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3	Small Mounted Photo	125	125	3
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1	Photo	9	9	4
2	Nothing			5
3	Photo	21	21	4
4	Photo	21	21	4
5	Photo	21	21	4
6	Photo	21	21	4
7	Photo	21	21	4
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Gass, Patrick	137	147		3
Gordon, William	3	6		4
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Horvath, Andrew	90, 111	109		3
Johnston, Edwin	120	128		4
Keisel, Mindy	152	179		3
Moreno, Gerardo	40			3
Noah, William	24	34		3
Parks, Mimi	207			4
Phillips, Tiffany	99, 119	110		4
Rivas, Mary	114			3
Romero, Roberta	34			3
Smith, Charlotte	148			3
Walles, Weldon	122			3
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Williams, Michael	48	86		3

REPORTER'S RECORD

VOLUME 2 of _____

Trial Court Cause No. 0836979A

Trial Court Cause No. 0836985A

THE STATE OF TEXAS) IN THE DISTRICT COURT
VS.) TARRANT COUNTY, TEXAS
BARTON RAY GAINES) 213TH JUDICIAL DISTRICT

HONORABLE MICHELE HARTMANN
HONORABLE ROBERT FORAN
Assistant District Attorneys
401 West Belknap
Fort Worth, Texas 76196
(817) 884-1400
SBOT No. 09167800
SBOT No. 07220600

FOR THE STATE

HONORABLE GREG WESTFALL
Attorney at Law
One Summit Avenue, Suite 910
Fort Worth, Texas 76102
(817) 877-1700
SBOT No. 00788646 -and-

HONORABLE CHEYENNE S. MINICK
Attorney at Law
One Summit Avenue, Suite 410
(817) 877-1001
SBOT No. 24001161

FOR THE DEFENDANT

On the 9th day of December, 2002, the following
Jury Voir Dire came on to be heard in the above-entitled
and numbered cause before the Honorable Robert Gill,
Judge presiding, held in Fort Worth, Tarrant County,
Texas.

Proceedings reported by machine shorthand.

KAY MILLER, CSR
Deputy Official Court Reporter
213th District Court
Tarrant County, Texas

KAY MILLER, CSR

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4 Trial Court Cause No. 0836985A

5 THE STATE OF TEXAS) IN THE DISTRICT COURT

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7 BARTON RAY GAINES) 213TH JUDICIAL DISTRICT

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Assistant District Attorneys
401 West Belknap
Fort Worth, Texas 76196
(817) 884-1400
12 SBOT No. 09167800
SBOT No. 07220600 FOR THE STATE

13 HONORABLE GREG WESTFALL
Attorney at Law
One Summit Avenue, Suite 910
Fort Worth, Texas 76102
(817) 877-1700
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17 HONORABLE CHEYENNE S. MINICK
Attorney at Law
One Summit Avenue, Suite 410
(817) 877-1001
18 SBOT No. 24001161 FOR THE DEFENDANT

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1 PROCEEDINGS
December 9, 2002
2 Monday
3 1:30 p.m.
4 (Open court, Defendant present, no jury)
5 THE COURT: court calls Cause 0836979 and
6 0836985 both styled the State vs. Barton Ray Gaines to
7 conduct a jury trial. Are both sides ready?
8 MS. HARTMANN: The State of Texas is
9 ready.
10 MR. WESTFALL: defense is ready, Your
11 Honor.
12 THE COURT: Let's conduct an arraignment.
13 MR. FORAN: Your Honor, at this time the
14 State is going to waive Paragraphs One in both cause
15 numbers and proceed only on Count 2.
16 (Indictment read in Cause 0836979A)
17 (Indictment read in Cause 0836985A)
18 THE COURT: sir, are you Mr. Barton Ray
19 Gaines, the Defendant in each of these two cases?
20 THE DEFENDANT: yes, sir.
21 THE COURT: is Barton Ray Gaines your
22 true name?
23 THE DEFENDANT: yes, sir.
24 THE COURT: is it spelled correctly in
25 the indictment?

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1 THE DEFENDANT: Yes, sir.
2 THE COURT: In Count 2 of each of these
3 indictments you are charged with the offense of
4 aggravated robbery with a deadly weapon. Do you
5 understand what you're charged with in Count 2 of each
6 indictment?
7 THE DEFENDANT: Yes, sir.
8 THE COURT: And to that charge in each
9 indictment you may plead guilty or not guilty.
10 THE DEFENDANT: Guilty, Your Honor.
11 THE COURT: Are you pleading guilty in
12 each of the two indictments?
13 THE DEFENDANT: Yes, sir.
14 THE COURT: Are you pleading guilty
15 because you are guilty in each case and for no other
16 reason?
17 THE DEFENDANT: Yes, sir.
18 THE COURT: Has anyone held out any hope
19 of pardon or promise of reward in order to get you to
20 plead guilty?
21 THE DEFENDANT: No, sir.
22 THE COURT: Are you pleading guilty
23 because of fear or persuasion?
24 THE DEFENDANT: No, sir.
25 THE COURT: Is your plea free or

1 voluntary?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is your guilty plea induced
4 by any representation made to you by your attorney, the
5 district attorney or anyone else? YES!

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you understand you have a
8 right to a jury trial on the issue of whether you are
9 guilty or not guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you waive that right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understand you have a
14 right to confront and cross-examine witnesses as to
15 whether you are guilty or not guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you waive that right also?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand you have a
20 right to not incriminate yourself by plea or testimony?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And are you giving up that
23 right also?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you a citizen of the

1 we would just ask if there's anything in addition that
2 has not been provided to them that they would give us
3 notice of that. We've provided impeachment information,
4 witness lists, subsequent firearms reports, hospital
5 records. They've all been turned over to defense
6 counsel.

7 MR. WESTFALL: I have no complaints
8 whatsoever, Your Honor, about the stated discovery in
9 the case. We had done an oral motion in limini, and
10 maybe both sides did. Did we do a motion in limine on
11 404(b) to take it up outside the presence of the jury
12 before we admitted it in evidence in front of the jury?

13 MS. HARTMANN: Yes.

14 MR. WESTFALL: I wanted to be refreshed
15 on that. But I have no complaints whatsoever, Your
16 Honor, about the State's discovery.

17 MS. HARTMANN: The State would like a
18 clarification, because that ruling was made at a time
19 when the intent was to proceed with a guilt-innocence
20 phase of the trial, and in essence what we are going to
21 be having is a punishment phase. Is that limine still
22 in effect? Would've loved to have been a fly on the wall

23 MR. WESTFALL: Perhaps, Your Honor, the
24 prosecutor and I should just talk about it after we get
25 finished today and see if we can get a clarification.

1 United States?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Counsel, is your client
4 competent to stand trial?

5 MR. WESTFALL: Yes, Your Honor.

6 THE COURT: Mr. Gaines, do you understand
7 that if you persist in your plea of guilty in front of
8 the jury, I'm going to instruct them to find you guilty
9 in each of these two cases and to set your punishment
10 within the range of punishment set out by law in each
11 case, which is for not less than five or more than 99
12 years or life confinement in the penitentiary, and in
13 addition, a fine of up to \$10,000 can be assessed in
14 each case?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And knowing all these things,
17 do you wish to persist in your plea of guilty in front
18 of the jury?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You may be seated.

21 Does either side have anything else we
22 need to take up before we seat the venire?

23 MS. HARTMANN: Your Honor, the only
24 thing, based upon the prior court rulings, the State has
25 provided the requested information to the defense, and

Could've possible been about my appeal?

1 THE COURT: I think that's probably a
2 good idea. Y'all kind of go over the ground rules.
3 Just let me know what y'all decide.

4 MR. WESTFALL: Thank you, Judge.

5 THE COURT: Is there anything else?

6 MS. HARTMANN: Nothing else from the
7 State.

8 MR. WESTFALL: None from the defense.

9 THE COURT: Are both sides ready to seat
10 the venire?

11 MS. HARTMANN: State's ready, Your Honor.

12 MR. WESTFALL: Defense is ready, Your
13 Honor.

14 THE COURT: Venire person number one
15 called this morning and told us he was going to have
16 some difficulty getting here.

17 MS. HARTMANN: Number one?

18 THE COURT: Number one, yeah. I don't
19 know if he's here or not.

20 (Jury panel present)

21 THE COURT: Good afternoon, ladies and
22 gentlemen. Welcome to the 213th District Court of
23 Tarrant County, Texas. My name is Bob Gill. I'm Judge
24 of this court. You have been summoned here as a venire
25 of 60 persons from which a jury of 12 persons will be

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1 selected this afternoon to hear the trial of a felony
2 criminal case.
3 The case on trial is the State of Texas
4 versus Barton Ray Gaines, in which Mr. Gaines is charged
5 with two cases of aggravated robbery with a deadly
6 weapon. The parties that will be involved in the trial
7 of the case are seated at the two tables in front of
8 you. At the table on the left is the Defendant, Mr.
9 Barton Ray Gaines. He is represented by two attorneys
10 in private practice here in Fort Worth, Mr. Greg
11 Westfall.

12 MR. WESTFALL: Good afternoon.

13 THE COURT: And Mr. Cheyenne Minick.

14 MR. MINICK: Good afternoon.

15 THE COURT: And at the other table
16 representing the State of Texas are two assistant
17 district attorneys, Ms. Michele Hartmann.

18 MS. HARTMANN: Good afternoon.

19 THE COURT: And Mr. Robert Foran.

20 MR. FORAN: Good afternoon.

21 THE COURT: I have to place you all under
22 oath as potential jurors. Please raise your right
23 hands.

24 (Jury panel sworn)

25 THE COURT: Thank you. Now I have to ask

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1 you three questions to test your qualifications. First,
2 except for failure to register, are you a qualified
3 voter in this county and state under the Constitution
4 and laws of this state? Please raise your hand if you
5 are not qualified to vote in Tarrant County.

6 And question two, have you ever been
7 convicted of theft, which can include hot checks or any
8 felony, please raise your hand. And question three, are
9 you under indictment or legal accusation for theft,
10 including hot checks or any felony, please raise your
11 hand. No one's raised their hand, and I find everyone
12 here to be qualified.

13 In this case it is expected that Mr.
14 Gaines is going to enter pleas of guilty to the offense
15 of aggravated robbery as contained in each of two
16 indictments. In that situation the jury would be
17 instructed by the Court to find the Defendant guilty and
18 then to set the punishment within the range of
19 punishment which is set out by our law, by our
20 legislature, which is for not less than five up to and
21 including 99 years or life confinement in the
22 penitentiary, and in addition, a fine of up to \$10,000
23 can also be assessed in each case.

24 Additionally, if a Defendant brings some
25 proof that he has never been convicted of a felony

1 offense in this or any other state and the jury decides
2 that the punishment should be ten years or less, the
3 jury must consider probation as a punishment option,
4 which means that they can give either probation or
5 penitentiary time as punishment in the case.
6 The jury will be instructed that they
7 must set the punishment based on the facts of the
8 particular case on trial. We come now to the voir dire
9 examination of the jury panel by the district attorney
10 and counsel for the Defendant. The State and Defendant
11 through their attorneys have the right to direct
12 questions to each of you concerning your qualifications,
13 background, experiences and attitudes.

14 In questioning you they are not meddling
15 in your personal affairs, but are trying to select fair
16 and impartial jurors who are free from any bias or
17 prejudice in this particular case. Do not conceal
18 information or give answers which are not true. Listen
19 to the questions and give full and complete answers.

20 Occasionally you may be asked a question
21 in such a manner that your silence constitutes an
22 answer. You are under oath to make true answers to any
23 question asked of you, so if your silence is misleading,
24 you must speak up. If the attorneys ask a question
25 directed to you as a group which requires an answer on

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1 your part individually, just hold up your hand until you
2 have answered the question.

3 There are several things you can do this
4 afternoon to help us move things along more quickly. If
5 you are seated in the second row or farther back
6 counting away from me and one of the lawyers is talking
7 to you individually, please stand so that those in the
8 front of the courtroom, which would be myself and Ms.
9 Kay Miller over here to my left, who is the official
10 court reporter, are better able to hear what you have to
11 say.

12 Please state your name before asking or
13 answering a question. There are 60 of you we have to
14 keep track of. This will better enable us to do so.
15 Please give spoken answers to all questions asked of
16 you. Ms. Miller has to take these matters down on a
17 type of shorthand on the machine in front of her. She
18 cannot take down a nod or gesture and must have a spoken
19 answer to work from.

20 If either side brings up a matter with
21 which you do not wish to discuss in front of everyone
22 here, you can tell the lawyer that you would like to
23 approach the bench and we'll take the matter up right
24 here at the bench in front of me with as few people as
25 possible present. The voir dire examination takes

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1 approximately one hour for each side, and we'll take a
2 break in the middle. The State may proceed.

3 VOIR DIRE EXAMINATION BY MS. HARTMANN

4 MS. HARTMANN: May it please the Court.

5 Good afternoon. Let's try that one more time. Good
6 afternoon.

7 PROSPECTIVE JURORS: Good afternoon.

8 MS. HARTMANN: Much better. Why are you
9 all here? You heard the Judge say that it is
10 anticipated that Mr. Gaines will be pleading guilty to
11 these two cases of aggravated robbery. Well, even if
12 that in fact takes place, these two tables still are in
13 disagreement, and we're in disagreement about what the
14 appropriate punishment should be.

15 So what I'm going to spend time with you
16 in the next hour or so doing is talking to you about the
17 law and talking to you about some of the issues that may
18 become relevant in this case. And the most important
19 thing that you all can do for both myself and Mr.
20 Westfall is to be open. That's the only way both sides
21 are going to get a fair trial here.

22 And both sides do deserve a fair trial.
23 Mr. Gaines deserves a fair trial and the State of Texas,
24 which is made up of the people of Tarrant County,
25 deserves a fair trial. Does everyone agree with that?

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1 PROSPECTIVE JURORS: Yes.

2 MS. HARTMANN: Okay. There are no right
3 or wrong answers. Mr. Westfall and I are not looking
4 for you to give us a specific answer. All right. What
5 is important is that when we talk about these issues and
6 parts of the law, if you disagree or you feel strongly
7 about something, you need to let us know.

8 You are under an obligation to let us
9 know, because what's going to happen is once I finish
10 and Mr. Westfall talks with you and he finishes, we're
11 going to go into our own little corners like a little
12 strategy session, and Mr. Foran and I are going to get
13 together, and Mr. Westfall and Mr. Minick and Mr. Gaines
14 are going to get together, and we're going to strike ten
15 people.

16 Okay. You hear jury selection. It's not
17 really you're being selected. It's more we're
18 eliminating people that we feel might not be receptive
19 maybe to our point of view of the case. Okay. And once
20 both sides strike ten people, the next 12 people that
21 are left make up the jury. Okay. And why is it so
22 important that you let us know about those feelings?

23 Sometimes you think in your head, "Well,
24 I don't agree with what Ms. Hartmann's telling me. I
25 disagree with that law." If you don't speak up and tell

1 robbery, because you need to know what is an aggravated
2 robbery. And probably most of you have an idea in your
3 head that maybe a person goes into a convenience store
4 with a gun and holds the store up and grabs money out of
5 the cash register. Is that what most of you think of
6 when you think of an aggravated robbery?

7 PROSPECTIVE JURORS: Yes.

8 MS. HARTMANN: Well, let me tell you the
9 specific elements that the State charges a person with
10 when we say that they have committed an aggravated
11 robbery. We're saying that a specific person; in this
12 instance, Mr. Gaines; in Tarrant County, Texas. We have
13 to prove that it happened here in this county, okay, not
14 in Dallas County or Houston or Austin.

15 On a particular date, intentionally or
16 knowingly, while in the course of committing theft of
17 property and with intent to obtain and maintain control
18 of the property, threatened or placed, and these
19 particular cases, two individuals by the name of Andrew
20 Horvack and Michael Williams, in fear of imminent bodily
21 injury or death. And finally we're claiming, we're
22 alleging, that Barton Gaines used or exhibited a deadly
23 weapon.

24 First of all, let me ask you, does
25 anybody know either of these two individuals, Andrew

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1 Horvack or Michael Williams?
 2 PROSPECTIVE JURORS: No.
 3 MS. HARTMANN: No one here. Does anybody
 4 here know Mr. Barton Gaines?
 5 PROSPECTIVE JUROR: No.
 6 MS. HARTMANN: Or any of the attorneys
 7 that are up here?
 8 PROSPECTIVE JURORS: No.
 9 MS. HARTMANN: Sometimes we get people
 10 that know some of us. All right. That's what we're
 11 saying Mr. Gaines did. Any questions about that?
 12 PROSPECTIVE JURORS: No.
 13 MS. HARTMANN: Does it seem pretty simple
 14 and straight forward?
 15 PROSPECTIVE JURORS: Yes.
 16 MS. HARTMANN: Let me talk to you about a
 17 couple of items that have to do with some of those
 18 elements, and that's what these are, are the elements.
 19 Okay. And I anticipate there's going to be two cases.
 20 Each case has one separate victim. So Mr. Horvack's
 21 case is one case and Mr. William's case is one case.
 22 Make sense?
 23 PROSPECTIVE JURORS: Yes.
 24 MS. HARTMANN: I just kind of combined
 25 them up here to save space. When we're talking about

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1 intentional, we're talking about someone who does
 2 something on purpose. It's not an accident. Easy
 3 enough?
 4 PROSPECTIVE JURORS: Yes.
 5 MS. HARTMANN: Or if they do it, knowing
 6 they're aware of the circumstances, they're aware of
 7 their conduct, okay? Make sense?
 8 PROSPECTIVE JURORS: Yes.
 9 MS. HARTMANN: So far pretty easy. All
 10 right. Let's talk about this threatening or placing a
 11 person in fear. When can that take place during the
 12 offense? Under the law being placed in fear can take
 13 place before the theft, during the theft or after the
 14 theft. Does that make sense?
 15 PROSPECTIVE JURORS: Yes.
 16 MS. HARTMANN: Let's go back to that
 17 convenience store aggravated robbery I was talking
 18 about, okay. And one thing I forgot to mention, Mr.
 19 Westfall and I cannot give you specific facts of these
 20 cases, because if we start telling you specific facts,
 21 then you're going to start forming opinions, and we're
 22 not the witnesses. We're not under oath, and we're not
 23 up on the witness stand.
 24 And the 12 of you who end up sitting on
 25 this case will need to start forming your opinions based

1 upon what the actual witnesses tell you under oath. I'm
 2 going to use this convenience store example for just
 3 that, just an example. It's not in any way related to
 4 this particular case.
 5 Let's say that we have a person who goes
 6 into the convenience store and they go in and they
 7 demand some money. Okay. They don't show any type of
 8 weapon, but they demand some money, all right. And the
 9 clerk was afraid because this is kind of a big person,
 10 so they hand over the money, and as the money is being
 11 handed over and being pocketed, okay, the Defendant in
 12 this case, the person charged, pulls out a gun and
 13 waives it at them as they're backing out of the store.
 14 That's kind of an example where the
 15 threat of imminent bodily injury or death takes place
 16 after the theft has been completed. You see that?
 17 PROSPECTIVE JURORS: Yes.
 18 MS. HARTMANN: You can have a situation
 19 where a person walks in and has the gun just right out
 20 there, just right out there before he even says a word.
 21 "Give me the money out of the register." So you've got
 22 that threat before there's a theft, right?
 23 PROSPECTIVE JURORS: Right.
 24 MS. HARTMANN: And what if the person
 25 walks in and contemporaneously or together pulls out his

1 gun and says, "Give me the money in the cash register,"
 2 so it takes place during the course of getting that
 3 money? So does everyone see how the fear can take place
 4 before, during or after that trying to take property?
 5 PROSPECTIVE JURORS: Yes.
 6 MS. HARTMANN: How do y'all feel about
 7 that? Does that make sense?
 8 PROSPECTIVE JURORS: Yes.
 9 MS. HARTMANN: Anyone who feels that it
 10 doesn't make sense to them? No response. Okay. And to
 11 those of you over here, I'm not really ignoring you, but
 12 we've got a panel of 60, so your likelihood of getting
 13 picked is pretty small. So don't think we're ignoring
 14 you over here, but I'm going to be directing most of my
 15 attention to these folks over here. But if you have any
 16 questions or any thoughts, please raise your hand.
 17 Okay. Do you promise to do that for me?
 18 PROSPECTIVE JUROR: Yes.
 19 MS. HARTMANN: We got one response.
 20 Would y'all do that for me, please?
 21 PROSPECTIVE JURORS: Yes.
 22 MS. HARTMANN: Great. Thank you. All
 23 right. The next thing I want to bring up is the State
 24 doesn't have to prove that there was a completed theft,
 25 and what do I mean by that? Let's say same example.

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1 Guy goes into the convenience store, pulls out the gun
2 and says, "Give me everything you've got in that cash
3 register." Before the clerk can get that
4 money out and hand it over, let's say a patrol car comes
5 cruising by, and the Defendant in this case -- not this
6 case, but in my example, sees that patrol car and
7 thinks, "You know what, I'm not going to wait around for
8 the money. I'm out of here." And they take off and
9 they get caught. Under the law, still an aggravated
10 robbery?

11 PROSPECTIVE JURORS: Yes.

12 MS. HARTMANN: Yes, you bet. The State
13 doesn't have to prove a completed theft. Okay. Because
14 what we're saying is they were in the course of
15 committing theft of the property. So what I'm telling
16 you is even if the person is unsuccessful in getting
17 that property, whether it's money, jewelry, stick of
18 gum, whatever it is, you still have an aggravated
19 robbery.

20 Make sense? Anyone feel that you should
21 have to at least get away with the property for it to be
22 a completed aggravated robbery offense?

23 PROSPECTIVE JURORS: No.

24 MS. HARTMANN: Okay. Something else I
25 want to bring up. The value of the property that's

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1 taken is of no consequence, okay? If that robber goes
2 in and let's say uses a knife, says, "Give me that pack
3 of gum." Okay. Aggravated robbery. Okay.

4 Robber goes up to someone on the street
5 and says, "Give me that Rolex watch you've got on your
6 wrist." Aggravated robbery if they've got a knife.
7 Okay. The value of the property being taken or
8 attempted to being taken does not matter. Does that
9 make sense?

10 PROSPECTIVE JURORS: Yes.

11 MS. HARTMANN: Why? Why do we say the
12 value of the property doesn't really matter?

13 Mr. Bradberry?

14 PROSPECTIVE JUROR: I believe that the
15 threat of bodily injury is of greater interest to me
16 than the value of property.

17 MS. HARTMANN: Did everyone hear Mr.
18 Bradberry?

19 PROSPECTIVE JURORS: Yes.

20 MS. HARTMANN: The law is looking at the
21 safety of the victim in this case. Okay. The threat
22 from that deadly weapon is just as real regardless of
23 whether the person is trying to get a stick of gum from
24 you or get your Rolex off your wrist. Okay? So the
25 focus of the law is on the threat, okay, the threat of a

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1 deadly weapon coupled with the theft offense. Okay.

2 Make sense?

3 PROSPECTIVE JURORS: Yes.

4 MS. HARTMANN: Mr. -- is it McCollom?

5 I'm getting kind of a questioning look from you.

6 Anything that I've gone over that you have any questions
7 or concerns about?

8 PROSPECTIVE JUROR: No.

9 MS. HARTMANN: What do you think about
10 the aggravated robbery law?

11 PROSPECTIVE JUROR: Sounds like it should
12 work.

13 MS. HARTMANN: Make sense to you?

14 PROSPECTIVE JUROR: (Prospective juror
15 nods head).

16 MS. HARTMANN: Is that yes?

17 PROSPECTIVE JUROR: Yes, it is.

18 MS. HARTMANN: And I'm just asking you to
19 speak up so the court reporter can take it down.

20 PROSPECTIVE JUROR: Yes.

21 MS. HARTMANN: All right. And of course,
22 we're alleging that the person in the aggravated robbery
23 uses or exhibits a deadly weapon. And what could be a
24 deadly weapon? Volunteers?

25 PROSPECTIVE JURORS: Anything.

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1 MS. HARTMANN: Anything that in the
2 manner of its use or intended use is capable of causing
3 death or serious bodily injury. And under the law a
4 firearm is a deadly weapon per se. It just
5 automatically is. Make sense?

6 PROSPECTIVE JURORS: Yes.

7 MS. HARTMANN: Okay. Ms. Mercado, did I
8 get that right?

9 PROSPECTIVE JUROR: Yes.

10 MS. HARTMANN: How do you feel about a
11 case involving a weapon, whether it's a knife or a gun
12 or a baseball bat or a two-by-four? How do you feel
13 about a case in which the State of Texas cannot produce
14 that actual weapon physically in court for you?

15 PROSPECTIVE JUROR: I guess I would
16 still -- maybe I'm not totally understanding what
17 you're --

18 MS. HARTMANN: Let's just take a
19 hypothetical case. Let's talk about my convenience
20 store example.

21 PROSPECTIVE JUROR: Okay.

22 MS. HARTMANN: And let's say that in that
23 example for whatever reason -- well, let me ask you
24 this. Let me back up. Can you think of ways in which
25 people who commit crimes will get rid of weapons?

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1 PROSPECTIVE JUROR: Yes.
 2 MS. HARTMANN: Can you think of different
 3 ways they might get rid of a weapon?
 4 PROSPECTIVE JUROR: Yeah. Throw it away.
 5 MS. HARTMANN: Sell it, pawn it, burn it?
 6 Is that yes?
 7 PROSPECTIVE JUROR: Yes.
 8 MS. HARTMANN: Under those circumstances
 9 are the police going to be able to locate that specific
 10 weapon?
 11 PROSPECTIVE JUROR: Probably not.
 12 MS. HARTMANN: Do you think there are
 13 other ways of proving what type of weapon may have been
 14 used in a crime?
 15 PROSPECTIVE JUROR: Yes.
 16 MS. HARTMANN: How?
 17 PROSPECTIVE JUROR: Maybe if there's
 18 marks or any kind of traces left.
 19 MS. HARTMANN: Okay. What about eye
 20 witness testimony?
 21 PROSPECTIVE JUROR: That also.
 22 MS. HARTMANN: And let's see, Mr. Rider,
 23 how about you? Let's say there's a situation in which
 24 the weapon is not physically present. What other ways
 25 do you think the State of Texas could prove that a

1 The law says we don't have to bring that
 2 physically into the courtroom, because it doesn't make
 3 much sense if, say, our little aggravated robber guy in
 4 the convenience store holds a clerk up, shoots him, runs
 5 off and drives by Lake Arlington and pitches it out the
 6 window, and we know who did it. We've got them on
 7 videotape, but the law says, just a hypothetical,
 8 "Sorry, guys, you don't have the actual gun used. You
 9 can't prosecute them." Doesn't make sense, does it?
 10 PROSPECTIVE JURORS: No.
 11 MS. HARTMANN: Is everyone on board with
 12 the fact that there are certain situations where the
 13 State may not be able to physically bring in the weapon
 14 that was used?
 15 PROSPECTIVE JURORS: Yes.
 16 MS. HARTMANN: Is there anyone here who
 17 feels like that would prevent them from being able to
 18 render a verdict?
 19 PROSPECTIVE JURORS: No.
 20 MS. HARTMANN: Over here to my right?
 21 PROSPECTIVE JURORS: No.
 22 MS. HARTMANN: Let me ask, and I know a
 23 lot of you all have children. Is there anybody here
 24 that's fairly recently had a baby? Any of the women in
 25 here?

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1 weapon and specifically what kind of weapon was used?
 2 PROSPECTIVE JUROR: Videotapes, it's
 3 possible.
 4 MS. HARTMANN: Videotapes?
 5 PROSPECTIVE JUROR: Eye witnesses is a
 6 big thing as far as I'm concerned. If the weapon, if it
 7 was a gun and it had been fired, ballistics from the
 8 bullets. Bullet wounds, whatever.
 9 MS. HARTMANN: Very good.
 10 Mr. Partlow, anything to add to that?
 11 PROSPECTIVE JUROR: No. I pretty much
 12 agree.
 13 MS. HARTMANN: Well, how do you feel
 14 about the State prosecuting a case where the actual
 15 weapon used may not be available?
 16 PROSPECTIVE JUROR: Shouldn't make any
 17 difference.
 18 MS. HARTMANN: Okay. Everyone heard what
 19 Mr. Partlow had to say? And what I need to let you know
 20 is that oftentimes because of certain circumstances
 21 whether a person has, you know, sold the weapon, pawned
 22 the weapon, thrown it in a lake, given it away, hidden
 23 it, burned it, sometimes there are situations in which
 24 the State of Texas is not going to have the actual
 25 weapon used, okay.

1 And that's Ms. Bolt?
 2 PROSPECTIVE JUROR: Yes.
 3 MS. HARTMANN: How old is your child?
 4 PROSPECTIVE JUROR: He's nine months.
 5 MS. HARTMANN: Let me ask you this, and I
 6 hope this isn't too personal. Was your husband in the
 7 delivery room with you?
 8 PROSPECTIVE JUROR: No.
 9 MS. HARTMANN: Was not. Darn.
 10 Is there anybody here who has had a baby?
 11 Okay.
 12 Mr. Hudgins?
 13 PROSPECTIVE JUROR: Grandbaby.
 14 MS. HARTMANN: Were you in the delivery
 15 room?
 16 PROSPECTIVE JUROR: Yes, I was.
 17 MS. HARTMANN: You will work just as
 18 well. Were there other people in the delivery room with
 19 you?
 20 PROSPECTIVE JUROR: Yes.
 21 MS. HARTMANN: Who all?
 22 PROSPECTIVE JUROR: Grandmother, sisters,
 23 best friend, doctors, nurses.
 24 MS. HARTMANN: Was it your granddaughter?
 25 PROSPECTIVE JUROR: My daughter's.

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1 MS. HARTMANN: So a lot of different
2 people watching the same event?
3 PROSPECTIVE JUROR: Right.
4 MS. HARTMANN: Do you think if we took
5 you all into separate rooms and asked you to recount
6 what happened that you would be exactly on par with
7 every single detail?
8 PROSPECTIVE JUROR: No.
9 MS. HARTMANN: Why?
10 PROSPECTIVE JUROR: Because everyone sees
11 everything differently.
12 MS. HARTMANN: Okay. You all saw the
13 same event?
14 PROSPECTIVE JUROR: Right.
15 MS. HARTMANN: But depending maybe upon
16 your perspective, where you're located in the room?
17 PROSPECTIVE JUROR: Yeah.
18 MS. HARTMANN: Whether you're the one
19 actually having the baby or just kind of a proud
20 relative?
21 PROSPECTIVE JUROR: That's right.
22 MS. HARTMANN: Whatever's kind of
23 important to you at the moment, does that influence your
24 recollection of that event?
25 PROSPECTIVE JUROR: Sure does.

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1 MS. HARTMANN: Does it mean if you and,
2 say, your daughter remember things just a bit
3 differently, some of the details, does that mean that
4 you didn't see the same event?
5 PROSPECTIVE JUROR: No.
6 MS. HARTMANN: Just means that your
7 perspectives were different?
8 PROSPECTIVE JUROR: Right.
9 MS. HARTMANN: Fair enough. Oftentimes
10 in a criminal case you get the same thing. You get
11 multiple people at one scene who see something happen,
12 and they all agree on what happened generally.
13 Sometimes the details differ, all right,
14 and sometimes that's because of the location of the
15 people. Sometimes it's because of their perspective on
16 what's going on. It depends on what part they're
17 playing. Does that seem to make sense?
18 PROSPECTIVE JUROR: Yes.
19 MS. HARTMANN: So my point in saying this
20 is sometimes as jurors you will hear from witnesses, and
21 sometimes the details differ, okay. They saw the same
22 event. Some of the details are different, and that
23 doesn't in and of itself mean that they're not telling
24 you the truth.
25 So what I would ask you to do is as

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1 you're listening, if you're a juror, you keep in mind
2 that people are in different places seeing the same
3 event, and that event is impacting them in different
4 ways.
5 Just kind of like Mr. Hudgins here
6 watching the birth of his -- Was it granddaughter?
7 PROSPECTIVE JUROR: Grandson.
8 MS. HARTMANN: Grandson. Same thing that
9 happened. Your responsibility will be to listen to each
10 of the witnesses and evaluate them on your own. But
11 just because details may differ, that doesn't in and of
12 itself mean they're not telling the truth. Does that
13 make sense?
14 PROSPECTIVE JURORS: Yes.
15 MS. HARTMANN: Can you all keep that in
16 mind?
17 PROSPECTIVE JUROR: Yes.
18 MS. HARTMANN: And listen to a witness
19 and give them fair consideration and decide after they
20 testify, okay, is that detail really important? Could
21 that have been because of where they were standing or
22 what was going on with them at a particular time or what
23 was obstructing their view that wasn't obstructing
24 someone else's view?
25 PROSPECTIVE JUROR: Sure.

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1 MS. HARTMANN: Okay. Fair enough. All
2 right. I want to talk to you about part of the law that
3 has to do with intoxication. And the law says that
4 voluntary intoxication is not a defense to criminal
5 behavior.
6 In other words, you can't decide, "Well,
7 gosh, I'm really upset about my wife leaving me, and so
8 I'm going to pop all these pills and I'm going to go on
9 a rampage and terrorize my neighborhood," and then turn
10 around and say, "Guess what. I'm sorry. I took all
11 those pills, and please forgive me, but you can't
12 prosecute me."
13 It doesn't work like that. Voluntary
14 intoxication, whether it's from alcohol or street drugs
15 or prescription drugs, does not excuse criminal
16 behavior. Okay.
17 Now, let's see.
18 Ms. Dean, how do you feel about that?
19 PROSPECTIVE JUROR: As different kinds of
20 intoxication?
21 MS. HARTMANN: How do you feel about the
22 fact that the law says that if you voluntarily drink
23 alcohol, you know, get high on heroin, or let's say
24 you're prescribed something legally, you have a legal
25 prescription for -- gosh, I can't think of something

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1 that you might get legally prescribed that might make
 2 you drowsy and you get in a car.
 3 PROSPECTIVE JUROR: Zoloft.
 4 MS. HARTMANN: Zoloft, okay. Completely
 5 legal drug if you get it through a prescription, okay?
 6 I'm asking you how you feel about the law that says that
 7 you either voluntarily getting intoxicated through
 8 alcohol or you get high on street drugs or you take
 9 Zoloft and it affects you in such a manner that that's
 10 not an excuse or a reason for criminal behavior.
 11 PROSPECTIVE JUROR: Right. You're still
 12 responsible for your actions.
 13 MS. HARTMANN: Does that make sense to
 14 you?
 15 PROSPECTIVE JUROR: Yes.
 16 MS. HARTMANN: why? Why do you think the
 17 law is that way? *This juror don't give a fuck whether its*
 18 PROSPECTIVE JUROR: Because once again,
 19 we're responsible for our actions. No matter what we
 20 take, we're still responsible for our actions.
 21 MS. HARTMANN: Okay. If it's voluntary.
 22 PROSPECTIVE JUROR: Right.
 23 MS. HARTMANN: MS. Blauvelt.
 24 PROSPECTIVE JUROR: Blauvelt.
 25 MS. HARTMANN: How do you feel about the

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1 law that says that you can't use -- voluntary
 2 intoxication, whether it's alcohol or street drugs or
 3 prescription drugs, can't use that as an excuse. You
 4 don't get off for your criminal behavior. *This juror don't give a*
 5 PROSPECTIVE JUROR: I agree. *fuck whether its*
 6 MS. HARTMANN: Okay. Why? *voluntary or*
 7 PROSPECTIVE JUROR: For the same reason I *involuntary either.*
 8 think that you're responsible for your actions, and if
 9 you injure somebody because of your actions, I think you
 10 should be held responsible.
 11 MS. HARTMANN: Okay. And how about you,
 12 is it Ms. Mills?
 13 PROSPECTIVE JUROR: Yes.
 14 MS. HARTMANN: How do you feel about that
 15 under the law?
 16 PROSPECTIVE JUROR: I believe that a *I.e., she don't*
 17 person is responsible for their actions, and.... *give a fuck*
 18 MS. HARTMANN: Is that it? *whether its*
 19 PROSPECTIVE JUROR: And I believe that *voluntary or*
 20 when they make that decision to take that drink or take *involuntary*
 21 that pill or whatever, they've made that decision. *either.*
 22 MS. HARTMANN: Okay. All right. And
 23 let's see. I'm going to kind of branch off from that to
 24 Mr. Davis, and I'm going to ask you, and I talked a
 25 little bit about -- mentioned street drugs and alcohol,

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1 and then I guess it was Ms. -- was it Ms. Childers that
 2 volunteered Zoloft as a possible, I guess, prescription
 3 drug? *This juror/s damn sure don't give a fuck whether its*
 4 *voluntary or involuntary.*
 5 Let's say somebody is taking some type of
 6 medication such as Zoloft for a psychiatric condition,
 7 whether it's, I don't know, like an anxiety disorder or
 8 depression or any one of the number of disorders that a
 9 lot of people in this country have. Do you think -- or
 10 let me ask you this. How do you feel about someone with
 11 a condition such as that committing criminal behavior?
 12 Do you think they should be held responsible for it?
 13 PROSPECTIVE JUROR: When I get up in the
 14 morning, I'm responsible for everything that I do during
 15 the day, and I don't think that I'm any better or any
 16 worse than anyone else, so I would hold everyone else to
 17 that same level of responsibility.
 18 MS. HARTMANN: Okay. Fair enough. And
 19 let's see. *This juror/s damn sure don't give a fuck whether its voluntary or*
 20 *involuntary. Hartmann's putting her own nails in her coffin, but I didn't*
 21 *have an attorney who gave a damn.*
 22 Mr. Swanson, you're next. How do you
 23 feel along those same lines?
 24 PROSPECTIVE JUROR: I more or less agree
 25 with him.
 26 MS. HARTMANN: Okay. With Mr. Davis?
 27 PROSPECTIVE JUROR: You know, you're
 28 responsible for what you do, and the way I figure it,

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1 you're really responsible if you've got either drugs,
 2 alcohol, whatever. You've got a weapon and you've got a
 3 robbery. You're responsible. *Again, against the law,*
 4 There's too many things there, you know, *whether*
 5 to just sit back and look at it and say, "Well, they *it be vol-*
 6 were drunk or high, and that made them do all this *untary or*
 7 other." It takes a lot to go through all of that, all *involuntary*
 8 three things.
 9 MS. HARTMANN: Okay. And Mr. Mills,
 10 basically the same type of question.
 11 PROSPECTIVE JUROR: I'm absolutely in
 12 agreement.
 13 MS. HARTMANN: How do you feel about, I
 14 guess, individuals who might have psychiatric
 15 conditions, some maybe of what I've already mentioned,
 16 and there's others out there. How do you feel about
 17 those being excuses for any type of criminal behavior?
 18 PROSPECTIVE JUROR: It would have to be
 19 proved, and that would be something that would be a
 20 whole different court case, I would think.
 21 MS. HARTMANN: In what respect?
 22 PROSPECTIVE JUROR: I don't know how it
 23 would be a defense, really, in the situation as you have
 24 spoken to this point.
 25 MS. HARTMANN: If I tell you there is no

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1 defense in the law having to do with what we're talking
2 about, there isn't a defense out there, a legal defense,
3 okay --

4 PROSPECTIVE JUROR: Then I would agree as
5 we have spoken that you are responsible, and things that
6 are taken, stimulants or what have you, shouldn't be
7 allowed to be the reason why you did what you did.

8 MS. HARTMANN: Okay.

9 PROSPECTIVE JUROR: That's my thoughts on
10 it.

11 MS. HARTMANN: Thank you, sir.

12 Ms. Thomas.

13 PROSPECTIVE JUROR: There's no excuse. I
14 don't think there's an excuse for breaking the law.
15 Otherwise anybody could make up an excuse and say,
16 "Well, I was sick" or "The doctor gave me some pills."
17 The doctor should warn you about these drugs.

18 MS. HARTMANN: Okay.

19 PROSPECTIVE JUROR: Whether you should
20 get out on the road, whether you should drive.

21 MS. HARTMANN: Okay.

22 Ms. Richardson, any thoughts on your
23 part?

24 PROSPECTIVE JUROR: Well, if there's a
25 prescription, there's recommendations on the

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1 prescription. You need to follow the instructions.
2 That's about it. If you choose not to follow those
3 instructions, you're assuming a risk of your actions
4 bottom line.

5 MS. HARTMANN: Do you think people ought
6 to be able to use as an excuse the fact that they were
7 drunk or the fact that they were depressed?

8 PROSPECTIVE JUROR: Absolutely not.

9 MS. HARTMANN: Or the fact that they shot
10 heroin?

11 PROSPECTIVE JUROR: Absolutely not.

12 MS. HARTMANN: Okay. Mr. Wakefield, same
13 question.

14 PROSPECTIVE JUROR: I feel the same way
15 he does about it. It's according if you've done it
16 before, if you were under alcohol or prescription pills.
17 It's according how many times you've done it without
18 getting caught for it before (inaudible) --

19 MS. HARTMANN: I'm kind of confused with
20 your answer.

21 PROSPECTIVE JUROR: Well, it's according
22 if they've been caught before doing drugs or doing an
23 offense before. It may be the first time they've taken
24 that drug and it did do something to them to do the
25 offense.

1 MS. HARTMANN: So to you it might be
2 important to hear whether or not it's the first time a
3 person had taken a particular drug, whether it's a
4 street drug or maybe drunk alcohol?

5 PROSPECTIVE JUROR: Yeah, if they've had
6 cases against them before, so no prior history.

7 MS. HARTMANN: How would you feel in a
8 situation where maybe it was that person's first time?
9 Do you think that that still excuses them from their
10 criminal behavior?

11 PROSPECTIVE JUROR: No, because I feel if
12 they've done it before, they're held to their actions.

13 MS. HARTMANN: Ms. Lemmons, same
14 question?

15 PROSPECTIVE JUROR: I definitely think
16 we're responsible for our own actions, and there should
17 be no excuse at all if they were taking a drug. As far
18 as prescription drugs, you should follow the
19 recommendations.

20 MS. HARTMANN: Let me ask you, because I
21 noted on your questionnaire that you put, and correct me
22 if I'm wrong, but you felt that you might not be able to
23 be fair and impartial to both sides. Was that a
24 mistake?

25 PROSPECTIVE JUROR: That must have been a

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1 mistake.

2 MS. HARTMANN: So you think you can?

3 PROSPECTIVE JUROR: Yes.

4 MS. HARTMANN: And while on that, Ms.
5 Bennett?

6 PROSPECTIVE JUROR: Yes.

7 MS. HARTMANN: You also, I think you put
8 on your questionnaire that you didn't think you could be
9 fair and impartial to both sides. Was that a mistake or
10 was that accurate?

11 PROSPECTIVE JUROR: I think I can be

12 fair.

13 MS. HARTMANN: You think you could be
14 fair?

15 PROSPECTIVE JUROR: I misread it.

16 MS. HARTMANN: Was that kind of you
17 misread it?

18 PROSPECTIVE JUROR: Yes.

19 MS. HARTMANN: Mr. Castillo, you also put
20 that you couldn't be fair and impartial. Was that a
21 mistake or was that intentional?

22 PROSPECTIVE JUROR: It was not a mistake.

23 MS. HARTMANN: It --

24 PROSPECTIVE JUROR: It was not a mistake.

25 MS. HARTMANN: Was not. Okay. Why do

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1 you think you can't be fair and impartial?
 2 PROSPECTIVE JUROR: Just can't.
 3 MS. HARTMANN: Let me ask you, do you
 4 think you would not be fair to the State or to Mr.
 5 Gaines?
 6 PROSPECTIVE JUROR: To the State.
 7 MS. HARTMANN: Can you tell me why? You
 8 don't like prosecutors?
 9 PROSPECTIVE JUROR: No.
 10 (Laughter)
 11 MS. HARTMANN: I asked you guys to be
 12 honest.
 13 PROSPECTIVE JUROR: I don't like the law
 14 either.
 15 MS. HARTMANN: You don't like the law
 16 either? The law in general or the law having to do with
 17 aggravated robbery?
 18 PROSPECTIVE JUROR: Everything.
 19 MS. HARTMANN: So are you telling me that
 20 if for some strange reason you ended up over here on the
 21 jury, you would not give the State of Texas a fair
 22 trial?
 23 PROSPECTIVE JUROR: Huh-uh.
 24 MS. HARTMANN: Is that no?
 25 PROSPECTIVE JUROR: No.

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1 MS. HARTMANN: I have to ask you to speak
 2 up, because she needs to take it down in the record.
 3 PROSPECTIVE JUROR: All right.
 4 MS. HARTMANN: Thank you. I appreciate
 5 it. Is there anybody else after the talking that I've
 6 been doing here so far thinks after hearing the facts,
 7 kind of like Mr. Castillo, that you don't think that
 8 you'd be able to be fair and impartial to both sides?
 9 Speak up. Raise your hand. And it's okay to feel that
 10 way.
 11 Is that Mr. Sides?
 12 PROSPECTIVE JUROR: Yes.
 13 MS. HARTMANN: Yes, sir. Can you stand
 14 up for me, please?
 15 PROSPECTIVE JUROR: I don't bother
 16 anybody. I keep to myself, and people that get out
 17 there and harm other people, I've got no pity for them.
 18 I feel like what they ought to do to people to cut down
 19 on crime over here is treat people the way they do in
 20 Japan. You go to the penitentiary over there. That's
 21 why the crime rate is so low. You have somebody from
 22 your family come in and feed them. That way if you're a
 23 repeat offense, that person that feeds you goes to
 24 prison with you the second time.
 25 MS. HARTMANN: So I think it's fair to

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1 say that you're kind of on the other side of Mr.
 2 Castillo? You would probably give the State of Texas a
 3 fair trial, but probably not Mr. Gaines?
 4 PROSPECTIVE JUROR: Exactly.
 5 MS. HARTMANN: And I'm sure that Mr.
 6 Westfall, Mr. Minick and Mr. Gaines appreciate hearing
 7 that. Okay. And that's what's important about this
 8 process, folks, is that you all do what Mr. Castillo and
 9 Mr. Sides has done, is if there's something that's real
 10 important that we need to know about, that you speak up.
 11 Okay. Anybody else?
 12 Yes, sir, Mr. Swanson?
 13 PROSPECTIVE JUROR: I will probably be
 14 more partial to the prosecutors because of -- robbery
 15 is close to theft, and I've been involved in a lot of
 16 personal theft.
 17 MS. HARTMANN: As a victim?
 18 PROSPECTIVE JUROR: Yes.
 19 MS. HARTMANN: Would you -- do you feel
 20 that you would not be able to set aside your own prior
 21 experiences and be fair and impartial?
 22 PROSPECTIVE JUROR: That would be hard to
 23 answer.
 24 MS. HARTMANN: And unfortunately in this
 25 process sometimes we have to tie you down to yes or no

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1 answers, because we have to make a decision. So not to
 2 put you on the spot, and I'm not looking for either
 3 answer. Only you can tell me. And I know Mr. Gaines
 4 needs to know, and his attorneys, and Mr. Foran and I
 5 need to know.
 6 PROSPECTIVE JUROR: It's like I said, I
 7 think I'd be more partial to the prosecutors.
 8 MS. HARTMANN: Okay. If you were to sit
 9 as a juror, do you think you would not give Mr. Gaines a
 10 fair trial?
 11 PROSPECTIVE JUROR: Uh --
 12 MS. HARTMANN: And only you know the
 13 answer to that.
 14 PROSPECTIVE JUROR: I don't think so.
 15 MS. HARTMANN: Okay. I appreciate your
 16 candor. Anybody else?
 17 Is that Mr. Gates?
 18 PROSPECTIVE JUROR: I would be very
 19 biased against the State in this case.
 20 MS. HARTMANN: You don't like prosecutors
 21 either?
 22 PROSPECTIVE JURORS: (Inaudible) In this
 23 case, you're talking about attempted robbery. There's
 24 no law for attempted robbery because there was no
 25 robbery that occurred, and all we have is eye witnesses

1 and no weapon or no other physical evidence other than
2 the threat to life?

3 MS. HARTMANN: Well, what I've done is
4 I've gone over certain parts of the law. I'm not
5 telling you what the facts are in this case. Okay. In
6 an aggravated robbery there is a robbery that takes
7 place. What I was talking about earlier is we don't
8 have to prove a completed theft.

9 PROSPECTIVE JUROR: I don't really agree
10 if somebody attempts to take something.

11 MS. HARTMANN: And even if they use a
12 gun, you don't think that that's a crime?

13 PROSPECTIVE JUROR: I couldn't get a
14 verdict with just eye witnesses.

15 MS. HARTMANN: Okay. Fair enough. Okay.
16 Does anyone feel the same way Mr. Gates does? He's kind
17 of brought up the whole eye witness thing. And there's
18 some people that are very uncomfortable with eye
19 witnesses. All right. Anybody else feel the same way
20 Mr. Gates does?

21 And that is Ms. Samarripa?

22 PROSPECTIVE JUROR: Back in, let me see,
23 '93, '94, I used to work at a gas station in Granbury,
24 and I got robbed, it was around noon, and I tried to
25 give his face and everything to the police. It even

1 for what he did.

2 MS. HARTMANN: Okay. And I guess I'm
3 back to my question. Could you set aside your personal
4 experience, and if you are selected to be a juror, could
5 you be fair and impartial to both sides in this case?

6 PROSPECTIVE JUROR: Well, I would be more
7 towards the prosecutor than the defense.

8 MS. HARTMANN: Okay. I think I
9 understand. You're saying that you would probably not
10 be able to give the Defendant a fair trial?

11 PROSPECTIVE JUROR: No. Because I --

12 MS. HARTMANN: That's fine. That's fine.

13 This is what this whole process is for, okay. And
14 that's fine. I appreciate your letting me know that.

15 **Mr. -- is it Fauble, did I pronounce that correctly?**

16 PROSPECTIVE JUROR: Yes.

17 **MS. HARTMANN: Yes, sir?**

18 PROSPECTIVE JUROR: My brother worked at
19 a convenience store, and he was robbed, and they put a
20 gun to his head, and he said he thought he was going to
21 be dead, but they didn't shoot him.

22 **MS. HARTMANN: Do you think that would be**
23 **threatened or placed him in fear of imminent bodily**
24 **injury or death?**

25 PROSPECTIVE JUROR: Yes.

1 come out on the news and everything, and they still
2 haven't, you know -- and he put a gun, and I got really
3 scared. So I believe that -- I want to say that if
4 this man did the same thing, but I don't know, but if
5 you do that, you need to pay.

6 MS. HARTMANN: And let me just ask you
7 this. You've told us a personal experience that you had
8 involving, I guess, someone coming in and putting a gun
9 in your face, right?

10 PROSPECTIVE JUROR: Uh-huh.

11 MS. HARTMANN: Would you be able to set
12 that experience aside and listen to the facts in this
13 particular case and do what's right for this case as
14 opposed to letting your prior incident influence you?
15 Let me ask it again.

16 PROSPECTIVE JUROR: No. I did
17 understand.

18 MS. HARTMANN: Okay.

19 PROSPECTIVE JUROR: I mean the person
20 that does that, there's always a reason, either they
21 don't have any money, bills or drugs. And why instead
22 of getting a job, they want to do it the easier way, go
23 to a store, rob somebody with a gun, and I don't think
24 that's right. I don't know exactly what this man did.
25 I mean, it's bad. But if he did wrong, he needs to pay

1 **MS. HARTMANN: Were --**

2 PROSPECTIVE JUROR: I think I would be
3 more towards the State than the Defendant.

4 MS. HARTMANN: Well, let me ask you this.
5 This Defendant wasn't involved in that situation, was
6 he?

7 PROSPECTIVE JUROR: Not that I know of.

8 MS. HARTMANN: And this was your brother,
9 right?

10 PROSPECTIVE JUROR: Uh-huh.

11 MS. HARTMANN: Not you?

12 PROSPECTIVE JUROR: Not me.

13 MS. HARTMANN: You don't have any reason
14 to believe that Mr. Gaines was even involved in that,
15 right?

16 PROSPECTIVE JUROR: Right.

17 MS. HARTMANN: Do you think it's fair
18 that people should be judged strictly on their own
19 behavior and not what somebody else has done?

20 PROSPECTIVE JUROR: Right.

21 MS. HARTMANN: Do you think it's fair --
22 would it be fair of you to take out any type of
23 animosity or anger against that person that threatened
24 your brother against Mr. Gaines?

25 PROSPECTIVE JUROR: No.

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1 MS. HARTMANN: All you would be asked to
2 do if you were a juror in this case is would be to sit
3 and listen to the facts and do what was appropriate for
4 this particular case.

5 PROSPECTIVE JUROR: Right.

6 MS. HARTMANN: Do you think you could do
7 that? *What? How'd Westfall let him end up being on my jury? He*
wasted peremptories he didn't have to waste, and he failed to
exercise for causes

8 PROSPECTIVE JUROR: Yes.

9 MS. HARTMANN: You can set aside what
10 happened to your brother as a completely separate
11 incident?

12 PROSPECTIVE JUROR: I think so.

13 MS. HARTMANN: Is that yes or no?

14 PROSPECTIVE JUROR: Yes.

15 MS. HARTMANN: Thank you, sir. Anybody
16 else? No hands? Let me ask, I'm going to go along the
17 line here, and I got to Ms. Lemmons, and I've already
18 talked to Mr. McCollom a little bit. Let me ask Mr.
19 McCollom, first you and Mrs. Blankenship, that's a big
20 surprise I'm coming to you next. Let me ask you this.
21 Do you think the State gets to pick their witnesses? Do
22 Mr. Foran and I get to go out and pick out who we want
23 to be our witnesses in our case?

24 PROSPECTIVE JUROR: Do I think you do?

25 MS. HARTMANN: Do you think we get to do

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1 that?

2 PROSPECTIVE JUROR: I wouldn't know.

3 MS. HARTMANN: what do you think, Ms.
4 Blankenship?

5 PROSPECTIVE JUROR: I don't know that
6 much about how the court works is what I'm telling you.

7 MS. HARTMANN: Okay.

8 Ms. Blankenship?

9 PROSPECTIVE JUROR: It's called padding
10 the jury. No, I don't think you do.

11 MS. HARTMANN: why not?

12 PROSPECTIVE JUROR: Because your job's
13 in jeopardy and your integrity.

14 MS. HARTMANN: well, I think I'm not
15 asking the question correctly. Generally when an
16 offense happens the State of Texas isn't there,
17 obviously. And so when a case gets brought to our
18 office, the people that are involved have already been
19 established, okay, who is the victim, who the witnesses
20 are. Offenses take place all over Tarrant County in
21 different parts of town, different neighborhoods, okay.

22 And we take victims as we say find them,
23 okay, even if they have unattractive personalities.
24 Sometimes you have cases, and this is not in any way
25 related to this case, but I'm throwing it out there as

1 MS. HARTMANN: Anybody who feels that
2 maybe some people have more worth in the community than
3 others and we should care more about them being victims
4 than other people?

5 PROSPECTIVE JURORS: No.

6 MS. HARTMANN: Mr. Davis, how do you feel
7 about that? Is it okay with you if the State -- that we
8 try cases with all sorts of different types of victims?

9 PROSPECTIVE JUROR: Of course. That's
10 basically what it's supposed to be about.

11 MS. HARTMANN: Okay.

12 Ms. -- is it VanCleve?

13 PROSPECTIVE JUROR: Uh-huh.

14 MS. HARTMANN: Do you think we get to
15 pick and choose who or pick the victims or witnesses who
16 see things happen?

17 PROSPECTIVE JUROR: No, I don't think so.

18 MS. HARTMANN: All right. What I want to
19 ask you is if, and I want to ask this of each of you, if
20 you are selected to be a juror in that case, can you
21 give fair consideration to each witness' testimony even
22 if you might find them personally distasteful to you?

23 PROSPECTIVE JUROR: Yes.

24 MS. HARTMANN: Maybe you don't like the
25 way they dress or maybe you don't like the way they talk

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1 or maybe it becomes obvious that they live a type of
2 life that you would never live, but would you give fair
3 consideration in listening to what they have to say
4 before you make a judgment?

5 PROSPECTIVE JUROR: Yes.

6 MS. HARTMANN: In other words, not make a
7 snap judgment, "This person doesn't talk educated, so
8 I'm not going to believe a word out of their mouth just
9 because of that." That wouldn't be fair, would it?

10 PROSPECTIVE JUROR: No.

11 MS. HARTMANN: Okay. Can everyone do
12 that, give fair consideration to each witness'
13 testimony?

14 PROSPECTIVE JUROR: Yes.

15 MS. HARTMANN: Anybody who cannot?

16 Anyone who feels uncomfortable?

17 Ms. Bolt, can you do that?

18 PROSPECTIVE JUROR: Yes.

19 MS. HARTMANN: And Ms. Fenn?

20 PROSPECTIVE JUROR: Yes.

21 MS. HARTMANN: And Ms. Bennett?

22 PROSPECTIVE JUROR: Yes.

23 MS. HARTMANN: And Mr. Carillo?

24 PROSPECTIVE JUROR: Yes.

25 MS. HARTMANN: Mr. Matheson?

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1 PROSPECTIVE JUROR: Yes.

2 MS. HARTMANN: Okay. Great. One final
3 thing before I move on to talk with you about the
4 punishment range involved, and that is witness
5 preparation, and I notice that on these questionnaires a
6 number of you have been witnesses before. Raise your
7 hand if you've been a witness. I've got at least three
8 people, four people, five people, six people. Okay.
9 Over here hold your hand up again.

10 Is it Ms. Long?

11 PROSPECTIVE JUROR: Uh-huh.

12 MS. HARTMANN: Can you tell me what you
13 were a witness in, what type of situation?

14 PROSPECTIVE JUROR: It's been for
15 business purposes.

16 MS. HARTMANN: Was it in a courtroom?

17 PROSPECTIVE JUROR: One was in a
18 courtroom and the others were just a small room. There
19 was a judge present.

20 MS. HARTMANN: Let me interrupt. Who
21 here has been a witness in a courtroom setting, like
22 under -- maybe in front of a jury?

23 Mr. -- is it Hodges?

24 PROSPECTIVE JUROR: Yes.

25 MS. HARTMANN: Was it a criminal or civil

1 case?

2 PROSPECTIVE JUROR: Criminal.

3 MS. HARTMANN: On whose side did you
4 appear on behalf of?

5 PROSPECTIVE JUROR: The prosecution.

6 MS. HARTMANN: What type of case, do you
7 remember?

8 PROSPECTIVE JUROR: It was a murder case.

9 MS. HARTMANN: Murder case, all right.

10 Was it here in Tarrant County or another county?

11 PROSPECTIVE JUROR: Another county.

12 MS. HARTMANN: Anything about that that
13 would prevent you from being fair and impartial in this
14 case?

15 PROSPECTIVE JUROR: No, I don't think so.

16 MS. HARTMANN: When you testified, were
17 you prepared?

18 PROSPECTIVE JUROR: No.

19 MS. HARTMANN: They didn't meet with you
20 prior to --

21 PROSPECTIVE JUROR: No.

22 MS. HARTMANN: Do you think it would have
23 helped you if you had been met with prior to?

24 PROSPECTIVE JUROR: Probably.

25 MS. HARTMANN: Would it kind of help to

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1 lessen the nervousness or fear?

2 PROSPECTIVE JUROR: Yes.

3 MS. HARTMANN: Was it nerve-racking to
4 testify?

5 PROSPECTIVE JUROR: Yes, it was.

6 MS. HARTMANN: Walking into a room,
7 everyone's looking at you, they swear you to tell the
8 truth?

9 PROSPECTIVE JUROR: Yes. Westfall sure wasn't

10 MS. HARTMANN: Oftentimes in cases in
11 which the attorneys are doing their job, both sides, if
12 they're going to be putting on witnesses, and let me
13 just say here that the defense is under no obligation to
14 present any evidence at all, but they can if they want
15 to.

16 Many times obviously the State does, but
17 if the defense is going to present witnesses, they will
18 do this too. We will meet with our witnesses and try
19 and tell them what's going to happen, who is going to be
20 in the courtroom, where those people are going to be,
21 what is their job. Oftentimes we tell little kids,
22 "There's going to be three policemen in there to make
23 sure everybody minds their manners."

24 We tell them where we're going to sit.

25 Okay. Many people have never been in a courtroom

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1 before, and it's not unusual, and we are only doing our
2 job if we bring witnesses in ahead of time to tell them,
3 "Look, you're a witness. You're going to be coming on
4 this date. These are the people that are going to be in
5 the courtroom. These are the people that are going to
6 be asking you the questions, and we're going to be
7 focusing on this particular day in your life." Does
8 that seem reasonable?

9 PROSPECTIVE JURORS: Yes.

10 MS. HARTMANN: Does it seem fair to do
11 it that way?

12 PROSPECTIVE JURORS: Yes.

13 MS. HARTMANN: And I think what Mr.
14 Hodges said was that wasn't done with him, but he thinks
15 he may have felt a little bit more comfortable and maybe
16 less apprehensive about what the whole process was. Is
17 that fair? Is that yes?

18 PROSPECTIVE JUROR: Yes.

19 MS. HARTMANN: Is there anyone here who
20 feels that's improper, that they would think that that's
21 coaching or trying to tell the witness what to say?
22 Sometimes you'll hear attorneys say how many times did
23 you meet with the prosecution or how many times did you
24 meet with the defense attorney, and there's nothing bad
25 about that.

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1 There's nothing secretive, awful. That's
2 a normal practice, and that's done to help witnesses be
3 prepared to come into court in a situation that they're
4 not familiar with. Does that seem fair if you have --

5 PROSPECTIVE JUROR: Yes.

6 MS. HARTMANN: Finally, I'll talk to you
7 about punishment. The punishment range for aggravated
8 robbery is not less than five years nor more than 99
9 years or life, okay, and listen up, folks. Because this
10 information is being given to you at the end of my
11 little spiel, which means that a lot of you have kind of
12 drifted off, gotten used to my voice, you're tired of
13 sitting on those benches, you want to know when I'm
14 going to shut up, and so you don't pay attention.

15 And so what happens is 12 of you will end
16 up on this jury. And if we get to a punishment phase,
17 you'll go back to that jury room, and I guarantee you
18 you're going to want to know this information. And you
19 know how I know that? Because I've been doing this for
20 a long time, and we get notes sent out from jurors
21 asking, "What's the difference between 99 years or
22 life?" There is no difference for you all.

23 Okay. Remember that. There is no
24 difference. We get notes sent out, "Who pays the fine
25 if we assess a fine?" If a fine is assessed in a case,

1 the Defendant, and not his family or not her family is
2 responsible for that fine. Only the Defendant
3 themselves.

4 I will tell you that generally the State
5 of Texas does not ask a jury to give a fine. That fine,
6 if it's assessed, does not go to a victim. Does not go
7 to this office. It goes into the general coffers of the
8 State of Texas, okay.

9 So I know this sounds like, "I'll
10 remember this," but I guarantee you if we get to that
11 stage, there's going to be a question, and you're going
12 to wonder, so please, please pay attention because this
13 is stuff that seems to be rather important to you all in
14 the situation when it comes up.

15 Not less than five years nor more than 99
16 years or life and a fine of zero to \$10,000. 99 years
17 or life is basically the same thing for a jury's
18 purpose. That is set up by the legislature, people down
19 in Austin. I don't decide that. Mr. Foran doesn't
20 decide that. The Judge doesn't decide that. The
21 legislators have said, "This is the range we're going to
22 give a jury to work with." Why do you think there's
23 such a big range?

24 Mr. Matheson?

25 PROSPECTIVE JUROR: Because it depends on

1 the severity and the situation.

2 MS. HARTMANN: Bingo. Exactly. Did
3 everyone hear Mr. Matheson? There's this big range
4 because the legislators knows that there are many
5 different ways an aggravated robbery can occur. And not
6 only are there different ways that it can occur, but the
7 people who commit aggravated robberies may have
8 absolutely no history. They may have prior criminal
9 history or bad acts, okay. Every situation is
10 different. Does that make sense?

11 PROSPECTIVE JURORS: Yes.

12 MS. HARTMANN: And they want to make sure
13 that the people who actually are hearing the specific
14 facts of the case could have that entire range to work
15 with, okay? Now, under special circumstances a jury can
16 recommend to the Judge that probation be given to a
17 person who's been convicted of aggravated robbery, but
18 certain things have to happen. All right?

19 What are those certain things? The first
20 thing that happens in a punishment situation is the jury
21 goes back and they take that five to 99 year range and
22 they decide what is appropriate, okay? They will come
23 to an agreement, all 12, about what number of years is
24 appropriate for this Defendant and these facts, okay,
25 and their history or lack of history.

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1 Okay. The first thing that's done is you
2 decide in a case, whatever that case is, what the
3 appropriate punishment number is for penitentiary. With
4 me?

5 PROSPECTIVE JURORS: Yes.

6 MS. HARTMANN: Second thing. The
7 Defendant in a case, not necessarily this case, but a
8 Defendant has to prove and the jury has to believe that
9 that Defendant has never before been convicted of a
10 felony offense in this state, any other state, or the
11 federal system. Okay.

12 So the first thing the jury sets, an
13 appropriate number of years. Second thing, they look to
14 see, has the Defendant proven never before been
15 convicted of a felony. Third thing, if the number of
16 years that's been set -- first thing. That's the first
17 thing, you set the number of years. If that number of
18 years is five, six, seven, eight, nine or ten, ten years
19 or less, okay, then you can decide whether or not the
20 Defendant is worthy of probation.

21 Doesn't mean you have to give it. It
22 puts it into your lap so to speak to decide does this
23 particular case, does this particular Defendant deserve
24 probation. Okay? Set the number of years, whatever's
25 appropriate, and maybe, maybe in a particular case 30

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1 years is appropriate, and you don't even get to this,
2 okay.

3 It's only if the appropriate number of
4 years in your mind is five, six, seven, eight, nine or
5 ten years, and then the jury, if they think it's
6 merited, if they think the Defendant's worthy of it, can
7 recommend probation. Did I lose anybody?

8 PROSPECTIVE JURORS: No.

9 MS. HARTMANN: It gets real confusing and
10 people get back to a jury room during punishment and
11 they forget and they have questions. Okay. First thing
12 you do is do what?

13 PROSPECTIVE JUROR: Number of years.

14 MS. HARTMANN: Number of years that's
15 appropriate for that particular case and Defendant.
16 Second of all, did the Defendant prove that he's never
17 before been convicted of a felony? Is the number that's
18 been picked by the jury is even within the target range
19 of probation consideration? Is it ten years or less?
20 And finally, if it is, does this particular Defendant in
21 the case merit the giving of probation? Everyone with
22 me?

23 PROSPECTIVE JURORS: Yes.

24 MS. HARTMANN: Any questions so far?

25 PROSPECTIVE JURORS: No.

1 MS. HARTMANN: Seems pretty simple so
2 far, right?

3 PROSPECTIVE JURORS: Yes.

4 MS. HARTMANN: No one's going to have any
5 questions if we get to that point, are they? Okay.
6 What I now need to determine is, not knowing any facts,
7 you know what the law is, you know what the range of
8 punishment is, okay. You don't know any facts, all
9 right, you don't know anything.

10 If you're a juror in a case, you don't
11 know anything at this point about their history or lack
12 of history. You don't know any facts of the case. So
13 you don't know what the appropriate punishment might be,
14 correct?

15 PROSPECTIVE JURORS: Correct.

16 MS. HARTMANN: Is it only fair that you
17 keep that entire range of punishment open and available
18 to you until you hear those facts?

19 PROSPECTIVE JURORS: Yes.

20 MS. HARTMANN: Would it be fair to
21 prejudice a particular Defendant just based upon the
22 charge?

23 PROSPECTIVE JURORS: No.

24 MS. HARTMANN: In this case, aggravated
25 robbery?

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1 PROSPECTIVE JURORS: No.

2 MS. HARTMANN: Okay. Sometimes we have
3 people who say, like in a murder case, "Ms. Hartmann,
4 I'm sorry, this is a murder case. I don't care what the
5 facts are. I would never probate someone for murder.
6 Okay. I don't care. I don't care. I don't know the
7 facts of the case, but I'm not going to do it."

8 And what I have to say is there are
9 different ways that offenses can happen, and let me give
10 you an example. Y'all seem to be pretty on board. But
11 I bet you when Mr. Westfall gets up here there's going
12 to be people say, "You know what, I've been looking at
13 what Ms. Hartmann had up there, and I don't think I
14 could consider five years or I don't think I could
15 consider probation. I'm sorry. I don't care what the
16 facts are."

17 This is why I'm going to elaborate, okay?
18 Let's say you have a murder case in two different
19 courtrooms. In one courtroom -- by the way, murder is
20 intentionally taking the life of another human being.
21 Let's say in one courtroom the man's on trial.

22 He's taken out insurance on his wife and
23 he's got his girlfriend on the side, and he kills her.
24 They collect the insurance money and they're going to
25 run off to Hawaii, and he's charged with murder.

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1 Probably insurance fraud too, but let's stick with
2 murder.

3 In the neighboring courtroom you have an
4 older person, let's say an older man that's on trial,
5 and the jury hears in that case that his wife had cancer
6 and that she was in the hospital and she was on
7 medication and medical aid that was keeping her alive.
8 And they had made a pact when they first got married
9 that if either one of them ever ended up in a situation
10 like that, that the other person would not let them
11 linger and suffer.

12 Okay. So in that courtroom the man is
13 tried because he pulls out, let's say, all the tubing,
14 and she's not getting the medical aid she needs, and she
15 passes away. Okay? So you've got two courtrooms where
16 murder's being tried. Do you think, and I'm not going
17 to ask what you would give as punishment, but do you
18 think that the punishment in each case might be
19 different from the other?

20 PROSPECTIVE JURORS: Yes.

21 MS. HARTMANN: Does that kind of help you
22 understand that there are different fact situations?
23 You might have the same charged offense, but there are
24 different facts involved, and people who commit offenses
25 sometimes have history, and sometimes they don't have

1 PROSPECTIVE JUROR: I have been in the
2 situation. My wife's secretary/bookkeeper embezzled
3 from her, and she was put on probation, a felony
4 conviction, asked to make restitution, doesn't have it.

5 MS. HARTMANN: Okay.

6 PROSPECTIVE JUROR: Probation department
7 doesn't take care of it. No matter what you do, you
8 can't do anything about it as a victim. So as far as
9 I'm concerned, probation doesn't work.

10 MS. HARTMANN: Okay. Are you saying
11 probation doesn't work for anybody or just for that one
12 person?

13 PROSPECTIVE JUROR: For anybody. The
14 probation department cannot control it. They say they
15 can't do anything, and for that reason, I'm against it.

16 MS. HARTMANN: Okay. So you would not be
17 able to give fair consideration to the entire range of
18 punishment?

19 PROSPECTIVE JUROR: Exactly.

20 MS. HARTMANN: Thank you, sir. Second
21 row here to my left. Can you all give fair
22 consideration, keep that entire range open? I'm not
23 asking you would you give probation or would you give
24 life. I'm asking you to wait and listen and hear the
25 evidence. Can you do that?

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1 anything.

2 And those are things you can take into
3 consideration, and that's why it's so important that you
4 be able to say, "Ms. Hartmann, Mr. Foran, Mr. Gaines,
5 Mr. Minick, Mr. Westfall, I don't know any facts yet, so
6 I'm going to keep that entire range of punishment open
7 to me until I hear the evidence, okay, whether it's five
8 years probation up to life in prison. I'm going to keep
9 it open and I'm going to wait and see and hear what's
10 presented to me." Can you all do that?

11 PROSPECTIVE JURORS: Yes.

12 MS. HARTMANN: Take it by rows. This
13 first row here?

14 PROSPECTIVE JUROR: Yes.

15 MS. HARTMANN: I've got a head shaking on
16 Mr. Rider. Yes, sir?

17 PROSPECTIVE JUROR: Yes, ma'am.

18 MS. HARTMANN: Tell me what you're
19 thinking.

20 PROSPECTIVE JUROR: No chance for
21 probation as far as I'm concerned.

22 MS. HARTMANN: You don't know any facts.

23 PROSPECTIVE JUROR: Don't know any facts.

24 MS. HARTMANN: You're one of those
25 people --

1 PROSPECTIVE JURORS: Yes.

2 MS. HARTMANN: Third row here, can you
3 all do that?

4 PROSPECTIVE JURORS: Yes.

5 MS. HARTMANN: Fourth row?

6 PROSPECTIVE JURORS: Yes.

7 MS. HARTMANN: And last row back here?

8 PROSPECTIVE JURORS: Yes.

9 MS. HARTMANN: I haven't talked with any
10 of you guys. Do you all have any questions for me at
11 this point? Is it because I haven't talked to you?

12 Okay. Middle section over here, front row. Can you all
13 keep the entire range of punishment available and open
14 to you and wait and listen to the facts of the case
15 before you make any decisions?

16 PROSPECTIVE JURORS: Yes.

17 MS. HARTMANN: First row?

18 PROSPECTIVE JUROR: Better take me out on
19 that too, because I would not give probation because my
20 background is police work.

21 MS. HARTMANN: Cannot give fair
22 consideration to the entire range?

23 PROSPECTIVE JUROR: Probably would have a
24 tough time of it.

25 MS. HARTMANN: And again this is one of

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1 those committal questions. I need a yes or no.
 2 PROSPECTIVE JUROR: Yes. I would have a
 3 tough time with it.
 4 MS. HARTMANN: Fair enough. Second row,
 5 can you give fair consideration, entire range?
 6 PROSPECTIVE JUROR: Yes.
 7 MS. HARTMANN: Wait and listen to all the
 8 facts?
 9 PROSPECTIVE JURORS: Yes.
 10 MS. HARTMANN: Is that yes?
 11 PROSPECTIVE JURORS: Yes.
 12 MS. HARTMANN: Third row?
 13 PROSPECTIVE JURORS: Yes.
 14 MS. HARTMANN: And Mr. Castillo, we've
 15 already talked about some of your concerns?
 16 PROSPECTIVE JUROR: Uh-huh.
 17 MS. HARTMANN: Last row back here?
 18 PROSPECTIVE JUROR: No.
 19 MS. HARTMANN: And that was Mr. Rogers?
 20 PROSPECTIVE JUROR: Yes, ma'am.
 21 MS. HARTMANN: Could you please stand?
 22 Could you tell me what you're thinking?
 23 PROSPECTIVE JUROR: After 28 years in law
 24 enforcement, I've never seen it work yet.
 25 MS. HARTMANN: That's your opinion?

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1 PROSPECTIVE JUROR: Yes, ma'am.
 2 MS. HARTMANN: Can everybody else on the
 3 back row give fair consideration to the entire range?
 4 PROSPECTIVE JURORS: Yes.
 5 MS. HARTMANN: As a precaution, can you
 6 keep the entire range of punishment open and available
 7 to you, and wait and consider the facts if you're
 8 selected as a juror?
 9 PROSPECTIVE JURORS: Yes.
 10 MS. HARTMANN: And I know, Mr. Sides, I
 11 know what your position is.
 12 And Mr. Gates?
 13 PROSPECTIVE JUROR: Right.
 14 MS. HARTMANN: Aside from the two of you
 15 gentlemen, everybody else over here?
 16 PROSPECTIVE JUROR: I think I would have
 17 a hard time --
 18 THE COURT REPORTER: I can't hear you.
 19 PROSPECTIVE JUROR: I'm sorry.
 20 MS. HARTMANN: Mr. Keathley, number 53.
 21 PROSPECTIVE JUROR: I was with state
 22 probation for 12 years and the federal system for 20
 23 years, and the last 12 years I've been a crime
 24 investigator, and I'd have a hard time giving
 25 consideration for probation.

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1 MS. HARTMANN: Okay.
 2 PROSPECTIVE JUROR: I can't imagine any
 3 facts that would justify.
 4 MS. HARTMANN: And you would agree with
 5 me that there's a lot of different ways things can
 6 happen and can come about?
 7 PROSPECTIVE JUROR: Right.
 8 MS. HARTMANN: Maybe shoplifting, someone
 9 who did it to feed kids or someone who does it to feed
 10 their drug habit?
 11 PROSPECTIVE JUROR: Robbery would be a
 12 hard one to see it.
 13 MS. HARTMANN: Thank you for your input.
 14 Anybody else? Can everybody here other than the three
 15 gentlemen I've spoken with give fair consideration to
 16 keep that entire range available to you?
 17 PROSPECTIVE JUROR: Yes.
 18 MS. HARTMANN: Any questions for me, and
 19 I'm getting ready to sit down, and I know you'll be
 20 pretty excited to hear that. I'm going to close with
 21 one final question. Sometimes there's information that
 22 you have that you think, "You know what, they would
 23 probably would want to know this, but they haven't asked
 24 the right question."
 25 Is there anybody out there that has some

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1 information or thoughts or feelings or opinions about
 2 something that you feel we need to know about, and we
 3 just haven't asked or I haven't asked you the right
 4 question yet?
 5 Yes? And that is -- is it Ms. Brown?
 6 PROSPECTIVE JUROR: 29, Marack.
 7 MS. HARTMANN: Ms. Marack.
 8 PROSPECTIVE JUROR: Yes. I was held at
 9 gun point about -- it's been about five or six years.
 10 Mine didn't go to trial because he stole my vehicle,
 11 went to San Antonio and held up a couple of banks and
 12 they caught him there. I'm fine with this. I think I
 13 can be fair. Everything would be fine, but I thought I
 14 would let you know. Yeah, right.
 15 MS. HARTMANN: And I know both sides
 16 appreciate hearing that. Would you be able to set that
 17 aside and be fair and impartial to both sides?
 18 PROSPECTIVE JUROR: Yes, absolutely.
 19 MS. HARTMANN: Thank you.
 20 Ms. Armstrong, I haven't talked to you at
 21 all, have I? Westfall appreciated hearing it so much that he not only let her be on my jury, but Forewoman, no less. Thank you Greg Westfall. May you rot in hell.
 22 PROSPECTIVE JUROR: No.
 23 MS. HARTMANN: Any questions for me?
 24 PROSPECTIVE JUROR: No.
 25 MS. HARTMANN: Ms. Taylor?

1 PROSPECTIVE JUROR: No questions.
 2 Everything's fine.
 3 MS. HARTMANN: Any opinions on what we've
 4 talked about?
 5 PROSPECTIVE JUROR: You're responsible
 6 for what you do. I do believe that.
 7 MS. HARTMANN: Have you learned anything
 8 today?
 9 PROSPECTIVE JUROR: Yes.
 10 MS. HARTMANN: Good, I'm glad. My
 11 partner has slipped me a note. Could I have just one
 12 moment, Your Honor?
 13 (Brief pause)
 14 MS. HARTMANN: All right. Anybody have
 15 any questions for me? Speak now. All right. I
 16 appreciate your time and your attention and your candor,
 17 and I look forward to presenting this case to you on
 18 behalf of the citizens of Tarrant County to the 12 of
 19 you who end up over here in the more comfortable seats.
 20 Thank you.
 21 THE COURT: Let's take a 15 minute break.
 22 That will be until ten minutes after 3:00. Please don't
 23 discuss this case or these procedures with anyone while
 24 you are on the break. We'll see you back outside the
 25 courtroom door in 15 minutes.

1 (Jury panel not present)
 2 (Short recess)
 3 (Open court, Defendant present, jury
 4 panel not present)
 5 THE COURT: Are both sides ready to bring
 6 the venire back in?
 7 MS. HARTMANN: State's ready.
 8 MR. WESTFALL: Defense is ready, Your
 9 Honor.
 10 (Jury panel present)
 11 THE COURT: Defense may proceed.
 12 VOIR DIRE EXAMINATION BY MR. WESTFALL
 13 MR. WESTFALL: Thank you, Your Honor.
 14 Good afternoon again.
 15 PROSPECTIVE JURORS: Hi.
 16 MR. WESTFALL: I am Greg Westfall. I'm a
 17 criminal defense lawyer in private practice here in Fort
 18 Worth. This is all I do is criminal trial law, and I've
 19 been doing this for about eight years.
 20 Cheyenne Minick is another lawyer who all
 21 he does is criminal defense as well. He works in the
 22 same building with me, and we're going to be trying this
 23 case together. Does any of y'all, having had a chance
 24 to sit and look at us for a while, does anyone recognize
 25 any one of us?

1 PROSPECTIVE JURORS: No.
 2 MR. WESTFALL: Any of you recognize the
 3 prosecutors?
 4 PROSPECTIVE JURORS: No.
 5 MR. WESTFALL: This is Bart Gaines. Bart
 6 Gaines is 20 years old. He grew up basically in
 7 Crowley, Texas. Cheyenne and I represent Bart here in
 8 this case. Do any of y'all recognize Bart?
 9 PROSPECTIVE JURORS: No.
 10 MR. WESTFALL: Bart Gaines has already
 11 pled guilty to two cases of aggravated robbery, robbery
 12 with a gun, to Judge Gill, and the 12 people who come
 13 over here and sit, that's the first thing they're going
 14 to hear after the Judge gives his instructions is Bart
 15 Gaines, my client here, will plead guilty to two
 16 separate indictments of aggravated robbery, robbery with
 17 a gun, to the jury.
 18 And then we are going to go on with what
 19 is called a punishment case. And in a punishment case
 20 all that is decided is what is the proper punishment in
 21 this case. So that is essentially what I'm going to
 22 talk to y'all about, is the punishment case, the range
 23 of punishment, and certain constitutional rights that
 24 attach to that. There's not a presumption of innocence
 25 in a punishment case. Y'all heard of a presumption of

1 innocence?
 2 PROSPECTIVE JURORS: Yes.
 3 MR. WESTFALL: In the guilt-innocence
 4 case a person is presumed innocent until the State
 5 proves its case beyond a reasonable doubt. So usually
 6 in a voir dire I would ask when you walked in and you
 7 looked at Bart, did you wonder in your mind, "What did
 8 he do?" Well, you know what he did. He committed armed
 9 robbery, and that's what I want to talk to you all
 10 about. How false this turned out to be. Self-centered jerk.
 11 And I am dreadfully afraid that, you
 12 know, to have him plead guilty to this type of offense
 13 to 12 people, and I'm very concerned about him getting a
 14 fair trial, and that's why I want to second what she
 15 said earlier about let's talk, okay. Let's talk, and
 16 let's look deep inside ourselves.
 17 And there's certain of y'all with
 18 experiences, and I'm going to talk to each one of y'all,
 19 and see if that's something that might affect the
 20 verdict you render in this case, which the only verdict
 21 is either going to have a number of years and/or a fine
 22 and whether or not the Judge should give probation, and
 23 that's it.
 24 What it means to be on a jury. You know,
 25 every day in this courthouse there's civil juries,

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1 there's criminal juries, there's car wreck juries,
2 there's business tort juries, and then on the criminal
3 side there's DWI juries, there's murder juries, there's
4 capital murder juries. There's a jury for virtually
5 anything you can imagine every day in this courthouse.

6 What this jury is is a jury for Bart
7 Gaines and a jury for the State of Texas, but in this
8 case the State of Texas versus Bart Gaines where he is
9 going to plead guilty to armed robbery.

10 And Mr. Wakefield?

11 PROSPECTIVE JUROR: Yes.

12 MR. WESTFALL: Would you agree with me
13 that it's your civic duty to be on a jury?

14 PROSPECTIVE JUROR: Yes.

15 MR. WESTFALL: Why do you think that is?

16 PROSPECTIVE JUROR: To give a fair and
17 honest trial to someone you don't know and have never
18 seen before, until you hear all the facts and go from
19 there.

20 MR. WESTFALL: Do you like the system?

21 PROSPECTIVE JUROR: Uh-huh.

22 MR. WESTFALL: By the same token, what do
23 you think of the statement, just as you have a duty to
24 serve, you may have a duty not to serve if it's not the
25 right type of jury for you?

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1 PROSPECTIVE JUROR: I don't think it
2 would be a wrong jury, but I would listen to the facts
3 and be truthful with what is going on with what he says
4 and what the other people say too. You've got to take
5 both sides into account. That's the way I feel about
6 it.

7 MR. WESTFALL: Okay. If there is
8 something -- if there is some experience that a person
9 has had that would influence their verdict in any way --
10 You know what I mean when I say that? You're back in
11 the jury room, you look at the evidence, but there's a
12 thing that you've gone through that keeps flashing
13 before your mind, and there is an experience that you
14 have had.

15 And what you're doing is you're sitting
16 there considering what to do with Bart, but in your
17 mind, you're kind of reliving this experience because
18 the facts of this case reminded you of that other
19 experience. Can you see where that would be unfair?

20 PROSPECTIVE JUROR: Unfair as what? By
21 experience that he's going through, would it be unfair
22 for me?

23 MR. WESTFALL: If you had been robbed
24 before?

25 PROSPECTIVE JUROR: I don't know. I've

1 never been in those shoes before, so I really couldn't
2 answer that. I would want a fair trial, believe me,
3 with all the facts in front of me and everybody as far
4 as what we're looking at and go with the information
5 that we have to go on.

6 MR. WESTFALL: And if God forbid somebody
7 who was close to you was sitting in Bart's shoes, you'd
8 want them to have a fair trial?

9 PROSPECTIVE JUROR: Yes, I would.

10 MR. WESTFALL: The words bias and
11 prejudice against the law get used when we're talking or
12 in this stage of the trial, bias and prejudice against
13 the law. It is true that you can't be on the jury
14 unless you can take an oath saying you're going to
15 follow the law. That is true.

16 Now, what the law says is that a juror
17 over here has to give full consideration to the entire
18 range of punishment and give fair consideration to
19 probation. That's what the law says.

20 And if you don't -- if you look inside
21 yourself and you say, "I can't take an oath that I'm
22 going to follow the law, because, to be quite honest,
23 this thing that I have gone through, this experience
24 that I have or this belief that I have or this opinion
25 that I have is going -- and there's a chance that is

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1 going to influence my verdict and I can't follow the
2 law," what does that mean?
3 That means you don't sit on the jury, and
4 that's it. That means you don't sit on this jury. It
5 doesn't mean you're bad. It doesn't mean your good. It
6 doesn't mean you're a law breaker or a scofflaw or
7 anything else. It means you don't sit on this jury.
8 Okay?

9 Mr. Fauble, you mentioned that your
10 brother was robbed at gun point?

11 PROSPECTIVE JUROR: Yes.

12 MR. WESTFALL: And while you were talking
13 to Michele I got the idea that I wanted to talk to you a
14 little bit further. And the test is if you're sitting
15 in the jury room, the experience that your brother had
16 and that you know about, is there a possibility that
17 that will influence your verdict in any way?

18 PROSPECTIVE JUROR: A possibility? I
19 would like to say no, but probably yes, but I would like
20 to think no, because it's two different people. It's
21 two different times, but I would say if push come to
22 shove, I would say no. I would try to be fair.

23 MR. WESTFALL: Right. And I'm not going
24 to disagree certainly, but you said something that I
25 kind of keyed in on. "I would like to think that I

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1 wouldn't," and I do the same thing. Because you think,
 2 "Well, if I do consider that, that's unfair, and I'm a
 3 fair person and I would like to think that I would be a
 4 fair person if push comes to shove."
 5 PROSPECTIVE JUROR: Right.
 6 MR. WESTFALL: And I would like to think
 7 that I'd be a fair person too. But what I am is human.
 8 PROSPECTIVE JUROR: Right.
 9 MR. WESTFALL: And I have my own little
 10 bundle of life experiences that I've gone through, and
 11 quite frankly, I've never even sat in your shoes because
 12 I've never been on a voir dire panel, but I can
 13 understand that I would want to be fair as well. But
 14 fairness aside, let's say would it affect your verdict
 15 in any way?
 16 PROSPECTIVE JUROR: No.
 17 MS. HARTMANN: Your Honor, I'm going to
 18 object. That's an improper way of asking the particular
 19 question.
 20 THE COURT: Overruled.
 21 MR. WESTFALL: Okay. Thank you.
 22 Mr. Davis.
 23 PROSPECTIVE JUROR: Yes.
 24 MR. WESTFALL: Same question. You too
 25 have gone through an experience according to your

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1 questionnaire?
 2 PROSPECTIVE JUROR: Yes.
 3 MR. WESTFALL: Would that influence your
 4 verdict in any way?
 5 PROSPECTIVE JUROR: No.
 6 MR. WESTFALL: Ms. Marack, you were
 7 already asked. Do you still --
 8 PROSPECTIVE JUROR: No.
 9 MR. WESTFALL: Mr. Matheson?
 10 PROSPECTIVE JUROR: Yes.
 11 MR. WESTFALL: You mentioned something on
 12 your questionnaire, and I'm a little bit unclear what it
 13 is. But you know what you put there.
 14 PROSPECTIVE JUROR: Uh-huh.
 15 MR. WESTFALL: Would that influence your
 16 verdict in any way?
 17 PROSPECTIVE JUROR: No.
 18 MR. WESTFALL: And the only reason why I
 19 said that, robbery and burglary are two different
 20 things.
 21 PROSPECTIVE JUROR: And it was a long
 22 time ago. I was little. It was at my parents' house.
 23 I was in high school.
 24 MR. WESTFALL: I've got this stuff
 25 written down. Just bear with me.

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1 Ms. Nevill?
 2 PROSPECTIVE JUROR: Yes.
 3 MR. WESTFALL: You put something on your
 4 questionnaire about your uncle. Would that influence
 5 your verdict in any way?
 6 PROSPECTIVE JUROR: No.
 7 MR. WESTFALL: Ms. Carpenter?
 8 PROSPECTIVE JUROR: Yes.
 9 MR. WESTFALL: You put something on your
 10 questionnaire as well.
 11 PROSPECTIVE JUROR: It would not
 12 influence me.
 13 MR. WESTFALL: Would not influence you in
 14 any way?
 15 PROSPECTIVE JUROR: No.
 16 MR. WESTFALL: Ms. Mueller, how are you
 17 doing?
 18 PROSPECTIVE JUROR: Fine.
 19 MR. WESTFALL: You put something on your
 20 questionnaire about your parents?
 21 PROSPECTIVE JUROR: Yes. I was also in
 22 high school. It wouldn't influence me at all. I think
 23 I could be fair.
 24 MR. WESTFALL: Okay. Thank you.
 25 I'm just going to cover just a couple of

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1 issues real fast. Number one is testimony, testifying.
 2 Bart Gaines has a constitutional right not to testify,
 3 and that is a right at this point I don't know if we're
 4 going to exercise or not, but I need to talk to you
 5 about it.
 6 The law says that the fact that Bart
 7 Gaines does or does not testify cannot be used as a
 8 consequence against him back -- the fact that he does
 9 not testify cannot be used as a consequence against him
 10 is the way it's phrased, but it can't be used against
 11 him. Okay. The fact that he doesn't testify cannot be
 12 used against him.
 13 That's in the Fifth Amendment to the
 14 United States Constitution. It's been there since 1789
 15 when the Constitution was adopted or whenever the bill
 16 of rights, whatever years after that. And then, you
 17 know, over the course of our history it's always been a
 18 controversial topic.
 19 We've all heard "pleading the Fifth," and
 20 some people don't believe the Fifth Amendment ought to
 21 exist. Some people believe that if you come to court,
 22 then you ought to explain yourself, and a lot of people
 23 feel like if they were charged with a criminal offense,
 24 they would darn sure explain themselves. They would
 25 sing it from the highest rooftops.

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1 Other people believe that the Fifth
2 Amendment is okay and that there's reasons why we have
3 it, and I want to see how you all feel about that.
4 Okay.
5 Mr. Bradberry?
6 PROSPECTIVE JUROR: Yes, sir.
7 MR. WESTFALL: How do you feel about
8 that?
9 PROSPECTIVE JUROR: I respect the right
10 of the accused to be silent.
11 MR. WESTFALL: Why do you think we have
12 that?
13 PROSPECTIVE JUROR: My understanding is
14 the Fifth Amendment was originally provided to protect a
15 Defendant against harassment or the incitement of making
16 a confession.
17 MR. WESTFALL: Good.
18 Mr. Wakefield. Are you Mr. Wakefield?
19 PROSPECTIVE JUROR: Yes.
20 MR. WESTFALL: What do you think?
21 PROSPECTIVE JUROR: Well, if I was in
22 issue, if it was up to me, I would want to speak to put
23 my half into it to let the jury hear what I would have
24 to say about what happened and what I've been charged
25 with. Even if it is a yes or no, go ahead and explain

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1 why he's pleading guilty or not guilty, because I would
2 like to see him on the stand and talk. That's the way I
3 feel.
4 MR. WESTFALL: You are probably in very
5 good company. How many people feel the same way Mr.
6 Wakefield does? Well, imagine -- I haven't looked at
7 your questionnaire to refresh my memory on whether you
8 have kids.
9 PROSPECTIVE JUROR: Yes.
10 MR. WESTFALL: Can you imagine if you
11 went to your kids and said, "You're going to have to
12 prove it." But in the court of law, you know, he is
13 accorded that privilege. He has the right not to
14 testify.
15 PROSPECTIVE JUROR: I respect that, you
16 know. It's according to whose shoes you're trying to
17 fill too. I respect that. If he don't want to talk,
18 that's fine. That's his right, like I say.
19 MR. WESTFALL: Would it influence your
20 verdict in any way if he chose not to?
21 PROSPECTIVE JUROR: Huh-uh.
22 MR. WESTFALL: Why do you think somebody
23 would choose not to?
24 PROSPECTIVE JUROR: Maybe they're too
25 intimidated, people in the courtroom, on the jury, being

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1 in this setting. It's according if they've been here
2 before or not. It would make me really nervous if it
3 was me.
4 MR. WESTFALL: Are you rethinking if it
5 was you, you would testify?
6 PROSPECTIVE JUROR: If it was me, I would
7 testify and stand up for myself. That's just the person
8 I am. I've always stood up for myself. That would be
9 me.
10 MR. WESTFALL: I didn't keep track of all
11 the people that raised their hands.
12 Mr. Davis, did you raise your hand?
13 PROSPECTIVE JUROR: No, sir, I did not.
14 MR. WESTFALL: Who agreed with Mr.
15 Wakefield? Refresh my memory.
16 Mr. Hodges, let me ask you real fast. On
17 this case where you were a witness in a murder case,
18 would that experience affect your verdict in any way in
19 this case?
20 PROSPECTIVE JUROR: It could.
21 MR. WESTFALL: Tell me how. Tell me
22 about your experience if you don't mind.
23 PROSPECTIVE JUROR: I didn't witness the
24 murder. I witnessed the victim -- it was a coworker,
25 and I was the last person to see him before he left the

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1 office, and they were subsequently killed outside the
2 building.
3 MR. WESTFALL: A violent offense?
4 PROSPECTIVE JUROR: Yes, sir.
5 MR. WESTFALL: And so I take it, and I'd
6 really appreciate you telling me about this. I take it
7 this wouldn't be the best jury for you to sit on?
8 PROSPECTIVE JUROR: Probably not.
9 MR. WESTFALL: And you would as a result
10 probably not give us a fair trial as that's defined?
11 PROSPECTIVE JUROR: Not by intention, but
12 I suspect it would be difficult.
13 MR. WESTFALL: Thank you very much.
14 Ms. Mitchell?
15 PROSPECTIVE JUROR: Yes.
16 MR. WESTFALL: Could you go ahead and
17 stand? Why do you think somebody would come into court
18 charged with a felony offense and not testify?
19 PROSPECTIVE JUROR: Well, several
20 reasons. First of all, just his personality. You know,
21 is he that type or raised that way to where that he
22 would testify and say something on his behalf or not?
23 Because I think a lot of us are. I know I am. But he
24 might not be. So I would give him that same
25 consideration, that I would do it, but possibly he

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1 wouldn't. I still have respect for him.
 2 MR. WESTFALL: You still what?
 3 PROSPECTIVE JUROR: I would still have
 4 respect for him knowing that he couldn't.
 5 MR. WESTFALL: Well, thank you.
 6 Ms. Armstrong, what do you think? I'm
 7 sorry. I looked at the wrong person. Ms. Armstrong?
 8 PROSPECTIVE JUROR: Do I need to stand
 9 up?
 10 MR. WESTFALL: Yes, please.
 11 PROSPECTIVE JUROR: I actually don't have
 12 an opinion either way. If he does, he does. That's
 13 fine. If he doesn't, it's not a big deal I don't guess.
 14 MR. WESTFALL: Just a deal.
 15 PROSPECTIVE JUROR: Just a deal, I guess.
 16 If he wanted to, I'm sure more people would like him to,
 17 but it's not really an issue one way or the other.
 18 MR. WESTFALL: Thank you.
 19 Ms. Taylor, what do you think?
 20 PROSPECTIVE JUROR: Well, I'd like to
 21 hear what he had to say, but I understand the Fifth
 22 Amendment, and he might not want to tell us why he
 23 doesn't.
 24 MR. WESTFALL: Why do you think somebody
 25 wouldn't? It's an important deal.

1 think that a person, if a person says something, you can
 2 tell a whole lot by what they say, right? I think if a
 3 person is not put on the stand, they don't go on the
 4 stand for a reason, and it's possibly not themselves but
 5 maybe their lawyer that might not want them on the
 6 stand. They could have something that they wouldn't
 7 want brought out in the open.
 8 MR. WESTFALL: What do you think about
 9 the concept of not having to testify?
 10 PROSPECTIVE JUROR: Well, like I say,
 11 it's in the law. I believe they have the right for it.
 12 I do believe that.
 13 MR. WESTFALL: How do you feel about it?
 14 PROSPECTIVE JUROR: Well, I really don't
 15 know what to say. I do feel they have the right. If
 16 it's in the law, it's got to have a reason.
 17 MR. WESTFALL: Thank you. Well, you
 18 already told me.
 19 Ms. Lemmons, what do you think?
 20 PROSPECTIVE JUROR: I respect his
 21 decision either way. Whether he spoke or not, that's a
 22 right we're granted in the Constitution, and I would
 23 respect it.
 24 MR. WESTFALL: Thank you.
 25 Mr. Hudgins, what do you think?

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1 PROSPECTIVE JUROR: I don't know. Maybe
 2 they're just afraid they'll say it wrong and get a wrong
 3 impression across that he doesn't want to.
 4 MR. WESTFALL: Thank you. Who else?
 5 Ms. Blankenship, what do you think? I'm
 6 sorry.
 7 Ms. Fenn, what do you think?
 8 PROSPECTIVE JUROR: I totally agree. I
 9 think some people are very shy and not loud spoken and
 10 not maybe well educated and might totally misrepresent
 11 themselves, and that's why you have a lawyer, to speak
 12 the law for you.
 13 MR. WESTFALL: Thank you. Ms.
 14 Blankenship, did you hear what Ms. Fenn said?
 15 PROSPECTIVE JUROR: Yes.
 16 MR. WESTFALL: What do you think?
 17 PROSPECTIVE JUROR: I think that's one
 18 reason we have attorneys, and sometimes they are advised
 19 by their attorneys that they should not be put on the
 20 witness stand. And I don't have a problem with that one
 21 way or the other. It's his right.
 22 MR. WESTFALL: Thank you.
 23 Mr. McCollom, you seem suspicious.
 24 PROSPECTIVE JUROR: I think the person
 25 has the right by the Fifth Amendment, but I personally

1 PROSPECTIVE JUROR: I think it's up to
 2 the individual. He has his rights, and that's what the
 3 U.S. government decided on years ago.
 4 MR. WESTFALL: Why do you think somebody
 5 might not testify in a trial like this?
 6 PROSPECTIVE JUROR: Well, I've heard a
 7 bunch of reasons. Mine would be if it was me that I
 8 would be intimidated, a little scared, afraid I'd say
 9 the wrong thing, and somebody might get the wrong
 10 opinion.
 11 MR. WESTFALL: Mr. Troup?
 12 PROSPECTIVE JUROR: Yes.
 13 MR. WESTFALL: Any relationship to Mark
 14 Troup?
 15 PROSPECTIVE JUROR: Yes, my son.
 16 MR. WESTFALL: What do you think?
 17 PROSPECTIVE JUROR: I feel like we
 18 mentioned before, we shouldn't hold it against them if
 19 he decides he should not testify. That's the way I
 20 feel. And as far as his reasons, that's his business.
 21 I would just go on the other facts or whatever facts
 22 were brought up in the case.
 23 MR. WESTFALL: Thank you very much.
 24 I'll just ask everyone, we've been
 25 talking now about 15 minutes about this right not to

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1 testify. Is there anyone here -- if Bart did not
2 testify, is there anyone here who that would influence
3 their verdict in any way?

4 PROSPECTIVE JURORS: It would bother me.
5 I would wonder why. I know that's his right, but I
6 would wonder why.

7 MR. WESTFALL: And Ms. Mills, the test
8 is -- like I said, following the law, the test is would
9 it affect your verdict, and if it does, that's great.
10 If it doesn't, that's great.

11 MR. FORAN: I'm going to object. That is
12 not the law. It's whether or not they could set aside
13 these feelings and follow the law.

14 THE COURT: Overruled.

15 MR. WESTFALL: Following the law means it
16 will not affect your verdict, so the issue is will it
17 affect your verdict.

18 PROSPECTIVE JUROR: I would wonder why,
19 and I'm afraid it might.

20 MR. WESTFALL: Okay. Thank you very
21 much.

22 Ms. Long?

23 PROSPECTIVE JUROR: Uh-huh.

24 MR. WESTFALL: Is acceptance of
25 responsibility in your mind the first step towards

1 and I suppose those are the two views that we could
2 have, and that is what I want to talk to y'all about.

3 Ms., -- is it Carter-Bennett or Ms. Bennett?

4 PROSPECTIVE JUROR: Bennett.

5 MR. WESTFALL: Ms. Bennett, what do you
6 think? Is acceptance of responsibility the first step
7 toward rehabilitation or not?

8 PROSPECTIVE JUROR: I think it is. I
9 think everybody is innocent until proven guilty, and we
10 should give that person the opportunity to rehabilitate.
11 It all depends on, I guess, the situation.

12 MR. WESTFALL: Ms. Bolt, what do you
13 think?

14 PROSPECTIVE JUROR: I agree.

15 MR. WESTFALL: How about Ms. Childers?

16 PROSPECTIVE JUROR: I really believe it
17 depends on the person. I mean anybody can say, "Yeah, I
18 accept my responsibility," but then they have to take
19 the next step forward. Everybody deserves a chance.

20 MR. WESTFALL: Ms. Marlin? Are you Ms.
21 Marlin, M-a-r-l-i-n?

22 PROSPECTIVE JUROR: M-a-r-t-i-n possibly?

23 MR. WESTFALL: Martin.

24 PROSPECTIVE JUROR: I think you have to
25 accept responsibility before you can ever possibly be

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1 rehabilitation?

2 PROSPECTIVE JUROR: Yes, I would think
3 so.

4 MR. WESTFALL: Why do you think?

5 PROSPECTIVE JUROR: I think if you accept
6 responsibility for your crime, and rather than blaming
7 it on this and that and the other person, I think if you
8 can accept that yes, I did this, I think it is a good
9 step toward rehabilitation.

10 I guess from examples of alcoholics or
11 taking that first step of saying, "Yes, I'm alcoholic,"
12 and that's the road to hopefully recovery, so I kind of
13 think it might be the same way in this situation.

14 MR. WESTFALL: Ms. Chambers, agree or
15 disagree?

16 PROSPECTIVE JUROR: I disagree. Just
17 because you say, "Yes, I'm an alcoholic," doesn't mean
18 he's going to change. Yes, you admit that you're an
19 alcoholic, but you still got to show me that you're
20 going to change, and just because you say yes doesn't
21 mean you're going to change.

22 MR. WESTFALL: We have kind of two view
23 points now. One says acceptance of responsibility is
24 the first step to rehabilitation, and then the other
25 viewpoint is that the two are not necessarily connected,

1 rehabilitated.

2 MR. WESTFALL: What do you think, Mr.
3 Matheson?

4 PROSPECTIVE JUROR: Yes. It's the first
5 step. There's a lot of other things, but it's
6 definitely the start.

7 MR. WESTFALL: Ms. Carpenter, what do you
8 think?

9 PROSPECTIVE JUROR: Well, it's certainly
10 is important, but also there's so many other factors,
11 you know, past experiences. Just again, by accepting
12 responsibility does not change your behavior. It is
13 definitely a vital step, but how many times in the past
14 has this person screwed up?

15 MR. WESTFALL: Has everyone heard this
16 over here?

17 Mr. Choate?

18 PROSPECTIVE JUROR: Yes.

19 MR. WESTFALL: What do you think?

20 PROSPECTIVE JUROR: I guess acceptance --
21 I don't think it's the first step. I've think it's got
22 to be more action.

23 MR. WESTFALL: Tell me about that.

24 PROSPECTIVE JUROR: Just, I mean words
25 mean very little, especially in a case like this. I

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1 think it relies more on what that person's going to do.
 2 MR. WESTFALL: What would you want to
 3 see?
 4 MS. HARTMANN: Your Honor, I'm going to
 5 object. That calls for a commitment question.
 6 THE COURT: Overruled.
 7 PROSPECTIVE JUROR: I guess for the
 8 person to address the jury, maybe go ahead and testify.
 9 I think that would show me that they really made a
 10 commitment.
 11 MR. WESTFALL: If they didn't testify,
 12 would that be something that would affect your verdict?
 13 You knew that question was coming.
 14 PROSPECTIVE JUROR: No.
 15 MR. WESTFALL: Mr. Townes?
 16 PROSPECTIVE JUROR: Yes, sir.
 17 MR. WESTFALL: What do you think?
 18 PROSPECTIVE JUROR: People make promises
 19 all day long. That don't mean nothing to me. You got
 20 to show me.
 21 MR. WESTFALL: And how would you want to
 22 do that?
 23 PROSPECTIVE JUROR: Just got to -- I'm
 24 not saying 99 years, but you got to do something.
 25 Something has to be done. Otherwise it will keep going

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1 on and on and on.
 2 MR. WESTFALL: I'm having a hard time
 3 understanding what you mean. What do you mean that they
 4 keep going on and on and on?
 5 PROSPECTIVE JUROR: I'm just saying, if
 6 you don't get strict with them, this little slap on the
 7 hand is not going to do anything. When you break the
 8 law, you break the law and you need to be punished. I'm
 9 not saying 99 years or life or anything like that, but
 10 I'm saying probation or a little more, but not just walk
 11 away.
 12 MR. WESTFALL: You understand there's no
 13 way he's going to be able to walk away.
 14 PROSPECTIVE JUROR: I understand that.
 15 It's a figure of speech.
 16 MR. WESTFALL: Would you, if you were on
 17 the jury, be able to give fair consideration to
 18 probation in an aggravated armed robbery case?
 19 PROSPECTIVE JUROR: Probably not.
 20 MR. WESTFALL: Okay. Thank you.
 21 Ms. Brown?
 22 PROSPECTIVE JUROR: Yes.
 23 MR. WESTFALL: What do you think about
 24 the idea of acceptance of responsibility?
 25 PROSPECTIVE JUROR: I think it's very

1 important. Trying to do the right thing, you know. I
 2 don't know what else to say.
 3 MR. WESTFALL: You've said enough. Thank
 4 you.
 5 Ms. Dean, what do you think?
 6 PROSPECTIVE JUROR: I do have to agree
 7 that acceptance is the first step. He's accepting the
 8 responsibility of the actions. I do agree.
 9 MR. WESTFALL: Thank you.
 10 Mr. Wakefield, could you give fair
 11 consideration to probation?
 12 PROSPECTIVE JUROR: Yeah. I would look
 13 at probation. You know, it's according to what prior
 14 offenses he's had before in the past. Has he been in
 15 trouble with the law before? I'd take that into
 16 consideration too, but I think someone deserves another
 17 chance if he hasn't been involved with the law a bunch,
 18 I think. It's according to prior history.
 19 MR. WESTFALL: What do you think, Mr.
 20 McCollom on probation? Could you give fair
 21 consideration to probation in an armed robbery case?
 22 PROSPECTIVE JUROR: It would be tough,
 23 but it would depend on the circumstances.
 24 MR. WESTFALL: It's not supposed to be
 25 easy. That's for sure.

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1 PROSPECTIVE JUROR: Well, on something
 2 like that, once a person does something, I think they're
 3 going to really have to put an extra effort to reset
 4 their habits because the next time it's a lot easier,
 5 and you can't just say you're going to do it and do it.
 6 You've got to set those habits, and that's not going to
 7 just happen by promises.
 8 MR. WESTFALL: Right. If a person does
 9 not consider probation, then they have to give full
 10 consideration to the full range of punishment, which is
 11 from five years in the penitentiary to life basically,
 12 and so the minimum you could ever get for a case like
 13 this would be five years of probation. The maximum you
 14 could ever get would be life. And in an armed robbery
 15 case could you give fair consideration to five years?
 16 PROSPECTIVE JUROR: I might want to know
 17 more about what that probation would consist of, how it
 18 would work.
 19 MR. WESTFALL: Okay. That sounds like a
 20 consideration. Thank you. I want to talk to y'all
 21 about mental health professionals and psychiatrists and
 22 psychologists, and you know, it's not nearly as touchy
 23 of a subject now as it was like ten years ago, but it
 24 still can be a touchy subject to talk about.
 25 And if there is something that anyone

1 doesn't want to discuss in front of the panel, then let
2 me know and we can discuss it in private in front of the
3 Judge, but I want to talk to y'all about your feelings
4 about mental health professionals.

5 I have seen mental health professionals
6 myself, and I have been treated for depression myself,
7 and I know that it can be something, you know -- I know
8 what it feels like and I know what it feels like to talk
9 about it, and I wanted to tell you all that to let you
10 know I'm not just being a lawyer. I want to hear about
11 your opinions, okay.

12 Let's start out with a poll. This says
13 very helpful, helpful, somewhat helpful, unhelpful and
14 very unhelpful. Can everyone see that?

15 PROSPECTIVE JURORS: Yes.

16 MR. WESTFALL: I'm going to go and I'm
17 going to ask everybody. The question I'm going to ask
18 is what is your opinion about mental health providers
19 and the services they provide, and I just want to know
20 what do you think, very helpful, helpful, somewhat
21 helpful, unhelpful or very unhelpful.

22 Mr. Bradberry?

23 PROSPECTIVE JUROR: Generally speaking?

24 MR. WESTFALL: Yes.

25 PROSPECTIVE JUROR: Somewhat helpful.

1 MR. WESTFALL: Ms. Mercado?

2 PROSPECTIVE JUROR: Somewhat.

3 MR. WESTFALL: Mr. Rider?

4 PROSPECTIVE JUROR: Obviously the
5 circumstances depends on the doctor, but I would say
6 generally helpful.

7 MR. WESTFALL: Mr. Partlow?

8 PROSPECTIVE JUROR: I think it could be
9 anywhere in the range depending on the person trying to
10 get the help.

11 MR. WESTFALL: Just from the standpoint
12 of what psychiatrists do, what psychologists do, do you
13 think what they do is helpful or do you think it's
14 voodoo?

15 PROSPECTIVE JUROR: Somewhat helpful.

16 MR. WESTFALL: Okay. Ms. Dean?

17 PROSPECTIVE JUROR: Helpful.

18 MR. WESTFALL: Ms. Blauvelt?

19 PROSPECTIVE JUROR: Helpful.

20 MR. WESTFALL: Are you married to the
21 Blauvelt that has the photography studio?

22 PROSPECTIVE JUROR: Yes.

23 MR. WESTFALL: Ms. Mills?

24 PROSPECTIVE JUROR: Somewhat helpful.

25 MR. WESTFALL: Mr. Davis?

1 Ms. Bolt?

2 PROSPECTIVE JUROR: Somewhat helpful.

3 MR. WESTFALL: Ms. VanCleve?

4 PROSPECTIVE JUROR: Somewhat helpful.

5 MR. WESTFALL: Mr. Davis?

6 PROSPECTIVE JUROR: Somewhat helpful.

7 MR. WESTFALL: Ms. Blankenship?

8 PROSPECTIVE JUROR: Somewhat helpful.

9 MR. WESTFALL: Mr. McCollom?

10 PROSPECTIVE JUROR: It would depend.

11 MR. WESTFALL: On what?

12 PROSPECTIVE JUROR: Several factors. The
13 competence of help that they're getting and the person's
14 needs. If I just have to pick, somewhat helpful,
15 because it's a very ambiguous question.

16 MR. WESTFALL: I hoped it wouldn't be.

17 Mental health professionals, the idea of psychiatry --
18 like, for instance, firemen. Do you think firemen are
19 generally helpful, very helpful, somewhat helpful,
20 unhelpful or very unhelpful? Firemen.

21 PROSPECTIVE JUROR: That would depend
22 too.

23 MR. WESTFALL: If we didn't have them,
24 would you miss them?

25 PROSPECTIVE JUROR: If I lived in the

1 country where there was not a fire hydrant available,
 2 they might not be very helpful.
 3 MR. WESTFALL: But the concept of
 4 firemen, is it a good thing or a bad thing?
 5 PROSPECTIVE JUROR: That's a good thing.
 6 MR. WESTFALL: Ms. Lemmons, what do you
 7 think?
 8 PROSPECTIVE JUROR: Generally speaking
 9 I'd say helpful.
 10 MR. WESTFALL: Mr. Wakefield?
 11 PROSPECTIVE JUROR: Helpful.
 12 MR. WESTFALL: Ms. Richardson?
 13 PROSPECTIVE JUROR: Very helpful.
 14 MR. WESTFALL: Ms. Thomas?
 15 PROSPECTIVE JUROR: Somewhat helpful.
 16 MR. WESTFALL: Ms. Bennett?
 17 PROSPECTIVE JUROR: Helpful.
 18 MR. WESTFALL: Mr. Carillo?
 19 PROSPECTIVE JUROR: Somewhat helpful.
 20 MR. WESTFALL: Mr. Matheson?
 21 PROSPECTIVE JUROR: It can be helpful.
 22 MR. WESTFALL: Ms. Long?
 23 PROSPECTIVE JUROR: Helpful.
 24 MR. WESTFALL: Ms. Chambers?
 25 PROSPECTIVE JUROR: Somewhat helpful.

1 MR. WESTFALL: Mr. Fauble?
 2 PROSPECTIVE JUROR: Somewhat.
 3 MR. WESTFALL: Ms. Taylor?
 4 PROSPECTIVE JUROR: Somewhat helpful.
 5 MR. WESTFALL: Ms. Armstrong?
 6 PROSPECTIVE JUROR: Somewhat.
 7 MR. WESTFALL: Ms. Marack?
 8 PROSPECTIVE JUROR: Very.
 9 MR. WESTFALL: Is it Marack?
 10 PROSPECTIVE JUROR: Yes. Very helpful.
 11 MR. WESTFALL: And Mr. Castillo?
 12 PROSPECTIVE JUROR: Somewhat.
 13 MR. WESTFALL: Ms. Childers?
 14 PROSPECTIVE JUROR: Sometimes somewhat.
 15 MR. WESTFALL: Back there y'all are going
 16 to have to speak up or stand up.
 17 PROSPECTIVE JUROR: Sometimes somewhat.
 18 MR. WESTFALL: Ms. Nevill?
 19 PROSPECTIVE JUROR: Helpful.
 20 MR. WESTFALL: Ms. Carpenter?
 21 PROSPECTIVE JUROR: Helpful.
 22 MR. WESTFALL: Mr. Hodges?
 23 PROSPECTIVE JUROR: Helpful.
 24 MR. WESTFALL: Ms. Mueller?
 25 PROSPECTIVE JUROR: Helpful.

1 MR. WESTFALL: Ms. Martin?
 2 PROSPECTIVE JUROR: Generally helpful.
 3 MR. WESTFALL: Ms. Roberts?
 4 PROSPECTIVE JUROR: Helpful.
 5 MR. WESTFALL: Mr. Crayton?
 6 PROSPECTIVE JUROR: Helpful.
 7 MR. WESTFALL: Mr. Townes?
 8 PROSPECTIVE JUROR: Helpful.
 9 MR. WESTFALL: Mr. Hudgins?
 10 PROSPECTIVE JUROR: Somewhat helpful.
 11 MR. WESTFALL: Mr. Troup?
 12 PROSPECTIVE JUROR: Helpful.
 13 MR. WESTFALL: Mr. Choate?
 14 PROSPECTIVE JUROR: Somewhat helpful.
 15 MR. WESTFALL: Ms. Acker?
 16 PROSPECTIVE JUROR: Very helpful.
 17 MR. WESTFALL: Ms. Sides?
 18 PROSPECTIVE JUROR: Somewhat.
 19 MR. WESTFALL: Ms. Harrison?
 20 PROSPECTIVE JUROR: Helpful.
 21 MR. WESTFALL: Mr. Williams?
 22 PROSPECTIVE JUROR: I'm not sure I can
 23 answer that question.
 24 MR. WESTFALL: How could I help you?
 25 PROSPECTIVE JUROR: Well, I'm sure

1 there's a good possibility I know some people that have
 2 been treated by mental health professionals. I don't
 3 know who they are, so I would certainly hope they're
 4 helpful.
 5 MR. WESTFALL: Would you go to see them?
 6 PROSPECTIVE JUROR: If I felt like I had
 7 a need to. I have people that have helped me when I
 8 needed to make a decision or maybe I had a problem. I
 9 didn't go to a health care professional. I just knew
 10 someone that I felt would help me through a problem or a
 11 stressful time. I can understand that, you know, maybe
 12 people (inaudible).
 13 Like I say, there's a possibility that I
 14 know some people that have been to the mental health
 15 care professionals and I just don't know who they are.
 16 MR. WESTFALL: Mr. Gates?
 17 PROSPECTIVE JUROR: Harmful.
 18 MR. WESTFALL: Harmful?
 19 PROSPECTIVE JUROR: Harmful.
 20 MR. WESTFALL: Mr. Villano or Ms.
 21 Villano, I'm sorry.
 22 PROSPECTIVE JUROR: Yes, somewhat.
 23 MR. WESTFALL: Ms. Quintanar?
 24 PROSPECTIVE JUROR: Somewhat.
 25 MR. WESTFALL: Ms. Ewing?

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1 PROSPECTIVE JUROR: Somewhat.
 2 MR. WESTFALL: Mr. Keathley?
 3 PROSPECTIVE JUROR: Somewhat.
 4 MR. WESTFALL: And Ms. Leino?
 5 PROSPECTIVE JUROR: There's a possibility
 6 that they can be very helpful.
 7 MR. WESTFALL: Ms. Kuchta?
 8 PROSPECTIVE JUROR: Helpful.
 9 MR. WESTFALL: Mr. Harbin?
 10 PROSPECTIVE JUROR: Somewhat helpful.
 11 MR. WESTFALL: And Mr. Newton?
 12 PROSPECTIVE JUROR: Somewhat.
 13 MR. WESTFALL: Thank you. Now everyone's
 14 been talked to. Now, those of you who have experience
 15 with mental health professionals, and there is some that
 16 have experience with mental health professionals, and
 17 there is some in the audience today. Who would like to
 18 speak about that? Who would like me to pick them?
 19 Let me just ask you this. Is there
 20 anyone here that no way, no how would never, ever go and
 21 see a mental health professional? Does anyone have
 22 personal experience, whether it be with a friend,
 23 themselves or a relative with what we call psychotropic,
 24 meaning something that you take for depression or
 25 anxiety, something, some medication that affects the

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1 chemicals in the brain?
 2 Is there anyone that has any experience
 3 in that? Can you do me a favor and raise your hands
 4 again? I'm trying to remember some of the faces.
 5 PROSPECTIVE JUROR: Did you ask if it was
 6 yourself or somebody that you know of that is taking
 7 medication?
 8 MR. WESTFALL: Either one.
 9 PROSPECTIVE JUROR: Yes.
 10 MR. WESTFALL: Would you tell me about
 11 that experience?
 12 PROSPECTIVE JUROR: My mother. She just
 13 takes Zoloft for depression.
 14 MR. WESTFALL: Did it help?
 15 PROSPECTIVE JUROR: Yes, it has helped
 16 her immensely. She has Parkinson's disease, and it's
 17 very hard for her to get up every morning without the
 18 medication. I've seen a big difference in it.
 19 MR. WESTFALL: Thank you for sharing
 20 that.
 21 Mr. Carillo?
 22 PROSPECTIVE JUROR: Yes.
 23 MR. WESTFALL: Would you mind talking?
 24 PROSPECTIVE JUROR: I had a past
 25 girlfriend that took Xanax for anxiety and panic

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1 attacks, and it seemed to help her whenever she had her
 2 attacks.
 3 MR. WESTFALL: It seemed to?
 4 PROSPECTIVE JUROR: Yeah.
 5 MR. WESTFALL: Who else?
 6 Ms. Nevill, did you raise your hand?
 7 PROSPECTIVE JUROR: Yes, I did. I was on
 8 an antidepressant called Serzone for about a year and a
 9 half. Worked very well.
 10 MR. WESTFALL: Worked very well?
 11 PROSPECTIVE JUROR: Yes.
 12 MR. WESTFALL: Ms. Childers. Did you
 13 raise your hand?
 14 PROSPECTIVE JUROR: What would you like
 15 to know?
 16 MR. WESTFALL: Whatever you feel like
 17 telling me.
 18 PROSPECTIVE JUROR: Okay. I have a son
 19 who is taking Adderall, Ritalin, Zoloft. Then they put
 20 him on an antipsychotic, which I took him off. I have a
 21 daughter on Paxil. All my nieces, and I have a nephew
 22 that's very severely depressed. I don't know what all
 23 he takes, but you name it. Some work. Some don't. And
 24 I think a lot of psychiatrists just push a lot of pills,
 25 but I like a lot of psychologists.

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1 MR. WESTFALL: Did everyone hear what Ms.
 2 Childers just said? No? I don't know how to repeat it
 3 all. But correct me if I'm wrong. You have a son.
 4 PROSPECTIVE JUROR: A son and a daughter
 5 who has just been put on Paxil for anxiety. She has
 6 anxiety attacks, just started last year, and it works
 7 very well on her. That one is working well on her.
 8 Now, my son, that was another story. He doesn't have
 9 anxiety, but he has OCD. He has depression, and he has
 10 ADHD. At this point we've taken him off all
 11 medications.
 12 MR. WESTFALL: Why is he off all
 13 medications?
 14 PROSPECTIVE JUROR: He had a really bad
 15 effect on Adderall. That was for ADHD. So we put him
 16 on Ritalin. He hated it. He was spitting them out. So
 17 then they put him on Zoloft.
 18 That also works on depression and OCD,
 19 and they have him on so much Zoloft that he became a
 20 zombie, and the only emotion he had was anger. So after
 21 a good friend of ours died and he didn't even cry, I
 22 took him off. I said that's enough. So we put up with
 23 him the way he is.
 24 MR. WESTFALL: What kind of drug is
 25 Zoloft?

1 PROSPECTIVE JUROR: It's an
 2 antidepressant. It works with the chemicals in your
 3 brain to make you feel happier or whatever. Now, I'm
 4 not really sure -- They put him on it for
 5 obsessive-compulsive disorder, and it did work on that.
 6 And at this point, he's not showing any signs of OCD,
 7 but that can always come back, at which time he'll
 8 probably go back on it.
 9 So there is reasons to go. My nephew,
 10 who is very, very severely depressed, if he wouldn't go,
 11 he would probably kill himself. So there are reasons
 12 for it. But you would to have a good psychiatrist who's
 13 going to work with you and do your blood work and make
 14 sure that you're not taking too much or too little, and
 15 that's the way it is.
 16 MR. WESTFALL: So the psychiatrist
 17 should --
 18 PROSPECTIVE JUROR: Should.
 19 MR. WESTFALL: -- follow up on the
 20 patient and make sure that the effects are not getting
 21 out of hand.
 22 PROSPECTIVE JUROR: what they're supposed
 23 to do.
 24 MR. WESTFALL: Right. Have you had
 25 experience with a psychiatrist who didn't do that, who

1 kind of gave the pills and walked away?
 2 PROSPECTIVE JUROR: Yes.
 3 MR. WESTFALL: Tell us about that.
 4 PROSPECTIVE JUROR: My son's. He did
 5 that. Until he started putting him on the
 6 antipsychotic, and that was the first time he ever asked
 7 for blood work. Now, my other niece, who ended up on 17
 8 pills a day, she was tested, but it got to the point
 9 that she was taking a pill to counteract another pill to
 10 counteract another pill. And basically she finally grew
 11 out of it and grew up, got pregnant, and then she was
 12 off of all medication and now she's doing fine.
 13 MR. WESTFALL: Have you ever heard of any
 14 of the risk factors involved in some of these
 15 medications like Paxil or Prozac?
 16 PROSPECTIVE JUROR: Yeah.
 17 MR. WESTFALL: What are those?
 18 PROSPECTIVE JUROR: Well, it just
 19 depends. You can't mix them with anything. Literally
 20 you cannot mix them with anything. If you do, you can
 21 have very bad side effects. It just depends on the
 22 person and their chemistry in their body really as to
 23 how it works, whether they can -- you know, some people
 24 can take a Paxil and take a drink and it won't bother
 25 them, and other people, they just go off the edge, go

1 crazy.
 2 We gave not knowing -- we gave Collin
 3 some Nyquil because he had a cold when he was on Zoloft.
 4 Needless to say, he got in a whole lot of trouble at
 5 school the next day. Got in a fight, got arrested. So
 6 you really got to know what you're doing, what you're
 7 mixing with it, and that was our fault.
 8 MR. WESTFALL: Have you had -- let me
 9 just ask you, would that risk right there have been
 10 something you would have liked to have known about from
 11 your doctor?
 12 PROSPECTIVE JUROR: It was printed on the
 13 printout, the information given to you. That was our
 14 fault for not reading, you know, the little thing,
 15 "Don't mix with this medication." And your kid has a
 16 cold. You don't think about it. You give them
 17 something, here, take this, and that's exactly what we
 18 did, and I just didn't even think about it. It will
 19 never happen again.
 20 MR. WESTFALL: Right. Learned your
 21 lesson.
 22 PROSPECTIVE JUROR: Yeah.
 23 MR. WESTFALL: Thank you very much. Has
 24 anyone had an experience similar to Ms. Childers or know
 25 of somebody who has with a child with ADHD? It's not an

1 uncommon experience.
 2 Yes, ma'am?
 3 PROSPECTIVE JUROR: We have a child that
 4 has ADHD.
 5 MR. WESTFALL: Stand up. I'm sorry.
 6 PROSPECTIVE JUROR: We have a child who
 7 has ADHD. We found out in third grade. And then later
 8 on he became bipolar, and we've had bad experiences with
 9 drugs.
 10 MR. WESTFALL: Had bad experiences with
 11 drugs?
 12 PROSPECTIVE JUROR: Yeah. One almost
 13 drove him to suicide.
 14 MR. WESTFALL: Which one?
 15 PROSPECTIVE JUROR: It was Ritalin.
 16 MR. WESTFALL: Ritalin did?
 17 PROSPECTIVE JUROR: As a grownup. He
 18 took it two years. It was a very bad experience.
 19 MR. WESTFALL: Thank you for sharing it
 20 with us.
 21 Has anyone else, then, read or seen on TV
 22 anything about these psychotropic drugs and possible
 23 risks?
 24 I see you shaking your head, Ms.
 25 Richardson.

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1 PROSPECTIVE JUROR: I'm sorry. I wasn't.
2 MR. WESTFALL: You weren't, okay. Has
3 anyone seen anything on the newspaper or TV or anything
4 about psychotropic drugs? No?
5 I'd like to talk to you, I guess, a
6 little bit about doctors. We were just talking about
7 doctors.
8 Ms. Childers, you mentioned that a doctor
9 has just given you these drugs for your child and not
10 really followed up or not really told you, kind of
11 dispensed the pill and went on.
12 PROSPECTIVE JUROR: Yes.
13 MR. WESTFALL: Could you please tell me
14 about that?
15 PROSPECTIVE JUROR: That pretty much
16 covers it.
17 MR. WESTFALL: That pretty much covers
18 it?
19 PROSPECTIVE JUROR: Yes. He may go in
20 and fill out a little tiny questionnaire with a few
21 questions and he talks to you basically -- I'm not going
22 to say all doctors, but the one we went to. It's very,
23 very hard that will find a psychiatrist that will work
24 with a child under 18. There was three on my health
25 plan in my area, three, and that was it. You walk in.

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1 They talk to them a few minutes, and they write out a
2 prescription.
3 MR. WESTFALL: I need to get you to
4 stand. I'm sorry.
5 PROSPECTIVE JUROR: You talk to them a
6 few minutes back and forth, and they talk to the child.
7 And they write out a prescription for what they think
8 they ought to be taking and you leave, go fill it, and
9 the only thing you get, information, is the little
10 information that the pharmacist gets you.
11 MR. WESTFALL: That Eckerd's prints off
12 when you pick up your deal?
13 PROSPECTIVE JUROR: Yeah.
14 MR. WESTFALL: No instructions from the
15 doctor, just the preprinted stuff --
16 PROSPECTIVE JUROR: Just what the doctor
17 tells you to do, take so many pills a day and how often
18 and whatever, and I'll see you next month.
19 MR. WESTFALL: Okay. You mentioned that
20 you had two or three doctors on your plan.
21 PROSPECTIVE JUROR: That was it. Three
22 doctors.
23 MR. WESTFALL: Three doctors?
24 PROSPECTIVE JUROR: Three psychiatrists.
25 MR. WESTFALL: Three psychiatrists that

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1 your health insurance will pay for?
2 PROSPECTIVE JUROR: Right. Three that
3 would work with children.
4 MR. WESTFALL: That would work with
5 children?
6 PROSPECTIVE JUROR: They do not like kids
7 under 18. They don't work with them.
8 MR. WESTFALL: How many of y'all has gone
9 through the experience of having to find somebody on
10 your plan that your health insurance will pay for so
11 that you can go see them and have to go through that?
12 PROSPECTIVE JUROR: For this or other
13 stuff?
14 MR. WESTFALL: For anything. And does
15 anyone know -- Well, first of all, would everyone agree
16 that it's kind of hard to go through that process and
17 get a relationship with a doctor? How many of y'all has
18 to have a gatekeeper like a primary care physician that
19 makes all the referrals? How many of y'all have to wait
20 months in order to go see a specialist?
21 How many of y'all in the last year have
22 gone to a doctor and paid cash because your health
23 insurance didn't cover it or you didn't have health
24 insurance? How many of y'all have not gone to see a
25 doctor because your health insurance doesn't cover it.

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1 See, everyone's in good company on that.
2 What are we going to do about that at
3 this legislative session? I'm joking. Here's the deal.
4 What she has mentioned, what Ms. Childers over there has
5 talked about, having these three doctors on the plan, if
6 you don't have insurance, it's hard. It's hard when you
7 do have insurance to find a doctor who will treat your
8 child, but if you don't have insurance at all, it can
9 become impossible. Does anyone know any social services
10 that covers psychiatric treatment, any government
11 services?
12 PROSPECTIVE JUROR: MHMR.
13 MR. WESTFALL: MHMR. Have you ever dealt
14 with them?
15 PROSPECTIVE JUROR: No.
16 MR. WESTFALL: Have you ever dealt with
17 TRC, the Texas Rehabilitation Commission? Has anyone
18 ever dealt with them? Does anyone know anything about
19 them? Those of you who had trouble with your insurance,
20 would you prefer to not have insurance and try to go
21 through it with public government channels? Everyone
22 who would, please raise your hand.
23 This part of the whole mental health
24 deal, a lot of insurance plans cut mental health, and
25 it's difficult to get a child taken care of. And does

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1 anyone else have any experience along those lines of
2 trying to get health care, mental health care for a
3 child?

4 Yes, ma'am?

5 PROSPECTIVE JUROR: I have children that
6 were in mental health issues.

7 MR. WESTFALL: Would you mind telling us
8 about that? Is that something you feel comfortable
9 talking about?

10 PROSPECTIVE JUROR: Yeah. We adopted
11 children from the state whose parents were paranoid
12 schizophrenic, and it's been an ongoing deal with the
13 state and how to get help for them.

14 MR. WESTFALL: And have these children
15 received psychiatric medications at all?

16 PROSPECTIVE JUROR: Some, but not what
17 you're -- not like Prozac or anything like that.

18 MR. WESTFALL: Okay. Thank you very
19 much.

20 Well, Mr. Martinez.

21 PROSPECTIVE JUROR: Yes, sir.

22 MR. WESTFALL: Could you go ahead and
23 stand? If you took your child in to a doctor and that
24 doctor said that he had received a medication or she had
25 received a medication and that medication actually has

1 of unknowns. I don't know if I'd be able to answer
2 that. I would think that that would be the whole reason
3 for the screening, trying to find out something that
4 would be there that he didn't see initially.

5 MR. WESTFALL: Where this medicine that's
6 supposed to be helping the child could actually hurt the
7 child?

8 PROSPECTIVE JUROR: Yeah.

9 MR. WESTFALL: Thank you very much.
10 Ms. Taylor.

11 PROSPECTIVE JUROR: Yes.

12 MR. WESTFALL: What do you think? Would
13 you want a doctor that you took your child to to closely
14 screen your child to see if there's any risk factors?

15 PROSPECTIVE JUROR: Of course.

16 MR. WESTFALL: And what could happen if
17 he didn't or she didn't?

18 PROSPECTIVE JUROR: Well, no telling what
19 could happen with the medication on a child. Even an
20 adult. The medication I take I'm screened all the time,
21 so I expect it to be done for my child.

22 MR. WESTFALL: Did everyone hear that?
23 Because it's kind of an obvious question.

24 I want to ask Ms. Childers, does that
25 always happen?

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1 risks that go with it, would you want your doctor, that
2 child's doctor, to screen the child for the risks to see
3 if they -- see if certain factors exist which would make
4 that medicine a risky medicine?

5 PROSPECTIVE JUROR: In other words,
6 you're asking me if the parent would want the doctor to
7 screen the child?

8 MR. WESTFALL: Right.

9 PROSPECTIVE JUROR: For the risk of that
10 medication that that Doctor was going to prescribe for
11 that child?

12 MR. WESTFALL: Right. To closely screen
13 the child, make sure --

14 PROSPECTIVE JUROR: I would think that
15 would be something that you certainly would want to look
16 at. I wouldn't want to think that a doctor would
17 prescribe something to a child or person and not know a
18 background about that person, whether it would be
19 actually helpful or not helpful.

20 MR. WESTFALL: Or even harmful.

21 PROSPECTIVE JUROR: Or harmful, yes.

22 Exactly.

23 MR. WESTFALL: And what could happen if
24 the doctor didn't screen for those risks?

25 PROSPECTIVE JUROR: Gosh, there's a lot

1 PROSPECTIVE JUROR: No.

2 MR. WESTFALL: Ms. Marack, would you --
3 go ahead and stand up. You're going to take your child
4 in to see a doctor. The doctor is going to give the
5 child pills. Would you want that doctor to educate you
6 on what to look for in case those pills start having an
7 adverse effect?

8 PROSPECTIVE JUROR: Absolutely.

9 MR. WESTFALL: And what could happen if
10 he didn't or she didn't?

11 PROSPECTIVE JUROR: He could have a risk
12 that occurs, such as bad health conditions or anything
13 that could happen.

14 MR. WESTFALL: Thank you. Thank you.

15 Mr. Partlow, do you agree?

16 PROSPECTIVE JUROR: Yes.

17 MR. WESTFALL: If we take that child in
18 and this doctor gives this child medicine, would you
19 want that doctor to educate the parents on the risks to
20 look for if the child starts having an adverse effect on
21 this medication?

22 PROSPECTIVE JUROR: Certainly.

23 MR. WESTFALL: Ms. Childers, does that
24 happen always?

25 PROSPECTIVE JUROR: It's left up to you

1 as the parent to figure it out.
 2 MR. WESTFALL: And sometimes you miss
 3 something.
 4 PROSPECTIVE JUROR: Can I ask a question?
 5 MR. WESTFALL: You may.
 6 PROSPECTIVE JUROR: I'm from a family of
 7 nine children. Is it not the parents' responsibility to
 8 ask the doctor?
 9 MR. WESTFALL: It could be. Tell me
 10 about that. What do you think about that?
 11 PROSPECTIVE JUROR: I always have. I
 12 only have two pets, but even when I'm going for their
 13 annual exam I'm asking questions, you know, the heart
 14 worm pills, what is this? That's just me as an
 15 individual. Is that just me or is it -- and I'm from
 16 North Carolina. Are we different there than people
 17 here?
 18 I don't know. I'm the oldest of nine,
 19 and I kind of helped raise the last six. So I would
 20 just assume when you take your kids to the doctor that
 21 as a mother you ask questions, because I know doctors,
 22 especially now they have all these appointments within a
 23 day's time, and sometimes I've got to go to the next
 24 patient, next patient. No, you need to wait a minute
 25 because I have more questions. I do that with my

1 pharmacist when I go get a prescription.
 2 MR. WESTFALL: Do you -- have you ever
 3 experienced a doctor that was less than enthusiastic to
 4 hanging around and answering all your questions?
 5 PROSPECTIVE JUROR: No, I haven't. But I
 6 haven't gone to the level of Ms. Childers either, so I
 7 don't know.
 8 MR. WESTFALL: Okay. Thank you.
 9 Has anyone experienced a doctor that
 10 acted like they didn't really have time or the
 11 inclination to answer your questions? I have pets too
 12 and my veterinarian gets the same treatment. But do you
 13 believe that there are people who are, number one, less
 14 assertive than you about asking that doctor questions?
 15 And number two, it sounds like you had a
 16 good experience in the medical field in the treatment
 17 that you received, whatever that may be. But do you
 18 believe that there are doctors out there who don't
 19 exactly truly educate people on what they're doing?
 20 I want to do one more thing, and this is
 21 going to be another kind of whole ordeal. I'm going to
 22 start over here, and what I want to know is how you make
 23 an important decision. Some people make an important
 24 decision by a feeling that they get or by emotions.
 25 Some people make an important decisions by careful

1 thought, logic and reason.
 2 And my experience is you're either one or
 3 the other. I know I'm one or the other, but I'm not
 4 going to tell y'all what I am until the end. So that's
 5 the question. Do you make an important decision like
 6 buying a house, buying a car, sending the kids to
 7 college, deciding what college you want to go to, do you
 8 make that decision through logic and reason or through
 9 emotion and feeling?
 10 Mr. Bradberry?
 11 PROSPECTIVE JUROR: Generally through
 12 logic and reasoning.
 13 MR. WESTFALL: Ms. Mercado?
 14 PROSPECTIVE JUROR: I guess logic and
 15 reason most of the time.
 16 MR. WESTFALL: Mr. Rider?
 17 PROSPECTIVE JUROR: Always with logic and
 18 reason.
 19 MR. WESTFALL: Mr. Partlow?
 20 PROSPECTIVE JUROR: Logic and reason.
 21 MR. WESTFALL: Ms. Dean?
 22 PROSPECTIVE JUROR: Logic and reason.
 23 MR. WESTFALL: Ms. Blauvelt?
 24 PROSPECTIVE JUROR: Logic and reason.
 25 MR. WESTFALL: Ms. Mills?

1 PROSPECTIVE JUROR: Logic and reason.
 2 MR. WESTFALL: Mr. Davis?
 3 PROSPECTIVE JUROR: To be totally honest,
 4 both, but I lean to the logic side. But I listen -- my
 5 heart takes me lots of places.
 6 MR. WESTFALL: I understand.
 7 Mr. Swanson?
 8 PROSPECTIVE JUROR: Logic and reason.
 9 MR. WESTFALL: Mr. Mills?
 10 PROSPECTIVE JUROR: Logic and reason.
 11 MR. WESTFALL: Ms. Fenn?
 12 PROSPECTIVE JUROR: Logic and reason and
 13 sometimes gut feeling.
 14 MR. WESTFALL: It's called intuition.
 15 PROSPECTIVE JUROR: That's right.
 16 What does MR. WESTFALL: Ms. Bolt?
 17 this have PROSPECTIVE JUROR: Logic and reason.
 18 to do with MR. WESTFALL: Ms. VanCleve?
 19 voluntary PROSPECTIVE JUROR: Logic and reason.
 20 & MR. WESTFALL: Mr. Davis?
 21 involuntary PROSPECTIVE JUROR: Logic and reason.
 22 intoxication ? MR. WESTFALL: Ms. Blankenship?
 23 PROSPECTIVE JUROR: Logic and reason.
 24 MR. WESTFALL: Mr. McCollom?
 25 PROSPECTIVE JUROR: Reason and feeling.

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1 MR. WESTFALL: Reason and feeling, one of
 2 each?
 3 Ms. Lemmons?
 4 PROSPECTIVE JUROR: Logic and reason.
 5 MR. WESTFALL: Mr. Wakefield?
 6 PROSPECTIVE JUROR: Logic and reason and
 7 information.
 8 MR. WESTFALL: Ms. Richardson?
 9 PROSPECTIVE JUROR: Logic and reason.
 10 MR. WESTFALL: Ms. Thomas?
 11 PROSPECTIVE JUROR: Logic and reason.
 12 MR. WESTFALL: Ms. Thomas?
 13 PROSPECTIVE JUROR: Logic and reason.
 14 MR. WESTFALL: Ms. Bennett?
 15 PROSPECTIVE JUROR: Logic and reason.
 16 MR. WESTFALL: Mr. Carillo?
 17 PROSPECTIVE JUROR: Feeling.
 18 MR. WESTFALL: Mr. Matheson?
 19 PROSPECTIVE JUROR: Logic and reason.
 20 MR. WESTFALL: Ms. Long?
 21 PROSPECTIVE JUROR: Logic and reason.
 22 MR. WESTFALL: Ms. Chambers?
 23 PROSPECTIVE JUROR: Logic and reason and
 24 feelings.
 25 MR. WESTFALL: Mr. Fauble?

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1 PROSPECTIVE JUROR: Logic and reason.
 2 MR. WESTFALL: Ms. Armstrong?
 3 PROSPECTIVE JUROR: Logic and reason.
 4 MR. WESTFALL: Ms. Taylor?
 5 PROSPECTIVE JUROR: Logic and reason.
 6 MR. WESTFALL: Ms. Marack?
 7 PROSPECTIVE JUROR: Logic and reason.
 8 MR. WESTFALL: Mr. Castillo?
 9 PROSPECTIVE JUROR: Feelings.
 10 MR. WESTFALL: Ms. Childers?
 11 PROSPECTIVE JUROR: Logic and reason.
 12 MR. WESTFALL: Ms. Nevill?
 13 PROSPECTIVE JUROR: Logic and reason.
 14 MR. WESTFALL: Ms. Carpenter?
 15 PROSPECTIVE JUROR: Logic and reason.
 16 MR. WESTFALL: Mr. Hodges?
 17 PROSPECTIVE JUROR: Logic and reason.
 18 MR. WESTFALL: Ms. Mueller?
 19 PROSPECTIVE JUROR: Unfortunately with my
 20 heart.
 21 MR. WESTFALL: Now why is that
 22 unfortunate?
 23 PROSPECTIVE JUROR: It makes me soft
 24 hearted. I don't use my head and think about it before
 25 I react.

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1 MR. WESTFALL: Ms. Martin?
 2 PROSPECTIVE JUROR: Logic and reason.
 3 MR. WESTFALL: Ms. Roberts?
 4 PROSPECTIVE JUROR: Reasoning and
 5 feelings, some of both.
 6 MR. WESTFALL: Mr. Crayton?
 7 PROSPECTIVE JUROR: Reasonable and
 8 feelings, same thing.
 9 MR. WESTFALL: Mr. Townes?
 10 PROSPECTIVE JUROR: Logic and reason.
 11 MR. WESTFALL: And Mr. Hudgins?
 12 PROSPECTIVE JUROR: A combination of
 13 both.
 14 MR. WESTFALL: Mr. Troup?
 15 PROSPECTIVE JUROR: Same here.
 16 MR. WESTFALL: Mr. Choate?
 17 PROSPECTIVE JUROR: Logic and reason.
 18 MR. WESTFALL: Ms. Acker?
 19 PROSPECTIVE JUROR: Combination of both.
 20 MR. WESTFALL: Mr. Sides?
 21 PROSPECTIVE JUROR: Logic and reason.
 22 MR. WESTFALL: Ms. Harrison?
 23 PROSPECTIVE JUROR: Logic and reason.
 24 MR. WESTFALL: Mr. Williams?
 25 PROSPECTIVE JUROR: Logic and reason.

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1 MR. WESTFALL: Mr. Gates?
 2 PROSPECTIVE JUROR: Both.
 3 MR. WESTFALL: Ms. Villano?
 4 PROSPECTIVE JUROR: Both.
 5 MR. WESTFALL: Mr. Quintanar?
 6 PROSPECTIVE JUROR: Logic and reason.
 7 MR. WESTFALL: Mr. Ewing?
 8 PROSPECTIVE JUROR: Logic and reason.
 9 MR. WESTFALL: Mr. Keathley?
 10 PROSPECTIVE JUROR: Same, common sense
 11 along with that.
 12 MR. WESTFALL: Mr. Newton?
 13 PROSPECTIVE JUROR: Logic and reason.
 14 MR. WESTFALL: Mr. Harbin?
 15 PROSPECTIVE JUROR: Logic and reason.
 16 MR. WESTFALL: Ms. Kuchta?
 17 PROSPECTIVE JUROR: Logic and reason.
 18 MR. WESTFALL: And Ms. Leino?
 19 PROSPECTIVE JUROR: Combination of both.
 20 MR. WESTFALL: How many of you all have
 21 bought a house? And how many of y'all bought the house
 22 because it just felt like the house, "This feels like
 23 the right house"? You see. I'm total feelings.
 24 Y'all, I'm about to wrap up, and we're
 25 going to do our strikes and we'll have the jury probably

1 in the next 15 or 20 minutes. I want to thank you for
2 letting me talk to you this afternoon and for talking
3 back to me. And is there anything that's on your mind
4 that you've been saying, you know, "If he talks to me
5 I'm going to say this," because I'm fixing to not talk
6 anymore.

7 Is there anything on anyone's minds that
8 I ought to know or that you think I ought to know and
9 that we should talk about it? Is there any question
10 you'd like to ask me? Well, thank you very much for
11 speaking with me this afternoon. Thank you.

12 Judge, we'll tender the venire.

13 THE COURT: Ladies and gentlemen, that
14 concludes the voir dire examination by the attorneys,
15 and there is now a procedure we have to go through in
16 the courtroom which determines which of you will be the
17 12 that serve on the jury.

18 While we do that, you can take a break
19 outside. I'll meet you back outside the courtroom door
20 in 30 minutes. That will be 5:00. At that time we'll
21 come back into the courtroom, and the 12 of you that
22 will make up our jury will be seated over here in the
23 jury box.

24 Excuse me. And the rest of you will be
25 allowed to go about your business. The 12 of you who

1 are selected to be jurors will receive a short set of
2 instructions from me and we're going to recess to begin
3 the trial tomorrow morning at 9:00. Don't discuss this
4 case or any of these procedures with anyone while you
5 are on the break. See you back outside the courtroom
6 door in 30 minutes.

7 (Jury panel not present)

8 THE COURT: Does either side have any
9 challenges for cause?

10 MR. FORAN: State challenges juror number
11 30, Mr. Castillo, bias against the State. Said he
12 cannot be fair and impartial.

13 THE COURT: It's granted.

14 MR. FORAN: Number 49 for the same
15 reason, Mr. Michael Gates.

16 THE COURT: It's granted.

17 MR. FORAN: We're done for right now,
18 Judge.

19 THE COURT: Defense?

20 MR. WESTFALL: I'm trying to get them in
21 order, Your Honor. Number three on probation.

22 THE COURT: Granted.

23 MR. WESTFALL: Number seven on testimony.

24 THE COURT: Granted.

25 MR. FORAN: Judge, we'd object to number

1 seven. All number seven said she was afraid it might.
2 It's not the same as (inaudible). They didn't impress,
3 or lay proper predicate that she could not follow the
4 law.

5 THE COURT: I think the overall tenor of
6 her examination was that she was prejudiced against that
7 phase of the law. That cause is granted.

8 MR. WESTFALL: Number ten on probation.

9 THE COURT: Granted.

10 MR. WESTFALL: Number nine on a bias
11 against the Defendant, couldn't be fair.

12 THE COURT: Granted.

13 MR. WESTFALL: Number 39 on probation.

14 THE COURT: Granted.

15 MR. WESTFALL: Number 44, Townes on
16 testimony.

17 THE COURT: Denied.

18 MR. WESTFALL: Couldn't give fair
19 consideration to probation.

20 THE COURT: Granted.

21 MR. FORAN: Which one is that?

22 MR. WESTFALL: Number 44.

23 MR. WESTFALL: Number 53 on probation.

24 THE COURT: Denied.

25 MR. WESTFALL: Number 52, admitted a bias

1 against the Defendant.

2 THE COURT: Granted.

3 MR. WESTFALL: Number 37 admitted a bias
4 against the Defendant.

5 THE COURT: Granted.

6 MR. WESTFALL: Let me see, Your Honor.
7 Number ten, did we ever get that? Yeah. We sure did.
8 We got number seven and 44. I think that's it, Your
9 Honor.

10 THE COURT: Please turn in your
11 preemptions at ten minutes till.

12 MR. WESTFALL: Hold on, Your Honor. We
13 said three already? We challenge number three.

14 MS. HARTMANN: It's already been done.

15 THE COURT: It's already done.

16 MR. WESTFALL: Thanks.

17 (Short recess)

18 (Open court, Defendant present, jury
19 panel not present)

20 THE COURT: Are both sides ready to bring
21 the venire back in?

22 MS. HARTMANN: State's ready, Your Honor.

23 MR. WESTFALL: Defense is ready, Your
24 Honor.

25 (Jury panel present)

1 THE COURT: I'm going to call the names
2 of the 12 people who will make up our jury. As I call
3 your name, please come through this open gate right over
4 here and have a seat up in the jury box. John
5 Bradberry, Toni Mercado, Stephanie Dean, Cymbre
6 Blauvelt, Cindy VanCleve, Michelle Lemmons, Marva
7 Thomas, Eric Carrillo, Barbara Chambers, Timothy Fauble,
8 Erin Armstrong and Tina Marack.

9 For those of you whose name I didn't
10 call, I want to thank you very much for the time you
11 spent here and the attention you paid to the case. You
12 are released from service here. Please report
13 downstairs on the plaza level to the central jury room.
14 There they'll excuse you from jury duty. Thanks again.
15 (Remainder of panel excused)

16 For those of you in the jury box, we're
17 passing around a booklet of instructions. In just a
18 minute we're going to break for the day. When you get a
19 few minutes, please read through those instruction.
20 They are all very important to your conduct as jurors.

21 Keep the booklet with you throughout the
22 course of the trial and that way if something comes up,
23 you'll have it to refer to. At various points in the
24 trial we're going to take breaks, and at those points
25 I'm going to ask you to remember and follow your

1 elsewhere which is not admitted in evidence. Do not let
2 anyone else do any of these things for you. All
3 evidence must be presented in open court so that each
4 side may question witnesses and make proper objections.
5 If you know or learn anything about this
6 case except from the evidence admitted during the course
7 of this trial, you should tell me about it at once. Do
8 not discuss the case among yourselves until after you've
9 heard all the evidence, the Court's charge, the
10 attorneys' summations and until I have sent you to the
11 jury room to conduct your deliberations.

12 Do not tell other jurors of your own
13 person experiences or those of other persons, nor relate
14 to them any special knowledge you may have such as
15 business, technical or professional knowledge. Texas
16 law permits proof of any violation of the rules of
17 proper jury conduct, and by this I mean that jurors and
18 others may be called upon to testify in open court about
19 acts of jury misconduct.

20 And I therefore instruct you to follow
21 carefully all the instructions which I have given you as
22 well as any others which you may later receive while the
23 case is on trial. Let me introduce to you some of the
24 rest of the folks you will work with this week that you
25 haven't already met.

1 instructions, and these are the instructions to which
2 I'll be referring.

3 Do not mingle with or talk to the
4 lawyers, witnesses, parties or any other person who
5 might be connected with or interested in this case
6 except for casual greetings. All of these other persons
7 are under the same instructions, and they will
8 understand it when you follow them. Do not accept from
9 nor give to any of those persons any favors, however
10 slight, such as rides, food or refreshments.

11 Wear your juror badge at all times you
12 are in or around the courthouse. Do not discuss
13 anything about this case or even mention it to anyone
14 whomsoever, including your wife or husband, nor permit
15 anyone to mention it in your hearing until you are
16 discharged as jurors. If anyone attempts to discuss the
17 case with you, please report it to me at once.

18 Do not make personal inspections,
19 observations, investigations or experiments related to
20 the issues that may be a part of this case. Do not
21 personally view premises, things or articles which may
22 be a part of the case but are not introduced into
23 evidence.

24 Do not seek information contained in law
25 books, dictionaries, public or private records or

1 We have three deputy sheriffs assigned as
2 bailiffs. This is Ms. Dimple Junior over here to your
3 right. Mr. James Thomas is in the back of the
4 courtroom. Mr. Dave Darusha is directly across from
5 you. They are the officers which will have you in
6 charge. And Ms. Rebecca Meinhart is the clerk of the
7 court. She's over here to my right and she'll be in the
8 courtroom when her duties require her to be here.

9 We will work from 9:00 a.m. until about
10 5:00 p.m. until the conclusion of the trial, which I
11 expect to be able to conclude this week. We will take a
12 break around noon for the lunch hour. We'll take a
13 stretch break in the morning and the afternoon, with all
14 the breaking points subject to finding a convenient
15 point in the trial to take a break.

16 I don't allow jurors to take notes during
17 the trial because the notes are often given an unfair
18 advantage back in the jury room during deliberations
19 even if they're taken correctly. Many times the notes
20 are taken incorrectly or inaccurately.

21 Obviously in that situation the jury
22 would be deliberating on false information. That would
23 be highly improper. There are 12 of you in the jury
24 box, and the witness stand is right in front of you. If
25 you will all pay careful attention to the testimony as

1 it comes to you from the witness stand, I don't think
2 you will have any difficulty recalling it and being able
3 to deliberate on it when the time comes.

4 Let me remind you, however, that it is
5 important that you pay careful attention to all the
6 testimony, as it often becomes apparent during
7 deliberations that something you felt was unimportant
8 when you first heard it is actually very important in
9 deciding the issues in the case.

10 Do you have any questions about the
11 instructions I've been over? All right. Then we're
12 going to recess at this time until 9:00 tomorrow
13 morning. Please remember and follow the instructions
14 I've just been over with you.

15 Tomorrow morning report just outside the
16 courtroom door just about 9:00. The bailiffs will meet
17 you there and escort you back into the jury room. As
18 soon as everyone's here, we'll start with the trial of
19 the case. Have a good evening. We'll see you tomorrow
20 morning at 9:00.

21 (Jury not present)

22 THE COURT: Anything else we need to go
23 into?

24 MR. WESTFALL: No, Your Honor.

25 MS. HARTMANN: Nothing from the State.

1 THE STATE OF TEXAS)

2 COUNTY OF TARRANT)

3 I, Kay Miller, Deputy Official Court Reporter in

4 and for the 213th District Court of Tarrant County,

5 State of Texas, do hereby certify that the above and

6 foregoing contains a true and correct transcription of

7 all portions of evidence and other proceedings requested

8 in writing by counsel for the parties to be included in

9 this volume of the Reporter's Record, in the

10 above-styled and numbered cause, all of which occurred

11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's Record of

13 the proceedings truly and correctly reflects the

14 exhibits, if any, admitted by the respective parties.

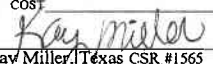
15 I further certify that the total cost for the

16 preparation of this volume is included in the

17 certificate of the last volume of this record.

18 WITNESS MY OFFICIAL HAND this the 1st day of

19 March, 2003. COST

20 
21 Kay Miller, Texas CSR #1565
22 Expiration Date: 12-31-04
23 Deputy Official Court Reporter
24 213th District Court
25 Tarrant County, Texas
401 W. Belknap

Fort Worth, Texas 76196

1 THE COURT: See y'all about 8:45 tomorrow
2 morning, then.

3 (Adjourned at 5:05 p.m.)
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