

**NEVADA COMMISSION ON ETHICS
REQUEST FOR OPINION
(ETHICS COMPLAINT)
NRS 281A.440.2
Please print or complete online.**

R E C E I V E D

DEC 28 2010

COMMISSION
ON ETHICS

1. Provide the name, title, public agency, address, and telephone number for the public officer or employee you allege violated the Nevada Ethics in Government Law, NRS 281A. (If more than one public officer or employee is alleged to have violated the law, use a separate form for each individual.)

Name & Title:	Richard Gammick, John Helzer, Kelly Cusanelli, Washoe County District Attorney,		
Public Agency:	Washoe County District Attorney office		
Address:	1 South Sierra Street		
City, State, Zip:	Reno, NV 89501-1928	Telephone:	323-3200

2. Describe in specific detail the conduct of the public officer or employee identified above that you allege violated the provision(s) of chapter 281A of NRS. (You must include specific facts and circumstances to support your allegations – including dates, times, places, and the name and position of each person involved.)

Check here if additional pages are attached.

On August 30, 2010 I personally attended the event being sponsored by the Republican Jewish Coalition.
Mr. Gammick perjured himself during the Ethics Commission's investigation.
Mr. Gammick illegally used the Walt Disney Trademark of Mickey Mouse thereby, committing Copyright Infringement.
Mr. Gammick has publicly lied about cases in order to take the focus away of what is really going on within the Washoe County District Attorney's Office.
Mr. Gammick covered up the wrong doings of ADA John Helzer when Gammick was informed in writing and chose to do absolutely nothing. Several times whenever Gammick was asked about the withholding of evidence in the Nolan Klein case Gammick would lie to the public, especially during his re-election campaigns in order to discredit those who knew the truth about what Gammick and several members in his office had done over the years. That would include Steven Barker, who has been cited/reprimanded several times for withholding evidence/exculpatory evidence. Gammicks response to this can be seen on the video of the Republican Jewish Coalition event of August 30, 2010.
Please see additional 3 page complaint attached.

3. Identify all persons who might have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide. Include the address and telephone number for each person.

Check here if additional pages are attached.

Name & Title:	Richard Gammick, John Helzer, Kelly Cusanelli, Washoe County District Attorney,		
Address:	1 South Sierra Street	Telephone:	
City, State, Zip:	Reno, NV 89501-1928		
Nature of Testimony:	Ms Sherry Powell can testify that she spoke with Mr. Gammick, and Mr. Cusanelli at the Republican Jewish Coalition on August 30, 2010 and she has private emails from members of Mr. Gammick's campaign team.		

4. Attach two copies of all documents or items you believe provide credible evidence to support your allegations. NRS 281A.440.2(b)(1) requires you to submit all related evidence to support your allegations. NAC 281A.435.3 defines credible evidence as a minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, minutes, agendas, videotapes, photographs, concrete objects, or other similar items that would reasonably support the allegations made within the complaint. Credible evidence does not include a newspaper article or other media report if the article or report is offered by itself.

State the total number of additional pages attached (including evidence) ~~45~~ 150

REQUESTOR'S INFORMATION:

NAME: Tonja Brown	E-MAIL: Tonjamasrod40@aol.com
ADDRESS: 2907 Lukens Lane	
CITY, STATE, ZIP: Carson City, NV 89706	
TELEPHONE 882-2744	CELL PHONE: 671-5037

By my signature below, I do affirm that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief and I am willing to provide sworn testimony if necessary regarding these allegations.

Tonja Brown
 Signature
 Print Name: Tonja Brown

12-28-10
 Date

Please return an original signed form, two copies of the form, and three copies of the supporting documents and evidence to:

**Executive Director
 Nevada Commission on Ethics
 704 W. Nye Lane, Suite 204
 Carson City, Nevada 89703**

Ethics complaints submitted by facsimile will not be considered as properly filed with the Commission.
NAC 281A.255.3

Formal Ethics Commission Complaint

December 28, 2010

On August 30, 2010 I personally attended the event being sponsored by the Republican Jewish Coalition where the Washoe County District Attorney Richard Gammick was the quest speaker. While I was there a man introduced himself as Kelly Cusanalli to a woman, Ms. Sherry Powell. He said he was working on Mr. Gammick's campaign as the campaign manager. Mr. Cusanalli told her that he was not suppose to do this, but, he handed her his Washoe County District Attorney's card and wrote on the back his private info and asked that she contact him. During their conversation Mr. Gammick approached the same woman and spoke to her.

See EXHIBIT 1, an email conversation between Ms. Powell and Mr. Cusanalli.

Mr. Gammick asked the audiences votes and had campaign info placed out for the people to take. This evidence can be seen in the video that has already been provided in the 10-71C case that is now before this Commission. During this time Mr. Gammick had a question and answer period with the members of the audience, myself included. The video is in the Ethics Commissions possession and will show the conversation between Mr. Gammick and myself. During the Q & A time I had asked Mr. Gammick why he continued to employ Deputy D.A. Steven Barker who has been cited/reprimanded for withholding evidence/exculpatory evidence in cases? His response is on the video.

See EXHIBIT 2, the June 23, 2010 minutes of the Advisory Commission on the Administration of Justice, Gammick was present and it the evidence against Steven Barker was given to the Advisory Commission. When asked if anyone had anything to say, Gammick said and did nothing.

EXHIBIT 3 a Writ of Mandamus detailing the Supreme Court Regulation ADKT 427 dealing with Gammick and John Helzer,

EXHIBIT 4 the October 27, 2010 Court's Order that is now on appeal.

Mr. Gammick has continued to use his office as a forum in an attempt to discredit those who voice their concerns about the wrong doings that is going on within the Washoe County District Attorney's Office. On several occasions Mr. Gammick has publicly lied to the citizens/voters of Washoe County in an order to take the focus away from what is going on in the Washoe County District Attorney's Office. Mr. Gammick has appeared on the Bill Mander's Show and that on or about October 28, 2010 made a public comment to the Reno Gazette Journal Reporter, Ms. Martha Belislle, knowing for a fact that he knows is not true in an effort I believe to gain votes.

See EXHIBIT 5, Reno Gazette Journal story, highlighted comment.

1083

See EXHIBIT 6, 6a, 6b 6c, 1995 letter from Gammick to Ms. Brown, Alternate Public Defender Committee Agenda March 2, 2007, Letter to Keith Munro in the Book To Prove His Innocence, and regarding comments.

See EXHIBIT 7, June 24, 2009 Pardons Board letter pertaining to the discovery of the newly discovered evidence and John Helzer,

See Exhibit 8. July 13, 2010 file stamp copy letter to Richard Gammick.

See EXHIBIT 9, 9a, 9b 2 Letters from the law office of Hager and Hearne. It should be noted that the discovery of the October 29, 2008 perjury of John Helzer during the Pardons Board hearing was not discovered until the transcripts 9b,were transcribed on or about the month of June 2009.

Mr. Gammick has a moral, ethical and legal obligation as a highest law enforcement officer in the county to uphold the laws and not to violate them as what he did when he PERJURED himself to the Ethics Commission investigation when he denied that he was campaigning at the August 30, 2010 Republican Jewish Coalition. In the Investigator's Report as I would like to use as evidence Mr. Gammick own admissions against him to prove that not only does he lie to the community in order to protect the wrong doings of the Washoe County District Attorney's Office Mr. Gammick will lie to the Ethics Commission to protect his own wrong doings too. See what I list as Exhibit 10 that is the Investigator's Report.

See Exhibit 11, Nevada Department of Public Safety, "Truthfulness and the Brady Decision".

Mr. Gammick illegally used and violated the COPYRIGHTED TRADEMARK of Mickey Mouse as his official seal of the District Attorney's office. See Ethics Commission Investigator's Report Exhibit 10.

See Exhibit 12, 12 a, ²Letter/email to the Walt Disney Legal Division and their response,

Mr. Gammick was named as a Defendant in the Writ of Mandamus Exhibit 3. Mr. Gammick had a duty to inform the Petitioner that the sitting judge Patrick Flanagan in this case against him supported/endorsed Flanagan.

See Exhibit Judge Flangan list of supporters, naming Gammick.

I refer to some of the perjury statutes that I believe that Mr. Gammick would fall under NRS 199.145, 281, 199, chapter 197 along with other violations named in the Writ of Mandamus Exhibit 3 and under Exhibit 11. This Commission may have a few others that would be relevant to this case. I will be filing a Complaint with the Nevada State Bar as well.

NRS 281A.020(2) provides, in relevant part:

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

2. The Legislature finds and declares that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

NRS 281A.400(7) provides, in relevant part:

Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit the public officer's or employee's personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of the public officer's or employee's public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

Tonja Brown
2907 Lukens Lane
Carson City, NV 89706
882-2744 home
671-5037 cell

WITNESS LIST

Witnesses: Christopher Mazur attended the Republican Jewish Coalition
330 West Nye Lane # 41
Carson City, NV 89701

Martha Bellisle, RenoGazette Reporter, Gammick gave her a comment that was printed and Gammick knew it was not true during his bid for re-election. He made the comment that appeared in the October 28, 2010 Reno Gazette paper that Mr. Klein had confessed to two attorney's. Mr. Gammick knows that is not true and to bring it up when he is being interviewed by the media and radio station, KKOH Bill Mander's show in order to take away the focus of the wrong doings that has been going on within the Washoe County District Attorney's Office. Gammick continues to make slanderous statements when he knows for a fact, by his own evidence that it is not true what he tells the public. It is another way for Gammick to gain votes by discrediting the name and family of Nolan Klein.

Mr. Dennis Tupper, has heard Mr. Gammick and Bill Manders mention this case on the KKOH talk Radio show. When I or others call in to defend what is being said by Gammick or others, I or we get cut off leaving Mr. Gammick to end the conversation with slanderous statements to the public. 741-4364 cell phone.

Ms. Sherry Powell, Ms. Powell attended the August 30, 2010 Republican Jewish Coalition and can be seen on the Video the Ethics Commission is in possession of. She has told me that she has correspondence from employees at the Washoe County District Attorney's office pertaining to Gammick's campaign and during business hours. She said that she has saved every email, note, conversation etc. Her email address is listed in Exhibit 1 as Hillbillywife19992@yahoo.com, her phone is 828-0827

Ms. Patty Pruett has heard Mr. Gammick on KKOH, The Dunbar Report, September 22, 2008 refer to Nolan Klein's case and continued to lie to the public about the facts of this case. 159 Dayton Village Parkway, Dayton, NV 89403. 246-9339 home.

From: tonjamasrod40 <tonjamasrod40@aol.com>

To: TONJAMASROD40 <TONJAMASROD40@aol.com>

Subject: Fwd: Merit Selection Fundraising Event

Date: Sun, Dec 26, 2010 10:59 pm

-----Original Message-----

From: Justice < >

To: Men Constitution Woman < >; Tonja <tonjamasrod40@aol.com>

Sent: Mon, Nov 29, 2010 12:04 pm

Subject: Fw: Merit Selection Fundraising Event

Ladies of Liberty

----- Forwarded Message -----

From: alecia biddison < >

To: Justice <hillbillywife1999@yahoo.com>

Sent: Mon, November 8, 2010 11:26:17 PM

Subject: Re: Merit Selection Fundraising Event

Woe...this is getting personal...Don't communicate with him further!!!

On 11/8/10 5:20 PM, "Justice" < > wrote:

Whom are you addressing, and what are you talking about?

Ladies of Liberty

----- Forwarded Message -----

From: " >

To: Justice <hillbillywife1999@yahoo.com>

Sent: Thu, November 4, 2010 7:16:26 PM

Subject: Re: Merit Selection Fundraising Event

I don't care what you think. We will see what happens because I don't care and you like games.

Sent via BlackBerry by AT&T

From: Justice <hillbillywife1999@yahoo.com>

Date: Thu, 4 Nov 2010 18:18:08 -0700 (PDT)

To: <keusanelli@yahoo.com>

Subject: Re: Merit Selection Fundraising Event

I do believe you represented yourself as a campaign manager. I also believe you asked for more information. You gave me your email, on the back of your card. I still have it.

Sherry Powell

Ladies of Liberty

<http://mail.aol.com/33069-111/aol-6/en-us/mail/PrintMessage.aspx>

12/26/2010

Exhibit 1
RFO No. 10-120C Page 7 of 155

From: " " < >
To: Justice < >; "Peckman, Maureen" < >
Sent: Wed, November 3, 2010 3:33:59 PM
Subject: Re: Merit Selection Fundraising Event

Sherrie Powell added me to this email group for some reason and I do not wish to get these emails.

**MINUTES OF THE
ADVISORY COMMISSION ON
THE ADMINISTRATION OF JUSTICE**

JUNE 23, 2010

The meeting of the Advisory Commission on the Administration of Justice was called to order by Assemblyman William C. Horne, Chair, at 9:42 a.m. on June 23, 2010, at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. is the Agenda. is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (CARSON CITY):

Assemblyman William C. Horne, Chair, Assembly District 34
Connie Bisbee, Chairman, State Board of Parole Commissioners
Assemblyman John C. Carpenter, Assembly District No. 33
Larry Digesti, Representative, State Bar of Nevada
Gayle W. Farley, Victims Rights Advocate
Richard Gammick, District Attorney, Washoe County
Honorable James W. Hardesty, Justice, Nevada Supreme Court
Donald L. Helling, Deputy Director, Operations North, Nevada Department of Corrections
Catherine Cortez Masto, Attorney General
Richard Siegel, President, American Civil Liberties Union of Nevada
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Phil Kohn, Clark County Public Defender
Judge Douglas W. Herndon, Eighth Judicial District Court
Senator David R. Parks, Clark County Senatorial District No. 7

COMMISSION MEMBERS ABSENT:

Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety
Thomas W. Finn, Chief, Boulder City Police Department
Raymond Flynn, Assistant Sheriff, Las Vegas METRO
Senator Dennis Nolan, Clark County Senatorial District No. 9
David Roger, District Attorney, Clark County

Exhibit 2

The Advisory Commission on the Administration of Justice
Date: June 23, 2010
Page: 2

Howard Skolnik, Director, Nevada Department of Corrections

STAFF MEMBERS PRESENT:

Nicolas C. Anthony, Senior Principal Deputy Legislative Counsel
Risa B. Lang, Chief Deputy Legislative Counsel
Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau
Olivia Lodato, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Rex Reed, Offender Management Chief, Nevada Department of Corrections
~~Tonia Brown~~
Steve Hines

Chair Horne opened the meeting at 9:42 a.m. He requested a roll call of members present.

Ms. Angela Clark called the roll. A quorum was present.

Chair Horne said there was one Agenda item today, the presentation concerning credits on terms of imprisonment. He said Mr. Helling would be making the presentation on data the Commission heard in January.

Donald L. Helling, Acting Director, Nevada Department of Corrections, asked Rex Reed to make the presentation.

Justice Hardesty said he requested a presentation to this Commission that was given to the District Judges Association, giving an overview of all of the various sentencing credit issues. He said the issue was complicated and uncertain for victims and inmates. It involved multiple statutory sources and the application of multiple decisions by the prison officials.

Rex Reed, Administrator, Offender Management Division, Nevada Department of Corrections, said his Power Point presentation, , was the same presentation given to the judges at their conference. He said he would discuss his presentation in five or six different elements. He would define the types of inmates, then define the terms, and then the five different types of credits. He said the Department of Corrections had five types of credits, and the Parole Board also had credits, but he would not cover those. He would discuss tracking credits, then list the programs that

earned an inmate merit credits, and finally offer examples discussing an issue that was difficult for him.

Mr. Reed defined the type of people in the system, . He said people had the ability to earn different kinds of credits. He defined terms used, such as the PED-parole eligibility date. He said they should assume if the minimum sentence was two years, it was also their PED. The NPED was assigned if an inmate appeared before the Parole Board and was not granted parole. He said MPR meant mandatory parole release date. PEXD was the projected expiration date and it often caused problems. He said it was a service provided to inmates and was an estimate of the projected release date so the inmate could plan ahead.

Chair Horne asked about the MPR and whether it was the mandatory parole release date or was it mandatory parole eligibility.

Mr. Reed said it was mandatory parole review. Mr. Reed defined the five types of credits. He said flat time was awarded for being present in a cell for one day. Good time was awarded if an inmate behaved while in prison. He received either ten or twenty days credited to his sentence requirements. Work time was earned by their job duties. He said it was a prorated credit. Merit credits were awarded if an inmate completed a certain program or earned a college degree. Jail credit was awarded to an inmate if he was in jail while waiting to be sentenced. He said the judge could award credit while the inmate was waiting.

Richard Gammick, District Attorney, Washoe County, asked Mr. Reed if he was going to cover how the different credits were applied, and whether the minimum or the maximum sentence applied to the time the inmate was serving.

Mr. Reed said all credits were applied to the maximum sentence. He said sometimes the work time and good time credits could be applied to the minimum; however, an A or B offender could not have credits applied to the minimum.

Mr. Gammick said he understood if some of the credits were applied to the minimum sentence, some people served less than a year in prison.

From: Gerry Spence <gerryspence@...>
To: tonjamasrod40@aol.com
Subject: Re: Final- Letter in Microsoft Word Document
Date: Mon, Jun 14, 2010 3:52 pm

Forward it as is, please. Have no means to sign and email. gerry

From: <tonjamasrod40@aol.com>
Date: Mon, 14 Jun 2010 14:39:13 -0400
To: <gerryspence@...>
Subject: Re: Final-

Gerry,

Is there a way you can sign the letter and email it back to me? If you cannot I'll forward it on this way.

Thanks again,

Tonja

-----Original Message-----
From: Gerry Spence <...>
To: tonjamasrod40@aol.com
Sent: Mon, Jun 14, 2010 11:19 am
Subject: Re: Final- Letter in Microsoft Word Document

Tonja:

Attached is my amended letter. Please feel free to distribute it as required.

gerry

From: <tonjamasrod40@aol.com>
Date: Mon, 14 Jun 2010 11:36:26 -0400
To: <gerryspence@...>
Subject: Re: Final- Letter in Microsoft Word Document

Gerry,

June 12, 2010

Re: NOLAN'S LAW

Dear Members of the Advisory Commission on the Administration of Justice:

My name is Gerry Spence. I am an attorney who has spent a lifetime fighting for the rights of ordinary citizens. I am in support of Ms. Tonja Brown's proposed recommendation of NOLAN'S LAW.

NOLAN'S LAW would be instrumental in protecting the rights of any of us who become accused of crimes. NOLAN'S LAW would provide that once a defendant is arrested and charged the law enforcement agency MUST provide the accused with a copy of all exculpatory evidence in the possession of the prosecution at the time of the arrest and that after the arrest copies of any additional exculpatory evidence that is provided the prosecution be simultaneously provided the accused.

We have witnessed in the last decade the release of countless innocent citizens whose precious lives were wasted in horrible prisons because an over zealous prosecutor chose not to turn over exculpatory evidence as is required by law.

The failure to turn over exculpatory evidence not only convicts innocent persons, but it is the reason that rapists and murderers are released to walk among us. Prosecutors withhold evidence which requires the court to reverse convictions and has resulted in the release of person who should have remained behind bars.

When a prosecutor doesn't do their job, we all lose. Either an innocent person loses his constitutional protection or a rapist or murderer walks free. Support NOLAN'S LAW and protect all of us, and our families from the strategies of ambitious prosecutors who want to convict at any price.

Respectfully,

Gerry Spence

HAGER & HEARNE

Attorneys at Law

Robert R. Hager
Treva J. Hearne

245 E. Liberty, Ste. 110
Reno, Nevada 89501
(775) 329-5800-Telephone
(775) 329-5819-Facsimile

June 15, 2010

To the committee:

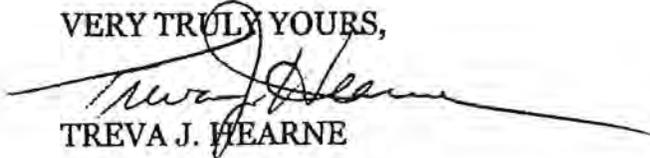
Robert R. Hager and I have practiced law a combined total of over sixty years. We concentrate our law practice in civil rights/plaintiffs litigation and criminal defense. We have not witnessed a more egregious violation of rights than what occurred to Nolan Klein.

We knew Nolan for several years and respected his legal opinions and research. Even though he focused on making the best of his time here on earth, what happened to him because of the failure of the District Attorney to disclose exculpatory evidence was a criminal act.

Too often we have prosecutors who care only about one crime, one perp, in order to get re-elected. This law named appropriately after Nolan Klein hopefully will change that mentality to one crime, the ***right*** perp.

Please support Nolan's law as a means to stop the wrongful conviction of innocent persons in the wrong place at the wrong time. America is better than that.

VERY TRULY YOURS,



TREVA J. HEARNE

From: Dennis Tupper <dentup47@gmail.com>
To: Tonja Brown <tonjamasrod40@aol.com>
Subject: Nolan's Law
Date: Tue, Jun 15, 2010 9:47 pm

To Whom It May Concern,

This letter is sent to those in charge of placing Nolan's Law before the lawmakers in Carson City, NV during the next legislative session.

I am a 50 year plus resident of the silver state and have observed several times during those years, court cases where a law similar in content to Nolan's Law would have been beneficial to Defense Attorney's, so as to provide accurate and needed information in preparation for a defense case.

Closing ones eyes as to the necessary facts in helping to prove guilt or innocence should be a non negotiable path of fact finding in any legal case.

Open your eyes and provide all information so that the guilty won't go free and the innocent won't serve time or even be put to death.

I am a strong supporter of Nolan's Law and hope that the necessary steps are taken to have our Nevada lawmakers vote to have it become a much needed part of our legal process.

Sincerely,
Dennis L. Tupper

From: Vicki Olausen <volausen@sbcglobal.net>
To: aclark@lcb.state.nv.us
Cc: Tonja Brown <tonjamasrod40@aol.com>; volausen@sbcglobal.net
Subject: NOLAN'S LAW
Date: Tue, Jun 15, 2010 6:23 pm

Dear Ms. Clark

My name is Vicki Olausen. I am the wife of John Steven Olausen #14804, an inmate at Northern Nevada Correctional Center. Steve has been incarcerated for 32 years in the Nevada prison system thanks to evidence being withheld in his case by Washoe County Deputy district attorney Gary Hadlestad. Needless to say I strongly support Nolan's Law.

The injustices that have been done to Nolan Klein, Steve Olausen and countless others has got to stop! Nolan's Law will protect the rights of innocent people being unjustly accused and prosecuted by our prosecutors who will do ANYTHING, including hiding or destroying evidence to get a conviction. Prison is a horrible place for anyone to be, especially those who are innocent but can't prove it due to the horrendous and vile cover ups by the DA's office.

I am asking you to please support NOLAN'S LAW for the protection of all. You never know when one might be unjustly accused of a crime.

Sincerely,

Vicki Olausen

Facts

In order to truly understand the State's otherwise incomprehensible motion, it is important that some background be fleshed out for the Court. The true motive behind the Motion has nothing to do with misconduct, for there is none (not on the part of the Public Defender at any rate). It has nothing whatever to do with worry over a flight risk, because if the State was *actually* concerned and had wanted to prevent the OR, there was still ample time to do so after the alleged misunderstanding. And it has absolutely nothing whatsoever to do with Deputy District Attorney Seven Barker's moral outrage, because he has been found by multiple judges on multiple occasions over the years to have engaged in ethical and legal misconduct himself (conduct which continues to this day). Clearly, he is more than comfortable with bent rules.

No. This motion is about one thing – vindictive and improper retaliation against an attorney who has the temerity to (gasp) do his job.

In order to understand the State's motion in context, then, it is unfortunately necessary to briefly outline Mr. Barker's conduct with Deputy Public Defender Orrin Johnson to date.

- On Mr. Johnson's first day as a member of a felony team, he represented a defendant charged with (among other things) Robbery at a preliminary hearing. The defendant was in custody, denied culpability, and invoked his right to his preliminary hearing. Mr. Barker was not prepared, as he didn't have a necessary witness present. When Johnson told him that the defendant was invoking his right and therefore he would have to make a *Hill-Bustos* motion if he wanted a continuance, Barker got within inches of Johnson's face and said, "You do not want to fuck with me. You're starting off on the wrong foot with me." Similar profanity-laced veiled threats were repeated at least three times before Barker was forced to go on the record to ask for the continuance. Barker was eventually forced to dismiss that case, but the threats turned out to be a harbinger of things to come.
- Later than first week, Barker conditioned an offer in another case on him being able to speak to the represented defendant personally so that he could chastise him. The defendant was in custody. Barker refused to discuss with the defense attorney what he intended to say to him. Failure to allow this impermissible contact with a represented criminal defendant would have impacted the deal in a way that could have meant the difference between multiple decades in prison and probation.
- Barker refused to stipulate to a continuance for a sentencing in a case where the defendant had been accidentally transported to prison by the State, in spite of the fact that the mistaken transport was unknown to either party until the defendant's wife contacted the Public Defender's Office (and Johnson contacted Barker). Due to the State's action, Mr. Johnson would not have been able to conduct an ADKT 411 compliant presentence investigation before the sentencing date. When pressed for a reason for his intransigence, Barker would only say, "Some things in

AD

1 CODE 2490
2 JEREMY T. BOSLER
3 BAR #4925
4 WASHOE COUNTY PUBLIC DEFENDER
5 One California Avenue
6 RENO, NV 89509
7 (775) 337-4800
8 ATTORNEY FOR DEFENDANT

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF WASHOE

13 STATE OF NEVADA,
14 Plaintiff,

15 vs.

Case No. CR09-0158

16 FELIPE HENRIQUEZ,
17 Defendant.

Dept. No. 8

18 **DEFENDANT'S MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT**

19 COMES NOW Defendant, FELIPE HENRIQUEZ, by and through his counsel of
20 record, the Washoe County Public Defender's Office, and Deputy Public Defender, SEAN B.
21 SULLIVAN, and hereby moves this Court to issue an Order dismissing this case in its entirety
22 for discovery violations and/or prosecutorial misconduct.

23 This motion is based upon the following points and authorities, the attached exhibits
24 herein, any arguments of counsel, and any witness testimony this Court may entertain at an
25 evidentiary hearing currently scheduled for September 9, 2009 in Department Number Seven of
26 the Second Judicial District Court.

Dated this 3 of September, 2009.

By:



SEAN B. SULLIVAN

1 Defense now raises this point only to illustrate the fact that Mr. Barker has a pattern of
2 withholding State's evidence from the Defense in the past, and he has been admonished by the
3 Second Judicial District Court to refrain from doing so. Therefore, Mr. Barker simply cannot
4 once again rely on the same old excuse that the evidence in question was not exculpatory in
5 nature because he believed it was irrelevant and he never planned on using the evidence in the
6 State's case in chief. It is axiomatic that Mr. Barker was not planning on using the
7 CARES/DNA evidence in his case in chief at trial-It exonerates the Defendant! This point
8 clearly illustrates Mr. Barker's bad faith in this matter, and his utter contempt towards the
9 reciprocal rules of discovery.

11 III. CONCLUSION

12 The Defense respectfully requests an Order from this Court sanctioning the State of
13 Nevada by way of dismissing the Information in its entirety in light of the prosecutor's bad
14 faith and delay in providing exculpatory evidence to the Defense pursuant to the Due Process
15 Clauses of the Fifth and Fourteenth Amendments to the United State Constitution; Article 1,
16 Sec. 8 of the Nevada State Constitution; Nevada Rules of Professional Conduct Rule 3.8(d);
17 Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitely, 514 U.S. 419 (1995); and State v.
18 Bennet, 119 Nev. 589, 81 P.3d 1 (2003).

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FILED

JAN 23 2007

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

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

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR06-1733

JOSHUA LEO DAVEY,

Dept. No. 1

Defendant.

ORDER

Defendant, JOSHUA LEO DAVEY, is charged with two counts of statutory sexual seduction. He entered pleas of not guilty and was scheduled to begin trial on October 23, 2006. In preparation for trial, the STATE and the Defense entered into a reciprocal discovery agreement. Additionally, defense counsel contends she made four requests for discovery and filed a motion in limine regarding other acts, all of which placed the State on notice of Defense's desire to obtain all discovery, both inculpatory and potentially exculpatory. On the day of trial, the Court was forced to vacate the trial and send home waiting jurors because the State violated the parties' reciprocal discovery agreement.

As a result of this violation, the Defense filed a *Motion for Dismissal with Prejudice Based Upon Prosecutorial Misconduct* on November 20, 2006. The State filed an *Opposition* to which the Defense *Replied*. The Court heard oral argument on the *Motion*.

3 This case against Mr. Davey resulted from the statements of two minor girls, Sarah F. and
4 Lisa J., who were the subject of an investigation and arrest for marijuana use and possession. During
5 the course of interviews related to their own criminal charges, Sarah and Lisa accused Defendant,
6 Joshua Davey, of providing them with marijuana. Later in the investigation, the girls further
7 disclosed that the Defendant, Joshua Davey, had consensual sexual relations with both of them.

8 Deputy Mark Moore, the arresting officer of Sarah F. and Lisa J., prepared two written
9 criminal reports regarding the allegations against Mr. Davey on November 17, 2005. These reports
10 were available to Detective Bernardy who became responsible for the investigation of Mr. Davey.

11 The record reflects Deputy District Attorney Steven Barker had these reports prior to trial
12 when he received a fax from P. Bernardy on October 18, 2006 containing the reports. The
13 transmittal was six pages and included the two reports prepared by Deputy Moore. Washoe County
14 Sheriff's Office incident report numbered 05-12658 listed the suspect "Jason Davies", and
15 referenced allegations from the alleged victims claiming they had sexual relations with "Davies" and
16 bought marijuana from him. The second report numbered 05-12657 referenced the drug possession
17 charges of the alleged victims, Sarah F. and Lisa J., and went on to reference the alleged sexual
18 contact between Mr. Davey and the alleged victims.

19 The State did not provide copies of these reports to the Defense pursuant to the reciprocal
20 discovery agreement until the morning of trial during pretrial motions when Deputy Moore
21 referenced the reports on the witness stand.

22 The record is clear that Deputy District Attorney Steven Barker had these reports in his
23 possession as early as October 18, 2006, at 9:07 a.m. The Court asked Mr. Barker to explain why he
24 had failed to provide the police reports to the defense. He stated "I did have it yesterday Judge.
25 Again, the State does not intend to get into the marijuana case." (See page 15, ln. 15-17, October 23,
26 2006, transcript.)

27 The State contends, although Mr. Barker received the police reports by fax on October 18,
28 2006, he believed the transmission merely contained the "marijuana report" he requested. Mr. Barker
claimed he simply placed the fax into his trial box without reviewing the document. Mr. Barker

1 further contends he believed the marijuana report was not discoverable "because it was not going to
2 be used as part of the State's case in chief."

3 Prior to trial, the Defense had consistently propounded a theory that the alleged victims may
4 have had motive to falsify statements and seek leniency from law enforcement in exchange for
5 information about Mr. Davey. The issue of the victims' alleged marijuana use and alcohol
6 consumption had been a subject of ongoing debate in several pretrial hearings predating the trial.
7 Thus, the Court finds Mr. Barker was well aware of the significance of evidence related to the girls'
8 arrest, investigation, and the allegations they made against Mr. Davey.

9 The Defense contends the State violated Brady v. Maryland, 373 U.S. 83, S.Ct. 1194 (1963)
10 by withholding the reports and avers, "Evidence is material if it offers the defense an opportunity to
11 question the police investigation or impeach the state's witnesses. Mazzan v. Warden, 116, Nev. at
12 75 993 P.2d at 42 (2000)." The Court notes the prosecutors' failure to turn over material evidence to
13 the defense "undermines confidence in the outcome of the trial" see Lay v. State of Nevada, 116
14 Nev. at 1198, 14 P.3d at 1265 (2000).

15 The Defense contends the prosecutorial misconduct exhibited by Mr. Barker is so egregious
16 as to warrant dismissal of the criminal charges, with prejudice, as an appropriate remedy to punish
17 the State and ensure the boundaries of justice are not abused by over zealous prosecutors. The
18 Defense contends Mr. Barker acted in bad faith.

19 The State contends dismissal of the above-captioned case is not an appropriate remedy and
20 the proper remedy has already been affected by this Court, which was granting a continuance and
21 giving the defense the police reports previously withheld by the State.

22 The Court has considered the points and authorities, and the arguments of counsel, along
23 with the record in its entirety and finds prosecutor Steven Barker violated the parties' reciprocal
24 discovery agreement.¹ Mr. Barker's explanations for the violation varied from: 'the evidence was

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26
27 ¹ The Court notes this is not the first occasion Mr. Barker has exhibited problems complying with reciprocal discovery
28 agreements. The Court has included an *Order* from Judge Steinheimer detailing a previous incident of Mr. Barker's
failure to comply with the rules of criminal procedure as an exhibit to this *Order*.

In that case, Mr. Barker learned that a witness overheard the defendant say "Forgive me." Mr. Barker did not share this
information with defense counsel and proceeded to use the information on cross-examination of the witness. The Court

not relevant' to 'he was not aware of the evidence' to 'he did not read the evidence until the morning of the trial'. Under any set of circumstances, Mr. Barker's lax approach to compliance with criminal discovery orders is unacceptable.

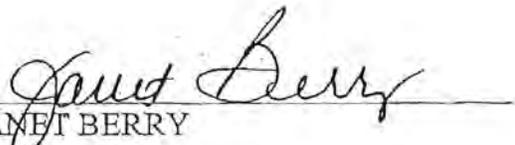
Mr. Barker's misconduct has caused this case to be delayed, has inconvenienced jurors who reported to the court to commence trial, has caused the State and County to incur costs associated with trial preparation, and has created concern from defense counsel as to Mr. Barker's integrity and/or ability to properly comply with the rules of discovery.

The Defendant's request for dismissal with prejudice, under the unfortunate circumstances of this case, is understandable. However, such a severe sanction is not warranted or supported by law. The dismissal of a criminal case because of prosecutorial misconduct results in potential injustice to victims of crime and the citizens of Nevada. The Supreme Court favors resolution of cases on the merits and dismissal is a harsh remedy for prosecutorial misconduct.

Accordingly, the Court DENIES the Defendant's *Motion for Dismissal Based Upon Prosecutorial Misconduct*. The Court has conferred with the State Bar of Nevada and requested guidance related to Mr. Barker's discovery violation. The State Bar requested the Court send a copy of this *Order* along with copies of the parties' motions and transcripts to the State Bar for consideration. Accordingly, the clerk is ORDERED to provide the State Bar with the requested documents.

IT IS SO ORDERED.

DATED this 23rd day of January 2007.


JANET BERRY
District Judge

found Mr. Barker's conduct was improper, but concluded the conduct was harmless beyond a reasonable doubt and denied the defendant's *Motion for Mistrial*.

The defense also alleged Mr. Barker engaged in misconduct when he made several statements during his closing argument. The Court found many of these statements to be improper, but the statements did not justify the Court granting a motion for mistrial or for a new trial.



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**: Facts followed by cases and exhibits. Gammick continues to k
withholds evidence**

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Dear Ms. Clark,

Please submit to the Commission the following information. This information is a pri
PASS. Assistant District Attorney, Steven Barker has been cited for withholding exc
some of the facts and Orders by the Judges regarding ADA Steven Barker.

Mr. still continues to hold him employment within the Washoe County District Attorne
Barker continue to do withhold exculpatory evidence in?

Nolan's Law will prevent such an over zealous prosecutor, such as, Mr Steven Barke

Tonja Brown

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Fwd: case 3

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- Case_3_Exhibit_3_ADA_Steven_Barker_withheld_evidence.jpg
- Case_3_Order_ADA_Steven_Barker_withheld_evidence.jpg

7 Attached Images



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To Whom it May Concern:

I am writing in support of the request of Tonja Brown to promote and ultimately pass Nolan's Law.

I have heard of many cases besides that of Nolan Klein where the prompt sharing of all evidence with the defense as well as the District Attorney would have served justice fairly and appropriately. I can think of no good reason for the current discrepancy in the procedure.

Please give earnest consideration and support to the passage of Nolan's Law.

Very Sincerely,

Linda D. Greenberg
267-11th Avenue #4
San Francisco, CA94118
(415) 668-5239

P S I am the mother of an inmate in the Nevada State Prison System.

Original Message

Tonja Brown, Executrix/Administrator
Estate of Nolan Klein
2907 Lukens Lane
Carson City, NV 89706

IN PROPER PERSON

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

Department No. 7

NOLAN KLEIN
Petitioner,

Case No: Cv10-01057

V

WRIT OF MANDAMUS

WASHOE COUNTY DISTRICT ATTORNEY'S
JOHN AND JANE DOES A – Z

PARDONS BOARD

ATTORNEY GENERAL KATHRINE CORTEZ MASTO
JOHN AND JANE DOES A – Z

_____/Respondents

WRIT OF MANDAMUS

COMES NOW, Petitioner, NOLAN KLEIN, not by nor through his exclusively Motion to Compel District Attorney, Richard Gammick, counsel on record. This above Writ of Mandamus is an extraordinary / extenuating circumstances action, wherein, Counsel is not retained by this honorable Court nor KLEIN, thus, in proper person KLEIN respectfully submits his Writ of Mandamus. This Writ of Mandamus is presented upon the record of cases CR88-1692, (Appeal No. 27514). CR88-1692P, CV90-3087, CV KLEIN v HELLING, . Petition for Writ of Habeas Corpus, Case No. HC-0140892, Seventh Judicial District Court, filed August 19, 1992, Petition for a Writ of Habeas Corpus CV-N-94-193-DWH, United States District Court. KLEIN entitled actions on accompany Points And Authorities, and all the records filed in said enumerated cases, as well as, KLEIN'S Writs of Habeas Corpus CV-N-94-193-DWH, as part of the record and TONJA BROWN'S, appointment as Administrator/Executrix in the Matters of the late Mr. NOLAN KLEIN estate. (attached) Affidavit of Tonja Brown submitted as part of the record.

POINTS AND AUTHORITIES

1. December 17, 2009. Supreme Court State of Nevada, ADKT 427, ORDER; (ID. At 2, first Paragraph) : IT IS HEREBY ORDERED that the Nevada Code of Judicial Conduct shall be repealed and that the Revised Nevada Code of Judicial Conduct, as set forth in Exhibit A, shall be adopted in its place.... (Id. At Exhibit A-Page 25) RULE 2.15 Responding to Judicial and Lawyer Misconduct

(A) “A Judge having knowledge that another judge has committed a violation of the Nevada Rule of professional Conduct that raises a substantial question regarding the lawyer’s honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.”

(B) “A Judge having knowledge that a lawyer has committed a violation of the Nevada Rule of professional Conduct that raises a substantial question regarding the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.”

(C) “A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.”

(D) “A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Nevada Rules of Professional Conduct shall take appropriate action.

COMMENT

[1]. “Taking action to address known misconduct is a judge’s obligation. Paragraphs (A) and (B) impose an obligation on the judge to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among ones fellow judicial colleagues of the legal profession undermines a judge’s responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.”

[2] “A judge who does not have actual knowledge that another judge or lawyer may have committed misconduct but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D).

Appropriate action may include, but, is not limited to, communicating directly with the judge who violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information that a lawyer has committed a violation of the Nevada Rules of Professional Conduct may include but are no limited to communicating directly with the lawyer who may have committed the violation or reporting the suspected violation with the appropriate authority or other agency or body.”

ISSUES PRESENTED

PETITIONER, NOLAN EDWARD KLEIN, WAS DENIED HIS RIGHT TO A FAIR TRIAL AND DUE PROCESS, IN VIOLATION OF PETITIONER’S FOURTH, FIFTH, SIXTH, AND FOURTEEN AMENDMENTS, CONSITUTIONAL RIGHTS:

THE HONORABLE: SUPREME COURT CHIEF JUSTICE GIBBONS, JUSTICE HARDESTY, PICKERING, DOUGLAS, SAITTA, PARRAGUIRRE, CHERRY, GOVERNOR JAMES GIBBONS, ATTORNEY GENERAL CATHERINE CORTEZ-MASTO HAD KNOWLEDGE OF LAWYER’S MISCONDUCT AND CRIMES pursuant to ADKT 427 SHALL INFORM THE APPROPRIATE AUTHORITY:

1. The Materiality and Exculpatory Evidence that was withheld in violation of BRADY v MARYLAND, KLEIN’S FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT. THESE VIOLATION WOULD LEAD TO THE WRONGFUL DEATH OF NOLAN KLEIN.

(a). Washoe County Deputy District Attorney, RONALD RACHOW, was the prosecuting attorney in the above entitled Case CR88-1692 STATE v NOLAN EDWARD KLEIN: Prosecuting Attorney RONALD RACHOW knew that KLEIN’S defense was being based on MISTAKEN IDENTITY and that KLEIN had an alibi placing him in Jack’s Bar in Carson City, NV during the time of the crime. RACHOW knew that he was violating KLEIN’S Constitutional Rights when RACHOW on November 10, 1988 filed a Motion in Opposition of KLEIN’S November 4, 1988 Motion for Discovery And Production of Exculpatory Materials. Rachow intentionally violated Judge Peter Breen’s court ORDER dated December 8, 1988 to turn over all the Materiality and Exculpatory Evidence to the defense. This is proven by RACHOW’S own handwritten notes on defense’s November 4, 1988 Motion for Discovery And Production of Exculpatory Materials. Rachow knew he was defying Judge Breen’s court order and thereby violated BRADY v MARYLAND and KLEIN’S Constitutional Rights to receive a fair trial.

(b) 373 U.S. 83 (1963) Brady held that “the suppression by the prosecutor of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.” Id at 87. The Court observed: “Society wins not only when the guilty are convicted but when criminal trials are fair; our system or the administration of justice suffers when any accused is treated unfairly.” Id Brady’s constitutional due process standard has been incorporated into an explicit ethical duty upon government attorneys.”

© RACHOW’S acted in Bad faith. KLEIN was deprived due process, loss of liberty and life itself caused directly by Rachow’s deliberate concealment of evidence, done in deliberate indifference to the same, and outright defiance and contempt of court as demonstrated by handwritten notes to withhold exculpatory evidence.

(d) RACHOW violated KLEIN’S Due Process Clause of the 14th Amendment “No State...shall deprive any person of life, liberty, or property without due process of law.” the touchstone constitutional principles which underlies our system of criminal justice in the United States: when the government seeks to deprive one of life or liberty, due process requires the prosecution, the very adversary which seeks to punish the accused, to provide the accused. “There is no crueller tyranny than that which is exercised under cover of law, and with the colors of justice...” US v Jannotte, 673 F. 2d 578, 614 (3d Cir. 1982)

2. RACHOW violated several NRS Statutes under NRS 199, 41, Code of Professional Conduct, Supreme Court regulation ADKT 427 when he intentionally withheld the evidence that was clearly in violation of Brady and KLEIN’S Due Process.

NRS 199.310 Malicious prosecution. A person who maliciously and without probable cause therefore, causes or attempts to cause another person to be arrested or proceeded against for any crime of which that person is innocent:

(a). On June 10, 2009 found in the District Attorney’s file in the above entitled case was RACHOW’S unsigned Memorandum dated November 10, 1988 to Defense Counsel Shelly T. O’Neill. This was typed and never received by Ms. O’Neill, because, everything had been turned over from the Washoe County Public Defender’s to KLEIN . This was presented in KLEIN’S Post-conviction Petition, CV90-3087. This memorandum states. “attached to this memo please find materials that may be exculpatory and/or statements to the defendant. This information is provided to you pursuant to Nevada Revised Statutes Chapter 174 and Brady v Maryland. I have also attached a copy of the rap sheet of defendant.”

“I have reviewed the file as of November 9, 1988, and I believe that the attached material is all that falls within statutory discovery and Brady. If I discover any other material that arguably falls within Brady or within the provisions of the Nevada Revised Statutes chapter 174, it will be provided to you in an expeditious manner.”

(b). It is KLEIN'S belief that RACHOW would not have obtained a legal conviction had he not violated BRADY v MARYLAND and had presented to the defense as well as the jury all of the evidence. This is based on the record and the following that during the Jury deliberations the Jury was DEADLOCKED and could not reach a decision until they heard two defense witnesses Barbara Hillman and William Richards's testimonies to be read back. Judge Charles McGee informed the Jury that it would take too long to have both testimonies transcribed so he ordered the Jury to pick one. They picked William Richards testimony. William Richards was a patron of Jack's Bar on the evening of May 9, 1988 during the crime was being committed. RICHARDS testified that he and KLEIN were playing pool until well after the time of the crime was being committed at 9:15 p.m.. This was raised in KLEIN'S Post-Conviction Petition CV90-3087, DV-N-94-193-DWH

3. The Materiality and Exculpatory Evidence that was withheld in violation of BRADY v MARYLAND KLEIN'S FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT. When Rachow withheld the discrepancies between KLEIN and the Sparks Police Departments, prime suspect ZARSKY who disappeared after the crime.

(a) That under Petitioner's district court criminal case #CR88-1692, there were reports and composite drawings of suspects from three separate robberies, sexual assaults and attempted sexual assaults, of which Petitioner was suspected of committing because of the uncanny resemblance of the suspects in all three cases, i.e., that all three crimes took place in the same general area of Sparks, Nevada; that the victims in all three cases gave virtually the same general description of the perpetrator; and that in two of the cases, the victims said that the perpetrator gave them his name and that he had something wrong with his mouth and/or teeth.

(b) In the case in which Petitioner was convicted, the victims gave the same general description of 5'9" tall, tan complexion, sandy/blond hair, dark/brown eyes, and dirty clothing. During preliminary hearing, Bridgette Sloan testified that the perpetrator had broken teeth. *See*, Preliminary Hearing Transcript, October 3, 1988, pg. 60. At trial Ms. Sloan stated that he had brown eyes. *See*, Trial Transcript, January 24, 1989, pg. 99. Further, at trial the other victim, Theresa Rodela testified that the perpetrator had something wrong with his teeth or mouth, but couldn't remember what, and that he had dark eyes and that the Petitioner's eyes are blue. *See*, Trial Transcript, January 24, 1989, pg. 62-64. These factors pertaining to the description of the perpetrator are of special importance when viewed in light of the two other similar crimes of which Petitioner was suspected of committing.

(c) That the second crime Petitioner was suspected of committing is listed under Sparks Police Department Case No. 88-4238, which was a robbery/Attempted Sexual Assault committed on April 21, 1988. The general description given by that victim and the composite drawing of the perpetrator are virtually identical in most all respects. As in the case Petitioner is convicted of, the victim in the April 21, 1988 case also identified the perpetrator as having teeth chipped/missing and a speech impairment or cleft pallet. The victim was also able to describe the perpetrator's vehicle as a possible 1965-67 Pontiac Bonneville - Dirty White. Also, the April 21, 1988 attacker gave the victim a name. All of the above characteristics of the crime and description were also found in the case for which Petitioner was charged and convicted. Furthermore, Petitioner's vehicle closely matched the vehicle description given in the April 21, 1988 attack

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(d) That because the descriptions by the victims in SPD Case No. 88-4892 (the case Petitioner was actually charged with), and SPD Case No. 88-4238 (the April 21, 1988 case), were so similar to one another, the police contacted the victim of the April 21, 1988 crime and asked her to come down and try to identify the Petitioner's vehicle as the same vehicle driven by the April 21, 1988 perpetrator, at which time she was driven by Petitioner's vehicle for attempted identification, however, she did not identify the Petitioner's vehicle as the vehicle driven by her attacker on April 21, 1988.

(e) That the third case Petitioner was a suspect in was logged under SPD Case No. 87-11777 that was committed on November 18, 1987. And like the other two cases, the description of the perpetrator bore a remarkable resemblance to one another.

(f) That due to the striking and remarkable resemblance and similarities in the characteristics of the crimes and the descriptions of the suspect, it was the affirmative theory of the investigating detectives that all three crimes were committed by the same person, and that the Petitioner was the prime suspect in all three cases.

(g) That the only reason Petitioner was not charged with the crimes committed in SPD Case Numbers 88-4238 and 87-11777 is that Petitioner was identified by those victims as not being the same person that committed the crimes against them. KLEIN had been cleared and his vehicle all of this was withheld from the defense in violation of KLEIN'S Constitutional Rights in order for RACHOW to secure a conviction.

(h) That Petitioner's defense pursued at trial was mistaken identity and alibi, and evidence of another person committing the crimes alleged to have been committed by Petitioner, would have been consistent with the theory of defense pursued at trial, and was corroborated by the victims' own testimony at trial that the perpetrator had broken teeth or something wrong with him mouth and brown or dark eyes, whereas, Petitioner does not have broken teeth or a mouth deformity, and his eyes are blue, this exculpatory evidence was prejudicial to Petitioner's trial defense.

4. The Materiality and Exculpatory Evidence that was withheld in violation of BRADY v MARYLAND KLEIN'S FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT.

(a) The fact that Petitioner had been named in Theresa Rodela's lawsuit on November 4, 1988, approximately ten weeks prior to Petitioner's trial ultimately resulted in counsel's failure to present valuable impeachment evidence when Ms. Rodela testified that Petitioner was not named as a defendant in her pending lawsuit, and actually went on to name all the defendants in the lawsuit, with the exception of the Petitioner. Trial Transcript, January 24, 1989, pg 71.

(b) Whereas Ms. Sloan testified at preliminary hearing that she could not identify the Petitioner as the perpetrator of the crimes at the time she had seen Petitioner in person approximately two weeks after the crime. Preliminary Hearing Transcript, October 3, 1988, pg. 57-61. However, Ms. Sloan still managed to name Petitioner by his true and correct name in a civil suit during the time that she stated she could not positively say that Petitioner was the same person that committed the crimes. The civil complaint was filed several weeks prior to Petitioner even being arrested and a preliminary hearing was held, but still alleged in her civil complaint that Petitioner had committed the offense as alleged in the criminal complaint against him.

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© That several times during closing arguments of KLEIN'S trial, RACHOW, expressed his opinion of the victim's motives and veracity by stating, "remember what they look like and remember how positive they were when they said it was him. They have no motive to come in here and lie." "You heard they have a civil suits going. They have civil suits going...but it's not against him. It makes no difference to those girls whether or not this particular individual is convicted except as a victim of the crime. They seek justice." (d) Under cross examination of Sloan when asked, Q. "Do you believe that your composite looks like my client? A. "Somewhat" Q. About a thousand other guys as well? A. "Yeah"

(d) On June 10, 2009 it was discovered in the file of the above entitled case that RACHOW had withheld the letters found in the file that he was corresponding with the Victim's attorney pertaining to the lawsuit back in September 1988. In fact, the attorney representing the victim had named another person other than KLEIN and it was RACHOW that informed them that it was not the person and then named KLEIN.

(f) That prior to KLEIN'S September 15, 1988 arrest, Bridgette Sloan, had filed suit against KLEIN before she was able to identify KLEIN in court at the Preliminary Hearing. Sloan was not given the photo lineup of KLEIN in May 1988, however, Theresa Rodela identified KLEIN thru a Photo line-up taken on May 22, 1988, thereby , making it a positive Identification and in court identification of KLEIN.

(g) That over the years study after study have been done on positive Identification thru eyewitness testimony, and photo line-ups have shown that wrongful convictions have occurred due to these types of photo arrays. In fact, KLEIN'S style of photo line up protocol is no longer being used through out our country because it has lead to wrongful convictions. IT IS ALSO TRUE THAT OF THIS WRITING, KLEIN'S PHOTO LINEUP HAS BEEN SHOWN TO 149 INDIVIDUALS WHO HAVE NO KNOWLEDGE OF WHAT KLEIN OR THE SUSPECT LOOK LIKE AND THEY HAVE PICKED KLEIN, NUMBER 3 OUT OF THE SAME PHOTO LINE UP THAT WAS SHOWN TO RODELA. This photo is what would be best described as tainted, because, the photo array depicts six men three on each side. Five of the men are from the chest up and KLEIN is cut off at the BEARD/CHIN. KLEIN is the darkest one featured and your eyes are drawn to him first unlike the other photos. This is called unconscious transference and this type of photo line up is no longer being used by law enforcement agencies. Neither , victims knew at the time of the crime that KLEIN had a full beard and not a 2-3 day old stubble as described by the victims. Evidence will show later as to why Counsel O'NEILL did not present beard evidence at trial CV-n-94-193-DWH, CV90-3087

(5) The Materiality and Exculpatory Evidence that was withheld in violation of BRADY v MARYLAND KLEIN'S FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT.

(a) Because of the known discrepancies in the victims' identification testimony as compared to Mr. Klein's actual physical characteristics which would come to light during the trial, RACHOW told the jury that this case was going to come down to identity, and whether they were going to believe the victims or not, and if they did, everything would flow. Trial transcripts January 27, 1989 CV-09-30-87, N-94-193-DWH

(b) KLEIN was denied his right to a fair trial and due process of law to prejudicial prosecutor RACHOW'S misconduct by repeatedly vouching for the credibility of witnesses and accusing

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defense witnesses of having motives to lie, in violation of KLEIN'S fifth and fourteenth amendment Constitutional Rights.

(c) RACHOW expressed his personal opinion as to the motives, veracity and credibility of the victims; and (2) RACHOW'S statements were misleading to the jury, where KLEIN was in fact named as a defendant by both victims in two separate lawsuits based upon the events that KLEIN was being tried for.

(d) These lawsuits were settled after trial at an award of nearly three quarters of a million dollars. RACHOW knew about these lawsuits prior to KLEIN being arrested and convicted. (e) Because of RACHOW violating KLEIN'S constitutional Right to due process, RACHOW is responsible for the wrongful conviction of Nolan KLEIN and because of his bad acts that resulted in the facilitation of a conspiracy of others to conceal a crime that RACHOW had violated BRADY v MARYLAND that ultimately lead to the wrongful death of an innocent man, Nolan KLEIN. (e) Because of RACHOW violating KLEIN'S Constitutional Rights and Due Process RACHOW is responsible for the wrongful conviction of NOLAN KLEIN and because of his bad acts, that resulted in the facilitation of the conspiracy of others to CONSPIRE TO CONCEAL A CRIME that RACHOW had violated BRADY v MARYLAND that ultimately lead to the wrongful death of an innocent man

(f) RACHOW is in violation of ADKT 427, Brady v Maryland NRS 199, 41, 174

6. The Materiality and Exculpatory Evidence that was withheld in violation of BRADY v MARYLAND KLEIN'S FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT.

(a) Because of these discrepancies in the victims' testimony, RACHOW was well aware that he needed to support the state's position that despite these inconsistencies in the descriptions of the suspect as opposed to KLEIN'S physical characteristics, the victims were still correct in their identification of KLEIN. This was a close case. There was no physical or forensic evidence that linked KLEIN to the crime. The Jury seemed concerned about convicting KLEIN whereas it appears that they were giving KLEIN alibi defense serious consideration before informing the court they could not reach a verdict until they had the testimony of two defense witnesses read back to them, however, the court, Judge McGee would only allow one witness's testimony read back to them, Bill Richards. The jury reached a verdict on January 27, 1989, after Bill Richard's testimony was read back.

(b) In January 1990 Tonja Brown would make contact with one of KLEIN'S juror's who would inform her what a reason they convicted KLEIN was. Had Judge McGee given what the jury requested both testimonies. According to the juror, the believed that RICHARDS was being truthful, however, they believed that he was mistaken as to the time he left Jack's Bar in Carson

giving enough time to drive to Sparks to commit the crime. If McGee had given the jury what they requested both testimonies they would know that Richards was not mistaken because HILLMAN'S testimony supports RICHARDS making no mistakes as to the time KLEIN left Jack's Bar in Carson City. Had RACHOW turned over all of the evidence the jury would have had to speculate that RICHARDS was mistaken as to the time KLEIN left the bar.. See CV-n-94-193-DWH, CV90-3087. trial transcripts January 23-25, 1989

(c) William RICHARDS would later become a Deputy with the Carson City Sheriff's Office who continues to stand by his testimony. Barbara Hillman is now deceased.

7. The Materiality and Exculpatory Evidence that was withheld in violation of BRADY v MARYLAND KLEIN'S FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT. RACHOW WITHHELD EVIDENCE PERTAINING TO STATE'S WITNESS LOUANNE GRITTER AND PUBLIC DEFENDER SHELLY T. O'NEILL THAT IS NOW BEFORE THE 9TH CIRCUIT COURT OF APPEALS.

(a) That on May 4, 2009 the Honorable Judge Brent Adams issued an Order compelling Washoe County District Attorney Richard Gammick to turn over the DNA test results and the entire file in the above entitled case. On June 10, 2009 newly discovered evidence was found in KLEIN'S FILE pertaining to statements made by state's witness LOUANNE GRITTER that RACHOW withheld from the defense. RACHOW withheld information that showed motive and reason for GRITTER TO LIE. See letter to Steven Quinn filed September 8, 2009 and Writ of Habeas Corpus CV-N-94-193-DWH

(b) That on or about September 4, 2009 that I, Tonja Brown, personally telephoned and spoke to Deputy Attorney General Steven Quinn and informed as to the newly discovered evidence that supports KLEIN'S claims in the 9th Circuit Court of Appeals. On September 8, 2009 I filed a letter written to Deputy Attorney General Steven Quinn detailing our conversation as to the discovery of what was found in the District Attorney's file on KLEIN. I provided him copies of the evidence that supports KLEIN'S claims in the 9th Circuit Court of Appeals that is still pending. Exhibit Letter to Quinn.

© That I personally submitted this information to members of the Pardons Board that have yet to notify or do anything about all of the newly discovered evidence which is violation of the new Supreme Court regulations, ADKT 427 and in violation of NRS 199 Crimes Against Public Justice concealing a crime.

8. The Materiality and Exculpatory Evidence that was withheld in violation of BRADY v MARYLAND KLEIN'S FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT. RACHOW WITHHELD EVIDENCE PERTAINING TO STATE'S

WITNESS LOUANNE GRITTER AND PUBLIC DEFENDER SHELLY T. O'NEILL THAT IS NOW BEFORE THE 9TH CIRCUIT COURT OF APPEALS.

(a) That on June 10, 2009 statements found in KLEIN'S file of Louanne GRITTER revealed conversations with members of the District Attorney's office, including, RACHOW. Such as, but not limited too, Gritter calling RACHOW to inform him that KLEIN has been calling him collect to see if he has spoken to his public Defender, Shelly T. O'Neill. Gritter states that she does not want to speak to KLEIN'S public defender O'Neill, because she is afraid that O'Neill will learn about the crimes she has committed. Gritter would make arrangements to see RACHOW to discuss this. RACHOW violated KLEIN'S Constitutional Rights by withholding this information.

(b) Gritter goes on to mention how she has some difficulty identifying KLEIN's voice from others and then later says she will identify his voice on the 911 call. At trial RACHOW would bring state's witness Gritter into identify the voice on the 911 taped call as KLEIN'S. RACHOW would play the tape of the suspect's voice on the 911 call. RACHOW did not bring into court the taped interview of KLEIN'S voice during his detention on May 22, 1988, all without Miranda Warning. Trial transcripts, CV90-3087, CV-N-94-193-DWH

© That during KLEIN'S trial not one defense witness was asked to hear the 911 call. If RACHOW or defense counsel O'Neill had brought the tape of KLEIN'S voice during his May 22, 1988 questioning to play for the defense witnesses and jury to hear that would have concluded that KLEIN was not the one who called the 911 operator. I base this on hearing the 911 tape after trial. The 911 call is not the voice of Mr. KLEIN.

(d) During the June 20 – 21, 1991 Evidentiary hearing when asked of Counsel, O'NEILL about the 911 call tape, she stated, " O'Neill testified 'I believed it did not sound like Nolan Klein on the tape recording, and Mr. Klein was adamant that it was not he that telephoned the Sparks Police Department and made that confession."

9. KLEIN'S FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT WERE VIOLATED BY COUNSEL PUBLIC DEFENDER SHELLY T. O'NEILL WHEN SHE COMMITTED PERJURY DURING THE EVIDENTIARY HEARING.

(a) That during the testimony of Ms. O'Neill she would go onto commit perjury and later in 1993 be confronted with it, wherein, she would admit that she lied during the Evidentiary Hearing of June 20, 1991. A perjury complaint would be filed by Tonja Brown and forward to the Washoe County District Attorney's Office where it would remain. When RICHARD GAMMICK would become the new District Attorney Tonja Brown would receive and continues to possess a letter from GAMMICK stating that the Statute of Limitations had run out on prosecuting O'Neill for perjury. See, Petition for Writ of Habeas Corpus, Case No. HC-0140892, Seventh Judicial District Court, filed August 19, 1992, Petition for a Writ of Habeas Corpus CV-N-94-193-DWH, United States District Court.

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(b) That Attorney, Treva Hearne would contact O'NEILL regarding any comment she would like to make pertaining to the book "To Prove His Innocence" that featured Ms. O'NEILL in it. O'NEILL picked up the manuscript and returned it without comment.

© That O'NEILL in 2007 was being considered for the position of the Washoe County Public Defender's Conflict Unit. That Tonja Brown would present the documents supporting O'Neill's perjured testimony of June 20, 1991. O'NEILL would be asked by the Committee if she had anything to say, and she stated. "NO" O'NEILL was not considered for the position. This is on record with Washoe County See Case No. HC-0140892, Seventh Judicial District Court, filed August 19, 1992, CV-N-94-193-DWH, exhibit from book To Prove His Innocence.

(d) That this perjury by O'NEILL would continue to haunt KLEIN'S case that would ultimately be a factor in his cases. See, Letter to Keith Munro in book To Prove His Innocence.

(e) That on June 10, 2009 the Washoe County District Attorney's file on KLEIN would prove that O'NEILL had committed the perjury during the 1991 because, O'Neill could not have known about ZARSKY because RACHOW never turned over the evidence. It also discredits her testimony, credibility, trustworthiness, honesty and integrity. See letters to Steven Quinn and Keith Munro, Case No. HC-0140892, Seventh Judicial District Court, filed August 19, 1992, CV-N-94-193-DWH

(e) That because of O'NEILL'S perjured testimony her actions violated KLEIN'S Constitutional Rights that ultimately lead to the wrongful death of NOLAN KLEIN on September 20, 2009 for which O'NEILL should be prosecuted and disbarred. Attached email to District Attorney Richard Gammick and John Helzer.

9. KLEIN'S FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT WERE VIOLATED WHEN SEVERAL INDIVIDUALS CONSPIRED TO CONCEAL A CRIME IN ORDER TO PROTECT THE BAD FAITH AND ILLEGAL ACTS COMMITTED BY DEPUTY DISTRICT ATTORNEY, RON RACHOW. (a)-(q) THAT WOULD LEAD TO THE WRONGFUL DEATH OF NOLAN KLEIN.

(a) Deputy District Attorney, Scott Edwards was representing the Washoe County District Attorney Office during KLEIN'S post-conviction. EDWARDS had the District Attorney's file on KLEIN. The same file that contained the newly discovered evidence on June 10, 2009 that RACHOW withheld in violation of Brady v Maryland and Mazzan, 993P.2^d at 37-38, 42-42 and FN1-3, NRS 199 Crimes against public justice, NRS. 193, 197, 205, 207, 252, 41 and the Code of Professional Conduct,

EDWARDS had KLEIN'S Petition raising 33 grounds. Edwards knew that KLEIN was presenting witnesses that he had between a 2-3 inch beard weeks before the crime, the day of the crime, up and to weeks after the crime and the suspect did not.

Edwards knew KLEIN maintained his innocence and that someone else had committed the crime. Some of this evidence that was discovered on June 10, 2009 was received from the Sparks Police Department containing evidence regarding prime suspect Zarsky, but, not all of it. In 1991 we could not prove if the Sparks Police Department turned over this evidence to the District Attorney. KLEIN would receive his entire file from the Public Defender's office and none of this evidence was in KLEIN'S file. On June 10, 2009 the truth was discovered that RACHOW never turned it over to the defense. Thereby, supporting the perjury against O'NEILL that later she would not deny that she had admitted that she had committed the perjury during the post-conviction hearing Edwards continued to fight KLEIN'S Petition know that the handwritten notes from RACHOW were in the file that indicated that RACHOW had withheld evidence in support of KLEIN'S claim that there was someone else responsible for the crime. On June 10, 2009 evidence from Gritter was found in the file, such as, but not limited to a letter to RACHOW when she was being contacted by an investigator during KLEIN's pos-conviction hearing regarding her being the Secret Witness. Statements from Gritter were also found in the file that support KLEIN'S case that is pending before the 9th Circuit Court of Appeals. All of this evidence RACHOW had and withheld and with the help of Edwards to keep this a secret from the defense he would have to conspire to conceal a crime RACHOW violating BRADY v MARYLAND when he intentionally withheld this information from the KLEIN and the Courts. .. See, CV90-3087, CV-N-94-193-DWH.

(b) Deputy District Attorney, Gary Hatlestad, was the prosecuting attorney on appeal. Hatlestad continued to fight KLEIN'S Petition/Appeal knowing there was exculpatory Evidence and Materiality Evidence, such as, but not limited to, the handwritten notes from RACHOW were in the file that indicated that RACHOW had withheld evidence in support of KLEIN'S claim that there was someone else thereby, supporting KLEIN'S defense of mistaken identity. Additional note: John Steven Olausen case is now pending in the Honorable Connie Steinheimer's Court regarding Hatelstad withholding evidence in John Steven Olausen's 1979 trial.

Hatlestad received additional information that was supplemented in that Defense Counsel, SHELLY T. O'NEILL, had been looking at the wrong photo, booking picture of KLEIN, to understand the beard evidence. KLEIN'S defense witnesses informed O'NEILL that KLEIN had a full 2-3 inch beard at the time of the crime. This was shown in the photo lineup taken of KLEIN on May 22, 1988. O'Neill had testified during the Evidentiary Hearing "And, frankly, in looking at the booking pictures, Mr. Klein had what we would term as a three-day growth of beard, or it was one of those situations that fell into it. And I thought it was kind of knit-picky in spite of all the other identification and alibi evidence that we had put forth."

Hatlestad was the attorney of record during the hearing of the missing DNA evidence. The DA's office conceded that the filter cigarette butts were gone but did not know what happened to them. The District Attorney's Office has been receiving Letters of Preservations since May 1989 to secure the evidence for future DNA testing.

That on May 4, 2009 the Honorable Judge Brent Adams issued an Order in the above entitled case for District Attorney Richard Gammick to turn over the DNA test results and the entire file in Klein's case. On June 10, Hatlestead had the file turned over and newly discovered evidence that was contained within the file was discovered. Including the name of a police officer who had contacted Sparks Police Detective Sherman Boxx regarding a man hitchhiking carrying a blue suitcase that matches the composite sketch of the suspect the day after the crime. The name of the officer was found in the file who was involved in investigating who opened up Klein's DNA evidence that was in the custody and control of the Washoe County Courthouse and the missing DNA filtered cigarette butts that the perpetrator smoked. The DNA tests results that Gammick publicly admitted on or about September 22, 2008 to opening up the DNA and testing it that results were not there.

It is Klein's belief that sometime after conviction of January 1989 and after they received the first letter of Preservation May 1989 and before the 1995 discovery by Brown, that a member of the District Attorney's Office illegally tested such evidence under a fictitious name, John Doe, because, the obtaining of such evidence was illegal could have had it tested at another lab outside the Washoe County area. It is also the belief that the tests results showed someone other than Klein and therefore, the tests results were destroyed.

©After Deputy District Attorney, Richard Gammick had been elected to the position of the Washoe County District Attorney he received information from Tonja Brown pertaining to the perjury complaint filed by Brown against O'NELL in 1992. Gammick would respond because of the Statute of Limitations had run out he could not prosecute O'NEILL for perjury even if his office felt appropriate to do so.

That in 1996 Tonja Brown would receive a letter from the Benjamin Cardozo School of Law, Barry Scheck, from the Innocence Project out of New York. Brown would receive a letter addressed to Judge Mills Lane from Detective Niles Carson describing how they were going to take my new 1996 police report on the discovery of the missing filtered cigarette butts and place it onto a the closed 1995 case, the opening of Klein's DNA kits. Gammick was aware in 1996 that there were ongoing problems with Klein's evidence while in the control and custody of the Washoe County Courthouse, In 2008 Gammick admitted that he opened up the DNA and had it tested.

That over the years Gammick has made several statements to the public that he knows to be not true regarding Klein's case. As the District Attorney, he was provided the documents in July 2009 that showed Rachow had violated Brady n Maryland and several members of the District Attorney's Office have conspired to conceal a crime including , Gammick himself. I incorporate this © with the following (a - r) as to the knowledge Gammick had pertaining to the illegal acts that have been perpetrated against Klein for the last 21 years. Including, but not limited, the 1996 interview given by Gammick regarding the ongoing investigation into the missing DNA evidence. In 2000 the presence of Gammick into Klein's evidence while in the control and

custody of the Washoe County Courthouse, while a court order Issued by Justice Springer in September 1998 was still in effect that no exhibits were to be sent and no case was before the District Court, thereby, giving no reason for GAMMICK to be into the evidence when attorney, Ms. Treva Hearne would see the Index Tracking Cards indicating that GAMMICK had been into the evidence just days before she was viewing it. That District Attorney's Office had signed out the evidence and now even more evidence was missing. That KLEIN filed within the Court, Dept. 2 regarding this issue and Judge Charles McGee had denied KLEIN a hearing . The Supreme Court upheld that decision. Ms. Hearne gave an affidavit as to what she witnessed with regarding to KLEIN'S evidence and the notions made on the INDEX Tracking cards.

GAMMICK also received information that KLEIN was appearing before the October 2008 Pardons Board. That KLEIN'S health was failing. GAMMICK knew that RACHOW violated BRADY and conspired to conceal a crime by not disclosing what RACHOW had done.

(d) On or about February 16, 1996 Tonja BROWN received a letter from Barry Scheck and Innocence Project. After speaking to Detective Niles Carson regarding this letter and the brand new 1996 Police Report I filed in January 1996. He stated that when I contacted him in December of 1995 regarding this matter he had made contact with Judge Mills Lane who instructed NILES to wait until he became head of the Court in 1996. Brown had asked for a copy of the letter he wrote to Judge Lane so that she could provide this letter to Mr. Scheck. Carson said he would and then instructed BROWN to contact Judge Mills Lane regarding the missing filter cigarette butts and the Innocence Project. BROWN contacted Judge Lane to find out what keeps happening to KLEIN'S evidence and to inform LANE that the Innocence Project was taking on KLEIN'S case. LANE instructed BROWN to contact Judge McGee to set up a meeting with McGee and LANW. Brown did as instructed and called McGee's office. The office confirmed that McGee had received a copy of the letter from Detective Niles Carson to Judge Mills Lane and was then informed to contact District Attorney Richard Gammick to join this meeting. BROWN contacted GAMMICK and was informed that GAMMICK was not going to join this meeting and for BROWN to get an attorney. BROWN called McGee's Office back and informed him that GAMMICK would not join the meeting. McGee's office said that McGee said that he won't have ex-parte communications if GAMMICK isn't coming. BROWN then contacted LANE'S office and left him the message. No meeting took place. Judge Mills LANE conspired to conceal a crime, the missing cigarette butts, when he went along with Detective Niles Carson to place this brand new 1996 case onto a closed 1995 thereby hiding the ongoing problem with KLEIN'S evidence.

(f) Washoe County Judge Charles McGee was the presiding Judge over KLEIN'S trial, Post-conviction, Writ of Habeas Corpus, missing DNA evidence hearing and in 2000 when KLEIN discovered that the District Attorney's Office have been into KLEIN'S evidence for years and Exculpatory evidence keeps disappearing when the District Attorney's Office returns the evidence after they check it out.

McGEE conspired to conceal a crime, the missing cigarette butts, when he went along with Detective Niles Carson to place this brand new 1996 case onto a closed 1995 thereby hiding and then held a hearing in his Court and dismissing the case.

(g) Deputy District Attorney, John Helzer, conspired to conceal a crime, when he spoke before the Nevada Pardons Board on October 29, 2008. This was placed on the record when I appeared before the member of the Pardons Board on June 24, 2009

“ As an Advocate for the Innocent I am here to ask this Pardons Board to adopt a policy holding those accountable for misleading the Members of the Pardons Board. The Pardons Board is expected to make a fair, unbiased, informative decision based on the information that is provided to them.

I am now in possession of newly discovered exculpatory evidence as a result of the litigation that Washoe County Assistant District Attorney, Mr. Helzer, said we needed to litigate the disappearance of the missing cigarette filters that Justice Gibbons asked ADA Helzer about.

During the October 29, 2008 Pardons Board hearing in which my innocent brother, Nolan Klein was being considered for a Pardon, KLEIN'S Attorney, and Mr. Hager repeatedly stated to this Pardons Board that Mr. Klein has always maintained his innocence and the Parole Board will not grant parole unless he admits guilt. Mr. Hager went on to say and provided to you a copy of the television interview of Washoe County District Attorney, Dick Gammick, who publicly admitted that he had opened up the DNA and tested it. Mr. Hager then demanded to know where the DNA test Results were?

Immediately following Mr. Hager representation of my brother ADA Helzer spoke to the Pardons Board to why Mr. Klein should not be given a Pardon. He went on to say. “Now before I came here, it's kind interesting, but before I even knew this was going to be considered for a Pardon, I was reviewing his file because I wanted to know more about it. I KEPT HEARING THINGS. I went over and talked to Commander Asher at the Sparks Police Department.” He continued on “And what is amazing to me, is that we have this continued denial in the sense that you are SUPPOSE TO BUY INTO IT.

On June 10, 2009 for the first time the Defense saw evidence that the prosecutor Ron Rachow hid from us. And after 21 years of incarceration it finally saw the light of day with Mr. Rachow's personal handwritten notes on it.

According to Commander Asher's report it would appear to be the THEORY OF THE Sparks Police Dept. that Mr. Zarsky committed this crime for which my brother was convicted of. In the documents provided to you the Prime Suspect's report of Zarsky refers to other crimes and the other victims that they believed Mr. Zarsky committed too. However, those victims from those crimes had cleared my brother and his car.

Don't you believe that as an Officer of the court ADA Helzer had a responsibility to speak the truth to you and the truth would be to inform you that while reviewing the file there was evidence that another person had committed the crime thus supporting my brother's claim of innocence? Clearly this information that has been withheld from us for

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all of these years is in violation of Brady and ADA Rachow makes a reference to Brady.

I ask that the Pardons Board adopt a policy, that when an inmate who maintains their innocence and appears before you, the District Attorney MUST DISCLOSE any evidence that was located in the file and inform the Pardons Board whether or not the evidence in the file was actually turned over during Discovery. If they do not and it is discovered that they new about this and deliberately withheld it they must be sanctioned and or disbarred and this must be carried out. (Placed on the record Pardons Board minutes of June 24, 2009 and the Pardons Board Hearing of November 19, 2009

That on or about July 1, 2009 BROWN contacted Commander Asher of the Sparks Police Department. ASHER was the Patrol Officer on May 9th 1988. ASHER was the one who discovered prime suspect RICKY LEE ZARSKY. ASHER was the one who took the victim from April 21, 1988 to KLEIN'S car and down to the Police Department who Cleared KLEIN of the crime. Zarsky police report. ASHER stated to BROWN that he had not spoken to Helzer regarding this case and when asked why he never said anything about ZARSKY or the victim from April 21st at KLEIN'S January 1989 trial, he stated, "because he was never asked."

July 13, 2009

Sparks City Council Members:

As an Advocate for the Innocent I base my request for the following. I ask that you place on your upcoming Agenda to discuss a future Oversight Policy regarding the Sparks Police Department's evidence and the way it is handled when it is turned over to the District Attorney's Office. I ask that the policy be that the Defense must be provided a copy of the list of evidence that was provided to the District Attorney Office.

We must put in place safeguards for those who have maintained their Innocence and in all fairness that a Defendant receives a fair an impartial trial. The Innocent should not have wait years if not decades because of an Honest Mistake that was made with regard to the evidence or it being intentionally withheld to get a conviction by an overzealous prosecutor. There are no laws that preclude a law enforcement agency from providing the Defense with a copy of what was provided to the District Attorney's office. Nor should there be.

I base this information on what has come to light after 21 years. Recently, a Washoe County District Court Judge has ordered District Attorney, Dick Gammick to turn over the entire file in Mr. Nolan Klein's case. Mr. Klein has always maintained his innocence and his defense were based on MISTAKEN IDENTITY, that someone else had committed the crime. We now know that there have more innocent people wrongfully convicted thru eyewitness testimony than any and all other factors combined.

It now appears that ADA Ron Rachow purposely withheld from the Defense all of the Exculpatory Evidence in this case. Including Commander Steve Asher's police report attached on their prime suspect, one Mr. Ricky Lee Zarsky. This report along with

several other pieces of evidence that was turned over by the Sparks Police Department in 1988 never made it trial because Ron Rachow withheld this evidence.

For 21 years the Washoe County District Attorney's have kept this secret buried until now. ADA Mr. Helzer even went to the Pardons Board knowing that this information was withheld from the Defense and he said nothing, however, he went so far as to state that he spoke to Commander Asher about this case. On July 1, 2009 I had a long conversation with Commander Asher. At first Commander Asher stated to me that he has not talked about this case since the late 1980,s or 1990's, since trial. I asked Commander Asher why he never mentioned Mr. Zarsky's during the trial. He said because he wasn't asked. When I asked if he had spoken to Mr. Helzer he said "NO". He then asked me why he would be speaking to Mr. Helzer. I then informed him about what Mr. Helzer said at the Pardons Board. Commander Asher went from NOT ever speaking to Mr. Helzer about this case to him to not recalling whether or not he did or didn't speak to him about Mr. Klein.

I ask the Sparks City Council to implement a policy for the Sparks Police Department that when they turn over the evidence to the District Attorney, that they also provide to the Defense a copy of what was turned over to the DA. This will secure any chances of an honest mistake being made or malicious intent. Then it will be left up to the court to decide what is or is not admissible for trial.

I also ask that you please notify me of the upcoming Agenda so that I may be present and provide you with any other documents that may be needed in support of this new policy. Placed on the record with the Sparks City Council. Tonja Brown

On or about July 13, 2009 Washoe County District Attorney, Richard Gammick received this information and the documents that Deputy District Attorney, John Helzer had conspired to conceal a crime that RACHOW had violated BRADY v MARYLAND in July 2009.

District Attorney Richard Gammick, Gary Hatlstead, Scott Edwards, John Helzer and JOHN and JANE DOES a-z, with information in hand of the clear miscarriage of justice further obstructed justice and further deprived KLEIN of life and liberty and basic freedom from incarceration. Their actions lead to the wrongful death on Nolan Klein. They are in violation of ADKT 427, NRS 199 Crimes Against Public Justice the Nevada Code of Professional Conduct.

(g) The Federal Public Defender was now representing KLEIN and had sent their investigators to investigate KLEIN's case. Judge/Justice James Hardesty was the head of the Court when KLEIN wrote Judge Hardesty a letter detailing the recent development of KLEIN'S evidence while in the control and custody of the Washoe County District Courthouse. BROWN notified Hardesty and spoke with Judge Hardesty regarding the ongoing problems with KLEIN'S evidence. It would appear now that the evidence had changed its appearance again and now some how the remaining cigarette butts had now grown in size. As head of the Courts Judge Hardesty never looked into the matter.

On October 29, 2008 KLEIN appeared before the Nevada Pardons Board. KLEIN'S attorney Robert Hager provided the members of the Pardons Board a copy of the interview given by Washoe County District Attorney Richard GAMMICK that clearly showed that BRADY had been violated. The Pardons Board, Gammick, Helzer knew that KLEIN'S health was declining.

When Chief Justice Gibbons asked ADA John HELZER about the missing DNA evidence that GAMMICK admitted to testing, HELZER stated he didn't know anything about it and that KLEIN could litigate the matter. KLEIN was not spoken to by any member of the Pardons Board, unlike the others who were appearing before them. KLEIN was denied a pardon.

On October 29, 2008, June 24, 2009 and November 19, 2009 Justice HARDESTY as a member of the Pardons Board was given the documents of the newly discovered evidence that confirmed that RACHOW violated BRADY by withholding the Exculpatory and Materiality Evidence. They were also given the documents in support KLEIN'S claim in the 9th Circuit Court of Appeals.

Nowhere in the Nevada Supreme Court's regulation ADKT 427 does it state that the Nevada Supreme Court Justice is excluded from their own regulation. Nor does it state that any State, County, Federal employee, elected official is excluded from this regulation. This regulation concerns the Public Welfare and this regulation does not state that it is or is not to be applied retroactive therefore, it must be considered retroactive.

Everyday that Justice HARDESTY dose not inform the 9th Circuit Court of Appeals and the Honorable Judge Brent Adams regarding of this discovery is another day they are concealing a crime and therefore, violating their own Supreme Court regulation and KLEIN'S constitutional rights. Nor does it say under NRS 199 Crimes Against Public Justice does a Supreme Court Justice is excluded from violating ones Constitutional Rights.

JUSTICE HARDESTY by remaining silent and not taking action to correct this miscarriage of justice done to KLEIN by RACHOW, Edwards, Hatlestead, Gammick, Helzer, and John and Jane Does, He is in violation of ADKT 427 and NRS 199 Crimes Against Public Justice

(h) On October 29, 2008, June 24, 2009 and November 19, 2009 Justice PARRAGUIRRE as a member of the Pardons Board was given the documents of the newly discovered evidence that confirmed that RACHOW violated BRADY by withholding the Exculpatory and Materiality Evidence. They were also given the documents in support KLEIN'S claim in the 9th Circuit Court of Appeals.

Nowhere in the Nevada Supreme Court's regulation ADKT 427 does it state that the Nevada Supreme Court Justice is precluded from this regulation. This regulation

concerns the Public Welfare and this regulation does not state that it is or is not to be applied retroactive therefore, it must be considered retroactive.

Everyday that Justice Parraguirre dose not inform the 9th Circuit Court of Appeals or take any kind of action against those who conspired to conceal a crime, including himself, is another day they are concealing a crime and therefore, violating their own Supreme Court regulation and KLEIN'S constitutional rights. Nor does it say under NRS 199 Crimes Against Public Justice does a Supreme Court Justice is excluded from violating ones Constitutional Rights.

JUSTICE PARRAGUIRRE by remaining silent and not taking action to correct this miscarriage of justice done to KLEIN by RACHOW, Edwards, Hatlestead, Gammick, Helzer, and John and Jane Does, He is in violation of ADKT 427 and NRS 199 Crimes Against Public Justice

(i) On October 29, 2008, June 24, 2009 and November 19, 2009 Justice CHERRY as a member of the Pardons Board was given the documents of the newly discovered evidence that confirmed that RACHOW violated BRADY by withholding the Exculpatory and Materiality Evidence. They were also given the documents in support KLEIN'S claim in the 9th Circuit Court of Appeals.

Nowhere in the Nevada Supreme Court's regulation ADKT 427 does it state that the Nevada Supreme Court Justice is precluded from this regulation. This regulation concerns the Public Welfare and this regulation does not state that it is or is not to be applied retroactive therefore, it must be considered retroactive.

Everyday that Justice CHERRY dose not inform the 9th Circuit Court of Appeals or take any kind of action against those who conspired to conceal a crime, including himself, is another day they are concealing a crime and therefore, violating their own Supreme Court regulation and KLEIN'S constitutional rights. Nor does it say under NRS 199 Crimes Against Public Justice does a Supreme Court Justice is excluded from violating ones Constitutional Rights.

JUSTICE CHERRY by remaining silent and not taking action to correct this miscarriage of justice done to KLEIN by RACHOW, Edwards, Hatlestead, Gammick, Helzer, and John and Jane Does, He is in violation of ADKT 427. (j) On October 29, 2008, June 24, 2009 and November 19, 2009 Justice CHERRY as a member of the Pardons Board was given the documents of the newly discovered evidence that confirmed that RACHOW violated BRADY by withholding the Exculpatory and Materiality Evidence. They were also given the documents in support KLEIN'S claim in the 9th Circuit Court of Appeals.

Nowhere in the Nevada Supreme Court's regulation ADKT 427 does it state that the Nevada Supreme Court Justice is precluded from this regulation. This regulation concerns the Public Welfare and this regulation does not state that it is or is not to be applied retroactive therefore, it must be considered retroactive.

Everyday that Justice CHERRY dose not inform the 9th Circuit Court of Appeals or take any kind of action against those who conspired to conceal a crime, including himself, is another day they are concealing a crime and therefore, violating their own Supreme Court regulation and KLEIN'S constitutional rights. Nor does it say under NRS 199 Crimes Against Public Justice does a Supreme Court Justice is excluded from violating ones Constitutional Rights.

JUSTICE CHERRY by remaining silent and not taking action to correct this miscarriage of justice done to KLEIN by RACHOW, Edwards, Hatlestead, Gammick, Helzer, and John and Jane Does, He is in violation of ADKT 427 and NRS 199 Crimes Against Public Justice

(j) On October 29, 2008, June 24, 2009 and November 19, 2009 Justice SAITTA as a member of the Pardons Board was given the documents of the newly discovered evidence that confirmed that RACHOW violated BRADY by withholding the Exculpatory and Materiality Evidence. They were also given the documents in support KLEIN'S claim in the 9th Circuit Court of Appeals.

Nowhere in the Nevada Supreme Court's regulation ADKT 427 does it state that the Nevada Supreme Court Justice is precluded from this regulation. This regulation concerns the Public Welfare and this regulation does not state that it is or is not to be applied retroactive therefore, it must be considered retroactive.

Everyday that Justice SAITTA dose not inform the 9th Circuit Court of Appeals or take any kind of action against those who conspired to conceal a crime, including himself, is another day they are concealing a crime and therefore, violating their own Supreme Court regulation and KLEIN'S constitutional rights. Nor does it say under NRS 199 Crimes Against Public Justice does a Supreme Court Justice is excluded from violating ones Constitutional Rights.

JUSTICE SAITTA by remaining silent and not taking action to correct this miscarriage of justice done to KLEIN by RACHOW, Edwards, Hatlestead, Gammick, Helzer, and John and Jane Does, He is in violation of ADKT 427 and NRS 199 Crimes Against Public Justice

(k) On October 29, 2008, June 24, 2009 and November 19, 2009 Justice DOUGLAS as a member of the Pardons Board was given the documents of the newly discovered evidence that confirmed that RACHOW violated BRADY by withholding the Exculpatory and Materiality Evidence. They were also given the documents in support KLEIN'S claim in the 9th Circuit Court of Appeals.

Nowhere in the Nevada Supreme Court's regulation ADKT 427 does it state that the Nevada Supreme Court Justice is precluded from this regulation. This regulation concerns the Public Welfare and this regulation does not state that it is or is not to be applied retroactive therefore, it must be considered retroactive.

Everyday that Justice DOUGLAS dose not inform the 9th Circuit Court of Appeals or take any kind of action against those who conspired to conceal a crime, including himself, is another day they are concealing a crime and therefore, violating their own Supreme Court regulation and KLEIN'S constitutional rights. Nor does it say under NRS 199 Crimes Against Public Justice does a Supreme Court Justice is excluded from JUSTICE DOUGLAS by remaining silent and not taking action to correct this miscarriage of justice done to KLEIN by RACHOW, Edwards, Hatlestead, Gammick, Helzer, and John and Jane Does, He is in violation of ADKT 427 and NRS 199 Crimes Against Public Justice

(l) On October 29, 2008, June 24, 2009 and November 19, 2009 Justice PICKERING as a member of the Pardons Board was given the documents of the newly discovered evidence that confirmed that RACHOW violated BRADY by withholding the Exculpatory and Materiality Evidence. They were also given the documents in support KLEIN'S claim in the 9th Circuit Court of Appeals.

Nowhere in the Nevada Supreme Court's regulation ADKT 427 does it state that the Nevada Supreme Court Justice is precluded from this regulation. This regulation concerns the Public Welfare and this regulation does not state that it is or is not to be applied retroactive therefore, it must be considered retroactive.

Everyday that Justice PICKERING dose not inform the 9th Circuit Court of Appeals or take any kind of action against those who conspired to conceal a crime, including himself, is another day they are concealing a crime and therefore, violating their own Supreme Court regulation and KLEIN'S constitutional rights. Nor does it say under NRS 199 Crimes Against Public Justice does a Supreme Court Justice is excluded from violating ones Constitutional Rights.

JUSTICE PICKERING by remaining silent and not taking action to correct this miscarriage of justice done to KLEIN by RACHOW, Edwards, Hatlestead, Gammick, Helzer, and John and Jane Does, She is in violation of ADKT 427.

(m) On October 29, 2008, June 24, 2009 and November 19, 2009 JUSTICE GIBBONS as a member of the Pardons Board was given the documents of the newly discovered evidence that confirmed that RACHOW violated BRADY by withholding the Exculpatory and Materiality Evidence. They were also given the documents in support KLEIN'S claim in the 9th Circuit Court of Appeals.

Nowhere in the Nevada Supreme Court's regulation ADKT 427 does it state that the Nevada Supreme Court Justice is precluded from this regulation. This regulation concerns the Public Welfare and this regulation does not state that it is or is not to be applied retroactive therefore, it must be considered retroactive.

Everyday that Justice GIBBONS dose not inform the 9th Circuit Court of Appeals or take any kind of action against those who conspired to conceal a crime, including

himself, is another day they are concealing a crime and therefore, violating their own Supreme Court regulation and KLEIN'S constitutional rights. Nor does it say under NRS 199 Crimes Against Public Justice does a Supreme Court Justice is excluded from violating ones Constitutional Rights.

JUSTICE GIBBONS by remaining silent and not taking action to correct this miscarriage of justice done to KLEIN by RACHOW, Edwards, Hatlestead, Gammick, Helzer, and John and Jane Does, He is in violation of ADKT 427 and NRS 199 Crimes Against Public Justice.

(n) On October 29, 2008, June 24, 2009 and November 19, 2009 GOVERNOR JAMES GIBBONS as a member of the Pardons Board was given the documents of the newly discovered evidence that confirmed that RACHOW violated BRADY by withholding the Exculpatory and Materiality Evidence. They were also given the documents in support KLEIN'S claim in the 9th Circuit Court of Appeals.

Nowhere in the Nevada Supreme Court's regulation ADKT 427 does it state that the Nevada Supreme Court Justice is precluded from this regulation. This regulation concerns the Public Welfare and this regulation does not state that it is or is not to be applied retroactive therefore, it must be considered retroactive.

Everyday that GOVERNOR JAMES GIBBONS dose not inform the 9th Circuit Court of Appeals or take any kind of action against those who conspired to conceal a crime, including himself, is another day they are concealing a crime and therefore, violating their own Supreme Court regulation and KLEIN'S constitutional rights. Nor does it say under NRS 199 Crimes Against Public Justice does a Supreme Court Justice is excluded from violating ones Constitutional Rights.

GOVERNOR JAMES GIBBONS by remaining silent and not taking action to correct this miscarriage of justice done to KLEIN by RACHOW, Edwards, Hatlestead, Gammick, Helzer, and John and Jane Does, He is in violation of ADKT 427 and NRS 199 Crimes Against Public Justice

(o) On October 29, 2008, June 24, 2009 and November 19, ATTORNEY GENERAL CATHERINE CORTEZ-MASTO as a member of the Pardons Board was given the documents of the newly discovered evidence that confirmed that RACHOW violated BRADY by withholding the Exculpatory and Materiality Evidence. They were also given the documents in support KLEIN'S claim in the 9th Circuit Court of Appeals.

Nowhere in the Nevada Supreme Court's regulation ADKT 427 does it state that the Nevada Supreme Court Justice is precluded from this regulation. This regulation concerns the Public Welfare and this regulation does not state that it is or is not to be applied retroactive therefore, it must be considered retroactive.

Everyday that ATTORNEY GENERAL CATHERINE CORTEZ-MASTO dose not inform the 9th Circuit Court of Appeals or take any kind of action against those who

conspired to conceal a crime, including himself, is another day they are concealing a crime and therefore, violating their own Supreme Court regulation and KLEIN'S constitutional rights. Nor does it say under NRS 199 Crimes Against Public Justice does a Supreme Court Justice is excluded from violating ones Constitutional Rights.

ATTORNEY GENERAL CATHERINE CORTEZ-MASTO by remaining silent and not taking action to correct this miscarriage of justice done to KLEIN by RACHOW. She is in violation of ADKT 427 and NRS 199 Crimes Against Public Justice.

(p) On or about September 4, 2009 I contacted and spoke to Deputy Attorney General, Steven Quinn, to inform him of the newly discovered evidence that supported KLEIN'S claims that are pending in the 9th Circuit Court of Appeals. Quinn stated that he would turn over the documents to Deputy Attorney Robert Weiland and ask him if it were in the best interest of the State to pull out of the 9th Circuit Court of Appeals then they would do it. I wrote a letter detailing our discussions and personally took it in and had it filed with the Attorney General's Office on September 8, 2009. KLEIN died a few days later and instead of notifying the 9th Circuit Court of Appeals the Attorney General's Office filed a notice of death, however, as the Administrator of Nolan Klein's estate, all of KLEIN'S cases are moving forward. Deputy Attorney General is violation of NRS Crimes Against Public Justice and in violation of ADKT 427

(q) According to Deputy Attorney General Steven Quinn he would be receiving the documents. If QUINN did in fact, turn over the documents to WEILAND then WEILAND too is in violation ADKT 427 and NRS 199 Crimes Against Public Justice,

® Deputy District Attorney John Helzer state to the Pardons Board that he heard things and looked in the file. Because of this statement it would apply to all the unknown JOHN AND JANE DOES who to looked in the file and said nothing.

RELIEF SOUGHT

That the Honorable Judge Brent Adams, pursuant to ADKT 427, 12-17-2009, New Set. ORDER, Report Washoe County District Attorney Richard Gammick, Deputy District Attorney Ronald Rachow, Deputy District Attorney Scott Edwards, Deputy District Attorney Gary Hatlestead, Deputy District Attorney John Helzer, All the members of the Nevada Pardons Board, Attorney General Catherine Cortez-Masto, Deputy Attorney General Steven Quinn, Deputy Attorney Robert Weiland, and all John and Jane Does A-Z to the proper authority, agency under this regulation ADKT 427.

Based on the newly discovered evidence that former prosecuting attorney, RON RACHOW,, had violated BRADY V MARYLAND and Nevada Revised Statutes Chapter 174. NOLAN KLEIN who has maintained his innocence from the first day of his questioning throughout his entire Court proceedings and in his final days leading to his wrongful death, KLEIN, asks this Court to consider every document, pleading, Exhibit, Grounds raised in Post-conviction, writs of Habeas Corpus, Writ of Mandamus as to where the grounds'- issues have or have not been fully addressed, or have reached the merits on or not in any of the state and federal Courts

KLEIN asks this Court to notify the Ninth Circuit Court of Appeals and inform them as to the newly discovered evidence that was found in the Washoe County District Attorney's on June 10, 2009 that RACHOW withheld the Materiality and Exculpatory Evidence that supports KLEIN'S case.

KLEIN asks this Court to Order a Hearing in the above entitled action.

KLEIN ask this Court to file criminal charges against those who violated BRADY v MARYLAND. Those who facilitated a wrongful death when they conspired to conceal a crime when they violated the NRS Statutes. Those who have violated the Nevada Code of Professional Conduct. Those who have violated ADKT 427. I ask this Court to file complaints with the State Bar of Nevada on those individuals who violated KLEIN'S Constitutional Rights and be disbarred from every practicing law in the State of Nevada.

Wherefore, KLEIN prays that the Honorable Court grant KLEIN'S Writ of Mandamus and overturn his conviction based on the newly discovered evidence that was in violation of BRADY v MARLAND and the Bad Faith that had perpetrated against KLEIN by several members of our judicial system.


TONJA BROWN, ADMINISTRATOR/EXECUTRIX OF
THE ESTATE OF NOLAN KLEIN.
2907 Lukens Lane
Carson City, NV 89706
775-882-2744

Affirmation:

The undersigned does hereby affirm that the proceeding document does not contain the social security number of any person.

Dated: _____, 2010

Signature _____

1. ~~Tonja~~ Brown, Executrix/Administrator
Estate of Nolan Klein
2. 2907 Lukens Lane
Carson City, NV 89706

3. _____
IN PROPER PERSON

5. IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7. ESTATE OF NOLAN KLEIN
Petitioner,

Case No: Cv10-01057

8. Dept. No. 7

9. V

10. WASHOE COUNTY DISTRICT ATTORNEY'S
JOHN AND JANE DOES A – Z
11. PARDONS BOARD
ATTORNEY GENERAL KATHRINE CORTEZ MASTO
12. JOHN AND JANE DOES A – Z

13. _____/Respondents

15. REPLY BRIEF IN SUPPORT OF PETITION IN WRIT OF MANDAMUS
16. REPLY TO MOTION TO DISMISS PETITION

20. Comes now, Petitioner, NOLAN KLEIN, by and through his Administrator/ Executrix
21. Tonja Brown, and pursuant to the Court's May 18, 2010 and May 28, 2010 orders appears on
22. behalf of the Estate of Nolan Klein and hereby Reply's to the Washoe County District Attorney
23. Richard Gammick's response to the Petition for Writ of Mandamus in the above entitled matter by moving
24. the court to grant said Petition and deny respondents Motion to Dismiss Petition.

exhibit 5

POINTS AND AUTHORITIES

Mr. Gammick's response is based in entirety technicality that completely avoid the issue of the deliberate violation of Nolan Klein's right to exculpatory evidence by the intentional and unlawful concealment of BRADY MATERIAL pre-trial.

The characterization of Mr. Klein's convictions having been upheld and the disingenuous and inaccurate depiction of Mr. Klein having "exhausted" his post-conviction remedy's ignore the fact the Courts that considered those matters, like Mr. Klein, were unaware of the deliberate concealment and failure to produce exculpatory evidence. That evidence, including the specific handwritten notation "NOT FOR DISCOVERY" "NO SHOWING OF MATERIALITY" first came into the possession of Mr. Klein on or about June 10, 2009 when his attorney Robert R. Hager was allowed pursuant to court order to examine the entire file that had been in the possession of Mr. Gammick for the last 15 years allowing Mr. Gammick to now use defensively state and federal court ruling that, like Mr. Klein's conviction, were the result of a continuous pattern prosecutorial misconduct lasting more than 20 years, would result in this Court condoning actions by Mr. Gammick that are in violation of Mr. Klein's fundamental constitutional rights and are offensive to acceptable standards of justice in Nevada and the United States.

In response to the argument Petitioner pursue the Petition unless represented by counsel. Petitioner the duly appointed Personal Representative of Mr. Klein, acting in his place in stead Petitioner not acting on behalf of "Entity" such as a corporation Trust, but instead as the Personal Representative of a natural person. Petitioner empowered as the Representative to pursue the relief requested much the same as if Petitioner were seeking an injunction to prevent the unauthorized use of Mr. Klein's image or intellectual property.

As for the notarization of the Petition the Affidavit satisfies the purpose of the requirement that the Petition be submitted under Oath and under penalty of perjury. The fact that Mr. Gammick exclusively devotes his response to technical argument such as the Sworn Affidavit being filed separately from the Petition and some of the contents Petition being single then doubled spaced is consistent with the manner in which Mr. Gammick and his predecessors have deprived Mr. Klein of fair adjudication of the issues of more than 20 years in the Washoe County District Attorney's Office. Had Mr. Gammick simply produced the exculpatory evidence rather than deliberately conceal it, Mr. Klein would

1. not have been deprived of his fundamental constitutional right to a fair trial and the State and Federal
2. courts would not have been required to make rulings on post-conviction matters without benefit of that
3. exculpatory evidence.

4. Anytime there is a violation of a fundamental constitutional right the result is "Structural Error."
5. The deliberate concealment of exculpatory evidence by Mr. Gammick and his predecessors in the
6. Washoe County District Attorney's Office violates a fundamental constitutional right of Nolan Klein,
7. thereby resulting in Structural Error. NEDER V. UNITED STATES, 527 U.S. 1,7,119 S.Ct. 1827, 144
8. L.Ed. 2D 35 (1999), Mazzan,993P.2^d at 37-38, 42-42 and FN1-3, State of Nevada v Ruben
9. babayan.

10. The Respondents argues that there is no authority for using mandamus to force reporting
11. of alleged prosecutorial misconduct. This Petition for Writ of Mandamus was submitted under the
12. ADKT 427 new regulation it clearly defines what a lawyer or Judge must and is required to do.

13. This case was filed with in the Honorable Judge Adams Court because this
14. case had been pending in Judge Adams court. Unbeknownst to Petitioner it had been
15. closed due to Mr. Klein's death at the time of filing. It was the clerk's office who made
16. the decision not to file the Petition under Judge Brent Adams court because the case had
17. been closed due to Mr. Klein's Death. The Petition was then re-submitted and filed under
18. the Estate of Nolan Klein. A filing fee was paid. It was then transferred to
19. Department 7 the Honorable Judge Patrick Flanagan's Court. It was not the Petitioner
20. that had the Petition transferred and thereby Petitioner is not responsible for which department
21. this Writ of Mandamus was assigned. In essence, whether it be the Honorable Judge Brent
22. Adams, Judge Patrick Flanagan, or another sitting Judge who received this Petition for Writ of
23. Mandamus would became aware of the information outlined within the Petition and is now
24. required to take action based on the new ADKT 427 regulation. The Honorable Judge Patrick
25. Flanagan received the information and now has knowledge. ADKT 427 does not define how this
26. information is reported or received by the Judge, only that once a Judge receives this information

1. he is required to take action.
2. (A) "A Judge having knowledge that another judge has committed a violation of the Nevada
3. Rule of professional Conduct that raises a substantial question regarding the lawyer's honesty,
4. trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority."
5. (B) "A Judge having knowledge that a lawyer has committed a violation of the Nevada Rule of
6. professional Conduct that raises a substantial question regarding the lawyer's honesty,
7. trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority."
8. (C) "A judge who receives information indicating a substantial likelihood that another
9. judge has committed a violation of this Code shall take appropriate action."
10. (D) "A judge who receives information indicating a substantial likelihood that a lawyer has
11. committed a violation of the Nevada Rules of Professional Conduct shall take appropriate action."

8. COMMENT

9. [1]. "Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and

10. (B) impose an obligation on the judge to the appropriate disciplinary authority the known

11. misconduct of another judge or a lawyer that raises a substantial question regarding the honesty,

12. trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct

13. among ones fellow judicial colleagues of the legal profession undermines a judge's responsibility

14. to participate in efforts to ensure public respect for the justice system. This Rule limits the

15. reporting obligation to those offenses that an independent judiciary must vigorously endeavor to

16. prevent."

14. [2] "A judge who does not have actual knowledge that another judge or lawyer may have

15. committed misconduct but receives information indicating a substantial likelihood of such

16. misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate

17. action may include, but, is not limited to, communicating directly with the judge who violated

18. this Code, communicating with a supervising judge, or reporting the suspected violation to the

19. appropriate authority or other agency or body. Similarly, actions to be taken in response to

20. information that a lawyer has committed a violation of the Nevada Rules of Professional

21. Conduct may include but are no limited to communicating directly with the lawyer who may

22. have committed the violation or reporting the suspected violation with the appropriate authority

23. or other agency or body."

19. Based on the new regulation set forth by the Nevada Supreme Court now raises questions

20. pertaining to the protected laws of the State of Nevada. The honesty, trustworthiness, and

21. ethical behavior that has been set in place under The Rules of Professional Conduct that all

22. licensed attorney's must obey. It also raises the questions when compared to the ordinary

23. citizen is the licensed attorney's within the State of Nevada above the law? If the answer is

24. "never" then the court must take the appropriate action against those named in the Petition. 1.

25. The Nevada Revised Statutes are clear and nowhere in any of the Nevada Revised

1. Statutes does it state that it is acceptable for a licensed attorney to be treated differently than the
2. ordinary citizen when it comes to committing crimes against public justice or any other crime
3. one might commit. If the ordinary citizen were to obstruct justice, conspire to conceal a crime,
4. etc. as alleged in the Petition would the ordinary citizen be prosecuted? If the answer is “yes”
5. then the Court must take the appropriate action according to our laws. Does The Code of
6. Professional Conduct supersede the laws of the State of Nevada? If the answer is “no” the Court
7. must take the appropriate action. Based on the Petition had the Respondents named in the
8. Petition breached their duty of integrity, honesty, trustworthiness, credibility and fitness? If the
9. answer is “yes” then the court must take action against those named in the Petition are in
10. violation of The Rules of Professional Conduct.

11. Page 10 line 2 of the Respondents response. “We can find no law that requires a Nevada
12. District Court Judge to commence a criminal proceeding.” The Court has inherent authority and
13. the duty in this case to overturn the conviction and refer this matter to the Grand Jury or other
14. authority of determination of whether a criminal proceeding should be commenced.

15. **NRS 34.170 Writ to issue when no plain, speedy and adequate remedy in law.** This writ
16. shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary
17. course of law. It shall be issued upon affidavit, on the application of the party beneficially
18. interested.

19. **NRS 34.520 If charge defectively set forth in process or warrant, judge shall examine witnesses and**
20. **discharge or recommit person.** If it shall appear to the judge, by affidavit, or upon hearing of the matter, or
21. otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings
22. as may be shown to the judge, that the party is guilty of a criminal offense, or ought not to be discharged, the judge,
23. although the charge is defectively or unsubstantially set forth in such process or warrant of commitment, shall cause
the complainant, or other necessary witnesses, to be subpoenaed to attend at such time as ordered, to testify before
the judge; and upon the examination, the judge shall discharge such prisoner, let the prisoner to bail, if the offense
beailable, or recommit the prisoner to custody, as may be just and legal. [22:93:1862; B § 370; BH § 3692; C §
3764; RL § 6247; NCL § 11396]

24. **NRS 34.220 If answer raises essential question of fact, court may order jury trial.** If an answer is made, which
25. raises a question as to matter of fact essential to the determination of the motion, and affecting the substantial rights
of the parties, and upon the supposed truth of the allegation of which the application for a writ is based, the court
may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be
26. had and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and

1. the county shall be designated in which the same shall be had. The order may also direct the jury to assess any
2. damages which the applicant may have sustained, in case they find for the applicant.

3. _____

6. **CONCLUSION**

7. Based on the facts contained within the above entitled action and the Petition for Writ of
8. Mandamus the Petitioner has provided adequate legal bases to have a hearing held and to have
9. Mr. Klein's conviction overturned and those named in the Petition to be prosecuted and referred
10. for investigation of professional misconduct. Furthermore the Respondents Motion should be
11. denied.

12. WHEREFORE, the Petitioner prays as follows:

13. 1. The Court grant that a hearing to be held; and
14. 2. The court grant the Petition for a Writ of Mandamus.

15.

16. **AFFIRMATION PURSAUANT TO NRS 239B.030**

17. The undersigned does hereby affirm that the preceding document does not contain the
18. social security number of any person.

19. Dated this 7th day of July 2010

25.

20.

21.

22.

23.


TONJA BROWN, Administrator/Executrix
2907 Lukens Lane
Carson City, NV 89706
775-882-2744

Footnote: Washoe County District Attorney Richard Gammick can be used as the prime example. On June 23, 2010 I presented to The Advisory Commission on the Administration of Justice a proposed recommendation of Nolan's Law. I also provided to The Advisory Commission where

in Washoe County District Attorney Richard Gammick was substituting in for one of the Commissioners on The Advisory Commission the documents of one ADA Steven Barker who had been sanctioned/reprimanded by judges, the Nevada Supreme Court and the State Bar of Nevada in different cases for withholding exculpatory evidence and violating Brady v Maryland. They were informed that Mr. Gammick continued to employ Mr. Barker thereby, condoning his actions to violate ones fundamental constitutional right to receive a fair trial. When the Chairman of the Commission, Assemblyman William Horne asked the Commission, including Mr. Gammick, if they had any questions of Ms. Brown, Mr. Gammick said "nothing"

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

ESTATE OF NOLAN KLEIN
Petitioner,

Case No.: CV10-01057
Dept. No.: 7

vs.

WASHOE COUNTY DISTRICT
ATTORNEYS JOHN AND JANE DOES
A-Z; PARDON BOARD; ATTORNEY
GENERAL KATHERINE CORTEZ
MASTO; JOHN AND JANE DOES A-Z,
Respondents.

ORDER

Parties to this action came before this Court on September 30, 2010 for oral argument on a Petition for Writ of Mandamus filed on March 30, 2010, requesting this Court overturn the conviction of Petitioner's brother based on alleged Brady violations and further asking this Court to punish those alleged to have committed such violations by reporting them to the State Bar and to commence criminal actions against them. Brady v. Maryland, 373 U.S. 83 (1963).

Respondents point to a number of procedural defects with the Petition, chief amongst these is the contention that a Writ of Mandamus an inappropriate vehicle for the relief sought, which warrants dismissal of the Petition. At oral argument, Petitioner, through her attorney, argued that as the Writ was filed when Petitioner was essentially *in pro per*, this Court should instead entertain the orally amended Petition and refer the District Attorney's office to the State Bar to investigate alleged misconduct. Petitioner also seeks a Grand Jury investigation.

Amber L

1 Respondents contended the relief requested is still beyond this Court's power. In the interests of
2 justice, this Court will entertain the requests made during oral argument as the operative Petition.

3 Discussion

4 Referral to the State Bar is Unwarranted Based on the Information Before This Court

5 The essence of Petitioner's argument is that the District Attorney's office withheld
6 potentially exculpatory evidence during the trial of NOLAN KLEIN, which constitutes
7 misconduct. Specifically, there were police reports that referenced a certain hitchhiker matching
8 the description given by the victims of the crimes for which NOLAN KLEIN was convicted.
9 Further there were cigarette butts which are no longer in the evidence file. Petitioner states that
10 NOLAN KLEIN's jury initially deadlocked and thus argues that evidence that there was another
11 potential suspect would likely have led to an acquittal. Petitioner argues that this potentially
12 exculpatory evidence was not disclosed to NOLAN KLEIN's trial attorneys or subsequent
13 appellate counsel. Therefore, Petitioner requests this Court refer this matter to the State Bar of
14 Nevada, which would then conduct an investigation into the alleged wrong doing by prosecutors
15 of the Washoe County District Attorney's Office pursuant to Nevada Code of Judicial Conduct
16 Rule 2.15(d) which states that a judge "who receives information indicating a substantial
17 likelihood that a lawyer has committed a violation of the Nevada Rules of Professional Conduct
18 shall take appropriate actions."

19 Respondents note that there is no impediment to Petitioner filing a complaint with the
20 State Bar of Nevada. Further, Respondents argued that Petitioner could not show a "substantial
21 likelihood" that a prosecuting attorney had committed any ethical violation. Respondents make
22 several arguments that tend to reduce the likelihood that any ethical violation had occurred.

23 First, Respondents argued that the existence of a possible alternative suspect, one
24 ZARSKY, was known to NOLAN KLEIN's trial attorney, who testified in prior post-conviction
25 cases that she decided to not pursue a defense theory that ZARSKY was the perpetrator. The
26 description of this subject was related to a separate and unrelated investigation. Additionally, this
27 information was disclosed to KLEIN's attorney who made a tactical decision not to use it in his
28 defense. The test for a Brady discovery violation is whether the evidence is disclosed to, not

1 whether it is used by, the defense. There is no evidence of a Brady violation and Petitioner has
2 not met her burden here.

3 Next, Petitioner points to the absence of cigarette butts from the evidence file as viewed
4 by Treva Hearne, an experienced defense counsel hired by the KLEIN family to pursue post-
5 conviction remedies. Petitioner argues that DNA testing of those cigarette butts at the time of
6 trial would have provided exculpatory evidence and that the District Attorney's Office
7 committed fundamental error in either (1) not testing those items or, (2) surreptitiously testing
8 those items and not sharing the test results with the defense.

9 First, Petitioner's counsel admitted that there was nothing that prevented KLEIN from
10 accessing or independently testing those items at the time of his trial. Counsel also admitted that
11 the cigarettes were obtained at the veritable dawn of DNA testing. DNA testing standards and
12 protocols at the time of NOLAN KLEIN's trial were not as sophisticated as they are now. Thus,
13 while it is possible that Petitioner's theory is correct, it is at least equally likely that the evidence
14 was either merely lost in the intervening twenty-two years or that it was destroyed in testing that
15 produced no results. In either event, this evidence may have not been favorable (or admissible)
16 in Mr. KLEIN's defense. If KLEIN's DNA had been on the cigarettes, it would have established
17 his presence at the scene of the crime, a fact hardly consistent with his claim of alibi. If
18 KLEIN's DNA was not on the cigarette it would not have been relevant evidence. Here again the
19 burden rests on Petitioner to demonstrate the likelihood of their theory, a burden of proof they
20 have not carried.

21 Petitioner alleges that items found in the prosecution file do not appear in the defense
22 trial bolstering their claim that not all items were shared between offices. However, there are
23 several flaws with this argument. First, among the items identified by Petitioner is a copy of a
24 discovery order with a prosecutor's handwritten notes. This is properly classified as "work
25 product" of the prosecutor and would not have been disclosed to the defense under any
26 interpretation of Brady. Secondly, this Court has reviewed every exhibit attached to the filed
27 *Petition and Reply* and finds that the exhibits presented to this Court do not disclose *information*
28 indicating a substantial likelihood of misconduct, at most the exhibits disclose a discrepancy

1 between files over the course of decades with no particular cause supported. Lastly, comparing
2 the Defense file to the Prosecutor's file does not necessarily indicate anything suspicious. There
3 is no evidence that the Prosecutors failed to turn over everything to which the Defense was
4 entitled at the time of trial, or during post-conviction proceedings. It may be that items were
5 placed in the KLEIN prosecution file as mere cross-reference, unrelated to the actual prosecution
6 of the case. It may be that there was a determination that the items not turned over had no
7 potential exculpatory value at the time that determination was made, and without the benefit of
8 twenty years of hindsight. It may well be that the Defense file is not intact, or has itself been
9 poorly maintained over the many years, giving rise to the illusion that some evidence was never
10 received. It is irrelevant whether this Court believes the Defense file to have been poorly
11 maintained or not. What is relevant is that this Court has not received evidence indicating a
12 substantial likelihood of any particular *cause* for the discrepancy between the files, and this
13 Court cannot and will not speculate as to the cause of the discrepancy (if any) between the files
14 maintained by two different offices many years ago.

15 This Court is impressed with Petitioner's dedication to her relentless pursuit of
16 vindication of her deceased brother's reputation. However, this Court finds that Petitioner has
17 pursued an avenue that can not lead to the relief sought. To refer the Washoe County District
18 Attorney's office to the State Bar of Nevada for an investigation into the withholding of
19 exculpatory evidence, this Court would have to find that it had received information indicating a
20 substantial likelihood **that an attorney committed** a violation of the Nevada Rules of Professional
21 Conduct. Here, this Court would essentially have to find a substantial likelihood that the
22 Washoe County District Attorney's office withheld exculpatory evidence. This Court cannot
23 make such a finding on the basis of the information before this Court. The information provided
24 to this Court does not rise to such a level that it indicates a substantial likelihood of wrongdoing
25 or misconduct.

26 This Court appreciates Petitioner's dilemma. Without an investigation, Petitioner is
27 likely hard-pressed to find evidence that would "indicate a substantial likelihood" that
28 misconduct had occurred. However, this Court finds that the mere insinuation or intimation of

1 county which may constitute a violation of a provision of chapter 197 of NRS." Chapter 197
2 contains two sections which could in theory be construed as applicable to the case at hand.

3 NRS § 197.200 "Opression Under Color of Office" includes unlawfully and maliciously
4 doing any act whereby the person, property or rights of another person are injured. Brady
5 violations would seem to fit this description. NRS § 197.220, a catchall provision, states that
6 "Every public officer or other person who shall willfully disobey any provision of law regulating
7 his or her official conduct in cases for which no other punishment is provided shall be guilty of a
8 misdemeanor." Violation of the rules of professional conduct by a prosecutor seems to fit this
9 description.

10 An allegation has been made that would implicate to sections of Chapter 197, and a
11 request to empanel a Grand Jury to investigate has been made by Petitioner. The question
12 becomes, what standard of proof, or cause, or suspicion is required to warrant the empanelling of
13 a Grand Jury. Nevada has no case law on this particular point, nor any statutory or constitutional
14 authority to guide this Court. This Court finds wise guidance in the laws of Pennsylvania, where
15 the nature of the Grand Jury was traced to the foundation of our common law so as to instruct
16 courts as to the proper bases for impaneling the Grand Jury. Petition of McNair, Mayor, et al.,
17 324 Pa. 48 (1936). This Court adopts the rules laid out in McNair.

18 The Grand Jury is an ancient and august legal body, whose development likely dates to
19 the reign of Ethelred, and certainly existed in the time of William the Conqueror. This inquiry
20 into history is warranted by the precept that the Courts of each State, including this Court, have
21 all the powers of the **King's Bench** unless subsequently modified by Constitution, statute, or
22 precedent. Thus, **this Court reaches a millennium into the past for guidance on the propriety of**
23 **this Court empanelling a Grand Jury in this case.**

24 The origins of the Grand Jury as described by Bracton disclose the Grand Jury to be an
25 accusatory body. McNair, 324 Pa. 48 at n.1, *citing* Bracton, De Corona, cap. 1. In its earliest
26 inception, the Grand Jury was convened specifically to issue accusations against the jurors'
27 fellows and neighbors. Over time, investigative functions were added, and this Court is guided
28 by that development in that it demonstrates the need to restrain from initiating accusatory

1 proceedings against citizens without sufficient reason.

2 As described by Blackstone, the Grand Jury is founded as a body empowered to prefer
3 indictments or accusations against specific offenders after deliberation. This function comports
4 with the purpose for which the Grand Jury as we know it was created, to protect citizens from
5 summary and unjust accusations. 4 Blackstone, Com. 302. The Grand Jury issues indictments
6 on the standard of probable cause. Therefore, it is axiomatic that the threshold for empanelling
7 the Grand Jury must be lower than probable cause. However, this Court must exercise restraint
8 and may not empanel a Grand Jury on mere speculation or whimsy. When a court orders an
9 investigation, it acts under its official responsibility and must exercise sound discretion.

10 A Grand Jury's investigation cannot be a blanket inquiry to bring to light supposed
11 grievances or wrongs for the purposes of criticizing an officer or a department of government,
12 nor may it be instituted without direct knowledge or knowledge gained from trustworthy
13 information that misconduct is afoot warranting an investigation. McNair, 324 Pa. at 61. There
14 is no power to institute or prosecute an inquiry on chance or speculation that some misconduct
15 may be discovered. The Grand Jury must not be set upon fruitless searches, founded upon mere
16 rumor, suspicion or conjecture. There must be a sound, solid basis on which to proceed. A court
17 is without power to set a grand jury investigation in motion unless the court has reasonable cause
18 to believe that the investigation will disclose some misconduct which is within its jurisdiction to
19 address. *See*, C.J.S. Grand Jury § 6; McNair, 324 Pa. 48 (1936).

20 As above, this Court appreciates Petitioner's attempt to uncover information that would
21 warrant an investigation. But this Court cannot initiate an investigation to discover information
22 that would be the basis for an investigation. This Court takes guidance in the wise decision of
23 the Supreme Court of Pennsylvania which noted that the Grand Jury removes the protections of
24 the Bill of Rights from the target of inquiry. This Court cannot effect such an inquiry absent
25 reasonable cause.

26 This Court does not find such reasonable cause here. Petitioner may have a cogent theory
27 for the discrepancy between the Defense file and the Prosecution file, but that theory is founded
28 solely on speculation as to why the discrepancy exists. This Court is without direct knowledge

1 of misconduct, and finds that Petitioner's theory does not rise to the level of "knowledge gained
2 from trustworthy information." Petitioner's theory is an allegation, an accusation, and
3 speculation, not information. This Court finds that empanelling a Grand Jury here would be little
4 more than a "fishing expedition". McNair, 324 Pa. at 63. Accordingly, this Court finds it does
5 not have sufficient basis to empanel a Grand Jury in this matter.

6 This potentially new exculpatory evidence came to light pursuant to an order permitting
7 extensive discovery by the Honorable Judge Brent Adams in Department Six of the Second
8 Judicial District Court. Any further proceedings relating to items uncovered through that
9 discovery are properly brought before that department. This Court notes that Petitioner has no
10 impediment to seeking an investigation from the State Bar on her own.

11 Conclusion

12 The filed Petition for Writ of Mandamus is an inappropriate vehicle for the relief
13 requested in the Petition. Therefore, this Court **DENIES** the Petition for Writ of Mandamus as
14 filed on March 10, 2010.

15 Based on the information received by this Court, this Court does not find a substantial
16 likelihood that any attorney of the Washoe County District Attorney's Office has violated any
17 Rule of Professional Conduct in the prosecution of NOLAN KLEIN. This Court does not find
18 reasonable cause to believe that a Grand Jury inquiry would disclose any misconduct within this
19 Court's jurisdiction to punish. Therefore the Petitioner's requests for relief are **DENIED**.

20 DATED this 27 day of October, 2010.

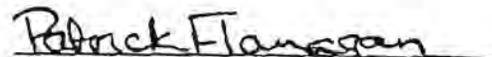
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23 PATRICK FLANAGAN
24 District Judge
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EXHIBIT LIST

- 1.
- 2.
- 3.
- 4.
5. See Exhibit 1
Exculpatory Evidence, Notions,
"NOT FOR DISCOVERY" made by prosecuting attorney Ron Rachow.
6. See Exhibit 2 Sparks Police Department Supplemental or Continuation
Report of one Churchill County Sheriff Deputy, Mike Judd. Had this report been
revealed it would have strengthened the defenses theory/case of mistaken identity.
Prosecutors page 05
7. See Exhibit 3 Supplemental or Continuation Report of Detective Sherman
Boxx, who states "also located in the vehicle was a paper clipping of a bank
robbery in Salmon Creek, Washington. With a picture of a perpetrator from a
surveillance camera inside the bank. A contact is being made with the FBI in that
jurisdiction "AS WE BELIEVE" the picture of that is Nolan Klein." Detective
Boxx mistook Petitioner for a bank robber. Had this been revealed it would have
strengthened the defense's theory/case of mistaken identity. Prosecutor page
0109
8. See Exhibit 4 photo copy of cassette tape of suspect's 911 call refer to
Exhibit 19, 27 E, 0196, 0197.
9. See Exhibit 5 Memorandum dated November 10, 1988. Prosecutor pages
0181 Refer to Exhibit 1 filed within the Writ of Mandamus filed on March 20,
2010.
10. See Exhibit 6 Investigative Notes of Louann Gritter Prosecutor pages
0090, 0091, 0107, 0108, 0109, 0115, 0116, 0117, 0118, 0197, 0198 Ms. O'Neil

1

exhibit 3

11. testified that she had listened to the tape and did not believe it sounded like Petitioner. Ms. Tonja Brown also listened to tape of suspect, it is not that of Petitioner. However, state's witness Gritter had motive and reason to lie. Gritter contacted Petitioner a year after his conviction informing why she did what she did. This was raised in the Post-conviction. Petitioner later sued and settled
12. See Exhibit 7 Letter from victim Rodela's attorney to ADA Ron Rachow dated September 19, 1988 Prosecutor page 0226, 0227
13. See Exhibit 8 Letter dated September 22, 1988 from ADA Ron Rachow to victim's attorney Mr. Lohse correcting name of their person and then identifying Petitioner as the Defendant. Prosecutor page 0229
14. See Exhibit 9 Letter dated September 27, 1988 from Mr. Lohse to ADA Ron Rachow thanking him. At Trial victims did not have a lawsuit.
15. See Exhibit 10A "On November 4, 1988 victim Rodela filed suit against Petitioner prior to trial. At trial Rodela testified she didn't know who she was suing. Victim Sloane filed suit against Petitioner prior to Petitioner's arrest and identifying him at preliminary hearing. Sloane dismisses Petitioner out of suit prior trial." Prosecutor page 0228
16. See Exhibit 11 Letter dated September 16, 1992 from State Bar of Nevada to Petitioner.
17. See Exhibit 12 December 13, 1988 Order to seize Petitioner's DNA. Results from victim's and Petitioner's DNA Prosecutor pages 0005, 0006, 0007, 0008, 0009, 0169, 0221, 0080.
18. See Exhibit 13 Motion for Dismissal of Counsel-Conflict of interest.
19. See Exhibit 14 Newspaper clipping of composite sketch of May 9, 1988, April 21, 1988.
20. See Exhibit 15 September 15, 1988 booking picture of Petitioner. Both depicting beard stubbles. May 22, 1988 Photo line depicts Petitioner with a full beard. Defense witnesses never asked about beard evidence until June 20, 1991 post-conviction hearing. Refer to the photo lineup found Exhibit 1 of the Writ of Mandamus filed on March 20, 2010,
21. See Exhibit 16 A Statement of Carla Jo Marsh dated May 1, 1989.

22. See Exhibit 17 Ms. Shelly O'Neill's testimony from June 20, 1988 post-conviction Testimony regarding State's witness Louann Gritter, prime suspect Ricky Zarsky and why O'Neill did not present beard evidence
23. See Exhibit 18 A, Letter dated January 29, 1990 to Petitioner detailing what was in the Defenses file,
24. See Exhibit 18 b, Letter dated June 13, 1991 regarding Petitioner's visitor's and attorney, Ms. Shelly O'Neill.
25. See Exhibit 20. Pages from the book "To Prove His Innocence" the Ms. O'Neill obtained a copy of the manuscript from attorney Ms. Treva Hearne and returned it without comment for publication.
 4. Shelly O'Neill was given the manuscript and made no comment.
 5. Ron Rachow was given the opportunity to read the manuscript but declined.
 6. An attorney who represents the police officer's union was given the manuscript, but gave us no comments. Sherman Boxx did meet with us once with his attorney present. He stated that he believed that he had given all the evidence that he had to the District Attorney.
26. See Exhibit 21 Petitioner's Power of Attorney to Ms. Renee Shoun so that she could retrieve Petitioner Harley Davidson. Detective Boxx said he never took the Power of Attorney from Ms. Shoun's home located at 501 N Maddux Drive. Petitioner attempted to retrieve this Power of Attorney so that the Harley Davidson could be sold to pay for a private attorney "This evidence, the 1967 Chevy Impala was similar to the crime committed on April 21, 1988, however that victim cleared Petitioner and his car. This exculpatory evidence was withheld from the defense. Petitioner sued Sparks Police Dept. for the Harley Davidson and his Car that was seized for evidence on September 15, 1988 and never used. Petitioner's property was lost forever." Prosecutor 0110, 0112, 0114, Petitioner sued in Klein v City of Sparks, Boxx and won.
27. See Exhibit 22
 ... has brown wooden with brass ends
 ... knife
28. See Exhibit 23 A, May 9, 1988 Victims described the weapon as a red and black handle knife same as victim from April 21, 1988 Case No. 88-4892. prosecutors pages, 0064, 0263 0116
29. See Exhibit 23 B, April 21, 1988 victim described the vehicle having a bench seat and the WEAPON AS A RED AND BLACK HANDLE KNIFE.

Prosecutors pages 0016, 0017, 0157, 0158, 0243 PETITION WAS NEVER CHARGED WITH THIS CRIME. Victim cleared Petitioner and his vehicle.

30. See Exhibit 24 Supplemental Continuation Report of Officer Steve Asher. Officer picked up victim from April 12, 1988 crime. She was driven by Petitioner's car and then the police Department. Petitioner was charged with this crime, even though it was the theory of several police officers that the crime was committed by the person who committed the May 9, 1988 crime for which Petitioner was convicted of. Evidence was withheld from defense.

31. See Exhibit 25. Office Deblizan states. "If should be noted that there are similarities between the suspect in this case and the suspect in Case # 88-4238." April 21, 1988. prosecutor page 0070

32. See Exhibit 26 Police Report on Ricky Lee Zarsky prosecutor pages 0068 0073. to case 88-4892

33. See Exhibit 27. Letter to victim Robert from Ms. Treasa Heurle

34. See Exhibit 28 newspaper clipping of May 9, 1988 crime and mention of April 21, crime. This evidence was not investigated and newspaper clipping was not admitted to the jury.

35. See Exhibit 29 State's additional Witness and statements withheld. Don Lutzenburg, Det. Sherman Boxx, additional witnesses.

36. See Exhibit 30 Defense witness Eunice Wilkinson, John Darnell, William Richards, Barbara Hillman, Renee Shoun. Prosecutor page 0190, 0191, 0192, 0193, 0194, 0198, 0199

37. See Exhibit 31 Letter of Preservation date May 5, 1988 from Petitioner

38. See Exhibit 31B, Motion for Evidentiary Hearing filed on Nov. 28, 2000

39. See Exhibit 31C, Affidavit of Tonja Brown, filed on March 20, 2010, NRS 176.0918

39.a See Exhibit 31D, Affidavit in MOTION FOR RECONSIDERATION Tonja Brown 39.a

4

40. SEE Exhibit 3 / F Letter dated April 22, 1998 to Mr. Joseph Placer from Petitioner
 41. See Exhibit 3 / F Letter dated January 24, 2001 to Mr. Dick Duer from Petitioner
 42. NOTICE OF EVIDENCE PRESERVATION DEMAND, AND NOTICE OF INTENT TO
 SUBMIT EVIDENCE FOR FORENSIC TESTING.
 See Exhibit 3 / G copy of Affidavit of Tonja that was submitted to the court in May 1988.
43. See Exhibit 3 / Washoe County District Attorney Richard
 Gammick's letter dated May 15, 1995 to Ms. Tonja Brown regarding
 perjury complaint against Ms. Shelly T. O'Neill.
44. See Exhibit 3 / A, Letter from Mr. Tim Ford,
 See Exhibit 27 B, Klein sues O'Neill, Supreme Court remitter,
45. See Exhibit 3 / C, Alternate Public Defender Committee.
46. See Exhibit 3 / D, Letter dated October 1, 1992 from the Office of
 the Attorney General to Petitioner regarding perjury complaint against Ms.
 Shelly O'Neill.
47. See Exhibit 3 / E Additional/ Supplemental facts in support of
 ground three of petition for writ of habeas corpus
48. See Exhibit 3 / Letter to Pardons Board submitted by law office of
 Hager and Hearne.
49. See Exhibit 3 / A, Letter dated May 13, 1998 from Gammick
 missing DNA.
50. See Exhibit 3 / B photo copy of Cassette tape of December 1996
 interview of DA Richard Gammick discussing the missing DNA evidence
 and how he saw the evidence. During the 1998 hearing on the missing
 DNA evidence ADA Gary Hatlestad concedes the evidence is gone. On
 September 22, 2008 Gammick admits to opening up the DNA and testing
 it. Tapes will be presented at hearing.
50. See Exhibit 3 / C Letter dated February 16, 1996 to Ms. Tonja
 Brown. This letter shows that Judge Lane and Det. Carson went along
 with putting the original 1996 police complaint filed by Ms. Brown onto
 the closed August 1995 police report complaint onto a closed case, thereby
 making it impossible to find the new complaint. By doing so they
 conspired to conceal a crime, the crime being the missing cigarette filters.
52. See Exhibit 3 / D October 29, 2008 Pardons Board hearing
 transcripts of ADA John Helzer regarding Gammick's public interview
 admitting to opening up Petitioner's DNA and testing it on September 22,
 2008 and ADMITTING TO LOOKING INTO THE FILE. ADA Helzer
 knew then the evidence had been withheld and kept quite to the Pardons
 Board.

53. - Exhibit 33 E photo copy of Petitioner - DNA evidence envelope opened after trial without a court order and unknown to defense.
54. See Exhibit 33 F photo copy taken of filtered cigarette butts in 1988.
55. See Exhibit 34 Affidavit of Ms. Treva Hearne,
56. See Exhibit 34 A, Supreme Court Justice Springer Court Order, September 1998
57. See Exhibit 35 letter and email from retired attorney Gerry Spence, *Hager & Hager*
58. See Exhibit 34 Petitioner's letter to Keith Munro.
59. See Exhibit 37 Petitioner's Petition for a Writ of Habeas Corpus,
cv-n193-DWH
60. See Exhibit 38 Letter to DAG Steven Quinn dated September 4, 2009 filed Sept. 8, 2009
61. see exhibit 39. Affidavit of Acker & Klein
62. see exhibit 39 A 1998 motion & reconsideration
63. see exhibit 39 B exhibits in support of motion to make additional findings of fact and/or to alter or amend order and/or judgement.
64. see ex 39 C Letter dated Jan. 17 1997 to Mr. Joseph Plater from Petitioner
65. see EX 39 D Police Report filed 1995 by MS. Tanya Brown as complaint
66. see EX 39 E Police Report filed by MS. Tanya Brown January 1996

DA
Kocher

FILED

'88 DEC -8 10:15

1 Case No. CR88-1692
2 Dept. No. 7

JUDICIAL CLERK
W. V. MUNDLO
DEPUTY

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

THE STATE OF NEVADA,
Plaintiff,

vs.
EDWARD ALLEN WILKINSON aka
NOLAN EDWARD KLEIN,
Defendant.

ORDER

IT IS HEREBY ORDERED that the Washoe County District
Attorney's Office shall provide the Defendant with the
following discovery:

1. Written or recorded statements or confessions made by the Defendant, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the District Attorney; and
2. Results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the District Attorney.

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9177

Exhibit 3

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3. Copies of any books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the State.

4. Copies of all photographs or diagrams taken in connection with this action.

5. All statements of witnesses or reports thereof, that in any way show favorably upon the Defendant's character or guilt or innocence or possible punishment.

6. This Order for Discovery is a continuing one pursuant to NRS 174.295.

IT IS FURTHER ORDERED that if the prosecution is unable to determine the materiality or exculpatory nature of the witnesses' statements or other material, that said materials be turned over to the Court for determination in camera.

DATED this 20th day of Dec, 1988.

Peer J. Bacon
DISTRICT JUDGE

0178

SPARKS POLICE DEPARTMENT

SPARKS POLICE DEPARTMENT

SUPPLEMENTAL OR CONTINUATION REPORT

Code of original report ROBBERY/SEXUAL ASSAULT	Date of original report 5/9/88	Case number 88-4892
Name of complainant PAYLESS SHOES/RODELA, THERESA	Location of original occurrence 543 E. PRATER	Date and time of supplement 5/10/88 1355 HRS.

Additional details of offense, progress of investigation, etc.

Pg 2

In talking with Mr. LITTLE, he advised us that Mr. ZARSKY was not home and when he returned home this morning after working graveyard, Mr. ZARSKY had left with two of his friends. Mr. LITTLE advised us that he left for work on 5/9/88 at approx. 2100 hrs. and did not return home until 5/10/88 at approx. 0830 hrs. Mr. LITTLE advised us that Mr. ZARSKY had planed to give plasma today in Reno at the Reno Plasma Center.

Det. BOXX & I then went to Nevada Plasma Center located on 2nd St. in Reno to attempt to locate Mr. ZARSKY. We made contact with a Nursing Supervisor at Nevada Plasma and she pulled the records on Mr. ZARSKY and advised us that Mr. ZARSKY had not been at Nevada Plasma since 1984. Nevada Plasma has a picture of Mr. ZARSKY but it is dated in 1984.

Det. BOXX & I then went to Reno Plasma Center located on 2nd St. in Reno to attempt to locate Mr. ZARSKY at this Plasma Center. We again made contact with a Nursing Supervisor and inquired if Mr. ZARSKY was there. The Nursing Supervisor brought us Mr. ZARSKY's file and told us he had not been there yet today. Reno Plasma also did have a picture of Mr. ZARSKY but it was dated in 1986. The Nursing Supervisor also advised us that the last time Mr. ZARSKY had been in there to give plasma was on 4 of 88.

Both of the photographs that I observed from Nevada Plasma & Reno Plasma did resemble the composites that were done in these cases. I then returned to the Abby Hotel and again made contact with Mr. ZARSKY's roommate, Mr. David LITTLE to inquire how many times, to his knowledge, that Mr. ZARSKY had given plasma. Mr. LITTLE advised me that he only knows of one other time, other than today, that Mr. ZARSKY has given plasma in the last two months. Again Mr. ZARSKY was not at home and Mr. LITTLE had no idea where he was.

I then went to the bartending area where I made contact with an individual who identified himself as being the Manager of the area and asked him if he observed Mr. ZARSKY come back would he please notify this Dept.

This is a supplement to case #88-4892. No further details.

↑
April 21st
Victim clears
room and his
car will be
Defense. Helzer new

ALL INFORMATION PROVIDED BY _____ ON _____ IS RESTRICTED AS TO USE AND DISSEMINATION

This Offense is now

Founded

Resolved by Arrest

Resolved Otherwise

Officer ASHER #4534 Patrol

Date 5/10/88

MAY 11, 1988

Nevad

Man robs shoe store, sexually assaults clerk

Sparks police are looking for a knife-wielding man who robbed a shoe store, sexually assaulted a clerk and then notified police.

A detective said the unidentified suspect's description was very similar to a man who kidnapped, robbed and attempted to sexually assault a woman on El Rancho Drive April 21.



The suspect

The latest case occurred at a shoestore on Prater Way. As two female employees, 18 and 20, were closing shortly before 9 p.m. Monday, a thin, dirty-looking young man brandished a knife and grabbed one of them.

He ordered her to put down a telephone and forced both victims to lie on the floor in a restroom. Claiming he had a gun, he ordered them not to move, police said.

Then, he went to the front of the store, rifled a cash drawer, locked the front door and returned to the restroom. He took one of the women to another room and sexually assaulted her.

At 10:18 p.m., a man telephoned Sparks police, saying, "There are two girls tied up in the back room" of the store. "I robbed them."

On Tuesday, police released a composite drawing of the man. They described him as Caucasian, 30 to 35 years old, about 3 feet 10 inches tall, weighing about 145 pounds and having brown eyes, sandy-blond hair.

B
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ZHRsky

exhibit 3



POLICE DEPARTMENT

City of Reno

POST OFFICE BOX 1900 RENO, NEVADA 89505

February 16, 1996

Honorable Mills B. Lane
District Court Judge Department 9
Washoe County Court House
P.O. Box 11130
Reno, NV 89520

Re: Reno Police Department Case # 187728-95

Dear Judge Lane:

Enclosed is a copy of the above reference case report. The report was made by Mrs. Jonja F. Brown, regarding the disappearance of potential evidence from the Court's evidence facility. Mrs. Brown has previously reported that she believed members of the Washoe County Sheriffs Department's Forensic Investigations Unit had perjured themselves when testifying against her brother Noland Edward Kline in the lat 80's. Mr. Kline was convicted and Mrs. Brown has been seeking to overturn that conviction through further investigation, appeal, and legal challenges.

~~Mr. Brown's prior case was recorded under the same case number. The Police Department investigated that case which alleged perjury and miss-handling of evidence prior to its presentation in court. That investigation disclosed no perjury occurred, and evidence introduced at the time of trial was handled appropriately under the law. Mrs. Brown was advised of the findings and briefed by Detective Dave Jenkins on the investigation. At that time Mrs. Brown related that she understood the findings and could find no conflict in the conclusions reached.~~

The current allegation is that someone entered the court's evidence facility and removed filters from cigarettes introduced at the time of trial. Mrs. Brow believes that the missing filters contain DNA evidence that is exculpatory for her brother. Per our telephone conversation this case is being forwarded to you for your review and discretion.

P2 104 2

EXHIBIT E Senate Committee on Judiciary
Date: 3-8-07 Page 1 of 119

EXHIBIT 3

1. Tonja Brown, Executrix/Administrator
Estate of Nolan Klein
2. Lukens Lane
Carson City, NV 89706
3. 775-882-2744
IN PROPER PERSON
4.

FILED
2010 NOV 19 PM 1:37
HOWARD W. CONYERS
BY K. Montgomery
DEPUTY

5. **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF**
6. **NEVADA IN AND FOR THE COUNTY OF WASHOE**

7. ESTATE OF NOLAN KLEIN

Case No: CV10-1057

8. Appellant,

Dept. No. 7

9.

v.

10. STATE OF NEVADA,

11. Respondent,
_____ /

12.

13. **NOTICE OF APPEAL**

14. NOTICE is hereby given that ESTATE OF NOLAN KLEIN, Appellant
15. above named, hereby appeals to the Supreme Court of the State of Nevada from the
16. Order Affirming Decision Of In the Second Judicial District Court entered on the
17. 27th day of October, 2010, a copy of which is attached and marked as Exhibit "1",
18. and a copy of the Notice of Entry of Order filed on the 1st day of November, 2010,
19. is attached and marked as Exhibit "2".

20. AFFIRMATION PURSUATN TO NRS 239B.030

21. The undersigned does hereby affirm that the preceding document does not contain
22. the social security number of any person.

23. DATED this 19th day of November, 2010

//



Washoe County District Attorney

**RICHARD A. GAMMICK
DISTRICT ATTORNEY**

May 15, 1995

Tonja Brown
3310 Surrey Lane
Carson City NV 89706

RE: SHELLY O'NEILL

Dear Tonja:

Nevada Revised Statutes 171.085 requires that criminal complaints be filed in felony cases within three years unless the case is one of the clearly specified exceptions. Since the alleged perjury in this case occurred on June 20, 1991 the three year statute of limitations has run and this office would be unable to file a case even if we felt it was appropriate to do so.

Even if you have any further questions or comments, please do not hesitate to contact me.

Yours truly,

Richard A. Gammick
RICHARD A. GAMMICK
District Attorney

KAU/sj

Exhibit 6

ALTERNATE PUBLIC DEFENDER COMMITTEE

Agenda

March 2, 2007

10:30 a.m.

Washoe County Administrative Complex
HR Large Conference Room, A210
1001 East Ninth Street, Reno, Nevada

Facilities in which this meeting is being held are accessible to the disabled. Persons with disabilities who require special accommodation or assistance (e.g. sign language, interpreters or assisted listening devices) at the meeting should notify the Washoe County Manager's Office, at 328-2000, 24 hours prior to the meeting.

PURSUANT TO NRS 241.020 A COPY OF THIS AGENDA HAS BEEN POSTED AT THE FOLLOWING LOCATIONS: RENO CENTRAL LIBRARY (301 S. CENTER STREET) – WASHOE COUNTY COURTHOUSE (COURT AND VIRGINIA STREETS) – SPARKS JUSTICE COURT (630 GREENBRAE DRIVE) – WASHOE COUNTY ADMINISTRATIVE BUILDING (1001 E. 9TH STREET)

Supporting documentation for items on the agenda provided to Committee members is available for viewing by members of the public at the County Manager's Office, 1001 E. Ninth St. Bldg. A, 2nd Floor, Reno, Nevada.

Note: Unless otherwise indicated by an asterisk (*), all items on the agenda are action items upon which the committee may take action. Items on the agenda may not necessarily be considered in the order that they appear.

1. Call to order and roll call.
2. Interviews with candidates as follows:
 - a) Jennifer Lunt
 - b) Shelly O'Neill
 - c) Kenneth Ward
3. Discussion and recommendation to Board of County Commission of candidates for interview and possible appointment at their March 20, 2007 meeting.
4. Direction to staff for conducting reference and background checks of top candidates.
- *5. Public Comments – Three-minute time limit per person.
6. Adjournment.

6a

Tonja mistakenly believed that this basic concept of an independent jury was at the very heart of our democracy just waiting for the moment that truth is available. Unless charges have been filed, which is at the discretion of the DA, the jury will never hear the matter at all. The Assistant DA's final statement was that he was leaving this investigation as a "no issue" and left Tonja listening to a dead receiver. Tonja then contacted and talked to the Chief Deputy District Attorney, who agreed to meet with her on this case.

Just prior to the meeting, Tonja wanted someone to give her an answer about whether there was a difference between an exaggerated truth and a lie. She was finally able after trying three judges, to reach one of the judges in the second judicial court of Washoe County. The Judge himself actually got on the telephone personally when he heard from his clerk what the question was. He stated to Tonja that the only reason he was talking to her was that he wanted to know if the perjury she was asking about had happened in his court room. She assured him that it had not, but that it had occurred in the Second Judicial, right in the Courthouse itself.

He confirmed to her that there was no difference between lying and exaggerating the truth, both had serious consequences under oath. Once someone has taken the oath to tell the truth and they testified, then what they said becomes perjury if it was a lie or exaggerated.¹⁰

Armed with her judicial information, Tonja went to her meeting with the Chief Deputy DA. He was the assistant DA's superior and second in command during the Dorothy Nash Holmes regime. During their conversation he told Tonja that if what she had said was true, he would bring charges against O'Neill. Tonja referred to her conversation with the judge and the Deputy DA became enraged and exploded that he would call the judge himself and explain what perjury meant. Tonja said, "fine, go ahead."

What Tonja could not understand at the time was why the Deputy DA seemed so intent on following up on the charges, but yet was so upset that she had conversed with a judge about the matter. The fact was that he resented her contact with the Judge and the constant badgering on the perjury of O'Neill. All the DA's office wanted was this entire matter to go away. When Tonja called

Exhibit
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¹⁰ This Judge was not re-elected for another term. In 1999 he returned to private practice, defrauded a client and was disbarred.

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back to check on the charges, the Deputy indicated that he no longer had any idea what she was talking about.

Meanwhile, Nolan was continuing to pursue the appellate process.

On February 8, 1993, in response to Nolan's first writ of habeas corpus filed in State Court, White Pine County, the Court ruled as follows:

Order HC-0140892:

Order Dismissing Petition for Writ of Habeas Corpus: Petitioner, NOLAN E. KLEIN, filed a petition for Writ of Habeas Corpus on the 19th day of August, 1992. Respondent filed a Motion to Dismiss Petition for Writ of Habeas Corpus on the 23rd day of November, 1992. Petitioner filed a Response to Motion to Dismiss Petition for Writ of Habeas Corpus on the 18th day of December, 1992.

Petitioner alleges three (3) reasons why he is unlawfully restrained of his liberty.

First, he alleges that he "was denied effective assistance of trial counsel and due process."

Second, he alleges that he "was denied effective assistance of counsel and due process on direct appeal."

Finally, he alleges he "was denied his right to due process to a full and fair evidentiary hearing" due to "repeated instances of perjury committed by SHELLY T. O'NEILL during her testimony at Petitioner's evidentiary hearing on his Petition for Post-Conviction Relief pursuant to N.R.S. 177.315 et seq. O'NEILL was KLEIN'S trial counsel.

Respondent urges that Petitioner's first two grounds for relief are barred by N.R.S. 34.810 (1)(b)(3) because the grounds for the Petition could have been presented in a direct appeal or prior petition. Respondent argues that Petitioner has shown no cause for his failure to previously present these grounds, nor has he shown actual prejudice.

Petitioner concedes that Grounds I and II in the instant Petition were raised in his Petition for Post-Conviction

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Relief as grounds IV. and V in that Petition. N.R.S 34.810 (2) provides in pertinent part:

A second or successive petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits..."

It is settled that Petitioner cannot re-litigate the same claims through successive petition. Washington v. State, 104 Nev. 309, 756 P.2d1191 (1988) Petitioner alleges in his instant Petition that his Petition for Post-Conviction relief (N.R.S. 177.315 et. seq.) was dismissed on the 12th day of July, 1991. The Court finds, therefore, that Petitioner's first two grounds for relief are barred procedurally because they fail to allege new or different grounds for relief.

KLEIN'S remaining ground for relief is the claim of denial of due process because his trial counsel allegedly perjured herself at the evidentiary hearing on his Petition for Post-conviction Relief. Perjury and Subornation of Perjury are defined at N.R.S 199.120. Perjury is a crime in Nevada punishable by imprisonment in the State Prison for not less than one (1) year, nor more than ten (10) years and may be further punished by a fine of not more than Ten Thousand Dollars (\$10,000). Petitioner's allegation that his trial attorney committed perjury is conclusory. He has provided no evidence that O'NEILL was ever charged with, much less convicted of perjury. Accordingly, the Court can grant Petitioner no relief on this argument.

For the reasons set forth above, the Court concludes that briefing and oral argument are unwarranted. See Luckett v. Warden, 91 Nev. 681, 541 P.2d 910 (1975), cert. denied, 423 U.S. 1077 (1976). Good cause appearing, therefore; IT IS HEREBY ORDERED that the Petition for Writ of Habeas is dismissed. DATED this 8th day of February, 1993.

Merlyn Hoyt, District Judge, White Pine County, State of Nevada.

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No one would charge O'NEILL with perjury, therefore, the Court would not grant Nolan's Writ nor even look at the evidence to see if it proved perjury. Anything that he had brought up before and that Judge McGee had dismissed couldn't be brought up again, even if Judge McGee was wrong. The only way to get a review of Judge McGee's decision was to go to the Supreme Court of Nevada to appeal McGee or to finally file in federal court. All of these steps had to be followed in order and lawfully correct. Nolan was learning.

Tonja's response to the dismissal of the Writ and the refusal to act by the DA's office was to direct attention to this by the only means she knew would work. Tonja again contacted the media. She called the Sparks Tribune and Nevada Appeal. On June 21, 1993, she was in front of the Public Service Commission to protest the employment of O'Neill in a State job. Her protest sign proclaimed the battle cry given to her by the Assistant DA: "What's the difference between a lie and an exaggerated truth." On the flip side "Ask Shelly O'Neill."

The media did show up, now savvy to Tonja's ongoing protest of the justice system. Angela Curtis for Sparks Tribune interviewed O'Neill. Troy Anderson with the Nevada Appeal asked O'Neill for a statement also. O'Neill told Anderson that she couldn't talk at that time, but she did come out to speak, or rather to plead with, Tonja and they spent one-half hour talking.

O'Neill told Tonja that her job was in jeopardy. Tonja couldn't believe that O'Neill thought that Tonja could be swayed by such an appeal. Tonja dismissed such a notion immediately, "I don't care." Then O'Neill tried to threaten her and told Tonja that she had called Ann Langer (Nolan's former juror and now assistant DA in Carson City) and she intended to have Tonja arrested for stalking. Tonja reminded her that the Public Service Commission was a public place and that Tonja, a citizen of these United States, was exercising her first amendment rights. Shelly had to admit that she was correct, and further admitted that Tonja was one smart girl.

Then the negotiation began. O'Neill wanted to know what it would take for Tonja to go away. At that moment, Tonja really intended to get the truth and go away and so she merely said that what she wanted was the truth. Incredibly, O'Neill said, "O.K. what do you want to know."

Tonja cut straight to it. She wanted to know about the prime suspect Rickie Lee Zarsky. O'Neill stated, to Tonja that she had Tim

Ford, the investigator check him out before trial. This, Tonja knew, she had not done and she called O'Neill on it. Tonja revealed the conversation with Ford. Ford had immediately told Tonja that he remembered her and he remembered the case but he had no idea about another suspect. Tonja told him that O'Neill had testified that she had sent Ford to investigate and check out the leads on Zarsky. He said that it was not only not in the file but he had no personal recollection of it either.

"Well, you caught me." O'Neill commented on Tonja's narrative of the Ford lack of recollection. "But, would it have made a difference?" This was the constant refrain adopted by O'Neill. "Would it have made a difference?" was all she would reply to one after the other fact that Tonja threw at her.¹¹

"Damn right, if the jury had known there was another suspect when it was a case of mistaken identity." Tonja slammed back at her. Tonja went on to remind O'Neill that the contrast of the composite sketch of the suspect in the April 21st incident had it been compared to the composite sketch of the suspect identified by the Payless victims would have certainly caused the jury to wonder if there had been someone else. Didn't O'Neill believe that the unidentified detective might have made a huge difference if called to testify why he wrote that the Payless crime was "very similar" to a crime that occurred on April 21st at Oddie and El Rancho. That Payless victim had been given an opportunity to view and identify Nolan while he was at Sparks P.D., but she could not. Certainly, that, with the other evidence would have cast doubt on Nolan's guilt.

¹¹ On September 20, 1993, Investigator Tim Ford signed the following affidavit: 1, TIMOTHY FORD, being first duly sworn, deposes and says: 1. That during the investigation and trial of NOLAN EDWARD KLEIN, I was the main investigator on the case working with KLEIN's counsel, Shelly O'Neill; 2. That I recently reviewed the trial file of MR. KLEIN, and did not find anything to indicate that Mr. Petty, an employee of the Abbey Hotel in Sparks, Nevada, was contacted regarding KLEIN's case; 3. Although there was no evidence in the file that Mr. Petty had been contacted, this does not necessarily mean that he was not so contacted; 4. That I wrote a letter on August 20, 1993, to Ms. Brown stating these facts, and incorporate such statements within this affidavit, and further declare that I wrote the letter attached to this affidavit. I, TIMOTHY FORD, do hereby swear under penalty of perjury that the assertions of this affidavit are true. Further affiant sayeth not.

How could O'Neill say that similarity of these two crimes might have created a huge doubt in the jurors' minds. O'Neill simply fail to respond.

What Tonja could not believe was O'Neill's reaction to explanation of the beard evidence. Tonja told O'Neill that she had read O'Neill's testimony from the hearing. Tonja had constar complained that O'Neill neglected to put on the evidence that Nolan had a full beard at the time of the crime. The victims had described their assailant as having a stubble. However, much of this evidence had been muddled. Tonja described to O'Neill that the booki picture of Nolan taken September 15, 1988 showed Nolan with stubble as the victims described. O'Neill had relied upon that picture for her understanding of the status of Nolan's beard. What she had missed was that Nolan had a full beard, which showed up in the photo line up at the time he was detained for questioning in March four months earlier. At the time of his arrest, he only had a two three day stubble just as the victims had described, but Nolan was arrested in September. O'Neill's chin dropped upon the realization that she had missed Tonja's entire point during trial because she had looked at the wrong photo.

Tonja demanded to know why O'Neill had failed to follow up with the witness information that Tonja's mom had found. Don Lutzenberg had been watching the car the night of the Payless incident and written down the license plate number. Tonja's Mom had actually located Mr. Lutzenberg. O'Neill hadn't even checked it out, but all she asked again was "Would it have made a difference? Yes he had a different license plate number, not Nolan's. If Tonja had discovered all of this evidence why had O'Neill, an attorney with an investigator, not found some of this exculpatory information? Had the DA really cooperated as O'Neill had testified? Tonja knew the answer was no or why would O'Neill have made a motion before trial to force the DA to reveal the evidence because they had refused to turn it over.

Tonja was sickened by the admissions of O'Neill. How could she ever absorb the import of O'Neill's plain callousness for her brother's case and the result. "Would it have made a difference rang in Tonja's ears for the better part of two weeks.

Tonja needed to scream about the injustice in some way or burst with the knowledge inside her. She sent a letter to the Assistant District Attorney detailing the statements made by O'Neill. The letter joined the re

Nolan Klein & Tonja Brown as told to Mary Elizabeth Morgan

made certain statements that "were not consistent with a thorough disclosure by the prosecution of the information in question." The District Attorney the Court referred to was Mills Lane.

Tonja re-started her protest at the Legislature. Nolan Klein continued to file lawsuits and motions for other inmates as well as himself. He has assisted over 200 other inmates successfully. Tonja read in the paper that Scott Shearer had resigned. Keith Munro was to be his replacement as attorney for the Governor. Tonja was concerned that this investigation would be lost in the shuffle.

While at NSP in March 2000, Nolan was told that he had an attorney visit. Nolan advised the prison that he had no counsel. When they told him it was the Governor's attorney, he got up and moved toward the visiting area. Keith Munro introduced himself to Nolan by stating that he had been advised that an innocent man was in jail. Nolan gave Munro a brief history of his case and the ensuing appeals.

Munro left with the information and the documents needed for his review. Any others that he needed, Tonja quickly supplied. Munro stated later that the biggest problem between Nolan and the pardons board was the eye witness testimony, but more importantly the statement by his public defender that he had confessed. Nolan was able to expertly and summarily prepare the documentation that Munro needed on those two issues. Nolan responded to Munro's inquiry regarding the confession.

Dear Mr. Munro,
Thank you for your letter of March 30, 2000, regarding the finding by Judge McGee that my "trial lawyer testified credibly in Klein's first state court habeas proceeding, in 1991 following his conviction he admitted the crime." While I did not find a copy of the order attached, I do know which order is being referenced and will respond regarding same. However, I feel that before this issue can appropriately be evaluated, I must set the background and evidence regarding the alleged confession in order for you to fully understand how it came about in the first place, and the obstacles I have encountered in my attempts to have any court or state agency consider or even comment on that evidence that directly conflicts

Exhibit 3
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with Ms. O'Neill's allegation that I had confessed to her after trial. For your convenience I am enclosing the exhibits which support matters stated herein, with the exception of a few orders and/or pleadings of which I believe are in your possession and can be easily located by description and filing date which will be cited in any such instances.

When Judge McGee made that finding he had never been given any information or evidence that would rebut the statement by Ms. O'Neill claiming that I had confessed to her after trial. This was because at the first post conviction hearing it was not necessary at that time to do so since she claimed that this event took place after trial, and as such, had no relevance to whether or not she provided effective assistance of trial counsel. In fact, the first post-conviction petition following the evidentiary hearing where Ms. O'Neill made the claim of the admission. Furthermore, the Nevada Supreme Court did not reference it either in their order on appeal from that first order of Judge McGee, and the state never argued it. (Order attached).

The truth of the matter is that I have made numerous attempts to have anyone evaluate the evidence contradicting a number of material statements made by Ms. O'Neill under oath, including the alleged confession, and in every instance there was no factual discussion. The courts simply determined that until some other local governmental agency concludes the facts constitute a crime they will not consider them; the State Bar wants basically the same thing, and the Reno Police Department allegedly investigated the matter, turned it over to the Washoe County District Attorney to be evaluated for possible criminal proceedings against Ms. O'Neill, however, by the time the District Attorney's office got around to anything, they said that it was then too late for them to do anything because the statute of limitations had run out. You would have to talk to my sister, Tonja Brown, for any information and documentation, names, etc., regarding the Reno Police and DA's position and investigations into this matter, but the state court cases were filed in: The Seventh

Judicial District Court, Case No. HC-0140892; Second Judicial District Court, Case No. CV95-01925.

Unfortunately, it appears that just because an attorney says something took place, it appears that any state or local government courts or other agencies accept that to be "credible" while at the same time refusing to even consider or discuss any evidence whatsoever that may discredit that credibility. This brings me to my present dilemma in which I actually expect no less from this office. This is unfortunate of course, and I hope I'm wrong. Nevertheless, I have elected to make one more attempt at having someone review the evidence showing that Ms. O'Neill's credibility is not as good as it looks on its face, and all I ask is that you look at everything presented herein and submitted with this letter, before reaching any conclusions, as no one else will.

Now that Order you refer to in your letter came on the heels of an evidentiary hearing held on the matter of missing evidence. After receiving a copy of that particular order, on May 14, 1998, I filed my timely Rule 52 motion for additional findings of fact, wherein, I specifically pointed out for the court that the only reference to the alleged confession came in the states closing argument, and as such, I had not had an opportunity to rebut the matter. Essentially, what I had asked the court for was that before Judge McGee found Ms. O'Neill's previous testimony that I had confessed to her after trial credible, that he look at all the evidence which tended to discredit her testimony during that same hearing, and further, submitted evidence in support of my position on May 15, 1998. (See attached Motion)

On August 24, 1998, Judge McGee issued another order wherein he completely fails to recognize or otherwise discuss the matters regarding Ms. O'Neill's credibility, but instead, appears to abandon the confession issue completely and discuss something about my counsel's performance at the evidentiary hearing, which was not at issue, but only discussed by me for the reason of demonstrating my cause for not presenting the exhibits at the time of the hearing when the prosecutor mentioned the alleged confession. That is what my

motion for additional findings of fact was about, the alleged confession and credibility finding, not counsel's performance. Yet once again the court failed to actually discuss any evidence attacking Ms. O'Neill's credibility, but instead, elected to merely act like it didn't happen or was no longer an issue.

That is the order I appealed and is currently pending resolution by the Nevada Supreme Court. Again I was frustrated because I made it a specific point of trying to keep the credibility evidence against Ms. O'Neill to only those persons that worked with her, or were not friends or family of mine, or were completely neutral. Nevertheless, Judge McGee rather than address the credibility issue directly, simply made it a non-issue by way of his new order, insofar as the courts are concerned anyway, and we know the Nevada Supreme Court will not either because I do not have an attorney. That will leave me with the Federal Court, and of course you are doing some sort of investigation, and as such, you will need to consider the evidence that Ms. O'Neill was not being entirely truthful in her testimony and that the alleged confession could not have even happened when she claimed, before you can reach any reasonable conclusions regarding this alleged confession. Therefore, I will go through some, albeit not all, of the credibility problems with Ms. O'Neill's evidentiary hearing testimony for which so many seem to want to defend.

1. During my criminal trial, Barbara Hillman testified that she was the bartender at Jack's Bar in Carson City on the evening of May 9, 1988. She also testified that prior to trial she only talked to a man in the bar in Carson City, and that was an investigator named Tim Ford. Ms. Hillman further testified that she didn't know anything about the car I was driving on May 9, 1988, because she hadn't seen one. However, at the evidentiary hearing held June 20, 1991, Ms. O'Neill testified that "I specifically recall going down to Jack's Bar, timing the drive, talking to the bartender, doing a walk between the dinner place and the bar, doing that sort of thing."

However, this cannot be reasonably credible because Barbara Hillman was the bartender and stated during her trial testimony, two years earlier, that she had only met with Mr. Ford. She reiterated the fact that she had never spoken to Ms. O'Neill prior to trial in a sworn statement after the evidentiary hearing. Additionally, the timing exercise testimony is questionable, merely because it would be hard to do unless you knew where to start, in that, Jack's Bar did not have a parking lot and sometimes a patron would have to park several blocks away in the residential neighborhood, and Barbara Hillman said she never saw the car.

2. During the evidentiary hearing Ms. O'Neill testified basically that she didn't really discuss my criminal case with me personally, but instead, insisted that we communicate through a third party. She stated: "No. No. I believe - I saw him a couple of times. On the onset we had a falling out. I told him to correspond or go through his mother with me because he was not getting along with me, although I do maintain contact with someone, although it's not personal, and then toward two or three weeks, maybe a month before trial I think he realized after people had reported to him that I was investigating, I had been in Carson City, I had been to those places.

Despite this claim I could not find a single person that Ms. O'Neill had talked to or met with in Carson City. (See statements of Hillman, Darnell, Richards, Wilkinson and Brown)

3. Contrary to and in direct conflict with the testimony cited in numbered paragraph 2 above, Ms. O'Neill, when questioned about her communication with me regarding how many times she had actually come to that jail to see me or talked with me personally, she testified that:

"Right. We had about an hour before the preliminary hearing, an hour to an hour and a half. There were some delays, and I recall they allowed myself and Mr. Kline (sic) to do an interview. I spent a little over an hour before the preliminary examination....Then I went out on a regular basis, and I also received numerous correspondence from him hand-delivered from his

mother. . ." Ms. O'Neill went on to state: "And frankly, he had no other choice but to work with me, that he decided to cooperate somewhat with me, and then I went out and saw him more often. . ."

However, as testified to be me at the evidentiary hearing, Ms. O'Neill only came to the jail and saw me to talk to me on a couple of occasions, once early on and once the day before trial commenced, as evidenced by the Washoe County Detention Center records. (Attached) The only other times were at the preliminary hearing in the manner testified to by her, and then only during court appearances at the defendants table in the courtroom itself.

4. A couple of years after my conviction it was learned that prior to my arrest the Sparks Police Department was actively pursuing another suspect by the name of Ricky Zarsky as the suspect in the offense for which I now stand convicted. During the evidentiary hearing, Ms. O'Neill was asked about any investigations, etc., that either she or her investigator checked out on the Zarsky information, or the outcome of the investigation. However, after the hearing, when contacted, Ms. O'Neill's main investigator, Tim Ford, reviewed the file for my case and could not find anything at all in the file regarding any investigations regarding the other suspect, Ricky Zarsky, not even a note. This information provided later certainly places the issue into question, since O'Neill testified that the matter was in fact looked into, but no one could be found, nor even a note could be found, that would indicate that the Zarsky issue was ever looked into at all, or by whom. The evidence actually indicates that Ms. O'Neill probably only found out about Mr. Zarsky at the time of the evidentiary hearing (post conviction). It is truly unreasonable to assume that an attorney acting competently would not make some sort of record into a matter of importance such as this.

5. During the evidentiary hearing, which is the actual focus of your letter, that I confessed to her after trial that I had committed the crimes charged against me. After the hearing in June of 1991, I had Ms. O'Neill narrow down the time and/or date of the alleged

confession as close as she could to an actual date, but to no avail. Nevertheless, she did place the date of the alleged confession at sometime after trial and before sentencing. (Her response to admissions)

However, there are several problems and contradictions with Ms. O'Neill's allegation that I confessed after trial, but before sentencing.

First, the fact is that she had never seen me or discussed anything with me during that entire period of time as evidenced by the jail visitor records provided by Captain John T. Westwood. This is further evidenced by her own testimony state that she only wanted me to communicate with her through a third party. This statement is supported by other evidence showing that she only saw me once early on and once the day before trial, and the same evidence contradicts her testimony that she went to see me on numerous occasions. The simple fact is that she had not seen me during the entire period of time from verdict to sentencing up to the moment we were in the courtroom for sentencing. She even had the pre-sentence report hand delivered to me by one of the deputy sheriffs working on the floor where the courtroom was located, and discussed it with me for about three minutes at the defense table just prior to sentencing.

Secondly, it should be taken into account that Ms. O'Neill never made any written note, document or other paper regarding this alleged confession, and it is certainly reasonable to assume that an attorney acting competently would have made some sort of record of an alleged event of such importance for future relevance. Thirdly, it is unreasonable to assume that an attorney acting competently before a district judge would deliberately misrepresent facts to the judge that were allegedly recently made known to her, while knowing they were material to the sentencing proceeding. Nevertheless, during sentencing Ms. O'Neill twice stated that I was maintaining my innocence and that I believed in it strongly. Specifically, she stated: "That was a chance he was willing to take because he believed in his innocence. He maintains that position and fully

intends to appeal." Ms. O'Neill went on to state: "I am not exactly sure, your Honor, what an appropriate sentence is here because Mr. Klein is, as I mentioned before, maintaining his innocence."

Very truly yours, Nolan Klein

Tonja had to figure out a way to get it across to Keith Munro that a confession never took place. She decided to tackle every way that was possible to discredit Shelly. She hit them full force and dissected every piece of Shelly's testimony from the 1991 hearing, the 1996 deposition from the slander suit and when they still weren't totally convinced, she brought in transcripts from the sentencing where Shelly tells Judge McGee that her client has always maintained his innocence. It was here that Keith Munro would give Tonja a compliment and a decision.

While on the phone to Munro, he asked Tonja, "may I tell you something? Without any hesitation Tonja said, yes. He asked Tonja that if he should ever get into trouble could he please adopt her for his sister. Tonja replies, "is that a compliment? He said, "yes it was". She graciously accepted his compliment, something that Tonja seldom ever heard. Then Munro told her one more thing. He said that "we", which she believed at that time, meant the Governor and the Governor's office, would like to try to get Nolan accepted to the Pardons Board. He cautioned her that it didn't mean that he would be accepted. Tonja accepted his offer with full knowledge that if the Governor sponsored Nolan before the Pardons Board, there would be no "try", it would be accomplished.

In anticipation of the Pardon process, Tonja provided what information she could to the Governor's office. In the process Tonja realized that she might as well start on the book that she had intended to write and while she was compiling the information for the Governor, she began. She had always had more of an audience for the wrongdoing with the media than she had ever had with the "system", that was, until the Governor's Office.

Nolan discounted the Pardons Board hearing as another instance of Tonja placing misguided belief in the system. But Tonja was convinced this time because of the kind and reassuring words of the Executive Secretary to the Pardons Board that Nolan would be placed on the next agenda. When Tonja had inquired about filling out the application to the Pardons Board, the secretary had

opposition. I understand politics and the demands of the office, but I can't believe that there isn't something so inherently unreasonable about the examples I've just given you that wouldn't merit your consideration.

I look forward to your response."

No response was ever received from this letter.

In 2003, Nolan Klein made application to the Pardons Board for commutation of his sentence. Without further comment, the Pardons Board refused to hear his case.

In 2003 Nolan also filed a Writ with the Federal Court again asking the Court to hear his case regarding the many counts that had not been ruled on by Judge McGee, again appealed to the Nevada Supreme Court who failed to issue an opinion for four years. The opinion rejected the appeal in 2002. Nolan followed this by a Writ to the same Federal Court that required that these issues be addressed and, although the issues were never addressed by Judge McGee or the Nevada Supreme Court, this time the Federal Court denied his Writ forcing him to appeal to the Ninth Circuit Court of Appeals. As a point of interest, by this time Judge McGee had been arrested for Driving Under the Influence so Nolan had added in his Writ a challenge to the trial judge's sobriety at the time of trial.

Finally, Nolan filed another Writ before the Honorable Edward C. Reed of the United States Federal District Court stating that he had been denied the right to appear before the Parole Board since for more than five years. The Court returned the Writ and asked that the State show cause why the Writ should not be granted. Within a short time of the return of the Writ, an attorney for the Governor appeared at Northern Nevada Correctional Center and tried to negotiate with Nolan, but he refused the offer. The next offer was to present him to the Parole Board in 2010. Nolan Klein has served five times the average sentence for the crimes that he has allegedly committed as of the year 2003. He has been threatened with even more punishment for his consistent position that he is innocent. He also believes that his incarceration continues because of his successful litigation against the State of Nevada. His sister fears that he is incarcerated because of her consistent diatribes to the

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media that the corruption within the justice system of Nevada what keeps Nolan Klein from his right to justice.

Everyone who reads this book has to examine his own belief in the justice system. If someone is poor, do we simply not care what happens to them. Do we care if the system is vindictive and prejudiced against inmates who exercise their right to be heard?

In 1996 Nolan was told that if he stopped appealing his case he would get a parole hearing. In 2004, he was taken before the Parole Board and asked one question, are you still appealing? His answer was yes. He was thanked and he left. According to the records of the Nevada Department of Corrections, Nolan will not be eligible for parole until January 2010. In that same year a Su Valley man who was considered in category of the worst of the child sex predators was released to return to society. He had no appeal pending.

Comments regarding the persons in this book:

1. Judge Charles McGee. He was given the opportunity to read this manuscript, but declined. In 2003 Charles McGee voluntarily placed himself in rehabilitation for alcoholism. He returned to the bench only to be arrested within four months after his return from driving under the influence right around the Christmas holiday. In 2004 he served a jail sentence for his offense to which he pleaded guilty of having twice the legal limit of alcohol in his system. He was defended by the other justices of the Second Judicial District Court who championed his judicial position and have allowed him to remain on the bench as the Drug Court Judge. In November 2004 he announced his retirement effective January 2005.

2. Mills Lane. He indicated that he would like to read the manuscript when it was in progress in 2002, but he suffered a stroke in 2003 and did not get an opportunity to read it.

3. The victims: Theresa R., through her husband, demanded that we not publish this book. He stated that she would have to

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re-live a very difficult time and that she did not want to consider the innocence of Nolan Klein.

Bridgett S. asked that the book not be published after she read her portion of the manuscript. She also stated to the Pardons Board that she did not want Nolan Klein given parole because she would fear for her life.

4. Shelly O'Neill was given the manuscript and made no comment.

5. Ron Rachow was given the opportunity to read the manuscript but declined.

6. An attorney who represents the police officer's union was given the manuscript, but gave us no comments. Sherman Boxx did meet with us once with his attorney present. He stated that he believed that he had given all the evidence that he had to the District Attorney.

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June 24, 2007

Pardons Board meeting
Public Record

As an Advocate for the Innocent I am here to ask this Pardons Board to adopt a policy holding those accountable for misleading the Members of the Pardons Board. The Pardons Board is expected to make a fair, unbiased, informative decision based on the information that is provided to them.

I am now in possession of newly discovered exculpatory evidence as a result of the litigation that Washoe County Assistant District Attorney, Mr. Helzer, said we needed to litigate the disappearance of the missing cigarette filters that Justice Gibbons asked ADA Helzer about.

During the October 29, 2008 Pardons Board hearing in which my innocent brother, Nolan Klein was being considered for a Pardon, his Attorney, Mr. Hager repeatedly stated to this Pardons Board that Mr. Klein has always maintained his innocence and the Parole Board will not grant parole unless he admits guilt. Mr. Hager went on to say and provided to you a copy of the television interview of Washoe County District Attorney, Dick Gammick, who publicly admitted that he had opened up the DNA and tested it. Mr. Hager then demanded to know where the DNA test Results were?

Immediately following Mr. Hager representation of my brother ADA Helzer spoke to the Pardons Board as to why Mr. Klein should not be given a Pardon. He went on to say. "Now before I came here, it's kind of interesting, but before I even knew this was going to be considered for a Pardon, I was reviewing his file because I wanted to know more about it. I KEPT HEARING THINGS. I went over and talked to Commander Asher at the Sparks Police Department." He continued on "And what is amazing to me, is that we have this continued denial in the sense that you are SUPPOSE TO BUY INTO IT.

On June 10, 2009 for the first time the Defense saw evidence that the prosecutor Ron Rachow hid from us. And after 21 years of incarceration it finally saw the light of day with Mr. Rachow's personal handwritten notes on it.

According to Commander Asher's report it would appear to be the THEORY OF THE Sparks Police Dept. that Mr. Zarsky committed this crime for which my brother was convicted of. In the documents provided to you the Prime Suspect's report of Zarsky refers to other crimes and the other victims that they believed Mr. Zarsky committed too. However, those victims from those crimes had cleared my brother and his car.

Don't you believe that as an Officer of the court ADA Helzer had a responsibility to speak the truth to you and the truth would be to inform you that while reviewing the file there was evidence that another person had committed the crime thus supporting my brother's claim of innocence? Clearly this information that has been withheld from us for all of these years is in violation of Brady and ADA Rachow makes a reference to Brady.

I ask that the Pardons Board adopt a policy, that when an inmate who maintains their innocence and appears before you, the District Attorney MUST DISCLOSE any evidence that was located in the file and inform the Pardons Board whether or not the evidence in the file was actually turned over during Discovery. If they do not and it is discovered that they knew about this and deliberately withheld it they must be sanctioned and or disbarred and this must be carried out.

Exhibit 7



Tonja Brown
2907 Lukens Lane
Carson City, NV 89706

NOTE: Additional newly discovered evidence was found in this file, showing that a Fallon Police Officer contacted the Sparks Police Dept the day after the crime, this officer recognized a man hitchhiking carry a blue suitcase out of town that resembled the composite sketch of the suspect that was just released. . This report was hidden from the defense for 21 years. Other exculpatory evidence pertaining to states witnesses were also found in this file, again hidden from us for 21 years. There is no doubt that all of this hidden evidence would have changed the outcome of the verdict, especially, since the jury was DEAD LOCKED to begin with. I have spoken to some members of the jury.



//

DICK Gammick
received this

July 13, 2009

Sparks City Council Members:

As an Advocate for the Innocent I base my request for the following. I ask that you place on your upcoming Agenda to discuss a future Oversight Policy regarding the Sparks Police Department's evidence and the way it is handled when it is turned over to the District Attorney's Office. I ask that the policy be that the Defense must be provided a copy of the list of evidence that was provided to the District Attorney Office.

We must put in place safeguards for those who have maintained their Innocence and in all fairness that a Defendant receives a fair an impartial trial. The Innocent should not have wait years if not decades because of an Honest Mistake that was made with regard to the evidence or it being intentionally withheld to get a conviction by an overzealous prosecutor. There are no laws that preclude a law enforcement agency from providing the Defense with a copy of what was provided to the District Attorney's office. Nor should there be.

I base this information on what has come to light after 21 years. Recently, a Washoe County District Court Judge has ordered District Attorney, Dick Gammick to turn over the entire file in Mr. Nolan Klein's case. Mr. Klein has always maintained his innocence and his defense was based on MISTAKEN IDENTITY, that someone else had committed the crime. We now know that there have more innocent people wrongfully convicted thru eyewitness testimony than any and all other factors combined.

It now appears that ADA Ron Rachow purposely withheld from the Defense all of the Exculpatory Evidence in this case. Including Commander Steve Asher's police report attached on their prime suspect, one Mr. Ricky Lee Zarsky. This report along with several other pieces of evidence that was turned over by the Sparks Police Department in 1988 never made it trial because Ron Rachow withheld this evidence.

For 21 years the Washoe County District Attorney's have kept this secret buried until now. ADA Mr. Helzer even went to the Pardons Board knowing that this information was withheld from the Defense and he said nothing, however, he went so far as to state that he spoke to Commander Asher about this case. On July 1, 2009 I had a long conversation with Commander Asher. At first Commander Asher stated to me that he has not talked about this case since the late 1980,s or 1990's, since trial. I asked

Exhibit 8

Robert R. Hager, SBN 1482
HAGER & HEARNE
245 E. Liberty, Ste. 110
Reno, Nevada 89501
775/329/5800

BEFORE THE PARDONS BOARD
OF THE STATE OF NEVADA

In re: Nolan Klein, #28074

Statement in support of Pardon

Comes now, Nolan Klein, by and through his counsel, Robert R. Hager, HAGER & HEARNE, and states the following in support of his request for pardon before this Board.

I.

The medical records support that Mr. Klein is in declining health.

The medical records of Nolan Klein for the year 2007 - 2008 demonstrate the health problems from which he suffers and which have radically changed his quality of life. (See, Exhibit 1 attached hereto) Mr. Klein suffered a MRSA staph bacterial infection introduced to his system while in prison last year. The medical

Exhibit 9

records indicate that he almost died and that the effects of the infection have caused memory loss, balance impairment and substantial joint pain. The prognosis is that Mr. Klein will require double hip replacements in the near future.

Mr. Klein is presently being treated for the consequences of the MRSA infection for which he spent ten weeks hospitalized. He has arthritis that will disable him at its current rate of progress within the next two to three years. He is treated presently for high blood pressure and hemochromatosis causing liver damage and severe arthritis. He presently is required to use a cane to ambulate. He cannot go up stairs without assistance.

Upon release from prison, Mr. Klein will qualify for medical care from the Veterans Administration. He is a veteran with an honorable discharge.

II,

Mr. Klein has maintained his innocence.

Although Mr. Klein has maintained his innocence since he was first informed of the charges against him, Mr. Klein does not harbor resentment or animus toward the victims. He believes that they testified as they believed. Mr. Klein has analyzed the events of his conviction and can see that the circumstances and occurrences could have easily led the victims to believe that the police had captured the perpetrator and that because of that capture, believed his guilt.

DNA evidence existed in small quantities beyond the capability of the testing technology extant in 1988 when he was convicted. When the technology

*we assumed he was being treated for MRSA
2009
he was in
Michigan
not to give
any more
with
the
DNA
evidence
was
found
in
his
clothing
in
1988*

III.

Mr. Klein has accomplished both a trade and charitable work while incarcerated.

Mr. Klein has two or three minor disciplinary actions against him during his incarceration since 1989. He can explain each of those as circumstantial and not indicative of any violations by him of actions while incarcerated.

Not only has he been an exemplary inmate, but he has also completed his paralegal certificate while incarcerated and donated his time for the Vietnam Veterans and been involved as the inmate to raise the most funds to fight breast cancer. Those certificates are included as Exhibit 3 attached hereto.

IV.

Mr. Klein is ready to re-enter the workforce and the community.

Mr. Klein has been assured employment by various law offices including Hager & Hearne based on his previous legal work. Mr. Klein's family who has supported him while he was incarcerated will also furnish him a home when he is released.

As mentioned earlier Mr. Klein qualifies for Veterans benefits for health care and disability, if necessary. Mr. Klein will be able to provide for himself and re-enter the community without being a burden to it.

WHEREFORE THE ABOVE-STATED REASONS, Nolan Klein respectfully requests that the Pardons Board release him immediately for time served of more than nineteen years.

cigarette butts of the evidence... missing and not available for testing.

The detective on the case and, recently, the District Attorney of Washoe County have stated that the evidence was tested. No results or the alleged testing were ever given to Mr. Klein or his attorney at any time since 1988 other than confirming his blood type.

Immediately after his trial in April of 1989, Mr. Klein's sister examined the evidence and the envelope containing the cigarette butts and the other samples of DNA was sealed and in fact. When she returned to examine the evidence in August of 1995, the envelope was not longer sealed and the filters from the cigarettes were missing. The Innocence Project which had agreed to do the testing for Mr. Klein then refused because the integrity of the DNA evidence was compromised. When the evidence was again examined in 2001, relatively new cigarettes with filters attached were in the evidence envelope. (Documentation of the DNA evidence discrepancies is found in Exhibit 2 attached hereto.)

Mr. Klein sought to have the DNA establish the innocence he has maintained, but was denied this right. Over the last several years the importance of DNA evidence in exonerating persons who were identified by eye witness testimony cannot be understated. Mr. Klein was denied the right to test the evidence and no tests were ever made available if, as the District Attorney claims, they were conducted.

HAGER & HEARNE

Attorneys at Law

Robert R. Hager
Trey J. Hearne

345 E. Liberty, Ste. 110
Reno, Nevada 89501
(775) 329-5800 Telephone
(775) 329-5819 Facsimile

November 12, 2008

Hand Delivered:
Mr. Richard Gammick
Washoe County District Attorney
1 Sierra Street
Reno, Nevada 89501

Re: *Nolan Klein*

Dear Mr Gammick:

Sometime in the week of September 22, 2008, you stated to a Channel 4 television producer that the sealed evidence envelope in the case of *State v. Nolan Klein* was opened and "used for testing." I represent Mr. Klein.

This letter is a formal demand for all documents reflecting the results of any and all tests performed on any and all evidence that was collected in that case. Also, please explain why the evidence was signed out of the evidence room in the basement of the Washoe County District Courthouse by someone from the Washoe County District Attorney's Office after the trial, and provide the name of the representative of the DA's office who removed the evidence in that case from the evidence room after the trial. Finally, please provide a court order or other documentation reflecting the authority under which the evidence was removed from the evidence room after the trial in that case. Please provide the documents and information requested within ten days.

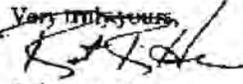
Very truly yours,

Robert R. Hager

Exhibit 9a

1 convicted requesting that the evidence be preserved
2 this case. That evidence also included two cigarett
3 butts with filters that the victims in the case said
4 that the perpetrator had smoked. Those cigarette
5 butts were removed from evidence without a court ord
6 and are not available for testing.

7 Included within the materials that I
8 submitted to you is a letter from Barry Scheck of th
9 Innocence Project offering to represent Mr. Klein if
10 he could provide evidence that could be tested with
11 new DNA technology. That evidence is not there.

12 Also included in your documents are an
13 affidavit from my law partner who went to the eviden
14 locker and saw that the evidence post trial had been
15 taken out of the evidence locker by the District
16 Attorney, and that instead of those two cigarette
17 filters that could have been used to exonerate,
18 tested, and if the DNA was not Mr. Klein's, would ha
19 exonerated him, what is instead there now is some
20 loose cigarette tobacco and some paper.

21 How that can happen is beyond me. How o
22 party can have access to evidence post trial and go
23 and remove that evidence, whether it is defense or t
24 state, I don't understand. It would be like me goin
25 in and switching evidence after a trial and placing

1 near death and not expected to live. He has one foot
2 in the grave as he is here today.

3 What we're asking you to do is to commu
4 his sentence to time served. We feel that the
5 humanitarian aspect in this case is vital.

6 Mr. Klein was honorably discharged from
7 the military, and he's eligible for treatment by th
8 VA. If he drinks or takes any drugs, because of MR
9 he will die. So it is the ultimate protection agai
10 any drinking or drug use.

11 I'd like to go through, I notice a lot
12 materials in this report, but I would like to go
13 through some of those materials, and I hope you all
14 received this letter from Eng Counseling in which t
15 issue of antisocial personality disorder is address
16 And also the issue of whether Mr. Klein's failure t
17 admit guilt affects any risk of recidivism.

18 If you look at the psychological repor
19 and in this case there is a dissenting report by
20 Dr. Scofield, what those reports clearly reflect i
21 that Mr. Klein's refusal to admit guilt has weighe
22 heavily with regard to the diagnosis of antisocial
23 personality disorder and with regard to his risk t
24 re-offend.

25 In the report by Eng Counseling, you s

1 that it is stated that the answer to the first
2 question posed there, if you have that report in front
3 of you, there is no positive research available in
4 field of the treatment of sex offenders indicates that
5 the treatment effect found in those who admit sex
6 crimes is the same for those who deny.

7 The answer to the second question with
8 regard to the antisocial personality disorder
9 diagnosis, two out of the three psychologists
10 concluded that with regard to Mr. Klein, is that it
11 internally inconsistent to say that Mr. Klein has
12 obvious symptoms of major medical illness and he has
13 antisocial personality disorder.

14 Furthermore, specifically with regard
15 the antisocial personality disorder, it was found
16 Mr. Klein demonstrates no obvious symptoms of any
17 major mental illness.

18 One of the reasons why the risk assessment
19 in this case was written the way that it is, is
20 because Mr. Klein has not had the availability of
21 offenders treatment in the prison system because
22 he has maintained his innocence. He has maintained
23 innocence since day one, since the day he was
24 arrested.

25 He sent a letter shortly after he was

1 admit here today that you did this and we will let you
2 out of prison, he will tell you no. It's not
3 defiance.

4 He was convicted once before of battery
5 and did a prison term when he found his wife in bed
6 with another man. He immediately pled guilty and he
7 admitted that he did that. If you ask him today, he
8 will admit that he did that, but he will never admit
9 that he committed these other crimes.

10 Now it's not just the affidavit of my law
11 partner that reflects that the District Attorney's
12 Office removed these items from evidence. I have
13 here, if it is disputed, a portion of a videotape
14 interview of the District Attorney in Washoe County
15 stating a few weeks ago on TV that of course that
16 evidence is not there, it was tested.

17 Where is the report? Where is the report
18 of the testing of those cigarette filters? It's never
19 been produced. It would either be Brady material and
20 exculpatory or it would be incriminating.

21 I'll wrap up by telling you some of the
22 things that Mr. Klein has done since he's been in
23 prison. And I have gone in the materials past -- I
24 apologize, it is not Bates numbered -- but it is at
25 the end of the medical records. You will see some

1 photographs there relating to the evidence. I
2 understand that they are difficult to see, except yo
3 can see clearly a cigarette filter in one of the
4 photographs.

5 The next thing you see is a November 25t
6 1995, letter from the Innocence Project signed by
7 Barry Scheck stating that they would be interested i
8 taking Mr. Klein's case. Mr. Klein immediately file
9 a motion to have these cigarette filters -- am I out
10 of time?

11 GOVERNOR GIBBONS: You have one minute,
12 Mr. Hager.

13 MR. HAGER: To have these cigarette
14 filters tested, but they are no longer available.

15 In the materials you also see that
16 Mr. Klein completed a legal assistant paralegal cour
17 with Blacks Home School of Law. He completed anothe
18 paralegal course at Mountain High School, White Pine
19 County School District. He also completed a paraleg
20 diploma at the Northern Nevada Community College in
21 White Pine County School District in July of 1992.

22 He's participated in Vietnam Veterans of
23 America, and he's also been active in the largest
24 fundraiser ever in the Breast Cancer Foundation in
25 2003. Thank you.

1 Think about this. He puts them into like a bathroom
2 or storage closet. I mean, because they pretty much
3 are a chattel at that point until he goes and picks
4 one out. The 21-year-old, you are going to come with
5 me on the floor, sexually assaulted.

6 How long do you think that took?

7 Well, it was about 20 minutes before he
8 retrieved one, one young woman from that room. And
9 then there was a sexual assault. And then there was
10 placing of this individual back into the room with the
11 other victim.

12 Do you think they could ID that
13 individual? Do you think they know who locked them
14 up, who stabbed, put the knife to them, who raped
15 them? Do you think they know? That's this case.

16 And what is amazing to me, what is amazing
17 to me is that we have this continued denial in the
18 sense that you are supposed to buy into it. And we're
19 supposed to actually consider letting him have time
20 served and walk out of here.

21 All I have heard today from many members
22 of this Board is the value of admission, the value of
23 having -- even if it is a close call. I have heard
24 the discussions that have been going on saying, well
25 he is just going to go to the Parole Board and they

1 Think about this. He puts them into like a bathroom
2 or storage closet. I mean, because they pretty much
3 are a chattel at that point until he goes and picks
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19 supposed to actually consider letting him have time
20 served and walk out of here.

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22 of this Board is the value of admission, the value o
23 having -- even if it is a close call. I have heard
24 the discussions that have been going on saying, well
25 he is just going to go to the Parole Board and they

1 won't let him go unless there are safeguards and our
2 community has some assurances that there will be some
3 protections. That is not what he says. He wants it
4 all or nothing.

5 It's time for Mr. Klein to realize he did
6 it. And it's time for you to send the message to him
7 we know you did it. Do not grant the request. Thank
8 you.

9 GOVERNOR GIBBONS: Thank you, Mr. Helzer

10 CHIEF JUSTICE GIBBONS: Mr. Helzer, what
11 about the cigarette issue?

12 MR. HELZER: Well, Your Honor, I wasn't
13 really prepared for an appeal. I do know that is an
14 accusation, and those are the types of things that we
15 see are available for review through numerous, whether
16 it is the state court, the federal courts. There has
17 been a lot of litigation in this case.

18 And to come forward and just say that
19 there is this evidence problem, well, then go litigate
20 it. But don't come in and say that is a reason to stay
21 there and give him time served, just because they say
22 that and because they say it is of significance. No
23 at all.

24 I thought it was interesting the comment
25 when counsel said, he told him, I said, just admit it



Truthfulness and the Brady Decision

Presented by the
Office Of Professional Responsibility

Exhibit 11

Course Objectives

- Understand what the *Brady* decision is and who it applies to
- Identify landmark case law and definitions regarding the *Brady* Decision
- Review applicable Department Policies, Directives and N.A.C.
- Learn the process of *Brady* Requests
- Discuss the consequences of violating *Brady* principles

Definitions

Definitions

- Dishonesty – an intentional deceptive act, behavior or statement, either verbally or in writing; the disposition to deceive, the intentional misleading of another based on fact or what one believes to be true, including making material omissions or lack of candor.

Definitions

- Material evidence- evidence is material only if there is a reasonable probability that the result of the trial would have been different if the suppressed evidence had been disclosed to the defense.

Definitions

- Bias - a preference or an inclination that inhibits impartial judgment.
- Public Official - someone who holds an office in an organization or government and participates in the exercise of authority (either his own or that of his superior and/or employer, public or legally private).

Definitions

- Exculpatory Evidence - evidence in the government's possession that is favorable to the defendant and that is material to the issue of guilt or punishment, including evidence that may impact the credibility of a witness.

Definitions

- Impeachment material – information that may call into question the veracity of a witness.
- Sustained finding- a conclusion or finding during an administrative investigation where the investigation determined the employee committed all or part of the alleged act of misconduct.

Definitions

- Duty to Disclose *Brady* material – requires an agency to notify the prosecutor of any potential exculpatory information, without a request being made.
- 14th Amendment of the United States Constitution (Due Process) -nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



Court Cases

Three Landmark Court Cases

- *Brady*
 - The government has a duty to disclose favorable material evidence to the defense, which could tend to change the outcome of the trial.
- *Giglio*
 - Expands *Brady* and requires prosecutors to provide information to the defense which could impeach a witness.
- *Henthorn*
 - Expands *Brady* and *Giglio* and requires the government upon request to examine the personnel files of testifying law enforcement officers for *Brady* material.

Brady Decision

What is the *Brady* Decision?

- ***Brady v. Maryland*, 373 U.S. 83 (1963)**, was a United States Supreme Court case in which the prosecution withheld exculpatory evidence from the criminal defense. The defendant challenged his conviction, arguing his Due Process rights had been violated because the prosecution withheld exculpatory evidence.

What is the *Brady* Decision?

- The prosecutor is obligated to disclose all substantial material evidence favorable to the defendant voluntarily, whether or not the defendant makes a request for discovery.
- Failure to comply with rules under *Brady* may result in a “*Brady* Violation,” which will likely lead to a reversal of a conviction.

What is the *Brady* Decision?

- Because of the *Brady* ruling, prosecutors are required to notify defendants and their attorneys whenever a law enforcement official involved in their case has a sustained record for knowingly lying in an official capacity.
- *Brady* evidence also includes material relative to the credibility of a civilian witness, such as evidence of false statements by the witness or evidence that a witness was paid to act as an informant.
- Police officers who have been dishonest are sometimes referred to as "*Brady* cops."

What is not *Brady* Material?

- Rumors and speculation are not evidence that must be revealed.
- Inculpatory evidence- evidence against a defendant or evidence tending to convict.
- Neutral evidence- neither convicts nor exonerates the defendant.
- Immaterial evidence- evidence not reasonably probable to produce a different result.

Giglio Decision

Giglio Case

- **Giglio vs. United States** - 405 U.S. 150 (1972)- the *Giglio* case expanded the *Brady* decision to require prosecutors to provide information to the defense counsel which could impeach a witness.
- This includes information about the credibility and veracity of the testimony.
- This also includes a sustained finding for falsifying reports or other conduct which could impact their truthfulness, not just dishonesty.

Henthorn Case

Henthorn Case

- **United States vs. Henthorn** – 931 F.2d 29, 31 (9th Cir. 1991)- the Court held that the government has a duty to examine, upon request, the personnel files of testifying law enforcement officers for all information, favorable to the defense, in attempting to impeach the witness (*Brady* material).

Coming soon to a
Courtroom near you.....

Pitchess Motion

Background Info

- The name “*Pitchess*” comes from a 1974 California Supreme Court case, *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.
- **Pitchess Motion**- a request made by a defendant in a criminal action for access to information in the personnel file of an arresting police officer.

Pitchess continued

- If the arresting officer's personnel file contains information that might bear on the defendant's claim that the officer had engaged in misconduct, as a matter of fairness, the defendant should have access to that information.
 - Misconduct involving moral turpitude
 - Alcohol and/or drug use
 - False reports
 - Inaccurate statements
 - Reputation for untruthfulness
 - Bias toward the defendant

**Department of
Public Safety**

- What does all this mean?
- How does this effect DPS?

Truth or Consequences

- Defense attorneys and prosecutors are using information about untruthful officers to create databases, also referred to as a *Brady Index*.
- Having a sustained allegation involving untruthfulness or falsification can effectively destroy an employee's career since he/she will forever be an impeachable witness.
- DPS has zero tolerance for dishonesty.

NAC/Policies

- 284.650 Causes for Disciplinary Action
 - (10) Dishonesty
 - (17) Falsification of Records
- 4.2.009 Rules of Conduct
 - (2) d. Employees shall be truthful and honest at all times in the performance of their duties. Lack of candor or omission of relevant information constitute dishonesty, which is unacceptable and cause for disciplinary action up to and including termination.

Brady Request Process

- Per DPS policy 04.1.012, Discovery Obligations- an authorized requestor will submit a written request to the Office of Professional Responsibility with notification being given to the Director's Office.
- OPR's response to the request includes a summary of misconduct complaints and findings against the employee.
- In addition, it is the obligation of the employer/employee to inform the prosecuting agency of potential impeachment material.

**Chief: No tolerance
for lying at
Tulsa Police
Department**

News Articles

**Goodyear fired
police officer for
lying after gun
inspection**

**Dishonesty by Officer
Requires Termination**

*CLERK
WARRANT
MAYBE
OFFICER
DISHONESTY*

"One of the most important police functions is to create and maintain a feeling of security in communities. To that end, it is extremely important for the police to gain and preserve public trust, maintain public confidence, and avoid an abuse of power by law enforcement officials... A police officer who uses his position of authority to make false arrests and to file false charges, and then shrouds his own misconduct in an extended web of lies and perjured testimony, corrodes the public's confidence in its police force. There is no dearth of positive law expressing the Legislature's strong instruction that such individuals not be entrusted with the formidable authority of police officers."

“The public policy against requiring the reinstatement of police officers who have committed felonious misconduct [without a conviction] stems from the necessity that the criminal justice system appear legitimate to the people it serves. People will not trust the police — on the street or in court — unless they are confident that police officers are genuine in their determination to uphold the law. As the city

reminds us, police legitimacy would be damaged severely by reports that the city continued to employ a police officer who had illegally abused his power and repeatedly lied about it under

Oath.

.....any officer who is found to be lying or dishonest on affidavits, sworn testimony, Internal Affairs interviews or police reports will now face a “presumptive disciplinary action of termination, consistent with just cause principles.”

“It’s hard to understand how things got to the point where they didn’t fire an officer who lied...”

“You have to get rid of officers who lie. The citizens and the jury have got to know that when they hear a policeman testify, that he’s telling the truth.”

A Goodyear police officer was fired in December after he lied about why his gun wasn't clean during a random weapons inspection.

It wasn't what he did, it was his lying to cover it up.

Dishonesty in the workplace takes two main forms – lying and stealing, and both are more common than many of us would like to think.

It's easy to say, "Everyone else is doing it, so I'll do it, too." It's much harder to take an ethical stand and insist on honesty.

Summary

The best way to avoid being labeled as a “Brady Cop” is prevention.

Opinion is a flitting thing,
But **Truth**, outlasts the Sun --
If then we cannot own them both --
Possess the oldest one --

by **Emily Dickinson**

NEW YORK

NAC 284.650 Causes for disciplinary action. (NRS 284.065, 284.155, 284.383)

Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.

2. Disgraceful personal conduct which impairs the performance of a job or causes discredit to the agency.

3. The employee of any institution administering a security program, in the considered judgment of the appointing authority, violates or endangers the security of the institution.

4. Discourteous treatment of the public or fellow employees while on duty.

5. Incompetence or inefficiency.

6. Insubordination or willful disobedience.

7. Inexcusable neglect of duty.

8. Fraud in securing appointment.

9. Prohibited political activity.

10. Dishonesty.

11. Abuse, damage to or waste of public equipment, property or supplies because of inexcusable negligence or willful acts.

12. Drug or alcohol abuse as described in NRS 284.4062 and NAC 284.884.

13. Conviction of any criminal act involving moral turpitude.

14. Being under the influence of intoxicants, a controlled substance without a medical doctor's prescription or any other illegally used substances while on duty.

15. Unauthorized absence from duty or abuse of leave privileges.

16. Violation of any rule of the Commission.

17. Falsification of any records.

18. Misrepresentation of official capacity or authority.

19. Violation of any safety rule adopted or enforced by the employee's appointing authority.

20. Carrying, while on the premises of the workplace, any firearm which is not required for the performance of the employee's current job duties or authorized by his appointing authority.

21. Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.

22. Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning sexual harassment.

23. Failure to participate in an administrative investigation authorized by the employee's appointing authority.

[Personnel Div., Rule XII § D, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 7-22-87; 12-26-91; 7-1-94; 11-16-95; R031-98, 4-17-98; A by Personnel Comm'n by R065-98, 7-24-98; R147-06, 12-7-2006)

Landmark Cases that Formed Brady Law

The following landmark cases suggest that the prosecution will not only release evidence that proves the defendant guilty of a crime, but also release evidence that might exonerate the defendant. Today many departments, including the Nevada Department of Public Safety have recognized the importance of officer credibility. As a result, policies and procedures regarding what constitutes acceptable on the job conduct have been instituted and sometimes are supplemented by Division guidelines specific to their needs.

Brady V. Maryland

The U.S. Supreme Court decided that constitutional due process guarantees the accused the right to discover exculpatory evidence in the possession of the government. Brady established that in a criminal case, the accused has a right to any exculpatory evidence, i.e., any evidence in the government's possession that is favorable to the accused and that is material to either guilt or punishment, regardless of the good or bad faith on the government's part in failing to disclose such information.

In *Brady v. Maryland (1963)*, John Brady was convicted of first-degree murder and sentenced to death. Brady testified at his trial about his participation in the crime, but stated that his companion was the actual murderer. Before trial, Brady requested statements provided to the government by the companion. The government delivered some statements, but failed to provide the statement in which the second individual admitted actually killing the victim.

Brady learned of the existence of this statement after he was convicted and sentenced to death. The Supreme Court decided that Brady's conviction should stand, but that he was entitled to present his accomplice's statement in an effort to avoid the death sentence. The Supreme Court agreed with Brady's argument that the government's failure to provide the companion's statement amounted to a denial of his right to due process of law guaranteed by the 14th amendment.

The Court concluded that while the statement did not affect Brady's culpability relating to the first-degree murder charge, the companion's statement was relevant for purposes of Brady's punishment. The Court elaborated on the defendant's constitutional right to discover exculpatory evidence in a criminal proceeding by concluding that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment. From this decision emerged the term "Brady material." The Supreme Court subsequently used the Brady Rule to expand the principle announced in *Napue* (material affecting a witness' credibility.)

In *Napue v. Illinois (1959)*, the Supreme Court held that the prosecutor's use of false testimony that goes to the credibility of a witness, violates due process. In *Napue*, the defendant was tried for murder. The government's main witness, also implicated in the

murder, falsely testified that he received no consideration in return for his testimony. The government, knowing that testimony to be false, failed to correct the record. The Supreme Court concluded that the jury's evaluation of the truthfulness and reliability of testimony may affect the determination of guilt or innocence and that "...it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." This is the leading precedent for arguing that a conviction should be overturned based on false testimony.

Giglio V. United States

In *Giglio v. United States (1972)*, petitioner filed a motion for a new trial on the basis of newly discovered evidence contending that the Government failed to disclose an alleged promise of leniency made to its key witness in return for his testimony. The assistant U.S. attorney (AUSA), who presented the case before a grand jury, made an unauthorized promise of leniency to the main government witness, a co-conspirator in the case. The case was later assigned to a different AUSA who tried the case, but was unaware of the promise. The witness testified falsely at trial that he received no consideration for his testimony.

After being convicted, *Giglio* appealed, arguing that the promise to the witness should have been revealed to the jury for their consideration of his credibility. Based on its decision in *Napue*, the Supreme Court found that the information regarding the earlier promise should have been revealed to the defense. The Supreme Court in *Giglio* reversed the conviction, holding that the AUSA's promise was attributable to the government, regardless of the absence of bad faith on the part of the prosecutor who tried the case. The Court believed evidence of this promise would impact the credibility of this key government witness and that the jury was entitled to consider this evidence when weighing the testimony of the witness.

As a result of ***Brady*** and ***Giglio***, the government is constitutionally required to disclose any evidence favorable to the defendant that is material to either guilt or punishment, including evidence that may impact on the credibility of a witness. Furthermore, the defendant's failure to request favorable evidence does not leave the government free of this obligation because constitutional error results "...if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Moreover, if an officer has a past history of falsifying reports or other conducts that could impact their Truthfulness, the *Giglio* Case requires that the prosecutor provide the defense with the information. Having a sustained allegation for falsification can effectively destroy an officer's career since he/she will forever be an impeachable witness.

United States V. Henthorn

In *United States v. Henthorn (1991)*, Donald Henthorn was convicted of cocaine possession with intent to distribute and racketeering. Prior to his trial, Henthorn's attorney sought a pre-trial order requiring prosecution to produce the personnel files of

all law enforcement witnesses expected to testify at the trial for evidence of perjurious conduct or dishonesty, also referred to as Brady Material for impeachment purposes.

The government objected, saying it had no obligation to examine the personnel files absent a showing by the defendant that they contained information material to his defense. The Ninth Circuit Court of Appeals reversed the district court decision and remanded the case. The appellate court found the government to be "incorrect in its assertion that the government has a duty to examine files upon request, and that the defendant need not show materiality.

Side Notes

The initial request for records does not obligate the government to turn over information contained in law enforcement witness personnel files. Rather, the request merely obligates the government to review the files. The files, or information contained, do not need to be furnished to the defendant or the court unless they contain information that is or may be material to the defendant's case.

In light of *Henthorn*, attorneys are using information about untruthful officers to create databases also referred to as a Brady Index to be used by other defense attorney's. A database has been established by the Clark County Public Defender's Office which contains information that could impeach an officer. This includes information about the credibility and veracity of the testimony of police officers. Because the parameters of potential impeachment information are not easily identifiable, the following type of information must be disclosed by law enforcement agencies:

- substantiated allegations—any finding of misconduct demonstrating bias or lack of candor or truthfulness;
- pending investigations or allegations—any credible allegation of misconduct that reflects upon the truthfulness or possible bias of the employee who is the subject of a pending investigation;
- criminal charges—any past or pending criminal charge against the employee; and
- allegations that are unsubstantiated, not credible, or have resulted in exoneration—when the allegations (unsubstantiated, not credible, or which resulted in exoneration) can be said to go to the truthfulness of the employee.

Upon receipt of this information, the prosecutor must decide whether disclosure is required or should be reviewed by the presiding judge. In an effort to reconcile state and federal law regulating disclosure of peace officer personnel records, the California Supreme Court has expanded criminal discovery to allow judges to provide defendants with "Brady material" discovered during an in camera review of a Pitchess Motion.

Pitchess Motion: Coming to a courtroom near you...

In *Pitchess V. Superior Court (1974)*, Petitioner, (the Sheriff of Los Angeles County), sought a court order to compel the superior court to quash its subpoena duces tecum requiring the production of certain documents requested by defendant Caesar Echeveria. Echeveria was charged in March 1972 with committing battery against four deputy sheriffs. While awaiting trial, the defendant stated he would attempt to establish that he acted in self-defense in response to the use of excessive force by the deputy sheriffs. Petitioner argued the discovery should not have been granted because the motion to discover was procedurally defective and the requested information was not subject to discovery. The trial court ordered discretion be used in ordering discovery and therefore denied the motion.

The theory underlying a Pitchess Motion is that the defendant should be entitled to any information that is relevant to his/her defense. Prior to 2002, a defendant could only gain access to records up to five years old. However, California Supreme Court ruling, *City of Los Angeles v. Superior Court (Jeremy Brandon)*, the judge lifted the five-year restriction and now criminal defendants have the opportunity to view records for the entire career of the officer.

Ramifications of Nondisclosure

The Supreme Court relied on the constitutional provision of due process in rendering its *Brady* decision. If the requirement of disclosing information material to a defendant's guilt or innocence, or his sentencing, is violated, the government has violated that defendant's constitutional right to a fair trial. The denial may result in a conviction being overturned, a sentence being vacated, the prosecution having to conduct a second costly and time consuming trial, or the decision to pursue a different remedy against the aggrieved defendant. The constitutional violation also may have severe consequences for the law enforcement officer who intentionally withholds *Brady* material.

Conclusion

Law enforcement officers take an oath to support the U.S. Constitution. If an officer fails to provide information favorable to a criminal defendant regarding either guilt or sentencing that officer has violated the defendant's right to due process. Information reflecting upon the credibility of a government witness is information that a defendant is entitled to have. This rule applies when the government witness is a law enforcement officer. Officers who intentionally withhold information that affects their credibility deprive defendants of their constitutional right to due process. No matter how destructive to the prosecution, or personally embarrassing the information may be, it must be disclosed at least to the government prosecutor. Only then can the prosecutor determine whether the information should be disseminated to the defense or reviewed by a judge *in camera* for making that determination.

Clearly, law enforcement agencies are justified in going to great lengths to ensure their employees are trained to understand the potentially far-reaching ramifications of a bad decision that affects their credibility. That single mistake in judgment will affect them for their entire law enforcement career.

From: tonjamasrod40 <tonjamasrod40@aol.com>

To: TONJAMASROD40 <TONJAMASROD40@aol.com>

Subject: Fwd: Copyright Infringement by District Attorney who uses Mickey Mouse has the official seal of his office.

Date: Sun, Dec 26, 2010 10:49 pm

-----Original Message-----

From: tonjamasrod40 <tonjamasrod40@aol.com>

To: tips <tips@comcast.net>

Sent: Mon, Dec 20, 2010 2:30 pm

Subject: Fwd: Copyright Infringement by District Attorney who uses Mickey Mouse has the official seal of his office.

I am outraged that a State of Nevada public official would continue to break the law by illegally depicting Mickey Mouse as the official seal of a public official, District Attorney Richard Gammick of the Washoe County District Attorney's Office. Many people who know Mr. Richard Gammick, like I do, know that he continues to break the law and gets away with.

I have provided you with an exert from the State of Nevada Ethics investigative report of Washoe County District Attorney, Richard Gammick. District Attorney Dick Gammick has violated copyright infringements by using Walt Disney's Mickey Mouse Trademark for his official seal.

The image of Mickey Mouse is portrayed to all of us as being a kind, lovable, honest character who would not intentionally hurt anyone. The real Mr. Gammick is an evil man. This is an insult to Mickey Mouse's character. Mr. Gammick has defamed the little guy's public image by imposing Mickey's Character on to a public elected office seal. The only place Mickey's face should officially appear is on the Walt Disney official site, trademark. Etc. This is something that the Walt Disney Corporation cannot and should not condone and, therefore, must take immediate action to correct this situation. Mr. Gammick needs to be stopped and held accountable for actions.

Mr. Gammicks character and his credibility pales in comparison to the lovable, honest kind hearted, Mickey Mouse. By what Mr. Gammick is doing to Mickey Mouse it is an insult to us who love this wonderful little guy Mickey Mouse. Not only because he is breaking the law by illegally using Mickey Mouse as the Official seal of the Washoe County District Attorney's Office, he is comparing his office to what Mickey Mouse stands for and that is simply not true. Mr. Gammick has covered up the wrongdoings of others who have withheld evidence in cases that have led to the wrongful incarceration and deaths of innocent people. This is something that I believe that if Mr. Walt Disney were still alive he would not want his Mickey Mouse anywhere connected to the Washoe County District Attorney's Office, more so, connected to Mr. Richard Gammick.

I believe by Mr. Gammick using Mickey's Mouse's image he is deliberately instilling a positive image that anyone who likes Mickey Mouse has to be okay, better known as an unconscious transference. I believe that is how he is benefiting from the use of a Disney character on his official, professional, elected office seal, which I believe is the only reason he won the re-election of 2010 by beating his opponent by less than 8 percent. In some cases a person's perception can be skewed by the images they see and we all love honest Mickey Mouse. Mr. Gammick is using the established persona of Mickey Mouse to cover his misdeeds as noted in the Nevada State Ethics Commission's investigative report. Mickey Mouse is honest! Unlike Mr. Gammick.

On a personal note I am appalled that Mr. Gammick would think that he could get away with using a famous beloved character for his personal and professional advantage. Mr. Gammick the most powerful elected law enforcement official in Washoe County.

Exhibit 12

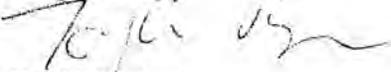
Will the Walt Disney Corporation continue to let Mr. Gammick use the copyrighted logo of Mickey Mouse? Or will the Disney Corporation send a message to Mr. Gammick and to the State of Nevada Ethics Commission, The Attorney General of the State of Nevada, Catherine Cortez Masto, State Bar of Nevada, Washoe County Commissioners, California State Attorney General, United States Attorney General, etc.... that they will not allow Mr. Gammick to use their Mickey Mouse Trademark and Mr. Gammick must be held accountable for copyright infringement.

In the meantime I have provided you with link to the Nevada Ethics Commission website and the court proceedings of a Writ of Habeas Corpus that was filed in court and can be found on the JusticeForNolanKlein.com website.

Page 8 line 9 of the State of Nevada Ethics Commission report. The requester also alleged improper use of the Disney character Mickey Mouse on the District Attorney office's official seal. Whether the use of this character offends the requester does not appear to fit within the Commission's jurisdiction. It is unclear how Gammick benefitted from using Mickey Mouse on the office seal. Page 11 line 4 Response, Tab D, pp. 21-25 and pp. 31-32).

Furthermore, as to the allegation of using county e-mail, alleged use of a county IT employee to develop his campaign website, and the use of the Disney's Mickey Mouse character on the office seal, no information beyond that in Gammick's Response was gathered.

Respectfully,



Tonja Brown
2907 Lukens Lane
Carson City, NV 89706
777-882-2744 home
775-671-5037 cell

From: Disney Antipiracy <tips@disneyantipiracy.com>

To: tonjamasrod40 <tonjamasrod40@aol.com>

Subject: Evidence for copyright infringement against District Attorney Dick Gammick

Date: Wed, Dec 22, 2010 9:02 pm

Thank you for your correspondence. We want you to know that we appreciate the time you took to bring this matter to our attention. We protect our intellectual property rights vigorously and we take reports of suspected infringement seriously. However, as you can appreciate, investigations are confidential. We neither reveal our sources nor generally correspond further with them about any investigations.

Please feel free to use our email address _____ or our Antipiracy voice mail hotline, 818-560-3300, if you want to provide more information about the suspected infringement or to report a suspected infringement in the future.

Very truly yours,

Antipiracy Group, Corporate Legal

The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521-0527

Exhibit 12H

Copyright Infringement

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THE AUTHORS

TONJA BROWN

She has fought for sixteen years now to prove her brother's innocence. When the courts and the cops didn't listen, she marched on to the legislature and the Governor. Finally, she found her support in the media. Even her detractors refer to her as tenacious. The Governor's Attorney said unequivocally that if he ever got in trouble, he was going to adopt her as his sister. Now, nearly every public figure knows who she is and what her cause is, but knows if they can't answer her questions satisfactorily, they will see her outside their window with her lawn chair and protest poster.

Real people, real events and real consequences, that is the hard driving message of this book.

NOLAN KLEIN

Nolan Klein has been incarcerated for sixteen years of his life. He is not going to plead guilty to a crime he did not commit. He has taken the time to learn the law for himself. During the last ten years he has filed more than a dozen claims in court and had a decision published by the 9th Circuit Court of Appeals more than twice. He is the "prison litigator." This is his life.

Exhibit 12b

ELECT

Patrick FLANAGAN

District Court Judge, Dept. 7

EXPERIENCE • INTEGRITY • LEADERSHIP

"My 27 years of legal experience in both public and private practice includes extensive trial and appellate experience in civil, criminal and administrative law. My work in expanding access to justice and improving the courts makes me the best qualified candidate."

PATRICK FLANAGAN

FLANAGAN FACTS

- Former Chief Deputy, Washoe County Public Defender
- Former Assistant Federal Public Defender (Nevada)
- Partner, Hale Lane Peek Dennison and Howard
- President, Washoe County Bar Association
- President, State Bar of Nevada
- President, Nevada Chapter, Federal Bar Association

FLANAGAN SUPPORTERS

- ✓ Former Nevada Governor Robert List
- ✓ Former Nevada U.S. Senator and Governor Richard Bryan
- ✓ Washoe County District Attorney Dick Gammick
- ✓ Washoe County Sheriff Dennis Balaam
- ✓ Washoe County Public Defender Jeremy Bosler
- ✓ Washoe County Clerk Amy Harvey
- ✓ Nevada State Senator Bernice Martin-Mathews

"Patrick Flanagan is the right candidate for District Court Judge of Washoe County. I have known him for over 15 years and have tremendous respect for his professionalism and the work he has done for the citizens of Washoe County."

SHERIFF DENNIS BALAAM

Contact Patrick Flanagan at www.flanaganforjudge.com

PAID FOR BY THE COMMITTEE TO ELECT PATRICK FLANAGAN, WASHOE COUNTY DISTRICT COURT JUDGE, DEPT. 7

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