indicated his additional concern.

THE COURT: Okay. Mr. Stanton, do you have any requests?

MR. STANTON: Well, Your Honor, as I understand the law in this area, one of the critical elements is whether or not this is an involuntary medication or a voluntary medication. And I don't know what the record has gleaned from that. I think Mr. Gregory and the Court has indicated that there was some discussion at the hearing we weren't present in, but I don't know to what extent.

Then, of course, we go -- if it's Mr. Vanisi's position that it's involuntary and he doesn't want it, that raises a whole set of issues. If indeed it's voluntary, to what extent has he been advised to make that decision? And that the decision is a rational decision, one that is based on information as best as he can determine.

It's the State's perspective from the information it has about Mr. Vanisi that not only indeed is he legally competent, but indeed he is rational in his state of mind to make the determination about the drugs. Obvious, any rational person who is not a doctor would have to have some sort of advice or be given some sort of information to make that rational choice. What are these drugs? What amounts are they? How do they affect him?

And those, other than from what I've gotten

through the PDR, I don't know more than that. The term in Riggins is antipsychotics. And I'm not sure if they use that term in a pharmacological vein with any degree of accuracy. I do know that all these drugs are potentially mood altering. Mr. Gregory's talking about mood leveling. I think it's a fine line between affecting one's mood and then going to the line of antipsychotic.

So, we have those concerns about the initial issue of voluntary versus involuntary. I think Riggins clearly sets out, although it's a short decision, it's only one page, that it lays out specific findings that the Court must put on the record. That it's medically appropriate and essential considering less intrusive means to assure the safety of the appellant or the safety of others.

I think in that vein you can add the language that it's in his best interests relative to his state of mind to either assist counsel or whatever the goal is that's being sought with the medication of the defendant, which the State is operating primarily in the dark here. I don't know what the goal is. I don't know what the problem is. And so I would assume you could assert the language.

But I think Riggins is clear that when you begin to medicate the criminal defendant, that it must be determined is it voluntary or involuntary? And to what extent are the goals being accomplished by the medication?

We have some concerns that, the sole concern from the State is making sure that the record is clear to support the order.

THE COURT: Is it your position that the Riggins case requires such a finding from the Court if the request for medication is voluntary?

MR. STANTON: If the request is voluntary, does the Court need to go further and find out the other aspects of the Riggins decision?

THE COURT: Yes.

MR. STANTON: You know, I'm not sure, Your Honor. The decision doesn't break it down by saying it's conditioned solely on the basis of involuntary versus voluntary. Although the dissent both of the Supreme Court of the United States and the dissent in the final Riggins decision, they seemed to be morally offended by the voluntary versus involuntary nature of the medication. My reading of the decision is that it's just a fact and it's not outcome derivative as to whether or not the rest of the finding must be made.

But I certainly think that some record should be developed as far as what is being requested, the specific drugs and the dosage amounts. And I understand from Mr. Gregory that the doctors who evaluated him in essence prescribed these.

It's kind of a convoluted route. We have a District Court Judge ordering the Washoe County sheriff's office medical staff to give somebody medication. A doctor is not prescribing it, at least not directly. As the Court said, you know, I would think any doctor that prescribes medication would want to know from their patient whether or not the effects are ongoing in a correct, appropriate manner as they would perceive that medication to take place.

If we have a doctor that is down in Carson City, how in the world is he going to know what the effects of Mr. Vanisi are? Because I'll tell you what is going to happen, as I'm sure the Court and counsel is aware of, you give this order to the sheriff's department medical staff, they are going to do one thing and one thing only. That is, they are going to comply with the order. If something happens wacky or up usual, I'm hopeful they will advise the Court. Or if someone in the medical staff says hey, look, I don't think this is appropriate, I would hope they would advise the Court.

But it's somewhat of a -- I understand what Mr. Gregory is doing, I think. That is trying to get some medication to assist him in communicating with his client or whatever. I'm just concerned about what has the record shown to justify the order.

THE COURT: Now, did you, Mr. Gregory, give

Mr. Stanton or Mr. Gammick a copy of Dr. Lynn's report?

MR. GREGORY: I gave Mr. Stanton the opportunity to read that. I didn't have a copy with me. He did read it in toto.

THE COURT: But that has been passed on?

MR. GREGORY: Yes, ma'am. If I might, Your Honor --

THE COURT: I just want to clear one thing up, Mr. Gregory. I just reviewed the entire sealed transcript, albeit while I was listening to Mr. Stanton with one ear. But I have reviewed the whole thing. None of the discussions between Mr. Vanisi and myself dealt with the voluntary medication issue.

MR. GREGORY: I know that question was asked, Judge. Maybe it wasn't during the sealed; maybe it was afterwards.

THE COURT: Maybe it was in open court with the D.A. present?

MR. GREGORY: It certainly could have been.

THE COURT: We will have to find out. I want to let you know it's not in the sealed transcript.

MR. GREGORY: If I might address Mr. Stanton's concern. Judge, if I could take a prescription up there and put it on the sheriff's desk and think that they would act on it, then I would do so. I don't know how else to do

this. I'm not asking the Court to order anything.

The doctor has indicated that this will help Mr. Vanisi focus and cooperate with us, which he has had grave difficulty doing. And the Court -- the prosecutor is concerned with whether or not there will be changes that might affect his competency. I have seen him, with the exception of two days, I have seen him every day since he has been back from the prison. I am there to monitor him. I'm certainly not going to let him fall into some dark mental pit without informing the Court and/or the doctors.

I don't want the Court to involuntarily medicate Mr. Vanisi. Mr. Vanisi understands that he's got a problem and that this might help him. And I think the documents that we used during the competency hearing indicated that the testing done, the extensive testing done by the psychologist has concluded that he is a manic-depressive and could be helped by these medications. Not specifically those. I don't know; I'm not a doctor. At least we have to get him on some sort of regimen, something so that he can aid me in his defense.

THE COURT: I'm not, obviously, familiar with what you all deal with on a regular basis with regard to medical attention at the jail. So I don't know exactly how it all works.

But I know in cases, certainly not as high profile

as this, but in cases generated out of the district that I've seen in my court there have been occasions when the defense has specifically requested that the medical team that is in place at the sheriff's office in the jail evaluate and administer certain kinds of drugs.

MR. GREGORY: Here is the problem, Your Honor. I've inquired of Dr. Lynn and other private psychiatrists. The problem is that the sheriff has a contract with a medical group. And out of extreme caution, this medical group has sugar pills -- this is the doctor's -- I mean, the medications they have to provide really don't do a thing. They are as mild, mild tranquilizers, as mild as they can be, okay? I don't know -- I know they have the capacity to give him lithium, but they are not going to do that out of their general practice in the jail. Just out of extreme caution. That's the way they operate.

THE COURT: But in this particular instance you haven't asked them. Your experience is that they don't do it?

MR. GREGORY: Your Honor, I don't presume on anybody. As I said, as soon as Mr. Stanton indicated his further concerns, I stopped everything immediately.

THE COURT: All right. The way I would like to -- I don't know exactly how we should handle this because we do have a valid order from the Chief Judge of the district who

has authority to sign the order he signed. Although it wasn't exactly what I anticipated, and in fact it was considerably different than what I anticipated, he did not have the benefit of that transcript. I don't know if you had that transcript at the time that you met with him.

MR. GREGORY: I did not.

THE COURT: So he didn't know what I had said I wanted to have happen before he did it. But he did sign the order.

If you voluntarily agree to not proceed with that order, we don't have to involve Judge McGee any further and that's fine. If you still want to proceed with that order, then I'm going to have to do something and I don't know exactly what to do. I have never been faced with this before.

What I would like to do, if this were just fresh on my plate, I would like to have a hearing. I would like to have either the sheriff's doctor tell me why he doesn't want to follow Dr. Lynn's recommendation and/or Dr. Lynn tell me why I should follow his recommendation, and some physician tell me how I and they are going to monitor this medication, so that we can be sure that there's really a physician monitoring the medication.

The fact that you take the blood level isn't the whole story. Somebody has to be evaluating that blood level

and determine: We stop giving it, we give it at a different level, we change the level of medication, whatever it may be. And I'm not comfortable that the order that was entered into initially by Judge McGee tells or directs or puts that responsibility on anybody. And I don't think that the District Court wants that responsibility.

That's all assuming that Mr. Vanisi says to me: Yes, I want the drugs and I want to do it. That's my concern. I want to have -- I would prefer to have the physician at the jail say: We accept Dr. Lynn's recommendation. We will take over the medication. We will supervise him and we will make regular reports to the Court that he's doing fine, and to counsel and he's doing fine. And we can have a medical determination, continuing medical determination of competency. That would be my first choice.

But if that can't happen, then I'm willing to go out and go further and become more aggressive as I've done in many cases with the sheriff's department's medical staff. And I have ordered them to give medication and to take certain action. But I've only done it after I have had a full hearing and I have heard from the physician that's recommending it and the physician who is indicating that he does not want to do it.

Otherwise, I think it's a very dangerous ground to go and just order that we have certain levels. I don't know

who is going to be monitoring those levels.

MR. GREGORY: All right. Here is the problem, as I see it. I believe Mr. Stanton has misread Riggins. The triggering factor here in the Riggins case was he was forced to take medication. That's the thing that offended everybody.

THE COURT: I'm kind of beyond Riggins. I'm assuming that Mr. Vanisi --

MR. GREGORY: Assuming Mr. Vanisi stands up and says: Judge, I need some help. How do we help him? How do we physically help him without going through this? We already had a doctor look at it.

THE COURT: Unless that doctor can treat him, then we have to get the doctor who is treating him on board before we start administering drugs. The order that was entered just says you'll give a certain level of medication. You'll take blood work. But it doesn't say when it gets to a certain level stop. Theoretically that order could force them to get these levels up to a toxic level.

MR. GREGORY: I'm not sure that I quite understood what the doctor was saying. I assume that any other competent doctor would look at that and understand what was going on.

THE COURT: Unfortunately, we've codified it in a written order from a judge which doesn't really allow for

independent reasoning and thought process. You follow the order, blanket order of the Court. That's why I'm very concerned about doing it that way.

MR. GREGORY: We are a month away from the trial, Judge. If you're going to have a full-blown hearing on the request of the defendant to have some voluntary help with his mood changes, I don't know, what are we going to be two weeks down the road?

THE COURT: Hopefully not.

MR. GREGORY: Then would the medication be of any help to him? It's critical that we do this now.

THE COURT: I think what you have to do today is you have to get a hold of the medical director of the jail. You have to give him Dr. Lynn's report. And you have to say: Do we have to have a hearing or will you give Mr. Vanisi the drugs he's requested?

MR. GREGORY: Assuming he says he will, we are finished.

THE COURT: I will canvass Mr. Vanisi today and make sure it's voluntary. Yes, then we're done. If he says he won't, you will be back in here. And I think you can do it on a telephone call together to set a time when we can get the doctor in here and get Dr. Lynn in here and you can ask me to make a call. In that call, I'll also make a call as to who will supervise the lithium levels, who is going to

supervise the blood work, and who is going to report back to me if the medication needs to be stopped.

MR. GREGORY: I want to make sure I understand. I don't want to get into a pickle. If I go up there and the doctor says: Yeah, we can do this, then I'm fine, right? I don't have to report that back to the Court?

THE COURT: Wait a second. If you go up there and you give him Dr. Lynn's report -- I have to canvass Mr. Vanisi still, but I canvass Mr. Vanisi and he says: Yes, I want this. You give him Dr. Lynn's report and the medical physician says yes, I agree this would be a good medical treatment, and I have no problem instituting it immediately, then he'll institute it.

That was my order back when we were, when you were in court on June 23. If they voluntarily gave it to him, they could give him anything and that was my order.

Now, if they don't want to do it, you can't say: Well, I have this order; you've got to do it. That's not what I'm talking about. I'm talking about --

MR. GREGORY: As far as I'm concerned, the order is withdrawn. I'm not going to utilize the order.

THE COURT: If they think it's medically justified, that's fine. What we will do, we will get a report from the medical team sometime before the trial to confirm that Mr. Vanisi is okay and the medication has not

impacted his mental state to the point that he can't be prepared for trial.

Mr. Stanton, you have a problem with that?

MR. STANTON: Not a problem, Your Honor. One additional thing. I think the medical staff from the jail would also want to have the opportunity to speak with Dr. Lynn about -- I read Dr. Lynn's one-time report. Mr. Gregory brought it over. I believe that may not be enough for them to do it. That they might have some follow-up questions of Dr. Lynn.

I think Dr. Lynn will be in the predicament of can he violate the doctor-patient privilege. If that's the case, if Mr. Gregory encounters that with the jail, obviously if they can arrange for Mr. Lynn to be able to communicate openly with the staff that might assist them in making a full determination.

THE COURT: That's a good idea, to give a release if you're comfortable with that, with your client after discussing it, that would be quicker to release Dr. Lynn so he can talk to medical staff.

MR. GREGORY: Yes, Your Honor.

THE COURT: Now, Mr. Vanisi, it's your turn. Now, you remember when you were here before and we had the long hearing when the D.A. wasn't present? Do you remember that?

THE DEFENDANT: Yes.

THE COURT: Now, when we were in that hearing your attorney asked me if I would order that you get certain kinds of drugs. I told him I wouldn't do it right then. Now we are talking about that issue today.

Do you understand that? The issue of whether or not you want to take drugs?

THE DEFENDANT: Yeah.

THE COURT: Now, do you know who Dr. Lynn is?

THE DEFENDANT: Yeah.

THE COURT: And have you gone over his report and recommendation with your attorneys?

THE DEFENDANT: I haven't gone over his report. I was there present when he was interviewing me, trying to see which medication would be proper for me. I was explaining to him certain things about myself and he deemed that I should be on lithium. And he told me that I also have attention deficit disorder, which prohibits me with working with my attorneys.

THE COURT: So he suggested lithium, but he suggested a few other drugs, too. Are you aware of that?

THE DEFENDANT: Yeah, I think one is Butrin and the other one --

THE COURT: Is hard to pronounce.

THE DEFENDANT: Yes.

THE COURT: Titra -- it was spelled by the

prosecutor a little while ago.

THE DEFENDANT: Yeah.

THE COURT: Now, did he tell you all this verbally? Or did you actually get to see his written report that he gave your lawyers?

THE DEFENDANT: I never got to see his written report. He told me after the interview.

THE COURT: Okay.

THE DEFENDANT: What he had suggested.

THE COURT: Now, Counsel, do you have those drug names written down anywhere?

MR. GREGORY: They are in the order. It's Wellbutrin and lithium.

THE COURT: Just go ahead and show Mr. Vanisi those actual words.

THE DEFENDANT: Titration with appropriate blood level monitoring.

THE COURT: I want to make sure --

MR. GREGORY: I don't think titration is a drug, Your Honor.

THE COURT: I don't even know what it is. Those are the recommendations. Okay.

THE DEFENDANT: Is that the report? That's the order.

THE COURT: That's the order, but it says the kind

of drugs that Dr. Lynn recommended that you take.

THE DEFENDANT: Yeah, I looked at that. I just looked at the order.

THE COURT: Okay. Do you want to take those drugs?

THE DEFENDANT: Yeah, I volunteered to take those medications.

THE COURT: Okay. And do you understand that there may even be more medication that is recommended by the medical team that assists you?

THE DEFENDANT: Yeah, if it will help. That's why I'm here. That's why we are here is to get me medicated.

THE COURT: You want to do that?

THE DEFENDANT: Yes.

THE COURT: Now, Mr. Vanisi, you know, don't you, that if any time you think this isn't working for you, that you need to communicate that to your attorneys?

THE DEFENDANT: I was the one --

THE COURT: If the drugs aren't working for you?

THE DEFENDANT: I was the one that kept looking for the proper medication. I was the one that brought it to the attention of these doctors. I brought it to the attention of Washoe. I have written kites. I have written N.S.P. kites. They have all failed to give me a response of what I asked them.

THE COURT: Looks like you're getting a response now.

THE DEFENDANT: Thank you.

THE COURT: What I want to make sure, though, is that you understand that if when you start taking the drugs, if you change your mind or you have a problem taking them, that you must tell your attorneys.

THE DEFENDANT: Yes. I would tell them if something is askew with the medication. I will tell them if something is amiss. I will be very thorough with explaining to them how this is affecting me.

THE COURT: That's fine. Anything further on the canvass with regard to the voluntariness from counsel?

MR. STANTON: No, Your Honor.

THE COURT: Okay. Now, Mr. Gregory, get back to us as soon as you have an answer. We already have an extensive hearing scheduled for Thursday afternoon on other issues with regard to Mr. Vanisi. But we might be able to add this to it. I don't know how long those hearings are going to take.

I don't know exactly how you all are going to sit in the room. Those are the hearings with -- you're all looking at me. You all know you have hearings Thursday? You don't know? Thursday is scheduled the newspaper motions for access to in-chambers conferences and the psychiatric

evaluations. And that's scheduled for Thursday afternoon. You did know, Mr. Gregory?

MR. GREGORY: Yes, Your Honor.

THE COURT: I wanted to make sure everybody knew about that. You two are joined; both the State and the defense is opposing. So it's going to be an interesting placement. We might have to kind of scoot everybody closer together.

MR. GREGORY: There's a problem, Your Honor, if the Court wishes to have a hearing with Dr. Lynn, assuming that the jail indicates that they are not comfortable with medicating. Dr. Lynn is one of those doctors that is, you know, you're three months before you can get him to see someone.

THE COURT: I know Dr. Lynn very well and have known him a long time. I'm sure I can get him here early some morning.

MR. GREGORY: As a favor?

THE COURT: Well, he knows the importance of this. He has had a history of being very cooperative with the Court. If he can arrange it, if necessary we will give him sometime some encouragement from me.

MR. GREGORY: Thank you, judge. May I have the Court's indulgence?

THE COURT: Yes.

MR. GREGORY: Your Honor, I know the Court's time is valuable, but I think it's important that we have a brief moment with the Court in camera with Mr. Vanisi present for certain issues that need to be brought to the Court's attention.

THE COURT: Okay. I think you need to say the general area of that, so that I know what we are excluding the State from. You don't have to tell me what the content of the discussion is, but is it regarding psychiatric? Is it regarding counsel?

MR. GREGORY: No, it really is regarding the attorney-client privilege, Your Honor.

THE COURT: Okay. Counsel, any objection?

MR. STANTON: Kind of hard to state an objection. I'm sure the Court will handle the proceeding appropriately.

THE COURT: Okay. Thank you. All the members of the District Attorney's office and staff will please be excluded from the courtroom.

MR. GAMMICK: May I ask as we did last time, Your Honor, if we can ask the Court to admonish all the sheriff's department not to discuss what is going on in here, we would appreciate it. Thank you.

MR. GREGORY: I believe the Gazette-Journal is also represented.

THE COURT: No, Ms. Sanchez is my law intern.

MR. GREGORY: I apologize.

THE COURT: That's okay.

(Mr. Gammick, Mr. Stanton, and several other people left the courtroom.)

THE COURT: As we did before, the gentlemen who are on the court detail, the bailiff is always obviously under the conditions of confidentiality as to closed hearings. But each of you are adjunct bailiffs of the department by providing security and transportation in this case.

And I would ask that you all -- many of you were here before, but I'm not sure all of you were here before. I will go ahead and have you state on the record your names and that you understand the requirement for confidentiality. That meaning that you cannot talk about what takes place during the sealed hearing with each other or with anyone else, absent a court order allowing you to discuss it, even if you think it's necessary for security purposes.

Go ahead and start over there and stand and state your name.

OFFICER: Deputy Jim Ellis, E-l-l-i-s.

OFFICER: Deputy Brian Williamson, W-i-l-l-i-a-m-s-o-n.

OFFICER: Lieutenant Jeffrey Wise, W-i-s-e.

OFFICER: Deputy Greg Larramendy,

L-a-r-r-a-m-e-n-d-y.

OFFICER: Deputy Brian Uptain, U-p-t-a-i-n.

THE COURT: Gentlemen, would you all stand? You all agree to follow the confidentiality rules I have just outlined?

(All officers responded "yes".)

(This concludes the partial transcript of open proceedings.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, KAREN YATES, a Certified Court Reporter of the Second Judicial District Court, in and for the State of Nevada, do hereby certify:

That I was present in the above-entitled court on August 3, 1999, and took verbatim stenotype notes of the proceedings entitled THE STATE OF NEVADA, Plaintiff, versus Sisosi Vanisi, Defendant, Case No. CR98-0516, and thereafter transcribed them into typewriting as herein appears,

That the foregoing partial transcript is a full, true and correct transcription of my stenotype notes of the open portion of said hearing.

DATED at Reno, Nevada, this 3rd day of August, 1999.

Karen Yates

KAREN YATES, CRR
Nevada CCR No. 195

Exhibit 22

Exhibit 22

Case No. CR98-0516 Code No. 4185

Dept. No. 4

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

--oOo--

THE STATE OF NEVADA,

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

_____/

MOTION FOR SELF REPRESENTATION

August 10, 1999

Reno, Nevada

APPEARANCES:

For the Plaintiff: RICHARD GAMMICK
District Attorney
DAVID STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant: STEPHEN GREGORY
and JEREMY BOSLER
Deputies Public Defender
One South Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI

Reported by: KAREN YATES, CRR
Nevada CCR No. 195

ORIGINAL

RENO, NEVADA, TUESDAY, AUGUST 10, 1999, 10:45 A.M.

--oOo--

THE COURT: Thank you. Please be seated. This is the time set for request by Mr. Vanisi for self representation. I have received his written request in the form of a motion and response from the State.

Any further legal documents to be filed at this time?

MR. GREGORY: Not by the defense.

MR. STANTON: Not by the State, Your Honor.

THE COURT: Mr. Vanisi?

THE DEFENDANT: Yes, ma'am.

THE COURT: There is an inquiry that I would like to make of you at this time to determine whether or not I will grant your request for self representation. Are you familiar with the procedure that is going to take place now?

THE DEFENDANT: Yeah, I'm familiar with the procedure.

THE COURT: Have you discussed what is going to happen with your court-appointed counsel?

THE DEFENDANT: Yeah, we've discussed it.

THE COURT: They explained to you what is going to happen today?

THE DEFENDANT: Yeah.

THE COURT: Do you understand, Mr. Vanisi, that it

is often unwise for a criminal defendant to conduct his own defense?

THE DEFENDANT: Yes, I understand.

THE COURT: And by saying you understand, what do you think is unwise about that?

THE DEFENDANT: If I produce a defense that would procure a detriment on my behalf, I won't complain on appeal.

THE COURT: Right. You understand that you can't complain that you were ineffective, in other words?

THE DEFENDANT: Yeah.

THE COURT: Do you understand there's other pitfalls in representing yourself?

THE DEFENDANT: Yes, there are other pitfalls, Your Honor.

THE COURT: What are the other pitfalls you are aware of?

THE DEFENDANT: One of the pitfalls I would be facing against the prosecution, they would have the ability, they would have the training, they would have the skill. They can somehow or another, because of their experience, can produce an unintended event where I would be at a disadvantage because I won't be quite knowledgeable with all the legal terminology and the proceedings of the court rules. So that one could be a pitfall.

THE COURT: All right. Do you understand that if you do undertake to represent yourself, you would be responsible for knowing and complying with all the procedural rules required of attorneys?

THE DEFENDANT: Yes, I understand.

THE COURT: Now, do you understand that you have a request for a jury trial in this case?

THE DEFENDANT: Yes, I understand.

THE COURT: What are the procedural rules that you are aware of with regard to a jury trial?

THE DEFENDANT: The procedural rule, for an example, if we were to have, or if we were to have a stage of possible or potential jurors and we find them prejudiced, we would have to challenge them for cause and we would try to find out how they feel, what their sentiments are about this case. Then if they are prejudiced, we feel there's prejudice, we can challenge them for cause.

THE COURT: Do you understand you would be required to submit all your voir dire questions in writing to the Court?

THE DEFENDANT: Yes, I understand that.

THE COURT: Do you understand that if I order you not to ask a question, you will be required to not ask that question of the juror?

THE DEFENDANT: Yes.

THE COURT: Do you understand what an objection to the form of a question is?

THE DEFENDANT: Yes, objection would be to oppose.

THE COURT: Right. And how would you, at what point are you allowed to intersperse objections in a court proceeding?

THE DEFENDANT: If the prosecution, if the prosecution were to present or to say something that is totally irrelevant, I can stand up and say "objection." And then the prosecution will have to stop and then you would have to give your decision. And then continue on. It would be the same for me. If I were to say something perhaps out of line, the prosecution can object and I would have to stop right there, and then have to find out what you were to say, and then go on from there.

THE COURT: Besides ineffectiveness of counsel, do you understand that you would waive, and there would be no opportunity to appeal your competency as counsel? In other words, if you missed a defense or a witness testified in such a manner that a competent, trained, skilled attorney might be able to detour, change that witness's testimony, get them to testify differently because they were inaccurate; or a trained attorney might be able to cause the jury to not believe that witness? And you might not be able to do those kinds of things.

Do you understand that you would waive any complaint later about that?

THE DEFENDANT: Yeah. If I were to manage my own defense, I will not complain on appeal because I can't complain about my own effectiveness, or ineffectiveness. So I'll have to just accept the fate or the reality. If I were to present a defense that would incur a detriment, yes, that's what would happen.

THE COURT: All right. Do you understand that the prosecution attorneys are extremely skillful, have a great deal of training and ability?

THE DEFENDANT: Yes, they are seasoned. I think they know more than I do, Your Honor.

THE COURT: So you understand that you would have a less experienced attorney?

THE DEFENDANT: Yes. I'm willing to accept the responsibility, knowing that they know more than I do.

THE COURT: Do you understand that you will not be entitled to any special library privileges?

THE DEFENDANT: Yeah, I understand.

THE COURT: What have you gleaned of your library privileges thus far?

THE DEFENDANT: When I was at N.S.P. I was able to read some case law books. I was able to Shepardize some cases, learn how to Shepardize some case laws, some cases.

I was able to read the Prisoner's Self-Help Litigation Handbook.

I'm reading case law here, trying to find out -- there's a case here about Richard Tanksley. So I'm trying to find out what happened in his, what happened in his situation.

So as far as my legal knowledge, that's the extent of it.

THE COURT: I understand that that's what you had available to you at the Nevada State Prison. But you understand that you are housed at the Washoe County jail. And you will be housed at the Washoe County jail during the term of your trial. Do you understand there is no law library at the Washoe County jail?

THE DEFENDANT: Yes, I understand that there is no library, but that's okay. That's okay. I don't need a law library at this point.

THE COURT: How are you going to look up the procedures that you need to look up or the rules of evidence?

THE DEFENDANT: How would I look it up? Well, I won't be able to look it up. I would ask questions. The questions that come to mind, I would ask some of the inmates. When the inmates tell me what they are, I will go and ask my counselor to see if the inmates are right.

I'll verify the information that I receive from other inmates against my standby counsel to see which of them is correct, the standby counsel is correct or the inmate is correct. Hopefully I'm going to go with what my standby counsel versus what the inmate tells me. I also have my standby counsel to ask for help as well.

THE COURT: Well, are you saying to me that you don't really intend to represent yourself? You just want to talk for yourself?

THE DEFENDANT: No, I want to represent myself.

THE COURT: Why are you going to rely on your standby counsel to give you legal research and advice?

THE DEFENDANT: Let me retract that. I'm not going to rely on them. If I said to rely on them, let me retract that. That's an inappropriate word. I am going to represent myself.

Because you are asking me questions, how am I going to figure things out? Is pretty much to paraphrase what you are asking me. And I was just trying to tell you that those are some outlets. Inmates are outlets for information. Counsel are outlets for information. But I'm going to represent myself, not the counsel.

THE COURT: Do you understand if an attorney relied on inmates for information with regard to the law or procedure, that would be per se ineffective? In other

words, if a lawyer came in and told me he was going to represent you and he was going to rely on what other inmates in the jail said to him the law was, that would be ineffective?

THE DEFENDANT: Maybe that example was not a good example because you placed me with the situation where I told you I didn't have a problem with the library book. Then you kept asking me again about the library book. I figured, well, I'll create another situation if you weren't happy with that.

But the bottom line is, I'm going to represent myself. I'm not going to go around asking the inmates. I see what you're saying and what you're doing and I'm not going to do that. I'm going to represent myself.

THE COURT: You understand then it would be a foolish source of information to look to other inmates for legal research or procedural rules?

THE DEFENDANT: Yes, you are correct. I agree with you. It is foolish to ask other inmates.

THE COURT: Do you understand that if you try to play the role of defendant, which you are cast in this case, and of counsel, that there is an inherent conflict there that's going to cause you problems?

THE DEFENDANT: Yeah, of course.

THE COURT: Do you understand that the net result

of that is that your role as attorney will be diminished? Your credibility as attorney will be diminished?

THE DEFENDANT: Yes.

THE COURT: And that puts you at a distinct disadvantage in this case?

THE DEFENDANT: Yes, I'm fully aware of that.

THE COURT: How old are you, Mr. Vanisi?

THE DEFENDANT: Twenty-nine.

THE COURT: And what is your -- I saw in your letter to me that you have a high school diploma?

THE DEFENDANT: Yes.

THE COURT: And the self-teaching, is that education or is that with an instructor, or just things that you read in your spare time?

THE DEFENDANT: Those are things that I do in my spare time or as a hobby, or what I do constantly is teach myself.

MR. STANTON: Your Honor, I noticed that you're going in an order pursuant to the Supreme Court rule. May I make an inquiry of the Court relative to item (2)(f)? If I could pose possibly as a hypothetical a scenario to see if Mr. Vanisi would understand the ramifications of this? Under (2)(f) --

THE COURT: You are suggesting a question that I could ask?

MR. STANTON: Yes. Is that okay, Your Honor?

THE COURT: You can suggest the question. I'll see if it's appropriate.

MR. GREGORY: I object, Your Honor. This Court conducts the Faretta canvass, not Mr. Stanton.

THE COURT: Objection is overruled.

MR. GREGORY: Thank you.

MR. STANTON: The question I would pose, Your Honor, in (2)(f) I recognize what the inquiry the Supreme Court is looking at is a tactical decision that a pro per non-legally trained defendant may make. For example, asking a question of a witness that would open the door, as we commonly refer to it, to evidence that the rules of evidence would otherwise bar. Specifically, say rules of hearsay. And that by asking a question that they feel might be beneficial to them, they don't know that the unintended consequence is that they have now opened the door to an area of inquiry that may be damaging to their case and otherwise may not have been admissible.

MR. GREGORY: Your Honor, after the question was posed, I again object under Faretta. He's not required to have any legal skills whatsoever.

THE COURT: Objection is overruled.

MR. GREGORY: That is the Nevada Lyons case.

THE COURT: Objection overruled.

Mr. Vanisi, the Supreme Court has indicated to me that I must inquire of you as to whether or not you understand that tactical decisions may produce an unintended consequence. Now, Mr. Stanton has suggested a question that I might ask you to determine if you understand that a tactical decision that you make during the course of the trial could produce an unintended consequence. I think it's a valid question. I want to be sure that you understand it.

Now, the question that I would ask you at this time is, do you understand that if you ask a question that calls for hearsay, for instance, and the State does not object -- they just sit silent. They don't object to the question. They're going to let the witness answer that hearsay question -- that they might do that, and by so doing, your asking the question might open the door for them to make inquiry that otherwise they would never be allowed to ask? Go down a road that they, based on the rules of evidence they could never get into that area, they could never ask questions in that area? But because you made a decision and asked a question into an area, you would have opened that line of questioning to the State. And that line of questioning could be very detrimental to you.

Now, do you understand you would be faced with consequences like that constantly during the course of your interrogation of witnesses?

THE DEFENDANT: Yes, I understand.

THE COURT: And do you understand that the consequence of opening those kinds of doors and that stringent detriment that may result could be the ultimate penalty being imposed by the jury against you in this case?

THE DEFENDANT: Yes, I understand that.

THE COURT: Do you understand what that penalty is that is being requested by the State?

THE DEFENDANT: The penalty?

THE COURT: Yes.

THE DEFENDANT: You're asking what a first degree penalty is?

THE COURT: I'm asking you if you understand what the penalty is that the State is requesting in this case.

THE DEFENDANT: Let me find out for you because I understand what you are saying about opening the doors. That I understand what you're getting at. But the penalty would be, I would just normally think the penalty would be that I would suffer, that it would be -- if I opened the door, by my line of questioning I would say something that opened the door and that the prosecution were to go with it and run with it and produce an unintended outcome, I understand -- let me find out what the penalty is.

What would be the penalty, Jeremy?

MR. BOSLER: Your Honor, I would ask the Court,

I'm kind of at a loss because you said, you posed a hypothetical about hearsay, and then said that may open the door. But I think that confuses hearsay and relevancy.

If I asked a question that brings out hearsay and they don't object, that's their problem. It may open the door relevance-wise. If they ask the same witness a question, I can still make a hearsay objection. These are technical problems.

THE COURT: Exactly. Mr. Vanisi needs to respond to it, not you, Mr. Bosler. You may be seated.

MR. GREGORY: He has confused the term "penalty", Your Honor, as far as punishment if he's convicted of the offense.

(There was a discussion between Mr. Vanisi and Mr. Bosler.)

THE DEFENDANT: Yeah, the penalty statute, that's what I said, Judge. The penalty would be the detriment.

THE COURT: Okay. The unintended consequence in this case would be that you would suffer the ultimate penalty allowed in this case, the one that the State is asking for. That could be the end result of what you might do. Do you understand that?

It's not just that something bad will happen that moment. It's not just that a piece of evidence may come in that you did not expect to come in. It's that that piece of

evidence that comes in may result in you receiving the ultimate penalty.

THE DEFENDANT: Yeah.

THE COURT: And the ultimate penalty that the State is requesting is what, Mr. Vanisi?

THE DEFENDANT: Yeah, the ultimate penalty for my situation, my case would be the death penalty.

THE COURT: You understand that?

THE DEFENDANT: Yes, I understand that.

THE COURT: So the one question could open the door for that being the end result?

THE DEFENDANT: Yes.

THE COURT: Okay. Now, with regard to your education, is there anything more that you can tell me about your education other than the written motion that you made?

THE DEFENDANT: Anything I can tell you? I like to read, like to know what I don't know. One of my hobbies or in my spare time, I like to read. I just take a lot of, I have a lot of fulfillment in reading. So I put myself in that type of realm, in reading.

THE COURT: What kinds of things do you read?

THE DEFENDANT: Well, science is my passion. Now law, I read a lot of law case, case laws. That's what I read at the Washoe, I read a lot of case laws.

THE COURT: What authors have you read?

THE DEFENDANT: In novels or in --

THE COURT: Whatever you've read. Give me some idea of what kinds -- I understand you're reading a case. And the case that you cited, I am familiar with that case. That, the legal part of the cases that you have been reading I'm familiar with.

What other kinds of things? You said your passion is science. What kinds of things have you been reading?

THE DEFENDANT: Reading in science? Yeah, physics, chemistry. I don't read a lot of science in jail. Ever since I have been incarcerated I haven't read any science books. But I read chemistry, physical science, astronomy and geography and life science.

THE COURT: And who are the authors of those?

THE DEFENDANT: Well, there's no really any specific author, but there's a guy that comes to my mind, his name is Thomas Young. Thomas Young, what he did when he was going to school, he dissected an ox's eye. Through his dissecting of the ox's eye, he noticed that the ox lens is able to change. Through his discovery of lens, we're able to bring about many other discoveries, like, for example, 35 millimeter lenses in camera, 50 millimeter lenses and 80 millimeter lenses. If you were to put a 50 millimeter in front of the camera, the lens on the 50 millimeter is different than the 35 and 80.

If you were to take a 50 millimeter lens and put it up to your eye as if you were taking a picture and then you move it away, it would be the same thing. We are looking, in our natural lens that we look at, we look at 50 millimeter. If you were to put an 80 millimeter in our, in front of a camera, you will be able to see far away. Just like the glasses you wear, like the glasses you're wearing, those are lenses. Yeah, those lenses are able to help you focus to read or to look at. It was out of Thomas Young; he did discovery and brought some information on the lenses.

There's also Christian Huygens that comes to mind, when he was trying to describe light theories. He thought light traveled in waves and then Isaac Newton came around and he said no, the light travels in particles. Then there's this big dispute whether light traveled in light waves or particle waves. Then coming into, there's another gentleman named Max Planck and he was, he has come out of quantum physics.

There's also another guy; he's the guy, the wild hair guy. I know his name. I see his face. He has a mustache. Wild hair guy. His name is Einstein. So Einstein and Max Planck, based on their two theories, had separated classical physics into modern physics. Up to their time it was classical physics. Now through the realm, theory of relativity and the quantum Planck number we are

able to separate two different types of physics, classical physics and modern physics.

There's another guy that comes to my mind. Theodore -- I don't know how much you want me to give you of these authors. These are not authors. These are, these are men, these are people who have done amazing things for society.

So there's another guy, Theodore Maymen, who first came out of Pepperdine. No. Yeah, he come out of Pepperdine. He is the laser guy, the first guy that created the crystal laser. But it wasn't, it was through Einstein's spontaneous emission theory that he was able to put these two sciences together. Not sciences. Put the spontaneous emission theory along with the laser theory. We are no longer in the bronze age or the stone age. We are in the light age now.

So I think I'll stop there, not -- unless you want me to go on some more, I'll go on.

THE COURT: What is your prior experience or familiarity with legal proceedings?

THE DEFENDANT: I'll tell you what I know. Let's see, for an example, if -- here is an example. The prosecution, in the beginning of the trial, the prosecution go, gives their opening statement. That's familiarity. One can say that's a familiarity. That I know that the

prosecution opens up. They give their opening statements. They are the first ones to begin. See, I know something about that.

THE COURT: What is your prior experience or familiarity with legal proceedings other than this case?

THE DEFENDANT: My prior, my prior experience with the law was when I first had a, when I first had a ticket. That was my first experience with the law is when I had a traffic ticket.

THE COURT: My question isn't what your first experience with the law is. It is what prior experience do you have in legal proceedings other than this trial?

THE DEFENDANT: Well, my father, he was in court. I told, I had to speak, I had to advocate on his behalf because he couldn't speak English. That was one experience that I had.

I had to tell the judge that he lives in Hawaii; that he can't make the hearings, he can't come to San Francisco for the proceedings and that he'll have to do it through letters. So that's one, that's one experience. If you were to look for one, that would be it.

THE COURT: Is that the only other experience you have had?

THE DEFENDANT: Let me see if there are other times.

CODE 3370

FILED

AUG 11 1999

AMY HARVEY
By: DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

****

STATE OF NEVADA,

Plaintiff,

vs. Case No. CR98-0516

SIAOSI VANISI, Dept. No. 4

Defendant.

ORDER

On August 5, 1999, Defendant, Siaosi Vanisi, filed a Motion for Self Representation that was presented to the Court in its original hand-written form attached to a type written version prepared by the Public Defender's office and submitted under seal. On August 5, 1999, this Court reviewed the Motion and Ordered that it be unsealed and served upon opposing counsel and that an evidentiary hearing on the Motion be scheduled for August 10, 1999. On August 9, 1999, the District Attorney's Office filed a Response to "Court Ordered Motion for Self Representation". On August 10, 1999, the Court heard oral testimony upon the Motion and took the matter under submission. After a careful review of all of the pleadings on file and supporting documents as well as the history of the case, previous hearings in the case, and the oral testimony presented, the Court makes its determination as discussed below.

EXHIBIT A

In Defendant's Motion, he articulated a desire to exercise his constitutional right to represent himself. He stated that he understood the danger and disadvantages that may procure from self representation. He further stated that if he conducted a defense to his detriment, he would not complain on appeal.

In the State's Response to the Motion for Self Representation, the State points out that the Nevada Supreme Court has addressed the issue of self representation, and further has adopted Supreme Court Rule 253 which sets out specific guidelines for a canvas of questions that a trial court judge should ask of any defendant seeking to assert the right to self representation. The State also cited a few of the important Nevada Supreme Court cases on this issue including Tanksley v. State, 113 Nev. 997, 946 P.2d 148 (1997), in which the Nevada Supreme Court upheld the trial court's denial of the defendant's request for self representation because the defendant was disruptive.

In its Response, the State then discusses concern that the request is untimely, the request is made solely for the purpose of delay, and that the Defendant is abusing his right to self representation by disrupting the judicial process. However, the State withheld its ultimate position relative to the Motion until the inquiry and assessment was conducted by this Court.

The Nevada Supreme Court has held that criminal defendants have an "unqualified right" to self representation, so long as there is a voluntary and intelligent waiver of the right to counsel. See, Lyons v. State, 106 Nev. 438, 796 P.2d 210 (1990); Baker v. State, 97 Nev. 634, 637 P.2d 1217 (1981), citing Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). However, although the constitutional right of self representation is generally protected by the court, courts have denied self representation where:

(1) the defendant's request for self representation is untimely;
(2) the request is equivocal;
(3) the request is made solely for the purposes of delay;
(4) the defendant abuses the right of self representation by disrupting the judicial process;

(5) the case is especially complex, requiring the assistance of counsel; or
(6) the defendant is incompetent to voluntarily and intelligently waive his or her right to counsel. Id.

In order to ensure that the Defendant has voluntarily and intelligently waived his Sixth Amendment right to the assistance of counsel, the Nevada Supreme Court adopted Supreme Court Rule 253, effective as of March 31, 1997. The purpose of the rule is to set out guidelines for a canvas that is meant to be an in-depth inquiry into whether or not an individual fully understands the disadvantages of self representation as well as an inquiry into the Defendant's background and ability to represent himself. Once a court has asked these and other relevant questions of the defendant, the defendant's right to represent himself may only be denied when one or more of the relevant factors articulated in Lyons v. State, *supra*, is present.

At the end of all relevant inquiry in open court, the Public Defender's Office expressed its position that Mr. Vanisi had satisfactorily answered all of the questions posed to him by the Supreme Court Rule 253 canvas, and should be allowed to represent himself. Similarly, the District Attorney's Office opined that Mr. Vanisi had satisfactorily answered the questions posed to him, but continued to voice concerns about the timeliness of the Motion and whether or not that would cause a delay in trial, as well as the possibility that the Motion was made to disrupt the judicial process. Additionally, the State said that at times previous to the current hearing, the Defendant had acted in a disruptive manner.

The Court believes that Mr. Vanisi was able to recite answers to the Court's inquiry which revealed him to be a very intelligent person who had carefully reviewed some of the most significant cases involving self-representation. However, inquiry as to whether to grant a defendant's request to discharge counsel and represent himself does not stop with the basic questions. The Court must assess many factors. Paramount to the Court's assessment must always be that the defendant has a right to represent himself.

At the conclusion of the Supreme Court Rule 253 inquiry, this Court had serious concerns about Mr. Vanisi's request to represent himself. First, although this request was technically timely for purposes of Lyons v. State, *supra*, this Court believes the Motion was made for the purpose of delay. Several factors enter into this Court's assessment of the Defendant's motive for the Motion being for the purpose of delay. The Defendant has previously verbally, without agreement of counsel, requested a continuance of the trial. Further, the Defendant, in June of this year, requested that the Court appoint new counsel to represent him. The Court denied that request. The Defendant then refused to cooperate with counsel which in fact caused a delay to take place. All matters ceased to be litigated while the Defendant was evaluated for competency. A reviewing court is directed to the sealed portions of this case to see the assessments of the physicians who examined the Defendant. This Court found the Defendant competent to proceed. Now, the Defendant has filed his Motion for Self Representation. The inquiry of Mr. Vanisi revealed he had formed his intent to represent himself on January 16, 1998, (the day of his arrest on this matter), but did not make a request to do so until August 5, 1999, approximately one month prior to the commencement of the second trial. Although the Defendant states he is not making this Motion for the purpose of delay, the Court finds otherwise in light of his previous actions and requests in this case.

Next, this Court believes that Mr. Vanisi is abusing the right of self representation by disrupting the judicial process. At previous hearings, Mr. Vanisi has blurted out statements in a loud voice and interrupted this Court requiring this Court to caution Mr. Vanisi about his conduct. During the Rule 253 inquiry by the Court, the Defendant exhibited difficulty in processing information. He took an extremely lengthy period of time to respond to many of the Court's questions, the courtroom proceedings stopping for two to three minutes at times while he pondered his answer. The Court was asked to repeat the same question many times before answering. In addition, the Defendant refused to answer the Court's question because he

believed it to be an "incomplete sentence." He frequently asked the Court questions rather than answering the Court's questions directly. Further, he spoke out loud to himself in such a manner that it was at times difficult to determine if he was speaking for his own benefit or to the courtroom audience or the Court. Further, Mr. Vanisi has previously been observed making statements under his breath while others were speaking in court. Moreover, at past hearings, Mr. Vanisi has been observed standing up and engaging in unsettling rocking motions, as well as repeating himself over and over again. Based on this combination of words and gestures during prior proceedings, this Court has concern about future disruptions during trial.

Further, the Defendant has a history of aggressive and disruptive behavior while at the Nevada State Prison which required aggressive action on the part of the Prison guards, as well as several incidents at the Washoe County Jail. Further, he has previously asked for accommodation by the Court by way of ordering the security detail to provide a less restrictive confinement of the Defendant while in the courtroom. The Court has diligently safeguarded the Defendant's ability to function and not be presented in a compromising position to the jury, while also safeguarding the safety of all participants in the courtroom. In response to the Court's inquiry if the Defendant thought self representation would allow him full movement in the courtroom, the Defendant's answer and demeanor was interpreted by the Court as yes, and if the Court did not grant him that accommodation, the Defendant would be able to complain on appeal that he was not afforded an equal opportunity to present his case as the prosecutor was afforded. This reveals a "tactic" intended to disrupt the judicial process.

In the case of Tanksley v. State, 113 Nev. 997, 946 P.2d 148 (1997), the Nevada Supreme Court stated that "if the district court decided that [the defendant's] pretrial activity was a strong indication that [the defendant's] self-representation would disrupt the [trial], we will not overturn that factual determination." Further, "This court will not substitute its evaluation for that of the district court judge's own personal observations and impressions." Id.

Accordingly, this Court finds that Mr. Vanisi's Motion for Self Representation is made for the purpose of disrupting the judicial process.

This Court must also consider the complexity of this case and whether the Defendant's self representation would virtually deny him a fair trial.

This Court recognizes that a request for self-representation should not be denied because the court considers that a defendant lacks reasonable legal skills. Lyons v. Nevada, *supra*, and Tanksley v. State, *supra*. However, two Nevada Supreme Court cases have upheld the trial court's decision to deny a defendant's request for self-representation when the case was especially complex.

In the case of Lyons v. State, *supra*, the Nevada Supreme Court stated that "a court may deny a defendant's request to represent himself when a case is so complex that the defendant would virtually be denied a fair trial if allowed to proceed pro se". The Court in Lyons cited the Florida case of Ashcroft v. Florida, 465 So.2d 1374 (Fla.App.1985) in which the District Court of Appeal of Florida held that "self representation is not an absolute right and need not be allowed when it would jeopardize a fair trial on the issues...The judge determined on the basis of the nature of the evidence to be adduced at trial, his inquiries to defendant, and his observations of defendant at prior hearings that defendant would not get a 'decent' trial. We equate 'decent' with fair, especially in view of the trial court's contemplation of the technical aspects to be involved at the trial, such as expert testimony involving fingerprints, serology, and hair comparisons."

Recently, in the case of Meegan v. State, Nos. 29511, 29739, Supreme Court of Nevada (November 25, 1998), the Court held that the murder defendant's request to represent himself was properly denied due to the complexity of the case. Specifically, in Meegan, *supra*, the court found "the district court asked Meegan a series of questions designed to determine whether he knew anything about the law and procedure governing his case. Upon receiving

answers which indicated that he knew virtually nothing about either, the district court denied his request. The basis for the denial was that Meegan was incapable of representing himself in a complex case which involved over thirty witnesses, and involved expert testimony on topics such as DNA evidence and other medical topics. The district court determined that the trial would be disrupted if Meegan were allowed to represent himself...Thus we hold that based on the complexity of the case, the district court properly denied Meegan's request to represent himself."

Both Lyons v. State, *supra*, and Meegan v. State, *supra*, are similar to this case. This case is extremely complex. There are multiple charges against the Defendant. The Defendant is charged with the murder and armed robbery of a police officer, the armed robbery of two clerks in two different convenience stores, and the grand larceny of a motor vehicle from still another person. There are going to be approximately 60 witnesses, many from multiple jurisdictions. In addition, there will be expert witnesses presenting complex scientific evidence. In addition, death penalty cases by their very nature are extremely complex, and thus the Nevada Supreme Court has articulated in Nevada Supreme Court Rule 250 specific procedural guidelines to ensure that Defendant's receive a fair trial. In addition to the legal guidelines of Supreme Court Rule 250, the rule also requires that a criminal defendant facing the death penalty be represented by two attorneys, one specifically trained and certified by the District Court as a death penalty qualified attorney. In this case, Mr. Vanisi is seeking to substitute himself in place of three competent attorneys, the Washoe County Public Defender and two of his deputies.

The Court's concern about these complexities is compounded by Defendant Vanisi's responses to this Court's questions about the charges against him. Mr. Vanisi could not name the elements of all the crimes against him, nor the penalties attached to those crimes, nor the lesser included offenses, nor the elements of the death penalty requirements, nor the maximum

punishment possible for all of these crimes. He focused only upon the potential penalty of death without being aware of all the other charges. Although the Court understands why this is foremost in the Defendant's mind, the other charges and defense of those charges could seriously impact the entire trial process. The Defendant was clearly unable to appreciate the relationship of all the charges to each other. It is evident to the Court that the Defendant's inability to relate to his entire case and subtle nuances of evidentiary issues presented by the case's complexity would result in a denial of a fair trial, if the Court were to allow him to represent himself.

In addition, as the prosecutor argued before the Court, the case is not one where it would be fundamentally fair or result in a fair trial to allow a defendant with a high school education, Mr. Vanisi's mental health issues, and current drug medications, to represent himself while facing the potential of the death penalty. Accordingly, this Court finds that this particular death penalty case is too complex for this particular Defendant, Siaosi Vanisi, to represent himself.

The Court has reviewed a videotape admitted as Exhibit "A" on August 10, 1999, and specifically finds that it does not form the basis of the Court's determination that the Defendant is making this request for the purpose of delay. It is, however, consistent with the Defendant's demeanor and verbal behavior in previous hearings before the Court.

The Court does not believe the combination of drugs the Defendant is currently taking affects his competency to stand trial or assist counsel. However, the side effect of drowsiness could affect the Defendant's ability to effectively handle the complex issues involved in this case.

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Based on the foregoing, and with good cause appearing,

IT IS HEREBY ORDERED that Defendant Siaosi Vanisi's Court Ordered Motion for Self Representation is hereby DENIED.

DATED this 11 day of August, 1999.

Connie J. Steinheimer
DISTRICT JUDGE

CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCP 5 (b), I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 11th day of August, 1999, I personally hand delivered to the following individuals in the courtroom, a true copy of the attached document, addressed to:

Siaosi Vanisi, Defendant

Richard Gammick
David Stanton, Deputy
Washoe County District Attorney

Steve Gregory, Deputy
Jeremy Bosler, Deputy
Washoe County Public Defender's Office

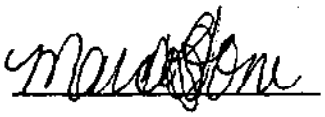

Exhibit 20

Exhibit 20

Case No. CR98-0516

Dept. No. 4

'99 JUN 28 P4:53

A[illegible]

B[illegible] Crawford

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA, Plaintiff, vs. SIAOSI VANISI, Defendant.	Pre-trial Motions June 23, 1999 Reno, Nevada

APPEARANCES:

For the Plaintiff: RICHARD A. GAMMICK
District Attorney
DAVID L. STANTON
Chief Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant: MICHAEL R. SPECCHIO
Public Defender
STEPHEN GREGORY
and JEREMY BOSLER
Deputies Public Defender
One South Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI

ORIGINAL

Reported by: ERIC V. NELSON, CCR No. 57

RENO, NEVADA, WEDNESDAY, JUNE 23, 1999, 1:30 P.M.

-oOo-

THE COURT: All those present in the courtroom who are not -- all the DRT team and the law clerks that are present for the Court, please stand. We need your names for the record, and we'll just start on the left side and move around, not the bailiff, but everyone else.

DEPUTY IVESON: Deputy Josh Iveson.

THE COURT: Back row.

DEPUTY WILLIAMSON: Deputy Brian Williamson.

MS. SANCHEZ: Africa Sanchez.

MS. VOGUE: Lisa Vogue.

MR. CHAMPAGNE: Justin Champagne.

DEPUTY LARRAMENDY: Deputy Greg Larramendy.

LIEUTENANT WISE: Lieutenant Jeff Wise.

MR. PETTY: John Petty.

THE COURT: You represent the defendant.

SERGEANT GROSS: Sergeant Mike Gross.

DEPUTY LONG: Deputy Rob Long.

DEPUTY ELLIS: Deputy James Ellis.

THE COURT: Okay. Mr. Petty, you do not need to be sworn. Everyone else, please raise your right hand.

MR. GREGORY: Your Honor, if I might, who are the three individuals?

THE COURT: My law clerks and Judge Polaha's law clerk.

MR. GREGORY: I object to Judge Polaha's law clerk being present.

THE COURT: Sorry, Mr. Champagne.

MR. GREGORY: And these two individuals are your law clerks, Your Honor?

THE COURT: Yes. One for the summer and my full-time, all-winter law clerk.

MR. GREGORY: Thank you, Your Honor.

THE COURT: Now, I am going to have them sworn, the law clerks, so they can be seated.

Law clerks and Mr. Petty be seated.

The request is to have law enforcement sworn. This hearing, as you know, and I have told the gallery, is under camera and under seal. Therefore, the clerk is going to ask you if you swear that you will abide by the rules of the closed session, and that means that you may not discuss the content of this hearing with anyone, including each other.

You may not disclose it to anyone until you are released by court order. That means you may not disclose it even for purposes of protecting someone or if you think it may come up that you think it would be important to represent what happened here when you are having a

discussion about Mr. Vanisi's case or his transport.

And the order is that you may not discuss anything that is said with each other or anyone else for any purpose without the court order from me.

Now, the clerk will ask you if you solemnly swear to follow this admonition and if you understood it. Please raise your right hands.

(Deputies sworn.)

THE COURT: Thank you. You may be seated.

Okay. Now, Mr. Vanisi, it is your turn. Okay. Now, you filed a motion. What you have to do is tell me exactly what your problems are with specificity.

THE DEFENDANT: Yeah, may I have a word with -- may I have the Court's indulgence's to have a word with Jeremy?

THE COURT: Mr. Bosler?

THE DEFENDANT: Yes.

THE COURT: Go ahead.

MR. BOSLER: Thank you, Your Honor.

THE COURT: Go ahead and stand up and tell me what your concerns are about your attorneys, Mr. Vanisi.

THE DEFENDANT: I assume that you received my motion to dismiss and appoint counsel. And I have also received opposed to -- motion to oppose to dismiss counsel and appoint counsel. And I have not yet fully read -- I'm

only on page 7 of the District Attorney's Office opposition to dismiss counsel.

But I would like to dismiss my counsel, namely Steven Gregory and the Public Defender, and the whole Public Defender, the County Public Defender and the State Public Defender.

I think I indicated that in my motion, that I'd like to dismiss them to have access to assisting me in this legal proceeding.

Now, that is what I stated in my motion. And so I guess what are you asking me now, Judge, I'm not familiar with your question because I have addressed the motion to you, and I guess what I'd like to hear is for you to grant those motions to dismiss my counsel. And I guess I will have to give some proof and some arguments of why I would like for you to grant that motion.

So yeah, where do you want me to begin? I guess perhaps it will help me if you ask me a question.

THE COURT: Well, I did. What's wrong with your counsel?

THE DEFENDANT: Yeah. My counsel here, my counsel here have not given me the full force of the full effect of counsel that I'm entitled to. I'm entitled to the full force of counsel, am I not, Your Honor? Yes, I am entitled.

THE COURT: What haven't they done?

THE DEFENDANT: They have not -- here, let me gather my thought real quick. My head itches.

Yeah. Part of counselor, you are supposed to spend time with your client, you are supposed to go over some strategies. They have not.

They have not fully prepared me with all the legal parameters that would be helpful to me to make decisions. I am making decisions based on limited information that they are giving me, and they are telling me one thing, and yet, when I do my research and do my investigation, I find something totally different from what they are telling me. So I then have to raise the suspicion that they are ineffective.

Can I stop there or do you want me to elaborate more of their ineffectiveness of them preparing me?

THE COURT: You have to be specific. What did they tell you, give you advice about that you did some research on that you think they are wrong about?

THE DEFENDANT: Yeah.

THE COURT: This is why this is all closed. You can talk about this.

THE DEFENDANT: Thank you, Your Honor. Before I go into the heart of why I want them dismissed, is there -- is this the first time -- is this usually the

procedure for every person that wants to dismiss their counsel to go through this, to have to explain specifically detail why there is?

Am I not entitled to say that I definitely have a conflict with Gregory and the Public Defender's Office? Yes, I do have a conflict, and I want to put on the record that I have a conflict. But you are going to make me say more and more?

When will it be enough for you that I am -- that I am in conflict with my attorney? When will it be enough?

I'm afraid if I give you, if I explain to you -- I have already explained to the Court, and I have already put on the record that they have failed to prepare me adequately. The information they have given me --

THE COURT: You are not giving me specifics. Do you know what the word specific means?

THE DEFENDANT: Yes. So, Your Honor, give me a second. Give me four seconds to take a deep breath and to start all over again.

THE COURT: That is fine.

THE DEFENDANT: Obviously, you do not like what I have said about my counselor.

THE COURT: Wait, wait, wait. Calm down. Now stop a second. It isn't whether I like what you are saying.

That's not the point here.

If you want your motion granted, the law requires that you tell me specific things, and then the law requires that the lawyers answer those specific things.

THE DEFENDANT: Give me an answer of something specific because I'm afraid that I'm going to fail you again if I were to explain to you why. Give me an example, Judge.

THE COURT: What did they tell you -- you said they gave you some information about the law and you did some research and found out they were wrong. Now, what did they tell you that they were wrong about? That's specific. That tells me what they did.

THE DEFENDANT: Before I address that, can you give me another example? Can you give me another example of a specific issue? Because I have to assume other defendants have stood here and asked their judge to dismiss their counsel because of conflict of interest.

Can you give me an example, a specific example? Because I'm willing -- before I address your question, because I'm not understanding exactly the specifics you are asking for. So give me -- let's just hypothetical, give me a specific example, please.

THE COURT: Do you have anything else you'd like to say?

THE DEFENDANT: Yeah. There's many things that

I would like to say to the Court and many things I want to say on the record to put on the record for my protection. Because I'm afraid that the counsel that is appointed to me is ineffective and will not put these things on the record.

And before I put these things on the record, I'm still waiting for you to help me understand the specificness of what you are asking me to give because I'm afraid if I make another attempt to give you an explanation why I want my counsel dismissed, you will not be happy with it. So give me another example --

THE COURT: You tell me whatever you want to say. This is your chance. I can't tell you any more. I don't have the brain power to explain it any further. I did the best I could.

THE DEFENDANT: I think we need to try a little harder for the brain power because I tried to explain to you and yet it wasn't sufficient for you to understand.

THE COURT: Put on the record what you want to put on the record. Say whatever you want to say. This is your time.

THE DEFENDANT: I think that it would be prudent to take one issue at a time --

THE COURT: Say it.

THE DEFENDANT: -- before I put many of the things I'd like to put on the record. And so I'd like for

the judge --

THE COURT: Do you have any other allegations against your counsel? Make them now or sit down. That's your chance.

THE DEFENDANT: Maybe I should refer to the motion.

THE COURT: I have read your motion.

THE DEFENDANT: Because I need help, Your Honor. I need help. Please help me. I'm not here to be confrontational with you.

THE COURT: What do you want help with?

THE DEFENDANT: I want help because I'm asking you to grant my motion to dismiss my counsel, and yet, I have given you an explanation.

THE COURT: I read your motion. What do you want to tell me that's in addition to what you wrote down?

THE DEFENDANT: In addition, the thing here, if I -- Nevada Revised Statute 7.115 and Nevada Revised Statute 7.125 allows me to have a counsel that will advocate for me to be effective. That is what I want, an effective counsel. And that's what I want.

Here, let's go to page 2 here of this here. Maybe -- because I'm still -- I could be more specific if you give me an example, Judge. That is what I would like from you, to give me something specific because I'm not

understanding exactly what you are not understanding of me.

THE COURT: What did they tell you that you found out was wrong? What don't you understand about that question?

THE DEFENDANT: Yeah. You know, I really adore Steven Gregory and Bosler and the Public Defender, and I don't at this time, at this time, want to avoid saying anything about them of what they have told me, what I have found out at this time. But I will after I have understood what is specific, what the specific is.

THE COURT: That is specific.

THE DEFENDANT: As I say, there's got to be another example. There's got to be -- this is such an intricate procedure that everything -- that this can't just be the only one. There has to be another example. Maybe if you give me another example of something specific, you can help me.

THE COURT: Why don't you sit down for a minute.

THE DEFENDANT: Sit down? Yeah. But to keep in mind --

THE COURT: Just listen to what I'm going to say now. You listen to what I'm going to say.

The procedure of you saying exactly what's wrong with your lawyers and them responding is not my

procedure. I didn't dream this up just because you filed a motion. You are not the first defendant who has filed this kind of a motion. Not the first defendant in this courtroom or any courtroom in this courthouse, or any courtroom in this state or the nation.

So what's happened is the judges are told, Judge, if a defendant files this kind of motion, this is what you have to do. Now, the Supreme Court has told me, if you refuse to give me anything more than what you wrote down in your motion, I have to deny your request. That's my instructions. That's what the law tells me I have to do.

Now, if you don't want to give me specifics as to what's wrong with your lawyers, or how they are ineffective, or what kind of advice they are giving you that's wrong, or how they are not taking care of your case, that's your choice to make. But if you make that choice, I have no record with which to grant your motion.

So it's in your best interests, if you really want them relieved, to give me the specifics. If you do not give me the specifics, I must deny your motion, and I will be upheld because I'm following what the Supreme Court has told me to do.

So it's up to you. I have read your written motion. It's not specific enough. If you have got some real complaints about your lawyers, which I'm sure you do or

you wouldn't have filed it, you have got to tell me those things now. If you don't, the motion is going to be denied and we're going to move on.

Now, the only thing you have told me that I could say, okay, give me the specifics, was that you said they weren't giving you good advice. So I'm saying okay, what did they tell you and what was wrong?

You said they don't spend time with you. They can address that.

You said you're getting limited information. That's not good enough. You have to tell me what information you think they should be giving you that they are not giving you.

Now either you go down this the way we have to do it, or we'll have to deny your motion and we'll move on. Now, I have the whole afternoon set aside. It doesn't really matter if you want to talk to me for 10 minutes or you want to talk about this for five minutes, or you want to talk about it for a half hour. This is your time to tell me exactly what's going on.

Now, nobody in this courtroom can talk about it. Nobody can tell the press, the D.A. can't know about it. Nobody can know about it, and it can never be brought up by anyone. But it's the only chance that you have to get these people off your case.

Now, if you want to take advantage of the opportunity I'm giving you, do it. But if not, we'll move on.

Now do you understand what you have to do?

THE DEFENDANT: Your Honor, I have understood you from the get go, from the beginning. May I please stand up?

THE COURT: Yes, you may.

THE DEFENDANT: Your Honor, I have understood you from the very top, from the very beginning. All I was asking of the Court was to give me a specific example. That's all I was asking.

I understood just based on what you last said crystal clear, as it was crystal clear for me in the beginning that I wasn't giving you abundance amount of information. I wasn't giving you enough detail. That I understood, and I also said on the record that I'm not willing to at this time or yet because I was hoping that you'd give me some more specifics. But that's okay.

Let's move on without the specifics and put on the record that the judge did not give me specific information of what a person, what a defendant must do to dismiss counsel. But let's move on from there. I just wanted to state that on the record.

So I'm hoping -- because if a person is trying

to -- if a person is trying to ask the judge to -- to have a motion --

THE COURT: I thought I answered that question.

THE DEFENDANT: I don't think I made myself clear again. I'll try again. I was hoping for a little gratuity of the specifics. That is all I was asking.

That's okay. I have indicated on the record that I'll move on from there. I will move on from that. I'll move on and let's go on to something different.

THE COURT: Go ahead.

THE DEFENDANT: Because I have understood you, and you are going to say the exact same thing, and I'm going to say I understood you the first time. So number one.

To move on here, you have to give me just a little more because I need to piece -- there is this one puzzle that I have found through my research, yeah, from my little research of my studying the law books, specific digests and all the other books that was available at hand, there was one information, there was some information that I had come across through my research that had led me to stand away from there and to be objective and look at my counsel, and ask some questions. I had to ask some questions.

And I'll be more specific. I'm just trying to figure out. Be patient with me, Judge.

THE COURT: I am.

THE DEFENDANT: I'm trying to tie two things in one, and that's what I'm trying to do is to tie two things in one, because the reason for my motion to dismiss counsel has to do with this other, with this other piece of information that I have discovered, and I want to tie the two. So I'm trying to -- keep in mind, that I'm trying to do something here that I'm not familiar with and I'm not versed with.

THE COURT: That's okay.

THE DEFENDANT: But I say to you, Judge, the prosecutor, the District Attorney, Dick and David, cannot prosecute me again. I say to the State of Nevada, they cannot retry this case again. I say to you, Judge, that you are obligated to protect my constitutional rights.

My research of the Fifth Amendment, United States Constitution, clearly explains: Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.

I'm going -- the prosecutor and the State wants to violate my constitutional right, which is the Fifth Amendment, and process me again, subjecting me to life or limb twice. The Constitution protects me, and you are obligated, Judge, to protect my constitutional right.

Furthermore, furthermore, now under the Nevada Revised Statute, 174.085(4), which explains proceedings not

constituting an acquittal states -- maybe I can just say it on the top of the head, but I'm going to assume -- let me put it on the record.

Well, I'm not really sure what to put on the record and not put on the record, but just to help me out, to make things understood -- Judge, I have always been civil in your court. May I please have one free hand to go through my papers?

I have always been civil and I continue to be civil. Please, most people such as in Washoe County and most people who deal with me have the misstatement, I'm an English gentleman and they think I'm this villain.

May I have one hand to be free to go through my paperwork? I brought paperwork to help me to make my pleading more effective and more efficient so I can make these references to them. May I please have my right hand free, please?

THE COURT: I'm not going to free your right hand, but I will allow you to sit down if that makes it easier to read.

THE DEFENDANT: That is okay, Judge. I'll work with what you give me.

THE COURT: Don't worry about hurrying.

THE DEFENDANT: What is that?

THE COURT: Don't worry about hurrying if you

need to get more paper off the desk.

THE DEFENDANT: I was a little hard pressed to keep up the time. I think you are putting me at ease, Your Honor.

Nevada Revised Statute 174.085 is proceedings, that gives information on proceedings not constituting an acquittal. I have already been tried on January 21st, and you declared a mistrial. This is what it simply says here.

In all cases where a jury is prevented from giving a verdict by a reason of accident or any cause, or other cause, an accident or other cause, except where the defendant is discharged.

I was not discharged. The jury was discharged.

Now, Your Honor, in the beginning, as soon as -- as soon as the first witness was called, that's when double jeopardy came into play. That's when double jeopardy came into play.

Then you had asked us, Your Honor, you had asked my counselor, you had asked the prosecutor, if this falls under double jeopardy clause. They all sat back not knowing the law. They are supposed to know the law, especially in my case where it resulted in double jeopardy.

The answer should have been yes, Your Honor, this falls under Nevada Revised Statute 174.085. This falls under the constitutional amendment number 5. This falls

under many, many cases. That's what should have been addressed to you, Your Honor.

Now, yeah, you had asked us. So I have to ask -- I have to be objective and say, why would the judge, wouldn't the judge know, the Honorable Judge Connie Steinheimer, know this falls under double jeopardy clause or not? Why would the prosecutors in one unison say no, this doesn't, this doesn't, this doesn't fall under double jeopardy.

But it as surely as one understands the law of NRS 174.085 and the constitutional right, in many cases that I have researched, just one textbook called Pacific Digest, yeah, over 349 cases, over 449 case, 549 cases where they denied rehearing. And then I have a situation here that qualifies me for the double jeopardy clause.

Judge, let me just -- maybe I'm being melodramatic, but allow me to be so. We are all punished or rewarded by the law. Some people live and die by the law. The law in some way made part of our life constitutes how we are rewarded, how we are punished.

This is a case here where I am not to be punished, that I'm not to be retried again. Sayeth the law. I'm only saying what the law is saying, that the prosecutor cannot prosecute me, the State of Nevada cannot retry me, and the Court is obligated, as you said earlier, to protect

my right.

So it's unfair -- I know I'm going to have to say what I say again. That is why I was asking Bosler why was the District Attorney dismissed, because I will have to -- they will have to be informed of this, of my motion.

And I implore you, Judge, to grant my motion to dismiss under the grounds which I have stated, which the law has stated clearly, that I cannot be retried again.

And the prosecutor is not here to hear me, hear me discuss this motion that I want to submit, my verbal motion to submit, and that has a lot to do with why I look at my -- I look at my lawyers and say, Why didn't you guys bring this to me so that I can process the information? Why didn't you tell me of these things? You said to me that this doesn't qualify as double jeopardy, but it surely does.

Now, if I want -- please make sense to my English brain, that I am incorrect, but I don't think so, Your Honor. I think it says here in Nevada Revised Statute, amendment and the Constitution surely upholds a person's constitutional right not to be prosecuted twice.

Now, I would like to hear the prosecutor, and they are not here to make their arguments to you.

THE COURT: We'll get to that.

THE DEFENDANT: I anticipate that, and I expect them to make an argument opposing my verbal motion to

dismiss. And I want to put it on the record because I have other documents here that I made notes on to prepare to oppose them, because I'm advocating the law here. I'm advocating the basic rights of a human person, of a human being not to be tried again because we're all governed by the Constitution.

THE COURT: I understand that specific allegation. So keep going with the other things.

You are going to have to -- you are right, this argument is going to have to be brought up at another time with the D.A. present. But for purposes of your relieving your attorneys, you have made your point.

THE DEFENDANT: And I want -- I want an attorney that I can have confidence in, not to short change me with this information. I could have kept them -- I wouldn't have a problem with them if they had presented this information to me.

You know, I am not a harsh person to deal with. In my situation, I have to be elastic. Yeah, if a wind blows me to the right, I have to go to the right, and I can't refuse, and I can't oppose those people who are blowing me to the left. And I go to the left when the wind blows me.

I just don't understand why my counselor, why the Public Defender availed me from this information. This

is important information. This is life or death here. And this is something that should be given to a person who is in dire need, as I'm in a dire need to stay alive.

THE COURT: I understand your point.

THE DEFENDANT: May I sit down, Judge?

THE COURT: Is that it?

THE DEFENDANT: At this point that's all that the conscience dictates to me, and I only -- I implore you to hopefully grant my motion to dismiss and my motion to appoint counsel, dismiss counsel.

THE COURT: Thank you, Mr. Vanisi.

Counsel, who would like to address the specifics? Which counsel? Mr. Specchio, I think the last issue maybe you need to address.

MR. SPECCHIO: Be happy to, Your Honor.

THE COURT: This is the way I see the specifics that he's put on. He said that you don't spend enough time with him and you haven't talked about the strategies. That is, we haven't gotten any more specific than that.

MR. SPECCHIO: Well, let me briefly respond.

THE COURT: Okay. That's fine.

MR. SPECCHIO: Judge, I started representing Mr. Vanisi in January 1998, maybe February. I'm not sure. I remember the homicide was in January. I don't know exactly how close.

Matter of fact, we sent the Utah Public Defender to talk to him before he even got back to the state because we knew we were probably going to have the case. So sometime in January or at the latest February.

I interviewed and saw Mr. Vanisi at least once a week, sometimes twice a week, sometimes three times a week during 1998. I have personally had about 1100 hours in this case. I have 1100 hours. There are two investigators and these two attorneys in addition to that.

THE COURT: You mean Mr. Bosler and Mr. Gregory?

MR. SPECCHIO: That is correct. And I would reasonably estimate that we have accumulated over 2,000 hours in this case. Our investigators have been every place that Mr. Vanisi suggested that we go. I personally went to Southern California and spoke to relatives and friends, et cetera.

As far as the hours, I'll submit it on that.

THE COURT: He has a claim that he doesn't think counsel has been effective, and the specifics of that claim is that at the time of the granting of the mistrial, a stipulation was entered into between the defense and the District Attorney, that the grounds did not rise to the level of a Fifth Amendment double jeopardy clause violation. And do you want to go ahead and respond to that?

MR. SPECCHIO: Mr. Gregory and I talked to Mr. Vanisi in that holding cell down there, which I remember. If you spend any time in there, you don't forget that. And he was advised as to what a mistrial, motion for mistrial meant and what the ramifications would be. I don't understand what he is talking about now.

He's relying on the fact that we picked the jury, that's double jeopardy, you can't ever try him again. He doesn't quite understand what the law is. He knows what he reads. But he doesn't know how to put it in the proper context.

The mistrial was declared. We didn't stop half way and say, We don't know what we're going to do, you can't retry him again.

This is an instance wherein these proceedings came to a halt, and I think we all agreed that it was through no one person's fault. A mistrial has to be declared in that circumstance. And double jeopardy does not. Unless it can be shown that it was at the fault of the prosecution and the prosecution ambushed in order to get that mistrial. That's not what happened in this case.

THE COURT: And you did discuss that with Mr. Vanisi prior to the mistrial?

MR. SPECCHIO: Not in that detail, but we explained to him what it was, what would probably happen,

and that he would be retried. We would retry this some other time.

MR. GREGORY: I did talk to him in detail at the time, Your Honor.

THE COURT: Thank you, Mr. Gregory. Also has there been a request from Mr. Vanisi to file a motion to dismiss on the double jeopardy grounds? Or is this the first you have heard of it?

MR. SPECCHIO: Not to us.

MR. GREGORY: Not to us, Your Honor.

MR. SPECCHIO: Judge, we're also bound, we're officers of the Court. We entered into a stipulation at that time. If my memory serves me correctly, that we stipulated that it wasn't a double jeopardy issue.

THE COURT: Yes, you did.

MR. SPECCHIO: Well, I can't come in here, whether he wants me to or not, and say, By the way, I was only kidding with that stipulation, Judge.

We don't file frivolous motions, Judge. That doesn't happen in my office. So that wouldn't happen under any circumstance.

THE COURT: Has there been any -- do any of you attorneys know of any reason why you cannot effectively continue as counsel for Mr. Vanisi?

MR. GREGORY: No, Your Honor.

MR. SPECCHIO: There is none, Judge.

MR. BOSLER: No, Your Honor.

THE DEFENDANT: Your Honor --

THE COURT: Wait a minute. I'm talking to them. It's their turn.

You have got 2,000 hours of attorney time thus far?

MR. SPECCHIO: I have 1100. I can give you my time sheet if you want to make it a part of this under seal.

THE COURT: I think that would be a good idea.

MR. SPECCHIO: I think that's through today, Judge, and about 1100 hours.

THE COURT: The clerk will mark it. This exhibit will be under seal to this in camera hearing.

THE CLERK: Exhibit B-1 marked.

(Exhibit No. B-1 marked.)

THE COURT: Counsel, do you know, as officers of the court -- and we all know why you are in the Public Defender's Office, you, all three of you have expressed to the District Court a concern over this type of case and a commitment, a personal commitment to the representation of indigent defendants charged in capital cases.

Do you know of any reason why you cannot provide fair and adequate representation to Mr. Vanisi through these proceedings?

MR. GREGORY: No, Your Honor.

MR. SPECCHIO: No, Your Honor.

MR. BOSLER: No, Your Honor.

THE COURT: Do you know of any inadequacies in your office that would require some short changing of Mr. Vanisi's representation?

MR. GREGORY: None whatsoever.

MR. SPECCHIO: Mr. Vanisi's case, Your Honor, is top priority. No expense is spared in this case. It's been that way since January or February 1998.

THE COURT: Thank you.

Mr. Vanisi, you wanted to respond to something that was said?

THE DEFENDANT: Yes, Your Honor. You asked them a question. You asked them a question if they -- if I had made any attempt to present the motion to dismiss to them. They said no.

Well, they said no because it goes to part of my argument. First is because they don't spend time to see me so that I can tell them these things. How can I inform them if they do not accept my collect call?

One time, one time I made a collect call to them, they accepted one time out of the many times that I have tried to contact the Public Defender's Office. No availability of Specchio. I tried his secretary. I tried

Specchio himself.

I tried -- I don't have Bosler's number, but I tried Gregory, I tried the Public Defender's Office. I tried -- yeah, I tried the Public Defender's Office, Specchio, Gregory, and a secretary. And only one time out of the many times, many attempts, five days out of the week, five times; the second week ten times; third week, 12, 15 times. I contacted, spoke to Gregory one time.

I called through the Public Defender's Office and dispatched me to the investigator. The reason why they don't know about this motion to dismiss is because they are not available to me. If they were to come to see me weekly, I can ask them these questions so they can adequately inform me what is a double jeopardy and what is not double jeopardy, because they are still going to hold and they are going to hold to this argument to the day they die, that this is not a double jeopardy case. But simply the research and the paperwork and the many cases will support that this is a double jeopardy, this falls under double jeopardy.

Now, I don't assume that as soon as the jury is picked that it becomes a -- constitutes double jeopardy.

THE COURT: Just a second. There is something you said I have to ask you about. Did this problem with visiting with them start when you went to prison? Now that you are at the prison, they are not accepting your collect

calls?

THE DEFENDANT: That's just one. There is another, if you want me to elaborate more. That's just one. That's just one. That's just one.

Because I would have liked, I would have liked to say to Gregory, Gregory, look at these books here. Interpret this for me. Look at these findings here. Look at what's going on here, Gregory. This is how I'm interpreting it. This is how I'm reading it. And tell me, Gregory, if I'm incorrect. Because what they have told me, as I stated earlier, they are giving me information that I have found out earlier that it raises suspicion, it raises a layman to ask.

So they are not -- they are not effective, Judge. That's just one issue. I can give you more specific if you want me to continue on.

THE COURT: Go ahead. Give me more specifics.

THE DEFENDANT: For an example here, Specchio once stood here and said that he has seen when I was at NSP, when I was at NSP on July 28, 1998, and Specchio had advocated for me to come back to Washoe, and Specchio had put on the record that he had seen me, his investigator, over 20 times.

That is far-fetched because when I go back to look at the visitation records, it doesn't show. It doesn't

show 20 times of visitation. It doesn't even show 10 times of visitation from June to January 1998, of Specchio visiting me. So there is an inconsistency. Because I'm looking here, 20 times?

And I look at the records, because I have contacted the sergeant, and said, Give me something here so I can see how many times. Because there is an abundant amount of information that I need to be processing in my behalf.

So I see less than 20 times, Your Honor. And he makes this claim that this is -- that he's spent -- yes, he spent a lot of time without contacting me, no doubt. I believe that he does put 1100 hours of hard arduous work that he spends on my case, and I'm indebted to him on that.

But I want to be clear, if I'm going to have representation, Your Honor, I want to have a full force. I want to have the full effect of counsel. I want to be confident with them.

Because what they are now, what they are going to be asking me is, this is Vanisi, I want to say, well, I am not going to be keen on trusting them right away because I will have to go back and find out what's going on. Because this is surely something here, Judge.

I have here something that falls under double jeopardy clause. And if the Court does not protect me and

insure my constitutional right, I warn -- I don't warn. Just I want to put on the record that this will constitute a judicial misconduct if the Court does not insure my constitutional right. My constitutional right is the Fifth Amendment, and that is one of my grounds of my arguments, and the Nevada Revised Statute 174.085(4) is another ground of my argument.

But I guess they have not fully responded to the double jeopardy. Because if this is not a double jeopardy clause, double jeopardy, if this doesn't fall under double jeopardy, I would like to be explained -- I'd like for them to explain on the record why it is not so I can read the record and go back to the case law books and do my research to find out if it is not or if it does not.

If the Court denies my motions, I will have to -- I will be prepared, Your Honor, to send -- submit a motion of certiorari, a motion, a writ of certiorari to higher court to inform them that they have got to look at this proceedings here to see because it's highly irregular.

Thank you, Your Honor.

THE COURT: Anything further from counsel?

The threshold of Mr. Vanisi's motion is that he believes counsel has been ineffective and specifically because counsel stipulated that there was not a double jeopardy violation with granting of the mistrial and the

resetting of the case for trial. Additionally, he argues that counsel has not spent enough time or accepted collect calls.

The issue here is whether or not Mr. Vanisi can receive a fair trial with counsel who have been appointed by the Court. The adversarial process, not the accused relationship with his attorneys, is what is important.

The law guarantees that you receive effective counsel, Mr. Vanisi. However, it does not guarantee that you may have the attorneys of your choice.

The fact that you do not have confidence in your attorneys is not a basis for granting your request to relieve counsel. The issue is whether or not the representation is inadequate, and I cannot make such a finding based on the record today.

The Court observed counsel's behavior at the initial trial that we had last year, I guess it was earlier this year, and I observed counsel's advocacy on your behalf. I know counsel's advocacy in the motion work and continuing advocacy counsel has made for you, and I cannot find at this time that in any way counsel has fallen below any type of objective standard in their representation of you.

When I look at the extent of conflict here, I see that there is a conflict based upon your being at the Nevada State Prison, which was necessitated by your own

behavior, and that problem is that you don't get to see them as often as you did.

I would encourage a schedule to be set where collect calls could be made at a specific time that works with the prison schedule and counsel's schedule so you can set something up if you haven't already. I would encourage that.

MR. SPECCHIO: Judge, we have a policy in the office that we accept collect -- first of all, he doesn't have to call collect. He can call direct. But he prefers to call us collect for some reason.

But the policy in the office is we'll accept them so long as the lawyer to whom he's addressing the call is present. I mean, he calls me at home. My wife finally just said, I have been ill and I wasn't going to take any calls from him. But, you know, it's like $11.00 a call or something.

THE COURT: That is why I'm saying, set up a schedule. I understand you would accept the call if you are there. I'm suggesting maybe you can set a schedule that will be there at a certain time or between a window once a week.

MR. SPECCHIO: Judge, we're probably going to have to address the issue of getting him back down here anyway because we're getting closer to trial and we're going

to have to have contact with him, assuming we're going to represent him. We're going to have to have -- and it's grossly inconvenient to go to the prison.

THE COURT: I understand.

MR. SPECCHIO: It takes hours to get there, come back.

THE COURT: Let me finish my record here.

MR. SPECCHIO: I'm sorry.

THE COURT: My findings. Thank you, Mr. Specchio.

So that's the extent of the conflict. That and his not having confidence in counsel.

When I look at this, based upon this inquiry that we have made today -- and I certainly have I think exhausted Mr. Vanisi's concerns -- I cannot see that there is an adequate basis for the relieving of counsel in this case.

Not only is there not a reason to grant the motion, and Mr. Vanisi's motion does fail on its grounds because it is not established on adequate grounds, I'm also concerned about the reports from the psychiatrist. And Mr. Vanisi is now indicating he wants to take a writ. It does appear and it does create some suspicion that Mr. Vanisi has an agenda to delay the trial rather than to move forward with counsel and prepare and get ready.

Based on the hearing last time when Mr. Vanisi refused to talk to Mr. Gregory substantively, which required an evaluation, which required a continuance and before we could get in here for that, a new motion to dismiss counsel, which Mr. Vanisi, being very bright as he is, knows would require a continuance of the trial if I even granted it, and now a request that if I deny his motion, he is going to go to the Supreme Court, tells me that Mr. Vanisi's true motivation here is to continue this matter out rather than go forward to trial, especially in light of the really minimal conflicts, that he can even address these conflicts! They are very significant to Mr. Vanisi, but they are not significant in terms of the Court's analysis of them.

So for those reasons, I am going to deny the motion to relieve counsel and not grant Mr. Vanisi's pro per oral motion to dismiss at this time. That's denied also. He's represented by counsel. All motions will be brought by counsel.

Now, that doesn't -- Mr. Vanisi, that doesn't stop you from filing your writ. If you want to go to the Supreme Court, do it. It doesn't stop you from later objecting to what I did. If, in fact, you get through the trial and you are found guilty, you can still complain about what I did in this hearing, what your lawyers did.

There are lots of opportunities for you to get

that all heard. Because I'm making these findings, and reaching this conclusion, doesn't mean that you can't appeal to the Supreme Court. You may. You may file a writ to the Supreme Court.

I can't tell you what they will do with it, but you can do it. And when the proceedings are all concluded, if you are not acquitted, then you can always appeal. And everything that we have done today is subject to an appeal.

So just so you understand, it isn't precluding you from ever raising this before the Supreme Court.

THE DEFENDANT: One just quick word, Your Honor, please. Yeah.

THE COURT: Now, you are represented by counsel. You sure you don't want to talk to your attorney?

THE DEFENDANT: I will, I will. Through your finding -- through your finding, you have not even explained fully and specificness of why you are denying my motion. You just said, oh, because you are finding of confidence, you say confidence.

Now, in the beginning, Your Honor --

THE COURT: Mr. Vanisi, there's nothing to debate here. If you don't like my ruling, take it to Carson City.

THE DEFENDANT: I have no problem with your hearing, Your Honor.

THE COURT: There is nothing else for you to talk about. You have counsel.

THE DEFENDANT: Just one quick question. Can you please --

THE COURT: Talk to your lawyers.

THE DEFENDANT: Yeah. Jeremy, will you please ask the judge to explain on the record -- she's asked me to ask you a question.

MR. GREGORY: Be quiet.

Your Honor, I think you have seen an example of how manic Mr. Vanisi can be and how difficult he is to handle. I have already talked to Mr. Gammick, and he indicated to me that he would have no objections if the Court would follow the suggestions as reflected in --

THE COURT: Wait, wait, wait. Are we going beyond the motion to relieve counsel?

MR. GREGORY: We are indeed.

THE COURT: So now we have to go back on the record. We will unseal the further proceedings.

MR. GREGORY: Wait a minute. This Court brought up the psychiatric evaluations. I don't think we have to unseal this, and I think the Court will understand if the Court will allow me.

THE COURT: I just don't want you to argue something that Mr. Gammick might want to respond to or

should respond to.

MR. GREGORY: I already talked to Mr. Gammick, and he indicated to me whatever the ruling the Court gives, he will be satisfied with. As an officer, I'm making that representation. I think it's important that we stay in camera on this particular issue. Please, Your Honor.

THE COURT: The specifics of the hearing are very clear. What about the referral to the psychiatric evaluation as it relates to my determination that you should remain as counsel of record do you need to tell me about?

MR. GREGORY: Thank you, Judge. You saw how Mr. Vanisi responded to the Court.

THE COURT: Actually I didn't think he is any worse than you. But you can go on. I mean, you have interrupted me on many occasions. I mean, he is excitable, but I would not call him manic.

MR. GREGORY: Well, Judge, how would you like to be in a room with him as opposed to these formal proceedings where you have some control and you are not able to get his attention? That's the problem that I have with Mr. Vanisi.

THE COURT: Okay.

MR. GREGORY: You can't have a substantive conversation because once he gets a thought in his mind, that's it, and you can't give him a reasonable answer, as

the Court attempted to do, because he just continues and continues and continues.

Now, what I wanted to ask the Court was to consider what's reflected in the evaluation by Dr. Bittker, he includes Dr. Knapp's notes from the prison, and that good doctor has concluded that this man, although he's competent, might suffer some bipolar disabilities and that Lithium, given in a proper dose, could help him and help us, I might add, Your Honor, to deal with him.

Now, I have talked to him. He's agreed to take whatever medication is necessary to give him a level mood so that we can function effectively as counsel for Mr. Vanisi.

I talked to Mr. Gammick. He's indicated he will have no objections if the Court would order supervised medication administered by a doctor to see if we can't get his mood at a level state so that I can do my job, Mr. Bosler and Mr. Specchio can do their job. Thank you, Your Honor.

THE COURT: Mr. Bosler, or Mr. Gregory, you're aware of the motion filed by the Reno Newspapers?

MR. GREGORY: I just received it, Your Honor. I'm sorry. The motion to release the psychiatric report? Yes.

THE COURT: We are not going to hear that today. Mr. Vanisi, keep your voice down. You have to

whisper. You are interfering.

We're not going to hear that today. But you intend to respond to that motion?

MR. GREGORY: Yes, Your Honor, we're going to be opposed to it. I assume the State is going to join us in that.

THE COURT: My concern on the motion with regard to the Lithium at this stage in the proceedings is I think -- I have some information before me in Dr. Bittker's report, but before the Court actually orders a physician to administer any particular drug --

MR. GREGORY: I'm just talking as that of an example. Anything they deem proper.

THE COURT: -- we have to have an actual hearing, the doctors have to come in. Now, if the prison and/or the Sheriff through their medical personnel determine it's the right thing to do, and begin that treatment, then all we have to do is have a hearing to determine that it isn't affecting his competency.

Of course, if you do hear that he is on medication, I'd ask any of you, whoever is here, as officers of the court, to notify me so we can be sure to do a canvass and be sure that he is competent still once he begins medication.

MR. GREGORY: Absolutely, Your Honor.

THE COURT: If they don't voluntarily place him on medication, we can have a motion, we can bring the doctors in, and they can all tell me before I actually sign an order. I need a little more information before I order medication.

So not that I'm opposed to it, as long as we can maintain his --

MR. GREGORY: Will the Court consider a general order allowing doctors to medicate Mr. Vanisi if they deem appropriate?

THE COURT: As long as we have an ongoing way to assure competency.

MR. GREGORY: Absolutely.

THE COURT: Why don't you talk to the doctors and see.

And, Mr. Gammick. And see what you can work out, and if you can get a stipulation and something in writing from the doctors explaining what it is and a procedure in place, then I'll consider signing such a motion.

MR. SPECCHIO: Thank you, Your Honor.

THE DEFENDANT: One more thing, Gregory.

THE COURT: Wait. That concludes the hearing on the attorney representation. We will bring everyone back in.

But I think it is a good time to take a short recess. We have some other things to do. So we're going to take a 15-minute recess, we'll be back on the record with everyone present.

MR. GREGORY: Thank you, Your Honor.

THE COURT: Court is in recess.

(Closed session concluded at 2:24 p.m.)

STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

I, ERIC V. NELSON, Certified Shorthand Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That I was present in Department No. 4 of the above-entitled Court and took stenotype notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 28th day of June, 1999.

Eric V. Nelson

ERIC V. NELSON, CCR No. 57

Exhibit 21

Exhibit 21

Vanis109560

FILED
Aug 4 99
AMY HARVEY, Clerk
By L. Romero
Deputy Clerk

Code No. 4190

Case No. CR98-0516

SEALED

Dept. No. 4

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

--oOo--

THE STATE OF NEVADA,

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

_____/

Sealed Proceedings

August 3, 1999

Reno, Nevada

APPEARANCES:

For the Plaintiff: RICHARD GAMMICK
District Attorney
DAVID STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant: STEPHEN GREGORY
and JEREMY BOSLER
Deputies Public Defender
One South Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI

Reported by: KAREN YATES, CRR
Nevada CCR No. 195

ORIGINAL

RENO, NEVADA, TUESDAY, AUGUST 3, 1999, 3:45 P.M.

--oOo--

(The following is a partial transcript.)

THE COURT: Thank you. Be seated. Mr. Gregory? The record is sealed from this point forward.

MR. GREGORY: As I have indicated to the Court, I have spent every day with the exception of a couple with Mr. Vanisi since he returned from the Nevada State Prison. He has refused to cooperate with us. There are issues that he wants to discuss that aren't relevant to the case, including whether or not jeopardy attached during the mistrial. And it has led to a level of frustration, I'm certain, with Mr. Vanisi and myself.

This morning, and he hinted at this and he has been hinting of this. I don't mean to suggest it came out of the blue. But this morning he indicated that -- maybe I should back up a little bit. I had presented him, as a result of his concerns about our defense, Faretta and the statutes. This morning he indicated that he wants to represent himself. He wants us to be his legal advisors.

And I asked him if he would wait until we get some, get him on the medications to see if that wouldn't help him a little bit. He indicated initially that he would. But then this afternoon as we were coming in, as I spoke to him before we came into court, he asked that this

be brought to the Court's attention. I promised him I would.

Now I present Mr. Vanisi for his request.

THE COURT: Mr. Vanisi.

THE DEFENDANT: Yeah, I request to represent myself, Your Honor, please. I feel much better and everything will be beautiful for me if I represent myself, please.

THE COURT: What I'm going to do, Mr. Vanisi, is because I have a strict constitutional requirement that I must fulfill before I can grant such a motion, I am going to require that you put your request in writing with an explanation of why you want to do this. This does two fold things. I want you to have an opportunity to think about it and be sure this is what you want. Second, it will give me an opportunity to determine your competence to act as your own counsel.

The written motion will have two effects on me: One, I'll be sure you really want to do it since there has been a little bit of a change of mind. And second, it will give me an opportunity to look at your thought process and how well you will be able to represent yourself and whether you are knowingly and understandingly entering into this request.

Then we will have a hearing as soon as I get the

written motion. And I will make inquiry of you. You will have an opportunity to argue your position, at which point I will make specific findings and either grant or deny your request.

So as soon as you get that in writing to me, I will set a hearing and we will have it.

THE DEFENDANT: Thank you, Your Honor.

THE COURT: If you don't get it to me, I will assume you changed your mind and you are comfortable with your representation.

THE DEFENDANT: Thank you.

MR. GREGORY: Thank you, Your Honor. That's the only matter.

THE COURT: The record is no longer sealed. I think we can conclude today's hearing. We will see you all back on Thursday.

MR. GREGORY: Thank you, Your Honor. We would ask that the motion for Mr. Vanisi be sealed when it is presented to the Court, as part of this record.

THE COURT: I can seal the motion when I get it, but I can't guarantee that other people won't see it.

MR. GREGORY: Then I will ask Mr. Vanisi to present it to me and I'll present it to the Court.

THE COURT: You can file it under seal. There's no problem.

MR. GREGORY: Thank you, Your Honor.

THE COURT: Court is in recess.

(The hearing concluded at 3:55 p.m.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, KAREN YATES, a Certified Court Reporter of the Second Judicial District Court, in and for the State of Nevada, do hereby certify:

That I was present in the above-entitled court on August 3, 1999, and took verbatim stenotype notes of the proceedings entitled THE STATE OF NEVADA, Plaintiff, versus Sisosi Vanisi, Defendant, Case No. CR98-0516, and thereafter transcribed them into typewriting as herein appears,

That the foregoing partial transcript is a full, true and correct transcription of my stenotype notes of the closed portion of said hearing.

DATED at Reno, Nevada, this 3rd day of August, 1999.

KAREN YATES, CRR
Nevada CCR No. 195

Code No. 4190

Case No. CR98-0516

Dept. No. 4

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

--oOo--

THE STATE OF NEVADA,

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

_____/

Motion re Medication

August 3, 1999

Reno, Nevada

APPEARANCES:

For the Plaintiff: RICHARD GAMMICK
District Attorney
DAVID STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant: STEPHEN GREGORY
and JEREMY BOSLER
Deputies Public Defender
One South Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI

Reported by: KAREN YATES, CRR
Nevada CCR No. 195

ORIGINAL

RENO, NEVADA, TUESDAY, AUGUST 3, 1999, 3:05 P.M.

--oOo--

THE COURT: Thank you. Please be seated. This is the time set for hearing regarding medication of defendant. Counsel?

MR. STANTON: Thank you, Your Honor. Your Honor, we were advised initially telephonically by Mr. Gregory and then ultimately in a telephone conference with the presiding Chief Judge of the Second Judicial District Court, Judge McGee, about a request for an order of medical treatment of defendant. An order was ultimately filed in and endorsed by Judge McGee dated July 12, 1999. It is entitled an ex parte order for medical treatment. It indicates that it was filed under seal.

In that two-page order it indicates that it is an order from the Second Judicial District Court to the Washoe County sheriff's office through their medical representatives to provide the following medication to the defendant. And it indicates, number one, lithium with a pre-lithium work-up; and another drug called titration, t-i-t-r-a-t-i-o-n; and then Wellbrutin, W-e-l-l-b-r-u-t-i-n and t-i-t-r-a-t-e in a three milligram dose.

Upon the State's receiving the order, we had some concerns because we were unaware to a great extent what had transpired in the hearing that the State was not privy to.

As a result of the order, I had reviewed some of the case law generated from the Nevada Supreme Court as well as from the United States Supreme Court, ironically out of a case that came from Nevada, the Riggins case.

And there is some factual distinctions between the Riggins case and the ultimate decision that was found in that decision. That is 109 Nevada 966, 860 P2d 705. It's a 1993 case. At least that's the case that was published on remand from the United States Supreme Court.

And there are specific directives in the Riggins case for a trial court to find as a matter of record. And that was the concern of the State in bringing this up to the Court's attention. Since we don't know what record was developed when we weren't present, this is one out of caution just to see, to advise the Court what we have been able to glean from the law, and I've told Mr. Gregory about the Riggins case and what my perception was of the mandate of that decision.

There are several fundamental differences factually between Riggins and this case. Number one is that this Court has made a finding of competence in this case which was somewhat convoluted in the Riggins cases.

Second, it was an involuntary medication in the Riggins case. At least it was involuntary in what the defendant pursued on appeal. And finally, that the types of

medication were, as they are described in the written opinion, antipsychotic medications.

I have looked at the PDR to the nature of the medications in the attendant order. I'm not sure what antipsychotic means within the PDR. That term is not used. However, I know that two of the drugs are indeed considered drugs given to people to change their affect. So to that extent I think they should be approached with satisfying that element of the Riggins case.

I don't know and would request of the Court what, if any, the record reveals regarding Mr. Vanisi's position about this medication that is subject to the order. Is he in agreement with it? Does he understand what the medication is? So that the record at least at this juncture is abundantly clear for those that review this record whether or not Mr. Vanisi understands the medication, what it's for, its purpose, its effect, and whether he's in agreement that it be administered to him as outlined in the order.

I'm prepared to address to the Court to the other directives that Riggins gives to trial courts about a finding about such medications whenever the Court is ready. But that's the State's concern in requesting the hearing.

THE COURT: I have a couple of questions for you. One, were you on a telephone conference with Chief Judge

McGee and Mr. Gregory or someone on behalf of Mr. Vanisi?

MR. STANTON: Yes. Ultimately when he signed the order, and I advised Judge McGee that I knew that there was -- Mr. Gregory had called me earlier and said he was going in front of Judge McGee regarding an order for medication. And he had advised me that in essence it had been borne out in part by what had occurred in the hearing that we were not present in.

When Judge McGee had me on the speaker phone, I advised him that I was aware of a case out of the Nevada Supreme Court and out of the United States Supreme Court that spoke to the medication of the defendant in a criminal setting. I remembered it being, coming out of Nevada. I think it actually came out of Clark County. I said that's the authority that I'm aware of that exists, because Judge McGee, I think, was asking me what my position was. I said: Well, judge, I'm shooting in the dark. I don't know what the record has developed about this hearing.

I assumed, I basically was reading between the lines and the fact that Mr. Gregory had indicated that a doctor had evaluated Mr. Vanisi and that he recommended these medications.

THE COURT: Did he share with you and Judge McGee that I said I would not order it absent a hearing?

MR. STANTON: No. I don't recall it.

THE COURT: Was there a court reporter present on the telephone conversation?

MR. STANTON: I have no knowledge, Judge. I was not in the chambers. I believe Mr. Gregory was over with Judge McGee. They put me on a speaker phone.

THE COURT: He was physically with Judge McGee?

MR. STANTON: Either that or it was a three-way conference. I don't know.

THE COURT: I guess we'll find out from Mr. Gregory. Have you received any of the documents? Have you received a copy of the order that was signed?

MR. STANTON: Yes, I received the order that has a stamped signature of Charles M. McGee that's dated July 12th.

THE COURT: Did you receive a transcript or a notification of a transcript from the telephone call?

MR. STANTON: No.

THE COURT: Thank you. Mr. Gregory?

MR. GREGORY: Your Honor, prior to our closed hearing I informed Mr. Stanton that I intended to ask the Court to issue an order allowing Mr. Vanisi to receive lithium treatment. As the Court remembers, at the end of that hearing I brought that to the Court's attention. The Court at that time, my recollection, indicated that if I got a psychiatrist to indicate that these particular medications

were appropriate for Mr. Vanisi, that at that time the Court would sign an order allowing for him to be medicated.

Subsequent to that, I had Dr. Lynn see Mr. Vanisi at the prison. Dr. Lynn practices in Carson City. He gave me a fax transmission, and I subsequently received a letter of confirmation which I believe I made part of the sealed record. The Court should have a copy of that.

The day after I received that letter, I believe Mr. Vanisi was returned from Nevada State Prison. I at that point came looking for this Court. I was informed that this Court was out of session that week. Not thinking to ask whether the Court was in session the following week, I returned the following Monday and was again told that this Court was still out of session.

At that point I called Mr. Stanton; indicated to him that I would like for him to meet with me and the Chief Judge so that I could present an ex parte order. Although it's entitled ex parte, it's obvious I shared with the State exactly what I was going to do.

I thereupon went to meet Judge McGee in chambers. Judge McGee decided that Mr. Stanton didn't have to be present; that we could do that telephonically. I was with Judge McGee. Mr. Stanton indicated to me that he had no objections as long as any Supreme Court issues were addressed.

Now, the case he refers to, the Riggins case, in my humble opinion is apples versus oranges. We are asking for the voluntary medication. The defense is asking for the voluntary medication of mood levelers, if you will, of Mr. Vanisi. The Riggins case was the involuntary medication with antipsychotics ordered by the State.

However, because Mr. Stanton had discovered this case and was concerned about having formal hearings because that was what was required in Riggins, I did not take the ex parte order over to the sheriff's department. As a matter of fact, I had that order three or four days before Mr. Vanisi was actually brought back from Nevada State Prison. And I still have that order. And it still hasn't been served.

So he insisted on having a hearing. At that point I just held the order. That's why we're here.

THE COURT: I'm kind of curious why you refused to have a telephone conference with me last week without a court reporter present for the mere purpose to determine what kind of a hearing you all wanted and how long it would took place, but you thought it was perfectly acceptable to talk about something that involves the specific issue of medication, and Mr. Stanton present, and thought all that could be done with Judge McGee without a court reporter?

MR. GREGORY: The only thing presented to Judge

McGee was the letter from Dr. Lynn.

THE COURT: Well, you got your order signed.

MR. GREGORY: Pardon me?

THE COURT: You also have an order signed. I don't understand, Mr. Gregory. If you want to get an order signed ex parte by the Chief Judge while I'm gone, you think it's perfectly okay to have a telephone conference without a court reporter present. But you absolutely refused to cooperate in my request to have a simple administrative telephone conference to find out how long today's hearing would be and whether you would be calling witnesses.

But that's, there's no other explanation than you just were physically there?

MR. GREGORY: May I respond?

THE COURT: Yes.

MR. GREGORY: I informed the Court that I would be willing to take part in that particular conversation. But when the Court indicated that she wanted to get into the factual reasons for this, at that point --

THE COURT: What factual reasons?

MR. GREGORY: Well, I don't know, Judge. You're the one that indicated --

THE COURT: I never told you we were going to talk about the facts of the matter.

MR. GREGORY: Maybe that's the reason why we have

a court reporter, Your Honor.

THE COURT: It's the same reason why we should have had a court reporter when you were representing things to Judge McGee.

The transcript from the sealed hearing shows that you asked for the motion. My comments were, "We have to have an actual hearing. The doctors have to come in. Now, if the prison and/or the sheriff through their medical personnel determine it's the right thing to do and begin that treatment, then all we have to do is have a hearing to determine that it isn't affecting his competency. Of course, if you hear that he is on medication, I would ask any of you, whoever is here, as officers of the court" -- and I was talking to the sheriff's officers as well as you -- "to notify me so we can be sure to do a canvass and be sure he is competent still once he begins the medication."

You said, "Absolutely, Your Honor." You continued to request, if you got something from a doctor. And I told you throughout the transcript that I would consider such a thing. I said -- you said, "Will the Court consider a general order allowing doctors to medicate Mr. Vanisi if they deem appropriate?"

"As long as we have an ongoing way to assure competency."

You: "Absolutely."

"Why don't you talk to the doctors and see. And Mr. Gammick, and see what you can work out. And if you can get a stipulation and something in writing from the doctors explaining what it is and the procedure in place, then I'll consider signing such a motion."

I was very, very clear about my concerns. Without a transcript, I don't know if you made these representations that I made to you in court clear to Chief Judge McGee when you asked for the order to be signed. I have seen the report from Dr. Lynn. But I don't think that obviates the necessity to have a hearing to determine whether your client wants these drugs. Is it voluntary or not? We need to find out how it affects him. I don't know.

MR. GREGORY: I believe that transcript indicates that his willingness to take the drug, if the Court will continue to read. Because I believe the Court --

THE COURT: There's nothing on here.

MR. GREGORY: I believe the Court specifically addressed that.

THE COURT: No. There isn't anything more in the sealed transcript about it.

MR. GREGORY: Well, maybe we were off the record, but I remember the Court asking if Mr. Vanisi indicated --

THE COURT: We haven't done anything off the

record, Mr. Gregory. So maybe there is an unsealed transcript somewhere where we brought the State back in.

MR. GREGORY: Well, it's my understanding, my recollection Mr. Vanisi indicated his willingness to take whatever medication was prescribed to help him get his moods under control. I can ask Mr. Vanisi now to confirm that.

THE COURT: Before you asked to have medication taken, I read the beginning of the transcript, there may have been something in canvass that he wanted to have that situation under control.

MR. GREGORY: Thank you, Your Honor.

THE COURT: But it hasn't been with regard to taking this particular medication. Dr. Lynn made the recommendation. Is he treating Mr. Vanisi?

MR. GREGORY: No, he cannot, Your Honor. He practices in Carson City. That's why I sought out an order. If Mr. Vanisi was not in custody, obviously I could, you know, have a private doctor give him whatever medications I deemed appropriate or the doctor deemed appropriate.

And Dr. Lynn practices in Carson City. Mr. Vanisi was in Nevada State Prison. So the ex parte order is designed to allow the sheriff through his medical facility to provide these medications. But to be extra cautious, I used the language that Dr. Lynn used in his fax to me, so that there be the checking of the blood levels and whatever.

The exact same language.

THE COURT: Have you communicated with the sheriff's medical personnel?

MR. GREGORY: No, ma'am. Like I said, after Mr. Stanton indicated his acquiescence in this, and then subsequent to that I found out that he was uncomfortable, I kept the order on my desk. It has not been served.

THE COURT: Okay. So, it was your understanding that he was stipulating basically to the medications being given?

MR. GREGORY: Yes, ma'am. Certainly they had no objectionS. I don't want to use a term that he's not comfortable with. But that's the feeling I had.

THE COURT: This is my concern about the treatment. I have to be able to determine, number one, that the specific drugs that are being recommended will not affect his competency and his ability to assist counsel throughout the trial. And we also have to be clear that the actual drugs that are being administered are voluntary. I know that he wants drugs, but we still need to have specific inquiry.

The other thing is, we need to have an ability to monitor this so we have periodic checks that actually the drugs are still appropriate. That's why I'm very uncomfortable ordering specific medications because I'm not

a physician and I think it makes it difficult for the Court to monitor it.

What I was about to say when you kind of misunderstood my question is, had you discussed with the medical personnel at the sheriff's office the utilization of these drugs? In other words, have you had an opportunity to have a conversation with the medical personnel and say: Dr. Lynn suggests these. Are you in agreement? Are you willing to order the administration of these drugs? My client wants them.

Or will I be, or Judge McGee already, be overriding a medical determination made by the physician on staff in the jail by ordering the drugs? That's of concern to me there.

MR. GREGORY: I have not, Your Honor. As I indicated, once I realized that Mr. Stanton was uncomfortable -- see, my concern was to get him on this regimen as quickly as possible. As it stands now we are running out of time. I'm not so sure -- I don't know what blood levels have to be attained with the lithium or how long that takes. I just knew that we were running out of time. That's why I was frantically searching for you and then went to the Chief Judge.

But I have not done anything with the order. It's been gathering dust on my desk ever since Mr. Stanton

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * *

SIAOSI VANISI, Appellant, vs. RENEE BAKER, WARDEN, and CATHERINE CORTEZ MASTO, ATTORNEY GENERAL FOR THE STATE OF NEVADA, Respondents.	No. 65774 Volume 3 of 26

APPELLANT'S APPENDIX

Appeal from Order Denying Petition
for Writ of Habeas Corpus (Post-Conviction)

Second Judicial District Court, Washoe County

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25	Response to "Objections to Proposed Findings of Fact, Conclusions of Law and Judgment Dismissing Petition for Writ of Habeas Corpus" April 7, 2014	AA06237-AA06239
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 7th day of January, 2015. Electronic Service of the foregoing Appellant's Appendix shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy
Washoe County District Attorney
tmccarth@da.washoecounty.us

Felicia Darensbourg
An employee of the Federal Public Defender's Office

Every person charged with the commission of a crime shall be presumed innocent unless the contrary is proved by competent evidence beyond a reasonable doubt.

Instruction No. 16

The burden rests upon the prosecution to establish every element of the crime with which the defendant is charged, and every element of the crime must be established beyond a reasonable doubt.

Instruction No. 17

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable, must be actual, not mere possibility or speculation.

Instruction No. 18

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Murder is further divided into Murder of the First Degree and Murder of the Second Degree

Instruction No. 19

As it applies to this case, Murder of the First Degree is:

(a) premeditated and deliberate murder or

(b) murder committed while lying in wait or

(c) murder committed during the commission or in the furtherance of a robbery

All other types of murder are Murder in the Second Degree.

Instruction No. 20

NRS 200.020 defines malice, express and implied, as follows:

1. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

2. Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

Instruction No. 21

Malice aforethought, as used in the definition of murder, means the intentional doing of a wrongful act without legal cause or excuse, or what the law considers adequate provocation. The condition of mind described as malice aforethought may aries, not alone from anger, hatred, revenge or from particular ill will, spite or grudge toward the person killed, but may also result from any unjustifiable or unlawful motive or purpose to injure another which proceeds from a heart fatally bent on mischief, or with reckless disregard of consequences and social duty.

Instruction No. 22

The nature and extent of the injuries, coupled with the repeated blows, may constitute evidence of willfulness, premeditation and deliberation.

Instruction No. 23

Unless felony-murder applies, the unlawful killing must be accompanied with deliberate and clear intent to take life in order to constitute Murder of the First Degree. The intent to kill must be the result of deliberate premeditation.

Premeditation is a design, a determination to kill, distinctly formed in the mind at any moment before or at the time of the killing.

Premeditation need not be for a day, an hour or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the premeditation is followed by the act constituting the killing, it is willful, deliberate and premeditated murder.

Instruction No. 24

Whenever death occurs during the perpetration of certain felonies, including Robbery, NRS 200.030 defines this as Murder in the First Degree. This is known as the "felony murder rule."

Therefore, an unlawful killing of a human being, whether intentional, unintentional or accidental, which is committed in the perpetration of a Robbery is Murder in the First Degree if there was in the mind of the defendant the specific intent to commit the crime of Robbery.

The specific intent to commit Robbery must be proven by the State beyond a reasonable doubt.

Instruction No. 25

All verdicts in this case must be unanimous. In considering Count I, Murder, the State has alleged three different theories of First Degree Murder. The three theories of Murder in the First Degree are as follows:

(1) Premeditated and deliberate murder; or

(2) That the murder was perpetrated in the furtherance of a robbery; or

(3) The murder was committed by means of lying in wait.

However, you need not be unanimous in your finding as to either of the theories I have just outlined.

Thus, you do not have to agree on the theory of Murder in the First Degree, it is sufficient that each of you find beyond a reasonable doubt that the murder, under any one of the three theories, was Murder in the First Degree.

Instruction No. 26

Robbery is the unlawful taking of personal property from the person of another, or in his or her presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

Instruction No. 27

Grand Larceny consists of the unlawful stealing, taking, and carrying away of personal goods or property of another of a value of Two Hundred Dollars or more, with the intent to permanently deprive the owner of the possession of such personal goods or property.

Instruction No. 28

If you find the defendant guilty of any of the first four counts of the Information, Murder in the First Degree and/or Robbery you must then answer the question as to whether the crime was committed with a deadly weapon.

Instruction No. 29

A deadly weapon is any object, instrument or weapon which is used in such a manner as to be capable of producing, and likely to produce, death or great bodily injury.

Instruction No. 30

A deadly weapon is any object, instrument or weapon which is used in such a manner as to be capable of producing, and likely to produce, death or great bodily injury.

Instruction No. 30

Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other count. The defendant may be convicted or acquitted on any or all of the offenses charged. Your finding as to each count must be stated in a separate verdict.

Instruction No. 31

It is your duty as jurors to consult with one another and to deliberate, with a view of reaching an agreement, if you can do so without violence to your individual judgment. You each must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

Instruction No. 32

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn from the fact that the defendant has not testified.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Instruction No. 33

Upon retiring to the jury room you will select one of your number to act as foreperson, who will preside over your deliberations and who will sign a verdict to which you agree.

When all twelve (12) of you have agreed upon a verdict, the foreperson should sign and date the same and request the Bailiff to return you to court.

Connie J. Steinheimer
DISTRICT JUDGE

Instruction No. 34

Exhibit 12

Exhibit 12

ORIGINAL

FILED

OCT 06 1999

AMY HARVEY, CLERK
By: M. Stowe
DEPUTY

CODE 1885

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR98-0516

Dept. No. 4

SIAOSI VANISI,
also known as
"PE,"
also known as
"GEORGE,"

Defendant.

_____/

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this penalty hearing. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions, regardless of any opinion you may have as to what the law is or ought to be.

Instruction No. 1

If in these instructions, any rule, direction or idea is repeated or stated in a different way, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

Instruction No. 2

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you would find that another fact exists, even though it has been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give any evidence.

It is for you to decide whether a fact has been proved by circumstantial evidence. In making that decision, you must consider all the evidence in the light of reason, common sense and experience.

You should not be concerned with the type of evidence but rather the relative convincing force of the evidence.

Instruction No. 3

The evidence presented both during the trial and during this hearing may be considered by the jury in deciding the proper and appropriate sentence in this case.

This evidence consists of the sworn testimony of the witnesses, both on direct and cross-examination, regardless of who called the witness; the exhibits which have been introduced into evidence and any facts to which the lawyers have agreed or stipulated.

Instruction No. 4

The State has the burden of proving beyond a reasonable doubt the aggravating circumstance in this case.

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors after the entire comparison and consideration of all the evidence are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt, to be the reasonable, must be actual, not mere possibility or speculation. Judge Sturman

Instruction No. 5

You have found the defendant in this case to be guilty of Murder in the First Degree; therefore, under the law of this state, you must determine the sentence to be imposed upon the defendant.

First Degree Murder is punishable:

(1) by death, only if an aggravating circumstance is found, and any mitigating circumstance or circumstances which are found to not outweigh the aggravating circumstance, or

(2) by imprisonment in the Nevada State Prison for life without the possibility of parole, or

(3) by imprisonment in the Nevada State Prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of twenty 20 years has been served, or

(4) for a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served

A determination of whether an aggravating circumstance exists is not necessary in the event you determine to impose a sentence less than death.

Instruction No. 6

A prison term of fifty years with eligibility for parole beginning when a minimum of twenty years has been served does not mean that the defendant would be paroled after twenty years but only that he or she would be eligible for parole after that period of time.

Life imprisonment with the possibility of parole is a sentence to life imprisonment which provides that the defendant would be eligible for parole after a period of twenty years. This does not mean that he or she would be paroled after twenty years but only that he or she would be eligible for parole after that period of time.

Life imprisonment without the possibility of parole means exactly what it says, that the defendant shall not be eligible for parole.

If you sentence the defendant to death, you must assume that the sentence will be carried out.

Instruction No. 7

Any person who uses a deadly weapon ~~firearm~~ in the commission of a crime, shall be punished by imprisonment in the Nevada State Prison for a term equal to and in addition to the term of imprisonment prescribed for the underlying crime, and said sentence shall run consecutively with the sentence prescribed for the underlying crime.

Because you have found the defendant committed the offense with the use of a deadly weapon → Judge Steinheimer ~~firearm~~, if you sentence him to life in prison with the possibility of parole, his earliest parole eligibility would be forty years. Likewise, if you sentence him to a term of fifty years, his earliest parole eligibility would be forty years.

Instruction No. 8

The following are the aggravating factors as alleged in this case:

1. The murder was committed in the commission of or attempt to commit the crime of Robbery With the Use of a Deadly Weapon;

2. The murder was committed upon a peace officer, Sgt. George Sullivan, while engaged in the performance of his official duty and that the defendant knew or reasonably should have known that the victim was a peace officer;

3. The murder involved mutilation of the victim;

4. The murder was committed by the defendant upon a person because of the actual or perceived race, color, religion or national origin of that person.

Instruction No. 9

The term "mutilate" means to cut off or permanently destroy a limb or essential part of the body, or to cut off or alter radically so as to make imperfect, or other serious and depraved physical abuse beyond the act of killing itself.

Instruction No. 10

A murder in the first degree may be mitigated by any of the following circumstances:

1. The defendant has no significant history of prior criminal behavior.

2. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.

3. The youth of the defendant at the time of the crime.

4. Any other mitigating circumstance.

This list of mitigating circumstances is not meant to be exclusive. You may consider any other mitigating circumstance(s) you believe is/are appropriate as individual mitigating circumstances.

Instruction No. 11

Mitigating circumstances are things which do not constitute a justification or excuse of the offense in question, but which in fairness and mercy may be considered as extenuating or reducing the degree of moral culpability.

Instruction No. 12

The mitigating circumstances which I have read for your consideration are given only as examples of some of the factors you may take into account as reasons for deciding not to impose a sentence of death on the defendant. Any aspect of the defendant's character or record and any of the circumstances of the offense, which a jury believes is a basis for imposing sentence less than death may be considered a mitigating factor. Any one of them may be sufficient, standing alone, to support a decision that death is not the appropriate punishment in this case.

In balancing aggravating and mitigating circumstances, it is not the mere number of aggravating circumstances or mitigating circumstances that controls. You must consider each separately and carefully to determine what weight should be given.

Instruction No. 13

The State has alleged aggravating circumstances are present in this case.

The defendant has alleged certain mitigating circumstances are present in this case.

It shall be your duty to determine:

(a) whether an aggravating circumstance has been proven beyond a reasonable doubt;

(b) whether a mitigating circumstance or circumstances are found to exist; and,

(c) based upon these findings, whether the defendant should be sentenced to death, or one of the alternatives less than death.

The jury may impose a sentence of death only if you find an aggravating circumstance and further find there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

Instruction No. 14

The law never compels the imposition of the death penalty. Even if you find that the aggravating circumstances have been proven beyond a reasonable doubt, and even if you also do not find that any mitigating circumstances exist, you are not required to return a verdict of the sentence of death as punishment, but may instead sentence the defendant to one of the alternatives less than death.

Instruction No. 15

In reaching your verdict you may consider only the testimony of witnesses and the exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the proper and appropriate sentence should be in this case.

Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from what the lawyers have stated, then your memory controls.

Questions and objections by lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or the court's ruling on it.

Testimony excluded or stricken by the court or testimony which you have been instructed to disregard is not evidence and must not be considered.

Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the proper punishment solely on the evidence received at the trial and at this hearing.

Instruction No. 16

In your deliberation you may not discuss or consider the subject of guilt or innocence of the defendant, as that issue has already been decided. Your duty is confined to a determination of the punishment to be imposed.

Instruction No. 17

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences which you feel are justified by the evidence, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, passion, prejudice, or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

Instruction No. 18

When you retire to consider your verdict, you must first determine whether the State has proven beyond a reasonable doubt that an aggravating circumstance or circumstances exist in this case. All of you must agree as to each aggravating circumstance.

Then you must determine whether a mitigating circumstance or circumstances exist in this case. A single juror may establish the existence of a mitigating circumstance. A mitigating circumstance can be established if any juror finds that some evidence has been provided as to its existence.

Based upon your findings in the verdict you must then determine whether the defendant should be sentenced to death, life without the possibility of parole, life with the possibility of parole or 50 years in prison.

During your deliberations, you will have all the exhibits which were admitted into evidence during the trial and during this hearing, these written instructions and forms of verdict which have been prepared for your convenience.

When all twelve (12) of you have agreed upon a verdict, the foreperson should sign and date the same and request the Bailiff to return you to court.

Connie J. Steinheimer
DISTRICT JUDGE

Instruction No. 19

Exhibit 13

Exhibit 13

CONFIDENTIAL

EXECUTION

MANUAL

PROCEDURES FOR EXECUTING THE DEATH PENALTY

NEVADA STATE PRISON

CONFIDENTIAL

REVISED: February 2004

Section I.

AUTHORITY - NEVADA REVISED STATUTES

NRS 176.345 Proceedings when conviction carries death penalty.

1. When a judgement of death has been pronounced, a certified copy of the judgment of conviction must be forthwith executed and attested in triplicate by the clerk under the seal of the court. There must be attached to the triplicate copies a warrant signed by the judge, attested by the clerk, under the seal of the court, which:
   a. Recites the fact of the conviction and judgment;
   b. Appoints a week, the first day being Monday and the last day being Sunday, within which the judgment is to be executed, which must not be less than 60 days nor more than 90 days from the time of judgment; and
   c. Directs the sheriff to deliver the prisoner to such authorized person as the director of the department of prisons designates to receive the prisoner, for execution. The prison must be designated in the warrant.
2. The original of the triplicate copies of the judgment of conviction and warrant must be filed in the office of the county clerk, and two of the triplicate copies must be immediately delivered by the clerk to the sheriff of the county. One of the triplicate copies must be delivered by the sheriff, with the prisoner, to such authorized person as the director of the department of prisons designates, and is the warrant and authority of the director for the imprisonment and execution of the prisoner, as therein provided and commended. The director shall return his certified copy of the judgment of conviction to the county clerk of the county in which it was issued. The other triplicate copy id the warrant and authority of the sheriff to deliver the prisoner to the authorized person designated by the director. The final triplicate copy must be returned to the county clerk by the sheriff with his proceedings endorsed thereon.

NRS 176.355 Execution of death penalty: Method; time and place; witnesses.

1. The judgment of death must be inflected by an injection of lethal drug.
2. The director of the department of prisons shall:
   a. Execute a sentence of death within the week, the first day being Monday and the last day being Sunday, that the judgement is to be executed, as designated by the district court. The director may execute the judgment at any time during that week if a stay of execution is not entered by a court of appropriate jurisdiction.
   b. Select the drug or combination of drugs to be used for the execution after consulting with the state health officer.
   c. Be present at the execution.
   d. Notify those members of the immediate family of the victim who have, pursuant to NRS 176.357, requested to be informed of the time, date and place scheduled for the execution.
   e. Invite a competent physician, the county coroner, a psychiatrist and not less than six reputable citizens over the age of 21 years to be present at the execution. The director

shall give preference to those eligible members or representatives of the immediate family of the victim who requested, pursuant to NRS 176.357, to attend the execution.

3. The execution must take place at the state prison.
4. A person who has not been invited by the director may not witness the execution.

NRS 176.357 Request for notification of execution of death penalty; request to attend.

1. If after a conviction for murder a judgment of death has been pronounced, each member of the immediate family of the victim who is 21 years of age or older may submit a written request to the director to be informed of the time, date and place scheduled for the execution of the sentence of death. The request for notification may be accompanied by a written request to attend or nominate a representative to attend the execution.
2. As used in this section, "immediate family" means persons who are related by blood, adoption or marriage, within the second degree of consanguinity or affinity.

NRS 176.365 Director of department of corrections to make return on death warrant.
After the execution, the director of the department of prisons must make a return upon the death warrant to the court by which the judgment was rendered, showing the time, place, mode and manner in which it was executed.

NRS 176.495 New warrant generally.

1. If for any reason a judgement of death has not been executed, and it remains in force, the court in which the conviction was had must, upon the application of the attorney general or the district attorney of the county in which the conviction was had, cause another warrant to be drawn, signed by the judge and attested by the clerk under the seal of the court, and delivered to the director of the department of prisons.
2. The warrant must state the conviction and judgment and appoint a week, the first day being Monday and the last day being Sunday, within which the judgement is to be executed. The first day of that week must be not less than 15 days nor more than 30 days after the date of the warrant. The director shall execute a sentence of death within the week the judgment is to be executed, as designated by the district court. The director may execute the judgment at any time during that week if a stay of execution is not entered by a court of appropriate jurisdiction.
3. Where sentence was imposed by a district court composed of three judges, the district judge before whom the confession or plea was made, or his successor in office, shall designate the week of execution, the first day being Monday and the last day being Sunday, and sign the warrant.

NRS 454.213 Authority to possess and administer dangerous drug.

9. Any person designated by the head of a correctional institution.

NRS 454.221 Furnishing dangerous drug without prescription prohibited; penalty; exceptions.

1. A person who furnishes any dangerous drug except upon the prescription of a practitioner is guilty of a category D felony and shall be punished as provided in NRS 193.130, unless the dangerous drug was obtained originally by a legal prescription.
2. The provisions of this section do not apply to the furnishing of any dangerous drug by:

f. A pharmacy in a correctional institution to a person designated by the director of the department of prisons to administer a lethal injection to a person who has been sentenced to death.

Exception

In the case of a female person, upon whom has been imposed the judgment of death, such person shall be delivered to the Warden of the Southern Nevada Women's Correctional Facility and there to be held pending decision upon appeal. Upon exhausting the appeal process, the female person sentenced to death shall be delivered to the Warden of the Nevada State Prison at [redacted] In the event of an eleventh hour commutation of sentence, said female prisoner shall be returned to the Southern Nevada Women's Correctional Facility, there to be confined pursuant to such commutation.

Section II.

OVERVIEW OF THE DAY OF EXECUTION

At approximately 10:30 a.m. (all times are approximate and may be adjusted on an "as needed" basis) on the day of the execution, the assigned sergeant and [redacted] observation officers will report to the condemned man's living unit. They will take with them two complete sets of new state-issue clothing, which have been searched by the sergeant. They will enter the unit and proceed to the cell of the condemned inmate. The condemned inmate will not be allowed to bring with him any personal items. All of the inmate's personal property will be thoroughly searched by the sergeant, who will also fill out an inventory sheet, which will be counter signed by the condemned inmate. His personal property will be disposed of in accordance with departmental procedures. He will then be allowed to eat lunch at approximately [redacted] After being positively identified, the condemned inmate will then be taken to the unit office where he will be stripped and body searched. He will then put on one set of new clothing, consisting of a pair of jeans, shirt, socks, underwear and tennis shoes. The inmate will be placed in leg and wrist restraints, and escorted to the last night cell area by the [redacted] observation officers. Direct sight coverage will be maintained by the officers of the condemned inmate when he is moved into the last night cell. The second set of clothing will be stored in the last night cell area.

Should the inmate have a radio and/or TV set, they will not be allowed to be placed in the cell but will be in the outer corridor of the cell. He will then be introduced to the [redacted] observation officers (one of the officers is relief). Following the inmate being placed in the last night cell area he will again be positively identified by a staff identification officer and the Associate Warden of Operations.

The inmate will be informed that his dinner will be served at approximately [redacted] He will also be asked who his spiritual advisor is and if he desires a visit from him or the Institutional Chaplain. The Institutional Chaplain will be assigned to the Nevada State Prison the day before the execution and the day of the execution.

At approximately 4:00 – 4:30 p.m., his dinner will be brought from the Culinary of the Nevada State Prison by a sergeant and [redacted] The dinner will be personally prepared by [redacted] and such preparation shall be witnessed by the Culinary officer. Coffee will be available throughout the night.

[redacted]

Note: In the event that more than one inmate is scheduled for execution on the same day, [redacted] observation officers will be utilized.

Following the completion of dinner, until two hours prior to the time set for execution, the inmate may receive visits from his spiritual advisor, the Director, and the Warden. The observation officers will remain in the institution from the start of the observation ~~officers~~ until

the execution is completed. Any other visitors, except as mentioned above, must be approved by the Director.

The inmate will be allowed to send out last letters to the news media and his family. Requests other then those above must be processed through the Nevada State Prison Warden for his approval.

At no time will the condemned inmate be out of visual observation of the observation officers.

Section III.

LIST OF NEEDED EQUIPMENT AND MATERIALS (MAY VARY)

1. Portable stretcher, equipped with restraining straps, one blanket and one pillow.

2. Cardiac monitor. **

3. One stop watch, one stethoscope, one pair surgical shears, and one pocket flashlight.

4. Two medium straight hemostats.

5. Two tourniquets, adhesive tape, both narrow and wide, one roll of gauze, several gauze pads, alcohol, sponges, and tongue depressor.

6. Two intravenous flasks (500 ml each) containing normal saline.

7. Three 10 ml syringes containing the necessary amount of Pavulon, clearly marked.

8. Three 140 ml syringes containing the necessary amount of Sodium Thiopental, clearly marked.

9. Three 140 ml syringes containing the necessary amount of Potassium Chloride, clearly marked.

10. Six 30 cc vials of Sodium Chloride for Diluent, (for mixing drugs).

11. Two 18-gauge intercath needles, 1 ¾" long.

12. Two standard fluid administration tubing sets with "Y" injection site.

13. Two extension sets.

14. Two 60 cc syringes (for mixing drugs).

15. Two 3 cc syringes with 21 gauge, 1 ½" needles attached.

16. Two injection needles, 20 gauge 2".

17. One 18 gauge 1 ½" needles (mixing medication).

18. Sterile cut-down tray if necessary.

19. Four syringes containing 10 mg. of Valium each.

20. Blood spill kit.

Note: In the event of two or more inmates being scheduled for execution on the same day, the above listed items will be provided for each inmate, with the exception of those indicated by ** which will require only one.

Drugs of Choice

The lethal substances and amounts to be used in the execution are:

1. Sodium Thiopental 5 grams.
2. Pavulon 20 milligrams.
3. Potassium Chloride 160 milliequivalents.

Personal differences exist. At times dosages have to be increased for certain individuals, although the above doses are lethal for most individuals. It will be the responsibility of the physician, working in conjunction with the staff pharmacist, to ensure that the above is sufficient to cause death.

NOTE: In the event of two or more inmates being scheduled for execution on the same day, the above listed items will be provided for each inmate.

Section IV.

EXECUTION PROCEDURE

The condemned inmate shall be pre-medicated with a sedative approximately four hours and one hour before the Execution is scheduled to occur. This sedative pre-medication is mandatory.

Medical services personnel will administer the sedative pre-medication orally. This sedative pre-medication is intended to provide a calming affect and shall not cause any lack of cognitive ability, incoherency or incompetence. A physician will determine the appropriate sedative and dosage.

A five-member security team will relieve the observation commander and the three observation officers approximately one hour prior to the time of Execution.

The window shades of the Execution Chamber shall be raised prior to the condemned inmate entering the Execution Chamber. Prior to the time of Execution, the condemned inmate will be escorted into the Execution Chamber by one supervisor and three officers. The condemned inmate will be placed on the table and the restraints will be secured. The window shades inside the Execution Chamber will remain raised during the Execution procedure.

Appropriate medical services personnel will perform the actual venipuncture. Venipuncture will occur into the veins of both arms. Once the venipunctures are completed, the needles will be taped securely into place and will be checked for patency. If the venipuncturist is unable to find an adequate vein in an arm, the venipuncture will occur into the vein of a leg. Once the venipunctures are completed, a stethoscope (if necessary) and cardiac monitor will be attached by the security team commander and checked to ensure they are functioning correctly. The medical services personnel will then leave the Execution Chamber.

A normal saline solution will then be infused at a slow rate in order to keep the system clear.

Three syringes - one each containing the appropriate doses of Sodium Thiopental, Pavulon and Potassium Chloride – constituting one set will be available. Three sets will be available.

The lethal injections shall be administered individually by syringe into a "Y" injection site of the intravenous tubing. The order of injection shall be first – Sodium Thiopental, second – Pavulon, and third – Potassium Chloride. At the order of the Director to proceed, the lethal injections will be administered at a rapid rate. Once started, the lethal injections will continue until all three syringes of two sets are administered and emptied. The first syringe of the first set and the first syringe of the second set will be administered simultaneously. The second syringe of both sets will be administered simultaneously. The third syringe of both sets will be administered simultaneously.

Once the lethal injections have been administered, the attending physician or designee and coroner shall then determine whether it was sufficient to cause death. If the previous lethal injections are determined to be insufficient to cause death, the third set of lethal injections shall be administered.

Once the death pronouncement has been made, all witnesses, observers and media personnel will be escorted from the Execution Chamber viewing area. All unused lethal injection solutions shall be handled in a most careful manner and returned to the Pharmacy to be inventoried and disposed of appropriately. The disposition of all solutions will be recorded including how much was used and how much was discarded.

NOTE: A physician may examine the condemned inmate prior to the scheduled Execution to determine if it might be necessary to utilize a vein in the leg for the venipuncture, or if there is an indication that a cut-down may be necessary.

Revised October 2007.

Section V.

WITNESS PROCEDURE

Nevada law requires there be at least six, but no more than nine, witnesses to attend an execution. The Director must approve all witnesses and/or other persons to be present.

NOTE: Instead of being on-call, a deputy from the Attorney General's office will be present at Nevada State Prison from 8:00 p.m. until the execution is over.

The witnesses will arrive at the institution approximately one hour prior to the execution and be escorted to the Visiting Room. Each witness will be given an I.D. card.

Approximately 25 minutes before the scheduled execution time the Associate Warden of Programs will escort the witnesses to the execution chamber via the Unit 3 (Cellhouse) entrance. When the escort reaches the bottom of the stairs, the witness group will proceed into Unit 3 and up the stairs and into the witness room. The witnesses will not be allowed to take any cameras, recording devices, or any personal items into the witness area.

None of the personnel involved in the execution will be in sight, and all blinds to the chamber will be closed. When all witnesses are in the witness area, the AWO will notify the PIO in the Courthouse. The PIO will then escort the media witnesses to the witness area utilizing the same route used by the AWP. The 217 door leading to the witness room will be closed but it is not necessary to lock it. The shades will then be raised and the inmate will be escorted into the chamber and secured on the table. ~~The shades will then be drawn.~~

~~Once the venipuncture and attachment of the stethoscope and cardiac monitor has been completed, the security team commander will raise the shades so the witnesses may view the execution.~~ The spiritual advisor will be allowed to witness the execution from the west execution chamber window. When the physician and coroner have declared the inmate dead, the shades will be drawn.

The media witnesses will then be escorted out of the chamber area and out of the institution. The official witnesses will then complete the affidavits provided by the AWP. Following completion of these affidavits, the AWP will escort the witnesses out of the institution.

NOTE: In the event two or more inmates are scheduled for execution on the same day, the witnesses will be escorted to the Visiting Room between executions and will be executed back to the execution chamber prior to the second execution following the same procedure listed above. Members of the media will be allowed to exit NSP to the area outside the fence between executions if they wish to do so. They will then be escorted back to the execution chamber area by the PIO as outlined above.

The Associate Warden of Operations will be provided with a body receipt in triplicate that will be completed when the mortician accepts delivery of the body.

The death certificate will be completed by the attending physician and the coroner will also complete his/her section of the death certificate. It shall be the Associate Warden of Operations' responsibility to ensure these documents are completed and accurate.

Following the completion of all required forms, the body will be released to the mortician. After the body has been loaded into the call car, the call car will exit through the maintenance gate. After a security inspection is completed the vehicle will exit NSP property.

Section VI.

EXTRA DUTY STATIONS AND SECURITY PLAN FOR THE EXECUTION OF THE DEATH PENALTY

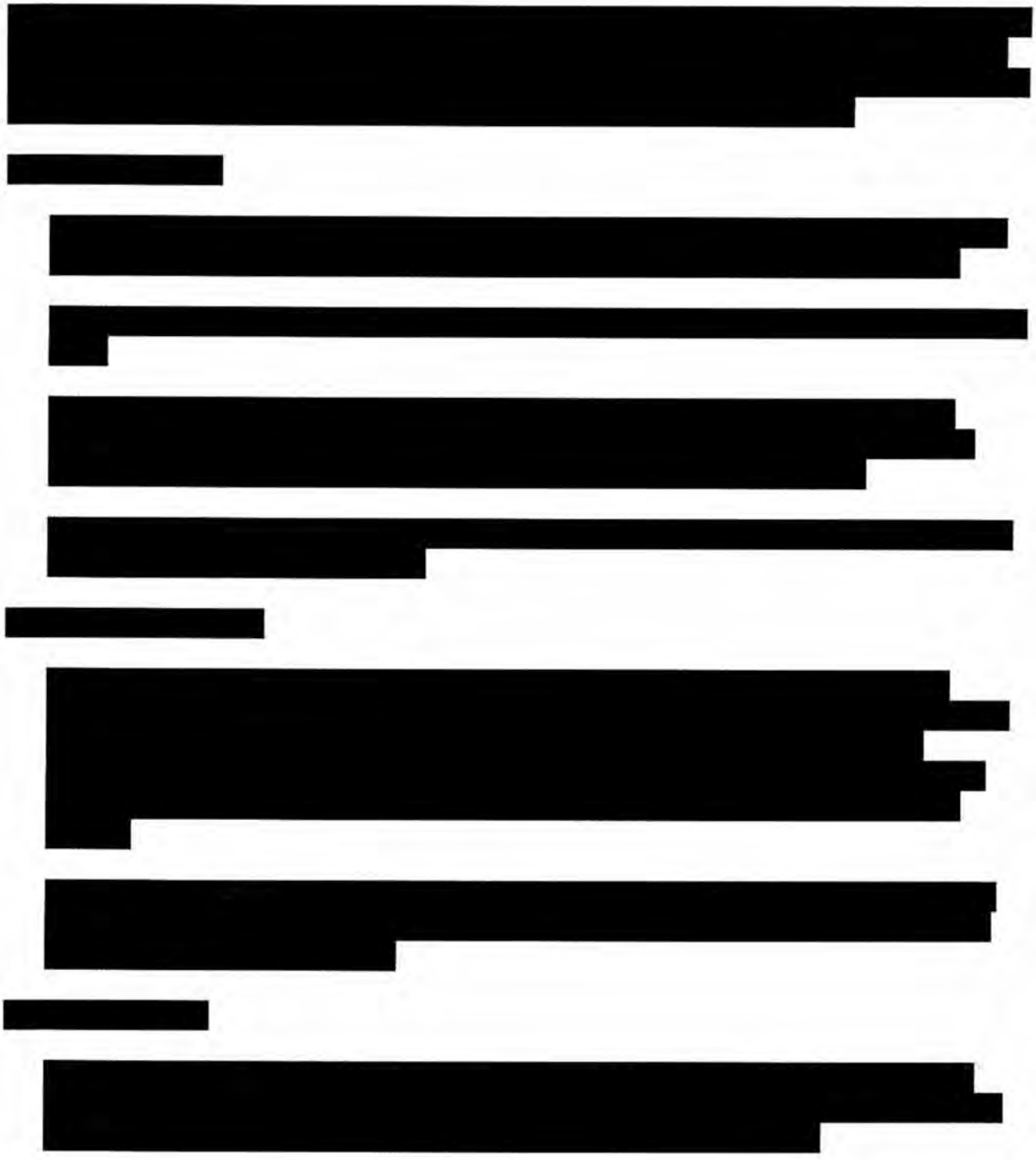
The following plan of action has been designated to provide for complete security coverage of the Nevada State Prison during an execution of the death penalty.

[redacted]

[redacted]

Section VII.

INTERNAL CONTROL PLAN



Section VIII.

POST-EXECUTION PROCEDURE

[redacted]

Immediately following the execution of the death penalty, the body shall be removed and turned over to the attending mortician, following the procedures for the death of an inmate.

NOTE: In the event two or more executions are scheduled for the same day, a separate vehicle as outlined above will be required for each inmate.

All disposable equipment, including needles, tubing, etc., will be turned over to the prison pharmacist for proper disposal within one working day. If unavailable, then they will be secured in the NSP pharmacy until the next business day.

Unopened solutions or drugs will be turned over to the prison pharmacist for proper handling within one working day. If unavailable, then they will be secured in the NSP pharmacy until the next business day.

The disposition of all solutions is to be recorded, as to the amount used and the amount discarded. The number of solutions that were utilized will be recorded by volume, and those that were turned over to the pharmacist, will also be recorded by number and volume.

The security team will have the responsibility of cleaning the execution chamber.

All staff directly involved in the execution will meet in the Courthouse with the designated clergy members, at which time, a debriefing will be conducted as well as psych counseling will be provided.

It shall be the responsibility of the Associate Warden of Operations to release all of the officers on overtime status and the decision will be based on the situation, as he/she perceives it.

Section IX.

COMMUTATION OR STAY OF EXECUTION

It must be understood that once infusion of the lethal injection has begun that the execution cannot be stopped.

In the event of an eleventh hour stay of execution, all preparations will cease and the Director will be immediately notified by the Warden.

If the condemned inmate has already been taken to the execution chamber, he/she shall be returned to the last night cell and all personnel shall remain on duty until released by the Associate Warden of Operations.

The on-call Deputy Attorney General, if not present at the institution, shall be notified of the situation as soon as possible. The availability of the on-call Deputy Attorney General shall be coordinated by the AWP at NSP and the Chief Deputy of the Criminal Division of the Attorney General's office.

Section X.

SAMPLE OF FORMS USED DURING THE EXECUTION PROCESS

A. Execution Checklist

B. Execution Position Assignments

C. Affidavit

D. I.D. Department Identification Form

E. Letters of Agreement -- Medical Services

F. Telephone Logs

G. Radio communications Assignment Memo [redacted]

H. Report and Schedule of Execution, Exhibit "A" (Time Keeper Checklist)

I. Maps - Nevada State Prison
- Execution Chamber
- NSP Parking Lot

EXECUTION CHECKLIST

	DATE/TIME		INITIALS
		30 days prior to execution date:	
1.	_____	Establish service contracts with Paramedics. Normally use Carson City Fire Department.	_____ AWP
2.	_____	Telephone notification to Sheriff's Office and Coroner's Office of pending execution.	_____ AWO
3.	_____	Telephone notification to Funeral Home of pending execution.	_____ AWP
4.	_____	Staff assignment and operation planning	_____ AWO
5.	_____	Certified Copy of the Judgment of Death (not less than 60 days nor more than 90 days from the time of judgment).	_____ AWP
6.	_____	Photograph inmate upon arrival to Nevada State Prison.	_____ AWO
		Approximately two weeks prior to execution date:	
7.	_____	Make arrangements for attending physician and for death pronouncement. Make arrangements for NDOC Psychiatrist to be at execution	_____ AWP
8.	_____	Make arrangements for equipment and drugs from Medical Department.	_____ AWP\W
9.	_____	Make arrangements for funeral home. Interview inmate for preparation of the Death Certificate, family, victim notifications, and final meal request. (See attachments)	_____ AWP/NDOC Victims' Advocate
10.	_____	Inmate's spiritual advisor of choice will be notified	_____ AWP
11.	_____	Ensure outside telephone lines in execution area operate.	_____ AWO/FM

12.	_____	Make arrangements for Registered Nurse to pre-medicate.	AWP/DONS
13.	_____	The condemned inmate will be given a medical exam by a physician.	AWP
14.	_____	Staff observation and security team rehearsal and cardiac monitor rehearsals.	AWO/DON
15.	_____	The Director of Nursing Staff (DONS) will ensure the cardiac monitor is in working order.	AWO/DON
16.	_____	Notification to Sheriff and Coroner in writing of execution, [redacted] Letters will be hand-delivered to both offices.	AWO
17.	_____	Make necessary maintenance inspection/repairs of the execution chamber, last night cell and adjacent areas.	AWO/FM
18.	_____	Staff meeting with Warden, AWO, AWP, Lt, and FM regarding the execution operation plan status.	AWO/AWP/W
19.	_____	Press is permitted to conduct interviews with condemned inmate if he/she consents. Condemned inmate must sign a press release form prior to any media interviews.	PIO/AWP
20.	_____	Make arrangements for one sani-hut and barricades for the parking lot with Facility Manager (FM).	AWP/FM
21.	_____	Notify all outside religious and program personnel to cancel activities for scheduled execution date.	AWP
		<u>One week prior to scheduled execution date:</u>	
22.	_____	Official confidential witness list will be prepared and distributed [redacted]	PIO/AWP
23.	_____	Make notification via memorandum of visiting, programs, or any operational schedule changes for day of execution.	AWP

24.	_____	Confidential Press witness list will be prepared and distributed to a restricted list of personnel.	PIO/AWP
25.	_____	All staff involved will be given a detailed briefing on specific duties and responsibilities will meet in the NSP Courtroom.	W/AWO/AWP
26.	_____	Make arrangements for a Deputy Attorney General to report to NSP for execution.	AWP
27.	_____	A confidential telephone list of appropriate government officials will be established so that they may be immediately contacted, i.e., Judge, inmate's attorney, Attorney General's Office, and NDOC PIO. [redacted]	W/AWP
28.	_____	Memorandum will be issued to all staff at NSP and WSCC informing of all personal vehicles will be parked at WSCC. [redacted]	AWO
29.	_____	Food Manager will be advised via memorandum that coffee with styrofoam cups is to be prepared for placement in the parking lot (1 containers), Visiting Room (1 container), Courtroom (1 container), Administration area (1 container), and any other designated areas.	AWP
30.	_____	There will be rehearsal(s) for the Death Watch, PIO, Select uniform officers and NDOC Victims' Advocate.	W
31.	_____	Parking lot memorandum detailing press, VIP and staff parking areas will be distributed.	AWO

Approximately 48 hours prior to scheduled execution:

32.	_____	The pharmacist will ensure the required medication is available for the execution. [redacted]	_____ W
33.	_____	Telephones in the execution area will be tested.	_____ AWO/FM
34.	_____	Restricted access list to execution chamber. Warden, AWO, and AWP only ones to authorize access to the execution chamber.	_____ W/AWP/AWO

Approximately 24 hours prior to scheduled execution:

35.	_____	Establish medical aid station in the Law Library	_____ AWO/DONS
36.	_____	A clipboard will be available for official witnesses to sign their affidavits. The Associate Warden of Programs will ensure each official witness signs the affidavits prior to departure.	_____ AWP
37.	_____	The cardiac monitor will be moved from the Infirmary to the Death Chamber and checked for operational readiness.	_____ DONS/AWO
38.	_____	The Department Chaplain and a NDOC staff psychologist will be assigned to NSP.	_____ AWP
39.	_____	List of official witnesses and media witnesses, approved by the Director, will be completed (not to exceed 9 official and 10 media witnesses).	_____ AWP/PIO
40.	_____	The Administration assigned phone number will be staffed commencing at 7:00 a.m. the day of the execution for calls concerning the execution.	_____ AWP
41.	_____	A log of all calls will be maintained by individuals manning the assigned phone. Once execution is complete, all phone log records will be turned into the Warden.	_____ AWP / W

42.	_____	Media coverage day for execution.	_____ W/AWP/PIO
		DAY OF EXECUTION	
43.	10:00 am	Check cardiac monitor for operational readiness.	_____ AWO/DON
44.	10:00 am	All designated keys will be issued by the Warden.	_____ W
45.	[redacted]	Lunch will be served to inmate in Unit 12.	_____ AWO
46.	11:00 am	The Observation team, with radio, and Sergeant with one other officer will respond to Unit 12 with two complete sets of new state issued clothing, consisting of jeans, shirt (short sleeve), socks, underwear, and tennis shoes (no T-shirt).	_____ W/AWO
47.	_____	The condemned inmate will not be allowed to retain personal items once thoroughly searched by the sergeant. The sergeant will also fill out an Inventory Sheet which will be countersigned by the condemned inmate.	_____ A WO
48.	[redacted]		_____ AWO
49.	_____	Prior to leaving Unit 12, the Sergeant will positively identify the inmate.	_____ AWO
50.	_____	The condemned inmate will be introduced to the [redacted] observation officers.	_____ AWO
51.	[redacted]		_____ W/AWP
52.	[redacted]	Maintenance Supervisor will commence dividing the parking lot into designated areas. A map will be provided.	_____ AWO/FM

53.	_____	One custody officer from will be assigned to the parking lot to ensure people park in designated areas as assigned.	W
54.	2:00 pm	The condemned inmate will be informed that dinner will be at approximately [redacted]	AWP
55.	_____	The condemned inmate will be asked if he/she would like to visit with his/her spiritual advisor or the department Chaplain.	W/AWP
56.	_____	The condemned inmate will be allowed to send out last letters and make phone calls to immediate family and attorney of record, spiritual advisor(s).	W/AWP
57.	2:30 pm	The Warden and Associate Warden will verify identity of inmate.	W /AWP
58.	3:00 pm	The [redacted] and the [redacted] will personally prepare the last meal. The [redacted] and [redacted] will then take the meal to the condemned inmate at approximately [redacted]	AWO
59.	_____	Following completion of dinner, until determined, the condemned inmate may receive visits from spiritual advisor, the Director and the Warden. Any other visits must be approved by the Director or Warden.	W
60.	[redacted]	The External Control Team will take position as follows:	AWO
61.	_____	[redacted]	AWO
62.	_____	[redacted]	AWO
63.	_____	[redacted]	AWO
64.	_____	[redacted]	AWO

65.	____	[redacted]	AWO
66.	5:00 pm	The condemned inmate will be offered pre-medication.	W/DON
67.	5:00 pm	The following staff will report to the Warden's office: [redacted] person security team, Witness team, [redacted]	AWO
68.	[redacted]	[redacted]	W/AWO
69.	[redacted]	[redacted]	AWO
70.	5:00 pm	The confidential list of official witnesses and media witnesses will be distributed to External Control Supervisor and parking lot entrance officers (3 total).	AWP/AWO
71.	[redacted]	[redacted]	AWO
72.	7:00 pm	The condemned inmate will be offered 2nd pre-medication.	W/DON
73.	7:30 pm	The regularly scheduled 8:00 institutional count will be held at 7:30 pm and inmates will remain locked up after this count.	AWO
74.	7:30 pm	The execution security team will arrive at the Execution Chamber.	W/AWO
75.	[redacted]	The security team will relieve the Observation officers. Observation officers will move to designated locations within Unit 2 and 3, and will work the required doors until the completion of the execution. Keys will be exchanged.	W/AWO
76.	[redacted]	The Coroner, EMT, physician and Registered Nurse will arrive and be escorted to Unit 3.	AWP/AWO
77.	[redacted]	The funeral home vehicle will arrive [redacted]	W/AWO

78.	8:00 pm	The official witnesses will arrive at the institution. Their identity will be verified by the Officer at the Bottom of One Tower. They will be issued a witness pass. They will then be escorted to the Visiting Room. The AWP will brief the official witnesses on the protocol for the execution.	AWP/PIO
79.	8:07 pm	AWO conducts telephone test on emergency outside phone line in last night area.	AWO
80.	8:10 pm	The EMT's, physician, and coroner will be given a briefing of the events of the execution.	AWO
81.	8:15 pm	The media witnesses will arrive at NSP. Their identity will be verified by Bottom of One Tower staff and they will be issued a media pass. No recording or photograph equipment will be allowed in the institution. They will be escorted to the Courthouse by the PIO. The AWP will brief the official witnesses on the protocol for the execution.	AWP/PIO
82.	8:35 pm	The media witnesses will be escorted from the Courthouse by the Public Information Officer/AWP and escorting officer to the execution chamber witness area.	AWP/PIO
83.	8:35 pm	The Warden may remove the caps from the syringes.	W
84.	8:45 pm	The condemned inmate will be placed in leg and handcuff restraints by the security team. (Handcuff in front)	AWO
85.	8:45 pm	The Associate Warden of Programs and escorting officer will escort the official witnesses from the Visiting Room to the execution chamber witness room. The NDOC Victims' Advocate and escorting officer will escort the victims to the designated victim witness area.	AWP

86.	8:50 pm	The condemned inmate will be escorted from the Last Night Cell to the Chamber by the security team, placed on the table, and put into soft restraints. Lead officer of the security team will re-check all restraints on the inmate. ~~Once restraints have been re-checked, the security team will close the window shades in the execution chamber.~~	W
87.	8:53 pm	The contracted emergency medical services technicians will be escort by Security Team Supervisor.	AWO
88.	9:00 pm	~~The window shades will be opened by the Security Team Supervisor, who will then exit the chamber.~~	AWO
89.	9:00 pm	The Director will give the order to proceed with execution to the warden. The Warden will give the Verbal Instruction. The lethal medication will be administered in the following order: 1. Sodium Thiopental 2. Pavulon 3. Potassium Chloride. The attending physician will then determine whether these injections were sufficient to cause death. If they are determined by the physician not to be sufficient, the injection procedure will be repeated into the alternate I.V.	W

POST EXECUTION

90.	_____	When the condemned inmate is pronounced dead by the attending physician and coroner, the Security Team Commander will enter the chamber and close the window shades, and then exit the chamber.	W
91.	_____	After the window shades are closed, the victim witnesses will be escorted out of the institution first.	AWP/Victims' Advocate

92. _____ Secondly, the media witnesses will be escorted out of the institution. _____ PIO/AWP

93. _____ The Associate Warden of Programs will ensure that all the official witnesses complete affidavits prior to exiting the witness area. Upon completion, they will be escorted from the viewing area and out of the institution. _____ AWP

94. _____ After all official and media witnesses have exited the chamber area, funeral home staff will respond from their vehicle [redacted] to the execution chamber with the portable stretcher, equipment with restraining straps, and one blanket. All I.V. lines and electrodes will be removed and right index fingerprint taken before the deceased is moved from the execution chamber. With the assistance of the security team, the mortuary will remove the deceased from the execution chamber to the funeral home vehicle. _____ W/AWO

95. _____ The Associate Warden of Programs will ensure that a body receipt is completed in triplicate, with fingerprint, when the mortician accepts delivery of the deceased. _____ W/AWP

96. _____ The Warden and Coroner will complete the Death Certificate and Cremation documents. The completed Death Certificate and Cremation document will be given to the funeral home. Copies of both documents will be obtained for the record. _____ W/AWP

97. _____ All unused medication in preloaded syringes must be accounted for and secured in the NSP pharmacy by the DIN. Appropriate arrangements will be made to deliver unused medications to the NDOC Pharmacy as soon a possible by the DIN. _____ W/AWO/DON

98. _____ Following the loading of the deceased into the funeral home vehicle, the vehicle will be escorted [redacted] After the presentation of the Body Receipt, and vehicle inspection, the vehicle will depart NSP. _____ AWO

99.	_____	At approximately 9:45 p.m., all official witnesses and media should be out of the institution.	AWP/AWO
100.	_____	At approximately 9:45 p.m., the Warden, AWO, AWP, and security team will meet with the designated clergy members and staff psychologist in the NSP Courtroom for de-briefing.	W
101.	_____	Assigned staff working the execution will be released from duty as determined by the Associate Warden of Operations.	AWO
102.	_____	After the 5:00 a.m. count, the institution will return to normal operation. execution if requested.	W/AWO
104.	_____	Arrangements will be made regarding the disposition of the deceased personal property. The Associate Warden of Programs will be responsible for this item.	AWP
105.	_____	All logs and records will be retained in the Warden's office for storage.	W/AWP
106.	_____	All documents, memorandums, telephone records, etc., related to the execution will be retained in the Warden's Administrative Assistant's file drawer.	W/AWP

99.	_____	At approximately 9:45 p.m., all official witnesses and media should be out of the institution.	AWP/AWO
100.	_____	At approximately 9:45 p.m., the Warden, AWO, AWP, and security team will meet with the designated clergy members and staff psychologist in the NSP Courtroom for de-briefing.	W
101.	_____	Assigned staff working the execution will be released from duty as determined by the Associate Warden of Operations.	AWO
102.	_____	After the 5:00 a.m. count, the institution will return to normal operation. execution if requested.	W/AWO
104.	_____	Arrangements will be made regarding the disposition of the deceased personal property. The Associate Warden of Programs will be responsible for this item.	AWP
105.	_____	All logs and records will be retained in the Warden's office for storage.	W/AWP
106.	_____	All documents, memorandums, telephone records, etc., related to the execution will be retained in the Warden's Administrative Assistant's file drawer.	W/AWP

EXECUTION POSTION ASSIGNMENTS

AFFIDAVIT

We the undersigned, being residents and citizens of the State of Nevada, do by these presents certify and aver that each one of us is over the age of twenty-one (21) years, that we were present and in the presence of each other did witness the legal execution of one _____,

Said execution having been performed at the Nevada State Prison, Carson City, Nevada, on the _____ day of _____, 20 _____, between the hours of _____ and _____ of said date; and,

That said execution was performed in accordance with the Report and schedule thereof hereto annexed, marked Exhibit "A", and made a part thereof as though set forth in full herein.

IN WITNESS WHEREOF, WE HAVE HEREUNTO SUBSCRIBED OUR NAMES THIS _____ DAY OF _____, 20 _____, AT CARSON CITY, NEVADA.

Witness	_____	Witness Signature:	
Residence	_____		_____
Witness	_____	Witness Signature:	
Residence	_____		_____
Witness	_____	Witness Signature:	
Residence	_____		_____
Witness	_____	Witness Signature:	
Residence	_____		_____
Witness	_____	Witness Signature:	
Residence	_____		_____
Witness	_____	Witness Signature:	
Residence	_____		_____
Witness	_____	Witness Signature:	
Residence	_____		_____
Witness	_____	Witness Signature	
Residence	_____		_____

NEVADA STATE PRISON

I.D. DEPARTMENT

THIS WILL CERTIFY THAT I HAVE, THIS DATE, AT _____ A.M., RECEIVED FROM THE NEVADA STATE PRISON THE PERSON(S) OF:

_____

_____

DATED THIS _____ DAY OF _____ A.D. 20_____.

WITNESSED BY:

_____

SIGNED:

_____

TITLE:

_____

ADDRESS:

_____

Distribution: Records
Warden, NSP
Mortuary

Fingerprint
Right Index

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting By and Through Its

Nevada Department Of Corrections
Name of Facility
5500 Snyder Avenue
Carson City, NV 89701
Ph: (775) 887-3239 Fax: (775) 887-3143

And
Name of Contractor
Address of Contractor
Phone: Phone # of Contractor
Fax: Fax # of Contractor

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of the Contractor are both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.

2. DEFINITIONS. "State" means the State of Nevada and any state agency identified hereon, its officers, employees and immune contractors as defined in NRS 41.0307.

3. CONTRACT TERM. This Contract shall be effective upon BOE approval to Termination Date, unless sooner terminated by either party as specified in paragraph (9).

4. NOTICE. Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

ATTACHMENT A:	STATE SOLICITATION; SCOPE OF WORK
ATTACHMENT B:	CONTRACTOR'S RESPONSE
ATTACHMENT C:	SECURITY REGULATIONS

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (3) at a cost of $ See Attachment B with the total Contract or installments payable: upon completion of services and submission of invoice, not to exceed Amt. Written out ($Amt in numbers) for the term of the contract. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a

biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or an termination as the result of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Governments, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its authorized examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Officers (as Fraud Control Units), the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention rules shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigations which may ensue.

9. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

b. State Termination for Nonappropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 15 calendar days of receipt

of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

c. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;

iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;

iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph (20).

10. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation $125 per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency.

11. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tax liability shall not be limited.

12. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

13. INDEMNIFICATION. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

14. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		Contractor's Initials	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?		
2.	Will the Contracting Agency be providing training to the independent contractor?		
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or license equipment?		
4.	Are any of the employees who assist the independent contractor in performance of his/her duties employees of the State of Nevada?		
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are sporadic, part-time, or of short duration)?		
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?		
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in the work relationship with the State?		

15. INSURANCE SCHEDULE. Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. The State shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and

2) The State has approved the insurance policies provided by Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes in insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure to the State to timely approve shall not constitute a waiver of the condition.

INSURANCE COVERAGE. Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the later of:

1. Final acceptance by the State of the completion of this Contract; or

2. Such time as the insurance is no longer required by the State under the terms of the Contract.

Any insurance or self-insurance available to the State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

Workers' Compensation and Employer's Liability Insurance

1) Contractor shall provide proof of worker's compensation insurance as required of Nevada Revised Statutes Chapters 616A through 616D inclusive.
2) Employer's Liability insurance with a minimum limit of $500,000 each employee per accident for bodily injury by accident or disease.
3) If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.
4) If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the contracting State agency a signed affidavit so stating.

Commercial General Liability Insurance

1) Minimum Limits required:
   $Call Risk Met General Aggregate
   $ Call Risk Met Products & Completed Operations Aggregate
   $ Call Risk Met Personal and Advertising Injury
   $ Call Risk Met Each Occurrence
2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
3) A separate General Aggregate limit may apply to this project.

Business Automobile Liability Insurance

1) Minimum Limit required: $ Call Risk Met Each Occurrence for bodily injury and property damage.
2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).
3) The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Professional Liability Insurance

1) Minimum Limit required: $ Call Risk Met Each Claim
2) Retroactive date: Prior to commencement of the performance of the contract.
3) Discovery period: Three (3) years after termination date of contract.
4) A certified copy of this policy may be required.

Umbrella or Excess Liability Insurance

1) May be used to achieve the above minimum liability limits.
2) Shall be endorsed to state it is "As Broad as Primary Policy"

Commercial Crime Insurance

Minimum Limit required: Call Risk Met Per Loss for Employee Dishonesty

This insurance shall be underwritten on a blanket form extending the definition of "employee" to include all employees of the Vendor regardless of position or category.

Performance Security

Amount required: $ Call Risk Met Security may be in the form of surety bond, Certificate of Deposit or Treasury Note payable to the State of Nevada, only.

1) The security shall be deposited with the contracting State agency no later than ten (10) working days following award of the Contract to Contractor.
2) Upon successful Contract completion, the security and all earned interest, if any, shall be returned to the Contractor.

General Requirements:

a. Additional Insured: By endorsement to the General Liability Insurance Policy, evidenced by Contractor, *The State of Nevada, the Department of Corrections, its officers, employees and lessees/ contractors* as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the contract.

b. Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to all additional insureds.

c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

d. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed $5,000 per occurrence, unless otherwise approved by the Risk Management Division.

e. Policy Cancellation Endorsement: Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to specify that without sixty (60) days prior written notice to the State of Nevada, the policy shall not be cancelled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address specified above. A copy of this signed endorsement must be attached to the Certificate of Insurance.

f. Approved Insurer: Each insurance policy shall be:
1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
2) Currently rated by A.M. Best as "A- VII" or better.

Evidence of Insurance:

a. Prior to the start of any Work, Contractor must provide the following documents to the Contracting State Agency.
1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
2) Additional Insured Endorsement: An original Additional Insured Endorsement, signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as additional insureds per General Requirements, A. above.
3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the insurance policy may be required.

b. Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

Nevada Department of Corrections
ATTN: Contract Manager
P.O. Box 7011
Carson City, Nevada 89702

Mail all required insurance documents to Contracting Agency at address specified above.

16. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract.

Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligations.

17. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or immaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

18. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

19. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the State.

20. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

21. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may clearly label individual documents as a "trade secret" or "confidential" provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records. If a public records request for a labeled document is received by the State, the State will notify Contractor of the request and delay access to the material until seven working days after notification to Contractor. Within that time delay, it will be the duty of Contractor to act in protection of its labeled record. Failure to so act shall constitute a complete waiver.

22. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

23. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

24. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. Millennium Compliance. Contractor warrants that any information system application(s), during or after the calendar year 2000, shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data insertion values that reflect the century. Pursuant to NRS 41.0321, the State is immune from liability due to any failure of millennium compliance.

25. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

26. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. Contractor consents to the jurisdiction of the Nevada district courts for enforcement of this Contract.

27. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

NAME OF THE CONTRACTOR	NEVADA DEPARTMENT OF CORRECTIONS
_____	_____
Independent Contractor's Signature — Date	Darrel Rasmussen — Date
_____	Assistant Director, Support Services
Independent Contractor's Title	Title
APPROVED BY BOARD OF EXAMINERS	Approved as to form by:
_____	_____
Signature - Board of Examiners	Deputy Attorney General for Attorney General
On _____ (Date)	On _____ (Date)

MEMORANDUM

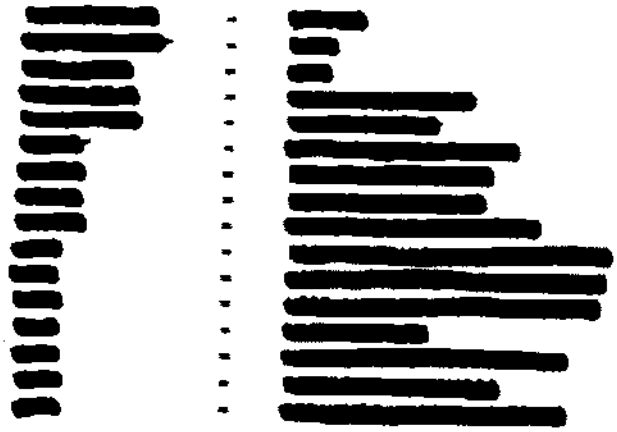
TO: ALL CONCERNED

FROM: JOHN COLEMAN, AWO
NEVADA STATE PRISON

SUBJECT: RADIO COMMUNICATIONS DURING EXECUTION

DATE: FEBRUARY 2004

To facilitate better radio communications during the execution scheduled for _____. the following call names will be utilized beginning at _____. and ending when the institution is secure and back to normal operations.



PERIMETER ONE:

MOBILE 2 MAN PERIMETER _____

cc: Warden Budge
AWP Baca
Shift Supervisor
Execution File
File

NEVADA STATE PRISON

REPORT AND SCHEDULE OF EXECUTION EXHIBIT "A"

DATE:_____

REPORT OF THE LEGAL EXECUTION OF _____,

PURSUANT TO THE PROVISIONS OF NRS 2000.030, 4 (A) AND, NRS 176.345 AND 176.355,

AS ORDERED ON THE _____ DAY OF _____, 20___, IN THE ____

_____ JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA BY THE

HONORABLE _____, DISTRICT JUDGE

AT:_____

ON THE _____ DAY OF _____, 20___.

	TIME RECORDED
PRISONER ENTERED CHAMBER.....	_____AM/PM
INMATE STRAPPED TO TABLE.....	_____AM/PM
DOOR CLOSED AT.....	_____AM/PM
LETHAL DOSES OF MEDICATION ADMINISTERED:	
SODIUM THIOPENTAL, DOSAGE:_____....	_____AM/PM
PAVULON, DOSAGE: _____.....	_____AM/PM
POTASSIUM CHLORIDE, DOSAGE:_____....	_____AM/PM
INMATE PRONOUNCED DEAD	_____AM/PM
BODY REMOVED FROM CHAMBER.....	_____AM PM

SUBMITTED BY:

_____
MICHAEL J. BUDGE, WARDEN
NEVADA STATE PRISON

REVIEWED BY:

_____
EX-OFFICIO CORONER

Exhibit 14

Exhibit 14

Inadequate anaesthesia in lethal injection for execution

Lancet 2005; 365: 1412–14

See Editorial page 1361

Leonidas G Koniaris, Teresa A Zimmers, David A Lubarsky, Jonathan P Sheldon

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Anaesthesia during lethal injection is essential to minimise suffering and to maintain public acceptance of the practice. Lethal injection is usually done by sequential administration of thiopental, pancuronium, and potassium chloride. Protocol information from Texas and Virginia showed that executioners had no anaesthesia training, drugs were administered remotely with no monitoring for anaesthesia, data were not recorded and no peer-review was done. Toxicology reports from Arizona, Georgia, North Carolina, and South Carolina showed that post-mortem concentrations of thiopental in the blood were lower than that required for surgery in 43 of 49 executed inmates (88%); 21 (43%) inmates had concentrations consistent with awareness. Methods of lethal injection anaesthesia are flawed and some inmates might experience awareness and suffering during execution.

Since 1976, when the death penalty was reinstated, 959 people have been executed in the USA.[1] Lethal injection has eclipsed all other methods of execution because of public perception that the process is relatively humane and does not violate the Eighth Amendment prohibition against cruel and unusual punishment. US courts recognise "evolving standards of decency that mark the progress of a maturing society", and prohibit punishments that "involve the unnecessary and wanton infliction of pain", "involve torture or a lingering death", or do not accord with "the dignity of man".[2]

Lethal injection usually consists of sequential administration of sodium thiopental for anaesthesia, pancuronium bromide to induce paralysis, and finally potassium chloride to cause death.[3] Without anaesthesia, the condemned person would experience asphyxiation, a severe burning sensation, massive muscle cramping, and finally cardiac arrest. Thus, adequate anesthesia is necessary both to mitigate the suffering of the condemned and to preserve public opinion that lethal injection is a near-painless death. By contrast with its medical applications, however, anaesthesia in execution has not been subjected to clinical trials, governmental regulation, extensive training of practitioners, standardisation, or the supervision of peer-review and medicolegal liability. Furthermore, the American Medical Association and American Nurses Association strictly oppose participation of their members in executions. We postulated that anaesthesia methods in lethal injection might be inadequate.

To assess anaesthesia methods, we sought protocol information from the states of Texas and Virginia, where 45·4% of executions are done, by a combination of statutory records requests to the Texas Department of Criminal Justice and the Virginia Department of Corrections, along with personal interviews and sworn testimony of corrections officials involved in executions. We noted that: neither state had a record of the creation of its protocol (Texas Department of Criminal Justice Assistant General Counsel, January and February, 2004; and Virginia Department of Corrections Director of Communications, December, 2003; written communications); executioners—typically one to three emergency medical technicians or medical corpsmen—had no training in anaesthesia (Virginia Department of Corrections Director of Communications, written communication; and personal interview of a former senior Texas corrections official who witnessed 219 Texas executions: hereafter "personal interview");[4] after placement of one or two intravenous lines, executioners stepped behind a wall or curtain and remotely administered drugs to the conscious inmate (personal interview);[4] no direct observation, physical examination, or electronic monitoring took place for anaesthesia (personal interview);[4] and there was no data collection, documentation of anaesthesia, or post-procedure peer review (Virginia Department of Corrections Director of Communications, written communication; and personal interview). No assessment of depth of anaesthesia or loss of consciousness was done; apparently anaesthesia is assumed because a relatively large quantity of thiopental is specified (usually 2 g) compared with the typical clinical induction dose of 3–5 mg/kg, immediately followed by 1–1·5 mg/kg per min for maintenance; this dose equates to 270–450 mg for induction and 90–135 mg/min maintenance for a 200 lb man.

The assumption that 2 g thiopental assures anaesthesia is overly simplistic, however. First, technical difficulties or procedural errors by poorly trained executioners might hinder administration of the total dose. Second, if thiopental anaesthesia were maintained at standard infusion rates, the total dose for a 10-min procedure in a 100 kg man would be 1·3–2·0 g. Thus the dose used is not excessive for the average time from injection to death (8·4 min, SD 4·7) and might be inadequate if the process took longer.[5] Third, a person anticipating execution would be fearful, anxious, and hyperadrenergic, and would need a higher dose of thiopental than would a premedicated surgical patient. Fourth, inmates with histories of chronic substance misuse problems might have high tolerance to sedative hypnotics and would need increased doses of anaesthetic.

Because no documentation of anaesthesia in the execution chamber existed, the only available objective data were postmortem concentrations of thiopental. Texas and Virginia refused to provide such data, but we obtained autopsy toxicology results from 49 executions in

Arizona, Georgia, North Carolina, and South Carolina. Toxicology reports were generated by MedTox Laboratories (St Paul, MN) for Arizona and are available in Beardslee versus Woodford, No C-04-5381 (Northern District of California, 2004). Data from the Division of Forensic Sciences Georgia Bureau of Investigation are available in State versus Nance, Superior Court Indictment No 95-B-2461-4. North Carolina reports were obtained directly from the Office of the Chief Medical Examiner. South Carolina Law Enforcement Division Toxicology Department reports were obtained by attorney David Barron, Kentucky Department of Public Advocacy Capital Post-Conviction Unit (personal communication) and are available in Hill versus Ozmint, No 2:04-0489-18AJ (District of South Carolina, 2004). Although the protocols of all four states are similar to those of Texas and Virginia, and specify that 2 g thiopental is used, concentrations of the drug in the blood ranged from only trace amounts to 370 mg/L (median 15·5 mg/L; figure 1). Thiopental concentrations did not fall with increased time between execution and blood sample collection (data not shown), consistent with data showing that thiopental is quite stable in stored human plasma.[6]

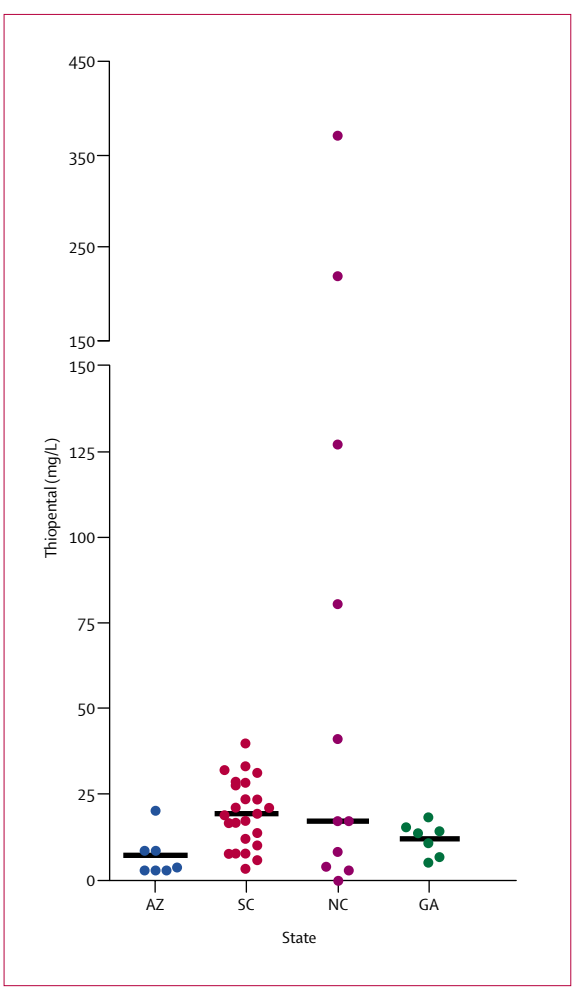

Figure 1: **Individual post-mortem thiopental concentrations in blood by state**
Lines show medians. Note different scales. GA sampled several sites in five individuals; the highest values are shown. GA values were reported as plus or minus 25%. AZ and SC did not report site of blood sampling. NC results were each from a single site, including subclavian artery, jugular vein, femoral vein, or vena cava.

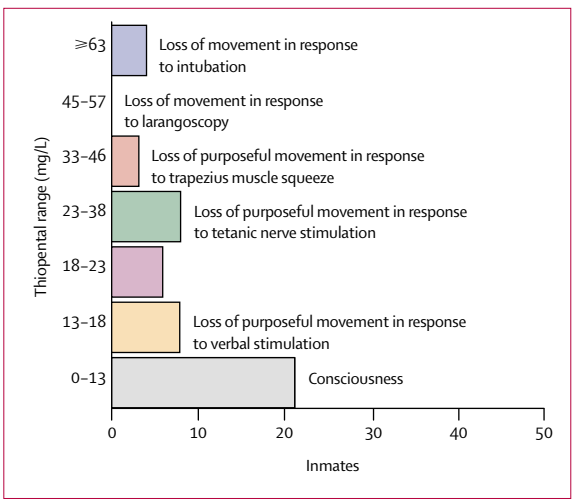

Figure 2: **Number of executed inmates with post-mortem thiopental concentrations within range for indicated clinical endpoint**
Ranges are 95% CI of the Cp50 for the stimuli.

Extrapolation of antemortem depth of anaesthesia from post-mortem blood thiopental concentrations is admittedly problematic. To estimate concentrations of thiopental in the brain from concentrations in the blood in life, details of the rate and duration of drug administration are needed. Unfortunately, such details are usually not specified in lethal injection protocols. Furthermore, no data about post-mortem distribution of thiopental are available. However, a large range of blood concentrations resulted from nearly identical protocols across and within individual states—from 8·2 mg/L to 370 mg/L in North Carolina for the same sampling site (subclavian artery) and similar collection times (same day or next day, respectively). This finding suggests substantial variations in either the autopsy or anaesthesia methods. Contrasting the expertise of state medical examiners with the relatively unskilled executioners, however, would strongly suggest that the variation is probably due to differences in drug administration in individual executions.

If post-mortem thiopental concentrations are taken as a surrogate marker of concentrations in the blood during life, most of the executed inmates had concentrations that would not be expected to produce a surgical plane of anaesthesia, and 21 (43%) had concentrations consistent with consciousness (figure 2). In a careful study in which actual serum thiopental concentrations were measured against clinical endpoints, the steady state serum concentration needed to produce a 50% probability of no

muscle response (Cp50) after intubation was defined as 78·8 mg/L (SD 2·9).[7] The Cp50 for movement after trapezius muscle squeeze, a stimulus equivalent to skin incision, was 38·9 mg/L (3·3). Remarkably, 43 of the 49 inmates had blood thiopental concentrations below this level. Most worryingly, 21 inmates had concentrations less than the Cp50 for repression of movement in response to a vocal command. In view of these data, we suggest that it is possible that some of these inmates were fully aware during their executions. We certainly cannot conclude that these inmates were unconscious and insensate. However, with no monitoring and with use of the paralytic agent, any suffering of the inmate would be undetectable.

With little public dialogue about protocols for killing human beings, it is pertinent to consider recommendations from animal euthanasia protocols. The American Veterinary Medical Association (AVMA) panel on euthanasia specifically prohibits the use of pentobarbital with a neuromuscular blocking agent to kill animals,[8] and 19 states, including Texas, have expressly or implicitly prohibited the use of neuromuscular blocking agents in animal euthanasia because of the risk of unrecognised consciousness.[2] Furthermore, AVMA specifies that "it is of utmost importance that personnel performing this technique are trained and knowledgeable in anaesthetic techniques, and are competent in assessing anaesthetic depth appropriate for administration of potassium chloride intravenously. Administration of potassium chloride intravenously requires animals to be in a surgical plane of anesthesia characterized by loss of consciousness, loss of reflex muscle response, and loss of response to noxious stimuli".[8] The absence of training and monitoring, and the remote administration of drugs, coupled with eyewitness reports of muscle responses during execution, suggest that the current practice of lethal injection for execution fails to meet veterinary standards.[3]

Our data suggest that anaesthesia methods in lethal injection in the USA are flawed. Failures in protocol design, implementation, monitoring and review might have led to the unnecessary suffering of at least some of those executed. Because participation of doctors in protocol design or execution is ethically prohibited, adequate anaesthesia cannot be certain. Therefore, to prevent unnecessary cruelty and suffering, cessation and public review of lethal injections is warranted.

Contributors

L G Koniaris and J P Sheldon conceived the study. J P Sheldon collected the protocol information. J P Sheldon and T A Zimmers collected the toxicology data. D A Lubarsky, L G Koniaris, and T A Zimmers assessed the protocol information and toxicology data. All authors participated in the writing and editing of the manuscript. L G Koniaris and T A Zimmers contributed equally to the work.

Conflict of interest statement

JS is an attorney who represents inmates sentenced to death. None of the other authors has a conflict of interest.

Acknowledgments

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Exhibit 15

Exhibit 15

No. 03-6821

IN THE UNITED STATES SUPREME COURT

October Term, 2003

DAVID LARRY NELSON,
Petitioner,

vs.

DONAL CAMPBELL,
Commissioner of the Alabama Department of Corrections,
and
GRANTT CULLIVER,
Warden of William C. Holman Correctional Facility,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER

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CERTIFICATE OF SERVICE

QUESTIONS PRESENTED

The Petitioner has raised the following two questions in his Petition for Writ of Certiorari before this Court:

1. Whether an action brought by a death-sentenced prisoner pursuant to 42 U.S.C. § 1983, which does not attack a conviction or sentence, is – simply because the person is under a sentence of death – to be treated as a habeas corpus case subject to the restriction on successive petitions which categorically precludes review of *any* constitutional violation not related to innocence (as the Fourth, Fifth and Eleventh Circuits hold), or can be maintained as § 1983 action (as the Sixth, Eighth and Ninth Circuits and several lower courts hold)?

2. Whether a cut-down procedure, which involves pain and mutilation, conducted prior to an execution by lethal injection, violates the Eighth Amendment to the United States Constitution?

STATEMENT OF INTEREST OF AMICI CURIAE

Each amicus curiae is a practicing physician in the State of Alabama[1]. The amici curiae have been informed of the medical procedures the Respondents have proposed using to gain venous access to the Petitioner to execute him by lethal injection.

The proposed medical procedures concern us as physicians for a number of reasons. First, obtaining central venous access is a complex medical procedure that involves serious risks and should only be performed by properly trained personnel. In this situation the Respondents will not disclose the credentials of the people who will be performing the procedure, including whether or not the physician is actually licensed to practice medicine in the State of Alabama or any other state. We are also concerned because it is apparent to us that the Respondents hope to implement a plan that was not designed by competent, credentialed physicians, and thereby are placing the Petitioner at high risk of enduring severe and needless pain and suffering.

---

1 Pursuant to Rule 37.6, Rules of the Supreme Court of the United States, counsel for neither party has authored this brief in whole or in part.

SUMMARY OF ARGUMENT

The Respondents must gain venous access to the Petitioner in order to execute him by lethal injection. Venous access may be obtained in most people by placing a very thin catheter under the skin in the hand or arm. Gaining venous access in this manner is referred to as peripheral venous access and is a relatively simple procedure.

Gaining peripheral venous access may be difficult or essentially impossible in some patients. When dealing with these people, central venous access must be obtained, which involves obtaining access to a central vein such as those in the chest and abdomen. Central venous access can only be achieved via a relatively complicated medical procedure.

The Respondents have essentially conceded that they will not be able to gain peripheral venous access to the Petitioner in order to execute him by lethal injection. As such, they will have to perform an invasive medical procedure to gain central venous access to the Petitioner prior to his execution.

There are two predominant methods for obtaining central venous access - - the percutaneous technique and the cut down

technique. In the overwhelming majority of situations where central venous access is required, the percutaneous technique is heavily favored over the cut down technique. This is because the percutaneous technique is less invasive, less painful, safer, faster, easier to learn, easier to teach, and easier to perform.

Attempts to gain central venous access should only be made by skilled, experienced physicians who have been specially trained to perform the requisite medical procedures. It cannot be emphasized enough that merely being a physician in no way qualifies a person to perform medical procedures to gain central venous access.

Many serious and painful complications may arise while a central venous catheter is being placed. These complications include severe pain, hemorrhage (severe bleeding), serious cardiac arrhythmias (abnormal beating of the heart causing shock), and pneumothorax (lung collapse due to collection of air between the lung and chest wall). Additionally, the amount of pain caused by the procedure is related to the experience of the medical practitioner performing the procedure.

For some unknown reason, the Respondents intend to use the cut down procedure instead of the percutaneous procedure. The Respondents also refuse to disclose the credentials and experience of the medical personnel who will be in charge of performing the cut down procedure.

Based on the scant information that the Respondents have disclosed, it appears that people with sufficient medical knowledge have not designed the medical procedure being prepared by the Respondents. Furthermore, there are no assurances that a competent, qualified, licensed physician will be performing the medical procedures proposed by the Respondents.

Of no small concern is the fact that the proposed medical procedures described by the Respondents include references to anatomy not present in human beings. In addition, the Respondents use the terms "percutaneous technique" and "cut down technique" interchangeably when the techniques are completely distinct.

Based upon the foregoing, the amici curiae have grave concerns about the medical procedures proposed by the Respondents. The amici curiae strongly recommend that the Petitioner's execution

be postponed until the Respondents disclose a medically sound, detailed description of the procedure that will be undertaken as well as a description of the experience and credentials of the medical personnel who will be performing the procedure.

ARGUMENT

I. INTRODUCTION

The Respondents have encountered a unique problem in the Petitioner's case involving the need for medical procedures to be performed on the Petitioner in order for the Respondents to gain intravenous access to the Petitioner for the purpose of executing him by lethal injection. It the intent of the amici curiae to outline some of the considerations surrounding intravenous access and also to explain the bases for our concerns about the medical procedures for gaining intravenous access to the Petitioner which are being contemplated by the Respondents.

II. BASIC CONSIDERATIONS REGARDING INTRAVENOUS ACCESS

Obtaining intravenous access is a common and essential procedure in the contemporary practice of medicine, because many drugs are only effective if delivered directly into the venous system.

In the vast majority of situations, intravenous access can be easily obtained by placing a very thin catheter (the same diameter or smaller than the wire of a coat hanger) into a vein located just under the skin in the hand or arm. This is called "peripheral access", as contrasted with "central access" which makes use of a "central vein" such as those in the chest and abdomen. Peripheral access is usually a minor procedure that causes a small amount of pain or discomfort, comparable to that caused by a vaccination.

Unfortunately, in some patients peripheral access cannot easily be obtained, or is essentially impossible to obtain. One circumstance where this problem is commonly encountered is in patients who have received chemotherapy, which causes injury and scarring of peripheral subcutaneous veins. As their veins deteriorate, a point is reached where the search for peripheral access becomes arduous and agonizing, and the patient and physician reach a joint decision to place a central intravenous catheter. This decision is not reached lightly, as placement of a chronic indwelling central catheter is a non-trivial surgical procedure that involves pain and risk. Often the patient is referred to a physician with expertise in obtaining vascular access; as

many physicians do not themselves have the experience and credentials to place a central catheter or to treat the complications that are associated with the procedure. Other clinical situations that involve difficult intravenous access include obese patients (in whom the subcutaneous veins are obscured by adipose tissue), patients who have taken corticosteroids for diseases such as arthritis and lupus, patients who suffer from diabetes and regularly inject insulin, and patients with a history of intravenous drug abuse. Additionally, some patients without any apparent reason just have no readily accessible peripheral veins.

Central venous access is indicated in several other clinical situations. As an example, patients undergoing major surgery often undergo central line placement (usually after general anesthesia has been induced) for the purposes of delivering large volumes of blood and fluids to treat anticipated intraoperative bleeding. Patients undergoing cardiac catheterization for diagnostic purposes may also require the placement of central venous catheters. Central access is also required for the placement of implanted cardiac pacemakers. The above list is not intended to be comprehensive, but rather is presented

for the purpose of conveying the scope of settings in which central intravenous access may be required.

It should be noted that in the great majority of the above-referenced therapeutic situations, peripheral intravenous access is obtained prior to embarking on the central venous access procedure. This allows the practitioner to administer painkillers and sedatives which render the central venous access procedure virtually innocuous. In the rare and unfortunate situation where peripheral intravenous access cannot be established before placing the central line, the experience is physically grueling, painful, and arduous for the person undergoing the procedure.

III. TECHNIQUES FOR OBTAINING CENTRAL VENOUS ACCESS

Putting aside rarely used methods, it is fair to say that two main techniques are used for obtaining central venous access. One technique, which is the most commonly used today, is called the "percutaneous technique". This involves inserting a needle through the skin and into the vein, then passing a thin wire through the lumen of the needle, then removing the needle over the wire to leave the wire placed in the vein, and then finally advancing a thin flexible catheter

over the wire into the vein. The wire can then be removed, leaving the catheter in the vein. Usually this procedure is performed in the groin (femoral vein), the neck (internal or external jugular vein), or under the collar bone (subclavian vein).

The second technique for obtaining central intravenous access is called the cut down technique. This involves the use of a scalpel to make a series of incisions through the skin, the subcutaneous fat, and the underlying muscle, to reach the relatively deeply located central vein. The length of these incisions is in the range of two inches and depends upon a variety of factors including location of the incision, degree of scarring, depth of the vessel, and the skill of the surgeon. As with the percutaneous technique, this procedure is usually performed in the groin (femoral vein), the neck (internal or external jugular vein), or under the collar bone (subclavian vein). The cut down technique is also used to obtain access to veins in the arm and leg, particularly in the setting of shock from trauma, where bleeding has emptied the vascular system and percutaneous access is thereby made difficult. Unlike the percutaneous technique, the cut down technique requires an array of surgical tools including hemostats, retractors, scissors, and

scalpels. The procedure typically requires the use of electrocautery, which is used to stop bleeding by burning the open ends of blood vessels.

The selection between these techniques is a therapeutic decision that is made by the practitioner based on the considerations of the individual situation. Nevertheless, we state with confidence that in the overwhelming majority of situations where central access is required, the percutaneous technique is heavily favored over the cut down procedure. The reasons for this are simple: compared with the cut down technique, the percutaneous technique is less invasive, less painful, less expensive, safer, faster, easier to learn, easier to teach, and easier to perform.

IV. QUALIFICATIONS FOR OBTAINING CENTRAL ACCESS

Obtaining central venous access, whether by the percutaneous technique or the cut down technique, is a significant medical procedure that requires skill, judgment, and experience. These procedures are typically taught during post-graduate medical residency training, and involve "elbow to elbow" supervision by an experienced practitioner. Some medical specialties (including surgery,

anesthesiology, cardiology, intensive care, and interventional radiology) frequently involve placement of central venous catheters. In other medical specialties, it is frequently the case that a patient requiring central venous access will be referred to a physician with expertise and proficiency in performing the procedure.

For physicians to be permitted to practice in a given hospital, they must apply for and receive admitting privileges. As part of this process, a physician will apply for permission to perform various procedures, and hospitals have in place systems for ascertaining whether such procedure privileges should be granted. Obtaining central venous access, whether by the percutaneous technique or the cut down technique, is a procedure that is specifically privileged by hospitals. This system is followed throughout the country as a means of ensuring that personnel possessing adequate training and experience care for patients. In particular, in granting privileges for performing central venous access a hospital board would need evidence that a physician performs the procedure with significant frequency and has appropriate credentials. Among the required credentials would be evidence of active state licensure. A hospital would also need to

review a physician's career record to ensure that there was no history of licensure revocation for misconduct or incompetence. It is very important to understand that merely being a physician in no way provides an assurance that proficiency or even familiarity with intravenous access exists.

V. COMPLICATIONS OF PLACING CENTRAL VENOUS CATHETERS

One of the reasons for requiring credentialing for obtaining central venous access is that the procedures are associated with significant complications. These complications include pain, hemorrhage (severe bleeding), cardiac arrhythmias, and pneumothorax (accumulation of air in the space between the lung and inner chest wall, causing lung collapse and suffocation). The amount of pain caused by the procedure is related to the experience of the practitioner. A skilled practitioner will spend less time "fishing around" to find the location of the vein and will be more adept at effectively infiltrating local anesthesia to make the procedure more comfortable.

Hemorrhage can occur because of lacerating or rupturing the large blood vessels that are the targets of the procedure. Hemorrhage can be external or internal. If it is external, one result can be

widespread distribution of blood throughout the operative field, including the drapes covering the patient's face, the floor, the medical personnel, and the operating table. If the hemorrhage is internal, expertise and experience is often required to recognize the problem and provide appropriate treatment. Hemorrhage, while not painful per se, is extraordinarily distressing and is associated with nausea, shortness of breath, a sense of suffocation, and terror.

Cardiac arrhythmias (abnormal beating of the heart) can be triggered by inadvertent stimulation of the heart muscle by the catheter or wire. These arrhythmias can cause a profound lowering of blood pressure, which like hemorrhage is extremely distressing. If that were to occur, the patient would likely require electrical defibrillation or electrical cardioversion, both of which would burn the skin and produce an extraordinarily agonizing experience for a conscious patient.

Finally, the complication of pneumothorax can be caused by inadvertently puncturing the thin sac that separates the lungs from the inner side of the chest wall. The resulting lung collapse is painful and extremely distressing, causing suffocation and sometimes death. The

treatment of pneumothorax involves the insertion of one or more large diameter tubes (approximately one-half inch in diameter) between the ribs and deep into the chest to evacuate the air. This procedure is painful, should only be performed by experienced practitioners, and is accompanied by its own set of catastrophic complications.

It should be noted that in most clinical situations in which central venous access is being obtained, peripheral intravenous access has already been established. Peripheral lines play a critical role in the treatment of the above-described complications because they permit the administration of painkillers and sedatives, drugs for treating arrhythmias, and allow for the infusion of blood and other fluids to treat hemorrhage. Logically, in a setting where central access is required because peripheral access could not be achieved, these complications are much more fearsome and difficult to manage.

VI. CONCERNS OF AMICI CURIAE REGARDING THE STATE OF ALABAMA'S PROPOSED PROCEDURES TO OBTAIN CENTRAL VENOUS ACCESS IN THE PETITIONER

It is our understanding that the Petitioner has a history of difficult intravenous access. The affidavit of Warden Grantt Culliver states that difficulty is anticipated in obtaining intravenous access and

that a plan has been formulated to obtain central venous access. It is our further understanding that this plan involves attempting catheter placement in the groin, the neck, or the arm.

It is our understanding that the Respondents have refused to disclose the State of Alabama's protocol for lethal injection and have disclosed very little information about the methods that will be employed in attempts to gain venous access in the Petitioner. It is our further understanding that the Respondents have not disclosed any information about the personnel who will be placing the central catheter in the Petitioner, including information about the personnel's credentials and experience. Indeed, it is not even known whether the individual who will be performing the medical procedure holds a current license to practice medicine in the State of Alabama or any other state. Thus, there is no assurance or basis for confidence that a suitably proficient practitioner will perform the medical procedure.

The failure on the part of the Respondents to provide this information makes it impossible to rationally ascertain whether or not reasonable steps have been taken to ensure that the procedure will not be bungled and cause extreme suffering and distress to the Petitioner.

Warden Culliver in his affidavit states that if the central intravenous access is obtained via the neck, the "external carotid vein" will be used. There is no such structure in human beings, and it is not credible to the amici curiae that a trained physician or practitioner would even mistakenly use this term. Oddly, an affidavit by Dr. Marc Sonnier also uses the term "external carotid vein". The use of this term bespeaks the presence of less than a glimmer of familiarity with the procedure and buttresses our concern that the personnel recruited by the Respondents for this procedure will not possess the requisite proficiency and expertise. It is difficult to believe that any personnel currently employed by the Respondents possess the requisite expertise to perform, review, or "sign off" on the procedures proposed by the Respondents.

It is our understanding that Warden Culliver's initial plan was to place the central line twenty-four hours in advance of the execution. This plan reflects a troubling lack of judgment. The fact that Warden Culliver retracted this ill-advised plan, eventually asserting that the procedure would be performed one or two hours prior to the execution, does nothing to mitigate the fact that he made the proposal and, for a

period of time, defended it. Also, it is our understanding that Warden Culliver initially informed the Petitioner that the procedure would involve an incision a quarter of an inch in length but later informed the Petitioner, as is reflected in his affidavit, that the incision would be approximately two inches in length. Warden Culliver clearly lacks the experience and expertise to make decisions about the medical features of the procedure.

It is also our understanding that during early discussions about plans to obtain intravenous access in the Petitioner, Warden Culliver used the term "cut-down" to refer to the percutaneous procedure. As described above, the two procedures are very different, and in virtually all cases it is preferable to use the percutaneous technique. Warden Culliver's failure to discern the distinctions between these procedures, in conjunction with his apparent prominent role in designing the procedure, strongly suggests that the Petitioner is at risk for being subjected to a poorly designed procedure.

In summary, the procedures for obtaining central venous access are complex medical procedures that require training and skill and should only be performed by experienced and credentialed personnel.

Warden Culliver's approach thus far has been to conceal from the Petitioner the nature of the procedure to be performed and the qualifications of the personnel who will be performing it. Based upon the scant information that has been provided by the Respondents, the amici curiae are concerned that the Petitioner is at great risk of experiencing unnecessary suffering and pain.

VII. CONCLUSION

In view of the above-described problems, each amicus curiae cannot escape the unfortunate conclusion that the Respondents have taken a haphazard and disarrayed approach to designing the procedure for obtaining intravenous access in the Petitioner's case. This situation brings to mind an adage of medical training, "failing to plan is planning to fail". We do not understand why it would not be in the best interest of the Respondents to contract with a demonstrably experienced physician to perform the procedure of obtaining central intravenous access on the Petitioner. We also do not understand why it would not be in the best interest of the Respondents to provide information about the physician's credentials so that it could be reasonably determined that central intravenous access would be

obtained in a fashion that would minimize the risk of needless cruelty, pain, and suffering.

It is our understanding the need to obtain central venous access in the Petitioner is not emergent. The readily apparent lack of a coherent program for designing and carrying out this procedure on the Petitioner leads us to recommend in the strongest possible terms that the procedure be postponed until the elements set forth above are brought into place. Specifically, we recommend that the Respondents be required to disclose a reasonably detailed and medically sound description of the procedure to be undertaken and a detailed description of the personnel who will be performing the procedure, including the credentials of the medical personnel. We, of course, recognize the medical personnel's desire for anonymity in the context of performing medical procedures related to an execution. However, it is not difficult to envision a solution that allows for a review of this information without revealing the identity of the specific personnel. For example, a mutually agreed upon independent party could review the professional credentials and licensure of the medical personnel and provide an assurance to interested parties that appropriately

credentialed personnel would be involved.

The amici curiae respectfully request that this Court grant the Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

KATHRYN LOUISE LIPPERT
Alabama Bar No. ASB-8428-I64K
Counsel for Amici Curiae

Post Office Box 661111
Birmingham, Alabama 35266
Telephone (205) 426-3705
Fax Number (205) 426-3750

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true and correct copy of this Brief of Amici Curiae in Support of Petitioner by United States Mail with proper postage affixed thereto upon the following:

Mr. Michael Billingsley
Deputy Attorney General
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Michael Kennedy McIntyre
507 The Grant Building
44 Broad Street, N.W.
Atlanta, GA 30303

H. Victoria Smith
507 The Grant Building
44 Broad Street, N.W.
Atlanta, GA 30303

Dated: This 10th day of November, 2003.

Kathryn L Tippert
KATHRYN LOUISE TIPPERT

Exhibit 16

Exhibit 16

FILED

'99 JUN 16 P3:39

AMY HARVEY CLERK
BY D Duncan

CASE NO. CR98-0516

DEPT. NO. 4

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

* * * * *

THE STATE OF NEVADA,
Plaintiff,

VS.

SIAOSI VANISI,
DEFENDANT IN PROPER PERSON.

MOTION TO DISMISS COUNSEL,
AND
MOTION TO APPOINT COUNSEL

COMES NOW, Defendant, SIAOSI VANISI, (herein after referred to as VANISI) **IN PROPER PERSON**, and respectfully moves this Honorable Court for an ORDER dismissing assigned Counsel, namely, STEVEN GREGORY, ESQ., of the Washoe County Public Defender's Office, and any and all Attorney's in that Office or Capacity, further, VANISI, moves this Court for an ORDER appointing Counsel as authorized by **NRS 7.115** and **NRS 7.125.**

This Motion is based upon the affidavit of SIAOSI VANISI, together with the Points and Authorities submitted herein.

DATED this 14 day of June, 1999.

SUBMITTED BY:

Siaosi Vanisi

SIAOSI VANISI
Defendant in Proper Person

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NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: RICHARD A. GAMMICK, ESQ., District Attorney of Washoe County;

YOU WILL PLEASE TAKE NOTICE that on the 23 day of June, 1999, at the hour of 9:00 A.M., the Defendant will bring the above and foregoing Motion to Dismiss Counsel and to Appoint Counsel before the above-entitled Court.

DATED this 14 day of June, 1999.

Siaosi Vanisi

SIAOSI VANISI
Defendant in Proper Person

STATEMENT OF FACTS

On January 14, 1998, VANISI, was arrested in Salt Lake City, Utah, by law enforcement officers from the Salt Lake City Police Department. On January 26, 1998, VANISI was extradicted back to Reno, Nevada. On January 28, 1998, VANISI was arraigned in Justice Court on Charges of : First Degree Murder, Robbery with the Use in the commision of a Murder, 2-Robberies, and Grand Theft Auto. During such time the Washoe County Public Defender's Office was appointed to represent VANISI upon said Charges. A preliminary hearing was held in this cause resulting in VANISI being bound over to stand trial on said charges. On February 20, 1998, VANISI was arraigned in District Court, wherein he plead not guilty to said charges. On January 11, 1999, Jury selections concluded and Trial commenced, on January 15, 1999, this Honorable Court, Judge Conny Stienhiemer, issued an ORDER for mis-trial due to clerical errors in a transcribed police report which differed from the

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actual audio recording. This Court then advised Defense Counsel and VANISI that this ruling was not appealable, and set a new Trial date for September 7, 1999.

ARGUMENT AND POINTS AND AUTHORITIES

I

APPOINTED COUNSEL IS INEFFECTIVE AND IS SUCH THE DEFENDANT IS BEING DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

VANISI contends that the Court appointed Counsel has failed to conduct adequate pre-trial investigations of evidence and facts which have rendered him unprepared or inadequately prepared for Trial. The failure to thoroughly investigate the facts and evidence in a case operates to render Trial Counsel unprepared and ineffective at Trial of the case. See i.e., People v. White, 514 P.2d 69 (Colo., 1973). See also American Bar Association Standards for Criminal Justice, 1.1(b) Role of Defense Counsel, 4.1 Duty to Investigate.

It is well settled law that a Defendant charged with a felony enjoys under the **Sixth Amendment** the right to Counsel to assist his Defense, even if he lacks funds for Counsel. Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792 (1963). However, the right to Counsel under the **Sixth Amendment** is the right to effective and competent assistance of Counsel, for the right given is not merely formal, but is a substantial right. Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55 (1932); Reece v. Georgia, 350 U.S. 85, 76 S.Ct. 167 (1955) Ex Parte Kramer, 61 Nev. 174, 122 P.2d 862, appeal dismissed, 316 U.S. 646 (1942).

The **Nevada Constitution** provides for (**the full force of**)

Counsel, and not "**mere**" effective assistance. See; **NRSA Nev. Const. Art.1, Sect.8.**

Citing as to Olausen, **Wilson [and Olausen] v. State**, 105 Nev. ___ #23, 771 P.2d 583 (1989):

> For ineffective assistance of counsel, defendant must show that the representation fell below an objective standard of reasonableness and his defense was prejudiced as a result; to prove prejudice, defendant must show a reasonable probability that, but for his attorney's mistakes, the result would have been different; in a death sentence case, defendant must show a reasonable probability that the sentencer, absent errors, would have determined death was not warranted; where defense attorney made remarks more appropriate for the prosecutor and failed to present a host of mitigating evidence of remorse, etc., ineffective assistance of counsel resulted; reminding the sentencer that the attorney's undertaking [as appointed counsel] is not by choice represents a breach of counsel's duty of loyalty to his client; death sentence reversed as to Olausen.

So, it also appears that, VANISI is now in the untenable position of permanent, ineffective Counsel (public defender), which may be irreversible. See; **Strickland v. Washington**, 466 U.S. 668; 104 S.Ct. 2052; 80 L.Ed.2d 674 (1984); notwithstanding that "objective standard of reasonableness" is a contradiction in terms; i.e., reasonable is **not** an objective term.

Another fundamental principle applies. The "State can't benefit from it's failures". See: **Sparks v. State**, 759 P.2d 180 N.2, 182 (Nev. 1988).

It can no more benefit, via continued prosecution, by it's failures to follow procedures, than it can by it's failures to preserve exculpatory evidence. Id.

And, the option of a pre-Trial Habeas petition certainly appears to be foreclosed, along with it's considerable power to

discharge VANISI. See; NRSA Chapter 34, especially NRSA 34.480.

In the instant case despite numerous attempts by VANISI to contact Counsel for purposes of preparing his case, only a few calls have been successfull, refused to advise VANISI of Counsel's alleged investigation, and since at N.S.P hasn't even attempted to visit VANISI for preparation for Trial, all of which is tantamont to an abusive display of ineffective assistance of Counsel. VANISI further states Counsel has failed to research the law in challenging the sufficiency of said charges, or this Courts ORDER of mis-Trial, i.e., Writ of Habeas Corpus, Motion to Dismiss, etc.

Where inadequate representation of Counsel is alleged and relates to matters outside the record, an evidentiary hearing is generally required and the Court should receive additional evidence in support of a Constitutional claim alleging the denial to the right of effective assistance of Counsel. See, Brubaker v. Dickson, 310 F.2d 30 (9th Cir., 1962); Jackson v. Warden, 91 Nev. 430, 537 P.2d 473 (1975).

II.

APPOINTMENT OF NEW COUNSEL WITH STATE AND/OR COUNTY PUBLIC DEFENDER'S OFFICE NOT AN OPTION.

VANISI contends a severe conflict of interest with the Public Defender's Office, and with the filing of this Motion that conflict will escalate, inthat he will and is being prejudiced of a fair Trial, effective assistance of Counsel, Due Process of law, and the equal protection of the law.

NRS 178.397 states:

> **Assignment of Counsel.** Every Defendant accused of a gross misdemeanor or felony who is financially unable to obtain Counsel is entitled to have Counsel assigned to represent him at every stage of the proceedings from his initial appearance before a magistrate or the Court through appeal, unless he waives such appointment.

Accordingly VANISI cites a public defender cannot be held vicariously liable for negligence of his deputies; malpractice arising out of discretionary decisions made pursuant to duties as public defender can't give rise to suit; public defenders do not act under color of State law; District Courts lack jurisdiction to impose professional discipline on Attorneys. **Ramirez v. Clark County Public Defender**, 105 Nev. ___ #47, 773 P.2d 343 (1989).

A defendant has a **Sixth Amendment** right to effective assistance of Counsel in deciding whether or not to accept or reject a plea bargain; here, Attorney's conduct fell below an objective standard of reasonableness where his recommendations (withdraw plea, go to Trial, etc.) were based on factors that would further his personal ambitions (to be national consultant on "battered wife" defense, etc.); note that a reasoned plea recommendation which hindsight reveals to be unwise or reliance on an ultimately unsuccessful defense tactic would seldom support a finding of ineffective assistance of Counsel. **Larson v. State**, 104 Nev.___ #113, 776 P.2d 261 (1988). VANISI asserts that due to Counsels lack of preparing an adequate defense he put his whole defense on the error made by the police transcriber. Now VANISI is virtually stuck with going through the motions of a Trial with no hope of expressing a new defense, and ultimately facing the most severe punishment known to man, DEATH.

1004

NRS 171.188, 1, 2(a), (b), 3(a), (b), which apply to VANISI states:

> 1. Any defendant charged with a public offense who is an indigent may, by oral statement to the district judge, justice of the peace, municipal judge or master, request the appointment of an attorney to represent him.
> 2. The request must be accompanied by the defendant's affidavit, which must state:
> (a) That he is without means of employing an attorney; and
> (b) Facts with some particularity, definiteness and certainty concerning his financial disability.
> 3. The district judge, justice of the peace, municipal judge or master shall forhwith consider the application and shall make such further inquiry as he considers necessary. If the district judge, justice of the peace, municipal judge or master:
> (a) Finds that the defendant is without means of employing an attorney; and
> (b) Otherwise determines that representation is required, the judge, justice of the peace, or master shall designate the public defender of the county or the state public defender, as appropriate, to represent him. If the appropriate public defender is unable to represent him, or other good cause appears, another attorney must be appointed.

<u>also</u> <u>See,</u> NRS 7.115:

> A magistrate or a district court shall not appoint an attorney other than a public defender to represent a person charged with any offense by indictment or information unless such magistrate or the district court makes a finding, entered into the record of the case, that the public defender is disqualified from furnishing such representation and sets forth the reason or reasons for such disqualification.

<u>CONCLUSION</u>

For the reasons stated above and with the severity, complexity and possible punishment in this said case, DEATH, VANISI prays this Court will find the only Constitutional remedy is to **GRANT**

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1005

VANISI' Motion and Appoint a qualified, non-bias, **SCR 250** qualified Attorney to represent VANISI and that the State and/or County Public Defender's Office not an option.

DATED this 14 day of June, 1999.

SUBMITTED BY:

SIAOSI VANISI # 58497
Nevada State Prison
P.O.Box 607
Carson City, Nevada
89702-0607
DEFENDANT IN PROPER PERSON

AFFIDAVIT OF SIAOSI VANISI IN SUPPORT OF MOTION TO DISMISS COUNSEL AND TO APPOINT NEW COUNSEL

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

SIAOSI VANISI, being first duly sworn upon his oath, deposes and says:

1. That Affiant has personal knowledge as to the facts contained herein and is competent to testify to same thereto.

2. That Affiant is the Defendant in the above-entitled case.

3. That Affiant has had only very limited phone contact with Counsel since January 15, 1999.

4. That Counsel has not proceeded to challenge the sufficency of the said charges despite the fact that Affiant is facing the Death Penalty.

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5. That Counsel has not informed or expressed to Affiant of any viable defense he allegedly intends to submit.

6. That Affiant has lost all confidence in Mr. Gregory to be adequately prepared for Trial as the material in this case needs to be reviewed and analized for Trial.

7. That Affiant if convicted, is facing the Death Penalty and needs the effective assistance of Counsel to insure Due Process and a Fair Trial.

FURTHER AFFIANT SAYETH NAUGHT.

Siaosi Vanisi

SIAOSI VANISI

SUBSCRIBED and **SWORN** to before me this 10TH day of June, 1999.

William T. Curry

Notary Public in and for the said County and State.

WILLIAM T. CURRY
NOTARY PUBLIC - NEVADA
Appt. Recorded in CARSON CITY
No. 97-3948-3 My Appt. Exp. Aug. 12, 2001

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1007

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 14 day of June, 1999, I, deposited in the United States Post Office, through, Nevada State Prison, a copy of the foregoing **MOTION TO DISMISS COUNSEL AND APPOINTMENT OF COUNSEL**, postage prepaid, addressed to the following:

Richard A. Gammick, Esq.
Washoe County District Attorney
P.O.Box 11130
Reno, Nevada 89520

Steven Gregory, Esq.
Washoe County Public Defender
P.O.Box 11130
Reno, Nevada 89520

Siaosi Vanisi

SIAOSI VANISI #58497
Defendant

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Exhibit 17

Exhibit 17

ORIGINAL

FILED

AUG 05 1999

AMY HARVEY
By: MStone
DEPUTY CLERK

CODE 2490
MICHAEL R. SPECCHIO
BAR# 1017
WASHOE COUNTY PUBLIC DEFENDER
P.O. BOX 30083
RENO NV 89520-3083
(775) 328-3464
ATTORNEY FOR: DEFENDANT

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,
vs.
SIAOSI VANISI, aka "PE"
Aka GEORGE",
Defendant.
_____/

UNDER SEAL

Case No. CR98-0516

Dept. No. 4

COURT ORDERED MOTION FOR SELF REPRESENTATION

I've read rule 253. I don't see anywhere in the rules of Nevada nor anywhere in the Constitution that I need to (as a defendant) write a motion to represent myself. However, I am abiding by your order to write this innocuous motion, in hope to fulfill your command.

As you know, it is my desire to exercise my constitutional right to represent myself. Furthermore, I understand the danger and the disadvantages that may procure from self representation.

If I produce a defense that will result to my detriment, I will not complain on appeals.

I am not intimidated by the State's representative, for I know they are experienced and have the training to make tactical decisions to bring about an unintended outcome to their advantage.

I have opened myself to countless hours of contemplation, ruminating whether or not I should represent myself. And I choose to do so on my own volition. And I must add, that no one coerced me to represent myself. Therefore; I'm waving my constitutional right to be represented by an attorney.

I have graduated from High School. From then on I became a "self taught man". I have studied: science, geography, physics, chemistry, english, math and philosophy.

I have the aptitude to apprehend the law. I have perused law books and read case law when I was at the NSP.

The law is not my forte. The realm of science is my strength. However, I have studied Faretta v. California. And you will find that the Supreme Court does not bestow a heavy burden upon a defendant to master the science of law.

And I now quote from FN 15 out of Faretta v. California. "We need make no assessment of how well or poorly Faretta had mastered the intricacies of the hearsay rule and the California Code Provisions that govern challenges of potential jurors on voir dire. For his technical legal knowledge, as such, was not relevant to assessment of his knowing exercise of the right to defend himself".

There are myriads of arguments that legal scholars have argued to intact the right of the accused to manage his own defense. The choice of an individual to represent himself is the lifeblood of the law.

"To force a lawer on a defendant can only lead him to believe that the law contrives against him," sayeth Faretta v. California.

I conclude my motion with the goal to be prepared for trial on the 7th of September 1999.

SIAOSI VANISI S/S
Defendant
August 4, 1999

Exhibit 18

Exhibit 18

FILED

'99 JUL 12 A10:57

JANY HARVEY, CLERK
BY Y Deach
DEPUTY

CODE 1675

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

vs.

Case No. CR98-0516

SIAOSI VANISI,
Defendant.

Dept. 4

***FILED UNDER SEAL**

EX-PARTE ORDER FOR MEDICAL TREATMENT

Good cause appearing therefore,

IT IS HEREBY ORDERED that the Washoe County Sheriff, through his medical representatives at the Washoe County Detention Facility, provide the following medication for the above-named Defendant:

1. Lithium (including a pre-Lithium work-up and Titration with appropriate blood level monitoring); and

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2. Wellbutrin and Titrate to 300 mg daily, (beginning after therapeutic Lithium levels have been reached).

DATED this 12th day of July, 1999.

Chas M. McGee
DISTRICT JUDGE
Chief Judge for
J. Steinheimer

Exhibit 19

Exhibit 19