

BEFORE THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Oct 17 2018 02:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NEVADA STATE BOARD OF)
ARCHITECTURE, INTERIOR DESIGN)
AND RESIDENTIAL DESIGN,)

Petitioner,)

vs.)

EIGHTH JUDICIAL DISTRICT COURT)
OF THE STATE OF NEVADA,)
DEPARTMENT 25, HONORABLE)
KATHLEEN DELANEY,)

Respondent)

and)

DENNIS RUSK,)

Real Party in Interest.)

-----)

Case No. 76792

Eighth Jud'l District Court
Case No. A-17-764562-J

PETITIONER'S SUPPLEMENTAL APPENDIX IN COMPLIANCE WITH
ORDER DIRECTING ANSWER, DIRECTING SUPPLEMENTATION OF
THE RECORD, AND GRANTING EMERGENCY MOTION FOR STAY

VOLUME 3

Petitioner Nevada State Board of Architecture, Interior Design and
Residential Design, by and through its attorney Louis Ling, submits this

Supplemental Appendix in compliance with this Court's Order Directing Answer, Directing Supplementation of the Record, and Granting Emergency Motion for Stay issued October 12, 2018.

TABLE OF CONTENTS FOR VOLUME 3

CONTINUATION OF Appellant/Petitioners' Opposition to
Motion to Dismiss (filed 1/29/18) APPX125 - APPX164

Signed this 17th day of October, 2018.

Louis Ling

LOUIS LING
Nevada Bar No. 3101
933 Gear Street
Reno, Nevada 89503
T: (775) 233-9099

Attorney for Petitioner Nevada State Board
of Architecture, Interior Design and
Residential Design

CERTIFICATE OF SERVICE

I certify that I served on the below date a copy of the attached PETITIONER'S SUPPLEMENTAL APPENDIX IN COMPLIANCE WITH ORDER DIRECTING ANSWER, DIRECTING SUPPLEMENTATION OF THE RECORD, AND GRANTING EMERGENCY MOTION FOR STAY - VOLUME 3 filed herewith upon the following:

By U.S. Mail to the Respondent:

Judge Kathleen Delaney, Department 25
Eighth Judicial District Court
Regional Justice Center

200 Lewis Avenue
Las Vegas, Nevada 89155

By the Court's e-filing and e-service system to the Real Party in Interest:

Robert Nersesian
Nersesian & Sankiewicz
528 S. Eighth Street
Las Vegas, Nevada 89128

Counsel for Real Party in Interest Dennis Rusk

Dated this 17th day of October, 2018.

Louis Ling

LOUIS LING
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933 Gear Street
Reno, Nevada 89503
T: (775) 233-9099

CONCLUSIONS OF LAW

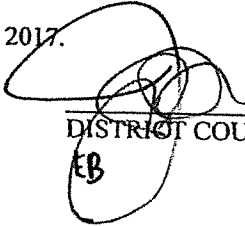

1. The Court addresses the current matter as a petition for judicial review;
2. While judicial review is ordinarily limited to the record before the administrative agency, nonetheless, in matters involving alleged irregularities in procedure before an agency that are not shown in the record, the court may receive evidence concerning the irregularities;
3. This Court shall not substitute its judgment for the judgment of an agency on a question of fact;
4. On the current Petition the Court may affirm, remand or set aside in whole or in part the decision of NSBAIDRD denying Petitioners Petition/Motion to Vacate if substantial rights of the Petitioner have been prejudiced because Conclusions of Law, and Order of NSBAIDRD of September 27, 2011 is:
 - a. In violation of constitutional or statutory provisions;
 - b. In excess of the statutory authority of the agency;
 - c. Made upon unlawful procedure;
 - d. Affected by other error of law;
 - e. Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
 - f. Arbitrary of capricious or characterized by an abuse of discretion.
5. To be arbitrary and capricious, the decision of the administrative agency must be in disregard of the facts and the circumstances involved.
6. NSBAIDRD's determination on Petitioner's NSBAIDRD Petition was clearly erroneous and arbitrary and capricious in the Board's refusal to consider the evidence of the fact that the March 6, 2007, Schirmer Report, with attached drawings, was apparently not before NSBAIDRD when it conducted its hearing in 2011.

1 7. The NSBAIDRD Petition was not a petition for rehearing, and instead must be treated
2 as a petition to vacate.

3 ORDER

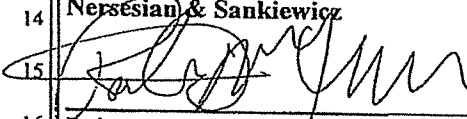
- 4 1. This matter is remanded to NSBAIDRD;
5 2. On remand, NSBAIDRD shall assume jurisdiction and rule upon the Petitioner's
6 NSBAIDRD Petition and consider whether it would be appropriate to vacate its prior
7 decision based upon the newly discovered evidence consisting of the March 6, 2007
8 Schirmer Report and drawings.

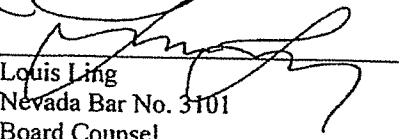
9 DATED this 26 day of June, 2017.

10
11 
12 DISTRICT COURT JUDGE
13 

13 Approved as to form and content:

14 Nersesian & Sankiewicz

15 
16 Robert A. Nersesian
17 Nevada Bar No. 2762
18 528 S. Eighth Street
19 Las Vegas, Nevada 89101
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25 ///
26 ///
27 ///
28 ///

Nersesian & Sankiewicz
528 SOUTH EIGHTH STREET

Respectfully submitted:

Nersesian & Sankiewicz

/s/ Robert A. Nersesian

Robert A. Nersesian

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EXHIBIT 6

EXHIBIT 6

1 CASE NOS.: 08-080R and 11-019R

2

3 NEVADA STATE BOARD OF ARCHITECTURE,
4 INTERIOR DESIGN AND RESIDENTIAL DESIGN

5 -oOo-

6

7 REPORTER'S TRANSCRIPT
8 OF
9 REVIEW, DISCUSSION AND POSSIBLE ACTION TO VACATE 9/27/2011
10 ORDER
11 BEFORE THE JAMES MICKEY, CHAIRMAN
12 WEDNESDAY, OCTOBER 25, 2017

11

12 APPEARANCES:

13 For the Board: LOUIS LING, ESQ.

14

15 For Dennis Rusk: ROBERT NERSESIAN, ESQ.

16

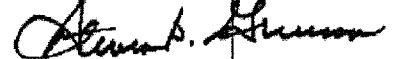
17 Members of the Board: James Mickey, Chairman; Kimberly
18 Ciesynski, Secretary/Treasurer; Greg Erny, Ann Fleming, John
19 Klai, John Morelli, Nathaniel Waugh

19

20 Also present: Sophia Long, Esq., legal counsel; Monica
21 Harrison, Executive Director; T. Kenani Aguada, Executive
22 Assistant; Ginger Hahn, public information coordinator; and
23 Laura Bach

24 REPORTED BY: JOHANNA VORCE, CCR NO. 913

25 JOB NO.: 424644



1 TRANS
Robert A. Nersesian
2 Nevada Bar No. 2762
3 **NERSESIAN & SANKIEWICZ**
528 South Eighth Street
4 Las Vegas, Nevada 89101
Telephone: 702-385-5454
5 Facsimile: 702-385-7667
6 *Attorneys for Appellants/Petitioners*

7
8 **DISTRICT COURT**
CLARK COUNTY, NEVADA

9 Dennis E. Rusk, and Dennis E. Rusk)
Architect, LLC)

10 Appellants/Petitioners,)

11 vs.)

12 Nevada State Board of Architecture,)
13 Interior Design and Residential Design)

14 Appellee/Respondent.)
15

Case No.: A-17-764562-J
Dept. No.: 29

16
17 **CERTIFIED REPORTER'S TRANSCRIPT**

18 Attached is the certified Reporter's Transcript of Review, Discussion and Possible Action
19 to Vacate Order Before the James Mickey, Chairman, dated Wednesday, October 25, 2017.

20 Dated this 8th day of December, 2017.

21
22 **NERSESIAN & SANKIEWICZ**

23 /s/ Robert A. Nersesian
24 Robert A. Nersesian, Esq.
25 Nevada Bar No. 2762
528 South Eighth Street
26 Las Vegas, Nevada 89101
Attorneys for Appellants/Petitioners

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December, 2017, I served a copy of the foregoing
Certified Reporter's Transcript, by depositing the same into the U.S. Mail in Las Vegas, Nevada,
postage prepaid, addressed as follows:

Lois Ling, Esq.
933 Geer Street
Reno, Nevada 89503

Sophia G. Long
Nev. Dep. Atty. General
555 E. Washington Ave., # 3900
Las Vegas, NV 89101

/s/ Rachel Stein
An employee of Nersesian & Sankiewicz

1 CASE NOS.: 08-080R and 11-019R

2

3 NEVADA STATE BOARD OF ARCHITECTURE,
4 INTERIOR DESIGN AND RESIDENTIAL DESIGN

5 -oOo-

6

7 REPORTER'S TRANSCRIPT
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9 REVIEW, DISCUSSION AND POSSIBLE ACTION TO VACATE 9/27/2011
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15 For Dennis Rusk: ROBERT NERSESIAN, ESQ.

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24

REPORTED BY: JOHANNA VORCE, CCR NO. 913

25

JOB NO.: 424644

TRANSCRIPT OF PROCEEDINGS - 10/25/2017

1	I N D E X	Page 2	1	MR. MICKEY: So I want to go through --	Page 4
2			2	MS. LONG: For the record, Sophia Long from the	
3	OPENING STATEMENT:	PAGE	3	Attorney General's Office acting as counsel for the Board.	
4	By Mr. Nersesian	9	4	MR. MICKEY: So one of the first things I want to	
5	By Mr. Ling	18	5	kind of do is just give everybody a heads up on our agenda	
6	By Mr. Nersesian	28	6	to make sure we're clear as to what we're going to get	
7			7	through today. Need to kind of go through a few	
8	Q and A	33	8	housekeeping items, kind of talk about the way that we're	
9			9	going to let everybody address the Board, Q and A portion of	
10	BOARD DELIBERATIONS	59	10	it, deliberations, and finally kind of looking at what	
11			11	possible actions may come from this.	
12			12	So a couple of the things just to remind everybody	
13			13	kind of the intent of what we're looking at for in today's	
14			14	session. Kind of going back through a number of documents	
15			15	here that kind of got us to this issue. But from the letter	
16			16	that was sent for everybody on kind of the reminder and the	
17			17	invite for this, please note that this agenda item is	
18			18	specifically limited to to determine whether the order to	
19			19	vacate its September 27, 2011 Order in light of the Schirmer	
20			20	Engineering Report and drawings.	
21			21	Other than this, the Board will not review any	
22			22	additional evidence outside of the original hearing. Also,	
23			23	other than this, the Board will not make any other	
24			24	determinations. And so when we go through and we look at	
25			25	the minutes from the May 22nd District Court Hearing, on the	
1	LAS VEGAS, CLARK COUNTY, NV, WEDNESDAY,	Page 3	1	last paragraph from the judge's order we have it that the	Page 5
2	OCTOBER 25, 2017		2	Board to consider whether it would be appropriate to vacate	
3	10:04 A.M.		3	its prior decision based upon the newly discovered evidence	
4	- oOo-		4	consisting of the March 6th, 2007 Schirmer Report and	
5	(The Court Reporter was relieved of her duties		5	drawings.	
6	under NRCP 30(b) (4) .)		6	And so as we all discuss part of the packet	
7	P R O C E E D I N G S		7	everybody should have received and has gone through, so	
8	MR. MICKEY: All right. So we are a little bit		8	basically this is what the judge has asked us to take a look	
9	behind here, but let's reconvene the October 25th, 2017		9	at. This is what everybody got in terms of that. And then	
10	Nevada State Board of Architecture, Interior Design and		10	for everybody's packet, which was distributed, we have the	
11	Residential Design Board Meeting.		11	respondent's answer and brief from January 7th, 2015; we	
12	Next on our agenda is Item 4, the matter to review		12	have the District Court Order dated June 26th, 2017; we have	
13	discussion and possible action regarding whether the Board		13	the two-day transcript of the Board versus Dennis Rusk	
14	would vacate its September 27th, 2011 Order in light of the		14	Hearing dated August 16th and September 1st, 2011 and all	
15	Schirmer Engineering Report and drawings in Case Nos.:		15	the accompanying exhibits; we have the Board Order dated	
16	08-080R and 11-019R. And so, if I can ask for the		16	September 27th, 2011; and then finally, once again, we have	
17	appearance for the state and the respondent, if everybody		17	a copy of the March 6th, 2007 Schirmer Engineering Reports	
18	would just want to come up and grab a seat. And, please,		18	and drawings.	
19	for the record, if everybody could go ahead and introduce		19	I just want to make sure that that is what	
20	themselves.		20	everybody has been reviewing, everybody has -- that that's	
21	MR. NERSESIAN: Good morning. Robert Nersesian,		21	what our packet is, and that's what we've been going	
22	Nersesian and Sankiewicz appearing for Dennis Rusk and		22	through.	
23	Dennis Rusk Architect, LLC. And with me today is Mr. Rusk.		23	Oh, yes. And then from there, we have the briefs.	
24	MR. RUSK: Dennis Rusk, Architect.		24	So we have, also, what came in as Judge Wiese's Order. We	
25	MR. LING: Louis Ling, Board Counsel.		25	have the brief filed pursuant to the Board's Directive of	

TRANSCRIPT OF PROCEEDINGS - 10/25/2017

<p style="text-align: right;">Page 6</p> <p>1 8/29/17. Sorry. We have the Board's response to the Board 2 Staff's Hearing Brief versus Judge Wiese's order that was 3 distributed. And then we have the petitioner's reply to the 4 Board Staff's Hearing Brief for Judge Wiese's Order, has 5 also been distributed to everybody. 6 Am I missing anything? Or does everybody 7 understand that that's kind of what -- I believe that 8 quantifies about 1700 pages worth of documents for 9 everybody. So I appreciate everybody's chance to get 10 through that and review it and look at those things. 11 So those are all the items that we have. And once 12 again, going through for the -- all the orders, the 13 paperwork, what we're looking at doing then is go ahead and 14 let the -- address the Board. And then from there, as I 15 mentioned, we're going to go into Q and A. 16 One of the things I do need to ask for everybody 17 is, unfortunately, we've had something come up in which 18 we've got some Board members that need to leave today for a 19 little while. And we're trying to -- we have to split this 20 up. And so we're wondering if you guys would be able to 21 come back at 3:30. 22 What we'd like to do is kind of get through 23 everybody's address to the Board. And if you're able to 24 come back later for Q and A, or if we need to do Q and A 25 this morning. We're just trying to get a gage as to would</p>	<p style="text-align: right;">Page 8</p> <p>1 described because they were not here at the time of the 2 hearing. 3 MR. MICKEY: Okay. 4 MR. WAUGH: Yes. 5 MR. MORELLI: Yes. 6 MS. LONG: Can you identify who's name -- 7 MR. WAUGH: Nathaniel Waugh, yes. 8 MR. MORELLI: John Morelli, residential designer, 9 yes. 10 MS. FLEMING: Ann Fleming, yes. 11 MR. MICKEY: Jim Mickey, architect, yes. 12 MR. LING: Okay. Thank you. 13 The other thing -- and I've heard in your opening 14 presentation that we were going to be limited to not 15 introducing any new evidence. And I do want to make sure 16 that the record is clear. Both Mr. Nersesian and we have 17 attached some exhibits to our briefs. And I want to make 18 sure those are part of the evidence today. Those are things 19 that were generated in the matter before Judge Wiese. And 20 they have been looked at and considered by you. We need to 21 make sure that those are part of the evidence and record in 22 this case so we can refer to them. 23 MR. MICKEY: Yeah. In recognition of the briefs 24 that were filed by both parties as well as the responses, 25 yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 everybody be able to come back about 3:30 so we can finish 2 this up. 3 MR. NERSESIAN: I'm available. 4 Are you available? 5 MR. RUSK: Yes. 6 MR. MICKEY: It's just kind of this Q and A 7 portion as to where if people can return, we can take that 8 break and come back at 3:30, that would be great. 9 MR. NERSESIAN: I'm available, yes. 10 MR. MICKEY: Okay. All right. With that, then 11 thank you everybody for your participation today. 12 And Mr. Nersesian. 13 MR. NERSESIAN: Before I start, may I approach and 14 use the copy that the Board has of the FLS drawings? 15 MR. MICKEY: Oh, these are not drawings. 16 MR. NERSESIAN: There's drawings in there. 17 MR. MICKEY: Oh, yes. 18 MR. LING: Mr. Mickey, if I may, just some 19 preliminary matters. I would like two things, at least 20 request to the Board. One would be that the Board members 21 who were not on the hearing in this matter, and there are 22 four of them, affirm, because we need to do this for 233B 23 purposes, that they have reviewed all the materials. And we 24 need to make sure on the record that they affirm that 25 they've all reviewed the 1700 pages of materials that you</p>	<p style="text-align: right;">Page 9</p> <p>1 MR. LING: And it's the attachments that I'm 2 referring to because those are not evidence from the 3 original hearing in this matter. They are things that came 4 up in front of Judge Wiese, but they've been presented to 5 you to supplement this so you -- for your consideration. I 6 just want to make sure that it's clear on the record that 7 those are part of the record in this matter and we can refer 8 to those. 9 MR. MICKEY: Yes. Correct. 10 So with that, we've got it set up as we originally 11 initiated the agenda that -- 15 minutes for each. And then, 12 Mr. Nersesian, you have five minutes afterwards for any 13 followup. So let the -- 14 MS. LONG: Mr. Nersesian, did you want any sort of 15 two-minute warning, minute warning, for your 15 minutes? 16 MR. NERSESIAN: No. I'll just naturally go over. 17 I have my watch, so okay. 18 MS. LONG: Okay. 19 MR. NERSESIAN: Thank you. 20 OPENING STATEMENT 21 MR. NERSESIAN: Good morning, ladies and 22 gentlemen. My name is Robert Nersesian. For those of you 23 who have not met him before, next to me here is Dennis Rusk, 24 an architect of some accomplishment that has been an 25 architect for decades in Las Vegas. Some of the things you</p>

TRANSCRIPT OF PROCEEDINGS - 10/25/2017

<p style="text-align: right;">Page 10</p> <p>1 might know that he has done a few churches, I will give you 2 perhaps he was also the architect and the sole architect on 3 the entirety of Alexis Park. That gives you an idea of the 4 level of stuff he does. And he's done a number of full 5 condominium complexes in town as well.</p> <p>6 Addressing what Mr. Mickey brought up at the 7 beginning, I understand what the Board's letter says. What 8 the judge's order says is that this Board shall consider the 9 petition that was filed by Mr. Rusk. That petition is 10 before you in the evidence. It is not anywhere near as 11 narrow as what I am apparently restrained to talk to. I 12 will attempt to live within those restraints, but understand 13 you're addressing the petition in its entirety and that's by 14 the Court's order.</p> <p>15 In this respect, please don't ignore the initial 16 briefing. And everything in that original filing by the 17 District Court's Order remains before you and is mandated to 18 be considered. And from that initial briefing, three things 19 are evident and also undisputable under the law. And this 20 all relates to the prosecution of Mr. Rusk.</p> <p>21 First, a prosecutor -- I'm sorry. Yeah. First, a 22 prosecutor violates his oath of office and commits 23 prosecutorial misconduct when he makes false statements to a 24 tribunal while knowing they are false towards the 25 prosecution and conviction of the subject of the</p>	<p style="text-align: right;">Page 12</p> <p>1 entire prosecution was based on and Mr. -- and the 2 prosecutor relied upon the statement that "Everything has to 3 be build ready on that initial submittal," which was the 4 pre-submittal in this instance. And Mr. White testified, I 5 think he stated three times, that this is the pre-submittal.</p> <p>6 So, obviously, in a pre-submittal, the idea that 7 you have to have build ready plans is patently not even 8 available because the idea of a pre-submittal is to identify 9 issues that will come up in the submittal.</p> <p>10 In the record of testimony, I believe at Volume 11 II, page 157, the prosecutor directly tells this tribunal at 12 that initial hearing that the fire life safety report was 13 not -- was not part of the original submittal for the Verge. 14 We know -- we absolutely know this is false. By the way, 15 the Verge is the project that all of this is related to.</p> <p>16 And I will quote to you from something the 17 prosecutor said in front of Judge Wiese that -- in the 18 remand order that you're all addressing here today. He 19 says, and I quote, regarding the fire life safety plans, "We 20 all knew it existed." "We all knew it existed."</p> <p>21 Remember Klai, you saw in his deliberations, said, 22 "If these things exist, where are they?"</p> <p>23 The prosecutor asked Mr. Rusk. I don't have -- 24 I -- I -- I didn't say I don't have any. "Where are these 25 mythical plans?" They were in his pocket, and he knew they</p>
<p style="text-align: right;">Page 11</p> <p>1 prosecution.</p> <p>2 Second, and perhaps even more important, a 3 prosecutor cannot offer testimony or evidence which he knows 4 is false.</p> <p>5 Third, when a prosecutor discovers that a tribunal 6 has operated under a mistake of fact, he has a duty to 7 inform them of that mistake.</p> <p>8 Here we have all three things occurring. The 9 record is, frankly, replete of these legal restrictions on a 10 prosecutor. And I'll list a few of them briefly. Eliciting 11 false testimony from the expert, that's Mr. Amor, in the 12 form that Exhibit B from the original hearing contains no 13 fire life safety coordination. And also in that respect, 14 that he was -- he had not -- or Mr. Rusk had not submitted 15 anything regarding fire life safety. Mr. Amor testified to 16 both of those things from his review.</p> <p>17 Second, informing the court that there was no fire 18 life safety submission with the initial submission to the 19 Court -- to Las Vegas. That's from both the prosecutor and 20 Mr. Amor. And eliciting false testimony from his expert to 21 the effect that the initial pre-submittal, pre-submittal -- 22 you got in my last brief testimony that shows that this 23 initial submittal everybody was talking about was a 24 pre-submittal for the very purpose of identifying issues and 25 moving forward with the actual submittal. And yet, the</p>	<p style="text-align: right;">Page 13</p> <p>1 existed. And yet, he continued a prosecution pretending 2 that what I'm holding up here, the Schirmer Engineering 3 Report, filed with the City of Las Vegas, and that's law of 4 the case here. District Court has determined that it was 5 filed with the City of Las Vegas on March 6th, 2007, which 6 is the date of the entire submittal, was so filed. And the 7 prosecutor was telling the members of the Board, "No, it 8 doesn't exist. There's no such thing."</p> <p>9 And then the other thing, even when you look at 10 the briefing, is, "Well, this deals with lack of 11 coordination. That's really what this was about." Well, it 12 wasn't. You can look at the record, and it was the fact 13 that there was nothing like this anywhere. And as I said in 14 the deliberations, remember Klai and the person on the Board 15 he was speaking to, recognized and reacted to the fact that 16 this very document that I'm holding up did not exist in 17 convicting Mr. Rusk. And it does exist, and it's right here 18 before you, and it came from the Board's files, and the 19 prosecutor knew it existed and repeatedly alluded and at one 20 point even stated "There's no such thing." That's 21 prosecutorial misconduct personified.</p> <p>22 I want to point out a couple other things about 23 this report. Other arguments are, "Well, this isn't 24 Mr. Rusk's." Right on the face of it, "Prepared for Dennis 25 E. Rusk, Architect." It is his. He hired or worked with an</p>

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<p style="text-align: right;">Page 14</p> <p>1 engineer to provide him with the documents to submit to the 2 City. And it says right on the front. They're his. Yet 3 the prosecutor was presenting an entire case based on the 4 fact that there wasn't any of this.</p> <p>5 And to bring this full circle, as to the lack of 6 due process that was provided here, for those of you who 7 were at the original hearing, Exhibit B, which is in your 8 package as submitted in the original hearing, I believe were 9 eight-and-a-half-by-eleven reductions of full sheets. And 10 Amor, stated that there was no fire life safety coordination 11 and, in fact, Exhibit B was devoid of fire life safety. 12 That was the testimony elicited by the prosecutor through 13 its expert at the hearing convicting Mr. Rusk. "No fire 14 life safety coordination in Exhibit B." Again, 15 eight-and-a-half-by-eleven reductions.</p> <p>16 The fact is, also from the very digital copy you 17 have been provided, we made full size blowups. And I bring 18 them here today, and I will leave them with you to review as 19 well. And you can compare them with the Exhibit B that was 20 used at that hearing. Here's the front page. Right at the 21 top and compare it -- this is the very Exhibit B you've been 22 provided that the prosecutor elicited testimony and thus 23 must have reviewed that was devoid of fire life safety and 24 did not coordinate with the Schimmer Fire Life Safety 25 Report.</p>	<p style="text-align: right;">Page 16</p> <p>1 report submitted by Mr. Rusk, as he testified and now known 2 to exist. There are three color and four color drawings on 3 extended sizes paper. Again, Mr. Amor testified there were 4 only 52 drawings submitted in the initial submittal. I 5 think he missed 30 of them and didn't include them in his 6 testimony upon which Mr. Rusk was convicted.</p> <p>7 Also, I would point out that he likely didn't 8 include them because he didn't know about them. And how 9 doesn't he know about them? The only way that this doesn't 10 exist in Mr. Amor's file is it was never shown to him. 11 Never.</p> <p>12 And what is -- and then the prosecutor elicits 13 testimony that this doesn't exist. That is the presentation 14 with knowledge of false testimony drawing toward a 15 conviction. And look at the decision. The decision turns, 16 turns on the absence of exactly what I'm telling you.</p> <p>17 The test for whether or not to vacate is whether 18 or not substantive due process was met. And substantive due 19 process fails in the face of prosecutorial misconduct. It 20 fails in the instances where false testimony with knowledge 21 of the prosecutor is presented. And again, he said to Judge 22 Wiese, "We all knew these were there." He knew it. It was 23 with knowledge. It was withheld. And the testimony 24 elicited was false. And the decision that was entered, the 25 decision that was entered, was based on false evidence.</p>
<p style="text-align: right;">Page 15</p> <p>1 As you go through this, you will see the fire code 2 is repeatedly cited. There are fire ratings for given walls 3 throughout Exhibit B. There is a pressurized vestibule for 4 the elevators, which is a critical fire fact- -- safety 5 factor that is incorporated in Exhibit B. There are plans 6 for and designation of a fire control room in Exhibit B. 7 The prosecutor and the prosecutor's expert told all of you 8 at that hearing, "There's no fire life safety." You have it 9 in front of you. And as you look at these blowups, you can 10 read it. It was a direct misrepresentation to this Board 11 that there was no fire life safety coordination in the 12 original exhibit.</p> <p>13 If you look at the original exhibits, in the 14 eight-and-a-half-by-eleven stature, they're unreadable. 15 Now, this is the actual digital copy that is -- that is 16 being left here for you. And it has been blown up to a size 17 you can read. I don't know what Mr. Amor was given by the 18 prosecutor, but if he said there's no fire life safety in 19 Exhibit B, he would have been given 20 eight-and-a-half-by-eleven unreadable sheets.</p> <p>21 Why does that happen and how does that comport 22 with due process to misrepresent to the Court or to you that 23 there's no fire life safety when it's everywhere? It's 24 everywhere in the 76-page report.</p> <p>25 I want you to note the drawings that are on this</p>	<p style="text-align: right;">Page 17</p> <p>1 Look to the decision and you'll see that.</p> <p>2 I realize I'm running out of time. So to try and 3 fool Ms. Long and not go over, I will sum up with don't -- 4 oh, one other quick thing. Don't get side tracked by the 5 draft indicator. It was filed. That's what it says. And 6 the draft indicator is a draft because it is exactly what it 7 was supposed to be, an initial submittal on a pre-submission 8 for review by the City for issues to be identified.</p> <p>9 It exists, and it's there.</p> <p>10 Cutting to the chase, this tribunal determined 11 that Mr. Rusk ignored FLS issues. It determined that he was 12 a liar because he said this existed. We now know that 13 that's false. Somebody was lying, but it wasn't Mr. Rusk. 14 He told the truth when he said that this was submitted. It 15 is now determined as a matter of law that he told the truth. 16 And he was denied due process by the prosecutor, with 17 knowledge saying --</p> <p>18 MS. BACH: Time.</p> <p>19 MR. LING: -- or convincing you that he was a 20 liar.</p> <p>21 So with all of that, if the false statements are 22 known and material, and obviously in the decision they are 23 material, vacation of the decision is actually mandated by 24 law. And that's what I ask that this Board do.</p> <p>25 Thank you.</p>

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<p style="text-align: right;">Page 18</p> <p>1 MR. MICKEY: Thank you, Mr. Nersesian. 2 Mr. Ling. 3 OPENING STATEMENT 4 MR. LING: Thank you, Mr. Chairman, members of the 5 Board. 6 I guess let's start with the question how we got 7 here today. This matter came to us as a complaint in 2008 8 from the owners and developers of this particular project, 9 the Verge, and we started investigating. Nothing terribly 10 unusual about that. That's what we do. 11 We investigated the case. We ultimately 12 determined that Mr. Rusk, in our judgment, had been 13 negligent in some of his activities related to this, so we 14 charged up the case and off we go to hearing. 15 When this matter started, Mr. Rusk was represented 16 by counsel, and we worked with counsel before a hearing. 17 Counsel pulled out just before the hearing. What's 18 important about that to know is simply that prehearing we 19 had presented to Mr. Rusk, through his counsel, the 20 documents we intended to introduce into evidence. So they 21 knew before the hearing. 22 At the hearing -- and we've put this in our 23 brief -- Mr. Rusk stipulated to the admission of the 24 exhibits. So he had reviewed them, knew what we were going 25 to be presenting to the Board, knew that the Schirmer Report</p>	<p style="text-align: right;">Page 20</p> <p>1 pulled out of the record and stitched together to say, 2 "Here's an argument that Mr. Ling was a bad guy," was 3 presented to Judge Israel. Didn't avail. Okay. Judge 4 Israel did not hold that I had committed prosecutorial 5 misconduct. And, in fact, he upheld the order. 6 This has already been litigated once. Okay. 7 They then appeal this matter to the Supreme Court. 8 And the final order from the Supreme Court was in May of 9 '14, and they dismissed Mr. Rusk's appeal. And in -- in any 10 other case, that's the end of the hunt. Okay. 11 You've appealed it. You've gone as far as you 12 can. And it's -- the Board's Order has been upheld all the 13 way along the way. 14 So then what happens and how did we get here? Why 15 are we sitting here today if the matter is over as of May of 16 '14? 17 Well, here's how we get there. 18 In August of '14, they serve a subpoena duces 19 tecum on the Board in a related case in which Mr. Rusk and 20 the developers on this project were in litigation. We give 21 them our access to all of our boxes. We don't care what 22 they look at. All we make sure of is that they tagged 23 everything they wanted copied. Okay. 24 Mr. Nersesian and I worked that out. He came in, 25 he looked at everything, tagged a bunch of stuff, copied it.</p>
<p style="text-align: right;">Page 19</p> <p>1 was not contained in our submittal, never was, stipulated to 2 that and so those were put into evidence. 3 We have our hearing. Okay. That's in 2011. The 4 Board issues its order in September of '11. And in that 5 Board Order you did not revoke Mr. Rusk's license. You did 6 find that he committed acts of negligence related to the 7 Verge Project. And what you did is you ordered -- largely, 8 your order was remedial. You ordered him to go take some 9 classes so that he could show you and the public that he did 10 have the code knowledge to which the case seemed to evidence 11 that he did not have. And you ordered that that all be done 12 by March of 2012 and that he submit evidence to you that 13 that was done. 14 Mr. Rusk did not follow through with the order. 15 And in May of 2012, this Board suspended him because he did 16 not comply with your order. He's been suspended ever since 17 then. 18 That matter then gets appealed, and we go to Judge 19 Israel. And we go through the whole briefing process in 20 front of Judge Israel. And that all ends up in an order in 21 August of 2012. And Judge Israel completely upholds all of 22 your Findings of Fact Conclusions of Law and order. 23 And what is important to know for these 24 proceedings is these very same arguments about my alleged 25 prosecutorial misconduct, the very same quotations that were</p>	<p style="text-align: right;">Page 21</p> <p>1 We don't hear anything more about this until January of '15. 2 So keep in mind that's, what, a year -- no, that's six 3 months or so. We hear nothing. And then suddenly we get 4 this writ of coram nobis that you're looking at today. And 5 suddenly we are hearing about how they have, quote, 6 discovered that this document was in our files. Oh, golly 7 gosh. And now they didn't know about that. I will go into 8 that in a bit. That discovery is false. Okay. That's 9 untrue. And that those serve as the very basis for their 10 writ of coram nobis that they brought to you today. 11 You issue your order denying the writ of coram 12 nobis in February of this year. We go to hearing in front 13 of Judge Wiese on that. That was in May. And in June, 14 Judge Wiese issues the order. That's how we get here. 15 We shouldn't be here. This has already been 16 resolved. The Supreme Court dismissed the appeal years ago. 17 We're here because of this claim, and it is only a claim, 18 that they, quote, discovered this document when they 19 executed the subpoena in August of '14. They didn't. Okay. 20 We've presented evidence to you in our brief, 21 starting at page 1674 of your packet. Let me get there. 22 And what that is -- what page 1674 is, this was documents 23 that was presented to Judge Wiese. I'm almost there. 24 And what this first document was is it is a letter 25 from Mr. Rusk to us in the course of the investigation, so</p>

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<p style="text-align: right;">Page 22</p> <p>1 this is back in 2010, in which Mr. Rusk tells us and does 2 give to us this document. He's the one that brought it to 3 us in 2010.</p> <p>4 So is he -- could he possibly be surprised to find 5 that in our files? Obviously not. He gave it us. And 6 that's on page 1674.</p> <p>7 This is a letter from Mr. Rusk to the Board, to 8 Gina and Laura. And he says in that letter, "I'm also 9 providing you with the fire protection report from Schirmer 10 Engineering submitted 3/6/2007." Here it is. He gave it to 11 us.</p> <p>12 Later we have our hearing. It's a couple days 13 after the hearing. Mr. Rusk writes a letter to you, to the 14 Board, in which he says -- this is now August 19, 2011 -- 15 "Upon returning to file away the documents from the hearing 16 of August 16, 2011, I found a box with documents from the 17 City of Las Vegas with the first submittal of the highrise 18 fire protection report for the Verge Project by Schirmer 19 Engineering, dated March 6th, 2007."</p> <p>20 He's writing to you three days after the hearing 21 saying: I looked in my boxes. There it was. I had it. 22 Okay.</p> <p>23 Later in the appeal to Judge Israel, he then 24 submits a sworn statement to Judge Israel. And in that 25 sworn statement he says, "In June of 2010, I received a call</p>	<p style="text-align: right;">Page 24</p> <p>1 saying this all along.</p> <p>2 You're getting a misrepresentation today of the 3 function of the Schirmer Report. The function of the 4 Schirmer Report was not to provide a set of drawings that 5 Mr. Rusk was going to hand to the City of Las Vegas and have 6 them interweave with his documents. No. This is a report.</p> <p>7 They looked at his documents, and they gave him 8 their expert review of it and said, "You're missing certain 9 things." And look at the letter submitted on February 6th, 10 2007. This was in your packet originally in this hearing.</p> <p>11 In that letter, they are telling Mr. Rusk -- 12 Schirmer is telling Mr. Rusk, "We've looked at your drawings 13 from January of 2007 and your drawings, Mr. Rusk, your 14 drawing are missing the following life safety elements."</p> <p>15 He knows this a month before he makes his first 16 submittal. He gets this expert review from Schirmer and 17 Schirmer says, "These things need to be in your drawings." 18 What does he submit? That's what you looked at in the 19 hearing of this matter, and that's what Mr. Nersesian has 20 now blown up for you.</p> <p>21 We only submitted to Mr. Amor, we only submitted 22 to you, Mr. Rusk's work product. Why? Because he has to be 23 able to defend his work product. He has to be able to show 24 you that his work product was or was not negligent. He has 25 to be able to show you therefore that the life safety</p>
<p style="text-align: right;">Page 23</p> <p>1 from Chazz Reinholt at the city." He had a bunch of plans 2 and stuff I'm going to get to in part here I had. "The set 3 I received from Mr. Reinholt was the original set received 4 by the City and stamped on the first page March 6th, 2007, 5 City of Las Vegas. On October 4th, 2010, I," Mr. Rusk, 6 "personally gave this original document to Laura Bach, the 7 investigator for the Board, at a meeting I had with her at 8 the Board's office.</p> <p>9 So there's Mr. Rusk, again, confirming that in 10 2010, he gave this to us. Okay.</p> <p>11 So can you possibly and actually and truthfully be 12 surprised when you show up in 2014 and execute a subpoena 13 and you find the very document you gave us? That is not a 14 surprise. That is not a newly discovered evidence.</p> <p>15 That is them making a misrepresentation to Judge 16 Wiese and to this Board that this was somehow newly 17 discovered evidence that I had hidden from people.</p> <p>18 I did not hide it. The Board's staff did not hide 19 anything from Mr. Rusk. We were as up front with him as we 20 could be. Prior to hearing, we told him what we were going 21 to submit. It did not contain the Schirmer Report.</p> <p>22 At hearing, he again saw those documents and 23 stipulated to them knowing the Schirmer Report was not in 24 there.</p> <p>25 And here's why it doesn't matter. And we've been</p>	<p style="text-align: right;">Page 25</p> <p>1 elements that were identified to him by Schirmer were, in 2 fact, properly incorporated into his drawings.</p> <p>3 He did not. They were not. We know that as a 4 matter of fact because the very first submittal that was 5 reviewed by the City came up with a whole long list of plan 6 review comments, that they were completely deficient in fire 7 life safety in his work product, Mr. Rusk's work product.</p> <p>8 The city did have this, and they were comparing 9 his drawings, Exhibit B in your hearing, to this. And they 10 were saying, "This says you got to have this. This says you 11 got to have this." And there was a whole long list of those 12 things that were not in Mr. Rusk's drawings.</p> <p>13 Now, Mr. Rusk only wins and only shows to you that 14 he has not committed negligence if you find that the 15 standard of care is met when an architect files deficient 16 plans but files a binder full of a report from an engineer. 17 That's not the standard of care.</p> <p>18 It wasn't the standard of care as it was presented 19 to you. It's not the standard of care today. The standard 20 of care is you take the engineer's report, you build it into 21 your drawings. And that way when the plan checker looks at 22 those drawings, he can see, "Oh, yeah, there's all that fire 23 life safety stuff is in here. Good for him."</p> <p>24 That's not what happened here. Okay. There is no 25 case law. There's been no evidence. There is no</p>

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<p style="text-align: right;">Page 26</p> <p>1 standard-of-care evidence presented to you that simply 2 filing this binder satisfies the architect's obligation. 3 It's not true. That's not the law. 4 So you found that he committed negligence based on 5 his work product. You looked at his drawings. You looked 6 at the first 72 pages, and then you looked at the subsequent 7 54 pages that it took for him to finally get this approval. 8 By the way, he hasn't said this, but this 54 pages 9 he submitted, which finally got the fire life safety issues 10 all dealt with, who drew those? He did. Schirmer didn't 11 draw those. He didn't submit Schirmer's plans in there to 12 fill in those gaps. He finally got around to doing it 13 himself. It took him nine months. It took him 54 extra 14 sheets. And he finally got there. Okay. But when he did 15 that, all of that is evidence of the negligence. 16 Also, he wants to say that this is exculpatory 17 evidence. That means in the law that is that had this been 18 in front of you that would have proven he didn't commit 19 negligence. But I ask you, and we would submit, look at 20 the -- what this actually proves. 21 This proves that the day he submitted his first 22 set of drawings, he just got this. That's been his 23 testimony all along. So how could he have read this, built 24 it into his drawings, and actually satisfied his legal 25 obligation to his client when he just gets it that day and</p>	<p style="text-align: right;">Page 28</p> <p>1 producing a document that we did not need to provide to 2 prove our case. Thank you. 3 MS. LONG: Just real quick. Nersesian has another 4 five minutes. John, we know you need to go. 5 MR. KLAI: I do. 6 MS. LONG: So the court reporter will be back at 7 3:30; is that correct? 8 THE COURT REPORTER: Um-hmm. 9 MS. LONG: So the court reporter should have -- by 10 3:30, do you think you can have the five minutes that 11 Mr. Nersesian says transcribed? 12 THE COURT REPORTER: Yeah. 13 MS. LONG: Okay. And then Mr. Klai can review it 14 before -- okay. Sounds good. Thank you. 15 REBUTIAL OPENING STATEMENT 16 MR. NERSESIAN: Thank you again. 17 I can't believe this keeps going on. You were 18 just told by the prosecutor, you were told that this is the 19 same issue that was on appeal. I will bring back this 20 afternoon, if you have questions about it, a copy of his 21 briefing to Judge Israel about this issue. 22 He is saying because what Mr. Rusk had at that 23 time, I think it was a May 23rd copy of this, because that's 24 what he had in his files, and he said, "Here's evidence that 25 it existed." He didn't say that this was what was</p>
<p style="text-align: right;">Page 27</p> <p>1 walks down and just throws the binder at the City and says, 2 "Here, here's my drawings, and here's this binder full of 3 stuff from my engineer, figure it out." That's not what an 4 architect is supposed to do. That is not coordination. 5 Mr. Rusk -- I would -- I would invite you, if you 6 want to, come on up and look. It's easier to read on the 7 big old drawings here. Mr. Rusk never included Schirmer -- 8 MS. BACH: Time. 9 MR. MICKEY: Okay. Thank you. 10 -- Schirmer in his own team. It's not on his 11 drawings. 12 If I may, my conclusion, we would simply ask that 13 you deny the motion for writ today. It's based on a false 14 premise. And that false premise therefore should not be 15 allowed to sustain an additional review beyond what the 16 Supreme Court has already dismissed. 17 We would ask in doing so that you find that 18 Mr. Rusk did not satisfy his professional obligation and was 19 negligent. You should also discuss this Schirmer Report 20 today and decide whether that actually changes your 21 conclusion as to whether he committed negligence. 22 We need you to -- we are asking you to find that 23 this whole concept of discovery, this discovery of this new 24 evidence is false. And we are asking that you find that no 25 prosecutorial misconduct was committed therefore by not</p>	<p style="text-align: right;">Page 29</p> <p>1 submitted. He said, "Here's evidence that it existed." And 2 he attached a May 23rd later iteration of the same report. 3 And what does the prosecutor on that appeal say? 4 He says even now Mr. Rusk cannot come forward with any 5 report that was submitted, that was submitted with his 6 initial submission. He is doubling down on the idea that 7 there's no such report. And you saw it in the places I 8 cited in the transcript. He said there's no such report. 9 And the question is: Is there? And, yes, there is. And 10 that was falsely represented to the Court. 11 Now, coordination, you now have the documents. 12 Remember, Amor said there's nothing in there about fire life 13 safety, and he harped on that. He said the same thing that 14 White testified, that there was an absence of FLS. It's all 15 in here. And if you look at this Exhibit B blown up where 16 you can actually read it and compare it with the FLS 17 submitted on March 6th, they correlate directly. 18 Also on coordination, Mr. Rusk did testify that he 19 coordinated. He said he was meeting weekly, weekly with all 20 of the engineering specialties. And when you look at 21 Exhibit B, you have to conclude that Schirmer was one of 22 them. Just because there's an ultimate report submitted 23 does not show lack of coordination. And the evidence showed 24 total coordination, especially, again, when you look to 25 Exhibit B and see the fire life safety elements, which the</p>

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<p style="text-align: right;">Page 30</p> <p>1 expert said didn't exist and which Mr. Ling told you did not 2 exist at that hearing.</p> <p>3 The Court has called this new evidence. Mr. Ling 4 went off just now on a whole thing about how this is not new 5 evidence, Mr. Rusk knew about it, he wrote letters years 6 earlier saying, and he told you exactly where it went. "I 7 gave this," this is what he said in the letter by Mr. Ling 8 to Ms. Bach. He doesn't have it. He gave it to the Board 9 by that letter. Why does that mean he -- that just shows 10 that he expected them to understand and make sure that this 11 was presented, and it wasn't. It was withheld. Mr. Klai 12 noticed it was withheld. The decision notes it was 13 withheld. The decision. If this wasn't withheld, how can 14 the decision say Mr. Rusk lacked credibility and there was 15 no such document? It's right here.</p> <p>16 As to discovery, it's true, if Mr. Rusk had this, 17 he would have attached it to the appeal. He would have 18 submitted it. It was with the Board, as the letter said. 19 And they withheld it. That's it.</p> <p>20 This was prosecutorial misconduct. This was 21 convicting this gentleman. And by the way, why isn't this 22 suf- -- sufficient in, as Mr. White testified to, a 23 pre-submittal, which is for the purpose of identifying 24 issues? That's exactly what you do, pre-submittal. I cited 25 line and verse in the documentation where it was stated that</p>	<p style="text-align: right;">Page 32</p> <p>1 not discuss it either amongst yourselves or with anyone 2 else.</p> <p>3 MR. MICKEY: All right.</p> <p>4 MR. NERSESIAN: I will also leave Exhibit B for 5 anybody who wants to look at it. And I will be available 6 when I come back, or I'll stay right now and point out the 7 FLS elements of Exhibit B that Mr. Amor testified did not 8 exist.</p> <p>9 MR. MICKEY: Thank you for your offer, but we 10 can -- within the rules of -- we're taking a break, no 11 further discussions or anything until we reconvene.</p> <p>12 MS. LONG: Correct. But as Mr. Nersesian stated, 13 in the interim if you wanted to individually go up and look 14 at the drawings, please feel free to do so.</p> <p>15 MR. MICKEY: Apologize for the break, but thank 16 you for helping us out with this. And we will reconvene on 17 Agenda Item No. 4 at 3:30 p.m. this afternoon.</p> <p>18 (Recess taken.)</p> <p>19 MR. MICKEY: It looks like we are on 3:30 here, so 20 thank you everybody for allowing us to take this break in 21 between this. Kind of get back on track here.</p> <p>22 The one thing that I do want to make sure is that 23 as you are doing with the petitioner's rebuttal was 24 transcribed and has been put together. John, you've been 25 given a copy of it and have had a chance to now start to</p>
<p style="text-align: right;">Page 31</p> <p>1 this was a pre-submittal.</p> <p>2 How do you conflate pre-submittal with "This has 3 to be perfect," which was what Amor said. "It has to be 4 buildable on the initial submission."</p> <p>5 Now, I can't say most of you put plans and 6 products through review for approval with city agencies. 7 The idea that an 11-story highrise with a novel construction 8 methodology would be submitted in a pre-submittal without 9 any comments whatsoever -- nobody did this at the time, but 10 Amor's testimony was patently ridiculous. As also cited, 11 Mr. White specifically testified at the hearing, you can 12 expect --</p> <p>13 MS. BACH: Time.</p> <p>14 MR. NERSESIAN: -- with the pre-submittal four 15 submissions in total.</p> <p>16 Everything that Mr. Rusk was convicted on, or 17 material things that he was convicted on, did not exist. 18 The law says in that circumstance when the prosecutor knew 19 the truth, it must be vacated. We ask you to follow the 20 law. Thank you.</p> <p>21 (Discussion off the record between 22 Ms. Long and Mr. Mickey.)</p> <p>23 MS. LONG: So we're going to table Agenda Item 4 24 until 3:30 this afternoon. So just a reminder for the Board 25 members that this is still an open agenda item, so please do</p>	<p style="text-align: right;">Page 33</p> <p>1 review it. I just want to affirm that he is the one we 2 wanted to make sure had copies of all that stuff, so we got 3 that in place.</p> <p>4 So from here, I believe on our agenda we were 5 getting ready to move into the question-and-answer kind of 6 session. And so for everybody here on the Board you've got 7 an opportunity to ask Mr. Rusk, Mr. Ling, our staff, or 8 amongst each other here if we have any questions or anything 9 we would like to bring up, kind of go through that in an 10 open forum.</p> <p>11 Once we finish with Q and A, then we'll kind of 12 move into Board deliberation. And then from there, we move 13 into any possible actions. That's kind of what is left on 14 the agenda for getting through some of this. So kind of 15 start it off here on the Board and just start at this end.</p> <p>16 So, Greg, is there anything for you that you 17 would -- any questions or anything that you would kind of 18 like to start leading up or go through anything?</p> <p>19 Q and A</p> <p>20 MR. ERNY: I guess I would ask --</p> <p>21 MS. LONG: Just to be clear.</p> <p>22 MR. ERNY: Go ahead.</p> <p>23 MS. LONG: The -- if you have questions of the 24 parties, it's -- we're not in Board deliberation. So if you 25 have comment, just hold that off until Board deliberation.</p>

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<p style="text-align: right;">Page 34</p> <p>1 MR. ERNY: Okay. Understood.</p> <p>2 I would ask Mr. Rusk or counsel that it's my</p> <p>3 understanding, based on your position, that this document we</p> <p>4 believe to be the responsibilities as an architect to</p> <p>5 integrate the iterations of references at sections of codes</p> <p>6 and what have you and to the documents for the -- in the</p> <p>7 design and construction documents in the file, is that -- is</p> <p>8 that what I'm --</p> <p>9 MR. NERSESIAN: Not the least, Mr. Erny. And I</p> <p>10 apologize for being contentious right from the start. But</p> <p>11 no. That's not what this is about at all. Okay.</p> <p>12 It does not necessarily relieve Mr. Rusk of the</p> <p>13 question of law or mixed law and fact as to whether or not</p> <p>14 or what level of coordination has to be there.</p> <p>15 What it does is it goes to the decision of this</p> <p>16 Board. If you recall, Mr. Rusk at the hearing testified and</p> <p>17 wanted to cross-examine, for example, Mr. Amor about what</p> <p>18 that type of document does with respect to his obligations.</p> <p>19 And if you go back to the decision -- not the decision, the</p> <p>20 record, you will see that at that point Mr. Ling steps up</p> <p>21 and says, "Objection." And then he goes off on this</p> <p>22 diatribe about Mr. Rusk, again, trying to get that in to ask</p> <p>23 questions about and says, "There is absolutely no evidence</p> <p>24 that such a document exists, and Mr. Rusk hasn't produced</p> <p>25 it." I think he even goes, "And where is this document?"</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. NERSESIAN: Your question was: Is it my</p> <p>2 position that this satisfies the coordination requirement,</p> <p>3 and I said, no, my position is X. That is directly</p> <p>4 responsive.</p> <p>5 Moreover, as to the coordination requirement, as I</p> <p>6 said, it's a mixed question of law and fact, and there was</p> <p>7 mixed testimony from two experts as to what level of</p> <p>8 coordination is necessary, especially in unbundled services.</p> <p>9 But that being said, all of this is moot because</p> <p>10 now with the blowup of Exhibit B you can see that Mr. Rusk</p> <p>11 was also telling the truth, that he had regular meetings</p> <p>12 with all of the engineering professionals, and he</p> <p>13 incorporated what they were doing into his initial submittal</p> <p>14 for the pre-submittal process. And it's here now at a size</p> <p>15 you can see it, and it has the fire life safety at that</p> <p>16 level for that stage within it.</p> <p>17 Again, fire control room is in here. It cites to</p> <p>18 firewall ratings. It cites to the fire code repeatedly.</p> <p>19 Exhibit B, it has all of the exit planning that you also see</p> <p>20 in the Schirmer Report incorporated. The idea that there</p> <p>21 was a lack of coordination is itself a misnomer from the</p> <p>22 very exhibits, all be it in miniature and unreadable size</p> <p>23 presented during the hearing, that are now here and show</p> <p>24 that this very coordination, which Mr. Ling was representing</p> <p>25 never existed, and indeed that there -- I think, yes, you'll</p>
<p style="text-align: right;">Page 35</p> <p>1 And the answer was it was in his pocket. His entire</p> <p>2 objection was fabricated.</p> <p>3 This is about justice at a hearing. And when the</p> <p>4 prosecutor stands up and says that this doesn't exist and</p> <p>5 I'm objecting to Mr. Rusk even bringing it up, when the</p> <p>6 prosecutor knows, one, that it does exist and, two, talks</p> <p>7 about how it doesn't exist to the tribunal in the middle of</p> <p>8 the hearing -- during and hearing and convinces all of you,</p> <p>9 as indicated in the decision, that, one, Mr. Rusk is a liar</p> <p>10 because he said this exists and, two, that the entire</p> <p>11 submittal, and this was a part of the submittal, was devoid</p> <p>12 of fire life safety.</p> <p>13 Those are in the decision. That's the basis of</p> <p>14 the decision. And it was false. And Mr. Ling pretending</p> <p>15 and leading the Board to believe that there is no such thing</p> <p>16 as a Schirmer Fire Life Safety Report was material to the</p> <p>17 decision. And he did lead the Board to believe it. He even</p> <p>18 said in his closing argument it doesn't exist. Okay. But</p> <p>19 it did, and he had it, and that was a misrepresentation to</p> <p>20 the Board. And it was a misrepresentation directly</p> <p>21 prejudicial to Mr. Rusk. Now --</p> <p>22 MR. MICKEY: Mr. Nersesian, please. Your question</p> <p>23 was the relevance of the document. It's not --</p> <p>24 MR. ERNY: You haven't answered my question.</p> <p>25 You're taking it down another --</p>	<p style="text-align: right;">Page 37</p> <p>1 see it. "Exhibit B is devoid of fire life safety." That's</p> <p>2 what Mr. Amor said. You now know that that was a false</p> <p>3 statement. And from the plans, as they existed in full size</p> <p>4 which had to be reduced by the prosecutor, the prosecutor</p> <p>5 knew that too.</p> <p>6 This was a denial of due process. But we are not</p> <p>7 here to test whether or not Mr. Rusk was negligent or not</p> <p>8 negligent. The vacation of a decision is premised on</p> <p>9 whether or not he was afforded due process through the</p> <p>10 presentation, in this case, by the prosecutor by -- through</p> <p>11 our allegations. And I believe that -- and I hope you</p> <p>12 agree -- that the evidence shows that the prosecutor played</p> <p>13 hide the ball, did it throughout, and then relied on what he</p> <p>14 hid, which just very briefly and I'll tie --</p> <p>15 MR. MICKEY: Mr. Nersesian, please.</p> <p>16 MR. ERNY: You're taking the discussion someplace</p> <p>17 totally beyond where I was asking the question.</p> <p>18 MR. NERSESIAN: Okay.</p> <p>19 MR. ERNY: And I'm satisfied with your response at</p> <p>20 this point.</p> <p>21 MR. NERSESIAN: All right. Thank you.</p> <p>22 MS. FLEMING: No questions.</p> <p>23 MS. LONG: No questions.</p> <p>24 MR. MICKEY: Kim?</p> <p>25 MS. CIESYNSKY: I have two questions.</p>

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<p style="text-align: right;">Page 38</p> <p>1 First of all, to Laura. I just want to be really 2 clear. On September 7th, 2010, there was a letter to you 3 from Mr. Rusk saying that I don't know what documentation is 4 in the Board's possession, that has difficulty identifying 5 what would be most helpful, so he wanted to come in and look 6 at these documents and then also what the building 7 department has. 8 So you had everything. Did Mr. Rusk come in and 9 see you and look at these documents? Did you hide anything? 10 I mean, I just want to know what the procedure is for that. 11 MS. BACH: He came in with his expert witness 12 Mr. Fielden, and they -- they came in twice. The first time 13 it was -- they met with the previous executive director and 14 myself, and we asked questions of them. Then they came back 15 a second time and actually looked up all the -- the drawings 16 that we had. And Mr. Rusk was addressing questions from 17 Mr. Fielden, and I was just in here with them. 18 MS. CIESYNSKY: And was the Schirmer Report there 19 then? 20 MS. BACH: I don't believe so. 21 MS. CIESYNSKY: Okay. When did -- did -- when did 22 you receive that? I guess I'm confused on when you got 23 that. 24 MS. BACH: I got that from Mr. Rusk prior -- I 25 believe prior to the hearing.</p>	<p style="text-align: right;">Page 40</p> <p>1 MS. LONG: Correct. 2 MS. CIESYNSKY: And then still -- 3 MS. LONG: Be licensed, correct. 4 MS. CIESYNSKY: -- be licensed, but then go -- go 5 to court and try to prove himself another way and got the 6 money back, essentially, if he would have won; is that right 7 or how does that work? 8 MS. LONG: I'm sorry. When you say "got the money 9 back"? 10 MS. CIESYNSKY: Well, I'm just saying that if he 11 paid a fine and then the courts found in his favor, that we 12 could have given him his money back, that that wouldn't 13 preclude him from going and arguing that he did nothing 14 wrong and -- 15 MS. LONG: Definitely true. But it is his case, 16 so he's allowed to move forward as he wishes. 17 MS. CIESYNSKY: Okay. 18 MS. LONG: So right. 19 MS. CIESYNSKY: There was no impediment if he -- 20 if he had paid the fine -- 21 MS. LONG: Right. Correct. 22 MS. CIESYNSKY: Okay. 23 THE COURT REPORTER: If he had paid the what? 24 MS. CIESYNSKY: Paid the fine and taken the 25 classes.</p>
<p style="text-align: right;">Page 39</p> <p>1 MS. CIESYNSKY: Prior to the hearing. Okay. 2 Okay. That makes sense. All right. At that moment, you 3 didn't have it. 4 And then the second question I have for Sophia. I 5 mean, taking someone's license away is -- is very unsettling 6 and not something that, you know, I certainly want to do. 7 If -- if somebody is found, like Mr. Rusk, to be 8 in violation and he has these requirements, can he do those 9 requirements but then still come back and say -- you know, 10 going through the court and then get his money back or 11 whatever. How does that work where he could have gotten his 12 license back five years ago, I'm thinking? I don't know. 13 MS. LONG: Well, I believe it might be a question 14 for Laura. I think my understanding was the reason why his 15 license was taken away is because he did not comply with the 16 Board Order, and then when he went back to -- I think his 17 license expired to reapply, I think. He was told to, I 18 guess, comply with the Board's Order and he possibly could 19 get his license back. So it's just the fact that right now, 20 as he sits, he hasn't complied with the Board Order. 21 MS. CIESYNSKY: Okay. 22 MS. LONG: And I believe that's my understanding 23 of it, so... 24 MS. CIESYNSKY: But he could have complied with 25 the Board Order?</p>	<p style="text-align: right;">Page 41</p> <p>1 So essentially, he could have had his license back 2 five years ago. 3 MS. LONG: Well, at that time, he could have done 4 whatever he wanted. He could have -- five years ago, they 5 could have done the motion for reconsideration, motion to 6 vacate, whatever motion, or even take it to court, which is 7 basically what they did. 8 MR. MICKEY: But there is nothing that -- he could 9 have complied with the order -- 10 MS. LONG: Prevented -- 11 MS. CIESYNSKY: Prevented him -- 12 MS. LONG: Correct. 13 MR. MICKEY: -- and then still have gone back 14 to -- 15 MS. LONG: Correct. Because it is a final 16 decision from the Board. 17 MR. MICKEY: Okay. 18 MS. CIESYNSKY: Okay. 19 MS. LONG: And he can appeal any final decision 20 from the Board. 21 MR. MICKEY: Okay. 22 MS. LONG: Regardless of whether -- yeah, whether 23 he paid, complied, or anything. 24 MS. CIESYNSKY: Got it. Okay. Thank you. 25 MR. WAUGH: I just had a couple questions for</p>

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<p style="text-align: right;">Page 42</p> <p>1 Mr. Nersesian.</p> <p>2 I, obviously, wasn't on the Board at the time, so</p> <p>3 I just kind of have to go based on what I saw, so -- you</p> <p>4 know, so kind of to the point you made this morning was that</p> <p>5 the March 6th submittal was a pre-submittal. So -- so you</p> <p>6 said that the point of the pre-submittal process was so that</p> <p>7 way those kind of errors could be identified. So my</p> <p>8 ques- -- so I have two questions.</p> <p>9 First question is going to be: So if -- if that</p> <p>10 was the case, so you did the -- the pre-submittal, you got</p> <p>11 the plan reviewed, and it said these are all the things we</p> <p>12 needed, and then so -- then it took nine -- nine months and</p> <p>13 several more submissions to get those. So were those also</p> <p>14 pre-submittals, or when was the final submittal?</p> <p>15 And the second question is: Since this is to</p> <p>16 vacate the entire ruling and not -- decision and not just a</p> <p>17 rehearing with new information, so does that also mean that</p> <p>18 the -- kind of the actions, the second cause of action</p> <p>19 original hearing, the cutting residence, and then all the</p> <p>20 other things that were part of it incorporated with the</p> <p>21 Verge, are those therefore baseless as well?</p> <p>22 I mean, so I'm just curious when you say "vacate</p> <p>23 the whole thing," is -- is it the assertion, also, that</p> <p>24 every action that the Board took at the time was wrong</p> <p>25 including the ones not related to the Verge Product? And</p>	<p style="text-align: right;">Page 44</p> <p>1 is especially frustrating, even on the record in front of</p> <p>2 you -- you had some two people, a Nevada architect, not some</p> <p>3 California architect who isn't familiar with Las Vegas'</p> <p>4 submittal process, and -- a Nevada architect and the person</p> <p>5 with the City of Las Vegas confirming that Mr. Rusk's</p> <p>6 processes were exactly what was expected.</p> <p>7 The only people saying that they weren't were the</p> <p>8 prosecutor, staff, and Mr. Amor, who was apparently</p> <p>9 testifying to standards he knew nothing about because he</p> <p>10 didn't even know this was a pre-submittal. The first --</p> <p>11 where Exhibit B went in. Although it was. And the record</p> <p>12 is clear on that.</p> <p>13 I don't think he even knew what a pre-submittal</p> <p>14 was. He -- he testified that was the submittal and they had</p> <p>15 to be build ready. Well, how can build ready comport with</p> <p>16 Mr. White's testimony of the process of no less than three</p> <p>17 submittals being common in a situation like this?</p> <p>18 There were five submittals in total: A</p> <p>19 pre-submittal, a submittal, a submittal, a submittal, and an</p> <p>20 approval. That's three submittals before the approval.</p> <p>21 There it is.</p> <p>22 There was nothing weird here, but it got conflated</p> <p>23 and exaggerated and presented in no small part because you</p> <p>24 had a guy who didn't have an attorney and somebody who knew</p> <p>25 that this could be kept out of the hearing with strategic</p>
<p style="text-align: right;">Page 43</p> <p>1 then the first question of the FLS elements in the</p> <p>2 subsequent submissions.</p> <p>3 MR. NERSESIAN: Okay. Thank you.</p> <p>4 If you look at the initial pre-submittal and then</p> <p>5 look at the letters following the submittals, okay, Mr. Rusk</p> <p>6 was working diligently at addressing those items that he</p> <p>7 could address. Others were tabled for further discussion</p> <p>8 with Mr. White. His responses are attached to those as</p> <p>9 well. And you see that he is consistently and constantly</p> <p>10 moving forward to fulfill Mr. White's requests. Okay.</p> <p>11 In doing so, if you go back to the testimony, you</p> <p>12 will see that Dr. Fielden testified that it is a process.</p> <p>13 Mr. White also testified, again, that it is a process.</p> <p>14 Mr. White himself said, "You will often see,</p> <p>15 especially on projects of this size, no less than three</p> <p>16 submittals." That's how many Mr. Rusk made before this</p> <p>17 process culminated in him meeting all of the requirements.</p> <p>18 Even Mr. White testified that the process that</p> <p>19 Dr. Fielden referred to was followed.</p> <p>20 Mr. Fielden or Dr. Fielden?</p> <p>21 MR. RUSK: Doctor.</p> <p>22 MR. NERSESIAN: Dr. Fielden referred to was</p> <p>23 followed, followed correctly, and reached the culmination of</p> <p>24 approval.</p> <p>25 What you had in front of you -- and this is what</p>	<p style="text-align: right;">Page 45</p> <p>1 objections.</p> <p>2 I know there was a second part to your question.</p> <p>3 What was it?</p> <p>4 MR. WAUGH: I'll -- I'll just make it -- I'll --</p> <p>5 I'll cut it all down because I did a lot of talking.</p> <p>6 Why a vacation not a rehearing?</p> <p>7 MR. NERSESIAN: Oh, yes. Well, that's the remedy</p> <p>8 that is spoken to in the Nevada Case Law and in common law.</p> <p>9 I recognize -- I do recognize that there is that signature</p> <p>10 issue with the cutting residence that is divorced from</p> <p>11 anything we've presented.</p> <p>12 I don't know what the effect or what the latitude</p> <p>13 is. I can only quote what courts have said, "The decision</p> <p>14 must be vacated."</p> <p>15 If Ms. Long thinks that there might be something</p> <p>16 that could be carved out to create a different remedy</p> <p>17 when -- if the remedy is met, that it -- that the decision</p> <p>18 on the Verge Project was affected by material misstatements</p> <p>19 or withholding of evidence to the court, perhaps, she could</p> <p>20 construct something or the Attorney General can assist.</p> <p>21 I just know that the law says, "If there is</p> <p>22 misconduct or a failure of due process that materially</p> <p>23 affects the decision, then the decision should be vacated."</p> <p>24 I wish that I could tell you, but I think you</p> <p>25 understand that the law is not black and white, and that</p>

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<p style="text-align: right;">Page 46</p> <p>1 people or boards or tribunals are often looking for ways to 2 do other things that they want to do. I can't craft that. 3 Perhaps, it exists. That's over with your attorney right 4 now. I would like to -- 5 MR. MICKEY: I was going to say, does that answer 6 your question? 7 MR. WAUGH: Yes. 8 MR. MICKEY: Okay. 9 MR. NERSESIAN: Okay. 10 MR. MICKEY: Thank you. 11 MR. NERSESIAN: I think. Thank you. 12 MR. MICKEY: Did you have anything else? 13 MR. WAUGH: No. That solved my -- (inaudible). 14 THE COURT REPORTER: I'm sorry. That what? 15 MR. WAUGH: That was just the clarification I 16 needed. 17 MR. MICKEY: I was going to say, John Klai, any 18 questions at the moment? 19 MR. KLAI: no. 20 MR. MICKEY: Okay. John Morelli? 21 MR. MORELLI: no. 22 MR. MICKEY: I do have a couple questions myself. 23 On the drawings that were submitted to building 24 department on March 6th, were those wet stamped? 25 MR. RUSK: Yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 wouldn't care. Staff was perfectly prepared to allow that 2 in. We just didn't need it to prove our case, and so we 3 didn't put it in our submittals. I thoroughly expected, 4 quite honestly, that he would, if he wanted this in front of 5 you, would have tried to ask to introduce it. 6 I did object to the -- some -- some of the other 7 stuff, which we don't need to get into today having to do 8 with the shell permit guidelines from another jurisdiction. 9 I never would have objected to this. It was never 10 proffered. He had it. We've proven that today. And he 11 didn't ever ask to introduce it, even though he knew prior 12 to hearing and throughout the hearing that it wasn't before 13 you. 14 So there was no strategic objection on my part to 15 keep this out of these proceedings. We would have allowed 16 them. Had he said, Mr. Ling, I want to put this into 17 evidence, I would have said, sure, that's fine. So that's 18 simply not true, and that's not what the record shows. 19 The other thing that the record does not show is 20 this whole new notion that he has been telling you today 21 that that first set of documents was a pre-submittal. That 22 was not in the hearing doc- -- hearing that was presented to 23 you back a few years ago. It was not argued in the 24 proceeding before Judge Israel. That is a figment of 25 Mr. Nersesian's creation, and it gets him around certain</p>
<p style="text-align: right;">Page 47</p> <p>1 MR. MICKEY: Okay. So they were wet stamped. 2 Okay. And then in your documents here -- where 3 did it go? 4 So you had a letter to the Board on August 19th, 5 2011 that was in our packet and basically outlining some of 6 the things before the hearing. But it says, Included with 7 the report was a memo from the Building and Safety 8 Department of the City of Las Vegas titled that you were 9 using the permits expressed plan review process. 10 Is that correct? 11 MR. RUSK: Yes. 12 MR. MICKEY: Those were my one or two questions. 13 Is there -- 14 MR. LING: Mr. Mickey, may I be just heard briefly 15 since you've received about 20 minutes of argument from 16 Mr. Nersesian in answer to your questions? Because he's 17 made some representations to you that aren't correct, and I 18 want to make sure that I clear those up. 19 MR. MICKEY: Please proceed then. 20 MR. LING: Just a couple of things, because one of 21 the accusations directed at me was simply not true. He 22 accused me, just a few minutes ago, of, quote, strategic 23 objections to keep Mr. Rusk from introducing this document. 24 That's not true. Okay. 25 Had he ever asked to introduce that document, I</p>	<p style="text-align: right;">Page 49</p> <p>1 things that cause trouble to his case. But it was never 2 argued in the appeal of your original order, and it was 3 never presented to you that way by Mr. Rusk at the original 4 hearing. 5 So the first submittal here that was being done in 6 March -- keep in mind the testimony that was actually 7 presented to you showed that Mr. Rusk had agreed to -- to go 8 forward and try to get this thing approved so they could 9 break ground in June, as I remember the testimony being. 10 Don't hold me to that, but I think that was the testimony, 11 that they were supposed to get the ground broken in June, 12 and this thing was supposed to be finished by the end of the 13 year. 14 And so he had been working on these documents. 15 And you have some of those in the record that were in the 16 record before you that showed that in January he had a draft 17 set of drawings. He had given that to Schirmer in February 18 when he gave you his comments. And that first submittal in 19 March was, in fact, a first submittal. 20 This whole notion of pre-submittal -- and he's 21 going to give you some quotes from Mr. White, I think. 22 Mr. White said there was a pre-submittal process, and there 23 was. But what those quotes don't say is that the first set 24 of documents submitted here was part of that pre-submittal 25 process. That simply isn't what the record before you was.</p>

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<p style="text-align: right;">Page 50</p> <p>1 It's not what you found. Okay.</p> <p>2 We're not here -- and that's fundamentally why I</p> <p>3 wanted to get to this point. We're not here to retry that</p> <p>4 case, even though Mr. Nersesian keeps trying to tell you</p> <p>5 what the record said and what the record held and all of</p> <p>6 that. We've done that. All right. That's what we did in</p> <p>7 front of Judge Israel years ago, is they challenged the</p> <p>8 sufficiency of the evidence.</p> <p>9 We're supposed to be here today to decide whether</p> <p>10 I did something in accord with this, and, most importantly,</p> <p>11 whether once you've looked at this, does this change your</p> <p>12 mind about Mr. Rusk and whether he was negligent. That's</p> <p>13 why we're here. We're not here to retry the original case.</p> <p>14 And so for Mr. Nersesian to be keep constantly</p> <p>15 trying to revise what they wished they had presented at the</p> <p>16 hearing and what they wished they had presented in front of</p> <p>17 Judge Israel is simply not what Judge Wiese ordered. That's</p> <p>18 not what we're here to do today.</p> <p>19 MR. MICKEY: Thank you, Louis. So...</p> <p>20 MR. NERSESIAN: May I respond, please?</p> <p>21 MR. MICKEY: You've had --</p> <p>22 MR. NERSESIAN: I did not, no. He -- he did that.</p> <p>23 Now, I would normally ordinarily -- I did not do argument.</p> <p>24 I answered questions. He did argument. I would at least be</p> <p>25 entitled to a brief rebuttal.</p>	<p style="text-align: right;">Page 52</p> <p>1 MR. MICKEY: Right.</p> <p>2 MR. NERSESIAN: -- for Dennis Rusk.</p> <p>3 MR. MICKEY: Yes.</p> <p>4 MS. CIESYNSKY: I wrote the same thing.</p> <p>5 MR. MICKEY: That's what I want to say. I thought</p> <p>6 I heard you say that Mr. Rusk had hired Schirmer, and so</p> <p>7 that's what I had written down.</p> <p>8 MR. NERSESIAN: If I did, I put it out of order</p> <p>9 because he was hired --</p> <p>10 MR. MICKEY: That's what I wanted to make sure,</p> <p>11 that that's --</p> <p>12 MR. NERSESIAN: He was hired to provide items to</p> <p>13 Mr. Rusk.</p> <p>14 MR. MICKEY: Right. So technically, Mr. Rusk was</p> <p>15 not under the responsible control of Schirmer Engineering?</p> <p>16 MR. NERSESIAN: Could not be and --</p> <p>17 MR. MICKEY: Right.</p> <p>18 MR. NERSESIAN: Yes.</p> <p>19 MR. MICKEY: That's why --</p> <p>20 MR. NERSESIAN: But he was coordinating with him,</p> <p>21 as he testified.</p> <p>22 MR. MICKEY: Right. Okay. And then -- okay.</p> <p>23 All right. No, that was it. I just -- I wanted</p> <p>24 to make -- double check on that one, so...</p> <p>25 MR. NERSESIAN: So may I please just limit it to</p>
<p style="text-align: right;">Page 51</p> <p>1 MR. LING: I was simply responding to his -- his</p> <p>2 answers to your questions.</p> <p>3 MR. MICKEY: Okay. Actually, I still -- I looked</p> <p>4 at my notes. I still do have a couple more questions I</p> <p>5 would like to ask as well. And, actually, I was seeking</p> <p>6 some clarification, Mr. Nersesian, to something you said</p> <p>7 earlier, so I just want to make sure that I heard it</p> <p>8 correctly or you may have misspoke.</p> <p>9 But early on you had mentioned that Mr. Rusk had</p> <p>10 hired Schirmer Engineering, and I was just wondering if I</p> <p>11 didn't hear that correctly or -- because I wrote it down on</p> <p>12 here, and it says -- I have it that Mr. Rusk had hired. And</p> <p>13 I thought it was the owner had hired.</p> <p>14 MR. NERSESIAN: If I said that, I misspoke. My</p> <p>15 recollection is --</p> <p>16 MR. MICKEY: That's why I wanted to make sure</p> <p>17 that --</p> <p>18 THE COURT REPORTER: I'm sorry. One at a time.</p> <p>19 MR. NERSESIAN: -- is that I said Schirmer</p> <p>20 Engineering was hired to prepare plans for Mr. Rusk.</p> <p>21 MR. MICKEY: Right. So --</p> <p>22 MR. NERSESIAN: And that is what -- that is what</p> <p>23 he was hired for. He was hired by the developer --</p> <p>24 MR. MICKEY: Right.</p> <p>25 MR. NERSESIAN: -- to prepare for Mr. Rusk --</p>	<p style="text-align: right;">Page 53</p> <p>1 what Mr. Ling just said? It's very --</p> <p>2 MR. MICKEY: I will allow it because I will -- two</p> <p>3 minutes.</p> <p>4 MR. NERSESIAN: Okay.</p> <p>5 MR. MICKEY: Please. Two minutes.</p> <p>6 MR. NERSESIAN: First, page 2 of our reply brief</p> <p>7 we cite to the transcript where Exhibit B is being discussed</p> <p>8 and Mr. White testifies it's a pre-submittal. It's cited in</p> <p>9 there page 2 of our reply brief.</p> <p>10 Second, I want to quote for you because it's</p> <p>11 always been said he wasn't keeping it out. So as far as</p> <p>12 this objection goes, we weren't -- he wasn't trying to get</p> <p>13 it in. It wasn't in. He didn't have it. He was --</p> <p>14 Mr. Rusk was trying to question about the report, not trying</p> <p>15 to submit the report. And that was the objection. And the</p> <p>16 objection was, "The report doesn't exist. You have nothing</p> <p>17 to show you that it exists. Don't let him question about</p> <p>18 it. Don't let him question about it."</p> <p>19 And Mr. Ling was sustained. And Mr. Rusk was told</p> <p>20 to move on to something else. He couldn't even question</p> <p>21 people about the report that he didn't have. And,</p> <p>22 obviously, he didn't have it. And for that I want to</p> <p>23 highlight this.</p> <p>24 This is from the Petition Exhibit D, page 21. And</p> <p>25 you heard earlier today that Mr. Ling said, "Oh, no, all of</p>

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<p style="text-align: right;">Page 54</p> <p>1 this was argued in front of Judge Israel."</p> <p>2 Here's a quote from his brief. "What is evident</p> <p>3 from the face of the document is" -- meaning, the</p> <p>4 exhibits -- or the fire life safety that Mr. Rusk had</p> <p>5 attached that he did have in his files, which, as I</p> <p>6 mentioned earlier, was the later iteration.</p> <p>7 Quote: What is evident from the face of the</p> <p>8 document is that it could not be the set of Schirmer</p> <p>9 Engineering documents that he claims he filed with his first</p> <p>10 submittal because his first submittal was on March 6th,</p> <p>11 2007. And the fugitive Schirmer documents to which he</p> <p>12 directs this court were not prepared until May 23rd, 2007.</p> <p>13 How can Rusk make such nasty aspersions against the Board</p> <p>14 staff when he himself cannot produce, even now before this</p> <p>15 court, a document that proves that he filed the report from</p> <p>16 the City of Las Vegas?" How can he say that? Because he</p> <p>17 didn't have it. Mr. Ling did.</p> <p>18 MR. MICKEY: All right.</p> <p>19 MR. NERSESIAN: And when Mr. Ling wrote this --</p> <p>20 MR. MICKEY: Mr. Nersesian, that's your two</p> <p>21 minutes.</p> <p>22 MR. NERSESIAN: That's my two minutes.</p> <p>23 -- he knew it was there, and he lied to Judge</p> <p>24 Israel too, just that clear, or hid it from Judge Israel.</p> <p>25 Thank you.</p>	<p style="text-align: right;">Page 56</p> <p>1 thought was the difference between an express and a pre- --</p> <p>2 MR. MORELLI: A preliminary --</p> <p>3 MS. LONG: Right.</p> <p>4 MR. MORELLI: A preliminary plans check and</p> <p>5 express.</p> <p>6 MS. LONG: Right. Because he's the one that</p> <p>7 wrote, that wrote in the letter. So in theory -- like, I</p> <p>8 know you understand, Mr. Nersesian, what they are. But what</p> <p>9 was Mr. Rusk's intent or what he thought at the time that he</p> <p>10 wrote the letter?</p> <p>11 MR. LING: And if I could interpose an objection</p> <p>12 before there's an answer. God knows I'm going to now create</p> <p>13 some more issues here. But we are not here to create a new</p> <p>14 record. Okay. And so Mr. Nersesian -- or Mr. Rusk is going</p> <p>15 to now start trying to change the testimony he gave the</p> <p>16 Board at the earlier hearing by answering your question</p> <p>17 because that's not what he testified to at the earlier</p> <p>18 hearing. I'm just concerned about that. And I'm objecting</p> <p>19 that we would be -- by allowing Mr. Rusk to answer that</p> <p>20 question is now going to allow him to be changing his</p> <p>21 testimony, and that's not what Judge Wiese ordered in this</p> <p>22 matter.</p> <p>23 MR. MORELLI: He answered the question.</p> <p>24 MR. NERSESIAN: All right.</p> <p>25 MR. MICKEY: Okay.</p>
<p style="text-align: right;">Page 55</p> <p>1 MR. MICKEY: So I'll give it one more last --</p> <p>2 MR. WAUGH: I was going to make a motion, but if</p> <p>3 you want to...</p> <p>4 MR. MICKEY: Oh, no, no. Actually, what we'll do</p> <p>5 now if there is no more questions for --</p> <p>6 MR. MORELLI: I had a question.</p> <p>7 MR. MICKEY: John.</p> <p>8 MR. MORELLI: To Mr. Rusk, you had a letter</p> <p>9 August 19th, 2011 regarding your submittal. And in your</p> <p>10 letter, you refer to this as the express plans check, and</p> <p>11 you keep referring to it as a preliminary plan check.</p> <p>12 Which one was it?</p> <p>13 MR. RUSK: One in the same.</p> <p>14 MR. NERSESIAN: The methodology that was employed</p> <p>15 by the City is in the expressed plan check process, and this</p> <p>16 is -- Mr. White later confirmed this at a deposition we did</p> <p>17 attend --</p> <p>18 MR. MICKEY: Mr. Nersesian, the question was</p> <p>19 directed to Mr. Rusk.</p> <p>20 MR. NERSESIAN: Well, he has an attorney here, and</p> <p>21 his attorney is always allowed to answer questions and be</p> <p>22 his mouth piece. That is what being represented by an</p> <p>23 attorney is, with all deference.</p> <p>24 MS. LONG: Well, we're in an administrative</p> <p>25 hearing, and the question was pretty much what Mr. Rusk</p>	<p style="text-align: right;">Page 57</p> <p>1 MS. CIESYNSKY: I had one final question.</p> <p>2 The Schirmer Report you gave to the Board, but you</p> <p>3 didn't keep a copy of it? I'm just confused.</p> <p>4 MR. RUSK: There was only one copy.</p> <p>5 MS. CIESYNSKY: So you didn't copy it?</p> <p>6 MR. RUSK: There was only one original.</p> <p>7 MS. CIESYNSKY: Yeah. But you didn't copy it</p> <p>8 before you gave it to the Board?</p> <p>9 MR. RUSK: No. I trusted the Board. Please don't</p> <p>10 make -- the staff. Please don't make that same mistake.</p> <p>11 MR. MICKEY: So take one more look around the</p> <p>12 table. So if there's no further questions --</p> <p>13 MR. LING: Mr. Mickey, I'm sorry. I keep doing</p> <p>14 this. But I want to make sure the record is clear.</p> <p>15 Both Mr. Rusk and Ms. Bach are -- were under oath</p> <p>16 at the original hearing. You did not swear them in today.</p> <p>17 We've received testimony from both of them. We either need</p> <p>18 to have them affirm that their testimony was under oath or</p> <p>19 you need to remind them that they were under oath from the</p> <p>20 hearing. I -- one way or the other, we need to make sure</p> <p>21 that their testimony is covered by an oath. Okay. Because</p> <p>22 they were allowed to speak today, and they were not under</p> <p>23 oath.</p> <p>24 MS. LONG: And it was Ms. Bach, Mr. Rusk.</p> <p>25 MR. NERSESIAN: May I briefly state that I wholly</p>

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<p style="text-align: right;">Page 58</p> <p>1 disagree. The questions to Ms. Bach and Mr. Rusk were 2 informational. They were not evidentiary. If we want to 3 have an evidentiary hearing, then we would be entitled to an 4 evidentiary hearing, and this wasn't. I believe that we 5 were supposed to have one, and we got a different order from 6 the Board.</p> <p>7 MS. LONG: You can still affirm them.</p> <p>8 (Discussion off the record between 9 Ms. Long and Mr. Mickey.)</p> <p>10 MR. MICKEY: I guess, can -- so I guess we all 11 understand that this is not a hearing?</p> <p>12 MR. NERSESIAN: Oh, no. It's a hearing. It is an 13 argument on a petition.</p> <p>14 MR. MICKEY: No.</p> <p>15 MR. NERSESIAN: I was not noticed for any 16 evidentiary hearing. I was not told -- I was told, in fact, 17 that I did not have subpoena power. I was allowed a 18 15-minute presentation. I would love to have an evidentiary 19 hearing. I would love for you to retry this whole case 20 because it was unjust to begin with. But that's not what we 21 have today.</p> <p>22 (Discussion off the record between 23 Ms. Long and Mr. Mickey..)</p> <p>24 MR. MICKEY: So affirmation then, Ms. Bach, that 25 today what you've spoken is the truth?</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. ERNY: To consider whether it be appropriate 2 to vacate the prior decision based upon the newly discovered 3 evidence consisting of the March 6th, 2007 Schirmer Report.</p> <p>4 When I look at the report, it is basically a 5 bunch -- a listing of a lot of code references. There are 6 drawings in there, but they deal with issues of smoke and 7 the fire sprinkler zones.</p> <p>8 The -- the -- the difference here, in my opinion, 9 is coordination and incorporation are two different things. 10 And there was a letter that predates this that already 11 addressed the issues that -- that were going to be in the 12 contents of the fire safety report or the -- yeah, this 13 report, that should be incorporated into the documents that 14 are going to be submitted. They did not get included, hence 15 the big, long list of responses that came out of the plan 16 department.</p> <p>17 So in light of -- in full consideration of this 18 report and reviewing all the documentation, again, almost 19 2,000 pages between the various documents that we were given 20 to look at this, all the brief evidence and listening to the 21 testimony today, I see no cause for vacating.</p> <p>22 MR. NERSESIAN: Did you review Exhibit B, the 23 full-size drawings? Because they --</p> <p>24 MS. LONG: Mr. Nersesian.</p> <p>25 MR. MICKEY: Mr. Nersesian, please. This is</p>
<p style="text-align: right;">Page 59</p> <p>1 MS. BACH: Yes.</p> <p>2 MR. MICKEY: Mr. Rusk, an affirmation as to what 3 you've spoken today is the truth?</p> <p>4 MR. RUSK: Could you repeat what I said?</p> <p>5 MR. MICKEY: It's on record.</p> <p>6 MR. RUSK: I'd like to know what I'm swearing to.</p> <p>7 MR. MICKEY: What you have spoken today is the 8 truth.</p> <p>9 MR. RUSK: Which is what?</p> <p>10 MR. MICKEY: Which is what we have on record and 11 any comments that you have made.</p> <p>12 MR. RUSK: Can you rerepeat it?</p> <p>13 MS. LONG: The court reporter can repeat it.</p> <p>14 (Page 57, lines 1-10 read.)</p> <p>15 (Page 55, lines 8-13 read.)</p> <p>16 (Pages 46, 47, lines 22-11 read.)</p> <p>17 MR. RUSK: I'm satisfied. Yes.</p> <p>18 MR. MICKEY: So with that, we'll close anything 19 with questions and answers and move into the Board's 20 deliberation. I guess I'll start to my right. Greg.</p> <p>21 BOARD DELIBERATIONS</p> <p>22 MR. ERNY: Well, I look at what we've been asked 23 to do by Judge Wiese.</p> <p>24 Is that how you correctly pronounce his name?</p> <p>25 MS. LONG: Yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 deliberation for the Board only.</p> <p>2 MR. NERSESIAN: I understand.</p> <p>3 MR. RUSK: That's a lie.</p> <p>4 MR. MICKEY: Please, please respect that we are in 5 deliberation.</p> <p>6 MR. NERSESIAN: Okay.</p> <p>7 MR. MICKEY: This is for the Board to go through 8 and discuss this amongst ourselves.</p> <p>9 MR. ERNY: Again, reliance of those terms 10 (inaudible) --</p> <p>11 MR. NERSESIAN: Well, then --</p> <p>12 MR. ERNY: For your consideration, yes.</p> <p>13 MR. NERSESIAN: And you don't see fire life safety 14 coordination?</p> <p>15 MR. ERNY: No, sir. There may be some 16 coordination.</p> <p>17 MR. NERSESIAN: The Supreme Court will.</p> <p>18 MR. ERNY: Excuse me, sir. There is a difference, 19 and I just said, between coordination and inclusion, so --</p> <p>20 MR. MICKEY: Greg.</p> <p>21 MR. ERNY: That's my opinion, sir, and that's my 22 comments regarding -- there's a difference between 23 incorporation and coordination.</p> <p>24 MR. MICKEY: All right. Anything else, sir?</p> <p>25 MR. ERNY: No. That's it.</p>

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<p style="text-align: right;">Page 62</p> <p>1 MR. MICKEY: Ann, anything you would like to?</p> <p>2 MS. FLEMING: No. Same.</p> <p>3 I'm new to this -- to this case, so I did take</p> <p>4 time to review all the documents carefully and hear the</p> <p>5 testimony today. I do not see reason to vacate the order.</p> <p>6 MR. MICKEY: All right. Kim?</p> <p>7 MS. CIESYNSKY: So two things. Is this a</p> <p>8 discussion or do we just have to do statements?</p> <p>9 MR. MICKEY: No.</p> <p>10 MS. CIESYNSKY: It's a discussion. Okay.</p> <p>11 MR. MICKEY: We discuss things.</p> <p>12 MS. CIESYNSKY: All right. Because -- that's</p> <p>13 good. Yeah. Can we ask questions amongst ourselves?</p> <p>14 MS. LONG: Yes.</p> <p>15 MS. CIESYNSKY: Okay. Okay. That's good because</p> <p>16 there's -- there's a couple things in here that -- that I --</p> <p>17 that I found.</p> <p>18 Don Wikes is a senior plan examiner. On his page</p> <p>19 37 this is what he says, "So I put in there because it was</p> <p>20 obvious that when I did the first review that the design</p> <p>21 professional hadn't even looked at the fire life safety</p> <p>22 report and hadn't even meshed together."</p> <p>23 So when I read that, I thought that kind of goes</p> <p>24 to the heart of what we're looking at, is kind of unbundling</p> <p>25 all of these things, that you're supposed to kind of put</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. MICKEY: Right.</p> <p>2 MR. KLAI: Yeah.</p> <p>3 MR. MICKEY: Responses?</p> <p>4 MR. KLAI: No. I'm just saying I was the one that</p> <p>5 asked that question way back as a previous question. I</p> <p>6 heard it brought back again. But again, it's -- it's --</p> <p>7 what Kim kind of alluded to, again, without the full</p> <p>8 integration of what the report says, I don't know that much</p> <p>9 is really changed, anything has changed.</p> <p>10 MR. NERSESIAN: Except that Mr. Rusk is not a</p> <p>11 liar --</p> <p>12 MR. MICKEY: Mr. Nersesian.</p> <p>13 MR. NERSESIAN: -- which you found.</p> <p>14 MR. MICKEY: Mr. Nersesian, please. This is not a</p> <p>15 time for your comments. This is for the Board, our</p> <p>16 deliberations only.</p> <p>17 Mr. Nersesian, please. This is in deliberations,</p> <p>18 and it's for our conversations only. Thank you.</p> <p>19 Anything else for anybody?</p> <p>20 I'll do my comments. So a couple things that I</p> <p>21 was looking at was, one, just what the City of Las Vegas and</p> <p>22 the intent of the expressed plan review. You go through and</p> <p>23 look at it, not only today or what was in place back then,</p> <p>24 it is for the purpose of obtaining a building permit. It is</p> <p>25 an expedient review. Necessarily to where, yes, there are</p>
<p style="text-align: right;">Page 63</p> <p>1 everything into the building department, the building</p> <p>2 department is supposed to somehow figure it all out.</p> <p>3 Are they supposed to -- the building department</p> <p>4 supposed to design this? I -- I was thinking that</p> <p>5 everything should be meshed together, put into the building</p> <p>6 department. And they might have a few things, but they're</p> <p>7 not actually supposed to design it and put this with this</p> <p>8 and, you know, all together.</p> <p>9 So I just felt all that telling from the plan</p> <p>10 examiner. And then also to the building department that</p> <p>11 you're putting in all these things and just hoping to get</p> <p>12 back comments so that you can fix it all. You should, you</p> <p>13 know, bring kind of a comprehensive document where you're</p> <p>14 meshing things before it gets to the building department.</p> <p>15 MR. KLAI: Integration, yeah.</p> <p>16 MS. CIESYNSKY: Yeah, integration.</p> <p>17 So those are -- those are my concerns. That's all</p> <p>18 I have.</p> <p>19 MR. MICKEY: Mr. Klai?</p> <p>20 MR. KLAI: No. Nothing.</p> <p>21 MR. MICKEY: Okay. Okay. So, John, I guess the</p> <p>22 question -- out there earlier on today, there was the</p> <p>23 reference as your testimony before with the reference to --</p> <p>24 MR. KLAI: Asking about where the fire life safety</p> <p>25 report was.</p>	<p style="text-align: right;">Page 65</p> <p>1 comments and returns and going through some of that stuff.</p> <p>2 The mere fact that drawings were wet stamped with the</p> <p>3 indication that at that day when you were doing the first</p> <p>4 plan review if all was in accordance to anything that the</p> <p>5 City may be looking for, you would have been issued a</p> <p>6 building permit, especially because you turned in wet</p> <p>7 stamped drawings, even from the expressed plan review.</p> <p>8 I did take the opportunity with the drawings that</p> <p>9 had been left behind, what I could go through and look at.</p> <p>10 And I did a comparison with just a few items that was on the</p> <p>11 Schirmer's original letter from February 6th, 2007, and just</p> <p>12 went through a couple of the items. The questions that they</p> <p>13 had about vestibule requirements, elevator lobbies, exit</p> <p>14 continuity and exit discharge. Doing a quick review looking</p> <p>15 at the drawings, none of those items had been picked up or</p> <p>16 addressed.</p> <p>17 And so when I look at it from the transition of</p> <p>18 these initial comments and then going through as to what was</p> <p>19 later elaborated on in more detail in the book, to me, I</p> <p>20 don't necessarily see that there was anything (inaudible.)</p> <p>21 THE COURT REPORTER: I don't see that there was</p> <p>22 anything what in there?</p> <p>23 MR. MICKEY: Oh, that there was any -- that the</p> <p>24 content from the original Schirmer Report had anything --</p> <p>25 wasn't much different from the initial letter from</p>

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<p style="text-align: right;">Page 66</p> <p>1 February 6th. It just elaborated a lot of things in more 2 detail. So that's kind of where I was seeing some things. 3 But especially from the understanding that the -- 4 what was presented in that original memo that it was part of 5 the expressed plan review, the intent that those -- City of 6 Las Vegas is doing that for issuing a building permit. 7 Even the way that the process is set up for 8 initial reviews, submit the drawings one week prior to the 9 appointment and then being able to go through and review it 10 with all the code officials, letters are usually issued and 11 then returned very shortly. Sometimes basically within one 12 to four days. So those are some of the things when I look 13 at this was set up as part of the original expressed plan. 14 MR. ERNY: Are we ready for a motion? 15 MR. MICKEY: Before we make a motion, there are 16 two things probably. 17 Okay. Let me make a reminder. And I want to read 18 it exactly from Judge Wiese's minutes, so I don't say it 19 incorrectly. So just as a reminder, just so everybody is 20 clear with this, and this is from the court minutes from 21 May 22nd, 2017, and this is a petition, "For the judicial 22 review is hereby granted and the Court hereby remands this 23 matter to the Board to consider whether it would be 24 appropriate to vacate its prior decision based upon the 25 newly discovered evidence consisting of the March 6th, 2007</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. WAUGH: Okay. So I'll end. 2 Do you want me to restate it correctly then? 3 MS. LONG: That's fine. 4 MR. ERNY: Second. 5 MR. MICKEY: Any discussion, further discussion on 6 the motion? 7 I'll call for a vote. All those in favor? 8 (All members join in ayes.) 9 MR. MICKEY: Anybody opposed? 10 Motion carries. 11 With that, I believe the next step is that we must 12 draw up an order. So he if -- I -- I can't if you would get 13 that please and we could go ahead and get the order crafted. 14 Thank you. 15 MR. NERSESIAN: Thank you. 16 MR. MICKEY: And we will adjourn. 17 MR. NERSESIAN: So I will get an order and nothing 18 is effective and no time frames are running until I get the 19 order? 20 MS. LONG: That's correct. 21 MR. NERSESIAN: Okay. Can I get a copy of the 22 transcript please? Thank you. Thank you all. 23 MR. MICKEY: Thank you everybody. 24 MR. NERSESIAN: And how you can find that a 25 finding that Mr. Rusk is a liar was not material --</p>
<p style="text-align: right;">Page 67</p> <p>1 Schirmer Report and drawings." 2 So that is the minutes and the order that we have 3 received from the judge. 4 And then, also, today -- I'm not going to say this 5 correctly. Yeah. There were some other items out there for 6 prosecutorial misconduct and regarding to the Schirmer 7 Report and whether you decide to take that into 8 consideration or not. 9 MS. LONG: Just to clarify, you know, the Board 10 doesn't -- you know, prosecutorial misconduct is for the 11 licensing, the Board that issued the attorney license. So 12 you're not here to regulate attorneys. However, if you do 13 feel that, you know, statements made during the original 14 hearing were material and materially affect, I guess, the 15 hearing, the original hearing, then you can pretty much take 16 that into account in your motion. 17 MR. MICKEY: So anything else for deliberations 18 for anybody? 19 All right. With that, the desire for action. 20 MR. WAUGH: I'll make a motion. 21 After reviewing the previous proceedings, previous 22 evidence, and after listening to both sides, I move that the 23 Board uphold the September 27th Order and that Cases Nos. 24 08-080R and 11 -- oh, doesn't -- 25 MS. LONG: That's it.</p>	<p style="text-align: right;">Page 69</p> <p>1 THE COURT REPORTER: Are we still on? 2 MS. LONG: Yes. 3 MR. NERSESIAN: -- to that decision is beyond me. 4 And that's the only question. So we'll see you in court. 5 MR. MICKEY: So with that, I will make an official 6 announcement that we are done with Item No. 4. 7 MR. NERSESIAN: I'm sorry about that outburst. 8 Thank you. Seriously, I apologize. Shouldn't have said 9 that, but I did. 10 MR. MICKEY: Can we take a five-minute break to 11 reorganize ourselves to continue on with our agenda, and 12 we'll finish everything up and make sure everybody can get 13 on with their day. Thank you. 14 (The proceeding was concluded at 15 4:25 p.m.) 16 ///// 17 ///// 18 ///// 19 ///// 20 ///// 21 ///// 22 ///// 23 ///// 24 ///// 25 /////</p>

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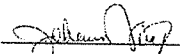
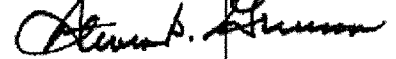
1	REPORTER'S CERTIFICATE	Page 70
2	STATE OF NEVADA)	
) SS	
3	COUNTY OF CLARK)	
4	I, Johanna Vorce, Certified Shorthand Reporter, do	
5	hereby certify that I took down in Shorthand (Stenotype) all	
6	of the proceedings had in the before-entitled matter at the	
7	time and place indicated; and that thereafter said shorthand	
8	notes were transcribed into typewriting at and under my	
9	direction and supervision and the foregoing transcript	
10	constitutes a full, true, and accurate record of the	
11	proceedings had.	
12	IN WITNESS WHEREOF, I have hereunto affixed my	
13	hand this 8th day of November, 2017.	
14		
15		
	Johanna Vorce, CCR No. 913	
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EXHIBIT 7

EXHIBIT 7



OPPS

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

Dennis Eugene Rusk, and Dennis Rusk, Architect,)
LLC,)

PETITIONER/APPELLANT

vs.

Nevada State Board of Architecture, Interior
Design, and Residential Design,

RESPONDENT.

) Case No.: A-17-750672-W

) Dept No.: 30

) Date of Hearing: January 4, 2018

) Time of Hearing: 9:00 a.m.

PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

NOW COMES Petitioner ("Rusk") and herewith oppose the Respondent's Motion to Dismiss. This Opposition is based on the papers on file to date, the attachments hereto, the following Memorandum of Points and Authorities, and any oral argument the Court deems pertinent.

MEMORANDUM OF POINTS AND AUTHORITIES

The Nevada State Board of Architecture, Interior Design, and Residential Design ("Board") brings a motion to dismiss a matter that is long concluded, and for which the final order of the Court has become operative and acted upon by both parties. Not only is this flawed from a procedural perspective, but from a factual perspective as well, the motion is entirely incompetent. Moreover, it is rank gamesmanship. On remand from this Court, as evident below,

1 upon considering Rusk's Petition to Vacate, the Board multiplied its errors, and rubber-stamped
2 an egregiously awful Decision bearing little resemblance to indisputable facts or justice. With
3 this, Rusk is entitled to put the Board's defalcation into the appellate process, and has filed a
4 Petition for Judicial Review. Before the Court is the Board's backhanded attempt to circumvent
5 the ordinary processes of having a Court determine whether this administrative body failed to
6 provide due process and whether Rusk was entitled to have the Decision of the Board vacated.

7 **I. FACTUAL BACKGROUND**

8 **A. RESPONSE TO RESPONDENT'S PROCEDURAL HISTORY AND** 9 **SUPPLEMENTAL PROCEDURAL FACTS**

10 The Respondents procedural history is rife with irrelevancies. The material procedural
11 history is as follows. Rusk filed a Petition to Vacate a decision of the Nevada State Board of
12 Architecture, Interior Design, and Residential Design ("Board") which disciplined him. Citing
13 lack of jurisdiction over the motion and the relief sought, the Board refused to consider the
14 Petition, and denied and dismissed it. Rusk brought a Petition for Writ of Mandamus before this
15 Court arguing, among other items, that the Board erred in finding that it lacked jurisdiction.
16

17 Based on the Petition for Writ of Mandamus, etc., which initiated the current proceeding,
18 this Court held an evidentiary hearing. Following the evidentiary hearing and expansive briefing
19 by the parties, the Court granted Rusk's Petition ruling that the Board did, in fact, have
20 jurisdiction over the Petition to Vacate, that Rusk had raised issues that merited consideration
21 over such a Petition, and that the Board was to address Rusk's Petition to Vacate. This Court
22 then remanded the matter back to the Board to determine the Petition to Vacate. This was, for all
23 intents, purposes, and appearances, a final order on the Petition for Mandamus, and determined
24 Rusk's Petition in its entirety. That is, this case was over.
25

26 And the Board's five-page rendition of facts confirms this. Meeting the requirements of
27 NRS 233B.125, the decision of the Board refusing to vacate the discipline was rendered at the
28

1 hearing on remand, orally. Transcript of Proceedings, exhibit 1, pp. 67-68: 21-10. Curiously,
2 nonetheless, the Board cites to and restates most of an incompetent order entered by the Board
3 thirty-seven days following the oral rendition of its decision, and filed after receipt of the filing
4 and service of the Petition for Judicial Review, exhibit 2, and seven days after the deadline of
5 Rusk to file a Petition for Judicial Review under 233B.130(d). Simply, the Board attempts to
6 upend the proceeding and oral pronouncement of its decision by issuing its alleged order on the
7 decision on the Petition to Vacate. This decision is patently incompetent, and should not be
8 considered as any portion of the Procedural History or relevant history offered by the Board in its
9 motion.
10

11 In the current motion, the Board relies extensively upon this decision providing over a
12 page of single-spaced uninterrupted text quoted from the tardy decision. Board's Brief, pp. 16-
13 17. In fact, this decision is actually a phantom document. Rusk filed his Petition for Judicial
14 Review of the final decision of the Board, which final decision was oral as authorized (NRS
15 233B.125 and Transcript of Proceedings, exhibit 1, pp. 67-68: 21-10) on November 9, 2017)
16 fourteen days following the decision of the Board rendered on October 25, 2017. accord
17 Transcript of Proceedings, ex. 1, and Petition for Judicial Review, exhibit 2. From yet another
18 perspective, when Rusk filed the Petition for Judicial Review on the remanded decision of the
19 Board, the Board lost jurisdiction over the matter, and had no authority to issue a written
20 decision. In short, the quoted "Decision" is, procedurally and factually, no decision whatsoever.
21

22 B. FACTS FOLLOWING REMAND

23 Following the remand by this Court, the Board conducted a truncated hearing and issued
24 a final decision on Rusk's Motion to Vacate, and on motion, affirmed its prior decision, with the
25 following approved motion:
26
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1 After reviewing the previous proceedings, previous evidence, and
2 after listening to both sides, I move that the Board uphold the
3 September 27th [2011] Order Motion Carries.¹

4 Transcript, Exhibit 1, p. 67: 22-23, and p. 68: 103 (emphasis added). Thus, following the hearing
5 the Board changed nothing, and even left standing the finding that Rusk had lied when he
6 averred that the Schirmer Fire/Life Safety ("FLS") documents despite the law of the case to the
7 contrary in this Court's Order on Rusk's Petition for Writ of Mandamus.

8 The Court may also recall that at the evidentiary hearing before it, Rusk, with blow-ups,
9 demonstrated that the original drawings he had submitted, and which the Board determined were
10 devoid of fire/life safety ("FLS") information, actually had FLS information. As pointed out by
11 Rusk in his Petitioner's Closing Brief, pp. 8-9, following the evidentiary hearing in this Court,
12 the Prosecutor had elicited testimony, known by him to be false, and hid pertinent evidence of
13 the actual FLS incorporation from the Board's expert in order to elicit the false testimony.

14 At the hearing held by the Board after remand, Rusk presented full size drawings of
15 exhibit B, something the Prosecutor never did in the prosecution of Rusk.² Curiously, they
16 effectively evinced full coordination between the Schirmer Engineering documents and Rusk's
17 submitted drawings (exhibit B at the hearing on the Complaint against him). And during the
18 hearing there was a break where the following was offered to the Board members:

19
20 Mr. Nersesian: I will also leave [full size] Exhibit B for anybody
21 who wants to look at it. And I will be available when I come back,
22 or I'll stay right now and point out the FLS element of Exhibit B
23 that Mr. Armor testified did not exist.

24 * * *

25 ¹ Note that by this Motion the Board necessarily adopted the same findings as in the Decision.
26 That is, that Rusk was lying when he stated that the Schirmer Engineering documents were never
27 filed and that Rusk was lying.

28 ² These drawings were direct blow-ups of the digitized copies provided by the Board in the duces
tecum request. They were infinitely more legible than the reduced drawings which the Prosecutor
produced at the hearing of the complaint against Rusk.

1 Ms. Long [Asst. Att. Gen.]: [A]s Mr. Nersesian stated in the
2 interim if you wanted to individually go up and look at the
3 drawings, please feel free to do so.

4 And with this, during deliberations at least one Board member put on another false show
5 concerning that which Rusk produced. In seeking to sway the balance of the Board, many of
6 whom were not architects, the architect member, Mr. Erny acknowledged that there may well be
7 coordination between Rusk's drawings in exhibit B and the FLS engineering by Schirmer
8 Engineering. Transcript, ex. 1, p. 61. And when pressed on the issue of the obvious
9 coordination, his statement to the balance of the Board and for the record was, "Excuse me sir,
10 there is a difference, I just said, between coordination and inclusion, so - - That's my opinion
11 sir, and that my comments regarding - - there's a difference between coordination and
12 incorporation." The bottom line is that when an architect incorporates the FLS engineer's items
13 into his drawings, that, by definition, is coordination, and in such a circumstance, there is
14 clearly no difference between incorporation and coordination as Mr. Erny attempted to sway the
15 other Board members. Nonetheless, it appears that the Board adopted Mr. Erny's fallacious
16 rambling.

17
18 This is important for a critical reason. The Decision clearly found that there was no FLS
19 engineering and no FLS report or drawings with the initial submittal. When this was shown to
20 have been false with the post-appeal discovery of the filed FLS documentation in the Board's
21 possession and the Prosecutor's admissions that it existed and he had it, the Prosecutor
22 attempted to change the entire tenor of the original proceeding and claim that there was a lack of
23 coordination between the Rusk and the FLS people. Then, with the full-size presentation of the
24 Board's exhibit B from the original hearing, it became obvious that Amor's statements that
25 there was no FLS in exhibit B and no coordination were false and known to be false by the
26 Prosecutor, and became further apparent that Rusk had coordinated with the FLS personnel, at
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1 the hearing on remand the Board changed its argument that Rusk was negligent to a claim that
2 incorporation into the drawings of the architect of the FLS engineering is not coordinating
3 between the architect and the engineer. Simply, with this show, the target and rationale moved a
4 third time, with the alleged deficiency being modified, yet again, to there being some
5 coordination, but largely incorporation. This moving target, simply, becomes more and more
6 ridiculous with each step.

7 In this respect, it is now shown that functionally everything in the Decision disciplining
8 Rusk relative to Verge was put up through the offering of altered and omitted evidence by the
9 Prosecutor. And to add insult to injury concerning the hearing on remand by the order of this
10 Court, prior to the motion to affirm the original decision, the assistant attorney general told the
11 Board that prosecutorial misconduct was not a concern of their's. Transcript, ex. 1, p. 67: 9-11.
12 Yet, prosecutorial misconduct presents a precise question before the tribunal faced with a
13 motion to vacate a judgment. See Jones v. State, 101 Nev. 573, 577, 707 P.2d 1128, 1131
14 (1985); Mooney v. Holohan, 294 U.S. 103 (1935); Pyle v. State of Kansas, 317 U.S. 213
15 (1942); Curran v. State of Delaware, 3 Cir., 259 F.2d 707 (1958); State v. White, 81 S.W.3d
16 561, 570 (Mo. Ct. App. 2002). With her false statement of the law to the Board, Ms. Long
17 misinstructed the Board and essentially eradicated the basis upon which vacation of the prior
18 decision must turn and eradicated the very core of the basis for the remand.
19
20

21 II. ANALYSIS

22 **A. THE PRESENT MOTION IS NON-JUSTICIABLE** 23 **AS INVOKING AN UNAVAILABLE PROCESS**

24 The Board's current motion is incomprehensible. The Board maintains that it is bringing
25 a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to
26 NRCP 12(b)(5). Board's Brief, p. 5: 21. This rule provides, in relevant part, "every defense, in
27 law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or
28

1 third-party claim, shall be asserted in the responsive pleading thereto if one is required, except
2 that the following defenses may at the option of the **pleader** be made by motion . . .” (Emphasis
3 added). A petition for mandamus is not a pleading in any sense. NRCP 7(a) provides a list of
4 “pleadings” concluding with “no other pleading shall be allowed.” A petition for mandamus or
5 review is not within the list of pleadings, and clearly not subject to the application of NRCP 12.

6 This is also the rule at common law. The common law corollary to a motion to dismiss
7 was a demur. At common law, one could not demur to a petition for mandamus or a petition for
8 review. State ex rel. Dox v. Board of Equalization, 10 Iowa 157, 159, 1859 Iowa Sup. LEXIS
9 198, *1 (1859); accord State ex rel. Kashmir Corp. v. Schmidt, 291 Ore. 603, 606, 633 P.2d 791,
10 793, n. 1 (1981)(Mandamus is not a pleading, and once ruled upon, the filing is “legally
11 defunct.”). This Court, having ruled upon Rusk’s Petition, no longer has any justiciable claim
12 before it, and the proceeding is entirely over.

14 Moreover, the Board does not seek to interpose a motion to dismiss, but rather a motion
15 for summary judgment. There was an evidentiary hearing as well as briefs responsive to Rusk’s
16 Petition for Writ of Mandamus. Those were the times when the Board was to present evidence
17 and argument, and that time has passed. Further, the idea that the Board could file a motion to
18 dismiss, on the front side, and attach exhibits claiming that is now constitutes a Motion for
19 Summary Judgment presents a gross bastardization of the rules.

21 The rule upon which the Board relies provides in relevant part:

22 If, on a motion asserting the defense numbered (5) to dismiss for
23 failure of the pleading to state a claim upon which relief can be
24 granted, matters outside the pleading are presented to and not
25 excluded by the court, the motion shall be treated as one for
26 summary judgment and disposed of as provided in Rule 56, and all
27 parties shall be given reasonable opportunity to present all material
28 made pertinent to such a motion by Rule 56.

1 N.R.C.P. 12. Clearly, NRCP 12 is the premise of a motion to dismiss. Nothing in the rule
2 provides that a movant has the ability to avoid the rule or change the basis of the decision by
3 ignoring the rule, attaching the exhibits, and forcing the court to consider the motion as
4 something other than that which is filed. The Board's motion takes this tack, and as noted in
5 NRCP 12, the Court has the discretion to exclude the Board's attachments. In the face of such
6 gross gamesmanship by the Board, this is exactly what the Court should do, the exhibits should
7 not be considered, and the motion brought by the Board under NRCP 12 should be denied.

8
9 **B. THE CURRENT MOTION IS NON-JUSTICIABLE AS OUT OF TIME**

10 The Board seems to misapprehend the nature of the order entered in this Court. As
11 expressly stated in the title, it is an "Order Determining Petitioner's Petition for Writ [sic]
12 Issuance of a Writ of Mandamus, or Alternatively, Judicial Review of Action of the Nevada
13 State Board of Architecture." The Board appears to miss the statement that the Order at issue is
14 an order "Determining" the proceeding. That is, the *determination* of Rusk's Petition is, by its
15 title and by its nature, a final order of the Petition for Writ of Mandamus. This proceeding is
16 over.

17
18 Having "determined" the entirety of the matter before it, there remains nothing for this
19 Court to consider regarding the past proceedings. Indeed, the ability to bring a motion to dismiss
20 based upon failure to state a claim expires on the determination of the claim after hearing.

21 Waddill v. Anchor Hocking, Inc., 330 Ore. 376, 382, 8 P.3d 200, 203 (2000); BAC Home Loan
22 Servicing v. Gerome, 2012 Ohio Misc. LEXIS 175, *4 (2012)(A motion to dismiss, even for
23 lack of jurisdiction, is available during the pendency of proceedings, and not after the
24 proceedings are no longer pending); Miller v. Bogart, 19 Kan. 117, 119, 1877 Kan. LEXIS 243,
25 *4 (1877); accord Deutsche Bank Nat'l Trust Co. v. Pardo, 170 Conn. App. 642, 652, 155 A.3d
26 764, 771 (2017); United States v. Perez-Jacome, 2012 U.S. Dist. LEXIS 43068, *2, 2012 WL
27
28

1 1080574 (D. Kan. 2012)(A motion to dismiss must be filed while a case is pending). This case
2 was over, and the matter filed “Determined” by the Order of June 27, 2017. There is nothing to
3 move to dismiss. This would also be especially true if the motion were to be considered a motion
4 for summary judgment as the Board requests. See Board’s Brief, p. 5: 22-26.

5 From a different perspective, as an “Order Determining” Rusk’s Petition, the remedy for
6 the Board, if any, lay in NRAP 3A(b)(1). The Nevada Rules of Appellate Procedure apply to
7 mandamus proceedings in the district court. NRS 34.310. The Board could have made all of its
8 arguments on an appeal, but failed to do so. The final date for the Board to file its notice of
9 appeal was July 31, 2017, well over four months ago. Having failed to do so, there remains no
10 procedure to address the Order Determining Rusk’s Petition, and there is, obviously, nothing to
11 dismiss. In this sense, challenges to the proceedings in this matter and the Order Determining
12 Rusk’s Petition have been soundly waived.³

14 **C. NOTHING NEW IS PROVIDED BY THE BOARD, AND THEY REMAIN**
15 **SUBJECT TO THE ORDER DETERMINING RUSK’S PEITION**

16 Judge Israel’s findings in the appeal as raised in the Board’s current argument concerning
17 his rulings actually support the propriety of the Motion to Vacate brought before the Board. The
18 Board highlights the following finding by Judge Israel:

19 Regarding the Schirmer FLS report, this Court concludes that the
20 Board’s Finding o Fact # 15 (the **finding of fact at issue**
21 **regarding the Schirmer FLS Report)** was supported by
22 **substantial evidence** and the Board’s credibility determination
that Mr. Rusk was not a credible witness.

23 Board’s Brief, p. 9: 24-27 (emphasis added). That is, Judge Israel expressly affirmed the Board’s
24 finding on Mr. Ling’s prosecution that Rusk lied about the Schirmer report having been filed.

25 _____
26 ³ This is not to be confused with or compared with, nor does it bear upon, the Petition to Vacate
27 and the availability of relief sought by Rusk before the Board following the decision and the
28 dismissal of appeals. As noted in the Petition to Vacate, and in the Petition for Mandamus,
Rusk’s proceedings were based on express statutory authorization for such proceedings, to wit:
NRS 622A.390(1)(c). No statute cited grants the Board the ability to make the current motion.

1 The Board's finding of fact that this statement necessarily relates to provides, in relevant
2 part, "Mr. Rusk's claim that he filed Schirmer Engineering's drawings appears untrue." In fact,
3 the Order Determining Rusk's Petition expressly notes the discovery of this evidence by Rusk.
4 Decision imposing discipline, ¶ 15. And, as noted in the deliberations, in addition to the express
5 terms of the Decision, this finding was material to the conclusion that Rusk be disciplined. And
6 finally, this Court has also determined that the Schirmer Engineering documents were made
7 available to Rusk after the time to appeal the Board's decision had expired or been determined
8 adversely. In short, the Board and Judge Israel both found that Rusk had not filed such
9 documents, and only following the expiration of any ability to appeal, did Rusk have possession
10 of the incontrovertible evidence showing that he did not lie as found by the Board and by Judge
11 Israel in imposing and upholding the discipline against Rusk. And this is true, even though the
12 Prosecutor knew, and the Board held in their files, the information that Rusk was telling the truth
13 at the time of the Board's decision.
14

15 And what was confirmed at the evidentiary hearing? It is known that the prosecutor knew
16 that the very conclusion that Rusk's statement concerning the filing of the Schirmer Engineering
17 documents was not untrue despite this being found by the Board and confirmed by Judge Israel.
18 Rather, Rusk was telling the truth., and the documentation was filed with the City of Las Vegas
19 at the same time the Board's exhibit B on the discipline hearing was filed by Rusk. More to the
20 point, at the evidentiary hearing the prosecutor admitted that he knew that they had been filed,
21 and even introduced as evidence the original file stamped Schirmer report and drawings. See
22 Order Determining Rusk's Petition, ¶ 11. Considering this knowledge, he was under an
23 affirmative obligation to not withhold such evidence (i.e., to disclose such evidence), and even
24 attempt to correct the decision when the Board adopted his false argument that the items had not
25 been filed. Nev. Rules of Prof'l Conduct 3.3 (Prohibiting false statements of fact to a tribunal,
26
27
28

1 and considering the finding that Rusk lied, failing to correct a false statement of material fact or
2 law previously made to the tribunal.).

3 As to the Board's machinations regarding Rusk's alleged possession of copies of the
4 March 6, 2007, file stamped FLS drawings, the items cited by the Board evince that Rusk turned
5 originals to the Board and did not retain copies. That is, the Board had originals, not only copies,
6 and Rusk did not. If he recognized that he had the ability to produce any such copies, he would
7 have done so at the hearing. If he had access to the copies, rather than providing them to the
8 Board, they would have been attached to his affidavit in the appeal. Simply, it is evident that
9 Rusk did not have the March 6 FLS report at the time of the hearing, and until it was produced at
10 the duces tecum deposition, did not have the determinative evidence demonstrating his
11 truthfulness and demonstrating the coordination of FLS aspects into his submission.
12

13 Admittedly, it was imprudent for Rusk to turn over his originals to the Board without
14 making copies, but, nonetheless, as a lay person he had no reason to suspect that a government
15 agency seeking justice would hide evidence. Concerning the original hearing, it is clear from the
16 Prosecutor's questions, and subsequently from the appeal to district court it is clear from the
17 briefing, that Rusk did not possess the March 6, 2007 Schirmer documentation at the time of the
18 hearing nor at the time of the appeal. He only gained or regained possession at a point where it
19 could be presented when it was provided in the duces tecum production. Indeed, as evidence that
20 he had no file stamped copy upon which to base an argument on his appeal are the very
21 arguments he made in his appeal. He entreated the Board to admit that it had copies of the March
22 6, 2007 filing. Rusk's Excerpts of Brief on Appeal, ex. 5. Attached to this exhibit 5 is also an
23 excerpt of the exhibit he did offer with his appeal, an FLS report dated May 23, 2007, to show
24 that he was working with Schirmer and support his claim that FLS documentation existed and
25 was filed.
26
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28

1 And what did the Prosecutor do with this presentation on appeal. First, he did not respond
2 as to whether or not the document existed. More importantly, he doubled down and essentially
3 argued again that there was no March 6, 2007 submittal of FLS drawings, stating:

4 It is simply true that Mr. Rusk did not demonstrate at hearing o
5 now before this Court that he personally filed anything from
6 Schirmer Engineering; he may have, but there is nothing in the
7 record before the Board that proves that except Mr. Rusk's own
8 testimony, and the Board expressly stated in Finding of Fact # 16
9 its concerns with Mr. Rusk's credibility. Worse still, even the copy
10 of the Schirmer Engineering report attached as Exhibit B to Mr.
11 Rusk's "Declaration" does not contain any evidence that its (sic)
12 was filed with the City of Las Vegas. What is evident from the face
13 of the document is that it could not be the set of Schirmer
14 Engineering documents that he claims he filed with his first
15 submittal because his first submittal was on March 8, 2007 and the
16 fugitive Schirmer Documents to which he directs this Court were
17 not prepared until May 23, 2007. How can Mr. Rusk make such
18 nasty aspersions against the Board's staff when he himself cannot
19 produce - even now before this Court - a document that proves that
20 he filed the report with the City of Las Vegas?

21 Excerpt of Board's Brief on Appeal, exhibit 6 (underlining added). In context, the Board is
22 admitting that Rusk does not have (cannot produce) a copy of the March 6, 2007 FLS report,
23 and they recognize that he does not possess a copy of that which he turned over to the Board.
24 More importantly, the Board is continuing to argue that Rusk is, in a word, a liar, there is no
25 such report, and the conclusion that he is a liar is supported by the absence of the very
26 document which the Board possessed at the time it prosecuted Rusk. The Prosecutor, possessing
27 the FLS report dated March 6, 2007, simply, argued on appeal as well as at the hearing that the
28 report he knew existed did not exist. In other words, all of his failures from a due process
perspective were amplified and confirmed on the appeal.

Also, nothing within the Board's briefing changes the prosecutorial misconduct that
evidently occurred regardless of Rusk's knowledge. Prejudicial prosecutorial misconduct is
grounds for vacating a judgment. Zalawadia v. Ashcroft, 371 F.3d 292, 300 (5th Cir. 2004);

1 Hernandez v. Senkowski, 1999 U.S. Dist. LEXIS 21141, *49 (E.D. NY 1999); Davis v.
2 Grandlienard, 2015 U.S. Dist. LEXIS 41510, *13, 2015 WL 1522186 (D. Minn. 2015); accord
3 Jones v. State, 101 Nev. 573, 577, 707 P.2d 1128, 1131 (1985). And here the Prosecutor
4 committed misconduct, regardless of whether or not Rusk ever had possession of such
5 documentation, when he made the following statements at the hearing while knowing that he
6 possessed the March 6, 2007, FLS documentation.

7 Ling: I just want to make sure the record is crystal clear on this -- to submit the first
8 set of documents, which is Exhibit B, and not to have addressed the fire life
9 safety issues?

10 Rusk: I did.

11 Ling: They're not in Exhibit B; correct?

12 Rusk: I did by submitting the fire life safety report and the fire life safety documents
13 as part of my package.

14 Ling: But there's no proof here today.⁴ There's no evidence before the Board?

15 Excerpt of Record of Proceedings, ex. 4, p. NSBA000698.

16 Rusk: No, that is not correct because you're assuming that I did not make sure that
17 the life safety drawings were submitted to the building department. They were.

18 Ling: They're not here. [See fn. 4].

19 Rusk: You did not review them.

20 Ling: They're not here. [See fn. 4].

21 Ex. 4, p. NSBA000700.

22 Rusk: At the very early stages, they were turned in. They were not reviewed, but
23 they were there. They were at the building department. I physically turned
24 them in. I put them in my package. They were there.

25 Ling: There's no evidence of that today, is there? All we have is your word.⁵

26 I don't have any more questions.

27 Ex. 4, NSBA 000702.

28

⁴ In a technical sense, this is a blatant lie. The Prosecutor did not say that there is "no evidence presented," but rather, "there's no proof here today." But there was, and it was in his pocket as he made this statement.

⁵ In stating, "All we have is your word," the Prosecutor expressly included himself in the universe of persons with his statement of what "we" have and do not have. Again, this was patently false as he did have the evidence, and knew that he had more than just Rusk's word.