MR. QUALLS: Okay with me.

MR. EDWARDS: Would that be until noon?

THE COURT: No, we have to finish up. I don't know how long it's going to take. You have Mr. Specchio and then you had arguments.

MR. EDWARDS: I have a hearing at 1:30 across the street.

THE COURT: Is it a death penalty case?

MR. EDWARDS: No, Your Honor. I'll tell them about you.

THE COURT: Okay. We have to move things around. Is it something --

MR. EDWARDS: It's a family law case.

THE COURT: Think you can get on the calendar fairly quickly after that again?

MR. EDWARDS: I'll talk to them about it. I'll contact their department.

THE COURT: Okay. So at the conclusion of today's hearing, we will allow Mr. Vanisi to leave and go back to the prison and not be brought back until May 18th for the 10 a.m. hearing.

Okay. Counsel, go ahead -- there's one other thing. The prison brought up the defendant's medical history. Have you all seen it?

MR. EDWARDS: Not since the original records were produced. Is this --

THE COURT: This is just the current, and it would be filed under seal. It's his personal medical records, but you're welcome to come see it. You may approach.

(Bench conference between Court and counsel.)

THE COURT: I'm going to have the clerk mark the medical record and seal it along with the other medical records. But counsel has had an opportunity to review it. It's my understanding that Mr. Vanisi has not had the Haldol or the other two medications that he normally, that he might have normally had, at his request. It's admitted under seal.

THE CLERK: Exhibit J marked.

(Exhibit J was marked and admitted.)

THE COURT: Just want to remind you, even though we unsealed your petition, his medical records have an ongoing ability to be sealed. That's not the same as the allegations that you raised in your petition for writ of habeas corpus. So there are some documents that are sealed from public access still.

MR. EDWARDS: Thank you, Your Honor.

THE COURT: Okay. Go ahead, and are we calling a

witness out of order?

MR. McCARTHY: Yes. Even though the petitioner hasn't rested, there's a witness who doesn't work at the courthouse all day and I'd like to accommodate her. Laura Bielser.

THE COURT: You're all stipulating?

MR. EDWARDS: We've agreed to this.

THE COURT: Come forward and face the court clerk and be sworn.

LAURA BIELSER

called as a witness on behalf of the Respondent,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McCARTHY:

Q Would you introduce yourself, please.

A My name is Laura Bielser, B-i-e-l-s-e-r.

Q Are you currently working with the County Public Defender?

A Not any longer.

Q You have previously been employed by the Public Defender here?

A I have.

Q In what capacity?

A I was Mike Specchio's administrative assistant.

Q For about how long?

A Close to 13 years.

Q You and Mr. Specchio developed an efficient working relationship?

A Absolutely.

Q Were you working with Mr. Specchio in '98 and '99?

A Yes.

Q Do you recall in '98, I think, having occasion to contact the Tongan Consulate?

A I do.

Q And did that come about because Mr. Specchio had you do that?

A Yes.

Q Do you remember, either generally or specifically, the nature of that communication to them?

A We contacted them because we wanted some assistance in representing Siaosi Vanisi, and we also wanted to gain more information on the Tongan culture.

Q Did you hear back from the Consulate?

A Eventually I did. I think I needed to -- if I

recall correctly, I haven't seen anything in seven years, but I had to call them or e-mail them or fax them repeatedly, and then I did hear back from them.

Q And do you recall, either generally or specifically, the nature of that response from the Tongan Consulate?

A They wanted nothing to do with us.

Q Had you explained the nature of the charge?

A We did.

Q Had you explained that the accused was a citizen of Tonga?

A We did.

MR. McCARTHY: That's all I have.

CROSS-EXAMINATION

BY MR. EDWARDS:

Q Where is the Tongan Consulate, Ms. Bielser?

A I think it was in San Francisco, but I think all of my correspondence was via e-mail.

Q So you contacted them by an e-mail?

A I believe so. And maybe fax, too. I don't remember.

Q Did you save any of that in the record any place?

A I'm sure it's in there. We don't throw anything

away.

Q So there would be proof of this contact that you made?

A Yes.

Q And who you contacted and when?

A Sure, yeah.

Q Have any idea where that might be, that proof, that written documentation?

A I would imagine, if it was a fax, it would be in the original file. Or an e-mail, I would have printed out the e-mail and that would be in the original file.

Q You were using e-mail in 1998 to communicate with?

A Yeah, I'm sure.

Q Did you know of the Vienna Convention on Consular Relations at the time that you made this contact?

A I don't recall, no.

Q Anybody ever mention that to you in the course of having you contact the Tongan Consulate?

A No.

Q When you say --

A Not that I recall. I don't know. I haven't --

Q Did they respond to you in writing or was that by telephone? Do you have any recollection?

A If it was by phone, I would have memoed it, made a physical memo of it. If it was by e-mail, I would have printed it. So I don't recall. I don't recall if it was fax or e-mail.

Q But you recall them, I believe your statement was not having, wanting to have anything tod o with us?

A Yes, exactly.

Q You don't recall how that was communicated to you, though?

A Pretty much we're not going to help you, pretty much.

Q Either by fax or phone or e-mail?

A Yeah, that, you know, sorry, but we're not going to get involved.

Q Did you keep a time record of the hours that you spent on Mr. Vanisi's case?

A Yes.

Q If I showed it to you, would you recollect it?

A I'm sure.

MR. McCARTHY: I've seen it.

MR. EDWARDS: Your Honor, may I approach the witness?

THE COURT: Yes.

MR. EDWARDS: For the record, Your Honor, this is

a portion of the 250 memorandum relating to the time record of Laura Bielser.

BY MR. EDWARDS:

Q Ms. Bielser, if you could look at that and tell me if there's any indication there of the -- first of all, is that your time record?

A Yes, I'm sure it is, yes.

Q Related to the time that you spent in the Siaosi Vanisi case, right?

A Yes.

Q And you apparently logged 90 hours during the course of the Public Defender's representation of Mr. Vanisi; is that right?

A If that's what it says. Yes.

Q So it looks pretty detailed, like everything that you did in the case is logged in there, right?

A It does, uh-huh.

Q Can you show me anywhere in that time record where it shows that you contacted the Tongan Consulate?

A I don't see it specifically.

Q Okay. Thank you. No further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. McCARTHY:

Q Still looking at that. If you would look at the entry for April 20th, 1998. And there's a reference, an e-mail, someone named, something named P-U-T-K-I-A, do you know who that is?

A I don't remember, it could have been someone from the Tongan Consulate.

Q By the way, when you got the response, whatever it may have been, did you tell Mr. Specchio about that response?

A Yes.

MR. McCARTHY: Nothing else.

RECROSS-EXAMINATION

BY MR. EDWARDS:

Q You're not sure about this entry on 4-20-98 being the Tongan Consulate, right?

A Am I absolutely sure? No. But if I were to guess, I would say that's it.

Q Why does it say "Australian Anthropologist, Center for Capital Assistance"?

A Because somehow -- let me think. There was a connection with a specific Australian anthropologist who

did either Tongan culture research or something like that. Mike had found somebody familiar with I believe the Tongan culture. I know it looks odd, but we were trying to do everything that we could, and that was one of the things we tried. The S. Phillips, I don't know, is that what you're talking about, S. Phillips? Because I don't know what that is.

Q Center for Capital Assistance. See, it says "E-mail Putkai, Australian anthropologist," right?

A I think what I did, this was one letter sent to several different people, now that I recall. We were asking a lot of people for help. And I would bet that the Putkai is somebody's name at the consulate, but I can't guarantee that.

Q But somewhere out there there's a more detailed record of what you did, is that what you're saying?

A I would think the original e-mail would be in the file that I sent to all five of these people.

Q It would be your practice to make a copy of something like that?

A To print a copy.

Q And this took three hours; is that right?

A The Internet search along with it, it says two and a half, yeah.

Q The Internet research is logged for two and a half on its own, right? The e-mail to Putkai Center for Capital Assistance, it says three hours, right?

A Maybe, yeah.

Q Okay. Thank you. No further questions, Your Honor.

MR. McCARTHY: Nothing else.

THE COURT: Okay. Thank you. You are excused.

MR. McCARTHY: Your Honor, looks like neither of us have additional evidence today.

MR. EDWARDS: That's correct, Your Honor.

THE COURT: So we're set for the 18th at 10 a.m. and that would be, we'll have -- now have you had a chance, I suppose we say we're set. Do we think Mr. Specchio will be back in town?

MR. EDWARDS: Oh, Your Honor --

THE COURT: Did you just lose the person who might tell you?

MR. EDWARDS: Since he's retired, I don't think she works with him anymore; but Mr. Petty did say, and Mr. Bosler, that two weeks from now would be safe.

MR. McCARTHY: They were guessing.

MR. EDWARDS: I think maybe -- we'll try to verify that tomorrow, how is that?

THE COURT: That would be good.

MR. EDWARDS: And I'll work on my family law issue as well.

MR. McCARTHY: I have a member of my able investigative staff available who I will ask to see if he can find out when Mr. Specchio will be back.

THE COURT: That's what we need to hear, Mr. Specchio. And then you think that will be the end of the witnesses and then there will be some argument?

MR. EDWARDS: I think so, Your Honor. We're deliberating about one additional witness not relative to the Tongan Consulate, an additional witness, perhaps an expert and that would be it. And then my opinion is that the motion to dismiss is really, the argument thereon would really be a rehash of the substantive issues in the petition itself. So I don't see why we should separate the two for argument purposes, why we can't just argue it all at once, if that's all right with the Court.

MR. McCARTHY: I don't know what to say. It seems that we're going to decide whether to have a hearing after the hearing. If that's the way it's going to be, it's okay with me.

MR. EDWARDS: I think you're going to decide whether to dismiss it or deny it.

THE COURT: Right. There is a difference.

MR. McCARTHY: Yes. And I would prefer -- I don't object to taking additional evidence before that, but I would prefer the Court rule on the procedural, the potential procedural defenses before considering the merits of the claims.

THE COURT: So the argument will be just first your motion to dismiss, and then you may respond, Mr. Edwards. And you will have an opportunity to present, if I don't grant the motion to dismiss, you will be able to present your argument with regard to the petition and the witnesses.

MR. McCARTHY: Then I can go last.

THE COURT: Then you can respond. But I might let him go after you, Mr. McCarthy.

MR. EDWARDS: I have the burden at this stage.

THE COURT: That's right.

So I'm just thinking we should be able to finalize this, though, on the 18th, if we have Mr. Specchio.

MR. EDWARDS: I believe so, Your Honor.

THE COURT: Great. Court's in recess.

(Proceedings concluded at 4:20 p.m.)

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STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

I, DENISE PHIPPS, 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 05/02/2005.

DENISE PHIPPS, CCR No. 234

Exhibit 40

Exhibit 40

Code No. 4185

ORIGINAL

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-

SIAOSI VANISI, Petitioner,	)	Case No. CR98P0516
vs.	)	Dept. No. 4
STATE OF NEVADA, Respondent.	)	

TRANSCRIPT OF PROCEEDINGS

CONTINUED POST-CONVICTION HEARING

WEDNESDAY, MAY 18, 2005

RENO, NEVADA

Reported By: DENISE PHIPPS, CCR No. 234

APPEARANCES:

For the Petitioner:

SCOTT EDWARDS
Attorney at Law
729 Evans Avenue
Reno, Nevada 89512
-and-

THOMAS L. QUALLS
Attorney at Law
443 Marsh Avenue
Reno, Nevada 89509

For the Respondent:

TERRENCE P. McCARTHY
DEPUTY DISTRICT ATTORNEY
75 Court Street
Reno, Nevada 89520

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VDIRE
MICHAEL SPECCHIO	5	12	14	15	
RICHARD CORNELL	17,26	53	58		22

RENO, NEVADA, WEDNESDAY, MAY 18, 2005, 10:00 A.M.

-oOo-

THE COURT: Mr. Edwards.

MR. EDWARDS: Good morning, Your Honor.

THE COURT: Ready to proceed?

MR. EDWARDS: Yes, Your Honor, ready to proceed. It's my goal here this morning to finish this process by noon or thereabout, as best I can. So perhaps if we could finish with the taking of testimony, and if there's time left for some minor argument, I'd like to present that as well.

THE COURT: If we aren't finished by 12:00, we can always start again at 1:00.

MR. EDWARDS: At this time I'd like to call Mr. Specchio, please.

THE COURT: Mr. Specchio, please go ahead and face the court clerk and be sworn.

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MICHAEL SPECCHIO

called as a witness on behalf of the Petitioner,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDWARDS:

Q Good morning, sir. Could you please state and spell your name for the record.

A Mike Specchio, S-p-e-c-c-h-i-o.

Q And Mr. Specchio, you were the long-time Washoe County Public Defender; is that correct?

A Yes.

Q And recently retired, I gather?

A Yes.

Q Congratulations.

A Thank you.

Q You had an opportunity to represent now my client Mr. Siaosi Vanisi; is that correct?

A That's correct.

Q Can you give us a little insight into what phases of the representation you were involved in?

A I was involved in the -- there were two trials. I was involved in the first trial. And I had heart

surgery, and the case was turned over to Steve Gregory and Jeremy Bosler, I think.

Q Did you author what's known as the 250 Memorandum in this case, do you have any recollection about that?

A That's possible.

Q If I showed you a copy of it, would you have a look at it, see if you can refresh your recollection?

A Sure.

MR. EDWARDS: Your Honor, for the record, I believe we entered this into the record at the last proceeding.

THE COURT: I believe we did.

THE WITNESS: It could very well be, I mean authored by me.

BY MR. EDWARDS:

Q It could have been authored by you?

A Yeah.

Q I'd like you to look through there. And there's some statements that I've highlighted that I want to make sure were actually statements, assertions, conclusions made by you or with your hand. So if we could address them. First of all, there are no page numbers on this. So I'm referring to a statement under a heading Services Performed, about five pages in on the memo.

A Okay.

Q Do you see the first highlighted statement there?

A Yes.

Q Could you read that, please?

A "Defendant is Tongan. Unfortunately, the local Tongan community who had professed aid and assistance for the defendant became disenchanted and have ignored our requests to confer with them."

Q Is that your statement, conclusion?

A Yes.

Q You have recollection of composing that?

A Yes.

Q How about the next highlighted statement on that page.

A "We contacted the Tongan Consulate without success."

Q Can you tell me what that means, "contacted the Tongan Consulate"?

A We contacted the Tongan Consulate in San Francisco, and they asked us for information about the case. We initially, I think, just sent them the headlines, the newspaper --

Q Newspaper headlines?

A Yeah, I think that's all we sent initially.

Q How was this contact made? Telephonically or in writing?

A I don't remember. I don't remember.

Q Do you personally have any recollection speaking to anyone in the Tongan Consulate?

A I think I did, but I don't remember.

Q Were you aware of the Vienna Convention on Consular Relations at the time of your representation of Mr. Vanisi?

A No.

Q So would it be fair to say that there was no attempt to contact the Consular of Tonga to fulfill some obligation under that international agreement?

A That would be a fair statement.

Q Do you recall if you ever had any discussions with Mr. Vanisi about contacting the Tongan Consulate?

A I don't remember. I would imagine, but I don't remember.

Q Thank you. If you could proceed to the next item I've highlighted there. And we're probably about 20 pages in now, is that fair? If you could read the highlighted portion into the record, what you're reviewing.

A "It became obvious that a conflict of interest was created when the defendant advised that he did in fact

kill Sergeant Sullivan and he was going to testify and commit perjury when he was on the witness stand."

Q Is that the totality of the highlighted area?

A No. Next paragraph, "He was advised that his creation of a conflict of interest for us prevented us from representing him at trial and moved the Court to represent himself."

Q Is that your --

A He moved the Court.

Q Okay. Is that statement your personal statement? Did you write that, compose it?

A I'm sure I wrote this, yeah.

Q So you're advising the record, I guess, through this memo that you had a conflict of interest; is that correct, your office, I suppose?

A Well, I don't know what it says in these 20 or 30 pages before this, but I would think that if in fact he indicated, as I stated, that, yeah, we would have a conflict of interest.

Q If you could move to the next one. And we're probably about 30 pages into the memo now, right?

A Yeah, I'd say, at least.

Q Could you read the highlighted section into the record?

A "The trial left little room for meaningful cross-exam and presentation of any viable defense."

Q Is that your personal conclusion?

A Well, yeah, it's based on these pages of statements that I'm not familiar with. But from what I remember about this case that's probably correct.

Q So is that your assessment about the way the trial was and the performance of your attorneys in this case?

A Yeah.

Q Last conclusion or statement, if you could kindly read it. It's now probably about 40 pages in in a different spacing; is that right?

A Yeah. Probably 30 or 40 pages from the rear.

Q Would you please read that highlighted portion into the record.

A "The defendant's medical condition" -- "mental condition and his election to act in such a bizarre fashion made him unable to assist counsel in his own defense."

Q Is that a statement you wrote and agreed with?

MR. McCARTHY: He is not being offered as an expert psychiatric witness. I object for lack of foundation.

MR. EDWARDS: I'm asking if he adopts that statement as one made by himself, Your Honor.

THE COURT: When was that, at what point in the litigation?

MR. EDWARDS: I just want to know if he authored that because it's in a different typeset.

THE WITNESS: Yeah.

THE COURT: Want to know if that's something that he wrote in the memo?

MR. EDWARDS: Right, rather than a conclusion of someone else, like Mr. Gregory or --

THE COURT: You're not offering it for the truth of the matter?

MR. EDWARDS: No, just --

THE COURT: Just what he said, if he said it.

MR. EDWARDS: If that was an authentic --

THE WITNESS: I think I said everything in here because I think I wrote this.

BY MR. EDWARDS:

Q Thank you. Do you have any written proof that we might present regarding your notification or your contact with consular authorities from Tonga?

A I haven't had access to the file in years.

Q Sure. Thank you, sir.

No further questions, Your Honor.

CROSS-EXAMINATION

BY MR. McCARTHY:

Q Mr. Specchio, as county public defender, you were charged with supervising the performance of, what, how many lawyers?

A 32 when I left. Probably 30 in 19 -- this would be 2001, I guess. So probably 30 lawyers at the time.

Q Handled an occasional case yourself as well?

A Yes.

Q Did your office have a budget for investigations, interpreters, experts and the like?

A Yes.

Q How long were you a public defender?

A From 1992 until last month.

Q And in that time did you ever run short in your budget?

A One time we had to ask for additional funds.

Q Did you get it?

A Yes.

Q Do you recall when Vanisi was first arrested in Salt Lake City asking Salt Lake City counterparts to visit him in the jail?

A Yes.

Q Was that, as far as you know, your first involvement in the case?

A I think that probably was. I know we got -- we got some calls on this case right off the bat from some members of the Tongan community that wanted to make sure that Mr. Vanisi's rights were protected, and I think that was before Salt Lake City, if I'm not mistaken. Might have been -- or it was right around the same time.

Q So you became involved in trying to protect Vanisi's rights perhaps even before he was arrested?

A Yes.

Q Certainly not long after?

A No, it was definitely before.

Q When you wrote in your memo there was a conflict of interest, is the conflict, were you actively representing someone else's interests?

A No.

Q The conflict arose because you felt you were ethically limited?

A If he would have followed through with what he indicated. That statement is kind of out of context.

Q Not exactly a conflict of interest?

A Not yet. Could have been created.

Q Certainly hampered your ability to do so?

A I would think so. And we have an obligation to advise the Court in so many words as to the existence of the conflict or the way that Mr. Vanisi would have had to testify.

MR. McCARTHY: That's all I have.

REDIRECT EXAMINATION

BY MR. EDWARDS:

Q Just one question, Your Honor.

On this meeting in Salt Lake City, you asked your public defender counterpart to meet with Mr. Vanisi; is that your testimony?

A Yes, tell him to keep his mouth shut.

Q Was there any talk or discussion that you're aware of about consular relations and all that?

A No. You mean with Salt Lake?

Q Yeah.

A No.

Q When you use the term "conflict of interest," you realize that has a legal term of art to it, correct?

A I do.

Q And was it used in that sense in your statement that we'd been talking about?

MR. McCARTHY: Somewhat leading, Your Honor.

THE COURT: Sustained.

BY MR. EDWARDS:

Q Did you mean the legal definition of conflict of interest when you used it in your statement?

MR. McCARTHY: Still is.

THE COURT: You can ask him what he meant.

BY MR. EDWARDS:

Q What did you mean?

A What I meant, that statement, I haven't read the entire report, but my understanding, that statement said if Mr. Vanisi was to act in a certain way, that a conflict of interest would be created. Namely, some admissions that he made, and then his willingness to get on the stand and testify contrary to that would put us in a very difficult position. Or a conflict of interest.

MR. EDWARDS: Thank you. Nothing further, Your Honor.

THE COURT: Mr. McCarthy, anything further?

RECROSS-EXAMINATION

BY MR. McCARTHY:

Q At the time your office represented Mr. Vanisi at any time in the litigation, was anyone in your office

actively representing competing interests?

A No.

MR. McCARTHY: That's all.

MR. EDWARDS: Nothing further.

THE COURT: You may step down.

MR. QUALLS: Your Honor, we'll call Richard Cornell.

MR. McCARTHY: I promised earlier that I have an objection to Mr. Cornell's testimony, and indeed I do.

THE COURT: Go ahead and sit down for a minute, Mr. Cornell.

MR. McCARTHY: This was originally -- this hearing was originally scheduled for three days. We quit at 3:00 on the first day with the promise that the purpose of the continuance was to hear from Mr. Specchio and any representative of the Tongan Consulate that might decide to appear. That was the only purpose of the continuance. As far as I'm concerned, we're done.

MR. EDWARDS: Your Honor, I'd like to respond to that.

THE COURT: Go ahead.

MR. EDWARDS: Page 99 of the May 2nd, 2005 hearing transcript. The Court is inquiring of me. Your statement is: "That's what we need to hear, Mr. Specchio,

and then you think there will be the end of the witnesses and there will be some argument?" And I respond to you saying, "I think so, Your Honor. We're deliberating about one additional witness, not relative to the Tongan Consulate, an additional witness, perhaps an expert, and that would be it."

MR. McCARTHY: That was what Mr. Edwards said. That's not what the Court said.

THE COURT: Okay. I'm going to allow the witness to go forward. But if you didn't have enough notice and you need additional time, Mr. McCarthy, to call a rebuttal witness, I'll allow that.

MR. McCARTHY: If it comes up, I'll feel free.

MR. EDWARDS: Thank you, Your Honor.

THE COURT: Mr. Cornell, go ahead and face the court clerk and be sworn.

RICHARD CORNELL

called as a witness on behalf of the Petitioner,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. QUALLS:

Q Good morning, sir.

A Good morning.

Q Could you please state your name and spell your last name for the court reporter.

A Richard F. Cornell, C-o-r-n-e-l-l.

Q And what's your occupation, Mr. Cornell?

A I'm an attorney.

Q And do you do appellate work?

A Yes.

Q And are you also qualified under Supreme Court Rule 250?

A I believe so, based on my experience. I mean I don't have a piece of paper saying that I'm hereby designated as so qualified. But I think that I would meet the qualifications.

Q Let's talk about that a little. What are some of your qualifications?

A Well, I have handled six capital murder cases in the post-conviction realm, both state and federal, and also one at trial. Well, handled five in the post-conviction realm, both state and federal. Gerald Gallego, William Leonard, Michael Hogan, Abram Nika and Tracy Petrocelli. And I had a sixth one, which was Raymond Currington at the pretrial stage where I was appointed as second counsel and the case never proceeded

to a capital hearing because we were able to get the notice of death penalty stricken and that upheld on an extraordinary writ.

Q Just to follow up, as far as other appellate experience, do you know approximately how many direct appeals you have --

A Between the time I was in the appellate division in the District Attorney's Office in the early '80s and private practice since then, I couldn't hazard an exact number. But I would say in excess of 200.

Q And that's criminal?

A Yes.

Q And then --

A Criminal post-conviction.

Q Then some additional civil cases?

A Yes. Not as many, but yes.

Q And so having that kind of experience with post-conviction cases, are you familiar with the Strickland standard?

A Yes.

Q And could you tell us what your understanding of that is?

A Yes. Strickland is a two-prong standard that does away with the sham pretense standard and essentially

it's a two-prong standard. Number one, did counsel act below the standard of reasonably effective counsel, either in presenting evidence, not presenting evidence, objecting to evidence, not objecting to evidence, making motions, not making motions and that sort of thing. And then number two, if counsel was below the standard and his performance, was the defendant prejudiced by that deficient performance.

Q Thank you. In preparing to give your testimony in this case today, did you review certain documents?

A Yes.

Q And what were those, if you recall?

A Yes. In fact, I brought some of them with me to help me out here. I reviewed the supplemental petition that you and Mr. Edwards prepared and filed in February of this year and a list of claims that summarized them. I reviewed the penalty transcript in terms of how the Court instructed the jury at penalty. I reviewed the briefs in this case, Mr. Petty's briefs and Mr. McCarthy's brief. I reviewed the formerly sealed transcripts that went on at time of trial or prior to trial regarding the Public Defender asserting the conflict of interest to the trial judge.

I reviewed the published opinion of Vanisi versus

State, which is 117 Nevada 300 something, if I remember right. I reviewed selected portions of the trial transcript from the guilt phase.

Q Thank you. And based upon your review, do you have an opinion as to any errors, including Strickland errors, that occurred at the trial level?

MR. McCARTHY: Objection, Your Honor. If the witness here is being called as an expert for the standards in the community, I'd like to talk about that. If he's being called to say that the Supreme Court would have reversed or something else, it's not relevant. Whether there was error or not, this witness can't speak to it.

THE COURT: You're asking for a conclusion that's a determination by this Court or the Supreme Court, or some other court. He certainly can testify as to the standard in the community both for appellate representation, you can ask those specific things. You can even make a representation whether or not he believes some attorney in the case fell below that standard. But he can't reach the ultimate conclusion.

MR. QUALLS: Thank you, Your Honor.

BY MR. QUALLS:

Q I misworded that.

A I appreciate that clarification, because I really wouldn't want to be talking about prejudice anyway. That's clearly a judicial call.

Anyway, go ahead.

Q So the question restructured is: Do you have an opinion relevant to Strickland as to whether the performance of the trial counsel fell below the standard of reasonableness as defined there?

MR. McCARTHY: Your Honor, now that there's been a question posed asking the opinion, I'd like to voir dire, please.

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. McCARTHY:

Q Let's see. Mr. Cornell, you do not devote a great deal of your attention to trials, do you?

A Not anymore. I've tried about 30 cases to a jury. But the last jury trial I handled was 1997.

Q And have you tried any capital cases?

A To a verdict, no. Like I say, the one capital case I had at the trial level was the Currington case and it never got to a penalty phase.

Q And now you, in your appellate capacity, you

generate a lot of paperwork, I would imagine?

A Yes.

Q Do you work alone?

A Yes.

Q Do you get to observe other lawyers advancing appeals?

A Yes.

Q In what way? How do you do that?

A Well, I mean I read the finished product of what they've done.

Q The opinions or the briefs?

A The opinions, certainly. The briefs in a few selected cases, yes.

Q Is that common that you would read someone else's briefs on appeal?

A If I'm not being asked to do this kind of work. Not common, but not unheard of. If I had spotted an issue that I've never litigated, for example, this Vienna Convention issue that we're talking about here, I would definitely want to look at someone else's brief bank on this to see what they've raised. Similarly, in federal court, there's quite an uproar over the Booker case and the effect of that on federal sentencing guidelines, and I've certainly looked at what the Federal Public

Defender's Office has done brief-wise in presenting memoranda, because I've ghost written a bunch of sentencing memoranda since Booker.

Q I get the sense, the nature of your practice, you don't get to spend your days hanging out in court, then?

A No. Except in the law library.

Q People in our business were once known as library rats.

A Yeah, I think that would characterize me.

Q When you discussed the Strickland standard earlier, did you intend to leave out the requirement that the standard be objective?

A Well, certainly. It's reasonable. That's absolutely correct. It's a reasonable standard, and typically -- in one way it's different, say, than medical malpractice is. Courts on review basically look at the record. Whereas in medical malpractice, you have to have an expert come in and say this act fell below the standard of medical care because blah, blah, blah. In fact, if you don't have that, you can't proceed.

Q I'm sorry, I interrupted. We have a couple of types of standards from the objective standard?

A Yes. Then you have the Hill Lockhart variation on what happens when the guy pleads guilty and, of course,

you have the Ebbets v. Lucy and Jones v. Barnes and Smith standard on appeals.

Q One of the sources of an objective standard would be ABA guidelines?

A Yes. The Supreme Court has made that pretty clear from Wiggins.

Q And then in that same Wiggins, they also commented that it was a custom in that jurisdiction in Maryland for lawyers in capital cases to take certain specific actions; is that not right?

A I believe that's correct, yeah.

Q That's what you would mean by an objective standard, one capable of being ascertained externally?

A Yes.

MR. McCARTHY: Your Honor, I object to the question. The question was referencing trial lawyers, and Mr. Cornell has said that he does not get to spend his days hanging out in courtrooms watching trial lawyers perform.

MR. QUALLS: Your Honor, may I address that?

THE COURT: Yes.

MR. QUALLS: May I address it through redirect?

THE COURT: Certainly. You can ask additional questions.

DIRECT EXAMINATION

(Resumed)

BY MR. QUALLS:

Q You testified that you have represented six different capital clients on post-conviction relief; is that correct?

A Yes.

Q And were you appointed on any of those?

A All of them. It's pretty rare to find a capital defendant with money to pay for a lawyer for the kind of investigations and the expenses and so forth that are required.

Q Were you appointed on any of those cases through this department, or can you tell us?

A I don't believe so. Gallego, of course, was Lovelock. Leonard was Carson City. Hogan is Las Vegas. Nika was Department 6 and ultimately Department 7. Petrocelli is Department 7. And the Currington case was Department 3. So no.

MR. QUALLS: I would ask, based upon Mr. Cornell's prior appointments as someone that's qualified under 250 to review the performance of trial counsel and appellate counsel on post-conviction, that he be allowed to give his opinion here today.

THE COURT: Mr. McCarthy.

MR. McCARTHY: Mr. Cornell has extraordinary experience in alleging that lawyers are ineffective. The question is whether he's qualified, based on some special training or experience, to voice an opinion receivable by this Court as to whether those lawyers were effective. I don't doubt he's imminently qualified to allege and attempt to prove that some lawyer did a poor job. But that doesn't make him qualified as an expert witness on whether they actually did a poor job.

THE COURT: I'm going to overrule your objection. I find that the objection goes to the weight that I should give his objective analysis. I will weigh the opinions that this witness gives based on my knowledge and his testimony of his experience.

MR. QUALLS: Thank you, Your Honor.

BY MR. QUALLS:

Q Back to your opinion as to any Strickland errors, any errors of trial counsel that fell below the standard of care, the standard of reasonableness that we've talked about here today. Can you --

MR. McCARTHY: Excuse me. Before Mr. Cornell answers, I guess it's an objection. I ask that the question be limited to errors that are pleaded.

THE COURT: Yes.

MR. QUALLS: Your Honor --

THE COURT: You better ask him if his opinion is as to a nonpleaded error. He has the petition and the supplemental petition. He said he's reviewed --

THE WITNESS: I don't have the petition, but I'm assuming we're going forward on the supplemental petition really anyway, because that's usually how it goes.

THE COURT: Exactly. So if your opinion relates to something that is not in the supplemental petition, then we're going to litigate that before the opinion is given.

THE WITNESS: Your Honor, I think, in fairness, where counsel is going to go with me, is my opinions regarding trial counsel and appellate counsel. And I think what I have to say about trial counsel is pleaded. What I have to say about appellate counsel may not be.

THE COURT: Okay. Then let's start with trial counsel. Don't go into appellate counsel until Mr. McCarthy as an opportunity to be heard on his objection.

THE WITNESS: Very well.

BY MR. QUALLS:

Q Do you remember the question posed?

A Yes. Respectfully, Mr. Gregory and Mr. Bosler were put in a horrible position. They were, as I've read the record, they were believing that they were directed as trial counsel by their client to direct and engineer a defense that they felt was based on fraud, and ultimately it would have to be based on perjury; and they, as ethical lawyers, weren't about to do that. They did exactly what they're supposed to do in that instance, which is to move to withdraw. Of course, their motion was denied.

So now they're in the position of having to try a case that they think or try a defense which they think is based on perjury. And they brought the conflict to the attention of the Court. And I think that the record that they made was quite to the effect that Mr. Vanisi didn't agree to the conflict. Indeed, Mr. Vanisi wanted to represent himself.

So in looking at cases such as Holloway versus Arkansas and Cuyler versus Sullivan, I do believe that they were put into a position of presuming prejudice. I mean they were really put into a box.

Now based on standards, what could they have done to get out of the box based on what I know of this case, I think they could have done this based on case law and well established case law first, and I say this, by the way,

with regard to the interesting catch back that Mr. Vanisi didn't testify. So ultimately they were trying to present a defense that really wasn't based on perjury as it turned out. But they believed going in that that's what was going to happen, apparently.

First off, per Nix and Whiteside, I don't think they had a duty to present a defense that was based on perjury. Second off, per Matthews versus U.S., they could have presented inconsistent defenses. But third off, I think there would have been a way for them to harmonize the two approaches. As I understand it, the defense they would have wanted to run would have centered on Mr. Vanisi's state of mind, whereas the state of defense that Mr. Vanisi wanted to present was an alibi. It was incorrectly referenced as a self-defense defense. I think, as I read the record and what he wanted to do and supposedly told his counsel, was a defense that someone else killed Sergeant Sullivan and he was being unfairly blamed for it.

It would seem to me that the approach that counsel could take per Nix and per Matthews and lower court cases, flushing those out, is he could have taken a two-fold approach: A, what did the perpetrator do? What was in the mind of the perpetrator at the time he acted?

And B, is the defendant that perpetrator? And that way counsel could have argued that the perpetrator was either insane, if not insane, acted compulsively, consistent with a secondary murder. And if the jury found that to be so and rejected the "some other dude did it" quote, unquote defense, they could come in with the result that the trial counsel wanted without compromising what the defendant wanted to do.

By the way, on one of the 30 jury trials I had, I was put in that position, that's exactly what I did. I tried it on a -- it was a case in Department 7. I tried it on the theory that what did the perpetrator do and is the defendant that perpetrator, because I had a case where the defendant was claiming he didn't do it and I thought he was lying to me.

Anyway, it would seem to me, looking at this record, that this, frankly, was an extremely difficult case to defend on any theory. But it would seem to me that what trial counsel would rationally want to do and objectively want to do is to try to present a mental defense in that way so that if the jury came back guilty with first degree, which certainly the jury is going to do if they believed the witnesses who testified that Mr. Vanisi told them before the fact that he wanted to

kill a cop and so on and so forth, at least they would be set for what I would think would be the primary area of arguing and penalty phase which is we've got the sub (2) mitigator statute, or that he was acting under extreme emotional disturbance and so forth.

By virtue of the fact that they defended the case, they couldn't really do that even in penalty. They presented a defense which is no defense. They did no opening statement, no closing statement, no defense witnesses. Minimal cross-examination. Essentially they've sent the message to the jury that our client is plainly guilty of first degree murder and there's nothing to say about the facts of the case. Essentially what they've done is doomed themselves to fail on the sub (2) mitigator by doing that because they've already told the jury there's really nothing to say on the facts of the case.

And when you look at the record, as I understand it, it really comes out. They brought in the one psychiatrist to say that Mr. Vanisi has a bipolar disorder, but they didn't bring out that he was in a manic phase on January 13, 1998, that the mania was exacerbated severely by drug use and that it is treatable.

Now, maybe the psychiatrist couldn't say that.

Knowing what I know of psychiatrists, I have a difficult time believing there's no psychiatrist out there that wouldn't say such a thing.

MR. McCARTHY: I'll object to this witness speculating about how some other witness might have testified.

THE COURT: Sustained.

THE WITNESS: But the point is that they didn't make that record, so they couldn't really fairly effectively argue the sub (2) mitigator, when it seems to me that that's what, that's where they really want to go with this case.

So that's basically my conclusion on trial counsel.

MR. QUALLS: Court's indulgence.

BY MR. QUALLS:

Q As to issues that are raised in the supplement, do you have an opinion as to whether any reasonableness standard, pardon me, as to whether appellate counsel's performance fell below the standard of reasonableness as articulated in Strickland?

A Well --

Q I could be specific if you would like.

A Yes, please. I will say this. The defense

counsel had a terrific Faretta issue, and he was number one to spotlight and emphasize that. I have no quarrel with what Mr. Petty did in that regard, I will say that.

Q What is your understanding, just briefly, of the Faretta area and the impact of alleging a Faretta error?

A If you could prove --

MR. McCARTHY: That particular error was indeed alleged. So further discussion doesn't seem relevant.

MR. QUALLS: This goes to how it was alleged. And, again, as I brought up with Mr. Petty, whether it was alleged as a structural error or not. If you'll recall, Mr. Petty stated his opinion in the last hearing that he didn't believe it was a structural error. So that's where I'm going with this.

MR. McCARTHY: It was alleged to be error.

THE COURT: The Supreme Court has ruled on that. It was alleged as error. You're going to have to lay more of a foundation, if Mr. Cornell wants to say that the Supreme Court couldn't figure out the difference. It's raised as error unless somebody briefs it specifically, then let him say that, then we'll move on, see if it's really relevant.

BY MR. QUALLS:

Q What is your understanding of a structural error?

Let me back up.

A Structural error is one that's not subject to harmless error review. It's one that affects the basic fundamental structure of a trial as envisioned under the Sixth Amendment.

Q And based upon your previous testimony here today regarding performance of trial counsel, do you believe that their shortcoming amounted to a structural error?

MR. McCARTHY: Again, Your Honor. The Supreme Court's opinion on whether it was error at all is what's relevant here, not Mr. Cornell's.

MR. QUALLS: I understand that it may have been plain error, and perhaps the Supreme Court should have sua sponte addressed that, but it wasn't raised as a structural error. So technically they weren't -- that was not an issue before them.

MR. McCARTHY: Your Honor, the Court found no error at all.

THE COURT: I know that. I'm going to sustain the objection. We're wasting time about what the Supreme Court already did. In fact, I remember Mr. Petty saying it even went to the United States Supreme Court on a writ after the -- on appeal after the Nevada Supreme Court ruled on it. So to argue now that somehow it should have

been pled differently and the Nevada Supreme Court would have ruled differently is beyond where we're at.

MR. QUALLS: Thank you, I'll accept your ruling.

BY MR. QUALLS:

Q What about with regards to the McConnell error; that is, that the murder occurred -- it was alleged in the pleading document that the murder occurred during a commission or attempt to commit a robbery, and then, of course, there's an aggravating circumstance found also based upon that same fact.

A Well, I have a two-part answer to that one. I believe, and Mr. McCarthy will certainly correct me if I'm wrong, that there's case law under Strickland that says that we measure the competence of counsel or the performance of counsel based on the law as it existed at the time they were acting as counsel. Now, at the time that Mr. -- at the time this appeal was pending, McConnell was not the law. Petrocelli was the law. And so I mean I have a difficult time, based on the standard, saying that Mr. Petty's failure to raise the McConnell issue fell below the standard, when Petrocelli was the law and that aggravator was good.

Now, can I say in retrospect could he have thought outside of the box like Ms. Bond did on McConnell

in raising the issue? Sure he could have. But you've asked whether that's below the standard for him to ask to overrule Petrocelli in this case. I can't go that far. That's the one hand. Secondhand is, from what I've seen, what he could have done with that is we had -- and I think he could have done this even in the face of Petrocelli, you had the case with three robberies that were charged and convicted. The robbery of Sergeant Sullivan, the 7-Eleven robbery thereafter and the Jackson's Mini-Mart robbery thereafter. He could have said the jury instruction on that aggravator has to make it very clear to the jury that they're not to consider the 7-Eleven robbery or the Jackson's robbery in determining that and the jury's focus wasn't sufficiently narrowed; and he could have raised, I won't call it the McConnell issue, but attacking the aggravator in that way.

Now, there was no objection to that effect, but the beauty of doing appellate work on death penalty cases is that it is the opportunity for you to argue a bunch of plain error, which the Supreme Court will review, whereas they wouldn't review it in another noncapital context. Because all this stuff affects, is directly impinging the Eighth Amendment and so forth. Because of capital murder cases and those serious cases in society, the Supreme

Court will use somewhat of a heightened standard or review, frankly, on those kind of matters.

So in terms of McConnell error, I can't honestly say that Mr. Petty acted below the standard in not making the McConnell argument. I think really it's going to have to be an issue of new rule and so forth as far as the court reaching McConnell now. In other words, what I'm saying, it doesn't mean that the Court can't reach McConnell collaterally, I just, in my opinion, don't think you can reach it on that theory, based upon the standard as I understand it.

Q Let's talk a little bit about, since you've touched on sort of the different way of handling death penalty cases, there's a concept that's used in death penalty litigation "death is different." Are you familiar with that?

A Yes. And yes, it is.

Q Can you explain what that means, particularly in the appellate realm?

A In the appellate realm, yeah, it's usually applied to trial lawyers.

In the appellate realm, it means, in my view, that capital appeals are the most difficult appeals to handle for an appellate litigator just like capital trials

are the most difficult to handle for trial lawyers. And I think why is because of the fact that even if the trial lawyer doesn't object to certain instructions or evidence or whatnot on the penalty phase, you can still raise them as plain error in a way that you can't in a typical noncapital sentencing. In a typical noncapital sentencing, you're limited to evidence that's impalpable or that sort of thing. And you really have a very limited canvas to paint on, so to speak.

Capital cases, on the other hand, if you spot instructions that were bad or inaccurate or misleading, you can raise that as a matter of plain error. If you spot evidence that shouldn't have been admitted but was and was not objected, you can raise that as plain error at the penalty phase, and you will typically get the Court to listen to you and just indicate those kind of issues on the merits.

And what happens then is appellate briefs become extremely difficult, because as you get into that process you'll end up being oversized. Nowadays, with the Rodriguez case in effect, we've got a de facto rule that the Supreme Court is absolutely not going to read anything that's more than 80 pages long. No ifs, ands or buts. There's no rule of appellate procedure that says that.

But these days that's practically how it is. Then you really do have to get into matters of issue selection and issue preclusion, and it becomes extremely difficult. Especially in the capital case, you don't want to mark out the wrong issue.

Q For the record, since you touched on that, the decision limiting the brief to 80 pages, did that postdate the appellate briefs in this case?

A It did. And, in fact, in my Leonard case, I was allowed a 100-page brief. So there was a history of the court allowing briefs larger than 80 pages prior to 2001.

Q For the record, how long was the opening brief, Mr. Petty's opening brief?

A I believe it was 32 pages. I think I have it in front of me if you need me to verify it.

Q In other words, it's clear Mr. Petty didn't run out of room?

A Yeah. In fact, he not only didn't end up out of room, but he included the reasonable doubt argument which is, frankly, a loser. Frankly, my understanding of exhaustive principle, I don't know that you need to raise it in order to be able to allege it in federal court, but that's a different subject.

What I'm saying is, take out the reasonable doubt

instruction argument and you have a 27-page brief.

Q You commented briefly earlier on the Vienna Convention claim. Is that something that you believe should have been included?

A I think it's a right-brained approach. I mean I compliment you with coming up with it. That's an interesting question. To the extent you can make that argument based on the judicial noticeable treaties and conventions and so forth, sure. That could be the kind of plain error you could bring up. If, however, you needed to get testimony from the Consulate for appellate issues, you really want to save that one for post-conviction. But, yeah, if it's based only on the treaty, sure, you can raise that as plain error.

Q You talked a little bit regarding trial counsel and the situation that trial counsel was in.

Regarding, again, the reasonableness standard with regards to Mr. Petty, what about the error regarding trial court refusing to allow trial counsel to withdraw under the circumstances?

A That's an interesting one. The rule is that you can't raise ineffective assistance of counsel-type issues on direct appeal. The exception is where the record has already been made on it and there's nothing more to say.

In this case, frankly, in my opinion, the record was sufficient to where Mr. Petty could have made a Holloway v. Arkansas or Cuyler versus Sullivan type of argument.

As a practical matter, you wonder whether a member of the same office would want to do that. But I think this record falls within the exception. He could have raised that, certainly.

Q Just for the record, could you articulate briefly the --

A As I understand it, Holloway versus Arkansas is a U.S. Supreme Court case from the late '70s and Cuyler versus Sullivan is one that distinguishes it from the '80s, and together they read this way: When counsel is conflicted, when the defendant is being represented by conflicted counsel, there is presumed prejudice. However, to establish presumed prejudice, you have to show that, A, the conflict was brought to the attention of the trial judge during the proceedings, prior to proceedings; B -- so that the trial judge had the opportunity to remedy the conflict. B, the defendant didn't agree to the conflict; and, C, the trial performance thereafter manifests or exhibits the conflict. And I think in this case all three were met just based on the record that was made prior to

these proceedings being instituted.

So it's an issue he could have raised, if that's what you wanted me to say.

Q Does it fall below the standard of reasonableness not to raise it?

A Well, you know, it's difficult to say that. In appeals only, because my take on IAC on appellate counsel, particularly from Ebbets and Smith and then Nevada Supreme Court's Hudson, as you're doing a backward view on, did you raise the issue or you didn't? Well, you didn't. Is that below the standard? Only if it's a winning issue. If I talk about whether or not it's a winning issue, then I'm going in violation of the judge's ruling because only the judge can determine whether it's a winning issue or not. See what I'm saying?

Q I understand that. Let me say it differently or have you articulate a different explanation, which is, in your understanding, is there a result for the failure to place an issue such as that in an appeal to the highest state court, which would be the Nevada Supreme Court here, what is the result of that going down the line?

A Well, the result is if it turns out it was a winning issue better than anything you raised, you'll be found ineffective on appeal, I guess. Does that answer

your question?

Q What about in the federal system?

A Same thing, they're going to be bound by the same standard of review.

Q Is there an exhaustion problem?

A In the sense -- yes, in the sense that if you don't raise the issue on direct appeal and you don't federalize the issue on direct appeal, although you would in this case because Cuyler and Holloway are clearly U.S. Supreme Court cases -- but if you don't raise it and you don't exhaust it as a federal issue, then you've got to come back in post-conviction and say appellate lawyer was ineffective in not raising this issue under the Sixth Amendment in order to exhaust it so you could move forward with it in federal court and get the federal court to determine on its merits.

Q I forgot to ask you one question. I'll ask you to back up a little bit on the McConnell issue. You spoke of sort a limiting jury instruction. Was anything of that nature presented in this case?

A From my reading of the penalty transcript where the jury instructions were read, it doesn't appear that it was.

Q What about any type of challenge, Eighth

Amendment challenge, to the death penalty? Is that something that's standard in an appeal in a capital case?

A Well, not anymore, because if what you mean is an appellate litigator trying to convince the Nevada Supreme Court to hold that the whole statutory scheme is unconstitutional, I mean, that's a dead bang loser. They're not going to go there. That's as big a loser as the reasonable doubt instruction, frankly. If what you mean, though, is having the Supreme Court do a proportionality type of analysis, well, they used to do that by statute. And they say they don't anymore. But in a sense they really do. If you've got something in front of them that causes them to look at the aggravators, the mitigators, the aggravating 175.552 evidence and the mitigating 552 evidence in order to determine prejudice, they will certainly do that. So they will do, I guess you could say, the proportionality review that way. I don't know if that answers your question or not. But that's the best answer I can give.

Q Again, is there a potential exhaustion problem if that's not raised?

A My opinion is no, because my opinion is if you don't raise an issue that's a dead bang loser, you don't have to in order to be able to use it. In federal court,

when you are representing somebody on capital appeal, just as when you're representing certain noncapital people on appeal, who you know are going to take this on to federal court, you really do have to look at this with an eye towards what's going -- avoid a motion to dismiss by the attorney general in federal court.

So I really do think that appellate litigators in capital proceedings have to look at it that way, and I would go so far as to say that would be amongst the standards. NACDL lectures on this, and ABA lectures, they'll tell you that. So anyway, but my opinion on your question is, no, I don't think that issue would necessarily have to be raised because I think you could show the federal court that that would be so clearly rejected, just like the reasonable doubt instruction attacked, that you don't waste the state court's time with that. If I was the appellate litigator and it was a choice between that and some other frivolous noncolorable issue, I would definitely pick the nonfrivolous, noncolorable issue.

Q That really wasn't the case here, was it?

A With 32 pages, he didn't have to worry about that, per se, if that's all there was to say on appeal.

Q Court's indulgence for one second.

Just a couple more issues, Mr. Cornell. What's your opinion regarding the failure to raise an argument concerning the District Attorney's constitutionally broad authority to select which cases the death penalty is sought in?

A Same as the other opinion. I think it would be summarily rejected by the Nevada Supreme Court, such that I think you could raise it for the first time in federal habeas and get around the exhaustion.

Q You believe it's a meritorious argument?

A Well, I don't know. I mean, maybe I have to back up on that. It wouldn't necessarily be a frivolous argument. But if you raised that, I would imagine that the DA's Office would want to have an evidentiary hearing where they would show how they staff cases and how they determine what cases they're going to seek the death penalty case on and which cases they're not. And with that showing I don't know that you could just raise that argument flat out. But then, again, if you can't raise that argument flat out, then that's an attack that the trial lawyer has to make so you have that kind of evidentiary record to talk about.

Q All right. Let's go forward with this. Was there anything that you saw, any errors that you saw that

should have been raised on direct appeal that were not included in the supplement?

A Yeah.

MR. McCARTHY: I object.

MR. QUALLS: Upon what grounds?

MR. McCARTHY: As soon as the Court asks, I'll tell her.

THE COURT: Go ahead.

MR. McCARTHY: Your Honor, the petition establishes the parameters of this hearing. It is the lawsuit. It is very specific. It's quite voluminous. And to ask is there some other basis upon which someone else might maintain a lawsuit is irrelevant.

THE COURT: Counsel.

MR. QUALLS: Your Honor, pursuant to Krump versus Edwards --

THE COURT: Cite?

MR. QUALLS: I probably don't have --

THE WITNESS: 113 Nevada 293, does that help?

MR. McCARTHY: Dang, you're good.

(Laughter)

THE COURT: I knew he would give it to me.

THE WITNESS: A familiar cite to me.

MR. QUALLS: Mr. Edwards and myself are subject

to claims of ineffective assistance and Mr. Vanisi is entitled to effective assistance.

Given that, I don't think it's unreasonable for Mr. Cornell to give an opinion at this time as to what possibly we should have raised as well.

MR. McCARTHY: If I ever see a petition alleging that Mr. Edwards or Mr. Qualls were ineffective in this case, I will respond to it. To date there isn't one.

MR. QUALLS: That's true, Your Honor. I'm just trying to make a record.

THE COURT: That's the extent of your record?

BY MR. QUALLS:

Q As far as other issues that should have been, Mr. Cornell is here to give us an opinion as to the areas, the claims that should have been raised by Mr. Petty that were not under the Strickland standard. I believe he can go outside the realm of our supplement based upon current --

THE COURT: Objection sustained.

MR. QUALLS: No further questions.

Oh, I misspoke. One second.

Your Honor, I apologize. I have missed one of the claims that were actually included in our supplement, if I might question Mr. Cornell as to that.

THE COURT: Okay.

BY MR. QUALLS:

Q In Claim No. 9, it's raised -- did you review claim No. 9?

A I'm sure I did. Although not to the point where I'd say, oh, yeah, I know exactly what you're talking about. Let me take a look.

Q It's an error regarding the International Covenant on Civil and Political Rights?

A Oh, yeah.

Q Are you familiar with NRS 213.085?

A Oh, yeah, I sure am. Yeah. That's the statute that was enacted in 1995 that did away with the Pardon Board's ability to commute a life without or death sentence. Very familiar with it.

Q Just to clarify, that's your understanding of the 213.085?

A Yes. The way it's been interpreted since then is the Pardons Board would still have the ability to take somebody who was sentenced to death or life without and commute it to time served or to grant an out-and-out pardon. In fact, I think the probability of any of that happening is a snowball in hell, but theoretically they have the ability to do that, but what they can't do under

the statute is commute a life without or death sentence to life with possibility of parole.

Q And so then is Claim No. 9 something that should have been raised on direct appeal?

A Yeah, because, if I'm understanding correctly, Claim 9 is talking about International Covenant on Civil and Political Rights that has to do with the body of international law that's applicable to the states on taking, you know, on not being permitted as a matter of international law to take away the ability to commute. And this statute absolutely does that. Now, that raises an interesting question.

MR. McCARTHY: Your Honor, I'd ask that Mr. Qualls ask the questions.

THE COURT: The objection is that there's no question before you, Mr. Cornell. Sustained.

THE WITNESS: All right. So your question is, is that the kind of thing that could have been raised? Yes.

THE COURT: Mr. Cornell, you have to wait until he asks you another question.

BY MR. QUALLS:

Q Mr. Cornell, does that raise any additional questions.

A Am I permitted to answer that one?

THE COURT: Yes, go ahead.

THE WITNESS: Raises an interesting question: What is the remedy of the court on direct appeals, that it can take in that instance. I mean is the remedy to strike the death penalty and the life without penalty and mandate that the Court give life with the possibility of parole? Or is it a remedy directed to the Pardons Board saying: If you ever accept this guy's application, you gotta hear him, notwithstanding the statute? That's an interesting question. I don't know about that. Sorry about that. My apologies.

BY MR. QUALLS:

Q Based upon all that, did it fall below the standard of reasonableness not to include that in the direct appeal?

A I think it's a nonfrivolous argument. And the standard of appellate counsel is to raise nonfrivolous arguments within the parameters of the allowable law. I think it's a nonfrivolous argument that could have been raised. So in that sense I would say so.

MR. QUALLS: Thank you. Now no further questions, Your Honor.

THE COURT: Counsel.

CROSS-EXAMINATION

BY MR. McCARTHY:

Q Did I understand you to say that the standard is counsel must raise all nonfrivolous arguments?

A Not precisely. Perhaps I need to clarify. Counsel clearly has no duty to raise frivolous arguments. What counsel is supposed to do is winnow out weak arguments and concentrate on strong arguments. So that's the duty. That's the duty.

Q Can you tell me, then, how the mental process by which other appellate practitioners in the community make that decision, how they winnow out and select issues?

A Well, given it's a reasonable standard, I don't really know that I can. And that, like I said before, that's the problem with talking about effective assistance of appellate counsel. To get ineffective, you have to show it's a winner, and only the judge can determine that.

Q You would also have to show that it was unreasonable to raise the argument, am I correct?

A Sure. It's almost like a tail wagging the dog type of standard, basically.

Q And objectively unreasonable?

A Sure, if it's a winning argument.

Q Is there, to the best of your knowledge, any

objective standard to aid appellate lawyers in deciding what arguments to raise on appeal?

A Do you mean in terms of what appellate lawyers can glean from cases like Jones versus Barnes and the like?

Q Let's start with that. And Jones versus Barnes has a local equivalent of Hernandez?

A Hernandez. Yeah. You are to -- the Supreme Court of Nevada certainly has made it very clear that with capital litigators, they don't want these briefs that bombard them with 30 issues and take up an extraordinary amount of time. They certainly believe that a good effective appellate brief in a capital case can be written in 80 pages or less. Frankly, I mean that's what they say.

Q You mentioned Jones versus Barnes. In that, didn't the Court reference a Law Review article by Justice Jackson advocating that same approach?

A Yeah. And I mean in fairness, what are you doing? Well, you're trying to win, of course; but, secondarily, you're trying to put on the best dress rehearsal you can for the play sometime down the road in front of the Ninth Circuit. And as a practical matter they're not going to let you go over 75 pages except in

extraordinary cases.

Q What is the object of an appeal to the Nevada Supreme Court? Is it to obtain relief for your client?

A Certainly. That's your first and foremost.

Q By phrasing your claim such as denial of a motion, in federal terms or in state terms, when before the Nevada Supreme Court, in your experience does it in any way change the likelihood that the Nevada Supreme Court will or will not grant relief?

A In my opinion, and I hope a bunch of federal judges are reading this testimony some day, no. It doesn't matter that you cite chapter and verse to the Federal Constitution or not, in my opinion.

Q So the purpose of raising a claim in federal terms would be to have some later effect in a federal court?

A Yeah.

Q But it would not affect your ability to obtain relief in the Nevada Supreme Court?

A As a practical matter, no, in my opinion it wouldn't, because, if I can give you an example, suppose you're litigating a statute of limitations issue. It's a state law claim, but if you win you get the ultimate victory: Your client goes home uninhibited by further

proceedings. You do not have to cite to the federal court chapter and verse or the state court about the Federal Constitution to win your statute of limitations attack. To then come back in federal court later and say, oh, you didn't cite to the Federal Constitution, therefore we can't hear this, in my opinion is ludicrous.

Q You mentioned earlier the Cuyler versus Sullivan discussion of conflicts of interest.

A Right.

Q Is it your understanding that a conflict of interest exists when a lawyer is actively representing competing interests?

A Right.

Q If a lawyer feels hampered in some other way, does that constitute a conflict of interest, as far as you know?

A Well, that's a good question. And I'm sure that's the argument you're going to make, that, you know, wait a minute, just because a lawyer comes in and says he has a conflict, does that really, does that really meet the Cuyler standard? Interesting argument. I can say yes, you can say no, and a judge will give us the answer some day.

Q Is there some objective standard that would

require a lawyer to suggest to the Nevada Supreme Court that the Cuyler standard while competing interests is wrong?

A I'm not sure if I'm understanding your question right. Here's what I can say: If the lawyer can show that he's being asked to do something that's in violation of the Supreme Court rules on ethics, then certainly he's met the burden. And I would think that would be met here, particularly on this record when Mr. Gregory went so far to talk to Mr. Bare about his situation, and Mr. Bare said you have to move to withdraw. I think it would be met.

But in a different case, where -- in a different case I could see a different result, let's put it this way.

Q Were you aware when forming your opinions that Siaosi Vanisi told his lawyers he had many defenses and he would not reveal to them what defense he intended to use?

A No, I was not. I was only aware of what Mr. Gregory represented to the Court and what Mr. Petty later represented to the Court.

MR. McCARTHY: That's all for me.

THE COURT: Anything further?

MR. QUALLS: Two quick ones, Your Honor.

REDIRECT EXAMINATION

BY MR. QUALLS:

Q Isn't it true that if an appellate lawyer raises an issue to the Nevada Supreme Court under the Federal Constitution, as a violation of federal constitutional rights, Nevada Supreme Court must then follow federal law in deciding that issue?

A Sure.

Q So from that standpoint it does make a difference, correct?

A Yes.

Q Do you have an opinion as to whether an appellate lawyer should kowtow to the way things are as opposed to the way the law is written and should be?

A Yes.

MR. McCARTHY: Your Honor, I think I'll object because the question asks whether a lawyer ought to kowtow, as I understand it. And the proper question would be whether there's some objective standard that requires a lawyer to take certain action.

THE COURT: Are you objecting to the form of the question?

MR. McCARTHY: Your Honor, whether --

THE COURT: Do you understand what the question

named Mr. Siaosi Vanisi?

A Yes.

Q Was that in a trial that took place in this court in 1999?

A It was.

Q And you worked for the Public Defender at that time?

A Yes.

Q Are you still employed there?

A No, I am not. I retired as of the first week of January of this year.

Q Congratulations.

A Thank you.

Q Was Mr. Vanisi -- well, Mr. Vanisi's trial was a capital trial, correct?

A It was.

Q And was this your first capital case?

A No.

Q And how long had you been qualified under Supreme Court Rule 250?

A For years. I can't give you the date.

Q Long before Mr. Vanisi's case?

A Yes.

Q So you had experience litigating capital trials

prior to this case?

A Yes.

Q In cases that actually proceeded to trial?

A Yes. Both as a prosecutor and as a defense attorney.

Q How long had you been doing defense work before 1999? Long time?

A Yes, 15 years.

Q And you had many jury trials, I assume?

A I had.

Q In this case you had co-counsel to assist you?

A I did.

Q And who was that?

A Well, actually when the case started, Mike Specchio was lead counsel and I was supporting him. After the mistrial, I took the case over, and Jeremy Bosler was my co-counsel.

Q So you were lead counsel by the time --

A I was indeed.

Q -- of the second trial?

A I was.

Q That was the trial that resulted in a guilty verdict and a death sentence?

A Yes.

Q And did you have support resources like investigators, paralegals and the like to assist you?

A I did.

Q And did you also have the assistance of your appellate division within the Public Defender's Office to consult regarding legal issues?

A Yes.

Q And did you in fact make use of that throughout the course of your representation?

A We did.

Q Do you recall how many hours you ended up working on this case, Mr. Gregory?

A No, I do not.

Q If I represented to you that the Supreme Court Rule 250 memorandum that you offered after the trial shows that you worked in excess of 500 hours on this matter, would that --

A That would be accurate.

Q Okay. Let's talk about the case. Aside from the trial itself, did you review the discovery in the case?

A Yes.

Q And did you meet with Mr. Vanisi?

A Many times, yes.

Q Can you tell us approximately how many times you

met with him?

A I met with him once or twice a week from the time I got on this case, I believe.

Q And did you review the discovery in this case with him?

A Yes.

Q Took it up to the jail with you?

A Always had a file with me, yes.

Q What kind of relationship did you establish with Mr. Vanisi?

A I think I established a good relationship with him.

Q Did there ever come a time that that changed?

A No.

Q Did you make an assessment of Mr. Vanisi's mental health at the time leading up to the trial in this case?

A Did I make an assessment?

Q Yes.

A Or did I have someone make an assessment?

Q Well, both.

A Yes to both.

Q And on what basis did you make this assessment? On the basis of actions of Mr. Vanisi? Did you have him examined?

A We had him examined before the first trial.

Q And what kind of results did you get from that?

A We were told that he was competent to stand trial.

Q Did you ever witness Mr. Vanisi engage in any bizarre behavior during the course of your representation?

A Did I witness it?

Q Yes.

A I would say no.

Q Were you able to communicate effectively with him?

A Most of the time. Sometimes he'd get off track, but most of the time, yes.

Q And did he seem to understand what you were telling him?

A Yes.

Q So at the time you proceeded to trial, did you have any concerns about Mr. Vanisi's competency, mental competency to proceed?

A No.

Q Did you ever consider a defense theory of not guilty by reason of insanity?

A No.

Q Why not?

A It wasn't the law.

Q Are you telling us that the law didn't exist at the time that this case proceeded to trial?

A That's correct.

Q So that legal defense wasn't available to defendants in Nevada?

A No.

Q What defense strategy did you develop relative to the guilt phase of the trial in this case, not the first trial, but the actual one that proceeded to completion?

A Ultimately?

Q Yes.

A Because we had an ethical conflict, it was a very limited defense. In my opinion it was about as weak a defense as could have been provided to him under the circumstances.

Q What was the defense? What was the defense theory?

A Our theory?

Q Yes.

A It was based on a self-defense. His theory was someone else did it.

Q What was the theory that was pursued during the trial from the defense perspective?

A All we could do as far as questioning the State's witnesses were to ask questions that suggest that maybe their credibility might be in doubt as far as their observations. That was it.

Q What evidence did you plan to present during the guilt phase of the trial?

A The attorneys?

Q Pardon me?

A The attorneys or Mr. Vanisi? See, there are two different things happening here.

Q There was a defense strategy I imagine at one point, right; before trial commenced you settled on what you would do and could do to defend Mr. Vanisi during the guilt phase, correct?

A Yes.

Q And I just want to know what that was, what that strategy was.

A Again, just to establish that a witness' perceptions were maybe incorrect, that sort of thing. That's all we could do as to each witness. We couldn't suggest our defense and we couldn't support what we knew to be a false defense.

Q So your hands were tied in terms of what you could present; is that what you're saying?

A That's correct.

Q Let's get into that. Why did this come about?

A Mr. Vanisi admitted to us that he had committed this murder under circumstances that suggested that there might be a self-defense, based on what he had said to us. However, he refused to allow us to put on this defense, insisting that his preference was to put on a defense that someone else had committed the crime.

Q Was that his decision to make or yours, as counsel in the case?

A What decision?

Q About what defense would be presented.

A Well, as far as how far we as attorneys were going to go, it was my decision.

Q And on the basis of this disclosure by Mr. Vanisi to you, did you --

A He also made it to all of us I believe, to Mr. Specchio, and also in writing.

Q And as a result of that, did you file a motion to withdraw from representation in the case?

A We did indeed.

Q And what was the basis of that motion?

A That we had an ethical conflict with Mr. Vanisi representing him.

Q Had you been in consultation with the bar counsel from the State of Nevada Bar?

A We had.

Q And presented this ethical issue to him?

A We did.

Q And what was the advice you were given?

A We were told to get off the case immediately.

Q And I assume you then filed the motion to withdraw from the case?

A We also contacted the task force for the National Association for Criminal Defense Lawyers for their assistance, and they put us in touch with an attorney who advised us to get off the case immediately.

Q Can you tell us what the legal basis for your motion to withdraw was?

A That there was a conflict between our ethical obligation and what Mr. Vanisi wanted to do.

Q And your ethical obligation you're referring to is the one not to present the defense he had chosen?

A Not to -- yes. Let's put it this way: Not to present a fraud to the court.

Q By having him testify or present evidence contrary to what he told you in the past?

A That's correct.

Q And you discussed this at length with State Bar counsel?

A Yes.

Q Was there any equivocation there about what you should do?

A No.

Q And, well, what happened? If you had such a large ethical conflict that you ended up going to trial in this case, tell us what happened.

A Again, it's back to your question about what we did. We were limited to just very shallow questioning of any witness that was presented, to try to avoid either a conflict with his intended defense or presenting an impression to the jury of a false impression to the jury through our own defense.

Q Somewhere in the record you've referred to your representation as being a bump on a log during the trial. Does that ring a bell with you?

A Yes.

Q Did you feel like that?

A Yes.

Q Did you feel like you could effectively represent Mr. Vanisi?

A No.

Q You didn't present an opening statement to the jury during the guilt phase; is that correct?

A That's correct.

Q And you didn't present a closing argument either; is that correct?

A That's correct.

Q You didn't present any physical evidence or witnesses during the defense case in chief during the trial phase; is that right?

A That's correct.

Q And would it also be fair to say that your cross-examination of the State's witnesses to the extent it took place was very limited?

A Very limited, yes.

Q And there were some witnesses that weren't examined at all by you or Mr. Bosler; is that right?

A That's correct.

Q So how was the State's case put through the crucible of adversarial testing? Have you heard of that phrase?

A Yes.

Q How was the State's case tested?

MR. McCARTHY: It seems to call for a long restricted narrative for several days.

THE COURT: With regard to broadness, I'll sustain the objection.

BY MR. EDWARDS:

Q During your representation of Mr. Vanisi, Mr. Gregory, did you become aware that he was a citizen of the Nation of Tonga?

A Early on, yes.

Q Were you aware of the provisions of the Vienna Convention on Consular Relations?

A No.

Q Did you have any contact with Mr. Vanisi regarding his citizenship and diplomatic status or status as a noncitizen in this country, I should say?

A Did I have conversations with him?

Q Yeah.

A No.

Q So you were just aware that he was from Tonga?

A Well, I believe we contacted the consulate early on.

Q You believe you contacted the consulate early on?

A I believe they were contacted.

Q You personally or someone --

A No, no. I believe it was Laura Beelser.

Q So that's nothing you have firsthand knowledge

about, right?

A That's correct.

Q You personally didn't have contact with Tongan diplomatic authorities?

A I did not.

Q While on this topic of international law, were you aware at the time of your representation with Mr. Vanisi of the provisions of the International Covenant on Civil and Political Rights?

A No.

Q What was your strategy during the sentencing phase of the case?

A To present as much mitigation evidence as we could.

Q And where did you get this mitigation evidence from?

A All over. We had our investigator locate family members, people that knew Mr. Vanisi when he was in high school, his bishop from his church. Just as many witnesses as we could locate that we thought was relevant.

Q So did you feel like you were able to help him during that phase of the proceeding?

A Yes. I feel we presented as much mitigation as we could.

Q Certainly able to render a lot more assistance than you were during the guilt phase?

A Absolutely.

Q Did you consult a mitigation specialist regarding capital crimes?

A No.

Q But would it be fair to say that somebody, either you or someone on your staff, had thoroughly researched Mr. Vanisi's upbringing and his past history before the crime?

A Yes.

Q And that's where these witnesses came from that you presented during the mitigation phase?

A Pardon me?

Q That's where you gained knowledge of these witnesses that you presented during --

A That's correct, yes.

Q One of the aggravating circumstances put before the jury and which the jury found was that the murder occurred in this case during the commission of a robbery, do you recall that?

A Yes.

Q Is it true to the best of your recollection that your client was, Mr. Vanisi was also charged in the guilt

phase of the case with felony murder?

A That's correct.

Q And that is in that he committed the murder in the course and furtherance of an armed robbery?

A That's correct.

Q Did you perceive any problem with basing this aggravating circumstance in this capital prosecution on a felony upon which the felony murder was predicated? I know that's a complicated question.

A No, it's not complicated. No, I didn't see any legal problems. We had done some research. There were no legal problems that I know of at that time.

Q As far as you knew the State was allowed to charge felony murder and then use that same --

A As an aggravator.

Q -- that same felony as an aggravator?

A That's correct.

Q Are you aware of the McConnell decision by the Nevada Supreme Court?

A The one that came down the last few months?

Q Yes. It's not very old.

A Yes. Vaguely aware of it.

Q I think it came out of your office. I don't know whether you were there at that time.

A Well, I don't know if I was there when the decision came down. But I believe the case stands from the proposition you cannot use a felony murder as an aggravator.

Q Right.

A Yes.

Q Was there any consideration about challenging this beforehand in Mr. Vanisi's case?

A Well, like I said, legal research was done and the law seemed to be settled. So beyond that, I don't know. You'd have to ask Mr. Petty.

Q Mr. Petty handled the appellate issues and things like that in this case; is that right?

A He does indeed, yes. He did indeed.

Q Was there a time that Mr. Vanisi attempted to fire you and represent himself?

A Yes.

Q What happened there? How did that come about?

A We refused to -- we told him that we would not put on his requested defense. We refused to aid him in any way in that regard. And he wanted to represent himself.

Q Was that after you moved to withdraw from the case or probably before, huh?

A Yeah, it was before, I'm sure. I don't know how many times we moved to withdraw. But...

Q In the course of this motion to withdraw, you disclosed to the Court the admission that Mr. Vanisi made to you or your office, right?

A That's correct.

Q Was that disclosure, was that provision of the statement to the Court in your motion done with the approval of State Bar counsel?

A Yes.

Q That was upon his recommendation?

A Yes.

Q What did you advise Mr. Vanisi regarding his right to testify in his own behalf?

A Well, we advised him that he could make a statement if he wanted to without our assistance.

Q During the penalty phase? Are you referring to like allocution, the right of allocution?

A Yes, I think that would be fair to say, yes.

Q Do you have any recollection regarding what you would have advised him about his right to testify during the guilt phase of the case?

A Other than the fact that we told him he could testify if he wanted to.

Q Did you tell him --

A But, again, we were not going to assist him in telling this Court a lie or this jury.

Q Did you provide him with any advice about that statement that he had made to you, admission about committing a crime, right?

A Yes.

Q Did you tell him whether or not it would be used against him if he chose to testify in his behalf?

A I don't have an independent recollection, but I'm sure I did, that he would be impeached.

Q With that statement?

A Oh, no, not with the statement he gave to us, no. Because that was not disclosed. The State would not know about it.

Q Do you know whether the State ever received the statement?

A No.

Q No, meaning they didn't or, no, you don't recall?

A Well, I believe we made our motion to withdraw, and subsequent to that the Court unsealed that particular record and gave it to the State so they would have known. They would have known that that admission had been made.

Q And that unsealing took place prior to the

commencement of the trial?

A I believe so.

Q So the State was in possession of that?

A They were. I'm sorry, I misunderstood you. I thought you had implied we had given it to the State.

Q No, oh no.

So it was likely, is that what you're saying, that you would have advised Mr. Vanisi that now that the State had the admission, if he chose to testify in his own behalf, he would be impeached with that?

MR. McCARTHY: That's a little leading, Your Honor.

THE COURT: It is leading. Sustained.

BY MR. EDWARDS:

Q Did you --

THE COURT: Counsel, I'm a little confused and I don't know if the witness is. I'm confused about which motion to withdraw you're talking about and which statements made by Mr. Vanisi, because there were several sealed transcripts and some have never been unsealed. So maybe best to make that clear.

MR. EDWARDS: We have a sealed transcript of June 23rd, 1999. These were unsealed -- everything was unsealed pursuant to a motion of mine, Your Honor.

THE COURT: Well, the latest order unsealed it. But your question implied that it was unsealed some time ago and before trial.

MR. EDWARDS: Yes, Your Honor. There is evidence in the record that in fact took place.

THE COURT: Not all of the hearings held outside the presence of the jury were unsealed prior to trial, and so I'm asking you to make it clear which one you're talking about so the witness knows what you're talking about when you say the State had something. Some of it was not unsealed even at appeal, as I understand it.

MR. EDWARDS: If I could have a moment, I'll point you to the portion of the record.

THE COURT: That's probably the best way to do it.

MR. EDWARDS: Your Honor, is there anything that hasn't been unsealed, as far as you know?

THE COURT: Well, I think your question was asking a historic question, about what was unsealed prior to trial, and there were items unsealed at trial. They were still in a sealed condition. Pretrial hearings that were held in camera that the State was not present, and those transcripts were not unsealed prior to trial.

MR. EDWARDS: Okay. Your Honor, what I was

referencing --

THE COURT: Now you all received a complete record, as I understand it, sealed and unsealed, when you began representing Mr. Vanisi. But I'm just -- the State hasn't received all of that. Now, in the latest order I refused to seal your petition. I unsealed your petition. And I refused to seal these hearings. But that order in and of itself did not unseal any previously sealed documents. The discussion of those sealed documents in your petition may make it necessary for me to unseal those. But right now there's been no order entered other than on petition.

MR. EDWARDS: Your Honor, I think Mr. McCarthy and I entered into a stipulation early on in this case, I'd have to look back, providing for sealed information to both of us.

MR. McCARTHY: And I assume we did. But I think the two of you and the Court and my friend are talking about different things.

THE COURT: Right. We are. I'm talking about the historical. Just because we unsealed it, you started representing him and got everything, doesn't mean that Mr. Gregory, it was unsealed when Mr. Gregory was representing Mr. Vanisi.

MR. McCARTHY: Just a second, Your Honor.

MR. EDWARDS: Okay, Your Honor, I think we can clarify this whole issue now.

On August 26, 1999, the Court conducted an ex parte hearing in camera regarding the motion to withdraw.

THE COURT: Which motion to withdraw?

MR. EDWARDS: Well, a motion to withdraw in which -- this was the day -- let's see. This was the one that was supported by affidavit, Your Honor. I don't have the motion sitting right here in front of me. But there was a motion to withdraw.

What the record reflects is that Mr. Gregory, talking to the Court, "Pursuant to Supreme Court Rule 172. We made an ex parte motion to withdraw supported by affidavit. Subsequent to filing this motion, this Court deemed it necessary to share that information with the State."

And that's what I'm referring to.

August 26, 1999.

MR. McCARTHY: In that case, Your Honor, if we're discussing Mr. Gregory's understanding of what this Court said, then it's hearsay. I suspect the Court made the prosecutor aware of the existence of an ex parte motion, but if the question is to this witness what did the Court

tell the prosecutor, it's either lack of personal knowledge or hearsay or something.

THE COURT: I don't understand. Are you asking him if the Court outside the presence of the court reporter disclosed something?

MR. EDWARDS: No, Your Honor. There was a motion made by affidavit by Mr. Gregory. He says it here on the record. He made a motion to withdraw by an affidavit.

THE COURT: But this August 26, 1999 transcript was sealed, and it's my understanding that Mr. Gammick was excused from the room.

MR. EDWARDS: Yes. Mr. Gregory says on the record, line 21, page 2, "This Court deemed it necessary to share that information with the State." This is prior to trial. I'm asking, clarifying, I guess, with Mr. Gregory what that information was, that this Court deemed necessary to share with the State.

THE COURT: I don't --

MR. EDWARDS: You don't get it?

THE COURT: No, because the Court didn't share anything with the State. So I don't know what we're talking about. And I have to read the whole transcript, and I think if Mr. Gregory reviewed the transcript and knows where you're at, then I don't necessarily have to be

with you, if Mr. Gregory knows what was going on on that transcript.

THE WITNESS: I do not, Your Honor, I'm sorry.

THE COURT: Hand him the transcript. Maybe he'll remember.

MR. EDWARDS: I'll be glad to, Your Honor.

THE COURT: This is page 2 of that August transcript.

MR. EDWARDS: August 26, 1999, page 2, line 21.

BY MR. EDWARDS:

Q Mr. Gregory, have you had an opportunity to look at that portion of the transcript?

A I have.

Q Can you tell us what you were referring to when you said the Court deemed it necessary to share that information with the State?

A Having read the entire paragraph, it appears that Mr. Stanton had made an argument of some sort indicating that Rule 172 did not apply under the circumstances and it suggests that the State had knowledge of the contents of our affidavit and our motion. I don't know that they did, but it certainly suggests that.

Q And you said the Court deemed it necessary; is that right?

A Well, if you wish, I'll read the entire paragraph.

Q I'm just asking for clarification, if there's anything you can provide us to tell us what you meant by that.

A It appears that I was suggesting exactly what you believe I was suggesting, that the Court had indeed shared information regarding our conflict with the State, and that Mr. Stanton, who was lead counsel, had made an argument against the application of Supreme Court Rule 172.

Q Thank you.

MR. McCARTHY: In which case I object. You're asking for this witness to speculate now about what he meant then when he was describing what the Court did. I don't know how many objections I have, but I make all of them.

THE COURT: I don't understand. I thought you were asking the witness about something that was unsealed. If you're asking the witness now if he remembers if there was an allegation of the Court somehow outside the presence of counsel disclosed something to the State, then he has no memory of what it was, the objections would be sustained. If that was your question. I thought you were

asking a question about the unsealing of that affidavit in a formal method.

MR. EDWARDS: I don't know how it was done, Your Honor.

THE COURT: Well, it wasn't done. What happened was he stood up and he said he had a motion; they had to be off the case. Mr. Stanton figured out what rule that applied. But there wasn't any disclosure to anybody. And it's my memory nothing was unsealed. That's what I was asking you about, was something unsealed.

Do you remember anything being officially unsealed?

THE WITNESS: I do not.

THE COURT: Go on.

BY MR. EDWARDS:

Q Do you have any recollection in your conversations or dealings with either Mr. Gammick or Mr. Stanton that would indicate they were aware of this admission by Mr. Vanisi to you?

A I don't recall any conversations.

MR. EDWARDS: No further questions, Your Honor.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. McCARTHY:

Q Thank you, Your Honor.

Mr. Gregory, in addition to your other duties, you were at the Public Defender's Office assigned to the ECR program; is that right?

A That's correct.

Q What's that?

A The Early Case Resolution program.

Q And in that capacity you spent a lot of time in the county jail?

A Daily.

Q Did you get any special accommodations from the county jail because of that?

A Yes.

Q Like what?

A Well, I have free access to the entire jail.

Q Without being noted on a visitors log?

A Oh, yes.

Q And if you brought someone with you, for instance, Mike Specchio, could he also access the jail without being noted --

A He could go through with me, yes.

Q When you contacted bar counsel and the NACDL for

their advice, they advised you to make an effort to get off the case, right?

A Told us categorically to get off the case.

Q Did they suggest what you ought to do if that effort was not allowed?

A We had to avoid -- I don't specifically remember them suggesting anything. I believe it was State Bar counsel that if we were forced to proceed, we had to avoid the potential conflict at all costs.

Q Did you receive any advice that you should avoid undercutting your clients' proposed defense?

A Yes.

Q As you prepared for trial and as you conducted the trial, did you know from Mr. Vanisi how he proposed to defend?

A Generally, yes.

Q Did he tell you he proposed to testify that through his theory that somebody else did it?

A Yes.

Q Did he also suggest to you that there were other defenses that he wasn't telling you what they were?

A Yes.

Q Did he suggest to you how many other defenses he might have?

A I don't recollect, I'm sorry.

Q Multiple?

A Multiple, yes.

Q And your advice was to not -- the advice you received was to not, by your cross-examination, undercut whatever secret defense he may propose to present later on; is that right?

A That's correct. Or bolster, for that matter, or help those defenses.

Q I suppose I may ask a stupid question. Does that make it any easier to defend Mr. Vanisi?

A No, it makes it much more difficult.

Q Impossible?

A Well, he set the parameters, so we did what we could.

Q Did you ask him to please divulge to you the nature of his proposed defense?

A Many times, yes.

Q Would "beg" be too strong a word?

A Plead, maybe.

Q Plead. And your pleadings were without avail?

A Without avail.

Q You arranged for a psychiatric evaluation of Mr. Vanisi before trial, right?

A That's correct.

Q You mentioned you got a report indicating that he was competent?

A That's correct.

Q That same doctor opined that your client was also sane?

A Yes.

Q Did you have any other evidence available that would have encouraged you to look at the defense of insanity?

A No, I think we were satisfied.

Q Did you ever discuss with your client, Mr. Vanisi, his relatively bizarre behavior within the jail and the prison?

A I believe we discussed incidents as they occurred.

Q Did he ever say to you anything that he was just doing it for the fun, to annoy his jailers?

A I can't remember him making that kind of statement. I do know that I was comfortable in my relationship with him that the activities he was involved in were more a sport than something he was compelled to do.

Q You were convinced of that?

A I was, yes.

Q In retrospect, if Finger decision had been announced before this trial and the defense of insanity was clearly available, can you think of any good faith basis you might have had for advancing that defense?

A At that time, no.

Q The defense that you wanted to pursue, you called it self-defense. That was based in part upon prior contacts between Mr. Vanisi and the police officers?

A That's correct.

Q Tell me, would it be more self-defense or irresistible impulse, which do you think is closer?

A You're asking me to split legal hairs. It was a defense. The most -- I almost said the most viable. I think it was the only viable defense.

Q And some sort of irresistible rage could theoretically have gotten you a manslaughter?

A Yes.

Q Unlikely, though, right?

A Yes.

Q Did you have discussions with Mr. Vanisi regarding the proposed defense of irresistible impulse or self-defense, did you and he talk about it?

A Yes. No, we set forth our theory of the case and

how we intended to defend. I don't believe he participated. I think he just refused to even talk about that and we went into great detail over and over again and he refused to accept that as a defense.

Q That great detail include letting him know that as a practical matter you would have to admit the act, the homicidal act?

A Yes.

Q Did he authorize you to admit to the jury the homicidal act?

A No.

Q So you were somewhat hampered by advancing that defense?

A Without his cooperation, we were not only hampered, we were prohibited from presenting that defense.

Q And he wouldn't tell you what defense he wanted to present?

A That's correct.

Q Mr. Gregory, by the time of this trial, 1998, 1999, your observations of lawyers in the community, can you think of anyone else that had advanced a claim based on violation of the Vienna Convention on Consular Relations?

A No.

Q Is that the claim that would be generally familiar to the bar in this jurisdiction?

A I would think not. I didn't know about it until I read it in the petition.

Q And how about the other treaty, what was it, Civil and Political Rights Treaty mentioned in the petition?

A Somebody in the state department, a lawyer in the state department might know about that stuff.

Q But you, as an experienced defense attorney, you knew if you wished you could call the Tongan Consulate and ask them for help?

A Yeah, I think that was the gist of the conversation Ms. Beelser had with the consulate.

Q You have no personal knowledge of that?

A No.

Q If you wanted, if you were hoping the consulate could provide an interpreter or money or experts or anything else, you have a telephone available to you; right?

A That's correct.

Q Do you recall how long after Siaosi Vanisi was arrested before your office got involved in the case?

A I think we got into the case immediately upon his

return to Nevada from Utah.

Q Do you know if anyone in your office in fact called the Salt Lake City Public Defender's Office and had them get in the act earlier?

A I do not know.

Q When you went to trial, did you and Mr. Bosler have a division of labor?

A Yes.

Q Your interest was primarily the guilt phase and Mr. Bosler's was primarily the penalty phase?

A That's correct. However, I don't want to imply in that statement that Mr. Bosler was responsible for the mitigation phase. I approved everything that was done.

Q And, of course, the two of you worked closely together?

A That's correct.

Q Consulted at every opportunity?

A Yes.

Q I don't know if you were asked earlier, if you know your office employed the services of a mitigation specialist?

A Not at that time, no.

Q Earlier, later, any other time?

A Later. We do now.

Q You have someone on staff now?

A Yes.

MR. McCARTHY: That's all.

THE COURT: Okay. Counsel.

REDIRECT EXAMINATION

BY MR. EDWARDS:

Q Regarding this psychological evaluation that you indicate gave you results that Mr. Vanisi was both competent and sane was your testimony; is that correct?

A That's correct.

Q So regarding the notion that he was sane, did this psychological examination actually address the legal standard of insanity?

A I believe that was the issue, yes.

MR. EDWARDS: No further questions.

THE COURT: Anything further?

MR. McCARTHY: Yes, if I may; it reminded me.

RECROSS EXAMINATION

BY MR. McCARTHY:

Q On that subject, the psychiatric examination you arranged before trial, did you ask that doctor to also comment about possible mitigation?

A I would say yes.

Q Remorse?

A Yes.

Q Was it helpful?

A No.

MR. McCARTHY: That's all.

THE COURT: Mr. Edwards, did you have something further?

MR. EDWARDS: No, Your Honor.

THE COURT: You may step down. May this witness be excused or do you want to hold him?

MR. McCARTHY: You know, I discussed with all the lawyers this witnesses, the possibility that I might have to recall them later. But I think, with the Court's permission, maybe for today he can be excused.

THE COURT: That's fine. Thank you.

Counsel, this is a good time to take our noon recess. We'll be back on the record with this case -- you have two more witnesses this afternoon.

MR. EDWARDS: Yes, Your Honor. Actually, three. Three witnesses, one relatively brief, I think.

THE COURT: Do you want to start at 1:15 or 1:30?

MR. EDWARDS: 1:30 is fine.

THE COURT: Then we'll be in recess on this case

until 1:30. As soon as we're ready to go on the next case let me know.

(Recess taken.)

RENO, NEVADA, MONDAY, MAY 2, 2005, 2:15 P.M.

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THE COURT: Please be seated. Counsel, go ahead and call your next witness.

MR. EDWARDS: Before we proceed, Mr. McCarthy and I have a stipulation to admit as evidence as part of this hearing the Supreme Court Rule 250 memorandum that was previously provided to both of us pursuant to our request, and it may have some relevance later on. So with that, I think Mr. Qualls is going to examine the next witness.

THE COURT: Is it in the file?

MR. EDWARDS: It's in your file. That's where we got it. If you'd like --

THE COURT: That's what they're supposed to do. It's supposed to be filed in our file.

MR. McCARTHY: It's under seal. I agree what you have is authentic and admissible and may be considered for whatever you want to consider it for.

THE COURT: Are we opening it? Are we unsealing it?

MR. McCARTHY: Sure. If it's admitted as evidence, I guess it is.

THE COURT: Do you want it marked or just we'll

stipulate that what's in the Court's file is the original and is accurate?

MR. EDWARDS: Yes, Your Honor.

THE COURT: And we'll order it unsealed.

MR. EDWARDS: Your Honor, I can provide a copy of this if you'd like and make it separately filed.

THE COURT: It doesn't matter. I can take judicial notice of anything in the file as long as it's unsealed, as long as you're stipulating it being unsealed.

MR. McCARTHY: Yes, Your Honor.

MR. EDWARDS: Yes, Your Honor.

THE COURT: That will be the order.

MR. QUALLS: Your Honor, our next witness would be Jeremy Bosler.

THE COURT: Mr. Bosler, go ahead and face the court clerk and be sworn.

JEREMY BOSLER

called as a witness on behalf of the Petitioner,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. QUALLS:

Q Good afternoon, Mr. Bosler.

A Good afternoon.

Q Could you please state your full name and spell it for the record.

A Jeremy Bosler. J-e-r-e-m-y. Last name Bosler, B-o-s-l-e-r.

Q What's your occupation?

A I'm a public defender.

Q How long have you been licensed as an attorney in Nevada?

A 11 years, about eight months, something like that.

Q Have you been with the Public Defender's Office the whole time?

A I have.

Q You represented Siaosi Vanisi in a capital case that went to trial in 1999; is that correct?

A I did, yes.

Q And you had co-counsel to assist you with that case; is that correct?

A That's correct.

Q Who was your co-counsel?

A Steve Gregory for a portion of the first proceeding. Mr. Specchio, obviously. But I believe in the second trial it was Mr. Gregory and I.

Q Were you the lead attorney on that case?

A I considered it co-counsel, but I don't think there was really a set division as who was first chair, second chair.

Q Was that your first death penalty trial?

A No, I think it was my second. I think I had done Geary with Mr. Gregory earlier.

Q So in the Geary case, would that be when you were first qualified under Supreme Court Rule 250 to serve as counsel on a capital case?

A I think the Vanisi case and me acting as co-counsel was the last piece for me to become 250 qualified.

Q Could you tell us briefly what kind of support resources, investigator staff and the like, you had when you were working on the Vanisi case?

A Well, as like all cases in the Public Defender's Office, you have the resources of the other attorneys in the office, investigators. We had, I believe, two investigators at least assigned to this case, even though other investigators took parts along the way.

I contacted the Capital Defense Resource Center about jury questionnaires. I think Mike had contacted them. Obviously, as you heard earlier, we contacted the

National Association of Criminal Defense Lawyers task force. So although most resources were in the office, there was outside office resources we also took advantage of.

Q And did you also work with the appellate division of the Washoe County Public Defender's Office?

A Yes.

Q Did you work with Mr. Petty in that case, John Petty?

A Yes.

Q Do you recall what legal issues you consulted with Mr. Petty on?

A No. Formally, no.

Q Do you have any memory about how many hours you actually worked on the case?

A I've reviewed my 250 memorandum. It would be only an estimate, because even if I looked at the memorandum, it's not complete as to time allotted to each task. I'd say at least 200 hours. I traveled to California and spent some time in California with an investigator looking for mitigation witnesses. So obviously that took a large portion of time.

Q You mentioned there was a first trial that ended in a mistrial, and then there was a full, complete second

trial. Were you involved in the first trial as well?

A Yes, but not as actively as I was in the second trial.

Q And so did you review all the discovery, police reports, et cetera, leading up to the first as well as the second trial?

A Yes.

Q And during the course of preparing for trial, did you meet with Mr. Vanisi?

A Yes.

Q And approximately how many times, do you have any idea?

A I'd say over a dozen.

Q Did you review discovery of Mr. Vanisi when you were on your visits?

A I reviewed portions of discovery with him. As I said earlier, Mr. Specchio and Mr. Gregory originally were the lead counsel for the first trial. Essentially all the discovery had been reviewed before the second trial began and I took a more active part in the trial. So we would talk about specific witnesses, specific parts of the defense, things that Mr. Vanisi wanted to have done. We did discuss those things. Did I go over the whole of discovery after the mistrial? I can't say I did.

Q As far as you mentioned trial strategy and each witnesses that would be important, you discussed those things?

A Yes.

Q Were you able to establish some rapport, some relationship with Mr. Vanisi?

A I believe so, yes.

Q Was he cooperative with you?

A I wouldn't characterize him as cooperative, no.

Q What about his ability to kind of track your conversations and have rational conversations with you?

A I think Mr. Vanisi tended to track his own conversations and things that he thought were important. I also believed he was a fairly rational, intelligent person. Although we didn't see eye to eye on most things.

Q Was there ever a time leading up to and during the second trial that you had cause to question Mr. Vanisi's mental health?

A Well, we had a diagnosis of bipolar disorder. Did I question his competence? No. Did I think maybe there was a mental health issue involved? Yes.

Q Did you ever consider, based on the evidence that you had reviewed and Mr. Vanisi's comments to you, perhaps he was not sane at the time of the crime, from a legal --

that would be defined legally?

A I never had that opinion, no.

Q So you never considered that option?

A I considered it, but to me there wasn't evidence to support a defense like that.

Q Was such a defense, by that, I mean not guilty by reason of insanity, was that available to you at that time?

A No.

Q Did that weigh into your decision on whether to pursue that option?

A Yes.

Q I'm going to move a little bit ahead. There came a time during your representation that you moved the Court for an order allowing you to withdraw as counsel; is that correct?

A That's correct.

Q What was the basis for that motion?

A Mr. Vanisi's insistence upon presenting a defense that was contrary to facts that he had given us earlier. So the chance that we would be suborning perjury or acting a fraud upon the court. Because we weren't at least in the position, willing to do that, we moved to withdraw. So that was the nuts and bolts of the nature of the

conflict.

Q And what was the result, what did the Court ultimately rule on the motion?

A That we were not able to withdraw.

Q Also around this same time did Mr. Vanisi move to have you removed as counsel on his own?

A Yes.

Q Did he also move to represent himself?

A Yes.

Q Under Faretta?

A Yes, he did.

Q What were the results of both of those?

A The Court denied those motions also.

Q As a result of those three denials, what was the situation you found yourself in in trial?

A I think the defense, we tried to be as effective as we could under those circumstances. But each witness would present a problem because if Mr. Vanisi's intent was to provide a defense that someone else was responsible for the murder, things that we had available to us, intoxication, mental health, our attempt to raise those issues for any one witness, even in cross-examination, had potentially the possibility of undercutting Mr. Vanisi's ability as historian.

So as each witness was considered, we had to worry, are we going to do things to limit Mr. Vanisi's ability to be a witness if he decided to take the stand in his own defense. So it became nearly impossible to conduct meaningful cross-examination without impinging upon things he might want to do as part of his ability to testify.

Q So as a result, the vast majority of the witnesses you didn't cross-examine, correct?

A That's correct.

Q Because your hands were essentially tied?

A That's correct.

Q Was it because of the same reason that you gave no opening statement?

A Yes.

Q And no closing argument?

A That's correct.

Q In your professional opinion, and based upon your experience, do you believe you had a conflict of interest in representing Mr. Vanisi during the trial?

MR. McCARTHY: Your Honor, what matters here is the Court's legal conclusion, not this witness' opinion. This Court has ruled and the Supreme Court reviewed it.

MR. QUALLS: It goes to the reasons why he asked

to withdraw and why he was essentially forced to sit on his hands here in court.

MR. McCARTHY: Asked and answered.

THE COURT: I'll sustain the objection.

Sounded like an expert witness opinion anyway.

BY MR. QUALLS:

Q Did you assert to the Court you had a conflict of interest during your motion to withdraw?

A I don't know whether I personally did. I think as an office we submitted the conflict of interest.

Q And was that based upon any consultations you had with State Bar counsel?

A Yes.

Q And that was his opinion as well, correct?

A That's correct. And I called NACDL and asked for their task force ethics representative, and I called Mike Sherman in Los Angeles and had discussion with him about the same circumstances, obviously hypothetically, and he concurred in that same opinion; he said we had to withdraw.

Q They advised you, accordingly, that there was a conflict?

A Yes.

Q Did you advise Mr. Vanisi regarding his right to

testify on his own behalf?

A I think I would have or one of the other attorneys would have. I can't specifically recall talking to him about that, the actual details of testifying.

Q Do you recall any conversations you had with him regarding whether he would testify or not?

A I remember discussing his willingness or his wanting to put on the defense that someone else was responsible. That would come from him. So that's as far as I can go with that question.

Q He didn't testify during the trial, did he?

A He ultimately chose not to testify, yes.

Q During the course of your representation of Mr. Vanisi, did you become aware that he wasn't a U.S. citizen?

A I know that the office had contacted the Tongan Consulate. I assumed he was a U.S. citizen, to tell you the truth.

Q What's the basis of your knowledge that the office contacted the Tongan Consulate, do you know?

A Reviewing the notes from the file, things that were preserved as part of the original trial record.

Q So they contacted the Tongan Consulate prior to your, when you got really involved in the case?

A That's correct, that's my understanding, yes.

Q To your knowledge, after this conflict arose in which you asked to be withdrawn as counsel, was there any contact with the Tongan Consulate?

A No, I have no information in that regard.

Q Did you have any familiarity with the provisions of the Vienna Convention that allowed for assistance of counselor relations?

A I had familiarity, yes.

Q But you believe that avenue had already been explored?

A Yes.

Q Were you at all familiar at the time of this trial, preparing for the trial, with the provisions of the International Covenant on Civil and Political Rights?

A No.

Q Could you tell us a little bit about your strategy during the sentencing phase of the case?

A Well, ideally, I think in any capital case you try to front load your mitigation as part of the trial phase; but since we were unable to do that, we had to essentially back load all of our mitigation.

I know that Mr. Specchio, from memos, had gone to, I believe, Redondo Beach to find friends and people

familiar with Mr. Vanisi. Christa Calderon, an investigator in our office, she and I traveled to San Mateo and used the services of the San Mateo Public Defender's Office to track down and discuss mitigation evidence, witnesses, school teachers, friends, family members. He also, I believe, used Dr. Teenhouse as far as the mental health aspect mitigation piece of the case. Did all we could under the circumstances, back loading the mitigation.

Q Do you know if he had any relatives still living in Tonga at the time?

A I believe, although the family history is a little bit complex as to children being handed off to nonbiological parents, I believe he still has, maybe even to this day has some relatives in Tonga.

Q Were any of them contacted, do you know?

A I know a lot of that was done before I came on the case with the original investigation. I believe the family members that were here that had contact with people in Tonga, they all knew about the case and what we were looking for as witnesses. Were any calls made directly from our office to Tonga? I can't say.

Q Do you know if anybody traveled to Tonga either at the time you were on the case or before it?

A I don't believe anyone traveled to Tonga.

Q One of the aggravating circumstances that was sought and the jury found was that it was based upon the felony murder rule that the murder occurred during the commission of a robbery, correct?

A That's correct.

Q And that was also, as the case was originally charged, it was charged under the felony murder rule, correct?

A That's correct.

Q Did you see any problem, any legal problem at the time with that aggravator?

A Not in the way that Nevada law existed at that time.

Q Did you consult with Mr. Petty and the appellate office regarding that?

A I've had the issue come up in my own trials, so I was already familiar with Nevada's at least willingness to allow the felony murder rule be used as an aggravator in a capital case.

Q That's why you didn't challenge it?

A That's why I didn't see a basis to challenge it.

MR. QUALLS: No further questions at this time, Your Honor.

THE COURT: Mr. McCarthy, cross-examination.

CROSS-EXAMINATION

BY MR. McCARTHY:

Q In the course of investigating, trying to track down potential mitigation type witnesses, did you experience any lack of cooperation?

A Yes.

Q From the witnesses?

A Yes.

Q Resistance to appearing?

A Yes.

Q There were times, in fact, when you had to use the Uniform Act to secure the attendance of witnesses from without the state; is that right?

A Contested hearings in San Mateo.

Q That was for friends, relatives?

A I believe the people who were most resistant were school teachers who had nice things to say over the phone about Mr. Vanisi, but once they learned they may be present at a trial began to experience reluctance about the information they had.

Q And other sorts of witnesses, friends and relatives, did you experience that same sort of reluctance

with them?

A Yes.

Q Now eventually you rounded up some, didn't you?

A Yes.

Q Did your client suggest to you any potential mitigating witnesses that you did not follow up on?

A No.

Q Did he give you names of some people that could say nice things about him?

A When I came into the case, we already had some family names and contacts in California. We went with those and expanded upon those.

Q Did you seek counsel of other lawyers experienced in the field on how to gather mitigating evidence?

A I believe Mr. Specchio contacted Charlotte Holdman, a recognized expert in presenting mitigation evidence, consulted with her and gave information to the other attorneys on how to create a mitigation case.

Q Were you satisfied you had done all you could in gathering mitigation?

A Yes.

Q When you got advice from outside agencies like the bar counsel on the subject of what has been termed a conflict of interest, conflict anyway, did you get advice

on what to do if the Court said no, you may not withdraw?

A The information I gathered was that it is a conflict and do all that you can to express that to the Court to be removed from the case.

Q I'm sorry, did you have any direct contact with bar counsel or NACDL?

A I contacted NACDL. I didn't participate with the direct conversation with Mr. Barrer.

Q And earlier, for the benefit of the court reporter, when you say NACDL --

A National Association of Criminal Defense Lawyers.

Q I noticed a little glimpse.

Okay. Were you involved in any discussions with Mr. Vanisi about him exercising his right to testify at trial?

A Yes.

Q Did you tell him he could testify if he wished?

A I was present when the conversations took place. He was advised he had the right to testify; we couldn't take that away from him. What he was going to say on the stand, we didn't know.

Q But you asked, didn't you?

A Yes. And there's correspondence where various defenses are raised and Mr. Vanisi is asked to commit to a

version, which he doesn't do.

Q Several times you asked him please tell you how he wished to defend himself?

A Those things were asked. I can't say I personally asked them, but those things were asked.

Q Did he ever tell to you or say something in your presence that he wished us to "sit on our hands" during the trial?

A I can't recall that statement.

Q I'm going to show you part of Rule 250 memo, see if that refreshes your recollection.

A That's my Rule 250 memo?

Q I can't tell you whether it is. Does that refresh your recollection?

A Yes.

Q Do you know now recall Mr. Vanisi asked if you would just sit on your hands during the trial?

A I put it in quotes. Those were his exact words, yes.

Q And he also told you he believes there are many defenses to the case but he wouldn't tell you what they were?

A That's correct.

Q You believe that hampered your ability to defend

your client?

A Yes, as I stated earlier, yes.

Q I'm sorry, what?

A As I stated earlier, yes, I believe that hampered our ability to take part in the trial.

MR. McCARTHY: That's it.

THE COURT: Redirect.

MR. QUALLS: Court's indulgence one second.

REDIRECT EXAMINATION

BY MR. QUALLS:

Q During the discussions with Mr. Vanisi regarding his right to testify about which you were either there or had personal knowledge, was it discussed or was Mr. Vanisi informed that he had the right to testify and put on his defense?

A I believe he was informed he had the right to testify and we couldn't tell him what he could say or couldn't say in his own defense.

MR. QUALLS: Thank you.

THE COURT: Anything further?

MR. McCARTHY: Nothing else.

THE COURT: You may step down. I think you're supposed to stick around, not today, but be available.

MR. McCARTHY: I know where he works, Your Honor. I can find him.

MR. QUALLS: Next witness, Your Honor, is John Petty.

JOHN PETTY

called as a witness on behalf of the Petitioner,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. QUALLS:

Q Good afternoon, Mr. Petty.

A Good afternoon.

Q Please state your full name and spell it for the court reporter.

A First name is John, common spelling J-o-h-n. Last name is Petty, P-e-t-t-y.

Q And what is your occupation?

A I'm a public defender.

Q And you work in the appellate division?

A I do.

Q How long have you been licensed as an attorney in Nevada?

A Since 1980.

Q How long have you been in the appellate division for the Public Defender's Office?

A Over 11 years.

Q And when were you first qualified pursuant to Supreme Court Rule 250 to serve as counsel in a capital case?

A I don't have a recollection, but I've handled many capital cases on appeal over the years.

Q Could you give us an estimate?

A Estimate of how many cases?

Q Yes.

A I'd say about ten.

Q You represented Siaosi Vanisi in direct appeal on the capital case that went to trial in 1999, correct?

A I did.

Q Did you handle that appeal by yourself or did you have co-counsel on that?

A I did it myself.

Q What kind of support resources are at your disposal and did you use, when you were doing this direct appeal?

A Well, I have a deputy public defender who does appeals as well. So we would talk. But she wasn't

actively involved in preparation of the appeal. And then I had staff, computers, access to West Law and the research engines.

Q So other than your associate, did you consult with any other death penalty lawyers during your representation of Mr. Vanisi?

A No. Aside from Mr. Gregory and Mr. Bosler.

Q Do you have an estimate of how many hours you worked on this appeal?

A You know, when you asked that question of Mr. Bosler, I was trying to think about it. But you figure that this is a death penalty case, so I get the complete record that has to be reviewed. Then we filed opening briefs and answering briefs.

Prior to the conviction we also had done a writ to the Supreme Court on the issue of should we be allowed to withdraw.

And at the conclusion of the case and at the conclusion of briefing and argument in the Supreme Court, we filed a petition for writ of certiorari in the United States Supreme Court that was denied.

So you put that all together, I can't give you a sufficient number of hours, but it was over a very long period of time.

Q Did you meet with Mr. Vanisi while you were working on this appeal?

A I talked to him on the telephone. I did not go out to any of the prison facilities that he was being housed at. I would talk to him briefly on the telephone, and I did have some contact with him during the course of the trial when I would be here to back up Mr. Bosler or Mr. Gregory with regards to some questions.

Q Do you have any idea how many times you talked to him on the phone while you were --

A No, I couldn't tell you. Sometimes the conversations were really, this is after the matter had been briefed, could you tell Jeremy to give me a call. Could you tell Mr. Gregory to give me a call or contact me. So some of those were very short conversations.

Q Were you able to communicate effectively with him at that time?

A Over the phone, I think we did.

Q What about backing up, since you were talking about you worked on the case during trial as well, as sort of a back-up legal advisor, did you have -- were you able to communicate rationally with Mr. Vanisi at that time?

A Yes, I was. But most of my conversations involving Mr. Vanisi were directed at Mr. Bosler or

Mr. Gregory and we would have exchanges and that would be about it. But I didn't have any -- I didn't feel as though there was difficulty communicating with him or understanding what was going on.

Q So did you ever review the issues on appeal with him either prior to filing the opening brief or sometime thereafter?

A Well, I don't recall talking with him about the issues raised on appeal. I mean there was one issue that was, I mean it was a dynamite issue that had to go and that was the Faretta issue that had to go. And at the conclusion of writing and filing, I supplied Mr. Vanisi with everything that was supplied to the Supreme Court.

And that issue, by the way, the Faretta issue is the issue we writted to the United States Supreme Court.

Q Thank you. Since you brought up the Faretta issue, let's go there. Essentially you challenged the trial court's decision based upon an argument that the Court's findings were belied by the record, correct?

A That's correct. Because what the record consisted, of after the Faretta motion was filed, Judge Steinheimer had a lengthy hearing one afternoon, might have even been all day, where arguments were made. The State was represented by Mr. Stanton, and Judge

Steinheimer did a Faretta canvass but also did a rule, Supreme Court Rule 153 canvass, which is essentially the same thing, to make the determination whether or not if Mr. Vanisi was making his request with his eyes wide open.

We differ about how that conclusion or how that hearing should have been resolved, because I thought, and so did Mr. Stanton. I think everybody in the courtroom thought that if there was ever anybody who successfully navigated through a 153 canvass, Mr. Vanisi had.

MR. McCARTHY: By the way, I object to the speculation about what the Court thought, Stanton thought or anybody --

THE COURT: Obviously the Court didn't think it because I didn't grant it. Obviously the Supreme Court agreed with me.

THE WITNESS: But did you read that scathing concurring opinion?

THE COURT: No.

MR. QUALLS: For the record, I believe Mr. Stanton made his thoughts clear regarding what Mr. Petty was saying on the record.

THE WITNESS: That's right. I think Mr. Stanton, and I think people were surprised, that he had come to the conclusion that he thought Mr. Vanisi could conduct

himself accordingly in court, that he was intelligent obviously because he had been reading books on physics and things of that nature. So he was -- he had intelligence.

BY MR. QUALLS:

Q So just following up on that: Your argument was that the record showed there was no indication that Mr. Vanisi would disrupt the proceedings, correct?

A That's part of the argument. And that was based on Nevada case law, Tankleys, T-a-n-k-l-e-y-s. Because as I read that case, there has to be some indication that the defendant is going to be disruptive and that indication has to be in prior court proceedings. And the record in this case reflected that every time that Mr. Vanisi was in court, he comported himself in a good fashion.

Q Additionally, the record showed that Mr. Vanisi showed that he was aware of his rights and of the possible punishment; is that true?

A Correct.

MR. McCARTHY: I'm willing to stipulate Mr. Petty disagrees with the Court's conclusion and raised that argument. I'm willing to stipulate that the record shows what it shows. I don't know why we're doing any of this.

THE COURT: Unless you have a question.

BY MR. QUALLS:

Q I'm getting there. That was my last question on that point, Your Honor. My next question is something completely different.

THE COURT: This is not supposed to be about what he thinks I did wrong; it's supposed to be about what you think he did wrong.

MR. QUALLS: I agree. That's where we're going.

BY MR. QUALLS:

Q Do you know what a structural error is?

A Generally speaking, that's an error that would cause the reliability of the verdict to be in question. Usually involves questions of something that's happened during the course of the trial that doesn't really go to testimony.

Q And based upon your review of the record and your involvement in the case, do you think there was a structural error in this case?

A I don't believe there was, because if I had found structural error, I would have argued that as such. I think the way we framed the Faretta issue, that was error. Whether or not that becomes structural, I'd have to think about that. Puzzle that.

Q You don't think the combination of the denial of

the Faretta motion plus the denial of the motion to withdraw counsel caused a structural error? Just clarification, Your Honor.

MR. McCARTHY: Your Honor --

THE COURT: Go ahead.

MR. McCARTHY: It doesn't matter. He raised what he raised. Whether he thinks -- relevance. I object.

THE COURT: I'm going to sustain that. He raised the issue. I don't think it mattered if he called it a particular name. So sustained.

MR. QUALLS: Your Honor, for the record, structural error is more than just calling something a name, because --

THE COURT: Is there something that you believe he should have pled to the Supreme Court that he didn't?

MR. QUALLS: I believe he should have raised a structural error because it avoids a harmless error analysis.

THE COURT: But he did raise the Faretta issue and he did raise the issue of not being allowed to withdraw as counsel.

MR. QUALLS: No, I don't believe he did raise that.

THE WITNESS: I can clarify that. We raised that

issue by way of the writ that went to the Supreme Court that was denied. The conflict never really resolved itself, but it never completely materialized either when Mr. Vanisi elected not to testify.

Had Mr. Vanisi elected to testify, he would have been able to give his story as he wished, and there is a mechanism by which counsel who still stays on the case can sort of navigate that problem; that is, as set forth in a case called Nix versus Whiteside, I think it is. And Nix is N-i-x. It's a very awkward situation.

Q During the course of your involvement in Mr. Vanisi's case, were you aware that he wasn't a U.S. citizen?

A You know, I wasn't aware of that. That wasn't something that I was focused on. I was really trying to answer questions that were put to me from time to time by Mr. Gregory or Mr. Bosler.

Q What about on appeal, once you read the record were you aware that he was a Tongan national?

A I think, having read the record, yes. But that wasn't raised as an issue on appeal. Primarily it wasn't raised as an issue on appeal because it was never litigated at the trial stage. As you know, if you don't give the district court an opportunity to resolve an issue

first the Supreme Court doesn't have any, doesn't have any obligation to review an issue not raised at the trial level.

Q With the exception of, for instance, a Jones error, which is a plain error on the face, you could technically raise claims of ineffective assistance and whatnot under direct appeal?

A Well, actually my understanding is that you cannot raise claims of ineffective assistance of counsel on direct appeal; but that would be, even assuming you could, the hurdle we would have there is that I would be claiming my deputies as being ineffective which would make me have to get off the case because of that conflict. So it's -- the answer to your question you cannot raise ineffective assistance of counsel on direct appeal. You have to wait to do that in post-conviction proceedings.

If there is a Jones error, if it's just so fundamentally wrong, like there's a case DUI case, I think Smith v. State, or in Jones where the record shows that without the client's permission, the attorney, if this is the one you're thinking about, the attorney conceded his client's factual guilt to a second degree murder case without any okay from his client.

Q Are you familiar with the International Covenant

on Civil and Political Rights?

A I am not.

Q Do you, as a death penalty qualified appellate lawyer, do you have to or have an obligation kind of to go above and beyond your normal appellate duties?

A Well, I like to think that I bring what talent I have to all the appeals I write. But a death penalty case is significant. I mean we're all familiar with that, death is different.

Q So you seek out additional information and experts and authorities from other parts of the country and whatnot, don't you?

A I do research. And I have sent letters off to other people. But basically it's -- I'm the author of my work.

Q But during that research you never came across the International Covenant on Civil and Political Rights?

A Not that I'm aware of, no.

Q You're aware of the recent McConnell decision by the Nevada Supreme Court?

A I am.

Q It came out of your office?

A It did.

Q Did you assist, I know you're not the named

author on the decision, but did you assist in that case?

A To the extent that I would talk to Cheryl Bond, who wrote that brief, or Maizie Pusich, who was his trial attorney, still is his trial attorney, our conversations, we would have those kind of conversations, but she's the one who brought that appeal.

Q And you're aware that one of the aggravators in this case is identical to the aggravator in McConnell, correct?

A I am, and McConnell was decided, what, it was the last case decided in 2004, literally the last case published that was decided in 2004. And then the State petitioned for rehearing which was openly denied in 2005. Prior to Ms. Bond getting that fantastic victory, that was not the state of the law in the state of Nevada so it was not even something that I thought about raising on appeal.

Q So you didn't consider raising that?

A No.

Q You do, however, your office, does fairly consistently raise issues, what comes to mind is the reasonable doubt instruction, to try to change the law, correct?

A Uh-huh.

Q And that's essentially what Ms. Bond did in the

McConnell decision?

A That's exactly what Ms. Bond did in McConnell. It was excellent.

Q Is there a reason why you didn't try that in the Vanisi case?

A I don't want to speculate on that, but that issue really was not floating as something to look at until an earlier decision by Maupin -- I think in a concurring decision or decent, I think it was concurring, sort of flagged that issue as sort of maybe something that should be percolated in the system, and I think that's what sparked Ms. Bond's interest and got her to write the issue.

Q Did you consider an Eighth Amendment challenge that the death penalty was itself cruel and unusual in this case?

A I know that early on at the trial court level we raised a variety of those kinds of motions, variety of those kinds of motions to the trial court's attention, but I ultimately didn't take it up on appeal because that case is, I mean that issue has never been successful on direct appellate review. In fact, it's never been successful in the state of Nevada.

Q So you just answered my second question; that's

why you didn't bring it forward, just because you didn't think it would be successful?

A Uh-huh.

Q Do you ever raise such issues in order to preserve them for federal appeal?

A I'm sure I have. I'm trying to think if I've raised that kind of issue before. But there are issues we do raise. The reasonable doubt issue, for example, is one we raised knowing full well that with the language of our Supreme Court we won't have much success but maybe up on federal review something will happen.

But, see, our Supreme Court also cites a Ninth Circuit case for the proposition that our current reasonable doubt instruction is good and that's not what the case stands for.

Q So along those same lines, why didn't you raise a cruel and unusual argument, for instance, to preserve it for the Feds?

A I couldn't tell you. I don't know.

Q Okay. Did you consider an argument that Nevada's death penalty statutes fail to meaningfully narrow the class of persons eligible for the death penalty?

A Yeah, we have raised that in the past. I don't believe that was one of the issues here. Like I said, the

issue for me, what I thought was going to be the driving issue for this particular appeal was the Faretta issue and also the fact that if you put together the mitigating factors that were offered to the jury, that perhaps they did outweigh the aggravating circumstances.

Q Did you consider any claims regarding competence to be executed?

A No, because that -- I've been involved in that kind of situation. I think back to when I was a trial attorney in the Public Defender's Office, one of the cases that I took to the Nevada Supreme Court was whether or not Priscilla Ford was competent to be executed, because she had been found to be incompetent. Then we put on a hearing for her with a lot of doctors which we thought was better evidence presented to the Court and they found her competent. So we took that to the Supreme Court. But that would have happened post-judgment on some kind of writ or something like that. It wasn't something that was even litigated below to be preserved for direct appeal.

Q Okay. Thank you.

Did you consider an issue related to constitutional standards of impartiality as it relates to the judiciary?

A Can you clarify that for me?

Q Sure. It's based upon an historical claim that we have presented on behalf of Mr. Vanisi, related to the judiciary as an elected body and therefore subject to the intense pressure related to death penalty cases?

A I'm sure that we may have filed something like at the district court level, but if what you're getting at is that statistically a sentencing panel will impose death more often than a jury, you know, that's just something that's been recognized in the state of Nevada. Those issues have been raised before the Nevada Supreme Court on more than one occasion without success.

Q Did you consider any other standard challenges to the death penalty regarding possibility of rehabilitation or unacceptable risk of executing an innocent person?

A Those issues were not raised on direct appeal.

Q What about an appeal issue regarding the discretion, the wide discretion of prosecutors in the state of Nevada to make the decision on whether to seek the death penalty?

A That issue has been raised, not necessarily by my office, but in published Supreme Court, Nevada Supreme Court cases, again without success.

Q And, again, is there a reason why you decided not to raise that issue or any of these other death penalty

issues other than the Eighth Amendment which we've already covered for federal review?

A No.

Q Finally, Mr. Petty, did you consider any appeal issues regarding allowing a death qualified jury to determine guilt or innocence?

A That wasn't raised on direct appeal, but I know we've talked about that around the office. I mean I think I might have mentioned it already. In fact, I was talking to some high school kids on Friday and pointed out the jury selection process in a capital case, that you ultimately end up with people who say, okay, I could impose the death penalty. When you get enough of them together, odds are you're going to get the death penalty imposed. But it's not an issue on appeal.

MR. QUALLS: No further questions.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. McCARTHY:

Q So you've been in the criminal appellate business more than 11 years?

A Correct.

Q Do you have a counterpart in Clark County?

A You know, I believe in Clark County the trial deputies, at least in the Public Defender's Office, they handle their own appeals. But then there's also a special office for death penalty cases.

Q I gave you a copy of the claims that were being pursued on habeas, right?

A Right.

Q By the way, Your Honor, that was with the permission of Mr. Edwards before the Court ruled.

Did you read that over?

A I glanced through it, yes.

Q Of the putative potential appellate arguments, were you familiar with them all?

A I'm trying to -- I would have to have that document in front of me to go through it, to answer that question intelligently.

Q How about the substantive due process, that might have been a new one?

A Substantive due process? Uh-huh.

Q Were there any great surprises in that document that I gave you?

A No, nothing came leaping out at me.

Q When you did this appeal, you knew you had the option of raising frontal attacks on the death penalty if

you wished?

A Uh-huh.

Q You know what they are; you know what's available? You have to answer out loud.

A I'm sorry, yes.

Q Not used to being a witness, are you?

How do you choose?

A Well, you know, I guess if I wanted to -- and I remember when Justice Young was on the Supreme Court, this used to drive him crazy where they would get these briefs from Clark County, primarily, that had everything and the kitchen sink thrown in there. Some issues so firmly established against the accused that it was just ridiculous to keep raising those things. You get frustrated.

The other thing, I think about my audience. You don't just bombard them with a whole host of frivolous issues and hope they pick one out and go, hey, I like this one. You have to pick and choose your issues.

Q Why?

A Well, first, I'm on a page limitation requirement. Without court permission you can't file an opening brief or any brief, for that matter, in excess of 30 pages.

But, also, as I said, I don't want to bury a good issue in a forest of bad issues.

Q And in this case you considered your best issue to be what?

A The Faretta issue. Not only in the Nevada Supreme Court, but also in the U.S. Supreme Court.

Q So you had in your arsenal what you considered to be your best issue and then a whole flock of other available issues?

A Uh-huh.

Q And you chose based on what you thought had the best odds of getting relief for your client?

A Well, think of it in this way: Had the Supreme Court agreed with me and found that the Faretta issue as an absolute right, and as long it's not being used to disrupt the proceedings or it's not being -- or it has been timely filed and would have reversed, then all those other issues we just talked with Mr. Qualls about would be gone.

On the other hand, none of the issues that I talked with Mr. Qualls about really had a remote chance of getting some kind of positive relief for Mr. Vanisi, particularly considering the evidence that was presented at trial in this case.

Q In your other appeals in other cases, you'll do that from time to time, you'll raise an argument that you know has been repeatedly rejected, right?

A Yes.

Q When you have something better, do you do that?

A No. If I have what I consider to be a hot button issue or something that is so intriguing that it's got justices up there interested, I don't put in some of my stuff. I mean I try to weed that out.

Q Do you know if other regular appellate practitioners take that same approach?

A I think that we do. I understand from Supreme Court, United States Supreme Court case law, and the case that's coming to mind is Barnes, but I can't think of what the secondary name is, it says it's not, appellate counsel in a criminal case is not required to raise each and every frivolous issue but can cherry pick, if you want, the issues they want to have brought to the attention of the Appellate Court.

Q Can and should?

A Can and should.

Q That's what you did?

A Yes.

MR. McCARTHY: Nothing else.

THE COURT: Mr. Qualls.

REDIRECT EXAMINATION

BY MR. QUALLS:

Q Death penalty law is fairly dynamic, wouldn't you say; that it changes a lot due to decisions of state and federal courts, U.S. Supreme Court?

A I will agree with you on that. But when you said that, I was reminded of the fact that ever since Renquist has been the chief justice of the United States Supreme Court, that dynamic shift in death penalty cases hasn't been in the favor of the accused. I mean just recently you got a favorable ruling in a death penalty case saying you cannot execute a person who committed a murder at the age of 16 or 17. But no one saw that coming.

Q That's correct. But there's also Ring and Apprendi?

A Yes.

Q And there's a decision that you can't execute mentally retarded people?

A Correct.

Q And there's a decision from the Nevada Supreme Court which we just spoke about, McConnell, correct?

A Correct.

Q So when you make a decision about a narrowing decision about what issues you're going to raise and you sweep these other possible claims over here and you don't raise them, those are waived for purposes of federal review, correct?

A I believe that's true, yes.

Q And so relief cannot be granted then on those ever? Perhaps ever was strong. You can clarify that.

A I don't want to say ever. The rules are always changing.

Q As a general rule?

A As a general rule.

Q And that's due to just, for the record, the principles of comity, correct; the federal courts won't review something that's high stake prioritizing?

A Correct.

MR. QUALLS: No more.

THE COURT: Anything further?

MR. McCARTHY: No thank you.

THE COURT: You may step down.

MR. McCARTHY: I can't anticipate recalling Mr. Petty.

THE COURT: Maybe you're excused.

THE WITNESS: Even though I disagree with you, I

do so with respect.

THE COURT: That's fine.

MR. EDWARDS: There's one additional witness that Mr. McCarthy has arranged to show at 3:45. I think it will be a brief recess.

THE COURT: You want to recess until 3:45?

MR. EDWARDS: If we could.

THE COURT: No problem. Court's in recess.

(Recess taken.)

THE COURT: Okay. Counsel, let's deal with the continuation real quick before we hear this witness. The clerk has a suggested time.

THE CLERK: I'm looking at May 20th.

MR. EDWARDS: I can't, Your Honor. I have to be in Las Vegas at 1:00 that day.

THE COURT: Okay.

MR. EDWARDS: I can do it the day before if you like.

MR. QUALLS: I can't do it the day before, Your Honor.

MR. McCARTHY: I was going to get a haircut that day.

THE CLERK: May 18th at 10:00.

MR. McCARTHY: Okay by me.

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 7 of 26

APPELLANT'S APPENDIX

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

Second Judicial District Court, Washoe County

RENE L. VALLADARES
Federal Public Defender

TIFFANI D. HURST
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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
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Felicia Darensbourg
An employee of the Federal Public Defender's Office

EXHIBIT B3

EXHIBIT B3

9

JOC

FILED
MAY 19 11 24 AM '06
Shirley B. Parraguirre
CLERK

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES A. SCHOLL
#1223201

Defendant.

CASE NO. C204775

DEPT. NO. IX

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT(S) 1 and 4 – BURGLARY (Category B Felony), in violation of NRS 205.060, COUNT 2 – FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON (Category B Felony) NRS 200.310, 200.320,193.165, COUNT 3 – ROBBERY WITH USE OF A DEADLY WEAPON (Category C Felony), NRS 200.380, COUNT 5 – FIRST DEGREE ARSON (Category B Felony), NRS 205.010, COUNT 6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony), NRS 193.330, 193.165, 200.380, COUNT 7 - MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), NRS 193.165,200.010, 200.030; and the matter having been tried before a jury and the

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MAY 19 2006
COUNTY CLERK

Defendant having been found guilty of the crimes of COUNT(S) 1 and 4 - BURGLARY (Category B Felony), in violation of NRS 205.060, COUNT 2 - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON (Category B Felony), NRS 200.310, 200.320, 193.165, COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony), NRS 200.380, 193.165, COUNT 5 - FIRST DEGREE ARSON (Category B Felony), NRS 205.010, COUNT 6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony), NRS 193.330, 193.165, 200.380, COUNT 7 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), NRS 193.165, 200.010, 200.030; thereafter, on the 1st day of May, 2006, the Defendant was present in court for sentencing with his counsel, DAVID M. SCHIECK and ALZORA B. JACKSON, Special Deputy Public Defenders, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee, $150.00 DNA Analysis Fee including testing to determine genetic markers, and $130.00 Restitution, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 - TO A MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS; AS TO COUNT 2 - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM and of SIXTY (60) MONTHS MINIMUM for the Use of a Deadly Weapon, COUNT 2 to run CONCURRENT WITH COUNT 1; AS TO COUNT 3 - TO A MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM Parole Eligibility of THIRTY-FIVE (35) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE HUNDRED FIFTY-SIX (156) MONTHS

MAXIMUM and THIRTY-FIVE (35) MONTHS MINIMUM, for the Use of a Deadly Weapon, COUNT 3 to run CONCURRENT with COUNT 2; AS TO COUNT 4 - TO A MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS, COUNT 4 to run CONSECUTIVE to COUNT 3; AS TO COUNT 5 - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SEVENTY-TWO (72) MONTHS, COUNT 5 to run CONSECUTIVE to COUNT 3; AS TO COUNT 6 - TO A MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS MAXIMUM and FORTY-EIGHT (48) MONTHS MINIMUM, COUNT 6 to run CONSECUTIVE to COUNT 3; COUNT 7 - LIFE WITHOUT POSSIBILITY OF PAROLE, plus an EQUAL and CONSECUTIVE term of LIFE WITHOUT POSSIBILITY OF PAROLE, for the Use of a Deadly Weapon, COUNT 7 to run CONSECUTIVE to COUNT 3; with SIX HUNDRED EIGHTEEN (618) DAYS credit for time served.

DATED this 18th day of May, 2006.

Jennifer P. Togliatti

JENNIFER P. TOGLIATTI
DISTRICT JUDGE

EXHIBIT B4

EXHIBIT B4

VER

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES A. SCHOLL,

Defendant.

CASE NO: C204775

DEPT NO: IX

VERDICT

We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as follows:

COUNT 1 - BURGLARY

(please check the appropriate box, select only one)

☒ Guilty of BURGLARY

☐ Not Guilty

We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as follows:

COUNT 2 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

☒ Guilty of FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

☐ Guilty of FIRST DEGREE KIDNAPPING

☐ Not Guilty

We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as follows:

COUNT 3 – ROBBERY WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

☒ Guilty of ROBBERY WITH USE OF A DEADLY WEAPON

☐ Guilty of ROBBERY

☐ Not Guilty

We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as follows:

COUNT 4 - BURGLARY

(please check the appropriate box, select only one)

☒ Guilty of BURGLARY

☐ Not Guilty

We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as follows:

COUNT 5 – FIRST DEGREE ARSON

(please check the appropriate box, select only one)

☒ Guilty of FIRST DEGREE ARSON

☐ Not Guilty

We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as follows:

COUNT 6 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

☒ Guilty of ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

☐ Guilty of ATTEMPT ROBBERY

☐ Not Guilty

We, the jury in the above entitled case, find the Defendant JAMES A. SCHOLL, as follows:

COUNT 7 – MURDER WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

☒ Guilty of First Degree Murder With Use of a Deadly Weapon

☐ Guilty of First Degree Murder

☐ Guilty of Second Degree Murder With Use of a Deadly Weapon

☐ Guilty of Second Degree Murder

☐ Not Guilty

DATED this 15 day of February, 2006

FOREPERSON

EXHIBIT B5

EXHIBIT B5

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD

Defendant.

Case No. C193182

Dept No. XVIII

SPECIAL VERDICT

(Mitigating Circumstances)

We, the Jury in the above entitled case, having found the Defendant, GLENFORD ANTHONY BUDD, Guilty of COUNT 1 - MURDER OF THE FIRST DEGREE (Dajon Jones, victim), COUNT 2 – MURDER OF THE FIRST DEGREE (Derrick Jones, victim), and COUNT 3 – MURDER OF THE FIRST DEGREE (Jason Moore, victim), designate that the mitigating circumstance or circumstances which have been checked or written in below have been established.

✓ The Defendant has no significant history of prior criminal activity.

✓ The murder was committed while the Defendant was under the influence of extreme mental or emotional disturbance.

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

✓ The Defendant's diminished intelligence.

✓ The impact of the defendant's execution on his family members, including his mother, grandmother, brother and sisters Shermaine and Angel.

✓ The impact of the defendant's execution on his other family members, friends and loved ones.

✓ Any other mitigating circumstances.

The apology of the defendant

DATED at Las Vegas, Nevada, this 16th day of December, 2005.

Rachel Madsen
FOREPERSON

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,

Defendant.

Case No. C193182 ~~C93182~~

Dept No. XVIII

SPECIAL VERDICT

(Aggravating Circumstance)

We, the Jury in the above entitled case, having found the Defendant, GLENFORD ANTHONY BUDD, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Dajon Jones, victim), COUNT 2 – MURDER OF THE FIRST DEGREE (Derrick Jones, victim), and COUNT 3 – MURDER OF THE FIRST DEGREE (Jason Moore, victim) designate that the following aggravating circumstance has been established beyond a reasonable doubt.

The murder was committed by a person who has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree.

DATED at Las Vegas, Nevada, this 15th day of December, 2005.

Rachel Adams
FOREPERSON

EXHIBIT B6

EXHIBIT B6

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,

Defendant.

Case No. C193182

Dept No. XVIII

PENALTY VERDICT - COUNT I (Dajon Jones, victim)

We, the Jury in the above entitled case, having found the Defendant, GLENFORD ANTHONY BUDD, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Dajon Jones, victim), and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

_____ A definite term of 100 years imprisonment, with eligibility for parole beginning when a minimum of 40 years has been served.

_____ Life imprisonment, with eligibility for parole beginning when a minimum of 40 years has been served.

__✓__ Life imprisonment without the possibility of parole.

_____ Death.

DATED at Las Vegas, Nevada, this 16th day of December, 2005

Rachel Mabe
FOREPERSON

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,

Defendant.

Case No. C193182

Dept No. XVIII

PENALTY VERDICT - COUNT 2 (Derrick Jones, victim)

We, the Jury in the above entitled case, having found the Defendant, GLENFORD ANTHONY BUDD, Guilty of COUNT 2 - MURDER OF THE FIRST DEGREE (Derrick Jones, victim), and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

_____ A definite term of 100 years imprisonment, with eligibility for parole beginning when a minimum of 40 years has been served.

_____ Life imprisonment, with eligibility for parole beginning when a minimum of 40 years has been served.

✓ Life imprisonment without the possibility of parole.

_____ Death.

DATED at Las Vegas, Nevada, this 16th day of December, 2005

Rachel Holden
FOREPERSON

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,

Defendant.

Case No. C193182

Dept No. XVIII

PENALTY VERDICT - COUNT 3 (Jason Moore, victim)

We, the Jury in the above entitled case, having found the Defendant, GLENFORD ANTHONY BUDD, Guilty of COUNT 3 - MURDER OF THE FIRST DEGREE (Jason Moore, victim), and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

_____ A definite term of 100 years imprisonment, with eligibility for parole beginning when a minimum of 40 years has been served.

_____ Life imprisonment, with eligibility for parole beginning when a minimum of 40 years has been served.

__✓__ Life imprisonment without the possibility of parole.

_____ Death.

DATED at Las Vegas, Nevada, this 16th day of December, 2005

Rachel Adams
FOREPERSON

EXHIBIT B7

EXHIBIT B7

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT IV - JERMAINE M. WOODS)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have been checked below have been established.

____ The Defendant has no significant history of prior criminal activity.

____ The victim was a participant in the Defendant's criminal conduct or consented to the act.

____ The Defendant was an accomplice in a murder committed by another person and his participation in the murder was relatively minor.

____ Any other mitigating circumstances.

_____

_____

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

FOREPERSON

VER

11-15-00 5:30 PM

Jayne Brown

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT IV - JERMAINE M. WOODS)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

___ 1. The murder was committed while the person was engaged in the commission of or an attempt to commit any Burglary.

✓ 2. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

///

3. The murder was committed to avoid or prevent a lawful arrest.

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

FOREPERSON

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT I - SAMANTHA LATRELLE SCOTTI)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have been checked below have been established.

____ The Defendant has no significant history of prior criminal activity.

____ The victim was a participant in the Defendant's criminal conduct or consented to the act.

____ The Defendant was an accomplice in a murder committed by another person and his participation in the murder was relatively minor.

____ Any other mitigating circumstances.

_____

_____

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

FOREPERSON

VER

11-15-00 5:30 PM

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT I - SAMANTHA LATRELLE SCOTTI)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

✓ 1. The murder was committed while the person was engaged in the commission of or an attempt to commit any Burglary.

✓ 2. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

///

✓ 3. The murder was committed to avoid or prevent a lawful arrest.

____ 4. The murder involved torture or the mutilation of the victim.

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

FOREPERSON

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT II - LISA RENEE BOYER)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have been checked below have been established.

____ The Defendant has no significant history of prior criminal activity.

____ The victim was a participant in the Defendant's criminal conduct or consented to the act.

____ The Defendant was an accomplice in a murder committed by another person and his participation in the murder was relatively minor.

____ Any other mitigating circumstances.

_____

_____

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

FOREPERSON

VER

11-15-00 5:30 PM

Joyce Brand

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT II - LISA RENEE BOYER)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

✓ 1. The murder was committed while the person was engaged in the commission of or an attempt to commit any Burglary.

✓ 2. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

///

✓ 3. The murder was committed to avoid or prevent a lawful arrest.

DATED at Las Vegas, Nevada, this 13 day of November, 2000.

FOREPERSON

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT III - STEVEN LAWRENCE WALKER)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have been checked below have been established.

____ The Defendant has no significant history of prior criminal activity.

____ The victim was a participant in the Defendant's criminal conduct or consented to the act.

____ The Defendant was an accomplice in a murder committed by another person and his participation in the murder was relatively minor.

____ Any other mitigating circumstances.

_____

_____

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

FOREPERSON

VER

11-15-00 5:30 PM

Joyce D'Esau

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

SPECIAL
VERDICT
(COUNT III - STEVEN LAWRENCE WALKER)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

✓ 1. The murder was committed while the person was engaged in the commission of or an attempt to commit any Burglary.

✓ 2. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

///

V 3. The murder was committed to avoid or prevent a lawful arrest.

DATED at Las Vegas, Nevada, this 16 day of November, 2000.

FOREPERSON

EXHIBIT B8

EXHIBIT B8

VER

11-15-00 5:30 PM

Faye Bleau

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

VERDICT
(COUNT IV - JERMAINE M. WOODS)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

____ Life in Nevada State Prison With the Possibility of Parole.

✓ Life in Nevada State Prison Without the Possibility of Parole.

____ Death.

DATED at Las Vegas, Nevada, this 15 day of November, 2000

[illegible]
FOREPERSON

VER

11-15-00 5:30 PM

Joyce Brand

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

VERDICT
(COUNT I - SAMANTHA LATRELLE SCOTTI)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

✓ Life in Nevada State Prison With the Possibility of Parole.

___ Life in Nevada State Prison Without the Possibility of Parole.

___ Death.

DATED at Las Vegas, Nevada, this 15 day of November, 2000

FOREPERSON

VER

11-15-00 5:30 PM

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

VERDICT
(COUNT II - LISA RENEE BOYER)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

____ Life in Nevada State Prison With the Possibility of Parole.

__✓__ Life in Nevada State Prison Without the Possibility of Parole.

____ Death.

DATED at Las Vegas, Nevada, this 15 day of November, 2000

FOREPERSON

VER

11-15-00 5:30 PM

Joyce Brown

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936
Dept. No. XI

VERDICT
(COUNT III - STEVEN LAWRENCE WALKER)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

____ Life in Nevada State Prison With the Possibility of Parole.

__V__ Life in Nevada State Prison Without the Possibility of Parole.

____ Death.

DATED at Las Vegas, Nevada, this 15 day of November, 2000

Edward Powell

FOREPERSON

EXHIBIT B9

EXHIBIT B9

VER

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

PATRICK HENRY RANDLE

Defendant.

Case No. C121817
Dept. No. XV
Docket L

VERDICT

We, the Jury in the above entitled case, having found the Defendant, PATRICK HENRY RANDLE, Guilty of COUNT IV - MURDER OF THE FIRST DEGREE and having found that th aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstance impose a sentence of,

____ Life in Nevada State Prison With the Possibility of Parole.

X Life in Nevada State Prison Without the Possibility of Parole.

____ Death.

DATED at Las Vegas, Nevada, this 13th day of June, 1996

FOREPERSON

JUL 1 1996

CLERK

EXHIBIT B10

EXHIBIT B10

VER

ORIGINAL

FILED IN OPEN COURT
JUN 14 1996 1:
LORETTA [illegible], CLERK
BY Cindy Hurtado
Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

PATRICK HENRY RANDLE

Defendant.

Case No. C121817
Dept. No. XV
Docket L

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, PATRICK HEN RANDLE, Guilty of COUNT IV - MURDER OF THE FIRST DEGREE, designate that the aggravat circumstance or circumstances which have been checked below have been established beyon reasonable doubt.

X The murder was committed by a person under sentence of imprisonment, to-wit: Ass With a Firearm on a Person.

X The murder was committed by a person who was previously convicted of a fel involving the use or threat of violence to the person of another, to-wit: Attempt Robb in the California Superior Court in 1978, Case No. A-522872.

X The murder was committed by a person who was previously convicted of a fel involving the use or threat of violence to the person of another, to-wit: Attempt Robb With a Deadly Weapon in the California Superior Court in 1978, Case No. A-6142

X The murder was committed by a person who was previously convicted of a felc involving the use or threat of violence to the person of another, to-wit: Robbery Wit! Deadly Weapon in the California Superior Court in 1983, Case Nos. A-455882.

X The murder was committed by a person who was previously convicted of a felc involving the use or threat of violence to the person of another, to-wit: Assault Wit: Firearm on Person in the California Superior Court in 1989, Case Nos. A-650532.

X The murder was committed while the person was engaged in the commission of or attempt to commit any Robbery.

DATED at Las Vegas, Nevada, this 13th day of June, 1996.

FOREPERSON

Jul 5 '96

CLERK

EXHIBIT B11

EXHIBIT B11

VER

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

PATRICK HENRY RANDLE,

Defendant.

CASE NO. C121817
DEPT. NO. XV
DOCKET L

V E R D I C T

We, the jury in the above entitled case, find the Defendant, PATRICK HENRY RANDLE, as to:

	Guilty	Not Guilty
COUNT I:		
ROBBERY - Calvin Johnson	✓	
With Use of a Deadly Weapon	✓	
Without Use of a Deadly Weapon		
COUNT II:		
ATTEMPT MURDER - Calvin Johnson	✓	
With Use of a Deadly Weapon	✓	
Without Use of a Deadly Weapon		
BATTERY WITH USE OF A DEADLY WEAPON (Lesser included offense - you may choose one only)		

CE31

	Guilty	Not Guilty
COUNT III:		
ATTEMPT ROBBERY - Roger Champagne	✓	
With Use of a Deadly Weapon	✓	
Without Use of a Deadly Weapon		
COUNT IV: Roger Champagne		
(Choose one of the following)		
MURDER OF THE FIRST DEGREE	✓	
MURDER OF THE SECOND DEGREE		
With Use of a Deadly Weapon	✓	
Without Use of a Deadly Weapon		
COUNT V:		
ROBBERY - Lorette Champagne	✓	
With Use of a Deadly Weapon		
Without Use of a Deadly Weapon	✓	

DATED: This 06 day of June, 1996.

FOREPERSON

EXHIBIT B12

EXHIBIT B12

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FERNANDO PADRON RODRIGUEZ

Defendant.

Case No. C130763
Dept. No. VI
Docket B

SPECIAL
VERDICT

We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON RODRIGUEZ, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Richley Miller), designate that the mitigating circumstance or circumstances which have been checked below have been established.

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

_____ The defendant was an accomplice in a murder committed by another person and his participation murder was relatively minor.

///

///

///

///

CE31

____ The defendant acted under duress or under the domination of another person.

_X_ Any other mitigating circumstances. (Mercy)

DATED at Las Vegas, Nevada, this 7 day of May, 1996.

Jacques C. Sapp
FOREPERSON

VER

MAY 2 1996

LORETTA BOWMAN, CLERK

BY _____ Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FERNANDO PADRON RODRIGUEZ

Defendant.

Case No. C130763
Dept. No. VI
Docket B

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON RODRIGUEZ, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Richley Miller), designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

✓ The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another, to-wit: Robbery (Florida 1989).

✓ The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another, to-wit: Robbery (Florida 1989).

///

///

✓ The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

✓ The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.

DATED at Las Vegas, Nevada, this 1 day of May, 1996.

Jacques C Jagne
FOREPERSON

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FERNANDO PADRON RODRIGUEZ

Defendant.

Case No. C130763
Dept. No. VI
Docket B

SPECIAL VERDICT

We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON RODRIGUEZ, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Brad Palcovic), designate that the mitigating circumstance or circumstances which have been checked below have been established.

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

_____ The defendant was an accomplice in a murder committed by another person and his participation murder was relatively minor.

///

///

///

///

CE31

____ The defendant acted under duress or under the domination of another person.

__X__ Any other mitigating circumstances. (Mercy)

DATED at Las Vegas, Nevada, this 7 day of May, 1996.

James C. Segal
FOREPERSON

JUL 9 '96

CLERK

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FERNANDO PADRON RODRIGUEZ

Defendant.

Case No. C130763
Dept. No. VI
Docket B

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON RODRIGUEZ, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Brad Palcovic), designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

✓ The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another, to-wit: Robbery (Florida 1989).

✓ The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another, to-wit: Robbery (Florida 1989).

///

///

CE31

1 / The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

✓ The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.

DATED at Las Vegas, Nevada, this 7 day of May, 1996.

James C. Dapre
FOREPERSON

JUL 5 '96

CLERK

EXHIBIT B13

EXHIBIT B13

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FERNANDO PADRON RODRIGUEZ

Defendant.

Case No. C130763
Dept. No. VI
Docket B

VERDICT

We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON RODRIGUEZ, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Richley Miller) and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

_____ A definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has passed

_____ Life in Nevada State Prison With the Possibility of Parole.

__X__ Life in Nevada State Prison Without the Possibility of Parole.

_____ Death.

DATED at Las Vegas, Nevada, this 1 day of May, 1996

Jacques C. Jaqua
FOREPERSON

VER

FILED IN OPEN COURT
MAY 4 1996
BY Jean McKinley

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FERNANDO PADRON RODRIGUEZ,

Defendant.

Case No. C130763
Dept. No. VI
Docket B

VERDICT

We, the jury in the above entitled case, find the defendant FERNANDO PADRON RODRIGUEZ, Guilty of COUNT I - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON. (Brad Palcovic)

DATED this 4 day of May, 1996.

Jacques C. Dayne
FOREPERSON

CE19

VER

MAY 7 1996

LORETTA BOWMAN, CLERK

BY _____ Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FERNANDO PADRON RODRIGUEZ

Defendant.

Case No. C130763
Dept. No. VI
Docket B

VERDICT

We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON RODRIGUEZ, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Brad Palcovic) and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

____ A definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has passed

____ Life in Nevada State Prison With the Possibility of Parole.

__X__ Life in Nevada State Prison Without the Possibility of Parole.

____ Death.

DATED at Las Vegas, Nevada, this 7 day of May, 1996

Jacques C. Layne

FOREPERSON

EXHIBIT B14

EXHIBIT B14

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JONATHAN DANIELS,

Defendant.

CASE NO.: C126201

DEPT NO.: XV

DCKT NO.: "L"

VERDICT

We, the jury in the above entitled case, find the Defendant JONATHAN CORNELIUS DANIELS, as follows:

COUNT I

	GUILTY	NOT GUILTY
Murder of the First Degree (June Mildred Frye)	X	
Murder of the Second Degree (June Mildred Frye)		

In the event that you find the Defendant guilty of Count I, you must now decide whether the crime was committed (WITH) or WITHOUT the use of a deadly weapon. (circle one).

You may only find the Defendant guilty of one of the above.

COUNT II

Murder of the First Degree (Nicasio Diaz)	X	
Murder of the Second Degree (Nicasio Diaz)		

In the event that you find the Defendant guilty of Count II, you must now decide whether the crime was committed (WITH) or WITHOUT the use of a deadly weapon. (circle one).

You may only find the Defendant guilty of one of the above.

621

COUNT III

	GUILTY	NOT GUILTY
First Degree Kidnapping	____	____
Second Degree Kidnapping	____	____

In the event that you find the Defendant guilty of Count III, you must now decide whether the crime was committed **WITH** or **WITHOUT** the use of a deadly weapon. (circle one).

You may only find the Defendant guilty of one of the above.

COUNT IV

Burglary	____	X

COUNT V

Robbery (June Mildred Frye)	X	____

In the event that you find the Defendant guilty of Count V, you must now decide whether the crime was committed (**WITH**) or **WITHOUT** the use of a deadly weapon. (circle one).

COUNT VI

Robbery (Nicasio Diaz)	X	____

In the event that you find the Defendant guilty of Count VI, you must now decide whether the crime was committed (**WITH**) or **WITHOUT** the use of a deadly weapon. (circle one).

DATED this 27 day of October, 1995.

Michael T. Evans
FOREPERSON

622

DISTRICT COURT

CLARK COUNTY, NEVADA

C126201

THE STATE OF NEVADA, Plaintiff, -vs- JONATHAN CORNELIUS DANIELS, #1201050 Defendant.	CASE NO. ~~C126201~~ DEPT. NO. XV DOCKET NO. L

FILED
NOV 01 1995
Cindy Horio

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Nicasio Diaz), designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

X The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

X The murder was committed while the person was engaged in the commission of or an attempt to commit any Robbery.

X The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.

548

X The Defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree.

DATED at Las Vegas, Nevada, this 1ST day of ~~October~~ NOVEMBER, 1995

Michael T. Eagan
FOREPERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- JONATHAN CORNELIUS DANIELS, #1201050 Defendant.	CASE NO. C1126201 DEPT. NO. XV DOCKET NO. L

S P E C I A L

V E R D I C T

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Nicasio Diaz), designate that the mitigating circumstance or circumstances which have been checked below have been established.

____ The defendant has no significant history of prior criminal activity.

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

X The defendant acted under duress or under the domination of another person.

650

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

__X__ Any other mitigating circumstances.

DATED at Las Vegas, Nevada, this 1ST day of ~~October~~ NOVEMBER, 1995.

Richard T Emmons
FOREPERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

C126201

THE STATE OF NEVADA,

Plaintiff,

-vs-

JONATHAN CORNELIUS DANIELS,
#1201050

Defendant.

CASE NO. ~~C1126201~~

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT
NOV 0 1 1995 19
LORETTA BOWMAN, CLERK
BY Andy Horton Deputy

S P E C I A L

V E R D I C T

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (June Mildred Frye), designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

X The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

X The murder was committed while the person was engaged in the commission of or an attempt to commit any Robbery.

X The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.

643

X The Defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree.

DATED at Las Vegas, Nevada, this 1st day of ~~October~~ November, 1995

Michael T. Egan
FOREPERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- JONATHAN CORNELIUS DANIELS, #1201050 Defendant.	CASE NO. C1126201 DEPT. NO. XV DOCKET NO. L

S P E C I A L

V E R D I C T

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (June Mildred Frye), designate that the mitigating circumstance or circumstances which have been checked below have been established.

___ The defendant has no significant history of prior criminal activity.

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

_X_ The defendant acted under duress or under the domination of another person.

645

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

X Any other mitigating circumstances.

DATED at Las Vegas, Nevada, this 1st day of ~~October~~ November, 1995.

Michael T Engan
FOREPERSON

646

EXHIBIT B15

EXHIBIT B15

DISTRICT COURT

CLARK COUNTY, NEVADA

C126201

THE STATE OF NEVADA, Plaintiff, -vs- JONATHAN CORNELIUS DANIELS, #1201050 Defendant.	CASE NO. ~~C1126201~~ DEPT. NO. XV DOCKET NO. L

FILED IN OPEN COURT
NOV 0 1 1995 19
LORETTA BOWMAN, CLERK
BY Cindy Horton Deputy

V E R D I C T

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Nicasio Diaz) and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

____ Life in Nevada State Prison With the Possibility of Parole.

X Life in Nevada State Prison Without the Possibility of Parole.

____ Death.

DATED at Las Vegas, Nevada, this 1st day of ~~October~~ NOVEMBER, 1995

Manford T. Eugene
FOREPERSON

647

DISTRICT COURT

CLARK COUNTY, NEVADA

C126201

THE STATE OF NEVADA, Plaintiff, -vs- JONATHAN CORNELIUS DANIELS, #1201050 Defendant.	CASE NO. ~~C1126201~~ DEPT. NO. XV DOCKET NO. L

FILED IN OPEN COURT
NOV 01 1995 12
LORETTA BOWMAN, CLERK
BY Cindy Hurton Deputy

V E R D I C T

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (June Mildred Frye) and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

____ Life in Nevada State Prison With the Possibility of Parole.

__X__ Life in Nevada State Prison Without the Possibility of Parole.

____ Death.

DATED at Las Vegas, Nevada, this 1st day of ~~October~~ November, 1995

Michael T. Eagan
FOREPERSON

652

EXHIBIT B16

EXHIBIT B16

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RONALD DUCKSWORTH, JR.,

Defendant.

CASE NO. C108501

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT
OCT 28 1993 19
LORETTA BOWMAN, CLERK
BY Cindy Horton Deputy

SPECIAL VERDICT

We, the Jury in the above entitled case, having found the Defendant, RONALD DUCKSWORTH, JR., Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Vikki Yvett Smith), designate that any aggravating circumstance which has been checked below has been established beyond a reasonable doubt and further find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

X The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another.

X The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a course of action which would normally be hazardous to the lives of more than one person.

X The murder was committed while a person was engaged, alone or with another, in the commission

of or an attempt to commit any Burglary, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Burglary committed.

X The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any First Degree Kidnapping, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the First Degree Kidnapping committed.

X The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any Robbery, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Robbery committed.

X The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any Sexual Assault, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Sexual Assault committed.

X The murder involved torture, depravity of mind or the mutilation of the victim.

DATED at Las Vegas, Nevada, this 28th day of October, 1993.

Richard M. Ott

FOREPERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RONALD DUCKSWORTH, JR.,

Defendant.

CASE NO. C108501

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT
OCT 28 1993 19
LORETTA BOWMAN, CLERK
BY Cindy Horton Deputy

S P E C I A L

V E R D I C T

We, the Jury in the above entitled case, having found the Defendant, RONALD DUCKSWORTH, JR., Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Joseph Smith III), designate that any aggravating circumstance which has been checked below has been established beyond a reasonable doubt and further find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

X The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another.

X The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a course of action which would normally be hazardous to the lives of more than one person.

X The murder was committed while a person was engaged, alone or with another, in the commission

of or an attempt to commit any Burglary, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Burglary committed.

X The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any First Degree Kidnapping, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the First Degree Kidnapping committed.

/ The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any Robbery, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Robbery committed.

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RONALD JR. DUCKSWORTH, aka RONALD DUCKSWORTH, JR.,

Defendant.

CASE NO. C108501

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT
OCT 28 1993 19
LORETTA BOWMAN, CLERK
BY Cindy Horton
Deputy

V E R D I C T

We, the Jury in the above entitled case, having found the Defendant, RONALD JR. DUCKSWORTH, aka RONALD DUCKSWORTH, JR., Guilty, impose a sentence of:

COUNT I - Murder of the First Degree (Joseph Smith III)

_____ Life with the Possibility of Parole;

_X_ Life without the Possibility of Parole;

_____ Death.

COUNT II - Murder of the First Degree (Vikki Smith)

_____ Life with the Possibility of Parole;

_X_ Life without the Possibility of Parole;

_____ Death.

DATED at Las Vegas, Nevada, this 28th day of October, 1993.

Frank W. Ott
FOREPERSON

EXHIBIT B17

EXHIBIT B17

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- CARL LEE MARTIN, Defendant.	CASE NO. C108501 DEPT. NO. XV DOCKET NO. L

FILED IN OPEN COURT
OCT 28 1993 19
LORETTA BOWMAN, CLERK
BY Cindy Horton
Deputy

S P E C I A L

V E R D I C T

We, the Jury in the above entitled case, having found the Defendant, CARL LEE MARTIN, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Joseph Smith III), designate that any aggravating circumstance which has been checked below has been established beyond a reasonable doubt and further find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

X The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another.

X The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a course of action which would normally be hazardous to the lives of more than one person.

X The murder was committed while a person was engaged, alone or with another, in the commission

of or an attempt to commit any Burglary, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Burglary committed.

X The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any First Degree Kidnapping, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the First Degree Kidnapping committed.

X The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any Robbery, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Robbery committed.

_____ The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any Sexual Assault, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Sexual Assault committed.

_____ The murder involved torture, depravity of mind or the mutilation of the victim.

DATED at Las Vegas, Nevada, this 28th day of October, 1993.

FOREPERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CARL LEE MARTIN,

Defendant.

CASE NO. C108501

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT
OCT 28 1993 19
LORETTA BOWMAN, CLERK
BY Cindy Horton Deputy

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, CARL LEE MARTIN, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Vikki Yvett Smith), designate that any aggravating circumstance which has been checked below has been established beyond a reasonable doubt and further find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

X The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another.

X The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a course of action which would normally be hazardous to the lives of more than one person.

X The murder was committed while a person was engaged, alone or with another, in the commission

of or an attempt to commit any Burglary, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Burglary committed.

X The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any First Degree Kidnapping, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the First Degree Kidnapping committed.

X The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any Robbery, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Robbery committed.

X The murder was committed while a person was engaged, alone or with another, in the commission of or an attempt to commit any Sexual Assault, and the person charged:

(a) Killed the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used; or

(c) Acted with reckless indifference to human life and was a major participant in the Sexual Assault committed.

X The murder involved torture, depravity of mind or the mutilation of the victim.

DATED at Las Vegas, Nevada, this 20th day of October, 1993.

FOREPERSON

EXHIBIT B18

EXHIBIT B18

DISTRICT COU

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CARL LEE MARTIN,

Defendant.

CASE NO. C108501

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT
OCT 28 1993
LORETTA BOWMAN, CLERK
BY Cindy Horton Deputy

V E R D I C T

We, the Jury in the above entitled case, having found the Defendant, CARL LEE MARTIN, Guilty, impose a sentence of:

COUNT I - Murder of the First Degree (Joseph Smith III)

_____ Life with the Possibility of Parole;

_X_ Life without the Possibility of Parole;

_____ Death.

COUNT II - Murder of the First Degree (Vikki Smith)

_____ Life with the Possibility of Parole;

_X_ Life without the Possibility of Parole;

_____ Death.

DATED at Las Vegas, Nevada, this 28th day of October, 1993.

FOREPERSON

CE

Exhibit 39

Exhibit 39

Code No. 4185

ORIGINAL

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-

SIAOSI VANISI, Petitioner, vs. STATE OF NEVADA, Respondent.	Case No. CR98P0516 Dept. No. 4

TRANSCRIPT OF PROCEEDINGS

POST-CONVICTION HEARING

MONDAY, MAY 2, 2005

RENO, NEVADA

Reported By: DENISE PHIPPS, CCR No. 234

APPEARANCES:

For the Petitioner:

SCOTT EDWARDS
Attorney at Law
729 Evans Avenue
Reno, Nevada 89512
-and-

THOMAS L. QUALLS
Attorney at Law
443 Marsh Avenue
Reno, Nevada 89509

For the Respondent:

TERRENCE P. McCARTHY
DEPUTY DISTRICT ATTORNEY
75 Court Street
Reno, Nevada 89520

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
STEPHEN GREGORY	4	30	39	39
JEREMY BOSLER	43	57	61	
JOHN PETTY	62	79	84	
LAURA BIELSER	89	91	95	95

EXHIBITS:		ID:	AD:
J	MEDICAL RECORDS	88	88

RENO, NEVADA, MONDAY, MAY 2, 2005, 11:10 A.M.

-oOo-

THE COURT: This is the time set for hearing. Today we're going to proceed with the writ of habeas corpus hearing.

Counsel, are you ready to proceed?

MR. EDWARDS: Yes, Your Honor.

MR. McCARTHY: State's ready.

MR. EDWARDS: Your Honor, before I forget, before we adjourn for the day, we'd like another date not too far out for continuation of evidence and argument upon the petition and I guess the motion to dismiss.

THE COURT: And you need to have Mr. Specchio available at that time?

MR. EDWARDS: Yes, Your Honor.

THE COURT: And someone from the Consulate?

MR. EDWARDS: Well, maybe.

THE COURT: So when do you want us to start looking for that date?

MR. EDWARDS: About 30 days, Your Honor.

THE COURT: You think it will be that long before Mr. Specchio is back?

MR. EDWARDS: I think two weeks is what I hear

from his former staff.

THE COURT: Okay. We'll start looking.

MR. EDWARDS: About two weeks or more.

THE COURT: Go ahead.

MR. EDWARDS: And at this time, Your Honor, I'd like to call Mr. Gregory, Stephen Gregory, to the stand.

STEPHEN GREGORY

called as a witness on behalf of the Petitioner,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDWARDS:

Q Could you please state your name and spell your first name.

A Stephen Gregory, S-t-e-p-h-e-n.

Q What's your occupation?

A I'm a lawyer.

Q How long have you been licensed as a lawyer?

A 32 years, over 30 years.

Q Is that all here in the state of Nevada?

A Yes.

Q Did you have occasion to represent an individual