

1 Q Let's assume that the evidence proves premeditated
2 murder, let's just assume that, would you think then
3 that the death sentence should automatically follow?
4 A Not automatically.
5 Q Can you explain that? I know I'm asking some hard
6 questions, but I hope you understand that we have to
7 ask them and I hope you'll be as candid and
8 explanatory as you can?
9 A Could you repeat the question?
10 Q If you found, let's assume at the end of the first
11 phase that the jury determined that the State had
12 proved premeditated murder, beyond a reasonable
13 doubt, do you got that?
14 A Uhm-uhm.
15 Q Would you feel that the death sentence would
16 automatically come into play?
17 A No, I think the way the murder was committed would
18 have to come into play there, if it was unusual and
19 real cruel in any way, that would have to be taken
20 into consideration.
21 Q Would that in and of itself dictate or mandate the
22 death sentence, in your mind?
23 A It's really hard to say. I'd have to hear all the
24 evidence and really consider exactly what happened to
25 come to a conclusion.

1 Q Off the top of your head can you think of some cases
2 which, in your mind, would undoubtedly mandate the
3 death penalty?
4 A Well, the case here recently with the hanging, the
5 little boy, I felt the death penalty was called for
6 there.
7 Q The one in Washington?
8 A Right.
9 Q I believe there were three involved?
10 A Right.
11 Q Sir, the Defendant stated that if you let me out I'll
12 do it again?
13 A Right.
14 Q That's one illustration. Can you think of any
15 others?
16 A I'm not sure of the case but where there was serial
17 killing where they have killed and killed again, in
18 that case I feel the death penalty would be called
19 for.
20 Q Do you think you'd want to hear about if it reached
21 that phase, here about the Defendant's background and
22 his family and so forth and how he was raised; would
23 you want to know about the Defendant as a person?
24 A Yeah, I would.
25 Q Is this a fair statement that you don't necessarily

1 favor the death penalty in all premeditated murder
2 cases; is that a fair statement?

3 A Yes.

4 Q Let's assume that you are selected as a juror and
5 that you come to the first phase and you make the
6 determination that the Defendant is guilty of murder
7 and at the second phase, after hearing all the
8 evidence in both phases, you come to the conclusion
9 that the appropriate sentence is life imprisonment
10 without parole. Let's assume that, and after all the
11 discussion, you are the only one who believes that
12 and the other 11 believe that it should be death,
13 would you be willing to stick by your guns?

14 A Yes, if I came to that conclusion and that's the way
15 I believed, I would stick to my guns and stay with
16 that decision.

17 Q I know that under the circumstances of this case and
18 the system, is there anything that I haven't asked
19 you about, Mr. Corrin, that you feel might render it
20 difficult or impossible for you to sit as a fair and
21 impartial juror?

22 A No, I think I could do a good job.

23 Q Let's assume, do you have any fear at the present
24 time that whatever your decision might be, even
25 though some of your friends or your wife or somebody

1 else might disagree with it, that you wouldn't be
2 afraid to face up with your decision with everybody?

3 A No, I'm sure I could.

4 Q How old are you?

5 A 30.

6 Q Pass for cause.

7 THE COURT: State may inquire.

8 EXAMINATION BY MR. GROFF:

9 Q I just have a few questions of you today. I don't
10 think we have met and I'm Dennis Groff. I'm your
11 State's Attorney and Mr. Miller, as you were coming
12 in -- did you used to be neighbors on Downing Street?

13 A I lived on Downing, but I don't remember him though.

14 Q It's okay. He's out of the neighborhood now?

15 A That's where my mom and dad live.

16 Q I need to talk to you a little bit today about the
17 death penalty. Mr. Butler explained a little bit
18 about this procedure and how we get to that death
19 penalty stage. Do you understand?

20 A Yes.

21 Q I want to clarify a couple of things. Assuming you
22 find Mr. Rhines guilty of first degree murder, then
23 you'd go to that second phase we would be talking
24 about and as State's Attorney what I'd be attempting
25 to prove to you in the second phase would be one or

1 more aggravating circumstances that make this case a
2 special murder case; do you understand?

3 A Uhm-uhm.

4 Q Those are circumstances that are basically enacted by
5 our legislature; do you understand?

6 A Yes.

7 Q Not all murder cases if there is a conviction,
8 justify imposition of the death penalty; do you
9 understand?

10 A Yes.

11 Q I would be attempting to prove one or more
12 aggravating circumstances that would permit you to
13 impose the death penalty. Do you see what I'm
14 saying?

15 A Right.

16 Q Now, if you got to that point, do you think you could
17 follow the Court's instructions concerning what those
18 other aggravating circumstances might be on
19 imposition of the death penalty?

20 A Yeah.

21 Q Do you think you could follow the Court's
22 instructions even if you didn't necessarily agree
23 those were aggravating circumstances?

24 A I could follow the Court's instructions, yeah.

25 Q And then of course even if you did find an

1 aggravating circumstance or more, if you were still
2 looking at all the evidence and deciding it was
3 appropriate to give a life sentence, you wouldn't
4 have to give the death sentence, do you understand?
5 A Yeah.
6 Q When you got the questionnaire, obviously you stopped
7 listening to anything about the case. Did you have
8 an idea that you might actually be called in?
9 A Well, no, just to fill out the questionnaire and get
10 called in for the case, other than that.
11 Q But you did get called in?
12 A Yeah.
13 Q You have been here for quite sometime, I know.
14 I want to ask you the same sort of question. Now
15 that you have been called in, there is a very real
16 possibility that you might be on this jury, and I'm
17 wondering now that you have thought a little bit
18 about the death penalty, I want to have you see if
19 you can visualize what that might be like. Assuming
20 that you did find Mr. Rhines guilty of first degree
21 murder and you went through the entire sentencing
22 phase process and you were convinced that the death
23 penalty was the appropriate sentence, at some point
24 in time if you were on that jury you'd come back with
25 the other 11 jurors and you'd face the Court and Mr.

1 Rhines and that verdict would be read, that verdict
2 imposing death upon him. Can you visualize yourself
3 being part of such a jury returning that type of
4 verdict?
5 A Yeah.
6 Q One other question along those lines and that is,
7 that jury could be called upon individually, one by
8 one, to announce whether or not they agree with that
9 verdict, whether that is their unanimous verdict. If
10 you were called upon, do you think you could
11 visualize yourself facing the Judge or Mr. Rhines and
12 saying, yes, I have considered all the evidence and
13 that's my verdict, to put you to death? Do you think
14 you could do that?
15 A Yeah, after reviewing the evidence if that's the
16 decision I come to I would stand behind it.
17 Q And no matter what your decision was, would you
18 consider the views of the other jurors as you tried
19 to come to the right decision? I think the Court
20 would instruct you that you are to make up your own
21 individual decision as you vote, but in so doing you
22 are to at least consider the views of the other
23 jurors as you reach the decision, and would you try
24 to do that?
25 A I'd consider their opinions, but once I came to my

1 decision I'd stand behind it.

2 Q Pass for cause.

3 MR. BUTLER: I have one more question.

4 THE COURT: I'll permit you that.

5 Q (By Mr. Butler:) I want you to think about this.

6 Which type of sentence do you consider to be more

7 severe, life imprisonment without parole or the death

8 penalty?

9 A The death penalty.

10 THE COURT: Mr. Groff, any further questions in view of

11 that?

12 MR. GROFF: None.

13 THE COURT: Sir, you remain a prospective juror in this

14 case. If you have not heard from us by next Tuesday

15 at noon, call next Tuesday at noon to check in. You

16 are not to discuss this case with anyone nor allow

17 anyone to discuss it with you or let anyone discuss

18 it in your presence, and as always, you are not to

19 read or watch or listen to any media accounts

20 concerning this case. Can you promise me you'll do

21 that? I know you have done it in the past?

22 ROBERT CORRIN: Yes, I will.

23 THE COURT: Thank you. Defense may exercise.

24 The record will show that the defense has exercised

25 its peremptory number eight and the Clerk will summon

1 in another prospective juror. Miss Tree Top, you
2 have previously been sworn in and you remain under
3 oath now. Defense may inquire.

4 (Prospective Juror VERA TREE TOP, having previously been
5 sworn, testified as follows:)

6 EXAMINATION BY MR. STONEFIELD:

7 Q Good afternoon, ma'am. Your name is Vera Tree Top?

8 A Yes, it is.

9 Q My name is Mike Stonefield and I'm one of the
10 attorneys that's representing Charles Rhines who is
11 the man seated in the middle of the table here and
12 this is Mr. Gilbert and Mr. Butler, the other
13 attorneys involved in this case. I assume that from
14 the orientation the other day that you understand why
15 you're here now?

16 A Yes, I do.

17 Q You understand what the procedure is about and what
18 the charge is in this case?

19 A Yes.

20 Q Let me ask you, first of all, do you have any
21 knowledge of Mr. Rhines, other than what you might
22 have read or heard in the media?

23 A No, I don't.

24 Q Did you know Donnivan Schaeffer or do you have any
25 knowledge of his family?

STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

Plaintiff,

v.

JURY TRIAL

CHARLES RUSSELL RHINES,

93-81

Defendant.

VOLUME III A

PROCEEDINGS: The following matters were had before the
HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 6th day 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 objected to earlier, with respect to Karl Bachman.
2 This peremptory challenge just exercised is as to
3 Kelli Hagemann who was an individual that falls into
4 that same class of conscionable persons as Karl
5 Bachman, the persons that have personal or moral
6 reservations about the death penalty and also as well
7 as all the grounds urged at the time that the
8 objection was made with respect to Karl Bachman.
9 THE COURT: I will consider the arguments you made at
10 that time in connection with your objection at this
11 time and your objection is overruled, and the State's
12 exercise of Kelli Hagemann will stand.
13 The Clerk will call another prospective juror. Mr.
14 Walton, thank you for your patience. We previously
15 had you sworn in and you still remain under oath at
16 this time.
17 BOBBY WALTON: Okay.
18 THE COURT: Defense may inquire.
19 (Prospective Juror BOBBY WALTON, having previously been
20 sworn, testified as follows:)
21 EXAMINATION BY MR. BUTLER:
22 Q You are Bobby Charles Walton?
23 A Yes, sir.
24 Q I'm Joe Butler and I'm one of the attorneys for the
25 Defendant, Mr Rhines and associated with me is Mr.

1 Wayne Gilhert, another attorney representing Mr.
2 Rhines and Mike Stonefield, also an attorney
3 associated with representing Mr. Rhines.
4 A Okay.
5 Q Mr. Walton, I have had a chance to read your
6 questionnaire that you returned to the Court; do you
7 remember completing that?
8 A Yes.
9 Q So there are some things I know about you from the
10 questionnaire and it isn't because I had a private
11 eye out checking on you. Now, let me find out a
12 little about you. You live here in Rapid City and
13 you have lived here for about seven years?
14 A Yes. I was stationed here in the Air Force and just
15 got out recently.
16 Q Tell me where you were born and just generally what
17 happened up to the present time?
18 A I was born in Chicago, Illinois, and I'm 41 years
19 old. I moved around a lot with my parents in my
20 early years and so I went to various schools around
21 the City of Chicago. I graduated in 1970 from
22 Farigut High School and attended college for a year
23 and a half in a small farming area 70 or 80 miles
24 northwest of Chicago. After a year and a half
25 attending school, funds -- I didn't have the money to

1 continue school, so my father talked me into joining
2 the Air Force and I stayed in for a few years, basic,
3 minimum of four years and got sent overseas and had a
4 good time and came back to the States and put in a
5 couple more years and it just hit me, well, it hasn't
6 been too bad a tour and I stayed on for another tour
7 and 20 years added up and I was stationed here in
8 September of 1985, and at that time I was still
9 married and just served my country here and did what
10 I had to do and as I was winding down near 20 years I
11 talked it over with the wife; where did she want to
12 retire at; did she want to go back to a place where
13 we had been and she liked the area here and we
14 decided to stay here. So, I started looking at
15 buying a home here and everything and once that got
16 settled and everything she decided she wanted to
17 leave, so I'm still here and she's gone.

18 Q Did you buy the home?

19 A Yeah, I was already in the process of getting it and
20 everything when she decided to leave.

21 Q Now you are going back to school?

22 A Yeah. I'm using my GI Bill right now and trying to
23 get my degree in business. Throughout my career I
24 have been taking college courses, but being in the
25 military you have one focus to do a job there, so

1 it's hard to take a lot of classes at that time. So
2 during the course of the 20 years I did accumulate a
3 lot of hours and that one year and a half I did
4 attend school in Illinois and that helped a lot too.
5 So I'm down to needing 24 more semester hours to get
6 my degree in business.

7 Q What did you do in the service, Mr. Walton?

8 A Did various jobs. Actually, my main job was
9 munitions specialist. We took care of building up
10 bombs and missiles and so forth and I had a tour of
11 duty as an instructor for the military as my career
12 field teaching new recruits.

13 Q What does your dad do, any particular occupation?

14 A Well, when I think back 40 years what I did
15 originally when he first moved to Chicago where he
16 was born he worked as a cook and as a car wash guy
17 and the biggest thing he did for most of my
18 upbringing is he was a construction worker.

19 Q Do you have brothers and sisters?

20 A No, sir.

21 Q You are the only child?

22 A Yes.

23 Q Mr. Walton, I want you to take a look at that list of
24 names on the desk ahead of you. Those people may be
25 witnesses in this trial. Would you read that and

1 tell me if there are any on the list who you know?
2 A There is nobody on this list that I recognize.
3 Q Let me ask you this general question. Is there -- I
4 don't want to go into any more specifics if your
5 answer is yes, but have you or any member of your
6 immediate family ever been involved with the law?
7 A No, sir.
8 Q Mr. Walton, the evidence in this case is going to
9 show that the Defendant, Mr. Rhines, is a homosexual;
10 he's gay. Would that fact in and of itself influence
11 your perception of the case or of Mr. Rhines?
12 A No, sir, it wouldn't.
13 Q Again, I don't want to get any more specific than
14 just this general question. Do you have any
15 acquaintanceship with any people who are homosexual?
16 A No.
17 Q To your knowledge do you know anybody?
18 A No.
19 Q Do you have any feelings towards someone with respect
20 to this right, has a right to pursue their own
21 lifestyle?
22 A Everybody has their own thing and as long as they let
23 me do my thing, I don't care.
24 Q You are not a member of any organized church?
25 A No, sir.

1 Q Do you believe in God?
2 A Yes, I do.
3 Q But you don't belong to any organized religion as
4 such?
5 A No. During my upbringing I went to church regularly
6 as a kid.
7 Q Your mother insisted on that?
8 A My father insisted on it, because his father was
9 actually a pastor, you know, but once I guess I
10 joined the military, I got away from it a bit.
11 Q You are going to school and what are the courses or
12 subjects that you are interested in?
13 A Well, I like science a lot, but because I'm pursuing
14 a business degree, I have been taking like accounting
15 classes and business management classes, so that's my
16 focus right now.
17 Q Do you intend on going further on to school after you
18 get your Bachelor's Degree?
19 A I haven't made that decision as off yet. People talk
20 to me say because I have my GI Bill you might as well
21 continue to use it because you are getting paid,
22 however, you know, I'm not getting as much money as I
23 used to when I was active duty. Once I get that
24 degree I might as well get that job and press on with
25 my life.

1 Q That's an alternative you haven't dealt with yet?
2 A Exactly. One step at a time. Get that first degree
3 and pursue maybe a Masters. I don't know yet.
4 Q Now, Mr. Walton, this trial is a little bit different
5 than most in that usually in most criminal
6 proceedings the Judge fixes the sentence. The jury
7 determines guilt or innocence and the Judge fixes the
8 sentence. In this situation, because the State has
9 elected to ask for the death penalty, we have a
10 little different situation here. This trial will be
11 in two phases. The first phase, called phase one
12 will be the determination of whether or not Mr.
13 Rhines is guilty of murder in the first degree; do
14 you understand?
15 A Yes.
16 Q Then if the jury determines that he is guilty of
17 murder in the first degree, then you get to the
18 second phase and that is the determination of
19 punishment. And with respect to murder in the first
20 degree and in South Dakota there are only two
21 alternatives for sentencing; one, life imprisonment
22 without parole, and that means just what it says,
23 life imprisonment for the rest of your life; can't
24 get out; do you understand that?
25 A I understand.

1 Q It's a little different in South Dakota than some
2 other states. The second alternative is death and
3 that means what that says, so if you are selected as
4 a juror and you have to go, I want you to think about
5 this in the aspect of having to go through both
6 phases, at least at this point while I'm visiting
7 with you. I'd like to ask you about your views on
8 the death penalty?

9 A Well, ever since the first day we were here, the
10 Judge told us to think about that and I have been
11 trying to give that some thought. I take a lot into
12 consideration in how we will see other crimes
13 throughout the nation dealing with the death penalty,
14 you know. I think back to the Bundy trial and the
15 one recently in Washington they just had, and I look
16 at the nature of the crime that the person has
17 committed, you know; was he insane at the time he
18 committed the act; was he of sound mind; did he know
19 what he was doing; what provoked him to take another
20 person's life. I look at so many variables and like
21 I say, I don't know this person, and I don't know
22 what drove him to do that. If I was selected I'd
23 have to hear everything involved. I look at it this
24 way, if a person takes another person's life and he
25 knew what he was doing, okay, then I would say, yes,

1 he deserved to be punished the same.

2 Q Let me just pursue that a little bit. If you were to

3 find that he was guilty of premeditated murder, would

4 you think he should receive the death penalty?

5 A Yeah, I would say so.

6 Q That one would follow the other?

7 A Yeah, if he was of sound mind and he knew what he was

8 doing, I would say yeah, because again, there is a

9 lot of variables and I can't judge the person right

10 now.

11 Q Let me explore this a little bit. I know we will be

12 somewhat general here, but would you say that

13 everyone who is guilty of premeditated murder should

14 be sent to the electric chair or death?

15 A No. We can take a lot into consideration again such

16 as say there was a ten year old boy and he happened

17 to stumble upon his father's gun and he may watch a

18 lot of westerns and gangster movies and he goes out

19 and plays with his friends and he's got this gun and

20 it's loaded, and we will say he actually pulls a

21 trigger and kills a kid, should we go ahead and kill

22 him, put him to death. No. There are so many

23 variables that we have to take into consideration.

24 He did not know what he was doing or what the nature

25 of a loaded gun is or to play with one.

1 Q The situation that you just illustrated there would
2 not be premeditated murder.
3 A Right.
4 Q I am going to deal with a situation where we accept
5 as a fact that the murder was premeditated, do you
6 think then that the death penalty should
7 automatically follow?
8 A I don't know -- no -- yeah. Like I say, you take a
9 person like Dahl or Bundy that committed many
10 murders, they knew and it was senseless on what they
11 did to the number of victims, so if you do it once, I
12 don't know, it's hard to say if you just kill one
13 person, you don't deserve to be killed in return.
14 Q You don't believe an eye for an eye or a tooth for a
15 tooth?
16 A No, I do not.
17 Q If the death sentence could bring back the person who
18 was killed, of course, we would all vote for the
19 death sentence?
20 A Of course, but you know that's not going to happen.
21 Q I'm sure you have done a lot of thinking about it and
22 if you are selected as a juror in this case you'll do
23 a lot more?
24 A Oh sure.
25 Q And you'll give it your best shot?

1 A Definitely.

2 Q Mr. Stonefield called my attention to one other

3 thing. Do you have any knowledge about the case?

4 A Very little. Just recently it's been on TV that they

5 caught the person I believe in Seattle, and that's

6 about it. At the time that it happened I was going

7 through my trauma of divorce, so I wasn't reading the

8 paper or watching TV, I wasn't keeping up with

9 nothing. I don't know too much about this at all.

10 Q Anything you heard you could certainly cast aside and

11 rely solely on what you hear in this courtroom to

12 make your decision?

13 A Definitely. During the nature of my job in the

14 military, we always have what we call two sides to a

15 story and I have dealt with a lot of people during my

16 20 years and I don't always take that first opinion.

17 I always get more input about a decision I would have

18 to make in my job I had.

19 Q Were you an athlete?

20 A I played basketball; weight lifting. I love weight

21 lifting. I just went there last night.

22 MR. BUTLER: I could tell that.

23 THE COURT: State may inquire.

24 EXAMINATION BY MR. GROFF:

25 Q Good afternoon, sir. I'm Dennis Groff and I'm the

1 State's Attorney in this case, sir and I just need to
2 ask you a few questions about the death penalty issue
3 if I may. And I want you to realize that if I am
4 being redundant and repeat some things that Mr.
5 Butler did, I'm sorry. This is the last and only
6 chance I'll have a chance to talk to you about the
7 case. In other words, once you are selected we won't
8 have any time either to discuss these issues anymore.
9 It is my understanding that from talking with Mr.
10 Butler now that you are aware that this trial could
11 have two stages?
12 A Right.
13 Q First stage, guilt or innocence, deciding whether or
14 not he's guilty of first degree murder or not; do you
15 understand that?
16 A Yes.
17 Q Assuming that you would do that, then you'd come back
18 for a second stage of the proceedings where you might
19 hear more evidence and more argument concerning what
20 the penalties should be. Now, as State's Attorney
21 what I would be attempting to prove to you in that
22 second stage is an aggravating circumstance. In
23 other words, under our law, not every first degree
24 murder is one that justifies the death penalty; do
25 you understand?

1 A Sure do.

2 Q Our legislature has set forth approximately ten

3 aggravating circumstances which, if you find at least

4 one you could impose the death penalty, if after

5 consideration of that aggravating circumstance you

6 found, and all the other evidence was in in the case

7 you thought it was appropriate. You wouldn't have to

8 but you could; do you understand?

9 A Right.

10 Q Now, if you were to be on this jury before you could

11 return any such verdict, you would have to be

12 unanimous in your verdict, all 12 would have to

13 agree; do you understand?

14 A Yes.

15 Q Since all 12 would have to agree, of course your

16 individual vote would be very important; do you

17 understand that?

18 A Yes.

19 Q That's the reason I'm talking to you about this now.

20 During the course of your life and work in the

21 military, have you discussed the death penalty on

22 very many occasions with people?

23 A No.

24 Q Prior to Monday, when you said you gave it a lot of

25 thought up to today, had you given it much thought at

1 all?

2 A Yeah, I have. The reason why is because of the
3 recent execution of Dahl or Dower in Washington. I
4 thought about that and in a way it was to me it was
5 sort of sickening to watch the demonstrations outside
6 of the prison that night. Some people cheering for
7 his execution, which is childish, in my opinion.

8 Q And just so I'm clear on this, you would do your best
9 if you got to that second stage of the trial to
10 follow the Court's instructions on what the law is in
11 deciding the case?

12 A Right.

13 Q Likewise, if the Court instructed you concerning
14 these aggravating circumstances that you might
15 consider the ones that would have to be proven beyond
16 a reasonable doubt before you could impose the death
17 penalty, would you follow the law as to what they
18 were, even if you disagreed with them?

19 A Well, being military we had a group of checklists we
20 had to follow to get to the next stage of any job and
21 of course we are to uphold those standards and if
22 that's the law of South Dakota to say, okay, this
23 meets this and this meets that, then the next thing
24 is whatever.

25 Q And I am going to go into this a little more

1 specifically. You were talking about the Bundy case
2 in Florida and Dahmer, and you know in this case the
3 Defendant on trial is Mr. Rhines and I think you
4 learned that Monday and I don't recall but, you have
5 been informed that there was a person allegedly
6 killed and his name was Donnivan Schaeffer?
7 A Right.
8 Q And so we are dealing literally with one person and
9 not a series of victims; do you understand?
10 A Sure do.
11 Q And all I'm asking is, do you think you could
12 consider imposing the death penalty where we are
13 dealing with just a single victim, depending on the
14 circumstances?
15 A Yeah, if the evidence all showed clearly that the guy
16 was, you know...
17 Q I understand. Now, I want to talk to you a few
18 minutes about the reality, the possibility of the
19 situation. Specifically, when you got your
20 questionnaire that you filled out for us that we have
21 been working from, did you think in your mind, I'll
22 bet I'll be going to Court and I possibly will be a
23 juror on this case? Did you think about that?
24 A Yes, I thought about that, you know. I usually have
25 bad luck, you know, sometimes. I said, well, here's

1 something else I have got to do.

2 Q This might be bad luck?

3 A Yeah.

4 Q Well, I'm not sure what you'd think about the luck as
5 being picked as a juror, but that could happen in
6 this case; do you understand that?

7 A Yes.

8 Q If you were picked as a juror, thinking about this
9 courtroom and the Judge and the Defendant where he's
10 seated right now and specifically those empty chairs
11 right over there, do you see them?

12 A Yes, I do.

13 Q That's where the jury will probably sit if we try
14 this case in this courtroom, and I just want you to
15 assume for a minute that you have gone through the
16 proceeding and you got through that first stage and
17 you have gone through the second stage and now you
18 are a member of that jury and you have decided as a
19 group, as a jury, that the appropriate verdict in
20 this case is to put Mr. Rhines to death. Are you
21 with me so far?

22 A Yes, I am.

23 Q As you think about it today, can you visualize
24 yourself coming back with such a jury and facing Mr.
25 Rhines and presenting that verdict to the Judge, a

1 verdict of death; can you visualize yourself doing
2 that, depending on the facts and the evidence?
3 A Right; yeah.
4 Q I have to carry it one step further, sir, because as
5 I said, this will be in effect, even though it's a
6 jury coming back, it will be your individual verdict;
7 do you understand, your decision -- and you may be
8 asked after that verdict is read, whether or not that
9 is your individual decision it's what we call polling
10 the jury. Can you visualize yourself, if you are
11 polled and they call out your name, can you visualize
12 yourself saying, yes, that's my verdict, putting this
13 Defendant to death, depending on the facts and
14 circumstances of the case; can you do that?
15 A Sure can.
16 Q Is there anyone, in terms of friends or family,
17 acquaintances who might give you a hard time if you
18 were to return a death verdict in a murder case?
19 A No one.
20 Q That's not something that would be on your mind?
21 A No.
22 Q The last thing I want to ask you about, Judge
23 Konenkamp in Court the other day was reading some
24 orientation instructions to you, do you remember that
25 took about 15 or 20 minutes?

1 A Yes.

2 Q During that discussion he told you about the concept

3 of reasonable doubt, do you rememeber that and you

4 have heard of that concept, reasonable doubt?

5 A Oh, yes.

6 Q And that is the standard for proof that the State has

7 to prove its case beyond a reasonable doubt; do you

8 understand?

9 A Uhm-uhm. Sure do.

10 Q Last thing I want to go into with you is this, and

11 that is, just because this is a serious case, do you

12 think you'd make the State prove its case, not to

13 what is required, which is proof beyond a reasonable

14 doubt, but to a much higher standard, which is not

15 required, which is an absolute certainty; would you

16 force the State to do something the law didn't

17 require?

18 A That the law required?

19 Q The law requires proof beyond a reasonable doubt.

20 A Right.

21 Q Which is not proof to an absolute certainty or

22 perfection. If you heard Judge Konenkamp, that's

23 what he told you the other day, which would require

24 the case to be proven to a reasonable doubt or would

25 you require a higher standard of proof a standard to

1 an absolute certainty?

2 A In other words, beyond a reasonable doubt, is what

3 you are saying?

4 Q Yeah.

5 A Yeah, that would clear it up a hundred percent for

6 me, yeah I could do that.

7 Q You could follow the Court's instructions instead of

8 trying to put a higher burden of proof because this

9 is a serious case, is that what you are telling us?

10 A Yeah.

11 MR. GROFF: That's all the questions I have. Thank you.

12 Pass for cause.

13 THE COURT: Mr. Walton, you remain a prospective juror on

14 this case and we will be in touch with you to let you

15 know when it's time for you to come back. If you do

16 not hear from us, for example, if we try to reach you

17 and have been unsuccessful, we would ask that you

18 call us, and if you haven't heard from us next

19 Tuesday to check in with us. Also, it's extremely

20 important that you not discuss this case with anyone

21 or allow anyone else to discuss the case with you nor

22 in your presence, and also it is very, very important

23 that you not listen to or read or watch any media

24 accounts about this case. Can you promise me that

25 you'll not do these things?

1 BOBBY WALTON: Yes, sir. Right now I'm a single person
2 and all I do right now is read for school, study and
3 stuff so I watch very little TV. Now or then I rent
4 a movie for my VCR.
5 THE COURT: Very good. We will be in touch with you.
6 Thank you. Let's take a ten minute recess.
7 (A recess was had from 2:55 to 3:15.)
8 THE COURT: Defense may exercise. Defense has exercised
9 its third peremptory and we will call another
10 prospective juror. Sir, thank you for your patience.
11 You have previously been sworn and you remain under
12 oath right now. Defense may inquire.
13 (Prospective Juror DALE LANDIS, having previously been
14 sworn, testified as follows:)
15 EXAMINATION BY MR. STONEFIELD:
16 Q Good afternoon, sir. Your name is Dale Landis?
17 A Yes.
18 Q Mr. Landis, I'm Mike Stonefield and I'm one of the
19 attorneys representing Mr. Rhines, the Defendant.
20 This is Mr. Butler and Mr. Gilbert and Mr. Rhines is
21 the gentleman seated here, and we are representing.
22 You were here a couple days ago during the
23 orientation process?
24 A Yes.
25 Q You understand what we are doing here today then?

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 VI

9

10 PROCEEDINGS: The following matters were had before the
11 HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 8th and 11th days
of January, 1993.

12

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

16

FOR THE STATE

17

MR. JOSEPH BUTLER

Attorney at Law

18

PO Box 2670

Rapid City, South Dakota

and

19

MR. WAYNE GILBERT

Attorney at Law

20

3202 West Main Street

21

Rapid City, South Dakota

and

22

MR. MICHAEL STONEFIELD

Public Defender

23

Pennington County

24

Rapid City, South Dakota

25

FOR THE DEFENDANT

1 THE COURT: I think we better excuse you on this case,
2 Laura.

3 LAURA LAUGHLIN: Thank you, sir. Nice seeing you again.

4 THE DEFENDANT: Could we have a short break?

5 THE COURT: Let's take a ten minute recess.

6 (At which time a recess was taken from 10:40 to 10:55.)

7 THE COURT: The Clerk will call in the next prospective
8 juror. The next one on your list is Mr. Dial and we
9 agreed to excuse him. He was the fellow that had the
10 job in Colorado and we agreed to excuse so we are
11 skipping over him and going to Miss Anderson. We
12 previously swore you in last week, so you remain
13 under oath now for these questions. Defense may
14 inquire.

15 (Prospective Juror MARTHA ANDERSON, having previously
16 been sworn, testified as follows:)

17 EXAMINATION BY MR. BUTLER:

18 Q I'm Joe Bulter and I'm one of the attorneys
19 representing the Defendant Mr. Rhines who I'm
20 pointing to and with me is Mr. Wayne Gilbert and Mr.
21 Mike Stonefield and that's Mr. Dennis Groff, the
22 State's Attorney. Mrs. Anderson we've had the
23 opportunity to review the questionnaire that you
24 completed and sent back to the Court, so I know a
25 little bit about you, however, I would like for you

1 to give me a brief sketch of your background and
2 where you went to school up to the present time?
3 A I was born in San Antonio, Texas and raised in
4 Arlington, Texas, which is in southern Texas and
5 spent my summers in northwest San Antonio, Texas and
6 I met my husband in Arlington and we were married in
7 East Bend and he has been 30 years in the service.
8 We were never stationed out of the United States and
9 we came here for the first time in 1972, two months
10 after the flood and were here seven years and went
11 back to Fort Worth, Texas and then came back here to
12 retire and he's been flying for B&L Aviation ever
13 since. I have been enjoying life by having chickens
14 and ducks and peacocks and enjoying the Hills.
15 Q What did your husband do in the service? Was he a
16 pilot?
17 A No, he was a navigator. He flew KC-97's. He was in
18 maintenance out here then he was an officer.
19 Q I notice you have three children; boys or girls?
20 A All boys. They all live in this area.
21 Q What do they do?
22 A Oldest is a body repairman and the middle boy works
23 for a plumber here in town and the youngest boy works
24 for a souvenir company and lives in Hill City and has
25 a few head of cattle.

1 Q And you have grandchildren?
2 A Yes, three.
3 Q Now, Mrs. Anderson, there is a list of names in front
4 of you there. Would you take a look at that list and
5 see if there are any names you recognize?
6 A The only one I know slightly is Mr. Remboldt and I
7 haven't seen him in several years. We gave him a
8 cat, other than that I don't see anybody.
9 Q Is there anything about your acquaintanceship with
10 him that would tend, if he were called as a witness,
11 for you to give more credence to his testimony than
12 somebody else?
13 A No, sir, I don't believe so.
14 Q You know why you are here, I'm sure.
15 A Yes, sir. I got a letter in the mail from the Judge.
16 Q You are aware that Mr. Rhines is charged here with
17 first degree murder?
18 A Yes.
19 Q Now, the evidence is going to show Mrs. Anderson that
20 Mr. Rhines is a homosexual. Is there anything about
21 or telling you that fact that impacts on your
22 perception of Mr. Rhines either as to his guilt or
23 innocence or as to him as a person?
24 A No, sir. This is his business not mine.
25 Q Do you feel that that lifestyle, although it's

1 different than yours or mine, that that lifestyle is
2 immoral or sinful?

3 A That's a hard question to answer. I couldn't really
4 say I don't have an opinion on that, to that
5 particular question.

6 Q Over the years, have you ever had an acquaintanceship
7 with any homosexual to your knowledge?

8 A No, I don't think so. There may have been some being
9 in the military, you make acquaintances with a lot of
10 people from different walks of life, and I have never
11 been that prejudice against anybody as long as it
12 didn't affect me.

13 Q In other words, you have your lifestyle to live and
14 others can live their own?

15 A That's kind of my view.

16 Q Let me tell you about the procedure in this case,
17 which is somewhat different than -- it is different
18 than most cases, because of the fact that this is a
19 first degree murder case in which the State has
20 requested the death penalty. When did you first
21 become aware that the State was asking for the death
22 penalty in this case?

23 A When I got the letter from the Judge. I'm not a
24 reader of the newspaper in particular and I'm not one
25 that picks up on things like that. When my husband

1 went to Vietnam in '72 I more or less quit reading
2 the paper per se, because all it was was bad things
3 in there about that and the protests and I just
4 decided it wasn't worth it. I got the letters from
5 him and that's all that mattered.

6 Q How long did your husband serve in Vietnam?

7 A He got his tour curtailed because of all his TDY
8 time. He was there seven or eight months and he
9 wasn't fighting per se, he was flying. He wasn't on
10 the ground, let's put it that way.

11 Q Not a lot of difference. Now, in this procedure I am
12 going to just give you an overview of the procedure
13 so I can ask you some more questions, okay? The
14 first phase of this trial the jury will be asked to
15 determine the Defendant's guilt or innocence of the
16 first degree murder charge, do you understand?

17 A Right.

18 Q And if the jury determines that the Defendant is
19 guilty of first degree murder, then there is a second
20 phase at which the jury fixes the punishment and
21 that's what makes this case a little bit different
22 than most. In most cases the Judge imposes the
23 sentence, and here the jury in the second phase if
24 the jury finds the Defendant guilty of first degree
25 murder in the first phase, imposes the sentence and

1 at that stage the State will assert that there are
2 certain circumstances which aggravate the first
3 degree murder conviction which would justify the jury
4 in considering the death penalty, do you understand?
5 A Okay.
6 Q Now, let me say this, at the second phase where the
7 jury has the two alternatives, one is life
8 imprisonment without parole and in South Dakota that
9 means just what it says, unlike in some other states,
10 that if the jury returns a verdict of life
11 imprisonment without parole that means the Defendant
12 would spend the rest of his natural life in jail.
13 And, of course, the other option, death means again
14 exactly what it says, that the death sentence would
15 be imposed if that was the judgment of the jury; do
16 you understand?
17 A Yes, sir.
18 Q All right. First of all, let me ask you if you have
19 any views, general views about the death penalty?
20 A Well, I really hadn't thought about it. I have never
21 been called for jury duty and like I say, I'm not a
22 person that can't wait to read the paper and see who
23 is killed, or whatever. I'm just not up on all that.
24 I will honestly say that -- some cases, some TV I
25 watch and I'm sure there must be some people that

1 deserve the death penalty. I'm not sure that that's
2 the right thing to do, but I don't know.

3 Q Is this kind of a fair statement, that you don't have
4 any really fixed views on it? I want you to think
5 about it, if you would.

6 A Yeah, I think there are certain cases that I feel
7 that the death penalty would be appropriate. Do you
8 want to state what?

9 Q Yes, if you would.

10 A Raping a child for one thing, I think is a very
11 severe crime, especially if it's an habitual criminal
12 in that case. To me that would be cause for the
13 death penalty.

14 Q Anything else?

15 A That's really the only thing I really have a view on.
16 You watch TV and there are cases I'm sure.

17 Q Let's assume that the Defendant in this case is
18 convicted of first degree murder, premeditated
19 murder, would that in your judgment automatically
20 tell you that the death penalty is in order?

21 A There again, I hate to make a snap decision. I'm
22 just not one to make a snap decision on that.
23 Possibly, I don't know. I'd have to know all the
24 evidence before I would say right off the top of my
25 head. Sorry. That's my honest opinion. I cannot

1 say right off the top of my head that that would
2 require the death penalty. I don't know.
3 Q It's a tough question.
4 A Never being in this situation before it's hard for
5 me -- I'm not a person to make a snap decision on
6 meeting a person or anything else. I just don't do
7 it.
8 Q As I gather it, you have had no particular thoughts
9 on the death penalty other than I suppose what I'm
10 asking you now. Which do you consider to be more
11 severe, the death penalty or life imprisonment
12 without parole?
13 A Ones almost as bad as the other. From what I
14 understand prisons can be quite a bad place to be if
15 you are there for life. I'm sure losing your life
16 would be worse. I'm not an opinionated person.
17 That's the only reason I can give you for not saying
18 right off on the top of my head whether I can answer
19 that question.
20 Q I understand. You are not the first one that hasn't
21 been able to answer it. I notice that you are a
22 member of the Community Lutheran Church in Hill City?
23 A Yes, sir.
24 Q Are you a regular church goer?
25 A No, just whenever I can. I support the church and

1 I'm not an every Sunday type. There again we live
2 out and I have chores to do and the church is at 9:00
3 o'clock in the morning in the wintertime and it's
4 hard. Summer is better for church going because when
5 you have ice to chop and cattle to feed, and I'm the
6 one that does it, I enjoy doing it...

7 Q Have you ever served on a jury before?

8 A No, I never have been called or served.

9 Q As you sit there today, do you have any opinion as to
10 the guilt or innocence of the Defendant?

11 A No, sir, because I really haven't followed the
12 newspaper or whatever. When I got the letter from
13 the Judge I remember reading in the paper when this
14 first happened and other than that, like I say I
15 really didn't keep up with it. My husband or anyone
16 can tell you the only thing I read is the editorial
17 page and classified ads and see if there is anyone
18 there I know.

19 Q Let's see if this is a fair summary of how you feel.
20 As far as the death penalty or whatever the sentence
21 that might be appropriate in this case, you have a
22 completely open mind?

23 A Yes, sir.

24 Q And just because he might be convicted of first
25 degree murder wouldn't mean to you that automatically

1 the death penalty could be imposed?

2 A No, sir, I don't believe so at this point I do not I
3 don't think. Like I say, the circumstances are such
4 that I have never been in this position, so it's hard
5 for me to say.

6 Q You understand that at the second phase the law is
7 never going to tell you you have got to return the
8 death penalty, that's going to be on your conscience.

9 A Yes, sir.

10 Q Let's assume this, that after -- this is after the
11 death punishment phase, that you have heard all the
12 evidence and you have listened to the views of the
13 other members of the jury and you conclude that life
14 imprisonment is the appropriate penalty.

15 A Okay. This is assuming.

16 Q I'm just assuming. Are you such a person that you
17 would stick by your guns and not give in just to be
18 in the majority?

19 A No, sir, I don't do that. If I make up my mind and
20 sometimes it takes awhile, I usually stick by it.

21 MR. BUTLER: Pass for cause.

22 EXAMINATION BY MR. GROFF:

23 Q Mrs. Anderson, as Mr. Bulter introduced me I'm Dennis
24 Groff and I'll be putting on the case the next couple
25 of weeks. The main thing I'd like to talk to you

1 about today is the death penalty. When you got your
2 questionnaire you filled it out and we have a copy of
3 it, did you visualize in your mind that you might be
4 here answering these kinds of questions?

5 A Well, I didn't know. Like I say, I have never been
6 called and I had no idea what to expect and I felt
7 like the orientation we had was very informative and
8 it did help kind of know what was going on.

9 Q I want to work with a couple of things now, because
10 there is a very good chance you will be a juror on
11 the case. It's a very real possibility. I need to
12 work with some assumptions here and I don't want any
13 commitments from you or anything like that, I just
14 want you to visualize yourself being on the jury if
15 that's possible. It's very possible the jury might
16 be here and if we used this courtroom instead of the
17 other courtroom, I want you to assume that you went
18 through that first phase and you considered the
19 evidence and passed on the evidence and you found the
20 Defendant guilty of first degree murder and then you
21 have gone to the second phase and at the second phase
22 after once considering how you heard how the murder
23 was committed and you determined beyond a reasonable
24 doubt that one of the aggravating circumstances was
25 there to make this a special murder and after

1 considering all of the evidence, just assuming now,
2 you decided that the death penalty was appropriate.

3 A That's just assuming that?

4 Q Just assuming. Can you visualize yourself coming
5 back with 11 other people that compiles of that jury,
6 all unanimous in their verdict and having that
7 verdict read and your jury's verdict is imposing the
8 death sentence on the Defendant, Mr. Rhines, can you
9 visualize yourself being part of that?

10 A Yes, sir, I think so. Like I say, there again it's
11 assuming and I think it's a hard decision to make,
12 but if it came to that I don't see any reason why if
13 everyone agrees, and like I say, I have no idea what
14 happens when the jury doesn't all agree, I'm not up
15 on all that.

16 Q The other thing I want to ask you is this, because
17 you know, like any criminal verdict, we have to have
18 unanimous decisions and it's not just enough to have
19 ten to two or one to 11, and assuming you had that
20 unanimous decision and the verdict was read, the next
21 thing that could happen is that you could be asked
22 whether that was your individual verdict. In other
23 words, you could be polled and I really mean to
24 strike some reality here. If that were to occur and
25 that was your verdict and then you were polled one by

1 one and they came to you, Mrs. Anderson, and said, is
2 this your verdict, could you visualize yourself
3 facing the Defendant and the Court and saying, yes
4 that's my verdict putting Mr. Rhines to death?
5 A Well, I wouldn't lie about it.
6 Q I understand that and I'm not saying you would, but
7 can you visualize yourself in that position sitting
8 in judgment facing another person and saying, yes
9 it's my vote that you be put to death?
10 A I would say so. Once you have made your decision up,
11 that's it.
12 Q Does that trouble you somehow as you think about it
13 now?
14 A Not really. Like I say, this is all assuming and all
15 I can do is try to assume that that is the position
16 I'm in.
17 Q Would it be fair to say that that kind of important
18 decision would depend on the facts of the case and if
19 the facts justified it, could you come to that
20 decision?
21 A Yes, sir.
22 Q Now, when we talk about these aggravating
23 circumstances, those are actually circumstances we
24 have set in our law and the way you'll find out is
25 the Judge will give you instructions on those

1 circumstances. Assuming that's done and you get to
2 that second stage and you are considering whether or
3 not I have proven to you that there were one or more
4 aggravating circumstances in this case, do you think
5 you can look at the circumstances the Court will tell
6 you about and judge those circumstances whether or
7 not you agree with them?

8 A Yes, sir.

9 Q So, in other words, if our law is different than you
10 might expect, can you still follow the law?

11 A Yes, sir. I will definitely try to be a law-abiding
12 citizen.

13 Q While we have been talking, you mentioned earlier
14 this case of someone who maybe rapes and kills a
15 child that comes to mind.

16 A Yes, sir.

17 Q Is that a case where you think using that same
18 situation and being polled, that's a case where you'd
19 be pretty comfortable coming back with?

20 A There again it would depend on the evidence.

21 Q What evidence besides what you already told us about
22 would it depend upon?

23 A Well, I think it would depend on whether the person
24 had done this many times.

25 Q In other words, you gave us that example and do you

1 remember the one if someone who is an habitual
2 offender and...

3 A This person had molested children several times and
4 maybe killed one or two, I think I wouldn't have a
5 problem with that.

6 Q And this is assuming that the evidence was there.

7 A I think evidence is the key word there.

8 Q Are you trying to say you'd need, in that sort of
9 case, some sort of a serial killer?

10 A Well, I wouldn't have thought about it that way.

11 Q That's kind of the way you are explaining it to me.

12 A Yes, sir, I guess. Like I say, there again we are
13 assuming a position that I'm not really in.

14 Q Ignoring serial killers for a minute, here we have
15 one Defendant and one victim, a set of facts that you
16 have to look at and determine whether or not, number
17 one, did the person do it, was it first degree murder
18 and secondly was it aggravating where you could come
19 back and impose the death penalty. Can you think of
20 any circumstances that would justify the death
21 penalty.

22 A I think the evidence -- there again in the case that
23 if the evidence has proved that this person has done
24 this crime, if your law says that you need to impose
25 the death penalty or life imprisonment, it would

1 depend, there again on the evidence and the
2 circumstances.

3 Q What you are telling me is, if you found someone
4 guilty of first degree murder when you got to that
5 second stage at least, your first analysis would be
6 to take a look at the case and see if it is
7 justified, the death penalty, based on the law we
8 had?

9 A Yes, sir.

10 Q What I'm trying to get at here before I stop asking
11 you questions is this, fairly and honestly can you
12 tell me, do you think you have any personal
13 reservations about sitting on a jury that's
14 considering the penalty?

15 A No, sir.

16 Q Do you think you would be -- and I'm not being
17 judgmental about this, but do you think you'd go into
18 that second phase of a trial with your own personal
19 beliefs and somehow have a preconceived notion that
20 you'd have to come back with a life sentence?

21 A No, sir. I don't have any preconceived notion of it
22 either way at this point. Like I say, I've never
23 been in this situation before and I'm trying to be as
24 honest as I can. It's hard for me to visualize what
25 you are saying, but I'm trying to answer it the most

1 honest way I can. I mean, it doesn't matter to me
2 one way or the other whether I'm a juror. It's
3 not -- I don't have any reason why I should not be,
4 if I'm selected, because I have no ties to hold me
5 back or keep me from coming.

6 Q As you sit there now and you think of those two
7 options in the second stage, do you kind of think
8 about it in your mind and say, boy I could think
9 about those two options, but I wouldn't be
10 comfortable giving one of them?

11 A No, sir. If you are selected for a jury, I think you
12 just have to do the duty as a juror. Like I say, the
13 orientation I felt was very informative.

14 MR. GROFF: I'll pass for cause. Thank you, ma'am.

15 THE COURT: All right, Mrs. Anderson, just a reminder, I
16 know you don't read newspapers, but I am going to ask
17 you to continue not to read any articles or listen to
18 any news broadcasts concerning this case. Do not
19 discuss this case with anyone one or allow anyone to
20 discuss it with you. We will call you to let you
21 know if you are on the final jury panel and if there
22 is a possibility we are trying to reach you and we
23 are unable to do so, if you would call the Clerk's
24 Office on Wednesday morning and make sure we haven't
25 been able to, haven't been trying to reach you.

1 MARTHA ANDERSON: Thank you.

2 THE COURT: Thank you. All right, the State may
3 exercise. Record will show that the State has
4 exercised its 15th peremptory challenge and the Clerk
5 will summon in the next prospective juror.

6 MR. GILBERT: I would just renew the motion we made as to
7 jurors ~~Bachman, Hagemann, Chadwick, Hanson, Stebbins,~~
8 and ~~Henry.~~ *Heidi Lamb b-1349*
1298

9 THE COURT: The number 15 strike was ~~Agnas McDonald and~~
10 your objections are overruled for the same reasons as
11 stated previously. Last week we placed you under
12 oath and you remain under oath for questioning.

13 (Prospective Juror VIRGINIA ANDERSON, having previously
14 been sworn, testified as follows:)

15 EXAMINATION BY MR. BUTLER:

16 Q Mrs. Anderson, I'm Joe Butler and I'm one of the
17 attorneys for Mr. Charles Rhines, the Defendant, and
18 I'm pointing at him now and with me is Mr. Wayne
19 Gilbert and Mr. Mike Stonefield. That is Dennis
20 Groff who is the State's Attorney. Mrs. Anderson, we
21 have had the benefit of your responses on your
22 questionnaire that was sent out, so we already know a
23 little bit about you, however, I would like to have
24 kind of a brief sketch of your personal background
25 and where you were born up to the present time.

18268

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 VII

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 11th and 12th
13 days of January, 1993.

14 APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and.
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17 Pennington County
18 Rapid City, South Dakota

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20 MR. JOSEPH BUTLER
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22 PO Box 2670
23 Rapid City, South Dakota and

24 SUPREME COURT
25 STATE OF SOUTH DAKOTA
FILED

JUN 08 1995

26 MR. WAYNE GILBERT
27 Attorney at Law
28 3202 West Main Street
29 Rapid City, South Dakota and

30 MR. MICHAEL STONEFIELD
31 Public Defender
32 Pennington County
33 Rapid City, South Dakota

34 FOR THE DEFENDANT
35 Pennington County, S.D.
FILED
IN THE CIRCUIT COURT

MAY 05 1993

ORIGINAL

By Bonnie Fitzgerald, Clerk 114
Deputy

1 THE COURT: We previously swore you in, so you remain
2 under oath at this time.

3 (Prospective Juror WILMA WOODSON, having previously been
4 sworn, testified as follows:)

5 EXAMINATION BY MR. BUTLER:

6 Q Your name is Wilma Woodson?

7 A Yes, it is.

8 Q My name is Joe Bulter and I'm one of the attorneys
9 representing the Defendant, Mr. Rhines, who I'm
10 pointing to now and with me is Mr. Wayne Gilbert and
11 Mr. Mike Stonefield also representing Mr. Rhines?

12 A Okay.

13 Q And that's Mr. Dennis Groff, the State's Attorney.
14 Mrs. Woodson, we have had the chance of reading the
15 responses that you made on the questionnaire, so I
16 know a little bit about you?

17 A Okay.

18 Q I wanted you to know that so you didn't think I had a
19 private eye out snooping. We have had the benefit of
20 this questionnaire, however, I would like to know a
21 little bit about your background, just kind of give
22 me a brief biography about where you were born?

23 A I was born in Cleveland, Ohio and went to John Adams
24 High School and graduated from there. I have three
25 sisters and one brother. My husband is in the

1 military so we've traveled a lot. From Cleveland to
2 Texas and Montana, Alaska, California and now we
3 reside in South Dakota.
4 Q You have two children?
5 A Yes.
6 Q They're both in school I take it?
7 A Not my daughter, she's five years old.
8 Q You work at the hospital up here at Rapid City
9 Regional?
10 A Yes.
11 Q Were you stationed at Fairbanks, Alaska?
12 A Yes.
13 Q How long were you there?
14 A Three years.
15 Q In the Air Force?
16 A Yes.
17 Q What is his position?
18 A E-7 Master Sergeant.
19 Q He's been in...
20 A 20 years.
21 Q Planning on retiring?
22 A Not yet.
23 Q I'd like to have you take a look at that list of
24 names that is before you and see if you recognize any
25 of those names?

1 A No, I don't.

2 Q You are aware that Mr. Rhines is here charged with

3 first degree murder?

4 A Yes.

5 Q The evidence is going to establish, Mrs. Woodson,

6 that Mr. Rhines is a homosexual. Does that fact in

7 and of itself impact upon how you look at Mr. Rhines?

8 A No.

9 Q Over your life have you ever been acquainted with

10 anyone who is a homosexual?

11 A Not to my knowledge.

12 Q Do you believe that the lifestyle of a homosexual is

13 sinful or immoral?

14 A It's sinful; my religious beliefs.

15 Q What are your religious beliefs?

16 A I'm a Baptist.

17 Q Do you regularly go to church?

18 A No.

19 Q Would your view as to the sinful character to

20 homosexuality impact on your decision, if you are

21 selected as a juror either as in the guilt phase or

22 the punishment phase?

23 A No.

24 Q Let me tell you a little bit about the procedure in

25 the case, because it's a little different than what

1 we go through normally. As I told you, this is a
2 first degree murder case and the State, through the
3 State's Attorney, has requested the death penalty and
4 as a result of that, the trial is divided into two
5 phases, the first phase is the determination of
6 whether or not Mr. Rhines is guilty of first degree
7 murder, and if the jury determines that the State has
8 proven, beyond a reasonable doubt that the Defendant
9 is guilty of first degree murder, you go to stage two
10 and at stage two the State would be claiming and
11 proving, attempting to prove an aggravating
12 circumstance which would make the first degree murder
13 somewhat worse, at least in the eyes of the
14 legislature, do you follow me?

15 A Yes.

16 Q And at that point the jury, if the State has proved
17 that beyond a reasonable doubt in the second phase,
18 the jury would have the sentencing obligation. It's
19 unlike most criminal cases, because if the Defendant
20 is found guilty, in most criminal cases the Court
21 imposes the sentence. But here, because of the
22 request for the death penalty it's the jury.

23 A I understand.

24 Q And I want to also mention this before I proceed with
25 another question. If the jury determines death, that

1 is what happens. The Defendant is put to death. On
2 the other hand, if the jury determines that its life
3 imprisonment, life without parole, that means just
4 what it says, unlike in some other states where after
5 serving a period of time people are paroled, with a
6 life sentence that does not happen in South Dakota.
7 Life imprisonment without parole means what it says,
8 do you understand that?
9 A Yes.
10 Q You are willing to accept that?
11 A Yes.
12 Q I'd like to start out, because of the nature of the
13 problem we are facing, to ask you about your general
14 views concerning the death penalty?
15 A It would depend on the facts and how I felt and the
16 circumstances of the crime. It would depend on that,
17 is that what you are asking?
18 Q Yeah. What kind of circumstances -- first of all,
19 let me ask you, you are not opposed to the death
20 penalty per se?
21 A No.
22 Q Why do you believe in the death penalty?
23 A In some cases I feel it's just.
24 Q Why would it be just?
25 A Condition of the crimes, if the Defendant had no

1 remorse or, why did he or she do this, you know.
2 It's hard for me to give you a yes or a no, if that's
3 what you are asking me.
4 Q I don't mean -- I understand that when you get to
5 discussing the death penalty there is no black and
6 white, at least for many of us, but I guess I'm kind
7 of asking you, would you, under certain
8 circumstances, view the death penalty as being
9 punishment?
10 A Yes.
11 Q Would you look at it in the form of society having
12 its revenge?
13 A No.
14 Q You said you are a churchgoer from time to time?
15 A Yes.
16 Q Have you studied the Bible?
17 A Yes, some.
18 Q Is your view about the appropriateness of the death
19 penalty related to the eye for an eye and tooth for a
20 tooth?
21 A No, I'd say not.
22 Q Basically, as I understand it and in what you have
23 told me, your view of the death penalty is that in
24 certain circumstances you would view it as
25 appropriate punishment?

1 A Yes.

2 Q Which would you consider the more severe sentence,
3 life imprisonment without parole or the death
4 sentence?

5 A I would say life imprisonment without parole.

6 Q That's from your perception, right?

7 A Yes. I have to think about these questions.

8 Q If you had your choice, do you think the life
9 imprisonment without parole is more severe?
10 Believe me, you can change your mind.

11 A Yes. I don't know.

12 Q This is just an example of the difficulty of the
13 question. Let me ask you this, do you think that it
14 is a serious matter to think about imposing the death
15 sentence on another human being?

16 A Yes.

17 Q Certainly nothing that should be taken lightly?

18 A No.

19 Q In your life, if you are selected as a juror, can you
20 think of a more difficult decision that you've ever
21 had?

22 A No.

23 Q Do you know of any reason, Mrs. Woodson, why you
24 wouldn't try to be fair and impartial?

25 A No.

1 Q Follow the Court's instructions?
2 A Yes.
3 Q And do what you felt in your mind was right?
4 A Yes.
5 Q Now, you understand that if you are selected as a
6 juror in this case you are one of 12?
7 A Yes.
8 Q After you are deliberating there will be only 12
9 deliberating, and with respect to the imposition of
10 the death penalty. It will take a unanimous verdict.
11 A Yes.
12 Q Now, you will, in your deliberations, consider the
13 views and arguments of your fellow jurors, I'm sure?
14 A Yes.
15 Q But after you have done all that and you arrive at
16 your opinion as to what you think the appropriate
17 sentence is, will you stick by that, even though you
18 are not in the majority?
19 A Yes, I have to go with the way I feel and it's
20 something I have to live with.
21 Q Because you understand that it takes a unanimous vote
22 of every juror for that death penalty?
23 A Yes.
24 Q So, in effect, each vote is one vote?
25 A Yes.

1 Q And you'd give it your best shot, wouldn't you?

2 A Yes.

3 MR. BUTLER: Pass for cause.

4 THE COURT: State may inquire.

5 EXAMINATION BY MR. GROFF:

6 Q Mrs. Woodson, I'm Dennis Groff and I will be
7 presenting the State's case to you. I'm your State's
8 Attorney. What I need to talk to you about briefly
9 today are some of these same death penalty questions,
10 would that be okay?

11 A Yes.

12 Q And we want to just make sure where you are at on
13 this. Can you tell me, you were telling Mr. Bulter
14 that it would depend on the facts and circumstances
15 of the case and how you were saying, when the death
16 penalty might be appropriate, is that what you were
17 telling us?

18 A Yes.

19 Q I'm a little curious and you are not bound by any of
20 this by any means, but can you think of any facts or
21 circumstances from your life as you have gone through
22 it and read the paper, any facts or circumstances
23 where you thought the death penalty might be
24 appropriate?

25 A Yes.

1 Q What kind of cases come to mind as you think about
2 that?
3 A I would say child killings.
4 Q Why do child killings come to mind?
5 A Defenseless, innocent persons.
6 Q I won't pry anymore, because I want to ask you a
7 little bit about the instructions. You served on a
8 jury before so you know you don't make up your mind
9 until you have heard the Court's instructions?
10 A True.
11 Q In the instructions that you are going to get, if you
12 get to that second phase, the Judge will instruct you
13 about some of the aggravating circumstances that
14 might be applicable to this case, and my job in the
15 second phase is to convince you beyond a reasonable
16 doubt that at least one of those aggravating
17 circumstances exists. If I can't do that, then you
18 don't have to consider the death penalty. If I can
19 do that and you are convinced beyond a reasonable
20 doubt, then you can consider the death penalty and
21 you don't have to impose it, but you can consider it,
22 do you understand?
23 A Yes.
24 Q What I am trying to get to briefly is when you look
25 at those aggravating circumstances that the Court

1 instructs you about, do you think you can follow that
2 law, even if you don't agree with it; do you think
3 you can do that?
4 A Yes.
5 Q Because you know you are bound to follow the
6 instructions?
7 A Yes.
8 Q If I could just take a moment with you and the first
9 thing I need to go into, your recollections of when
10 you got the questionnaire that you filled out.
11 A Yes.
12 Q When you got that and sent it back within the time
13 frame you had to send it back, did you visualize that
14 you might actually be here in the courtroom answering
15 these kind of questions?
16 A No.
17 Q And you are here now.
18 A Yes.
19 Q And we've gotten through part of it and what I want
20 you to do, without holding anything against me, I
21 want you to, through a visualization process and this
22 is the last time either side will have a chance to
23 look at you and decide from your responses whether or
24 not you can be on the jury?
25 A Okay.

1 Q I think this may help. I wanted you to assume for a
2 moment, because there is a real possibility you'll be
3 chosen. Assume for a moment that you are actually on
4 this jury and I want you to think about this
5 courtroom and that jury box and I want you to assume
6 now, and I'm not asking for any guarantees or
7 promises, I just want you to assume for our purposes
8 that you have gone through that first phase and I
9 know you haven't heard any evidence, and assume you
10 went through that first phase and you have decided
11 the guilty verdict was appropriate on first degree
12 murder, just an assumption, and assume you got to the
13 second phase and assume you have heard the evidence
14 and the arguments in the second phase and you have
15 gone back and decided that there is an aggravating
16 circumstance.

17 A Okay.

18 Q And let's assume that you, along with your other
19 jurors decided, just decided the death penalty was
20 appropriate. All I'm trying to get to now is, can
21 you visualize yourself coming back in here with those
22 other 11 people and facing the Judge and the
23 Defendant, Mr. Rhines, and actually being part of
24 that jury who would have their verdict read imposing
25 death on this Defendant? Can you visualize yourself

1 doing that if the facts and circumstances indicated
2 that that was the appropriate thing to do?
3 A Yes.
4 Q Secondly, I don't know if this happened up in Alabama
5 or not, but what happens here in South Dakota is the
6 jury is polled because it has to be their individual
7 verdict and they had to vote for it individually,
8 unanimously, plus they are asked one by one, is this
9 your verdict in this case, putting someone to death.
10 Can you actually visualize yourself, if that were
11 your verdict, saying, yes, that is my verdict putting
12 you to death? Can you visualize yourself going
13 through that, if you were convinced that was the
14 right thing to do?
15 A Yes, if I felt that way, yeah.
16 Q Let's back out of that and none of that has happened,
17 but I want to talk to you a little bit about your
18 friends, do you have any friends or relatives who are
19 adamantly opposed to the death penalty?
20 A Not that I know of.
21 Q Can you think of anyone, if you were to render that
22 type of verdict, who, when you left the courthouse
23 and went home would give you a hard time because you
24 did something like that?
25 A No, I can't think of one, no.

1 Q The last thing I want to ask you about is reasonable
2 doubt. In our law, whether it's a D.W.I. case or a
3 speeding case, right down the line, all the way to a
4 murder case, our standard of proof that we have to
5 prove the case by is always proof by beyond a
6 reasonable doubt. It's always the same standard no
7 matter what it doesn't go up like this. Just because
8 this is a murder case and it might involve the
9 consideration of the death penalty, do you think you
10 would make us prove our case, not to a standard of
11 proof beyond a reasonable doubt, but to an absolute
12 certainty?
13 A Yes.
14 Q You'd want to be pretty certain?
15 A Yes.
16 Q But if the Judge told you that absolute certainty
17 wasn't required of the State, that the State had to
18 prove its case beyond a reasonable doubt, could you
19 follow the Court's instructions?
20 A Yes.
21 Q Can you think of of any reason at all now that you
22 have been here about 25 minutes, why you couldn't be
23 on this jury?
24 A To be honest with you, no.
25 MR. GROFF: That's what I was thinking you'd tell me.

1 Pass for cause.

2 THE COURT: Miss Woodson, you remain a prospective juror
3 on this case and we will let you know this week
4 whether you have made it onto the final jury panel.
5 It is very important now that you not discuss this
6 case with anyone or let anyone discuss it with you
7 and also that you not listen to or watch or read any
8 news media accounts of this case. Can you promise me
9 you'll not do these things?

10 WILMA WOODSON: Yes, your Honor.

11 THE COURT: If you haven't heard from us by tomorrow
12 afternoon, I'd ask that you call the Clerk's Office
13 to check in and make sure that we haven't been trying
14 to reach you. Thank you, very much. State may
15 exercise.

16 MR. GROFF: State has exercised, your Honor.

17 THE COURT: State has exercised its 18th peremptory. The
18 Clerk will summon in another prospective juror. Good
19 morning, sir. We previously swore you in last week
20 so you remain under oath for questioning today.

21 GARY CHASTAIN: All right.

22 THE COURT: Defense may inquire.

23 (Prospective Juror GARY CHASTAIN, having previously been
24 sworn, testified as follows:)

25 EXAMINATION BY MR. STONEFIELD:

18268

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 VII

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 11th and 12th
13 days of January, 1993.

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

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

24 SUPREME COURT
25 STATE OF SOUTH DAKOTA
FILED

26 JUN 08 1995
27 Attorney at Law
28 3202 West Main Street
29 Rapid City, South Dakota and

30 MR. MICHAEL STONEFIELD
31 Public Defender
32 Pennington County
33 Rapid City, South Dakota

34 FOR THE DEFENDANT
35 Pennington County, S.D.
FILED
IN THE CIRCUIT COURT

MAY 05 1993

ORIGINAL

By Bonnie Fitzgibbon, Clerk 114
Deputy

1 the state.

2 Q And you said you didn't start high school?

3 A No.

4 Q Have you had any vocational schooling or other kinds

5 of schooling?

6 A Yes.

7 Q It's kind of a difficult question and I don't want to

8 embarrass you, but you said that you didn't really

9 understand what the Court had instructed you about a

10 week ago yesterday and I don't know how else to

11 phrase it but, do you think you'll have trouble

12 understanding and following along?

13 A I believe I would have, I really do.

14 MR. GILBERT: Your Honor, I'd ask that Mr. Pleinis be

15 excused.

16 MR. GROFF: I have no objection.

17 THE COURT: I think we will excuse you on this case, Mr.

18 Pleinis. Thank you, very much for coming in.

19 Clerk will summon another prospective juror. Good

20 morning, sir. We swore you in last week and so you

21 remain under oath at this time?

22 (Prospective Juror MARK DEAN, having previously been

23 sworn, testified as follows:)

24 EXAMINATION BY JOE BUTLER:

25 Q Your name is Mark Dean.

1 A Right.

2 Q I'm one of the attorneys representing Mr. Rhines and

3 I'm Joe Butler. I'm pointing at Mr. Rhines and next

4 to him is Mr. Wayne Gilbert who is associated with me

5 as well as Mr. Mike Stonefield and Mr. Rhines is

6 right there and that is Dennis Groff, the State's

7 Attorney. Mr. Dean we had a chance to look at the

8 questionnaire you returned to the Court and you were

9 asked to list any other known reason why you do not

10 feel you could serve as a juror in this case; do you

11 remember that?

12 A Uhm-uhm.

13 Q And you stated I have been going through a lot of

14 stress because of my divorce and money problems?

15 A Uhm-uhm.

16 Q Do you feel that that would serve as a reason why you

17 couldn't sit on this case?

18 A I guess not actually.

19 Q I don't like to pry into your personal life, but at

20 least you indicated there might be some impact and I

21 would like to visit with you a little bit about it.

22 Apparently you are in the process of a divorce or has

23 it been completed?

24 A No, it's completed.

25 Q And when was it completed?

1 A It's been several months ago.
2 Q And you indicated that you had some financial
3 problems?
4 A Yeah.
5 Q Are those still there?
6 A Yeah -- I don't know.
7 Q Would serving on this jury aggravate those, make them
8 worse?
9 A Not at this point. Actually I haven't been working
10 for a few days any way because of the weather and the
11 weather is a big factor in my job.
12 Q If you were to serve on a jury here for maybe two or
13 three weeks or even a month, you don't think that
14 would impact on you financially?
15 A Well, yeah, it probably would to a point.
16 Q Would it be something that you couldn't handle?
17 A No.
18 Q Okay. Mr. Dean, just give me a brief sketch about
19 your personal background and where you were born and
20 raised and went to school and so forth?
21 A I was born in Hot Springs and I grew up in South
22 Dakota most of my life and graduated from Hill City
23 High School and I have worked in the area pretty much
24 all my life.
25 Q What kind of work do you do?