

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 33 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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27	114. Declaration of Heidi Bailey-Aloi April 7, 2011.....	AA05727 – AA05730
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28	137. Memorandum to Vanisi File from MRS April 27, 1998.....	AA05856 – AA05858
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35 State’s Opposition to Motion for Reconsideration
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- 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
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- 36 1. Transcript of Proceedings – Status Hearing, *Vanisi v. State of Nevada*, Second Judicial District Court of Nevada, Case No. CR98-0516
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- 36 Suggestion of Incompetency and Motion for Evaluation, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516
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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

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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
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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
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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
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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
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1 to review the exhibits which we had prepared for today?

2 A I reviewed a number of exhibits with you in my
3 office yesterday. Was that your question?

4 Q Yes.

5 A Yes.

6 Q Nothing -- I mean, anything that I had, I offered
7 you, and we did actually go through quite a number
8 yesterday, did we not?

9 A Yes. I can represent that we spent the better
10 part of three hours looking at declarations and other
11 exhibits yesterday.

12 Q Okay. After -- in addition -- or you filed your
13 *Rohan* motion.

14 A Correct.

15 Q And obviously, one of the allegations within your
16 motion, you alleged that it was difficult to communicate
17 rationally with Mr. Vanisi.

18 A Okay.

19 Q Is that fair?

20 A That's fair.

21 Q And you were going to use the information -- or
22 how did you intend to use the information that you
23 obtained from Mr. Vanisi?

24 A Well, we -- the goal is to obtain and present as

1 full a picture of Mr. Vanisi as possible. And also, in
2 the context of comparing what's out there with what was
3 either found and/or presented by trial counsel.

4 Number of different issues in his case, including
5 mental health issues as well as, you know, a fairly
6 complicated litigation case, I believe.

7 Q Would it be a fair statement to say that you
8 viewed your responsibility as one to discover
9 constitutional error, if it existed, in Mr. Vanisi's
10 trial?

11 A Well, absolutely. Habeas work, post-conviction
12 habeas work, especially death penalty work, is complicated
13 because it's a little bit of a minefield. I'll try to
14 condense what I'm trying to say here.

15 When you're doing something, a direct appeal on
16 something that's not death-penalty related especially,
17 what you want to do is pick a few strong horses and ride
18 them to the Supreme Court.

19 When you're doing habeas work, and especially
20 capital work, you want to try to dot every I and cross
21 every T for purposes of exhaustion should the matter end
22 up in Federal Court, and because cumulative error is
23 oftentimes an issue. So the adage that it may not be a
24 wall, but if you can find enough bricks, hopefully you can

1 create a wall.

2 Did I answer your question?

3 Q Yeah. Let me see if I can just make sure we got
4 the record clear.

5 When you say pick a few horses with a non-cap,
6 you're talking about pick your best issues.

7 A Correct.

8 Q Or best points of error. With habeas, with
9 capital habeas, you're saying that you want to try to
10 identify all the constitutional error?

11 A I guess where I was going with that is, yes, you
12 want to identify and raise all the constitutional error.
13 And by that -- and what I hear is a key -- kind of
14 linchpin issues. There may be any number of other issues
15 that don't maybe rise to the level of a due process or
16 constitutional error alone, but together, with other
17 errors, they may.

18 Does that make sense?

19 Q Sure. And obviously, if you have them
20 identified, you can make an educated decision about what
21 to raise.

22 A Sure.

23 Q So you're concerned with identifying the issues
24 first.

1 A Sure. And I don't -- I don't want to jump the
2 gun on your questions.

3 Q How do you do that? How do you identify issues?

4 A Legal issues?

5 Q Yeah. How do you discover error, just generally?

6 A Well --

7 Q I'm not trying to be too obsequious, but I'm
8 trying not to lead the witness.

9 A Well, the most obvious way is that you have to
10 read the record. So you read what happened in the
11 pre-trial hearings. You look at pre-trial motions. You
12 look at orders. And then obviously you look at the voir
13 dire and you look at the trial and you look at the
14 penalty.

15 Q So you obtained all those records, or someone
16 did, in Mr. Vanisi's case.

17 A Right. So that's the first step, is you have to
18 pour over the record generally more than once. And then
19 the second step is you'd want to look at previous
20 counsel's files, you want to look at notes, you want to
21 look at police reports and things that aren't immediately
22 in the record.

23 And then the second or third thing is you have to
24 do investigation of things that don't appear in the

1 record. And that's, again, a key difference between a
2 direct appeal and a habeas proceeding, is that you then
3 have to start uncovering, marshaling evidence that doesn't
4 appear in the record.

5 Q And that's that second or third step. I guess
6 your second step was you get some records that are not
7 within the trial record that might be prior counsel's
8 files?

9 A Yes.

10 Q Educational records, medical records, prior
11 psychiatric history, things like that?

12 A Sure.

13 Q And review those?

14 A Yes. That would be the goal.

15 Q And would it be fair to characterize the third
16 step in your description as one of investigation?

17 A Yes.

18 Q Okay. And so based upon I guess four things,
19 because you also identified the fact that you attempted to
20 talk to Mr. Vanisi.

21 A Correct.

22 Q So based upon the interview, plus the record,
23 plus whatever records you were able to collect, then you
24 investigate?

1 A Well, the -- yeah. Okay.

2 Q That's a general process.

3 A Right.

4 Q Okay. Did you get all the way through that
5 procedure in this case?

6 A No, we did not.

7 Q Okay. Where was the stopping point?

8 A Well, the stopping point was we were -- we didn't
9 ever complete a thorough investigation.

10 Q Okay. Looking real quickly -- 178. Do you
11 recognize that exhibit?

12 A I do.

13 Q Is that a declaration you provided which was
14 attached to the petition in this case?

15 A Yes.

16 Q And I'm assuming inasmuch as you swore to the
17 truth of the matter, that it is true and correct.

18 A Yes.

19 MR. TAYLOR: Okay. Judge, we offer Exhibit 178.

20 THE COURT: Any objection?

21 MR. McCARTHY: Well, prior statement of the
22 witness? That sounds like hearsay to me.

23 THE COURT: This was the declaration that was
24 attached to the habeas?

1 MR. TAYLOR: Petition.

2 THE COURT: Petition?

3 MR. TAYLOR: Yes, Your Honor.

4 THE COURT: So I can take judicial notice of it,
5 whether we admit it or not.

6 MR. McCARTHY: And it's been authenticated, but I
7 think if we want to know something from this witness, we
8 ought to ask him instead of asking what he wrote before.

9 THE COURT: Okay. I will take judicial notice of
10 the document. I think there may be some relevance to what
11 he said then to what he said now.

12 BY MR. TAYLOR:

13 Q You said you didn't get the opportunity to
14 complete an adequate investigation. Is that a fair
15 statement?

16 A In complete fairness, I think the most accurate
17 way I can say that is that we did not complete our
18 investigation.

19 Q Okay. Can you tell us, did you retain an
20 investigator?

21 A I don't -- I don't remember that. You know, that
22 probably would have been Mr. Edwards' purview as lead
23 counsel. And I don't know if there was an investigator --
24 I can't remember if there was an investigator engaged when

1 Mr. Picker and Mr. Edwards had the case or not.

2 I know that Mr. Edwards and I had a number of
3 discussions about future investigation. I don't recall --

4 Q Did you ever talk to an investigator?

5 A I don't recall talking to an investigator in this
6 case. And I'm trying to be as accurate as possible, but
7 this was ten years ago, and there's been a lot of cases
8 since then. And some of these DP cases bleed together.

9 So I can't remember specifically talking to an
10 investigator in this case.

11 Q Let me ask, do you remember talking to
12 Ms. Schaeffer, the young woman or the name that we talked
13 about a while ago that was recommended by Scharlette
14 Holdman about the investigation in this case?

15 A No, I don't remember talking to her.

16 Q Would you -- if you had retained an investigator,
17 would you have sought court approval to expend those
18 funds?

19 A Yes.

20 Q Likewise, you -- there were two experts who --
21 two expert psychiatrists, I believe, who saw Mr. Vanisi;
22 is that correct?

23 A Not entirely. One was a psychiatrist,
24 Dr. Bittker, and one was a psychologist, Dr. Amezaga. And

1 those were appointed by the Court pursuant to our *Rohan*
2 motion.

3 Q Okay. And they were reimbursed by virtue of your
4 motion; is that correct? The motion of you or Mr. Edwards
5 in your billing records.

6 A I don't have an independent recollection of that,
7 but I am sure that's what happened. That's standard
8 procedure.

9 Q And if the billing records reflect payments to
10 Dr. Bittker and payments to Dr. Amezaga, that would have
11 been the process that you would have gone through as well
12 if you had had an investigator?

13 A Yes. And again, I don't remember if I submitted
14 those bills or Mr. Edwards did, but that's standard.

15 Q Would it be fair to say, Mr. Qualls, that if your
16 billing records or Mr. Edwards' billing records do not
17 reflect any request to reimburse or pay any investigator,
18 you probably hadn't gotten one appointed yet?

19 A That's true. If an investigator was working on
20 the case, we would have submitted bills on that
21 investigator's behalf.

22 Q So for my purposes, let's assume, since we don't
23 have any billing records and you don't remember talking to
24 an investigator, at least as far as you're concerned,

1 there was additional investigation to do.

2 A Yeah. There was certainly investigation to do.
3 There's no mistake about that.

4 Q You have answered a while ago that you and
5 Mr. Edwards had discussed future investigation; is that
6 true?

7 A Yes.

8 Q Okay. And do you remember the kind of things
9 that you wanted to do?

10 A Well, again, there's -- in any capital case,
11 there's the developing the things that we have spoken
12 about a couple times today, social histories and whatnot.

13 Mr. Vanisi's case was unique in that he was
14 Tongan and obviously had a very rich cultural history that
15 we thought was relevant.

16 Q Okay. So an investigator could have assisted in
17 the cultural or at least the cultural issues that surround
18 Mr. Vanisi and his social history?

19 A Correct.

20 Q Could you turn to Exhibit 205, please.

21 A (Witness complies.)

22 Okay.

23 Q Do you recognize the handwriting in that exhibit?

24 A Yes, I do.

1 Q Okay. And do you know what this exhibit is?

2 A Appears to be my handwritten -- some of my
3 handwritten notes from the file.

4 Q Related to Mr. Vanisi's case?

5 A Yes.

6 Q On the first page, under No. 19, does it reflect
7 the need to do mitigation investigation?

8 A Yes.

9 Q Does it reflect the need to get some assistance
10 in cultural matters?

11 A Yes.

12 Q Second page, under number two, same thing. The
13 social history mitigation issues reflect that at least you
14 wanted some evidence along that line.

15 A Yes.

16 Q On the third page, were there -- does this
17 identify some concerns you had regarding mitigation
18 investigation or possible potential mitigation?

19 A Yes.

20 Q What were those areas of concern?

21 A Based upon what's reflected on this page three?
22 Is that your question?

23 Q Sure. Or the whole exhibit. Does this help
24 refresh your memory as to what the investigation you

1 wanted to conduct was?

2 A Well, yes. Again, there's reference to a
3 mitigation expert. There's reference to a Tongan expert.
4 There's reference to what was presented at trial in
5 mitigation and what was available that could have been.

6 Q Need for cultural assistance or assistance with
7 the Tongan culture?

8 A Right.

9 MR. TAYLOR: Judge, I'd offer 205.

10 MR. MCCARTHY: No objection.

11 THE COURT: Exhibit 205 is admitted.

12 (Exhibit No. 205 admitted.)

13 BY MR. TAYLOR:

14 Q Okay. So ultimately, I mean, we're kind of to
15 the point to where you -- and I'll let you take this, but
16 we're at the point to where you believe that there's a
17 need for investigation, it sounds like. You have
18 encountered some difficulties in communication and have
19 filed a *Rohan* motion.

20 What occurs next in this representation of
21 Mr. Vanisi?

22 A Well, as we discussed, the Court appointed two
23 mental health experts, and then we had a hearing pursuant
24 to *Rohan* in which the Court reviewed the evaluations from

1 both experts and heard testimony from both Dr. Bittker and
2 the psychologist, Amezaga. And then the Court ruled on
3 *the Rohan* motion.

4 Q So basically, you were in the midst of litigating
5 your *Rohan* situation, *Rohan* motion.

6 A That's correct.

7 Q Was any investigation, to your knowledge, ever
8 accomplished in the midst of this *Rohan* litigation?

9 A No, it was not. We were taking it step by step,
10 and our first step or first priority was the *Rohan* matter.
11 And based upon the circumstances, obviously, we were
12 overconfident, but we believed that there would be some
13 stay in place based upon *Rohan*. Specifically --

14 Q You had faith in your motion.

15 A What's that?

16 Q You had faith in the motion you brought.

17 A Sure. And we had faith in -- Dr. Bittker's
18 recommendation was that due to the medication that Vanisi
19 was on, which was at the time Depakote and Haldol, that he
20 recommended that he be taken off those medications. I
21 believe he recommended placement at Lake's Crossing or
22 someplace like that for -- that's my memory, for
23 approximately 90 days kind of for him to clean out, and
24 then he wanted to evaluate him again, again, for purposes

1 of another *Rohan* evaluation.

2 So we were, in our minds, certain that we would
3 at least have that amount of time.

4 Q You were kind of banking on the Court accepting
5 Dr. Bittker's recommendation.

6 A Yes. As it turns out, perhaps foolishly, we
7 banked upon that too much.

8 Q Okay. What occurred -- as I understand, just for
9 purposes of the record, the Court heard the witnesses on
10 separate days, Dr. Amezaga and Dr. Bittker.

11 A If you tell me that -- I don't recall that but if
12 they were separate days --

13 Q You remember that ultimately the Court denied
14 your motion?

15 A Yes.

16 Q Okay. Then what occurred?

17 A And then there was an order in fairly short order
18 to file the supplement.

19 Q And by short order, what do you mean?
20 Approximately?

21 A I don't want to misrepresent. My memory is that
22 it was either a Thursday or a Friday hearing, and we had
23 to file the supplement by the next Tuesday.

24 Q So four or five days?

1 A That's my memory.

2 Q And no investigation had been accomplished at
3 that point.

4 A Nothing other than our review of the file.

5 Q Was any attempted over that four- or five-day
6 period?

7 A No. I think all of our time was spent in putting
8 together the -- I mean, we had --

9 Q You did file a supplement.

10 A We did file a supplement. And we had -- going
11 back to your question about the constitutional errors, we
12 had what we believed and I still believe are very good
13 legal issues.

14 We had a structural error based upon the fact
15 that the defense lawyers basically sat on their hands
16 during the trial. My memory is no opening, no closing. I
17 think they asked a few cross-examination questions of the
18 one witness. So we had structural error.

19 The *Finger* case had come down since the trial, I
20 believe. We had a possible *Faretta* issue. Mr. Edwards
21 had developed an issue based upon a consular matter that I
22 believe was up at the U.S. Supreme Court at the time.

23 We had a number of strong legal issues already at
24 least roughed out in the petition that we believed were

1 reversible, and so we took those. We took other standard
2 death penalty issues that we have worked on over the years
3 and put it all together and filed the petition with what
4 we had.

5 If I had it to do over again, I probably would
6 have filed some notation or some motion requesting
7 additional time or making a note that we wanted to add
8 additional issues. I didn't -- I didn't have the
9 experience at the time to do that.

10 Q To be fair, I mean, you have raised a number of
11 legal issues, correct?

12 A Yes, again, and I still think they're very strong
13 legal issues.

14 Q But would you agree with me that there was no
15 rational or strategical reason that you did not conduct an
16 investigation into Mr. Vanisi's circumstances?

17 A Did we intentionally not investigate before we
18 filed the petition? Is that the question?

19 Q Essentially.

20 A No. There was no intention to file the
21 supplement without any further investigation.

22 Q So you, at least up until the day that the Court
23 ruled over your *Rohan* motion, contemplated that an
24 investigation would be conducted?

1 A Yes. We contemplated additional claims. We
2 contemplated putting together a more comprehensive picture
3 of mitigation. We -- you know, you don't -- purely
4 speculative to identify what might come out of
5 investigation, but certainly, that was part of our plan.
6 Again, it was a stepped-out plan, and our first priority
7 was *Rohan*.

8 Again, you know, have to -- the real world comes
9 into play here. This is not our only case. We both are
10 very busy lawyers at the time. And we erroneously thought
11 we had a winner in this *Rohan* issue, and we thought it was
12 particularly appropriate and relevant to Mr. Vanisi's
13 case.

14 Q Would it also be true, Mr. Qualls, that perhaps
15 your investigation would have been more focused had you --
16 had Mr. Vanisi the ability to communicate with you?

17 A Well, there's --

18 Q Would that have assisted you in your
19 investigation?

20 A Well, sure, but could he have communicated, there
21 wouldn't have been legitimate grounds for the *Rohan* issue.
22 So it's kind of a Catch-22.

23 Q Dr. Bittker, and to some extent Dr. Amezaga, and
24 additionally there was a number of other doctors

1 previously that had seen Mr. Vanisi. Do you remember
2 Theinhaus, Dr. Lynn during the trial?

3 A I do remember that there were, I believe, a
4 couple of evaluations regarding competency or mental
5 health at the trial level.

6 Q Do you remember what diagnoses they came to?

7 A I'm sorry, I did not review that coming in here
8 today. I can't, with specificity, remember what the
9 diagnoses were.

10 Q If I were to represent to you that at least
11 Dr. Bittker and others was concerned with ruling out a
12 bipolar disorder, would you have any reason to disagree
13 with me?

14 A No. I remember that bipolar was an issue,
15 amongst others.

16 Q In fact, a while ago you talked about certain
17 medications that Dr. Bittker recommended. Do you remember
18 what those were?

19 A I remember -- I don't remember him recommending
20 new medications. I remember that he opined that the
21 Haldol and Depakote that he was on were potentially a
22 cause for his incompetence to proceed, and that they were
23 also endangering his health and safety.

24 Q Okay. Are you aware of the symptoms for

1 manifestations of bipolar disorder? Have you encountered
2 that elsewhere?

3 A Certainly I've encountered diagnoses of bipolar
4 disorder throughout my career.

5 Q I'm not asking you to render any expert opinion
6 or diagnose someone with bipolar disorder, but there are
7 certain things, red flags, that would cause you to seek
8 expert assistance; is that true?

9 A Sure, yeah.

10 Q Related to not only bipolar disorder, but I take
11 it you have also had clients that were -- or been around
12 schizophrenia?

13 A Yes.

14 Q Are symptoms of schizophrenia things that you
15 might look for in any case?

16 A Yes.

17 Q Psychotic behavior?

18 A Yes.

19 Q It's another thing that you trained yourself to
20 look for?

21 A Yes. Or at least I'm familiar with it from
22 bumping into it in other cases.

23 Q If I could, I'd like to ask you some just general
24 questions about different issues that you might or might

1 not encounter in the investigation of a capital case and
2 find out if that would be important to you. Okay?

3 Evidence of family dynamics, how the family lived
4 together, who was in charge, who kind of held the power,
5 is that important to you?

6 A It's important from a social history, I suppose.

7 Q Would allow the Court or jury to fully understand
8 or at least assist in understanding the defendant's
9 actions, childhood and life?

10 A Sure.

11 Q What about instances of domestic violence or
12 abuse in the home? Are those things which interest you in
13 the investigation of a capital case?

14 A Those are relevant.

15 Q And what would you do with that kind of evidence?

16 A Well, depends on -- it could be -- a lot of this
17 stuff, a lot of the mental health issues, a lot of the
18 family dynamic issues are a little bit of a double-edged
19 sword. They help to explain behavior, but they also tend
20 to scare people.

21 Q Sure.

22 A And so the primary reason that you want that
23 information is so that you can make informed choices, I
24 suppose.

1 Q But you still want to investigate and learn it so
2 you can decide what to do with it.

3 A Correct.

4 Q Okay. What about evidence that persons close,
5 either family members or very close friends, close to your
6 clients died, somewhat close to this behavior of the
7 charged offense?

8 A Certainly in a number of my cases, the death of a
9 parent or a sibling or someone close to the defendant is
10 important and relevant.

11 Q In helping explain behavior at times?

12 A At times.

13 Q Doesn't excuse it but can explain it.

14 A Sure. At least explains the mental state.

15 Q What about with a client that is from outside
16 this country's cultural information?

17 A Yes. As I have indicated and as the notes
18 indicate, we believed that the Tongan cultural issue was
19 important.

20 Q Are there certain waypoints in a client's life
21 that you kind of look at and obtain the evidence
22 regarding? Like their childhood or their birth, schooling
23 and --

24 A I suppose it would depend on the client. It's

1 impossible to predict what the events are that are
2 traumatic or shape an individual, so --

3 Q So you kind of want to look at it all?

4 A I suppose.

5 Q In particular, would you also might focus on
6 evidence or behaviors within a reasonable time before the
7 charged offense?

8 A Anything that is relevantly contemporaneous with
9 the charged offense is important.

10 Q Sounds kind of silly, but if you encountered
11 evidence of your client having sleep issues before the
12 charged offense, would that be relevant?

13 A Sometimes it's, in my experience, sometimes
14 relevant to mental health issues.

15 Q So that would tell you to look for more. Is that
16 a fair statement?

17 A Yeah. It could be a red flag.

18 Q Drug use, whether legal or illegal.

19 A Obviously drug use is a huge factor.

20 Q The fact that your client was expressing
21 different personalities at different times.

22 A That would be extremely relevant, important.

23 Q What about reports that the client's speech
24 pattern changed? Rapid speech, distorted thoughts, loose

1 thoughts that someone described as mouth working faster
2 than his brain?

3 A I would think that could be indicative of either
4 some kind of extreme mental illness, like schizophrenia,
5 or maybe my first thought would be some sort of speed,
6 methamphetamine or cocaine or something.

7 Q And we both, in discussing this, we're not saying
8 that any of these are diagnosis of a mental illness,
9 right?

10 A No. Again, just things you --

11 Q Just red flags that tell you to look further.

12 A Yeah, rocks you want to turn over.

13 Q What about the fact you got a client that -- I
14 guess the catch word is grandiose or grandiosity.

15 A You mean like Dr. Pepper?

16 Q You tell me. I mean, it's got to be your
17 opinion. Is that something you look for, things that are
18 out of proportion?

19 A Sure. And Vanisi definitely displayed that on
20 occasion.

21 Q I'm a movie star?

22 A Right.

23 Q Paranoia, would that evidence be interesting to
24 you?

1 A Sure.

2 Q Hypervigilance?

3 A Yeah. That's pretty important.

4 Q What about hallucinations, delusions, talking to
5 himself or talking to animals?

6 A All of those are important. That goes on the
7 same scale as multiple personalities because you're
8 talking more along the lines of competence and whether or
9 not he might -- whether or not there might be a legitimate
10 mental health issue as to his ability to form the
11 requisite mental state at the time of the offense.

12 When you get into the really bizarre behaviors,
13 dissociative disorder, extreme psychotic behavior,
14 schizophrenia, multiple personalities -- did I say that?

15 Q Yeah.

16 A Those are indicators that you might have the
17 rarity of he was not of the mental state during the
18 offense to form the requisite intent.

19 Q So for sure you want to turn those rocks over.

20 A Yeah. That's why I said earlier that those are
21 very important.

22 Q In fact, the next thing I was going to ask you is
23 whether documentation of bizarre, strange behavior in the
24 time period leading up to the offense, is that important?

1 A Yeah, that would be. All of it is important, but
2 certainly stuff within a reasonable time frame around the
3 event is more important.

4 Q What about that your client had an imaginary
5 friend that he talked to and referred to?

6 A Again, that goes into what I said. That's like
7 the multiple personalities.

8 Q Evidence that your client changed his appearance
9 or hygiene recently before the charged offense.

10 A That could be indicative of a number of things,
11 but it's important.

12 Q It's a rock to turn over?

13 A (Nods head).

14 Q Do you want to know about your client's work
15 habits, employment history?

16 A Yes.

17 Q If there was some behaviors, some action of the
18 client which caused him to be singled out or brought shame
19 on his family and he was singled out, is that evidence
20 you'd want?

21 A Sure, and especially if there's a strong cultural
22 impact of that.

23 Q And recognizing that in some cultures, the shame
24 is maybe greater?

1 A That's what I meant, yes.

2 Q How about issues of abandonment during your
3 client's childhood? Is that information --

4 A That's often important, yes.

5 Q Another rock that you would turn over?

6 A Yes.

7 Q How about previous problems with police officers?

8 A Well, any previous legal issues are important.

9 Q In particular in a case where a police officer
10 was the alleged victim.

11 A Well, sure, yeah.

12 Q What about experiencing situations involving
13 racial prejudice?

14 A You mean the client is being prejudiced?

15 Q For or against. Either people prejudiced against
16 him or prejudices that his family holds towards others.

17 A Yeah.

18 Q Either one could be important?

19 A Sure.

20 Q Medical issues, head injuries, things like that,
21 do you want to turn those rocks over, too?

22 A Absolutely. Any kind of brain injury, whether
23 it's caused by trauma or existing at birth, is important
24 to mental health issues.

1 Q Would it be fair to say that you would at least
2 like some general understanding of his childhood, young
3 adult years?

4 A I think you'd probably want more than a general,
5 but yes.

6 Q So you would want to investigate that?

7 A Yes.

8 Q Okay. When you have a situation such as this to
9 where you believe your client is mentally ill and he's
10 from another country and another culture, is it ever
11 important to look at the way mental illness is viewed in
12 that other culture?

13 A Yeah. I think that falls into the need for a
14 cultural expert.

15 Q Now, you will agree with me that if you had
16 encountered any of this -- these type of issues in your
17 review of the trial record or in trial counsel's files,
18 that's a rock you would have turned over, or at least you
19 would have identified it by that point?

20 A Hopefully, yes.

21 Q Okay. And you contemplated or intended to look
22 for that type of evidence anyway.

23 A Yes.

24 Q Okay. Is it safe to say that you never got that

1 far?

2 A No, we didn't. And I am sure that I didn't go
3 back and look at -- you know, over that four- or five-day
4 period, I'm sure I didn't -- between the denial of the
5 *Rohan* and the filing of the supplement, I'm sure I didn't
6 go back and look at Picker's notes or the social history.

7 Our focus at that point was the linchpin legal
8 issues.

9 Q And to be fair, I mean, you had that four days or
10 whatever. Did you also try extraordinary writ?

11 A I saw a reference to that in one of the
12 transcripts. I don't have any independent memory of that.

13 Q But you had plenty to do, I guess, is what you're
14 telling us in that four-day period.

15 A That's my memory.

16 Q Are you aware of Mr. Vanisi's religious
17 preference or previous religious affiliation?

18 A I was aware that there was a history of Mormonism
19 in his past.

20 Q That his family had joined or were Mormons,
21 joined the LDS church?

22 A Yes, I was aware --

23 Q Were you aware or did you discover through
24 investigation that he had actually been excommunicated

1 from the church?

2 A I don't have an independent recollection of that
3 except for our recent discussions. I may have known that
4 ten years ago, but I don't remember.

5 Q Is that another one of those rocks that you would
6 turn over to kind of find out the effect on him after that
7 occurred?

8 A Sure. That's something I would have liked to ask
9 Vanisi about, the impact of that on him.

10 Q Especially if it occurred within the year or so
11 previous to the charged offense?

12 A If it was close in time to the offense, yes.

13 Q Let's look at real quick, if you would, at
14 Exhibit 42, if I could.

15 A Exhibit 42?

16 Q Yes. I believe this is the findings of fact that
17 we talked about a little earlier. The very first exhibit.

18 A Okay.

19 Q Are you familiar with that document?

20 A It's been some time, but yes.

21 Q Okay. And is this the order in which the judge
22 finds that -- or denies relief to Mr. Vanisi, in which the
23 Court denied relief?

24 A Hang on a minute. It appears to go through the

1 different grounds and then deny the petition. On page 14.

2 Q Okay. The judge basically took the issues that
3 were presented in your amended pleading and denied them.

4 A Yes.

5 Q Okay. On page eight of those findings, we have
6 an ineffective assistance of trial counsel claim. Do you
7 recognize that?

8 A Is it --

9 Q First paragraph.

10 A Yes, I recognize it.

11 Q Okay. And I think the judge described your claim
12 as a generic argument that counsel failed to investigate
13 and develop a defense.

14 A Yes. You know, obviously our claim at least in
15 part is based upon the fact that defense counsel didn't do
16 anything.

17 Q Well, we talked about that.

18 A Yeah.

19 Q That they, for whatever strategic reason or
20 concern for inconsistent defenses, essentially did nothing
21 during the guilt phase of the trial.

22 A Right.

23 Q And I think you attacked some of the penalty
24 phase as well, their failure to come up with a cogent

1 defense; is that true?

2 A Correct.

3 Q Look at the last sentence of that paragraph, if
4 you would. The Court denies that basically for the reason
5 that no additional evidence was presented regarding what
6 defense or evidence could have been discovered; is that a
7 fair statement?

8 A Yeah.

9 Q Does that finding directly impact or a result of
10 your inability to investigate?

11 MR. MCCARTHY: Your Honor, I think that calls for
12 this witness's speculation about what he would have
13 uncovered when turning over all those rocks.

14 MR. TAYLOR: We're fixing to help him with that.

15 THE COURT: Well, then, you should do that before
16 you have him reach a conclusion. I'm going to sustain the
17 objection.

18 MR. TAYLOR: Thank you, Your Honor.

19 BY MR. TAYLOR:

20 Q Turn to page 12, if you would.

21 A (Witness complies.)

22 What am I looking at?

23 Q The second -- last paragraph, third sentence.
24 Again, the Court makes reference to what available

1 evidence -- there's no evidence to show that anything was
2 available to be found.

3 A The third sentence in the last paragraph?

4 Q The Court finds that there is no reason to
5 believe. Do you see that portion of the sentence?

6 A Oh, the second paragraph.

7 Q Yeah. It's the same thing --

8 A Oh, I see, yeah, okay. Right.

9 Q Do you think that had -- or I guess I'm in the
10 same situation. Your intent to investigate is to avoid a
11 finding such as this.

12 A Well, okay. My intent to investigate is to put
13 on a thorough case to avoid this, but yeah.

14 Q Did you feel you did so? Do you feel you put on
15 a thorough case?

16 A No.

17 Q Let's turn to Exhibit 92. Give you a chance to
18 look at Exhibit 92.

19 A Okay.

20 Q Do you find that the declaration by this witness
21 is relevant to the family dynamics of Mr. Vanisi's family?

22 A Yes. Appears to be.

23 Q Do you find that it's relevant to -- I think we
24 discussed issues of domestic violence or abuse.

1 A Yes.

2 Q Does it suggest that there was a death of close
3 family members that Mr. Vanisi encountered?

4 A Yes, his uncle.

5 Q Does it provide some insight in the Tongan
6 culture?

7 A Some.

8 Q Is this the type of evidence that you would have
9 used or like to have discovered in your investigation?

10 A Sure.

11 Q Do you believe that you would have presented this
12 evidence to the Court had you found it?

13 A It's likely.

14 MR. TAYLOR: Your Honor, I'd offer Exhibit 93 for
15 the purpose of this hearing only. Excuse me, 92.

16 THE COURT: Mr. McCarthy?

17 MR. MCCARTHY: Understanding it's not being
18 offered for the truth of something that Mr. Qualls would
19 have found interesting, then with that understanding, I
20 have no objection.

21 THE COURT: Okay. 92 is admitted.

22 (Exhibit No. 92 admitted.)

23 MR. TAYLOR: Judge, with each of these, I'm not
24 trying, nor would I ever try to deny Mr. McCarthy an

1 opportunity to impeach these statements at some point, but
2 for the purposes of this hearing, I'm just asking the
3 witness to assume they were true, and would he -- would it
4 have been relevant or would he have used it, would it have
5 fit those criteria we've discussed.

6 THE COURT: Are you going to lead him through
7 that litany you just did on every one of these witnesses?

8 MR. TAYLOR: A good many of them.

9 THE COURT: Because it would be probably better
10 not to lead him through that all, just ask that question
11 that you were going to ask.

12 MR. MCCARTHY: If we have generally the agreement
13 that was just announced, that all of these things we're
14 about to hear from are not offered for the truth, just for
15 Mr. Qualls's opinion on what he would have liked if he
16 were king of the forest, then I'll have no objection on
17 any of them.

18 MR. TAYLOR: Could I have a minute, Your Honor?

19 THE COURT: Okay. Go ahead.

20 (Discussion off the record
21 between defense counsel.)

22 MR. TAYLOR: Judge, I think we have essentially a
23 stipulation to admit those. We are assuming for the
24 purposes of this hearing that they are true. Obviously

1 Mr. McCarthy has the ability to challenge them at any
2 later hearing. I won't go each through individual
3 exhibit, but I am going to make a representation to the
4 Court what I think they're relevant to as far as which of
5 those areas that Mr. Qualls has identified.

6 THE COURT: Well, isn't it important whether or
7 not he would have used it?

8 MR. TAYLOR: Well, that's what we're going to,
9 Judge.

10 MR. MCCARTHY: That's the big question.

11 MR. TAYLOR: That's where we're going.

12 THE COURT: Okay. So why do you think it's
13 relevant?

14 MR. TAYLOR: Well, that's what I'm asking him.
15 I'm making a represent -- I don't want to go through each
16 individual thing. I'm trying to avoid --

17 THE COURT: Okay. Let's see how we can do this.
18 So that's your stipulation, Mr. McCarthy?

19 MR. MCCARTHY: Gosh, I don't even remember what
20 it was.

21 THE COURT: I think that it's nobody is offering
22 these for the truthfulness of the matters contained
23 therein, but asking the witness to assume that they are
24 truthful, and would that make a difference in his

1 presentation.

2 MR. McCARTHY: Oh, sure, I think that's --

3 THE COURT: Isn't that what you're asking?

4 MR. TAYLOR: Yes.

5 MR. McCARTHY: I think that's an appropriate
6 question.

7 THE COURT: So that stipulation will be allowed
8 in. Does that relate to all the declarations?

9 MR. TAYLOR: It relates to --

10 THE COURT: Is there any exhibit that we
11 currently have that --

12 MR. TAYLOR: It doesn't.

13 THE COURT: -- it doesn't relate to?

14 MR. TAYLOR: Your Honor, I think it would relate
15 to the declarations or letters up No. 199, and we'd offer
16 them with that stipulation.

17 THE COURT: Mr. McCarthy? With the
18 stipulation --

19 MR. McCARTHY: Yeah, sure.

20 THE COURT: Okay. The exhibits that are marked
21 42, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103,
22 104, 105, 106, 107, 108, 110, 111 through 129 are
23 admitted. 130 through 132 are admitted. 149 through 153
24 are admitted. 155, 163, 164, 173, 179, 180, 181, 195,

1 196, 197, 198, 199 are all admitted.

2 (Exhibit Nos. 42, 92, 93, 94, 95, 96, 97,
3 98, 99, 100, 101, 102, 103, 104, 105, 106,
4 107, 108, 110, 111, 112, 113, 114, 115, 116,
5 117, 118, 119, 120, 121, 122, 123, 124, 125,
6 126, 127, 128, 129, 130, 131, 132, 149, 150,
7 151, 152, 153, 155, 163, 164, 173, 179, 180,
8 181, 195, 196, 197, 198, 199 admitted.)

9 MR. TAYLOR: Your Honor, maybe I heard it wrong.
10 No. 131 and No. 156 are included?

11 THE COURT: Yes, they are included. Oh, 156 is
12 not marked on my list. Maybe it is on --

13 MR. TAYLOR: It's on mine.

14 THE COURT: Okay.

15 MR. TAYLOR: But it's a declaration by Nancy
16 Chaidez, Your Honor.

17 THE COURT: So 156 is also admitted.

18 (Exhibit No. 156 admitted.)

19 MR. TAYLOR: May I continue? I'm sorry, Judge.

20 THE COURT: You may. I'm sorry.

21 BY MR. TAYLOR:

22 Q Mr. Qualls, we went through a number of these.
23 In fact, through -- all through 199, did we not?

24 A I believe that's a correct statement.

1 Q And so are you familiar with the evidence that's
2 contained within those exhibits?

3 A Yes.

4 Q And we also just a few minutes ago went through
5 issues such as family dynamics, domestic abuse, a number
6 of issues that you called rocks that you had to turn over,
7 that you needed to investigate.

8 A Correct.

9 Q During your review of those exhibits, up through
10 199, would you agree that they fit the -- do they appear
11 to reflect the same information that you would have
12 investigated for?

13 A Yes. Yes. They appear to be relevant to what I
14 would want to know with regard to my investigation.

15 Q Do they provide evidence, each of those exhibits,
16 that you would have used with regard to Mr. Vanisi's --
17 would have presented in some manner with regard to
18 Mr. Vanisi's petition had you had that evidence available
19 to you?

20 A That's a big question. Let me answer it this
21 way: Each of them were pieces of information that would
22 have been relevant and helpful to me in deciding what I
23 was going to put forward with the judge. I cannot say
24 definitively that each one of them I would have definitely

1 included as a -- you know, as a pillar of the case or
2 declarations or witnesses I wanted to put on, but it was
3 all relevant and important to the investigation.

4 Most of it, I'm sure I would have -- I hope I'm
5 not shooting myself in the foot here -- wanted to put on
6 to present a complete picture of Mr. Vanisi and a complete
7 picture of what was out there because, again, the idea
8 being that you can't make a strategic decision about what
9 information to put either before a judge or a jury unless
10 you have that information to review.

11 So from a post-conviction habeas standpoint of
12 alleging IAC of trial counsel, I would have wanted it all
13 to show that defense counsel could not have made a
14 strategic decision about what story to put on about
15 Mr. Vanisi without having the complete story.

16 Q And you would agree with me, I assume, that it
17 would be next to impossible for you to attack trial
18 counsel's investigation without conducting your own
19 investigation.

20 A Absolutely, and I think that was made clear in
21 the judge's order.

22 Q So that's the way you relate that order to the
23 evidence that we have before us today.

24 A Yes.

1 Q Now, we are obviously, rather than going through
2 the individual circumstances in each one of these 150
3 exhibits, we're going to have to rely upon the Court to
4 review them, obviously.

5 A Sure.

6 Q But do you believe that these are the type of
7 issues you would have investigated?

8 A Yes. I think they fall under the rubric of all
9 of the things that we've discussed, cultural issues,
10 mental health issues, family dynamics, previous violence,
11 drug use, et cetera.

12 Q And you have used the word "story" a few times in
13 your testimony today. Do you believe that an accurate
14 representation of Mr. Vanisi's circumstances was presented
15 to the jury in this case, based on your review of the
16 declarations that we now have admitted into evidence?

17 A Well, again, there was no case put on at the
18 guilt phase. And my memory of what was put on at the
19 penalty phase, although there were certainly a number of
20 witnesses presented, I think it was a pretty
21 one-dimensional story, that Vanisi was a nice guy and a
22 gentle guy.

23 Q Who kind of acted strange in one way.

24 A Yeah, there was some of that. But, you know, I

1 mean, for -- very objectively, for good or bad, it was not
2 the full story of Vanisi.

3 Now, whether there were any strategic decisions
4 behind that, I don't know, other than it would have been
5 our intention to argue that you can't make a strategic
6 decision without all of the information.

7 Q Do you agree with me that the Court never learned
8 the full story, Mr. Vanisi's full story or complete
9 circumstances either during the state habeas proceedings?

10 A Well, to the extent that the Court did not have
11 these 150 exhibits, the Court was not aware of that full
12 story, no.

13 Q If I were to represent to you that of these
14 exhibits, the petition involves 56 outside-the-record
15 interviews, these exhibits, 56 declarations themselves --

16 A Mm-hmm.

17 Q -- that 31 of these people indicated in those
18 declarations they were never interviewed by trial counsel.

19 A What's your question?

20 Q Would that impact or would that have relevance to
21 the ineffective assistance of counsel claim that you
22 raised?

23 A Again, from the very basic standpoint of you
24 can't make a strategic decision without having -- you

1 can't -- you have to do the investigation before you can
2 decide whether or not to use it, so yes.

3 Q And then on top of that, a number of those, a
4 number of the people who were interviewed by trial counsel
5 indicated that they were never asked about Mr. Vanisi's
6 social history. Is that of concern to you as state habeas
7 counsel?

8 A Yes, for all the reasons we've discussed.

9 Q So would you agree with me that those 31 people
10 are directly relevant to the Court's findings in
11 Exhibit 42?

12 A You mean to the finding that we didn't put up any
13 investigation to show what investigation should have --

14 Q Yes.

15 A Sure. That's directly relevant.

16 Q And of those 56 interviews, some obviously
17 weren't available to you. Would that be a fair statement?
18 Like our experts. You had your own. But 49 of those that
19 were available to you indicated that they were never
20 contacted by state writ counsel. You don't dispute that?

21 A If you're talking about family and friends and
22 church members that existed and were available at the
23 time, yes.

24 THE COURT: Okay. Let's take a short recess now.

1 We'll be back by 3:30.

2 Court's in recess.

3 (Recess taken 3:15 p.m. to 3:35 p.m.)

4 THE COURT: Thank you. Please be seated.

5 Counsel, you may proceed.

6 MR. TAYLOR: May I approach the clerk, Your
7 Honor? I have got her marking something else right quick.

8 THE CLERK: Exhibit 223 marked.

9 (Exhibit No. 223 marked.)

10 BY MR. TAYLOR:

11 Q Mr. Qualls, I am handing you what has been marked
12 as Exhibit 223. Would you review that or have you
13 reviewed it previously?

14 A I reviewed this during the break.

15 Q Okay. And can you tell the judge what that is?

16 A It is a declaration of Shaylene Grate, who
17 apparently was one of the jurors on the Vanisi trial.

18 Q Now, is one of the things that you would have
19 done had you been able to conduct an investigation, would
20 you have interviewed jurors in this case?

21 A I would have wanted to do that, yes.

22 Q And, thus, you would have wanted to conduct the
23 investigation that's reflected by this exhibit?

24 A Yes.

1 Q And do you think that this exhibit is relevant to
2 any of the claims that were presented in your petition or
3 maybe additional claims?

4 A I think it's relevant for two reasons. One, it's
5 relevant I believe to our -- at least one of our claims
6 regarding the content of the jury regarding death
7 qualification, and it's also relevant from the standpoint
8 there's at least an indication that a thorough
9 presentation of Mr. Vanisi's mental health history and
10 cultural background may have had a positive impact on the
11 juror.

12 Q Are we talking in particular about a --
13 paragraphs eight and nine on the second page?

14 A Yes, that's what I was referring to.

15 Q And not trying to belabor the point, but the
16 mental illness that Mr. Vanisi suffered, that is something
17 that you have identified that you would have investigated
18 had you had the opportunity?

19 A Yes. Obviously we believed that was an issue.
20 One of the legal issues that we raised was related to the
21 *Finger* case, and then obviously we raised additional
22 mental health issues with respect to the *Rohan* issue.

23 MR. TAYLOR: Your Honor, we'd offer 223.

24 MR. MCCARTHY: This one is quite a bit different

1 and I do in fact object. A juror may not impeach his or
2 her verdict. This does nothing more than that. So I
3 object to it being considered for any reason at all.

4 MR. TAYLOR: Just to make the record clear, Your
5 Honor, it's also offered to demonstrate the
6 appropriateness or the qualifications of the jurors to
7 serve in a death penalty trial, not anything to do with
8 the verdict, but as well as her qualifications to be sworn
9 as a juror.

10 MR. McCARTHY: That is -- it's undistinguishable
11 to me. That is the same. I return a verdict because I'm
12 a bad juror? No, I don't think so, Your Honor.

13 THE COURT: The record would clearly reflect what
14 she says she said and what her rehabilitation or lack
15 thereof was. And anything that she didn't tell the Court
16 at the time of the selection would probably be an attempt
17 to impeach her decision, which is improper in the state of
18 Nevada.

19 MR. TAYLOR: I understand, Your Honor. We're
20 offering to show to that she was not qualified at the
21 time.

22 THE COURT: Well, the transcript would show
23 whether she's qualified or not. That's the evidence that
24 was before the Court.

1 Do you have anything further, Mr. McCarthy?

2 MR. McCARTHY: No. I repeat my suggestion that
3 this affidavit is a juror attempting to impeach a verdict,
4 and that's not appropriate.

5 THE COURT: I'm going to sustain the objection.

6 MR. TAYLOR: May I have one minute, Your Honor?

7 THE COURT: Yes, you may.

8 (Discussion off the record
9 between defense counsel.)

10 BY MR. TAYLOR:

11 Q I think we've kind of established this,
12 Mr. Qualls, but since there's apparently no mule, I won't
13 kick two or three times.

14 Would you have taken this type of evidence that
15 we talked about -- and you said you'd investigate. Would
16 you also share it with your mental health experts?

17 A Yes, is the short answer to that.

18 Q And I think a number of them that have testified
19 in this case but -- I'm trying to find my...

20 163 and 164, if you could look at those, please.

21 A (Witness complies.)

22 Q If I'm not mistaken, 163 should be a report by
23 Dr. Jonathan Mack?

24 A Correct. That's what it appears to be.

1 Q And 164 should be a report by a Dr. Siale
2 Foliaki.

3 A Correct.

4 Q Okay. Have you seen these reports before?

5 A I don't recall seeing them, no.

6 Q Have you discussed them with any person?

7 A No. I don't recall that, no.

8 Q If we can just real quickly -- and I'm not going
9 to belabor this point anymore. Would you look at page
10 two.

11 A Of?

12 Q Of Exhibit 163, I'm sorry.

13 A (Witness complies.)

14 Okay.

15 Q And on page two, does it appear that Dr. Mack
16 starts to list and provide information from the records he
17 received in order to make his assessment in this case?

18 A Yes.

19 Q Does that review and list of records end on page
20 37?

21 A Yes. It appears very thorough.

22 Q And then on page 37, he talks about the social
23 history that was prepared by the federal public defender.

24 A Yes.

1 Q And describes that information; is that correct?

2 A Mm-hmm.

3 Q And does that continue until page 43?

4 A It appears, and then it moves into interview of
5 client.

6 Q So when we get to page -- well, and then after
7 the interview of the client, do we, on page 48 and 49, go
8 into his neurological testing?

9 A Yes.

10 Q And that would continue until page, I believe,
11 66? Is that about right?

12 A Yes. It's not clear whether it ends there. The
13 end of 66 goes into formulations and impressions.

14 Q Okay. Would that -- if you look at those,
15 starting at that section and look through 69 and 70, does
16 that appear to be Dr. Mack's conclusions?

17 A Yes.

18 Q And in an attempt to speed this along, Dr. Mack
19 found that Mr. Vanisi suffered a psychotic break on page
20 67?

21 A Yes. It was -- he indicates that in the top
22 paragraph.

23 Q Diagnosed him as suffering from schizoaffective
24 disorder?

1 A Yes.

2 Q Are you familiar with that diagnosis?

3 A Yes, somewhat.

4 Q Can you tell us what your understanding of it is?

5 A Well, schizophrenia is often diagnosed along with
6 other disorders, including bipolar disorder, and it can --
7 both of them kind of have the sliding scale of, in my
8 understanding of -- I'm not an expert, but of behavior and
9 psychosis, if you will.

10 Often, in my understanding and experience, again,
11 schizophrenia and bipolar overlap, especially when bipolar
12 disorder is on the extreme end. It involves a number of
13 the things that we have discussed regarding Mr. Vanisi's
14 behavior, his delusions of grandeur, his acting out, his
15 inability to track, his -- I believe a number of the
16 witnesses in the declarations talked about scribbling all
17 over the walls and dressing up as different characters and
18 sometimes, again, overlaps with multiple personalities.

19 Q And you've described writing on the walls,
20 dressing up as characters. I mean, are these the type of
21 bizarre behaviors you would have further investigated and
22 presented to your expert --

23 A Sure. Again, we were aware of several of those
24 kinds of behaviors, just from reviewing trial files and

1 speaking with the trial lawyers and whatnot.

2 Q Regarding the diagnosis of schizoaffective, is it
3 kind of your limited -- I'm not trying to qualify you as
4 an expert, but that often occurs when people have
5 overlapping symptoms of schizophrenia and bipolar. Is
6 that your understanding?

7 A That's what I was discussing, yes.

8 Q Did Dr. Mack, on page 67, investigate or evaluate
9 whether or not Mr. Vanisi was malingering?

10 A Yes. Pardon me. I'm reading the sentence right
11 now.

12 Essentially he says any opinion of malingering or
13 prior opinion of malingering of Mr. Vanisi is, quote, both
14 counterintuitive and completely unsupportable, end quote.

15 Q Okay. On pages 67 and 68, did he also diagnose
16 Mr. Vanisi with attention deficit hyperactivity disorder?

17 MR. McCARTHY: Your Honor, once again, I haven't
18 objected up to this point. This witness said he's never
19 seen this report. He didn't author it. And then having
20 him read to the Court from that report doesn't seem
21 productive. So again, my objection is undue waste of
22 time.

23 MR. TAYLOR: Okay. Your Honor, I'd make the same
24 offer of stipulation as I made last time. This report was

1 attached to the petition, and I'll ask him about the
2 relevance, assuming it to be true. And Dr. Mack is fully
3 available to present his own opinion.

4 THE COURT: You want to offer it -- assuming that
5 it is true, you want him to testify as to what he would
6 have done with it had he had it?

7 MR. TAYLOR: Yes. And how it would have
8 influenced his actions.

9 THE COURT: If at all.

10 MR. TAYLOR: If at all.

11 MR. McCARTHY: I don't object to that. I just
12 object to having him read stuff from it.

13 THE COURT: Right.

14 MR. TAYLOR: Then I'll offer it at this point.
15 Exhibit 163, for that limited purpose, assuming that it's
16 true.

17 MR. McCARTHY: Sure, no problem.

18 THE COURT: Okay. For that purpose, 163 will be
19 admitted.

20 MR. TAYLOR: And just to knock another stone off
21 the thing, 164 as well, which is a psychiatrist named
22 Dr. Foliaki.

23 THE COURT: Those were admitted. We have
24 admitted them.

1 MR. TAYLOR: That's true. I'm just making sure
2 I'm not in trouble.

3 THE COURT: It's all there.

4 BY MR. TAYLOR:

5 Q Having reviewed that report -- and I asked you as
6 well to review page 68 and 69 very quickly regarding brain
7 damage and when these problems originated.

8 A Right. Well, the relevance obviously to the case
9 is that he opines that it -- that the mental illness has
10 been occurring since before the onset of the charged
11 offense.

12 Q Is this the type of evidence that you would
13 likely have evaluated and used in your investigation and
14 preparation of Mr. Vanisi's state habeas petition?

15 A I believe it's relevant for two reasons. Number
16 one, it supports our *Finger* claim, and number two, it
17 supports our efforts with respect to *Rohan*, and
18 specifically countering the opinion of Amezaga regarding
19 the malingering, which we believed at the time was
20 unsupported.

21 Q Okay. And I'll get directly to that, but first,
22 I want to ask you: Is this the type of evidence you would
23 have wished to present with a -- through your own
24 investigation had you had that opportunity?

1 A Yeah. In short, yes.

2 Q Now, Dr. Amezaga is a psychologist; is that
3 correct?

4 A That's my understanding.

5 Q That was appointed by the Court to evaluate
6 Mr. Vanisi's competency to proceed at habeas corpus.

7 A Correct. I believe the order from the Court was
8 that they were appointed both to assess competency to
9 assist counsel and competency as a witness.

10 THE WITNESS: I just read that, Terry. I don't
11 remember that from ten years ago.

12 MR. MCCARTHY: Ah-ha. I believe you.

13 BY MR. TAYLOR:

14 Q Dr. Amezaga is a local psychologist?

15 A He was at the time.

16 Q And was it your understanding that Dr. Mack, at
17 least from your review of the report today, is a
18 neuropsychologist?

19 A Yes, that's what it states here.

20 Q So the evaluations, the neuropsychological
21 examination, it's your understanding that's somewhat more
22 comprehensive?

23 A Certainly.

24 Q And had this evidence, similar to what we

1 presented in the exhibits up through, say, 199 had been
2 available, is that the type of evidence you might have
3 provided your expert?

4 A Certainly. It was very relevant.

5 Q So your expert, essentially Dr. Amezaga, was --
6 and I'm talking about Dr. Bittker as well, was denied this
7 information in their evaluation of Mr. Vanisi and their
8 opinion that they provided the Court.

9 A I can't -- I don't have an independent
10 recollection of what information was provided to both
11 Amezaga and Bittker. But clearly, they didn't have these
12 reports as they were prepared long after that hearing.

13 Q Is it fair to say that you didn't provide it to
14 them?

15 A These two reports?

16 Q No. All the other information we've talked to
17 and the exhibits through 199.

18 A Yes, that's fair to say.

19 Q So it might have been -- now, just for the sake
20 of identifying, Dr. Amezaga was a psychologist who
21 performed, if I remember right, two tests in this case?

22 A I don't -- I don't recall. I recall one of the
23 tests was a secret.

24 Q Okay. But as I recall, and the Court can

1 remember the hearing, I'm sure, very well herself, the
2 test dealt with trial competency versus competency in a
3 habeas. Dr. Amezaga did not really distinguish between
4 those situations?

5 A I'll take your word on that. I don't remember
6 exactly.

7 I remember the key issue being -- the key issue
8 at the time having to do with his competency to assist
9 counsel based upon the medication that he was on at the
10 time, and that was Bittker's main point was that a more
11 thorough evaluation was not possible until his meds were
12 changed.

13 And obviously Dr. Amezaga is not able to make any
14 kind of assessment of the effect of medications because
15 he's a psychologist and not a psychiatrist.

16 So that was one of the key and, I still think,
17 relevant issues regarding to that *Rohan* issue. There were
18 other underlying issues, obviously all kinds of mental
19 health issues there, but the -- but that crux issue that
20 we believed we were going to be able to pursue further,
21 the *Rohan* issue, had to do with effect of the medications
22 on Vanisi's competency.

23 Q Fair to say that's a matter which you disagreed
24 with the Court's ruling on?

1 A Yes, respectfully, and I think the weight of the
2 evidence is contrary to that.

3 Q And on page 67, Dr. Mack reviews the test that
4 Dr. Amezaga relied upon in his findings regarding the
5 chance of malingerer; is that correct?

6 A I believe that's what he was referring to, yes.

7 Q And just one more thing real quickly. If you
8 will look at Exhibit 202 and look at the bottom right,
9 you'll see -- I think these are already in, but you'll see
10 some page numbering, and the last three numbers will be
11 514.

12 A 514?

13 Q Yes.

14 A Or 541?

15 Q 514.

16 A In Exhibit 202?

17 Q 202, which I believe is Mr. Edwards' billing
18 records. And look down at the lower right-hand corner,
19 and there is a --

20 A It may not be sequential.

21 Q -- a Bates label.

22 A I see.

23 Q It's a letter from Dr. Amezaga?

24 A Yes.

1 Q And it's where he billed the Court for his
2 testimony and evaluation? Does that sound correct?

3 A Looks to be.

4 Q The second page listing what he did?

5 A Correct.

6 Q And then at the footer on both those pages, he
7 runs a business apparently: www.askapsych.com?

8 A That appears -- yeah, that's the -- that's the
9 website at the bottom of his billing.

10 Q Okay. If you would, go to the next Exhibit, 164.
11 That's Dr. Foliaki's report.

12 A Okay.

13 Q Dr. Foliaki in section one, I believe, and
14 section two, provides his conclusions. Could you take a
15 minute, starting at page five, to just look at that.

16 A Okay.

17 Q If you would turn to page 120, and I believe that
18 includes the information that was provided to Dr. Foliaki.

19 A Several-page inventory. Looks like it goes from
20 120 to 123, and then there's some legal declarations.

21 Q It's the Appendix B, I believe, is it entitled on
22 page 120?

23 A I'm sorry, what was your question? Appendix B is
24 on 119.

1 Q Okay. That's the information that Dr. Foliaki
2 reviewed. And finally, if you look at page one, would you
3 tell me, where is Dr. Foliaki from?

4 A Manukau City, New Zealand.

5 Q Are you familiar with the relationship between
6 New Zealand and -- as far as graphical relationship -- and
7 Tonga?

8 A My rudimentary geography says that they are both
9 somewhere in the South Pacific.

10 Q Okay. The information that was provided to
11 Dr. Foliaki that you reviewed, is that the type of
12 information that you would have wanted to provide to your
13 experts?

14 A Yes.

15 Q Looking at the evaluation that Dr. Foliaki did,
16 the matters that he considered, and the diagnoses that he
17 came out with, is that the type of the information you
18 would have used in presenting your claims to the Court?

19 A Yes.

20 Q Was it important to have that kind of
21 information?

22 A Yes.

23 Q Do you feel that your inability to complete an
24 investigation impacted your abilities to present that type

1 of evidence?

2 A Sure.

3 Q Okay. Turning to page -- Exhibit 120, very
4 quickly. And I'd just ask you to quickly look at that, if
5 you would.

6 A Okay.

7 Q You and I had a discussion about mental illness
8 as well as Tongan culture. Is this the type of
9 information you think is relevant to the investigation of
10 a death penalty case?

11 A Sure. Well, it folds into a lot of other things
12 we've talked about, importance of cultural role, the
13 misunderstanding and sort of hiding of mental illness in
14 the culture, the prevalence of certain kinds of mental
15 illness.

16 Q Is it also relevant, do you believe, to you in
17 your investigation about the availability of mental
18 healthcare within Tonga to this family?

19 A It has some relevance, yes.

20 Q And the Tongan perspectives or views about mental
21 illness, is that relevant to your investigation?

22 A Yes.

23 Q Probably make it more difficult, those views?

24 A I suppose that could be possible.

1 Q And you talked a minute ago -- and I don't want
2 to belabor the point -- about the writing on walls and
3 some bizarre behavior.

4 Was there some historical evidence that you
5 became familiar with just generally in these exhibits
6 regarding Mr. Vanisi's father?

7 A Yes.

8 Q And his father's behaviors?

9 A Yes. His father, according to a number of the
10 declarations, anyway, was quite mentally ill and exhibited
11 quite a number of bizarre behaviors. Continually had
12 substance abuse issues, never held down a job, et cetera.

13 Q Were some of those behaviors, such as dressing up
14 in outfits and marching around with swords or things like
15 that similar to behaviors that have been documented
16 regarding Mr. Vanisi?

17 A Yeah. I saw multiple similarities in behaviors.

18 Q Is this information that, one, you would have
19 liked to have known?

20 A Yes. Certain aspects of mental illness are
21 believed to be genetically passed.

22 Q Is this the type of evidence that you would have
23 sought had you been given the opportunity to complete an
24 investigation?

1 A Yes.

2 Q There were, Mr. Qualls, a number of different
3 deadlines in this case. Is that your memory?

4 A My memory is fuzzy about deadlines. The thing
5 that stands out the most is the Tuesday deadline.

6 Q I'm sure. But I guess what I'm asking is, as
7 lawyers, we routinely encounter deadlines?

8 A Sure.

9 Q And there were previous deadlines for filing the
10 amended petition prior to that Thursday order, were there
11 not?

12 A I don't know that deadline is the right thing.
13 You made me aware that --

14 Q Or dates?

15 A -- that Mr. McCarthy had been requesting for some
16 time that we file our supplemental petition, and in due
17 fashion, Mr. Edwards and I had been resisting the same.
18 That's not uncommon in death penalty practice. The State
19 wants to move it along; the defense wants more time.
20 That's generally how it goes.

21 Q Did you -- I guess why I'm asking this, did you
22 anticipate that the Court would have a hard and fast
23 four-day time for you to file your petition?

24 A Whether it was reasonable or not, I did not

1 foresee that coming.

2 Q So you expected you would have at least some time
3 to complete your investigation and draft a petition?

4 A Yeah. Again, our plan was *Rohan* first and then
5 we'll have plenty of time to do our investigation while it
6 is stayed. We didn't think that there was any issue about
7 Mr. Vanisi's mental health issues again. That could have
8 been a mistake, but we obviously believed in the *Rohan*
9 motion. We knew the mental health issues were real, and
10 we thought we would have some kind of stay to continue to
11 work on the case. So we were surprised both by the denial
12 of the *Rohan* motion and by the order to file our
13 supplement.

14 MR. TAYLOR: Begging the Court's indulgence for
15 one moment.

16 THE COURT: Yes.

17 (Discussion off the record
18 between defense counsel.)

19 MR. TAYLOR: Your Honor, do we show Exhibit 201
20 has been admitted or that you took judicial notice of it?

21 THE CLERK: 201 has been admitted.

22 MR. TAYLOR: 202?

23 THE COURT: No.

24 THE CLERK: No.

1 MR. TAYLOR: Okay.

2 BY MR. TAYLOR:

3 Q Just very quickly, Mr. Qualls -- and I thank you
4 for your patience with me today.

5 Exhibits 221 and 222, are you familiar with those
6 exhibits at all?

7 A Yeah. They look familiar.

8 Q Are these related to a claim that you and
9 co-counsel presented regarding the Vienna Convention?

10 A This is a claim that Mr. Edwards was handling,
11 yes, regarding a Vienna Convention. It's a -- 221 is a
12 letter to the consulate general from Mr. Edwards regarding
13 Vanisi with respect to that being a convention code.

14 Q Okay. And 222, is that just a copy of the
15 website of the consulate in San Francisco?

16 A That's what it appears to be. It says: Welcome
17 to our website. Yes.

18 Q Have you had an opportunity to just quickly look
19 at Exhibits 173 and 199, which are from the solicitor
20 general of Tonga?

21 A 173, and what was the other one?

22 Q 199.

23 A I believe you showed me those yesterday.

24 Q Okay. And are they, as well, related to that

1 claim that you and co-counsel identified and raised
2 regarding the Vienna Convention and the failure to notify
3 Tongan Consulate upon Mr. Vanisi's arrest?

4 A It appears to be related to that, yes. I'm
5 sorry, I'm reading.

6 Q I apologize.

7 A Yes.

8 Q 173 is a declaration by my investigator, and 199
9 is a draft letter from Solicitor General Kefu?

10 A Correct. And it appears to be saying that they
11 would have offered assistance.

12 Q In other words, had the connection been made
13 between the government of Tonga and you had been provided
14 or had the opportunity to complete your investigation,
15 they would have assisted?

16 A Meaning that contacting the solicitor general
17 directly as opposed to the consulate --

18 Q I mean, that's all I'm saying, is had you made
19 contact with the solicitor general --

20 A Yeah, they appear to say that they would have
21 offered assistance.

22 Q I think it's fair -- I mean, I'm not trying to
23 make the record anything other than what it is. If the
24 record reflects that you contacted the San Francisco

1 consulate --

2 A Correct.

3 Q -- and they say that was not the one you were
4 supposed to contact.

5 A Right.

6 Q Essentially. All right. But as far as
7 assistance in locating witnesses and locating records in
8 Tonga, things of that nature, you might have had it.

9 A If we had more time, I don't know. Yeah.

10 Q Is it something that you at least would have used
11 to consider presenting to the Court --

12 A If we had --

13 THE REPORTER: I'm sorry, I didn't hear the end
14 of the question.

15 MR. TAYLOR: Let me repeat the question.

16 BY MR. TAYLOR:

17 Q Is it something that you would have at least
18 considered presenting in your state habeas presentation?

19 A If we had this information, yes.

20 MR. TAYLOR: At this point, we'll pass the
21 witness, Your Honor.

22 THE COURT: Okay. Mr. McCarthy?

23 ///

24 ///

CROSS-EXAMINATION

BY MR. McCARTHY:

Q When the Court gave just those few days to file the supplement, that wasn't the first time you were on notice that you might have to prepare a supplement, was it?

A No. It came to my attention -- and I did not remember this, but it came to my attention yesterday that in November, there was a hearing in which you again asked for us to file the supplement. The Court said, "No, I'm not going to make them file it right now, but depending on my order in the *Rohan* case, you should be prepared to file it then."

Q And when the Court said -- when the Court denied the motion, you did file a supplement.

A Yes, we did.

Q Rather thorough. Do you know how many claims were in there?

A I'm sorry, I don't recall the number of claims. We did the best we could in the circumstances. And again, it's not like we started working on the supplement that -- that Friday or something.

Q No. You had been anticipating the need for a supplement all along.

1 A Sure. It had been outlined from the beginning,
2 and we had been drafting it as we went, yes.

3 Q And one of the barriers to a more thorough
4 investigation was your client's failure to communicate
5 with you.

6 A That was a major barrier.

7 Q Right.

8 A Yeah.

9 Q And the finding of the Court was that he was
10 simply unwilling; is that correct?

11 A That's my memory, based upon Amezaga's opinion
12 that he was malingering and that he was unwilling as
13 opposed to unable. The Court adopted that and that was
14 the finding.

15 Q Do you recall Dr. Bittker also said something
16 like your client is delusionally unwilling? Because of
17 his delusion, he was unwilling to cooperate, something
18 like that?

19 A I don't recall that. I believe it if you tell me
20 that's in the record.

21 Q Does it sound at all familiar?

22 A The delusional part sounds familiar. I remember
23 some sparring that went back and forth between you and he.

24 Q Yeah.

1 A And it seemed that he was pretty adamant about
2 the psychosis.

3 Q Is that the one that had the nihilistic delusions
4 was his --

5 A Yes, I recall that phrase.

6 Q I remember that, too.

7 A And I recall you arguing that his letter might
8 have indicated some awareness of his mental illness, but I
9 don't think that flew.

10 Q Okay. Now, between the time you and Mr. Edwards
11 decided to pursue what we're calling this *Rohan* motion,
12 and the time the Court rules, you got four days to file
13 your supplement. How much time was in between there, your
14 decision to file the motion and the ruling on the motion?

15 A Oh, I don't know that.

16 Q A year or two?

17 A Anything that I said would be purely speculative.
18 I apologize. I did not look at the date that we filed the
19 motion.

20 Q Well, let me ask this: You decided to file it
21 before it was actually filed, I assume. You didn't knock
22 it off in one day.

23 A No, that's true.

24 Q You and Mr. Edwards discussed it. You talked

1 about it.

2 A Sure. We had to do the research and -- yeah.

3 Q Okay. Now, in that time between when the motion
4 was filed and -- did you meet with your client?

5 A We had met with Mr. Vanisi, and my memory is at
6 least twice prior to that motion.

7 Q After. I mean, after you filed the motion and
8 when it was heard.

9 A I believe we met with him in that interim.

10 Q Okay. Did you ask him in that time about any of
11 these rocks we've been discussing?

12 A I don't have any specific memory of that. I
13 remember -- I remember the meetings with Vanisi, depending
14 on when his medications had been administered, we found
15 out later, he was either very manic and exhibiting all of
16 the behaviors that we've discussed throughout, or he was
17 essentially drooling on himself if it were right after the
18 Depakote or Haldol shots. And so we didn't know what we
19 were going to get anytime we saw him.

20 Q Okay. Were you trying to do the necessary
21 investigation in that time period while the motion was
22 pending?

23 A Our focus at that time was not on outside
24 investigation. It was pursuing the *Rohan* motion. That

1 was our focus.

2 Q And would it have supported the motion, the *Rohan*
3 motion, if prison records showed extensive conversation
4 between you and your client?

5 A Would it have supported the *Rohan* motion?

6 Q Yes.

7 A I suppose, if we're offering hypotheticals. I
8 mean, if we sat in a room for several hours with Vanisi,
9 which we did on occasion, and talked, that doesn't mean
10 that we got anything --

11 Q Okay.

12 A I would be especially interested if those
13 conversations were recorded.

14 Q I'm not saying I have -- I don't --

15 A You know, what I had testified to was true. We
16 did not get any substantive coherent information from
17 Vanisi.

18 Q Right. I guess what I'm asking is: Did you not
19 try to get any because you didn't want to undercut your
20 motion?

21 A Oh, absolutely not. No. No, we tried. We tried
22 to get the information, and that is the thing that
23 prompted the *Rohan* proceedings.

24 Q I meant in the interim --

1 A After the motion?

2 Q -- after the motion was filed.

3 A I can't -- I can tell you this: There was no
4 specific decision on our part to not seek additional
5 information from Vanisi because of *Rohan*. We wouldn't
6 have done that.

7 Q Okay. Now, you also knew there was at least some
8 possibility that your motion would be denied, but on a
9 legal analysis, not on a factual analysis.

10 A Meaning your argument that the Ninth Circuit case
11 didn't apply here?

12 Q Yeah.

13 A I suppose there's always a chance. We believed
14 very strongly in our *Rohan* motion, both legally and
15 factually. I mean, obviously, you never know what's going
16 happen.

17 Q You don't file frivolous motions. I know that.

18 Now, you asked a lot about the potential for
19 additional mitigating evidence. How do you define
20 mitigating evidence?

21 A I think pursuant to the *Wiggins* line of cases,
22 mitigating evidence is a very broad scope. It contains
23 almost anything that humanizes your client in the eyes of
24 the jury.

1 Q Whatever a juror decides is mitigating is
2 mitigating.

3 A Correct.

4 Q Do you know, has there ever been a jury that has
5 heard all possible mitigating evidence?

6 MR. TAYLOR: Your Honor, I'm going to object.
7 First, it's speculating. Two, that's not the standard
8 before --

9 THE COURT: It is argumentative, so I'll sustain
10 it.

11 MR. McCARTHY: Of course it is.
12 BY MR. McCARTHY:

13 Q Now, when you filed the supplement, you got a
14 hearing on all the pleaded claims, didn't you?

15 A I believe that's true, yes.

16 Q Okay. And --

17 A We at least had oral argument on the claims. I
18 mean, some of them are legal based upon the record, right.

19 Q Right. In a death penalty case, when you're
20 representing a person who has been sentenced to die, do
21 you generally find delay to be a desirable objective?

22 A As I stated before, within ethical boundaries,
23 typically, the State wants to move it along and
24 petitioner's counsel wants as much time as possible.

1 Q Right. Your client stays alive.

2 A Every day is a win.

3 Q Okay. All right. And the existence of
4 additional mitigating evidence becomes pertinent only if
5 you can also demonstrate that trial counsel was
6 ineffective in some way in failing to gather that; is that
7 correct? Does that seem right?

8 A As I have stated, from a post-conviction
9 petitioner's counsel's standpoint, the goal is present the
10 evidence and then make the claim that there can't possibly
11 be a strategic decision by trial counsel not to put it up
12 if they didn't know it was there. That's the fundamental
13 of that.

14 Q But that's not the entirety of the claim, though.
15 You have to show that counsel is --

16 MR. TAYLOR: Object, Your Honor. That is
17 argumentative.

18 MR. McCARTHY: Well, I'm not done yet.

19 THE COURT: Go ahead and restate your question.
20 BY MR. McCARTHY:

21 Q Is there more to the argument that trial counsel
22 is ineffective?

23 A Well, sure. There's a prejudice --

24 Q Can you show ineffective assistance simply by

1 showing the existence of mitigating evidence?

2 A Are you saying can you show the prejudice prong?

3 Q No. Can you show that counsel's performance was
4 deficient by simply showing the existence of additional
5 mitigating evidence?

6 A I believe you can show that counsel was
7 ineffective because they -- regarding the investigation or
8 the lack thereof, you can show that they were ineffective
9 because they can't make a strategic decision not to
10 present something that they didn't find.

11 MR. TAYLOR: Judge, can I interpose --

12 THE WITNESS: I don't know if I said that right.

13 MR. TAYLOR: I'm sorry. Can I interpose an
14 objection? I understand what Counsel's trying do, but
15 ultimately what the law is and what you have to show is
16 something that this Court has to determine, not something
17 that Mr. Qualls is charged with.

18 So I think it goes to the ultimate issue before
19 the Court and not Mr. Qualls's opinion of what has to
20 happen.

21 THE COURT: What's the purpose of the line of
22 questioning?

23 MR. McCARTHY: To try to determine the witness's
24 understanding of his role. He's been asked over and over

1 again: Wouldn't you do something with this?

2 THE COURT: Okay. With regard to
3 cross-examination in that regard, I will allow you to
4 inquire.

5 BY MR. McCARTHY:

6 Q Did you answer the last question?

7 A Could you rephrase?

8 Q You did. You said that --

9 THE COURT: He answered it.

10 BY MR. McCARTHY:

11 Q -- you would show the evidence -- the decision
12 couldn't be strategic if it wasn't based on complete
13 evidence, right?

14 A Yeah. The first prong is: Were they ineffective
15 in failing to look for available evidence?

16 Q Right.

17 A Yes. And then --

18 Q To show that a failure wasn't strategic, does
19 that mean it was necessarily deficient?

20 A I think that's for the Court to decide.

21 Q Okay. What do you think, though? What's your
22 opinion on it?

23 MR. TAYLOR: Objection.

24 MR. McCARTHY: I'm trying to get his

1 understanding of his role, Your Honor.

2 THE COURT: I'm going to overrule it just for
3 purposes of not whether or not he's allowed to make an
4 expert opinion about the ultimate outcome.

5 MR. McCARTHY: Well, I'm not offering Tom Qualls
6 as an expert witness.

7 THE COURT: I understand that.

8 MR. McCARTHY: Not that you wouldn't be
9 qualified.

10 THE COURT: I'm allowing the inquiry as it
11 relates to the direct examination.

12 MR. McCARTHY: Okay.

13 BY MR. McCARTHY:

14 Q So the question then was: Do you think that the
15 claim of deficient performance is made out just by showing
16 that it's not -- that the decisions of counsel were not
17 strategic?

18 A I think deficiency is shown by the omission to do
19 something which is understood to be a reasonable standard
20 of trial counsel in death penalty cases.

21 Q Okay. Now, in your dealings with Mr. Vanisi, did
22 he appear to understand he was in prison?

23 A I suppose that depended on the day because he --
24 because he also did a lot of things that would appear

1 contrary to that, and he spoke of where he was
2 differently. Kind of made up his own rules there.

3 Q He managed to survive, though, didn't he?

4 A He did. I don't know that I'm qualified to
5 answer that. I can't get inside his head, but I can tell
6 you that from indications that we had, both stories that
7 he would tell us or things he would act out and reviews of
8 the prison record, it's not clear that at least he always
9 understood that that's where he was.

10 Q Okay. When he understood that he was in prison,
11 did he seem to understand in general terms why he was in
12 prison?

13 A I would have to say I'm unsure about that
14 because, again, communication with him was so difficult,
15 and when we would approach the charged offense, there was
16 not coherent communication and there were lots of stories
17 involved that weren't, in my opinion, grounded in reality.

18 So I don't -- I can't answer that question,
19 Mr. McCarthy. And I'm not trying to be evasive. I don't
20 know is the answer to that. And that was part of our
21 difficulty.

22 Q All right. Did you ever have any discussions
23 with Mr. Vanisi about the nature of the defense that he
24 wanted to offer versus the nature of the defense that was

1 actually offered at the trial?

2 A At trial?

3 Q Yes.

4 A We never had any coherent conversations with him
5 about that.

6 Q Okay.

7 A We attempted.

8 Q You tried to ask him: Did you want to defend by
9 saying you didn't do it?

10 A I don't know that that was the exact words,
11 but --

12 Q Something like that.

13 A But yes, there was -- yeah. There were -- the
14 closest that we got were kind of veiled references to
15 Tongan warrior culture.

16 Q Okay.

17 A That he may have believed he was in a battle.
18 That's the closest I can -- but that's not specifically
19 related to your question about the antagonistic nature of
20 the defense that we got from the sealed hearings in which
21 his trial lawyer said that they wanted to put this defense
22 on and he wanted to put a separate defense on. We didn't
23 ever get close to that kind of coherent conversation with
24 him.

1 Q Anything as simple as he knew or that he
2 demonstrated that he knew another person had died at his
3 hand?

4 A No.

5 Q There was an allegation somewhere in the petition
6 that you and Mr. Edwards believed you were limited to the
7 record in creating your post-conviction claims; is that
8 correct?

9 A I'm not sure where that would have -- I don't
10 understand the context of that.

11 Q You know you're --

12 A Is that in my declaration?

13 Q No, no. You knew, didn't you, that you're not
14 limited to the record when creating your claims on
15 post-conviction actions?

16 A Sure. Of course. The goal is to -- as I said
17 earlier, what differs from a direct appeal is you must go
18 outside the record. Whether we -- whether we did that
19 based upon time was another thing. I think, essentially,
20 what we were left with were claims that were on the
21 record.

22 Q All right.

23 THE COURT: Based on time?

24 THE WITNESS: Based -- yeah, based upon at least

1 our time plan for the case.

2 BY MR. MCCARTHY:

3 Q Do you mean the relatively short period after the
4 motion hearing and the time you filed the supplement?

5 A Yes. I mean, I had essentially done the mea
6 culpa as far as, quite obviously, it was a mistake for us
7 to not pursue investigation sooner. Our plan was the
8 *Rohan* proceedings and then the outside investigation.

9 We reviewed the record. We did the *Rohan* stuff.
10 I don't really remember what investigation was done when
11 Mr. Picker and Mr. Edwards had the case before I got
12 involved. But as far as further investigation that we had
13 discussed, we were not able to include any claims because
14 of the order to file the supplement before we conducted
15 that investigation. It's not my place to say whose fault
16 that was. That's just the facts.

17 Q Okay.

18 THE COURT: Do you remember that in November, you
19 were ordered to prepare the supplemental petition?

20 THE WITNESS: Mr. McCarthy and I discussed that,
21 yes. Again, that's --

22 THE COURT: And it was in April when you were
23 ordered -- April 25th when you were ordered to get it on
24 file ultimately. Is that the five days you're talking

1 about?

2 THE WITNESS: Okay. I'll take your word on that.

3 THE COURT: All right.

4 BY MR. McCARTHY:

5 Q What remedy do you think you would have got if
6 you're right? If the *Rohan* motion was granted, what
7 remedy do you get?

8 MR. TAYLOR: Objection, Your Honor. I'm not sure
9 how that's relevant to the issue before the Court right
10 now.

11 THE COURT: Well, if his -- if it's relevant that
12 he did not investigate because he didn't have enough time,
13 and that that somehow was impacted by his filing of the
14 *Rohan* motion, then it is relevant if the *Rohan* motion
15 wouldn't have -- the answer -- we all know the answer as
16 to what the remedy would have been if the *Rohan* motion
17 would have been granted.

18 MR. TAYLOR: Arguably, the matter would have been
19 stayed --

20 THE COURT: Exactly. No remedy. Just delay.

21 MR. TAYLOR: I understand that that's --

22 THE COURT: I think that's the question he's
23 asking, what other thing did Mr. Qualls think. Right?

24 MR. McCARTHY: Well, I'm asking his understanding

1 of it.

2 THE COURT: And we just told him.

3 MR. McCARTHY: Well, let's find out, if he's
4 allowed to answer.

5 THE COURT: Yes. Overruled.

6 THE WITNESS: *Rohan* was a relatively new
7 precedent, and so our understanding was that there would
8 be a stay for as long as it took to come to either a
9 determination that he was permanently exempt or for them
10 to get him to the state where he was competent to assist
11 counsel. So it was -- the future was very unknown as far
12 as how long the stay would be.

13 We believed that there would -- there would be
14 two things. There would at least be the 90 days that
15 Bittker was requesting in order to do another evaluation
16 once they had removed the medications, Haldol and
17 Depakote. And then we believed that would there would be
18 additional proceedings after that, that we would have new
19 evaluations. We believed it was likely that we would have
20 new evaluations.

21 Again, our experience with Vanisi was that he was
22 fairly severely mentally ill, and we thought that there
23 was a chance that this could be stayed out indefinitely.

24 ///

1 BY MR. McCARTHY:

2 Q To avoid the death penalty forever if you win.

3 A Well, obviously, that's the best case scenario.

4 Q Did you have that in mind?

5 A We had that in mind as a possibility, you know.
6 The record that they are presenting here, I believe,
7 supports that to a large degree.

8 And so, you know, remedy, as far as your normal
9 remedy from a post-conviction habeas case, that's not
10 exactly what we were thinking of, but we thought, well,
11 we'll buy more time, which we believed was Vanisi's
12 friend. We'll buy more time legitimately, and we'll
13 continue to build this case.

14 As my notes reflected, we discussed many things.
15 There were plans for the mitigation expert. There were
16 plans for interviewing family and friends, perhaps even
17 requesting -- obviously, we would have requested it to
18 begin with, to be able to go to Tonga and/or to enlist the
19 assistance of a cultural expert, et cetera.

20 In hindsight, we should have been doing that at
21 the same time we were doing this *Rohan* thing.

22 It's a different world being on that side of the
23 bar versus being on this side of the bar.

24 Q I suppose it is.

1 A My experience prior to Vanisi, although fairly
2 extensive in capital cases, was not the same thing as
3 being on this side of the bar. And again, we learn as we
4 go. I know way more ten years down the road than I did
5 then. And so, live and learn.

6 But that was the plan, and obviously it was a
7 mistake not to do the investigation at the same time.

8 Q As far as you know, were you the first
9 post-conviction lawyers in this county to bring such a
10 motion?

11 A Yes. *Rohan* was brand new.

12 MR. MCCARTHY: I'm done. Thanks.

13 THE COURT: Counsel?

14 MR. TAYLOR: May I --

15 THE COURT: You may inquire, but I encourage you
16 to try to finish your redirect --

17 MR. TAYLOR: With this witness, yes.

18 THE COURT: -- with this witness so we don't have
19 to have him come back tomorrow.

20 MR. TAYLOR: I think I'll be able to do that.

21
22 **REDIRECT EXAMINATION**

23 BY MR. TAYLOR:

24 Q I'm a little concerned, Mr. Qualls, because what

1 I was hearing was a suggestion that maybe -- maybe it was
2 an inference that was coming through that you made some
3 strategic decision not to investigate just so you could
4 get some sort of indefinite stay in this case. Is that
5 true?

6 A No. That's not true.

7 Q Is --

8 A I don't believe that's what I said.

9 Q Well, and I don't either. Is --

10 MR. MCCARTHY: I don't think that's what I asked.

11 MR. TAYLOR: If that inference is out there, it's
12 correct.

13 BY MR. TAYLOR:

14 Q Is there some reason that conducting an adequate
15 investigation is mutually exclusive when you're raising a
16 *Rohan* motion?

17 A Is there some reason why I couldn't do both at
18 the same time?

19 Q Yes, yes. Or do both sequentially, period.

20 A I'll answer your first question. They're not
21 mutually exclusive.

22 Q Is there something about conducting an
23 investigation in a capital case that detracts from a *Rohan*
24 motion, so to speak, that you can think of?

1 A No. In the sense that the primary issue in the
2 *Rohan* was the inability of our client to assist counsel,
3 no.

4 Q So the reality is, is obtaining the competence of
5 your client actually assists you in your investigation,
6 does it not?

7 A It's essential to be able to communicate and work
8 with your client. You've got to be able to have a
9 coherent conversation, I mean, obviously because there are
10 things that only they know, that friends and family aren't
11 going to be able to tell you, but also just because that's
12 an essential part of the -- you can't have an
13 attorney/client relationship if you can't communicate.

14 Q But if you were forced to conduct that
15 investigation, we've looked at a number of exhibits and
16 memos involving Marc Picker and the trial record and
17 things that at least gave you a starting place to do it
18 when you got ready. Would you agree with that statement?

19 A Yes.

20 Q You have the family information, the schools, the
21 address, that kind of stuff?

22 A We had some starting points, yes.

23 Q But as far as the *Rohan* motion -- and you were
24 asked the question regarding remedy. Dr. Bittker's

1 recommendation to this Court, was it an indefinite stay?

2 A No, not at the time, it was not. It was -- I
3 believe, memory serves, he was asking for 90 days to
4 remove the medications so that he could reevaluate him
5 pursuant to the request regarding *Rohan*.

6 Q Would you agree with me that it was a proactive
7 recommendation? In other words, let's mess with the meds
8 and see if we can get him competent.

9 A I believe that was it. It was two step. He's
10 not competent now. Let's take him off the meds and see
11 what effect that has.

12 Q So in some ways, not only did it not preclude you
13 from conducting an investigation, it could have assisted
14 you in your investigation had the Court adopted that
15 recommendation.

16 A Well, that was our plan.

17 Q You said something about Tongan warrior. Do you
18 remember different instances -- I guess they were called
19 Lamanite warriors and Tongan warriors, discussions of
20 that?

21 A Amongst the declarations you showed me?

22 Q Yes, as well as your interactions with
23 Mr. Vanisi.

24 A I don't remember him discussing those exact

1 words, Lamanite.

2 Q Maybe I should ask it this way: Did some of the
3 illustrations and the declarations that the judge will
4 review, did they kind of ring true to you, to what you had
5 observed?

6 A Absolutely. They were very much in sync with
7 what little we knew.

8 Q And like I remember someone talking about
9 Mr. Vanisi went to talk to the doctor, and they found him
10 talking to a Dr. Pepper bottle. Does that ring true with
11 anything you observed?

12 A Yes. I believe we presented that, and maybe even
13 in affidavits to the Court regarding the *Rohan* motion that
14 one of our visits with Mr. Vanisi during which he would
15 break out in song and whatnot, he told us that he wanted
16 to be Dr. Pepper.

17 Q This evidence that you and Mr. McCarthy and you
18 and I all day have been discussing, is it relevant only to
19 an ineffective assistance of counsel claim, or can it be
20 relevant to any number of claims?

21 A Well, I suppose there's crossovers, again, with
22 the mental health issues and whatnot.

23 Q Kind of like you have testified to all day, is
24 there any way to know what claim you're actually

1 developing until you start the investigation?

2 A No, and there's -- you don't really know what
3 you're going to use until you have it.

4 Q Likewise, if some of this evidence had been
5 discovered in the DA's file, it might be an entirely
6 different claim if it was not disclosed.

7 A Sure, yeah. There'd be *Brady* issues then.

8 Q And as we talk, you mentioned the *Wiggins* case.
9 Is that one of your guiding -- *Wiggins vs. Smith*, I
10 believe, is it not?

11 A Well, it's certainly a guidepost as far as
12 post-conviction habeas counsel goes for mitigation.
13 Should be a guidepost for trial lawyers for penalty phase
14 mitigation.

15 Q Did *Wiggins* not discuss the need that -- or the
16 requirement that a decision not to investigate be informed
17 itself?

18 A Can you repeat that? I'm sorry.

19 Q I think you said this in another way. But I
20 think you support, the case you cite actually supports
21 that.

22 But does the decision you make regarding
23 investigation need to be an informed decision?

24 A Yes, as we're talking about the omissions and

1 whatnot.

2 Q And did you make an informed decision in this
3 case not to investigate?

4 A Did we make an informed decision not to
5 investigate?

6 Q Yes. Considering knowing what was out there and
7 knowing what evidence or proceeding to the point that you
8 had something to tell you that an investigation wasn't
9 needed, was any of that available to you?

10 A Obviously we didn't know what we didn't know.

11 Q I guess what I'm asking is, there was nothing to
12 suggest to you that you shouldn't investigate in this
13 case.

14 A No. We didn't know anything that told us not to
15 investigate.

16 Q In fact, you intended and contemplated that you
17 would conduct an investigation.

18 A As my notes from my file indicated, yes.

19 Q And lastly, the only question I would ask is: Do
20 you continue, after all our conversations today, to
21 believe that the jury nor the Court received an accurate
22 picture of Mr. Vanisi's problems through either the trial
23 or the state habeas?

24 A I believe that's true. I didn't have a complete

1 picture until now.

2 MR. TAYLOR: We'll pass, Your Honor.

3 THE COURT: Anything further, Mr. McCarthy?

4 MR. McCARTHY: No, thank you.

5 THE COURT: May this witness be excused?

6 MR. TAYLOR: Sure, Your Honor, subject to maybe
7 if I need him, I can call him. But that depends on the
8 other witness. I don't anticipate it.

9 THE COURT: Well, I don't know where he's going
10 to be tomorrow.

11 THE WITNESS: I'll tell you where I'm going to
12 be. I'm going to be in my office finishing up
13 post-hearing briefs.

14 THE COURT: Okay. You may step down. Since you
15 don't -- aren't excusing him, he won't be excused. He has
16 to remain in contact with you.

17 MR. TAYLOR: And I would represent to the Court I
18 don't anticipate that we would use him.

19 THE COURT: Okay. It's 5:00 o'clock. So we will
20 be recessing until tomorrow morning.

21 (Discussion off the record between
22 the clerk and the Court.)

23 THE COURT: We have a little quick hearing
24 tomorrow morning before we start this hearing at 9:00.

1 They're both called for 9:00, but the other hearing will
2 take five minutes or so. So we'll plan on starting
3 tomorrow morning at 9:00.

4 MR. McCARTHY: Can we leave our junk here?

5 THE COURT: Leave your stuff. There won't be
6 anybody here.

7 MR. TAYLOR: Thank you, Your Honor.

8 THE COURT: See you in the morning. Court's in
9 recess.

10 (Proceedings concluded at 4:54 p.m.)
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1 STATE OF NEVADA)
2)
3 COUNTY OF WASHOE)
4

5 I, STEPHANI L. LODER, Certified Shorthand
6 Reporter of the Second Judicial District Court of the
7 State of Nevada, in and for the County of Washoe, do
8 hereby certify:

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

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

16 DATED: At Reno, Nevada, this 6th day of
17 December, 2013.

18 /s/ Stephani L. Loder
19 STEPHANI L. LODER, CCR No. 862
20
21
22
23
24

EXHIBIT 199

EXHIBIT 199

All correspondence to be addressed to

THE SOLICITOR GENERAL
Crown Law Department
P.O. Box 85
Nuku'alofa
KINGDOM OF TONGA



Telephone: (676) 24 055
24 007
Fax : (676) 24 005
Office Hours : 8:30 am-4:30 pm
Mon - Fri

Our Reference: AK 992/11 – SG/c.13(e)

15 November 2011

Mr Ben Scroggins
Assistant Federal Public Defender
Law Offices of the Federal Public Defender
411 E. Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101
UNITED STATES OF AMERICA

BY EMAIL AND POST

Dear Mr Scroggins

Mr Siao Si Vanisi

I refer to your enquiries regarding any contact made to the Tongan Government regarding Mr Vanisi's prosecution and eventual conviction for murder in the State of Nevada, and his subsequent sentencing to death.

As discussed, I am the Solicitor General of the Government of the Kingdom of Tonga, and the head of the Government's Crown Law Department. In that role I provide to the Tongan Government all legal services, including legal advice, legal representation in civil and land matters, criminal prosecution and also legislative drafting. I am accountable to the Attorney General of the Kingdom of Tonga, who is appointed by His Majesty the King.

I was unaware of the circumstances of Mr Vanisi until you and Mr Herbert Duzant of the Federal Public Defender office contacted me in January 2011. I was never contacted by Mr Vanisi's previous attorneys nor any authorities within the US government.

After speaking with you, I conducted a thorough search of the records in my office here in Tonga, and also requested a search of records at our consular offices in San Francisco, California and Honolulu, Hawaii, and also our embassy in New York City.

I can confirm that the Tongan Government does not have any record that it was informed by any US law enforcement or diplomatic authority that Mr Vanisi was charged with and tried for murder, or was convicted for murder and sentenced to death.

For completeness, I should state that the records in the Crown Law Department only start from 2007 because we lost most of our documents in a fire that destroyed our office premises in November 2006. The records at our foreign missions in the United States should therefore contain any contact regarding Mr Vanisi from any US authority.

Had the Tongan Government been contacted about Mr Vanisi's case, it would have provided consular assistance to Mr Vanisi, and also considered engaging legal counsel to make amicus submissions to the US Federal Courts or make representations to State authorities or through diplomatic channels.

The Tongan Embassy in New York City, New York is the appropriate office to contact for matters concerning the arrests of any Tongan national within the United States. The matter would then be dealt with by either the New York mission, or one of the Tongan Consulate offices in San Francisco or Honolulu, depending on the location of the Tongan national.


AA06968

Further to any consular assistance or legal assistance, the Tongan Government also would have facilitated any investigation in Tonga that Mr Vanisi's counsel would have wanted to carry out. The Tongan Government would have facilitated Mr Vanisi's counsel to obtain background information by providing and arranging for a liaison officer, an interpreter, meetings with relevant people and authorities, access to Government information and also information on where to source other information not in Government possession.

You should also be made aware that I had referred this matter to His Majesty's Cabinet in March 2011, and Cabinet decided that appropriate action be taken on the matter. We are still assessing our options and would be grateful for you to update us on the status of Mr Vanisi's matter before the US Federal Courts.

Please do not hesitate to contact me if you need any further information.

Sincerely


Aminiasi Kefu
Solicitor General



cc: Secretary for Foreign Affairs

EXHIBIT 201

EXHIBIT 201

8/Jan 15 12:00 PM 2005

CODE: 4260
THOMAS L. QUALLS, ESQ.
State Bar No. 8623
216 E. Liberty St., Reno, NV 89501
(775) 333-6633
Co-counsel for Petitioner,
SIAOSI VANISI

2005 JAN 14 PM 3:00

[Signature]

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

Case No. CR98P0516

vs.

Dept. No. 4

WARDEN, Ely State Prison;
and the STATE OF NEVADA,

DEATH PENALTY CASE

Respondents.

EX PARTE CLAIM FOR ATTORNEY COMPENSATION

COMES NOW, THOMAS L. QUALLS, ESQ., counsel heretofore appointed to represent the
Petitioner above-named, who hereby submits the following Claim for Compensation pursuant to
NRS 7.125 and NRS 7.135. This Claim for Compensation is supported by the Affidavit of
THOMAS L. QUALLS, ESQ.

Respectfully submitted this ^{14th} day of January, 2005.

[Signature]
THOMAS L. QUALLS, ESQ.
State Bar No. 8623
216 East Liberty St.
Reno, Nevada 89501
(775) 333.6633

Co-counsel for Petitioner,
SIAOSI VANISI

EXHIBIT

tabler
201
CR98-0516

2JDC05928

AA06971

AFFIDAVIT OF COUNSEL IN SUPPORT OF CLAIM FOR COMPENSATION

STATE OF NEVADA)

COUNTY OF WASHOE)

THOMAS L. QUALLS, ESQ., being first duly sworn, deposes and says:

1. That he is an attorney duly appointed by the Court in the above entitled case to represent

SIAOSI VANISI, in regards to the instant proceedings, to wit: Post Conviction Proceedings.

2. That he has expended time in the matter of the representation of the said SIAOSI VANISI, as set forth following; and that the this affidavit is true and correct and made and sworn to according to the best of his knowledge, information and belief:

SUMMARY OF ATTORNEY'S TIME:

<u>date</u>	<u>description</u>	<u>time</u>	<u>amt</u>
08.08.03	Telephone conference with attorney Edwards. [@\$60]	.25	\$15
08.22.03	Meeting with attorney Edwards. [@\$60]	1.25	\$75
02.13.04	Meeting with co-counsel Edwards to discuss status of case. [@\$125]	1.0	\$125
02.18.04	Draft partial section regarding ineffective assistance of counsel. [@\$125]	3.0	\$375
02.25.04	Draft partial claim regarding structural error. [@\$125]	2.0	\$250
02.26.04	Draft partial claim regarding <u>Faretta v. California</u> issue. [@\$125]	4.0	\$500
03.03.04	Draft partial claim regarding conflict of counsel. [@\$125]	4.0	\$500
03.04.04	Draft partial claim regarding <u>Finger v. State</u> , competence, and voluntary intoxication. [@\$125]	5.0	\$625
03.05.04	Meet with Co-counsel Edwards to discuss case. [@\$125]	1.0	\$125
03.16.04	Draft updated outline of claims based upon record and research to-date. [@\$125]	3.0	\$375
03.16.04	Meet with Co-counsel Edwards to discuss outline and progress of case. [@\$125]	1.0	\$125
03.19.04	Legal research re: mitigation experts and draft partial claim regarding same. [@\$125]	6.0	\$750

1	04.09.04	Review federal habeas briefs on capital cases. [@\$125]	4.0	\$500
2	05.19.04	Teleconference with Co-counsel Edwards to arrange a date to travel to Ely to interview Vanisi; discuss interview topics and strategy. [@\$125]	1.0	\$125
3				
4	06.08.04	Travel to Ely, Nevada with co-counsel Edwards for interview with Petitioner Vanisi. [@\$125]	6.0	\$750
5	06.08.04	Prepare for interview with Vanisi with co-counsel Edwards. [@\$125]	2.0	\$250
6				
7	06.09.04	Visit Ely State Prison and Interview Vanisi. [@\$125]	4.0	\$500
8	06.09.04	Return travel from Ely to Reno, Nevada. [@\$125]	6.0	\$750
9	06.16.04	Discuss competency issue with Michael Pescetta; research same. [@\$125]	4.0	\$500
10				
11	06.18.04	Review emails and research from co-counsel Edwards re: consular issue. [@\$125]	1.0	\$125
12	06.29.04	Draft e-mail to co-counsel Edwards regarding consular issue and Rohan and read e-mail from Edwards. [@\$125]	0.5	\$62.50
13				
14	07.15.04	Legal research re: competence during post-conviction proceedings. [@\$125]	5.0	\$625
15				
16	07.19.04	Draft letter to authorities at Ely State Prison requesting medical and disciplinary records. [@\$125]	1.0	\$125
17	10.19.04	Draft e-mail to co-counsel Edwards re: Rohan and other related legal issues for supplement. [@\$125]	0.25	\$31.25
18	10.25.04	Draft e-mail to co-counsel Edwards re: Rohan and other related legal issues for supplement. [@\$125]	0.25	\$31.25
19				
20	10.26.04	Draft e-mail to co-counsel Edwards and read e-mail from Edwards. [@\$125]	0.5	\$62.50
21	10.27.04	Additional legal research re: competency and Rohan v. Gates; draft partial Motion for Stay and for psych. evaluation. [@\$125]	7.0	\$875
22				
23	10.27.04	Read e-mail from co-counsel Edwards. [@\$125]	0.25	\$31.25
24	10.28.04	Draft e-mail to co-counsel Edwards. [@\$125]	0.25	\$31.25
25	10.28.04	Revise and finalize Motion for Stay of Post-conviction Habeas Corpus Proceedings and for Transfer of Petitioner to Lakes Crossing for Psychological Evaluation and Treatment ("Motion for Stay"). [@\$125]	3.0	\$375
26				
27	10.29.04	Read e-mail from co-counsel Edwards. [@\$125]	0.25	\$31.25
28				

SVANIS12JDC05931


11.15.04	Read e-mail from Edwards, draft reply e-mail. [@\$125]	0.5	\$62.50
11.16.04	Review State's Response to Motion for Stay and legal research re: authorities cited therein; e-mails to and from and teleconference with co-counsel Edwards. [@\$125]	4.0	\$500
11.21.04	Review State's Notice of Supplemental Authorities and prepare for hrg on November 22, 2004. [@\$125]	5.0	\$625
11.22.04	Hearing on Motion for Stay. [@\$125]	2.0	\$250
11.23.04	Assist co-counsel in drafting Order. [@\$125]	1.0	\$125

total hrs. @\$60/hr. 1.5 = \$90.00

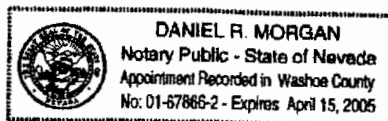
total hrs. @\$125/hr. 88.75 = \$11,093.75

TOTAL AMOUNT DUE \$11,183.75

Dated this 14th day of January, 2005.


THOMAS L. QUALLS, ESQ.
Nevada State Bar No. 8623
216 East Liberty
Reno, Nevada 89501
(775) 333.6633
Co-counsel for Petitioner,
SIAOSI VANISI

Subscribed and Sworn to
Before me, the undersigned
Notary Public this 14th day of
November, 2005.



January
NOTARY PUBLIC

My Commission Expires: April 15, 2005

ORIGINAL FILED

FEB 04 2005

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

CODE: 3105

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

SIAOSI VANISI,

Petitioner,

Case No. CR98P0516

vs.

Dept. No. 4

WARDEN, Ely State Prison;
and the STATE OF NEVADA,

DEATH PENALTY CASE

Respondents.

ORDER ALLOWING CLAIM FOR COMPENSATION

An application for compensation having been filed herein by THOMAS L. QUALLS, ESQ.,
Court-appointed counsel for SIAOSI VANISI, the above-named Petitioner, and the Court having
reviewed the claim and finding it is appropriate in view of NRS 7.125 and NRS 7.135, et seq., and
GOOD CAUSE APPEARING,

IT IS HEREBY ORDERED that the application be allowed and that the State Public
Defender's Office pay to THOMAS L. QUALLS, ESQ., 216 E. Liberty Street, Reno, Nevada 89501,
the sum of: **\$11,183.75** (Eleven Thousand One Hundred Eighty-Three Dollars and 75/100).

DATED this 31 day of January, 2005

Connie J. Steinheimer
DISTRICT JUDGE

ORIGINAL

CODE: 4260
THOMAS L. QUALLS, ESQ.
State Bar No. 8623
216 E. Liberty St., Reno, NV 89501
(775) 333-6633
Co-counsel for Petitioner,
SIAOSI VANISI

FILED

2005 FEB 28 AM 11:03

RONALD A. LEBERTIN, JR.

BY  DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

Case No. CR98P0516

vs.

Dept. No. 4

WARDEN, Ely State Prison;
and the STATE OF NEVADA,

DEATH PENALTY CASE


Respondents.

EX PARTE CLAIM FOR ATTORNEY COMPENSATION

(Second Interim Billing)

COMES NOW, THOMAS L. QUALLS, ESQ., counsel heretofore appointed to represent the
Petitioner above-named, who hereby submits the following Claim for Compensation pursuant to
NRS 7.125 and NRS 7.135. This Claim for Compensation is supported by the Affidavit of
THOMAS L. QUALLS, ESQ.

Respectfully submitted this 25TH day of February, 2005.


THOMAS L. QUALLS, ESQ.
State Bar No. 8623
216 East Liberty St.
Reno, Nevada 89501
(775) 333.6633

Co-counsel for Petitioner,
SIAOSI VANISI

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
CLAIM FOR COMPENSATION**

STATE OF NEVADA)

COUNTY OF WASHOE)

THOMAS L. QUALLS, ESQ., being first duly sworn, deposes and says:

1. That he is an attorney duly appointed by the Court in the above entitled case to represent

SIAOSI VANISI, in regards to the instant proceedings, to wit: Post Conviction Proceedings.

2. That he has expended time in the matter of the representation of the said SIAOSI VANISI, as set forth following; and that the this affidavit is true and correct and made and sworn to according to the best of his knowledge, information and belief:

SUMMARY OF ATTORNEY'S TIME:

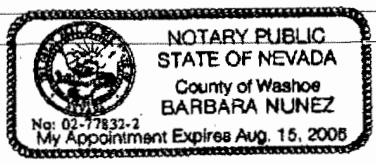
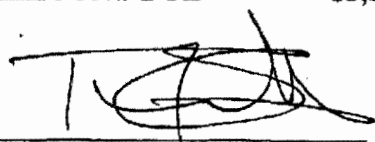
<u>date</u>	<u>description</u>	<u>time</u>	<u>amt</u>
01.14.05	Conference call with Dr. Bittker and meeting with co-counsel Scott Edwards.	1.5	\$187.50
01.21.05	Review evaluation report from Dr. Bittker.	1.0	\$125
01.24.05	Meeting in chambers on competency issue.	1.0	\$125
01.25.05	Teleconference with co-counsel Scott Edwards.	0.25	\$31.25
01.26.05	Travel to Nevada State Prison @ Carson City and meet with Petitioner Vanisi and return.	4.0	\$500
01.26.05	Teleconference with Dr. Amezaga.	0.25	\$31.25
01.27.05	Attend partial competency hearing in District Court.	0.5	\$62.50
02.17.05	Review Dr. Amezaga's report and prepare for second part of bifurcated competency hearing.	2.0	\$250
02.18.05	Continue preparation for argument at competency hearing and meet with co-counsel Scott Edwards to review.	3.0	\$375
02.18.05	Attend second part of bifurcated competency hearing.	2.5	\$312.50
02.19.05	Draft partial Supplemental Petition for Writ of Habeas Corpus.	6.0	\$750
02.20.05	Continue drafting Supplemental Petition for Writ of Habeas Corpus.	6.0	\$750

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02.21.05	Continue drafting Supplemental Petition for Writ of Habeas Corpus.	8.0	\$1,000
02.22.05	Teleconference with Attorney Michael Pescetta.	0.5	\$62.50
02.22.05	Continue drafting partial Supplemental Petition for Writ of Habeas Corpus and finalize.	6.0	\$750
02.23.05	Review order of District Court finding Vanisi competent to proceed; conference with co-counsel Edwards.	1.5	\$187.50
02.23.05	Research and draft Motion for Protective Order.	3.0	\$375
total hrs. @\$125/hr.		47.0	= \$5,875.00

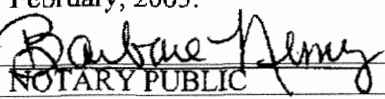
TOTAL AMOUNT DUE \$5,875.00

Dated this 25th day of February, 2005.



THOMAS L. QUALLS, ESQ.
Nevada State Bar No. 8623
216 East Liberty
Reno, Nevada 89501
(775) 333.6633
Co-counsel for Petitioner,
SIAOSI VANISI

Subscribed and Sworn to
Before me, the undersigned
Notary Public this 25 day of
February, 2005.


NOTARY PUBLIC

My Commission Expires: August 15, 2006

ORIGINAL

FILED

CODE: 3105

MAR 09 2005

RONALD A. HIGHT JR., CLERK
BY: *[Signature]*

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

SIAOSI VANISI,

Petitioner,

Case No. CR98P0516

vs.

Dept. No. 4

WARDEN, Ely State Prison;
and the STATE OF NEVADA,

DEATH PENALTY CASE

Respondents.

ORDER ALLOWING CLAIM FOR COMPENSATION

An application for compensation having been filed herein by THOMAS L. QUALLS, ESQ.,
Court-appointed counsel for SIAOSI VANISI, the above-named Petitioner, and the Court having
reviewed the claim and finding it is appropriate in view of NRS 7.125 and NRS 7.135, et seq., and
GOOD CAUSE APPEARING,

IT IS HEREBY ORDERED that the application be allowed and that the State Public
Defender's Office pay to THOMAS L. QUALLS, ESQ., 216 E. Liberty Street, Reno, Nevada 89501,
the sum of: **\$5,875.00** (Five Thousand Eight Hundred Seventy-Five Dollars and no/100).

DATED this 8 day of March, 2005.

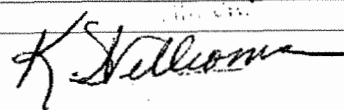
Connie J. Steinhilber
DISTRICT JUDGE

2/Jan1512JDC05276

CODE: 4260
THOMAS L. QUALLS, ESQ.
State Bar No. 8623
216 E. Liberty St., Reno, NV 89501
(775) 333-6633
Co-counsel for Petitioner,
SIAOSI VANISI

ORIGINAL

2005-05-01 9:00



IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

Case No. CR98P0516

vs.

Dept. No. 4

WARDEN, Ely State Prison;
and the STATE OF NEVADA,

DEATH PENALTY CASE

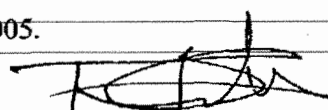
Respondents.

EX PARTE CLAIM FOR ATTORNEY COMPENSATION

(Third Interim Billing)

COMES NOW, THOMAS L. QUALLS, ESQ., counsel heretofore appointed to represent the
Petitioner above-named, who hereby submits the following Claim for Compensation pursuant to
NRS 7.125 and NRS 7.135. This Claim for Compensation is supported by the Affidavit of
THOMAS L. QUALLS, ESQ.

Respectfully submitted this 6TH day of May, 2005.



THOMAS L. QUALLS, ESQ.
State Bar No. 8623
216 East Liberty St.
Reno, Nevada 89501
(775) 333.6633

Co-counsel for Petitioner,
SIAOSI VANISI

SVANISI:2JDC05277

AFFIDAVIT OF COUNSEL IN SUPPORT OF
CLAIM FOR COMPENSATION

STATE OF NEVADA)
COUNTY OF WASHOE)

THOMAS L. QUALLS, ESQ., being first duly sworn, deposes and says:

1. That he is an attorney duly appointed by the Court in the above entitled case to represent
SIAOSI VANISI, in regards to the instant proceedings, to wit: Post Conviction Proceedings.

2. That he has expended time in the matter of the representation of the said SIAOSI VANISI,
as set forth following; and that the this affidavit is true and correct and made and sworn to according
to the best of his knowledge, information and belief:

SUMMARY OF ATTORNEY'S TIME:

<u>date</u>	<u>description</u>	<u>time</u>	<u>amt</u>
02.24.05	Preliminary research re: extraordinary writs.	1.0	\$125
03.10.05	Email to and from Scott Edwards re: response to motion for protective order.	.25	\$31.25
03.15.05	Review State's Response to Motion for Protective Order; legal research re: authorities in the State's brief and the protective order issues; draft, revise and finalize reply.	6.5	\$687.50
03.16.05	Conference with Scott Edwards re: review of written order of competency and discuss writ of mandamus/prohibition.	2.0	\$250
03.17.05	Review Supplemental Response to Protective Order.	.25	\$31.25
03.17.05	Email from Scott Edwards re: motion protective order.	.25	\$31.25
03.17.05	Legal research re: rules governing writs of prohibition and mandamus and related case law.	2.5	\$312.50
03.28.05	Email from Scott Edwards re: writ of mandamus.	.25	\$31.25
04.06.05	Email (x2) from Scott Edwards re: draft of mandamus writ petition.	.25	\$31.25
04.07.05	Emails (x3) re: communication with Tongan consulate.	.25	\$31.25

///

1	04.08.05	Read draft of mandamus writ petition from Scott Edwards		
2		Legal research, review record and edit work on writ of		
3		mandamus / prohibition petition.	3.5	\$437.50
4	04.09.05	Continue working on petition for writ of mandamus /		
5		prohibition; legal research and draft Motion for		
6		Emergency Stay.	4.0	\$500
7	04.10.05	Email from and to Scott Edwards re: mandamus writ		
8		petition and strategy for moving forward.	.25	\$31.25
9	04.12.05	Finalize petition for writ of mandamus / prohibition		
10		and conference with Scott Edwards re: strategy,		
11		evidentiary hearing and status of ongoing matters.	3.0	\$375
12	04.18.05	Review State's Response re: Motion for Emergency Stay.	0.5	\$62.50
13	04.19.05	Review Order from Nevada supreme Court denying		
14		extraordinary writ petition.	.25	\$31.25
15	04.20.05	Email from Scott Edwards re: evidentiary hearing.	.25	\$31.25
16	04.22.05	Emails to and from Scott Edwards re: scheduled tele-		
17		conference, motion to continue, scheduling and other		
18		substantive matters re: the evidentiary hearing.	0.5	\$62.50
19	04.25.05	Review case status and outstanding issues; legal research		
20		re: motion for continuance.	3.5	\$437.50
21	04.25.05	Teleconference with Court and counsel for State re:		
22		scheduling issues and continuance motion.	.25	\$31.25
23	04.25.05	Teleconference with Scott Edwards re: hearing.	.25	\$31.25
24	04.25.05	Receive and review State's Answer to Petition for Writ		
25		of Habeas Corpus and State's Motion to Dismiss; begin		
26		legal research.	1.5	\$125
27	04.26.05	Conference with Scott Edwards, draft and revise		
28		motion for continuance, discuss other issues including		
29		possible recusal.	2.5	\$312.50
30	04.26.05	Legal research re: recusal, judicial cannons, and proper		
31		procedures, teleconference with Scott Edwards re:		
32		findings and strategy.	3.5	\$437.50
33	04.27.05	Review Supplement and record and start working on		
34		Opposition to Motion to Dismiss.	6.0	\$750
35	04.28.05	Continue research for Opposition to Motion to Dismiss.	4.0	\$500
36	04.29.05	Review record and claims and start preparation for		
37		Evidentiary Hearing.	4.0	\$500
38	///			

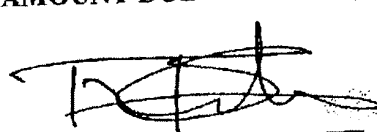
SVan1s12JDC05279

04.30.05	Meet with Scott Edwards; go over examination of witnesses for Evidentiary Hearing; continue prep.	3.0	\$375
05.01.05	Review death penalty claims and prepare examination; Work on Opposition to Motion to Dismiss.	3.0	\$375
05.02.05	Meet with Vanisi prior to court and Evidentiary Hearing on Petition for Writ of Habeas Corpus.	3.5	\$437.50
05.04.05	Continue drafting Opposition to Motion to Dismiss.	4.5	\$625
05.06.05	Review arguments from Scott Edwards and Continue drafting Opposition to Motion to Dismiss; revise, finalize and file.	4.0	\$500

total hrs. @\$125/hr. 69.25 = \$8,656.25

TOTAL AMOUNT DUE \$8,656.25

Dated this 6TH day of May, 2005.


THOMAS L. QUALLS, ESQ.
Nevada State Bar No. 8623
216 East Liberty
Reno, Nevada 89501
(775) 333.6633
Co-counsel for Petitioner,
SIAOSI VANISI

Subscribed and Sworn to
Before me, the undersigned
Notary Public this 6th day of
May, 2005.


NOTARY PUBLIC

My Commission Expires: April 8, 2008



ORIGINAL

FILED

MAY 12 2005

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

CODE: 3105

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

SIAOSI VANISI,

Petitioner,

Case No. CR98P0516

vs.

Dept. No. 4

WARDEN, Ely State Prison;
and the STATE OF NEVADA,

DEATH PENALTY CASE

Respondents.

ORDER ALLOWING CLAIM FOR COMPENSATION

An application for compensation having been filed herein by THOMAS L. QUALLS, ESQ.,
Court-appointed counsel for SIAOSI VANISI, the above-named Petitioner, and the Court having
reviewed the claim and finding it is appropriate in view of NRS 7.125 and NRS 7.135, et seq., and
GOOD CAUSE APPEARING,

IT IS HEREBY ORDERED that the application be allowed and that the State Public
Defender's Office pay to THOMAS L. QUALLS, ESQ., 216 E. Liberty Street, Reno, Nevada 89501,
the sum of: **\$8,656.25** (Eight Thousand Six Hundred Fifty-Six Dollars and 25/100).

DATED this 11 day of May, 2005.

Connie J. Steinheimer
DISTRICT JUDGE

ORIGINAL

CODE: 4260
THOMAS L. QUALLS, ESQ.
State Bar No. 8623
216 E. Liberty St., Reno, NV 89501
(775) 333-6633
Co-counsel for Petitioner,
SIAOSI VANISI

2005/05/27 11:19:22

H. Williams

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

Case No. CR98P0516

vs.

Dept. No. 4

WARDEN, Ely State Prison;
and the STATE OF NEVADA,

DEATH PENALTY CASE

Respondents.

EX PARTE CLAIM FOR ATTORNEY COMPENSATION
(Third Interim Billing)

COMES NOW, THOMAS L. QUALLS, ESQ., counsel heretofore appointed to represent the
Petitioner above-named, who hereby submits the following Claim for Compensation pursuant to
NRS 7.125 and NRS 7.135. This Claim for Compensation is supported by the Affidavit of
THOMAS L. QUALLS, ESQ.

Respectfully submitted this 27 day of May, 2005.

THOMAS L. QUALLS
THOMAS L. QUALLS, ESQ.
State Bar No. 8623
216 East Liberty St.
Reno, Nevada 89501
(775) 333.6633

Co-counsel for Petitioner,
SIAOSI VANISI

S/Van1s12JDC05172

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
CLAIM FOR COMPENSATION**

STATE OF NEVADA)
COUNTY OF WASHOE)

THOMAS L. QUALLS, ESQ., being first duly sworn, deposes and says:

1. That he is an attorney duly appointed by the Court in the above entitled case to represent SIAOSI VANISI, in regards to the instant proceedings, to wit: Post Conviction Proceedings.

2. That he has expended time in the matter of the representation of the said SIAOSI VANISI, as set forth following; and that the this affidavit is true and correct and made and sworn to according to the best of his knowledge, information and belief:

SUMMARY OF ATTORNEY'S TIME:

<u>date</u>	<u>description</u>	<u>time</u>	<u>amt</u>
05.09.12	Discuss expert with Scott Edwards and teleconference with Rick Cornell, prepare materials for delivery to Mr. Cornell.	2.0	\$250
05.12.05	Teleconference with Rick Cornell re: additional materials.	0.25	\$31.25
05.16.05	Review death penalty claims and prepare to meet With Strickland expert Rick Cornell.	1.5	\$187.50
05.17.05	Meeting with Strickland expert Rick Cornell re: Evidentiary hearing.	2.0	\$250
05.18.05	Continued Evidentiary Hearing.	2.0	\$250
total hrs. @\$125/hr.		7.75	= \$968.75

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TOTAL AMOUNT DUE \$968.75

Dated this 27 day of May, 2005.


THOMAS L. QUALLS, ESQ.
Nevada State Bar No. 8623
216 East Liberty
Reno, Nevada 89501
(775) 333.6633
Co-counsel for Petitioner,
SIAOSI VANISI

Subscribed and Sworn to
Before me, the undersigned
Notary Public this 27 day of
May, 2005.


NOTARY PUBLIC

My Commission Expires: April 8, 2008



SVAN1S12JDC05161

CODE: 3105

ORIGINAL

FILED

JUN 14 2005

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

Case No. CR98P0516

vs.

Dept. No. 4

WARDEN, Ely State Prison;
and the STATE OF NEVADA,

DEATH PENALTY CASE

Respondents.

ORDER ALLOWING CLAIM FOR COMPENSATION

An application for compensation having been filed herein by THOMAS L. QUALLS, ESQ.,

Court-appointed counsel for SIAOSI VANISI, the above-named Petitioner, and the Court having

reviewed the claim and finding it is appropriate in view of NRS 7.125 and NRS 7.135, et seq., and

GOOD CAUSE APPEARING,

IT IS HEREBY ORDERED that the application be allowed and that the State Public

Defender's Office pay to THOMAS L. QUALLS, ESQ., 216 E. Liberty Street, Reno, Nevada 89501,

the sum of: **\$968.75** (Nine Hundred Sixty-Eight Dollars and 75/100).

DATED this 8 day of June, 2005.

Connie J. Steinhilber
DISTRICT JUDGE

ORIGINAL

FILED

2007 APR -6 PM 3:08

RONALD A. LONGTIN, JR.

BY  DEPUTY

CODE: 4260
THOMAS L. QUALLS, ESQ.
State Bar No. 8623
216 E. Liberty St., Reno, NV 89501
(775) 333-6633
Co-counsel for Petitioner,
SIAOSI VANISI

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

SIAOSI VANISI,

Petitioner,

Case No. CR98P0516

vs.

Dept. No. 4

WARDEN, Ely State Prison;
and the STATE OF NEVADA,

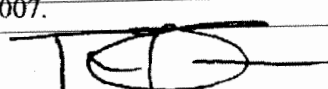
DEATH PENALTY CASE

Respondents.

EX PARTE CLAIM FOR ATTORNEY COMPENSATION
(Fifth Interim Billing)

COMESNOW, THOMAS L. QUALLS, ESQ., counsel heretofore appointed to represent the
Petitioner above-named, who hereby submits the following Claim for Compensation pursuant to
NRS 7.125 and NRS 7.135. This Claim for Compensation is supported by the Affidavit of
THOMAS L. QUALLS, ESQ.

Respectfully submitted this 5 day of April, 2007.


THOMAS L. QUALLS, ESQ.
State Bar No. 8623
216 East Liberty St.
Reno, Nevada 89501
(775) 333.6633

Co-counsel for Petitioner,
SIAOSI VANISI

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
CLAIM FOR COMPENSATION**

STATE OF NEVADA)

COUNTY OF WASHOE)

THOMAS L. QUALLS, ESQ., being first duly sworn, deposes and says:

1. That he is an attorney duly appointed by the Court in the above entitled case to represent

SIAOSI VANISI, in regards to the instant proceedings, to wit: Post Conviction Proceedings.

2. That he has expended time in the matter of the representation of the said SIAOSI VANISI, as set forth following; and that the this affidavit is true and correct and made and sworn to according to the best of his knowledge, information and belief:

SUMMARY OF ATTORNEY'S TIME:

<u>date</u>	<u>description</u>	<u>time</u>	<u>amt</u>
03.20.07	Review case re: aggravators and mitigators, review penalty hearing; legal research re: McConnell and Ring and Apprendi, as well as 1990 cases; teleconference with federal Public Defender's office; begin drafting Memorandum of Law for Court.	5.5	\$687.50
03.21.07	Continue drafting Memorandum and investigate and marshal documentation re: other murders and other similarly situated cases.	2.5	\$312.50
03.22.07	Continue drafting Memorandum of Law re: McConnell issue, including gathering information and documentation on similar cases; Conference with Scott Edwards re: preparing Memorandum of Law additional materials and review draft; additional teleconference with Vegas office.	6.0	\$750
03.23.07	Review Memorandum and discuss with Scott Edwards, revise document.	1.5	\$187.50
03.27.07	Finalize and prepare for filing Memorandum of Law regarding the McConnell issue.	1.5	\$187.50
04.02.07	Prepare for hearing on McConnell issue.	4.0	\$500
04.02.07	Hearing re: McConnell issue.	1.0	\$125
total hrs. @\$125/hr.		22.0	\$2,750

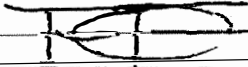
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TOTAL AMOUNT DUE


\$2,750.00

Dated this 5 day of April, 2007.




THOMAS L. QUALLS, ESQ.
Nevada State Bar No. 8623
216 East Liberty
Reno, Nevada 89501
(775) 333.6633
Co-counsel for Petitioner,
SLACSI VANISI

Subscribed and Sworn to
Before me, the undersigned
Notary Public this 5 day of
April, 2007.


NOTARY PUBLIC

My Commission Expires: 4/8/08

ORIGINAL

FILED

CODE: 3105

JUN 04 2007

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

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

SIAOSI VANISI,

Petitioner,

Case No. CR98P0516

vs.

Dept. No. 4

WARDEN, Ely State Prison;
and the STATE OF NEVADA,

DEATH PENALTY CASE

Respondents.

ORDER ALLOWING CLAIM FOR COMPENSATION

An application for compensation having been filed herein by THOMAS L. QUALLS, ESQ., Court-appointed counsel for SIAOSI VANISI, the above-named Petitioner, and the Court having reviewed the claim and finding it is appropriate in view of NRS 7.125 and NRS 7.135, et seq., and GOOD CAUSE APPEARING,

IT IS HEREBY ORDERED that the application be allowed and that the State Public Defender's Office pay to THOMAS L. QUALLS, ESQ., 216 E. Liberty Street, Reno, Nevada 89501, the sum of: **\$2,750.00** (Two Thousand Seven Hundred Fifty Dollars and 00/100).

DATED this 4 day of June, 2007.

Connie J. Steinheim
DISTRICT JUDGE

EXHIBIT 214

EXHIBIT 214

March 22, 2002

MEMORANDUM

TO: VANISI FILE

FROM: MP

RE: HABEAS INVESTIGATION SUMMARY

1. Identifying information for client.

Name: Siaosi Vanisi

DOB: [REDACTED]

SSN: [REDACTED]

FBI#:

CII#:

Current address: Nevada State Prison

Address at time of crime: 1913 Dufour Ave. Redondo Beach, CA 90278

2. Identifying information for offense.

Victim: George Daniel Sullivan

Date of offense: January 13, 1998

Place of offense: UNR Campus, Reno, Nevada

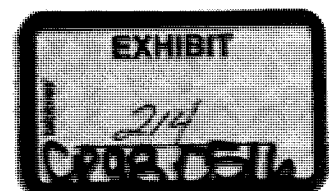
3. Identifying information for criminal proceedings.

Arrest date: 1/14/98

Co-defendants: None

Information filed: 2/26/98

Notice of Intent to Seek Death Penalty Filed: 2/26/98



AA06994

Conviction date:

10/6/99

Trial court:

Criminal case No. CR 98-0516, Washoe County, NV; Honorable Connie Steinheimer, presiding.

Defense attorney:

Stephen Gregory & Jeremy Bosler, Deputy Public Defenders.

Prosecutor:

Richard Gammick, Washoe County District Attorney, and David Stanton, Deputy District Attorney.

Appeal:

Vanisi v. State, 117 Nev. Adv. Op. No. 32, 22 P.3d 1164 (2001) (opinion affirming conviction and penalty).

Appellate attorney:

John Reese Petty, Appellate Deputy PD

4. Residences for Vanisi family:

Nu'Kualofa, Tonga (same house)

Age 6 to 20 lived in San Bruno, CA at 1880 Crestwood Dr. 94066

Age 20 lived in Redondo Beach

Age 20 to 22 lived in Mesa/Tempe at a number of residences

Age 22-27 moved back to Redondo Beach

Age 27 came to Reno

5. Family members.

Biological Mother- Luisa Tafuna (maiden) (deceased July 2000)

Aunt (mom) - Toeumu Tafuna

Father- Afa Vanisi

Half brother - Steven

Half sister - Caroline Tukuafu

Full sister - Sela DeBruse

AA06995

Full brother - Tevita Vanisi (deceased 1987)

Half brother - Tupou Uluave

6. Vanisi's schooling.

Head Start program? No

Elementary School? 1st grade in San Bruno Carl Sandberg Elementary, 2nd-6th grade at Rolling Wood Elementary

Junior High School? Parkside JHS

High School? Capuccino HS Graduated in 1989 (Line backer & offensive lineman for football)

7. School personnel who identified Vanisi's educational, mental, and family difficulties.

None

8. Vanisi's friends, neighbors, and associates.

ROOMMATES: Gregory Garner, Redondo Beach - closest

David Goodman, Hacienda Heights - sales rep/ copiers

Michael Finau, cousin, Redondo Beach - waiter

9. Employment history.

Worked as an actor in Los Angeles

- while acting, he was also an electrician (key grip) and a waiter.

- Non-Screen Actors Guild (SAG qualified but no card)

Was unemployed after he moved to Reno

10. Drug use.

Marijuana - when he was 26, smoked a lot for one year prior to crime.

11. Custodial institutions

Washoe County Jail

Nevada State Prison, Carson City

Ely State Prison (Death Row)

LA County Jail - Traffic Violations (processed only)

Salt Lake City Jail - 1988-1989 for Traffic Violations

- 1998 for 1 week

12. Defense attorneys who had contact with case at trial:

Michael Specchio, Washoe County Public Defender (1st trial)

Walter Fey, Deputy Public Defender (Pre-trial Motions)

Stephen Gregory, Deputy Public Defender (1st & 2nd trials)

Jeremy Bosler, Deputy Public Defender (1st & 2nd trials)

13. Defense Attorney who represented Smith on appeal.

John Reese Petty, Appellate Deputy PD

14. Defense investigators.

Crystal Cauldron

15. Defense experts who had contact with case at trial:

Ole Thienhaus, MD, UNR Psychiatrist (Trial/Penalty Phase)

Richard Lewis, Ph.D. (2nd Psych eval)

Philip Rich, MD (2nd Psych eval)

Edward Lynn, MD (lithium order)

Thomas E. Bittker, MD (1st Psych eval)

Frank Evarts, Ph.D. (1st Psych eval)

Edward J. Bronson, JD, LLM, Ph.D., Chico State Pol. Sci professor (Jury expert)

16. Victim information – George Daniel Sullivan

DOB:

SSN:

Spouse: Carolyn Sullivan

Children: Meghan Sullivan

Employer: University of Nevada Police Department

17. Newspapers covering crime and trial.

Reno Gazette Journal

The Daily Sparks Tribune.

Siaosi talked to Victoria Campbell at Channel 4 one time, several months after arrest. (Victoria contacted Siaosi)

18. First Trial jurors. (January 11, 1999-January 15, 1999)

Shelby Y. Denton	Cheryl L. Kominek	George A. Decker
Daniel M. Gerbatz	William V. King	Gordon D. Berg
James A. Stephenson	Victoria A. Lyman	Benilda G. Viernes
Randall A. McCargar	Lawrence L. Jones	Doris E. Roberts

Alternates – Jerome A. Moss, Susan M. Frankel, Peter G. Thomas, James H. Dunn

19. Second Trial Jurors. (September 20, 1999-October 6, 1999)

Bonnie K. James	Lauren Ziler (exc. day 1)	Nettie Horner
Shaylene J. Grate	Jeannette L. Minassian	Larry F. Mullins
James D. McMorran	Michael Sheahan	Alice J. Bell
Leslie C. Johnson	James L. Ayers (foreperson)	Robert T. Buck

Alternates — Richard A. Tower, Shaun L. Carmichael, Pete S. Costello, Lori T. Frazier

20. Crime witnesses.

UNR Sargeant Lou Lepera	Gustavo Ceron (1098 N. Rock Blvd #A)	Metuisela Tauveli
		Maria Losa Louis/ Corina Louis
		Ellen G.I. Clark, M.D.
		Patricia Mary Misito (7-11) Kaleb
	Lee Bartlehem (7-11)	Diana Lynn Shouse
	(Jackson)	

21. Co-defendant information.

No Co-Defendant

22. Jailhouse snitch information

Name:

DOB:

SSN:

FBI#:

CII#:

Defense attorney:

Prosecutor:

Judges:

Former addresses.

23. Law enforcement personnel connected with investigation.

Richard Gammick, Washoe County District Attorney (both trials)

David Stanton, Deputy District Attorney (both trials)

Detective Jenkins, RPD

UNR Sargeant Lou Lepera

Detective Jim Duncan, RPD

Kevin Browing, SPD

24. Prison and Washoe County jail personnel in contact with Vanisi. None of these individuals testified. Need to determine why, and whether there was pressure not to assist the defense.

25. Washoe County special circumstances and death sentence cases from 1990-present.

26. Judges who had contact with the case.

Connie Steinheimer, District Judge (both trials)

Edward Dannan, Justice of the Peace (prelim)

1 Code No. 4185

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE
5 THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

6 -oOo-

7 STATE OF NEVADA,)
8 Plaintiff,) Case No. CR98-0516
9 vs.) Dept. No. 4
10 SIAOSI VANISI,)
11 Defendant.)
12 _____)

13 TRANSCRIPT OF PROCEEDINGS
14 Petition for Post Conviction
15 Day Two
16 Friday, December 6, 2013
17 Reno, Nevada
18

19
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21 Reported By: SUSAN CULP, CCR No. 343
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A P P E A R A N C E S

For the Plaintiff:	TERRENCE MCCARTHY Deputy District Attorney P.O. Box 30083 Reno, Nevada 89520 tmccarth@mail.co.washoe.nv.us
For the Defendant:	Gary Allen Taylor Deputy Federal Public Defender 411 East Bonneville Avenue, Suite 250 Las Vegas, Nevada 89101 Gary_taylor@fd.org
	TIFFANI D. HURST Deputy Federal Public Defender 411 East Bonneville Avenue, Suite 250 Las Vegas, Nevada 89101 Danielle_hurst@fd.org
The Defendant:	Not Present

I N D E X

<u>WITNESS</u>	<u>PAGE</u>
SCOTT EDWARDS	
DIRECT EXAMINATION BY MR. TAYLOR	4
CROSS-EXAMINATION BY MR. MCCARTHY	27
REDIRECT EXAMINATION BY MR. TAYLOR	33
RECROSS-EXAMINATION BY MR. MCCARTHY	57

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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224	EXHIBIT 224 ADMITTED INTO EVIDENCE	41

1 RENO, NEVADA, FRIDAY, DECEMBER 6, 2013, 9:15 A.M.

2 -oOo-

3
4 THE COURT: We'll move into the case of Mr. Vanisi
5 versus the State of Nevada.

6 Okay. We concluded with Mr. Qualls yesterday. I
7 think you have another witness to call?

8 MR. TAYLOR: Yes, Your Honor. We call Scott Edwards,
9 please.

10 THE COURT: Okay you may proceed.
11 (The witness was sworn.)

12 THE COURT: Okay. You may proceed.

13
14 SCOTT EDWARDS,
15 having been first duly sworn, was examined
16 and testified as follows:

17
18 DIRECT EXAMINATION

19 BY MR. TAYLOR:

20 Q Mr. Edwards, would you state your full name?

21 A Scott Wesley Edwards.

22 Q Are you an attorney?

23 A Yes, I am.

24 Q And can you give us a synopsis of your experience?

25 A I was -- I graduated from law school in 1987, passed

1 the Colorado bar that same year, moved to Nevada at the end of
2 the year, passed the Nevada bar in 1988, and I've been licensed
3 since then, and I've had work experience primarily in the area
4 of criminal law.

5 Q Okay. And did you have any connection with
6 Mr. Vanisi's case?

7 A I did.

8 Q Okay. Were you appointed as an attorney in his case?

9 A I was.

10 Q And what was your role?

11 A Initially, I was second chair to Marc Picker who was
12 first chair. We represented him in state postconviction
13 proceedings in this court.

14 Q And Mr. Picker withdrew?

15 A Mr. Picker withdrew.

16 Q And then what became your role?

17 A We came before the Court and had a hearing, because I
18 had not been formally Rule 250 certified, and we discussed that
19 in this court, and the judge said after hearing us that it was
20 appropriate for me to remain on the case as lead counsel.

21 Q Okay. And at that point, was co-counsel appointed?

22 A At that point, there was not co-counsel appointed.
23 Mr. Qualls came on because he had not yet passed the Nevada
24 bar. So he came on as basically assistant to me, a paralegal
25 assistant. Although he had graduated from law school and been

1 working in the legal profession for quite some time, he had not
2 secured his license yet. So upon his licensing here in Nevada,
3 I moved to have him formally appointed as co-counsel.

4 Q You were comfortable with that arrangement, I take it?

5 A I was very comfortable.

6 Q Okay. And ultimately, you filed a petition or an
7 amended petition, I think, and then the Court denied and we are
8 here today. Let's talk about that.

9 A Okay.

10 Q Okay. I'll show you, if you would, Exhibit 200.

11 A Okay. I've got it.

12 Q Do you recognize that document?

13 A This is a declaration that you and I worked out a few
14 weeks ago at the Wolf Den Restaurant.

15 Q Okay. And did you sign this declaration?

16 A I did.

17 Q I notice there's quite a bit of handwriting on there.
18 Were there changes that you suggested?

19 A Yes. The handwriting is yours. The initials are
20 mine, as is the signature.

21 Q In other words, you approved the changes?

22 A I did.

23 Q Okay.

24 A As I recall, these were -- yes, these were the changes
25 that I requested you make.

1 Q Okay. And obviously the declaration was true and
2 correct?

3 A Yes.

4 Q Okay.

5 A Yes.

6 MR. TAYLOR: Your Honor, we would offer Exhibit 200.

7 MR. MCCARTHY: It's hearsay.

8 THE COURT: He's objecting on the grounds it's
9 hearsay, Counsel.

10 MR. TAYLOR: Your Honor, the witness is before the
11 Court. I mean, it may be an out-of-court statement, but it is
12 relative to the proceedings before us today, and it's
13 definitely relevant to his memory of what occurred on that day
14 or what had occurred previous to that day.

15 MR. MCCARTHY: I didn't say it's not relevant. I said
16 it's hearsay. It's a prior statement of the witness. If you
17 want to know during my representation of Vanisi, I was
18 primarily concerned about something, ask him, and he can
19 testify to it.

20 THE COURT: I'm going to sustain the objection. You
21 may be able to use it if you want to impeach the witness if he
22 can't remember something. But for right now, it's hearsay.

23 BY MR. TAYLOR:

24 Q Would you look at Exhibit 202, Mr. Edwards?

25 A 202?

1 Q Yes.

2 A Okay. Yes. I see it.

3 Q And what is that exhibit?

4 A It's an ex parte motion for payment of attorney's fees
5 and costs to appointed counsel and an affidavit.

6 Q Is it a series of motions?

7 A I see. Yes, there are a series of ex parte motions it
8 appears.

9 Q Okay. Would you look to the exhibit. Does it appear
10 to be your billings and the payments from the Court to you for
11 representation of Mr. Vanisi's case?

12 A Yeah, it sure does. That's what they all appear to
13 be, my motions for fees, either for myself, Mr. Picker or
14 Mr. Qualls, or I guess there were some doctors.

15 Q Dr. Baker, Dr. Amazaga who were appointed by the
16 Court. You submitted their billings for them as well?

17 A That's correct. I processed them for them.

18 Q And along with your motions, did you provide a
19 detailed explanation of the services you provided?

20 A Yes.

21 Q Okay. And is that true and accurate?

22 A Yes. As I recall, it was done relatively
23 contemporaneously with the events that are recorded there.

24 Q And so the work that you accomplished in this case, it
25 is accurately reflected in your billing?

1 A Yes, I believe so.

2 MR. TAYLOR: Your Honor, we would offer Exhibit 202.
3 It's a matter of record with the Court, but separately as well.

4 THE COURT: Okay.

5 MR. MCCARTHY: I have no objection.

6 THE COURT: Exhibit 202, the Court will take judicial
7 notice of.

8 MR. TAYLOR: Can I beg the Court's indulgence one
9 minute?

10 BY MR. TAYLOR:

11 Q Turning back to Exhibit 200, Mr. Edwards, and I guess
12 I'm just going to ask you some questions relative.

13 What was your primary concern during at least the
14 initial part of your representation of Mr. Vanisi?

15 A My primary concern was to avoid the imposition of the
16 death penalty.

17 Q Okay.

18 A That was my overriding concern in this case. And to
19 that end, we undertook a lot of activity, as you can see
20 reflected in the billing statements.

21 If you're talking about my primary concern in a legal
22 sense, we did have a concern as you've heard from Mr. Qualls
23 and the record reflects about Mr. Vanisi's competency, his
24 mental health, his ability to assist us. And so we undertook
25 certain actions to flesh that out, mainly the Rohan motion that

1 we've talked about or you've talked about extensively. But we
2 had an overall plan of attack which ultimately resulted in an
3 amended petition and a hearing on it, and we raised numerous
4 legal issues, many of them, I feel, had substantial merit in
5 his petition.

6 But we did have a concern about his competency, we
7 litigated that in the Rohan hearing, and unfortunately for us,
8 we were not successful, which would have, if we had been
9 successful, would have created some kind of time window,
10 therefore, further work on the case.

11 I would like to say this: I don't know whether there
12 was the impression given in your examination of Mr. Qualls
13 yesterday that somehow our amended petition was spawned in a
14 three-day period between the Rohan motion and the --

15 Q I'm going to specifically ask you about it,
16 Mr. Edwards --

17 A All right.

18 Q -- if that's okay.

19 And I don't want to leave any misimpression today in
20 anything.

21 A Okay.

22 Q Okay. But, going back over your response to my
23 question, when you stated on that date three weeks ago your
24 primary concern was Mr. Vanisi's competency to proceed, that is
25 correct?

1 A There was a -- that was a big concern of ours, yes.

2 Q And you did focus your efforts on litigating the
3 competency issue?

4 A Yes. But as I've said in my declaration, from that
5 point forward, I focused my efforts on litigating the
6 competency issue, but I didn't say all my efforts.

7 Q That's true. And that was a change you suggested?

8 A Yes, because as I was saying, it was no surprise that
9 this petition would eventually have to be filed. Now,
10 Mr. Qualls related our desire not to rush it because --

11 Q Well, do you agree with that?

12 A Every day that Mr. Vanisi is not under a death warrant
13 would be a success in this kind of litigation, so yes, I mean,
14 we weren't doing it merely for the purposes of delay, but in a
15 tactical sense -- you know, our petition was -- our amended
16 petition was crafted well over time. We put together --

17 Q Okay, I agree.

18 A We put together pieces of it, but from a tactical
19 standpoint, the first and most important thing to do was
20 litigate the Rohan issue.

21 Q Well, and I guess to summarize or to repeat, to make
22 sure I understand the statements you've made, you're not
23 suggesting that your Rohan motion was filed in bad faith, are
24 you?

25 A Oh, absolutely not.

1 Q Did you think Mr. Vanisi was competent and just filed
2 the motion so you could get the stay?

3 A No.

4 Q So you felt it had merit?

5 A I felt it had merit, yes, I did.

6 Q You were present during Mr. Qualls' testimony
7 yesterday, and he testified that he was surprised and fully
8 thought that you were going to win the Rohan motion. Did you
9 share that belief?

10 A I was the one who conducted the examination of the
11 doctors in that case, and the responses I received I thought
12 factually were in our favor. And to the extent that we were
13 not successful with that, I even, I believe, took an
14 extraordinary writ to the Supreme Court to challenge the
15 ruling.

16 Q So you did believe you were going to win this?

17 A It was sincere, yes. It wasn't merely for delay. And
18 I feel it was factually based. I had interactions with
19 Mr. Vanisi that I've heard, you've seen in the affidavits, his
20 activities and the way he reacted when we interacted with him.
21 And although I'm no psychologist or psychiatrist, certainly
22 suggested to me, real mental health issues there.

23 Q And even though you're not a psychologist or
24 psychiatrist, you have been working with criminal clients, and
25 a certain portion of those are mentally ill, correct?

1 A Yes.

2 Q You've litigated competency in other cases?

3 A I have.

4 Q You've worked with experts in mental health over what
5 now, over 20-something years?

6 A Sure, yes.

7 Q So you were seeing signs that suggested mental
8 illness?

9 A Yes.

10 Q And you filed the motion?

11 A Yes. And there was a problem with our ability to
12 interact with him as the Rohan proceeding called for.

13 Q But that was just one part of your defense; Is that a
14 fair statement?

15 A That's a fair statement.

16 Q And you made or you told me that you intended to
17 conduct a complete investigation?

18 A Yes. A complete investigation, that's right, into the
19 things that you've developed now in your work on this case.

20 Q But you were unable to complete an investigation?

21 A We did not get to it.

22 Q Okay.

23 A A complete investigation.

24 Q All right. And are you suggesting that you -- I think
25 you said, you filed some claims on his behalf and you had faith

1 in those claims?

2 A We did.

3 Q One of those claims, and we had some exhibits
4 yesterday, dealt with the Vienna Convention?

5 A That's correct.

6 Q And I think Mr. Qualls testified you were primarily
7 responsible for that?

8 A I was. I did the research on that. I contacted an
9 attorney, you and I both know that attorney who was basically
10 the leading edge of that kind of claim.

11 Q Sandra Babcock?

12 A Sandra Babcock. And Ms. Babcock provided material on
13 it. I think there was a case, the Medallion case, which was
14 pending before the United States Supreme Court at that time. I
15 believe it had merit and I was trying to flesh out the factual
16 basis for it. It later turned out that it might not have been
17 there at all as I recall.

18 Mr. Specchio, who at one point served as trial counsel
19 for Mr. Vanisi, I believe testified at the trial hearing on the
20 petition that he had made contact with the consulate.

21 Q Or attempted?

22 A Yes, in the initial phase of the representation.

23 Q And that record will obviously speak for itself.

24 A Yes.

25 Q You will agree with me the record is probably more

1 accurate than yours and my memory at this point?

2 A What it says is what it says. I just recall not being
3 successful with that.

4 Q The things that you were talking about that you heard
5 yesterday, and you've had a chance to look at the petition on
6 the record now; is that correct?

7 A It's been a while since I reviewed the whole petition,
8 but yesterday I did have an opportunity to go through some of
9 the exhibits that you referenced with Mr. Qualls about things
10 you've uncovered in your investigation in Tonga and other
11 places. So I've seen that. That wasn't something that we've
12 uncovered or even got to attempt.

13 Q Okay. And that's all I want to focus on right now.
14 Is that an investigation you wanted to conduct?

15 A Eventually, yes.

16 Q And it is an investigation you were unable to
17 complete?

18 A That's correct.

19 Q And would you agree with me that that's the type of
20 evidence that you would have been looking for?

21 A Had we reached that stage of the process, yeah.

22 Q And I -- and we can turn to Exhibit 42. Page 8, I
23 believe.

24 A Are you referring to 142, perhaps?

25 Q No. Exhibit 42 is I believe the findings of facts

1 entered by the Court. It should be the first exhibit in the
2 notebook.

3 A I see it, yes.

4 Q On page 8 -- I believe on page 11 and 12, the Judge
5 made references to a couple of claims that were within your
6 amended petition. If you'll look at them, please?

7 A Page 12?

8 Q Look at page eight first the last sentence in the
9 first paragraph.

10 A Okay.

11 Q Is that precisely why you had wanted to complete an
12 investigation was the likelihood or the chance that that
13 finding would come forth?

14 A To avoid that kind of finding.

15 Q And basically the Court says, you know, we just don't
16 have any new evidence?

17 A Uh-huh.

18 Q Okay. You were unable to conduct the investigation.
19 Was that because the Judge overruled your Rohan motion?

20 A I guess timing wise, yes. I mean we had talked about
21 going to Tonga, but priority-wise in the litigation of this,
22 that wasn't the top priority. We investigated somewhat the
23 case. We had talked to Mr. Specchio, Mr. Bosler, Mr. Gregory,
24 those in the know about the case and their litigation of it.
25 And we weren't presented with a, "Wow, here is the key to the

1 overturning of his conviction of his sentence" in the trip to
2 Tonga. So we focused more on legal issues, and this became
3 less of a priority. And when the Rohan motion was denied, we
4 were left without that as an option. We included it as a
5 claim. It would apply -- it was applying to Mr. Bosler and
6 Mr. Gregory, Mr. Specchio as well.

7 Q Did you -- you said you did speak to some people. You
8 spoke to previous trial counsel?

9 A Yes, we did.

10 Q Did you speak to any other witnesses than previous
11 trial counsel?

12 A Any other witnesses, perhaps police officers. I don't
13 think -- I don't recall any specific interviews with people
14 other than trial counsel.

15 Q Did you speak with Mr. Vanisi's family?

16 A I don't recall that.

17 Q Did you retain an investigator?

18 A I don't believe so, at least to do investigative work.
19 I know somebody had to serve the subpoenas and stuff, but maybe
20 that was done by the State.

21 Q Looking through your files, we found yesterday some
22 information that ya'll have for Marc Picker that talked about
23 or provided you information about his family. Do you remember
24 that?

25 A Yes. Early on in the case when it was Mr. Picker and

1 I representing Mr. Vanisi, we traveled down to Las Vegas and we
2 met with your office, Mr. Pescetta in your office and asked for
3 some assistance basically.

4 Q Some resource?

5 A Yeah, some resources. You know, I remember consulting
6 The Death Penalty Resource Center primarily looking for some
7 new issues that perhaps hadn't been litigated or were being
8 litigated. Mr. Pescetta provided us some information, I
9 believe that's where Picker got the Rohan case information.

10 Q And Scharlette Holdman?

11 A Yes. Those names I think went to Mr. Picker. And I
12 believe that was his kind of, you know, division of labor in
13 the case. He was working that or whatever he was doing on it.
14 But it never reached the stage of appointing one or hiring one
15 or -- a mitigation specialist is what I'm talking about.

16 Q Once Mr. Picker withdrew, you had not at that time
17 retained an investigator; is that correct?

18 A I don't think so.

19 Q And it's a fair statement you didn't retain an
20 investigator after that time?

21 A That's correct. I believe so, yeah.

22 Q It's also a fair statement, is it not, that no
23 investigation into his family, into his social history, into
24 his background was ever conducted?

25 A That's correct, by us.

1 Q By you?

2 A By me or Mr. Qualls.

3 Q We are not talking about trial counsel. Those claims
4 will rise or fall on their own merit, but we are just talking
5 about your own representation.

6 A Yeah. There was some of that information in the
7 record that we received, and I believe they were -- although
8 there wasn't much information at all presented by the defense
9 during the guilt phase, there was a rather substantial number
10 of witnesses called on his behalf during the penalty phase as I
11 recall. The record speaks for itself.

12 Q You made reference to the fact you didn't hire an
13 investigator and you didn't seek funds go to Tonga, right?

14 A That's correct.

15 Q Now, you had the opportunity to review all of these
16 exhibits, you said?

17 A All the --

18 Q The mitigation information and evidence that's before
19 the Court now.

20 A I don't know how to answer that.

21 Q You said you looked through it yesterday?

22 A I went through some documentation that I believe you
23 faxed to Mr. Qualls.

24 Q Okay.

25 A So during the lunch hour yesterday, we met and there

1 were some documents that you had provided him.

2 Q Okay.

3 A So I had a gaze at those.

4 Q And you had looked at the petition?

5 A I -- yes, I read the petition long ago.

6 Q And are you aware that as far as those interviews we
7 are talking about, there's, say, approximately 56 of those
8 interviews?

9 A If that's what you have, yeah.

10 Q And --

11 A And I know in discussing with you -- you know, what
12 investigation you've performed.

13 Q Okay.

14 A So some of it.

15 Q And if those declarations themselves reflect that in
16 over, say, approximately 50 of them, they were never
17 interviewed by you or Mr. Qualls, would that be accurate?

18 A That would be accurate.

19 Q Also, if you look at those declarations carefully, you
20 would find that only six of those 56 interviews were actually
21 from Tongan citizens, from people who were in Tonga. Do you
22 have any reason to dispute that?

23 A I don't have any reason to dispute that.

24 Q And a large majority of them came from residents of
25 Nevada, indeed Reno, and residents of California. Did you

1 conduct any investigation of these witnesses in either Nevada
2 or California?

3 A No.

4 Q Okay. Or Utah?

5 A No.

6 MR. TAYLOR: I'm sorry. One second.

7 BY MR. TAYLOR:

8 Q Given the opportunity, would you have conducted that
9 investigation?

10 A Yes, or we would have attempted it.

11 Q Okay. You had no strategic or tactical reasons for
12 not doing an investigation in this case?

13 A No. We didn't rule it out.

14 Q And you didn't start an investigation, and nothing led
15 you to believe that it would not be fruitful or anything like
16 that?

17 A We didn't start an investigation, put it that way.

18 Q Okay.

19 A We didn't hire an investigator. We didn't do those
20 things. That wasn't our priority at that time.

21 Q You were somewhat concerned with the cost of doing the
22 investigation?

23 A Yes. That's what I mean in terms of priority. You
24 know, I had envisioned a situation where if it reached that
25 stage where we were making application to the Court for what

1 appeared to be somewhat extraordinary expenses, I might need
2 some justification for it. And I hadn't been -- you know, put
3 on notice about that, other than -- you know, this is a good
4 thing to do, Mr. Pescetta suggested it and a mitigation
5 specialist would have insisted on it, I imagine.

6 Q Would you agree with me that you probably did need
7 extraordinary support to investigate the witnesses who lived in
8 Washoe County?

9 A No -- well, I don't know.

10 Q Or probably not? In fact, probably could have
11 interviewed them yourself?

12 A Yeah.

13 Q You didn't necessarily need it for witnesses that
14 lived in Utah, Salt Lake City?

15 A Probably not.

16 Q Or California?

17 A It probably would have helped, but, yeah.

18 Q And the -- obviously your experience leads you to
19 believe that what you obtain from the initial interviews
20 sometimes will provide that justification to go further?

21 A That could be true.

22 Q You just don't know unless you try, right?

23 A You don't know until you do it. But I hadn't been
24 provided with anything that told me right off the bat, "Boy,
25 this is the key to your case." So that's not where I was

1 heading.

2 Q So you prioritized it lower than some of the other
3 things?

4 A That's exactly the point.

5 Q But you intended to do it?

6 A Eventually.

7 Q Okay. And did you suspect that you were going to have
8 such a short period to file an amended petition?

9 A Suspect? I mean, we had the case for years.
10 Eventually, it was going to have to be filed, but that's what I
11 meant, this petition -- the amended petition was not created,
12 so to speak, over that weekend. But in terms of doing the
13 investigation when we lost the Rohan motion, I didn't think,
14 "Oh, I need," you know -- it's time to file the petition. We
15 had been put on notice. The Court in their orders and in
16 the -- you know, some of which I suppose were not necessarily
17 faithfully obeyed about time limits and things like that,
18 but -- you know, we knew there would come a time we would have
19 to file the petition. But we didn't get around to the
20 investigation of these witnesses that you -- that you have.

21 Q Did you tell me a few weeks ago, November the 7th, I
22 believe, that if you had suspected the trial judge was going to
23 order an amended petition so quickly would not have postponed
24 your factual investigation?

25 A I suppose that's true. I suppose that's true.

1 Q Now, at the time you and I had this interview, and
2 that's the only interview, the only opportunity we've discussed
3 this; is that correct?

4 A Yes.

5 Q At the time we had this interview, it was
6 approximately on November 7th, and there was another person
7 present, was there not?

8 A Right. Mr. Gazant.

9 Q From our office?

10 A Yeah.

11 Q Did you also make the statement that deadlines were
12 routinely ignored or routinely bypassed in Washoe County?

13 A Oh, man, if I did, I mean, that sounds like I'm
14 intentionally violating a court order. But, I did say
15 something along those lines like, you know -- but this was a
16 different nature. This was in open court, and she said, "Have
17 your petition on file by this time on that date," and that was
18 that.

19 Q And that's what we were discussing on that -- the
20 other day, was it not?

21 A Yeah. I mean, that was -- you know, there -- I don't
22 recall the record exactly, but in my practice, especially in my
23 practice, postconviction practice and prior years in this
24 court, the order would come down initially upon an appointment,
25 and have this done by this time and that done by that time.

1 And, yes, those were not necessarily obeyed.

2 Q They would frequently change?

3 A Yes.

4 Q And is that, perhaps, why you didn't suspect you were
5 going to have to file the amended petition in such a short
6 period?

7 A I guess.

8 Q Okay.

9 A Yeah.

10 Q Now. If you'll turn back to Exhibit 202.

11 A All right.

12 Q Just peruse your billings. And if you would --

13 A Is there something in particular you would like me to
14 look at?

15 Q Well, I'm kind of looking at number 117 -- 6117 is on
16 the bottom Bates label.

17 A 6117, okay.

18 Q We are looking at it, and the next page is 6118,
19 correct?

20 A Okay.

21 Q Does that accurately reflect work that you were doing
22 on this petition?

23 A Yes.

24 Q Over a period of time?

25 A Uh-huh, yeah. Yeah, see -- yeah. Discussion of the

1 case with Michael Pescetta. E-mail with Michael Pescetta.
2 Correspondence with Rebecca Blakeley of the Federal Public
3 Defender. Sandra Babcock. These were all things that I recall
4 doing.

5 Q As I look at your billing, and maybe you can tell me
6 before -- I mean, you can tell me if I'm incorrect. I see
7 31 hours of attorney work on the petition or on -- before the
8 Rohan motion was filed?

9 A I imagine so, yes. Like I said, it wasn't created
10 that weekend.

11 Q After the Rohan motion was filed, I see eight hours of
12 time billed. Does that sound fair?

13 A Yeah.

14 Q And then once the Court denied your Rohan motion, I
15 see that you put in 24 hours of work in the next four days.
16 Was that accurate as well?

17 A Mr. Qualls and I had divided up work on separate
18 claims, so we spent that weekend merging our separate research
19 and writing into the petition, so we sent it back and forth to
20 each other that weekend pretty intensely. But, it had been
21 completed, it just hadn't been presented.

22 Q And out of that 24 hours, that was also the time you
23 spent litigating the extraordinary petition that you filed as
24 well?

25 A Is that right?

1 Q That's the same period.

2 A Is that what I billed? That could be. I don't know
3 if we had the record available for that at that point in time.
4 But I recall doing that.

5 Q Let's just say, and I don't want to misrepresent
6 anything, if that extraordinary petition was filed during that
7 same time period, it would be reflected in your hours, correct?

8 A What I billed for, yeah, would be when I did it.

9 MR. TAYLOR: I'll pass the witness, Your Honor.

10 THE COURT: Mr. McCarthy?

11 MR. McCARTHY: Thank you, Your Honor.

12
13 CROSS-EXAMINATION

14 BY MR. McCARTHY:

15 Q Mr. Edwards, you've been both a prosecutor and defense
16 attorney, correct?

17 A Yes, sir.

18 Q And capital cases in both of those roles?

19 A I have.

20 Q And you've also been an appellate lawyer and
21 postconviction?

22 A I've done both of those.

23 Q Capital cases in both of those?

24 A Yes.

25 Q And do I understand correctly that at some point, you

1 decided to devote your energies to the Rohan issue and put off
2 the investigation until later; is that fair?

3 A That's fair.

4 Q Okay. Now, the investigation that we are talking
5 about that was delayed, it mostly concerns mitigation; is that
6 correct?

7 A Yes. The witnesses that Mr. Taylor has been
8 referencing.

9 Q Right. Now, is there a reason why you would find the
10 gathering of mitigation evidence to be less important or less
11 urgent than working on the legal questions in this case?

12 A Well, I did. I mean --

13 Q Why is that?

14 A My reason for it?

15 Q Yeah.

16 A Well, in my practice, in my appellate and
17 postconviction practice, I had most success with solid legal
18 issues. And the mitigation evidence is a factual matter.
19 And -- you know, I don't want to make an assessment of his
20 proposed evidence.

21 Q No.

22 A But from what I've been made known to about the facts
23 of the case, the record as it was, my contact with counsel,
24 this wasn't like, "Boy, I really -- this has got to be my
25 priority." So while I understand it's important to look into

1 these things and leave everything uncovered, it didn't sound to
2 me like this was the real nugget in the case. There were many
3 other legal issues that Mr. Qualls related, that the record
4 reflects, that just compelled our attention. And so, we didn't
5 take this and we didn't do it at the same time. And -- you
6 know, I just -- I didn't want this to be what's holding up the
7 case.

8 Q You knew that there were some pretty significant
9 aggravators?

10 A Yes, I did. This case was, upon initial appointment,
11 was almost hopeless feeling you get when you read the record.
12 You know, you understand it. I lived here when this went on.
13 You know, in a personal sense, you know, I really understood
14 the magnitude of this case. Aggravator, number one, we have a
15 slain police officer. You know, I remember the time this case
16 was going on. I was involved in it, but there's just some
17 energy and impetus to it that puts me in a -- a position way
18 different than, "Wow, he didn't do it," or, "This can be
19 explained away by something."

20 Now, the mental health issue was the one issue that I
21 thought was -- you know worthy of further investigation right
22 off the bat.

23 Q And why? Why is that?

24 A The mental health issue as perhaps a mitigating
25 factor. And in the Rohan sense as well.

1 Q Okay.

2 A But, that's a different thing than saying I'm looking
3 for classic mitigation witnesses that have been developed by
4 Mr. Taylor.

5 Q Your evaluation at the time, correct me if I'm wrong,
6 the evaluation at the time led you to think that additional
7 mitigating evidence is not likely to be what wins your case?

8 A Yes.

9 Q Okay. Did you have unlimited resources and unlimited
10 time?

11 A No. I mean, Mr. Qualls joked, "Oh, boy, maybe we'll
12 get a trip to Tonga out of this or something."

13 Q Did you find that attractive?

14 A But it couldn't really pass the giggle test in my
15 motion at that point in time with my understanding of what was
16 there. And bless them for undertaking it.

17 Q You're pointing at my colleagues from the FPD?

18 A Yeah.

19 Q Okay.

20 A But there were just other things in this case. And
21 the case as I knew it and -- you know kind of experienced it
22 that cried out for my attention more.

23 Q Well, did you talk to others about where you should be
24 devoting your attention? Did you talk to Pescetta about that?

25 A All the time.

1 Q How about local lawyers?

2 A And I can't say -- I won't say this. Mr. Pescetta did
3 not say to me, "Don't do this."

4 Q Well, of course not.

5 A Don't investigate this. And he provided resources
6 about mitigation specialists, but he did that primarily with
7 Marc Picker. And in our division of labor, that was going to
8 be Marc Picker's stuff. And when I took the case, I guess I
9 took a different angle on it.

10 Q Okay.

11 A I did not make that my priority.

12 Q I notice in your bill you had at least one
13 conversation with Rick Cornell fairly early on. Do you
14 remember what that might be about?

15 A Well, Mr. Cornell is a very experienced appellate
16 lawyer with a vast knowledge, legal knowledge. I can't recall
17 exactly what that was about.

18 Q Okay.

19 A But there were -- I don't know whether -- I can't tell
20 you.

21 Q Okay.

22 A I don't remember.

23 Q On your -- the time records have been discussed here,
24 is that necessarily complete?

25 A I wish it was, but . . .

1 Q Did you write down every time you had a conversation
2 with somebody?

3 A I can't do that. You know, it's just too disruptive.
4 But I try to capture to the best of my abilities the time I
5 expend on a case.

6 Q Okay. And you -- so as I understand it, during the
7 first years that you had the case, until the end of the ruling
8 on the Rohan motion, you were preparing a supplement all that
9 time.

10 A Yeah, we were.

11 Q Hoping it to be extensive?

12 A It was a priority issue. Maybe I'm seduced by neat
13 legal issues, the consulate issue, the Faretta canvass, the
14 actual factual trial itself and how all that worked in. Those
15 things were really -- you know, kind of juicy issues to
16 Mr. Qualls and I.

17 Q That's a good word. Seduced. What do you mean by
18 that? Tell me your thoughts on the subject.

19 A I don't mean it in some kind of awkward way, but you
20 know, those drew my attention as my focus in the case, you
21 know. These -- let's not drop the ball on this. Let
22 Tom -- you know look at this consular issue. Hey, look at
23 what's going on in the U.S. Supreme Court over it. Let's make
24 sure this one flies, you know. That kind of seduction by the
25 issue that arises from the -- whatever you've investigated.

1 Q And that's --

2 A And in this case, it was primarily the record and the
3 conversation with the trial counsel. I mean, we had -- I
4 thought really interesting issues, the more we got into it,
5 other than here are the facts of the case. Here are the
6 factual guilt basis of the case.

7 Q I take it you found the proposition of having Judge
8 Steinheimer waive mitigation and aggravation to be less
9 attractive?

10 A Well, she had been there when it was done before, and
11 she presided over it. She heard it. It's, you know, her call.
12 We put it in the petition because there hadn't been a
13 substantial amount of it over -- you know, it hadn't been as
14 exhaustively done as Mr. Taylor has done by trial counsel. And
15 so it was in there, but like the Judge ruled, we didn't have
16 anything to back it up.

17 MR. MCCARTHY: Okay. I have no other questions.

18 THE COURT: Counsel?

19 MR. TAYLOR: Thank you.

20
21 REDIRECT EXAMINATION

22 BY MR. TAYLOR:

23 Q Would it be a fair statement, Mr. Edwards, that you
24 don't know, and you never discovered what trial counsel didn't
25 know?

1 A I wouldn't know what they don't know.

2 Q That's right.

3 A That would be fair.

4 Q And unless you investigated yourself, you would never
5 know how good their investigation was, would you?

6 MR. MCCARTHY: Your Honor, yesterday there was an
7 objection about argumentative. I'll raise that one.

8 THE COURT: Okay. Sustained.

9 BY MR. TAYLOR:

10 Q Is it a fair statement that one of the
11 responsibilities of habeas counsel is to investigate the
12 representation that your client receives at trial?

13 A In a general sense, yes.

14 Q Okay. And in order to know or to learn what issues,
15 constitutional issues, surround that representation at trial,
16 you've got to look into it to some extend?

17 A Okay.

18 Q So, unless you speak to someone more than trial
19 counsel, you'll never learn that, will you?

20 A I don't know if that's necessarily true.

21 Q Okay.

22 A I mean, trial counsel has a responsibility to look
23 into these very things and probably to a greater extent than I
24 do as habeas. And -- you know, in my discussions with them,
25 this is not what they told me the central focus of this case

1 was about.

2 Q You're right. They have a greater responsibility --
3 or a great responsibility. I mean, we can agree on that. We
4 can also agree that of the 56 witnesses that are before the
5 Court now, you didn't interview at least 49 of them, and trial
6 counsel missed over 31 of them, and you never would have
7 learned that; is that a fair statement?

8 A I don't --

9 MR. MCCARTHY: That's not a fair statement.

10 THE COURT: Sustained.

11 MR. MCCARTHY: There are 300 million Americans and
12 none of them have been interviewed by Scott Edwards.

13 THE WITNESS: Some of them have.

14 MR. MCCARTHY: Right. Except for a few.

15 THE COURT: I will sustain the objection.

16 MR. TAYLOR: All right, Your Honor.

17 BY MR. TAYLOR:

18 Q You're reviewed the declaration or you've had an
19 opportunity?

20 A Yes, I have.

21 Q And I don't think there's real disagreement between
22 you and I, if trial counsel missed it, you didn't learn it?

23 A That's correct.

24 Q You didn't look for it?

25 A No.

1 Q We don't have any disagreement on that, do we?

2 A No.

3 MR. TAYLOR: Your Honor, at this point in light of the
4 testimony, I think we would offer 200, or reoffer 200 again for
5 the purposes of impeachment as it exists.

6 THE COURT: You think the whole document impeaches his
7 testimony?

8 MR. TAYLOR: Well, I just want to use it is. What I'm
9 saying, Judge, I want to refer to it. It's before the Court.
10 I just didn't want to get in trouble with you at all.

11 MR. McCARTHY: I think if counsel believes there's
12 something inconsistent in a prior statement of the witness, he
13 can ask about it.

14 THE COURT: Yes.

15 MR. McCARTHY: If he thinks it's consistent and
16 offered to rebut a recent claim of fabrication which I am not
17 making, then it's also admissible, but it's still hearsay.

18 THE COURT: So --

19 MR. TAYLOR: If I can refer to it.

20 THE COURT: Yes. Go ahead and refer and ask him. You
21 can certainly do that.

22 MR. TAYLOR: That would be fine.

23 BY MR. TAYLOR:

24 Q Mr. Edwards, looking at paragraph 8.

25 A Eight. Of my declaration.

1 Q Of your declaration, Exhibit 200?

2 A Uh-huh.

3 Q You stated on in a date that if you had any suspicion
4 that the trial judge was going to order the amended petition,
5 you would not have postponed your investigation; is that
6 correct?

7 A Correct.

8 Q In other words, it wasn't a priority type thing to
9 where it just, if you didn't get to it, no big deal, you
10 planned on doing an investigation?

11 A Eventually, yeah.

12 Q Okay. And your next sentence says if you had to do it
13 over today, you would have done things differently then because
14 you wanted that investigation?

15 MR. MCCARTHY: Your Honor, I will object to questions
16 that call for hindsight.

17 THE COURT: Sustained.

18 THE WITNESS: And that's not what I said. You
19 originally prepared this declaration where it said if I were
20 handling this case today, but that's crossed out.

21 BY MR. TAYLOR:

22 Q If you made the decision to postpone your -- if you
23 had made a decision to postpone your investigation, you would
24 have insisted that the trial judge give you the time to
25 complete the investigation. Doesn't that contradict your

1 previous testimony?

2 A If I had made that -- I would have postponed -- yeah.
3 I wanted -- I guess what this is saying I wanted to do a
4 factual investigation, but I did not get to it. And --

5 Q Actually what I --

6 A And I didn't actually move to ask for more time once
7 the order to file the amended petition. We just didn't get to
8 it, this factual investigation that you've done. I mean, I
9 commend you for it. And this will probably go on forever. You
10 know, somebody will probably say that Tonga wasn't enough, you
11 know. There should have been somebody else. I don't know.

12 Q Nor Utah or California?

13 A California.

14 Q Nevada?

15 A Right.

16 MR. TAYLOR: Can I approach the clerk, Your Honor?

17 THE COURT: Yes.

18 BY MR. TAYLOR:

19 Q You did seek assistance from several places including
20 our office, The Capital Research Center, Michael Lawrence; is
21 that correct?

22 THE COURT CLERK: Exhibit 224 marked.

23 (Exhibit 224 marked for identification.)

24 THE WITNESS: Maybe you could refresh me on Michael
25 Lawrence.

1 BY MR. TAYLOR:

2 Q With the Capital Center in California.

3 A Okay. That kind of rings a bell. I don't recall what
4 that was about.

5 MR. McCARTHY: Thank you.

6 MR. TAYLOR: You bet.

7 BY MR. TAYLOR:

8 Q You don't deny talking to a number of folks?

9 A No. Yeah, we reached out. Let's see.

10 Q And, in fact, that's where Scharlette Holdman's name
11 and the other investigator, Ms. Schaye, the call came from
12 these experts you were talking to, correct?

13 MR. McCARTHY: You gave me two.

14 THE WITNESS: Yeah, I believe Mr. Pescetta provided us
15 those names. That's my recollection, but . . .

16 Q In fact, in this letter from Mr. Pescetta to you where
17 you're talking to him, he's talking about the need to have
18 investigation, wasn't he?

19 A He says, "I don't know how much investigation was
20 conducted to obtain the details of his life from native
21 sources, but this is sort of mitigation investigation that
22 Ms. Holdman does."

23 Q And before that, he's given you an article about how
24 to do a successful penalty phase investigation as well?

25 A Yes, he's providing one.

1 Q So these experts are telling you you need to
2 investigate, weren't they?

3 A They were suggesting things.

4 Q Including an investigation?

5 A He says, "I don't know how much investigation was
6 conducted, but it worked in another case."

7 Q You didn't have -- you believe you didn't have
8 unlimited resources in this case?

9 A Yes, I -- no case has unlimited resources.

10 Q But you didn't seek resources, did you?

11 A No, not on -- no not -- no.

12 Q So there was nothing to lead you to believe that this
13 judge would have denied you the services of an investigator?

14 A Not the service of an investigator I don't think.

15 Q Would have denied an investigation of witnesses who
16 lived in Washoe County?

17 A Probably not.

18 Q Or Salt Lake City, Utah?

19 A I don't know. Maybe.

20 Q California?

21 A Probably, okay. Depending on where.

22 Q Especially if the Defendant had grown up at least part
23 of the time in California?

24 A Down in San Diego as I recall.

25 Q I think he grew up in San Bruno or something like

1 that.

2 A Oh, is that right?

3 Q Yeah.

4 A I remember some time he spent in southern California
5 in the movie business.

6 Q If you would, look at Exhibits 163 and 164,
7 Mr. Edwards.

8 MR. TAYLOR: Judge, while he's doing that, we would
9 offer 224, I believe the latest exhibit.

10 THE COURT: Okay.

11 MR. McCARTHY: The letter, yeah, I have no objection
12 to that.

13 THE COURT: Exhibit 224 is admitted.

14 (Exhibit 224 admitted into evidence.)

15 THE WITNESS: Okay. What I have as 163, the
16 confidential report from Benjamin Scroggins or to Mr. Benjamin
17 Scroggins.

18 BY MR TAYLOR:

19 Q From Jonathan Mack, neuropsychologist?

20 A Yes. Jonathan Mack.

21 Q As you look through that and we went through
22 yesterday, how many records Dr. Mack reviewed, but let's turn
23 towards, say, page 66 through page 70.

24 A You're talking 66 of exhibit --

25 Q Of his report.

1 A Oh, okay.

2 Q I think it's at the top left, I believe, that the page
3 numbers --

4 A Okay. 66, yes.

5 Q And is that --

6 A The sorting test.

7 Q Where Dr. Mack is giving his impressions?

8 A General measures of neuropsychological functioning.

9 Q Formulations and impressions. And 66 through 70
10 details his findings?

11 A Okay.

12 MR. MCCARTHY: Your Honor, I remind the Court this was
13 not offered for the truth of the matter asserted.

14 THE COURT: Right.

15 MR. TAYLOR: I understand, Your Honor.

16 MR. MCCARTHY: So if it's offered now to prove he in
17 fact did these tests or reached these conclusions, that's
18 inappropriate.

19 THE COURT: Okay.

20 MR. TAYLOR: Judge, it's not been offered or we'd go
21 on it.

22 THE COURT: Okay.

23 BY MR. TAYLOR:

24 Q Have you had an opportunity look at that, Mr. Edwards?

25 A I've scanned it. I mean, it's substantial documents.

1 Is there something in particular you would like me to direct my
2 attention to?

3 Q As you were focussing on your Rohan litigation, is
4 that the type of evidence you would have liked to have had?

5 A If it comports with what Dr. Bitker provided. Are you
6 saying this is better than what we came up with.

7 Q I'm asking you if it's evidence you would have liked
8 to have had.

9 A I suppose.

10 Q And would you agree with me that you expert, whether I
11 consulted Jonathan Mack or you consulted Dr. Bitker, your
12 expert is better prepared if you're able to give them more
13 information to base their opinion on. Is that a fair
14 statement?

15 A Sometimes I suppose that could be true.

16 Q And looking back at Dr. Mack's report, he was provided
17 substantial information to come to his conclusions, was he not?

18 A I guess, if you say so.

19 Q And look at Dr. 'Alo Fokiaki's report at 164. I
20 believe it's under Section 1 and 2. He's got an exhibit -- I
21 mean an index at the first of it?

22 A Right.

23 THE COURT: I'm going to ask you a quick question.
24 Did you bring this doctor from New Zealand to the Nevada State
25 Prison?

1 MR. TAYLOR: We sure did. And I've got a -- I'd love
2 an opportunity to explain to the judge why we did that.

3 THE COURT: No, no. You don't have to explain it to
4 me. I'm not paying your bills.

5 MR. TAYLOR: No, no. It was an extremely unusual
6 request.

7 THE COURT: Yes.

8 MR. TAYLOR: Which required quite a bit different
9 justification than we normally have to provide, but Dr. --
10 because of our unfamiliarity with the Tongan culture.

11 THE COURT: That's okay. I didn't want you to have to
12 go into too much detail. It was a quick question because the
13 issue here --

14 MR. TAYLOR: The expense.

15 THE COURT: -- there's issues with regard to the norms
16 of practice has something to do with ineffectiveness.

17 MR. TAYLOR: I agree. I haven't suggested that
18 counsel was required to go to that extreme.

19 THE COURT: Okay. Go ahead.

20 BY MR. TAYLOR:

21 Q You would agree with me that Dr. 'Alo Foliaki was
22 provided a great deal of information on which to provide his
23 opinion.

24 A His report.

25 MR. MCCARTHY: Your Honor, the question assumes the

1 truth of the report. And while I don't dispute it, I have no
2 reason to dispute it because I've never met the author of the
3 report, it's not been admitted for that purpose.

4 MR. TAYLOR: We said --

5 THE COURT: It isn't being admitted for that purpose,
6 plus I'm having a great deal of difficulty when you ask the
7 question and the witness says, "Well, if you tell me that."
8 You might as well be testifying, Mr. Taylor.

9 MR. TAYLOR: Obviously I'm not trying to testify.

10 THE COURT: I know you're not. So let's clean up and
11 get right to what you want me to look at.

12 MR. TAYLOR: We admitted it yesterday. We are
13 assuming the truth for the purposes of this hearing only.

14 MR. MCCARTHY: The question to this witness doesn't
15 assume anything. It isn't based on the assumption. It's,
16 "Didn't this doctor have this material?" Well, if you want to
17 ask that, ask the doctor. This witness, all he can do is read
18 the report which has not been admitted for the truth of the
19 matter.

20 MR. TAYLOR: I'll ask it a different way.

21 THE COURT: Okay.

22 BY MR. TAYLOR:

23 Q Mr. Edwards, wouldn't you agree with me that an
24 expert's opinion, whatever expert you hire is generally better
25 if you provide them more information to consider?

1 A I don't know if quantity is quality. I would like
2 them to focus on what I'm asking them to be expert in.

3 Q Okay. So as I understand what you're saying is you
4 can bring a mental health expert to see any client for a period
5 of 30 minutes and it doesn't make any difference to you or to
6 that expert's opinion how much information they have?

7 A No, I didn't say that. You said the more information
8 you provide, the better. Kind of like -- you know limitless
9 mitigation evidence is -- improves your situation. I believe
10 that I provided Dr. Bitker with enough information to focus on
11 the issue that --

12 Q What did you provide Dr. Bitker?

13 A Well, I reviewed the case with him.

14 Q Okay.

15 A I informed him factual circumstances, any mental
16 health stuff I had.

17 Q And what did you have?

18 A I don't recall, but I had stuff. And then he did his
19 review of the medical records that we had. All right. And he
20 interviewed Mr. Vanisi.

21 Q Would it be important to you to know if Mr. Vanisi had
22 been exhibiting signs of a mental illness in the months and
23 weeks prior to the offense?

24 A It might have helped. I don't know.

25 Q Would it have helped your expert?

1 A Could have. I don't know.

2 Q Would it have been important to you to know if your
3 client had certain cultural prejudices against mental --
4 treatment for mental illness?

5 A I don't know. I don't know the answer to that.

6 Q Okay. Would it have helped you to know that your
7 client had a number of traumatic events in his life and
8 exhibited bizarre behavior surrounding that event?

9 A I think we knew a little bit about his bizarre
10 behavior.

11 Q But would it help?

12 A To know more about it?

13 Q Yeah.

14 A The more bizarre, the more bizarre, I guess.

15 Q Would it help your expert in evaluating his mental
16 health?

17 A I thought my expert -- I don't remember Dr. Bitker
18 complaining to me he needed more information to make an opinion
19 in this case.

20 Q I understand. But would it generally? We are not
21 talking about Dr. Bitker. Generally would it help your expert?

22 A Dr. Bitker is my expert.

23 Q In any case, I'm talking generally. When you hire an
24 expert, a mental health expert, would you want to give him
25 information about your client?

1 A I do give them information about my client.

2 Q And if there was information surrounding your client's
3 -- a major even in your client's life and bizarre behavior by
4 your client at different times in your client's life, is that
5 information you think your expert should know?

6 A Perhaps.

7 Q At least you think you ought to know it so you can
8 make some informed decision about whether to give it to your
9 expert?

10 A When I ask for a competency evaluation in the course
11 of representation of my clients, okay, I provide the people at
12 Lakes Crossing with some factual understanding of their
13 circumstances in terms of police reports, and sometimes if I
14 have mental health history, I'll include that. But I don't --
15 I don't give them my box of discovery.

16 Q Okay.

17 A And I don't send an investigator out beforehand. So,
18 if I receive information from the expert, the one who is making
19 the evaluation that they cannot do so or their opinion is
20 undermined or unreliable because they don't have certain
21 information, I would undertake that. But as a matter of
22 course, just to go to New Zealand because Mr. Vanisi, you know,
23 is from Tonga, you know this -- this really didn't cross my
24 mind.

25 Q And I don't want to sit here and fuss with you about

1 this.

2 So if Dr. Bitker had asked for something else, you
3 would have gone out and found it?

4 A Yes. If he had asked me, "You know what, I just don't
5 understand this Tongan whatever," well let's see what we can do
6 about that. If you can't render an opinion regarding this
7 issue because of some lack of factual basis, fine. Now, you
8 know, flip side of that is -- you know, if you want to
9 discredit the opinion, you're going to come up with something
10 that he hadn't reviewed. It's just a game.

11 Q I'm sorry?

12 A No, it's just the nature of the beast, in my opinion.

13 Q Another one of the statements you made to Mr. McCarthy
14 is you were well aware of the kind of notorious history of this
15 case, in your representation of Mr. Vanisi; fair statement?

16 A I remember when the crime took place. I was shocked
17 by it. The whole community was. This -- you know, it's not a
18 big town. This took place at our university, you know. My
19 child went to that university. You know, this is just
20 horrific. You and I --

21 Q I'm sorry?

22 A -- sat up there. My fiance plays at Nightingale Hall,
23 and every time I walk to her performance there, there is
24 Mr. Sullivan's plaque on the wall.

25 Q There's a memorial at the University of Nevada,

1 correct?

2 A Yeah, yes.

3 Q And in fact when we met, you said for us to meet there
4 across the street from the memorial?

5 A Yeah. It's also across the street from the crime
6 scene, which I don't think you had been to before that.

7 Q And the reality is, this was a hopeless case to you?

8 A Initially, there -- when I say hopeless, I mean you do
9 get a feeling of hopelessness, when you know what had occurred.
10 When -- you know, I monitored what took place in the courtroom,
11 I've reviewed the record. That just made it all the more
12 shocking. The first contact with the evidence in the case, the
13 police reports, the photographs for goodness sakes. This was a
14 horrendous circumstance. So my natural reaction, I don't know
15 whether it's self-preservation or whatever, "Hey, let's look at
16 the legal issues here and maybe not so much on the facts of
17 what occurred." I don't think this was a case where I was
18 going to get a DNA expert to come forward and say, couldn't
19 have been Mr. Vanisi.

20 Q There was -- you know, I mean, it was a tough case,
21 right?

22 A It was. Factually the evidence was very, very strong.

23 Q Okay.

24 A And it was made even more compelling by the fact that
25 Mr. Vanisi hadn't been able to mount, really, any kind of

1 factual defense during the guilt phase due -- due -- due to the
2 issues with his attorneys.

3 Q And I'm sure it was made even more difficult by your
4 inability to communicate with Mr. Vanisi?

5 A Mr. Vanisi, I mean, it wasn't -- there were times when
6 Mr. Vanisi was somewhere else when we met with him. There were
7 times, depending on his medical regimen, medical dosage,
8 whatever. I can remember standing here at one time at one
9 hearing and Mr. Vanisi basically just leaning over on me
10 because he had been medicated recently. So there wasn't -- I
11 mean, we attempted interaction with Mr. Vanisi, but there --
12 you know, sometimes -- you know, you can only do so much.

13 Q It's fair to say it was difficult?

14 A Yes.

15 Q And so it's fair to say that all these matters
16 probably were behind statements you made about sometimes this
17 -- it was just a hopeless case?

18 A Yeah, factually there was some hopelessness to it.

19 Q All right.

20 A You know, I mean, I don't think if we had even been
21 successful that in a retrial of this case you would get a
22 particularly different result.

23 THE COURT: We are going to take a short recess now.
24 We will be in recess about 10 or 15 minutes.

25 Court is in recess.

1 (A break was taken.)

2 THE COURT: Thank you. Please be seated.

3 I know it's cold in here. I hope you all walked
4 around and warmed up. Are you ready to proceed?

5 MR. TAYLOR: Yes, Your Honor.

6 THE COURT: Go ahead.

7 BY MR. TAYLOR:

8 Q Mr. Edwards, I'm going to try to go ahead and wrap
9 this up just by asking you just a few statements.

10 We talked about before, you primarily, or at least one
11 of your primary concerns was Mr. Vanisi's competency; is that a
12 fair statement?

13 A That's correct.

14 Q Do you agree that to effectively represent Mr. Vanisi,
15 it was necessary to conduct a factual investigation?

16 A Yes. Part of it, yeah.

17 Q Which part do you disagree with?

18 A No. I said part of the effective representation would
19 be to conduct a --

20 Q And did you plan to investigate all of this, you said
21 trial counsel maybe didn't even investigate themselves?

22 A That's hard to say. I mean -- no, I can't say that,
23 for sure. If I was aware of an issue in that I thought merited
24 investigation, I planned to investigate it.

25 Q On November the 7th, did you state, "Our plan was to

1 investigate all of the issues that trial counsel were
2 ineffective for failing to pursue"?

3 A Is this my declaration that you --

4 Q Did you make that statement on November the 7th?

5 A If that's what it says.

6 Q Your declaration?

7 A Yeah, I signed that declaration.

8 Q Would it have been useful for you to travel to Tonga
9 to interview government officials, like history, witnesses,
10 cultural people?

11 MR. MCCARTHY: Calls for the witness's speculation of
12 what he would have discovered.

13 THE COURT: Actually, it calls for the witness to give
14 an opinion about what would be useful to him, so I'll sustain
15 in that regard as speculative.

16 BY MR. TAYLOR:

17 Q Did you request resources from the Court to travel to
18 Tonga to make an investigation regarding Mr. Vanisi's life
19 history?

20 A No, I did not.

21 Q Did you believe that would simply be a wasted effort?

22 A Yeah, I suppose it would have. It certainly -- it was
23 something I talked about, but didn't think it would be fruitful
24 at all, so I didn't pursue it.

25 THE COURT: What part was not fruitful? You didn't

1 think you would get the permission to go or you didn't think
2 you would find anything fruitful once you went?

3 THE WITNESS: I didn't think I pursued the request
4 because I didn't have a basis for it.

5 THE COURT: Okay.

6 BY MR. TAYLOR:

7 Q Along that lines, on November the 7th did you not
8 state that, "These types of undertakings are rarely funded by
9 the Court, and I did not ask for this funding because I knew it
10 would have been a wasted effort"?

11 A Yes, I said that.

12 Q Did you plan to conduct a thorough investigation of
13 this -- Mr. Vanisi's life?

14 A I planned to conduct an investigation of it. Thorough
15 is a term.

16 Q After talking with me on November the 7th, didn't you
17 tell me you believed it would have been useful for you to
18 travel to Tonga in order to seek this kind of information?

19 A Yeah, I did, after you told me what you found.

20 Q Okay.

21 A I thought it would have been something to put in.

22 Q Did you plan to provide your experts an in-depth
23 social history including medical, employment, and educational
24 records?

25 A Mr. -- Dr. Bitker are you referring to?

1 Q Well, I mean, did you tell me on November 7th that, "I
2 plan to provide my experts this information"?

3 A I don't recall that.

4 Q Okay. Would you look at Exhibit 200 and see if you
5 made that statement. Paragraph five.

6 A Yeah, I signed this.

7 Q And, in fact, you were aware that there were witnesses
8 related to this case in California, Utah, and Reno, were you
9 not?

10 A I think they were disclosed in the record that we had
11 been provided.

12 Q Okay. So you were aware?

13 A Of some witnesses, I suppose.

14 Q And you didn't investigate those witnesses or
15 interview those witnesses, correct?

16 A No, I didn't.

17 Q And you didn't do this investigation of these
18 witnesses or your plans to investigate these witnesses didn't
19 come to fruition because of the Court's scheduling order; is
20 that correct?

21 A Right, right.

22 Q Okay. You didn't on November the --

23 A That's not the only reason, but, yes, that's true.

24 Q Is it fair to say that on November the 7th, you
25 attributed to the scheduling order and not to some list of

1 priorities?

2 A Well, I mentioned that to you many times during this
3 conversation.

4 Q Okay. But as far as what you told me and what you
5 signed, that's what you said, right?

6 A That's what I signed.

7 Q Okay. You never conducted a complete investigation of
8 Mr. Vanisi's case; is that correct?

9 MR. MCCARTHY: It's been asked and answered over the
10 last several --

11 THE COURT: Sustained.

12 BY MR. TAYLOR:

13 Q Is it true that it was only the cost of this
14 investigation and the refusal of the Court to give you
15 additional time to investigate that prevented you from
16 completing the investigation in this case?

17 A Is that what I signed?

18 Q Paragraph 6.

19 A Well, I did sign this, but I don't know if I would
20 agree with it right now.

21 MR. TAYLOR: Judge, we would offer Exhibit 200 at this
22 point.

23 MR. MCCARTHY: It's at least partially inconsistent
24 with partial parts of the testimony.

25 THE COURT: Right.

1 MR. McCARTHY: So, okay.

2 THE COURT: It's admitted.

3 BY MR. TAYLOR:

4 Q You were given the opportunity, in fact, Mr. Edwards,
5 you took the opportunity to make any changes you wanted to this
6 declaration, is that true?

7 A Well, I could give you some description how that
8 occurred. I mean -- this is your handwriting.

9 Q It is.

10 A And you're suggesting these changes when I disagreed
11 with things that I read there, you suggested alternative
12 language.

13 Q Something that would be more accurate to your memory?

14 A Yes.

15 MR. TAYLOR: We'll pass, Your Honor.

16 THE COURT: Mr. McCarthy?

17
18 RECROSS-EXAMINATION

19 BY MR. McCARTHY:

20 Q The paragraph 6 of Exhibit 200 --

21 A Yes, sir.

22 Q -- begins with a comment of your focus.

23 A Yes.

24 Q When you were focused on competency, you were aware
25 that that wasn't going to be the end of the litigation?

1 A True.

2 MR. McCARTHY: Okay. That's all.

3 THE COURT: Anything further? May this witness be
4 excused?

5 MR. McCARTHY: It's okay with me.

6 MR. TAYLOR: I have nothing, Your Honor.

7 Yes, you may.

8 THE COURT: Thank you, Mr. Edwards. You may step
9 down.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: You can leave that. I think you're the
12 last one. Maybe not. I don't know.

13 MR. TAYLOR: Thank you, sir.

14 THE COURT: Counsel?

15 MR. TAYLOR: I was going to -- I don't know what the
16 Court plans as far as scheduling or desires at this point. I
17 was going to suggest to the Court that rather than argue to
18 you, perhaps we could make arguments in writing.

19 THE COURT: Is that -- I don't know if that's really
20 necessary.

21 MR. TAYLOR: Well --

22 THE COURT: Mr. McCarthy?

23 MR. McCARTHY: I'm guessing that means that the
24 Petitioner has rested at this point?

25 THE COURT: That's what I'm kind of hearing.

1 MR. TAYLOR: Well, one of the reasons I did this, I
2 was under the impression from the Court's previous ruling when
3 I wasn't here that those were the two witnesses you wanted to
4 hear from, and we had those. Now obviously --

5 THE COURT: Well, what we did was we had a hearing on
6 a Motion to Dismiss and the issue before the Court that I
7 allowed you to present evidence on was whether or not there was
8 a good cause for the delay in filing this.

9 MR. TAYLOR: Yes, ma'am.

10 THE COURT: And so that's what we -- you choose. I
11 never told anyone what evidence they wanted to put on. The
12 Court did not make a comment in that regard specifically except
13 for it went to the effectiveness of counsel was an issue.

14 MR. TAYLOR: I misspoke. I apologize, Your Honor.

15 THE COURT: Oh, that's okay.

16 MR. McCARTHY: I would be prepared to argue today,
17 orally, whether we should go forward, and that would be my
18 preference. And by the way, the State has no more evidence to
19 present at this time.

20 THE COURT: So the evidence is closed at this time
21 from both the Petitioner and the State.

22 I think oral argument would be fine. If, after I
23 heard your oral argument, I need some briefing, I can certainly
24 give you that opportunity. I don't know how long you would
25 take for oral argument. Is that the problem?

1 MR. TAYLOR: Well, Your Honor, I mean, if I can
2 respond in two ways. First off is obviously you were looking
3 for cause or you were looking specifically at the cause for the
4 late filing or the time of the filing of the current successor
5 petition. And under Crump, if I'm on the same page with the
6 Court, we have an obligation to show the prejudice as well as
7 the failure to comply with the standard as we discussed. So we
8 would like to have the opportunity, obviously, to show you the
9 prejudice in addition to the declaration that we have. We
10 would like to present these witnesses to you. Because we
11 believe that the evidence that's since been developed
12 demonstrates prejudice to the Court. I'm happy to argue that,
13 but inasmuch as I was unable to go through the specific
14 instance in every declaration which would have been tedious for
15 everybody involved, I'm sure, that's one of the reasons I
16 suggested to you that maybe we should do it in writing, because
17 I can do it in writing and conserve time in that way. So
18 that's where I'm at. I would like to present evidence on the
19 merits of the harm, the prejudice in this case. I'd like -- I
20 believe we've gotten passed the Crump bar, but I also would
21 like --

22 THE COURT: Why don't we -- it's Mr. McCarthy's
23 motion. So it was his Motion to Dismiss, but I allowed you to
24 put evidence on. So I'll let him argue, and then you can
25 respond, and then we'll decide where to go from there. S this

1 is really a continued Motion to Dismiss.

2 MR. McCARTHY: I suppose it is. I suppose it's
3 Haloman like. So I'll go ahead.

4 You know, ordinarily in these types of situations on
5 making this motion, I started out with a standard. Rather
6 difficult in this case because I'm not sure what it is. It's
7 arguable. But we know since 1997, the Crump decision, Nevada
8 law allowed a prisoner to escape or overcome procedural bars if
9 the procedural bar was caused by the ineffective assistance of
10 postconviction counsel. Since then, we haven't really explored
11 that, what it means.

12 Now, I have always assumed it was fairly a
13 Strickland-type standard as modified for postconviction
14 counsel. Did counsel act reasonably contrary to prevailing
15 professional norms and the like? And that probably is the
16 standard.

17 And then we find ourselves over the last year or so
18 with a couple of U.S. Supreme Court decisions about -- on the
19 same subject. The U.S. Supreme Court has recognized an
20 equitable tolling, if you will, on the same grounds of
21 ineffective assistance of postconviction counsel. They didn't
22 discuss the standard that much, but there may be some
23 difference. In those cases, and I'm talking about Martinez
24 versus Ryan and there was -- excuse me. Maples versus Thomas.
25 And the more recent one, the Texas one, is Trevino versus

1 Thaylor, that's 133 Supreme Court 1991 decided this year. And
2 in each of those, it seems like the Court seems to say the big
3 question here is whether you get -- the Petitioner managed to
4 get some aspect of trial counsel's performance reviewed by
5 somebody. So in Maples, I think it was, the Petitioner was
6 completely abandoned by his lawyers. His lawyers left the law
7 firm and never notified the Court, and they did absolutely
8 nothing on the prisoner's behalf. And then likewise in
9 Martinez versus Ryan, it is because of the way the lawyers --
10 postconviction lawyers kind of screwed up, there was no review
11 at all of any aspect of counsel's performance. So, perhaps, it
12 is a standard akin to that, that there has to be some sort of
13 review if the lawyer screwed up. So there's no review at all,
14 then that will overcome the procedural bars.

15 On the other hand, the other end of the scale of
16 potential standards, we have a basic Strickland standard that
17 is -- you know, an objective standard of reasonableness
18 measured by reasonable prevailing professional norms. And in
19 fact, I don't know where we will come down on that debate. The
20 federal courts, of course, aren't binding, the extent to which
21 Nevada laws allows collateral review is determined by state
22 law. I would note I'm arguing a case next week in Carson City
23 or next month that's going to have some impact here, but that
24 doesn't help all that much. We haven't gotten a ruling and I
25 don't expect one in the immediate future.

1 So somewhere in that range, between Strickland and the
2 total abandonment, is an appropriate standard for measuring the
3 effectiveness of postconviction counsel.

4 I suggest to you, Your Honor, that you needn't decide
5 where in that range we will find the appropriate standard for
6 measuring the standard of postconviction counsel, because I
7 suggest that it hasn't been shown that counsel fell below any
8 standard at all. There is no doubt that we now have reason to
9 believe there is additional mitigating evidence. And you know
10 what, I think one of these witnesses, I'm not sure which one,
11 maybe Mr. Edwards suggested when this is all done, there's
12 still going to be more because it is true that no jury has ever
13 seen all potential mitigating evidence, because the way the
14 term is defined, no jury can see all mitigating evidence.
15 You're never going to see it either. When we are done, there
16 will be more.

17 So, the question is, is there some objective standard
18 of reasonableness measured by a prevailing professional norms
19 that prohibited the decision to focus on the legal issues with
20 the hopes of looking into the secondary issues, what these
21 lawyers consider to be secondary, when the time arose? I don't
22 know of any such standard that prohibits that. You've seen it.
23 You've been sitting here as a trial judge for longer than I've
24 been doing my job and you've seen it. You've seen somebody
25 that focused their trial strategy on the assumption that the

1 motion to suppress is going to be denied, or a motion it going
2 to be granted and it's denied, and they have to soldier on the
3 best they can. It doesn't mean they're ineffective. It means
4 he had allocated their resources, and in retrospect, they wish
5 they allocated them differently.

6 Well, among the resources allocated is time. We have
7 to do that. Everyone has to allocate their resources.
8 Everyone has to allocate their time to decide how to best
9 represent the client. And I think Mr. Edwards said it pretty
10 well. This case is not going to rise and fall with additional
11 mitigating evidence. You've got a defendant that killed a cop.
12 He hit him in the face with a hatchet and they had to dig his
13 teeth out of his throat. You can have buckets of mitigating
14 evidence, and nothing is going to overcome that. It has to be
15 done. You have to go out and find the mitigating evidence
16 anyway. But the focus, the primary focus is what's going to
17 help, at least what has a chance of helping, a better chance of
18 helping. That's what we do. We try to marshal our resources
19 to best help the client. You can't have everything. And I
20 think I once mentioned to -- I quoted to the Nevada Supreme
21 Court the eminent British philosopher who says, "You can't
22 always get what you want." It's true. And when you can't, you
23 take the best of what you've got. And that's what they did.

24 Now, this supplemental petition, I -- actually I don't
25 know the number offhand but 19, 20 claims, something like that.

1 A significant number. Mostly legal. And that's where these
2 lawyers focused their attention. Because that's where they
3 thought they had the best shot of obtaining relief for their
4 client. They may ultimately have been wrong. I don't think
5 so. I still think they are right. They had the best shot by
6 focusing their attention on these legal issues. There is a
7 McConnel-type issue. There's a -- the incompetency, the
8 present incompetency. I mean, geeze, as a practical matter,
9 they are going to win the case if they win that. They are
10 going to avoid the death penalty perhaps forever. So they
11 focus there attention on it. It turns out they said, "If we
12 had unlimited resources, we also would have done this
13 investigation." I have no doubt that's true. I wouldn't have
14 disputed that. But when you have limited time, limited
15 resources because the Court says lawfully with no abuse of
16 discretion, your 30 days to supplement passed some years ago
17 and now your supplement is due, so file it, that's what you do,
18 you file the petition as the Court has ordered.

19 I would note, Your Honor, that the law does not
20 require that postconviction counsel have unlimited time and
21 resources to prepare a supplement. The statute allows for
22 30 days. Counsel is appointed, and they are supposed to file
23 that supplement within 30 days. Now, I'm not denying that we
24 routinely stipulate for additional time, but not unlimited
25 time. So the notion that the -- some law required more, that

1 required that the Court allow more time, more resources is
2 incorrect for a couple of reasons. One of them is your
3 judgment has been reviewed and affirmed. The Court -- the
4 Supreme Court found no error in denying the first petition.

5 Now there's no specific issue about the time allowed
6 for the supplement, but the fact of the matter is, we now know
7 that your judgment has been reviewed and affirmed.

8 And finally, one additional thing I want to mention,
9 you already found that Vanisi had the ability, if he wished, to
10 communicate with and assist his lawyers and that he was
11 refusing to do so. That finding has not been attacked. And
12 you may recall over and over again, we've been saying that
13 these new -- this new evidence is not admitted for the truth.
14 Even so, there is nothing calling that finding into question.

15 So I suggest to you the findings of this Court are
16 one, res judicata, and two, they imply -- they don't imply,
17 they establish that the inability to talk to Siaosi Vanisi to
18 gather more information from that source was due to his willful
19 misconduct, his refusal to communicate with his lawyer. That
20 appears to be true simply because you had previously ruled that
21 is true.

22 So, I guess to summarize, regardless of what standard
23 we apply when measuring the performance of postconviction
24 counsel as an excuse to overcome the procedural bars, it has
25 not been made out here. It has not been shown that counsel was

1 ineffective in their allocation of resources including their
2 allocation of time, that time was short, but not unlawfully so.
3 It's not an abuse of discretion because they are only entitled
4 to 30 days in the first place and they had years to draft the
5 supplement. In fact, we now know from having seen that
6 supplement and having heard from Mr. Edwards they took way more
7 than the 30 days, and in fact they were working on it
8 throughout the period. They would have done more. That's not
9 the standard. In fact, I would be hard pressed to ever find a
10 lawyer who, having tried a case, would stand up and say there
11 was nothing more that anyone could do. That person doesn't
12 exist I've learned. That's not true. I wouldn't -- no
13 realistic lawyer, no reasonable lawyer would ever say there was
14 nothing more that could be done. And that's not the standard.
15 We needn't just show there was something more that could be
16 done. We need to show at least that these lawyers, the
17 decision of allocation of resources fell below an objective
18 standard of reasonableness as measured by prevailing
19 professional lawyers.

20 One thing the Court ought to consider when considering
21 those prevailing professional norms, this was the first Rohan
22 motion that had been filed in this region ever. There is no
23 guidance. No one knew what's going to happen after. I sure
24 didn't. I suspect the Court didn't know either. So I don't
25 think there is a prevailing professional norm that required

1 counsel to have a Plan B. If there is such a norm, I haven't
2 heard evidence of it.

3 So I would ask that you rule now that it has not been
4 shown that these two lawyers fell below the objective standard
5 of reasonableness and that is the good cause to excuse the
6 untimely abuse of an excessive petition, and so the petition
7 ought to be dismissed as being untimely abusive and excessive.

8 THE COURT: Thank you.

9 Counsel?

10 MS. HURST: Good afternoon, Your Honor. Your Honor,
11 the standard that is applicable to what you're ruling upon
12 today and we are addressing today is found in the line of cases
13 involving Wiggins, Rompilla, Williams V Taylor, the ABA
14 standards and the reasonable professional norms in connection
15 with whether postconviction counsel is required to conduct an
16 extra record investigation as part of their duties in
17 representing a defendant in postconviction proceedings. The
18 case law is very clear. Counsel is required to conduct an
19 extra record investigation. That's the point of habeas
20 proceedings. So whether their plan is to start it the day they
21 are appointed or after ruling on a particular motion, that has
22 to be done in order for counsel to be effective. And the
23 reason is because if they do not conduct an extra record
24 investigation, then they do not have enough information in
25 front of them to make a strategic decision about the proper way

1 to proceed in representing a postconviction defendant in terms
2 of what to put into a petition. They cannot decide we've seen
3 enough -- we've heard enough information from one source, so we
4 are not going to pursue this line of mitigation any further.
5 They can't make that determination if they've done no
6 investigation into that particular line of investigation. And
7 in this context, we are talking specifically about Mr. Vanisi's
8 mental health and his history of mental health issues, his
9 history of -- his developmental history, his childhood history
10 that might have contributed to his mental health issues. His
11 behavior leading up to the offense and for the purposes of the
12 Rohan motion, his behavior in between the offense and the time
13 that that postconviction counsel began their interaction with
14 him. So in order for counsel to determine that, interviewing
15 family members would be unhelpful to their petition, they have
16 to conduct some interviews, that of family members, that inform
17 them, this line of proceeding is not going to be fruitful.
18 They did not do that in this case. The only people who were
19 interviewed were prior trial counsel. And, of course, you
20 can't ascertain whether the interviews or the investigation
21 done by prior trial counsel was effective if you don't see what
22 else was available that trial counsel failed to do. And the
23 easiest way that they could have done that was simply to start
24 by talking to the witnesses that trial counsel initially called
25 on Mr. Vanisi's behalf to make sure that trial counsel actually

1 obtained all of the relevant information they could have
2 obtained to effectively represent Mr. Vanisi. They did not do
3 that. Had they done that, then they would have learned the
4 majority of the information that we have put before this Court
5 and attached to the petition in the form of declaration from
6 these same witnesses that were originally presented by trial
7 counsel, but who were not asked about various -- the various
8 topics that we determined through postconviction counsel would
9 have been important to include in a petition. So, for example,
10 the domestic abuse that Mr. Vanisi experienced. The ongoing --
11 the abandonment issues. The ongoing bizarre behaviors that
12 were reflected in high school and which when he became an adult
13 turned into full-blown psychosis. There was a multitude of
14 signs and signals that would have been relied upon by a mental
15 health professional to come to an accurate diagnosis of
16 Mr. Vanisi's condition that could have been provided by the
17 very family members that trial counsel interviewed; however,
18 trial counsel failed to ask these witnesses anything other than
19 was Mr. Vanisi a nonviolent person. Was -- good-guy questions
20 about Mr. Vanisi. And that's what they presented at trial.
21 Mr. Vanisi was a kind person who hadn't been violent prior to
22 this act who then behaved really strangely at a wedding. That
23 was the -- they presented multiple witnesses, all of whom
24 repeated that same theme. And in fact, there was an objection,
25 because it was so repetitive. Good guy, strange behavior at a

1 wedding. Instead of hiring someone who could speak the Tongan
2 language, a translator who would assist in finding out in-depth
3 information about Mr. Vanisi's strange and bizarre behavior and
4 enable them to state this, using their own language in an
5 effective way that would enable them to communicate the strange
6 instances of wearing wigs and multiple personality disorder --
7 multiple -- behaving in a -- behaving as different characters
8 when he's wearing different wigs. Just this immensely bizarre
9 cache of strange and psychologically disturbing behaviors.
10 Instead of being able to draw that out using an interpreter and
11 find out exactly what made this person who had not had a
12 history of this type of behavior completely fly off the
13 reservation, trial counsel focused their investigation on good
14 guy stuff and did not do -- ask the probing questions of their
15 witnesses that they should have asked and could have asked, and
16 postconviction counsel could have easily started there. But
17 not only did they not start there, they didn't start at all.
18 And that's the problem in this case. You can't not perform an
19 investigation and be considered an effective postconviction
20 attorney, you just can't, under the case law, and under the ABA
21 standard. They were deficient. And there's just -- the
22 testimony does not reflect anything other than that.

23 Your Honor told them to file a petition, to be
24 prepared to file a petition when you gave your order on the
25 Rohan motion. And so at that time, I guess that was in

1 November, and the order came out several months thereafter.
2 They didn't do it. They didn't conduct the investigation when
3 you gave them that order. For whatever reason, they didn't,
4 and they should have. They were deficient. We can't -- we --
5 we -- there's nothing else in this record other than the fact
6 that they were deficient for failing to investigate because
7 they failed to believe that they really had to file that
8 petition on the day that you gave them the order on the Rohan
9 motion. So that was just plain old deficiency.

10 So the question before you at this point is not
11 deficiency, I would argue. I would argue that's a closed door.
12 They were deficient. The question before you is, was their
13 deficiency prejudicial to Mr. Vanisi? And I would suggest the
14 only way that question can be answered is with a full-blown
15 evidentiary hearing, because contrary to the way the State has
16 phrased the left-out information that we have revealed through
17 our investigation to be present, it's not just mitigation
18 information. The information that we have uncovered goes
19 towards mitigation, but it also goes towards the Rohan motion.
20 Had that -- had his history -- his mental health history and
21 all of the details of his bizarre behavior prior to -- leading
22 up to the crime, the break -- when he actually had the
23 full-blown psychotic break in his early 20s which is consistent
24 with forms of schizophrenia, the fact that he had challenges
25 prior to his full-blown schizophrenic break all of that

1 information would have been extremely relevant to Dr. Bitker's
2 analysis, but also to Dr. Amazaga's analysis. And experts can
3 only render as good of an opinion as the information provided
4 to them. So there's one expert I like to quote, he said,
5 "Garbage in, garbage out." If you don't provide -- if you
6 don't conduct the investigation to give the proper background
7 of the defendant to the expert, then the expert doesn't have
8 the information they need to rely upon to ascertain the full
9 brunt of the person's psychosis if they have it, or whether or
10 not they have psychosis. They cannot render an effective
11 conclusion without the type of information that we uncovered,
12 which was not even attempted by initial postconviction counsel.
13 That's the problem here in terms of counsel's Finger claim.
14 Once again, they had a limited amount of information to work
15 with on the record, but had they conducted a full-blown
16 investigation, then they would have had a wealth of
17 declarations and evidence to rely upon in support of their
18 Finger claim. This is not just about mitigation. In order to
19 conduct -- in order to be effective, you have to conduct a
20 full-blown investigation. In order to ascertain what claims to
21 present in a petition and in order to present those -- or an
22 adequate investigation -- I said effective, I meant an adequate
23 investigation -- in order to ascertain what claims should be
24 presented in a petition. They conducted no investigation short
25 of interviewing trial counsel which is the equivalent of simply

1 making a record based -- or it's barely above relying on the
2 record, because trial counsel's interviewing trial counsel is
3 going to be in connection with the record. But in order to
4 ascertain what more trial counsel should have done, you can't
5 ask trial counsel that and let it in there. You have to
6 actually go out and look at the -- interview the witnesses
7 yourself in order to ascertain whether or not trial counsel had
8 not -- had -- did not fully interview their witnesses or
9 whether they should have gone past their witnesses they
10 initially interviewed.

11 If I could just have a moment?

12 THE COURT: Yes.

13 MS. HURST: In terms of the State's argument that you
14 already indicated or made a finding that Mr. Vanisi's conduct
15 was due to willfulness and not due to psychosis, well, in this
16 context, you would be -- it would be problematic for you to
17 rely on that finding in this context, because in this context,
18 for the purposes of a Motion to Dismiss, the question is, if
19 all of the information we presented, was -- is in fact true,
20 you have to look at it from that -- it -- if all of the
21 information we presented is in fact true, then Mr. Vanisi's
22 conduct was not willful, it was the result of psychosis. And
23 if you want, I would suggest, to reject that his conduct was
24 the result of psychosis in the context of these proceedings,
25 then we would need to have a full-blown evidentiary hearing

1 where you would have the opportunity to have our experts
2 testify and -- and inform you as to why your original finding
3 of willfulness is not one that was fully informed, and it
4 wasn't fully informed because initial postconviction counsel
5 failed to conduct the necessary -- failed to conduct an
6 adequate investigation, and, in fact, conducted almost no
7 investigation except for talking to trial counsel. We need a
8 hearing on whether your findings were accurate in light of this
9 new evidence.

10 And I'm not so sure about the State's analogy that if
11 trial counsel chooses to focus all their time on a motion to
12 suppress and fails to prepare for trial, they are going to be
13 found to be effective. If they completely failed to
14 investigate their case prior to trial, and that's what we have
15 here, counsel focused -- they started off looking at the record
16 and writing claims, record-based claims, spent a good number of
17 hours on that. Then determined that they were unable to
18 communicate with their client, filed the Rohan motion, worked
19 for about eight hours on the supplemental petition while the
20 Rohan motion was being litigated. And then spent the remaining
21 four days after you denied their motion performing the bulk of
22 the rest of the writing of the supplemental petition. But
23 during no period did they actually conduct the necessary
24 investigation that is considered to be reasonable under
25 professional norms and under the case law. Even a minimal

1 investigation by writ counsel would have demonstrated the need
2 to investigate further. And, I would suggest that in this
3 case, one could even say that if you want to call their talking
4 to trial counsel a minimum amount of investigation, it should
5 have demonstrated to them the need to investigate further.
6 And, in fact, I would suggest that Mr. Qualls indicated that
7 indeed it did show them that they needed to investigate
8 further, they indented to investigate further they had plans to
9 and they simply erred in failing to do so by not paying
10 attention to this Court's deadlines. And that's deficiency.
11 And if there is any question of prejudice, I would suggest that
12 we need a full-blown hearing on that.

13 Thank you, Your Honor.

14 THE COURT: Okay. Thank you.

15 Mr. McCarthy, and we'll go until you're finished
16 arguing, so . . .

17 MR. MCCARTHY: Oh, you know I'm not going to take up
18 that much time.

19 There's -- first, it hasn't been established there was
20 no investigation. There was investigation here. Not as much
21 as they would have liked. That's not the standard. Assuming
22 the Strickland standard, that does not require all possible
23 investigation. And I suggest to you there never has been a
24 case in which there was all possible investigation. These
25 lawyers expected to prevail and expected that they would

1 therefore have more time. They allocated their resources based
2 on that anticipation. They were ultimately wrong. That's not
3 the standard either. The question is whether there is some
4 prevailing professional norm that requires taking a different
5 approach. I'd suggest that the preparation for the Rohan
6 decision -- I mean the Rohan motion was reasonable in its
7 scope. We now have more evidence, potentially, and when we are
8 done with this, there's still going to be more. Now, I think
9 Mr. Edwards described it. He said, "How do you do that? And
10 how is it ordinarily done here?" You get your psychologist,
11 your psychiatrist, and give them free reign. You say, "What do
12 you need from me in order to render an opinion about his
13 current competency? What do you need from me?" And you give
14 them that. There's no indication that that's not what they
15 did. So the -- the suggestion that counsel is ineffective in
16 failing to gather additional evidence for the Rohan motion, I'm
17 not sure that explains away -- I'm not sure that would overcome
18 the procedural bar anyway, but I suggest it hasn't been shown.
19 There's no indication that Mr. Edwards was wrong when he said
20 that's the way it's done. You ask the psychologist, the
21 psychiatrist, "What do you need from me in order to render an
22 opinion about his present competency?" And then you ask him
23 for the opinion. That seems to be a reasonable approach in the
24 prevailing professional norm.

25 And the question of insanity, once again, Your Honor,

1 I would remind you, none of these reports have been admitted
2 for the truth of the matter asserted. There is no evidence of
3 insanity before this Court. If there were, it appears to be
4 that the opinion would be something like, "He killed out of a
5 fixed delusion that killing a cop would restore his life to
6 normalcy, that he would feel better if he killed a cop."

7 That's not a defense. That's an Indictment. That's a motive
8 that the prosecutor would use. It's not defense at all.

9 In Finger, the Court told us fixed delusions, that if
10 true, would justify the crime. That's a defense. A fixed
11 delusion that that's not a cop car, but a watermelon, that
12 would be a defense. But a fixed delusion that I will feel
13 better if I simply hit this man in the head with a hatchet,
14 that's not a defense, that's an Indictment.

15 There is no standard that requires success. We do the
16 best we can with what we have. That is the appropriate
17 standard, and I suggest that's what has been shown. These
18 lawyers, like the trial lawyers, they did the best they had
19 with what was available. Among the things that was available
20 was time. While they didn't have as much as they anticipated,
21 but I suggest nothing requires counsel to have a crystal ball
22 in order to be effective. They hoped to have more time to
23 investigate. Nothing more is required.

24 As to the suggestion that this Court should schedule
25 yet another hearing to show prejudice in an effort to overcome

1 the procedural bar, today is the hearing. I also don't think
2 it's necessary. You can, based solely on this evidence, you
3 can examine the testimony of Mr. Qualls and Mr. Edwards and
4 determine that their representation in the postconviction
5 action did not fall below some prevailing professional norm,
6 some objectionable standard of reasonableness. Ultimately they
7 did not investigate as much as they would have liked to. I
8 don't deny that. That's not the standard. When you apply an
9 appropriate standard, you will find, Your Honor, that it has
10 not been proved that these lawyers were unreasonable and
11 therefore there is nothing that overcomes the procedural bars.

12 THE COURT: Counsel, there is nothing like a case
13 involving the death penalty to extenuate litigation. And when
14 I look at the case number here and it's a 98 case, and I think
15 back, I realize I've been dealing with it for a long time, and
16 there's parts of it that you reminded me of during this
17 presentation, how much delay there was at certain times. And I
18 think one of the things that kind of hit me the hardest was
19 four days to get this petition filed was just bizarre to me,
20 because I ordered in November for them to have it ready, and it
21 wasn't until April. I said, "Where is it? You've got to do
22 it."

23 So there's a way to look at all of the things that
24 happened, and I appreciate that you're doing the very best you
25 can for Mr. Vanisi.

1 I do want to review the testimony from Mr. Qualls and
2 Mr. Edwards. I want to think about that testimony in light of
3 your arguments.

4 These -- this case as well as all cases involving this
5 type of situation calls for the Court's complete evaluation of
6 your thoughts and arguments, and I will give it that. And I
7 appreciate your arguments today and efforts so far.

8 There will be a transcript prepared, I haven't talked
9 to the court reporter, I'm sure they are doing a
10 two-or-three-day turnaround, so if there is an issue you have
11 to provide the Court, because I will be using their transcripts
12 in reviewing their testimony as well as the notes as you have
13 seen I've been taking.

14 So thank you. I'll take it under advisement and I'll
15 advise you of my decision.

16 Court is in recess.

17 (Proceedings concluded.)

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, SUSAN CULP, an Official Reporter of the Second
5 Judicial District Court of the State of Nevada, in and for the
6 County of Washoe, State of Nevada, DO HEREBY CERTIFY:

7 That I am not a relative, employee
8 or independent contractor of counsel to any of the parties, or
9 a relative, employee or independent contractor of the parties
10 involved in the proceeding, or a person financially interested
11 in the proceedings;

12 That I was present in Department No. 4 of the
13 above-entitled Court on December 6, 2013, and took verbatim
14 stenotype notes of the proceedings had upon the matter
15 captioned within, and thereafter transcribed them into
16 typewriting as herein appears;

17 That the foregoing transcript, consisting of pages 1
18 through 81, is a full, true and correct transcription of my
19 stenotype notes of said proceedings.

20 DATED: At Reno, Nevada, this 9th day of December,
21 2013.

22 /s/ Susan Culp

23 SUSAN CULP, CCR No. 343
24
25

EXHIBIT 200

EXHIBIT 200

Declaration Of Scott Edwards

I, Scott Edwards, hereby declare as follows:

1. I am an attorney duly licensed to practice law in the State of Nevada. I was one of the attorneys appointed to represent Mr. Vanisi during his state post-conviction proceedings.

2. During my representation of Mr. Vanisi I was primarily concerned about his competency to proceed and moved for a stay of his state-post conviction proceedings in order to determine his competency. From that point forward I focused ~~all~~ my efforts on litigating Mr. Vanisi's competency issue.

3. To effectively ~~have~~ represented Mr. Vanisi it would have been necessary for me to have ~~been given~~ time to conduct a complete investigation of all aspects of his case. Our plan was to investigate all of the issues that trial counsel were ineffective for failing to pursue.

4. To conduct a full investigation of Mr. Vanisi's case it would have been useful to travel Tonga for the purpose of interviewing life history witnesses, government officials and cultural experts. However, these types of undertakings are ~~never~~ funded by the court and I did not ~~bother to ask~~, I knew it would have been a wasted effort.

5. I planned to conduct a thorough investigation into Mr. Vanisi's life and provide ~~competent~~ experts with an in-depth social history as well as all medical, employment and educational records I could obtain. I was aware of the witnesses in California, Utah and Reno. However, these plans never came to fruition.

6. Because I was focused on the competency litigation and had ~~no doubt~~ that we would win on the issue, I did not conduct an investigation on Mr. Vanisi's case. I had no strategic or tactical reason for not conducting the investigation. It was only the lack of funds and the refusal of the court to allow me enough time that prevented me from doing what was necessary.

7. After the post-conviction judge denied my motion for a stay, she gave me an extremely short period of time to file an amended post-conviction petition. As a result I was left with no time to request funding for a thorough investigation and appropriate expert assistance to establish prejudice caused by Mr. Vanisi's trial counsel's ineffective

performance.

8.

IF I HAD SUSPECTED THE TRIAL JUDGE WAS GOING TO ORDER AN AMENDED PETITION SO QUICKLY, FACTUAL
If I were handling this case today I would not have postponed my investigation pending a competency determination. If I had made that decision I would have insisted that the post-conviction judge give me adequate time to conduct an investigation before filing an amended petition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Washoe County, Nevada, on November 8th, 2013.


Scott W. Edwards

EXHIBIT 224

EXHIBIT 224

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January 30, 2003

Scott W. Edwards, Esq.
1030 Holcomb Avenue
Reno, Nevada 89502

Re: Vanisi

Dear Mr. Edwards:

I enclose some materials I mentioned yesterday: the federal discovery motions in Williams and Bollinger and the amended petitions in Williams, Bennett, and Haberstroh. I also enclose an article from the CACJ Forum about a successful penalty phase presentation for a foreign client that I thought you might like to see. I don't know how much investigation was conducted to obtain the details of his life from native sources, but this is the sort of mitigation investigation that Ms. Holdman does.

Yours truly,



Michael Pescetta

Assistant Federal Public Defender

MP:rlc
enclosures



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