

ability to answer questions that were not expected that he actually knew the answers here; therefore, he was attempting to misrepresent his actual cognitive and thinking abilities.

BY MR. MCCARTHY:

Q So I had it right earlier when I asked perhaps he doesn't want to appear to be as bright as he really is?

A And that the evidence -- the span of the suppression sector is equivalent to, once again, tossing the coin 23 consecutive times and each time arriving at the incorrect answer when the expectation is one would arrive at a chance answer as was demonstrated in this plot and profile here.

MR. MCCARTHY: That's all I have.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. EDWARDS:

Q Doctor, you testified just a moment ago in the course of looking at page 6 of your report that you came to the conclusion that there was no significant impairment. Do you recall that statement?

A Correct.

Q Okay. Now, that's not exactly true, right?

1 If you look right before the underlying portion under
2 rational understanding on the ECST-R, the last few words
3 there are mildly impaired to normal range, right?

4 A I'm sorry, where are you at?

5 Q I'm on page 6, six lines from the top -- from
6 the bottom, I beg your pardon, and it indicates mild
7 impairment, right? I think you would agree that you've
8 made a finding that my client's --

9 A I still don't know where you --

10 Q Is my client mildly impaired in some respect?

11 A In some respects I concluded that he might
12 have been mildly impaired.

13 Q Mildly impaired in what ability?

14 A And his ability to assist his defense with
15 his counsel.

16 Q So there is some impairment?

17 A Mild impairment.

18 Q And there's a bipolar disorder with
19 psychosis, right?

20 A Yes.

21 Q Okay. ... Can these graphs over here be impacted
22 by drugs, performance on these secret questions?

23 A Yes, I would expect, however, a deterioration
24 in his ability to respond.

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Q Is that based upon medical knowledge?

A Well, if you're assuming the drugs are having a negative affect, then there's a degree of an impairment that, likely, would be reflected on the assessment here.

Q So we could have either super smart, so smart that he's able to do that --

A Uh-hum.

Q -- right? Or drug impaired or unlucky.

A If there was some impairment due to the medication, then he would not likely be able to answer with the consistency he responded to in the first sector of the evaluation, the most easiest items on the assessment, quite the contrary; he answered correctly the most difficult items on the assessment.

Q This first test, the ECST-R?

A Correct.

Q You gave us the questions in that, didn't you?

A Correct.

Q How come you can give the questions there and not the one in the VIP, the ones in the VIP?

A These questions are paraphrased, the VIP is a symbolic nonverbal test of a picture. I can't give you

a paraphrase of a picture.

Q So you're measuring cognitive ability with the VIP?

A The VIP is a measure of response style, how the individual approaches and the integrity that's used in carrying out his responses to the assessment.

Q And your conclusion is it's a remarkably sophisticated attempt at deception?

A I'm concluding that Mr. Vanisi made the attempt to purposely misrepresent his actual results.

Q And you also used the word sophisticated.

A Yes, I did.

Q And sophisticated implies high-end intelligence, right?

A Correct.

Q And you don't know what his IQ is?

A No, I don't.

MR. EDWARDS: Okay. I have no further questions.

THE COURT: Anything further?

MR. MCCARTHY: I forgot to have this marked and authenticated --

THE COURT: Okay.

MR. MCCARTHY: -- if you would? I don't

think it's admitted.

THE COURT: The original is provided to me,
counsel.

MR. EDWARDS: Yes, ma'am.

THE COURT: We have Exhibit D as Dr. Bittker's
original report. Do you all want Mr. Amezaga's report
marked next in order?

MR. EDWARDS: Yes, your Honor. That would be
fine.

FURTHER REDIRECT EXAMINATION

BY MR. EDWARDS:

Q Dr. Amezaga, the two charts that you have up
here, they differ from the ones that you've attached to
the back of your report; is that right?

A Yes, those are sample protocols.

Q Do you have any objection to us entering
those in the record, the two sample protocols?

A I can provide you with samples, yes. No, no
objection.

MR. EDWARDS: Terry?

MR. MCCARTHY: No, I think it's a good idea.

COURT CLERK: Exhibit E marked.

THE COURT: Exhibit E was filed in an original
when it was received in the department, so it's actually

marked as an exhibit and it has also a file stamp that was admitted as a document in the file. So just so the record's clear why it has a file stamp and an Exhibit E, but either way, I'm either admitting it one way or it's part of the permanent record.

(Exhibit E is marked and admitted into evidence.)

MR. MCCARTHY: I'm done.

THE COURT: Okay.

MR. EDWARDS: And your Honor, I've moved to admit these two additional pieces of evidence that will correspond to the hearing we've had today.

THE COURT: The clerk will mark those next in order.

MR. MCCARTHY: Is that all right with you, the ones that are actually taped to the board, we can have those?

THE WITNESS: Yes.

MR. MCCARTHY: Thank you. No objection.

COURT CLERK: Those will be marked F and G.

(Exhibit F & G are marked.)

THE COURT: And F is the sample and G is, actually, Mr. Vanisi's response.

MR. MCCARTHY: I think --

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MR. EDWARDS: Mr. Vanisi's response, your Honor, is attached to the report.

THE COURT: Right, but it says "SV" on there.

MR. EDWARDS: Does it?

MR. MCCARTHY: I think that means Siaosi Vanisi.

THE COURT: Right.

MR. EDWARDS: I guess I was moving to admit these two.

THE COURT: Well, decide which ones you want.

MR. EDWARDS: The ones that correspond to the presentation the doctor made.

MR. MCCARTHY: Okay.

THE COURT: The sample question and the different kinds of answers --

MR. EDWARDS: Right.

THE COURT: -- those are what you wanted?

MR. EDWARDS: Yeah. Mr. McCarthy.

MR. MCCARTHY: Sure. Sure. Why not.

THE COURT: So the sample question which is practice question number one will be marked by the clerk.

COURT CLERK: That's marked as Exhibit F.

THE COURT: And it's admitted. And then the

responses, types of responses.

COURT CLERK: Is G.

THE COURT: And that's admitted.

(Exhibit F & G are admitted into evidence.)

THE COURT: And then did you want the others
on the other side marked?

MR. MCCARTHY: I thought they were attached.

THE COURT: One is --

MR. MCCARTHY: Oh, okay.

THE COURT: -- Mr. Vanisi's responses. It's
attachment number four to the report.

MR. EDWARDS: So I guess --

MR. MCCARTHY: Figure 6 would be the --

MR. EDWARDS: Test interpretation out of
Chapter 7.

THE COURT: Was just a sample that he
testified about.

MR. MCCARTHY: Of a valid sample.

THE COURT: Let me see it.

MR. MCCARTHY: An example of a valid test.

THE COURT: Turn around so the doctor can see
it, please.

MR. MCCARTHY: I'm going to be Vanna White in
my next life.

THE COURT: They're talking about the one on your left.

THE WITNESS: That is a sample.

THE COURT: Of?

THE WITNESS: Of a valid profile of no particular individual.

THE COURT: Okay. That will be marked as --

COURT CLERK: H. And you said the one on the left?

(Exhibit H is marked.)

THE COURT: Left, your left, and the one on your right.

THE WITNESS: Is Mr. Vanisi's protocol.

THE COURT: Which is a blowup version of attachment four in your report which we've admitted. Do you want that one marked also? And F is admitted also?

COURT CLERK: No, we went to H.

THE COURT: H? Okay. F, G, and H are admitted, as well as E.

(Exhibit H is admitted into evidence.)

THE COURT: Anything further, counsel? Okay. Doctor, you may step down.

THE WITNESS: Thank you.

THE COURT: Do you wish to present argument?

MR. EDWARDS: Yes, your Honor.

THE COURT: Mr. --

MR. EDWARDS: Mr. Qualls will be presenting
the argument.

Thank you, Doctor.

MR. QUALLS: Thank you, your Honor. We're
dealing with two overlapping issues here. The first is
the standard of competence for Capital Habeas
Petitioners on post conviction review as we've cited
under the 9th Circuit case of Rohan.

And second, what has arisen as we've
previously indicated that it might is the effect of
Riggins versus Nevada on the instant case as far as
Mr. Vanisi's right to challenge his current forced
medication which requires an analysis of the effect of
his current medications in the Rohan context.

THE COURT: Usually -- I don't think that is
an issue before me right now. You're asking -- if I'm
understanding what you're saying, there's no issue with
regard to forced medications before the Court. The only
issue is whether or not he may proceed in the habeas
action based upon his mental state. And then you asked
for an additional consideration about whether or not he
could testify if you wanted him to testify, whether or

not he was competent, and I agreed to allow the doctors to analyze that. As far as I understand, those are the only two issues before the Court right now.

MR. QUALLS: And I believe the Court actually sua sponte added the his ability to testify or the difference between a truth and a lie.

THE COURT: It wasn't sua sponte, it came out of a request on behalf of the defense.

MR. QUALLS: But at any rate, I'll address your question, your Honor, which is, and this is jumping ahead a little bit, and the reason why I bring Riggins into the fold is because I think it's very much tied up in the competency issue, particularly if you look at the report and the testimony of Dr. Bittker. Dr. Bittker observed and evaluated Mr. Vanisi and that evaluation was based very much and had a lot to do with his -- and his findings had a lot to do with his medication. As a matter of fact, his final recommendations and conclusions were that something to the effect that the medications that he was on was inhibiting his competency and also possibly endangering his health. That is why I've kind of said that by necessity brings up the issue of medication.

We had a conversation in which I believe the

1 Court questioned the Court's authority to mandate
2 whether the medications could be changed, whether this
3 Court could order the prison to change his medication,
4 and I believe under the authority of Riggins if this
5 Court so decided it could decide that. It could, again,
6 decide that relative to a determination of competency in
7 this case.

8 Again, Dr. Bittker originally recommended that
9 what we do is change his medication and then revisit
10 this issue in 90 days, reevaluate him to see if the
11 change of medication had anything to do with his
12 competency, and so I think as a matter of necessity we
13 have to address a Riggins issue in the context of
14 competence under Rohan. Shall I proceed?

15 THE COURT: Go ahead.

16 MR. QUALLS: Okay. So the Court has the
17 reports and testimony of two professionals to weigh in
18 deciding these issues. The first was Dr. Bittker, as I
19 mentioned, the psychiatrist that gave us a report and
20 testified here. If the Court will recall, Dr. Bittker
21 found, number one, that Mr. Vanisi does not currently
22 have the requisite emotional stability to permit him to
23 cooperate with counsel or to understand the distinction
24 between truth and lying.

Further, Dr. Bittker makes multiple references to Mr. Vanisi's psychosis, and attributes his inability to distinguish between truth and lying to his incompletely treated psychotic thinking disorder. Also, Dr. Bittker's evaluation places considerable importance on Mr. Vanisi's current medications and their effect on his mental state.

In short, Bittker concludes Mr. Vanisi's current medications are not ideally suited to assist him in reestablishing competency. In making this finding Dr. Bittker considered Vanisi's treatment with 500 milligrams of Depakote and 50 milligrams of Haldol of two weeks, as well as other medications. And he also looked at the laboratory studies which indicate that his current medications could compromise Mr. Vanisi's health. Dr. Bittker considered the effect of the medications upon Mr. Vanisi's ability to communicate, for example, his bizarre effect and his feeling of being disconnected from himself. Bittker also opined that Mr. Vanisi's medications, particularly his Haldol, should be changed to do so, avoid dangers to his health.

Finally, that the negative effect of the medications, Bittker concluded the cognitive impact of bipolar disorder and the side effects of medicine

significantly compromise his ability to cooperate with counsel.

It's significant to note that Dr. Bittker did not find any evidence of malingering by Mr. Vanisi during the evaluation. That's despite the fact that in the previous evaluation years ago he actually did find evidence of malingering.

Additionally, Dr. Bittker found Vanisi's behavior to be considerably influenced by delusions and serious impairment of judgment.

Finally, Bittker testified that he thought it would be difficult if he weren't a psychiatrist to make sense of what he was saying.

Secondly, we have Dr. Amezaga, the psychologist who testified here today. His findings, of course, are markedly different from Dr. Bittker's. In considering Dr. Amezaga's report and his testimony, it's important to keep in mind that unlike Dr. Bittker, Dr. Amezaga is not a medical doctor and, therefore, could not take into consideration the medications and their full effect on Mr. Vanisi or evaluate whether proper medications were being administered. Dr. Amezaga admits in his report that majority of Vanisi's answers were limited to one- or two-word responses, but does not

take into account all of Vanisi's medications. Amezaga admitted that he might have been suffering from delusions of memory, but does not seem to figure into the conclusions. Amezaga did not distinguish between Mr. Vanisi was either unable or unwilling to maintain his concentration over a period of time. And again, he did not appear to consider or evaluate the appropriateness of his medication related to this factor.

Interestingly, Dr. Amezaga stated in the report that he found Mr. Vanisi to be malingering and yet at the same time he found, quote, no effort to feign or exaggerate psychiatric symptoms in order to suggest the possibility of incompetency. So it seems on the critical issue of competency, there was no malingering where that was concerned. In fact, Amezaga indicated that Vanisi may have been attempting to downplay his own psychosis in order to appear as someone who does not need the potent psychiatric medications he's now on.

Amezaga also opines that Vanisi has the ability to, at least minimally, communicate with counsel, but admits that Vanisi showed suboptimal attention and concentration during his testing.

Finally, as to his testimony today, Amezaga

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reviewed the records from NSP but not any of the records from the Ely State Prison, which much of this -- much of the current motion was predicated by. He was, again, not aware when his medications were administered relevant to his interview with Mr. Vanisi. He admits that Vanisi's denial of psychotic symptoms may be a misrepresentation, and although I'm paraphrasing here, in essence, his testimony clarifies that Vanisi was not faking it when he was acting crazy, but attempting to appear, actually, more normal than he was.

As to the VIP assessment, Amezaga attributes a grand sophistication to the wrong answers that Vanisi gave when it could be, as was mentioned, that Vanisi simply is not as smart as Dr. Amezaga thinks he is or is a really bad guesser. Amezaga admits that the three factors that he used to determine the legitimacy of Vanisi's psychosis were each speculation and not based upon actual evidence.

Bottom line here is that there are many inconsistencies and speculations given by Dr. Amezaga. He is unable to judge the appropriateness of Vanisi's medication as Dr. Bittker was, so in conclusion as to the evidence to be weighed, it must be acknowledged that the medications do play a significant role in the

determination of competence as defined by Rohan.

Additionally, because we only have one expert considering the role of the medications determining competency, that expert's opinion must necessarily be weighed heavier where that is concerned than the other.

Accordingly, we argue that the great weight of the evidence in this matter shows, number one, that Vanisi does not have the present ability to communicate rationally and adequately assist counsel under the Rohan standard. But this inability would cause a structural error if we were forced to go forward with the proceedings in this case. And as argued previously, Rohan recognizes that could be done habeas proceedings with the petitioner. Rohan recognizes a due process right to competence which exists beyond trial, and Rohan recognizes that right is connected to the Sixth Amendment, right to counsel.

Finally, Rohan recognizes the Eighth Amendment ban on the execution of the insane and, again, largely at issue here is the importance to communicate rationally with counsel. Without the ability to communicate rationally with counsel the meaningful assistance of counsel guaranteed under the Sixth Amendment is meaningless.

Now, as to the issue of forced medication in Riggins, which I have explained is sort of a necessary consideration here, the U.S. Supreme Court in Riggins recognized a Constitutional liberty interest at stake. In short, the high court found that in the order to forcibly medicate the State must show both, one, that the medication was medically appropriate, and two, that less intrusive alternative means were not sufficient.

In this case, again, based upon Bittker's findings, it appears that his current medications are neither medically appropriate or -- well, certainly they're not medically appropriate, perhaps, it's yet to be determined whether there are any lesser means of controlling Mr. Vanisi's behavior. Therefore, in conclusion, the weight of the evidence favors a finding that Vanisi is not competent to assist counsel in these proceedings and that his medications are not appropriate under Riggins and must be adjusted for the sake of his health and for a finding of competence under Rohan for him to continue.

THE COURT: Thank you. Mr. McCarthy.

MR. MCCARTHY: Your Honor, last things first.

Until this moment I never heard any motion to modify the medication medical regime. Had there been such a motion

I would have suggested that it should be brought in the county where Mr. Vanisi is confined in a court with authority to inquire. This Court is authorized to inquire into whether this actually could go forward, whether Siaosi Vanisi and persons like him are authorized, if they are allowed to seek relief from their conviction.

My primary position, as I've mentioned before, your Honor, is that the question of his competence is of no legal significance. Rohan is incorrect. It makes no sense at all. Other cases have held to the contrary, but I will say this. I have come along in some respect. I now agree it's a good idea. I have come along to where I agree it's a good idea that we have a record now. In particular, I notice that both the experts seem to agree that Mr. Vanisi is competent to be executed. He's aware of his condition. He's aware he's in prison. And he is aware the State proposes to execute him. Might be kind of handy to have that kind of record in the future so anyway, no, I don't think it's of any legal significance. I now think it was a good idea to have this hearing, so.

And the Court may become somewhat surprised to find I think that both the doctors used the wrong

standard. Both Dr. Bittker and Dr. Amezaga agree that Mr. Vanisi, if competent, is relevant at all. He understands the procedures, he understands why he's in prison, he understands about court. They differ only on one question and that is his ability to assist his attorneys. And your Honor, that's where I think they're running into a problem. That's a criminal standard for competency, a standard applied to those when someone is an accused person required to defend himself. This is not a criminal case any more. This is a civil case where the question is whether Mr. Vanisi can be heard. If he is incompetent, then he is not allowed to litigate on his own behalf. That's why, by the way, why I suggested it would make some difference whether he is incompetent because an incompetent prisoner like a child, like a juvenile delinquent, can, indeed, be heard, but I think this court could hear it, but as I suggest, the appropriate standard would be the civil standard.

And there is a definition, your Honor, in NRS 159.019, and I know the Court's familiar with it. And it has to do with governing one's affairs, taking care of one's affairs, which Mr. Vanisi, obviously, can. Evidence before you has him complaining about being

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overcharged for dental care, things like that. But that civil standard has nothing to do with one's ability to assist one's attorney, so instead the question asked whether you have the ability to decide to litigate.

Now, I have -- you know, I ran across something this morning and -- perhaps not. I don't have the citation, your Honor, actually, I couldn't find it, a memorandum decision from Supreme Court, U.S. Supreme Court, Reece versus Peyton in 1966, and was somewhat surprised to find it, I wasn't looking for that, where a Habeas Petitioner was alleged to be incompetent and the Supreme Court has remanded for determination. What made it unusual is that the Habeas Petitioner never had directed his attorneys to withdraw his petition. Supreme Court said what is of interest is whether he has the authority to not litigate, whether he has the authority to withdraw his petition. It seemed to say they imply that competent or not, the case can go on, but if he's incompetent, then -- or if he's competent, then and only then can he withdraw his petition. Of course, it's just a memorandum decision and remanded for -- to have the district court evaluate the competency so I don't know if it's of any great precedential value, but it seems to make sense to me. So if we assume

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competency is at issue, and assuming further that we should use a criminal standard of competency, which I don't think so, then we have other issues.

First is the obvious, what you've been confronted with already, you've got to choose between these two experts, the expert that conducted objective tests and the expert who chatted with Mr. Vanisi. I don't mean -- I know a clinical interview is not just chatting, but we did have one person, one witness explain the advantage of one procedure over the other. And it sounds to me, I don't know -- but I don't know, your Honor, that it is really necessary to do that. Frankly, I don't -- I don't even know if Dr. Bittker really expressed the opinion that Mr. Vanisi is incompetent. I mean, he certainly did in summary, but from the last hearing, I noticed a couple of things, on page 32 of the transcript, he testified in his opinion Mr. Vanisi can't, quote, fully cooperate with his attorneys. I don't know that's the right standard. And I know in the argument just a few moments ago, Mr. Qualls mentioned some things that were, like, suboptimal, not the best. I don't know that that's the correct standard, either. We can find the correct standard. We'd have to show that, basically, he can't

help.

Now, Dr. Amezaga says he can, but I'll tell you I think Dr. Bittker said so, too. At page 24 in response to a question, Dr. Bittker testifies that yes, indeed, he has the cognitive ability with sufficient motivation. If he is asked a question and he knows the answer, he has the ability to retrieve that information and to express it. Dr. Amezaga agreed with that. So what we have, taken in summary, is Dr. Bittker pretty much expresses the same opinion that Dr. Amezaga did, that he may be unwilling to do that. That is not the correct standard. Even under criminal standard, the Court must determine if it's relevant, if mental disease or defect, if by virtue of mental disease or defect the defendant lacks the capacity, the ability to consult with his attorneys. Dr. Amezaga very clearly thinks that Mr. Vanisi has the ability to consult with his attorneys, and furthermore, based on what Dr. Bittker said at page 24 of the transcript, it appears that he thinks so, too.

Now, what's holding him up, according to Mr. Bittker, is an attitude, a nihilistic delusion, a belief that nothing matters, that -- your Honor, that's not a diagnosis of a mental disease or defect. It's a

diagnosis of an attitude. Dr. Bittker says it's not in the DSM and Dr. Amezaga says it's not in the DSM and Dr. Bittker said he had to look it up in -- in a dictionary to give meaning to the words, but it's not a diagnosis of a mental disease or defect. He has mental diseases and defects. Everyone seems to agree with that. You know, some years ago Judge Gamble down in Douglas County ruled that a fellow was goofy but competent, and I think this was appropriate in that case and I think Dr. Amezaga expressed that sentiment here today. They're not the same thing. He has mental diseases and defects, but they don't -- that is not what prevents him, if anything does, that's not what prevents him from being able to assist his attorneys. Instead, what prevents him from being able to fully cooperate is his unwillingness, his belief that nothing matters, but Dr. Bittker says a sufficient mot -- with sufficient motivation I can reach down inside him, pull up an answer and express it. That's competence.

Now, that he may lack that motivation in that doesn't make him incompetent. I think that Dr. Bittker asked the wrong question. He seems to have been asking himself whether this would be easy. I think Dr. Amezaga had that part right. No, it wouldn't be easy. This is

gonna take some degree of patience, dedication and ability on the part of Mr. Vanisi's lawyers to extract his assistance from him. Fortunately, he has two lawyers who have that ability, that dedication and that patience.

I suggest to you, your Honor, that the question of competence is of no legal significance. If it is significant, the proper standard is a civil standard. If the proper standard is a criminal standard, that both experts agree he has the ability to assist his attorneys and both experts also agree that to the other conditions are met, therefore, this Court ought to declare that Mr. Vanisi is now presently competent.

THE COURT: Thank you. Anything further, Mr. Qualls?

MR. QUALLS: Very quickly, your Honor. Obviously, we argue the points that competence is not significant. Earl John says that competence is significant and that is our argument for the Court today. Our argument is also that a civil standard is not relevant and that is not the terms under which, or the law under which we have brought the current motion. It is, as Rohan recognizes, a federal Constitutional

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right. This is not a civil case in the sense that we're dealing with the competency of a child to testify. What we're dealing with is a capital punishment case in which a person's federal Constitutional rights to life, liberty and due process are at stake. Therefore, the standard should be the standard that's set forth in Rohan, and it focuses specifically upon the ability to communicate rationally and meaningfully assist counsel. Therefore, and as we have argued, the 9th Circuit in its interpretation of federal Constitutional rights is controlling on this state and other states, and that's the standard that we should use.

Additionally, very quickly, Mr. McCarthy speculated as to what Dr. Bittker may have meant in his testimony. One thing that we do know is what his written report says, which is that Mr. Vanisi does not currently have the requisite emotional stability to prevent him -- excuse me, I've screwed that up again -- to permit him to cooperate with counsel or to understand fully the distinction between truth and lying.

Again, he also states that Mr. Vanisi's current medications are not ideally suited to assist him in reestablishing competency, that, again, implicit in itself is that he is not competent now, he needs to

reestablish it.

Finally, Vanisi's mental disease that prevents cooperation is not a matter of motivation or willingness to cooperate, and I think that's made pretty clear in Dr. Bittker's report. So based upon that, this Court should follow Dr. Bittker's evaluation and recommendations and find that he is not currently competent to assist counsel and find that either his medication needs to be reevaluated and changed, or if this Court still finds that it does not have the authority to do that, that that is a necessary component of his competency to move forward.

THE COURT: First with regard to his medications, that motion has to be brought -- you have to serve the prison, you have to give them an opportunity to be heard, bring whoever they want to bring to hear that. You can't just in a hearing without giving any notice to medical staff at the prison say change his medication.

Secondly, it probably is not appropriate to bring it before me; it's where he's being housed that is appropriate. It's like all prisoner litigation that deals with the conditions under which he is confined. It becomes relevant to me only if there is an issue of

his competency to be executed and forced medication is used attenuate to that, so it's only in the -- the only time I will be hearing such an issue is if we're at the point of an execution order and you are requesting that that execution order not be entered because of some issue with regard to medication or his competency at that time. So this is not the court to litigate that issue, and if you think it is important to litigate that issue, you need to do it wherever he's being housed.

Second. I know that State has opposed the Rohan case and the holding of the Rohan case, and has argued the jurisdiction decisions that this Court is cognizant of the 9th Circuit's ruling, and until it is modified, we must follow whatever that ruling is. If it is a ruling with regard to United States Constitution as it applies to cases coming out of the 9th Circuit, Nevada is in the 9th Circuit, therefore, we order these hearings so that it will be appropriate.

I do not contest the State's position that, in fact, somewhere down the road Rohan might not be overturned and it might not be overturned both in the 9th Circuit as well as the Federal United States Supreme Court. But today, it isn't and so we ordered the competency hearings.

That gets us to the question of whether or not under the decision and the competency evaluations I have before me the defendant is able to assist counsel in a manner that counsel's appointment doesn't violate the right to have counsel and proceed. And it's the Court's opinion at this time, after having heard both Dr. Bittker and Dr. Amezaga, and seeing their written reports and the prison documents that have been submitted by the defense, and reading those medical records, as well as the history of this case and all information, and lastly, my opportunity to observe Mr. Vanisi during these hearings and his reaction to certain things, when a joke is made, Mr. Vanisi cracks his smile. He seems to be connecting to the proceedings. All of that put together, I find that Mr. Vanisi is competent at this time to proceed. I do find him to be competent to assist counsel. He understands the -- where he is, what he's doing, and what the possibilities are with regard to this litigation.

I am not going to get into a debate about whether it's a civil case or a criminal case. Clearly, in post conviction with death penalty cases, we have both components. The civil law controls, procedurally,

in the State of Nevada on habeas. However, the federal Constitutional law with regard to death penalty cases requires that you have meaningful assistance of counsel, so under either standard, however, Mr. Vanisi is competent to proceed.

Now, I know defense says the Court sua sponte asked about the competency to testify. It's not my memory as how it came up. I think counsel specifically prior to argument said even if he is -- even if it is a civil case, even if he doesn't have to be competent, how can we proceed and put him on the witness stand? And I think that's how it came up that we went forward and asked for a competency with regard to Mr. Vanisi's ability to testify, and I think it came up, in the Court's opinion, pursuant to an implication at least, that the defense may at some point want to call Mr. Vanisi as a witness in the post conviction relief hearing that needs to take place in the near future. There is no indication, however, at this time that Mr. Vanisi is incompetent to testify. The Court is -- has before it evidence that he does understand the difference between a truth and a lie and if he chooses to tell the truth he can do so. He's even specifically made comments to Mr. -- Dr. Amezaga about his not ever

falsifying being sworn under oath which directly relates to his previous stance with regard to his religion and his strength of religion, and I think it's clear that he understands whether or not he's to tell the truth or a lie on the stand. He understands the difference and he can testify, so I don't think that's an issue based on the evaluations I have before me. Therefore, we may proceed directly with concluding the writ that we have pursuant to the pleadings that have been filed in this case. I don't know how long and what you want to do with regard to that. We stopped everything because of the evaluations.

MR. MCCARTHY: Your Honor, if I may?

MR. EDWARDS: I'd like to be heard on this too, your Honor.

MR. MCCARTHY: At this point there are no claims pending before the Court, you may recall that. It was a bare bones petition on file that says nothing and that was filed a little over three years ago, January 18th, 2002. The 30 days to supplement has passed, and then again, and again, and again for the last three years. On November 22nd, last year, this Court directed counsel to be prepared to file a supplemental petition today at the close of this

hearing. I'm ready to go forward.

MR. EDWARDS: Well, your Honor, I'd like to hear that exact thing from the record. That's not exactly what you said. You said -- I may tell you at the next hearing if I deny this Rohan claim when to file the petition, what I'd ask is you order us to file it within 30 days of today. Obviously, we've indicated that this determination given the state of the law here in Nevada may need some review by the Nevada Supreme Court, and I think the way to do that, when this interlock -- on this interlocutory basis through extraordinary writ petition which wouldn't take that long to compose and file. There's no time limit on it so we should do that right away. In a way, I'm asking that 30-day window, so if there is injunctive relief from the Nevada Supreme Court I haven't prejudiced my client's position by filing something pursuant to your order. Do you understand what I'm saying?

THE COURT: I understand your request.

MR. EDWARDS: Okay.

THE COURT: I don't remember not -- Mr. McCarthy has a transcript from our prior hearing and I think he's prepared to maybe --

MR. MCCARTHY: Your Honor, I probably should

have wrote down what page it was so it will take me a minute.

As to the possibility of injunctive relief, your Honor, given the Court's ruling, I'd say that is so remote that the Court should discount it. Had this Court said Mr. Vanisi is incompetent and we are proceeding, that is something the Supreme Court might look into. You made a factual finding about the weight of the evidence. That seems to be the end of it, and I can't imagine the Court intervening, so if you'll give me a moment, your Honor, I will try to look up the appropriate page where this Court directed when the supplement should be filed. It will just take me a minute.

MR. EDWARDS: And I think we can set an evidence hearing date, too, your Honor. Now, I'm not opposed to that at all, in terms of getting the pleading in. I just think there's some irreparable harm if it turns out that the Nevada Supreme Court figures that the proceedings should be stayed on the basis of Rohan.

Now, granted we're not dealing with you rejecting the Rohan decision as much as we are your discretionary factual determinations regarding competency that will become an issue both, you know, in

this extraordinary writ petition and maybe in a later appeal, but if I file the supplement to the petition right now, I'm acknowledging the propriety of that determination, okay, that it's okay to go forward with a client who has incompetency issues. Do you understand what I'm saying?

THE COURT: You always have a right to appeal the decision with regard to my determination of competency, but you aren't going to be able to delay the proceedings based upon your belief that I reached an inappropriate factual determination. In other words, if I'm wrong and the Supreme Court wants to reverse me, then the whole thing would be reversed and we'll be back to square one anyway.

MR. EDWARDS: Well, yes and no, your Honor. I mean, if the Supreme Court says you're wrong about this, then they'll stay proceedings in accordance with Rohan.

THE COURT: Well, and if I've made decisions, they'll reverse those decisions. If I was right, if I can't -- if I was wrong in compelling you to move forward because Mr. Vanisi, in fact, was incompetent and my findings are wrong, then they will -- then whatever we do while he's incompetent, if the Supreme Court tells me I was wrong, which I kind of agree with Mr. McCarthy,

I think it's a pretty long shot, those things are reversed, as with any other case, the Supreme Court reverses, so I don't understand the issue that you're raising. Mr. McCarthy.

MR. MCCARTHY: Your Honor, page 29 on November 22, this Court said, "I'm not going to make you file anything, but I am ordering you to prepare it in discussing the supplement, so that depending on my ruling at the next hearing, you'll be prepared to file it immediately". That sounds to me like get it ready. I'm ready.

THE COURT: Okay. I'm going to take your motion, your request as a motion to stay my decision pending your going to the Supreme Court for a writ. I'm going to deny that and I will allow you to go forward with the oral motion, but my denial has to be in writing so you have to prepare that if you want to go to the Supreme Court on it. And then you can go to the Supreme Court if you want, but in the interim I'm going to order that you file the petition on Tuesday by 5:00.

MR. EDWARDS: Very good, your Honor.

THE COURT: Okay?

MR. MCCARTHY: Thank you, your Honor.

THE COURT: And now counsel, do you want to

set it in open court now or do you want to wait and get together?

MR. EDWARDS: Your Honor, if we could set an evidentiary hearing?

THE COURT: Mr. McCarthy will have 45 days to respond. And then you will have a certain period of time, maybe -- no, you don't get any response. No.

MR. MCCARTHY: That's a complaint and answer, that's pretty much it.

THE COURT: Right. So we're looking at April. Is that what we're looking at? And Mr. McCarthy, I'm going to ask that you prepare order consistent with my oral findings here today, so that we can have that in writing also.

MR. MCCARTHY: I will do that.

THE COURT: Thank you.

MR. EDWARDS: Could we have that Tuesday by five, too, your Honor?

THE COURT: My order?

MR. EDWARDS: Is that all right?

THE COURT: It has to be done so you can appeal from it.

MR. EDWARDS: Right.

MR. MCCARTHY: Okay.

THE COURT: We're looking at sometime after
the first of April, so counsel, do you have any trial?
Mr. Edwards, do you have any trials set?

MR. EDWARDS: Your Honor, I have a case in Las
Vegas, but I believe it's the end of April.

COURT CLERK: Counsel, you originally set this
for two to three days.

MR. EDWARDS: I think so.

COURT CLERK: Is that still the case?

MR. EDWARDS: Yes.

COURT CLERK: May 2nd at nine a.m.

MR. EDWARDS: Your Honor, on May 3rd at 9:30 I
have a brief federal sentencing, so if we can -- I have
nothing around either side of it, though.

THE COURT: We can work around that, I'm sure.

MR. EDWARDS: That date's fine.

THE COURT: When you say brief, we're not
talking about Judge Reed.

MR. EDWARDS: No, your Honor, no, no.

THE COURT: Okay.

MR. EDWARDS: I've been through those, too.

THE COURT: Okay.

MR. MCCARTHY: Guidelines don't apply anymore
and there, actually, is a such a thing as a brief

federal sentencing.

THE COURT: Okay.

MR. MCCARTHY: What time?

THE COURT: We can work around that one, sure.

MR. MCCARTHY: What time we talking?

MR. EDWARDS: Nine a.m.

THE COURT: We'll start Monday morning at nine a.m. and then we'll adjust Tuesday and, if necessary, Wednesday's calendar depending on this hearing that Mr. Edwards has. And we'll probably do a regular criminal calendar on that Tuesday morning also. Anything wrong with that date?

MR. EDWARDS: No, your Honor.

THE COURT: All right.

MR. EDWARDS: Thank you.

THE COURT: Thank you, counsel. Court's in recess.

(Discussion held off the record.)

THE COURT: The record should reflect we're back on the record and Mr. Vanisi is still present with counsel. The State's represented by counsel.

Was there something additional?

MR. MCCARTHY: Yes, your Honor. I don't know if you recall, when Dr. Amezaga was testifying he took

one of his charts down.

THE COURT: Yes.

MR. MCCARTHY: We forgot to ask that that be
admitted. I think the clerk has marked it.

COURT CLERK: Exhibit I.

MR. MCCARTHY: And we ask that that also be
admitted.

MR. EDWARDS: No objection.

THE COURT: That is identified as?

COURT CLERK: Exhibit I. It's a nonverbal
subtest.

MR. MCCARTHY: That was a sample of a
suppression, I think, right? Invalid/suppressed sample.

THE COURT: Okay.

MR. MCCARTHY: Right?

THE COURT: Is that your understanding,
Mr. Edwards?

MR. EDWARDS: Yes.

THE COURT: Okay. Exhibit I is admitted.

(Exhibit I is marked and admitted into
evidence.)

THE COURT: Anything else?

MR. EDWARDS: No, your Honor.

MR. MCCARTHY: That's it.

THE COURT: All right. Thank you. Court's in recess.

(Proceedings continued until May 2, 2005, at 9:00 a.m.)

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STATE OF NEVADA)

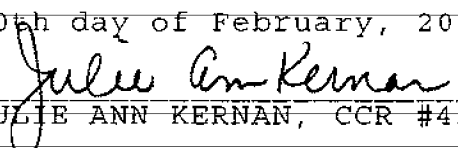
COUNTY OF WASHOE)

I, JULIE ANN KERNAN, official reporter of
the Second Judicial District Court of the State of
Nevada, in and for the County of Washoe, do hereby
certify:

That as such reporter I was present in
Department No. 4 of the above court on Friday,
February 18, 2005, at the hour of 1:45 p.m. of said day,
and I then and there took verbatim stenotype notes of
the proceedings had and testimony given therein upon the
Report on Psychiatric Evaluation of the case of SIAOSI
VANISI, Petitioner, vs. STATE OF NEVADA, Defendant, Case
No. CR98P0516.

That the foregoing transcript, consisting of
pages numbered 1 through 100, both inclusive, is a full,
true and correct transcript of my said stenotype notes,
so taken as aforesaid, and is a full, true and correct
statement of the proceedings had and testimony given
upon the Report on Psychiatric Evaluation of the
above-entitled action to the best of my knowledge, skill
and ability.

DATED: At Reno, Nevada, this 20th day of February, 2005.


JULIE ANN KERNAN, CCR #427

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 50607

District Court Case No. CR980516

10

FILED

JUL 30 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingersoll
DEPUTY CLERK

REMITTITUR

TO: Howard W. Conyers, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: July 19, 2010

Tracie Lindeman, Clerk of Court

By:

Deputy Clerk

A. Ingersoll

cc (without enclosures):

Hon. Connie J. Steinheimer, District Judge
Attorney General/Carson City
Law Office of Thomas L. Qualls, Ltd.
Washoe County District Attorney
Scott W. Edwards

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on 7-20-10.

Howard W. Conyers
District Court Clerk
HOWARD W. CONYERS



SA02160

10-18131

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 50607

District Court Case No. CR980516

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 20th day of April, 2010.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "Rehearing denied."

Judgment, as quoted above, entered this 22nd day of June, 2010.

IN WITNESS WHEREOF, I have subscribed my name and affixed
the seal of the Supreme Court at my Office in Carson City,
Nevada, this 19th day of July, 2010.

Tracie Lindeman, Supreme Court Clerk

By: _____

Deputy Clerk

A. Ingersoll



SA02161

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

Electronically Filed
Jan 14 2015 12:30 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

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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 Q Okay. And how about during this eval, this
2 assessment that you performed?

3 A Well, I don't think that he was as forthcoming
4 as I would like him to be; but he did not advance to me
5 symptoms in an effort to manipulate me, I believe. I
6 believe he more likely attempted to close off any
7 transparency so that it would be more difficult for me to
8 understand his pathology. But, no, in common terms I don't
9 think he was faking it when I examined him at the last exam.

10 Q Your report indicates, quote, Mr. Vanisi did
11 not seem to fully capture the significance of being
12 transparent with his defense counsels. Is that right?

13 A Yes.

14 Q What do you mean by that?

15 A I don't think he fully understands that in
16 order for you to assist him that you need to understand what
17 went on with him in his inner life as you're attempting to
18 proceed with his appeal. I think you are still perceived as
19 an instrument of the State and irrationally so. So there's
20 very little that he will disclose about what went on. I can
21 acknowledge that there may be rational reasons for him not
22 doing this. It would make sense, one would say, if this was
23 prior to his initial conviction. But it isn't making a
24 great deal of sense right now.

25 Q You also found that Mr. Vanisi possess what you

1 call manic entitlement. Can you explain what that is?

2 A I think it was demonstrated as he described to
3 me what went on with him in Ely. He did not do well with
4 the constraints of being incarcerated. He believed that he
5 was entitled to wear traditional garb and attempted to
6 assume that when wearing, I guess, some sort of sheet or
7 gown, was outside for a full 24 hours from my understanding.
8 He was somehow outside of his cell or outside the wall for
9 about 24 hours during that time where he was just wanting to
10 do what he wanted to do. He didn't fully comprehend that,
11 yes, as an incarcerant, as somebody who's been convicted of
12 a crime, he needs to remain and conform to the expectations
13 of the institution for his safety and the safety of other
14 inmates. He had some insight into that. What he said was
15 that the medication allowed him to get control of this
16 impulsive aspect of himself. So that was the positive
17 aspect of taking medicine. The negative aspect was he would
18 -- he explained that he just could not access what he was as
19 a person. He was not the same person with the medicines as
20 he was off the medicines.

21 Q In your diagnosis on Axis 5 you indicate his
22 behavior is considerably influenced by delusions and serious
23 impairment and judgment.

24 A Yes.

25 Q Is that right?

1 A Yes, and I think that's part of the
2 entitlement.

3 Q And your recommendation for Mr. Vanisi is that
4 he have his medication altered. And is that with the
5 prospect of him returning to a state of competency?

6 A I believe that if he were placed on a trial of
7 newer generation medications, particularly those medicines
8 that are less likely to aggravate his problem of modest
9 obesity, the new generation of medicines would allow him to
10 think more clearly, could stabilize his mood without
11 promoting excessive sedation.

12 Q Did you talk to any prison medical personnel
13 about this recommendation?

14 A No, I did not. At the time when I visited the
15 prison, I didn't have access to personnel. I spoke to a
16 nurse, and I reviewed the chart. But, no, I have not had a
17 dialogue with any prison personnel.

18 MR. EDWARDS: Thank you, Dr. Bittker.

19 No further questions, your Honor.

20 THE COURT: Counsel.

21
22 CROSS-EXAMINATION

23 BY MR. MCCARTHY:

24 Q Dr. Bittker, when you examined Siaosi Vanisi,
25 he was oriented to person, place, time?

1 A Yes, he was.

2 Q He knew who he was, where he was, why he was?

3 A He knew who he was, where he was. I'm not sure
4 if we fully understand the why he was.

5 Q In the metaphysical sense do any of us?

6 A Yes.

7 Q He was -- you indicated that you were not so
8 sure -- I think you said not so sure about the question
9 about whether or not he was suffering any hallucinations?

10 A I'm sorry, what did you say now? "Not so sure"
11 is not something I would put in a report.

12 Q No. A few moments ago on direct examination
13 the question of whether he was suffering hallucinations --

14 A I said he denied -- what I believe I said was
15 he denied the presence of perceptual distortion. But
16 without greater transparency, I am uncertain as to whether
17 or not that is true; and I have my doubts.

18 Q Okay. What did you do to determine if your
19 doubts had validity?

20 A Without adequate cooperation with Mr. Vanisi
21 and without greater transparency, there's very little that I
22 could do. I did not administer projective tests, as a
23 psychologist might. On the other hand, the projective tests
24 also requires some level of transparency.

25 Q Did he demonstrate to you that -- did he give

1 you any reason to believe that he was in fact hearing voices
2 or seeing things?

3 A Certainly when you start talking to Mr. Vanisi
4 about his sense of God and in that portion of the interview,
5 there was a fragmentation of his thinking and an
6 expansiveness. And he would say within seconds statements
7 such as "I don't believe in God. But then again, God
8 pervades everything in my life." There was this what you
9 might -- you, given your level of education, might consider
10 this Jungian thinking; but that's not rational thinking.
11 That is much more likely a positive sign of psychotic
12 ambivalence.

13 Q And how would you distinguish that from the
14 ordinary, run-of-the-mill agnosticism?

15 A The distinction is the degree to which God he
16 believes pervaded his life. And he went on. If you're an
17 agnostic, you say "I don't know" and it stays that way. He
18 was perseverating about this issue for several moments
19 during our interview about God, about the afterlife. One
20 would say, Well, you know, that might make sense for
21 somebody who's confronting the death penalty. On the other
22 hand, the frequency with which he switched back and forth on
23 this issue and the fragmentation of his thinking, the
24 derailment of his thinking is a much more important sign of
25 psychosis than is the sign of perceptual distortion.

1 Q Unsure of his beliefs?

2 A Beg your pardon?

3 Q He's unsure of his religious beliefs?

4 A Yes.

5 Q He's also unsure of the existence of an
6 afterlife?

7 A All of us can share that. We all -- unless you
8 have come back from a near-death experience, it's very
9 difficult to speak of that. However, those of us who have
10 that level of ambivalence don't show the same level of
11 fragmentation of thinking that Mr. Vanisi demonstrated in my
12 interview.

13 Q It would be difficult to carrying on a
14 conversation with Mr. Vanisi?

15 A I actually didn't find it that difficult to
16 carry on a conversation with Mr. Vanisi. I think it would
17 be difficult, if you weren't a psychiatrist, to make sense
18 of what he was saying. And even as a psychiatrist, it is a
19 challenge to attach consensually validated meaning to what
20 he is saying, something that you and I can agree on this is
21 what the guy meant.

22 Q Okay. Now, let's see. What is a nihilistic
23 delusion?

24 A Nothing matters, doesn't make any difference.

25 Q And is he wrong?

1 A To the extent that he's curated it, yes.

2 Q Is there something called cotired(ph) syndrome?

3 A Cotired syndrome?

4 Q Yeah. Are you familiar with that?

5 A Tell me about it.

6 Q The nihilistic delusion that one no one longer

7 exists or is dead. Does that sound familiar?

8 A The eponym I don't know, but I can understand

9 what you're talking about.

10 Q Apparently a term not used anymore?

11 A Well, you started it out; so we've now

12 resurfaced the use.

13 Q Does Siaosi Vanisi, as far as you can tell,

14 suffer from that?

15 A No.

16 Q He doesn't believe he's dead?

17 A No.

18 Q And he's able to -- you know, I was wondering

19 in the materials that you read prior to or after your

20 interview with Mr. Vanisi, did you see where he complained

21 of a toothache?

22 A I don't recall.

23 Q If he were complaining of a toothache and he

24 asked to, therefore, see a dentist, would that have --

25 that's not irrational, is it?

1 A That's not irrational, but a psychotic person
2 can do that.

3 Q All right. In what ways then would his
4 problems interfere with the care of his ordinary affairs?

5 A Well, I think as I discussed earlier under
6 direct examination, he isn't fully able to integrate his
7 relationship with an institution such as a penal
8 institution. He's entitled; he's a Tongan; he doesn't need
9 to comply. Well, you could say he's just a hard case. But
10 the other part of that is with the frequency with which that
11 occurs one would say is a reflection of a manic psychosis.

12 Q The frequency with which it occurs among the
13 death row population, do you find a disregard for prison
14 rules as unusual on death row?

15 A Having not interviewed more than, I think right
16 now, a half dozen death row inmates, I cannot respond to
17 that at any level of expertise.

18 Q A general disrespect for authority, is that
19 uncommon in the prison population?

20 A No, that's not. However, the extent to which
21 that was shown -- one can get into a fight, one can be
22 resistant to authority. But does one spend 24 hours outside
23 wearing a gown? I don't think so.

24 Q That's pretty unusual?

25 A I think that is at the level of what one might

1 consider as bizarre behavior.

2 Q Were you struck at all by the fact that he was
3 allowed to do that?

4 A I didn't know the circumstances. I didn't see
5 the report.

6 I should say that the significance of that even
7 he understood was bizarre, which is one of the reasons he
8 volunteered it to me.

9 Q Right. He volunteered that? You didn't ask
10 about it?

11 A I believe the context was when he was concerned
12 about medicine. I was asking him how the medicine helped
13 him and what was his concerns about the medicine. This is
14 when that came up.

15 Q You and Mr. Vanisi discussed his prior
16 malingerin, did you not?

17 A Yes.

18 Q And didn't he explain to you that he was taking
19 advice from amateur lawyers on his cellblock?

20 A Exactly this term.

21 Q Did it seem unusual to you that he could take
22 legal advice from someone?

23 A No.

24 Q Have any reason to believe that he couldn't
25 take legal advice from a more experienced attorney?

1 A I believe he could take legal advice from a
2 more experienced attorney; but as it relates to the issues
3 of his appeal and his guardedness with his more experienced
4 attorney, apparently he's not more forthcoming.

5 Q That's our operative phrase here, isn't it,
6 "not forthcoming"?

7 A Yes.

8 Q That condenses the whole thing.

9 A Not exactly. If that condenses the whole
10 thing, then we character what's going on. But it is an
11 element of concern. Then the question is: Why is he not
12 forthcoming? And in my belief, based on limited evidence --
13 because admittedly I've had one interview with him. I've
14 not reviewed all the documentation. But I think the balance
15 of evidence would suggest that given his history, given how
16 he presented to me, a very likely reason that he's not
17 forthcoming is not rational but rather irrational and based
18 on psychotic.

19 Q If an attorney or a psychiatrist were to
20 formulate a question, present a question to Mr. Vanisi such
21 as "What were you thinking when you committed this crime?,"
22 is it your opinion that he is unable to formulate an answer
23 or unwilling to express it?

24 A It's my opinion that two things are going on.
25 One is I believe he's quite confused about what went on at

1 the crime, at the time of the crime. And secondly, I
2 believe that because of his level of suspiciousness,
3 pathological paranoia, the sense that this is not natural,
4 he believes that if he discloses that to you as his defense
5 counsel, that you are going to be harmed.

6 Q Okay. Is there any -- is that something that
7 can be overcome with sufficient motivation?

8 A Not if you're psychotic. One of the problems
9 with psychosis -- I'm sorry, we've worked together before.
10 What is your name?

11 Q Terry McCarthy.

12 A Mr. McCarthy, forgive me.

13 Q Oh, I'll get over it.

14 A One of the problems with psychosis is that it
15 does impact motivation.

16 Q So a motive to protect one's self, could that
17 affect the type of decisions that he might have to make?

18 A The motive to protect oneself can impact the
19 decision. However, if the self-protection is illfounded --
20 I guess you could best illustrate it that if I'm thrown into
21 water and I try to keep my head above water, I'm not going
22 to swim very effectively. I think that metaphor applies in
23 this case. In order for him to advance his appeal, he's
24 going to have to work with counsel most effectively and to
25 understand what went on in his head at the time of the

1 crime.

2 Q Well, let's assume it is something that he's
3 not confused about. Again --

4 A What's the foundation for that assumption?

5 Q I'm making it up as we go along. Let's assume
6 that counsel or a psychiatrist poses a question such as
7 "Where were you on the night of September 21st, 1999?" or
8 something like that and he's not confused, does he have the
9 ability with sufficient motivation to relate the answer?

10 A If he were not confused and if his motivation
11 were clear and not psychotic, he has the cognitive capacity
12 to retrieve that answer.

13 Q And to express it?

14 A And to express it.

15 Q But the psychosis might make him unwilling to
16 express it; is that what you're saying?

17 A That's correct. And I think the quality of
18 psychosis that is relevant here is that when you're in the
19 midst of a paranoid psychosis, acknowledging that there's
20 potential harm out there, that the world is a mix of good
21 and evil, the paranoid psychotic can't make that
22 distinction. So virtually everyone is a threat, virtually
23 everyone is evil or can't understand.

24 Q For one on death row would that seem terribly
25 unusual to you?

1 A Well, if you look at my relatively limited
2 number of death row evaluations -- as I said, I think it's
3 about a half dozen more or less -- Mr. Vanisi is unique in
4 that he is most closed about that and virtually every other
5 person that I've examined on death row.

6 Q He is aware that society through the government
7 of the State of Nevada proposes to execute him?

8 A He's very aware of that.

9 Q In your opinion does that enter into it at all,
10 this lack of his being forthcoming?

11 A You could say that it may, but I do not believe
12 that's the primary motivation.

13 Q Would that be a motivation to malinger, by the
14 way?

15 A Would that be a motivation to malinger?

16 Q Yes, to feign incompetency and thereby avoid
17 execution.

18 A I'm sorry. Oh, your suggestion is that he's
19 feigning incompetency to postpone execution?

20 Q I'm suggesting nothing. I'm asking.

21 A What's the question?

22 Q Would a pending execution create a motivation
23 for one to feign incompetence?

24 A Of course.

25 Q You mentioned Mr. Vanisi, when asked the

1 difference between truth and a lie, said that a lie would be
2 perjury. Right?

3 A Yes.

4 Q Did you follow up at all? Did you discuss that
5 further?

6 A I attempted to, and that's where we got into
7 the nihilistic arguments that nothing really made any
8 difference anyway.

9 Q Did you give him an example of a false
10 statement and ask him if that was true or false?

11 A No.

12 Q Have you ever been in a courtroom when people
13 do that, like with a child? They ask something like "If I
14 told you I was wearing a green suit, would that be true or
15 false?"

16 A I've not been in a courtroom with a child as a
17 witness; but, yes, I've read about that intervention.

18 Q Did you do anything like that?

19 A I did ask him about the question of the truth
20 and a lie and its relevance to the case. And he
21 acknowledged that he could not -- and I asked him
22 particularly as it related to what he could tell me. He
23 acknowledged that he could not completely trust me, but he
24 assured me that he could trust his counsels. But when I
25 spoke to his counsels about that, they gave me virtually the

1 same report that I had about Mr. Vanisi being closed off and
2 not being able to disclose.

3 Q Okay.

4 Hang on just a moment please.

5 I was interested in the expression you used.
6 You said you established a modest rapport with Mr. Vanisi in
7 your two-hour meeting.

8 A In the second part of the meeting, yes.

9 Q Can you describe -- explain to ignorant old me.
10 What is a modest rapport?

11 A I would never contend that you are ignorant,
12 sir. I will advance what I believe was evidence of that.

13 The first part of our interview, that wooden
14 quality and a very closed off quality persisted. And
15 questions were responded to by "I don't know," "I don't want
16 to talk about it," very flat, not going anywhere. And in an
17 effort to break that, I said, "Okay, if there's nothing
18 further, then I suppose you can leave." Just as he was at
19 the door, I had him come back. That intervention was enough
20 to allow him to just kind of relax and talk more freely.
21 The flow of conversation was far more spontaneous. That's
22 when I began to see the fragmented thinking. That's when he
23 was much more forthcoming about his own awareness of his
24 distorted thinking and the way it was getting him into
25 trouble, his feelings about the medication and so on. In

1 that element of history the ease with which he was in dialog
2 with me was evidence of that improved rapport.

3 Q And you also indicated he doesn't fully
4 understand -- I think that was your word, "fully
5 understand," the need to be candid with his attorneys. Does
6 he understand in a rudimentary way?

7 A Help me with what you mean by "rudimentary."
8 What are the boundaries?

9 Q In a more simplistic way. Given the question
10 "Is it true, Mr. Vanisi, that lawyers help you?," does he
11 seem to understand that?

12 A First of all, do not confuse my assessment of
13 the psychosis with any attempt to allege that Mr. Vanisi is
14 not an intelligent man.

15 Q Oh, no.

16 A He's fully aware of what the roles are. I
17 think sometimes he's not able to repeat that in a way that
18 makes a lot of sense to some of us, but I think that
19 represents more a problem of fragmentation of his thinking
20 and the way he's expressing himself. But I don't think he
21 understands fully the role of defense counsel and how
22 defense counsel can help him because of that paranoid sense
23 that everybody is out to get him and so why be transparent?

24 The other problem is since nothing makes any
25 difference anyway -- and I believe just in the limited

1 evidence that that may have had some impact on his decision
2 at the time of the crime. But again, I don't have enough
3 evidence really to go into that today. And I hope you
4 understand that that is not the issue today.

5 But the concern I have is that nihilistic
6 quality that "Nothing really makes much difference, and I
7 really can't trust these guys anyway." That gets in the
8 way. Also I think if you look at his desire to represent
9 himself, I see that as also evidence of a psychotic thinking
10 and part of this grandiose entitlement that "I can do it for
11 myself."

12 Q Is it your understanding that in this matter,
13 this post conviction matter, he has attempted to represent
14 himself?

15 A No, I'm referring to earlier in his trial
16 history.

17 Q Okay. You know, I went looking earlier -- I
18 have an older version of DSM -- for nihilistic delusion. I
19 couldn't find anything.

20 A I don't think you're going to find it in DSM.

21 Q Is there a definition anywhere?

22 A Of nihilistic delusions?

23 Q Yes.

24 A I'm sure. In fact, actually I did
25 coincidentally just look it up in the APA psychiatric

1 dictionary and Steadman's. It refers to a sense of it's as
2 if there is nothing, nothing is of consequence.

3 Q All right. Are you familiar with nihilism as a
4 branch of philosophy?

5 A Yes.

6 Q And it is a recognized philosophy, is it not,
7 the belief that there are no absolutes, of doubt and
8 existence?

9 A I'm not aware that Nietzsche had the same
10 boundary problems with the law that Mr. Vanisi has.

11 Q Nihilistic delusion though, the belief that
12 nothing matters, that is a recognized philosophical school,
13 is it not?

14 A It's a recognized philosophical school. We may
15 even have professors of psychology -- I'm sorry, professors
16 of philosophy that may advance this in a university course.
17 However, they usually have enough awareness of boundaries
18 that they appear at the time of their lectures and grade
19 appropriately.

20 So the distinction between a nihilistic
21 philosophy which might be a polar perspective -- having only
22 a vague familiarity of Nietzsche and that's probably about 20
23 years old. But my own sense of that is that it was put
24 forth as an argument, as a polarizing point. But I'm not
25 convinced that philosophers that advance this live their

1 life based on that philosophy.

2 Q One who lived their life based on that
3 philosophy would have a hard time requesting a dentist to
4 fix a toothache, would they not?

5 A That is true.

6 MR. MCCARTHY: Thank you, doctor.

7 THE WITNESS: Thank you, Mr. McCarthy.

8 THE COURT: Anything further, Mr. Edwards?

9 MR. EDWARDS: Just a question, your Honor.

10
11 REDIRECT EXAMINATION

12 BY MR. EDWARDS:

13 Q Dr. Bittker, did you see the comment made in
14 writing by Mr. Vanisi to one of his medical personnel that
15 he had sunshine in his soul, therefore he must be ill? Did
16 you see that comment?

17 A No, I did not see that comment. It would have
18 been helpful to have highlighted that. I saw handwritten
19 medical records and didn't pick that up, I regret. Those
20 were in the medical records at the Nevada State
21 Penitentiary?

22 Q Well, those might have come from the records at
23 Ely State Penitentiary.

24 A I actually looked through the medical records
25 at the Nevada State Penitentiary and saw a lot of brief

1 reflections of medical encounters, but I didn't see that
2 kind of transparency. It could have been in there, but
3 either I overlooked it or it wasn't present.

4 Q And again, you don't perceive him to be
5 malingering presently?

6 A No, I would not consider his representation to
7 me on our last examination that of malingering.

8 Q And he remains not competent at this time to
9 assist counsel and cooperate in this litigation?

10 A I believe that's a crunch issue of his
11 incompetence. It's a critical issue right now. I do not
12 believe he can fully cooperate with you.

13 MR. EDWARDS: Thank you.

14 THE COURT: Anything further, Mr. McCarthy?

15 MR. MCCARTHY: May I?

16 THE COURT: You may.

17 MR. MCCARTHY: Thank you.

18
19 RECROSS EXAMINATION

20 BY MR. MCCARTHY:

21 Q Let's assume you had seen the comment,
22 something like "I have sunshine in my heart or my soul and,
23 therefore, I am ill." Does that sound like a recognition of
24 one's own bipolar disorder?

25 A It could be a reflection of insight. Without

1 further exploring what the meaning of that is with him, I
2 would hesitate commenting. But that would be one
3 interpretation.

4 MR. MCCARTHY: That's all I have.

5 THE COURT: Anything further, Counsel?

6 MR. EDWARDS: No, your Honor.

7 THE COURT: Thank you, Dr. Bittker. You may
8 step down.

9 THE WITNESS: Thank you, your Honor.

10 THE COURT: It's my understanding that
11 Dr. Amezaga is attempting to make arrangements to visit with
12 Mr. Vanisi.

13 MR. EDWARDS: Yes, your Honor. And I believe
14 he's selected three dates and communicated them to your
15 court clerk as February 9th through the 11th. And he's now
16 in the process of making arrangements with the prison to see
17 which date is most appropriate for him to be there. He did
18 state, it's my understanding, that he will need one week
19 following whatever date he does get in to see Mr. Vanisi to
20 generate his report.

21 THE COURT: Is it your intention then today to
22 bifurcate today's hearing and deal with Dr. Amezaga's report
23 and testimony at a later time?

24 MR. EDWARDS: Yes, your Honor. I so move right
25 now.

1 THE COURT: Mr. McCarthy?

2 MR. MCCARTHY: Your Honor, I have been told
3 that Mr. Vanisi's failure to cooperate earlier was due to a
4 misunderstanding, that he didn't know who it was that
5 awaited him in the meeting place. Nevertheless, your Honor,
6 I repeat this is his motion; and it's his burden to produce
7 the evidence. And if this is the evidence that exists
8 today, then I think we ought to move on to a decision. But
9 my primary position is there's no legal significance to
10 this. Nevertheless, your Honor, I gave up tilting at
11 windmills long ago. If the Court is inclined to bifurcate
12 the hearing, I probably won't get too upset.

13 THE COURT: Well, I think it's important to
14 make a complete record no matter what the ultimate decision
15 is here. There is a representation from counsel for
16 Mr. Vanisi that the misunderstanding -- it was a
17 misunderstanding when Dr. Amezaga went there before. I
18 certainly would not accept such an excuse a second time.
19 But given the circumstances of this particular instance, I
20 will give you one more shot to get Dr. Amezaga there.
21 Therefore, we'll get a new date and time from the clerk.

22 MR. EDWARDS: Thank you, your Honor.

23 Your Honor, just for the record, I'd like to
24 note that I have had the opportunity to communicate with my
25 client yesterday. And in no uncertain terms I told him that

1 his cooperation with the interview with Dr. Amezaga is most
2 critical to his position in this case, and I think it's been
3 made quite clear to him.

4 (Court and clerk confer.)

5 THE COURT: Counsel, are you available February
6 18th at 1:30?

7 MR. EDWARDS: Yes, your Honor.

8 MR. MCCARTHY: This is difficult for me to
9 answer, your Honor. I have a notion that my staff told me
10 she was scheduling something on that day because she checked
11 with me about it. It's the beginning of a holiday weekend;
12 that's the part I remember. But I have nothing written down
13 here, so I don't know. If the Court wants to schedule it,
14 and then please forgive me if I call and say there's a
15 problem.

16 THE COURT: Why don't we schedule it then. If
17 you need to reset it, you and Mr. Edwards can get together
18 and come to the department and we'll reschedule it. For now
19 we'll continue this hearing until February 18th at 1:30 in
20 the afternoon. And Mr. Vanisi will be brought back for that
21 hearing.

22 Mr. Edwards, it's your responsibility to get
23 Dr. Amezaga's report to the Court and to Mr. McCarthy prior
24 to the hearing date.

25 MR. EDWARDS: Understood, your Honor.

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THE COURT: Thank you. Court's in recess.

(Proceedings concluded at 3:10 a.m.)

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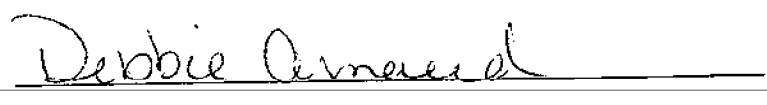
STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, DEBBIE ARNAUD, Certified Court Reporter of the
Second Judicial District Court, in and for the County
of Washoe, State of Nevada, 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 January,
2005.



DEBBIE ARNAUD, CCR #416, CSR #10102, RPR

ORIGINAL

FILED

CODE: 2010
Scott W. Edwards
Bar Number 3400
729 Evans Ave., Reno, NV 89512
(775) 786-4300
Attorney for Petitioner

2005 FEB -4 PM 4:31

RONALD A. LINDEN, JR.

CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

VS.

WARDEN, ELY STATE PRISON,

Respondent

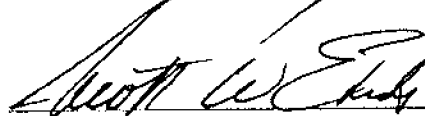
CR98P0516
Case No. ~~CR97P-0274~~

Dept. No. 4

**EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES
AND COSTS TO APPOINTED COUNSEL & AFFIDAVIT OF COUNSEL
(POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS)-5th INTERIM BILL
(DEATH PENALTY CASE)**

COMES NOW, SCOTT W. EDWARDS, appointed counsel for Petitioner, SIAOSI VANISI, and
moves this Court for an order allowing and authorizing payment of fees and costs incurred in this matter
in the amount of \$4650. This motion is based upon NRS 7.125 et seq., and is made ex parte upon the
attached affidavit of counsel.

RESPECTFULLY SUBMITTED this 3rd day of February, 2005.



SCOTT W. EDWARDS
Attorney for Petitioner

AFFIDAVIT

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

SCOTT W. EDWARDS, under penalty of perjury affirms that the assertions in this Affidavit are true.

1. Your affiant was appointed counsel for Petitioner SIAOSI VANISI in this death penalty habeas action by order of this Court. This billing is the fifth in the series. It represents time expended in recent court hearings and the expenses related to expert witness Dr. Bittker.
2. The attached Summary of Time and Expense Billings are true and correct itemizations of the hours reasonably and necessarily expended by affiant in representing the Petitioner, SIAOSI VANISI, in post-conviction proceedings in district court to date. The sums requested are fair, reasonable and necessary sums to be paid for attorney's services and costs expended as appointed counsel herein pursuant to NRS 7.125 et seq.
3. The latest representation in this case consisted of further document review, contact with potential witnesses, a visit with the petitioner and several court hearings. Therefore, this court is respectfully requested to find good cause for fees and costs in the amount of \$4650 payable to Scott Edwards.
4. Your affiant further certifies he has neither requested nor accepted compensation in this case from any other source.

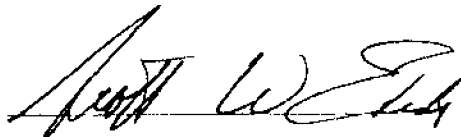
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FURTHER, your affiant sayeth not.



SCOTT W. EDWARDS

SUBSCRIBED AND SWORN to

Before me this 3rd day

Of FEBRUARY, 2005



NOTARY PUBLIC



**SUMMARY OF TIME AND EXPENSE BILLINGS of SCOTT W. EDWARDS
RE: SIAOSI VANISI**

**(Death Penalty Case-Petition for Writ of Habeas Corpus (post-conviction))
Dept. 4- Judge Steinheimer
Case No. CR98P-0516**

(Time billed @ statutory \$125 per hour)-5th Interim Billing

1/10/05-Review of fax from Dr. Amazaga. Telephonic court hearing. 1 hour \$125
1/14/05-Conference call with Dr. Bittker. Conference with co-counsel Qualls. 1.5 hour
\$187.50
1/20/05-Review of Bittker report. 1 hour \$125
1/21/05-Telephone call with Court to schedule hearing. .25 hour \$31.25
1/24/05-In Camera Hearing regarding Amazaga. 1 hour \$125
1/25/05-Contact with prison to schedule visit. Memo faxed to prison .25 hour \$31.25
1/26/05-Travel to and from NSP. Visit with Vanisi. 4.5 hours \$562.50
1/27/05-Hearing regarding Dr. Bittker's report. 2 hours \$250 Dr. Bittker's bill. \$3150
(attached)
2/3/05-Motion and order for fees. .5 hour \$62.50

TOTAL: \$4650

MENTAL HEALTH MEDICAL ASSOCIATES

PSYCHIATRY / PSYCHOTHERAPY / FORENSICS

PERRY A. ROWLE, MD, PH.D.

E. MICHAEL IRWIN, MD

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BEVERLY G. CLEFF, Ed.D., APN
LENORE BRANSFORD, Ph.D., APN

January 14, 2005

Scott Edwards
1030 Holcomb Ave
Reno, NV 89502

RE: Siaoosi Vanisi
BAC# 63376

1/14/2005 5 hours driving to and from Nevada State Penitentiary,
interview with Mr. Vanisi, review of medical records, interview with co-
counsels.

2 hours report preparation

Total of 7 hours @ \$450 per hour

\$3150.00


Thomas E. Bittker, MD

TIN: 20-1241617

TEB/bw

CODE: 3105

ORIGINAL

FILED

MAR 01 2005

RONALD A. COMBES, JR., CLERK
By: *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

VS.

WARDEN, ELY STATE PRISON,

Respondent

Case No. *CR98P0516*
CR97P-0274

Dept. No. 4

ORDER APPROVING FEES AND COSTS OF
COURT-APPOINTED ATTORNEYS
(DEATH PENALTY CASE)

Upon motion of SCOTT W. EDWARDS, the appointed counsel of Petitioner SIAOSI VANISI,
and good cause appearing therefore:

IT IS HEREBY ORDERED that attorney fees and costs in the amount of \$4650 are approved
and that amount be paid directly to SCOTT W. EDWARDS, Esq., by the State of Nevada Public
Defender's Office, for legal services rendered to the Petitioner in post-conviction determinations in this
matter.

DATED this 23 day of February 2005.

Connie J. Steinheimer

DISTRICT JUDGE

ORIGINAL

FILED

CODE: 2010
Scott W. Edwards
Bar Number 3400
729 Evans Ave., Reno, NV 89512
(775) 786-4300
Attorney for Petitioner

2005 FEB 23 PM 4:30
RONALD A. LONGTIN, JR.
BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

VS.

WARDEN, ELY STATE PRISON,

Respondent

CR98P0516
Case No. ~~CR97P-0274~~

Dept. No. 4

**EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES
AND COSTS TO APPOINTED COUNSEL & AFFIDAVIT OF COUNSEL
(POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS)-5th INTERIM BILL
(DEATH PENALTY CASE)**

COMES NOW, SCOTT W. EDWARDS, appointed counsel for Petitioner, SIAOSI VANISI, and
moves this Court for an order allowing and authorizing payment of fees and costs incurred in this matter
in the amount of \$4275. This motion is based upon NRS 7.125 et seq., and is made ex parte upon the
attached affidavit of counsel.

RESPECTFULLY SUBMITTED this *23rd* day of *February* 2005.

[Signature]

SCOTT W. EDWARDS
Attorney for Petitioner

AFFIDAVIT

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

SCOTT W. EDWARDS, under penalty of perjury affirms that the assertions in this Affidavit are true.

1. Your affiant was appointed counsel for Petitioner SIAOSI VANISI in this death penalty habeas action by order of this Court. This billing is the sixth in the series. It represents time expended in recent court hearings and out of court time preparing for an evidentiary hearing, conducting the hearing and filing a supplement to the petition.
2. The attached Summary of Time and Expense Billings are true and correct itemizations of the hours reasonably and necessarily expended by affiant in representing the Petitioner, SIAOSI VANISI, in post-conviction proceedings in district court to date. The sums requested are fair, reasonable and necessary sums to be paid for attorney's services and costs expended as appointed counsel herein pursuant to NRS 7.125 et seq.
3. The latest representation in this case consisted of further document review, a court hearing and preparation of a large supplement to the petition. Therefore, this court is respectfully requested to find good cause for fees and costs in the amount of \$4275 payable to Scott Edwards.
4. Your affiant further certifies he has neither requested nor accepted compensation in this case from any other source.

FURTHER, your affiant sayeth not.



SCOTT W. EDWARDS

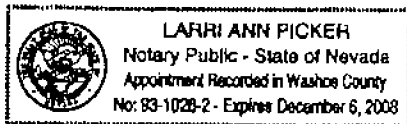
SUBSCRIBED AND SWORN to

Before me this 23rd day

Of FEBRUARY, 2005



NOTARY PUBLIC



**SUMMARY OF TIME AND EXPENSE BILLINGS of SCOTT W. EDWARDS
RE: SIAOSI VANISI**

**(Death Penalty Case-Petition for Writ of Habeas Corpus (post-conviction))
Dept. 4- Judge Steinheimer
Case No. CR98P-0516**

(Time billed @ statutory \$125 per hour)-6th Interim Billing

2/17/05-2 Telephone calls with district court. Pick up Dr. Amazaga's report. Review report. Prepare examination of Dr. Amazaga. 4 hours. \$500
2/18/05-Evidentiary hearing. Conference with Tom Qualls. 3 hours. \$375
2/19/05-Work on supplement to Petition. 6 hours \$750
2/20/05-Work on Supplement to Petition. 6 hours \$750
2/21/05-Work on Supplement to Petition. 7 hours. \$825
2/22/05-Finalize, copy, file and serve Supplement to Petition. 7 hours \$825
2/23/05-Review of order finding competency. Conference with counsel on writ petition to Nevada Supreme Court. Motion and order for fees. 2 hours \$250

TOTAL: \$4275

CODE: 3105

ORIGINAL FILED

MAR 07 2005

RONALD A. EDWARDS, JR. CLERK
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

VS.

WARDEN, ELY STATE PRISON,

Respondent

CR98 POS 16
Case No. CR98P-0274
Dept. No. 4

ORDER APPROVING FEES AND COSTS OF
COURT-APPOINTED ATTORNEYS
(DEATH PENALTY CASE)

Upon motion of SCOTT W. EDWARDS, the appointed counsel of Petitioner SIAOSI VANISI,
and good cause appearing therefore:

IT IS HEREBY ORDERED that attorney fees and costs in the amount of \$4275 are approved
and that amount be paid directly to SCOTT W. EDWARDS, Esq., by the State of Nevada Public
Defender's Office, for legal services rendered to the Petitioner in post-conviction determinations in this
matter.

DATED this 28 day of February 2005.

Connie J. Steinheimer

DISTRICT JUDGE

ORIGINAL

CODE: 2010
Scott W. Edwards
Bar Number 3400
729 Evans Ave., Reno, NV 89512
(775) 786-4300
Attorney for Petitioner

2005 MAR -7 PH 4:42

RONALD A. SIMPSON, JR.

BY A. Simpson

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

VS.

WARDEN, ELY STATE PRISON,

Respondent

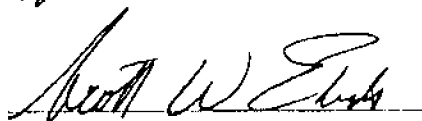
Case No. CR98P-0516

Dept. No. 4

**EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES
AND COSTS TO APPOINTED COUNSEL & AFFIDAVIT OF COUNSEL
(POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS)-7th INTERIM BILL
(DEATH PENALTY CASE)**

COMES NOW, SCOTT W. EDWARDS, appointed counsel for Petitioner, SIAOSI VANISI, and moves this Court for an order allowing and authorizing payment of fees and costs incurred in this matter in the amount of \$4937.50. This motion is based upon NRS 7.125 et seq., and is made ex parte upon the attached affidavit of counsel.

RESPECTFULLY SUBMITTED this 7th day of March, 2005.



SCOTT W. EDWARDS
Attorney for Petitioner

AFFIDAVIT

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

SCOTT W. EDWARDS, under penalty of perjury affirms that the assertions in this Affidavit are true.

1. Your affiant was appointed counsel for Petitioner SIAOSI VANISI in this death penalty habeas action by order of this Court. This billing is the seventh in the series. It represents time expended on document review and correspondence. The primary portion of it relates to the bill of Dr. Amezaga who will be paid by your undersigned upon receipt of the funds from the State Public Defenders Office
2. The attached Summary of Time and Expense Billings are true and correct itemizations of the hours reasonably and necessarily expended by affiant in representing the Petitioner, SIAOSI VANISI, in post-conviction proceedings in district court to date. The sums requested are fair, reasonable and necessary sums to be paid for attorney's services and costs expended as appointed counsel herein pursuant to NRS 7.125 et seq.
3. The latest representation in this case consisted of further document review and correspondence. Therefore, this court is respectfully requested to find good cause for fees and costs in the amount of \$4937.50 payable to Scott Edwards.
4. Your affiant further certifies he has neither requested nor accepted compensation in this case from any other source.



A.M. Amézaga, Jr., Ph.D.

*Nevada Licensed Psychologist - PY0327
California Licensed Psychologist - PSY14696
Nevada Licensed Alcohol & Drug Counselor (LADC) - No. 1431
Certified by the APA College of Professional Psychology in the
Treatment of Alcohol & Other Psychoactive Substances - No. AD003460
Credentialed by the National Register of Health Service Providers in
Psychology - No. 44207*

January 24, 2005

Scott Edwards, Esq.
Attorney at Law
1030 Holcomb Avenue
Reno, NV 89502

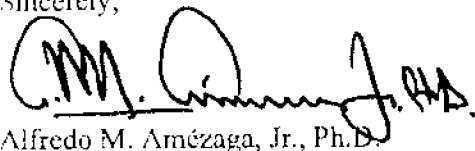
RE: Billing for Vanisi Competency Evaluation dated 15 February 2005

Mr. Edwards:

I am enclosing total billing due for time, travel and the evaluation of your client, Siao Si Vanisi. I am uncertain if there is a differentiation between hours billed for court testimony versus hours spent in conducting and completing the assessment. If so, please advise and I will resubmit the statement.

I am happy to have met your acquaintance. Please do not hesitate to contact me if I can ever be of further assistance.

Sincerely,



Alfredo M. Amézaga, Jr., Ph.D.

Cc: Hon. Connie J. Steinheimer

*Voice/Fax (Bilingüe): 775/853.8993 & 866/262.7431
E-mail: amezaga_am@sbcglobal.net // www.askapsych.com
Operations: 18124 Wedge Parkway - Suite 538 - Reno, Nevada 89511-8134 - USA/EUA*

SA02039

2JDC05514



A.M. Amézaga, Jr., Ph.D.

*Nevada Licensed Psychologist - PY0327
California Licensed Psychologist - PSY14696
Nevada Licensed Alcohol & Drug Counselor (LADC) - No. 1431
Certified by the APA College of Professional Psychology in the
Treatment of Alcohol & Other Psychoactive Substances - No. AD003460
Credentialed by the National Register of Health Service Providers in
Psychology - No. 44207*

January 24, 2005

Scott Edwards, Esq.
Attorney at Law
1030 Holcomb Avenue
Reno, NV 89502

Billing Statement-Competency Evaluation

Name: Siasos Vanisi	ID: 06261970
DOB: June 26, 1970	Evaluation Date: 02.03.2005
Age: 34 Years, 6 Months	Report Date: 02.15.2005

Billing fee for psychological services at \$125.00 per hour (Three (3.0) hour minimum).

1. January 20, 2005: Travel to and from NSP for refused evaluation..... 3.0 hrs.
2. February 3, 2005: AM review of records at NSP.....3.0 hrs.
3. February 3, 2005: Travel and PM contact visit with defendant.....3.0 hrs.
3. February 11, 2005: Scoring and interpretation of psychological testing3.0 hrs.
4. Report writing.....20.0 hrs.
5. February 18, 2005: Court testimony.....3.0 hrs.

Total hours.....35.0 hrs.

Total due @ \$125.00 X 35.0 hrs.....\$4375.00

Voice/Fax (Billing): 775/853.8993 & 866/262.7431
E-mail: amezaga_am@sbcglobal.net // www.askapsych.com
Operations: 18124 Wedge Parkway - Suite 538 - Reno, Nevada 89511-8134 - USA/EUA

SA02040

2JDC05515

**SUMMARY OF TIME AND EXPENSE BILLINGS of SCOTT W. EDWARDS
RE: SIAOSI VANISI**

**(Death Penalty Case-Petition for Writ of Habeas Corpus (post-conviction))
Dept. 4- Judge Steinheimer
Case No. CR98P-0516**

(Time billed @ statutory \$125 per hour)-7th Interim Billing

3/1/05-Conference with Tom Qualls re: timing of writ to Supreme Court. Review of
documentation needed in support. Preliminary work on petition. 2 hours. \$250
3/2/05-Receipt of Billings from Dr. Amezaga (Attached)...\$4375
3/6/05-Letter to Consulate General with enclosure. 2 hours \$250
3/7/05-M-Motion and order for fees. .5 hour \$62.50

TOTAL: \$4937.50

FURTHER, your affiant sayeth not.



SCOTT W. EDWARDS

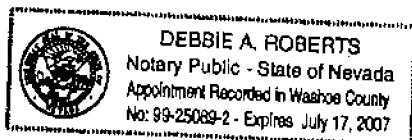
SUBSCRIBED AND SWORN to

Before me this 7th day

of March, 2005



NOTARY PUBLIC



ORIGINAL

FILED

MAR 11 2005

RONALD A. LONSTON, JR., CLERK

By: DEPT.

CODE: 3105

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

VS.

Case No. CR98P-0516

Dept. No. 4

WARDEN, ELY STATE PRISON,

Respondent

ORDER APPROVING FEES AND COSTS OF
COURT-APPOINTED ATTORNEYS
(DEATH PENALTY CASE)

Upon motion of SCOTT W. EDWARDS, the appointed counsel of Petitioner SIAOSI VANISI,
and good cause appearing therefore:

IT IS HEREBY ORDERED that attorney fees and costs in the amount of \$4937.50 are approved
and that amount be paid directly to SCOTT W. EDWARDS, Esq., by the State of Nevada Public
Defender's Office, for legal services rendered to the Petitioner in post-conviction determinations in this
matter.

DATED this 8 day of March 2005.

Connie J. Steinheimer

DISTRICT JUDGE

ORIGINAL

CODE: 2010
Scott W. Edwards
Bar Number 3400
729 Evans Ave., Reno, NV 89512
(775) 786-4300
Attorney for Petitioner

FILED

2005 APR 14 11:12:26

RONALD S. L. JR.

BY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

VS.

WARDEN, ELY STATE PRISON,

Respondent

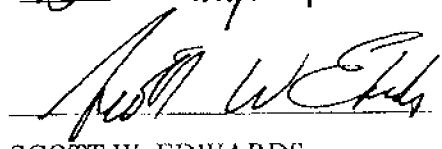
Case No. CR98P-0516

Dept. No. 4

**EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES
AND COSTS TO APPOINTED COUNSEL & AFFIDAVIT OF COUNSEL.
(POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS)-8th INTERIM BILL
(DEATH PENALTY CASE)**

COMES NOW, SCOTT W. EDWARDS, appointed counsel for Petitioner, SIAOSI VANISI, and moves this Court for an order allowing and authorizing payment of fees and costs incurred in this matter in the amount of \$4654.92. This motion is based upon NRS 7.125 et seq., and is made ex parte upon the attached affidavit of counsel.

RESPECTFULLY SUBMITTED this 13th day of April, 2005.


SCOTT W. EDWARDS
Attorney for Petitioner

AFFIDAVIT

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

SCOTT W. EDWARDS, under penalty of perjury affirms that the assertions in this Affidavit are true.

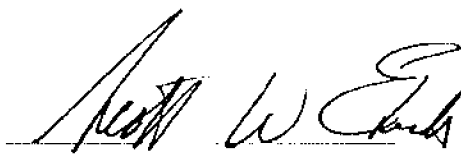
1. Your affiant was appointed counsel for Petitioner SIAOSI VANISI in this death penalty habeas action by order of this Court. This billing is the eighth in the series. It represents time expended on document review, correspondence, and the filing of an extraordinary writ application with the Nevada Supreme Court. There is also a supplemental bill from Dr. Bittker not covered in primary payment requests.
2. The attached Summary of Time and Expense Billings are true and correct itemizations of the hours reasonably and necessarily expended by affiant in representing the Petitioner. SIAOSI VANISI, in post-conviction proceedings in district court to date. The sums requested are fair, reasonable and necessary sums to be paid for attorney's services and costs expended as appointed counsel herein pursuant to NRS 7.125 et seq.
3. The latest representation in this case consisted of further document review and correspondence. Therefore, this court is respectfully requested to find good cause for fees and costs in the amount of \$4654.92 payable to Scott Edwards.
4. Your affiant further certifies he has neither requested nor accepted compensation in this case from any other source.

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FURTHER, your affiant sayeth not.

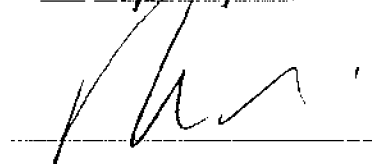


SCOTT W. EDWARDS

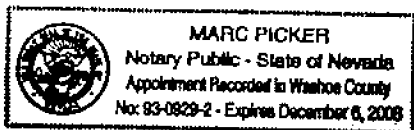
SUBSCRIBED AND SWORN to

Before me this 13th day

Of April, 2005



NOTARY PUBLIC



Sierra Legal Duplicating, Inc.

P.O. Box 2452
Reno, NV 89505
775-786-8224
EIN 88-0369419

Invoice

DATE	INVOICE #
4/12/2005	Apr 05 84

BILL TO
Scott W. Edwards, Esq. 729 Evans ave. Reno, Nevada 89512

SHIP TO
Scott W. Edwards, Esq. 729 Evans ave. Reno, Nevada 89512

TERMS	REP	SHIP	VIA	CLIENT/MATTER
Net 30	EF	4/12/2005	Hand Deliver	Vanisi

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
1,537	0002	Light Grade Copywork	0.10	153.70T
6	0011	GBC Bind	2.00	12.00T
2	0013	Rebind	1.00	2.00
		Sales Tax	7.375%	12.22
			Total	\$179.92

2% Interest charged on invoices unpaid after 30 days

[illegible]

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01/27/05

1 hour courtroom testimony

\$600 per hour

\$600

**SUMMARY OF TIME AND EXPENSE BILLINGS of SCOTT W. EDWARDS
RE: SIAOSI VANISI**

**(Death Penalty Case-Petition for Writ of Habeas Corpus (post-conviction))
Dept. 4- Judge Steinheimer
Case No. CR98P-0516**

(Time billed @ statutory \$125 per hour)-8th Interim Billing

3/16/05-Conference with Tom Qualls re: Review of written order on competency.
Strategize on extraordinary writ. 2 hours. \$250
3/21-23/05-Research on standards for writ petition. Review of transcripts and pleadings.
7.5 hours. \$937.50
4/3-6/05-Compile and number appendix. Draft writ application. Send materials to
Qualls for review. 12.5 hours. \$1562.50
4/7/05-2 Letters to Tongan consulate. Review of emergency motion for stay. Edit writ
application. 4 hours \$500
4/12/05-Finalize writ application and Motion for Stay. Conference with Tom Qualls.
Topics included no response from state to supplement, subpoenas for public defenders,
preparation for evidentiary hearing, motion for continuance, motion for disqualification.
3 hours. Copy, file and serve writ application. 4 hours \$500 Copying by Sierra Legal
Duplicating. \$179.92 (Attached) Additional bill from Dr. Bittker. \$600
4/13/05-Motion and order for fees. 1 hour \$125

TOTAL: \$4654.92

ORIGINAL FILED

CODE: 3105

APR 21 2005

RONALD A. LONGIN, JR. CLERK
BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

Case No. CR98P-0516

VS.

Dept. No. 4

WARDEN, ELY STATE PRISON,

Respondent

**ORDER APPROVING FEES AND COSTS OF
COURT-APPOINTED ATTORNEYS
(DEATH PENALTY CASE)**

Upon motion of SCOTT W. EDWARDS, the appointed counsel of Petitioner SIAOSI VANISI,
and good cause appearing therefore:

IT IS HEREBY ORDERED that attorney fees and costs in the amount of \$4654.92 are approved
and that amount be paid directly to SCOTT W. EDWARDS, Esq., by the State of Nevada Public
Defender's Office, for legal services rendered to the Petitioner in post-conviction determinations in this
matter.

DATED this 18 day of April 2005.

Connie J. Steinheimer

DISTRICT JUDGE

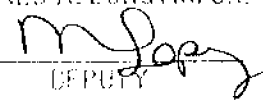
ORIGINAL

FILED

CODE: 2010
Scott W. Edwards
Bar Number 3400
729 Evans Ave., Reno, NV 89512
(775) 786-4300
Attorney for Petitioner

2005 MAY -6 PM 4:43

RONALD A. LONGIN, JR.

BY 
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

VS.

WARDEN, ELY STATE PRISON,

Respondent

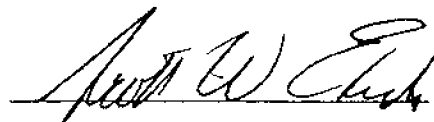
Case No. CR98P-0516

Dept. No. 4

**EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES
TO EXPERT WITNESS RICHARD CORNELL, ESQ.
(POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS)
(DEATH PENALTY CASE)**

COMES NOW, SCOTT W. EDWARDS, appointed counsel for Petitioner, SIAOSI VANISI, and moves this Court for an order allowing and authorizing payment of fees and costs to attorney Richard Cornell, Esq. to serve as an expert witness in this case, in the amount of \$2500. This motion is based upon NRS 7.125 et seq., and is made ex parte upon the attached affidavit of counsel.

RESPECTFULLY SUBMITTED this 6th day of MAY, 2005.



SCOTT W. EDWARDS
Attorney for Petitioner

AFFIDAVIT

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

SCOTT W. EDWARDS, under penalty of perjury affirms that the assertions in this Affidavit are true.

1. Your affiant was appointed counsel for Petitioner SIAOSI VANISI in this death penalty habeas action by order of this Court. The evidentiary hearing on the case will proceed to completion on May 18, 2005. Counsel have determined that the evidentiary record should be expanded through the presentation of expert witness testimony. Local attorney Richard Cornell is a suitable expert and has agreed to undertake the task of reviewing relevant documentation and testifying on May 18, 2005. He estimates his fee for this work will be \$2,500. Accordingly, through this motion, this Court is requested to enter an order authorizing expenditure of that sum in this case.

FURTHER, your affiant sayeth not.




SCOTT W. EDWARDS

SUBSCRIBED AND SWORN to

Before me this 6th day

Of May, 2005



NOTARY PUBLIC



ORIGINAL FILED

CODE: 3105

MAY 12 2005

ROMANA A. EDWARDS, JR., CLERK
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

Case No. CR97P-0274

VS.

Dept. No. 4

WARDEN, ELY STATE PRISON,

Respondent

ORDER AUTHORIZING EXPENDITURE OF EXPERT WITNESS FEES
(DEATH PENALTY CASE)

Upon motion of SCOTT W. EDWARDS, the appointed counsel of Petitioner SIAOSI VANISI,
and good cause appearing therefore:

IT IS HEREBY ORDERED that expert witness attorney fees of \$2500 are authorized and the
Petitioner may retain the services of Richard Cornell, Esq. to testify at the May 18, 2005 hearing in this
case. Subsequent to that testimony this Court will address actual payment of those fees by the State of
Nevada Public Defender's Office in a separate order.

DATED this 11 day of May 2005.

Connie J. Steinheimer

DISTRICT JUDGE

ORIGINAL

FILED

CODE: 2010
Scott W. Edwards
Bar Number 3400
729 Evans Ave., Reno, NV 89512
(775) 786-4300
Attorney for Petitioner

2005 MAY 25 PM 12:33

RONALD A. LONGIN, JR.

BY *J. Simpson*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

Case No. CR98P-0516

VS.

Dept. No. 4

WARDEN, ELY STATE PRISON,

Respondent

**EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES
AND COSTS TO APPOINTED COUNSEL & AFFIDAVIT OF COUNSEL
(POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS)-9th INTERIM BILL
(DEATH PENALTY CASE)**

COMES NOW, SCOTT W. EDWARDS, appointed counsel for Petitioner, SIAOSI VANISI, and
moves this Court for an order allowing and authorizing payment of fees and costs incurred in this matter
in the amount of \$2375. This motion is based upon NRS 7.125 et seq., and is made ex parte upon the
attached affidavit of counsel.

RESPECTFULLY SUBMITTED this 25th day of MAY, 2005.

Scott W. Edwards

SCOTT W. EDWARDS
Attorney for Petitioner

AFFIDAVIT

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

SCOTT W. EDWARDS, under penalty of perjury affirms that the assertions in this Affidavit are true.

1. Your affiant was appointed counsel for Petitioner SIAOSI VANISI in this death penalty habeas action by order of this Court. This billing is the ninth in the series. It represents time expended on document review, conferences and the conduct of two evidentiary hearings.
2. The attached Summary of Time and Expense Billings are true and correct itemizations of the hours reasonably and necessarily expended by affiant in representing the Petitioner, SIAOSI VANISI, in post-conviction proceedings in district court to date. The sums requested are fair, reasonable and necessary sums to be paid for attorney's services and costs expended as appointed counsel herein pursuant to NRS 7.125 et seq.
3. The latest representation in this case consisted of tow court hearings and matters relating to them. Therefore, this court is respectfully requested to find good cause for fees and costs in the amount of \$2375 payable to Scott Edwards.
4. Your affiant further certifies he has neither requested nor accepted compensation in this case from any other source.

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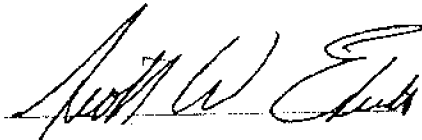
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FURTHER, your affiant sayeth not.

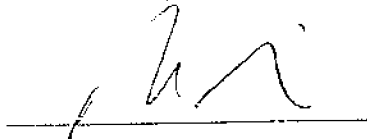


SCOTT W. EDWARDS

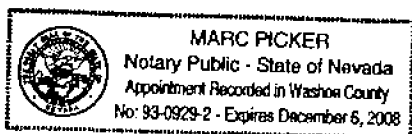
SUBSCRIBED AND SWORN to

Before me this 25th day

Of MAY, 2005



NOTARY PUBLIC



**SUMMARY OF TIME AND EXPENSE BILLINGS of SCOTT W. EDWARDS
RE: SIAOSI VANISI**

**(Death Penalty Case-Petition for Writ of Habeas Corpus (post-conviction))
Dept. 4- Judge Steinheimer
Case No. CR98P-0516**

(Time billed @ statutory \$125 per hour)-9th Interim Billing

4/25/05-Review of Supreme Court Order denying writ. Telephone call Tom Qualls. .5 hour \$62.50

4/26/05-Conference with Tom Qualls on hearing strategy, division of labor. 2 hours \$250

4/29/05-2 Emails to Tongan Consulate. 1 hour \$125

5/1/05-Review of pleadings. Telephone call DA McCarthy. Preparation for hearing. 3 hours \$375

5/2/05-Hearing, examination of Gregory, Bosler and Petty. Admittance of SCR 250 memorandum. Conference with Tom Qualls afterward on remaining portions of proceeding. 4 hours. \$500

5/17/05-Telephone call DA McCarthy. Preparation for hearing. Conference with Tom Qualls. Conference with Rick Cornell. 3.5 hours \$437.50

5/18/05-Hearing, examination of Specchio and Cornell, and argument upon petition and motion to dismiss. Conference with Tom Qualls afterward. 4 hours \$500

5/24/05-Motion and order for fees. 1 hour \$125

TOTAL: \$2375

CODE: 3105

ORIGINAL

FILED

JUN 9 7 2005

RONALD A. LONGTHORPE, JR., CLERK
BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

Case No. CR98P-0516

VS.

Dept. No. 4

WARDEN, ELY STATE PRISON,

Respondent

**ORDER APPROVING FEES AND COSTS OF
COURT-APPOINTED ATTORNEYS
(DEATH PENALTY CASE)**

Upon motion of SCOTT W. EDWARDS, the appointed counsel of Petitioner SIAOSI VANISI,
and good cause appearing therefore:

IT IS HEREBY ORDERED that attorney fees and costs in the amount of \$2375 are approved
and that amount be paid directly to SCOTT W. EDWARDS, Esq., by the State of Nevada Public
Defender's Office, for legal services rendered to the Petitioner in post-conviction determinations in this
matter.

DATED this 2 day of June 2005.

Connie I. Stunhame

DISTRICT JUDGE

ORIGINAL

2005 FEB 22 PM 3:26

[Signature] CLIN. JR.
CLERK

4185

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

---000---

SIAOSI VANISI,

Case No. CR98P0516

Petitioner,

Dept. No. 4

vs.

TRANSCRIPT OF PROCEEDINGS

STATE OF NEVADA,

Respondent.

POST CONVICTION - REPORT ON PSYCHIATRIC EVALUATION
FEBRUARY 18, 2005, RENO, NEVADA

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Reported by:

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Computer-Aided Transcription

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For the Petitioner:

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RENO, NEVADA; FRIDAY, FEBRUARY 18, 2005; 1:45 P.M.

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4 THE COURT: This is the time set for report
5 for psychiatric evaluation. Counsel, have you received
6 Dr. Amezaga's report?

7 MR. EDWARDS: Yes, your Honor.

8 MR. MCCARTHY: Yes, your Honor.

9 THE COURT: Is everyone ready to proceed?

10 MR. EDWARDS: Yes.

11 MR. MCCARTHY: State's ready.

12 THE COURT: Does any one want to call
13 Dr. Amezaga as a witness?

14 MR. EDWARDS: I'll call him, your Honor.

15 THE COURT: Okay. Please come forward,
16 Dr. Amezaga, and be sworn.

17
18 ALFREDO M. AMEZAGA, JR., Ph.D.,
19 called as a witness by the Petitioner
20 herein, being first duly sworn, was
21 examined and testified as follows:
22
23
24

DIRECT EXAMINATION

BY MR. EDWARDS:

Q Good afternoon, sir. Could you state your name and spell your last name?

A First name is Alfredo, A-l-f-r-e-d-o, middle initial M., last name A-m-e-z-a-g-a, Junior. Alfredo Amezaga, Jr. Ph.D., clinical psychologist.

Q Is there an accent in your last name?

A Yes, there is.

Q Where is that, for the record?

A On the E.

Q Can you tell me a little bit about your credentials, sir?

A I'm a graduate clinical psychology program University of Nevada, Reno. Completed my first year of residency at the V A. Medical Center, West Los Angeles. I completed my second residency School of Medicine University Missouri, Columbia, Department of Clinical Psychology.

Q How long have you practiced here in Nevada?

A Been licensed in Nevada since 1996.

Q Since 1996, you say?

A Correct.

Q Have you published any treatises, professional

books, professional publications?

A Yes.

Q Can you tell me what they are?

A Majority of those publications concerned my doctoral dissertation, basically, on the outcome assessment of social service and mental health service programs, what works, what doesn't work, for whom, under what set of circumstances, and why.

Q Were these books or --

A Papers.

Q -- papers for your work?

A Correct.

Q Do you sit on any professional boards?

A No, I do not.

Q Now, sir, you're not a medical doctor; is that correct?

A That's correct.

Q So this logo on the left-hand side of your report, AMA, that relates to your name, not to the American Medical Association?

A That's correct.

Q Do you have authority to prescribe medication to treat mental illness?

A No, I do not. I'm not a physician.

Q Do you have skills and experience to diagnose mental illness?

A Yes, I do.

Q For example, bipolar disorder?

A Yes, I do.

Q And you would be comfortable making that kind of diagnosis?

A I'm sufficiently aware of the symptoms and signs that are associated with that disorder to make a diagnosis.

Q Have you testified as an expert in a criminal case here in Nevada before?

A Yes, I have.

Q When was that?

A Hum, I believe the majority of those testimony are associated with proceedings associated with juveniles at Wittenberg Hall.

Q Have you ever testified in a criminal trial in the district court?

A I believe I was involved in several competence evaluations, the dates and the specifics I'm not able to recall at this instant.

Q But you have been qualified as an expert in court proceedings before?

1 A I been qualified as an expert both in Washoe
2 County and in various counties in California.

3 Q And you can't give us a case here in Nevada
4 that you've testified in?

5 A I can't recall the specific case at this
6 point in time.

7 Q Who called you as a witness in this case that
8 you can't recall --

9 A I believe Judge Polaha, but I'm uncertain at
10 that point.

11 Q Have you ever testified on behalf of the
12 defense in a criminal trial?

13 A Yes, I have.

14 Q When was that, sir?

15 A Nevada County, California.

16 Q When?

17 A 2001, I believe.

18 Q Sir, you conducted an evaluation of
19 Mr. Siaosi Vanisi; is that correct?

20 A That's correct.

21 Q And what were you asked to determine in this
22 evaluation?

23 A I was determined -- I was asked to assess his
24 ability to proceed -- his competency and ability to

proceed with trial.

Q And what was your conclusion?

A That defendant, indeed, is competent to

proceed with trial.

Q Aside from -- now, in preparation for this evaluation, you conducted an interview of Mr. Vanisi in person; is that right?

A That's correct.

Q And aside from that interview, and I understand you performed some testing in the course of that interview; is that right?

A That's correct.

Q What information did you review in the process of making your opinion?

A Could you repeat the question, please?

Q What other information besides the interview and the testing did you review in the course of this evaluation?

A I reviewed all the records that were contained in his medical file at the Nevada State Prison.

Q So you reviewed the medical records in the file at Nevada State Prison?

A Correct.

Q Did you review the prison disciplinary records relative to Mr. Vanisi?

A I was only allowed to have access to the medical information concerning the defendant.

Q How long did this review of medical records take?

A Approximately two hours.

Q And how long was the interview?

A Approximately two hours.

Q Did you review the affidavits of myself and Mr. Qualls in support of our motion for mental examination?

A The court order?

Q No, the affidavits.

A No.

Q Did you interview Mr. Qualls or myself?

A No.

Q Did you discuss the case with a Dr. Thomas Bittker?

A No.

Q Did you review Dr. Bittker's report?

A I was provided a copy of the record yesterday. I briefly reviewed the report.

Q But not before composing your report?

A No.

Q Were you made aware through the news media or any other means that Dr. Bittker had found Mr. Vanisi presently incompetent?

A Yes.

Q How did you find that out?

A The date of the article appearing, I took notice of the headlines, I briefly glanced at the headlines, and then set them aside.

Q Do you have any knowledge regarding instances of what we have termed bizarre behavior by Mr. Vanisi in the past year?

A I'm aware that there have been documentations of some of his bizarre behavior.

Q Did you review any of that documentation?

A Yes, I did.

Q What did you review?

A The various notations made in his medical file, just instances where he engaged in very bizarre psychotic-like behavior. I could not give you a reference to a specific notation.

Q He engaged in bizarre psychotic behavior?

A In the past, correct.

Q Were you aware that he considered him an

independent sovereign?

A Yes.

Q How about the fact that he has been known to

dress up in a cake?

A Yes.

Q Called him Dr. Pepper?

A Correct.

Q How about how he disrobed and rolled on the floor in the presence of counsel?

A I'm aware that that's been cited in his medical records.

Q And were any of these facts helpful to you in conducting your evaluation?

A It gave me a context for his behavior.

Q What day did you interview Mr. Vanisi?

A On February 3rd.

Q And you said it lasted about two hours?

A Approximately.

Q And during that two-hour period, is that when you performed the tests?

A Correct.

Q Do you know how long it had been since Mr. Vanisi had been injected with Haldol?

A No, I do not.

Q Are you familiar with Haldol?

A I'm familiar that it's medication used to treat individuals who are severely psychotically impaired.

Q Okay. Is it your understanding, sir, that administering psychotropic medication can affect how a person presents to you in a competency evaluation?

A I would expect that if someone is taking a potent psychotropic, that that would affect their presentation and behavior and that would be displayed and observable.

Q Do you make any adjustments in the way you perform a competence evaluation based on the medication a person is receiving?

A I take note of the fact that the individual is taking medication, but apart from it, I observed no behavior to suggest that the medication was a negative influence on his behavior as part of my evaluation.

Q Were you also aware that he's been taking the drug call Depakote?

A Yes, I am.

Q What are the disorders or disorder that these medications are treating Mr. Vanisi for?

A Well, first of all, let me qualify that I am

not a physician so I don't pass judgment on the appropriateness or the -- the efficacy of the medication that a client might be receiving, but in general, that combination of medication is usually used amongst -- with individuals who are experiencing some form of a psychoses or severe psychotic disorder.

Q Have you performed a competency evaluation of Mr. Vanisi in the past?

A No, I have not.

Q Is this the first contact you've ever had with him?

A Correct.

Q Did you review prior competency findings?

A No, I did not.

Q Do you agree with the diagnosis that Mr. Vanisi has bipolar disorder mixed type with psychosis?

A I suspect that Mr. Vanisi, likely, is suffering from a psychotic disorder of some sort, however, the mission of my evaluation did not concern arriving at a specific diagnoses so, in general, I suspect there's a psychotic component; I'm uncertain as to what the specific component might be.

Q Do you agree that he suffers from nihilistic

delusions?

A I'm not sure what that is.

Q Do you agree that he suffers from paranoia?

A I observed no indications of paranoia as part of my evaluation.

Q Do you have any opinion whether he presents a narcissistic sense of entitlement?

A I have -- I certainly don't have any demonstrations of any sense of narcissistic entitlement that I was able to observe as part of my evaluation.

Q Do you have any opinion whether Mr. Vanisi is chronically suicidal?

A I have no opinion.

Q In your report, Doctor, I think you indicated that you didn't think he was suicidal, right?

A I don't recall specifically making that reference.

Q Do you have any dispute with the reputation or skills of Dr. Bittker?

A I have never had the opportunity to meet Dr. Bittker.

Q Are you familiar with the standard of competence required under the 9th Circuit opinion of Rohan versus Woodford?

A No, I'm not.

Q Do you feel Mr. Vanisi, or do you conclude, I should say, Mr. Vanisi is impaired in his ability to rationally communicate with counsel and assist in his defense?

A Please repeat the question.

Q Do you feel Mr. Vanisi is impaired in his ability to communicate with counsel and assist in his defense?

A No, I do not.

Q Why did you use the Dusky Standard, sir, in your evaluation?

A It's the standard that, to the best of my understanding, is the normative standard used in the determination of competency.

Q And you did review the order appointing you in this case, correct?

A Yes, I did.

Q And specifically on line 21 of that order, you were directed to evaluate the Petitioner's mental competence to assist and communicate with counsel?

A Yes, I did.

Q Do you recall that?

A Yes.

3 Q I'd like to look at some specific conclusions
4 in your report, if I might, sir. Do you have a copy of
5 it with you there?

6 A Yes, I do.

7 Q Okay. If you could look at page 3, second
8 paragraph, second to last paragraph, you observed that
9 my client was, quote, mechanical and robotic. Is that
10 correct, do you recall those?

11 A Yes.

12 Q Okay. Did that suggest to you any kind of
13 mental disease or defect?

14 A I was aware that this subject -- there could
15 be two possibilities; number one, that there could be
16 some sort of a schizophrenia, perhaps a catatonic form
17 of schizophrenia, though I was amused to see that
18 symptom displayed given the diagnosis of a bipolar
19 disorder.

20 More importantly, the symptoms ceased after
21 approximately ten minutes of its display, which I would
22 not expect in an individual who had a legitimate form of
23 a schizophrenia.

24 Q Could that presentation, the mechanical and
robotic posture, have anything to do with the medication
that they administered to him?

A It's possible it certainly could be the case.

Q Do you think that mechanical and robotic is an indication that somebody's malingering?

A Not in and of itself.

Q Page 4 of your report, first line, you state, "He denied the experience of all psychotic symptoms".

A Correct.

Q Okay. Do you think he was truthful about that?

A No.

Q So he was malingering about that.

A He was misrepresenting probably what he may have actually been experiencing.

Q Is there a difference between misrepresentation and malingering?

A Well, malingering is a much more formal term that requires a rather exhaustive assessment to make that determination. I'm unwilling to call that malingering.

Q Have you made that assessment in the course of this evaluation?

A I provided various assessments that lead me to some conclusions. I'm not in a position to determine whether or not Mr. Vanisi, in fact, is malingering for

-- in his symptoms.

Q So, you're telling us he's misrepresenting his symptoms?

A He denied psychotic symptoms. Given his behavior, given his presentation, I found it difficult to believe that, perhaps, that might be exhaustively true.

Q His denial that he's psychotic is not a reflection of the truth, in your opinion? He is, actually, psychotic.

A He has demonstrated some psychotic behaviors.

Q Give us some examples.

A I would suggest that the stiffening behavior could be a form of a psychotic behavior. It could be a consequence of his medication; it could be a consequence of feigning. I was uncertain. I was unsure.

Q On page 4, the fifth line on page 4 from the top, you indicate that Mr. Vanisi is maybe suffering from delusion of memory?

A Correct.

Q Does that mean he's delusional?

A No.

Q What does it mean?

A Well, it means he denied the fact that he had

ever resided or spent significant time in the Reno or greater Nevada area, which, according to the evidence, would suggest not to be true. It's possible that he was being delusional in his recall of that information.

Q So he was being delusional about that.

A Correct.

Q Could that have been caused or triggered by the medication that he's on?

A It could have been triggered by a host of issues. It could have been triggered by his medication. It could have been triggered by his psychotic or delusional disorder, it could have been triggered by feigning.

Q Page 4, second paragraph, you indicate, "Mr. Vanisi was unable to maintain concentration for extended periods and evidenced short-term memory impairment".

A Correct.

Q Is that evidence of psychosis?

A It could be evidence of psychosis. It could be evidence, once again, of his medication. It could be evidence of feigning.

Q Is it evidence of malingering?

A Malingering, once again, is a term -- it could be evidence of misrepresentation. I'm not willing

to go forward to call it evidence of malingering in and of itself.

Q Page 5 of your report below the first bold line there about a third of the way down the page you state, "Mr. Vanisi gave no indication of being significantly influenced by whatever psychotic symptoms he may or may not be experiencing".

A Correct.

Q So you're not ruling out psychosis with respect to Mr. Vanisi; is that right?

A I'm not ruling it out. The presence or the existence of a psychotic disorder is, really, separate and apart from the issue of competency. Just because someone is psychotic does not mean that he meets criteria for incompetency.

Q On the last paragraph, you summarize your findings, or at least some of them, with respect to this test that you performed?

A Correct.

Q And that is the evaluation of competency to stand trial task, right?

A Correct.

Q What is your conclusion stated in the last paragraph?

1 A My conclusion is that he demonstrated no
2 efforts to feign or exaggeration any psychiatric
3 symptoms that would lead me to conclude that he was
4 incompetent to proceed. Those conclusions are depicted
5 in graph, or an attachment of in graph or attachment
6 number two.

7 Q So the result of this test is that Mr. Vanisi
8 was not misrepresenting his psychotic symptoms.

9 A The conclusion is Mr. Vanisi was not
10 demonstrating any evidence of incompetency.

11 Q I beg your pardon? Let's read together,
12 Doctor.

13 A Correct.

14 Q "In summary, as was observed as part of his
15 overall presentation, the results of his ECST-R testing
16 indicate no effort to feign or exaggeration psychiatric
17 symptoms in order to suggest the possibility of
18 incompetency."

19 A Correct.

20 Q So, your finding is that he was not trying to
21 hide any kind of --

22 A Correct.

23 Q -- psychosis?

24 A Correct.

Q Misrepresent psychosis?

A That's correct.

Q So he was not misrepresenting himself as

impaired?

A He was not representing himself as impaired,

that's correct.

Q Misrepresenting?

A Misrepresenting.

Q The second test you administered resulted in
a different conclusion; is that right?

A That's correct.

Q And this test was administered within the
same two-hour period that you interviewed him?

A That's correct.

Q How long does it take to administer one of
these tests?

A Approximately 20 to 30 minutes.

Q So was there a break between the
administration of the two tests, was there --

A No, they were continuous.

Q They were continuous. So which test did you
perform first?

A The ECST-R.

Q So you performed that and you found no

evidence of malingering or misrepresentation, I should say, right?

A Correct.

Q And then immediately administered the next test and you find that there is evidence of misrepresentation?

A Well, I administered the second test and sent that test off for scoring. I had no idea what the results of that test were.

Q Right. Until later?

A Correct.

Q Let's return to your report again, and on page 7, third paragraph, analysis of this second test that you performed --

A Uh-hum.

Q -- you indicate, "There is sufficient reliable evidence to support a conclusion that he intended to misrepresent himself as impaired" --

A Correct.

Q -- is that right? Can you tell us what this sufficient and reliable evidence is?

A I can tell you what that is; that would be part of my use of the posters that I brought to the Court, and with the permission of the Court, I would be

able to make a mini presentation of approximately 12 to 15 minutes to explain that result.

THE COURT: Do you want him to do that?

MR. EDWARDS: Yes, please, your Honor.

THE COURT: Okay. Do you want to step down and use the stencil?

Excuse me just a minute.

(Short pause.)

THE COURT: Okay. Doctor, you may proceed.

THE WITNESS: Thank you.

MR. EDWARDS: And your Honor, the question to him, just so we're clear, I asked him if he could please tell us what this evidence is and why he considers it sufficient and reliable.

THE WITNESS: Correct.

THE COURT: Okay.

THE WITNESS: This is a sample question from -- taken from the VIP, or the Validity Indicator Profile, is a hundred item questionnaire of nonverbal cognitive abilities, that is, the thinking and the problem solving skills displayed by a test taker. Each problem is presented to the individual, one problem at a time, on one single sheet. The upper half of the sheet depicts the problem that's to be solved and the lower

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half depicts one of two possible choices or answers for the problem. Obviously, in this case the most correct answer would be item number one to complete the problem.

Now, I refer to this as a test of cognitive abilities, but what it actually is is a test of a response style that the defendant makes use of in completing the assessments. By response style, I mean the intention and the effort that a test taker utilizes in order to complete the test. Poster number two here might give me a better, more concrete example by what I mean. Response style in taking any examination, including the VIP, an individual can put forth an honest effort, sign zero effort to do well in the examination, or they could be indifferent or casual or sloppy in how they approach the test. The VIP is specifically designed to measure the quality or the integrity of the intention and the effort an individual puts forth in completing the assessment instrument.

There are four possible response styles depicted here on this form. The first possibility is that an individual might have the intention to perform well on the examination and demonstrate high effort to do so. That would result in a compliant response style, as well as a valid outcome on the assessment.

BY MR. EDWARDS:

Q Doctor, if I might ask you, how can you tell if they're putting forth maximum effort?

A As I proceed I'll be able to demonstrate that --

Q Okay.

A -- to you. A second option in responding to the assessment would be an individual who approaches the test with the intention to perform well but demonstrates low effort in doing so, so for example, someone may have the intention to do well on an examination but demonstrate inconsistent or minimal effort in the completion of the examination, or may have difficulties with their attention or concentration which allows them not to exert a high level of effort as would be required to achieve a compliant response style as is depicted here.

A third option is the individual who intends to perform poorly on the examination and demonstrates low effort in doing so. This would, basically, be equiv -- this is called an irrelevant response style and also results in an invalid assessment. In this response style pattern, the answers that an individual provides bears no resemblance whatsoever to the questions that

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are being asked. An individual may decide, for example, to answer every third item as true or correct or in an attempt to display a random pattern of answering.

The last possibility in response styles on the VIP is an individual who tends to perform poorly and demonstrates high effort in doing so. The ability to answer questions -- the individual has the ability to answer questions, but suppresses a correct answer for an incorrect answer.

Now, the VIP, as can be seen here, is a forced choice test. If an individual did not know any of the answers or answered randomly to all of the 100 questions on the item, they would never, by chance alone, obtain approximately 50 percent of the questions correctly merely by guessing. The VIP uses this evidence of below chance performance to identify the deliberate effort to respond incorrectly. And by deliberate effort, the demonstration of deliberate effort would, likely, constitute misrepresentation.

If I can turn this, these are examples of two VIP profiles, one of which is a valid and compliant profile, the other which is an invalid and suppressed profile. Before -- these are not Defendant Vanisi's profiles, these are just samples that I'm providing, but

before you can comprehend the meaning or the interpretation of these profiles, I'd like to explain or provide an explanation for two -- for two issues that are important in determining how -- knowing how to interpret this.

Number one, when the individual is provided with the initial test questions, those questions are provided to the individual randomly in terms of their degree of difficulty. When the assessment is tested and sent off for testing by computerized scoring, those questions are rank ordered from left to right, according to degree of difficulty, so the easiest questions depicted by the example of the model I provided earlier are on the extreme left side of this vertical/horizontal access and the most difficult items are on the extreme right side, number one.

Number two, this curve here is known as a performance curve and it's computed based on a statistical property known as a running mean or a moving average. That is to say, you may have heard a financial analyst, for example, talk about the three-day moving average of a particular stock, or the three-day moving average price of a particular mutual fund. That means, basically, they've taken the closing price of that stock

or mutual fund for three consecutive days, Monday, Tuesday, Wednesday, noted the closing price, divided that price of that sum over three days, divided it by three to obtain a moving average. In order to maintain the integrity of that moving average the following day, Thursday, the -- that's the closing price would be noted, but the first day closing price would be dropped, so the second average would be computed based on the sum of the closing prices on Tuesday, Wednesday, Thursday divided by three to obtain a moving average. That, in turn, would be plotted on a profile; ditto for a Friday, Thursday and Wednesday. The intent is to provide a plot, a moving average of the average score of the individual. On the VIP, this is a ten-day moving average. The first ten answers from least difficult to most difficult are sum divided by ten and an average score is placed at this indicator here. Because that score is 1.0 on those first ten items the defendant answered correctly, and on the most easiest items, so what we have here, then, on this vertical axis is a range of 1.0 to 0 indicating how the client, on average, responded to the questions of the assessment. A score of 1.0 would be a true answer, and as incorrect answers are added to the average you would see a natural

progression in the performance curve. And once again, the horizontal axes is the rank ordering of the items according to difficulty from left to right, the left being the easiest, the right being the most difficult.

This shaded area represents the area of chance guessing, at this point at 0.5 (indicating). Once again, we have a forced choice assessment where there's only one or two possible answers are correct. This area here represents the area of guessing, a random guessing that would be expected over a period of time. At the midline is the 0.5 cutoff at this height is 0.7, at this lowest level is 0.3.

Now, if I can proceed here to discuss these various sectors, the first sector here on this compliant valid profile is called an ability sector. That is to say, it is the ability that the test taker demonstrates in answering the easiest items of the test that are rank ordered. And in this instance it's quite clear that the gentleman, because it's not a valid compliant profile, had no difficulty and was more than willing to answer the questions correctly. The running means or the moving indicators that I've discussed earlier are consecutive up to this point in time. The greater this distance in sector one, the greater the ability or the

willfulness of the test taker to answer the easy item correctly. One would expect to score, on average, in the 50's to the 60's range, as is demonstrated in this compliant profile.

Sector two here in this area is much -- is a much narrower width than sector one here (indicating). This is called a transition sector. This is the area where the test taker moves from knowing the answers to the questions, transitioning to an area where he's beginning to guess about the answers to the questions, and is, as demonstrated in this validity compliant profile, it's very narrow meaning it doesn't take many questions to reach that question, and it's a very sharp, steep decline.

Sector three on this compliant profile is the transition sector. It's that portion of the performance curve here that reflects the period of transition from knowing the answers to guessing at the answers at the beginning at the sector two there and continues all the way to the end. This depicts the performance on items that are sector three. The transition of random sector depicts the performance on items that are beyond the range of the test taker's ability to answer. And because these are rank ordered by item difficulty, one

would expect this area to be depicted of the performance curve by answers in a shaded area because if one is honestly guessing, over time approximately half the questions will be answered even if you don't know the correct answer. So what we have here, then, is a valid performance of an individual who demonstrated some willingness to answer the easiest items with integrity, made a very rapid transition from what he knew to be correct to being uncertain, and then with regards to the most difficult items of the VIP assessment, demonstrated random guessing where approximately 50 percent of the answers were correct, 50 percent of the answers were incorrect. This is a second example of a profile that is not that of the defendant. This represents an invalid suppressed style of responding. As you can see, at the very onset, at the easiest answers, the individual is making a demonstration to feign no knowledge how to respond. He is answering according to random guessing rather than to degrees of certainty. Point in fact, the entire running means that have been computed are all in the shaded area suggesting he's merely guessing and not making an honest effort to answer with any degree of integrity or sincerity. In addition, what makes up a suppressed profile is the

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suppression sector right in here that is below the shade area (indicating). This means that for an extended period of time of the performance curve, there were running means of less than 0.3 below the shaded area. That means for the extended number of items the test taker answered no more than 30 percent of them correctly. A suppression sector on the VIP is designed or defined as 20 or more running means of 0.3 or less. Given that, guessing at an answer will result in 50 percent of the correct answers on average, the existence of this running mean strongly suggests a suppression of correct answers. If he didn't know the answers to the problems, the performance curve would be in the shaded area which is -- which depicts chance responding. So these suppression -- this suppression pattern here means that he knew the correct answers, but was willing, seemingly willing to answer them incorrectly in order to misrepresent himself, albeit in a very naive manner, particularly given this introduction here.

Now allow me to present the defendant's profile. This is the defendant's profile on the VIP, the Validity Indicator Profile. And at the onset one can see it is an invalid suppressed profile, not unlike the previously invalid suppressed but with a bit more

sophistication. Sector one, the ability sector, the willingness of the defendant to answer the easiest items of the test is demonstrated here in sector one. As you can see, it's not very wide. The distance is 32, when we would expect a range approximately in the 50's or the 60's. The total score, that is the number of items the defendant answered correctly, was 64. On average we would at least expect a score approximately of 50 plus or minus a few, so this tells us that he's making some effort to answer correctly, particularly the easiest items of the test.

The transition sector here, sector two, is problematic. It's much too wide, as can be seen. It's much too wide and there appears to be some degree of confusion about his -- the transition from knowing the answers to guessing the answers. This sector, the transition sector depicts an individual who is uncertain about wanting to answer the items correctly. The cutoff for this sector is 23 on the VIP. That is to say, anything in excess of 23 presents a problem. Mr. Vanisi obtained a score of 25 on this sector. This, basically, means that the individual, the defendant, was not exerting a full answer in an effort to honest a straight answer but in and of itself this problem here in sector

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one, this problem here in sector two is not what makes this profile invalid. What makes this profile difficult is his response pattern on sector three. Sector three, as I stated previously, depicts the performance of an individual on items that are beyond their ability to answer. And because they're beyond their ability, we would expect a chance pattern of responding, that is, the performance curve would be in the shaded area. But, however, notice that rather than demonstrating chance performance here in the shaded area, there is a consecutive existence of 23 running means that are below 0.3 or less. This is referred to, as I stated previously, a suppression sector. It begins at unit number 64 and continues to unit number 86, a distance of 23 units which exceeds the cutoff of 20 for the establishment of suppression sector, so we have two choices about what this suppression sector means. Number one, the defendant deliberately answered the item incorrectly in an attempt to misrepresent his actual abilities. Number two, that the defendant experienced an extremely improbable period of bad luck that resulted in him responding in an incorrect manner for 23 consecutive trials. If you receive this latter explanation, this would be equivalent to flipping a

coin, a 50/50 option 23 consecutive times, and each time you said heads, the outcome was tails; and each time that you said tails, the outcome was heads. That, I put to the Court, is an improbable occurrence, therefore, if I assume that this is a deliberate misrepresentation of his abilities, I have to conclude that when the defendant was presented with a problem, he was able to do a correct answer, suppress his correct answer and select an incorrect answer. I put it to you that's hardly the experience of -- that delusions or impact judgment would not allow that kind of thinking or cognitive processing to occur.

Now, there are two points I want to make in conclusion. It takes just as much reasoning skill to select a correct -- incorrect answer here as it takes to select a correct answer. And the only reason why someone would select an incorrect answer there would be to misrepresent their actual abilities.

And two, this is a much more sophisticated attempt to misrepresent one's abilities than the first poster I presented where the individual at the very onset was in the random range of responding. Here we have an individual who is willing to answer the initial questions correctly, demonstrated some hesitancy or

concern about what was going on and how he wanted to respond, and then rather than answering randomly, which would be expected to be the most difficult items on the assessment, purposely suppressed his answers indicating that he knew the answers to begin with. So the issue reasoning and rational thinking associated with competency suggest some emphasis on cognitive functioning.

The presence of a mental illness is relevant only insofar as that illness affects one's rational and factual understanding. My conclusion is based on large part on these results here that whatever mental health symptoms Mr. Vanisi would be experiencing, whatever diagnosis you want to give him, that those symptoms and signs do not overwhelm his cognitive abilities to engage in reasoning, in rational thinking, in factual understanding of the information as presented on the VIP.

THE COURT: Thank you. Please retake the stand.

BY MR. EDWARDS:

Q So, Doctor, what you're telling us here is this test can measure human intention?

A It measures a response style. It measures

the style, the intention the individual demonstrated in completing the requirements of the examination. I can generalize, therefore, from this assessment to other like assessments of cognitive abilities. I can suspect, also, that for other assessments not affiliated with cognitive abilities that there's strong reason to suspect the sincerity of effort that's being put forth.

Q This is a better test than the first test you gave him?

A They're different tests.

Q Which one's recognized in the state of Nevada as a --

A Both tests meet the Daubert standards.

Q You've used both tests before in proceeding in court --

A Correct.

Q -- right? Okay. Seems to me on this VIP test that that chart shows somebody who performs poorly as the questions become more difficult. Didn't it look like that to you?

A It looks that way.

Q The questions get more difficult, his answers get less correct?

A With the exception of the suppression sector

that is highlighted in yellow.

Q But that's not the problem you see in this case?

A No, it is the problem.

Q Oh, it is the problem?

A Yes.

Q Well, tell us what question 64 was on this test.

A I can not tell you what that question is.

Q Can you tell us what any of the questions were?

A I gave you the sample that was provided initially, but I do not have the test and it would be unethical for me to reveal those test answers.

Q It would be unethical?

A Yes, it would.

Q On what ethical grounds are you prohibited from sharing that information with us?

A Well, I'm permitted ethical grounds of the American Psychological Association not to reveal the answers to a specific assessment instrument.

Q So it's a secret test?

A No, it's not a secret test, but they may give it to you one day and I don't want you to know what the

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answers might be.

Q Well, I guess you can perceive my intention here. I guess that would be like letting out the SAT or something?

A An SAT, sure.

Q It's that reliable?

A Yes.

Q And it's all statistical based, right?

A Largely.

Q Okay. So on the basis of these statistics, is the questions which we don't know what they are become more difficult, I have to take your word for that, right? Like what's the first question on the test?

A The questions are nonverbal.

Q They're nonverbal?

A They're patterns as was demonstrated in the sample I provided earlier.

Q Like pictures?

A Correct.

Q Is this a deduct kind of thing or at a category?

A No, it was much akin to the sample I provided in the initial part of the presentation.

Q So the basis of these secret questions you've determined that my client is lying to you?

A On the basis of his response to these questions, I determined the client was making, in all probability, a purposeful effort to misrepresent his actual abilities in responding to a simple 50/50 forced choice test.

Q We can't judge whether that's a reasonable conclusion because we're not allowed to know what questions you asked him.

A Well, I have the results there. If -- if some arrangements can be made to actually look at the test, perhaps that would resolve your curiosity.

Q Well, you know, secretive testing is kind of suspicious, wouldn't you think?

A The secrets were not -- the testing was not secret to the defendant. I'm merely reporting his responses to the questions and, more importantly, the pattern of responses that he provided.

Q Do you know Mr. Vanisi's IQ?

A No, I don't, but I suspect he's a very bright man.

Q You suspect?

A Yes.

Q On what basis?

A On the basis of this sophisticated attempt to misrepresent his actual abilities.

Q Could this suppressive responding you're referring to have been due to bad guessing, bad luck?

A Indeed, that was part of my presentation that it's possible. An alternative explanation is that it could have been an extremely extended period of bad luck, equivalent to flipping a coin 23 times and each time making the incorrect decision.

Q And you mention that he was two points over what, some threshold where --

A Three points over, 23.

Q Questions -- was it 64 to 86 or --

A Approximately, yes.

Q Okay. That's 22, right?

A 23.

Q Okay. So he got both 64 and 86 wrong.

A On the attachment number four the distance of the suppression sector is 23 units. It begins its starting point 64 and ends at ending point 86.

Q And therefore, he was three questions over the threshold?

A The threshold in and of itself is sufficient

to trigger a suppress -- the existence of a suppression sector.

Q So do you have any way with this test to determine whether that's a severe suppression or just a --

A Well, if you recall --

Q -- moderate one or --

A If you recall the previous example, there was a demonstration of a suppression sector that was 50 units in length. That was a very obvious naive attempt to answer questions in a subvertive manner. This is less naive. I put it to you that it's a much more sophisticated attempt.

Q But it might be bad luck, too.

A But if you think you can guess the outcome of 28 flips of a coin randomly, it would be bad luck.

Q All right. On page 8 and 9 of your report you address your attempt to assess Mr. Vanisi's willingness to engage in truthful testimony. Do you recall that?

A Correct.

Q What did you conclude?

A That he is not likely to engage in truthful testimony, in spite of the fact that he knows what

truthful testimony is.

Q Do you think that unwillingness to engage in truthful testimony has any relation to the way he's communicating between counsel and his ability to communicate with counsel?

A Could you restate the question?

Q Yeah. If he's unable to testify truthfully, do you think it has any impact on his relationship to his attorneys?

A Well, it's certainly possible that he'd be willing to miss -- to deceive his attorneys, of course, but that in and of itself would not constitute criteria for incompetency.

Q On page 9 you state, "He has clearly demonstrated his willingness to engage in sophisticated acts of deception".

A Based upon the results of the VIP assessment.

Q So these sophisticated acts of deception are the wrong answers he gave to these secret questions?

A The suppression sector which strongly suggests the duration of a suppression sector, its place in the assessment process in sector three as opposed to sector one certainly indicates some sense of planning and premeditation of how to respond to the assessment

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itself.

Q Premeditation?

A One has to look at the test and make a determination, do I want to answer this portion of the test correctly or not.

Q All right. Finally, in your report you conclude that "The legitimacy of Mr. Vanisi's psychiatric symptoms should be called into question".

A Yes.

Q Are you saying he does haven't bipolar disorder --

A No.

Q -- with psychosis?

A No.

Q Do you think his bizarre behavior is really just kind of faking it?

A I think at times it's rather obvious that his bizarre behavior was, indeed, faking. I think at times it may not be. I suspect that he has some symptoms associated with the bipolar disorder, but in an attempt to present himself in a sophisticated manner is more than willing to exaggeration or at times feign those symptoms.

Q Do you think the prison doctors are wrong in

involuntary administering psychotropic drugs?

MR. MCCARTHY: Your Honor, the witness has already said he's not an expert in the field of medication.

THE COURT: Are you objecting?

MR. MCCARTHY: Yes.

THE COURT: Sustained.

BY MR. EDWARDS:

Q Doctor, on page 6, you indicate that my client -- let me get the line for you -- first line, page 6, quote, has a regime of potent psychiatric medications.

A Uh-hum.

Q Is that right?

A Correct.

Q Is there a reason for that?

A For his medications.

Q Is there a reason for receiving them, yeah.

A Well, once again, I'm not a physician. I presume that the medications are either, as they consist in many prison contexts, to control his behavior or to treat his symptoms.

Q So the fact that he's receiving medicine might corroborate the fact that he has legitimate

psychiatric symptoms, right?

A It may corroborate that as a behavioral problem and this is a way of containing those behaviors, could be either way.

Q You give us three facts in your report that you use to support your conclusion that Mr. Vanisi's psychiatric conditions are, perhaps, being faked; is that right?

A Specifically --

Q Well --

A -- page 9?

Q You list them one, two, three --

A Correct.

Q -- page 9 and 10. First on page 9, you state that you're not aware of any mental health condition prior to Mr. Vanisi's arrest --

A Correct.

Q -- and that seems to indicate, or you seem to be implying that, therefore, he might be faking because he didn't have anything before.

A Within the context of the results obtained on the VIP, I have reason to suspect a host of issues about Mr. Vanisi's presentation. These points are independent of that and would likely corroborate that suspicion.

Q You have suspicion. Do you have any evidence?

A No.

Q Do you have any evidence to suggest that he did not have these mental health conditions prior to his arrest?

A No, because the existence of a psychotic disorder really isn't -- does not constitute designation of incompetency in and of itself.

Q So point one, in fact, one is really speculate one?

A I am presuming that there are no evidence I observed in one. It's possible there may be.

Q So it's really an innocuous fact, then, right?

A I observed no evidence in his file that suggested there was a history as I might expect with an individual who has a serious psychotic disorder prior to his incarceration in Washoe County Jail.

Q And the second factor you rely on to conclude that Mr. Vanisi might be faking his psychiatric condition is that the medical record in 1999 never ruled out malingering, right?

A The medical record, there were various

notations in the initial medical record that suspected that his symptoms were feigned or exaggerated. I would expect most professional experienced mental health professionals to be acutely attune to that possibility.

Q And this is the very same medical record that contains the diagnosis of bipolar disorder and numerous references to psychotic behavior, correct?

A Correct.

Q And it also indicates, most importantly, that my client is being treated with what you call powerful antipsychotic drugs, right?

A Correct.

Q So is it fair to say, then, Doctor, that the medical record you're referring to does not prove any conclusive manner that Mr. Vanisi is faking his symptoms?

A I'm not -- I'm not concluding that Mr. Vanisi is faking any symptoms. I'm merely referring to the fact there are a host of individual pieces of evidence when, if taken together, a reasonable person may conclude that there may be some exaggeration or feigning of specific symptoms demonstrated by Mr. Vanisi.

Q Well, you would agree that reasonable people make conclusions on the basis of evidence, not

speculation, correct, Doctor?

A That's correct.

Q Okay.

A Would you like to address point number three?

Q Yes. The third and final fact you rely on to question the legitimacy of Mr. Vanisi's psychiatric symptoms is that he appeared in a Miller Light commercial and that he was housed in the psychiatric detention center here in Sparks?

A My conclusion is Mr. Vanisi was a paid professional actor prior to his legal difficulties and if, indeed, he has that skill, it, once again, would not be unreasonable that he might be able to mimic psychiatric behaviors in a facility such as Lakes Crossing detention center.

Q What evidence do you have that he was a paid professional actor?

A I have no evidence. I'm taking it at face value, as well as notes that are made in his entry chart.

Q So you haven't seen this commercial that he allegedly appeared in?

A No.

Q And you don't have any evidence he ever

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received any professional training as an actor?

A I'm taking it at face value.

Q You never saw any of his performances?

A No, I did not.

Q Okay. Is it somehow a scientific fact that actors can fake psychiatric symptoms better than other people?

A I'm not sure it's scientific fact but, however, my Masters degree was on professional Hollywood actors and their ability to disassociate themselves and take on differing roles.

Q So was that a yes or a no?

A Repeat the question.

Q Is it a scientific fact --

A No, it's not.

Q -- that professional actors can fake psychiatric symptoms better than others?

A No, it's not a scientific fact.

Q All right. So you're really just speculating that because he was in a beer commercial he might be a more skilled faker than others, right?

A It's a realistic speculation.

Q Do you know if he showed up in a grass skirt in that commercial?

A I have no idea if he did.

Q Okay. Finally, the fact that he was housed in Lakes Crossing and, therefore, I guess what the implication here is that he -- he learned to -- learned to fake by watching others?

A The speculation is that if one had the skill and the wherewithal to take on and mimic other peoples' behavior, Lakes Crossing would be the ideal optimal facility to do that given the legitimacy of the majority of the people, the psychiatric legitimacy of some of the signs and symptoms some of -- the majority of people display at that facility.

Q He wouldn't know anything what Mr. Siaosi Vanisi sought at Lakes Crossing, do we?

A No, we do not.

Q We do not know who he was exposed to?

A No, we do not.

Q So we don't know what symptoms he could have learned there?

A I have no idea.

Q It's all speculation?

A It's -- it's a suspicion.

Q Mental illness contagious, Doctor?

A No, it's not.

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MR. EDWARDS: No further questions.

THE COURT: Cross.

MR. MCCARTHY: Can I have a short break first?

THE COURT: Certainly. Court's in recess.

(Short break.)

THE COURT: Okay, Mr. McCarthy.

MR. MCCARTHY: Thank you.

CROSS-EXAMINATION

BY MR. MCCARTHY:

Q Dr. Amezaga, I noticed in your testimony earlier you mentioned a couple of times you were concerned about Mr. Vanisi's competency for trial; I'll put the word trial in quotes. Are you aware that proceeding to follow this is not really a trial?

A Correct.

Q Does that make any difference at all in your analysis?

A No, it's not. No, it doesn't.

Q Okay. And tell me, Doctor, are you trained in how to conduct a clinical interview?

A Yes, I am.

Q And you also know how to conduct these more objective tests?

A Correct.

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Q Is there some reason why testing is better,
in your view, than clinical interviewing?

A Testing allows someone -- allows an
individual, a professional to acquire evidence in an
objective standardized manner which allows them to come
to a more -- hopefully a more accurate, more reliable
decision about what exactly is going on or being
experienced by the test taker.

Q Okay. By the way, do you have any way of
calculating the odds of flipping a coin and getting
heads 23 times in a row?

A I thought about how that might be computed
referring -- referring to my -- to my old statistical
days it was a permeation some day to 28 to the 27th
power times the 26th power, 25, it was rather
improbable.

Q A long number?

A A long number.

Q When one -- I'm not sure I understand. Is a
low score or high score on the last part of the VIP test
that we talked about, is that indicative of
intelligence?

A A low score.

Q Or a high score?

1 A A high score.

2 Q That is falling without the gray range either
3 above or below?

4 A Can you restate the question please?

5 Q You know, I don't think I can. I think I'm
6 going to move on.

7 Okay. Were you expressing the opinion that
8 Siaosi Vanisi suffers no mental illnesses at all?

9 A No, I was not.

10 Q Your opinion is despite his mental illnesses,
11 he is competent?

12 A The existence of a mental illness in and of
13 itself does not preclude someone from a designation of
14 competency or incompetency.

15 Q And it's your understanding of the standard
16 of competency --

17 A Correct.

18 Q -- that if a psychotic person -- if a
19 schizophrenic person, nevertheless, is able to
20 understand the proceedings and the charge, they can be
21 competent?

22 A I'm well aware of individuals who have a
23 formal diagnosis of schizophrenia who, if they're asked,
24 can restrain their symptoms and engage in sufficient

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cooperation and communication with your attorney to assist with their defense.

Q Okay. And if they are unwilling to do so and if they are unwilling to cooperate with their attorney, in your view does that make someone incompetent?

A No. Unwilling is to be differentiated from capacity. Someone certainly has those, though someone has the capacity, it becomes a volitional choice of whether or not they wish to execute that capacity.

Given the nature of the responses that were provided on the first assessment administered to Mr. Vanisi, the ECST-R, I conclude that Mr. Vanisi has sufficient capacity to respond and communicate and convey information to his attorneys if he so chooses.

Q What was it about the quality of his responses on that exam that leads you to that conclusion?

A Well, there were specific answers concerning each; the progression of competency that were asked directly of Mr. Vanisi and Mr. Vanisi was able to respond in a rational coherent logical manner to those questions.

Q Can you give an example?

A Page 6 of my report, factual understanding of

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the ECST-R, on this domain, this portion of this particular assessment, the specific intent of the specific questioning is to determine to what degree Mr. Vanisi possesses factual understanding of the proceedings against him. He was asked to identify his charges, he initially stated he did not recall. After a few seconds he identified his charges as homicide murder. He identified the possible consequences associated with his murder charge as the death penalty, I'm subject to die. He was able to correctly remember the roles and responsibilities of both the defense counsel, my attorney helps me, helps defend my case, and opposing counsel, McCarthy, prosecute the case against me, et cetera, et cetera, et cetera. This led me to conclude and derive the conclusion that based on his responses to those direct questions regarding his factual understanding of the proceedings against him, that he demonstrated no significant impairment in his level of understanding in whatever psychiatric symptoms, be they valid or not, he was experiencing.

Q ... Would you agree with the proposition that Siaso Vanisi has the ability if a question is posed to him and he knows the answer, he has the ability with sufficient motivation to formulate an answer and express

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it?

A Emphatically, yes.

Q If his attorneys wished to acquire knowledge from him, he could, if he wished, provide that knowledge?

A The results of the VIP indicate that Mr. Vanisi has the wherewithal, the capacity to respond to the questions that may be asked of him.

Q Does that mean he would be an easy client for a lawyer?

A No.

Q Might be difficult?

A I would suspect it's extremely difficulty given the degree of sophistication in an attempt to misrepresent himself that was displayed on the VIP.

Q Might require some patience on the part of counsel?

A I suspect so.

Q Do you have an explanation for why the two tests that you mention have seemingly different results?

A I formulated a possible explanation, yes.

Q Okay.

A On the first test, the ECST-R is usually administered to individuals to assess the severity of --

of their psychotic behavior and how severe that behavior
-- unrealistic that behavior may be in an attempt to
look worse than they really are.

Mr. Vanisi did not demonstrate any behavior to
suggest that he was incompetent in any way. What he did
demonstrate was an excessive degree of defensiveness in
some of his responding which led me to conclude that
through, perhaps, routine normal every-day experiences
that he was denying in attempt not to present himself as
significantly impaired or psychotic.

My conclusions, basically, were that the
evaluation of competency to stand trial gave no
indication that he was making an overt effort to
demonstrate incompetency. The VIP is a measure of his
thinking skills, his cognitive abilities, his
problem-solving skills on this measure, he made, in my
opinion, a concerted effort to misrepresent his actual
abilities. I conclude from that assessment or that
result that there's reasonable suspicion to suspect his
reliability in providing or sharing information
regarding his -- his behaviors.

Q Are you suggesting perhaps you want him to
appear not quite as bright as he really is?

A That was a good conjecture.

Q All right. You mentioned or you were asked about a nihilistic delusion earlier. As far as you know, is that a recognized diagnosis of any sort?

A No, I'm not aware of it being any form of a psychiatric descriptor.

Q Certainly not something that's found in the MMPR?

A MMPI?

Q Sorry, wrong book. DSM. It is not?

A It is not.

Q Okay. But do you have a general understanding of what one might mean by the phrase nihilistic delusions?

A I suspect some sort of fatalistic belief.

Q Okay. And I'm just -- perhaps I'm a little bit unclear. If you would, what does the result of the suppression part of the VIP test indicate to you? How does that affect your opinion?

A May I approach the poster, your Honor?

THE COURT: Yes, if you need to.

THE WITNESS: The suppression sector means that on the most difficult items of the examination, where an otherwise compliant individual is able to obtain chance response, that Mr. Vanisi demonstrated the