

Volume 20

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

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

7 VS: } & A-96-253

8 DARLIE LYNN ROUTIER } Kerr Co. Number

9

10

11

12

13 STATEMENT OF FACTS

14 JURY VOIR DIRE

15 INDIVIDUAL JURORS HEARING

16 VOL. 20 OF VOLS.

17 November 7, 1996

18 Thursday

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Sandra M. Halsey, CSR, Official Court Reporter

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1 C A P T I O N

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3

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

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

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

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

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

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

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

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

12 follows:

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Sandra M. Halsey, CSR, Official Court Reporter
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1 A P P E A R A N C E S

2
3

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

7

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

11

12 AND:

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

16

17 AND:

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

21

22 APPEARING FOR THE STATE OF TEXAS

23

24

25

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1 ADDITIONAL APPEARANCES:

2

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

6 717 N. Harwood
7 Dallas, TX 75201

8

9 AND: HON. CURTIS GLOVER
10 Attorney at Law

11 2650 Maxus Energy Tower
12 717 N. Harwood

13 Dallas, TX 75201

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

8 proceedings were held in
9 open court, in the presence
10 and hearing of the
11 defendant, being
12 represented by her attorneys
13 and the representatives of
14 the State of Texas, as
15 follows:)
16
17
18 THE COURT: All right. Today is
19 Thursday, November 7th, 1966. Let's go back on the
20 record. Are we ready? Let's bring in Ms. Jefferson.
21 Your name, ma'am?
22 THE PROSPECTIVE JUROR: Maria
23 Jefferson.
24 THE COURT: Maria Jefferson. All
25 right. If you will just have a seat and make yourself
Sandra M. Halsey, CSR, Official Court Reporter
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1 comfortable.
2 If you will raise your right hand,
3 please?
4 Do you solemnly swear or affirm you
5 will true answers make to all the questions propounded to
6 you concerning your qualifications as a juror, so help
7 you God?
8 THE PROSPECTIVE JUROR: I do.
9
10 (Whereupon, the prospective
11 juror was duly sworn by the
12 Court to true answers make
13 to the questions propounded,
14 concerning qualifications, after
15 which time, the proceedings were
16 resumed as follows:)
17
18 THE COURT: Thank you, ma'am. You
19 have been called to be a potential juror in the Darlie
20 Routier matter. Mrs. Routier is the defendant in today's
21 case, she is sitting right there to your far right, next
22 to her attorneys, Mr. Richard Mosty and Mr. Curtis
23 Glover.
24 The State of Texas is represented by
25 Toby Shook and Sherri Wallace, they are Assistant
Sandra M. Halsey, CSR, Official Court Reporter
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1 District Attorneys of Dallas. They are both going to be

2 asking you some questions, there are no wrong answers,
3 there won't be a test. Just answer it as calmly and
4 briefly as you can, and tell your exact feelings about
5 the questions. Fair enough?
6 THE PROSPECTIVE JUROR: Yes.
7 THE COURT: All right. Are you a
8 little bit nervous?
9 THE PROSPECTIVE JUROR: More nervous
10 than you know.
11 THE COURT: Well, just relax. And if
12 you can speak into the microphone, and answer yes or no.
13 Ms. Halsey is taking this down, and can't take down head
14 nods and uh-huhs or huh-uhs.
15 THE PROSPECTIVE JUROR: Okay.
16 THE COURT: All right. Mr. Shook.
17 MR. TOBY L. SHOOK: May it please the
18 Court?
19
20 Whereupon,
21
22 MARIA DELPILAR JEFFERSON,
23
24 was called as a prospective juror, for the purpose of
25 voir dire, having been first duly sworn by the Court to
Sandra M. Halsey, CSR, Official Court Reporter
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1 speak the truth, the whole truth, and nothing but the
2 true, testified in open court, as follows:
3
4 VOIR DIRE EXAMINATION
5
6 BY MR. TOBY L. SHOOK:
7 Q. Ms. Jefferson, again, my name is Toby
8 Shook. I am one of the prosecutors on the case and I am
9 going to ask you some questions on behalf of the State
10 this morning. And as Judge Tolle told you, we're just
11 interested in your honest opinions. Okay? This isn't a
12 test or anything like that. We don't want you to answer
13 the questions the way you think we want them answered, we
14 just want your honest opinions. Okay?
15 A. Okay.
16 Q. Everyone feels differently about these
17 issues, and that is what we are here to explore. I want
18 to go over some things that are here on your
19 questionnaire, because you brought up some things at the
20 end of it about -- we have a question if you have any
21 personal health problems that would prevent you from
22 giving full attention to the testimony during the trial,
23 and you checked yes.

24 And you put down some information I
25 believe, about your mother having a stroke, and you are
Sandra M. Halsey, CSR, Official Court Reporter

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1 under lot of pressure for several things; is that right?

2 A. Yes.

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

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

6

7 THE COURT: Just calm down now, it's

8 not going to go beyond here.

9 THE PROSPECTIVE JUROR: Well for one

10 thing, I am an only child, and when my mother had the

11 stroke we almost lost her. And having to deal with my

12 family, my father, my home, my work, it's been very

13 stressful. Due to the fact that I am an only child, I

14 have to help my dad care for mother. She is in a good

15 nursing home, and she is being very well taken care of.

16 But from work I go home for 30 to 45

17 minutes and see what I am going to get started for

18 dinner, when I get home. Then I go feed mother, and she

19 won't let us leave until she is ready to go to bed, which

20 here lately, it's been 6:30 to seven o'clock. Then I

21 still have to go home and feed my father, feed my family.

22 All summer long we haven't done

23 anything, we haven't had a vacation. My husband and I

24 haven't had a vacation. We didn't get to do anything due

25 to the fact of my mother. His mother had a triple

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1 bypass, she has had a leg amputated, so everything is

2 coming down.

3 Q. Okay. So, at your present situation,

4 you have a lot of things going on in your life.

5 A. Yes. It's hard for me, like you ask

6 me a question, I just break down. You know?

7 Q. Right. Would you say you are just not

8 emotionally stable at all at this time?

9 A. Not at this time. I had a friend tell

10 me to go to the doctor to get some antidepressants,

11 because by the end of the weekend, or by Friday, I want

12 to go home and rest, and I can't.

13 I am constantly having to do things

14 for people. You know, not only for my family, but I have

15 to go and help my dad with clothing and --

16

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

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

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

24

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

10

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

16 THE PROSPECTIVE JUROR: I'm sorry.

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

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

24 THE PROSPECTIVE JUROR: Fair enough.

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

2 THE PROSPECTIVE JUROR: Thank you.

3

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

11 as follows:)
12
13 THE CLERK: The next one is here.
14 THE COURT: All right. What is his --
15 her name? Is that Ms. Scharein --
16 THE CLERK: Nelda Bill.
17 THE COURT: Nelda Bill number 62. All
18 right. Come on in.
19 You are Ms. Nelda Bill. N-E-L-D-A,
20 Ozuna, O-Z-U-N-A, Bill, B-I-L-L.
21 THE PROSPECTIVE JUROR: Yes.
22 THE COURT: Is that correct?
23 THE PROSPECTIVE JUROR: Yes.
24 THE COURT: This is number 62 on our
25 list, number 183 on the jury list. If you can raise your
Sandra M. Halsey, CSR, Official Court Reporter
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1 right hand, please.
2 Do you solemnly swear or affirm that
3 you will true answers make to all questions propounded to
4 you concerning your qualifications as a juror, so help
5 you God?
6
7 (Whereupon, the witness
8 Was duly sworn by the
9 Court, to speak the truth,
10 The whole truth and
11 Nothing but the truth,
12 After which, the
13 Proceedings were
14 Resumed as follows:)
15

16 THE PROSPECTIVE JUROR: Yes, sir.
17 THE COURT: Thank you. Ma'am, you
18 have been called here today as a potential juror in the
19 Darlie Routier matter. Mrs. Routier is the defendant in
20 this case, as I told you earlier. Mrs. Routier is
21 sitting over there to your far right, with her attorneys
22 are Richard Mosty and Mr. Curtis Glover.
23 The State is represented by Mr. Toby
24 Shook and Ms. Sherri Wallace. They are Assistant
25 District Attorneys from Dallas. Both sides are going to
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1 ask you some questions, there are no wrong answers. You
2 can be a member of the Flat Earth Society and nobody is
3 going to disagree with you. Just give your answers as
4 succinctly possible, and answer them very directly. Fair

5 enough?

6 THE PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: All right. Go ahead,

8 please, Mr. Shook.

9

10 Whereupon,

11

12 NELDA OZUNA BILL,

13

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

18

19 VOIR DIRE EXAMINATION

20

21 BY MR. TOBY L. SHOOK:

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

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

25 As Judge Tolle told you, all we're
Sandra M. Halsey, CSR, Official Court Reporter

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

5 Have you ever been down on jury
6 service before?

7 A. No, sir.

8 Q. Okay. We usually talk with the jurors
9 in a big group, but we do it through individual voir dire
10 because the law prescribes it because it is a death
11 penalty case.

12 We're not trying to put you on trial
13 or anything like that, but each side gets a little while
14 to talk with you.

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

17 A. No.

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

20 A. No.

21 Q. From the Dallas area?

22 A. No, sir.

23 Q. There have been two Kerrville
24 attorneys that have been retained to represent Mrs.
25 Routier also. Mr. Richard Mosty, do you know Mr. Mosty?
Sandra M. Halsey, CSR, Official Court Reporter

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

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

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

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

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

20 A. Yes.

21 Q. Okay. Well, then the question I need

22 to ask you is this: It's okay to form opinions as to

23 what you read. I mean, we form opinions on what we read

24 all the time. But I need to know is if your opinion is

25 in your mind and it's a conclusion you have reached in

Sandra M. Halsey, CSR, Official Court Reporter

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1 your mind that you think it is going to affect your

2 verdict in this case?

3 A. It would

4

5 MR. RICHARD C. MOSTY: We submit the

6 juror.

7 THE COURT: All right. Thank you for

8 coming, ma'am, you are excused.

9 Ma'am, don't discuss any of your

10 testimony here today, please, until the trial is over

11 with, the first part of February. We do have a gag order

12 where I can impose monetary or jail time sanctions. I am

13 not threatening you, I know that won't be necessary.

14 THE PROSPECTIVE JUROR: Yes, sir, I

15 understand.

16 THE COURT: Thank you, you bet.

17 MS. SHERRI WALLACE: Judge, we will

18 offer Court's Exhibit No. 10.

19 THE COURT: All right, No. 10, Court's

20 Exhibit is admitted. That is fine.

21

22 (Whereupon, a short

23 recess was taken,

24 after which time,

25 the proceedings were

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1 resumed on the record,

2 in the presence and

3 hearing of the defendant

4 as follows:)

5

6 THE COURT: Okay, we're ready. Let's

7 go back on the record after a short recess.

8 This is number 185, number 63 on our

9 list. How are you doing, sir?

10 THE PROSPECTIVE JUROR: Good morning.

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

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

13 THE PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: That is number 185 on the

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

16 right hand, please?

17 Do you solemnly swear or affirm that

18 you will true answers make to all questions propounded to

19 you concerning your qualifications as a juror, so help

20 you God?

21

22 (Whereupon, the prospective

23 juror was duly sworn by the

24 Court to true answers make

25 to the questions propounded,

Sandra M. Halsey, CSR, Official Court Reporter

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1 concerning qualifications, after

2 which time, the proceedings were

3 resumed as follows:)

4

5 THE PROSPECTIVE JUROR: I do.

6 THE COURT: Mr. Rollins, you are here

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

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

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

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

11 The State is represented by two

12 Assistant District Attorneys from Dallas County, Toby

13 Shook and Sherri Wallace.

14 They are going to be asking you

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

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

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

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

19 down.

20 THE PROSPECTIVE JUROR: Okay.

21 THE COURT: Okay. Thank you. Go

22 ahead, Mr. Shook.

23

24

25

Sandra M. Halsey, CSR, Official Court Reporter

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1 Whereupon,

2

3 DOCK ADDISON ROLLINS,

4

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

9

10 VOIR DIRE EXAMINATION

11

12 BY MR. TOBY L. SHOOK:

13 Q. Mr. Rollins, again, my name is Toby

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

20 A. Okay.

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

23 A. Yes, sir.

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

Sandra M. Halsey, CSR, Official Court Reporter
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1 A. Yes, sir.

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

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

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

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

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

13 A. Yes, sir.

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

17 A. Yes, sir.

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

22 A. No, sir.

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

25 A. Yes, sir.
Sandra M. Halsey, CSR, Official Court Reporter
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1 Q. That was, I believe, you said a drug
2 case?

3 A. Yes, sir.

4 Q. Was that in Houston?

5 A. Yes, sir.

6 Q. How long ago was that?

7 A. Probably 20 years ago.

8 Q. Okay. And the verdict was guilty?

9 A. No, sir, it was a hung jury.

10 Q. Hung jury? Okay. Tell me a little
11 bit about that case.

12 A. The person had been caught and as the
13 policeman walked up to the car, and they threw the
14 evidence out, and we had one lady on the jury who was
15 given a parking ticket, and she said all policemen were
16 crooks. And she would not --

17 Q. Okay.

18 A. It was just that simple, we had one
19 person that didn't like the policemen.

20 Q. Okay. So, it was 11 to 1?

21 A. Yes, sir.

22 Q. And that is the only time you have
23 served on a jury?

24 A. No, sir. I served once here in
25 Kerrville on a same thing. It was a narcotics case of a
Sandra M. Halsey, CSR, Official Court Reporter
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1 doctor who was dispensing narcotics illegally.

2 Q. Okay. And what happened on that case?

3 A. It was guilty.

4 Q. Did the jury assess punishment or did
5 the Judge? Or do you recall?

6 A. It was the Judge, I believe, sir. I
7 don't recall assessing any punishment.

8 Q. Okay. Did you have -- as far as your
9 jury experiences go, did those go pretty smoothly?

10 A. Yes, sir.

11 Q. Okay. When we're selecting a capital
12 jury, we do it a little differently. Do you recall that
13 from your prior jury service that everyone is talked to
14 kind of in one large group? But since this is a death
15 penalty case, we interview every juror individually.

16 A. Yes, sir.

17 Q. I want to get right at the heart of
18 the matter. You know that the State is seeking the death

19 penalty in this case?

20 A. Yes, sir.

21 Q. And, so, we want to talk to each juror
22 about the death penalty. Do you agree that we should
23 have the death penalty as a law in this State?

24 A. Yes, sir. Mainly, because I have been
25 taught, and I believe, there is some place in the Bible
Sandra M. Halsey, CSR, Official Court Reporter
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1 that says "An eye for an eye, and a tooth for a tooth."

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

3 Q. Okay. Tell me a little bit about
4 that.

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

11 Q. Okay. What types of cases do you
12 think it should be upheld in?

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

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

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

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

12 For it to come under our death penalty

13 statute, you have to have a murder plus something else.
14 For example, murder during felony, you go in -- you have
15 probably read about the situations where someone goes in
16 and robs a grocery store and shot the clerk during the
17 robbery. That could be a death penalty case in Texas
18 because it happens during a felony. If someone comes and
19 breaks into a house and kills someone in there, one of
20 the homeowners, that could be a death penalty case.
21 Murder during a rape or a kidnapping or an arson, those
22 types of situations could be death penalty cases.
23 Also, if you murder a police officer
24 while he is on duty or a fireman on duty, it could be a
25 death penalty case.

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1 Murder for hire, someone that just
2 kills someone for money, could be a death penalty case.
3 Or your mass murder situations or the
4 serial killer situations. And, in addition, the type of
5 case we have indicted here. And I believe that
6 indictment is in front of you. If you could take a
7 moment to read that to yourself, and just the printed
8 portion there in the middle.

9 A. All right.

10 Q. All right. That sets out the
11 allegations of intentional killing of a child under the
12 age of six. That type of case falls under our death
13 penalty statute, of course, depending on the facts.
14 Let me ask you: Is that the type of
15 case you feel personally, and I'm not asking you for your
16 verdict because you have not heard from any witnesses,
17 but is that the type of case you feel that could be
18 appropriate for the death penalty under the proper
19 circumstances?

20 A. Yes, sir.

21 Q. Okay. Those other areas I went over,
22 murders that occur during a felony, murders of a police
23 officer, are those also the types of murders you think
24 could be appropriate for the death penalty?

25 A. Well, sir, I would like to know the
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1 circumstances. For example, you mentioned that if
2 someone went in to rob somebody, they planned to do that,
3 that was not a spontaneous thing. To kill a police
4 officer, there are all kind of circumstances that prevail
5 there. Was it something that happened off duty, that

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

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

10 A. No, sir.

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

14

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

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

20 THE COURT: All right. Good.

21

22 BY MR. TOBY L. SHOOK:

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

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

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

15 A. Yes, sir.

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

21 A. No, sir.

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

25 A. Yes, sir.

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

21 death penalty has been reinstated that have been
22 executed. Okay?
23 Many jurors have answered these
24 questions, and, like I said, there have been over 100
25 executions take place.
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1 You have told me that
2 philosophically -- well, maybe not philosophically, but
3 you feel that since the death penalty statute is on the
4 books, you think it should be enforced in the proper
5 circumstances.
6 I want to know if you are the type of
7 juror who can listen to the evidence and that if we do
8 prove these things to you, you could answer these
9 questions in the way, knowing that the defendant would be
10 executed someday?
11 A. Yes, sir.
12 Q. Okay. I take it you are not
13 volunteering for the job?
14 A. Nope.
15 Q. But if you were chosen to sit on this
16 jury, you could do that?
17 A. Yes, sir.
18 Q. Okay. In a criminal case, and you are
19 familiar with this because you have been over a couple.
20 The State, obviously, has the burden of proof and we have
21 to put on witnesses.
22 We can do that two ways: We call that
23 direct evidence or indirect evidence. Direct evidence is
24 an eyewitness to the case. All right? Maybe, in your
25 case, it was the police officer that saw the drugs come
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1 out of the car when he made the arrest. He was an
2 eyewitness, saw an event, to the offense.
3 You also have what we call
4 circumstantial evidence, I am sure you are familiar with.
5 That is any other type of evidence that links the
6 defendant to the crime. It could be the DNA evidence,
7 you have heard of DNA, I'm sure?
8 A. Yes, sir.
9 Q. Blood evidence; scientific evidence,
10 hair, fiber; it could be fingerprints; blood spatter
11 evidence; the crime scene itself what that could tell
12 investigators and the jury about the case; statements
13 made by the defendant, before, during, and after the
14 crime; all of these things, anything but a direct

15 eyewitness is circumstantial evidence.
16 Now, many times in a murder case all
17 the State has to rely on is circumstantial evidence. The
18 reason for that being, you have the person that committed
19 the murder and the person that was killed, obviously.
20 The law says that there is no
21 difference between the two types of evidence. The State
22 still has the same burden, to prove beyond a reasonable
23 doubt.
24 What I need to know is: If the State
25 proves its case using solely circumstantial evidence, and
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1 we prove that to you beyond a reasonable doubt, would you
2 be able to find the defendant guilty?

3 A. Well, to answer that, I would just
4 have to hear it, sir. To give you an answer right now, I
5 can't honestly do it.

6 Q. Okay. I know you have to hear the
7 evidence, but I want to know is -- are you predisposed to
8 be against circumstantial evidence, or is your mind open?

9 A. My mind is open, that is the reason I
10 didn't answer you yes or no.

11 Q. Okay. Fair enough then. Let me go
12 over another part of the law with you. You often hear
13 the term "motive," the reason a crime occurred,
14 especially in a murder case.
15 When the evidence is produced to the
16 jury, many times the motive becomes very clear. Okay?
17 Other times it may not be clear at all. Everyone might
18 have their own opinion on it. There could be several
19 possible motives. It could be what sometimes is called
20 just a senseless killing, and no motive is apparent, it
21 is locked away in the killers mind, and we may never know
22 what it is. The person is just as dead, the proof is
23 still there, but we don't know what the motive is.
24 In Texas, the law does not require the
25 State to prove what the motive is. We just have to prove
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1 those allegations that you have read to get a guilty
2 verdict, we don't have to prove the motive. Would you be
3 able to follow that law?

4 A. Yes, sir.

5 Q. Okay. I want to go then into some of
6 these punishment issues, okay? Like I said, you don't
7 get to these unless the defendant was found guilty of
8 capital murder. At that point, we would move to the

9 punishment stage, and you may hear additional evidence.
10 You could hear evidence about the
11 person's background, maybe their criminal history, or
12 moral character, anything like that. Good or bad, it
13 could go both ways.
14 At the end of that evidence, you get
15 this first question. It starts out with a "no" answer
16 and we have to prove beyond a reasonable doubt that it
17 should be answered "yes."
18 If you would read that first question
19 to yourself, please.
20 A. Okay.
21 Q. It's a fact question. It calls for
22 the jurors to make a prediction on how the defendant will
23 behave in the future. Let me ask you: Do you think --
24 and again, I can't get into any facts, but just looking
25 at what that question asks you -- do you think you could
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1 answer that question if it was proven to you beyond a
2 reasonable doubt?
3 A. Yes, sir.
4 Q. Okay. What kinds of things would be
5 important for you to know? Or would you want to know
6 before you answered that question?
7 A. The purpose for this crime, and would
8 it -- you think that someone is going to do this in the
9 future.
10 For example: Robbery, drive-by
11 shootings, or things like that, is what you mentioned a
12 moment ago. But I would want to know how this would look
13 into the future.
14 Q. Okay.
15 A. For example, a man and his wife, we
16 only have one wife or one husband, so we are not going to
17 go down the street killing wives and husbands.
18 Q. Okay. Do you feel if a man kills his
19 wife, say a brutal killing, his wife is gone now, what is
20 that going to tell you about him, how he will act in the
21 future?
22 A. I don't think I could say that he is
23 going to get married and kill another one.
24 Q. Okay. The words in this question, you
25 won't be given any legal definitions. It will be up to
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1 you and the other jurors. We have got to prove -- so I
2 am going to go over a few of those, for instance,

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

7 A. A chance.

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

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

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

16 A. No, sir.

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

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

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

6

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

10 THE COURT: Well, that is sustained.

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

14 THE PROSPECTIVE JUROR: Yes, sir.

15 MR. TOBY L. SHOOK: Okay.

16

17 BY MR. TOBY L. SHOOK:

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

21 A. Well, mainly the cause.

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

23 A. Yes, sir.

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

25 question. You don't get to that unless you have found
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1 the defendant guilty, and found that they would be a
2 continuing danger to society. And if you would, just
3 take a moment.
4 This one is a lot lengthier, and
5 believe me, Mr. Rollins, none of the lawyers here thought
6 up this question, the legislature did that.
7 Read that to yourself for a moment.
8 A. All right.
9 Q. That is what we call the mitigation
10 question. That is the one where the jurors at the end
11 review all of the evidence, and then decide: Is there
12 evidence that shows this defendant should get a life
13 sentence or is there not? Okay?
14 We can't tell you what circumstantial
15 evidence is -- I mean, what the mitigating evidence is,
16 that is going to be left up to you and the other jurors.
17 In fact, you don't have to sit there
18 and conjure up facts which you think the mitigating
19 evidence is, and you don't have to agree with the other
20 jurors.
21 You just have to be able to keep your
22 mind open to it. Do you think you can do that?
23 A. Yes, sir.
24 Q. Okay. Well, we have talked to lots of
25 juror, and people have different ideas and you don't have
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1 to agree with any of them. But let me go over a few
2 things and see how they cut with you one way or the
3 other.
4 Sometimes, we have jurors that say,
5 "Well," -- or you have a situation maybe where the
6 defendant was drunk or on drugs when they committed the
7 crime.
8 Some jurors might view that as
9 mitigating, other jurors would really hold that against a
10 person.
11 How do you feel about it one way or
12 the other?
13 A. I would hold that against the person.
14 Q. Okay. Sometimes you might hear
15 evidence that a person grew up in a poor economic
16 neighborhood. They were deprived maybe when they grew
17 up. Some people feel that might be mitigating evidence,
18 other people say no, that is not mitigating.

19 A. I don't agree with that.

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

24 A. I have a very strong feeling about
25 that, I believe that is a crutch.

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

3 A. Yes, sir.

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

6 A. No, sir.

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

10 A. Yes, sir.

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

16 A. Yes, sir.

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

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

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

25 A. Yes, sir.

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

6 A. Yes, sir.

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

13 A. Yes, sir.

14 Q. Okay. The Judge will also tell you

15 that during any part of your deliberations you are not to

16 consider the parole laws. Could you follow that rule of

17 law?

18 A. I didn't understand you.

19 Q. You cannot consider parole laws. You

20 can't consider those at all.

21

22 THE COURT: Both sides might state the

23 reason why that is.

24

25

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1 BY MR. TOBY L. SHOOK:

2 Q. The reason for that is the parole laws

3 change all the time, and we never know what they may be.

4 But the jury has no control over them, whatsoever.

5

6 THE COURT: We cannot control the

7 parole laws at this level.

8 THE PROSPECTIVE JUROR: All right,

9 sir.

10 MR. TOBY L. SHOOK: Judge Tolle has no

11 control. So he would just instruct you that you are not

12 to consider those or use those in your deliberations in

13 any way. Could you follow that rule of law?

14 THE PROSPECTIVE JUROR: Yes, sir.

15

16 BY MR. TOBY L. SHOOK:

17 Q. Mr. Rollins, you have been very

18 patient with me. Do you have any questions about

19 anything I have gone over?

20 A. No, sir.

21 Q. Okay.

22

23 MR. TOBY L. SHOOK: That's all I have

24 then, Judge. Thank you.

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

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1 Mosty.

2

3 VOIR DIRE EXAMINATION

4

5 BY MR. RICHARD MOSTY:

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

7 you doing today?

8 A. Just fine.

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

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

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

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

13 anything that might come up to you.

14 So, I want to encourage you to feel

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

16 it out on the table.

17 If you have got some concern or lack

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

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

20 Once you get in that jury box, you

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

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

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

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

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

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1 So, this is your time to speak up.

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

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

4 A. Uh-huh. (Witness nodding head

5 affirmatively.)

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

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

8 death penalty and these special issues, and in my

9 judgment that is completely getting the cart before the

10 horse.

11 Because what I really want to

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

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

14 reasonable doubt, the presumption of innocence.

15 Those things that the law has afforded

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

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

18 going to follow it."

19 And do you agree with me that those

20 laws, those presumption of innocence, that burden of

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

22 law relating to the death penalty?

23 A. Yes, sir.

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

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

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1 punishment unless someone is found guilty. Okay?
2 Are you all right with that?
3 A. Yes, sir.
4 Q. Do you know anything about this case?
5 A. No.
6 Q. Well, let me preface that by saying,
7 nobody ever really knows anything about a case until they
8 sit and hear. But from what you have read or heard --
9 what have you heard about this case?
10 A. That one jury (sic) was selected, sir,
11 and that is all I know.
12 Q. That one juror was selected?
13 A. Yes, sir.
14 Q. Do you know anything about the facts
15 of the case or what the facts of this case are supposed
16 to be?
17 A. No, sir.
18 Q. You have lived in Kerrville for a
19 pretty good while?
20 A. Yes, sir.
21 Q. And you go to Trinity Baptist?
22 A. Yes, sir.
23 Q. What Sunday school class do you teach
24 over there?
25 A. I have taught three or four of them,
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1 sir. The Agape class and I substitute teach for quite a
2 few of them.
3 Q. Okay. My partner, Keith Williams, has
4 taught, I guess just a little bit of everything, but in
5 the younger bracket, mainly.
6 Let me cover a little bit with you
7 about what the law requires of you as a juror. And if
8 any of these things bother you and we need to discuss
9 them, let's talk about them.
10 The first thing that the law requires,
11 the law says and Judge Tolle told you this, that the fact
12 that an indictment has been issued means absolutely
13 nothing at all. Are you okay with that?
14 A. I'm aware of that, yes, sir.
15 Q. All right. And from your
16 experience -- you know that from your previous jury
17 experience. The law says that all reasonable doubts will
18 be resolved in favor of the defendant. That every
19 reasonable doubt that any juror has always belongs to
20 Darlie. Do you have any problem with that at all?
21 A. No, sir.
22 Q. You know, some people might say as

23 they are filtering through the evidence that, they say,
24 "Well, you know, I sort of have a reasonable doubt about
25 that. You know, the defense sort of has the better end
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1 of that argument. And I have got a reasonable doubt
2 about this and maybe the State really has sort of the
3 better end of that one."
4 Some jurors might say, "Well, I am
5 going to give that reasonable doubt to the defendant, and
6 I am just going to go ahead and cast that reasonable
7 doubt over in favor of the State."
8 The law says you can't do that. That
9 once it's a reasonable doubt, and once you have any
10 reasonable doubt, that you always park it on the side of
11 the defendant.
12 Would you have any problem with that
13 concept at all?
14 A. Nope. No, sir.
15 Q. And the law says: Any reasonable
16 doubt or a reasonable doubt. There don't have to be 20
17 reasonable doubts, or 100 reasonable doubts, it's just
18 one reasonable doubt is enough to acquit a defendant.
19 And that is okay with you?
20 A. I agree.
21 Q. Do you think that is fair?
22 A. I would like to know all the
23 circumstances, but, yes, that would have to be.
24 Q. You know, one thing -- one thing that
25 jurors do not get to do in a criminal case is solve the
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1 case. You are judges of the facts presented to you.
2 And you are the exclusive judges of
3 those facts. And whatever you say the facts are, that is
4 what they are.
5 And sometimes that reasonable doubt --
6 there may be the facts that are presented, and within
7 those facts, there are gaps, there are inconsistencies,
8 there are things that just don't quite make sense, they
9 don't have a common thread to them. And within those
10 facts, you may say there is reasonable doubt.
11 On the other hand, it may just simply
12 be that there is something left out. Just a fact not
13 covered, that in your mind says, there is a reasonable
14 doubt.
15 And you may say, "Gosh, I would really
16 like to know who committed this crime." But -- and you

17 may be sitting there like you were saying a minute ago,
18 saying, "Boy, I would really like to know more about
19 this," but you may not.
20 And at that point you just have to as
21 a juror say, "I am going to make my decision based on the
22 facts that are before me."
23 A. Yes, sir.
24 Q. And even if there were still those
25 questions lingering in your mind about who did this, or
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1 what happened, in any criminal case, and I am just
2 talking in generalities here, that even though that is
3 left in your mind -- and you might even think, "You know,
4 I think that defendant is probably guilty. Dadgumit, I
5 have got this nagging doubt, and I think it's a
6 reasonable doubt."
7 At that point, you might have to make
8 a hard call and say not guilty. Do you have any problem
9 with that at all?
10 A. No, sir. My problem is that what you
11 are saying here -- because I have not heard anything, I
12 mean, I realize what you are saying and these are
13 situations that I don't know whether I am in, or whether
14 I will be in. I would have to wait and be there.
15 Q. That's correct. And all I am trying
16 to glean is if I can give you some understanding of the
17 law, between Mr. Shook talking to you, and me talking to
18 you about the law, that you can follow those, and that
19 you can take those facts?
20 A. I believe I can.
21 Q. And say, if there is a reasonable
22 doubt, then that's it?
23 A. That's it.
24 Q. Not guilty? It's the end of the
25 story. And does that seem fair to you?
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1 A. Right. Because he just told me the
2 burden of proof is on the State, so if they don't prove
3 it, then I don't have any recourse.
4 Q. Okay. One of the lawyers who's going
5 to help in this case is Doug Mulder, and he always says,
6 "That those who do the accusing, ought to have to do the
7 proving." And does that make sense to you?
8 A. In a manner of speech, yes, sir.
9 Q. Now, there was some conversation with
10 Mr. Shook about circumstantial evidence. And what the

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

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

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

3 A. Yes, sir.

4

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

7 THE COURT: Yes, sir.

8

9 BY MR. RICHARD MOSTY:

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

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

20

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

23 THE PROSPECTIVE JUROR: I understand.

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

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

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

4 A. Yes, sir.

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

10 A. No, sir.

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

17 A. Yes, sir.

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

21 A. No, sir, I am retired.

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

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1 that you could not be fair and impartial?

2 A. No, sir, none.

3 Q. Okay.

4

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

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

10

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

17

18 THE COURT: What says the State?

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

21 MR. RICHARD C. MOSTY: We'll excuse
22 the juror.
23 THE COURT: Both sides exercise
24 peremptories?
25 MR. RICHARD C. MOSTY: What did you
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1 say?
2 MR. TOBY L. SHOOK: We already did it.
3 MR. RICHARD C. MOSTY: Oh, then I will
4 save my strike.
5 THE COURT: All right.
6 MR. RICHARD C. MOSTY: I can't believe
7 that. There just went all my jury selection knowledge
8 right out the window.
9 THE COURT: Okay.
10 MR. TOBY L. SHOOK: I knew that would
11 surprise you, Judge.
12 THE COURT: All right.
13 MR. RICHARD C. MOSTY: The Judge is
14 astonished on both sides.
15 MR. CURTIS GLOVER: We want to
16 reconsider the whole thing.
17
18 (Whereupon, the prospective
19 juror returned to the
20 room and the proceedings
21 were resumed as follows:)
22
23 THE COURT: All right. Mr. Rollins,
24 we want to thank you for coming, but you will be excused
25 from further jury service. Don't discuss anything down
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1 here that has occurred because the case isn't over yet.
2 When it's over in February you can talk or not talk as
3 you see fit. We have a gag order in effect until then,
4 so please don't violate it. I can impose monetary or
5 jail time sentence. I am not threatening you, I just
6 have to tell you that.
7 THE PROSPECTIVE JUROR: All right,
8 sir.
9 THE COURT: Thanks a bunch, we
10 appreciate you coming.
11 THE PROSPECTIVE JUROR: All right,
12 sir.
13 THE COURT: All right. Bring in the
14 next juror. You are Sandra McElhannon,

15 M-C-E-L-H-A-N-N-O-N; is that correct, ma'am?
16 THE PROSPECTIVE JUROR: Yes, sir.
17 THE COURT: That's 203 on the jury
18 list, 71 on our list. All right. Ms. McElhannon, if you
19 will raise your right hand, please.
20 Do you solemnly swear or affirm you
21 will true answers make to all the questions propounded to
22 you concerning your qualifications as a juror, so help
23 you God?
24 THE PROSPECTIVE JUROR: Yes, sir, I
25 do.
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1
2 (Whereupon, the prospective
3 juror was duly sworn by the
4 Court to true answers make
5 to the questions propounded,
6 concerning qualifications, after
7 which time, the proceedings were
8 resumed as follows:)
9
10 THE COURT: You are here as a
11 potential juror in the Darlie Routier matter. Mrs.
12 Routier is the defendant, she is sitting over here to
13 your far right. She is represented by her attorneys, Mr.
14 Richard Mosty and Mr. Curtis Glover.
15 The State by Assistant District
16 Attorneys Toby Shook and Sherri Wallace. They are both
17 from Dallas. Mr. Glover is from Dallas, and Mr. Mosty is
18 from Kerrville. And we have also have involved from
19 Dallas, Greg Davis, he is not here now; Douglas Mulder
20 for the defense, he is not here now, and Preston Douglass
21 for the defense, he is also from Kerrville.
22 You are going to be asked some
23 questions by both sides. If you will just answer them as
24 briefly and right to the point as you can. There are no
25 wrong answers. So just relax and tell us what you feel.
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1 Ms. Wallace. Okay.
2
3 MS. SHERRI WALLACE: May it please the
4 Court.
5
6 Whereupon,
7
8 SANDRA S. MCELHANNON,

9

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

14

15 VOIR DIRE EXAMINATION

16

17 BY MS. SHERRI WALLACE:

18 Q. Good morning.

19 A Good morning.

20 Q. Are you nervous at all?

21 A. Yes.

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

25 I am going to talk to you a little bit

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

6 A. No.

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

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

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

16 A. Yes.

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

19 A. Yes.

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

22 A. No.

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

25 A. Both of them.

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

3 A. Yes, ma'am.

4 Q. You have got two children. How -- it

5 says here that you are in favor of the death penalty if

6 the defendant is proven guilty.

7 Tell me a little bit about your

8 feelings about the death penalty. Why are you in favor

9 of it?

10 A. I just am.

11 Q. What -- so you think it is a good law,

12 you think it's a good idea?

13 A. Yes.

14 Q. What are your thoughts on that as to

15 why?

16 A. I think if you are proven guilty, then

17 it should be carried out.

18 Q. Okay. You said that you believe a

19 death penalty is appropriate in all capital murder cases.

20 We had that list of things to circle. And I want to talk

21 to you a little bit about the death penalty and the

22 scheme of how it works here in Texas.

23 First off, not every murder is a

24 capital murder. You have to have a murder kind of plus

25 something else. For instance, if you murder two or more

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1 people, that is a capital murder.

2 If you murder a police officer in the

3 course or in the line of duty, or prison guard or a

4 fireman in the line of duty.

5 If you murder in the course of

6 committing another felony; like, if you are raping

7 someone and then you kill them; or you kidnap someone and

8 then you kill them; and you go up here to the Circle-K

9 and rob the clerk, and then kill the clerk.

10 Those would be crimes that would be

11 eligible for the death penalty.

12 Additionally, if you -- murder for

13 hire. If you hire a hit man, if you are the person that

14 hires the hit man, you are eligible for the death

15 penalty.

16 And, if you are the hit man, if you

17 take money to perform a killing, then you are eligible

18 for the death penalty. Or if you murder a child under

19 the age of six which is the type of crime on trial here.

20 If you were the Governor of Texas,

21 would you change that list in any way? Add to it, take

22 away, alter it in any way?

23 A. No.

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

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

2 A. Yes.

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

4 Ms. McElhannon; is that right?

5 A. McElhannon.

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

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

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

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

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

11 participate in that process?

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

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

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

15 called on to serve, could you answer the questions

16 accordingly knowing that a death sentence would result?

17 A. Yes.

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

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

20 phases of the trial.

21 The first phase, you have the guilt or

22 innocence phase. You decided the State has proved their

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

24 If it is not guilty, everybody goes

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

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1 committed the capital murder, you go to the punishment

2 phase. And it's not automatic, the death penalty is not

3 an automatic sentence. You can be convicted for capital

4 murder and there's two choices; life or death.

5 Used to be, that is what the jury

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

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

8 answers two question.

9 And the two questions are up here and

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

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

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

13 Now, that first question, it says:

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

15 that there is a probability that the defendant would

16 commit criminal acts of violence that would constitute a

17 continuing threat to society?"

18 That question is presumed to be

19 answered "no." In other words, like the defendant is
20 presumed not guilty; it is presumed that the defendant is
21 not a continuing threat.
22 We must convince the jury beyond a
23 reasonable doubt. You have to revisit the evidence, if
24 you will. You cannot automatically say, "Well, I have
25 found the defendant guilty of killing a child under the
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1 age of six, so, therefore, automatically, I am not even
2 going to rethink it, that equals 'yes.'"
3 You have to look at the evidence. And
4 here's where it's a little tricky; in the punishment
5 phase, you may hear more evidence, and you may not. It
6 might be that, at that phase, all you do is rethink about
7 the first phase. Do you follow me?

8 A. Yes.

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

18 A. Yes.

19 Q. Just depending on the case?

20 A. Yes.

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

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

4 Can you do that?

5 A. Yes.

6 Q. On your questionnaire you wrote that:

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

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

13 Will you do that?

14 A. Yes.

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

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

18 A. Yes.

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

21 A. I'm not real sure.

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

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

10 A. It's probable.

11 Q. More likely than not?

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

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

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

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

21 A. Yes.

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

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

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

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

10 A. Yes.

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

14 A. Okay.

15 Q. That is what we must prove to you
16 beyond a reasonable doubt. We have that burden of proof.

17 And, I see on your questionnaire that you have heard
18 about this case and read about it in the newspapers.

19 A. Yes.

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

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

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

13 A. Yes.

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

22 A. Yes.

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

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

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

2 A. Yes.

3 Q. If, in fact, a verdict of guilty was

4 returned, then we go to this first question. We talked
5 about that, that would be the second phase of the trial.

6 And we talked a little bit about what that means to you,
7 the words, "probability and criminal acts of violence,
8 and a continuing threat to society."

9 If that question is answered "no," if

10 we don't meet our burden of proof, if we fall on that
11 question in your mind, it's "no" and we all go home.

12 Well, the defendant gets a life sentence. But, I mean,
13 we don't go on to the next question.

14 If, in fact, you answer the question

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

17 "Taking into consideration all of the

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

24 If I could summarize that, basically,

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

5 Now, it may be that you hear and you

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

12 But as a juror, you must keep an open

13 mind and say, "Well, I don't know what it is, but I will
14 know it when I see it." Can you do that?

15 A. Yes.

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

7 Is there anything that comes to your
8 mind that could be mitigating?
9 A. Yes.

10 Q. Okay. What would that be?

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

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

14 A. Right.

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

19 I don't want you to know
20 automatically. But just see what your -- how your
21 instincts are about certain things.
22 For instance, young age. Some people
23 think, "Well, if they are already doing this at this
24 young age, then that is really bad, that is aggravating."
25 And some people think, "Well, if they
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1 are that young, maybe a death penalty is not appropriate.
2 That would be mitigating." How do you feel about age?
3

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

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

8

9 BY MS. SHERRI WALLACE:

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

12 A. Yes.

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

15 A. No.

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

18

19 MR. RICHARD C. MOSTY: Again, I think

20 that also calls for --

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

24

25

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1 BY MS. SHERRI WALLACE:

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

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

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

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

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

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

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

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

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

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

8 A. Yes.

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

13 A. Yes.

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

16 A. Right.

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

22 A. I don't know.

23 Q. Okay. It is difficult in many murder
24 cases for a jury to look at a photograph, but what I am
25 asking with this question is: We still have to be held
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1 to our burden of proof.

2 Even if -- a horrible crime has been
3 committed. But if we have the wrong person, it doesn't
4 do anybody any good to convict the wrong person. Fair
5 enough?

6 A. Right.

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

11 A. Right.

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

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

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1 that, of course, that doesn't even make sense.
2 But could you hold all witnesses on
3 the same plane and judge them equally, and wait until you
4 hear from them to decide if they are telling you the
5 truth?

6 A. Yes.

7 Q. The -- in the punishment phase, the
8 Judge will instruct you that you cannot consider parole
9 for any reason. And there is a really good reason for
10 that, the Parole Board is in charge of parole.
11 The Judge has nothing to do with it,
12 the jury doesn't, we don't, no one except the Board of
13 Pardons and Paroles, and that changes with every
14 governor. And because of that and because there is no
15 control over that issue, the jury must not consider
16 parole for any reason, and assume that a life sentence is
17 just that, a life sentence. Could you do that and follow
18 that law?

19 A. Yes.

20 Q. Do you have any questions for me?

21 A. No.

22 Q. All right. Thank you so much.

23 MS. SHERRI WALLACE: We will pass the
24 juror.

25 THE COURT: Mr. Glover.

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1 VOIR DIRE EXAMINATION

2

3 BY MR. CURTIS GLOVER:

4 Q. Ms. McElhannon, I noticed on your
5 questionnaire that you indicated that you had read or
6 perhaps talked with some folks about the facts of this
7 case. Can you kind of tell us what that was all about?

8 A. I just read it in the newspaper and we
9 discussed it at work.

10 Q. Okay. Was that back when it occurred,
11 or when it came here to Kerrville? Or do you recall?

12 A. When they said they were going to
13 transfer it.

14 Q. Okay. What do you recall that you
15 read?

16 A. That some woman killed her two kids.

17 Q. Okay.

18 A. Was accused of it.

19 Q. Okay. And who did you discuss that

20 with?

21 A. The people at work.

22 Q. Okay. That is --

23 A. And my husband.

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

25 it?

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

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

3 Q. Okay. What did you conclude as a

4 result of what you read or what they said?

5 A. Nothing really, we just talked about

6 it.

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

8 opinion one way or the other?

9 A. No.

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

11 today that you have no opinion whatsoever about the guilt

12 or the innocence of the defendant in this case?

13 A. No.

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

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

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

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

18 back to something that you said here in your

19 questionnaire: That if a person is accused of capital

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

21 agree with that?

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

23 Q. Okay. You made the statement though

24 that you feel like she should have to prove her

25 innocence. Do you feel that way today?

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1 A. Yes.

2 Q. Okay. And that is knowing that the

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

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

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

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

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

8 a capital murder case?

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

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

11 Q. Okay. But you made the statement in

12 your questionnaire that if she is accused of capital

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

14 agree with that?

15 A. I guess.

16 Q. We need an answer yes or no.

17 A. Yes.

18 Q. Okay.

19

20 MR. CURTIS GLOVER: We submit the

21 juror, your Honor.

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

23 instruction that the State does the accusing, they have

24 to do the proving. They don't have to do one thing.

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

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1 to do.

2 Mrs. Routier doesn't have to testify.

3 They don't have to offer any evidence. Are you still

4 going to require them to say something before you could

5 find her not guilty?

6 THE PROSPECTIVE JUROR: Not if they

7 are not required, no.

8 THE COURT: Okay. Do you understand

9 when the State's case is over, if you have a lot of

10 questions about what they did --

11 THE PROSPECTIVE JUROR: Right.

12 THE COURT: -- and the defense says

13 nothing, and you are saying to yourself, "I sure wish

14 that I could hear from her." Can you ignore that and

15 follow the law? Put aside your predisposition that you

16 wanted her to prove something and follow the law?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. Go ahead.

19

20 BY MR. CURTIS GLOVER:

21 Q. You understand, Ms. McElhannon, that

22 there is no requirement under our law that you agree with

23 the law. I mean, there are many laws that I disagree

24 with.

25 And simply because you are here in

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1 this courtroom today, if there is particular law that you

2 are confronted with, if you are predisposed to say,

3 "Well, I don't agree with that." Then you have a perfect

4 right to do that.

5 And you had made the statement here

6 that if a person is accused of capital murder then she

7 should have to prove her innocence. And you strongly

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

10

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

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

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

19 THE PROSPECTIVE JUROR: Okay.

20

21 BY MR. CURTIS GLOVER:

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

25 A. Okay.

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1 Q. Do you still feel that way today?

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

3

4 THE COURT: Thank you. Anything?

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

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

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

15 THE PROSPECTIVE JUROR: Okay.

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

18

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

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1 Defendant, being

2 represented by her
3 Attorney, as follows:)

4

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

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

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

19

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

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1

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

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

7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: All right. This is -- Mr.
9 Farris is number 65 on our list, 187 on the jury list.

10 If you will raise your right hand,
11 please.

12

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

17 THE PROSPECTIVE JUROR: I do.

18

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

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

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1 Whereupon,
2
3 CARL SCOTT FARRIS,
4
5 was called as a prospective juror, for the purpose of
6 voir dire, having been first duly sworn by the Court to
7 speak the truth, the whole truth, and nothing but the
8 true, testified in open court, as follows:
9
10 VOIR DIRE EXAMINATION
11
12 BY MR. TOBY L. SHOOK:
13 Q. Mr. Farris, again, my name is Toby
14 Shook, I am with the prosecution and I am going to ask
15 you some questions on behalf of the State this morning.
16 Like Judge Tolle said, we just want your honest opinions
17 on these issues. Okay?

18 A. Okay.

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

23 A. Yeah.

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

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

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

9 A. No.

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

12 A. Yeah.

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

15 A. Yes, sir.

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

18 A. I was born in Dallas, Texas.

19 Q. Right.

20 A. And we moved to Kerrville in 1972.

21 Q. You have had a kidney transplant?

22 A. Yes, sir.

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

25 A. Yes, sir. I have also been a diabetic
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1 for 31 years, been a diabetic all of my life.

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

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

7 Q. So you are fine right now?

8 A. Oh, yeah.

9 Q. Okay.

10 A. Fine, no problem.

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

12 believe, and --

13 A. Worked as a ranch manager for Roma

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

15 worked for Pep Boys Automotive, also worked for Scotties

16 Mobile Home Service.

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

18 A. No.

19 Q. What are you doing at this time?

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

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

22 the third leading cause of blindness.

23 Q. Okay.

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

25 going blind in my right eye.

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1 Q. Okay. So that --

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

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

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

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

6 that kind of stuff?

7 A. Yes, sir.

8 Q. Let me go directly then to how you

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

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

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

12 to explore everyone's personal feelings about the death

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

14 law?

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

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

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

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

19 Q. Okay. What types of crimes do you

20 think are appropriate for the death penalty?

21 A. Well, killing somebody.

22 Q. Any type of murder case?

23 A. Yes, sir.

24 Q. Okay. Have you ever been against the

25 death penalty?

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1 A. Nope.

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

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

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

5 sometimes people are tried with long criminal histories;

6 and sometimes people are tried for the death penalty that
7 have no criminal history. Just can decide some of these
8 issues on the facts of the case alone.
9 We asked you this question: Do you
10 believe that there are some crimes which call for the
11 death penalty solely because of their facts and
12 circumstances, regardless of whether or not the guilty
13 person has committed prior violent acts?
14 And you said yes. And your answer
15 was, "If the facts and circumstances point, you did it,
16 oh, well, cancel Christmas."
17 A. That's right.
18 Q. That is how you feel about it?
19 A. Yes, sir.
20 Q. Okay. Just kind of let the cards fall
21 where they may, but you commit the crime, then you should
22 be punished for it?
23 A. That's right.
24 Q. Okay. In Texas, there are only
25 certain types of crimes that call out for the death
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1 penalty. First of all, it has to be a murder case. It
2 has to be a specific type of murder case.
3 You have to have murder plus something
4 else. You probably read about some of them; murder
5 during the course of a felony.
6 Go into a 7-Eleven and shoot the clerk
7 during a robbery, that could be a death penalty case.
8 Going into someone's house and
9 breaking into it, that could be a death penalty case, you
10 break in, commit a burglary; during a rape; during a
11 kidnapping; those are death penalty-type cases. Also,
12 murder of a police officer while he is on duty, or a
13 fireman on duty, or a prison guard on duty, mass murder,
14 or murdering someone for hire, that could be a death
15 penalty situation.
16 Let me let you look at the indictment
17 in this case, which I think is in front of you. Do you
18 see that piece of paper there, with the paragraph set
19 out? Read that to yourself real quick.
20 That sets out allegations of
21 intentional killing of a child under the age of six. I
22 can't ask you for your verdict in this case, but is that
23 the type of case you think should call out for the death
24 penalty under the proper facts and circumstances?
25 A. Yeah.
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1 Q. Okay. Just depending on the facts and
2 circumstances?

3 A. Yes, sir.

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

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

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

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

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

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

2 A. Frame of mind.

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

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

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

9 A. Yeah.

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

14 A. Okay.

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

19 A. It could happen.

20 Q. Okay. What about "criminal acts of

21 violence," what does that mean to you?

22 A. Going out and killing somebody,

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

24 Q. Okay. All types of felony offenses?

25 A. Yes.

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1 Q. Okay. Let me go to this second

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

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

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

5 legislature did that.

6 A. Okay.

7 Q. "Taking into consideration all of the

8 evidence, including the circumstances of the offense, the

9 defendant's character and background, and personal moral

10 culpability of the defendant, is there a sufficient

11 mitigating circumstance or circumstances to warrant that

12 a sentence of life imprisonment rather than a death

13 sentence be imposed?"

14 See where that question there -- it's

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

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

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

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

19 background here that they should get a life sentence

20 rather than a death sentence."

21 Your mind has to be open to that type

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

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

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

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

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1 danger?

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

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

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

5 Q. Okay.

6 A. Nope.

7 Q. All right. If you found someone

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

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

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

11 life should ever be spared?

12 A. No.

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

14 why you feel that way?

15 A. Yep.

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

21 A. Yes.

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

2 A. That's right.

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

8 A. Okay.

9 Q. If you answer them any other way, a
10 "no" to that first question, or a "yes" answer to the
11 second one, he will give a life sentence. And that last
12 question is a way out for the jurors to look at the
13 evidence, and if they think even though the person is
14 guilty of capital murder, or even though they are a
15 continuing danger, they might see something in the
16 defendant's background that they think a life sentence
17 should be appropriate.
18 You are telling me that because of the
19 indictment, murder of a child under the age of six, that
20 you would always answer that first question "yes," they
21 would be a continuing danger? And you are not going to
22 answer that question in a way that they are going to get
23 a life sentence?

24 A. Nope.

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

2 A. That's right.

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

4 Then your mind is not open to that last question?
5 Because you don't think anyone's life should be spared
6 for that type of offense; is that what you're telling us?

7 A. Yes, sir.

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

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

12 A. Go ahead.

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

15 A. Sure, go ahead.

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

20 A. Right.

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

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

3 Mitigation could be anything.

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

7 Okay?

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

10 A. Okay.

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

15 A. Yes, sir.

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

18 A. No.

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

21 A. That's right.

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

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

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

9 A. That's right.

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

14 A. That's right.

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

18 A. That's right.

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

23 A. Yes, sir.

24 Q. Okay.

25

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

2 submit the juror.

3 MR. RICHARD C. MOSTY: No objection.

4 THE COURT: Thank you for coming, sir.

5 Your services will no longer be needed. We do have a gag
6 order in effect, please do not discuss the case with
7 anybody. I can impose monetary sanctions or jail time.

8 I'm not threatening you. At any rate, when the trial is
9 over, later part of January, first part of February, you
10 may talk to anybody as you see fit. Good luck to you.

11 THE PROSPECTIVE JUROR: Yes, sir.

12 Thank you, sir.

13 THE COURT: Okay.

14

15 (Whereupon, a short

16 Recess was taken,

17 After which time,

18 The proceedings were

19 Resumed on the record,

20 In the presence and

21 Hearing of the defendant,

22 As follows:)

23

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

25 on the record. This is after the lunch recess, I thought
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1 that we had agreed that we could call some of these
2 people out of order.
3 Ms. Schilling, come on up here please,
4 ma'am. Would you have a seat right up there, please.
5 You are Ella, E-L-L-A, Schilling, S-C-H-I-L-L-I-N-G; is
6 that correct?
7 THE PROSPECTIVE JUROR: Yes, sir.
8 THE COURT: If you will raise your
9 right hand, please.
10 Do you solemnly swear or affirm that
11 you will true answers make to all questions propounded to
12 you concerning your qualifications as a juror, so help
13 you God?
14
15 (Whereupon, the prospective
16 juror was duly sworn by the
17 Court to true answers make
18 to the questions propounded,
19 concerning qualifications, after
20 which time, the proceedings were
21 resumed as follows:)
22
23 THE PROSPECTIVE JUROR: I do.
24 THE COURT: Thank you, ma'am. You are
25 a prospective juror in the Darlie Routier matter. Mrs.
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1 Routier is sitting right there to your right between her
2 attorneys, Mr. Richard Mosty and Curtis Glover. Mr.
3 Mosty is from Kerrville and Mr. Glover is from Dallas.
4 Also, Mr. Preston Douglass from Kerrville is here also.
5 The State is being represented today
6 by two Assistant District Attorneys from Dallas County,
7 Toby Shook and Sherri Wallace.
8 They are going to ask you some
9 questions now, there are no wrong answers down here. If
10 you will listen to the question and answer it briefly,
11 right to the point. If you could say yes or no all the
12 time instead of uh-huh or huh-uh sometimes, so Ms. Halsey
13 can take it all down. Okay?
14 Go ahead, please. Mr. Shook.
15
16
17 Whereupon,
18

19 ELLA WILLIAMS SCHILLING,

20

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

25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. TOBY L. SHOOK:

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

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

8 A. Yes.

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

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

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

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

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

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

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

25 A. Yes.

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1 Q. What opinion have you formed?

2 A. I think she is guilty.

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

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

8 A. Yes, I do.

9

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

12 THE COURT: All right. And you could

13 not put that aside, I assume?
14 THE PROSPECTIVE JUROR: No, I could
15 not.
16 THE COURT: Okay. Thank you for
17 coming, ma'am, we appreciate it. This was a very brief
18 appearance, but nonetheless, it was necessary on your
19 part. Please do not discuss the case yet, it's not over,
20 like what went on down here or anything. In the first
21 part of February it will be over, then you will be able
22 to talk or not talk, as you see fit.
23 THE PROSPECTIVE JUROR: Okay.
24 THE COURT: Thanks a bunch.
25 THE PROSPECTIVE JUROR: Okay.
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1 THE COURT: You bet.
2 The defense motion for cause is
3 granted, obviously.
4 MR. RICHARD C. MOSTY: Preston is
5 really earning his pay today, isn't he, Judge?
6 MR. S. PRESTON DOUGLASS, JR: Aren't
7 you glad I'm back, Judge?
8 THE COURT: He is knocking them dead,
9 I sure am.
10 MR. RICHARD C. MOSTY: I'll take the
11 next one.
12 THE COURT: All right. We're ready.
13 Your name, sir?
14 THE PROSPECTIVE JUROR: Jesus Romero.
15 THE COURT: All right. You speak
16 Spanish, do you speak English?
17 THE PROSPECTIVE JUROR: A little bit.
18 THE COURT: Are you able to speak
19 English, or do you need a Spanish interpreter?
20 THE PROSPECTIVE JUROR: Well, I can
21 speak English.
22 THE COURT: You can speak English.
23 All right. If you will just have a seat, please. If you
24 will raise your right hand.
25 Do you solemnly swear or affirm that
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1 you will true answers make to all questions propounded to
2 you concerning your qualifications as a juror, so help
3 you God?
4
5 (Whereupon, the prospective
6 juror was duly sworn by the

7 Court to true answers make
8 to the questions propounded,
9 concerning qualifications, after
10 which time, the proceedings were
11 resumed as follows:)
12
13 THE PROSPECTIVE JUROR: I do.
14 THE COURT: All right. Your name,
15 sir?
16 THE PROSPECTIVE JUROR: Jesus Romero.
17 THE COURT: Jesus Romero. That is
18 number 58 on our list, and 166 on the jury list.
19 Mr. Romero, you speak both Spanish and
20 English; is that correct?
21 THE PROSPECTIVE JUROR: Well, I speak
22 English some.
23 THE COURT: You don't need a Spanish
24 interpreter for these proceedings?
25 THE PROSPECTIVE JUROR: Well, if it's
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1 problem pronounce the words.
2 THE COURT: Well, if you don't
3 understand anything, just say you don't understand it,
4 and we'll get along. But obviously, you are able to
5 speak English; is that correct?
6 THE PROSPECTIVE JUROR: Yes.
7 THE COURT: Okay. And you have been
8 in this country how long?
9 THE PROSPECTIVE JUROR: About 14
10 years.
11 THE COURT: Okay. Are you here on a
12 green card?
13 THE PROSPECTIVE JUROR: No, I am
14 citizen.
15 THE COURT: You're a citizen?
16 THE PROSPECTIVE JUROR: Yes.
17 THE COURT: Well, okay, back then --
18 when were you naturalized?
19 THE PROSPECTIVE JUROR: Last year, May
20 25th.
21 THE COURT: Okay. Well, I think you
22 can probably speak enough English.
23 All right. What is going to happen
24 here today is that you are here as a prospective juror in
25 the Darlie Routier matter.
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1 This is Mrs. Routier sitting here, she
2 is the defendant in today's case. She is between Mr.
3 Richard Mosty, her Kerrville attorney, and Mr. Curtis
4 Glover, one of her attorneys from Dallas. This is also
5 Preston Douglass, who is from Kerrville.
6 The State today is represented by Mr.
7 Toby Shook and Ms. Sherri Wallace, they are Assistant
8 District Attorneys from Dallas.
9 Now, both sides are going to ask you
10 some questions, there are no wrong answers. So just
11 listen to what the question is and answer them straight,
12 just like you feel. Okay?
13 THE PROSPECTIVE JUROR: Okay.
14 THE COURT: All right. Go ahead.
15 BY MR. TOBY L. SHOOK: Thank you,
16 Judge.
17
18 Whereupon,
19
20 JESUS OLIVARES ROMERO,
21
22 was called as a prospective juror, for the purpose of
23 voir dire, having been first duly sworn by the Court to
24 speak the truth, the whole truth, and nothing but the
25 true, testified in open court, as follows:
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1
2 VOIR DIRE EXAMINATION
3
4 BY MR. TOBY L. SHOOK:
5 Q. Mr. Romero, again, my name is Toby
6 Shook and I am going to be asking you questions on behalf
7 of the State.
8 A. Okay.
9 Q. If at any time you don't understand a
10 question, feel free to, you know, have me re-explain it,
11 or if you have any questions at any time, just jump in at
12 any time. Okay?
13 A. Okay.
14 Q. We question every juror one at a time,
15 and we don't mean to make you feel uncomfortable or put
16 you on trial or anything like that.
17 A. Okay.
18 Q. The law requires us to talk to each
19 juror individually. Okay?
20 A. Okay.
21 Q. Okay. Has your situation changed at
22 all since the two weeks when you filled out the

23 questionnaire?

24 A. No, sir.

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

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1 A. Camp Stewart.

2 Q. You do maintenance there?

3 A. Yes, sir.

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

5 every juror about how they feel about the death penalty,

6 and let me just preface my questions like this: There is

7 no right or wrong answers. Okay? We just want your

8 honest answers on this. Are you in favor of the death

9 penalty as a law?

10 A. No, I am not.

11 Q. Okay. Tell me why.

12 A. Well, death penalty would never solve

13 the problem, that is my beliefs.

14 Q. Does not solve the problem at all?

15 A. No.

16 Q. Taking someone's life for a crime they

17 committed, that --

18 A. Well, that is like, it's like if they

19 have -- how do you put it, a lots of murder, probably so,

20 because they are a danger to the public.

21

22 THE COURT REPORTER: Judge, I can't

23 understand what he is saying.

24 THE COURT: He said if they have a lot

25 of murders, maybe so, because they are a danger to the

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1 public.

2 THE COURT REPORTER: Thank you, Judge.

3

4 BY MR. TOBY L. SHOOK:

5 Q. Okay. But, personally, you are not in

6 favor of the death penalty?

7 A. No, I am not.

8 Q. Okay. Mr. Romero, we can't get into

9 the facts of the case. You know, we can't talk to you

10 about what we think we're going to prove or anything like

11 that.

12 That is why we have to talk through

13 examples or hypothetical situations or just how you feel

14 about the death penalty. Okay?

15 A. Uh-huh. (Witness nodding head

16 affirmatively.)

17 Q. But have you ever been for the death
18 penalty, or have you always been against it?
19 A. Well, I am against it.
20 Q. Is it a religious belief?
21 A. Well, yeah, I think.
22 Q. Okay. Or just a personal objection?
23 A. Well, the personal and religion, too.
24 Q. Personal and religious?
25 A. Yes.
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1 Q. Okay. Well, let me ask you this, Mr.
2 Room: You know, when we call jurors down, like we did
3 you, we call them down and they don't know what type of
4 case they are coming down for.
5 You know, it could have been any type
6 of case. It could have been a DWI, it could be a
7 burglary case, or it could be a civil case, maybe a
8 divorce or child custody, something like that. It just
9 kind of happens on what day you get called down on.
10 Now, you know from what Judge Tolle
11 has told you that we are attempting to put on a case,
12 present an indictment to the jury that will ultimately
13 find this defendant guilty. We are pursuing the death
14 penalty.
15 You realize that, don't you?
16 A. Yes, I know.
17 Q. Let me ask you this: You know
18 yourself pretty well, Mr. Romero, don't you?
19 A. Well --
20 Q. You know how you feel about things,
21 don't you?
22 A. Yes.
23 Q. Are you the kind of person that could
24 sit on a jury like this and make these decisions or
25 because of the way you feel, how you are against the
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1 death penalty, is this not your type of case?
2 A. Well, I guess the way I feel.
3
4 THE COURT: Well, that was not the
5 question. Listen to the question carefully.
6
7 BY MR. TOBY L. SHOOK:
8 Q. Because of the way you feel, would you
9 be unable to make these types of decisions?
10 A. Repeat it again.

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

14 A. Yes.

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

17 A. Well, more or less.

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

20 A. Yes.

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

23 A. You mean those questions there?

24 Q. Yes.

25 A. Yes.

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

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

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

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

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

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

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

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

2 A. Yes.

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

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

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

11 A. Well, yes.

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

14 A. Yes.

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

24 A. Yes.

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

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

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

11 A. Yes.

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

14 A. Yes.

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

18 A. Yes.

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

21 A. Some.

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

24 A. With lethal injection.

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

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

5 Q. Huntsville, Texas.

6 A. Yes, Huntsville.

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

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

18 It has happened over a hundred times.

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

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

24 Right?

25 A. Yes, I am.

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

3 A. Yes.

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

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

13 Q. Right.

14 A. Well --

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

17 A. Yes.

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

20 A. Uh-huh. (Witness nodding head
21 affirmatively.)
22 Q. But you are saying, if you found her
23 guilty -- I mean, I can't go into the fact situation. I
24 am just trying to get a good read on you on if your
25 objections are strong enough where you don't think you
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1 could take part in this type of decision.
2 Or they're not so strong, and you
3 think you could make these decisions. That is where I am
4 coming from.
5 Some people are strongly opposed to
6 the death penalty and they have a good religious or moral
7 conviction against it. And, you know, that is not going
8 to leave them.
9 They couldn't make a decision that
10 they know would cause a person to die someday. Other
11 people can make those decisions, it doesn't matter to us,
12 but that is what I am trying to get from you. You have
13 told me you are opposed to the death penalty, personally,
14 I want to know if you could sit on this jury and make
15 those decisions or not?

16 A. Yes, I could.

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

19 A. Yes.

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

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

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

5 A. Yes, I would follow that law.

6

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

9

10 BY MR. TOBY L. SHOOK:

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

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

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

19 Q. And you agree with that?

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

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

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

2 A. Yes.

3 Q. Okay. The defense is not obligated to

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

10 A. Yes.

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

19 And like I said, it doesn't matter one
20 way or the other. The law says you can't consider that.
21 Some people can follow that law, and some people can't.
22 You have said on here that: You feel that a person
23 accused of capital murder should have to prove her
24 innocence.

25 A. Yes.

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1 Q. Is that still how you feel?

2 A. Yes.

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

5 A. Yes.

6 Q. Okay. And if the Judge instructed you

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

9 A. Yes.

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

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

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

16 A. Yes.

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

19 A. Yes.

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

22 A. No.

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

25 A. Yes.

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

3 A. The defendant?

4 Q. Right.

5 A. The defendant is the person who --

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

8 A. Yes, I think so.

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

11 A. Yes, I would.

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

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

20 Some people can follow the law, and
21 some people can't.

22 How do you feel about that, Mr.

23 Romero?

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

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1
2 THE COURT: Well, here is the rule.
3 THE PROSPECTIVE JUROR: Yes.
4 THE COURT: Under the Fifth Amendment
5 to the Constitution of the United States, a defendant has
6 the right not to testify.
7 THE PROSPECTIVE JUROR: Oh, not to
8 testify.
9 THE COURT: If she wants to testify,
10 no one can stop her. If she does not want to testify, no
11 one can make her. If she testifies, she is to be
12 considered like any other witness.
13 What does her testimony sound like?
14 Does it look like she's telling the truth or not? What
15 does she have to gain or lose by the way she is
16 testifying?
17 If she elects not to testify, you
18 can't hold that against her for any reason whatsoever.
19 Do you understand that?
20 THE PROSPECTIVE JUROR: Yes.
21 THE COURT: That is not just her
22 right, that is all of our rights, your right, my right,
23 his right, her right, his right, if we're ever sitting
24 where Mrs. Routier is now.
25 Some people still feel, "Well, I don't
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1 care what the law is, I still want her to testify, and I
2 would require her," wanting her and requiring her are two
3 different things. Now, if you would require her to
4 testify, we have to know it.
5 THE PROSPECTIVE JUROR: Yes.
6 THE COURT: You would require her to
7 testify?
8 THE PROSPECTIVE JUROR: Yes.
9 THE COURT: And, you would -- if she
10 does not testify, you would hold that against her. Is
11 that what you are saying?
12 THE PROSPECTIVE JUROR: Yes.
13 THE COURT: All right.
14 MR. TOBY L. SHOOK: Judge, then we
15 would submit the juror.
16 MR. CURTIS GLOVER: Yes, sir.
17 THE COURT: Everybody agreed?
18 MR. CURTIS GLOVER: Yes, sir.
19 THE COURT: All right. Thank you very
20 much.

21 Does the defense want to move for
22 cause?
23 MR. TOBY L. SHOOK: The State would
24 submit the juror, Judge.
25 THE COURT: Any objection from the
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1 defense?
2 MR. S. PRESTON DOUGLASS, JR: No, sir.
3 THE COURT: None.
4 MR. S. PRESTON DOUGLASS, JR: None,
5 Your Honor.
6 THE COURT: Thank you. All right.
7 Thank you very much for coming, sir, we appreciate your
8 time and attention.
9 Please do not discuss this case with
10 anyone now, because it isn't over yet. In February, you
11 will be able to discuss it, we will probably be through
12 then, with anyone you want to, but not until then.
13 Anybody else? Thank you.
14
15 (Whereupon, a short
16 Recess was taken,
17 After which time,
18 The proceedings were
19 Resumed on the record,
20 In the presence and
21 Hearing of the defendant,
22 As follows:)
23
24 THE COURT: All right. This is juror
25 number 73 on our list, 213 on the juror list. This is
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1 Mr. Lardie. Would you raise your right hand, please.
2 Do you solemnly swear or affirm that
3 you will true answers make to all questions propounded to
4 you concerning your qualifications as a juror, so help
5 you God?
6
7 (Whereupon, the prospective
8 juror was duly sworn by the
9 Court to true answers make
10 to the questions propounded,
11 concerning qualifications, after
12 which time, the proceedings were
13 resumed as follows:)
14

15 THE PROSPECTIVE JUROR: I do.
16 THE COURT: Sir, you are here as a
17 potential juror in the Darlie Routier matter. Mrs.
18 Routier is the defendant. She is sitting right there in
19 front of you between her attorneys, Mr. Richard Mosty,
20 and Mr. Curtis Glover.
21 Mr. Glover is from Dallas, Mr. Mosty
22 is from Kerrville. And she is also represented by Mr.
23 Preston Douglass from Kerrville.
24 The State is represented by Mr. Toby
25 Shook and Ms. Sherri Wallace, they are Assistant District
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1 Attorneys from Dallas. You are going to be asked some
2 questions concerning your qualifications to be a juror,
3 there are no wrong answers. Listen to them and answer
4 them as succinctly as you can. Okay? Let's go right to
5 the point.

6 All right. Mr. Shook.

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

9

10 Whereupon,

11

12 LAWRENCE VINCENT LARDIE,

13

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

18

19 VOIR DIRE EXAMINATION

20

21 BY MR. TOBY L. SHOOK:

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

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

5 A. Yes.

6 Q. I have dealt with Jehovah's Witnesses

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

9 made it pretty clear here, that as a cornerstone of your
10 religion, one of your doctrines is that you cannot sit in
11 judgment of another human being; is that right?
12 A. That's correct.
13 Q. And is that a religious conviction
14 that you yourself believe strongly in?
15 A. Yes, it is.
16 Q. You can't even find someone guilty of
17 a criminal offense because you cannot pass judgment on
18 them yourself; is that right?
19 A. That's right, that's correct.
20 Q. Something you have believed in a long,
21 long time?
22 A. All my life, really.
23 Q. Were you raised in that particular
24 denomination?
25 A. Yes.
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1
2 MR. TOBY L. SHOOK: Okay. We would
3 agree on this juror, Judge.
4 THE COURT: All right. Thank you for
5 coming, sir, we appreciate it.
6 MR. TOBY L. SHOOK: Judge, for the
7 record, we would submit the juror.
8 THE COURT: All right. State's motion
9 for cause is granted. Thank you, sir.
10 MR. S. PRESTON DOUGLASS, JR: No
11 objection, Your Honor.
12 THE COURT: All right. And you are
13 Barbara Jo Murray, M-U-R-R-A-Y.
14 THE PROSPECTIVE JUROR: Yes, sir, I
15 am.
16 THE COURT: Please raise your right
17 hand, please, ma'am.
18 Do you solemnly swear or affirm that
19 you will true answers make to all questions propounded to
20 you concerning your qualifications as a juror, so help
21 you God?
22
23 (Whereupon, the prospective
24 juror was duly sworn by the
25 Court to true answers make
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1 to the questions propounded,
2 concerning qualifications, after

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

5

6 THE PROSPECTIVE JUROR: I will.

7 THE COURT: All right. Ma'am, you

8 have been called here today to be a potential juror in
9 the Darlie Routier matter. Mrs. Routier is sitting right
10 over here in the jacket, between her attorneys, Mr.

11 Richard Mosty, who is from Kerrville. I am sure you know
12 him. And her other attorney from Kerrville is Preston
13 Douglass, you know him, and this is Mr. Curtis Glover, he
14 is from Dallas.

15 The State is represented today by two

16 Dallas County District Attorneys, Toby Shook and Sherri
17 Wallace.

18 And they are going to ask you some

19 questions, ma'am, there are no right or wrong answers.

20 You won't be given a test. So, if you will answer them

21 right to the point, we would be most appreciative.

22 All right, Mr. Shook.

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

24

25

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1 Whereupon,

2

3 BARBARA JO MURRAY,

4

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

9

10 VOIR DIRE EXAMINATION

11

12 BY MR. TOBY L. SHOOK:

13 Q. Ms. Murray, my name is Toby Shook. As

14 the Judge told you, I am one of the prosecutors on the

15 case and I will be asking you questions on behalf of the

16 State.

17 And what I want to do is go over a few

18 things that are here in your questionnaire, and then, get

19 some of your personal feelings about the death penalty

20 and some of the law as it applies to this case. Okay?

21 A. Okay.

22 Q. As he said, there aren't any right or

23 wrong answers, we are just looking for your honest

24 opinions. Have you ever been down on jury service

25 before?
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1 A. No.
2 Q. Okay. Usually we talk to everyone in
3 one big group, but since it is a death penalty case the
4 law prescribes that we talk to each juror individually.
5 And you have given us a lot of information here. It
6 looks like you were born in Germany?
7 A. Yes, I was.
8 Q. Your father was in the military?
9 A. Yes.
10 Q. What branch was he in?
11 A. Army intelligence.
12 Q. Okay. And then you came back here and
13 been to several schools, UT and Northwestern.
14 A. Yes. And Centenary.
15 Q. And are now teaching English here in
16 Kerrville, and debate and speech?
17 A. Right.
18 Q. As I understand it, also you sponsored
19 the mock trial team?
20 A. Right.
21 Q. Is that right? And you know Mr. Mosty
22 and Mr. Douglass?
23 A. Yes, I do.
24 Q. Okay. And how do you know them?
25 A. I know Mr. Douglass because he has
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1 worked with the mock trial students in the courtroom. I
2 sponsor, but they actually are the ones that -- I sort of
3 sit on the side.
4 Q. Okay. And I believe you put in the
5 questionnaire that you taught Mr. Mosty's children?
6 A. Yes, both of his children.
7 Q. Okay. Do you teach his daughter now?
8 A. No.
9 Q. Okay. Do you teach a particular grade
10 in English?
11 A. I teach AP English 3, those are
12 juniors.
13 Q. Okay.
14 A. And I piloted a program last year in
15 SAT and ACT preparation. I don't teach that now.
16 I piloted it and it was successful
17 so -- and it was taken over by a couple of teachers in
18 the department.

19 Q. Okay. Anything about knowing Mr.
20 Mosty or Mr. Douglass that would affect you one way as a
21 juror?
22 A. I don't think so.
23 Q. Okay. Obviously, in a smaller town,
24 some of the jurors are almost always going to know the
25 local attorneys.
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1 A. Uh-huh. (Witness nodding head
2 affirmatively.) Right.
3 Q. We just want to make sure of the fact
4 that you can listen to the case and judge the case on its
5 facts, and not weigh particularly one side or the other.
6 Because you know them obviously, you might after
7 listening to the facts and listening to one of the
8 lawyers argue, you might go one way with them because of
9 the fact -- you can't do it on personalities, you have to
10 do it on the facts.
11 Do you feel you could do that?
12 A. Well, you just want sort of an
13 extemporized answer. First of all, both of these
14 gentlemen are very fine individuals in our community, and
15 I don't know them personally. I do know them
16 professionally, in the sense of mock trial and things
17 like that. I don't think they can change any of the
18 facts of the case any more than you can.
19 Q. Right, and that is my point. It's the
20 facts that the jury will ultimately judge and not -- it
21 is not a personality contest or anything like that.
22 A. Right.
23 Q. Okay. Let me then get into how you
24 feel about the death penalty. You obviously know the
25 State is actively seeking the death penalty in this case.
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1 We can't get into the facts of the case. I think you
2 have read just a little bit, but not much, about the
3 facts; is that right?
4 A. I read an article in the Kerrville
5 Times about the jury selection.
6 Q. Okay. Did it just talk about moving
7 the case here? Did it go into the facts at all?
8 A. No. This was after I had been
9 notified that I was going to be a juror and it came out
10 in the paper where I was supposed to report.
11 Q. Okay.

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

14 Q. All right.

15

16 THE COURT: Everything here is secret,

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

18 THE PROSPECTIVE JUROR: Okay.

19 THE COURT: It will not be published.

20 THE PROSPECTIVE JUROR: I don't read

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

22 do extemporaneous speeches about Bosnia and Herzegovina,

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

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

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

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1 Q. Right. Let me get into then your

2 personal opinions about the death penalty. You have

3 been -- gave us some very good insights here, where we

4 had this small space for you to explain how you feel

5 about the death penalty. But I just wanted to let you do

6 it verbally now. You checked off the chart, you favor

7 the death penalty as a law. And I would like for you to

8 explain to me why, and what purpose you feel the death

9 penalty serves.

10 A. I was raised in Europe, Germany, and

11 it was postwar. And, so, one of the things my father

12 wanted to be sure that all of his children understood was

13 what man could do to other people. And, so, he took us

14 to Dachau and Treblinka; and so, when you go through

15 something like that, you become very aware that most

16 people are very, very good, and some people are not. And

17 that there really is no way of making up for some of

18 those things. I don't want to get corny here.

19

20 THE COURT: Well, that's fine. Go

21 ahead.

22 THE PROSPECTIVE JUROR: I read a lot

23 of philosophy and Immanuel Kant is a philosopher who

24 basically said, our own actions set how people respond,

25 have the right to respond.

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1 So, it is sort of like your own

2 actions is the maximum of the rule. If someone, in fact,

3 commits a murder, we really don't have a whole lot of --

4 if we believe in autonomy, we don't have a lot of option

5 in return.

6

7 BY MR. TOBY L. SHOOK:

8 Q. And you circled, also -- that we have
9 different categories. The one you circled was number 2
10 which is the category that most people circle. That is:
11 I believe that the death penalty is appropriate in some
12 capital murder cases. And I could return a verdict that
13 would result in death in the proper case. Not every
14 case, but in some case under the proper circumstances.
15 And I take it you still feel that way?

16 A. Yes.

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

19 A. The law went out when I was nine years
20 old. I was on the east side, I was taken to the west
21 side in the middle of the night, I guess, so when people
22 jumped over walls and died doing so and I think that is
23 when I decided that some things have to -- that society,
24 if it's going to stay sound, is going to have to make a
25 decision.

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1 When I said, in some cases, I think
2 that there are sometimes mitigating circumstances, and
3 those mitigating circumstances could be a wide variety of
4 things. But if a person is cognizant of their acts, and
5 know what they are doing, they intend to do it, and it is
6 beyond the pale, then they fall under capital -- that is
7 a capital crime.

8 Q. Okay. Let me -- I want to give you a
9 couple of explanations and then go into a couple of other
10 questions. The way a capital murder trial works, as far
11 as procedure-wise, is this: It is divided into two
12 portions; the guilt/innocence stage is the first portion,
13 and we have to prove beyond a reasonable doubt the
14 indictment.

15 And let me let you read that very
16 quickly. It is right there in front of you, I think.

17 The typed portion is --

18

19 THE COURT: In the middle of the page.

20 MR. TOBY L. SHOOK: Yes, in the middle
21 of the page.

22

23 BY MR. TOBY L. SHOOK:

24 Q. Those are the allegations we have to
25 prove in the guilt/innocence stage. If we don't do that,
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1 obviously, we all go home, it's a not guilty. If we do
2 do that, we move to the second portion of the trial.
3 In the second portion of the trial,
4 you may hear additional evidence. You can hear evidence
5 regarding a person's background, good and bad. It may be
6 a long hearing, it may be short. It just depends on each
7 case, and I can't get into any of the facts, obviously,
8 of this particular case. So, we are going to be talking
9 in hypotheticals.

10 But at the close of that evidence, the
11 jury does get these questions. And I want to go over
12 those, and I will go in more detail in a moment. But to
13 summarize: Question number 1 is the question the State
14 has to prove beyond a reasonable doubt. And, basically,
15 what it says is: We have to prove that the defendant
16 would be a continuing danger to society.
17 Now, if we do prove that, using all of
18 the evidence, and the jury gives us a "yes" answer, you
19 move to this second question. If you will take a moment
20 just to read that.

21 A. Okay.

22 Q. That is the mitigation question. It
23 kind of covers what you have already brought up, that
24 there could be mitigating circumstances. It's a question
25 that allows the jurors to look at all of the evidence and
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1 if they think there is sufficient mitigating evidence,
2 they could answer the question "yes," in which case, the
3 defendant would get a life sentence. Now, if that
4 question is answered "no," it's a death sentence. But
5 there are only two possible outcomes, once the person has
6 been found guilty of capital murder. The death sentence
7 or a life sentence, and that is determined by how the
8 jurors answer those question.

9 And you probably know from reading the
10 paper that in Texas the method of execution is by lethal
11 injection. Were you aware of that?

12 A. Actually, I was not.

13 Q. Okay. It used to be by electrocution,
14 now it is by lethal injection. The procedures are the
15 same in every case on the execution date, which happens
16 somewhere down the line, there is obviously an execution
17 chamber where witnesses are prescribed to be there by law
18 with the warden present. And it's a procedure where the
19 person is strapped down, and needles placed in the arm,
20 and poisons are injected which stop the heart and lungs.

21 It's happened in Texas over a hundred
22 times. There are some states where we have the death
23 penalty statute and it's never invoked. In Texas, it has
24 been invoked more than any other state. And my point is
25 this: It is one thing to talk about the death penalty
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1 philosophically, you know, I agree with it or I don't
2 agree with it, whatever. But it's quite another thing to
3 say, "Well, I know what I believe."
4 Now, we need to decide if you are able
5 to sit and listen to the evidence and make these
6 decisions. Actually knowing that if you did answer "yes"
7 and "no" to these questions, the defendant would be
8 executed someday. We're not down here looking for
9 volunteers. If someone came down here volunteering, I
10 think we would all be pretty afraid to put that person on
11 the jury.
12 But we get all kinds of folks down
13 here. What I need to know is you have told me
14 philosophically some cases do call for the death penalty.
15 And I want to know if you could listen to the evidence,
16 and if we did prove these things to you, you could answer
17 it "yes" and "no"; knowing it would result in an
18 execution?
19 A. Nobody wants to do that.
20 Q. Right. But if you were placed on the
21 jury, do you think you would have the strength to do
22 that, if it was proven to you?
23 A. Yes, I would.
24 Q. Okay. I know you have never been put
25 in that position. But as best you know yourself, you
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1 feel you could do that if it was proven to you?
2 A. Uh-huh. (Witness nodding head
3 affirmatively.)
4 Q. Fair enough. I want to get into a
5 couple of other issues that come up in criminal trials,
6 well, in all trials. And I believe you have even been to
7 law school for at least one year; is that right?
8 A. Yes.
9 Q. These are all going to be familiar to
10 you then.
11 A. Well, I don't know, it's been a long
12 time.
13 Q. Well, they are even familiar to folks
14 who just watch -- if you had watched Perry Mason at all.

15 Circumstantial evidence is one issue that comes up. You
16 have heard that term time and time again?

17 A. Yes.

18 Q. When we put on evidence, it's either

19 direct evidence or indirect evidence, what we call it.

20 An eyewitness to a crime is direct evidence. Any other

21 type of evidence is indirect evidence or circumstantial

22 evidence. It's anything that can link the defendant to

23 the crime, anything we can use to prove our case. It can

24 be: Fingerprints, DNA evidence, scientific evidence,

25 blood spattering, the crime scene itself, statements made

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1 by the defendant, anything that we can use to link the

2 defendant to the case.

3 My point of it is this: The law says

4 that there is no difference between the two. Our burden

5 of proof is the same, we have to prove the case beyond a

6 reasonable doubt, whether we have an eyewitness or we use

7 circumstantial evidence. We still have to reach that

8 particular hurdle, but one is not thought of to be a

9 greater weight than the other by the law. Ultimately, of

10 course, once it comes out in the courtroom, you will

11 judge its credibility.

12 I need to know if you could sit and

13 listen on a capital murder case and find someone guilty

14 of capital murder, based solely on circumstantial

15 evidence, if it was proven to you beyond a reasonable

16 doubt?

17 A. I mean, if it's proven beyond a

18 reasonable doubt, that is a pretty serious burden you are

19 carrying.

20

21 THE COURT: All of these questions

22 will assume that you believe the evidence in all that,

23 ma'am.

24

25

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1 BY MR. TOBY L. SHOOK:

2 Q. What we do, and I asked this question

3 earlier, it's just to make sure no one has a bias against

4 circumstantial evidence. Some people do. We come across

5 a person once in a while that would require an

6 eyewitness, even though, obviously, in a murder case, you

7 don't have an eyewitness. You just have the person

8 killed and the killer. But you would be able to that if

9 it was proven to you beyond a reasonable doubt?

10 A. Yes.

11 Q. Okay. Another point I want to bring

12 up is motive. Everyone has heard of motive, the reason

13 why a crime occurs. And many times when you put on a

14 case, the motive comes out. It could be very clear,

15 other times, it may not be so clear.

16 Everyone might have their own opinion.

17 There could be two or three motives circling around out

18 there and you could have your own opinion of it, or it

19 might not be apparent to anyone.

20 It could be locked away in the

21 killer's mind. It could be what we call a senseless

22 killing, and no one can really make a whole lot of sense

23 of it, but the person is just as dead and the evidence is

24 still strong that they committed the act.

25 But in Texas the State is not required

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1 to prove motive to get a guilty verdict. You will see in

2 that indictment, obviously, it wasn't listed anywhere why

3 we think the crime occurred, only how, when and who was

4 killed, who did the killing.

5 We're not required to prove motive.

6 Could you follow that rule of law?

7 A. Where no particular motive is proven?

8 Q. Uh-huh. And like I said, I can't

9 preview the case. My point is this is: Some jurors

10 again would require us to prove motive before they could

11 even find someone guilty, but the law does not call for

12 that.

13 We only have to prove that the crime

14 occurred and who committed the crime.

15 A. So, your question is what now?

16 Q. The question would be could you follow

17 that rule of law and not require us to prove motive in

18 order to prove our case in guilt or innocence?

19 A. Yes.

20 Q. Okay. Now, and I'm sure that the

21 defense will talk to you about this. Lack of motive

22 sometimes might be worked in as reasonable doubt, you

23 know, depending on each case.

24 But just on the face of it, you can

25 understand why it might be hard for the State to prove

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1 motive. It's kind of hard to prove why a person commits

2 a certain crime sometimes.

3 A. Well, it's very much in like in
4 literature, intent.
5 Q. Right, everyone has their own
6 interpretation of it.
7 A. Right.
8 Q. Let me kind of go to these questions
9 now for a minute that we will get to in the punishment
10 stage.
11 First of all, like I said, you don't
12 get to them unless you have found the defendant guilty.
13 This first question, you start out
14 with a "no" answer. The State has to prove to you beyond
15 a reasonable doubt it should be answered "yes."
16 Just like you start out the trial with
17 the presumption of innocence. Okay?
18 And you can use the evidence of the
19 crime itself and then any background information you
20 might hear. You might hear about a long criminal record,
21 prison trips, things like that, other crimes, or it could
22 be a situation where a person has never committed a
23 criminal act in their life.
24 You could hear bad character evidence
25 or very good character evidence, but you use all that
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1 when you make this decision.
2 Again, I can't preview the facts, but
3 you might be faced with a situation where you only have
4 the crime itself, or the murder itself to look to on
5 deciding the answer to that question.
6 Do you think the facts of the crime
7 itself could give you enough information to answer that
8 question "yes," under the proper facts and circumstances?
9 A. Well, hypothetically, yes.
10 Q. Again, I can't preview any facts for
11 you, so it's kind of hard to answer that question. But
12 we do have jurors from time to time that say, "No, one
13 act itself could never tell me enough."
14 But other jurors tell us, "Well, it
15 just depends, the brutality involved, how the person
16 acted after the crime," those kinds of things. But your
17 mind is open to that fact situation, where if the facts
18 could prove that to you?
19 A. Well, I think so. It would kind of
20 depend on how I viewed or I perceived motive.
21 Q. Okay. Motive might become important
22 to you then?
23 A. At least in my head it would be.
24 Q. Okay. Now, in the guilt/innocence

25 stage, you will be given some definitions by the Judge,
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1 some legal definitions that you have to apply.
2 Interesting thing about this, on both these questions,
3 the words we use there, the definitions will be up to you
4 and the other jurors. He will provide you with no
5 guidance there.
6 So, I want to over a couple of the
7 words and see how they apply to you. And since you're an
8 English teacher, you should not have much of a problem.
9 We have to prove beyond a reasonable
10 doubt that there is a probability that the defendant
11 would commit criminal acts of violence. When you see the
12 word "probability" used in that context, what does that
13 mean to you?
14 A. More likely than not.
15 Q. Okay. That is the answer most people
16 give us. How about "criminal acts of violence"? What
17 kinds of acts do those conjure up in your mind?
18 A. Assault.
19 Q. Okay. It doesn't say, obviously, that
20 we have to prove murder again, just a criminal act of
21 violence. Does that seem like a fair question to you?
22 The way we worded it?
23 A. Yes.
24 Q. Okay. And society, when we say
25 "constitute a continuing threat to society," who do you
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1 think of in regards to "society"?
2 A. Well, everybody.
3 Q. Okay. Would that then include
4 everyone also in our prison systems; prisoners, guards,
5 administrators?
6 A. Everybody.
7 Q. Okay. If you do answer that question
8 "yes," you move to this last question: The mitigation
9 issue. That is the lengthy question that the legislature
10 has written. We didn't form that question. It gets kind
11 of confusing, but, again, the words we use in that
12 question, those definitions will be left up to you. We
13 can't tell you what mitigating evidence is.
14 In fact, you don't have to sit there
15 and think of what mitigating evidence might be. And you
16 don't even have to agree with the other jurors as to what
17 mitigating evidence is. What might be mitigating to one,
18 may not be mitigating to the other.

19 What you have to be able to do though
20 is listen to all the evidence, and even though you have
21 found someone guilty of capital murder, and you feel
22 they're a continuing danger, there still might be some
23 fact situation, something in their past or their
24 character which tells you that they deserve a life
25 sentence rather than a death sentence. Okay?
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1 It is kind of a way out, kind of a
2 safety valve or a safety net you might say. Other people
3 have described it as a way to stop the train at the last
4 minute. A person doesn't get off, they still have to
5 serve a life sentence, but it could be anything.
6 And, like I said, different people
7 think different things about mitigating evidence. We've
8 had people tell us, "Well, perhaps young age is
9 mitigating." And I'm not talking about like a ten year
10 old. But, you know, a young person who is an adult.
11 Some people view that as mitigating evidence and other
12 people say, "No, they are held just as accountable."
13 Does that cut one way or the other
14 with you; young age of the defendant?
15 A. No.
16 Q. Okay. Sometimes capital murders are
17 committed under the influence of drugs or alcohol. A
18 person goes out and gets drunk or high and commits a
19 capital murder.
20 In Texas, that is not a legal defense
21 at all, but some jurors view that as mitigating. Other
22 people take a harsh view to it, they think it's even
23 worse, more aggravating. Does it cut one way or the
24 other with you?
25 A. I don't know.
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1 Q. Okay.
2 A. I think I would have to have more
3 information than that.
4 Q. All right. You might hear a person
5 from a childhood that had physical or sexual abuse in
6 their past when they were growing up. Some people,
7 again, view that as possible mitigating evidence, other
8 people feel that is not mitigating at all. How does that
9 cut one way or the other with you?
10 A. Once again, I have to say I would have
11 to know more information than that.
12 Q. Okay. I take it from the answer you

13 gave me, even when you were describing your own feelings
14 about the death penalty though, that your mind is open to
15 this type of evidence?

16 A. Well, I would like to think I was
17 open-minded on a lot of things. I am going to have to go
18 back to, I guess, my definition of total responsibility.
19 I think we are responsible for our actions.
20 I think that there are things that
21 occur beyond our control that might, in fact, have some
22 factor in our reactions.
23 There are some circumstances though
24 that are beyond the pale. I'm just -- I don't think age
25 is a factor. I'm not even sure that age is a factor in a
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1 16 year old or an 18 year old. I think once you reach an
2 age of accountability, you are accountable. As far as
3 sexual abuse, there is a harm there, but I still think
4 that there is choice. And I think that that is where,
5 you know, how much degree of choice.

6 Q. Right. Again, that is where we're
7 kind of hampered, we obviously can't preview the facts
8 for you.

9 A. I understand.

10 Q. I probably should have started out
11 with this type of explanation: The reason this question
12 came into being, we used to not have this question until
13 several years ago. But there was a person convicted of
14 capital murder, knew right from wrong, but was
15 diagnosed -- well, he was, he was mentally retarded.
16 Okay?

17 He was born that way, no fault of his
18 own. Still dangerous, but mentally retarded. Some
19 people, obviously, view that as a mitigating circumstance
20 where a life sentence should be imposed rather than a
21 death sentence. And, it's again, it's a fact, it's a
22 case by case question.

23 A. Right.

24 Q. But it is a way out for the jurors to
25 view the evidence. And we just want to make sure you can
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1 keep your mind open to it and answer it "yes" or "no,"
2 depending on the facts.

3 One other important thing is, this
4 question, there is no burden of proof from either side.
5 You know, we have to prove that first question to you
6 beyond a reasonable doubt, the State does.

7 Here the State doesn't have to prove
8 it one way or the other, or there is not a burden,
9 obviously, we are going to try.
10 A. Right.
11 Q. And the defense is not obligated,
12 there is no burden for them to prove a "yes" answer.
13 It's something you could -- it might
14 be something neither lawyer brings up, something you see
15 in the case.
16 A. For clarification: In other words,
17 the jury gets to debate this within -- within the --
18 wherever they put juries. I have never done this before.
19 Q. Right.
20 A. And they get to debate whether or not
21 that is a "yes" or "no" answer.
22 Q. Right. All they have to do is, as far
23 as following the law is, they have to base it on some
24 evidence, you know?
25 A. Then it would have to depend on that
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1 evidence.
2 Q. Right.
3 A. I mean, that is my best answer.
4 Q. Okay. Fair enough.
5 The other area I want to get into
6 is -- well, I know that you have had some training in
7 this because it's the basic Constitution and Judge Tolle
8 has gone over that: Presumption of innocence.
9 A. Uh-huh. (Witness nodding head
10 affirmatively.)
11 Q. Every defendant starts out with that.
12 And you could do that, follow that rule of law?
13 A. Uh-huh. (Witness nodding head
14 affirmatively.)
15 Q. Fifth amendment: Everyone has a right
16 not to testify. If you want to testify, no one can stop
17 you.
18 A. Right.
19 Q. But if you choose not to, the Judge,
20 obviously, will instruct the jury that if a defendant
21 chooses not to testify, you can't use that as evidence.
22 You could follow that rule of law?
23 The burden of proof is on the State of
24 Texas. We have to prove that beyond a reasonable doubt
25 and that burden never leaves the table. If we don't
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1 reach our burden, then you could find the defendant not
2 guilty?

3 A. Right.

4 Q. That burden never shifts to the
5 defense. Obviously, they are not obligated to prove
6 anything to you. You can't require them to prove
7 anything to you.

8 They are very good lawyers, I am sure
9 they are going to try hard. But by way of example, if
10 they wanted to they could sit there and read English
11 books or work crossword puzzles while the trial is going
12 on.

13 A. I don't think they will do that.

14 Q. They won't do that. But they are not
15 obligated to prove anything to you, the burden never
16 leaves the State.

17 A. Okay.

18 Q. One other area I need to get into.

19 Oh, yes, the parole system. Sometimes we read about
20 parole, early release, people get angry about that. But
21 the Judge will instruct you that you can't consider
22 parole laws when you enter any of your deliberations.
23 Okay? You just have to base your verdicts on the
24 evidence.

25 A. Right.

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1 Q. You can follow that rule of law?

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

4

5 THE COURT: The reason for that,
6 ma'am, is that at this level, we don't control parole.

7 THE PROSPECTIVE JUROR: Right.

8 THE COURT: That is controlled by the
9 governor, the legislature, the Board of Pardons and
10 Paroles. Do you understand?

11 THE PROSPECTIVE JUROR: Right.

12 THE COURT: All right. Thank you.

13

14 BY MR. TOBY L. SHOOK:

15 Q. As Judge Tolle told you the
16 indictment, that you just read is no evidence of anyone's
17 guilt. The fact that someone has been indicted, it's
18 just a piece of paper.

19 A. Right.

20 Q. The fact that anyone has been
21 arrested, the fact that we are even going through this
22 process is not evidence. You have to wait for the

23 evidence to come out through the witnesses.
24 Obviously, in a criminal case you are
25 going to hear from police officers. The Judge will
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1 instruct you that all witnesses have to start out on the
2 same foot. Okay? You can't start a police officer ahead
3 of another witness, just because he is a police officer,
4 or behind any other witness just because he is a police
5 officer. You have to judge him just like you would any
6 other witness. Could you follow that rule of law?

7 A. Yes. I have students that are police
8 officers.

9 Q. Okay.

10 A. I graded all of their papers.

11 Q. So, you know they are like anyone
12 else?

13 A. Yes.

14 Q. Obviously, in a murder case, there are
15 going to be some graphic pictures, some bloody pictures,
16 some pictures that are not easy to look at. They are
17 introduced for various reasons, but they can have an
18 effect on jurors.

19 But what you have to be able to do,
20 and I'm sure you are not going to be one of these
21 persons, that just have a knee-jerk reaction and want to
22 go out and find someone guilty just because you have seen
23 a bloody crime scene.

24 You just have to still judge the
25 evidence as it is. In other words, we don't want people
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1 to get all upset and just want to find someone guilty
2 because they know something bad happened. That is going
3 to be obvious, the point is whether the State proved the
4 defendant committed the crime.

5 Could you follow that rule of law?

6 A. No problem.

7 Q. Okay. Oh, let me go over the -- you
8 had mentioned the O.J. Simpson trial, did you pay -- I
9 guess you could not help but get some information on the
10 O.J. Simpson trial, I mean we were saturated with it; but
11 you mentioned it in your questionnaire about a case where
12 the police may have taken a shortcut in their
13 investigation.

14 Did you pay close attention to the
15 O.J. Simpson case?

16 A. Not really. I mean, frankly, I think

17 I answered two questions that come from different
18 directions with the same answer.
19 I mean, that was so sensationalized,
20 it was kind of embarrassing, I think, for the judicial
21 system.
22 Q. Right, I agree. This trial will not
23 be anything like the O.J. Simpson case.
24 A. Good.
25 Q. It will start January 6 and last
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1 probably, at the most, two weeks. There is a possibility
2 of it going three weeks, but we don't think so. Judge
3 Tolle moves everyone along.
4 We don't rush through anything, but we
5 don't slow down either, unnecessarily.
6 We go from -- Judge Tolle usually goes
7 from 9:00 in the morning to 5:00 in the afternoon.
8 Breaks, obviously, are taken during the day, and you will
9 be able to go home at night. Unless you are in
10 deliberations, that is probably the only time you would
11 be sequestered. Okay?
12 Does that cause any conflict that
13 cannot be overcome with your schedule?
14 A. Well, I am a teacher. I mean, you
15 know, I have a lot of students. And, you know, it's a
16 dilemma because I have a lot of students, and they are
17 very important. I think a fair trial is also very
18 important. I guess I could overcome it. I mean, I could
19 work at night.
20 Q. Sure. Well, here is the point:
21 Obviously, any jury service, especially if it goes
22 several days, is an inconvenience to the average citizen.
23 Sometimes we get jurors that say, "My business will
24 suffer so much I am not going to pay attention to the
25 evidence." They will tell us that, even though it's a
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1 death penalty case.
2 Obviously, we want jurors that want to
3 pay close attention to the evidence. What you just have
4 to be able to assure us is even though, obviously, you
5 will be inconvenienced, but when you are here, you will
6 pay close attention and give the case your full
7 attention?
8 A. Yes, I will.
9 Q. Okay. Well, I have kind of gone over
10 this fast, but you have been very forthright in your

11 answers. Do you have any questions over anything we have
12 gone over?

13 A. No.

14 Q. Okay. Anything -- any insights about

15 yourself that you think we ought to know before we make
16 our decisions?

17 A. I don't know, I'm a fairly serious

18 person. I think I am a good teacher. I am really

19 honest, embarrassingly so sometimes. I have a fairly

20 good sense of humor, and I am real nervous.

21 Q. Okay.

22 A. This is my first time to do this.

23 Q. Well, you have done great.

24

25 THE COURT: Well, ma'am, just relax.

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1 We're all friends here, please just relax.

2 THE PROSPECTIVE JUROR: Okay.

3 MR. TOBY L. SHOOK: You have done

4 exactly what we have asked and that is fill out this

5 questionnaire honestly and given us plenty of information

6 here with honest answers.

7 THE PROSPECTIVE JUROR: Thank you very

8 much.

9 MR. TOBY L. SHOOK: That is all the

10 questions I have, Your Honor.

11 THE COURT: All right. Mr. Glover.

12

13 VOIR DIRE EXAMINATION

14

15 BY MR. CURTIS GLOVER:

16 Q. Ms. Murray, my name is Curtis Glover

17 as the Judge told you. And you started your talk with

18 the prosecution about having lived in Germany after

19 postwar -- in postwar Germany. And that you learned to

20 appreciate how bad a tyrannical system can be, having

21 seen it firsthand there.

22 Well, let me just say to you, that I

23 somewhat feel that being a juror in a criminal case is

24 kind of the front runner or on the forefront of a

25 democratic system.

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1 You are kind of -- you know you may

2 think you live in a democracy and that tyranny can't take

3 over, well it can, and it can be insidious, it can be

4 blatant.

5 But you, as a juror, are kind of the
6 bulwark or the difference between tyranny and a
7 democracy. You're just kind of the forefront of it,
8 being on a jury. Can you appreciate that?
9 Being on a jury is probably the most
10 democratic thing we can do in a democratic society. I
11 guess we're one of the few countries in the world that
12 does have it, and it keeps us from being overtaken by
13 maybe overzealous, possible tyranny or whatever. Can you
14 appreciate that?

15 A. Yes.

16 Q. Anyway, the prosecutors have gone over
17 some very important things with you here. They have
18 talked essentially about the second part of a criminal
19 trial.

20 There are two parts: There is the
21 guilt or innocence phase, and the penalty phase. And
22 they put a lot of emphasis on these special issues over
23 here which talk about life or death.

24 I am not going to talk about those
25 issues, because I am so confident that the jury in this
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1 case will never get to those. And I am not just paying
2 lip service to a notion here, that the jury is, we hope,
3 going to acquit her, we feel confident that she will be
4 acquitted. And I just want to go over some things with
5 you and kind of firm up in your mind of what your
6 function will be on this jury.

7 As they told you, the burden of proof
8 lies over there. And it is so easy to pay lip service to
9 the fact, yes, I will hold them accountable for that
10 burden of proof, and I will never shift it here. But,
11 you know, when you go back to that jury room, you or any
12 other juror, will have a tendency to have little
13 questions come up in your mind, and you will say, "You
14 know, either by the lack of evidence, or the confusion of
15 evidence, or the failure to call this witness, there is a
16 doubt in my mind."

17 And then you say, "Well, is that a
18 reasonable doubt?" And there may be one of those, there
19 may be two of them, or there may be 100 of those little
20 reasonable doubts. And then you start weighing in your
21 mind, are those reasonable, is this one reasonable.
22 And then, sometimes you will want to
23 say, "Well, you know, perhaps the defendant didn't
24 testify in this case, and she could have perhaps
25 enlightened the jury about that."

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1 Well, you know the minute you have
2 done that, you have denied her a fair trial, because she
3 has no burden. And the law says that if she doesn't take
4 the witness stand in this case that you cannot consider
5 that for any purpose. And the law further says that if
6 any of those little reasonable doubts come up, you are to
7 resolve every last one of them in her behalf.
8 That is sometimes confusing to people
9 because they say, "A person should step forth and prove
10 their innocence. A person should step forth and do
11 whatever, you know, we the jury think perhaps because of
12 these reasonable doubts, think that she should have
13 done." The law says no.
14 So, you know, you are in a big
15 position to see that democracy works right when you get
16 back there in that jury room. Are you of the frame of
17 mind to do that?
18 A. Oh, yes.
19 Q. Okay. You can look her in the eye and
20 say I will do that?
21 A. I will do that.
22 Q. Okay.
23 A. I think that that's what I learned at
24 nine. If anything, you know, the United States is the
25 one place in the world where, when you are tried, the
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1 burden is a serious burden and it ought to be.
2 Q. You can assure her that you will never
3 shift that burden to here?
4 A. No.
5 Q. And if anything should come up in the
6 deliberations of this case that appear to you to be
7 shifting that burden, you would be quick to correct it,
8 and say, "No, we do not do that."
9 A. I would try to.
10 Q. And if that shifting or that attempt
11 to shift that burden involves a reasonable doubt you'll
12 say, "That raises a reasonable doubt, and we will do as
13 Judge Tolle tells us to do, and we will resolve that in
14 her behalf."
15 And if it's one or it's ten or it's
16 100, all it takes is one, Ms. Murray. One reasonable
17 doubt as to an element of this case, and you resolve that
18 in her behalf and say by your verdict say, "Not guilty."
19 That is what the Judge will tell you to do. Will you do
20 that?

21 A. Yes, sir.

22 Q. You know in a case of this nature, and

23 they have talked about the fact that you are going to see

24 evidence of perhaps a heinous crime, and I feel that you

25 will.

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1 And so frequently, and it's only human

2 nature, and I am sure you will agree with me, that when a

3 juror sees something like that, it so shocks their

4 conscience and their feeling about mankind and

5 everything, that they just scream out, "We need to hold

6 somebody accountable for this."

7 And the government has come forth and

8 they have said, "We have got the person that is

9 accountable for it. You know, this is the person that we

10 have got."

11 And there is a reasonable doubt in

12 your mind as to whether or not they have that person.

13 You are not going to be of the frame of mind that you

14 say, "Well, we, the jury, have got to solve this case."

15 That is not your job to solve this case, that is their

16 job to solve this case.

17 Can you assure her that if you go back

18 to that jury room and you are so shocked by what you see,

19 that you will not attempt to solve the case for them?

20 That is their job. That is not the jury's job. You are

21 to base your verdict on what they tell you in the

22 evidence they have got. And if it's inadequate or

23 insufficient, it is not your job to go probing around and

24 trying to figure out, "Well, what is this all about?"

25 That should raise a reasonable doubt in your mind if you

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1 have to go back there and try to resolve this case.

2 Can you assure her and look her in the

3 face and say, "I will not do that. I will hold them

4 accountable to solve this case, if they can. And if they

5 can't, you will walk free from this courtroom." Will you

6 do that?

7 A. Yes, I would.

8 Q. Okay. And as she sits there now, you

9 will presume her to be innocent and not just pay lip

10 service to that. You have heard some things about this

11 case, and you have read some things about it, and can you

12 tell her that those things have not influenced you in any

13 way in this case?

14 A. I made a real concerted effort not to.

15 Q. Can you assure her that you will set
16 aside anything that you have read or any preconceived
17 notions about this case? And base this case on what you
18 hear from either there or here? Can you assure her that
19 you will do that?

20 A. Yes.

21 Q. Do you have any questions of us, Ms.
22 Murray?

23 A. I guess I want to know if the
24 gentlemen that I am familiar with are comfortable with
25 the idea of me being on this jury?

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1 Q. Well, they both said you are an
2 excellent English teacher.

3 A. I work real hard at it. I am lousy
4 cook, but I work in the classroom.

5 Q. Now, getting to this business about
6 your time being very valuable. My wife was formerly a
7 high school English teacher --

8 A. No more valuable than anyone else. I
9 mean, I wasn't implying --

10 Q. -- well, let me tell you this. My
11 wife was an English teacher in high school and graduated
12 from Centenary, by the way. And she would get up at 4:30
13 in the morning, and I -- being an English teacher is an
14 awful task.

15 You know, I just can't imagine why
16 they don't pay them like they pay coaches, you know?
17 They work as hard. But would that present a problem for
18 you? The fact that I know it's a horrendous job?

19 A. Well, it wouldn't be easy.

20 Q. Would it detract anything from your
21 concern for this woman? This is who you should be
22 concerned with in this courtroom.

23 A. You asked me if I needed to share
24 something. I'll be honest with you, it would have been
25 real easy on that form to fill it out in a way to get

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1 around working on this jury, it really would have been.
2 But you asked the question of 65 year old people in the
3 audience. Do you remember that?

4

5 THE COURT: Oh, yes, I ask that all
6 the time.

7 THE PROSPECTIVE JUROR: There were
8 three answers. And one was very chilling. And so I

9 said, "Okay. They are looking for something in
10 particular." And I don't know what you look for in
11 jurors, but I know your best shot of getting a fair trial
12 was for me to answer all the questions very honestly.
13 But that chilling answer, was, you
14 know, this was a person who really wanted to work on the
15 jury, and that was a little bit disturbing. That
16 disturbs the whole system. And so, I guess my students
17 can do without me. I am replaceable. I don't want to
18 think I am replaceable, but, you know, some things are
19 more important.

20

21 BY MR. CURTIS GLOVER:

22 Q. Okay, I think you are being very
23 honest with us and I appreciate that.

24

25 MR. CURTIS GLOVER: That's all we
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1 have, Judge.

2 THE COURT: Ma'am, could you step
3 outside briefly, please. Don't run back to the classroom
4 yet, we'll be calling you back in here in just a few
5 minutes.

6

7 (Whereupon, the prospective
8 juror was excused from the
9 room, and the following
10 proceedings were held,
11 outside of her presence
12 as follows:)

13

14 THE COURT: All right. What says the
15 State?

16 MR. TOBY L. SHOOK: The State will
17 accept the juror.

18 THE COURT: What says the defense?

19 MR. CURTIS GLOVER: We will strike the
20 juror, Your Honor.

21 THE COURT: Strike the juror?

22 MR. CURTIS GLOVER: Yes, Your Honor.

23 THE COURT: All right. If you will
24 have Ms. Murray come in, please.

25

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1 (Whereupon, the prospective

2 juror returned to the

3 room and the proceedings
4 were resumed as follows:)

5

6 THE COURT: Ms. Murray, I want to
7 thank you for your attendance, but you will be excused
8 from further service.

9 THE PROSPECTIVE JUROR: Okay. Thank
10 you.

11 MR. TOBY L. SHOOK: Thank you.

12 THE COURT: Please don't discuss
13 anything. Ma'am, when the trial is over, you may talk or
14 not talk about this thing. But please don't talk about
15 anything until it is over. Is that fair enough?

16 THE PROSPECTIVE JUROR: Okay.

17 THE COURT: Thanks a bunch.

18 THE PROSPECTIVE JUROR: Thank you.

19 Bye-bye.

20 THE COURT: We appreciate it. All
21 right.

22

23 (Whereupon, the proceedings
24 Were recessed for the
25 day, to return on the
Sandra M. Halsey, CSR, Official Court Reporter
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1 next day, November 8, 1996,

2 at 8:00 a.m. at which

3 time the proceedings

4 were resumed in open

5 court, in the presence

6 of the defendant, with her

7 attorney, and the State

8 being represented by the

9 D.A., as follows:)

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12 (These proceedings are continued to
13 the next volume in this cause.)

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Sandra M. Halsey, CSR, Official Court Reporter
2315

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

2316

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

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18 _____

19 MARK TOLLE, JUDGE
20 Criminal District Court Number 3
21 Dallas County, Texas
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Sandra M. Halsey, CSR, Official Court Reporter
2317