

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

\* \* \* \* \*

SIAOSI VANISI,

Appellant,

vs.

WILLIAM GITTERE, WARDEN,  
and  
AARON FORD, ATTORNEY  
GENERAL FOR THE  
STATE OF NEVADA.

Respondents.

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Volume 9 of 38

**APPELLANT'S APPENDIX**

Appeal from Order Denying Petition for Writ of  
Habeas Corpus (Post-Conviction)  
Second Judicial District Court, Washoe County  
The Honorable Connie J. Steinheimer

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## **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 26th day of September, 2019.

Electronic Service of the foregoing Appellant's Appendix shall be made in accordance with the Master Service List as follows:

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Sara Jelenik  
An employee of the Federal  
Public Defender's Office

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

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

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

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

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

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

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

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

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

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

16 THE COURT: Certainly.

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

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

22 MR. GREGORY: Yes, Your Honor.

23 THE COURT: Now, with regard to --

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

1 they have a priority.

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

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

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

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

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

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

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

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

25 THE DEFENDANT: Yeah.

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

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

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

6 MR. GREGORY: That's Bishop --

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

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

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

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

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

25 THE DEFENDANT: Yeah.

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

3 THE COURT: The birth mother.

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

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

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

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

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

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

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

21 THE COURT: Who are they?

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

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

3 THE COURT: That is correct.

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

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

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

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

15 MR. GREGORY: Oh, please.

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

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

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

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

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

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

11 MR. GREGORY: That is Vainga.

12 MR. STANTON: Number 12, Your Honor.

13 MR. GREGORY: That is his father.

14 MR. STANTON: Number 15.

15 MR. GREGORY: Brother-in-law.

16 MR. STANTON: Number 16.

17 MR. GREGORY: Sister.

18 MR. STANTON: Number 19.

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

21 MR. STANTON: 20.

22 MR. GREGORY: That's another cousin.

23 MR. STANTON: 21.

24 MR. GREGORY: An uncle.

25 MR. STANTON: 22.

1 MR. GREGORY: Cousin.

2 MR. STANTON: 25.

3 MR. GREGORY: They have already testified.  
4 That is Lose.

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

7 MR. STANTON: Number 25, Your Honor.

8 MR. GREGORY: It's a cousin.

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

14 MR. GREGORY: It is not.

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

17 MR. GREGORY: Yes.

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

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

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

1 Selsback was not required.

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

4 MR. STANTON: That's correct.

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

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

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

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

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

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

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

1 not going to.

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

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

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

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

13 MR. GREGORY: Complaint.

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

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

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

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

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

1 difficult for you to contact them?

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

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

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

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

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

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

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

25 MR. STANTON: They have previously indicated,

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

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

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

13 MR. GREGORY: No.

14 THE COURT: All right. Next item.

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

20 THE COURT: Counsel?

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

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

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

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

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

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

18 MR. BOSLER: Obviously.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Yes.

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

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

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

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

15 THE CLERK: Exhibits K and L marked.

16 (Exhibits K and L marked.)

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

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

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

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

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

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

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

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

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

15 MR. GREGORY: Pardon me?

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

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

19 THE COURT: Right.

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

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

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

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

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

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

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

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

9 THE COURT: Yes.

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

17 THE COURT: Okay.

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

25 During voir dire a statement was made, or it

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

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

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

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

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

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

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

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

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

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

1 in this matter at the Washoe County Jail.

2 THE COURT: Let me see it up close.

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

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

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

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

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

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

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

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

8 THE CLERK: Exhibit 44 marked.

9 (Exhibit No. 44 marked.)

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

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

25 THE COURT: You want to use this exhibit to

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

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

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

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

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

22 THE CLERK: 44.

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

1 during its case in chief in penalty phase.

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

9 MR. GREGORY: I do indeed.

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

12 THE CLERK: Exhibit 45 marked.

13 (Exhibit No. 45 marked.)

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

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

1 front of this jury.

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

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

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

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

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

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

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

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

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

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

25 MR. GREGORY: Yes, Your Honor.

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

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

5 THE COURT: We might as well.

6 (State's Exhibit 45 played.)

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

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

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

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

18 THE COURT: And the purpose of this?

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

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

5 THE COURT: Yes, I will.

6 MR. GREGORY: Thank you, Your Honor.

7 THE COURT: Try to give me the cases.

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

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

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

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

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

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

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

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

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

4 (Exhibit Nos. 46-A through 46-E marked.)

5 THE COURT: Seeing no objection, subject to the  
6 foundation of the person actually testifying, they will be  
7 admitted.

8 MR. GREGORY: Thank you, Your Honor.

9 (Exhibit Nos. 46-A through 46-E admitted.)

10 MR. GREGORY: Your Honor, if I might, I'm sure  
11 the Court intends to look at Miss Sue Millard's statement  
12 and Miss Sullivan's statement. I'll make a general  
13 objection maybe to help the Court in looking at those  
14 statements.

15 These appear to be mostly reminiscences and not  
16 truly an impact on the victim. It is descriptions of when  
17 they first met, when they were dating, their wedding, that  
18 sort of thing. So I'd ask the Court to consider that those  
19 statements may not be appropriate as victim impact under  
20 Homick. And I'll leave it at that.

21 THE COURT: Anything else from the State's  
22 perspective?

23 MR. STANTON: Well, Your Honor, I think  
24 Mr. Gregory's reading of the law regarding victim impact  
25 statement is incorrectly narrow. There is nothing that my

1 reading of Paine and Homick and its progeny both in the  
2 federal and state and our State Supreme Court that has  
3 construed victim impact statement to solely a reference to  
4 generalized or specific statements about their loss.

5 Mr. Gregory refers to it as reminiscing. It is  
6 entirely appropriate for someone to articulate to the Court  
7 or to a jury that their sense of loss and how their loved  
8 one's murder has affected their lives, both at the present  
9 and in the future in the context of stories and references  
10 to give some context to their loss, to include instances  
11 that reflect who the person was. Paine permits in victim  
12 impact statement evidence to show ladies and gentlemen of  
13 the jury who the victim was, and that can be an anecdotal  
14 form as well. I believe Paine and its progeny fully  
15 supports that.

16 MR. GREGORY: Well, I have given the Court a  
17 heads up to aid the Court, and then I'll make my specific  
18 objections tomorrow morning, if I have any.

19 THE COURT: Okay. Just a moment, gentlemen,  
20 please. Now as I understand it, the State intends to call  
21 Deputy Ellis in the penalty phase.

22 MR. STANTON: That's correct, Your Honor.

23 THE COURT: There has been a stipulation that  
24 Deputy Ellis could be part of the security handling  
25 Mr. Vanisi during the guilt phase and that it would not

1 impact his testimony. However, I do have a concern about  
2 his sitting here in the courtroom on the side and being  
3 called from that position to the stand.

4 Do you know when you would want to be calling  
5 him?

6 MR. STANTON: Deputy Ellis, once again,  
7 depending on when we start, if we start at 9:00 o'clock,  
8 making an educated guess or a rough guesstimate, Deputy  
9 Ellis could be by 10:00 o'clock.

10 THE COURT: Okay. I just needed to know that,  
11 and I will talk with the security detail and make other  
12 arrangements.

13 MR. GREGORY: Thank you, Your Honor.

14 THE COURT: Anything else?

15 MR. GREGORY: No, Your Honor.

16 MR. GAMMICK: That's I believe all the items  
17 that the State had.

18 THE COURT: Okay. Then we'll see you back at  
19 8:30 in the morning for preliminary hearings regarding  
20 the -- you are going to get some authority and then any  
21 objections to the jury instructions that you wanted to make,  
22 or any objections to the statements, the victim impact  
23 statements.

24 MR. STANTON: Yes. For the record, we provided  
25 now the redacted version of Miss Millard's statement to

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counsel.

MR. GREGORY: They have indeed. Thank you,  
Your Honor.

THE COURT: Good. Court is in recess.

(Court recessed for day at 4:50 p.m.)

STATE OF NEVADA, )  
 )  
COUNTY OF WASHOE. )

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

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

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

DATED: At Reno, Nevada, this 30th day of September, 1999.

CERTIFIED ORIGINAL  
 The record to which this certificate is  
 attached is the original  
 \_\_\_\_\_  
 which was on file and recorded in my  
 office in accordance with the provisions of  
 \_\_\_\_\_  
 ERIC V. NELSON, CCR No. 57  
 \_\_\_\_\_  
 DATE: \_\_\_\_\_  
 AMY HARVEY, Clerk of the Second Judicial  
 District Court, in and for the County of  
 Washoe, State of Nevada.  
 \_\_\_\_\_  
 Deputy

28

Code No. 4185

FILED

OCT 04 1999

AMY HREVEY  
By: *[Signature]*  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	Case No. CR98-0516
	)	Dept. No. 4
vs.	)	
	)	
SIAOSI VANISI,	)	
	)	
Defendant.	)	

TRIAL - VOLUME 9  
October 1, 1999  
Reno, Nevada

APPEARANCES:

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DAVID L. STANTON  
Chief Deputy District Attorney  
75 Court Street  
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For the Defendant: STEPHEN GREGORY  
and JEREMY BOSLER  
Deputies Public Defender  
One South Sierra Street  
Reno, Nevada

The Defendant: SIAOSI VANISI

ORIGINAL

Reported by: DENISE PHIPPS, CCR No. 234  
KAREN YATES, CCR No. 195

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RENO, NEVADA, FRIDAY, OCTOBER 1, 1999, 8:57 A.M.

-o0o-

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

THE COURT: This is the time set for any objections to the victim impact statement.

Mr. Gregory, did you have any other --

MR. GREGORY: Yeah, I'm a little disappointed, Your Honor, because there are items in here I thought that we had agreed to take out that are still in the document. I don't know when Mrs. Sullivan, when the State intends to put her on. I believe yesterday they said after lunch.

THE COURT: No, I don't think they said that. Maybe before lunch.

MR. GREGORY: Then I misunderstood. Maybe Mr. Stanton can aid me.

THE COURT: Why don't you tell me what the problems are. We'll just go through it.

MR. GREGORY: And the only reason I was asking for that assistance is I'm concerned that maybe a line-by-line in-depth reading of this might be more -- I've tried to look at it a couple times, but it's amazing how you pick things up. In any event, I will help the Court.

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1           The first page -- these pages used to be  
2           numbered, by the way, so I apologize to the Court. The  
3           first page, the second paragraph, I believe it's the fourth  
4           sentence "and savagely" I think is an inappropriate  
5           characterization. It suggests a cultural situation, I  
6           submit.

7           The second page, the first paragraph, the last  
8           sentence, I believe that's suggesting to the jury that the  
9           community somehow has an influence on them, if you will,  
10          Judge, that the community, for Mrs. Sullivan and her family  
11          to love the community again, certain things have to happen.  
12          And I find it dangerous to invite the community as an entity  
13          or the judicial system as an entity into this discussion  
14          that we're going to have in the next two days.

15          The third paragraph, Your Honor, will be the  
16          second complete paragraph, the last sentence. Again, that's  
17          that same argument, that somehow if the outcome is not as  
18          Mrs. Sullivan wants it to be, that the jury hasn't supported  
19          the judicial system. And as I indicated yesterday, this  
20          document is replete with reminiscences. I'm not sure that  
21          is a legitimate impact, but I'll leave that alone.

22          I am concerned, Judge, again, this used to be  
23          numbered so I'm going to start from the front, the sixth  
24          page in. And this might be nitpicky, and if it is I  
25          apologize to the Court, but I feel for the record's sake

1 that I should indicate this. The first paragraph, the three  
2 sentences, primarily the second sentence, which is referring  
3 to the rarity of people like Vanisi, I'm not really sure  
4 what they're trying to imply here.

5 THE COURT: Where are you? Which sentence?

6 MR. GREGORY: The second to the last in the  
7 first paragraph.

8 The following page, the last paragraph on the  
9 page, the last complete paragraph on the page, last  
10 sentence, again it's suggesting that if the outcome is not  
11 as the State wants it, that somehow our justice system has  
12 faltered.

13 If we could go to the second to last page, the  
14 third paragraph from the bottom, it would be the second  
15 complete paragraph on the bottom, but the third, starting  
16 with Siasosi Vanisi, I think those predictions from  
17 Mrs. Sullivan are inappropriate. We would object to that  
18 entire paragraph unless it's reworded.

19 And the final page, I believe the third  
20 sentence in the first paragraph, the third from the bottom,  
21 I think that's obvious.

22 THE COURT: First paragraph, third sentence  
23 from the bottom?

24 MR. GREGORY: That's correct.

25 THE COURT: Of that paragraph?

1 MR. GREGORY: Yes, Your Honor. May I approach,  
2 maybe I can aid the Court?

3 THE COURT: Yes.

4 (Bench conference between Court and counsel.)

5 THE COURT: The Court will interlineate Exhibit  
6 K to reflect the removal of that sentence, it begins with  
7 the word "you" and ends with the word "us".

8 MR. GREGORY: The prosecutor indicated at the  
9 bench that that's been taken out, but he indicated that this  
10 was the redacted version.

11 MR. STANTON: That's not what --

12 THE COURT: I understand it's been taken out.  
13 Now we have a second redacted version and I've just  
14 corrected it.

15 MR. GREGORY: The second paragraph, Your Honor,  
16 it would be the fourth sentence starting "to look around"  
17 from the bottom, again I think it's suggesting to the jury  
18 that if they don't come back with the correct verdict --

19 MR. STANTON: I believe that's taken out as  
20 well, Your Honor.

21 THE COURT: The entire sentence?

22 MR. STANTON: Yes, Your Honor.

23 MR. GREGORY: Now, again, Your Honor, I don't  
24 have a copy of that one. And I'm a little concerned. So if  
25 Mrs. Sullivan is planning to come this afternoon, I'd like

1 the opportunity to see the redacted version.

2 THE COURT: Well, Mr. Gregory, you can just  
3 cross out the one you've got just like I did. Is there any  
4 other changes that you've already made, Mr. Stanton?

5 MR. STANTON: There's been a couple others  
6 pursuant to agreement with counsel that I've already  
7 redacted I want to reflect that aren't in that exhibit. So  
8 we've already agreed to take out certain other portions.

9 THE COURT: But from last night to this morning  
10 these are the only two changes you've made?

11 MR. STANTON: Correct, Your Honor.

12 THE COURT: Those are made. I'll reserve  
13 ruling on the other requests, and I'll allow the State to  
14 respond in a few minutes, or sometime when we get a break  
15 before Ms. Sullivan testifies.

16 MR. GREGORY: I have a couple other matters,  
17 Your Honor, if the Court wishes me to make a record,  
18 briefly.

19 THE COURT: Okay.

20 MR. GREGORY: Your Honor, we're going to ask  
21 through a motion in limine that Mr. Gammick be prohibited --  
22 and I'm not suggesting he intends to do it, but I saw  
23 reference to his law enforcement background in a newspaper  
24 report last week, how he could empathize with the family,  
25 with law enforcement. We're going to ask that the Court

1 order that he not make any reference during this penalty  
2 phase to his previous profession.

3 MR. STANTON: Your Honor, I'm going to be doing  
4 the penalty phase in this case, and I can assure the Court I  
5 will not refer in any way, shape or form to Mr. Gammick's  
6 past employment as a law enforcement officer.

7 MR. GREGORY: Thank you. I appreciate that.

8 We would also ask, Your Honor, because of the  
9 highly volatile and emotional nature of these proceedings,  
10 that there be kleenex in place so that the witnesses can  
11 have access to them so that no one has to assist, if you  
12 will, to --

13 THE COURT: There's kleenex. It's there.

14 MR. GREGORY: Thank you.

15 And Your Honor, the State has a witness that is  
16 Deborah Mann, who is involved in classification. And I'm  
17 just bringing this to the Court's attention. I'm not really  
18 sure how they intend to use her, but judging from her  
19 report, I think it's suggested by her that Mr. Vanisi may  
20 not, if he's given a life sentence, may not -- they may not  
21 be able to classify, which I presume means that they can't  
22 house Mr. Vanisi. And the Court was concerned and the State  
23 with how many witnesses we may or may not have. We may have  
24 to have additional witnesses if that particular subject is  
25 offered by the State from Nevada State Prison, the

1 administrative people, so that we can deal with the hundreds  
2 of prisoners serving life sentences, their emotional  
3 problems, maybe the details of their crimes and how the  
4 prison has been able to deal with those people and house  
5 them.

6 I don't know if that's the reason they're using  
7 Ms. Mann, but we have a curious, rather silly document, if  
8 you will, from her suggesting that might be a subject  
9 matter. With that --

10 THE COURT: That's by way of putting the Court  
11 on notice that you think you might at some point decide you  
12 want to call more witnesses?

13 MR. GREGORY: Yes, Your Honor. Thank you.

14 THE COURT: What about, I received a copy of an  
15 e-mail that had some cases that were supposedly the cases  
16 that dealt with victim impact statements and the  
17 admissibility of the videotape and I was wondering if the  
18 defense has anything to cite Post-Paine.

19 MR. GREGORY: No, Your Honor. We provided  
20 those cases to the prosecution last night.

21 THE COURT: Well, we got them at a quarter to  
22 9:00 -- but the Court got them at a quarter to 9:00.

23 MR. STANTON: So did we.

24 THE COURT: Whatever the case, they're not --  
25 they're all pre-Paine. They're all pre-Homick, and I think

1 that I've had an opportunity to briefly review them, but in  
2 light of Paine and the Homick case in Nevada, as well as the  
3 Castillo case, I don't see any problem with the -- I'll look  
4 at the specific objections to Mrs. Sullivan's statement, but  
5 the general use of the statements both by Ms. Sullivan and  
6 by the victim's sister are admissible. And I've also had an  
7 opportunity to look at the videotape which was shown last  
8 night and I do not find it to be inflammatory or highly  
9 prejudicial to the defense. I think it fits clearly within  
10 the Supreme Court of the State of Nevada and the United  
11 States' contemplation with regard to victim impact  
12 statements. Therefore, I will allow it to be presented.

13 MR. GREGORY: I assume our objections are noted  
14 for the record?

15 THE COURT: Yes, they're all on the record from  
16 yesterday.

17 MR. GREGORY: Your Honor, we have one final  
18 matter. We're concerned with the number of uniformed  
19 officers that are present in the courtroom, officers that  
20 have nothing to do with the security of this. We're  
21 concerned with the message that law enforcement may be  
22 trying to send this jury by showing up enforce. We don't  
23 want this jury intimidated under any circumstances. I'm not  
24 objecting to any of them being here, but the wearing of the  
25 uniform, I submit to the Court, could suggest to this jury

1 that law enforcement has an agenda and that they're watching  
2 the jury at all times.

3 THE COURT: How many seats do we have?

4 THE BAILIFF: 85.

5 THE COURT: We have 85 seats in the courtroom.  
6 And as I see it, I see four uniformed officers and  
7 three-quarters of the rest of the seats are also filled.

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

10 THE COURT: So I only see them in the very  
11 back. There's four of them. They're all UNR PD in blue.  
12 But there's only four. And, frankly, I'm not even sure the  
13 jury will be able to see them very clearly because of where  
14 they're seated in the gallery. But I do not -- I want the  
15 record to be very clear, we have many people in the  
16 courtroom and they are a distinct minority, a very small  
17 number. Looking out in the courtroom, I do not see it  
18 packed with uniforms at all. Even including the security  
19 detail we have, three to one, certainly.

20 MR. GREGORY: And I assume that the Court is  
21 saying that if it does reach the point where it's packed,  
22 that the Court will address it at that time?

23 THE COURT: If I, as I have indicated, and I  
24 want you to continue to call anything that you think might  
25 be important to call to my attention, but if I feel that

1 there is any indication that there's a look in the courtroom  
2 that is not one of interested people and it's only of law  
3 enforcement interested in this case, I will consider your  
4 request.

5 MR. GREGORY: Thank you.

6 And just for the record, the Court is quite  
7 correct there are four uniformed UNR PD officers, but  
8 there's one, two, three --

9 THE COURT: Don't count my bailiffs.

10 MR. GREGORY: There's at least four or five  
11 additional deputy sheriffs with the exception of your  
12 bailiffs.

13 MR. STANTON: I'm guessing, so the record is  
14 clear, that Mr. Gregory didn't finish up that last comment.  
15 Those are part of the security detail in court, the  
16 reference to the additional --

17 MR. GREGORY: But the jury doesn't know how to  
18 distinguish, Your Honor.

19 MR. STANTON: They've been in trial for the,  
20 been present for the entirety of the trial.

21 THE COURT: And I do see, squinting and trying  
22 to see, a couple of captains and lieutenants in the very  
23 back row. I do see five people, but they are in deputy  
24 sheriff uniforms and have been here throughout the case.  
25 And again, even if you add it all together with our 85 seats

1 and the vast majority filled with civilians, it's a very  
2 minuscule appearance, from the Court's perspective.

3 MR. GREGORY: Thank you, Your Honor.

4 THE COURT: Anything else?

5 MR. BOSLER: Your Honor, I have some exhibits  
6 to mark that I'll be using in the penalty phase, if I may  
7 approach your clerk.

8 THE COURT: Go ahead. They are family  
9 photographs, including high school photographs, total of  
10 four photographs, and four lettermen certificates, all in  
11 the name of George Tafuna. I've shown them to the District  
12 Attorney. As an offer of proof, I would advise the Court  
13 that those photographs would be recognized as part of a  
14 family photo album by witnesses that will be called by the  
15 defense in the penalty phase.

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

18 MR. BOSLER: I don't know how the timing is  
19 going to work but I'd move for their admission on the offer  
20 of proof.

21 MR. STANTON: I'd request that counsel make the  
22 motion in front of the jury.

23 THE COURT: Okay. Do you see anything wrong  
24 with them, though, if there is an offer of proof made  
25 through the witnesses?

1 MR. STANTON: I generally have no objection to  
2 the admission of them, that's correct, Your Honor.

3 THE COURT: That gives you an indication,  
4 Mr. Bosler.

5 Now, is the defense going to make an opening  
6 statement this morning?

7 MR. BOSLER: Yes, Your Honor.

8 THE COURT: Who is going to make it?

9 MR. BOSLER: I will, Your Honor.

10 THE COURT: Would you check and see if the jury  
11 is here.

12 THE BAILIFF: Yes, they are.

13 THE COURT: Go ahead and bring the jury in.

14

15 (Whereupon, the following proceedings were held  
16 in open court, in the presence of the jury.)

17 THE CLERK: Exhibits 47 through 52 marked.

18 (Plaintiff's Exhibits 47 through 52 were marked.)

19 THE COURT: Counsel, I'm going to have the  
20 clerk call the roll because of our recess.

21 (Whereupon roll call was taken.)

22 THE COURT: Welcome, ladies and gentlemen. As  
23 I had told you when you left earlier this week, we would be  
24 hearing the penalty hearing. And now we are going into that  
25 penalty phase. Because this is a new phase, you will hear

1 opening statements from counsel. You will receive  
2 additional evidence. You will get new instructions from me,  
3 and you will hear closing argument. So it will be just  
4 similar format as what we had in the trial. I will tell you  
5 now that I anticipate we will go today, Monday and Tuesday,  
6 so that you can kind of have an idea of how much time you're  
7 going to be spending in this phase in trial. We will begin  
8 now, and the State is allowed to make the first opening  
9 statement.

10 Are you ready to proceed?

11 MR. STANTON: Yes, the State is, Your Honor.

12 THE COURT: You may proceed.

13 MR. STANTON: Thank you, Your Honor.

14 Ladies and gentlemen of the jury, in this  
15 portion of the trial, what is referred to as the penalty  
16 phase in a capital murder case, the focus of the evidence is  
17 different. Instead of providing evidence to you from the  
18 State about who committed the crime and the elements of the  
19 crime, the State will now be presenting evidence to you in  
20 two primary categories.

21 The first thing that you will hear from the  
22 State and the road map that this evidence will track is what  
23 has been referred to and you've heard from the inception of  
24 this case, something called aggravating factors. Those  
25 factors by law in the state of Nevada that make a first

1 degree murder case, and the person who committed that,  
2 eligible for the death penalty.

3 The burden of proof for those aggravators is on  
4 the state of Nevada, the prosecution: Mr. Gammick and  
5 myself.

6 The burden is beyond a reasonable doubt, as was  
7 the elements in the guilt phase.

8 In this specific case you will hear evidence of  
9 four aggravators that make this a death penalty case. You  
10 have heard all these aggravators before. First one is that  
11 the murder was in the commission of a violent and dangerous  
12 felony. In this case, the murder was committed in the  
13 furtherance of and the commission of a robbery.

14 Number two, that the murder was committed upon  
15 a police officer in his official capacity, and that the  
16 defendant, Siaosi Vanisi, knew or should have known the  
17 victim was indeed a police officer.

18 Number three, that the murder involved  
19 mutilation of the victim. And number four, that the murder  
20 was committed upon Sergeant Sullivan because of his race,  
21 ethnicity or national origin.

22 The entire testimony and evidence that was  
23 adduced during the guilt phase will be reintroduced and  
24 available for you in your consideration of the penalty  
25 phase, all the exhibits, documents, photographs, and

1 testimony.

2           You will hear other relevant evidence in this  
3 phase to make your decision. There's an axiom, a saying,  
4 that actions speak louder than words. And that is indeed  
5 what you're going to see in the evidence in the penalty  
6 phase. The actions and behavior of that man right there,  
7 Siaosi Vanisi, before, during and after the murder of  
8 Sergeant Sullivan. In this phase, unlike the guilt phase,  
9 you're now going to hear testimony in just a very short  
10 while about how that man behaved and acted while in jail and  
11 in prison awaiting this trial. You're going to hear  
12 specific acts of violence perpetrated against correctional  
13 officers. You're going to hear them from both the Nevada  
14 State Prison officials and also from the Washoe County Jail  
15 officials that interacted with him physically, that the  
16 defendant was shot at during an attempted escape from the  
17 Nevada State Prison. And I'm sure, as you did during the  
18 guilt phase, that you will pay very careful attention to  
19 that evidence, the dates, the times and the defendant's  
20 reaction and behavior that is critical.

21           I'm not going to stand up here and go over each  
22 item. You'll hear it in a very short while. You'll hear  
23 the number of events at the Nevada State Prison and their  
24 severity. You will hear the same thing at the Washoe County  
25 Jail, the number of events and their severity.

1           You will hear from two witnesses, from both the  
2 county jail and the Nevada State Prison whose job it is,  
3 among other tasks, to assess the dangerousness and risk that  
4 inmates pose to their staff and to other inmates. You'll  
5 hear from Lieutenant Geoff Wise from the Washoe County Jail  
6 and Deborah Mann from the Nevada State Prison in that  
7 regard. And they will tell you specifically their  
8 assessment of that man's dangerousness in the context I just  
9 gave.

10           Suffice it to say, I believe their testimony  
11 will be that they both assess, based upon their practical  
12 experience, their intimate knowledge of interacting with the  
13 defendant, conversationally with him before and after these  
14 incidents, that they rate him to be a significant risk of  
15 danger to correctional staff and to other inmates.

16           The second portion of this presentation will be  
17 evidence to tell you something about a person that you know  
18 very little about, and that's Sergeant George Sullivan. He  
19 was a family man. And you will hear from family members  
20 about who he was as a person, as a family man. And you will  
21 hear the extent of the damage to their lives. You will hear  
22 from a coworker of Sergeant Sullivan, one of his fellow  
23 university police officers, Steve Sauter, not only a  
24 coworker but a personal friend, a relationship that had  
25 developed over the years, about the impact that it had not

1 only on him as a close friend and a coworker, but also upon  
2 the entirety of the University of Nevada Police Department,  
3 that community of law enforcement, somewhat unique in this  
4 larger community.

5 You will hear from George Sullivan's wife, his  
6 widow, Carolyn Sullivan, and from his daughter, Meghan. You  
7 will also hear evidence from Mr. Vanisi's mouth through  
8 another witness, the witness that you had previously heard  
9 from in the guilt phase, that of Vainga Kinikini. That  
10 chilling testimony will describe to you what the defendant  
11 in this courtroom said to him on January 14th, 1998 in Salt  
12 Lake City prior to the SWAT stand-off with law enforcement  
13 officers about what he wanted to do in the future and how he  
14 felt about the murder of Sergeant Sullivan. Actions speak  
15 louder than words.

16 At the conclusion of the evidence in this case,  
17 or in this portion of this case, the State will ask you to  
18 return a punishment of death. Justice, to have any meaning  
19 in this case, will demand it.

20 Thank you in anticipation of your time and  
21 attention.

22 MR. BOSLER: Objection to the last statement of  
23 the prosecution, Your Honor, that it equates justice with  
24 death.

25 THE COURT: He already said it when you

1 objected, so you go ahead and make your opening statement  
2 now, Mr. Bosler.

3 MR. BOSLER: Is the Court going to make a  
4 ruling on the objection, motion to strike, if the Court  
5 finds it objectionable?

6 THE COURT: Counsel approach.

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

9 THE COURT: Go ahead and make your complete  
10 objection for the record.

11 MR. BOSLER: It's the same objection I just  
12 raised, Your Honor, that equating justice with death is an  
13 improper argument.

14 THE COURT: Okay. Mr. Stanton.

15 MR. STANTON: I'm not sure what authority  
16 you're relying on for that.

17 MR. BOSLER: The jury has got in place specific  
18 instructions regarding aggravators and mitigators and  
19 they'll have to make a reasonable decision based upon that.  
20 One of -- none of the aggravators are justice, and to equate  
21 that if they don't give death there would be an injustice is  
22 improper. Appeals again to the community sense that for  
23 them to be a just jury or fair jury you have to impose  
24 death.

25 MR. STANTON: Well, if that's his basis of

1 objection, my response is as follows: My precise quote was  
2 justice in this case demands death. I'm aware of no  
3 authority that says anything remotely to that it's improper  
4 argument by the prosecutor. And indeed that's my argument  
5 as to the State's position upon the evidence in this case.

6 THE COURT: I agree that a blanket statement of  
7 saying that justice always requires death would be improper.  
8 However, the specifics as it was presented and the context  
9 it was presented was not improper because it was equated  
10 with this particular case and the facts which related  
11 directly to the beginning of the statement which dealt with  
12 aggravating circumstances. And based upon that I'm going to  
13 find that it was not objectionable.

14  
15 (Whereupon, the following proceedings were held  
16 in open court, in the presence of the jury.)

17 MR. BOSLER: I'd like to say good morning, but it  
18 may not be the appropriate way to begin things.

19 In this case justice does not mean death. In  
20 fact, what you're going to hear and what has already kind of  
21 been explained is that in our society, the way our law is  
22 set, there is more reasons to not kill than there are  
23 reasons to kill. And in all fairness, what you're going to  
24 hear over the next few days is going to be probably at times  
25 emotionally gut wrenching testimony. You're going to hear

1 testimony from one family who has lost a loved one. You're  
2 going to hear testimony from another family who stands to  
3 lose a loved one. And I only can ask you that as you sit  
4 there as jurors you need to understand that that emotional  
5 tenor is not supposed to be a thing that guides your  
6 decision. It's probably impossible to not have it affect  
7 you. But as jurors, as you took your oath, it's more  
8 important that you decide these things as -- I can't say  
9 detached because there's no way you could be detached, but I  
10 just want you to be aware that there may be times in this  
11 proceeding where things are pretty emotionally difficult. I  
12 could only ask that you stay as strong as you can to make it  
13 through to the end.

14 The person that the State wants to kill, Siaosi  
15 Vanisi, you also heard him referred to as George Tafuna.  
16 Why is he George Tafuna? You'll learn a little bit about  
17 Tongan culture, how if one family has an infertile female  
18 another family will actually give them a baby so they can  
19 become a complete family. You'll learn that George Tafuna  
20 was given that name in a way to keep him away from his  
21 biological father who George Tafuna was told was dead. And  
22 so Siaosi Vanisi was raised as George Tafuna.

23 What you're going to hear is not a childhood  
24 filled with burning buildings, hurting small animals,  
25 anything like that. You're going to hear the exact

1 opposite. What you're going to hear is George Tafuna grew  
2 up in a close-knit family, with loved ones, nurturing  
3 parents. You're going to hear that George Tafuna not only  
4 was kind of the kid that we'd all like to know, you're going  
5 to hear about when he got to high school. He was the type  
6 of student that wasn't hanging out with all his friends  
7 smoking cigarettes, he was the student who would go to class  
8 early, to hug the teacher to make sure she felt okay. He  
9 was the student who would participate in every activity he  
10 could. Lettered in sports. He essentially was a 3.0  
11 student. This was despite whatever cultural difficulties  
12 being a Tongan in a community like San Mateo presented.

13 What you're going to hear is that there's this  
14 allegation about how much he hated white people. You're  
15 going to hear that Cappuchino High School where George  
16 Tafuna went to school is a mixed school racially, Hispanics,  
17 Caucasians, Tongans. George Tafuna's friends were  
18 Caucasian. You're going to hear from his friends in high  
19 school that it was George Tafuna that when there was fights  
20 between Tongans and Caucasians, George Tafuna was the peace  
21 keeper. He was the person that said there's no reason to  
22 use violence, there's no reason for you two groups to fight.

23 You're going to hear -- 20 some odd witnesses  
24 are going to come testify. In all fairness, I don't know  
25 how you really reconstruct the worth of someone's life

1 through any number of witnesses. But we're going to bring  
2 you family members, people who knew him during school,  
3 people who knew him essentially in a chronological age up  
4 until this terrible event happened.

5 You're going to hear George Tafuna was a family  
6 man. Married. Had children, everything that would lead you  
7 to believe here is a well-balanced American citizen on his  
8 way to becoming productive and maybe some day sitting in a  
9 jury just like you.

10 But what happens? We have this child who has  
11 no problems, no criminal record, no run-ins with law  
12 enforcement, who comes from a nurturing family, who does all  
13 the things we would expect of our ideal high school student,  
14 track, football, Polynesian groups - dancing, a person who  
15 cares about his other students, willing to do whatever he  
16 can to help, a person who is going to show up early to help  
17 the teacher because that's how much he cares about his  
18 community.

19 How does that change?

20 What you're going to hear is that it did  
21 change. You're going to hear some testimony from a doctor  
22 who's seen Siaosi Vanisi - George Tafuna - at the Washoe  
23 County Jail, and you're going to hear that way too late, way  
24 too late for Mr. Sullivan, way too late for Mrs. Sullivan,  
25 George Tafuna was diagnosed with a mental illness. That

1 mental illness, bipolar disorder, manic depression, an  
2 illness that strikes maybe one to five percent of the  
3 population, doesn't know any gender, racial ethnic barriers.  
4 It could strike anybody. When it strikes, you don't know  
5 it's happening until you're in the grips of that manic  
6 episode.

7           This doctor is going to come in and will tell  
8 you a little bit about what that illness means. It could be  
9 so severe that it actually creates a psychosis in the person  
10 who suffers from the illness. And why is that important?  
11 Does it really matter in this case? Well, if you will  
12 recall, people who knew George Tafuna, who knew Pe, who knew  
13 Siaosi Vanisi back in San Mateo, what did they say when they  
14 saw Siaosi when he came back to Reno? "He was a different  
15 person." "I didn't even recognize him." The reason is  
16 because of the mental illness.

17           What you're also going to hear is that those  
18 people who suffer from that illness unfortunately tend to  
19 self-medicate with alcohol, controlled substances, which is  
20 the exact worst thing you can do if you have that illness,  
21 because that's only going to exacerbate the problems and  
22 lead to psychosis.

23           We know that through the State's witness, I  
24 believe it's Ms. Martinez, that when she sees this person  
25 walk on the campus, it's essentially a staggered gait,

1 drunken gait. You'll hear from a lot of other witnesses  
2 that unfortunately while Siasos Vanisi was up here he was  
3 drinking. In fact, the whole group was drinking. He was  
4 using controlled substances. And unfortunately, with his  
5 illness, that was really a recipe for disaster, recipe for  
6 tragedy.

7           You're going to hear Officer Wise. You're  
8 going to hear people from the prison, from the jail, and  
9 you're going to hear that Mr. Vanisi hasn't been an easy  
10 person to deal with while he suffers from this mental  
11 illness. And you're going to hear the details of that. But  
12 what you're also going to hear is that he's finally been  
13 diagnosed properly and has been receiving the proper  
14 medication so he is the Siasos Vanisi you've seen in court.  
15 He's not the problem person they had earlier this year.  
16 He's not the person they've had difficulty with.

17           Terrible probably doesn't even accurately  
18 describe the loss to the Sullivan family or even the facts  
19 of this case. A tragedy beyond words. But that being said,  
20 when you look at Siasos Vanisi's life, when you look at  
21 really what was going on inside of him that would even cause  
22 someone who had been such an ideal person all their life to  
23 reach that situation where he thought killing an officer was  
24 something he had to do, when you take those things into  
25 consideration, you'll understand why the law says there's

1 more reasons not to kill than there is to kill.

2 Thank you.

3 THE COURT: Mr. Stanton, call your first  
4 witness.

5 MR. STANTON: Your Honor, prior to the State  
6 calling its first witness, the State would make a motion to  
7 admit all the previous evidence and testimony that was  
8 adduced during the guilt phase of this trial.

9 THE COURT: Counsel.

10 MR. GREGORY: We submit it, Your Honor.

11 THE COURT: The Court will enter such an order.

12 MR. STANTON: Your Honor, State would first  
13 call Michael Wiley.

14 THE CLERK: Please raise your right hand.

15 (Witness sworn.)

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

18 MICHAEL WILEY

19 called as a witness on behalf of the Plaintiff,

20 having been first duly sworn,

21 was examined and testified as follows:

22

23 DIRECT EXAMINATION

24 BY MR. STANTON:

25 Q Could you please state your name and spell your

1 last name for the court reporter.

2 A Michael Wiley, W-i-l-e-y.

3 Q And sir, how are you currently employed?

4 A I work for the State of Nevada, Department of  
5 Prisons.

6 Q And what prison facility do you work at  
7 primarily?

8 A Nevada State Prison.

9 Q And where is that located?

10 A 3301 Fifth Street, Carson City.

11 Q And how long have you been employed at the  
12 Nevada State Prison?

13 A A little over three years.

14 Q And were you assigned to any other prison prior  
15 to the Nevada State Prison?

16 A No, I wasn't.

17 Q What is your current assignment at the Nevada  
18 State Prison?

19 A Gun Post 5-B, which is the gun rail on the  
20 roof.

21 Q And what type of inmates are housed at that  
22 facility?

23 A We've got general population and then further  
24 up the hill we have dis-seg and ad-seg, which is violent  
25 criminals.

1 Q And what type of offenses are inmates serving  
2 at that facility?

3 A Up the hill there's three or four different  
4 fences before you can get out.

5 Q I'll rephrase my question. What type of  
6 offenses?

7 A I'm sorry. Mostly violent crimes.

8 Q And how many inmates are housed at the Nevada  
9 State Prison?

10 A It varies between seven and 900.

11 Q I would like to direct your attention, Officer  
12 Wiley, to May 24th of 1999, an incident you were involved  
13 in. Do you recall that?

14 A Yes, I do.

15 Q Did you know at that time an inmate by the name  
16 of Siaosi Vanisi?

17 A I knew of him, yes.

18 Q And do you see him in court today?

19 A Yes, I do.

20 Q Could you please describe where he is in the  
21 courtroom?

22 MR. GREGORY: I'm going to stipulate to the  
23 identification by this officer.

24 MR. STANTON: Thank you, counsel.

25 BY MR. STANTON:

1 Q On May 24th could you describe to the ladies  
2 and gentlemen of the jury what your specific assignments  
3 were on that day.

4 A My assignment on that day was to sit on the  
5 roof of Unit 10 and keep an eye on the disciplinary  
6 segregation yards, which are the bad boys of the prison,  
7 more or less.

8 Q Can you describe what Unit 10 looks like, how  
9 it's laid out from a security perspective?

10 A Well, I was actually on the roof of Unit 10,  
11 but I watch the Unit 12 yards.

12 Q Could you describe Unit 12.

13 A Unit 12 has two yards behind Unit 10. And then  
14 they have a walk-alone yard right next to the Unit 12. It's  
15 about 30 or 40 yards away from where I'm positioned on the  
16 roof.

17 Q And that is for inmates housed in Unit 12?

18 A That's correct.

19 Q And is that where Mr. Vanisi was at?

20 A Yes. It's the walk-alone yard. That's where  
21 they put people by themselves.

22 Q And you use the term "walk-alone". That is  
23 literally what happens there?

24 A Right. One person at a time on that yard.  
25 It's actually like a cage. It's got a roof on it and

1 everything.

2 Q And by the nature of your term, are there other  
3 inmates in that yard at the same time?

4 A No, not on that particular day, no, just  
5 walk-alone.

6 Q And did there come a time when Mr. Vanisi was  
7 alone in that yard and other correctional officers gave him  
8 a verbal command?

9 A Yes, there was.

10 Q You were observing this?

11 A Yes, I was.

12 Q Could you describe what happened when those  
13 correctional officers, what type of command they gave him  
14 and what occurred after the command was given?

15 A They gave him a command to come to the gate and  
16 turn around to be locked up. They put restraints on his  
17 arms and his legs to take him back in, because he was  
18 threatening to escape. And he told him he wouldn't do it.

19 Q And how many times do you recall approximately  
20 verbal commands were given?

21 A Oh, half a dozen, probably.

22 Q And were those -- do you remember how many  
23 correctional officers were giving the commands?

24 A The number was growing quickly. I think it  
25 started with two. But four or five of them showed up.

1 Q And are these correctional officers easily  
2 recognized as correctional officers?  
3 A Oh, sure.  
4 Q How is that?  
5 A They're in uniform.  
6 Q Did there come a time when a correctional  
7 officer gave verbal commands different from coming to get  
8 handcuffed but to do something else while he was in the  
9 yard?  
10 A I think Correctional Officer Hudson had told  
11 him to get on the ground.  
12 Q Why is that?  
13 A Because he had dug a hole underneath the fence.  
14 Q And did you see it at this juncture?  
15 A Yeah. In fact, I gave him commands to get away  
16 from the hole, which he wasn't doing.  
17 Q Is the hole that you're describing in the  
18 walk-alone yard?  
19 A Yes.  
20 Q Where was it in relationship to the fence line?  
21 A It was underneath the fence on the east side.  
22 Q And did it appear to you that that hole had  
23 been dug previously?  
24 A Yeah. As a matter of fact, I had been watching  
25 him for seems like two or three weeks. Every week I

1 would -- Vanisi would be on the yard one day and he would  
2 pick weeds every day. He'd pick all these weeds. He had  
3 piles of them. I came back to work on that particular day  
4 and the piles of weeds were gone. I thought that maybe  
5 somebody that worked for the prison had cleaned them up on  
6 my days off. What actually had happened, he had dug a hole  
7 the week before while I was gone and buried them in a hole.

8 Q That's the hole that you're referencing under  
9 the fence line?

10 A Correct. He put dirt over the top. It was 40  
11 or 50 yards away from me. I'm on the roof. There's no way  
12 I could tell that there was a hole there.

13 Q Now, physically, Officer Wiley, you're above  
14 Mr. Vanisi, correct?

15 A Yeah, 20 or 30 feet.

16 Q And you're on a tower?

17 A Well, I'm actually on the roof of a general  
18 population housing unit.

19 Q And are you armed?

20 A Yes.

21 Q What are you armed with?

22 A 12 gauge shotgun and .357 Magnum.

23 Q That's a handgun?

24 A Right.

25 Q And the shotgun, do you carry that so it's

1 visible to inmates?

2 A Yeah, I never even set it down.

3 Q And this is in daylight hours?

4 A Right.

5 Q There would be nothing from your perspective  
6 that would have prohibited Mr. Vanisi from seeing you not  
7 only in uniform but in possession of a shotgun while you're  
8 giving commands?

9 A None whatsoever.

10 Q At some juncture did Mr. Vanisi, in your  
11 presence, and during this time period, begin to continue  
12 digging, going to that hole?

13 A Yeah. In fact, he was laughing. I had told  
14 him to get away from the hole and he didn't do it. That's  
15 when I racked the first round into the shotgun. And the  
16 first shot that we actually shoot off is just a popper. All  
17 it does is make a lot of noise. It's kind of a warning  
18 shot. And it didn't faze him.

19 Q You said he was laughing?

20 A Yeah, he thought it was hilarious. He thought  
21 it was fun and games the whole time I was shooting at him.  
22 I think I shot six or seven shots, if I recall.

23 Q You describe the first round as a popper.  
24 Would it be fair to say that that's kind of an attention  
25 getter?

1 A Right.

2 Q Did that get Mr. Vanisi's attention to stop  
3 digging?

4 A Absolutely not.

5 Q What did you do next?

6 A I racked in another round and shot at him. I  
7 just kept shooting, but he just kept digging. Then before I  
8 knew it he was halfway underneath the fence.

9 Q And you said that Mr. Vanisi was doing  
10 something besides digging while you were shooting rounds at  
11 him. What was he doing?

12 A He was digging and laughing.

13 Q And the rounds that you then fired after the  
14 popper rounds, what kind of rounds are those?

15 A They're actually nonlethal. It's a real hard  
16 rubber pellet.

17 Q There's another correctional officer that is  
18 also present up above Mr. Vanisi?

19 A Right. I called him on the radio to back me  
20 up. He had shot quite a few rounds himself.

21 Q During this same time period?

22 A Right. We were having a tough time. We're  
23 shooting through two or three different fences, and it was,  
24 the rounds weren't real effective, but they were making it  
25 that far.

1 Q Ultimately Mr. Vanisi was removed from the  
2 yard?

3 A Yeah.

4 Q Now, as a result of this incident what happens  
5 to the rest of the prison?

6 A They lock the whole place down, take everybody  
7 off the yards, put them in their houses.

8 Q The entire population of the prison?

9 A All eight or 900, however many happen to be  
10 there.

11 Q After Mr. Vanisi was returned to his cell after  
12 this incident on this day, what did he do?

13 A From what I understand, I was still on the  
14 roof, but from what I understand he flooded his cell out.

15 Q How do inmates flood a cell in prison?

16 A They plug the toilet up and keep flushing it or  
17 turn on the water, plug up the sinks.

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

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. GREGORY:

22 Q It's Wiley?

23 A Yes.

24 Q You've been a correctional officer for three  
25 years?

1 A Three years, yes.

2 Q Do you know anything about mental illness?

3 A No, not really. I'm not a psychologist.

4 MR. GREGORY: Your Honor, I thought we had a  
5 blackboard in here. And I apologize, but maybe I can do  
6 this verbally.

7 THE COURT: We can get it for you. You want  
8 it?

9 MR. GREGORY: Please.

10 BY MR. GREGORY:

11 Q Let's start off, Block 12.

12 First of all, this jury needs to know Block 12  
13 is primarily a holding unit, is it not, for inmates that  
14 have matters pending in the courts?

15 A Part of it is; one of the wings is, yes.

16 Q At one time it was the most secure housing  
17 facility in the state, right? It's old max right here in  
18 Carson?

19 A Right.

20 MR. GREGORY: With the Court's permission,  
21 Officer Wiley, I'd like you to step down and start off as  
22 far as you think it's appropriate so that everybody  
23 understands what you're doing and put the perimeter fence  
24 in.

25 THE WITNESS: The perimeter of the whole

1 prison?

2 MR. GREGORY: Yes, sir.

3 THE COURT: Want to do that on a piece of white  
4 paper? Want to use the piece of white paper?

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

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

8 BY MR. GREGORY:

9 Q Do the best you can.

10 A Something like that (Drawing).

11 Q Show us with an X, if you will, where the guard  
12 towers are.

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

14 MR. GREGORY: May the record reflect that the  
15 witness has complied, Your Honor?

16 THE COURT: Yes.

17 BY MR. GREGORY:

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

20 A Double fence all the way around here.

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

22 A Yes.

23 Q These fences are how high?

24 A Probably 12 feet.

25 Q And how high are they with Constantine wire?

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

3           Q       Both on the exterior and interior fence?

4           A       Right.

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

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

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

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

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

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

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

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

20          Q       Describe it again for this jury.

21                 THE COURT: Are you through with the diagram?

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

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

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

4 MR. GREGORY: Thank you, counsel.

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

7 BY MR. GREGORY:

8 Q Describe this exercise yard.

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

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

13 A Right.

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

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

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

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

25 Q So there's another fence?

1 A Yeah.

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

4 THE COURT: Yes.

5 BY MR. GREGORY:

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

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

11 Q Heading in an easterly direction?

12 A That's right.

13 Q So toward what?

14 A Toward Unit 12.

15 Q You may resume your seat.

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

18 A Right.

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

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

22 Q How many officers were involved in this?

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

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

1 Block 10?

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

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

5 A I'm getting lots of exercise.

6 Q You are indeed. My apologies to you.

7 A (Witness complied.)

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

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

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

14 A Yes.

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

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

18 THE COURT: The clerk will mark it.

19 MR. GREGORY: Court's brief indulgence.

20 THE CLERK: Exhibit 53 marked.

21 THE COURT: Exhibit 53 is admitted.

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

23 BY MR. GREGORY:

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

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

3 Q Right around lunchtime?

4 A Yeah.

5 Q A lot of guards and inmates out?

6 A Not particularly, no.

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

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

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

14 A There's about 40 on day shift.

15 Q Do you know anything about manic behaviors?

16 A No.

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

19 THE COURT: Redirect.

20 MR. STANTON: Briefly, Your Honor.

21

22 REDIRECT EXAMINATION

23 BY MR. STANTON:

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

1 dictionary translation.

2 GP yard?

3 A General population.

4 Q Ad-seg?

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

8 Q And dis-seg?

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

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

12 THE COURT: Anything further?

13 MR. GREGORY: Just one.

14

15 CROSS-EXAMINATION

16 BY MR. GREGORY:

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

20 A Uh-huh.

21 Q Is that correct?

22 A Sure.

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

1           A     Yeah.

2           MR. GREGORY: Thank you.

3           THE COURT: Anything further?

4           MR. STANTON: No, Your Honor.

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

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

7     the easel first.

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

9     a procedural matter?

10          THE COURT: Yes.

11          (Bench conference between Court and counsel.)

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

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

14          THE COURT: Yes.

15          Go ahead and call your next witness.

16          MR. STANTON: The State would call David

17     Molnar.

18          THE CLERK: Please raise your right hand.

19          (Witness sworn.)

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

21     witness stand.

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DAVID MOLNAR

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

DIRECT EXAMINATION

BY MR. STANTON:

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

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

Q And sir, how are you currently employed?

A With the Nevada State Prison.

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

A At the prison itself?

Q Yes.

A For approximately a year.

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

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

Q Where is your current assignment?

A At the Nevada State Prison.

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

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

4           Q     What is that?

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

7           Q     And you teach that to who?

8           A     To staff members.

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

11          A     As well as other prisons in the area.

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

15          A     Yes, sir.

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

18          A     Yes, sir.

19          Q     Do you see him in court?

20          A     Yes, sir.

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

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

25               MR. STANTON: Thank you, counsel.

1 BY MR. STANTON:

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

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

10 Q Is that Mr. Vanisi?

11 A Yes, sir.

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

13 A Yes, sir.

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

16 A Every day, yes, sir.

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

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

25 Q Besides the count, the actual identification

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

3 A Yes, sir.

4 Q How is that?

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

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

11 A Correct.

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

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

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

22 A There was five.

23 Q You were one of those five?

24 A Yes, sir.

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

1 extraction team dressed?

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

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

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

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

14 A Correct.

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

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

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

25 A Yes.

1 Q Could you describe what that is.

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

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

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

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

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

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

1 him?

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

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

6 A No.

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

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

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

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

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

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

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

1 A No.

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

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

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

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

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

22 A Very. Yes, sir.

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

25 A All five that entered the cell.

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

3 A Yes, sir.

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

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

8 Q And that was the shooting incident?

9 A Yes, sir.

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

12 A Yes, sir.

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

15 A Yes, he was.

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

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

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

21 THE COURT: Cross-examination.

22

23 CROSS-EXAMINATION

24 BY MR. GREGORY:

25 Q You indicated that Mr. Vanisi had constructed a

1 barricade?

2 A Yes, sir.

3 Q Did he have tools and building materials?

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

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

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

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

12 A Not that I recall.

13 Q Do you know anything about mental illness?

14 A No, sir.

15 Q Know anything about manic behavior?

16 A Not that I could professionally --

17 Q How many other units --

18 MR. STANTON: I would ask again --

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

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

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

24 BY MR. GREGORY:

25 Q Thank you.

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

3           A       None.

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

5           A       Yes, sir.

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

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

10          Q       It wasn't closed completely?

11          A       It's a solid window.

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

13          A       Correct.

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

15          A       Correct.

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

17          A       I don't know the dimensions.

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

20          A       Yes, sir.

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

23          A       Not at the Nevada State Prison.

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

1 A Yes, sir.

2 Q How many officers are used during extractions?

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

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

9 A Correct.

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

12 A Yes.

13 Q Did he have any weapons in there?

14 A Not that we could see.

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

17 A Over his mouth.

18 Q It was over his mouth?

19 A Correct.

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

22 A That would have been after.

23 Q After you put in the pepper spray?

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

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

3 A Correct.

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

6 A Approximately a minute.

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

9 A Correct.

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

12 A It's very unusual.

13 Q That's unusual?

14 A Yes, sir.

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

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

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

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

23 Q How big is this lid, sir?

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

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

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

5 Q Is that like a Thermos chest?

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

7 Q What's it made of?

8 A Made of hard plastic.

9 MR. GREGORY: Nothing further.

10 THE COURT: Anything further?

11 MR. STANTON: No further questions.

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

14 Go ahead and call your next witness.

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

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

19 THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

17 THE CLERK: Please raise your right hand.

18 (Witness sworn.)

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

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

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

DIRECT EXAMINATION

BY MR. STANTON:

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

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

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

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

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

A 17 years.

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

A A good 10 years.

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

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

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

3 A Yes, sir.

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

6 A We have approximately 827.

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

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

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

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

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

20 A Yes.

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

23 A Yes, I am.

24 Q Do you see him in court today?

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

1 identification by this witness.

2 MR. STANTON: Thank you, counsel.

3 BY MR. STANTON:

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

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

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

16 A Yes, sir.

17 Q On a regular basis? Frequently?

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

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

24 A Yes, sir.

25 Q Approximately how many times did that occur?

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

3           Q     Did he ever correspond with you in writing?

4           A     Continually.

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

7           A     Yes, sir.

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

10          A     Daily for approximately two and a half weeks.

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

14          A     Most definitely, yes.

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

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

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

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

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

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

14 A Yes, sir, I do.

15 MR. STANTON: No further questions.

16 THE COURT: Cross.

17

18 CROSS-EXAMINATION

19 BY MR. GREGORY:

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

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

23 Q Did you know why he was there?

24 A As an SK, safe keeper.

25 Q As a courtesy --

1 A Yes, sir.

2 Q -- to the Washoe County Jail?

3 A Yes, sir.

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

6 A Could have been.

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

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

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

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

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

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

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

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

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

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

6 BY MR. GREGORY:

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

9 A Yes, sir.

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

12 A Current discipline problems.

13 Q And adjustment?

14 A Uh-huh.

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

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

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

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

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

11 Q He attacked you?

12 A He did not attack me.

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

15 A Uh-huh.

16 Q What, passing through the hallway?

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

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

23 A From his cell to the gate.

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

1           A     On the other side of the gate.

2           Q     Now, his cell has been described.

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

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

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

6           A     I don't know, sir.

7           Q     They have a little food slot that's key

8     operated that he's fed through, right?

9           A     Yes, sir.

10          Q     And a thick rectangular window on the right

11     side, is it?

12          A     It's in the doorway.

13          Q     It's real thick glass, right?

14          A     Yes, sir.

15          Q     Now, you indicated, checked his criminal

16     history, which, but for a misdemeanor in Huntington Beach,

17     is nonexistent; is that correct?

18          A     Sir, I didn't have a presentence investigation

19     report. So I have no idea on his prior criminal history.

20     That was not given to me.

21          Q     Okay. So you have no idea what his prior

22     criminal history is?

23          A     I have no idea.

24          Q     Thank you, Ms. Mann. By the way, do you know

25     anything about manic behavior in the sense of mental

1 illness?

2 A Do I know anything about it?

3 Q Yes, ma'am.

4 A I'm not a psychologist.

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

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

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

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

11 MR. STANTON: I believe it is.

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

25 Counsel, the recess will be 15 minutes.

1 (Recess taken.)

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

4 MR. STANTON: So stipulated.

5 MR. GREGORY: The defense so stipulates.

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

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

10 THE CLERK: Please raise your right hand.

11 (Witness sworn.)

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

14

15

JAMES ELLIS

16

called as a witness on behalf of the Plaintiff,

17

having been first duly sworn,

18

was examined and testified as follows:

19

20

DIRECT EXAMINATION

21

BY MR. STANTON:

22

Q Sir, could you state your name and spell your

23

last name for the court reporter.

24

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

25

Q How are you employed?

1 A With the Washoe County Sheriff's Office.

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

4 A A little over four years.

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

7 A Assigned to detention, swing shift.

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

10 A Yes, sir.

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

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

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

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

18 Q What's the Detention Response Team?

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

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

24 A Yes.

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

1 an approximate basis?

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

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

7 A Six foot four, about 285 pounds.

8 Q Did you play collegiate athletics?

9 A Yes.

10 Q What did you do?

11 A I wrestled for Brigham Young University.

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

15 A Yes, I am.

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

18 MR. STANTON: Thank you, counsel.

19 BY MR. STANTON:

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

24 A Yes, I did.

25 Q Can you explain the situation that existed upon

1 your arrival?

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

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

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

14 Q What was Mr. Vanisi's response?

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

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

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

25 And so after negotiating with him for a while,

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

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

6 A Yes.

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

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

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

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

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

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

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

15          A     Yes, sir.

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

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

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

3 A Yes.

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

6 A Absolutely.

7 Q And how is that?

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

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

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

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

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

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

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

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

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

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

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

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

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

8           Q       Certainly.

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

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

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

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

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

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

11 A Absolutely.

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

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

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

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

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

4 A No, he did not.

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

8 A Yes.

9 Q Could you describe that to the jury.

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

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

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

22 A Approximately 12.

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

25 A Initially the knee drops to the shoulder area

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

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

8 A Down here or up here?

9 Q Whatever is more comfortable to you.

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

15 Q Thank you.

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

18 A Yes, it was.

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

21 A Absolutely.

22 Q What is that?

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

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

5 Q Did you find a weapon inside his cell?

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

7 Q Could you describe what you found.

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

11 Q Did it have anything inside the towel?

12 A I don't know.

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

15 A Yes.

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

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

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

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

6 A Yes.

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

9 A Yes.

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

12 A At least three to four times.

13 Q And he refused all those?

14 A Yes.

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

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

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

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

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

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

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

13          A     Yes, it was.

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

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

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

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

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

25          A     I was again the pin shield person. The

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

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

14 A After a short struggle.

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

17 A Not that I was involved in, no.

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

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

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

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

4 A Not to my personal knowledge, no.

5 MR. STANTON: No further questions.

6 THE COURT: Cross-examination.

7 MR. GREGORY: Thank you, Your Honor.

8

9

CROSS-EXAMINATION

10 BY MR. GREGORY:

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

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

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

16 A Roughly.

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

19 A Yes, sir.

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

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

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

10 Q That stands for multipurpose?

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

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

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

25 A It's self-sufficient.

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

4           A     Yes.

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

7           A     Yes.

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

10          A     I believe so.

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

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

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

20          A     Yes.

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

23          A     Uh-huh.

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

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

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

5           A     Yes, there's 56 cells.

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

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

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

11          A     I'm not exactly sure how many.

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

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

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

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

3           Q     Did you?

4           A     Yes.

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

8           A     I try.

9           Q     But he goes back to the cell.

10          A     Eventually, yes.

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

13          A     I dressed into the DRT uniform.

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

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

18          Q     Approximately how much time passed?

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

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

22          A     Approximately, yes.

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

25          A     Yes.

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

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

6 Q What did Sergeant Davis tell him?

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

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

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

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

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

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

23 A Sure.

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

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

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

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

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

8 Q Yes.

9 A Yes. When we are --

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

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

15 Q I understand.

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

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

21 A We have to.

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

24 A Yes.

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

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

3 A Yes.

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

6 A Yes.

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

9 A Yes.

10 Q Is that correct?

11 A Yes.

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

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

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

23 A The PR-24.

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

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

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

6 Q I just wanted them to understand the procedure.

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

11 Q But the nightstick is still put in?

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

15 Q Absolutely. I understand.

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

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

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

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

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

3 Q What's it made of?

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

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

7 A Yes.

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

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

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

16 A Yes.

17 Q On the inmate?

18 A If so needed, yes.

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

21 A Yes.

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

24 A No, I did not kick.

25 Q I didn't say you did.

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

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

4 A Probably the first initial one, yes.

5 Q Blood all over the place?

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

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

12 A No.

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

15 THE COURT: You may.

16 MR. GREGORY: Pass the witness.

17 THE COURT: Redirect.

18 MR. STANTON: No further questions.

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

21 Call your next witness.

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

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

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

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

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

6 THE COURT: Yes.

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

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

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

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

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

9 MR. GREGORY: That's fine.

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

16 MR. GREGORY: I do.

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

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

22 ///

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VAINGA KINIKINI

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

DIRECT EXAMINATION

BY MR. STANTON:

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

A Yes.

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

A Yes.

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

A Yes.

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

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

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

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

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

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

21 A Yes.

22 MR. STANTON: No further questions.

23 THE COURT: Cross-examination.

24 MR. GREGORY: Thank you, Your Honor.

25

CROSS-EXAMINATION

BY MR. GREGORY:

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

A Yes.

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

A The whole thing all over again?

Q Yeah. One more time.

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

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

A Yes.

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

A Yes.

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

A Yes.

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

1 A Yes.

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

4 A That's correct.

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

7 A Yes.

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

10 THE COURT: Redirect.

11

12 REDIRECT EXAMINATION

13 BY MR. STANTON:

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

17 A Yes, I did.

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

21 A Yes, I did.

22 MR. STANTON: Nothing further.

23 MR. GREGORY: No recross.

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

1 MR. STANTON: Yes, Your Honor.

2 MR. GREGORY: Your Honor, I'd ask that he wait.  
3 We may well excuse him -- just to our break, I believe.

4 MR. STANTON: May counsel approach?

5 THE COURT: Administratively or on the record?

6 MR. STANTON: Administratively.

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

9 (Bench conference between Court and counsel.)

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

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

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

regard to this case, report it to the bailiff.

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

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

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

2 --oOo--

3 (Whereupon, the following proceedings took place

4 in open court, in the presence of the jury.)

5 THE COURT: Thank you. Please be seated. Counsel

6 stipulate to the presence of the jury?

7 MR. STANTON: State will so stipulate.

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

9 THE COURT: State may call their next witness.

10 MR. STANTON: Thank you. The State would call

11 Detective Geoff Wise.

12 THE COURT: Lieutenant, if you'll stop and face

13 the court clerk.

14 (One witness sworn.)

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

16 witness stand.

17 GEOFFREY WISE,

18 called as a witness on behalf of the

19 Plaintiff, having been first duly sworn,

20 was examined and testified as follows:

21

22 DIRECT EXAMINATION

23 BY MR. STANTON:

24 Q Sir, could you please state your complete name and

25 spell your first and last name for the court reporter?

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

3           Q     And how are you currently employed?

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

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

8           A     Twenty-three years.

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

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

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

17          A     Yes.

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

21          A     Yes.

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

1 A Yes, I have.

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

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

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

11 A Yes.

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

14 A Yes.

15 Q What was that incident?

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

18 Q If that would help you.

19 A It would.

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

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

1 of the jail?

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

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

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

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

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

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

23 A I believe it was.

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

25 A I am.

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

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

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

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

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

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

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

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

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

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

1 would be a next time.

2 Q Do you remember the language that he used?

3 A I don't.

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

6 Does that sound accurate?

7 A That sounds accurate.

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

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

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

14 A That's my understanding.

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

17 A Yes.

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

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

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

1 Mr. Vanisi?

2 A I spoke to him for a moment.

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

6 A Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25                He is very agile. His exercise routines are

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

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

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

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

16 A Yes.

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

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

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

1 Q You also mentioned there was a commissary quid pro  
2 quo or give and take relative to some of his behavior. Is  
3 that another benefit that was derived by Mr. Vanisi?

4 A Yes.

5 MR. STANTON: No further questions.

6 THE COURT: Cross-examination.

7 MR. GREGORY: Thank you.

8 CROSS-EXAMINATION

9 BY MR. GREGORY:

10 Q Lieutenant Wise, you are no longer assigned to the  
11 area of the SHU; is that correct?

12 A That's correct.

13 Q What are your obligations now?

14 A My specific duties are to supervise the HISTEP  
15 program, which is the boot camp, and the house arrest and  
16 sheriff's community work program.

17 Q Entirely different area of the jail, is that  
18 correct?

19 A That's correct.

20 Q How many units are there in the jail?

21 A Are you talking about housing units?

22 Q Yes.

23 A Fourteen.

24 Q Fourteen total?

25 A Yes, sir.

1 Q And these units are situated around an area of  
2 control; is that correct?

3 A There are four areas of control, yes.

4 Q And the SHU is a unit within an area of control?

5 A Yes.

6 Q And yet it functions as an independent unit; is  
7 that correct? Or can function as an independent function?

8 A Not entirely. The situation in the SHU is, what  
9 we are referring to there is the Special Housing Unit or  
10 high security area of the jail, is a little bit different.  
11 It has its own, what you could categorize as a miniature  
12 central control.

13 Q A tower?

14 A A tower.

15 Q When did you assume the duties that you are  
16 currently enjoying?

17 A I took over the HISTEP program in May of this  
18 year.

19 Q May?

20 A Yes, sir.

21 Q So was that right before or right after Mr. Vanisi  
22 was sent to Nevada State Prison?

23 A It was just before.

24 Q Do you remember the exact date he was sent there?

25 A I don't. It was early May.

1 Q Okay. Now, you indicate, you used a word earlier  
2 when you were talking about Mr. Vanisi, one of his manic  
3 states. I've seen that several times, where he's shouting,  
4 agitated, nonsensical in what he's saying, right?

5 A I've seen that.

6 Q But you also said you've seen him violent. I  
7 never read a report that indicated that he was violent.

8 A I have seen him violently pounding his door,  
9 capering about his cell in an agitated fashion. He  
10 established a situation in the day room where he had put up  
11 barricades that would preclude the detention response team  
12 from getting to him quickly and easily.

13 Q So that's what you define as violent?

14 A That and other incidents, yes.

15 Q Okay. So if he's banging in his cell, that's --  
16 I'm not trying to trick you or be cute, but that's violence?  
17 That's defined as violence?

18 A Yes. What I would categorize as violent, as  
19 opposed to just disruptive.

20 Q All right, sir. Now, you indicated that he  
21 refused to lock down. Now, we already, this jury has  
22 already heard testimony about two extractions, if you will,  
23 of Mr. Vanisi from his cell for failing to follow orders.  
24 That means immediately, doesn't it? When he refuses to lock  
25 down?

1 A I'm not sure I follow where you're going.

2 Q Eventually he does lock down, doesn't he?

3 A On one of those occasions, eventually he did.

4 Q Okay. And then on that other occasion that you  
5 left out, he had to be extracted from his cell? Is that  
6 what you're saying?

7 A After he had locked down in May, after he  
8 voluntarily locked down, then he had to be extracted from  
9 his cell forcibly.

10 Q He did lock down, but he didn't do it immediately,  
11 is what I'm saying.

12 A After a lengthy negotiation.

13 Q No, I understand. But just so that the jury  
14 understands your terminology, if you tell a prisoner to do  
15 something at the Washoe County jail, they do it immediately  
16 or there are consequences, aren't there?

17 A Yes.

18 Q Now, you seemed to be concerned that Mr. Vanisi,  
19 in February of last year, had an interest in the shift  
20 schedules of the guards working the SHU; is that correct?

21 A That's of concern, yes.

22 Q You also know that, according to Mr. Vanisi, there  
23 are certain guards that like to poke him like he's a caged  
24 bear, aren't there?

25 A That allegation has been made and investigated and

1 not substantiated.

2 Q And he refers to those guards as aliens, does he  
3 not?

4 A Mr. Vanisi refers to a lot of people as aliens.

5 Q But the people that he thinks are trying to goad  
6 him, tease him, that hate him because he's a cop killer, are  
7 the ones I'm talking about.

8 MR. STANTON: Your Honor, I think the witness  
9 answered the question already. Mr. Vanisi called a lot of  
10 people aliens.

11 THE COURT: Do you have an objection?

12 MR. STANTON: Yes. It's been asked and answered,  
13 Your Honor.

14 THE COURT: Sustained.

15 BY MR. GREGORY:

16 Q So there's another reason, is there not, to have  
17 the shift schedules? That way you know who your tormenters  
18 are going to be?

19 A That's not the way that we look at that.

20 Q Well, of course not. But there is another reason,  
21 isn't there?

22 A I suppose that he could proffer a reason, yes.

23 Q Now, this broom deal, where did this guy get a  
24 broom?

25 A Inmates in the Special Housing Unit are expected

1 to clean their cell and day room. Prior to September of  
2 this year, they were given a broom and a mop to do that  
3 with.

4 Q Okay. So you guys gave it to him; is that  
5 correct?

6 A That's provided in the room, not specifically for  
7 him, yes.

8 Q Okay. When you say "the room," you don't mean his  
9 room. You mean the unit area?

10 A The day room, yes, sir.

11 Q And he was exercising during his tier time,  
12 utilizing this broom?

13 A Yes.

14 Q And you guys wrote him up for that?

15 A That was noted, yes.

16 Q And you said you have these criteria. His  
17 physical stature is one; is that correct?

18 A Yes, yes.

19 Q And you say he's fit; is that correct?

20 A That's correct.

21 Q You have some big men working down there, don't  
22 you?

23 A Yes, we do.

24 Q That's understandable. His prior violent history.  
25 You mean the fact that he was accused of being a cop killer?

1 That he is a cop killer?

2 A I mean the incident in February where he got into  
3 a fight with a detention response team.

4 Q Is that the incident when you guys beat him with  
5 your clubs and kicked him and knee-dropped him and cut his  
6 face and had to have the doctor there? Is that the five-man  
7 incident you're talking about?

8 A That's the incident where the detention response  
9 team took him down, yes.

10 MR. GREGORY: Thank you very much.

11 THE COURT: Redirect?

12 MR. STANTON: Briefly.

13 REDIRECT EXAMINATION

14 BY MR. STANTON:

15 Q Lieutenant Wise, Mr. Gregory was asking you a  
16 question about how much time in May of 1999 occurred between  
17 the request of jail deputies to lock him down until the  
18 detention response team came in. Your response to  
19 Mr. Gregory's question was: After lengthy negotiations.

20 Can you tell us how much time had elapsed between  
21 the initial order for him to lock down and when the  
22 detention response time had not entered, but gathered to  
23 make entry?

24 A Approximately, oh, 40 minutes ensued after he was  
25 directed to lock down and before the team was assembled.

1           After that, I personally went to the unit and  
2 talked with Mr. Vanisi for about 25 minutes before he agreed  
3 to lock down on that particular occasion. So, it was over  
4 an hour.

5           Q     When Mr. Gregory asked you a question about the  
6 broom handle and him practicing martial arts, Mr. Gregory  
7 asked if you wrote him up. Were there any disciplinary  
8 proceedings that occurred for Mr. Vanisi as a result of  
9 that?

10          A     There were not.

11               MR. STANTON: Nothing further.

12               MR. GREGORY: May I recross?

13               THE COURT: You may.

14                       REXCROSS-EXAMINATION

15           BY MR. GREGORY:

16           Q     So you didn't think it was significant enough,  
17 Lieutenant, to write him up?

18           A     It would not be a violation of rules. It's a  
19 significant safety issue.

20           Q     Okay.

21           A     And that issue has since been changed. They no  
22 longer get those tools.

23           Q     But you write him up for minor things, don't you,  
24 Lieutenant? I mean, you guys go to the trouble to write  
25 him -- not just him, but all the prisoners?

1 MR. STANTON: Your Honor, I object. It's outside  
2 the scope of cross-examination and initial direct.

3 MR. GREGORY: I don't believe it is.

4 THE COURT: I'm going to sustain the objection.

5 MR. GREGORY: You are going to sustain it?

6 THE COURT: Yes.

7 MR. GREGORY: Thank you, Your Honor.

8 BY MR. GREGORY:

9 Q When Mr. Vanisi went back to his cell when he was  
10 playing with his broom? Remember that? Did he take the  
11 broom with him?

12 A No.

13 Q He put the broom down?

14 A Yes.

15 Q And went back to his cell?

16 A Yes.

17 Q You haven't been in charge of the DRT team or the  
18 SHU or anything since May; is that correct?

19 A That's correct.

20 MR. GREGORY: Thank you, Lieutenant.

21 THE COURT: Anything further?

22 MR. STANTON: Just briefly.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. STANTON:

25 Q The inference that is laid before you, Lieutenant

1 Wise, is that your transfer in May had something to do with  
2 the May incident with Mr. Vanisi. Can you explain to the  
3 ladies and gentlemen why the transfer occurred?

4 MR. GREGORY: That was not implied in the  
5 question, and the prosecutor is testifying.

6 MR. STANTON: I ask what the relevance of  
7 Mr. Gregory's question --

8 MR. GREGORY: It's not his business. I'll tell  
9 him later.

10 THE COURT: Gentlemen, please approach.  
11 (Whereupon, a bench conference was held among  
12 Court and counsel as follows:)

13 THE COURT: Okay.

14 MR. STANTON: The last response from Mr. Gregory  
15 is it is not my business. I think it's my business as a  
16 litigator in this case to know what the relevance of his  
17 line of questioning is. I certainly image we will hear in  
18 closing argument as to the reason for this transfer.

19 THE COURT: You are objecting on the grounds of  
20 relevance?

21 MR. GREGORY: I didn't object.

22 THE COURT: Mr. Stanton.

23 MR. STANTON: I asked the question. I asked him a  
24 question about, Mr. Gregory asked by my count three, at  
25 least three questions regarding the transfer dates, when

1 Lieutenant Wise was transferred from his current duties.  
2 What is the relevance of that line of inquiry?

3 MR. GREGORY: I will tell you. He had no dealings  
4 with Mr. Vanisi since Mr. Vanisi's return from Nevada State  
5 Prison. That was the relevance.

6 THE COURT: You are not going to argue that the  
7 transfer --

8 MR. GREGORY: Absolutely not.

9 MR. STANTON: Okay.

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

12 MR. STANTON: Based upon Mr. Gregory's  
13 representation, I'll withdraw the question. I have no  
14 further questions of this witness.

15 THE COURT: Thank you. Anything further?

16 MR. GREGORY: No, Your Honor. Thank you.

17 THE COURT: You may step down. You are excused.

18 (The witness was excused and left the courtroom.)

19 THE COURT: Call your next witness.

20 MR. STANTON: Thank you, Your Honor. The State  
21 would next call Sue Millard.

22 (One witness sworn.)

23 THE CLERK: Thank. Please be seated at the  
24 witness stand.

25 MR. GREGORY: Your Honor, we need to approach

1 again. I'm sorry. Maybe we can do this quickly,  
2 procedurally.

3 THE COURT: If it's a procedural question, you can  
4 approach.

5 (There was a discussion at the bench off the  
6 record.)

7 THE COURT: Will the court reporter come to side  
8 bar?

9 (Whereupon, a bench conference was held among  
10 Court and counsel as follows:)

11 THE COURT: Okay. Mr. Gregory, go ahead and put  
12 on the record what you were saying.

13 MR. GREGORY: My objections to Ms. Millard's  
14 statement that she is going to give is that it consists of  
15 disjointed reminiscences, if you will, and has nothing to do  
16 with contemporary impact on the family.

17 There is a particular paragraph that I think the  
18 Court would find objectionable and that is speculation on  
19 how the enfeebled father would have been taken care of had  
20 Officer Sullivan not been killed. That is of particular  
21 concern to me.

22 MR. STANTON: Your Honor, the State's response to  
23 Mr. Gregory's objection is that I believe that our Supreme  
24 Court previously ruled that specific interactions, instances  
25 of interactions between a witness and the deceased are

1 proper to give perspective of who that person is and how  
2 they felt about that person. I believe that's a reference  
3 to Mr. Gregory's statements about what he calls disjointed  
4 instances.

5 As far as Mr. Gregory's objection to a portion of  
6 Ms. Millard's statement, to put it in context for the Court,  
7 Ms. Millard, their father -- Ms. Millard is a sister of  
8 George Sullivan. Their father was being taken care of by  
9 George Sullivan and his family in Reno in a house right  
10 across the street from his.

11 I believe it's proper victim impact about how  
12 Sergeant Sullivan's murder has affected her and her family.  
13 She addresses indeed how the caring of their father has now  
14 drastically changed and has changed for the worse.

15 THE COURT: I have read the statement that is  
16 proposed and I find nothing violative of the Supreme Court  
17 rulings with respect to victim impact statements in the  
18 statement. I think it is proper and it is appropriate to  
19 allow her to go forward.

20 MR. GREGORY: Thank you, Judge.

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

23 THE COURT: You may proceed.

24 MR. STANTON: Thank you, Your Honor.

25 ///

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

DIRECT EXAMINATION

BY MR. STANTON:

Q Could you please state your name and spell it?

A My name is Sue Millard, M-i-l-l-a-r-d.

Q Thank you. I would like to show you a series of  
photographs that have been marked 46-A through E. Do you  
recognize these photographs?

A Yes.

Q You provided them to me?

A Yes.

Q Do they truly and accurately depict the contents  
of portions of your statement that you would like to read  
today?

A Yes.

MR. STANTON: Your Honor, I move 46-A through E  
into evidence.

MR. GREGORY: No objection.

THE COURT: Exhibits 46-A through E are admitted.  
(Exhibits 46-A through E admitted.)

///

1 BY MR. STANTON:

2 Q Ms. Millard, are you related to Sergeant George  
3 Sullivan?

4 A Yes.

5 Q What relationship is he?

6 A My brother.

7 Q Would you like to read a statement to the ladies  
8 and gentlemen of this jury as to how his murder has affected  
9 you and your family?

10 A Yes.

11 Q Please do so.

12 A George Daniel Sullivan is my brother, my  
13 half-brother, my only brother. We have the same father,  
14 George B. Sullivan. We are 13 years apart. I was raised by  
15 my mother in California. George was raised by our father  
16 here in Nevada.

17 George's mother, Jackie Sullivan, had a son by a  
18 former marriage. Len Codega is George's half-brother. Both  
19 Len and George proudly share the same profession, law  
20 enforcement. Len is a deputy sheriff in Arizona. They  
21 enjoyed having their picture taken together in uniform, back  
22 to back. Len is present. Here is a picture of George and  
23 Len.

24 Jacqueline Sullivan died of cancer at age 27,  
25 leaving George and Len motherless at age three and seven,

1 respectively. Now George's children are left fatherless.  
2 The youngest, then at age three, is the same age George was  
3 when he lost his mother, a cruel twist of fate. Len went to  
4 live with his dad, while my brother was cared for by our  
5 father.

6 George was too young to remember his mother. He  
7 cherished learning about her, what little he could. She was  
8 adopted. So ended the family tree on his mother's side,  
9 knowledge that George dearly cherished. I should say dearly  
10 desired. Little is known on our father's side, which also  
11 disappointed him. Thus George placed great emphasis on  
12 raising, protecting and thoroughly enjoying the solidarity  
13 of his own family.

14 Because of our age difference and geographical  
15 locations, Nevada, Arizona and California, George, Len, and  
16 I lived separate lives. George and I had close ties because  
17 of our father, and due to recreational interests in the Reno  
18 area, skiing, shooting, fishing, boating, and camping.

19 Early in George's childhood, Dad would bring him  
20 to San Francisco to visit my mother and me. He was cute,  
21 sweet, adventurous and well-behaved. When George as ten or  
22 11, he spent a summer with me in Southern California where I  
23 was teaching. He learned to swim and took up archery.  
24 Lovingly, I have carried three pictures in my wallet:  
25 Little George at my wedding, husband on the back side, and

1 George's police picture. I carry these today and will into  
2 the future. This is little George at my wedding, and  
3 George's police picture.

4 George's priorities in life were family, his wife,  
5 his children, and our father; and his profession, serving  
6 society as a UNR police sergeant and back-up to other law  
7 enforcement agencies.

8 With what little free time he had beyond parenting  
9 and work, George enjoyed home improvement projects,  
10 woodworking and helping neighbors and friends with their  
11 endeavors. George learned everything he could in  
12 construction by trading skills and jobs. He learned  
13 electrician work from a neighbor when he was in high school.  
14 He was a self-taught do-it-yourselfer, Mr. Home Improvement.  
15 Good at it, his abilities saved money to stretch the family  
16 budget.

17 I remember George putting in a swamp cooler,  
18 tearing out and replacing a bathroom floor, and building  
19 custom mailboxes. I remember George carrying Kyle, the  
20 youngest, in one arm while doing repairs or housework with  
21 the other. George was always helping with the kids and the  
22 house or yard.

23 George Sullivan, the police sergeant and the  
24 father, was also Mr. Mom. Carolyn, the nurse, educator, and  
25 mother, was also Mrs. Dad. At any given time their roles

1 were integral and reciprocal. George preferred the night  
2 shift despite the cold, which he disliked, so he could spend  
3 time with the children and help with household chores and  
4 family responsibilities. Errands, projects, cleaning,  
5 cooking, transportation, school activities, athletics, and  
6 homework.

7 He and Carolyn were constantly coordinating, often  
8 going in different directions to meet the family needs.  
9 George loved every minute of being a father, from watching  
10 each of his children born, to being babysitter,  
11 disciplinarian, mentor, friend, provider, teacher, and  
12 parent.

13 George was very proud of his children, including  
14 his firstborn, Matthew Sullivan. Matt, now 21, lives in  
15 Canada where he was raised by his mother and stepfather,  
16 along with three half-sisters. George and Matthew did not  
17 see one another as much as they would have liked due to the  
18 geographical difference. However, love, random visits  
19 during summers, phone calls, financial support, and  
20 communication with his mother maintained their bond.

21 Matthew is a handsome and independent young man,  
22 skilled in construction, and doing very well in Canada.  
23 This is Matthew's high school graduation picture.

24 George loved police work with the UNR, which  
25 varied from checking out the repeaters on the mountains to

1 making sure the students received proper medical attention  
2 when they were on drugs or consumed too much alcohol.

3 He encouraged young people to develop their  
4 potential to pursue their goals and assisted where he could.  
5 He often shared with us stories of the busy work nights when  
6 entertainers and activities drew large crowds at the  
7 university. He vocalized interest in and worked to improve  
8 UNR's police department. He sought professional improvement  
9 through taking classes and attending conferences. He was  
10 safety-oriented in everything he did, driving skills,  
11 security, family protection and self defense.

12 George exercised daily, maintaining a fit body.  
13 He ate healthy and lived healthy. At the UNR his life ended  
14 at 43. With so much to do, to see his children educated,  
15 pursue careers, marry, have children, and to retire with his  
16 wife.

17 George was as good a person as anyone could be.  
18 His smile, the twinkle in his eyes, his sense of humor, his  
19 sweetness and his affection, made him special. He did not  
20 wear a uniform and gun to be strong or important. That was  
21 not his identity. He chose to serve others, to protect  
22 members of society, to make this world a better place.

23 There was nothing macho about my brother. He was  
24 intelligent, strong, focused, principled and moral. He was  
25 honest and sincere. And in the meekest or gravest of

1 situations he could find positive humor. He could see the  
2 glass half full rather than half empty. Jokes and pranks  
3 were clean fun for George, which made people laugh and feel  
4 comfortable. George was a kind and gentle man whose  
5 integrity and selflessness earned him the respect of many.

6 George loved and cared for our father deeply. He  
7 and Carolyn saw Dad through years of stroke history,  
8 multiple hernia repairs, and two cataract surgeries. In  
9 1997 they moved Dad from his home of 40-plus years to one  
10 across the street from them where George could monitor his  
11 needs and help him manage in his senior years.

12 The intent was good, but Dad's adjustment was  
13 never happy. He longed to be back in his Reno home. Months  
14 later, Dad had a total knee replacement. Again George was  
15 at his side, interacting with the doctors and medical staff.  
16 Three weeks later, George was gone forever. Dad was alone  
17 in grief and pain, losing his son was horrendous. Dad was  
18 84.

19 I will never forget Carolyn's call on January 13,  
20 1998 at six a.m. I knew immediately something was terribly  
21 wrong. I asked about Dad. She said George had been killed.  
22 There are no words for the shock, disbelief, horror, loss  
23 and finality. The news was catastrophic and numbing.

24 The family immediately assembled for support and  
25 the events to follow, the funeral and memorial and the

1 inurnment. There is no way to express the devastation,  
2 pain, brutality, and senselessness of George's death. One  
3 has to experience it to know.

4 There was overwhelming community support for  
5 George's wife and children. The Sullivan family is truly  
6 grateful. At the UNR, the memorial bench on the  
7 seven-pointed star overlooking Manzanita Lake reads:  
8 "Sergeant George D. Sullivan, Your sacrifice will not be  
9 forgotten." A somber reality and an eternal respect for a  
10 man who made a difference.

11 Every time I see a police officer, I think of  
12 George and reflect. The law enforcement scholarship in  
13 George's memory will serve deserving students where George's  
14 life ended. The UNR recognized George's exemplary work over  
15 the past five years by bestowing on him the Classified  
16 Employee of the Year Award. His name is engraved on one of  
17 the granite columns near the information center in the Honor  
18 Court.

19 George also received upon his death from the UNR  
20 the Thornton Peace Prize. George's name has been added to  
21 the Police Officer Memorials in the City of Reno, the state  
22 capital in Carson City, and the nation's capital in  
23 Washington, D.C.

24 There is true joy in having had George in my life.  
25 I admired, respected, and loved him. When my husband and I

1 would arrive at our Dad's house in Reno to visit, George  
2 would come by on his break, greet us with a kiss and a hug,  
3 check on Dad, grab a snack, invite us to his home, update us  
4 on his family, and then inquire about ours.

5 During that short time, he would be listening to  
6 and using the police radio or scanner. He had many  
7 interesting stories to tell. George gave his all.

8 It is one year and nine months since George died.  
9 His closet and dresser are still filled with his clothes and  
10 belongings. Life goes on for the survivors. Without  
11 George, Carolyn is singly challenged to meet the demands and  
12 interests of four energetic and productive children, manage  
13 the household and finances, maintain her profession as an  
14 R.N., and somehow succeed, often by putting her needs aside.  
15 Her days are long and exhausting. Sleepless nights take  
16 their toll. Loneliness and despair come and go. In spite  
17 of the struggle, Carolyn is amazingly strong for her  
18 children.

19 Carolyn wears George's wedding band around her  
20 neck, symbolizing her loss, their love as a source of  
21 strength. The children are without their resourceful and  
22 loving dad, whom they dearly loved and respected. Each  
23 handles the loss in his or her own way. The impact is  
24 far-reaching. Love sustains the family, but cannot bring  
25 George back.

1           The children have challenging lives ahead and an  
2           industrious mother to assist. Now she does it alone,  
3           maintaining the goals that she and George shared.

4           Dad always feared for George's life as a police  
5           officer. He felt he was too kind, too trusting, and the  
6           work too dangerous. Death on the job is any police  
7           officer's family's worst fear. Dad openly grieves, cries  
8           for his son, and suffers quietly but intensely. He too has  
9           lost the center of his life, his son. George is not going  
10          to come through the door to visit, to fix or find things, to  
11          comfort and help him with groceries, shopping, doctors,  
12          meds, and cleaning.

13          Dad has lost the security of knowing that George  
14          and Carolyn would have provided for his elderly care in  
15          their home. Dad's struggle is heart breaking. We have lost  
16          George; Dad has lost everything. My grown kids and family  
17          cannot make up for the losses. At 85, Dad looks back rather  
18          than forward. As Dad's world gets smaller, missing what he  
19          had becomes paramount. Short-term memory loss makes coping  
20          with change difficult.

21          We cannot bring George back nor give my father his  
22          former life. It makes for unhappiness. His care and  
23          presence are a constant reminder of losing George. The  
24          sadness of having to take my father from Nevada where he  
25          enjoyed the last 50 years of his life, working, raising

1 George, caring for Matthew, hunting, fishing, retiring, and  
2 being Grandpa hurts.

3 What I do is best for him, but he cannot always  
4 understand it. Senility, grief and change can alter his  
5 cognition at any given moment.

6 If George were alive, Dad would be functioning at  
7 a higher level. He would not be uprooted and displaced.  
8 There would be the normal aging issues. He would be in an  
9 assisted living care home in Sparks, close to the family he  
10 so loves. His life would be whole, as much as it could.

11 To meet my father's needs, we take him out for  
12 meals, have him stay with us, take him for walks and rides,  
13 involve him in our activities and current events, have our  
14 adult children interact with him, encourage ties to Sparks,  
15 make and set up phone calls, talk with him daily, monitor  
16 the retirement care, manage his health care and maintain his  
17 finances. His studio is furnished and set up like his  
18 Sparks home, with similar comforts. We try to keep him  
19 functioning at the highest level of independence with  
20 support in place.

21 I glance many times during each day at George's  
22 pictures in our living room. I see his smile, feel his  
23 love, and remember his humor. I can hear his voice. I know  
24 the love he had for his family and the validity of his  
25 police work. George is gone from our daily lives, but he

1 lives on in our hearts and minds. His beautiful wife and  
2 children carry on with the goodness, dignity, and integrity  
3 that was George.

4 This is a picture of George and his family during  
5 his last Christmas, the last time we spoke with George.

6 George is at rest beside his mother. She would  
7 have been so proud. At last they are together.

8 MR. STANTON: Thank you, Ms. Millard. I have no  
9 further questions.

10 THE COURT: Counsel?

11 MR. GREGORY: No questions, Your Honor. Thank  
12 you.

13 THE COURT: You may step down.

14 (The witness was excused.)

15 MR. STANTON: May I call my next witness, Your  
16 Honor?

17 THE COURT: Yes.

18 MR. STANTON: State would next call Steve Sauter.

19 (One witness sworn.)

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

22 STEPHEN LOUIS SAUTER,  
23 called as a witness on behalf of the  
24 Plaintiff, having been first duly sworn,  
25 was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STANTON:

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

A My name is Stephen Louis Sauter, S-a-u-t-e-r.

Q Sir, how are you employed?

A I am a police officer with the University of Nevada, Reno.

Q How long have you been in that form of employment?

A Approximately 18-and-a-half years.

Q And do you happen to know Sergeant George Sullivan?

A Yes, I do.

Q Is that both professionally and personally?

A Both.

Q Do you have a statement you would like to read to the ladies and gentlemen of this jury regarding Sergeant Sullivan's murder and the impact on you and the University Police Department?

A Yes, I do.

Q If you would at this time, sir?

A Thank you. Ladies and gentlemen, on the night that George was murdered I was in bed with my wife, as many of the fellow officers on my department were. It was approximately 2:00 in the morning. I was sound asleep.

1 I received a phone call from a deputy sheriff in  
2 Carson City who was a friend of mine. He wanted to know if  
3 I had heard anything about one of our police officers being  
4 murdered. I told him that I hadn't. I asked him if he had  
5 any details. He said he didn't.

6 I kind of hung up the phone; and my wife, who had  
7 woke up, asked me who was on the phone and what the  
8 conversation was about. I explained to her what the  
9 conversation was. And she asked me who worked on graveyard  
10 shift. I was in a bit of a daze and I said, "God, the only  
11 one I can think of is George." We laid there for a few  
12 minutes and fell asleep.

13 Approximately half an hour later I received a call  
14 from Officer Sean Smith of our police department. He told  
15 me that Sergeant Sullivan had, in fact, been murdered.

16 After hanging up the phone, I had to tell my wife.  
17 My wife started crying and shaking. All I could do is think  
18 about George's wife. And I knew that if I was lying dead on  
19 the ground somewhere that George would be jumping out of bed  
20 for me.

21 So I got dressed and I drove to the station. When  
22 I got to Virginia Street and McCarran, I saw police  
23 officers, two-man teams of police officers approximately  
24 every 50 feet, something I had never seen. I've worked on  
25 that campus for 18-and-a-half years. I've worked major rock

1 concerts, football games, basketball games, crowds in  
2 attendance of 30,000 plus. I've never seen that many  
3 policemen in one spot.

4 I drove down to 15th Street and tried to turn into  
5 the campus. It was blocked off. So I drove down to Ninth  
6 and Center -- Ninth and Virginia, and made a left turn on to  
7 Ninth Street. Just after I made that turn, I could see  
8 bright lights coming from the area of the kiosk.

9 I pulled up to the stop sign and I looked up to my  
10 left. I could see this big ball, several balls of light. I  
11 could see one of our police cars silhouetted. I could see  
12 the Reno police mobile command post.

13 My first instinct was to drive up to that location  
14 and see if I could help. That's what I'm trained to do.  
15 Then I started to think about George, and I thought about  
16 what the officer told me on the phone. I didn't want to see  
17 my friend that way.

18 So I sat there for a few minutes. I drove to the  
19 station. When I got to the station, all my fellow employees  
20 were huddled into a small room, some of them crying out  
21 loud, some of them hugging; all of them with a look on their  
22 face of just total disbelief. They looked like lost  
23 orphans. Nobody knew what to do.

24 I asked if anyone had any information about more  
25 details. They said no, they hadn't had any. The room kind

1 of went silent. We all sat there maybe 20 minutes. Then it  
2 hit me that I responded there to do something; that was to  
3 try to help Mrs. Sullivan.

4 So I knew, from knowing George all those years, I  
5 knew what his habits were. He came into the station and he  
6 would take off his green parka jacket. He put his keys in  
7 the right front hand pocket. He would drape it over the  
8 back of his chair, grab his equipment, and go get in the  
9 car.

10 So I went into his office. George had about ten  
11 finger paintings on the wall from his kids. Stick people,  
12 little houses. It hit me that his kids didn't have a dad  
13 anymore. I started crying. And I pulled myself together  
14 because I knew I had to be there for Carolyn.

15 So after about ten minutes I got a grip on myself  
16 and I got into George's car and I drove to Carolyn's house.  
17 I stayed there for about 16, 18 hours that day. That's part  
18 of the impact I felt, my family felt.

19 Like I said, the impact on me is very great  
20 because not only did I know George real well, I knew  
21 Mrs. Sullivan real well. I worked for George as one of his  
22 subordinates. There was a time when I first got there where  
23 George and I were partners on a shift. And like I said, I  
24 have been a good friend-to him and his family. George and I  
25 attended training classes together. We used to love to go

1 to training together. We both had a similar sense of humor.  
2 We both liked to crack jokes. After so many years it got  
3 to, he knew my physical limitations and I knew George's.

4 George is not a big man. He was only five foot  
5 seven, about 150 pounds. I know George lifted weights, but  
6 he only lifted to stay in shape. He didn't lift to build  
7 bulk. He didn't have a lot of upper body strength.

8 I had worked with George on many radio calls, and  
9 as his partner. I know in my heart, just as sure as I'm  
10 sitting here talking to you people, that when Mr. Vanisi  
11 walked up to George's police car and knocked on the window,  
12 that George Sullivan got out of his police car with a smile  
13 and the first thing he would have said is, "How can I help  
14 you?"

15 George never used any unkind words toward anybody,  
16 especially people he would come in contact with. George  
17 gave me a reprimand one time because I had seen three  
18 individuals in a parking lot and they -- it was a dark  
19 parking lot. It was prone to auto burglaries. So I stopped  
20 the three gentlemen based upon the fact that it was late at  
21 night and their clothing was, they were covered with grease  
22 and dirt. And I did my investigation and George came to  
23 cover me.

24 After I did my investigation and told the three  
25 men that they could leave, one of them asked me why I

1 stopped them. I told them that they were in a high crime  
2 rate area and that I noticed that their clothes were covered  
3 in grease and dirt and they didn't look like typical  
4 students.

5 George called me to the station after that stop  
6 and he chewed me out. He said that my comments were  
7 inappropriate. That's how George was. George and I had a  
8 bit of a heated argument over that, but after we had  
9 finished our meeting we were friends. George was that type  
10 of supervisor.

11 George loved to pull jokes on me. One time when  
12 we were on a shift together I was outside in my car. George  
13 went into the station apparently and found the hole punch  
14 machine. He took about a million of those little dots out  
15 of the bottom and he stuffed them in the defroster vent on  
16 my police car. It was a cold winter night. When I hit the  
17 ignition key, it rained.

18 He would pull practical jokes like that. Another  
19 one I can think of is, I had a toe surgery and I was on  
20 crutches. This was on a day shift. We were in the station  
21 and apparently I was typing on the computer. I got done and  
22 George said, "Well, let's go to lunch."

23 I grabbed my crutches and as I started to put them  
24 down on the ground, the right one was four inches shorter  
25 than the other one. I tumbled off into the mailboxes.

1 Before I hit the floor, I knew who had readjusted my  
2 crutches.

3 George was great about practical jokes. He made  
4 the job fun. He could take them just as well as he could  
5 give them.

6 I truly miss George. I miss talking to him about  
7 problems within the department and I miss talking to him  
8 about the problems outside the department; our wives, our  
9 goals, our hobbies. Now the only way I have to talk to him  
10 is to talk to him at his gravesite.

11 As far as the impact on the department, George's  
12 death isn't talked about too much. One of the things that I  
13 think has happened, most of the officers on our department  
14 are young officers. They go through the police academy.  
15 They are taught that if you use these tools properly and you  
16 follow policy, you should prevail. They are taught a  
17 winning attitude. They are not taught how to deal with a  
18 fellow officer's death. So by not talking about it, they  
19 keep it at a distance.

20 A short time after George's murder, probably  
21 within a week, Washoe County Sheriff's Department chaplain's  
22 office invited officers from our department and their  
23 spouses and families to a critical incident debriefing. I  
24 never had been to one. I was told we would be able to talk  
25 about what happened and our feelings. I hadn't thought too

1 much about anybody else's feelings up until this point other  
2 than my family and George's family.

3 I went. I took my wife. People who were involved  
4 in the incident were allowed to be in one room and the  
5 spouses were in another. It was probably 50, 60 people in  
6 this room. I was shocked. I thought there would just be  
7 officers from my department. There were officers from the  
8 Reno Police Department, Sparks Police Department, Reno fire,  
9 REMSA, our department, dispatchers.

10 We were all in a big circle and they started off  
11 and they had everybody introduce themselves and then after  
12 we did that, they talked about how the incident had affected  
13 them. I saw people crying, dispatchers who only knew George  
14 by voice. And they liked George. They felt almost  
15 responsible. I saw police officers who had gone to school  
16 with George, who cried when they said they couldn't even  
17 recognize him.

18 It made me feel pretty small. But it was good.  
19 Made me realize there was a lot of people that cared about  
20 George besides myself.

21 After the death of George, there was obviously an  
22 opening. There was another opening. The department made  
23 two appointments to the two sergeants' positions. The  
24 sergeants didn't want to take the desk that George sat at.  
25 The police car he was driving that night, no one wanted to

1 drive it.

2 My last example of the kind of man George was was  
3 that he was always the type of person who would help  
4 somebody in need. Maybe a month or so after his death a  
5 lady came into the station and wanted to speak to me. She  
6 had three little teddy bears. She explained to me that  
7 several years back she had been walking around the campus  
8 one night crying. She was distraught because her father had  
9 died. And that George had seen her, and he stopped and he  
10 talked to her. She said that George had talked to her for  
11 well over an hour; that he didn't offer so much advice, he  
12 just offered comfort.

13 She told me that George apparently had a teddy  
14 bear that he carried in the trunk that he kept for children  
15 who were victims of crime. And that George gave this young  
16 woman this teddy bear. And the lady cried and she hugged  
17 it, and she felt comfort from the teddy bear. And she  
18 wanted to give these three teddy bears to George's kids.

19 In the course of life some people stumble through  
20 life giving little or nothing to their fellow man, always  
21 taking and never giving. Then there are others who spend  
22 their lives giving their all to their fellow man. George  
23 was a giver. He was willing to lay down his life for his  
24 fellow man.

25 Thank you.

1 MR. STANTON: No more questions.

2 MR. GREGORY: No questions, Your Honor. Thank  
3 you.

4 THE COURT: Thank you. You may step down  
5 (The witness was excused.)

6 THE COURT: Counsel, is this a good time to take  
7 our afternoon recess?

8 MR. STANTON: It is, Your Honor, from the State's  
9 perspective.

10 THE COURT: Ladies and gentlemen of the jury, at  
11 this time I'm going to ask that -- we started a little  
12 earlier than we usually do today. So we may not take a full  
13 afternoon recess now. It may be a very brief break. You  
14 can go in the jury room and stretch, but it may not be a  
15 very long recess. Then we may take a regular recess a  
16 little bit later in the afternoon.

17 During this break do not discuss the case among  
18 yourselves or with anyone else. Do not allow anyone to  
19 discuss any matter regarding this case with you or attempt  
20 to influence you in any way with regard to it.

21 It is your duty not to form or express any opinion  
22 about the ultimate outcome of this matter until it is  
23 finally submitted to you. You are not to read, look at, or  
24 listen to any news media accounts regarding this case.

25 Ladies and gentlemen of the jury, you will be

1       excused and wait in the jury room, please.

2               (The jury recessed at 2:15 p.m.)

3               (Whereupon, the following proceedings took place  
4               out of the presence of the jury.)

5               THE COURT: The purpose for this break is to go  
6       over the statement that is proposed to be read by  
7       Ms. Sullivan.

8               MR. GREGORY: I would like to complete the record  
9       of the last two witnesses, if I might.

10              THE COURT: Certainly.

11              MR. GREGORY: Both of the witnesses were crying  
12       intermittently. At times their voices shook or broke.  
13       Several of the jurors -- two that I saw, and there may have  
14       been others -- were also noticeably and openly crying and  
15       using tissues. I wanted the record to be complete.

16              THE COURT: You want to modify that at all,  
17       Mr. Stanton?

18              MR. STANTON: I stipulate to the fact that the  
19       State's witnesses at times, as Mr. Gregory assessed, were  
20       caught up in emotion. I can't speak to the record relative  
21       to the jurors. I was not focusing on their behavior.

22              MR. GREGORY: Well, I offer that for the record.  
23       And in addition, it was obvious that some of the audience  
24       members were having difficulty with the testimony of  
25       Ms. Millard and Mr. Sauter. And I ask that the record

1 reflect that.

2 THE COURT: The record will reflect what you have  
3 all stipulated to. The Court did have an opportunity to  
4 view a few, a couple of the jurors using tissue. And I did  
5 hear some tissue being used in the audience.

6 However, on the grand scheme of things it was not  
7 disruptive. It did not rise to the level of extreme  
8 emotionalism. And I didn't see it, find it to be  
9 distracting.

10 MR. GREGORY: I wasn't suggesting that. I just  
11 want the record to reflect what occurred in court.

12 THE COURT: The record is clear. Let's go on with  
13 the statement.

14 MR. STANTON: I indicate while we are going over  
15 the statement, that Mrs. Sullivan is in court. This is the  
16 actual copies that I provided to the Court and defense  
17 counsel earlier today. We now have what Mrs. Sullivan has.  
18 I indicate that the statement is numbered by pages, save and  
19 except for the first page.

20 THE COURT: Mr. Stanton, I have Exhibit K, which  
21 was the original document that you marked yesterday  
22 afternoon. That's what we talked about this morning when we  
23 talked about the objection. So I'm going to have to call  
24 your attention to Exhibit K rather than the new one.

25 If you are familiar enough with the change in the

1 font, you can go forward with making the changes that may be  
2 ordered pursuant to this hearing.

3 MR. STANTON: I can, Your Honor. I will note  
4 before we reconvene whether or not Mrs. Sullivan is in  
5 accord with our statement and I'll match it up with hers.

6 THE COURT: Okay, the first objection. Do you  
7 want to address all of the objections at one time?

8 MR. STANTON: I prefer to address them all at one  
9 time, Your Honor.

10 THE COURT: Go ahead.

11 MR. STANTON: As far as Mr. Gregory's previous  
12 comments, Your Honor, I have indicated that we previously  
13 deleted some items. We are not in objection to the deletion  
14 of the statement that begins "Look around this room" and  
15 then concluding with "it speaks volumes." That would be  
16 towards the end of the statement.

17 In addition, the State is in agreement with  
18 striking the language referencing the one sentence,  
19 approximately three paragraphs prior to that. It would be,  
20 I believe, on your second to the last page, that deals with  
21 a reference by Ms. Sullivan to the sentence in this case.

22 There is one sentence --

23 MR. GREGORY: I think it's on that same page, Your  
24 Honor.

25 THE COURT: "You deserve to die for the

1 hateful --"

2 MR. STANTON: Correct, Your Honor.

3 THE COURT: That's on the same page as Exhibit K,  
4 and that has been deleted.

5 MR. STANTON: Correct. As far as the rest of the  
6 items that Mr. Gregory has categorized, I don't believe that  
7 they are objectionable. I think they fall within the  
8 appropriate victim impact from Ms. Sullivan to fully and  
9 completely articulate the nature of the loss to her and to  
10 her family.

11 THE COURT: Okay. The first objection is the use  
12 of the word "savagely" on the first page.

13 MR. STANTON: Correct, Your Honor.

14 THE COURT: The Court is going to ask that the  
15 word "savagely" not be used.

16 MR. STANTON: Okay.

17 THE COURT: Second objection was to the first  
18 paragraph, last sentence on the Court's copy. "How can you  
19 love and trust?" The Court is going to deny that objection.  
20 It can remain.

21 Third paragraph, last sentence, the objection was  
22 to "Those who have loved George have been here to support  
23 the judicial system." The reference to "the judicial  
24 system" should be deleted. The remainder of the sentence is  
25 fine.

1 Do you find that? It's the paragraph that begins,  
2 "It has been hard for me to sit through this trial."

3 MR. STANTON: Thank you, Your Honor. That helps  
4 me immensely.

5 THE COURT: It is the last sentence.

6 MR. STANTON: I have it. The words stricken would  
7 be "judicial system, support"?

8 THE COURT: Right. The rest of it is fine. The  
9 defendant's objection is to the paragraph that begins with  
10 "Kyle will also be reminded."

11 MR. STANTON: Okay. Thank you, Your Honor, I'm  
12 there.

13 THE COURT: That objection is denied. I am not  
14 ordering that it be stricken. The next objection was to the  
15 paragraph beginning with "Brian." It's the next page over.

16 MR. STANTON: I am there, Your Honor. Thank you.

17 THE COURT: That reference to the justice system  
18 is not inappropriate. It can remain.

19 And the last objection would be the second to the  
20 last page, fourth paragraph, which began "Siaosi Vanisi is a  
21 man who killed without remorse."

22 MR. STANTON: Yes, I'm there. Thank you, Your  
23 Honor.

24 THE COURT: There was an objection to the entire  
25 paragraph.

1 MR. STANTON: Yes, Your Honor.

2 THE COURT: I do not believe the entire paragraph  
3 needs to be stricken. I am concerned about the impact.  
4 What it means, I'm not sure exactly. Sometimes it's hard  
5 when I'm reading something like this to understand exactly  
6 what it means, "we must keep him forever away from our  
7 community and others." I think that could be implied to  
8 mean a request for the death penalty.

9 MR. STANTON: Your Honor, I believe there's a case  
10 out of our state Supreme Court in my review of some of the  
11 issues we have addressed that dealt with "he must" -- I  
12 believe the victim impact statement was "he should be dealt  
13 with as harsh as possible." And the Supreme Court has  
14 upheld that under the rationale that it is a reflection that  
15 whatever the jury determines to be the appropriate  
16 punishment, it should be the harshest punishment possible.

17 In this case the paragraph certainly doesn't  
18 directly reference a sentencing request by Ms. Sullivan. I  
19 believe it also comports with the other sentencing  
20 alternatives, at least with two of them. To some extent it  
21 doesn't comport with two out of the four. Those are life or  
22 a term of years, life with the possibility and two years.

23 THE COURT: If it were up to me, if the sentence  
24 were modified to read, "we must keep him forever away from  
25 our community" and we delete "and others," that would

1 satisfy the concern I have.

2 MR. STANTON: Okay.

3 THE COURT: Then it can fit into any of the scheme  
4 of sentencing that the jury has available to it. With  
5 regard to that much of the objection, it's granted, just  
6 those words, "and others."

7 MR. GREGORY: So the line, "Given the opportunity,  
8 Vanisi would kill again," is specifically left in?

9 MR. STANTON: Your Honor, in that paragraph,  
10 "Given the opportunity, Vanisi will kill again," I will  
11 stipulate for purposes of Mrs. Sullivan reading that  
12 statement, we will agree to strike that.

13 THE COURT: That is stricken also.

14 Now, that's the totality of the objections with  
15 regard to this. How many more witnesses do you have,  
16 Mr. Stanton?

17 MR. STANTON: Two, Your Honor.

18 THE COURT: And will the defense be ready to start  
19 immediately thereafter? Or would you need a recess?

20 MR. GREGORY: We are going to need a recess, Your  
21 Honor. I don't know, how long are we going now? We have  
22 been at it since 1:00. It's 2:30.

23 THE COURT: It is not quite 2:30. It is 2:25. I  
24 would normally go approximately two hours before we take a  
25 break.

1 MR. STANTON: Your Honor, we have Carolyn Sullivan  
2 and Meghan Sullivan as remaining witnesses. Carolyn  
3 Sullivan's statement is self-evident. Meghan Sullivan will  
4 be reading a brief poem; that's it.

5 THE COURT: You anticipate this testimony to take  
6 approximately half an hour?

7 MR. STANTON: I would think that would be a pretty  
8 close estimate, Your Honor.

9 THE COURT: What I'm thinking is, rather than take  
10 a long recess now, we'll get the jury back in here. We'll  
11 finish up with this and then take another recess as soon as  
12 the State rests their case. Then you can take your recess  
13 and talk to your witnesses and be ready to go.

14 MR. STANTON: We have the videotape, Your Honor,  
15 seven minutes and 35 seconds, I believe.

16 THE COURT: Well, I think we will be okay.  
17 All right, bring the jury back in.

18 MR. STANTON: Can I have a few moments to -- Your  
19 Honor, may I have just a few moments to confer with  
20 Ms. Sullivan and make sure that the Court's ruling is  
21 consistent with Ms. Sullivan's statement?

22 THE COURT: Why don't we go ahead and take a  
23 break. Court is in recess

24 (A recess was taken at 2:30 p.m.)  
25

1 RENO, NEVADA, FRIDAY, OCTOBER 1, 1999, 2:50 P.M.

2 --oOo--

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

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

7 MR. GAMMICK: State does, Your Honor.

8 MR. GREGORY: Yes, Your Honor.

9 THE COURT: Call your next witness.

10 MR. STANTON: Your Honor, the State would next  
11 call Carolyn Sullivan.

12 (One witness sworn.)

13 THE CLERK: Thank you. Please be seated at the  
14 witness stand.

15 CAROLYN SULLLIVAN,  
16 called as a witness on behalf of the  
17 Plaintiff, having been first duly sworn,  
18 was examined and testified as follows:

19  
20 DIRECT EXAMINATION

21 BY MR. STANTON:

22 Q Could you please state your name and could you  
23 spell your first name for the court reporter?

24 A Carolyn Sullivan, C-a-r-o-l-y-n.

25 Q And Ms. Sullivan, are you George Sullivan's wife?

1 A Yes, I am.

2 Q I show you Exhibit 45, a videotape, and the label  
3 portion. Have you reviewed this videotape?

4 A Yes, I have.

5 Q When you reviewed it, did you initial and date it?

6 A Yes, I did.

7 Q Does it accurately depict approximately seven  
8 minutes and 35 seconds of various different family  
9 gatherings involving you, your husband, and your family?

10 A Yes, it does.

11 MR. STANTON: Your Honor, I move for 45 into  
12 evidence.

13 THE COURT: It's admitted.

14 MR. GREGORY: Thank you, Your Honor.

15 (Exhibit 45 admitted.)

16 BY MR. STANTON:

17 Q Ms. Sullivan, do you have a statement you would  
18 like to give to the ladies and gentlemen of this jury.

19 MR. GREGORY: Your Honor, I don't mean to  
20 interrupt, but maybe we should have a side bar real quick.

21 THE COURT: Okay.

22 (Whereupon, a bench conference was held among  
23 Court and counsel as follows:)

24 MR. GREGORY: I want to make sure that the  
25 objection is noted for the record and it is contemporaneous

1 with the order.

2 THE COURT: On the videotape?

3 MR. GREGORY: Yes.

4 THE COURT: Based on my prior ruling, I admitted  
5 it. You also want to make an objection as to the statement?

6 MR. GREGORY: That's what I was doing. I wanted  
7 it to be contemporaneous with the order, and I want the  
8 Court to note our objection for the record.

9 THE COURT: Based upon the arguments made by  
10 counsel earlier, the Court's ruling with regard to the  
11 statement will also stand.

12 MR. GREGORY: Okay.

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

15 THE COURT: You may proceed.

16 MR. STANTON: Thank you, Your Honor.

17 BY MR. STANTON:

18 Q Ms. Sullivan, do you have a statement you would  
19 like to read to the ladies and gentlemen of this jury?

20 A Yes, I do.

21 Q If you would at this time?

22 A Thank you. Ladies and gentlemen of the jury, I  
23 have spent countless hours and tears writing what you will  
24 now hear. It has been a healing time for me being able to  
25 tell you about my life and my pain. I hope that you will

1 see in these words our lives prior to George's murder and  
2 the effect his death has had on us.

3           Though my words are long and I will not be able to  
4 read them without crying, through them you will come to know  
5 our family just a little bit so that you are able to make  
6 the right decision in sentencing Siaosi Vanisi.

7           On January 13, 1998, my life changed forever. I  
8 became a widow. My husband died a death that would be  
9 anyone's worst nightmare. He was brutally murdered by  
10 Siaosi Vanisi. My life will never be the same again. I  
11 have cried more tears in the last year-and-a-half than I  
12 will probably cry in the rest of my lifetime. And still the  
13 tears come.

14           George was my best friend, my partner. We were  
15 married for 16-and-a-half years and we had the best marriage  
16 anyone could think of. We loved each other deeply, and out  
17 of that love came four wonderful children. I am so thankful  
18 for each of our children because I could not have continued  
19 on without them.

20           It has been the most difficult year-and-a-half of  
21 my life. The night George was killed, his police chief and  
22 a chaplain knocked on my door, awakening me from a deep  
23 sleep at two a.m. As they told me that George had died, my  
24 mind was wracked with thoughts of responsibility and loss.

25           I will always remember our last words. As he left

1 for work that night at 10:30 I lay in bed reading. He came  
2 upstairs with all of his leather squeaking from his heavy  
3 duty belt, bent down and kissed me good-night. I told him  
4 to have a good night and that I would see him in the  
5 morning.

6 But there was to be no morning for us, only  
7 sadness and tragedy. I continue to wonder today why I  
8 didn't keep him from leaving. I didn't know that Siaso  
9 Vanisi wanted to kill him that night.

10 Vanisi didn't care about the family and friends  
11 George would leave behind. He didn't care about the wife  
12 who shared his life, about the 15-year-old daughter who  
13 needed him to teach her how to drive or share a joke in the  
14 midst of teenage turmoil.

15 He didn't care about the ten-year-old boy who  
16 would be eleven in six days and would have to have his  
17 birthday party without his dad. Or about the six-year-old  
18 who worshipped his dad and shared his artistic abilities.  
19 And he didn't care about the three-year-old boy who clung to  
20 his dad, playing games with him and learning from his dad  
21 how to share.

22 George will never be able to enjoy the things  
23 parents look forward to: High school graduations, walking  
24 Meghan down the aisle on her wedding day, our 25th and then  
25 50th wedding anniversaries, college graduations, his sons'

1 weddings, and grandchildren born into the family.

2 He has been denied, as have we all, those  
3 wonderful memories. We are left with memories that will  
4 fade from our children's memories with time, especially our  
5 youngest children.

6 In the first year following George's death, I  
7 feared that one day one of our children would say, "Mommy, I  
8 don't remember what Daddy looks like." That has happened,  
9 and it has broken my heart. Vanisi destroyed our lives on  
10 January 13 with his hatred and his violence.

11 In the last months we have had to deal with many  
12 things that should never have been a part of our lives. We  
13 all have been to counselors, crying many tears and asking  
14 questions to which there will never be any answers. All of  
15 my children have grown up much faster than I ever would have  
16 wanted for any of them. I have tried not to share too many  
17 burdens with them so that they could remain children. But  
18 they have seen and not only -- and felt not only my sadness,  
19 but their own and that of their siblings.

20 They have felt the need to be more than they  
21 should have to be. They are strong, qualities they have  
22 received from both Mom and Dad. And the Lord has blessed us  
23 all with this strength and love. We are trying daily to  
24 pull together and continue the family that George and I  
25 started, the family that we thought we would see through

1 together as grandchildren and great-grandchildren entered  
2 our home.

3 But growth doesn't come without pain. In August  
4 1998, last year, seven months after George was murdered,  
5 Scott, now our eight-year-old, had three nights of  
6 sleeplessness, and nightmares plagued him when he did sleep.  
7 He cried each night, as nights are more quiet and hardest on  
8 all of us. He and Kyle, our five-year-old, are always  
9 afraid of the bad guys, afraid they are going to come into  
10 our home and hurt us.

11 This episode of Scott's pain left only when he  
12 drew a picture of Vanisi, and punched and kicked it along  
13 with Brian, his eleven-year-old brother, until it was  
14 destroyed.

15 Understand this: Our children have always been  
16 happy, well-adjusted children, nice children. George used  
17 to say that we must be doing something right because our  
18 children always had smiles on their faces.

19 Now they deal with anger, hatred, and fright. And  
20 in spite of it all, I try to continue to impose our  
21 Christian values, including love of family and community.

22 And I know it is confusing for them. For how can  
23 you love and trust a community, a member of which has  
24 gruesomely and without remorse murdered their daddy?

25 I came to address this jury today so you are able

1 to see that there was more than just another life lost in  
2 the line of duty. So much more than a police officer. You  
3 have heard so much about this crime over the past several  
4 days. And you have carefully considered the evidence in  
5 coming to a verdict.

6 Today you must consider so much more than just  
7 another murder committed. Today it is your job to see the  
8 impact George's death has made on my family. Yes, George  
9 Sullivan was a police sergeant who was attacked and  
10 viciously killed while at work. But to me, to our family  
11 and to our friends, he was so much more. I came to tell you  
12 today about George Sullivan, the husband, the father, the  
13 son, and the friend.

14 It's been hard for me to sit through this trial.  
15 I know George would not have wanted me to be here for all of  
16 this. He would not have wanted to put me through this hell.  
17 Nor would he have wanted me to take home this unbearable  
18 sadness day after day that has been associated with this  
19 trial.

20 But I have endured it so that you could all see  
21 that this man was my husband, one whom I dearly loved, and  
22 that I have been sorely impacted by his death. By being  
23 here, I wanted to feel some part in making sure that Siaoosi  
24 Vanisi could never hurt another family like he has hurt  
25 ours.

1           Those who have loved George as family and as  
2 friends have been here to support and honor his memory and  
3 show you, the jurors, that he will never be forgotten.

4           George and I had been married for 16-and-a-half  
5 years when he was murdered. Over the years many people  
6 would ask me if I feared for his safety. I always said no,  
7 and it was true. He was the best at what he did. He was  
8 the first to champion wearing bulletproof vests in his  
9 department, and he never went a day without his. He was  
10 promoted to sergeant very early in his career because his  
11 potential as a leader was clear.

12           He was careful at work and he considered every  
13 option, every time. He supported those who worked with him  
14 and struck out at what was wrong. He was a friend and a  
15 supervisor at the same time. George was methodical in his  
16 work and it carried over into his personal life as well. It  
17 had to, so that he could count on his reactions at work  
18 being second nature to him. And they were.

19           He had a sense of humor that was equal to few.  
20 One of our friends told me that when he first came to work  
21 for the University Police Department, George was the first  
22 person he met. George laughed with him over his Irish  
23 T-shirt, and he they began a relationship that lasted and  
24 carries through to our family today.

25           Because of all these things and because I loved

1 him so much, I never doubted that he would be safe. But  
2 that night, the night that Vanisi murdered him, he never had  
3 a chance to react.

4 George was so methodical that it was funny. We  
5 used to laugh about his habits. When he was getting ready  
6 for work, he did everything exactly the same every time.  
7 The same order, the same amount of time for each task. He  
8 was extremely proud of his uniform and took great pride in  
9 his appearance. He spent time weekly polishing his brass,  
10 polishing his shoes. His hair was always neatly trimmed.  
11 He would have me trim around his ears and three days later  
12 decide that the rest needed a trim as well, so he would go  
13 to the barber and get a haircut, every month. And his  
14 barber knew him well.

15 Fun memories of his habits chase the tears away  
16 from time to time. When the tears flow I think of all the  
17 times he made me laugh, and there were many. On our wedding  
18 day the photographer took a formal picture of us by the  
19 altar. But my parents took one just seconds later where we  
20 were looking at each other and laughing. It's framed in our  
21 home. We were both laughing because he goosed me.

22 And almost every picture of him I look at, he  
23 looks as if he just stopped laughing, and for the most part  
24 that was true. George laughed so much because he believed  
25 in happiness, for himself and for those around him. He was

1 always able to laugh our children out of bad moods, sad  
2 feelings. He lightened the moods of those around him.

3 I can still remember him standing at the kitchen  
4 sink doing dishes with one leg slightly bent and behind the  
5 other. He looked like a horse with one leg bent. I told  
6 him so, and he would neigh and whinny like a horse. We  
7 laughed about that all the time.

8 George was one of three children. He was raised  
9 by himself without siblings, though, from the time he was  
10 short of his third birthday because that's when his mother  
11 died. His sister lived with her natural mother, and his  
12 brother went back to live with his natural father. His mom  
13 died of cancer when she was 29 years old.

14 George lived with a friend of the family until he  
15 was five or six, when his dad could take care of him. He  
16 spent one day a week as a child skiing with his dad, but his  
17 dad worked most evenings in a downtown tobacco shop, so he  
18 was cared for mostly by the live-in housekeeper. He called  
19 her Dottie, and he talked about her with a gleam in his eye  
20 because he said he was so terrible as a child that he drove  
21 her mad.

22 During his middle school and high school years he  
23 was lucky to have the influence of some great people in his  
24 neighborhood. He would help people by trimming their tree  
25 branches or mowing their lawns. He also helped out a

1 neighbor who was an electrician. Chester employed him for a  
2 couple of summers, teaching him to do electrical wiring.

3 Lou and Dorothy lived down the street from him and  
4 took him in for dinners, helped him with homework, and  
5 taught him how to study. All of the older people in the  
6 neighborhood liked George and did what they could for him.

7 He became associated with a man who worked for  
8 Reno P.D. but also had an interest in Ham and CB radios. He  
9 was the one who got George interested in police work. His  
10 fascination with electrical wiring and radios never waned.

11 During the first couple of years that we were  
12 married, he put a CB radio in my car. I remember him  
13 putting up the antenna when no one else was around. He  
14 slammed his thumb in the trunk. There was no one around to  
15 help him get it out. He finally just pulled it out himself.  
16 It was sore and black and blue for weeks.

17 In 1978 after working security jobs, being a  
18 reserve officer for Reno P.D. and receiving a degree in  
19 criminal justice, George finally was hired by the University  
20 Police Department, as he tested very well. Immediately he  
21 went to the Nevada Highway Patrol Academy for 16 weeks as a  
22 new recruit. He was hooked. He was right where he wanted  
23 to be.

24 George and I met 20 years ago, just about a year  
25 after he was hired at the University Police Department. I

1 was a resident assistant at White Pine Hall at UNR,  
2 finishing up my Bachelor's degree in medical science.

3 I called the police after asking a vagrant to  
4 leave the common room on two or three occasions. George was  
5 the officer who responded. He handled the situation with  
6 poise, took a report from me, and left the residence hall.  
7 He remembered being interested in one of the coeds from the  
8 third floor, but discovered she had a boyfriend. I never  
9 picked up on that. I just wanted the vagrant out of there.

10 He called me about two weeks later, but I didn't  
11 remember who he was. He asked me out on a date in the early  
12 spring of 1980 and it took only a couple of months to know  
13 that we were in love.. That summer was the first one I  
14 didn't go home to California for the summer. I was 21 years  
15 old.

16 Because neither of us had much money, we did  
17 inexpensive dates like picnics at local lakes, bike rides  
18 around Lake Tahoe, hikes through Eagle Falls. I recently  
19 found a card I saved from that summer that George sent me  
20 telling me how friendship came first and then love. He told  
21 me he would always love me. And thinking about that card,  
22 and about our relationship over the last 18 years that we  
23 were together, the one quality I return to is that our deep  
24 friendship remained for all those years. We were truly best  
25 friends.

1           So when he died, I lost my best friend, the one  
2           who had been with me through thick and thin, with whom I had  
3           had four children, the one person I could count on in my  
4           adult life. He gave me strength to be who I wanted to be.  
5           He was my constant, and I could always depend on him. To  
6           have him gone now leaves a void that no one can understand  
7           unless you've lost your life-long friend.

8           We were married in the summer of 1981 with all the  
9           typical fanfare. We were lucky to get married when we did  
10          because that year the state legislature had met and given  
11          the employees a generous raise. Before that we wondered how  
12          we would make it together on his paltry salary. I had just  
13          been accepted to the Orvis School of Nursing, though it was  
14          an uphill battle. Until we married I was not a Nevada  
15          resident, and only Nevada residents were considered at the  
16          time. We had to provide documentation that we would be  
17          married, and that I would therefore be a Nevada resident by  
18          the time I started school in August.

19          George and his friend, who was also his best man,  
20          constructed a wooden kneeling bench to use at our wedding  
21          ceremony. A friend of mine and I padded it and covered it  
22          with satin. It was beautiful. George loved woodworking,  
23          and it was a life-long hobby.

24          The kneeling bench was then to be donated to the  
25          church. So he put it up in the back of his pickup, got

1 ready for the wedding, and got on the freeway. During the  
2 ride to the church the bench blew out of the back of the  
3 pickup. And he had to quickly go back home, repair it the  
4 best he could, clean it up again and present himself to the  
5 wedding on time. He did it, and I never knew the difference  
6 until he told me the story a week later.

7 George and I always thought we would be together  
8 forever. We thought we would grow old together. We thought  
9 as our children grew and left our home we would still have  
10 many years to be best friends. He always loved the Orient,  
11 the art and the architecture. He had visions of traveling  
12 there together. I always wanted to go see the European  
13 castles, the Italian art. I wanted to do those things with  
14 George.

15 When you have a young family, that's where your  
16 focus is and you give up many things, including time  
17 together. We always thought we would make that up as the  
18 children grew up. Now I'm left with only happy memories of  
19 our short time together. That will have to be enough.

20 Broken dreams are often what I think of. We often  
21 thought how much fun holidays would be as our children grew,  
22 married, and had children of their own. We imagined a house  
23 with lots of grandchildren running around and more happy  
24 times. I think how sad it is that our grandchildren will  
25 never know him, be influenced by him, or hear his old tales.

1 Grandchildren should be enriched by extended family and they  
2 won't have that opportunity with George.

3 Children should also be enriched by the views and  
4 interactions with their parents. So it was with our  
5 children. Kyle is our baby. He was three when George was  
6 murdered. He turned four two months later. So I pray that  
7 he had enough time with his dad to never forget him.

8 I put a large picture on the wall of his room so  
9 he will never say to me, "Mommy, what did Daddy look like?"  
10 I thought I couldn't bear that. But I found out now how  
11 much that question hurts. Kyle doesn't remember. We try to  
12 talk to him a lot so that Kyle will remember the fun times  
13 and the good times that he spent with his dad. But he was  
14 just too young. He tries really hard to remember, but he  
15 only remembers us talking about the memories.

16 Those days were far more brief than I ever could  
17 have imagined. We talk about the Star Wars rides on Dad's  
18 shoulders up to bed. In the fall of 1997 was when our boys  
19 became very interested in the newly released Star Wars  
20 movies. George bought them a set for Christmas of 1997.  
21 They watched them together over and over again. We had a  
22 cassette tape of the music from the movie. So Kyle would  
23 beg George to play the music, put him on his shoulders, and  
24 give him a Star Wars ride up to bed.

25 This ride was like none other. I would get Scott

1 or Kyle, while George would get the other. The boys would  
2 go on our shoulders and we would chase each other around the  
3 house in time to the music, shooting our pretend laser guns  
4 until they were finally deposited into their beds.

5 How could you expect a child to sleep after that?  
6 But they always did, because following that one of us would  
7 read to them. Typically it was George, as I was doing a  
8 household chore that hadn't been done. He would lay in  
9 Scott and Kyle's room on the floor reading a story to them.  
10 Sometimes they would have to remind him to stay awake. But  
11 he read to them nonetheless.

12 One day about a year ago now I went to pick Kyle  
13 up from his babysitter's house. There were two children  
14 named Kyle in daycare there. And the other Kyle's dad had  
15 come to pick him up, too. When both of us parents arrived  
16 at the same time, our caregiver called out, "Kyle, your dad  
17 is here to pick you up." My Kyle heard that and ran out and  
18 questioned, "My Daddy's here?"

19 I felt so bad for him, and had to explain the  
20 mistake. We all felt so bad, not realizing how that one  
21 statement had impacted him. Again I cried. Kyle's dad  
22 would never pick him up again, as he had done so many times  
23 before.

24 Kyle also will be reminded of the times he sat on  
25 the floor playing Army guys or Lego guys with his dad. He

1 had so much patience with our little ones and tried to give  
2 each one one-on-one time with him. George was with him  
3 during the day many times while I worked part-time. So he  
4 had the opportunity to really be a part of Kyle's life. It  
5 was that way with all of our children. We worked opposite  
6 each other to avoid daycare as much as possible. We wanted  
7 to raise our children by ourselves.

8 Many people thought that Kyle would not be  
9 affected by George's death, but they were wrong. Because he  
10 is so young, he doesn't have the societal constraints placed  
11 on him yet. So he is not worried about expressing his  
12 feelings. He cries with me regularly about how much he  
13 misses his dad. I have noticed that he wants his Daddy even  
14 more so when he is hurt. And all I can do is wrap my arms  
15 around him and tell him that Daddy is still there for him in  
16 his heart, and that I miss him, too.

17 He used to tell me that he wished he could die,  
18 too, so that he could be with Daddy. How do you deal with  
19 such intense love? Other than to assure him that he will  
20 get to see Daddy again some day after he has finished  
21 growing up and leading a good life here with the rest of his  
22 family.

23 Kyle still thinks the robbers are going to come  
24 into our house and get one of us. We try to tell him that  
25 people like Vanisi are rare, but he still thinks about it a

1 lot. All of this from a five-year-old. It's a lot for a  
2 little guy to handle.

3 Scott is now eight years old. So he was six when  
4 George died. Scott is next to the youngest and a sweet  
5 child. He hugs and he kisses and shares his affection  
6 regularly. I think that George helped to foster those  
7 feelings in our children. He was very affectionate towards  
8 them, and also to me.

9 I think Scott will never forget his dad. They had  
10 wonderful times together. There were times when Scott would  
11 just follow George around and help him with simple household  
12 repairs or projects. Scott would help him turn a screw,  
13 hold tools, or just ask a lot of questions. George said  
14 that curiosity was a wonderful thing, and I agreed. We  
15 always encouraged the children to ask questions.

16 Scott started playing soccer three years ago now.  
17 George loved to go to his soccer games. When Scott was  
18 five, it was his first year for soccer. We would all go to  
19 watch him play goalie that year. He was a tiger and his dad  
20 was his best audience.

21 Together we would praise Scott for his  
22 accomplishments and encourage him. Scott also had George's  
23 talent for art. He draws pictures far beyond his years.  
24 I'm so glad he picked that up from his dad. We tell Scott  
25 frequently how beautiful his pictures are and how talented

1 he is. He expresses a lot of his feelings through his art.

2 Immediately following George's death, Scott was  
3 exhibiting some behavior problems in his classroom. The  
4 counselor and the principal thought that since Scott was so  
5 artistic that he would benefit by an art class where he  
6 could translate his feelings into his work. That was very  
7 helpful.

8 As a parent I've always felt it was my job to  
9 carry the burden for my children. This is one burden they  
10 must shoulder alone, work through by themselves, and come  
11 back to our family where we can feel the unrelenting love  
12 that George and I have worked so hard to create.

13 This spring Scott also expressed his lack of  
14 memory. He said, "I just don't remember Dad." He was too  
15 young then. He wants to remember so badly. I'm sure it  
16 hurts him, too. It just means I have to work harder to keep  
17 George's memory alive for his children.

18 Scott, like the other children, has taken George's  
19 death very hard. Anger was never a part of Scott's sweet  
20 personality before his dad died. He was always cheerful and  
21 happy-go-lucky. It's very hard to see this change in him.  
22 And he has been in extended counseling to help him through.  
23 I pray in time that Scott will resolve the issues that  
24 plague him, making him angry, and that he can learn to live  
25 life for everything it has to offer, though that will have

1 to be without his dad.

2 He has the ability, too, at his very young age to  
3 feel his dad's presence around him. When the wind blows,  
4 Scott knows his dad is around. When he goes to bed at  
5 night, we always give each other hugs and kisses from Dad.  
6 When Kyle cries because he misses George, Scott gives him a  
7 hug or a kiss and tells him not to worry because Daddy is  
8 still in his heart. Scott is a very sensitive child.

9 Brian is twelve now and becoming a young man. He  
10 was ten when George was killed and had his eleventh birthday  
11 without his dad six days later.

12 Brian is lucky because he will remember his dad.  
13 As an adult he will have fond but fading memories, because  
14 ten years old is still awfully young to lose one of your  
15 parents. Brian is our second child. He was born four years  
16 after Meghan, and Scott didn't come along until Brian was  
17 four-and-a-half. So Brian really got a chance, as did  
18 Meghan, to spend a lot of time with George. He will  
19 remember the times they crawled under the house together to  
20 wire for a telephone extension or put in extra stereo  
21 speakers.

22 He will remember crawling up on the roof to watch  
23 fireworks with us, or to fire up the swamp cooler. George  
24 was so safety oriented. Since Brian and Meghan really  
25 wanted to go up on the roof with him, he fastened them with