

1 prison?

2 MR. GREGORY: Yes, sir.

3 THE COURT: Want to do that on a piece of white

4 paper? Want to use the piece of white paper?

5 MR. GREGORY: That's fine. Thank you, Your

6 Honor.

7 THE WITNESS: There's some twists and turns.

8 BY MR. GREGORY:

9 Q Do the best you can.

10 A Something like that (Drawing).

11 Q Show us with an X, if you will, where the guard

12 towers are.

13 A 3 tower here, 4 tower, 5 tower, 1 tower.

14 MR. GREGORY: May the record reflect that the

15 witness has complied, Your Honor?

16 THE COURT: Yes.

17 BY MR. GREGORY:

18 Q Now the interior fences. Let's make it

19 easier --

20 A Double fence all the way around here.

21 Q There's another one near the outside fence?

22 A Yes.

23 Q These fences are how high?

24 A Probably 12 feet.

25 Q And how high are they with Constantine wire?

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1           A     That'd probably make them another foot high  
2 because it kind of hangs on the top of them.

3           Q     Both on the exterior and interior fence?

4           A     Right.

5           Q     Put in Block 12 and put in the fences around  
6 Block 12.

7           A     Actually, it's kind of shaped like this.  
8 There's a fence here, another one along here. There's gates  
9 here. There's a gate here. (Drawing) We have so many  
10 fences.

11          Q     Okay. Are the fences just the dotted lines?

12          A     Well, there's more fences back here, but these  
13 are the other Unit 12 yards.

14          Q     Okay. Is that Block 10's or 12's?

15          A     Unit 10 sits right here. This is Unit 12  
16 yards. The walk-alone yard is right here, (pointing).

17          Q     You guys call it the dog pen at times, correct?

18          A     I've never called it that. I've never heard it  
19 called that.

20          Q     Describe it again for this jury.

21               THE COURT: Are you through with the diagram?

22               MR. GREGORY: For the moment. I may have him  
23 do something else. Do me a favor and put your initials on  
24 the bottom of that.

25               MR. STANTON: Your Honor, in addition, I'd ask

1 counsel to wait until the witness has completely responded.  
2 He was talking over the witness' answer. I couldn't hear.  
3 I'm sure the court reporter might have had trouble too.

4 MR. GREGORY: Thank you, counsel.

5 THE COURT: Go ahead and have a seat in the  
6 witness chair.

7 BY MR. GREGORY:

8 Q Describe this exercise yard.

9 A It's about 30 feet wide and about 15 feet deep.  
10 And it's got -- there's no Constantine wire on it. It's got  
11 chainlink all the way around it and on the lid.

12 Q On the lid. You mean it's totally enclosed?

13 A Right.

14 Q And the prisoners are brought out of Block 12  
15 one at a time and allowed to exercise out there; is that  
16 correct?

17 A For five hours. Ten hours a week, five hours  
18 twice.

19 Q And you've indicated that you saw Mr. Vanisi  
20 trying to dig under a fence. Now I'm going to ask you to  
21 step down again and show us, if you will, I don't want to  
22 confuse this jury, with an F for fence, okay, the exact  
23 point where he's digging under.

24 A There's a fence that runs along here, too.

25 Q So there's another fence?

1 A Yeah.

2 Q I'm not sure -- okay. May the record reflect  
3 he's complied with a small "f", Your Honor?

4 THE COURT: Yes.

5 BY MR. GREGORY:

6 Q And put north/south-east/west, if you will,  
7 please, on that. I don't want to put words in your mouth,  
8 but what direction was he headed in?

9 A When he was going under the fence, he was  
10 heading east.

11 Q Heading in an easterly direction?

12 A That's right.

13 Q So toward what?

14 A Toward Unit 12.

15 Q You may resume your seat.

16 Towards the housing facility, Unit 12; is that  
17 correct?

18 A Right.

19 Q Now, you're aware that your own administration  
20 termed this an incident, not an escape attempt, aren't you?

21 A No, I'm not aware of that.

22 Q How many officers were involved in this?

23 A I'm not sure the exact number. Probably eight  
24 or ten.

25 Q And your tower, as you indicated, was on top of

1 Block 10?

2 A Yeah. It was on top of Unit 10.

3 Q Which is -- I apologize. One more time. Put  
4 12 and 10 there.

5 A I'm getting lots of exercise.

6 Q You are indeed. My apologies to you.

7 A (Witness complied.)

8 Q So the jury is not confused, these other areas  
9 have housing units and dining commons?

10 A Yeah. There's three units on this side and  
11 three on this side. Another one over here.

12 Q Would you say that's a close representation as  
13 far as the fences and the locations of the unit?

14 A Yes.

15 MR. GREGORY: We're going to offer that as an  
16 exhibit, Your Honor.

17 MR. STANTON: I have no objection, Your Honor.

18 THE COURT: The clerk will mark it.

19 MR. GREGORY: Court's brief indulgence.

20 THE CLERK: Exhibit 53 marked.

21 THE COURT: Exhibit 53 is admitted.

22 (Defendant's Exhibit 53 was marked and admitted.)

23 BY MR. GREGORY:

24 Q What time of day was this, Officer Wiley? I  
25 don't know if anybody even asked you.

1 A I think it was approximately 12:30 in the  
2 afternoon, if I remember right.

3 Q Right around lunchtime?

4 A Yeah.

5 Q A lot of guards and inmates out?

6 A Not particularly, no.

7 Q Were you down for the count or were there  
8 people exercising in the yards at Block 10?

9 A No. 10 is a GP yard. They all go out to the  
10 bigger yard up above. I don't even really see them. My  
11 main job is to watch the inmates from Unit 12.

12 Q There are a lot of guards there; is that  
13 correct?

14 A There's about 40 on day shift.

15 Q Do you know anything about manic behaviors?

16 A No.

17 MR. GREGORY: I'll pass the witness. Thank  
18 you, Your Honor.

19 THE COURT: Redirect.

20 MR. STANTON: Briefly, Your Honor.

21

22 REDIRECT EXAMINATION

23 BY MR. STANTON:

24 Q Fortunately I think we all know some of the  
25 terms that you've used, and I'd like to just maybe do a

1 dictionary translation.

2 GP yard?

3 A General population.

4 Q Ad-seg?

5 A That's administrative segregation. The  
6 administration puts them in a certain place because they  
7 don't get along with everyone else.

8 Q And dis-seg?

9 A That's disciplinary segregation. That's where  
10 you -- it's kind of like ad-seg, but it's the real bad boys.

11 MR. STANTON: Thank you. No further questions.

12 THE COURT: Anything further?

13 MR. GREGORY: Just one.

14

15 CROSS-EXAMINATION

16 BY MR. GREGORY:

17 Q I want to make it clear to this jury that  
18 Mr. Vanisi was in there as a courtesy to the Washoe County  
19 Jail?

20 A Uh-huh.

21 Q Is that correct?

22 A Sure.

23 Q Thank you. He wasn't in there for any criminal  
24 offenses that he committed; just to be held by the prison,  
25 right?

1 A Yeah.

2 MR. GREGORY: Thank you.

3 THE COURT: Anything further?

4 MR. STANTON: No, Your Honor.

5 THE COURT: The witness may step down. We'll

6 take the easel out. The clerk will remove the exhibit from

7 the easel first.

8 MR. GREGORY: May Mr. Stanton and I approach on

9 a procedural matter?

10 THE COURT: Yes.

11 (Bench conference between Court and counsel.)

12 MR. GREGORY: Your Honor, may I have the

13 Court's indulgence? I need to check on something.

14 THE COURT: Yes.

15 Go ahead and call your next witness.

16 MR. STANTON: The State would call David

17 Molnar.

18 THE CLERK: Please raise your right hand.

19 (Witness sworn.)

20 THE CLERK: Thank you. Please be seated at the

21 witness stand.

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DAVID MOLNAR

called as a witness on behalf of the Plaintiff,  
having been first duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STANTON:

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

A David Molnar, M-o-l-n-a-r.

Q And sir, how are you currently employed?

A With the Nevada State Prison.

Q And how long have you been in that form of  
employment?

A At the prison itself?

Q Yes.

A For approximately a year.

Q And prior to your assignment at the Nevada  
State Prison had you been in corrections longer than that?

A Yes, I was with the Federal Bureau of Prisons  
for nine years.

Q Where is your current assignment?

A At the Nevada State Prison.

Q What are your job responsibilities and  
assignments at that facility?

1           A       I work what's known as S&E. I work on the  
2 ground patrolling the grounds, doing escort, searches; and  
3 I'm also the self-defense tactics instructor.

4           Q       What is that?

5           A       I teach use of force and practical application  
6 of self-defense.

7           Q       And you teach that to who?

8           A       To staff members.

9           Q       To all the correctional officers at the Nevada  
10 State Prison?

11          A       As well as other prisons in the area.

12          Q       I'd like to direct your attention to an  
13 incident that occurred on May 27th, 1999, in Unit 12. Do  
14 you remember that day?

15          A       Yes, sir.

16          Q       Do you know an inmate that that incident  
17 involved, Siaosi Vanisi?

18          A       Yes, sir.

19          Q       Do you see him in court?

20          A       Yes, sir.

21          Q       Could you please describe where in the  
22 courtroom he is and what he's wearing?

23                   MR. GREGORY: Again, we'd stipulate to the  
24 identification.

25                   MR. STANTON: Thank you, counsel.

1 BY MR. STANTON:

2 Q Once again, directing you to that date and  
3 time, Officer Molnar, what was the purpose of you being in  
4 Unit 12 on that day?

5 A I was called to that unit by the sergeant as  
6 the result of an inmate who had barricaded his cell. The  
7 unit officers tried to conduct a count, 11:30 count, and  
8 were unable to see inside of the cell. The occupant had the  
9 cell blocked with paper and tape.

10 Q Is that Mr. Vanisi?

11 A Yes, sir.

12 Q When you say the 11:30 count, 11:30 a.m.?

13 A Yes, sir.

14 Q And is that a standard procedure that is  
15 utilized?

16 A Every day, yes, sir.

17 Q The areas that were covered by Mr. Vanisi in  
18 his cell that day, could you describe that in a little bit  
19 more detail, what prohibited you from making the count and  
20 seeing inside the cell?

21 A Yes. There's windows beside the cell door as  
22 well as a window on the cell door. There was newspaper  
23 which was applied with, I believe it was, toothpaste that  
24 was pasted on the inside of the cell so we couldn't see in.

25 Q Besides the count, the actual identification

1 that all inmates are present, did that represent a security  
2 concern to officers?

3 A Yes, sir.

4 Q How is that?

5 A Inmates who have barricaded their cell are  
6 known to perhaps have weapons or may have inflicted harm  
7 upon themselves, suicide attempts, that sort of thing.

8 Q Is it also a security concern relative to what  
9 they're doing besides the presence of weapons but what they  
10 may be in fact doing inside their cell?

11 A Correct.

12 Q Now, there's a team or group of officers that  
13 convene at that juncture. Can you explain what that team is  
14 and what their purpose is?

15 A That's known as a use of force, a cell  
16 extraction team. It's comprised of five individuals. Not  
17 necessarily an assignment, but five available individuals  
18 who wear protective clothing and enter the cell in a  
19 tactical formation to extract the inmate.

20 Q And what was the number of officers that were  
21 involved in this cell extraction?

22 A There was five.

23 Q You were one of those five?

24 A Yes, sir.

25 Q And how were you and the other officers on the

1 extraction team dressed?

2 A We wear a helmet with a face shield, a gas  
3 mask, a protective vest, and gloves.

4 Q And what, if anything, are you provided with as  
5 far as tools or anything to perform or assist you in the  
6 cell extraction?

7 A I was provided with a set of leg restraints.  
8 One of my responsibilities was to apply the leg restraints  
9 once I got in. The first man in, or the point man, carries  
10 a shield. It's a plexiglass see-through shield to help pin  
11 the inmate.

12 Q And you say that you have this unit convene in  
13 a tactical environment outside the cell door?

14 A Correct.

15 Q Prior to you making entry, can you describe to  
16 this jury what commands were being given to Mr. Vanisi  
17 throughout this entire period?

18 A Prior to that happening, a supervisor has to be  
19 present. In this case it was a sergeant. He attempted to  
20 give orders to the inmate to have him come up to the cell  
21 and submit to restraints. There was nothing coming from the  
22 cell and there was no reply.

23 Q Now, was there something on the cell door  
24 called a food slot?

25 A Yes.

1 Q Could you describe what that is.

2 A A food slot is a, it's a metal, actually, just  
3 a flap that comes down. It's secured by a lock. When you  
4 open it up, you can pass things to the inmate. They can be  
5 restrained through that hole. And that's usually where they  
6 get their food in and out of.

7 Q Relative to the previous testimony you had  
8 given about Mr. Vanisi's conduct of toothpasting items to  
9 prevent looking into the cell, did there come a time where  
10 the food slot was attempted to be opened and what did you  
11 observe at that juncture?

12 A Yes, the sergeant took the key and opened the  
13 food slot. That was also barricaded. There was papers and  
14 I believe he had a state-issued yellow tub that he perched  
15 up and was able to block the food slot.

16 Q Now, can you describe what happened prior to  
17 your entry? Did there come a time where you were able to  
18 see into the cell briefly?

19 A Yes, sir. The sergeant opened the door and  
20 once again gave several commands to submit to restraints, to  
21 come out. To no avail. There was absolutely no response.  
22 He used his hand to brush away some of the debris. And as  
23 we looked down, I could see Mr. Vanisi. He had a towel up  
24 to his face and was just staring right at the door.

25 Q Did he have any liquid in a container next to

1 him?

2 A He was holding a cup. I had no idea what was  
3 in it.

4 Q You didn't at that time know what it was; is  
5 that correct?

6 A No.

7 Q And after the observation that you just  
8 described, was there an attempt to use pepper spray?

9 A Yes. Once again the sergeant advised him that  
10 he was going to introduce chemical agents into the cell, and  
11 he still he wouldn't say anything, wouldn't come up to the  
12 door. So at that point the sergeant entered pepper spray  
13 into the cell and closed the cell door or the food slot.

14 Q What effect, if any, did it have on Mr. Vanisi,  
15 this pepper spray?

16 A It didn't appear to have any. I didn't hear  
17 any coughs or any type of vocalization whatsoever.

18 Q Have you ever had any experience with the use  
19 of a towel as you observed on Mr. Vanisi, especially a towel  
20 that's been moistened with water and how that assists an  
21 inmate with the use of gas?

22 A In my experience it works momentarily.  
23 However, once the chemical seeps in, it does take an effect  
24 on the inmate after a certain period of time.

25 Q Did you see any effect on Mr. Vanisi?

1 A No.

2 Q Could you describe to the ladies and gentlemen  
3 of the jury what happened and what you observed about  
4 Mr. Vanisi's behavior when the extraction team actually made  
5 entry into his cell?

6 A After he was given one final chance to come out  
7 of the cell, the sergeant ordered that the cell be opened.  
8 The cells in that unit are electronic. And rather than  
9 opening like a regular door, they slide. Once it got about  
10 a foot and a half or so open, he attempted to actually come  
11 out of the cell. He had a large cover to his tub, which is  
12 maybe three and a half by two feet and was using it as a  
13 shield or as an offensive weapon to actually try to come out  
14 of the cell towards the team.

15 Q And how many -- was he taken into custody after  
16 a struggle?

17 A Yes, sir. We were able to move him back into  
18 the cell where he fell to the ground and we were able to  
19 restrain him.

20 Q I'm assuming this took place, that it was a  
21 violent encounter, it wasn't just --

22 A Very. Yes, sir.

23 Q How many officers did it take to take  
24 Mr. Vanisi into custody?

25 A All five that entered the cell.



1 Q After Mr. Vanisi was taken into custody, did he  
2 ever spit at any of the officers?

3 A Yes, sir.

4 Q And were you aware at the time of that cell  
5 extraction about an incident that occurred the day before?

6 A I was off the previous day but I had heard what  
7 had happened.

8 Q And that was the shooting incident?

9 A Yes, sir.

10 Q As a result of that was there a disciplinary  
11 hearing that occurred relative to this incident?

12 A Yes, sir.

13 Q And was Mr. Vanisi found guilty of assault and  
14 battery within your institution?

15 A Yes, he was.

16 Q How frequent are cell extractions at the Nevada  
17 State Prison?

18 A That's the only one I've been involved with or  
19 have heard of.

20 MR. STANTON: Thank you. No further questions.

21 THE COURT: Cross-examination.

22

23 CROSS-EXAMINATION

24 BY MR. GREGORY:

25 Q You indicated that Mr. Vanisi had constructed a

1 barricade?

2 A Yes, sir.

3 Q Did he have tools and building materials?

4 A He had several -- he had a lot of, from what I  
5 recall, a lot of legal work, books, papers, that type of  
6 thing, yes.

7 Q That's stuff that you guys had put in there;  
8 isn't that correct?

9 A That's stuff he's provided, yes, sir.

10 Q So there's nothing -- there was no contraband  
11 inside his cell, was there?

12 A Not that I recall.

13 Q Do you know anything about mental illness?

14 A No, sir.

15 Q Know anything about manic behavior?

16 A Not that I could professionally --

17 Q How many other units --

18 MR. STANTON: I would ask again --

19 MR. GREGORY: He's answering the question.

20 MR. STANTON: -- at least the witness be given  
21 an opportunity to answer the question.

22 THE COURT: Mr. Gregory, you are cutting him  
23 off just a little at the end.

24 BY MR. GREGORY:

25 Q Thank you.

1                   How many other inmates were in the cell with  
2           him?

3           A       None.

4           Q       It's a single-man cell, isn't it?

5           A       Yes, sir.

6           Q       And let me see, now, he took pieces of paper,  
7           put toothpaste on them, and closed up the window so you  
8           couldn't see in?

9           A       He didn't close the window, no.

10          Q       It wasn't closed completely?

11          A       It's a solid window.

12          Q       Oh. It's a solid piece of glass?

13          A       Correct.

14          Q       In fact, it's fairly thick glass, isn't it?

15          A       Correct.

16          Q       Like an inch thick, isn't it?

17          A       I don't know the dimensions.

18          Q       Now, Mr. Stanton indicated that you had to use  
19       five officers for this extraction?

20          A       Yes, sir.

21          Q       And I believe your last answer was you've never  
22       been involved in an extraction before?

23          A       Not at the Nevada State Prison.

24          Q       Have you been involved in extractions in the  
25       past, regardless of where they took place?

1 A Yes, sir.

2 Q How many officers are used during extractions?

3 A Throughout the country and throughout every  
4 prison I've been to five is the common number to use in the  
5 use of force extraction.

6 Q And the routine is to -- you correct me if I'm  
7 wrong -- to open the door, rush the inmate and subdue him as  
8 quickly as possible, is it not?

9 A Correct.

10 Q With as little damage to the inmate and/or the  
11 guards as possible?

12 A Yes.

13 Q Did he have any weapons in there?

14 A Not that we could see.

15 Q And you say he had a towel sitting in there  
16 hanging over his head?

17 A Over his mouth.

18 Q It was over his mouth?

19 A Correct.

20 Q Was that before you put in the pepper spray or  
21 after you put in the pepper spray?

22 A That would have been after.

23 Q After you put in the pepper spray?

24 A I didn't put in the pepper spray, but after it  
25 was induced.

1 Q After someone on your team put in the pepper  
2 spray?

3 A Correct.

4 Q And you let that do whatever it does in the  
5 cell for a moment.

6 A Approximately a minute.

7 Q 60 seconds. And it fills with this pepper  
8 spray. And then you pop the door, right?

9 A Correct.

10 Q It's not unusual for inmates to pop out, to try  
11 to get a breath?

12 A It's very unusual.

13 Q That's unusual?

14 A Yes, sir.

15 Q In every extraction you've ever been in you  
16 never had an inmate seeking air trying to get out?

17 A I've been involved in probably 50 to 75  
18 extractions. Most inmates submit after the pepper spray is  
19 induced.

20 Q Now, you described this lid that he had in  
21 front of him when he came out of the cell.

22 A He was holding it in an offensive manner, yes.

23 Q How big is this lid, sir?

24 A Like I said, probably about three and a half  
25 feet by about two feet.

1 Q So he has a lid inside his cell three and a  
2 half feet by two feet wide?

3 A Every inmate at the Nevada State Prison is  
4 provided one.

5 Q Is that like a Thermos chest?

6 A It's to put your personal property in.

7 Q What's it made of?

8 A Made of hard plastic.

9 MR. GREGORY: Nothing further.

10 THE COURT: Anything further?

11 MR. STANTON: No further questions.

12 THE COURT: You may step down. You are  
13 excused.

14 Go ahead and call your next witness.

15 MR. STANTON: The State would next call Deborah  
16 Mann.

17 MR. GREGORY: Your Honor, before the witness  
18 approaches, may we approach on the record?

19 THE COURT: Yes.

20 (Bench conference between Court and counsel  
21 outside the presence of the jury as follow:)

22 MR. GREGORY: Your Honor, we need to make a formal  
23 motion in limine that Ms. Mann not get into the subject  
24 matter whether this man can be housed in the prison.  
25 Obviously he can like any other inmate. But see, that's the

1 theme they're going to try to play here, that this man is  
2 such an animal, such a savage, so uncivilized that he can't  
3 live in the confines of a Nevada State Prison, which is an  
4 absolutely ridiculous proposition. And it's intended to  
5 prejudice this jury. And I'm bringing that to the Court's  
6 attention before they play that game.

7 MR. STANTON: Well, Your Honor, I would just,  
8 in response to Mr. Gregory's assertion about what the  
9 State's theory is, I'd like to establish a couple things for  
10 the record:

11 Pursuant to a courtesy to counsel, we have in  
12 Rule 250 a requirement to give notice of evidence and  
13 supporting aggravating factors filed 15 days prior to trial.  
14 That was done in this case. In addition, I provided the  
15 specific instances what I referred to as Buschauer notice  
16 pursuant to the Nevada Supreme Court case of that name of  
17 other act evidence - it's not required to be given in that  
18 advance notice, it's just required that it be given before  
19 it's presented. Once again, well in advance of 15 days  
20 before trial in this matter.

21 That included all these instances. I can  
22 virtually guarantee this Court that defense counsel hasn't  
23 contacted Ms. Mann. If they did, they would understand the  
24 nature and the content of her testimony as it relates to  
25 Mr. Vanisi. The State is not going to ask Ms. Mann about

1 whether or not he can be housed in the Nevada State Prison.  
2 Ms. Mann is a correctional employee who is in charge of  
3 disciplinary hearings, all disciplinary hearings to my  
4 understanding at the Nevada State Prison. She has specific  
5 knowledge of Mr. Vanisi. He's communicated to her, wrote  
6 her letters, affectionate letters, apparently.

7 She had heard the disciplinary hearings that  
8 involved Mr. Vanisi when he was down there. I want to talk  
9 to her about her knowledge of Mr. Vanisi and how they assess  
10 the dangerousness of the inmates within their institution,  
11 what factors do they utilize and then based upon those  
12 factors what is her assessment of Mr. Vanisi under that  
13 criteria.

14 THE COURT: I don't think there's any problem  
15 with that testimony.

16 MR. GREGORY: Okay. Thank you, Your Honor.

17 THE CLERK: Please raise your right hand.

18 (Witness sworn.)

19 THE CLERK: Please be seated at the witness  
20 stand.

21  
22 (Whereupon, the following proceedings were held  
23 in open court, in the presence of the jury.)  
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DEBORAH MANN

called as a witness on behalf of the Plaintiff,  
having been first duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STANTON:

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

A It's Deborah Mann, M-a-n-n.

Q And ma'am, how are you currently employed?

A I'm Correctional Case Work Specialist 3 at the  
Nevada State Prison in Carson City, Nevada.

Q And how long have you worked within the general  
subject matter of correctional work?

A 17 years.

Q And how long have you been assigned to the  
Nevada State Prison?

A A good 10 years.

Q And you gave a formal job title just now. Can  
you explain what your job responsibilities are on a  
generally daily or weekly basis.

A Well, I'm the head counselor at the Nevada  
State Prison, and we help maintain parole progress reports,  
disciplinarys, security matters, housing, jobs for the  
inmates that are housed at our institution.

1 Q And all those things that you just mentioned  
2 are available to inmates, counseling, jobs, and the like?

3 A Yes, sir.

4 Q How many inmates are housed at the Nevada State  
5 Prison?

6 A We have approximately 827.

7 Q And what type of offenses, charges are people  
8 serving time at that prison for?

9 A A large gamut from DUI to petty larceny, to  
10 burglary, to murder, sexual assault. It goes throughout the  
11 whole gamut.

12 Q Relative to your specific responsibility on  
13 disciplinary matters, what is your role in disciplinary  
14 matters at the Nevada State Prison?

15 A I conduct all of the disciplinaries for the  
16 lockdown inmates at the Nevada State Prison.

17 Q And are you involved in making assessments  
18 about the level of dangerousness or threat that all inmates  
19 pose to staff and other inmates?

20 A Yes.

21 Q Are you familiar with the defendant in this  
22 case, Siasosi Vanisi?

23 A Yes, I am.

24 Q Do you see him in court today?

25 MR. GREGORY: We'll stipulate again to the

1 identification by this witness.

2 MR. STANTON: Thank you, counsel.

3 BY MR. STANTON:

4 Q Could you describe to the ladies and gentlemen  
5 of the jury, Ms. Mann, what factors that in the application  
6 of your profession and other members of the Nevada State  
7 Prison take into consideration in evaluating an inmate as to  
8 whether or not he's a threat to staff or other inmates?

9 A Well, we take a lot. In our classification, we  
10 look at behavior, prior criminal history, current history,  
11 disciplinary process, overall adjustment for that individual  
12 in our institution, and they're classified according to many  
13 point scores. Potential for violence, so on and so forth.

14 Q Now, have you had occasion while Mr. Vanisi was  
15 at the Nevada State Prison to talk to him?

16 A Yes, sir.

17 Q On a regular basis? Frequently?

18 A When he first came in to our institution, I did  
19 an assessment on his intake and then later I had to see  
20 Mr. Vanisi on numerous disciplinaries.

21 Q And during the course of that conduct or other  
22 times did you have occasion to communicate with Mr. Vanisi,  
23 sit down and talk to him?

24 A Yes, sir.

25 Q Approximately how many times did that occur?

1 A Sitting down and talking to him, approximately  
2 three times. In passing, maybe two to three times.

3 Q Did he ever correspond with you in writing?

4 A Continually.

5 Q By the nature of your question, did that occur  
6 frequently?

7 A Yes, sir.

8 Q Approximately how many times, if you can  
9 recall?

10 A Daily for approximately two and a half weeks.

11 Q In your assessment professionally, Ms. Mann, do  
12 you ever take into consideration the cognition aspect of an  
13 inmate as it represents a danger to staff and other inmates?

14 A Most definitely, yes.

15 Q Do you have an opinion, Ms. Mann, relative to  
16 an inmate who is violent and an inmate who is violent and  
17 yet cognitive or intelligent as to a risk to the staff and  
18 inmates, do you have an opinion as to which one represents  
19 more of a danger, and if so, why?

20 A My view and of the years that I have had at the  
21 prison with inmates, when an individual is intelligent, he's  
22 aware of what he is doing with a deliberate attempt and acts  
23 out on his violence, they are considered the most volatile  
24 of an inmate in our system. And they are placed at a high  
25 priority that we need to be more aware, more careful. Those

1 individuals conduct themselves and perform violence upon  
2 staff. We must be very careful of these people.

3 Q And relative to Mr. Vanisi individually,  
4 Ms. Mann, and your knowledge of him for all the factors that  
5 you've mentioned, his behavior, his disciplinary and his  
6 cognition as you observed it in both passing and the times  
7 that you spoke to him directly in evaluation of his  
8 writings, how do you categorize Mr. Vanisi based upon that  
9 criteria?

10 A Very volatile and very conniving and just very  
11 volatile.

12 Q Would you consider him a significant risk to  
13 staff and inmates?

14 A Yes, sir, I do.

15 MR. STANTON: No further questions.

16 THE COURT: Cross.

17

18 CROSS-EXAMINATION

19 BY MR. GREGORY:

20 Q How long was Mr. Vanisi in your prison?

21 A Approximately -- I'm not very sure. Maybe a  
22 couple of months, until he was sent back to county.

23 Q Did you know why he was there?

24 A As an SK, safe keeper.

25 Q As a courtesy --

1 A Yes, sir.

2 Q -- to the Washoe County Jail?

3 A Yes, sir.

4 Q Because he had been acting up, he had manic  
5 behavior in the jail; is that correct?

6 A Could have been.

7 Q He wasn't in that prison under sentence of any  
8 kind, was he?

9 A No, sir, he was under an SK status, safe keeper  
10 status.

11 Q Did somebody ask you to do this evaluation, Ms.  
12 Mann?

13 A We do an evaluation on any person, any inmate  
14 or any SK that comes into the Nevada Department of Prisons,  
15 sir.

16 Q Even though he's not -- even though he wasn't  
17 an inmate committed to the Nevada State Prison?

18 A That's right. We also do medical and dental  
19 and make sure that their health is fine.

20 Q He had no criminal history whatsoever to speak  
21 of. He had a misdemeanor in Huntington Beach, California,  
22 so that's one of the things you checked, right?

23 MR. STANTON: I object to counsel testifying in  
24 this case. It's not evidence. And he's speaking as it were  
25 evidence.

1 MR. GREGORY: Your Honor, it's  
2 cross-examination, first of all, and hearsay is allowed in  
3 these proceedings.

4 THE COURT: If you want to ask her if she  
5 relied on information, you may do so.

6 BY MR. GREGORY:

7 Q You indicated that you had four criterion, did  
8 you not, Ms. Mann?

9 A Yes, sir.

10 Q Behavior, criminal history, the discipline,  
11 prior discipline problems, right?

12 A Current discipline problems.

13 Q And adjustment?

14 A Uh-huh.

15 Q Did you make this assessment -- he's there a  
16 couple months. Did you make this the first day that he was  
17 there?

18 A I believe it was the second or third day that  
19 he was brought into our institution.

20 Q He was there two days and you're already making  
21 an evaluation on how well he's adjusted, whether he's a  
22 discipline problem, whether he has behavior problems; is  
23 that correct?

24 A We are looking -- this is when he first comes  
25 in, sir. Now, he is already considered a safe keeper, so he

1 can't go out to the general population. He's already in the  
2 lockdown institution of our unit. And I'm doing an intake  
3 just like I do for every inmate that comes in. I did not  
4 have a presentence investigation report, so it was a  
5 one-to-one discussion with Mr. Vanisi. He provided  
6 information to me about his background, his prior criminal  
7 history. When I say that Mr. Vanisi is extremely violent,  
8 that is over the course of the time that he provided -- he  
9 exhibited that behavior, sir, that justified us keeping him  
10 in that current housing, which was lockdown.

11 Q He attacked you?

12 A He did not attack me.

13 Q You indicated that you talked to him three  
14 times in passing.

15 A Uh-huh.

16 Q What, passing through the hallway?

17 A If I go up to the unit, Mr. Vanisi will say Ms.  
18 Mann, I need to talk to you, and I will go to his door. Or  
19 I will -- the officers will kick him out to the gate and I  
20 will talk to him. But that's not a sit-down.

21 Q When you say "kick him out to the gate," what  
22 do you mean?

23 A From his cell to the gate.

24 Q So he's released from his cell and he walks to  
25 the gate, and where are you, Ms. Mann?



1 A On the other side of the gate.

2 Q Now, his cell has been described.

3 Approximately what size is this cell that he's in?

4 A I'm not sure, sir. I couldn't give you --

5 Q Like four-by-eight, is that fair?

6 A I don't know, sir.

7 Q They have a little food slot that's key  
8 operated that he's fed through, right?

9 A Yes, sir.

10 Q And a thick rectangular window on the right  
11 side, is it?

12 A It's in the doorway.

13 Q It's real thick glass, right?

14 A Yes, sir.

15 Q Now, you indicated, checked his criminal  
16 history, which, but for a misdemeanor in Huntington Beach,  
17 is nonexistent; is that correct?

18 A Sir, I didn't have a presentence investigation  
19 report. So I have no idea on his prior criminal history.  
20 That was not given to me.

21 Q Okay. So you have no idea what his prior  
22 criminal history is?

23 A I have no idea.

24 Q Thank you, Ms. Mann. By the way, do you know  
25 anything about manic behavior in the sense of mental

1 illness?

2 A Do I know anything about it?

3 Q Yes, ma'am.

4 A I'm not a psychologist.

5 MR. GREGORY: Thank you. Thank you, Judge.

6 MR. STANTON: No questions for Ms. Mann.

7 THE COURT: You may step down. You are  
8 excused.

9 Counsel, is this a good time to take a morning  
10 recess?

11 MR. STANTON: I believe it is.

12 THE COURT: Ladies and gentlemen of the jury,  
13 we'll take our morning recess now. During this break you  
14 will go into the jury room and remain together. Remember  
15 the admonition that you've been given at all other breaks.  
16 You're not to form or express any opinion about the ultimate  
17 outcome of this case. It's not been submitted to you for  
18 determination. Furthermore, you're not to allow anyone to  
19 attempt to influence you in any manner with regard to this  
20 case. Should anyone make such an attempt, you are to report  
21 such an occurrence to the bailiff. Do not view, listen to  
22 or read any news media accounts regarding this case should  
23 there be any. Await us in the jury room pending this  
24 recess.

25 Counsel, the recess will be 15 minutes.

1 (Recess taken.)

2 THE COURT: Counsel, do you stipulate to the  
3 presence of the jury?

4 MR. STANTON: So stipulated.

5 MR. GREGORY: The defense so stipulates.

6 THE COURT: Thank you. Go ahead and call your  
7 next witness.

8 MR. STANTON: The State would next call Deputy  
9 James Ellis.

10 THE CLERK: Please raise your right hand.

11 (Witness sworn.)

12 THE CLERK: Please be seated at the witness  
13 stand.

14

15 JAMES ELLIS

16 called as a witness on behalf of the Plaintiff,

17 having been first duly sworn,

18 was examined and testified as follows:

19

20 DIRECT EXAMINATION

21 BY MR. STANTON:

22 Q Sir, could you state your name and spell your  
23 last name for the court reporter.

24 A James Ellis, E-l-l-i-s.

25 Q How are you employed?

1 A With the Washoe County Sheriff's Office.

2 Q And how long have you been employed in that  
3 capacity?

4 A A little over four years.

5 Q And what are your current job responsibilities  
6 within the sheriff's office on a regular basis?

7 A Assigned to detention, swing shift.

8 Q When you say "detention," is that the Washoe  
9 County Jail?

10 A Yes, sir.

11 Q And swing shift, when would you begin and end  
12 your shift on a normal day?

13 A 3:00 in the afternoon until 11:30 at night.

14 Q Do you have any additional assignments or  
15 responsibilities within the detention or jail facility?

16 A Yes, I'm a member of the Detention Response  
17 Team.

18 Q What's the Detention Response Team?

19 A It's like the SWAT team for the jail. We  
20 handle any crisis or any sort of situation that might come  
21 up in the jail.

22 Q And do you receive special training in that  
23 regard?

24 A Yes.

25 Q And how often do you engage in the training on

1 an approximate basis?

2 A We have two days set aside per month for  
3 special training other than classes and different instructor  
4 level courses that I've been to.

5 Q And Deputy Ellis, could you please indicate how  
6 tall you are and how much you weigh.

7 A Six foot four, about 285 pounds.

8 Q Did you play collegiate athletics?

9 A Yes.

10 Q What did you do?

11 A I wrestled for Brigham Young University.

12 Q I'd like to discuss your involvement  
13 specifically with the Detention Response Team with the  
14 Washoe County Jail. Are you familiar with Siaosi Vanisi?

15 A Yes, I am.

16 MR. GREGORY: I'd stipulate to the  
17 identification.

18 MR. STANTON: Thank you, counsel.

19 BY MR. STANTON:

20 Q I'd like to focus your attention, Deputy Ellis,  
21 to March 20th, 1998. Sir, did you have occasion to be  
22 involved at the Washoe County Jail with the Detention  
23 Response Team?

24 A Yes, I did.

25 Q Can you explain the situation that existed upon

1 your arrival?

2 A I was working swing shift that evening. I've  
3 been assigned to swing shift the entire time with the  
4 sheriff's office, and I went down to Housing Unit 4 because  
5 Mr. Vanisi was on tier time in A Wing, which is one of the  
6 units inside of Housing Unit 4, and he was refusing to lock  
7 down for tier time at the wing door.

8 Q And what occurred after Mr. Vanisi's refusal to  
9 lock down?

10 A We talked back and forth for probably five or  
11 ten minutes trying to negotiate with him to get him to go  
12 back to his cell and to close the door behind him so he  
13 would lock down in his cell.

14 Q What was Mr. Vanisi's response?

15 A He would not lock down, refused to obey the  
16 verbal orders given to him.

17 Q And then what is the reaction from the jail at  
18 this juncture because of his refusal? What did you have to  
19 do?

20 A DRT, the Detention Response Team, is usually  
21 called in. If an inmate barricades himself, refuses to lock  
22 down, takes a hostage, riot situations, all those different  
23 things, the Detention Response Team would be called out for  
24 that.

25 And so after negotiating with him for a while,

1 he eventually did lock down after about ten minutes. And  
2 then it was determined that the Detention Response Team  
3 would be called in.

4 Q The Detention Response Team was called in to  
5 have Mr. Vanisi come back out of his cell?

6 A Yes.

7 Q What was the purpose of getting him out of the  
8 cell?

9 A The purpose, leading up to this, on March 29th,  
10 Mr. Vanisi had, there had been several other occasions where  
11 he was slow to lock down where the deputies would have to  
12 negotiate almost every time at the end of his tier time to  
13 have him locked down. And so we were going to organize a  
14 team, not go into his cell necessarily, we wanted to talk to  
15 him at his cell door. On each of the cell doors there's a  
16 food slot, and what we wanted to do was open the food slot  
17 and have him put his hands through the food slot so we could  
18 handcuff him and then take him out of the cell and talk to  
19 him about his failure to obey verbal orders.

20 Q Now, relative to the incident that you  
21 described as a failure to lock down and that there had been  
22 previous instances of Mr. Vanisi being slow to lock down,  
23 how does that affect the overall operation of Housing Unit 4  
24 and the security of the other inmates that are located  
25 therein?

1           A     In Housing Unit 4, it is the lock-down unit.  
2     They're locked down 23 hours a day. So the ladies and  
3     gentlemen living in that unit only get an hour of tier time  
4     a day. So if one person goes over, if people are out beyond  
5     the hour, then that takes time away or it puts time  
6     constraints on the other people receiving their tier time or  
7     out-of-cell time.

8           Q     Relative to the other units, in fact the  
9     entirety of the Washoe County Jail, what is the most secure  
10    portion of that facility?

11          A     Back then it was Housing Unit 5. Now it's  
12    Housing Unit 4, it's been renamed, but that is the SHU,  
13    Special Housing Unit; that's our max unit, basically.

14          Q     And that's where Mr. Vanisi was held?

15          A     Yes, sir.

16          Q     Relative to the explanation that you gave about  
17    other inmates not getting tier time, how does that affect  
18    other Special Housing Unit inmates relative to their  
19    demeanor and behavior if they don't get their time, could  
20    you relate it to the security concerns of staff?

21          A     Tier time, obviously an hour out of their cell  
22    a day, they like that a lot. If we cut that short, if they  
23    don't receive it for that day, anything like that, then  
24    obviously we have upset inmates, which can lead to security  
25    problems inside Housing Unit 4.



1 Q Did the Detention Response Team gather that  
2 evening?

3 A Yes.

4 Q Was Mr. Vanisi able to see and at least know  
5 the presence of your team gathered?

6 A Absolutely.

7 Q And how is that?

8 A We organized a team. Sergeant Davis was our  
9 team leader. We were given specific assignments that night.  
10 When we responded to Housing Unit 4, A Wing, Mr. Vanisi was  
11 celled in A-3. There is a window in the cell. We  
12 approached the window. Sergeant Davis started giving him  
13 verbal orders from the window and the team lines up behind  
14 Sergeant Davis. So me being the first person in line behind  
15 Sergeant Davis, I could see Mr. Vanisi just over Sergeant  
16 Davis's shoulder, and he was carrying on a conversation with  
17 Sergeant Davis and also viewing the team at the same time.

18 Q At the time that the team has gathered outside  
19 Mr. Vanisi's cell door, what commands are given to  
20 Mr. Vanisi? What did the sergeant in your unit say to  
21 Mr. Vanisi about what he wanted him to do at this juncture?

22 A He identified himself as the team leader for  
23 the Detention Response Team and gives him what we call a  
24 cell extrication admonishment. And this is basically  
25 telling the inmate they need to comply with all verbal

1 orders given to them at that time or they can and will be  
2 physically restrained.

3 Q And what was Mr. Vanisi's response to that  
4 admonishment?

5 A After Sergeant Davis asked at least one,  
6 possibly two times, he asked Mr. Vanisi if he understood.  
7 And Mr. Vanisi said no, he did not understand. So Sergeant  
8 Davis gave that admonishment at least one or two more times.  
9 And we want to make sure he does understand the  
10 admonishment. So at the end, Sergeant Davis would ask him  
11 if he understood the admonishment.

12 Q Deputy Ellis, at this juncture I'd like you to  
13 tell the ladies and gentlemen of the jury what occurred when  
14 you actually made entry into the cell. Before you do that,  
15 I have one other question for you. How are you and other  
16 members of the team dressed? What, if anything, did you  
17 have in your possession to assist in the cell extraction?

18 A The Detention Response Team -- our uniform is  
19 different than the one I'm wearing today. We're in black  
20 BDUs, black tops, black bottoms. We have the sheriff badge.  
21 That's a patch on the shirt, sewn on the shirt, and also a  
22 sheriff patch, big gold lettering, sewn on the back of the  
23 shirt. We're in full riot gear. I have my regular vest on,  
24 then we also have a slash vest, which is just a little bit  
25 more protection, if we do make entry in the cell, just more

1 protection for us. And also I had a riot -- or all of us  
2 had a riot helmet on, which is a helmet that will strap down  
3 like a football helmet that has a full shield face mask in  
4 front.

5 Q Could you describe to the ladies and gentlemen  
6 of the jury what occurred when you made entry and what was  
7 Mr. Vanisi's conduct towards you?

8 A When we made entry into the cell, after  
9 Sergeant Davis had repeated his admonishment several times,  
10 it's practice that he starts doing the admonishment again to  
11 get the inmate or whoever it is, it doesn't matter in this  
12 particular case, but whoever the inmate that we're going to  
13 make entry on, they start another admonishment, talking to  
14 the person. And then halfway through they will open the  
15 door. So it kind of takes the inmate by surprise so they  
16 can't come up with any offensive plan against the team.

17 And so Sergeant Davis began to do this. And  
18 then midstream, midway through his admonishment he opened  
19 the door. I was the shield person. I have a big shield  
20 that I carry in. It's a two-handed pin shield that's a big  
21 plexiglass pin shield. And that's what we make contact  
22 with. The reason for the pin shield is to protect the team.  
23 If the inmate has any sort of weapon, if the inmate makes  
24 any sort of offensive move towards the team, the shield  
25 person's responsibility is to protect the team.

1                   So I was the first one in the cell after the  
2 door was popped, made contact with Mr. Vanisi. At this time  
3 we have kind of a train going. There's three or four guys  
4 coming in behind me and we're getting a little speed built  
5 up. When I made contact with Inmate Vanisi, he caught the  
6 shield with his hands, and as he started to push with his  
7 hands, he turned quickly -- if I could stand up.

8                   Q       Certainly.

9                   A       After I made contact with the shield, he  
10 quickly like did a torso turn and just kind of pushed the  
11 shield, which, with all my momentum, the people pushing  
12 behind me, I went right past him. After making contact, and  
13 after him pushing the shield and turning to the side, I  
14 actually went down on the floor. I went down, caught myself  
15 with the shield on the floor and slid on the floor for three  
16 or four feet.

17                  Q       Could you describe what happened next as far as  
18 the physical altercation that was occurring between  
19 yourself, other members of your unit and Mr. Vanisi.

20                  A       After I slid by, the next person in the cell  
21 was Deputy Cooper. And Deputy Cooper is basically face to  
22 face with Inmate Vanisi because he was the second person in  
23 line. At this time a struggle ensues. The rest of the team  
24 is trying to get control of Mr. Vanisi. He's still on his  
25 feet at this point. I leave the shield where it is because

1 we're now in hand-to-hand stuff with him and the shield is  
2 no longer useful for protecting the team.

3 So I left the shield where it lay and got back  
4 up and came to go hands-on with Inmate Vanisi. It probably  
5 took us 45 -- 30 to 45 seconds to actually get Mr. Vanisi on  
6 the ground where we could start controlling his legs and his  
7 hands.

8 Q Did there come a time once you have Mr. Vanisi  
9 on the ground that you began giving verbal commands for him  
10 to acquiesce to the custodial status?

11 A Absolutely.

12 Q What's being said to Mr. Vanisi?

13 A From the point of entry, the first thing I say  
14 going in the door, after banging the shield on the ground,  
15 is get down, get down, get down, letting the inmate know  
16 exactly what I want him to do, that we don't want him to  
17 stand there and make contact with the shield. We actually  
18 do want them to get on the ground so we can gain control of  
19 them more quickly.

20 At this particular point Mr. Vanisi is not  
21 giving up his hands. He has his arms underneath him. He's  
22 flexing underneath his chest. And I hear the deputy on the  
23 feet telling him to stop kicking. I don't know who the  
24 deputy is on the feet, but he's telling Mr. Vanisi to stop  
25 kicking. We're all saying stop resisting, stop resisting,

1 give us your arm, give us your arm, give us your leg, that  
2 type of thing.

3 Q Did Mr. Vanisi comply with any of these orders?

4 A No, he did not.

5 Q Did there come a time, Deputy Ellis, in this  
6 incident where you used force on Mr. Vanisi to get him to  
7 comply with the verbal commands?

8 A Yes.

9 Q Could you describe that to the jury.

10 A In our use of compliance or use of force  
11 continuum, one of the options that we have is active  
12 countermeasures, using your own personal hands, feet,  
13 elbows, knees, things like that.

14 Mr. Vanisi was starting to come off the ground  
15 with three or four of us on top of him. Again, the person  
16 trying to control the feet is saying stop kicking. Both the  
17 people on the arms are asking for the arms, getting the arms  
18 out, stop resisting, stop getting up. That type of thing.  
19 I started doing knee drops on the back shoulder blade, the  
20 left side of Mr. Vanisi's back on the shoulder blade.

21 Q How many knee drops did you do, Deputy Ellis?

22 A Approximately 12.

23 Q And what was the effect of your knee drops to  
24 the shoulder area of Mr. Vanisi?

25 A Initially the knee drops to the shoulder area

1 were not doing anything. As Vanisi was trying to get up, he  
2 was also scooting back, and so my knee drops started going  
3 onto the neck and onto the back of his head.

4 Q Could you stand up again, Deputy Ellis, and  
5 describe or demonstrate to the ladies and gentlemen of the  
6 jury what you mean by knee drop and how you did it in this  
7 case.

8 A Down here or up here?

9 Q Whatever is more comfortable to you.

10 A We're inside the cell. It's about a 10-by-10  
11 cell. Vanisi is laying on the ground. People are trying to  
12 get his arms, get his legs. He's right below me with -- his  
13 shoulder blades are right below me. I'm doing knee drops  
14 like this on the back of the shoulder (demonstrating).

15 Q Thank you.

16 After ultimately getting Mr. Vanisi into  
17 custody, was a search of his room performed?

18 A Yes, it was.

19 Q And was there an item inside that room that  
20 caused a security concern to you as a jail officer?

21 A Absolutely.

22 Q What is that?

23 A Initially when we talked to him at the cell  
24 door, when we tried to get him to come through the food slot  
25 where we could just handcuff him, we initially wanted to

1 talk to him, we wanted to explain the rules, that type of  
2 deal, when he refused to comply, to go the easy route  
3 through the food slot, we believed he might possibly have a  
4 weapon and he might be trying to hide that in his cell.

5 Q Did you find a weapon inside his cell?

6 A What we believed to be a weapon, yes.

7 Q Could you describe what you found.

8 A There was a towel with a knot tied in one end  
9 of the towel. I did not personally find it. But it was  
10 found, and so I don't exactly know what it looks like.

11 Q Did it have anything inside the towel?

12 A I don't know.

13 Q There was a next incident involving the  
14 Detention Response Team in May of 1999. Do you recall that?

15 A Yes.

16 Q Could you explain what factually had occurred  
17 as you were advised or what Mr. Vanisi had been doing that  
18 called for the Detention Response Team to be called out.

19 A Mr. Vanisi was at this point in D Wing. Again,  
20 that's in Housing Unit 4. It's divided into four different  
21 wings: A, B, C and D. At this juncture Mr. Vanisi was  
22 housed in D Wing, Cell D-7. We were told by the floor  
23 deputies, the deputies working the unit at that time, that  
24 Mr. Vanisi was quote, unquote going off, that he was being  
25 such a nuisance or such a problem in the wing that the other



1 inmates were starting to get angry and other inmates were  
2 actually starting to kick their doors and starting to get  
3 more violent.

4 Q And did the same call-out procedure that you  
5 had previously testified occur in this case?

6 A Yes.

7 Q Upon your arrival to Mr. Vanisi's cell door was  
8 he given verbal commands?

9 A Yes.

10 Q Can you give me an approximate number of times  
11 he was given verbal commands?

12 A At least three to four times.

13 Q And he refused all those?

14 A Yes.

15 Q Prior to the entry of the Detention Response  
16 Team, did you observe Mr. Vanisi with a towel wrapped around  
17 his face?

18 A Yes. One thing that the team had started to  
19 use was OC gas, OCCS gas that would actually be deployed in  
20 the food slot and the gas would disperse inside the cell,  
21 making the inmates want to come out of the cell more quickly  
22 and complying with our orders, where we didn't have to go in  
23 and physically grab hold of them; after the gas was  
24 dispersed then they generally wanted to come out and would  
25 basically give up.

1 Q In this case you saw Mr. Vanisi with a towel  
2 wrapped around his face prior to the injection of gas into  
3 his cell?

4 A Yes. Mr. Vanisi was laying on the floor right  
5 in front of his cell door with a towel over his head. And I  
6 believe also to get some ventilation from underneath the  
7 door, because he knew the gas was going to be deployed.

8 Q And what was the purpose of the towel on the  
9 face?

10 A To keep the gas away from his eyes and nose so  
11 it would hardly affect him.

12 Q Was gas deployed into Mr. Vanisi's cell?

13 A Yes, it was.

14 Q What was the effect on Mr. Vanisi and the gas?

15 A Hardly any effect at all. After about five  
16 minutes we may have heard a couple coughs, that it was  
17 starting to finally settle or get underneath the towel.

18 Q And did you and your unit have to physically go  
19 into the cell for the extraction?

20 A Yes, we did. He still would not comply with  
21 again the admonishment that was given to him at least a  
22 couple more times.

23 Q Could you describe that physical confrontation  
24 with Mr. Vanisi on this occasion?

25 A I was again the pin shield person. The

1 sergeant who was the team leader opened the cell door, and  
 2 when I first made entry, again, we bang the shield on the  
 3 ground to maybe disorient or shock the inmate to maybe get  
 4 his attention elsewhere. Mr. Vanisi was still laying on his  
 5 stomach in front of the cell door. When I banged the shield  
 6 when the door opened and I banged the shield, Mr. Vanisi  
 7 tried to somersault out of the cell. He rolled forward. I  
 8 don't know if it was to kick me or to get out of the cell  
 9 but he somersaulted into the shield. I made contact with  
 10 him, pushed him back into the cell and down on the ground  
 11 where he was.

12 Q He was taken into custody ultimately by the  
 13 entire team?

14 A After a short struggle.

15 Q Were there any other physical confrontations  
 16 that you were involved in, Deputy Ellis?

17 A Not that I was involved in, no.

18 Q Are cell extractions a common or rare  
 19 occurrence in the Washoe County Jail?

20 A A full-on cell extraction is rare. There's  
 21 sometimes that the team is called out and we go to the cell.  
 22 When the inmate sees the team lined up and sees we mean  
 23 business they usually comply and are handcuffed through the  
 24 food slot. I'd say 80 percent of the time they comply.

25 Q Was there ever a time when Mr. Vanisi was

1 confronted with the physical presence of the Detention  
2 Response Team that he complied without the need of making  
3 entry?

4 A Not to my personal knowledge, no.

5 MR. STANTON: No further questions.

6 THE COURT: Cross-examination.

7 MR. GREGORY: Thank you, Your Honor.

8  
9 CROSS-EXAMINATION

10 BY MR. GREGORY:

11 Q This first incident occurred on March 20th,  
12 1998?

13 A Yes, it was late in the evening. It might have  
14 spilled over into the 21st.

15 Q Around midnight, is that what you're saying?

16 A Roughly.

17 Q The second incident in May of 1999 of this  
18 year?

19 A Yes, sir.

20 Q Just so this jury has a clear understanding, I  
21 don't think we need to do a diagram, but describe the secure  
22 housing unit, how it's laid out?

23 A As you walk into Housing Unit 4, you're in a  
24 tunnel. There's a deputy that controls the door and  
25 actually lets you into the unit. As you walk into the unit,

1 on your left and right, the first two doors are yard doors.  
 2 You can go out to the exercise yard, see the sun, run around  
 3 the yard, get some exercise. As you keep moving down the  
 4 hallway, the next two doors that you come to are the MP  
 5 rooms, or the multipurpose rooms. One of them is the  
 6 deputy's office, basically MP-1 is the deputy's office.  
 7 MP-2 is the office that if an inmate needs to cut his hair,  
 8 read the newspaper, make an attorney phone call, those type  
 9 of things go on inside MP-2.

10 Q That stands for multipurpose?

11 A Multipurpose, yes. And then after those two  
 12 doors, as you look straight, the hallway is divided in half.  
 13 Half of it is a door that actually leads up to the tower  
 14 where the deputy sits and he monitors all the inmates inside  
 15 the unit. So he's high up, probably 12, 15 feet in the air.  
 16 So he can see down in each of the individual wings.

17 To the left, as you're going down this hallway,  
 18 you come back to the wing doors. A Wing is the first one on  
 19 the left that you come to. Then as you go around a  
 20 semi-circle there's B Wing, C Wing and D Wing. Also back by  
 21 D Wing there's a utility closet with mops and brooms and  
 22 cleaning supplies.

23 Q Is it fair to say that the secure housing unit  
 24 is a jail unto itself, theoretically?

25 A It's self-sufficient.

1 Q When you go into the jail, do you go through  
2 the -- do you go through a series of electrically controlled  
3 doors upstairs; is that correct?

4 A Yes.

5 Q And then you go down to what's called Area  
6 Control; is that correct?

7 A Yes.

8 Q You go through a series of three electrically  
9 controlled doors; is that correct?

10 A I believe so.

11 Q The outer door through the AC, the inner door,  
12 then the next door leading to the unit; is that correct?

13 A I usually don't go that way. That's the way  
14 for civilians to go through. But yes, it sounds about  
15 right.

16 Q And then you get to the SHU, and the SHU is  
17 controlled by an electrical door with a video camera. And  
18 the fellow in the tower controls the entry to that door; is  
19 that correct?

20 A Yes.

21 Q And then you have the various and sundry wings,  
22 Able, Baker, Charlie and David?

23 A Uh-huh.

24 Q Approximately how many inmates are in each of  
25 the wings?

1           A     There's 14 cells. So it depends on if they're  
2 all full or if any of the cells are doubled up with two  
3 inmates.

4           Q     So there's theoretically 56 in the entire unit?

5           A     Yes, there's 56 cells.

6           Q     And Mr. Vanisi was in the Charlie unit?

7           A     He was in A Wing at this juncture that you're  
8 talking about, A Wing.

9           Q     So there was at least 13 other inmates in there  
10 that are being put out not being able to take tier time?

11          A     I'm not exactly sure how many.

12          Q     And you said he initially refused to lock down  
13 and then after about ten minutes went back to his cell; is  
14 that correct?

15          A     The tower deputy advised the floor deputies  
16 that Inmate Vanisi's tier time was over. It was also, like  
17 I said, it was late at night. So at shift change we go into  
18 a lock-down status where the entire jail locks down for a  
19 count to make sure that we have all the inmates that we're  
20 supposed to have. And at this particular time Vanisi was  
21 told that he needed to lock down. I'm not quite sure that  
22 either it was for the count or that his tier time was over.  
23 But he was told that he needed to lock down.

24          Q     And sometimes inmates are told why they need to  
25 lock down; other times they're just told to lock down?

1 A I know on this particular night that I told him  
2 why he needed to lock down.

3 Q Did you?

4 A Yes.

5 Q And my experience with you is that you're very  
6 fair with the inmates and you do explain what you're doing  
7 when you deal with them.

8 A I try.

9 Q But he goes back to the cell.

10 A Eventually, yes.

11 Q And the DRT team shows up. Did you stay on  
12 scene or did you change into your uniform?

13 A I dressed into the DRT uniform.

14 Q You left him there just monitored by the tower  
15 until you guys were ready?

16 A Yes. And the floor deputies that were working  
17 the unit at that time.

18 Q Approximately how much time passed?

19 A I'd say 20 minutes to half an hour.

20 Q So he's in the cell and then half an hour later  
21 the DRT team responds?

22 A Approximately, yes.

23 Q And he's told at that time that you want him  
24 out of the cell?

25 A Yes.



1 Q Did you tell him -- this is for my  
2 edification -- did you tell him why you wanted him out of  
3 the cell?

4 A I believe Sergeant Davis did during the  
5 admonishment.

6 Q What did Sergeant Davis tell him?

7 A Told him the admonishment, that he needed to  
8 comply with all verbal orders given to him and told him that  
9 he needed to come to the food slot so he could be handcuffed  
10 so we could bring him out of the cell.

11 Q I understand that. Maybe I confused you.  
12 Those are the orders that are given. Inmates are not given  
13 the opportunity to debate or question your orders, are they?

14 A At that point, when the Detention Response Team  
15 is called in, the floor deputies or the regular line  
16 deputies have basically already exhausted all of their  
17 means. And so when we arrive, we give them verbal orders  
18 and then they either comply or they fail to comply.

19 Q And that game is over at that point; is that  
20 correct?

21 A That's one way you could put it.

22 Q That's a fair analysis, is it not?

23 A Sure.

24 Q I mean, when you want to do something with  
25 Mr. Vanisi and I suggest that I need some time with him, you

1 don't take any guff off me either, do you?

2 A I've never dealt directly with you, sir.

3 Q There have been times when I wanted to talk to  
4 him and your sergeant has told you that you had to take him  
5 away, that's what I'm talking about.

6 A I thought you meant in the jail setting.  
7 You're talking here?

8 Q Yes.

9 A Yes. When we are --

10 Q And you tell me what your job is and you don't  
11 want to hear from me, right?

12 A After court is called in recess, Mr. Vanisi,  
13 rather than leaving him here in an open courtroom, yes, we  
14 do like to secure him.

15 Q I understand.

16 A Either in a holding cell or secured area. Then  
17 we invite you in to talk as long as you would like.

18 Q Yes, indeed you do. What I'm saying is you  
19 have control of the situation and nobody is going to let you  
20 lose that control.

21 A We have to.

22 Q Now, you say he's asked to come out of the cell  
23 by putting his hands through the food slot.

24 A Yes.

25 Q Maybe I'll help you. I'll lead you a little

1 bit. Is it like this, he's told to back up to the door and  
2 put his hand through the food slot; is that correct?

3 A Yes.

4 Q Then he's handcuffed with his hands through the  
5 food slot?

6 A Yes.

7 Q The door is still locked; he's in the cell  
8 handcuffed?

9 A Yes.

10 Q Is that correct?

11 A Yes.

12 Q Then the door is unlocked and he's told to walk  
13 back and the door is opened with him like that; is that  
14 correct?

15 A We keep control of his hands so that he can't  
16 pull his hands back through, and then the door is slowly  
17 opened, and we're telling him to slowly walk back with the  
18 door and the door is opened slowly as he walks back with the  
19 door.

20 Q That reminds me. That's a piece of equipment  
21 that you left out, that little piece of equipment that you  
22 use to control his hands.

23 A The PR-24.

24 Q Tell the jury what a PR-24 is.

25 A The PR-24 is the nightstick. It's a baton.

1 After the inmate is -- if they comply and come through the  
2 food slot, we slide the PR-24 down between the cuffs and the  
3 door so that the inmate can't pull his hands back through.  
4 But that wasn't an option because we didn't get him to the  
5 food slot.

6 Q I just wanted them to understand the procedure.

7 A If they're physically disabled where they can't  
8 physically, like a big person or someone that's disabled  
9 that can't get their hands through the food slot as they're  
10 going backwards, we have cuffed in the front before.

11 Q But the nightstick is still put in?

12 A Yes, to make sure that they don't pull their  
13 hands back. Then we give them a weapon that they can do  
14 stuff with.

15 Q Absolutely. I understand.

16 And those PR-24s, you don't have one on you, do  
17 you?

18 A No, I have a straight stick on me.

19 Q Describe how long they are. Just describe it  
20 for the jury, if you would.

21 A It's 24 inches long. It's made up of six  
22 parts. There's the long end, the long portion, the short  
23 end and the short portion. Then there's the side handle and  
24 the knob. The side handle is probably about six inches long  
25 and it connects the short portion and the long portion of

1 the PR-24. It's 24 inches in length, about an inch and a  
2 half in diameter.

3 Q What's it made of?

4 A They're different. Some are made out of  
5 polycarbonate stuff. Some of them are made out of aluminum.

6 Q Is it fair to say they're hard?

7 A Yes.

8 Q Now, when the DRT team responds in a situation  
9 like that, there's certain members -- and I don't presume to  
10 know exactly who is assigned to what -- but certain members  
11 that, if not all of you, that have PR-24s?

12 A There's two specifically assigned to PR-24s  
13 that that's their assignment during the extrication.

14 Q They're trained to use that weapon, are they  
15 not?

16 A Yes.

17 Q On the inmate?

18 A If so needed, yes.

19 Q And that would occur if he failed to, say, pull  
20 his hands out from beneath his body?

21 A Yes.

22 Q And the knee slams, is there any kicking going  
23 on?

24 A No, I did not kick.

25 Q I didn't say you did.

1 A To my knowledge there was no kicking going on.

2 Q He was pretty badly injured during one of these  
3 extrications, was he not?

4 A Probably the first initial one, yes.

5 Q Blood all over the place?

6 A I believe he did have a cut on the right side  
7 of his face.

8 Q Since he returned from Nevada State Prison in  
9 July, and since the doctor assigned to the Washoe County  
10 Jail has started giving him lithium, have you had any  
11 problems with him?

12 A No.

13 MR. GREGORY: May I have the Court's  
14 indulgence?

15 THE COURT: You may.

16 MR. GREGORY: Pass the witness.

17 THE COURT: Redirect.

18 MR. STANTON: No further questions.

19 THE COURT: You may step down. You are  
20 excused.

21 Call your next witness.

22 MR. STANTON: The State would call Vainga  
23 Kinikini.

24 MR. GAMMICK: Your Honor, would the Court like  
25 Mr. Kinikini sworn again or just to the witness stand?

1 MR. GREGORY: I'm sorry, I didn't understand.

2 THE COURT: He's still under oath and I will  
3 advise him.

4 MR. STANTON: May counsel approach on the  
5 record?

6 THE COURT: Yes.

7 (Bench conference between Court and counsel  
8 outside the presence of the jury as follows:)

9 MR. STANTON: Your Honor, in anticipation of --  
10 Mr. Kinikini is the State's percipient witness to the  
11 incident about the Jesus Christ and killing the white men in  
12 the house. I know we have not reached the stage where that  
13 is admissible. I would at this juncture lay the foundation  
14 to the photograph that it's true and accurate and the like.  
15 I don't plan on calling Mr. Vainga Kinikini back in to  
16 testify, but through --

17 So I'm asking to advise counsel and the Court  
18 of some direction with Mr. Kinikini -- if there's no  
19 objection to the foundation of the photographs, I don't  
20 think we need to go into that and then have the jury  
21 wondering why we're talking about a photograph that never  
22 comes in if it doesn't come in.

23 MR. GREGORY: I will not object to the  
24 foundation. I object to the admission, but I have no  
25 problems.

1 MR. STANTON: Then I'm not going to call  
2 Mr. Kinikini if you do go down that road, but I believe  
3 under the rules of evidence that unless it's highly suspect  
4 or unpalatable evidence, hearsay is permissible and I plan  
5 on, instead of calling him from Salt Lake City to Reno for  
6 the third time for a series of two questions, that I'd be  
7 asking it through Jim Duncan about the statement and the  
8 reference to --

9 MR. GREGORY: That's fine.

10 THE COURT: You're familiar with the statement.  
11 You know what the statement was and you've had an  
12 opportunity to talk to Mr. Kinikini about whether or not he  
13 actually heard that statement and related it to the  
14 detective and you feel comfortable with the reliability of  
15 that?

16 MR. GREGORY: I do.

17  
18 (Whereupon, the following proceedings were held  
19 in open court, in the presence of the jury.)

20 THE COURT: Go ahead and retake the witness  
21 stand. You're still under oath.

22 ///

23 ///

24 ///

25 ///



1 VAINGA KINIKINI  
2 called as a witness on behalf of the Plaintiff,  
3 having been first duly sworn,  
4 was examined and testified as follows:  
5

6 DIRECT EXAMINATION

7 BY MR. STANTON:

8 Q Mr. Kinikini, I want to direct your attention  
9 to that transcript that I handed to you and that we used in  
10 your prior testimony, that is, the transcript of your  
11 interview with Reno homicide detectives in Salt Lake City on  
12 January 23rd, 1998. Do you recognize it?

13 A Yes.

14 Q Sir, if you could turn to page 22 of that  
15 transcript. Before I ask you a question from that  
16 transcript, Mr. Kinikini, the context of what you told the  
17 detectives on page 22 and 23, those statements were made to  
18 you by Defendant Siaosi Vanisi in Salt Lake City, correct?

19 A Yes.

20 Q And that was done during the day or morning  
21 hours of his first arrival on January 14th, 1998?

22 A Yes.

23 Q Mr. Kinikini, if you would look on the  
24 transcript at line 11, there's a question by the detective,  
25 and that question to you is: "Well, let me ask you

1 something. What's your impression of him?" meaning  
2 Mr. Vanisi, "Does he act rational? Do you think he's sane,  
3 crazy or what?" You said he was smart. Could you read your  
4 response that you gave to that detective all the way down to  
5 line 32, just your response.

6 A "He's real real smart and there's a lot of -- I  
7 mean a lot of them crazies out there are smart. To me just  
8 insane, crazy. He told me straight up 'I am straight up a  
9 hundred percent insane, you know, I don't care about  
10 anything anymore. I'm free and this is what I want to live.  
11 Once I kill, I gotta kill some more to keep my high.'"

12 Q And Mr. Kinikini, on page 23, if you could read  
13 lines 1 through 4, ending with the word "rush".

14 A "Once I'm -- he goes, 'Once I'm killing, I mean  
15 I got -- I just gotta keep on moving. I just gotta keep on  
16 moving so they won't know where I am at, you know. So you  
17 know I gotta keep on killing to keep this rush.'"

18 Q And then the reference of to keep his high and  
19 to keep his rush, is he talking to you about the killing of  
20 the police officer in Reno?

21 A Yes.

22 MR. STANTON: No further questions.

23 THE COURT: Cross-examination.

24 MR. GREGORY: Thank you, Your Honor.

25

CROSS-EXAMINATION

BY MR. GREGORY:

Q Do you have your statement there, Mr. Kinikini?

A Yes.

Q Go to page 23 again. Now the prosecutor asked you to stop where it says "rush". Why don't you read that again but don't stop where it says "rush".

A The whole thing all over again?

Q Yeah. One more time.

A "One time he goes, 'Once I'm killing, I mean I gotta, I just gotta keep on moving. I just gotta keep on moving so they won't know where I'm at, you know. So you know I gotta keep on killing to keep this rush,' which obviously means he's crazy, you know."

Q You're talking to a detective, that last sentence was your sentence, wasn't it, to the detective?

A Yes.

Q And you said "which obviously means he's crazy, you know."

A Yes.

Q And that was your impression of him, was it not?

A Yes.

Q He shocked you the way he looked at first when you saw him?

1 A Yes.

2 Q Because you had known him as a very clean man,  
3 well dressed, soft spoken; is that correct?

4 A That's correct.

5 Q And what you saw was something totally  
6 different than the man you had known?

7 A Yes.

8 MR. GREGORY: Court's indulgence. Nothing  
9 further.

10 THE COURT: Redirect.

11

12 REDIRECT EXAMINATION

13 BY MR. STANTON:

14 Q Mr. Kinikini, when you used the term to the  
15 detective's response whether or not you thought Mr. Vanisi  
16 was crazy, you said he was a very smart man?

17 A Yes, I did.

18 Q When you used the word "crazy", did you also  
19 mean by part of that about what he had told you he had done  
20 and that sounded crazy to you, killing a police officer?

21 A Yes, I did.

22 MR. STANTON: Nothing further.

23 MR. GREGORY: No recross.

24 THE COURT: You may step down. Is this witness  
25 excused?

1 MR. STANTON: Yes, Your Honor.

2 MR. GREGORY: Your Honor, I'd ask that he wait.

3 We may well excuse him -- just to our break, I believe.

4 MR. STANTON: May counsel approach?

5 THE COURT: Administratively or on the record?

6 MR. STANTON: Administratively.

7 THE COURT: You may step outside the courtroom  
8 but you're not excused yet.

9 (Bench conference between Court and counsel.)

10 THE COURT: Ladies and gentlemen of the jury,  
11 I'm going to go ahead and let you go to lunch now. It's a  
12 little bit earlier than normal and I'm going to have you  
13 come back at 1:00. You'll still get close to your hour and  
14 a half of lunch, but it's a little different timing.

15 During this break remember that it is your duty  
16 not to discuss with yourselves or anyone else any matter  
17 having to do with this case. It's your further duty not to  
18 form or express any opinion about the ultimate outcome of  
19 this matter until it's finally submitted to you for  
20 decision.

21 You are not to look at, read or view any news  
22 media accounts or listen to any news media accounts relating  
23 to this case. And you will not allow anyone to attempt to  
24 influence you with regard to this case or discuss it in any  
25 manner with you. If anyone should try to influence you with

regard to this case, report it to the bailiff.

We'll see you back at one p.m. Court's in  
recess.

(Noon recess taken at 11:45 a.m.)

1 RENO, NEVADA, FRIDAY, OCTOBER 1, 1999, 1:05 P.M.

2 --cOo--

3 (Whereupon, the following proceedings took place  
4 in open court, in the presence of the jury.)

5 THE COURT: Thank you. Please be seated. Counsel  
6 stipulate to the presence of the jury?

7 MR. STANTON: State will so stipulate.

8 MR. GREGORY: Yes, Your Honor, thank you.

9 THE COURT: State may call their next witness.

10 MR. STANTON: Thank you. The State would call  
11 Detective Geoff Wise.

12 THE COURT: Lieutenant, if you'll stop and face  
13 the court clerk.

14 (One witness sworn.)

15 THE CLERK: Thank you. Please be seated at the  
16 witness stand.

17 GEOFFREY WISE,  
18 called as a witness on behalf of the  
19 Plaintiff, having been first duly sworn,  
20 was examined and testified as follows:

21  
22 DIRECT EXAMINATION

23 BY MR. STANTON:

24 Q Sir, could you please state your complete name and  
25 spell your first and last name for the court reporter?

1           A     Geoffrey Wise. G-e-o-f-f-r-e-y, last name  
2     W-i-s-e.

3           Q     And how are you currently employed?

4           A     I am a lieutenant in the jail for Washoe County  
5     Sheriff's Office.

6           Q     How long have you been in the employ of the Washoe  
7     County Sheriff's Office?

8           A     Twenty-three years.

9           Q     And what is your specific job responsibilities as  
10    of today at the jail?

11          A     Currently I work in the section that supervises  
12    the HISTEP program and the alternatives to incarceration  
13    unit.

14          Q     During the course of your responsibility at the  
15    Washoe County jail, have you had occasion to be involved in  
16    a supervisory capacity of the inmate Siaosi Vanisi?

17          A     Yes.

18          Q     And as part of your function in that capacity,  
19    have you had to deal with the security problems with that  
20    inmate?

21          A     Yes.

22          Q     And have you reviewed Mr. Vanisi's file prior to  
23    your testimony today and prior to the performance of your  
24    responsibilities regarding the incidents of Mr. Vanisi in  
25    the Washoe County jail?



1 A Yes, I have.

2 Q What portion or what level of security is  
3 Mr. Vanisi in at the Washoe County jail?

4 A Mr. Vanisi is considered to be a high risk  
5 prisoner because of his propensity for violence and the  
6 charges for which he is in the jail.

7 Q Are you familiar with the incidents that have been  
8 documented within the Washoe County Sheriff's Office  
9 detention file regarding Mr. Vanisi while he has been an  
10 inmate?

11 A Yes.

12 Q Directing your attention to February 3, 1998, do  
13 you recall an incident with Mr. Vanisi at that time?

14 A Yes.

15 Q What was that incident?

16 A As I recall, he had to be -- I may have to refer  
17 to my notes.

18 Q If that would help you.

19 A It would.

20 On that occasion, he had refused to lock down from  
21 his exercise period.

22 Q We've heard testimony previously about the  
23 security concerns that exist with that. Could you explain  
24 from your perspective what security problems exist when an  
25 inmate refuses to lock down? How that affects the integrity

1 of the jail?

2 A It has a substantial effect in the unit where  
3 Mr. Vanisi was housed, where the inmates are only allowed  
4 out one at a time for a specified length of time. So his  
5 refusal to lock down would affect other inmates' time for  
6 exercise. It causes a disruption to the jail because then  
7 we have to assemble a number of deputies in order to safely  
8 physically escort the prisoner back to his cell, and that  
9 kind of thing.

10 Q Do you know the total number of times that  
11 Mr. Vanisi has done the same or similar situations in his  
12 stay at the Washoe County jail regarding refusal to comply  
13 with verbal commands?

14 A I don't know the number exactly. It's several  
15 times.

16 Q I want to direct your attention to February 7,  
17 1998. Was there an incident that caused concerns from  
18 security about an item found in Mr. Vanisi's cell?

19 A Among other things found in a routine shakedown of  
20 his cell was a note that was keeping track of the deputies  
21 and what shift schedules they were working.

22 Q Was that note in Mr. Vanisi's handwriting?

23 A I believe it was.

24 Q Are you familiar with Mr. Vanisi's handwriting?

25 A I am.

1 Q How is it you're familiar with his handwriting?

2 A I have received over the past months a number of  
3 different writings, what we call inmate kites, which are  
4 requests for various things, in his own handwriting.

5 Q On February 13, 1998, was there an incident that  
6 was brought to your attention through the reports of  
7 deputies regarding Mr. Vanisi and a broom?

8 A Yes, I am aware of an incident where he was  
9 practicing with a broom as though it were a weapon.

10 Q And what security concerns did that raise to you  
11 and staff?

12 A It would be a dramatic danger to staff in the  
13 event that we had to physically move Mr. Vanisi or in the  
14 event of a similar situation to the refusal to lock down on  
15 the 3rd of February.

16 Q What type of activity was Mr. Vanisi doing with  
17 the broom?

18 A What was categorized as a martial arts type of  
19 routine, where he used it similar to a long staff or what is  
20 called a bo, b-o.

21 Q On April 3, 1998, after a cell extraction had  
22 occurred, did Mr. Vanisi make a statement to jail deputies  
23 about his intention of having a subsequent or another  
24 physical altercation?

25 A Yes, my understanding is that he alluded to there

1 would be a next time.

2 Q Do you remember the language that he used?

3 A I don't.

4 Q His quote is, "Now I'm ready for round two. This  
5 time I'm going to win."

6 Does that sound accurate?

7 A That sounds accurate.

8 Q In addition, did Mr. Vanisi make a statement, "I  
9 would rather take a thousand beatings than deal with this  
10 place"?

11 The deputy responds, "Why take the beatings?"

12 Mr. Vanisi responds, "Because you guys are fun to  
13 play with."

14 A That's my understanding.

15 Q On May 8, 1999, did you have occasion to be at the  
16 Washoe County jail prior to a cell extraction of Mr. Vanisi?

17 A Yes.

18 Q Could you describe to the ladies and gentlemen of  
19 the jury what you observed upon your arrival about  
20 Mr. Vanisi's behavior and what he was doing?

21 A My observations were that Mr. Vanisi was extremely  
22 agitated, violent. He was loud, shouting, that kind of  
23 thing.

24 Q Prior to the detention response team actually  
25 gathering to make entry on May 8, 1999, did you talk to

1 Mr. Vanisi?

2 A I spoke to him for a moment.

3 Q And prior to the detention response team making  
4 entry, was it observed by you, Mr. Vanisi wetting himself  
5 down with water and soap?

6 A Yes.

7 Q Could you explain to the ladies and gentlemen of  
8 this jury what concerns it raises to a correctional officer  
9 or officer assigned to a detention facility when they see an  
10 inmate soaking themselves in water and soap?

11 A The main concern with that sort of action is that  
12 the incident is not a spur of the moment acting out. It's  
13 not an incident that is prompted by an immediate reaction to  
14 anger or stress, but rather a planned incident. The inmate  
15 has thought out an idea of how to give himself an advantage,  
16 knowing full well what the response of the jail detention  
17 response team is going to be.

18 So he would wet himself down with water and soap  
19 to make himself slippery, difficult to control, difficult to  
20 hold.

21 Q During the course of your involvement with  
22 Mr. Vanisi at the jail, have you had occasion to have  
23 extended conversations with him?

24 A I have on more than one occasion had a long  
25 conversation with Mr. Vanisi.

1           Q     Can you describe the nature, just the general  
2 subject matter of your interactions with Mr. Vanisi?

3           A     The first occasion that I had to have a long  
4 discussion with Mr. Vanisi was over a request for some  
5 commissary. Inmates in the high security section are not  
6 generally given commissary privileges or commissary items.

7                     I, through discussion with Mr. Vanisi and an  
8 agreement regarding his cessation of some bizarre behavior,  
9 allowed him to have that commissary.

10          Q     During the course of your contact with Mr. Vanisi,  
11 had you developed a rapport with him, some sort of  
12 relationship that you felt that Mr. Vanisi would like to  
13 talk to you as opposed to other deputies assigned to the  
14 detention unit?

15          A     Yes. Mr. Vanisi would frequently ask to talk to  
16 me.

17          Q     What was your impression of Mr. Vanisi relative to  
18 his intelligence, his cognition and his state of mind  
19 throughout the entirety of his stay at the Washoe County  
20 jail?

21          A     On all of the occasions that I had discussions  
22 with Mr. Vanisi, I found him to be very articulate. I found  
23 that he was able to speak on a college educated level. That  
24 his diction, his pronunciation, his sentence structure was  
25 that of a very educated person.

1           He had what I would characterize as a very large  
2 vocabulary. He could talk at length on a number of  
3 different subjects. He wasn't limited to just his time in  
4 the jail. But he would talk about some metaphysical kinds  
5 of things. He could talk about, on one occasion, the stock  
6 market, those kinds of things.

7           Q     And Lieutenant Wise, what are the factors that you  
8 in the performance of your duties and responsibilities at  
9 the Washoe County jail, what factors do you use to determine  
10 the dangerousness to staff and to other inmates? To assess  
11 them relative to those issues, dangerousness to staff and  
12 other inmates?

13          A     Among the factors are, of course, physical stature  
14 and physical ability; prior violent history; their ability  
15 to develop and put into place any kind of a plan, an  
16 organized plan to disrupt the operations of the jail;  
17 whether or not their behavior is self-controlled or whether  
18 they are completely out of control most of the time. Those  
19 kinds of things.

20          Q     How would you assess Mr. Vanisi on each one of  
21 those criteria?

22          A     Mr. Vanisi is very large and very physically fit.  
23 He has demonstrated on a number of occasions that he is very  
24 tolerant to pain.

25                He is very agile. His exercise routines are

1 strenuous and involve tumbling routines, gymnastic sorts of  
2 routines and martial arts kata, if you will. A kata is a  
3 martial arts exercise, an exercise routine.

4 As I said before, he is very intelligent and  
5 articulate. He demonstrated he is able to formulate a plan  
6 and carry out his plan, even when under duress such as the  
7 application of chemical agents or physical restraint.

8 He has, in my view, always been in control of his  
9 emotions. He doesn't act out, in my experience,  
10 irrationally. He will on occasion act irrationally,  
11 although that is in control.

12 Q The times that you have perceived him to be, or  
13 what some person seeing him for the first time might see as  
14 irrational, is there always some goal he is attempting to  
15 accomplish by that behavior?

16 A Yes.

17 Q Can you give an example of an occasion like that?

18 A Some of the things he would benefit by that  
19 irrational kind of activity would be stature within the unit  
20 amongst other inmates. He would develop a fear of himself  
21 in other inmates, so as to have a better position within the  
22 high security unit of the jail.

23 He could in some circumstances create a perception  
24 that he was insane or out of control, which would give him  
25 an advantage in an altercation.



FILED

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Code No. 4185

OCT 01 1999

AMY HARVEY  
By: *M. Stone*  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,

Plaintiff,

vs.

SIAOSI VANISI,

Defendant.

Case No. CR98-0516  
Dept. No. 4

TRIAL - VOLUME 8  
September 30, 1999  
Reno, Nevada

ORIGINAL

APPEARANCES:

For the Plaintiff:

RICHARD A. GAMMICK  
District Attorney  
DAVID L. STANTON  
Chief Deputy District Attorney  
75 Court Street  
Reno, Nevada

For the Defendant:

STEPHEN GREGORY  
and JEREMY BOSLER  
Deputies Public Defender  
One South Sierra Street  
Reno, Nevada

The Defendant:

SIAOSI VANISI

Reported by:

ERIC V. NELSON, CCR. No. 57

SIERRA NEVADA REPORTERS (775) 329-6560

# I N D E X

EXHIBITS:	ID	EVID
h and I.....	1068	
J.....	1074	
K.....	1092	
L.....	1092	
44.....	1098	
45.....	1100	
46-A through 46-E.....	1105	1105

RENO, NEVADA, THURSDAY, SEPTEMBER 30, 1999, 3:39 P.M.

-oOo-

THE COURT: This is the time set for hearing to be sure that we're ready to go forward with penalty hearing tomorrow.

I have heard from the judge in California, Judge Kozlowski, and all but one of your witness were ordered. I think we should make a record on that one witness which is the one that was a teacher.

MR. GREGORY: I think Mr. Bosler can handle that.

MR. BOSLER: Mr. Selsback, if I'm not mistaken.

THE COURT: That is correct.

MR. BOSLER: My understanding is the judge found that because his testimony was also going to be presented through another instructor and because of his medical condition, she found that there was insufficient reason for him to be bound over.

THE COURT: What she told me was that he made -- someone questioned him in the hallway about whether or not he knew Mr. Vanisi, and he said, oh, yes, he was a nice guy. But he went back and he looked in the yearbook and he realized it was not the defendant that he was talking about. In fact, it was some other individual with a

1 slightly different name that he had in his memory and had no  
2 memory of Mr. Vanisi. That's what she told me was the basis  
3 for her not requiring him to attend.

4 MR. BOSLER: My information comes from the  
5 attorney who was helping us. He also informed me that his  
6 medical condition, I guess he has a broken leg or some other  
7 medical disability that also figured in her decision. We're  
8 prepared to go forward with the witnesses we have who have  
9 been ordered to appear, and I'm also I'm informed that  
10 Leanne Jones was also ordered I believe from Chico this  
11 afternoon or today and as part of the hearing. So with that  
12 we're prepared to go forward.

13 THE COURT: Have all your witnesses been  
14 contacted with their appropriate dates? As of yesterday  
15 afternoon two of the witnesses still did not have the new  
16 time.

17 MR. BOSLER: That is my understanding. They  
18 have all been contacted. Even one of those people who said  
19 they hadn't been contacted had been contacted before  
20 yesterday's hearing who had just forgotten what the  
21 arrangements that were made.

22 THE COURT: Everyone has been recontacted?

23 MR. BOSLER: That was my understanding, Your  
24 Honor.

25 THE COURT: Thank you. Now Mr. Stanton.

1 MR. STANTON: Yes, Your Honor. In discussing  
2 some matters prior to today's hearing with Mr. Gregory,  
3 there appears to be some disagreement relative to the  
4 admissibility of some evidence that the State possesses and  
5 will attempt to admit during the penalty phase beginning  
6 tomorrow.

7 MR. GREGORY: May I have the Court's  
8 indulgence?

9 THE COURT: Yes.

10 MR. GREGORY: Thank you, Your Honor.

11 MR. STANTON: In addition, I'd like, since  
12 we're on the witnesses, I'd like to make a record and  
13 provide some documents to the Court about what the State has  
14 been advised of the status of the witnesses to be called by  
15 the defense. If I could have two items marked, Your Honor.

16 THE COURT: Are those for purpose of the  
17 discussions with regard to the availability of witnesses?

18 MR. STANTON: No. It's just -- this is  
19 strictly based upon the notice that has been -- notice or  
20 lack thereof that's been given to the State in this case.

21 THE COURT: So this isn't something that will  
22 ultimately go to the jury?

23 MR. STANTON: No, Your Honor.

24 THE COURT: Yes, you may approach the clerk.

25 MR. STANTON: Your Honor, if I could have the

1 next in order.

2 THE CLERK: Exhibits H and I marked.

3 (Exhibits H and I marked.)

4 MR. STANTON: Your Honor, for the record,  
5 Exhibit H is a three-page document. This is printed from an  
6 attachment to an E-mail provided to us, the Washoe County  
7 District Attorney's Office, yesterday morning at  
8 approximately 9:36. This is from the Public Defender  
9 Investigator Crystal Calderon.

10 And Exhibit I is an E-mail sent to me and  
11 Mr. Gammick with its date sent listed on the exhibit itself  
12 September 30th, today's date, at 10:35 a.m.

13 Your Honor, I'd like to begin my comments and  
14 to lay out the record to the transcript of two days ago,  
15 September 28th, where Mr. Gammick stood before this court on  
16 page 1062 of the transcript in this case and advised the  
17 court of the fact that a list of witnesses had been provided  
18 to the State of who the defense intended to call during the  
19 penalty phase of this trial. That exhibit was marked and  
20 made part of the whole record in this case.

21 In addition, Mr. Gammick mentioned and we had  
22 previously been advised that the defendant's ex-wife, an  
23 aunt that supposedly raised Mr. Vanisi in the Bay area, were  
24 potential family witnesses. And Dr. Thienhouse was  
25 mentioned by Mr. Gregory as a potential witness, as well as

1 the Kinikini brothers, and the two witnesses that were  
2 called by the State during the guilt phase.

3 That document is entitled, the one that was  
4 admitted on two days ago, is a memo from the Public  
5 Defender's Office entitled Mitigation Witnesses.  
6 Mr. Gregory responded to this Court that the District  
7 Attorney's Office would be provided names of family members  
8 after the hearing was over.

9 We were provided through an attached E-mail  
10 from Crystal Calderon, of which the first exhibit you have  
11 there was sent. It lists 25 witnesses. That exhibit was a  
12 subsequent amendment apparently to that which highlights,  
13 and that's the laser printed version of that exhibit and  
14 witnesses 1 through 5 and throughout, and the statement in  
15 the E-mail saying these are the witnesses we're really going  
16 to call at penalty phase.

17 The next exhibit, Exhibit I, is the latest  
18 E-mail from Miss Calderon informing us of two names of  
19 witnesses that they are going to call at the penalty phase  
20 that have never been provided to the State before. The  
21 State objects, Your Honor. The State objects to the  
22 fashion, the form of this notice.

23 There is absolutely nothing that the State can  
24 glean from the information it knows about these witnesses as  
25 to why or a basis of good cause why these names weren't

1 timely notified to the State. It is a violation of the law,  
2 number one. And it is a violation of fundamental fairness  
3 and violation of due process on behalf of the other party to  
4 this litigation, the State of Nevada.

5 We cannot, as the Court I'm sure can glean from  
6 that witness list, adequately prepare and even understand  
7 the content of what these people could remotely testify to  
8 without having some ability to meaningfully contact them as  
9 opposed to 24 to 48 hours. Most of these people reside in  
10 California.

11 We have had two investigators working full time  
12 since we were provided with this list, and I'm sure it will  
13 surprise no one in this courtroom that the vast majority of  
14 these witnesses have not been able to be contacted by the  
15 State, have refused to return telephone calls by the State,  
16 leaving the State with no other option other than to  
17 physically go down and try and track them down in California  
18 and find out who they are, what they know, what they are  
19 going to testify to, what relationship they are to  
20 Mr. Vanisi, when they knew him, when was the last time they  
21 saw him, to find some basis so that I can intelligently  
22 cross-examine witnesses in a capital murder penalty phase.  
23 We haven't been able to do that.

24 The State strenuously and vehemently objects to  
25 the method, the nature of how defense counsel is playing



1 hide the ball, and that's exactly what they are doing in  
2 this case.

3 Mr. Bosler has told this Court that in their  
4 declaration in California, they purposely left the  
5 declaration vague so as to not give the State the benefit of  
6 understanding, quote, their strategy in the penalty phase.  
7 Whether he wants to do that, whether it's logical or not, is  
8 not the gravamen of my comments. But it certainly speaks to  
9 what indeed has been I think evidenced by this, the  
10 defense's strategy in this case. And it hurts the State, it  
11 hurts the State's ability to intelligently cross-examine  
12 these experts.

13 And the only thing that I would ask the Court,  
14 if the roles were reversed and the State were to provide  
15 notice of witnesses in this fashion, in the same setting,  
16 what would be the objection and how would the defense object  
17 to that, how would an appellate court review that, how would  
18 this trial court review the State's performance, how could  
19 the defense intelligently cross-examine the State's  
20 witnesses in that fashion, and whether or not there's even  
21 one piece of authority, case law or statute that would hold  
22 that the rules of notice for witnesses is different from the  
23 State or for the deference perspective. The State is  
24 unaware of any. The same rules, the same logic, the same  
25 sense of fairness, the same sense of due process applies to

1 both parties in this type of proceeding, and in any criminal  
2 proceeding. And yet, they have been grossly violated in  
3 this case.

4 We would object to any witnesses being called  
5 outside those that are noticed in the initial exhibit that  
6 was provided to the State. That in and of itself was  
7 untimely by Nevada law.

8 MR. GREGORY: I think what he's requesting is  
9 that we have no family members come in and testify for Mr.  
10 Vanisi. I think that's what he is suggesting, Your Honor.

11 We were under the impression, in fact, I  
12 believe they were given this list of family members for the  
13 first trial in January. When we gave them the additional  
14 list, we presumed that they had these family members. We're  
15 not doing anything nefarious. We're not playing hide the  
16 ball.

17 Those highlighted witnesses are the ones that  
18 at this time we feel should be called. The other ones may  
19 be called. Which is our option.

20 Judge, depending on what kind of a case they  
21 put on, we could have 30 witnesses that come to mind as a  
22 result of their case, and there's no court that's not going  
23 to allow us to put on witnesses in mitigation of this crime  
24 that this man has been found guilty of. So I don't know how  
25 to answer Mr. Stanton other than to say use your vast

1 resources.

2 I mean, they got the entire law enforcement  
3 community in Northern California. You want to use strong  
4 words, intimidating our witnesses, coming with their muscle  
5 to the door, what are you going to talk about?

6 They don't want anybody to come here and talk  
7 about this man. They want the image that they have created  
8 in the media, they want that image to be the only image that  
9 this jury has, the wild man from Tonga. Not an ounce of  
10 civilization, of civilized behavior in his body. That is  
11 what they want presented is a blood lust in this community.

12 There are politics at play here. This is an  
13 ugly thing.

14 But for them to suggest that they don't have  
15 the resources to contact people where we have the addresses  
16 and the phone numbers is mind boggling. They probably have  
17 2,000 officers at their disposal in California who can't  
18 wait to do whatever they can to kill this man.

19 I'll leave it at that, Judge.

20 THE COURT: Mr. Stanton, do you want to say  
21 something?

22 MR. STANTON: Yes, Your Honor. Let me address  
23 Mr. Gregory's comments because I don't think he either  
24 understood my comments.

25 If counsel can establish good cause as to why

1 these witnesses weren't notified to us pursuant to Nevada  
 2 law, that is five days prior to trial, why -- he sits there  
 3 and says he has to wait until the state's case in chief.  
 4 The State already provided them discovery in the case in  
 5 chief. We provided them as required the notice of our  
 6 witnesses to be called at trial well in advance of five  
 7 days. They had the same witnesses go around in the first  
 8 trial. This Court sat through a portion of the first trial,  
 9 and obviously, the entirety of the second trial.

10 So counsel is completely missing the point.  
 11 Can he establish good cause as to name one of these  
 12 witnesses that he was not able to understand and contemplate  
 13 their testimony prior to the presentation of the State's  
 14 case in chief? The reason why is he can't do it.

15 May I have this next marked in evidence?

16 THE CLERK: Exhibit J marked.

17 (Exhibit J marked.)

18 MR. STANTON: Your Honor, counsel made a  
 19 statement that these witnesses have previously been provided  
 20 to the State prior to trial. What you have marked as J,  
 21 Your Honor, is the entirety, the absolute entirety of the  
 22 notice that the State was given of the defense witnesses at  
 23 penalty in the first case, and as you can see, that is an  
 24 E-mail message sent by Mr. Specchio to our office dated  
 25 December 31st, 1998. There's no address, there's no phone

1 numbers. Wife, Deanne, quote, mother, sister, David Goodman  
2 and David Kinikini.

3 So when Mr. Gregory says that notice has  
4 previously been provided, that's the notice. So now the  
5 Court has before it the entirety of the notice that the  
6 State has been given and when it's been provided.

7 Contrary to Mr. Gregory's recollection and to  
8 his speech unsupported by any facts about what resources are  
9 available to the State, it's not a matter of what resources  
10 and that we have 2,000 officers at our beck and call. We  
11 can't do anything when we're provided witnesses 24 hours  
12 before when they are to be called, 48 hours at the maximum,  
13 when we are doing other things relative to our resources  
14 here in the state.

15 And I think the more operative question is, is  
16 what did they know about these witnesses and when did they  
17 know it and why can't they establish good cause as to why  
18 any of these witnesses couldn't have been noticed to the  
19 State earlier?

20 MR. GREGORY: Your Honor.

21 THE COURT: Mr. Gregory.

22 MR. GREGORY: I think we should indicate that  
23 with the exception maybe of a couple witnesses, our  
24 witnesses aren't even going to be presented before Monday.  
25 I'll remind the Court it was the State, when they are

1 throwing bricks at us for messing up the compelling of  
2 witnesses from California, that so freely volunteered we had  
3 no trouble getting ahold of these witnesses, we were able to  
4 get ahold of them with no trouble. And now they have  
5 trouble.

6 I'd almost have to have Mr. Specchio in because  
7 I know, Your Honor, that they had a more complete list than  
8 that. Because I know that they have known about Bishop  
9 Tonga, we had these conversations, and there are others that  
10 are on there that don't necessarily come to mind. But we  
11 almost have to have -- there is a lot of things that went on  
12 face-to-face verbally.

13 And the point I was making --- he missed the  
14 point I was making. When they put on their penalty phase,  
15 Judge, if as a result of the witnesses they present  
16 witnesses are suggested to me or Mr. Bosler, even  
17 Mr. Vanisi, that they haven't heard about, we still have a  
18 right to put those witnesses on. We still have a right.  
19 With no notice to them.

20 With that, Your Honor, I'll just submit it.  
21 Thank you, Judge.

22 THE COURT: With regard to the question of what  
23 the Court would do if the roles were reversed, the Court  
24 would continue the penalty hearing. That's what the Court  
25 would have to do. The Court would have no choice but to

1 allow an opportunity for the defense to investigate the  
2 witnesses.

3 The Court would not refuse to allow witnesses  
4 that have information that bear on the ultimate question in  
5 this kind of a case to testify. The violation would be  
6 sanctions for the costs and the continuance. So that's  
7 really where I'm at here.

8 If the State is at such a disadvantage that I  
9 need to continue the penalty hearing for a few more days, I  
10 need to know that. Otherwise, the other thing I can do at  
11 this stage is I can request that either Mr. Bosler or  
12 Mr. Stanton -- Mr. Gregory right now tell us who these  
13 people are. At least you would have an indication who they  
14 are if you don't already know, Mr. Stanton.

15 MR. STANTON: I certainly would like at a  
16 minimum, Your Honor, an order from this Court compelling the  
17 defense counsel to articulate what witnesses they are going  
18 to call in the penalty phase. Not potential lists, who they  
19 have, who they are, and the general subject matter of their  
20 testimony. Because there are some people that we haven't  
21 even been able to contact.

22 Mr. Gregory says you got to understand, we are  
23 the State prosecuting for a lot of these people that have  
24 refused contact, a relative of the defendant. So the only  
25 realistic method of contacting them is phone contact, oh,

1 I'll leave a message, never call back. That's kind of what  
2 our investigators are finding or no answer whatsoever, no  
3 call back, no whatever, don't know where the people work,  
4 whatever.

5 Contrary to Mr. Gregory's unsupported  
6 allegations, there's been no conduct that I'm aware of  
7 people intimidating witnesses merely to do what any  
8 appropriate investigator for the state or defense counsel  
9 would do, is find out who they are, how they know the  
10 defendant, and what's the subject matter of their testimony.

11 THE COURT: Well, with regard to the witness  
12 list, I have an H and I have an I. Are these all the  
13 potential witnesses, Mr. Bosler?

14 MR. BOSLER: I'll defer to Mr. Gregory.

15 MR. GREGORY: May I approach, Your Honor?

16 THE COURT: Certainly.

17 MR. GREGORY: Yes. The Peaua woman will be  
18 called, and the highlighted ones at this point we will  
19 definitely call.

20 THE COURT: But all the potential witnesses are  
21 listed either in H or I?

22 MR. GREGORY: Yes, Your Honor.

23 THE COURT: Now, with regard to --

24 MR. GREGORY: We may not call all of the  
25 highlighted ones, but I want to give them notice of that so



1 they have a priority.

2 THE COURT: You indicated you may call some of  
3 the people that aren't highlighted.

4 MR. GREGORY: May well happen, yes, Your Honor.  
5 But I didn't want to give him a phone book. So I wanted to  
6 make it as easy for them to find these witnesses. That's  
7 why the highlighted ones are definite at this point. We may  
8 not call all the highlighted ones.

9 THE COURT: Why don't you tell us who the ones  
10 that reside at 363 Taylor Avenue in San Bruno are?

11 MR. GREGORY: Judge, I don't have the list.  
12 I'm sorry.

13 THE COURT: There are three that are  
14 highlighted, and they all have the same telephone number and  
15 same address. Four. That all reside at the same address.

16 MR. GREGORY: I'm sorry. I can't keep the  
17 Polynesian names straight. It is his aunt, number one;  
18 sister, I believe, is number two; and his brother is number  
19 four at the 363 address. I'm sorry, there's another. And  
20 another brother, number five.

21 THE COURT: So are they brothers or cousins  
22 residing with his aunt?

23 MR. GREGORY: I believe they are true brothers,  
24 are they not?

25 THE DEFENDANT: Yeah.

1 THE COURT: And these people will testify as to  
2 their relationship with the defendant or what?

3 MR. GREGORY: That's exactly true, yes, Your  
4 Honor.

5 THE COURT: What about number 3, who is that?

6 MR. GREGORY: That's Bishop --

7 MR. STANTON: We have talked to Bishop Tonga,  
8 Your Honor. On the next page would be witness number 8.

9 MR. GREGORY: It is a cousin, Your Honor.  
10 Number 11 is an aunt.

11 THE COURT: You have another one at the 363  
12 Taylor Avenue, number 17.

13 MR. GREGORY: That is his mother. Now, Your  
14 Honor, just so it's clear, because I don't want to get  
15 accused of misrepresenting anything, the Tongans have a  
16 tradition. They suffer, some of their families suffer from  
17 infertility.

18 And his mother who is represented in number 17  
19 is one of those people. His true mother, his birth mother  
20 after giving birth to two children subsequently handed  
21 subsequent children over to her brothers and and/or sisters  
22 who were sterile. But this is the lady who is actually his  
23 blood aunt that raised him from a child. This is the true  
24 mother?

25 THE DEFENDANT: Yeah.

1 MR. GREGORY: I'm sorry. I apologize. This is  
2 the true mother.

3 THE COURT: The birth mother.

4 MR. GREGORY: That is the birth mother. Number  
5 1 is the mother that raised him. She is a blood aunt but  
6 she raised him.

7 THE COURT: Do you need any of the other  
8 witnesses identified?

9 MR. STANTON: No, Your Honor. Not the  
10 highlighted ones that appear on that exhibit.

11 THE COURT: Now the nonhighlighted ones, are  
12 there any of these witnesses you are not familiar with,  
13 Mr. Stanton, that you just don't know?

14 MR. STANTON: If counsel is making a  
15 representation that he will not be calling --

16 THE COURT: No, he's not saying that. He is  
17 saying he doesn't think they will be called. But I don't  
18 think you can count on them not being called. You tell me  
19 who you don't know.

20 MR. STANTON: 6 and 7 on page 1.

21 THE COURT: Who are they?

22 MR. GREGORY: 6 is an aunt. We can't identify  
23 the 7th. It was people picked up by our investigators, Your  
24 Honor. Miss Calderon is not here. She could truly aid the  
25 court much better than I am.

1 MR. STANTON: So we have number 6 was an aunt.  
2 They don't know who number 7 is; is that correct?

3 THE COURT: That is correct.

4 MR. GREGORY: We do know who she is. I don't  
5 know who that is.

6 MR. STANTON: I assume Mr. Bosler doesn't know  
7 who number 7 is either.

8 MR. BOSLER: Not without my paperwork. I  
9 wasn't prepared to have this type of hearing, Your Honor.  
10 That information is probably in the investigator's office.

11 MR. STANTON: It is somewhat hard to believe,  
12 Your Honor, with all due respect to counsel, that they don't  
13 know who these witnesses are. I'm presuming that they  
14 are --

15 MR. GREGORY: Oh, please.

16 MR. STANTON: That their investigator has  
17 talked to them. I mean, if they are going to potentially  
18 call them as a witness, you think you got to know what the  
19 heck the witness is going to testify to. Call me crazy,  
20 Your Honor.

21 MR. GREGORY: I'll call you crazy. If he'd  
22 have let me know why he wanted this hearing, maybe we could  
23 have answered these questions and I wouldn't be stumbling  
24 around here.

25 MR. STANTON: I don't think I'm asking for a

1 minute detail. It's the content of a witness that they  
2 might call in a penalty phase hearing. Not some remote  
3 aspect buried in their files over there. I think it would  
4 be relatively relevant, material and at the touch of their  
5 list of priorities.

6 THE COURT: Well, I'm sure that the names are  
7 confusing to people who are not familiar with the Polynesian  
8 names. So I'm going to chalk it up with that.

9 With regard to number 10, do you know who that  
10 is?

11 MR. GREGORY: That is Vainga.

12 MR. STANTON: Number 12, Your Honor.

13 MR. GREGORY: That is his father.

14 MR. STANTON: Number 15.

15 MR. GREGORY: Brother-in-law.

16 MR. STANTON: Number 16.

17 MR. GREGORY: Sister.

18 MR. STANTON: Number 19.

19 MR. GREGORY: I believe that's a cousin. It's  
20 a cousin.

21 MR. STANTON: 20.

22 MR. GREGORY: That's another cousin.

23 MR. STANTON: 21.

24 MR. GREGORY: An uncle.

25 MR. STANTON: 22.

1 MR. GREGORY: Cousin.

2 MR. STANTON: 25.

3 MR. GREGORY: They have already testified.

4 That is Lose.

5 I'm sorry. 25. I thought you went to 23. I'm  
6 just slow, David.

7 MR. STANTON: Number 25, Your Honor.

8 MR. GREGORY: It's a cousin.

9 MR. STANTON: As to all the ones that we just  
10 mentioned, I'm assuming without counsel stating, that they  
11 are going to generally testify as to the relationship of the  
12 defendant. If it is anything other than that, the State  
13 would like to know.

14 MR. GREGORY: It is not.

15 THE COURT: It's just to their relationship to  
16 the defendant?

17 MR. GREGORY: Yes.

18 THE COURT: We also have the ones that are in  
19 Exhibit F that have been compelled by California courts to  
20 attend these hearings, and they are going to testify; is  
21 that correct?

22 MR. GREGORY: That is correct, yes, Your Honor.

23 THE COURT: And that is Mr. McGinn,  
24 Miss Celeste, Mr. Fry, Leanne Jones, Anna Jones,  
25 Mr. Krueger, Ernest Schurpfeil and Brian Verna. Roger

1 Selsback was not required.

2 MR. GREGORY: I don't think the state is  
3 complaining about those witnesses, Your Honor.

4 MR. STANTON: That's correct.

5 THE COURT: Is that a complete list of the  
6 witnesses? Do you know who this newest witness is,  
7 Mr. Stanton?

8 MR. STANTON: There are two witnesses on E-mail  
9 that we received this morning.

10 MR. GREGORY: Court's indulgence. They are  
11 members of the Peaua family, same family that the previous  
12 witness Renee comes from.

13 MR. STANTON: We have Dr. Thienhouse that is  
14 not listed on any of these proposed witness lists.

15 THE COURT: Yes. And that you told me in the  
16 hearing before you thought you were going to call him.

17 MR. GREGORY: Yes, indeed. We told the State  
18 orally. They have known all along we were going to call  
19 Dr. Thienhouse.

20 They complain about these witnesses not wanting  
21 to talk to them. They ought to be in our shoes when we try  
22 to talk to their witnesses. I mean, their witnesses, the  
23 impression we get, are instructed to give us the bum's rush,  
24 to not say a word to us. And in fact, they oft times say  
25 the State has told us we don't have to talk to you and we're

1 not going to.

2 MR. STANTON: Well, you know, if Mr. Gregory is  
3 going to make that allegation, Your Honor, I'm going to  
4 specifically request that it be stricken from the record and  
5 that if he has that allegation, that he come in here and  
6 prove it in this courtroom.

7 THE COURT: Are you talking about this case,  
8 Mr. Gregory?

9 MR. GREGORY: No, I'm talking in general, Your  
10 Honor.

11 THE COURT: This is kind of a general Public  
12 Defender - District Attorney issue?

13 MR. GREGORY: Complaint.

14 THE COURT: Complaint. But this case you have  
15 not met with that difficulty?

16 MR. GREGORY: Not to my knowledge, no, Judge.

17 THE COURT: Mr. Bosler, have you had any  
18 difficulty with any of the witnesses in this case?

19 MR. BOSLER: Not specifically referring to  
20 District Attorney conduct, no, Your Honor. But some  
21 witnesses are just difficult to talk to, but that's just the  
22 nature of this practice.

23 THE COURT: But there hasn't been any issue in  
24 this case thus far with regard to the District Attorney  
25 hiding witnesses, keeping them away from you or making it



1 difficult for you to contact them?

2 MR. BOSLER: That is what I just said, Your  
3 Honor.

4 THE COURT: I want to make sure the record is  
5 very clear on that.

6 MR. STANTON: Thank you, Your Honor. I just  
7 want to respond to Mr. Gregory.

8 Your Honor, the point I'm making about not  
9 being able to talk to them, the State understands realities  
10 of talking to family members of the defendant. But when we  
11 have 24 hours' or 48 hours' notice of these individuals,  
12 that's where it becomes a problem. If the people say, hey,  
13 I don't have a word to say to you, as Deanne Vanisi, the  
14 defendant's ex-wife has hung up on our investigators and  
15 said as soon as she found out who they are, that is their  
16 prerogative and right. We don't begrudge anybody of  
17 exercising their right.

18 My problem is the realistic ability to get  
19 anybody to talk to you over the telephone when we have 24  
20 hours' or 48 hours' notice.

21 THE COURT: Okay. I think we have kind of made  
22 enough with regard to this particular issue.

23 Dr. Thienhouse's testimony, is there any  
24 problem with regard to that?

25 MR. STANTON: They have previously indicated,

1 Mr. Gregory is accurate in his statement that he told us  
2 just prior to the commencement of the trial that indeed they  
3 might call him as a witness. The sum and substance of his  
4 testimony, other than what he testified in court, is unknown  
5 to the State. I specifically asked if any reports, any  
6 evaluation, any requests for evaluation, any testing had  
7 been done, and I was advised that there had not been.

8 MR. GREGORY: Well, and Mr. Bosler has a point.  
9 It is not going to be any more extensive than what he's  
10 already testified to.

11 THE COURT: And there are no scientific  
12 reports?

13 MR. GREGORY: No.

14 THE COURT: All right. Next item.

15 MR. STANTON: Your Honor, the next item is the  
16 State would be requesting a motion in limine regarding any  
17 defense witness in penalty phase from speaking as the State  
18 witnesses are prohibited to a sentence for this jury to  
19 consider.

20 THE COURT: Counsel?

21 MR. GREGORY: I had no intentions of anybody  
22 suggesting anything to this jury, Your Honor.

23 MR. STANTON: I just don't want anybody coming  
24 in there saying, Please spare my son, speaking to don't kill  
25 my son, anything like that. I have seen it before. Don't

1 have any idea what the plan of attack here is.

2 It's inappropriate for State witnesses to  
3 mention the penalty. My review of the authority is it is a  
4 unilateral rule of law and that it would apply appropriately  
5 to all penalty phase witnesses in the form of either victim  
6 impact or defense witnesses.

7 MR. BOSLER: Your Honor, I do believe it is  
8 unilateral, but the only difficulty I would have is if a  
9 witness gets up and says, I love my son, I want to talk to  
10 him, be able to write him and say things to him in the  
11 future, is that the same thing? The inference is don't kill  
12 him. How far do you take that?

13 THE COURT: Mr. Bosler, clearly every witness  
14 that you are going to put on is going to infer that the  
15 maximum penalty in this case would not be appropriate. If  
16 they weren't going to infer that, you wouldn't be calling  
17 them.

18 MR. BOSLER: Obviously.

19 THE COURT: So that's kind of a silly analogy.  
20 The question is, can they make the ultimate request, and  
21 there's no question that the law is it's clear, that they  
22 can't. So we all know that. If someone testifies that they  
23 want to be able to write and contact their son for the rest  
24 of his life, that's okay. The next step is not okay.  
25 Motion in limine is granted.

1 MR. GREGORY: Your Honor, I'm going to inquire  
2 through the Court whether the prosecutors had the  
3 opportunity to edit the statement of Miss Sullivan and  
4 whether I can have a copy of the edited statement.

5 MR. STANTON: The answer to that question, and  
6 I'll be addressing it, I have an order here, Your Honor, and  
7 I'll be answering counsel's question here shortly.

8 Next, Your Honor, is pursuant to the Court's  
9 order at 3:30 today, I provided defense counsel with a copy  
10 of the jury instructions pursuant to the Court's order. I  
11 can provide the Court a copy. Indicate that we have not  
12 received any proposed jury instructions from defense  
13 counsel.

14 MR. GREGORY: We have them in our hot little  
15 hands right here.

16 MR. BOSLER: If I may have a moment, Your  
17 Honor, to sort them.

18 THE COURT: Okay. You can keep going while he  
19 is sorting them, Mr. Stanton. I think they can sort them,  
20 Mr. Stanton, while you proceed.

21 MR. STANTON: Okay. Your Honor, there is two  
22 victim impact statements that I requested the witnesses to  
23 prepare, in essence, a transcript, if you will, Carolyn  
24 Sullivan's, and Sue Millard's. Miss Millard is George  
25 Sullivan's sister.

1 I have provided defense counsel on several  
2 occasions copies of their statements. Mr. Gregory asked if  
3 I had prepared a redacted statement of Miss Sullivan, and  
4 the answer is yes, and for the record, I just provided that  
5 to Mr. Gregory.

6 Miss Sullivan sent that to me as an attachment  
7 through E-mail this afternoon approximately one o'clock.

8 Just for the record, during the proceedings and  
9 litigation in this matter, I have provided as a courtesy to  
10 defense counsel these transcripts and asked him to highlight  
11 any portions that he would have an objection so we could  
12 come to this court somewhat efficiently to see what we could  
13 agree to disagree on any of the provisions. For the most  
14 part I believe we are of the same mind and out of abundance  
15 of caution asked Miss Sullivan to delete those areas that  
16 even arguably could be objectionable.

17 I think she has done that successfully and  
18 provided that to defense counsel. Yesterday they were  
19 provided or this morning they were provided with  
20 Miss Millard's redacted.

21 THE COURT: Have you provided the Court with  
22 the new version?

23 MR. STANTON: No. I can if you would like,  
24 Your Honor.

25 THE COURT: Yes.

1 MR. GREGORY: Just so that I'm clear, is this a  
2 new version that Miss Sullivan presented to you this  
3 morning?

4 MR. STANTON: This is the version with the --  
5 it is a redacted version, Your Honor, pursuant to  
6 Mr. Gregory's concerns, which I think for the most part are  
7 addressed. He has the previous one, and I think he can  
8 quickly go to those areas where he's previously had problems  
9 and see that I think his concerns were addressed. I have  
10 both Miss Sullivan's and Miss Millard's, if I may approach.

11 THE COURT: Yes. The clerk will mark them.

12 MR. STANTON: The first one, the one that says  
13 Sentencing Hearing, Ladies and Gentlemen of the Jury, colon,  
14 that is Miss Sullivan's. The other one is Miss Millard's.

15 THE CLERK: Exhibits K and L marked.

16 (Exhibits K and L marked.)

17 MR. GAMMICK: Your Honor, may I inquire as to  
18 which statement was marked as K and which is L?

19 THE COURT: Mrs. Sullivan's is K.

20 MR. GREGORY: I don't believe I have a copy of  
21 the edited parts, Your Honor.

22 THE COURT: I'll see if Mr. Stanton can get you  
23 one.

24 MR. GREGORY: I believe he is talking to his  
25 investigators now.

1 MR. STANTON: I have been corrected, Your  
2 Honor. The original was delivered to them on Miss Millard,  
3 the redacted version was done yesterday morning. That  
4 apparently hasn't been delivered to them. It was delivered  
5 to them this afternoon.

6 MR. GREGORY: Again, Your Honor, I'm reserving  
7 any objections to either document. Mr. Stanton is correct,  
8 we have worked well together. We do on occasion work well  
9 together.

10 But I haven't had an opportunity to go through  
11 the edited version, and it's rather extensive, and I'd like  
12 to reserve the right to object to anything that I find  
13 inappropriate and allow the Court to rule on it.

14 THE COURT: When do you want to do that?

15 MR. GREGORY: Pardon me?

16 THE COURT: When do you want to do that?

17 MR. GREGORY: Well, Judge, I don't think we  
18 have enough time for me to go through it now.

19 THE COURT: Right.

20 MR. GREGORY: I will have it done by tomorrow  
21 morning.

22 THE COURT: Okay. Is Miss Sullivan going to be  
23 your first witness?

24 MR. STANTON: No, Your Honor, she's not.

25 THE COURT: Will she be after lunch, or do we

1 need to have the hearing in the morning before we start?

2 MR. STANTON: I believe -- it's hard to  
3 estimate in this case, but there's a possibility we'll be  
4 done before the noon hour, maybe in the early afternoon.

5 THE COURT: Okay. We'll plan on being here at  
6 8:30. If there is an objection, we'll hear it at 8:30. If  
7 there isn't, we won't have to have the hearing.

8 MR. BOSLER: Your Honor, may I approach?

9 THE COURT: Yes.

10 MR. BOSLER: I have a copy of our offered  
11 instructions. I have given one set to the Court as I speak,  
12 another set to the State. And some of these may be  
13 duplicitous. I didn't know what the State considered stock  
14 instructions until I actually got theirs just immediately  
15 before the hearing. So hopefully we won't have too much of  
16 a problem. Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. STANTON: Next in line, Your Honor, there's  
19 a series of evidence issues. Previously the Court had ruled  
20 that there was a photograph of the Kinikini home involving  
21 Jesus Christ and some of the higher officials in the Mormon  
22 church when Mr. Vanisi pointed a gun at them and said that  
23 he's going to kill these white, using a derogatory term,  
24 outside of that.

25 During voir dire a statement was made, or it



1 was either in voir dire or some part of the process that  
 2 Mr. Gregory made a comment that Mr. Vanisi was an elder in  
 3 the church. I spoke to Mr. Gregory about the State's  
 4 concern raising Mr. Vanisi's, at the penalty phase, his  
 5 interaction with, involvement or any mention whatsoever of  
 6 him in the church. If this evidence isn't already relevant  
 7 relative to the aggravating factors of ethnicity at the  
 8 penalty phase -- and I know the Court has ruled that its  
 9 prejudicial effect outweighed the probative value for the  
 10 guilt phase -- that the State is, I want to advise the  
 11 Court, going to seek to admit that testimony if any mention  
 12 whatsoever is presented about Mr. Vanisi in relationship to  
 13 the church. Because I think at that juncture it is  
 14 extremely relevant and it is proper rebuttal evidence.

15 For the Court, it is Exhibit 33-A. So out of  
 16 abundance of caution, there are some evidentiary issues that  
 17 I think are going to be involved in a dispute between the  
 18 parties here, and I thought it was appropriate to bring to  
 19 the Court's attention prior to tomorrow's hearing since the  
 20 jury has obviously been recessed for a while and this may  
 21 lead to further recess tomorrow. So I thought it might be a  
 22 little bit more efficient.

23 THE COURT: It won't happen tomorrow because  
 24 you would use it in rebuttal, is what you are thinking.

25 MR. STANTON: That is correct, Your Honor. I

1 think that's where it's appropriate. At least the State's  
2 inclination at that juncture.

3 The State doesn't want to interject religion  
4 because I think the appellate courts have generally said to  
5 stay away from it. But if they believe it's proper  
6 mitigating evidence and want to touch on it in any way,  
7 shape or form, I believe it then becomes proper rebuttal.

8 THE COURT: Well, I'm not sure and I don't know  
9 how I will rule on your request to admit 33-A or elicit the  
10 testimony that is involved in addition to 33-A. I'll have  
11 to wait and see what the defense puts on.

12 But I think clearly the defense is on notice at  
13 least of a request by the State to utilize this testimony,  
14 and if the defense chooses to go down that road, it will be  
15 subject to the potential for the Court to allow this  
16 evidence to come in in rebuttal. I think the State -- the  
17 defense must consider that when choosing what they will put  
18 on in the case.

19 MR. GREGORY: Yes, Your Honor, we understand.

20 MR. STANTON: Two other evidentiary items, Your  
21 Honor. One is a photograph that Mr. Gregory has advised me  
22 that they do not object foundationally to the photograph,  
23 but they object to the subject matter of the photograph. It  
24 is a photograph of Mr. Vanisi that appeared in the Sparks  
25 Tribune taken while he was incarcerated and awaiting trial

1 in this matter at the Washoe County Jail.

2 THE COURT: Let me see it up close.

3 MR. GREGORY: It's an obvious attempt to pander  
4 this jury, Mr. Vanisi mocking you ladies and gentlemen. I  
5 don't think we need that in this trial.

6 I remind the Court after the verdict came back  
7 of the picture that was on the front page of the local  
8 newspaper. They must have taken 10 rolls of film to get a  
9 picture of him with his eyes open like that. Just so that  
10 they could scare everybody.

11 And then the headline reads, underneath the  
12 caption, in bold letters, remember, "Dazed and angry." This  
13 man was neither dazed nor angry. It is an out and out lie.  
14 And this is a lie in picture form that they want to present  
15 to this jury.

16 THE COURT: What's the relevance of the  
17 picture?

18 MR. STANTON: Your Honor, the relevance is  
19 obviously the State -- and I don't know how the defense is  
20 going to argue it, but anticipating what are common  
21 arguments between the sentencing alternatives, that the  
22 degree of punishment that exists to individuals that are  
23 incarcerated varies from individual to individual. And I  
24 think this is relevant and compelling, frankly, evidence to  
25 suggest that a sentencing option other than death in this

1 case is not a punishment to this individual, and I believe  
2 that's evidence, along with other evidence that the State  
3 plans to present of that fact.

4 THE COURT: Let's have the clerk mark it next  
5 in order. You're not looking at using this in your case in  
6 chief in penalty phase, you are looking at it as rebuttal?

7 MR. STANTON: No. Case in chief, Your Honor.

8 THE CLERK: Exhibit 44 marked.

9 (Exhibit No. 44 marked.)

10 THE COURT: In light of all the evidence that  
11 the State has with regard to his incarceration and his  
12 adaption to incarceration, at this time I'm not going to  
13 allow it. I may change my mind part way through depending  
14 on how that evidence is developed and how the  
15 cross-examination goes.

16 MR. STANTON: Your Honor, I'm not sure what the  
17 Court says about our evidence about how he's adapted. The  
18 only evidence that we have is the series of events that  
19 involves use of force and violence against prison and jail  
20 officials. We don't have any evidence that we are going to  
21 elicit directly about Mr. Vanisi's day-to-day adaption,  
22 positive adaption to jail or prison environment. So the  
23 Court may misunderstand or misapprehend what the State seeks  
24 to or is going to present.

25 THE COURT: You want to use this exhibit to

1 show that Mr. Vanisi was able and has been able to adapt and  
2 is happy in jail, and therefore, that would not be an  
3 appropriate punishment?

4 MR. STANTON: No, Your Honor. The State  
5 exhibit I think speaks directly to an argument that is made  
6 between the sentencing alternatives of death and the other  
7 sentences here, and that is prison is, as you heard many of  
8 the jurors say, and Mr. Bosler say repeatedly in his voir  
9 dire, about that the punishment is greater when someone has  
10 to think about the offense, and that it is indeed an easy  
11 way out for someone to be executed as opposed to repenting  
12 and to dwelling on their wrong, or to live in an environment  
13 that may not be as pleasant as unadulterated living. The  
14 State's perspective is that isn't also true with individuals  
15 and it's not true with this defendant.

16 MR. GREGORY: This picture, by the way, Your  
17 Honor, was taken shortly after his return from Utah. He had  
18 not been incarcerated for any length of time.

19 THE COURT: You can ask me again before you  
20 rest, but right now I'm not inclined to allow it.

21 MR. STANTON: What is the exhibit, Miss clerk?

22 THE CLERK: 44.

23 MR. STANTON: Your Honor, the next is the  
24 videotape that has been previously provided to defense  
25 counsel. This is a videotape the State will seek to admit

1 during its case in chief in penalty phase.

2 It is a videotape that is seven minutes 35  
3 seconds in length. It is of various different family  
4 functions of the Sullivan family, specifically of Sergeant  
5 George Sullivan interacting with his family, friends and  
6 associates at Christmas, at family gatherings, and the like.  
7 And Mr. Gregory informed me he had an objection relative to  
8 its admission.

9 MR. GREGORY: I do indeed.

10 THE COURT: Let's mark it so we're clear what  
11 we're talking about.

12 THE CLERK: Exhibit 45 marked.

13 (Exhibit No. 45 marked.)

14 MR. GREGORY: I do indeed have an objection to  
15 it. The Supreme Court of this State has consistently said  
16 that references to holidays or the lack of a victim being  
17 able to participate in holiday activities is inappropriate  
18 in any situation, be it the prosecutor or the defense to  
19 suggest.

20 And this is clearly again just pandering to the  
21 jury. This is trying to appeal to their base emotions. Not  
22 whether this man should die because of the aggravators, but  
23 he should die because they had such a great Christmas family  
24 and now Mr. Sullivan is not part of it. Judge, I just think  
25 it's reaching an emotional low we don't need to introduce in

1 front of this jury.

2 MR. STANTON: Your Honor, counsel cites  
3 apparently to authority that the State is unaware of that  
4 our Supreme Court, the Nevada Supreme Court has held that  
5 references to a loved one not being present during the  
6 holidays, or other social functions, exists. I'm unaware of  
7 that case.

8 In fact, there are numerous references in  
9 Miss Sullivan's statement to that fact as it relates to  
10 occasions outside of the videotape. For example, references  
11 to her daughter's prom, walking her down the aisle to the  
12 wedding, things that I think have appropriately been  
13 addressed and done many times on appellate review and record  
14 regarding things that will impact the family not only now  
15 but in the future by their loved one's murder.

16 And once again, if counsel can reference the  
17 case number and citation, I'll certainly be happy to rethink  
18 the State's motion to admit that. But once again, I'm  
19 unaware of any prohibition from our State Supreme Court  
20 relative to the missing of loved ones at holidays. In fact,  
21 I think that is precisely the type of victim impact that  
22 Paine addresses.

23 THE COURT: What is the case that you are  
24 thinking of, Mr. Gregory?

25 MR. GREGORY: Well, Mr. Bosler was suggesting

1 it was one of my cases. Although we do have a list of cases  
2 involving claims of prosecutorial misconduct, and two or  
3 three of them are mine. Unfounded, by the way, Your Honor.

4 But this happens to be the case of --  
5 prosecutor's name was Jerry McGimsey in the District  
6 Attorney's office of Clark County some 25 years ago and gave  
7 a rather eloquent closing argument where he indicated to the  
8 jury something along the lines of Merry Christmas to the  
9 ex-victim's family from the defendant, whoever the defendant  
10 happened to be; and I believe there are other cases that  
11 where similar things were done by the prosecutors and they  
12 were found in connection with.

13 THE COURT: Was that over the Christmas  
14 holidays, though? Was it a jury that was taking place at  
15 Christmastime?

16 MR. GREGORY: Your Honor, I was in the  
17 courtroom, and I know sometimes I say I'm old, but you know,  
18 it's times like this where I really feel old. I don't  
19 remember what time of the year. I believe the killing took  
20 place on the 23rd or 24th of December. The actual trial,  
21 I'm not sure.

22 THE COURT: Let me see the video, and then the  
23 defense can get me the list of cases. If you don't get them  
24 to me by 5:30 today, get them to us early in the morning.

25 MR. GREGORY: Yes, Your Honor.



1 THE COURT: So we can look at it and make the  
2 decision.

3 MR. STANTON: Do you want to watch the  
4 videotape now, Your Honor?

5 THE COURT: We might as well.

6 (State's Exhibit 45 played.)

7 MR. GREGORY: Is this going to be with or  
8 without audio, Your Honor?

9 MR. STANTON: Audio. Miss Sullivan will be on  
10 the stand subject to cross-examination if counsel so  
11 desires.

12 THE COURT: Now, you plan on having  
13 Mrs. Sullivan identify this while she's on the stand?

14 MR. STANTON: Yes, Your Honor. She's already  
15 reviewed the tape. She has signed and dated it as being a  
16 true and accurate copy of the selected portions of tapes  
17 from her family get-togethers.

18 THE COURT: And the purpose of this?

19 MR. STANTON: The purpose? It complies with  
20 what the State believes the mandates of Paine and Homick as  
21 proper victim impact evidence to show to the ladies and  
22 gentlemen of the jury who George Sullivan was, what his life  
23 was like, and that this was a man, a family man, and I think  
24 it also comports with the testimony of the written statement  
25 of Carolyn Sullivan as to the impact of his loss.

1 MR. GREGORY: I would ask the Court to reserve  
2 ruling until tomorrow morning so we can do it in conjunction  
3 with the statement which they have already indicated that  
4 they are tied together.

5 THE COURT: Yes, I will.

6 MR. GREGORY: Thank you, Your Honor.

7 THE COURT: Try to give me the cases.

8 Any additional? Mr. Bosler, why don't you turn  
9 off the monitor.

10 MR. STANTON: Your Honor, I have four  
11 photographs that -- actually I have five photographs that I  
12 have shown Mr. Gregory.

13 MR. GREGORY: I have no objections to any of  
14 them.

15 THE COURT: Do you want to have them marked,  
16 please?

17 MR. STANTON: Can I have them marked in a  
18 series? Because they were all photographs that Sue Millard  
19 brought with her.

20 THE COURT: Do they comport with this 1, 2, 3,  
21 4 and 5 statement?

22 MR. STANTON: Yes, Your Honor, they actually  
23 do. It is like Miss Millard is quite an organized person,  
24 and it's almost like a slide show, if you will, and she did  
25 that for her own reference at my request; that a lot of

1 people get quite emotional during these things, and I felt  
2 that it was a good thing for them to do to keep their focus.

3 THE CLERK: 46-A through -E marked.

4 (Exhibit Nos. 46-A through 46-E marked.)

5 THE COURT: Seeing no objection, subject to the  
6 foundation of the person actually testifying, they will be  
7 admitted.

8 MR. GREGORY: Thank you, Your Honor.

9 (Exhibit Nos. 46-A through 46-E admitted.)

10 MR. GREGORY: Your Honor, if I might, I'm sure  
11 the Court intends to look at Miss Sue Millard's statement  
12 and Miss Sullivan's statement. I'll make a general  
13 objection maybe to help the Court in looking at those  
14 statements.

15 These appear to be mostly reminiscences and not  
16 truly an impact on the victim. It is descriptions of when  
17 they first met, when they were dating, their wedding, that  
18 sort of thing. So I'd ask the Court to consider that those  
19 statements may not be appropriate as victim impact under  
20 Homick. And I'll leave it at that.

21 THE COURT: Anything else from the State's  
22 perspective?

23 MR. STANTON: Well, Your Honor, I think  
24 Mr. Gregory's reading of the law regarding victim impact  
25 statement is incorrectly narrow. There is nothing that my

1 reading of Paine and Homick and its progeny both in the  
2 federal and state and our State Supreme Court that has  
3 construed victim impact statement to solely a reference to  
4 generalized or specific statements about their loss.

5 Mr. Gregory refers to it as reminiscing. It is  
6 entirely appropriate for someone to articulate to the Court  
7 or to a jury that their sense of loss and how their loved  
8 one's murder has affected their lives, both at the present  
9 and in the future in the context of stories and references  
10 to give some context to their loss, to include instances  
11 that reflect who the person was. Paine permits in victim  
12 impact statement evidence to show ladies and gentlemen of  
13 the jury who the victim was, and that can be an anecdotal  
14 form as well. I believe Paine and its progeny fully  
15 supports that.

16 MR. GREGORY: Well, I have given the Court a  
17 heads up to aid the Court, and then I'll make my specific  
18 objections tomorrow morning, if I have any.

19 THE COURT: Okay. Just a moment, gentlemen,  
20 please. Now as I understand it, the State intends to call  
21 Deputy Ellis in the penalty phase.

22 MR. STANTON: That's correct, Your Honor.

23 THE COURT: There has been a stipulation that  
24 Deputy Ellis could be part of the security handling  
25 Mr. Vanisi during the guilt phase and that it would not

1 impact his testimony. However, I do have a concern about  
2 his sitting here in the courtroom on the side and being  
3 called from that position to the stand.

4 Do you know when you would want to be calling  
5 him?

6 MR. STANTON: Deputy Ellis, once again,  
7 depending on when we start, if we start at 9:00 o'clock,  
8 making an educated guess or a rough guesstimate, Deputy  
9 Ellis could be by 10:00 o'clock.

10 THE COURT: Okay. I just needed to know that,  
11 and I will talk with the security detail and make other  
12 arrangements.

13 MR. GREGORY: Thank you, Your Honor.

14 THE COURT: Anything else?

15 MR. GREGORY: No, Your Honor.

16 MR. GAMMICK: That's I believe all the items  
17 that the State had.

18 THE COURT: Okay. Then we'll see you back at  
19 8:30 in the morning for preliminary hearings regarding  
20 the -- you are going to get some authority and then any  
21 objections to the jury instructions that you wanted to make,  
22 or any objections to the statements, the victim impact  
23 statements.

24 MR. STANTON: Yes. For the record, we provided  
25 now the redacted version of Miss Millard's statement to

1 counsel.

2 MR. GREGORY: They have indeed. Thank you,

3 Your Honor.

4 THE COURT: Good. Court is in recess.

5 (Court recessed for day at 4:50 p.m.)

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STATE OF NEVADA, )  
 )  
COUNTY OF WASHOE. )

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

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

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

DATED: At Reno, Nevada, this 30th day of  
September, 1999.

\_\_\_\_\_  
ERIC V. NELSON, CCR No. 57  
\_\_\_\_\_  
DATE: \_\_\_\_\_  
AMY HENNEY, Clerk of the Second Judicial  
District Court in and for the County of  
Washoe, State of Nevada.  
by \_\_\_\_\_

28

Code No. 4185

FILED

OCT 04 1999

AMY HARVEY  
By: *[Signature]*  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-000-

THE STATE OF NEVADA,

Plaintiff,

vs.

SIAOSI VANISI,

Defendant.

Case No. CR98-0516  
Dept. No. 4

TRIAL - VOLUME 9  
October 1, 1999  
Reno, Nevada

APPEARANCES:

For the Plaintiff:

RICHARD A. GAMMICK  
District Attorney  
DAVID L. STANTON  
Chief Deputy District Attorney  
75 Court Street  
Reno, Nevada

For the Defendant:

STEPHEN GREGORY  
and JEREMY BOSLER  
Deputies Public Defender  
One South Sierra Street  
Reno, Nevada

The Defendant:

SIAOSI VANISI

ORIGINAL

Reported by:

DENISE PHIPPS, CCR No. 234  
KAREN YATES, CCR No. 195

SIERRA NEVADA REPORTERS (775) 329-6560

SA01133



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RENO, NEVADA, FRIDAY, OCTOBER 1, 1999, 8:57 A.M.

-o0o-

(Whereupon, the following proceedings were held in open court, outside the presence of the jury.)

THE COURT: This is the time set for any objections to the victim impact statement.

Mr. Gregory, did you have any other --

MR. GREGORY: Yeah, I'm a little disappointed, Your Honor, because there are items in here I thought that we had agreed to take out that are still in the document. I don't know when Mrs. Sullivan, when the State intends to put her on. I believe yesterday they said after lunch.

THE COURT: No, I don't think they said that. Maybe before lunch.

MR. GREGORY: Then I misunderstood. Maybe Mr. Stanton can aid me.

THE COURT: Why don't you tell me what the problems are. We'll just go through it.

MR. GREGORY: And the only reason I was asking for that assistance is I'm concerned that maybe a line-by-line in-depth reading of this might be more -- I've tried to look at it a couple times, but it's amazing how you pick things up. In any event, I will help the Court.

1                   The first page -- these pages used to be  
2                   numbered, by the way, so I apologize to the Court. The  
3                   first page, the second paragraph, I believe it's the fourth  
4                   sentence "and savagely" I think is an inappropriate  
5                   characterization. It suggests a cultural situation, I  
6                   submit.

7                   The second page, the first paragraph, the last  
8                   sentence, I believe that's suggesting to the jury that the  
9                   community somehow has an influence on them, if you will,  
10                  Judge, that the community, for Mrs. Sullivan and her family  
11                  to love the community again, certain things have to happen.  
12                  And I find it dangerous to invite the community as an entity  
13                  or the judicial system as an entity into this discussion  
14                  that we're going to have in the next two days.

15                  The third paragraph, Your Honor, will be the  
16                  second complete paragraph, the last sentence. Again, that's  
17                  that same argument, that somehow if the outcome is not as  
18                  Mrs. Sullivan wants it to be, that the jury hasn't supported  
19                  the judicial system. And as I indicated yesterday, this  
20                  document is replete with reminiscences. I'm not sure that  
21                  is a legitimate impact, but I'll leave that alone.

22                  I am concerned, Judge, again, this used to be  
23                  numbered so I'm going to start from the front, the sixth  
24                  page in. And this might be nitpicky, and if it is I  
25                  apologize to the Court, but I feel for the record's sake

1 that I should indicate this. The first paragraph, the three  
2 sentences, primarily the second sentence, which is referring  
3 to the rarity of people like Vanisi, I'm not really sure  
4 what they're trying to imply here.

5 THE COURT: Where are you? Which sentence?

6 MR. GREGORY: The second to the last in the  
7 first paragraph.

8 The following page, the last paragraph on the  
9 page, the last complete paragraph on the page, last  
10 sentence, again it's suggesting that if the outcome is not  
11 as the State wants it, that somehow our justice system has  
12 faltered.

13 If we could go to the second to last page, the  
14 third paragraph from the bottom, it would be the second  
15 complete paragraph on the bottom, but the third, starting  
16 with Siaosi Vanisi, I think those predictions from  
17 Mrs. Sullivan are inappropriate. We would object to that  
18 entire paragraph unless it's reworded.

19 And the final page, I believe the third  
20 sentence in the first paragraph, the third from the bottom,  
21 I think that's obvious.

22 THE COURT: First paragraph, third sentence  
23 from the bottom?

24 MR. GREGORY: That's correct.

25 THE COURT: Of that paragraph?

1 MR. GREGORY: Yes, Your Honor. May I approach,  
2 maybe I can aid the Court?

3 THE COURT: Yes.

4 (Bench conference between Court and counsel.)

5 THE COURT: The Court will interlineate Exhibit  
6 K to reflect the removal of that sentence, it begins with  
7 the word "you" and ends with the word "us".

8 MR. GREGORY: The prosecutor indicated at the  
9 bench that that's been taken out, but he indicated that this  
10 was the redacted version.

11 MR. STANTON: That's not what --

12 THE COURT: I understand it's been taken out.  
13 Now we have a second redacted version and I've just  
14 corrected it.

15 MR. GREGORY: The second paragraph, Your Honor,  
16 it would be the fourth sentence starting "to look around"  
17 from the bottom, again I think it's suggesting to the jury  
18 that if they don't come back with the correct verdict --

19 MR. STANTON: I believe that's taken out as  
20 well, Your Honor.

21 THE COURT: The entire sentence?

22 MR. STANTON: Yes, Your Honor.

23 MR. GREGORY: Now, again, Your Honor, I don't  
24 have a copy of that one. And I'm a little concerned. So if  
25 Mrs. Sullivan is planning to come this afternoon, I'd like

1 the opportunity to see the redacted version.

2 THE COURT: Well, Mr. Gregory, you can just  
3 cross out the one you've got just like I did. Is there any  
4 other changes that you've already made, Mr. Stanton?

5 MR. STANTON: There's been a couple others  
6 pursuant to agreement with counsel that I've already  
7 redacted I want to reflect that aren't in that exhibit. So  
8 we've already agreed to take out certain other portions.

9 THE COURT: But from last night to this morning  
10 these are the only two changes you've made?

11 MR. STANTON: Correct, Your Honor.

12 THE COURT: Those are made. I'll reserve  
13 ruling on the other requests, and I'll allow the State to  
14 respond in a few minutes, or sometime when we get a break  
15 before Ms. Sullivan testifies.

16 MR. GREGORY: I have a couple other matters,  
17 Your Honor, if the Court wishes me to make a record,  
18 briefly.

19 THE COURT: Okay.

20 MR. GREGORY: Your Honor, we're going to ask  
21 through a motion in limine that Mr. Gammick be prohibited --  
22 and I'm not suggesting he intends to do it, but I saw  
23 reference to his law enforcement background in a newspaper  
24 report last week, how he could empathize with the family,  
25 with law enforcement. We're going to ask that the Court

1 order that he not make any reference during this penalty  
2 phase to his previous profession.

3 MR. STANTON: Your Honor, I'm going to be doing  
4 the penalty phase in this case, and I can assure the Court I  
5 will not refer in any way, shape or form to Mr. Gammick's  
6 past employment as a law enforcement officer.

7 MR. GREGORY: Thank you. I appreciate that.

8 We would also ask, Your Honor, because of the  
9 highly volatile and emotional nature of these proceedings,  
10 that there be kleenex in place so that the witnesses can  
11 have access to them so that no one has to assist, if you  
12 will, to --

13 THE COURT: There's kleenex. It's there.

14 MR. GREGORY: Thank you.

15 And Your Honor, the State has a witness that is  
16 Deborah Mann, who is involved in classification. And I'm  
17 just bringing this to the Court's attention. I'm not really  
18 sure how they intend to use her, but judging from her  
19 report, I think it's suggested by her that Mr. Vanisi may  
20 not, if he's given a life sentence, may not -- they may not  
21 be able to classify, which I presume means that they can't  
22 house Mr. Vanisi. And the Court was concerned and the State  
23 with how many witnesses we may or may not have. We may have  
24 to have additional witnesses if that particular subject is  
25 offered by the State from Nevada State Prison, the



1 administrative people, so that we can deal with the hundreds  
2 of prisoners serving life sentences, their emotional  
3 problems, maybe the details of their crimes and how the  
4 prison has been able to deal with those people and house  
5 them.

6 I don't know if that's the reason they're using  
7 Ms. Mann, but we have a curious, rather silly document, if  
8 you will, from her suggesting that might be a subject  
9 matter. With that --

10 THE COURT: That's by way of putting the Court  
11 on notice that you think you might at some point decide you  
12 want to call more witnesses?

13 MR. GREGORY: Yes, Your Honor. Thank you.

14 THE COURT: What about, I received a copy of an  
15 e-mail that had some cases that were supposedly the cases  
16 that dealt with victim impact statements and the  
17 admissibility of the videotape and I was wondering if the  
18 defense has anything to cite Post-Paine.

19 MR. GREGORY: No, Your Honor. We provided  
20 those cases to the prosecution last night.

21 THE COURT: Well, we got them at a quarter to  
22 9:00 -- but the Court got them at a quarter to 9:00.

23 MR. STANTON: So did we.

24 THE COURT: Whatever the case, they're not --  
25 they're all pre-Paine. They're all pre-Homick, and I think

1 that I've had an opportunity to briefly review them, but in  
2 light of Paine and the Homick case in Nevada, as well as the  
3 Castillo case, I don't see any problem with the -- I'll look  
4 at the specific objections to Mrs. Sullivan's statement, but  
5 the general use of the statements both by Ms. Sullivan and  
6 by the victim's sister are admissible. And I've also had an  
7 opportunity to look at the videotape which was shown last  
8 night and I do not find it to be inflammatory or highly  
9 prejudicial to the defense. I think it fits clearly within  
10 the Supreme Court of the State of Nevada and the United  
11 States' contemplation with regard to victim impact  
12 statements. Therefore, I will allow it to be presented.

13 MR. GREGORY: I assume our objections are noted  
14 for the record?

15 THE COURT: Yes, they're all on the record from  
16 yesterday.

17 MR. GREGORY: Your Honor, we have one final  
18 matter. We're concerned with the number of uniformed  
19 officers that are present in the courtroom, officers that  
20 have nothing to do with the security of this. We're  
21 concerned with the message that law enforcement may be  
22 trying to send this jury by showing up enforce. We don't  
23 want this jury intimidated under any circumstances. I'm not  
24 objecting to any of them being here, but the wearing of the  
25 uniform, I submit to the Court, could suggest to this jury

1 that law enforcement has an agenda and that they're watching  
2 the jury at all times.

3 THE COURT: How many seats do we have?

4 THE BAILIFF: 85.

5 THE COURT: We have 85 seats in the courtroom.  
6 And as I see it, I see four uniformed officers and  
7 three-quarters of the rest of the seats are also filled.

8 MR. GREGORY: May I have the Court's brief  
9 indulgence?

10 THE COURT: So I only see them in the very  
11 back. There's four of them. They're all UNR PD in blue.  
12 But there's only four. And, frankly, I'm not even sure the  
13 jury will be able to see them very clearly because of where  
14 they're seated in the gallery. But I do not -- I want the  
15 record to be very clear, we have many people in the  
16 courtroom and they are a distinct minority, a very small  
17 number. Looking out in the courtroom, I do not see it  
18 packed with uniforms at all. Even including the security  
19 detail we have, three to one, certainly.

20 MR. GREGORY: And I assume that the Court is  
21 saying that if it does reach the point where it's packed,  
22 that the Court will address it at that time?

23 THE COURT: If I, as I have indicated, and I  
24 want you to continue to call anything that you think might  
25 be important to call to my attention, but if I feel that

1 there is any indication that there's a look in the courtroom  
2 that is not one of interested people and it's only of law  
3 enforcement interested in this case, I will consider your  
4 request.

5 MR. GREGORY: Thank you.

6 And just for the record, the Court is quite  
7 correct there are four uniformed UNR PD officers, but  
8 there's one, two, three --

9 THE COURT: Don't count my bailiffs.

10 MR. GREGORY: There's at least four or five  
11 additional deputy sheriffs with the exception of your  
12 bailiffs.

13 MR. STANTON: I'm guessing, so the record is  
14 clear, that Mr. Gregory didn't finish up that last comment.  
15 Those are part of the security detail in court, the  
16 reference to the additional --

17 MR. GREGORY: But the jury doesn't know how to  
18 distinguish, Your Honor.

19 MR. STANTON: They've been in trial for the,  
20 been present for the entirety of the trial.

21 THE COURT: And I do see, squinting and trying  
22 to see, a couple of captains and lieutenants in the very  
23 back row. I do see five people, but they are in deputy  
24 sheriff uniforms and have been here throughout the case.  
25 And again, even if you add it all together with our 85 seats

1 and the vast majority filled with civilians, it's a very  
2 minuscule appearance, from the Court's perspective.

3 MR. GREGORY: Thank you, Your Honor.

4 THE COURT: Anything else?

5 MR. BOSLER: Your Honor, I have some exhibits  
6 to mark that I'll be using in the penalty phase, if I may  
7 approach your clerk.

8 THE COURT: Go ahead. They are family  
9 photographs, including high school photographs, total of  
10 four photographs, and four lettermen certificates, all in  
11 the name of George Tafuna. I've shown them to the District  
12 Attorney. As an offer of proof, I would advise the Court  
13 that those photographs would be recognized as part of a  
14 family photo album by witnesses that will be called by the  
15 defense in the penalty phase.

16 THE COURT: The clerk will mark those next in  
17 order.

18 MR. BOSLER: I don't know how the timing is  
19 going to work but I'd move for their admission on the offer  
20 of proof.

21 MR. STANTON: I'd request that counsel make the  
22 motion in front of the jury.

23 THE COURT: Okay. Do you see anything wrong  
24 with them, though, if there is an offer of proof made  
25 through the witnesses?

1 MR. STANTON: I generally have no objection to  
2 the admission of them, that's correct, Your Honor.

3 THE COURT: That gives you an indication,  
4 Mr. Bosler.

5 Now, is the defense going to make an opening  
6 statement this morning?

7 MR. BOSLER: Yes, Your Honor.

8 THE COURT: Who is going to make it?

9 MR. BOSLER: I will, Your Honor.

10 THE COURT: Would you check and see if the jury  
11 is here.

12 THE BAILIFF: Yes, they are.

13 THE COURT: Go ahead and bring the jury in.

14

15 (Whereupon, the following proceedings were held  
16 in open court, in the presence of the jury.)

17 THE CLERK: Exhibits 47 through 52 marked.

18 (Plaintiff's Exhibits 47 through 52 were marked.)

19 THE COURT: Counsel, I'm going to have the  
20 clerk call the roll because of our recess.

21 (Whereupon roll call was taken.)

22 THE COURT: Welcome, ladies and gentlemen. As  
23 I had told you when you left earlier this week, we would be  
24 hearing the penalty hearing. And now we are going into that  
25 penalty phase. Because this is a new phase, you will hear

opening statements from counsel. You will receive additional evidence. You will get new instructions from me, and you will hear closing argument. So it will be just similar format as what we had in the trial. I will tell you now that I anticipate we will go today, Monday and Tuesday, so that you can kind of have an idea of how much time you're going to be spending in this phase in trial. We will begin now, and the State is allowed to make the first opening statement.

Are you ready to proceed?

MR. STANTON: Yes, the State is, Your Honor.

THE COURT: You may proceed.

MR. STANTON: Thank you, Your Honor.

Ladies and gentlemen of the jury, in this portion of the trial, what is referred to as the penalty phase in a capital murder case, the focus of the evidence is different. Instead of providing evidence to you from the State about who committed the crime and the elements of the crime, the State will now be presenting evidence to you in two primary categories.

The first thing that you will hear from the State and the road map that this evidence will track is what has been referred to and you've heard from the inception of this case, something called aggravating factors. Those factors by law in the state of Nevada that make a first

1 degree murder case, and the person who committed that,  
2 eligible for the death penalty.

3 The burden of proof for those aggravators is on  
4 the state of Nevada, the prosecution: Mr. Gammick and  
5 myself.

6 The burden is beyond a reasonable doubt, as was  
7 the elements in the guilt phase.

8 In this specific case you will hear evidence of  
9 four aggravators that make this a death penalty case. You  
10 have heard all these aggravators before. First one is that  
11 the murder was in the commission of a violent and dangerous  
12 felony. In this case, the murder was committed in the  
13 furtherance of and the commission of a robbery.

14 Number two, that the murder was committed upon  
15 a police officer in his official capacity, and that the  
16 defendant, Siaso Vanisi, knew or should have known the  
17 victim was indeed a police officer.

18 Number three, that the murder involved  
19 mutilation of the victim. And number four, that the murder  
20 was committed upon Sergeant Sullivan because of his race,  
21 ethnicity or national origin.

22 The entire testimony and evidence that was  
23 adduced during the guilt phase will be reintroduced and  
24 available for you in your consideration of the penalty  
25 phase, all the exhibits, documents, photographs, and



1 testimony.

2           You will hear other relevant evidence in this  
3 phase to make your decision. There's an axiom, a saying,  
4 that actions speak louder than words. And that is indeed  
5 what you're going to see in the evidence in the penalty  
6 phase. The actions and behavior of that man right there,  
7 Siaosi Vanisi, before, during and after the murder of  
8 Sergeant Sullivan. In this phase, unlike the guilt phase,  
9 you're now going to hear testimony in just a very short  
10 while about how that man behaved and acted while in jail and  
11 in prison awaiting this trial. You're going to hear  
12 specific acts of violence perpetrated against correctional  
13 officers. You're going to hear them from both the Nevada  
14 State Prison officials and also from the Washoe County Jail  
15 officials that interacted with him physically, that the  
16 defendant was shot at during an attempted escape from the  
17 Nevada State Prison. And I'm sure, as you did during the  
18 guilt phase, that you will pay very careful attention to  
19 that evidence, the dates, the times and the defendant's  
20 reaction and behavior that is critical.

21           I'm not going to stand up here and go over each  
22 item. You'll hear it in a very short while. You'll hear  
23 the number of events at the Nevada State Prison and their  
24 severity. You will hear the same thing at the Washoe County  
25 Jail, the number of events and their severity.

1                   You will hear from two witnesses, from both the  
2 county jail and the Nevada State Prison whose job it is,  
3 among other tasks, to assess the dangerousness and risk that  
4 inmates pose to their staff and to other inmates. You'll  
5 hear from Lieutenant Geoff Wise from the Washoe County Jail  
6 and Deborah Mann from the Nevada State Prison in that  
7 regard. And they will tell you specifically their  
8 assessment of that man's dangerousness in the context I just  
9 gave.

10                   Suffice it to say, I believe their testimony  
11 will be that they both assess, based upon their practical  
12 experience, their intimate knowledge of interacting with the  
13 defendant, conversationally with him before and after these  
14 incidents, that they rate him to be a significant risk of  
15 danger to correctional staff and to other inmates.

16                   The second portion of this presentation will be  
17 evidence to tell you something about a person that you know  
18 very little about, and that's Sergeant George Sullivan. He  
19 was a family man. And you will hear from family members  
20 about who he was as a person, as a family man. And you will  
21 hear the extent of the damage to their lives. You will hear  
22 from a coworker of Sergeant Sullivan, one of his fellow  
23 university police officers, Steve Sauter, not only a  
24 coworker but a personal friend, a relationship that had  
25 developed over the years, about the impact that it had not

1 only on him as a close friend and a coworker, but also upon  
2 the entirety of the University of Nevada Police Department,  
3 that community of law enforcement, somewhat unique in this  
4 larger community.

5 You will hear from George Sullivan's wife, his  
6 widow, Carolyn Sullivan, and from his daughter, Meghan. You  
7 will also hear evidence from Mr. Vanisi's mouth through  
8 another witness, the witness that you had previously heard  
9 from in the guilt phase, that of Vainga Kinikini. That  
10 chilling testimony will describe to you what the defendant  
11 in this courtroom said to him on January 14th, 1998 in Salt  
12 Lake City prior to the SWAT stand-off with law enforcement  
13 officers about what he wanted to do in the future and how he  
14 felt about the murder of Sergeant Sullivan. Actions speak  
15 louder than words.

16 At the conclusion of the evidence in this case,  
17 or in this portion of this case, the State will ask you to  
18 return a punishment of death. Justice, to have any meaning  
19 in this case, will demand it.

20 Thank you in anticipation of your time and  
21 attention.

22 MR. BOSLER: Objection to the last statement of  
23 the prosecution, Your Honor, that it equates justice with  
24 death.

25 THE COURT: He already said it when you

1 objected, so you go ahead and make your opening statement  
2 now, Mr. Bosler.

3 MR. BOSLER: Is the Court going to make a  
4 ruling on the objection, motion to strike, if the Court  
5 finds it objectionable?

6 THE COURT: Counsel approach.

7 (Bench conference between Court and counsel  
8 outside the presence of the jury as follows:)

9 THE COURT: Go ahead and make your complete  
10 objection for the record.

11 MR. BOSLER: It's the same objection I just  
12 raised, Your Honor, that equating justice with death is an  
13 improper argument.

14 THE COURT: Okay. Mr. Stanton.

15 MR. STANTON: I'm not sure what authority  
16 you're relying on for that.

17 MR. BOSLER: The jury has got in place specific  
18 instructions regarding aggravators and mitigators and  
19 they'll have to make a reasonable decision based upon that.  
20 One of -- none of the aggravators are justice, and to equate  
21 that if they don't give death there would be an injustice is  
22 improper. Appeals again to the community sense that for  
23 them to be a just jury or fair jury you have to impose  
24 death.

25 MR. STANTON: Well, if that's his basis of

1 objection, my response is as follows: My precise quote was  
2 justice in this case demands death. I'm aware of no  
3 authority that says anything remotely to that it's improper  
4 argument by the prosecutor. And indeed that's my argument  
5 as to the State's position upon the evidence in this case.

6 THE COURT: I agree that a blanket statement of  
7 saying that justice always requires death would be improper.  
8 However, the specifics as it was presented and the context  
9 it was presented was not improper because it was equated  
10 with this particular case and the facts which related  
11 directly to the beginning of the statement which dealt with  
12 aggravating circumstances. And based upon that I'm going to  
13 find that it was not objectionable.

14  
15 (Whereupon, the following proceedings were held  
16 in open court, in the presence of the jury.)

17 MR. BOSLER: I'd like to say good morning, but it  
18 may not be the appropriate way to begin things.

19 In this case justice does not mean death. In  
20 fact, what you're going to hear and what has already kind of  
21 been explained is that in our society, the way our law is  
22 set, there is more reasons to not kill than there are  
23 reasons to kill. And in all fairness, what you're going to  
24 hear over the next few days is going to be probably at times  
25 emotionally gut wrenching testimony. You're going to hear

1 testimony from one family who has lost a loved one. You're  
2 going to hear testimony from another family who stands to  
3 lose a loved one. And I only can ask you that as you sit  
4 there as jurors you need to understand that that emotional  
5 tenor is not supposed to be a thing that guides your  
6 decision. It's probably impossible to not have it affect  
7 you. But as jurors, as you took your oath, it's more  
8 important that you decide these things as -- I can't say  
9 detached because there's no way you could be detached, but I  
10 just want you to be aware that there may be times in this  
11 proceeding where things are pretty emotionally difficult. I  
12 could only ask that you stay as strong as you can to make it  
13 through to the end.

14           The person that the State wants to kill, Siaosi  
15 Vanisi, you also heard him referred to as George Tafuna.  
16 Why is he George Tafuna? You'll learn a little bit about  
17 Tongan culture, how if one family has an infertile female  
18 another family will actually give them a baby so they can  
19 become a complete family. You'll learn that George Tafuna  
20 was given that name in a way to keep him away from his  
21 biological father who George Tafuna was told was dead. And  
22 so Siaosi Vanisi was raised as George Tafuna.

23           What you're going to hear is not a childhood  
24 filled with burning buildings, hurting small animals,  
25 anything like that. You're going to hear the exact

1 opposite. What you're going to hear is George Tafuna grew  
2 up in a close-knit family, with loved ones, nurturing  
3 parents. You're going to hear that George Tafuna not only  
4 was kind of the kid that we'd all like to know, you're going  
5 to hear about when he got to high school. He was the type  
6 of student that wasn't hanging out with all his friends  
7 smoking cigarettes, he was the student who would go to class  
8 early, to hug the teacher to make sure she felt okay. He  
9 was the student who would participate in every activity he  
10 could. Lettered in sports. He essentially was a 3.0  
11 student. This was despite whatever cultural difficulties  
12 being a Tongan in a community like San Mateo presented.

13 What you're going to hear is that there's this  
14 allegation about how much he hated white people. You're  
15 going to hear that Cappuchino High School where George  
16 Tafuna went to school is a mixed school racially, Hispanics,  
17 Caucasians, Tongans. George Tafuna's friends were  
18 Caucasian. You're going to hear from his friends in high  
19 school that it was George Tafuna that when there was fights  
20 between Tongans and Caucasians, George Tafuna was the peace  
21 keeper. He was the person that said there's no reason to  
22 use violence, there's no reason for you two groups to fight.

23 You're going to hear -- 20 some odd witnesses  
24 are going to come testify. In all fairness, I don't know  
25 how you really reconstruct the worth of someone's life

1 through any number of witnesses. But we're going to bring  
2 you family members, people who knew him during school,  
3 people who knew him essentially in a chronological age up  
4 until this terrible event happened.

5 You're going to hear George Tafuna was a family  
6 man. Married. Had children, everything that would lead you  
7 to believe here is a well-balanced American citizen on his  
8 way to becoming productive and maybe some day sitting in a  
9 jury just like you.

10 But what happens? We have this child who has  
11 no problems, no criminal record, no run-ins with law  
12 enforcement, who comes from a nurturing family, who does all  
13 the things we would expect of our ideal high school student,  
14 track, football, Polynesian groups - dancing, a person who  
15 cares about his other students, willing to do whatever he  
16 can to help, a person who is going to show up early to help  
17 the teacher because that's how much he cares about his  
18 community.

19 How does that change?

20 What you're going to hear is that it did  
21 change. You're going to hear some testimony from a doctor  
22 who's seen Siasia Vanisi - George Tafuna - at the Washoe  
23 County Jail, and you're going to hear that way too late, way  
24 too late for Mr. Sullivan, way too late for Mrs. Sullivan,  
25 George Tafuna was diagnosed with a mental illness. That



1 mental illness, bipolar disorder, manic depression, an  
2 illness that strikes maybe one to five percent of the  
3 population, doesn't know any gender, racial ethnic barriers.  
4 It could strike anybody. When it strikes, you don't know  
5 it's happening until you're in the grips of that manic  
6 episode.

7 This doctor is going to come in and will tell  
8 you a little bit about what that illness means. It could be  
9 so severe that it actually creates a psychosis in the person  
10 who suffers from the illness. And why is that important?  
11 Does it really matter in this case? Well, if you will  
12 recall, people who knew George Tafuna, who knew Pe, who knew  
13 Siaosi Vanisi back in San Mateo, what did they say when they  
14 saw Siaosi when he came back to Reno? "He was a different  
15 person." "I didn't even recognize him." The reason is  
16 because of the mental illness.

17 What you're also going to hear is that those  
18 people who suffer from that illness unfortunately tend to  
19 self-medicate with alcohol, controlled substances, which is  
20 the exact worst thing you can do if you have that illness,  
21 because that's only going to exacerbate the problems and  
22 lead to psychosis.

23 We know that through the State's witness, I  
24 believe it's Ms. Martinez, that when she sees this person  
25 walk on the campus, it's essentially a staggered gait,

1 drunken gait. You'll hear from a lot of other witnesses  
2 that unfortunately while Siaosi Vanisi was up here he was  
3 drinking. In fact, the whole group was drinking. He was  
4 using controlled substances. And unfortunately, with his  
5 illness, that was really a recipe for disaster, recipe for  
6 tragedy.

7           You're going to hear Officer Wise. You're  
8 going to hear people from the prison, from the jail, and  
9 you're going to hear that Mr. Vanisi hasn't been an easy  
10 person to deal with while he suffers from this mental  
11 illness. And you're going to hear the details of that. But  
12 what you're also going to hear is that he's finally been  
13 diagnosed properly and has been receiving the proper  
14 medication so he is the Siaosi Vanisi you've seen in court.  
15 He's not the problem person they had earlier this year.  
16 He's not the person they've had difficulty with.

17           Terrible probably doesn't even accurately  
18 describe the loss to the Sullivan family or even the facts  
19 of this case. A tragedy beyond words. But that being said,  
20 when you look at Siaosi Vanisi's life, when you look at  
21 really what was going on inside of him that would even cause  
22 someone who had been such an ideal person all their life to  
23 reach that situation where he thought killing an officer was  
24 something he had to do, when you take those things into  
25 consideration, you'll understand why the law says there's

1 more reasons not to kill than there is to kill.

2 Thank you.

3 THE COURT: Mr. Stanton, call your first  
4 witness.

5 MR. STANTON: Your Honor, prior to the State  
6 calling its first witness, the State would make a motion to  
7 admit all the previous evidence and testimony that was  
8 adduced during the guilt phase of this trial.

9 THE COURT: Counsel.

10 MR. GREGORY: We submit it, Your Honor.

11 THE COURT: The Court will enter such an order.

12 MR. STANTON: Your Honor, State would first  
13 call Michael Wiley.

14 THE CLERK: Please raise your right hand.

15 (Witness sworn.)

16 THE CLERK: Thank you. Please be seated at the  
17 witness stand.

18 MICHAEL WILEY

19 called as a witness on behalf of the Plaintiff,

20 having been first duly sworn,

21 was examined and testified as follows:

22

23 DIRECT EXAMINATION

24 BY MR. STANTON:

25 Q Could you please state your name and spell your

1 last name for the court reporter.

2 A Michael Wiley, W-i-l-e-y.

3 Q And sir, how are you currently employed?

4 A I work for the State of Nevada, Department of  
5 Prisons.

6 Q And what prison facility do you work at  
7 primarily?

8 A Nevada State Prison.

9 Q And where is that located?

10 A 3301 Fifth Street, Carson City.

11 Q And how long have you been employed at the  
12 Nevada State Prison?

13 A A little over three years.

14 Q And were you assigned to any other prison prior  
15 to the Nevada State Prison?

16 A No, I wasn't.

17 Q What is your current assignment at the Nevada  
18 State Prison?

19 A Gun Post 5-B, which is the gun rail on the  
20 roof.

21 Q And what type of inmates are housed at that  
22 facility?

23 A We've got general population and then further  
24 up the hill we have dis-seg and ad-seg, which is violent  
25 criminals.

1 Q And what type of offenses are inmates serving  
2 at that facility?

3 A Up the hill there's three or four different  
4 fences before you can get out.

5 Q I'll rephrase my question. What type of  
6 offenses?

7 A I'm sorry. Mostly violent crimes.

8 Q And how many inmates are housed at the Nevada  
9 State Prison?

10 A It varies between seven and 900.

11 Q I would like to direct your attention, Officer  
12 Wiley, to May 24th of 1999, an incident you were involved  
13 in. Do you recall that?

14 A Yes, I do.

15 Q Did you know at that time an inmate by the name  
16 of Siaosi Vanisi?

17 A I knew of him, yes.

18 Q And do you see him in court today?

19 A Yes, I do.

20 Q Could you please describe where he is in the  
21 courtroom?

22 MR. GREGORY: I'm going to stipulate to the  
23 identification by this officer.

24 MR. STANTON: Thank you, counsel.

25 BY MR. STANTON:

1 Q On May 24th could you describe to the ladies  
2 and gentlemen of the jury what your specific assignments  
3 were on that day.

4 A My assignment on that day was to sit on the  
5 roof of Unit 10 and keep an eye on the disciplinary  
6 segregation yards, which are the bad boys of the prison,  
7 more or less.

8 Q Can you describe what Unit 10 looks like, how  
9 it's laid out from a security perspective?

10 A Well, I was actually on the roof of Unit 10,  
11 but I watch the Unit 12 yards.

12 Q Could you describe Unit 12.

13 A Unit 12 has two yards behind Unit 10. And then  
14 they have a walk-alone yard right next to the Unit 12. It's  
15 about 30 or 40 yards away from where I'm positioned on the  
16 roof.

17 Q And that is for inmates housed in Unit 12?

18 A That's correct.

19 Q And is that where Mr. Vanisi was at?

20 A Yes. It's the walk-alone yard. That's where  
21 they put people by themselves.

22 Q And you use the term "walk-alone". That is  
23 literally what happens there?

24 A Right. One person at a time on that yard.  
25 It's actually like a cage. It's got a roof on it and

1 everything.

2 Q And by the nature of your term, are there other  
3 inmates in that yard at the same time?

4 A No, not on that particular day, no, just  
5 walk-alone.

6 Q And did there come a time when Mr. Vanisi was  
7 alone in that yard and other correctional officers gave him  
8 a verbal command?

9 A Yes, there was.

10 Q You were observing this?

11 A Yes, I was.

12 Q Could you describe what happened when those  
13 correctional officers, what type of command they gave him  
14 and what occurred after the command was given?

15 A They gave him a command to come to the gate and  
16 turn around to be locked up. They put restraints on his  
17 arms and his legs to take him back in, because he was  
18 threatening to escape. And he told him he wouldn't do it.

19 Q And how many times do you recall approximately  
20 verbal commands were given?

21 A Oh, half a dozen, probably.

22 Q And were those -- do you remember how many  
23 correctional officers were giving the commands?

24 A The number was growing quickly. I think it  
25 started with two. But four or five of them showed up.

1 Q And are these correctional officers easily  
2 recognized as correctional officers?

3 A Oh, sure.

4 Q How is that?

5 A They're in uniform.

6 Q Did there come a time when a correctional  
7 officer gave verbal commands different from coming to get  
8 handcuffed but to do something else while he was in the  
9 yard?

10 A I think Correctional Officer Hudson had told  
11 him to get on the ground.

12 Q Why is that?

13 A Because he had dug a hole underneath the fence.

14 Q And did you see it at this juncture?

15 A Yeah. In fact, I gave him commands to get away  
16 from the hole, which he wasn't doing.

17 Q Is the hole that you're describing in the  
18 walk-alone yard?

19 A Yes.

20 Q Where was it in relationship to the fence line?

21 A It was underneath the fence on the east side.

22 Q And did it appear to you that that hole had  
23 been dug previously?

24 A Yeah. As a matter of fact, I had been watching  
25 him for seems like two or three weeks. Every week I



1 would -- Vanisi would be on the yard one day and he would  
2 pick weeds every day. He'd pick all these weeds. He had  
3 piles of them. I came back to work on that particular day  
4 and the piles of weeds were gone. I thought that maybe  
5 somebody that worked for the prison had cleaned them up on  
6 my days off. What actually had happened, he had dug a hole  
7 the week before while I was gone and buried them in a hole.

8 Q That's the hole that you're referencing under  
9 the fence line?

10 A Correct. He put dirt over the top. It was 40  
11 or 50 yards away from me. I'm on the roof. There's no way  
12 I could tell that there was a hole there.

13 Q Now, physically, Officer Wiley, you're above  
14 Mr. Vanisi, correct?

15 A Yeah, 20 or 30 feet.

16 Q And you're on a tower?

17 A Well, I'm actually on the roof of a general  
18 population housing unit.

19 Q And are you armed?

20 A Yes.

21 Q What are you armed with?

22 A 12 gauge shotgun and .357 Magnum.

23 Q That's a handgun?

24 A Right.

25 Q And the shotgun, do you carry that so it's

1 visible to inmates?

2 A Yeah, I never even set it down.

3 Q And this is in daylight hours?

4 A Right.

5 Q There would be nothing from your perspective  
6 that would have prohibited Mr. Vanisi from seeing you not  
7 only in uniform but in possession of a shotgun while you're  
8 giving commands?

9 A None whatsoever.

10 Q At some juncture did Mr. Vanisi, in your  
11 presence, and during this time period, begin to continue  
12 digging, going to that hole?

13 A Yeah. In fact, he was laughing. I had told  
14 him to get away from the hole and he didn't do it. That's  
15 when I racked the first round into the shotgun. And the  
16 first shot that we actually shoot off is just a popper. All  
17 it does is make a lot of noise. It's kind of a warning  
18 shot. And it didn't faze him.

19 Q You said he was laughing?

20 A Yeah, he thought it was hilarious. He thought  
21 it was fun and games the whole time I was shooting at him.  
22 I think I shot six or seven shots, if I recall.

23 Q You describe the first round as a popper.  
24 Would it be fair to say that that's kind of an attention  
25 getter?

1 A Right.

2 Q Did that get Mr. Vanisi's attention to stop  
3 digging?

4 A Absolutely not.

5 Q What did you do next?

6 A I racked in another round and shot at him. I  
7 just kept shooting, but he just kept digging. Then before I  
8 knew it he was halfway underneath the fence.

9 Q And you said that Mr. Vanisi was doing  
10 something besides digging while you were shooting rounds at  
11 him. What was he doing?

12 A He was digging and laughing.

13 Q And the rounds that you then fired after the  
14 popper rounds, what kind of rounds are those?

15 A They're actually nonlethal. It's a real hard  
16 rubber pellet.

17 Q There's another correctional officer that is  
18 also present up above Mr. Vanisi?

19 A Right. I called him on the radio to back me  
20 up. He had shot quite a few rounds himself.

21 Q During this same time period?

22 A Right. We were having a tough time. We're  
23 shooting through two or three different fences, and it was,  
24 the rounds weren't real effective, but they were making it  
25 that far.

1 Q Ultimately Mr. Vanisi was removed from the  
2 yard?

3 A Yeah.

4 Q Now, as a result of this incident what happens  
5 to the rest of the prison?

6 A They lock the whole place down, take everybody  
7 off the yards, put them in their houses.

8 Q The entire population of the prison?

9 A All eight or 900, however many happen to be  
10 there.

11 Q After Mr. Vanisi was returned to his cell after  
12 this incident on this day, what did he do?

13 A From what I understand, I was still on the  
14 roof, but from what I understand he flooded his cell out.

15 Q How do inmates flood a cell in prison?

16 A They plug the toilet up and keep flushing it or  
17 turn on the water, plug up the sinks.

18 MR. STANTON: Thank you. No further questions.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. GREGORY:

22 Q It's Wiley?

23 A Yes.

24 Q You've been a correctional officer for three  
25 years?

1 A Three years, yes.

2 Q Do you know anything about mental illness?

3 A No, not really. I'm not a psychologist.

4 MR. GREGORY: Your Honor, I thought we had a  
5 blackboard in here. And I apologize, but maybe I can do  
6 this verbally.

7 THE COURT: We can get it for you. You want  
8 it?

9 MR. GREGORY: Please.

10 BY MR. GREGORY:

11 Q Let's start off, Block 12.

12 First of all, this jury needs to know Block 12  
13 is primarily a holding unit, is it not, for inmates that  
14 have matters pending in the courts?

15 A Part of it is; one of the wings is, yes.

16 Q At one time it was the most secure housing  
17 facility in the state, right? It's old max right here in  
18 Carson?

19 A Right.

20 MR. GREGORY: With the Court's permission,  
21 Officer Wiley, I'd like you to step down and start off as  
22 far as you think it's appropriate so that everybody  
23 understands what you're doing and put the perimeter fence  
24 in.

25 THE WITNESS: The perimeter of the whole

**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

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Volume 1 of 9

**APPELLANT'S SUPPLEMENTAL 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  
Assistant Federal Public Defender  
Nevada State Bar No. 11027C  
411 E. Bonneville, Suite 250  
Las Vegas, Nevada 89101  
(702) 388-6577  
danielle\_hurst@fd.org

Attorneys for Appellant

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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 Supplemental Appendix shall be made in accordance with the Master Service List as follows:

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

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

1           A       Yeah, he thought it was working because they  
2           thought it was a Jamaican.

3           Q       Did he describe to you or make any comments to  
4           you about doing any robberies in Reno?

5           A       Yes.

6           Q       And how was his demeanor when he was talking  
7           about the robberies?

8           A       He said it was real casual. He went in there  
9           and directed traffic and, you know, was real polite to the  
10          people.

11          Q       Did he ever indicate to you that he watched any  
12          T.V. news about the murder?

13          A       Yeah, he watched it later on.

14          Q       Did you ever see him with any change, coins?

15          A       He had a roll of coins that I saw.

16          Q       A roll of coins? Did there come a time where  
17          you saw a car that he, Mr. Vanisi, pointed out to you?

18          A       Yeah. We went over to my cousin's house and  
19          him and I stepped across the street and we glanced over and  
20          he showed me the car. It was covered.

21          Q       Covered with --

22          A       With a tarp thing or whatever.

23          Q       Showing you 32-A and B. Does that look  
24          familiar to you?

25          A       Yeah, I didn't see the car, but I saw the gray.

1 Q You didn't see the car, but you saw the gray  
2 cover?

3 A Yes.

4 Q Did Mr. Vanisi tell you whether or not or how  
5 he got that car?

6 A He said it was a G ride.

7 Q Did that mean to you that it was --

8 A Stolen.

9 Q -- stolen? Did he make any comments to you  
10 about his feelings towards white people?

11 A He hated all white people.

12 Q Did he tell you why he hated white people?

13 A He said he just like grew up with them and that  
14 he hated them. Is that right? Can I --

15 Q Whatever he told you, the best you can remember  
16 it.

17 A That's the best I can remember.

18 Q Did he tell you about some dogs that were  
19 nearby after the murder? Did he tell you about that?

20 A He said that the dogs were on to him and that's  
21 when he got rid of his beanie.

22 Q What did he tell you about how he got and where  
23 he got rid of the wig and beanie?

24 A He said he threw it in a canal that was nearby.

25 Q Did you see anything that appeared to be blood

1 on his clothing?

2 A I saw some spots on his utility boots that he  
3 had on.

4 Q Did he tell you what he did with the hatchet?

5 A He took it over to some apartment.

6 Q And how about the belt that he was sporting,  
7 what did he say he did with that after wearing it home?

8 A I think it was the same place, the apartment.

9 Q There came a point in time in the conversation  
10 with Mr. Vanisi that you believed that he was telling the  
11 truth about this murder; is that correct?

12 A Yes.

13 Q What was it that changed your mind from not  
14 believing him to believing him?

15 A When I was examining the weapon, I took out the  
16 clip and I noticed that the clip had hollow point bullets in  
17 it; and to my knowledge, police officers are the only ones  
18 who carry that type of bullet.

19 Q Was the gun loaded when you were looking at it?

20 A Yes.

21 Q I ask you to take a look at 15-C. Look in  
22 this, inside there.

23 A Yeah.

24 Q Does that look familiar to you?

25 A Yes.

1 Q What is it?

2 A Hollow point bullets.

3 Q Speak up louder, please.

4 A Hollow point bullets.

5 Q Is that what you saw inside the gun when you  
6 were looking at it?

7 A Yes.

8 MR. STANTON: Move for 15-C and D into  
9 evidence, Your Honor.

10 MR. GREGORY: We would submit it, Your Honor.

11 THE COURT: 15-C and D are admitted.

12 (Plaintiff's Exhibit No. 15-C and 15-D  
13 admitted.)

14 BY MR. STANTON:

15 Q Mr. Kinikini, do you recall a time during this  
16 conversation where Mr. Vanisi was talking about how he felt  
17 then and what he was going to do in the future regarding the  
18 murder?

19 MR. GREGORY: I believe that's been asked and  
20 answered already, Your Honor.

21 MR. STANTON: It hasn't, Your Honor, but I will  
22 be more specific if I can have some leeway here.

23 BY MR. STANTON:

24 Q Mr. Kinikini, if you can turn to page 22 of  
25 your transcript? Directing your attention, sir, to lines 15

1 through 32. If you can read that to yourself.

2 Do you remember that portion of the  
3 conversation?

4 A Yes.

5 Q I would like to begin with the portion of the  
6 question read to you by, or the detective gave you and then  
7 if you can just read your answer.

8 Before I read the question to you, is what you  
9 told the detectives on page 22 --

10 MR. GREGORY: Your Honor, I'm going to ask to  
11 approach on this.

12 THE COURT: Okay.

13 (Whereupon, a bench conference was held among  
14 Court and counsel as follows:)

15 MR. GREGORY: Judge, this is the whole area  
16 with the gang situation. The first part of this questioning  
17 begins with him wanting to be Robin Hood.

18 MR. STANTON: No, down here, line 11.

19 MR. GREGORY: No, I understand.

20 THE COURT: Which line are you --

21 MR. GREGORY: I'm talking about line number  
22 one. He's talking about 11. But this area up here is the  
23 preface for these answers down here, Judge. I have  
24 difficulty getting into this subject area. I think it's  
25 dangerous ground.



1           The Court already ruled there would be no  
2 reference to any gang activity, forming Tongan gangs. I  
3 think the prosecutor is trying to guild the lily and he  
4 should leave it alone.

5           MR. STANTON: First of all, Your Honor, what I  
6 plan to do is read the question that begins on line 11 by  
7 Detective Jenkins and have Mr. Kinikini read just his  
8 responses down through the highlighted section that I have  
9 there. There is no --

10          MR. GREGORY: That's my objection. That is not  
11 the whole story. We get into the whole story and get into  
12 mistrial material. I think he should just leave it alone.

13          THE COURT: This information really goes to  
14 potential penalty, not guilt.

15          MR. STANTON: Well, I think it goes to the  
16 defendant's state of mind at the time of the murder.

17          MR. GREGORY: No, this is future conduct. I  
18 see that's where it's confusing.

19          THE COURT: Yes, I don't think it's confusing,  
20 but I think it goes to penalty phase information because it  
21 goes to future conduct.

22                I understand that you want to get the  
23 witnesses, use them while they're here, but I don't think it  
24 goes to guilt or innocence. This portion says that he  
25 doesn't care about anything and how he's free to kill again.

1 MR. STANTON: But I mean, Mr. Gregory's  
2 objection is that it deals with gang references. And  
3 putting it in context, it doesn't have anything to do with  
4 gangs.

5 THE COURT: What is the relevance at this stage  
6 of the proceedings?

7 MR. STANTON: The relevance is it goes to his  
8 state of mind; his intent that it wasn't self defense, it  
9 wasn't accidental, that he wanted to kill and wants to kill  
10 again.

11 THE COURT: It doesn't say that. This portion  
12 goes to the fact that now that he has guilt, he's free. "I  
13 don't care about anything anymore."

14 MR. STANTON: I think it says --

15 THE COURT: It says --

16 MR. STANTON: The question by Detective Jenkins  
17 is: "What is your impression about whether he's rational?"  
18 which I think also is part of his state of mind. "This guy  
19 is not nuts or crazy." He says, "You said he was smart."

20 The answer by Mr. Kinikini is, "He's real, real  
21 smart and there's a lot of them -- I mean, a lot of them,  
22 the crazies out there that are smart." He said, "He told me  
23 straight up, 'I'm 100 percent insane. You know, I don't  
24 care about anything anymore. I'm free and this is why I  
25 want to live. Once I kill, I have to kill some more to keep

1 my mind, my high."

2 MR. GREGORY: That's future conduct. It may be  
3 relevant at penalty phase, but not at this stage of the  
4 proceedings.

5 MR. STANTON: It's relevant for his state of  
6 mind at the time he does the killing and relevant to state  
7 of mind of intent to kill.

8 THE COURT: I'm going to sustain the objection.  
9 (Whereupon, the following proceedings were held  
10 in open court, in the presence of the jury.)

11 MR. GREGORY: Your Honor, I don't know if we  
12 made a formal objection before I asked to approach, but we  
13 will object at this time.

14 THE COURT: Sustained.

15 BY MR. STANTON:

16 Q Mr. Kinikini, if you can turn to page 33 of  
17 that transcript, line 32 through 35.

18 Specifically at this portion of the transcript,  
19 did Mr. Vanisi tell you about a series of robberies?

20 A Yes.

21 Q What did he tell you about those robberies?

22 A He robbed his way over to where we were.

23 Q To Salt Lake City?

24 A Yes.

25 Q Did he also say something about a car?

1 A He stole a car.

2 Q At the time he mentioned the robberies, did he  
3 do anything physically?

4 A He just pulled out the money.

5 Q The wad of cash?

6 A Yes.

7 MR. STANTON: Thank you. I have no further  
8 questions.

9 THE COURT: Cross-examination?

10 MR. GREGORY: May I have the Court's  
11 indulgence?

12 THE COURT: Yes.

13 (There was a pause in the proceedings while  
14 counsel and the defendant conferred.)

15 MR. GREGORY: Thank you, Your Honor. No  
16 questions.

17 THE COURT: Okay. You may step down. Please  
18 do not leave the courthouse until I release you.

19 (The witness stepped down and left the  
20 courtroom.)

21 MR. GAMMICK: Your Honor, may I confer with the  
22 clerk for a moment?

23 THE COURT: Yes.

24 MR. GAMMICK: Your Honor, I have three items of  
25 evidence to bring to the Court at this time. Number 35 is

1 an outline of chain of custody for some of the evidentiary  
2 items. That was stipulated to previously in this case to be  
3 admitted.

4 MR. GREGORY: We will submit it, Your Honor.

5 THE COURT: Exhibit 35 is admitted.

6 (Plaintiff's Exhibit No. 35 admitted.)

7 MR. GAMMICK: Number 36 is a blow-up of the  
8 month of January, 1998. That was also previously stipulated  
9 to be admitted.

10 THE COURT: Counsel?

11 MR. GREGORY: Again, Your Honor, we will submit  
12 it.

13 THE COURT: It's admitted.

14 (Plaintiff's Exhibit No. 36 admitted.)

15 MR. GAMMICK: Item number 37, Your Honor, which  
16 is a time line of some of the events that occurred. It was  
17 also previously stipulated to be admitted.

18 MR. GREGORY: Again, Your Honor, we will submit  
19 it.

20 THE COURT: Approach, please.

21 (Whereupon, a bench conference was held among  
22 Court and counsel as follows:)

23 MR. GAMMICK: I'm having a little problem here.  
24 My understanding was all stipulated items would be  
25 stipulated to. Mr. Specchio specifically stipulated to all

1 three of these items. I don't know why we are getting this  
2 "submit" now instead of the stipulation.

3 THE COURT: Okay. These were stipulated to  
4 prior to the first trial or in the middle of the first  
5 trial?

6 MR. GAMMICK: During the course of the first  
7 trial, yes.

8 THE COURT: And that's what I just wanted to  
9 ask you about.

10 MR. GAMMICK: Yes.

11 THE COURT: Were they offered previously? Or  
12 you just reached the stipulation in the first trial?

13 MR. GAMMICK: This was done during the trial,  
14 No. 37. I recall No. 35 was done before the trial. No. 36  
15 was done, I believe, at the commencement of the trial or  
16 shortly after we started.

17 THE COURT: Okay. Based upon the stipulation  
18 you prepared the document; is that correct?

19 MR. GAMMICK: Yes.

20 THE COURT: And where did you get the  
21 information? Did you get it off of --

22 MR. GAMMICK: The information for No. 37, Your  
23 Honor, came from the police reports and/or the dispatch  
24 tapes. We went back and checked on them. When we prepared  
25 this item, we gave a copy to the defense. Mr. Specchio did

1 stipulate and submitted that it was accurate.

2 MR. GREGORY: We will agree that Mr. Specchio  
3 did stipulate to that.

4 MR. GAMMICK: Mr. Specchio from my  
5 understanding is still the attorney, one of the attorneys of  
6 record because Mr. Gregory and Mr. Bosler are also attorneys  
7 of record.

8 THE COURT: Right. As I understood, the  
9 agreement was that everything that had been stipulated to  
10 previously was still in effect unless a new motion was made.  
11 No new motion was made with regard to Exhibit 37. Correct?

12 MR. GREGORY: That's correct.

13 THE COURT: Okay. It is admitted.

14 (Whereupon, the following proceedings were held  
15 in open court, in the presence of the jury.)

16 THE COURT: Exhibit 37 is admitted.

17 (Plaintiff's Exhibit No. 37 admitted.)

18 MR. GAMMICK: Your Honor, with that  
19 understanding of the evidence, the State would rest its  
20 case.

21 THE COURT: Ladies and gentlemen of the jury,  
22 before we proceed any further, I do need to have a hearing  
23 outside of your presence. During this hearing, I ask that  
24 you remember the admonition I've given you at the other  
25 breaks.

1                   You may not form or express any opinion about  
2                   the ultimate outcome of this case. You may not discuss the  
3                   case among yourselves or with anyone else. You may not  
4                   allow anyone to attempt to influence you with regard to it.  
5                   You may not view any news media accounts regarding this case  
6                   should there be any, or listen to or read them.

7                   Please excuse us for a few minutes and go ahead  
8                   and go in the jury room.

9                   (Whereupon, the following proceedings were held  
10                  in open court, outside the presence of the  
                  jury.)

11                  THE COURT: Counsel, approach, please.

12                  (There was a discussion at the bench off the  
13                  record.)

14                  THE COURT: We are going to take a short  
15                  recess. The Court is in recess.

16                  (A recess was taken at 11:34 a.m.)

17  
18                  (See Volume 6A for Sealed portion of  
19                  proceedings.)

20                  (Whereupon, the following proceedings were held  
21                  in open court, outside the presence of the  
                  jury.)

22                  THE COURT: Mr. Gregory, will you be making an  
23                  opening statement?

24                  MR. GREGORY: No, Your Honor. We will rest our  
25                  case on the evidence already presented.



1 THE COURT: Okay. Mr. Gammick? That means, I  
2 think, that all we have left to do prior to closing  
3 arguments is finalize the jury instructions and then move  
4 forward with closing arguments this afternoon.

5 Counsel see any reason why we couldn't let the  
6 jury go now until 1:30, finalize the instructions and argue  
7 at 1:30?

8 MR. GREGORY: No, Your Honor.

9 MR. GAMMICK: None, Your Honor. Is the defense  
10 going to rest in front of the jury?

11 THE COURT: Yes, I'll bring the jury in, offer  
12 them that opportunity. We'll send the jury to lunch, and I  
13 would like you to stay and we will finalize the --

14 MR. GREGORY: Your Honor, the Kinikini brothers  
15 are awaiting counsel downstairs. I would like the  
16 opportunity to see them.

17 THE COURT: We want to finalize the jury  
18 instructions before the jury comes back. That has to be the  
19 first order of business.

20 MR. GAMMICK: In order to make the airplane to  
21 get out of here, they have to leave here at 12:30.

22 THE COURT: Oh, 12:30? I thought you said the  
23 plane didn't leave until 5:00.

24 MR. GAMMICK: That was the original plans. Our  
25 office called and managed to get them on an earlier flight.

1 They leave 12:30 or they have to stay here until 5:00 to  
2 catch the next night. It's however the Court wants to work  
3 that out. We are putting two officers, they are leaving  
4 here 12:30 to catch that earlier flight.

5 THE COURT: Has the defense had an opportunity  
6 to talk to the brothers at all?

7 MR. BOSLER: No, Your Honor.

8 THE COURT: Okay. We will see what we can do.  
9 We'll see how quickly we can go.

10 (Whereupon, the following proceedings were held  
11 in open court, in the presence of the jury.)

12 MR. GAMMICK: May we approach?

13 THE COURT: Did you need to be on the record?

14 MR. GAMMICK: No.

15 (There was a discussion off the record at the  
16 bench.)

17 THE COURT: Counsel stipulate to the presence  
18 of the jury?

19 MR. GAMMICK: Yes, Your Honor.

20 MR. GREGORY: The defense will so stipulate,  
21 Your Honor.

22 THE COURT: Thank you. The State has rested.  
23 Counsel for the defense?

24 MR. GREGORY: Your Honor, at this time we are  
25 not going to make an opening statement and we will rest on

1 the evidence already presented to this jury.

2 THE COURT: Thank you. Ladies and gentlemen of  
3 the jury, I am going to send you to lunch now, let you go on  
4 about your business until 1:30. During this lunch recess, I  
5 advise you to make arrangements for your evening.

6 What will happen next is when you come back at  
7 1:30, I will read the law to you, the instructions that you  
8 will receive in this case, and counsel will be able to make  
9 their closing arguments. Then the matter will be submitted  
10 to you for decision.

11 Once the matter is submitted to you for  
12 decision, you will not be able to talk with anyone other  
13 than each other. You won't be able to call your family and  
14 tell them where you're at and what you're doing. Make sure  
15 you make arrangements for your period of time with me after  
16 lunch.

17 You will be back with me from lunch until  
18 whenever we need to recess later. So ladies and gentlemen  
19 of the jury, make those plans.

20 During this break, do not form or express any  
21 opinion regarding the ultimate outcome of this matter. Do  
22 not discuss the case among yourselves or with anyone else.  
23 Do not allow anyone to attempt to influence you with regard  
24 to this case in any way. If anyone should attempt to  
25 influence you, notify the bailiff and he in turn will notify

1 me.

2 Do not read, listen to or view any news media  
3 accounts regarding this case, should there be any.

4 Ladies and gentlemen of the jury, 1:30 this  
5 afternoon, be back here. You are excused for now.

6 (The jury left the courtroom at 12:06 p.m.)

7 (Whereupon, the following proceedings were held  
8 in open court, outside the presence of the  
jury.)

9 THE COURT: Counsel, I know you want to move  
10 quickly, but I do have a couple of questions for you with  
11 regard to the jury instructions. Last time when we left,  
12 the defense indicated that they would or would not submit  
13 instructions and they would let me know now.

14 MR. BOSLER: We are going to stand on the  
15 representations and objections I made previously, Your  
16 Honor.

17 THE COURT: Okay. Now, the defendant has  
18 chosen not to testify. Do you wish to offer an instruction  
19 with regard to his not testifying?

20 MR. GREGORY: Just the standard instruction, we  
21 do indeed wish to offer. We don't have that available but  
22 we will present it.

23 THE COURT: Are you talking about the  
24 instruction that we utilize in this district saying that the  
25 jury may not consider his failure to testify and may not

1 discuss it among themselves?

2 MR. GREGORY: Yes, Your Honor.

3 THE COURT: That's a specific request?

4 MR. GREGORY: It is indeed.

5 THE COURT: I will give that instruction. Also  
6 the State was to correct an instruction for me.

7 MR. STANTON: Yes, that was provided to your  
8 secretary, administrative assistant Friday afternoon.

9 THE COURT: We'll see if we can find it. Also  
10 there was still an objection to the second line of the  
11 intent instruction that I don't think I ruled on. While  
12 witnesses may see and hear and best be able to give direct  
13 evidence of what a defendant does or fails to do, there can  
14 be no eye witness account of the state of mind with which  
15 the acts were done or omitted, et cetera. And the State  
16 objected to me deleting it, defense requested it. I said I  
17 would rule later. I will go ahead and give it as it has  
18 been presented in the packet.

19 Now, we have not numbered these, but we can  
20 number them after the lunch hour, if you would like to go  
21 speak with your witnesses now.

22 MR. GREGORY: Thank you, Your Honor.

23 THE COURT: You are going to have to be back  
24 here by 1:00 so we can get them in order. I'm worried about  
25 holding the jury up too long. I don't know how long you

1 think you'll need. 1:15?

2 MR. GREGORY: That gives us an opportunity to  
3 get a sandwich.

4 MR. GAMMICK: If we could, Your Honor, 1:15  
5 would be fine. We have no additional instructions to offer.  
6 We will go in the same order the Court gave them last time.  
7 We're set.

8 THE COURT: You had no additional ones to offer  
9 or any further objections?

10 MR. BOSLER: No, Your Honor.

11 THE COURT: And no objections to the packet,  
12 Mr. Gammick?

13 MR. GAMMICK: No, Your Honor.

14 THE COURT: I think that's clear. Is counsel  
15 requesting that the instructions be read prior to closing?

16 MR. GREGORY: Yes, Your Honor.

17 MR. GAMMICK: Yes, Your Honor.

18 THE COURT: Court is in recess.

19 (Luncheon recess was taken at 12:10 p.m.)  
20  
21  
22  
23  
24  
25

RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 1:28 P.M.

-o0o-

(Whereupon, the following proceedings were held in open court, outside the presence of the jury.)

THE COURT: Let the record reflect the Court has convened outside the presence of the jury for the purpose of finalizing jury instructions.

Counsel, I have gone through the packet which we went over Friday afternoon. There were a couple of typographical errors. Those have been corrected. And I have received a proposed instruction from the defense.

MR. GREGORY: There is an error in that also, Your Honor. I don't know if the Court's clerk brought it to your attention. On line 3 it should be "guilty."

THE COURT: I think line 5 is supposed to be "The law never imposes."

MR. GREGORY: That's correct. I'm sorry, Your Honor.

THE COURT: The administrative assistant is making those corrections, but I can read the instruction as it is going to be corrected. I have corrected it on my set.

Counsel, any objection to that procedure?

MR. STANTON: No, Your Honor.

MR. GREGORY: None.

1 THE COURT: Now, we have a packet then, this  
2 instruction being added, of 1 through 34 instructions. Any  
3 additional instructions to offer on behalf of the State?

4 MR. STANTON: No, Your Honor.

5 THE COURT: Any additional instructions to  
6 offer other than those which were previously marked and  
7 offered by the defense?

8 MR. GREGORY: No, Your Honor.

9 THE COURT: Any corrections or objections to  
10 the instructions 1 through 34 as offered, Mr. Stanton?

11 MR. STANTON: No, Your Honor.

12 THE COURT: Any further objections than those  
13 already noted, Mr. Gregory, to the instructions?

14 MR. GREGORY: No, Your Honor.

15 THE COURT: Specifically, and I'm not sure the  
16 record was clear on this, Defendant's Exhibits A, B and C  
17 were all denied. So to make that clear.

18 MR. GREGORY: And they will be made part of the  
19 record.

20 THE COURT: They have been made already part of  
21 the record, yes.

22 MR. GREGORY: Thank you, Your Honor.

23 THE COURT: Now we have the verdict forms.  
24 Have you had a chance to review the potential verdict forms?

25 MR. GREGORY: Yes.



1 THE COURT: Any changes or corrections to be  
2 made to those verdict forms?

3 MR. GREGORY: Not by the defense, Your Honor.

4 THE COURT: Mr. Stanton.

5 MR. STANTON: No, Your Honor.

6 THE COURT: Now is there anything further that  
7 you would like to resolve outside the presence of the jury  
8 before we call the jury in?

9 MR. STANTON: Two items briefly, Your Honor.  
10 The defense pro-offered instruction, which number will that  
11 one be?

12 THE COURT: 33.

13 MR. STANTON: And just so the record is clear,  
14 the defense counsel is indeed requesting that 33 be given.

15 MR. GREGORY: That's correct.

16 MR. STANTON: That's it, Your Honor.

17 THE COURT: Okay. Anything further, counsel?

18 MR. GREGORY: No, Your Honor.

19 THE COURT: We'll have the bailiff check and  
20 see if the jury is all here.

21 DEPUTY BROKAW: Still missing two jurors, Your  
22 Honor.

23 THE COURT: We'll be in recess until they  
24 arrive.

25 (Recess taken at 1:31 p.m.)

RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 1:40 P.M.

-oOo-

(Whereupon, the following proceedings were held in open court, outside the presence of the jury.)

THE COURT: I have been informed the jury is all here, but we do have a few more things to go over outside their presence. The first is the clerk has an exhibit to mark.

THE CLERK: Exhibit 18-A is marked. It is the transcript of the 911 phone call.

(Exhibit 18-A marked for identification.)

THE COURT: I understand there was a stipulation with regard to the admission of that.

MR. GAMMICK: Your Honor, we'd ask for it to be admitted since it's required now by Supreme Court Rule 250.

MR. BOSLER: My understanding, it was going to be admitted as part of the record on appeal but not given to the jury; correct?

THE COURT: That was my understanding also. Right?

MR. BOSLER: With that, Your Honor, we'll submit it.

THE COURT: So we just know what that is being

1 marked for the record.

2 (Exhibit No. 18-A marked for identification.)

3 We also have an issue of the juror's question.

4 We talked about that last Friday. We still haven't answered

5 the question, although I did prepare an answer. If counsel

6 has any objection, I think I will just read the question and

7 the answer before I begin jury instructions this afternoon.

8 It is the way it was read on Friday.

9 "Are we going to be able to see the cousin's  
10 transcript?" Unsigned.

11 "You will only be reviewing the documents that  
12 have been admitted in evidence."

13 MR. GAMMICK: That would be fine with the  
14 State, Your Honor.

15 MR. GREGORY: That is fine, Your Honor.

16 THE COURT: And the clerk asked me to make a  
17 record and notify you that the bullets will not be going  
18 into the jury room. The gun and bullets are available in  
19 case the jury requests it. The gun will be removed by the  
20 bailiff. We don't give them both at the same time. Any  
21 objection?

22 MR. GAMMICK: No, Your Honor.

23 THE COURT: Then we will bring the jury in.

24 (Whereupon, the following proceedings were held  
25 in open court, in the presence of the jury.)

1 THE COURT: Counsel stipulate to the presence  
2 of the jury?

3 MR. GAMMICK: Yes, Your Honor.

4 MR. GREGORY: Yes, Your Honor.

5 THE COURT: Thank you.

6 Ladies and gentlemen of the jury, as I  
7 indicated to you before your lunch recess, when you came  
8 back you'd receive the instructions by the Court, you'd hear  
9 closing arguments in the case, and then the matter would be  
10 submitted to you. Before I give you the instructions of the  
11 Court, I do want to answer a question that I received  
12 earlier in the week.

13 The question was: "Are we going to be able to  
14 see the cousin's transcript?"

15 And the answer that I will be giving you in  
16 regard to that question is: "You will only be reviewing the  
17 documents that have been admitted into evidence."

18 Now, I am going to be instructing you as to the  
19 law in this case, and I wish that I would be allowed to just  
20 in conversation terms tell you what the law is. However,  
21 that is not permissible. The law is specific, and it is  
22 technical in some regards, and it's important that I give  
23 you specific instructions as to what the law is.

24 Therefore, the instructions of the Court are  
25 written down, and I read those instructions to you. Now

1 during the course of this afternoon's period of time while  
2 I'm reading these instructions to you, do not become  
3 concerned if you are lost on one particular instruction or  
4 if it is confusing to you. You will have a copy of these  
5 instructions with you in the jury room, and may refer to  
6 them during your deliberations.

7 Don't worry about taking notes during the  
8 reading of the instructions, and if you do become confused,  
9 just relax and wait for the next instruction to come along  
10 and then review them for yourself while you are in the jury  
11 room.

12 Ladies and gentlemen of the jury:

13 It is my duty as judge to instruct you in the  
14 law that applies to this case, and it is your duty as jurors  
15 to follow the law as I shall state it to you, regardless of  
16 what you may think the law is or ought to be. On the other  
17 hand, it is your exclusive province to determine the facts  
18 in the case and to consider and weigh the evidence for that  
19 purpose. The authority thus vested in you is not an  
20 arbitrary power, but must be exercised with sincere  
21 judgment, sound discretion and in accordance with the rules  
22 of law stated to you.

23 The defendant in this matter, Siaosi Vanisi,  
24 also known as Pe, also known as George, is being tried upon  
25 an Information which was filed on the 26th day of February,

1 1998, in the Second Judicial District Court charging the  
2 said defendant, Siaosi Vanisi, also known as Pe, also known  
3 as George, with:

4 Count I, murder in the first degree, a  
5 violation of NRS 200.010 and NRS 200.030 and NRS 193.165, a  
6 felony, in the following manner:

7 That the said defendant on the 13th day of  
8 January, AD, 1998, or thereabout and before the filing of  
9 this Information, at and within the County of Washoe, State  
10 of Nevada, did willfully, unlawfully and with malice  
11 aforethought, deliberation and premeditation, kill and  
12 murder Sergeant George Sullivan, a human being, by means of  
13 repeated blows to the head and face with a hatchet, and/or  
14 other instrument, and/or other blunt force trauma inflicted  
15 to the head and upper torso thereby inflicting mortal  
16 injuries upon the Sergeant George Sullivan for which he died  
17 on January 13th, 1998; or

18 That the said defendant during the course of  
19 and in furtherance of an armed robbery did willfully and  
20 unlawfully murder Sergeant George Sullivan in that the said  
21 defendant on or about January 13th, 1998, did kill and  
22 murder Sergeant George Sullivan, a human being, in the  
23 perpetration and/or the furtherance of an armed robbery at  
24 the University of Nevada, Reno, at or near the information  
25 kiosk, with the use of a deadly weapon, to wit, a hatchet

and/or other implement; or

That the said defendant on or about January 13th, 1998, did kill and murder Sergeant George Sullivan, a human being, by laying in wait, in that the said defendant did watch, wait and conceal himself from Sergeant George Sullivan, with the intention of killing Sergeant George Sullivan, in that he hid and waited until Sergeant George Sullivan completed a traffic stop, then observed and followed Sergeant George Sullivan to a location where he was alone and then ambushed Sergeant George Sullivan inflicting mortal injuries to his person from which he died on January 13, 1998.

Count II, robbery with the use of a deadly weapon, a violation of NRS 200.380, and NRS 193.165, a felony, in the manner following:

That the said defendant on the 13th day of January, AD, 1998, or thereabout and before the filing of the Information, at and within the County of Washoe, State of Nevada, did willfully and unlawfully take personal property, to wit: a Glock .45 caliber handgun; Glock magazines; a flashlight; and handcuffs from the person of Sergeant George Sullivan, at or near the information kiosk located at the University of Nevada, Reno campus, Washoe County, Nevada, against his will and by means of force or violence to his person, and with the use of a hatchet and/or

1 other implement, which the said defendant used to strike  
2 Sergeant George Sullivan repeatedly in the head and face,  
3 and/or other blunt force trauma inflicted to the head and  
4 upper torso.

5 Count III, robbery with the use of a firearm, a  
6 violation of NRS 200.380 and NRS 193.165, a felony, in the  
7 manner following:

8 That the said defendant on the 13th day of  
9 January, AD, 1998, or thereabout, and before the filing of  
10 the Information, at and within the County of Washoe, State  
11 of Nevada, did willfully and unlawfully take personal  
12 property, to wit, U.S. currency from the person of Patricia  
13 Misito, clerk of the 7-11 store located at 710 Baring  
14 Boulevard, Washoe County, Nevada, against her will and by  
15 means of force or violence or fear of immediate or future  
16 injury to her person and with the use of a large caliber  
17 handgun which the said defendant displayed to the victim and  
18 demanded money.

19 Count IV, robbery with the use of a firearm, a  
20 violation of NRS 200.380, and NRS 193.165, a felony in the  
21 manner following:

22 That the said defendant on the 13th day of  
23 January, AD, 1998 or thereabout and before the filing of  
24 this Information, at and within the County of Washoe, State  
25 of Nevada, did willfully and unlawfully take personal



1 property, to wit, U.S. currency from Diana Lynn Shouse, the  
2 clerk at said establishment, at the Jackson Food Mart  
3 located at 2595 Clearacre lane, Washoe County, Nevada,  
4 against her will and by means of force or violence or fear  
5 of immediate or future injury to her person and with the use  
6 of a large caliber handgun, which this defendant displayed  
7 to the victim and demanded money.

8 Count V, grand larceny, a violation of NRS  
9 205.220, a felony, in the manner following:

10 That the said defendant on the 13th day of  
11 January, AD, 1998, or thereabout and before the filing of  
12 this Information, at and within the County of Washoe, State  
13 of Nevada, did willfully and unlawfully steal, take and  
14 drive away the personal property of Louis D. Hill, to wit, a  
15 certain black four door 1993 Toyota Camry bearing Nevada  
16 license plate 029 HPY, with the intent then and there to  
17 permanently deprive the owner thereof.

18 To the charges stated in the Information, the  
19 defendant, Siaosi Vanisi, also known as Pe, also known as  
20 George, pled not guilty.

21 An Information is a formal method of accusing a  
22 defendant of a crime. It is not evidence of any kind  
23 against the accused and does not create any presumption or  
24 permit any inference of guilt.

25 If in these instructions any rule, direction or

1 idea is stated in varying ways, no emphasis thereon is  
2 intended by me and none must be inferred by you. For that  
3 reason you are not to single out any certain sentence or any  
4 individual point or instruction and ignore the others, but  
5 you are to consider all the instructions as a whole and to  
6 regard each in the light of all the others.

7 If during this trial I have said or done  
8 anything which has suggested to you that I'm inclined to  
9 favor the position of either party, you will not be  
10 influenced by any such suggestion.

11 I have not expressed nor intended to express  
12 any opinion as to which witnesses are or are not worthy of  
13 belief, what facts are or are not established, or what  
14 inference should be drawn from the evidence. If any  
15 expression of mine has seemed to indicate an opinion  
16 relating to any of these matters, I instruct to you  
17 disregard it.

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

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

5 It is the duty of attorneys on each side of the  
6 case to object when the other side offers testimony or other  
7 evidence which counsel believes is not admissible.

8 When the Court has sustained an objection to a  
9 question, the jury is to disregard the question and may draw  
10 no inference from the wording of it, or speculate as to what  
11 the witness would have said if permitted to answer.

12 Nothing that counsel say during the trial is  
13 evidence in the case.

14 The evidence in a case consists of the  
15 testimony of the witnesses and all physical or documentary  
16 evidence which has been admitted.

17 The penalty provided by law for the offense  
18 charged is not to be considered by the jury in arriving at a  
19 verdict.

20 Neither the prosecution nor the defense is  
21 required to call as witnesses all persons who may appear to  
22 have some knowledge of the matters in question in this  
23 trial.

24 There are two types of evidence from which a  
25 jury may properly arrive at a verdict. One is direct

evidence, such as the testimony of an eyewitness. The other is circumstantial evidence, the proof of a chain of circumstances pointing to the existence or nonexistence of a fact in issue.

The law makes no distinction between direct and circumstantial evidence but requires that before convicting a defendant the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

To the jury alone belongs the duty of weighing the evidence and determining the credibility of the witnesses. The degree of credit due a witness should be determined by his or her character, conduct, manner upon the stand, fears, bias, impartiality, reasonableness or unreasonableness of the statements he or she makes and the strength or weakness of his or her recollections viewed in the light of all the other facts in evidence.

If the jury believes that any witness has willfully sworn falsely, they may disregard the whole of the evidence of any such witness.

A person is qualified to testify as an expert if he or she has special knowledge, skill, experience, training or education sufficient to qualify him or her as an expert on the subject to which his or her testimony relates.

Duly qualified experts may give their opinions on questions and controversy at a trial. To assist you in

1 deciding such questions, you may consider the opinion and  
2 the reasons given for it, if any, by the expert who gives  
3 the opinion. You may also consider the qualifications and  
4 credibility of the expert.

5           You are not bound to accept an expert opinion  
6 as conclusive but should give it the weight to which you  
7 find it to be entitled. You may disregard any such opinion  
8 if you find it to be unreasonable.

9           In every crime there must exist a union or  
10 joint operation of act and intent.

11           The burden is always upon the prosecution to  
12 prove both act and intent beyond a reasonable doubt.

13           Intent may be proved by circumstantial  
14 evidence. It rarely can be established by any other means.  
15 While witnesses may hear and see and thus be able to give  
16 direct evidence of what a defendant does or fails to do,  
17 there can be no eyewitness account of a state of mind with  
18 which the acts were done or omitted, but what a defendant  
19 does or fails to do may indicate intent or lack of intent to  
20 commit the offense charged.

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

24           The burden rests upon the prosecution to  
25 establish every element of the crime with which the

defendant is charged, and every element of the crime must be established beyond a reasonable doubt.

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

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

Murder is further divided into murder of the first degree and murder of the second degree.

As it applies to this case, murder of the first degree is:

premeditated and deliberate murder or  
murder committed while lying in wait or  
murder committed during the commission or in  
the furtherance of a robbery.

All other types of murder are murder in the second degree.

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

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

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

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

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

22 Unless felony murder applies, the unlawful  
23 killing must be accompanied with deliberate and clear intent  
24 to take life in order to constitute murder of the first  
25 degree. The intent to kill must be the result of deliberate

1 premeditation.

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

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

13 Whenever death occurs during the perpetration  
14 of certain felonies, including robbery, NRS 200.030 defines  
15 this as a murder in the first degree. This is known as the  
16 felony murder rule.

17 Therefore, an unlawful killing of a human  
18 being, whether intentional, unintentional or accidental,  
19 which is committed in the perpetration of a robbery, is  
20 murder in the first degree if there was in the mind of a  
21 defendant the specific intent to commit the crime of  
22 robbery.

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

25 All verdicts in this case must be unanimous.



1 In considering Count I, murder, the State has alleged three  
2 different theories of first degree murder. The three  
3 theories of murder in the first degree are as follows.

4 Premeditated and deliberate murder; or  
5 that the murder was perpetrated in the  
6 furtherance of a robbery, or  
7 the murder was committed by means of lying in  
8 wait.

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

11 Thus, you do not have to agree on the theory of  
12 murder in the first degree. It is sufficient that each of  
13 you find beyond a reasonable doubt that the murder under any  
14 one of the three theories was murder in the first degree.

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

19 The value of property or money taken is not an  
20 element of the crime of robbery, and it is only necessary  
21 the State prove the taking of the property or money.

22 Grand larceny consists of the unlawful  
23 stealing, taking and carrying away of the personal  
24 property -- personal goods or property of another of a value  
25 of \$250 or more with the intent to permanently deprive the

1 owner of the possession of such personal goods or property.

2 If you find the defendant guilty of any of the  
3 first four counts of the Information, murder in the first  
4 degree and/or robbery, you must then answer the question as  
5 to whether the crime was committed with a deadly weapon.

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

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

17 It is your duty as jurors to consult with one  
18 another and to deliberate, with a view of reaching an  
19 agreement if you can do so without violence to your  
20 individual judgment. You each must decide the case for  
21 yourself but should do so only after a consideration of the  
22 case with your fellow jurors, and you should not hesitate to  
23 change your opinion when convinced that it is erroneous.  
24 However, you should not be influenced to vote in any way on  
25 any question submitted to you by the single fact that a

majority of the jurors or any of them favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

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

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

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

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

Signed, District Judge Connie J. Steinheimer.

Counsel, you may proceed with opening closing.

MR. GAMMICK: If it please the Court, counsel, ladies and gentlemen of the jury:

1                   On January 13th, 1998, at sometime between  
2                   about 25 minutes to one and five minutes to one in the  
3                   morning, Sergeant George Sullivan of the University of  
4                   Nevada, Reno, Police Department was murdered. There can be  
5                   no question of that having seen the evidence in this  
6                   courtroom over the last week.

7                   What I would like to do now is to talk to you  
8                   about how some of the evidence ties together and to talk to  
9                   you about those issues that are not issues, and then we'll  
10                  get down to what is the issue in this case.

11                  Murder is defined as the unlawful killing of  
12                  another human being. When you look at this exhibit that  
13                  Dr. Clark came in and testified to, you need to look at it  
14                  as evidence.

15                  What comes out of this exhibit? It is not  
16                  pleasant to look at. There's absolutely no question.

17                  But what is the evidence that is shown here?  
18                  It shows a man that was brutally beaten to death. This was  
19                  not a suicide. This was not an accidental death. This was  
20                  not a natural death, nor was it undetermined.

21                  The other thing you need to look at when you  
22                  look at these photographs is does it give us a clue. Can  
23                  Sergeant Sullivan give us some information to help make your  
24                  decisions that you need to make within the next few hours?  
25                  Undoubtedly he talked to us.

1           There's absolutely no question that this is the  
2       weapon that was used to murder Sergeant George Sullivan. If  
3       you remember Dr. Clark's testimony, she went through using  
4       the demonstrative evidence, the undamaged hatchet, she went  
5       through and showed you how this hatchet, how the head of it  
6       matched up to various wounds that Sergeant Sullivan  
7       suffered.

8           Look at them, compare them. Remember when she  
9       talked about extreme force being used to break the bones  
10      that were broken and take a look at the shafts of the  
11      undamaged hatchet and the murder weapon. Compare them for  
12      yourself.

13           And one other thing to remember on this weapon.  
14      Sergeant George Sullivan's blood was found on it. It was  
15      recovered within an hour after the murder. Or it was  
16      spotted again at the apartment. Excuse me. It wasn't  
17      recovered till later.

18           The murder is not really at issue here.

19           What else is not at issue? Let's talk about  
20      the armed robberies. Counts III and IV. This is what you  
21      get to do, because you will have this evidence. Compare.  
22      Take a look.

23           This is from the Jackson Food Mart. This is  
24      defendant Vanisi before he was clean shaven. Look for  
25      yourself. You'll have the opportunity to see these.

1 Absolutely no question that an armed robbery occurred at the  
2 7-11. Absolutely no question that an armed robbery occurred  
3 at Jackson's Food Mart.

4 Defendant Vanisi walked in with a gun and  
5 demanded money and received money. That's it. What else?

6 Count V, grand larceny of a motor vehicle.  
7 Louis Hill's car. He left it parked running. It's gone.  
8 It's found in Salt Lake City.

9 You heard statements made today about how it  
10 was a stolen car from Reno. Louis Hill didn't know  
11 Mr. Vanisi and did not ever give him permission to take his  
12 car.

13 I submit to you as we're sitting here right  
14 now, Counts III, IV and V are proven. There is no other  
15 verdict except guilty.

16 As to Counts I and II, the murder and the  
17 robbery of Sergeant George Sullivan, all the elements are  
18 proven. The only question is who. Who did the murder, who  
19 did the armed robbery?

20 Now let's take a look at that.

21 "I want to kill a cop. Watch me.

22 "Wait until I kill a cop and rob a store.

23 "There was a police station, and he wanted to  
24 kill a cop."

25 He is I. I don't think I need to tell you

1 that. You have been very attentive.

2 "He was going to kill a cop, a police officer,  
3 with an ax.

4 "He wanted to be walking, Doobie as a cover,  
5 and sneak up behind a cop and kill him.

6 "He wanted to kill a white cop because his wife  
7 left him for a white cop.

8 "He said he wanted to kill a cop more than 20,  
9 times. He was going to kill a cop, take his gun and radio.  
10 He wanted to kill a white cop. He wanted to kill a cop with  
11 a hatchet."

12 Think back among the witnesses you saw and  
13 listened to before the murder. Those are friends of Siaosi  
14 Vanisi. Those were his acquaintances, and they came in here  
15 and told you about these statements he made. Unfortunately,  
16 no one took him real serious at that time.

17 Remembering and thinking about keeping these  
18 statements in mind, what else do we know in the way of the  
19 evidence? Defendant Vanisi came to Reno, you heard, a week,  
20 two weeks, before the killing. He brought with him a wig, a  
21 beanie and a leather jacket.

22 The wig, a beanie, and a leather jacket.  
23 Described as a red or maroon leather jacket.

24 On Friday, January 9th, 1998, he went to  
25 Wal-Mart. There he purchased a hatchet, the murder weapon,

1 for \$7.

2 He also purchased a pair of brown or tan  
3 leather gloves.

4 Saturday night, he went to the dance. This was  
5 his partner (indicating the hatchet).

6 Sunday night, he took an unsuccessful trip at  
7 hunting a cop. Remember, Teki weenied out and said no and  
8 drove him home. But he wanted to be dropped where he could  
9 sneak up on and kill a cop.

10 Monday night, about 10:30, we have defendant  
11 Siaosi Vanisi at the house on Sterling. You'll have these  
12 again so you can see them and look at them. Remember, we  
13 described this one, University of Nevada campus right here.  
14 The actual place where Sergeant George Sullivan was  
15 murdered.

16 The house on Sterling, 1545 Sterling, big park  
17 right here behind it. Valley Road, and there is the house.  
18 Not very far from the campus.

19 Who else lived on Sterling at that house? His  
20 cousins, meaning Mr. Vanisi's, and one other important  
21 player in this overall drama. Doobie. Doobie lived there.

22 About 10:30, defendant was still at the house.

23 Tuesday morning, at about 1208 or eight minutes  
24 after midnight, a young lady went to pick up her dad every  
25 night because if she didn't get there on time, dad was



1 hooking it down the street. Who did she see when she went  
2 up on campus? In fact, she said she came up Virginia  
3 Street, turned in right here at this intersection, and right  
4 in this area where this red dot is, she has her own dog, she  
5 loves dogs, she sees Doobie.

6 Doobie isn't alone. Doobie has a man with  
7 him -- I don't know if Doobie is a him or her -- but Doobie  
8 has a person that scares her. This man right here.

9 She goes and waits for a few minutes, picks up  
10 her dad right in this area, comes back out, comes back down,  
11 and guess what, Doobie is right here. Remember she talked  
12 about the bridge that goes across Virginia Street. Doobie  
13 is in that area now, and here is our man, walking down  
14 towards Manzanita Lake. It isn't much longer that that man  
15 is seen right down here again by a totally different person,  
16 identified as this man.

17 Now when you get the various items of evidence,  
18 you start looking at them, I have a little math thing here  
19 for you. The wig and the beanie. And Mr. Vanisi before he  
20 has his beard shaved off. You add all those together, take  
21 a look at it, there he is. Positively identified in this  
22 courtroom as being on the university campus a short period  
23 of time before Sergeant Sullivan is murdered, and being in  
24 the area of Ninth and Wells.

25 This was about, when he was seen down in here,

1 the call, the stop was made at 17 minutes after midnight.  
2 So what are we talking? 17, 20 minutes after midnight?

3 Sergeant Sullivan leaves that call and goes  
4 back up on the hill. What happened? Well, until today you  
5 didn't know.

6 Vainga Kinikini came in, again a relative of  
7 the defendant. And he tells some of the things that he was  
8 told that happened.

9 How Mr. Vanisi told him that he saw the officer  
10 make the stop and waited for him, 10, 15 minutes. That he  
11 put the sneak on him.

12 Remember one of those statements that was made,  
13 one of the other people was he wanted to put a sneak on a  
14 police officer.

15 That he also wanted to catch a police officer  
16 who was doing his paperwork or was on his coffee break.  
17 George Sullivan was doing his paperwork, parked up under the  
18 lights, his coffee cup was in the car.

19 As you can see in this photograph, the inside  
20 of Sergeant Sullivan's car, and there is purple or actually  
21 more aqua-marine or turquoise. Might help if I turn the  
22 picture the right way, too. Right there.

23 How do we know he was doing paperwork? Not  
24 only did Vainga tell you that this morning, but we also have  
25 the field interview card that was not completed Sergeant

1 Sullivan was writing on.

2 After the greeting was made, defendant started  
3 hitting Sergeant Sullivan. He said Sergeant Sullivan got  
4 one shot in. Maybe, maybe not. We know from the extent of  
5 the injuries and the damage that he didn't get many shots  
6 in, if any. We also know that there weren't many defensive  
7 wounds. The left hand where the fingers were almost cut  
8 off.

9 Then he kicked him in the head and stomped him.  
10 Is there evidence consistent with that? You heard  
11 Dr. Clark. Enjoyed what he was doing. It was fun, it was  
12 great.

13 We know the robbery was committed because when  
14 you look at this photograph, you can see that Sergeant  
15 Sullivan's gunbelt and weapon are missing.

16 Those were recovered later, as you heard the  
17 evidence.

18 You have a photograph of what items were  
19 actually taken. It was more than the gun and the gunbelt.  
20 Included his radio, handcuffs, some ammo magazines, and his  
21 gun. But that wasn't even recovered with this batch.

22 We talked about how he went along the canal and  
23 how he got rid of the beanie and the wig. Now you know what  
24 it meant when Mr. Moreira came in here, and we had the  
25 pictures of the canal, and how he also talked about

1 recovering the beanie and the wig in the canal after the  
2 water was drained. He also talked about some dogs barking  
3 at him. So Mr. Moreira went back and recovered these items.

4 Doobie led him home back to Sterling. You have  
5 heard how the area was described, how there is a path that  
6 runs right up along here. Then if you look, you'll see a  
7 road right here going across, a park, and then there is the  
8 house on Sterling. The wig and the beanie were recovered  
9 right here behind 1215 Beech, and the water runs this way,  
10 toward the north end of the map.

11 Before 1:30 a.m., or 2:00 to 2:30, is what Mana  
12 estimated it was, remember he was watching movies, the  
13 people that said before 1:30 were on the computer and saw  
14 the time displayed on the computer itself. So whichever  
15 time you want to adopt is up to you. The wig and the beanie  
16 are gone. And he's carrying a white plastic bag.

17 He shows up at the apartment wearing the jacket  
18 with the gloves, with the hatchet. Sergeant Sullivan's  
19 blood was identified on all three of those items. You  
20 recall from the chart that Jeff Riolo brought in here and  
21 explained the findings of his DNA testing.

22 Later Tuesday, Mr. Vanisi goes to the Mormon  
23 church. You remember that. He approaches Teki and shows  
24 him a gun. Teki identified this as the gun he was shown.  
25 Sergeant Sullivan's gun.

1 Later on, if you recall, a few days later, the  
2 pistol belt and the other missing items of Sergeant  
3 Sullivan's are found at the Rock Street apartment, and they  
4 are contained in a white plastic bag. Whose fingerprint was  
5 on the white plastic bag? Defendant Vanisi's.

6 There was a second print that was unidentified.  
7 But defendant Vanisi's was identified as one of the prints.

8 All of those items are in this box. But I'm  
9 going to caution you before you reach in and start handling  
10 those very much, these were treated with Super Glue. They  
11 are marked as a biohazard. You can open the box, take a  
12 look at them, but I wouldn't handle them a whole lot. There  
13 are photographs for you to look at closer.

14 The recovery of the jacket and the gloves by  
15 Detective Duncan.

16 Recovery of the hatchet, Rock Boulevard by the  
17 front door, with blood on it.

18 Later on Tuesday night, there are two armed  
19 robberies and a car theft, and defendant Vanisi disappears.  
20 Massive manhunt going on, arrest warrant obtained. Salt  
21 Lake City calls Wednesday and says we have him up in Salt  
22 Lake City. He is barricaded in his cousin's house.

23 Not only do you have the statements that come  
24 from defendant Vanisi while he's there, but also if you will  
25 recall, there are several other pieces of evidence that come

1 from that location. Renee, his cousin, describes defendant  
2 Vanisi as wearing a purple shirt with cutoff sleeves. If  
3 you remember, this shirt was identified as being worn by the  
4 man who committed at least one of the two robberies.

5 The boots that were being worn by defendant  
6 Vanisi also have Sergeant Sullivan's blood on them,  
7 identified by Mr. Riolo as shown on the chart.

8 Between the statements that were made here  
9 before he left and the statements that were made in Salt  
10 Lake City, we have, "I killed a cop." No question about  
11 that statement.

12 "There was a policeman killed. Did you do it?

13 "Yes.

14 "After the purchase of the hatchet, said he was  
15 looking for a white police officer.

16 "Said he had committed a murder.

17 "I was beating his ass.

18 "Kicked him over and over and then stomped on  
19 his head.

20 "It was fun.

21 "It was great.

22 "I don't feel nothing, man."

23 Ladies and gentlemen, we're never required to  
24 prove motive, but the question has to come about why. He  
25 made several statements for his own reasons that he hates

1 white people. He stated that his wife left him for a white  
2 cop, and therefore, he wanted to kill a white cop.

3 Whatever the reason, Sergeant Sullivan didn't  
4 have anything to do with it. This didn't involve him.

5 You talk about being at the wrong place at the  
6 wrong time, Sergeant Sullivan was alone on the university  
7 campus January 13th, 1998, when he became the target of a  
8 stalker and was murdered for no reason other than he was a  
9 white cop.

10 This also didn't involve Patricia Misito or  
11 Caleb Bartelheim or Diana Shouse. I don't know if that  
12 answers the why or not, but whether it does or not, there's  
13 absolutely no question, look at the evidence, deliberate,  
14 take all the time you need and return with a verdict of  
15 guilty; guilty of murder of the first degree, guilty of  
16 robbery, armed; guilty of robbery, armed; guilty of robbery,  
17 armed three counts; and guilty of grand larceny.

18 Thank you very much for your time.

19 THE COURT: Counsel.

20 MR. GREGORY: Thank you, Your Honor.

21 We thank this jury. We would waive our closing  
22 argument.

23 THE COURT: Ladies and gentlemen of the jury,  
24 we have reached the stage in the proceedings when I'm about  
25 to allow you to go into the jury room and begin your

1 deliberations. When you go into the jury room to begin your  
2 deliberations, you will be able to take with you into the  
3 jury room the notes that you have taken through the course  
4 of this trial, as well as all the evidence which has been  
5 received in this case. The clerk will be bringing the  
6 evidence in to you in a few minutes after you have retired.

7 You will receive the written instructions of  
8 the Court, and you will have all this with you in the jury  
9 room. We also have a television set in there with a video  
10 attached in case you want to review any of those things that  
11 have been admitted.

12 We have thought that this trial originally was  
13 going to take three weeks, so we selected lots of you so  
14 that everyone could get sick or many people could get sick.  
15 As it turned out, we haven't lost very many of you, and  
16 we're down to having more than I need to deliberate.

17 Therefore, counsel and I have determined the  
18 first 12 of you who will be deliberating. The other three,  
19 however, will still be required to remain with us. Your job  
20 is not over even though you are not deliberating in this  
21 phase of the proceedings.

22 I am going to ask that you follow the  
23 admonition that I have given you at all other breaks, and  
24 that is, Mr. Carmichael, Mr. Costello and Miss Frazer,  
25 unlike your fellow jurors, you will not be allowed to



1 discuss the case among yourselves. Furthermore, you may not  
2 begin to form opinions about the ultimate outcome of this  
3 matter.

4 You must continue to not view any news media  
5 accounts regarding this case or listen to them or read any  
6 news media accounts.

7 And we also must keep you in a position where  
8 you will not be influenced by anyone, and if anyone should  
9 attempt to influence you, you must report it to one of the  
10 officers taking charge of you.

11 Now, for the interim of this period of time, in  
12 a few minutes I'm going to swear the officers to take charge  
13 of the jury and the alternates, and you will proceed with  
14 Mr. Anderson into the jury room, collect your personal  
15 belongings and then go into a separate jury room where you  
16 will remain together. But while you remain together, you  
17 may not discuss the case amongst the three of you.

18 Do you all understand this admonition as well  
19 as the instructions I have given you?

20 THE ALTERNATE JURORS: Yes.

21 THE COURT: Do you all agree to follow that  
22 admonition?

23 THE ALTERNATE JURORS: Yes.

24 THE COURT: Thank you. Ladies and gentlemen of  
25 the jury, the rest of you will begin your deliberations as

1 soon as I swear the officers to take charge of you. You  
2 will go into the jury room and begin your work.

3 The clerk will now swear the officers to take  
4 charge.

5 (Officers sworn to take charge of jury.)

6 THE COURT: Ladies and gentlemen of the jury,  
7 and alternates, you may proceed with the bailiffs into the  
8 jury room.

9 (Whereupon, the jury retired to deliberate, and  
10 the following proceedings were held in open  
court, outside the presence of the jury.)

11 THE COURT: Counsel, I think while I was  
12 reading the instructions you probably heard, if you were  
13 reading along with me, you saw a couple of typographical  
14 errors that we hadn't caught previously. I have provided  
15 those to my administrative assistant. She's corrected those  
16 to comport with the typographical errors. The clerk has the  
17 originals that I read from which show the typographical  
18 errors.

19 Those will all be corrected and provided in  
20 their corrected form to the jury, as well as the verdict  
21 forms that we discussed before.

22 Anything further for the record at this time?

23 MR. GREGORY: No, Your Honor.

24 MR. GAMMICK: No, Your Honor.

25 THE COURT: Deputy Uptain, you are alternate

1 bailiff, so you are going to have to help me with this. We  
2 are moving our alternates to another jury room. So if the  
3 audience would give us a few minutes before you exit the  
4 courtroom, I would appreciate it, and Deputy Uptain will  
5 take care of that.

6 Thank you. Court is in recess.

7 (Recess taken at 2:38 p.m.)  
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RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 3:23 P.M.

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(Whereupon, the following proceedings were held in chambers, outside the presence of the jury.)

THE COURT: Let's go on the record.

Let the record reflect that we are convened in chambers with Mr. Gregory, Mr. Stanton and Mr. Gammick and the Court clerk for the purpose of reviewing the question that has been received from the jury. The question is: "Can we get a copy of NRS 200.380 and NRS 193.165?"

Counsel, does Mr. Vanisi waive his appearance for purposes of answering the jury questions?

MR. GREGORY: He does, Your Honor.

THE COURT: I intend to answer the question: The law as it applies to this case has been given to you. You may not review anything else -- any other -- help me out, gentlemen. Do you have an idea?

MR. GREGORY: The law that you are to consider has been given to you by this Court through instructions.

MR. GAMMICK: And then I was even thinking, if the Court is inclined to add a little bit more than that to help them out, to the effect that even though it may not be identified specifically by statute. At least they will know they have been instructed on all the law to

1 include the specific sections they are asking for.

2 (Off the record.)

3 THE COURT: After looking at the alternatives,  
4 I have come up with: You may not review the Nevada Revised  
5 Statutes. However, this law has been given to you already  
6 in the instructions of the Court.

7 Any objection to that answer?

8 MR. GAMMICK: No.

9 MR. GREGORY: No, Your Honor.

10 THE COURT: Then the clerk will type that, and  
11 I'll sign it, and we'll get it to the jury.

12 (Recess at 3:31 p.m.)

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RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 4:31 P.M.

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(Whereupon, the following proceedings were held in open court, outside the presence of the jury.)

THE COURT: Deputy, have you heard from the jury?

DEPUTY BROKAW: Yes, Your Honor, they have informed me they have a verdict.

MR. GREGORY: Your Honor, may we approach?

THE COURT: Do you need a court reporter, or is it administrative?

MR. GREGORY: I don't think it is necessary. It is just procedural.

(Whereupon, a bench conference was held among Court and counsel:)

THE COURT: Go ahead and bring the jury in.

(Whereupon, the following proceedings were held in open court, in the presence of the jury.)

THE COURT: The clerk will now call the roll of the jurors and alternates.

THE CLERK: Bonnie K. James.

JUROR JAMES: Here.

THE CLERK: Nettie Horner.

JUROR HORNER: Here.

1 THE CLERK: Shaylene J. Grate.  
2 JUROR GRATE: Here.  
3 THE CLERK: Jeannette L. Minassian.  
4 JUROR MINASSIAN: Here.  
5 THE CLERK: Larry F. Mullins.  
6 JUROR MULLINS: Here.  
7 THE CLERK: James D. McMorran.  
8 JUROR McMORRAN: Here.  
9 THE CLERK: Michael Sheahan.  
10 JUROR SHEAHAN: Here.  
11 THE CLERK: Alice J. Bell.  
12 JUROR BELL: Here.  
13 THE CLERK: Leslie C. Johnson.  
14 JUROR JOHNSON: Here.  
15 THE CLERK: James L. Ayers.  
16 FOREPERSON AYERS: Here.  
17 THE CLERK: Robert T. Buck.  
18 JUROR BUCK: Here.  
19 THE CLERK: Richard A. Tower.  
20 JUROR TOWER: Here.  
21 THE CLERK: Shaun L. Carmichael.  
22 JUROR CARMICHAEL: Here.  
23 THE CLERK: Pete S. Costello.  
24 JUROR COSTELLO: Here.  
25 THE CLERK: Lori T. Frazer.

1 JUROR COSTELLO: Here.

2 THE COURT: Ladies and gentlemen of the jury,  
3 have you chosen a foreperson?

4 THE JURY: Yes, we have.

5 THE COURT: Who is it?

6 FOREPERSON AYERS: Myself.

7 THE COURT: You, Mr. Ayers?

8 Has the jury reached a verdict?

9 FOREPERSON AYERS: Yes, we have.

10 THE COURT: Would you please hand the verdicts  
11 to the bailiff who in turn will hand them to the Court?

12 The bailiff approach, please.

13 THE COURT: The clerk will read the verdicts.

14 THE CLERK: "Case No. CR98-0516, Department No.  
15 4, in the Second Judicial District Court of the State of  
16 Nevada, in and for the County of Washoe. The State of  
17 Nevada, plaintiff, versus Siaosi Vanisi, also known as Pe,  
18 also known as George, defendant. Verdict:

19 We the jury in the above-entitled matter find  
20 the defendant, Siaosi Vanisi, also known as Pe, also known  
21 as George, guilty of murder, dated this 27th day of  
22 September, 1999, James L. Ayers, foreperson.

23 Having found the defendant guilty of murder,  
24 you must answer the following question: Was it murder of  
25 the first degree or murder of the second degree?



1 Murder of the first degree. James L. Ayers,  
2 foreperson.

3 If you have found the defendant guilty of  
4 murder, you must answer the following question: Was a  
5 deadly weapon used in the commission of this murder as  
6 defined in these instructions? Yes. James L. Ayers,  
7 foreperson.

8 Verdict: We the jury in the above-entitled  
9 matter find the defendant Siaosi Vanisi, also known as Pe,  
10 also known as George, guilty of Count II, robbery. Dated  
11 this 27th day of September, 1999, James L. Ayers,  
12 foreperson.

13 If you have found the defendant guilty of  
14 robbery, you must answer the following question: Was a  
15 deadly weapon used in the commission of this robbery as  
16 defined in these instructions? Yes. James L. Ayers,  
17 foreperson.

18 Verdict: We the jury in the above-entitled  
19 matter find the defendant, Siaosi Vanisi, also known as Pe,  
20 also known as George, guilty of Count III, robbery, dated  
21 this 27th day of September, 1999, James L. Ayers,  
22 foreperson.

23 If you have found the defendant guilty of  
24 robbery, you must answer the following question: Was a  
25 deadly weapon used in the commission of this robbery as

1 defined in these instructions? Yes. James L. Ayers,  
2 foreperson.

3 Verdict: We the jury in the above-entitled  
4 matter find the defendant, Siaosi Vanisi, also known as Pe,  
5 also known as George, guilty of Count IV, robbery. Dated  
6 this 27th day of September, 1999. James L. Ayers,  
7 foreperson.

8 If you have found the defendant guilty of  
9 robbery, you must answer the following question: Was a  
10 deadly weapon used in the commission of this robbery as  
11 defined in these instructions? Yes. James L. Ayers,  
12 foreperson.

13 Verdict: We the jury in the above-entitled  
14 matter find the defendant, Siaosi Vanisi, also known as Pe,  
15 also known as George, guilty of Count V, grand larceny,  
16 dated this 27th day of September, 1999. James L. Ayers,  
17 foreperson.

18 THE COURT: Ladies and gentlemen of the jury,  
19 are these your verdicts as read, say you one, say you all?

20 THE JURY: Yes.

21 THE COURT: Does either the State or the  
22 defense wish the jury polled?

23 MR. GAMMICK: No, Your Honor.

24 MR. GREGORY: No thank you, Your Honor.

25 THE COURT: Ladies and gentlemen of the jury,

1 as you know, from your process of selection of the jury,  
2 your job here is not finished at this time. We will be  
3 moving into a penalty hearing.

4 However, we're not able to tell you exactly  
5 when that penalty hearing will begin. The parties are  
6 looking for their witnesses that they want to put on for the  
7 penalty hearing, and we do not know for sure what day we can  
8 start this hearing. I'd like to begin it on Wednesday  
9 morning, but I can't tell you now for sure.

10 What I'm going to ask that you do is call my  
11 chambers, the direct line into the chambers, between four  
12 and five tomorrow afternoon, at which time one of the  
13 members of my staff will advise you as to what time to be  
14 here. If at all possible it will be 9:00 o'clock Wednesday  
15 morning. But it may not be possible to get all the  
16 witnesses here that are necessary.

17 We will give you instructions either to call at  
18 another day or a specific time and date to report.

19 Now during this break I want to remind everyone  
20 that you no longer are allowed to discuss the case among  
21 yourselves. Your deliberations on this phase of the  
22 proceedings are over. Therefore, you may not form or  
23 express any opinion about the ultimate outcome with regard  
24 to penalty. You may not discuss the case among yourselves  
25 or with anyone else until it's given to you again for

1 deliberations.

2           You may not allow anyone to attempt to  
3 influence you in any manner regarding this case. And if  
4 anyone does attempt to influence you with regard to it, you  
5 are to report such an occurrence to the court through the  
6 bailiff immediately.

7           You are not to read, listen to or view any news  
8 media accounts regarding this case. Now ladies and  
9 gentlemen, of the alternates, you are under the same  
10 obligations as you have been at all other times. You will  
11 be remaining with the jury, and you will return for the  
12 penalty phase of this hearing. You will hear the evidence  
13 again, and again, I don't know for sure that everyone will  
14 stay healthy and able to attend the deliberations, and if  
15 for some reason there is a vacancy on the jury for the  
16 penalty phase, you will be substituted on to the jury and  
17 you will begin deliberations with the rest of the members of  
18 the jury.

19           So it's very important that you take these  
20 admonitions seriously. They do apply to you even though you  
21 were not able to deliberate on the guilt phase in this case.

22           Ladies and gentlemen of the jury, when I say  
23 you can't talk about it, when you go home tonight and go  
24 back to work tomorrow, people are going to question you, and  
25 you must be assertive about the inability to talk about it.

1 You can't talk about how you came up with this verdict, what  
2 you talked about with each other in getting this verdict,  
3 and you cannot talk about or allow anyone else to talk about  
4 the potential penalties involved in this case. And walk  
5 away, leave, whatever you need to do. We will assist you if  
6 anyone is persistent in their following you or anything like  
7 that. But be sure that you are vigilant in following this  
8 admonition.

9 We will be hearing additional evidence. You  
10 will be hearing arguments and opening statements from both  
11 sides in this case when we get to the additional piece of  
12 the rest of the case. So you do not have all the evidence  
13 before you. So it is absolutely important that you not  
14 begin to form or express any opinions.

15 Does anyone on the jury misunderstand this or  
16 have any questions about the process?

17 Now, Mr. Ayers, it's going to be your  
18 responsibility when the jury is all gathered in the jury  
19 room to be sure that you followed the admonition that I have  
20 given. So you have a double duty. You have to do it for  
21 yourself as well as notify me if there is any problems with  
22 regard to the jury.

23 FOREPERSON AYERS: Okay.

24 THE COURT: Now does everyone -- the bailiff  
25 will provide you with that number if you don't already have

1 it for the chambers. Remember, it's between four and five  
2 tomorrow afternoon that you will be calling me in my  
3 chambers to speak with the staff about your next appearance.  
4 Plan on Wednesday morning but don't make anything too final  
5 because I don't know for sure. The attorneys will work  
6 today and all tomorrow morning trying to locate all the  
7 witnesses.

8 Ladies and gentlemen of the jury, at this time  
9 I'm going to excuse you until your further call. Remember  
10 the admonition. Do not discuss the case among yourselves or  
11 with anyone else. Do not form or express any opinion with  
12 regard to the ultimate outcome of this case.

13 Do not allow anyone to attempt to influence you  
14 with regard to it in any manner. If anyone were to do so,  
15 notify the bailiff outside the presence of your other jurors  
16 as soon as possible.

17 Do not read, listen to or view any news media  
18 accounts regarding this case should there be any.

19 Is Mr. Anderson going to go out with the jury?

20 DEPUTY BROKAW: Yes, Your Honor.

21 THE COURT: Mr. Anderson, would you go out with  
22 the jury into the jury room?

23 MR. ANDERSON: Yes, Your Honor.

24 (Whereupon, the jury was excused for the day,  
25 and the following proceedings were held in open  
court:)

1 THE COURT: The audience will be seated,  
2 please. Will everyone please remain seated and return to  
3 their seats? Thank you.

4 Which television station is filming today?

5 FROM THE AUDIENCE: Two.

6 THE COURT: The bailiff will be confiscating  
7 your tape until we have a hearing with regard to the  
8 shooting of the jurors. If there's anyone here with you  
9 besides the camera man, you may talk about it with the  
10 bailiff, and we can have a hearing if there is a problem.

11 FROM THE AUDIENCE: Okay.

12 THE COURT: The bailiff noticed that the jurors  
13 were photographed. In addition, we have another hearing  
14 tomorrow at 1:30 with regard to the potential of setting the  
15 penalty phase. Until then, counsel, we'll be in recess.  
16 Court is in recess.

17 (Recess taken for day at 4:44 p.m.)  
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STATE OF NEVADA, )  
 )  
COUNTY OF WASHOE. )

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

That we were 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 27th day of  
September, 1999.

CERTIFIED  
to be a true and correct  
transcription of the proceedings

KAREN YATES, CCR No. 195

to be a true and correct  
transcription of the proceedings

STENO

to be a true and correct  
transcription of the proceedings

ERIC V. NELSON, CCR No. 57

Washed



FILED

Code No. 4185

SEP 30 1999

AMY HARVEY  
By *m Stone*  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	Case No. CR98-0516
	)	Dept. No. 4
vs.	)	
	)	
SIAOSI VANISI,	)	
	)	
Defendant.	)	
	)	

TRIAL - VOLUME 7  
September 28, 1999  
Reno, Nevada

APPEARANCES:

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

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

The Defendant: SIAOSI VANISI  
Reported by: DENISE PHIPPS, CCR No. 234

ORIGINAL

SIERRA NEVADA REPORTERS (775) 329-6560

RENO, NEVADA, TUESDAY, SEPTEMBER 28, 1999, 1:30 P.M.

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(Whereupon, the following proceedings were held in open court, outside the presence of the jury.)

THE COURT: I've been in contact with Judge Judith Koslowski, Department 10 in San Mateo County.

Counsel, why don't you tell me your version and I can tell you what her version is.

MR. BOSLER: All right. I just got off the phone with John Digiacinto. He's the assistant program director for the Private Defenders Group in San Mateo County. He's the person who has been generous enough to help us with our out-of-state subpoenas. Four people were present at the hearing today in San Mateo asking not to be compelled to come to Nevada: Mr. Selsback, Mr. Verna, Mr. McGinn and Ms. James. I believe the Court spoke to most, if not all, of them and has reset a hearing for 4:00 tomorrow in which Mr. Digiacinto is supposed to provide some additional pleadings in order to satisfy the Court down there and secure the attendance of those people through this out-of-state service.

My understanding is that the judge in California will not compel Mr. Verna or Mr. McGinn unless proof is shown that they both will return the evening of

1 October 4th. The judge is trying to accommodate some of the  
2 business difficulties and other hardships that have been put  
3 upon these persons as a result of the paperwork filed by our  
4 office.

5 All these people, it's my understanding, will  
6 be compelled -- if the Court's satisfied with the additional  
7 pleadings, and at the hearing tomorrow at 4:00 all these  
8 witnesses will be compelled to appear on October 4th. And  
9 that's the information I have from Mr. Digiacinto.

10 I'd ask the Court to share with me any  
11 additional information the Court has in that regard.

12 THE COURT: Well, I spoke twice with Judge  
13 Koslowski this morning. She indicated to me that she took  
14 an hour recess because there was absolutely no declaration  
15 prepared or submitted with paperwork showing the necessity  
16 of these witnesses. And that I don't know the name --

17 MR. BOSLER: Digiacinto.

18 THE COURT: They call him a private defender in  
19 the county had requested a recess, and she gave him an hour  
20 to go and try to contact you. Then the hearing went forward  
21 after that period of time, and the problem was that  
22 Mr. Selsback says he might have taught Mr. Vanisi but he  
23 doesn't know, and nobody has spoken to him about it. And  
24 Anna Marie Emma Jones is the secretary at the school but she  
25 didn't start working there until the year after the

1 defendant quit going to school there. So she doesn't know  
 2 what she's supposed to be testifying to. Mr. Verna has  
 3 started firemen's academy. He can't be gone a long time.  
 4 And he alleged to the Court that he was left up here for  
 5 four days. He was brought for the prior trial and was left  
 6 sitting around for four days without contact. And  
 7 Mr. McGinn has a football game. He's a coach, and he has a  
 8 football game Friday night, and the judge is not going to  
 9 compel him to come until Monday.

10 Now, I have assured her that Mr. Verna would  
 11 get on the stand on Monday the 4th and get off the stand.  
 12 And she believes that Mr. Verna and Mr. McGinn, because they  
 13 are contemporaries of the defendant's, that she doesn't  
 14 necessarily think that it will be impossible for you to show  
 15 the necessity for their testimony.

16 Your marginal candidates are Mrs. Jones, who  
 17 you're going to have to show why, if she didn't even come to  
 18 work until after the defendant wasn't at that school  
 19 anymore, why she's necessary. And the same with  
 20 Mr. Selsback. You'll have to remind him of how he knew the  
 21 defendant and why there's a connection.

22 She also represented to me that the people in  
 23 the hearing, Mr. McGinn, specifically, did not understand  
 24 that he was signing a waiver of appearance and thought all  
 25 he was doing was agreeing to appear at her hearing. And he

1 did actually sign a waiver for you all, but he appeared at  
2 the hearing anyway because he didn't know what it was. So  
3 the judge down there was very concerned about some of the  
4 other people who may have signed waivers and not realized  
5 that they're agreeing to appear.

6 Furthermore, neither Mr. Verna or Mr. McGinn  
7 have their airline tickets yet. Now, yesterday I thought I  
8 made it clear to counsel that it was my belief that someone  
9 from the Washoe County Public Defender's Office should have  
10 been at that hearing today physically present and that  
11 someone should be down there with the tickets. I don't know  
12 what the situation is, but there is another hearing tomorrow  
13 afternoon. And I don't really think that a faxed copy of an  
14 affidavit is sufficient given the circumstances here. These  
15 witnesses are necessary. Someone from the Public Defender's  
16 Office better drive down to San Mateo County, be present  
17 before Judge Koslowski and explain why these witnesses are  
18 necessary.

19 I'm telling you, before my second call with her  
20 I was going to order you to do it. I'm not going to order  
21 you to do it, because at least after the second hearing, a  
22 couple of these people indicated that they had talked to  
23 Crystal Calderone previously. But in the first hearing they  
24 were telling the judge they hadn't even talked to anyone  
25 from your office. Now they're admitting they have talked to

1 Ms. Calderone. But some as long ago as six months ago.  
2 That's what the judge down there is getting.

3 As far as trying to start this hearing before  
4 the 4th, there's no way. There wasn't anybody physically  
5 down there today from the Public Defender's Office to talk  
6 to the judge or these people. No one brought any tickets  
7 down from the Public Defender's Office as alternative  
8 transportation, even if these people would have agreed to  
9 appear. There's other people that have signed waivers that  
10 may or may not appear. I don't know how much -- the judge  
11 was concerned that at least one person misunderstood what  
12 they signed.

13 MR. BOSLER: Your Honor, may I reply?

14 THE COURT: Well, wait a minute. I'm telling  
15 you and the State I don't see how we can start the hearing  
16 before the 4th because I can't get the witnesses down here  
17 before the 4th.

18 MR. GAMMICK: We still have our case to  
19 present, Your Honor. Faced with that set of circumstances,  
20 I believe we would prefer starting Friday morning. It's  
21 going to take upwards of a day or less for us to present our  
22 case. Then the defense can present theirs Monday morning,  
23 or even if they have local witnesses, if we still have time  
24 Friday afternoon, they can present those and present the  
25 out-of-states Monday morning.

1 THE COURT: Okay. Now Mr. Bosler.

2 MR. BOSLER: Just to correct what I perceive as  
3 some inaccuracies on the record. We've talked to all those  
4 witnesses.

5 THE COURT: She's faxing me a copy of the  
6 transcript from the hearing, because I wanted to see it.  
7 But these people are saying they were contacted five or six  
8 months ago by Crystal Calderone. Some of the people were  
9 contacted again in August and they were served with  
10 subpoenas on September 22nd.

11 MR. BOSLER: All the witnesses have been talked  
12 to. The tickets that the Court mentioned are all E-tickets.  
13 So although some people have actually had plane tickets, the  
14 arrangements have been made as ticketless travel. I think  
15 those people who think they don't have tickets actually do  
16 have tickets. They just don't know the logistics or they've  
17 forgotten what arrangements had been made.

18 THE COURT: The judge won't order them to be  
19 here unless they have tickets. That's what she says.

20 MR. BOSLER: I've already asked my investigator  
21 to fax affidavits to Mr. Digiacinto. He assured me that he  
22 spoke to the same judge you talked to and she was going to  
23 accept those affidavits, even though they were faxed; that  
24 they set forth materiality. They do set forth materiality,  
25 and this is a capital case, and I don't think I need to

1 remind the Court, that any information can be considered as  
2 mitigation no matter how slight it may seem to us or even to  
3 the Court in California. We're convinced that once the  
4 Court does receive those affidavits, these people will be  
5 compelled to appear.

6 I've also asked our investigator to fax  
7 information regarding the E-ticket availability for  
8 Mr. Verna and Mr. McGinn so they can make this a one-day  
9 trip. Unfortunately, what you have, Judge, is that we were  
10 prepared. We had these witnesses. We talked to them months  
11 ago. This is before the first trial even began. After the  
12 mistrial, we were gearing up to have them commit for the  
13 second trial. When the Court continued that hearing two  
14 weeks, we had to redo everything.

15 I've already been down there twice for hearings  
16 and spoken to some of the witnesses, spoken to  
17 Mr. Digiacinto, spoke to his other attorney who is handling  
18 the case for me, Majeek Shamardi (phonetic). We've done all  
19 we could to get these people up here. When the Court  
20 continued the case for two weeks, it kind of threw us into a  
21 spin to try to get new paperwork down there and recontact  
22 these people. What you have is some people that have work  
23 obligations and may have been reluctant just based upon the  
24 nature of the case. Maybe it's human, just the way human  
25 nature is, but they were reluctant to come up. Then to have



1 everything bumped another two weeks made them more  
 2 reluctant. The people who now tell the court down there  
 3 they don't have information, that's inaccurate. They do  
 4 have information. They may not be willing to share it with  
 5 the Court, but we've already essentially got the information  
 6 we need from them; and once they're compelled to come up  
 7 here, I think the Court's going to understand why they're  
 8 important.

9 THE COURT: But I'm telling you that the judge  
 10 will not compel them to appear unless she's satisfied  
 11 tomorrow. And the only way you can be sure that she will be  
 12 satisfied is if someone from here is down there confirming  
 13 that they have a ticket and their materiality.

14 The statute in California is very specific.  
 15 She can deny your request if it's just too much hardship on  
 16 them.

17 MR. BOSLER: I disagree that that's what the  
 18 law says down there.

19 THE COURT: That's what she says. I'm not a  
 20 judge in California. I'm just telling you what she thinks  
 21 her position is. If that's what she's saying and she's  
 22 concerned, I know she has told me also that she will accept  
 23 the faxed affidavit, but I think that this case is of such a  
 24 serious nature that someone from here should go, especially  
 25 since it's only a three-and-a-half-hour drive.

1 MR. BOSLER: None of the attorneys can give any  
2 more information than what the investigator has and can put  
3 down in the affidavit. So I mean I trust the Court will  
4 leave that decision to us. But I've spoken to  
5 Mr. Digiacinto. We're faxing stuff even as we speak,  
6 E-ticket information. That will all be in his office today.  
7 The tickets have already been purchased. We've been ready  
8 to go. We were ready to go at the first trial. The short  
9 continuance the Court allowed --

10 THE COURT: These people were not ready to go.  
11 You didn't even have me sign any exemplars for the first  
12 trial. When I gave you the two-week continuance, you had  
13 not asked for any out-of-state process. I didn't get any  
14 out-of-state process until the week before this trial  
15 started. So you weren't all ready to go.

16 MR. BOSLER: I'd ask the Court to look at its  
17 records because I was down there for hearings  
18 for the out-of-state process for the first trial.

19 THE COURT: For the second date.

20 MR. BOSLER: That's what I mean. I was down in  
21 San Francisco arguing pleadings.

22 THE COURT: The September 11th date?

23 MR. BOSLER: Yes.

24 THE COURT: For starting this trial on  
25 September 7th?

1 MR. BOSLER: Yes.

2 THE COURT: I signed out-of-state process  
3 request?

4 MR. BOSLER: I was down there with pleadings  
5 that were signed or stamped by you. I don't know whether  
6 there was a signature on there. It was a stamp.

7 THE COURT: Are you sure you didn't get them  
8 from the chief judge? You might have. I don't know. It's  
9 possible.

10 MR. BOSLER: Well, there were pleadings filed.  
11 We were down there arguing this matter.

12 THE COURT: Did you have declarations with them  
13 that day?

14 MR. BOSLER: Yes. Just to correct another  
15 misconception. There is declarations. The Court down there  
16 found that they were insufficient. Inasmuch as we didn't  
17 want to disclose our witnesses and what they had to say to  
18 the State, the declarations were maybe, in retrospect, maybe  
19 a little bit too conclusary. But there's information on  
20 those petitions saying this is why we believe this person is  
21 important. The Court wanted more. We're willing to submit  
22 that down there with affidavits. We're doing everything we  
23 can, Judge, to get these people here.

24 THE COURT: She was wrong when she said there  
25 were no declarations attached?

1 MR. BOSLER: I guess it would depend how you  
2 define the word "declaration." They're complete pleadings  
3 down there.

4 THE COURT: That's not what she thought.

5 How do you feel about starting the penalty  
6 hearing on Friday morning?

7 MR. BOSLER: I think that's probably the best  
8 way to go at this point, Your Honor.

9 THE COURT: Can you get your local witnesses  
10 here for Friday afternoon?

11 MR. BOSLER: Yes. We'll have some local  
12 witnesses available.

13 THE COURT: And now when have you compelled the  
14 people from Salt Lake to return?

15 MR. BOSLER: We gave them subpoenas for both  
16 days, Thursday and Monday. I would ask the Court not to ask  
17 those people to come on Friday just in case we can't get to  
18 them. We prefer to have those people return on Monday.

19 THE COURT: The State.

20 MR. GAMMICK: That's fine with us, Your Honor.

21 THE COURT: Okay. We'll start the penalty  
22 hearing then Friday morning at nine a.m.

23 MR. GAMMICK: We do have one other issue before  
24 we recess.

25 THE COURT: We'll do it Friday until the end of

1 business. Then we'll continue it over until Monday. And I  
2 have the original jury instructions that were provided for  
3 the first trial for penalty phase. I have not received any  
4 additional instructions. Do you want to go through those  
5 again and submit whatever you want me to look at?

6 MR. GAMMICK: Mr. Stanton has started on that  
7 already. We're going back through them to ensure that the  
8 ones you have now are the ones we want to use, or if we do  
9 have additional, we'll get them to you in the next day or  
10 two, and to the defense.

11 MR. BOSLER: Same with us. We're working on  
12 additional instructions.

13 THE COURT: So penalty phase instructions by  
14 4:00 p.m. on Thursday.

15 MR. BOSLER: Yes, Your Honor.

16 THE COURT: Your other matter, Mr. Gammick.

17 MR. GAMMICK: The defense has furnished us with  
18 a list of witnesses they intend to call. We've discussed  
19 four of them today. I would like to have this placed with  
20 the Court's records, please, if I may. These were also --  
21 there's been some mention about some others. It's our  
22 understanding at this time that they intend to call family  
23 members but they haven't been specified yet. We expect the  
24 ex-wife and we expect the aunt of the defendant. But if  
25 there are other family members, we have no idea who they

1 are. I understand from the defense they intend to call Dr.  
2 Thienhause, who I believe has appeared in this matter in  
3 court before. And then we also are expecting David and  
4 Vainga Kinikini from Salt Lake City; Mele Maveni, who did  
5 testify during the guilt phase, and Renee Peaua, who also  
6 did testify during the guilt phase.

7 If there are any other additional witnesses  
8 that the defense intends to call, we would like to have that  
9 information now so that we may prepare for the penalty  
10 phase.

11 MR. GREGORY: Well, I already told him we would  
12 give him the specific names of the family members after this  
13 hearing was over. We have them back at the office. So I  
14 have no problems with that.

15 THE COURT: Okay. So approximately how many  
16 witnesses do you think you'll be calling?

17 MR. GREGORY: 18 to 19 witnesses, Your Honor.

18 THE COURT: So do you think it will take two  
19 days?

20 MR. GREGORY: Well, we're hoping to be able to  
21 finish in one day, but it may well take two.

22 THE COURT: I have promised the San Mateo judge  
23 that Mr. Verna will be on on October 4th. I didn't know for  
24 sure that there was a problem with Mr. McGinn, but if that's  
25 part of the order, then make sure you consider those things

1 in your order of witnesses.

2 MR. GREGORY: We will, Your Honor.

3 THE COURT: And anything further?

4 MR. GAMMICK: Not from us, Your Honor.

5 MR. GREGORY: Not by the defense. Thank you.

6 THE COURT: Thank you. The Court's in recess.

7 (Recess taken at 1:53 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 28th day of  
September, 1999.

*Denise Phipps*  
DENISE PHIPPS, CCR No. 234  
CERTIFIED ORIGINAL  
at which time the original of this certificate is  
which was on file and of record in my  
office in said court  
DATE: \_\_\_\_\_  
JAMES HAYES, Clerk of the Second Judicial  
District Court in and for the County of  
Washoe, State of Nevada  
Witness my hand and seal of office  
this 28th day of September, 1999.

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