

1 A I work up on Crazy Horse Monument.
2 Q Before that?
3 A I was in mining most of the time and I had a business
4 for six years and I did taxidermy for six years at
5 one point.
6 Q In Hill City?
7 A Yes.
8 Q Your parents still live around here?
9 A No, my mother lives in Rapid and my father is dead.
10 Q Do you have any brothers?
11 A Yes, one brother and two sisters.
12 Q Do they live around here?
13 A My brother lives in Hill City and both my sisters
14 live here in Rapid City.
15 Q What does your brother do in Hill City?
16 A He runs Dakota Stone Company, it's a company my
17 father started quite a few years ago.
18 Q His name is Jim Dean, right?
19 A Yes.
20 Q He's your older brother?
21 A Yes.
22 Q Have you worked at Dakota Stone at all?
23 A I did up until six years ago.
24 Q Worked with your brother?
25 A Yeah.

1 Q Still get along with your brother?
2 A Yeah.
3 Q Mr. Dean, would you take a look at the list of names
4 in front of you and see if you recognize any of those
5 names?
6 A No.
7 Q Do you know recognize any?
8 A No, I don't.
9 Q You indicated in your questionnaire in answer to a
10 question that you heard about the case on the news or
11 read about it and saw it on TV?
12 A Yeah.
13 Q Do you remember what you heard or what you had seen?
14 A Well, that that gentleman had been killed in that
15 donut shop and I guess I really haven't seen much of
16 it. I don't know.
17 Q Anything stick in your mind?
18 A I don't know -- nothing I guess in particular.
19 Q Have you or any member of your immediate family ever
20 been charged with a crime?
21 A I have at one time.
22 Q When was that?
23 A Ten years ago I got a D.W.I.
24 Q Did you plead guilty or was the case tried?
25 A I pled guilty.

1 Q And with the exception of that, nothing else?
2 A No.
3 Q Now, are you aware that the Defendant Mr. Rhines is
4 here charged with first degree murder?
5 A Uhm-uhm.
6 Q And the evidence is going to show, Mr. Dean, that Mr.
7 Rhines is a homosexual. Does that's have affect how
8 you look at Mr. Rhines?
9 A I guess not.
10 Q You said you guess not?
11 A Well, no.
12 Q Have you ever known any homosexuals?
13 A Yeah.
14 Q Were they friends?
15 A Yeah.
16 Q And even though they have a different lifestyle than
17 yourself, you still regard them as your friends?
18 A Yeah.
19 Q Now, Mr. Dean, let me try and explain to you and if
20 you have any questions understanding what I'm saying,
21 don't be embarrassed about asking me to explain them
22 further. This case is a little bit different than
23 most crimes. This case is divided into two phases
24 because the State has requested the death penalty, do
25 you understand?

1 A Yeah.

2 Q The first phase consists of a trial determining

3 whether or not Mr. Rhines is guilty of first degree

4 murder. If the jury determines that the State has

5 proven beyond a reasonable doubt that Mr. Rhines is

6 guilty of first degree murder, then there is a second

7 phase and at the second phase the issue before the

8 jury is whether or not or what the proper or

9 appropriate sentence is and there are only two

10 options at the sentencing phase. If you find him

11 guilty of first degree murder, the two options are

12 life imprisonment without parole or death. You

13 should understand that the death penalty at the

14 sentencing phase is only to be considered as an

15 alternative, if the State proves what we call an

16 aggravating circumstances. That's kind of a thumb

17 nail sketch of whether you can consider the death

18 penalty and what happens at the second phase. I

19 should also emphasize that at no time is the jury

20 required by the Court to impose the death penalty,

21 that's strictly up to the jury, do you understand?

22 A Uhm-uhm.

23 Q Now, before I ask you another question you should

24 understand that in South Dakota life without parole

25 means what it says. If the jury were to impose that

1 sentence, that's exactly what would happen to Mr.
2 Rhines, he would spend the rest of his life behind
3 bars. On the other hand, if the jury imposes the
4 death sentence, that too is what happens. He's put
5 to death.

6 A Uhm-uhm.

7 Q Let me ask you, do you have any particular views
8 about the appropriateness of the death penalty?

9 A I guess it depends on the situation as far as I'm
10 concerned.

11 Q Can you elaborate on that?

12 A Depending on the seriousness of the crime and stuff.

13 Q You have got to understand that you could not reach,
14 consider the death penalty until you had first found
15 that he was guilty of first degree murder and then
16 made an additional finding of the existence of an
17 aggravating circumstance, do you understand that?

18 A Uhm-uhm.

19 Q It's only after that two-step process can you even
20 consider the application of the death penalty.

21 A Right.

22 Q Do you have some circumstances in your mind which
23 would make the death sentence appropriate as far as
24 you are concerned?

25 A I guess to a point I guess, yeah.

1 Q Can you tell me what point?

2 A Well, I don't know. I guess I have seen some

3 situations where I guess I thought it was

4 appropriate, just things that I have seen on

5 television and stuff.

6 Q What kind of situations have you seen?

7 A Well, for one thing to me when there is children

8 involved, when someone does something to children and

9 it's proven they did it, you know, to me that

10 warrants it, I guess.

11 Q What other circumstance, aside from children?

12 A I don't know.

13 Q Let's assume, take the circumstances that you

14 describe that there were children involved, why would

15 you think the death penalty is appropriate in that

16 circumstance as opposed to life imprisonment without

17 parole?

18 A I don't know. I don't know if it is appropriate. I

19 don't know, really. I don't really know what would

20 be, I guess, for sure.

21 Q Would you feel life imprisonment without parole is a

22 very severe sentence in itself?

23 A Yeah.

24 Q Have you ever thought about which, in your mind,

25 would be worse?

1 A Yeah, I guess so.

2 Q Which do you think would be the worse?

3 A I suppose I'd rather be alive than dead.

4 Q So you would think that the death sentence would be

5 more severe?

6 A Yeah..

7 Q As you sit there right now Mr. Dean, have you any

8 thoughts about whether or not the Defendant is

9 guilty?

10 A I don't know. I guess not. I don't know enough

11 about it.

12 Q Well, you understand that you have the presumption of

13 innocence and that the State has to prove the

14 Defendant guilty?

15 A Uhm-uhm.

16 Q So, is it fair to say that you really don't have any

17 feeling about the Defendant being guilty at this

18 point in time on the basis of what you might have

19 read or heard?

20 A I couldn't say -- I don't know.

21 Q Have you reached any conclusion at this point with

22 the sketchy information that you have as to whether

23 or not life imprisonment should be the sentence or

24 death?

25 A I don't know what would be right.

1 Q Would you give the matter a lot of thought before you
2 ever imposed the death sentence?
3 A Yeah.
4 Q Is your child living with you or your wife at the
5 present time?
6 A My wife. We have joint custody.
7 Q She lives in Hill City as well?
8 A They live in Rapid.
9 Q Does she work?
10 A Yes, for the Department of Revenue.
11 MR. GILBERT: Pass for cause.
12 THE COURT: State may inquire.
13 EXAMINATION BY MR. GROFF:
14 Q Mr. Dean, first thing I need to ask you, is there
15 anything about that experience ten years ago that
16 would cause you to think you couldn't be fair to the
17 State?
18 A No.
19 Q In terms of the way you were treated by the
20 prosecution or the Court?
21 A No.
22 Q I want to ask you a little bit about mainly the death
23 penalty today. Did you understand that we have got
24 these two separate phases we might be going through?
25 A Yeah.

1 Q The first phase, of course, if you found Mr. Rhines
2 not guilty, you'd never get to the second phase and
3 it would be all over. Assuming you found him guilty
4 then you'd move on to that second phase and as Mr.
5 Bulter told you, what I'd be trying to prove to you
6 in the second phase is that there was at least one
7 aggravating circumstance that made this case special.
8 In other words, it's not enough to find somebody
9 guilty of murder or premeditated murder, there has to
10 be something aggravating or special about it.
11 A Uhm-uhm.
12 Q Those are circumstances that our legislature has
13 drafted for us and the Court will instruct you what
14 might be relevant to this case and if the Court
15 instructs you what aggravating circumstances you
16 could consider or what would need to be proven before
17 you'd consider the death penalty, do you think you
18 could follow those circumstances, even if you
19 disagreed with them?
20 A I think I could as far as I know.
21 Q In other words, the law tells us what they are and
22 the Judge is going to tell you what the law is and
23 I'm asking you whether or not you think you can
24 follow the law?
25 A Yeah, as far as I know.

1 Q You understand, before you could ever consider
2 imposing the death penalty, I'd have to prove one of
3 those aggravating circumstances beyond a reasonable
4 doubt?

5 A Uhm-uhm.

6 Q Mr. Bulter was asking you about circumstances and you
7 mentioned children was something you thought came to
8 mind as a circumstance that might be appropriate for
9 the death penalty?

10 A Uhm-uhm.

11 Q Why is it that you feel that way with children? I
12 know some of these questions are being asked twice,
13 but this is the only time we have to talk to you.

14 A Well, I guess children are pretty helpless, what
15 happens to them in most circumstances, I don't know.

16 Q Can you think of, if you don't mind, I think it would
17 be helpful to us and if you can't think of any
18 others, that's all right. This isn't a test, but can
19 you think of any other situations at all that you
20 thought about personally or you seen on TV where you
21 thought the death penalty might be appropriate?

22 A One that comes to mind to me is just recently, I
23 can't remember who it was where they hung the
24 gentleman and he admitted to killing those kids and
25 said he would do it again if he got out, and to me

1 that was appropriate.

2 Q In that case was it a concern to you that he killed

3 the kids or a concern that he kind of chose that form

4 of punishment in terms of choosing hanging over some

5 other form of execution?

6 A Doesn't matter to me how they did it, just the fact

7 that -- I don't know, he pretty much said he would do

8 it again and what he did do was pretty bad, I

9 thought, and in that situation I could agree with

10 that. I don't know.

11 Q Are you telling me that as you analyze these kind of

12 cases, one of the things you look at is the how and

13 the why, how it happened and why it happened, is that

14 what you are saying?

15 A Yeah, I guess so.

16 Q I need to ask you some questions a little bit about

17 actually being on the jury, if that would be okay.

18 Do you remember when you got your questionnaire?

19 A Yes.

20 Q When you got your questionnaire and you filled it

21 out, did you ever think, I'm actually going to be

22 there in Court answering these questions?

23 A I thought it was possible, yeah.

24 Q Well, you are here and we are going through it and I

25 need to take you one step further, if I might, and

1 there is a very real possibility now that you are
2 going to be on the jury and if I may, what I am going
3 to try to attempt to do is, take you there to see
4 what it might be like on the jury. As I do that, I'm
5 not trying to get any commitments or promises from
6 you, I just want you to visualize yourself doing some
7 things on the jury?

8 A Okay.

9 Q If you are picked for this jury, and of course, you
10 would deliberate on the first part of the case and I
11 want you to assume that you did so and that you found
12 Mr. Rhines guilty, okay, just an assumption, and I
13 want you to assume that after you had done so you
14 went back and you considered the additional evidence,
15 if any, and you decided whether or not there was an
16 aggravating circumstance. Assume you found one and
17 let's assume then that you, along with your other
18 jurors decided the death penalty was appropriate,
19 just an assumption, you are not committed to that,
20 and also assuming all that, Mr. Dean, if you look
21 over in those chairs over there, if you reach that
22 verdict, sentencing verdict, then at some point in
23 time you would be called into the courtroom after you
24 told the Judge you had a verdict and in front of the
25 Judge and in front of the Defendant, Mr. Rhines, that

1 verdict, that unanimous verdict would be read, a
2 verdict putting Mr. Rhines to death. What I'm trying
3 to find out from you, Mr. Dean is, assuming the facts
4 were there and assuming you were convinced that that
5 was the right thing to do, can you visualize yourself
6 being part of a jury imposing the death penalty upon
7 someone, in this case, Mr. Rhines?

8 A I guess whatever the circumstances ended up being, I
9 don't know, I would do what I felt was right that's
10 all I can say really.

11 Q If I can just take it one step further for you. Same
12 thing, after the jury would return its verdict, as
13 you may know, maybe not, in criminal cases everybody
14 has to agree, in other words, an individual's vote
15 has to count and you couldn't have that individual
16 vote. One of the things that happens after a verdict
17 is returned is that the jury may be polled, that is
18 asked, each one individually, whether or not that is
19 their verdict. In other words, during that polling
20 process your name could be called out and they'd ask,
21 Mr. Dean, whether or not that was your verdict and
22 you'd have to respond before the Court and the
23 Defendant whether or not, yes, that is my verdict
24 imposing death upon someone right in front of you and
25 in that case, Mr. Rhines. Can you visualize yourself

1 being able to do that, if that was your verdict?

2 A If that ended up being a verdict, yes, I guess so.

3 Q Are you uncomfortable at all as you think about it?

4 A A little bit, yeah.

5 Q And can you tell me a little more about it. Is it

6 because us don't sit in judgment on someone else?

7 A It's pretty serious issue to me.

8 Q When you say it is a pretty serious issue to you, I

9 know it's important, but what is the thing that

10 really strikes you about it that makes it so sorry

11 serious?

12 A Well, you are basically making a decision about

13 somebody else's future in life.

14 Q Yeah, whether they're going to live.

15 A Right.

16 Q What I'm trying to determine is whether or not you

17 think you can make that kind of life or death

18 decision?

19 A As far as I know I think I could.

20 Q Do you have some reservations about it?

21 A I don't know. It's just pretty serious to me. It's

22 nothing I would take real lightly.

23 Q Do you think, Mr. Dean, that assuming you found the

24 Defendant guilty of first degree murder and you went

25 to that second stage, do you think as you went into

1 that second stage you'd sort of have a predisposition
2 towards one penalty or the other; do you see what I'm
3 getting at?

4 A Yeah. I don't know. A lot of it depends on a lot of
5 circumstances I guess.

6 Q Have you heard -- strike that. Do you have any
7 friends out there who are opposed to the death
8 penalty?

9 A I don't know. I guess it's not something really that
10 I can remember seriously talking about lately.

11 Q What I'm trying to get at is, let's assume that the
12 death penalty was the verdict of the jury, that you
13 were on and people knew ~~you were on~~ the jury and the
14 case was over and you rendered your verdict and you
15 went back out to your job in the community, can you
16 think of anybody out there that would give you a hard
17 time for coming back with the death penalty in this
18 case?

19 A No, not that I know of.

20 Q Did you understand from Judge Konenkamp the other day
21 what the burden of proof is in a criminal case?

22 A Yes.

23 Q What did you think that was from listening to Judge
24 Konenkamp?

25 A Well, beyond a reasonable doubt, it's got to be.

1 something that pushes it one way or the other, I
2 guess.

3 Q When we deal with the burden of proof, beyond a
4 reasonable doubt, the Judge will instruct you at the
5 end of the case what that means and you'll be able to
6 read the instructions and deliberate. You know
7 that's the same standards we have in a speeding
8 ticket case or a D.W.I. case or a theft case, right
9 down the line, it never changes, it's always proof
10 beyond a reasonable doubt. In other words, it
11 doesn't go up just because the charge is more
12 serious, it's always proof beyond a reasonable doubt.
13 Do you think that you would keep that burden where it
14 is, that proof beyond a reasonable doubt or just
15 because this is a pretty serious case involving
16 possible capital punishment that you'd raise it to an
17 absolute certainty, which has never been required by
18 our law?

19 A I guess I would just try to follow the way it's
20 supposed to go the way we will be instructed to do
21 it.

22 Q Same thing will come up in the second stage when you
23 consider the aggravating circumstances, if any. Once
24 again they'll have to be proven beyond a reasonable
25 doubt, but not to an absolute certainty, are you with

1 me?
2 A Yeah.
3 Q I'm wondering if you will keep the State's burden at
4 proof beyond a reasonable doubt and not raise to an
5 absolute certainty just because this is a murder
6 case? Do you think you can do that?
7 A I think I can.
8 Q What kind of work are you doing now, Mr. Dean?
9 A I do demolition work.
10 Q Who do you generally work for?
11 A Paul Mual.
12 Q Do you work with other people on the job there?
13 A Yeah.
14 Q How many people are on your crew?
15 A Full time there are six of us.
16 Q Generally, does you are crew work together most of
17 the time?
18 A Well, we sort of have our separate jobs we do, but we
19 work together, but yet they have, we have our certain
20 jobs and we basically do ours, I guess
21 Q Are most of these people in the Hill City area or
22 where do they live at?
23 A Custer most of them.
24 Q How much older is your brother than you?
25 A Year and a half.

1 Q You went to high school together in Hill City?
2 A Uhm-uhm.
3 Q On the questionnaire and during Mr. Butler's
4 questioning you mentioned a little bit about the
5 divorce situation. Did you have a lot of anger about
6 that divorce?
7 A Yeah.
8 Q Would you consider yourself to be a very emotional
9 person?
10 A Not generally. That was a pretty rough time for me.
11 Q If I stayed general about it, could we talk about it
12 a little bit?
13 A Yeah.
14 Q Did it come as a surprise to you when it happened?
15 A Uhm-uhm.
16 Q And I take it you were very close to your daughter?
17 A Yeah.
18 Q You were very close to your child?
19 A Yeah.
20 Q Has it made it difficult in terms of visitation, made
21 it difficult to see your child since the divorce?
22 A No, that's something we never had any trouble with.
23 Q Would it be fair to say that at least in your mind
24 that it was a marriage that you hoped was going to
25 work?

1 A Yeah.
2 Q Even after these many months, are you completely over
3 it?
4 A Not completely.
5 Q There is still a lot of pain involved?
6 A Yeah, a little.
7 MR. GROFF: Thank you for bearing with me. Pass for
8 cause.
9 THE COURT: Mr. Dean you remain a prospective juror on
10 this case and it's very important that you not
11 discuss this case with anyone or let anyone talk to
12 you about it and also that you not read or listen to
13 or view any media accounts concerning this case. Do
14 you promise me you'll not do these things?
15 MARK DEAN: Yeah, I do.
16 THE COURT: We will contact you when we are ready to have
17 you come back in, but in the unlikely event that we
18 are unable to reach you, I'd ask that you call us
19 tomorrow afternoon and check in with us to make sure
20 that we haven't been trying to reach you. Defense
21 may exercise. The record will show that the defense
22 has exercised its 17th peremptory challenge and the
23 Clerk will call in the next prospective juror. Good
24 morning, Miss Woodson?
25 WILMA WOODSON: Good morning, Judge.

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

COUNTY OF PENNINGTON)

SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

Plaintiff,

v.

JURY TRIAL

CHARLES RUSSELL RHINES,

93-81

Defendant.

VOLUME VIII

PROCEEDINGS: The following matters were had before the
HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 12th and 13th
days of January, 1993.

APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
MR. MARK VARGO
State's Attorney's Office
Pennington County
Rapid City, South Dakota

FOR THE STATE

MR. JOSEPH BUTLER
Attorney at Law
PO Box 2670
Rapid City, South Dakota and

MR. WAYNE GILBERT
Attorney at Law
3202 West Main Street
Rapid City, South Dakota and

MR. MICHAEL STONEFIELD
Public Defender
Pennington County
Rapid City, South Dakota

FOR THE DEFENDANT

1 THE COURT: Good afternoon, sir. You timed it just
2 right. We appreciate your patience in waiting all
3 afternoon for us
4 We previously swore you in, so you remain under oath
5 now. The defense may inquire.

6 (Prospective Juror WILLIAM BROWN, having previously been
7 sworn, testified as follows.)

8 EXAMINATION BY MR. STONEFIELD:

9 Q You are William Brown?

10 A Yes.

11 Q I'm Mike Stonefield and I'm one of the attorneys
12 representing Charlie Rhines who's the man seated
13 right here in front of me and this is Joe Bulter
14 another attorney and Wayne Gilbert another attorney
15 on his case. You sat through the orientation process
16 last week and you understand generally what it is we
17 are here for today?

18 A Uhm-uhm.

19 Q You understand that Mr. Rhines is charged with murder
20 in first degree murder?

21 A Yes.

22 Q I'd like to ask you, first of all, and we will be
23 having a number of questions for you, but first of
24 all, if you could tell us what, if anything, you know
25 about this case?

1 A Only thing I know is what I heard on the television.
2 Q I'll ask you to be specific about what you heard on
3 the television as best as you can remember?
4 A That the boy was killed and that he worked in a donut
5 shop, I think and that's about it.
6 Q Anything more than that?
7 A At that time it took them awhile to arrest somebody.
8 Q Have you heard or read anything about the case
9 recently?
10 A Just what is on television, that they're selecting a
11 jury and I knew that from being here.
12 Q Would you say that over the months, over the past few
13 months that your knowledge about this case has come
14 from discussing it with other people or hearing about
15 it on television or reading about it in the newspaper
16 or has it been from all those things?
17 A Just basically television.
18 Q Do you recall ever reading anything in the newspaper
19 about it at all?
20 A I don't get the paper.
21 Q Do you read it at all regularly or at all?
22 A No.
23 Q Have you ever heard anybody express an opinion about
24 Mr. Rhines?
25 A No.

1 Q Have you ever heard anybody express an opinion about
2 Mr. Rhines as to whether he's guilty or not guilty of
3 these charges?
4 A No.
5 Q Have you yourself ever formed any kind of an opinion
6 about that?
7 A No.
8 Q One of the things that was discussed the other day
9 during the orientation process and this is something
10 maybe you are familiar with, was the legal concept of
11 the presumption of innocence; do you remember hearing
12 about that?
13 A Uhm-uhm.
14 Q Do you feel that you understand what that means?
15 A Yes, I think so.
16 Q Any person charged with a crime is presumed to be
17 innocent and that presumption follows him throughout
18 the entire case unless it's overcome by evidence
19 beyond a reasonable doubt?
20 A Yes.
21 Q And do you believe you understand that?
22 A Yeah.
23 Q And you feel that that's a good presumption to have?
24 A Yes.
25 Q As you sit there right now, do you have any problem

1 applying that presumption of innocence to Charles
2 Rhines?
3 A No.
4 Q None whatsoever? Okay. You understand why we have
5 to ask about this?
6 A Oh, yeah.
7 Q I don't mean to seem like I'm prying or anything, I
8 just want to be as clear on a number of things as I
9 can and you understand why we are doing this?
10 A Uhm-uhm.
11 Q You have never served on a jury before?
12 A No.
13 Q You did mention one thing, Mr. Brown, you had a
14 custody case apparently parental custody of your
15 daughter a few years ago?
16 A I have custody of my daughter and we've been in Court
17 ten times and it's been up to the Supreme Court and
18 there is another hearing coming up. It's been in
19 Court since 1986 and it's still in Court.
20 Q And it's still unresolved?
21 A It's been resolved several times.
22 Q But it keeps being opened up again?
23 A Right.
24 Q You have custody now?
25 A Yes.

1 Q That's the daughter you had gone to pick up from
2 school?
3 A Yes.
4 Q She's eight years old?
5 A Uhm-uhm.
6 Q Your employment -- apparently you do a couple of
7 different things and right now you are a carpenter?
8 A Yes.
9 Q And you are also going to school?
10 A Yes.
11 Q At Black Hills?
12 A At the air base.
13 Q Are you going full-time?
14 A Six hours.
15 Q You spend six hours a week in class?
16 A This semester would be, Thursday, from four to ten.
17 Q Just one day a week.
18 A Right.
19 Q But it's six hours?
20 A Yes.
21 Q When does that semester start?
22 A In two weeks.
23 Q Have you registered for the class already?
24 A Uhm-uhm.
25 Q Have you paid any kind of money or anything?

1 A I have a student loan a PEL Grant.
2 Q If you were to be selected on this case and the case
3 were to take several weeks and you were required to
4 be in here every day, would that mean you couldn't
5 take the class?
6 A No, I could make arrangements.
7 Q You understand on Thursday you might not necessarily
8 be able to leave in time to get out there?
9 A Yes.
10 Q Do you understand that we really can't tell you what
11 kind of a time schedule you'd be on or anything like
12 that?
13 A With what?
14 Q With having to be in Court. We can't tell you that
15 we'd start at a set hour or quit at a set hour every
16 day, that kind of thing?
17 A I have made arrangements. I have someone that will
18 watch my daughter if I need to stay late a few days.
19 Q As far as school, do you see any problem with it?
20 A No.
21 Q Even if perhaps you had to miss a Thursday or more
22 than one Thursday altogether?
23 A They're history classes and I can read the book.
24 Q You don't see a problem with that?
25 A No.

1 Q You did mention another thing about your daughter.
2 You indicated in an answer to the questionnaire here
3 that there might be a problem, what you said is, if I
4 was unable to see and spend time with my daughter
5 beyond two to three days, I am a single parent and
6 you indicated that as a possible problem?
7 A Well, I didn't know if during this if you had to stay
8 here overnight the entire time or how you guys run
9 the Court process.
10 Q I can't tell you with any kind of certainty now how
11 you would work it, but I can tell you that there is
12 at least a possibility that you might be required to
13 be sequestered for a time to where you couldn't go
14 home for a time, whether it would be beyond two or
15 three days, that I can't say. Can you see that as a
16 problem of being able to sit on the case if it came
17 to that?
18 A I guess I can make arrangements, if I have to.
19 Q So you are saying that you wouldn't see it as a
20 problem?
21 A No. Well, if I am to sit and it wasn't a month or
22 something.
23 Q I wouldn't anticipate that it would be a month but
24 you understand that I can't tell you that and nobody
25 can tell you right now whether it would happen or if

1 it did how long it would be?

2 A Yes.

3 Q So you are telling us that you don't see it as a

4 problem?

5 A I can make arrangements.

6 Q Is it the kind of thing that might cause you to be

7 concerned to an extent that your attention would be

8 diverted away from the case here?

9 A All I can say is if it was for a very long time.

10 Q What do you mean by a very long time?

11 A A week to me, that would be a little long. She goes

12 to Alaska in the summer, so I don't see her for ten

13 weeks at a time.

14 Q So it has a possibility of being a problem, at least?

15 A Yes.

16 Q Mr. Brown, one of the things that was discussed with

17 you the other day when you went through this

18 orientation process was the fact that the death

19 penalty is potentially involved in this case. Do you

20 remember hearing about this?

21 A Yes.

22 Q Were you aware of that before last Monday?

23 A No.

24 Q I'll take a little time and explain how things would

25 go in a case like this, but as a general question, do

1 you have, as you come into the courtroom here, do you
2 have any opinions one way or another just in general
3 about the appropriateness of the death penalty?
4 A I believe there are times when it's appropriate.
5 Q That's just a general opinion you have?
6 A Yeah.
7 Q Can you give us any kind of idea as to what things in
8 your mind you think it might be appropriate?
9 A On treason, crimes against the government, spying,
10 and so forth, crimes against children.
11 Q Anything else in particular?
12 A Exceptionally brutal maybe.
13 Q Let me take a minute and go through with you the
14 procedure about how this case would work, what would
15 be presented to you if you were to sit. The first
16 part of the case would be just like the first part of
17 any criminal case or the trial of any criminal case
18 where evidence is presented and the jury makes a
19 decision as to whether or not the person charged is
20 guilty and if the person is not proven guilty or the
21 jury doesn't feel that he's been proven guilty that
22 would be the end of the case. There wouldn't be
23 anything further and we wouldn't get into punishment
24 or anything like that if there was an acquittal. If,
25 however, there was a conviction and the jury found

1 that Mr. Rhines was guilty of first degree murder,
2 then we would move on to a second part or second
3 trial basically; do you understand this so far?
4 A Uhm-uhm.
5 Q The death penalty would come into play if the jury
6 found Mr. Rhines guilty of first degree murder and
7 then we would move to a second trial where there
8 could be new evidence and arguments made and then the
9 jury in this case would be the same jury that heard
10 the evidence in the first trial and they would then
11 have to make a decision as to whether or not, first
12 of all, whether or not there were certain
13 circumstances surrounding the case, what the law
14 calls aggravating circumstances, whether one or more
15 of those things surrounded the case, do you
16 understand that so far?
17 A Yes.
18 Q If the jury found there were these circumstances and
19 these circumstances did exist in this case, then the
20 jury would have a second determinations to make and
21 that second determination would be whether the death
22 penalty was the appropriate penalty. So you
23 understand that this could be a two-trial process
24 basically?
25 A Uhm-uhm.

1 Q First part of it would be determining guilt or
2 innocence and if the determination was innocence that
3 would be the end of the case. And if the
4 determination was guilty of first degree murder, we
5 would get into the second part and I explained that a
6 little bit. Do you feel you have understood so far
7 what I have gone through?
8 A Yes.
9 Q Given your opinions about the death penalty, what you
10 feel about the death penalty and what you bring in
11 here, the ideas about it that you bring in here
12 today, I'll ask you to just make some assumptions
13 here, to assume some things. Assuming that you sat
14 on the jury and the jury found Mr. Rhines guilty of
15 first degree murder, assuming that, do you feel then
16 at that point that in your mind the death penalty
17 should follow, automatically?
18 A Not necessarily.
19 Q Do you think you would want to hear other things?
20 A Uhm-uhm.
21 Q You'd be willing to consider other circumstances?
22 A Yeah.
23 Q What kind of other things do you think you'd be
24 interested in hearing about if you have any idea in
25 your mind?

1 A To know what happened and why.
2 Q Can you think of anything else? Could you say that
3 your opinion about the death penalty is such that you
4 can think of certain cases where if the person is
5 proved to have done something that it should
6 automatically follow that they be executed?
7 A I really don't understand what you want.
8 Q Again I'm asking you to maybe make some kind of an
9 assumption here. Can you think, in your mind, of any
10 type of situation any type of crime that you may have
11 heard of or that you can think of in your mind that
12 would be so serious or so severe that the person who
13 did that should be executed, should just
14 automatically be executed?
15 A I don't think anybody should just automatically be
16 executed. It's pretty serious.
17 Q Would you say that there is something, this talk
18 about the death penalty is it something that you ever
19 thought about much in your life?
20 A I have always had just kind of basic opinions, you
21 know, that there are some things that people do.
22 Q Some things?
23 A Some things.
24 Q I'm interested -- you indicated here as far as your
25 education, that you were a sociology student?

1 A Major.
2 Q Your degree is in sociology?
3 A Yes.
4 Q Did your studies in sociology ever involve any
5 discussion study of the death penalty?
6 A Not any class spent on it.
7 Q Do you recall the subject even coming up in a text or
8 in a discussion or anything like that?
9 A It has, yes. I don't recall the specifics.
10 Q You heard about the death penalty being involved in
11 this case since last Monday and have you thought at
12 all about your feelings or re-examined them or
13 anything like that?
14 A I would have to be shown that it was extremely
15 appropriate.
16 Q And I believe we talked before about my question
17 about the automatic nature of it and you said in your
18 opinion it would never be automatic.
19 A Right.
20 Q Is that right?
21 A No.
22 Q Am I right in assuming that?
23 A Yes.
24 Q As you said you'd want to hear other things?
25 A Yeah.

1 Q You indicated on the questionnaire that you are a
2 member of St. Andrews Episcopal Church here in town.
3 Do you attend regularly?
4 A On a monthly basis.
5 Q Does your daughter go with you or more often?
6 A Nope, that's the only time she goes to church.
7 Q Again, a question I want to ask, and I don't mean to
8 seem like I'm prying, but I'll ask, do you consider
9 yourself to be a religious person?
10 A I would call it more spiritual than religious.
11 Q You indicated on the questionnaire here that you
12 lived in South Dakota for most of your life. Where
13 were you born at?
14 A Columbus, Ohio.
15 Q Did you live in Ohio all...
16 A We moved here when I was in second grade.
17 Q Are your parents still living here?
18 A They're both dead.
19 Q What did your father do?
20 A He owned Chris Supply and he serviced music theaters
21 and fixed the sound systems.
22 Q Do you have brothers and sisters?
23 A I have a brother and two sisters. My brother runs
24 Chris Supply now and my sisters live in California
25 and Washington State.

1 Q Do you still stay in touch with them?
2 A Yes.
3 Q Are they younger or older?
4 A One sister is older and my one brother and other
5 sister are younger.
6 Q They all have kids?
7 A Yeah. My brother doesn't.
8 Q As siblings, do you still get together whenever you
9 can?
10 A Yeah, when I go to Alaska the end of the summer to
11 pick up my daughter, I go through California or
12 Washington and visit them.
13 Q One thing I'm curious about, the Court system or
14 having been involved in a fairly lengthy Court
15 process, is there anything about that that you think
16 that we should know that has maybe changed your
17 opinion about the Court system or made you more
18 distrustful of it or would you say maybe it's made
19 you more respectful?
20 A I found that it works.
21 Q Before this incident with the custody incident had
22 you ever been involved in the Court system before?
23 A I had been in Court for driving offenses.
24 Q Minor type things?
25 A Uhm-uhm.

1 Q I don't believe I asked you this, Mr. Brown, one of
2 the things that you are going to hear testimony about
3 is that Charlie Rhines is a homosexual and you are
4 also going to hear testimony that he may have had a
5 relationship with one or more of the people that are
6 witnesses in this case. Hearing that from us, does
7 it in any way change your opinion about him or how
8 you would view him?
9 A No, I don't think so.
10 Q Have you ever known anyone who is gay?
11 A Yeah.
12 Q A friend?
13 A A friend of a friend.
14 Q Would you say that in any way whatsoever that you
15 feel that knowing that about him that you feel that
16 maybe his lifestyle is sinful or that it changes your
17 opinion about him in any kind of a way?
18 A I don't think so.
19 Q Would you take a look at this list of names and if
20 you would read that over and tell us if you recognize
21 any of those names.
22 A I don't recognize any of those names.
23 Q Mr. Brown, there is a very real possibility that
24 you'll be called to serve as a juror on this case, do
25 you think there is anything that we haven't discussed

1 here in this few minutes that wasn't talked about in
2 the questionnaire, anything else that you think we
3 should know about in coming to our decision as to
4 whether or not you should sit on this case; anything
5 that comes to your mind whatsoever?
6 A Well, the only thing I can think of is the next
7 custody hearing is the 10th of February, but I'm sure
8 that can be postponed.
9 Q Do you have an attorney involved in that?
10 A Yes.
11 Q I expect if it was necessary you could probably talk
12 to your attorney about moving it; do you think that
13 could be arranged?
14 A Uhm-uhm.
15 Q Anything else that you can think of?
16 A Only thing I can say, I would want to make sure I did
17 a good job parenting my daughter. That's the only
18 thing, I wouldn't want to be away a long, long time.
19 Q You indicated before you think that from what we've
20 discussed with you at least you think that it could
21 be...
22 A It doesn't sound to me like it would be more than a
23 couple of days
24 Q I want to be clear what you meant by that?
25 A That amount of time would be okay. I'm talking if it

1 goes a month or something.

2 Q You understand that if the trial goes two or three

3 weeks or however long it might go, that you'd be

4 required to be here every day during the day to

5 listen to evidence?

6 A Right.

7 MR. STONEFIELD: Thank you, Mr. Brown.

8 THE COURT: State may inquire.

9 EXAMINATION BY MR. GROFF:

10 Q I'm Dennis Groff and I'm the State's Attorney and if

11 you are picked on the jury I am going to have the

12 chance to present the State's evidence and so I need

13 to ask you some questions, is that all right?

14 A Yes.

15 Q I wanted to mainly go through this procedure on the

16 death penalty and see if you understand it and see if

17 you can follow the law, is that all right?

18 A Yes.

19 Q From talking to Mr. Stonefield, did you understand

20 first of all that we might have two stages here?

21 A Right.

22 Q The first stage is whether or not Mr. Rhines is

23 guilty of first degree murder.

24 A Right.

25 Q If you find him guilty of first degree murder, you

1 move to the second stage, sentencing.

2 A Right.

3 Q What I am going to be attempting to prove at the

4 second stage is that there is at least one

5 aggravating circumstance that makes this first degree

6 murder special; do you understand, something that

7 aggravates it to the point where you can consider the

8 death penalty. Did you understand that from Mr.

9 Stonefield?

10 A Uhm-uhm.

11 Q Now, the first thing I want to ask you is, the Judge

12 is going to instruct you as to what those aggravating

13 circumstances are that you'll have to consider,

14 whether or not they have been proven and what I need

15 to know is, even if you disagree with those, do you

16 think you can follow the Court's instructions?

17 A Uhm-uhm.

18 Q Now, the next thing is, when you get to that second

19 stage, I'm not sure if you will get more evidence

20 from the State or not. In other words, you may just

21 be asked to consider the evidence you heard in the

22 first part of the trial, only now to consider it for

23 sentencing purposes. If that were to occur, do you

24 think you could follow the Court's instructions on

25 that?

1 A Yes.

2 Q That would look into the how and why as to what

3 happened with respect to the alleged death?

4 A Yes.

5 Q What I wanted to get to now for a moment is the

6 concept of being on this jury, if that would be okay.

7 Do you remember when you got the questionnaire, Mr.

8 Brown?

9 A Yeah.

10 Q When you got that questionnaire and filled it out,

11 did you think you might actually be here in Court

12 answering these type of questions?

13 A No, I didn't figure it would go this far.

14 Q As Mr. Stonefield said, there is a real possibility

15 you'll be on this jury now, okay?

16 A Okay.

17 Q So, even though you didn't know you'd be here you

18 actually might be on the jury. What I need to talk

19 to you about is visualizing being on the jury, if

20 that's okay with you. This will require some

21 assumptions when I go through those assumptions I

22 don't want you to necessarily think any of that has

23 happened, I want you to assume it for purposes of

24 putting you in that position. I want you to assume

25 for a moment that you are on the jury and that you

1 have gone through that first stage and just assume
2 now that you have found enough evidence and you
3 believe that Mr. Rhines is guilty and you returned
4 that verdict finding him guilty of first degree
5 murder. Are you with me?

6 A Uhm-uhm.

7 Q Just an assumption, and I wanted you to assume that
8 you get to the second stage and you hear all the
9 evidence in that second stage and you go back and a
10 later, assuming that the jury finds one aggravating
11 circumstance, do you know what we are talking about
12 there, and assume that the jury, after they hear that
13 and consider all the evidence and the Court's
14 instructions, let's assume that the jury, including
15 you, decides unanimously that the death penalty is
16 appropriate, just an assumption now, if that were the
17 case, do you see those chairs over there, Mr. Brown?
18 If we are in this courtroom those are probably the
19 chairs you'd come back to and sit in when your
20 verdict was read?

21 A Okay.

22 Q What I am trying to find out is, based upon our
23 thoughts about the death penalty and knowing about
24 what could be involved, do you think you can
25 visualize yourself, if the facts warrant it, do you

1 think you can visualize yourself coming back with
2 your fellow jurors and having your verdict read, your
3 unanimous verdict read in front of the Court and the
4 Defendant announcing that it was your decision to put
5 him to death. Do you think you could do that if the
6 facts were there?

7 A Yeah, I could. I would have to be convinced.

8 Q I understand, sir. Let's assume after that verdict
9 was read this is kind of the same question. After
10 the verdict was read sometimes in these criminal
11 cases because they have to be a unanimous verdict,
12 each juror is asked individually, is that your
13 verdict, and they'd come to you and say, Mr. Brown,
14 is that your verdict and then once again, not with
15 that unanimity anymore one by one you'd have to
16 announce whether it was or not if you reached that
17 verdict and you were convinced, can you visualize
18 yourself facing the Judge and Defendant saying, yes,
19 that is my individual verdict putting you to death?
20 Do you think you could do that if you were convinced?

21 A If that is the conclusion I had come to.

22 Q I hope I'm not offending you, I just want to see if
23 you can face that moment if it happens?

24 A It sounds frightening.

25 Q Next thing I want to talk to you about a little bit

1 is about the concept of getting hassled after the
2 trial is over. Do you know anyone that is opposed to
3 the death penalty real strongly?
4 A No.
5 Q So you can't think of anyone that necessarily would
6 give you a hard time if you rendered that verdict and
7 left the courthouse; can you think of anybody that
8 would give you a hard time for rendering that
9 verdict?
10 A I don't think so.
11 Q When we are dealing with the proof in the first part
12 on guilt or innocence or whether we are dealing with
13 the proof on the second part on aggravating
14 circumstances, it's always proof beyond a reasonable
15 doubt. Did you hear the Judge talk about that the
16 other day?
17 A Uhm-uhm.
18 Q And to tell you about that again, you know if you get
19 on the case, but one thing it isn't proof to an
20 absolute certainty?
21 A Yes.
22 Q And no matter what the cases are, whether it's a
23 speeding ticket or D.W.I. right down the line any
24 case in our Court system that deals with the criminal
25 or traffic laws has the same standard of proof, in

1 other words, it always stays level, proof beyond a
2 reasonable doubt, it doesn't go up to an absolute
3 certainty just because it gets to be a more serious
4 case, do you understand?

5 A Yes.

6 Q Just because this is a very serious case, do you
7 think you would make the State prove its case to an
8 absolute certainty or could you keep the standard
9 where the law has instructed, to proof beyond a
10 reasonable doubt?

11 A The reasonable doubt sounds to me that you would have
12 convinced me.

13 Q Before I sit down, you told Mr. Stonefield you
14 thought about treason and...

15 A Crimes against children.

16 Q And extremely brutal deaths, is that what you said?

17 A Yes.

18 Q Any other circumstances you can think of that
19 wouldn't make it automatic or circumstances where you
20 think the death penalty might be appropriate?

21 A Not really. I would think of something.

22 Q You would consider the aggravating circumstances
23 instructed to you by the Court?

24 A Oh, yeah.

25 MR. GROFF: Thank you, sir. Pass for cause.

1 THE COURT: Mr. Brown, you do now remain a prospective
2 juror on this case and I should tell you that we
3 probably will know tomorrow whether you'll be on the
4 final jury panel. In the meantime, it's very
5 important that you not discuss this case with anyone
6 or let anyone discuss it with you and you should not
7 allow someone to discuss it in your presence even.
8 Also, you should not listen to or watch or read any
9 news media accounts concerning this case. Can you
10 promise me you'll not do these things?
11 WILLIAM BROWN: Yes.
12 THE COURT: If you have not heard from us by tomorrow
13 afternoon, would you please call the Clerk's Office
14 to check in?
15 WILLIAM BROWN: Yes.
16 THE COURT: Thank you, sir. You are excused for now.
17 Could I see counsel for a minute? Who was the
18 prospective juror who inverted the Golden Rule, do
19 unto to others as they'll do...
20 MR. BUTLER: Frazey. I don't know if he...
21 THE COURT: I'm having some questions in my mind about
22 this gentleman. I know there was a challenge.
23 MR. BUTLER: We were going to make a record that
24 requested an additional peremptory.
25 THE COURT: Well, I'm reconsidering it, so if you want to

1 STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

2 COUNTY OF PENNINGTON)

SEVENTH JUDICIAL CIRCUIT

3
4 STATE OF SOUTH DAKOTA,

5 Plaintiff,

6 v.

JURY TRIAL

7 CHARLES RUSSELL RHINES,

93-81

8 Defendant.

VOLUME VIII

9
10 PROCEEDINGS: The following matters were had before the
11 HONORABLE JOHN K. KONENKAMP, Circuit Judge at
12 Rapid City, South Dakota, on the 12th and 13th
days of January, 1993.

13 APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
14 MR. MARK VARGO
15 State's Attorney's Office
16 Pennington County
17 Rapid City, South Dakota

18 FOR THE STATE

19 MR. JOSEPH BUTLER
20 Attorney at Law
21 PO Box 2670
22 Rapid City, South Dakota and

23 MR. WAYNE GILBERT
24 Attorney at Law
3202 West Main Street
Rapid City, South Dakota and

MR. MICHAEL STONEFIELD
Public Defender
Pennington County
Rapid City, South Dakota

FOR THE DEFENDANT

1 (Prospective Juror JUDY SHAFER, having previously been
2 sworn, testified as follows:)

3 EXAMINATION BY MR. GILBERT:

4 Q Your name is Judy Shafer?

5 A Uhm-uhm.

6 Q Mrs. Shafer, I'm Wayne Gilbert and to your far left
7 is Joe Bulter and Mike Stonefield and the three of us
8 represent Charles Rhines, he's the gentleman seated
9 here in the middle of the table with a gray coat on,
10 the Defendant in this case. Could you look over that
11 list of names that's there in front of you and see if
12 any of them are familiar to you?

13 A No.

14 Q The questionnaire you filled out awhile back, copies
15 of that have been made available to us and obviously
16 not so we can pry into your private affairs, but
17 because of the process that we are going through in
18 making sure that a fair and open minded jury can be
19 seated in this case. I just have a couple of
20 questions about some of the matters on the
21 questionnaire. You are a single parent of two
22 children?

23 A Yes.

24 Q And you live in Hill City some distance away?

25 A Yes.

1 Q If you were seated as a juror in this case and had to
2 sit and come into Rapid City every day for three or
3 four weeks, would that present any hardships or
4 problems for you as far as your family is concerned
5 in taking care of your kids?
6 A No. Their dad lives a block away. He has custody.
7 Q How about as far as your work is concerned, would it
8 be a problem?
9 A Not this time of year.
10 Q Before you came here a week ago yesterday for the
11 first time had you heard anything about this case?
12 A Very little to be honest with you. I knew that a
13 young man was killed in a donut shop. I didn't know
14 if he was stabbed or shot. The other day I seen it
15 on the news, that the man that had done it was, I
16 thought they said he was arrested in a nearby state
17 like Colorado or something. Other than that I don't
18 know too much about it.
19 Q Based on what you have heard, do you come here today
20 with any ideas that Mr. Rhines is probably guilty of
21 this charge?
22 A No.
23 Q You were called as a juror approximately eight years
24 ago, you were called in, but didn't actually serve?
25 A That's right.

1 Q Were you at the point where you were questioned or
2 part of the group of people that were questioned?
3 A No.
4 Q Other than that, you haven't served on a jury before?
5 A No.
6 Q Have you or any member of your family or close
7 friends ever been touched in some way by the criminal
8 justice systems, maybe subpoenaed as a witness or
9 been a victim of a crime or a Defendant?
10 A No.
11 Q Had you heard of the presumption of innocence before
12 the Court's instructions that were read to you a
13 little over a week ago yesterday?
14 A Yes.
15 Q Generally, are you in agreement with that idea?
16 A Yes.
17 Q So, would you agree that the State has the burden of
18 proof beyond a reasonable doubt and that the
19 Defendant is not obligated or shouldn't be expected
20 to put on any evidence at all?
21 A Yes.
22 Q If I were to ask you to assume right now that just
23 assume that the defense in this case doesn't plan on
24 putting on any evidence at all, would that change how
25 you look at the case at all or would you still

1 benefit Mr. Rhines with the presumption of innocence?

2 A Yes, I would benefit him.

3 Q There is going to be evidence in this case that Mr.

4 Rhines is a homosexual and one or two of the

5 witnesses in the case are also homosexuals who might

6 be called, had you heard that before?

7 A No.

8 Q Knowing that, does that change either your view of

9 Mr. Rhines as to how he ought to be treated or what

10 kind of proof ought to be required in a case like

11 this?

12 A No. I have friends that are also.

13 Q And knowing that, that doesn't change your friendship

14 or relationship with them?

15 A No.

16 Q Had you heard or did you know before you came here to

17 Court a week ago yesterday that the State was

18 requesting the death penalty in this case?

19 A Yes.

20 Q Do you have any general views or opinions about the

21 death penalty?

22 A I don't know. I guess I feel if you intentionally

23 take a life you maybe should be prepared to give your

24 own. It would be real hard to do that, though, if

25 that was up to you.

1 Q You mean it would be difficult to actually make the
2 decision?
3 A Right.
4 Q Well, before I get into some of the details about the
5 process involved, you said it would be difficult to
6 make a decision, but do you think, given your beliefs
7 about the death penalty, that you could be part of a
8 jury that would make a decision one way or the other
9 on the death penalty?
10 A Yes.
11 Q Knowing it would be difficult, but you could still do
12 it if you were called on?
13 A Yes.
14 Q When the State requests and asks that the Defendant
15 be executed if he's found guilty, there is a trial
16 here and once the jury is seated where the State
17 presents the proof that it has and asks the jury to
18 find the Defendant guilty of first degree murder.
19 Now, if the jury is convinced beyond a reasonable
20 doubt that the State has proved it and that the
21 Defendant is guilty of first degree murder, then
22 there is a second phase, a second stage maybe even
23 like a second trial and at that second trial the
24 Judge would give you more instructions and would
25 define for you what is called aggravating

1 circumstances. These are situations which make a bad
2 thing worse, because if you get to the second phase
3 that would mean that the jury has unanimously found
4 the Defendant guilty of first degree premeditated
5 murder. At the second stage then the Judge would
6 define these things for you called aggravating
7 circumstances and you would be asked to make another
8 decision, another two decisions, actually. The first
9 decision would be if you find that the aggravating
10 circumstances, that one or more of them have been
11 proved beyond a reasonable doubt, if you are
12 convinced of that unanimously, then you make a second
13 decision and that second decision is, should the
14 Defendant receive life imprisonment or should he be
15 executed. I want to tell you right now that, in
16 South Dakota life imprisonment means life without
17 possibility of parole. If the jury's final decision
18 in this case is that Mr. Rhines should receive a life
19 imprisonment term, he'll never get out. It would be
20 the rest of his life in prison. If the jury's final
21 decision in this case is the death penalty, that will
22 be carried out. In South Dakota there won't be any
23 stay of execution or something to happen to save his
24 life. So, it is the jury's decision and that doesn't
25 happen in any other kind of criminal case. In all

1 other kinds of criminal cases in South Dakota the
2 judge makes the sentence, but because the death
3 penalty is involved here the jury makes the sentence.
4 It doesn't have to be the death penalty. There is no
5 situation where the jury would ever have to. Even if
6 you find an aggravating circumstance, even then you
7 make that decision should it be death or life without
8 parole.

9 When I asked you a few minutes ago if there were
10 circumstances which you could think about that the
11 death penalty would be appropriate, and you said
12 something like, and I may get this wrong, where a
13 person intentionally takes someone else's life then
14 he should be prepared maybe to pay with his own. I
15 think you said something like that. Now, knowing
16 that there is this process you have to go through and
17 there are two stages and that the aggravating
18 circumstances have to be proved beyond a reasonable
19 doubt and even then you are not required to impose
20 the death penalty, do you think that if at the end of
21 the first stage you are satisfied beyond a reasonable
22 doubt that the Defendant has been proved guilty of
23 first degree, premeditated murder, that you'd want
24 right then and there to impose the death penalty or
25 would you want to know more or think about it more?

1 A I think I would probably want to think about it more.
2 Q So there wouldn't be any automatic decision on your
3 part as far as the death penalty is concerned?
4 A No.
5 Q Would you say that you are a religious person?
6 A Not a lot, no.
7 Q Do you believe in God?
8 A Yes.
9 Q Is there anything about the beliefs that you have
10 about religion and God that affect how you view a
11 request for a death penalty in a case?
12 A No.
13 Q Would you say that you place a high value on human
14 life?
15 A Yes.
16 Q Is that why you said that it would be a difficult
17 decision to have to make?
18 A Yes.
19 Q Do you think that if you were on a jury that
20 unanimously found guilty of first degree,
21 premeditated murder, beyond a reasonable doubt, at
22 that point you'd be leaning one way or the other?
23 Would you be kind of leaning towards the death
24 penalty or leaning away from the life imprisonment?
25 A I don't know if I could say either way.

1 Q You'd be entering that second phase if you get that
2 far with an open mind on that?

3 A Uhm-uhm.

4 Q Can you think of any circumstances in which you think
5 the death penalty ought to be automatic, where you
6 don't even need to hear about aggravating
7 circumstances, just think that what's happened is so
8 bad that it just ought to be the death penalty?

9 A No.

10 Q In other words, would it be fair to say that no
11 matter how horrible the murder or crime was you'd
12 want to know more before you made a decision to have
13 a Defendant put to death?

14 A Yes.

15 MR. GILBERT: No further questions.

16 EXAMINATION BY MR. GROFF:

17 Q Ma'am, I'm Dennis Groff and I'm the State's Attorney
18 and I am going to have the chance over the next
19 couple of weeks to present the State's case to you
20 and because I am going to be doing that, one of the
21 things I do first is to pick a jury that could be
22 fair to both sides and do you understand that the
23 State has asked and I have asked for the death
24 penalty in this case, and do you understand that now?

25 A Yes.

1 Q And do you know from what Mr. Gilbert told you that
2 it's not the Judge that does that, 12 people that we
3 select here?
4 A Yes.
5 Q Can you understand how important this process is?
6 A Yes.
7 Q As Mr. Gilbert was telling you, assuming you find Mr.
8 Rhines guilty of first degree murder, then there'd be
9 this second stage and I think you told Mr. Gilbert
10 that you have high regard for human life?
11 A Yes.
12 Q Just based upon that alone, do you think that somehow
13 you can't consider the death penalty?
14 A No.
15 Q I need to let you take a moment here, because we are
16 interested in your thoughts and views, everyone in
17 this room, and can you think of not automatically at
18 all, but any circumstances at all where you think the
19 death penalty might be appropriate. Just take a
20 moment?
21 A Yes, I think there are.
22 Q Now that you have thought about something that might
23 be there, I realize it is not automatic and you know
24 that too but some cases where it might be
25 appropriate, can you tell us what you just thought of

1 please?

2 A I think if you intentionally go to take someone's

3 life, then the death penalty could be appropriate.

4 Q Not automatic, but it could be?

5 A Yes.

6 Q In this case when you get to that second stage, the

7 Judge is going to tell you what aggravating

8 circumstances you may consider, to see if the State's

9 proven them beyond a reasonable doubt, and it's going

10 to be my job, the State's job in that second case to

11 convince you that at least one of these aggravating

12 circumstances is present in this case and it takes it

13 out of this general category of first degree murder

14 and takes it up one more step to murder that you can

15 consider the death penalty on; do you understand?

16 A Yes.

17 Q Do you believe that you can follow the Court's

18 instructions as to what those aggravating

19 circumstances are in South Dakota?

20 A Yes.

21 Q And even if you were to disagree with those

22 instructions or never even thought about them, do you

23 think you could still follow them?

24 A Yes.

25 Q Now, you said to Mr. Gilbert, and I made a note of it

1 here, that you would be able to keep an open mind as
2 you went into that second stage as to whether or not
3 it would be life or death, and then you also told him
4 that you thought in that second stage you might want
5 to know more, is that right?
6 A Uhm-uhm.
7 Q What is the more that you were talking about, what
8 more would you want to know in the second stage?
9 A Maybe explaining a little bit more about the extra
10 circumstances.
11 Q Let me ask you this then. I understand what you are
12 saying and I'll get back to it, but you realize that
13 just because you have heard this evidence in the
14 first part of the case where you are going to decide
15 guilt or innocence, that same evidence would likely
16 be considered as to whether or not on the how and why
17 of it happening, whether or not circumstances were
18 met that made it special, do you understand?
19 A Yes.
20 Q You don't have to say we made that decision let's
21 leave that behind. You would take that into that
22 second stage with you, do you understand?
23 A Yes.
24 Q You were just telling me that in the second stage you
25 would look at the evidence and you would do more

1 analysis as to the why and how?

2 A Yes.

3 Q Based upon your review of that evidence, you would

4 consider whether or not one of these aggravating

5 circumstances was present, is that what you are

6 telling me?

7 A Yes.

8 Q I am going to have to go into this, because I need to

9 know. You said that it would be difficult to go

10 ahead and make that kind of a verdict?

11 A I think it would be difficult for anyone.

12 Q I'm not trying to give you a hard time about that,

13 but what I need to do is get you to visualize what

14 that might be like, so if you can bear with me and

15 follow me for a minute. Do you remember when you got

16 the questionnaire?

17 A Yes.

18 Q And when you got the questionnaire and you filled it

19 out, did you think you might actually be in a

20 courtroom like this deciding or we are deciding

21 whether you can be a fair juror? Did you think you

22 would come down here?

23 A Yes.

24 Q Could you visualize yourself, even though you had

25 that piece of paper at home, being at home and

1 that's what I want to take a step further. Without
2 holding anything against me, could you make some
3 assumptions? I'm not trying to get you to commit to
4 any decision, I am just going to try to get you into
5 that jury box, even though you are not there, and I
6 want you to assume for a moment that you are picked
7 on this jury, because there is a very real
8 possibility you will be. Assume you are on that jury
9 and you listened to the first part of the case and
10 you weighed the evidence carefully and you considered
11 the Court's instructions and you decided beyond a
12 reasonable doubt that Mr. Rhines is guilty of first
13 degree murder, okay?
14 A Uhm-uhm.
15 Q The verdict has been brought back and then we can get
16 to the second stage and let's assume we get to the
17 second stage and you consider the evidence and you
18 carefully consider those aggravating circumstances
19 and you consider everything you hear in that second
20 stage and you go back and deliberate and let's assume
21 that you, as a jury, find that one of those
22 aggravating circumstances is present. Now you don't
23 have to at that point in time come to a conclusion
24 that the death penalty is appropriate, but you may.
25 Do you see what I'm saying?

1 A Uhm-uhm.

2 Q Let's assume for the moment that you come to that

3 conclusion based on the facts you heard and

4 instructions of the Court and you believe the death

5 penalty is the appropriate verdict, then you would

6 come back and you would sit in one of these chairs if

7 we were in this courtroom, and the foreman of the

8 jury would read or pass to the Judge the verdict and

9 that verdict would be read in front of everybody in

10 the courtroom, the Judge, the Defendant, with all of

11 you sitting there facing the Defendant announcing

12 your verdict, which in that case would be putting Mr.

13 Rhines to death. As you think about your views, and

14 I realize you don't have any facts to work with, but

15 as you think about your views, if you were convinced

16 that was the right thing to do, do you think you

17 could visualize yourself being on a jury doing just

18 that?

19 A Yes.

20 Q Now, something else I need to warn you about, and

21 that is, if you are on that jury and it was a

22 unanimous decision, after the verdict was read

23 something else could happen. What could happen is

24 that each individual juror could be polled right out

25 there in front of everybody; is this your verdict

1 putting Mr. Rhines to death, and they'd come to you,
2 ma'am, and ask you and after they asked you then
3 you'd have to respond, yes or no. Can you visualize
4 yourself saying, if you were convinced, it was the
5 right verdict, yes, that's my verdict putting Mr.
6 Rhines to death; can you visualize yourself doing
7 that?

8 A Yes.

9 Q Do you have any friends or relatives or acquaintances
10 who you know are just adamantly opposed to the death
11 penalty?

12 A No.

13 Q Can you think of anyone out there, if you were to go
14 ahead and make a decision like this, I realize a
15 difficult and important decision, but if you made it
16 and you came back in the courtroom and gave a death
17 verdict, can you think of anyone that would give you
18 a hard time, once you left the courtroom and got back
19 with your regular life?

20 A No.

21 Q The last thing I want to talk to you about is, just
22 the burden of proof. Do you remember Judge Konenkamp
23 explained the burden of proof a week ago Monday?

24 A Uhm-uhm.

25 Q That is the same burden that runs throughout our

1 Court system, whether it is a traffic ticket, a
2 D.W.I. or theft case, all the way to a murder case,
3 do you understand?

4 A Yes.

5 Q Even though the cases may seem to get more serious,
6 the standards of proof always stay the same. It
7 doesn't go up just because this is a serious case.
8 Do you think you would some how make the State prove
9 its case beyond what the law requires, that is beyond
10 their level of beyond a reasonable doubt? Are you
11 with me so far?

12 A Yes.

13 Q Up to a level of absolute certainty, which is not
14 required. Do you think you'd make the State proof
15 ~~its case to an absolute certainty and not what the~~
16 law requires?

17 A I'm not sure. I think I'd want to be real, real
18 sure.

19 Q But if the Court told you that didn't mean you had to
20 be sure to a perfection or an absolute certainty, do
21 you think you could follow that law?

22 A Yes.

23 Q Same thing with the aggravating circumstance in the
24 second part, if the Court told you that had to be
25 proven to a reasonable doubt, do you think you could

1 make it be proven to a reasonable doubt, but not take
2 it to this other level, which is not required by law
3 which is an absolute certainty?
4 A Yes.
5 Q Now that you have thought about it, do you think you
6 have any reservations about it?
7 A No.
8 Q One of the reasons you said you'd want to be so
9 convinced is because you know you might face the
10 death penalty?
11 A Yes.
12 Q Even knowing that you are going to face the death
13 penalty possibly in terms of your deliberations, do
14 you think you can be fair to both the Defendant and
15 to the State?
16 A Yes, I think I'm a very fair person.
17 MR. GROFF: No other questions. Thank you. Pass for
18 cause.
19 THE COURT: Ma'am, you remain a prospective juror.
20 MR. GILBERT: Your Honor, excuse me, but could I ask just
21 a couple more questions?
22 THE COURT: Yes.
23 Q (By Mr. Gilbert:) Miss Shafer, I just want to, if I
24 could, and I'd like to ask you to elaborate a little
25 bit on the statement you made that an individual who

1 intentionally takes someone's life should be prepared
2 to give his own. Do you mean by that that you think
3 and believe in an eye for an eye type of thing?

4 A No, I believe that there is always a possibility that
5 that could happen, and if they did there is always
6 that possibility, not for sure, but the possibility.

7 Q You didn't mean like a retribution type of thing?

8 A No. No.

9 MR. GILBERT: That's all.

10 THE COURT: As I was saying, you are a prospective juror
11 in the case. We should know by tomorrow afternoon
12 whether or not you are on the final jury panel. If
13 you haven't heard from us by tomorrow afternoon at
14 3:00, call the Clerk's Office to check in with us.
15 Now, it's very important that you not talk to anyone
16 about this case or let anyone talk to you about it or
17 talk in your presence about it and you should not
18 listen to or read or watch any news media accounts of
19 this case. Can you promise me you'll not do those
20 things?

21 JUDY SHAFER: Yes.

22 THE COURT: Thank you. I'm going to adjourn for today.
23 I'd like to reconvene at a quarter to nine tomorrow
24 morning so we can hear the motion for the additional
25 peremptory challenges, and after that we will proceed

1 then to either decide on the issue of the peremptory
2 challenges and then the question of how many and
3 under what method we will select our alternate
4 jurors. I welcome your suggestions on that tomorrow
5 morning as well.

6 THE COURT: Hearing is adjourned for today.

7 (At which time the proceedings ended for the day.)
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