

**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 12 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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<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
36	Addendum to Motion to Set Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 20, 2018.....	AA07685 – AA07688
<b>EXHIBIT</b>		
36	1. Handwritten note from Siao Si Vanisi to Jennifer Noble or Joe Plater August 13, 2018.....	AA07689 – AA07690
32	Answer to Petition for Writ of Habeas Corpus (Post-Conviction), July 15, 2011 .....	AA06756 – AA06758
35	Application for Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 20, 2018.....	AA07321 – AA07323
35	Application for Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 11, 2018 .....	AA07385 – AA07387
12	Application for Setting, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 11, 2001 .....	AA02529
35	Application for Setting, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 20, 2018.....	AA07324

14	Application for Writ of Mandamus and/or Writ of Prohibition, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No.45061 April 13, 2005.....	AA02818 – AA02832
14-15	Case Appeal Statement, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 28, 2007.....	AA02852 – AA03030
39	Case Appeal Statement, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 25, 2019 .....	AA08295 – AA08301
35	Court Minutes of May 10, 2018 Conference Call Re: Motion for Reconsideration of the Order to Produce, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 17, 2018 .....	AA07390
35	Court Minutes of May 30, 2018 Oral Arguments on Motion for Discovery and Issuance of Subpoenas/Waiver of Petitioner’s Appearance at Evidentiary Hearing and All Other Hearings, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 4, 2018 .....	AA07447-AA07749
39	Court Minutes of September 25, 2018 Status Hearing on Petitioner’s Waiver of Evidentiary Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 28, 2018.....	AA08190 – AA08191

37	Court Ordered Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 ( <b>FILED UNDER SEAL</b> ) September 19, 2018.....	AA07791 – AA07829
3	Evaluation of Siao Si Vanisi by Frank Everts, Ph.D., June 10, 1999 .....	AA00554 – AA00555
34	Findings of Fact, Conclusions of Law and Judgment Dismissing Petition for Writ of Habeas Corpus, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 10, 2014 .....	AA07103 – AA07108
12	Judgment, Second Judicial District Court of Nevada, <i>State of Nevada v. Vanisi</i> , Case No. CR98-0516 November 22, 1999.....	AA02523 – AA02524
12	Motion for Appointment of Post-Conviction Counsel, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 18, 2002.....	AA02530 – AA02540
12	Motion for Extension of Time to File Supplemental Materials (Post-Conviction Petition for Writ of Habeas Corpus (Death Penalty Case), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 23, 2002.....	AA02556 – AA02559
38	Motion for Leave to File Supplement to Petition for Writ of Habeas Corpus, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 28, 2018.....	AA08083 – AA08090



## EXHIBIT

- 38        1.     Supplement to Petition for Writ of  
             Habeas Corpus (Post Conviction)  
             September 28, 2018..... AA08091 – AA08114
- 13        Motion for Order Appointing Co-Counsel, State of *Nevada*  
             *v. Vanisi*, Second Judicial District Court of Nevada,  
             Case No. CR98-0516  
             October 30, 2003..... AA02588 – AA02590
- 35        Motion for Reconsideration, *State of Nevada v. Vanisi*,  
             Second Judicial District Court of Nevada,  
             Case No. CR98-0516  
             April 2, 2018 ..... AA07327 – AA07330

## EXHIBITS

- 35        1.     *State of Nevada v. Vanisi*, Case No.  
             CR98-P0516, Petitioner’s Waiver of  
             Appearance,  
             January 24, 2012..... AA07332 – AA07336
- 35        2.     *State of Nevada v. Vanisi*, Case No.  
             CR98-P0516, Waiver of Petitioner’s  
             Presence,  
             November 15, 2013..... AA07337- AA07340
- 35        3.     *State of Nevada v. Vanisi*, Case No.  
             CR98-P0516, Order on Petitioner’s  
             Presence,  
             February 7, 2012 ..... AA07341 – AA07342
- 35        4.     *State of Nevada v. Vanisi*, Case No.  
             CR98-P0516, Order, ..... AA07343 – AA07346  
             February 7, 2014

13	Motion for Stay of Post-Conviction Habeas Corpus Proceedings and for Transfer of Petitioner to Lakes Crossing for Psychological Evaluation and Treatment (Hearing Requested), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 9, 2004.....	AA02594 – AA02608
14	Motion to Continue Evidentiary Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 26, 2005.....	AA02835 – AA02847
32	Motion to Dismiss Petition for Writ of Habeas Corpus (Post-Conviction), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 15, 2011 .....	AA06759 – AA06764
35	Motion to Disqualify the Washoe County District Attorney’s Office, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 29, 2018 .....	AA07450 – AA07468

## EXHIBITS

35	1. State Bar of Nevada, Standing Committee on Ethics and Professional Responsibility, Formal Opinion No. 41 June 24, 2009 .....	AA07469 – AA07476
35	2. American Bar Association, Standing Committee on Ethics and Professional Responsibility, Formal Opinion 10-456,	

	Disclosure of Information to Prosecutor When Lawyer's Former Client Brings Ineffective Assistance of Counsel Claim July 14, 2010 .....	AA07477 – AA07482
35-36	3. Response to Motion to Dismiss, or Alternatively, To Disqualify the Federal Public Defender, <i>Sheppard v. Gentry, et al.</i> , Second Judicial District Court of Nevada, Case No. CR03-502B December 22, 2016 .....	AA07483 – AA07545
36	4. Transcript of Proceedings – Conference Call Re: Motions, <i>Sheppard v. Gentry, et al.</i> , Second Judicial District Court of Nevada, Case No. CR03-502B December 29, 2016 .....	AA07546 – AA07568
36	5. Order (denying the State's Motion to Dismiss, or Alternatively, To Disqualify the Federal Public Defender), <i>Sheppard v. Gentry, et al.</i> , Second Judicial District Court of Nevada, Case No. CR03-502B January 5, 2017.....	AA07569 – AA07586
36	Motion to Set Hearing Regarding Vanisi's Request to Waive Evidentiary Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 25, 2018 .....	AA07607 – AA07610
12	Motion to Withdraw as Counsel of Record, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 18, 2002 .....	AA02564 – AA02567
36	Non-Opposition to Presence of Defendant, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 21, 2018.....	AA07691 – AA07694

12	Notice in Lieu of Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 34771 October 6, 1999.....	AA02413
14	Notice in Lieu of Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 45061 May 17, 2005 .....	AA02848
12	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, Nevada Supreme Court Case No. (35249) November 30, 1999.....	AA02525 – AA02526
14	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No. 50607 November 28, 2007.....	AA02849 – AA02851
34	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No. 65774 May 23, 2014 .....	AA07117 – AA07293
38	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, Nevada, Supreme Court Case No. (78209) February 25, 2019 .....	AA08181 – AA08184
34	Notice of Entry of Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 25, 2014 .....	AA07109 – AA07116
38	Notice of Entry of Order, (Order Denying Relief), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 6, 2019 .....	AA08167 – AA08173

38	Notice of Entry of Order (Order Denying Motion for Leave to File Supplement), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 22, 2019 .....	AA08174 – AA08180
34	Objections to Proposed Findings of Fact, Conclusions of Law and Judgment Dismissing Petition for Writ of Habeas Corpus, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 31, 2014.....	AA07097 – AA07102
36	Opinion (on ethical duties of capital post-conviction counsel), David M. Siegel, Professor of Law, August 23, 2018.....	AA07695 – AA07700
12	Opposition to Motion for Extension of Time to File Supplemental Materials (Post-Conviction Petition for Writ of Habeas Corpus) (Death Penalty Case), State of Nevada v. Vanisi, Second Judicial District Court of Nevada, Case No. CR98-0516 November 1, 2002.....	AA02560 – AA02563
32	Opposition to Motion to Dismiss, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 30, 2011.....	AA06765 – AA06840
38	Opposition to Motion for Leave to File Supplement to Petition for Writ of Habeas Corpus, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 8, 2018.....	AA08115 – AA08122

36	Opposition to Motion to Disqualify the Washoe County District Attorney's Office, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 9, 2018 .....	AA07587 – AA07594
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## EXHIBITS

36	1. State Bar of Nevada, Standing Committee on Ethics and Professional Responsibility, Formal Opinion No. 55 .....	AA07595 – AA07602
36	2. E-mail from Margaret "Margy" Ford to Joanne Diamond, Randolph Fiedler, Scott Wisniewski, re Nevada-Ethics-Opinion-re-ABA-Formal-Opinion-55 July 6, 2018 .....	AA07603 – AA07604
12	Opposition to Motion to Withdraw as Counsel of Record, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 23, 2002 .....	AA02568 – AA02571
3	Order (directing additional examination of Defendant), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 3, 1999 .....	AA00551 – AA00553
32	Order (to schedule a hearing on the motion to dismiss), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 21, 2012.....	AA06845 – AA06847
34-35	Order Affirming in Part, Reversing in Part and Remanding, <i>Vanisi v. State of Nevada</i> , Nevada Supreme Court, Case No. 65774 September 28, 2017.....	AA07294 – AA07318

38	Order Denying Motion for Leave to File Supplement, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 15, 2019 .....	AA08176 – AA08180
37	Order Denying Motion to Disqualify, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 17, 2018.....	AA07785 – AA07790
14	Order Denying Petition, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 45061 April 19, 2005.....	AA02833 – AA02834
3	Order Denying Petition for Writ of Certiorari or Mandamus, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 34771 September 10, 1999.....	AA00620 – AA00621
38	Order Denying Relief, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 6, 2019 .....	AA08169 – AA08173
37	Order for Expedited Psychiatric Evaluation, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 6, 2018.....	AA07782 – AA07784
13	Order (granting Motion to Appoint Co-Counsel), <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 23, 2003 .....	AA02591 – AA02593
38	Order Granting Waiver of Evidentiary Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 6, 2019 .....	AA08157– AA08166

35	Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 23, 2018.....	AA07325 – AA07326
35	Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 14, 2018 .....	AA07388 – AA07389
12	Order (relieving counsel and appointing new counsel), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 11, 2002.....	AA2553 – AA02555
3	Original Petition for Writ of Certiorari or Mandamus And Request for Emergency Stay of Trial Pending Resolution of the Issues Presented Herein, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 34771 September 3, 1999.....	AA00556 – AA00619
15-16	Petition for Writ of Habeas Corpus (Post-Conviction), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 4, 2011 .....	AA03033 – AA03269

## EXHIBITS

16	1. Criminal Complaint, <i>State of Nevada v. Vanisi, et al.</i> , Justice Court of Reno Township No. 89.820, January 14, 1998.....	AA03270 – AA03274
16	2. Amended Complaint, <i>State of Nevada v. Vanisi, et al.</i> , Justice Court of Reno Township No. 89.820, February 3, 1998 .....	AA03275 – AA3279



16	3.	Information, <i>State of Nevada v. Vanisi</i> , Second Judicial Circuit of Nevada, Case No. CR98-0516, February 26, 1998.....	AA03280 – AA03288
16	5.	Declaration of Mark J.S. Heath, M.D., (including attached exhibits), May 16, 2006 .....	AA03289 – AA03414
16	6.	Birth Certificate of Siaosi Vanisi, District of Tongatapu, June 26, 1970.....	AA03415 – AA03416
16	7.	Immigrant Visa and Alien Registration of Siaosi Vanisi, May 1976.....	AA03417 – AA03418
16-17	11.	Juror Instructions, Trial Phase, <i>State of Nevada v.</i> <i>Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, September 27, 1999.....	AA03419 – AA03458
17	12.	Juror Instructions, Penalty Phase, <i>State of Nevada v.</i> <i>Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, October 6, 1999.....	AA03459 – AA03478
17	16.	Motion to Dismiss Counsel and Motion to Appoint Counsel. <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, June 16, 1999 .....	AA03479 – AA03489
17	17.	Court Ordered Motion for Self Representation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 5, 1999 .....	AA03490 – AA03493
17	18.	Ex-Parte Order for Medical Treatment, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 12, 1999 .....	AA03494 – AA03496

17	19.	Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, August 11, 1999.....	AA03497 – AA03507
17	20.	<i>State of Nevada v. Vanisi</i> , Washoe County Second Judicial District Court Case No. CR98-0516, Transcript of Proceedings June 23, 1999 .....	AA03508 – AA03551
17	21.	Transcript of Proceedings <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 3, 1999 .....	AA03552 – AA03594
17-18	22.	Reporter's Transcript of Motion for Self Representation <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 10, 1999.....	AA03595 – AA03681
18	23.	In Camera Hearing on Ex Parte Motion to Withdraw <i>State of Nevada v. Vanisi</i> , Second Judicial District Court, Case No. CR98-0516 August 26, 1999.....	AA03682 – AA03707
18	24.	Amended Notice of Intent to Seek Death Penalty, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 18, 1999.....	AA03708 – AA03716
18	25.	Mental Health Diagnosis, Phillip A. Rich, M.D., October 27, 1998.....	AA03717 – AA03720
18	26.	Various News Coverage Articles ...	AA03721 – AA03815

18	29.	Verdict, Guilt Phase, <i>State of Nevada v. Vanisi, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 27, 1999.....	AA03816 – AA03821
18	30.	Verdict, Penalty Phase, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 6, 1999.....	AA03822 – AA03829
18	31.	Photographs of Siaoisi Vanisi from youth .....	AA3830 – AA03834
18	32.	Ex Parte Motion to Reconsider Self-Representation, <i>State of Nevada v. Vanisi</i> , Case No. CR98-0516, Second Judicial District Court of Nevada, August 12, 1999.....	AA03835 – AA03839
18-19	33.	Defense Counsel Post-Trial Memorandum in Accordance with Supreme Court Rule 250, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 15, 1999.....	AA03840 – AA03931
19	34.	Petition for Writ of Habeas Corpus (Post-Conviction) <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 January 18, 2002.....	AA03932 – AA03943
19	35.	Ex Parte Motion to Withdraw, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 August 18, 1999.....	AA03944 – AA03952

19-20	36.	Supplemental Points and Authorities to Petition for Writ of Habeas Corpus (Post-Conviction), <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 February 22, 2005 ..... AA03953 – AA04146
20	37.	Reply to State’s Response to Motion for Protective Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, March 16, 2005..... AA04147 – AA04153
20	39.	Transcript of Proceedings - Post-Conviction Hearing <i>Vanisi v. State of Nevada et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 May 2, 2005 ..... AA04154 – AA04255
20-21	40.	Transcript of Proceedings - Continued Post-Conviction Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 May 18, 2005 ..... AA04256 – AA04349
21	41.	Transcript of Proceedings, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 April 2, 2007 ..... AA04350 – AA04380
21	42.	Findings of Fact, Conclusions of Law and Judgment, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 November 8, 2007..... AA04381 – AA04396
21	43.	Appellant’s Opening Brief, Appeal from Denial of Post-Conviction Habeas Petition <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 50607, August 22, 2008..... AA04397 – AA04496

21-22	44.	Reply Brief, Appeal from Denial of Post-Conviction Habeas Petition, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No. 50607 December 2, 2008.....	AA04497 – AA04554
22	45.	Order of Affirmance, Appeal from Denial of Post-Conviction Petition, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Case No. 50607 April 20, 2010.....	AA04555 – AA04566
22	46.	Petition for Rehearing Appeal from Denial of Post-Conviction Petition, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 50607 May 10, 2010 .....	AA04567 – AA04580
22	48.	Order for Competency Evaluation <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 27, 2004 .....	AA04581 – AA04584
22	49.	Forensic Psychiatric Assessment, Thomas E. Bittker, M.D., January 14, 2005.....	AA04585 – AA04593
22	50.	Competency Evaluation, A.M. Amezaga, Jr., Ph.D., February 15, 2005 .....	AA04594 – AA04609
22	56.	Order finding Petitioner Competent to Proceed, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court, Case No. CR98-0516 March 16, 2005.....	AA04610 – AA04614
22	59.	Sanity Evaluation, Thomas E. Bittker, M.D., June 9, 1999 .....	AA04615 – AA4622
22-23	60.	Preliminary Examination, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 20, 1998 .....	AA04623 – AA04856

- 23        61.    Arraignment, *State of Nevada v. Vanisi*,  
             Second Judicial District Court of Nevada, Case No.  
             CR98-0516  
             March 10, 1998..... AA04857 – AA04867
- 23        62.    Status Hearing, *State of Nevada v. Vanisi*,  
             Second Judicial District Court of Nevada,  
             Case No. CR98-0516  
             August 4, 1998 ..... AA04868 – AA04906
- 23        63.    Status Hearing *State of Nevada v. Vanisi*,  
             Second Judicial District of Nevada,  
             Case No. CR98-0516  
             September 4, 1998..... AA04907 – AA04916
- 23        64.    Status Hearing, *State of Nevada v. Vanisi*,  
             Second Judicial District Court of Nevada, Case No.  
             CR98-0516  
             September 28, 1998..... AA4917 – AA04926
- 23        65.    Report on Psychiatric Evaluations, *State of Nevada v.*  
             *Vanisi*, Second Judicial District Court of Nevada,  
             Case No. CR98-0516  
             November 6, 1998..... AA04927 – AA04940
- 24        66.    Hearing Regarding Counsel, *State of Nevada v.*  
             *Vanisi*, Second Judicial District Court of Nevada,  
             Case No. CR98-0516  
             November 10, 1998..... AA04941 – AA04948
- 24        67.    Pretrial Hearing, *State of Nevada v. Vanisi*,  
             *et al.*, Second Judicial District Court of Nevada,  
             Case No. CR98-0516  
             December 10, 1998 ..... AA04949 – AA04965

24	69.	Hearing to Reset Trial Date, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court, Case No. CR98-0516 January 19, 1999.....	AA04966 – AA04992
24	70.	Transcript of Proceeding – Pretrial Motion Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 1, 1999 .....	AA04993 – AA05009
24	71.	Motion Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 11, 1999.....	AA05010 – AA05051
24	72.	Decision to Motion to Relieve Counsel, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 30, 1999.....	AA05052 – AA05060
24	73.	In Chambers Review, <i>State of Nevada v. Vanisi, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 12, 1999 .....	AA05061 – AA05080
24	81.	Transcript of Proceedings - Report on Psych Eval, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 6, 1998.....	AA5081 – AA05094
24	82.	Hearing Regarding Counsel, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 10, 1998.....	AA05095 – AA05102
24-25	89.	Transcript of Proceeding, Trial Volume 4, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516	

	January 14, 1999.....	AA05103 – AA05331
25	90. Order (granting Motion for Mistrial), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 15, 1999.....	AA05332 – AA05335
25	92. Declaration of Paulotu Palu January 24, 2011.....	AA05336 – AA05344
25	93. Declaration of Siaosi Vuki Mafileo February 28, 2011 .....	AA05345 – AA05359
25-26	94. Declaration of Sioeli Tuita Heleta January 20, 2011.....	AA05360 – AA05373
26	95. Declaration of Tufui Tafuna January 22, 2011.....	AA05374 – AA05377
26	96. Declaration of Toeumu Tafuna April 7, 2011 .....	AA05378 – AA05411
26	97. Declaration of Herbert Duzant’s Interview of Michael Finau April 18, 2011 .....	AA05412 – AA05419
26	98. Declaration of Edgar DeBruce April 7, 2011 .....	AA05420 – AA05422
26	99. Declaration of Herbert Duzant’s Interview of Bishop Nifai Tonga April 18, 2011 .....	AA05423 – AA05428
26	100. Declaration of Lita Tafuna April 2011.....	AA05429 – AA05431
26	101. Declaration of Sitiveni Tafuna April 7, 2011 .....	AA05432 – AA05541



26	102. Declaration of Interview with Alisi Peaua conducted by Michelle Blackwill April 18, 2011 .....	AA05442 – AA05444
26	103. Declaration of Tevita Vimahi April 6, 2011 .....	AA05445 – AA05469
26	104. Declaration of DeAnn Ogan April 11, 2011 .....	AA05470 – AA05478
26	105. Declaration of Greg Garner April 10, 2011 .....	AA05479 – AA05486
26	106. Declaration of Robert Kirts April 10, 2011 .....	AA05487 – AA05492
26	107. Declaration of Manamoui Peaua April 5, 2011 .....	AA05493 – AA05497
26	108. Declaration of Toa Vimahi April 6, 2011 .....	AA05498 – AA05521
26-27	109. Reports regarding Siaosi Vanisi at Washoe County Jail, Nevada State Prison and Ely State Prison, Various dates .....	AA05522 – AA05699
27	110. Declaration of Olisi Lui April 7, 2011 .....	AA05700 – AA05704
27	111. Declaration of Peter Finau April 5, 2011 .....	AA05705 – AA05709
27	112. Declaration of David Kinikini April 5, 2011 .....	AA05710 – AA05720
27	113. Declaration of Renee Peaua April 7, 2011 .....	AA05721 – AA05726

27	114. Declaration of Heidi Bailey-Aloi April 7, 2011.....	AA05727 – AA05730
27	115. Declaration of Herbert Duzant’s Interview of Tony Tafuna April 18, 2011.....	AA05731- AA05735
27	116. Declaration of Terry Williams April 10, 2011.....	AA05736 – AA05741
27	117. Declaration of Tim Williams April 10, 2011.....	AA05742 – AA05745
27	118. Declaration of Mele Mavani Vakapuna April 5, 2011.....	AA05746 – AA05748
27	119. Declaration of Priscilla Endemann April 6, 2011.....	AA05749 – AA05752
27	120. Declaration of Mapa Puloka January 24, 2011.....	AA05753 – AA05757
27	121. Declaration of Limu Havea January 24, 2011.....	AA05758 – AA05767
27	122. Declaration of Sione Pohahau January 22, 2011.....	AA05768 – AA05770
27	123. Declaration of Tavake Peaua January 21, 2011.....	AA05771 – AA05776
27	124. Declaration of Totoa Pohahau January 23, 2011.....	AA05777 – AA05799
27-28	125. Declaration of Vuki Mafileo February 11, 2011 .....	AA05800 – AA05814

28	127. Declaration of Crystal Calderon April 18, 2011.....	AA05815 – AA05820
28	128. Declaration of Laura Lui April 7, 2011.....	AA05821 – AA05824
28	129. Declaration of Le’o Kinkini-Tongi April 5, 2011.....	AA05825 – AA05828
28	130. Declaration of Sela Vanisi-DeBruce April 7, 2011.....	AA05829 – AA05844
28	131. Declaration of Vainga Kinikini April 12, 2011.....	AA05845 – AA05848
28	132. Declaration of David Hales April 10, 2011.....	AA05849 – AA05852
28	136. Correspondence to Stephen Gregory from Edward J. Lynn, M.D. July 8, 1999.....	AA05853 – AA05855
28	137. Memorandum to Vanisi File from MRS April 27, 1998.....	AA05856 – AA05858
28	143. Memorandum to Vanisi File From Mike Specchio July 31, 1998.....	AA05859 – AA05861
28	144. Correspondence to Michael R. Specchio from Michael Pescetta October 9, 1998.....	AA05862 – AA05863
28	145. Correspondence to Michael Pescetta from Michael R. Specchio October 9, 1998.....	AA05864 – AA05866

28	146. 3 DVD's containing video footage of Siaosi Vanisi in custody on various dates (MANUALLY FILED).....	AA05867
28	147. Various Memorandum to and from Michael R. Specchio 1998-1999 .....	AA05868 – AA05937
28	148. Memorandum to Vanisi file Crystal-Laura from MRS April 20, 1998.....	AA05938 – AA05940
28	149. Declaration of Steven Kelly April 6, 2011 .....	AA05941 – AA05943
28	150. Declaration of Scott Thomas April 6, 2011 .....	AA05944 – AA05946
28	151. Declaration of Josh Iveson April 6, 2011 .....	AA05947 – AA05949
28	152. Declaration of Luisa Finau April 7, 2011 .....	AA05950 – AA05955
28	153. Declaration of Leanna Morris April 7, 2011 .....	AA05956 – AA05960
28	155. Declaration of Maile (Miles) Kinikini April 7, 2011 .....	AA05961 – AA05966
28	156. Declaration of Nancy Chiladez April 11, 2011 .....	AA05967 – AA05969
28-29	159. Transcript of Proceedings, Trial Volume 1, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 11, 1999.....	AA05970 – AA06222

29-31	160. Transcript of Proceedings, Trial Volume 2, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 12, 1999.....	AA06223 – AA06498
31	163. Neuropsychological and Psychological Evaluation of Siaosi Vanisi, Dr. Jonathan Mack April 18, 2011.....	AA06499 – AA06569
31-32	164. Independent Medical Examination in the Field of Psychiatry, Dr. Siale ‘Alo Foliaki April 18, 2011.....	AA06570 – AA06694
32	172. Motion for Change of Venue, <i>State of Nevada v.</i> <i>Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 15, 1998 .....	AA06695 – AA06700
32	173. Declaration of Herbert Duzant’s Interview with Tongan Solicitor General, ‘Aminiasi Kefu April 17, 2011 .....	AA06701 – AA06704
32	175. Order Denying Rehearing, Appeal from Denial of Post-Conviction Petition, <i>Vanisi vs. State of</i> <i>Nevada</i> , Nevada Supreme Court, Case No. 50607 June 22, 2010 .....	AA06705 – AA06706
32	178. Declaration of Thomas Qualls April 15, 2011.....	AA06707 – AA06708
32	179. Declaration of Walter Fey April 18, 2011.....	AA06709 – AA06711
32	180. Declaration of Stephen Gregory April 17, 2011.....	AA06712 – AA06714
32	181. Declaration of Jeremy Bosler April 17, 2011.....	AA06715 – AA06718

- 32        183. San Bruno Police Department Criminal  
Report No. 89-0030  
February 7, 1989 ..... AA06719 – AA06722
- 32        184. Manhattan Beach Police Department Police  
Report Dr. # 95-6108  
November 4, 1995..... AA06723 – AA06727
- 32        185. Manhattan Beach Police Department  
Crime Report  
August 23, 1997..... AA06728 – AA06730
- 32        186. Notice of Intent to Seek Death Penalty,  
*State of Nevada v. Vanisi*, Second Judicial  
District Court of Nevada, Case No. CR98-0516  
February 26, 1998 ..... AA06731 – AA06737
- 32        187. Judgment, *State of Nevada v. Vanisi*,  
Second Judicial District Court of Nevada,  
Case No. CR98-0516  
November 22, 1999..... AA06738 – AA06740
- 32        190. Correspondence to The Honorable Connie  
Steinheimer from Richard W. Lewis, Ph.D.  
October 10, 1998..... AA06741 – AA06743
- 32        195. Declaration of Herbert Duzant’s Interview of  
Juror Richard Tower  
April 18, 2011 ..... AA06744 – AA06746
- 32        196. Declaration of Herbert Duzant’s Interview of  
Juror Nettie Horner  
April 18, 2011 ..... AA06747 – AA06749
- 32        197. Declaration of Herbert Duzant’s Interview of  
Juror Bonnie James  
April 18, 2011 ..... AA06750 – AA06752

32	198. Declaration of Herbert Duzant’s Interview of Juror Robert Buck April 18, 2011.....	AA06753 – AA06755
12	Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 35249 November 27, 2001.....	AA02527 – AA02528
15	Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 50607 July 19, 2010 .....	AA03031 – AA03032
35	Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 65774 January 5, 2018.....	AA07319 – AA07320
12	Reply in Support of Motion to Withdraw as Counsel of Record, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 27, 2002 .....	AA02572 – AA02575
39	Reply to Opposition to Motion for Leave to File Supplement to Petition for Writ of Habeas Corpus, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 15, 2018.....	AA08232 – AA08244
36	Reply to Opposition to Motion to Disqualify the Washoe County District Attorney’s Office, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 27, 2018 .....	AA07615 – AA07639

## EXHIBITS

36	1. Response to Motion for a Protective Order, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court
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	of Nevada, Case No. CR98-0516 March 9, 2005.....	AA07640 – AA07652
36	2. Letter from Scott W. Edwards to Steve Gregory re Vanisi post-conviction petition. March 19, 2002.....	AA07653 – AA07654
36	3. Supplemental Response to Motion for a Protective Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 16, 2005.....	AA07655 – AA07659
36	4. Appellant’s Appendix, Volume 1, Table of Contents, <i>Vanisi v. State of Nevada</i> , Nevada Supreme Court, Case No. 50607 August 22, 2008.....	AA07660 – AA07664
36	5. Facsimile from Scott W. Edwards to Jeremy Bosler April 5, 2002.....	AA07665 – AA07666
35	Reply to Opposition to Motion for Reconsideration and Objection to Petitioner’s Waiver of Attendance at Evidentiary Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 16, 2018.....	AA07356 – AA07365

## EXHIBIT

35	1. Petitioner’s Waiver of Appearance (and attached Declaration of Siaoosi Vanisi), April 9, 2018.....	AA07366 – AA07371
13	Reply to Response to Motion for Stay of Post-Conviction Habeas Corpus Proceedings and for Transfer of Petitioner to Lakes Crossing for Psychological Evaluation and treatment (Hearing Requested), <i>State of Nevada v.</i> <i>Vanisi</i> , Second Judicial District Court of Nevada,	



Case No. CR98-0516  
November 17, 2004..... AA02609 – AA02613

36 Reply to State’s Response to Petitioner’s Suggestion  
of Incompetence and Motion for Evaluation, *Vanisi*  
*v. State of Nevada, et al.*, Second Judicial District  
Court of Nevada, Case No. CR98-0516  
August 6, 2018..... AA07671 – AA07681

### EXHIBIT

36 1. Declaration of Randolph M. Fiedler  
August 6, 2018 ..... AA07682 – AA07684

36 Request from Defendant, *State of Nevada v.*  
*Vanisi*, Second Judicial District Court of Nevada,  
Case No. CR98-0516  
July 24, 2018 ..... AA07605 – AA07606

32 Response to Opposition to Motion to Dismiss  
Petition for Writ of Habeas Corpus  
(Post-Conviction), *State of Nevada v. Vanisi*,  
Second Judicial District Court of Nevada,  
Case No. CR98-0516  
October 7, 2011..... AA06841 – AA06844

36 Response to Vanisi’s Suggestion of Incompetency  
and Motion for Evaluation, *State of Nevada v.*  
*Vanisi*, Second Judicial District Court of Nevada,  
Case No. CR98-0516  
July 30, 2018 ..... AA07667 – AA07670

35 State’s Opposition to Motion for Reconsideration  
and Objection to Petitioner’s Waiver of Attendance at  
Evidentiary Hearing, *State of Nevada v. Vanisi*, Second  
Judicial District Court of Nevada,  
Case No. CR98-0516  
April 11, 2018..... AA07347 – AA07352

## EXHIBIT

1. Declaration of Donald Southworth, *Vanisi v. State of Nevada, et al.*, Second Judicial District Court of Nevada, Case No. CR98-0516  
April 11, 2018..... AA07353 – AA07355
- 36 State’s Sur-Reply to Vanisi’s Motion to Disqualify the Washoe County District Attorney’s Office, *Vanisi v. State of Nevada, et al.*, Second Judicial District Court of Nevada, Case No. CR98-0516  
August 31, 2018..... AA07701 – AA07710

## EXHIBIT

- 36 1. Transcript of Proceedings – Status Hearing, *Vanisi v. State of Nevada*, Second Judicial District Court of Nevada, Case No. CR98-0516  
July 1, 2002 ..... AA07711 – AA07724
- 36 Suggestion of Incompetency and Motion for Evaluation, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516  
July 25, 2018 ..... AA07611 – AA07614
- 37 Transcript of Proceedings – Competency for Petitioner to Waive Evidentiary Hearing, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516  
September 24, 2018..... AA07830 – AA07924
- 37-38 Transcript of Proceedings – Report on Psychiatric Evaluation, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516  
September 24, 2018..... AA07925 – AA08033

13	Transcript of Proceedings – Conference Call – In Chambers, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 5, 2003 .....	AA02583 – AA02587
35	Transcript of Proceedings – Conference Call, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 10, 2018 .....	AA07372 – AA07384
34	Transcript of Proceedings – Decision (Telephonic), <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 4, 2014.....	AA07089 – AA07096
12	Transcript of Proceedings – In Chambers Hearing & Hearing Setting Execution Date, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District of Nevada, Case No. CR98-0516 January 18, 2002.....	AA02541 – AA02552
13	Transcript of Proceedings – In Chambers Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District of Nevada, Case No. CR98-0516 January 19, 2005.....	AA02645 – AA02654
13	Transcript of Proceedings – In Chambers Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 24, 2005.....	AA02655 – AA02679
35	Transcript of Proceedings – Oral Arguments, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 30, 2018 .....	AA07391 – AA07446

38	Transcript of Proceedings – Oral Arguments, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 25, 2019.....	AA08136 – AA08156
32-33	Transcript of Proceedings - Petition for Post-Conviction (Day One), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 5, 2013 .....	AA06848 – AA06966

### **EXHIBITS**

Admitted December 5, 2013

33	199. Letter from Aminiask Kefu November 15, 2011.....	AA06967 – AA06969
33	201. Billing Records-Thomas Qualls, Esq. Various Dates.....	AA06970 – AA06992
33	214. Memorandum to File from MP March 22, 2002.....	AA06993 – AA07002
33	Transcript of Proceedings - Petition for Post-Conviction (Day Two), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 6, 2013 .....	AA07003 – AA07083

### **EXHIBITS**

Admitted December 6, 2013

33	200. Declaration of Scott Edwards, Esq. November 8, 2013.....	AA07084 – AA07086
33	224. Letter to Scott Edwards, Esq. from Michael Pescetta, Esq. January 30, 2003.....	AA07087 – AA07088

12-13	Transcript of Proceedings – Post-Conviction, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 28, 2003.....	AA02576 – AA02582
13	Transcript of Proceedings – Post-Conviction, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 22, 2004.....	AA02614 – AA02644
1	Transcript of Proceedings – Pre-Trial Motions, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 24, 1998.....	AA00001 – AA00127
13	Transcript of Proceedings – Report on Psychiatric Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 27, 2005.....	AA02680 – AA02716
37-38	Transcript of Proceedings – Report on Psychiatric Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 24, 2018.....	AA07925 – AA08033
13-14	Transcript of Proceedings – Report on Psychiatric Evaluation <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 18, 2005 .....	AA02717 – AA02817
38	Transcript of Proceedings – Report on Psychiatric Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 25, 2018.....	AA08034 – AA08080

36-37	Transcript of Proceedings – Status Conference, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 5, 2018.....	AA07725 – AA07781
3-5	Transcript of Proceedings – Trial Volume 1, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 20, 1999.....	AA00622 – AA00864
5-6	Transcript of Proceedings – Trial Volume 2, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 21, 1999.....	AA00865 – AA01112
1-2	Transcript of Proceedings – Trial Volume 3, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 13, 1999.....	AA00128 – AA00295
6-7	Transcript of Proceedings – Trial Volume 3, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 22, 1999.....	AA01113 – AA01299
2-3	Transcript of Proceedings – Trial Volume 4, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 14, 1999.....	AA00296 – AA00523
7	Transcript of Proceedings – Trial Volume 4, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 23, 1999.....	AA01300 – AA01433

3	Transcript of Proceedings, Trial Volume 5, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 15, 1999.....	AA00524 – AA0550
7-8	Transcript of Proceedings, Trial Volume 5, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 24, 1999.....	AA01434 – AA01545
8	Transcript of Proceedings – Trial Volume 6, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 27, 1999.....	AA01546 – AA01690
8-9	Transcript of Proceedings – Trial Volume 7, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 28, 1999.....	AA01691 – AA01706
9	Transcript of Proceedings – Trial Volume 8, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 30, 1999.....	AA01707 – AA01753
9-10	Transcript of Proceedings – Trial Volume 9, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 1, 1999.....	AA01754 – AA01984
10-11	Transcript of Proceedings – Trial Volume 10, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 4, 1999.....	AA01985 – AA02267

11-12	Transcript of Proceedings – Trial Volume 11, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 5, 1999.....	AA02268 – AA02412
12	Transcript of Proceedings – Trial Volume 12, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 6, 1999.....	AA2414 – AA02522



## **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

Lamanite warrior reference that you previously testified to, any other indication of any other type of representation or behavior by Mr. Vanisi along a superhero ideation?

A No, sir.

MR. STANTON: No further questions.

THE COURT: Cross-examination?

MR. GREGORY: Thank you.

CROSS-EXAMINATION

BY MR. GREGORY:

Q Good afternoon, Detective Jenkins.

A Good afternoon, Mr. Gregory.

Q How are you, sir?

A Fine, thank you.

Q You made a report on your contact with Mrs. Vanacey?

A I don't know if I did or not, sir. I haven't reviewed the entire investigation.

Q I don't have a report. Would that suggest to you that you didn't make a report?

A I don't know if I did or not, sir.

Q Well, you're the case detective, are you not, Detective Jenkins?

A Yes, I'm one of two.

Q And I assume that the prosecutor told you what the subject matter of your testimony was going to be today,

did he not?

A Yes, he did.

Q And being a case detective of your stature, with your experience, I assume that you looked for any reports that you might have, did you not?

A Depending on my familiarity with the issues that I was told would be discussed. With reference to the trip to Southern California, Mr. Stanton specifically told me that he was interested only in whatever contact I might have had with Ms. Vanacey.

Q Okay. Did you look for any reports that you may have generated at that time regarding Ms. Vanacey?

A No, I did not.

Q You probably didn't make a report, did you, Detective Jenkins?

A I don't recall if I did or not. I know that I had met during that time frame on a very frequent, regular basis with the District Attorney's office and had conveyed to them that we were going and the results of that trip upon our return.

I was also with another detective and I don't know if he had written a report regarding that or not.

Q Had you made a report, you would have gotten it to the District Attorney; is that correct?

A Yes, sir.

SIERRA NEVADA REPORTERS (775) 329-6560

Q Okay. Now, your conversations with Mr. Vanisi while he was returning from the airport, he also mentioned the fact that he had been using speed for a year, did he not?

A Yes, sir.

Q And that he loved to smoke marijuana, did he not?

A Yes, sir.

Q Well, tell this jury what speed is.

A Speed is the street vernacular for a central nervous system stimulant. Most commonly it refers to the drug methamphetamine.

Q But also, they call them white babies, Phen Fen, that sort of thing, right?

A Well, Phen Fen is a term I'm familiar with. White babies, sir, I think perhaps precedes my generation.

Q But it's something to get you high? Like you say, it's a central nervous system stimulant? Tends to keep you awake, does it not?

A It can, depending on the dosage and frequency of use.

MR. GREGORY: I have nothing further.

THE COURT: Mr. Stanton?

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REDIRECT EXAMINATION

BY MR. STANTON:

Q Detective Jenkins, the time that you talked to Mr. Vanisi on the extradition, did he appear to be under the influence of alcohol, drugs, or any other substance?

A No, sir, he did not.

MR. STANTON: Nothing further.

MR. GREGORY: No questions.

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

THE WITNESS: Thank you, Your Honor. May I return the exhibit to the State's attorneys?

THE COURT: It's admitted. If you would give it to the clerk.

(The witness was excused.)

MR. STANTON: Your Honor, that would conclude the State's rebuttal case.

THE COURT: Counsel?

MR. GREGORY: May we approach? I'm sorry, Your Honor.

THE COURT: Yes.

(Whereupon, a bench conference was held among Court and counsel as follows:)

MR. GREGORY: Who asked to approach? I'm sorry. When do you want to canvass?

SIERRA NEVADA REPORTERS (775) 329-6560

THE COURT: Well, if you're going to do a surrebuttal case, I want to do that first.

MR. BOSLER: No.

THE COURT: No surrebuttal?

MR. GREGORY: No, no surrebuttal.

THE COURT: We are ready to send the jury in. I'll canvass the defendant and then we will let him come back out and say his -- you need a break? Let's canvass him, let him think about it after I canvass him. Take our break and we'll come back outside the presence of the jury and make sure he wants to do whatever he wants to do.

Go back on the record with the jury, right of allocution, and then I'll send the jury home. Then finalize instructions and you'll argue first thing in the morning when everybody is fresh.

MR. GAMMICK: Do you know when that will be?

THE COURT: We have nothing else scheduled. We can start right at 9:00.

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

THE COURT: Ladies and gentlemen of the jury, it is time for your recess. During the recess, it is your duty not to discuss this case among yourselves or with anyone else. It is your further duty not to form or express any opinion about the ultimate outcome of this matter until

it is ultimately submitted to you for decision.

You are not to read, listen to, or view any news media accounts regarding this case, should there be any. Do not allow anyone to attempt to influence you in any manner with regard to this case. Any attempts to influence you should be reported to the bailiff immediately, who in turn will report it to me.

Ladies and gentlemen of the jury, please go into the jury room for your afternoon recess.

(The jury left the courtroom at 2:58 p.m.)

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

THE COURT: Mr. Vanisi, I want to go over with you the parameters of your right to make a statement before this jury; that being a statement that is unsworn, also known as a statement of allocution.

I am going to go over the parameters of this statement with you and then we will take our afternoon recess. You will have an opportunity to talk to your counsel during this recess and make a decision as soon as the recess is over about your decision on what to do. I want you to know until you actually make your statement, you have a right to change your mind.

Your right to make a statement is not an unlimited right. It has certain parameters attached to it.

SIERRA NEVADA REPORTERS (775) 329-6560

It is subject to this Court's supervision at all times. If you go beyond what is permissible, the Court must make and take corrective action.

The corrective action could be that I would comment on your statement to the jury, that the prosecutor may comment on your statement to the jury, or what is sometimes possible is even the reopening of the case for the prosecution to cross-examine you.

Your statement must be one of mitigation. Included in that you may talk about remorse, apology, chagrin, plans and hopes for the future.

It is not an opportunity for you to tell the jury of your innocence or to rebut facts in evidence, or to deny your guilt.

Do you understand the specific parameters of your right to make a statement to the sentencing authority?

THE DEFENDANT: Yes, I do.

THE COURT: Then we will take our afternoon recess. You can tell me after the recess your decision about making the statement.

MR. GREGORY: Thank you, Your Honor.

THE COURT: Court is in recess.

(The afternoon recess was taken at 3:03 p.m.)



RENO, NEVADA, TUESDAY, OCTOBER 5, 1999, 3:25 P.M.

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

THE COURT: Thank you. Please be seated.

Mr. Vanisi, have you had an opportunity to consult with your attorneys?

THE DEFENDANT: Yes.

THE COURT: And is it your desire to make a statement in mitigation?

THE DEFENDANT: Yes.

THE COURT: Okay.

MR. GREGORY: Your Honor, procedurally, I ask that the Court admonish the audience that there should not be any outbursts while Mr. Vanisi makes a statement. Secondly, certainly the prosecutor can argue that it was an unsworn statement. I would ask, however, that this Court make no special effort to put a spotlight, unusual spotlight on the fact that he is making a statement.

THE COURT: Like what?

MR. GREGORY: Well, like: Ladies and gentlemen, Mr. Vanisi is going to stand up at counsel table. He is not going to take the stand. He is not subject to cross-examination. He's going to be -- you know, he has a

SIERRA NEVADA REPORTERS (775) 329-6560

right to allocute in front of this jury. And I think all that's needed is that the jury be told, or that the Court invite Mr. Vanisi to stand and ask him if he would like to make a statement to the jury. If he answers in the affirmative, then allow him to do so.

THE COURT: Fine with me.

MR. GREGORY: That would be our request.

THE COURT: What outbursts do you anticipate?

MR. GREGORY: I don't know, Your Honor. I don't know. But I do know that I have seen that happen. I don't anticipate anything. I just want them to be told to please maintain the courtroom decorum.

THE COURT: All right. I haven't noticed there being any problems. If there is a problem, we will clear the courtroom.

This is a statement in mitigation and I can't foresee it's any problem, as long as the defendant is not trying to rebut facts in evidence or deny his guilt, or claim his innocence. Okay?

Please bring in the jury.

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

THE COURT: Counsel stipulate to the presence of the jury?

MR. GAMMICK: Yes, Your Honor.

SIERRA NEVADA REPORTERS (775) 329-6560

MR. GREGORY: Yes, Your Honor.

THE COURT: Mr. Vanisi, we have come to the stage in the proceedings when you may make a statement to the jury, if you so desire.

THE DEFENDANT: Yes.

THE COURT: You may do so.

THE DEFENDANT: I want to say that I'm sorry the Sullivan family has gone through this. I'm sorry that my family has gone through this. If I had known that I was ill, I would have gone to a doctor. I used speed and marijuana before coming to Reno, and used it for the week that I was here. I didn't sleep much.

This is not an excuse, but a reason. I fell away from my church and my values. If given the opportunity, I hope to try to help others avoid the nightmare of drugs and despair. Maybe this will help the Sullivan family and my family with their grief. Thank you.

THE COURT: Ladies and gentlemen of the jury, we worked late last night after you left and I have not been able to finalize the jury instructions. I anticipate that I have another half an hour at least in order to finalize them. And that's very conservative.

Then counsel will be able to present their closing arguments to you on the penalty phase.

I'm very concerned about the lateness of the

SIERRA NEVADA REPORTERS (775) 329-6560

hour and keeping you here all afternoon while we finalize these instructions and then begin closing arguments late in the day. For that reason, although I really told you I thought we were going to go to the jury today, I think it's better that we do it tomorrow morning.

So, in spite of the fact I know everyone wants to move forward with this case, I don't want you beginning your deliberations at 8:00 tonight. I think everyone will be tired at that point and you will be able to more effectively listen to closing arguments if you do it when you are fresh in the morning.

I have no other things scheduled tomorrow morning. We will begin sharply at 9:00 a.m. in the morning. Come on in in the morning. Go into the jury room. Be prepared to hear the instructions of the Court, closing arguments of counsel, and begin your deliberations.

Now, that's 9:00 a.m. tomorrow morning.

During this evening's recess, do not discuss the case among yourselves or with anyone else. Do not allow anyone to attempt to influence you with regard to this case. It is your duty not to express or form any opinion about the ultimate outcome. And do not read, look at, or listen to any news media accounts regarding this case.

Ladies and gentlemen of the jury, you are excused until 9:00 a.m. tomorrow.

SIERRA NEVADA REPORTERS (775) 329-6560

(The jury was excused at 3:32 p.m.)

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

THE COURT: Counsel, I have a couple of different instructions that you all have given me. I want to go through those and make sure you all received copies before we begin settling the instructions again. We will be back on the record. We will take a short recess and then begin settling instructions.

(A recess was taken.)

RENO, NEVADA, TUESDAY, OCTOBER 5, 1999, 3:50 P.M.

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

THE COURT: Thank you. Please be seated. Let the record reflect we have convened outside of the presence of the jury for the purpose of finalizing jury instructions and verdict forms. The defendant is present with counsel.

Let's go through the stack. You'll see there's a couple that we prepared in our office. I think there's some that I received from the State and the defense. Let's go through the pile and put them in the same order as each other.

"Ladies and gentlemen of the jury."

"If in these instructions any rule, direction, or idea."

"There are two kinds of evidence."

"The evidence presented during the trial."

"The State has the burden of proving beyond a reasonable doubt."

"You have found the defendant in this case to be guilty of murder in the first degree."

"A prison term of 50 years with eligibility of parole."

SIERRA NEVADA REPORTERS (775) 329-6560

"Any person who uses a firearm in the commission."

"The following are the aggravating factors."

This has been retyped.

MR. BOSLER: Retyped?

THE COURT: Right.

MR. STANTON: Aggravating or mitigating?

THE COURT: No, I'm sorry, it looks like the same. You can tell I'm tired.

"The term mutilate."

Okay. Now, this is the one that was a modification of defendant's offered H. It starts "A murder in the first degree may be mitigated by any of the following circumstances."

I asked the defense to prepare it, but we prepared it also. So is this in the form as what you want?

MR. BOSLER: Let me double-check with the Court's copy with what I have. I believe the District Attorney received a copy also.

THE COURT: Yes, that's it. Does everybody have that? Do you have it?

MR. GAMMICK: We have received one from the defense in the packet this morning. I don't believe we have seen the Court's. My understanding, it's the same language.

THE COURT: It's what we talked about.

SIERRA NEVADA REPORTERS (775) 329-6560

Sometimes I don't always get it from the defense. I thought we might be going quick. We went ahead and retyped it this morning. I don't think we received anything from the defense.

Oh, Mrs. Stone says she thinks maybe the packet you thought you got from the defense might have been our packet.

MR. BOSLER: I believe it was, Your Honor.

THE COURT: Did you draw up a packet?

MR. BOSLER: It was not a packet, but we provided some of the things we talked about today to the D.A.

THE COURT: We'll see what we've got. Right now we have the modification of Exhibit H.

MR. BOSLER: We ask that you allow Mr. Vanisi to have his right hand free for purposes of this hearing.

THE COURT: Yes.

MR. BOSLER: Thank you, Your Honor.

THE COURT: Okay. So, we have the "Murder in the first degree may be mitigated by any of the following circumstances." We have, "One, the defendant has no significant history of prior criminal behavior."

"Two, the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance."



"Three, the youth of the defendant at the time of the crime."

"Four, any other mitigating circumstances," and the last paragraph from the statute.

MR. BOSLER: Yes, Your Honor.

THE COURT: Okay. "Mitigating circumstances are things which to not constitute a justification or excuse of the offense in question, but which in fairness and mercy may be considered as extenuating or reducing the degree of moral culpability."

MR. BOSLER: I believe that's the evidence instruction. I didn't get a copy of that from the Court.

THE COURT: It is.

MR. GAMMICK: Then did you --

THE COURT: Did the State by any chance get two copies of it?

MR. STANTON: No, Your Honor.

THE COURT: Mr. Anderson, would you go find Ms. Clements and find out why they don't have a copy?

MR. GAMMICK: That instruction is replacing what we talked about last night as the *Bishop* instruction?

THE COURT: No. Last night we talked about there's two evidence instructions. One is the *Bishop* instruction. And that's on page 1204 of the *Evans* case. And that is the *Bishop* instruction, but sandwiched between

the language that the State was using through *Bishop*, was additional language.

Then there was a second instruction in the *Evans* case on page 1203. It's cited in a footnote and approved in the case for an explanation of what mitigation is. That's the instruction that was not given in the original packet of instructions, but was given subsequently by the Court because the jury came out and did not understand what mitigation was. The Court defined mitigation.

Both of those instructions went up on appeal. The Court approved both of the instructions.

MR. GAMMICK: The one you were just reading is a 14-line instruction?

THE COURT: It is in *Evans*, page 1203, sub-footnote 31.

MR. GAMMICK: I'm asking about the physical instruction. How many lines?

MR. STANTON: How many lines?

THE COURT: The one I just read?  
Four lines.

MR. GAMMICK: That's four lines, okay.

THE COURT: Then the next instruction is the one we have been talking about, which is the *Evans* instruction from page 1204.

MR. STANTON: Your staff has prepared what appears to be the rest of that instruction?

THE COURT: Yes.

MR. STANTON: Is that going to supplant the State's proffered instruction?

THE COURT: For the one you offered and cited as *Bishop*?

MR. STANTON: Yes.

THE COURT: Yes.

MR. GAMMICK: We will wind up with two instructions that talk about mercy?

THE COURT: I'm concerned about that aspect of it because in the *Evans* case there were two instructions. The other part of that instruction that was approved in the *Evans* case, though, is the description of mitigation, which is not defined anywhere in the packet as submitted by the State.

Furthermore, there's subsequent cases to *Evans* which cite to those specific instructions that were utilized in *Evans*.

We have the *Lane* case, *Lane vs. Nevada*, a 1998 case. I have only the Pacific 2d statute. It specifically approves and cites to *Evans*.

MR. GAMMICK: That's not my question, Your Honor. When we substitute and replace these, we have -- we

SIERRA NEVADA REPORTERS (775) 329-6560

wind up with two instructions that talk about mercy.

THE COURT: So, is your suggestion that it would be appropriate to modify the *Evans* instruction that was given, even though the Court approved giving both of those instructions in that form?

MR. STANTON: Yes, Your Honor. Once again, I think in my argument last evening, I think the *Evans* instruction I believe needs to be taken into context. That is, the debate over the instruction that was given because of the juror's question presupposes that the jury is not going to understand -- the jury is not going to understand the definition of mitigation as it's given in other instructions.

THE COURT: Where is it defined?

MR. STANTON: According to yours, it's defined in that four-line paragraph, mitigation.

And also --

THE COURT: The one from the *Evans* case, page 1204? Is that the one you're thinking of?

MR. STANTON: It's the mitigating circumstances, four-line instruction.

THE COURT: That's the one that was given after the jury inquired.

MR. STANTON: Correct. Your question to me was, where is the definition of mitigating circumstances?

THE COURT: If we don't give that instruction, which was not given until the jury questioned the definition of mitigation --

MR. STANTON: In the next *Evans* instruction that is 14 lines in length --

THE COURT: Right.

MR. STANTON: -- beginning at line four, starting with the sentence "any aspect," that's the definition of mitigation.

MR. BOSLER: I disagree, Your Honor. I think the 14-line instruction doesn't define mitigation. Just shows how it can be used.

MR. STANTON: In addition, we have the actual instruction that lists the mitigation. It's not like it's in a vacuum. The one that lists the statutory mitigation that defense counsel believes *Evans* supports it and the residual exception.

In essence what the Court is inquiring, where is there a definition of the residual aspect of mitigation? Clearly no one can have a question or debate that the statutory mitigation is clearly defined. It's defined in the instruction that outlines the mitigation.

THE COURT: Well, I don't see anywhere where we tell the jury -- we use the words "mitigation" and "aggravation" all the time. We understand what those words

mean.

I don't know if our jury had been confused by those words. But it has happened in numerous cases. It specifically happened in the *Evans* case and went up on appeal.

I do not want to instruct duplicatively. I do not want to give two instructions that are the same. I don't want to continually tell the jury you have to consider mercy, mercy, mercy because that also gives the wrong impression.

I want to be completely accurate in how we instruct the jury.

I think that there is a potential for the jury not to understand what mitigation even means. And I know we have told them what the statutory ones are. I think perhaps we could join the two *Evans* instructions into one instruction. The State's concern would be alleviated. I would be instructing the jury in a form that has been approved by the Supreme Court.

MR. GAMMICK: If that results in the 14-line instruction, striking the language which starts at line six -- excuse me, starts at line five "including any desire you may have to extend mercy to the defendant," because that's the duplicative language. Strike that and you already talk about mercy and fairness in the shorter

instruction. I don't believe we would have any problem doing that.

THE COURT: So you're suggesting we could have it read, "Any aspect of the defendant's character or record, and any of the circumstances of the offense which a jury believes is a basis for imposing a sentence less than death may be considered a mitigating factor"?

MR. GAMMICK: Yes.

MR. BOSLER: Then the four-line instruction?

THE COURT: Right.

MR. GAMMICK: In conjunction with the four line one.

MR. BOSLER: No objection from the defense, Your Honor.

Just for order, we go from the four statutory mitigators, definition of mitigation, and then the longer Evans instruction?

THE COURT: Right. We are deleting the duplicative language which dealt with mercy.

MR. BOSLER: Thank you, Your Honor.

THE COURT: And my Administrative Assistant will be typing that.

Now, the next potential instruction is, "Your determination that an aggravating circumstance exists must be unanimous. You need not be unanimous, however, on you

finding of a mitigating circumstance. Your unanimous finding that an aggravating circumstance exists must be beyond a reasonable doubt, but such is not the case on your determination that a mitigating circumstance exists."

That's given to you today by me. Now -- yes?

MR. BOSLER: I think we have dealt with some of these issues. I think we have come to an agreement on the instruction that was a bone of contention last night. I object to this instruction because I think that it isn't specific enough to guide the jurors.

THE COURT: You object? It's not going to be given.

"The State has alleged aggravating circumstances are present in this case."

"The law compels the imposition."

"In reaching your verdict."

"In your deliberation you may discuss" -- I'm sorry, "may not discuss."

Your client did not testify. But he did assert his right of allocution. Do you want the constitutional right of a defendant not to testify? Do you want to modify it? Do you offer something different? Do you not want this at all? You two can talk.

MR. BOSLER: We don't need the Fifth Amendment instruction, Your Honor.



THE COURT: You specifically do not want that given?

MR. GREGORY: We do not.

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

THE COURT: "Although you are to consider only the evidence."

Then I have the one that you all have played with and I have two different versions.

MR. GAMMICK: The latest version on line eight should read "may establish."

THE COURT: Okay. You guys both like this, right?

MR. GAMMICK: What we did here, Your Honor, we rewrote it the way we discussed it last night. We changed some of the language offered by the defense.

Today I talked to Mr. Hadelstadt about that. Even though he and I did not entirely agree on the language, I'll defer to him. He liked the language by the defense better. We changed it back, where now we have inserted the language that the defense gave to the Court last night verbatim. That's why line eight should read "may establish the existence." That's the difference between the two is whether it's "present" or "may establish."

"May establish" with the District Judge signature block at the bottom, that's the latest version.

That incorporates what was given to the Court last night in the shorter instruction we were discussing then about mitigation. You will note we put the aggravators in the first paragraph, the mitigators in the second paragraph. Third and fourth paragraph stayed as they were. What is usually the last instruction, we took it and placed it as the fifth paragraph in this particular instruction.

THE COURT: Okay.

MR. GAMMICK: "When all 12 of you agree upon a verdict."

THE COURT: Mr. Bosler?

MR. BOSLER: Now that it includes the language we asked for last night, we have no objection to this instruction.

THE COURT: Okay.

MR. BOSLER: This is kind of the reason I thought that the other instruction you offered is maybe not useful, because I think this explains a little bit more about the procedure.

THE COURT: All right.

We will go one more time preliminarily before we number. We are still waiting on the one to be retyped by Mrs. Clements.

"Ladies and gentlemen of the jury."

"If in these instructions."

SIERRA NEVADA REPORTERS (775) 329-6560

"There are two kinds of evidence."

"The evidence presented."

"The State has the burden."

"You have found the defendant."

"A prison term of 50 years."

"A person who uses a firearm."

"The following are the aggravating factors."

"The term mutilate."

"A murder in the first degree is mitigated by."

"Mitigating circumstances are things which do not constitute."

You have a new retyped version of the mitigating circumstances. Please read that over and make sure it's what we discussed.

MR. STANTON: Your Honor, was there an instruction before this?

THE COURT: Yes, it's the short four-line, "Mitigating circumstances are things which do not constitute a justification or excuse of the offense in question, but which in fairness and mercy may be considered as extenuating or reducing the degree of moral culpability."

MR. STANTON: Thank you.

THE COURT: "The State has alleged aggravating circumstances."

"The law never compels the imposition."

SIERRA NEVADA REPORTERS (775) 329-6560

"In reaching your verdict."

"In your deliberation."

"Although you are to consider only the evidence."

"And when you retire."

Does the State have any additional instructions to offer?

MR. STANTON: No, Your Honor.

THE COURT: Defense have any additional instructions to offer?

MR. BOSLER: No additional, other than the ones that have already been offered and rejected. Thank you, Your Honor.

THE COURT: Any objections to the packet as I propose to give it? Mr. Stanton or Mr. Gammick?

MR. STANTON: No, Your Honor.

THE COURT: Any additional objections you have not already noted for the defendant?

MR. BOSLER: No, Your Honor.

THE COURT: We'll go ahead and number them. Before we worry about numbering, why don't we go ahead and talk about the verdict forms.

We have a proposed verdict, set of verdicts that the State has proposed. Then I have another proposed verdict, I think from the defense, which is three pages

SIERRA NEVADA REPORTERS (775) 329-6560

long. Is that correct, Mr. Bosler?

MR. BOSLER: That is, but I apologize to the Court. I actually tinkered with it a little bit since I offered it to the Court.

THE COURT: You want to offer a different one?

MR. BOSLER: Can I read the amendment I offer the Court? Mine is handwritten.

THE COURT: Yes. I hate to mark up the exhibit because we are going to mark it. Why don't you tell me what the change is and then we'll mark your handwritten one.

MR. BOSLER: The change is on the last page. The first paragraph says, "The jury further finds that any mitigating circumstances do not outweigh the aggravating circumstances and therefore --" I would insert at that portion, where it says "and," it says "also finds that death is the appropriate penalty to be imposed on the defendant" and then put "and therefore said penalty to be imposed is death."

The reason I do that, Your Honor, I think that those two lines kind of imply it's just a weighing. That if you find the mitigators don't outweigh aggravators, death is the next step.

I think the law is different. Even when they reach that step, they have the next step: Is death the appropriate penalty? No matter which aggravators outweigh

mitigators. In that sense, I think it's misleading to the jury given the instructions that had been given. I move to add that language.

I believe the prosecutor has an objection to the whole of my offered instruction.

MR. GAMMICK: I will confirm Mr. Bosler's belief. Your Honor, if the Court will pull 175.554, paragraph four.

THE COURT: Yes?

MR. GAMMICK: Then in paragraph four, if you go to the second sentence, "The finding or verdict must designate the aggravating circumstance or circumstances which were found beyond a reasonable doubt." Both our proposed instruction and the defense proposed instruction do that, by the jury stating yes or no as to whether they found each of the individual aggravators beyond a reasonable doubt.

Then it goes on to state "and must state that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found."

What the law requires and the statute requires and what has been upheld in this state time and again is simply a statement from the jury saying they find no mitigating circumstance or circumstances that outweigh the aggravating circumstance or circumstances.

The problem we get into with the defense proffer is that it starts laying out mitigating circumstances. Now we are right back into the same circle we got into last night.

If a mitigating circumstance is not included here, then on appeal time, it's going to be brought up that they never found this mitigating circumstance or this mitigating circumstance, or this mitigating circumstance; or if the jury does say on these particular mitigating circumstances, then it wasn't sufficiently covered and it was over-covered.

We get into, with aggravators, they are specifically defined. They have to allege them. We have to prove them beyond a reasonable doubt. The jury is told so we know exactly what the target is. With mitigating circumstances, we tell the jury, "You can have 5,000 mitigating circumstances. Or you can have one." They have that complete spectrum.

For the Court to start outlining mitigators, and for the Court to start making a finding on that when it's not required by the law, has not been required by the U.S. Supreme Court, has not been required by the Nevada Supreme Court is getting out there where we get into argument that we can't win no matter which way it goes.

If they designate they found others, then the

argument will be made, what were they? If they designate they didn't find any others, the argument is going to be made the jury didn't properly deliberate the case.

So to step forward when the law doesn't require it, nor is it supported by any law to have specific designation of mitigators is taking a step out into the universe. We don't really need to be there. Yes, we do object to proposing this at all. The law is very specific as to what is supposed to be on the verdict form.

THE COURT: Okay. Now, without going into the specific argument that the defense is making with regard to having findings as to some mitigators' existence or not, what about his request to modify the last paragraph? Which is the same in both instructions.

MR. GAMMICK: Again I have problems because the statute says specifically "and must state." Not "may," and "must state that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found." That is a finding the jury makes and then they have to state that.

This is not something new we are dreaming up here. These instructions have been through all the judges in the Second Judicial District Court, through the Supreme Court. That's where we've evolved.

Now to start doing things differently and start



doing new things just to be doing them in contradiction to the statute is going to lead us down a road I don't particularly want to go down, and I urge the Court not to go down.

THE COURT: The proffered instruction doesn't match the statute.

MR. GAMMICK: I'm sorry, I didn't hear you.

THE COURT: I'm sorry, I drop my voice sometimes.

MR. GAMMICK. I couldn't hear you.

THE COURT: My dad can't hear me either.

The proffered instruction doesn't match the statute exactly.

I don't know if it makes a difference. The statute is that it must state that there are no aggravating, no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances. I don't know if that makes a difference, but the proffered instruction is not identical.

MR. GAMMICK: We'll change that line. We can have the word "sufficient." I didn't notice it was not verbatim.

THE COURT: I hadn't before either, but you had me read it. As you were going over the instruction, I read it and I saw that.

MR. BOSLER: That kind of gets to the problem I pointed out, Your Honor. It implies there's just a weighing process. There isn't the additional step that even though the jury finds the mitigators don't outweigh the aggravators, they still have the option of life.

In that sense, even the way it's offered in the statute and by the Court adding the word "sufficient," still doesn't comport with what the law is, which is even if they reach that point, they still can vote for death -- I mean vote for life. That's why I offered the amendment.

MR. GAMMICK: Get into the language of 200.030, sub (4)(a), which states "by death, only if one or more aggravating circumstances are found and any mitigating circumstance or circumstances which are found do not outweigh the aggravating circumstance or circumstances."

So again, basically the same basic language in 175.554 and 200.030, although they don't use the word "sufficient" under 200.030.

THE COURT: Right. I don't believe that the verdict form is what controls the jury in their deliberations. I think the jury instructions control the jury in their deliberations.

The instructions are very clear that the jury does not, it is not just a weighing process; that the jury has the option to not impose death for any reason, or no

reason at all. And the instructions clearly instruct the jury as to that.

The mere parroting of the language from the statute does not create a new instruction to the jury in the verdict form. Nor does it make a new implication to the jury in the verdict form. They are merely provided for the convenience of the jury anyway, and I tell them such.

So I don't think the objection to the language of the statute is well-founded and I won't modify it.

However, Mr. Gammick's argument and presentation of NRS 175.554 sub (4) is clear it must be instructed as to the language of the statute. I don't know if there's really a difference. There may be a semantic difference only. That's what the statute says. The statute is constitutional, has been found to be constitutional. This Court will instruct in that regard.

So the language needs to be modified to read identically to the statute.

Now, with regard to your request for additional findings by the jury? I rejected that argument in prior cases. I do not believe it's appropriate to limit in any way the findings of the jury with regard to mitigation, although I think you are offering it because you think it would be helpful to the defense. In many instances in the research I have done, in case law I've read, it is not the

preferred method. Nor has the Nevada Supreme Court ever adopted it.

For those reasons and the potential for the Supreme Court not choosing to adopt such a format, I will deny your request to adopt that format.

MR. BOSLER: To make the record, Your Honor, I believe the statute that has been cited by the prosecutor sets forth the minimum limits on a verdict form but does not set the maximum limits on the verdict form.

THE COURT: I agree with you. I just don't think adding more to the verdict form is going to make much difference. And I am instructing clearly in the jury instruction.

MR. BOSLER: Just to make the record clean, I think by only emphasizing the aggravating circumstances in the verdict form, you essentially deprive Mr. Vanisi of the weight of the mitigating circumstances and do not give a place where the jurors can actually recognize the existence of those mitigating circumstances. In that sense, I think it deprives him of a fair sentencing. I just note that for the record.

MR. GAMMICK: So, modify the verdict form where it will now read, "The jury further finds that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found, and

therefore set the penalty to be imposed upon the defendant at death."

THE COURT: The language is fine to the word "found." I'm wondering about the "and therefore" or if we should start a new sentence. I just am thinking.

MR. GAMMICK: However the Court prefers. I don't have any preference. You want to make that a period? "Therefore, the jury sets the penalty to be imposed upon the defendant at death."

THE COURT: Defense have a preference? I don't care.

MR. BOSLER: In that regard we don't. We made our objections.

THE COURT: We will leave the stock format as provided and utilized on the Second Judicial District Court.

We will mark the defendant's proffered verdict form next in order.

MR. BOSLER: We ask the Court to note that it should reflect some oral amendments.

THE COURT: Yes. Actually, do you want to give us your oral amendment, the one you read from?

MR. BOSLER: My handwriting is so illegible, they should just look at the record.

THE COURT: Okay.

THE CLERK: Defendant's proffered Verdict

Form P.

THE COURT: And it is denied.

MR. BOSLER: Thank you, Your Honor.

THE COURT: Do you have any problem with the other verdict forms that have been provided?

MR. BOSLER: Can the Court give me a moment?

THE COURT: Yes.

MR. BOSLER: No, Your Honor. There's three additional verdict forms?

THE COURT: Yes. Okay. We will number the jury instructions now, the final set. We have, "Ladies and gentlemen of the jury," is one.

"If in these instructions" is two.

"There are two kinds of evidence," three.

"The evidence presented," four.

"The State has the burden of proving," five.

"You have found the defendant," six.

"A prison term," seven.

"A person who uses," eight.

"The following are the aggravating factors," nine.

"The term 'mutilate,'" ten.

"Murder in the first degree," 11.

"Mitigating circumstances," 12.

"The mitigating circumstances which I have

SIERRA NEVADA REPORTERS (775) 329-6560

read," 13.

"The State has alleged," 14.

"The law never compels," 15.

"In reaching your verdict," 16.

"Your deliberation," 17.

"Although you are to consider," 18.

"When you retire" will be 19. And signed by myself.

Counsel have the entire packet?

MR. BOSLER: No, Your Honor.

THE COURT: No, you don't have them all?

MR. BOSLER: I have them all.

THE COURT: You have the entire packet?

MR. GAMMICK: Yes, Your Honor.

THE COURT: Great.

MR. GAMMICK: I should be able to have the corrected verdict form to the Court within the next few minutes.

THE COURT: Great. Anything else that counsel has before we proceed until tomorrow?

MR. GREGORY: No, Your Honor.

THE COURT: One thing that came up in a previous trial and I wanted to make sure you all were in agreement. And that is the clerk will be giving the jury all the exhibits that were admitted in the prior case.

Along with that are the original form of jury instructions provided to the foreperson, as well as the new verdict forms.

MR. STANTON: The original verdict forms?

THE COURT: I'm sorry, not verdict. The original jury instructions from the guilt phase.

MR. STANTON: What is the purpose of the original instructions?

THE COURT: Well, in the last case they asked for them. I don't know. They have been given them once.

MR. STANTON: I would disagree with that, Your Honor.

MR. STANTON: So would we, Your Honor.

THE COURT: By stipulation we will have only this set of instructions. In this packet there is no instruction on the relative weight to give testimony of an individual, or credibility of witness testimony. In the packet it's provided.

MR. GAMMICK: Could we kick that one around a little bit?

THE COURT: I am not saying you need it in this particular case, but there are general statements in your original packet of jury instructions that we deal with in terms of "it's the right of an attorney to make objections," that general statement. We have included a few you've asked



me to give, which is number one and number two.

Other than that, we do not make any comment in these instructions with regard to anything except for direct and circumstantial evidence. We don't talk about testimony. We didn't talk about expert testimony. The defense had expert witnesses.

MR. GREGORY: That's correct, Your Honor. May we again have the opportunity to think about this overnight?

THE COURT: I would like to give you maybe a half hour to think about it. 9:00 o'clock comes early.

MR. GREGORY: That's fine, Judge.

MR. STANTON: Was there a concern -- surely the Court is talking about the Babbs and Sirex case.

THE COURT: Yes.

MR. STANTON: The jury asked for the previous instructions?

THE COURT: They got them. I don't remember, and counsel stipulated to it. I don't want to do it without a stipulation or agreement of everyone. I can't tell you at this point how they got them.

But the instructions, the packet is not a complete statement of all the law that they can consider in this case. Now, some of the original instructions obviously have no application to the determination of penalty. That would be those that describe the definitions of offenses.

But you know, it's up to you how you want to do this. I think if you stipulate and it's a matter of tactics, you will make your determination and you will live with those determinations. I want to make sure you are aware and are sure of what you are asking me to do.

MR. GREGORY: May we have that half hour?

THE COURT: We need this verdict form anyway. Why don't you come back here in 20 minutes, ten minutes of 5:00.

(The recess was taken.)

RENO, NEVADA, TUESDAY, OCTOBER 5, 1999, 4:53 P.M.

-oOo-

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

THE COURT: Thank you. Please be seated.

Mr. Stanton?

MR. STANTON: Your Honor, save and except for a misspelling which they are correcting and bringing up, I show you the corrected verdict form, I believe.

THE COURT: Okay. Oh, did you change "foreperson"?

MR. STANTON: No, sure didn't. I don't think so.

THE COURT: I didn't see it the first time around.

MR. STANTON: Nor did we.

THE COURT: So we will need all of them changed to "foreperson."

MR. GAMMICK: Okay.

THE COURT: We don't have a foreman, so it shouldn't matter.

MR. GAMMICK: We've already called downstairs. It should be on its way upstairs right now. With the one correction, we can do it again, if the Court wishes.

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THE COURT: We told them they have a foreperson. Now we have it saying "foreman."

MR. STANTON: I'll take care of it.

THE COURT: You can use the phone in the courtroom.

MR. STANTON: It's easier for me to do it this way.

THE COURT: Okay.

Now, you all had an opportunity to think about whether or not you had any instructions or any objection to the Court providing the jury with the original instruction packet?

MR. GAMMICK: You're back. Go for it.

MR. STANTON: Your Honor, I've reviewed the original jury instructions. I have a State's copy here. There are four, potentially five jury instructions that I think might be either relevant or of assistance to the jury in the penalty phase. I can cite to them by number or however the Court wants to proceed.

THE COURT: What is your idea, that you want me to just give a few of the instructions or give the whole packet and let them find out the ones they want?

MR. STANTON: I don't think that the vast majority of the instructions are relevant. Therefore, I would not suggest that the entire packet be given to the

jury.

THE COURT: Mr. Bosler?

MR. BOSLER: Your Honor, I don't think any of them are really relevant. They already have been instructed as to the issues in the trial. They know what an expert witness is. We ask the Court just to give the instructions we've already settled for the penalty phase.

THE COURT: What is your -- did you all talk about the five that the State wants to use?

MR. STANTON: I'm not saying the State wants to use them. If that's the impression, I need to correct that.

THE COURT: Okay.

MR. STANTON: Potentially there are five that could be relevant. I don't think they are necessary. To some extent I would agree with Mr. Bosler as to the result of his analysis, but not how he got there. Not that they remember it from the previous instruction, but merely that I'm not sure that any of that is relevant at this juncture.

There is one that I think is probably the most relevant and that is the assessment of witnesses. That would be jury instruction number 12 that begins "to the jury alone."

THE COURT: I don't understand -- I'm a little confused about what the harm is to allow the foreperson to have a complete set of the instructions. They get all the

evidence, all the evidence in the case, and they have had the packet of instructions. I don't understand what the concern is about that.

MR. STANTON: Well, for example, there's instructions about the elements of the crime that I don't know if it's relevant at this juncture.

THE COURT: It is if we tell them that it is relevant, they can't consider the crime.

MR. GREGORY: It's adding to the confusion. We are just adding paper. Needlessly confusing this jury.

MR. BOSLER: Juries already have a difficult time going through the instructions.

MR. GREGORY: There are instructions we've agreed on and given to this jury. Nothing else in the penalty phase.

MR. GAMMICK: My concern is, Your Honor, we also have an instruction that says you are not to consider the penalty. The set of instructions is replete with instructions like that.

THE COURT: Okay. You specifically had an opportunity to review the packet of instructions and the instructions that were given in the first trial. The State has no further instructions to offer for the penalty phase at this time; is that correct?

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

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THE COURT: The defense has had the opportunity to review the original packet of instructions as well as the proposed instructions. The defense has no instructions to offer; is that correct?

MR. GREGORY: That's correct.

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

THE COURT: Your assessment with regard to this instruction, with regard to a potential instruction as to how to utilize expert testimony is a decision that you have made, you've talked about it, and you specifically asked me not to include it in the packet?

MR. GREGORY: That's correct.

THE COURT: Then we won't change the packet. We just have to change the verdict forms and when we get them, I will use the originals. Anything else?

MR. BOSLER: No.

MR. GAMMICK: Nothing.

THE COURT: See you tomorrow morning at 9:00 a.m. Court is in recess.

(The trial adjourned at 5:00 o'clock p.m.)

STATE OF NEVADA, )  
 )  
COUNTY OF WASHOE. )

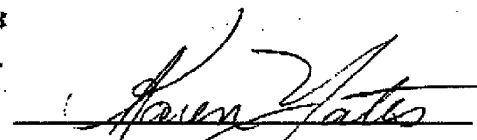
WE, DENISE PHIPPS and KAREN YATES, Certified  
Shorthand Reporters of the Second Judicial District Court of  
the State of Nevada, in and for the County of Washoe, do  
hereby certify:

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

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

DATED: At Reno, Nevada, this 5th day of  
October, 1999.

  
DENISE PHIPPS, CCR No. 234

  
KAREN YATES, CCR No. 195

By \_\_\_\_\_  
Witness, State of Nevada.  
District Court for the County of  
Washoe, State of Nevada.  
DATE: \_\_\_\_\_  
Office of the Clerk of the Court  
which was the one to report in  
the attached is the original  
The record to which the certificate  
is attached is certified



IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,  
Petitioner,  
vs.  
THE SECOND JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF WASHOE, AND THE  
HONORABLE CONNIE J. STEINHEIMER,  
DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 34771

District Court Case No. CR980516

**NOTICE IN LIEU OF REMITTITUR**

TO THE ABOVE-NAMED PARTIES:

The decision and order of the court in this matter having been entered on September 10, 1999, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the order and decision entered herein has, pursuant to NRAP 40(a), become effective.

DATE: October 6, 1999

Janette M. Bloom, Supreme Court Clerk

By: J. Richards

Chief Deputy Clerk

cc: Hon. Connie J. Steinheimer, District Judge  
Attorney General  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe County Clerk

jw

99-09585  
AA02413

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Code No. 4185

FILED

OCT 07 1999

AMY HARVEY  
By: M. Stone  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,  
Plaintiff,

vs.

SIAOSI VANISI,  
Defendant.

Case No. CR98-0516  
Dept. No. 4

TRIAL - VOLUME 12  
October 6, 1999  
Reno, Nevada

APPEARANCES:

For the Plaintiff:

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

For the Defendant:

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

The Defendant:

SIAOSI VANISI

ORIGINAL

Reported by:

DENISE PHIPPS, CCR No. 234

SIERRA NEVADA REPORTERS (775) 329-6560

1 RENO, NEVADA, WEDNESDAY, OCTOBER 6, 1999, 9:10 A.M.

2 -oOo-

3  
4 (Whereupon, the following proceedings were held  
5 in open court, outside the presence of the  
6 jury.)

7 THE COURT: Counsel.

8 MR. GREGORY: Yes, Your Honor, just a couple of  
9 requested admonishments. We're going to ask that the Court  
10 admonish the prosecutor from charging counsel table or  
11 screaming at our client or any other demonstration of that  
12 sort.

13 We're also going to ask that the Court admonish  
14 the audience. In fact, we're going to request that the  
15 Court seal the court at the beginning of the closing  
16 arguments. And the reason for that, Your Honor, is when  
17 Ms. Sullivan was giving her heart-wrenching testimony, there  
18 were several people who got up, couldn't control themselves,  
19 walking in front of the audience, distracting the jury. We  
20 would ask that the audience be admonished to remain seated,  
21 to keep their emotional demonstrations to a minimum, and  
22 that the Court not allow people to come and go during the  
23 closing arguments.

24 Thank you, Your Honor.

25 MR. GAMMICK: I believe the first request is

1 premature. If anything is done that is not appropriate by  
2 prosecution in the closing, an objection can be made and the  
3 Court can rule on it at that time.

4 Secondly, we have specifically asked people,  
5 knowing how the Court feels about disturbing the courtroom,  
6 that if they feel their emotions are getting away from them,  
7 to leave the courtroom so they do not put a display on here.  
8 It's getting rather old, the chant from the defense, about  
9 how Mrs. Sullivan had her emotional -- well, let's talk  
10 about defense witnesses and how they were crying and how  
11 people were crying in the audience when defense was putting  
12 on their case. That's natural. This is a very highly  
13 emotional case. We have asked people to leave here if they  
14 feel they cannot control their emotions. We'd ask the Court  
15 to continue with that so we don't have a disruption.

16 Also, I was watching the jury during  
17 Ms. Sullivan's testimony. I don't believe the jury, any of  
18 the jurors were paying any attention to the audience.

19 MR. GREGORY: Your Honor, I do have a response.  
20 I'm a little concerned. Is the prosecutor planning to  
21 charge defense table and scream at my client? Is that why  
22 he's inviting me to make the objection in front of the jury?

23 THE COURT: Mr. Gammick -- actually, I don't  
24 even know which one is going to make which closing argument,  
25 or both, so whoever the prosecutor is I'm sure will not

1 commit prosecutorial misconduct. If they behave  
2 inappropriately, I will sanction them and take the  
3 appropriate steps. Counsel should object if there's a  
4 problem.

5 Second, I'm not going to hold the audience  
6 captive. I'm not going to do that. I think that that is  
7 not the policy in this department. However, if during  
8 closing arguments someone leaves, which has always been my  
9 policy, is that they can stay outside until we're through to  
10 the next break. I do not like people coming in and out and  
11 in and out. And that has not been going on in this case,  
12 and it won't go on this morning. So if someone has to  
13 leave, they leave and they'll stay out until the next break.  
14 We won't have a revolving door.

15 I have not seen the jury be disturbed by any of  
16 the emotion in the courtroom. I have believed on both sides  
17 it's been pretty well contained. I have at times heard  
18 people crying, but it's been minimal. And I have not seen  
19 it to be disruptive at all. If it does become disruptive, I  
20 will control it. And they will be excused. My bailiffs  
21 both understand. They're experienced, and they know how to  
22 remove people in a very quiet manner.

23 MR. GREGORY: And that's all we want; we just  
24 don't want it to get disruptive. Thank you, Your Honor.

25 THE COURT: Now, counsel, there is a

1 typographical error on Instruction No. 7, line four. I'm  
2 sorry, line three. The court reporter found it for me.  
3 Line three. "Does not mean that the defendant would be  
4 parole after 20 years." It should be "paroled." I've  
5 corrected that on mine. And I will read it as paroled.

6 Anything further?

7 MR. GAMMICK: Not from the State.

8 MR. GREGORY: No, Your Honor.

9 MR. BOSLER: No, Your Honor.

10 THE COURT: Bring the jury in, please.

11  
12 (Whereupon, the following proceedings were held  
13 in open court, in the presence of the jury.)

14 THE COURT: Counsel stipulate to the presence  
15 of the jury?

16 MR. STANTON: Yes, Your Honor.

17 MR. GREGORY: The defendants would so  
18 stipulate, Your Honor.

19 THE COURT: Thank you. Ladies and gentlemen of  
20 the jury, we have come to the point in these proceedings  
21 when it is my responsibility to give you the law as it  
22 applies to the penalty phase. Again, I wish I could just  
23 tell you the law in conversational tones and terms, but I  
24 cannot do that.

25 As you remember from the last phase, I will be

1 reading you a set of jury instructions. You will have a  
2 copy of those instructions in the jury room to review. And  
3 if you become lost on any particular instruction, do not  
4 become concerned. Remember, you do not have to take notes  
5 during the course of my reading of the instructions, because  
6 you will have them with you in the jury room.

7 Ladies and gentlemen of the jury, it is my duty  
8 as judge to instruct you in the law that applies to this  
9 penalty hearing. It is your duty as jurors to follow these  
10 instructions and to apply the rules of law to the facts as  
11 you find them from the evidence.

12 You must not be concerned with the wisdom of  
13 any rule of law stated in these instructions, regardless of  
14 any opinion you may have as to what the law is or ought to  
15 be.

16 If in these instructions, any rule, direction  
17 or idea is repeated or stated in different ways, no emphasis  
18 thereon is intended by me and none may be inferred by you.  
19 For that reason you are not to single out any certain  
20 sentence or any individual point or instruction and ignore  
21 the others, but you are to consider all the instructions as  
22 a whole and regard each in the light of all the others.

23 The order in which the instructions are given  
24 has no significance as to their relative importance.

25 There are two kinds of evidence: direct and

1 circumstantial. Direct evidence is direct proof of a fact,  
2 such as testimony of an eyewitness. Circumstantial evidence  
3 is indirect evidence, that is, proof of a chain of facts  
4 from which you would find that another fact exists, even  
5 though it has been proved directly. You are entitled to  
6 consider both kinds of evidence. The law permits you to  
7 give equal weight to both, but it is for you to decide how  
8 much weight to give any evidence.

9 It is for you to decide whether a fact has been  
10 proved by circumstantial evidence. In making that decision,  
11 you must consider all the evidence in the light of reason,  
12 common sense and experience.

13 You should not be concerned with the type of  
14 evidence but rather the relative convincing force of the  
15 evidence.

16 The evidence presented both during the trial  
17 and during this hearing may be considered by the jury in  
18 deciding the proper and appropriate sentence in this case.

19 This evidence consists of the sworn testimony  
20 of the witnesses, both on direct and cross-examination,  
21 regardless of who called the witness; the exhibits which  
22 have been introduced into evidence and any facts to which  
23 the lawyers have agreed or stipulated.

24 The State has the burden of proving beyond a  
25 reasonable doubt the aggravating circumstances in this case.



1           A reasonable doubt is one based on reason. It  
2 is not mere possible doubt, but is such doubt as would  
3 govern or control a person in the more weighty affairs of  
4 life. If the minds of the jurors after the entire  
5 comparison and consideration of all the evidence are in such  
6 a condition that they can say they feel an abiding  
7 conviction of the truth of the charge, there is not a  
8 reasonable doubt. Doubt, to be reasonable, must be actual,  
9 not mere possibility or speculation.

10           You have found the defendant in this case to be  
11 guilty of murder in the first degree; therefore, under the  
12 law of this state, you must determine the sentence to be  
13 imposed upon the defendant.

14           First Degree Murder is punishable: (1) by  
15 death, only if an aggravating circumstance is found and any  
16 mitigating circumstance or circumstances which are found to  
17 not outweigh the aggravating circumstance, or

18           (2) by imprisonment in the Nevada State Prison  
19 for life without the possibility of parole, or

20           (3) by imprisonment in the Nevada State Prison  
21 for life with the possibility of parole, with eligibility  
22 for parole beginning when a minimum of 20 years has been  
23 served, or

24           (4) for a definite term of 50 years, with  
25 eligibility for parole beginning when a minimum of 20 years

1 has been served.

2 A determination of whether an aggravating  
3 circumstance exists is not necessary in the event you  
4 determine to impose a sentence less than death.

5 A prison term of 50 years with eligibility for  
6 parole beginning when a minimum of 20 years has been served  
7 does not mean that the defendant would be paroled after 20  
8 years but only that he or she would be eligible for parole  
9 after that period of time.

10 Life imprisonment with the possibility of  
11 parole is a sentence of life imprisonment which provides  
12 that the defendant would be eligible for parole after a  
13 period of 20 years. This does not mean that he or she would  
14 be paroled after 20 years but only that he or she would be  
15 eligible for parole after that period of time.

16 Life imprisonment without the possibility of  
17 parole means exactly what it says, that the defendant shall  
18 not be eligible for parole.

19 If you sentence the defendant to death, you  
20 must assume that the sentence will be carried out.

21 Any person who uses a firearm in the commission  
22 of a crime, shall be punished by imprisonment in the Nevada  
23 State Prison for a term equal to and in addition to the term  
24 of imprisonment prescribed for the underlying crime, and  
25 said sentence shall run consecutively with the sentence

1 prescribed for the underlying crime.

2 Because you have found the defendant committed  
3 the offense with the use of a firearm, if you sentence him  
4 to life in prison with the possibility of parole, his  
5 earliest parole eligibility would be 40 years. Likewise, if  
6 you sentence him to a term of 50 years, his earliest parole  
7 eligibility would be 40 years.

8 The following are the aggravating factors as  
9 alleged in this case:

10 1. The murder was committed in the commission  
11 of or attempt to commit the crime of Robbery With the Use of  
12 a Deadly Weapon;

13 2. The murder was committed upon a peace  
14 officer, Sergeant George Sullivan, while engaged in the  
15 performance of his official duty and that the defendant knew  
16 or reasonably should have known that the victim was a peace  
17 officer;

18 3. The murder involved mutilation of the  
19 victim;

20 4. The murder was committed by the defendant  
21 upon a person because of the actual or perceived race,  
22 color, religion or national origin of that person.

23 The term "mutilate" means to cut off or  
24 permanently destroy a limb or essential part of the body, or  
25 to cut off or alter radically so as to make imperfect, or

1 other serious and depraved physical abuse beyond the act of  
2 killing itself.

3 A murder in the first degree may be mitigated  
4 by any of the following circumstances:

5 1. The defendant has no significant history of  
6 prior criminal behavior.

7 2. The murder was committed while the  
8 defendant was under the influence of extreme mental or  
9 emotional disturbance.

10 3. The youth of the defendant at the time of  
11 the crime.

12 4. Any other mitigating circumstance.

13 This list of mitigating circumstances is not  
14 meant to be exclusive. You may consider any other  
15 mitigating circumstance or circumstances you believe is or  
16 are appropriate as individual mitigating circumstances.

17 Mitigating circumstances are things which do  
18 not constitute a justification or excuse of the offense in  
19 question, but which in fairness and mercy may be considered  
20 as extenuating or reducing the degree of moral culpability.

21 The mitigating circumstances which I have read  
22 for your consideration are given only as examples of some of  
23 the factors you may take into account as reasons for  
24 deciding not to impose a sentence of death on the defendant.  
25 Any aspect of the defendant's character or record and any of

1 the circumstances of the offense, which a jury believes is a  
2 basis for imposing sentence less than death may be  
3 considered a mitigating factor. Any one of them may be  
4 sufficient, standing alone, to support a decision that death  
5 is not the appropriate punishment in this case.

6 In balancing aggravating and mitigating  
7 circumstances, it is not the mere number of aggravating  
8 circumstances or mitigating circumstances that controls.  
9 You must consider each separately and carefully to determine  
10 what weight should be given.

11 The State has alleged aggravating circumstances  
12 are present in this case. The defendant has alleged certain  
13 mitigating circumstances are present in this case. It shall  
14 be your duty to determine:

15 (a) whether an aggravating circumstance has  
16 been proven beyond a reasonable doubt;

17 (b) whether a mitigating circumstance or  
18 circumstances are found to exist; and,

19 (c) based upon these findings, whether the  
20 defendant should be sentenced to death, or one of the  
21 alternatives less than death.

22 The jury may impose a sentence of death only if  
23 you find an aggravating circumstance and further find there  
24 are no mitigating circumstances sufficient to outweigh the  
25 aggravating circumstance or circumstances found.

1           The law never compels the imposition of the  
2 death penalty. Even if you find that the aggravating  
3 circumstances have been proven beyond a reasonable doubt,  
4 and even if you also do not find that any mitigating  
5 circumstances exist, you are not required to return a  
6 verdict of the sentence of death as punishment, but may  
7 instead sentence the defendant to one of the alternatives  
8 less than death.

9           In reaching your verdict, you may consider only  
10 the testimony of witnesses and the exhibits received into  
11 evidence. Certain things are not evidence and you may not  
12 consider them in deciding what the proper and appropriate  
13 sentence should be in this case.

14           Arguments and statements by lawyers are not  
15 evidence. The lawyers are not witnesses. What they have  
16 said in their opening statements, closing arguments and at  
17 other times is intended to help you interpret the evidence,  
18 but is not evidence. If the facts as you remember them  
19 differ from what the lawyers have stated, then your memory  
20 controls.

21           Questions and objections by lawyers are not  
22 evidence. Attorneys have a duty to object when they believe  
23 a question is improper under the rules of evidence. You  
24 should not be influenced by the objection or the court's  
25 ruling on it.

1           Testimony excluded or stricken by the court or  
2 testimony which you have been instructed to disregard is not  
3 evidence and must not be considered.

4           Anything you may have seen or heard when the  
5 court was not in session is not evidence. You are to decide  
6 the proper punishment solely on the evidence received at the  
7 trial and at this hearing.

8           In your deliberation you may not discuss or  
9 consider the subject of guilt or innocence of the defendant,  
10 as that issue has already been decided. Your duty is  
11 confined to a determination of the punishment to be imposed.

12           Although you are to consider only the evidence  
13 in the case in reaching a verdict, you must bring to the  
14 consideration of the evidence your everyday common sense and  
15 judgment as reasonable men and women. Thus, you are not  
16 limited solely to what you see and hear as the witnesses  
17 testify. You may draw reasonable inferences which you feel  
18 are justified by the evidence, keeping in mind that such  
19 inferences should not be based on speculation or guess.

20           A verdict may never be influenced by sympathy,  
21 passion, prejudice or public opinion. Your decision should  
22 be the product of sincere judgment and sound discretion in  
23 accordance with these rules of law.

24           When you retire to consider your verdict, you  
25 must first determine whether the State has proven beyond a

1 reasonable doubt that an aggravating circumstance or  
2 circumstances exist in this case. All of you must agree as  
3 to each aggravating circumstance. Then you must determine  
4 whether a mitigating circumstance or circumstances exist in  
5 this case. A single juror may establish the existence of a  
6 mitigating circumstance. A mitigating circumstance can be  
7 established if any juror finds that some evidence has been  
8 provided as to its existence.

9 Based upon your findings in the verdict you  
10 must then determine whether the defendant should be  
11 sentenced to death, life without the possibility of parole,  
12 life with the possibility of parole or 50 years in prison.

13 During your deliberations, you will have all  
14 the exhibits which were admitted into evidence during the  
15 trial and during this hearing, these written instructions  
16 and forms of verdict which have been prepared for your  
17 convenience.

18 When all 12 of you have agreed upon a verdict,  
19 the foreperson should sign and date the same and request the  
20 bailiff to return you to court.

21 Signed District Judge, Connie J. Steinheimer.

22 Any objection to the reading of the  
23 instructions?

24 MR. STANTON: No, Your Honor.

25 MR. BOSLER: No, Your Honor.



1 THE COURT: Ladies and gentlemen, as with the  
2 first case, the State has the burden of proof and they make  
3 their opening statement first. You may proceed.

4 MR. STANTON: Thank you, Your Honor.

5 Ladies and gentlemen of the jury, in the  
6 penalty phase, as the judge has just instructed you, the  
7 focus and purpose of your listening to the evidence and the  
8 deliberation that you're about to undertake is a completely  
9 different focus than in the guilt phase.

10 The sole function at this juncture, the  
11 evidence that you've heard, the entirety of the evidence  
12 that was admitted in the guilt phase is now available for  
13 your consideration to determine what is the proper  
14 punishment in this case.

15 The first analysis that you must do as a jury  
16 is to assess whether the State has met its burden of proof  
17 in the penalty phase. The judge has read to you the  
18 instruction of law that the State, the District Attorney,  
19 Richard Gammick and myself, notice specific aggravating  
20 factors.

21 There are four in this case. They're listed  
22 before you in this exhibit. The first one, that the murder  
23 was committed during the commission of a robbery. It's  
24 self-evident and has already been found by you beyond a  
25 reasonable doubt pursuant to your guilty verdict in Count II

1 of the Information in the guilt phase.

2 Number two, murder was committed upon a peace  
3 officer while on duty. And the defendant knew or reasonably  
4 should have known that indeed he was a police officer in his  
5 official capacity.

6 While not an issue as far as a finding in the  
7 guilt phase, I would submit to you that that evidence has  
8 been proven beyond a reasonable doubt. It's been proven  
9 beyond any doubt.

10 The evidence -- two fundamental areas: Number  
11 one, is Sergeant Sullivan himself, that is, he's dressed in  
12 a uniform. His patrol vehicle is duly marked. There are  
13 several photographs better than this one admitted during the  
14 guilt phase that is evidence to a reasonable person that  
15 approached Sergeant Sullivan indeed he was a uniformed  
16 police officer on duty in his official capacity. Second,  
17 and probably much more relevant at this juncture, is the  
18 state of mind of that man right there. Stated in his own  
19 words repeatedly. To who? To friends and associates,  
20 family members, relatives, children; Saia, his cousin;  
21 William Louis, his brother, at the Rock Boulevard address,  
22 present when Mr. Vanisi tells them repeatedly that he wants  
23 to kill a cop.

24 In fact, the testimony in the guilt phase was  
25 that Saia, in the van, says, "No, you're not." Recall the

1 testimony and the answer to that, what he said right after  
2 Saia told him you're not going to kill a cop. "Watch me.  
3 Watch me."

4 Aggravator number two: Beyond any doubt. The  
5 murder involved mutilation of the victim. That, ladies and  
6 gentlemen of the jury, is the instruction of law that was  
7 given to you a few moments ago. "The term "mutilate" as  
8 defined in this case in the penalty phase means to cut off  
9 or permanently destroy a limb or essential part of the body,  
10 or to cut off or to alter radically so as to make imperfect,  
11 or other serious and depraved physical abuse beyond the act  
12 of killing itself."

13 The Exhibit 4 series admitted in the guilt  
14 phase -- these are not pleasant to look at, but they have  
15 very specific forensic items of value to answer the question  
16 relative to this aggravator and the definition that was just  
17 given to you.

18 It comes not only from these photographs and  
19 the evidence, but in combination with certain other  
20 witnesses' testimony.

21 I direct your attention to the lower right,  
22 this is Exhibit 4-C. That is the almost completely severed  
23 fingers of Sergeant Sullivan. You notice what hand they  
24 are. You recall Dr. Ellen Clark's testimony about defensive  
25 wounds, and you recall the testimony of Vainga Kinikini of

1 what that man, Siaosi Vanisi, told him about how the murder  
2 occurred. And the testimony of the friend and coworker of  
3 Sergeant Sullivan, Steve Sauter. He had no doubt in his  
4 mind that when Mr. Vanisi approached Sergeant Sullivan's  
5 vehicle and knocked on that window, that Sergeant Sullivan  
6 greeted him with a smile and "Can I help you?"

7 Exhibit 14-A, Sergeant Sullivan's glasses.  
8 Take a close look at the left temple on those glasses. And  
9 what lens is missing? The left lens.

10 That left hand of Sergeant Sullivan was the  
11 first blow. The first blow to his head. His hand goes up,  
12 almost severs the fingers, smashes his glasses. And as that  
13 man told his cousin, he knocks him out. There's a brief  
14 struggle. Maybe Sergeant Sullivan gets in one punch. And  
15 he's knocked out. What happens next? I don't have a  
16 videotape for you of this murder, but you can piece it  
17 together almost perfectly so that you don't need a  
18 videotape.

19 Exhibit 17-D, the blood letting event, the  
20 beating of Sergeant Sullivan, occurred while he was down,  
21 while he was helpless, while he was defenseless.

22 He took this hatchet, the one that's admitted  
23 into evidence, and he then crushed Sergeant Sullivan's  
24 skull, not once, not twice, repeatedly. He wanted to kill  
25 Sergeant Sullivan. He had been thinking about it for a long

1 time. Maybe not Sergeant Sullivan, but who Sergeant  
2 Sullivan represented: A white police officer. He hated  
3 both those concepts.

4 This exhibit, the entirety of the 4 series,  
5 shows you conclusively that aggravator. This is not just to  
6 kill, this is to mutilate. This is an expression of his  
7 anger. Why? Because of one other piece of evidence, and  
8 that source once again is the defendant, Siaosi Vanisi.  
9 What does he tell Vainga Kinikini he does after he brutally  
10 beats Sergeant Sullivan? He stomps on him. He stomps his  
11 head.

12 And you remember the examination by Mr. Gammick  
13 of Dr. Clark relative to especially what you see here in  
14 4-I. Sergeant Sullivan's upper mandible, his upper jaw, is  
15 crushed. His teeth are knocked out, down his throat and off  
16 his body. The force and violence that was perpetrated  
17 against Sergeant Sullivan as depicted in those pictures was  
18 massive. It is beyond the act of killing.

19 He tells several witnesses that he wants to  
20 kill a cop to take his gun, his belt, his radio. And he  
21 does. Sergeant Sullivan is lying dead on that pavement.  
22 What does Mr. Vanisi do? He strips him. Rips his belt off.

23 MR. BOSLER: I'm going to object to that. I  
24 think that's a misstatement of the evidence, because I  
25 believe that Mr. Ciocca testified that he thought Officer

1 Sullivan was still alive when he approached him. This is  
2 well after the belt was taken.

3 THE COURT: I'll let the jury make a  
4 determination of the weight of the evidence.

5 MR. BOSLER: Thank you, Your Honor.

6 MR. STANTON: Thank you, Your Honor.

7 Mr. Vanisi strips him. Rips off his belt. You  
8 recall the photographs, go back to the trial photographs,  
9 that scene photograph outside the vehicle and the scene in  
10 the video to show you the belt buckle that held that Sam  
11 Brown together off of Sergeant Sullivan's body.

12 Finally, ladies and gentlemen, the forensic  
13 value of this evidence, besides the extent of the wounds,  
14 the severity of them, reflecting the force.

15 There's one other thing that has very  
16 significant value in this case, where the wounds are.  
17 They're on his face. They're on his head. Why? And why  
18 use a hatchet? Because he wanted to mutilate Sergeant  
19 Sullivan. It was part of his design, his goal, his intent  
20 and purpose. Not formulated in an instant, formulated over  
21 a period of months, if not years.

22 The only thing that needed to be answered to  
23 formulate or to finish that plan was who? There are, as you  
24 have heard, at least one Reno police officer and one Sparks  
25 police officer that are lucky to be alive today, because

1 that man, Siaosi Vanisi, stalked and chose his target, not  
2 at random in the sense of why he did it, but certainly at  
3 random as who it was. It didn't make a difference as long  
4 as it fit two criteria: It was a police officer and he was  
5 white, because that's who he hated.

6 The murder was committed because of the actual  
7 or perceived race, color or national origin of the victim.

8 The testimony in this case has been replete, I  
9 would submit to you, respectfully, of evidence suggesting  
10 and satisfying that beyond a reasonable doubt.

11 There was a witness that was called in the  
12 guilt phase, the only time this witness was called. Her  
13 name was Maria Louis. She was also known as Losa. She was  
14 asked "Did Mr. Vanisi tell you why he wanted to kill a cop?"  
15 "Yes, he wanted to kill them because they took so much.  
16 Well, he wanted to kill a white cop because they took so  
17 much from the Polynesians." "Did he say what he wanted to  
18 take from a white police officer once he killed them? "Their  
19 radio and their gun."

20 Mr. Gregory upon cross-examination asked a  
21 series of questions about whether or not she ever used the  
22 word "white" before. On redirect examination, "Ms. Louis,  
23 when you met with the District Attorney's Office, the  
24 question Mr. Gregory didn't ask you, did we ever ask you to  
25 say the word "white"?

1 "ANSWER: No.

2 "Why is it your testimony that he said a white  
3 cop today?

4 "ANSWER: Well, just -- well, we just had been  
5 discussing it and talking amongst ourselves with other  
6 witnesses."

7 "Is that because that's what he, Mr. Vanisi,  
8 said?"

9 "Yes."

10 There was another witness that testified to  
11 Mr. Vanisi saying he wanted to kill a white cop. That's  
12 Ms. Maveni. You heard the interchange that took place.  
13 Ms. Maveni, according to her penalty phase testimony, indeed  
14 he didn't say that. That is one of the prerogatives and  
15 duties of you as a juror to attach credibility and weight to  
16 each one of the witnesses that have testified before you in  
17 the penalty phase.

18 It really is not an issue. There's one  
19 uncontroverted witness testifying that Mr. Vanisi put two  
20 words together, "white cop." Do you even need that to put  
21 that together? No, because it's not contested whatsoever  
22 that he made repeated statements about killing police  
23 officers and his hatred of white people.

24 The four aggravators are proven beyond a  
25 reasonable doubt.



1           At that juncture, ladies and gentlemen, the  
2 defendant is death eligible, meaning he is a person that the  
3 death penalty is an appropriate sentence. And I submit to  
4 you there's no question that he satisfies this part of your  
5 analysis.

6           The next step of your analysis is to determine  
7 whether any mitigating circumstances have been shown in this  
8 case. And then, if there have been any, or if there are  
9 none, you must determine whether or not the aggravation  
10 outweighs the mitigating evidence. Then a second weighing  
11 process by you occurs, and that is if the aggravation  
12 outweighs the mitigating evidence, is the death sentence the  
13 appropriate punishment? And I submit to you that without  
14 question or without doubt it is. Why? The evidence before  
15 you and the law. That's the guidelines that take you to  
16 that decision.

17           The evidence that the State presented to you in  
18 the penalty phase began with testimony, uncontroverted  
19 testimony of the defendant and his behavior. When? Not  
20 during the murder. Not initially after the murder. But  
21 think about this, ladies and gentlemen, what the defendant  
22 is doing and where he's doing it.

23           You heard from correctional officers Molnar and  
24 Wiley from the Nevada State Prison. That man is sitting in  
25 prison awaiting murder charges. And what does he do? He

1 purposely, willfully, intentionally, premeditated, confronts  
2 physically correctional officers. There's more than the  
3 confrontation: The details of how he does it. All the cell  
4 extractions you've heard, there's one prevailing piece of  
5 evidence that exists in each one of those cell extractions.  
6 They're not done by surprise. Every single witness  
7 specifically told you how those cell extractions occurred.  
8 They're done in the sight of that man. They're not done  
9 instantaneously. He knows what's going on before it  
10 happens. He can see the crowd gather outside his door,  
11 dressed, as you heard each witness pursuant to my direct  
12 questioning, how each of them was dressed.

13 He knew what was going on. And what was his  
14 response during virtually every single one of those? He was  
15 ready to do battle. He got ready preparing himself with  
16 towels, with water, for the gas that he knew was coming in.  
17 Or don't forgot, this is the person that has the mental  
18 illness that can't think, that can't cognicize, that he  
19 knows exactly what's going on, because he's doing everything  
20 he can to prepare to do battle.

21 You want to look into this man's mind?  
22 Remember the testimony of the correctional officer while he  
23 was attempting to escape and what Mr. Vanisi was doing while  
24 he was shooting at him. On more than one occasion  
25 Mr. Vanisi was laughing at him. He wasn't laughing at him

1 because he was mentally ill, he was laughing at him because  
2 he was playing a game with the guards. You heard that from  
3 Lieutenant Geoff Wise, who interacted with him on numerous  
4 occasions, who told you he was a very intelligent man, is  
5 conniving.

6 What about the defendant when they went and did  
7 the cell extraction in prison? What did the defendant do?  
8 He charged at them. He had a bucket as a shield and went  
9 after the five officers that came into the cell.

10 You want to know who he is and what he's like?  
11 Think about how he killed Sergeant Sullivan. And think  
12 about those cell extractions. I told you at the beginning  
13 of this case in the penalty phase that actions speak louder  
14 than words. Those speak volumes.

15 Next you heard from Deputy Ellis. Deputy Ellis  
16 told you about a cell extraction. More importantly, ladies  
17 and gentlemen, he told you how it occurred and a very  
18 important thing about his testimony and that is the strength  
19 of that man right there.

20 Deputy Ellis is six four, 285 pounds. As he  
21 testified to you, that during the cell extraction, after he  
22 slid by, there were two to three deputies on Mr. Vanisi's  
23 back and he was continuing to get up, even despite repeated  
24 orders to stay down. And you saw Deputy Ellis stand before  
25 you not 10 feet from you and demonstrate the knee drop that

1 he did. The knee drop of a six foot four, 285 pound man.  
2 And remember what happened to Mr. Vanisi when he began to do  
3 those knee drops. They had no effect. He was hitting him  
4 in the shoulder. It wasn't until the blows came to the back  
5 of the neck and the head that they stopped that man.

6 Think about the strength of that man when you  
7 think about why those photographs are so graphic in series 4  
8 as they are. It's part of that videotape to play in your  
9 mind. If you want to know what lurks between his ears, in  
10 his mind, think about that.

11 The testimony before you of the family,  
12 friends, Carolyn Sullivan, Meghan Sullivan, emotional  
13 testimony, as was a lot of the testimony in the penalty  
14 phase, both sides, but it's evidence, ladies and gentlemen.  
15 Just like those autopsy photographs are evidence, the  
16 testimony from Sue Mallard, Steve Sauter and Carolyn  
17 Sullivan, Meghan Sullivan are evidence for you to consider  
18 in that final weighing process; does this man deserve death?

19 Think of the evidence that they gave you, not  
20 in the context of the emotion, per se, think of it in the  
21 context of how much damage he has done. That's the evidence  
22 before you regarding those people's testimony. How this  
23 man's misguided, racist, violent views destroyed those lives  
24 forever.

25 Racist. That's what it is. It's not the

1 typical one that you may hear or know about, white  
2 supremacists having distorted hateful views of minorities.  
3 But it's no different. It's no different in its context,  
4 its severity or its abrogation of the normal fabric of our  
5 community. That's what that man is.

6 The testimony you've heard is that he was at  
7 one point a nice person. George Tafuna. Siaosi Vanisi is  
8 what this penalty phase is about.

9 I'm going to talk to you finally about a series  
10 of pieces of evidence to assist you in your deliberation of  
11 the evidence when you consider that final weighing process  
12 of aggravating versus mitigating and then concluding whether  
13 or not the death penalty is appropriate, considering all the  
14 evidence in this case.

15 What you see there is a statement from  
16 Mr. Vanisi. That statement came through the testimony of  
17 Detective David Jenkins, who told you several things that I  
18 believe were extremely relevant in your consideration of the  
19 penalty phase witnesses that you've heard, especially from  
20 the defense in this case.

21 Mr. Vanisi stated that he had led a very normal  
22 and straight life as a teenager. I don't think anybody  
23 would dispute that that's what the evidence shows in this  
24 case. That now he was "having the time of his life and  
25 running around." Comes from the defendant's own mouth.

1 "You know, I don't care about living anymore,  
2 I'm free. And this is what I want to live. Once I kill, I  
3 gotta kill some more to keep my high." "Once I'm killing, I  
4 mean, I got, I just gotta keep on moving, I just gotta keep  
5 on moving so they won't know where I'm at, you know, I gotta  
6 keep on killing to keep this rush."

7 Where does that come from? The defendant,  
8 Siaosi Vanisi, from his own mouth. To who? To his  
9 relative, to his cousin, Vainga Kinikini. Remember the  
10 testimony of Mr. Kinikini. What was the defendant's  
11 demeanor when he was saying that? Was it remorseful? No  
12 emotion? He was excited about it. Excited about it.

13 The State would submit to you, ladies and  
14 gentlemen, that the proper punishment in this case is death  
15 for all the reasons that I've just mentioned and the  
16 evidence in this case.

17 Mr. Vanisi should not be permitted the  
18 opportunity to kill again. He is an incredibly violent,  
19 racist person who has shown no compunction whatsoever to  
20 carry out his desire, hatred, revenge. This is not borne by  
21 any mental illness, alcohol or drugs. It's borne by cold  
22 blooded premeditated thought that's done not once but  
23 repeatedly over a period of several months, if not years,  
24 both in the murder of Sergeant Sullivan and his performance  
25 in prison.

1 Ladies and gentlemen, the death penalty in this  
2 case is a decision for you as a unanimous jury. But don't  
3 ever lose sight of the fact that the death penalty is borne  
4 by his behavior and his conduct alone. Make him face his  
5 responsibility with that verdict.

6 Thank you for your time and attention.

7 THE COURT: Counsel, you may proceed to make  
8 your closing argument.

9 MR. BOSLER: Thank you, Your Honor.

10 Ladies and gentlemen, why? Why kill Siaosi  
11 Vanisi? What are we going to accomplish by that killing?  
12 What is it about our society that we all flock to movies  
13 where people are killed en mass, gratuitous violence? What  
14 is it about our society that we can easily dispatch someone  
15 as if there is no humanity left in them?

16 I look at the irony in this case that you have  
17 two children both raised in essentially single family  
18 households; both children grow up, go to school, do  
19 everything to make their parents proud. Both children  
20 married early, have children, care, cherish, love for these  
21 children, and then suddenly these two paths are so close,  
22 they're split apart. And what splits them apart? We find  
23 out it's the mental illness of one, and that same mental  
24 illness, ironically, is the thing that brings them both back  
25 together and causes the death of the other.

1           How ironic it is or what a statement it makes  
2 about our community that phone-in surveys, we're so easily  
3 led to say this person did a terrible crime, he should die,  
4 without ever thinking about, well, what is this person  
5 about? What qualities do they have? What brought them to  
6 the point that they've actually killed another human being?  
7 All those people who clamor for the death penalty, they've  
8 never had the chance, like you, to sit through a sentencing  
9 hearing and actually hear that -- well, this is the dirty  
10 little secret, ladies and gentlemen, about the criminal  
11 justice system: The defendants that the State tries to  
12 kill, the defendants the State asks you to kill for them,  
13 they're human beings. They're people. They're children who  
14 were raised with mothers, fathers, went to school, have  
15 cared for their family, have done things that everybody has  
16 done. They're not so inhuman that you can easily dismiss  
17 them as if it's some casual decision: Well, you know, the  
18 judge gave us a mathematical formula, we're going to weigh  
19 that and we'll plug in the facts, and if Mr. Vanisi needs to  
20 die, then the formula says that. That's not what our  
21 society is about. That's not even what the law is about.

22           The person who sits at that table is a human  
23 being. And I think you've heard a little bit about that  
24 through the witnesses that were called at the penalty phase  
25 and you heard about that from the witnesses who were



1 actually called by us that were earlier the State's  
2 witnesses, to show that.

3 Ladies and gentlemen, I don't pretend I'm the  
4 type of person who can say everything that needs to be said  
5 to show you why Mr. Vanisi doesn't need to die. There are  
6 so many reasons why he doesn't need to die for this crime, I  
7 can't hope to tell you all of them. I can only ask, because  
8 I only have this one opportunity -- the State will get up to  
9 argue again. I don't get a chance to rebut what they say.  
10 But when you go back in the jury room, you've heard the  
11 testimony, you've heard enough facts about this case, that  
12 you ladies and gentlemen of the jury can go through that  
13 evidence and see each of these little things, each of these  
14 little threads that you can pull together that say there's  
15 more reasons not to kill Siasos Vanisi than there are  
16 reasons to kill him.

17 I guess if someone would convince me that by  
18 killing Siasos Vanisi we would bring George Sullivan back to  
19 his loving family, then maybe there's a reason to support  
20 the death penalty. But that's not what's going to be  
21 accomplished when we decide to kill Siasos Vanisi. You have  
22 on one side of the courtroom a family who has lost a loved  
23 one, essentially the leader of that family, a father who  
24 loved his children, loved his wife, loved his job. If  
25 killing Siasos Vanisi was to bring George Sullivan back

1 again, maybe there would be an argument in favor of the  
2 death penalty. But that's not what's accomplished. What is  
3 accomplished is you have on one side a family who has  
4 experienced a tragedy and lost a loved one; now the State's  
5 asking you to visit that tragedy on the other family.

6 If that's equity, if that's what we're  
7 accomplishing with the death penalty, then I think there's  
8 some problems with the way we view punishment and crime in  
9 our community.

10 Mr. Vanisi had the same loving family that  
11 George Sullivan had. And I think it's abundantly obvious  
12 that this person who grew up, played sports, took extra  
13 classes in high school so he could be with teachers and  
14 learn, would be the teacher's aide, do everything he could  
15 to help his friends with their lives, to keep people from  
16 fighting and engaging in violence, is it really an argument  
17 that something significant had to have happened to him to  
18 make those things change?

19 The argument that this isn't a mental illness  
20 belies all the evidence that you've heard. And that's  
21 evidence that comes from the State's own witnesses.

22 If you were going to tell me that the death  
23 penalty acted as some sort of deterrence, then maybe I could  
24 agree that the death penalty is appropriate in this case.  
25 But let's look. Are we really supposed to expect that

1 killing Siao Si Vanisi is going to deter other manic people  
2 who haven't been diagnosed from having manic episodes?  
3 Again, I ask you to look, why would we kill Siao Si Vanisi?  
4 What are we accomplishing by that? Because it's not going  
5 to help other people who haven't been diagnosed with the  
6 illness, because, as we know from Dr. Thienhaus, that you  
7 don't get bipolar or manic depression, you don't get that  
8 illness until late teens, early 20s. Siao Si Vanisi. And  
9 unfortunately that illness isn't diagnosed until something  
10 catastrophic happens and you actually figure out, well, my  
11 mind is not working, enough of my friends have said  
12 something to me, it's time I need treatment.

13 Killing Siao Si Vanisi is not a deterrent to  
14 other manic people who haven't been diagnosed because it  
15 just is logically impossible.

16 If you were going to tell me that by killing  
17 Siao Si Vanisi we've exacted the extreme, the greatest  
18 punishment that we can impose upon a person, I would ask  
19 you, killing Siao Si Vanisi, is that more punishment than  
20 actually looking at him and his life, the way he loves his  
21 children, the way his family loves him, having to sit in  
22 prison for the rest of his life without an opportunity to  
23 ever get out, to see those people, to be with them? Which  
24 is the more extreme punishment? It isn't death.

25 For Siao Si Vanisi and what you know about him

1 from the people who have spoken about him, the more extreme  
2 punishment is life imprisonment without the possibility of  
3 parole. And based upon the facts of this case I can't stand  
4 here and say, you know, what happened to George Sullivan is  
5 a typical murder, it's a first degree murder. It's a tragic  
6 event. It's beyond the words that any law school or any  
7 dictionary could teach me. There's no way to explain that  
8 or describe it. And for that Mr. Vanisi deserves the  
9 ultimate punishment. That ultimate punishment isn't death.  
10 Not only for the reason it isn't going to accomplish  
11 anything, but because really if you sit down and take  
12 yourself away from this emotional -- I don't know if it's a  
13 roller coaster or whatever that's thrown our society to this  
14 way of thinking that the death penalty is actually going to  
15 accomplish things, if you step away from that emotional  
16 decision-making process, you'll see that really the greater  
17 punishment for Siaosi Vanisi is life in prison.

18 And in some sense I'll agree with Mr. Stanton  
19 -- it doesn't happen very often -- if you look at the way  
20 that Mr. Vanisi is going to be treated in his custodial  
21 status, you know that even prison for him isn't going to be  
22 the prison that a normal prisoner suffers. As the person  
23 who has been convicted of killing a peace officer, you  
24 already know what goes on at the jail. Twice he's been late  
25 returning to his cell. I know it's important that people

1 obey orders in the jail, but if we judge the response by the  
2 jail to him going to his cell late and kind of griping that  
3 he's not had enough time on the tier, their response, go  
4 into the cell with six people, beat him into submission, tie  
5 him up, hog tie them, whatever you want to do, let him sit  
6 and then release him, if that's the type of response that  
7 Mr. Vanisi is going to receive in a custodial status, then,  
8 ladies and gentlemen, you're giving him the worst punishment  
9 by making him suffer the rest of his life in prison.

10 The State spoke to you about the four  
11 aggravators that are necessary before you can even consider  
12 whether you should kill somebody. The first two, robbery.  
13 You've already found that in the guilt phase. The second  
14 one, killing of a police officer. I'm not going to insult  
15 your intelligence and argue that those things aren't really  
16 what the facts show. However, the other aggravators, I'd  
17 ask you to take a little closer look at them.

18 What we have is the aggravator of mutilation.  
19 I'll wait for the screen. The aggravator of mutilation.  
20 "The term "mutilate" means to cut off or permanently destroy  
21 a limb or essential part of the body, or to cut off or alter  
22 radically so as to make imperfect, or other serious and  
23 depraved physical abuse." This is where I want you to look.  
24 "Beyond the act of killing itself."

25 As the judge told you, it's the whole

1 instruction that is the thing that carries the weight for  
2 you as jurors. George Sullivan died a terrible, a painful  
3 death. I'm not going to show you those pictures. I don't  
4 think you need to look at them again. I think that they  
5 would have an emotional impact upon you if you only saw them  
6 for five seconds. But the issue really isn't the type of  
7 death George Sullivan died. If anybody is killed with a  
8 hatchet to the face, their body is going to look badly  
9 disfigured. If you killed somebody with a hatchet, that's  
10 probably -- by the nature of that instrument that's how the  
11 death is going to occur. But the issue is, is this  
12 instruction satisfied? Is what Siaosi Vanisi did beyond the  
13 act of killing itself?

14 What do we know? We know that Dr. Clark  
15 testified that she believed -- Dr. Ellen Clark. Questioning  
16 by Mr. Gammick. "But were all these wounds caused before  
17 death, before the cessation of his heart?"

18 Ellen Clark. "Yes. The wounds were caused  
19 before death."

20 This is by Mr. Gammick. "You cannot make a  
21 statement about whether or not he was conscious when these  
22 wounds were inflicted upon him, can you?"

23 Ellen Clark, "I cannot."

24 "Just to make sure for the timing of the  
25 wounds," Mr. Gammick says, "the timing of the wounds, when

1 they were delivered, do you make a determination based upon  
2 blood flow, basically?"

3 Ellen Clark, "Relative to your question about  
4 when the heart was beating, all the wounds had evidence of  
5 bleeding into their margins or into the tissue around them,  
6 implying that the heart blood was still circulating."

7 What else does Ms. Clark say, most importantly,  
8 "The wounds were all acute and of the same age." What does  
9 that mean?

10 That means when George Sullivan was attacked  
11 with a hatchet, all the wounds were acute, as you would  
12 expect from a hatchet, and of the same age. We know from  
13 Andrew Ciocca that George Sullivan was still breathing when  
14 he arrived. This is after Siasos Vanisi had left. Why is  
15 that important? Ladies and gentlemen, the term "mutilation"  
16 doesn't mean just that a body is disfigured by the killing.  
17 It means something is done that is done beyond the act of  
18 killing itself. The act of killing itself wasn't even  
19 accomplished by Mr. Vanisi. So for the State to say that  
20 the hatchet blows to Mr. Sullivan's face were beyond the act  
21 of killing itself isn't the truth.

22 If Ellen Clark would have said Sergeant  
23 Sullivan has all these wounds to his face and later it was  
24 determined that his fingers were almost severed after his  
25 heart had stopped, you have mutilation. If Ellen Clark

1 would have testified that after all these blows were  
2 delivered to Mr. Sullivan, and as he laid bleeding to death  
3 on the ground other blows were administered, a limb was  
4 chopped off, something was done other than the act of trying  
5 to kill George Sullivan with a hatchet, then you would have  
6 mutilation.

7           And this may seem like a hypertechnical way to  
8 look at what mutilation is, but ladies and gentlemen, we're  
9 all asked to follow the law. You've been specifically  
10 instructed that the instructions are taken in totality. So  
11 you don't stop with has been radically altered body parts or  
12 is this abuse severe, serious and depraved. It is. But is  
13 that the issue? The issue is when Siaosi Vanisi attacked  
14 George Sullivan with a hatchet with the intent to kill him  
15 and attacked him and made wounds to his face, were those  
16 wounds to his face done for anything more than to just  
17 simply kill George Sullivan? Even if you believe -- and  
18 this evidence isn't uncontradicted -- even if you actually  
19 believed he kicked or stomped George Sullivan, none of that  
20 was done after he died. So none of the acts, although they  
21 seem like it's a little bit more than necessary, none of the  
22 acts were done beyond the killing itself.

23           The other factor I would ask you to consider is  
24 that George Sullivan was chosen because he was a white  
25 police officer. Again, I'm not going to insult your



1 intelligence and say that Siaosi Vanisi made his way up to  
2 the kiosk not to attack a police officer, because I think  
3 the evidence shows that. But what do we know about that  
4 whole evening? It's Brenda Martinez, who is the young lady  
5 who came in very early in the case. She goes to the  
6 university to pick up her, I think it's grandfather or her  
7 father. She sees Siaosi Vanisi staggering through the  
8 parking lot with a dog. We know Siaosi Vanisi is the person  
9 who walks the dog, Doobie, who is owned by the Peauas.

10 Siaosi Vanisi isn't stalking anybody at that  
11 point. He is in the grips of a drug-induced, drug  
12 aggravated, manic episode, where he's walking around with a  
13 hatchet maybe looking for trouble, maybe even looking for a  
14 police officer to kill. But whether it's a white police  
15 officer or officer of any other color isn't proven by the  
16 evidence.

17 What we have is Mr. Vanisi staggering around  
18 one part of the campus, as he makes his way down Virginia  
19 Street. Unfortunately, we find out later, for Mr. Sullivan  
20 he's made a stop. Siaosi Vanisi in this manic thing focuses  
21 on the lights, walks over to where the lights are. Is  
22 Siaosi Vanisi planning this event? What does Siaosi Vanisi,  
23 according to Carl Smith, do? Tries to get Carl Smith, who  
24 is in a police car, a marked police car, driving, to get him  
25 to attack Siaosi Vanisi. Siaosi Vanisi isn't deliberate.

1 He's not worried about who the target is. He is trying --  
2 in his mind he's thinking I have to kill a police officer, I  
3 have to kill a police officer. As the car drives by, he  
4 tries to get the police officer to engage him in a  
5 confrontation. Can Siaosi Vanisi even see inside the car at  
6 night as he's traveling down the street? No.

7 Unfortunately for Officer Sullivan, when Siaosi  
8 Vanisi later sees the car drive up the street and goes up  
9 the street, George Sullivan is white. Does that mean that  
10 Siaosi Vanisi went there to kill a police officer? It means  
11 that Siaosi Vanisi went there to kill a police officer and  
12 by circumstance that officer was white. But to say that  
13 this whole episode of him staggering through the parking lot  
14 being led by the lights, working his way up the hill to the  
15 kiosk is motivated by race - it's not motivated by race.  
16 It's motivated by a person who had for 23 years been a  
17 respectable, decent, loving, caring human being, who, after  
18 he begins to suffer from manic illness, begins to take drugs  
19 in order to help himself but does the exact opposite. And  
20 as he suffers this manic episode, he gets drawn towards  
21 lights and ultimately towards Mr. Sullivan, who dies.

22 But ladies and gentlemen, to simply say that  
23 that evidence proves beyond a reasonable doubt that the  
24 reason George Sullivan was chosen was because he was white  
25 isn't supported by the evidence. That is a tragic chain of

1 circumstances that happened. George Sullivan was white, but  
2 that wasn't the reason for the violence.

3 There's been so much this witness said that,  
4 they say something different on cross-examination, they say  
5 something different on direct examination. What we know and  
6 what Mr. Stanton has told you is that a lot of the people  
7 who hang out at Sterling Drive, Rock Boulevard, they heard  
8 Siaosi Vanisi talking. "The whites have taken a lot from  
9 the Polynesians. The whites are bad for this. The whites  
10 are bad for that." Later, "I need to kill a cop. I want to  
11 kill a cop." It's those people who put those two phrases  
12 together, the white cop.

13 And what do we hear from the witness the State  
14 referenced -- I wrote her name down. Maria Louis? "We've  
15 been talking about this amongst ourselves," the Peauas,  
16 Maria Lewis and a lot of other people, and there's a lot  
17 that live at that Sterling Way address. They talk amongst  
18 themselves. "Remember when Siaosi Vanisi said he hated the  
19 white people for what they did to Polynesians when they came  
20 to Polynesia? Yeah, I remember that. Remember him also  
21 saying I'm going to kill a cop? Yeah, I remember that."  
22 They begin to talk and now it blends together and now Siaosi  
23 Vanisi wants to kill a white cop.

24 The reason George Sullivan was killed wasn't  
25 because he was white. It was a terrible -- words can't

1 describe the chain of circumstances that led to his death.  
2 But it wasn't because he was white. And all these phrases  
3 that we attribute to Siaosi Vanisi are really an  
4 amalgamation, a blending of separate phrases that other  
5 people had heard, until it came to the point that Mele is up  
6 here saying, well, I thought the District Attorney suggested  
7 to me it was white. No, maybe it was my friends. I can't  
8 remember exactly when it happened. It could have been me.  
9 Her testimony is actually I put those two things together.  
10 He was mad at the whites, what they had done to the  
11 Polynesians; he wanted to kill a cop. Mele said she's the  
12 one that put that together. She's the one that testified to  
13 support the State's aggravator that the reason this murder  
14 happened was because Siaosi Vanisi wanted to kill a white  
15 cop.

16           Again, I can only ask you -- this is the way it  
17 works -- you each are your own judges in this case. As the  
18 judge told you, it's up to you each to decide which  
19 mitigators are found, any evidence of them. Has the State  
20 proved the aggravators beyond a reasonable doubt? It's up  
21 to you to decide each of those questions as individuals.  
22 And I can only ask you to look really at the evidence to  
23 show is this instruction really supported beyond a  
24 reasonable doubt, the mutilation instruction supported by a  
25 beyond a reasonable doubt, when you look at the facts? And

1 I mean look beyond the disfigurement to George Sullivan.  
2 Because that in itself suggests mutilation. But ladies and  
3 gentlemen, the mutilation has a specific definition under  
4 the law.

5 I can only ask you as individuals to look about  
6 whether this violence -- was the murder caused really  
7 because George Sullivan was white or is that just an  
8 unfortunate -- unfortunate is not a good word -- a tragic  
9 tragedy beyond words, a tragic set of circumstances that led  
10 Siaosi Vanisi as he was staggering around the campus with  
11 Doobie to be drawn towards the lights and then eventually up  
12 to the place where George Sullivan was finishing his report.

13 I told you when I got to speak the first time,  
14 there's many more reasons not to kill than there are reasons  
15 to kill. And I would like you to take that into  
16 consideration when you think about what mitigating evidence  
17 is. I'm not offering these things as an excuse for Siaosi  
18 Vanisi's behavior. I'm not offering them as a defense to  
19 the crime. If you think that's what mitigation evidence is,  
20 then please look at the instruction. That's not why it's  
21 offered.

22 People kill. And normally one can attribute a  
23 reason why they're in a situation where they kill.  
24 Mitigating evidence is only evidence that shows you: Does  
25 this person deserve to die? Is there a reason why this

1 tragedy happened? Is there a reason? We need to consider  
2 other circumstances besides just the crime before we decide  
3 what the punishment is.

4 I took the liberty of writing down a few  
5 mitigators for you. Again, collectively or as individuals,  
6 I'm sure that many more things will come to you as an  
7 important thing in your mind as you make this huge decision.

8 Siaosi Vanisi, no significant criminal history.  
9 That hasn't really been contested by the State. What do we  
10 know about him? A law-abiding person. When his girlfriend  
11 got pregnant at 19, takes her in, cares for her as she has  
12 the baby. Probably the person we would believe is like an  
13 ideal person, the type of person we'd like to know, until we  
14 start to have the first episodes of manic depression, the  
15 violence, the bizarre behavior that ends in him dressing up  
16 as a superhero, wearing wigs, talking to himself. .

17 No prior criminal history. That can also be  
18 defined. No prior history involving violence. You have a  
19 man who, up until immediately preceding this event, had not  
20 a history of being convicted for violent crimes. That can  
21 be considered a mitigator.

22 The fact that he was suffering from extreme  
23 emotional or mental disturbance. Again, ladies and  
24 gentlemen, I'm not -- I only ask you to look at the evidence  
25 about whether this is bipolar disorder, manic depression or

1 what the State has implicated as some type of malingering.

2 Let me tell you why it's not malingering first.  
3 We heard the definition of malingering. Malingering is like  
4 you're faking an illness. Malingering means someone who  
5 projects symptoms of mental illness to avoid punishment, to  
6 avoid responsibility, to avoid consequences. That's  
7 malingering. If that's malingering, then how can you  
8 explain why Siasos Vanisi would manifest these symptoms  
9 years before this event? Is he malingering to lose the love  
10 of his wife? That doesn't fit the definition of  
11 malingering. Is he malingering so his wife is going to take  
12 the two children that he loves away from him? That doesn't  
13 fit the definition of malingering.

14 If he's malingering, then why, after Dr.  
15 Thienhaus finally gets his medication set at the proper  
16 levels of lithium, Elavil, Risperdal, if he's malingering  
17 why has his behavior changed so he's not an institutional  
18 problem? Because ladies and gentlemen, if you believe he  
19 was malingering, he would be malingering today, because this  
20 is the time that he would need to malingering to avoid a  
21 punishment. You don't get better before your trial. If  
22 you're trying to malingering, you stay sick through the trial  
23 in hopes that the jury is going to understand that.

24 It's not malingering. Not only because so many  
25 people have, Dr. Thienhaus' diagnosis and I believe two or

1 three of the other psychologists also agreed to that  
2 diagnosis of bipolar disorder. The malingering aspect is,  
3 unfortunately whenever you have a mentally ill person in  
4 jail, the first thing people -- the first things people  
5 think about is, is he faking it? He's in jail. He has  
6 consequences he may need to suffer or to face. Is he faking  
7 it? It's really in that context that all these people  
8 believe he's malingering. But ladies and gentlemen, the  
9 symptoms occur well before that would even come into play.  
10 And that doesn't fit the definition. And the fact that he's  
11 now healthy when he would most need to be mentally ill isn't  
12 going to aid him.

13 So I would just hope when you hear the argument  
14 which I anticipate from the State that there is no mental  
15 illness, you look at the facts. You look at the State's own  
16 witnesses. The witnesses the State brought up here and  
17 offered them as credible vessels to carry Siaosi Vanisi's  
18 statement to you about what he had done, and the trial, that  
19 the State brought them up here and asked you to believe them  
20 for the trial, then it's going to be a little bit  
21 disingenuous for them to say, well, this stuff about mental  
22 illness you hear from them, it's not to be believed because  
23 they're family members.

24 Well, the State's already offered they're not  
25 biased in this case and they have two important things to



1 bring to you. One was in the trial phase. And now let's  
2 listen to them when they say that George Tafuna, Siaosi  
3 Vanisi, when he showed up in Reno wearing a wig, a different  
4 person. Some people didn't even recognize him. We know  
5 that George Tafuna, when he went to his sister's wedding, a  
6 completely different person. He would stay up all night  
7 talking. No one would understand a word he was saying.

8 He would wear wigs and stand in front of the  
9 mirror and talk to himself for hours. He would dress up as  
10 a superhero, walk out to the street, walk to Chuck E. Cheese  
11 where other people were, and pretend he was a superhero. If  
12 that's not a symptom of mental illness, what is? How else  
13 do you prove mental illness? None other than from the  
14 behavior of the person who is suffering that mental illness.

15 I think that you can find many mitigators in  
16 that fact, not only in the fact that Siaosi Vanisi was  
17 diagnosed as being mentally ill and that in some sense, I  
18 think in the greatest sense, played a part in this terrible  
19 tragedy. It's mitigating, the fact he's finally been  
20 diagnosed. Unlike the earlier time in the jail when he was  
21 just getting medication, he's finally been diagnosed and  
22 they have him at a level where he is Siaosi Vanisi that you  
23 heard through all these witnesses. It's mitigating  
24 evidence. Not only that he's been diagnosed, receives  
25 medication, it's mitigating evidence the fact that this can

1 be given in an institutional setting. There's ways to keep  
2 Mr. Vanisi from being the manic, essentially crazed person  
3 that would try to crawl under a fence in broad daylight,  
4 with people with shotguns standing over him and actually go  
5 under one fence into another secure area.

6 Although the State wants to offer that as a  
7 reason why they think you should kill Siasos Vanisi, I think  
8 what it proves is that he's mentally ill, because no  
9 rational person would think to crawl under a fence in broad  
10 daylight with shotgun armed guards over his head and crawl  
11 into another area that's even more secure. I can't tell you  
12 how many bits and pieces of testimony that you have that  
13 support Siasos Vanisi's mental health. Most notably Dr.  
14 Thienhaus.

15 The State, although they reference reports from  
16 other doctors, do not bring a doctor in to rebut that. What  
17 we have is the diagnosis agreed upon even by some of the  
18 State's doctors, even some of the people who suspect  
19 malingering but aren't going to refute the diagnosis of  
20 bipolar disorder.

21 The use of alcohol, drugs, I think everybody  
22 knows how alcohol and drugs affect a normal rational person,  
23 and how the normal rational person, under the influence of  
24 alcohol and drugs, loses important, I don't know if it's a  
25 conscience or whatever thing we have, superego that controls

1 our behavior, that rational people lose that under the  
2 influence of alcohol and drugs.

3 What do we know about Siaosi Vanisi? It's an  
4 unfortunate part of this illness -- when it occurs later in  
5 life, a lot of people think by doing drugs I'm going to  
6 medicate myself, make myself feel better. What it does is  
7 the exact opposite. It makes that illness worse. And,  
8 again, the same witnesses who testified for the State at the  
9 trial, the same witnesses they ask you to believe in order  
10 to find Siaosi Vanisi guilty of first degree murder, are the  
11 same witnesses who are going to say that Siaosi Vanisi never  
12 drank as a teenager, avoided parties. He starts to  
13 experiment with drugs later in his marriage. And we know  
14 how that affected the bipolar disorder that had just begun  
15 in two years of that marriage. It's the Siaosi Vanisi who  
16 sits outside of Renee Peaua's house, smokes laced marijuana,  
17 snorts methamphetamine. It's the same Siaosi Vanisi we see  
18 staggering around the campus moments before George  
19 Sullivan's tragic death.

20 The reason why the law -- the reason why I'm  
21 going to ask you to consider that as mitigation is because  
22 in the sense that we voluntarily take drugs, that isn't  
23 mitigation. And I'm not trying to argue that someone forced  
24 these drugs down Siaosi Vanisi's throat. But the reason why  
25 the law considers this mitigation is because people who take

1 drugs and alcohol aren't the same people who show up in  
2 court to be sentenced, because they're at a different state  
3 of mind when they commit these acts, and really it's the  
4 person you need to look at who isn't strung out on  
5 methamphetamine, who hasn't slept in a week, who is smoking  
6 laced marijuana, who is drunk on alcohol. That isn't the  
7 person you ultimately sentence. It's the sober, reasonable  
8 person you sentence.

9           The law says if you think that those acts were  
10 involved, involved or exacerbated, influenced by controlled  
11 substances, then that's not really something you hold  
12 against them, because that's not the same person you get to  
13 sentence.

14           For that reason, evidence, I'd ask you to  
15 consider, when you think, well, they've shown me some  
16 aggravators and I'm not convinced all four are there, what  
17 mitigates this offense. When you start to think about it,  
18 there's going to be more things than I could ever tell you,  
19 more things than I could ever sit up here and say are  
20 reasons why you shouldn't kill Siaosi Vanisi than is humanly  
21 possible.

22           I put these down as a list, not because I think  
23 those are the only ones you should consider, the  
24 instructions say there are going to be things that occur to  
25 you that are more important. And it's up to you to decide

1 in your mind is this a mitigating factor to me. If it is,  
2 it's personal to me. How does this affect how I  
3 individually weigh it whether Siaosi Vanisi should live or  
4 die? It can be something, maybe some people would feel it's  
5 so insignificant as Mr. Vanisi's statement at the end of the  
6 trial, that I want to express my grief to the Sullivan  
7 family, to my own family. It can be that display of  
8 humanity that can be reason for you not to kill Siaosi  
9 Vanisi.

10 It could be something so obscure -- and I'm  
11 sure the State will disagree with this -- something so  
12 obscure as the fact that -- and I think two things: After  
13 this manic episode was over and George Sullivan was dead and  
14 Siaosi Vanisi decides he needs to go to see David Kinikini,  
15 a close friend, someone who has always been a confidante to  
16 him, and Siaosi Vanisi decides to rob two stores. Is this:  
17 Siaosi Vanisi doesn't hurt those people. He has a loaded  
18 firearm. He actually almost seems overly polite for a  
19 robber. The young man says you're robbing the store, take  
20 my money. No, go ahead and keep that; that's not when I'm  
21 after. That display I think is more, although it's a  
22 criminal act, it's more in character with the Siaosi Vanisi  
23 knowing that he's already killed somebody and how drastic,  
24 how terrible that is, besides the only way he can get to  
25 Salt Lake City is by, one, to take a car that's not his, and

1 by getting money to get him here. That's Siaosi Vanisi when  
2 he robs those stores and decides I'm not going to hurt these  
3 people. I have a loaded gun. They're Caucasian. I suppose  
4 they hate Caucasians. I need the money. That's all I need.  
5 I'm not going to pistol whip anybody, order them around;  
6 just give me the money, please, thank you, and leaves.

7 Even something that may seem so illogical to  
8 you, I don't know if that's going to be the thing that is  
9 important to you, but you need to look through this whole  
10 case and decide are there things like that that I've heard  
11 that are important things before I decide whether someone  
12 has to die to, and again I'll submit to you, it's not going  
13 to accomplish anything.

14 I thought about this and this is again maybe  
15 not something that's important to you. When Siaosi Vanisi  
16 is in David Kinikini's house and he started the fire as kind  
17 of a diversion, the SWAT team walks in, the first SWAT  
18 officer is walking down the hallway. It's the second  
19 officer who is probably the more astute and sees what's  
20 going on. As the first officer walks by, the second officer  
21 is behind him. He sees that Siaosi Vanisi is there with a  
22 gun -- we later find out it's loaded -- points it at the  
23 officers. Could have easily shot. Again, white officers.  
24 If he wanted to kill them, the first guy would have been a  
25 target, never would have seen it coming. Siaosi Vanisi

1 raises the gun, gets shot, puts it down, is taken into  
2 custody, later walks out, is shot with a beanbag.

3 Again, ladies and gentlemen, I'm not trying to  
4 say that Siaosi Vanisi is a saint for being involved in the  
5 fire, having the SWAT team kick down the door, essentially  
6 causing David Kinikini to move to a different residence.  
7 He's not a saint for that. But I think the fact that when  
8 he had an opportunity, again this is the guy who is out to  
9 kill white police officers, the fact that he showed that  
10 humanity that he didn't want to shoot these people, he  
11 wanted to get shot. He knew he would be taken into custody,  
12 that is a display of humanity. It may not be important for  
13 you, but this whole case is just so full of, when Siaosi  
14 Vanisi is out of his manic stage, full of so many displays  
15 of humanity that when you look at whether this person needs  
16 to live or die, there's just so many reasons, so many  
17 displays of humanity other than -- what happened to George  
18 Sullivan is terrible. I'm not trying to deny that. I'm not  
19 trying to minimize it.

20 Siaosi Vanisi has been convicted of first  
21 degree murder. In some sense you're getting an instruction  
22 that that really isn't an issue today, whether he's been  
23 convicted of first degree murder. The issue is do we as a  
24 group of people and as individuals feel that really the only  
25 appropriate way to punish him is to kill him? And I can't

1 tell you how many reasons there are, because it's humanly  
2 impossible for me to list all the reasons. There's just too  
3 many. My mind isn't going to be able to retain them all or  
4 tell you about them, but I only ask you when you sit and  
5 sift through what is two weeks' testimony, a lot of it  
6 difficult, a lot of it emotionally challenging, gut  
7 wrenching, decide is this person who sits at this table so  
8 deprived of humanity, so bereft, so lacking in any human  
9 quality? Has his life been so empty and so bad that really  
10 the only thing you need to do, the only thing that's  
11 possible, the only appropriate punishment is death?

12           There may be people out there who fit that bill  
13 of goods. And I'm not here to say there isn't. But I think  
14 when you look at the case and the reasons that the death  
15 penalty is asked for, what we think it accomplishes for us  
16 as a community, and you look at that man there and what type  
17 of life he's led, it can be the fact that -- another small  
18 episode, I think it shows his humanity, is what does his  
19 wife say that when he goes to the Chuck E. Cheese dressed as  
20 a superhero, I mean such bizarre behavior, it can't manifest  
21 anything but mental illness. When he goes to Chuck E.  
22 Cheese, how does he get his high? He gets his high by  
23 playing with the little kids. The same Siaosi Vanisi that  
24 at the group, the family picnics, wants to spend his time  
25 gossiping with the older ladies and playing with the



1 children. Those displays of humanity, they're not statutory  
2 mitigators. They may not amount to a lot for the State.  
3 They may not amount to a lot for the family of George  
4 Sullivan. But those displays are the types of humanity that  
5 we need to consider before we decide does this person  
6 actually need to die. Are we accomplishing anything by  
7 putting him to death?

8 I have some other things I'd like to show you.  
9 If I could, I'd just like to depart from my presentation for  
10 a moment and talk about things the State had said.

11 Detective Jenkins was their last witness. And  
12 a lot of statements through Detective Jenkins and Vainga  
13 Kinikini are in the big scheme of things -- I mean, if  
14 they're taken out of context, these statements would help  
15 support your decision to put Siaosi Vanisi to death. But  
16 what do we know about the illness from Dr. Thienhaus? That  
17 people in their manic episodes exaggerate, are boisterous,  
18 can actually lose touch with reality.

19 Ladies and gentlemen of the jury, when  
20 Detective Jenkins takes those statements from Siaosi Vanisi,  
21 isn't that exactly what's going on? Is it not delusional  
22 that Siaosi Vanisi, as he's handcuffed and in belly chains  
23 and ankle chains, believes he's a Lamanite warrior? Is it  
24 not delusional that Siaosi Vanisi actually believes he's  
25 going to become later a Robinhood? Things Siaosi Vanisi

1 says about I don't feel anything anymore. I don't care  
2 anymore. I'm having fun.

3 What else do we know? What lets us know that  
4 this is really the manic episode, the manic depressive  
5 person speaking, what does Vainga Kinikini say about this?  
6 And again Vainga Kinikini is their witness. He's excited  
7 while he's saying this.

8 Ladies and gentlemen, the key symptom for  
9 bipolar disorder is that manic hyperexcitement that happens  
10 and in that hyperexcitement is when all these statements  
11 come out. And so in some sense I'm not disagreeing that  
12 these aren't statements that come from Siaosi Vanisi. But  
13 are they the statements of Siaosi Vanisi, the Siaosi Vanisi  
14 who is not in the throes of a manic episode? No, they're  
15 exactly that. And that's from the State's witnesses.

16 The State also asked you to consider if Siaosi  
17 Vanisi didn't intend to mutilate George Sullivan, why choose  
18 a hatchet. Well, check your own notes. My understanding is  
19 that Siaosi Vanisi actually wanted to buy a weapon first.  
20 Then when he's told you need a license opts for the hatchet.  
21 So those don't prove an intent to mutilate. It's proof of a  
22 fact that maybe Siaosi Vanisi didn't have the money to buy a  
23 weapon, but it doesn't mean in the end that he was trying to  
24 mutilate someone so that he could kill them. That may prove  
25 an intent to kill, which you already found in the first

1 degree murder case, but it doesn't prove an intent to  
2 mutilate.

3 The State also asks you to consider the fact  
4 that Siaosi Vanisi was laughing while he was being shot  
5 while trying to escape from the Nevada State Prison. I'm  
6 using the word "escape" pretty loosely, because he's  
7 actually going to escape into a more secure area of the  
8 prison.

9 Ladies and gentlemen, if someone does that in  
10 broad daylight, does that show they're a danger? It shows  
11 they're in the danger of being manic again or they're  
12 suffering from a manic episode at that point. But it  
13 doesn't prove a dangerousness, because we know that ever  
14 since -- Dr. Thienhaus and Dr. Lynn have talked about their  
15 co-diagnosis of Siaosi Vanisi, and after they've begun to  
16 medicate him in order to keep his manic episodes and  
17 depressive episodes level, he's not been a problem at the  
18 facility. So it doesn't demonstrate danger. It  
19 demonstrates mental illness. Now that we know that the  
20 mental illness has been taken care of, it's a reason not to  
21 kill Siaosi Vanisi.

22 If we could, I'd like to talk to you again  
23 about what is accomplished by the death penalty. We have --

24 MR. STANTON: May counsel approach?

25 (Bench conference between Court and counsel)

1 outside the presence of the jury as follows:)

2 MR. GREGORY: Maybe we should take a break to  
3 do this, Judge?

4 MR. STANTON: That's the exhibit that counsel  
5 had presented in front of the jury. This was not shown to  
6 the State. I briefly saw it. It's entirely inappropriate.

7 THE COURT: I was going to take the break at  
8 11:15, but now is fine.

9 MR. BOSLER: I'm almost done.

10 THE COURT: I'm sorry. You said this is  
11 entirely inappropriate?

12 MR. STANTON: Yes. I believe the portions that  
13 I've read is arguments by, may the record reflect counsel  
14 has a blown up exhibit, statements of Coretta Scott King and  
15 Kerry Kennedy Comeau, and they're statements in opposition  
16 to the death penalty. It's inappropriate argument. The  
17 death penalty is a law in the state of Nevada.

18 MR. BOSLER: Your Honor, my authority is Ybarra  
19 versus State, 103 Nevada, at page eight. And the quotation  
20 is:

21 "Factual matters outside the record are not  
22 generally proper subjects for argument at penalty unless  
23 counsel is discussing general theories of penology,  
24 punishment, deterrence and the death penalty."

25 THE COURT: Let me see.

1 MR. BOSLER: That's exactly what I'm doing.

2 MR. GREGORY: Not only that, the U.S. Supreme  
3 Court has many times said that counsel can argue the values  
4 of western civilization which these people obviously  
5 represent.

6 MR. BOSLER: As a reason not to impose the  
7 death penalty.

8 MR. STANTON: What you're asking, the problem  
9 with it, if the Court wants to read that section, is that  
10 they're arguing to the jury not to follow the law. You can  
11 argue that the death penalty isn't appropriate based upon  
12 facts in this case, but you can't argue that the death  
13 penalty is not appropriate. It's the law. So their  
14 argument is that the jury not follow the jury instructions.

15 MR. BOSLER: Your Honor --

16 THE COURT: Just a minute.

17 Was this Mills Lane's case?

18 MR. STANTON: I think so.

19 THE COURT: '87?

20 MR. STANTON: I think so.

21 THE COURT: I think so.

22 MR. GREGORY: Your Honor, in response --

23 MR. BOSLER: Maybe it would be better to take a  
24 break, Your Honor.

25 THE COURT: No. Just wait a minute.

1 MR. GREGORY: If I might respond to counsel's  
2 last statement, Your Honor. We're not arguing the law,  
3 we're arguing the philosophy of western civilization. It  
4 has nothing to do with the law.

5 THE COURT: If you are arguing why the death  
6 penalty should not be imposed in this case, because of  
7 circumstances involved in this case, you're entitled to do  
8 that. You're not entitled to bring in evidence that certain  
9 people in the community believe that the death penalty is  
10 inappropriate. What this says is that, and I don't know why  
11 you intended to use it, but you've got a quote here saying  
12 the death penalty is not the proper outcome, ever, in any  
13 case. So then you really are arguing for nullification of  
14 the law that allows the death penalty be imposed.

15 MR. BOSLER: I'm not going to argue that. I'm  
16 arguing that in general, theories of penology and  
17 deterrence, Your Honor.

18 THE COURT: You can argue general theories that  
19 some people should not receive the death penalty. But using  
20 the quote would be inappropriate.

21 MR. BOSLER: Am I allowed to -- I'm not allowed  
22 to quote people, historical characters?

23 THE COURT: I allow a certain amount of leeway  
24 there, but I mean I've allowed people to quote historical  
25 figures in the past. I don't know exactly what you want to

1 do here.

2 MR. STANTON: Your Honor, my additional  
3 objection is that neither of these people -- this isn't  
4 evidence. He's bringing quotes from people that aren't  
5 examined and sworn witnesses in this case.

6 MR. GREGORY: Quotes from famous people are  
7 used all the time and has been approved by the U.S. Supreme  
8 Court.

9 THE COURT: This exhibit is not appropriate and  
10 the use of the exhibit will not be allowed.

11 MR. GREGORY: So we can quote those people but  
12 we just can't show it as an exhibit?

13 THE COURT: I don't understand how you can  
14 quote these people and still fulfill the requirements of  
15 Ybarra. When I read the Ybarra case, it seemed clear that  
16 what the Supreme Court was talking about was an error, error  
17 that was committed both by the prosecution and the defense.  
18 The general statement of the law in the Ybarra case does not  
19 open the door for this kind of argument. It was deemed in  
20 the Ybarra case improper. Not proper. That's my reading of  
21 Ybarra itself.

22 MR. STANTON: I'd specifically ask that the  
23 Court order that that exhibit not be shown in any way, shape  
24 or form to the jury, nor any contents read or referred to by  
25 Mr. Bosler. There's nothing in those comments that's

1 appropriate.

2 THE COURT: Has this even been marked?

3 MR. GREGORY: No. You can keep the exhibit up  
4 there, Judge.

5 THE COURT: We'll have the clerk mark it.

6 (Exhibit 54 was marked.)

7 THE COURT: The exhibit is marked 54. It's the  
8 next in order. And so we can keep a record, I'm going to  
9 grant Mr. Stanton's motion, but we'll have a record of the  
10 exhibit. It will be in the record. If you believe my  
11 decision is improper, it can be a subject of appeal.

12 MR. GREGORY: Thank you, Your Honor.

13 MR. STANTON: Your Honor, additionally, do you  
14 have any more of these little gems?

15 MR. BOSLER: (Showing document) This has been  
16 pretty commonly used.

17 MR. GREGORY: This is used in capital  
18 punishment seminars that we've all attended.

19 MR. STANTON: Counsel understands he's not to  
20 read anything from that document to this jury?

21 THE COURT: That's my ruling.

22 MR. BOSLER: I object, but --

23 THE COURT: That document being the exhibit  
24 that's been marked.

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



1 MR. BOSLER: The way in which our society says  
2 people from the community can be drawn at random and decide  
3 whether someone lives or dies is a difficult concept. Not  
4 only morally, but legally. What I've done is hopefully  
5 present a little chart so you guys could understand how the  
6 process works. And I think what the chart will show you is  
7 again, like I said many days ago, there are many more  
8 reasons not to kill than there are reasons to kill.

9 As it was explained, the first step is to find  
10 does an aggravating factor exist, has it been proven beyond  
11 a reasonable doubt. If it hasn't, then the only choice is  
12 life imprisonment. If you find an aggravating circumstance  
13 does exist and has been proven beyond a reasonable doubt --  
14 death eligibility, the legal term for it -- you go to the  
15 next step: Has there been any evidence of mitigating  
16 circumstances? And again the law says there's many more  
17 reasons not to kill than there are to kill. The way the law  
18 works is that the State has the burden of proof for  
19 aggravating circumstances. If any of you as individuals  
20 find any evidence of mitigating circumstance, then you can  
21 find in your mind that that's been established.

22 The proof beyond a reasonable doubt isn't a  
23 burden that's imposed upon the defendant. It's only the  
24 fact that some of you would find any evidence of mitigating  
25 circumstance. Hopefully that's pretty relevant or

1 understandable.

2 If you find mitigating circumstances, then you  
3 have to go the next step: Do they outweigh the aggravating  
4 circumstances? Well, I've given you eight, 10, 12 different  
5 mitigating circumstances. I know you, as intelligent,  
6 rational members of our community, will be able to look at  
7 this evidence and see many more that I'm not going to be  
8 able to pull out or show you. Things are going to be more  
9 important to you. They may be things that I may not find  
10 important. But again, the process, as you look through all  
11 this evidence, decide, well, this juror finds these two  
12 aggravators but I find these six mitigators. Talk to me  
13 about why you think the aggravators are more important than  
14 my mitigators, convince me why, even if I believe these are  
15 found, that death is the appropriate punishment. That's the  
16 type of process that's supposed to go on.

17 If you were to find that the aggravators, the  
18 mitigation does not outweigh the aggravation -- mitigation  
19 does outweigh the aggravation, the next step, life in  
20 prison. You define the aggravators outweigh the mitigation  
21 in order to even consider death. Even then we come to this  
22 point right here. Like I said when we selected the jury, if  
23 you found 12 aggravators and didn't find any mitigators, you  
24 never have to impose death. That is a moral, awesome,  
25 judgment decision you need to make as a group and as

1 individuals, and the law doesn't force you to do anything.

2           There is no magical mathematical formula that  
3 says we can put these four volumes of paper over here and  
4 these three volumes over here and we're magically told  
5 whether someone lives or dies. That's not how the law  
6 works. That's not how society works.

7           The weighing process, all the way through the  
8 process, gives you all the opportunities to say I'm not  
9 going to accomplish anything by killing this person. There  
10 are more reasons to not kill than there are to kill, and the  
11 instructions are going to tell you that. The diagram tells  
12 you that. I've told you that. The State said it. I just  
13 don't want there to be any confusion.

14           This may be hard to believe, but I'm usually a  
15 man of very few words. I heard Mrs. Sullivan -- I sat  
16 through her victim impact statement. One can't help but to  
17 be moved by the quality of life that she shared with George  
18 Sullivan and how it's impacted their family. You can't help  
19 but be moved by that. But she said one thing. It kind of  
20 stuck out to me. She was describing what would happen when  
21 her children seem to act out or get angry and she believed  
22 it was due to what had happened to her husband. She tells  
23 the children to stay away from the anger, go away from the  
24 anger. And it seemed so again ironic to me that these  
25 lessons we give to children sometimes seem to be lost on the

1 adults.

2           There's reasons to be angry about what happened  
3 in our community. There's reason to be angry about the  
4 death of George Sullivan. But in the end, if we follow  
5 Mrs. Sullivan's advice and stay away from that, there's many  
6 more reasons not to kill Siao Si Vanisi, for you not to  
7 sentence him to death than are actually used for him to  
8 sentence you to death. If you look at really what's going  
9 to be accomplished by doing what the State asked you to do,  
10 you have just made, you've doubled one tragedy into two.  
11 And if that's some sense of justice, then I'm not going to  
12 understand it. But I'll abide by your decision. I just  
13 would ask you to consider what I've said before you  
14 undertake what is an awesome responsibility.

15           Thank you.

16           THE COURT: Okay. The State is allowed to make  
17 a rebuttal argument, but I am going to take our morning  
18 recess now. The bailiff will provide you with some menus.  
19 I'm going to ask you order a meal for your lunch, because  
20 you will not be out and about today. If you need to make  
21 any telephone calls to advise any last minute family members  
22 about the fact that you are not going to be available to  
23 talk to anyone in a little while and throughout the rest of  
24 the deliberations, I'd ask that you make those calls on this  
25 morning's break.

1                   During this break do not discuss among  
2 yourselves or with anyone else any matter having to do with  
3 this case. It is your further duty not to form or express  
4 any opinion regarding the ultimate punishment in this  
5 matter.

6                   You are not to read, look at or view any news  
7 media accounts regarding the case. And should any person  
8 attempt to influence you in any manner with regard to this  
9 case, you must report such an attempt to the Court  
10 immediately.

11                   Court's in recess.

12                   (Recess taken.)

13                   THE COURT: Counsel, will you stipulate to the  
14 presence of the jury?

15                   MR. STANTON: Yes, Your Honor.

16                   MR. GREGORY: Yes, Your Honor.

17                   THE COURT: The State may conclude your closing  
18 arguments.

19                   MR. STANTON: Thank you, Your Honor.

20                   Ladies and gentlemen, I'm going to speak  
21 primarily to the comments, facts and analysis that  
22 Mr. Bosler just gave you. The first thing I'd like to start  
23 off with is his analysis of the aggravator of mutilation.  
24 He's got a primary defect in his argument here. Fatally  
25 flawed.

1           There's nothing in this instruction that says  
2           that the mutilation has to take place when someone is dead.  
3           And that was the entirety of his argument to you about  
4           disfiguring the body once somebody has died. The statute  
5           says that a portion of mutilation, one way to find it -- and  
6           there's several up there -- is that it is an act beyond the  
7           killing itself, not that the person is dead, but that the  
8           murder in the fashion it was committed was more than was  
9           necessary to commit the murder.

10           He argues that Andrew Ciocca found the officer  
11           breathing; that he was still alive. That flies in the face  
12           of that definition. He argues by analogy the State says  
13           look at the weapon that he used, a hatchet. He wanted to  
14           buy a gun. Okay. Let's use that analogy that Mr. Bosler  
15           gives you. A gun. If Siaosi Vanisi had walked up to  
16           Sergeant Sullivan, knocked him on the ground and shot one  
17           round into his head and it was a high caliber weapon, 12  
18           gauge shotgun, caused significant disfigurement, that would  
19           not be mutilation. But if he took that same shotgun, that  
20           same handgun -- remember the testimony of Dr. Ellen Clark,  
21           minimum of 20 blows to the head. So instead of one shot to  
22           the head to kill, he shot that gun or shotgun 20 times,  
23           that's evidence of mutilation.

24           It doesn't trigger itself on when death occurs.  
25           Do you think Siaosi Vanisi was making that assessment? Do

1 you think he checked Sergeant Sullivan's pulse? No. That's  
2 not what that instruction means. It is the act beyond the  
3 killing itself is mutilation, coupled with it the state of  
4 mind. What's he doing? Why is he doing it? Why is he  
5 hitting George Sullivan in the face? Wounds to the face are  
6 to disfigure, the anger and the hatred. Why? It's in his  
7 mind. The State didn't make up that evidence. He's the one  
8 that stated it.

9 Mr. Bosler talks to you about mental illness.  
10 Ladies and gentlemen, I know you will very carefully  
11 consider the evidence in this case. One thing I ask you is  
12 be very, very careful about the evidence that you've heard  
13 about mental illness.

14 Where have you seen that evidence and what kind  
15 of evidence is it? First of all, Dr. Thienhaus, their  
16 witness, comes in and says the primary source of information  
17 for him to make a diagnosis almost exclusively is from one  
18 source and one source only. Who is that? Where is that  
19 source from? From the defendant himself. In what situation  
20 is Siaosi Vanisi in when he makes the statements to Dr.  
21 Thienhaus that draws him to the, quote, diagnosis that he's  
22 mentally ill?

23 First of all, he never diagnosed him as being  
24 mentally ill. He diagnosed him as being possibly manic  
25 depressive.

1           Once again, from him. What evidence do you  
2 have in this case that would suggest that anything from  
3 Siaosi Vanisi might be structured purposely to manipulate  
4 the system for his own good? At least two doctors, a  
5 psychiatrist and a psychologist, had previously concluded  
6 conclusively that that man was malingering, a conscious  
7 fabrication to benefit one's self.

8           "Mr. Vanisi does not believe that he's mentally  
9 ill, but he is smart and motivated. Therefore, he's  
10 attempting to manipulate us into believing he's psychotic  
11 with a short-term goal of avoiding responsibility for recent  
12 behavior. Digging under a fence, setting fires, refusing  
13 direct orders. This will produce a future forensic problem.  
14 Mr. Vanisi is motivated to avoid a death sentence and is  
15 smart and manipulative. I am required by ethics to educate  
16 him regarding his mental illness. This results in his  
17 increased ability to fake and exaggerate symptoms. For  
18 example, he tried to tell me today that his manic depression  
19 makes him unaware -- equals not responsible -- for what he's  
20 doing. I told him he was not telling me the truth and  
21 explained that bipolar disorder could result in a decreased  
22 ability to make rational, reasonable decisions to control  
23 his impulses. He understood the difference immediately and  
24 applied it."

25           That's what he did regarding mental illness.



1 He's learning. He's learning the right things to say and do  
2 to benefit himself.

3 So when any of you sit there and consider  
4 mitigating evidence in this case that that man is mentally  
5 ill, think very carefully about what evidence you get that  
6 from and the weight and the credibility you should lend to  
7 it. I suggest none. Unless it's independently  
8 corroborated. Oh, we have independent corroboration,  
9 according to Mr. Bosler. What is it? His pre-murder  
10 behavior.

11 The entirety of the evidence presented by the  
12 defense penalty witnesses in this case boils down to a  
13 couple categories. One category I refer to is the high  
14 school witnesses. I think that testimony can be fairly  
15 surmised as follows: 10, 11, 12 years ago a person by the  
16 name of George Tafuna attended Cappuchino High School in the  
17 greater San Francisco area. He was a nice guy. Good  
18 student. No problems. That's it.

19 Next we have a series of family witnesses that  
20 have said he was raised in a loving, caring environment. He  
21 wasn't abused. That's also offered as mitigating evidence  
22 that someone has an abusive childhood. Was it in this case?  
23 No.

24 I think it can fairly be represented that the  
25 family of the defendant generally were loving, caring

1 people, that gave him an environment to grow in, healthy  
2 environment to grow in. In fact, Mr. Vanisi even tells  
3 Detective Jenkins that. Concedes it.

4 But look at what the evidence doesn't show you.  
5 There's a huge gap in what they presented to you. It's as  
6 glaring as the daylight sun. All the evidence comes up to  
7 what I'll refer to as the royal wedding that we heard so  
8 much about, and behavior that disrespected the royal family.  
9 Was there any other instances that showed mental illness as  
10 Dr. Thienhaus described? Anything that was severe manic  
11 depression or even mild manic depression?

12 The only testimony about Mr. Vanisi's behavior  
13 prior to getting to Reno in January 1998 was from Deanne  
14 Vanacey, his wife. What did she tell us? Some shocking  
15 information, actually. That this person, as Mr. Bosler  
16 said -- let me get his quote -- "he's a decent human being  
17 before the murder." Really? Siaosi Vanisi is a decent  
18 human being before the murder?

19 The definition of decency must be obviously a  
20 distorted one if that's indeed a claim to be made to you,  
21 ladies and gentlemen. Because it is uncontroverted  
22 testimony that the Deanne Vanacey left the defendant a year  
23 before she made the January 29th, 1998 telephone call to  
24 Sergeant Jeff Partyka. By her sworn testimony, a year  
25 before, she had left him because he was physically and

1 verbally abusive; that he didn't care for the children  
2 because he didn't work and she had to work two jobs to care  
3 for the children; that he wanted to go out to clubs and be  
4 single, live the single life. That he wore wigs. He was  
5 the center of attention.

6 Ladies and gentlemen, that's not mental  
7 illness, that's selfishness. That's being self-centered.  
8 And what he's running away from when he comes to Reno is a  
9 lifestyle he'd rather forget. It's not love for his  
10 children, it's not love for his wife, it's an abrogation of  
11 his responsibility as a human being. He comes to Reno not  
12 in a drug-induced manic state of mind, dressed as a  
13 superhero, he comes up here wearing his wig and a racist  
14 view of life that he's going to be a Tongan man and take  
15 back from the whites.

16 Renee Peaua said that the defendant, who she  
17 idolized, were her words to the police, was obsessed with  
18 money. Obsessed with money. This is this manic depressive  
19 person? It boils down to a very simple thing, ladies and  
20 gentlemen, this quote mental illness -- he didn't like, as  
21 he got into his 20s, living the lifestyle he had previously  
22 led in Los Angeles as an actor. He wanted a completely  
23 different lifestyle. And his, quote, mental illness was now  
24 a racist viewpoint that he had thought about and researched  
25 for months. His hatred towards whites.

1 Be very careful about the evidence of mental  
2 illness in this case, where it comes from and the  
3 credibility and the veracity of any of that information.

4 Deanne Vanacey, a couple things that she said  
5 that I'd just point out to you to view with suspicions, some  
6 of her testimony - her motivation. She's testifying at a  
7 penalty phase where the death penalty is an option. And she  
8 still loves the defendant.

9 She says that in 1996 the defendant takes a  
10 trip to China and buys bottles of Phen Fen. What's odd  
11 about that was her earlier testimony on direct examination:  
12 They had no money. How does he get to China to purchase  
13 drugs, to smuggle back into the United States?

14 He's a superhero. Remember her testimony about  
15 wearing a wig and women's leggings standing in front of the  
16 mirror? She left the witness stand, sounded like odd  
17 behavior, until we have the Public Defender investigator who  
18 sheds some light on what really that was all about.

19 And Mr. Bosler mentioned it to you; that he's  
20 dressed up as this superhero at a Chuck E. Cheese with  
21 children, and he says if that's not evidence of mental  
22 illness, I don't know what is.

23 I'll leave it to you, ladies and gentlemen of  
24 the jury, if that's any evidence of mental illness to you,  
25 that a man dresses up to entertain children at a Chuck E.

1 Cheese.

2 Kathy Peaua: This is the person that lives at  
3 Sterling who testified primarily to the aberrant behavior of  
4 Mr. Vanisi; that he was using drugs. And she previously  
5 hadn't told the truth that indeed there was drug usage going  
6 on at Sterling, and that she was an eyewitness to it and an  
7 eyewitness to the defendant using drugs. What did she tell  
8 you, when you look closely at her testimony? She said she  
9 sees the defendant using drugs, marijuana, and white pills.  
10 There's no evidence what those white pills are. None  
11 whatsoever.

12 But let's go further with what she testifies  
13 to. What was his demeanor like? "He was withdrawn and  
14 antisocial." All the other witnesses in the case say that's  
15 the exact opposite of what Mr. Vanisi was. In fact, it  
16 directly contradicts the symptoms of methamphetamine, which  
17 is an accelerant to someone's behavior, and it flies  
18 directly in the face of Manaoui Peaua, who testified in the  
19 guilt phase. Remember, he's the gentleman that sees the  
20 defendant sleeping just before he watches the movie, a time  
21 of which after Mr. Vanisi gets up, wakes from his sleep,  
22 goes and murders Sergeant Sullivan, comes back to the  
23 Sterling Way house and asks for a ride over to Losa's house  
24 over on Rock Boulevard. That's who Manaoui is. So her  
25 testimony that she's never seen him sleep and saw him using

1 drugs at 10:30 at night is in direct contravention to  
2 Manaoui Peaua's testimony, who saw him sleeping.

3 And remember Mr. Peaua said that on the way  
4 over to Rock Boulevard the defendant had several things  
5 different. He wasn't wearing his wig anymore. He was quiet  
6 when he drove over. Other than that, he seemed normal. And  
7 yet the aggravating or the mitigating circumstance that  
8 Mr. Bosler tells you exists in this case is that the  
9 defendant was operating under an extreme emotional  
10 disturbance. When? It has to be at the time of the murder.

11 Dr. Thienhaus said on cross-examination by  
12 Mr. Gammick that in order to be in an extreme episode of  
13 manic depression, the person wouldn't know and be able to  
14 operate mentally, to plan and organize. Is there evidence  
15 that the murder of Sergeant Sullivan was planned and  
16 organized? Absolutely. Where is it from? From the  
17 defendant's own relatives. Out of his own mouth. "I want  
18 to kill a cop." "I want to kill a cop on a coffee break."  
19 "I want to kill a cop when I sneak up, creep up on him from  
20 behind." "I'm going to take the dog along, Doobie, so it  
21 acts as cover." I'm going to wear a Jamaican disguise so no  
22 one will ever know it's me."

23 Yet, according to the defense's own expert  
24 witness about manic depression, if it's an extreme bout of  
25 manic depression, he couldn't even think that way, let alone

1 what he does after the murder: throws the wig and the beanie  
2 into the creek. Why? If he's manic depressive, he wouldn't  
3 care one way or another. No, he did it because he's the  
4 Tongan warrior.

5 This mentally disturbed man afterwards sports  
6 this as a proud trophy after he bludgeoned Sergeant Sullivan  
7 to death.

8 MR. BOSLER: The record should reflect that  
9 Mr. Stanton is wearing the belt.

10 THE COURT: The record will so reflect.

11 MR. STANTON: That is the evidence of this  
12 deranged man. It entirely fits with his racist views of  
13 whites and his views of cops.

14 We had a witness say that Mr. Vanisi hated  
15 white police officers because his wife, Deanne Vanacey, left  
16 him for a white police officer. Ms. Vanacey denies that  
17 under oath on the stand. Whether it's true or not, who  
18 knows.

19 The question is, what effect did it have in his  
20 mind? The effect was disastrous.

21 Mr. Bosler tells you that, get this one  
22 correct, "that it was a tragic circumstance that the police  
23 officer that Siaosi Vanisi killed was white." Tragic?  
24 Coincidence? Besides the two witnesses, and I understand  
25 Mele Maveni has recounted her testimony, but we had two

1 witnesses who swore under oath in the guilt phase,  
2 uncontested in the guilt phase, that he wanted to kill a  
3 white cop. But we have two prevailing comments about hating  
4 whites and hating police officers. So what's the leap  
5 between white and cop? There is none. We know for sure  
6 that Sateki Teki Taukiueva and this man stalked a Sparks  
7 police officer the night before Sergeant Sullivan's murder.  
8 Guess what, he's white, too. That's what Mr. Taukiueva's  
9 testimony was.

10 Coincidence? The defense would like you to  
11 think so. It certainly wasn't a coincidence based upon  
12 Mr. Vanisi's statements.

13 Another problem Mr. Bosler has, the robberies.  
14 The robberies of the two grocery stores. How do you argue  
15 that? Because there's one major aspect of those robberies  
16 that flies in the face of their theory. His demeanor. His  
17 demeanor. He's cool, calculated. Polite. He knows exactly  
18 what he's doing there. Is that evidence of someone  
19 operating under a mental disease or defect such as Dr.  
20 Thienhaus said they would be incapable of planning or  
21 formulating any rational thought?

22 Cool, calm and collected is what both those  
23 witnesses said. Yet, incredibly we now have an argument to  
24 you that doesn't analyze his behavior, because they can't  
25 answer that question. It flies in the face of their theory.



1 But what they now argue to you is, ladies and gentlemen,  
2 that's a mitigating factor. The victim of an armed robbery  
3 and the fact that he did not kill them because they were  
4 white is a mitigating factor because, quote, he showed  
5 compassion by not killing the victims.

6 He said - Mr. Bosler - that the State probably  
7 wouldn't agree with that. It's not whether the State agrees  
8 or doesn't agree with you. I ask you, ladies and gentlemen  
9 of the jury, is that a mitigating factor?

10 Mr. Bosler says this process of the death  
11 penalty, that we quickly dispatch the defendant with a  
12 decision of death. He says several different things that  
13 attempts to shift the burden on your shoulders relative to  
14 the death penalty, whether you decide to kill Siasosi Vanisi.

15 Ladies and gentlemen, your death verdict in  
16 this case, as the instructions clearly state, you are to  
17 presume that sentence will be carried out. And there is no  
18 doubt that if you render a death verdict, that indeed that  
19 is the sentence that will be carried out.

20 But ladies and gentlemen, it is not you that  
21 put us in this situation today. There's only one --

22 MR. BOSLER: I'm going to object, Your Honor,  
23 to anything that implicates that the jury has any other duty  
24 other than to impose death -- any comment that Mr. Vanisi is  
25 the person who chose death by his conduct is improper,

1 because ultimately the jury is the people who have to decide  
2 whether Mr. Vanisi lives or dies.

3 THE COURT: Overruled.

4 MR. STANTON: The position of you making this  
5 decision is solely because of him and no one else. Let's  
6 get one thing straight about this case and about  
7 responsibility. This case isn't about drugs. It's not  
8 alcohol. It's not mental illness. How many people suffer  
9 from depression? Manic depression? How many people of  
10 those use methamphetamine? Yet, the question begs itself,  
11 why kill and why kill in this fashion? The only explanation  
12 that remains is that Siaosi Vanisi, in his heart, in his  
13 soul and in his mind is the basis for his behavior and  
14 nothing else.

15 "Quickly dispatch Mr. Vanisi." This is a legal  
16 process. You heard evidence, facts and instructions of law.  
17 A civilized society. That's how the imposition of  
18 punishment in all criminal cases is, and the most severe of  
19 all, a first degree murder, capital murder case. He tries  
20 to compare with two wrongs don't make a right argument.  
21 Sergeant Sullivan was tragically killed, he concedes, but  
22 what are we going to do by sentencing Mr. Vanisi to death?  
23 We're going to compound the tragedy by inflicting the trauma  
24 that the Sullivans had to the greater Vanisi family.  
25 There's a major problem with that argument. The problem is

1 this: George Sullivan didn't have a jury. He didn't have  
2 evidence. George Sullivan was an innocent man. That's the  
3 difference between this process. That is what an ordered  
4 society does. They follow the rules. They have a trial  
5 before a jury of his peers.

6 Manic illness -- besides the number of people  
7 that have the disorder that don't do what Mr. Vanisi did,  
8 what was Dr. Thienhaus' answer about the question where does  
9 violence play in a manic depressive order? In other words,  
10 are manic depressives violent?

11 Dr. Thienhaus' testimony was it's only in an  
12 acute stage of manic that someone can be violent. And  
13 acute, he says, is when someone cannot process or think at  
14 all; plan. We've already proven to you, I would submit,  
15 the evidence in this case about how he killed and what he  
16 did after directly contradicts any assertion that he was  
17 operating under a manic or severe manic episode.

18 Counsel argues the following: Guess what,  
19 Siaosi Vanisi is a cop killer. You've seen what's happened  
20 to him at jail and prison. Sentence him to life without the  
21 possibility of parole and that's really going to punish that  
22 man. Because, as Mr. Bosler argued to you, the jail  
23 deputies and the prison deputies have been unfair to him.  
24 They've beaten him up, shoved him down, violently assaulted  
25 him. Why? Because on two occasions he didn't listen to

1 orders quick enough.

2 That's not what the testimony was. The  
3 testimony was conclusively in every single cell extraction  
4 Mr. Vanisi had multiple opportunities to respond to those  
5 jail deputies' orders after the Detention Response Team or  
6 distract team was called.

7 That's Mr. Bosler's job, he's a defense  
8 attorney, to make some argument to you. But remember, look  
9 at the entirety of the facts when you evaluate those  
10 assessments of counsel.

11 And if life in prison is going to be so tough  
12 for Mr. Vanisi, why argue for it? If it's that tough for  
13 him, why would you want to argue for that? It's because  
14 ultimately the most valuable thing is life itself.

15 Mr. Bosler says that Mr. Vanisi was walking in  
16 a drug-induced manic depressive state at the campus of UNR  
17 on January 12th into January 13th, 1998. What's the  
18 evidence to suggest that?

19 What's the evidence before you that suggests  
20 that he was suffering from any mental disease or that he was  
21 under the influence of some drug-induced stage? We have  
22 Brenda Martinez, whose observation was he staggered;  
23 possibly, as she put it, drunk. Does she know whether he's  
24 drunk? She has no idea. None whatsoever. And that he  
25 followed the lights down the street. There's no evidence of

1        what Mr. Vanisi did from when Brenda Martinez saw him.

2                The next piece of evidence and the only piece  
3 of evidence you have is what Carl Smith saw, not of a  
4 staggering drunk, but of Mr. Vanisi glaring at him.

5                Mr. Bosler says, look, these are the State's  
6 witnesses; they want you to believe the State witnesses  
7 because they carry the message of what Mr. Vanisi said and  
8 did. Ladies and gentlemen, those witnesses were called by  
9 the State. They're not my witnesses. They're the people  
10 that have evidence to support criminal charges. Who are  
11 these witnesses? They're not my choice. If I had my choice  
12 to be able to go walk out into the community and to pick  
13 witnesses to testify in a criminal case, Lord knows it  
14 wouldn't be Renee Peaua. I am left with the witnesses that  
15 he chose, the defendant, to bear his soul to, who he said  
16 things to, where he dropped the evidence, where he put his  
17 blood stained clothing, that's who I'm left to call. Am I  
18 endorsing their credibility because I called them? No. I'm  
19 not endorsing their credibility whatsoever. That's your  
20 job. Their bias, their perspective, their demeanor and  
21 appearance on the stand is what you should consider when you  
22 determine what credibility to lend to those witnesses.

23                Do they say that Siaosi Vanisi changed in his  
24 behavior? I think everybody did. David Kinikini believed  
25 as well, with several other witnesses, that he looked

1 different. Dressed different, whatever. Is that borne out  
2 of mental illness because somebody looks different from the  
3 last time they've seen him several years ago? No. Not  
4 because Mr. Vanisi has now embraced, done his research about  
5 his racist views on whites. Now he's different.

6 Remember the testimony of what he does in the  
7 van, where he takes the hatchet and hits in the back of  
8 Ms. Kauapalu and then stares at her after she tells him  
9 "Wanting to kill somebody is wrong." Just glares at her.  
10 In that van, Mr. Vanisi says, "I want to go get my Tongan  
11 mats." And the witness told you what a Tongan mat is. It's  
12 a garb dress like the warriors. This isn't some superhero  
13 comic book character. This is Mr. Vanisi's viewpoint that  
14 he wants to be a Tongan warrior to kill whites.

15 Ask yourself when you think about that racist  
16 angle in this case, how is it any different substantively  
17 from a white supremacist who hates minorities? And as I  
18 said in my opening statements to you in this case, there is  
19 no distinction between it. It's morally offensive no matter  
20 what race your hatred is targeted.

21 Mr. Bosler talks to you about the prison  
22 escape - well, it's an escape in quotes. You're either  
23 pregnant or you're not. It's either an escape or it's not.

24 The guards aren't shooting weapons at him  
25 because they're going to sit there and say, hey, Bob, don't

1 worry about it, once he gets through the next fence he's  
2 going to get to a more secure area, we'll blast him then.  
3 It's not a sign of mental illness. It's a sign of him  
4 showing the dangerous person that he is, attempting to  
5 escape and mentally, as part of this game, playing with  
6 correctional officers, his hatred, his disrespect, his  
7 despise of those officers and what they represent.

8           There is a photograph in evidence, a photograph  
9 of the weapon of Sergeant Sullivan in Salt Lake City. The  
10 testimony in the guilt phase is that it was taken in the  
11 laundry room area after the hostage situation was taken  
12 over. There's an important piece of evidence in that  
13 photograph, one that was never mentioned by Mr. Bosler in  
14 his closing today. Why it wasn't mentioned? Because it  
15 doesn't fit their theory. Remember, the defendant is in a  
16 hostage situation in his own relative's house, which he  
17 tries to burn down by starting a fire in the garage. And  
18 what does Mr. Vanisi say at the beginning of the hostage  
19 situation according to the witness, Keith Stephens, Craig  
20 Meyer? He tells the SWAT officers that there's children in  
21 the house, to buy himself time, to manipulate them. Is that  
22 the sign of a man who can't think? He doesn't know what  
23 he's doing? No. It's precisely consistent with everything  
24 else that this man has done, and that is attempt to  
25 manipulate the system to his best advantage.

1           What else does he do? He takes a cutting  
2 board, a wooden cutting board that's in that photograph, and  
3 he stuffs it down his shirt when the police are coming in.  
4 Remember, I asked the SWAT officer that went into that home,  
5 what concern that had to him as a SWAT officer being  
6 involved in a potentially deadly use of force. He said that  
7 board protects the center mass, just like a police officer's  
8 vest. Is that the sign of a crazed, drug-induced person  
9 that can't think, or is that the sign of a person who is  
10 wily, cunning, intelligent, beyond his years in school?  
11 That's exactly what it is. He's doing what any person  
12 reasonably could do that could think under those  
13 circumstances. And he was acting just like he did in those  
14 two stores: calm, cool, collected.

15           Mr. Bosler mentioned some things about  
16 statements to Detective Jenkins. He has the testimony  
17 wrong. Detective Jenkins testified about statements that  
18 Mr. Vanisi made to him when he was in handcuffs. Those  
19 statements were made about his mother should be wearing  
20 these same chains for bringing him over to the United  
21 States. The same mother, either his aunt or his biological  
22 mother, who did nothing but love him all his life. And  
23 that's what he has to say about them.

24           What he's relating is the statements made to  
25 Vainga Kinikini, "I want to kill this white mother fucker."



1 "I want to kill Jesus Christ." "I want to kill this white  
2 mother fucker," pointing to each one of the presidents of  
3 the Mormon church. It's not the sign of a drug-induced,  
4 crazed man. It's induced by hatred, racial hatred and  
5 nothing else. Pure and simple.

6 He made comments about Carolyn Sullivan's  
7 comments about her children. The children are told not to  
8 hate because they're children. It's the healthy way to  
9 improve.

10 The function of a jury in a capital murder  
11 case, your sworn oath is to apply the law and the facts and  
12 to make a reasoned moral judgment. There's a great  
13 distinction and no parallel exists between those two.

14 Ladies and gentlemen, Siaosi Vanisi doesn't  
15 deserve your sympathy. He doesn't deserve your pity. He  
16 doesn't deserve your warmth. He doesn't deserve your  
17 compassion. He doesn't deserve your mercy. He doesn't  
18 deserve your leniency. Justice in this case demands death.

19 Thank you very much.

20 THE COURT: Counsel stipulate to the alternates  
21 remaining in the custody and care of the officers?

22 MR. GREGORY: The defense would so stipulate,  
23 Your Honor.

24 MR. GAMMICK: The State would too, Your Honor.

25 THE COURT: Thank you.

1 Ladies and gentlemen of the jury, at this time  
2 our alternates remain, Mr. Carmichael, Mr. Costello and  
3 Ms. Frazer. You will not begin your deliberations on this  
4 matter at this time. You will be held separately as was the  
5 case before. And if there is a vacancy on the jury, one of  
6 you would be substituted in for the juror who had to be  
7 relieved and the jury will begin their deliberations anew.  
8 Therefore, you must follow the admonition during this break  
9 that I've given you at all other breaks. You must follow it  
10 diligently and remember it carefully.

11 It is your duty not to discuss this case among  
12 yourselves or with anyone else. You may not form or express  
13 any opinion with regard to the ultimate decision in this  
14 case. You may not look at, listen to or view in any way or  
15 read any news media accounts regarding this case. You may  
16 not allow anyone to attempt to influence you with regard to  
17 it. If anyone should attempt to influence you with regard  
18 to it, you must report it to the officers who will be in  
19 charge of you.

20 I'm going to let you leave in just a moment  
21 with the rest of the jury, proceed into the jury room,  
22 gather up your personal belongings, and leave with  
23 Mr. Anderson. Do not discuss anything with your fellow  
24 jurors as you walk through the jury room.

25 Ladies and gentlemen of the jury who will be

1 deliberating this phase of the case, you will have with you  
2 in the jury room all the evidence that has been admitted in  
3 this case. In addition, you'll have a copy of the jury  
4 instructions that I've given you and you may take your notes  
5 with you.

6 The clerk will now swear the officers to take  
7 charge of the jury.

8 (Bailiffs sworn).

9 THE COURT: Gentlemen, will you please escort  
10 the jury and alternates into the jury room.

11 (Whereupon the jury was excused.)

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

14 THE COURT: Counsel.

15 MR. GREGORY: Just a couple matters.  
16 Instruction No. 8 and Instruction No. 5.

17 THE COURT: Okay.

18 MR. GREGORY: Instruction No. 8, Your Honor, we  
19 use the term "firearm." I believe "hatchet" should have  
20 been inserted. I have no objections to that being changed  
21 before it's given to the jury.

22 THE COURT: Or "deadly weapon." That's what  
23 the jury found.

24 MR. GREGORY: Fine.

25 THE COURT: I did notice that as I was reading

1 it but counsel didn't object so I kept reading.

2 MR. GREGORY: I didn't want to do it in front  
3 of the jury.

4 THE COURT: Mr. Stanton.

5 MR. STANTON: The instruction number that the  
6 Court is referring to?

7 THE COURT: It's 8, "Any person who uses a  
8 firearm." The jury found a deadly weapon in this particular  
9 case.

10 MR. GREGORY: It's in two places. Also on line  
11 eight.

12 THE COURT: Do you have a position?

13 MR. STANTON: No objection, Your Honor.

14 THE COURT: Then the Court will, by  
15 interlineation, change the word "firearm" to "deadly  
16 weapon."

17 MR. GREGORY: Thank you, Your Honor.

18 THE COURT: In both places.

19 MR. GREGORY: Instruction No. 5, line nine,  
20 "doubt, to be reasonable."

21 THE COURT: I think I read it "to be  
22 reasonable."

23 MR. GREGORY: You did indeed.

24 MR. STANTON: No objection, Your Honor.

25 MR. GREGORY: Thank you, Your Honor.

1 THE COURT: Those changes have been made.

2 Anything further?

3 MR. GREGORY: No, Your Honor.

4 THE COURT: Have the alternates been removed?

5 THE BAILIFF: Yes, Your Honor.

6 THE COURT: I want to remind everyone who has  
7 participated in the trial in terms of family members of both  
8 sides and observers, that while the jury is deliberating,  
9 it's my policy to keep the floor clear of interested  
10 participants. Therefore, the family members on both sides,  
11 friends and family, and friends, and anyone just interested,  
12 I'm going to ask you leave the fourth floor immediately.  
13 You can remain in the courthouse. It's free to you, but I  
14 don't want you on the fourth floor during the deliberations.  
15 And if you want to stay someplace where you can be notified  
16 by counsel, just tell them where you are. They will notify  
17 you if we have a verdict.

18 Counsel, it's your responsibility to stay in  
19 touch with the clerk of the court and the administrative  
20 assistant with regard to your whereabouts.

21 Court's in recess subject to the call of the  
22 jury.

23 (Noon recess taken at 12:06 p.m.)  
24  
25

1 RENO, NEVADA, WEDNESDAY, OCTOBER 6, 1999, 2:30 P.M.

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3  
4 (Whereupon, the following proceedings were held  
5 in open court, outside the presence of the  
6 jury.)

7 (Mr. Stanton was not present for this hearing.)  
8

9 THE COURT: Counsel, the bailiff has handed me  
10 a question from the jury. I think you've been handed a copy  
11 of the question which reads: "Do we have to be unanimous on  
12 the aggravating factors on either the "Yes" or "No"?

13 Counsel have any position with regard to the  
14 answering and how the answer should be made?

15 MR. GAMMICK: Your Honor, I think this can be a  
16 very simple answer. I think the Court can simply state, if  
17 you want to make it a little longer, but "Refer to Jury  
18 Instruction No. 19."

19 MR. GREGORY: We would agree, Your Honor.  
20 Although we don't think it has to be any longer.

21 MR. GAMMICK: "In answer to your question, you  
22 may refer to Jury Instruction No. 19," if you want to throw  
23 in a few extra words.

24 MR. GREGORY: Court's indulgence.

25 THE COURT: The concern that I have is I'm not

1 sure if the jury is asking if they have to be unanimous as  
2 to the answer on each aggravating circumstance or whether  
3 they are asking if they must be unanimous as to all of the  
4 aggravating circumstances. In other words, do they have to  
5 decide the same thing as to each aggravating factor.

6 MR. GAMMICK: Not getting into a complete  
7 analysis, different directions of this question, I might  
8 suggest to the Court you send an answer back "Refer to Jury  
9 Instruction No. 19 at this time." If that does not -- if  
10 they want to rephrase it a different way, if that doesn't  
11 answer it, then I think they can send it back out again. As  
12 to the question right now, I wouldn't want to try to  
13 second-guess or read much into it; take it on face value and  
14 tell them to refer to Instruction No. 19.

15 MR. GREGORY: I believe Mr. Bosler has  
16 something to add.

17 MR. BOSLER: I don't read the question the same  
18 as you. My concern is that if they are confused about the  
19 unanimous requirement for each aggravator, they already have  
20 the instructions. If that hasn't resolved the issue, then  
21 I'd rather not have them resolve this issue in a manner that  
22 is incorrect or done with a misunderstanding of the law. So  
23 I mean the question -- the Court may perceive this as  
24 problematic. I know normally I say just refer to the  
25 instructions, but I think the Court would not be unwise to

1 say you must find unanimously the existence of each  
2 aggravator.

3 MR. GAMMICK: I'm going to object to that at  
4 this time, giving them any further instructions. I think  
5 we've already instructed them. No. 19 says, "When you  
6 retire to consider your verdict, you must first determine  
7 whether the State has proven beyond a reasonable doubt that  
8 an aggravating circumstance or circumstances exist in this  
9 case. All of you must agree as to each aggravating  
10 circumstance."

11 THE COURT: But do you understand that it's  
12 possible to read that as meaning that they must agree that  
13 all the circumstances exist or that none of the  
14 circumstances exist?

15 MR. GAMMICK: Give me just a minute, Your  
16 Honor. I thought we addressed that in another instruction  
17 that says they must find at least one aggravating  
18 circumstance. I see what you're saying now.

19 THE COURT: When I read that -- I think it  
20 meant something to all of us, but I'm not sure it meant the  
21 same thing to the jury.

22 MR. GAMMICK: If the suggestion is to say  
23 something to the them to the effect you must find at least  
24 one aggravating circumstance beyond a reasonable doubt and  
25 you must be unanimous, I'd have no objection to that. Does



1 that answer what the Court's concern was?

2 THE COURT: Kind of.. I'm thinking. It's  
3 always problematic for the Court to answer jury questions  
4 after we've already instructed them as to the law. So I  
5 appreciate your input. Give me a minute and I'll see if I  
6 can come up with something.

7 Counsel approach.

8 (Bench conference between Court and counsel.)

9 THE COURT: Let the record reflect I'm having  
10 counsel read the proposed answer. I'll read it into the  
11 record after they've had an opportunity to look at it. The  
12 question about whether or not I would refer to another  
13 instruction, I'd rather not in case -- there may be many  
14 instructions they really should utilize. I don't want to  
15 imply that one particular instruction is the only one that  
16 answers their question.

17 MR. BOSLER: I think 19 is the one that deals  
18 with this specific issue.

19 THE COURT: Parts of it. So the answer I  
20 propose is "You must decide on each alleged aggravating  
21 factor separate from the others. You must be unanimous as  
22 to any aggravating factor you respond "Yes" to on the  
23 verdict form.

24 MR. BOSLER: No objection.

25 THE COURT: Anybody have an objection to that

1 answer?

2 MR. GAMMICK: No objection, Your Honor.

3 THE COURT: Then the clerk will type that  
4 answer and put a signature line. I'll sign it. It will be  
5 handed to the jury in a few minutes.

6 MR. BOSLER: Will the Court provide us with  
7 copies?

8 THE COURT: Yes.

9 The Court's in recess.

10 (Recess taken at 2:35 p.m.)

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1 RENO, NEVADA, WEDNESDAY, OCTOBER 6, 1999, 4:00 P.M.

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3  
4 (Whereupon, the following proceedings were held  
5 in open court, outside the presence of the  
6 jury.)

7 THE COURT: Deputy, do we have a verdict?

8 THE BAILIFF: Yes, Your Honor.

9 THE COURT: Please bring the jury in.

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

12 THE COURT: The clerk will now call the roll of  
13 the jurors.

14 (Roll call taken.)

15 THE COURT: Mr. Ayers, has the jury reached a  
16 verdict?

17 JUROR 10: Yes, it has, Your Honor.

18 THE COURT: Would you please hand the verdict  
19 to the bailiff, who in turn will hand it to the Court.

20 The defendant will please rise. The clerk will  
21 read the verdict of the jury.

22 THE CLERK: In the Second Judicial District  
23 Court of the State of Nevada, in and for the County of  
24 Washoe, the State of Nevada, Plaintiff, versus Siaosi  
25 Vanisi, also known as "Pe", also known as "George",

1 Defendant, Case No. CR98-0516, Department No. 4.

2 Verdict: We the jury, in the above-entitled  
3 matter, having previously found the defendant Siaosi Vanisi  
4 also known as "Pe", also known as "George", guilty of murder  
5 in the first degree, find that the following aggravating  
6 circumstances exist, to wit: Number one, the murder of  
7 Sergeant George Sullivan was committed by Defendant Siaosi  
8 Vanisi, also known as "Pe", also known as "George", in the  
9 commission of, or attempt to commit, the crime of robbery  
10 with the use of a deadly weapon. Yes.

11 Number two, the murder of Sergeant George  
12 Sullivan was committed by Defendant Siaosi Vanisi, also  
13 known as "Pe", also known as "George", upon a peace officer  
14 who was engaged in the performance of his official duty, and  
15 the defendant knew or reasonably should have known that the  
16 victim was a peace officer. Yes.

17 The murder involved mutilation of Sergeant  
18 George Sullivan. Yes.

19 Number four, the murder of Sergeant George  
20 Sullivan was committed by Siaosi Vanisi also known as "Pe",  
21 also known as "George", because of actual or perceived race,  
22 color, religion or national origin of Sergeant George  
23 Sullivan. No.

24 The jury further finds that there are no  
25 mitigating circumstances sufficient to outweigh the

1       aggravating circumstance or circumstances found and  
2       therefore set the penalty to be imposed upon the defendant  
3       at death.

4               Dated this 6th day of October, 1999.   James L.  
5       Ayers, Foreperson.

6               THE COURT:   You may be seated.

7               Ladies and gentlemen of the jury, is this your  
8       verdict say you one and say you all?

9               (All Responded Affirmatively.)

10              THE COURT:   Does either party wish the jury  
11       polled?

12              MR. GREGORY:   We do indeed.

13              THE COURT:   The clerk will now poll the jury.

14              THE CLERK:   Juror No. 1, is this your verdict  
15       as read?

16              JUROR NO. 1:   Yes.

17              THE CLERK:   Juror No. 2, is this your verdict  
18       as read?

19              JUROR NO. 2:   Yes.

20              THE CLERK:   Juror No. 3, is this your verdict  
21       as read?

22              JUROR NO. 3:   Yes.

23              THE CLERK:   Juror No. 4, is this your verdict  
24       as read?

25              JUROR NO. 4:   Yes.

1 THE CLERK: Juror No. 5, is this your verdict  
2 as read?  
3 JUROR NO. 5: Yes, it is.  
4 THE CLERK: Juror No. 6, is this your verdict  
5 as read?  
6 JUROR NO. 6: Yes.  
7 THE CLERK: Juror No. 7, is this your verdict  
8 as read?  
9 JUROR NO. 7: Yes.  
10 THE CLERK: Juror No. 8, is this your verdict  
11 as read?  
12 JUROR NO. 8: Yes.  
13 THE CLERK: Juror No. 9, is this your verdict  
14 as read?  
15 JUROR NO. 9: Yes.  
16 THE CLERK: Juror No. 10, is this your verdict  
17 as read?  
18 JUROR NO. 10: Yes.  
19 THE CLERK: Juror No. 11, is this your verdict  
20 as read?  
21 JUROR NO. 11: Yes.  
22 THE CLERK: Juror No. 12, is this your verdict  
23 as read?  
24 JUROR NO. 12: Yes.  
25 THE COURT: The verdicts of the jury will be

1 recorded by the clerk. Ladies and gentlemen of the jury,  
2 your job here is finished. I join with the officers of the  
3 court and my staff in thanking you. It has been several  
4 weeks, and you've worked very diligently. We appreciate  
5 your service. Jury service, as I told you in the beginning,  
6 is at best inconvenient and many times it creates hardships.  
7 You've worked through those hardships and that  
8 inconvenience.

9 With our appreciation, you are now released  
10 from the admonition that I've given you all along. You may  
11 talk about the case with anyone you so desire to speak of it  
12 with. However, you're not obligated to speak of the case.  
13 No one can force you to talk about it. It is your choice  
14 and your choice alone. If you have any difficulties in this  
15 regard, please feel free to contact me. If I can answer any  
16 questions for you or assist you in any manner, please feel  
17 free to call me at a later date.

18 Ladies and gentlemen of the jury and  
19 alternates, with our thanks, you are released at this time.

20 (Whereupon the jury was excused.)

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

23 THE COURT: The jury having found the defendant  
24 guilty, the defendant will be remanded to the custody of the  
25 sheriff. The clerk will give us a date for entry of

1 judgment and sentencing on those charges that the jury did  
2 not reach an appropriate sentence for the defendant.

3 THE CLERK: November 22nd at 10:00 a.m.

4 MR. GREGORY: Thank you. Your Honor, if I  
5 might. We're willing to waive a presentence report. We're  
6 willing to allow the Court to impose the maximum consecutive  
7 sentence at this time. If the Court does not wish to do  
8 that, we're going to ask that Parole and Probation not have  
9 any contact with Mr. Vanisi.

10 MR. GAMMICK: May we have just a moment?

11 Your Honor, we're in total agreement with that,  
12 with one exception. We'd ask that the Court canvass the  
13 defendant personally to ensure that this is his wishes. But  
14 if he wishes to have the maximum sentence imposed on Counts  
15 II, III, IV and V, consecutive to the death sentence, we  
16 have no objection to that.

17 MR. GREGORY: I'm his counsel, Your Honor. I  
18 speak for him.

19 MR. GAMMICK: Your Honor, we would like to have  
20 a personal canvass, please.

21 THE COURT: I have a question first: Is this  
22 a -- is your concern the investigation that would be  
23 conducted by the Department of Parole and Probation or the  
24 interview of your client that would be conducted as part --

25 MR. GREGORY: I don't want my client talking to



1 Parole and Probation, first of all. And secondly, I believe  
2 it's a useless exercise. I know what their recommendation  
3 is going to be, and I suspect what the Court will do.

4 THE COURT: It's the Court's opinion that the  
5 investigation conducted by the Division of Parole and  
6 Probation is never a useless exercise. A criminal defendant  
7 has an absolute right to have that investigation. And the  
8 Court should have the value of having the Division of Parole  
9 and Probation evaluate the facts and circumstances. I, at  
10 this point had, although I've sat through the entire trial,  
11 am very familiar with it, I had not anticipated sentencing  
12 your client.

13 Furthermore, I don't know if your client is  
14 going to want to make some statements at his sentencing on  
15 the other charges that might be addressed to the Court,  
16 something different than what he might address to a jury.

17 MR. GREGORY: I can aid the Court. He will not  
18 make any statements either to the Court or to Parole and  
19 Probation.

20 THE COURT: Mr. Vanisi, your attorney has  
21 indicated that you wish to waive your right to have a  
22 presentence investigation in this matter. Do you waive that  
23 right?

24 THE DEFENDANT: I'm represented by counsel  
25 and --

1 THE COURT: That's true, Mr. Vanisi. However,  
2 this is a very significant right that counsel does not waive  
3 for himself. He can only waive it if you request that it be  
4 waived. It is not a determination that he can make on his  
5 own. If you agree with that determination and want to waive  
6 that right, you may do so. If you do not agree with that  
7 determination, I will deny his request. If you want to  
8 stand mute on the decision, you may do so and I will rule  
9 accordingly.

10 MR. GREGORY: Court's indulgence.

11 THE DEFENDANT: Yeah, I understand the  
12 questions, the admonishment that you have given me, but at  
13 this point he's my counselor. He's going to make that  
14 decision.

15 THE COURT: Okay. The Court will deny the  
16 motion. We'll set the date for sentencing as the clerk has  
17 set it. We will have a presentence investigation.  
18 Certainly you have a right to deny the interview with the  
19 Division of Parole and Probation. However, it will be  
20 referred to the Division of Parole and Probation for a  
21 presentencing investigation.

22 MR. GREGORY: Yes, Your Honor, you've just  
23 indicated to him he has a right to deny to see Parole and  
24 Probation. Unfortunately, at the jail, what happens when  
25 the P&P officer comes up, they usher the defendant down to

1 him and they in effect force the defendant on the Parole and  
2 Probation officer. I'm advising the Court and the sheriff's  
3 department he will not talk to Parole and Probation. So  
4 it's not necessary for them to even go down there.

5 Thank you, Your Honor.

6 THE COURT: The Division of Parole and  
7 Probation will make contact with the defendant through the  
8 shift supervisor at the jail. If Mr. Vanisi acknowledges to  
9 the shift supervisor that he does not wish to speak to the  
10 P&P officer, no further contact will be made. If Mr. Vanisi  
11 changes his mind and wants to talk to the P&P officer, the  
12 P&P officer will conduct the personal investigation. The  
13 shift commander will make a written report with regard to  
14 the contact and serve that report on counsel for both sides.

15 Anything further?

16 MR. GAMMICK: The date and time of sentencing  
17 again, please, Your Honor.

18 THE COURT: Yes.

19 THE CLERK: That is November 22nd at 10:00 a.m.

20 THE COURT: That will be also the time that the  
21 death warrant will be issued at the time of sentencing.

22 MR. GAMMICK: We will prepare all the necessary  
23 paperwork and have it to the Court before then as well as  
24 defense counsel, Your Honor.

25 MR. GREGORY: A 250 matter. Certain

1 allegations were made against me in front of the press. The  
2 Court did not allow me to at that time offer my explanation.  
3 And of course it was reported in the press, as I suspected  
4 it would be, that I had done something wrong. Now --

5 THE COURT: Do you want a hearing set?

6 MR. GREGORY: No.

7 MR. GAMMICK: I'm going to request a hearing,  
8 Your Honor.

9 MR. GREGORY: Okay. I was going to suggest  
10 that I provide the Court with an affidavit. They can  
11 respond. I'll give them a copy. And if a hearing is needed  
12 as a result of that, then we can have one.

13 MR. GAMMICK: However we get there, I am going  
14 to request a hearing on the matter that we left pending.

15 THE COURT: Right. There's two questions: Is  
16 your motion for attorney misconduct and Rule 11 sanctions,  
17 if they apply in this case? Or is your motion for contempt  
18 of court? And does either party want to be heard with  
19 regard to whether the Court needs to hear it if it is a  
20 contempt of court motion?

21 MR. GREGORY: Well, I'm going to file charges  
22 or, rather, allegations, Your Honor, and request whatever  
23 appropriate action the Court deems necessary for  
24 prosectorial misconduct. I'm not going to get involved in  
25 that and perform for the media. But there are several areas

1 that I need to bring to the Court's attention.

2 THE COURT: Okay. What I'm going to do is I'm  
3 going to set a briefing schedule, and then we'll have a  
4 hearing at the conclusion of that. If during your briefings  
5 you determine that another department should hear part or  
6 all of your motions, you should put that in your motions.  
7 You will submit your -- each of you will have until October  
8 18th at 4:00 p.m. to file your initial pleadings. They must  
9 be served on opposing counsel personally. Opposing counsel  
10 will have until October 22nd at 5:00 p.m. to respond. Any  
11 replies will be submitted to the Court October 26th at 4:00  
12 p.m.

13 MR. GREGORY: Thank you, Your Honor.

14 THE COURT: In your replies, if you do file  
15 them, or your responses, you should note whether or not you  
16 want to have a hearing.

17 The Court will set the hearing subsequent to  
18 that.

19 Anything further?

20 MR. GREGORY: No, Your Honor.

21 THE COURT: Mr. Gammick? Mr. Stanton?

22 MR. GAMMICK: No, Your Honor.

23 THE COURT: Court's in recess.

24 (Proceedings concluded at 4:20 p.m.)  
25

STATE OF NEVADA, )  
 )  
COUNTY OF WASHOE. )

I, DENISE PHIPPS, Certified Shorthand Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

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

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

DATED: At Reno, Nevada, this 6th day of October, 1999.



DENISE PHIPPS, CCR No. 234

at the time of transcription  
the record to which this certificate is  
attached is the original  
which was on file and of record in my  
office in case number \_\_\_\_\_  
DATE: \_\_\_\_\_  
AMY HARVEY, Clerk of the Second Judicial  
District Court, in and for the County of  
Washoe, State of Nevada.  
by \_\_\_\_\_

SVAN151  
2JDC05166

1 Code 1850

FILED

NOV 22 1999

AMY HARVEY, CLERK  
By: [Signature]  
DEPUTY

2  
3  
4  
5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

9 STATE OF NEVADA,

10 Plaintiff,

11 Vs.

Reporter: E. Nelson

Case No. CR98-0516

Department No. 4

12 SIAOSI VANISI, also known as "GEORGE",  
13 also known as "PE",

14 Defendant.

15 JUDGMENT

16 No sufficient cause being shown by Defendant as to why judgment should  
17 not be pronounced against him, the Court rendered judgment as follows:

18 That SIAOSI VANISI, also known as "GEORGE", also known as "PE",  
19 is guilty of the crimes of Murder of the First Degree, a violation of NRS 200.010 and NRS  
20 200.030, a felony, as charged in Count I; Robbery with The Use Of A Deadly Weapon, a  
21 violation of NRS 200.380 and NRS 193.165, a felony, as charged in Count II; Robbery  
22 With The Use Of A Firearm, a violation of NRS 200.030 and NRS 193.165, a felony, as  
23 charged in Count III and IV; and Grand Larceny, a violation of NRS 205.220, a felony, as  
24 charged in Count V of the Information and that he be punished by Death for Count I; by  
25 imprisonment in the Nevada Department of Prisons for the maximum term of one  
26 hundred eighty (180) months with the minimum parole eligibility of seventy-two (72)

months, with a consecutive like term for the use of a deadly weapon, for Count II, to be served consecutively to sentence in Count I; by imprisonment in the Nevada Department of Prisons for the maximum term of one hundred eighty (180) months with the minimum parole eligibility of seventy-two (72) months, with a consecutive like term for the use of a firearm, for Count III, to be served consecutively to sentences in Counts I and II; by imprisonment in the Nevada Department of Prisons for the maximum term of one hundred eighty (180) months with the minimum parole eligibility of seventy-two (72) months, with a consecutive like term for the use of a firearm, for Count IV, to be served consecutively to sentences in Counts I, II and III; and by imprisonment in the Nevada Department of Prisons for the maximum term of one hundred twenty (120) months with the minimum parole eligibility of forty-eight (48) months, for Count V, to be served consecutively to sentences in Counts I, II, III and IV. Defendant shall receive credit for six hundred sixty seven (667) days time served. Defendant is further punished by payment of a fine in the amount of Ten Thousand Dollars (\$10,000.00); and by submission to a DNA Analysis Test for the purpose of determining genetic markers. Defendant shall reimburse the Washoe County Public Defender attorney's fees in the amount of Seven Hundred Fifty Dollars (\$750.00). Defendant is further ordered to pay a Twenty-Five Dollar (\$25.00) administrative assessment fee and a Two Hundred Fifty Dollar (\$250.00) DNA analysis fee to the Clerk of the Second Judicial District Court.

Dated this 22nd day of November, 1999.

*Conrad J. Steinheimer*  
DISTRICT JUDGE

**CERTIFIED COPY**

The document to which this certificate is attached is a true and correct copy of the original as filed in the court office.

1/18/02

By *M. Stone*  
Clerk and County



ORIGINAL

FILED

1999 NOV 30 AM 10:02

AMY HARVEY, CLERK

BY:  DEPUTY

1 CODE 2515  
2 WASHOE COUNTY PUBLIC DEFENDER  
3 JOHN REESE PETTY, State Bar No. 10  
4 ONE S. SIERRA STREET  
5 RENO, NEVADA 89501  
6 (775) 328-3475  
7 Attorney for Defendant.

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9  
10 IN AND FOR THE COUNTY OF WASHOE  
11  
12 THE STATE OF NEVADA,

13 Plaintiff,

14 vs.

Case No. CR98-0516

15 SIAOSI VANISI, also known as  
16 "GEORGE," also known as "PE."

Dept. No. 4

17 Defendant.  
18 \_\_\_\_\_ /

19 NOTICE OF APPEAL

20 NOTICE IS HEREBY GIVEN that SIAOSI VANISI, also known  
21 as "GEORGE," also known as "PE," the defendant above named,  
22 hereby appeals to the Supreme Court of Nevada from the judgment  
23 of conviction entered in this action on November 22, 1999.

24 This is a death penalty appeal governed by Supreme  
25 Court Rule 250. See NRAP 3B.

26 DATED this 30<sup>th</sup> day of November, 1999.

MICHAEL R. SPECCHIO  
Washoe County Public  
Defender

By: 

JOHN REESE PETTY  
Chief Deputy

SVan1s12JDC06051

CERTIFICATE OF SERVICE

1 I certify that on the 30<sup>th</sup> day of November, 1999, I served a copy of the  
 2 foregoing NOTICE OF APPEAL by mailing it by first class mail with sufficient postage  
 3 prepaid to the following addresses:

4 JANETTE M. BLOOM  
 5 Clerk of the Supreme Court  
 6 Supreme Court Building  
 7 Capitol Complex  
 8 Carson City NV 89710

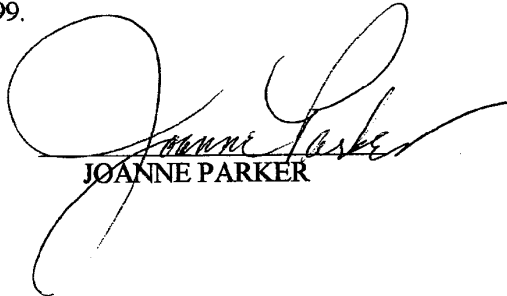
SIAOSI VANISI #63376  
 Nevada State Prison  
 P. O. Box 607  
 Carson City, NV 89702

8 FRANKIE SUE DEL PAPA  
 9 Attorney General, State of Nevada  
 10 100 No Carson Street  
 11 Carson City, NV 89701

11 and served a copy by inter-office mail to:

12 RICHARD A. GAMMICK  
 13 Washoe County District Attorney  
 14 Attention: Gary Hatlestad, Appellate Deputy

15 Dated this 30<sup>th</sup> day of November, 1999.

  
 JOANNE PARKER

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1854-1

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 35249

District Court Case No. CR9980516

**REMITTITUR**

TO: Amy Harvey, Washoe County Clerk

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

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

DATE: November 27, 2001

Janette M. Bloom, Clerk of Court

By: J. Richards  
Chief Deputy Clerk

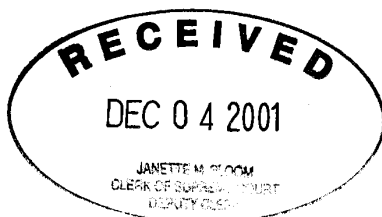
cc: Hon. Connie J. Steinheimer, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe County Public Defender  
Federal Public Defender

**RECEIPT FOR REMITTITUR**

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on Nov 29, 2001

Amy Harvey  
County Clerk



**FILED**  
DEC 06 2001  
JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY J. Richards  
CHIEF DEPUTY CLERK

01-19805

AA02527

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 35249

District Court Case No. CR9980516

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

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

**JUDGMENT**

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

Judgment, as quoted above, entered this 17th day of May, 2001.

IN WITNESS WHEREOF, I have subscribed my name and affixed  
the seal of the Supreme Court at my Office in Carson City,  
Nevada, this 27th day of November, 2001.

Janette M. Bloom, Supreme Court Clerk

By: \_\_\_\_\_

*J. Richards*  
Chief Deputy Clerk

ORIGINAL

FILED

2001 DEC 11 AM 9:17

AMY HARVEY, CLERK

BY [Signature]  
DEPUTY

CODE 1250  
Richard A. Gammick  
#001510  
P.O. Box 30083  
Reno, NV 89520-3083  
(775) 328-3200  
Attorney for Plaintiff

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

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR98-0516

SIAOSI VANISI,

Dept. No. 4

Defendant.

APPLICATION FOR SETTING

TYPE OF ACTION: CRIMINAL  
MATTER TO BE HEARD: HEARING TO SET EXECUTION DATE  
DATE OF APPLICATION: December 11, 2001 MADE BY PLAINTIFF  
COUNSEL FOR PLAINTIFF: RICHARD GAMMICK, DA  
COUNSEL FOR DEFENDANT: STEPHEN GREGORY, ESQ.  
CUSTODY STATUS:    BAIL    O.R.   X   IN CUSTODY

Setting at 1:15 PM on the 18th day of January, 2002

AA02529

SVANIS12JDC06046

CASE NO. CR98-0516  
DEPT. NO. 4

FILED

JAN 18 2002

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

RONALD A. LONGSTAFF, JR., CLERK  
BY: SIAOSI VANISI  
DEPUTY

SIAOSI VANISI #63376  
ELY STATE PRISON  
P.O. BOX 1989  
ELY, NV 89301  
VS.

WARDEN OF ELY STATE PRISON  
AND THE STATE OF NEVADA  
RESPONDENT

MOTION FOR APPOINTMENT  
OF POST-CONVICTION COUNSEL

COMES NOW, PETITIONER, SIAOSI VANISI, IN PROPER  
PERSON, AND HEREBY REQUEST APPOINTMENT OF EFFECTIVE  
COUNSEL TO ASSIST HIM IN STATE POST-CONVICTION PROCEEDINGS.  
THIS MOTION IS MADE AND BASED UPON NRS. 34.820 (1)(a),  
THE ATTACHED MEMORANDUM OF POINTS AND AUTHORITIES,  
THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO  
THE UNITED STATES CONSTITUTION, AND THE ENTIRE RECORD  
ON FILE HEREIN.

DATED THIS 17<sup>TH</sup> DAY OF JANUARY, 2002.

SUBMITTED BY:

SIAOSI VANISI  
SIAOSI VANISI #63376  
IN PROPRIA PERSONA

MEMORANDUM OF POINTS AND AUTHORITIES

1  
2 1. I HAVE BEEN AN INMATE ON NEVADA'S DEATH ROW  
3 SINCE 1999 I NEEDED AND OBTAINED ASSISTANCE  
4 IN THE PREPARATION OF THESE DOCUMENTS.  
5

6 2. I AM PRESENTLY WITHOUT COUNSEL TO LITIGATE  
7 MY CONSTITUTIONAL CLAIMS IN STATE COURT. AS A  
8 LAYMAN, I AM NOT COMPETENT TO REPRESENT  
9 MYSELF. I AM PRESENTLY UNDER A SENTENCE OF DEATH,  
10 AND I HAVE FILED A PETITION FOR WRIT OF HABEAS  
11 CORPUS ATTACKING MY JUDGMENT OF CONVICTION  
12 AND SENTENCE, AND A REQUEST TO PROCEED IN  
13 FORMA PAUPERIS, DEMONSTRATING THAT I AM  
14 INDIGENT. NRS 34.750 (1). APPOINTMENT OF  
15 COUNSEL TO PROVIDE REPRESENTATION FOR ME IN  
16 THESE PROCEEDINGS IS MANDATORY. NRS 34.820(1)(a).  
17

18 3. I AM ENTITLED UNDER NRS 34.820(1)(a) TO  
19 EFFECTIVE ASSISTANCE OF COUNSEL IN STATE HABEAS  
20 PROCEEDINGS. *Crump v. Warden* 113 NEV. 293, 934 P.2d.  
21 247, 253 (1997). I THEREFORE REQUEST THAT THIS COURT  
22 APPOINT ME COUNSEL WHO WILL ENSURE THAT ALL  
23 AVAILABLE CLAIMS ARE DISCOVERED AND LITIGATED  
24 EFFECTIVELY ON MY BEHALF IN THE NEVADA STATE COURT  
25 SYSTEM. I DO NOT CONSENT TO WAIVING ANY OF THE  
26 CLAIMS RAISED IN THE PETITION NOW ON FILE OR  
27 ANY OTHER AVAILABLE CONSTITUTIONAL CLAIM.  
28

1 IN ANY STATE PETITION FOR WRIT OF HABEAS  
2 CORPUS FILED BY APPOINTED COUNSEL SHOULD BE  
3 EXPRESSLY DEEMED TO BE WITHOUT MY CONSENT  
4 AND AGAINST MY WILL. SEE, E.G., *RACQUEPAW V. STATE*,  
5 108 NEU.1020 (1992); *STEWART V. WARDEN*, 92 NEU.  
6 588 (1976) MY AUTHORIZATION ALLOWING APPOINTED  
7 COUNSEL TO REPRESENT ME, AND TO BIND ME BY  
8 HIS OR HER ACTIONS AS MY AGENT, IS CONDITIONAL  
9 UPON COUNSEL PERFORMING EFFECTIVELY AS MY COUNSEL;  
10 DISCOVERING, INVESTIGATING AND LITIGATING ALL  
11 AVAILABLE CLAIMS ON MY BEHALF; AND MAINTAINING  
12 UNDIVIDED LOYALTY TO MY INTERESTS THAT MAY BE  
13 AFFECTED BY THE VIGOROUS DISCOVERY AND LITIGATION  
14 OF MY CLAIMS AND REGARDLESS OF THE IMPACT OF SUCH  
15 LITIGATION ON COUNSEL'S PROSPECTS OF COMPENSATION,  
16 APPOINTMENT IN OTHER CASES, OR TREATMENT IN OTHER  
17 CASES BY THE PRESIDING JUDGE IN THIS MATTER, OR  
18 BY ANY OTHER JUDICIAL OFFICIALS. ANY ACTION BY  
19 COUNSEL WHICH IS INCONSISTENT WITH EFFECTIVE  
20 PERFORMANCE OF THESE DUTIES IS OUTSIDE THE  
21 SCOPE OF MY AUTHORIZATION TO COUNSEL TO ACT  
22 AS MY AGENT, AND THE STATE IS HEREBY PLACED ON  
23 NOTICE NOT TO RELY UPON COUNSEL'S AUTHORIZATION  
24 TO ACT AS MY AGENT IF COUNSEL PERFORMS ANY ACT  
25 INCONSISTENT WITH THESE DUTIES WITHOUT MY  
26 EXPRESS AND INFORMED CONSENT. SEE. *DEUTSCHER V.*  
27 *ANGELONE*, 16 F.3d 981 (9<sup>th</sup> CIR. 1994).  
28



4. THE CONSTITUTIONAL CLAIMS ALREADY IDENTIFIED IN MY CASE, WHICH I DIRECT APPOINTED COUNSEL TO RAISE ON MY BEHALF, INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

A. ALL ISSUES RAISED ON MY BEHALF ON DIRECT APPEAL, BECAUSE I WAS PREVENTED FROM PREVAILING ON THEM DUE TO ERRONEOUS COURT RULINGS, *LOZADA V. STATE*, 110 NEV. 349, 871 P.2d 944 (1994) (ERRONEOUS COURT RULINGS CONSTITUTE IMPEDIMENT EXTERNAL TO THE DEFENSE WHICH JUSTIFIES RELITIGATION OF SAME ISSUES IN SUBSEQUENT COURT PROCEEDINGS).

B. CLAIMS OF INEFFECTIVE PRE-TRIAL, TRIAL AND APPELLATE COUNSEL.

C. ANY AND ALL COGNIZABLE ISSUES NOT RAISED ON DIRECT REVIEW BUT WHICH BECAME KNOWN TO EFFECTIVE POST-CONVICTION COUNSEL AFTER BOTH COMPREHENSIVE INVESTIGATION OF THE FACTS SURROUNDING MY CASE AND A THOROUGH AND EXHAUSTIVE SEARCH OF THE RECORD.

5. I FURTHER CONDITION MY AUTHORIZATION FOR APPOINTED COUNSEL TO REPRESENT ME UPON COUNSEL PERFORMING EFFECTIVELY IN SEEKING AN EVIDENTIARY HEARING(S) ON EACH OF THE ABOVE ISSUES, SEE NRS 34.770, 34.780(2), 34.790, TO PROVIDE THE REQUISITE FACTUAL BASIS FOR THE DEVELOPMENT AND REVIEW OF THE ABOVE CLAIMS.

1  
2 I FURTHER direct my COUNSEL TO SEEK COURT  
3 AUTHORIZATION TO EXPEND ANY AND ALL FUNDS  
4 NECESSARY TO FULLY AND FAIRLY develop AND  
5 PRESENT my CLAIMS, INCLUDING WHATEVER FUNDS  
6 ARE NECESSARY FOR EXPERT. INVESTIGATIVE, AND  
7 OTHER ANCILLARY SERVICES, SEE NRS 7.135, AND TO  
8 CONDUCT ALL DISCOVERY PROCEEDINGS, SEE NRS  
9 34.780, NECESSARY TO THE IDENTIFICATION AND  
10 DEVELOPMENT OF ALL AVAILABLE CLAIMS.  
11

12 DATED THIS 17<sup>th</sup> day OF JANUARY, 2002  
13

14 SUBMITTED BY:

15 Siaosi Vanisi  
16  
17 SIAOSI VANISI #63376  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5

SVAN 12JDC06040

CASE NO. CR 98-0616  
DEPT. NO. 4

FILED

JAN 18 2002

RONALD M. LONGTINE, CLERK  
DEPUTY

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

SIADSI VANISI #63376  
ELY STATE PRISON  
P.O. BOX 1989  
ELY, NV, 89301

V.S.

WARDEN OF ELY STATE PRISON

AND THE STATE OF NEVADA

RESPONDENT

(DEATH PENALTY CASE)

PETITION FOR WRIT OF HABEAS  
CORPUS (POST-CONVICTION)

1. NAME OF INSTITUTION AND COUNTY IN WHICH YOU ARE PRESENTLY IMPRISONED OR WHERE AND HOW YOU ARE PRESENTLY RESTRAINED OF YOUR LIBERTY: NEVADA STATE PRISON, CARSON CITY, NV.
2. NAME AND LOCATION OF COURT WHICH ENTERED THE JUDGMENT OF CONVICTION UNDER ATTACK: SECOND JUDICIAL DISTRICT COURT RENO, NEVADA.
3. DATE OF JUDGMENT OF CONVICTION: NOVEMBER, 22, 1999
4. CASE NUMBER: CR98-0616
5. (A) LENGTH OF SENTENCE: DEATH  
(B) IF SENTENCE IS DEATH, STATE ANY DATE UPON WHICH EXECUTION IS SCHEDULED: N/A

6. ARE YOU PRESENTLY SERVING A SENTENCE FOR A CONVICTION OTHER THAN THE CONVICTION UNDER ATTACK IN THIS MOTION?

YES — NO X

IF YES, LIST CRIME, CASE NUMBER AND SENTENCE BEING SERVED AT THIS TIME: X

7. NATURE OF OFFENSE INVOLVED IN CONVICTION BEING CHALLENGED: FIRST DEGREE MURDER

8. WHAT WAS YOUR PLEA? (CHECK ONE)

(A) NOT GUILTY X

(B) GUILTY —

(C) GUILTY BUT MENTALLY ILL —

(D) NOLO CONTENDERE —

9. IF YOU ENTERED A PLEA OF GUILTY OR GUILTY BUT MENTALLY ILL TO ONE COUNT OF AN INDICTMENT OR INFORMATION AND A PLEA OF NOT GUILTY TO ANOTHER COUNT OF AN INDICTMENT OR INFORMATION, OR IF A PLEA OF GUILTY OR GUILTY BUT MENTALLY ILL WAS NEGOTIATED GIVE DETAILS: N/A

10. IF YOU WERE FOUND GUILTY AFTER A PLEA OF NOT GUILTY WAS THE FINDING MADE BY: (CHECK ONE)

(A) JURY X

(B) JUDGE WITHOUT A JURY —

11. DID YOU TESTIFY AT THE TRIAL? YES — NO X

12. DID YOU APPEAL FROM THE JUDGMENT OF CONVICTION?

YES X NO —

13. IF YOU DID APPEAL, ANSWER THE FOLLOWING:

(A) NAME OF COURT: NEVADA SUPREME COURT

(B) CASE NUMBER OR CITATION: 352549

(C) RESULT: AFFIRMED

(D) DATE OF RESULT: MAY, 17, 2001

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14. IF YOU DID NOT APPEAL, EXPLAIN BRIEFLY WHY YOU  
DID NOT: N/A

15. OTHER THAN A DIRECT APPEAL FROM THE JUDGMENT OF  
CONVICTION AND SENTENCE, HAVE YOU PREVIOUSLY FILED ANY  
PETITIONS, APPLICATIONS OR MOTIONS WITH RESPECT TO THIS  
JUDGMENT IN ANY COURT, STATE OR FEDERAL? YES X NO   

16. IF YOUR ANSWER TO NO. 15 WAS "YES", GIVE THE FOLLOWING  
INFORMATION:

(1) NAME OF COURT: U.S. SUPREME COURT

(2) NATURE OF PROCEEDINGS: WRIT OF CERTIORARI

(3) GROUNDS RAISED: SIXTH AMENDMENT

(4) DID YOU RECEIVE AN EVIDENTIARY HEARING ON YOUR  
PETITION, APPLICATION OR MOTION? NO

(5) RESULT: DENIED

(6) DATE OF RESULT:   

(7) IF KNOWN, CITATIONS OF ANY WRITTEN OPINIONS OR DATE OF  
ORDERS ENTERED PURSUANT TO SUCH RESULT: N/A

(8) AS TO ANY SECOND PETITION, APPLICATION OR MOTION,  
GIVE THE SAME INFORMATION:

(1) NAME OF COURT: N/A

(2) NATURE OF PROCEEDINGS: N/A

(3) GROUNDS RAISED: N/A

(4) DID YOU RECEIVE AN EVIDENTIARY HEARING ON  
YOUR PETITION, APPLICATION OR MOTION? N/A

(5) RESULT: N/A

(6) DATE OF RESULT: N/A

(7) IF KNOWN, CITATIONS OF ANY WRITTEN OPINION OR DATE OF ORDERS ENTERED PURSUANT TO SUCH RESULT: N/A

(C) AS TO ANY THIRD OR SUBSEQUENT ADDITIONAL APPLICATIONS OR MOTIONS, GIVE THE SAME INFORMATION AS ABOVE, LIST THEM ON A SEPARATE SHEET AND ATTACH.

(D) DID YOU APPEAL THE HIGHEST STATE OR FEDERAL COURT HAVING JURISDICTION, THE RESULT OR ACTION TAKEN ON ANY PETITION, APPLICATION OR MOTION? N/A

(1) FIRST PETITION, APPLICATION OR MOTION?

YES      NO     

CITATION OR DATE OF DECISION:                     

(2) SECOND PETITION, APPLICATION OR MOTION?

YES      NO     

(3) THIRD OR SUBSEQUENT PETITIONS, APPLICATION OR MOTIONS?

YES      NO     

CITATION OR DATE OF DECISION:                     

(E) IF YOU DID NOT APPEAL FROM THE ADVERSE ACTION ON ANY PETITION, APPLICATION OR MOTION, EXPLAIN BRIEFLY WHY YOU DID NOT. (YOU MUST RELATE SPECIFIC FACTS IN RESPONSE TO THIS QUESTION. YOUR RESPONSE MAY BE INCLUDED ON PAPER WHICH IS 8 1/2 BY 11 INCHES ATTACHED TO THE PETITION. YOUR RESPONSE MAY NOT EXCEED FIVE HANDWRITTEN OR TYPEWRITTEN PAGES IN LENGTH.) N/A

17. HAS ANY GROUND BEING RAISED IN THIS PETITION BEEN PREVIOUSLY PRESENTED TO THIS OR ANY OTHER COURT BY WAY OF PETITION FOR HABEAS CORPUS, MOTION, APPLICATION OR ANY OTHER POST-CONVICTION PROCEEDING? NO IF SO, IDENTIFY: N/A

18. IF ANY OF THE GROUNDS LISTED IN NOS. 23(A),(B),(C) AND (D), OR LISTED ON ANY ADDITIONAL PAGES YOU HAVE ATTACHED, WERE NOT PREVIOUSLY PRESENTED IN ANY OTHER COURT, STATE OR FEDERAL, LIST BRIEFLY WHAT GROUNDS WERE NOT SO PRESENTED, AND GIVE YOUR REASONS FOR NOT PRESENTING THEM. (YOU MUST RELATE SPECIFIC FACTS IN RESPONSE TO THIS QUESTION. YOUR RESPONSE MAY BE INCLUDED ON PAPER WHICH IS 8 1/2 BY 11 INCHES ATTACHED TO THE PETITION. YOUR RESPONSE MAY NOT EXCEED FIVE HANDWRITTEN OR TYPEWRITTEN PAGES IN LENGTH.)

INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL AND ON DIRECT APPEAL. THESE MATTERS ARE NOT PROPERLY RAISED ON DIRECT APPEAL.

19. ARE YOU FILING THIS PETITION MORE THAN 1 YEAR FOLLOWING THE FILING OF THE JUDGMENT OF CONVICTION OR THE FILING OF A DECISION ON DIRECT APPEAL? NO, IF SO, STATE BRIEFLY THE REASONS FOR THE DELAY. (YOU MUST RELATE SPECIFIC FACTS IN RESPONSE TO THIS QUESTION).

20. DO YOU HAVE ANY PETITION OR APPEAL NOW PENDING IN ANY COURT EITHER STATE OR FEDERAL, AS TO THE JUDGMENT UNDER ATTACK? YES — NO X

IF 'YES', STATE WHAT COURT AND THE CASE NUMBER: N/A

21. GIVE THE NAME OF EACH ATTORNEY WHO REPRESENTED YOU IN THE PROCEEDING RESULTING IN YOUR CONVICTION AND ON DIRECT APPEAL:

TRIAL ATTORNEY: STEVEN GREGORY ESQ.

APPEAL ATTORNEY: JOHN PETTY ESQ.

22. DO YOU HAVE ANY FUTURE SENTENCE TO SERVE AFTER YOU COMPLETE THE SENTENCE IMPOSED BY THE JUDGMENT UNDER ATTACK? YES — NO X

IF 'YES', SPECIFY WHERE AND WHEN IT IS TO BE SERVED,  
IF YOU KNOW: N/A

23. STATE CONCISELY EVERY GROUND ON WHICH YOU CLAIM  
THAT YOU ARE BEING HELD UNLAWFULLY. SUMMARIZE BRIEFLY  
THE FACTS SUPPORTING EACH GROUND. IF NECESSARY YOU MAY  
ATTACH PAGES STATING ADDITIONAL GROUNDS AND FACTS  
SUPPORTING SAME.

(A) GROUND ONE: DENIED RIGHTS UNDER FOURTH, FIFTH, SIXTH  
AND FOURTEENTH AMENDMENTS AS I DID NOT RECEIVE DUE  
PROCESS OF LAW OR EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL.

SUPPORTING FACTS (TELL YOUR STORY BRIEFLY WITHOUT CITING  
CASES OR LAW) I AM INDIGENT AND DO NOT UNDERSTAND  
THE LAW AND NEED COUNSEL APPOINTED TO HELP ME  
COMPLETE THIS PETITION AND FILE A SUPPLEMENTAL  
PETITION.

(B) GROUND TWO: DENIED RIGHTS UNDER FOURTH, FIFTH  
SIXTH AND FOURTEENTH AMENDMENTS AS I DID NOT RECEIVE  
DUE PROCESS OF LAW OR EFFECTIVE ASSISTANCE OF COUNSEL  
ON APPEAL.

SUPPORTING FACTS (TELL YOUR STORY BRIEFLY WITHOUT  
CITING CASES OR LAW.) I AM INDIGENT AND DO NOT  
UNDERSTAND THE LAW AND NEED COUNSEL APPOINTED  
TO HELP ME COMPLETE THIS PETITION AND FILE A  
SUPPLEMENTAL PETITION.

EXECUTED AT NEVADA STATE PRISON ON THIS 17<sup>TH</sup> DAY OF  
JANUARY, 2002.

SIAOSI UPANISI  
SIAOSI UPANISI #63376  
PETITIONER IN PROPER PERSON  
NEVADA STATE PRISON  
I.O. NO.  
P.O. BOX 607  
CARSON CITY, NEVADA, 89702



FILED

2002 FEB 19 PM 4:08

RONALD A. LINGSTON, JR.

BY *[Signature]*  
DEPUTY

Code No. 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE  
THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

Case No. CR98-0516

Dept. No. 4

IN-CHAMBERS HEARING &  
HEARING SETTING EXECUTION DATE  
JANUARY 18, 2002  
RENO, NEVADA

APPEARANCES:

For the Plaintiff:

RICHARD A. GAMMICK  
District Attorney  
Washoe County Courthouse  
Reno, Nevada

For the Defendant:

JOHN REESE PETTY &  
JEREMY BOSLER  
Deputies Public Defender  
One South Sierra Street  
Reno, Nevada

The Defendant:

SIAOSI VANISI

Reported By:

Cindy Lee Brown, CCR #486

RENO, NEVADA; FRIDAY, JANUARY 18, 2002; 1:10 P.M.

-oOo-

THE COURT: Let the record reflect we're convened in chambers with counsel for the state and counsel for the defense. The defendant is not present. The purpose of being together today is just to talk about some administrative issues with regard to the paperwork that will come out of today's hearing.

The statute that we'll be dealing with today is NRS 176.345, 355 and 357, which were modified and effective 2001. There is some minor changes in wording that this order of execution, warrant of execution and order of committal will say, changing director of prisons to director of the department of corrections, those kinds of things.

I've made those changes, and I'm not too concerned about that. There is also an issue with regard to the wording.

We used to limit how many people could be at the execution. It's now within the discretion of the director. It's also, there is some additional people that previously weren't required to be there. The psychiatrist and county coroner now, pursuant to the statute 2001, are required to be there. So that language is changed in my proposed paperwork.

The reason I asked you over here is, we have

SIERRA NEVADA REPORTERS  
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1 an issue with regard to the statutes' wording and our  
2 current practice in the Second Judicial District Court. The  
3 wording in NRS 176.345, directs the county clerk to do some  
4 things and to affix the seal of the court.

5 We do not have a county clerk who is the clerk  
6 of the court any longer. Pursuant to the supreme court  
7 decision in October and our swearing in of the new clerk of  
8 court on December 14th, the clerk of the Second Judicial  
9 District Court, is Ron Longtin. The county clerk has no  
10 authority to act, has no access to the seal of the court and  
11 does not do any of these things.

12 The clerk who is present in the courtroom is a  
13 deputy clerk of the court, not a deputy county clerk. The  
14 reason I asked for you to come is because I wanted to make  
15 sure that no one thought this would create any difficulties  
16 or problems if the language of the warrant of execution  
17 directs the clerk of the court to send these things.

18 MR. PETTY: I have no objection.

19 MR. BOSLER: I have no objection.

20 MR. GAMMICK: No problem --

21 THE COURT: Thank you.

22 MR. GAMMICK: -- if it gets sent correctly and  
23 the triplicate copies and all of the other stuff is thrown  
24 in there.

25 As long as we're here, I ran off some

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1 calenders and sat down and counted the days. I see three  
2 possibilities: March 25th, April 1st and April 8th, and  
3 those are the only three that will fit within what's  
4 required.

5 MR. PETTY: Obviously, we're going to ask for  
6 April 8th. If the Court will allow, we'll be filing a  
7 petition for post conviction relief habeas that Mr. Vanisi  
8 has put together, and we'll ask the Court to stay the  
9 execution date.

10 THE COURT: You'll be filing here?

11 MR. PETTY: Yes.

12 THE COURT: I have looked at the calendar  
13 also, and because of certain sensitivities with regard to  
14 Good Friday and Easter Sunday, I have chosen April 8th.

15 Anything else?

16 MR. GAMMICK: (Shakes head.)

17 MR. PETTY: No.

18 THE COURT: Okay. Thank you. I just wanted  
19 to make sure this clerk and the county clerk issue did not  
20 cause a problem.

21 Are you going to ask for that today?

22 MR. PETTY: The stay?

23 THE COURT: (Nods head.)

24 MR. PETTY: Yes.

25 MR. GAMMICK: I had no notice of this or

SIERRA NEVADA REPORTERS  
2JDC06030

1 anything. Nothing's been filed. We've been served with  
2 nothing.

3 THE COURT: We'll deal with what we're here  
4 for, and you can make your record, Mr. Petty. And if you  
5 have to come back at a later time, we'll do that.

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RENO, NEVADA; FRIDAY, JANUARY 18, 2002; 1:25 P.M.

-oOo-

THE COURT: Let the record reflect that the defendant, Siasosi Vanisi, is present with counsel. Counsel for the State is also present. This is the time set for setting an execution date.

Counsel, do you have anything to provide to the Court? Any input? Anybody want to tell me something?

MR. GAMMICK: Your Honor, under the statutes there are three possible execution dates or weeks that will fit the more than 60 days and less than 90. That's March 25th, April 1st and April 8th. So we'd ask the Court to set one of those weeks with respect to the date of execution in the Nevada State Prison.

THE COURT: Counsel?

MR. PETTY: And we'll be asking for the latter of those three dates: April the 8th.

THE COURT: Mr. Vanisi, please stand.

A judgment of death having been entered against you on November 22nd, 1999, have been found guilty of murder in the first degree by a legally-impaneled jury of 12 persons and this Court's independent inquiry into the facts and finding of no legal reason against execution of the judgment of death, I will hereby order the director of the department of corrections to execute the judgment of

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1 death by lethal injection of a lethal drug within the limits  
2 of the state prison located in Carson City, State of Nevada,  
3 during the week commencing on April 8th, 2002, in the  
4 presence of the director of the department of corrections  
5 and not less than six reputable citizens over the age of 21  
6 years to be selected by the director, a competent physician,  
7 a psychiatrist and the county coroner. But no other person  
8 may attend the execution, other than those who are invited  
9 by the director.

10 I'm also at this time issuing a warrant of  
11 execution at this time, the jury having found that there  
12 were aggravating circumstances in connection with the  
13 commission of the crime that you were found guilty of.  
14 Those aggravating circumstances being that the murder was  
15 committed during the commission of a robbery; the murder was  
16 committed upon a peace officer while on duty, and the murder  
17 involved mutilation of the victim.

18 The court hereby orders the clerk of the court  
19 of Washoe County, State of Nevada, to forthwith deliver the  
20 warrant of execution that I am entering today and the  
21 judgment of conviction to the director of the department of  
22 corrections who will take custody of you. It is ordered  
23 pursuant to NRS 176.345, NRS 176.355 and NRS 176.357 that  
24 the director of the department of corrections shall carry  
25 out this judgment and sentence by executing the said Siaosi

SVan1s12JDC06033

1 Vanisi by injection of a lethal drug within the limits of  
2 the state prison in Carson City, State of Nevada, during the  
3 week commencing Monday, the 8th of April, 2002, entered this  
4 18th day of January, 2002. That will be the order of the  
5 court.

6 MR. PETTY: Your Honor, having set that date,  
7 we were supplied this afternoon a petition for post  
8 conviction relief prepared by Mr. Vanisi. With the Court's  
9 permission, I would have Mr. Bosler deliver that to the  
10 court for filing.

11 THE COURT: Any objection?

12 MR. GAMMICK: I have no objection to the  
13 filing, Your Honor. We were not served with this until we  
14 were in court today, which I understand there has been no  
15 formal written request for stay or anything else. I'm going  
16 to ask, before the Court take any further action with  
17 respect to this, above and beyond the filing, that it be  
18 required to be in writing and served upon us, as  
19 appropriate, so we have an opportunity to respond.

20 THE COURT: Let's start with the filing of the  
21 document with the clerk.

22 MR. BOSLER: There is a second document for  
23 the appointment of post conviction counsel.

24 THE COURT: Do you have copies to serve on the  
25 district attorney at this time?



1 MR. BOSLER: I've given copies already to the  
2 district attorney.

3 THE COURT: Of the motion and the writ?

4 MR. BOSLER: Yes, two documents.

5 MR. GAMMICK: I have a motion for appointment  
6 of post conviction counsel and a petition for writ of habeas  
7 corpus post conviction, both in handwriting, as I said, I  
8 was given on my way into court today, Your Honor.

9 THE COURT: Do you want time to respond to the  
10 motion for appointment of post conviction counsel?

11 MR. GAMMICK: Not even knowing whether or not  
12 the petition for writ of habeas corpus post conviction  
13 relief is appropriate or done correctly, I would just as  
14 soon not be in position to do anything with respect to this  
15 today, so if the Court would like to give time for us to  
16 respond, at least review the documents and be sure that they  
17 are correct.

18 THE COURT: At this time the Court has  
19 accepted the petition. I will order that the state has 10  
20 days to respond to the written petition, as well as the  
21 motion. The defendant will have 10 days to answer any  
22 response filed by the state, at which point the court will  
23 take these motions under submission.

24 We'll start with the motion for appointment of  
25 counsel, and then we'll decide about the petition, whether

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1 or not it's appropriate to do a brief schedule subsequently.

2 MR. PETTY: I might point out to the court's  
3 attention and to Mr. Gammick's attention, obviously the post  
4 conviction petition probably alleges, among other things,  
5 ineffective assistance of counsel of the Public Defender's  
6 Office. That put us into conflict with Mr. Vanisi. If for  
7 some reason his petition, his pro per petition isn't quite  
8 clear, then that post conviction counsel could supplement  
9 the petition.

10 THE COURT: Well, do you think that -- I've  
11 given 10 days, so that would be the 28th. I gave 10 days  
12 for Mr. Vanisi to reply to the State's --

13 MR. PETTY: I apologize. You want Mr. Vanisi  
14 to respond?

15 THE COURT: Well, I assume he's the one  
16 bringing this petition. My concern was getting Mr. Gammick  
17 serving his opposition, if he has opposition, on Mr. Vanisi,  
18 and him having an opportunity to get it back to the court in  
19 something shorter than 10 days.

20 If he, or you on his behalf because you're  
21 still attorney of record, want to waive a response to  
22 Mr. Gammick's opposition, if there is any, we could  
23 certainly move this motion for counsel along.

24 MR. PETTY: I'll wait to see the response.

25 THE COURT: Okay. So we've got 10 days for

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1 the state and 10 days for the defense right now. It's up to  
2 you if in the interim you want to have a response saying, We  
3 do need to appoint counsel, because you cannot proceed, that  
4 would be your reply to Mr. Gammick.

5 MR. PETTY: Thank you, Your Honor.

6 THE COURT: Anything further today?

7 MR. PETTY: No.

8 THE COURT: Mr. Gammick?

9 MR. GAMMICK: No, Your Honor. Thank you.

10 THE COURT: Okay. The defendant is remanded  
11 to the department of corrections.

12 Court's in recess.

13 (Proceedings concluded at 1:30 p.m.)

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SVAN1512JDC06037


1 STATE OF NEVADA, )  
 2 ) ss.  
 3 COUNTY OF WASHOE. )

4 I, CINDY LEE BROWN, Certified Court Reporter of  
 5 the Second Judicial District Court, in and for the County of  
 6 Washoe, State of Nevada, do hereby certify;

7 That I was present in the above-entitled court  
 8 on January 18, 2002, and took verbatim stenotype notes of  
 9 the proceedings entitled THE STATE OF NEVADA, Plaintiff,  
 10 versus SIAOSI VANISI, Defendant, Case No. CR98-0516,  
 11 and thereafter transcribed the same into typewriting, as  
 12 herein appears;

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

15 Dated at Reno, Nevada, this 18th day of February,  
 16 2002.

17   
 18 CINDY LEE BROWN, CCR #486  
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CODE: 2745

**FILED**

MAR 1 1 2002

RONALD A. LONGTIN, JR., CLERK

By: RLS  
DEPUTY

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

SIAOSI VANISI,

Plaintiff,

vs.

THE STATE OF NEVADA,

Defendant.

Case No. CR98P0516

Dept. No. 4

**ORDER**

IT IS HEREBY ORDERED that the Washoe County Public Defender is relieved as counsel for Petitioner, and Marc Picker, Esq., and Scott Edwards, Esq., as co-counsel are appointed to represent Petitioner on his Petition for Writ of Habeas Corpus and the Petitioner may proceed inform a pauperis.

IT IS FURTHER ORDERED that the Washoe County Public Defender provide a complete copy of their file with regard to the above named Petitioner to Marc Picker, Esq., pursuant to the death penalty statutes.

IT IS FURTHER ORDERED that counsel shall have forty-five (45) days from the date of the receipt of the copies of Petitioner's pleadings within which to supplement the Petition for Writ of Habeas Corpus or file a Notice indicating that the original Petition for Writ of Habeas Corpus shall stand as filed.

**RECEIVED**  
MAR 1 1 2002

IT IS FURTHER ORDERED that the Respondent shall respond within forty-five (45) days from the date of the filing of the Petition to supplement or Notice of Nonsupplementation.

IT IS FURTHER HEREBY ORDERED that the execution in this matter is stayed.

Dated this 11 day of March, 2002.

Conrad J. Steinheimer  
DISTRICT JUDGE

CERTIFICATE OF MAILING


I certify that I am an employee of JUDGE CONNIE STEINHEIMER; that on the  
11 day of March, 2002, I deposited in the county mailing system  
for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of  
the attached document addressed to:

Marc Picker, Esq.  
PO Box 3344  
Reno, NV 89505-3344

Scott Edwards, Esq.  
1030 Holcomb Ave.  
Reno, NV 89502

Washoe County District Attorney  
Appellate Division  
VIA INTERCOUNTY MAIL

Siaosi Vanisi, #63376  
Ely State Prison  
PO Box 1989  
Ely, NV 89301



ORIGINAL

FILED

2002 OCT 23 PM 2:05

KORNAVAK, J.R.  
CLERK

CODE: 2075

Marc Picker, Esq. (SBN 3566)

Marc Picker, Esq., Ltd.

691 Sierra Rose Dr., Suite A

Post Office Box 3344

Reno, Nevada 89505

Telephone 775/324-4533

Facsimile 775/322-3014

Attorney for Petitioner

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

VS.

WARDEN, ELY STATE PRISON,

Respondent

CR98P0516

Case No. ~~CR97P-0274~~

Dept. No. 4

**MOTION FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL MATERIALS  
(POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS)  
(DEATH PENALTY CASE)**

COMES NOW Petitioner SIAOSI VANISI, by and through his appointed attorneys, MARC PICKER, ESQ., of MARC PICKER, ESQ., LTD., and SCOTT EDWARDS, ESQ., to request this Court grant an extension of the time period allowed for filing supplemental materials relative to the post-conviction petition for writ of habeas corpus filed in this case until April 1, 2003. This motion is based upon the following affidavit of counsel.

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of October, 2002.

MARC PICKER, ESQ., LTD.

MARC PICKER  
Attorney for Petitioner



AFFIDAVIT

STATE OF NEVADA     )  
                              ) ss:  
COUNTY OF WASHOE )

MARC PICKER, under penalty of perjury affirms that the assertions in this Affidavit are true.

1. Your affiant was appointed counsel, for Petitioner SIAOSI VANISI in this death penalty habeas action by order of this Court.
2. Since the appointment, your affiant has reviewed the voluminous record in this case and identified numerous issues to be presented in this proceeding.
3. Your affiant has also spent significant effort attempting to establish a productive attorney-client relationship with the petitioner.
4. Further investigation and legal research are required to present an exhaustive supplement to Mr. Vanisi's habeas petition.
5. Your affiant estimates that the supplement can be completed by the end of March 2003.
6. As this is a death penalty case, Mr. Vanisi is entitled to effective representation of counsel in this proceeding. An extension of time is necessary for effective representation.
7. As Mr. Vanisi remains on death row, there is no prejudice to the State in this court granting an extension of time requested.
8. This request for an extension to April 1, 2003 for the filing of the supplement in this case is not made for the purpose of delay or any other improper purpose. Further requests for

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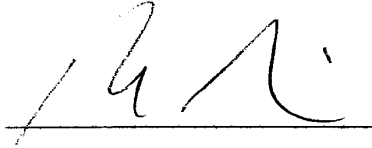
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extension will not be made absent extreme and unforeseen circumstances.

FURTHER, your affiant sayeth not.

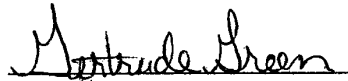


MARC PICKER

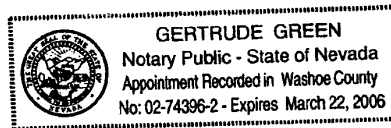
SUBSCRIBED AND SWORN to

Before me this 23<sup>rd</sup> day

Of October, 2002.



NOTARY PUBLIC



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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of MARC PICKER,  
ESQ., LTD., and that I caused the attached document to be delivered by

- \_\_\_\_\_ placing an original or true copy thereof in a sealed, postage prepaid envelope in the United States Mail, at Reno, Nevada
- \_\_\_\_\_ personal delivery
- \_\_\_\_\_ facsimile transmission
- \_\_\_\_\_ Federal Express/UPS or other overnight delivery
- \_\_\_\_\_ Reno/Carson Messenger Service

fully addressed as follows:

Terry McCarthy, Esq.  
Deputy District Attorney  
Washoe County District Attorney's Office  
75 Court Street  
Reno, Nevada 89501

this 28<sup>th</sup> day of October, 2002.

  
GERTRUDE GREEN

2002 NOV -1 AM 11:25  
2JDC06548

FILED

2002 NOV -1 AM 11:25

RONALD A. LONGSTIN, JR.

BY *[Signature]*  
DEPUTY

CODE No. 2645  
RICHARD A. GAMMICK  
#001510  
P. O. Box 30083  
Reno, Nevada 89520-3083  
(775) 328-3200  
Attorney for Respondent

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

\* \* \*

SIAOSI VANISI,

Petitioner,

v.

Case No. CR98P0516

WARDEN, ELY STATE PRISON,  
AND THE STATE OF NEVADA,

Dept. No. 4

Respondents.

OPPOSITION TO MOTION FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL  
MATERIALS (POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS)  
(DEATH PENALTY CASE)

COMES NOW, the State of Nevada, by and through counsel,  
and opposes petitioner's Motion for Extension of Time to File  
Supplemental Materials (Post-Conviction Petition for Writ of  
Habeas Corpus) (Death Penalty Case). The opposition is based  
upon the records of this Court and the attached points and  
authorities.

POINTS AND AUTHORITIES

Siaosi Vanisi was convicted of murder a full three  
years ago, in November 1999. He appealed, without success. The  
remittitur issued in May 2001. He filed his petition in January

2002. This Court appointed counsel in March 2002 and allowed counsel 45 days in which to file a supplemental petition. That time was already extended once, and the supplement was due to be filed not later than October 1, 2002. That date came and went with nary a word from Vanisi's counsel. Finally, on October 23, 2002, counsel filed a motion seeking an additional six months time in which to file the supplement.

The legislature has allowed 30 days for a supplement. NRS 34.750. This Court initially allowed even more time than would be allowed by the legislature, and then extended it by six months. Even the motion for an extension of time was not filed until after that twice-extended time frame had passed. For that reason alone, the court could and should deny the motion for additional time. See Peters v. State Bar of Nevada, 104 Nev. 768, 766 P.2d 277 (1988).

The motion is supported by the affidavit of Marc Picker. That affidavit gives only general assertions, giving no reason why counsel could not and did not comply with the orders of this Court. Instead, counsel says only that Vanisi is entitled to effective representation. While the State agrees that Vanisi is entitled to effective assistance of counsel, that does not mean that counsel must be free to do as he pleases, unbridled by the rules of procedure. Instead, it means only that counsel must act reasonably in light of the time, resources and information that is available. See Hernandez v. State, 117 Nev. \_\_\_, 24 P.3d 767 (2001) (appellate counsel must make tactical

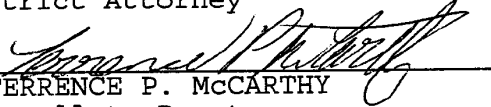
decisions concerning nature of issues to be pursued and cannot simply disregard rules of appellate procedure).

This Court should deny the motion for an extension of time, declare the pleadings closed and order an answer. This court has an obligation to "expedite" this case. NRS 34.820(7). Death penalty cases must have priority over all other cases. SCR 250(5)(a). Granting repeated extensions of time to allow Vanisi to allege why his conviction is invalid is not appropriate.

If the court is not inclined to declare the pleadings closed, then at a minimum this Court should rule that any claim presented after October 1, 2002 will be disregarded unless Vanisi is able to plead and prove some specific external impediment which prevented him from complying with the prior orders of this Court. The generalizations provided in the affidavit of Mr. Picker should not be seen as sufficient to explain why any sort of claim could not be presented in a timely manner. Any claim that could have been presented in a timely manner should be disregarded. Primarily, however, the State contends that the instant motion should be denied outright. The State will then respond to the petition for writ of habeas corpus forthwith.

DATED: October 31, 2002.

RICHARD A. GAMMICK  
District Attorney

By   
TERRENCE P. MCCARTHY  
Appellate Deputy

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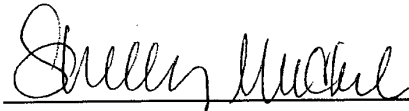
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an  
employee of the Washoe County District Attorney's Office and  
that, on this date, I deposited for mailing through the U.S. Mail  
Service at Reno, Washoe County, Nevada, postage prepaid, a true  
copy of the foregoing document, addressed to:

Marc Picker, Esq.  
P.O. Box 3344  
Reno, NV 89505

Scott W. Edwards, Esq.  
1030 Holcomb Avenue  
Reno, NV 89502

DATED: November 1, 2002

  
\_\_\_\_\_

Case 1:12-jd-00628-1

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ORIGINAL

MARC PICKER, ESQ. (SBN 3566)  
MARC PICKER, ESQ., LTD.  
691 Sierra Rose Drive, Suite A  
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Reno, NV 89505-3344  
775/324-4533

FILED

2002 DEC 18 PM 12:48

RONALD A. LONGTIN, JR.  
BY *C. Kessler*  
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

\*\*\*

THE STATE OF NEVADA,

Case No. CR98-P-0516

Dept. No. 4

Plaintiff,

v.

SIAOSI VANISI,

Defendant.

MOTION TO WITHDRAW AS COUNSEL OF RECORD

COMES NOW MARC PICKER, ESQ., of MARC PICKER, ESQ., LTD., and pursuant to Nevada Supreme Court Rule 46, moves to withdraw as attorney for Defendant SIAOSI VANISI.

This Motion is based upon the Points and Authorities and Affidavit of MARC PICKER, ESQ., attached hereto.

DATED this 17<sup>th</sup> day of December, 2002.

MARC PICKER, ESQ., LTD.

*[Signature]*  
\_\_\_\_\_  
MARC PICKER, ESQ.

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**POINTS AND AUTHORITIES**

Supreme Court Rule 46 provides that a Court may allow the withdrawal of an attorney from any action or proceeding upon the application of the attorney or the client. SCR 166 allows withdrawal by an attorney if such action can be accomplished without material adverse effect on the interests of the client.

In this instant case, MARC PICKER, ESQ., was appointed to represent Defendant in the underlying criminal case. I no longer have adequate time to represent sufficient representation for Mr. Vanisi. This case is complex and the record is voluminous, and providing Mr. Vanisi with adequate representation in this very serious case requires more time than I have available.

Wherefore, MARC PICKER, ESQ., requests this Court enter an order approving withdrawal as attorney for Petitioner SIAOSI VANISI,

DATED this 17<sup>th</sup> day of December, 2002.

MARC PICKER, ESQ., LTD.

  
\_\_\_\_\_  
MARC PICKER, ESQ.

**AFFIDAVIT OF MARC PICKER, ESQ.**


STATE OF NEVADA       )  
  )ss:  
COUNTY OF WASHOE    )

I, MARC PICKER, ESQ., under penalty of perjury, being first duly sworn, depose and state:

1. Affiant is an attorney licensed to practice law in the State of Nevada.
2. Affiant was appointed to represent Petitioner SIAOSI VANISI, with regards to the above-captioned matter.
3. I no longer have sufficient time to devote to this case, and am unable to properly represent the Petitioner.
4. I request I be allowed to withdraw from representation of the Defendant in this matter.

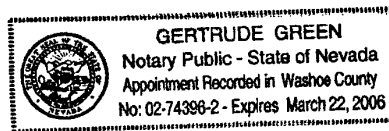
That the same be true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe them to be true.

DATED this 17<sup>th</sup> day of December, 2002.

  
\_\_\_\_\_  
MARC PICKER, ESQ.

Subscribed and sworn to before me  
this 17<sup>th</sup> day of December, 2002.

  
\_\_\_\_\_  
NOTARY PUBLIC



# CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of MARC PICKER, ESQ., LTD., and that on this date I served the attached document on those parties identified below by:

XX	Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
	Certified Mail/Return Receipt Requested

Richard A. Gammick  
District Attorney  
Terrence P. McCarthy  
Appellate Deputy  
75 Court Street  
Reno, NV 89520

and

Scott Edwards, Esq.  
1030 Holcomb Ave.  
Reno, NV 89502

and

Siaosi Vanisi #63376  
Nevada State Prison at Ely  
Post Office Box 1989  
Ely, NV 89301

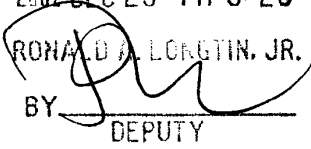
Dated this 17<sup>th</sup> day of December, 2002.

  
GERTRUDE GREEN

FILED

2002 DEC 23 PM 3:26

RONALD A. LONGTIN, JR.

BY  DEPUTY

CODE #2645  
RICHARD A. GAMMICK  
#001510  
P. O. Box 30083  
Reno, Nevada 89520-3083  
(775)328-3200  
Attorney for Respondent

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

\* \* \*

SIAOSI VANISI,

Petitioner,

v.

Case No. CR98P0516

WARDEN, ELY STATE PRISON,  
AND THE STATE OF NEVADA,

Dept. No. 4

Respondents.

OPPOSITION TO MOTION TO WITHDRAW AS COUNSEL OF RECORD

COMES NOW, the Respondent, by and through counsel, and  
opposes the Motion to Withdraw as Counsel filed by Mark Picker,  
appointed counsel for petitioner Siaosi Vanisi. This opposition  
is based upon the records of this Court and the attached Points  
and Authorities.

POINTS AND AUTHORITIES

SCR 250 requires counsel and the court to give capital  
cases priority over all other matters. And yet, it seems to be  
the custom to cite the fact that a case is a death-penalty case  
as justification for giving the case the lowest possible  
priority. That seems to be what is happening in the instant

case.

The records of this Court reveal that Vanisi was convicted in November, 1999, three years ago. His petition for writ of habeas corpus was filed in January, 2002. The parties stipulated to a reasonable time in which to file the supplemental petition that is allowed by, but not required by, NRS 34.750. Vanisi's counsel ignored that stipulation. He then filed a motion for an extension of time and this Court ordered him to file his petition not later than October 1, 2002. Again, counsel ignored the order of this Court. On October 23, three weeks after the supplement was due, he filed yet another motion seeking an additional six month extension of time. That motion is still pending.

Now, on December 17, 2002, counsel has filed a motion to withdraw. The attached proposed order suggests that the Washoe County Public Defender should be appointed in his stead, as though that agency were qualified to assert claims that its own members rendered ineffective assistance of counsel. The justification for the motion recites only that counsel perceives that he no longer has the time to devote to this case. The State contends that by virtue of SCR 250 and common respect for life requires counsel to find the time, to put aside other matters and make a concerted effort to spare his client's life.

This Court should deny the motion, impose sanctions on Mr. Picker, declare the pleadings closed and order the State to answer. In the alternative, if the court is inclined to allow

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1 this blatant disregard for the authority of this Court, then this  
2 Court should order that the motion will be granted only if Mr.  
3 Picker is able to present this Court with the name of an attorney  
4 who is willing to file the supplement within 30 days. Even then,  
5 this Court should order that any counsel fees resulting from the  
6 preparation of a supplemental petition should be paid by Mr.  
7 Picker personally.

8           The delay in this case, and the proffered justifica-  
9 tions for those delays, are ridiculous. This Court should put a  
10 stop to it.

11           DATED: December 23, 2002.

12           RICHARD A. GAMMICK  
13           District Attorney

14           By *Terrence P. McCarthy*  
15           TERRENCE P. MCCARTHY  
16           Appellate Deputy

SVan1s12JDC08280

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an  
employee of the Washoe County District Attorney's Office and  
that, on this date, I deposited for mailing through the U.S. Mail  
Service at Reno, Washoe County, Nevada, postage prepaid, a true  
copy of the foregoing document, addressed to:

Mark Picker, Esq.  
P.O. Box 3344  
Reno, NV 89505-3344

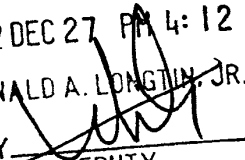
DATED: December 23, 2002

Stella Michel

ORIGINAL

MARC PICKER, ESQ. (SBN 3566)  
MARC PICKER, ESQ., LTD.  
691 Sierra Rose Drive, Suite A  
Post Office Box 3344  
Reno, NV 89505-3344  
775/324-4533

FILED

2002 DEC 27 PM 4:12  
RONALD A. LONGTIN, JR.  
BY  DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

\*\*\*

THE STATE OF NEVADA,

Case No. CR98-P-0516

Plaintiff,

Dept. No. 4

v.

SIAOSI VANISI,  
Defendant.

**REPLY IN SUPPORT MOTION TO WITHDRAW AS COUNSEL OF RECORD**

MARC PICKER, ESQ., of MARC PICKER, ESQ., LTD., hereby files his reply in support of the Motion to to withdraw as attorney for Defendant SIAOSI VANISI. This reply is based upon the Points and Authorities attached hereto, as well as all other pleadings and papers on file in this matter.

**POINTS AND AUTHORITIES**

The tone of the Respondents' Opposition to Motion to Withdraw as Counsel of Record filed in this matter is both insulting and petty. The argument offered is ridiculous, and is more bluster than substance.

This counsel is in private practice, and as such must make a living without a guaranteed steady paycheck from a government entity. What Respondents don't consider in their opposition is the difficulty and long delay in receiving ANY payment from the State



1 of Nevada on appointed cases, even when the payments are death penalty related. As  
 2 well, there is no consideration of the level of time required to be devoted to such a death  
 3 penalty habeas case without any remuneration to be received for months at a time. While  
 4 the Respondents' attorneys all receive their regular salaries, counsel in private practice  
 5 who are appointed to these cases must still make a living doing other work in order to  
 6 survive until the State of Nevada deigns to honor a Court order for payment.  
 7

8 A certain level of civility is required even for those who practice on behalf of the  
 9 State of Nevada, but is forgotten in the rush to execution being sought here.

10 The history of this matter is simple: No one wanted to take the appointment to  
 11 represent Mr. Vanisi in this case because it promised to be a difficult, lengthy, time-  
 12 consuming and thankless task. Only after a considerable number of requests did this  
 13 counsel agree to take on the task. But, as with all things, circumstances change. Because  
 14 this is a death penalty case which requires both the highest priority and the highest level  
 15 of competence, this work should only be performed by someone who can dedicate the  
 16 necessary resources and time to such a matter. This counsel devoted a large number of  
 17 hours to this matter initially, but it has become increasingly difficult to do so given other  
 18 demands due to this counsel's growing practice. This counsel is a sole practitioner, with  
 19 no one else to rely upon other than co-counsel, who is also a sole practitioner. As the  
 20 Nevada Supreme Court has suggested, it would be more appropriate for these death  
 21 penalty matters to be handled by attorneys within a medium to large law firm, where more  
 22 resources and time can be allocated without overburdening a single practitioner. In  
 23 northern Nevada, this is the rare exception.  
 24

25 In this matter, this counsel has strived to meet the requirements of both this Court  
 26 and his professional responsibility. But, there are only so many hours in each day and only  
 27  
 28

1 so many days in a week. It is clear, that this counsel cannot provide effective legal  
2 representation to Mr. Vanisi in this legally mandatory habeas proceeding.

3 To punish this counsel for volunteering and making an effort to assist the Court  
4 would only provide a chilling effect among habeas practitioners in the community – which  
5 is already a woefully small group. This counsel has provided habeas corpus  
6 representation to more than 100 indigent petitioners in the Second Judicial District Court  
7 since 1988. If the reward for this service is to be sanctioned, that is obviously up to the  
8 Court. But it would appear that obtaining any further assistance in these kinds of matters  
9 would be made more difficult by such a heavy handed approach, no matter how loud  
10 Respondents' counsel objects.  
11

12 Wherefore, MARC PICKER, ESQ., requests this Court enter an order approving his  
13 withdrawal as attorney for Petitioner SIAOSI VANISI,  
14

15 DATED this 27<sup>th</sup> day of December, 2002.

16 MARC PICKER, ESQ., LTD.

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21 MARC PICKER, ESQ.

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Richard A. Gammick  
Washoe County District Attorney  
Terrence P. McCarthy, Esq.  
Appellate Deputy  
PO Box 30083  
Reno, NV 89520-3083

Scott Edwards, Esq.  
1030 Holcomb Ave.  
Reno, NV 89502

Siaosi Vanisi #63376  
Nevada State Prison at Ely  
Post Office Box 1989  
Ely, NV 89301

Dated this 21<sup>st</sup> day of December, 2002.

  
\_\_\_\_\_  
GERTRUDE GREEN

ORIGINAL

Code No. 4185

FILED  
2003 FEB 14 AM 12:32  
RONALD A. LONGTIN, JR.  
BY DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

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

POST CONVICTION .  
JANUARY 28, 2003  
Reno, Nevada

APPEARANCES:

For the Petitioner:  
(Via telephone)

SCOTT EDWARDS  
Attorney at Law  
1030 Holcomb Avenue  
Reno, Nevada  
and  
MARC PICKER  
Attorney at Law  
691 Sierra Rose Drive  
Reno, Nevada

For the Respondent:

TERRENCE P. MCCARTHY  
Deputy District Attorney  
195 S. Sierra Street  
Reno, Nevada

Reported by:

ERIC V. NELSON, CCR No. 57

SUNSHINE REPORTING SERVICES (775) 323-3411

1           RENO, NEVADA, WEDNESDAY, JANUARY 28, 2003, 3:13 P.M.

2                           -oOo-

3  
4                   (Whereupon, the following proceedings were held  
5                   in chambers, conducted via telephone.)

6                   THE COURT: Let the record reflect we're  
7                   convened in chambers and on the telephone on Siaosi Vanisi,  
8                   CR98PO516, the post conviction case for Mr. Vanisi.

9                   The Court has received a submittal from  
10                  Mr. Picker asking to be relieved as counsel. And I asked  
11                  for this hearing on the record to determine if Mr. Edwards  
12                  is comfortable moving forward with Mr. Picker being  
13                  relieved.

14                  MR. EDWARDS: Would you like to hear from me,  
15                  Judge?

16                  THE COURT: Sure.

17                  MR. EDWARDS: This is Scott Edwards.

18                  THE COURT: Yes, I do want to hear from you.

19                  MR. EDWARDS: Your Honor, I came into this case  
20                  at the request of Marc Picker, and that's really why I took  
21                  it. So, frankly, I wouldn't be comfortable moving ahead  
22                  without him.

23                  THE COURT: Okay. Mr. Picker, the nature of  
24                  your problem?

25                  MR. PICKER: Your Honor, as you will recall,

SUNSHINE REPORTING SERVICES (775) 323-3411

1 and maybe your clerk can help you if you don't recall, I had  
2 a lot of discussions with her regarding this case and I was  
3 not real excited about taking this because it did carry such  
4 an amount of time. But I decided that I might be able to do  
5 that, and I tried with my best intentions to represent  
6 Mr. Vanisi appropriately in this case, and I represent to  
7 you that I spent a lot of time, I met with Mr. Vanisi quite  
8 a few times, organized the file, obtained missing documents,  
9 those kind of things, and my practice has gotten to the  
10 point where I simply cannot devote sufficient amount of time  
11 to this case.

12 It is a very time consuming and very important  
13 case, and I just don't feel comfortable that I'm going to be  
14 able to do that and still make a living at this point. Even  
15 if Your Honor was to agree to let me have intermediate  
16 payment, I just don't see it happening. It's just too much,  
17 and at the moment I'm overwhelmed with what I have of cases  
18 that don't involve the death penalty at this time. I don't  
19 think that I would be effective in presenting --  
20 representing Mr. Vanisi.

21 Just so the record has this as well, I spoke to  
22 Mr. Vanisi last week, and he expressed to me that he had --  
23 while he wished that I was not getting off, he had no  
24 objections to my motion. He had received it and he  
25 certainly didn't have any objections. He understood the

1 reasoning, and he just wanted to know if I would assist by  
2 bringing up to speed any new counsel, and I assured him I  
3 would certainly do that, and that any new counsel would not  
4 have to go through the very long prep time that it took me  
5 to get up to speed because the files are now actually  
6 organized.

7 THE COURT: Have you spoken to anyone that  
8 would be willing to take the case in lieu of you?

9 MR. PICKER: No, Your Honor. I have spoken to  
10 a number of people, and quite frankly, I'm having the same  
11 problem that you had last year, which is that there's not a  
12 lot of people eager to take on this case.

13 And the second problem is that, I'm sure  
14 Mr. McCarthy would remind us all of this, if I didn't bring  
15 it up, which is whoever does it has to be death penalty  
16 habeas qualified, and that's a small group. In fact, I had  
17 the same discussion you just had with Mr. Edwards when I  
18 first went to file this motion, and part of the problem is  
19 that Mr. Edwards is not -- does not believe that he is death  
20 penalty qualified, death penalty habeas qualified either.  
21 So he would not be able to lead on this, I don't believe.  
22 That was a concern I had I'm sure Mr. McCarthy shares.

23 THE COURT: Well, who is -- who do you know in  
24 the state that could take this case?

25 MR. PICKER: One person who might be able to do

1 it is a person who's taken a problem case out of Department  
2 1 on a habeas, and that doesn't involve a death penalty but  
3 involves life sentences, and that's Kay Ellen Armstrong of  
4 Carson City. She is very competent, and in fact, she has me  
5 as the victim of a habeas corpus in Department 1, and that  
6 was a case that was particularly ugly and I guess Judge  
7 Berry was able to convince her to take. She might be  
8 willing to take this one on. I haven't spoken to her about  
9 it.

10 MR. McCARTHY: I'll bet she appreciates you  
11 mentioning her name, too.

12 MR. PICKER: I'm sure she does. And anything I  
13 can do, certainly I'll do whatever I can, Judge. I mean, if  
14 you'd like, I can certainly contact Mr. Pachetta, who has  
15 handled the federal version of the appeal, preparing it that  
16 way, and federalizing the appeal, and I can certainly ask  
17 him if he has any suggestions. That might be of some  
18 assistance there as well. And I can get back to you on  
19 that.

20 MR. McCARTHY: Can I interject?

21 THE COURT: Certainly.

22 MR. McCARTHY: A lot more people are qualified  
23 than we think. Basically qualifications to be on 250 for  
24 habeas is having had two prior habeas cases.

25 THE COURT: Not necessarily death penalty