

## Lawyers seek details on jurors

### THOROUGH QUESTIONS IN DEATH PENALTY TRIAL

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When John "Jay" Brooks's murder trial starts, few people may know more about the jurors than the lawyers in the case. They'll know which jurors have fired a handgun, what each one thinks of millionaires and whether jurors think people generally get what they deserve.

They'll know those jurors who drink and those who watch 60 Minutes. And if jurors have walked out of a movie because of explicit sex or violence, the lawyers will know that, too.

Yesterday, those questions and more than 130 others were put to nearly 600 people from Rockingham County who've been chosen as potential jurors in Brooks's capital murder trial. In the coming weeks, legal teams on both sides of the case will pore over the answers and begin assessing what they see as the strengths and weaknesses of each respondent.

Jury questionnaires are routine in New Hampshire - but they never look like this one, lawyers said yesterday.

The standard questionnaire runs four pages. The Brooks questionnaire is 28 pages. The standard form sticks to the basics: employment history, family makeup and criminal record. The Brooks version inquires about marital infidelity, religious training and whether potential jurors see themselves as followers, leaders or neither.

Brooks's attorneys and prosecutors from the state attorney general's office could not be reached yesterday. Area lawyers said there's a good reason the Brooks questionnaire is so different in scope and detail: Brooks is the first person in decades to stand trial in New Hampshire for capital murder, and he could face death if convicted. He is charged with hiring men to kidnap and kill a Derry mover he suspected had stolen from him.

"You want to know, 'Do the people coming before you as prospective jurors have any hidden biases that even they might not be aware of,'" said Manchester attorney [Andru Volinsky](#), who has defended death penalty cases elsewhere. "I am struck by how thoughtful an analysis someone made to go over the form and use one that provides helpful information. If this weren't a death penalty case, you wouldn't do this."

Concord defense attorney Jim Moir has been defending criminal cases 24 years and said he's never seen such a detailed juror questionnaire. That's because it's so expensive and time consuming to sift through nearly 30 pages of information for every case.

"But to get the most fair trial possible, this is the way to go," he said.

Both sides submitted questions for the questionnaire, but jurors do not know which side is responsible for a particular question. The attorneys wanted an additional eight questions that Superior Court Judge Robert Lynn rejected. In a June order, Lynn said he opposed questions about prospective jurors' political party affiliations, use of bumper stickers, letters to the editor and philosophical leanings because he found them "overly intrusive." Lynn let 143 other questions stand.

Typically, potential jurors are asked if they rent or own their own home and whether they are single, married, divorced or widowed. They must identify their current employer, or, if they are not working, their past employer.

The hundreds of people called as potential jurors in the Brooks case were asked yesterday for much greater detail. Did they rent an apartment or mobile home, or own a condominium or a home? They had more choices, too, when asked about their marital status, including "never married," "remarried," and "living with someone."

And they had to list their employers for the last 10 years.

Similarly, the Brooks questionnaire asked about "major" and "minor" courses of study in college, not just a person's highest level of education, which is as far as the standard questionnaire goes.

Brooks's lawyers asked whether jurors listen to talk radio and which personalities they follow. They asked about internet use and magazine reading habits. They wanted to know if potential jurors ever visited anyone in jail or had someone they knew murdered. The standard form ignores most of those topics except the last: And it asks whether any member of a potential juror's family has been a victim of a crime. And only the Brooks questionnaire asked potential jurors how afraid they are of becoming a victim of a violent crime.

Moir, who, like Volinsky, looked over the Brooks questionnaire for the Monitor, said some questions are obviously case specific. Brooks is a millionaire, and one question asks jurors how ethical and honest they think millionaires are. Another question asks about potential jurors' experience with diabetes. Brooks has diabetes, according to court records.

Other questions are signs of the times, he said. One question asks whether potential jurors watch television crime dramas like Law & Order and CSI: Crime Scene Investigation. Moir said that's because those shows tend to make crime investigation easier than it is. A single hair found at a crime scene, Moir said, can solve a case on television.

But other questions - what is your favorite movie? - read like personality quizzes that circulate among friends via e-mail. And in some ways, they aren't so different.

"When you are picking a jury, it's really hard to find a window into what the juror might think," Moir said. "Both sides, the prosecution and the defense, really want to get a read on these people. If you find out what their three favorite books are or their three favorite television shows are, that gives you some kind of insight."

Because Brooks could face death if convicted, much of the questionnaire asks potential jurors about their feelings toward the death penalty and life in prison without parole. The form explains that jurors in this case will have to choose between those punishments if they convict Brooks.

Potential jurors were asked how strongly they support or oppose the death penalty and whether they believe in the concept of "an eye for an eye." The attorneys want to know whether their views on the death penalty have changed and whether their spouses share their views.

Other questions ask potential jurors to assess the prison system's ability to rehabilitate criminals and when they think life without parole is a justified penalty.

Anyone who says he cannot apply the death penalty if Brooks is convicted will be excused from the case. But the questionnaire tries to inquire beyond that position alone.

"All across the board, (the lawyers) are trying to drill down," Volinsky said. "It's clear to me they are trying to go beyond the superficial."

Volinsky said he was struck by even the difference between the instructions in the standard questionnaire and the one given to potential Brooks jurors yesterday. Only the latter states in large bold letters the reminder that there are no right or wrong answers, just honest ones.

"The only question is, 'Are these jurors a fair match for this case?' " Volinsky said. "The more you can impress upon the jury that you need to be candid in their response, the better off everyone is, on both sides."

In mid-August, the lawyers and potential jurors will return to court. One by one, the lawyers will question the potential jurors in more detail about the responses to the questionnaire. At the end of that process, which is expected to last about a month, they plan to have a jury.