Clark, Angela

From: tonjamasrod40@aol.com

Sent: Monday, June 14, 2010 4:09 PM

To: Clark, Angela

Subject: : Facts followed by cases and exhibits. Gammick continues to keep ADA Barker knowing he withholds evidence

Attachments: FACTS__ADA_Steven_Barker_withheld_evidence_in_several_cases..jpg;
FACTS__ADA_Steven_Barker_withheld_evidence_in_several_cases._001.jpg;
FACTS__ADA_Steven_Barker_withheld_evidence_in_several_cases._002.jpg;
FACTS__ADA_Steven_Barker_withheld_evidence_in_several_cases._003.jpg;
FACTS__ADA_Steven_Barker_withheld_evidence_in_several_cases._004.jpg;
FACTS__ADA_Steven_Barker_withheld_evidence_in_several_cases._005.jpg

Dear Ms. Clark,

Please submit to the Commission the following information. This information is a prime example of why we need NOLAN'S LAW TO PASS. Assistant District Attorney, Steven Barker has been cited for withholding exculpatory evidence in the cases. I have attached some of the facts and Orders by the Judges regarding ADA Steven Barker.

Mr. still continues to hold him employment within the Washoe County District Attorney's Office. How many more cases will Mr. Barker continue to do withhold exculpatory evidence in?

Nolan's Law will prevent such an over zealous prosecutor, such as, Mr Steven Barker from continuing to violate the accused rights.

Tonja Brown

Advisory Commission on Admin. of Justice
Exhibit E pg 1 of 22 Date: 6-23-10
Submitted by: T. Brown

Facts

In order to truly understand the State's otherwise incomprehensible motion, it is important that some background be fleshed out for the Court. The true motive behind the Motion has nothing to do with misconduct, for there is none (not on the part of the Public Defender at any rate). It has nothing whatever to do with worry over a flight risk, because if the State was *actually* concerned and had wanted to prevent the OR, there was still ample time to do so after the alleged misunderstanding. And it has absolutely nothing whatsoever to do with Deputy District Attorney Seven Barker's moral outrage, because he has been found by multiple judges on multiple occasions over the years to have engaged in ethical and legal misconduct himself (conduct which continues to this day). Clearly, he is more than comfortable with bent rules.

No. This motion is about one thing – vindictive and improper retaliation against an attorney who has the temerity to (gasp!) do his job.

In order to understand the State's motion in context, then, it is unfortunately necessary to briefly outline Mr. Barker's conduct with Deputy Public Defender Orrin Johnson to date.

- On Mr. Johnson's first day as a member of a felony team, he represented a defendant charged with (among other things) Robbery at a preliminary hearing. The defendant was in custody, denied culpability, and invoked his right to his preliminary hearing. Mr. Barker was not prepared, as he didn't have a necessary witness present. When Johnson told him that the defendant was invoking his right and therefore he would have to make a *Hill-Bustos* motion if he wanted a continuance, Barker got within inches of Johnson's face and said, "You do not want to fuck with me. You're starting off on the wrong foot with me." Similar profanity-laced veiled threats were repeated at least three times before Barker was forced to go on the record to ask for the continuance. Barker was eventually forced to dismiss that case, but the threats turned out to be a harbinger of things to come.
- Later than first week, Barker conditioned an offer in another case on him being able to speak to the represented defendant personally so that he could chastise him. The defendant was in custody. Barker refused to discuss with the defense attorney what he intended to say to him. Failure to allow this impermissible contact with a represented criminal defendant would have impacted the deal in a way that could have meant the difference between multiple decades in prison and probation.
- Barker refused to stipulate to a continuance for a sentencing in a case where the defendant had been accidentally transported to prison by the State, in spite of the fact that the mistaken transport was unknown to either party until the defendant's wife contacted the Public Defender's Office (and Johnson contacted Barker). Due to the State's action, Mr. Johnson would not have been able to conduct an ADKT 411 compliant presentence investigation before the sentencing date. When pressed for a reason for his intransigence, Barker would only say, "Some things in

life are inexplicable." The case was, of course, continued by the court, but Johnson was forced to waste the time drafting and filing a last-minute written motion. Ironically, had Johnson chosen to "hide the ball" and not revealed the mixup to the DA, the continuance would have been forced by the defendant's absence and Barker would have been embarrassed in open court.

- In a shoplifting case that same day, Johnson was late for three preliminary hearings as a result of having to write the previously referenced motion to continue. In spite of the fact that the motion was necessary to cure Mr. Barker's own mistake and lack of attention to his own case, Barker was apparently upset that his case (only one of the three) was not the first Johnson handled. That case required the use of an interpreter which always takes extra time, and during Johnson's interview with the client (and during interactions with other clients), Barker constantly engaged in harassing behavior, including lurking outside the interview room pointing at his watch, threatening to revoke the offer "in ten minutes" if the client didn't accept his deal (obviously not enough to time conduct an ADKT 411 preliminary interview), and even unilaterally told the Reno Justice Court clerks to put a judge on the bench to begin a prelim in order to "demand" the judge simply bind the case over.
- Frequently, Mr. Barker comes to court unprepared to even discuss the case. He will openly admit that he hasn't read the file prior to arriving for a preliminary hearing, and untold hours have been wasted waiting for him to get up to speed and formulate an offer on the spot (even when offers have been requested of him days in advance via E-mail). While all busy attorneys must refresh their recollection on the files and may rethink negotiations at the hearing itself from time to time, with Barker it has become increasingly the norm, in spite of his suggestion to the contrary in his motion.
- More troubling than these was another recent case in which Mr. Barker failed to comply with at least 4 written requests to produce discovery in a case. Mr. Barker either ignored the requests or indicated that he had turned over all discovery when a subsequent E-mail from Barker himself showed that he had NOT done so, and in fact had hidden material evidence he was first made aware of at a previous setting. That previous setting was continued at Barker's request, but the request would not have been stipulated to had he revealed this relevant information. Johnson was forced to file a formal Motion to Compel discovery in that case. In spite of the clear misconduct evidenced there, Mr. Johnson chose – for the sake of comity – not to ask for sanctions. That did not stop Barker from indicating at the sentencing in that case (on the record no less) that if he had gotten the discovery motion earlier, he would have offered a different and presumably worse deal – a clear indicator of Barker's willingness to engage in unethical, vindictive behavior in retaliation for a defense attorney simply doing his job.
- While that case was ongoing, the defendant had a pending matter in family court due to an unrelated case. Without notice to the defense, written or otherwise, Mr. Barker went to one of the defendant's Family Drug Court Hearings prepared to make a motion for a "no contact" order against the defendant in order to further the criminal case. Mr. Johnson only learned about this attempt at impermissible ex-parte communication with that court after the fact. When confronted, Mr.

Barker said only (and in contravention of all law, rule, and courtesy), "I owe you neither explanation nor notice for that."

- Recently, Johnson made a 3rd, written request for discovery in a Category A Felony case after Barker ignored the first two. In spite of the seriousness of the offense, and the heightened obligations on both parties which go with it, Barker was casually dismissive of the request, erroneously claiming that the Federal Supreme Court's caselaw regarding a prosecutor's obligation with regard to discovery did not apply.

These are just the cases where Johnson represents the defendant, and represents a time period of just over 4 months. It is most assuredly not a comprehensive list, but rather a representative sample which highlights Mr. Barker's general attitude, demeanor, and standard operating procedure.

Mr. Barker is no stranger to misconduct and bad faith in dealing with other defense attorneys. Consider:

- In 2007, Judge Berry penned a scorching order chastising Barker for a discovery violation. The court specifically made a finding that Barker had engaged in misconduct, and the transcripts of that hearing reveal the same sort of vile pattern of abusive, bullying, contemptuous, in that case sexist, and quite frankly illegal behavior on his part. The order referenced a previous finding of misconduct by Judge Steinheimer. Judge Berry considered the misconduct so egregious that she referred Mr. Barker to the State Bar for disciplinary action.
- After that trial, Barker filed additional charges against that defendant. Judge Berry dismissed that case, finding that the charges constituted vindictive prosecution.
- Deputy Public Defender Sean Sullivan, on the week prior to a lewdness trial, discovered that an exculpatory CARES examination existed and had not been turned over by Barker. Barker indicated (wrongly) that he alternatively either didn't know about the report or that he wasn't obligated to turn it over an exculpatory medical examination because he wasn't going to use it in his case-in-chief at trial. (Barker had been specifically admonished that this was not the law in Berry's 2007 order.) Even so, Barker was initially unwilling to even agree to continue that trial to allow the defense to have their own experts digest the new medical report. Mr. Sullivan was forced to file a Motion to Compel discovery and Motion to Dismiss for Prosecutorial Misconduct in that case. The Motion to Compel was granted. That case is still on going.
- During a recent hearing, Mr. Sullivan saw Barker staring and glowering at him in a harassing manner. When confronted, Barker told Sullivan, "You're lucky that all I'm doing is staring." Barker did not elaborate on this threat.
- In a current case with Deputy Public Defender Jessica Longley, the defense requested copies of evidence which consisted of images of child pornography. Mr. Barker refused to turn over this information, claiming that the police wouldn't copy the material because they were afraid of violating federal law. This was not the truth. The information from the officer revealed that he had asked the DA

specifically if he should make copies for the defense, but had been told by prosecutors not to.

- Recently, Barker made a similar accusation to the one made against Johnson against private attorney John Arrascada. Actually, "similar" doesn't do the complaint justice, since it is quite obviously a cut-and-pasted copy of the one before the court today. Certainly, it makes the statements regarding Mr. Barker's "careful consideration" somewhat hollow.

The real trouble is that Mr. Barker likes to pick and chose what he will send via discovery to defense attorneys, what information he will reveal and not reveal, and flouts the law at will. He does not appreciate it when an opposing attorney forces him to comply with the rules of professional conduct, discovery statutes, or his obligations under the Constitution of the United States, and attempts to punish, smear, and besmirch such attorneys in retaliation for their "audacity".

Contrast with the attorney being so besmirched here. Mr. Johnson has a spotless record and a reputation for integrity and honor. He is a decorated military veteran who carried a Top Secret security clearance. He was recently recognized by his peers – in a survey taken of other members of the State Bar by Nevada Business Magazine – as one of the top 20 public attorneys in the entire state. His last performance evaluation was exemplary. He has never been so much as verbally reprimanded from the bench, much less referred to the bar for misconduct by at least one sitting District Court judge for hiding evidence, as is Mr. Barker's case. Mr. Barker makes unsupported allusions to the contrary, saying he'd spoken to "other attorneys" in his office, but could not name one. If this motion were to be granted and a hearing set, on the other hand, Mr. Johnson would be prepared to call half a dozen sitting District Attorneys as character witnesses.

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The present case fits Mr. Barker's *modus operandi*. It's handy that the State chose to include the E-mails between Johnson and Barker, because they speak for themselves. The final one from Johnson sums up the situation perfectly, and Mr. Barker's motion here only serves to highlight his own bad-faith.

For example, Mr. Barker says that he "searched his Outlook" for the original E-mail from Johnson, but that he was unable to find it. There are only a few ways in which this statement can be credible. Either he deleted the original without ever having read it, or he did an incompetently incomplete job of searching through his computer files. The other possibility, of course, is that he *did* get it, *did* read it, and is simply not telling the truth in his motion.

If this were the only such example of this, one could perhaps give him the benefit of the doubt. But it is not.

Barker notes, "If the State had known he was in custody, we would not have agreed to the OR." But the State *did* know – not only did Johnson inform him specifically, but it was
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by the State's own actions that the defendant was in custody in the first place! How could he possibly have *not* known? Additionally, Barker had in his possession extradition paperwork which he read from at a time he later claimed not to know the defendant was in custody – paperwork which Barker has *still* not turned over to the defense, even though it is material to the total restitution in this case.

Again, the State's implication that the defense was somehow hiding the fact that Mr. Masten was in custody makes absolutely no sense whatsoever. How can this be, when the defense communicated this fact to the DA – in writing! – two days prior to the hearing? Next, Mr. Barker will suggest to this Court that the defense attorneys with whom he works should come to his office and read their E-mails aloud to him, following up with a short quiz to test his level of comprehension. But in spite of its absurdity, the State's assertion that Mr. Johnson engaged in misconduct is wholly dependent on this implication.

It is true that Johnson never actually said the words, "I would like a stipulation to an OR release." (The State will no doubt put that last sentence in a block quote in their reply, work themselves up into a missing-the-point frenzy, and say, "See! See! He admits it!" – conveniently forgetting the entirety of the rest of the conversations at issue or the context in which they took place.) But given that the deal was, as stated, illusory, impossible, unworkable, and otherwise meaningless without an OR release, the implied consent to the OR is the unmistakable and unavoidable conclusion. No rational fact finder could possibly determine otherwise.

At *best*, what exists here is a miscommunication. With both sides handling hundreds of cases at any given time, that sort of thing is inevitable. With both attorneys being human beings, mistakes are bound to take place from time to time. Indeed, if each mistake and miscommunication was followed by a show cause request from either side, the court would have no time to handle a single other matter! Without a showing of some sort of unethical intent, or even negligence, there is no misconduct, and there can be no sanction.

Mr. Barker's contention that he would not have agreed to OR Mr. Masten likewise cannot withstand the most basic of scrutiny. Mr. Barker has been around long enough to know that when an inmate at WCJ is released on an OR, they don't immediately just walk out the door from the basement of Reno Justice Court within minutes of the judge granting the request. Rather they must be transported, processed, interviewed with Court Services, and only then released. If the State was serious about this "flight risk" concern, they would have immediately asked to go in on the record to revise the order. Since they didn't this court is left with the only other conclusion – that this is a disingenuous *ex post* excuse to justify feigned outrage over misconduct which never actually took place, and that it is being done in order to intimidate, harass, and retaliate against Mr. Johnson for committing such heinous acts as asking for discovery he's legally entitled to, or assuming that the State has bothered to conduct the most perfunctory preparation prior to a hearing.

Often, this unethical behavior puts a defense attorney in an untenable position. No one – no one – should have to put up with such despicable and unethical behavior, but the defense attorney is also obligated to his client. Often, because of legitimate fears of retaliation in present or future case, a defense attorney finds himself unable to confront the bad behavior without adversely impacting his client.

Mr. Barker knows this, and exploits it. (Why he does so is unclear, but his long history of doing so in any event speaks for itself.) If this Court is not willing to hold Mr. Barker to account for this type of behavior in the strongest possible way, then the behavior will continue. Barker clearly thinks the rules don't apply to him, and unless they are rigorously enforced when his misconduct is exposed, he's correct in that assessment.

All good attorneys value their integrity and their reputation, and guard it zealously. Any attack on this foundation of any attorney's

Clark, Angela

From: tonjamasrod40@aol.com

Sent: Monday, June 14, 2010 4:09 PM

To: Clark, Angela

Subject: Fwd: cases 1 and 2 out of seven cases evidence withheld by prosecution and Sanctions imposed on Barker

Attachments: Case_1._ADA_Steven_Barker_withheld_evidence_in_several_cases..jpg;
Case_1._ADA_Steven_Barker_withheld_evidence_in_several_cases._002.jpg;
Case_2._ADA_Steven_Barker_withheld_evidence_in_several_cases..jpg;
Case_2._ADA_Steven_Barker_withheld_evidence_in_several_cases._001.jpg

Please submit to the Commission.

As for now there will be 4 emails containing the information regarding ADA Steven Barker with the Washoe County District Attorney's Office.
t: cases 1 and 2 out of seven cases evidence withheld by prosecution and Sanctions imposed on Barker

JEREMY T. BOSLER
BAR #4925
WASHOE COUNTY PUBLIC DEFENDER
One California Avenue
RENO, NV 89509
775) 337-4800
ATTORNEY FOR DEFENDANT

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,
Plaintiff,

vs.

Case No. CR09-0158

FELIPE HENRIQUEZ,
Defendant.

Dept. No. 8

/

DEFENDANT'S MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT

COMES NOW Defendant, FELIPE HENRIQUEZ, by and through his counsel of record, the Washoe County Public Defender's Office, and Deputy Public Defender, SEAN B. SULLIVAN, and herby moves this Court to issue an Order dismissing this case in its entirety for discovery violations and/or prosecutorial misconduct.

This motion is based upon the following points and authorities, the attached exhibits herein, any arguments of counsel, and any witness testimony this Court may entertain at an evidentiary hearing currently scheduled for September 9. 2009 in Department Number Seven of the Second Judicial District Court.

Dated this 3 of September, 2009.

By: _____
SEAN B. SULLIVAN

AFFIRMATION PURSUANT TO N.R.S. 239.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted this 3 day of September, 2009.

JEREMY T. BOSLER
Washoe County Public Defender

By _____
SEAN B. SULLIVAN
Deputy Public Defender

FILED

JAN 23 2007

RONALD A. LONGTIN, JR. CLERK
By: _____
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

STATE OF NEVADA,

Plaintiff,

vs. Case No. CR06-1733

JOSHUA LEO DAVEY, Dept. No. 1

Defendant.

ORDER

Defendant, JOSHUA LEO DAVEY, is charged with two counts of statutory sexual seduction. He entered pleas of not guilty and was scheduled to begin trial on October 23, 2006. In preparation for trial, the STATE and the Defense entered into a reciprocal discovery agreement. Additionally, defense counsel contends she made four requests for discovery and filed a motion in limine regarding other acts, all of which placed the State on notice of Defense's desire to obtain all discovery, both inculpatory and potentially exculpatory. On the day of trial, the Court was forced to vacate the trial and send home waiting jurors because the State violated the parties' reciprocal discovery agreement.

As a result of this violation, the Defense filed a *Motion for Dismissal with Prejudice Upon Prosecutorial Misconduct* on November 20, 2006. The State filed an *Opposition* and the Defense *Replied*. The Court heard oral argument on the *Motion*.

not relevant' to 'he was not aware of the evidence' to 'he did not read the evidence [illegible] of the trial'. Under any set of circumstances, Mr. Barker's lax approach to compliance with discovery orders is unacceptable.

Mr. Barker's misconduct has caused this case to be delayed, has inconvenienced jurors who reported to the court to commence trial, has caused the State and County to incur costs associated with trial preparation, and has created concern from defense counsel as to Mr. Barker's integrity and/or ability to properly comply with the rules of discovery.

The Defendant's request for dismissal with prejudice, under the unfortunate circumstances of this case, is understandable. However, such a severe sanction is not warranted or supported by law. The dismissal of a criminal case because of prosecutorial misconduct results in potential injustice to victims of crime and the citizens of Nevada. The Supreme Court favors resolution of cases on the merits and dismissal is a harsh remedy for prosecutorial misconduct.

Accordingly, the Court DENIES the Defendant's *Motion for Dismissal Based Upon Prosecutorial Misconduct*. The Court has conferred with the State Bar of Nevada and requested guidance related to Mr. Barker's discovery violation. The State Bar requested the Court send a copy of this *Order* along with copies of the parties' motions and transcripts to the State Bar for consideration. Accordingly, the clerk is ORDERED to provide the State Bar with the requested documents.

IT IS SO ORDERED.

DATED this 23rd day of January 2007.

JANET BERRY
District Judge

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found Mr. Barker's conduct was improper, but concluded the conduct was harmless beyond a reasonable doubt and denied the defendant's *Motion for Mistrial*.

The defense also alleged Mr. Barker engaged in misconduct when he made several statements during his closing argument. The Court found many of these statements to be improper, but the statements did not justify the [illegible] granting a motion for mistrial or for a new trial.

JEREMY T. BOSLER, Bar No. 4925
One California Ave
Reno, NV 89509
(775)337-4800
Attorney for Defendant

IN THE JUSTICE COURT OF RENO TOWNSHIP

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

KIRK EDWARD MASTEN,

Defendant.

Case: RCR 09-049502

DEPT: 5

OPPOSITION TO MOTION REQUESTING A SHOW CAUSE HEARING AND REQUEST FOR SANCTIONS

The motion filed by the State fails on its merits, as any common sense reading of the communications Deputy DA Steven M. Barker himself provides shows. The motion is frivolous and without foundation. The situation is – at the very most – a miscommunication and honest mistake of the type that is inevitable for any attorneys from time to time who carry the caseload of either a Public Defender or a District Attorney. Worse, it is an attempt to retaliate against another attorney for prior actions which consisted of nothing more than him trying to do his job. After having been caught on multiple occasions hiding evidence, violating discovery laws and rules, and acting vindictively, the sad but inevitable conclusion is that Mr. Barker filed this motion to distract from his own ongoing misconduct and to bully the defense bar generally into not zealously defending their clients. We therefore respectfully request the

To that end, we respectfully request that Mr. Barker's Motion for a Show Cause Hearing be DENIED, that he be admonished via a written ORDER against committing further misconduct in the future, and that further sanctions be imposed as this Court deems appropriate.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 19th Day of NOVEMBER, 2009.

JEREMY T. BOSLER
Washoe County Public Defender

By _____
ORRIN J. H. JOHNSON
Deputy Public Defender

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

STATE OF NEVADA,

Plaintiff,

vs. Case No. CR06-1733

JOSHUA LEO DAVEY, Dept. No. 1

Defendant.

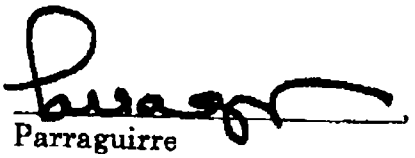
ORDER

Defendant, JOSHUA LEO DAVEY, is charged with two counts of statutory sexual seduction. He entered pleas of not guilty and was scheduled to begin trial on October 23, 2006. In preparation for trial, the STATE and the Defense entered into a reciprocal discovery agreement. Additionally, defense counsel contends she made four requests for discovery and filed a motion in limine regarding other acts, all of which placed the State on notice of Defense's desire to obtain all discovery, both inculpatory and potentially exculpatory. On the day of trial, the Court was forced to vacate the trial and send home waiting jurors because the State violated the parties' reciprocal

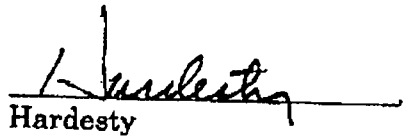
deprive a defendant of a fair trial."[9] Further misconduct of this nature by Barker could lead to a referral to the State Bar of Nevada.

Accordingly, we

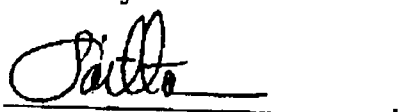
ORDER the judgment of the district court AFFIRMED.



_____, J.
Parraguirre



_____, J.
Hardesty



_____, J.
Saitta

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General Catherine Cortez Masto/Carson City
Washoe County Public Defender
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[9]Jones v. State, 113 Nev. 454, 469, 937 P.2d 55, 65 (1997) (quoting Pacheco v. State, 82 Nev. 172, 180, 414 P.2d 100, 104 (1966)).

CODE 3370

FILED

JUN 20 2007

RONALD A. LONGTIN, JR., CLERK

By: _____ DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR06-1733

Dept. No. 1

JOSHUA LEO DAVEY,

Defendant.

_____/

ORDER

Defendant, JOSHUA LEO DAVEY, filed a *Motion to Dismiss Indictment for Vindictive Prosecution* on April 17, 2007. The STATE filed an *Opposition* on May 18, 2007, and the Defense *Replied* on May 25, 2007. The Court heard oral argument and makes the following findings of fact and conclusions of law.

Davey was originally charged with two counts of statutory sexual seduction. He entered pleas of not guilty and was scheduled to begin trial on October 23, 2006. Before the scheduled trial, the Court heard argument and considered motions on the admissibility of alleged but not charged acts of alcohol consumption, marijuana use, sale, or trade involving the defendant and alleged victims. On the date of trial, the Court and parties learned the State was responsible for a discovery violation. The Court continued the trial, and Defendant later filed a *Motion for Dismissal with Prejudice Based upon Prosecutorial Misconduct*. The Court denied Defendant's *Motion for Dismissal* and referred the matter to the State Bar of Nevada to investigate the alleged prosecutorial misconduct.

and chose not to pursue the drug charges until March 2007. The claim that the State had not adequately investigated those facts until later does not convince the Court that the new indictment is unrelated to the defense's filing of motions in September, October, and November of 2006 and the defense strategy articulated during pre-trial motion hearings.

Further, public policy supports this Court granting Defendant's *Motion*. The U.S. Supreme Court has reasoned that "fear of vindictiveness for exercising a statutory right to appeal was as forceful as actual vindictiveness in chilling a defendant's 'free and unfettered' choice in deciding to appeal." U.S. v. DeMarco, 550 F.2d 1224, 1227 (9th Cir. 1977) (citing North Carolina v. Pearce, 395 U.S. 711, 724 (1969). The appearance of vindictiveness in this case is so strong that, if the indictment was allowed to stand, defendants may be discouraged from aggressively defending charges against them for fear that the State would hold back charges and bring them forward when the defense became too aggressive or irritating in the eyes of the prosecution.

In light of these public policy considerations, the law, and the record in its entirety, the Court GRANTS Defendant's *Motion to Dismiss Indictment for Vindictive Prosecution*.

DATED: This 20th day of June, 2007.

Janet Berry

DISTRICT JUDGE

FILED

09 DEC -9 AM 10: 02

JANE BUTTLE
RENO JUSTICE COURT
BY _____
DEPUTY

Case No. RCR 2009-049502

Dept. No. 5

IN THE JUSTICE COURT OF RENO TOWNSHIP

COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KIRK EDWARD MASTEN,

Defendant.

_____/

ORDER DENYING REQUEST FOR SHOW CAUSE HEARING AND SANCTIONS

This matter came before the Court on the District Attorney's Motion for Order to Show Cause and Reprimand Re: Orrin Johnson Misconduct, filed November 10, 2009, by Deputy District Attorney Steven M. Barker. On November 20, 2009, the Washoe County Public Defender, by Deputy Public Defender Orrin J.H. Johnson, filed his Opposition to Motion Requesting a Show Cause Hearing and Request for Sanctions. On November 30, 2009, Deputy District Attorney Barker, on behalf of the District Attorney, filed his Reply to Opposition to Motion Requesting a Show Cause Hearing and Request for Sanctions. While these documents have all been filed under the above-entitled case name and number, the complaint in that case has been dismissed as to the above-named Defendant.

The Court has read and considered the allegations and arguments set forth in the documents regarding the instant Motion. While it is apparent that both Mr. Barker and Mr. Johnson feel strongly regarding their positions, the Court finds that neither the allegations, nor the amount of time and energy that has been devoted to this Motion, justify a further exercise of

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IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFTON EMIL IGNACIO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53317

FILED

JAN 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of statutory sexual seduction. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant Clifton Emil Ignacio contends that the State breached the negotiated plea agreement at sentencing. We agree.

The State reserved the qualified "right to present arguments, facts, and/or witnesses at sentencing in support of the plea agreement," but agreed not to object to probation if Ignacio qualified based on a psychosexual evaluation. Ignacio was determined to be eligible for probation. Although the prosecutor stated several times that the State would stand behind its agreement, the State also presented argument at sentencing. Ignacio objected to the State's argument.

The State is held "to the most meticulous standards of both promise and performance in fulfillment of its part of a plea bargain," and "[t]he violation of either the terms or the spirit of the agreement requires reversal." Sullivan v. State, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999) (internal quotation marks omitted). We conclude that the State breached the plea agreement by implicitly seeking to persuade the district court to impose a harsher sentence than probation. See id. at 389, 990 P.2d at

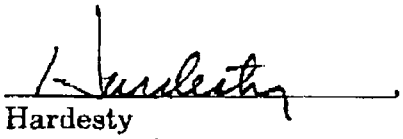
10-00421

deprive a defendant of a fair trial."[9] Further misconduct of this nature by Barker could lead to a referral to the State Bar of Nevada.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Parraguirre



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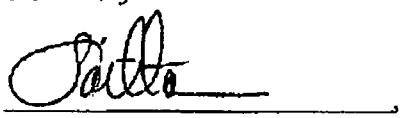

_____, J.
Saitta

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General Catherine Cortez Masto/Carson City
Washoe County Public Defender
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[9]Jones v. State, 113 Nev. 454, 469, 937 P.2d 55, 65 (1997) (quoting Pacheco v. State, 82 Nev. 172, 180, 414 P.2d 100, 104 (1966)).

Erin A.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOAN PENDERGRAFT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46171

FILED

JUN 12 2007

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of gross misdemeanor child endangerment and misdemeanor coercion. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Joan Pendergraft to two concurrent jail terms of 6 months, but then suspended execution of the sentence and placed Pendergraft on probation for a time period not to exceed 18 months.

Pendergraft contends, among other things, that reversal of her conviction is warranted because the prosecutor engaged in misconduct.[1] Specifically, she argues that the prosecutor acted improperly by asking Pendergraft, on cross-examination, whether the case against her daughter and codefendant had been "adjudicated" and asking whether her daughter had been held "accountable" for the same crimes. In its appellate brief,

[1]Pendergraft also argues that the prosecutor committed misconduct by implying, in rebuttal closing argument, that her daughter and codefendant was a bad mother. The alleged instance of misconduct was not objected to and does not rise to the level of plain error. See Williams v. State, 103 Nev. 106, 110-11, 734 P.2d 700, 703 (1987).

While the State presented sufficient evidence in support of the convictions, under the particular circumstances of this case, we cannot say that the prosecutorial misconduct was harmless beyond a reasonable doubt. To the contrary, we conclude that the prosecutorial misconduct infected the proceedings with unfairness and, therefore, Pendergraft is entitled to a new trial. Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Gibbons, J.

Douglas, J.

Cherry, J.

cc: Hon. Steven P. Elliott, District Judge
Hardy & Associates
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

. . . continued

misconduct and issuing a "stern warning to trial attorneys" that "failure to observe the admonitions of the trial judge will not be tolerated").

DA #368686
DV-DB

IN THE JUSTICE COURT OF RENO TOWNSHIP
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

SALOME MARTINEZ,

Defendant.

RCR 2007-034171

DEPT. NO.: 1

REQUEST, STIPULATION AND ORDER RE PRE-PRELIMINARY HEARING AND PRE-TRIAL RECIPROCAL DISCOVERY
(Felony And Gross Misdemeanor Cases)

I. DEFENDANT'S REQUEST FOR PRE-PRELIMINARY HEARING DISCOVERY

Pursuant to NRS 171.1965, the Defendant requests copies of any and all of the following items which come into the possession of custody of the prosecuting attorney not less than two (2) judicial days before the scheduled preliminary hearing: written or recorded statements or confessions made by the Defendant; written or recorded statements made by a witness or witnesses; reports of statements or confessions; results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the case; and books, papers, documents or tangible objects that the prosecuting attorney intends to introduce into evidence during the State's case in chief at the preliminary hearing.

II. DEFENDANT'S REQUEST FOR PRE-TRIAL DISCOVERY

Pursuant to NRS 174.235 through 174.295 the Defendant requests copies of any and all of the following items within the custody of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney: written or recorded statements or confessions made of the Defendant; written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the State; results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case;

and papers, documents or tangible objects that the prosecuting attorney intends to introduce into evidence during the case in chief of the State.

III. STATE'S REQUEST FOR PRE-TRIAL DISCOVERY

Pursuant to NRS 174.235 through 174.295 the State requests copies of any and all of the following items within the possession, custody or control of the Defendant, the existence of which is known, or by the exercise of due diligence may become known, to the Defendant: written or recorded statements made by a witness the Defendant intends to call during the case in chief of the Defendant; results or reports of physical or mental examinations, scientific tests or scientific experiments that the Defendant; and papers, documents or tangible objects that the Defendant intends to introduce into evidence during the case in chief of the Defendant.

IV. WAIVER OF TIME REQUIRMEENTS

By the execution of the instant request and stipulation, both the State and the Defendant expressly waive the requirement that the parties requests for pre-trial discovery must be made within thirty (30) days of the District Court arraignment, pursuant to NRS 174.285. The parties stipulate and agree that said requests are timely and satisfactorily made by the execution of the instant request and stipulation.

V. ADDITIONAL STIPULATIONS

The parties agree to comply with the witness notification provisions, including the expert witness notification provisions, of Chapters 173 and 174 of the Nevada Revised Statutes.

The State agrees to provide the Defendant with all exculpatory materials pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and the provisions of this Request, Stipulation and Order are not intended to affect any obligation placed on the prosecuting attorney by the Constitution of this State or the Constitution of the United States to disclose exculpatory evidence, or other materials required by law, to the Defendant.

The State and the Defendant shall have a continuing duty to disclose copies of all discovery items noted *supra*.

///

///

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned do hereby affirm that the preceding document does not contain the social security number of any person.

Prosecuting Attorney — Date: 4/20/07

JOHN L. ARRASCADA,
Defendant's Attorney — Date: 4/23/07 (April 23, 2007)

ORDER

GOOD CAUSE APPEARING, the above stipulations are hereby ratified and approved. The parties shall comply with the terms of this document.

IT IS SO ORDERED.

DATED: This _____ day of April, 2007.

DISTRICT JUDGE

Clark, Angela

From: tonjamasrod40@aol.com

Sent: Monday, June 14, 2010 4:47 PM

To: Clark, Angela

Subject: Recommend an Oversight Committee to the 2011 Legislature

Ms. Clark,

Please submit to the Commission the information regarding AB416- AB510 minutes of Tonja Brown and other Advocates in favor of an Oversight Committee.

If there had been an Oversight Committee to over see NDOC other than the Board of Prison Commissioners who basically had a total disregard of what the Advocates and Prison Guards had to say at the hearings, the Ely lawsuit among other suits would not be been going forward.

The lack of an Oversight Committee has cost the taxpayers money and it will continue to cost the taxpayers money until one can be put in place. We as Advocates have asked for an Oversight Committee for years. We have even offered to be apart of the Oversight Committee at no cost to the state. This would cut down on the grievances filed by the inmates that ultimately lead to lawsuits. The lack of medical care could have been provided instead we now have a federal lawsuit and others going forward because of lack of medical care. It would have cut back on the lawsuits filed by NDOC staff members that are going to trial if there had been a fair and impartial Oversight Committee put in place. http://www.leg.state.nv.us/74th/Minutes/Senate/JUD/FINAL/1407.pdf#xml=http://search.leg.state.nv.us/isy

Tonja Brown

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fourth Session
May 28, 2007

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:25 a.m. on Monday, May 28, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator Dennis Nolan (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman David R. Parks, Assembly District No. 41

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Lora Nay, Committee Secretary

OTHERS PRESENT:

Tonja Brown
Esther Smith
James W. McCuin

Cotter C. Conway, Washoe County Public Defender
Jason M. Frierson, Clark County Public Defender's Office
Michele Gochenour
Don Holmes
Donald Hinton, Spartacus Project Redress, Inc.
Ken Neil
David Haney
Mark Woods, Acting Deputy Chief, Division of Parole and Probation, Department of Public Safety
Don Helling, Warden, Northern Nevada Correctional Center, Carson City, Department of Corrections
Consuelo F. McCuin
Marnita Y. Smith
Sean Gamble, The Rogich Communications Group
Flo Jones
Rich Lamb
Raymond J. Flynn, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Evelyn Murphy
Cindy Haney
Constance Kosuda
Katy O'Leary
Staci Palovich/Harsh
Pat Hines
Joseph A. Turco, American Civil Liberties Union of Nevada
Patti Edgin

CHAIR AMODEI:
We will continue our hearing on Assembly Bill (A.B.) 416.

ASSEMBLY BILL 416 (1st Reprint): Makes various changes to provisions concerning the Department of Corrections. (BDR 16-190)

TONJA BROWN:
I support A.B. 416. It has been surprising to Legislators to learn Nevada is one of three states where deoxyribonucleic acid (DNA) testing only applies to inmates who have received the death penalty. I am asking that a genetic marker analysis testing be conducted by an independent forensic laboratory outside the state at the petitioner's request. If the court finds in favor of the petitioner, the Department of Corrections (DOC) incurs all costs.

I want to add that a petitioner may request and pay for an independent forensic laboratory outside the state at the petitioner's request and cost. If an inmate is willing to incur all costs, they should grant DNA testing. There would be no fiscal impact to the state unless a judge grants their request and the county would incur the costs. The Nevada DOC would incur the costs of DNA testing in death penalty convictions. Also, I would like to add ...

CHAIR AMODEI:
Ms. Brown, is this your testimony? You are giving us specific information.

MS. BROWN:
I provided this testimony last week and you were sent a copy.

CHAIR AMODEI:
We already have that information?

MS. BROWN:
Yes, you have it. Also, every parolee must have supervision of a minimum of six months. No one should leave prison on an expired sentence. This will reduce recidivism.

I would like to go to the Open Meeting Law. The Nevada Supreme Court determined the State Board of Parole Commissioners does not meet the definition of a quasi-judicial body; yet the Parole Board still claims they are quasi-judicial. They do not even meet the test of due process. Each meeting of the Parole Board should allow any citizen who is behaving properly an opportunity to speak; three minutes is the normal time used for most open meetings. They should also be required to have a written record for each meeting. An inmate must be present for the parole hearing to respond and participate in the question-and-answer portion of the Parole Board decision making. Parole Boards have been known to make mistakes. It is

important to adopt procedures preserving the appearance of fairness, thus gaining the confidence of inmates in their decision process. Their treatment in parole hearings will enhance the chance for rehabilitation by avoiding negative reactions.

What will the cost to Nevada taxpayers be when the Parole Board violations of *Nevada Revised Statute* (NRS) 241 concerning Open Meeting Laws are taken on appeal all the way to the U.S. Supreme Court? Accuracy and fairness are essential in proceedings which impinge directly on personal liberty. The interest of both society and criminal offenders are best served when fairness and accuracy are assured at all stages of sentencing and correctional process.

If the Legislature leaves Carson City without applying the Open Meeting Law to the Parole Board Commissioners, the practice of darkness will be alive and well and will follow this Legislature's decisions for years to come. This is one fiscal impact that must not be overlooked. The only foreseeable reason to have no records is that the Commissioners can give any reason; we have no way to check and the reasons change if they are questioned. With no records, we have no checks and balances and they answer to no one.

CHAIR AMODEI:
If I asked you to give me your top three priorities in A.B. 416 to put into A.B. 510, what would they be?

MS. BROWN:
It would be an advisory oversight commission, the Open Meeting Law and the DNA testing is important but so are the credits.

ESTHER SMITH:
I have been a resident of Las Vegas for 54 years. My husband is in the Southern Nevada Correctional Center. There have been changes. I was told everything is being taken away such as televisions, computers and things they can use to learn something, gym and stuff they need for exercises. That is not fair for the inmates. Incompetent prisoners needing treatment should be in an institution where they can get help. Do not put him behind bars and give him bad treatment. That is not doing anything for the inmates.

I do not think that institution is run correctly. They have pickers and choosers. They do not do as good to the inmates that other states do. If one inmate gets into a problem, lock that inmate down or do whatever is necessary. Do not do the whole prisoner system that way.

JAMES W. MCCUIN:
I am retired from the army and support A.B. 416 and A.B. 510.

ASSEMBLY BILL 510 (2nd Reprint): Makes various changes concerning credits earned by offenders and the incarceration and supervision of offenders. (BDR 16-1377)

COTTER C. CONWAY (Washoe County Public Defender):
I specifically support A.B. 416 to the provisions involving putting some discretion back with the judges in sections 26 through 34. With regard to those, my concern has been this, we testified before this Committee on A.B. 63 and we know some of the concerns there. What I am proposing today is very briefly ...

ASSEMBLY BILL 63 (2nd Reprint): Revises provisions governing the additional penalty for the use of certain weapons in the commission of crime. (BDR 15-151)

CHAIR AMODEI:
Let me stop you there because apparently what I said on the Senate Floor has left some people with some confusion. This Committee passed out A.B. 63 and supported the return of discretion to sentencing judges. We had some language drafted which was circulated. Before it got to a vote, there were concerns raised by members of the Judiciary regarding that language's application to a fairly recent U.S. Supreme Court case and possible unintended consequences. This is the part where I did not make myself clear. I said we support the concept, but we want another week to work on language which will accomplish the objective without creating the unintended consequences.

If anybody thinks that anything I just said means we are somehow trying to kill A.B. 63, you are incorrect. I would like to thank these two gentlemen for taking up the task of a proposed amendment which accomplished what we want. If anybody leaves the room in the Grant Sawyer Building or the room here in Carson City thinking that A.B. 63 is dead—although I thought I made it clear

earlier, it is not. We are going to put its language into A.B. 510 which accomplishes the objective and does not create unintended consequences. Thank you for your efforts, Mr. Conway, and please proceed.

MR. CONWAY:
I understood what you said on the Senate Floor. In an effort to propose something to meet your concerns, I have submitted language to you (Exhibit C).

JASON M. FRIERSON (Clark County Public Defender's Office):
I would only like to add that I have spoken with R. Ben Graham of the Nevada District Attorneys Association and Assemblyman William Horne. There was language provided to Assemblyman Horne as a result of those discussions to resolve the concerns in A.B. 510 as well as A.B. 63 with respect to the U.S. Supreme Court case of *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

SENATOR CARE:
Are you inclined to give courts discretion to determine the enhancement we have had in statute for several decades?

MR. CONWAY:
I drafted this proposed amendment based on a statute that had survived *Apprendi* out of New York.

MR. FRIERSON:
I will provide you with language that came from discussions last week. Originally, it was worded in a way that appeared to make the enhancement discretionary. We changed that to make it clear the enhancement is required by law so we do not have to have a judge explain why the enhancement is being applied as opposed to explain the level of the enhancement.

MICHELE GOCHENOUR:
I support A.B. 416 and A.B. 510.

DON HOLMES:
I support A.B. 416 and A.B. 510.

DONALD HINTON (Spartacus Project Redress, Inc.):
Since Howard Skolnik, Director, Department of Corrections, has taken over the prison system, it has gotten worse. Infractions written up are not always true and it does not look like Mr. Skolnik is going to approach that problem.

Whole time for people, whether the infractions they are written up for are true or not, sometimes goes into years, and it does not look like Mr. Skolnik is going to approach that problem. At High Desert State Prison, they have removed the books and televisions and almost all reading material, anything to pass the time in the cell blocks. We definitely need that oversight committee.

CHAIR AMODEI:
Let me ask you the same question I asked Ms. Brown. If you could prioritize three things out of A.B. 416, what would be your top three priorities?

MR. HINTON:
The oversight committee would be No. 1; No. 2 is the money that DOC assesses on their kangaroo fines and perhaps the Open Meeting Law.

KEN NEIL:
I am a 30-year businessman in Las Vegas and have a son who has done 22 years in prison. The oversight committee is necessary. There are things that go on that you need to know about.

DAVID HANEY:
I absolutely support A.B. 416 and A.B. 510.

MS. SMITH:
I forgot to say I support A.B. 416 and A.B. 510, and I think we should go into the Parole Board system because our parole members are very rude to the inmates. They do not give them a chance to talk; they say things inappropriate to them and give them a bad spirit on parole date.

CHAIR AMODEI:
Assemblyman David Parks, we will conclude our testimony on A.B. 416 with you and then you can introduce A.B. 510.

ASSEMBLYMAN DAVID R. PARKS (Assembly District No. 41):
I am Chair of the Assembly Select Committee on Corrections, Parole and Probation (P&P). I am confused because I have not had any communication that A.B. 416 is in the least dead. I know section 25 seems to have problems with members in the Assembly, but I would like to emphatically say that without A.B. 416, we are going to have severe budget problems.

Sections 26 through 34 are provisions dealing with an issue partially contained in A.B. 63. This is where major savings will be accomplished, and I would hope to see A.B. 416 out of the Assembly Committee on Ways and Means within the next day. While all the other sections are vitally important, sections 26 through 34 are especially important from a budgetary perspective.

CHAIR AMODEI:
What is your impression of the chance of the proposed advisory commission coming out of Ways and Means?

ASSEMBLYMAN PARKS:
I have not heard. I am only one vote. My confusion is in the fact I have not received feedback from my fellow committee members in Ways and Means on what they like or do not like about the bill. I have to admit I am in the dark.

SENATOR WASHINGTON:
I have a question regarding the advisory commission. I am looking at the membership list. Was there any consideration given to the fact that some of the work could be incorporated by the prison interim committee?

ASSEMBLYMAN PARKS:
Are you talking about the interim committee on prison industries?

SENATOR WASHINGTON:
They are different?

ASSEMBLYMAN PARKS:
There are job descriptions about duties they are statutorily required to perform.

SENATOR WASHINGTON:
I was trying to find another avenue just in case you got bogged down in the Assembly Ways and Means Committee. Will you still have the interim committee on prison industries? Maybe through drafting or some language we can assign those duties.

ASSEMBLYMAN PARKS:
That would probably require some form of an adjustment or a change to the scope of duties of which they are required to adhere.

SENATOR WASHINGTON:
We have both served on that, have we not?

ASSEMBLYMAN PARKS:
No, I have not been on that committee. The thinking of the Select Committee was in part relative to the work accomplished in A.B. 508 would be more into the area of sentencing requirements, but the proposal within A.B. 416 would be to look at issues of concern that you heard this morning. The members attending this hearing from the Grant Sawyer Building have brought up that the Policy Advisory Commission on Corrections in A.B. 416 would look at those particular issues whereas the Advisory Commission on Sentencing would look more strictly at the judicial end of the work.

ASSEMBLY BILL 508 (3rd Reprint): Makes various changes to provisions concerning the Advisory Commission on Sentencing. (BDR 14-1378)

CHAIR AMODEI:
Sections 1 through 6 of A.B. 416 are about the Commission; section 25 is the Open Meeting Law and sections 26 through the end are the various things dealing with sentencing.

ASSEMBLYMAN PARKS:
Yes, you are correct. I would only add that section 21 is also in A.B. 510. The other important section would be section 24 of A.B. 416, which requires certain prisoners not previously released on parole be released 18 months, instead of the current 12 months, prior to the end of their maximum term.

The other part of section 24 that seems to be important to the individuals who have spoken this morning is that a reason for denial must be written every time somebody gets dumped. Most inmates get their notice and do not know why they were not granted parole.

SENATOR WASHINGTON:
In section 25, subsection 6, which is the Open Meeting Law portion of the bill, deals with discretion for the Board to have closed meetings if necessary to protect the identity of a minor, etc. Is that discretion limited to those circumstances within that section?

ASSEMBLYMAN PARKS:
Subsection 6 on page 11 says the Board may hold closed meetings in considering a prisoner for parole when necessary. Yes, there are times when testimony from a witness, especially a victim of crime, could be taken separately because there certainly is a fear factor that continues for many years. We do not want this to be an uncomfortable situation any more than what it already is for those individuals. Whatever the Board does, the important thing is they need to make a notation of it and include it in their findings.

SENATOR WASHINGTON:
How do you envision this working? Who would they notify that the hearing will be either opened or closed?

ASSEMBLYMAN PARKS:
I do not know the exact specifics, but I know they currently do activities along that line at this time.

SENATOR WASHINGTON:
Subsection 8 on page 12 says that the prisoners provide all information which the Board will rely upon considering whether to grant parole. That information sometimes discloses graphic information, such as details of the event. Would photos or graphic information be provided to the prisoner as well?

ASSEMBLYMAN PARKS:
Normally, documents are not provided to the inmate, but the inmate at least has the opportunity to look at those documents. I have heard time and again where an inmate meets with a caseworker, goes through the folder with the documents that are supposed to be submitted to the Parole Board and then

finds out afterwards that the documents never ended up in the folders provided to the Parole Board. These documents include information on good time credits or maybe letters from a member of the clergy supporting the inmate's request for parole. This bill is an attempt to let the inmates know exactly what is in the folder provided to the Parole Commissioners.

Certain offenders may earn a reduction of their sentence through good behavior, educational attainment or by successfully completing an alcohol or drug treatment program. Probationers become eligible for good behavior credits. Assembly Bill 510 increases the deductions from the sentence for a parolee who is current with any restitution and fees to defray the cost of his supervision. The bill also provides for retroactive application of credits to certain offenders. The Director of the DOC must not assign certain convicted sex offenders or offenders convicted of violent felonies to minimum security facilities. The Director must adopt standards making persons ineligible for a program of residential confinement if they are a felony sex offender Category A or a Category B felon or convicted of violent felonies. Parolees or probationers who violate conditions of their parole or probation, respectively, may be placed in certain community or minimum security correction facilities for no more than six months. An offender convicted of a violent felony within the immediate preceding year is ineligible to participate in certain programs of community reentry. The bill becomes effective July 1.

CHAIR AMODEI:
When we are talking about employment and education or rehabilitation, we changed from "established" to "demonstrated." Is that just wordsmithing or is there a different standard? The existing statute in section 3, page 5, says established a willingness or established a position of employment and the change will be to demonstrate a willingness or ability to establish. How do you administrate that?

ASSEMBLYMAN PARKS:
We have made it less specific. Sometimes "established" means there is definable documentation supporting the requirements.

CHAIR AMODEI:
Can you help us understand the demonstrated a willingness or ability to enroll in a program or rehabilitation as opposed to having actually enrolled?

MARK WOODS (Acting Deputy Chief, Division of Parole and Probation, Department of Public Safety):
It is easier for an inmate to let us know they will be able to get a job versus actually having the job before they are paroled. It is rare someone will be guaranteed a job while they are still inside prison.

CHAIR AMODEI:
What about the rehabilitation or education stuff?

MR. WOODS:
It is the same thing. Many inmates are able to get rehabilitation when a bed or position is available, and they do not have control over that. They are willing to enter it as soon as possible.

CHAIR AMODEI:
Therefore, if we approve the change, there are resource issues. They must demonstrate a willingness to enroll in a program as opposed to enrolling. If we do not want the change, we should get rid of it as opposed to saying "demonstrating a willingness."

MR. WOODS:
I can appreciate what you are saying, but if inmates plan to get an education and come out between school sessions, they are not going to be enrolled as they have to go to the educational facility and enroll in person.

CHAIR AMODEI:
What would happen if an inmate comes out between sessions and there is no enrollment? We are not going to revoke them for that are we?

MR. WOODS:
No, unless they choose to purposely stay away from trying to enroll.

CHAIR AMODEI:
Section 3 on page 5 gets rid of "complete successfully the remainder of the program of treatment." I understand the context that forfeits credits. When we get rid of the requirements in section 3, can someone just connect the dots on how that is taking us to the greater good? Also, in section, 7.5, page 11, we have deleted paragraph (f) saying "has not made an effort in good faith to participate in or to complete educational or vocational program or any program of treatment, as ordered by the Director." Why is that being removed?

DON HELLING (Warden, Northern Nevada Correctional Center, Carson City, Department of Corrections):
The requirement was that a person must have a job prior to being released to residential confinement, which is a difficult standard to meet by many offenders. This change will give them more latitude on who can be sent out. Obviously, they will have to have some other resources available while they look for a job, maybe additional family support.

CHAIR AMODEI:
We have in section 7.5, subsection 3, paragraph (c) "has, within the immediately preceding 5 years, been convicted of any crime involving the use or threatened use of force or violence." Can you summarize the discussion for me that led from changing five to one?

ASSEMBLYMAN PARKS:
That came about as a result of testimony and discussions relative to allow inmates the opportunity to avail themselves of these programs.

CHAIR AMODEI:
Was there any statistical basis for the selection of one year? I know we wanted to make it shorter but was there any discussion of substance on selecting the shorter period of time that led to 1 year as opposed to 18 months or two years or whatever?

ASSEMBLYMAN PARKS:
There has been previous discussion of backing that down. The first discussion was that we reduce it to three years; subsequently—apparently from data provided by DOC, the final recommendation was to drop it down to one year.

MR. HELLING:
Just because inmates are eligible does not mean or imply that we will put them out on residential confinement. There would be other factors to consider. Even if they meet all these minimum criteria, there might be some other reason the Department might decide an inmate is not an appropriate candidate.

SENATOR HORSFORD:
I have questions about whether some of this needs to be developed through regulation by P&P because this is pretty broad language. I have concerns about how it will be administered and if it will be administered consistently and equally. If it is not implemented through regulation, who is held accountable if it is not followed?

MR. WOODS:
Parole and Probation is not responsible for the timekeeping of a parolee or inmate. We advise the prison system whether a parolee is complying with the rules. We have never been involved with good time credits.

MR. HELLING:
The DOC has administrative regulations detailing the criteria set forth which will have to be revised and modified. The Department supports this bill as amended, but a couple of caveats need to be added. There are issues about the amount of meritorious time an inmate can earn toward the end of the sentence. There are other statutory requirements about notification. For example, the Department likes to notify victims 30 days in advance of a release. Sometimes, these offenders get meritorious credits at the end of their sentence and all of a sudden they get released the next day. That is an issue, especially with sex offenders. The Department is having difficulty meeting that requirement. Therefore, the Department is considering allowing inmates to take classes but not give them credits.

The Department is caught between the old and new systems and still working on algorithms for the sentence structure of the old system to transfer to the new system. Applying credits to minimum sentencing only gives the Department 30 days. We are depending upon a vendor, and they have had problems in calculating the regular sentence structure; now we are adding additional things, such as minimum sentencing and retroactive credits. We will do what we have to, but it is a huge amount of work.

Another unintended consequence is we will see the education level of inmates coming to prison drop drastically because currently, they often falsify presentence investigation reports (PSI) to make them look good by saying they have a high school diploma. When they go before a judge, they might falsify in the other direction so they can get credits to maximize the least amount of time they will serve.

The Department does not know the total impact or the number of inmates. The Department does not determine who gets released. The Parole Board does. There is no way to predict what another agency is going to do.

MR. HINTON:
I would like the Committee to ascertain from Mr. Helling if he would give us the name of just one inmate who has been released within one day. This Committee is entitled to hear the truth, not rhetoric. I do not know where they are getting this stuff, but I will tell you, you should have heard the moans and groans that came up from here in Las Vegas when he was testifying. They know for a fact it is not true.

MS. SMITH:
He said inmates should have a job. Thousands of inmates are 60, 70 or 80 years old, in bad health and cannot get a job. We can hardly find jobs for those who are 25 or 30 years old. The health of older inmates will not let them get a job so what can we do about that?

CONSUELO F. MCCUIN:
Of all the parolees to come out of prisons, sex offenders are the hardest to place because there are many debits put in front of them. They cannot be within so many feet of a school, cannot be in a neighborhood and this, that and the other. My solution to all of this is provide more money for more parole officers. We have 300 to 400 parolees to 2 to 3 parole officers. Additional officers would better control where they are going, who they are seeing and what they are doing. I am not criticizing the job parole officers are doing. Mr. Helling has only been in his job for a month or two so he has not had time to get his fingers wet and see what is really under programs. He should not be in charge.

MARNITA Y. SMITH:
I am representing Kevin Smith, ID No. 14527. The best resource available to you is the inmate. The inmate knows his time. If he does not, then working with the counselors who work with DOC can move this process along. It should not be a long, drawn-out process because of computer programming. It would be cost-efficient to find out who needs to be released based upon the outline of A.B. 510.

We have supporters for incarcerated family members. We have asked, in writing, for time-management information. I wrote a letter in August 2006 on behalf of my husband. I have not received a response. I wrote another letter in February since I found out there is time that cannot be accounted for that the judge has credited. The system is failing the inmates.

An inmate is sentenced to serve time for his or her punishment. The punishment should not continue beyond the designated release date based on the discretion of one individual. It seems like some of the inmates' rights are violated before they are even released.

In Nevada, a felon cannot get a gaming card and if they do not have a strong work history for the past ten years, they are not going to get a job even though we have industry that is open for individuals who may lack education.

We are carrying the burdens of our loved ones on our backs. Send them home so we can continue to support them.

MS. BROWN:
For the record, I have a copy of the checklist the Parole Board uses (Exhibit D). I have submitted United States District Court, District of Nevada *Nolan Klein v. Don Helling, et. al.* (Exhibit E, original is on file in the Research Library).

CHAIR AMODEI:
How does your testimony relate to A.B. 510?

MS. BROWN:
It relates to A.B. 510 because this is why we need the oversight committee.

CHAIR AMODEI:
Which is in A.B. 416.

MS. BROWN:
But I am asking that A.B. 416 be moved over into A.B. 510 along with the DNA testing. I would like to add more.

CHAIR AMODEI:
I already heard that.

MS. BROWN:
I would like to add more to my submitted testimony because this is going to trial. During the discovery process, court proceedings and deposition, it was learned that DOC decided the attorney, Treva J. Hearne, was not allowed to see her client because she was married to an ex-felon. However, Ms. Hearne is not married and her ex-husband is a prominent practicing attorney in Missouri. The person they were referring to was an ex-felon who had killed his child. Mr. Hearne from Missouri has contacted the Attorney General's Office and the Governor and requested an apology. This has not been done. There is pending legal action. We need an oversight committee so things like this do not happen. Also, the cost is enormous to taxpayers. The American Civil Liberties Union has received in excess of $300,000 in legal fees. If we had an oversight committee, things like this would not happen. We are tired of paying for inappropriate behavior and their retaliation against inmates, family members and now attorneys.

I am also asking the Parole Board not consider whether the prisoner has appealed the judgment of imprisonment for which the prisoner is being considered for parole. This goes hand in hand with the DNA request. I will tell you this, it is an unwritten policy of the Parole Board that if you have an appeal pending in either state or federal court, you will not be released to the street. So, if a person is maintaining their innocence and appealing their conviction, they will never see the street. If the DNA is available, it would definitely help those people who are fighting for justice to prove their innocence.

CHAIR AMODEI:
We are considering A.B. 510. We already had the hearing on A.B. 416. I asked you what your top priorities are and we know that one of the top priorities is the oversight board. If you have testimony on A.B. 510 that you have not already provided in the context of A.B. 416, please come forward and give that testimony.

SEAN GAMBLE (The Rogich Communications Group):
Assemblyman Harvey J. Munford requested that I speak on his behalf. He asked that I bring forward his three components of A.B. 416 to amend into A.B. 510. The components include the Open Meeting Law, the policy advisory commission, which is the oversight committee, and the inmate merit credits (Exhibit F). He is trying to address overcrowding and allow release of inmates sooner, if they qualify. He feels there are many incarcerated for petty crimes and they can be released. He says 80 percent of the women inmates are in for nonviolent crimes.

CHAIR AMODEI:
We are hearing these bills in anticipation of something coming from the Assembly Committee on Way and Means. There is a rule that says it actually has to pass out of the House of origin before we can do anything with it. In anticipation of one of them passing, we are conducting these hearings to afford you an opportunity to do what you are doing now as opposed to trying to do something on the floor and on the run.

I am not familiar with the open meeting stuff because, traditionally, that jurisdiction is with the Senate Committee on Government Affairs. For that component, I would appreciate brief information in writing within the next couple days on the status of an open meeting with respect to the Parole Board now. Summarize the proposals to change it and make members of the Committee on Government Affairs know that is something we are looking at in case they want to have input or a hearing if appropriate.

FLO JONES:
The Open Meeting Law, NRS 241, is applicable to the Parole Board, which it was, is and has always been. Between 2001 and 2003, they wrote it out of their manual when they revised it. For some reason, they took the authority to drop the language.

CHAIR AMODEI:
If it turns out that your conclusion is the Parole Board is subject to the provisions of the Open Meeting Law, then we do not need to change the law because we should be following it. We will request an opinion from Legislative Counsel.

SENATOR WIENER:
I had requested staff to provide information about how many times we have requested Legislative Commission to provide regulatory changes, updates and revisions. According to staff, it has been six years. If there is an overlap or interactivity required between the *Nevada Administrative Code* and regulations, I would sure like some clarification.

CHAIR AMODEI:
If regulations have changed and they have not come through the NRS 233B process, we would like to know that.

SENATOR WIENER:
Can they do things through Administrative Code that do not require some marriage to the regulatory process?

CHAIR AMODEI:
Is your testimony in the context of open meetings?

MS. JONES:
Yes, NRS 213.130, subsection 8 has been on the books for a long time; it clearly would not be interrupted by NRS 241, which is applicable to all commissions of our state. It does protect, with exact language, the victim's identity during a parole hearing. It also gives the Parole Board the authority to close a session to protect this identity. What it does not allow is the misuse or disallowment of the provisions of the Open Meeting Law—NRS 241—which is what I believe is happening.

SENATOR CARE:
I would like to introduce Hayden Courtney who is with me today who is 11 years old; he is up here for a couple of days doing a report for his school on the Legislature.

MS. JONES:
I want to touch on inmate credits. Fourteen years ago, a day was considered a 24-hour period of time. Somewhere along the line, the DOC developed a formula which they claim how easy it makes their lives. It works in only one specific situation when an inmate gets all of his credits for good time, is able to work and gets all of his work time. For any other situation, the formula is wrong and cheats inmates and taxpayers because we are paying for people to be in longer.

The DOC even puts on inmates' sheets that a day and a merit credit—which is only worth two-thirds of a day—are synonymous. The last time I counted, they are not. To only get two-thirds of a day when you thought you earned a day of good time defeats morale. It also affects education credits. If we allow the DOC to continue to maintain the two-thirds reduction, we are defeating our own purposes.

CHAIR AMODEI:
Where is that language?

MS. JONES:
It is explained in my handout (Exhibit G). These changes will help inmate morale, discourage lawsuits and even stop some of the unrest we have in a situation with so much idle time.

I never heard someone from DOC speak to the fact that the PSI reports could be falsified; however, I must say that has bothered me for many years. We have people writing the presentencing investigation reports who in many cases are overworked, not qualified and certainly are not sworn to tell the truth. Sometimes, those PSI stories look like they are fictional and the inmates do not have an opportunity—nor do their families—to correct any information. I speak of this from a very personal experience. About 26 years ago, information existing in a PSI report was not accurate and we were unable to check it.

I would like to ask that the folks who do PSI reports be sworn, just like anyone who testifies before a parole hearing must under the laws of perjury. I have no problem with victims being able to speak in private. I have every problem with victims being able to embellish—not that their emotion is not a very important factor—the facts of the case.

RICH LAMB:
I approve what Ms. Jones says about A.B. 416 and A.B. 510 and have submitted a handout (Exhibit H).

RAYMOND J. FLYNN (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):
Originally, we had major concerns with A.B. 510, but as amended, it will address our needs and I have confirmed that with Director Skolnik.

EVELYN MURPHY:
I am speaking first regarding a proposed amendment to A.B. 510 (Exhibit I) which adds to NRS 193 that the sentencing judge shall have discretion to determine what the enhancement penalty shall be from one to ten years. This Amendment also deletes doubling the enhancement penalty. This is to be applied retroactively.

The other thing I would speak to is credits and the importance of them being properly credited. I have long been involved with reentry programs and have spoken to groups of inmates regarding reentry and street readiness programs. Inmates should be given opportunities for education because it is proved that the greater education they have, the less likely they are to reoffend. There are many inmates who are looking to change their way of life. Availing them—while they are incarcerated—to further education, speaking abilities, vocational programs, etc. will help reduce the prison population in the future by having them ready and giving them the opportunity to earn credits. While I do not know the exact figures, at Warm Springs Correctional Center, there are 64 jobs available for an excess of 300 inmates. These inmates want the opportunity and are willing to participate in whatever necessary to improve their chances for success and reduce recidivism.

CHAIR AMODEI:
On the enhancement you testified to, are you in favor of the enhancements being changed in the context that they appear in A.B. 510?

MS. MURPHY:
That is correct.

CINDY HANEY:
My son, incarcerated at High Desert State Prison, is Jeremy Naylor, ID No. 86930. He has continually been in all the education programs trying to earn good credits. I have been calling time-management keepers continuously to make sure his credits have been applied properly. I was just told he was to get 90 meritorious credits which would equal 9 days for every 15 credits. What got

on his books is 30 days of meritorious credits which only moved up his good time by 18 days when he was expecting 54 days. This is a continual problem. Time management is not getting the proper time reported.

I am also in favor of changing the enhancement penalty. My son is also in there on an enhancement charge. He got sentenced double. There are many changes that need to be made.

MR. HINTON:
I am disappointed that A.B. 416 may not get out of Committee which is unconscionable.

CHAIR AMODEI:
Whether A.B. 416 travels or does not travel, the important thing is the policy considerations relevant to this issue. Whether they have a number A.B. 416 or a number A.B. 510 or whatever number, the important thing is that the policy is addressed or attempted to be addressed. I suggest you watch the policy and not necessarily the bill.

MR. HINTON:
I had made an amendment to A.B. 416, but I do not have the paperwork with me. I believe it was on NRS 209.246 where the institution was permitted some years ago by the Legislature to take money from family, friends, and loved ones who send money in to support their families in prison. Would you accept my mailing it to you as an amendment to A.B. 510?

CHAIR AMODEI:
If you would deliver it to the staff in the Grant Sawyer Building, they will fax it to Brad Wilkinson, Chief Deputy Legislative Counsel, today.

MR. HINTON:
It will be a chore, but I will try and get it done.

MS. MCCUIN:
I support A.B. 510. I concur with everything Flo Jones said. The priority for me is the oversight committee, time credits and enhancements, in that order.

CONSTANCE KOSUDA:
I am concerned that if everything the advocates have testified to is true, specifically that P&P has been violating the Open Meeting Law for at least six years, then some sanctions need to be included for an agency such as P&P. This should not be allowed to happen forever with impunity. We support these bills completely.

ESTHER SMITH:
I support an inmate who is my husband. Why do they not remove the section of the parole program that when an inmate spends 25 or 30 years in prison and comes out on parole, the family pays a parole office to turn in papers once a month? That is another $35 or $40 that he can use to live. Once he does his time, he should be free to go and do whatever he is supposed to do and not pay for it.

CHAIR AMODEI:
On your way out, if you want to give staff the specific question you just posed, they will direct it to Linda J. Eissmann, Committee Policy Analyst, and she will provide a brief answer to you.

KATY O'LEARY:
I am a registered nurse here on behalf of a friend who is in Ely State Prison. My eyes have been opened about the status of prisoners. I am here today to support A.B. 510 and A.B. 416 to transform the prison system to something that can work for the prisoners and their families.

My friend has told me a lot of stories about things that happen. He was up for parole in three months and was attacked by a group of people with a knife. He was put in solitary nine months ago and he is still there. Something is wrong with that picture.

All institutional paroles to consecutive prison sentences should be made by Nevada DOC Offender Management Division. An inmate should be considered for release if he has served the mandatory minimum or bottom number of his sentence less the statutory good time credit days. He should have no additional criminal convictions occurring during the instant term being served. The statutory good time credit day should have the value of a 24-hour period of time and not anything less. Parole Board hearings will be held only for inmates being considered for possible release to the streets. Anyone with no possible release

should not have a parole hearing. This is an incredibly positive savings to the Nevada state budget.

STACI PALOVICH/HARSH:
I will read my written testimony into the record (Exhibit J).

PAT HINES:
I am from Yerington. Credits given erroneously for many years have been visibly overlooked by this Committee and other legislative committees. It is specifically listed in our NRS that one credit is equal to one day's time in prison. I cannot understand how a government department can make this kind of error which is punishment for the people earning credits. If you or I broke an NRS, we would have some kind of punishment. To make this bill only retroactive back to 2000 or 2001 is a disgrace.

Judges need more discretion. They certainly do in comparison to what the Parole Board had without any monitoring, supervision or even approval of their own standards and guidelines.

I just received paperwork on a young man who had his parole hearing denied on May 8 and received the notice on May 22. It is highly unusual for an inmate to get notice within two weeks. Sometimes, decisions are not made for five or six weeks after the inmate's hearing. The paperwork I received said his parole decision was done on May 9. If they can make a decision the day after, they can certainly do their deliberations—if this body decides to make that a law—before the day of the parole hearing and give that decision out the day of the hearing. I would like to see that included and some of these discretions removed.

JOSEPH A. TURCO (American Civil Liberties Union of Nevada):
I will speak to a couple of policy issues in both A.B. 416 and A.B. 510. It took me awhile to understand the *Apprendi* problem. The discretions we are talking about had nothing to do with whether enhancements are granted because that is a jury decision. The discretion we are talking about is giving judges a range between one and ten years for enhancements rather than automatically doubling the sentence. Judges will have to explain the reasons for their decisions.

CHAIR AMODEI:
Hearings have taken place over the years where victims have felt just as passionately that a sentence did not do justice. To paint a 360-degree historical picture, we now are going back to this precipice and reexamining our value judgments—the Truth in Sentencing in the mid-1990s was that people testified they did not want the parole folks to have any discretion. Now we are hearing one size does not fit all so we are reexamining those policies.

MR. TURCO:
I know how difficult judges' jobs are and this does require them to do a little bit more homework, although we have proposed adding an appellate layer and a district. The ACLU supports an oversight committee and would ask that Dr. Richard L. Siegel or someone from our organization be included as a civil rights advocate.

Regarding credits, I cannot tell you how many letters and phone calls our office has received. If we did not change any law, Mr. Chair, if we just did the math, we could release I do not know how many hundreds of people today. I have not followed every single complaint to its conclusion, but enormous numbers of people are calling and writing the ACLU saying their credits are being added incorrectly. Is it because they cannot do math, is it deliberate or is it a lack of oversight? I do not know the answer. There are things we could and should do right now without changing any law. I wanted to make that observation; it is anecdotal, but it is significant.

Open meetings are my final policy issue. I get the sense that maybe DOC is a little paranoid. Every other agency and department struggles with open meetings. Nobody is demanding every single thing be wide open. Advocates, sponsors and people who care want some kind of cooperation. I am personally appealing to DOC to give us something more than what we have. Inmates come back into our society, they are one of us and it is all our responsibility to do these things right.

PATTI EDGIN:
I would like to address some of the issues about the Parole Board that have come up today, especially the Open Meeting Law. One of the comments you made earlier about one of the sections on A.B. 510 was whether an inmate had established a willingness to get employment or educational programs. I would let you know, and you may be aware of this, some of the reentry programs

such as Casa Grande Transitional Center have the men and women working so they are able to establish the ability to maintain a job; they are responsible, able to pay restitution and are financially responsible. They are able to demonstrate those skills and abilities. Yet when they come up for parole, they are not always approved for parole even though they have already established they are able to fulfill many of the requirements to make them eligible for parole.

My son is at Casa Grande and is successful in that program. He came up for parole and was not allowed to attend his Parole Board hearing. As a family, we were only allowed to provide letters for the Board to review. Whether they actually read the letters, we do not know. I understand these parole hearings are quick, but the inmate is not even allowed to participate in his own Parole Board hearing. That is not right. Decisions are being made about their lives. They have a right to be at the hearing where things are being discussed and decisions are being made for their lives. Because the Board does not document their meetings, there are no notes, agenda or record other than their decision.

My son's probability score was excellent. He had a score of -3 which means he is going to be successful if approved for parole. He is already working and has established he is a successful person. Not only did they deny his parole, they denied it for two years. The Parole Board needs to be accountable for their decisions. Please do not let them continue to meet in secret, make decisions behind people's backs and not be accountable.

MS. BROWN:
I call the Committee's attention to page 7, Item 15 of Exhibit G while you deliberate. The Parole Board has too much discretion. I will provide an example of an inmate who was recently released after serving additional time for a parole violation. He had been released and was productive and working. He had a girlfriend who was into drugs and visited his home. He called his parole officer repeatedly, but the officer never showed up. He left the situation because he did not want to go to jail, but in doing so, he committed an infraction by cutting off his ankle bracelet. Because of this infraction, it cost him nine additional years in prison. His parole officer testified at his parole hearing, took responsibility and verified the inmate's attempts to contact him. The inmate did not have the proper code because they are changed often. Had the parole officer received the calls, he would have removed the inmate from the situation. Because the inmate had cut off his ankle bracelet, he was returned to prison for nine years. Every time he appeared before the Parole Board, it was a dump.

CHAIR AMODEI:
We will close the hearings on A.B. 510 and A.B. 416. We are adjourned at 11:56 a.m.

RESPECTFULLY SUBMITTED:

Lora Nay,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE:

Clark, Angela

From: dwms@juno.com
Sent: Wednesday, June 09, 2010 6:45 PM
To: Clark, Angela
Cc: tonjamasrod40@aol.com
Subject: IN FAVOR OF NOLAN'S LAW

NOLAN'S LAW should be passed. We are a network of 300+ litigants in the Eighth Judiciary (Clark County) of Nevada. On Thursday, June 3, 2010, Attorney General Catherine Cortez-Masto and Washoe District Attorney testified before 20 Commissioners appointed by the Nevada Supreme Court. Their testimony was shocking. Criminal evidence is intentionally, knowingly, and conscientiously being destroyed by the Clerks of the Courts of the State of Nevada.

If NOLAN'S LAW is passed, we victims of crime will be able to have the documents, prior to their destruction, to ensure a fair trial.

Dee Williams, Public Information Officer YOUR RIGHT!
1812 Shifting Winds Street
Las Vegas Nevada 89117
702-787-0002

Clark, Angela

From: Michelle [michelleravell@cox.net]
Sent: Thursday, June 10, 2010 7:50 AM
To: Clark, Angela
Cc: Prison/Parole advcate (Brown, Tonja)
Subject: For the ACAJ

Dear Members of the ACAJ Committee,

I add my support to the BDR for Nolan's law, with a couple of additions. There must be language in the law that sets forth the penalties for failure to comply, or it is meaningless.

Once a person is ARRESTED all agencies that generate reports or process evidence MUST provide to the defense a copy of all evidence and all reports at the same time they are provided to the District Attorney. Failure to do so would result in the Agency or District Attorney being charged with misconduct and placed on unpaid administrative leave pending the outcome of an evidentiary hearing. If it is found that the evidence was withheld from the defendant, the person who withheld the evidence will be terminated from their employment with the agency without compensation of any kind and will lose all rights and privileges afforded by the agency which employed them. They may also be liable in civil court for their actions.

Additionally, having been advised of so many instances of what I consider to be cruel and inhuman punishment of incarcerated individuals, I also add my support for a BDR to be written to authorize and Oversight Committee to oversee and investigate these allegations into prisoner misconduct. It would ease the burden of the Board of Prison Commissioners, and also enable the ACAJ to garner further knowledge into the workings of the NDOC. There is too much smoke for there to be no fire, and if situations arise for which the ACAJ, AG, etc.... have been advised but have not investigated, criminal negligence charges should be brought against them. Currently there seems to be no mechanism or committee to handle these complaints.

I would also like to see the ACAJ recommend that the need for a Parole Board be reviewed. There are many states that do not have Parole Boards without any problems arising because of the lack, and I believe it would be a cost savings to the state.

Sincerely,

Michelle Ravell

Las Vegas, NV

702-321-3277

Clark, Angela

From: Laurie Rielly-Johnson [lriellyjohnson@gmail.com]
Sent: Friday, June 11, 2010 9:23 PM
To: Clark, Angela
Subject: NOLAN'S LAW...it's a must have in fair courtroom proceedings

At my first ACAJ meeting on June 9, 2010, I heard about Nolan's Law for the 1st time. I am in support of this Law. On a persoanl not...improper discovery process was a big deal in my own sons case...attorney's should not be allowed to waive the discovery...in my own personal opinion. Improper/unknown facts create improper/unfair and sometimes illegal sentences! I am in no way pointing a finger at anyone for anything...simply working along with others to make known certain areas that should be addressed and corrected by adding additional law for fair and equal justice on both sides of the courtroom!!! I thank you from my heart, for considering my voice in your decision making!!!

--
Health & Peace...<3

Laurie Rielly-Johnson
702-689-7332

Clark, Angela

From: judithlipman@comcast.net
Sent: Saturday, June 12, 2010 6:31 PM
To: Clark, Angela
Cc: judithlipman@comcast.net
Subject: noa law

please submit my support to activate noa law.and stop the crawl and unjustice practice.

sincerly

Judith LIpman

Clark, Angela

From: judithlipman@comcast.net
Sent: Saturday, June 12, 2010 6:38 PM
To: Clark, Angela
Cc: judithlipman@comcast.net
Subject: NOLAN LAW

I Am sending my support to activate the NOLAN LAW,

sincerly

JUDITH LIPMAN

Clark, Angela

From: tonjamasrod40@aol.com
Sent: Sunday, June 13, 2010 8:00 PM
To: Clark, Angela
Subject: Fwd: Nolan's Law

Hi Angi,

Will you please submit Gene's email as part of the record for those in Support of Nolan's Law.

Thank you,

Tonja

-----Original Message-----
From: gene pierce <gpierc1@hotmail.com>
To: tonja masrod <tonjamasrod40@aol.com>
Sent: Sun, Jun 13, 2010 5:33 pm
Subject: Nolan's Law

It is so unbelievable that submission of all evidence to all parties concerned in a criminal case is not already required by law. I am in full support of implementation of Nolan's Law. I wish you the best of luck, Tonja. I have thought of you often since we first had contact.

Sincerely,
Gene Pierce
Cell: 702-503-2443

Clark, Angela

From: tonjamasrod40@aol.com
Sent: Monday, June 14, 2010 11:44 AM
To: Clark, Angela
Subject: Fwd: Nolan's Law and Oversight

Angi,

Please submit Mr. Hinton's letter in support of Nolan's law and in favor of an Oversight Committee to the Commission.

Thank you

Tonja

-----Original Message-----
From: Donald Hinton <spartacusproject@yahoo.com>
To: tonjamasrod40@aol.com
Sent: Mon, Jun 14, 2010 11:32 am
Subject: Re: Fwd: Nolan's Law

Ms.Tonja Brown:

From Donald Hinton & The Spartacus Project:

One of the most important parts of our system of the judicialry is fair play. The fairness of fair play was denied your brother, Nolan Klien--who died in prison as an innocent man,and the State of Nevada authorities knew it. Nevada law in many respect is disgraceful and nothing is done to change it. Nolan'sLaw must be implemented.

The second most important thing as it stands today is the originating of an Oversight Committee--that is not filled with law enforcement officials, which seems like in Nevada taints everything they touch. Other states have businessmen, doctors and dentists and clergymen and women keeping law enforcement from continuing outrageous brutality on our citizens.

While I am no bleeding heart citizen, I do believe there is a need for prisons and jails, but to the extent Nevada carries their justice is pure evil, and is the second largest industry in Nevada. The sentences are too long and the continuing lock down of the men & women in Nevada Prisons is beyond sane and borders on the insane.

It is way past time to hire intelligent men and women to administer to the penal needs of Nevada. There needs to be a complete change of sadistic wardens and guards and attitudes on our convicted men & women, so that they may have a decent chance to become good citizens, instead of more harden felons. Example: More education, more jobs, and trades taught in prisons and a decent menu of more than a $1.27 per day. The horses they keep on the prisons grounds are fed at least $2.50 a day. Tell me a man or woman in a Nevada Prison isn't worth more than a $1.27 a day in prison food?

To go into the mental health, and medical health, and dental health, in Nevada's

Prisons--would require book the size of a large dictionary. It is beyond brutal and sadistic. Even the word rotten doesn't cover the subject. Shame on the State of Nevada and it's administrators--from the Governor, to the Secretary of State to the soul-less Attorney General, who spends millions of dollars fighting prisoner issues that could be litigated in a few minutes and for a few pennies. And, to do what, show the citizens she can fight and win against bankrupted, browbeaten, ignored, oppressed, vanquished and shattered men & women in Nevada's Prisons. She doesn't do very well against those who are able to fight back and have a few dollars. And. all three of the above named continue to let the Director of Prisons pass regulation after regulation--without a whimper of question. And, we, citizen's of Nevada call these people: "LEADERS"! They are disgraceful parasites.

You now have my opinion on the need for Nolan's Law and an Oversight Committee.

How foolish can one state be to continue this wastful expendature of tax dollars that produces nothing, and almost has no meaning?

Respectfully submitted.

Donald Hinton, Sr.
Spartacus Projectof Nevada
1919 E. HallwoodDrive
Las Vegas, Nevada

(702)798-4339

June 12, 2010

Re: NOLAN'S LAW

Dear Members of the Advisory Commission on the Administration of Justice:

My name is Gerry Spence. I am an attorney who has spent a lifetime fighting for the rights of ordinary citizens. I am in support of Ms. Tonja Brown's proposed recommendation of NOLAN'S LAW.

NOLAN'S LAW would be instrumental in protecting the rights of any of us who become accused of crimes. NOLAN'S LAW would provide that once a defendant is arrested and charged the law enforcement agency MUST provide the accused with a copy of all exculpatory evidence in the possession of the prosecution at the time of the arrest and that after the arrest copies of any additional exculpatory evidence that is provided the prosecution be simultaneously provided the accused.

We have witnessed in the last decade the release of countless innocent citizens whose precious lives were wasted in horrible prisons because an over zealous prosecutor chose not to turn over exculpatory evidence as is required by law.

The failure to turn over exculpatory evidence not only convicts innocent persons, but it is the reason that rapists and murderers are released to walk among us. Prosecutors withhold evidence which requires the court to reverse convictions and has resulted in the release of person who should have remained behind bars.

When a prosecutor doesn't do their job, we all lose. Either an innocent person loses his constitutional protection or a rapist or murderer walks free. Support NOLAN'S LAW and protect all of us, and our families from the strategies of ambitious prosecutors who want to convict at any price.

Respectfully,

Gerry Spence

Clark, Angela

From: tonjamasrod40@aol.com
Sent: Monday, June 14, 2010 5:32 PM
To: Clark, Angela
Subject: In support of Nolan's Law

I fully support Nolan's Law, and ask that it be enacted into law on an expedited basis.

This is the full and fair discovery that is at the heart of our jurisprudence, and would give the people of this State confidence in the transparency and fair dealings engaged in by the Police, Prosecutors, and Judiciary.

Sincerely,

Constance Kosuda
retired NJ trial lawyer
Las Vegas, NV 89122

702 463 3936

Peace, Prosperity, Perfect Health, Harmony, Happiness, and Compassion Always, Forever.

I

Clark, Angela

From: SAM DEHNE [renocitizen@gmail.com]
Sent: Monday, June 14, 2010 7:29 PM
To: tonjamasrod40@aol.com; Clark, Angela
Subject: Re: Letter from famous attorney Gerry Spence in support of Nolan's Law.

MEMO
Sam Dehne, Lt Col, USAF (ret)
775 825-1398

Subject: Support of Nolan's Law

Dear Tonja, 6/14/10
I, Sam Dehne, wholeheartedly agree with Mr. Spence's erudite report.
He portrays my thoughts eloquently in a minimum amount of words.
Please use my short comments of support anywhere and anyway you want.
And if anybody wants to contact me, I will be happy to discuss this.

My prayers are with you in your valiant and courageous battle.

Sam Dehne
297 Smithridge
Reno, Nevada 89502

cc: Angela Clark

On Mon, Jun 14, 2010 at 6:39 PM, <tonjamasrod40@aol.com> wrote:

Here is the correspondence between Gerry Spence and I regarding the law I'm trying to get passed on Nolan's law.

Re: Final- Letter in Microsoft Word Document

Gerry Spence to you - 3 hrs agoMore Details
Date:
Mon, Jun 14, 2010 3:52 pm

Forward it as is, please. Have no means to sign and email. gerry

---

From: <
tonjamasrod40@aol.com>
Date: Mon, 14 Jun 2010 14:39:13 -0400
To: <gerry
Subject: Re: Final- Letter in Microsoft Word Document

Gerry,

Is there a way you can sign the letter and email it back to me? If you cannot I'll forward it on this way.

Thanks again,

Tonja

-----Original Message-----
From: Gerry Spence <
Tonja:

Attached is my amended letter. Please feel free to distribute it as required.

gerry

-----Original Message-----
From: Gerry Spence
To: tonjamasrod40@aol.com
Sent: Sun, Jun 13, 2010 9:18 pm
Subject: Re: Final- Letter in Microsoft Word Document

I attach my edited letter. Is it factually correct?

Gerry

From: <tonjamasrod40@aol.com>
Date: Sun, 13 Jun 2010 22:56:03 -0400
To: <gerry
Subject: Re: Final- Letter in Microsoft Word Document

NOLAN'S LAW. NOLAN'S LAW would be once a defendant is ARRESTED AND
THEN CHARGED the law enforcement agency MUST provide to the defense a copy of the evidence at the same time they provide the District Attorney with the evidence.

Clark, Angela

From: tonjamasrod40@aol.com
Sent: Wednesday, June 16, 2010 7:27 AM
To: Clark, Angela
Subject: Fwd: Nolan's Law

Please pass to the Commission

-----Original Message-----
From: Dennis Tupper <dentup47@gmail.com>
To: Tonja Brown <tonjamasrod40@aol.com>
Sent: Tue, Jun 15, 2010 9:47 pm
Subject: Nolan's Law

To Whom It May Concern,

This letter is sent to those in charge of placing Nolan's Law before the lawmakers in Carson City, NV during the next legislative session.
I am a 50 year plus resident of the silver state and have observed several times during those years, court cases where a law similar in content to Nolan's Law would have been beneficial to Defense Attorney's, so as to provide accurate and needed information in preparation for a defense case.
Closing ones eyes as to the necessary facts in helping to prove guilt or innocence should be a non negotiable path of fact finding in any legal case.
Open your eyes and provide all information so that the guilty won't go free and the innocent won't serve time or even be put to death.
I am a strong supporter of Nolan's Law and hope that the necessary steps are taken to have our Nevada lawmakers vote to have it become a much needed part of our legal process.

Sincerely,
Dennis L. Tupper

Clark, Angela

From: Vicki Olausen [volausen@sbcglobal.net]
Sent: Tuesday, June 15, 2010 6:23 PM
To: Clark, Angela
Cc: Tonja Brown; volausen@sbcglobal.net
Subject: NOLAN'S LAW

Dear Ms. Clark

My name is Vicki Olausen. I am the wife of John Steven Olausen #14804, an inmate at Northern Nevada Correctional Center. Steve has been incarcerated for 32 years in the Nevada prison system thanks to evidence being withheld in his case by Washoe County Deputy district attorney Gary Hadlestad. Needless to say I strongly support Nolan's Law.

The injustices that have been done to Nolan Klein, Steve Olausen and countless others has got to stop! Nolan's Law will protect the rights of innocent people being unjustly accused and prosecuted by our prosecutors who will do ANYTHING, including hiding or destroying evidence to get a conviction. Prison is a horrible place for anyone to be, especially those who are innocent but can't prove it due to the horrendous and vile cover ups by the DA's office.

I am asking you to please support NOLAN'S LAW for the protection of all. You never know when one might be unjustly accused of a crime.

Sincerely,

Vicki Olausen

Clark, Angela

From: tonjamasrod40@aol.com
Sent: Tuesday, June 15, 2010 3:10 PM
To: Clark, Angela
Subject: Nolan's law
Attachments: Chris Mazur in support of NOLAN'S LAW.doc

Dear Ms. Clark,

Please submit Mr. Mazur's letter in support of Nolan's Law to the Commission.

Thank you,

Tonja

June 15, 2010

Re: NOLAN'S LAW

Dear Advisory Commission on the Administration of Justice:

Please consider the value of Nolan's Law being proposed by Tonja Brown This law asks that police evidence be submitted simultaneously to both the prosecutorial team and the defense counsel

Any questions of withholding of exculpatory evidence by an over zealous prosecutor – part of Mr Nolan Klein's assertion within his own case- would be thwarted by this law.

I agree with Ms Brown that our laws are set up to protect the rights of the accused. Nolan's law will do just that.

Come the 2011 Legislature, I ask that you merit in this law and push for a favorable recommendation.

Respectfully,

Christopher Mazur

Christopher Mazur
330 West Nye Lane Apt # 41
Carson City, NV 89706

Clark, Angela

From: tonjamasrod40@aol.com
Sent: Tuesday, June 15, 2010 3:07 PM
To: Clark, Angela
Subject: Letter in support of passing Nolan's law

Dear Ms. Clark

Please submit this letter in support of Nolan's law to the Commission.

Thank You,

Tonja

To Whom it May Concern:

I am writing in support of the request of Tonja Brown to promote and ultimately pass Nolan's Law.

I have heard of many cases besides that of Nolan Klein where the prompt sharing of all evidence with the defense as well as the District Attorney would have served justice fairly and appropriately. I can think of no good reason for the current discrepancy in the procedure.

Please give earnest consideration and support to the passage of Nolan's Law.

Very Sincerely,

Linda D. Greenberg
267-11th Avenue #4
San Francisco, CA94118
(415) 668-5239

P. S. I am the mother of an inmate in the Nevada State Prison System.

Clark, Angela

From: myra [moparfans2@yahoo.com]
Sent: Thursday, June 17, 2010 10:57 AM
To: Clark, Angela
Subject: Nolan's Law

I strongly approve the passage of such a law as I am actively involved with a case with my son which evidence has been held by the state and not released and now 4 years later I am trying to obtain this evidence to help in the release of my son who has been falsely accused of crimes which he has not committed and whom Judge James Bixler of the eighth judicial court has refused to hear new evidence that could potentially exonerate him. Please stop the injustice that is taking place.