IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

Case No. 2014-CR-00062
2014-CR-00062BD

TATIANA LEIBEL,

Respondent,
_____/

RECORD ON APPEAL

VOLUME 19

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PAGES 2532-2637

TATIANA LEIBEL
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LAS VEGAS, NEVADA 89115

IN PROPER PERSON

THE STATE OF NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY

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Case No. 14-CR-0062B

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondents.

_____/

MOTION TO EXCLUDE TESTIMONY OF NATASHA KHARIKOVA

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

Respondent, the State of Nevada, by and through the Douglas County District Attorney's Office, moves this Court to exclude the testimony of Natasha Kharikova as an expert or lay witness in the upcoming November 15, 2018 post-conviction evidentiary hearing. This motion is based on the following memorandum of points and authorities and all other pleadings and documents on file.

Natasha Kharikova is not qualified to testify as an expert witness. On October 25, 2018, petitioner Tatiana Leibel filed a Notice of Expert Witness indicating that she intended to call Natasha Kharikova as an expert witness to "testify regarding Petitioner's need for an interpreter at all of her meetings with counsel due to Petitioner's inadequacy in speaking and understanding the English language." Notice at 2. NRS 50.275 limits expert testimony to "scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." The list of qualifications for Natasha Kharikova does not indicate that she has any specialized knowledge other than translating English to

Russian and Russian to English. Nothing in her list of qualifications indicates that she has specialized knowledge that would assist the trier of fact in determining whether Leibel needed an interpreter at her meetings with counsel several years ago or whether she adequately speaks or understands the English language. Nothing in her list of qualifications indicates that she has any training in determining Leibel's proficiency in English at the time of the meetings or whether Leibel's conversations with Ms. Kharikova involve malingering. All of Ms. Kharikova's experience involves direct translation from English to Russian and Russian to English. Two interpreters have already been retained for that purpose.

Natasha Kharikova is not qualified to testify as lay witness. "[I]f a witness fails to qualify as an expert, the court should not permit the witness to testify unless the witness may otherwise be considered a lay witness." *Mulder v. State*, 116 Nev. 1, 14, 992 P.2d 845, 853 (2000). Ms. Kharikova should not be permitted to testify as a lay witness. Any opinion or inference testified to by Ms. Kharikova which is rationally based on her perception would not be helpful to a clear understanding of her testimony or the determination of a fact in issue. *See* NRS 50265. The attorney-client meetings which are at the center of one of Leibel's claims occurred years ago and Ms. Kharikova was not present for any of those meetings. She cannot provide any information, much less opinions or inferences, that would assist the trier of fact in determining what Leibel or her attorneys understood during those meetings.

For the same reason Natasha Kharikova's testimony is not relevant. *See* NRS 48.015. She was not present during the attorney-client meetings and her testimony does not have "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." *Id.* Because her testimony is not relevant it is not admissible. NRS 48.025.

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This Court should exclude Ms. Kharikova's testimony at the November 15, 2018 post-conviction evidentiary hearing.

Dated this 29 day of October, 2018.

MARK B. JACKSON
DISTRICT ATTORNEY

By: _____

Matthew Johnson
Deputy District Attorney
P. O. Box 218
Minden, Nevada 89423
(775)782-9800

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Case No. 14-CR-0062B

Dept No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner,

vs.

CERTIFICATE OF SERVICE

THE STATE OF NEVADA,

Respondent.

_____/

Pursuant to NRCP 5(b), I certify that I am an employee of the District Attorney for Douglas County, Nevada, and that I deposited for delivery a true copy of Motion to Exclude Testimony of Natasha Kharikova,

addressed to:

John E. Malone,
209 North Pratt Avenue
Carson City, Nevada 89701

☐ U.S. Mail
☐ Reno/Carson Messenger
☐ Hand Delivery
☒ Email
☐ By placing a copy in the pick-up folder in the District Attorney's Office.

DATED this 29th day of October, 2018.

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

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JOHN E. MALONE
State Bar No. 5706
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 461-0254
jmalonelaw@gmail.com

IN THE NINTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

TATIANA LEIBEL, Petitioner vs. STATE OF NEVADA, Respondent.	Case No. 14 CR 00062 B Dept.

PETITIONER'S OPPOSITION TO MOTION TO EXCLUDE LINGUISTICS EXPERT

COMES NOW petitioner Tatiana Leibel, through her attorney, the undersigned John E. Malone, opposes the State's Motion to Exclude Linguistics Expert.

I affirm that this document does not contain the social security number of any person.

Dated this 6th day of November, 2018.

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 461-0254
Attorney for Tatiana Leibel

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POINTS AND AUTHORITIES

Petitioner Tatiana Leibel noticed Natasha Karikhova as an expert linguist and interpreter with expertise in both Russian and English to testify regarding areas of linguistics, translation, and interpretation to present evidence regarding Ms. Leibel's ability to understand and communicate in English with her trial lawyers. The Nevada Supreme Court has expressly directed that counsel:

> ...should ensure that at [the initial interview] and at all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, are overcome. ADKT 411 Standard 4-4(c) (emphasis added); *cf.* "*Commentary to American Bar Association Guideline for the Appointment and Performance of Defense Counsel in Death Penalty Cases 4.1*," 31 Hofstra L. Rev. 913, 955 (2003) (requiring access to consulting experts).

The State objects to Ms. Karikhova testifying at all. It argues that she is not qualified to testify regarding Ms. Leibel's linguistic abilities because "[t]he list of qualifications does not indicate that she has any specialized knowledge other than translating English to Russian and Russian to English." *Motion to Exclude*, pp. 1-2. The State suggests that nothing shows that Ms. Karikhova has any specialized knowledge that enables her to assess Ms. Leibel's linguistic needs or abilities and that Ms. Karikhova cannot tell if Ms. Leibel is malingering.

With all due respect to the State, this assertion in nonsense. A simple perusal of Ms. Karikhova's curriculum vitae shows broad specialized knowledge, not only in legal interpretation as demonstrated by her certifications from both state and federal courts (federal court certification for interpreters is considered the "Gold Standard" in the field), but she also has experience and training in other specialized areas of practice such as interpreting for large groups and conferences. Even the most cursory viewing of her CV shows that she is experienced in governmental, media, scientific and technical, medical, marketing and finance, and legal transactions. *See* Exhibit A.

And she has advanced degrees in philology and linguistics.[1] She will testify that it is absolutely part of her job as an interpreter is to make an assessment of whether or not the person needs an interpreter, what kinds of language issues the person may have, how to address those to ensure complete communication of subtleties and details, and an analysis of the substantive area of conversation that is being interpreted.

For the State to suggest that the need for an interpreter has been settled is preposterous. Ms. Leibel's linguistic abilities are directly at issue in this hearing. Her ability to communicate in English with her trial counsel is perhaps the most important matter to be addressed by this court. Ms. Leibel maintains that she needed interpretation assistance in order to understand the dire situation she was facing. A reading of her interview with Douglas County sheriff's detectives begs the question as to what time she realized that she was no longer simply trying to tell them what had happened, but was in fact the subject of their investigation and was suspected of her husband Harry Leibel's murder. A person accused of first-degree murder faces one of the most complex and critical situations possible. Clear communication with experienced and trained counsel can literally mean the difference between life and death.

This evidentiary hearing is set in order to inform the court of problems in the representation that the court could not observe simply from the trial bench. The court ensured that interpreters were available for every hearing during the prosecution of Ms. Leibel's case; Ms. Leibel's ability to participate in the preparation of her defense was even more important than her ability to passively understand what was happening during her trial. In 2015 shortly before the trial, Ms.

---

[1]Philology is a subspecialty of linguistics. *See* Department of Classical Philology webpage, Russian State University for the Humanities; *http://en.ivka.rsuh.ru/article.html?id=628398.*

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Leibel contacted the Russian Consulate General in San Francisco to seek help because she was having trouble understanding. *See* Exhibit B. By the time of the trial counsel should have known every nuance of her story, should have known every detail of what happened on that terrible day, and should have accumulated enough knowledge and understanding of Ms. Leibel to determine whether she would be a good witness in her defense. After all, she was the only human being present when Harry Leibel died. (The trial was a binary problem; either Harry shot himself or Tatiana did.) But if Ms. Leibel's English was not good enough for her to participate actively, then trial counsel did not have the information they needed. ADKT 411 mandates that counsel continually reevaluate Ms. Leibel's need for interpretation during her meetings with counsel. This is a critical fact at issue.

It is beyond dispute that "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge." NRS 50.275. Ms. Karikhova is certainly such an expert. Indeed, interpreters and translators are routinely accepted without qualification as expert witnesses in federal and state courts. *See* E. Imwinkelried, "*The Taxonomy of Testimony Post-Kumho: Refocusing on the Bottomlines of Reliability and Necessity*," 30 Cumb. L. Rev. 185, 211, fn. 150 (1999-2000). The State's motion should be denied.

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CONCLUSION

Normally, if a party challenges the qualifications of an expert, the court will conduct voir dire. Ms. Leibel therefore proposes that if the court has concerns about the propriety of Ms. Karikhova testifying, that the motion to exclude be denied, and that this ordinary practice be followed.

Dated this 6th day of November, 2018.

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 461-0254
Attorney for Tatiana Leibel

VERIFICATION pursuant to NRS 34.735

Under penalty of perjury, the undersigned declares that the undersigned is counsel for the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

Dated this 6th day of November, 2018.

John E. Malone
209 N. Pratt Ave.
Carson City, Nevada 89701
(775) 461-0254

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing PETITIONER'S OPPOSITION TO MOTION TO EXCLUDE LINGUISTICS EXPERT was made this date by depositing a true copy of the same for mailing and/or hand delivery in Carson City, Nevada, with additional copies sent via facsimile and via electronic mail addressed to each of the following:

Douglas County District Attorney's Office
PO Box 218
Minden, NV 89423

DATED this 6th day of November, 2018.

Kelly Atkinson

Kelly Atkinson

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Exhibit "A"

2542

Nataliya "Natasha" Kharikova
Santa Monica, CA | 90405 | USA
+1 310 570 9392 | nkharikova@gmail.com | kharikova.com

Summary

- Professionally trained conference interpreter with 18 years of experience (English-Russian)
- California Certified Court Interpreter
- US Federal Court Qualified Interpreter
- ATA-Certified Translator (English to Russian)

Select Interpretation Experience

Government/NGO

- 2018 UITP Metropolitan Railway Assembly and International Rail Forum for North America, Los Angeles, CA
- 2018 Russian American Pacific Partnership Annual Meeting, Anchorage, AK
- 2018 Expert Lectures by former President of Kyrgyzstan Dr. Roza Otunbayeva, Monterey, CA
- 2017 UN World Meteorological Organization, 13th Symposium on Education and Training (SYMET-XIII), Bridgetown, Barbados
- 2017 Geographic Information Systems (GIS) Day Forum, Monterey, CA
- 2015 Special Olympics Opening and Closing Ceremony Meetings, Los Angeles, CA
- 2015 Special Olympics Head of Delegations meetings, Los Angeles, CA
- Executive Committee and Executive Board Meetings, Union of Healthcare Workers, Southern CA, 2013 – present
- SEUI Local #2015 Leadership Assembly, Southern CA, 2016 – present
- 2012 USCENTCOM Regional Cooperation Command Post Exercise, Bishkek, Kyrgyzstan
- International Visitors Council of Los Angeles Tour Groups, Los Angeles, CA

Media

- 2018 Fox Sports, FIFA World Cup national broadcast, pre-match, half time and post-match interviews, Los Angeles, CA
- 2014 American Film Festival, Los Angeles, CA
- TV and Film Shoots, Sports and Fashion Interviews, Los Angeles, CA and Moscow, Russia, 2004 – present

Technical/Science

- 2017 Telemedicine Familiarization Tour, San Diego and Los Angeles, CA
- Harman Technical Academy (acoustics), Los Angeles, CA, 2013 – present
- 2015 Zaporizhstal Study Tour, maintenance and repairs in the steel industry, various cities, USA
- 2015 Sibur Study Tour, maintenance and repairs in the oil and gas industry, various cities, USA
- 2014 RuSciTech Forum (science and business cooperation), Tempe, AZ

Marketing/Finance

- 2018 Direct Selling Company Convention, Salt Lake City, UT
- 2018 MLM Company Global Broadcast, Salt Lake City, UT
- 2017 Disruptive Leadership Course, Palo Alto, CA
- 2016 Los Angeles Auto Show, Los Angeles, CA
- 2016 Distributor Meeting for a large MLM company, various cities, USA, 2015 – present
- IHRSA Convention and Trade Show (sports and fitness), various cities, USA, 2013 – present
- Trainings and workshops for a large nutrition company, Los Angeles, CA, 2012 – present

Medical

- 2017 Ministry of Health Visit and Audit (Kazakhstan), Gilead Sciences, San Dimas, CA
- 2012 Dermalogica Professionals' Symposium, Los Angeles, CA
- ZO Skincare Distributor Meetings, Dana Point, CA, 2014 – present
- 2012 DIO Implant Systems Conference, UCLA School of Dentistry, Los Angeles, CA

Legal

- 2015 International Dispute Resolution Exchange Program for Russian Lawyers, Hong Kong, China
- 2015 International Commercial Arbitration Exchange Program for Russian Lawyers, London, UK
- Effective Restorative Justice Conference, Leicester, UK
- Depositions, hearings, criminal and civil trials at the state and federal level, CA

Professional Affiliations

- American Translators Association (Voting Member)
- Association of Independent Judicial Interpreters of California (Member, Former Treasurer)

Education

Middlebury Institute of International Studies at Monterey, CA, USA

- MA in Conference Interpretation (English and Russian) with Distinction

Russian State University for the Humanities, Moscow, Russia

- BA in Philology (English and Russian)
- MA in Philology (English and Russian)

Exhibit "B"

Gmail **Kristine Brown <klbesquire@gmail.com>**

Re: Tatiana Leibel (Kosyrkina)

1 message

Kristine Brown <klbesquire@gmail.com> Tue, Jan 13, 2015 at 5:07 PM
To: Evgeny <e.uspenskiy@consulrussia.org>

I wish Tatiana would have mentioned in court that the translator wasn't helping. I will talk to her tomorrow. She actually speaks English quite well, when you sit and talk to her, but it is difficult in court for her to keep up. For trial there will be two certified court translators present in the courtroom. They will take turns translating and will be sitting beside her. I will make sure she knows to let us know if the translation is incorrect.
The trial is scheduled for two weeks. It begins on the 27th and continues through that week. We have court on 2/2, then we are off on Tuesday and finish up 2/4-2/6.
I will do my best to keep you updated.

Sincerely,
Kristine Brown

On Tue, Jan 13, 2015 at 9:39 AM, Evgeny <e.uspenskiy@consulrussia.org> wrote:

> Dear Ms. Brown,
> Thank you for your reply and thank you for your thorough work with the Russian citizen.
>
> Tatiana's daughter just wrote me her mother was able to get her translation during the pre-trial over the phone and she didn't get a word. As for the common practice I always saw Russian translators to be present at the court houses during the trials. Whom should we address an official request for that? We'd also mention some strange attitude to Tatiana at this request.
>
> Thank you for your readiness to assist me on my arrival. Consul General will decide soon if I would be able to be present at the next trial on January 27th.
>
> Thank you,
>
> Evgeny Uspenskiy
>
> Vice Consul
>
> Consulate General of the Russian Federation
>
> 2790 Green Street
>
> San Francisco, CA 94123
>
> (415)929-1035
>
> 1/12/2015 8:57 PM, Kristine Brown пишет:
>
> > Dear Mr. Uspenskiy,
> > Sorry for the delay in answering it has been a busy day. I am one of the defense attorneys in her criminal case. I don't think her rights were violated, but I think she was not treated well. Maybe in part because she spoke with a heavy Russian accent. She reported her husbands death as a suicide to law enforcement, but was almost immediately determined to be a suspect in a murder. This was based on circumstantial evidence at the scene. We have an expert coming in to testify on atypical suicides. Myself, co-counsel, our investigator and experts are committed to Tatiana's case.
> > There is a separate case involving the probate of the estate where I think Ms. Liebel has been treated badly.

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Assets have been liquidated that should have been frozen until the outcome of the criminal case. Just my opinion.
If you are planning to come to Nevada and need any assistance in visiting with Tatiana, let me know. The jail staff are very accommodating.

Kristine Brown

On Mon, Jan 12, 2015 at 9:48 AM, Evgeny <e.uspenskiy@consulrussia.org> wrote:

> Dear Kris Brown,
>
> Ms. Tatiana Leibel applied to the Consulate General of the Russian Federation in San Francisco for the Consulate assistance. We also receive a lot of messages from her relatives where some concerns were expressed over the trial. In this matter I'd like to kindly request some of the details of her case and possible outcome from your understanding. I also wanted you to let me know if you see any of the indications of her rights are not properly followed. I can be reached at (415)929-1035 or via email e.uspenskiy@consulrussia.org.
>
> Thank you in advance for your kind cooperation on this matter.
>
> Looking forward to your reply.
>
> Sincerely yours,
> Evgeny Uspenskiy
> Vice Consul
> Consulate General of the Russian Federation
> 2790 Green Street
> San Francisco, CA 94123

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Gmail

Kristine Brown <klbesquire@gmail.com>

from the Russian Consulate in San Francisco

1 message

Viceconsul <rusconsigor@sbcglobal.net> Mon, May 12, 2014 at 12:23 PM
To: klbesquire@gmail.com

Dear Mrs. Brown,

My name is Igor Shaktar ool and I am Vice Consul of the Russian Consulate in San Francisco.

I am writing to you in response to your and Mrs. Leibel's letters addressed to Consul General Mr. Petrov.

I have recently talked to Mrs. Leibel's daughter and she asked the Consulate to assist her mother in court.

In this regard I will be very grateful if you could provide us with details of the case (if possible). We are also ready to discuss the ways of how the Consulate can help Mrs. Leibel.

Should you have any questions do not hesitate to contact me at 415 929 1035 or email rusconsigor@sbcglobal.net.

Sincerely,

Igor Shaktar ool

Vice Consul of the Russian Consulate

In San Francisco

P.S. I will be out of the office starting May 12, 2014 till May 15, 2014. But you can always reach me via email.

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Case No. 14-CR-0062B

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

_____/

REPLY TO OPPOSITION TO MOTION TO EXCLUDE TESTIMONY OF NATASHA KHARIKOVA

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

Respondent, the State of Nevada, by and through the Douglas County District Attorney's Office, replies to petitioner's opposition to respondent's motion to exclude the testimony of Natasha Kharikova as an expert or lay witness in the upcoming November 15, 2018 post-conviction evidentiary hearing. This reply is based on the following memorandum of points and authorities, attached documents, and all other pleadings and documents on file.

Natasha Kharikova's degrees in Philology from the Russian State University for the Humanities do not qualify her to testify as an expert or lay witness in this case. Calvert Watkins, former Professor of Linguistics and the Classics at Harvard University, in his article titled, "What is Philology?," defines philology as "the art of reading slowly." Calvert Watkins, *What is Philology?*, Comparative Literature Studies, Vol 27, No. 1, p. 21, 25 (1990) (attached as Exhibit 1). He goes on to explain how Philology involves studying and interpreting the meaning of texts in light of their cultural context and history. *Id.* at 21-25. Leibel's own

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citation in footnote 1 of her opposition to her university's webpage for the Department of Classical Philology supports this conclusion. *See* Exhibit 2 (Webpage from http://en.ivka.rsuh,ru/article.html?id=628398). While Philology is, perhaps, an interesting field of study, Ms. Kharikova's educational background in Philology does not qualify her to testify in this case.

As for Leibel's contention that Ms. Kharikova is "experienced in governmental, media, scientific and technical, medical, marketing and finance, and legal transaction," Opposition at 2, her actual curriculum vitae states that she has "Interpretation Experience" in those forums. It does not say that she has experience determining whether people working in those fields adequately speak or understand the English language. Ms. Kharikova is not qualified and her testimony is not relevant to the issues raised in Leibel's post-conviction petition.[1]

This Court should exclude Ms. Kharikova's testimony at the November 15, 2018 post-conviction evidentiary hearing.

Dated this 7 day of November, 2018.

MARK B. JACKSON
DISTRICT ATTORNEY

By: _____
Matthew Johnson
Deputy District Attorney
P. O. Box 218
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(775)782-9800

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
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[1]Footnote 150 of Edward J. Imwinkelreied's 2000 law review article does not stand for the proposition that interpreters and translators like Ms. Kharikova are routinely accepted without qualification as expert witnesses in federal and state courts. *Cf.* Opposition at 4.

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EXHIBIT 1

EXHIBIT 1

What is Philology?

CALVERT WATKINS

Some thirty-three years ago, when I was being interviewed as a candidate for Harvard's Society of Fellows, I was asked what I felt was the relation between linguistics and philology. I have no recollection of what I answered, but I do remember the historian Crane Brinton's response:

> It seems to come down to the question of which is the handmaiden of which?

The question before us is, what is philology? My answer will be to try and define it philologically, by looking at texts, in other words by doing philology.

Linguists in the past have sometimes been rather short with philology. Ferdinand de Saussure in the posthumous *Cours*, in his thumbnail sketch of the history of linguistics, gives the following 'second stage':

> Then came philology. . . . Language is not the unique object of philology. The task of philology is above all to establish, interpret, and comment upon texts. This just concern leads philology to concern itself with literary history, customs, institutions, etc. . . . Everywhere it makes use of its own method, which is textual criticism. But philology is deficient in one point: it is too slavishly attached to the written word and forgets spoken language; and

COMPARATIVE LITERATURE STUDIES, Vol. 27, No. 1, 1990.
Published by The Pennsylvania State University Press, University Park and London.

> besides it is almost exclusively concerned with Greek and Latin antiquity."[1]

Now the claim that philology is "almost exclusively concerned with Greek and Latin antiquity" is of course nonsense, as the Germanists, Celticists, Hittitologists, Iranists, and Indologists among us would immediately agree. (I mention those just because they are the philologies I have to deal with every day.) Considerations of philology tend for historical reasons to begin with classical antiquity, and the Latinists begin and end this conference in good ring-composition style. But philology may be better integrated elsewhere, and a field where philology is more a standard tool than a separate and sometimes hostile discipline might be a good place to start to look at what philology is. It is perhaps true that there is more of a barrier between philology qua textual criticism, and linguistics or history or archaeology in the Classics than in some others: in Old Irish, or Hittite, or Vedic Sanskrit, or Indo-European studies, everyone does both linguistics and philology on a daily basis, and it's no big deal.

Saussure was at some pains to point out that the objects of linguistics and of philology were only coincidentally the same; saying in the third series of lectures in 1910–11,

> Most linguists do philology, which does not prevent the object *language* from remaining separate in principle from the textual material.[2]

Saussure's pupil Antoine Meillet in his wonderful little book of 1925 on *The Comparative Method in Historical Linguistics* is more stringent:

> To determine linguistic states of the past, the linguist must employ the most exact and the most precise philology. Every advance in philological precision permits new progress for the linguist. . . . But by itself philology cannot bring even a beginning of linguistic history.[3]

And Leonard Bloomfield a decade later also keeps the two firmly apart, but with an interesting definition of our word:

> The term *philology*, in British and older American usage, is applied not only to the study of culture (especially through literary documents), but also to linguistics. It is important to distinguish between *philology* . . . and *linguistics* . . . , since the two studies have little in common.[4]

If philology is the study of culture (especially through literary documents) then philology would seem to be a branch of anthropology. This probably sits uncomfortably with my classical colleagues, but it is by no means absurd: Saussure in a letter to Meillet of January 4, 1894 wrote poignantly,

> In the last analysis it is only the picturesque side of a language, that which makes it differ from all others as belonging to a certain people having certain origins, it is this almost ethnographic side, which keeps its interest for me.[5]

What Saussure meant was precisely philology, as Jonathan Culler saw in his translation of the letter, when he interprets and translates a later passage as "spoil my pleasure in philology."[6] But note that for Saussere philology is not just texts, but "a certain people having certain origins."

It is sometimes instructive to observe one's own linguistic usage. I can recall having used the word philology only a couple of times in print. One was a paper given in Geneva a decade ago on Saussure's method, in which I tried

> to leave the floor to Saussure, to confront certain passages with certain others, and if I may call it that, to do Saussurian philology.[7]

In another (written in 1981) I ventured to suggest that

> . . . the historical linguist's first task is the interpretation of the meaning of a text. Now there is a realm of meaning called 'semantics', and a realm of meaning nowadays called 'pragmatics'. The latter . . . 'is the study of the meaning of language forms as these depend on the linkage of signs to the context in which they occur (we call this the "indexical" meaning of signs)' [Silverstein]. . . . Despite the relative novelty of isolating what it denotes—the his-

torical linguist has been dealing with this all along; he just calls it philology.[8]

Philology is also "the meaning of language forms as these depend on the linkage of signs to the context in which they occur."

Comparative Philology used to be a catch-all term for Linguistics, as it was formerly at Harvard. The change of name to Department of Linguistics in the late 40s was entirely appropriate, and indeed long overdue: comparative philology conceived as such had nothing to do with the object we are here to study. But that doesn't mean that there isn't something we can term the "new comparative philology" or the new comparative poetics and comparative ethnosemantics of Émile Benveniste.[9] This is for me—as it was for Saussure—the most pleasurable part of comparative linguistics. Let me just try and give a little illustration of what this comparative philology is, show how we use both linguistic and philological arguments, and show which is which.

I can state that Greek *ēthos* "custom, usage; abode; character" is related to Vedic *svadhā-* "self-power; own state, customary state; custom; abode," and to Latin *sod-alis* "(fellow) member of a paternity" and to the family of German *Sitte* "custom." The cognate set is reconstructible as **swe-dh(e)h-*. These are linguistic statements, which can be supported by linguistic arguments.

I can also state that the respectful term of address *ētheîos* (*ēthaîos*) in Greek, "trusty, customary, friend," is a derivative of *ēthos* "custom," just as Latin *sod-alis* is a derivation of **s(u)od-*. I can further assert that the term *ētheîos* pragmatically makes reference to, it *indexes* the inherited consecrated usage of the reciprocal gift-exchange relation (Greek *xenía*) between, e.g.,

That is to say, the meaning of *ētheîos* cannot be determined without indexical reference to this relation. In support I can adduce Pindar's referring to a patron in Isthmian 2.48 (470 B.C.*?*) as *xeînon emòn ēthaîon*, translating pregnantly "my 'customary' guest-friend" ("customary" in the sense "with whom one shares consecrated usage"). I can then compare our oldest attestation of the Latin cognate of *ēthaîos*, namely, *s(u)odalis* in a

recently discovered archaic inscription, the lapis Satricanus (ca. 500 B.C.), perhaps the oldest text we have in the Latin language:

POPLIOSIO VALESIOSIO SVODALES

with again a pregnant translation "customary clients of Publius Valerius." Here I am making a linguistic (and ethnosemantic) statement, supported by philological arguments; and the comparison may also contribute to the interpretation of both passages, which is a philological goal.

Such are les plaisirs du texte.

What, then, is philology? Let me conclude with the definition of philology that my teacher Roman Jakobson gave (who got it from his teacher, who got it from his): "Philology is the art of reading slowly."

Harvard University

NOTES

1. Ferdinand de Saussure, *Cours de linguistique générale*, 2nd ed. (Paris: Payot, 1922) 13–4. (All translation is my own.)
2. Ferdinand de Saussure, *Cours de linguistique: édition critique*, ed. Rudolf Engler (Wiesbaden: Otto Harrassowitz, 1967) 3:137.
3. Antoine Meillet, *La Méthode comparative en linguistique historique* (Oslo: H. Aschehoug & Co., 1925) 11.
4. Leonard Bloomfield, *Language* (New York: Holt, Rinehart and Winston, 1933) 512.
5. Ferdinand de Saussure, letter to Antoine Meillett, 4 January 1894, *Cahiers Ferdinand de Saussure* 21 (1964): 93–96.
6. Jonathan Culler, *Ferdinand de Saussure*, (New York: Penguin Books, 1977) 4.
7. Calvert Watkins, "Remarques sur la méthode de Ferdinand de Saussure comparatiste," *Cahiers Ferdinand de Saussure* 32 (1978): 59–69.
8. Calvert Watkins, "Language, culture, or history?" *Papers from the Parasession on Language and Behavior*, eds. Carrie S. Masek et al. (Chicago: Chicago Linguistic Society, U of Chicago, 1981) 238–48.
9. Émile Benveniste, *Le vocabulaire des institutions indo-européennes* (Paris: Les Éditions de Minuit, 1969). Note also: Calvert Watkins, "New Parameters in Historical Linguistics, Philology and Culture History," Presidential address to Linguistic Society of America, *Language* 65 (1989), forthcoming; "Questions linguistiques de poétique, de mythologie et de prédroit en indo-européen," *Lalies* 5 (1987): 3–29; "How to kill a dragon in Indo-European," *Studies in Memory of Warren Cowgill (1929–1985)*, ed. Calvert Watkins (Berlin: de Gruyter, 1987) 270–99; "Aspects of Indo-European poetics," *The Indo-Europeans in the Fourth and Third Millennia*, ed. Edgar Polomé (Ann Arbor: Karoma, 1982) 104–20.

EXHIBIT 2

EXHIBIT 2

The Department of Classical Philology

The main task of the Department of Classical Philology of the IOCS is teaching core philological and linguistic courses within the major "Antique Culture" (with two tracks: "History" and "Philology"). These courses are primarily those of Ancient Greek and Latin as well as of history and literature ("Main Problems of Studying Ancient Greek Literature," "Main Problems of Roman Literature Studies," etc.), linguistics ("Comparative Grammar of Ancient Languages," "History of Ancient Greek," "History of Latin," etc.) and culture studies ("Antique Mythology and Religion," "Culture of Latin Middle Ages," "History of Antique Philosophy," etc.).

Head of the Department: Dr. Georgi S. Starostin

The Department also teaches a number of courses for the School of History and Philology ("History of World Literature (Antiquity)," "Latin"), for the School of Philosophy ("Antique mythology"), for the School of History, Political Science and Law ("Antique Culture"), and for the major "Religious Studies" ("Religions of Ancient Greece and Rome").

The main goal of the Department is to promote and develop classical education including its linguistic, philological, historical and cultural components. In order to implement this approach, which goes back to the old tradition of the one indivisible *Altertumswissenschaft*, the Department works closely with the Departments of Ancient History and with the Center of Classical Ancient Studies of the IOCS. This includes joint preparation and teaching of a number of special courses which combine historical, linguistic and philological approaches, such as "Antique Source Studies," "Antique Epigraphy," "History of Classical Studies," etc. A special task of the Department, carried out jointly with the Department of Ancient History, is updating and elaborating on educational programs of the major "Antique Culture" ("History," "Philology").

Research

The implementation of the educational programs of the Department would be impossible without constant scientific activity of its faculty members, reflected in their numerous publications (first of all, in the publications of the IOCS, the periodical Kentavr (Centaurus), etc.). The forum for this is provided by the ongoing seminar "Modern Problems of the Classical Studies" (conducted jointly with the Center of Classical Ancient Studies). An important aspect of research activities at the Department, closely associated with the teaching process, is the edition of the commented bilingual Greek and Latin texts in the framework of the series of the IOCS. Another component of the Department's activity is the creation of a database necessary for the teaching of ancient languages and classical philology as a whole. With this aim in view, the Department acts as an assistant and expert, facilitating the update process at the RSUH library of the acquisition of necessary archives, data bases etc.

The Department promotes academic cooperation between RSUH and other institutions both in Russia and abroad. Its closest partners are the Department of Classical Philology of Moscow University and the Department of Classical Philology of St. Petersburg University. The cooperation with these institutions is carried out both in the framework of an ongoing seminar and in the course of daily contacts concerning the supervision of the students, diploma/thesis supervision, etc.

The concept of classical education as the traditional basis of the Liberal Arts education does not mean that the students of the Department are meant to apply their skills only within the obtained qualification (as scholars or university teachers). The classical disciplines are integrated into a vaster historical and cultural background, and the traditions of Ancient Greece and Rome are included into the general course of Russian and European culture. The Department constantly cooperates with secondary education schools and organizes (jointly with other high schools of Moscow) traditional competitions in the knowledge of Latin for the schoolchildren.

The Department considers it necessary to engage its best graduates in the teaching and academic activities. One of the tracks for graduate students is "Classical Philology, Byzantine Studies and Modern Greek Philology."

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Print version

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15 Chayanova st, Moscow (m. Novoslobodskaya)

Case No. 14-CR-0062B

Dept No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,

Petitioner,

vs.

CERTIFICATE OF SERVICE

THE STATE OF NEVADA,

Respondent.

_____/

Pursuant to NRCP 5(b), I certify that I am an employee of the District Attorney for Douglas County, Nevada, and that I deposited for delivery a true copy of Reply to Opposition to Motion to Exclude Testimony of Natasha Kharikova,

addressed to:

John E. Malone,
209 North Pratt Avenue
Carson City, Nevada 89701

☐ U.S. Mail
☐ Reno/Carson Messenger
☐ Hand Delivery
☑ Email
☐ By placing a copy in the pick-up folder in the District Attorney's Office.

DATED this 7 day of November, 2018.

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

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CASE NO. 14-CR-00062B

DEPT. NO. 1

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

BEFORE THE HONORABLE DISTRICT COURT JUDGE, NATHAN TOD YOUNG

TATIANA LEIBEL,

Plaintiff,

vs.

THE STATE OF NEVADA,

Defendant.

_____/

TRANSCRIPT OF PROCEEDINGS

POST HEARING CONVICTION

FRIDAY, NOVEMBER 16, 2018

APPEARANCES:

For the State: MATTHEW JOHNSON
Deputy District Attorney
Minden, Nevada

For the Defendant: JOHN MALONE
Attorney at Law
209 N. Pratt Avenue
Carson City, Nevada 89701

Reported By: Kathy Jackson CSR
Nevada CCR #402
California CCR #10465

INDEX OF WITNESSES

FRIDAY, NOVEMBER 16, 2018, MINDEN, NEVADA

-oOo-

THE COURT: Okay. We are in session in Case 14CR62B, Tatiana Leibel versus State of Nevada. Mr. Malone is here, together with Ms. Leibel, and our interpreter is here, one of them.

THE INTERPRETER: The other interpreter is on her way. She'll be here. I'm starting first.

THE COURT: Thank you, ma'am.

And Mr. Johnson is here for the State.

MR. JOHNSON: Good morning, Your Honor.

THE COURT: Good morning to everyone.

Before we proceed, there's something that occurred to me that I wanted to say. Yesterday during the discussion with Mr. Malone, I made a comment that I said something like, well, why are you doing this. I think you misinterpreted it. What I meant for you to understand was tell me why it is you are presenting this particular evidence, and I think you took that as, at least your response to me was that you had an obligation to do the best for your client.

And, Mr. Malone, I don't want you to have the impression that this Court believes you're doing anything less than that or have any motivation other than that. And

if perhaps my question to you was not clearly phrased, it did not have to do with why are you being a zealous advocate for your client as you are, and it was never intended in that direction and if you understood it to be such, that's probably a lack of communication on my part and not yours, sir.

MR. MALONE: And, Your Honor, I didn't take it as in a negative light.

THE COURT: Okay.

MR. MALONE: And I don't have hurt feelings or defensive posture, and I hope my response didn't indicate that.

THE COURT: Okay.

MR. MALONE: I think I didn't -- I didn't understand the question. If you would like me to rephrase an answer to it.

THE COURT: You don't need to, sir, you don't need to, but having reflected on it some last evening, I wanted to make certain you knew I was not questioning your good faith or good intent or your zealous advocacy, sir.

MR. MALONE: I did not take it that way.

THE COURT: Okay.

MR. MALONE: I think I was somewhat confused a little bit. Well, you know.

THE COURT: Okay.

MR. MALONE: It was what it was. It wasn't --

THE COURT: That's fine. My question had to do with as you were about to make, you're trying to get a witness' testimony in. Tell me why you want -- what exactly you're trying to prove with this.

MR. MALONE: And did I answer that sufficiently for the Court?

THE COURT: You did.

MR. MALONE: In whole.

THE COURT: And so we'll move on. And let me make clear on the record, the witness that you posted as an expert whose testimony I did not allow as an expert in, in looking at the Perez versus State case and looking at what that witness can offer me, I am finding that that witness did not have information that would assist the trier of fact based on whatever skills she may have.

She was undoubtedly a qualified interpreter, had some understanding of linguistics but for her to testify as to whether Ms. Leibel understood her communication with her attorney and was capable of understanding discussions in English with her attorney concerning her case, I find that she could not assist the trier of fact. She did not engage in testing.

She watched a video that I will tell all counsel I've watched all of since I seen you last and have -- and she also had some time with you and Ms. Leibel an hour and a half to two hours in the prison where Ms. Leibel is housed, and I do not believe that that observation is able to assist me in making a determination of whether an interpreter was required because I'm capable of doing that on the evidence that I already have before me and do not need expert testimony on that, particularly the testimony that particular witness could offer.

So having said that, good morning to everyone.

And, Mr. Malone, I believe you were about to present a witness.

MR. MALONE: Thank you, Your Honor. I have a couple of housekeeping matters, and I would like to briefly respond to the Court's explanation of not allowing Ms. Kharikova's testimony. One clarification I would have is the -- my purpose for calling Ms. Kharikova was to present expert testimony regarding Ms. Leibel's facility in speaking and understanding English.

THE COURT: I understand that, and I'm capable of making that determination.

MR. MALONE: And I understand the Court's position.

THE COURT: Thank you.

MR. MALONE: Your Honor, the first thing I would do is would be to ask that Ms. Leibel be unchained for her court appearance.

THE COURT: Yes, could we take her belly chains off there. Quite frankly, my bailiff is twice her size and three times as fast, and I'm not worried about her posing a threat.

Additionally, let me ask the bailiff, did Ms. Leibel stay in the Douglas County Jail last night?

THE BAILIFF: Yes, she did, Your Honor.

THE COURT: I appreciate you and our other bailiff making that work with the department of prisons.

THE BAILIFF: Of course, not a problem at all.

THE COURT: Go ahead, sir.

MR. MALONE: Your Honor, I have another issue. We did notice Chaya-Anna Leibel as a witness. Ms. Leibel -- Chaya-Anna Leibel was present at the last court hearing.

THE COURT: Not yesterday.

MR. MALONE: No, the -- the previous setting.

THE COURT: Okay.

MR. MALONE: Is not here. I don't want there to be -- there was a comment by Ms. Brown talking about she felt that Chaya-Anna Leibel was allied towards her father or

something like that, that leads me to want to make sure that the Court understands that there's -- her absence is due to her being in the hospital. I do have an admit sheet.

THE COURT: No, no, no, let me just stop you, Mr. Malone. First of all, I don't take any -- I don't make any inference from anybody being here or not being here. You'll call the witnesses that you need. If you subpoenaed someone and they had a medical emergency and you still want them to testify, we'll make certain that this hearing is scheduled so that they are able to do so.

I don't draw any inference from your list of witnesses and your decisions to call someone and not call someone if they are on that list because that's entirely within your discretion, and I don't make any presumption about what they will testify to or won't testify to. It's simply not before me if they don't testify and -- and that's not something that I'm -- that I do. So if Chaya-Anna is in the hospital and she's ill, the only thing I will say to that, I wish her a speedy recovery.

MR. MALONE: Thank you.

THE COURT: And if you find that she's an essential witness to you and you need to wait until she's released before you conclude your presentation, we will discuss that. You haven't made that request.

MR. MALONE: Your Honor, I'll discuss that option with my client. I had -- I had not considered that as being an option. I did -- Nancy Strayer is one of -- in the red blouse.

THE COURT: I've seen Ms. Strayer here. She was here throughout the trial.

MR. MALONE: Correct.

THE COURT: And I recognize her in the audience.

MR. MALONE: But she lives in San Diego where Chaya-Anna lives and I was informed of Chaya-Anna's hospitalization Tuesday -- Tuesday night, Tuesday night, and I did explore the possibility just on Chaya-Anna's part of being able to testify by phone. Unfortunately, the doctor said she was too sick to even testify by phone. I think I was able to get evidence in that I wanted from her. The only thing that would be added would be the Court's ability to assess the witness' testimony, judge from her demeanor and the way that she speaks and make a decision regarding her veracity, that is lacking, obviously, from her not being here, but I'll discuss that issue with my client at a later time, but I feel comfortable that I was able to work around some of that limitation other than the personal presence.

So I believe -- I believe Chaya-Anna, Chaya-Anna may be out of the hospital now.

MS. STRAYER: Yeah, she got out last night.

MR. MALONE: What was that?

MS. STRAYER: She got out of the hospital last night.

MR. MALONE: We can alleviate any fears of her being very very ill.

THE COURT: Mr. Malone, I hope that she's well. I will -- I will remind you since you're not from here that I'm pretty fond of describing this courtroom as probably as technologically advanced as any courtroom in the State of Nevada. You certainly have the capacity to allow witnesses to testify via skype and to have it presented right in front of you, at counsel table, on the wall and -- and this is an emergent situation, and I don't know how important she is to you, and Mr. Johnson could respond to that, but you haven't asked for that, and but we have a lot of capacity in this courtroom.

MR. MALONE: Thank you.

THE COURT: And we worked hard to make sure that we do.

MR. MALONE: I know I'm being -- I'm being too longwinded now but there was -- when I initially was dealing with this issue, I was informed that she could not testify by phone and/or skype.

THE COURT: Okay.

MR. MALONE: We didn't discuss skype but I assume skype -- and that was coming from her doctor. So, as I said, I got nothing further on that. I just wanted the Court to be aware of that because she has been here before and I --

THE COURT: I don't have a negative --.

MR. MALONE: -- dotted my T's or.

THE COURT: -- inference from her not being here.

MR. MALONE: Understood, Your Honor. Thank you.

THE COURT: All right. So do you have anything that you need to address before we get busy, Mr. Johnson?

MR. JOHNSON: No, Your Honor.

THE COURT: Okay. Do you have a witness that you want to call, sir?

MR. MALONE: Yes, I would call Tatiana Leibel.

THE COURT: Thank you. I'm going to ask that we put a second chair up by the witness stand and for Ms. Leibel.

THE INTERPRETER: May I?

THE COURT: Yeah, please, jump around. See, he's big. He's fast and he's strong.

You may have a seat. Well, we need to swear you in.

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TATIANA LEIBEL,

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

THE COURT: You have to say something out loud.

THE INTERPRETER: Yes.

THE COURT: You may have a seat.

And you may have a seat if you're more comfortable.

THE INTERPRETER: I will thank you. As soon as I need. Thank you so much.

THE COURT: Sure.

All right, Mr. Malone.

DIRECT EXAMINATION

BY MR. MALONE:

Q. Ma'am, would you please state your name.

A. Tatiana Leibel.

Q. And do you have a maiden name?

A. Yes, Kosyrkina, interpreter spelling K-o-s-y-r-k-i-n-a.

Q. Would you please spell your names for the interpreter, Ms. Leibel.

A. Which ones?

Q. The name that you go by regularly, Tatiana Leibel.

A. In English, spell it in English?

Q. Please.

A. T --

Q. Yes -- well, no.

THE COURT: Wait a minute.

Q. (BY MR. MALONE:) I think what I'm asking you to do, as we discussed, I would ask you to testify using your Russian language, and then it will be heard by the interpreter.

THE COURT: You can't see, is that right, sir?

MR. JOHNSON: I can't.

THE COURT: Mr. Malone, thank you. We are a technologically advanced courtroom, but we have not developed an invisibility clause.

Q. (BY MR. MALONE:) So please spell your name in Russian.

A. T-a -- T-a-t-i-a-n-a L-e-i-b-e-l. I know the spelling by now in English.

Q. Thank you.

THE COURT: And the record will reflect that she spelled her name in English.

THE INTERPRETER: Because I don't know how to

spell Leibel in Russian.

Q. (BY MR. MALONE:) Thank you. The Court will take that -- that is sufficient I assume?

THE COURT: For the spelling of her name, certainly.

MR. MALONE: Yes.

Q. Ms. Leibel, how long have you lived in the United States?

A. My first visit here was in 1992. I had a three-year business Visa and then it was extended. The business Visa was extended for another five years, and then I married Jim Landis and after I my divorce, I married -- I got married to Harry Leibel. So from '92 to now, I guess that would make it 27 years, if that's correct calculation.

Q. Was there a time when you returned to Russia to live permanently or at least for an extended time?

A. No, I did not return to -- for any kind of permanent residency in Russia, but I had business dealings here, as well as in Russia. So I returned because -- because my -- my daughter was attending school here, and it was very difficult for her to change from English into Russian which is why I -- which is why I made a decision that I was going to live here.

Q. And which daughter? You have two daughters?

A. Lana.

Q. What was the -- what business were you involved in when you came to the United States in 1992?

A. The first time was telephonic IP. I was partnered with an American company. It's called Digi -- Digicom.

Q. And --

A. Oh, Digicom.

THE COURT: Digicom?

THE INTERPRETER: Uh-huh.

Q. (BY MR. MALONE:) And that was -- was that a business involved in telecom?

A. Yes -- yes, and I -- my American partners would go travel to Russia to demonstrate the product.

Q. And --

A. This was official. This was within a framework of a conference. This was official. This was within a framework of a conference.

Q. Conference?

A. Yes, conference.

Q. Would you describe your education, the education that you received in Russia.

A. In Russia I graduated from school. I graduated from school but I only had one B. Every other grade was an

A. And when the end of communism came to our country and people were given an opportunity to open companies of their own because before that no one could have any private business of their own. So when I was 25 years old, I opened my own business. By then I had a five-year-old daughter --

Q. If you can --

A. -- Lana.

Q. -- be specific.

A. My first husband died in surgery or because of his surgery. The business was going well, and the reason I came in '92 was because I had to consult here regarding the interaction or relationship between the dollar and ruble because during communism we didn't deal with rubles at all, dollars rather at all because -- because the -- because the American partners sold their products for dollars and wanted to be paid in dollars whereas the Russian partners or buyers were only able to pay in rubles.

THE COURT: Ms. Leibel, would you do me a favor, please, and just speak in shorter clips because when you give a long answer, it becomes harder for your interpreter, so if you would break up your answers. Is that okay with you? Thank you. She acknowledges that she would do that.

Q. (BY MR. MALONE:) Ms. Leibel, when you came to the United States in 1992, did you speak English?

A. No, I did not speak English because in school I studied German. And in my company there was a very qualified employee who was a very qualified interpreter who used to be a diplomat, and I came to consult with Pacific National -- Pacific National Bank in Laguna Beach.

Q. Ms. Leibel, I'm going to interject at times to ask questions. The Court will generally require that you respond to questions from me, and you're doing a very good job, but I as well will ask you to use small segments of conversation.

A. Okay.

Q. So when you had to conduct business in English, you would use an interpreter; is that correct?

A. Yes.

Q. Now --

A. He came here with me from Russia. He was with me 24 hours.

Q. Okay. And so that allowed you to conduct your business?

A. Yes, absolutely.

Q. And am I correct that you would go back to Russia for business occasionally?

A. Yes.

Q. But you did not go back there to live?

A. I did not.

Q. And is it correct that after the fall of communism, Russian infrastructure was somewhat antiquated?

A. Yes, of course.

Q. And what was of importance to you was that the telephone -- telecom systems needed to be updated?

MR. JOHNSON: Objection, relevance to the line of questioning.

THE COURT: Overruled. I'll let him get this.

THE INTERPRETER: I'm sorry, may the interpreter hear the question again, please.

Q. (BY MR. MALONE:) What was of importance to you was that the Russian telecom systems need to be updated?

A. Because at that time in Russia the market was very good for our partners.

Q. And that created -- that did create your business opportunity here?

A. Yes.

Q. You -- we'll move on to different -- a different subject. You mentioned getting married in America.

A. Yes.

Q. And you married -- who did you marry?

A. Yes, it was Jim Landis. He also worked at Digicom, and he proposed.

THE COURT REPORTER: Can you spell Landis.

THE INTERPRETER: L-a-n-d-i-s.

Q. (BY MR. MALONE:) Was that a good marriage?

A. Initially yes for two or three months but when I left for a business trip to Russia, he remained here. The company started growing, and there was a lot of stock that were issued to me but because he was my husband, he had access and had -- had power of attorney or was able to use my stock.

Q. My next question, I'm just going to clarify something. The marriage started out okay?

A. Uh-huh.

Q. And then did it get bad?

A. Yes.

Q. Okay. And how bad did it get? And my question --

A. It became very bad.

Q. Okay, thank you. Is this a person who Kris Brown referenced yesterday?

A. Yes.

Q. Okay.

A. We had -- we divorced officially and it even stated in the divorce papers that he defrauded me which the Court found that he was liable and had to pay me.

Q. Now, how long after that was it before you met Harry Leibel?

A. The official divorce lasted three years. The divorce was final in 2001 I think. Maybe I'm wrong, maybe beginning of 2002. I don't recall but that's around the time, excuse me, when I met Harry.

Q. And about how many years after -- about 2001 is when you met Harry?

A. Yes.

Q. And then you got married to Harry?

A. Yes.

Q. After having known him for how long?

A. A year.

Q. A year. And did you meet his family?

A. Yes.

Q. Okay.

A. His children treated me extremely well.

Q. You considered them your children as well?

A. Yes, of course.

Q. Did you meet his parents?

A. Yes, only with his mom. His dad had died already.

Q. What did his father die of?

A. He had had nine surgeries, cancer.

Q. Okay. What was your relationship with Harry's mom?

A. She was extremely -- well, if she loves you then she loves you wholeheartedly. If she doesn't like you, then she doesn't like you.

Q. Did she love you?

A. Yes.

Q. Sorry, looking for my water.

So you -- you had a good relationship with his mom?

A. Yes. When she had a stroke, I was with her in the hospital. And when Harry wanted to put her into a nursing home where, you know, the old people were, I said -- I said I'm from Russia. I would never allow that, and she was very grateful that -- that I told him not to do that.

Q. Did she end up putting you in her will?

MR. JOHNSON: Objection, relevance.

MR. MALONE: Relationship, there's been allegations that the marriage --

THE COURT: What's your argument as to why that's relevant?

MR. MALONE: The relationship with Harry's mother and whether or not this was a sham marriage where she lied about being Jewish and whether or not the relationship was

real or somehow artificial.

THE COURT: How does that relate to any claim in this petition?

MR. MALONE: Because the -- Kris Brown testified yesterday that one of the reasons she didn't put Ms. Leibel on the stand was she could be picked apart based on her marriage of Jim Landis, false allegations about being Jewish and the -- basically that the district attorney would be able to show that this was a sham marriage based on lies. So what we have is an emotionally -- emotional detachment to Harry's mother.

THE COURT: The objection is overruled. I'll allow you to.

Q. (BY MR. MALONE:) Was this -- did you marry Harry just to stay in the United States?

A. No, of course not.

Q. Why did you marry him?

A. Well, first of all --

Q. You can keep it short, Tatiana.

A. He treated me well. He treated my children well.

Q. Okay.

A. And he always referred to Chaya-Anna as my pumpkin.

Q. Did you love Harry?

A. Yes. If I didn't love him I would never marry him.

Q. Thank you. Are you Jewish?

A. Yes, my mom is Jewish.

Q. Okay, thank you. Do you currently practice Judaism?

A. Yes, to this day.

Q. Okay. What type of Jewish text do you have in prison?

A. I have the Torah in my Bible, and I also have constant visitors from a Jewish organization.

Q. Do you meet with rabbis in prison?

A. Yes, with a rabbi, yes, absolutely.

Q. Before the fall of communism was it easy to be Jewish in Russia?

A. It's a good question because people would never before admit that they were Jewish or the whole family would be sent to Siberia.

Q. Thank you. Let's go -- how many times would you say that you met with Kris Brown after you were charged with Harry's murder? And my question is really how many times did you consult with her in private, not court hearings.

A. Fewer than ten times. The rest of it I wrote to her because I constantly wished to see her but she was always

busy, unavailable.

Q. Did you ever have an interpreter in your private meetings with Attorney Brown?

A. No, never.

Q. Do you feel you needed an interpreter in order to speak -- well, in order to -- let me take that back. Let me withdraw that question.

Would it have been useful for you to have the services of a Russian-English interpreter when you spoke to Ms. Brown?

THE COURT: I'm sorry, what was that last word?

MR. MALONE: It was going to be in your private conferences.

THE INTERPRETER: Thank you.

Q. (BY MR. MALONE:) Would it have been helpful for you to have an interpreter to speak to Ms. Brown when you had private conferences with her?

A. Without doubt because when I spoke to Kris Brown and I wanted to explain to her how I lived with Harry, what it was like when he was sick but she -- she didn't hear it and she didn't listen. I thought that was the most primary thing for her to listen to me to hear me out which is why I called my daughter Lana -- my daughter Lana, and I asked her to find the Russian Consulate and to contact them. I wrote a

letter addressing the Russian Consulate. I wrote please help me. They don't understand me here which is why the Russian Consulate got involved.

Q. Now, when you went to school in Russia, you got almost all A's, right?

A. Yes.

Q. Are you proud of that?

A. Yes, of course.

Q. You're proud of being a good student?

A. Yes.

Q. And do you consider yourself intelligent?

A. I don't know the level to which I am intelligent, but I created a business, and I was able to support my family.

Q. Okay. Do you think you speak English well?

A. I can speak and say everyday words. I don't know why, when I speak I start thinking in Russian and then speak English. I read. I understand. I write, but I am not able to express what I would like to express. I'm not being understood. I don't know, I guess I probably would have to study this language from the very beginning, start from scratch from first grade.

Q. Okay.

A. I didn't ever have time. I was always working

and then Harry was like my -- he became like my child. He was always sick.

Q. Tatiana, excuse me for a moment. Sorry for the long pause. I'm trying to reformulate my thoughts.

So you -- well, if you did not have an interpreter when you were working with Digicom, would that business have been possible in the United States?

A. No, of course not, absolutely not.

Q. Okay. Now, you did receive a degree from UNR, correct?

A. Yes, I started my studies at Lake Tahoe Community College in 2005 when my partners were -- were the Oracle Company. I took five people, representatives from Oracle to Russia. We traveled to Russia, and we present an Oracle product. You can find that in the -- on the web. Only it will all be in Russian. There's even a picture of me with them if the D.A. would like to see it.

Q. And, Tatiana, did you have the services of an interpreter on that trip?

A. Absolutely, absolutely.

Q. You eventually went to UNR?

A. Yes.

Q. Please explain to the judge how you graduated from UNR with your language difficulty, English?

A. For example --

Q. In Russian.

A. Well, for example, I started studying at a community college, Lake Tahoe. I told Harry that I was just going to give it a try. The education system here versus Russian education system, they are completely different. Here you are never asked to explain in your own words what you're studying. Here if you can read and write, then you'll be able to constantly do your homework, and I'm a very responsible person, and I would always do my homework. But when I didn't understand, Harry was constantly helping me. I got good grades. I got A's and whatchamacallit, the consul two and a half years later, I was offered a transfer to UNR. So it ended up that I at the same time graduated from Lake Tahoe College and started my studies at UNR.

Q. Tatiana --

THE COURT: Did you actually translate something into whatchamacallit?

THE INTERPRETER: I did.

THE COURT: Okay, thank you. Go ahead.

MR. MALONE: You did?

THE COURT: She tells me she did. So go ahead.

MR. MALONE: I didn't even hear whatchamacallit.

THE COURT: There's some Russian word or phrase

that translates into whatchamacallit.

Q. (BY MR. MALONE:) You testified that you got all A's. Did you sometimes get other grades that weren't so good throughout your study?

A. Yes, I had one class. It actually happened to be political science. Even for the exam he wanted me to translate something from English to Russian and then help me take that -- the final exam which had 200 questions.

Q. You mentioned Harry helping you.

A. He was helping me. He would explain it to me but once I understand something, then I can -- then I can do it myself.

Q. Did you have any help from professors or counselors?

A. No, I only talked to my counselor.

THE DEFENDANT: She very good lady and she --

THE INTERPRETER: The interpreter is speaking. So the first part of the answer was rendered in English. She very good lady, and then the rest of the answer was in Russian which I'm about to render. She -- she didn't -- something she didn't understand what I said, but she said it wasn't important.

When I asked her isn't it important -- is it important at the university to speak, look at the way I'm

speaking. And she said no. The most important thing is that you do your homework, that you pass your exams and that you understand the, you know.

Q. (BY MR. MALONE:) Did you get any extra time when doing exams?

A. Yes, this was very important because Lake Tahoe Community College would give me this type of privilege. Let's say the exam would be 45 minutes. They would give me one hour and then at the university they gave me more time because there were more questions. My understanding is that in the United States people like -- like myself that there's some kind of program, educational program for people like myself.

Q. That speak a foreign language?

A. Yes.

Q. Did you also have help with your homework from Chaya-Anna?

A. Yes, Chaya-Anna explained things to me as well. She's -- she was a really good student too.

Q. Did -- did you have to spend a lot of time doing homework?

THE INTERPRETER: This is the interpreter speaking. The first part of the answer was given in English, oh, my gosh, and I'm about to render the Russian portion of

the answer. Yes, I would have to stay up until 3:00 a.m. and then in the morning I needed time to -- to drive to the university.

Q. (BY MR. MALONE:) Okay.

A. To Reno.

Q. Do you remember making -- do you remember the morning that Harry died?

A. Yes, I do. It was as if it was yesterday.

MR. MALONE: Your Honor, I'm going to ask that this be marked next in sequence.

MR. JOHNSON: I need to see the exhibit before.

MR. MALONE: Yeah, I don't have a copy.

Q. For the record I'm showing Ms. Leibel Exhibit Number 17. Would you take a look at that and see if you recognize what it is.

A. I don't have my glasses.

Q. Are your glasses here?

A. Oh, no. Oh, wait. I'll be able to read. Hold on. I have two different prescriptions. I'm both nearsighted and have far. I was never given the reading glasses.

Q. What do you need?

A. Wait. Wait. Hold on.

THE COURT: Do these help?

THE DEFENDANT: Oh, yeah. Thank you.

Q. (BY MR. MALONE:) Do you recognize that?

A. Yes.

Q. Would you tell the judge what that is.

A. This is when I called 911.

Q. Okay. That was the morning Harry died?

A. Yes.

MR. MALONE: Your Honor, we would move for the admission of this document.

MR. JOHNSON: No objection, Your Honor.

THE COURT: 17 is admitted.

MR. MALONE: And, Your Honor, we're not going to read the document but it is evidence, some evidence of Ms. Leibel's proficiency in English.

THE COURT: Well, you may not read it but I certainly will.

MR. MALONE: No, what I meant, I'm not -- Your Honor, I have read it.

THE COURT: Okay.

MR. MALONE: As being introduced to show some proficiency in English.

THE COURT: All right.

MR. MALONE: Is the Court going to read that right now, is that --

THE COURT: No, I'm going to allow you to complete your testimony.

Q. (BY MR. MALONE:) All right. Did you kill Harry?

A. No, I did not kill him.

Q. Would you describe to the judge that morning. Did you cook breakfast that morning?

A. For me he was the best -- it would be so much better if he lived with me. How could I have killed him? I don't understand that.

Q. I understand, I'm sorry. Describe what you were doing when -- there came a time that morning when you heard a gunshot, correct? Just if you could say yes or no.

A. Yes.

Q. Where were you when you heard that gunshot?

A. It was when I opened the fridge, I wanted to get a Pepsi to drink.

Q. So you were in your kitchen?

A. And that's when I heard it.

Q. You were in your kitchen?

A. Yes, I was in the kitchen.

Q. Do you recall your trial?

A. All of the hearings, they are all like a bad dream to me.

Q. Do you recall ever saying that you were outside

when you heard the gunshot?

A. How could I be outside?

Q. Do you recall saying that though at some point?

A. I remember that -- I remember that the officer asked me where were you? Were you -- I meant it was outside. I said outside of here, outside of this room, meaning that I wasn't present. I wasn't present when this happened when he did what he did.

Q. But you were in the kitchen. You were outside the other room?

A. I'm sorry, go ahead.

Q. When you spoke did you have a translator -- interpreter I mean, interpreter?

A. No. I was surprised how he was able to write -- write down notes. I was crying.

MR. JOHNSON: Objection, unresponsive to the question.

THE COURT: Sustained.

Q. (BY MR. MALONE:) Did -- did the -- this was a police officer, correct, or a sheriff's deputy?

A. Yes, somebody came -- came up to me on the street when I was already outside.

Q. That's a yes, correct?

A. Yes.

Q. And he -- he spoke English?

A. Yes.

Q. And you spoke Russian and English?

A. I spoke in English to him, in English.

Q. Okay. Is it your testimony that that was a misinterpretation of what you said?

MR. JOHNSON: Objection leading.

Q. (BY MR. MALONE:) Or meant?

THE COURT: That is leading and that objection is sustained.

MR. MALONE: I think we have -- she's already testified -- I'm good.

Q. Did some of the things that you said to the police get misinterpreted?

A. I don't understand the question. You mean when he was writing down, things down or during the interview?

Q. I mean whenever you spoke to the police after Harry's death, were there certain things that were misinterpreted?

A. I felt like that day no one understood me at all. I kept saying the same thing, but they didn't understand what I was saying.

Q. Were you in the room when Harry fired the first shot?

A. No. I was -- when I heard the first -- during the first shot, I was in the kitchen. It was when I opened the refrigerator door.

Q. What happened next?

A. When I heard it, he had already frightened me about it the previous evening. He was --

MR. JOHNSON: Objection, unresponsive to the question.

THE COURT: The objection is overruled because the question was what happened when he fired the first shot, and I think she's giving a predicate of what happened when she heard the sound and how -- how the threat the previous evening impacted her when she heard this sound. It all involves what happened. So go ahead.

THE INTERPRETER: Thank you. Which is why when I heard this sound, I realized that something has happened and when I came to the living room, my house doesn't have doors between the kitchen, the dining room and the living room. There are no closed doors as such. Everything was open in-between the spaces, and the ceiling is very very high. It's three times higher than here, yes. So the sound, it was kind of -- it was like -- it was kind of like that, boom.

And when I came into the living room, I saw him and I just lost my mind. I closed my eyes, and then I heard

the second sound. I didn't even see how he did that at all. If I had seen it, I would have said everything right away to the police, but I didn't see it. I didn't see him do it. I don't know, I did not see him do it.

Q. (BY MR. MALONE:) When you came back into -- when you came into the living room, did you see -- did you observe whether Harry had a wound on him, a gunshot wound?

A. Initially no. At first when I heard the boom sound, I realized it's a shot. And when I came into the living room, he was sitting on the couch, and he was sitting kind of like this, and I realized that he did something, but I did not see anything on him but when the second time -- you know, when I heard it the second time, I saw blood on his -- I saw something on his hand.

Q. Did it take you some time to decide what you needed to do next? Let me withdraw that.

Did you eventually call 911?

A. Not -- not -- did there come a time? I called right away. Right away I called them. He was still okay and when I went downstairs, when I opened the door, when they came and he said -- they said he was dead, I said no, he's not dead.

Q. You had a dog? Did you have a dog?

A. Yes, we had a Doberman. We bought him together.

We -- he grew up -- we brought him up together. He was constantly with Harry, but I'm the one who constantly walked him because Harry couldn't.

Q. Describe -- describe the size of this dog.

A. We bought him when he was still in -- you know, when his mom was still pregnant, and Harry explained that he's an alfa which is why he was so huge. He was 120 pounds.

Q. And that's when Harry died?

A. Yes.

Q. What was the name of the dog?

A. Beau, B-e-a-u, Beau.

Q. Where was Beau when Harry was shot? Was Beau in the room when Harry was shot?

A. Yes, he was constantly in the living room with Harry. He would just sit there on the couch with him but the armchair, and I would sit on the armchair. And when I went to the kitchen, Beau was with him and when I returned -- when I heard the boom sound and I started screaming Harry, Beau was -- he got up onto the couch and he was trying to run back from Harry, and then he would run to the end of the room. He was pacing. He was running back and forth. So I explained to the officer during the first interview that I don't know how this happened, you know.

Q. Now, you mentioned earlier that Harry had scared

you the night before.

A. Yes.

Q. Please explain.

A. This was not the first time. He had some kind of obsession, like a mania I think. When we moved from Los Angeles to Lake Tahoe --

MR. JOHNSON: Objection, nonresponsive to the question.

Q. (BY MR. MALONE:) What happened when you moved --

THE COURT: Wait, stop. The objection is sustained.

Q. (BY MR. MALONE:) What was his mania?

A. That's what I wanted to explain, if I may.

THE COURT: You can now. That's the question.

THE INTERPRETER: When we lived in Los Angeles, he only had two guns. Once we started living in Nevada after the first surgery, he started buying a lot of guns. When three or four years basically previously, we started going to gun conference -- gun shows or gun -- gun conferences to Reno, and he would buy three or four guns at a time. I asked him why do you need it. He said no, you don't understand. It's like a collection.

He was basically collecting them, and he explained to me that it was somewhat even a financial

decision. We even received -- he had the card from the FBI. We would come here also. They gave us a card that we have a right to go to, what do you call it, to shoot, the places where you can shoot, right. And we would go -- we didn't go a lot but we did go to Carson City. There's a place there. They have one there, right, and we would come.

He would spend the whole day on, what do you call it, he would clean all of his guns. For him this was like a -- I saw that he was -- I would say to him people when they are addicted buy up everything that they see in a store, and he had that kind of -- he developed that kind of thing after his surgery.

He would put this -- this shotgun inside the house. All of the shotguns were loaded. They had bullets in them, all of them, every single one. Only -- there were like eight or ten on the wall that didn't have bullets because when people would come, he didn't want the people to be able to shoot the guns but there were many which were in locked boxes, I don't know, inside a clos -- there was a safe hidden. There was another one in a photograph box. There's a lot of new technology. You can buy anything. He kept thinking that somebody is going to enter the house and he had to protect us.

Q. (BY MR. MALONE:) Tatiana?

A. That's why he was constantly holding this gun, but my -- when this whole thing happened --

THE COURT: Okay, stop. It's gotten nonresponsive.

Ask another question.

Q. (BY MR. MALONE:) Did Harry scare you the night before?

A. Yes.

Q. And please explain, quick, short.

A. Okay. When I told them -- when I told them that I had to visit my daughter, my children.

Q. Tatiana?

A. He said no and if I leave, he might die, and he would die alone. He was always afraid of that.

Q. Tatiana, is that what Harry said?

A. Yes, he always said that.

Q. Okay. He said he was afraid he might die and he might die alone?

A. Uh-huh.

Q. Now, were you going down to Los Angeles to buy Lana an apartment?

A. To --

MR. JOHNSON: Objection, leading.

Q. (BY MR. MALONE:) Buy or purchase?

THE COURT: Sustained.

MR. MALONE: Were you -- sustained?

THE COURT: Yeah. So the question is why were you going to Los Angeles?

Q. (BY MR. MALONE:) Why were you -- why were going down to Los Angeles with Lana -- to meet Lana, why, the purpose?

A. She had a fight with her husband, and she wanted to move to another apartment. It's hard for her to do it by herself. She had three children that were little and she -- and she asked me to come for two, three days to help her. That was it, nothing else.

Q. Was -- did you hear Kris Brown's testimony yesterday?

A. Yes, I was in shock.

Q. Okay. Why were you in shock?

A. Because I explained to her what I am saying to you now. When I spoke to her, she didn't see me.

Q. Tatiana, was the apartment to be rented or was it to be purchased?

A. Of course it wasn't for purchase. It was to rent.

Q. And what were you -- excuse me. What were you going to do when you went down there?

A. Baby-sit the little ones. Lana wanted to do all of this, but she had no one to help her out.

Q. So you were going to baby-sit your grandchildren?

A. Yes.

Q. Were you going to move to Los Angeles?

A. Oh, my gosh, that never even entered my mind. I had the house with Harry. How could that even enter my head? Why would I even think about that? No, sorry.

MR. MALONE: Can I have one moment, Your Honor?

Q. Tatiana, do you remember what -- did you fix Harry breakfast the morning he died?

A. Yes.

Q. And what did you fix him?

A. He asked me because I cooked for him every time.

Q. No, did you understand the question?

A. He asked me to make me -- gosh, I'm blanking out on the word again. What do you call it, croissant.

Q. That's your answer, you made him a croissant?

A. I'm sorry, I didn't hear what you said.

Q. The answer is you made him a croissant?

A. Yes, yes, I prepared a croissant for him. He put some cheese on the croissant and I put it in the oven.

THE COURT: Counsel, yesterday you told me you needed about 20 minutes.

MR. MALONE: Yeah, I apologize, Your Honor.

THE COURT: You've gone an hour and a half, and I need to know for the Court's purposes how much longer you think you need because Mr. Johnson needs some time. I have a meeting at noon that I'm not going to make, obviously, and I've got court that starts in another matter that I'm not going to move.

MR. MALONE: Your Honor, I am -- I could be done right now and I apologize.

THE COURT: I'm not ordering you to quit, but you need to know where you are here.

MR. MALONE: No, Your Honor, and I'm not feeling -- I would not quit if I didn't feel it was okay.

THE COURT: Okay.

MR. MALONE: Okay. And I do have a -- a photograph that's relevant and it will give me some time to find that while I sit down.

THE COURT: Take your minute.

MR. MALONE: No, I mean, I'll pass the witness.

THE COURT: Okay.

MR. MALONE: And, Your Honor, I apologize for -- last night I was thinking I would just deal with two things given the time constraint that that would be the most important thing, but I apologize to the Court. I know how

frustrating it must be for the Court to have me blow the egg and go much over my time.

THE COURT: I'm trying to make certain that just this case gets heard but other cases that I need to hear today.

MR. JOHNSON: Your Honor, I'm not very long but if I could have two minutes, a two-minute break before cross. If it's not appropriate, then I will -- I will --

THE COURT: More important than that, I'm going to give the clerk and court reporter a ten-minute break.

MR. JOHNSON: Thank you, Your Honor.

THE COURT: And we'll be back in session in ten minutes.

(Whereupon, a brief recess was taken.)

THE COURT: Ms. Leibel, I will remind you you are under oath, and everyone else is here.

So, Mr. Johnson, are you ready to proceed?

Before you do, do you have some picture that you wanted to try to admit, Mr. Malone?

MR. JOHNSON: And I have no objection.

THE COURT: Oh, okay.

MR. MALONE: If I could ask they could be marked in sequence.

THE COURT: There's a stipulation to admit them,

so one will be 18 and one will be 19, and they will be admitted.

Q. (BY MR. MALONE:) Tatiana, do these pictures depict the croissant you depicted earlier?

A. Yes, over here.

Q. I'm going to draw your attention to the other picture, right on top of --

THE COURT: Why don't you say what exhibit number it is. Let's use exhibit numbers.

Q. (BY MR. MALONE:) If you could look at what's been marked and admitted as 18. Do you see if there are croissants in that picture as well? This is -- over here.

A. I'm sorry?

Q. Did you clean up the kitchen after you cooked breakfast?

Thank you, Your Honor, I appreciate that --

A. Yes.

Q. -- accommodation.

THE COURT: Okay. Mr. Johnson.

THE CLERK: Did you want me to ask if he wants that --

MR. JOHNSON: Your Honor, I spoke with Mr. Malone. There's a cover page that says these are true and accurate copies for E and my understanding is he doesn't

have any admission -- to admission of the transcripts which are being marked as exhibit?

THE CLERK: 20.

THE COURT: He doesn't have an objection to them?

MR. MALONE: We will stipulate to admission.

MR. JOHNSON: I don't do the cover sheet. It has the social security on the cover sheet but not on the other pages, and so it needs to be redacted of those social security numbers.

THE COURT: Let me see it.

MR. JOHNSON: Sure, I didn't want to mark up the original.

THE COURT: Okay. So here's -- here's the thing, this does -- this exhibit which will be 20?

THE CLERK: Yes.

THE COURT: Which you may put on the back does contain Ms. Leibel's social security number, and also her official transcript is attached thereto. It -- what I would ask is that we redact the social security number with some redaction tape that the --

MR. JOHNSON: Sounds good, Your Honor.

THE COURT: Do you have an objection to that?

MR. MALONE: No, I think it's necessary.

THE COURT: Okay. All right.

MR. MALONE: And, Your Honor, if -- if the Court would -- we could put the tape on there, make a copy of it and we could put on the record that, I don't know.

MR. JOHNSON: I have a copy for Mr. Malone, and I believe he's familiar with the social security number. I didn't redact that one.

THE COURT: Okay.

MR. JOHNSON: Do you want me to redact his copy?

THE COURT: Well, the clerk has an official redaction policy, and I imagine that the clerk will follow that policy very carefully. Thank you.

MR. MALONE: Thank you.

MR. JOHNSON: Your Honor, I don't know if I asked, we would ask to move to admit 20.

THE COURT: It's admitted pursuant to agreement.

MR. JOHNSON: If I could continue, Your Honor.

THE COURT: Please do, sir.

MR. JOHNSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Ms. Leibel, your first -- so your second husband, Jim Landis, was he a Russian speaker?

A. No, he did not speak Russian.

Q. And so you communicated with him exclusively in

English?

A. We had huge problem because I was trying to speak with him in English. We had problem.

Q. Did you communicate with him in English or Russian?

A. He took Russian classes as far as I know but we -- we had more intimate relations at the beginning.

Q. Let me ask the question again. Did you communicate with your second husband in English or Russian?

A. English.

Q. Your third husband, Harry Leibel, did he speak English or Russian?

A. English.

Q. And did you communicate with him in English or Russian?

A. English.

Q. And so when he helped you at night with your schoolwork, he helped you by speaking with you in the English language, correct?

A. Yes, yes, in English. He would explain in English.

Q. And when he helped you with that schoolwork, he didn't have an interpreter to communicate with you, did he?

A. No. When a stranger start talking to me, they

don't understand me but when a person with whom I live for a long time talk to me, he understands me.

Q. Ms. Leibel, I'm showing you what's been previously marked and admitted as Exhibit 20. I would like you to take a look at page two.

A. Glasses.

THE COURT: The glasses, absolutely, ma'am. Justice is not blind.

Q. (BY MR. JOHNSON:) Can you take a look at page two there and tell me whether you recognize that as your transcript from UNR?

A. Yes.

Q. Now, the first class on there is listed as intro to philosophy, correct?

A. Yes.

Q. And that class involved basic problems in different areas of philosophy such as ethics, political theory, metaphysics and epistemology, correct?

A. Yes. As I explained --

Q. Ma'am, I was just asking for a yes or no answer.

THE COURT: Wait, wait, no, she gets to answer and it's really hard with the translator. So allow the answer to finish, please.

Do you need something, sir? Mr. Malone, do you

need something, sir? What do you need?

MR. MALONE: Your Honor, I'm going to object. The district attorney is reading off a course description that apparently has UNR letterhead or symbol that has not been produced to the defense.

THE COURT: Well, it's not in evidence. It may be part of his prep and notes, and the objection is overruled.

THE INTERPRETER: So as I explained before, I mean, the professor does not talk to you.

MR. JOHNSON: Your Honor, I object as being unresponsive to my question.

THE COURT: Ask a question.

Q. (BY MR. JOHNSON:) And this course was taught in English, correct?

A. Yes, all English.

Q. The second course listed on here is comparative government and politics, correct?

A. Uh-huh.

Q. And that course involved the analysis of similarities and differences in the governing processes of different societies, correct?

A. Yes.

Q. And that course was taught in English?

A. Yes.

Q. And the third course is titled world politics, correct?

A. Uh-huh.

Q. And that course --

THE COURT: Wait a minute. The answer is?

THE INTERPRETER: Yes.

Q. (BY MR. JOHNSON:) And that course involved the study of international relations, correct?

A. Yes.

Q. And the next course was titled legislative process, correct?

A. Yes.

Q. And that involved the legislative process with special emphasis on the U.S. Congress, correct?

A. Yes.

Q. And that course was taught in English, correct?

A. Yes.

Q. And the next course was on the Nevada Constitution, correct?

A. Yes.

Q. And that course was an examination of the Nevada Constitution, correct?

A. Yes.

Q. And that course was taught in English, correct?

A. Yes.

Q. The next course is an internship, correct?

A. Yes.

Q. And where did you do that internship at?

A. I had two internships, so I don't remember which one, this one or the other one.

Q. Well, let's start with one of them. What was the first one you did an internship at?

A. Legislature, I was assistant to the Senator Lee.

Q. And did you speak with Senator Lee in English or Russian?

A. It was just everyday words.

Q. Did you speak with the Senator in English or Russian?

A. English.

Q. The next course listed on there is political philosophy, correct?

A. Yes.

Q. And that was a detailed study of issues including justice, freedom, equality, tyranny, prudence, racism, feminism, politics and economics, correct?

A. Yes.

Q. And that class was taught in English, correct?

A. Yes.

Q. And the next course was global environmental policy, correct, and that was an analysis of transitional ecological problems such as ozone depleter, global warming and diplomacy, correct?

A. Yes.

Q. And that course was taught in English?

A. Yes.

Q. And the next course was on international law, correct?

A. Yes.

Q. And there you talked about the contemporary significant sources and customs and treaties?

A. Which year? Yes, I had problems with this class.

Q. And historical developments in various areas of international relations, correct?

A. International law?

Q. Uh-huh.

A. We started -- in international law we started -- we started international cases.

Q. Okay. And did you study those global cases in English?

A. In English but I had problem with this professor. He could not understand me.

Q. Okay. But you still passed the class, correct?

A. He gave me D. I got a D.

THE DEFENDANT: I had one D.

Q. (BY MR. JOHNSON:) And the next class was contemporary Basque politics, correct?

A. Basque?

Q. Basque.

A. Uh-huh.

Q. And that involved the history and legal status of Basque politics?

A. Yes.

Q. And was that course taught in English?

A. Yes, in English. It was European professor so he could understand me really well.

Q. He spoke to you in Russian?

A. No.

Q. He spoke to you in English?

A. Yes.

Q. Your next course was comparative economic systems, correct?

A. Yes.

Q. And that involved an analysis of economic institutions of capitalism and other economic systems, correct?

A. Correct.

Q. And that course was taught in English?

A. Yes.

Q. And you had a course on the American presidency, correct?

A. Yes.

Q. That involved all the study of all of the presidents of the United States?

A. Yes.

Q. And that course was taught in English?

A. Yes, in English.

Q. Let's skip down to the other course on juris prudence, correct?

A. Uh-huh.

Q. And there --

THE COURT: Wait a minute. What's the answer?

THE INTERPRETER: Yes.

THE COURT: You had a course on juris prudence, right?

Q. (BY MR. JOHNSON:) Correct?

A. Yes.

Q. And there you studied problems of legal theory from the analytical philosophical and sociological points of view?

A. Yes.

Q. And you paid particular attention to modern theories of law, correct?

A. No, I focused on the diplomatic work.

Q. Okay. And that course was taught in English, correct?

A. Yes.

Q. And is there any other course listed on this transcript that was not taught in English?

A. Yes, I -- I had a test in Russian language.

Q. Is that listed on this transcript?

A. I had -- I had classes in Russian. It's -- it's not credit class.

Q. Okay. So the question was is there any other class listed on this transcript that was not taught in English?

A. All in English.

Q. Okay. Is there any class listed on this transcript where you took a test that was not in English?

A. I would like to remember the class which was translated to me which the professor translated it to me for English into Russian.

Q. Which class was that?

A. It was political.

THE COURT: What did she say?

THE INTERPRETER: Political.

THE COURT: She mumbled something else.

Q. (BY MR. JOHNSON:) Was it only one class where a test was translated into Russian?

A. Yes.

Q. Okay. And you passed all of those classes, correct?

A. Yes, professor could see my conversation -- conversational level, and they would give me more time for tests and as you know, it's a multiple choice A, B, C, D.

Q. And you passed all of those classes, correct?

A. Yes.

Q. And you obtained a degree in international affairs, correct?

A. Yes.

Q. And to obtain that degree, all of your classes and all except for one test were in English, correct?

A. Yes.

Q. And you also obtained a minor in political science, correct?

A. Yes.

Q. And all of your work at the legislature as an intern was in English, correct?

A. Yes.

Q. Okay. When you spoke with Harry at home, it was in English, correct?

No further questions.

THE COURT: Did she answer that last question?

THE INTERPRETER: Yes.

THE COURT: Thank you. No further questions?

MR. JOHNSON: No further questions, Your Honor.

THE COURT: Do you have redirect?

MR. MALONE: No, Your Honor.

THE COURT: Okay. You may step down.

MR. JOHNSON: I didn't give the exhibit back, Your Honor.

THE COURT: Let me have that. Thank you.

(Witness excused.)

THE COURT: Counsel, are you ready to argue?

MR. MALONE: Yes, Your Honor.

THE COURT: Are you ready? Do you need a minute?

MR. JOHNSON: We can go forward, Your Honor.

THE COURT: All right. Go ahead, sir.

MR. MALONE: Your Honor, I'm not going to belabor the point. The Court has very been patient in listening to all of the testimony in this hearing. I think that there are three controlling cases the Court is aware of. Bigpond deals

with the concept of accumulative error. I believe that there are some real structural errors in this matter and that's going -- that's been presented to the Court, but Bigpond also goes to -- and I'm really speaking too fast. Bigpond also presents the concept that's well settled in Nevada law regarding the accumulative error.

In addition, Weakland V. State, a case from 1998 96 Nevada 99. Big Pond is 12 Nevada 97 and it's a 2000 -- 2000 case. There's a phrase that I find very compelling from Weakland. The Nevada Supreme Court read an appellate wrote -- an appellate has a right to a fair -- has an --

THE COURT: Start over.

MR. MALONE: An appellate whose right to a fair trial has been vitiated should be accorded that right anew. Retrial is a small price to pay for ensuring the right to a fair trial.

The third case I'm just going to talk about is Cheryl Walker or Walker V. State. That involved basically a prior bad act. The Supreme Court reversed basically on the proposition that evidence of Ms. Walker's previous assault with a deadly weapon or there was evidence adduced as to an assault was improperly introduced at trial. After objection and after a Petrocelli hearing, the Nevada Supreme Court reversed.

Here, we don't have the factual basis that led to Mr. Orin's testimony that he warned Harry of two different -- two different occasions, that he thought that Tatiana Leibel would kill her -- kill him, kill Harry. We don't have that. I would say that the record was not clarified by counsel at trial. She testified that it was new information for her.

THE COURT: Well, sir, how is that a prior bad act?

MR. MALONE: Because --

THE COURT: Just a minute. Just a minute. This is a witness who is speculating about something that Ms. Leibel might do. How is that a prior bad act? That's a future act that's being imagined. It's -- tell me in any fashion how that becomes a prior bad act.

MR. MALONE: Well, the -- one must -- one can reasonably assume that Mr. Orin based his warning on something that he observed.

THE COURT: Where's the evidence of that?

MR. MALONE: We don't know it because it wasn't developed by counsel at the Petrocelli hearing.

THE COURT: Did you develop it here?

MR. MALONE: I can't because that testimony has been done and passed. What we have is an interception of the inadequate work of counsel to not go in, number one, prevent

that information, that toxic information from being introduced before the jury, and we didn't have the record preserved either to make that appeal on direct appeal or to be able to argue it here. Does that make sense?

THE COURT: Well, what makes sense to me is that you're just guessing as to where that information came from and -- and you are guessing that there was some basis for that speculation.

MR. MALONE: Your Honor?

THE COURT: And we don't -- we don't have that. I don't know that there was.

MR. MALONE: We would have had it had counsel provided reasonable counsel.

THE COURT: Unless it was just speculation and just yammering.

MR. MALONE: Well, what we had was a very toxic statement by Mr. Orin that wasn't developed by counsel. I believe that competent counsel -- first off, this counsel would have seen it coming. I said yesterday that makes -- at some point, your hair starts standing up on the back of your neck. I would have been extremely on edge at that point and I think within very close proximity to his initial statements would have asked -- would have objected and asked for a hearing outside the presence of the jury so I could find out

what the heck was going on. That didn't happen.

Competent counsel would have noticed it coming, would have taken preventative and curative measures. That didn't happen and that only makes the situation worse. That only makes the situation worse because what the jury heard was that this individual who knew both Harry and Tatiana was so concerned for Harry's safety that he told her -- him, told Harry not once but twice on separate occasions that he thought that Tatiana Leibel was going to kill him.

So the fact that counsel did not give us -- did not perform adequately when faced with that destructive evidence doesn't vitiate the fact that her rights were violated, number one, by that statement coming before that jury and number two, by the failure of counsel to behave adequately.

Your Honor, I was -- the Cheryl Walker case that I talked about earlier was a case that I tried twice. I tried it twice because the Court -- the Court reversed it not after -- not from a statement that Cheryl Walker was going to kill anybody but the fact that -- the mere fact that she had -- was accused of at a prior time pointing a pistol at her husband's head and then several years later she did shoot him, but we had a self-defense case.

So to me the cases are very close in some ways.

They are very different in some ways, but they are very close but competent counsel's --

THE COURT: In that case the -- the evidence was that the defendant did something previously, did something. In this case it's some other person speculated that the defendant might do something in the future. Those are widely different scenarios, sir.

MR. MALONE: Correct, Your Honor, but I believe a Petrocelli hearing should have been held.

THE COURT: And -- and what case does the Nevada Supreme Court address a Petrocelli type hearing for witnesses' wild speculation?

MR. MALONE: We don't know if it was wild speculation because it wasn't developed by counsel.

THE COURT: What case do you know of where speculation of some other witness about what a defendant might do has led to a Petrocelli hearing?

MR. MALONE: Your Honor, I think the overall concepts apply in this case and that just is my position.

THE COURT: Okay.

MR. MALONE: And, Your Honor, I think that --

THE COURT: The motion in limine is what you're suggesting maybe should have been done.

MR. MALONE: We had a motion in limine.

THE COURT: Yeah.

MR. MALONE: We had a comprehensive motion in limine that would have been the basis for an objection. The objection posed by counsel was relevance. It was certainly relevant. I think that was relevant testimony. It was extremely toxic. It was extremely toxic, but it was relevant, and what I'm saying is that there's a merger between counsel's inadequate trial response, and we don't know what Orin thought but it gave the jury -- it planted a very toxic thought in their mind.

Here is a woman accused of killing her husband and their mutual friend says I warned Harry twice that she was going to kill him, and then the State's theory, obviously, was that she did kill him. That's all I have to say, Your Honor.

THE COURT: All right. Sir?

MR. JOHNSON: Your Honor, these kinds of proceedings I always like to remind us, and I know you know, Your Honor, where -- what this case is all about, what this post conviction is hearing is all about, and that's the question of whether the defendant was provided ineffective assistance of counsel as prohibited by the United States Constitution.

Now, there were in the pro se petition other

claims that weren't ineffective assistance of counsel that were raised. However, as I noted, I'm not going to rehash it. Those are all procedurally barred under Nevada law, and those procedural bars are mandatory for the district court to follow. I just want to focus on the ineffective assistance of counsel claims that were in the petition.

And as it has been for 30 years, the standard that governs this Court's review for ineffective assistance of counsel is Strickland V. United States, and Strickland V. United States specifically directs this Court about the perspective from which this Court is supposed to judge whether Kris Brown provided ineffective assistance of counsel of Tatiana Leibel.

THE COURT: As to those claims that you asserted are barred, there's not been any other argument about those.

MR. JOHNSON: Correct, Your Honor.

THE COURT: And the Court concludes you're correct.

MR. JOHNSON: On page 689 of Strickland, I'm not going to read a very large portion, Your Honor. It says this, I think it's important just to remind everyone why we're here. A fair assessment of attorney performance requires that every efforts be made to eliminate the disorient effect of hindsight, to reconstruct the

circumstances of counsel's challenged conduct and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherit in making that evaluation, a Court, this Court must indulge in a strong presumption that counsel of conduct falls within the wide range of reasonable professional assistance.

And they go on to say there's countless ways to provide effective assistance of counsel, and some criminal defense attorneys would not defend a particular client in the way the other one does. And in this case, the first claim involved whether counsel's decisions did not have an interpreter for the attorney-client meetings, there's a diversion of use about how many attorney-client meetings went forward. But when I asked Ms. Brown about whether there was any language difficulties that she noticed during any of those attorney-client meetings, she said that she was able to work through any difficulties. She was able to ask any questions that Ms. Leibel asked of her.

In fact, she said during the first attorney-client meeting, she asked Ms. Leibel would you like an interpreter here for this, and she said no, and that comports with what she said to the investigators as well, and so it's completely consistent. My understanding is you watched the whole thing, so you saw at a minute 33, Sergeant

Hubkey asked do you --

THE COURT: Detective Hubkey came in and asked her whether she would like to have a translator there, someone to interpret. And she -- the Court finds that she very strongly protested that, told the detective I've been in this country for 25 years, and she did not want an interpreter. She did not want translation assistance. As a matter of fact, what she said is that I've graduated from UNR. I don't need an interpreter, and she insisted that she understood.

Throughout the course of that interview, there was also a regular use of idioms such as the phrase children in common. There was a reference to the phrase significantly older. There was a use of the phrase Harry's freaking out and all of that, it is very clear that Ms. Leibel understood and understood clearly.

MR. JOHNSON: So for those reasons --

THE COURT: That's the Court's finding as fact.

MR. JOHNSON: Thank you, Your Honor. So for those reasons we feel --

THE COURT: And there were also numerous instances throughout that interview in which she corrected spelling and -- and was able to correct misunderstanding on the part of the detectives. Go ahead.

MR. JOHNSON: And so based on that factual finding, we ask that you find she wasn't deficient in her performance nor was there any prejudice. We also ask that if you issue an order that you also both make a finding that, even though it's not required, we ask that you make a finding both as efficient performance and prejudice because this case is ultimately going to end up in another court that's going to be reviewing what this Court did, and we ask that that be the case.

As for prejudice, she said that somehow that might effect -- that she might have testified. And I submit to you that what she testified to here today nor what was represented in the briefs is sufficient to say, to demonstrate to this Court that if she had testified, even if there was deficient performance that would have effected the outcome of the proceedings, we ask you to make that finding as well.

The second claim that was made involved the investigation that was done. Now, this Court has already read the transcript of what Mr. Billaue said at trial, and there's been some dispute about what he was referring to, but I believe it's clear, if you read the entire question that Mr. Billaue in context, he was asked about whether he was able to make any trajectory related finding, and he said

there's not sufficient information for me to make a finding. And then Ms. Brown asked what did you need to make a trajectory related finding? And he said it was something that the initial investigators, not Mr. Nadell (phonetic), not Mr. Omalu, he said --

THE COURT: Dr. Omalu.

MR. JOHNSON: I'm sorry, Dr. Omalu needed to do, and he said that's the information I needed. I asked him on the stand whether he obtained that.

MR. MALONE: I'm going to object and have the Court refer to the record.

THE COURT: Your objection is overruled. He can argue, but the record is what it is, and my recollection of the record is superior at least legally to yours.

MR. JOHNSON: Absolutely, Your Honor. And then on the stand I asked him whether he had that information from the initial investigators. He said two different things. At one point he said, well, it was there, but I didn't realize it was there at the time. And then I asked him did you tell Ms. Brown before the trial about that mistake and she said no.

I asked him whether you told any of the new things you've developed and told this Court, Ms. Brown about that and he said no. He said actually maybe I might have

told her about the bigger hole caused by the metal rod. That was the only thing he said he might have told Ms. Brown, but he couldn't even be certain of that. Ms. Brown didn't know what her investigator's opinion was because he never told her. She certainly was able to make that argument there. Plus, that was divergent from what Ms. Brown's actual trial strategy was. That was the first question I asked her on the stand, what was your trial strategy.

Her trial strategy was that there was a poor police investigation and that there was insufficient information for the State's investigator to draw the conclusion that he drew, and we all know what the jury results after that argument was, but that was her trial strategy, and I'm not going to rehash what the Supreme Court's opinion on strategic decisions are and that is what made --

THE COURT: Practical decisions.

MR. JOHNSON: And that was made by Ms. Brown based on the information available.

And the last two things that Mr. Billaue said was that his opinion was not based on science, not to a degree of scientific certainty but a subjective interpretation, and I would say it has very little weight this Court should consider based on this testimony here.

I don't want to go through all of the rest of them. There's been some mention of ADK 411 in this court. I just remind the Court that the Nevada Supreme Court and the very first standard says that these standards are not intended to be used as criteria for the judicial evaluation but alleged misconduct of defense counsel to determine the validity of a conviction.

And it goes on to say nothing contained herein shall be construed to overrule, expand or extend whether directly or by analogy the decision reached by the United States Supreme Court in Strickland V. Washington adopted by the Nevada Supreme Court.

Your Honor, Strickland's reasonable standard is what controls this case and your determination about all of the ineffective assistance of counsel points here, including the claim that somehow some mention of marijuana was involved. There's been some discussion of a psychological autopsy, and that some psychiatrist should have done a postmortem psychological determination of Harry after he was dead.

Now, I asked Ms. Brown about that. She said in all of her experience, both supervising and performing trials, she had never seen one done, either as a prosecutor or a defense attorney. I asked Ms. Armstrong, who was

represented as a more experienced attorney than Ms. Brown, whether she had ever heard of that. She said I never heard of that. At first she said a psychologist would be a good idea but when I cross-examined her, she clarified and said I was talking about a psychological evaluation for Ms. Leibel, not Harry, not the claim that's actually before you and raised in the petition.

And so, therefore, for all of those reasons, we haven't had anyone say that a psychological evaluator suggest that Ms. Brown fell below -- I'm sorry, an objective standard reasonable for not obtaining such a psychologist.

I don't want to belabor all of the rest of the claims because I think they are addressed rather well in the petition, and they weren't the primary thing that was addressed here for this Court. We've already addressed the trajectory related evidence, the suicidal ideation.

We talked about all of these witnesses that may have either through hearsay or some other means believed that Harry might be committing suicide. And we heard by Ms. Brown either didn't believe those had come in for evidentiary reasons or didn't believe that the benefit would outweigh the potential damage could be done to the case because of other information that would come in on either cross-examination or some other way based on Ms. Brown's determination about

everything she knew about the case.

And then just going back to the standard, Your Honor, the petitioner has not overcome the presumption this Court is required to put in place, that Ms. Brown met the standard for ineffect -- for effective assistance of counsel and unless they overcome that presumption, which is their burden here, not ours, this Court needs to deny the petition, and we would ask that you do so.

THE COURT: You get the last word.

MR. MALONE: Your Honor, I don't need to address the Court any farther regarding this. I think that we've -- other than our position is we have introduced evidence here of substandard and performance of counsel that rises to the Strickland standard.

THE COURT: Thank you.

MR. MALONE: Do you want Ms. Leibel to stand? I don't know your formality.

THE COURT: No, no.

MR. MALONE: Fine.

THE COURT: It's the Court's finding that the petitioners failed to meet their burden. And, in fact, I conclude that there is not evidence that Ms. Brown's performance failed to meet the standard in Strickland, and as fact I find that there's simply nothing that was produced

here that changes -- that would change my mind about that.

I've been pretty clear in interrupting counsel that the whole issue as to the petitioner's ability to speak English and the failure of counsel to have an interpreter present during the meetings with her, I want the record to be clear that, one, I do not believe Ms. Leibel. I do not believe that she has been honest, and I think that she was particularly not honest about the number of times that she met with her counsel.

I have had the opportunity to observe her during the course of this proceeding. Ms. Brown testified that she met with Ms. Leibel between 50 and 100 times. I don't know how many times she met with her, but I'm quite convinced that Ms. Leibel's recitation of having only met with her ten times is simply false, and I'm also convinced that Ms. Brown, as she testified, did ask her if she felt like she understood and wanted an interpreter, and that Ms. Leibel's response to that was exactly the same as the response that she gave to the investigating officers, that she understood very well. She did not need an interpreter.

And, again, I having watched that interview with her, she was in the Court's mind, in fact, belligerent about it and quite insistent that she had a college degree and had lived here for 25 years and spoke English just fine. And

even watching her testify, it was apparent that there were times that she could think of a word in English and couldn't think of the word in Russian that she wanted to convey.

She has not convinced the Court at all that she was unable to communicate with her counsel and importantly that her counsel was defective in failing to provide interpretative services or ask for interpretative services for meetings with counsel.

Furthermore, the other allegations as to the deficiency of counsel are unproven in this Court's mind and, therefore, the petition fails. You'll prepare the order.

MR. JOHNSON: Thank you, Your Honor.

THE COURT: And I appreciate all of the work that the attorneys did, and I like having good lawyers here, and I've had two here, and I appreciate it very much, and this matter is concluded, and we'll be in recess. Thank you.

I also find a lack of prejudice as was requested.

MR. JOHNSON: Thank you, Your Honor.

THE COURT: Let me just say before we're entirely done, I appreciate the services of the interpreters. I understand you're working but I appreciate you both being here and hanging in there for an extra day and accommodating us.

And, Mr. Malone, I appreciate you taking this appointment.

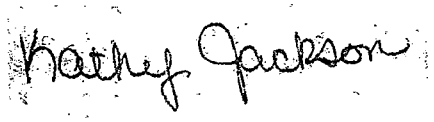
STATE OF NEVADA,)
) ss.
CARSON CITY.)

I, KATHY JACKSON, Nevada Certified Court Reporter Number 402, do hereby certify:

That I was present in the District Court in Minden, in and for the State of Nevada, on Friday, November 16, 2018, for the purpose of reporting in verbatim stenotype notes the within-entitled Post Hearing Conviction;

That the foregoing transcript, consisting of pages 1 through 76, is a full, true and correct transcription of said Post Hearing Conviction.

Dated at Carson City, Nevada, this 27th day of November, 2018.



/s/ Kathy Jackson
KATHY JACKSON, CCR
Nevada CCR #402

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THE NINTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF DOUGLAS

TATIANA LEIBEL,
Plaintiff,
v.
THE STATE OF NEVADA,
Defendant.

Case No. 14-CR-00062B
Dept. No. 1

AFFIRMATION
Pursuant to NRS 239B.030

The Undersigned does hereby affirm that the following document **DOES NOT** contain the social security number of any person: (List of document(s) attached below)

1) Post Hearing Conviction -- 11/16/18

-or-

The undersigned does hereby affirm that the document named below **DOES** contain the social security number of a person as required by state or federal law or for the administration of a public program or for an application for a federal or state grant: (List of document(s) attached containing social security number information below)

1) _____

2) _____

(Your signature) Kathy Jackson Kathy Jackson (Date) 11/27/18