality of evidence
9 that a jury will answer "yes" to that first question, and
10 "no" to that second question, if they listen to the
11 evidence and just make their judgments on the evidence.
12 And if they answer that way, this woman will be executed
13 someday.
14 Now, some people come in and tell us,
15 "Look, I am for the death penalty. I could do it in
16 every case." They almost volunteer for the job. We
17 usually don't want them. We have other people tell us,
18 "Look, yeah, I'm for the death penalty and I could sit
19 and if I hear the evidence and you prove those things, I
20 can do that."
21 We have other people that tell us,
22 "Look, if we were talking about prison time, that would
23 be one thing, but I, myself, have personal objections to
24 answering questions that are going to equal someone's
25 death someday." You don't write life or death, but
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1 sitting there making those decisions. "I can't do that.
2 If it were a prison case, I could do that. But I have
3 personal objections, moral beliefs, strong beliefs, that
4 I can't remove. That is just how I feel, and I want to
5 be fair and up front about it." We have had several
6 people like that on this panel.
7 You know yourself the best, ma'am, and
8 you have told me that you don't think it's right for
9 people to make judgments about executing another human,
10 and you personally don't think you have that right.
11 A. Uh-huh. (Witness nodding head
12 affirmatively.)
13 Q. Do you think you -- would you be able
14 to sit and listen to the evidence and make those
15 judgments? Or are you one of those people that just has
16 those objections that wouldn't allow you to answer
17 questions in a way that would result in another person's
18 death?
19 A. Yes, I am one of those, uh-huh.
20 (Witness nodding head affirmatively.)
21 Q. Okay. And when you just kind of
22 paused there for a second, you were just making sure of
23 your answer?
24 A. Yes.
25 Q. Okay. Like I said --
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1 A. Well, I know it now.
2 Q. You know yourself pretty well, don't
3 you?
4 A. Uh-huh. (Witness nodding head
5 affirmatively.)
6 Q. Okay.
7 A. I know I couldn't do that.
8 Q. These beliefs, these objections you
9 have, they are not going to fly away anytime soon, are
10 they? Or leave your mind, are they?
11 A. No.
12 Q. That is something that is going to
13 stay with you, isn't it?
14 A. Yes.
15 Q. If this were some other type of case,
16 say just a murder case that would involve prison time,
17 you would be able to sit and listen and pass a sentence?
18 A. Yes, I think so.
19 Q. But it's the death penalty issue that
20 gives you the big problem?
21 A. Yes, sir.
22 Q. And you are just being honest with me?
23 A. Uh-huh. (Witness nodding head
24 affirmatively.) Yes.
25 Q. I'm not trying to go argue with you at
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1 all. Okay?
2 A. Okay.
3 Q. The law requires me to kind of truly
4 test your answers. Make sure that is how you feel.
5 Okay? We don't require people to come down here and
6 violate their personal beliefs and convictions. Okay?
7 A. Right.
8 Q. No one can force you on a jury and
9 say, "Forget about how you feel." If you feel strongly
10 about an issue, and it cuts both ways, just let us know
11 like you are on this issue.
12 A. Okay.
13 Q. Here is the problem though: We talk
14 about these fact questions and let me go over these for a
15 moment, because this is the next area I want to get into.
16 It's one thing, proving things with evidence in someone's
17 mind, intellectually.
18 You know, it's easy to say, "Can't you
19 just be fair and answer questions?" Well, a normal
20 person will say, "Sure, I can do that." But the fact is,
21 you know that the way you answer questions determines
22 whether a person dies or lives. You realize that?

23 A. Uh-huh. (Witness nodding head
24 affirmatively.)
25 Q. Okay. See this first question? It
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1 asks: "Do you find from the evidence beyond a reasonable
2 doubt, there is a probability that the defendant would
3 commit criminal acts of violence that would constitute a
4 continuing threat to society?"
5 You see that question asks the jury to
6 make a prediction. Okay? How a person is going to
7 behave. They can use evidence of the murder itself, or
8 any other evidence they have heard in the punishment
9 stage to make that prediction.
10 As I told you, that is the first step
11 in the punishment stage for the death sentence. If we
12 get a "yes," we're on our way to the death penalty. If
13 it's a "no," obviously, that is a life sentence.
14 I have had jurors tell me that, "Well,
15 I know you can prove it to me. I know, you know, you
16 might come in here and put a ton of evidence on that the
17 defendant turns out to being just one mean, killing
18 machine, you know." Something you would read about in a
19 Stephen King novel.
20 A. Uh-huh. (Witness nodding head
21 affirmatively.)
22 Q. Or see on Friday the 13th, who knows,
23 just a mean person. "And even if you could prove it to
24 me intellectually, I know the evidence says -- I know in
25 my mind that person would be dangerous, I could never
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1 bring myself to answer that question 'yes,' because I
2 know that is on the way to the death penalty.
3 "Even though I know they are
4 dangerous, even though the evidence is there, I would
5 have to answer it 'no.'"
6 A. Uh-huh. (Witness nodding head
7 affirmatively.)
8 Q. "Because that is just how I feel, and
9 I couldn't violate my personal conviction."
10 A. Uh-huh. (Witness nodding head
11 affirmatively.)
12 Q. And that is fine if they feel that
13 way. Because they are not going to take part in this
14 punishment process if it means when they answer the
15 questions that it would result in the person's death.
16 How do feel about that?

17 A. Well, right, I don't think I could do
18 that.

19 Q. Okay. Again, it's not a question that
20 in your mind of what we can prove. I mean, I guess we
21 could put on a lot of evidence and you know in your mind
22 that, yes, this person could be dangerous. It's the
23 point that you know when you are answering these
24 questions that that person is on their way to the death
25 penalty.

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1 A. Right. Even if I felt like, yes, all
2 of the evidence was there to, you know, to get a guilty
3 verdict. I just don't think I could do the death.

4 Q. Okay. The life sentence; that is
5 fine?

6 A. Yes.

7 Q. Okay. Some people can't even get to
8 the guilty verdict.

9 A. Oh.

10 Q. They don't even get to that step.

11 They go, "I'm not participating in this process at all.

12 I'm not going to find someone guilty of capital murder."

13 How do you feel about that?

14 A. No, I could do that.

15 Q. Okay. Whether they did it or not, you
16 could make that decision?

17 A. Right, uh-huh. (Witness nodding head
18 affirmatively.)

19 Q. It is when we get to these punishment
20 issues that is when you know we are moving close to the
21 death penalty. Okay.

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

24 Q. So, question number 1, you couldn't
25 even answer that "yes" knowing that your objections to
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1 the death penalty are going to stay with you?

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

4 Q. Okay. That is fine.

5 Now, this second question -- and you
6 made yourself clear again but I have to argue -- I mean,
7 I have to go over this with you just in case,
8 hypothetical situation.

9 "Taking into consideration all of the

10 evidence, including the circumstances of the offense, the

11 defendant's character and background, the personal moral
12 culpability of the defendant, is there a sufficient
13 mitigating circumstance or circumstances to warrant that
14 a sentence of life imprisonment, rather than the death
15 sentence be imposed?

16 A long question. Basically, I think
17 what that question says is this: The jurors, if they
18 look at all of the evidence and if they see something and
19 they have already found the defendant guilty, they have
20 already found that they are a danger. But they look at
21 all of the evidence and the defendant's background and
22 decide, this person needs a life sentence rather than a
23 death sentence. And they have to make that decision
24 based on the evidence. Okay?

25 Now, if you answer "no," you know what
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1 that equals, that is a death penalty?
2 If you answered "yes," it's a life
3 sentence. I have had some people tell me, you know, they
4 don't have any qualms about giving someone the death
5 penalty. They will say, if they see that evidence and it
6 points to a "yes" answer, they will answer it that way.
7 If it points to a "no" answer, they will answer it that
8 way.
9 I have had people, such as yourself
10 though, that say, "I have deep, personal convictions
11 against my personally answering a question that would
12 sentence someone to death. And I know if I somehow wound
13 up on a death penalty jury," let's say we didn't go
14 through this process and just stuck people at random off
15 the street on a jury, "I know I could never answer that
16 question "no." Because I know that if I did that it
17 would equal a person's death."

18 In other words, no matter what the
19 evidence is, they would answer it "yes."

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

22 Q. Because that is a way out for them
23 every time. Do you understand what I am saying?

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

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1 Q. Even if they didn't see evidence that
2 said it was mitigating, the whole record might be blank
3 of any evidence, there might be nothing but bad news as
4 far as the evidence goes for the defendant, how bad they

5 are, they would still answer it "yes," because that is a
6 way for them to avoid giving someone the death penalty?
7 A. Yes.
8 Q. See where I am coming from?
9 A. Uh-huh. (Witness nodding head
10 affirmatively.)
11 Q. Is that how you feel about it again?
12 A. Yes.
13 Q. You are never going to answer that
14 "no" because you know that is the final answer that would
15 give someone the death penalty?
16 A. Right.
17 Q. You would always answer -- no matter
18 what the evidence is, you would answer it "yes" because
19 that is how you feel?
20 A. Yes.
21 Q. Okay. All right. And this isn't a
22 matter again of evidence; it's just how you personally
23 feel against the death penalty?
24 A. Right, uh-huh. (Witness nodding head
25 affirmatively.)
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1 Q. About making these decisions?
2 A. Uh-huh. (Witness nodding head
3 affirmatively.)
4 Q. All the jurors take oaths, "I will
5 render a verdict based on the law and the evidence," you
6 know, kind of like you did on that big panel, everyone
7 takes an oath. But you are just being truthful?
8 A. Yes.
9 Q. Okay. No matter how many oaths you
10 take, you are still going to have a personal objection
11 and you are personally not going to be able to make the
12 decision in a death penalty case. Are you?
13 A. No.
14 Q. Okay. Well, you have been very honest
15 with me and I appreciate that. Like I said, this is
16 something you have thought about and you feel strongly
17 about; is that right?
18 A. Yes.
19 Q. Okay. The only other area I had to
20 get into was, it looked like one time someone made, at
21 least maybe brought a charge of criminal trespass against
22 you?
23 A. Yes.
24 Q. But none of those charges were ever
25 brought ultimately?

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1 A. No.

2 Q. What police department was it? Or
3 were the police even called?

4 A. No.

5 Q. So, it was just a personal dispute or
6 something?

7 A. Yes.

8 Q. But the police didn't even get
9 involved?

10 A. Huh-uh. (Witness shaking head
11 negatively.)

12 Q. Okay. Do you know either of the
13 attorneys, local counsel, that is Mr. Douglass here or
14 Richard Mosty?

15 A. No.

16 Q. Okay. Do you have any questions over
17 anything we have gone over?

18 A. I don't think so.

19 Q. Okay. Oh, yes that is another area I
20 wanted to get into. You know, we list, we talked
21 about -- and the Judge talked about a person, if they are
22 accused of the crime, doesn't have to testify in their
23 own behalf.

24 And we asked a question about that in
25 your questionnaire. I know you answered a lot of
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1 questions, but let me refresh your memory on that.

2 The question we asked is this: The
3 Constitution says that a person accused of a crime does
4 not have to testify in their own behalf. How do feel
5 about this constitutional right?

6 A. Well --

7 Q. Now, you said, "I think it is a fair
8 constitutional right; although, I do feel that one should
9 speak in one's own behalf." Okay?

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

12 Q. The point of the matter we have to get
13 to is this: If someone wants to testify, they can, no
14 one can stop them. However, if a defendant chooses not
15 to testify, the jury can't use that against them as
16 evidence.

17 A. Okay.

18 Q. Some people agree with that rule; some
19 people say, "No, if they don't testify, I'm going to hold

20 it against them," because I would get up there.

21 A. Yes.

22 Q. How do you feel about that rule of

23 law?

24 A. Well, I think that is fine if they

25 choose not to. But, I guess, I was thinking more if I

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1 were on trial, I would want to testify.

2 Q. So you could follow that rule?

3 A. Yes, uh-huh. (Witness nodding head

4 affirmatively.)

5 Q. Getting down to brass tacks then

6 though, but this type of case, being a case where the

7 State is seeking the death penalty, you are letting us

8 know up front that you have a personal conviction against

9 personally making that judgment of a death sentence, or

10 answering questions that would actually equal to a death

11 sentence, and that you couldn't do that?

12 A. Yes.

13 Q. You couldn't bring yourself to do

14 that?

15 A. No.

16 Q. Okay. Fair enough.

17

18 MR. TOBY L. SHOOK: That's all the

19 questions I have, Judge.

20 THE COURT: Mr. Douglass.

21 MR. S. PRESTON DOUGLASS, JR: Thank

22 you, your Honor.

23

24

25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. S. PRESTON DOUGLASS, JR:

4 Q. Ms. Martin, I came in late. Well,

5 actually, I was the last chair, I have been here since

6 you got here. I have been doing this for a while and I

7 am getting where I forget and I feel like I am in a time

8 warp, and I apologize.

9 I want to go through a couple of

10 things. You have been up there for a while, and you have

11 answered questions, I believe, as forthrightly and as

12 honestly as you can.

13 In representing Darlie Routier, our

14 perspective with respect to this case is absolutely at a
15 whole other end of the spectrum from that of the
16 attorneys representing the State.
17 We have a dramatically different
18 opinion about this case. And in that regards, I,
19 personally, like to center upon the first phase of the
20 trial; the guilt/innocence phase of the trial.
21 My client has entered a plea of not
22 guilty, and she is going to stand behind that plea of not
23 guilty 100 percent. Okay. And so, because she has
24 entered that plea, my focus and my emphasis is on the
25 first part of the trial, and the rights, the very
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1 important rights that are guaranteed the defendant. And
2 the obligations and the duties that the law puts on the
3 attorneys representing the State to present their case.
4 Now, having said all of that, I'm
5 going to go to the issues that you last talked about.
6 Not because -- I am talking about the punishment issues.
7 Not because that is what interests me, but because you
8 have raised some concern, and the Judge, I think, would
9 like me to go to that straightaway, and get that
10 resolved, if I can.
11 So don't think I am not interested in
12 the guilt/innocence phase, but I am going to this
13 punishment issues first, not because I think we are going
14 to end up there, but because you raised some concern and
15 a great deal of time was spent on that. And I just want
16 to go straight to that while it is all fresh on our mind.
17 A. Okay.
18 Q. There are no rules, no criteria for
19 the kind of people that are supposed to be on a jury.
20 When the law or the ideals we have says that we're
21 supposed to have a jury of our peers, that doesn't mean a
22 jury of our peers that think alike. That just means a
23 jury of our peers. And I think it has been a good change
24 in the law that we take everybody by their driver's
25 license numbers or people who register to vote. And all
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1 of these people are put in a big pool, and they are
2 brought in, and all of those people are different ages,
3 different backgrounds, everything that you can imagine.
4 I don't think we have had too many people in here that
5 are the same. I don't think anybody in the world is the
6 same as the next person. Do you agree with me on that?
7 A. Yes.

8 Q. Now, what is important about that is
9 we don't have a jury selection process to homogenize. I
10 mean, we don't do this to make everybody the same so that
11 the 12 people that sit over in that jury are a bunch of
12 robots. That is not the idea.
13 It is our system's goal, I believe, to
14 find people with different perspectives in life. And
15 that they bring their life experiences into the jury box
16 and that background helps them be good jurors.
17 So, please, and I don't think Mr.
18 Shook by any means implied this, but don't believe that
19 anybody feels that you have to think a certain way to be
20 on a jury. Your thoughts are your thoughts.
21 Now, I think, in that regard, there
22 are absolutely no wrong answers. There is only right
23 answers to these questions. And in the final analysis,
24 the only way you pick a fair jury are people who are
25 willing to say exactly what is on their mind, and I
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1 appreciate you doing that.
2 At the beginning of the examination I
3 heard you say, and correct me if I am wrong, but I had
4 heard you say that there were situations, or there could
5 be people bad enough in your mind that they ought to
6 receive a death penalty. Did I hear that from you?

7 A. Yes.

8 Q. Okay. Now, you understand, as we sit
9 here right now, we don't have fact one?

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

12 Q. The only piece of paper that is in
13 front of you is an indictment. And you might remember
14 that the Judge told you that indictment doesn't mean
15 anything either. And without any facts, you don't know,
16 the Judge doesn't know, I may not even know all of the
17 evidence that the State hopes to bring in the trial.

18 They may bring evidence that
19 absolutely just curls your hair, and you say, "Man, I
20 never dreamed they would bring that up." Or, you know,
21 you just never know.

22 And in that regard, it's hard when we
23 sit here right now at 1:00 o'clock in the afternoon, two
24 months before the trial is going to start because we
25 don't know, I mean, we are all talking hypotheticals.

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1 So, the questions come down to: Could

2 you sit as a juror and consider evidence if you know that
3 there is the possibility that there would be a
4 conviction? And if you know there is a possibility that
5 in the event there is a conviction, a jury would make a
6 decision that results in a life sentence or a death
7 sentence?

8 All the law can ask you, all the Judge
9 can ask you is to have an open mind and be willing to
10 consider evidence. Not come in here with the idea that,
11 I don't care what they tell me, I don't care if they tell
12 me the most horrible things on earth, I have got a closed
13 mind.

14 I think the key is, if you can say, "I
15 have an open mind and I can consider the evidence." Then
16 you are a long way to being qualified as a person who can
17 sit on a jury.

18 I understood you also to say that you
19 could listen to the evidence in the guilt/innocence
20 stage, and make a determination on whether you think the
21 State has met its burden of proof. Was I right about
22 that?

23 A. Yes.

24 Q. Okay. So, the next and the critical
25 step is if the State was to then obtain a conviction in a
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1 criminal case and you knew the death penalty was a
2 possible option, and the State began to produce
3 evidence -- well, again, let me clarify something.
4 The State -- does not -- there is no
5 absolute responsibility, there is no obligation, is what
6 I am trying to say, that they have to produce evidence in
7 the punishment phase. They can if they want to, they
8 don't have to. They do have the burden of proof, but
9 they could stand up and say, "We think what we have
10 proven is enough to answer these questions." So, I don't
11 want to mislead you.

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

14 Q. But you could get to the punishment
15 phase of the trial, and the State could start saying,
16 "Now we're going to bring you evidence that we believe
17 convinces you beyond a reasonable doubt, that there is a
18 probability that this person would be a future danger."
19 They call this question, "future danger question". Is
20 this person going to be dangerous to society?
21 The question that is important at this
22 point is knowing that there is the two possible
23 penalties, could you take an oath and could you listen to

24 evidence, and if you believe the State proved to you that
25 a person was absolutely a future -- probability, would be
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1 a future danger to society, you said to yourself, "Well,
2 they proved some pretty bad stuff." But you could say,
3 "Yeah, I think that person could be a future danger."
4 My question to you is: If they
5 brought you the kind of proof you needed, could you say
6 yes? Could you say, "Yes, I think this person is a
7 future danger."

8 A. Yes.

9 Q. And one step further: Could you say
10 yes, knowing, because they are going to ask you this,
11 knowing that a "yes" gets you about halfway to a death
12 penalty? Could you do that?

13 A. Yes.

14 Q. Okay. And let me ask it another way:

15 If you sat as a juror and you sat there for a while, and
16 you believed in your heart that the answer to that
17 question is "yes," you believed in your heart that they
18 proved beyond a reasonable doubt that this person is
19 probably going to be a danger to society, you wouldn't
20 change your answer and say "no." Would you?

21 A. No.

22 Q. You would answer what you believe?

23 A. Right.

24 Q. And taking it one step further, this
25 second question is the question regarding mitigation.

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1 And that is a word lawyers throw around and I am not sure
2 that many people -- I didn't know what that word was
3 before I went to law school. Mitigation means, something
4 that lessens a person's moral blameworthiness.

5 You might say, "I don't think the
6 person is as responsible because of some reason." Let me
7 give you some examples. I can't tell you what mitigation
8 is, but let me just give you a couple of examples of what
9 some people might think it is.

10 Some people might say, "Well, okay, I
11 found the person might be a future danger to society."
12 And then you get to this question which the attorney for
13 the State sometimes call the "safety net" question. It's
14 an example of the question again, I used to say, it is
15 the question that let's you stop the train.

16 That if you get to this point, you
17 say, "Yes, he is guilty of capital murder. Yes, he is a

18 future danger. But you know what, there is something
19 about this person's character, there is something about
20 this person's background that makes me think a life
21 sentence is the right thing."

22 Then this gives you the chance to say,

23 "I know about all this, but, yes, there is a reason not
24 to take this person's life." And in that situation, you
25 can vote that way.

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1 Now, would you be able to answer this
2 question to where honestly and considering the evidence
3 where you thought to yourself: Is there a reason not to
4 give this person the death penalty?
5 Or, conversely of that, "No, I don't
6 think there is any reason not to give this person the
7 death penalty. I am going to consider this evidence. I
8 am going to answer this question based on what I think is
9 right and based on what I get produced to me by
10 evidence." Could you answer the question?

11 A. Now, wait a minute.

12 Q. I confused you?

13 A. Yes, I'm confused.

14 Q. Let me back up. I knew I had messed
15 it up halfway into it.

16 What this question says is: Even
17 though you found them guilty, maybe you believe they are
18 a future danger.

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

21 Q. Is there something about this person
22 that is on trial, is there something about their
23 background, is there something about their character,
24 their circumstance that makes you think that a life
25 sentence is a better idea?

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1 And if you believe in that situation,
2 that there is some circumstance -- let me give you some
3 examples: Some people might say, "Well, this person is
4 real young. They are so young, that I believe that means
5 they should get a life sentence." It mitigates.

6 Some people might say, "No, I don't
7 agree with that at all. Young doesn't mean anything to
8 me. But I tell you what, I believe the person was
9 sexually abused as a child, and I think that put this
10 person messed up all the way along. So I think they
11 should get a life sentence. We shouldn't put this person

12 to death."

13 My only question to you, ma'am, is:

14 Could you consider in your mind -- could you keep your
15 mind open to evidence of that kind of nature, and if you
16 thought that kind of evidence occurred, say, "Yes, I
17 agree there is mitigation, life sentence." Could you do
18 that?

19 A. Yes.

20 Q. Now, let me flip that over. If you

21 believe there was no evidence of mitigation, none. You
22 heard the evidence and you said, "Well, they just didn't
23 do it for me." They said the reason the guy -- they
24 wanted to have mitigation because the guy is a good fly
25 fisherman.

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1 You said, "That is the craziest thing
2 I have ever heard of, that is not mitigation." Could you
3 then answer "no," knowing that that might -- that that
4 would end up in a death sentence? Could you listen to
5 the evidence and do that?

6 A. Could I answer "no"?

7 Q. Could you answer "no" if there are no
8 mitigating circumstances?

9 A. Oh, yes, I could, yes.

10 Q. I want to go back and talk to you a
11 little bit about the -- okay. And the last thing I want
12 to ask you about punishment issues, on page 2, and I am
13 not going to read all this to you, but there was a list
14 of six choices you had about the death penalty, six
15 statements.

16 And one of those statements, it's the
17 one you circled was, it says: With reference to the
18 death penalty, which of the following statements best
19 represents your feelings? And one of those statements
20 was, "Although I do not believe that the death penalty
21 ever ought to be invoked, as long as the law provides for
22 it, I could assess it under proper circumstances."

23 Does that statement still reflect what
24 you felt, or what you feel now? That is what you felt
25 back two weeks ago, is that still the way you feel?

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1 A. Can I read it over?

2 Q. Let me just show it to you.

3 A. Okay.

4 Q. Now --

5

6 MR. S. PRESTON DOUGLASS, JR: May I?

7 THE COURT: Oh, by all means.

8 MR. S. PRESTON DOUGLASS, JR: It is
9 kind of hard to read things to people.

10

11 BY MR. S. PRESTON DOUGLASS, JR:

12 Q. Now, that number 3: "Although I do
13 not believe that the death penalty ever ought to be
14 invoked, as long as the law provides for it I could
15 assess it under the proper set of circumstances." A
16 couple of weeks ago, you put that down as your response.
17 Do you believe that is still the way you feel?

18 A. I think I am going to have to change
19 my mind on that one. I am just going to have to change
20 my mind on that one. No, I just don't believe in it at
21 all, no.

22

23 THE COURT: That is not the question,
24 ma'am. We know you don't believe in it.

25 THE PROSPECTIVE JUROR: Okay.
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1 THE COURT: Listen to the question
2 carefully, please.

3

4 BY MR. S. PRESTON DOUGLASS, JR:

5 Q. Let me ask you about that response you
6 gave. Back then, you said -- and I'm going to
7 paraphrase, that while you don't think the death penalty
8 should be invoked, under proper circumstances, you could
9 invoke it if you thought the circumstances were right.
10 Is that the way you feel today?

11 A. No.

12 Q. Do you remember, we talked a little
13 bit over there about how you could listen to the
14 evidence?

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

17 Q. And you could answer the questions.
18 And you also said a little while earlier, that you could
19 imagine cases or that there was something running through
20 your mind that it would deserve the death penalty; is
21 that right?

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

24 Q. Okay. The only thing I'm going to ask
25 you, ma'am, is: Can you take an oath, listen to that
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1 evidence, and arrive at a verdict based on what the
2 evidence tells you; and listen and consider with an open
3 mind, the evidence? Can you do that?

4 A. Yes.

5 Q. Okay.

6

7 MR. S. PRESTON DOUGLASS, JR: May I
8 have one second?

9

10 (Whereupon, a short
11 discussion was held
12 Between the defendant
13 and her attorneys,
14 off the record, and outside
15 of the hearing of the
16 Jury, after which time,
17 the proceedings were
18 resumed on the record,
19 In the hearing of
20 the juror as follows:)

21

22 BY MR. S. PRESTON DOUGLASS, JR:

23 Q. Now, with all that being said, and the
24 Judge will be sure and tell me when my time is up, but I
25 want to go back to the issues we talked about that I was
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1 trying to get with you on.

2

3 THE COURT: You have 30 minutes left.

4 MR. S. PRESTON DOUGLASS, JR: Oh,
5 well, Judge, I didn't realize I had 30 minutes left.

6 I promise I won't take all of that.

7 THE PROSPECTIVE JUROR: Okay.

8 THE COURT: That's all right.

9

10 BY MR. S. PRESTON DOUGLASS, JR:

11 Q. Is -- the State and the Judge have
12 provided for you a copy of the indictment that is sitting
13 in front of you.

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

16 Q. You probably heard Judge Tolle, you
17 might remember two weeks ago, it's been a while now, but
18 you might have heard when Judge Tolle said that in Dallas
19 County there are approximately 25,000 indictments issued
20 a year against citizens. And, you may remember -- do you

21 remember him saying that?

22 A. Vaguely, yes.

23 Q. You remember, he also said -- the

24 Judge said, because I wouldn't know about this, I live

25 here, but the Judge said that on a given day, that a

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1 single Grand Jury might hand down 125 indictments in one

2 day's work.

3 A. Uh-huh. (Witness nodding head

4 affirmatively.)

5 Q. And that many of those people who are

6 investigated and many of those people who receive an

7 indictment, may not even know that they were being talked

8 about by the Grand Jury. They may not even know they

9 were being investigated. Because they didn't know, they

10 obviously didn't have a chance to come down to court, to

11 the Grand Jury, they didn't have a chance to tell their

12 side of the story. The first question is: Did that

13 surprise you when you heard that?

14 A. Yes, uh-huh. (Witness nodding head

15 affirmatively.)

16 Q. Okay. Because that -- because you

17 obviously understand that some portion of those 25,000

18 people didn't get to tell their side of the story, can

19 you understand that that would necessarily mean that an

20 indictment is no evidence of guilt at all?

21 A. Uh-huh. (Witness nodding head

22 affirmatively.)

23 Q. Would you agree with that proposition?

24 A. Yes, uh-huh. (Witness nodding head

25 affirmatively.)

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1 Q. An indictment is really just a piece

2 of paper that tells a defendant what they are charged

3 with, and gives our Judge jurisdiction so he can hold a

4 trial.

5 Now, my last question about the

6 indictment is: Because there is an indictment, there are

7 some people that say, "Well, to me, where there is smoke,

8 there is fire. If there is an indictment that means I am

9 going to believe that person's guilty to start out with."

10 Do you feel that way?

11 Or do you think that you could start

12 everybody on an even plane and believe that the

13 indictment doesn't mean anything?

14 A. Yeah. No, I don't believe that.

15 Q. Okay. Now it's been said, in kind of
16 a slang term or shorthand term, "That the people that do
17 the accusing have to do the proving." What I take that
18 to mean is that the attorneys representing the State seek
19 an indictment, and they get an indictment, it is then
20 their obligation to prove what they have alleged. Do you
21 agree with that?
22 A. Uh-huh. (Witness nodding head
23 affirmatively.)
24 Q. Where that go to is, and I believe
25 you -- I believe you were fine with the questionnaire on
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1 this issue, you believe, strongly that -- or do you
2 believe that if -- that the burden of proof lays over
3 here with the attorneys representing the State, and that
4 the defendant just doesn't have to prove anything to you.
5 Are you okay with that?
6 A. Uh-huh. (Witness nodding head
7 affirmatively.) Yes.
8 Q. It was said one time in a trial, and I
9 thought it was kind of a silly example, but with me
10 involved it may not have been so silly. The Judge said
11 that I could, in a trial, told the jurors, "Well, you
12 know, Mr. Douglass, he could just sit over there and
13 watch the fan spin around, the blades on the fan at the
14 old courthouse over there, and he doesn't have to do
15 anything in the trial. And that if he decides that the
16 State has not proven what they said they were going to
17 prove, he can just watch the fan spin around and when it
18 comes his turn, say, they have not proven anything. And
19 then a juror has to decide the question of guilt or
20 innocence, guilty or not guilty, based only on what the
21 State has proven." It means that I have no obligation or
22 no duty to bring you evidence.
23 Now, what that means is -- to me is,
24 are you going to make me prove something to you? Or are
25 you going to make them do the proving, the State's
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1 attorneys?
2 A. I would have to make you prove
3 something.
4 Q. Okay.
5 A. The defendant, you know.
6 Q. Okay. Now, are you -- when I hear
7 that from you, are you saying that you would insist on
8 the defendant bringing you evidence?

9 A. Yes.

10 Q. Okay. You know that the law says that

11 I don't have to -- that it's our right. Let me give you

12 an example: Let's say the State puts an indictment that

13 I went down to Nations Bank down there, and I held up the

14 bank. And they said, "Preston ran in the lobby, shot up

15 the place, and took the money."

16 A. Uh-huh. (Witness nodding head

17 affirmatively.)

18 Q. So, the trial starts and they put on a

19 guy who says, "Well, I saw Preston's law partner, Richard

20 Mosty, run in the bank and rob the place." And that is

21 all they proved, that it was my partner down there. My

22 name doesn't even come up, you have not even heard my

23 name. Nobody has even said anything about Preston.

24 And I sit there and I say, "Well, they

25 have not proved anything." In that situation, the law

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1 says I don't have to do anything. Because they have not

2 proven a thing. I don't have to get up on the stand; I

3 don't have to say a word. Does that seem fair to you?

4

5 MR. TOBY L. SHOOK: Judge, in that

6 case, it would not even go to the jury. It would be a

7 directed verdict. So I think that I would object to the

8 form of that question.

9 THE COURT: Well, you might rephrase

10 your question.

11

12 BY MR. S. PRESTON DOUGLASS, JR:

13 Q. Okay. Well, let's take it a step

14 further. Let's say they said some things, like, "Well,

15 we believe we saw a person sitting out in the car that

16 might have been Preston." All right?

17 A. Uh-huh. (Witness nodding head

18 affirmatively.)

19 Q. "But we can't say for sure." There

20 might have been a little bit of evidence. And you are

21 sitting there as a juror and you say, "Wow, they said it

22 was a person that might have looked like Preston." And I

23 am sitting there and I am saying, "Well, you know, it's

24 kind of like the old question; when did you stop beating

25 your wife? You know, if you have never beaten your wife,

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1 how are you going to prove that you stopped?" Do you

2 understand?

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

5 Q. There are some things a person just
6 simply can't prove. And I guess what I am saying is, if
7 I am sitting there and I don't believe the State has met
8 its burden of proof, and as a lawyer, I stand up and say,
9 "Judge, I don't think they have met their burden of
10 proof." I don't have to put on any evidence.

11 My question is: Would you hold it
12 against the defendant for not putting on evidence?

13 A. Oh, the defendant?

14 Q. Right.

15 A. No, I don't guess so, no.

16 Q. Okay. By the same token, you said
17 that you thought it was a good law that a defendant
18 should not have to testify. I think there's three people
19 with respect to testifying. There is a class of people
20 that say, "If I were charged with a crime, I am going to
21 get up there and I am going to say something."
22 Some people will say, "I am going to
23 rely on my attorney. My lawyer tells me, you know, you
24 don't need to testify, or thinks you should not testify.
25 I am just going to do what they tell me to do."

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1 There is another group of people that
2 say, "I would be so scared, I would be so nervous, I am
3 not a very good talker. A lawyer could twist me around
4 to where even if I was telling the truth, it would look
5 like I was lying." And they say, "Don't get me near that
6 stand."

7 Can you understand that because there
8 are different classes of people that feel about
9 testifying, that the law doesn't make them get up there
10 and say something? Does that sound fair to you?

11 A. Yes, uh-huh. (Witness nodding head
12 affirmatively.)

13 Q. In your questionnaire, you said you
14 are one of these people that would probably like to say
15 something. Now, where that causes me concern is, you may
16 want to say something, but could you honor a defendant's
17 right not to say anything, should that defendant choose
18 not to?

19 A. Could I honor -- yes, I could.

20 Q. You could put aside your feelings.

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

23 Q. That you might say something and say,
24 "Well, but I can't do that, I have got to judge it just

25 based only on what I hear in evidence, and I am not going
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1 to say that that person has to get up and testify." Are
2 you okay with that?

3 A. Yes.

4 Q. All right. One of the last things I
5 want to talk to you about is reasonable doubt. In our
6 State the highest burden of proof is beyond a reasonable
7 doubt. And that is the burden of proof that the law says
8 the State's attorneys have and that is the burden of
9 proof that the Judge is going to hold the State to. You
10 did not -- you said you had never been on a jury. You
11 have been on a Grand Jury; is that right?

12 A. Right, uh-huh. (Witness nodding head
13 affirmatively.)

14 Q. All right. Well, there's different
15 burdens of proof, and I'm just going to run through them
16 very quickly with you.

17 In a civil case, when somebody hits
18 you from behind in a car, in what I call a sore neck
19 case, where you are trying to get some money for being
20 hurt, the burden of proof is the preponderance of the
21 evidence. It's just the greater weight; 51 percent. You
22 know, they talk about the scales of justice. If the
23 scales tip just a little bit, that is who proved their
24 case, even if it is just a little bit. Whoever produced
25 a little more evidence.

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1 That is not the way it is in a
2 criminal case. That is preponderance of the evidence;
3 it's the lowest burden of proof. Up from that is what is
4 called, clear and convincing evidence. Clear and
5 convincing evidence is, just like it says, clear and
6 convincing. And that is the level of proof, for
7 instance, that you have got to get to to take a child
8 away from a mother. If you are going to take a child
9 away from a mom, you have got to prove by clear and
10 convincing evidence that that is what needs to happen.
11 Even up from that is reasonable doubt.
12 Even higher than the proof to take a child away is
13 reasonable doubt. And they used to not define reasonable
14 doubt, but now they do, and it is a long definition.
15 But, basically, it is proof of such a
16 convincing character, so convincing to you that you would
17 not hesitate to rely upon that proof in your own most
18 important personal affairs. Now, it sounds like a long

19 definition, but does it sound like it is pretty
20 important? A high degree of proof they have got to meet?
21 A. Yes, uh-huh. (Witness nodding head
22 affirmatively.)
23 Q. Okay. Let me just show you something.
24 My partner uses an example where he draws a circle, and
25 he says, "Imagine this is a circle, and there is a beam
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1 of light coming through the circle. And at the start of
2 the trial, this beam of light is the presumption of
3 innocence. And that the State during the trial, will
4 start to bring evidence to you, and they will start to
5 try to blacken that out, so that there is no light
6 shining through of the presumption of innocence." The
7 law says, that the State has to completely blacken out
8 that circle, such as there is no light coming through.

9 A. Okay, uh-huh. (Witness nodding head
10 affirmatively.)

11 Q. My question to you, Ms. Martin, is:
12 Even if there is a little pin light of light coming
13 through, of reasonable doubt, do you agree with me that
14 your verdict has to be not guilty, if -- unless they
15 totally blacken out this circle?

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

18 Q. Okay. And would you indulge the
19 defendant -- would you give the defendant that benefit of
20 the reasonable doubt? Say that is her right?

21 A. Yes, uh-huh. (Witness nodding head
22 affirmatively.)

23 Q. Okay. In common talk, the tie goes to
24 the runner. Obviously, if there is anything close to
25 that, any doubt you have got to give that to the
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1 defendant?

2 A. Okay.

3 Q. Are you okay with that?

4 A. Yes.

5 Q. Do you think that is the right way?

6 A. Yes, uh-huh. (Witness nodding head
7 affirmatively.)

8 Q. The State, I believe told you, that
9 they don't have to prove a motive in a case. The State
10 does not have a requirement to say why something
11 happened.

12 Now, I agree with that statement. You

13 can see that indictment up there in front of you, and it
14 doesn't say why they allege this crime took place.

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

17 Q. But I want to talk to you about motive
18 and reasonable doubt for a second. While they don't have
19 to bring you proof of a motive, can you agree with me
20 that you might receive a lot of evidence during the
21 trial.

22 They might show you things about
23 fingerprints, or who knows what. And you would listen to
24 this and you would hear a lot of evidence, but something
25 doesn't fit. There isn't a glue that pieces all of this
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1 evidence together.

2 And you might say, "I know they don't
3 have to give me a motive. They don't have to prove it.
4 But the fact they have not proven anything about motive,
5 the fact that I don't understand, this doesn't make
6 sense." Could you agree with me, that the absence of
7 proof of a motive might raise a doubt in your mind? A
8 reasonable doubt in your mind?

9 A. Yes.

10 Q. That you might say, "You know, I mean,
11 I know they have got all this stuff, but quite frankly,
12 two and two doesn't add up." And the fact that they have
13 not brought you any proof of motive, could you agree that
14 might raise a question?

15 A. Yes, it might, uh-huh. (Witness
16 nodding head affirmatively.)

17 Q. Okay. I promise you this is the last
18 thing. I anticipate the State is going to bring you
19 pictures that are gruesome. I imagine that some of those
20 pictures will be blown up for whatever purpose. And I
21 will also tell you, there is no doubt in my mind, that
22 you are going to see pictures of a horrible crime. There
23 is no question about that.

24 Now, some people will look at pictures
25 like that and recognize those pictures for what they are.
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1 They are blown up to show something, some piece of
2 evidence or something.

3 Some people might look at a picture
4 like that and become so infuriated, that they don't care
5 who is on trial, or what the proof is, they are going to
6 punish somebody because they are mad.

7 Do you feel like you could look at a
8 picture for what it is and not become so infuriated that
9 you would come to some automatic conclusion?
10 A. Yes, I think I could.
11 Q. Okay. Did you grow up in Brady?
12 A. No.
13 Q. When did you leave Brady?
14 A. I was just born there.
15 Q. Okay. And were you on a Grand Jury
16 here in Kerr County?
17 A. No, in Menard.
18 Q. Menard County?
19 A. Uh-huh. (Witness nodding head
20 affirmatively.)
21 Q. Was Ron Sutton the district attorney?
22 A. No, I don't think so, I'm not sure.
23 This was like 18 years ago or something like that.
24 Q. Okay. All right. I have done all of
25 the question asking. And I just want to ask you: Do you
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1 have any questions of me?
2 A. No.
3 Q. If you, God forbid, were sitting in
4 the place the defendant is sitting charged with a crime,
5 would you be satisfied with somebody like yourself
6 sitting on the jury, knowing what you know about
7 yourself?
8 A. Well, yes.
9 Q. Okay.
10 A. I think so.
11
12 MR. S. PRESTON DOUGLASS, JR: If I
13 could have one minute.
14 That's all, Your Honor, thank you.
15 THE COURT: Ma'am, here is what I have
16 got to know: I hear you say one thing to Mr. Shook and
17 you turn around and say something else over here. You
18 obviously have a bias against the death penalty, we
19 understand that. That does not in and of itself
20 disqualify you to be a juror. Do you understand that?
21 THE PROSPECTIVE JUROR: Uh-huh.
22 (Witness nodding head affirmatively.)
23 THE COURT: What I have to know is
24 this: If you are selected to be a juror in this case,
25 can you put aside your bias against the death penalty,
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1 and follow the law as is given to you?
2 THE PROSPECTIVE JUROR: No.
3 THE COURT: Thank you. Any motion
4 from anybody?
5 MR. TOBY L. SHOOK: Judge, we would
6 challenge the juror, and ask that she be excused under
7 35.16(b)(1).
8 THE COURT: Granted. Thank you very
9 much for coming, ma'am. We appreciate it.
10 THE PROSPECTIVE JUROR: Okay.
11 THE COURT: We do have a gag order in
12 effect, so, please do not discuss this, you know, what
13 went on here today with anybody until the trial is over.
14 The trial will probably be over
15 sometime in January, maybe February, sometime around
16 Valentine's Day.
17 THE PROSPECTIVE JUROR: Okay.
18 THE COURT: And we can -- the gag
19 order does call for monetary penalties and also jail
20 time.
21 THE PROSPECTIVE JUROR: Okay.
22 THE COURT: All right. Thank you very
23 much for coming.
24 THE PROSPECTIVE JUROR: All right.
25 THE COURT: All right. Thank you.
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1 MR. S. PRESTON DOUGLASS, JR: Your
2 Honor, I suppose that despite the eloquence I prepared to
3 respond to that, that it would have been overruled.
4 THE COURT: Well, it would have been
5 overruled, that is right. But when they say that --
6 both of you have done a great job, and we appreciate your
7 thoroughness in examining the witness. You are still
8 upholding the high standards that we expect of you. Your
9 standards must always be maintained on both sides. And
10 that being the case, we will now take a standard --
11 anybody need a break or anything? All right. A
12 five-minute break.
13
14 (Whereupon, a short
15 Recess was taken,
16 After which time,
17 The proceedings were
18 Resumed on the record,
19 In the presence and
20 Hearing of the defendant
21 And the jury, as follows:)
22

23 THE COURT: All right. Let's bring in
24 the next juror, Ms. Caroline Reynolds.
25 Ma'am, if you will come on up here,
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1 please. If you will raise your right hand, please,
2 ma'am.
3 Do you solemnly swear or affirm you
4 will true answers make to all the questions propounded to
5 you concerning your qualifications as a juror, so help
6 you God?

7 THE PROSPECTIVE JUROR: I do.
8

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

17 THE COURT: Okay. Ma'am, you are
18 Caroline, C-A-R-O-L-I-N-E, Reynolds, R-E-Y-N-O-L-D-S; is
19 that correct?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: You're here today as a
22 prospective juror in the Darlie Routier matter. Mrs.
23 Routier is the defendant in today's case, she is sitting
24 there in the red dress with the white collar.
25 She is represented by her attorneys,
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1 Mr. Curtis Glover from Dallas and Mr. Preston Douglass,
2 who is from Kerrville.
3 The State will be represented by Mr.
4 Toby Shook and Ms. Sherri Wallace. They are Assistant
5 District Attorneys from Dallas.
6 You will be asked some questions, and
7 there are no wrong answers; just answer them how you
8 truly feel.
9 If you could say yes or no to all
10 answers as opposed to uh-huh or huh-uh, Ms. Halsey is
11 taking all this down, and she can only take down yeses
12 and nos. That microphone is live, so pull it back to
13 you, or up to you, whatever you want to do, just speak
14 into it.
15 THE PROSPECTIVE JUROR: Okay.
16 THE COURT: Thank you. Who will go

17 for the State?
18 MS. SHERRI WALLACE: I will.
19 THE COURT: Ms. Wallace. Very well.
20 MS. SHERRI WALLACE: May it please the
21 Court?
22
23
24
25
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1 Whereupon,
2
3 CAROLINE PAIGE REYNOLDS,
4
5 was called as a prospective juror, for the purpose of
6 voir dire, having been first duly sworn by the Court to
7 speak the truth, the whole truth, and nothing but the
8 true, testified in open court, as follows:
9

10 VOIR DIRE EXAMINATION

11
12 BY MS. SHERRI WALLACE:
13 Q. Again, good afternoon, Ms. Reynolds.
14 How are you?
15 A. All right.
16 Q. Good. I want to first of all thank
17 you for filling out this questionnaire. I appreciate it,
18 it has been very helpful to us. I want to talk to you a
19 little bit about it, and ask you some questions about
20 that.
21 Then I want to talk to you a little
22 bit about how you feel about the death penalty, and that
23 kind of in general. And then we will get on to some
24 parts of the law that will govern this case. Okay?
25 A. Okay.

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1 Q. If you have got any questions for me,
2 let me know. If I'm not explaining something, it's my
3 fault. It is the end of the day, and I may get
4 tongue-tied, so just let me know. All right?
5 A. Yes.
6 Q. It says that you have not heard
7 anything about this case, so you are not familiar with
8 the facts?
9 A. Not much, no.
10 Q. Okay. That is exactly what we're

11 looking for. Somebody that will keep an open mind and
12 wait until they hear the evidence in the courtroom, and
13 you would have no problem in doing that, would you?

14 A. No.

15 Q. Okay. The next thing I want to say up

16 front is it's our goal and desire to see that that woman
17 at the other end of this table is executed. We believe
18 we have the type of case and the quality of evidence to
19 see that she is put to death by lethal injection. Would
20 you have any trouble in participating in that process?

21 A. I don't think so.

22 Q. Okay. Let me talk to you a little bit

23 about that. It says that you are in favor of the death
24 penalty. And I will read -- I know it's been a couple of
25 weeks since you wrote this, let me read what you wrote
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1 and then talk to you about it. It says: Prisons are
2 overcrowded; some criminals are not afraid of our justice
3 system; an eye for an eye. Can you tell me a little bit
4 about how you feel about the death penalty and why you
5 said you are in favor of it.

6 A. Well, as I wrote there, I feel the
7 prisons are overcrowded. Where are you going to put
8 them?

9

10 THE COURT: Ma'am, you know we don't
11 execute people just because the prisons are overcrowded.

12 THE PROSPECTIVE JUROR: Well, I know
13 that, but --

14 THE COURT: I just wanted to make that
15 clear, that is not a death penalty argument.

16 THE PROSPECTIVE JUROR: No, I
17 understand that, too.

18

19 BY MS. SHERRI WALLACE:

20 Q. That is common reason people have,
21 there is nothing wrong with that. Just, what else, what
22 are you thinking about?

23 A. Well, criminals, in my opinion,
24 criminals don't seem to be afraid of our justice system.

25 Q. Okay. Fair enough. Have you ever
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1 felt differently about the death penalty than you do now?

2 A. No.

3 Q. Okay. Always thought it was a good
4 idea if the case warranted it?

5 A. Yes.

6 Q. Okay. You have said: In reference to
7 the death penalty, that you believe the death penalty is
8 appropriate in some capital murder cases, and could
9 return a verdict resulting in death in a proper case. Is
10 that still how you feel?

11 A. Yes.

12 Q. Okay. On your questionnaire as well,
13 it said -- you were asked the question: Do you have any
14 moral, religious, or personal beliefs that would prevent
15 you from sitting in judgment of another human being? And
16 you marked yes. Can you tell me about that?

17 A. I know it contradicts itself.

18 Q. Uh-huh. (Attorney nodding head
19 affirmatively.)

20 A. Well, you know, God says we're not
21 supposed to be judgmental.

22 Q. And that is not really what we're
23 talking about.

24 A. I understand.

25 Q. That is good practice to not be a
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1 judgmental person, but as a juror, you will be a judge.

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

4 Q. Of the facts and whether or not we
5 have proved our case.

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

8 Q. Ms. Reynolds, is there anything that
9 would prevent you from making that decision as a juror?

10 A. I don't think so.

11 Q. Okay. So, the answer to that question
12 is, you don't want to be a judgmental person?

13 A. Yes.

14 Q. All right. I want to talk to you a
15 little bit about how the death penalty works here in
16 Texas, and ask you some questions about that.
17 To have a -- all murders are not
18 capital murders. To have a capital murder you have to
19 have a murder plus something else, if you will. It could
20 depend on the type of victim, or an additional crime
21 coupled with the murder.

22 Let me give you some examples of what
23 are cases that are eligible for the death penalty in
24 Texas: If you have a police officer or a fireman that
25 are killed in the line of duty, that is a crime that is
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1 eligible for the death penalty. I believe your husband
2 used to be a police officer; is that right?

3 A. Yes.

4 Q. So, that is something you are probably

5 aware of.

6 A. Uh-huh. (Witness nodding head

7 affirmatively.)

8 Q. Additionally, a prison guard in the

9 line of duty would also be a type of job that would be
10 protected by the death penalty statute. If you commit a

11 murder in the course of another felony, for instance,

12 kidnapping and murder someone, or rape and then murder

13 someone, or go into a store, maybe a convenience store

14 like the Circle-K over here, and rob the clerk and then

15 kill him in the course of the robbery. Those would be

16 types of crimes that would be eligible for the death

17 penalty. Or killing more than one person, sometimes

18 people refer to that as serial killers, just two or more

19 qualifies you to be eligible for the death penalty. Or a

20 child under the age of six, and that is a crime we are

21 here about today. How do those -- how does that list of

22 capital murders sound to you? Does that sound fair?

23 Those are good choices our legislature has made?

24 A. Yes.

25 Q. Is there anything that you would add

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1 to it if you had that power?

2 A. That covers everything, no.

3 Q. Okay. So, you think that they have

4 chosen well?

5 A. Yes.

6 Q. All right. How a death penalty case

7 works is in all cases, it's two parts. First, we have

8 the guilt/innocence phase, and that is where the jury is

9 called on to decide if we have proven our case. If we

10 prove our case beyond a reasonable doubt, we're entitled

11 to a guilty verdict. If we don't prove our case, it's

12 not guilty, and we all go home. Okay?

13 I'll talk to you a little bit more

14 about that in a minute, but first I want to get on to the

15 second phase right now.

16 The second phase is called the

17 punishment phase. So if the defendant is found guilty,

18 you go to the next phase. It used to be in Texas, the

19 jury said -- there was a blank, and the jury said, "Life

20 or death." It isn't that simple now, but the result is

21 the same.

22 Now a jury must answer two questions,

23 and based on those answers, the Judge has zero choice in

24 how he sentences the defendant. Okay? And here are the

25 two questions: And to equal death, you first have to

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1 have guilty, then this question has to be answered "yes,"

2 and this question has to be answered "no."

3 A. Okay.

4 Q. If they are answered any differently,

5 it's a life sentence. Okay? Now, I see you want to read

6 that. So, let's read along with me, if you would.

7 "Do you find from the evidence beyond

8 a 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?" What

11 are the types of things that you would look for, Ms.

12 Reynolds, in answering that question?

13 A. Can you be more specific?

14 Q. Well, it may be in the second phase of

15 the trial that you do not hear any more evidence, and it

16 may be that you do. And that is why it's a hard question

17 to answer because I can't get into the facts of this

18 case.

19 A. Uh-huh. (Witness nodding head

20 affirmatively.)

21 Q. You may hear about the defendant's

22 past; whether it's good or bad; and you may not. Could

23 you conceive of a set of circumstances where a crime was

24 so horrible, so heinous, so brutal, that based on the

25 facts of that crime you could find that somebody probably

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1 would be a danger in the future?

2 A. In other words, the possibility that

3 maybe they will do it again, type of thing?

4 Q. Do it again or some other criminal act

5 of violence.

6 A. Well, I guess yes is the answer you

7 are looking for, yes.

8 Q. Well, just really looking for how you

9 feel. I will tell you what I am looking for. I am

10 looking for a juror that will wait to hear the evidence.

11 I am looking for a juror that won't make up their mind

12 right now, based on anything they have heard. They will

13 wait, get into the jury box, listen to the evidence, and

14 then get the law from the Judge, and then make the call.

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

17 Q. Can you do that?

18 A. I could.

19 Q. Okay. On that special issue, it says:

20 "Do you find from the evidence beyond a reasonable
21 doubt," again, on this question we have the burden of
22 proof.

23 Just like, you know, the Judge's
24 instructions a couple of weeks ago, he told you that the
25 defendant was presumed innocent. If you voted right
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1 then, you would have to find her not guilty. Do you
2 remember that?

3 A. Yes.

4 Q. Okay. This question is the same way.

5 This question is presumed to be answered "no." And if
6 you were to vote right now, you would have to find that
7 she is not a continuing threat, because you have not
8 heard any information. Okay?

9 A. Okay.

10 Q. You are not going to get to these
11 questions until you have found the defendant guilty of
12 capital murder. So, you have already found the defendant
13 knowingly and intentionally killed a child under the age
14 of six. By law you cannot automatically say she is a
15 continuing threat. It may be that you don't hear
16 anything else.

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

19 Q. But by law, you have to revisit the
20 issue. Because if it was automatic, we wouldn't even
21 need these questions. We would not the second phase of
22 the trial. Do you follow what I am saying?

23 A. I understand.

24 Q. Okay. So, could you wait and look at
25 all the evidence again in the punishment phase?

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1 A. Yes, I could.

2 Q. Okay. How are you feeling about that?

3 Do you have any questions or concerns?

4 A. No, I am just trying to understand all
5 this.

6 Q. I know we throw out these words and we
7 have been here -- I think you are about the 48th or 49th
8 juror we have talked to.

9

10 THE COURT: 48th.

11 MS. SHERRI WALLACE: If I am going too
12 quickly, let me know.

13 THE PROSPECTIVE JUROR: No, I
14 understand that.

15 THE COURT: Are you nervous, ma'am?

16 THE PROSPECTIVE JUROR: I am kind of
17 nervous, yes.

18 THE COURT: Well, okay, just relax
19 now.

20 THE PROSPECTIVE JUROR: All right.

21 THE COURT: Are you all right?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: Okay. And don't worry
24 about a thing.

25

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1 BY MS. SHERRI WALLACE:

2 Q. I'm going to ask you a little bit
3 about that special issue, that first one. I'm going to
4 ask what some of the words mean to you. The reason I do
5 this, Ms. Reynolds, it's not a test, it's just we give a
6 lot of definitions. The Court will give you many
7 definitions if you are a juror in this case, but he will
8 not give you a single one in this question. So, it's
9 important for me to know what these words mean to you.
10 A. Okay.

11 Q. Probability. What does that mean to
12 you?

13 A. The odds are better --

14 Q. More likely than not?

15 A. Yes.

16 Q. All right. Criminal acts of violence;
17 what sort of things would you be looking for in that
18 phraseology?

19 A. The killing of another human being
20 type.

21 Q. Some people think murder.

22 A. Well --

23 Q. Would you require it to be another
24 murder? Or could it be any form of injury or harm to
25 another person?

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1 A. Injury or harm to a person.

2 Q. And society is the other word I want

3 to ask you about. Before I ask you about that, let me
4 just kind of tell you where I am coming from. Some
5 people, when we think of society, we just kind of think
6 of the free world. But I want to know from you, would
7 society include folks in the prison?

8 For instance, prison guards, the
9 chaplain, psychiatrists or psychologists that are in
10 there counseling inmates, inmates themselves or maybe
11 relatives in the prison visiting inmates; would society
12 include all people in your mind?

13 A. Well, yeah, it would have to.

14 Q. Okay. Before you is an indictment, it
15 should be right on your table right there.

16 A. Yes.

17 Q. Would you look at it, just that
18 typewritten portion in the middle, and after you have
19 read it, let me know when you are finished.

20 A. Okay. I have finished reading it.

21 Q. Okay. That is what we as the State
22 must prove to you beyond a reasonable doubt.

23 A. Okay.

24 Q. And I want to talk to you about how we
25 go about doing that. We can prove our case, really, any
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1 way we can prove our case. A lot of times when you think
2 of a crime you think of an eyewitness. I saw, you know,
3 John kill Sue, or whatever. But in many cases of murder
4 we don't have that type of evidence. We don't have a
5 direct eyewitness.

6 And when you think about it -- I mean,
7 you probably don't sit around and think about these
8 things, but it makes sense. The eyewitness is dead. And
9 you know the defendant doesn't have to testify. So, we
10 have to look at other ways to prove the crime. And that
11 can be through indirect or what is sometimes called
12 circumstantial evidence.

13 No type of evidence is better as long
14 as we convince you beyond a reasonable doubt. Evidence,
15 circumstantial evidence could be things like: DNA, blood
16 spatters, fingerprints, fibers, statements by the
17 defendant that don't comport with the crime scene,
18 anything other than an eyewitness.

19 Do you believe that if we proved the
20 case to you beyond a reasonable doubt, based on
21 circumstantial evidence alone, that you could return a
22 verdict of guilty in a capital murder case?

23 A. I said I can, but I'm not sure.

24 Q. Okay. Talk to me a little bit about

25 how you feel about that.
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1 A. About the guilty verdict?

2 Q. Yeah.

3 A. Well, all my beliefs are in a certain
4 way, but I have never tested them, so to speak.

5 Q. Okay. When you say all of your
6 beliefs are a certain way, but you have never tested
7 them, can you tell me sort of what you mean, or where you
8 are coming from on that?

9 A. Well, I have always believed in the
10 death penalty, but I have never been on a jury for a
11 capital murder.

12 Q. Okay.

13 A. That would be testing them, to me.

14 Q. Here is kind of an example, we
15 sometimes use about that. We're from Dallas, you know.

16 A. Right.

17 Q. In San Antonio there is big, tall
18 skyscrapers, and sometimes I will look up and I will see
19 a guy cleaning the windows. And I think, it's a good
20 idea, somebody needs to clean those windows. But it
21 could not be me. Okay?

22 A. Okay.

23 Q. Some people, that's how they feel
24 about the death penalty. Other people say, "No, if I had
25 to do it, I could." How do you feel about doing the
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1 deal?

2 A. I think I could.

3 Q. Okay. That is all we're looking for.
4 This isn't supposed to be easy, and if you were
5 auditioning for the job, we wouldn't want you. Okay?

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

8 Q. Now, that all kind of started by you
9 saying you were not sure if you could convict on
10 circumstantial evidence alone.

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

13 Q. Let me elaborate a little bit more on
14 that. I am assuming we will prove the case to you beyond
15 a reasonable doubt, but it's through circumstantial
16 evidence. If we proved it to you, but it was
17 circumstantial evidence, would you return a verdict of
18 guilty?

19 A. Yes.

20 Q. Okay. Additionally, that is what we

21 have to prove to you. Okay? Here is what we don't have

22 to prove to you. We don't have to prove to you motive.

23 We don't have to prove to you why. And there is really a

24 good reason for that.

25 You know, we can't get into the mind

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1 of the defendant, and you know she has an absolute right

2 not to testify. We can't call her to the stand, because

3 it's automatic reversible error if we do. Okay? And you

4 can't use that against us or against her. So, how do you

5 figure out motive?

6 Well, it may come with the trial that

7 it becomes abundantly clear to you. Or it may be after

8 you have heard all the evidence, you are still not sure,

9 there is a couple of different motives kind of out there.

10 You may think one reason is the primary motive. Another

11 juror may think another reason is a primary motive. But

12 none of that really matters, because you believe we have

13 proved the case to you beyond a reasonable doubt.

14 Or it may be, as in so many crimes,

15 that you just don't flat understand it. It may not make

16 any sense, but you know the defendant is good for it.

17 Okay?

18 We don't have to prove motive. Could

19 you follow that law?

20 A. Yes.

21 Q. If the defendant is found guilty, we

22 go to this question number 1, and we pretty much have

23 exhausted talking about that. But let me just remind you

24 again, that we have the burden of proof. And as I said

25 earlier, that question is presumed to be answered "no"

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1 until we convince you that the defendant would probably

2 be a future danger, is kind of another way to phrase it.

3 Okay? If you find the answer to that question is "yes,"

4 then you go to the second question.

5 In order for her to die, that question

6 must be answered "no." All right? Now let's read that.

7 "Taking into consideration all of the evidence, including

8 the circumstances of the offense, the defendant's

9 character and background, and the personal moral

10 culpability of the defendant, is there a sufficient

11 mitigating circumstance or circumstances to warrant that

12 a sentence of life imprisonment, rather than a death

13 sentence, be imposed?"

14 If I can just kind of summarize it:

15 Basically, after you have heard everything, if you, in
16 your heart, decide that the right thing to do is give the
17 defendant life instead of death, would you do that?

18 A. Yes.

19 Q. Okay. And, Ms. Reynolds, this
20 question is different from the others, because there is
21 no burden of proof. This question is a safety net.

22 If, after you have heard everything,
23 "Yeah, she killed a child under the age of six. And,
24 yes, I believe that she is a future danger." But
25 something to you, for you to decide, for some reason
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1 there is a reason that she should not die, then you could
2 make that judgment call; is that right?

3 A. Yes.

4 Q. Okay. It may be that you sit in five
5 million murder cases as a juror. And you may never hear
6 sufficient mitigating circumstances in your mind to
7 basically change your verdict. Okay?

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

10 Q. But it's like, you know, you know it
11 when you see it, sort of a thing. Could you do that?

12 A. Yes.

13 Q. Okay. I want to talk to you a little
14 bit about mitigating circumstance or circumstances.
15 Mitigation is, first off, let me just say, I didn't write
16 these questions, they were written by our legislature and
17 we are just happy to have them. Okay?

18 A. Okay.

19 Q. Mitigation is -- has been defined in
20 case law in other cases, as something that would lessen
21 someone's moral blameworthiness. Okay? Or even though
22 they are responsible, they are not held as accountable as
23 someone else because of something in their background.
24 Okay? Does that sound like a fair definition to you?

25 A. As far as I know, yes.

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1 Q. Yeah. I mean it is not something
2 again that you would sit around and think about.

3 A. No.

4 Q. Having that definition and kind of
5 starting to think about these things, is there anything
6 that comes to your mind immediately that you would

7 consider as mitigating or lessening somebody's moral
8 blameworthiness or responsibility?

9 A. I'm not sure if I understand the
10 question, but basically, if you -- if I see somehow they
11 could be -- learn from their mistakes, or -- is that what
12 you are asking for? Learn from their mistakes?

13 Q. Well, it's just kind of whatever you
14 think it is. It is not really what I think it is.

15 A. Will they learn from their mistakes or
16 they can be -- I can't think of the word, but --
17

18 THE COURT: I think you are getting it
19 accurately.

20

21 BY MS. SHERRI WALLACE:

22 Q. Yes, I understand what you are saying.

23 A. Okay.

24 Q. I think the word we sometimes use
25 around here is rehabilitate.

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1 A. Thank you. That is the word I was
2 looking for.

3 Q. Okay. Then maybe that would be
4 something for you to consider for that type of question;
5 is that right?

6 A. Yes.

7 Q. Okay. I want to talk to you about
8 what could be mitigating. It may be that, you know, you
9 don't know until you hear the facts. But I want to ask
10 you about certain, different types of things.

11 Some people say that if a defendant
12 was drunk at the time of the crime, that that would be
13 mitigating. Some people think, well, that makes it
14 worse. They went out and got drunk and then did
15 something. Do you have any feeling about how you feel
16 about alcohol?

17 A. I'm not sure if I really understand
18 what you said about the definition of that.

19 Q. Mitigation?

20 A. Yes.

21 Q. Okay. Let me try to talk to you about
22 that again. That would be something that -- you have
23 heard everything, and you have heard all of the evidence,
24 and you believe the defendant is guilty of capital
25 murder, and you also believe they are a future danger.

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1 But there is something in the evidence, it may have come
2 from the State and it may have come from the defense.
3 There is something in the evidence that you decide
4 because of that in their background, that maybe they
5 should not be put to death.
6 A. Uh-huh. (Witness nodding head
7 affirmatively.)
8 Q. For instance, like if they were abused
9 as a child or sexual assault in the past; is that
10 something that maybe you could consider as possibly being
11 mitigation? And I know you have to hear the evidence.
12 A. Well, okay. Could you ask that
13 question again now?
14 Q. Okay. Is there -- well, are there any
15 things that come to your mind that would kind of fall in
16 that category?
17 A. No, it doesn't come to my mind right
18 now.
19 Q. Okay. You don't have to think of
20 anything. Like I say, you just have to say you will keep
21 an open mind.
22 A. Oh, yes, I will.
23 Q. All right. I am going to just kind of
24 go through a list of things that people sometimes think
25 are mitigating and see how it cuts with you and how you
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1 feel about it. Mental retardation. Do you think that
2 would be mitigating?

3 A. Yes.

4

5 MR. S. PRESTON DOUGLASS, JR: Your
6 Honor, if I might just briefly. I think it is a matter
7 of semantics, but I think the question is, could they
8 consider that as mitigating evidence. They don't have to
9 make a commitment.

10 THE COURT: Sustained.

11 MS. SHERRI WALLACE: Judge, he is
12 right. I need to rephrase my question.

13 THE COURT: Yes, let the witness
14 understand the question and answer it.

15

16 BY MS. SHERRI WALLACE:

17 Q. And, Ms. Reynolds, like I said before,
18 I'm not trying to get you to tell me right now what you
19 consider mitigating. I just want to see what your gut is
20 on some different issues here.

21 So, what you might consider as being

22 mitigating or what wouldn't be mitigating to you. Okay?

23 And you said, I think, that mental retardation would be
24 one of the things that you would consider?

25 A. Yes.

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1 Q. What about age?

2 A. No.

3 Q. What about alcohol or drugs?

4 A. Possibly.

5 Q. What about prior physical abuse?

6 A. Yes.

7 Q. Child abuse?

8 A. I don't know.

9 Q. What about abuse when the defendant
10 was a child?

11 A. No.

12 Q. Any prior sexual abuse?

13 A. Possibly.

14 Q. Anything else?

15 A. No. I guess I can't think of anything
16 else off the top of my head.

17 Q. Okay. What about a well-educated
18 person?

19 A. No.

20 Q. Okay. Thank you.

21 Do you have any questions so far?

22 A. No.

23 Q. Okay. I want to talk to you now a
24 little bit about general principles of law that will
25 apply in this as they do in most criminal cases.

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1 The Judge told you, and I believe I
2 have mentioned that the defendant is presumed innocent.
3 That means -- and we have talked about this, if you voted
4 right now, you would have to find her not guilty. Could
5 you follow that law?

6 A. Yes.

7 Q. Okay. You may not use it against her
8 if she chooses not to testify. She has an absolute right
9 not to testify. Would you be able to follow that law?

10 A. Yes.

11 Q. Additionally, as the Judge told you a
12 couple of weeks ago, the indictment against her is no
13 evidence at all of guilt. It just merely sets forth the
14 elements that we must prove to the jury. Would you be
15 able to follow that law?

16 A. Yes.

17 Q. In this case, in proving our case, we
18 will bring forth witnesses. And, that doesn't
19 necessarily mean eyewitnesses, it just means that people
20 will come and tell you about what they know. And there
21 will be police officers that testify in this case. As a
22 juror, you must assume that all witnesses start out on
23 the same plane.
24 In other words, you can't
25 automatically say, "Before I hear them, I am going to
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1 automatically believe that type of person over the
2 other." Obviously, that doesn't even make sense. But
3 sometimes people will ask a question, really kind of as a
4 trick question, where they say, "Would you believe a
5 police officer simply because he is a police officer?"
6 And they say, "Well, yes, I'll believe police officers."
7 But as a juror, you can't do that, you have to wait to
8 hear -- regardless of the occupation or job. Would you
9 be able to start all of the witnesses out the same?

10 A. Yes.

11 Q. Additionally, in this type of a case,
12 you will see gruesome photographs.

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

15 Q. A brutal crime. That is part of the
16 evidence in this case. And, regardless of the
17 photographs, would you still hold us to our burden of
18 proof that -- I mean, we still have to prove the case
19 even though a bad crime was -- do you follow what I am
20 saying?

21 A. Yes, I do.

22 Q. If we don't have the right person, it
23 doesn't do anybody any good to convict them.

24 A. Yes.

25 Q. Okay. The defendant in this case does
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1 not have to prove anything to you. We have the burden of
2 proof. They can sit there and challenge each other in a
3 tic-tac-toe game if they want to. Now, I don't expect
4 these lawyers to do that, but certainly, if they wanted
5 to, they could. Okay? And you don't have any problem
6 with that, do you?

7 A. No.

8 Q. If and when we get to the punishment
9 phase of the trial, the Judge will instruct you that you

10 may not consider parole for my reason. And there is a
11 good reason for that.
12 The Board of Pardons and Paroles
13 changes with every governor, the rules of parole change.
14 We have no control over it, the Judge has no control over
15 it, so you just can't consider it. You must consider a
16 life sentence to be just that, a life sentence, and not
17 consider parole. Would you be able to do that, Ms.
18 Reynolds?

19 A. Oh, yes.

20 Q. Okay. After having talked with you a
21 little bit, and you probably have thought about some
22 things here today, or heard some things that you hadn't
23 really spent that much time thinking about before. Is
24 there anything that comes to mind, or any questions you
25 want to ask me?

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1 A. No. Just on the, how the system
2 works, step by step.

3 Q. Have I been clear enough anyway?

4 A. Yes, you have.

5 Q. All right. I'm going to ask this
6 question again because it's very important to me. This
7 is real. In Texas we killed over 100 people with the
8 death penalty statute in recent years. This is a
9 reality. It's something that if you answer the
10 questions, in the future the Judge will issue a death
11 warrant, and that sentence will be carried out in
12 Huntsville. Do you have the type of moral conviction
13 that you could do that, Ms. Reynolds?

14 A. Yes, I believe so.

15 Q. Okay. Well, while it is on my mind,
16 let me ask you: Do you know the lawyers here that are on
17 this case?

18 One of them is here today, Preston
19 Douglass?

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

22 Q. And, do you know Richard Mosty? He is
23 not here.

24

25 MR. CURTIS GLOVER: I am not he.

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1 THE PROSPECTIVE JUROR: No, I know the
2 name, but I don't know him.

3

4 BY MS. SHERRI WALLACE:

5 Q. How do you know Mr. Douglass?

6 A. He is a friend of my husband's.

7 Q. Are they related through work? How

8 are they friendly?

9 A. Through church activities.

10 Q. Okay. What is your relationship with

11 Mr. Douglass?

12 A. He is a friend of my husband's.

13 Q. Okay. Are you all on a first name

14 basis?

15 A. Probably.

16 Q. Is there anything about that that

17 would affect you in this case?

18 A. Well, I listen to him.

19 Q. Okay. Well, what I am worried about

20 is -- well, you know, we're from Dallas. We're the

21 out-of-towners here?

22 A. Uh-huh. (Witness nodding head

23 affirmatively.)

24 Q. And if we say one thing and he says

25 another, you are going to be asked to make a call on who

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1 is shooting straight with you, if you will, and which

2 side you are going to believe.

3 Will you wait until you hear the

4 evidence? Or are we starting in a one-down position just

5 because of what you know about Mr. Douglass?

6 A. Right now, I'm going to say y'all have

7 your jobs to do and I understand that.

8 Q. Okay.

9 A. I just happen to know one of y'all.

10 Q. All right. You see, that is not

11 uncommon in a small town, to know folks, and we don't

12 have any problem with that. But you could understand

13 where I am coming from?

14 A. Yes, I understand where you are coming

15 from.

16 Q. Okay. If I could ask you a little bit

17 more about your questionnaire. You said that what would

18 be important to you in making your decision is: "Is the

19 defendant able to learn by her mistakes, will she do it

20 again, is she sorry?" And those are things that -- well,

21 talk to me a little bit about what you mean by that.

22 A. All three of them?

23 Q. Yes. Yes.

24 A. If she is guilty of it, did she learn

25 anything from it. I mean, does she miss her child, type

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1 situation.

2 Q. So, you are talking about remorse sort
3 of issues?

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

6 Q. Okay. Those are types of things that
7 we are curious about as citizens.

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

10 Q. But, it may be, you know, that you can
11 not look to her to testify.

12 A. Yes.

13 Q. She doesn't have to, if she doesn't
14 want to. So, what I want to know is: If she doesn't,
15 will you be able, not knowing whether she is remorseful
16 or sorry or not knowing those things, will you still be
17 able to make that call?

18 A. I believe so, yes.

19 Q. Okay. And, so it's important for you
20 not to ever look to them to prove anything, these
21 gentlemen or this defendant. And will you do that?

22 A. What was your question? I don't
23 understand the question.

24 Q. You cannot look to them to prove
25 anything to you, prove her innocence, prove she is sorry,

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1 prove anything. It is our job to prove to you
2 everything.

3 A. I understand.

4 Q. Okay.

5 A. I understand.

6 Q. Okay. Tell me a little bit about your
7 job, if you would.

8 A. I work in an environmental outdoor
9 awareness facility.

10 Q. So, is the YO Adventure Camp, is
11 that --

12

13 THE COURT: You have five minutes
14 left, ma'am.

15 MS. SHERRI WALLACE: Thank you.
16

17 BY MS. SHERRI WALLACE:

18 Q. Is that year round?

19 A. Yes, it's a year round camp. We have

20 a summer camp in the summer and schools bring their

21 classes out during the spring and fall.

22 Q. Sounds like a great job?

23 A. Oh, yes. Plus, I'm in charge of the

24 horses for the kids.

25 Q. Have you always been around horses?

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1 A. Yes.

2 Q. And your husband is now the director

3 of the camp?

4 A. Yes.

5 Q. How long was he a police officer?

6 A. I believe three years, that was before

7 we were married.

8 Q. All right. Did y'all meet at the

9 camp?

10 A. Yes.

11 Q. You did? And you married from knowing

12 each other there?

13 A. Yes.

14 Q. Do you know why he left law

15 enforcement?

16 A. He was not satisfied with it.

17 Q. Okay. Anything about that that would

18 affect you here, or influence you?

19 A. No.

20 Q. All right. Can you tell me a little

21 bit about your education. You have got it written here,

22 you went to Tarleton, you got a BBA, and then went to the

23 Texas Department of Health as emergency care attendant.

24 When did that happen? When did you go to --

25 A. I have been an ECA since '89.

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1 Q. And, have you ever worked full time in

2 that capacity?

3 A. No, just for the camp situation.

4 Q. Did the camp require you to get that

5 certification or did you just do that on your own?

6 A. They require advanced first aid, but

7 that was the only thing they offered, so I took that.

8 Q. Okay.

9 A. So I got a better deal.

10 Q. Okay. BBA is bachelor of business

11 administration?

12 A. Yes, it is.

13 Q. Okay. What else have you done, other

14 than be at the camp?

15 A. Just throughout college, are you

16 talking about? Or just jobs in general?

17 Q. Yes, just jobs.

18 A. Cashiers, salesclerk.

19 Q. Okay. I appreciate it. Thank you for

20 all of your time and I know you have been up there a long

21 time. All we're looking for again, is a juror that will

22 keep an open mind and wait to hear the evidence. Thank

23 you.

24

25 MS. SHERRI WALLACE: Pass the juror.

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1 THE COURT: Mr. Douglass, Mr. Glover.

2 MR. CURTIS GLOVER: Yes, Your Honor.

3 THE COURT: All right. Mr. Glover,

4 you may proceed.

5

6 VOIR DIRE EXAMINATION

7

8 BY MR. CURTIS GLOVER:

9 Q. Ms. Reynolds, my name as Curtis

10 Glover. As the Judge told you, I just want to talk with

11 you briefly here, if I might. I was looking at your

12 questionnaire that was done some two weeks ago over at

13 the courthouse. You recall all of that?

14 A. Yes.

15 Q. Anything come to your mind concerning

16 perhaps knowledge about this matter that you didn't

17 include in the questionnaire that you might have thought

18 of after you left the courthouse?

19 A. No, I have not read anything about it.

20 Q. You don't really know anything about

21 this at all?

22 A. No, I live on a ranch forty miles

23 away, I am very secluded, very secluded.

24 Q. I guess there is an advantage to that.

25 Okay. And nothing from friends or anything of that

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1 nature that you have chatted about in this regard?

2 A. No. I had some other friends on the

3 jury.

4 Q. You mean on the panel?

5 A. Yes. The panel, whatever you call it.

6 Q. Any of them talked to you about this

7 matter?

8 A. No, not really, no.

9 Q. Okay. This has been said to you
10 before, but let me say it again. As Darlie sits there
11 now, she is presumed to be innocent.

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

14 Q. Everybody has told you that.

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

17 Q. You have an indictment there before
18 you and it's got some words printed on there about the
19 allegations that are concerned in this case.

20 The law says that you are not to
21 consider those of any evidence whatsoever of guilt. Are
22 you of the frame of mind that you think, simply because a
23 Grand Jury has sat down and listened to something they
24 may or may not have; you don't know what they have heard,
25 we don't know what they may or may not have heard; they
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1 may hear something off of a piece of paper, they may hear
2 something from a witness, they may hear it for 60
3 seconds, they may hear it for an hour; it's done in
4 secret.

5 Can we count on you to say in your own
6 mind that that piece of paper really means nothing? As
7 far as evidence in this case is concerned?

8 A. I know it's not evidence.

9 Q. Okay. How do you feel about that?

10 A. Well, I kind of wondered, like I said,
11 I really don't understand how the system itself works,
12 but how it got that far, well, I don't know.

13 Q. Well, it is a system where a group of
14 people meet, they have a Grand Jury here in this county,
15 all counties have them. And they determine whether or
16 not felony indictments may be returned in that county or
17 not returned.

18 A. Okay.

19 Q. They may hear hearsay, they may hear
20 something from a piece of paper, they may hear evidence
21 for 60 seconds and return an indictment, they may hear
22 evidence for a great length of time and return an
23 indictment.

24 The law says that that piece of paper
25 cannot be considered by you as any evidence whatsoever.
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1 What I am kind of getting at here is some people say,
2 "Where there is smoke, there must be fire." How do you
3 feel about that?

4 A. Well, I understand this is not a piece
5 of, but in my mind I am wondering if it got that far how
6 is it --

7

8 THE COURT: Well, ma'am, you can be
9 indicted by a Grand Jury and never know you're under
10 investigation. Did you know that?

11 THE PROSPECTIVE JUROR: No, I didn't
12 know that.

13 THE COURT: You may know you are under
14 investigation, you want to go tell your story to that
15 Grand Jury. They don't have to listen to you.

16 THE PROSPECTIVE JUROR: Uh-huh.

17 (Witness nodding head affirmatively.)

18 THE COURT: Did you know that?

19 THE PROSPECTIVE JUROR: No, I didn't.

20 THE COURT: They may listen to you and
21 they say there is nothing to it and throw it out, no bill
22 it. That is not the end of it. They can take you a
23 second or a third or a fourth or a fifth or a sixth Grand
24 Jury.

25 The bottom line is, if somebody really
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1 wants you indicted, you are going to get indicted. Do
2 you understand that?

3 THE PROSPECTIVE JUROR: Yes, I do.

4 THE COURT: Okay. Would you consider
5 that indictment for any reason whatsoever then?

6 THE PROSPECTIVE JUROR: No, it's not
7 evidence.

8 THE COURT: Okay.

9

10 BY MR. CURTIS GLOVER:

11 Q. And in connection with that, the law
12 says that she is presumed to be innocent. I have told
13 you that. Can you do that?

14 A. Yes.

15 Q. Do you have any problem with that?

16 A. No.

17 Q. Along with that presumption of
18 innocence, the law says that she has no burden to do
19 anything in this case. She has no burden to bring
20 evidence. If she doesn't take the witness stand, you
21 can't hold that against her, because she is presumed to
22 be innocent.

23 A. Yes.

24 Q. Do you have any problem with that?

25 A. No.

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1 Q. If she did not take the witness stand
2 in this case, and you were back in the jury room
3 deliberating, and there came a question to your mind, and
4 you thought, "Well, you know, only she could have
5 answered that." Or someone on the jury might say to you,
6 "Only she could have answered that." How would you
7 handle that question being asked to you?

8 A. If only she could answer that?

9 Q. Yes.

10 A. Is that what you are asking me?

11 Q. And she didn't testify.

12 A. Then we don't know. We wouldn't know
13 what the answer is.

14 Q. You wouldn't know what the answer was.

15 Well, if somebody would say, "Well, I want to know that
16 answer." How would you handle that?

17 A. We don't know the answer.

18 Q. You would just say, "We don't know the
19 answer."

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

22 Q. Well, would you go back to that
23 premise that I said to you a while ago and say, "She is
24 presumed to be innocent, and she has no burden of proof.
25 And if she doesn't take the witness stand in this case,
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1 we can't hold it against her." And the Judge would tell
2 you not to even discuss that fact. Could you do that?

3 A. Uh-huh. (Witness nodding head
4 affirmatively.) Yes, I could.

5 Q. How do you feel about that?

6 A. She is innocent until proven guilty.

7 Q. Okay. Would you see that you maintain
8 that frame of mind throughout this entire case?

9 A. Yes.

10 Q. Do you understand what the burden of
11 proof is here? That it's on the State. That burden of
12 proof is to prove her guilt beyond a reasonable doubt.
13 Do you have any qualms about that?

14 A. No.

15 Q. Do you have any questions of me up to
16 this point?

17 A. Well, no, just figuring out, like I
18 said earlier, how it works.

19 Q. Okay. We may have police officers
20 testify in this case, and we may have non-police officers
21 testify in this case. Your husband was formerly a police
22 officer?

23 A. Yes.

24 Q. Have any occasion in the past to
25 discuss his work with him at any great length?

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1 A. Not very many.

2 Q. Did he ever relate to you anything
3 about his work that might give you a prejudice or a bias
4 as far as sitting in judgment of another person?

5 A. It was several years before we were
6 married so, no, not in great lengths, no.

7 Q. Okay. If it should occur in the
8 course of this case, and it has been talked to you about,
9 that if a police officer testified and another person who
10 was a non-police officer, and they are frequently
11 referred to as civilian witnesses. If they testified and
12 the police officer said one thing about a particular
13 issue, the non-police officer said something that was
14 diametrically opposed to what the police officer said
15 about the same issue; and you gave credence to both of
16 them about what they had said or had a tendency to
17 believe both of them, but they were diametrically opposed
18 and you would have to accept one or the other, or you
19 were wanting to accept one or the other's testimony.
20 Would you have a tendency to say, "I will go with the
21 police officer simply because he is a police officer"?

22 A. No.

23 Q. Any particular reason why you have
24 that view about it?

25 A. No, they are all persons or people.

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1 It depends on their knowledge and if they are a
2 professional in a certain area. I don't know what I am
3 trying to say. Their knowledge of a certain subject, if
4 that is who the person would be. Their credibility type
5 stuff has nothing to do with being a police officer.

6 Q. Okay.

7

8 MR. CURTIS GLOVER: That's all we
9 have, Judge.

10 THE COURT: All right. Thank you.

11 Ma'am, could you step outside, briefly, please. Don't
12 run away.

13 THE PROSPECTIVE JUROR: I will not.

14 THE COURT: Okay. Just briefly.

15 THE PROSPECTIVE JUROR: Okay.

16

17 (Whereupon, the prospective

18 juror was excused from the

19 room, and the following

20 proceedings were held,

21 outside of his presence

22 as follows:)

23

24 THE COURT: All right. What says the

25 State?

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1 MS. SHERRI WALLACE: The State will

2 accept the juror.

3 THE COURT: What says the defense?

4 MR. CURTIS GLOVER: We will accept the

5 juror.

6 THE COURT: All right. Bring Ms.

7 Reynolds in, please.

8

9 (Whereupon, the prospective

10 juror returned to the

11 room and the proceedings

12 were resumed as follows:)

13

14 THE COURT: All right. Ms. Reynolds,

15 you have been accepted as a juror. So this trial is

16 scheduled to start the 6th of January. We ask that you

17 not discuss it with anyone, obviously, you are going to

18 tell your husband. We understand that.

19 If the two of you could keep it quiet

20 between now and the first of the year, between the time

21 the trial is over, things will go much easier.

22 THE JUROR: Yes.

23 THE COURT: When the trial is over,

24 you may talk or not talk to anybody as you see fit, that

25 goes for members of the press or anybody. It will be

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1 your business after that. But until that time, please

2 don't discuss what went on in here or anything else. You

3 will find things will be a lot easier for you.

4 THE JUROR: Oh, yes.

5 THE COURT: All right. There is a gag
6 order in effect, which if you violate, I can impose
7 monetary or jail time sanctions. I am not threatening
8 you, I just have to tell you that.
9 THE JUROR: Yes, sir, I know.
10 THE COURT: So, anyway, Mr. Navarre
11 back there will be calling you and letting you know about
12 the 6th, when and where to come in on that date.
13 THE JUROR: Okay.
14 THE COURT: Thanks a bunch. Thank you
15 again for coming.
16 All right. Next. Have a seat right
17 up here. Okay.
18 You are Mr. Thomas Connell; is that
19 correct?
20 THE PROSPECTIVE JUROR: Connell.
21 THE COURT: All right. Please raise
22 your right hand, sir.
23 Do you solemnly swear or affirm you
24 will true answers make to all the questions propounded to
25 you to concerning your qualifications as a juror, so help

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1 you God?
2 THE PROSPECTIVE JUROR: I do.
3
4 (Whereupon, the prospective
5 juror was duly sworn by the
6 Court to true answers make
7 to the questions propounded,
8 concerning qualifications, after
9 which time, the proceedings were
10 resumed as follows:)
11
12 THE COURT: All right. This is Thomas
13 Connell, C-O-N-N-E-L-L; that is the correct spelling?
14 THE PROSPECTIVE JUROR: Yes, sir.
15 THE COURT: This is juror number 48 on
16 our list, 144 on the jury list. I would ask that you
17 please spit your gum out.
18 Ms. Halsey is taking all this down and
19 we would have trouble with that.
20 THE PROSPECTIVE JUROR: Yes.
21 THE COURT: You are here as a
22 prospective juror in the Darlie Routier matter. This is
23 Mrs. Routier right here in the red dress and the white
24 collar, she is the defendant.
25 She is represented by Mr. Curtis

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1 Glover from Dallas, Mr. Preston Douglass and Richard
2 Mosty from Kerrville. Mr. Mosty is not here right now.
3 The State is represented by Mr. Toby
4 Shook and Ms. Sherri Wallace and Mr. Greg Davis from
5 Dallas, they are Assistant District Attorneys. They are
6 from the Dallas County District Attorney's office. Mr.
7 Shook and Ms. Wallace are here.
8 You will be asked some questions, just
9 relax, there are no wrong answers.
10 THE PROSPECTIVE JUROR: Okay.
11 THE COURT: We won't have a test. So
12 you just tell it like you feel it. Okay?
13 THE PROSPECTIVE JUROR: Yes, sir.
14 THE COURT: All right, Mr. Shook.
15
16 Whereupon,
17
18 THOMAS DUANE CONNELL,
19
20 was called as a prospective juror, for the purpose of
21 voir dire, having been first duly sworn by the Court to
22 speak the truth, the whole truth, and nothing but the
23 true, testified in open court, as follows:
24
25

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1 VOIR DIRE EXAMINATION
2
3 BY MR. TOBY L. SHOOK:
4 Q. Mr. Connell, as the Judge told you I
5 am Toby Shook, I am one of the prosecutors, and I will be
6 asking you questions on behalf of the State.
7 A. Yes, sir.
8 Q. Like he said, we just want your honest
9 opinion. Okay?
10 A. Yes, sir.
11 Q. I will go over a few things here in
12 your questionnaire, and then maybe some things concerning
13 the law and how you feel about that.
14 A. Yes, sir.
15 Q. First thing I want to get to is, you
16 did check off that you heard about this case on TV, CNN,
17 and the newspaper.
18 A. Yes, sir.
19 Q. Did you hear anything about the facts
20 of the case, that kind of stuff?

21 A. Yes. Basically, they said that, you
22 know, we know someone had supposedly had gone out and no
23 dust was disturbed and nothing outside the window looked
24 like any footprints, and just stuff of that nature.
25 Q. So, you read a lot of stuff that

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1 concerned the facts?

2 A. Yes, sir.

3 Q. All right. The last question we have
4 on page 12 here is, you have said that you couldn't be
5 absolutely fair because you said that you think she is
6 guilty, is what you wrote in. Do you remember writing
7 that?

8 A. Yes, sir.

9 Q. Is that an opinion that you formed?

10 A. No, sir, that is just what I feel
11 like --

12 Q. From what --

13 A. -- from what I have read.

14 Q. -- what you read?

15 A. From what I read and what I have
16 heard.

17 Q. And so what you have read, everything
18 you have read, you felt she is guilty?

19 A. Yes, sir.

20 Q. Okay. Well, what we need to know is,
21 and obviously, that is an opinion?

22 A. Yes, sir.

23 Q. Okay. Well, what we need to know is
24 that opinion, as to how you feel about her guilt, is that
25 something that you think would influence your verdict?

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1 A. Well, I would think so. Yes, sir.

2 Q. Okay.

3

4 MR. TOBY L. SHOOK: Judge, then, I
5 guess, we would ask the juror to be excused under
6 35.16(10).

7 MR. CURTIS GLOVER: No objection, Your
8 Honor.

9 THE COURT: All right. Thank you very
10 much, we appreciate your coming, sir. We would ask you
11 this: Please don't discuss this. This trial won't be
12 over until probably the end of January. Please don't
13 discuss any way you feel, or anything that went on here
14 today, or your impression of anything in here today until

15 the trial is over.
16 THE PROSPECTIVE JUROR: Yes, sir.
17 THE COURT: That will be about the
18 first part of February. When the trial is over, you may
19 then talk or not talk, as you see fit. There is still a
20 gag order on it. I can impose monetary or jail time
21 sanctions. I'm not threatening you, we just have to say
22 that.
23 THE PROSPECTIVE JUROR: Yes, sir.
24 THE COURT: I appreciate it. Mum is
25 the word until the trial is over in order to give

Sandra M. Halsey, CSR, Official Court Reporter 1864

1 everybody a fair shake. Fair enough?
2 THE PROSPECTIVE JUROR: Yes, sir.
3 THE COURT: Thank you for coming.
4 MR. TOBY L. SHOOK: Thank you, sir.
5 THE COURT: All right. That was two
6 minutes, I think. Thank you, Mr. Shook. Your brevity
7 was appreciated.
8 See everybody in the morning. All
9 right. That was very good.
10 Everybody try to be here at 8:00
11 o'clock in the morning.
12 Thanks for all your good work,
13 everyone.
14
15 (Whereupon, the proceedings
16 Were recessed for the
17 day, to return on the
18 next day, November 6, 1996,
19 at 8:00 a.m. at which
20 time the proceedings
21 were resumed in open
22 court, in the presence
23 of the defendant, with her
24 attorney, and the State
25 being represented by the

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1 D.A., as follows:)
2
3 (These proceedings are continued to
4 the next volume in this cause.)
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Sandra M. Halsey, CSR, Official Court Reporter 1866

1 CERTIFICATION PAGE
2 THE STATE OF TEXAS)
3 THE COUNTY OF DALLAS)
4 I, Sandra M. Halsey, was the Official Court
5 Reporter of Criminal District Court Number 3, of Dallas
6 County, Texas, do hereby certify that I reported in
7 Stenograph notes the foregoing proceedings, and that they
8 have been edited by me, or under my direction and the
9 foregoing transcript contains a full, true, complete and
10 accurate transcript of the proceedings held in this
11 matter, to the best of my knowledge.
12 I further certify that this transcript of the
13 proceedings truly and correctly reflects the exhibits, if
14 any, offered by the respective parties.
15 SUBSCRIBED AND SWORN TO, this _____ day of
16 _____, 1997.
17 _____
18 Sandra M. Day Halsey, CSR
19 Official Court Reporter
20 363RD Judicial District Court
21 Dallas County, Texas
22 Phone, (214) 653-5893
23
24 Cert. No. 308
25 Exp 12-31-98

Sandra M. Halsey, CSR, Official Court Reporter 1867

1 STATE OF TEXAS)
2 COUNTY OF DALLAS)

3

4 JUDGES CERTIFICATE

5

6

7

8 The above and foregoing transcript, as certified
9 by the Official Court Reporter, having been presented to
10 me, has been examined and is approved as a true and
11 correct transcript of the proceedings had in the
12 foregoing styled cause, and aforementioned cause number
13 of this case.

14

15

16

17

18 _____

19 MARK TOLLE, JUDGE

20 Criminal District Court Number 3

21 Dallas County, Texas

22

23

24

25

Sandra M. Halsey, CSR, Official Court Reporter 1868