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AFFIDAVIT OF TREVA J. HEARNE

STATE OF NEVADA)
)ss:
COUNTY OF WASHOE)

TREVA J. HEARNE, hereby affirms under penalty of perjury that the assertions of this affidavit are true.

1. I am an attorney licensed in the States of Nevada and California.
2. I was retained in the regular course of business to represent the authors for the manuscript of the Nolan Klein story being written in part by Nolan Klein.
3. I was directed to review the evidence in this matter to determine if the manuscript was accurate.
4. I went to the evidence room at the Washoe County courthouse. When I requested the evidence from the trial of Nolan Klein, CR 88-1692 and the post conviction hearing, I was told that exhibits 1-10 were missing from the 1998 hearing, CR88-1692. One week later I was told that those exhibits were found. I was informed by the authors that the Supreme Court did not request the exhibits to be sent to them in reference to the appeals. I was also told that there was only one tape recording in the evidence, but two weeks later I was told that three tapes were found. I received a copy of each tape from the evidence room.
5. When I observed the cigarette evidence, I observed one shred of paper and some tobacco flakes in the envelope. The envelopes containing the rape kit and the cigarette pieces had been opened and the tape had been split.
6. On the evidence sheet, the notation that Exhibits 13 and 14 were now in plastic garbage bags after being returned. This notation was not on the original evidence sheet nor was it on the copy of the evidence sheet from 1995 that I observed from the manuscript. The notation "Appl" over 9/7/95 was also a notation that was not on the evidence sheet from 1995 that was used in the manuscript.
7. I observed the index cards maintained by Dick Duer in the evidence room, but very briefly since he asked me not to look at them when he saw me reviewing them. During the time that I reviewed the index cards, I noted that there were notations on the cards indicating persons who had looked at or checked out the evidence. I noticed "DA" and another word which looked like "office or official" on two occasions that were just prior to my review of the evidence. I also saw that some of the notations looked like J. Mcg. The notations indicated a date in 1989 in DA and I saw notation DA in 2000 and it was just before I had made an appointment

Assembly committee: EPE/CA
Exhibit C P. 1 of 19 Date 02/22/2007
Submitted by: Tonia Brown

to view the evidence.

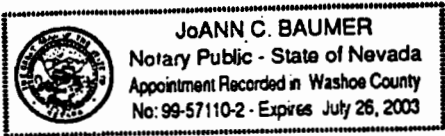
8. During the time that the book was being written, I noted that there was a newspaper article about Detective Boxx suing the Sparks Police Department. Michael Langton who was representing Detective Boxx is an attorney with whom I am acquainted. I told him that he might be interested in the book. I received permission from the authors and Detective Boxx and his attorney viewed the manuscript. Detective Boxx said to me that he knew the filters had been removed from the cigarettes for testing. I asked him when those filters had been removed and he didn't respond.

Further, affiant sayeth naught.


TREVA J. HEARNE

Subscribed and sworn to before me
this 19th day of June, 2001.


Notary Public



Original report ROBBERY/SEXUAL ASSAULT	Date of original report 5/9/88	88-4892
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.

DETAILS:

On 5/10/88 I was asked by acting Sgt. BEATY to do some follow-up work per Det. Sgt. ZARUBI, on this case. I was asked to go to the different motels within the area and show them a composite of last nights incident and see if they know anybody that matched that description to be staying there and I was also looking for a vehicle that was involved in a robbery/kidnap/attempt sexual assault where the two composites match closely.

While checking the Abby Hotel located in the 800 blk. of B St., I made contact with a bartender there by the name of Jeff PETTY. I showed Mr. PETTY the three composites that I had and Mr. PETTY advised me that there was an individual matching the description of the composites with the hair from 88-4892 and the facial area of 88-4238. He advised me the individuals name was ZARSKY, Ricky Lee. I asked Mr. PETTY where Mr. ZARSKY lives, he advised me in #104. In further talking with Mr. PETTY, he gave me a brief description of the individual as being a tanned individual with a mustache that came down to 1/2" pass to the openings to the mouth and further advised me that the individuals description closely matched the descriptions given in the composites. Mr. PETTY then advised me that Mr. ZARSKY had left early this morning with two other friends and he had no idea where he was and that he could be back in his room.

I then went to room #104 where I listened and it did not sound like anybody was home. I then returned to the SPD and went to talk to Det. Sgt. ZARUBI and fill him in on what I had found. We then brought Mr. ZARSKY up on SCOPE and ascertained the following:

ZARSKY [REDACTED] *Texas*

I then recontacted Mr. PETTY at the Abby Hotel to ascertain from him if he knew where Mr. ZARSKY was employed. I was advised by Mr. PETTY that he was a dishwasher at Karls Casino. I then contacted Karls Casino and talked with an individual in Personnel who did advise me Mr. ZARSKY was an employee and was a dishwasher.

Det. BOXX also found out that Mr. ZARSKY works dayshift with Tue. & Wed. off. Det. BOXX & I then returned to the Abby Hotel, Rm. #104, to attempt to attempt to make contact with Mr. ZARSKY. While at the room, Det. BOXX & I made contact with a David LITTLE. Mr. ZARSKY's roommate.

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

This Offense is now

Unfounded

Cleared by Arrest

Cleared Other wise

Not Cleared (inactive)

Officer ASHER \$4534 Patrol

Date 5/10/88

Investigating Officer
Sgt Lightfoot 3875

Supervisor Approving



PROSECUTOR

Exhibit 22
C-3

SPARKS POLICE DEPARTMENT

SUPPLEMENTAL OR CONTINUATION REPORT

Type of original report ROBBERY/SEXUAL ASSAULT	Date of original report 5/9/88	Case number 88-4892
Victim 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.

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

This Offense is now

founded

ended by Arrest

ended Otherwise

Cleared active

Officer ASHER \$4534 Patrol

Date 5/10/88

Investigating Officer

Sgt. L. L. [Signature] 3875 **C-4**

Supervisor Approving

Date 5/10/88

SPARKS POLICE DEPARTMENT
EVIDENCE REPORT

STORAGE LOCATION

CASE NO.

Env

88-4892

DATE OF OFFENSE: 5-9-88 LOCATION OF OFFENSE: 543 E Prater Wy OFFENSE: Robbery / Leg Assault

VICTIM: Rodela, Theresa ADDRESS: 543 E Prater Wy PHONE:

SUSPECT: unk ID NO. ARR. NO. W.H. NO.

IMPOUNDING OFFICER/ID NO.: Jones PROPERTY IMPOUNDED: Date: 5-9-88 Time: 2300 From: 543 E Prater Wy

ITEM NO.	QUANTITY	EVIDENCE DESCRIPTION - INCLUDE SERIAL NOS.
FT1	1	Pk. white Party House.
FT	2	Cigarette Butt

SPECIAL NOTATIONS:

SIGNATURE: *[Signature]*

CHAIN OF CUSTODY OF THE ABOVE LISTED PROPERTY MUST BE DOCUMENTED BELOW. USE ADDITIONAL FORMS IF NECESSARY.

NAME	DESTINATION/REASON	DATE AND TIME RECEIVED
TO JONES	Evidence	5-9-88 2300
TO Evidence	Evidence	5-10-88 0400
ADAMS	Evidence	5-10-88 0800
Evidence locker TO ADAMS	transport to J.A.	1-23-89 1029
ADAMS TO DANNY COOK	District Court	1-23-89 1045
<i>[Signature]</i>	District Court	1-23-89 1045

PROPERTY DISPOSITION:	Officer	Date and Time	Authorization
Returned to Owner:			
Auctioned:		C-5	

1 CODE 3060

FILED

'00 DEC 19 A9:03

AMY HARVEY, CLERK
BY *J. Tucker*
DEPUTY

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

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

Case No. CR88-1692

12 NOLAN KLEIN,

Department Two

13 Defendant.

14
15 **ORDER DENYING MOTION FOR EVIDENTIARY HEARING;
16 ORDER RESTRICTING ACCESS TO EVIDENCE**

17 The Court has reviewed Defendant's Motion for Evidentiary Hearing filed herein on November
18 27, 2000, Plaintiff's Response to Klein's Motion for Evidentiary Hearing filed herein on November 30,
19 2000 and good cause appearing,

20 IT IS HEREBY ORDERED that Defendant's motion for evidentiary hearing is denied.

21 IT IS FURTHER ORDERED that the evidence presently maintained in the Exhibit Room shall
22 not be examined by anyone absent a Court order. Further, the Washoe County Crime Lab and any and
23 all related law enforcement agencies are ordered to maintain the integrity of any and all evidence in this
24 case.

25 DATED: This 19th day of December, 2000.

26 *Charles M. McFarlane*
District Judge

PLEASE SEAL

10/1

4-4-89

C-7

COPIED FROM
orig. etc.

8/25/75-

[Signature]

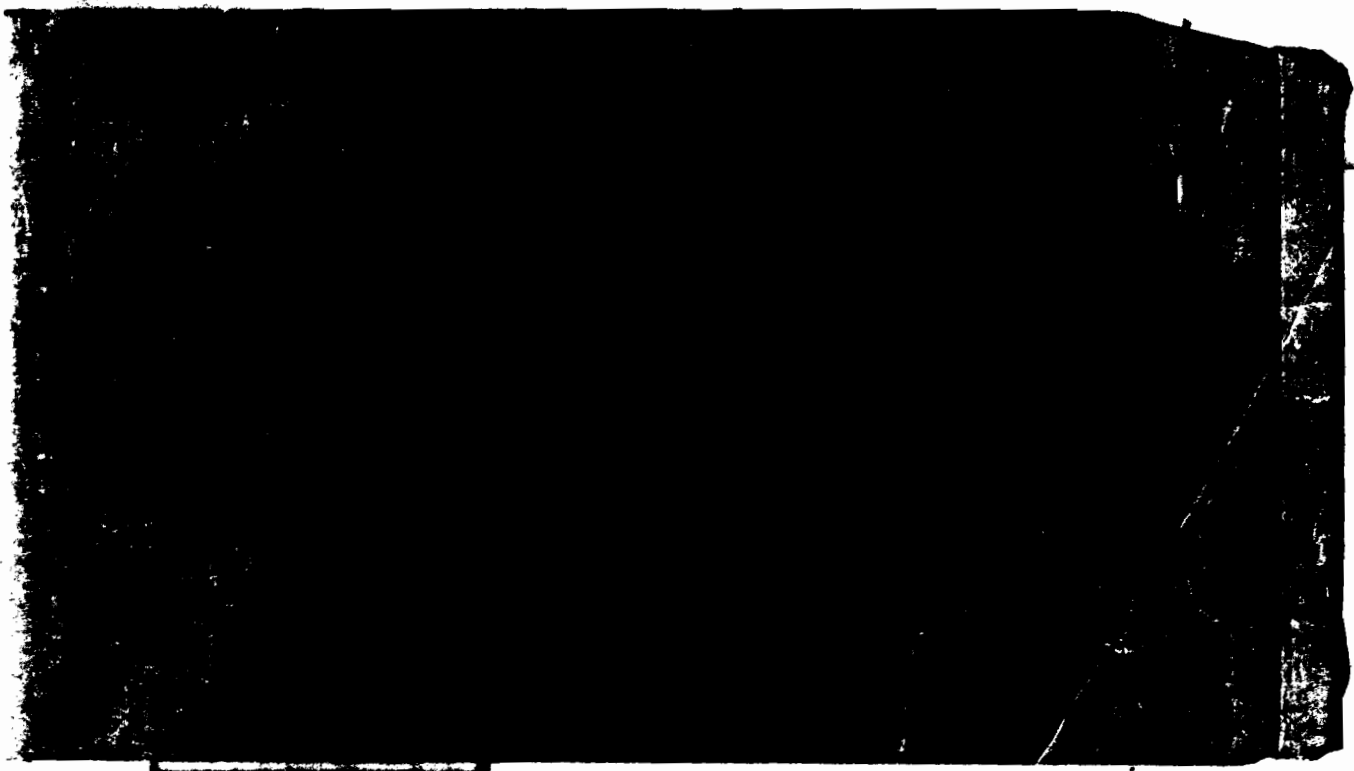
C-8

LO946-88

Suspect's Public
Control

David
Attention
328-3001

ML



*They received
wed march 10, 2000*

NOLAN E. KLEIN #28074
N.N.C.C.
Post Office Box 7000
Carson City, NV 89702-7000

*A#n: Trey
McGeire*

The Honorable Judge Hardesty
District Court Judge
Department 9
Second Judicial District Court
P.O. Box 11130
Reno, NV 89520

*Please do nothing
until Geoff Dorn
with the new AP*

RE: The State of Nevada v. Nolan Klein
Case No. CR88-1692

Dear Judge Hardesty,

The reason I am writing this to you is because I am seeking permission from the court to view, photograph and possibly photocopy (if necessary) the evidence held in the court evidence room. I attempted to contact Judge McGee regarding this matter, and was informed that he no longer handles the evidence in this case, and as such, I should seek permission from this court, more specifically, Your Honor.

Based on that information I had my sister contact your office which she did, and I have been informed by her that the person she talked to in your office told her to have me write a written request to view and have photographed the evidence in the above-entitled case, so that I have this photographic record for litigation in my Federal Habeas Corpus Petition currently filed and pending in the United States District Court, (Reno), under Case No. CV-N-01-0211-DWH(VPC). Perhaps it is appropriate to provide some brief factual background in order for you to more clearly understand the problem at hand.

In 1995, after finding a forensic lab that would and could conduct DNA testing without requiring blood draws from the victims, (which Judge McGee refused to do), I sought to have my DNA tested against the saliva which may have been on the cigarette filters held in evidence. However, shortly thereafter it was found that the filters had been removed and the evidence seals on the evidence envelope containing samples provided by me had been broke open and the cotton swabs with my saliva missing. There was an evidentiary hearing held in 1998 at which time the state acknowledged the missing filters, but it was never determined where they were or who took them.

Thereafter, around September or October of 2000, Dr. ^{*Alan Keel*} Edward Blake of Forensic Science Associates informed me through Tonja Brown that it may still be possible for DNA to be in the tobacco portions of the cigarette butts in evidence, and as such, testing should be attempted on them. Around this same time Treva J. Hearne, an attorney in Reno who represents the authors of a book regarding this case went to the evidence room for the purpose of verifying facts contained in the book. She reported that there were no longer any cigarette parts in evidence except one shred of paper and some tobacco flakes in the evidence envelope. She also noted other problems with the evidence which did not exists prior to October of 2000, and submitted an affidavit regarding same.

C-10

Based on the information and affidavit provided by Ms. Hearne, as well as that provided by Dr. Blake and others, my "Motion for Evidentiary Hearing" was filed on November 27, 2000. In said motion I was basically requesting that the court intervene and provide me with information regarding any evidence collected in the case and stored by any law enforcement agency so that it could be determined whether or not there was any evidence still remaining that could be subjected to forensic testing, as well as, asking the court to hold a hearing in order to determine where the evidence kept disappearing, why it was disappearing and who was responsible for it's removal from the evidence room which is supposed to be a controlled environment, and finally, asking to order that any such remaining evidence be protected and the integrity be maintained.

Nevertheless, on December 19, 2000, Judge McGee denied my requests, and in a classic example of closing the barn door after the sheep were gone, ordered that the "evidence presently maintained in the Exhibit Room shall not be examined by anyone absent a court order." While it did not tell me what I needed to know, even though what I was doing at the time was exactly what he ordered - seeking a court order - it at least appeared that the integrity of any remaining evidence would be maintained. Not so.

Recently an investigator for the Federal Public Defender who worked for me at the time, reported to me that he had went into the evidence room and personally viewed the evidence envelope which use to contain the cigarette butts collected at the crime scene, and stated that there was in fact now what appeared to be a non-filtered (made as a non-filter cigarette from the factory) cigarette butt in the envelope which he measured to be one-half (1/2) inch long, and as such, my claim was no longer supported by the record so they would not pursue that claim.

1/24 ~~do not mention~~
~~I terminated their representation~~ of me at that point because I could not see how they could reach that conclusion because court documents showed that it just can't be so, and I wanted them to explain how it got there when it did not exist before. The most interesting thing I pointed out to them which makes me very curious as to where it came from is the fact that there are photocopies (actual size) of the original cigarette butts in the record which show that the tobacco portion of either of them was no more than one-quarter inch, and as such, it had to have gotten larger over time.

Therefore, I am requesting permission to have Treva J. Hearne, Esq., 575 Forest Street, Suite 200, Reno, NV 89509 (Phone #323-5700), go to the court evidence room and photograph all the evidence in the above-entitled case with a ruler to measure size, etc., while at all times never handling the evidence personally and only in the presence of the evidence room supervisor, Dick Duer, or other person designated by the court in order for me to determine whether the investigator was correct, as well as to create a photographic and photocopy (where necessary) inventory of what still exists, as well as, be able to determine whether there is any evidence available which could be subjected to forensic testing. Something is terribly wrong in this case, and I am suffering for it. Therefore, please allow this controlled examination of all the evidence in the above-entitled case. Thank you for your time, concern and consideration in this very important matter.

C-11

Respectfully,
[Signature]

C-12



This photo-copy was made on April 4, 1989, by the lead supervisor of the evidence room, Dick Duer. In November 1995, Tonja would discover the filters were now missing. Tonja would be informed by Mr. Duer, that there had been two requests made for this evidence. Both of these requests were made after trial. Mr. Duer stated that one of the requests made for this evidence came from the court. The other request had been made by the District Attorney's office.

CHAPTER EIGHT THE INVESTIGATION BEGINS...

The trial was over. Tonja had plenty of time to think. She considered and reconsidered her brother's guilt. Tonja knew, of course, that Nolan was guilty of many things. He was guilty of living a transient life. He was guilty of having too many affairs and not making a commitment to Renee soon enough. If he had made a commitment to Renee, the Louanne Gritter testimony, which certainly seemed to have been devastating, wouldn't have existed. He was guilty of carrying a chip on his shoulder. He was guilty of driving under an assumed name to avoid an outstanding warrant for his arrest for driving while intoxicated. He was guilty of staying in Nevada around the very people who had gotten him in trouble time and time again. She and Nolan both were guilty of having a crazy brother who should have been put away long ago. Nolan was probably guilty of using drugs and dealing drugs during part of his life. He certainly had been guilty of marrying poorly the first time and beating her up for committing adultery in his marriage bed.

Above all else, Nolan was guilty of being poor. For that crime the punishment was enhanced and the justice was spread very thin. All of these things considered, Tonja believed with all her being that her brother, Nolan, was not guilty of rape and robbery. She even called an Attorney, a famous one, Melvin Belli in San Francisco to see if he would take Nolan's case pro-bono. She had heard that sometimes he takes on cases for free. Tonja was hoping that



Picture of Nolan's DNA. His DNA evidence consisted of his blood, hair samples, pubic hair samples, and saliva. However, on the chain of custody sheet indicated all but the blood samples.



This picture was taken by Tonja while in the presence of Mr. Duer. This brown wooden buck knife was admitted into evidence during the testimony given by Bridgette S. La... Tonja would discover that in Bridgette's statement she made to police on May 9, 1988, she had described the knife as being red and black.

CHAPTER NINE POST CONVICTION RELIEF

Every person convicted of a felony and incarcerated has the right to seek post conviction relief. If a prisoner believes that his case was handled incorrectly or the judge made a mistake or some evidence was not properly made available to prepare his own defense or properly made available for the jury's review, that prisoner can file an appeal. This appeal for post conviction relief is filed on a form provided by the Court. Today, however, the post conviction relief is generally viewed by the courts and prosecutors as a nuisance that clogs up the court system. 95% of the petitions for post conviction relief are filed *in pro per*, which means that the prisoner himself has drafted the document that is filed with the court.

Courts spend time categorizing and characterizing the writs. 90% of the writs are unsuccessful and are given a cursory view by a clerk often just minutes out of law school. The two favorite claims in these writs are incompetence of counsel and improper prosecutorial conduct. An overworked court system gives short shrift to these proceedings. How then, does a prisoner devise a means to get independent and objective consideration of his post conviction filing. He doesn't. Only if an alert clerk sees that an obvious and glaring error has occurred does the Judge ever notice one of these proceedings from another.

Nolan had little chance of prevailing in a petition for post conviction relief. Yet he knew that he had an unusually high number

10. That on or about the week of November 20, 1995 returned my call.
 11. that he was informed by me that someone had stolen the filters off of the cigarett buttes.
 12. That I had asked Jenkins to put this in the final report before he submits it to the D.A.
 13. That He had already submitted the report, and there was nothing more he could do.
 14. That I had asked Jenkins to contact Nevada Division of investigation. He refused. Why? (THE FIRST TIME I MET JENKINS, I HAD ASKED JENKINS TO ASK NDI FOR ASSISTANCE. HE SAID HE WOULD IF HIS FINDINGS SHOWED TAMPERING. I ALSO, ASKED FOR A COPY OF THE FINAL REPORT FOR NOLAN. HE SAID HE WOULD, ONLY BECAUSE, IT WAS NOLAN'S EVIDENCE. HE NEVER DID. JOE, IT'S A COVER-UP PLEASE GET YOUR HANDS ON HIS FINAL REPORT, BECAUSE I CAN ACTUALLY SHOW WHERE ON SOME EXHIBITS WEREN'T FOLLOWED PROPERLY. SEE ETHICS COMPLAINT, AND LETTER TO MILLS LANE.
-

JUDGE MILLS LANE

1. That I personally telephoned and talked to Judge Mills Lane about the tampering and stealing of Nolan's evidence. (I FIRST CALLED JUDGE LANE IN AUGUST, 1995. I TOLD HIM I DISCOVERED THAT SOMEONE HAD TAMPERED WITH SOME EVIDENCE AT THE COURT HOUSE. HE SAID, " THAT IT WAS ILLEGAL AND IT WOULD NOT BE TOLERATED I DON'T KNOW IF HE WOULD REMEMBER OUR EARLIER CONVERSATION)
2. That on or about Febuary 23, 1996, I telephoned Judge Mills Lane, and asked him if he had received his letter from Chief Niles Carson?
3. That Judge Lane stated that he had not, but, did have a conversation with him regarding Nolan Klein's evidence.
4. I told Judg Lane that I had received a copy of the letter and told him that Chief Carson did not put into the letter that he was going to list it as a PETTY THEFT. I asked Lane if Carson mentioned to him about a Petty Theft? He said NO he didn't
5. I asked Judge Lane if he would ask Nevada Division of Investigation to step in and investigate? He said no. But he said this, " but, I will tell you what I will do when I get my letter. I will personally walk it down to Judge McGee.
6. That Judge Lane asked me to call Judge McGee and explain to him what I just told him.
7. That Judge Lane did infact give the letter to Judge McGee. (JACKIE,

C-14-

September 4, 1996

COMMISSION ON ETHICS

I am asking the Commission on Ethics to review my complaint case number 96-37 again, since it was not address in the Commissions August 20, 1996, Secision. Specifically, the ADDITIONAL INFORMATION TO CASE # 96-37 that was filed on July 5, 1996.

I would like to see if the Ethics Commission has jurisdiction in the July, 5, complaint that deals with District Attorney, Dick Gammick, Asst. District Attorney, Cary Hatlestead, Reno Police Officers Chief Nile Carson, and Detective Dave Jenkins.

Please review the (2 page complaint) material that was provided to the Commission on July 1, 1996, Judges Lane and McGee and on July 5, 1996 Additional information (2 page complaint) on GAMMICK, HATLESTEAD, CARSON, and JENKINS

I am also providing a copy of today's (9-4-96) Reno Gazette Journal The underlined portion THERE ARE NO EYEWITNESSES OTHER THAN THE DEFENDANT OFFICERS, WHO HAVE ALREADY BEEN CLEARED OF WRONGDOING BY THEIR OWN DEPARTMENT. It has come to my attention that the person involved in clearing the three officers was DAVE JENKINS.

Thank you for your time concerning this very important matter.

TONJA BROWN
3310 Surrey Lane
Carson City, NV 89706
702-882-2744

RECEIVED

SEP 04 1996

**NV COMMISSION
ON ETHICS**

0-15

JUDGE MCGEE'S SECRETARY CONFIRMED HE HAD THE LETTER, AND WAS WILLING TO MET WITH ME ON THE CONDITION DICK GAMMICK JOINS US, GAMMICK REFUSED. SO DID MCGEE.

8. Why didn't Judge Lane follow thru and find out what happened to the evidence?
-

CHIEF NILES CARSON

1. That during the investigation I met Chief Carson. I was waiting to see Detective Dixon and Jenkins Chief Carson introduced himself to me. It was at this time I showed him the photographs of the evidence sealed up in 1989, Then the ones I just took in August 1995.
2. That I contacted Chief Carson after I discovered the filters had been stolen and after I contacted Detective Jenkins.
3. That I told Chief Carson that I was going to file another police report.
4. That Carson asked me not to do anything yet. He wanted to find out first if there was another way to handle the matter without me filing another police report.
5. That it had been several weeks and Chief Carson had not gotten back to me.
6. That on January 19, 1996. My new 1996 police report had been signed for.
7. That on February 16, 1996, I called the Reno Police Dept.. I had not yet received my case number back. The records dept stated that they had not received my complaint. I then informed them that it was signed for on 1-19-96. They never found it.
8. That on February 16, 1996, That I telephoned Chief Carson's office and left a message as to where my 1996 complaint was at.
9. That on that afternoon, Carson Called me back and stated that he had it sitting on his desk.
0. That he said, that he was waiting for Judge Lane to take over the head of the courts. and he had already talked to him about the case
1. That he was going to list it as a petty theft. and that was why he went to Judge Lane instead of the District Attorney's office, because if he sent it over to the D.A.'s office they would just laugh at

him and thru it out.

12. That Carson did infact put this brand knew 1996, on to a closed 1995 case. (I BELIEVE THEY ALL OBSTRUCTED JUSTICE BY CONSPIRING TO CONCEAL A CRIME)
-

RICHARD GAMMICK

1. That he received the final report submitted to him by Detective Jenkins.
 2. Does the final report state that Nolan Klein's evidence was tampered with.
 3. That on November 9 1995, The District Attorney's Office received a motion for discovery that I personally filed that clearly states that the evidence has been stolen and tampered with, and they did nothing for nearly a year. Why?
 - 4., That on Dec 6 1996, over a year later Dick Gammick said in an interview that he had his staff go and look at the evidence. WHEN?
 5. That Dick Gammick has knowledge of the names of the individuals who saw the evidence prior to me discovering the filters were stolen. (I believe he's lying, because Jenkins told me he was by himself and according to Dick Duer, the chain of custody shows the evidence never went to Reno Police Dept. So How Could Gammick sent any one to the Reno Police Dept. when the evidence was never there.)
 6. Did these filters exist prior to me discovering the filters were stolen. Or were they already gone.
 7. When (date) did Dick Gammick send his Employees to see the evidence?
 8. Is it a normal practice for Dick Gammick to publicly lie to the residents of washoe County for the sole purpose of trying to discredit me. (I HAVE DICK GAMMICK ON TAPE IN AN INTERVIEW)
-

ROXANNE SMITH

1. She over heard Dick and I talking about the cigarette buttes.

but composing and filing motions was a whole different issue. He said that she had to get it filed and to make certain to serve the DA. She hung up and wondered how in the world she could manage this one.

On November 3, 1995, Tonja filed her motion to request that there be discovery of the evidence from the trial. Nolan was still in lockup in Ely because of the riots and could not be reached for advice or guidance.

She then called the forensic science lab to find Dr. Edward Blake and ask what could still be tested. She spoke to Jennifer Mahlovich and explained the situation that the semen samples taken from the victim only consisted of two heads and tails. Jennifer didn't believe that would be enough. She said that the range for testing was 100 but they could get by with 50. Tonja explained the circumstance of the cigarette butts with anxious anticipation. Relieved, she heard the woman say that cigarette butts with saliva could be tested with the technology that then existed. Then Tonja had to explain a little problem. If someone cut the filters off, would there be enough DNA left off what is left behind for testing? Jennifer admitted that the chances of that were extremely rare, but if enough saliva got through the filters, then they might be able to test them. It took all of Tonja's energy to complete the conversation. She was devastated to hear what she already suspected. But there was still a small chance that saliva had made it through the filters into the cigarette butts. She had to face reality that even the technology of 1995 might not have advanced enough to test what was left in that evidence room. The tampering had finished it. What she couldn't understand was why, after six years, someone had entered that evidence room and taken Nolan's last shred of DNA evidence. What puzzled her even more was how the evidence was removed from the evidence room without some explanation.

Tonja could not tell Nolan. She was hanging on to the small hope of the tests occurring. Nolan was locked down in a prison with rioting inmates suffering from a gunshot wound that hadn't even been intended for him. Nolan had not seen his son in seven years. She could not tell him about the missing evidence.

Nolan, again, sent letters of preservation in Dec. 1995. Tonja didn't want to tell him that he was preserving useless bits of paper. Once tampered with, none of what little remained of the evidence was trustworthy.

CHAPTER TWELVE THE DNA

On January 19, 1996, Tonja was still waiting to receive a post card from Reno P.D. with a new ID number for her new police report. She had filed the report after Niles Carson failed to call her back. As she waited, the days turned into weeks. She called the Reno P.D. and inquired about her new ID number since the procedure had not changed since the 1995 police report she had filed. She was told that there was no record of filing a new report. She had sent it certified and the receipt was returned and had been signed for by an officer. She was told that all the Reno P.D. had was a closed 1995 case. She called Det. Carson to find out if he knew what had happened to her 1996 case and left a message on his answering machine. Tonja told Det. Carson's machine that she had not heard from him regarding her 1995 report so she decided to go ahead and file another police report and, although it was signed as received by the Reno P.D., no one had a record of it. She sweetly asked him to please give her a call, wishing she could call him the conniving son of a bitch that she thought he was.

This time Carson did call her back and said that he knew where the report was, it was sitting on his desk. He checked into it and contacted Mills Lane and now he was waiting for Lane to become the head of the Court. He explained to her that he had told the entire story to Mills Lane and Lane had instructed him to hold on to the report until Lane became Chief Judge. This is what we decided to do was all that he would say to her.

mentioned by the Judge as a necessary party for this meeting. Any more work on this investigation was futile, Tonja could see that.

Tonja had found a new friend in the media, Ralph Heller, a columnist for the Sparks Daily Tribune. He listened to the stories that she used to tell Mike Phillis before he died. Ralph wrote this item for the Tribune:

TAMPERING: Nolan Klein has been in state prison since he was found guilty of robbery and assault in early 1989, but irregularities and unorthodox procedure associated with the prosecution of his case have troubled many people to this day. Now both the renowned Benjamin N. Cardozo School of Law in New York City and a national ACLU official are interested in taking a closer look at things.

It appears that certain evidence, stored in an envelope box from which the evidence could be taken for future DNA testing, has been tampered with. Especially intriguing are two filtertip cigarette butts from which the saliva on the filters might later be tested to determine blood type (DNA). But it seems that the filters have been mysteriously removed from the cigarette butts, with no explanation, making such DNA testing impossible. Indeed, I'm told that a report will be forthcoming shortly from detective Jenkins of the Reno Police Department in which mention will be made of the fact that evidence in this case has been tampered with. Meanwhile, Klein's sister, Tonja Brown of Carson City, has tried her best to interest DA Richard Gammick in this travesty, but without success.

Tonja had tried to avail herself of the forces of the police, district attorney, courts and media. Again, she tried to turn to the Legislature. Tonja went to the Legislature to lobby for a bill that would make tampering with evidence, a felony instead of a gross misdemeanor, with a double enhancement for officers of the court.

As a result of her efforts at the Legislature, Tonja was invited to do a radio talk show with J. R. Reynolds in Reno about her efforts to get the bill passed. Dick Gammick had previously been a guest on the same show in December 1996 and Tonja had taped the

ababeth Morgan

JUDGE

ould tell by the way he
n't think this was much

ould be listed as a petty
theft. He had not called it a petty theft in the report but, after his
conversation with Mills Lane, had determined it was a petty theft
because the filters weren't valuable. Tonja knew that the filters were
of grave importance to the case if the Innocence Project became
Nolan's attorney. Tonja next called the office of Judge Mills Lane
to determine if he would include her in the information circuit about
the investigation. Lane said he could not respond until he received
the letter from Det. Carson. Tonja begged Lane to have an outside
investigation conducted by the Nevada Department of Investigation.
He assumed his famous cocky attitude and explained to her, little
lady, that he would not turn this over to an outside investigation.
He stated that when he got that letter, he would walk it down to the
Court, Judge Charles McGee.

Tonja was appalled. My god, he wouldn't do that, she thought.
One of the persons who checked out the evidence was Judge
McGee. He could be a suspect. Lane assured her that was exactly
what he intended to do. Lane told her to call McGee and set up
an appointment. After she got off the phone, she called McGee's
secretary and told her that Judge Lane was going to bring a letter to
his office from Det. Carson. Tonja explained that Judge Lane had
instructed her to set up an appointment with McGee.

After considerable stewing over the entire situation, Tonja
believed that she had to follow through with what Lane directed
to do. In a week she called McGee's office to find out if he had
received the letter. Indeed, he had received it and left a specific
message for her and that was that he would meet with her only if
District Attorney Gammick would also meet. Her next duty was
to call Gammick. After her past experience with the D.A.'s office,
she didn't hold out much hope for a warm welcome there. As she
expected, Gammick stated that he would not meet with her now or
ever and for her to get an attorney. When she related this to the
Judge, he stated that he wouldn't have an *ex parte*¹³ communication
without Gammick there. Nolan, on the other hand, wasn't even

¹³ Ex parte is the term for a communication between the Judge and
one party without all the parties to the matter present. In a contested
matter, this is generally a forbidden communication.

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used the word crime with a sneer that

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