

As an Advocate for the Innocent and the Inmates I ask that you please pass Assemblyman Munford and Assemblyman Moore's Assembly Bill AB 401 and create this legislation that is long overdue.

I became an Advocate for the Innocent and the Inmates because of what had happen to my innocent brother, Nolan Klein, who was wrongfully convicted of a 1988 sexual assault /armed robbery. He was sentenced to 40 years and 2 life sentences. On September 20, 2009 Mr. Klein passed away still fighting to exonerate his name through his appeals.

Mr. Klein's defense was based on a case of mistaken identity. Mr. Klein and his 5 alibi witnesses gave statement's prior to Mr. Klein's trial and testified at his trial he was at Jack's Bar in Carson City, Nevada at the time of the crime. The Jury was deadlocked for hours, they asked Judge Charles McGee for two defense witnesses testimony to be read back to them. The judge denied the jury's request. Mr. Klein was ultimately convicted of the Sparks Payless Shoe store crime.

In 2011 Mr. Klein's attorney's filed a Petition for Exoneration. The Nevada Supreme Court dismissed the Petition, because they lacked jurisdiction and Nevada has no laws. They suggest creating legislation . This Bill would create legislation. **Exhibit 1**

Years ago most people believed that a victim would never forget what the perpetrator looked like. We now know that the opposite is true. Mistaken identity is the number one leading factor for wrongful convictions.

In 1990 Mr. Klein filed a Post-conviction petition raising 33 grounds of Ineffective assistance of counsel, Prosecutorial misconduct, Judicial Error, and jury misconduct. During Mr. Klein's 1991 Post-conviction hearing Judge Charles McGee issued his Order stating the following **"The in-court identification of Klein was powerful and overwhelming. He received a fair trial."**

In the most recent study that was conducted and presented to our Advisory Commission on the Administration of Justice in 2014, it showed that of those who have been exonerated through DNA testing Eyewitness misidentification was a contributing factor in more than 72% of DNA exonerations. Studies indicate, 35% of eyewitnesses make identifications that are wrong.

## **Exhibit 2**

Mr. Klein was misidentified through a photo line -up array. This type of photo array is no longer being used by law enforcement agencies though out the country because they have led to wrongful convictions. **Exhibit 3**

False confessions is another major factor to wrongful convictions, such is in the most recent Nevada case of Kathy Woods who was recently exonerated through DNA testing after spending 30 years incarcerated.

Exhibit B -ACAJ 7 pages.  
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Meeting Date: 2-4-16.

Un-validated or improper forensic science and informants are the other major factors leading to wrongful convictions. Nevada has laws to allow DNA testing to be conducted after conviction only if the court allows the Petitioner to do so. Nevada Judges are still denying those who maintain innocence to test the DNA evidence.

Prosecutorial Misconduct is another major factor to wrongful convictions when prosecutors withhold exculpatory evidence from the defense. This happened in Mr. Klein's case as well. In 2009 Judge Brent Adams ordered Washoe County District Attorney Richard Gammick to turn over the DNA test results and the entire file in Mr. Klein's 1988 case. The handwritten notes of ADA Ronald Rachow showing that he intentionally defied Judge Peter Breen's 1988 Court Order to turn over all of the evidence. There were over 200 documents, mostly exculpatory that were discovered hidden from the defense and jury that would have exonerated Mr. Klein.

#### **Exhibit 4**

Nevada Senator Ray Rawson gave his testimony as an expert on bite marks. Senator Ray Rawson's testimony resulted in the conviction and death penalty of Ray Krone for a murder. 10 years later Mr. Krone was the 100<sup>th</sup> person from death row in the United State to be exonerated through DNA testing.

During Mr. Klein's incarceration it has cost the taxpayers an estimated 1.9 million dollars to keep an innocent man in prison. **Exhibit 5**

Thank you,

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| Exhibit 1 | Nevada Supreme Court Order  |
| Exhibit 2 | Rebecca Brown presentation on eyewitnesses identification                         |
| Exhibit 3 | Photo line-up array   |
| Exhibit 4 | 1988 Motion for Discovery with ADA Rachow's handwritten notes defying Court Order |
| Exhibit 5 | costs to appeal conviction  |

## Exhibit 1

## Exhibit 2

## Exhibit 3

## Exhibit 4

## Exhibit 5