

Volume 24

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

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

7 VS: } & A-96-253

8 DARLIE LYNN ROUTIER } Kerr Co. Number

9

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11

12

13 STATEMENT OF FACTS

14 JURY VOIR DIRE

15 INDIVIDUAL JURORS HEARING

16 VOL. 24 OF VOLS.

17 November 14, 1996

18 Thursday

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1 C A P T I O N

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4 BE IT REMEMBERED THAT, on Thursday, the 14th day of

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

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

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

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

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

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

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

12 follows:

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

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

7

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

11

12 AND:

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

16

17 AND:

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

21

22 APPEARING FOR THE STATE OF TEXAS

23

24

25

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1 ADDITIONAL APPEARANCES:

2

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

6 717 N. Harwood
7 Dallas, TX 75201

8

9 AND: HON. CURTIS GLOVER
10 Attorney at Law

11 2650 Maxus Energy Tower
12 717 N. Harwood

13 Dallas, TX 75201

14
15 AND: HON. RICHARD C. MOSTY
16 Attorney at Law
17 Wallace, Mosty, Machann, Jackson & Williams
18 820 Main Street, Suite 200
19 Kerrville, TX 78028
20
21 AND: HON. S. PRESTON DOUGLASS, JR.
22 Attorney at Law
23 Wallace, Mosty, Machann, Jackson & Williams
24 820 Main Street, Suite 200
25 Kerrville, TX 78028
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1
2 AND: HON. JOHN HAGLER
3 Attorney at Law

4 901 Main Street, Suite 3601
5 Dallas, TX 75202
6 ALL ATTORNEYS REPRESENTING THE
7 DEFENDANT: DARLIE ROUTIER
8 MR. HAGLER HANDLING THE APPEAL
9 AND:
10 HON. ALBERT D. PATILLO, III
11 Attorney at Law
12 820 Main Street, Suite 211
13 Kerrville, TX 78028
14 APPEARING FOR: Witness-
15 Detective Jimmy Patterson
16 only on one date in trial
17 AND:
18 HON. STEVEN J. PICKELL
19 Attorney at Law
20 620 Earl Garrett Street
21 Kerrville, TX 78028
22 APPEARING FOR: Witness
23 Officer Chris Frosch
24 only on one date in trial
25
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1 P R O C E E D I N G S
2
3 November 14th, 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,
15 as follows:)

16

17 THE COURT: All right. Is everybody

18 ready. Let's bring Ms. Delgado in.

19 How are you today, ma'am?

20 THE PROSPECTIVE JUROR: Fine.

21 THE COURT: Can you raise your right

22 hand, please? Your name is Nora Delgado, D-E-L-G-A-D-O;

23 is that correct?

24 THE PROSPECTIVE JUROR: Uh-huh.

25 (Witness nodding head affirmatively.)

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1 THE COURT: Do you solemnly swear or

2 affirm that you will give true answers to all questions

3 propounded to you concerning your qualifications as a

4 juror, so help you God?

5

6 (Whereupon, the prospective

7 juror was duly sworn by the

8 Court to true answers make

9 to the questions propounded,

10 concerning qualifications, after

11 which time, the proceedings were

12 resumed as follows:)

13

14 THE PROSPECTIVE JUROR: I do.

15 THE COURT: Thank you. And just for

16 the record, it's obvious that you are totally fluent in

17 English. You do read, write, and speak the English

18 language fluently; is that correct?

19 THE PROSPECTIVE JUROR: Uh-huh.

20 (Witness nodding head affirmatively.)

21 THE COURT: Is that a yes?

22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: You don't need a Spanish

24 interpreter for these proceedings?

25 THE PROSPECTIVE JUROR: No.

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1 THE COURT: Fine. If you can pull
2 that microphone back to you and speak right into it. You
3 are a potential alternate juror in the Darlie Routier
4 matter.
5 Mrs. Routier is the defendant in
6 today's case, and she is sitting there in the olive dress
7 next to her attorneys.
8 From Dallas we have Curtis Glover and
9 from Kerrville we have Preston Douglass.
10 The State today is represented by two
11 Assistant District Attorneys from Dallas, Toby Shook and
12 Sherri Wallace.
13 Now, there are no wrong answers down
14 here. Whatever you feel like saying, please say. You
15 are not going to hurt anybody's feelings. But if you
16 could speak in a loud voice, answer all questions yes or
17 no, don't say uh-huh or huh-uh because Mrs. Halsey is
18 taking all this all down, and she can't do that.
19 THE PROSPECTIVE JUROR: Okay.
20 THE COURT: Are you a little nervous?
21 THE PROSPECTIVE JUROR: Yes.
22 THE COURT: Okay. Well, just relax.
23 Because like I say, there are no wrong answers, and both
24 sides are just going to ask you a few questions. All
25 right?
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1 THE PROSPECTIVE JUROR: Okay.
2 THE COURT: Thank you. Go ahead,
3 please,
4 Mr. Shook.
5 MR. TOBY L. SHOOK: Thank you, Judge.
6
7 Whereupon,
8
9 NORA ILDA DELGADO,
10
11 was called as a prospective juror, for the purpose of
12 voir dire, having been first duly sworn by the Court to
13 speak the truth, the whole truth, and nothing but the
14 true, testified in open court, as follows:
15
16 VOIR DIRE EXAMINATION
17
18 BY MR. TOBY L. SHOOK:
19 Q. Ms. Delgado, is that how you pronounce
20 your name?
21 A. Uh-huh. (Witness nodding head
22 affirmatively.)

23 THE COURT: Is that a yes?

24 THE PROSPECTIVE JUROR: Yes.

25

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1 BY MR. TOBY L. SHOOK:

2 Q. My name is Toby Shook, and I am one of
3 the prosecutors and I am going to ask you questions on
4 behalf of the State.

5 A. Okay.

6 Q. And as Judge Tolle told you, there is
7 no right or wrong answers. We just want your honest
8 opinions. You are not going to hurt our feelings in any
9 way. Okay?

10 A. Okay.

11 Q. I believe you checked off, you have
12 not heard anything about this case?

13 A. No.

14 Q. So, you don't know anything about the
15 facts, anything like that?

16 A. No.

17 Q. Okay. And you have lived here a
18 number of years, I guess with your family; is that right?

19 A. Yes.

20 Q. Okay. It looks like some of your
21 younger brothers or sisters are still in school here?

22 A. Yes.

23 Q. Are you the oldest?

24 A. No, I am the second to the oldest.

25 Q. Okay. And your job you've had for
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1 about a year now, three months, you're a caregiver?

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

4 Q. Who do you work for?

5 A. Well, I quit my job, my Sunshine Inn
6 Day Care, and now I am working for Tivy High School,
7 Child Development Center.

8 Q. What do you do there?

9 A. I'm a caregiver.

10 Q. Okay. And what are your duties?

11 A. Well, a lot of stuff. I take care of
12 the kids, I play with the kids, I change diapers, and all
13 that stuff.

14 Q. Mostly just taking care of the kids?

15 A. Yes, sir.

16 Q. Okay. I guess by your description,

17 young kids, infants and toddlers --

18 A. Yes.

19 Q. -- is that right?

20 A. Yeah. Well, I work with a year to two

21 and then three to four, it's different ages.

22 Q. Okay. And how long have you been

23 doing that?

24 A. For like four months, around there.

25 Well, I been -- I worked for a year and so many months at

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1 Sunshine Inn Day Care, and that is my other job that I

2 used to have.

3 Q. Uh-huh. (Attorney nodding head

4 affirmatively.)

5 A. And I used to work with five year olds

6 to ten.

7 Q. Okay. And when did you quit the

8 Sunshine Inn Day Care?

9 A. Like a week ago.

10 Q. Okay. All right. Let me turn your

11 attention to the type of case we're on. And again, we're

12 just looking for your honest answers. Okay?

13 A. Uh-huh. (Witness nodding head

14 affirmatively.)

15 Q. You know from what Judge Tolle has

16 told you, this is a capital murder case?

17 A. Yes.

18 Q. That the State is seeking the death

19 penalty. So, we want to talk to every juror about how

20 they feel about the death penalty. We just want your

21 opinions on it, how you personally feel about it. Let me

22 ask you: Are you in favor of the death penalty as a law?

23 A. Not really.

24 Q. Okay. Tell me about how you feel

25 about it.

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1 A. Well, I am not with it because I just

2 don't think -- I don't know, I just don't feel right for

3 people to take lives away.

4 Q. Okay. And that is fine. A lot of

5 people feel that way. You're opposed to the death

6 penalty then?

7 A. Yes.

8 Q. Because you think it's wrong to take

9 someone's life?

10 A. Yes.

11 Q. All right. For the State or anyone?
12 A. Yes.
13 Q. Okay. And is that from your own
14 personal viewpoint? Is it a religious viewpoint on your
15 part, or the way you were raised, the church?
16 A. The way I was raised.
17 Q. Okay. And have you always felt that
18 way?
19 A. Yes.
20 Q. Okay. And is it something you feel
21 strongly about?
22 A. Yes.
23 Q. Okay. You are against the death
24 penalty because you don't think it's right to take
25 someone's life?
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1 A. Right.
2 Q. And as I said, I'm not arguing with
3 you, but the law requires us to ask questions about that.
4 I thought that is how you felt because
5 when we asked that question kind of in a short way you
6 put, "I am just against it, against that."
7 A. Yes.
8 Q. And that is what you were talking
9 about? You were against the death penalty?
10 A. Yes.
11 Q. Okay. Let me look at your -- show you
12 your second page.
13 A. All right.
14 Q. We have here a section that says:
15 Which of these statements would represent how you feel
16 about the death penalty?
17 And I would like you to go over those
18 to yourself and see which one best represents your
19 feelings. Okay? You can just take the time to read
20 those. I think there's six statements there.
21 A. Okay.
22 Q. Okay. Those statements kind of cover
23 a broad range, you know, from how jurors might feel.
24 Some think it's appropriate in all circumstances to
25 people that just say, "I could never participate and
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1 return a verdict of death." Which one -- where do you
2 fit in as far as this goes?
3 A. Right here.
4 Q. On number 5?

5 A. Yes.

6 Q. Okay. "I could never under any
7 circumstances return a verdict which assessed the death
8 penalty." Okay. That best sums up how you feel about
9 it?

10 A. Yes.

11 Q. Okay. And again, is that because,
12 you're -- it's just the way you were brought up?

13 A. Yes.

14 Q. And you just don't think it's right?

15 A. Yes.

16 Q. Okay. And that is fine. Again, I am
17 not arguing with you, but the law requires me to go a
18 little further with you. Okay?

19 A. Okay.

20 Q. And we don't require anybody to
21 abandon how they feel, their deep convictions, religious
22 convictions, things like that.

23 A. Okay.

24 Q. Some jurors are perfect for one type
25 of case and not perfect for another type of case. You
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1 know what I mean?

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

4 Q. We get people down here that maybe
5 have had a death in their family from a DWI wreck and so
6 they couldn't sit objectively on a DWI case, but they
7 might be fine on some other type. And we get other
8 people that, you know, just because of personal reasons
9 are not suitable for certain cases.

10 I take it from what you are saying is,
11 the objections you feel about the death penalty that's
12 something that is not going to leave you, is it? That is
13 going to be with you?

14 A. Yes, sir.

15 Q. And, so because of this type of case,
16 you would never be able to return a verdict of death in a
17 case because of the way you feel against the death
18 penalty?

19 A. Yes.

20 Q. Okay. Now, let me be clear. The way
21 the case works, let's just talk about hypothetical real
22 quick, so I can ask you some more questions.

23 A. Okay.

24 Q. The first part of the trial just has
25 to do with guilt/innocence, whether we prove the case.
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1 If we do that, if we do prove the case, we go to the
2 punishment stage, where you might hear more, a juror
3 might hear more evidence. But once we get to this
4 punishment stage, the jurors then look at these
5 questions, and they get these questions to answer. And
6 let me summarize those questions.
7 That first question, that question
8 asks: Has the State proven that the defendant will be a
9 continuing danger to society? They are asking the jurors
10 to predict how the defendant is going to behave in the
11 future. And if we just have the evidence and prove it
12 should be answered "yes," the jurors are -- they are
13 supposed to answer that question. We're well on the way
14 to the death penalty there.
15 We have got to get a "yes" answer
16 there to get to the death penalty. That is how the
17 procedure works.
18 Then we go to this last question, that
19 is last stop until we get to the death penalty. And that
20 question says: If you look at all of the evidence, is
21 there some evidence that tells you I should spare the
22 defendant's life, and sentence them to a life sentence or
23 recommend a life sentence, or that they should get a life
24 sentence? Or is there no evidence to the contrary and I
25 answer that question "no."

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1 If that first question is answered
2 "yes," and that second question is answered "no," the
3 judge will sentence the defendant to death.
4 If they are answered any other way,
5 then it's a life sentence. But those are the only two
6 alternatives, do you understand that?
7 A. Yes.
8 Q. Death or life. The jurors don't
9 answer -- they don't write death in, they don't write
10 life in, they answer these questions. But the Judge
11 sentences the defendant on how you answer those
12 questions. Is that clear to you?
13 A. Yes.
14 Q. Practically the same thing. Again,
15 these questions are just supposed to be answered on
16 facts. Okay?
17 A. Okay.
18 Q. If it is a "yes" and a "no," the Judge
19 would sentence the defendant to death and that execution
20 would take place someday. I don't know if you have ever

21 read about it, you know, but the method of execution is
22 by lethal injection. Have you heard that?

23 A. No.

24 Q. Okay. It's by lethal injection. The
25 procedure is the same in every case. There's a "yes" or
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1 a "no" answer, Judge Tolle has no discretion, he has no
2 choice, he will sentence the defendant to death. The
3 defendant would be taken down to Huntsville, Texas and
4 housed on death row. And I can't tell you when, but
5 someday the Judge would issue what is called a death
6 warrant. That death warrant would have an execution date
7 on it.

8 The day before that date, the
9 defendant would be moved to a special unit, the Walls
10 Unit. They will be given an opportunity to say their
11 last goodbyes to family, maybe a couple of friends, and
12 maybe be with a minister. But at 6:00 p.m. our
13 procedures call for guards to come to that cell, walk the
14 defendant down a 30-foot hallway, and into the death
15 chamber.

16 Now, there's witnesses there who stand
17 behind a glass window and watch all these proceedings,
18 but very quickly, the defendant will be strapped down to
19 a hospital gurney, cinched down, legs, chest, arms, and
20 needles will be placed in her arms.

21 The death warrant would be read, they
22 would be given an opportunity for last words. You might
23 read about that someday. It could be anything. "I am
24 innocent, I didn't do it," whatever. But very soon
25 poisons would be injected, the heart would stop, the
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1 lungs would quit breathing, it's all over in about 10
2 minutes.

3 Now, I don't mean to be morbid about
4 all that, but I must put all my cards on the table. That
5 is our goal in this case. You understand that?

6 A. Yes, sir.

7 Q. We fully believe that we have enough
8 evidence to convince a jury to find the defendant guilty,
9 and answer those questions "yes" and "no" which would
10 result in her execution. And that is our goal. I don't
11 want to beat around the bush. And there's been over 100
12 executions in the State of Texas.

13 So it is a very real punishment. We
14 get all kinds of people down here, and you are free to

15 feel the way you can. I'm not arguing your position.
16 Some people believe in the death
17 penalty and can participate in this kind of proceeding,
18 and some people can't. And that is fine if they feel
19 that way.
20 Some people -- we have talked to
21 jurors out of that panel that have told us, "Look, I am
22 opposed to the death penalty. I was raised that way. I
23 have a religious conviction against it. I can't
24 participate in this type of setting. It's not, you know,
25 what you prove to me, it's what is in my heart." Do you
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1 understand what I'm saying?

2 A. Yes.

3 Q. They would be fine if this was a
4 burglary case or maybe a civil lawsuit or something like
5 that, but they can't participate as a juror because the
6 ultimate sentence is death.

7 That is their objections to the death
8 penalty, it's just not going to leave them. They could
9 never answer these questions, no matter what the
10 evidence, in a way that would result in the Judge
11 sentencing the defendant to death.

12 That is, they could never answer that
13 first question "yes" and the second question "no."

14 Now, is that how you are telling me
15 you feel?

16 A. Yes.

17 Q. Okay. And I know you are a little
18 nervous being down here, but that is truly how you feel,
19 you know yourself. Right?

20 You could never bring yourself to
21 answer those questions in that way?

22 A. Right.

23 Q. Okay. And again, I'm not arguing with
24 you, the law just requires we go a little further. Okay?

25 A. Yes.

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1 Q. Do you understand that these
2 questions, let me just read that first one to you. Okay?
3 "Do you find from the evidence beyond a reasonable doubt,
4 that there is a probability that the defendant would
5 commit criminal acts of violence that would constitute a
6 continuing threat to society?" Okay?
7 That is the question that asks the
8 jurors to make a prediction: Is the defendant going to

9 be a danger in the future? Again, that is just a fact
10 question, you know. We put on evidence to try to prove
11 that thing. I have had jurors that tell me, they say,
12 "Look, I am opposed to the death penalty. You can prove
13 that to me all day long." You know? "I can know in my
14 mind that this person is a very bad person, that they are
15 a very mean person, that they are a very violent person.
16 But I know if I answer 'yes,' that person may get the
17 death penalty.
18 "So, either -- regardless of the
19 evidence, I can't answer that question 'yes,' I would
20 have to answer it 'no.' Or, I just won't answer it. I'm
21 just not going to participate in it. If for some reason
22 I wound up on this type of jury, I just couldn't do that,
23 because my objections, my conscience won't let me." You
24 understand that?

25 A. Yes.

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1 Q. And I have had other jurors tell me
2 that if they had to go to this second question, now let
3 me read that for a moment.
4 "Taking into consideration all of the
5 evidence, including the circumstances of the offense, the
6 defendant's character and background, and the personal
7 moral culpability of the defendant, is there a sufficient
8 mitigating circumstance or circumstances to warrant that
9 a sentence of life imprisonment, rather than a death
10 sentence, be imposed?"
11 That is a long question. Summarizing
12 what it says is this: You look at all of the evidence,
13 the jurors would, and they would decide, "Well, look, we
14 know the defendant is guilty. We know there is a
15 danger." They look at all of the evidence and if they
16 think, "Well, I can answer this 'yes' and that will give
17 the defendant a life sentence." There's always a way
18 out.

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

21 Q. Or they can answer it "no" if there is
22 no evidence. And then it's death. I have had jurors
23 tell me, "I am opposed to the death penalty, but if
24 somehow I wound up on this side of the case, I could
25 never answer that question 'no,' even if I didn't think
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1 there was any of this mitigating evidence, evidence that
2 I thought shows a life sentence.

3 "If it was all bad evidence that I
4 heard, I could never answer it 'no' because that is the
5 final stop to the death penalty. I just either wouldn't
6 answer it, I couldn't, you know, mark 'yes' or 'no,' or I
7 would always answer it 'yes' to give me a way out, to
8 give them life and not death. Because they have to live
9 with themselves for the rest of their lives."

10 Is that how you feel about it?

11 A. Yes.

12 Q. Okay. So, it's not a question of me
13 proving these things to you, it's a question of you being
14 opposed to the death penalty? Is that what you are
15 telling me?

16 A. Yes.

17 Q. I'm not going to be able to change
18 your mind about that, am I?

19 A. No.

20 Q. Okay. I mean, that is just truly how
21 you felt all your whole life?

22 A. Yes.

23 Q. Okay. So, because this is a death
24 penalty case and if you answer these questions with a
25 "yes" and a "no," and you know if you did that, the
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1 defendant would be executed someday?

2 You are telling us and this Judge that
3 you wouldn't be able to do that, would you?

4 A. No.

5 Q. You couldn't answer these questions
6 just based on the facts, your objections against the
7 death penalty are going to stay with you?

8 A. Yes.

9 Q. Okay. All jurors take an oath to
10 follow the law and make their decisions on the evidence.
11 I'm sure you are a good law-abiding person and want to
12 follow your oath. But we can't ask you to violate your
13 convictions and are you just telling me honestly that
14 it's not a matter of what oaths you take, you're telling
15 us that, "I couldn't bring myself -- either I would just
16 refuse to answer them or I couldn't, because of these
17 objections I have about the death penalty aren't going to
18 leave."

19 A. Yes, sir, right.

20 Q. Okay. I mean, you could never answer
21 those questions in a way that would result in a person's
22 death?

23 A. Right.

24 Q. Okay. You have been real cooperative

25 with me and I think I am solid on that. I'm not going to
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1 talk you out of your opposition to the death penalty, and
2 I'm not trying to.

3 A. Okay.

4 Q. But the law required me -- requires me
5 to really test your feelings and make sure you feel that
6 way.

7 A. Okay.

8 Q. The one other area I want to get into
9 is, in a trial a defendant has a right not to testify if
10 they don't want to. And they can if they want to, but
11 they don't have to.

12 I mean, they could just sit there in
13 silence until after all of the evidence comes in. You
14 said in your questionnaire when we asked about that, that
15 you wanted to hear both sides of the story.

16 A. Yes.

17 Q. Okay. What I need to know is: Would
18 you require, after the State put on its case, would you
19 want or would you require the defendant to testify?

20 A. Yes.

21 Q. Okay.

22 A. I would like to hear both sides of the
23 story.

24 Q. Now, everyone probably wants to hear
25 the whole story. Of course, that is just how we are.

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1 But the law says if a defendant decides not to testify,
2 you can't use that as evidence against them.

3 Some people can follow that law, other
4 people say, "No, certainly if I were not guilty, I would
5 get up there and tell the jury about it. I couldn't
6 ignore that. That would mean something bad."

7 The Judge will say you have to
8 disregard that.

9 Some people can follow that and some
10 people can't. How do you feel about it?

11 A. Well, I don't know, I would like to
12 hear from both sides, to see who would tell -- that I
13 would just by hearing one side, I wouldn't know who was
14 telling the truth and who is not. I'm not good on that.

15 Q. Okay.

16 A. Who is telling the truth and who is
17 telling a lie.

18 Q. So, you would still want to hear from

19 the defendant?

20 A. Yes.

21 Q. Okay. But the bottom line is, you
22 have always been opposed to the death penalty and are
23 going to stay opposed to the death penalty?

24 A. Yes.

25 Q. You couldn't return a verdict that
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1 would result in someone's death?

2 A. No.

3 Q. Okay.

4

5 MR. TOBY L. SHOOK: We pass the juror.

6 MR. S. PRESTON DOUGLASS, JR: Your
7 Honor, I think based on the questions regarding the
8 presumption of innocence, we submit her for cause.

9 THE COURT: All right. The defense
10 motion for cause is granted. Thank you very much for
11 coming, ma'am. We certainly appreciate it.

12 THE PROSPECTIVE JUROR: Uh-huh.

13 (Witness nodding head affirmatively.)

14 THE COURT: Okay. Let me check
15 something here.

16

17 (Whereupon, a short

18 recess was taken,

19 after which time,

20 the proceedings were

21 resumed on the record,

22 in the presence and

23 hearing of the defendant

24 as follows:)

25

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1 THE COURT: All right. This is Cloie
2 Brandon, 262 on the list, 93 on our list. Is that
3 correct? How are you, ma'am?

4 THE PROSPECTIVE JUROR: I am fine,
5 sir. How are you?

6 THE COURT: Fine. Are we pronouncing
7 it right? C-L-O-I-E, Cloie?

8 THE PROSPECTIVE JUROR: Cloie, yes,
9 sir. Congratulations, you are first one to do that.

10 THE COURT: I am the first one, on the
11 record, please. Ms. Brandon, raise your right hand,
12 please.

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

17

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

25

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1 THE PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Thank you. You are a
3 potential alternate juror in the Darlie Routier matter.

4 THE PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Mrs. Routier is the
6 defendant. She is the young lady sitting there in the
7 olive dress next to her attorneys, Curtis Glover who is
8 from Dallas, and Preston Douglass who is from Kerrville.
9 The State is represented today by two
10 Assistant District Attorneys from Dallas, Toby Shook and
11 Sherri Wallace. Both are going to ask you some questions
12 now.

13 THE PROSPECTIVE JUROR: All right.

14 THE COURT: There are no wrong
15 answers. If you are nervous, relax.

16 THE PROSPECTIVE JUROR: I'm always
17 nervous.

18 THE COURT: Just relax. If you would
19 be kind enough to answer the questions directly and tell
20 us exactly how you feel. You are not going to hurt
21 anybody's feelings, and what you say doesn't go beyond
22 here.

23 THE PROSPECTIVE JUROR: All right.

24 THE COURT: And if you could speak
25 into the microphone, Ms. Halsey is taking all of this
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1 down. And say yes or no as opposed --

2 THE PROSPECTIVE JUROR: Do I need to
3 scoot up?

4 THE COURT: Well, you can pull the
5 mike back to you or scoot up, whatever you want to do.
6 Say yes or no as opposed to uh-huh or huh-uh. We can't

7 take that down.
8 THE PROSPECTIVE JUROR: Not a problem,
9 I'm very direct, sir.
10 THE COURT: That is very good, that's
11 what we need. So, Mr. Shook.
12 MR. TOBY L. SHOOK: Thank you, Judge.

13

14

15

16

17 Whereupon,

18

19 CLOIE ELAINE BRANDON,

20

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

25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. TOBY L. SHOOK:

4 Q. Ms. Brandon, my name is Toby Shook. I
5 am one of the prosecutors and I will be asking you
6 questions on behalf of the State.

7 A. All right.

8 Q. And as Judge Tolle informed you, we
9 just want your honest opinions. What I am going to do is
10 go over a little bit of the information you have here in
11 the questionnaire.

12 A. Okay.

13 Q. And then go over some of the death
14 penalty rules and laws that apply to this case.

15 A. Yes, sir.

16 Q. Have you ever been on a jury before?

17 A. No, sir.

18 Q. Okay. Usually we talk to the jurors in
19 a large group, but since this is a death penalty case,
20 the law, well, it says we have to talk to every juror
21 individually. So we're not getting you up there like
22 we're putting you on trial or anything like that.

23 A. I understand.

24 Q. And if you have any questions at all,
25 you ask us. That is what is the best part of this
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1 procedure, is both sides get to ask questions.

2 A. Yes, sir.

3 Q. Okay. I see that you're born in

4 Abilene and you've lived in Kerrville the last, about 11
5 years?

6 A. Yeah. Yes, sir, I have.

7 Q. What brought you to Kerrville?

8 A. Marriage.

9 Q. Okay.

10 A. I decided I didn't want to raise my
11 child in San Antonio.

12 Q. Okay. You lived in San Antonio, and
13 then, okay, and then you came up here. It looks like
14 you're in, oh, you have been in sales, and, I guess, you
15 have worked as a jeweler?

16 A. Yes, sir, I have.

17 Q. Tell me a little bit about that. What
18 did you do with that?

19 A. Everything from the designing to the
20 making, casting, repairing, everything, sales.

21 Q. Do you still do that?

22 A. No, sir, I do not. Right now, I do
23 not work. And right now, I am currently living in Wood
24 Living Center. Which is -- I am away from my family
25 right now.

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1 Q. Okay. What is your situation in
2 regards to that?

3 A. My situation in regard to that, sir,
4 is I have been diagnosed as post-traumatic stress
5 disorder, depression, and bi-polar.

6 Q. Okay.

7 A. And I am taking medication for that.

8 You know, I voluntarily put myself in there because I
9 knew I had some things I needed to work out. So, I take
10 classes and I take medication, and I do what I am told.

11 Q. So, are you under a doctor's care
12 there?

13 A. Yes, sir, I am, Doctor Stephenson.

14 Q. Okay. And how long have you been
15 there?

16 A. I would say a month. My contract will
17 be up on December the 9th.

18 Q. Okay. What are your plans after that?

19 Are you going to stay there longer? Or are you going to
20 be in therapy outside of there?

21 A. I will continue -- I will continue the

22 counseling and classes and I will also still be under a

23 doctor's care just for the medication, to make sure the
24 level of Lithium are right.

25 So, you know, I will still be under a
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1 doctor's care for it, but, you know, it's a quick little
2 blood test, so --

3 Q. Thank you for being honest with us on
4 that.

5 A. Yes, sir.

6 Q. We don't mean to pry on these matters,

7 but obviously they can be --

8 A. Well, no, that is very important,
9 because I mean, this is a very important thing. In my
10 opinion, you know, someone's life is on the line here,
11 and you make sure you have very competent people to do
12 that.

13 Q. Okay. You said that, is it
14 post-traumatic stress syndrome?

15 A. Yes, sir.

16 Q. What does that stem from? Where did
17 this originate?

18 A. It was a gift from my mother, for the
19 first 14 years of my life.

20 Q. Okay. So, this is something that went
21 on for a long time?

22 A. Yes, sir.

23 Q. Okay. And recently you made the
24 decision that you needed some treatment, I guess?

25 A. Yes, sir. I lost my father on August
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1 the 9th which sent me into a very bad depression. He was
2 very special.

3 Q. Okay.

4 A. And so at that point, I decided that,
5 you know, it was time for me to get some help instead of
6 being around my family and dragging them down.

7 And so I went ahead and did that on my
8 own to make sure that I would be all right for my family.

9 Q. Okay. Well, let me get right to the
10 point then, Ms. Brandon, since you bring up that.
11 Obviously, this is an important case and you can imagine
12 as the State we are seeking the death penalty in this
13 case.

14 A. Yes, sir.

15 Q. And these lawyers are going to be
16 fighting us, so it's going to be obviously a very

17 stressful trial, to say the least, I would imagine.

18 A. Yes, sir.

19 Q. For everyone, the lawyers, the

20 defendant and the jury.

21 A. Yes, sir, absolutely.

22 Q. Your situation now that you are under

23 treatment actually in this home doing counselling and

24 doing treatment, is this the -- well, it sounds like this

25 might be a bad time for you being called down as a juror

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1 for this type of case, under the stress you're under.

2 A. Well, you know, I tell you I had

3 always wanted to be called to jury duty. I always

4 thought, you know, I would like to try that. And, you

5 know, and then I got that jury summons. I have never had

6 one before in my life.

7 That was right before I checked myself

8 in. You know, I do understand and I am taking

9 antidepressants and I do take stress medication and

10 things like that to handle my stress, but I don't know

11 whether that disqualifies me, or you know.

12 Q. Well, it's kind of -- you know your

13 situation best.

14 A. Uh-huh. (Witness nodding head

15 affirmatively.)

16 Q. But if your situation is bad enough

17 where you felt you had to check yourself in somewhere?

18 A. Yes, sir.

19 Q. And you are only going to be checked

20 out in this next month and then the trial is going to

21 start up.

22 A. Yes.

23 Q. We're just talking hypotheticals here.

24 A. Sure.

25 Q. I'm just wondering, from my own point

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1 of view -- there will be plenty of times you will get

2 jury summons the rest of your life.

3 A. Oh, I'm sure, yeah, I'm sure.

4 Q. But is your current mental and medical

5 situation, is that putting you -- if you somehow wound up

6 on a jury, putting you back in a very stressful

7 situation?

8 It is probably not the best thing at

9 this point for you.

10 A. I have thought about that and that is

11 why I wanted to be so honest with you today. I would
12 very much like to be able to participate in jury because
13 I am a very objective person.
14 I do not make decisions without
15 hearing all of the information. But right now, I believe
16 that you're right and that it would -- just being
17 released from there, I am sure that it would put me back
18 into a very stressful situation.
19 I'm sure this woman here wants very
20 competent people to be objective for her.
21

22 MR. TOBY L. SHOOK: If we could have
23 just a moment, Judge?
24 MR. S. PRESTON DOUGLASS, JR: Let me
25 go ahead and ask her a few questions.
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1 THE COURT: We'll go ahead and pass
2 her to Mr. Douglass and then if -- we will let Mr. Shook
3 question again, if he wants to. Go ahead, Mr. Douglass.
4 MR. S. PRESTON DOUGLASS, JR: Thank
5 you, Judge.

6
7 VOIR DIRE EXAMINATION
8

9 BY MR. S. PRESTON DOUGLASS, JR:
10 Q. You have been very honest with us and
11 we appreciate it.

12 A. Yes, sir.

13 Q. And we look for people that take these
14 things seriously and I know you are doing that.

15 A. Yes, sir.

16 Q. The way our schedule will work during
17 the day, I would assume, is the Judge would have the jury
18 for Court, we would probably start Court 8:30, 9:00,
19 something like that.

20

21 THE COURT: Nine o'clock we'll start.

22 THE PROSPECTIVE JUROR: Yes, sir.

23

24 BY MR. S. PRESTON DOUGLASS, JR:

25 Q. Nine o'clock. There will probably be
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1 a break in the morning and then a break for lunch, come
2 back at 1:00 or 1:30.

3

4 THE COURT: We will have at least an

5 hour and a half for lunch, so don't worry about that.

6 MR. S. PRESTON DOUGLASS, JR: Okay.

7

8 BY MR. S. PRESTON DOUGLASS, JR:

9 Q. One-thirty, let's say. Probably a

10 mid-afternoon break, and we would be done about 5:00

11 everyday.

12 A. Okay.

13

14 THE COURT: At the latest.

15

16 BY MR. S. PRESTON DOUGLASS, JR:

17 Q. At the latest. So, you are looking at

18 9:00 to 5:00 with two or three breaks, and a long break

19 in the middle during the day?

20 A. Yes, sir.

21 Q. That will be -- then the majority of

22 it will be sitting over in chairs like those. We will be

23 back at the other courthouse.

24 A. Yes, sir.

25 Q. You would be just, you know, listening

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1 to evidence and deciding what that evidence means to you.

2

3 THE COURT: Ladies and gentlemen, I do

4 have a call I've got to take, I'm sorry. Be right back.

5 Thank you.

6 THE PROSPECTIVE JUROR: Do we

7 discontinue questioning?

8 MR. S. PRESTON DOUGLASS, JR: No, I

9 think we have to stop.

10 MS. SHERRI WALLACE: We have got to

11 cut it.

12 THE PROSPECTIVE JUROR: Okay. That is

13 fine.

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. Back on the

25 record now.

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1 MR. S. PRESTON DOUGLASS, JR: May I
2 continue?

3 THE COURT: Yes, you may.

4

5 BY MR. S. PRESTON DOUGLASS, JR:

6 Q. Okay. Talking about the time
7 involved, like we said 9:00 to 12:00.

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

10 Q. With a break, and 1:00 or 1:30 to 5:00
11 with a break.

12 A. Yes, sir.

13 Q. Do you feel like the -- just talking
14 about the time involved. Do you think the time involved
15 in being a juror, those hours would cause you a problem?

16 A. Actually, I would have to say no that
17 I don't think it would cause a problem. I mean, I'm not
18 working. I take my medication, it keeps everything under
19 control. You know, it was just a matter of getting on
20 the right medication.

21 Q. Okay.

22 A. And I don't feel like that would cause
23 a -- you know, a big problem. I was not aware that there
24 were so many breaks throughout the day, you know, I mean.

25 Q. And I don't think I misrepresented
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1 that, the Judge would obviously correct me.

2

3 THE COURT: No, we will have adequate
4 break, believe me. So you don't have to worry about
5 that.

6 THE PROSPECTIVE JUROR: Uh-huh.
7 (Witness nodding head affirmatively.)

8 THE COURT: Are you on the right
9 medication now? Do you take it religiously?

10 THE PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: All right. Go ahead,
12 please.

13

14 BY MR. S. PRESTON DOUGLASS, JR:

15 Q. And really, the only person that can
16 tell is you. There will be a trial, and obviously the
17 trial will be a very contested trial.

18 A. Yes, sir.

19 Q. Obviously, it's a trial involving a
20 murder case.

21 A. Yes, sir.

22 Q. And I'm not going to beat around the
23 bush. There is going to be periods where there is
24 testimony that you may find distasteful.

25 A. Yes, sir.

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1 Q. There may be photographs you find

2 distasteful.

3 A. Yes, sir.

4 Q. But we're not going to lock you up at
5 night during the trial, to where you can go home, during
6 lunch breaks you can take some time to get out and clear
7 your head, and things like that.

8 A. Yes, sir.

9 Q. I'm not trying to put any words in
10 your mouth, I'm just asking: Knowing that description,
11 and knowing that you would be sitting for those amount of
12 times and listening to the evidence, do you think that
13 without any unforeseen problem, you would be able to
14 handle that?

15 A. Yes, sir, I do.

16

17 THE COURT: Okay. That is fine. Go

18 ahead, Mr. Shook.

19

20 VOIR DIRE EXAMINATION (Continued)

21

22 BY MR. TOBY L. SHOOK:

23 Q. Well, Ms. Brandon, I didn't think it
24 was a question of time. Right now you are in a hospital,
25 right?

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1 A. I'm not in a hospital, I'm in a living

2 center.

3 Q. A living center.

4 A. But I am out of there December
5 9th. The only reason that they have put me in -- well, I
6 put myself in, to get on the right medication.

7 I was already on stress medication and

8 I was already on antidepressant, but I was having a great
9 deal of problem still with mood swings and things of that
10 nature.

11 So, what they have done and the reason

12 I am in there now is because they prescribed a new

13 medication, and they are simply monitoring it to make

14 sure, and they will take blood test levels from me weekly

15 to make sure that my medication is right where it's
16 supposed to be, and I have the correct amount in my
17 system.

18 Q. You are undergoing counseling right
19 now?

20 A. Yes, sir.

21 Q. What type of counseling?

22 A. It's a private session with -- I don't
23 know her last name, her first name is Debbie, over at
24 MHMR.

25 I also take -- you know, I also take a
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1 couple of courses which will be over by the time -- or
2 classes, that will be over before December.

3 So, really the only thing I have is
4 just, you know, my counseling and that time could be
5 rearranged if need be.

6

7 THE COURT: Well, the Court is
8 familiar with this arrangement. And you are there on a
9 voluntarily basis, are you not?

10 THE PROSPECTIVE JUROR: Oh, yes, sir.

11 THE COURT: Okay.

12

13 BY MR. TOBY L. SHOOK:

14 Q. So, you are telling us you have
15 checked yourself in there because of your emotional state
16 at the time?

17 A. Yes, sir.

18 Q. You felt that would be best for you?

19 A. I felt it would be best for myself and
20 my family.

21 Q. Right. And do you think that by
22 January 6th is when we begin the trial, that your
23 emotional state will be fine, you will be able to sit as
24 a juror and make these decisions just fine on the --
25 first guilt of the defendant and then possibly their
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1 execution?

2 A. I think that with my medication,
3 correct. And, like I said, they are monitoring that now,
4 everything seems to be going fine. They are just
5 monitoring it.

6 I think that, yes, everything will be
7 all right. I take my medication religiously. I, you
8 know, do not fail to take it.

9 Q. Okay. Let me then ask you about: You
10 know that obviously the State is seeking the death
11 penalty?

12 A. Yes, sir, I do.

13 Q. So, I want to ask you your personal
14 opinions about the death penalty.

15 A. That's fine.

16 Q. Do you agree that -- well, how do you
17 feel about the death penalty? Do you think we should
18 have it as a law?

19 A. Yes, sir, I do.

20 Q. Okay. Tell me why.

21 A. Because I think there -- there are so
22 many crimes that just are so heinous that, you know,
23 someone should not be allowed to be supported by the
24 State for the rest of their life in jail, you know, after
25 committing such an act, and maybe taking someone's life,
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1 you know.

2 I do feel that more or less an eye for
3 an eye, I guess.

4 Q. Have you always felt that way?

5 A. Yes, sir, I have.

6 Q. Okay. What crimes -- or have you ever
7 followed anything in the news, any murder cases, that you
8 think that that is an appropriate use for the death
9 penalty or that person deserved the death penalty or
10 anything like that?

11 A. Speaking quite frankly, I believe that
12 O.J. deserved the death penalty and did not get it. If
13 that is, you know, I mean, I followed that one.

14 Q. You followed that one pretty closely?

15 A. Yes, pretty closely.

16 Q. What about this Susan Smith case that
17 was in the news? Do you remember that case?

18 A. That one where she put the children in
19 the car?

20 Q. Uh-huh. (Attorney nodding head
21 affirmatively.)

22 A. I believe that she should have
23 received the death penalty.

24 Q. Okay.

25 A. You know? I believe that if a person
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1 is truly guilty of causing harm to a child, then, you
2 know, any kind of harm to a child, because a child does

3 nothing. I mean, it's an innocent -- you know, an
4 innocent human being that deserves to die, or to be
5 beaten for. But, I also, you know, like I said, I don't
6 like to make any kind of decisions until I have heard
7 everything.

8 Q. Uh-huh. (Attorney nodding head
9 affirmatively.)

10 A. Because you can't make a clear
11 decision unless --

12 Q. You hear all of the evidence?

13 A. Everything. You know, I mean, it has
14 to be in your own mind, you know, and in every juror's
15 mind. And how I believe it has to be beyond a shadow of
16 a doubt, you know. But if there is any doubt, you know,
17 that is another animal.

18 Q. Well, let me ask you that, because a
19 lot of jurors say that beyond a shadow of a doubt or if
20 there is any doubt. We have to prove beyond a reasonable
21 doubt, which is the highest burden, obviously.

22 A. Yes, sir.

23 Q. But that doesn't mean all doubt, we
24 could never prove away all doubt.

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

2 Q. You realize that?

3 A. Yes, sir.

4 Q. It's a doubt based on your reason.

5 A. Yes, sir. It's based on the evidence
6 presented.

7 Q. Okay. You brought up O.J. Simpson and
8 that you watched that case, it came in over the news, I
9 guess. They had it on --

10 A. Yes, sir. Every channel, every day,
11 every night, it was O.J. whenever you turned it on.

12 Sure.

13 Q. Okay. As a juror, you are going to be
14 listening to the evidence, and we have what we call
15 direct evidence and circumstantial evidence.

16 A. Yes, sir.

17 Q. Direct evidence is an eyewitness to a
18 crime.

19 A. Yes, sir.

20 Q. If you left the courthouse and someone
21 robbed you, and we caught the person, the police caught
22 them, and you were able to identify them, you would be
23 the direct evidence, the eyewitness to the case.

24 A. Yes, sir.

25 Q. Any other evidence is circumstantial
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1 evidence?

2 A. Uh-huh. (Witness nodding head

3 affirmatively.)

4 Q. Like in the O.J. Simpson case, there

5 was no witness produced that watched the crime occur?

6 A. Exactly.

7 Q. It was all circumstantial evidence.

8 The crime scene, you know, what the defendant did before

9 or after the crime, those types of things. You have to

10 put it all together.

11 A. Yes, sir.

12 Q. Okay. Do you think -- the law says

13 there is no difference between the two, you still have to

14 prove the case beyond a reasonable doubt using direct

15 evidence or indirect evidence?

16 A. Yes, sir.

17 Q. Obviously, in a murder case we don't

18 have an eyewitness many times. You have the victim --

19 A. Many times, I'm sure.

20 Q. -- and the person that was killed. So

21 we would have to rely on circumstantial evidence. Do you

22 think you could listen to evidence and convict a person

23 of capital murder based solely on circumstantial

24 evidence?

25 A. If it was -- if it was convincing to

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1 me, if it was what I believed, then, yes, I could.

2 Q. Okay. I guess the best example I

3 could give to you is the type of evidence that was

4 produced in the Simpson trial, because they didn't have

5 an eyewitness, that's all circumstantial evidence.

6 A. Yes, sir.

7 Q. That's what we're talking about.

8 A. Yes, sir.

9 Q. Piecing things together. Okay. And

10 you -- well, there's only certain types of murder cases

11 that are eligible for the death penalty in Texas. Not

12 every murder case can be a death penalty case, you have

13 to have murder plus something else.

14 A. I understand.

15 Q. Murder during a robbery, murder during

16 a burglary, and murder of a child under the age of six.

17 In fact, could I get you to look at the indictment? Read

18 it to yourself real quick and let me know what you think.

19 A. Uh-huh. (Witness nodding head
20 affirmatively.) So, this is a death penalty case?
21 Q. Well, that is a type of case.
22 A. Well, yes, I understand, but you know,
23 you said under the age of six.
24 Q. Uh-huh. (Witness nodding head
25 affirmatively.)
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1 A. This child being deceased at six, yes.
2 Q. Okay.
3 A. You know, I mean, I understand
4 everything you are saying to me.
5 Q. Okay. I take it from your answer
6 then, that that type of case you think could be a death
7 penalty case?
8 A. I think that if anyone is going to
9 cause harm to a child, you know, I am a mother, I have a
10 13-year-old boy, I would give my life to protect my
11 child. I believe that most mothers would feel that way.
12 However, you know, obviously in the past there have been
13 some that haven't, and they have dealt with it in the
14 worse way possible, you know, leaving all of their good
15 options behind.
16 I believe those people who are so
17 selfish as to do something like that should be punished
18 for it, yes, sir.
19 Q. Okay. The way the procedure works in
20 Texas is we first have to prove that indictment to you
21 beyond a reasonable doubt. If we don't do that, it's not
22 guilty, we all go home.
23 A. Yes.
24 Q. If we do do that, we go to the
25 punishment stage and you get these questions.
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1 A. Yes.
2 Q. And I will go over those in a moment,
3 but the first question summarizes this: The State has to
4 prove would the defendant be a continuing danger to
5 society? Okay?
6 A. Uh-huh. (Witness nodding head
7 affirmatively.)
8 Q. And you can use the evidence from the
9 crime itself and any other evidence you hear. If that's
10 answered "yes," you go on to the second stage.
11 A. Okay.
12 Q. The second stage is what we call the

13 mitigating evidence.

14 A. Pardon, sir?

15 Q. Mitigating evidence, a question.

16 A. Okay, okay.

17 Q. It's kind of lengthy, but if I could

18 summarize it, it basically says this: If you look at all

19 of the evidence and review it all, if there is something

20 in the defendant's background where you think they should

21 get a life sentence rather than a death sentence, you can

22 answer it "yes."

23 If you don't think that evidence is

24 there, you can answer it "no." If that first question is

25 answered "yes" and the second question "no," the Judge

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1 will sentence the defendant to death.

2 A. Yes, sir.

3 Q. If they are answered any other way, it

4 will be a life sentence. But those are the only two

5 alternatives once we've reached this point.

6 A. Yes, I understand.

7 Q. And you don't write in death or life,

8 but that is how the Judge sentences the defendant based

9 on the questions.

10 A. Yes, sir.

11 Q. And if it is a "yes" and a "no" in a

12 death sentence, you probably know from reading the news

13 that lethal injection is the method of execution in

14 Texas.

15 A. Well, he stated that, the Judge stated

16 that on the first day I was there, what the penalty was

17 and how it would be carried out if it was so deserved.

18 Q. Those executions take place in

19 Huntsville, Texas, and they do take place, there has been

20 over 100.

21 A. Uh-huh. (Witness nodding head

22 affirmatively.)

23 Q. The methods -- you are probably are

24 aware of that. You know some states have the death

25 penalty and never invoke it.

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1 A. Yes, I understand.

2 Q. But Texas leads the nation in

3 execution. It is a very real punishment.

4 A. Well, I believe that it is, you know,

5 it is a good thing that we do have that for the people

6 who do commit crimes such as that.

7 Q. Okay. What I want to know is this:
8 You've told me philosophically you believe the death
9 penalty is appropriate in some types of cases and should
10 be carried out?
11 A. Yes, sir.
12 Q. If we get in here and prove this case
13 to you beyond a reasonable doubt and this question should
14 be answered "yes" and "no," I need to know: Would you be
15 able to answer the questions that way knowing that this
16 woman would be executed someday?
17 A. Yes, I would.
18 Q. Okay. I am curious, I know it's been
19 a while since you filled out your questionnaire --
20 A. Yes, sir.
21 Q. -- and it's a 13-page one. But on the
22 second page we have a list of about six categories of
23 what best reflects your feelings. And you circled 3,
24 and, in fact, I will just let you look at it.
25 A. That would be very helpful. Thank
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1 you.
2 Q. I'm sure you didn't memorize it.
3 A. No, sir, I didn't.
4 Q. If you could just read that?
5 A. All right. The highlighted?
6 Q. Yes, the 3.
7 A. This one?
8 Q. Yes.
9 A. Okay. Yes, sir.
10 Q. Is that what best reflected your
11 feelings?
12 A. Yes, because under the right set of
13 circumstances, you know, then it should be invoked, but
14 not for every crime.
15 Q. Okay. Let me let you review number 2
16 also.
17 A. Yes, sir, I could.
18 Q. The difference between those two is --
19 well, maybe it's subtle, but the way I read 3 is I don't
20 believe the death penalty should ever be invoked, that's
21 what it says, but under the proper -- as long as the law
22 provides for it I could assess it under the proper
23 circumstances.
24 A. Exactly. I mean, perhaps I should
25 have circled the other one.
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1 Q. Well, it always concerns me when
2 someone writes 3. Do you really mean you just don't
3 think it should ever be invoked?
4 A. No, I don't mean that really, you
5 know. I do believe there are certain cases where it
6 should be invoked. That woman that drown her children,
7 she is doing life in prison. Right?
8 Q. Right.
9 A. She shouldn't be.
10 Q. Okay.
11 A. In my opinion.
12 Q. Well, you are entitled -- fair enough.
13 I mean, you said you are a very direct person, and that's
14 what I like. So, it's not a deal where you think, "Well,
15 you know, I just don't think that punishment should ever
16 be invoked, but I understand it under certain
17 circumstances." You believe that we should have that law
18 and it should be invoked?
19 A. Yes, sir, in the right set of
20 circumstances.
21 Q. Okay. I thought from what you were
22 saying that is what you meant, but I just wanted to clear
23 that up with you.
24 A. All right.
25 Q. Also, this first question, let me read
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1 it to you: "Do you find from the evidence beyond a
2 reasonable doubt that there is a probability that the
3 defendant would commit criminal acts of violence that
4 would constitute a continuing threat to society?"
5 That question asks the jurors to make
6 a prediction: Is the defendant going to be a continuing
7 danger?
8 Now, you don't get to this question
9 unless the defendant has been found guilty.
10 A. Yes, sir.
11 Q. So you would already know the facts of
12 the murder itself.
13 A. Exactly.
14 Q. And you might hear additional evidence
15 in the punishment stage, I can't preview the case for
16 you.
17 A. Exactly. I understand.
18 Q. But you know, you may hear they have
19 been to prison or that they have a criminal record, you
20 could hear that.
21 If they have not been to prison, done
22 nothing wrong in their lives, you will hear that. So you

23 can hear good things and bad things. Maybe you will hear
24 a lot of evidence, you may hear hardly any. Okay?
25 A. All right. So, basically, I would be
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1 allowed to, if I were selected, I would be allowed to
2 hear past evidence on this woman to be able to judge what
3 kind of person she was before and what kind of person she
4 is now and things of that nature?

5 Q. If it existed.

6 A. Okay.

7 Q. And again, I can't get into the facts.

8 My point is, most people say, "God, I would like to hear
9 a lot. Maybe I would like to hear a track record, things
10 like that, whether they have been bad before."

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

13 Q. But, you understand from that
14 question, there is no requirement under the law that
15 someone had been to prison before or have a criminal
16 record before they can be prosecuted for the death
17 penalty? You know, a person can go through a --

18 A. I didn't understand what you just
19 said.

20 Q. Oh, there is no requirement, you know,
21 that someone has had a prior criminal record or been to
22 prison or had a violent past before you can prosecute
23 them for the death penalty.

24 A. Okay.

25 Q. You know? It could be a situation
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1 where you have a person who has not gotten in any
2 trouble.

3 A. Yes, sir.

4 Q. And then they go out and commit a
5 brutal murder.

6 A. Yes, sir.

7 Q. And so the jury may have only the
8 facts of the murder itself.

9 A. Yes, sir.

10 Q. To look at in deciding this question,
11 is my point.

12 A. Okay.

13 Q. Do you think you could get enough
14 information from the crime itself that would enable you
15 to answer that question "yes," under the proper facts and
16 circumstances?

17 A. Well, I believe after hearing all of
18 the evidence that I would be able to make a -- you know,
19 a responsible decision. But I would not prejudge,
20 because, I mean, this is obviously very important.

21 Q. Uh-huh. (Attorney nodding head
22 affirmatively.)

23 A. I could not prejudge. I would have to
24 hear every bit of the evidence before I could make an
25 objective decision.

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1 Q. Okay. And I understand that. But you
2 see my point is this is: Some people tell us, "Well, if
3 they don't have a long history of violence or something,
4 I could never answer 'yes' to that."
5 The law doesn't require them to have a
6 long history. It may be a situation where you just have
7 a brutal murder. Maybe that can tell you enough about
8 it, you know, how brutal it was, you know, what led up to
9 it, maybe those kinds of things. I don't know.

10 A. Yeah.

11 Q. And I just want to know: Is your mind
12 open to the fact that maybe from just the facts of the
13 murder itself, could you draw enough information where
14 you could answer that "yes"?

15 A. I feel that I could.

16 Q. Okay. I guess the only example I
17 could give you, you brought up Susan Smith, I brought up
18 Susan Smith, woman probably had never really been in
19 trouble before that murder.

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

22 Q. Obviously.

23 A. Obviously, but what she did was worse
24 than evil, you know.

25 Q. See what I'm talking about? That's
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1 the facts of the offense alone and that's what I'm
2 talking. So your mind is open to that type of thing?

3 A. Yes, sir.

4 Q. Okay. We have to prove that it's just
5 a probability that the defendant would commit this act.

6 Not a certainty, just a probability.

7 A. Yes, sir.

8 Q. What does probability mean to you?

9 A. Probability that in all likelihood,

10 that the person is guilty of this crime.

11 Q. Okay. In this context, we have to
12 prove that's it's a probability the defendant would
13 commit criminal acts of violence. Again, it's kind of a
14 prediction.

15 What does probability mean to you in
16 the context of that sentence?

17 A. I'm sorry.

18 Q. What does probability mean to you, the
19 way we use it in the questionnaire?

20 A. Like I say, the probability, after
21 hearing all of the evidence, you know, and making my
22 decision, the probability, I would be able to determine
23 from -- you know, from the decision that I made.

24 Q. Okay. It's not a certainty, but some
25 people when we ask them that question, some people will
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1 say, "It's more likely than not," probability.

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

4 Q. When we say criminal acts of violence?

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

7 Q. What would your definition of
8 committing criminal acts of violence be?

9 A. Criminal acts of violence. Gosh,
10 there's such a wide range. Criminal acts of violence, I
11 don't know, I would say assault, robberies, drive-by
12 shootings.

13 Q. Any type of violence to another
14 person?

15 A. Any type of violence to another
16 person. I mean, I grew in a very violent home situation.
17 I can understand that.

18 Q. That was involving your mother.

19 A. Yes, sir. That is where I got that
20 nice little gift from. But, you know, I didn't grow up
21 to be like that. It made me want to be just the
22 opposite, not to harm anyone and, you know. But, again,
23 with the question, I mean, after hearing everything and
24 after making my own decision objectively, you know, I
25 believe that I could.

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1 Q. Okay. My point to all of that, asking
2 your definition is, you won't get a legal definition.
3 These words will be up to you and the other jurors as to
4 these two questions.

5 A. Exactly.

6 Q. Okay. Now, this last question and let
7 me read this one out loud, it gets kind of long and
8 complicated.

9 A. That's fine.

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

17 It gets kind of long, and, believe me,
18 we didn't write that question.

19 A. I know that.

20 Q. The legislature did that. But it
21 talks about, it's the last question you get to. Okay?

22 A. Yes, sir.

23 Q. You had already found the defendant
24 guilty of capital murder, you had already found the
25 defendant a future danger to society, and then you get
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1 this last question which neither side has the burden of
2 proof, the jurors look at all the evidence and background
3 of the murder itself and the defendant's background and
4 decide: Do I think there is mitigating evidence where a
5 life sentence should be imposed, or is there not? You
6 answer it "no," a death sentence would be imposed.

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

9 Q. Do you see where they're coming from
10 with this question? It's kind of a way out for the jury
11 if they think the right thing to do is to give the
12 defendant a life sentence.

13 A. Yes, I understand.

14 Q. We can't tell you what mitigating
15 evidence is. It will be up to you and the other jurors.

16 A. Yes, sir.

17 Q. You just have to be able to tell the
18 Court if you see it, you could, you know, answer the
19 question that way, if you think it reaches that level.

20 A. Yes, sir.

21 Q. And if it doesn't, you would answer it
22 "no."

23 A. Yes, sir.

24 Q. What is mitigating to one juror may
25 not be mitigating to another and you are not required to
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1 I think of what mitigating evidence is. But let me go over
2 a couple of things. We have talked to a lot of jurors.

3 A. Sure.

4 Q. You don't have to agree with any of
5 this. You bring up a point that a lot of people do as
6 far as your background goes, but from what little you
7 have told me, there was some violence in your household.

8 A. Yes, sir, tremendous amount.

9 Q. And you may have a situation where,
10 you know, you could be on a jury in a capital murder, and
11 the defendant maybe has had an abusive home life,
12 physically or mentally, maybe they grew up that way.
13 Maybe they were mentally or physically abused when they
14 grew up, and you hear about that.

15 A. Yeah, mine was to the age of 14, and
16 then to be quite honest with you, I left home at 14, I
17 got my own apartment, I worked late at night at the gym
18 to pay for my apartment, and I completed my high school
19 education. It was something I didn't want to be around.

20 Q. Okay.

21 A. I -- you know, I took counseling for
22 it.

23 Q. So you --

24 A. I have done things that I can do to
25 leave that in the past.

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1 Q. Okay. Some people view that as
2 mitigating, that kind of background, and other people
3 say, "Look, we all make choices in life, and that doesn't
4 mean you can go around killing people."

5 A. That is exactly right.

6 Q. I take it from what you did with your
7 own personal situation, you wouldn't really view that as
8 mitigating evidence necessarily?

9 A. Well --

10 Q. Or would it just depend on the facts?

11 A. Well, I'm not sure what mitigating
12 means.

13 Q. Most people don't.

14 A. I'm sorry. Excuse my ignorance, but
15 if you could explain.

16 Q. Mitigating is -- well, it's been
17 described, there is one legal definition, it's something
18 that lowers someone's moral culpability or moral
19 blameworthiness.

20 A. Okay.

21 Q. Okay?

22 A. Okay.

23 Q. You are not excused from the crime,

24 but you get a life sentence instead.

25 A. Exactly.

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1 Q. You understand?

2 A. Yes, sir.

3 Q. Okay. And, you know, you don't have

4 to agree with anyone else what you think is mitigating.

5 A. Oh, I intend to make my own decision,

6 and that is where I will stand.

7 Q. Okay. So that is how it goes. That

8 is what mitigating is. It's up to you and the other

9 jurors.

10 A. Uh-huh. (Witness nodding head

11 affirmatively.)

12 Q. I'm just trying to get -- sometimes

13 people bring up that type of background and say, "Well,

14 that could possibly be mitigating evidence." And other

15 jurors, when we talk about that they say, "No, you make

16 your own choices."

17 A. Well, that was a lifetime ago for me.

18 And, like I said, I moved out when I was 14, I did it all

19 myself, I took the responsibility myself, and as far as I

20 am concerned, that is something that -- you know, it's

21 something that, post-traumatic stress disorder is

22 something that I will always have.

23 Q. Uh-huh. (Attorney nodding head

24 affirmatively.)

25 A. But with the right medication, it can

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1 be treated, it is being treated, and you can be right

2 again. You know? And I feel quite positive that, you

3 know, medications they've got me on now is the correct

4 medication, it does seem to be doing the job, it keeps my

5 stress levels down, which is good, it stops me from being

6 depressed, it allows me to get the right amount of sleep.

7 It allows me to function properly.

8 This is a medication I will have to

9 take for the rest of my life, but this is something that

10 comes along with the post-traumatic stress disorder. So,

11 you know, as long as I take my medication, believe-you-me

12 I intend to, I feel that I can be just as objective as

13 someone who didn't voluntarily commit themselves to get

14 some help.

15 Q. What does it do, like the
16 post-traumatic stress syndrome, if you are not on
17 medication? How does it cause you to act?
18 A. Basically, if you are not on your
19 medication it causes -- what you have is flashbacks,
20 nightmares, you have problems sleeping, you are very
21 stressed out all the time, you are bouncing off the
22 walls. You can -- you know, there are certain things
23 that can trigger it that, you know, if you are not on
24 your medication -- if you are on your medication, you can
25 handle it.

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1 But if you are not on your medication,
2 say for me, if I were not on my medication and I were to
3 walk back into my mother's home, you know, she is still
4 alive, she does not live in this town, for me, that would
5 be something that would cause me instant stress, my mind
6 would be racing at, you know, a thousand thoughts a
7 minute and it would be something that would be very
8 extreme for me to handle.

9 Q. But if you are on your medication,
10 then you don't have those things?

11 A. If I'm on my medication, which I am,
12 then no, you don't have that. It controls -- that's what
13 it's for, it just fixes the chemical imbalances.

14 Q. Okay. You put in your questionnaire
15 that you are an authorized rider with, is it the
16 Kerrville Police Department?

17 A. Yes, sir.

18 Q. How long have you been doing that?

19 A. Well, I did that -- I used to work at
20 Denny's and I worked the graveyard shift and I have taken
21 karate, ShotoKan karate for four years, and growing up in
22 San Antonio I wanted to make sure I knew how to defend
23 myself, so when I got here, I took lots of karate with my
24 son.

25 They kept asking me -- they would come
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1 in at nighttime, I called them the breakfast club, the
2 KPD. They were very nice people. And, you know, they
3 would come in there every night to do their reports and
4 to do their lunches and everything like that.
5 One day one of the officers came up
6 with a form and he said, "I need you to sign here." And
7 I said, "Well, what is this for?" And there was a police
8 academy coming up and they wanted me to join the police

9 academy because of all my training that I had had.
10 Physically, I may be small, but I am well prepared to
11 take care of myself. I have had experience with target
12 shooting and pretty well versed with that.
13 Q. But you didn't join the police force?
14 A. No, I did not.
15 Q. But you have friends, I guess?
16 A. Yes, I do, I have some friends that
17 work on it. And, you know, I don't see them. I don't
18 work at Denny's anymore.
19 Q. Uh-huh. (Attorney nodding head
20 affirmatively.)
21 A. But I worked there for a year and I
22 got to know each one and almost all of their families,
23 too.
24 Q. Okay. So let me ask you one more
25 thing.
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1
2 THE COURT: You have ten minutes left.
3 MR. TOBY L. SHOOK: Thank you, Judge.
4 THE COURT: All right.
5
6 BY MR. TOBY L. SHOOK:
7 Q. I don't think you know any of the
8 Dallas attorneys involved in the case?
9 A. No, sir, I know no one involved in
10 this case.
11 Q. Okay. You don't know the Kerrville
12 attorneys, either Mr. Douglass or Mr. Mosty?
13 A. No, sir, I know no one involved in
14 this case.
15 Q. Okay. Well, you have been real honest
16 with me. Do you have any questions over anything we have
17 gone over?
18 A. Not really, I understood what you
19 said. I answered honestly and directly to each question.
20 Q. Okay. Well, then, that's all the
21 questions I have. Thanks a lot for your patience.
22
23 THE COURT: Thank you. You have 40
24 Mr. Douglass.
25 MR. S. PRESTON DOUGLASS, JR: Thank
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1 you, Your Honor.

2

3 VOIR DIRE EXAMINATION (Continued)

4

5 BY MR. S. PRESTON DOUGLASS, JR:

6 Q. The fact that he tells me that I have

7 40 minutes doesn't mean I have to use it all.

8 A. Not a problem, I understand.

9

10 THE COURT: Excellent observation.

11

12 BY MR. S. PRESTON DOUGLASS, JR:

13 Q. I have -- there's good news and bad

14 news. The bad news is we're not done yet. You have been

15 very patient, but I have some questions I need to ask

16 you.

17 A. That's fine.

18 Q. Good news is I don't think that I will

19 be as long, they have covered a lot of ground.

20 A. Yes, sir.

21 Q. And I just have some things I need to

22 go through.

23 A. Sure, that is fine.

24 Q. As you might well be aware, our

25 perspective from where we sit is completely 180 degrees

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1 opposed to that of the attorneys representing the State.

2 A. Understood.

3 Q. There is very little that we agree

4 with them on when we talk about this case.

5 A. Understood.

6 Q. At the very outset, to make things

7 very clear, Darlie Routier has pled not guilty.

8 A. Yes, sir.

9 Q. She will enter a plea of not guilty

10 before the jury and then she will stand behind that plea

11 of not guilty wholeheartedly throughout the trial, won't

12 waver.

13 A. Yes, sir.

14 Q. Because of that, in Texas, we always

15 know there is going to be a guilt/innocence phase of a

16 trial.

17 A. Uh-huh. (Witness nodding head

18 affirmatively.)

19 Q. But there is certainly no guarantee

20 that there is a punishment phase of a trial. Now,

21 obviously, if a person is found not guilty, you don't

22 talk about punishment.

23 A. No, you stand up and hug your lawyers.

24 Q. We do not expect and we don't intend
25 to be talking about punishment issues in this trial.
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1 A. Yes, sir.

2 Q. Now, for that reason, I want to go
3 through some of the points of law that deal with the
4 guilt/innocence part of trial.

5 A. Yes, sir.

6 Q. And see how you feel about it.

7 A. All right.

8 Q. Mr. Shook went through some of them
9 briefly and I am going to go through them a little bit
10 more and just kind of see if you agree with me on some
11 points, or if you have got some things that you have
12 problems with that you want to let me know about.

13 A. Uh-huh. (Witness nodding head
14 affirmatively.) If I have any problems with anything, I
15 will let you know.

16 Q. Thanks. To begin with, our client
17 sits here absolutely innocent. Do you agree with that?

18 A. She is innocent until proven guilty.

19 Q. The presumption of innocence,
20 sometimes it's been said that the presumption of
21 innocence alone is enough to acquit somebody.
22 Meaning that that presumption is so
23 strong and it changes, it cannot waiver and there cannot
24 be a person who starts out not believing the presumption
25 of innocence and not willing to completely,

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1 wholeheartedly follow it.

2 Now, the converse of that is, that you
3 don't presume someone guilty. Perhaps it is more
4 important to say, "Well, you know, the presumption of
5 innocence, do you believe that?"

6 What it really means is: Do you start
7 out not presuming someone guilty? Do you give everyone a
8 level playing field when they start the case?

9 How do you feel about that? Do you
10 think that is the way it ought to be?

11 A. Well, I do. Just because you have
12 been charged with something doesn't necessarily mean that
13 you are guilty. You know?

14 I know that there is probably a lot of
15 people sitting in prison that didn't commit the crimes
16 that were still convicted. You know, I do not --

17 Q. What do you think happened in those

18 cases?

19 A. What do I think happened?

20 Q. Yeah. What do you think went wrong?

21 A. Well, you know, maybe various

22 evidence, the crime wasn't investigated enough to provide

23 enough evidence to lead to another potential guilty

24 party, or, you know, things of that nature. That maybe

25 it wasn't investigated well enough.

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1 Q. All right. I think you would agree

2 with me: Do you remember Judge Tolle talking about the

3 indictment and how the indictment is no evidence of guilt

4 at all?

5 A. Exactly, I remember it the first day.

6 Q. Okay. Rather than go back through it,

7 do you remember he talked about how over 25,000 people

8 get indicted in Dallas County each year?

9 A. Uh-huh. (Witness nodding head

10 affirmatively.)

11 Q. And that a great portion of those

12 people never know they were being investigated and

13 because they didn't know they were being investigated,

14 they didn't have a chance to come tell their side of the

15 story.

16 Did that surprise you when you heard

17 it the first time?

18 A. Well, it surprised me that, I mean, I

19 know people can be investigated. And I know, I

20 understand, I guess, from having as many policemen

21 friends as I did when I was at Denny's, I understand --

22 could you repeat that for me?

23 Q. I guess I am wondering, would you

24 agree that if a lot of people get run through a system

25 and such as in Dallas over 25,000 people are indicted,

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1 would you agree with me that as Judge Tolle told you, a

2 lot of those people don't even know they are being

3 investigated?

4 A. Oh, yeah.

5 Q. And not only that, they didn't even

6 know, didn't have a chance to have their side of the

7 story told. It all took place in secret, behind their

8 back and they didn't know about it, and the next thing

9 they know is they get an indictment.

10 A. When they get their indictment, they

11 do have an opportunity to have their side represented?

12 Q. Well, obviously, there is likely to be
13 a trial.

14 A. Exactly. You know, I believe in that
15 then all of it should come out. I believe that they
16 should be allowed to tell their side of what happened,
17 even if it means, you know, I mean going right down to
18 the emotional state of how someone was at the time.

19 Or, I believe there is some cases
20 that, you know, should be investigated without other
21 people's knowledge, most of those being, you know, the
22 more serious cases, I think, more serious crimes.

23 But, I do believe that everyone one
24 should have -- there's two sides to every story, and I
25 believe that everyone should have the right to tell their
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1 side.

2 Q. So, you can assure Darlie Routier that
3 you would place no weight on the fact that there is an
4 indictment in this cause?

5 A. No.

6 Q. Okay. Now, let's talk about the
7 burden of proof a little bit.

8 A. All right.

9 Q. The burden of proof --
10

11 THE COURT: I think the answer was,
12 yes, you could assure her of that; is that correct?

13 THE PROSPECTIVE JUROR: Well, yes, I
14 could assure her that I would not say --

15 THE COURT: Just keeping the record
16 straight.

17 THE PROSPECTIVE JUROR: -- I would not
18 say, you know, have a -- be thinking you are guilty when
19 I haven't even heard -- you know, I don't know you, I
20 haven't seen you before, I haven't heard about this in
21 the news, I haven't watched it on television, I am -- I
22 know nothing about this basically, you know, except for
23 what has been told to me in the courtroom at first and
24 here.

25 And, you know, I do believe that
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1 everybody ought to be able to tell their side of the
2 story.

3

4 BY MR. S. PRESTON DOUGLASS, JR:

5 Q. Okay. With respect to the burden of

6 proof, do you agree that that burden of proof lies with
7 the attorneys representing the State, does not shift to
8 the defendant?

9 A. The defendant shouldn't have to prove
10 her innocence. It is the responsibility for them to
11 prove her guilt. She is innocent until proven guilty.

12 Q. All right. The burden of proof that
13 they have is beyond a reasonable doubt. You talked a
14 little bit about beyond a shadow of a doubt, but I think
15 the Court will instruct you that the --

16 A. Reasonable doubt.

17 Q. -- it's beyond a reasonable doubt.

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

20 Q. That is such that they have to imagine
21 if you -- let me give you just one quick example:
22 Imagine if you have a circle, and coming from that circle
23 is a bright beam of light.

24 A. Yes, sir.

25 Q. And that beam of light coming out of
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3001

1 that circle is the presumption of innocence.

2 A. Yes, sir.

3 Q. The State might bring you evidence in
4 the course of the trial trying to meet their burden,
5 bringing you maybe, eyewitness evidence, maybe they may
6 bring you fingerprint evidence, they may bring you
7 evidence that you think has a lot of weight and persuades
8 you, they may bring you evidence that you say doesn't
9 persuade me at all, doesn't tell me anything.

10 Regardless of the weight you put on
11 the evidence they bring, their burden is to completely,
12 100 percent blacken out all reasonable doubt.

13 A. Understood.

14 Q. Okay. Such that, if there is even a
15 small pin light, a little beam of light coming through
16 that represents reasonable doubt to you, that you, as a
17 juror, have an absolute oath and obligation to say there
18 is any -- even the most tiniest of reasonable doubt, you
19 have to resolve in favor of the defendant.

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

22 Q. Are you committed to that?

23 A. Absolutely.

24 Q. And can you give her a pledge that you
25 would resolve any reasonable doubt in her favor without
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1 any question in your mind?

2 A. There is no question in my mind. I

3 would have to be, you know, very well convinced before,

4 you know, I could go ahead and go to the punishment thing

5 and everything.

6 I -- like I say, I will not make a

7 decision until I hear everything, you know, that is just

8 how I feel.

9 Q. I want to ask you a little bit about

10 witnesses. You are the sole judge of the credibility of

11 the witnesses. When you become a juror, no one can tell

12 you who to believe or who not to believe.

13 A. No, sir.

14 Q. Now, one thing you have brought up, I

15 would anticipate that there are going to be police

16 officers testifying in this trial.

17 A. Yes, sir.

18 Q. In order to be a qualified juror,

19 everyone needs to start out judging all people equal.

20 A. Yes, sir.

21 Q. Regardless of what they do for a

22 living.

23 A. Understood.

24 Q. Which police officers did you know

25 that worked at night, that you would see at Denny's?

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1 A. Well, I saw Guy, oh, what's his last

2 name?

3 Q. Hilsabeck?

4 A. Hilsabeck, yeah. Guy Hilsabeck.

5 David Doran, who is now been transferred, or not

6 transferred, but is now the sheriff of Laredo. And J.D.,

7 he is a supervisor. Sergeant, oh, I know his nickname,

8 but -- let's see, Sergeant starts with an R.

9 Q. Roesler.

10 A. Sergeant Roesler. Yes, sir.

11 Q. What is his nickname?

12 A. No, sir, I'm sorry.

13 Q. That is fine.

14

15 THE COURT: I think Sergeant Roesler

16 will be sufficient.

17 THE PROSPECTIVE JUROR: Nice try.

18

19 BY MR. S. PRESTON DOUGLASS, JR:

20 Q. I think I know it. Okay. Go ahead.

21 A. Okay. Mostly Sergeant Roesler and Guy
22 and J.D. and there was another gentlemen named -- oh, he
23 was rookie, I can't recall his name, but he was one of
24 the ones that came in, too.
25 Q. Okay. The question I have to you is
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1 because you have known -- and I don't think any Kerrville
2 police officer is going to testify in this trial.

3 A. I doubt it, since obviously this
4 wasn't committed here.

5 Q. So what is going to happen is there
6 are going to be some police officers testify that you
7 don't know.

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

10 Q. But I will assume they will show up
11 with a uniform on, like most police officers do.

12 A. Yes, sir.

13 Q. Are you the kind of person that
14 because someone is a police officer you will start them
15 out ahead of other witnesses? Do you think you would put
16 more weight on what they have to say?

17 A. No, sir.

18 Q. Tell me about that. Tell me what your
19 feelings are about that.

20 A. Well, I guess, you know, when I first
21 met them, just to give you an example, when I first met
22 them at Denny's, you know, it kind of, it was different
23 and it felt different. But as in, you know, they were
24 more important, what they said was just absolute and, you
25 know, and that kind of thing. I did have more of a --
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1 well, not just absolute, but I did have more of an
2 attitude about that.

3 But as I got to know them through the
4 year, and meet with their families and everything, you
5 know, they are people. That's all they are. They are
6 people. They have jobs, you know, just like you, just
7 like a lot of other people.

8 I don't believe that I would take --
9 just because they are a police officer, you know, I would
10 listen and I would take in everything they said, but I
11 wouldn't place them above or below anyone else.

12 Q. Would you agree that just like me they
13 are subject to making mistakes?

14 A. We're all humans, that is why we have

15 erasers on pencils.

16 Q. All right. And if you thought a

17 mistake the police officer made was sufficient to raise a

18 reasonable doubt in your mind about a case, you say,

19 "Well, you know, that was really bungled up and that

20 raised a reasonable doubt." Would you be willing to call

21 it like you see it?

22 A. Absolutely.

23 Q. Okay. All right.

24 A. I mean, you know, absolutely.

25

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1 MR. S. PRESTON DOUGLASS, JR: May I

2 have one minute, your Honor?

3 THE COURT: All right.

4 MR. S. PRESTON DOUGLASS, JR: You have

5 been very patient. I think that's all the questions I

6 have. Thank you very much.

7 THE COURT: Thank you.

8 Ma'am, could you step outside briefly,

9 please? You will be called back.

10 THE PROSPECTIVE JUROR: Me?

11 THE COURT: Yes, ma'am. Just briefly.

12 THE PROSPECTIVE JUROR: Yes, sir. May

13 I take my water, sir?

14 THE COURT: Oh, by all means.

15 THE PROSPECTIVE JUROR: Thank you.

16

17 (Whereupon, the prospective

18 juror was excused from the

19 room, and the following

20 proceedings were held,

21 outside of her presence

22 as follows:)

23

24 THE COURT: All right. Is everybody

25 ready? What says the State?

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1 MR. TOBY L. SHOOK: We will exercise a

2 strike, Judge.

3 THE COURT: Thank you. All right.

4 THE COURT: Who is coming up next?

5 The next one will be Winifred Custer, that's number 105

6 on our list, 298 on the jury list.

7

8 (Whereupon, the prospective

9 juror returned to the
10 room and the proceedings
11 were resumed as follows:)
12
13 THE COURT: Ma'am, we want to thank
14 you very much for your attendance. You are going to be
15 excused from further jury service. We want to thank you
16 very much for your answers, and we congratulate you on
17 your program and hope you complete it successfully.
18 THE PROSPECTIVE JUROR: I will. Thank
19 you very much, I appreciate it.
20 THE COURT: Good luck to you, ma'am.
21 THE PROSPECTIVE JUROR: Good luck to
22 you, ma'am.
23 THE DEFENDANT: Thanks.
24
25 (Whereupon, a short
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1 recess was taken,
2 after which time,
3 the proceedings were
4 resumed on the record,
5 in the presence and
6 hearing of the defendant
7 as follows:)
8
9 THE COURT: Good morning, ma'am. This
10 is Ms. Winifred Custer, number 298 on the jury list, and
11 number 105 on our list.
12 That is your name, ma'am?
13 THE PROSPECTIVE JUROR: Yes, sir.
14 THE COURT: Okay. Thank you. All
15 right.
16 If you will raise your right hand,
17 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 do.

7 THE COURT: I have just received a
8 letter from Ms. Custer, this will be State's (sic)

9 Exhibit number, what's the next one?

10 THE COURT REPORTER: 16, Judge.

11

12 (Whereupon, the following

13 mentioned item was

14 marked for

15 identification only

16 as Court's Exhibit No. 16,

17 after which time the

18 proceedings were

19 resumed on the record

20 in open court, as

21 follows:)

22

23 THE COURT: From a Dr. B.I. Klein,

24 K-L-E-I-N, of the Family Health Care Center, 401 West 6th

25 Street, Littlefield, Texas.

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1 THE PROSPECTIVE JUROR: That's where

2 we moved from.

3 THE COURT: Okay. Stating that Ms.

4 Custer has a son who has Down's syndrome, and you have

5 the sole responsibility for his care and no one to leave

6 him with.

7 The Court will admit that for record

8 purposes.

9

10 (Whereupon, the above

11 mentioned item was

12 received in evidence

13 for record purposes

14 only, after which time,

15 the proceedings were

16 resumed on the record,

17 as follows:)

18

19 MR. CURTIS GLOVER: We will agree to

20 excuse.

21 MR. TOBY L. SHOOK: We will agree,

22 also, Judge.

23 THE COURT: All right. Thank you.

24 That takes care of that.

25 All right. The next one, this is Gene
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1 Shelton. You are Mr. Shelton, I believe.
2 THE PROSPECTIVE JUROR: Yes, I am.
3 THE COURT: Okay. All right. This is
4 Mr. Gene Shelton, number 281 on the jury list, 99 on our
5 list. All right.
6 If you will raise your right hand,
7 please.
8 Do you solemnly swear or affirm that
9 you will true answers make to all questions propounded to
10 you concerning your qualifications as a juror, so help
11 you God?
12
13 (Whereupon, the prospective
14 juror was duly sworn by the
15 Court to true answers make
16 to the questions propounded,
17 concerning qualifications, after
18 which time, the proceedings were
19 resumed as follows:)
20
21 THE PROSPECTIVE JUROR: I so affirm.
22 THE COURT: Thank you. Mr. Shelton,
23 you are a potential alternate juror in this case. This
24 is the Darlie Routier matter.
25 Mrs. Routier is the defendant as you
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1 have been told already. She is the young lady sitting in
2 the olive dress with her attorneys from Kerrville, we
3 have Mr. Richard Mosty, and Mr. Preston Douglass, and
4 from Dallas she is represented by Mr. Curtis Glover.
5 Doug Mulder is also an attorney from Dallas, he is not
6 here now.
7 The State now is represented by two
8 Assistant District Attorneys from Dallas, Toby Shook and
9 Sherri Wallace.
10 You are going to be asked some
11 questions and there are no wrong answers. You can just
12 answer the questions directly and to the point, we would
13 appreciate it.
14 THE PROSPECTIVE JUROR: Yes, sir.
15 THE COURT: So, Mr. Shook.
16 MR. TOBY L. SHOOK: Thank you, Judge.
17
18 Whereupon,

19

20 GENE SHELTON,

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. Dr. Shelton, my name is Toby Shook. I

6 am one of the prosecutors that will -- well, I am the

7 prosecutor that will be asking you questions this morning

8 for the prosecutors on the case.

9 And as Judge Tolle informed you, we

10 just want your honest opinions on these particular issues

11 that involve the death penalty. Have you ever been on

12 jury service before?

13 A. Yes, sir.

14 Q. What type of case was that?

15 A. It was a drunken driving case.

16 Q. Okay. And here in Kerr County?

17 A. No, sir. It was years ago in Kaufman

18 County.

19 Q. Okay. And it looks like you had a

20 finding of guilt and a fine and the Judge assessed the

21 punishment in that case?

22 A. Yes. That was a long time ago, but

23 yes, that is what happened.

24 Q. Okay. And you currently work, is it

25 Hill Country Special Education Co-op?

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1 A. Yes, sir.

2 Q. What are your duties there?

3 A. I am a school psychologist.

4 Q. And how long have been doing that?

5 A. I am in my fourth year of doing that

6 full time now.

7 Q. And you have worked as a psychologist

8 in different fields, I guess, since you got your degree?

9 A. Well, that's really all I know how to

10 do, so, that is what I have done.

11 Q. And how long have you been here in

12 Kerr County?

13 A. I first moved here in '73 and moved
14 away and then moved back, so, I guess, I have been here
15 altogether, let me think, about 16 or 17 years.

16 Q. Okay. Let me ask you this: First of
17 all, do you know any of the Dallas attorneys involved?

18 A. No.

19 Q. There's two local counsel that have
20 been hired, Mr. Preston Douglass and Mr. Richard Mosty.

21 Do you know either of those gentlemen?

22 A. No.

23 Q. Okay. You have read some about the
24 case, I see. Was that just in the local paper?

25 A. A little bit in the local paper and a
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1 little bit in the Austin paper.

2 Q. Okay. Let me -- I forget what your
3 response was. We have had a lot of jurors in here this
4 morning, but have you ever testified as an expert
5 witness?

6 A. Yes.

7 Q. What type of cases?

8 A. A federal case regarding a right to
9 treatment and quality of care of treatment, as well as a
10 first degree murder case and a couple of robbery cases.

11 Q. In the first degree murder case, how
12 were you called to testify?

13 A. I had evaluated this individual when
14 he was in the jail and I had been called to provide
15 testimony because I had evaluated him.

16 Q. What type of testimony was it? What
17 kind of testimony was it?

18 A. The effects of alcohol on judgment.

19 Q. Okay.

20 A. And possible effects of a blow to the
21 head in terms of sequela and the behavior the person may
22 have engaged in.

23 Q. Okay. Were you called by defense in
24 that case?

25 A. Yes.

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1 Q. And what about the robbery cases?

2 A. I had evaluated these individuals --
3 this was a robbery of a pharmacy by a drug addict. I had
4 evaluated the individual in my job at working at
5 Kerrville State Hospital. And I was then called, there
6 were several of these, and then I was then called to

7 testify, not all robbery.

8 Q. Okay. In what regard were you called
9 to testify?

10 A. Just regarding the mental state and
11 the ability to cooperate with the attorney.

12 Q. Okay. Was it for competency?

13 A. Competency. Part of it was
14 competency, part of it had to do, again, with
15 rehabilitation aspects and so forth.

16 Q. Okay. And you work some in prisons;
17 is that right?

18 A. Yes, sir.

19 Q. Which prisons did you work at?

20 A. I worked at Draper Prison back in the
21 Sixties which was at the time, a medium security prison
22 in Alabama. I worked at Kilby Prison in Alabama, which
23 was the main receiving prison, all inmates, all male
24 inmates in Alabama go to Kilby where they are
25 psychologically tested and classified and then sent to
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1 whatever prison that they are going to go to for
2 treatment or security purposes.

3 Q. Okay. Dr. Shelton, obviously, it's a
4 death penalty case we're dealing with here which the
5 State is seeking the death penalty. So we want to talk
6 to every juror about their personal feelings about the
7 death penalty. You put here in your questionnaire that
8 as far as being in favor of the death penalty, you
9 checked off the category saying no.

10 A. No, I do not believe in the death
11 penalty.

12 Q. If you would, just explain your
13 personal opinions on that and the reasons for that.

14 A. Well, the death penalty is the
15 cold-blooded murder of an individual by the Government,
16 by the State, and I can't accept that.

17 Q. Okay. Have you felt that way your
18 entire life?

19 A. No. Most of my adult life, but not my
20 entire life.

21 Q. Okay. But you have felt it most of
22 your adult life?

23 A. Yes.

24 Q. Is there any -- is it just after
25 working in the system or just your education, things you

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1 saw, you just developed that opinion or any one thing?

2 A. No, I don't think it's any one thing.

3 It's just a personal belief. I don't think it has to do

4 with education or anything else, it's just a personal

5 belief.

6 Q. Something you feel strongly about?

7 A. Not strong enough to get in a

8 fistfight over it, but it's a conviction I have, yes,

9 sir.

10 Q. Okay. Well, let me ask you this:

11 Obviously, everyone's opinions on the death penalty is

12 important to both sides.

13 A. Right.

14 Q. And, we called a bunch of jurors down

15 here because people do have various opinions on the death

16 penalty, especially.

17 A. Right.

18 Q. You have worked in prisons in the

19 legal system so you have got a head start on most people,

20 most jurors we bring down here. Obviously, you know how

21 the system works.

22 A. Yes, sir.

23 Q. In a death penalty case, obviously,

24 the case, like any trial is divided into two parts. The

25 guilt/innocence stage and then this punishment stage.

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1 A. Right.

2 Q. I don't know if you are familiar with

3 what happens, but the jurors do answer special issues.

4 A. Right.

5 Q. One question being about the future

6 danger which is a "yes" and then the mitigation question,

7 do you think a life sentence should be imposed rather

8 than a death sentence.

9 A. Right.

10 Q. I'm sure you are well aware that in

11 Texas, the death penalty is a real punishment. You know

12 there are some states that they never invoke it, but in

13 Texas obviously they do.

14 A. Right.

15 Q. Let me ask you, just to be real honest

16 with me here: You know, it's our goal, what we're trying

17 for is ultimately to achieve a verdict that will result

18 in the execution of this woman.

19 A. Yes.

20 Q. We feel like we have the type of

21 evidence that can prove those questions and obviously the

22 defense feels the opposite way.

23 A. Right.

24 Q. You have told me that you are just,

25 you know, against the death penalty, that it is

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1 cold-blooded murder by the State, and it's wrong. You

2 have sat on a DWI jury, obviously, this one is a lot

3 different from that perspective. Knowing how you feel

4 about the death penalty, do you think you could be an

5 objective juror on this type of case?

6 A. Yes, I do. The issue I would be asked

7 to vote on, or give my opinion on would be guilt or

8 innocence. My concerns would not be what punishment

9 might occur.

10 Q. Okay.

11 A. In other words, what I am trying to

12 say is that if I thought someone were going to get the

13 death penalty and I thought they were guilty, I wouldn't

14 say they were not guilty just because I thought they

15 would get the death penalty.

16 Q. Okay. So then let me go a little

17 farther with you.

18 A. Sure.

19 Q. That is not the only issue you decide,

20 guilt/innocence. The way it works is this: The trial is

21 divided into two parts. The first part is you just

22 decide guilt, was the crime committed or not. But then,

23 after a finding of guilt, we can move to the second part

24 of the trial. The jury decides all these issues.

25 A. That's correct.

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1 Q. Okay. This first question asks, and

2 you may hear additional background evidence, you know, if

3 there is any in that part of the trial: But, "Do you

4 find from the evidence, beyond a reasonable doubt, that

5 there is a probability that the defendant would commit

6 criminal acts of violence that would constitute a

7 continuing threat to society?"

8 It's a fact question, a prediction

9 question we ask the jurors. If we prove that beyond a

10 reasonable doubt, the jury answers "yes." Then we move

11 on to the second question which asks: "Taking into

12 consideration all of the evidence, including the

13 circumstances of the offense and the defendant's

14 character and background, and the personal moral

15 culpability of the defendant, is there a sufficient

16 mitigating circumstance or circumstances to warrant that

17 a sentence of life imprisonment, rather than a death
18 sentence, be imposed?"

19 It's a "yes" or "no" question, too.

20 A. Right.

21 Q. If you find there is sufficient

22 mitigating evidence, you would answer it "yes"; if you

23 don't, you would answer it "no." A "yes" and a "no"

24 answer by the jury equals a death sentence, the Judge

25 has no discretion. In some states the Judge has the

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1 discretion to decide. In Texas, if there is a "yes"

2 answer to the first question, and a "no" answer to the

3 second, he will sentence the defendant to death. If the

4 jury answers any another way, he will sentence the

5 defendant to life. But those are the only two possible

6 outcomes.

7 A. Yes, sir.

8 Q. The jury doesn't write death or life

9 in.

10 A. Right, I understand.

11 Q. But the Judge makes his decision on

12 how those questions are answered.

13 A. Yes, sir.

14 Q. So, you do more, a juror does more

15 than just find a defendant guilty.

16 A. Correct. I was addressing just the

17 first part --

18 Q. Oh, okay. Okay.

19 A. -- of guilt or innocence. I knew it

20 was a two-stage thing. Sorry to miscommunicate.

21 Q. Okay. What I need to know, well,

22 obviously, the guilt/innocence portion just has to do

23 with whether a crime was committed and we have proven it.

24 A. Right.

25 Q. But this other area has to do with the

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1 death and life issue, and that is kind of the theory I

2 want to concentrate on.

3 A. Right.

4 Q. On what you are talking about your

5 objections because that is where that comes into play.

6 A. Right.

7 Q. Do you think, I mean, you have told me

8 matter-of-factly you are opposed to it. Could you be an

9 objective juror in that portion of the trial when you

10 know that the result of these answers could equal a

11 person's execution?

12 A. Objective from the standpoint that I

13 will stick to my philosophical beliefs. I do not believe

14 in the death penalty.

15 Q. Okay.

16 A. Period.

17

18 THE COURT: Well, to pin it down,

19 would you answer it purposely "no"? I mean, for example,

20 even if you thought the answer was "yes," which would

21 result in the death, would you answer it purposely so it

22 would not result in the death penalty?

23 THE PROSPECTIVE JUROR: I would answer

24 it truthfully and honestly.

25 THE COURT: Even though it might

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1 result in the death penalty?

2 THE PROSPECTIVE JUROR: That is

3 correct.

4 THE COURT: Oh, well, fine. We got

5 that straightened out.

6

7 BY MR. TOBY L. SHOOK:

8 Q. Well, let me go a little further with

9 that so it's straight in my mind. Obviously, these are

10 fact questions.

11 A. Right.

12 Q. And we can prove to you all day long,

13 that, you know, we may can prove to you that this person

14 is a mean, killing machine. And they are going to be a

15 danger, so in your mind know it should be a "yes." Of

16 course, you know, also, if you answer "yes" you go to

17 this last question, if you answer it "no," it's going to

18 equal death.

19 Some people come in and tell us,

20 "Look, I know you can prove it to me, but I am still

21 philosophically opposed in my heart to the death penalty.

22 I might answer it 'no' even though I know it should be a

23 'yes,' or I just may refuse to answer it because I am

24 opposed to the death penalty. Even though I know the

25 evidence is there, I can't violate by own convictions."

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1 And we can't require jurors to do

2 that. You can take an oath and follow the law, when it

3 comes down to your personal convictions, you have to live

4 with yourself after the trial.

5 Taking this first question: Are you
6 telling us if we proved that to you with the evidence you
7 can answer it "yes," even though you're opposed to the
8 death penalty?

9 A. I could answer that "yes" if you can
10 prove that to me, yes, sir.

11 Q. Knowing that you would be halfway to
12 the death -- the defendant would be halfway to a death
13 penalty?

14 A. I understand.

15 Q. Okay. Then we get to this last
16 question. Neither side has the burden of proof. We say:
17 "Taking into consideration all of the evidence, including
18 the circumstances of the offense and the defendant's
19 character and background, and the personal moral
20 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 It's a long question. But, basically,
25 what mitigating evidence would be is up to you and the
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1 other jurors. We can't tell you what it would be, but it
2 does have to be there.

3 In other words, you can't just -- you
4 may hear -- the record may be void of all mitigating
5 evidence. You just know that you convicted them and they
6 are a dangerous person. There's no mitigating evidence
7 in their background and none that will go to the level of
8 where a life sentence should be imposed.

9 If you answer that "no," it equals a
10 death sentence.

11 Some people have told me that, even if
12 there is no evidence that there is mitigating evidence,
13 that is a way out for them, obviously, if they answer
14 that thing "yes," then the defendant will get a life
15 sentence. Looking at yourself, I mean, you're a smart
16 man, obviously, you have a doctor's degree, knowing how
17 you feel about the death penalty and the objections you
18 have, could you ever answer that last question "no"?

19 A. I would answer that question fairly
20 and honestly to the best of my ability. Yes, sir. I can
21 be opposed to many things. Okay? And there are many
22 things we do in this country and many laws we have that I
23 think are rather foolish and that I am opposed to, but
24 that does not mean that I campaign against them nor does
25 it mean that I violate them or urge others to violate
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1 them.

2 Q. Okay.

3 A. So, I guess, what I'm saying is that

4 there are a lot of things I disagree with, but that is

5 immaterial. I have my philosophy where I try to be fair

6 and honest in my dealings with people, and I would try to

7 be fair and honest in rendering a decision as an

8 alternate juror, if I had to. Well, I don't render one

9 as an alternate juror, obviously, but you understand what

10 I'm saying.

11 Q. But you also understand that even

12 though we talk about alternate juror, that we have had a

13 lot of alternate jurors that wind up on the jury.

14 A. Right, I understand that.

15 Q. Okay. And I understand that a lot of

16 people are opposed to certain laws but they can follow

17 the law and make their decisions objectively.

18 A. Correct.

19 Q. Almost every juror, obviously, is

20 opposed to some laws, but I always have a personal -- to

21 be honest with you, I have a personal concern when

22 someone tells me they are opposed to the death penalty,

23 but, okay, I will sit and answer the question the way

24 it's going to --

25 A. I can understand that.

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1 Q. You can understand that?

2 A. Sure.

3 Q. Some people tell me, "Look, I am not

4 going to avoid my convictions." But you are telling me

5 you think that you can answer that question based on the

6 evidence?

7 A. Yes, sir. The fact that I am opposed

8 or not opposed to something would not affect the way that

9 I would try to answer a question. I would answer it as

10 honestly and fairly as I could.

11 Q. Okay. Let me talk a little bit about

12 the guilt/innocence stage of the trial. We, obviously,

13 bring in evidence, what we call direct evidence or

14 indirect evidence; direct evidence being the eyewitness

15 to a case. Any other evidence is what we call

16 circumstantial evidence.

17 A. Right.

18 Q. You probably are aware of

19 fingerprints?

20 A. Yes, sir.

21 Q. Those kinds of things, crime scene,
22 photographs, DNA, whatever, anything else that links the
23 defendant to the case.

24 A. Yes, sir.

25 Q. In a murder case, obviously, you may
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1 not have an eyewitness.

2 A. Yes, sir.

3 Q. To a case.

4 A. Yes, sir.

5 Q. You have got the victim and person you
6 have accused of the crime.

7 A. Yes, sir.

8 Q. So, we have to rely totally on
9 circumstantial evidence. And the law says there is no
10 difference between the two, the burden of proof is the
11 same, you have to prove it beyond a reasonable doubt.

12 A. Correct.

13 Q. Could you convict someone of capital
14 murder if the State only had circumstantial evidence? If
15 you believe that evidence beyond a reasonable doubt?

16 A. Well, quite honestly, circumstantial
17 evidence can often be quite a bit more compelling than
18 direct evidence. I am very aware of studies done with
19 eyewitness testimony and the difficulty of making
20 identifications, problems with memory, there are many
21 problems with direct evidence.

22 There is, of course, problems with
23 circumstantial evidence too. But in terms of
24 fingerprinting, blood analysis, RNA and DNA studies, this
25 type of scientific circumstantial evidence is quite

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1 compelling evidence in my mind.

2 As I say, in some cases, quite a bit
3 more accurate evidence than eyewitness testimony, because
4 so often eyewitness testimony has been proven to be
5 wrong, in terms of faulty recall of details, of false
6 memory creation, of planted memory creation during
7 questioning, as well as simply wrong identification of
8 people through line-ups.

9 So, I wouldn't worry about whether it
10 was circumstantial or direct. I would weigh it on the
11 basis of did it seem to make sense, and was it logical,
12 and how compelling it was.

13 Q. Okay. The other thing is this: We
14 always hear about motive, especially in a murder case.

15 A. Right.

16 Q. The reason a crime occurred.

17 A. Right.

18 Q. In Texas, we're not required to prove

19 motive. We're just required to prove -- well, in fact,

20 let me let you look at the indictment. I don't think I

21 have had you do that. It's that piece of paper in front

22 of you.

23 A. Sure.

24 Q. If you could read that paragraph there

25 to yourself real quick.

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1

2 THE COURT: Just the typed portion,

3 sir, in the middle.

4 THE PROSPECTIVE JUROR: Okay. I have

5 read that.

6

7 BY MR. TOBY L. SHOOK:

8 Q. Okay. That is what we have to prove,

9 that indictment.

10 A. Yes, sir.

11 Q. Beyond a reasonable doubt. Now, as

12 you can clearly see, we don't have the motive in there,

13 the reason why the crime occurred.

14 A. Right.

15 Q. We're not required to do that under

16 the law. The motive might be clear once the evidence is

17 in, or it may not be clear. I think maybe from your

18 background, you realize, some killings, the motive may be

19 locked away in the defendant's mind and no one really

20 knows why.

21 A. Correct.

22 Q. Can you follow the law in that regard,

23 as far as motive?

24 A. Yes.

25 Q. Have you dealt with any murder

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1 suspects or people under murder charges?

2 A. Yes.

3 Q. Okay. When do you come in in that?

4 Is it usually treatment afterwards, or do you look at

5 them for competency?

6 A. Most of my dealings within it is

7 two-pronged; one has been through the mental health,

8 forensic aspect, to where the people have already been

9 judged to be mentally ill and were put in forensic
10 treatment; and then I had to come in and make judgment
11 decisions as to release status.
12 Were they ready to leave a lock-up
13 facility to an unlocked facility; were they ready to
14 leave an unlocked facility to go into a community home or
15 go back home?
16 That was through mental health. I
17 also through prison have dealt with numerous individuals
18 who have committed murder. That was more from the
19 standpoint of looking at mental health and other
20 classification issues to see if they were drug, alcohol
21 or other involvement, to see if they were going to go to
22 a secure lock-up facility for dangerous people, or if
23 they were going to go to a less secure facility for
24 treatment reasons, assuming that there were drug or
25 alcohol or other mental health issues involved.
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1 Q. Okay. Let me go to this last question
2 real quick; the last question, the mitigation issue. You
3 don't get -- well, actually, let me start with the first
4 question.

5 A. Sure.

6 Q. We can't, obviously, preview any of
7 the case for you.

8 A. Right.

9 Q. We ask, in that first question: "Do
10 you find from the evidence, beyond a reasonable doubt,
11 that there is a probability that the defendant would
12 commit criminal acts of violence that would constitute a
13 continuing threat to society?"

14 And, as I told you, in the punishment
15 stage, you might hear additional evidence about the
16 defendant's background.

17 A. Yes, sir.

18 Q. Okay. If they have a long criminal
19 record, bad character evidence, that can all come in, and
20 the opposite is true. If they have never had a criminal
21 record.

22 A. Correct.

23 Q. That could come in.

24 A. Right.

25 Q. The law doesn't require that we only
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1 prosecute or seek the death penalty against individuals
2 that have been to prison or have a criminal history.

3 The jurors may have a situation where
4 the person has never done anything wrong in their lives,
5 but commits capital murder.

6 A. Right.

7 Q. So you may not get a whole lot of
8 background evidence in the punishment portion. You may
9 have to rely, as far as a "yes" answer to that question,
10 rely on maybe inferences and facts you can draw from the
11 murder case itself.

12 A. Yes, sir.

13 Q. Again, I can't preview the facts, but
14 do you feel you could get enough information from the
15 murder, the facts surrounding the murder itself to enable
16 you to make a prediction about a person?

17 A. No.

18 Q. And why not?

19 A. Well, things have changed a little bit
20 over time, in terms of statistics. However, in general,
21 murderers tend to be the individuals who, irrespective of
22 the length of the sentence, tend to be the ones who are
23 the least likely to repeat their crime.

24 Murderers tend to make trustee in
25 prisons virtually quicker than any other group of
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1 individuals.

2 So much of that now -- I'm talking
3 murder in general here, I'm giving you general
4 statistics. Of course, so much of murder is associated
5 with a crime of passion and alcohol, and, of course, most
6 of it is created by men.

7 And for years, 80 percent of murders
8 were done by people who knew each other. Now, that has
9 changed somewhat.

10 We have a lot more stranger killings
11 now, perhaps due to the deteriorating condition of the
12 inner cities, the availability of hand guns, the drug
13 trade, and so forth. But statistically, murderers are
14 the group least likely to repeat, or the crime of passion
15 murderers are the ones least likely. I think, to form a
16 very honest opinion and judgment, I would probably need
17 more factual data than just surrounding the circumstances
18 of the crime.

19 Q. Would that be a prior criminal
20 history, track record, such as that?

21 A. Track record is important, the mental
22 state of the individual, the use of alcohol or drugs,
23 even though we don't discuss motive, motive is also a
24 factor. There are a numbers of things that have to be

25 considered when you are making a judgment call about
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1 whether an individual is dangerous or not for the future.
2 Most of these, interestingly enough,
3 are based more on large number statistics, such as
4 demographic background, socioeconomic status, degree of
5 education, prior criminal record, these are all much more
6 persuasive in determining the future dangerousness than
7 your actual impression or knowledge of the psychological
8 state of an individual.

9 We like to think we can read people
10 and make these judgments, and I know parole boards like
11 to think that, but the actual fact is that you're far
12 better off simply going with the large number of
13 statistics and looking at demographics and the other
14 factors that I've mentioned, you can make much more
15 accurate prediction. And I realize I'm talking as a
16 scientist now.

17 Q. Right.

18 A. But I have to, because that is what I
19 am.

20 Q. That is your background.

21 A. That's what I am, yes, sir.

22 Q. Okay. Dr. Shelton, have any of the
23 murderers that maybe you dealt with in prison, or the
24 other ones accused of crimes of murder that you treated
25 before the trial, did they ever involve women?

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1 A. Yes.

2 Q. Women?

3 A. Yes. Oh, I'm sorry, were any of the
4 murderers I was involved with women?

5 Q. Yes.

6 A. No, sir, I worked exclusively with the
7 male population.

8 Q. Okay.

9 A. I have worked with some females in
10 forensic arena who were convicted of murder.

11 Q. Okay. What kind of work did you do
12 with them?

13 A. It was primarily classification work.

14 Again, determining the degree of dangerousness: Do they
15 need to be locked up behind two doors versus one door?

16 Were they able to go outside escorted?

17 These types of things, as well as some

18 treatment issues, because these people that I am talking

19 now, had been adjudged as to be mentally ill and
20 incompetent at the time of the crime.

21 Q. Okay.

22 A. I have never worked with a female
23 murderer in a prison because I worked exclusively with
24 males.

25 Q. Okay.

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1

2 MR. TOBY L. SHOOK: Give me just one
3 moment, Judge.

4 THE COURT: All right.

5

6 (Whereupon, a short

7 Discussion was held

8 Off the record, after

9 Which time the

10 Proceedings were resumed

11 As follows:)

12

13 BY MR. TOBY L. SHOOK:

14 Q. Do you have any questions over

15 anything we have gone over?

16 A. No, sir, I think I am clear.

17 Q. Okay.

18

19 MR. TOBY L. SHOOK: That's all the
20 questions I have then, Judge.

21 THE COURT: All right.

22 Mr. Glover.

23

24

25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. CURTIS GLOVER:

4 Q. Dr. Shelton, as the Judge told you, my
5 name is Curtis Glover. Just a brief thing or two I would
6 like to go over with you. You indicated that you heard
7 something about this, I think you said in the local
8 newspaper. Do you recall what you may have read about
9 the case?

10 A. Just the very general kind of things

11 that newspapers publish. The accusation, the fact the

12 trial was being moved here, pretty much that was the

13 extent of it.

14 Q. Okay. I assume because of your vast
15 training in this area that you made nothing of that? Did
16 you arrive at any opinion one way or the other?

17 A. No, no.

18 Q. Okay. Let me just go over a few
19 things with you that obviously you know, but I kind of
20 want to repeat it with you. As she sits there now she is
21 presumed innocent. You can do that, can you not?

22 A. Yes, sir.

23 Q. That presumption remains with her
24 until they have overcome it by competent evidence?

25 A. Yes, sir, that's correct.

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1 Q. Beyond a reasonable doubt? You would
2 hold them to that burden?

3 A. Yes, sir.

4 Q. You know that burden never shifts to
5 this side of the table?

6 A. Right.

7 Q. Can you think of any reason why you
8 wouldn't be fair in this case, going into your heart of
9 hearts?

10 A. No, I can't. Quite honestly, I think
11 I could be fairer than the average juror, because I have
12 so much knowledge about these issues. Although, I
13 realize people like me are rarely picked to be on juries
14 possibly because they do have knowledge of a lot of
15 things. But absolutely I could be fair.

16

17 MR. CURTIS GLOVER: That's all we
18 have, Judge. Thank you.

19 THE COURT: Thank you. Doctor, would
20 you mind stepping outside. We will call you back in just
21 a minute.

22

23 (Whereupon, the prospective
24 juror was excused from the
25 room, and the following

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1 proceedings were held,
2 outside of his presence
3 as follows:)

4

5 THE COURT: That's it for this
6 morning?

7 THE BAILIFF: That's all we have here
8 now.
9 THE COURT: All right. That's fine.
10 THE BAILIFF: There was another one,
11 but they haven't arrived.
12 THE COURT: They haven't arrived.
13 Well, we can take rejection for a while here. Everybody
14 ready? What says the State?
15 MR. TOBY L. SHOOK: We will exercise a
16 strike, Judge.
17 THE COURT: Thank you.
18 MR. RICHARD C. MOSTY: Can we just
19 repeat that? That was so much fun.
20 THE COURT: All right. The State has
21 now exhausted all its peremptory challenges in this phase
22 of the proceeding, this phase of the trial.
23 All right. If you will bring Dr.
24 Shelton back.
25 MR. TOBY L. SHOOK: Well, there is no
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1 law that says we can't have more.
2 THE COURT: There is no law that says
3 you can't have more.
4 MR. RICHARD C. MOSTY: There's judges
5 that say that.
6
7 (Whereupon, the prospective
8 juror returned to the
9 room and the proceedings
10 were resumed as follows:)
11
12 THE COURT: Doctor, you are going to
13 be excused from further jury service.
14 THE PROSPECTIVE JUROR: Okay.
15 THE COURT: I'm sure that's not coming
16 as a shock to you.
17 THE PROSPECTIVE JUROR: No, it's not.
18 THE COURT: Listen, we want to thank
19 you very much.
20 THE PROSPECTIVE JUROR: Sure.
21 THE COURT: And I heard your comments
22 out there about the school board. I hope everything goes
23 well with you down here.
24 THE PROSPECTIVE JUROR: Thank you.
25 THE COURT: Pleasure having you in
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1 here.
2 THE PROSPECTIVE JUROR: Thank you very
3 much.
4 THE COURT: Thank you. Bye. You bet.
5 Oh, I do have to tell you one thing. Please don't talk
6 about this until it's over, it will be over the latter
7 part of February, or the latter part of January.
8 THE PROSPECTIVE JUROR: All right.
9 THE COURT: Thank you. Okay.
10 That is it. All right. Short recess.

11
12 (Whereupon, a short
13 recess was taken,
14 after which time,
15 the proceedings were
16 resumed on the record,
17 in the presence and
18 hearing of the defendant
19 as follows:)

20
21 THE COURT: All right. Bring the next
22 juror in.
23 Your name, ma'am?
24 THE PROSPECTIVE JUROR: Lou, Lou
25 Chamberlain.
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1 THE COURT: Okay. This is Ms. Lou
2 Chamberlain. She is 294 on the jury list, 103 on our
3 list. And it's C-H-A-M-B-E-R-L-A-I-N; is that correct
4 ma'am?
5 THE PROSPECTIVE JUROR: Correct. Yes,
6 sir.
7 THE COURT: Ms. Chamberlain, if you
8 will raise your right hand, please.
9 Do you solemnly swear or affirm that
10 you will true answers make to all questions propounded to
11 you concerning your qualifications as a juror, so help
12 you God?

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

21
22 THE PROSPECTIVE JUROR: I do.

23 THE COURT: Thank you, ma'am. Ms.
24 Chamberlain, you are a potential alternate juror in the
25 Darlie Routier matter. We have already picked 12, we're
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1 going to pick four alternates now. You could be one of
2 the alternates.
3 Now, Mrs. Routier is the defendant,
4 she is the young lady sitting there in the olive dress.
5 She's with her attorneys, Mr. Curtis Glover from Dallas
6 over here, and from Kerrville we have Mr. Richard Mosty
7 and Mr. Preston Douglass.
8 The State is represented by two Dallas
9 County Assistant District Attorneys, Toby Shook and
10 Sherri Wallace.
11 There are no wrong answers. They are
12 just going to ask you some questions. Tell us exactly
13 how you feel about things. You are not going hurt
14 anybody feelings.
15 And if you are nervous, just relax.
16 And if you could speak into the microphone, shortly,
17 briefly and loudly so Ms. Halsey can take all this down.
18 And if you could say yes or no, I know you will, instead
19 of uh-huh, huh-uh, we'll get it down. Okay?
20 THE PROSPECTIVE JUROR: Okay.
21 THE COURT: Thank you, ma'am. All
22 right. Who for the State? Mr. Shook.
23 MR. TOBY L. SHOOK: Thank you, Judge.
24
25
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1 Whereupon,
2
3 LOU CHAMBERLAIN,
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. Is it Ms. Chamberlain?
14 A. Yes, sir.
15 Q. My name is Toby Shook. I am one of
16 the prosecutors on the case. I will be asking you

17 questions on behalf of the State.
18 I want to go over a couple of things
19 here in your questionnaire and then we will go over the
20 law that pertains to the death penalty and some of the
21 rules. Okay?
22 I was looking at your questionnaire,
23 and I believe that you are director of --
24 A. Religion.
25 Q. Religion, at Notre Dame?
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1 A. Yes, sir.
2
3 THE COURT: That is the local church
4 as opposed to the university?
5 THE PROSPECTIVE JUROR: Yes, sir. I
6 wish. Yeah.
7 THE COURT: Long commute. Notre Dame
8 is in South Bend. Oh, I'm sorry.
9
10 BY MR. TOBY L. SHOOK:
11 Q. I take it that you don't know any of
12 the Dallas attorneys?
13 A. No, sir, I do not.
14 Q. I believe you put in your
15 questionnaire that you do know Mr. Mosty and Mr.
16 Douglass.
17 A. Yes, sir, I do.
18 Q. From a -- is it a past lawsuit?
19 A. Yes, sir.
20 Q. What type of lawsuit was it?
21 A. I had gone into court contesting an
22 eviction from a restaurant that I had. This was several
23 years ago.
24 Q. How long ago was it?
25 A. Four years, five years, it was a
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1 while.
2 Q. And what happened on that case?
3 A. We settled out of court.
4 Q. Were they on the opposite side?
5 A. They were on the opposite side.
6 Q. Okay. I think you said that, on your
7 questionnaire, what we need to know is obviously they
8 have been retained as also some of the lawyers on this
9 case.

10 A. Right.

11 Q. Would you hold that against them from
12 that experience in any way? Would that enter into your
13 decisions? Or would you just decide this case, if you
14 were a juror, just based on the evidence?

15 A. Well, they did a good job. I wouldn't
16 hold it against them.

17 Q. You recognize they were only doing
18 their job in that case?

19 A. Yes, sir.

20 Q. And you have no animosity toward or
21 against them?

22 A. No.

23 Q. Okay. Fair enough then.

24 You put down on a special interest in
25 a criminal case, there was a case back here that was in
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1 Kerrville and you worked for some attorneys at the time.

2 A. Years ago, it was a friend and I just
3 worked -- I helped them out at night. It was Joe Grady
4 Tuck, he was an attorney here in town at that time and he
5 was assigned the Genene Jones case. And his secretary
6 had left, had walked out right in the middle of all this.
7 And myself and another gal would go over at night and
8 just help him, get things out of his TRS-AV (phonetic
9 spelling) and help him get documents ready and so forth.

10 Q. Okay. You put down on your
11 questionnaire also that you read, had seen some stuff on
12 TV about an article about the case, and read an article
13 in the San Antonio paper about the case.

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

16 Q. Obviously, most of the jurors have
17 heard about the case.

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

20 Q. There was a lot of publicity in
21 Dallas and was the reason it was moved here.

22 A. Right.

23 Q. And obviously, there were some news
24 reports when it came here. It's okay to read, especially
25 when you are just summoned down as a juror, but what we
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1 have to be sure of is jurors don't come in and form
2 opinions ahead of time and decide the case on what they
3 have heard on the TV or the media.

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

6 Q. In other words, they have to wait
7 until the witnesses testify and decide the evidence on
8 that.

9 A. Right.

10 Q. They have to more or less mentally and
11 have the mental discipline to forget what they heard in
12 the media and just decide the case in the courtroom.
13 Could you do that?

14 A. I believe so.

15 Q. Okay. I mean, we all form opinions as
16 to what we read or see on TV, but I think it's best
17 demonstrated a couple of weeks ago, what happened in
18 Atlanta with Richard, what's his name?
19

20 THE COURT: Jewell.

21

22 BY MR. TOBY L. SHOOK:

23 Q. Jewell case. Remember it got some
24 publicity in Atlanta? Blamed in the media at least, or
25 said to be the chief suspect --

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1 A. Oh, the security guard, yes.

2 Q. The first couple weeks it looked, you
3 know, they pretty much hung him out to dry. And it comes
4 out later that, no, they don't have any evidence against
5 him at all and it's ruined his life.

6 A. Right.

7 Q. And that is why we don't do that. You
8 understand that?

9 A. Yes, sir.

10 Q. So that is why we always ask, when we
11 know you have read information, but we just have to be
12 assured that if you were chosen as a juror to listen to
13 the evidence, and then decide the case based on that,
14 could you do that?

15 A. Yes, sir.

16 Q. Okay. Ms. Chamberlain, let me talk to
17 you about what you believe about the death penalty. I
18 believe you stated on your questionnaire that you were in
19 favor of it as a law; is that right?

20 A. Of the death penalty?

21 Q. Yes.

22 A. Yes, sir.

23 Q. Can you tell me in your own words the
24 reasons why you favor the death penalty?

25 A. It is definitely not to do with my

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1 faith. Father Mike would hate to hear me say that, but
2 it has to do with my family background. My entire family
3 is in law enforcement and that is where I form my
4 opinions from.

5 Q. Okay. And have you held that opinion
6 all your life?

7 A. Yes, I have.

8 Q. You put number two, and I will read it
9 to you. You circled: "I believe the death penalty is
10 appropriate in some capital murder cases, and I could
11 return a verdict resulting in death in a proper case." I
12 take it from your answers here, you believe that there
13 are just certain types of cases that the death penalty is
14 appropriate?

15 A. Oh, absolutely, yes.

16 Q. Not every murder case?

17 A. No, no.

18 Q. Just depends on the facts of each
19 case?

20 A. Yes, uh-huh. (Witness nodding head
21 affirmatively.)

22 Q. Okay. In Texas, again, I guess it
23 kind of correlates to how you feel, but not every murder
24 case is a death penalty case.

25 A. No, sir.

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1 Q. There's only certain type of cases
2 that could even be eligible for the death penalty, and
3 then it depends on the fact situation and how the
4 questions are answered.
5 Murders that occur during felonies,
6 such as murder during a robbery, or a burglary, a
7 kidnapping, or rape, those fall under our statutes, also,
8 murder of a police officer while he is on duty would fall
9 under the statute.

10 A. Yes, sir.

11 Q. Murder for hire, mass murder, and, as
12 in this case, murder of a child under the age of six, can
13 be a death penalty case, depending on each of the facts
14 of the case. Our procedures -- or first of all, you have
15 to prove the indictment against the defendant. And I'll
16 let you take a moment to read that to yourself. The
17 piece of paper over there on the table before you, there
18 is a paragraph there, it is typewritten. If you will
19 take a moment and look at that.

20 A. I have to see it.

21 Q. No problem.

22

23 THE COURT: The one there in the
24 middle there.

25 THE PROSPECTIVE JUROR: This bottom
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1 paragraph, Judge?

2 THE COURT: Yes, ma'am.

3 THE PROSPECTIVE JUROR: Yes, sir.

4

5 BY MR. TOBY L. SHOOK:

6 Q. Okay. That is what the State has to
7 prove in the first part of the trial to get a guilty
8 verdict. Those allegations themselves. Now, if we don't
9 do that, it's real simple, we all go home, and a not
10 guilty verdict if we don't prove those allegation beyond
11 a reasonable doubt.

12 If we do prove those allegations, we
13 don't go home then either, we go to the punishment phase.

14 And you may hear additional evidence about the
15 defendant's background in the punishment phase.

16 At the close of that evidence, you
17 will get these questions, we'll go over in a moment, but
18 let me summarize.

19 The first question is a "yes" or "no"
20 question that basically asks this: Has the State proven
21 that the defendant would be a continuing danger to
22 society?

23 If we get a "yes" answer you go to the
24 second question. Which basically asks the jurors to
25 review all the evidence, and if they feel there's
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1 sufficient mitigating evidence, which they believe a life
2 sentence should be imposed rather than a death sentence,
3 then they will answer the question "yes." If they don't
4 feel that mitigating evidence exists, they answer it
5 "no." Okay?

6 And a "yes" and a "no" answer equals
7 the death penalty. The Judge would sentence the
8 defendant accordingly. If there's any other answer
9 given, it equals a life sentence. But those are the only
10 two choices, once someone has been convicted of capital
11 murder.

12 A. Okay.

13 Q. You don't write life or death in, but

14 the Judge sentences according to how the jurors answered
15 those questions.

16 A. Okay.

17 Q. And you probably know that the method
18 of execution in Texas is by lethal injection.

19 A. Right.

20 Q. And those executions do take place.

21 A. Right.

22 Q. We can't preview this case for you,
23 obviously, can't go over the facts, we're only kind of
24 dealing in a hypothetical situation. But as best you
25 know yourself, do you feel you could objectively listen
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1 to the evidence in a case like this? And if it was
2 proven to you beyond a reasonable doubt, could you answer
3 these questions?

4 A. Yes.

5 Q. Okay. Let me start out with a few
6 things the Judge went over.

7 Have you ever been on a jury before?

8 A. No.

9 Q. Okay. He went over some rules that
10 apply in every criminal case, and they are rules you have
11 heard your entire life. I want to make sure you can
12 follow those rules. Every juror we go over these with.

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

15 Q. Number 1, the presumption of
16 innocence. Okay? As the Judge told you, every defendant
17 starts out with the presumption of innocence.

18 A. Yes, sir.

19 Q. That's part of the Constitution. I'm
20 sure you have heard that?

21 A. Yes, sir.

22 Q. As the defendant sits here today, you
23 have to start her out with the presumption of innocence.
24 That is the presumption we have to overcome with our
25 evidence. The fact that anyone has been indicted, the
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1 fact that, you know, a Grand Jury came back with that
2 piece of paper, is no evidence of guilt.

3 A. No.

4 Q. It's just a piece of paper. I think

5 Judge Tolle told you how, you know, the Grand Juries in
6 Dallas can hear a case in 30 seconds or one minute

7 sometimes?

8 A. Right.

9 Q. So, you can't use that as evidence of
10 their guilt. You can't use the fact that anyone has been
11 arrested or that we're going through this. You have to
12 wait until the witnesses testify and listen to all of the
13 testimony before you make that decision. Does that make
14 sense to you?

15 A. Yes, sir, it does.

16 Q. Could you then follow that rule and
17 give the defendant the presumption of innocence at the
18 beginning of the trial?

19 A. Yes, sir, I could.

20 Q. Okay. Now, in every criminal case,
21 the State has to prove the case beyond a reasonable
22 doubt. The burden of proof is on us.

23 A. Right.

24 Q. We do the accusing, we have to do the
25 proving, is one way of saying it. We have to prove each
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1 and every element of that indictment there. If we do not
2 prove our case beyond a reasonable doubt, then you find
3 the defendant not guilty.

4 Now, let me go a little further with
5 that. That also means that the defense has no burden of
6 proof. Okay? We have to prove this case to you beyond a
7 reasonable doubt. They are not required to prove
8 anything to you. There is no legal requirement they
9 prove anything to you, you see.

10 I'm going to give you an example here
11 that's not going to happen, but it is a way of
12 illustrating my point. The only requirement the defense
13 has, because the State has to do the proving, is to show
14 up in Court. If they wanted to, they could read
15 newspapers while all the testimony went on and not ask a
16 single question. I don't expect they will do that. They
17 will ask plenty of questions, I'm sure, and make
18 arguments and make objections, but they don't have to.
19 And they don't have to put witnesses on. They very well
20 might, but they don't have to.

21 That is because the burden of proof
22 never shifts to them. If we put on some evidence and
23 then we stop, there is no burden of proof that goes,
24 "Okay. It's your turn. You have got to put on some
25 evidence. You have got to prove their innocence." You
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1 understand? They might very well wind up doing that, but

2 they can't be under any legal requirement by the jurors.
3 You see? Because we're very, very strict on that rule in
4 our Constitution. The State has an awesome power when it
5 starts accusing people, so they have to have that burden.
6 Do you understand?

7 A. Yes, sir.

8 Q. Like I said, they very well might try
9 to prove someone's innocence, but they are not obligated
10 to and you can't require them to in any way. Obviously,
11 you would expect them to as lawyers to work.

12 A. Yes.

13 Q. But they are under -- can be under no
14 obligation to do that. If we don't make that hurdle of
15 reasonable doubt, then you have to find the defendant not
16 guilty. Could you follow those rules of law?

17 A. Yeah. I would have to, huh?

18 Q. Oh, sure. I mean that is the law. We
19 have to make sure you have the mental discipline --

20 A. Right.

21 Q. -- to do that though. You seem like a
22 bright enough person, and, I mean, to figure out what the
23 rules are, and know yourself well enough to whether you
24 could follow it or not.

25 A. Yeah.

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1 Q. I mean, it doesn't take a juror long
2 to figure out, I don't think, that if you don't want to

3 be stuck on a jury, you could lie to us and say, "No, I'm
4 not going to follow the rules." I don't think you're
5 that type of person though.

6 A. No, I'm not.

7 Q. I might, you might be tempted to?

8 A. Yes, I would be tempted to.

9 Q. Well, if all citizens felt that way,
10 we very well couldn't have juries.

11 A. I know.

12 Q. And you put on your questionnaire, we
13 have several categories that we had you circle. And one
14 of the statement is: "If a person is accused of capital
15 murder, she should have to prove her innocence." And you
16 put that you strongly agree with that statement.

17 A. Yes, I do.

18 Q. Okay. And I want to get back, because
19 that is just the rule of law I just talked about there.

20 A lot of people feel that way.

21 A. Yes, I know. I didn't understand that
22 until you told me.

23 Q. Well, you think about, "Well, golly."
24 First of all, you would think they would want to.
25 A. Uh-huh. (Witness nodding head
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1 affirmatively.)
2 Q. But especially if they were innocent,
3 they would do everything in their power. And again, it
4 might actually come down to it. But we can't have jurors
5 on the jury requiring the defense to do that as an
6 obligation. See, if we just put on a little evidence,
7 and maybe you are not quite convinced, you can't go,
8 "Let's hear what the defense has to say. If they don't
9 convince me totally, then I will find the defendant
10 guilty." Do you understand where I'm coming from?
11 A. I understand, it's difficult for me,
12 you know. But I understand where you are coming from.
13 Q. You have to kind of just look at it
14 objectively and imagine reasonable doubt kind of as a
15 hurdle. And if we get there from the evidence we put on,
16 then you could find the defendant guilty. But if we
17 don't get there, whether it's because you just don't
18 believe the way we put on the evidence, or maybe they did
19 question, maybe they just cross-examined our witnesses
20 and that gave you a reasonable doubt. You see?
21 A. Uh-huh. (Witness nodding head
22 affirmatively.)
23 Q. They may not have to put on witness
24 one. But they can be under no legal obligation.
25 A. To do so, yes.
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1 Q. Is it clearer to you now?
2 A. Yes.
3 Q. Where I'm coming from?
4 A. Yes, it is. I'm sorry, yes.
5 Q. Okay. That is the point I wanted to
6 be clear on, because I'm sure the defense will probably
7 ask you about that too.
8 A. Right.
9 Q. But in your mind, as the Judge would
10 instruct you, that you cannot require the defense to
11 prove anything to you. You have to require the State to
12 do the proving in this case. Could you follow that rule
13 of law?
14 A. I could.
15 Q. Okay. Another area of law is the
16 Fifth Amendment right. If someone wants to testify, they

17 can. However, if they choose not to testify, no one --
18 the jury cannot hold that against them. That is another
19 cornerstone of our Constitution. There can be a lot of
20 reasons why a person may not want to testify. They may
21 be real guilty, and they would look guilty if they
22 testified.

23 Their lawyers might tell them not to
24 testify. Maybe they don't think we have proven our case,
25 and they'll get up, and they may be an uneducated person,
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1 or it would look bad if they did testify. It could be
2 innocent, you know, but under cross-examination might
3 look guilty. Maybe they could be very nervous, have a
4 speech impediment, I don't know, they could look bad when
5 they are not guilty.

6 A. Well, yes.

7 Q. So, there are very many reasons that
8 go into it. So the law takes care of it by saying,
9 "Look, if they don't testify, you don't use it as
10 evidence." You look at all the other evidence to decide
11 if the State has proven its case. Again, the burden is
12 on us. Could you follow that rule of law?

13 A. Yeah. Yes, I could.

14 Q. Okay. In addition to that, in any
15 criminal case you will hear from police officers.
16 Invariably, some officer will be called in some capacity.
17 A lot of people have respect for police officers. But
18 you have to start police officers as well as any other
19 witness, out on the same plane.
20 Do you understand? You can't give
21 them a leg up ahead of time. Now, after you wait and
22 hear them testify, you are going to judge each one
23 differently about their credibility. In the end, you
24 might think a police officer is credible, or you might
25 think another witness is more credible.

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1 But you can't automatically put them
2 ahead of the other witnesses. Do you understand where I
3 am coming from?

4 A. Yes, sir.

5 Q. They are all human, just like us.

6 There's good ones and there is bad ones. Can you follow
7 that rule of law?

8 A. Yes, sir.

9 Q. Okay. I think that is most of the

10 basic rules Judge Tolle went over. And I think you

11 clearly stated you could follow those if you sat as a
12 juror on this case.

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

15 Q. I want to then move into the
16 punishment issues, which may only come up if you have
17 found the defendant guilty.

18 As I said, the trial is divided into
19 two parts. The first part concentrating on the offense
20 itself, the murder itself. If we do prove our case, we
21 move to this punishment stage and you might hear more
22 evidence on the background of the defendant at that
23 point. Okay?

24 You can hear if there is criminal
25 history, bad character evidence, you could hear that. If
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1 there is no criminal history, you could hear that also.
2 It could be a lengthy part of the trial or it could be
3 very short.

4 But after all of that evidence is in,
5 you go back there and exam it, as well as the evidence
6 you heard in the guilt/innocence stage and then you
7 answer this question. That question asks: "Do you find
8 from the evidence, beyond a reasonable doubt, that there
9 is a probability that the defendant will commit criminal
10 acts of violence that would constitute a continuing
11 threat to society?" You see that question is asking the
12 jurors to make a prediction about the future.

13 And it's a fact question based on the
14 facts of the offense and all of the background evidence
15 that you know about the defendant. Okay?

16 A. Yes, sir.

17 Q. That question starts out with a "no"
18 answer. And we have to overcome it by putting on
19 evidence and proving to you beyond a reasonable doubt it
20 should be answered "yes." Just like a defendant starts
21 out with the presumption of innocence, this part of the
22 trial, that starts out with a presumption of "no."

23 A. All right.

24 Q. And we overcome that. Now, what you
25 have to do as a juror is reevaluate the evidence you have
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1 already heard and then the new evidence you have heard,
2 and then decide has the State proven its case. Okay?

3 A. Yes, sir.

4 Q. My point here is there is no automatic

5 answers. You know, you don't go back there and say,
6 "Look, we found the defendant intentionally took a life
7 and is a capital murderer. Therefore, the defendant is a
8 future danger. 'Yes.'" You don't do that automatically,
9 you have to wait and look at all the evidence and then
10 decide that.

11 We can't have just people making these
12 decisions with knee-jerk reactions, because every case is
13 different. You don't know what the facts are going to
14 be. They very well may show you a very dangerous person
15 you would answer "yes" to, and there could be mitigating
16 circumstances that, you know, show, "Well, this person
17 isn't going to be a danger."

18 You don't know. You might sit on 100
19 capital murder juries and 99 of them you would answer
20 "yes" to and then there might be one coming along that
21 you would answer "no" to.

22 But you have to wait and listen to all
23 of the evidence. You understand that?

24 A. Yes, sir.

25 Q. Can you tell the Judge that you would
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1 follow the law and would require the State to prove that
2 to you in the punishment stage, and wait until all of the
3 evidence is in and review the evidence and then make your
4 decision on that question?

5 A. Yes.

6 Q. In other words, it would not be an
7 automatic "yes" for you if you found someone guilty?

8 A. No.

9 Q. Okay. Now, if you do answer "yes" to
10 question number 1, you get to this last question, and
11 neither side has the burden of proof there. It's just
12 kind of an overview of all of the evidence that you have
13 heard.

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

21 It's a long question. The beauty
22 about this question is, the lawyers and the Judge can't
23 tell you what mitigating evidence is. It will be up to
24 you.

25 And you don't have to sit there and
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1 I think of what mitigating evidence is. I don't think most
2 people sit around thinking of that. But you are not
3 required to imagine those types of facts in your mind
4 right now. It could be any evidence. Anything in the
5 defendant's background. You know, we have talked to a
6 lot of jurors.
7 It could be their age, it could be the
8 history of maybe how they grew up, were they beaten, were
9 they sexually abused, or are they mentally retarded, it
10 could be anything, that might mitigate their punishment.
11 They don't walk away, they have to serve a life sentence.
12 But it's a way for the jurors to look
13 at all the evidence and then decide, "Well, I know the
14 person is guilty, I know they are a future danger, but
15 something in the case tells me they need a life sentence,
16 rather than a death sentence."
17 And if the evidence equals that, you
18 could answer it "yes" and they would get a life sentence.
19 And if it doesn't, then you answer it "no," they get a
20 death sentence.
21 A. But that decision, we make personally?
22 Q. It's a decision each juror makes.
23 A. Individually.
24 Q. Yeah. You don't have to agree on it.
25 For instance, an example I give is, you might hear a case
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1 where a guy has a Ph.D. from Harvard. One juror might
2 say, "Man, that is mitigating. A guy did something with
3 his life. He is very intelligent, I think that is
4 mitigating enough that he should get life." Another
5 juror would say, "No. Someone that smart shouldn't
6 commit capital murder. I am going to hold it against
7 him, I think it should be held against him."
8 So you don't have to agree on it at
9 all. They could have thought of some other mitigating
10 factor themselves. But it's not a unanimous verdict
11 either, but what it is, is it's a decision you make from
12 the evidence, but it also is a decision you make, I
13 guess, kind of with your heart.
14 If you decide the evidence tells you
15 that the defendant needs a life sentence, then you will
16 answer it that way. But your mind has to be open to it.
17 If that evidence exists, you will give it that weight.
18 Can you keep your mind open to that
19 type of evidence?
20 A. Well, I don't know. I have a couple

21 questions in that area.

22 Q. Okay.

23 A. I sometimes have to wonder what good

24 does it do the victim or society to sentence somebody to

25 life. What benefit is it to anyone, them or us, I mean,

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1 unless they want life. I don't know. I have some

2 trouble with that, you know.

3

4 THE COURT: Well, ma'am, you don't do

5 any sentencing, I do the sentencing.

6 THE PROSPECTIVE JUROR: Right.

7 THE COURT: All you do is answer the

8 questions.

9 THE PROSPECTIVE JUROR: Okay. Well, I

10 could answer the questions in the case, yes.

11

12 BY MR. TOBY L. SHOOK:

13 Q. And again, you don't have to think --

14 the whole reason we got this question, goes back to one

15 case where the evidence showed that the defendant was

16 mentally retarded. Knew right from wrong, but was very

17 slow, extremely slow, to the level of retardation, wasn't

18 insane, but a level of retardation.

19 Now, he was that way through no fault

20 of his own. He was born that way. A jury could have

21 believed in that case, "Well, he is a danger, but because

22 of his mental condition, I think a life sentence might be

23 more just than a death sentence."

24 And this goes to another instruction

25 the Judge will give you, I know in the news a lot of

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1 times the parole laws come up, an early release and all

2 that. Those laws change all the time.

3 The Judge would instruct you and the

4 other jurors that you can't consider the parole laws or

5 when the defendant might be released at all during your

6 deliberations. Because we have no control over that at

7 this level.

8 A. Right.

9 Q. Those change all the time. It's up to

10 the governor or the parole board.

11 A. Right.

12 Q. So, you can only base your decision on

13 the evidence that you hear.

14 A. Yes, I understand.

15 Q. Can you follow that rule of law?

16 A. Yes, I can.

17 Q. And can you keep your mind open to

18 this mitigating type of evidence and if you think there

19 is evidence that tells you in your heart and in your mind

20 that a life sentence is what is just in this case, you

21 could answer the question that way?

22 A. If my heart told me so, I would go

23 with that feeling, yes.

24 Q. I gave you an example earlier, you

25 could sit on 100 capital murder cases and 99 of them you

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1 might decide there isn't any mitigating evidence, but if

2 that one came along, or somewhere in the trial you saw

3 this mitigating evidence that came to that level, you

4 could answer it that way?

5 A. Yes, sir.

6 Q. Do you see how that question is kind

7 of a safety valve or safety net?

8 A. Right.

9 Q. For certain situations that might

10 exist?

11 A. Uh-huh. (Witness nodding head

12 affirmatively.)

13 Q. Okay. You said that you had

14 relatives, a lot of relatives that had been in law

15 enforcement?

16 A. Yes, sir.

17 Q. What area of law enforcement are they?

18 A. My dad is a retired police officer, my

19 uncle is captain of the police force, I have got a

20 brother in parole, he was a probation (sic), he is now a

21 parole officer, and I have got several cousins on the

22 police force, a lot of my family works in that area.

23 Q. Okay. It's perfectly fine to have

24 relatives as police officers. It doesn't disqualify you

25 from being a juror at all.

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1 A. Right.

2 Q. In fact, in this case, are your

3 relatives local police officers?

4 A. No, they are all up in the Midwest.

5 Q. Okay. But obviously they are not

6 going to be involved in this case out of Dallas County?

7 A. No.

8 Q. I mean obviously, if they were local

9 and this was a local case, you know, if he knew anything
10 at all, that would be different, if you knew the witness.

11 A. It would be different, right.

12 Q. But that doesn't disqualify you as
13 long as you know you can be objective, which I think you
14 told us you could be. That also means the fact that most
15 people we get in here don't like crime, obviously.

16 A. Correct.

17 Q. And don't like violent criminals. And
18 you talk about -- invoke the words capital murder, or
19 murder of a child under the age of six, you start
20 imagining all kinds of bad things. That is just a
21 natural reaction. And I said before, it's certainly not
22 a disqualification. We would be in a sad state if the
23 only jurors we got on the jury liked criminals and so
24 forth.

25 What you have to be able to promise
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1 the Judge though is, obviously, you just keep your mind
2 open and wait until all the evidence is in before you
3 make your decisions.

4 And if the State proves these issues
5 to you, you can answer the questions that way. But also,
6 you have got to have the discipline and integrity that if
7 we don't prove it to you, obviously, you're not going to
8 answer it. You will find the defendant not guilty, or
9 you could answer these questions "no."

10 But you can understand why we need
11 jurors who could wait until all the evidence is in before
12 they make their decisions?

13 A. Yes, sir.

14 Q. Okay. Do you have any questions over
15 anything we have gone over?

16 A. No, sir.

17 Q. Okay. The trial is scheduled to begin
18 January 6th, we can't tell how long it's going to last.
19 I know it's not going to be any type of O.J. case, our
20 best guess is two weeks, maybe even a little bit less.

21 A. Oh, two weeks?

22 Q. Or a little less.

23 A. I thought you earlier said three
24 months, I have been just dying.

25
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1 THE COURT: Three months?

2 MR. TOBY L. SHOOK: Oh, no, no.

3 THE PROSPECTIVE JUROR: There were
4 rumors on the street that this is a three month trial.

5 THE COURT: Ma'am, this is Texas, not
6 Southern California.

7

8 BY MR. TOBY L. SHOOK:

9 Q. We don't even know if it will go as
10 long as two weeks. The schedule is just 9:00 to 5:00,
11 you get to go home at night. The only time you would be
12 sequestered is during deliberations if you deliberate far
13 into the evening hours.

14 A. Oh, okay.

15 Q. So we're not talking three months,
16 best guess we're looking at is two weeks. Maybe, it
17 could go a little longer, but it could very well go less
18 than that.

19 A. My boss would come after you if I had
20 been here three months.

21

22 THE COURT: Three weeks is the
23 outside, ma'am, and that anticipates some inclement
24 weather, and you have people in the San Antonio Airport
25 and so forth.

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1 MR. TOBY L. SHOOK: The two week
2 period or less is much more likely.

3 THE PROSPECTIVE JUROR: Okay.

4 MR. TOBY L. SHOOK: Any questions over
5 anything I have gone over?

6 THE PROSPECTIVE JUROR: No.

7 MR. TOBY L. SHOOK: I appreciate your
8 patience.

9 THE COURT: Thank you, Mr. Shook.

10 Mr. Glover.

11

12 VOIR DIRE EXAMINATION

13

14 BY MR. CURTIS GLOVER:

15 Q. Ms. Chamberlain, my name is Curtis
16 Glover. I just have a few questions for you, if I might?

17 A. Yes, sir.

18 Q. I noticed on the first page of your
19 questionnaire, you indicated that you had read some
20 articles on this, and TV mostly, and so you have learned
21 a few things about the case, you indicated that you had
22 heard some things on the street about how long it may
23 take and whatnot?

24 A. Yes, sir.

25 Q. If you would, just share with me what
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1 you have heard about it.

2 A. The article was on the front page of
3 the Express News on Sunday, and I buy the Sunday paper,
4 the Express anyway. And aside from that, you know, I
5 watch NBC news every night, there's always a blip, but
6 that is basically it.

7 And, of course, I read our Kerrville
8 paper every day, so what's been written in there is what
9 I have read.

10 Q. Okay. What do you recall that you
11 read about the case?

12 A. Well, that the defendant is from
13 Dallas. That her husband and other son were upstairs,
14 that her neighbors are all rallying behind her. That the
15 trial was moved to Kerrville, that Mr. Mosty and Mr.
16 Douglass were assigned, you know, just the basic things
17 the paper printed.

18 Q. Did you talk with your husband about
19 it?

20 A. Oh, yes, when it first came out I did,
21 yes.

22 Q. Did he have any kind of opinion about
23 it one way or the other?

24 A. No, I didn't.

25 Q. Okay. Where are you employed?
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1 A. Catholic Church, Notre Dame.

2 Q. Did you talk with anyone there about
3 it?

4 A. There are only -- only that I know
5 there were several other parishioners that were on the
6 original 450 list, you know, people that you called in.
7 I knew that.

8 Q. Okay. Did you gather any kind of
9 conclusion about the case once you read about it?

10 A. I didn't draw a conclusion, no.

11 Q. You didn't get any kind of opinion in
12 your own mind?

13 A. Well, I was horrified when I read the
14 story. You know I have a child. The whole thing made me
15 really upset, but as to form an opinion of guilt, I
16 haven't done that.

17 Q. Any opinion one way or the other about
18 anything?

19 A. Curiosity, no opinion.

20 Q. You are curious about it?

21 A. Well, I would like to know the

22 details, yeah.

23 Q. Okay. Let me just kind of start off

24 talking. The Judge has talked with you before,

25 previously, about the law that is going to be involved in

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1 this case. And the prosecutor just talked with you

2 somewhat about the law that is going to be involved.

3 And I feel like you probably

4 understand everything that we are going to talk about, so

5 I won't dwell on many aspects of all of that. I just

6 want to say to you that when you are in a court of law,

7 that there is no law that says that you have to agree

8 with any given law.

9 We live in a democracy, we all can

10 disagree with laws, there are many laws that I disagree

11 with and I'm sure there are probably some that you

12 disagree with?

13 A. Yes, there are.

14 Q. And that is indeed our right. But

15 there are certain occasions because of the situations

16 that we are in that we are compelled to agree with a

17 particular law, and adopt that law, simply by virtue of

18 where we are, or whatever circumstances that we're in at

19 any given time.

20 And we're in a circumstance here that

21 requires one to look into their heart of hearts, deep

22 into their own minds, and determine whether or not they

23 agree with a given law.

24 We don't simply ask that one pay lip

25 service to a particular law, a given law, and just say,

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1 "Well, if that is the law, then I will follow it. Or I

2 will give lip service to it." Without examining one's

3 conscience or one's heart of hearts to know whether or

4 not indeed they agree with that particular law.

5 Which leads me to your questionnaire,

6 and I have a copy of it here that y'all filled out in

7 that big situation in the Courthouse. And you said on

8 your questionnaire, "If a person is accused of capital

9 murder," and you put an addition there, "she or they

10 should have to prove her innocence."

11 And you didn't agree on certainly --

12 you strongly agreed that one should have to prove their

13 innocence.

14 A. Uh-huh. (Witness nodding head

15 affirmatively.)

16 Q. Do you still feel that way today?

17 A. Yes.

18 Q. Okay.

19

20 MR. CURTIS GLOVER: We would submit

21 the juror, your Honor.

22 THE COURT: All right. Now, you know

23 you have said two things here. Mrs. Routier doesn't

24 have -- they don't have to do a thing over here.

25 THE PROSPECTIVE JUROR: Yes.

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1 THE COURT: But you would still

2 require them to do it, right?

3 THE PROSPECTIVE JUROR: In my heart.

4 You know he asked me that several times, "In your heart,

5 is that how you feel." You know?

6 THE COURT: Well, feeling that way is

7 not wrong. Would you require them to do it? I feel bad

8 about the income tax laws in this country, but I still

9 pay it.

10 THE PROSPECTIVE JUROR: Right.

11 THE COURT: Okay. Now, just because

12 you don't believe in the death penalty doesn't disqualify

13 you, just because you think she has to prove -- has to

14 make a statement or prove her innocence doesn't

15 disqualify you. If you can follow the law, and put that

16 out of your mind. Can you put that out of the mind and

17 if she doesn't say anything, still find her guilty or not

18 guilty, depending on what you hear from that side? If

19 you hear none over here, are you going to require her to

20 say something?

21 If this side doesn't do anything,

22 there is nothing wrong with that either. We just have to

23 know it. Would you require them to do so?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: Thank you. All right.

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1 Motion for cause is granted. There is nothing at all

2 wrong with that. We want to thank you very much for

3 coming. We appreciate it. If you could not discuss your

4 appearance here today with anybody until the trial is

5 over.

6 The trial is over, talk or not talk as

7 you see fit.
8 THE PROSPECTIVE JUROR: Okay.
9 THE COURT: Okay. I have to tell you
10 about our big gag order that we have in effect. I can
11 impose monetary sanctions or jail time. I am not
12 threatening, I just have to tell you about that.
13 THE PROSPECTIVE JUROR: I know that.
14 THE COURT: All right. Thank you very
15 much. Thank you for coming.

16
17 (Whereupon, a short
18 recess was taken,
19 after which time,
20 the proceedings were
21 resumed on the record,
22 in the presence and
23 hearing of the defendant
24 as follows:)

25
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1 THE COURT: All right. Let's bring
2 Ms. Lackey in. How are you, ma'am?
3 THE PROSPECTIVE JUROR: I am fine,
4 thank you.
5 THE COURT: Your name, ma'am?
6 THE PROSPECTIVE JUROR: Lackey, Clara
7 Lackey.
8 THE COURT: That is number 102 on our
9 list, gentlemen -- excuse me, number 292 on the jury list
10 and 102 on our list. And that is Clara, L-A-C-K-E-Y; is
11 that right, ma'am?
12 THE PROSPECTIVE JUROR: That's
13 correct.
14 THE COURT: If you will raise your
15 right hand please, ma'am?
16 Do you solemnly swear or affirm that
17 you will true answers make to all questions propounded to
18 you concerning your qualifications as a juror, so help
19 you God?

20
21 (Whereupon, the prospective
22 juror was duly sworn by the
23 Court to true answers make
24 to the questions propounded,
25 concerning qualifications, after
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1 which time, the proceedings were
2 resumed as follows:)

3

4 THE PROSPECTIVE JUROR: I will.

5 THE COURT: Thank you, ma'am. First
6 of all, I have to ask you to just get this on the record
7 here. I notice that you are 73 years of age, so you may
8 claim an exemption if you want to. Do you want to waive
9 that exemption?

10 THE PROSPECTIVE JUROR: If I can, I
11 do.

12 THE COURT: You can waive it if you
13 want to. So you want to waive it and go ahead to be
14 considered to be a juror?

15 THE PROSPECTIVE JUROR: Yes, I will do
16 that.

17 THE COURT: Okay. That is fine,
18 that's fine. I appreciate that. I think that is great,
19 you have the life experience we need.
20 You're a potential juror, potential
21 alternate juror, in the Darlie Routier case, we have
22 already picked 12, you will be the first alternate if you
23 are picked.

24 Mrs. Routier is the young lady in the
25 olive dress there. She is the defendant in this case,
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1 sitting between her attorneys, Curtis Glover who is from
2 Dallas, Richard Mosty from Kerrville, and Preston
3 Douglass from Kerrville.

4 The State is represented by two
5 Assistant District Attorneys, Toby Shook and Sherri
6 Wallace, both from Dallas.

7 You are going to be asked some
8 questions now, Ms. Lackey, and there are no wrong
9 answers, just answer however you exactly feel about
10 things. Pull that mike back and speak right into it.

11 Ms. Halsey is taking all this down.

12 Mr. Shook.

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

14

15

16

17 Whereupon,

18

19 CLARA BOYD LACKEY,

20

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

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

25

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1 VOIR DIRE EXAMINATION

2

3 BY MR. TOBY L. SHOOK:

4 Q. Ms. Lackey, my name is Toby Shook. I

5 am one of the prosecutors for the State. I am going to

6 ask you questions this afternoon on behalf of the State.

7 If you have any questions of me at any time, feel free to

8 ask them also. Okay?

9 A. Thank you.

10 Q. I noticed that, like many of our

11 jurors, you have heard a little bit about the case from

12 the Kerrville Daily Times. But I think you put in your

13 questionnaire, you just read the headline; is that right?

14 A. That's right.

15 Q. Do you know any of the details

16 surrounding the case at all?

17 A. No, I don't. I didn't -- I heard

18 that, then somebody said, told me, said something about,

19 "Don't be on that. You don't want to go down there,

20 because I think that woman is on trial for killing her

21 children." And I said, "Oh." And that was the first I

22 had heard of it.

23 Q. Okay.

24 A. And then I saw it in the paper after

25 that.

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1 Q. So, you have not formed any opinions

2 or anything like that?

3 A. No, I haven't.

4 Q. Okay. I believe you put on your

5 questionnaire that you have been on a jury before?

6 A. Yes, I have.

7 Q. Some type of assault on a police

8 officer?

9 A. Yes.

10 Q. How long ago was that?

11 A. In the early Eighties.

12 Q. And that was here in Kerrville?

13 A. '84. No, it was in Midland, Texas.

14 Q. Midland, Texas. Okay. What happened

15 on that case? Kind of give me a little summary.

16 A. Well, this young man was resisting

17 arrest and bit the officer's thumb almost off.

18 Q. And you found him guilty?

19 A. They found him guilty. And as far as

20 I remember, we had to do the penalty too, and I think it

21 was a suspended sentence. You know it's been a long time

22 ago.

23 Q. Okay. You said that you were eager on

24 that jury when it began, but you were glad when it was

25 over, I guess.

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1 A. Uh-huh. (Witness nodding head

2 affirmatively.)

3 Q. Okay. We anticipate this trial to

4 begin, the date the Judge is going to start the trial is

5 January 6. And it's slated, well, we don't know how long

6 it will go, but the best guess we can give you is two

7 weeks.

8 The Judge's hours are from 9:00 in the

9 morning till 5:00 in the afternoon. You get to go home

10 in the evenings.

11 The only time you would be sequestered

12 is if you are deliberating late into the evening.

13 Does that cause you any problems for

14 your schedule at all?

15 A. No, it doesn't.

16 Q. Let me -- you know, and obviously you

17 know now, that this is a capital murder case in which the

18 State is seeking the death penalty. So we want to talk

19 to every juror about your personal feelings about the

20 death penalty.

21 And that's what I want to get into

22 now. Let me ask you, ma'am, do you believe that we

23 should have the death penalty as a law in this state?

24 A. Yes, I do.

25 Q. Tell me your reasons why you believe

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1 we should have the death penalty and the purpose it

2 serves.

3 A. Well, I think it would be a great

4 deterrent against crime, terrible crimes, but I also

5 think that it certainly is something that you have to

6 think very carefully about and not abuse.

7 Q. Okay.

8 A. And just use it when it's --

9 Q. Just in certain situations?

10 A. In certain situations.

11 Q. What types of crimes come to mind that
12 you think this could be a death penalty-type case?

13 A. Beg your pardon?

14 Q. What types of crimes come to mind? Is
15 it murder cases, or just certain types of murder cases?

16 A. Well, I think probably certain types

17 of murder cases.

18 Q. Okay. Have you followed any murder
19 cases in the news that you -- that in your estimation

20 that is a death penalty case? Or this is a case that

21 might be in consideration of the death penalty or

22 anything like that?

23 A. No. Actually, I have not followed any

24 cases that close.

25 Q. Okay. Have you always been in favor
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1 of the death penalty?

2 A. Yes, I have. I even debated it in

3 high school.

4 Q. Oh, did you?

5 A. Oh, yes.

6 Q. Okay. So you have thought about this

7 for a while?

8 A. Uh-huh. (Witness nodding head

9 affirmatively.)

10 Q. Okay. You know, you said that the

11 death penalty is only used in certain circumstances, and
12 that is kind of how the law is constructed. We have many

13 murders in Texas, different types of murders which cannot
14 get the death penalty.

15 They can be very cruel, but a person

16 can only receive a life sentence. You have to have

17 murder plus another aggravating fact; such as a murder

18 during a robbery, or a murder that occurred while a

19 felony was being committed.

20 Murder during a robbery, or breaking

21 into someone's home, murder during a rape or kidnapping

22 can all possibly be death penalty cases. Or murder of a

23 police officer while on duty could be a death penalty

24 case.

25 In this case, we have indicted the

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1 defendant for murder of a child under the age of six. If

2 you could take a moment to read that indictment which is

3 in front of you, that piece of paper there, if you could

4 read that paragraph to yourself.

5 A. Okay.

6 Q. That sets out allegations of an
7 intentional killing of a child under the age of six.

8 Now, I can't commit you to your verdict in this case
9 because you haven't heard one fact yet or one witness.

10 But is that the type of case, the
11 murdering of a child under the age of six, that you
12 personally feel might be eligible for the death penalty,
13 depending on the facts?

14 A. Depending on the facts, it could be.

15 Q. Right. And just depending on the
16 facts?

17 A. On the facts, yes, sir.

18 Q. Let me kind of give you a preview of
19 how the case goes. You have sat on one criminal case, so
20 you will be familiar with some of this. The case is
21 divided in two parts: The guilt/innocence stage is the
22 first portion, and we have to prove that indictment
23 beyond a reasonable doubt.

24 If we don't do that, everyone goes
25 home, it's a not guilty verdict, obviously. But if we do
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1 do that, we move to the punishment phase and you might
2 hear additional evidence in the punishment phase.

3 Evidence concerning the defendant's background.

4 At the close of that evidence, you get
5 these questions, and they are "yes" or "no" questions.

6 The first question the jury looks at is, the State has to
7 prove: Will the defendant be a continuing danger to
8 society?

9 You review all of the evidence and
10 decide that we have proven that, then you answer "yes."

11 You then move to the second question, if you answer
12 "yes." The second question is what we call the
13 mitigation question.

14 And it allows the jurors to review all
15 the evidence, all the defendant's background, and decide,
16 should a life sentence be imposed or is there mitigating
17 evidence that tells you a life sentence should be
18 imposed, or not. If there is, you answer, "yes." If
19 there is no such mitigating evidence, you would answer
20 "no."

21 But if you answer "yes" and "no" to
22 that second question, the Judge has no discretion, he
23 will sentence the defendant to death. If they are
24 answered in any other fashion, it will be a life
25 sentence.

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1 Those are the only two choices. The
2 Judge does the sentencing according to how the jurors
3 answer the questions. Is that clear?

4 A. Yes, it is.

5 Q. You probably know from living here in
6 Texas that executions do take place. They are in the
7 paper from time to time. The method is by lethal
8 injection. Are you aware of that?

9 A. Yes.

10 Q. That method of execution takes place
11 the same and has happened over a 100 times in the State
12 of Texas. On the date of execution the prisoner is
13 brought in, put on a gurney, and with witnesses there a
14 death warrant is read, but poisons are injected into
15 their body. And like I said, this happens, well, it's
16 happened over 100 times. So it's a very real punishment
17 we're talking about.

18 Quite frankly, we're are confidant we
19 have the evidence that will convict this defendant and
20 cause the jury to answer these questions "yes" and "no,"
21 which will result in the defendant's execution someday.
22 And, obviously, the defense feels the opposite way.

23 You have told me that,
24 philosophically, you believe that in some cases the death
25 penalty is necessary. And I want to know is, if you are
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1 the type of person who could listen to the evidence, and
2 if we do prove these things to you beyond a reasonable
3 doubt, you could answer these questions in a way that
4 would result in this defendant's execution?

5 A. I believe so. If you can prove it
6 beyond a reasonable doubt.

7 Q. All right. That is what we have to
8 do. And I know you have never been in this situation,
9 but as best you know yourself, you could answer those
10 questions if they are proven to you?

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

13 Q. Okay. In a criminal case, you know
14 that, obviously, the State has the burden of proof and we
15 have to put on our witnesses. We use what we call direct
16 and indirect evidence.

17 Direct evidence is an eyewitness to a
18 case. If you saw a crime occur, then you would be the
19 eyewitness to the case. Any other type of evidence is
20 indirect evidence or what we call circumstantial

21 evidence. It could be fingerprints, crime scene
22 evidence, DNA evidence, photographs, anything that links
23 the defendant to the crime is circumstantial evidence.
24 You actually use your common sense and piece things
25 together, that kind of thing.

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1 In a murder case, we often only have
2 circumstantial evidence. You have the victim and the
3 person that was accused of the killing. There's no
4 witnesses there to tell you what happened. So the State
5 must rely on circumstantial evidence.
6 The law says there is no difference
7 between the two, the burden of proof is the same, beyond
8 a reasonable doubt.

9 And again, I can't preview the facts
10 for you, but I need to know: Can you sit and listen to
11 evidence and convict a person of capital murder based
12 solely on circumstantial evidence?

13 A. No, I couldn't. If it's
14 circumstantial, I would have to have proof.

15 Q. Well, that is my point.

16 Circumstantial evidence is a way we have of proving the
17 case. All evidence we might put on is circumstantial,
18 unless we have an eyewitness to the case. Do you
19 understand that?

20 A. Yes, I understand that.

21 Q. Are you telling me you would require
22 an eyewitness before you could convict someone?

23 A. Well, no, it's not that I would
24 require an eyewitness, but I would have to be certain, to
25 be sure that the circumstantial evidence was the truth.

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1 Q. Right.

2 A. It would have to be beyond a
3 reasonable doubt with me.

4 Q. Well, that is how all evidence must
5 be, be beyond a reasonable doubt.

6 A. I couldn't do it unless I had --
7 unless I thought in my heart that there was -- that that
8 was the truth.

9 Q. Okay. And that's all we can ask of
10 the jurors. Now some people get real hinked up when we
11 say circumstantial evidence, but that is just evidence
12 you use your common sense on. Some people say
13 circumstantial evidence is stronger than an eyewitness

14 because you can always be mistaken about what you see.
15 You understand what I'm saying?
16 A. Yes, that is very true.
17 Q. One little example that I give of
18 circumstantial evidence is, let's say you went to bed
19 tonight. You looked outside and it was cloudy, but it
20 wasn't raining. When you woke up, it was not raining
21 again, but your newspaper was soaking wet and the yard
22 was soaking wet and the streets were -- had water all in
23 them, and maybe as you drove to the store, water was
24 everywhere. You didn't wake up in the night and get out
25 and see that it was raining, but from all the clues you
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1 could gather, I imagine you could figure out pretty quick
2 it rained that night.
3 That is circumstantial evidence. You don't
4 have to have an eyewitness to it, but you draw -- you use
5 your common sense and you draw conclusions from it. And
6 that's what we're talking about.
7 A. All right. Then I could do that.
8 Q. But the burden of proof, you're right,
9 is the same. We have to prove it beyond a reasonable
10 doubt.
11 A. Well, I would have to be very, very
12 sure.
13 Q. Okay.
14 A. That the evidence, the circumstantial
15 evidence was the way it was.
16 Q. Okay. But if we do prove it, you
17 could find the defendant guilty?
18 A. Yes, I could, if you prove it.
19 Q. Okay. Let me go to another area, and
20 that's called motive. You have heard motive, I'm sure.
21 The reason why a crime occurred.
22 A. Yes.
23 Q. Once you hear -- if you are listening
24 to evidence, especially in a murder case, it might become
25 very clear, the motive of why someone killed another
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1 person. It might be clear to everyone. Or it may not be
2 clear at all, no one may know. It may be locked away in
3 the defendant's mind. I mean, right now I could pull out
4 a gun and shoot Ms. Wallace here and then laugh about it,
5 and set the gun down, and have all these witnesses here
6 with the gun in my possession, but no one may never know
7 why I did it. It doesn't make her any less dead,

8 obviously, or me any less guilty. Could be something
9 locked away somewhere, we sometimes call a senseless,
10 cruel killing.
11 Or, once the evidence is in, you may
12 know of several motives, you know, there could be several
13 motives floating around and everyone could have their own
14 opinion. Or there may be several reasons why someone
15 decides to kill someone, I don't know.
16 My point is this: The law does not
17 require the State to prove motive in order to get a
18 guilty verdict. Okay? You have read the indictment
19 there, and no place in the indictment does it say why the
20 killing occurred.
21 It only says this person was killed by
22 this method and who did it. That is what we have to
23 prove to get a guilty verdict. Motive, we're not
24 required to prove. It may come out, but then again, it
25 may not.

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1 Could you follow that rule of law?
2 A. I think so.
3 Q. Okay. Fair enough then. Let me then
4 move to these questions that you only get to in the
5 punishment stage. You would only get to these questions
6 if the defendant was found guilty of capital murder.
7 Then you would look at question number 1.
8 As I said before, you might hear more
9 evidence, let's say maybe of the defendant's background.
10 You could hear evidence of a prior criminal history if it
11 existed or bad character evidence, or you could hear lack
12 of criminal history and good character evidence. It can
13 go either way.
14 Then you get this question, it starts
15 out with a "no" answer that we have to overcome. Okay?
16 And we have to prove to you beyond a reasonable doubt
17 that it should be answered "yes." And this question
18 asks: "Do you find from the evidence, beyond a
19 reasonable doubt, that there is a probability that the
20 defendant would commit criminal acts of violence that
21 would constitute a continuing threat to society?"
22 Do you see where that question is
23 asking the jurors to make a prediction on how the
24 defendant will behave in the future, they would be a
25 continuing threat?

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1 A. Yes.

2 Q. And you answer that question based on
3 the facts of the offense and any other background
4 evidence you might have.

5 Do you feel if you got enough
6 evidence, enough information about the defendant you
7 could answer that question "yes"?

8 A. If I felt that she would be a threat
9 to society, yes.

10 Q. Okay. And that is what we're aiming
11 at and you understand the evidence we use is the murder
12 itself and any other information you learn about the
13 defendant.

14 A. Yes, right.

15 Q. There is no requirement under our law
16 that someone have a criminal history or been to prison or
17 to jail before we can prosecute them for capital murder.

18 Okay? They may very well may have been, but it is no
19 requirement.

20 My point is this: A person can live a
21 life and then, you know, have not done anything wrong, at
22 least not be caught doing anything wrong and then go out
23 and commit capital murder. And you may have only the
24 facts of the murder itself to decide this question; the
25 brutality, what lead up to it maybe, was there any

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1 remorse, what was said afterwards, that kind of thing.

2 So you may have only the information or the crime itself
3 to answer that question "yes."

4 Again, I can't preview the case for
5 you, but could your mind be open to the fact, or could
6 you answer that question "yes," based on the facts of the
7 offense alone, again, depending on what those facts were?

8 A. Restate that.

9 Q. Okay. I got kind of long-winded
10 there, didn't I? Could you answer question number 1
11 "yes," just based on what you know from the facts of the
12 offense alone, the facts surrounding the murder itself,
13 could that give you enough information about the
14 defendant where you decide that they're a continuing
15 danger?

16 A. No, no, it wouldn't. Just the murder
17 itself, it wouldn't give me any -- I wouldn't know
18 whether she could be dangerous, you know, I wouldn't -- I
19 couldn't answer "yes" or "no" to that question because I
20 wouldn't know. Just by -- if I just knew one thing, if I
21 didn't know anything about her background before.

22 Q. Okay. Like I said, there may be a
23 situation where no one has done anything wrong before.

24 A. Uh-huh. (Witness nodding head
25 affirmatively.)
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1 Q. But then they commit a brutal murder.
2 A. Uh-huh. (Witness nodding head
3 affirmatively.)
4 Q. Would you require some more
5 information, something more in the background?
6 A. Well, I'd have to know -- that's a
7 hard question to answer "yes" or "no" when you don't know
8 anything about what happened.
9 Q. Sure it is. And that is where I am
10 hampered because I can't preview the facts for you. What
11 I'm wondering is --
12
13 THE COURT: You might want to rephrase
14 it, if there is enough information in the --
15

16 BY MR. TOBY L. SHOOK:
17 Q. Some people tell us, "Well, you know,
18 I know I could hear a lot about a killing, but I would
19 still want some, you know, I would want a prior prison
20 trip," or something like that.
21 A. I would have to know more about her
22 previous actions and whether, you know, this could have
23 been -- this one crime could have been brought on by
24 something that was medical, you know, I don't know.
25 Q. Sure.
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1 A. I don't know, so I can't answer that.
2 Q. Okay.
3 A "Yes" or "no."
4 Q. Okay. Again, I am hampered by not
5 being able to preview the facts.
6
7 MR. RICHARD C. MOSTY: Well, your
8 Honor, I am going to object to that, that there is no --
9 that's no hamper on anybody, nobody is allowed to do
10 that.
11 THE COURT: They can't go into the
12 facts. The fact is, ma'am, if you thought there was
13 enough evidence from what you heard so far, you could
14 answer that question "yes," right? If you thought there
15 was enough evidence there? Is that a fair question?
16 THE PROSPECTIVE JUROR: That she
17 would --

18 THE COURT: Yeah, yeah.
19 THE PROSPECTIVE JUROR: That she would
20 be a menace to society?
21 THE COURT: Yes. If you thought they
22 had brought you enough evidence from what they bring you,
23 you could answer it "yes" if you thought there was enough
24 there, right? If there wasn't enough there --
25 THE PROSPECTIVE JUROR: If I thought
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1 there was enough evidence that I could find her guilty,
2 then I could answer that question that she would be a
3 menace to society?

4 THE COURT: Yes, assuming that you
5 believe she would be, based on the evidence you had
6 heard. You could do that, right?

7 THE PROSPECTIVE JUROR: Well, then I
8 think I could do that.

9 THE COURT: Well, I think we're
10 splitting hairs here.

11

12 BY MR. TOBY L. SHOOK:

13 Q. Again, I'm not going to be able to
14 give you facts, and I know you are in a bad position
15 there because you don't know what the facts will be in
16 any given case.

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

19 Q. As long as your mind is open to that.

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

22 Q. Now, this second question is the last
23 question you would get. And neither side has to prove
24 that to you, neither side has the burden of proof. Okay?

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

8 See, that thing gets kind of lengthy?

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

11 Q. We call this the mitigation question.

12 If you will take a moment just to kind of review that.

13 A. Well --

14 Q. Now, you see how that thing gets kind

15 of convoluted. The way that question -- the way I

16 summarize it is this: You review all the evidence you

17 hear, and you decide is there, what we call mitigating

18 evidence, something that in your heart that tells you

19 that this defendant, or the defendant that is on trial,

20 should get a life sentence, rather than a death sentence.

21 And I can't tell you what mitigating evidence will be.

22 That will be up to you and the other jurors.

23 A. Yes, I see.

24 Q. And the Judge, he's not going to give

25 you a definition. It's just going to be up to you.

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1 A. I know. It's just a hard question to

2 answer.

3 Q. Yeah. And just what you have to be

4 able to tell us is: Will you keep your mind open to it?

5 And if you do see that type of mitigating evidence, you

6 will answer it "yes."

7 A. Yes, if I kept my mind open and I

8 thought it warranted it, I could do that.

9 Q. And the converse is true also. If you

10 don't see that type of mitigating evidence, you would

11 answer it "no."

12 A. That's right.

13 Q. Okay. Okay. That is fair enough

14 then.

15 A. Okay.

16 Q. So you lived in Midland, Texas. How

17 long did you live in Midland?

18 A. About 26 years.

19 Q. Okay.

20 A. My late husband was an attorney there.

21 Q. Was he?

22 A. Yes.

23 Q. Which firm was he with?

24 A. Stubbeman, McRae, Sealy, Laughlin and

25 Browder.

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1 Q. When I was in law school, I clerked at

2 a law firm. I think it was Cotton-Bledsoe.

3 A. Yes, they were rivals.

4 Q. So I stayed a summer there.

5 A. As a matter of fact, they were members

6 of the firm and then they left.

7 Q. Oh, really? Then they branched off?

8 A. They branched off several years ago

9 and started their own firm.

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

11 attorneys involved, do you?

12 A. No, I don't.

13 Q. There's two local Kerrville attorneys,

14 Mr. Douglass and Mr. Mosty. Do you know either one of

15 those gentlemen?

16 A. I don't know them, I know Mr. Mosty's

17 name. I don't know if he is the attorney that is with

18 Jackson.

19 Are you the one that is with them?

20

21 MR. RICHARD C. MOSTY: No.

22

23 BY MR. TOBY L. SHOOK:

24 Q. Where did you hear his name, through

25 business?

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1 A. His law firm represents my husband,

2 David Jackson.

3 Q. Ed Wallace?

4 A. Yeah. Ed Wallace represents my

5 husband. Well, they just do -- they drew up his will,

6 and do things and helped him. When he sold his ranch I

7 think you all, his firm handled it.

8 Q. Okay.

9 A. But I have never met Mr. Mosty.

10 Q. Okay. I don't think that would affect

11 you in any way if you sat as a juror, would it?

12 A. No, it wouldn't affect me.

13 Q. Okay. Do you have any questions over

14 anything we have gone over? You have been very patient

15 with me and I appreciate that, but I am about out of

16 questions.

17 A. I don't have any questions.

18 Q. Okay. Well, thanks a lot for your

19 attention and we appreciate your coming in.

20

21 THE COURT: Mrs. Routier, would you

22 like a break; is that right?

23 THE DEFENDANT: Yes, please.

24 THE COURT: Okay. That is fine.

25 Let's take a brief break then.

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1 All right. Ma'am, if you could step
2 down for a while. You may wander outside if you want to,
3 whatever, that will be fine too. We will be right with
4 you.

5 We are just going to take a brief
6 break and then we will be right back with you.

7 THE PROSPECTIVE JUROR: Okay.

8 THE COURT: All right.

9

10 (Whereupon, a short
11 recess was taken,
12 after which time,
13 the proceedings were
14 resumed on the record,
15 in the presence and
16 hearing of the defendant
17 as follows:)

18

19 THE COURT: All right. Thank you,
20 ma'am, for your patience.

21 All right. Who is for the defense,

22 Mr. Douglass?

23 MR. S. PRESTON DOUGLASS, JR: Yes,
24 sir. Thank you, Your Honor.

25 THE COURT: All right. Go ahead.

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1 VOIR DIRE EXAMINATION

2

3 BY MR. S. PRESTON DOUGLASS, JR:

4 Q. Ma'am, there's a few more questions
5 that I am going to have. I hope -- they have been very
6 thorough -- and I hope that I can not unnecessarily
7 duplicate any of the stuff they went through and so that
8 you won't think I am wasting your time. Obviously
9 though, our perspective is completely different from that
10 of the attorneys representing the State.

11 There is no question that from where
12 we sit a lot of the issues they go through are items that
13 they are keenly interested in. There are items that
14 we're also keenly interested in.

15 This is, without any doubt, one of the
16 most important moments, if not the most important moment
17 in Darlie Routier's life.

18 She literally is sitting here with the
19 attorneys for the State seeking actively to have her
20 executed.

21 So, I hope you understand that it's --
22 while it's two o'clock in the afternoon and you have been
23 up there a while, I am going to need to ask you a few
24 more questions and I hope you won't hold it against me, I
25 know you have been up there a while, but I will move as
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1 quickly as I can.
2 First, with respect to the trial, the
3 only thing we know for sure in Texas when there is a
4 trial, in criminal cases is that there is going to be a
5 guilt/innocence phase.
6 We have absolutely no guarantee and
7 many, many times there is not a punishment phase.
8 However, though, in jury selection it always seems like,
9 at least at the outset, a lot of the focus is on the
10 death penalty.
11 And, it seems to draw everybody's
12 attention, and I think rightly so in that not many people
13 talk about the death penalty. Jurors don't sit around
14 out at their house and debate the issue with their
15 brothers or sisters or spouses and things like that. It
16 just doesn't come up that much. So, a lot of the
17 discussion focuses around the death penalty.
18 However, in this situation, Darlie
19 Routier has plead not guilty. When a jury is selected,
20 impaneled and is sitting in that jury box, she will again
21 plead not guilty.
22 And she will stand behind that plea of
23 not guilty throughout the trial, not waver. Because of
24 that, I want to talk to you about the first part of the
25 trial.
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1 Because that is the only part of the
2 trial that we know we are going to have. And that is the
3 guilt/innocence part.
4 You might remember that Judge Tolle
5 told you about the indictment back three or four weeks
6 ago. And there was an instruction to you that an
7 indictment is no evidence of guilt, and that a juror is
8 not to place any weight on an indictment.
9 And what I want to get into with you
10 is there's really two groups of people when they talk
11 about in the indictment, two main groups and there's
12 people in the middle, obviously.
13 But first, there is, "Where there is
14 smoke, there's fire," group of people. A lot of people

15 who have sat on Grand Juries might feel that way. When
16 you came down to the courthouse you naturally, four weeks
17 ago, saw those television trucks, you saw a lot of
18 lawyers, a lot of people running around. And there are
19 people that think, "If there is all this activity going
20 on, there has got to be something to this."

21 And as a result of that, the fact that
22 someone has been indicted, in that person's mind starts a
23 juror to thinking, "All this stuff just doesn't happen by
24 chance. There must be something to the charges." That
25 is one group.

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1 There's another group over here on the
2 other side that says "Well, I understand there has been
3 an indictment, but I'm not going to put any weight on
4 that. And I am not going to count that for anything,
5 because that is just an allegation."

6 How do you think you align? Do you
7 align with any of those groups?

8 A. Yes, I do. I certainly would have to
9 be -- I think anybody is innocent until they are proven
10 guilty.

11 Q. Okay. You probably remember Judge
12 Tolle talking about indictments in Dallas County. And he
13 said some things that were interesting.

14 He said, and you might remember that
15 the Judge told us that there were over 25,000 people
16 indicted each year in Dallas County.

17 And that any one Grand Jury, a group
18 of say 9 to 12 people, might be sitting for one day, a
19 period of eight hours, and that that one group of people
20 might return 125 indictments in one day. And because of
21 that, Judge Tolle told you that many times a lot of
22 those people do not know they were being investigated,
23 who were indicated, not only do they not know they are
24 being investigated, but obviously, they didn't get to
25 tell their side of the story, or put on any evidence.

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1 So for that reason, did you know about
2 that? Did that surprise you that that many people could
3 be indicted that may or may not know that they were being
4 investigated?

5 A. Well, it didn't surprise me. I
6 realized that.

7 Q. Have you ever had a chance to be on a
8 Grand Jury?

9 A. No, I have not.

10 Q. Did you ever get a chance to talk to
11 your husband about a Grand Jury process and how that
12 works?

13 A. Very briefly.

14 Q. Okay. Because that is the way the
15 system works, that a Grand Jury meets in secret, a Judge
16 doesn't preside really over the Grand Jury and be
17 present, really it is run by the district attorney.

18 Because of those facts, can you agree with me that an
19 indictment should have no weight placed on it and it's
20 just simply a piece of paper?

21 A. Well, I'm not sure it shouldn't have
22 any weight put on it, but I'm certainly think that it
23 should not be the deciding factor whether somebody is
24 innocent or guilty.

25 Q. Let me ask you this: If the fact that
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1 there is an indictment, does that cause you or in any way
2 lessen in your mind the presumption of innocence?

3 A. Because of the indictment?

4 Q. Yes.

5 A. Well, no, I don't think so.

6 Q. The main thing about the presumption
7 of innocence is that as a person starts out in a trial,
8 they are absolutely, completely presumed to be innocent.
9 There is no black mark on them at all. What is probably
10 more important than that is that you don't do the
11 converse and presume someone guilty.

12 And there are some people who will
13 say, "Well, if there is an indictment, I presume them
14 guilty. And they start out guilty and they have got to
15 prove to me they are not guilty."

16 A. No, I don't feel that way, without any
17 trial.

18 Q. Do you agree with me that as Darlie
19 Routier sits here today she is innocent, and if you heard
20 nothing more than what you know about this matter right
21 now that you would have to say, not guilty?

22 A. I certainly would, they would have to
23 prove that she was guilty, yes.

24 Q. Now, in criminal cases the burden of
25 proof is on the State, that burden of proof never shifts
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1 to this table. What that means most importantly is that
2 you can hear a whole trial and the lawyers representing

3 the defendant can hold the State to its burden of proof,
4 but there is no obligation on the defense to put a
5 witness on the stand. They don't have to put on any kind
6 of defense.
7 And what I mean by that is you can
8 come to a trial and the defendant's lawyers can say, "You
9 know, the State had some allegations they had to prove.
10 They were in the indictment and they completely failed in
11 their proof. The proof didn't mean beyond a reasonable
12 doubt what they said it was going to mean."
13 In that situation, a defense lawyer
14 might say, "I don't see any reason to put on any evidence
15 if they haven't met the burden they have got to meet."
16 Some people don't think that is a good law. Some people
17 say, "Well, I don't care, I want to hear the other side
18 explain to me why they think they are innocent, I want
19 the other side to bring me some proof." How do you feel
20 about that?
21 A. Well, I think that -- I knew that. I
22 knew that you don't have to -- that the defense doesn't
23 have to go on the stand.
24 Q. Yes, ma'am. Is that a concept you are
25 behind, you feel good about that?
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1 A. Well, I would wonder why they wouldn't
2 want to present something. I would wonder why they
3 didn't.
4 Q. If a defense --
5 A. Except that maybe the defense (sic)
6 had made such a bad job, there was not any way in the
7 world that they could help the situation.
8 Q. Would the fact that a defendant might
9 not take the stand, would that influence you when you
10 deliberate?
11 A. No.
12 Q. Would the fact that the lawyers didn't
13 put on any evidence, if they chose not to; would that be
14 the kind of thing that would influence you in your
15 verdict?
16 A. It would all depend on what the
17 defense, I mean, what the prosecution had said.
18 Q. Okay. I guess just to boil it down,
19 if you heard -- if the State put on a case and when you
20 listen to the case for a while and you said, "You know, I
21 think they have proven some things to me, but I have
22 still got some questions in my mind. You know, there is
23 some unresolved reasonable doubt floating around in my
24 mind." And the State maybe puts on 10 or 20 witnesses,

25 let's say, and then they rest their case.
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1 And you as a juror are still sitting
2 there and you are saying, "You know, I still have got
3 those doubts in my mind, and I think those are reasonable
4 doubts." And the Judge looks at the defense lawyers and
5 says, "Okay. You all can call a witness if you would
6 like to." The defense lawyers says, "We're not calling
7 any witnesses. We're resting."
8 The question comes down to, can you
9 then look only at the State's case and decide in your own
10 mind based on the evidence, whether they resolved all
11 reasonable doubt and proved the allegations, or are you
12 going to when you begin to deliberate, say, "I wish the
13 defendant had brought me some evidence," and because you
14 wish they had, that might affect you?
15 A. If there was a reasonable doubt, it
16 wouldn't matter to me what you said. If there's a
17 reasonable doubt, I couldn't find anybody guilty, if
18 there was a reasonable doubt -- if I had a reasonable
19 doubt.
20 Q. All right. So, you wouldn't worry
21 about what the defense did. If you're sitting there and
22 you are saying, "Well, I have got maybe one reasonable
23 doubt and they have not solved that doubt," and the State
24 says, "I rest its case," you under your oath are going to
25 say, "Well, they didn't resolve that doubt, and I have an
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1 obligation to resolve that in favor of the defendant."
2 A. That's right, if there is a reasonable
3 doubt, I could not --
4 Q. And do you feel strongly about that?
5 A. Yes. That is what our nation is, that
6 is what our jury system is about.
7 Q. Sure. Reasonable doubt has been -- it
8 used to be never defined and before it was defined, it's
9 only been, I don't know, maybe under five years or so
10 since the legislature -- or since the courts defined and
11 gave a definition of reasonable doubt.
12 You used to hear all kinds of
13 definitions about it, but now the Judge in a Charge will
14 give you a definition.
15 I want to -- it's a long definition,
16 and part of it kind of paraphrased says: That proof
17 beyond a reasonable doubt is proof of such a convincing
18 character that you would be willing to rely upon it

19 without hesitation in deciding your own most important
20 personal affairs.

21 That is a real paraphrase of it, but
22 they don't jump up and down and say, "I am totally
23 wrong," but that is a paraphrase. What that implies is
24 that it is proof that is so convincing to you that when
25 you were making -- even your most important affairs
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1 decisions about those things, that you just wouldn't
2 rely -- wouldn't hesitate in making a decision. Does
3 that seem like a pretty good definition to you or one
4 that makes some sense?

5 A. It makes sense, yes.

6 Q. Let me give you an example: Imagine
7 for a second that this circle I have drawn, and coming
8 out of this circle is a beam of light. And that beam of
9 light represents the presumption of innocence.
10 It's the State's burden to come and in
11 their case bring you evidence which totally blacks out
12 that light coming from the circle. And by proof, they
13 may bring you an eyewitness that you think persuades you
14 and that starts to really blacken it out.

15 They may bring you a fingerprint
16 evidence and you may think, that is pretty persuasive,
17 and that starts to blacken it out.

18 But would you agree with me that
19 unless all reasonable doubt is resolved to where there is
20 not any light at the presumption of innocence coming
21 through, that no matter how slight the doubt based on
22 reason that you have, even if it is just a pin light down
23 here at the bottom, that you have to resolve any
24 reasonable doubt in favor of the defendant, and unless
25 they have completely blackened out that circle, you
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1 cannot say guilty unless they have proven it completely
2 beyond a reasonable doubt?

3 A. That's correct. I wouldn't have --
4 before I could find them guilty, I wouldn't have any
5 doubt.

6
7 THE COURT: Okay. I think we have
8 covered that point. Let's move on.
9 MR. S. PRESTON DOUGLASS, JR: Okay.

10
11 BY MR. S. PRESTON DOUGLASS, JR:
12 Q. Let me ask you a question about motive

13 for a second. I think Mr. Shook talked about motive with
14 you, and after a while we go through a day, we see six or
15 seven or eight people, and we start to lose track of who
16 said who to what. But motive, the State was correct, is
17 not an element, it is not a hurdle they have to jump over
18 to prove their case. You may notice on that indictment
19 in front of you that it has a date on the indictment, up
20 at the top, printed part.

21 A. 6-21?

22 Q. Right.

23 A. '96?

24 Q. Well, no, you might see, it says June

25 6th in there, somewhere on that indictment.

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1

2 MR. S. PRESTON DOUGLASS, JR: May I

3 approach, Your Honor?

4 THE COURT: You may.

5 THE PROSPECTIVE JUROR: Oh, I just

6 looked at this, oh, that is filed. I see it was June

7 6th.

8

9 BY MR. S. PRESTON DOUGLASS, JR:

10 Q. You may also notice that it says right

11 there on that indictment in Dallas County?

12 A. Uh-huh. (Witness nodding head

13 affirmatively.)

14 Q. Those are items of proof, or elements

15 that the State has to prove. For instance, one of the

16 elements of their proof is an "on or about a date." And

17 they have said June 6th, and also they have said in

18 Dallas County.

19 Those are elements that -- I like to

20 sometimes call them hurdles, that they have to jump over

21 in proving their case. You will notice in that

22 indictment that it does not say why, it doesn't say why

23 this crime happened. And they are right, that motive

24 does not have to be proven.

25 However, I would submit to you that

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1 the motive is something, although it's not a hurdle they

2 have to jump over, it's certainly a subject a juror can

3 consider. It's something a juror can rattle around in

4 his or her mind in trying to decide if the State has met

5 its burden of proof.

6 And, all I'm asking is, although it's
7 not a element they have got to prove, a hurdle they have
8 got to jump, can you see a situation where perhaps not
9 having any proof of motive might raise some doubt in your
10 mind, to where that doubt might be a reasonable doubt?

11 A. Yes.

12 Q. Okay. Just like imagine if you are
13 sewing together a quilt and you have got different
14 patches and you might have some fingerprint evidence over
15 here, you might have some kind of evidence over here, and
16 you kind of believe the evidence, but it doesn't really
17 fit together quite squarely. Could you see that maybe
18 the proof of the motive might be what makes the evidence
19 make sense, and without the proof of the motive that that
20 evidence just doesn't make sense to you, and it doesn't
21 fit squarely together.

22 So, could you see how that might
23 happen?

24 A. Yes, but I would have to hear the
25 facts.

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1 Q. Sure.

2 A. I couldn't say yes or no to that
3 because you have to --

4 Q. Oh, I know. This is a frustrating
5 process because we can't give you A, B, C, D; how do you
6 vote?

7 A. Well, then I cannot give you a "yes"
8 or "no" --

9 Q. I understand.

10 A. Because I have to know what the thing
11 says.

12 Q. A jury is not a democracy. In a jury
13 you have your own vote and it's your vote and nobody can
14 take that vote from you. If you find yourself back in
15 the jury room and you find yourself in the minority in
16 terms of how you feel about something, but deep in your
17 heart, you know that you believe that that is the way you
18 heard the evidence and that is the way you feel about it,
19 are you the kind of person that will stand for what you
20 believe in and even fight for what you believe in, even
21 if you're the short person on the stick?

22 A. Yes.

23 Q. I believe that very much. There are
24 going to be some gruesome photographs, there is no
25 question about that, there is no doubt. And sitting from
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1 where I sit, sometimes I wonder -- and it always seems
2 like the photographs get enlarged and blown up.
3 If you see some photographs that are
4 terribly distasteful to you, can you look at them and see
5 them for what they are as photographs? Or are you
6 concerned that you might be so overwhelmed by the
7 photographs that it makes you think, "I don't care what
8 they prove, I am going to punish somebody for this,
9 because these photographs are so bad."

10 How do you feel about that?

11 A. I think I could look at them.

12 Q. Nobody wants to.

13 A. No, I would rather not. I would
14 rather not see them, and I'm sure I would feel very bad
15 about it.

16 Q. The main thing is that you could
17 receive it like other evidence and take it for what it
18 is, and not let it stampede your common sense?

19 A. I think so.

20 Q. Okay. All right. I probably
21 shouldn't ask this, and it probably goes against me, but
22 I am just curious, part of my family grew up in Midland
23 and I was wondering, did you ever know Preston
24 Bridgewater?

25 A. I knew the Bridgewaters.

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1 Q. Did you ever know Sam Preston?

2 A. I knew the name.

3 Q. Well, that was my great, great, great,
4 great grandfather. That is my name, Sam Preston.

5 A. Yes.

6 Q. I was just curious. Now, don't hold
7 that against me.

8 A. I won't hold that against you.

9 Q. All right. Do you have any questions
10 of me?

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

12

13 MR. S. PRESTON DOUGLASS, JR: I don't
14 have anything further. Thank you, Your Honor.

15 THE COURT: Thank you, ma'am. Can you
16 step outside briefly, please, and you will be called back
17 in. Thank you.

18

19 (Whereupon, the prospective
20 juror was excused from the

21 room, and the following
22 proceedings were held,
23 outside of her presence
24 as follows:)
25
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1 (Whereupon, a short
2 Discussion was held
3 Off the record, after
4 Which time the
5 Proceedings were resumed
6 As follows:)
7
8 THE COURT: Everybody ready? Will the
9 State accept the juror?
10 MR. TOBY L. SHOOK: Sure.
11 THE COURT: All right.
12 MR. S. PRESTON DOUGLASS, JR: We will
13 use a peremptory challenge.
14 THE COURT: What? That's okay. Got
15 one of them.
16 All right. Let's bring Ms. Lackey
17 back in.
18
19 (Whereupon, the prospective
20 juror returned to the
21 room and the proceedings
22 were resumed as follows:)
23
24 THE COURT: Ms. Lackey, we want to
25 thank you very much for coming. You have been excused
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1 from further jury service. We thank you very much.
2 If you could remember, ma'am, if you
3 could please not talk about this to anybody until the
4 trial is over, which will be probably the end of January.
5 Then you can talk or not talk as you
6 see fit. Thank you very much.
7 THE PROSPECTIVE JUROR: Thank you.
8 THE COURT: Yes, ma'am.
9 All right. Who is the next one? Who
10 is next? All right. Let's bring in the next juror.
11 Okay. This is juror number 275, 97 on our list. All
12 right. Bring her in.
13 All right. This is Jennie,
14 J-E-N-N-I-E, Motheral, M-O-T-H-E-R-A-L, that is the

15 correct spelling, ma'am?
16 THE PROSPECTIVE JUROR: That's correct
17 spelling.
18 THE COURT: Am I pronouncing it right?
19 THE PROSPECTIVE JUROR: Pronounced
20 mother all.
21 THE COURT: Motheral, I almost got it
22 right.
23 Number 275 on the juror list, number
24 97 on our list. If you will raise your right hand,
25 please, ma'am?
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1 Do you solemnly swear or affirm that
2 you will true answers make to all questions propounded to
3 you concerning your qualifications as a juror, so help
4 you God?
5
6 (Whereupon, the potential juror
7 Was duly sworn by the
8 Court, to speak the truth,
9 The whole truth and
10 Nothing but the truth,
11 After which, the
12 Proceedings were
13 Resumed as follows:)
14
15 THE PROSPECTIVE JUROR: I do.
16 THE COURT: Thank you, ma'am. You are
17 a potential alternate juror in the Darlie Routier matter.
18 We have already picked the 12, we're going to pick four
19 alternates now.
20 You could be the first one, if you are
21 picked.
22 Mrs. Routier is the defendant, she is
23 the young lady sitting there in the olive dress with her
24 attorneys, Curtis Glover from Dallas, and Preston
25 Douglass from Kerrville.
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1 The State is represented by two
2 Assistant District Attorneys from Dallas, Toby Shook and
3 Sherri Wallace.
4 There are no wrong answers today.
5 Just feel free to express your opinions just as you see
6 fit, because both sides are going to ask you some
7 questions.
8 Speak loudly into the microphone

9 because Ms. Halsey is taking all this down.

10 THE PROSPECTIVE JUROR: All right.

11 THE COURT: Ms. Wallace. Thank you.

12

13 Whereupon,

14

15 JENNIE S. MOTHERAL,

16

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

21

22 VOIR DIRE EXAMINATION

23

24 BY MS. SHERRI WALLACE:

25 Q. Ms. Motheral, good afternoon. Thanks

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1 for waiting on us. Have you been out there long?

2 A. No.

3 Q. Okay. I want to start out by thanking

4 you for filling out your questionnaire. It has been a

5 big help and I appreciate it. And I just want to talk to

6 you a little bit about how the system works, kind of

7 explain things to you and get your feelings on that.

8 A. All right.

9 Q. Up front, let me tell you what we are

10 looking for. We need a person with common sense. We

11 need a person that will keep an open mind, and wait until

12 they hear the evidence in the courtroom. Having said

13 that, it is our goal and desire to execute that woman

14 down there. Would you have any problem in participating

15 in that process?

16 A. Not under the right circumstances.

17 Q. Right. As long as we do our job,

18 prove our case to you beyond a reasonable doubt, and

19 bring you the appropriate case, you could do that; is

20 that right?

21 A. Correct.

22 Q. Okay. It says here that you have

23 heard about the case on radio and television. That

24 doesn't disqualify you as a juror, a lot of people have

25 heard about this case.

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1 A. Most people.

2 Q. Sure, most people. And really, that

3 is one of the reasons, or that is the reason that we came
4 here from Dallas is to get away from some of that, but we
5 can't get away from all of it. And as I said, that
6 doesn't disqualify you from being a juror. What you
7 cannot do is form an opinion based on what you have heard
8 in the press.

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

11 Q. And carry that opinion into the jury
12 box before having reached a verdict. That is not allowed
13 as a juror. There is good reason for that. Richard
14 Jewell, he was the man who was accused of the bombing in
15 the Olympics. Do you remember that, what I'm talking
16 about?

17 A. Correct.

18 Q. I mean, you know, for three months
19 they followed him, they harassed him, they took his
20 mother's Tupperware, they searched everything in his
21 house, and then a couple of weeks ago they said we have
22 no evidence against him. And, so if you believed the
23 press, he was already tried, convicted, and hung out to
24 dry. So, it's cases like that that really bring the
25 point home, that you must wait until you hear the
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1 evidence in the courtroom. Can you follow the rule of
2 law?

3 A. Very well.

4 Q. Good. Here -- you have had, I notice
5 from your questionnaire that you have had a tragedy in
6 your life. You have lost your daughter.

7 A. Yes.

8 Q. How long has that been?

9 A. Thirteen years.

10 Q. Okay. So, it's still something you
11 live with every day, but you have done some healing since
12 then?

13 A. Yes.

14 Q. Okay. You can set that aside as a
15 juror in this case; is that correct?

16 A. I would hope so.

17 Q. Okay. Here is how the death penalty
18 scheme works in Texas. We have the first phase of the
19 trial which is the guilt/innocence phase of the trial.
20 And in that phase, the Judge talked about several weeks
21 ago, you as a juror, would decide whether or not the
22 State has proved their case to you beyond a reasonable
23 doubt. Whether we have met our burden of proof in the
24 indictment. If you believe we have not, then it's a not

25 guilty, and we all go home. If you believe we have, we
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1 go to the second phase of the trial and that's called the
2 punishment phase.
3 There, it used to be, that you
4 answered -- there was a blank and you wrote in the word,
5 life or death. That is not how it is anymore. Although,
6 the jury does determine whether it's death or life, they
7 do so by answering two questions. The Judge takes the
8 answers to those questions, and depending on how they are
9 answered, he has no choice in the matter, and he
10 sentences the defendant to death or life. But really it
11 comes from the jurors' questions, on how they are
12 answered.
13 The two questions are up here on this
14 board to my right, to your left. The first question is:
15 "Do you find from the evidence beyond a reasonable doubt
16 that there is a probability that the defendant would
17 commit criminal acts of violence that would constitute a
18 continuing threat to society?"
19 To nutshell it, do you believe that we
20 have proved to you that the defendant would be a future
21 danger? In that question, you know how the Judge told
22 you, and I just mentioned, that the defendant is presumed
23 innocent?
24 A. Correct.
25 Q. Okay. So that means, it is another
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1 way of saying we have the burden of proof. It's another
2 way of saying if you voted right now, you would have to
3 find the defendant not guilty.
4 A. Okay.
5 Q. If, in fact, we get past that stage
6 and you believe the defendant is guilty, then we go to
7 this stage, and we kind of start all over. Okay?
8 A. Okay.
9 Q. That first question is presumed to be
10 answered "no." We must convince you beyond a reasonable
11 doubt that, in fact, a defendant is a future danger to
12 society. So, if you were to answer right now, you have
13 heard nothing and you must answer it "no." Now, here is
14 where it kind of gets hard, so follow me, if I don't
15 explain it well, let me know. Okay?
16 It may be in the second phase of the
17 trial that you do not hear any more evidence other than

18 what you heard in the first phase of the trial, the facts
19 of the case. However, you must promise the Court that
20 you won't -- in the event you find the defendant guilty,
21 you won't automatically answer this question "yes." In
22 other words, you have to -- to follow the law, you have
23 to revisit the issue. You may get more evidence and you
24 may not, and I can't tell you what is going to happen. I
25 can't get into the facts of this case.

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1 But will you follow the law and
2 presume the question answered "no," reevaluate whatever
3 it is you heard from either phase of the trial, and then
4 make your determination?

5 A. Uh-huh. (Witness nodding head
6 affirmatively.) Oh, I'm supposed to speak, yes.

7 Q. Well, and the reason you have to speak
8 is because --

9 A. I'm sorry.

10 Q. -- she has to type this all up, you
11 know.

12 A. I'm sorry.

13

14 THE COURT: No problem, ma'am, no
15 problem.

16

17 BY MS. SHERRI WALLACE:

18 Q. I see you nod and I know what you
19 mean, but we have got to get it all on paper. If that
20 question is answered "no," then the defendant gets a life
21 sentence. If it's answered "yes," we go to the next
22 question.

23 The next question says: "Taking into
24 consideration all of the evidence, including the
25 circumstances of the offense, the defendant's character

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1 and background, and the personal moral culpability of the
2 defendant, is there a sufficient mitigating circumstance
3 or circumstances to warrant that a sentence of life
4 imprisonment, rather than a death sentence, be imposed?"
5 I can't tell you how many times I have
6 read that question, and I still think it's hard to
7 understand. But to kind of summarize it, here is how I
8 look at it.

9 After you have heard everything, if you
10 think that there is a reason to save the defendant's life
11 and not give the death penalty, that is how you do it.

12 It's an out for the jury, if you will.
13 You have heard everything at this
14 point, you believe the defendant is guilty of capital
15 murder, you believe the defendant is a future danger.
16 But something you have heard, in your mind and no one
17 else's, not a lawyer's, not another juror's, not the
18 Judge's, but in your mind is sufficient evidence to
19 warrant that a life sentence instead of a death sentence
20 be imposed, could you keep an open mind to that type of
21 evidence?

22 A. Yes, I could.

23 Q. All right. And I think you responded
24 that way in your questionnaire. I know it's been a while
25 since you filled it out, but that is consistent with what
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1 you said.

2 There are mitigating circumstances.

3 That word has been described as something that would
4 lessen somebody's moral blameworthiness.

5 They are still good for it, if you
6 will, for the crime, but something in their background
7 makes the jury feel like death is not the right thing to
8 do. Okay?

9 This question came about for a
10 defendant who was mentally retarded. He knew the
11 difference between right and wrong, he wasn't insane, but
12 nevertheless, he was mentally retarded, and so some
13 people felt that was a reason to spare his life.
14 You don't have to think of any
15 examples that you would find mitigating. You don't have
16 to tell me under what circumstances you would change your
17 verdict, because that is in effect what you are doing.
18 But what you do have to promise the Court is that you can
19 follow the law and keep an open mind.

20 And you may sit on, God forbid, five
21 million capital murder cases as a juror and never hear
22 something that you think is sufficient, but it's one of
23 those things, "I don't know what it is, but I will know
24 it when I see it."

25 You have said you can keep an open
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1 mind to do that; is that right?

2 A. I believe so.

3 Q. Okay. If that question is answered
4 "yes," then a life sentence is imposed. If it's answered
5 "no," it's a death sentence. So that is how it works.

6 It's guilty, "yes," "no," equals death; anything else is
7 a life sentence. Okay?

8 A. All right.

9 Q. Before you is the indictment in this
10 case, take a minute to read that.

11

12 THE COURT: It's the typewritten
13 paragraph.

14 THE PROSPECTIVE JUROR: Yeah, right
15 here.

16 THE COURT: Right there.

17

18 BY MS. SHERRI WALLACE:

19 Q. Ready?

20 A. Yes.

21 Q. In that indictment is everything that
22 we must prove to you beyond a reasonable doubt. That is
23 one of the ways that you can commit capital murder in
24 Texas, there are several other ways too, but they don't
25 apply under this indictment.

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1 Do you think that is a fair type of
2 offense that should be eligible for the death penalty?

3 A. Yes, I do.

4 Q. Okay. And as I said, that indictment
5 is what we must prove to you beyond a reasonable doubt.

6 We can do that several ways. All we have to do is
7 convince you beyond a reasonable doubt.

8 We can either do it through direct
9 evidence or indirect evidence. Indirect evidence is

10 sometimes called circumstantial evidence and I want to
11 talk to you about that a little bit.

12 Direct evidence is if you had an
13 eyewitness, you know, John shot Sue and I saw it. I
14 would be the witness. But in many murder cases, there is
15 no eyewitness because the eyewitness is dead. And the
16 defendant does not have to testify.

17 The defendant has the most control
18 over how many witnesses there are, so, therefore, in many
19 murder cases, we look to indirect or circumstantial
20 evidence to prove the case. Circumstantial evidence is
21 everything else.

22 It's fingerprints, blood spatters,
23 DNA, fibers, statements by the defendant that don't
24 comport with the crime scene, anything else, other than
25 an eyewitness. Okay?

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1 If we prove the case to you beyond a
2 reasonable doubt, by using circumstantial evidence, will
3 you be able to return a verdict of guilty?

4 A. I think I would.

5 Q. Additionally, that is what we have to
6 prove to you. What we don't have to prove to you by law
7 is motive. Now, I noticed in your questionnaire that you
8 said that you would want to know the whys, and that is
9 human nature. And that is fine out on the streets, to be
10 curious.

11 But you see in crimes, if the
12 defendant doesn't have to testify, so often we can't
13 understand what they were thinking. You know, we can't
14 get into someone else's mind. It may be that the reason
15 is locked inside their own mind, and you may not hear
16 from the defendant.

17 It may be in certain cases from the
18 evidence that the motive becomes clear to you, or you
19 think it's one of several, you are not sure. But the
20 bottom line there is the motive doesn't matter if you
21 believe we have proved the case to you beyond a
22 reasonable doubt. Can you follow that rule of law?

23 A. I would hope so.

24 Q. Okay. Again, we would go to -- once
25 the defendant was found guilty, we would go to these
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1 questions. And I have touched on them, let me just see
2 if you can kind of agree with some definitions that other
3 jurors have said.

4 Do you find from the evidence beyond a
5 reasonable doubt that there is a probability? I have
6 heard that described as more likely than not.

7 Does that sound like a fair kind of
8 definition of that word to you?

9 A. Well, I think so. I mean probability
10 is more on the probable side than the lesser side.

11 Q. Okay. Probably going to happen, more
12 likely than not. Correct?

13 A. Correct.

14 Q. Not a certainty, but more than a
15 possibility?

16 A. Correct.

17 Q. Criminal acts of violence, we've heard
18 that described as anything that would cause harm to
19 another person, not necessarily another murder, but
20 anything that would harm or injure. Is that a fair

21 description?

22 A. Correct.

23 Q. Okay. And society, that word, does

24 that include everyone to your mind including the people

25 that work in the prison, prison guards, chaplains,

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1 psychiatrists, inmates, relatives visiting inmates,

2 everybody in the world?

3 A. To me, society as a whole is all

4 people.

5 Q. Okay. Again, if that question is

6 answered "yes," you move on to the second question and if

7 the second question is answered "no," that would be a

8 death sentence.

9 I want to talk to you a little bit

10 about, in general, principles of law. And I noticed that

11 you had previously been on a Grand Jury.

12 A. Yes.

13 Q. And the Judge told you that the

14 indictment is no evidence of guilt. And I am sure you

15 are very familiar with that concept, if you were a Grand

16 Juror in Austin; is that right?

17 A. Correct.

18 Q. How long ago has that been?

19 A. About 15 years.

20 Q. All right. Do they move pretty

21 quickly through those things?

22 A. We were on it for six months and so we

23 spent -- they move pretty quickly through each individual

24 case, yes.

25 Q. Right. Okay. So you see why that

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1 rule is so important to follow, that an indictment is no

2 evidence of guilt.

3 A. Right.

4 Q. Because the case hasn't had time to be

5 flushed out. And you could follow that?

6 A. Uh-huh. (Witness nodding head

7 affirmatively.)

8

9 THE COURT: Is that a yes, ma'am?

10 THE PROSPECTIVE JUROR: Yes, I'm

11 sorry.

12 THE COURT: That's all right.

13 MS. SHERRI WALLACE: Your Honor, may I

14 approach the --

15 THE COURT: You may.

16

17 BY MS. SHERRI WALLACE:

18 Q. Ms. Motheral, on this -- on your

19 questionnaire --

20 A. Okay.

21 Q. We had asked: Please state your

22 personal opinion regarding the following three

23 statements, it said circle. It said: "If the police

24 arrest someone for capital murder, the person is probably

25 guilty."

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1 A. Oh, I didn't do that.

2 Q. Well, that is okay. "And if a

3 district attorney tries a person for capital murder, then

4 the person is probably guilty."

5 Now, you didn't answer that and that

6 is great, because what we really want is an open mind.

7 Is your mind open and you will hold us to our burden and

8 not use the fact that she has been indicted or arrested

9 in any way against her?

10 A. I would definitely.

11 Q. Okay. Additionally, you, I think in

12 line with that, said, "I think if a person is accused of

13 capital murder, she should have to prove her innocence."

14 And you said you strongly disagree.

15 A. Well, do you need my definition of

16 that?

17 Q. No, I don't. I want to talk to you a

18 little bit about that.

19 A. Okay.

20

21 MR. CURTIS GLOVER: Well, Your Honor,

22 may the person be allowed to answer that question?

23 THE COURT: Well, I think that would

24 be fair enough. I think you did answer it, did you not?

25 THE PROSPECTIVE JUROR: Well, I said

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1 strongly disagree because I do believe that the burden of
2 proof lies with the prosecution.

3

4 BY MS. SHERRI WALLACE:

5 Q. And Ms. Motheral, that is exactly

6 where I was headed. As long as you can follow that law

7 and hold us to our burden, that is a burden that we

8 gladly accept in this case. You cannot look to that

9 table for anything. As you know, all they have to do is
10 show up.

11 Now, I have told you we are actively
12 seeking the death penalty, and I anticipate that they are
13 going to fight us every step of the way. But if they
14 don't want to, they don't have to ask a question, and you
15 can't hold that against the defendant and you can't look
16 to them to prove anything. And I think you have
17 indicated that you can follow that; is that right?

18 A. I would hope so, yes.

19 Q. Okay. The defendant has an absolute
20 right not to testify and if she didn't, you would not
21 hold that against her, would you?

22 A. No.

23 Q. And I anticipate that police officers
24 will testify in this case. And the rule of law with
25 regards to witnesses is kind of like everything else.

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1 You have got to wait until you hear from them and you
2 have got to keep an open mind.
3 I have heard the question asked,
4 "Would you believe a police officer simply because he is
5 a police officer?" And, really, it's kind of a trick
6 question, because everybody thinks, "Well, yeah. I want
7 to believe a police officer."

8 But the key there is that you can wait
9 and hear from the person, regardless of occupation.
10 Could you follow that?

11 A. I believe so.

12 Q. If, in fact, when we get to the
13 punishment area and phase, the Judge will instruct you
14 that you may not consider parole. I know from time to
15 time there is a lot of news articles about parole. But,
16 as a juror, you cannot consider parole for any reason.
17 There is a good reason for that: The Board of Pardons
18 and Paroles changes the make up of the board all the
19 time. They have the exclusive decision-making board on
20 that issue. So the Judge has no control over it, the
21 jury has no control over it, we have no control over it.
22 The key there is that you do not consider parole and
23 assume a life sentence means just that, life. Could you
24 follow that law?

25 A. Yes.

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1 Q. Okay. Do you have any questions for
2 me?

3 A. Not at this time that I can think of.
4 Q. Okay. Thank you, so much, Ms.
5 Motheral, for visiting with me, and I think the defense
6 attorneys will want to ask you some questions.

7

8 THE COURT: Thank you, Ms. Wallace.

9 Mr. Glover.

10 MR. CURTIS GLOVER: Yes, sir.

11 THE COURT: Thank you, sir.

12

13 VOIR DIRE EXAMINATION

14

15 BY MR. CURTIS GLOVER:

16 Q. Ms. Motheral, as the Judge told you my
17 name is Curtis Glover. I have just got a few questions
18 for you.

19 A. All right.

20 Q. I noticed that on the beginning of
21 your questionnaire you indicated that you heard about the
22 matter on the radio and television. Can you tell us what
23 you heard?

24 A. Just vaguely the fact that she had
25 been indicted for the crime. Mainly, what is said here,
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1 of course, no evidence because, I frankly, don't like to
2 listen to that kind of thing on television or read about
3 it.

4 Q. Why?

5 A. Because I did lose a daughter, and I
6 don't like violent crimes of any type.

7 Q. Things like that -- I can see how that
8 would bother you.

9 A. Yes.

10 Q. Okay. My bottom line to you is: Did
11 you have any other discussions with either your spouse or
12 people at work or places like that concerning this
13 particular offense?

14 A. Not other than the fact that it
15 happened.

16 Q. Okay. Do you recall what any of those
17 conversations were?

18 A. No, just that it was a terrible thing
19 that had happened.

20 Q. Okay. Who would that conversation
21 have been with?

22 A. My husband.

23 Q. Did he comment one way or the other
24 about it?

25 A. No. We don't -- we really, like I
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1 said, we don't comment about that type of thing, on any
2 type of violence-type thing.

3 Q. Okay. May we assume, then, in your
4 heart of hearts, that you have not gathered any sort of
5 an opinion or concluded anything concerning this case?

6 A. Not other than the fact that she has
7 been indicted.

8 Q. Okay. And you have served on a Grand
9 Jury?

10 A. Yes, sir.

11 Q. You are very familiar with that sort
12 of thing. Again, looking into your heart, can you
13 conclude anything from the fact that she has been
14 indicted?

15 A. Not other than the fact that she has
16 lost two children.

17 Q. Okay. Obviously, you know having
18 appeared here today, because she has been charged with
19 that.

20 A. Yes, sir.

21 Q. And you know at the time you read
22 about it or heard about it on television.

23 A. That's correct.

24 Q. Did you conclude anything as a result
25 of that, based on your experience as a Grand Juror? Our
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1 experiences certainly enlighten us about what is going on
2 about us?

3 A. Well, as a Grand Juror, of course, the
4 only thing that I could conclude is that there was some
5 evidence there to presume enough, I mean, to indict her.
6 Now, what that evidence -- as I well know because on the
7 Grand Jury that I have been on, there were some that were
8 indicted and later found guilty, some were found
9 innocent.

10 Q. Right.

11 A. So, an indictment does not necessarily
12 assure that the crime was committed by the person that
13 was indicted.

14 Q. Sure. And you are doing very well.

15 You know, there is no law that says we have to agree with
16 the law. Are you familiar with that?

17 A. No, sir, not --

18 Q. That principle?

19 A. I'm not sure that I am. I'm not sure
20 I follow you completely.
21 Q. Well, let me just talk with you a
22 little bit about it. We live in a democracy, and we're
23 not all compelled to agree with the law. We can disagree
24 with the law. Certain of our legislators do, they go
25 down to Austin and say, "I disagree with that."
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1 They attempt to have laws changed
2 based on that. We have courts that disagree with the law
3 and they in due time and due process change the law.
4 We as citizens have the right to
5 disagree with the law. You as a citizen have the right
6 to disagree with the law.

7 A. Right.

8 Q. Would you agree with that?

9 A. I would agree with that.

10 Q. Okay. So, simply because we have
11 these various laws, we can disagree with them, but when
12 you are placed in certain circumstances that those laws
13 might apply to what you are endeavoring to do, or they
14 apply to some action that you are involved with, then the
15 law says to be qualified to be in that position, you have
16 to agree with those laws that are going to come into play
17 with what you are doing.

18 A. Correct.

19 Q. Would you agree with that?

20 A. Yes, sir.

21 Q. Okay. Now, should you go back to the
22 jury room in this case after hearing all of the evidence
23 and start your deliberations, and being given all of the
24 law and Judge Tolle will give it to you if you are a
25 juror in this case, if it should occur during the
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1 deliberations, that he tells you there is no burden and
2 you see that in his instructions to you, there is no
3 burden on the defendant to do anything in her behalf.
4 There is no burden on her to come
5 forth and testify, and if she did not do that, then he
6 would instruct you you are not to consider that for any
7 purpose whatsoever.
8 But if during your deliberations,
9 something should occur in discussions with your other
10 fellow jurors, you know, Darlie Routier could have
11 resolved that question for us. And then you go back and
12 you look at the Court's charge and it says, "Well, you

13 are not to consider that."

14 Do you believe, in your heart of
15 hearts, as she sits there now that she is, indeed,
16 presumed to be innocent and would you allow that
17 presumption to remain with her throughout this case until
18 it is over with?

19 A. I would hope that I would. I believe
20 I can. I mean, I can't answer that I will positively
21 will do anything, because I do believe that, as a person,
22 we can only hope that we will do the very best we can.
23 We cannot -- I cannot give you an assurance that
24 something inside me would not happen or would happen,
25 because I don't know that until it happens. And I don't
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1 I feel that anyone else does.
2 I would hope that I would go on my
3 own, what my knowledge and what my feelings were, that I
4 would never be influenced by whatever someone else would
5 say within the jury. I believe that the prosecution does
6 have the burden of proof.

7 Q. The statement is made in your
8 questionnaire, Ms. Motheral, under oath and you recall
9 you were placed under oath before you filled this out, to
10 answer truthfully and correctly: "If a person is accused
11 of capital murder, she should have to prove her
12 innocence." And you said strongly disagree. Do you feel
13 that way today?

14 A. Yes, because, there again, I believe
15 that the burden of proof lies with the prosecution. That
16 is the way our laws are written.

17 Q. And you will hold forth with that
18 throughout this entire case?

19 A. Yes, sir.
20

21 MR. CURTIS GLOVER: Thank you. That
22 is all we have, Judge. Thank you.

23 THE COURT: Ma'am, would you mind
24 stepping out briefly, please. We will call you back in
25 in a minute.

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1 THE PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Watch your step there.

3

4 (Whereupon, a short
5 recess was taken,
6 after which time,

7 the proceedings were
8 resumed on the record,
9 in the presence and
10 hearing of the defendant
11 and outside the presence
12 of the prospective juror
13 as follows:)
14
15 MR. S. PRESTON DOUGLASS, JR: My
16 adversariness almost came out when she kept clicking her
17 eyes around at you and said, "Did I put him in his
18 place?"
19 THE COURT: I assume then this will --
20 MR. CURTIS GLOVER: We'll strike that
21 juror.
22 MS. SHERRI WALLACE: We will accept
23 her, Judge.
24 THE COURT: I figured you would.
25 All right. Thank you very much. I
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1 figured you would.
2 MR. S. PRESTON DOUGLASS, JR: You know
3 what she did? She almost went uh-huh.
4 THE COURT: The defense has now
5 exhausted their peremptory challenges.
6 MR. CURTIS GLOVER: Well, I think we
7 are going to have to start objecting to bringing these
8 jurors in out of order, Judge.
9 THE COURT: Well, that is fine. We'll
10 call four for tomorrow. We'll go in the regular order.
11 We have three one day, that's what we'll have on the jury
12 panel on Monday. Let's get the next juror out, please.
13 Let's bring Ms. Motheral back.
14 MR. TOBY L. SHOOK: We can call them
15 all in order and have them go all day tomorrow if you
16 want to.
17
18 (Whereupon, the prospective
19 juror returned to the
20 room and the proceedings
21 were resumed as follows:)
22
23 THE COURT: Ms. Motheral, we want to
24 thank you very much for coming. You will be excused from
25 further jury service.
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1 THE PROSPECTIVE JUROR: All right.
2 THE COURT: All right. Please don't
3 discuss what went on in here today until the trial is
4 over. That will be the latter part of January, the first
5 part of February, then you are free to talk or not talk
6 as you see fit.
7 I do have a gag order in effect. I
8 can impose monetary sanctions or Kerr County jail time.
9 I'm not threatening you, I just have to tell you.
10 THE PROSPECTIVE JUROR: I understand.
11 THE COURT: Fair enough. We sure
12 appreciate your coming.
13 All right. That is -- let's bring in
14 Ms. Linda Gibson. That is Number 301 on the jury list,
15 and number 106 on our list.
16 If you will raise your right hand,
17 please.
18 Do you solemnly swear or affirm that
19 you will true answers make to all questions propounded to
20 you concerning your qualifications as a juror, so help
21 you God?
22
23 (Whereupon, the prospective
24 juror was duly sworn by the
25 Court to true answers make
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1 to the questions propounded,
2 concerning qualifications, after
3 which time, the proceedings were
4 resumed as follows:)
5
6 THE PROSPECTIVE JUROR: Yes, I do.
7 THE COURT: Thank you. Ma'am, you are
8 a potential alternate juror in the Darlie Routier matter.
9 Mrs. Routier is the defendant, she is
10 sitting right over there in the olive dress with her
11 attorneys, Mr. Curtis Glover from Dallas and Mr. Preston
12 Douglass who is from Kerrville.
13 The State is represented by two
14 Assistant District Attorneys from Dallas, Toby Shook and
15 Sherri Wallace.
16 There are no wrong answers to the
17 questions that you are going to be asked, so please tell
18 us frankly how you feel. You won't offend anybody.
19 If you could speak into the microphone
20 loudly, and distinctly, Ms. Halsey is taking all this
21 down. And when asked questions, if you could say "yes"
22 or "no" as opposed to uh-huh or uh-huh, we sure would

23 appreciate it.
24 THE PROSPECTIVE JUROR: I usually
25 shake my head.
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1 THE COURT: Well, you have got to say
2 "yes" and "no," we can't take that head shake.
3 THE COURT: Okay, Mr. Shook.
4 MR. TOBY L. SHOOK: Thank you, Judge.

5
6 Whereupon,
7
8 LINDA C. GIBSON,
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 MR. TOBY L. SHOOK:
18 Q. Ms. Gibson, my name is Toby Shook. I
19 am one of the prosecutors on the case and I am going to
20 ask you some questions this afternoon on behalf of the
21 State. I want to go over a couple of things on your
22 questionnaire and then talk to you about the death
23 penalty and some of the laws that apply. Okay?

24 A. Okay.
25 Q. If you have any questions at any time,
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1 just feel free to ask. We're just looking for your
2 honest opinions. All right?
3 A. Okay.
4 Q. The trial is -- you have put down as
5 most our jurors have, that you have heard about the case
6 from the T.V. and newspapers, it's gotten a lot of
7 publicity. Can you tell us what you have heard?
8 A. Well, I have not since I came, I have
9 not listened or read anything about it.
10 Q. Okay. Prior to the Judge's
11 instructions is what I'm talking about.
12 A. Very sketchy, two sons, Dallas area.
13 Q. Okay.
14 A. I saw a picture of the house, I think.
15 Q. Okay.
16 A. There was a picture of the house.

17 Q. You didn't get a lot of details then?

18 A. No.

19 Q. Okay. The reason we ask that is it's

20 fine, and obviously fine for anyone before they came down

21 for jury service to read about the case. It's just that

22 we can't have jurors with opinions coming into the case

23 that will affect them during their deliberations. You

24 can understand that. You can draw opinions about what

25 you read, you just can't use them as evidence. Do you

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1 understand that?

2 A. Yes.

3 Q. Have you formed any opinions as to

4 guilt or innocence, or is your mind open and could you

5 wait until the evidence comes in?

6 A. It's open.

7 Q. So, you can wait and decide this case,

8 if you are chosen as a juror, as the evidence comes into

9 the courtroom?

10 A. Yes.

11 Q. Okay. Fair enough.

12 The trial is slated to begin January

13 6. And the Judge's hours are from 9:00 in the morning

14 until 5:00 in the afternoon, you can go home in the

15 evenings. The only time you would be sequestered is if

16 you were deliberating into the evening. In fact, most

17 days you go home in the evenings. We can't tell you

18 exactly how long it will last, but our best guess is

19 about two weeks, so it won't be like O.J. Simpson or

20 anything like that.

21 Now, Ms. Gibson, let me get to the

22 heart of the matter. You know that the State is seeking

23 the death penalty in this case from what Judge Tolle has

24 told you. The defense is obviously opposed to that. So

25 we want to interview everyone about their personal

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1 feelings about the death penalty. You put down that you

2 are in favor of it as a law; is that right?

3 A. Yes.

4 Q. Tell me why you believe we should have

5 the death penalty as a law.

6 A. Well, I feel like if you have done

7 something and gone through court and a jury has found you

8 to be guilty of that offense, then I feel it is proper.

9 Q. Okay. Do you think, I guess, from

10 your viewpoint, is it proper in some murder cases? Or is

11 there other crimes?

12 A. There would be other crimes.

13 Q. What other crimes, do you think?

14 A. Well, I don't know, probably if there
15 was forms of abuse.

16 Q. Okay. Torture, things of that nature?

17 A. Yes.

18 Q. Okay. In Texas, we can only get the

19 death penalty for murder cases, and then only certain
20 types of murder cases. Okay? Not every murder case
21 falls into our death penalty statute. Obviously, you
22 have got all kinds of murder cases. You have got your
23 barroom brawls, you have got lovers' quarrels, you've got
24 cold-blooded, vicious murders, you have got people going
25 after, you know, maybe someone has injured their child

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1 and they seek revenge, those kinds of things. Millions
2 of different factors can come in. That is why you have a
3 wide penalty range of murder cases.

4 In capital murder cases, you have to

5 have murder plus something else, an aggravating fact.

6 For instance, a murder that occurs during another felony,

7 like murder during a robbery, during a burglary, during a

8 rape, kidnapping, can fall in that statute. And not

9 every one of those is a death penalty case, it depends on

10 how these questions are answered.

11 Again, facts of each case. Murder of

12 a police officer while on duty can be a death penalty

13 case, and murder of a child under the age of six can be a

14 death penalty case. In fact, can I let you take a moment

15 there to read the indictment which is seated there in

16 front of you.

17 A. Okay.

18

19 THE COURT: It's just the typewritten

20 paragraph in the middle.

21 MR. TOBY L. SHOOK: Yeah, just that

22 typewritten paragraph.

23 THE PROSPECTIVE JUROR: Unlawfully

24 then and there, intentionally and knowingly --

25 THE COURT: No, ma'am, you can read it

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1 to yourself.

2 MS. SHERRI WALLACE: You don't have to

3 read it out loud.

4 MR. TOBY L. SHOOK: Yeah, just read it

5 to yourself.

6 THE PROSPECTIVE JUROR: Oh, okay.

7 Thank you.

8 THE COURT: All right. Thank you.

9

10 BY MR. TOBY L. SHOOK:

11 Q. All right, Ms. Gibson, that is a copy

12 of the indictment, the allegations we have to prove.

13 Obviously, I can't ask you for your verdict in this case

14 because you haven't heard any evidence yet.

15 But is that the type of case you feel

16 might be appropriate for the death penalty, given the

17 proper facts and circumstances?

18 A. Yes.

19 Q. Have you ever been on jury service

20 before?

21 A. No.

22 Q. Okay. The way a criminal trial works

23 in a death penalty case is this: It's divided into two

24 portions. There is the guilt/innocence stage and then

25 the punishment stage. The first portion, we have to

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1 prove that indictment that you just read beyond a

2 reasonable doubt.

3 If we don't do that, everyone goes

4 home, not guilty verdict if we can't prove our case

5 beyond a reasonable doubt. If we do prove the case, that

6 is not the end of the case either, we go to the

7 punishment phase.

8 And you can hear more evidence, more

9 background evidence about the defendant, if it exists.

10 Then you get these questions and I am

11 going to go over those in more detail in a moment. But

12 these are "yes" and "no" questions. The first question

13 asks the jurors, "Will the defendant be a continuing

14 danger to society?"

15 And if you answer that question "yes,"

16 you move on to the second question which is the

17 mitigating question. That allows the jurors to look at

18 all the evidence, and if you feel there is mitigating

19 evidence, evidence which tells you the defendant should

20 get a life sentence, rather than a death sentence, you

21 can answer it that way. If you don't, you answer it

22 "no."

23 A "yes" to the first question and a

24 "no" answer to the second, equals a death sentence. The

25 Judge has no choice.

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1 Answer it any other way, it's a life
2 sentence. But those are the two choices, once we have
3 reached the punishment stage. Is that clear to you?
4 A. Uh-huh. (Witness nodding head
5 affirmatively.) Yes.
6 Q. Are you aware that the method of
7 execution in Texas is by lethal injection?
8 A. Yes.
9 Q. Okay. And you are probably aware that
10 those executions do, in fact, take place?
11 A. Yes.
12 Q. What I need to know is this: You told
13 me philosophically you believe in the death penalty in
14 certain crimes, in certain situations?
15 A. Yes.
16 Q. I guess depending on each fact
17 situation?
18 Would you be able to listen to the
19 evidence and if we prove these things to you beyond a
20 reasonable doubt, answer those questions knowing the
21 defendant would be executed?
22 A. Yes.
23 Q. Okay. And then if we didn't prove it,
24 you wouldn't have any problem finding the defendant not
25 guilty or answering those questions "no"?
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1 A. No.
2 Q. You could just let the cards fall
3 where they may, according to the evidence?
4 A. Uh-huh. (Witness nodding head
5 affirmatively.) Yes.
6 Q. Okay. Fair enough.
7 Now, let me get into a couple of
8 things. Judge Tolle went over some rules of law that
9 apply in all criminal cases. I'm going to refresh your
10 memory on those.
11 A. These are very confusing to me.
12 Q. Okay. We will go over them slow.
13 A. Okay.
14 Q. And if you have any questions, you let
15 me know.
16 A. Okay.
17 Q. A lot of these will be a little bit
18 familiar because they are parts of our Constitution. The

19 presumption of innocence, I'm sure you have heard of
20 that?

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

23 Q. Every defendant, including this
24 defendant, is presumed to be innocent at the beginning of
25 the trial.

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

3 Q. Now, we have to overcome that
4 presumption. We do that by putting on evidence. But at
5 the get-go, every juror must give the defendant the
6 presumption of innocence. You can't start presuming them
7 guilty, in other words.

8 They start out with that presumption
9 of innocence and since we are the accusers, we have to
10 overcome that presumption. Can you follow that rule of
11 law?

12 A. Yes, I understand that.

13 Q. You understand that?

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

16 Q. Okay. Secondly, the State has the
17 burden of proof, we have to prove the case. It's our job
18 to prove this case beyond a reasonable doubt. Okay?

19 Beyond a reasonable doubt is the highest burden under
20 law. You can see why, especially in a situation
21 involving the taking of another person's life.

22 That burden of proof, we have to prove
23 the indictment to you beyond a reasonable doubt. That
24 burden of proof never shifts to the defense. Okay? Let
25 me give you an example. Let's say -- well, the only

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1 obligation of the defense is this, and I don't expect
2 this to happen, but they just have to show up. Okay?

3 They are under no legal obligation to
4 prove a case to you, to prove their client's innocence.
5 Okay?

6 They just have to show up. Now very
7 likely, they are going to ask questions, make arguments,
8 make objections, maybe even put on witnesses. They might
9 attempt to prove their client's innocence, but they're
10 not under a legal obligation to. As a juror, most people
11 come in here, well, if you asked them, they would say,
12 "Well, I would expect them to, they're lawyers." And

13 that is a reasonable assumption.
14 But we can't have jurors require the
15 defense to prove their client's innocence. You see, the
16 State has to clear a hurdle of beyond a reasonable doubt,
17 and we put on evidence to do that.
18 Now, if we don't do that, whether they
19 put on a witness or not, whether they ask a question, you
20 have to find the defendant not guilty, if our evidence
21 falls short. If we do clear that hurdle, you find them
22 guilty. But we can't put on just some evidence and maybe
23 it doesn't reach that hurdle and then you can't turn
24 around and say, "Okay. What do you have to say about it,
25 defense? I'm going to require you to prove her
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1 innocence, now that someone said the defendant did
2 something." Do you understand what I am saying?

3 A. Yes.

4 Q. Okay. A lot of people get that
5 confused sometimes, they would require the defense, and
6 we have got to be sure we have jurors that would keep the
7 burden of proof on this table. Can you follow that rule
8 of law?

9 A. Yes.

10 Q. Okay. We list three statements in
11 this questionnaire, to get your feelings on them. And
12 one of statements is: If a person is accused of capital
13 murder, she should have to prove her innocence. And we
14 have different categories you can circle. "Don't know,"
15 "Strongly disagree," "Disagree," "Uncertain," "Agree,"
16 and "Strongly agree."

17 You put agree and uncertain right
18 together though, and you've circled that one. I didn't
19 know if you meant uncertain or agree or -- so I just
20 wanted to ask you about that.

21 A. This right here?

22 Q. Yes, just read that for me.

23 A. That confused me.

24 Q. Okay.

25 A. If I am following you correctly on
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1 this, I would be fine if she would not have to say
2 anything.

3 Q. Yeah, that is another point I am going
4 to get to.

5 A. Okay. Well, is that about that?

6 Q. Well, her not saying anything also

7 gets into a person's Fifth Amendment right.

8 A. She should have to prove her

9 innocence, no.

10 Q. Okay. You would then say, looking at

11 it, you would disagree?

12 A. Disagree.

13 Q. Okay. And that goes to what I was

14 saying. They are not required. It very well may happen,

15 but they are not required.

16 A. Right, I understand that.

17 Q. Okay. Now, you jumped ahead of me to

18 my next point about the defendant actually testifying.

19 If a person wants to testify in their own behalf, they

20 can, no one can stop them. But if they choose not to,

21 the jurors can't use that as evidence against them? You

22 understand that?

23 A. I understand that.

24 Q. There are a lot of reasons for that,

25 you know. They could be real guilty and look bad, if

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1 they don't want to testify. Or they might be very

2 innocent and a good prosecutor can cross-examine them and

3 make them look bad. Their lawyer might advise them,

4 "Just don't take the stand," and they listen to that

5 lawyer. There's a lot of reasons that go behind it, so

6 the law just says: If the defendant does not testify,

7 you cannot use that as evidence of guilt. Could you

8 follow that rule?

9 A. Yes.

10 Q. Okay. In criminal cases, many times

11 police officers are called to testify. And most of our

12 jurors have respect for police officers and the job they

13 do. But the law says this: You have to start all

14 witnesses off the same. Okay? You can't automatically

15 give some witnesses a head start, such as police officers

16 over other witnesses.

17 You have to wait and listen to -- and

18 wait, until they testify, and then draw your conclusions

19 about them. Whether they are more credible than other

20 witnesses. Do you see what I'm getting at here?

21 A. Yes.

22 Q. You can't automatically give a police

23 officer, just because he is a police officer, an

24 automatic head start as far as credibility goes. Once

25 they testify, you might feel that way, or you may not.

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1 It's just like any other situation, police officers are
2 human, there are bad officers, there's real good
3 officers, there's real hard-working ones and there are
4 lazy ones. The law just says you have to start all
5 witnesses out on the same playing field. Can you do
6 that?

7 A. Yes.

8 Q. Okay. The law also -- the Judge would
9 instruct you that you cannot consider parole laws or
10 early release in any way during your deliberations.
11 Sometimes we read about those things, it makes the
12 headlines, but you can't consider those things during
13 your deliberations, because we have no control over that
14 here.

15 The Judge doesn't, we don't, they
16 change all the time, in other words. You just have to
17 base your decisions on the evidence as it comes in.

18 Could you follow that rule of law?

19 A. Yes.

20 Q. Okay. Those are the basic rules that
21 apply to every case. What I want to get into next are
22 some of the rules that apply to these issues here.

23 Now, like I said, you don't get to the
24 punishment questions unless the defendant is found
25 guilty. Okay? But just because you find a defendant
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1 guilty of capital murder doesn't mean they get the death
2 penalty. You have to go through these questions. You
3 may hear more evidence about the defendant's background
4 before you get these questions.

5 This first question asks: "Do you
6 find from the evidence beyond a reasonable doubt that
7 there is a probability that the defendant would commit
8 criminal acts of violence that would constitute a
9 continuing threat to society?"

10 Do you see where that question is
11 asking, calling for a "yes" or "no"?

12 A. Yes.

13 Q. It's asking the jurors to predict how
14 the defendant is going to behave. Would they be a future
15 danger? And you use the evidence of the crime itself and
16 anything else you have learned about the defendant and
17 their background to answer that question. The State has
18 to prove that to you beyond a reasonable doubt. You
19 start out with a "no" answer, just like you start the
20 trial with the presumption of innocence.

21 The presumption is answered "no." And
22 then we have to overcome that "no" answer by putting on

23 the evidence. There is no automatic answer to that
24 question. Okay? Just because you find a person guilty
25 of capital murder, you don't check in, "yes," they will
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1 be a danger.
2 You don't know what the facts are of
3 each case or what the background is.
4 In some cases it may be true, some
5 cases it may not. You have to tell the Court, I will
6 wait until the evidence is in, reevaluate the evidence I
7 have already heard, listen to any new evidence and then
8 I'll decide if the State has proven that to me or not.
9 Could you do that?
10 A. Yes, sir.
11 Q. Okay. You could sit on a 100 cases
12 and in 99 of them you might think they are a danger, and
13 in one you may not. It just depends on what the State
14 can prove to you. If you do answer that question "yes,"
15 you'd move on to this last question.
16 That is the longer question that can
17 get a little confusing.
18 That question asks: "Taking into
19 consideration all of the evidence including the
20 circumstances of the offense and the defendant's
21 character and background and the personal moral
22 culpability of the defendant, is there a sufficient
23 mitigating circumstance or circumstances to warrant that
24 a sentence of life imprisonment, rather than a death
25 sentence, be imposed?"
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1 Like I said, that question gets kind
2 of lengthy. It's called the mitigation question. The
3 way I summarize it is this: You look at all the evidence
4 and decide, either from the crime itself or the
5 background about the defendant, something in their
6 character, is there some evidence that tells me, the fair
7 thing to do, the right thing to do is for the defendant
8 to get a life sentence rather than a death sentence?
9 They don't get off, they have to serve
10 a life sentence, but it's a way out for the jurors in the
11 end. You have already found them to be guilty, you have
12 already found them to be a danger, but there is something
13 in their background that you think a life sentence should
14 be imposed.
15 Can you keep your mind open to that
16 type of evidence?

17 A. Yes.

18 Q. Do you think that is a fair question
19 to have in a death penalty case?

20 A. Yes, I do.

21 Q. Okay. It kind of leaves the jurors a

22 way out if they think it is just the right thing to do,

23 but, of course, you have to do it based on the evidence.

24 We can't tell you what mitigating evidence will be. You

25 know? It's going to be up to you and the other jurors.

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1 And as you sit there today you are not

2 required to think of what mitigating evidence may be.

3 You just have to be able to assure the Court you can keep

4 your mind open to it. And if you think it reaches the

5 level where a life sentence should be imposed, you would

6 answer it "yes." And vice versa, if you don't think it

7 does, you could answer it "no." Could you do that?

8 A. Yes, sir.

9 Q. Okay. Oh, one other area I forgot to

10 get into, the indictment that you did read, Judge Tolle

11 told you that any indictment by the Grand Jury is no

12 evidence of guilt.

13 A. Correct.

14 Q. You understand that, don't you?

15 A. Yes.

16 Q. As he told you, they can hear very

17 little evidence. The fact that a person has been

18 arrested is no evidence of guilt, or ever even going

19 through this procedure. You have to wait until the

20 evidence comes in and then make your decisions. Can you

21 do that?

22 A. Yes.

23 Q. Okay. I notice that in one part of

24 the questionnaire, we put down, "Do you know anyone that

25 has been in prison or jail?" You put down a person by

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1 the name of Randy Rios.

2 A. Yes.

3 Q. How did you know him?

4 A. One of my students was married to this

5 young man.

6 Q. Okay.

7 A. He is -- one of my employees, and a

8 former student, that is her husband.

9 Q. Okay. Do you know what kind of charge

10 it was?

11 A. Not really, no.
12 Q. Okay. What about Eddie Harris? I
13 think you put down --
14 A. Yes, that is a nephew.
15 Q. Okay. And he got some prison time
16 on -- is it a rape charge?
17 A. Uh-huh. (Witness nodding head
18 affirmatively.)
19 Q. Is he still in prison at this point?
20 A. Yes.
21 Q. How long ago did that happen?
22 A. Probably three years ago.
23 Q. Okay. Did you know anything about the
24 facts of that case?
25 A. No.
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1 Q. Okay. From what you know, or little
2 that you know, do you feel that he was treated fairly by
3 the criminal justice system?
4 A. Uh-huh. (Witness nodding head
5 affirmatively.) Yes.
6 Q. Okay. You don't know any of the
7 Dallas attorneys involved, do you?
8 A. No.
9 Q. There's two Kerrville attorneys that
10 have been retained also. Mr. Douglass here, do you know
11 him?
12 A. Yes.
13 Q. How do you know Mr. Douglass?
14 A. Mr. Douglass is one of our neighbors.
15 Q. Okay. How close are y'all? Are y'all
16 just waving neighbors or do y'all talk?
17 A. Well, I have talked to him on several
18 occasions. My husband has a Harley and he has a Harley,
19 so --
20 Q. Yeah, we have heard about Mr.
21 Douglass's Harley.
22 A. We have a Harley, too, so we share
23 little Harley comments. That's about it.
24 Q. That's about it?
25 A. Uh-huh. (Witness nodding head
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1 affirmatively.)
2 Q. We've heard that he -- does he get
3 into his kind of leather get-up on weekends? We have
4 heard about that.

5 A. Yes, you have to watch the sun on the
6 studs on the bike.

7

8 THE COURT: Bandana?

9 THE PROSPECTIVE JUROR: No. I am on
10 the stand, no, there is no bandana.

11 MR. TOBY L. SHOOK: No bandana.

12 THE PROSPECTIVE JUROR: He does have
13 some leather.

14 MR. TOBY L. SHOOK: Some -- well, you
15 have to have some for the cold.

16 THE COURT: Accoutrement.

17 THE PROSPECTIVE JUROR: Well, like his
18 wife, I have never spoken to her, I have just waved.

19

20 BY MR. TOBY L. SHOOK:

21 Q. Okay. What about Mr. Richard Mosty,
22 the other attorney?

23 A. I know Richard, yes, I know Richard.

24 Q. How do you know him?

25 A. I have lived in Kerrville most of my
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1 life. He was a partner, I believe, with Tom Pollard at
2 one point, a friend of ours.

3 Q. Okay. Are you close friends with him
4 or just --

5 A. Tom Pollard?

6 Q. No, Mr. Mosty.

7 A. No.

8 Q. Okay. Would either knowing both
9 attorneys, would that affect you in any way if you were a
10 juror?

11 A. No.

12 Q. Okay. The bottom line is, again, what
13 I have been going over, is obviously, we need jurors who
14 don't form opinions beforehand, and listen to the
15 evidence, and then make these decisions, based on the
16 evidence that they hear in the court. Can you do that?

17 A. Yes.

18 Q. It's fine to not like crime,
19 obviously. It's fine to want to be hard on violent
20 criminals, I would hope most jurors would feel that way.
21 But we just have to have people that can listen to the
22 evidence objectively, and then make those decisions. Can
23 you do that?

24 A. Yes.

25 Q. Okay. Do you have any questions over
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1 anything we have gone over?

2 A. No.

3 Q. Okay. Appreciate your patience.

4

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

6 Judge.

7 THE COURT: Thank you. Mr. Glover.

8

9 VOIR DIRE EXAMINATION

10

11 BY MR. CURTIS GLOVER:

12 Q. Ms. Gibson, as the Judge told you, my

13 name is Curtis Glover and I am going to be one of the

14 lawyers sitting here helping Darlie with her case. I

15 just want to talk with you briefly about a few things.

16 I noticed on your questionnaire that

17 you indicated that you had heard about this on television

18 and in the newspaper. Can you tell us a little more

19 about what you heard?

20 A. All I recall hearing was it was in the

21 Dallas area, two children, young children, possible stab,

22 knife, I saw one picture of a two-story home on TV, just

23 showing the area, I assumed was her home. I was not

24 paying attention, really, I looked and I saw this house

25 flash on at the time, but nothing really other than that.

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1 Q. Did you have occasion to talk with

2 anyone at your place of employment about this?

3 A. It's been mentioned, and I also teach

4 child development classes in high school.

5 Q. Anything you mentioned in connection

6 with the child development classes concerning this?

7 A. No, other than the current case was

8 moving to Kerrville, and right about that time, I got my

9 juror summon and I said, "We won't be talking about

10 anything."

11 Q. Did you have occasion to talk with

12 your husband about it?

13 A. Well, probably before I was called,

14 but we really haven't.

15 Q. That's what I am referring to, prior

16 to when you were called?

17 A. No.

18 Q. Okay. Any of those folks that you had

19 discussions with concerning it, did they express any kind

20 of an opinion concerning what they had read, or that

21 y'all were discussing?

22 A. Well, I think probably the people I'm
23 around are real sensitive to issues with children and
24 concerned about children, and I probably heard some
25 things along those lines, you know.

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1 Q. Can you tell us what you heard?

2 A. Well, "I can't believe that would
3 happen," you know, "The poor children," those types of
4 things.

5 Q. Do you recall anyone expressing any
6 kind of an opinion at that time concerning this?

7 A. Probably. I have heard several places
8 she is guilty.

9 Q. Okay. As a result of those
10 conversations, and what you have heard people say and
11 this sort of thing -- and before I get to this question,
12 let me kind of touch on this subject; the seriousness of
13 what we're doing here. We're talking about a human life
14 in an imperfect system. The taking of a human life.
15 And if you would, just reflect on
16 that, and in your own mind as to the seriousness of what
17 this is all about, and your position concerning it. And
18 I would ask you to kind of look into your heart of hearts
19 as you answer these questions to me, and really probe
20 your conscience, because it is of imperative importance.
21 I mean, I could methodically sit here
22 and go down through a checklist, a laundry list of laws
23 that are involved and that sort of thing, and that
24 becomes, in my view, rather meaningless.

25 But I think what is important is for
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1 you to look into your own mind and heart, and determine
2 as you answer these questions for Darlie, that what you
3 are saying is from your heart and from your conscience.

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

6 Q. And out of an abundance of concern for
7 her. See, you have heard no evidence in this case. You
8 don't know whether this woman is guilty or innocent.

9 A. Correct.

10 Q. And the law says right now that you
11 must presume her to be innocent. And what if indeed she
12 is? What a plight you are in.

13 Wouldn't you want, if you were in her
14 position, and you were indeed innocent, for those that

15 were sitting in judgment on you to be terribly concerned.

16 And I assume that you are?

17 A. Yes, I am.

18 Q. Okay. Based on those conversations

19 that you had with those folks, did you conclude anything?

20 A. No. And if I heard anything like

21 that, you know, I said, "I can't talk about it. I don't

22 want to talk about it."

23 Q. Okay. So, you are telling us that you

24 do not have the slightest bit of opinion, one way or the

25 other, concerning this case?

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1 A. No.

2 Q. Okay. Well, it's as the Judge has

3 told you, and as the prosecutors have told you in this

4 laundry list of laws that we're going to be concerned

5 with here today, that Darlie Routier is presumed to be

6 innocent. She may be, she may not be.

7 And the evidence will eventually tell

8 us one way or the other concerning all of that. But,

9 they have all told you that she is presumed to be

10 innocent. And, you know, the law says that.

11 And there is no law that says that

12 we -- there is no law that says we have to agree with the

13 law. We're in a democracy. There are legislators down

14 in Austin all of the time who are trying to change laws

15 that they don't agree with. There are judges that do

16 change laws, all the time that the legislators have made.

17 So nothing is written in stone as far

18 as the law is concerned, and you as a citizen in a

19 democracy can certainly disagree with the law.

20 Now, it brings me to a very important

21 subject that's coming up in this case, and that concerns

22 the Fifth Amendment to the Constitution of the United

23 States. And that is that a person is presumed to be

24 innocent and they cannot be called upon at any time to

25 prove their innocence. If they wish to remain silent,

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1 then indeed they very well may.

2 Now, there are many folks that

3 disagree with that. And they think that if a person is

4 charged with a crime they ought to come forward, they

5 ought to be brought forward to talk about that.

6 And the only newspaper in Dallas, the

7 Dallas Morning News thinks it ought to be done away with.

8 They have written editorials, their editorial staff says

9 it ought to be done away with.
10 So, there are strong folks that
11 disagree with that. Now, that having been said, I want
12 to you ask you, if I might, about this statement.
13 And I want you to look into your heart
14 of hearts as you do this, and you were under oath at the
15 time that you did this.

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

18 Q. This statement was asked of you: If a
19 person is accused of capital murder?

20 A. Where are you?

21 Q. Right here.

22 A. Oh, okay.

23 Q. If a person is accused of capital
24 murder she should have to prove her innocence, and you
25 said there, "I agree," and then said you were uncertain.

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1 Now, before you answer that?

2 A. Okay.

3 Q. Have you looked at it enough?

4 A. Sure.

5 Q. But let me just ask you: That if
6 there was any reservation in your mind at that time as to
7 perhaps that a person should have to come forward and
8 prove their innocence, and we're making specific
9 reference to Darlie Routier in this case.

10 A. I probably would answer it that I
11 disagree. I circled agree, and these are very close
12 together here, but I should have probably -- disagree, I
13 mean, she would not have to say anything, if that is what
14 you are asking, I would not hold that against her.

15 Q. Let me tell you what I am concerned
16 about. Is that frequently we will pay lip service to
17 rules and regulations and laws that are concerned in a
18 situation like this, and where things are so terribly
19 serious, it concerns me that I see that there.

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

22 Q. And that perhaps, just in an attempt
23 on your part to be just cooperative about all of this,
24 and to -- none of us want to admit that perhaps, you
25 know, I might call upon her to come forth and prove her
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1 innocence.

2 A. No, I would probably disagree with

3 that. I would disagree with that. I mean, I have seen
4 court cases where people have even talked in their
5 defense or whatever and, I mean, they didn't even need to
6 do that. Probably in some cases, would have been better
7 if they hadn't said anything.

8 Q. Right. Well, at this point in time,
9 nobody knows what she is going to do. We haven't heard
10 the evidence in this case, so we don't know what -- God
11 in heaven only knows what will happen in that connection,
12 not even she. But, obviously, we are concerned that
13 perhaps you expressed some ambivalence in that regard.

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

16 Q. I just want you to look into your
17 heart of hearts and be sure.

18 A. Well, the way I answered it is the way
19 that I felt. I feel like she would not have to say
20 anything on her behalf.

21 Q. Okay.

22 A. That is what you are asking me?

23 Q. Well, the way you have answered it
24 just here today.

25 A. Right.

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1 Q. Exactly.

2 A. Right, it is different than what I
3 have here.

4 Q. Than what you checked here?

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

7 Q. So, you are telling the Judge and the
8 Court that you are retracting that?

9 A. Yes.

10 Q. Okay. And that is after a
11 consideration in your mind and in your heart that that
12 was an error? Is that what you are saying?

13 A. Yes, sir.

14 Q. Okay. Is there any reason, Ms.
15 Gibson, that you can share with us why you would not be a
16 fair juror in this case?

17 A. Why I would not be a fair juror?

18 Q. Right.

19 A. I can't think of any.

20 Q. Do you want to serve in this case?

21 A. I would like to.

22 Q. Okay.

23 A. I have plenty of time. I teach
24 school, but I have plenty of time that I could.

25 Q. I agree with you and I appreciate your
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1 candor and I think you would make an excellent juror.

2 Thank you, ma'am.

3

4 THE COURT: If you could step outside

5 briefly, ma'am, we will be calling you back in briefly,

6 in just a minute.

7

8 (Whereupon, the prospective

9 juror was excused from the

10 room, and the following

11 proceedings were held,

12 outside of her presence

13 as follows:)

14

15 MR. TOBY L. SHOOK: We will accept the

16 juror, Your Honor.

17 MR. RICHARD C. MOSTY: May we have a

18 couple of moments to talk, Your Honor?

19 THE COURT: Yes, you may.

20 MR. RICHARD C. MOSTY: I need to talk

21 to the appellate section.

22 THE COURT: No, I know the State has

23 accepted since they have no more strikes. That's why I

24 wondered what comment Mr. Shook had already volunteered.

25 MR. RICHARD C. MOSTY: That's why it

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1 takes us a little while to do that.

2 THE COURT: I understand, I

3 understand. I know what you are doing, I'm ready for it.

4 Are we ready?

5 MR. CURTIS GLOVER: Considering the

6 fact that she is a neighbor of Preston, we are going to

7 accept this juror, Judge.

8 THE COURT: All right. Ask Ms. Gibson

9 to step back in, please.

10

11 (Whereupon, the prospective

12 juror returned to the

13 room and the proceedings

14 were resumed as follows:)

15

16 THE COURT: Ms. Gibson, you have been

17 selected as alternate juror number 1. You are number 1

18 alternate.

19 That means if anybody cannot serve,
20 you will be sitting through the entire trial, anyway.
21 THE JUROR: Okay.
22 THE COURT: And the only time you will
23 leave is if the entire jury is intact when they go into
24 deliberations.
25 But, you are the first alternate, so
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1 if something happens to one of them you will immediately
2 take their place. But you will be sitting through the
3 entire trial.
4 THE JUROR: Okay.
5 THE COURT: Now, please do not discuss
6 this case. I know you will tell your husband, we
7 understand that. If the two of you will be kind enough
8 not to discuss this until the trial starts about whether
9 or not you are an alternate, or anything like that, I
10 think things will go much easier with you out there.
11 We have to decide this case on the testimony
12 and the evidence you hear received here in the courtroom.
13 And so we do have a gag order in effect, I can impose
14 monetary sanctions or Kerr County Jail time.
15 I'm not threatening you, I am just
16 telling you.
17 Mr. Navarre, back there will be
18 calling you. The trial is going to start on the 6th of
19 January.
20 THE JUROR: Okay.
21 THE COURT: So, he will be giving you
22 more time and information data later on.
23 THE JUROR: Okay.
24 THE COURT: Thank you very much. We
25 appreciate your coming. We will see you then.
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1 Anybody else? Is that all, Mr.
2 Navarre? All right. We're ready for Ms. Lopez. This is
3 Ms. Oralia Lopez, number 276 on the jury list, juror
4 number 98 on our list.
5 How are you, ma'am?
6 THE PROSPECTIVE JUROR: Fine, sir.
7 THE COURT: If you would raise your
8 right hand, please, ma'am?
9 Do you solemnly swear or affirm that
10 you will true answers make to all questions propounded to
11 you concerning your qualifications as a juror, so help
12 you God?

13
14 (Whereupon, the potential juror
15 Was duly sworn by the
16 Court, to speak the truth,
17 The whole truth and
18 Nothing but the truth,
19 After which, the

20 Proceedings were
21 Resumed as follows:)
22

23 THE PROSPECTIVE JUROR: I do.
24 THE COURT: All right. Thank you.
25 Ms. Lopez, I just have to ask you this first question.
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1 You do read, write, and speak the English language
2 fluently. It's obvious you don't need a Spanish
3 interpreter for these proceedings.
4 THE PROSPECTIVE JUROR: Yes, sir.
5 THE COURT: Okay. I knew that, but I
6 just had to ask you that to clear it up. You can pull
7 that mike back up toward you and speak into it loudly.
8 THE PROSPECTIVE JUROR: Okay.
9 THE COURT: Okay. You are a potential
10 alternate juror today in this case, the case involving
11 Darlie Routier.
12 Mrs. Routier is the young lady sitting
13 here in the olive dress, she is the defendant. She is
14 represented by her attorneys, Mr. Curtis Glover on this
15 side, who is from Dallas, and her two Kerrville
16 attorneys, Mr. Richard Mosty and Mr. Preston Douglass.
17 The State is represented by two
18 Assistant District Attorneys from Dallas County, Toby
19 Shook and Sherri Wallace.
20 They are going to ask you some
21 questions, there are no wrong answers. We want to know
22 exactly how you feel about things. You are not going to
23 offend anybody down here by anything that you say.
24 Anything you say is not going to go outside of these
25 doors, so just tell it like it is, tell them how you
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1 really feel.
2 Fair enough?
3 THE PROSPECTIVE JUROR: Yes, Judge.
4 THE COURT: Speak loudly and say yes
5 or no to the answers, don't say uh-huh or huh-uh because

6 Ms. Halsey is taking all this down and she has got to
7 have distinct answers.

8 Mr. Shook.

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

10

11 Whereupon,

12

13 ORALIA R. LOPEZ,

14

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

19

20 VOIR DIRE EXAMINATION

21

22 BY MR. TOBY L. SHOOK:

23 Q. Ms. Lopez, my name is Toby Shook and I
24 am one of the prosecutors. I am going to ask you
25 questions on behalf of the State this afternoon.
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1 A. Yes, sir.

2 Q. Like the Judge just said, we're just
3 looking for your honest opinion. There aren't any right
4 or wrong answers. Okay? I want to go over a couple of
5 things that are in your questionnaire. You checked that
6 you have heard something about the case on TV and in the
7 newspaper; is that right?

8 A. Yes, sir.

9 Q. Can you tell us what you have heard?

10 A. I was sitting at home and it caught my
11 attention when it was on the news.

12 Q. What details do you remember that were
13 on the news?

14 A. About a mother stabbing her two young
15 boys.

16 Q. Okay. I wanted to turn your attention
17 back to the last page of the questionnaire. The last
18 question we ask is: Do you know of any reason why you
19 could not sit as a juror for this trial and be absolutely
20 fair to the defendant and the State, and render a verdict
21 based solely upon the evidence presented to you?

22 Now you didn't check either one off,
23 but you did put in there, there were children involved at
24 the end. Now -- so, I wasn't sure if you were saying you
25 couldn't be fair, or just that that was a concern of
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1 yours, or what, do you remember writing that down for us?
2 Or do you need me to refresh your memory? I know it's
3 been about three weeks?

4 A. Yes, uh-huh, it has. That day I was
5 just -- I believe, I think I misinterpreted that
6 question.

7 Q. Okay. I wasn't sure what you meant by
8 that, and I didn't know if you were just making a comment
9 or anything like that.

10 Let me ask you this: Did you form any
11 opinions about anything you read in the newspaper or saw
12 on TV?

13 A. My personal opinion is, what I have
14 heard so far, is that whatever happened did happen, just
15 because what I have heard on the news and --

16 Q. Well, let me ask: Have you formed any
17 opinions? And I just want your honest answer. Have your
18 formed any opinions about the defendant's guilt, one way
19 or the other?

20 A. Yes, I have. I feel as though she is
21 guilty.

22 Q. Okay.

23 A. That is my personal opinion.

24 Q. Sure.

25 A. Because of everything that I have
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1 heard and seen.

2 Q. And let me ask you this: Is the
3 conclusion -- you have reached a conclusion, a conclusion
4 about her guilt that is in your mind, in your opinion?

5 A. Yes, sir.

6 Q. Do you think that might affect you if
7 you were a juror in this case, things you have read and
8 heard about?

9 A. Yes, sir, I believe it would.

10 Q. Okay.

11

12 THE COURT: Either side have anything
13 else?

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

16 THE COURT: All right. Do you wish to
17 submit the juror, Mr. Mosty?

18 MR. RICHARD C. MOSTY: I will.

19 THE COURT: Thank you for coming,
20 ma'am.

21 MR. RICHARD C. MOSTY: Yes, sir.
22 MR. CURTIS GLOVER: We all submit her,
23 Judge.
24 MR. RICHARD C. MOSTY: Does it have to
25 be unanimous?
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1 THE COURT: No, sir. All right. That
2 juror is dismissed.

3
4 (Whereupon, the
5 Proceedings were
6 Recessed for the day,
7 To be resumed the
8 Following day, in
9 Open court, as follows:)

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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
3202

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.

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15
16
17
18
19 _____

20 MARK TOLLE, JUDGE
21 Criminal District Court Number 3
22 Dallas County, Texas
23
24
25
Sandra M. Halsey, CSR, Official Court Reporter
3203