

Advisory Commission on the Administration of Justice

After reading the Memorandum Proposed Legislation for the Preservation of Biological Evidence I realized that something was missing in the securing of DNA evidence. I would like to have the Sworn Affidavit of Attorney Ms. Treva Hearne submitted as part of the record on Monday, August 25, 2008 along with my request to have the following submitted as number 6 of the Memorandum.

I would like to recommend to the Advisory Commission on the Administration of Justice that they need to secure the INDEX TRACKING CARDS. I would recommend to the Commission "that every time that the evidence is seen, or checked out of the Evidence Room, the Supervisor of the Evidence MUST inventory by photo copying and photographing the exhibits prior to any ones viewing and when the exhibits/DNA are returned.. The Supervisor MUST NOTIFY the District Attorney, The Public Defender, the Private Attorney if that is the case, The Court and THE DEFENDANT. They MUST notify each person if something is missing, if the evidence's appearance has changed in any way. This will eliminate any chance of any wrong doing by anyone." Below is my reason for asking for this request based on personal experience.

These Index Tracking Cards are crucial in order to secure the Evidence AFTER TRIAL. When the trial is over the evidence is STORED IN THE WASHOE COUNTY COURTHOUSE EVIDENCE ROOM. In this evidence room, as in our case, the defendants BLOOD, PUBIC HAIR, HAIR COMBING, AND SALVIA ARE BEING STORED along with the perpetrators's DNA that could be found on once were filtered cigarette butts.

The Washoe County District Attorney and The Courts have access to this evidence at any time. There is no way of knowing how many times a person has had access to the evidence, UNLESS ONE SEES THE INDEX TRACKING CARDS. The INDEX TRACKING CARDS, show Who and when someone checked them out and when they were returned. It also shows if the EVIDENCE IS MISSING WHEN IT IS RETURNED.

Unless someone is familiar with how the Supervisor of the Evidence Room maintains his or her record keeping by the INDEX TRACKING CARDS, one would see just the Chain of Custody records that are secured onto the Exhibit. To someone who is not familiar with the workings of the Evidence Room , One would think that the evidence is fine, when in reality, it very well may not be the case. That is why the INDEX TRACKING CARDS, must be maintained and secured.

I have attached self explanatory documents to be part of the record.

Thank You,

Tonja Brown
2907 Lukens Lane
Carson City, NV 89706
775-882-2744



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.

Mrs. 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.

Washoe County Sheriff
Criminlisitcs Laboratory
911parr Blvd
Reno Nevada 89512

Washoe County District Attorney
Washoe County Court House
P. O. Box 11130
Reno, Nevada 89520-0027

Re: Scientific test results, and availibility of specimen's for independent testing, in order to prepare for Post Conviction Relief. (N.R.S. 177.315)

I would like to request copies of all reports of comparison or any other test conducted on the following specimen's, also the availibility of all specimens for independent testing in the future, at the defendant's expense.

Case # CR88-1692, Second Judicial District Court Dept. # 2.

Date of offense: May 9, 1988.

Victim's name: Tresea Rodela

Specimen taken: May 9, 1988, W.M.C. Reno, Nevada

Defendant's name: Nolan Klein

Specimen taken: December 12, 1988, W.M.C. Reno, Nevada

I Nolan Klein give Tonja F. Brown, the authorization to act in my behalf, the power of attorney to collect, and or recieve any and all material in regard's to this matter.

Signiture need not be verified by notary, by inmates in the State of Nevada. (N.R.S.) 208.165.

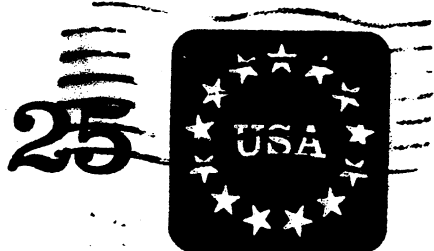
Dated this day of May 5, 1989.

Inmate Nevada State Prison,

Nolan E. Klein # 28074

Nolan E. Klein
P.O. Box 607

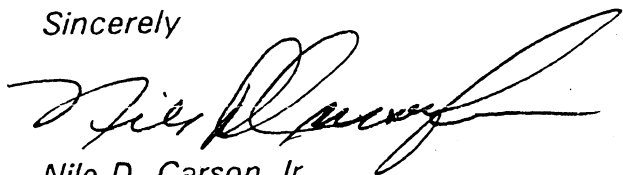
Carson City, Nevada 89701



Mrs. Brown advised me this date that her brother is now represented by council, and is the subject of a news article in the Nevada Appeal (copy enclosed for information). I am sure that you will receive an enquiry from Mrs. Brown or her brother's representatives.

If I can be of assistance or answer any questions please feel free to contact me at 334-2180.

Sincerely



*Nile D. Carson Jr.
Deputy Chief of Police
Detective Division Commander*

*c.
File*

*Tonja F. Brown
3310 Surrey Ln.
Carson City, NV
89706*

NOLAN E. KLEIN #28074
Nevada State Prison
Post Office Box 607
Carson City, Nevada 89702

April 22, 1998

JOSEPH R. PLATER
5341 Vista Larga Circle
Reno, Nevada 89523

RE: Klein v. McDaniel,
Habeas Corpus Petition
Case No. CR88P1692

Dear Mr. Plater,

I am writing for a couple of reasons which will be detailed below, as well as the fact that for some reason I cannot get through on the telephone. I have been continually trying to call, but I keep getting the recording stating that the party called has disconnected on most attempts to call you, and on other attempts, the person answering the phone at your end just refuses the call. Therefore, I have decided that the best thing to do is to accept this as your personal way of telling me that you do not wish to speak with me, and I should just write and finally put this matter to rest.

First, I would like to express my disappointment in your performance at the 4/7/98 evidentiary hearing. I know that you got my letter telling you that I needed at least fifteen (15) minutes with you prior to the hearing to show you the exhibits I needed to have submitted, of which, all supported all of my claims and testimony, because I saw that letter sitting on the table during the hearing. Nevertheless, you chose to not see me prior to the hearing, and as such, all of those exhibits and evidence that would have shown, among other things, (1) that I sought to have the evidence tested prior to the discovery that it missing; (2) that there was expert testimony that saliva could be tested; (3) that I had professional legal advice from a judge in that courthouse advising me that the court order allowed me to test the evidence at any time, but that I would have to pay for it; (4) that it was properly collected from the crime scene and preserved; (5) that I did exercise due diligence in my efforts to find a lab and have the evidence tested, despite my incarceration in Ely where I did not even have access to something as simple as a phone book; and (6) that there was evidence of bad faith, including a evidence log that was available showing that the only places that checked that particular evidence out of the evidence room was the court and D.A.'s office, just to name some, were not presented or admitted during the hearing. Additionally, you did not even bother to call necessary witnesses.

While I do not know why you did not do these things, I consider it a serious error on your part. I just want to say that I trusted you and you really let me down. You had all of these things made known to you and available to you prior to the 4/7/98 hearing, yet for some reason, you chose not to look at the exhibits or call witnesses to support the allegations and my testimony, and I don't think I should be the one to have to suffer for it, where I did everything in my power to have you see the exhibits and call the necessary witnesses.

*Joe Plater
want to work for
G.O.A. Gary Hatfield
ON July 13 1998.
McBee rendered his
final decision in weeks
Aug 1998 - several weeks
after Plater*

To: JOSEPH R. PLATER
From: NOLAN E. KLEIN #28074
Re: Klein v. McDaniel,
Habeas Corpus Petition
Case No. CR88Pl692

Date: April 23, 1998

Page Two of Two

Next, I want you to know that I have every intention of filing a NRCP 52(b) motion for additional findings with the court in order to produce and have considered all the evidence that you failed to present and have admitted during the hearing, even though the prosecutor kept complaining to me that he had not seen the evidence I was testifying about. It was there and could have been presented had you simply taken the time to see me before the hearing, or even at a minimum, accepted one or two of my phone calls to you. I will send you a copy of the Rule 52(b) motion, even though I don't think you will endorse it because I will have affidavits and copies of the letters from me to you in support of my reasons for not submitting the actual exhibits during the 4/7/98 hearing, whereas, I even believe they should have been.

Finally, I have a couple of questions for you, of which I would really appreciate a response. First, I would like to know why all of the sudden you did not care about this case, thus, deciding not to actively pursue it in the manner it should have been, especially in light of the evidence and witnesses that were made known and available to you; and secondly, if I file a timely NRCP 52(b) motion for additional findings, will it toll the time for taking an appeal to the Supreme Court even though it is filed in a habeas corpus action? I would really appreciate an answer to the second question even though you may not want to answer the first one.

In closing, after responding to the matters set forth above unless you decide not to of course, I guess the best thing to do at this point, since I have lost all faith and confidence in you to actively pursue this case in a professional and diligent manner with all the evidence and witnesses available to you, that it is in the best interests of all parties concerned, to request that you withdrawal as my attorney of record with the court immediately, and thereafter, send any and all papers, pleadings, documents and/or other tangible items regarding my case that are in your possession to me, and I will be forced to pursue the matter on my own from that point forward.

I would like to thank you in advance for your time, assistance, concern and prompt response regarding this very important matter.

Respectfully,


Nolan E. Klein

cc: The Honorable Charles McGee,
District Judge;
Gary Hatelstad,
Deputy District Attorney;
file

FILED

SEP 15 1998

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

vs.

WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,

Respondent.

ORDER RE: RECORD ON APPEAL

Having reviewed the documents on file in this proper person appeal, this court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). Accordingly, within thirty (30) days from the date of this order, the clerk of the district court shall transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2) (the complete record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court, as well as any previously prepared transcripts of the district court proceedings).¹

It is so ORDERED.

Springer

C.J.

cc: Hon. Frankie Sue Del Papa, Attorney General
Hon. Richard A. Gammick, District Attorney
Nolan E. Klein
Betty J. Lewis, Clerk

II

Prosecution intentional suppression of evidence by the failure to conduct scientific testing for comparisons on semen and cigarette but collected after offense, when defendant was subjected to the removal of samples of Blood, Saliva and Pubic Hairs for comparisons as implied on seizure order, where as this was to lead defendant to believe that test would finally performed. Defense was not informed that no test were performed until Expert's testimony during trial, which denied defense access to material evidence, and hindering defense preparations for trial do to the lack of knowledge. The prosecution's failure to disclose and thus suppressing evidence is a violation of Due Process. N.R.S. 174.295, CRIMINAL-LAW 700, CONSTITUTIONAL LAW 257, 268(5).

On December 12, 1988 approx. 7 mos. after offense, Detective Boxx of Sparks Police Department arrived at the Washoe County Detention Center in Reno, Nevada with a seizure order signed by Justice Peter Breen, for samples of Blood, Saliva and Pubic Hairs to be taken by defendant for the purpose of evidentiary scientific comparison testing against any and all evidence collected during investigation starting at date of offense on May 9, 1988, N.R.S. 56.020.

Failure of prosecution to disclose the information to the fact that test were never performed, prior to expert testimony in trial is interpreted as a ploy, as not to give defense enough time to prepare or possibly conduct independent testing to present in trial.

Defendant therefore concludes that the suppression of such material evidence is a direct denial of defendant's right to a fair trial, constituting reversible error.

Since theory of defendant's case is based on mistaken identity, this is highly material evidence, and the failure of prosecution to follow through with investigations as to identity of perpetrator is extremely prejudicial to defendant, and a clear violation of Due Process which constitutes reversible error.

State v. Youngblood (734 P. 2d. 592 Ariz. App. 1986)

Ariz. v. Youngblood (109 S. Ct. 333 1988)

People v. Nation, Jr.(Cal. 604 P. 2d. 1051)

State v. Escalante (734 P. 2d. 597 Ariz. App. 1986)

Crockett v. State (Nev. 603 P. 2d. 1078)

State v. Havas (Nev. 601 P. 2d. 1197)

Hilliard v. Spalding (719 F 2d. 1443, "1983")

Case No. CR88-1692

Dept No. 2

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

NOLAN E. KLEIN,
petitioner,

vs

E.K. McDANIEL, Warden,
Ely State Prison,
The Sate of Nevada
Respondant.

STATEMENT OF TONJA BROWN

Dear Judge Mcgee,

I have recently been informed that you have or soon will receive a letter from Barry Scheck with the Innocence Project out of New York. I am writing this to clear up any misunderstandings that the Innocence Project and I may have had in regards to Nolan Klein, case # CR88-1692.

In October, 1995, after receiving an (August) article from Nolan Klein about the Innocence project I immediately contacted the innocence Project in New York. On October, 31, 1995 (Nevada Day) I received a call from the innocence Project. They informed me what to do and to send whatever Documents I had that I thought would be important in their determination on whether they would take on Nolan Klein's case.

In the information I sent on or about November 7. It talked about the tampering Of Nolan Klein's evidence. In December, I received a letter from Barry Scheck dated November, 27, 1995 with a questioner for Nolan Klein to fill out. At this time they had not accepted Nolan Klein's case. I then Contacted the innocence Project to find out where they have their DNA testing done, just in case they didn't take on Nolan Klein's case.

On or about December 6, 1996, I called and left am message, asking where they have their DNA conducted. I received a call from one Jonas Kant, Asst. Director of the innocence Project. I explained to Mr. Kant about the circumstances involving Nolan Klein's blood viles, and the filters being removed from the cigarette butts. But, I was accidentally given a copy of the medical report on Theresa Rodela, from detective Jenkins and it showed that there was some semen found and we wanted to have it tested. Because I was informed back during Nolan's trial that there wasn't anything to test, yet, the reports I have, showed their was something. I told Mr. Kant that on November 9, 1995, I had filed a motion for discovery on Nolan Klein's Exculpatory evidence and they hadn't responded yet. Mr. Kant asked me if I was an attorney. I told him no, that I was Nolan's sister. We discussed the cigarette buttes along with

the opening of Nolan's sealed exhibit being opened and the possibility that the evidence might be tainted.

During our conversation Mr. Kant gave me the name, address, and phone number, of where the innocence Project sends their evidence to for DNA testing. FORENSIC SCIENCE ASSC., 3053 Research Drive, RICHMOND, CA, 94806, phone Number, 510-222-8883. Along with that I was told by Mr. Kant that the information I had given him on Nolan's case(although he was not personally aware of it) was pretty far advanced. He stated that he did not know the status of Nolan's case but, we discussed what they would do if they were going to take his case, was they would send out Letters of preservation to where ever their was testing done. I told Mr. Kant that I was probably going to assume that they were not, so I wouldn't get my hopes up. So we were just going to go ahead and have the testing done.

On or about December 6, 1995, I contacted the Forensic Science Asscs. I talked to a Jenifer Mihalovich. I explained the situation to her as I did with Mr. Kant. During our conversation we discussed whether or not we can even trust it. But she did tell me that, it is very rare but, you can sometimes get saliva from the pieces that are left behind, If the person managed to get his saliva through the filters, but it has been known to happen. We discussed the amount of money. To have the cigarette butts tested would run around \$3500.00 and they could come up with nothing, and that they would like to have 100 heads and tails from the semen. But before the testing could be done they would need a \$500. deposit.

Shortly thereafter, I sent Nolan Klein the questionnaire I received from Barry Scheck at the Nevada State Prison in Carson City. When Nolan called me I explained my conversation with Mr. Kant and Ms. Mihalovich. Then towards the end of December 1995, The Letters of Preservations were sent out to Washoe Medical Center, For Theresa Rodela's, Washoe Crime Lab, Dave Atkinson, Maria Fasset, for the semen samples taken from Theresa Rodela, Reno Plasma or Nevada Plasma on Ricky Lee Zarsky, and to Dick at the Washoe County Courthouse, evidence room. (during this time we were going to wait to see if the Innocence Project was going to take Nolan's case, before we sent the deposit)

Then on or about the week of Feb. 10, 1996, Nolan Klein received a letter from Barry Scheck dated January. 1996, saying they have taken on his case. As the weeks went by (May) I contacted Mr. Kant at the innocence project to see if he would be interested in giving an interview with the Nevada Appeal's reporter Geoff Dornan. Again Mr. Kant and I talked. Geoff Dornan called and talked to Mr. Kant. But, Mr. Kant was not familiar with Nolan's case. but it was going to be assigned when school lets back in during the summer, then he'd talk to him.

Then in May I had another conversation with Mr. Kant he talked about Geoff Dornan and Nolan along with the new laws that he would like to see Nevada get. We discussed the law New York has that deals with admitting evidence anytime after conviction, preserving evidence, ect.. He told me that he Lived around here. Squaw Valley. He knew where the Ormsby House was and Jacks Bar in Carson City. All of this information that I got from Mr. Kant I relayed to Nolan Klein.

Then during the latter part of June or early part of July I was contacted By One Christine Doyle, from the innocence Project. She had been assigned to Nolan's case. During our conversation we discussed Nolan's case, including the fact, that Nolan evidence had been tampered with. I told her that I had filed a motion for discovery on November 9, 1995, and an Ethics complaint that was scheduled for July 19. Ms. Doyle asked me to send her a copy of the motion for Discovery and ethics complaint, which I did. Ms. Doyle called me to tell me they were getting ready to test Nolan's DNA and she wanted to know about our finances. I told her that Judge McGee's order granted the DNA testing so we weren't going to have to pay, but, that Washoe county would have to pay. Ms. Doyle said that's what the order says but, what it means, is that even though it was granted it is the responsibility of us or whoever wants to have it tested to pay, and that I could call Judge McGee and ask him about the order. On or about Monday July 8, 1996, I contacted Judge McGee's office to find out about the Order. But there was a recording saying that he was out of the office until I believe the week of July 22, 1996. So all of his business was being assigned to other Judges. So I then contacted Judge Stone. He confirmed what Ms. Doyle said, that it was the responsibility of whomever wanted to have it tested. I then contacted Ms. Doyle and informed her we were obtaining a bank loan to get it tested. It was during this conversation that Ms. Doyle and I really discussed what our options were. Since Nolan's evidence could have been made to appear it was him, and it could be used against him if it came back as his blood type. So it was left up to Nolan if he wanted to trust it and have the testing done. Ms. Doyle mentioned that Nolan's case could be reversed on that alone and if we didn't do the DNA testing that the Innocense Project wouldn't be able to help Nolan anymore, because they only work through DNA to exonerate inmates. I told her that we never wanted a technicality, that we always wanted to prove his innocence. Ms. Doyle Suggested that we get another Attorney to work on the exculpatory evidence end of it and in the meantime I would talk to Nolan and let her know what he wants to do.

I contacted Ms. Doyle and told her that Nolan wanted to have it tested. During this same time frame I contacted Joseph Plater 111.(In Feb or March the innocence Project contacted Mr. Plater I believe it might have been Jonas Kant) Nolan's post-conviction Attorney and he agreed to represent Nolan and to have Nolan file a motion to have him appointed. This was done on July 25, 1996.

I contacted Ms. Doyle again and told her that we got the bank loan and what nolan was doing to get Mr. Plater appointed. Then Mr. Plater could get the evidentiary hearing so we know whats going on with Nolan's evidence before she asks to have it tested. Ms. Doyle said that she she wanted a copy of the motion when Nolan filed it and she wouldn't do anything until we got Judge McGee's decision. x

During the beginning of August, I was contacted by Ms. Doyle. She said that she had received the motion Nolan had filed and she wanted to ask me a question as to where we got the name of the lab from. I told her that I got it from Jonas Kant in December 1995. I told her that my mom and I, in Sept. 1995, after my meeting with Det. Jenkins with the

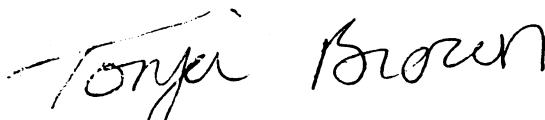
Reno Police dept and getting the test results on Theresa Rodela decided to have it tested. Then I told Nolan that we were going to pay to have it tested. This is when Nolan told me about what he remembered about the Judges order on the DNA (On November 2, 1995 I obtained a copy of the DNA court order). I told her about the woman at the forensic Lab. Ms. Doyle asked me if she was the receptionist at the lab. I told her I didn't think so. That I gotten the impression she was a technician. I asked Ms. Doyle if they had changed to lab where they conduct the DNA testing. She said no. She said that's all she wanted to know. The next thing I know is that I get a call tonight from Nolan at the Ely State Prison saying that he just received a copy of the letter from Barry Scheck to you. Hopefully, my letter will clear up any misunderstandings and Nolan Kleins' statement is correct, because everything I told him is what I was told.

Someone has done something with Nolan Klein's evidence. I know it. I have the proof. Because on April 4, 1989 and Jan. 1990 through Dick ? help at the Washoe County Courthouse I have obtained photographs photocopies of ALL THE EVIDENCE AND THOSE FILTERS WERE THERE AND ATTACHED TO TWO CIGARETTE BUTTS AND NOLAN'S ENVELOPES WERE SEALED NOW THERE OPENED. and we are still willing to have this tested.

Perhaps now we can get this all cleared up. Since you, yourself Judge McGee, are somewhat familiar with what has happened to Nolan Klein's evidence. This is according to your secretary confirming that you did receive a letter from Reno Police Cheif Nile Carson to Judge Mills Lane. I am still wanting to discuss this but, as you already know, District Attorney, Dick Gammick, refuses to meet with us and will not respond to Nolan Klein without an Attorney. (per March, 1996, Phone coversation with Jackie your Secretary) and you will not have ex-parte communications without Mr. Gammick, being there. (Per conversation with your secretary, Jackie)

Thank you for your time regarding this very important matter.

dated; August 16, 1996



Tonja Brown
3310 Surrey Lane
Carson City, NV, 89706
702-882-2744

cc;
Barry Scheck
BENJAMIN N. CARDOAO SCHOOL OF LAW
THE INNOCENCE PROJECT
55 Fifth Ave. room 1701
New York, New York 10003
(212) 790-0368
file

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, decision. 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, Gary 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**

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.

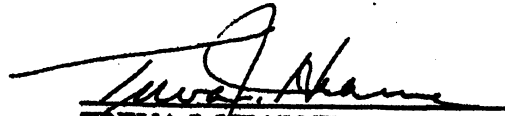
1. I am an attorney licensed in the States of Nevada and California.
2. I was retained in the regular course of business to represent the authors for the manuscript of the Nolan Klein story being written in part by Nolan Klein.
3. I was directed to review the evidence in this matter to determine if the 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.

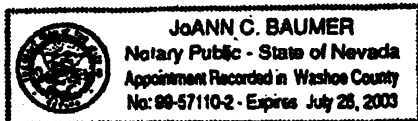
8. During the time that the book was being written, I noted that there was a newspaper article about Detective Boxx suing the Sparks Police Department. Michael Langton who was representing Detective Boxx is an attorney with whom I am acquainted. I told him that he might be interested in the book. I received 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



I believe that there can be no other reason why Mr. Klein's former Public Defender, Shelly O'Neill committed the perjury for these reasons below. She makes comments to the news media regarding the photo line up positive identification by the victim. Did Shelly believe that because Nolan Klein was ID by the victim, that Nolan Klein must have committed the crime? I believe so and that is why she did not do any investigation into his case before trial and then she lied that she had.

As it was pointed out during the October 30, 2007 Advisory Commission on Administration of Justice hearing, that this same photo line up of Mr. Klein had been shown to 128 individuals prior to appearing before you. That number changed when Mr. Kohn himself along with a woman, an Advocate for Victims Rights identified Mr. Klein from that very same photo line up that was shown to the victim, now making it 137 people.

Below are the snippets from the book TO PROVE HIS INNOCENCE. Starting first with former public defender, Shelly O'Neill and her comments regarding the photo lineup.

As a result of his review of the material, the following Nevada Appeal article ran on the 26th of July 1993:

"The victims testified at trial that the perpetrator looked like a thousand other men and that they didn't get a good look at him." Yet nonetheless, they positively identified Klein as the man who raped one of them and robbed the Sparks shoe store, Brown said.

The victims described the suspect as having chipped front teeth, brown eyes, hair parted on the side and beard stubble, yet Klein did not have chipped teeth, and had blue eyes and an approximately three inch beard when the crime occurred,

June 21, 1993, Sparks Tribune: RAPIST'S SISTER PUSHES CASE AGAINST DEFENDER,

"There is no doubt in my mind he is innocent," Brown said.

The two victims said otherwise, picking Klein out of a lineup, O'Neill said.

"There was nothing I could do to get around the photo ID," she said. "After all was said and done the jury believed those two little victims."

On November 7, 1993 the Nevada Appeal carried the following story:

Public Defender Shelly O'Neill said, "Klein believes I have damaged his reputation and assumedly wants money for this transgression," she said. "...The positive identification of Klein was insurmountable"

DISCREPANCIES between the composite suspect and the defendant Mr. Nolan Klein

Victim #1 Theresa May 9, 1988

Victim #2 Bridgette

Victim #3 case # 88-4238 April 21, 1988

Victim #4 Terri Colgrove

Victim #5 case 87-11777 November 18, 1987

Age: 30-35

Race: White

Sex: Male

Height: 5'5" - 5'10"

Weight: 135-140

Hair: Brown, sandy blonde

Eyes: Brown, dark

Facial Hair: 2-3 day old beard Stubbles, unshaven.

Build: Slender

Clothing: Levi jeans, white T-shirt, levi jean jacket, tennis shoes, brown belt, red/white flannel jacket.

Weapon: Red and Black knife, Exhibit C-2, simulated hand gun Exhibit H

Vehicle: Possible 1965-1967 Bonneville, BENCH seat April 21, 1988, Exhibit A-2 (c)

Location: Prater Way, Sparks, Prater and McCarran, Sparks, Oddie and El Rancho, Sparks.

Similarities: All 5 suspects have brown/dark eyes, hair parted on the side, brown/sandy blonde

hair, 2-3 day old beard stubble, unshaven levi's and t-shirt, in his early thirties.
crime located in Sparks, NV.

SUSPECTS from victims 1, 2,&3 have BROWN EYES, CHIPPED FRONT TEETH
SOMETHING WRONG WITH HIS MOUTH, RED AND BLACK KNIFE, GAVE A NAME,
COMPOSITES MATCH THAT OF SUSPECT RICKY LEE ZARSKY PHOTOGRAPHS.

Victim's # 1 & 2 stated that the suspect was very dirty.

Victim #3 was withheld from the defense and jury. Exhibit C-5

Victims #4 said she saw a picture of him (composite) and it was the same man. Zarsky? This
information was withheld from the defense and jury. Exhibit G

Victim #5 composite resembles the same composites done from victims #1-4

Victim #5 was withheld from the defense and jury. Exhibit H

All of these cases were combined and placed in one file that came forward at the 1991 Post-
Conviction Hearing.

Identifying marks: CHIPPED FRONT TEETH, SOMETHING WRONG WITH HIS MOUTH.

Eyewitnesses: Victim's #1 Theresa, Victim #2 Bridgette Exhibit 1, 2, 3, 4, & C-1 - C-5

Detective Sherman Boxx identified the Ricky Lee Zarsky photograph's from the Nevada Plasma
and Reno Plasma Center resembling that of the Composites from all three victims. Detective
Boxx put together 3 separate photo lineups. Two of the three photo line ups were shown to
victim #2. (The TAINTED photo line up that Mr. Klein appeared in was shown only to victim
#1, wherein, she positively identified Mr. Klein. Just as Commissioner/Public Defender Phil
Kohn has along with 132 other people.) Exhibit #2, 3, 5, 7, & Exhibit D

Detective was aware of Victim # 3 that she was never shown any photo line up of Mr. Klein,
because, she had seen him in person and his vehicle and had CLEARED MR. KLEIN on May 22,
1988. This eyewitness could not go to the jury, because, this would have supported Mr. Klein's
defense on MISTAKEN IDENTITY when all three victims stated that he had something wrong
with his mouth and chipped teeth and brandished red and black knife. Exhibit 3, C-2 & D

for April 21, 1988 statement that is on file in the 117 pages of exhibits.

Detective Frank Torres: Compiled the composite sketch from victim's 1&2 Exhibit 5

This report Exhibit D on Mr. Ricky Lee Zarsky was withheld from the defense and jury. DA's
response to the Supreme Court on the prime suspect Zarsky . "For some reason, this issue was
not addressed by Judge McGee in his Order Denying Post-Conviction Relief. See Exhibit E

PRIME SUSPECT: RICKY LEE ZARSKY Exhibit D disappeared the day after the crime never
to be seen. After the hearing I went to find Zarsky. In 1991 according to the Karl's Silver Club
Personal Department Mr. Zarsky's NEVER PICKED UP OR SENT FOR HIS LAST
PAYCHECK. By law, they were required to hold it for him.

I have since then ran a check on Mr. Zarsky thru his SSN. I know that since, May 9, 1988. Mr. Zarsky has never gone by the spelling of Ricky Lee Zarsky the name that was on the May 10, 1988 police report, Exhibit D. He is continuing to use different spellings of his name and changing his name around, such as, Lee Zarsky among other spellings, however, he has continued to use his SSN for the different spellings. In the most recent search he is going by the name Rickey Zarsky. Exhibit I

Suspect/Defendant: NOLAN KLEIN

Age: 33

Race: White

Sex: Male

Height: 5'11"

Weight: 150

Hair: Blonde

Eyes: Blue, bright

Facial Hair: 2-3 inch BEARD

Build: slender

Clothing: Levi's and black T-shirt

Weapon: Owned a brown wooden buck knife with brass ends

Vehicle: 1967 Impala with BUCKET seats and a counsel

Location: Jack's Bar, Carson City, NV

Similarities: Within in the age, height, weight group, wore similar type clothing, owned a knife, and drove a car similar to the one victim #3 had gotten into and cleared Mr. Klein and his car on May 22, 1988.

Identifying Marks: Tattoo's, It should be noted that Mr. Klein HAD NOTHING WRONG with his mouth or teeth, However, this was not presented during the trial

Eyewitnesses: Barbara Hillman, Bartender at Jacks Bar Exhibit # 9

William Richards, playing pool with Mr. Klein. Exhibit # 10
John Darnell, present at Jack's Bar in Carson City. Exhibit # 11
Eunice Wilkinson, Mother and was present at Jack's Bar. Exhibit # 12
Tonja Brown, sister, called Mr. Klein at Jack's Bar Exhibit # 13
CarlaJo Marsh, eyewitness that was never called to testify
at trial, however, testified at Post-Conviction Hearing June
20, 1991. Exhibit J
Cindy Haas, eyewitness that was never called to testify at
Trial, however, evidence was presented at Post-Conviction Exhibit K
Barbara Hillman gave an affidavit that she was shown a picture
(Composite) by Ms. Wilkinson in the Summer of 1988. She said
that the reason when she said no when she was asked if the
composite looked like Mr. Klein, was because, Mr. Klein had a

full beard on May 9, 1988 and the photo(composite) did not.
Other witnesses came forward to testify that Mr. Klein was seen
having a full beard weeks before the May 9th crime, including the
day of to several day's later. Exhibit 7 photo line up shows beard.
Composite sketch does not.

Ms. Shelly O'Neill, Public Defender, testified with regard to why
She did not present the beard evidence, Prime suspect Ricky Lee
Zarsky and inconsistencies in the victims testimonies. Exhibit B

Mr. Don Lutzenberg, saw the suspect and wrote down Vehicle licence plate.
Mr. Lutzenberg was never contacted by the defense. Statement can be found on file.

(Tonja Brown exhibit)

Bartender from the Abbey Hotel, identified the composite as one RICKY LEE ZARSKY. This
witness was withheld from the defense and jury. Exhibit D

Jeff Petty was the room mate of Mr. Zarsky. Mr. Petty informed the police the Mr. Zarsky was
selling his blood that day and had sold his blood back in April. Which would have shown to the
jury that Mr. Zarsky was desperate for MONEY.
This witness was withheld from the defense and jury. Exhibit D

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 trial, the prosecutor 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. For instance, the sexual assault
victim ("Victim 1") described the perpetrator to police on the night of the crime as having broken
front teeth or something else wrong with them, and that he had brown eyes. She acknowledged
that Mr. Klein has blue eyes, even though she could not see that well from the distance in the
courtroom, and was actually closer at the time of the crimes.

She went on to state that she was sure the suspect had dark eyes and that Mr. Klein has blue eyes. Victim 1 picked Mr. Klein out of the photo line-up prepared by Detective Boxx, but acknowledged that Boxx had informed her that they had arrested a man for the crime the night before, but had to let him leave. She had worked 12 hours that day, she did not turn around and look at the man, and only saw the man clearly when he came to the bathroom door, but after she came out it was dark in the back room and there wasn't enough light to see. The robbery victim ("Victim 2") said she got a good look at the man that he had brown eyes and the only difference in his appearance in court was that he was clean shaven. She had seen Mr. Klein on May 22, 1988, just two weeks after the crime, but could not identify him as the suspect because he was cleaner, which was no different than his appearance in court, nor was she able to identify Klein from any photo line-ups, because, Mr. Klein was not in the first two photo line ups because Detective Boxx said, "Because she had seen the defendant on the day the picture was taken, and I felt that would taint whether or not she

could objectively pick the subject out." When asked, "So you were going on victim 1 identity alone?" Detective Boxx, answered, "yes". If you look at Exhibit 7 the photo line up picture #3 showing Mr. Klein with a full beard, you will see that he is cut off at the chin, he is a the darkest picture compared to the other photo's making it a very suggestive photo line up. When you compare this Exhibit 7 to Exhibit 3 the composite sketch they are not the same person. If you look at Exhibits N & O, Mr. Klein is seen with no broken teeth or anything wrong with his mouth.

Then you must take into consideration the person who put together the photo line up Detective Frank Torres' testimony, that he even states that it was SOMEWHAT UNUSUAL that Detective Boxx put a photo line up together with all the men having blue eyes when the suspect had either brown or dark eyes. Exhibit 6
Essentially, Victim #2 was unable to identify Mr. Klein until she saw him at preliminary hearing dressed in jail garb, yet filed and served a civil lawsuit on Mr. Klein prior to ever identifying him in court, from which Mr. Klein was dismissed after the preliminary hearing.

Furthermore, Victim #2 under cross when asked if "Do you believe that your composite looks like my client?" Victim #2 stated, "Somewhat" ABOUT A THOUSAND OTHER GUYS AS WELL? Victim #2 answered, "YEAH" Exhibit 2
This is what Judge Charles McGee classify's as an IN COURT IDENTIFICATION THAT WAS POWERFUL AND OVERWHELMING. Exhibit P

Because of these discrepancies in the victims' testimony, the prosecutor 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 Mr. Klein's physical characteristics, the victims were still correct in their identification of Mr. Klein.

This was a close case. There was no physical or forensic evidence that

linked Mr. Klein to the crime. The jury seemed concerned about convicting Mr. Klein, whereas it appears that they were giving Mr. Klein's alibi defense serious consideration, in that, on the first day of deliberations the jury deliberated approximately nine (9) hours before informing the court that 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. The jury chose Bill Richards. The jury reached a verdict on January 27, 1989, after Bill Richards' testimony was read back.

However, one must wonder what would the outcome have been if all of the evidence from all of the witnesses and victims had testified at trial? Would the jury have convicted Mr. Klein if they had known that he had a full beard at the time of the crime, which was inconsistent with the suspect having a STUBBLE. Would the jury have convicted Mr. Klein if they had known that he had nothing wrong with his teeth or mouth? Would the jury have convicted Mr. Klein if they had been presented with all of the evidence including what they had requested the testimonies of both

defense witnesses Barbara Hillman and Bill Richards? No! because, clearly Mr. Klein did not fit the description. The positive identification came by way of a TAINTED PHOTO LINE UP. and Mr. Klein had been cleared of other crimes when the main detective, Detective Boxx in the case believed Mr. Klein was responsible for those crimes as well. Otherwise, he would not have placed these other crimes in the same file and made reference to the cases being similar.

Recently I have read the June 3, 2008 story "Conviction Overturned for prosecution and judicial error". When you see the evidence from the case of Mr. Klein and compare it to the most recent Nevada Supreme Court decision of Noe Martinez's that case pales in comparison with the evidence that is being presented to this commission today. The positive identification thru a TAINTED PHOTO LINE UP was the only evidence that they had against Mr. Klein. The photo line up was SOOOOO SUGGESTIVE, that 133 individuals and some of these people you personally know, Commissioner/Public Defender Phil Kohn, have picked Mr. Klein out of the same photo line up that was shown to victim 1. This photo line up array was not put together to match the composite sketch of the suspect, but, rather to match that of Mr. Nolan Klein in order to get Victim #1 to positively identify him, because, WITHOUT THAT IDENTIFICATION THERE WAS NOT CASE!!!!!!!!!!!!!!!!!!!!!!

You have to question the in court identification of victim #2 who could not identify Mr. Klein until he was already in jail garb at his preliminary hearing, yet, she had filed a civil suit against him before she could identify him in court. These victim's 1 & 2 were awarded \$510,000.00 @ 12% and \$265,000.00 @ 12% respectively until paid in full.

According to the post conviction hearing Order Judge, Charles McGee, stated that the IN COURT identification was powerful and overwhelming. Exhibit P. Over the years the wrongful identification thru eyewitness testimony and photo line ups have been WRONG and it is thru DNA evidence that these individuals are being freed from their wrongful conviction.

MR. KLEIN IS INNOCENT! I ASK THAT YOU CONSIDER MR. KLEIN'S CASE AS PART OF THE CASE STUDY ON WRONGFUL CONVICTIONS THAT MR. KOHN AND MR. BOSLER HAVE ASKED OF THIS COMMISSION DURING THE OCTOBER 2007 Hearing.

It should also be noted, that witness Florence Kimball testified during the 1991 Post-conviction hearing that on Thursday, May 5, 1988 she had yelled at a fully bearded young man who was working on his car in the Brown's driveway to get the Brown's dog, Brandy, out of the street, because she was eating garbage that had been dropped by the garbage collectors.

Ms. Kimball said she did not know who this person was referring to Nolan Klein, she thought he was my husband, Robert, because, she had never personally met my husband. She and I acknowledge that on Monday, May 9, 1988 that I had noticed that our dog, Brandy had not been eating or drinking much for a couple days and had just been informed by Nolan Klein about the incident regarding Brandy and the garbage that she had eaten.

I then went over to speak with her about what the dog had eaten the other day. During our conversation Mr. Nolan Klein had walked out of the front door of the house when Ms. Kimball stated that she was very upset with him for letting the dog out into the street the other day. She said that the Brandy had appeared to have eaten some rib bones.

I told Ms. Kimball that if Brandy was not feeling any better I would take her to the vets. Brandy was admitted into the Sierra Veterinary Hospital on May 10, 1988 where she remained for a couple of days. The Vet bill verified these dates where the Brandy remained for a few days.

Respectfully,

Tonja Brown
2907 Lukens Lane
Carson City, NV 89706
775-882-2744

Clark, Angela

From:
Sent:
To:

Subject:

Please submit this as part of the record under Prosecuting Attorney's proposed DNA bill too for the upcoming September 22, 2009 hearing.

Tonja Brown

Ten months since evidence missing in Fallon vault-still no answers

Dunbar Report looks into missing evidence case
4:41

In-depth Dunbar Report looks into why ten months after evidence mysteriously vanished from under the watch of the Department of Public Safety, Attorney General has yet to report any findings.

Many questions remain about the case that involves missing drugs and as many as 90 guns disappearing from a storage vault in Fallon.

Ron Cuzze, president of Nevada Law Enforcement Officers' Association says the attorney general's office has had ample time to do an investigation.

"I know who else is involved and there's not that many people so why it's taking so long is beyond me," Dunlap said.

News 4 did have an interview scheduled with current Attorney General, Catherine Cortez Masto to discuss this case. She cancelled that interview saying she couldn't talk about it.

Clark, Angela

From:
Sent:
To:

Subject:

The Advisory Commission on the Administration of Justice

I would to have this placed on the record for the upcoming September 22, 2009 hearing.

The proposed DNA bill by the Prosecuting Attorneys must include The Index Tracking Cards that should have been placed in that bill to begin with. Washoe County Dick Gammick has known for years that there has been a problem with evidence being stored in Washoe County. He has personally gotten into evidence that has contained DNA evidence when there had been court order in effect that no evidence was to be sent by the Nevada Supreme Court. So why was Washoe County Dick Gammick into the evidence again, per Ms. Treva Hearne's affidavit that has already been provided to you? Without securing the Index Tracking Cards, Washoe County District Attorney, Dick Gammick would be able to continue on without anyone being any wiser. This must stop!

While the bill draft resolution was being considered the debate raged over the handling of the exculpatory evidence in the Mazzan trial. And the finger was being pointed directly at the former district attorney, Mills Lane. Gammick was, again, to declare that the legislation was not necessary because there was no evidence missing in the courthouse, at least, to his knowledge. Tonja lay in wait and as soon as these words left his lips, she called in to talk to Gammick on the air. The District Attorney became quite patronizing of=2 Oher and assured her that no evidence was missing and that nothing had been tampered with in the evidence room at the Washoe County Courthouse. He denied his previous statements about his office investigating the disappearance of Nolan's DNA evidence, but Tonja let him that she had that tape and he could listen to what he said earlier. And on that note she asked Gammick a quick question. "Then why did your office concede to the fact the evidence was now gone?" At that, he said nothing further. She reminded the prosecutor and the rest of the judicial system that they weren't just politicians allowed to tailor their "truth" to the audience of the moment. Tonja wanted to make certain that they all remembered that their acts and judgments affected real people every day.

Tonja Brown

Clark, Angela

From:
Sent:
To:

Subject:

The Advisory Commission on the Administration of Justice

I would like to have this placed on the record under the eyewitness Agenda Item and Preserving DNA Evidence for the upcoming September 22, 2009 hearing.

Prior to moving to Nevada an innocent man was tormented by law officials who believed he was responsible for the rape of a young girl and the murder of two fellow police officers in 1957. For Forty seven years a man was considered by many Police Officers a cop killer.

This man was TRULY INNOCENT OF THE CRIME. The police tried to manipulate the victim to identify this man. Had they been able to succeed this INNOCENT man would have been executed and not able to speak before you has he has done in the past. This INNOCENT MAN, IS DONALD HINTON OF THE SPARTACUS PROJECT.

Below is a story on the real killer who was caught after 47 years thru DNA.

Tonja Brown

From Reader's Digest - September 2005

The Oldest Cold Case in History

The Heinous Crime

When the cold case unit was formed in Los Angeles, detectives faced a daunting backlog of 9,000 unsolved murder cases dating back four decades. But killings don't get any colder than the 1957 murder of two young cops during a routine traffic stop. Investigators had all but given up on the case -- one of the oldest unsolved homicides in the country -- when modern technology finally caught up with justice.

The story begins 48 years ago, on July 21, in a desolate area of an oil field in Hawthorne, California. With its view of the ocean and glittering city lights, the spot made a perfect lovers' lane, which is where, around midnight, two teenage couples in a 1949 Ford were parked.

They weren't alone for long. Out of the darkness, a man in his 20s, with a pompadour hairstyle, approached the car and, in a distinct Southern drawl the teenagers would never forget, said all he wanted to do was rob them. He pointed his .22, told the frightened youths to hand over their watches and cash, then made himself out to be a liar.

Snapping off pieces of both duct and surgical tape to strap over their eyes and mouths, he forced three of them, two boys and a girl, into the backseat, while he raped the other girl in the front. Terrified, the youths figured they'd be killed so there would be no witnesses.

Instead, the intruder ordered the teenagers to take off everything but their underwear, and left them, nearly naked, in the middle of nowhere as he sped away in their Ford.

Two miles to the west, in the city of El Segundo, officers Richard Phillips, 29, and Milton Curtis, 25, were patrolling the streets when they saw a man in a Ford run a red light. It was 1:30 a.m. They pulled the car over and noticed clothes -- a yellow sundress, a slip and a man's sport shirt -- strewn across the backseat. The officers ordered the

driver out of the car, and as Curtis used his radio to call headquarters, the man pulled out his .22 and shot Phillips three times in the back. Then he pointed the gun inside the patrol car where Curtis was sitting and fired three more times, striking him in the chest.

Phillips managed to discharge his service revolver three times in the direction of the man -- who by then was climbing back behind the wheel of the Ford -- before he fell to the ground. With both officers down, the driver took off. Four blocks away, he abandoned the car and fled on foot.

Back in the oil field, the teenagers eventually stumbled upon a security guard and asked for help. Still dazed when the police showed up, the youths struggled to recall physical details of the perpetrator in hopes a composite sketch would lead to his arrest.

The young rape victim was examined, but in the 1950s, says Darren Levine, the deputy DA assigned to the case in 2002, "the way they handled a rape case was much different from today. They gave back the girl's semen-stained underpants and slip, so we never had that forensic evidence to work with later on."

Keith Curtis, now 53, was only five, and his sister two, when he heard a knock on the door at four in the morning. "I was awakened by voices and my mother's crying," he recalls. His mother was so rattled she couldn't get the front door unlocked. "What's wrong?" she called to the El Segundo police chief. "Is my husband hurt?"

"No, it's worse than that," said the chief, who, at a house a mile away, had just delivered the same devastating news to the widow of Officer Phillips and his three young children.

"I was confused for a while," Curtis says. "My mother kept saying my father had just gone away on a trip. Finally, she told me he'd gone to heaven and couldn't come home."

The killing of the policemen made headlines in Southern California for months. In the abandoned Ford, detectives found three bullet holes from the shots Phillips fired -- two in the rear window and one in the trunk -- but located only two projectiles. Where was the third? The answer would eventually stun them. Also in the Ford, torn clothing and pieces of tape were found, along with three partial fingerprints on the steering wheel and a car panel. But with no computer databases against which to check the prints, police simply sealed and stored them.

Over the next few years, as detectives worked the case, bits of evidence surfaced. A month after the murders, a woman gardening in her backyard near where the Ford was abandoned found a man's watch but made no connection to the crimes. Two years later, her husband was clearing brush in the yard when he discovered a piece of a .22-caliber handgun but, like his wife, didn't think much about it and put it on a shelf in the garage.

In 1960, the couple's son was working outside when he found the revolver's rusty cylinder. The boy's father, having seen news stories about the officers' deaths, put two and two together. He reasoned that, with his house located close to the crime scene, the suspect had tossed the incriminating evidence in the backyard as he fled. The man phoned police.

When a ballistics check confirmed that markings from rounds fired by the gun were consistent with bullets removed from Curtis's and Phillips's bodies, elated police finally had their first break.

Investigators were able to trace the murder weapon to a Shreveport, Louisiana, Sears store, where records indicated it had been purchased three days prior to the killings. But because identification wasn't necessary for the purchase, the customer had simply signed the receipt, "G. D. Wilson," in wide-spaced lettering.

the way they handled a rape case was much different from today. They gave back the girl's semen-stained underpants and slip, so we never had that forensic evidence to work with later on. Investigators located the clerk who handled the transaction and, amazingly, he recalled that the purchaser was a man with a pompadour who seemed in a hurry to get out of town. But the trail went dead when those leads led nowhere, sending the case into cold storage for another 42 years.

An Unlikely Tip

The backlog of cold cases grows longer each year. Of the more than 560 homicides committed

annually in Los Angeles, almost 50 percent go unsolved.

Lisa Kahn, head of the DA's forensic sciences division, and David Lambkin of LAPD's cold case unit, are leading the effort to crack the city's cold cases by using modern technology, including tracking software, DNA evidence (blood, hair and semen) and computerized databases of fingerprints and ballistics records. The work began in 2001 with a \$50 million state grant to cover the costs of examining DNA in unsolved sexual assault cases. The grant allowed detectives to review cases using a state database containing 300,000 DNA samples from known offenders. To date, investigators in L.A. have solved 28 cold cases and are hopeful of solving another 50 this year.

Kahn first became fascinated with forensics when she tried a double rape case in the late '80s. It was the first case in L.A. County in which DNA was entered as evidence, and it introduced Kahn to the world of genetic profiling. Because the rapist wore a mask, his victims could not identify him. Kahn obtained blood samples from the suspect that, when tested against semen left in the victims' bodies, produced a DNA match.

"I look at an old case like a big forensic puzzle," says Kahn. "You can tell a lot from DNA testing -- whether there were multiple perpetrators, for example, or whether a victim was killed, or dumped, at the scene."

Not all cold cases are solved using DNA. Fingerprint evidence can be a helpful tool, and it would prove key in the El Segundo officers' murder case. Before computerized fingerprint databases were developed in the mid-'80s, detectives had to come up with a suspect and then compare prints on file, often with limited results.

With advances in technology, however, fingerprints can now be scanned directly into huge computer systems. "We can take a fingerprint from a crime scene, process it and search it against prints in the database," says Lambkin, "which can tell us who the suspect is instead of vice versa."

That's precisely what happened in the 1957 case, which was reopened in the fall of 2002 after investigators, out of the blue, received a tip. A man dying of cancer informed police that his kid brother, years earlier, had boasted of killing the El Segundo officers. When detectives checked out the kid brother, they determined that he wasn't credible.

"He took credit for all sorts of crimes," says Deputy DA Levine, "including killing Robert Kennedy. But the tip, though irrelevant, stirred up interest in the case."

By then, fingerprint analysis had come a long way. In July 1999, the FBI completed compiling its Integrated Automated Fingerprint Identification System (IAFIS), a nationwide fingerprint database containing some 40 million prints of known offenders. Detectives assigned to the 1957 case ran its composite of the prints from the Ford through the database, then waited expectantly to see what would come back.

"I'll never forget the moment when I got the phone call from the crime lab analyst who said we had a match," recalls Lt. Craig Cleary, head of El Segundo's detective unit. "I thought he was kidding. 'Are you sure?' I asked."

"I'm certain," the analyst said.

The print belonged to a man named Gerald F. Mason who lived in Columbia, South Carolina. In 1956, a year before the officers' killings, a then-22-year-old Mason had been arrested in South Carolina for commercial burglary (the only other crime on his record), so his fingerprints were on file in that state. But those prints did not make their way to the national database until many years later.

Detectives began tracking Mason and soon learned more details about him. He was 68, weighed 195 pounds, had been married for 40 years, and had two grown children and several grandchildren. After working in gas stations in his youth, he had eventually bought a service station chain, an investment that made him a wealthy man. In fact, he was well known and respected in Columbia. Upon retiring a few years earlier, he had begun spending much of his time bowling and playing golf.

The first call Cleary made after identifying Mason was to the family of Officer Milton Curtis. "I was intrigued but wary," says Keith Curtis, who today works for a heavy equipment company, is married and has a 19-year-old daughter. Cleary also phoned Richard Phillips's family. By then, his widow was in her 70s, and his three children were middle-aged. "I talked to her son, and he almost hung up on me," Cleary says. "He thought it was a prank call. But the more I talked, the more he realized this might be true."

the way they handled a rape case was much different from today. They gave back the girl's semen-stained underpants and slip, so we never had that forensic evidence to work with later on.

Justice Is Finally Served

"I'm not a religious guy," explains Deputy DA Levine, "but this was one of those cases where you feel someone above is watching over you. All the stars aligned to make it work."

Still, Levine wanted more evidence. "I wanted to make sure, 46 years later, before arresting someone who is a successful businessman and a pillar of his community, that we had a rock-solid case that would go to trial and end with a conviction." Investigators tracked down as many witnesses as they could, but several, including the 16-year-old boy who had owned the Ford, had died.

One witness -- the Sears clerk with the excellent memory -- was not only still alive, but he had risen through the ranks to become a VP of the retail chain. All those years later, the man still remembered Mason, his Southern accent and that he appeared in a hurry. Having learned that Mason had been living at a YMCA in Columbia when he was arrested in 1956, detectives began checking other YMCAs to see if they could place him near the Sears in Shreveport, where the murder weapon had been purchased.

Sure enough, on the registry of a YMCA right across from the store, they spotted the signature of one "George D. Wilson." Detectives compared the signature with the one on the gun sales form and with Mason's signature on a recent business document. All three matched.

"We knew we had him then," Levine says. Detectives are still not exactly sure why Mason had come west to California, but his journey across the United States, possibly to deal with a legal matter involving his mother, fit the time period of the crimes.

It was daybreak on January 29, 2003, when a group of eager officials, including Deputy DA Levine and Lieutenant Cleary, came to Mason's front door. "He had the deer-in-the-headlights look," Cleary recalls.

"We want to talk to you about the murder of two El Segundo police officers," one of the detectives said.

"He didn't deny it," Cleary says, "but we could tell he was shocked we'd solved the case after all these years."

At the local jail, officials searched Mason and found a circular scar, the size of a dime, on his back. In a later admission, Mason finally provided the answer to a question that had baffled investigators for decades. Phillips's third bullet, which police could find no evidence of at the scene of the crime, had struck Mason just below the right shoulder blade, and he still had the scar to prove it.

In March 2003, after waiving extradition, Mason was brought to Los Angeles, where he pleaded guilty to two counts of first-degree murder. He was not charged with rape and robbery because the victims didn't want to go through the ordeal of a trial. Sentenced to two life terms, Mason, as part of his plea agreement, is serving out his days in a South Carolina prison.

Mason declined to be interviewed for this story, but during his plea hearing he offered officials some insight, however credible, into his motive for the killings. "It wasn't premeditated at all," Mason told the officials. "[One of the officers] started pressing me...I was scared they came. I was really fearful."

As for robbing the teenagers and raping the 15-year-old girl, alcohol appears to have had an influence. "I really don't have an explanation for why this happened to them. I wish I did," Mason said. "I'm still trying to just figure out how I got there [in the oil field]."

I do recall being in Vegas. I feel like I have a memory of a liquor bottle in that field somewhere, [which] I left empty." What Mason seemed to imply was that the deadly events of that night in 1957 had occurred while he was in some kind of alcohol-induced haze.

In contrast, Keith Curtis's memory of his father has always been crystal clear. "I never gave up hope," he says. "I missed not having my dad around, and he missed a lot too. I just could never accept that someone had simply gotten away with his murder."

Clark, Angela

From:
Sent:
To:

Subject:

Attachments:



Letter to attorney,
Joe Plater...



Letter to attorney,
Joe Plater...



Judge McGee
receives my statem..



Judge McGee
receives my statem..



Judge McGee
receives my statem..



Judge McGee
receives my statem..

To the Advisory

Commission on the Administration of Justice.

To be placed on the record for the upcoming Advisory Commission hearing on September 22, 2009.

This is in reference to the proposed DNA bill by the Prosecuting Attorney's and why we must secure and maintain the "Index Tracking Cards" for future DNA testing.

We had a hearing held in April 1998 on the missing DNA evidence. McGee in his order dismissing the writ on the DNA evidence said we didn't want to have DNA testing until we discovered the evidence missing filters were missing. In my statement that I personally filed in Washoe District Court McGee knew for nearly two years that we were attempting to have DNA testing conducted in October 1995, prior to the discovery of the missing filter's November 1995. The Nevada Supreme Court upheld McGee's decision.

Nolan Klein's attorney, Joseph Plater received my phone bill showing that I had called the Innocence Project in October 1995. Plater never presented this phone bill or other evidence to support the bad faith issue and you cannot raise ineffective assistance of council.

It later would be learned that prior to the final decision from McGee dismissing the case in August 1998, Plater went to work for the opposition, District Attorney Dick Gammick weeks before the decision came down from Nolan Klein's motion for reconsideration. This would explain alot about why he didn't properly present the information that had been provided to him.

Also, it should be noted that in Summer of 1996 prior to my statement that was filed in Washoe District Court, I personally filed and Ethics Complaint against Judge Charles McGee, Judge Mills Lane. The Ethics Commission contacted Judge McGee and Judge Mills Lane to inform them of my complaint against them that it was out of their jurisdiction to do anything.

Judge McGee should have recused himself from ever hearing this case, especially, since the INDEX TRACKING CARDS would indicate that he and then District Attorney Mills Lane had requested the evidence after trial and the filters had been removed. Plater stated in court that he could not seem to locate Mr. Duer, Supervisor of the Evidence Room who was right there in the courthouse to testify as we had requested Plater to bring him in along with Gammick, Lane, Detectives Carson and Jenkins to explain what happened to the evidence.

We must SECURE DNA EVIDENCE FOR FUTURE TESTING AND MAKE THOSE HELD ACCOUNTABLE FOR ANY

WRONG DOINGS!

Tonja Brown
2907 Lukens Lane
Carson City, NV 89706

[Image Removed]

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