

Dear Ms Hartzler,

Please pass this along to all of the Commissioners.

Here is the most recent update on the Petition to allow DNA testing to be conducted. I have been advocating to this Commission for years to allow Petitioner's to have DNA testing at their own expense if the Court denies DNA testing. With the exception of a couple of Commission members this board has voted against passing it for recommendation to our legislators.

In 2009, and 2011 Assemblyman Harvey Munford brought it before the Legislature only to have it killed by Assemblyman Horne. As an Advocate for the innocent I ask this Commission to please pass my proposed recommendation that is now before you to the 2013 legislature.

For the new Commissioners, I would refer you to the Minutes and Exhibits of the June 2008 and June 2010 meetings of Tonja Brown. I would also like to refresh your memory of the October 29, 2008 Pardons Board Hearing, wherein, Mr. Nolan Klein appeared before the Pardons Board. Every Pardons Board member was given a copy of the CD interview of Washoe County District Attorney Dick Gammick, wherein, Gammick stated that they opened up the DNA and tested the cigarette butts. We demanded to know where the test results were. The Pardons Board new that Mr. Klein always maintained his innocence, and he was dying, yet, even with the admission of Gammick they chose to deny Mr. Klein a Pardon. Had this exculpatory evidence been turned over it would have established Mr. Klein's defense that someone else was responsible for the crime and that Mr. Klein's alibi and witnesses were not mistaken as to their testimony placing Mr. Klein in the Jack's Bar in Carson City during the time the crime was being committed.

Mr. Klein's attorney's filed a Motion in Washoe County District Court to compell Gammick to turn over the DNA test results. Judge Adams Ordered Gammick to turn over the tests results and all of the exculpatory evidence. When Gammick finally complied with Adams Order newly discovered exculpatory evidence was found hiding in the DA's file that showed that the theory of the Sparks Police was that another man was responsible for the crime, as well as 3 other crimes. As Mr. Klein's attorney's were getting ready to file their Motions to free Mr. Klein, he died. This newly discovered evidence found in the file were the handwritten notes that Mr. Rachow was going to deny Judge Peter Breen's court Order to turn over all of the exculpatory evidence that would have shown to the jury that Mr. Klein was innocent and someone else was their prime suspect only that he had disappeared.

Again, I would like to refresh your memory that I had recently hired a Private Investigator who was able to locate the Sparks Police Department's prime suspect that was hidden from the defense and jury by prosecuting attorney, Ron Rachow, and protected by Washoe County Dick Gammick. I had the opportunity to listen what he had to say, and I'm only at liberty to say that he had knowledge of the Payless Shoe Store crime that Mr. Klein was convicted. He had knowlege of the other 3 crimes, that the defense and jury did not know about, but, was suspected of by the SPD. He stated sometime later when he inquired into the Payless Shoe store he was told by the Sparks Police that they caught their guy and put him away for a long time.

If one is truly innocent then why deny them their freedom? Please pass my proposed recommendation to the Advisory Commission and present it to the 2013 Legislature with your blessing.

Thank You,

Tonja Brown  
775-671-5037

**From:** tonjamasrod40@aol.com  
**Sent:** Thursday, July 05, 2012 8:04 PM  
**To:** Hartzler, Angela  
**Subject:** Ms. Hartzler, Please place on the record and submit to the Commissioners, Agenda # 5 Post Conviction.

## taken from the book "To Prove His Innocence"

### CHAPTER FOURTEEN NOLAN'S LETTER...

I was asked to write the final chapter of this book for the simple reason that I am the one single person most affected by the matters and possible criminal activities. I am the example of judicial neglect. While I do not portray or present myself as being a writer to any significant degree, I do know how I have been affected personally over what is now approximately thirteen years of my life as an incarcerated person.

While I understand that when most people read books, whether it be fiction or non-fiction, they reasonably anticipate or expect a happy , or at least acceptable conclusion, but I do not believe that you will find either here, and for that I apologize. There can never be a happy or remotely acceptable ending to this particular chapter in my life. The reasons are numerous.

To start with as I write this I do so from my prison cell at the Nevada State Prison (NSP) where I still sit for a crime I did not commit. Even if I were to be released tomorrow, thirteen years of my life are just gone, never to be replaced. It just can't be done no matter how hard I might try. The end result is nothing more than permanent damage and sense of loss to me, both physically and mentally. When I was arrested in 1988, my son was one year old. Today he is almost fourteen. These are probably the most important and impressionable years of his life and any opportunity to take part in that and help shape him as a person for his future has been taken away from me unjustly. It is not possible to find a means to replace that in his life or mine.

Additionally, the first eight years of my incarceration were spent in Nevada's maximum security institution which, in general, is supposed to be where Nevada's most violent and dangerous criminals are housed. While this is true in theory, there are still numerous prisoners housed in maximum that have no business being there. During my eight years in max, I saw so many stabbings and other random acts of serious violence that I have become desensitized to pain and death. I can see it and just pay no attention or care about it one way or another. While these acts of violence went on more at max, they still happen here at NSP quite often, in fact, just yesterday. But I still view them the same. I pay no real attention because it is none of my business and does not directly concern me. I find this to be a troubling commentary on my mental state. I have no clue if I will ever overcome this and return to my normal self if I am ever released.

I have been shot at more times than I can remember, not because prison guards were shooting directly at me, but because they were shooting at prisoners next to or in close proximity to me. Because of this coupled with all of the violence that I have endured around and directed at me, I have acquired a paranoia that I have no idea if I can ever lose. I am constantly looking around me in every direction. It freaks me out to have anyone behind me because I just don't know what they might be thinking at that moment. I don't know if any of these problems can ever be repaired, but my personal sense of loss, as I see it now, is staggering to me.

When I first got to prison I realized that if this could happen to me, it could happen to anyone, including family or other loved ones. I went to work in the prison law library, then took a couple of years in law through correspondence courses, as

well as some offered by the State College system at the prison, and learned through research that it didn't have to happen. If you know the law and how it works, even a person with a public defender that doesn't give a shit about you or your case, you can guide the defense or otherwise protect your rights. So I took my case into my own hands and started from there.

What I didn't realize until later was that the State justice system, police or district attorney did not give a shit. If they had made a mistake in convicting me, they really didn't want to hear it. I mean, after all, all prisoners think they shouldn't be in prison, what's one more. All they cared about was that they balance the books - one conviction for one crime. They didn't care how they got the books to balance or whether the accused was the right person or not. They would probably make great accountants. We've all seen it on T.V. and in newspapers recently "DNA frees man" after 10 - 15 years because he was innocent. Why two TV stations have offered to pay for my tests, but unfortunately, they've taken all the evidence and I don't have any DNA left to test. However, you always see the prosecutor looking totally surprised. Gee, it must have been the other guy after all, but to the public, they maintain that they believed they had the right guy. They never say, "Hey, we fucked up." This is simply because it would undermine their prosecuting ability and their public posturing which could turn into a political nightmare in the future.

The same is true for State district court and Supreme Court judges. When faced with a decision of convicting the wrong guy or convicting no one, they choose the wrong guy every time. An uneven balance sheet come election time could bite them in the ass. Nevada's Supreme Court has openly admitted that during a national conference for Supreme Court justices that they were the butt of jokes because of their in-house bickering and inconsistent opinions. The Nevada Supreme Court also has a policy which discriminates against the poor. Basically, if you cannot afford a private attorney, or the court doesn't appoint one to represent you, then your appeal sits for years before the court, in most cases, it will eventually be summarily dismissed. Over the years I have watched this pattern through my case and numerous others, and have come to the reality that State elected courts never seem to address the important issues when you are acting on your own, but instead, choose one minor issue and dismiss the case rather than decide the major issues that are crying for resolution. In other words, it's not the words. If Nolan Klein says it, they don't want to listen, but if an attorney says it, they brag that it will be processed within one year now that they have new "fast track" system. My case is filed "in pro per" because I represent myself. My case has been pending for decision by the Supreme Court of Nevada for 2 and ½ years.

The current parole board is no better. They have told me that they felt their predecessors were too good for paroling prisoners 220 Nolan Klein & Tonja Brown as told to Mary Elizabeth Morgan from sentence to sentence indicating that they were going to fix that little indiscretion and have further made it clear to me that until I come to them and admit guilt and show remorse, I will never get out of prison.

So, because I will not sway from the fact that I didn't commit this crime, I will never be released from prison, I just will not say I did this crime when I know I did not, nor should I have to in order to be released. Nonetheless, if that means spending the rest of my natural life in prison, so be it.

Unfortunately, its easy for anyone reading this to ignore it. That is, until it happens to you or someone you know. In this country we make almost everything illegal to some degree or another, so don't think it can't happen to you. All it takes is a couple of up and coming detectives and a newly elected prosecutor and you being in the wrong place at the wrong time. That prosecutor and that detective have a balance sheet that needs to be completed and you can wind up understanding this better than you ever imagined.

With the exception of the last eight months I have always looked at my circumstances and life as if I would simply die in prison. However, for the last six to eight months I have had renewed hope. Unfortunately, after re-evaluating the judicial process as I have observed it in its entirety, it's probably a false hope. When viewed over the last twelve years, it would appear more to me that my initial position is correct. The simple truth is that because the judicial system in Nevada, as well as the parole board, are motivated by what is politically favorable rather than what is right, guilt or innocence is totally irrelevant to the process itself. The American public wants criminals in jail because they are tired of being afraid in the streets and tired of being victims. That fear causes the elected prosecutors to be entirely motivated to make certain that for every crime there is a criminal. As such, I feel the

need to face the reality that I will spend the rest of my life in prison for a crime I did not commit, whether my life ends tomorrow by the act of another or in twenty years by natural causes.

Signed,  
Nolan Klein #28074  
Nevada State Prison  
April 2001

BOARD OF COMMISSIONERS  
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March 18, 2008

Janet E. Traut, Senior Deputy Attorney General  
Nevada State Attorney General's Office  
100 N. Carson St.  
Carson City, NV 89702

Re: Michael S. Spencer v. Glen Whorton, et al.  
USDC Case No. 3:07-cv-00635-LRH-VPC

*Not given in  
discovery or answer  
Mailed into NSP  
by you? JFT?  
via Delbert Werner*

I just received this on Friday, March 14<sup>th</sup>, so to respond by March 18<sup>th</sup> as specified in the instructions that accompanied this lawsuit, is not reasonable. My job includes lots of crisis work, death notices, dealing with inmates and families who have severe medical and social issues. I have to take care of those issues on a priority basis when they arise, which is often.

My response to this case, which involves the Asatru/Odinist religious group of practitioners at Nevada State Prison (NSP), is similar to the issues named in the case of McGee v. Whorton, which involves the same religious group trying to practice their religion at the same prison with the same principles involved. I'm not clear why these two cases are not combined as a class action suit.

To respond to the plaintiff's first statement, the defendants Warden Bill Donat, AWP James Baca and others did indeed "willfully" act to deprive the plaintiff and other practitioners of the same religious group of their ability to practice the "free exercise of (their) religion." Whether it was with malice I cannot say. It does seem that their right to due process was overridden.

I know nothing about whether plaintiff, or any other Asatru practitioners, were punished for attempting to practice their religion, but they were prohibited and inhibited in the practice of their religion. The facts are indisputable.

As stated in my response to McGee v. Whorton, I did my best to research the Asatru/Odinist religion, given the time restraints put upon me with the numerous job duties that I carried when I was "Supervising Chaplain" for the Nevada Department of Corrections (NDOC). I typically worked a 60+ hour workweek, while being paid the same as all other Chaplains that had only one institution to attend to. I did research on the Internet, read books on European pagan religions, attended a Conference on Religions from around the world, exchanged information with other heads of state corrections religious activities, and got feedback from a local pagan practitioner in the Las Vegas area. The sum total of what I learned from all that effort was that: 1) Asatru/ Odinisists typically do worship outdoors, and cook meals as part of their worship, which are cooked on fires outdoors; 2) they typi-

cally do grow herbs which are used both for seasoning food and also are part of their worship rituals; 3) it is not a universal practice to have saunas or sweat lodges and "plunge pools," although it is done by some branches; the main holy days that are the most important to them are the two solstices and two equinoxes that occur each year—the dates of which change slightly each year; 4) they usually participate in both group worship and solitary time; 5) they do have various religious symbols that represent forces of nature, and Thor is one of their main gods, but there are many others they can use.

There are various ways that Asatru followers can worship, with various types of altars, symbols, etc. They can adapt to the restricted circumstances of prisons by using what is available and still have adequate worship practice if they are allowed space and time and both are respected by staff. NDOC has a policy of not serving any pork, thus avoiding possible conflicts with eating habits of Jews and Muslims. It would be reasonable for pagans to adapt to using whatever meats are available through the prison culinaries. They do not have to have pork. That is a preference, not a requirement. They do not need to have the Thor symbol for their worship; since it is used as a gang symbol for white supremacist groups and could cause trouble on a prison yard. Common sense dictates that the Thor symbol not be allowed.

Since the culinary has to feed all prisoners three meals a day anyway, it is not unreasonable for the culinary to provide the raw food products to pagan groups on their day of worship so that they can cook it themselves. This practice would/does not involve any extra food, expense or effort on the part of culinary or Correctional Officer Staff.

All inmates may purchase baby oil at the prison canteens, and they are allowed to use that oil for religious purposes of anointing. All they have to do is bless it by their own religious rites and it will fulfill their purposes. Being a clergy person myself who frequently uses blessed oils for anointing the sick and the seekers, I see this as adequate practice for prisoners.

I see no good reason why the European-based pagan religions cannot be practiced in Nevada prisons by allowing them to use the outdoor lands they have used for some decades, to allow them to have their small herb gardens, build paths and altars, and have a space to cook and a space to worship as a group. That is what they had for some time and it worked well, without any incidents of abuse or misuse reported in the entire system. In some of the prisons, some of the staff members seem to have a prejudice against the European-based pagan groups, and do not want to treat them with equal respect as they do for other religious groups such as Christians, Jews, Muslims, LDS, and Jehovah's Witnesses.

- It is true that there is no line item in the NDOC budget for purchase or provision of religious items —
- for any of the religious groups. That is a serious oversight, but it is a fact. All religious items that are provided to inmates for their worship or study are donated by a wide variety of prison ministry groups, both national and local. That includes all books, pamphlets, CD's for music, rosaries, prayer shawls, prayer beads, etc. for all religions and denominations. It is up to the Administration of NDOC to put in a request for a line item in the budget for the Chaplains to have funds to use at each institution, and for the State Legislature to pass such a budget item. That is a lack in the system that has always been there. NDOC does not even provide a Chaplain for each prison, let alone a budget for religious materials for each Chapel at each institution that serves all approved religions. Inmates can ask friends and family to donate religious materials for them and their religious group, and there are strict regulations how that describe how that can be done. If prisoners have money on their books, they can purchase allowed items for themselves or their religious group. Otherwise, all other religious items are donated by large, established religious organizations, many of whom specialize in providing just such materials for the purposes of prison ministry.

If and when the authorities at NSP stopped the Asatrus from practicing their religious worship, if they bulldozed, razed or deconstructed their "land, grills, brick ovens, fire pits, altars, and ordered forfeiture of sacred statues," that would seem to me to be entirely uncalled for, if not illegal to do so. Federal laws do protect inmates' rights to practice their religions, within the confines and necessary restrictions of prison settings, security and safety of staff and inmates. Some of the staff of NDOC, and especially at NSP, do not seem to understand or accept that fact, and think that they have a right to do whatever they want to demean, or even threaten, inmates and restrict their personal behavior, even when they are behaving within the bounds of the law. It is up to the Courts of the United States to determine if NDOC practices in this instance have violated the rights of prisoners to practice their religion as provided by RLUIPA and other legislation and U.S. Supreme Court decisions. If there have been transfers, beatings and administrative disciplinary actions, such as sending prisoners to do hard time in segregation units, loss of good time and work time credits, loss of good work assignments, denial of participation in educational and rehabilitational programs, level reduction, loss of personal property, etc., as retaliatory measures against inmates for practicing their religions, then this would certainly be a violation of the laws that have been legislated in order to protect prisoners' rights to practice their religions. It is up to the courts to decide if this would qualify as "cruel and unusual punishment."

In the four years that I served as the Institutional Chaplain at Nevada State Prison, I did observe that there were occasional acts concerning the treatment of the European-based pagan groups (Wiccans, Druids, Asatru/Odinists) that were discriminatory and retaliatory. It seemed that one of the Christian volunteers had a bias against these groups—their beliefs and practices, and exercised undue influence over some of the decisions by the wardens towards those groups. They were not given equal treatment or protection.

It is true that most prisoners have gotten themselves into prison by their own misdeeds. Many of them came from abusive homes and did not benefit from a healthy, nurturing, training home life. None the less, they did acts that society has deemed unacceptable. Therefore, when they get themselves to prison by their own choices and actions, they have to understand that part of the punishment, aside from having their freedom temporarily taken away, is to live in a restricted environment. They can not expect all the luxuries that individuals may have on the outside who work for a living and provide for themselves and their families by honest work. However, a prison environment ideally provides an atmosphere that encourages positive change. That would include the opportunity for prisoners to learn more about themselves and society, why they became drug and/or alcohol addicts and how to get control over their addictions, what constitutes healthy living and relational habits, and encouragement to improve themselves. Opportunities that can help and encourage prisoners to change to a positive attitude and lifestyle would include education including literacy, psychological counseling and group therapy, training in life skills, ability time and space to practice their religions, and positive ways to otherwise spend their time such as reading, arts and crafts, hobbies that involve skill building, gardening, and athletic activities. Both staff and outside volunteers can provide some of the positive encouragement and development of the personalities and mentalities of prisoners through personal contact, counseling, feedback, etc.

Since most prisoners have excess time on their hands, and numerous studies by Criminologists, Psychologists and Sociologists over the past decades have shown that if people have something positive to do, they develop in a healthier way; and if they do not have positive attention and activities, they tend to turn toward negative behavior and activities, it makes sense for all prison systems to emphasize keeping prisoners as busy as possible with positive activities, which includes all those areas names above. When prisoners do not have their excess time taken up with positive activities, the incidents of violence, sexual abuse and drug abuse increase in prisons. And the opposite is

true: when you keep them positively employed, not only do the drugs, sex abuse and violence decrease, but people are more likely to change into more healthy, responsible, people with a healthy self-esteem and confidence which better equips them to make a successful transition to society when they are paroled.

Within the Nevada Department of Corrections (NDOC), there is an unstated pressure for staff to always find in favor of the Department when grievances or law suits are filed against it. As an ordained Minister of a well recognized mainline Christian denomination, I cannot bend the truth one way or the other. I have tried to behave in an ethical and fair way toward all staff and inmates, and to weigh the interests and needs of NDOC versus the rights of prisoners. I have tried to service the needs fairly of all the religious groups recognized as legitimate by NDOC. Some people do not seem to understand that prisoners do not forfeit all their civil rights when they are sentenced to a prison term as a felon. They still maintain certain civil rights, and one of those is the right to practice their religion as long as it is a legitimate religion and they do not abuse the privileges that accompany that practice. They also have been found to have the right to be fed a minimum level of nutritional diet; to receive decent medical care; to not be tortured; to have due process with any charges against them; and in general, to be treated as human beings. They do not have a right to luxurious living or to do harm to one another or the staff.

As a Minister of God, I believe that, at least theoretically, there is the possibility for the salvation of every soul; that all prisoners have a right to be treated with respect and dignity; and that they should be given the opportunity to recover from whatever childhood traumas they might have suffered and to receive rehabilitative treatment. As a Criminologist, I know that the great majority of prisoners respond better to positive opportunities and treatment than to negative, degrading and punitive treatment, and that they will be more capable and likely to make a successful, positive transition to society when they leave a prison if they have experienced rehabilitative and humane treatment than if they have had a negative, degrading and harsh experience. So it is to Society's best interest to run a prison system with strong, humane, enlightened and productive leadership than to allow the abuse and degradation of prisoners. Society will pay the price in the long run if prisons are run in a retrograde manner, with further and escalated criminal behavior and the return of ex-prisoners to prisons, with the continuing costs of running a counter-productive system.

I write this response to the current law suit as a public response. It is not to be considered a confidential document. The law suit is public and so are my responses, to this and all law suits in which I have been named am a respondent. I will not respond to pressures from NDOC Administration or the Attorney General's Office to bend the truth to protect illegal or harmful practices. This is an honest accounting and assessment of what I know and have observed, both as a Minister of God and as a Criminologist.

Very truly yours

Not given in  
discovery or answer  
Mailed into NSP  
by you? JFT?  
via Dellbert Werner



DISTRICT OF NEVADA

NOLAN KLEIN,

Plaintiff,

vs.

DON HELLING, ET AL.,

Defendants.

3:05-CV-0390-PMP (VPC)

**REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE**

January 17, 2007

This Report and Recommendation is made to the Honorable Philip M. Pro, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is plaintiff's motion for summary judgment and/or partial summary judgment (#38).<sup>1</sup> Defendants opposed (#48) and filed a cross-motion for summary judgment (#50).<sup>2</sup> Plaintiff replied to defendants' opposition and opposed defendants' cross-motion for summary judgment (#58). Defendants replied to plaintiff's opposition (#60). The court has thoroughly reviewed the record and the motion and recommends that both plaintiff's motion for summary judgment (#38) and defendants' cross-motion for summary judgment (#50) be denied.

**I. HISTORY & PROCEDURAL BACKGROUND**

Plaintiff Nolan E. Klein, a *pro se* prisoner, is currently incarcerated by the Nevada Department of Corrections ("NDOC") at the Lovelock Correctional Center ("LCC") (#16, 21).

<sup>1</sup> In support of his motions, plaintiff submits Plaintiff's Exhibits to Motion (#43), Plaintiff's Supplemental Exhibits to Motion (#55) and various affidavits (#s 39, 40, 41, 42).

<sup>2</sup> In support of their motions, defendants filed, under seal, an *in camera* submission titled "confidential NDOC Inspector General's Report and Materials" (#62). Defendants also filed under seal "Plaintiff's NDOC 'Chrono Files' Bearing Bates Range D-MSJ 1-10," a copy of which was served on plaintiff (#52).

alleged retaliatory transfer. *See Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1997).

The defendants have a legitimate penological interest in protecting inmates from harm inflicted by other inmates. In his affidavit, Helling states:

NNCC holds a large population of elderly, infirmed, and easily-confused inmates, owing largely to the design of the NNCC facility, which features a "flat yard" design and houses regional medical facilities, both of which accommodate elderly and infirmed inmates. Protecting elderly, infirmed, and easily-confused inmates from potentially predatory, fraudulent, and abusive conduct of other inmates is a legitimate correctional goal at NNCC and within the NDOC system. The elderly, infirmed and easily-confused inmates are especially vulnerable to exploitation. Such victimization is very difficult to discover, as physical force is often not used. Verbal threats and fraudulent behavior often leave no outward, discernible indicators or physical injuries. When such victimization or potential victimization has been discovered, stopping the harm or threat of harm must be immediate. Physically separating an elderly, infirmed, or easily-confused inmate claiming to be a likely victim of fraud, from the suspected perpetrators or collaborators of that fraud is a legitimate correctional goal at NNCC. Given that NNCC has a large concentration of elderly inmates, as compared to other correctional facilities within the NDOC system, separating inmate Klein from inmates housed at NNCC would further the goal of separating inmate Klein from elderly, infirmed, or easily-confused and easily-manipulated inmates.

#48, Helling's Affidavit, D-MSJ 83, ¶ 25.

The court has reviewed defendants' sealed and *in camera* submission, the "Confidential NDOC Inspector General's Report and Materials," *see* #62 (*sealed*),<sup>7</sup> and concludes that the

<sup>7</sup> The plaintiff submitted a request that the court take judicial notice of the fact that the "final" version of the Inspector General's Confidential Report is dated April 29, 2005 but that the decision to transfer the plaintiff to LCC was made on April 27, 2005 (#64). The plaintiff argues that the defendants are attempting to make after-the-fact and bogus justifications for the transfer decision. The court notes that while the "final" version of the report is dated April 29, 2005, the investigation began on April 14, 2005. The report's supporting documentation is dated between April 14, 2005 and April 22, 2005, thus, the court concludes that the defendants likely had much of the information available to them on April 27, 2005 when the committee made the transfer decision. The court concludes that merely because the final draft of the investigative report was dated two days after the decision to transfer the plaintiff to LCC does not mean that

1 in the alleged scam as the plaintiff, the court cannot conclude that the defendant's proffered  
2 "legitimate penological basis" for the defendants' initiation of the plaintiff's transfer prior to the  
3 close of the investigation was not pretextual. There exists a genuine issue of material fact  
4 regarding whether the defendants' motives and intent were retaliatory in transferring the plaintiff  
5 to LCC.

6  
7 Defendants also argue that there is no evidence that they knew of the plaintiff's First  
8 Amendment activities because the plaintiff's name was not on the class action letter (#60, p. 11).  
9 Plaintiff responds that the defendants did know he was the inmate behind the letter because it was  
10 his attorney who wrote it, and defendants were well aware that Ms. Hearne represented plaintiff  
11 in his appeals (#58, p.12). The court notes that the defendants were at least aware of the book that  
12 the plaintiff contributed to because Helling denied Ms. Hearne's request to meet with the plaintiff  
13 to have him sign the book, *see* #48, D-MSJ 11, and Helling apparently would not allow the book  
14 into the prison (#60, p. 13, *incorporating by reference* #48, p. 18, *citing* Plaintiff's Deposition).

15  
16 Although defendants state that plaintiff's 2001 placement at NNCC was always intended  
17 to be temporary because prison officials planned to transfer plaintiff to LCC, *see* #48, p. 11 and  
18 #51, D-MSJ 5 (entry for May 1, 2001), the plaintiff was housed at NNCC for approximately four  
19 years. The court finds that four years is not "temporary."

20  
21 Finally, plaintiff notes that he has never been charged with wrongdoing. Defendants admit  
22 this fact, stating "ultimately, no formal disciplinary or criminal charges were leveled against inmate  
23 Nolan Klein related to the Investigation," *see* #50, p. 5, ¶ 9 and p. 21; however, they fail to explain  
24 why this is so. Despite not bringing charges or making a formal finding of wrongdoing, the  
25  
26  
27  
28

1 defendants argue that in Helling's "professional judgment and opinion," the plaintiff "should  
2 remain as a 'separatee' of the above-identified inmates,... because Inmate A and others similarly  
3 situated "remain especially prone to victimization of fraudulent schemes by [the plaintiff]" (#50,  
4 p. 5, ¶ 10).

5  
6 The court finds it curious that the plaintiff has never been charged with a violation. While  
7 it appears that there was cause to investigate the circumstances surrounding the Inmate A Trust,  
8 it is unclear whether investigators ever came to a conclusion that a crime or fraud was committed  
9 and by whom. For instance, there is no information before the court regarding whether  
10 investigators concluded that the trust was actually fraudulent, that money was missing from Inmate  
11 A's trust account, and if so, who took the money. The court is not clear whether, to this day, the  
12 investigation is "completed" or whether charges might be brought sometime in the future. The  
13 plaintiff was transferred before any of these issues were resolved (#43, Ex. 2, Helling's Response  
14 to Request for Admissions, p. 3, No. 9). Reasonable minds can differ as to whether, had the  
15 defendants waited, they may have found no wrongdoing or basis to transfer the plaintiff. It appears  
16 to the court that the plaintiff is being kept at LCC only pursuant to Helling's opinion that he should  
17 be kept away from elderly inmates. While the court must defer to the discretion of prison officials,  
18 there is a limit to that deference, and the court finds that there is a question here as to the  
19 defendants' motives underlying their discretionary decisions.

20  
21 The plaintiff argues that there are as many or more elderly inmates at LCC. If this is in fact  
22 the case,<sup>13</sup> it is unclear to the court why the plaintiff would be transferred to LCC and why he  
23

24  
25 <sup>13</sup> The defendants submit an affidavit stating that 8.9% of the NNCC population is over age 60, while  
26 5.35% of the LCC population is over age 60 (#60, D-MSJ 171, ¶ 5; see also #60, p. 18). The court notes that  
27 when one considers the total populations for each institution – 1,275 inmates (NNCC) and 1,548 inmates  
28

would remain there. Although the defendants do provide information regarding the percentages of elderly inmates at NNCC and LCC as a whole, they do not provide information regarding how many elderly inmates inhabit the restricted units at NNCC, such as Unit 7b, as compared to NNCC Unit 3 and LCC. As the Ninth Circuit has noted, if the defendants abuse prison procedure as a pretext to silence or punish an inmate for protected First Amendment conduct, "they cannot assert that [the plaintiff's transfer] served a valid penological purpose, even though he may have arguably ended up where he belonged." *Ylst*, 351 F.3d at 1289 (emphasis in original).

The court agrees that the circumstances of the Inmate A Trust account are suspicious, most notably that plaintiff's family and attorney were intimately involved in the trust account. Thus, it appears that there was good cause to investigate the plaintiff. However, reasonable minds can differ as to whether there was retaliatory motive in the defendants' instigation of the transfer itself where defendants punish one inmate but allow another equally involved inmate to remain where he was without investigation. Further, reasonable minds can differ as to whether there is a retaliatory motive based on the fact that the defendants never ultimately found the plaintiff guilty of wrongdoing but continue to keep him at a different institution where there are arguably almost as many elderly inmates. The court concludes that the timing of the transfer, combined with the lack of investigation into inmate Carpino's role and the fact that no charges have ever been brought against the plaintiff, raise genuine issues of material fact regarding whether there was retaliatory motive behind the transfer. *Ylst*, 351 F.3d at 1289.

(LCC) as of October 31, 2006 - there is no significant difference. See [http://www.doc.nv.gov/stats/2006/10/2006-10\\_DAILY\\_POP\\_COUNTS.pdf](http://www.doc.nv.gov/stats/2006/10/2006-10_DAILY_POP_COUNTS.pdf), page 31. This means that as of October 31, 2006, there are approximately 113 inmates over the age of 60 at NNCC and 83 inmates over the age of 60 at LCC.

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1                   **b. Conspiracy to Retaliate**

2           As noted above, there is absolutely no evidence before the court that the defendants made  
3 an agreement or conspired to retaliate against the plaintiff. As such, the court grants summary  
4 judgment in favor of the defendants as to plaintiff's conspiracy claim.  
5

6                   **III. CONCLUSION**

7           Based on the foregoing and for good cause appearing, the court concludes that plaintiff has  
8 failed to meet his burden of demonstrating that there was no legitimate penological reason for his  
9 transfer to LCC and has failed to present any evidence of a conspiracy to retaliate on the part of  
10 the defendants. Defendants have failed to show there are no genuine issues of material fact as to  
11 their motive behind the plaintiff's transfer prior to the completion of an investigation that  
12 ultimately resulted in no charges being filed. Therefore, the court recommends that plaintiff's  
13 motion for summary judgment (#38) be **DENIED** and defendants' cross-motion for summary  
14 judgment (#50) be **DENIED** as to the retaliation claim but **GRANTED** as to the conspiracy claim.  
15

16           The parties are advised:

17           1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice,  
18 the parties may file specific written objections to this report and recommendation within ten days  
19 of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and  
20 Recommendation" and should be accompanied by points and authorities for consideration by the  
21 District Court.  
22

23           2. This report and recommendation is not an appealable order and any notice of appeal  
24 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.  
25  
26  
27  
28

CAHRA STENBERG - Activity in Case 3:04-cv-00049-ECR-RAM Nolan E. Klein VS Jackie Crawford "Order"

Post-it* Fax Note 7871		Date 5/1/07	# of pages 21
To David E. Smith	From Bob Wieland	Co. AG	
Cb/Dept. Nevada Court	Phone # 790-4115	Fax #	
Phone #			
Fax # 687-6736			

From: <cmecf@nvd.uscourts.gov>

To: <cmecfhelpdesk@nvd.uscourts.gov>

Date: 5/1/2007 1:43 PM

Subject: Activity in Case 3:04-cv-00049-ECR-RAM Nolan E. Klein VS Jackie Crawford "Order"

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United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was received from DRM, entered on 5/1/2007 at 1:44 PM PDT and filed on 5/1/2007

Case Name: Nolan E. Klein VS Jackie Crawford

Case Number: 3:04-cv-49

Filer:

Document Number: 73

Docket Text:

ORDER - ORDERED that the petition for writ of habeas corpus is conditionally GRANTED, such that unless, within 90 days Rs afford P appropriate procedural due process (see order for specifics). If an appeal is taken, the 90 day period referenced above shall run, subject to the order of a higher court on review, from the later of entry in this Court of the order on mandate or the conclusion of any proceedings on a petition for writ of certiorari, including the expiration of any period for seeking rehearing therefrom. Clerk shall enter judgment accordingly. Signed by Judge Edward C. Reed Jr. on 5/1/2007. See ord for spec. (DRM, )

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp\_ID=1101333072 [Date=5/1/2007] [FileNumber=3435712-0]  
[286da465777061b5cbc6943a0b1a9019ca001bbad1d49b8485491c1a67c63a3c6a8f  
080ac0c85cdea1ca560fc3adc620cbb179b7cd98c0c5c7422a6ea618613]]

3:04-cv-49 Notice will be electronically mailed to:

Debra Bookout ECF\_Vegas@fd.org, ECF\_NVNCH@fd.org, susan\_kline@fd.org

Robert E Wieland bewielan@ag.state.nv.us, klstonbc@ag.state.nv.us

Doc. in  
Nolan

**O. RELATED STATEMENT CONCERNING INVESTIGATION**

Defendants herein agree to make the following statement ("STATEMENT") concerning information that was contained in the CONFIDENTIAL DOCUMENTS, without admitting liability or any culpable conduct—including for any acts or omissions—arising from or relating to events described in STATEMENT and for the making of the STATEMENT, itself. In a letter written by the Office of the Attorney General dated December 2, 2005:

Our office has concluded its investigation concerning Inmate Fred Huston's (#72877) monies entrusted to Tonja F. Brown. Our investigation revealed Inmate Fred Huston set up a trust and appointed Tonja Brown as a trustee of that account. Inmate Huston became concerned when no supporting documentation was submitted to him reflecting the source and distribution of his funds. Interviews conducted with the individuals in the trust and the reviewing of the bank documents revealed that no criminal activity existed. A conversation with an NDOC inmate-caseworker revealed that, at the time of that conversation, Inmate Huston had no further concerns regarding his monies.

**P. EFFECTIVENESS**

This AGREEMENT shall become effective upon the execution of this AGREEMENT by the Signatories to this AGREEMENT.

**Q. COMPLETENESS OF DOCUMENT**

This AGREEMENT contains the entire understanding between the parties with respect to the matters set forth herein. There are no representations, warranties, agreements, arrangements, or undertakings, oral or written, between or among the parties hereto relating to the subject matter of this AGREEMENT which are not fully expressed herein.



13

Date: \_\_\_\_\_ Ethnic: 1 **SMOKER** **NON-SMOKER** Age: 51

Parole Agenda? \_\_\_\_\_  
 Regular Review List? \_\_\_\_\_

Court Actions Pending? \_\_\_\_\_

Ever Eligible for Min: no 5/0

Gang Affiliation: Wiccan

**Holds/Detainers:** 0

Disciplinary Actions Pending / Last Disciplinary: LOC: 4/10 1-18-01 M529  
MEN 3: 3-5-9-10-11 -

Medical / Dental / Mental Health Issues: BB-BT do Dental/mtl

FS  
PED: 1-1-10 MPR: EXP: Life/w  
To CS Life/w

**Educational Level:** \_\_\_\_\_

Notes: AT LCC 5:05 → 6:05  
Manipulated Tx from LCC - Please refer to LCC

**Committee:** \_\_\_\_\_

**AFFIDAVIT OF TONJA BROWN**

STATE OF NEVADA     }  
CITY OF CARSON       }

Tonja Brown, being first duly sworn under oath and under penalty of perjury under the laws of the United States, hereby deposes and says:

1. That I have been an Advocate for the Inmates that are incarcerated within the Nevada Department of Corrections for approximately 20 years or more.
2. That during my Advocacy I have been at times a Sponsor for the Wiccan inmates who were and are incarcerated within the Nevada Department of Corrections. That during my times that I had been a Sponsor I personally witnessed retaliation and discrimination by the Nevada Department of Corrections. I have personally seen or have personal knowledge of how NDOC staff have discriminated against Wiccans and other earth based religions. The NDOC have intentionally destroyed their personal property, intentionally damaged their land where they practice their religion and have personally interfered with my Sponsorship for them.
3. NDOC have moved inmates to other Institutions when inmates attempt to have the Settlement Agreements enforced, Klein v Ignacio et al., USDC Case No. CV-N-98-401-HDM, consolidated in <sup>Burnett</sup> ~~Bullett~~ v Ignacio et al, Case No CV-N-98-390-HDM, (Base File), Klein v Crawford 03:05-CV-N-0463-LRH- RAM. 2009 Nolan Klein v Corda USDC Case No. 3:09-cv-00387-LRH-RAM filed on 7/22/2009, but, not served due to his death.
4. They have illegally listened in on inmates/ attorney client phone calls, have opened up inmates legal mail outside the presence of the inmate. And while in the presence of the inmate they have taken evidence out of the legal mail that was needed for their Court cases.
5. I have personally witnessed my First Amendment Rights being violated by informing the Board of Prison Commissioners on December 5, 2011 and May 17, 2012 when I attempted to provide to the Board public documents that came out of the wrongful Death case of Mr. Nolan Klein, case USDC Brown v Skolnik Case No. 03:10-cv-000679-ECR-VPC that during the Discovery process the Attorney General's Office turned over a documents listed as NDOC 01639 that I provided to the Board of Prison Commissioners.
6. In this exhibit Mr. Nolan Klein's Gang affiliation is listed as Wiccan. This was documented since 2005 that Mr. Klein is listed as Gang Member. I then presented to the Board of Prison Commissioners a letter written by the former NDOC Chaplain Jane Forecker-Thompson to Deputy Attorney General

Janet Traut defines in this letter regarding inmate Michael Spencer that NDOC discriminates and retaliates against certain Earth Based religions.

7. The Board of Prison Commissioners are refusing to have these public documents placed on the public record and the NDOC website for the record. They are claiming confidentiality of the Settlement Agreement in Brown v Skolnik. They have put my written letter outlining what was found in the Discovery, however, it is so light that it makes it very difficult to read, but, none of the Exhibits provided by me are listed on the NDOC Board of Prison Commissioners web site.

8. This information is not a part of any Confidentiality that resulted in the Settlement Agreement made and filed in Federal District Court under Case No. 03:10-cv-000679-ECR-VPC. As fact, the Board of Prison Commissioners were given a copy of the Settlement Agreement and still refused to have these documents made public, thereby, violating my Free Speech and the Open Meeting law. The documents that have come out of Discovery now leads me to future litigation against the State for Slander, defamation, retaliation, discrimination, Constitutional Rights violation, the computer glitch that put false felony charges in Mr. Klein's file and other inmates files, withholding evidence by the Deputy Attorney General Office, in Mr. Klein's 2005 Klein v Helling et al. CV-N-05-390 case that had a profound impact on his civil case and his access to general population at NNCC and to the Wiccan land.

9. In fact, on page 15 of the Brown v Skolnik Settlement Agreement the December 5, 2005 letter written by the Attorney General's office was a part of the Settlement Agreement so that I can pull this out to show to any Board that exonerates my name as well as Nolan Klein's name. I mention this solely for the purpose to demonstrate how NDOC retaliates against certain individuals. In the Exhibit NDOC 01639 they have Mr. Klein listed as Gang Affiliation Wiccan and that Mr. Klein was being transferred because NDOC was accusing Mr. Klein of scamming and elderly inmate, Mr. Huston. This is not true and NDOC knew it was not true by the Settlement Agreement on page 15. All Mr. Klein did was give the name of an attorney to set up a trust for Mr. Huston. Mr. Huston died in 2009. Northern Nevada Correctional Center Administrators wanted Mr. Klein out of their Institution and clearly this was a way to get Nolan out of NNCC by making these false/slandorous accusations against Mr. Klein and I that now gives me a new cause of action against the State of Nevada.

10. Prior to the 2011 newly discovered evidence relating to Wiccan's being labeled as Gangs I was contacted by Mr. Joseph Carpino located at the Lovelock Correctional Center. At that time Mr. Carpino informed me that Wiccan's are being treated as though they were gang members and they are not. Mr. Carpino informs me that he is going to bring suit against NDOC for hate crimes. The exhibit that came out of the Discovery clearly demonstrates that NDOC is discriminating against this earth based religion. The Reverend Jane Forecker-Thompson letter enforces these discriminatory and retaliatory behavior acts committed by NDOC. This letter and emails were a part of Brown's discovery H & H Exhibits and were not a part of any Confidentiality of the Settlement Agreement, however, the Attorney General's Office and the Board of Prison Commissioners will not allow these public documents to be placed on the record. So inmates, their family and friends are unable to pull them off and submit to the Court.

If the Court would like any of the documents out of the Brown v Skolink or that I may have in the cases mentioned above. If the Court would like for me, Tonja Brown to personally send the Court the Documents that will support Mr. Chernestsky claims I will be happy to do so. If the Court would like for me to send Mr. Chernestsky then I believe it would take a Court Order to do so, based on the fact that NDOC will not allow these types of documents in their entirety if at all.

FURTHER AFFIANT SAYETH NAUGHT

Tonja Brown

AFFIANT TONJA BROWN

2907 Lukens Lane

Carson City, NV 89706

775-882-2744

-----  
NOTARY PUBLIC

SIGNED AND SWORN to before me on  
this day \_\_\_\_\_, day of June, 2012

State of Nevada  
County of Carson City

Signed and sworn to (or affirmed) before me on 6/29/2012 by  
Tonja Brown

Chris Walsh

(Signature of notarial officer)



CHRIS WALSH  
NOTARY PUBLIC  
STATE OF NEVADA  
My Commission Expires: 10-09-18  
Certificate No: 11-5715-5

*True 19.2  
Found Hidden  
DAIS  
Sile*

FILED

*2-1-8-88*

1 No. CR88-1692  
2 Dept. No. 7/8

'88 NOV -4 P2:44

JUDI BAILEY, CLERK  
BY R. JACO  
DEPUTY

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and only 1 de  
before trial  
date require*

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

8 THE STATE OF NEVADA,  
9 Plaintiff,

vs.

10 EDWARD ALLEN WILKINSON aka  
11 NOLAN EDWARD KLEIN,  
12 Defendant.

MOTION FOR DISCOVERY  
AND PRODUCTION OF  
EXCULPATORY MATERIALS

13 The above-named Defendant, by and through the Washoe  
14 County Public Defender's Office, moves this Honorable Court for  
15 an Order granting discovery pursuant to NRS 174.235 and NRS  
16 174.245.

17 Further, pursuant to Brady v. Maryland, 373 U.S. 83,  
18 83 S. Ct. 1194 (1963), and its progeny, Defendant moves for an  
19 Order directing the prosecution to disclose and produce for  
20 inspection and copying all materials in the possession of the  
21 prosecution, or others, which may be favorable to the Defendant  
22 and be material to the issue of guilt or punishment, or  
23 exculpate the Defendant's involvement in the criminal acts  
24 charged by weakening or affecting any evidence proposed to be  
25 introduced against the Defendant, or in any manner may aid  
26 Defendant in the ascertainment of the truth. Said disclosure  
and production to be made without regard to whether the evidence

1 to be disclosed and produced is deemed admissible at trial  
2 herein.

3 Defendant respectfully requests that said production  
4 and disclosure include, but not be limited to, the following  
5 evidence.

6 1. Any written or recorded statements or,  
7 confessions or admissions attributed to the Defendant, or copies  
8 thereof, within the possession, custody or control of the  
9 prosecution or their agents. (NRS 174.235);

10 2. All physical and tangible evidence obtained by  
11 any law enforcement agency, including, but not limited to, the  
12 Washoe County Sheriff's Department, Reno Police Department,  
13 Sparks Police Department, or any other agents of the Washoe  
14 County District Attorney; further, to produce and itemize any  
15 and all evidence in possession of the State or its agents or  
16 evidence recovered from the person, vehicle or residence of the  
17 Defendant when apprehended or thereafter (NRS 174.245);

18 3. Results or reports of physical or mental  
19 examinations, and of scientific tests or experiments made in  
20 connection with this case, or copies thereof (NRS 174.235);

21 4. Copies of all photographs or diagrams taken in  
22 connection with this action (NRS 174.244);

23 5. All statements of witnesses or reports thereof,  
24 that in any way show favorably upon the Defendant's character or  
25 guilt or innocence or possible punishment (Brady, supra; United  
26 States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342

1 (1976));

OK 2 6. Any and all reports, summaries, or "rap sheets"  
3 reflecting the criminal records or past police conduct of the  
4 Defendant including prior bad acts (Brady, supra; Agurs, infra;  
5 NRS 179A.100 4(b)); NRS 48.045;

NO 6 7. Any information reflecting upon the credibility  
7 of any prosecution witnesses, including, but not limited to  
8 criminal records, prior inconsistent or contradictory statements  
9 (oral or written), and any consideration paid, promised or  
10 expected for testimony or information provided, or to be  
11 provided, in this case (Brady, supra; Giglio v. U.S., 405 U.S.  
12 150 (1972));

13 8. For any other orders as the Court may deem just  
14 and proper in the premises; including, that said Order for  
15 Discovery be made a continuing one pursuant to NRS 174.295.

16 It is further moved that if the prosecution is unable  
17 to determine the materiality or exculpatory nature of the  
18 witnesses' statements or other material, it be ordered that said  
19 materials be turned over the Court for determination in camera.  
20 United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d  
21 342 (1976); United States v. Gardner, 611 F.2d 770 (9th Cir.  
22 1980); United States v. Heberman, 583 F.2d 622 (5th Cir. 1978).

23 This Motion is made pursuant to the Points and  
24 Authorities cited herein and upon the ground counsel for  
25 Defendant believes production of the aforementioned materials  
26

///

1 and evidence is necessary for the preparation of the defense  
2 under Defendant's constitutional rights to a fair trial and due  
3 process of law.

4 DATED this 4<sup>th</sup> day of November, 1988.

5 DAVID G. PARRAGUIRRE  
6 Washoe County Public Defender

7 By: 

8 SHELLY T. O'NEILL  
9 Chief Trial Deputy



NEVADA BOARD OF PARDONS

-oOo-

MEETING AND PUBLIC HEARING

ITEM H

NOLAN KLEIN

NDOC #28074

Wednesday

October 29, 2008

Supreme Court Building  
201 South Carson Street  
2nd Floor  
Carson City, Nevada

Reported by:

ERIC V. NELSON, CCR #57, CRR

1 somebody else's cigarettes in instead of my client's.  
2 It should never happen. But that's what happened in  
3 this case.

4 Because Mr. Klein has maintained his  
5 innocence since the time of his arrest, and because  
6 that evidence that could prove his innocence is no  
7 longer available, he'll die in prison if this Board  
8 doesn't commute his sentence. Because he will never  
9 admit that he committed these crimes.

10 I have had conversations with him. I have  
11 encouraged him to just admit. He won't do it. The  
12 Parole Board has made it clear that so long as he  
13 denies that he committed these crimes, he will never  
14 be paroled.

15 You are all familiar with the laws related  
16 to spoilation of evidence and that when evidence is  
17 spoiled, it is to be inferred against the party who  
18 had control of that evidence. In this case Mr. Klein  
19 and his attorney never had control over that evidence.  
20 The state did.

21 So we find ourselves here today with  
22 someone -- and now I can go through what he's done in  
23 prison, but that is really what is dramatically  
24 different about this case than what you have heard in  
25 the other cases. Mr. Klein, if you ask him, will you

1 admit here today that you did this and we will let you  
2 out of prison, he will tell you no. It's not  
3 defiance.

4 He was convicted once before of battery  
5 and did a prison term when he found his wife in bed  
6 with another man. He immediately pled guilty and he  
7 admitted that he did that. If you ask him today, he  
8 will admit that he did that, but he will never admit  
9 that he committed these other crimes.

10 Now it's not just the affidavit of my law  
11 partner that reflects that the District Attorney's  
12 Office removed these items from evidence. I have  
13 here, if it is disputed, a portion of a videotape  
14 interview of the District Attorney in Washoe County  
15 stating a few weeks ago on TV that of course that  
16 evidence is not there, it was tested.

17 Where is the report? Where is the report.  
18 of the testing of those cigarette filters? It's never  
19 been produced. It would either be Brady material and  
20 exculpatory or it would be incriminating.

21 I'll wrap up by telling you some of the  
22 things that Mr. Klein has done since he's been in  
23 prison. And I have gone in the materials past -- I  
24 apologize, it is not Bates numbered -- but it is after  
25 the end of the medical records. You will see some

1 photographs there relating to the evidence. I  
2 understand that they are difficult to see, except you  
3 can see clearly a cigarette filter in one of the  
4 photographs.

5 The next thing you see is a November 25th,  
6 1995, letter from the Innocence Project signed by  
7 Barry Scheck stating that they would be interested in  
8 taking Mr. Klein's case. Mr. Klein immediately filed  
9 a motion to have these cigarette filters -- am I out  
10 of time?

11 GOVERNOR GIBBONS: You have one minute,  
12 Mr. Hager.

13 MR. HAGER: To have these cigarette  
14 filters tested, but they are no longer available.

15 In the materials you also see that  
16 Mr. Klein completed a legal assistant paralegal course  
17 with Blacks Home School of Law. He completed another  
18 paralegal course at Mountain High School, White Pine  
19 County School District. He also completed a paralegal  
20 diploma at the Northern Nevada Community College in  
21 White Pine County School District in July of 1992.

22 He's participated in Vietnam Veterans of  
23 America, and he's also been active in the largest  
24 fundraiser ever in the Breast Cancer Foundation in  
25 2003. Thank you.

1 He didn't say, just tell them. He said, just admit  
2 it.

3 GOVERNOR GIBBONS: Is there any member of  
4 the family or victim here present to testify in  
5 opposition to this motion?

6 Any member of the Board have a question?  
7 Hearing none, is there a motion by the Board?

8 JUSTICE SAITTA: Governor, I'll move to  
9 deny.

10 JUSTICE CHERRY: I'll second. Justice  
11 Cherry.

12 GOVERNOR GIBBONS: Motion made by Justice  
13 Saitta, seconded by Justice Cherry.

14 Any comment or question by any member of  
15 the Board on the motion?

16 Hearing none, Mr. Secretary, call the  
17 roll.

18 MR. SMITH:

19 JUSTICE SAITTA:	Yes.
20 JUSTICE CHERRY:	Yes.
21 JUSTICE PARRAGUIRRE:	Yes.
22 JUSTICE HARDESTY:	Yes.
23 CHIEF JUSTICE GIBBONS:	Yes.
24 ATTORNEY GENERAL MASTO:	Yes.
25 GOVERNOR GIBBONS:	Yes.

MR. SMITH: Motion carries.

GOVERNOR GIBBONS: Request is denied.