



Washoe County District Attorney

RICHARD A. GAMMICK
DISTRICT ATTORNEY

November 20, 2008

Robert R. Hager, Esq.
245 E. Liberty Street, Suite 110
Reno, NV 89501

Re: Nolan Klein

Dear Mr. Hager:

Your letter of November 12, 2008, addressed to Mr. Gammick, was routed to me for a response. The letter appears to be a demand for some sort of discovery but you neglected to identify the litigation from which this demand stems, or the legal basis for the demand. I am aware only of a proper person appeal from the denial of a motion to alter the sentence in Mr. Klein's case. The rules of appellate procedure do not include any rules for discovery. If there is some other legal basis for your demand, please feel free to specify that basis.

The information upon which you base your demand appears to be incorrect. I am unaware of any post-litigation testing of any evidence. I seem to recall that there was one bit of evidence that went missing when Mr. Klein's sister examined it, but beyond that I have no idea of what you are discussing in your letter. Feel free to clarify and to demonstrate some legal basis for your demand.

Respectfully,

RICHARD A. GAMMICK
DISTRICT ATTORNEY

By 
TERRENCE P. McCARTHY
Appellate Deputy

TPM/sm

So far this year, 13 people around the United States have been exonerated by DNA testing after serving more than 200 combined years in prison for crimes they didn't commit. At least 10 more people have been cleared by DNA but are waiting for their exonerations to become official.

Here are the stories of those exonerated so far in 2008:

Michael Blair was convicted and sentenced to death in Texas based on improper forensic testimony and several eyewitness misidentifications. He served nearly 14 years on Texas death row for a murder he didn't commit.

Kennedy Brewer was sentenced to death in 1995 for a child murder he didn't commit. He was freed when DNA testing secured by the Innocence Project led to the identity of the real perpetrator. His exoneration also led to critical reforms on handling evidence and state oversight for autopsies.

Dean Cage was exonerated by DNA testing in Chicago after spending 12 years in prison for a rape he didn't commit.

Charles Chatman served 27 years in Texas prison for a rape he didn't commit before DNA testing secured by the Innocence Project of Texas set him free.

Nathaniel Hatchett was 17 years old when he was arrested for a carjacking and rape he didn't commit. He served 10 years in Michigan before he was cleared.

Arthur Johnson spent 16 years in Mississippi prison for a rape he didn't commit before DNA testing won by the Innocence Project New Orleans led to his release.

Rickey Johnson served 25 years in Louisiana prison for a rape he didn't commit before the Innocence Project secured DNA testing that proved his innocence. The test results pointed to the identity of a Louisiana inmate who was convicted of committing another rape in the same neighborhood after Johnson was convicted.

Robert McClendon was exonerated by DNA in August in a joint project between the Ohio Innocence Project and the Columbus Dispatch. He spent 17 years in Ohio prison for a crime he didn't commit before he was cleared.

Thomas McGowan served 23 years in Texas prison for a rape he didn't commit before DNA testing obtained by the Innocence Project proved his innocence. He was convicted based on a faulty identification procedure.

Steven Phillips was exonerated in October after serving more than two decades in Texas prison for a series of rapes he didn't commit. DNA testing obtained on Phillips' behalf by the Innocence Project pointed to the identity of the real perpetrator of the crime.

Ronnie Taylor was convicted in 1993 of a rape he didn't commit based on faulty forensic tests at the troubled Houston crime lab. His exoneration became official in January, just days after he married his longtime fiancée Jeanette Brown. The couple now lives in Atlanta.

Patrick Waller served more than 15 years in Texas prison for a rape he didn't commit. He is the 21st person cleared by DNA testing in Dallas County.

Joseph White exonerated in November, was the first person cleared by DNA testing in Nebraska history. His five co-defendants are awaiting pardons from the governor in order to be fully exonerated.

Nolan Klein has been fighting for years to have his DNA tested in order to exonerate him only to find out that the DNA evidence consisting of two filter cigarette butts have been removed. Just

recently the Washoe County District Attorney has admitted that the filters were tested, however, to this day no results have ever been made known to Mr. Klein or his attorney's. Why? Because, the results would have shown that it WAS NOT MR. KLEIN.

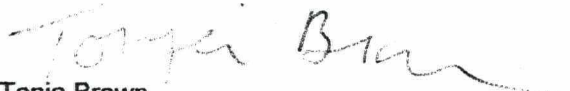
Mr. Klein had an alibi with several witnesses present who testified for him that he was with them some 30+ miles away during the time of the crime. Mr. Klein was positively identified thru a tainted photo lineup that was shown to only one victim, however, unknown to the victims, the defense and the jury the police had a prime suspect, Mr. Rickey Lee Zarsky, other than Mr. Klein who even fit and resembled the composite sketch, but, not Mr. Klein.

Mr. Klein to date has been identified out of this same photo lineup by 137 people who have no knowledge of what Mr. Klein or the suspect looks like. I would like to refresh your memory that it was Commissioner Phil Kohn who was the 130th person to identify Mr. Klein from this same photo line up. I refer you to the minutes of the June 9, 2008 Advisory Commission on the Administration of Justice, Exhibit P.

http://www.leg.state.nv.us/74th/Interim_Agendas_Minutes_Exhibits/Exhibits/AdminJustice/E060908P.pdf

This bill will not help Nolan because any chances of DNA testing are long gone or simply cannot be trusted, however, this bill can help other INNOCENT people within our prison system. How much longer can we allow the innocent to remain behind our prison walls? The time is now to allow them their freedom by approving my recommendations to this proposed bill before you.

Thank You,


Tonja Brown

Sent: Thursday, December 11, 2008 12:57 PM

Subject: [PNN] TX - Ricardo Rachell cleared of 2002 sexual assault

Ricardo Rachell cleared of 2002 sexual assault

By BRIAN ROGERS Copyright 2008 Houston Chronicle

Dec. 11, 2008, 1:56PM

A Houston man sentenced to 40 years in prison five years ago for the aggravated sexual assault of a child is expected to be freed after DNA evidence cleared him, Harris County District Attorney Kenneth Magidson announced today.

The DA's office will join with defense attorneys for Ricardo Rachell to ask for a bond at a hearing tomorrow. Rachell, 51, has served five years his sentence.

A jury found him guilty in 2003 of sexually assaulting an 8-year-old boy a year earlier. Two witnesses and the victim testified Rachell had committed the crime.

"As soon as the evidence was found to exonerate him, we have acted as swiftly as possible to see that justice is done in this case,"

Magidson said in a written statement. He said his office will support any requests from Rachell for a full pardon.

DNA evidence collected by Houston police during their investigation of Rachell was never tested, which was a mistake, Magidson said. He said his office has reopened the case and identified a new suspect, who has not been charged.

The case is one of 540 since 2001 that are under review by Magidson's office. Three other wrongly convicted Harris County inmates have been cleared by new DNA evidence as a result of the case reviews.

Mr. Richards who is now a Deputy Sheriff with the Carson City Sheriff's Office wanted to appear before the October 29, 2008 Pardons Board and speak before them to reaffirm his testimony, that He and Mr. Klein were together that night during the time of the crime. Mr Richards was informed by the his attorney, which would be the District Attorney, that we would not be able to testify before the Pardons Board or give an affidavit to reaffirm his testimony. Below is Mr. Richards and the bartender, Ms. Barbara Hillman of Jack's Bar testimony from the January 1989 trial of Mr. Klein.

WILLIAM RICHARDS, called as a witness herein.

What do you do for a living, sir? I'm a bartender. Do you know the gentleman seated to my left?

Yes, I do. What is his name? Nolan Klien. And how long have you known him?

Approximately three and a half, four years. And how do you know him?

I worked with him at Reno Flying Service. Do you recall being with him on a night wherein a particular event was supposed to happen the next day?

Yes. And would you describe that? We were discussing the possibility of Los Angeles falling in the ocean the next day, May 10th. It was in all the newspapers, and Nolan and myself and several other people in the bar were discussing that fact. What bar was this? Jack's Bar. Who else was present? There was Nolan, his brother Marty, his mother Pinkie, J.D. and Barbara, the bartender. And do you recall approximately what time you got there, Mr. Richards?

Five. And who was there when you got there? Nolan, myself and his brother Marty.

Did anyone leave during the course of the evening? We were all there, and Pinkie and J.D. left around 9:00 o'clock that night. Why were you so sure about that time? Because it was just starting to get dark. Do you recall what time Nolan left? The best of my knowledge, we were there until ten, eleven o'clock that evening. Did you leave together? No. Who left first? Nolan left first. And could that have been any earlier than 10:00 o'clock at night? No. Why do believe that? Because I looked at the clock, gauging what time to go home. And why are you so sure that this was May 9th, 1988? Because we were discussing the possibility of May 10th the following day, Nostradamus' prediction coming true. Are you sure it's May 9th?

It was during the course of that weekend or on Monday I read it in the paper and heard it on Eyewitness News, as well. Cross examination of WILLIAM RICHARDS, called as a witness herein. What do you do for a living, sir? I'm a

bartender.

Do you know the gentleman seated to my left? Yes, I do. What is his name?
Nolan Klien.

And how long have you known him? Approximately three and a half, four years.

And how do you know him? I worked with him at Reno Flying Service. Do you recall being with him on a night wherein a particular event was supposed to happen the next day? Yes. And would you describe that? We were discussing the possibility of Los Angeles falling in the ocean the next day, May 10th. It was in all the newspapers, and Nolan and myself and several other people in the bar were discussing that fact.

What bar was this? Jack's Bar. Who else was present?

There was Nolan, his brother Marty, his mother Pinkie, J.D. and Barbara, the bartender. And do you recall approximately what time you got there, Mr. Richards?

Five. And who was there when you got there?

Nolan, myself and his brother Marty. Did anyone leave during the course of the evening?

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Do you recall what time Nolan left? The best of my knowledge, we were there until ten, eleven o'clock that

evening. Did you leave together? No. Who left first? Nolan left first. And could that have been any earlier than 10:00 o'clock at night? No. Why do believe that?

Because I looked at the clock, gauging what time to go home. And why are you so sure that this was May 9th, 1988? Because we were discussing the possibility of May 10th the following day, of Nostradamus' prediction coming true.

Are you sure it's May 9th? It was during the course of that weekend or on Monday I read it in the paper and heard it on Eyewitness News, as well.

(Cross Examination by Rachow) What kind of contact have you had with Nolan in the past? We worked together at Reno Flying Service. And then we met on several occasions at Jack's Bar, went out to the river a few times. Do you patronize Jack's Bar on a frequent basis. Yeah. Nolan do that, too? At the time. When did he stop? During the summer. I started to work and so I kind of lost contact with a lot of people. Were you still seeing him there in June? In June? I believe so.

Now, after May 9th, did you ever talk about Nostradamus again?

Not to my knowledge. And you never talked with anybody about it, just on this one occasion?

Just on this occasion, because it had been publicized. We were joking about having ocean-side property. Did you go back on Tuesday to the bar?

Possibly. Like I said, I frequented it quite often at that time because I lived

right near.

How did you happen to recall this particular date. Wasn't it because Pinkie came to you in July and asked you about it?

She asked me if I remembered discussing Nostradamus; and I said, yes. And had it been any other time, I wouldn't have remembered, but I remember

Barbara

worked on Mondays and Tuesdays, and I remember the date of the prediction,

which is Tuesday, May 10th, and we were there discussing it the evening before.

All right. But it was Pinkie that approached you in July?

She asked me if I remembered that evening and who was there.

BARBARA HILLMAN called as a witness herein

What do you do for a living? I'm a bartender. In May of 1988, where were you employed?

At Jack's Bar, Carson City. Approximately a year? Yeah. Do you have a regular crowd in a bar like Jack's Bar? Yes. Do you know the gentleman seated to my left? Yes. And who is he?

Nolan. Do you know other members of his family, as well? Yes. Who do you know?

I know his mother and his brother. Are they regular customers? Well, his mother is; and the two of them come and go. Do you recall them all being present in your bar on a Monday night? Yes.

Was something unusual discussed that particular Monday night? Well, we were all talking about California was supposed to drop off the next day, so we talked about that all —California was supposed to drop off where? Into the ocean. And who was talking about that? Nolan; his brother; his mother; myself, J.D., and Bill. What was the time of your shift? I came on at 6:00. Do you recall if Nolan Klien was present when you had arrived at work? I believe he was.

How long does your shift usually go? Till 2:00. What happened during the course of the evening.

We just sat there and talked. Then Pinkie—Nolan's mother—and J.D. got up to go to dinner; and Nolan and Bill and his brother were still there. We just talked and, like I said, it wasn't busy and they drank. And that was approximately 9:00 o'clock? Yeah. In fact, it was after that. I would say probably maybe 10:00, 10:30. And you would have recalled if Nolan left earlier than 9:00 o'clock?

Yeah, yeah, because we were all there. Nobody left. And you've let this fact

be known from the onset of this case; correct? Right. Are you related to Nolan Klein in any way? Is there anyway that you'd take the stand and testify falsely for him? No. And you believe it was May 9th that you were all together? Yes.

(Rachow cross examined)

Ma'am, obviously California didn't fall into the ocean. Did you discuss this Tuesday in the bar? Probably, yeah. Isn't it true, ma'am, that the first time you brought this forward was when

Nolan's mother's Pinkie came forward to refresh your memory on the 4th of July?

She asked me if I remembered that night. And like I say, that's the only reason I remember that night. Didn't she help you with the details? No. You're sure about that?

Yes. It would be a true statement that people come in time after time, right? Usually. And yet it was only one night that this crowd ever talked about Nostradamus?

Yes, because that's—we were all waiting for California to drop off. Hadn't talked about it Sunday? I don't remember. Maybe we did. Did you see Pinkie on Sunday? I don't know. See Nolan on Sunday? No. See any of those people on Sunday? I didn't see anybody on Sunday, because I don't work Sunday. Okay. So—And you don't know whether you saw them on Tuesday? I didn't see Nolan on Tuesday. I don't know, Pinkie might have been in Tuesday. I don't pay attention, you know. They're just everyday people that come

in. What time did Nolan leave that night? I couldn't swear for sure, but I know it couldn't have been before ten o'clock. Who did he leave with? I don't know that either. What was he wearing? I have no idea. What was he driving? I have no idea. I didn't see his car. No further questions.

(O'Neill on re-direct) Is the lady that you spoke to in court today from the DA's office? The lady in purple seated behind me? I spoke to people over the phone. I talked to a man in the bar that came in a gave me the subpoena. Would that have been my investigator, Tim Ford, in the gray jacket? Yes. Had you provided a written document saying that you would be happy to testify and you provided that back in the summer, correct? Right. Have you ever changed your position? No. And has anyone promised you or given you anything in exchange for your

testimony? No. (Cross by Rachow) Miss Hillman, you're telling the truth as best you remember it; right? That's right. It is not possible you might be mistaken on a date?

No, none. You're absolutely sure? Absolutely There could be no doubt in

your mind whatsoever? No. Thank you.