

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

Advisory Commission on Admin. of Justice  
Exhibit H pg 1 of 11 Date: 8-25-08  
Submitted by: T. Brown

**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 "Appf" 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.

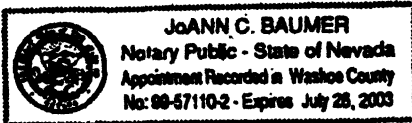
8. During the time that the book was being written, I noted that there was a newspaper article about Detective Boxx suing the Sparks Police Department. Michael Langton who was representing Detective Boxx is an attorney with whom I am acquainted. I told him that he might be interested in the book. I received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

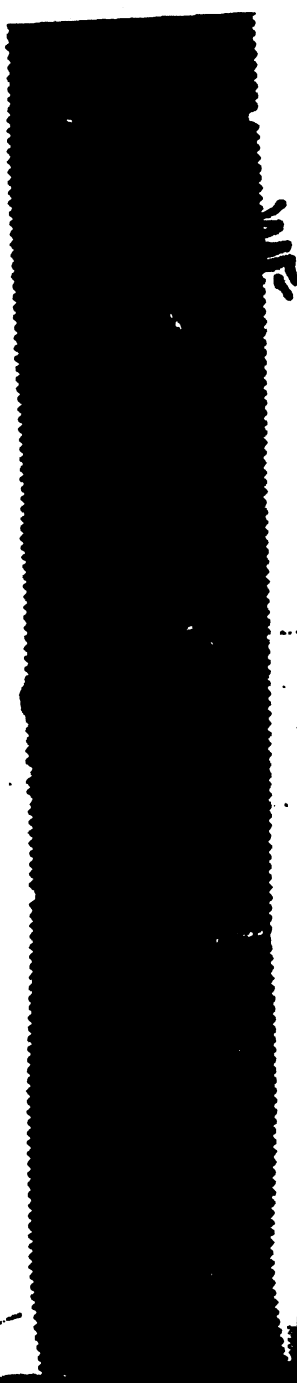
  
TREVA J. HEARNE

Subscribed and sworn to before me  
this 19<sup>th</sup> day of June, 2001.

  
Notary Public



PLEASE SEAL

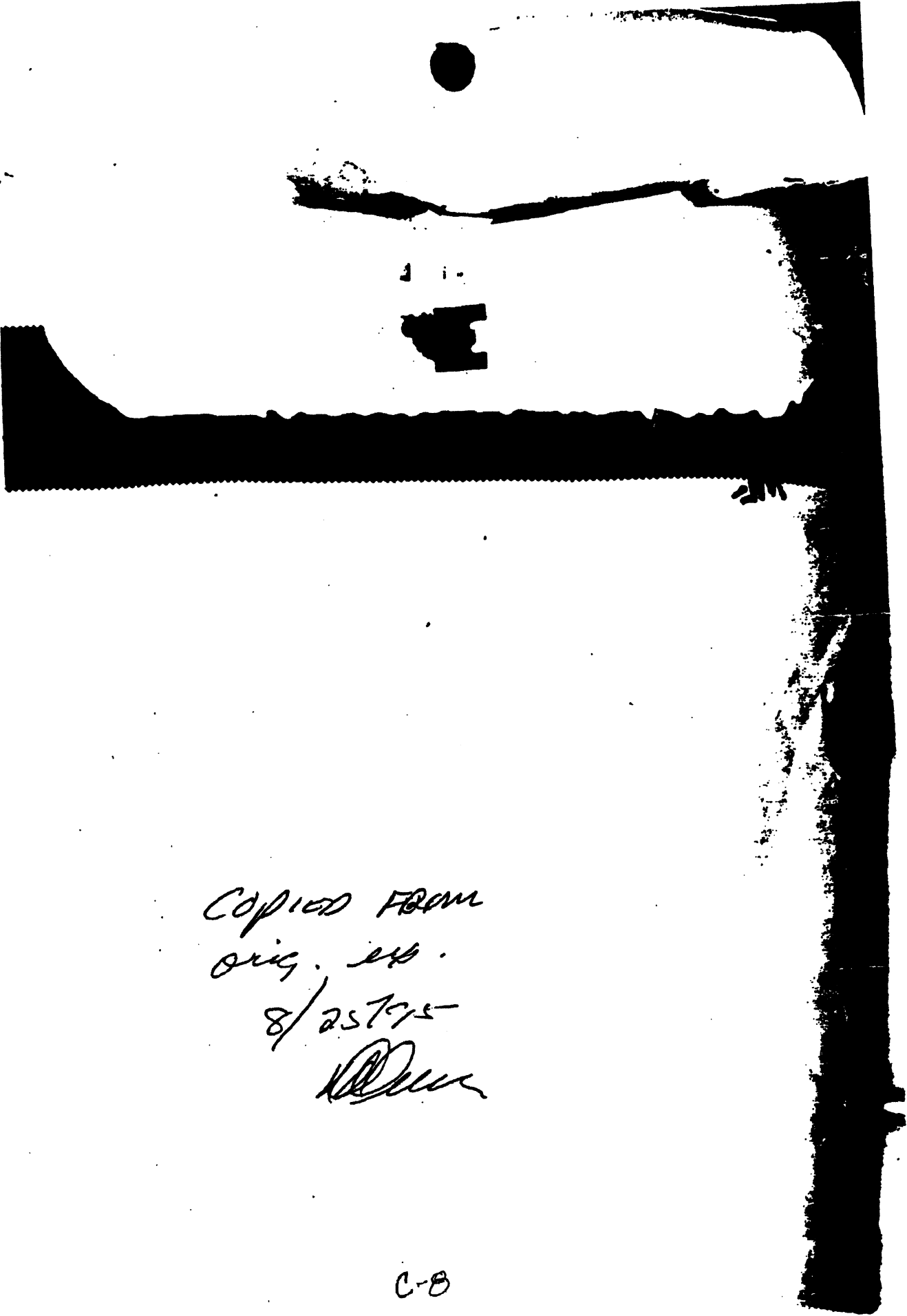


MP

4-4-89

C-7

COPIES TO BE MADE



Copied from  
orig. etc.  
8/25/75  
Dunn

C-8

LO946-88

Suspect's Public  
Control

David  
Attention

328-3001

MA



SPARKS POLICE DEPARTMENT  
EVIDENCE REPORT

STORAGE LOCATION:

CASE NO.

Env

88-4892

DATE OF OFFENSE 5-9-88	LOCATION OF OFFENSE 343 E Prater Wy	OFFENSE Battery / 1st Assault
VICTIM Kodjela, Theresa	ADDRESS 343 E Prater Wy	PHONE
SUSPECT unk	ID NO.	ARR. NO.
IMPOUNDING OFFICER'S NO. 100005		W.H. NO.

PROPERTY IMPOUNDED: Date: 5-9-88 Time: 2300  
From: 343 E Prater Wy

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

SPECIAL NOTATIONS:

SIGNATURE: *K. Jones*

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 T. 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>Danny Cook</i>	District Court	1-23-89 1045

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

The Following is the proposed DNA bill along with the minutes of the June 2008 Advisory Commission.

**BILL SUMMARY:** Revises the provisions of N.R.S. 176.0917 and N.R.S. 176.0918 pertaining to DNA Testing.

N.R.S. 176.0917 (ADD, or genetic marker analysis testing can be conducted by an independent forensic laboratory inside or outside the State of Nevada at the petitioner's request. If the petitioner received the death penalty the Department of Corrections incurs all costs.)

Sec. 1. The board of county commissioners of each county shall designate a forensic laboratory ADD: (or petitioner may request and pay for an independent forensic laboratory outside the State of Nevada.)

Sec. 2. (a) Must be operated by this State or one of its political subdivisions ADD: (or an independent forensic laboratory outside the State of Nevada at the petitioner's request and cost.)

N.R.S. 176.0918

Sec. 2. #1 A person convicted of a crime DELETE: (and under sentence of death) who meets the requirements of this section may file a post conviction petition requesting a genetic marker analysis of evidence within the possession or custody which may contain genetic marker information relating to the investigation or prosecution ADD: (or the exoneration) that resulted in the judgement of conviction, DELETE: (and) ADD: (or) sentence of death. The petition, ADD: (if sentence is death) must include, without limitation, the date scheduled for the execution if it has been scheduled.

Sec. 6. The court shall order a genetic marker analysis if the ADD: (petitioner requests and incurs all costs or the) court finds that:

Sec. 7. #1 Be operated by this State or one of its political subdivisions, ADD: (or an independent forensic laboratory outside the State of Nevada at the petitioner's request and petitioner incurs all costs.)

Sec. 7. (c) [2] Include such analysis, testing and comparison of genetic marker information contained in the evidence and the genetic marker information of the petitioner as the Court ADD: (or the petitioner requests and the petitioner incurs all costs.)

Sec. 9. ADD: (If) [t]he Court shall dismiss a petition filed pursuant to this section DELETE (if:) ADD: (the petitioner may request for genetic marker testing and the petitioner incurs all costs:)

Sec. 10. For the purpose of a genetic marker analysis pursuant to this section, a person under sentence of death ADD: (or any crime)

Sec. 11. The expens

e of analysis pursuant to this section is a charge against ADD: ( the county where the petitioner was convicted of. Unless the Court denies petitioner's request for genetic marker testing then the petitioner incurs all costs.)

Sec. 12 DELETE (and under sentence of death.)

Contact: Tonja Brown  
2907 Lukens Lane  
Carson City, NV 89706

#### HISTORICAL INFORMATION

1. From: The Legislative Counsel Bureau

Sent: Thu 8/31/2006 8:46 AM

Subject: Research Request: Post-Conviction DNA Testing

<<NCSL post-conviction DNA testing.pdf>> <<Washington Code 10.73.170.pdf>> <<Tennessee Code 40-30-301 et al..pdf>>

M E M O R A N D U M

DATE: August 31, 2006

SUBJECT: Post-Conviction DNA Testing

This memorandum is in response to your request for information on whether or not any states allow persons not on death row to request a DNA sample.

According to the National Conference of State Legislatures (NCSL), 35 states currently have a set of procedural rules for post-conviction relief. Since 2000, due to the advancement of DNA technology, many states have updated their post-conviction DNA testing procedures.

Of the 35 states that have rules regarding post-conviction relief, 32 allow persons not on death row to request a DNA sample. Three states currently limit the ability to petition a court for post-conviction DNA testing to individuals who are convicted and sentenced to death. Those states include: Kentucky, Nevada, and Pennsylvania.

In 2001, tw

o states amended their post-conviction DNA testing statutes to include persons other than those sentenced to death.

Tennessee's definition now includes any offender convicted of and sentenced for any criminal offense. Similarly,

Washington's definition now allows any incarcerated felon to petition the court for post-conviction DNA testing.

Attached is a summary of post-conviction DNA testing procedural rules compiled by NCSL, the Washington statute related to DNA testing requests (Revised Code of Washington 10.73.170), and the Tennessee Post-Conviction DNA Analysis Act of

2001□ (Tennessee Code Annotated 40-30-301 through 40-30-313).

The minutes:

Tonja Brown commented on Agenda Item VI B and VI D. She submitted testimony for the Commission. (Exhibit P) She submitted a proposed bill dealing with DNA evidence and wrongful convictions. She requested the Commission recommend the bill to the 2009 Legislature. She said the bill entitled an inmate to have DNA testing at his own expense. She said her other item of discussion, Agenda Item VI-D, was eyewitness identification. She provided a large packet of exhibit material for the Commission. She asked the Commissioners to look at the photo lineup included in her materials. Ms. Brown read further statements from her exhibits.

Chair Hardesty said the Commission had Ms. Brown's material and he asked her to make a policy issue. Ms. Brown recommended the Commission



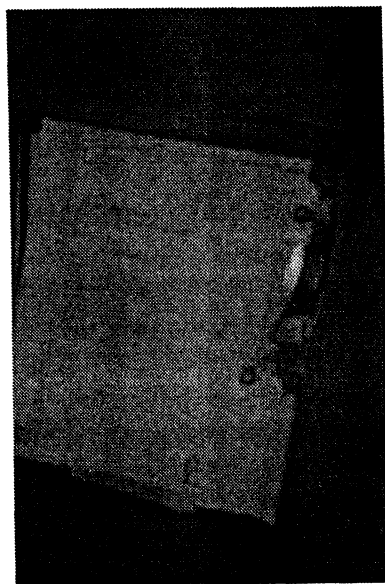
This photo-copy was made on April 4, 1989, by the head supervisor of the evidence room, Dick Duer. In November 1995, Tonja would discover the filters were now missing. Tonja would be informed by Mr. Duer, that there had been two requests made for this evidence. Both of these requests were made after 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 that 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. Of these things considered, Tonja believed with all her being that her brother, Nolan, was not guilty of rape and robbery. She even had hired 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. Later, 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 was not 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